



**CITY AND COUNTY OF SAN FRANCISCO
IMMIGRANT RIGHTS COMMISSION**

**A CITY AND NATION OF
IMMIGRANTS:**

**2013 Recommendations on
Comprehensive Immigration Reform**

April 2013



CITY AND COUNTY OF SAN FRANCISCO IMMIGRANT RIGHTS COMMISSION

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April 1, 2013

Since 1997, the San Francisco Immigrant Rights Commission (IRC) has been a champion for the inclusion and integration of San Francisco's immigrant residents and workers. From upholding sanctuary city ordinances to language rights and immigration reform, the IRC has fought for fair and humane policies at the local, state and federal levels.

In 2009, the IRC held a series of hearings, meetings, and a summit on Comprehensive Immigration Reform, Effects of Federal Immigration Enforcement Policies on local communities, and San Francisco's role in helping to shape national policy. Over three years later, the national debate on reform has escalated, while millions of immigrants continue to live in limbo, unsure of their status and unable to move forward to a new future.

In February 2013, the IRC held a special session on immigration reform to hear testimony from community advocates and individuals affected by proposed policies. The IRC then developed a series of updated recommendations and held a policy discussion in March 2013 with local, state and national experts and advocates.

This report includes the voices of San Francisco's diverse immigrant communities. The IRC applauds the courage of everyday San Franciscans and community advocates who have come forward to provide testimony, recommendations and solutions to this nation's immigration puzzle.

The IRC commends the Mayor, Board of Supervisors, District Attorney and city officials for their leadership and commitment to a more fair, inclusive and just America.

Finally, the IRC thanks the Office of Civic Engagement & Immigrant Affairs, under the leadership of Executive Director Adrienne Pon, for its invaluable assistance with this report and its partnership in improving the lives of all San Francisco residents, including immigrants and vulnerable communities.

Handwritten signature of Bill Ong Hing in black ink.

Bill Ong Hing, Chair

Handwritten signature of Celine Kennelly in black ink.

Celine Kennelly, Vice Chair

A CITY AND NATION OF IMMIGRANTS:

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**San Francisco Immigrant Rights Commission
April 2013**

A WORD ABOUT THIS REPORT

As this report was being prepared for printing, legislation crafted by a bipartisan Senate Committee referred to as the “Gang of Eight”¹ was introduced in the U.S. Senate.

S. 744: the Border Security, Economic Opportunity, and Immigration Modernization Act currently under consideration by the Senate Judiciary Committee, proposes a pathway to citizenship for undocumented immigrants, a streamlined path for DREAMers and certain groups of long-term residents, the clearing of family backlogs, higher priority for children and spouses of lawful permanent residents, STEM visas, some due process protections for deportees with mental problems, and the elimination of the one-year filing deadline for asylum applicants.

The San Francisco Immigrant Rights Commission welcomes and appreciates efforts to reform an antiquated and ineffective immigration system but is concerned that S.744 does not go far enough to reflect the core values of this great nation. The IRC is particularly concerned about the implications of shifting priorities from keeping families together to an unprecedented expansion of border enforcement, as well as the threats to the safety, economic well-being and civil liberties of all workers, both immigrant and non, from the E-Verify program. S. 744 excludes same-sex, binational couples and families; eliminates sibling, older married sons and daughters and diversity categories; lacks provisions for fair hearings for deportable immigrants who are rehabilitated; and includes requirements that create insurmountable and costly barriers for aspiring immigrants, rather than pathways to citizenship and legal residency.

The IRC believes that broad, progressive immigration reform is necessary and beneficial to this nation. As noted in its 2009 report, the IRC recognizes that fixing a broken system is difficult, given the complexity and ambiguity of U.S. immigration laws and policies that were designed to exclude, not include, certain individuals. A 200+ year history of discriminatory immigration law on the basis of national origin, race, class, gender, and sexuality cannot be corrected with piecemeal legislation.

It is the IRC’s hope that the Senate Judiciary Committee enacts legislation that embraces America’s diversity and core values— legislation that is fair, humane, inclusive and non-discriminatory; focuses on the inclusion, integration and success of immigrants; supports family unity; includes a broad and clear pathway to legal residency and citizenship; prevents violence and the unnecessary loss of life; and contains safeguards for basic human rights and dignity.

This is an opportunity to design fair and equitable laws and policies that embrace what is best about America—the dynamism, creativity and innovation that come from a rich heritage of diverse people and perspectives.

¹ Members of the bipartisan “Gang of Eight” Senate Committee include: Senators Michael Bennet (D-CO), Dick Durbin (D-IL), Jeff Flake (R-AZ), Lindsey Graham (R-SC), John McCain (R-AZ), Bob Menendez (D-NJ), Marco Rubio (R-FL), and Chuck Schumer (D-NY).

**SAN FRANCISCO IMMIGRANT RIGHTS COMMISSION
A CITY AND NATION OF IMMIGRANTS:
2013 RECOMMENDATIONS ON COMPREHESIVE
IMMIGRATION REFORM**

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I. EXECUTIVE SUMMARY

We are so proud of everybody here. In each of you, we see the true spirit of America. And we see a bit of ourselves, too, because most of our stories trace back to moments just like this one. To an ancestor who — just like the men and women here today — raised their right hand and recited that sacred oath. And the point is that unless you are one of the first Americans, unless you are a Native American, you came from someplace else. That’s why we’ve always defined ourselves as a nation of immigrants. And we’ve always been better off for it. The promise we see in those who come from all over the world is one of our greatest strengths. It’s kept our workforce young. It keeps our businesses on the cutting edge. It’s helped to build the greatest economic engine that the world has ever known.

—President Barack Obama at a March 25, 2013 White House naturalization ceremony for active duty service members and civilians.²

The United States is a nation of immigrants with a proud history of welcoming and including newcomers. Major cities like San Francisco owe their rich cultural diversity and economic leadership to the contributions of immigrants. But since its inception, this nation has also struggled with issues of controlling immigration, embracing some groups of newcomers while vilifying others. A long history of anti-immigrant sentiment has triggered hostility, hatred, and at times violence due to national, cultural, linguistic and religious differences, and perceived threats to the economy, national security or the “American culture.”

Immigrants long have been blamed for everything from overpopulation to causing the poor economy, taking jobs away from Americans and draining the welfare system. Immigrants have been accused of being disloyal, refusing to learn English, and failing to adopt the American culture. Immigrants from Germany, Ireland, Asia, Mexico, the Middle East, and other parts of the world all have been targets of American nativism, racism and bias. Post-9/11 efforts to fight global terrorism and ensure a safe America have had a drastic effect on how immigrants have been recently viewed in the United States, with increased cases of hate crimes, harassment, racial profiling, and discrimination over the past 12 years.³

There are an estimated 11 million immigrants currently living or working in the United States without legal status.⁴ Most arrived seeking the same things as generations of immigrants before them: freedom, economic opportunity, safety, a better life, and a peaceful future for their children and families. However, a federal immigration system focused on enforcement, rather

² Retrieved from <http://www.whitehouse.gov/blog/2013/03/25/president-obama-new-citizens-each-you-we-see-true-spirit-america>

³ The Pluralism Project, Harvard University, *Post 9/11 Hate Crime Trends: Muslims, Sikhs, Hindus and Jews in the U.S.* (2005), and U.S. Department of Justice, Civil Rights Division. **Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later**, A Report on the Civil Rights Division’s Post-9/11 Civil Rights Summit, Hosted by George Washington University, October 19, 2011. Retrieved from http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf

⁴ Department of Homeland Security, Retrieved from http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf and Pew Hispanic Center: Pew Research Center, A Nation of Immigrants A Portrait of the 40 Million, Including 11 Million Unauthorized, January 29, 2013. Retrieved from <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/>

than integration and engagement, has failed to solve long-standing problems. The failure to address challenges such as the root causes of unauthorized immigration, demand for foreign workers, limitations on worker visas, border security, and family reunification has, resulted in an over-burdened system of antiquated quotas and conflicting laws and policies, billions of wasted tax dollars, and an environment of fear, intimidation and confusion. Regardless of political perspective, all sides on the issue agree that the U.S. immigration system is broken and ineffective. The need for broad and comprehensive change is painfully urgent.

SAN FRANCISCO, A CITY OF IMMIGRANTS

Nowhere in the United States is the contribution of immigrants and the value of diversity more evident than in San Francisco, a vibrant, dynamic, international city shaped by its immigrant roots. Over a third of San Francisco's current population is immigrant and nearly half of all residents speak at least one of 112 different languages other than English at home.⁵ This immigrant-driven diversity and creativity is what makes San Francisco a world class city and a center of finance, multiculturalism and innovation.

In 1989, San Francisco passed the *City and County of Refuge Ordinance* (widely known as the Sanctuary Ordinance)⁶ which prohibits city departments, agencies, commissions, officers or employees from 1) assisting with Immigration and Customs Enforcement (ICE) investigation, detention or arrest proceedings unless such assistance is specifically required by federal law, as well as 2) prohibiting city employees, officers and departments from requiring or disseminating information regarding the immigration status of an individual when providing services or benefits. The Ordinance is rooted in the Sanctuary Movement of the 1980s, when churches across the country provided refuge to Central American immigrants fleeing civil wars in their countries. Faith-based communities provided this assistance in response to the difficulties immigrants faced in obtaining refugee status from the U.S. government. Local law enforcement, public health and social service providers also found that public safety and public health were threatened because immigrants feared reporting crimes or utilizing basic services out of the belief that local officials would report them to immigration agents. Municipalities across the country followed suit, adopting legislation to prohibit the use of municipal funds or resources to be used to enforce federal immigration laws.

In recent years, particularly after 9/11, increased federal immigration enforcement activities, including raids of homes and places of employment, have undermined Sanctuary ordinances across the country and created fear among San Francisco's most vulnerable residents. These actions raise questions over the basic protections for immigrants even in a City of Refuge. Many of the problems stem from conflicting federal immigration policies and practices focusing on enforcement.

A VOICE FOR IMMIGRANT COMMUNITIES

Since 1997, the San Francisco Immigrant Rights Commission, a 15-member policy advisory body, has advocated for fair, humane and inclusive policies affecting immigrant,

⁵ U.S. Census Bureau. (Last Revised: Thursday, 10-Jan-2013 EST). *State and County QuickFacts*. The foreign-born population in San Francisco County is estimated to be 35.6 percent. Retrieved from <http://quickfacts.census.gov/qfd/states/06/06075.html>. The most frequently spoken languages in the City and County of San Francisco are English, Spanish, Cantonese, Mandarin, Tagalog and Vietnamese.

⁶ *San Francisco City and County of Refuge Ordinance*, San Francisco Administrative Code Chapter 12H: Immigration Status. Retrieved from http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca.

linguistically isolated and economically vulnerable communities. The Board of Supervisors of the City and County of San Francisco adopted Ordinance number 211-97 on May 8, 1997, codified in Chapter 5, Article XXI of the San Francisco Administrative Code, establishing the Immigrant Rights Commission (IRC).

The mission of the IRC is to improve, enhance and preserve the quality of life and civic participation of all immigrants in the City and County of San Francisco. The IRC is charged with the primary duty of providing advice and making recommendations to the Board of Supervisors and the Mayor on issues affecting immigrants working and residing in the City. The IRC consists of 15 voting members, eleven (11) who are appointed by the Board of Supervisors and four (4) who are appointed by the Mayor. At least eight members must be immigrants to the United States and each member serves for a term of two years.

Over the past 16 years, the IRC has convened numerous hearings, meetings and neighborhood sessions to listen to community voices, documenting testimony and feedback from thousands of San Francisco residents and workers about policies and programs that are both beneficial and harmful to immigrants.

The IRC continues to urge local, state and national leaders to pass comprehensive, humane immigration policies based on the principles of fairness and equity upon which this country was founded.

The IRC respects the rights of all people to due process, human dignity and the opportunity to participate in meaningful ways and contribute to economic and social success of the United States. The interdependence between immigrants and citizens is this nation's strength. Fairness, equity, inclusion and integration are not just San Francisco values, but also fundamental American principles that should be reflected in this nation's immigration policies and institutions.

TIME FOR CHANGE

Now is the time for comprehensive immigration reform. Given policy debates currently happening in Washington, D.C. and across the country, the question appears not to be *if* reform will occur, but whether the reform will contain a broad path to legalization and citizenship for undocumented immigrants, reaffirm and strengthen the commitment to family categories, and reinstate due process protections that were eroded in 1996 legislation and a post 9/11 enforcement environment.

It is the IRC's hope that this nation's leaders adopt legislation that leads to the collective success of all America's people. Creating pathways to legal immigration status; facilitating the stability, participation and success of new immigrants; keeping families together; allowing access to critical information and safety net services; and developing enforceable, realistic, fair, and humane policies are keys to effective immigration reform. While there are many challenges to completely revamping a broken system, decisionmakers now have a great opportunity to think outside-the-box, to design fair and equitable laws and policies that embrace what is best about America—the dynamism, creativity and innovation that come from a rich heritage of diverse people and perspectives.

II. RECOMMENDATIONS

In February and March of 2013, the San Francisco Immigrant Rights Commission (IRC) held a series of hearings, discussions and meetings on comprehensive immigration reform, documenting the testimony of over 100 advocates and immigrants. The recommendations contained in this report reflect the real-life hopes, dreams and concerns of individuals who will be directly affected by changes in immigration policy. The IRC urges local, state and national leaders listen to these voices and enact immigration reform that reflects this nation's commitment to equality and justice for all America's people, not just some. A full transcript of all testimony provided during the hearing and minutes from the subsequent policy summit may be found after this section.

FEDERAL RECOMMENDATIONS

Visas

1. **Prioritize Family Reunification.** Family reunification should remain a cornerstone of immigration policy. Serious backlogs in certain categories should be addressed by increasing the number of family visas available and increasing the per country numerical limitations. A reasonable maximum waiting period for visas should be established.
2. **Recognize Same-Sex, Binational Partners.** The Uniting American Families Act (UAFAs) should be enacted as part of comprehensive immigration reform. Under current immigration law, U.S. citizens and lawful permanent residents may sponsor their spouses for immigration purposes. But same-sex partners of U.S. citizens and permanent residents are not considered spouses and their partners cannot sponsor them for family-based immigration. The UAFAs would amend the law by simply adding the term "permanent partner" in sections where "spouse" appears, thus ensuring that a non-citizen permanent partner may receive the same immigration benefits that non-citizen spouses now receive.
3. **Increase and Facilitate High Tech Visas for Highly-Skilled Students and Workers.** There is a great need for expanded Science, Technology, Engineering and Math (STEM) and high-tech visas. Facilitate the immigration of individuals in STEM categories and increase H-1B nonimmigrant numbers.
4. **Maintain the Diversity Visa Program.** The diversity visa program should be continued. Today 80 percent of immigrants come from only 20 countries. Allowing more people from places such as Chile, Argentina, Estonia, and Latvia to obtain diversity visas will be beneficial to the nation. Individuals from those countries deserve a chance at the American dream.

Legalization
and
Cancellation
Relief

5. **Enact a Legalization Program with a Clear Path to Citizenship**
Undocumented immigrants contribute to the social and economic success of communities across America— a broad and generous legalization program should be enacted with a clear path to citizenship.
6. **Adopt the DREAM Act.** While the Deferred Action for Childhood Arrivals (DACA) program is an extremely important administrative action taken on behalf of DREAMers, the actual DREAM Act should be made part of comprehensive immigration reform so that DREAMers have a clear path to citizenship and equal access to financial options that support their educational success.
7. **An Expansive Guest worker Program is a Bad Idea.** Incorporating a guest worker program into comprehensive immigration reform should not be considered. The record of worker abuse in current H-2A (temporary agricultural workers) and H-2B (non-agricultural workers) programs suggests that broad legalization of workers with a path to citizenship is the better option to avoid worker abuse.
8. **Repeal the Three- and 10-Year Bars Due to Unlawful Presence.** The three and 10-year bars to reentering the United States that are applied to undocumented immigrants are particularly discriminatory against Mexicans. The bars should be repealed, or broader and more equitable waivers should be made available.
9. **Modify Cancellation of Removal Requirements.** Cancellation of Removal requirements for undocumented immigrants are unrealistically difficult to satisfy. The “exceptional and extremely unusual” requirement should be reduced, the 10-year continuous residence requirement should allow flexibility, and the federal court of appeals should be able to review administrative denials of cancellation.
10. **Revise Asylum Standards and Procedures.** Changes to asylum standards and procedures must be implemented. The humanitarian intent of asylum is undermined by the requirement that asylum applications must be filed within one year of arrival. Counsel for particularly vulnerable immigrants in removal proceedings should be provided. The overbroad application of the “material support to terrorist organization” bar has eroded the U.S. Refugee Resettlement Program and placed asylum seekers on hold, often in prolonged detention. This adversarial system is not appropriate for asylum seekers— the non-adversarial Asylum Office should have initial jurisdiction over all asylum claims.
11. **Renegotiate Trade Agreements.** U.S. policy shares responsibility for much of the so-called “economic migration.” Trade agreements such as NAFTA and CAFTA need to be renegotiated. They have enabled the poverty in Mexico and the rest of our hemisphere that provokes so much of the immigration influx today. Economic

	migrants are also victims of such policies and should be included in a broad legalization program.
Enforcement	<p>12. Eliminate the Secure Communities Program. The Secure Communities (S-Comm) program should be abandoned. Racial profiling has resulted from S-Comm. Although the program is presumably targeting immigrants who are criminals or who pose public safety problems, the vast majority of those detained because of the program are not criminals.</p> <p>13. Allow Discretion for Immigration Judges to Grant Relief for Aggravated Felons. The discretionary authority for immigration judges to cancel deportation if an aggravated felon is rehabilitated and remorseful should be reinstated. The ability for immigration judges to provide a second chance to such individuals was eliminated in 1996. The definition of “aggravated felony” should also be revised so that minor offenses are not included in the federal definition that triggers harsh deportation procedures.</p> <p>14. Revise Detention Policies. Detention policies are out of control and should only be used in the most extreme circumstances. This is an aspect of the lack of proportionality in current immigration enforcement. Many individuals with no or minor offenses are being held in detention, separated from their families. Once in detention, they often give up hope and those who are able to find willing counsel are often at a disadvantage.</p> <p>15. Repeal Employer Sanctions and Abandon E-Verify. Employer sanctions should be repealed and the E-Verify program should be abandoned. Employees actually are the victims of employer sanctions laws, and all, both citizens and non-citizens, are potentially victimized by the flawed E-Verify system. The National Labor Relations Act should be amended to fully protect and include undocumented workers.</p>

STATE RECOMMENDATIONS	
California State TRUST Act	16. Enact the California State TRUST Act. The Secure Communities enforcement program has been harmful to thousands of non-dangerous individuals and their families. The state legislature should pass and the governor should sign the California State TRUST Act (AB4- Ammiano), which sets clear statewide standards for local governments to respond to U.S. Immigration and Customs (ICE) enforcement holds.
Domestic Workers Bill of Rights	17. Adopt the California Domestic Workers Bill of Rights. The California State Legislature should pass and the governor should sign the California Domestic Workers Bill of Rights (AB241- Ammiano) that would provide overtime pay, meal breaks, a safe and

	<p>healthy workplace, workers compensation and other labor protections to an estimated 200,000 caregivers, nannies and house cleaners in California. The mostly female and Immigrant domestic workforce is particularly vulnerable to abuse and violations of labor laws. AB241 would include these workers in rights provided to other California workers.</p>
<p>Drivers Licenses for Undocumented Workers</p>	<p>18. Allow Driver’s Licenses for Undocumented Workers. The state legislature should pass and the governor should sign legislation that would permit undocumented workers to apply for driver’s licenses. This would provide an important right to individuals who are simply trying to work and support their families, as well as to address public safety.</p>

<p>LOCAL RECOMMENDATIONS</p>	
<p>Sanctuary City & Public Safety</p>	<p>19. Affirm Commitment to Sanctuary Policy and Public Safety. The Mayor, Board of Supervisors, all elected and appointed officials, business, education and labor leaders should reaffirm San Francisco’s commitment to establishing a welcoming and safe environment for immigrants. The City of Refuge (Sanctuary) Ordinance remains a visible system of this commitment and ensures public safety for all San Franciscans. More can be said and done.</p>
<p>Local TRUST Act</p>	<p>20. Enact a local TRUST Act. The Board of Supervisors and Mayor should enact a local TRUST Act that outlines a clear separation of local law enforcement from federal immigration enforcement, with an emphasis on a) the needs of local communities for public safety and trust in local law enforcement, b) the rights of all accused to due process, and c) the rights of victims and witnesses to have the judicial system, not immigration agencies, determine innocence, guilt, and consequences.</p>
<p>City ID Card Program</p>	<p>21. Expand the SF City ID Card Program. San Francisco should continue to invest in innovative programs such as the Municipal Identification Card (SF City ID) program which has been invaluable to the more than 17,000 residents who have obtained cards since 2009. Many San Francisco residents, including seniors, immigrants and the homeless, rely on this card to access essential programs and banking services. The City should explore expanded features of the card or other mechanisms that connect individuals to safe, secure and affordable ways of accessing funds and facilitating monetary transactions.</p>
<p>LANGUAGE ACCESS & IMMIGRANT INTEGRATION</p>	<p>22. Enhance opportunities for immigrant integration, engagement, and civic participation. Support the success of new immigrants by ensuring a welcoming environment, language services and equal access to timely, accurate and critical information for monolingual and limited-English proficient individuals.</p>

III. RATIONALES FOR RECOMMENDATIONS

The following outlines rationales for the IRC’s recommendations, which were developed based on local community and expert testimony.

F E D E R A L

Recommendation 1: Prioritize Family Reunification

Family reunification should remain a cornerstone of immigration policy. Serious backlogs in certain categories should be addressed by increasing the number of family visas available and increasing the per country numerical limitations. A reasonable maximum waiting period for visas should be established.

Promoting family reunification has been a major feature of immigration policy for decades. Prior to 1965, permitting spouses of U.S. citizens, relatives of lawful permanent residents, and even siblings of U.S. citizens to immigrate were important aspects of the immigration selection system.⁷ Since the 1965 reforms, family reunification has been the major cornerstone of the immigration admission system, not only reflecting respect for the integrity of immigrant households and their importance to society, but also serving to counteract the legacy of national-origins quotas and other policies that discriminated against non-European immigrants. However, current practices and policies that restrict the number of family visas have created decades-long backlogs for immediate family members from certain nations. While the preferential category is meant to reunify families, the growing backlog prevents U.S. citizens and lawful permanent residents from reunifying with relatives.

Backlogs in certain categories can be addressed by increasing the number of available family visas and increasing the per country numerical limitations. Family members should not have to wait many years or even decades to be reunited. As it stands, immigrant San Francisco

⁷ The 1965 immigration amendments allowed 20,000 immigrant visas for every country not in the western hemisphere. Of the 170,000 immigrant visas set aside for eastern hemisphere immigrants, about 80 percent were specified for “preference” relatives of citizens and lawful permanent residents, and an unlimited number was available to immediate relatives of U.S. citizens. The unlimited immediate relative category included spouses, parents of adult citizens, and minor, unmarried children of citizens. The family preference categories were established for adult, unmarried sons and daughters of citizens (first preference), spouses and unmarried children of lawful permanent resident aliens (second preference), married children of citizens (fourth preference), and siblings of citizens (fifth preference). Third and sixth preferences were established for employment-based immigration. In 1990, a separate preference system was established for employment visas, and the family preference categories were slightly renumbered as adult, unmarried sons and daughters of citizens (first preference), spouses and unmarried children of lawful permanent resident aliens (second preference), married children of citizens (third preference), and siblings of citizens (fourth preference).

Over time, Asian and Latin immigration came to dominate most of the immigration to the United States. By 1976, a new worldwide preference system (which now included the western hemisphere) was installed with a quota of 270,000 that continued to reserve 80 percent for kinship provisions; the category for immediate relatives of the U.S. citizens remained numerically unlimited. The effects of this priority were demonstrated vividly in the subsequent flow of Asian immigration, even though nations such as those in Africa and Asia, with low rates of immigration prior to 1965, initially were handicapped. The nations with large numbers of descendants in the United States in 1965 were expected to benefit the most from a kinship-based system. At the time, fewer than a million Asian Americans resided in the country when the total population was more than 194 million. Although the kinship priority meant that Asians were beginning on an unequal footing, at least Asians were on par numerically, in terms of the twenty thousand visa per country quotas. Gradually, by using the family categories to the extent they could be used and the labor employment route, Asians built a family base from which to use the kinship categories more and more. By the late 1980s, virtually 90 percent of all immigration to the United States – including Asian immigration – was through the kinship categories. And by the 1990s, the vast majority of these immigrants were from Asia and Latin America.

elders are dying without the support of their children, and young children are growing up without their parents. A reasonable maximum waiting period for visas should be established.

The U.S. Department of State limits the number of family-sponsored preference visas to 226,000 annually— the backlog is over 4.3 million people. Worldwide and per-country numerical limitations on family visas severely affect certain preference categories for immigrants from countries like Mexico, the Philippines and the People’s Republic of China. A U.S. citizen petitioning for a sibling from the Philippines, for example, must currently wait 24 years before the family visa will be considered. Unmarried, adult sons and daughters of lawful permanent residents from Mexico have been waiting for 20 years. While their relatives struggle to continue life without family members, some immigrants feel pressured to reunify outside of legal channels.

In her testimony before the IRC, Lillian Galedo, Executive Director of Filipino Advocates for Justice, pointed out that the rationale for family reunification through immigration was rooted in the logic that immigrants thrive and are more likely to succeed in integrating in their new country when they have a base of mutual support and are surrounded by their loved ones. But for at least three decades, thousands of families have had to wait years, even decades, to reunite their families. In particular, Filipinos have one of the longest family visa backlogs. With over 60 percent of the Filipino community being foreign born, these families are mixtures of legal and undocumented individuals, and the pain of separation is widespread in the Filipino community.

Speaking in Tagalog through an interpreter, Emiliana Acopia, an 80-year-old naturalized citizen and former TSA airport screener, testified about her hardships with family visa backlogs. Mrs. Acopia immigrated to the United States from the Philippines in 1989 at the age of 57, along with her husband and one son. While happy to be here, she was sad to leave five other children behind. After gaining citizenship in 1996, she petitioned for her three married children to join her and is still waiting. In the meantime, her husband passed away and despite her advanced age, she continues to work as an elder caregiver to support herself and her family in the Philippines.

Two clients of *Self-Help for the Elderly* (a 47- year-old multipurpose community agency serving over 35,000 seniors in three Bay Area counties) also shared their experiences, illustrating the economic contributions of immigrants and the need for expedited family visas. A new immigrant spoke of securing a job in the United States; an elderly immigrant spoke of his desire for a quicker family visa process so his son could care for him as he ages.

Ms. Galedo highlighted several ways to address the problem of backlogged family visas. Drawing from U.S. Representative Mike Honda’s (D-San Jose) *Reuniting Families Act (H.R. 717)*, her recommendations include: raising the worldwide number of family sponsored immigrant visas to at least 480,000 and allocating unused visas from previous years to those waiting in line; increasing per-country limits from 7 percent to 10 percent; increasing government discretion and flexibility in resolving barriers to family reunification; removing death as a way to invalidate the petition because the waiting periods are so long; exempting immediate family members of nationalized World War II veterans, who were denied citizenship, from numerical limitations as a means to right a historical injustice. As Ms. Galedo pointed out, many of these proposals have been previously introduced in Congress, however no action has been taken.

Recommendation 2: Recognize Same-Sex, Binational Partners

The Uniting American Families Act (UAFAs) should be enacted as part of comprehensive immigration reform. Under current immigration law, U.S. citizens and lawful permanent residents may sponsor their spouses for immigration purposes. But same-sex partners of U.S. citizens and permanent residents are not considered spouses and their partners cannot sponsor them for family-based immigration. The UAFAs would amend the law by simply adding the term "permanent partner" in sections where "spouse" appears, thus ensuring that a non-citizen permanent partner may receive the same immigration benefits that non-citizen spouses now receive.

Under the Immigration and Nationality Act (INA), U.S. citizens and legal permanent residents may sponsor their spouses (and other immediate family members) for immigration purposes. But same-sex partners of U.S. citizens and permanent residents are not considered "spouses" and their partners cannot sponsor them for family-based immigration.⁸

In 2000, 2001, and 2004 Congressman Jerrold Nadler (D-NY) introduced the PPIA (Permanent Partners Immigration Act), which would have allowed U.S. citizens and lawful permanent residents to sponsor their same-sex partners for immigration to the United States by simply adding the term "permanent partner" in sections where "spouse" appears in the Immigration and Nationality Act. The bill died in committee. In 2005, 2007, 2011, and 2013, PPIA was reintroduced in the House and Senate under the name of Uniting American Families Act (UAFAs) by Congressman Nadler and Senator Patrick Leahy. Although most of the cosponsors are Democrats (including Congressman Mike Honda), the 2013 legislation is cosponsored by Republican Congressmen Charlie Dent and Richard L. Hanna.

Today, an estimated 40,000 binational same-sex couples reside in the U.S., contributing to society, the economy and community life. Too many are kept apart from overseas partners, or forced to live in the precarious state in which one partner is in constant fear of deportation. Immigration attorney Zachary Nightingale testified that even if the Supreme Court overturns the Defense of Marriage Act (DOMA), that will not completely resolve the problem under the federal immigration system because so many immigrants live in jurisdictions where there is no legally-recognized same sex marriage.

UAFAs would help to remedy this situation by providing LGBT Americans with foreign partners equal immigration rights and helping individuals who might suffer persecution based on sexual identity if forced to return to their native countries. UAFAs would eliminate discrimination in immigration laws by permitting permanent partners of U.S. citizens and of lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and of lawful permanent residents. More than 18 countries, including most of the United States' key allies and trading partners, already provide immigration benefits to same-sex couples. These include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, and the United Kingdom.

⁸ In *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982), *cert. denied*, 458 U.S. 1111 (1982) the United States Court of Appeals for the Ninth Circuit held that the term "spouse" refers to an opposite-sex partner for the purposes of immigration law. The court held that "Congress's decision to confer spouse status under [the law] only upon the parties to heterosexual marriages has a rational basis. . . Congress rationally intended to deny preferential status to the spouses of [same-sex] marriages."

The IRC heard testimony from many affected couples, individuals, and representatives of *Out 4 Immigration*, a grassroots organization advocating for equal treatment of same sex couples under immigration law. Phyllis Christopher testified that as a 50-year-old U.S. citizen with an aspiring immigrant partner, she feels it is wrong that her country makes her choose between caring for her ill, elderly parents here or being forced to emigrate in order to be with her British-born partner. Her partner cannot live in the U.S. and does not visit much because they never know if she will be harassed at the border or be turned away. The simple recognition of their relationship for the purposes of obtaining a family visa would address both the couple's problems as well as the caregiving needs of Ms. Christopher's parents.

Erik Schnabel is a U.S. citizen and 14-year resident of San Francisco. His partner of nine years came to the United States from the Philippines for a better life, leaving behind family and friends. After working as a church choir director, his partner asked his employer for assistance and green card sponsorship, but was refused when he revealed that he was gay. Mr. Schnabel and his partner have lived together for many years in constant fear of even a simple traffic stop, and have had to abandon friends they felt could not be trusted. They married in New York in 2011, but that has no impact on the partner's immigration status because current U.S. immigration laws do not recognize their relationship.

Susanne Schwarzer and Mary McNamara also offered testimony on how even legally married and legally employed immigrants can be separated by current U.S. policies. Dr. Schwarzer is an instructor at City College of San Francisco who came to the United States in 2000 and later obtained her Ph.D from UC Davis. Ms. McNamara, an attorney, is a 56-year-old naturalized U.S. citizen who immigrated from Ireland. The couple married in October 2008. Dr. Schwarzer teaches foreign language at City College and is also a liaison for groups that come to visit San Francisco each year. She has been unable to obtain a business visa to allow her to stay in the country and faces possible deportation this coming fall. Ms. McNamara employs six people in her San Francisco firm but now faces the possibility of giving up her business and her career in order to follow her spouse back to Europe. The couple's story provided a vivid example of the economic costs to citizen workers when their immigrant or U.S.-born employers are forced to divest their assets and close their U.S. businesses to live with their same-sex partners overseas.

Recommendation 3: Increase and Facilitate High Tech Visas for Highly-Skilled Students and Workers.

There is a great need for expanded Science, Technology, Engineering and Math (STEM) and high- tech visas. Facilitate the immigration of individuals in STEM categories and increase H-1B nonimmigrant numbers.

Many of this era's incredible advances in science, technology, medicine and manufacturing can be attributed to the contributions of highly skilled, foreign-born engineers, scientists, researchers, workers and entrepreneurs. A quarter of the chief executives or lead technologists in U.S. science and technology companies are foreign-born. In 2005, these companies generated \$52 billion in revenue and employed 450,000 workers. According to the American Enterprise Institute, each foreign-born U.S. worker educated in STEM creates an average of 2.6 American jobs.

A number of proposals being advanced as part of comprehensive immigration reform could be helpful in retaining professional talent and keeping companies in San Francisco and elsewhere globally competitive and on the cutting edge of innovation:

Increase the number of available H-1B Non-immigrant Visas - H-1B visa holders are those engaged in specialty occupations requiring a higher education degree and can often remain in the United States for up to six years. The current H-1B cap is limited to 65,000 new H-1Bs per year. A proposal to increase that number to 115,000 would give employers greater ability to hire talent.

Uncap existing H-1B limits for Advanced Degrees- The National Bureau of Economic Research found that the majority (more than 67 percent) of doctoral students pursuing STEM degrees are foreign students. This number increased by 27 percent between 1973 and 2003. Providing unlimited, less-arbitrary H-1B visas for foreigners with U.S. advanced degrees will expand the supply of high-skilled immigrants.

Exempt U.S. STEM degree holders, dependents and people of extraordinary ability and Outstanding Professors and Researchers from the employment-based green card cap- At this time, there are hundreds of thousands of foreigners working on temporary work visas who are in the queue for green cards. These skilled workers who have been honing their skills in the United States are increasingly becoming frustrated with the slow green card process and taking their talents to other countries like Singapore, Canada, and Australia who are welcoming skilled workers with open arms. Providing a faster route to the green card for STEM skilled workers just makes sense. Stopping the “brain drain” must be a priority and reforming the green card process is critical.

Immigration attorney Petra Tang testified that she witnesses firsthand the difficulties employers face in hiring and retaining the best and the brightest STEM workers. The most common work visa used in this country for these workers is the H-1B visa. Because of the annual cap on the number of new H-1B visas, her clients are faced every year with the possibility of not being able to hire the skilled professionals they need. Her clients must also turn away a percentage of potential new hires because they do not “make the cap.” Recruiters and staffers are *desperate* to find qualified talent.

Even when STEM and high tech workers are able to obtain temporary visas, it can take many years for to obtain permanent residency. This is a result of the per country limitation on green cards, and for some individuals from China or India, that path can take a decade or longer. In that time, they raise their families here, have U.S.-born children and are productive members of their communities, yet they live with the uncertainty of their status. Many eventually decide that the long wait is not worth the effort and choose to leave. The loss of high-skilled talent is felt by companies in San Francisco and nationally.

Increasing the number of STEM visas allocated each year and using the fees collected from those visa applications to fund U.S. STEM education programs makes sense. The White House’s proposal to create a “startup visa” for job-creating entrepreneurs is noteworthy. The proposal would allow foreign entrepreneurs who attract financing from U.S. investors, or revenue from U.S. customers, to start and grow their businesses in the United States, and to remain permanently if their companies grow further, create jobs for U.S. workers, and strengthen the economy.

Recommendation 4: Maintain and Expand the Diversity Visa Program

The Diversity Immigrant Visa Program should be continued. Today 80 percent of immigrants come from only 20 countries. Allowing more people from places such as Chile, Argentina, Estonia, and Latvia to obtain diversity visas will be beneficial to the nation. Individuals from those countries deserve a chance at the American dream.

The Diversity Immigrant Visa (DV) program (also known as the Green Card Lottery), is a congressionally mandated program established in 1990.⁹ The program basically makes 55,000 visas available annually, for people randomly selected from countries with low rates of immigration to the United States. The purpose of the program is to diversify the immigrant population in the United States.

Ineligible countries- Countries who send more than 50,000 immigrants (not counting asylum seekers, refugees, NACARA beneficiaries or other DV immigrants), are not illegible for the DV program. For DV-2014, natives of the following countries were not eligible: Bangladesh, Brazil, Canada, China, Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, UK (except Northern Ireland), and Vietnam. Currently, Africa and Europe receive about 80% of the visas in the lottery, including countries like Romania.

Requirements- In order to receive a DV visa, one must not only be a “winner” of the lottery, but also meet the eligibility requirements under the U.S. law. This includes a high school diploma or its equivalent, or two years of work experience in an occupation requiring at least two years in training. Successful DV recipients are not provided any type of assistance such as airfare, housing assistance, or subsidies. Lottery winners are required to provide evidence that they will not become a public charge in the United States before being issued a visa. This evidence may be in the form of a combination of personal assets, an Affidavit of Support (Form I-134) from a relative or friend residing in the United States, and/or an offer of employment from an employer in the United States.

Attorney James Byrne of the Irish Immigration Pastoral Centre and the San Francisco Irish American Bar Association noted the importance of diversity and the need to increase the number of diversity visas. Today over 80 percent of immigrants come from only 20 countries. But opportunities must be made available for people from other countries too, not just those 20. A recent proposal to cancel the DV program makes no sense. In fact, more people from places such as Chile, Argentina, Estonia, Latvia, and the like should be able to obtain diversity visas, and have a chance at the American dream.

⁹ INA § 203(c).

Recommendation 5: Enact a Legalization Program with a Clear Path to Citizenship

Undocumented immigrants contribute to the social and economic success of communities across America— a broad and generous legalization program should be enacted with a clear path to citizenship.

Over 11 million people are currently living in the United States without immigration status.¹⁰ Over the past decade, enforcement policies have not only failed to deliver commonsense reform but have also impeded progress on a host of other important national issues—including healthcare, education, taxes, benefits, and workforce. The only sensible approach from a fiscal,¹¹ economic, social and security perspective is to create a roadmap for these immigrants to earn citizenship.

More than two-thirds of the undocumented immigrants working in the United States have contributed to the economy and culture for more than a decade. Yet, outdated, misguided and polarizing immigration policies block their, and the nation's, full potential and force them to live in fear, separating them from their families and U.S.-citizen children. Following are just a few benefits of providing a path to citizenship for undocumented immigrants:¹²

- Enabling immigrants to earn legal status and to openly participate in civic life will strengthen communities and reduce marginalization and exploitation.
- Bringing these hard-working immigrants off the economic sidelines would generate a \$1.5 trillion boost to the nation's cumulative GDP over ten years and add close to \$5 billion in additional tax revenue in just the next three years.
- Legalization would strike a blow to unscrupulous employers who exploit workers (both immigrant and native-born) and help ensure fair labor standards, including fair pay, earned benefits, and safety for all.
- Registration and background checks would ensure that authorities know who is here and allow enforcement resources to focus on criminal elements and security threats, rather than any undocumented immigrant working to provide a better life.

It comes as no surprise that recent national polls show Americans now believe that allowing the 11 million undocumented immigrants in this country to pursue citizenship is a sensible and beneficial approach. When given a choice, Americans prefer full citizenship over second-class status or deportation of the undocumented.¹³

History shows that legalization has worked in the past. After a significant percentage of the undocumented population legalized under the Immigration Reform and Control Act of 1986

¹⁰ Marshall Fitz, *Time to Legalize our Eleven Million Undocumented Immigrants*, AMERICAN PROGRESS (November 14, 2012) <http://www.americanprogress.org/issues/immigration/report/2012/11/14/44885/time-to-legalize-our-11-million-undocumented-immigrants/>.

¹¹ According to the National Immigration Forum, the government spends \$23,000 to deport a single immigrant. In 2011, our Government deported 180,206 immigrants with no criminal record. At \$23,000 per removal, taxpayers are shelling out more than \$4.1 billion per year to remove immigrants who would otherwise be law-abiding taxpayers themselves if allowed to stay. Terry Jones, *Immigration Enforcement Fiscal Overview: Where are We, and Where are We Going?*, NATIONAL IMMIGRATION FORUM (February 2011), <http://www.immigrationforum.org/images/uploads/2011/ImmigrationEnforcementOverview.pdf>

¹² *Supra* note 1.

¹³ AMERICA'S VOICE, *Poll Roundup: Americans Support Full Citizenship for Undocumented Immigrants*, <http://americasvoiceonline.org/polls/poll-roundup-americans-support-full-citizenship-for-undocumented-immigrants/>.

(IRCA), formerly clandestine workers were successfully turned into higher-paid employees and more money was spent in their respective communities.¹⁴

Due to increased border security, undocumented immigrants from Mexico live today with their families in the U.S., rather than migrating to and from Mexico. A new legalization program would have a profoundly positive impact on their family lives and opportunities. First, legalization would eliminate the trauma of families being separated by enforcement, when some family members are suddenly detained or deported. Second, legalization would allow undocumented children to pursue college educations and brighter futures. Third, U.S.-born children of undocumented immigrants would not have to suffer the emotional trauma of constantly fearing that their parents are going to be deported, thus forcing them to choose between their families or their country. Legalization would have an immediate effect, improving the lives of more than 5.5 million children under the age of 18 who live in undocumented households—more than 1.5 million of whom are undocumented, and more than one million of whom live in households where other members of the family are also undocumented.¹⁵ Finally, legalization helps build strong communities. Enforcement raids damage local communities and economies, creating fear and intimidation, rather than engaging immigrants and recognizing their contributions. Workers who are free to report income, buy homes, and participate in their communities keep rural towns and bustling cities economically and civically viable.

Legalization of undocumented immigrants has worked in the past and it will work today. Legalization for millions of otherwise law-abiding and hard-working undocumented immigrants is the most humane and economically sensible option. Legalization would remove many of the barriers facing undocumented immigrants today, including marginalization, exploitation, and an educational glass ceiling for millions of children. There are few federal policies whose beneficial effects would be felt as widely as a path to citizenship for undocumented immigrants in this country.

Recommendation 6: Adopt the DREAM Act

While the Deferred Action for Childhood Arrivals (DACA) program is an extremely important administrative action taken on behalf of DREAMers, the actual DREAM Act should be included in comprehensive immigration reform legislation so that DREAMers have a clear path to citizenship and equal access to financial options to support their educational success.

Every year an estimated 65,000 immigrant youth graduate from American high schools, only to find that they face dim futures with limited opportunities ahead.¹⁶ These young immigrants were brought to this country as children, have grown up in the United States, and are American in every sense except for the status of their parents. Their dreams for a better future are often crushed by the reality that they cannot attend college, qualify for most college aid, or work legally. These are the DREAMers.

The Development, Relief, and Education for Alien Minors Act (DREAM Act) is narrowly tailored, bipartisan legislation that would open the door to earned citizenship for unauthorized youth who: (1) have lived in the U.S. for at least five years; (2) graduated from high school; (3) are of good moral character; and (4) complete at least two years of college or military service.

¹⁴ Dr. Sherrie A. Kossoudji, Ph.D., *Back to the Future: The Impact of Legalization Then and Now*, IMMIGRATION POLICY CENTER (January 2013), http://www.immigrationpolicy.org/sites/default/files/docs/back_to_the_future.pdf.

¹⁵ *Id.*

¹⁶ Terri Jones, *The DREAM Act: Investing in America's Future*, NATIONAL IMMIGRATION FORUM (September 22, 2011), www.immigrationforum.org/images/uploads/2011/DREAM_ACT.pdf.

The DREAM Act is a wise investment in the nation's humanity, economy and safety. According to a Congressional Budget Office estimate, passage of the DREAM Act would reduce the U.S. deficit by \$1.4 billion with new revenue over 10 years. Since immigrant youth would be able to pursue higher education and have opportunities to increase their income, tax revenue would greatly increase. Moreover, the DREAM Act would increase the pool of bilingual and highly qualified recruits for the U.S. military. Former Secretary of Defense Robert Gates urged members of Congress to pass the DREAM Act in 2010 because it would be an opportunity to expand the pool of non-citizens serving in the military "to the advantage of military recruiting and readiness." Former Secretary of State, Ret. General Colin Powell also said in 2010 that the country should invest more in education and "should use the Dream Act as one way to do it."¹⁷

On June 15, 2012, the Obama Administration announced the Deferred Action for Childhood Arrivals (DACA) program.¹⁸ The initiative offers a two-year reprieve from deportation for those who meet certain qualifications, but is not the DREAM Act that Congress has been debating for the past 11 years.¹⁹ Under DACA, individuals must have been brought to the United States before they turned 16 and be younger than 30 to qualify for deferred action.²⁰ They must have lived in the country for at least five consecutive years with no criminal history and they must have graduated from a U.S. high school, earned a GED or served in the military.²¹ While this policy is an important first step in immigration reform, the initiative offers only a temporary legal status.²² Even if granted, deferred action is not a way for minor immigrants to obtain permanent residency or citizenship.²³ DACA fails to address the needs of minor immigrants who may have entered the United States as children but are now over the age of thirty, or who have not been able to obtain qualifying educational or professional histories due to their undocumented status. Many individuals whose lives do not fit into the strict criteria of the DACA policy guidelines are without any other option for relief.

While DACA is a good temporary program, the DREAM Act should be included in comprehensive immigration reform legislation so that these young students have a clear path to citizenship and equal access to financial options to pay for their educations. Academically qualified DREAM Act students should be allowed to apply for and receive federal student aid to ensure their educational success.

¹⁷ *Id.*

¹⁸ Lozano Law Firm, *President Obama Offers Work Permits to Dreamers*, www.DreamersAction.com, <http://dreamersaction.com/10-demo-articles/22-the-president-offers-work-permits-to-young-dreamers> (last visited February 24, 2013).

¹⁹ *Id.*

²⁰ Lozano Law Firm, *Guidelines for Requesting Consideration of Deferred Action For Childhood Arrivals*, www.DreamersAction.com, <http://dreamersaction.com/what-is-deferred-action/faq> (last visited February 24, 2013).

²¹ *Id.*

²² *What is Deferred Action*, OwntheDream.com, Retrieved from http://www.weownthedream.org/faq/item.3695-What_is_Deferred_Action (last visited February 24, 2013).

²³ *Id.*

Recommendation 7: An Expansive Guest worker Program is a Bad Idea

Incorporating a guest worker program into comprehensive immigration reform should not be considered. The record of worker abuse in current H-2A (temporary agricultural workers) and H-2B (non-agricultural workers) programs suggests that broad legalization of workers with a path to citizenship is the better option to avoid worker abuse.

The notion of including a large, guest worker program as part of immigration reform has been consistently included in immigration proposals since the administration of President George W. Bush. However, guest worker programs, past and present, have a troubled track record and are clearly not effective solutions.

Cynthia Rice Esq., Director of Litigation Advocacy and Training for the California Rural Legal Assistance Foundation (CRLAF), has been a legal services attorney with CRLAF for the past 16 years. Rice testified that guest workers programs are included in the various immigration reform proposals under consideration and commented that the term “guest worker” is a euphemism because workers within these programs are treated as “indentured servants” and there are no caps on employer exploitation.

The H-2A Guest worker program- CRLAF has long been monitoring the activity of the agricultural temporary visa, known as the H-2A visa, which was created under the Immigration Reform and Control Act of 1986.²⁴ H-2 visas are reserved for workers who temporarily enter the U.S. to meet a labor need and are one of the many nonimmigrant visa categories under the INA §101(a)(15). This H-2A visa is what many consider, the remnants of the “Bracero program,” the original guest worker program. During its initial creation in 1917, the program allowed over 70,000 Mexican workers to enter the US temporarily for seasonal work.²⁵ During the span of the bracero program, an estimated two million Mexican men entered the U.S. and the program came to be known for its rampant employer abuse as many were cheated out of wages and subjected to deplorable living conditions.²⁶

Currently, employers requesting guest workers must file a Department of Labor (DOL) certification application showing that “(A) there are not sufficient workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition and (B) the employment of the alien in such labor or services will not adversely affect the wages and working condition of workers in the United States similarly employed.”²⁷ If DOL grants the certification USCIS must then approve the H-2 visa petition. There is an annual adverse effect wage rate for each state determined by the DOL that sets the minimum hourly wage rate for H-2A workers.²⁸ In 2011, the hourly wage ranged from \$8.97 in Arkansas to \$12.01 in Hawaii.²⁹ Moreover, employers must provide H-2A guest workers with housing, meals or cooking facilities, return transportation, and workers’ compensation insurance or its equivalent.³⁰

²⁴ INA § 1019(a)(15)(H)(2)(B)

²⁵ Farmworker Justice, NO WAY TO TREAT A GUEST: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers, 12, (2011) [hereinafter Farmworker Justice Report], <http://farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

²⁶ Id.

²⁷ INA §218(a)(1)

²⁸ Farmworker Justice Report, 15

²⁹ Farmworker Justice, H-2A Adverse Effect Wage Rates, 2000-2011, 1 (2011)

<http://farmworkerjustice.org/sites/default/files/AEWRs%20Table%202000-2011.pdf>

³⁰ INA §218(c)(4); 20 C.F.R. §§ 655.102(b)(9), 655.107; 655.102(b)(4), 655.102(b)(5)(ii); INA §218(b)(3).

Exploitation within the Guest worker program: The Need for Reform- Despite the minimum hourly wage in California (CA) of \$8.00, CRLAF has discovered that some guest workers, shepherders specifically, are being paid as little as \$5.00 a day.³¹ This is a consequence of U.S. Department of Labor directives which allow ranchers to employ H-2A herders for year-long contracts with possibility of extension, and pay them only \$750 a month (the current “prevailing wage” for shepherding in many western states), however, they must be on call nearly 24 hours a day, 7 days a week.³²

One of the major flaws of the guest worker program, which makes it fertile ground for employer abuse, is that a worker does not have a choice about seeking out other employers since visas are granted to work with a particular employer. If the worker leaves his employer, he loses non-immigrant status and the only choice is to go home. Home might be Mexico for many foreign workers, but it may be farther as employers identify new groups to recruit for the H-2A program.

Moreover, the guest worker program hurts both foreign workers and domestic workers. CRLAF has represented U.S. workers who were fired after employers hired H-2A workers to replace them. Another aspect of the program that exacerbates the problem is that the recruitment process gives way for employers to “hand-pick” their ideal workforce—mainly young men in their 20s.³³ This class of workers endures employer abuses such as violations of wage requirements, which in turn creates workplace standards that depress wages and working conditions of domestic workers.³⁴

The recruitment of H-2A workers is also ripe with problems as recruiters charge exorbitant fees, some as high as \$11,000, and take advantage of the fact that workers are desperate to escape poverty at home.³⁵ Workers are commonly lied to about the conditions of work, including wages, crops to be picked, visa terms, and type of housing.³⁶ CRLAF has represented groups of H-2A guest workers who were promised 40 hours of work per week for six months at \$100 per day,³⁷ yet were paid lower wages or not compensated for all of their work.³⁸ Workers lived in camps where “toilets were backed up, the mattresses were soiled with blood and sweat, no laundry facilities existed, and there were exposed wires.”³⁹

Rice outlined several recommendations:

1. There is movement, particularly in California, to advance a new H-2A program that lessens restrictions and increases guest workers program availability. However, there are plenty of domestic workers that can take the jobs being filled by H-2A workers, therefore, true immigration reform must exclude groups like guest workers who can be easily exploited. Alternatively, if the program continues, there are many changes that are needed. The U.S. Department of Labor should enhance oversight and enforcement of the H-2A program in order to identify unscrupulous employers

³¹ Testimony by Cynthia Rice at San Francisco Immigrant Rights Commission Hearing, Feb. 11, 2013

³² Farmworker Justice Report, 33

³³ *Id.*, 17

³⁴ *Id.*, 7

³⁵ *Id.*, 22-23

³⁶ *Id.*, 23

³⁷ Rodriguez et al. v. SGLC, Inc. et al., No. 2:08-CV-01971-MCE-KJN (D. Ca, Filed 15 November 2012)

³⁸ *Id.*, 10

³⁹ *Id.*, 9

and impose heavy fines to deter egregious conduct and bar those who commit serious violations.⁴⁰

2. Wages and labor protections that protect United States and foreign workers should also be strengthened to retain U.S. farmworkers and end the abuse of guest workers. This recommendation can take the form of removing financial incentives for H-2A employers who prefer guest workers over domestic workers, such as Social Security and unemployment tax exemptions.⁴¹
3. Furthermore, guest workers should have opportunities to change employers so that they are not fearful of challenging unfair labor practices or employer retaliation.⁴² In addition, H-2A workers should have opportunities to adjust their status— Congress should pass the Agricultural Jobs, Opportunities, Benefits, and Security Act (AgJOBS) to allow currently unauthorized farmworkers to earn legal immigration status.⁴³
4. Last, there must be an end to the systemic abuse during the recruitment of workers. Employers should be held accountable for the actions of their recruiters, which includes behavior abroad.⁴⁴

Incorporating a guest worker program into comprehensive immigration reform is a bad idea. The record of worker abuse in current H-2A (temporary agricultural workers) and H-2B (non-agricultural workers) suggests that broad legalization of workers with a path to citizenship is the better option to avoid worker abuse.

Recommendation 8: Repeal the Three- and Ten-Year Bars Due to Unlawful Presence

The three and ten-year bars to reentering the United States that are applied to undocumented immigrants are particularly discriminatory against Mexicans. The bars should be repealed, or broader and more equitable waivers should be made available.

Since 1996, undocumented immigrants who have accumulated certain periods of “unlawful presence” in the United States and then leave the country are barred from returning as lawful U.S. permanent residents for three or 10 years. Persons who have accumulated 180 days or more of unlawful presence and leave the country cannot return to the United States for three years; persons who have accumulated one year or more of unlawful presence and leave the country, cannot return for 10 years. Persons who surreptitiously return to the United States without seeking a waiver must wait outside the country for 10 years before they can apply for waivers.

The bars place those with unlawful presence who have entered the country without inspection (such as the vast majority of undocumented Mexicans) in no-win situations. Because they entered without inspection, they are not eligible to file for a change of status or extension of stay while remaining in the United States.⁴⁵ However, leaving the United States, subjects them

⁴⁰ Farmworker Justice Report, 8

⁴¹ *Id.*, 8-9

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*, 8

⁴⁵ INA §245(a).

to the bars. While adjustment of status would be the best option, immigrants cannot apply if they entered without inspection. In contrast, individuals who become undocumented by overstaying their visitor or student visas but who then marry U.S. citizens, can apply for adjustment of status without being subject to the bars. Individuals who entered without inspection who subsequently marry U.S. citizens must depart the country and are subject to the bars.

Both “unlawful presence” and “extreme hardship” are very complex terms with particular multifaceted meanings.⁴⁶ The options for relief from bars are extremely limited. Prospective immigrants may seek waivers, but waivers are limited to immigrants who are the spouses, sons, or daughters of U.S. citizens or lawful permanent residents, and will only be granted if bars would result in extreme hardship.

The three- and 10-year bars have impacted immigrants who have family in the U.S., have worked and paid taxes here, and, in many cases, are otherwise eligible for permanent resident status.⁴⁷ The current waiver process is difficult, inefficient and costly, subjecting immigrants to abuse of discretion and separating families for long periods. Because many waivers are filed in the city of Juarez, Mexico, where there is heavy drug and gun violence, vulnerable immigrants are often exposed to crime and violence. The extreme hardship determination is subjective, so at times, it is difficult for applicants to be successful in their waiver requests.⁴⁸

At the IRC hearing, Commissioners heard testimony from two impressive, articulate young U.S. citizen women whose fathers, both law-abiding, hard workers, were deported after years of U.S. residence. Although the speakers are old enough to petition for their fathers to immigrate, the fathers are barred from returning for 10 years. Although the fathers have dependent U.S. citizen children, they are not able to apply for waivers because applicants must have spouses or parents who are citizens, or be lawful residents to be eligible to apply.

The three- and 10-year bars for unlawful presence clearly should be repealed. They are unduly restrictive, cause years of family separation, and discriminate against undocumented immigrants who entered without inspection (as opposed to overstaying their visa). Short of repeal, the hardship standard for a waiver should be decreased and should be made available to prospective immigrants who have U.S. citizen children.

Recommendation 9: Modify Cancellation of Removal Requirements

Cancellation of Removal requirements for undocumented immigrants are unrealistically difficult to satisfy. The “exceptional and extremely unusual” requirement should be reduced, the 10-year continuous residence requirement should allow flexibility, and the federal court of appeals should be able to review administrative denials of cancellation.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) eliminated suspension of deportation relief that was available to undocumented immigrants who had good moral character, seven years continuous physical presence, and could demonstrate that deportation would result in “extreme hardship.” INA: Act 240A created “cancellation of

⁴⁶ James D. Eliss & Danielle Rizzo, “*The Three and Ten Year Bars Revisited: When It Helps to be Put Into Removal Proceedings.*” <http://www.ilw.com/articles/2005,0830-eiss.shtm>. 24.2.13.

⁴⁷ Retrieved from <http://www.humanrightsattorney.com/sub/unlawfuleentry.jsp>

⁴⁸ Retrieved from <http://www.immigrationpolicy.org/just-facts/so-close-and-yet-so-far-how-three-and-ten-year-bars-keep-families-apart>

removal,” a form of immigration relief available to individuals who have been placed in removal proceedings. However, individuals can no longer rely on “extreme hardship to oneself” as a defense and the hardship standard has been increased. Individuals must now show that an immediate family member will suffer “exceptional and extremely unusual hardship” if removal occurs. Mere separation from family is not enough.

Francisco Ugarte, Senior Immigration Attorney for the Defense and Legal Advocacy Program at Dolores Street Community Services, testified that before 1996, “extreme hardship to oneself” was a defense in removal proceedings and judges had a large amount of discretion in considering factors to determine if a person in removal had a good moral character. Under the IIRAIRA, all requirements to cancel removal proceedings are more rigorous.

As an example of how difficult post-1996 hurdles are to clear, Mr. Ugarte spoke about one of his clients who has been present in the United States since 1983, suffers from severe diabetes and an amputated foot (as the result of a workplace injury), and has a 20-year-old U.S. citizen daughter and undocumented ex-wife with a brain tumor. The BIA ruled that even such dire circumstances as these fail to constitute exceptional and extremely unusual hardship sufficient to prevent his removal from the U.S.

The IIRAIRA’s “stop-time”⁴⁹ provision is alarmingly less forgiving than the old seven-year residence rule. Now, an immigrant must show 10 years of continuous presence in the United States, with no interruption greater than a brief, casual departure and return. If an interruption is determined to be longer than that, the 10-year clock begins again, and the person loses “credit” for any time already spent in the country. Nearly any type of crime can stop the clock as well.

Currently, U.S. federal circuit courts of appeals do not have jurisdiction to review the discretionary decisions of immigration judges. Under IIRAIRA’s changes, the court of appeals can only review questions of law. The elimination of judicial discretion on all levels of removal proceedings has been disastrous to immigrants in removal proceedings. For example, in Romero-Torres v. Ashcroft, 327 F.3d 887 (9th Cir. 2003), the Ninth Circuit Court of Appeals specifically cited the 1996 changes in denying jurisdiction to review Board of Immigration Appeals (BIA) decisions. Similarly, in Gonzalez-Oropeza v. U.S. Attorney General, 321 F.3d 1331 (11th Cir. 2003), the Eleventh Circuit stated that it lacked jurisdiction to review an immigration judge’s denial for cancellation. Petitioners raised a constitutional due process claim regarding a BIA affirmation without opinion of an immigration judge’s refusal to cancel removal. The Court said it lacked jurisdiction to review BIA decisions or procedures without the petitioner showing “that he was deprived of liberty without due process of law...and that the asserted error caused him substantial prejudice.” Even after a *de novo* review,⁵⁰ the court found that the lack of educational quality and opportunity in Mexico was not an exceptional and extremely unusual hardship, and thus did not even merit a three-person BIA review.

The difficult requirements for cancellation of removal for undocumented immigrants who have resided in the United States for many years without criminal incident are too rigorous. The

⁴⁹ The “stop-time rule,” Section 240A(d)(1) of the Immigration and Nationality Act by IIRAIRA provides that any period of continuous physical presence in the United States shall be deemed to end when one of the following occurs: 1) When the alien is served a Notice to Appear under INA §239(a); or 2) When the alien has committed an offense referred to in INA §212(a)(2) that renders the alien inadmissible to the United States under §212(a)(2) or removable from the United States under INA §237(a)(2) or §237(a)(4), whichever is earliest. Prior to the addition of this rule, the period of continuous physical presence required for suspension of deportation applicants could run until a final administrative order was issued and an application for suspension of deportation was filed.

⁵⁰ De Novo review is a form of appeal in which the appeals court holds a trial as if no prior trial had been held. A trial de novo is common on appeals from small claims court judgments.

“exceptional and extremely unusual” requirement should be reduced, the 10-year continuous residence requirement should allow flexibility, and the federal court of appeals should be able to review administrative denials of cancellation.

Recommendation 10: Revise Asylum Standards and Procedures

Changes to asylum standards and procedures must be implemented. The humanitarian intent of asylum is undermined by the requirement that asylum applications must be filed within one year of arrival. Counsel for particularly vulnerable immigrants in removal proceedings should be provided. The overbroad application of the “material support to terrorist organization” bar has eroded the U.S. Refugee Resettlement Program and placed asylum seekers on hold, often in prolonged detention. This adversarial system is not appropriate for asylum seekers— the non-adversarial Asylum Office should have initial jurisdiction over all asylum claims.

Under 1996 changes to immigration laws, asylum seekers are required to file their asylum applications within one year of arrival in the United States. However, asylum seekers face daunting challenges in meeting this deadline due to trauma, lack of knowledge about U. S law, and few resources. Those who cannot meet the requirements, even if they have well-founded fears of persecution, are barred from asylum protection and face deportation to the countries from which they fled. Some with compelling claims may be granted withholding of removal. However, withholding of removal does not lead to permanent residency, and beneficiaries cannot petition for their families to be reunited here since they are only entitled to work authorizations that must be renewed each year.

The IRC heard testimony on the effect of unreasonable asylum policies and procedures from a number of individuals, including Niloufar Khonsari of Pangea Legal Services and the Iranian Bar Association; Nunu Kidane, Director of the Priority Africa Network (PAN); and Adoubou Traore and Charles Jackson of the African Advocacy Network. Written testimony was received from Lisa Frydman of the Center for Gender and Refugee Studies at UC Hastings. The following reflects their recommendations.

1. The Obama administration should eliminate the wasteful and counterproductive asylum filing deadline contained in INA: Act 208(a). It should fulfill the December 2011 pledge, made in connection with the 60th anniversary of the 1951 Refugee Convention, to work with Congress to eliminate the deadline. This reform should be included in any legislative immigration reform initiatives. The legislation should also permit refugees who were granted withholding of removal, but not asylum due to the filing deadline, to adjust their status to lawful permanent residency and to petition to bring their spouses and children to safety.
2. The U.S. Department of Homeland Security (DHS) confirmed its conclusion that the filing deadline should be eliminated because it causes genuine refugees to be denied asylum, expends resources without helping uncover or deter fraud and only makes the process more difficult. While the deadline was initially proposed as a tool to prevent fraud, it actually led the United States to deny asylum to credible refugees while also delaying asylum adjudications and diverting governmental resources from adjudicating the actual merits of asylum requests.
3. Another problem is prolonged delays at the immigration court with respondents waiting for more than two years before their cases are heard. Cases filed in 2012

have been scheduled for 2015. Contributing to the delays are cases that could have been resolved at the Asylum Office level that have been shifted to courts and ICE's failure to timely file cases. The White House and the Department of Justice/Executive Office for Immigration Review (DOJ/EOIR) should urge Congress to provide adequate resources to conduct timely and fair proceedings, and specifically to (1) increase staffing at the immigration courts and the Board of Immigration Appeals (BIA), and (2) provide mandatory initial training and ongoing professional development for all BIA members, immigration judges, and legal support staff.

4. The EOIR should welcome, and immigration judges should grant, requests to schedule immigration court hearing dates within several months. This would allow asylum seekers with families at-risk and stranded abroad, or with children on the verge of "aging out," to have their cases resolved sooner. A reliable system for requesting earlier hearing dates might also help individuals secure counsel, including pro bono counsel who might be hesitant to commit to take on cases with hearings that are two or three years away.
5. DHS and DOJ should adopt a single non-adversarial interview process before the USCIS Asylum Office for all asylum seekers, including "arriving" asylum seekers and "defensive" asylum seekers.
6. A change in the background checks process also must be made. In 2011, the United States granted 168,460 refugees/asylees legal permanent resident status.⁵¹ To gain legal permanent resident status, each of those 168,460 individuals was required to undergo an extensive background check. Under the INA: Act 208(d)(5)(A)(i), "asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State."

Although the INA's purpose of protecting the United States' interests and security is logical and necessary, the manner in which the process is currently enforced leads to erroneous delays and agony for applicants. The current process for checking the background of a refugee is inefficient and overly burdensome. There are 10, possibly more, background checks that each applicant must clear before receiving an interview for asylum.⁵² Applicants must gain clearance through databases operated by different bureaucratic agencies, even if housed in the same agency, in addition to specific databases housed at each branch.

Databases housed at DHS that must be checked

- Central Index System (CIS) – This database provides administrative history on the applicant's immigration attempts.
- Deportable Alien Control System (DACCS) – This database checks alien's status for inadmissibility.
- National Automated Immigration Lookout System (NAILS) – Similar to CIS, is responsible for administrative history on the applicant and includes confirmed/unconfirmed information that may exclude an individual from entry.

⁵¹Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics*, retrieved from http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf (accessed Feb. 28, 2013).

⁵² Human Rights First, *Security Procedures in the U.S. Asylum System*, Retrieved from <http://www.humanrightsfirst.org/wp-content/uploads/pdf/asylumsecurity.pdf> (accessed Feb. 21, 2013).

- Interagency Border Inspection System (IBIS) – This database contains known law enforcement data.

Databases operated by the FBI that must be checked

- FBIQuery – Checks name and date-of-birth claims, in addition to fingerprint checks.

International databases

- INTERPOL – Checks fingerprints against the database for the international police.

Immigration official databases

- IDENT – Compares fingerprints against prior known applicants.
- Additionally, IDENT has two sub-databases:
Lookout and Recidivist – Databases that contain history of convicted crimes that would result in removal or exclusion from the United States.

CIA databases and approval

- CIA Databases – CIA security clearance is granted after checking agency specific databases, in addition to fingerprint checks.⁵³

It is clear how these extensive and repetitive background checks can cause bureaucratic delays and backlogs in the review of asylum applications, along with unintended consequences. Ms. Khonsari described the situation of her client, Shukrullah Ahmadzai, a native of Afghanistan, who applied for asylum in December 2011. In Afghanistan, he was a productive citizen, a husband and father to nine children, and a bank manager. His employment at a central bank made him a target of political extremists, who successfully planted a land-mine in his house, resulting in the amputation of his leg. Under fear of further attacks, he and his wife Karma were forced to flee their native country, seeking asylum in the United States where their daughter resides. Unfortunately, the extensive background checks for asylum have resulted in Mr. Ahmadzai only recently being granted his interview for asylum, a year and three months after he initially applied. Ms. Khonsari described how Mr. Ahmadzai and his wife live in a constant state of uncertainty, stress and worry, which in turn causes stress in their extended family who do not know if their loved ones will remain present in their lives, or even be safe. If not granted asylum, the couple may be forced to return to Afghanistan, a place where violence and retribution await.

Ms. Khonsari suggested minimizing the delay in time for asylum background checks and granting applicants more access to their applications. A contact or process should be provided to update the status of applications. Combining databases and streamlining database-checking housed under the same department are necessary to expedite the application process. Without these changes, backlog of asylum applications will continue, and those seeking asylum will continue to live in uncertainty and fear.

Changes to asylum standards and procedures must be implemented. The humanitarian intent of asylum is undermined by the requirement that asylum applications must be filed within one year of arrival. Counsel for particularly vulnerable immigrants in removal proceedings should be provided. The overbroad applications of the “material support to terrorist organization” bar has eroded the U.S. refugee resettlement program and placed asylum seekers on hold, and

⁵³ Human Rights First, *Security Procedures in the U.S. Asylum System*, Retrieved from <http://www.humanrightsfirst.org/wp-content/uploads/pdf/asylumsecurity.pdf> (accessed Feb. 21,2013).

often in prolonged detention. The adversarial system is not appropriate for asylum seekers— the non-adversarial Asylum Office should have initial jurisdiction over all asylum claims.

Recommendation 11: Renegotiate Trade Agreements

U.S. policy shares responsibility for much of the so-called “economic migration.” Trade agreements such as NAFTA and CAFTA need to be renegotiated. They have enabled the poverty in Mexico and the rest of our hemisphere that provokes so much of the immigration influx today. Economic migrants are also victims of such policies and should be included in a broad legalization program.

Since the 1980s, Mexico has engaged in economic reforms that rely on international trade. Major reforms were adopted in 1986 when President Carlos Salinas and a new ruling elite successfully lobbied for the country's entry into the General Agreement on Tariffs and Trade (GATT), which covers international trade on goods. Soon thereafter, President Salinas approached the United States about establishing a continent-wide free trade zone, and those efforts eventually culminated in the North American Free Trade Agreement (NAFTA). Over the past 25 years, trade between Mexico and the United States has increased more than eightfold. Since NAFTA was signed in 1994, trade and investment among Mexico, the United States, and Canada has tripled, and Mexico has edged out Japan as the largest supplier of goods and services to the United States.

NAFTA was intended to also fix the problem of undocumented Mexican migration to the United States. Proponents claimed that NAFTA represented a long-range solution to "illegal immigration" from Mexico. Their thinking was that by stimulating economic development in Mexico, NAFTA would create jobs in Mexico and keep Mexicans home.

In reality, NAFTA failed miserably as a method of reducing undocumented migration. Although NAFTA coincided with a new border enforcement focus, illicit border crossings have continued to rise. The entry points have shifted, so that while apprehension rates may have decreased in places that were once easy to cross, attempts to enter have surged in more dangerous places like Arizona. Most demographers today estimate that between 300,000 and half a million undocumented immigrants continue to enter the country annually.

The low-wage labor sector is not the only type of migration from Mexico that has accelerated since the economic reforms. Business visas for Mexicans have tripled and are now about 438,000 annually, while the numbers of investors and intra-company transferees for corporate executives and key managers have grown dramatically. The number of tourists from Mexico has increased six times to over 3.6 million each year, while the number of foreign students has doubled.

Labor migration has been promoted by economic integration in North America and development in Mexico. The problem with this picture is that, while economic arrangements have facilitated the movement of goods and services, nothing new was provided in NAFTA to facilitate the movement of labor beyond existing immigration law categories. The error of not providing for labor migration left no lawful channel to address the need and recruitment of low-wage workers from Mexico.

The increase in trade generated by NAFTA has not translated into more jobs for Mexicans at home. In fact, NAFTA may have resulted in structural changes that encourage

more labor migration from Mexico. For example, agricultural free trade should theoretically reduce migration pressures from poorer countries because agriculture is a huge source of employment in such countries, however, agricultural subsidies in wealthier countries distort the situation. The agricultural industry in Mexico is neither powerful nor vast. Although there are large farms in the north that grow fruit and vegetables aimed at U.S. markets, most Mexican farms are small and lack credit. The government permits the sale of land in the form of cooperatives, but it has little credit, funds, or aid for small farmers. Net exports from northern Mexico grew after NAFTA, but that expansion paled in comparison to new U.S. imports of grain, oilseeds, and meat. Since ten years after NAFTA was signed, Mexico has been dependent on the United States for much of its food.

The effect of U.S. government subsidies on undocumented migration is clear. Subsidies for agricultural entities actually promote the migration of unskilled workers due to non-market stimulation of demand for employees in the U.S. and accompanying negative effects of domestic subsidies on the developing countries that send migrant workers. This was easily foreseeable before NAFTA began. For years, Mexico provided support to rural areas through systems of price supports for producers, and reduced prices of agricultural products for consumers, but this support was withdrawn after NAFTA. The United States, however, continued to produce subsidized corn in huge quantities at low prices, undercutting Mexico's corn prices. The subsidized system displaced Mexican workers because corn was a major source of rural income.

At best, the effects of NAFTA in Mexico have been uneven, especially in rural areas and among low-skilled groups that tend to migrate to the United States. The wages for low-wage workers have declined, and the rural poverty rate has increased. The idea of NAFTA-created jobs that would reduce pressure to migrate simply has not become a reality.

One might think that agricultural liberalization would be good for a developing country in a trade relationship with a developed economy. Although Mexico had an agricultural trade deficit with the United States before NAFTA, the problem worsened afterwards. Not all tariffs on crops in both the United States and Mexico have been eliminated, and therefore, matters are still in flux. U.S. farm subsidies (and farmer efficiency) continue to make a difference. For example, U.S. corn is sold in Mexico at prices that are estimated to be at least 30 percent below the cost of production.

Clearly, agricultural trade liberalization is the single most significant factor in Mexico's agricultural jobs loss. Prior to NAFTA, Mexico had 8.1 million agricultural jobs. That figure actually increased slightly after the peso crisis of the early 1990s, when unemployment led some workers back to farms. A decline then ensued and by 2006, only 6 million agricultural workers were employed--down 2 million from pre-NAFTA levels. While NAFTA cannot be blamed for all of these losses, Mexico has "reduced its agricultural tariffs much more for the United States than for other trading partners." The 2 million farmers forced to abandon their land ended up as migrant workers in Mexican cities or in the United States. Perhaps 200,000 migrant workers have settled in wretched conditions in an agricultural area called Sinaloa, where 20 families control the industry. With pitiful wages, many survive on the corn and beans they manage to grow, live in inferior housing, and are unable to attend schools or obtain health care.

Mexican farmers suffered from NAFTA's failure to provide a long phase-out period for tariffs on basic crops. Little was done to help rural farmers face the adjustments that had to be made— no meaningful transition period, no assistance in shifting to competitive crops, and no

development of alternative job opportunities. The effect of U.S. subsidies on products such as corn should have been anticipated when NAFTA was enacted. The negative effect of subsequent actions on rural Mexican farmers should have been obvious; for example, the U.S. farm bill in 2002 further increased subsidies, putting Mexican farmers at even greater disadvantage. As small, allegedly "inefficient" Mexican farmers were put at risk, no foreign investments into the rural sector for industrial development or value-added activities arrived.

Agricultural job loss is emblematic of overall employment problems in Mexico. Jobs in non-maquiladora manufacturing are fewer today than in 1994, except in informal sector microenterprises. By June 2006 there were 130,000 fewer jobs in non-maquiladora manufacturing than prior to NAFTA. The U.S. recession and global changes, such as competitive exports from China, have also contributed to Mexican job loss in the past few years. Export manufacturing jobs increased modestly in Mexico during NAFTA, however, the loss of 2 million agricultural jobs greatly offsets the 700,000 jobs gained in export manufacturing. Furthermore, 100,000 jobs in Mexico's domestic manufacturing sector were lost from 1993 to 2003.

The effect of NAFTA on Mexican wages is also a relevant factor in undocumented migration from Mexico. Recent migration is a manifestation of historical restructuring of the Mexican economy. Disappointingly, while NAFTA substantially increased exports (worker productivity) and direct foreign investment, the average Mexican worker's wages and standard of living has not improved. Wages for manufacturing workers (both maquiladora and non-maquiladora) have fallen below pre-NAFTA levels. Even highly-educated workers in manufacturing (e.g., professional, technical, and administrative staff) had lower wages in the late 1990s than in 1993. After 10 years of NAFTA, real wages in Mexico were lower and income inequality had grown even though productivity had increased. Many Mexicans, if not most, who come to the United States looking for work were formerly employed in Mexico. That means that efforts to improve economic conditions in Mexico must look beyond employment to wages, job quality, and perceptions of opportunity. Mexican labor migration is not as much about escaping abject poverty as it is about improving the economic situation in the new NAFTA economy. In essence, given the growth in low-wage maquiladora jobs and the decline in domestic manufacturing jobs, the gap between U.S. and Mexican wages actually widened under NAFTA. In 1975, Mexican wages were about 23 percent of wages in the United States; just before NAFTA was implemented in 1994, they declined to 15 percent of wages in the United States; by 2002, they dropped further to 12 percent of wages in the United States.

David Bacon, a photo journalist and worker's rights advocate, testified on the effects of trade agreements such as NAFTA. He argued that movement and migration is a human right, but we live in a world where much migration is not voluntary, forced by poverty and so-called economic reforms. Our trade policy, and the economic policies imposed on countries like Mexico, El Salvador or the Philippines make poverty worse. When people get poorer and their wages go down, it creates opportunities for U.S. corporate investment, which is what drives U.S. trade policy. But the human cost is very high. In El Salvador, the U.S. embassy is telling the government to sell off its water, hospitals, schools and highways to give U.S. investors a chance to make money. This policy is enabled by the Central American Free Trade Agreement (CAFTA), whose object was to increase opportunities in El Salvador for U.S. investors. It was imposed on El Salvador in the face of fierce popular opposition.

According to Mr. Bacon, 4 million individuals have already left El Salvador, and 2 million have come to the United States, not because they love it here, but because they cannot survive there. These migrants come without papers, because there are no visas for 2 million people

from this small country. NAFTA did even more damage than CAFTA. It allowed U.S. corporations to dump corn on the Mexican market, then to take over the Mexican food market with imports from the United States. Today one company, Smithfield Foods, sells a third of all the pork consumed in Mexico. Prices dropped so low that millions of Mexican farmers could not survive without leaving home.

In many respects, the problem with NAFTA was not what it included, but what it did not include, which was a unified approach that recognized the need for the three countries to come together across social and economic lines. As part of the North American community, the United States and Canada must help Mexico with its economic development.

The debate over trade and migration needs to be reframed. NAFTA and similar agreements have had tremendous influence on migration pressures from Mexico. Infrastructure and economic assistance for Mexico and a new vision of the border and labor migration are needed. Mutually beneficial solutions need to be developed. Existing agreements need to be renegotiated to ensure balance and fairness for all parties.

Recommendation 12: Eliminate the Secure Communities Program

The Secure Communities (S-Comm) program should be abandoned. Racial profiling has resulted from S-Comm. Although the program is presumably targeting immigrants who are criminals or who pose public safety problems, the vast majority of those detained because of the program are not criminals.

Although the Bush Administration piloted the Secure Communities Program (S-Comm) in 2008, the Obama Administration expanded it exponentially into a program where local enforcement authorities must share fingerprints of anyone arrested with federal Immigration and Customs Enforcement (ICE). As soon as local law enforcement agencies send fingerprints to the FBI for regular background checks, ICE has access to the fingerprints and can initiate deportation proceedings against undocumented individuals.

According to ICE, the mission of S-Comm is “to improve public safety by implementing a comprehensive, integrated approach to identify and remove criminal aliens from the United States.”⁵⁴ S-Comm’s three stages are: (1) identification, (2) arrest, and (3) removal. ICE has divided undocumented immigrants into three categories: (1) Level 1: those who have committed serious crimes, (2) Level 2: those who committed less serious offenses, and (3) those who have minor convictions. On average, those arrested spend 28 days in detention, but 28% spend more than one month.⁵⁵

According to the Immigration Policy Center, ICE planned to implement this program in the 3,100 state and local jails across the country by 2013. By late 2011, S-Comm was operating in 1,595 jurisdictions in 44 states. As of September 30, 2011, there were 692,788 matches in the database that resulted in the removal of more than 142,000 persons.⁵⁶ However, by April 2011, S-Comm had erroneously arrested approximately 3,600 U.S. citizens.⁵⁷ Since the implementation of the program, there has been a disproportionate effect on Latinos— 93 percent of the people identified for deportation proceedings are from Latin America in comparison to 2

⁵⁴ Retrieved from http://www.ice.gov/doclib/foia/secure_communities/securecommunitiespresentations.pdf

⁵⁵ Retrieved from http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

⁵⁶ Retrieved from <http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet>

⁵⁷ Retrieved http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

percent from Asia and 1 percent from Canada and Europe.⁵⁸ Since deportation is not considered to be a criminal proceeding, no appointed counsel is provided during appearances before an immigration judge.⁵⁹

In spite assertions that ICE “prioritizes the removal of criminal aliens, those who pose a threat to public safety, repeat immigration violators...[and] the most dangerous and violent offenders, ” the agency has inconsistently deported only 26 percent Level 1 and 19 percent Level 2 illegal immigrations from all deportations. Well over half of the deportees are those with minor or no offenses. There are additional concerns with S-Comm, such as obstacles to community policing, issues of profiling and pretextual arrests, lack of clear complaint mechanisms for those who believe they have been erroneously been identified as deportable aliens, and strong concern about the lack of oversight and transparency, especially when it comes to supervising local partnerships.⁶⁰

Laura Polstein, a staff attorney with the Central American Refugee Center (CARECEN) testified about one of her clients, who has lived in the United States for over 15 years, is undocumented, but has citizen children. Over a 10-year period, the client was the victim of spousal abuse. On one occasion, she called the police. When the police arrived, the client was arrested. There are many different reasons why the wrong person might get arrested in these situations, such as language barrier or especially in self-defense cases, difficulty in determining who is the aggressor. Eventually, the district attorney dropped the case against Ms. Polstein’s client when it became apparent that she was the victim and had a restraining order against her abusive husband. But because she had been fingerprinted, the client was referred to ICE, and has been battling the deportation process for the last two years. The fear and stress have been a nightmare for the client.

Ms. Polstein stated that San Francisco’s Sanctuary Ordinance does not trump S-Comm. The automatic fingerprint sharing triggers the ICE hold. Police may be prohibited from calling ICE because of the Sanctuary policy, but S-Comm gives the police no discretion. So victims of domestic violence often cannot be protected by the San Francisco Police Department.

Another CARECEN client received an ICE hold when she was stopped by the SFPD for a driving infraction– failing to stop at a stop sign. After being pulled over, the police officer realized the client was driving without a license and requested to see her identification. She did not have her passport on her and the officer decided to arrest her for not having proper ID. The client is a longtime San Francisco resident and has two U.S. citizen children. ICE took custody of the client for deportation proceedings. Fortunately, CARECEN was able to get her a U-Visa (because she was the victim of an unrelated crime) and deportation proceedings were terminated.

Dean Santos, a 22-year-old immigrant, testified about his experience with S-Comm. Two years ago, he was arrested for petty theft and detained by ICE after serving sentence. After he was arrested by ICE, he was given two choices: 1) self deport or 2) fight his case. He chose to fight the case. Telling his mother what happened was the hardest thing he ever had to do. While in custody in Florence, Arizona, he met another man who had been detained by ICE after being caught for driving without a license. Santos and this man were definitely low priority cases, but S-Comm makes no distinction between low level and criminal cases.

⁵⁸ http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

⁵⁹ http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

⁶⁰ <http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet>

The overly broad S-Comm program should be abandoned. Racial profiling has resulted from S-Comm. Although the program is presumably targeting immigrants who are criminals or who pose public safety problems, the vast majority of those detained are clearly not criminals. In San Francisco, seven out of 10 of deported under S-Comm do not have criminal convictions or are arrested on lesser offenses.

Recommendation 13: Allow Discretion for Immigration Judges to Grant Relief for Aggravated Felons

The discretionary authority for immigration judges to cancel deportation if an aggravated felon is rehabilitated and remorseful should be reinstated. The ability for immigration judges to provide a second chance to such individuals was eliminated in 1996. The definition of “aggravated felony” should also be revised so that minor offenses are not included in the federal definition that triggers harsh deportation procedures.

The law today does not afford lawful immigrants and refugees a second chance if they have been convicted of an aggravated felony. As a result, noncitizens from a wide range of countries are removed from the United States where they have spent many of their formative years. Most of the convicted lawful residents and refugees have one thing in common: under U.S. immigration laws, they are regarded as aggravated felons and virtually no deportation relief is available from an immigration judge.

Discretionary relief from deportation for longtime, lawful permanent residents convicted of serious crimes, even those eventually classified as aggravated felonies, was available from 1976 to 1996. During that time, an immigration judge could consider issues of rehabilitation, remorse, family support in the United States, atonement, and employment opportunities for aggravated felons who had entered as refugees or as immigrants, if they had become lawful resident aliens and had resided in the country for at least seven years.

In 1996, however, Congress enacted legislation that eliminated the Section 212(c) second-chance relief as it had been applied for 20 years. In its place, a Cancellation of Removal provision was added that precluded even the possibility of relief for many who had been able to seek second-chance, discretionary relief from an immigration judge under the prior provision.⁶¹ The new provision, INA: Act 240A(a), permits the attorney general to “cancel removal” for certain aliens who commit crimes if the alien (1) has been a lawful permanent resident for at least five years, (2) has resided in the United States continuously for seven years after having been admitted in any status, and (3) has *not* been convicted of any aggravated felony.⁶² The aggravated felony bar, thus, eliminated relief for many lawful resident aliens who would have been eligible for Section 212(c) relief.

Anoop Prasad, a staff attorney with the Asian Law Caucus, testified that soft drug offenses are the biggest category resulting in mandatory detention and a lifelong bar from legalization. He argued that proportionality must be restored in the immigration system. Under the current law, immigration judges simply look at conviction records and are not permitted to view individuals. For example, Prasad’s client Samuel Lin, came to the United States as a green

⁶¹ See Katherine Brady, *Recent Developments in the Immigration Consequences of Crimes*, OUR STATE OUR ISSUES: AN OVERVIEW OF IMMIGRATION LAW ISSUES 129 (Bill Ong Hing ed., 1996).

⁶² 8 U.S.C. § 1229(a) (2004) (emphasis added).

card holder. He graduated from high school when he was 16, but before attending college he foolishly took part in a robbery and was sentenced to nine years in prison. In prison, he trained to be a firefighter and EMT. Since his release, he has been working as a first responder but will soon be deported. The judge will only see his conviction, everything that Samuel has become since his release from prison will be irrelevant.

Su Yon Yi of the Immigrant Legal Resource Center also testified about how the 1996 laws greatly expanded what is known as an aggravated felony. Before 1996, this category only covered the most serious offenses, like murder, rape and drug trafficking. But now the definition of aggravated felony includes even the most minor crimes, such as the following:

- Misdemeanor theft of a \$10 video game or \$15 worth of baby clothes
- Sale of \$10 worth of marijuana
- Allowing a friend to use his car in a burglary

Previously repealed discretionary relief should be restored. Other options for handling criminal immigration cases should be made part of the immigration court system.

Recommendation 14: Revise Detention Policies

Detention policies are out of control and should only be used in the most extreme circumstances. This is an aspect of the lack of proportionality in current immigration enforcement. Many individuals with no or minor offenses are being held in detention, separated from their families. Once in detention, they often give up hope and those who are able to find willing counsel are often at a disadvantage.

Individuals facing removal who are in detention suffer a distinct disadvantage in pursuing a viable claim for relief. Depending on the location of the detention facility, access to counsel can be severely limited. Some detention facilities are located in remote areas where few immigration attorneys are available. Being in custody itself can be very demoralizing, and detained individuals can be discouraged from pursuing viable claims due to the circumstances of confinement when they may think of deportation as a way of getting out of custody. Moreover, communication with attorneys (if available), friends, family, and potential witnesses is hampered.

The challenge for an attorney representing cancellation clients in ICE detention is the ability to effectively communicate. In cases involving applications for relief, adequate representation requires hours and hours, if not days and weeks, of preparation. Developing a trusting and open relationship with the client is essential. Both the attorney and the client need to be able to speak with candor. Each element of a defense or claim for relief is important, and the explanation can be complicated due to nuances of the law. Preparing the respondent for direct examination in a responsible manner can take many hours over the course of a few days. Discussing case strategies and tactics is also important. When a client is detained, all of these efforts are truncated and compromised. In cases where the respondent is not detained, removal respondents are commonly asked to help speak to potential witnesses and gather documentary evidence. Clients who are in detention cannot assist in that regard.

The drastic expansion of mandatory detention, skyrocketing detention budget appropriations to the Department of Homeland Security (DHS), and changes in DHS policies

and priorities favoring detention have resulted in dramatic numbers of detained individuals since the 1990s. In 2001, the U.S. detained approximately 95,000 individuals. By 2007, the number of individuals detained grew to over 300,000. The average daily population of detained immigrants grew from approximately 5,000 in 1994, to 19,000 in 2001, and to 32,000 by the end of 2008.

Today, conditions at ICE detention facilities leave much to be desired. Numerous international and national human rights organizations, scientific journals, and newspapers have published reports documenting different aspects of immigration detention conditions in heartbreaking detail. While all detainees endure inexcusably harsh conditions, mentally ill detainees, who may not be competent to advocate for themselves, are especially vulnerable and may be punished for behavior that they cannot control.

The devastating effects of ICE detention policies resulting from S-Comm and other ICE enforcement strategies have been well documented. At the IRC hearing, several attorneys testified about the effect on San Francisco residents.

ICE detention policies must be revised. Many immigrants with no or minor offenses are detained, isolated and separated from their families, greatly disadvantaged, and living in fear. Detention should be used only in the most extreme circumstances.

Recommendation 15: Repeal Employer Sanctions and Abandon E-Verify

Employer sanctions should be repealed and the E-Verify program should be abandoned. Employees actually are the victims of employer sanctions laws, and all, both citizens and non-citizens, are potentially victimized by the flawed E-Verify system. The National Labor Relations Act should be amended to fully protect and include undocumented workers.

Employer sanctions (the notion of penalizing employers for hiring undocumented workers) are relatively recent in U.S. immigration laws. With heightened concerns over the number of undocumented workers (predominantly Mexican) in the United States in the 1970's and early 1980's, estimates of up to nine million undocumented people residing in the country were offered to demonstrate that immigration enforcement efforts were ineffective.⁶³ Policymakers proposed addressing the situation from a new angle, by penalizing employers who were hiring undocumented workers, through what came to be called "employer sanctions."⁶⁴ "By 1986, employer sanctions were part of the nation's immigration laws. The passage of the Immigration Reform and Control Act (IRCA) represented the culmination of years of social, political, and congressional debate about the perceived lack of control over the U.S. southern border."⁶⁵ "The belief that something had to be done about the large numbers of undocumented workers who had entered the United States from Mexico in the 1970s was reinforced by the flood of Central Americans who began to arrive in the early 1980s."⁶⁶

The efficacy of employer sanctions in reducing undocumented migration has been hotly debated. Proponents of increased enforcement note that few employers have been fined or

⁶³Bill Ong Hing, *The Immigration and Naturalization Service, Community-Based Organizations, and the Legalization Experience: Lessons for the Self-Help Immigration Phenomenon*, 6 GEO. IMMIGR. L.J. 413, 470 (1992) [hereinafter Hing, *Lessons for the Self-Help*].

⁶⁴BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 179-82, 196-97 (2004).

⁶⁵*Id.* at 155.

⁶⁶*Id.*

punished since 1986. That view, however, fails to note that hundreds of thousands of workers have been fired. In fact, punishing employers, or threatening to do so, was always simply a mechanism to criminalize work for the workers themselves, and thereby force them to leave the country, or not to come in the first place.

Utilizing employer sanctions to address the phenomenon of Mexican migration in this context of poverty and globalization causes misery for workers, but does not reduce migration. Arresting and deporting workers for working without authorization as a means of discouraging them from coming to the United States for a better life simply cannot be effective in the face of such grave economic and social forces. Can punishing workers who are here because of the effects of many U.S. economic policies really be justified?

Another problem with employer sanctions is the resulting discrimination. Long before recent evaluations of the discriminatory effects of the E-Verify program,⁶⁷ discrimination was rampant. In its final report to Congress on employer sanctions in 1990, the Government Accounting Office estimated that of 4.6 million employers in the United States, 346,000 admitted applying IRCA's verification requirements only to job applicants who had a "foreign" accent or appearance.⁶⁸ Another 430,000 employers only hired applicants born in the United States or did not hire applicants with temporary work documents in order to be cautious.⁶⁹

Workplace ICE raids by gun-wielding agents resulting in the mass arrests of dozens and sometimes hundreds of employees that were common under the G. W. Bush administration appear to have ceased under the Obama administration.⁷⁰ Legally questionable mass arrests continue to occur in neighborhoods under the pretext of serving warrants on criminal aliens.⁷¹ However, disruptive, high-profile worksite raids appear to have subsided. When a Bush administration-style ICE raid took place in Washington State in February 2009 soon after Janet Napolitano took the helm as Secretary of the Department of Homeland Security (DHS), she expressed surprise and ordered an investigation. These types of raids were not in her strategy plan she noted, claiming instead that enforcement under her leadership would focus on employers who hire undocumented workers, not on the workers themselves.⁷²

However, the Obama administration's focus-on-employers-rather-than-workers strategy in fact falls squarely on the shoulders of the workers. Immigration raids at factories and farms have been replaced with a quieter enforcement strategy: sending federal agents to scour company records for undocumented immigrant workers. While past sweeps commonly led to deportation of these workers, the "silent raids" usually result in workers being fired, although in many cases they are not deported.⁷³ The idea is that if the workers cannot work, they will self-

⁶⁷IMMIGRATION POLICY CENTER., E-VERIFY AND ARIZONA: EARLY EXPERIENCES FOR EMPLOYERS, EMPLOYEES, AND THE ECONOMY PORTEND A ROUGH ROAD AHEAD (May 2008), Retrieved from <http://www.immigrationpolicy.org/sites/default/files/docs/AZE-Verify04-08.pdf>. E-Verify is a federal, web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. See IMMIGR. POL'Y CTR., DECIPHERING THE NUMBERS ON E-VERIFY ACCURACY (Feb. 11, 2009), Retrieved from <http://www.immigrationpolicy.org/sites/default/files/docs/Deciphering%20the%20Numbers%20on%20E-Verify%20Accuracy.pdf>.

⁶⁸Michael Fix & Frank D. Bean, *The Findings and Policy Implications of the GAO Report and the Urban Institute Hiring Audit*, 24 INT'L MIGRATION REV. 816 (1990).

⁶⁹Laura C. Oliveira, Comment, *A License to Exploit: The Need to Reform the H-2A Temporary Agricultural Guest Worker Program*, 5 SCHOLAR 153, 170 (2002).

⁷⁰See generally, Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 USF L. REV. 307 (2009).

⁷¹See Interview with Violeta Chapin, Professor of Law, Univ. of Colo., in Santa Fe, N.M. (Sept. 24, 2010).

⁷²Secretary Seeks Review of Immigration Raid, N.Y. TIMES, Feb. 26, 2009, at A19, Retrieved from <http://www.nytimes.com/2009/02/26/washington/26immig.html>.

⁷³Julia Preston, *Illegal Workers Swept from Jobs in "Silent Raids,"* N.Y. TIMES, July, 9, 2010, at A1, Retrieved from <http://www.nytimes.com/2010/07/10/us/10enforce.html>.

deport and leave on their own. However, workers do not actually leave because they need to work. They become more desperate and take jobs at even lower wages.⁷⁴ Given the increasing scale of enforcement, this can lead to an overall reduction in the average wage level for millions of workers, which is, in effect, a subsidy to employers. Over a 12-month period, ICE conducted audits of employee files at more than 2900 companies.⁷⁵ According to official figures, in the first six months of 2010, the agency levied a record \$3 million in civil fines on businesses that hired unauthorized immigrants and thousands were fired.⁷⁶

Employers say the current audits have reached more companies than the work-site roundups of the Bush administration. The audits force businesses to fire every suspected undocumented worker on the payroll, not just those who happened to be on duty at the time of a raid, and make it much harder to hire other unauthorized workers as replacements. Auditing is only effective in getting unauthorized workers fired.⁷⁷

David Bacon, the photo journalist and worker's rights advocate, testified that no employer has ever gone to jail for violating employer sanctions laws, yet thousands of workers continue to lose their jobs each year. Employer sanctions do not keep migrants from coming to the United States; the sanctions simply criminalize working. Current proposals to make E-Verify screening would make matters worse. Instead of criminalizing work, every worker should be given a social security number, and Congress should enact legislation that would overturn the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002), that denied an award of back pay to an undocumented worker who had been laid off for participating in a union organizing campaign with several other employees. The organizing rights of all workers must be validated.

Employer sanctions should be repealed and the E-Verify program should be abandoned. At the very least, due process protections and anti-discrimination provisions should be added to the E-Verify program to guard against abuse.

⁷⁴ See id.

⁷⁵ See id.

⁷⁶ Id.

⁷⁷ Id.

S T A T E

Recommendation 16: Enact the California TRUST Act

The Secure Communities enforcement program has been harmful to thousands of individuals who do not pose public safety threats and to their families. The state legislature should pass and the governor should sign the California TRUST Act, which would prohibit local law enforcement agencies from holding an arrestee for federal immigration authorities unless the crime or conviction involves a serious or violent felony.

California State Assemblyman Tom Ammiano (D-SF) introduced the TRUST Act (AB 1081), in 2011 in response to the Secure Communities (S-Comm) federal immigration enforcement program. S-Comm enables the Department of Homeland Security (DHS) to check fingerprints of individuals arrested by local law enforcement for deportability. Federal authorities can request that Individuals suspected of being undocumented and removable (eligible for deportation), be held for deportation until a federal agency assume custody. Critics have pointed out that under S-Comm, local governments bear the burden and cost of detaining suspected, deportable immigrants, with little or no reimbursement from the federal government agency that requests the hold. The TRUST Act authorizes local authorities to refrain from automatic compliance with federal detainer requests— instead local authorities can determine whether to comply on a case-by-case basis. Discretion is based on whether "the individual has been convicted of or in custody for a serious or violent felony" and "the continued detention of the individual on the basis of the immigration hold would not violate any federal, state or local law, or any local policy."⁷⁸

Assemblyman Ammiano and the bill's co-sponsors stressed that passage of the TRUST Act would reduce detainer costs for local communities, build trust for local law enforcement with immigrant communities (e.g., by encouraging that crimes be reported without the fear of deportation), and to make sure that ICE officials satisfy a burden of proof that individuals are deportable. In August of 2012, both houses of the California Legislature passed the TRUST Act, however Governor Brown vetoed the legislation. In his veto message, the Governor expressed concerns with the constraints that the Trust Act would place on law enforcement officials, saying the bill was flawed because it did not definite "serious" or "violent" adequately. However, the Governor stated that he would consider a new bill with those issues properly addressed.

Assemblymen Ammiano and Luis Alejo, along with State Senator Kevin DeLeon reintroduced the TRUST Act in December 2012 as AB 4. The legislation should be enacted in order to stop the deportation of undocumented immigrants arrested for non-violent and minor offenses. In the words of Assemblyman Ammiano, "These policies have been hurting people every day."⁷⁹

⁷⁸ 2011 CA A.B. 1081 (NS).

⁷⁹ <http://calcoastnews.com/2012/12/another-try-for-immigrant-bill/>

Recommendation 17: Adopt the California Domestic Workers Bill of Rights

The California State Legislature should pass and the governor should sign the California Domestic Workers Bill of Rights (AB241- Ammiano) that would provide overtime pay, meal breaks, a safe and healthy workplace, workers compensation and other labor protections to an estimated 200,000 caregivers, nannies and house cleaners in California. The mostly female and Immigrant domestic workforce is particularly vulnerable to abuse and violations of labor laws. AB241 would include these workers in rights provided to other California workers.

According to the National Domestic Workers Alliance, the domestic worker industry is riddled with abuse, mistreatment, and labor violations. The mostly female and immigrant domestic workforce is particularly vulnerable. Domestic workers have historically been excluded from the most fundamental labor protections under both federal law and California law. Domestic workers are excluded, either partially or completely, from rights that other workers have, such as collective bargaining, receiving minimum wage and overtime pay, working in safe and healthy environments, and receiving workers' compensation benefits. They are often unprotected from anti-discrimination laws as well.

Federal Law - During the 1930's, a period of widespread labor unrest, Congress passed two key laws, the National Labor Relations Act (NLRA) and Fair Labor Standards Act (FLSA). The NLRA gives private sector workers in the United States the right to organize into unions and bargain collectively. However, domestic workers along with farm workers were excluded and remain excluded from NLRA. The FLSA sets federal minimum wage and overtime standards. Domestic workers were excluded from FLSA minimum wage and overtime protection when the law was passed in 1938, and remained excluded for almost 40 years until 1974. Even after 1974 amendments, many domestic workers are still denied basic entitlements under FLSA. Live-in domestic workers have no right to overtime pay. Companions for the elderly and what FLSA refers to as "the infirm" are exempt from federal minimum wage and overtime requirements, whether working directly for the household or for a home care agency. Childcare providers who are considered "casual babysitters" are similarly excluded from federal minimum wage and overtime protections. The exclusion of companion caregivers from FLSA protections is particularly significant because data show that there are 1.7 million employees working in this area with a projection that these jobs will increase by 50 percent by 2018. This is due to the anticipated rise in the number of elderly who will require caregivers.

Title VII of the Civil Rights Act of 1964: This is the key federal law protecting against discrimination on the basis of race, national origin, gender, and religion, however its application requires at least 15 employees. Federal laws prohibiting discrimination on the basis of disability and age require 15 and 20 employees respectively. Domestic workers typically work alone or with only a few others, so they cannot meet the requirements for coverage under the law. Thus if an employer refuses to hire, or fires, a domestic worker simply because the employer does not want a particular type of employee, there is no recourse for these workers under Title VII.

Occupational Safety and Health Act (OSHA): OSHA is the main federal agency charged with the enforcement of safety and health legislation. Domestic workers lack protection under OSHA. Although caregivers for patients with contagious diseases may be exposed to blood-borne contaminants, when hired by private household employers, there is no law ensuring that they are provided gloves, masks, or other basic equipment to ensure their own health and safety. Likewise for housekeepers exposed to toxic cleaning chemicals in private homes, the same protections required for hospitals, nursing homes, or hotels, do not apply.

California Law- Under California law, domestic workers are similarly excluded from protections under Cal/OSHA, the state's version of OSHA. Only some, but not all, domestic workers have protection. California anti-discrimination law, the California Fair Employment and Housing Act, requires at least five employees in the workplace, so most domestic workers cannot bring claims under this law. Domestic workers can look only to workplace harassment laws, which do protect workers even when there is only one employee.

In California, wages and hours of work are governed by regulations known as Industrial Welfare Commission (IWC) Wage Orders. Although IWC was established in 1913 with the mission of regulating wages and working conditions of women and children, there was no IWC wage order for household workers until the mid-1970's. For 60 years after the IWC began regulating California workplaces, there was no protection for the predominantly female workforce of household employees, many of whom were women of color. Even when IWC began regulating household workers, it created a category for "personal attendants," workers who primarily serve as caregivers for children, the elderly, or persons with disabilities. Although personal attendants eventually won the right to be paid minimum wage, they are still denied the right to overtime pay, meal periods, rest breaks, or other fundamental rights.

Live-in domestic workers, other than personal attendants, such as live-in housekeepers, are entitled to some overtime pay, but it is more limited than the overtime pay to which most other California workers are entitled.

Domestic workers make it possible for doctors, lawyers, business people, and lawmakers in California and the rest of the country to do their jobs with assurance that their homes are kept clean and their families are cared for properly. Domestic workers are largely women of color and immigrants, so exclusions from legal protection disparately impact them.

Immigrant workers are especially vulnerable. According to *Home Economics: The Invisible and Unregulated World of Domestic Work*, a 2012 report by the National Domestic Workers Alliance,⁸⁰ 50 percent of U.S.-born and 62 percent of undocumented domestic workers spend more than half their income on rent or mortgage; 19 percent of U.S.-born and 31 percent of undocumented workers perform work outside their assigned responsibilities; and perhaps most disturbing, 54 percent of U.S.-born and 74 percent of undocumented domestic workers are injured on the job. Additionally 85 percent of undocumented workers who indicated their working conditions are problematic did not complain or report the problems because of fear that their undocumented status would be used against them.

During the February 11, 2013 IRC hearing, Professor Marci Seville, Professor of Law and Director of Women's Employments Rights Clinic at Golden Gate University, spoke on behalf of the California Domestic Workers Coalition. Seville pointed out that under California law, nannies and caregivers are excluded from the right to over-time pay. They often work all night, seven days in a row, and have no right even to a rest or meal break. There are no provisions for getting adequate sleep, even though the health and safety of the people being cared for is also an issue. Housecleaners who continually work with toxic chemicals and stoop and lift are excluded from occupational health protections. Even California's anti-discrimination act requires that there be more than five employees, so a family employer can say, "I don't want a Latino nanny; I want a white nanny" without penalty.

⁸⁰ Burnham, Linda & Theodore Nik (2012) National Domestic Workers Alliance, New York, NY. Retrieved from <http://www.domesticworkers.org/pdfs/HomeEconomicsEnglish.pdf>

Professor Seville pointed out that domestic workers are left out in the cold for workers' rights. Even when there are rights and programs such as San Francisco's prevailing wage and Healthy San Francisco universal healthcare program, violation of domestic workers rights are the highest rates. Professor Seville routinely sees people working 40 hours per week for \$250.

Professor Seville was accompanied by two domestic workers who spoke of their experiences. Maria testified that she had worked for 14 years as a domestic worker, watching children, cleaning houses and caring for the elderly. She spoke of getting old and sick but having no benefits. Maria testified that she is just one of millions of women like her who are seen as nothing. She hopes for change and passage of the Domestic Workers Bill of Rights, rights that she deserves for all her years of work. Mary, another domestic worker, testified about her experiences and hardships after being recruited by an employer in the Philippines to come to the United States as a nanny. She needed the job to support her six children back home. Once she arrived in this country, her passport was taken by her employer and she was left to cook, clean and perform other work for the employer's extended family, for only \$300 a month. She later moved to Seattle, working for at the same rate as housekeeper, caregiver and more. She cooked, cleaned and cared for three children for \$20 a day, then moved to Modesto where she was paid nothing for housekeeping, childcare and work in the family's restaurant. She escaped but was beaten by her employer. She continued to be exploited, abused and threatened by subsequent employers until finally standing up for her rights and filing a complaint in 2012. She was able to join a support group and feels the best way to stop the abuse of domestic workers is to give them legal status.

In 2012, the State Legislature passed the California Domestic Worker Bill of Rights, requiring labor protections for domestic workers. Unfortunately, the legislation was vetoed by Governor Brown. The legislation excluded babysitters under the age of 18 as well as family members, but applied to nannies, housekeepers, caregivers of the sick or elderly, and other domestic workers. The Bill of Rights would have entitled domestic workers to overtime pay, ease eligibility requirements for workers' compensation and given them time for meals and rest breaks. It would have also added some protections specific to domestic labor, like giving live-in employees the right to eight hours of sleep and domestic workers the right to use employers' kitchens to cook their own food. The Bill of Rights legislation has been re-introduced by Assemblyman Tom Ammiano (AB 241) with the support of the California Domestic Workers Coalition. AB 241 should be enacted and signed by the governor to honor the contributions of domestic workers to California homes and communities.

Recommendation 18 – Allow Driver's Licenses for Undocumented Workers

The state legislature should pass and the governor should sign legislation that would permit undocumented workers to apply for driver's licenses. This would provide an important right to individuals who are simply trying to work and support their families, as well as to address public safety.

There is a great need to enact legislation affording undocumented immigrants the ability to obtain driver's licenses. Currently, California has the highest undocumented immigrant population in the country, with an estimated 2.83 million people without documentation. Many of these individuals drive without licenses and can be arrested immediately or have their vehicles impounded.⁸¹ If impounded, vehicles are then held for 30 days, and all expenses of towing and

⁸¹ California Vehicle Code Section 14602.6 (a) (1): Retrieved from http://www.dmv.ca.gov/pubs/vctop/d06/vc14602_6.htm

storage of the vehicle are charged to registered owners or agents of the owners. This causes an unnecessary economic hardship on low-income and vulnerable immigrant families, as the costs can result in as much as \$2,000 per car impoundment. Some progress was made when Governor Brown signed into law ABA 353 in 2011, prohibiting police at sobriety checkpoints from seizing car solely because the drivers are unlicensed. Instead, officers must allow unlicensed motorists time to find a legal driver and avoid impoundment.⁸²

Attorney Mark Silverman, Director of Immigration Policy at the Immigrant Legal Resource Center, emphasized the hardship that car impoundments and lack of drivers licenses have on families. In addition to making it difficult for individuals to go to work and the economic costs of an impoundment, children cannot be driven to medical appointments, along with many other inconveniences. Silverman applauded San Francisco for a fair impoundment policy that enables drivers to locate others to come assist with the car in situations not limited to sobriety checkpoints.

Not having a driver's license causes immeasurable fear among immigrant families - fear that loved ones will not arrive safely to or from work, and fear that a simple traffic stop could mean separation from children, spouses, parents and family members. Under S-Comm, stops of unlicensed, undocumented drivers can result in ICE holds and eventual deportation.

A recent DMV study showed that suspended/revoked and unlicensed drivers are three times more likely to cause a fatal crash than licensed drivers.⁸³ Public safety will be enhanced and California roads will be safer if unlicensed drivers have opportunities for proper training to drive in the state.

On January 7, 2013, Assembly Member Luis Alejo with Co-Author Assembly Member Das Williams introduced AB 60. AB 60 would amend Vehicle Code Sections 1653.5, 12800, 12801, and 13002 and repeal Sections 12801.5, 12801.6, and 12801.8,⁸⁴ allowing undocumented individuals to obtain driver's licenses by identifying themselves with an Individual Tax Identification Number (ITIN) "or other number associated with the identity document that the DMV finds clearly establishes the identity of the applicant" in place of Social Security Numbers.⁸⁵ Other states have paved the way by passing similar legislation. The state of Washington allows individuals to obtain licenses by using foreign passports or valid foreign driver's licenses as proof of identity.⁸⁶ New Mexico also allows individuals without social security numbers to obtain licenses by presenting other forms of identification, such as matricula consular cards, foreign passports, and ITIN cards or letters.⁸⁷⁸⁸ Illinois Governor Pat Quinn recently signed into law a bill authorizing driver's licenses to undocumented immigrants.⁸⁹ In Utah, undocumented residents are allowed to obtain Driver Privilege Cards or Learner Permits by submitting identification verification similar to those accepted in Washington and New Mexico.⁹⁰ According to the National Immigration Law Center, 33 states have confirmed or have already begun to issue driver's licenses to Deferred Action for Childhood Arrival (DACA)

⁸² Retrieved from http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0351-0400/ab_353_bill_20110908_enrolled.html

⁸³ Retrieved from http://www.dmv.ca.gov/pubs/newsrel/newsrel12/2012_19.htm

⁸⁴ Retrieved from http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0051-0100/ab_60_bill_20130107_introduced.html

⁸⁵ Id.

⁸⁶ Retrieved from <http://www.dol.wa.gov/driverslicense/idproof.html#identity>

⁸⁷ Retrieved from <http://www.mvd.newmexico.gov/Drivers/Licensing/pages/MVD-Proof-of-Identification-Number-No-SSN.aspx>

⁸⁸ New Mexico Gov. Susana Martinez, the first Latina Governor in the United States, is currently trying to repeal New Mexico's law permitting undocumented residents to get a Driver's License: Retrieved from http://abcnews.go.com/ABC_Univision/Politics/mexico-gov-martinez-opposes-licenses-undocumented-immigrants/story?id=18305031

⁸⁹ Retrieved from http://articles.chicagotribune.com/2013-01-27/news/ct-met-quinn-immigrant-drivers-licenses-0128-20130129_1_licenses-illinois-illegal-immigrant-consular-identification-card

⁹⁰ Retrieved from http://publicsafety.utah.gov/dld/acceptable_id.html

recipients.⁹¹ California is one of those states. Governor Brown signed AB 2189 into law at the end of 2012.⁹²

A February 2013 Field Poll showed that there is now nearly universal support among California voters to allow undocumented immigrants who have lived here for a number of years to stay and become citizens if they have jobs, learn English, and pay back taxes. In addition, a 52 percent majority now favors allowing undocumented residents to obtain California driver's licenses.⁹³

LOCAL

Recommendation 19: Affirm Commitment to Sanctuary Policy and Public Safety

The Mayor, Board of Supervisors, all elected and appointed officials, business, education and labor leaders should reaffirm San Francisco's commitment to establishing a welcoming and safe environment for immigrants. The City of Refuge (Sanctuary) Ordinance remains a visible system of this commitment and ensures public safety for all San Franciscans. More can be said and done.

Policies that instruct employees and officials to refrain from asking crime victims or witnesses about their immigration status are in place in more than 70 cities and states⁹⁴ from San Francisco to New York, as well as in many law enforcement agencies, such as the New Haven and Los Angeles police departments. Thousands of other police agencies are reluctant to be viewed as partners in federal immigration enforcement.⁹⁵ The motivation behind these laws and policies is simple: to encourage the entire community, including immigrant members, to trust and cooperate with police in promoting public safety for everyone.⁹⁶ If messages are delivered successfully, and with the right tone, positive steps like these encourage the civic integration of immigrant communities and stand in sharp contrast to xenophobic measures such as Arizona's S.B. 1070 and the billions of dollars spent annually in border and interior enforcement of federal immigration laws.⁹⁷

Like many cities and jurisdictions across the country in the 1980s, San Francisco declared itself a "city of refuge" or "Sanctuary City" in response to the deportation of Central American refugees who fled to the United States searching for protection from civil conflicts that were raging in their countries.⁹⁸ San Francisco's 1985 resolution, passed by the city and county's Board of Supervisors and signed by the Mayor, was considered nonbinding, although its language stated that "federal employees, not City employees, should be considered responsible for implementation of immigration and refugee policy" and that city departments

⁹¹ Retrieved from <http://www.nilc.org/dacadriverslicenses.html>

⁹² Retrieved from http://www.huffingtonpost.com/2012/10/01/california-drivers-licenses-undocumented-immigrants_n_1927991.html

⁹³ Retrieved from <http://www.field.com/fieldpollonline/subscribers/RIs2439.pdf>

⁹⁴ Wachs, Benjamin *Sanctuary City: Now Endorsed by 17,945 Law Enforcement Agencies Nationwide*, SF WEEKLY, Aug. 26, 2008, retrieved from http://blogs.sfweekly.com/thesnitch/2008/08/sanctuary_city_now_endorsed_by.php. An anti-immigrant organization, Ohio Jobs and Justice PAC, maintains a constantly updated website that lists dozens of cities and localities that it considers sanctuary cities. Steve Salvi, *The Original List of Sanctuary Cities, USA*, <http://ojjpac.org/sanctuary.asp> (last visited Nov. 3, 2011).

⁹⁵ Pamela Constable, *Many Officials Reluctant to Help Arrest Immigrants*, WASH. POST, Aug. 23, 2008, at B1.

⁹⁶ In the words of Police Chief Charlie Dean of Prince William County, Virginia, "I have a responsibility to provide service to the entire community—no matter how they got here. It is in the best interest of our community to trust the police." DEBRA A. HOFFMASTER ET AL., POLICE EXEC. RESEARCH FORUM, POLICE AND IMMIGRATION: HOW CHIEFS ARE LEADING THEIR COMMUNITIES THROUGH THE CHALLENGES 15–16 (2010), Retrieved from <http://policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>.

⁹⁷ HING, BILL ONG, DEPORTING OUR SOULS 178–82 (2006); BILL ONG HING, ETHICAL BORDERS 29–63 (2010).

⁹⁸ Ignatius Bau, *City of Refuge: No Federal Preemption of Ordinances Restricting Local Government Cooperation with the INS*, 7 LA RAZA L.J. 50, 50–53 (1994).

should not act in a manner toward Salvadoran and Guatemalan refugees that would “cause their deportation.”⁹⁹ However, after two 1989 incidents involving San Francisco police officers who cooperated with the Immigration and Naturalization Service (INS) and the Salvadoran consul, the Board of Supervisors adopted an ordinance that specifically prohibited city employees, including law enforcement officers, from asking about or disseminating an individual’s immigration status “unless required by federal or state law.”¹⁰⁰

The exception for “unless specifically required” by state or federal law became relevant a few years later and is relevant today under preemption and Tenth Amendment scrutiny.¹⁰¹ In 1990, Congress passed a law that required states receiving federal block grants for crime and drug control to provide certified copies of state criminal conviction records to federal immigration authorities within 30 days of conviction.¹⁰² In 1992, the California Office of Criminal Justice Planning (OCJP), which was responsible for administering the federal block grant, became cautious and decided to require grant recipients such as San Francisco to report individuals to the INS upon arrest, even prior to conviction.¹⁰³ With some dissent,¹⁰⁴ San Francisco complied by amending the Sanctuary Ordinance in 1993, permitting an exception for individuals arrested and booked on felonies.¹⁰⁵ Thus, both the State and San Francisco went beyond the federal requirement of reporting immigrants with convictions, and the new ordinance language required reporting of individuals simply upon arrest. Outside of those circumstances, however, the ordinance required officers to refrain from asking individuals about immigration status. Ironically, the federal requirement that block grant recipients provide notice of criminal convictions subsequently was eliminated,¹⁰⁶ but San Francisco has never repealed this exception.

The history of San Francisco’s Sanctuary Ordinance suggests that the ordinance falls into a genre of policies that can be classified as expressions of “solidarity” with the Sanctuary Movement of the 1980s when thousands of refugees from El Salvador and Guatemala fled to the United States seeking refuge from civil strife.¹⁰⁷ Most of the asylum seekers were denied relief under narrow interpretations of the asylum laws, so churches and synagogues protested the decisions by offering their places of worship to house and protect the migrants.¹⁰⁸ Thus, cities like San Francisco stepped into the fray with their own sympathetic policies to make a statement in opposition to the limited grant of asylum by U.S. officials to the migrants.¹⁰⁹

Although it may be tempting to regard the current multitude of sanctuary policies as statements in opposition to federal immigration enforcement decisions, the public justification offered for the vast majority of such policies generally is presented in terms of public safety. The idea is that by seeking to create good relations and trust with immigrant communities, law enforcement is more effective for the entire community. In fact some immigrant rights advocates

⁹⁹ S.F. Bd. of Supervisors Res. 1087-85 (1985).

¹⁰⁰ Bau, *supra* note 98, at 53–54; *see also* S.F., CAL., ADMIN. CODE § 12.H.2 (1989).

¹⁰¹ Language in sanctuary policies that provide exceptions when federal authorities ask for immigration information that local authorities have helps to avoid preemption. *See notes--*, *infra*, and accompanying text.

¹⁰² Immigration Act of 1990, Pub. L. No. 101-649, § 507, 104 Stat. 4978 (1990). The next year, Congress amended the law to require simple notice of conviction in lieu of certified records, unless INS requested the certified records. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, § 306(a)(6), 105 Stat. 1751 (1991).

¹⁰³ *See, e.g.*, Letter from Cal. Office of Criminal Justice Planning 1 (Sept. 29, 1993).

¹⁰⁴ The San Francisco Board of Supervisors voted six to four to amend the ordinance to comply with OCJP’s directive, in order to avoid the loss of federal funding. *See* Amy Wright the online research services librarian at the USF School of Law.at 6 (unpublished paper on file with author).

¹⁰⁵ Bau, *supra* note 98, at 68–70.

¹⁰⁶ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 1111, 119 Stat. 2960 (2005).

¹⁰⁷ Bau, *supra* note 98, at 53–54.

¹⁰⁸ TRAMONTE, *supra* note, at 4.

¹⁰⁹ Bau, *supra* note 98, at 50–53.

and law enforcement officials rail against the “sanctuary” terminology, arguing that the misnomer distracts the public from the real purpose of the policies to provide safe communities for all residents.¹¹⁰ They prefer “community policing,” “confidentiality,” or “preventive policing” labels.¹¹¹ The Los Angeles Police Department’s policy, issued in 1979, is an early example of a community policy approach implemented prior to the influx of Central American refugees and the Sanctuary Movement.¹¹²

New York City’s policy evolved on the heels of the sanctuary movement on behalf of Central Americans. While the public trust and confidence argument is certainly advanced to justify the policy today, there is no doubt that New York City mayors, including current mayor Michael Bloomberg, have a very long and consistent pro-immigrant worldview. Essentially, the city prohibits its employees from voluntarily providing federal immigration authorities with information concerning the immigration status of any alien. In August 1989, then-Mayor Edward Koch issued Executive Order No. 124. The Order, which was subsequently reissued by Koch’s successors David Dinkins and Rudolph Giuliani, prohibits any city officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities unless (i) such employee’s agency is required by law to disclose such information, (ii) an alien explicitly authorizes a city agency to verify his or her immigration status, or (iii) an alien is suspected by a city agency of engaging in criminal behavior. However, even if a city agency’s line workers suspect an alien of criminal activity, the Executive Order prohibits them from transmitting information regarding such alien directly to the federal authorities. Instead, it requires each agency to designate certain officers or employees to receive reports on suspected criminal activity from line workers and to determine on a case by case basis what action, if any, to take on such reports.¹¹³

¹¹⁰ TRAMONTE, *supra* note at 5.

¹¹¹ See *Public Safety and Civil Rights Implications of State and Local Enforcement of Fed. Immigration Laws: J. Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec., & Int’l Law and the Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the Comm. on the Judiciary H.R.*, 111th Cong. 84 (2009) (testimony of George Gascón, Chief, Mesa Police Dep’t, Mesa, Ariz.); DAVID A. HARRIS, GOOD COPS: THE CASE FOR PREVENTIVE POLICING 14–25 (2005); NAT’L IMMIGRATION FORUM, IMMIGRATION LAW ENFORCEMENT BY STATE AND LOCAL POLICE 2–3 (2007); TRAMONTE, *supra* note, at 1. A Congressional Research Service report defines a “sanctuary city” as follows: Most cities that are considered sanctuary cities have adopted a “don’t ask-don’t tell” policy where they don’t require their employees, including law enforcement officers, to report to federal officials aliens who may be illegally present in the country. Localities, and in some cases individual police departments, in such areas that are considered “sanctuary cities,” have utilized various mechanisms to ensure that unauthorized aliens who may be present in their jurisdiction illegally are not turned in to federal authorities.

LISA M. SEGHETTI ET AL., CONG. RESEARCH SERV., RL32270, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 26 (2006).

¹¹² TRAMONTE, *supra* note, at 4.

¹¹³ Executive Order 124 provides in pertinent part:

Section 2. Confidentiality of Information Respecting Aliens.

a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) Such officer’s or employee’s agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien’s immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.

b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency’s line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

Section 3. Availability of City Services to Aliens.

The Los Angeles Police Department's 1979 policy predates the Central American-focused Sanctuary Movement of the 1980s. Special Order 40 (S.O. 40), entitled "Undocumented Aliens," LAPD's sanctuary policy, has been in place since November 27, 1979.¹¹⁴ S.O. 40 was implemented to gain the trust of the immigrant community in an effort to encourage undocumented residents to report crimes without intimidation. The order restrains police officers from engaging in action when the only purpose is to inquire about immigration status and arresting the person for entering the country illegally. In other words, officers are instructed not to enforce immigration violations that they are not witnessing.¹¹⁵ On the other hand, when a person is arrested for more than one misdemeanor offense or something more serious, the arresting officers do have to notify a superior if the arrested person is determined to be undocumented.¹¹⁶

In San Francisco, public officials who support the city's Sanctuary Ordinance emphasize its public safety purpose. In explaining his support, District 9 Supervisor David Campos explained, "If you are the victim of a crime and an undocumented person was the witness to that crime, you want that undocumented person to come forward and report what they saw to the police. . . . They're not going to come forward if they're afraid the police will report them to immigration."¹¹⁷ The policy shielding immigrants from deportation benefits other San Franciscans as well.¹¹⁸ Language in San Francisco's ordinance makes clear that actions of local authorities are not to "be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies."¹¹⁹

All of above examples demonstrate that while some local lawmakers and police officials may be motivated by sympathy for undocumented immigrants, the rationale behind the sanctuary or "don't ask" policies with respect to witnesses, victims, and low level criminal arrests

Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligible by laws.

¹¹⁴ *Sturgeon v. Bratton*, 95 Cal. Rptr. 3d 718, 724 (Ct. App. 2009). Prior to 1979, Special Order No. 68 and its Supplemental Fact Sheet, dated November 24, 1972, embodied LAPD policy regarding arrest for illegal entry into this country.

According to this directive, officers were not to initiate police action with the primary objective of discovering the alien status of a person where no crime-related issues were involved.

Whether or not a suspected undocumented alien was booked on criminal charges, the arresting officer was to contact by phone an immigration agent who would then interview the detainee to "determine the legality of the suspected person's presence in the United States." INS could place a teletype "hold" on the suspect which became effective after adjudication of any state criminal matter.

Where the detained person was not booked on a criminal charge and contact with the INS revealed undocumented status, the LAPD policy required an officer to consult divisional detectives or the watch commander for booking approval. Such approval might be obtained where "there is a likelihood that the release of an illegal alien will create additional police problems. (Example: Family dispute calls, possibility of an assault or ADW occurring, etc.)" If booking approval was denied, the suspect was to be released but the officer was to forward all available information as to the suspect's identity to Detective Headquarters Division (DHD).

With respect to suspected illegal aliens who were neither the object of a police investigation nor subject to booking, an officer "need not notify INS" but instead could merely forward information on the suspect to DHD. However, in urgent situations, such as fires or other disasters in which a suspected illegal alien was a victim or involved, an officer could notify DHD, which, in turn, would notify INS "who will take immediate action to aid this Department in alleviating the problem."

Gates v. Superior Court, 238 Cal. Rptr. 592, 595 (Ct. App. 1987). S.O. 40 was enacted to replace Special Order No. 68.

¹¹⁵ *Sturgeon*, 95 Cal. Rptr. 3d at 725.

¹¹⁶ See Mariel Garza, *Bratton: Special Order 40 Not Going Anywhere*, L.A. DAILY NEWS, Apr. 14, 2008, Retrieved from <http://www.insidesocal.com/friendlyfire/2008/04/bratton-special-order-40-not-g.html>; *In the Real World: The Myths Surrounding the LAPD's Special Order 40 May Hinder Action on Criminal Deportations*, L.A. TIMES, Apr. 9, 2008, at A16, Retrieved from <http://articles.latimes.com/2008/apr/09/opinion/ed-gangs9>.

¹¹⁷ Richard Gonzales, *San Francisco Youth Sanctuary Law Prompts Battle*, NPR ALL THINGS CONSIDERED (Nov. 4, 2009) <http://www.wbur.org/npr/120061381/san-francisco-youth-sanctuary-law-prompts-battle> (quoting Supervisor David Campos).

¹¹⁸ *Id.*

¹¹⁹ See *infra* note -- (text of the ordinance).

is public safety. Gaining the trust of members of the community is important to ensuring the public safety of all.

Recommendation 20: Enact a Local Trust Act

The Board of Supervisors and Mayor should enact a local TRUST Act that outlines a clear separation of local law enforcement from federal immigration enforcement, with an emphasis on a) the needs of local communities for public safety and trust in local law enforcement, b) the rights of all accused to due process, and c) the rights of victims and witnesses to have the judicial system, not immigration agencies, determine innocence, guilt, and consequences.

The ICE Secure Communities (S-Comm) program has been extremely harmful to community members who pose no public safety concern and to their families. The Board of Supervisors should pass and the Mayor should sign a local Trust Act aligned with the proposed California State TRUST Act to ensure due process and basic human rights protections. The policy should prohibit local law enforcement agencies from holding arrestees for federal immigration authorities unless the federal government 1) holds only an individual convicted of a serious or violent felony as defined by the California penal code, and 2) reimburses local government for the full cost of detention.

Angela Chan, an attorney with the Asian Law Caucus, testified that S-Comm is an automated system, a new way of conducting enforcement that is faster, more invisible and more efficient than prior systems and that links the criminal justice system to the immigration system. Anyone who has contact with local law enforcement could be, and basically is, reported to immigration at the point of arrest, even if the violation is minor. Being undocumented does not mean a criminal violation was committed, and usually the violation is civil. The danger with S-Comm is the exchange of fingerprints between the FBI and Department of Homeland Security for a civil immigration background check. Fingerprints are checked for a match or no-match verification, with a match meaning the individual is of interest to immigration enforcement. The individual may not be undocumented and could actually be a green card holder or legal permanent resident, but DHS may think they did something that makes them removable.

Five percent of S-Comm matches actually involve U.S. citizens because the database is not foolproof. For example, an ICE detainer that is sent to the Sheriff's Office is a request that the person be held for an additional time beyond the criminal process. The local jail bed becomes an immigration bed, and the additional time in custody is usually 48 hours plus weekends/holidays. In the meantime, the person is denied bail and access to pretrial diversion programs. The process actually may end up being two to three weeks or longer.

S-Comm has resulted in 90,000 deportations in California—the highest figure among all states. In San Francisco, S-Comm has resulted in 705 deportations. Seven in 10 of those deported under S-Comm in San Francisco do not have criminal convictions or were arrested on minor offenses. They simply are not public security threats.

The law is clear that ICE holds are voluntary; they are simply requests. Because of the harm that ICE's Secure Communities enforcement program has had upon community members who pose no public safety concern and to their families, the Board of Supervisors should pass and the Mayor should sign a local Trust Act that aligns with AB 4, the California State TRUST Act. The policy should prohibit local law enforcement agencies from holding arrestees for federal immigration authorities unless the federal government reimburses for the full cost of

detention, and if reimbursement is made, only if the individual has been convicted of a serious or violent felony as defined by the California penal code.

Recommendation 21: Expand the SF City ID Card Program

San Francisco should continue to invest in innovative programs such as the Municipal Identification Card (SF City ID) program which has been invaluable to the more than 17,000 residents who have obtained cards since 2007. Many San Francisco residents, including seniors, immigrants and the homeless, rely on this card to access essential programs and banking services. The City should explore expanded features of the card or other mechanisms that connect individuals to safe, secure and affordable ways of accessing funds and facilitating monetary transactions.

In 2009, San Francisco implemented the SF Municipal ID Card (“City ID Card”), a program that provides a photo identification card for San Francisco residents to streamline access to City programs, services and local businesses. The tamper-proof card provides proof of identity and San Francisco residency and was modeled after a similar program implemented in New Haven, Connecticut. Today, similar City ID Card programs exist in Oakland, Trenton, New Jersey, Chicago, and Minneapolis. These programs, initially advocated by the undocumented community have turned into inclusive, community-wide positive projects that help provide proper governmental identification cards to those that otherwise do not possess valid identification. For an array of reasons, many residents lack valid government issued identification which prevents them from accessing bank accounts, libraries and city services—often exposing them to identification verification issues with local police, transit agencies and businesses. Many residents without identification are already marginalized members of the community such as individuals who are low income, homeless, youth, elderly, LGBT, victims of domestic violence, and immigrant. The lack of valid identification only exacerbates and entrenches the economic and social marginalization that already exists and prevents them from accessing services to which they are entitled.

The SF City ID Card is available to all San Francisco residents and can:

- Serve as proof of identity and residency
- Include information about the card holder's medical conditions or allergies
- List an emergency contact
- Provide discounts on San Francisco family excursions, restaurants, museums, and more
- Be used as a public library card
- Serve as a form of identification to open a checking account at participating banks
- Serve as a form of identification to open a Family Account with the Recreation and Parks Department

The holder’s full name, photograph, address, signature, date of birth, and card issue and expiration date are printed on the gender-neutral card, which is valid for up to two years.

Many immigrants are unable to obtain state identification. Without identification, they are afraid to report crimes to the police or labor and housing violations, such as blighted properties, slum landlords, and workplace health, safety, and wage violations, to the appropriate authorities. This underreporting of crime and civil violations reduces the quality of life for all residents and impacts public safety for all residents.

Without appropriate identification, it is difficult to open bank accounts and immigrants carrying large amounts of cash are specifically targeted for robbery and other violent crimes. The limited access to financial institutions and fear of police and other city officials results in decreased civic and economic participation.

Maria Dominguez of the Oakland City Identification Card Coalition (“OCICC”) testified about a new feature that has been implemented as part of Oakland’s City ID initiative. Oakland launched their City ID program on February 1, 2013, following the San Francisco model. The City of Oakland, however, includes a debit card feature. Financial institutions will allow users to store cash on the card to help protect them from becoming victims of crime. Many undocumented immigrants do not have access to financial institutions, so the Oakland City ID card helps to address that challenge.

Concern has been raised about Oakland’s debit card feature, because unlike San Francisco which does not keep personal information once the applicant’s documents and identity are verified, the Oakland cardholder’s address, picture, and birthday appear on the card. A Southern California consumers rights organization criticized the card, raising issues of identify theft. Ms. Dominguez testified that Oakland has been working with SFGlobal to make sure the card is secure, so that an account is not stolen. There is also a unique PIN associated with the card and Oakland is holding the bank and SFGlobal accountable for teaching cardholders how to protect and keep safe their information. Ms. Dominguez pointed out that losing an Oakland City ID card is like losing your wallet along with your driver’s license and ATM card. The Oakland ID Coalition discussed security concerns with the community and it was agreed that the benefits outweighed the risks.

Allowing undocumented immigrants to obtain driver’s licenses or state-issued identification as part of state and federal immigration reform would provide a broader solution. The IRC recommends that Congress enact a broad legalization program and that California issue drivers licenses to undocumented immigrants. These actions would reduce the burden on local municipalities and would allow for immigrants who travel across county or city lines to use their identification cards with the same confidence as the city or county in which they reside. Until those actions are taken at the state and federal level, San Francisco should continue to act and expand its municipal ID program with caution and thorough consideration.

Note: Following the February 11, 2013 hearing, reports of exorbitant fees associated with the Oakland ID card began to surface. The IRC recognizes and applauds San Francisco’s national leadership in the area of municipal ID cards and recommends that the City explore safer, more secure and affordable ways for residents to access funds and facilitate monetary transactions.

RECOMMENDATION 22: Enhance opportunities for immigrant integration, engagement, and civic participation.

Support the success of new immigrants by ensuring a welcoming environment, language services and equal access to timely, accurate and critical information for monolingual and limited-English proficient individuals.

Numerous city departments provide opportunities for local residents to participate and voice their concerns. However, the ability of new immigrants to participate, particularly those who are undocumented is often overshadowed by fear, mistrust of government, and language or other barriers.

San Francisco officials should enhance opportunities like those provided by the Office of Civic Engagement & Immigrant Affairs (OCEIA) to ensure that new immigrants and individuals for whom English is not a first language feel welcomed, are able to participate in meaningful ways and have opportunities to contribute to San Francisco's success. OCEIA operates several innovative projects to bridge cultural and linguistic differences between immigrants and longtime residents. The office also provides community grants for Citizenship, DACA and Language Access, operates the Community Ambassadors Safety Program which employs immigrants and longtime residents, and provides language assistance and training to city departments and community-based organizations, particularly during hearings, public meetings and crisis, emergency or public safety situations.

In preparation for immigration reform, San Francisco should also be developing pathways that lead to immigrant integration and longterm success, including resources for English as a Second Language (ESL), language access, voters education, and outreach on how to navigate and participate in city government.

III. HEARING TRANSCRIPT & STATEMENTS



CITY AND COUNTY OF SAN FRANCISCO

IMMIGRANT RIGHTS COMMISSION

San Francisco Immigrant Rights Commission
Full Commission Meeting and Special Hearing on
Proposed State and Federal Immigration Policies and Impacts on San Francisco Residents
Monday, February 11, 2013, at 4:00 P.M.
City Hall, Hearing Room 416
1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

SECTION A. MEETING TRANSCRIPT

Chair Bill Hing: I'm going to call this meeting to order. Madam clerk, can you call the role?

Whitney Chiao: Commissioner Chee is excused. Commissioner Coll?

Commissioner Coll: Here.

Whitney Chiao: Commissioner Enssani? [No response. Arrived after roll call]. Commissioner Fuentes?

Commissioner Felix Fuentes: Present.

Whitney Chiao: Commissioner Gaime?

Commissioner Fuentes: She just stepped, she's here.

Director Adrienne Pon: She's present.

Whitney Chiao: Commissioner Haile?

Commissioner Vera Haile: Here.

Whitney Chiao: Chair Hing.

Chair Hing: Here.

Whitney Chiao: Vice Chair Kennelly? [No response. Arrived after roll call].. Commissioner Kong?

Commissioner Florence Kong: Present.

Whitney Chiao: Commissioner Maldonado.

Commissioner Melba Maldonado: Here.

Whitney Chiao: Commissioner Molodetskaya? [no response]. Commissioner Moses?

Commissioner Toye Moses: Here.

Whitney Chiao: Commissioner Ng.

Commissioner Sam Ng: Here.

Whitney Chiao: Commissioner Paz? [No response. Arrived after roll call].. And the Commission has a quorum.

Chair Hing: Thank you. Will the Director make any announcements?

Director Pon: To members of the audience and commissioners, this is a full Commission meeting and special hearing on proposed state and federal immigration policies and impacts on San Francisco residents. The Commission will be hearing invited testimony first, for four panels, followed by public comments. If you need language assistance, please see the Office of Civic Engagement & Immigrant Affairs staff standing near the doorway. Simultaneous interpretation in Cantonese and Spanish will be available using headsets. Individuals wishing to speak during public comments, that is not invited speakers, must complete a green speakers card located at the side table near the entrance. The Chair will call five names at a time for public comments. Based on the number of speakers, individuals may be limited during public comments to two minutes, not including interpreter time. Members of the audience and commissioners are reminded to please set electronic devices to silent or vibrate. Questions regarding the Immigrant Rights Commission, commissioners, or tonight's hearing may be directed to the Office of Civic Engagement & Immigrant Affairs, telephone number (415) 581-2360. The Immigrant Rights Commission will be holding a follow-up summit to tonight's hearing on March 14, 2013. Information on this event will be available online the last week of February.

Chair Hing: Thank you. We have one item of business before we begin our special hearing: approval of the minutes from the meeting of January 14, 2013. Are there any changes or corrections? If not, is there a motion?

Commissioner Moses: So moved.

Chair Hing: Is there a second?

Commissioner Kong: Second.

Chair Hing: All those in favor?

All: Aye.

Chair Hing: Thank you. All those opposed? [No response]. Welcome to tonight's Commission hearing on immigration policy and immigration impact and reform. We're honored to have President of the San Francisco Board of Supervisors, President David Chiu, with us to make a few opening remarks.

President David Chiu: Good afternoon commissioners, I wanted to come and thank you for hosting a hearing on an incredibly important topic. I also want to thank your Executive Director and her staff and all the work that you're doing to continue to make San Francisco really a model to the rest of the country and how we work with our immigrant community. And I want to take a moment and thank the members of the public who are here. I stand in front of you as the son of immigrants, serving on a Board of Supervisors where a majority of us are the sons and daughters, grandsons and granddaughters of immigrants, in a city that is one-third immigrant. And we're a city that appreciates and know that San Francisco, California, our country was built on the backs of our fathers, our mothers, our grandparents, and our grandfathers. But, I think we know that Washington, D.C. as of yet still doesn't get it. And I think it's incredibly important that we have an opportunity to vet the issues we hope our counterparts in D.C. will focus on. I moved to San Francisco seventeen years ago after working for the Senate Judiciary Committee in 1996, when the Senate Judiciary moved forward and Congress approved the last major piece of so-called immigration reform. Some of you may remember in 1996, a bill was passed called "The Illegal Immigration Reform and Immigrant Responsibility Act." Just from the name alone you know that Washington did not pass legislation that respected the fact that our country was built on the backs of immigrants. And I know that there are thousands of San Franciscans who have a very different perspective of the type of pro-immigrant and true immigration reform policies that we want to see. We want to see policies that ensure that we are truly safe and secure communities, policies that understand that law enforcement needs to work with immigrant communities, and I just want to mention anecdotally, the very first time I came to City Hall to testify on behalf of anything was in 1998 I believe, testifying on behalf of our Sanctuary City policy. We know that we can only have good law enforcement when law enforcement knows how to work with our immigrant communities. I appreciate the fact that there

are folks here to speak about the plight facing domestic workers, that there are people here to talk about the unfairness and the unjustness of our visa systems, vis a vie, people who are in LGBT couples, the fact that we need to move forward with students and really ensuring that the DREAM Act becomes a reality. From my perspective, there are literally dozens of topics that I think your Commission can deal with and I appreciate the fact that today you are here to discuss many of them. And I want you to know that you have a Board of Supervisors and a Mayor that stands with you, that wants to make sure that the ideas and consensus that we build here today, hopefully someday will, someday soon, be adopted as national policy in Washington. And for those representatives of the media who are covering this, I think it's so important that we let every member of every community in here and San Francisco, representing the diversity of America know how important it is for us to get true, true comprehensive immigration reform done and I know I stand with many elected officials here in San Francisco to do that. So thank you for all that you do, and I also want to say that if this Commission thinks it is important for our Board of Supervisors to pass resolutions to support some of the work that you do here, I know that I stand, along with many of my colleagues, to do that with you. So thank you and good luck with the work that we're all doing together.

Chair Hing: Thank you President. On the note of any media coverage and photographs, we ask that anyone who has a camera not take any pictures without permission of the staff, and we would appreciate that very much if you not take permission without permissions of the staff. On behalf of the Immigrant Rights Commission, thank you for attending tonight's hearing on proposed state and federal immigration policies and impacts on San Francisco residents. Ever since last November's election, we've been hearing plenty from Republicans and Democrats about the need for comprehensive immigration reform. The Commission held a hearing and summit about this in 2009. It's now 2013, and immigration policy has made its way to the front pages. We hope that tonight's hearing and the real stories that we will hear also make it front and center to policy and lawmakers in Sacramento and Washington. Comprehensive reform requires addressing far more than issues of enforcement and legalization for the eleven million undocumented immigrants in America. Comprehensive immigration reform is the opportunity to think innovatively and expansively about the real needs of the country as well as those of newcomers. For instance, coming up with a different formula for family immigration categories that would alleviate backlogs altogether would be an important innovation. A flexible visa system to accommodate various needs, such as movement circularity to accommodate individuals of every economic class would be an innovation. Reassessing the current immigration enforcement regime, where overzealous enforcement programs such as the Secure Communities program have swept up victims of crimes, minor offenses, and even crime witnesses, raising concerns about racial profiling and other biases would be thinking differently. Given the demographic changes that have been brought about by immigrant and refugee resettlement across the country, why not promote civic engagement efforts that serve to welcome newcomers? It makes sense to reach out to immigrants and refugees as soon as they arrive so that they, too, might understand the responsibilities of being an American. Comprehensive immigration reform means thinking outside of the narrow, archaic box that has defined immigration in America. We start tonight by listening and hearing the real life stories about individuals in San Francisco and the Bay Area who will be affected by these policies being debated across the country.

So, we start tonight with invited testimony. The Commission will be hearing from four different groups: Panel 1: State and Local Testimony; Panel 2: National Issues involving visa reform; Panel 3: National Issues involving legalization; Panel 4: National Issues involving enforcement. Commissioners will be listening to testimony and not commenting on individual comments in the interest of time so that we can hear from all speakers. We may ask individuals to abbreviate their comments. If there's not enough room for seats, there's an overflow room across the hall in 408. Thank you. So at this time I'd like to ask the group in the first panel to sit in the front row and that includes Angela Chan, Laura Polstein, Nilouf Khonsari, Maria Dominguez, Marci Seville, and Mark Silverman, I think Mary. Okay, so because of schedule, I'm going to ask Mark Silverman to come forward first and he's going to be speaking about drivers' licenses for undocumented immigrants and car impoundments and Mr. Silverman is an attorney with the Immigrant Legal Resource Center. Welcome.

Mr. Mark Silverman: Thank you, thanks a lot Mr. Chairman, members of the Commission. Over the last eight or ten years, the local and state immigration issue, that is, the two issues that have been most important to the immigrants I work with, and I don't work with all immigrants, that's mainly with Latino immigrants, and especially undocumented Latino immigrants and their citizen family members, have been drivers' licenses, the inability to get a driver's license because they're undocumented; and a spin-off issue of having their car impounded when they're stopped by the police and they don't have a license, the car is impounded and often the car, not in San Francisco, where we've taken great strides for, but often if a car is impounded for a mandatory 30 days and it's \$70 per day, that's \$2,100 for the family. So you can see how devastating both these measures are, and that's why there's been so much interest over the years in getting legislation. The licenses at the state level to pass a law in which undocumented immigrants can get a license and car impoundments, started out at the local city level, sometimes at the county level, although we succeeded in getting AB 353, which was a law which drastically reduces the impoundment of cars at DUI checkpoints. So, you can see how this can devastate families, you know, they don't have a means, a car to get to work, under either scenario, the car impoundment or driving without a license, they can't take their children to medical appointments. Devastating economic impact, think of the \$2,100 in fines or storage, so-called, that families have to pay. And

that's why it's such a pressing issue for immigrants in California, and their families, most of their members, or at least many of their members who are U.S. citizens. Some of them vote now, and all of them will be voting when they turn 18. Interesting, two things are happening. We're in a period where for the first time in years, there's a possibility of immigration reform; and there's also a possibility for laws to give licenses to unlicensed drivers at the state level. And local ordinances like San Francisco had, San Francisco played a leading role in their landmark ordinance on car impoundments, which was used as a model. When we did a model ordinance we took San Francisco's ordinance and one from one other city, combined them and they were used as a model for many other cities. But two things are happening: there's a prospect for immigration reform, best prospects I've seen since, since after IRCA, so for more than almost 25 years. At the same time, ironically, there's a big possibility to get a law on licenses, or maybe further laws on car impoundments, minimizing the devastating consequences of car impoundments, and therefore I suggest a two-fold approach: we have to play the piano with two hands. On the one hand, play the national immigration reform part of the piano, try to win immigration reform this year for a lot of reasons people are saying it's got to be this year. From both parties actually. And secondly, at the same time, be dealing with state legislation, trying to put state legislation forward. There's a lot of others that you'll be hearing about, like the TRUST Act. I'm particularly concerned of working on the state issues like drivers' licenses and car impoundments for two reasons, under two scenarios. One, what happens, and I hope this happens, that we win immigration reform quickly? If we win immigration reform quickly, let's say by August or something, that will, might take the steam and the organizing and the anger and the desire to get license laws, because the vast majority of the people that don't have licenses now will know that they don't need for them a license law because they're going to have a legalization law as part of an immigration reform. So for that reason, I think it's very important to pursue these state legislation, same with the TRUST Act, as hard as possible, without detracting from organizing and mobilizing for immigration reform so that either we can win them before immigration reform is passed, and of course we don't know when that would be, if it passes this year; or if not, immigration reform passes, there's so much momentum, the campaign, say for licenses, that it's easy to follow through and win licenses.

Chair Hing: Mr. Silverman, in your last minute, can you make recommendations to us and tell us who to contact, and specifically, since state legislator Cedillo has retired?

Mr. Silverman: Okay, well I don't know who's sponsoring that, who may be sponsoring it this year. Allen sponsored a bill up from Sonoma County on impoundments last year, or two years ago. I would contact him, I think it's State Senator Allen. On licenses, I don't know who is sponsoring. I'll find out and provide you that information.

Chair Hing: Okay, thank you for your testimony.

Mr. Silverman: Thank you.

Chair Hing: Our next speaker will be Angela Chan, with the Asian Law Caucus. And Ms. Chan has given hard copies of her PowerPoint to each Commission member.

Ms. Angela Chan: Sorry, just technical things right here. I'll start with the introductions. My name is Angela Chan, I'm a senior staff attorney at the Asian Law Caucus in San Francisco and I'm here today to talk about the Secure Communities Program and also ICE hold requests and what can be done at the local level and also what can be done at the state level. And you do have the PowerPoint and hard copy in front of you and I know I only have a few minutes so I'm not going to go through every slide, but I'm happy to answer questions during or after. So, a little bit about the Asian Law Caucus, we're the oldest civil rights organization serving low-income, Asian immigrants in the country and we're located in Chinatown, North Beach area. We have a variety of different program areas and one of them is immigration, another is criminal justice reform, and I manage the criminal justice reform program. So Secure Communities, this is a fingerprint-sharing program. It occurs between local police and immigration, and I'll explain exactly what that means, but I want to make that sure I frame this by explaining that this program is a whole new way of conducting immigration enforcement, a whole brand new way of doing it. Prior to Secure Communities, you'd have officers sometimes deputized to be immigration agents, but it wasn't every single police officer that did immigration enforcement. Or you'd have immigration officers in your jails, but they'd, it wouldn't be contact necessarily with every single person entering the jail. Secure Communities changes this, and it's an automated system, so that anyone who has contact with local law enforcement could be and basically is reported to immigration at the point of arrest. So it's a brand new way of doing enforcement that's much faster, and much more invisible, and much more efficient than prior other systems. And so I just want to emphasize that. So the way it works is that when you have fingerprints taken by local law enforcement at the point of arrest, that individual is booked, and it could be for anything. It could be that individual committed something very minor, could be something more serious, it could be a mistake, the individual is mistakenly arrested, any reason why they're arrested, those fingerprints are now sent, well prior to this they were sent to the State Department of Justice for state criminal background check, they were also sent to the federal government FBI for a federal criminal background check. Those two parts are the normal criminal background check process, not related to Secure Communities. What's new is this arrow pointing down

between the FBI and the Department of Homeland Security, those fingerprints now are set, are sent between the FBI and the Department of Homeland Security for a civil immigration background check. Because someone is here as undocumented does not necessarily mean that they committed a criminal violation, usually it's a civil violation. But what's new is that you have this connection now, so you're checking someone's criminal background and their civil immigration background, that's the dangerous part for our communities, because it basically endangers any contact with local police. Those fingerprints are checked, a no-match or match is sent back; match meaning this person is of interest to immigration enforcement. It doesn't necessarily mean that person is undocumented, that person could actually be a green card holder, could be a legal permanent resident, but immigration thinks they did something that makes them removable. In about five percent of the matches they're actually U.S. citizens. The reason why is that this database is not a foolproof database, it's growing very quickly, there are mistakes in it, especially if someone naturalizes from a green card holder to becoming a U.S. citizen, sometimes the database does not catch that. So that's why five percent are actually U.S. citizens. Then something called an ICE hold is issued, and the ICE hold is actually just a one page, well now it's a two page document that's sent back to local law enforcement, usually our Sheriff's Department, and I'll explain exactly what an ICE hold does, but that's the mechanism, that's the direct connection between the criminal system and the immigration system. So, let me show you what it looks like here, so this is an ICE detainer right here. An ICE detainer is sent to our Sheriff's Department, and it asks them to hold someone for additional time beyond when they would normally be released in the criminal process. So someone might be released in the criminal process because the DA decides not to file criminal charges, they have their hearing and the judge says or the jury finds them innocent of the offense, they could plead out and maybe get probation, whatever reason they're being released at the time, they could receive bond, you know, whatever reason why they're being released, and it's at that point that the ICE hold kicks in and that person now is being held purely for immigration reasons, that bed, that jail bed is no longer a criminal jail bed, that's an immigration detention, immigration prison jail bed. That's what happens at that moment. The person is held for additional time, usually forty-eight hours, excluding weekends and holidays for ICE, but it's not just those forty-eight hours and weekends and holidays, it's also that, oftentimes they're denied pre-trial diversion programs, they're denied bail, and so for someone whose undocumented or a green card holder subject to an ICE hold, they could be held sometimes for two to three weeks longer than someone for the exact same offense. I am going to rush through this quickly since I am running out of time. So, I want to make clear that ICE holds are voluntary, they're simply requests, they're not mandatory. I can go into deep detail why, but I'm not going to, it's all on there in the PowerPoint in front of you, but they are voluntary, and that's something that civil rights organizations have underlined for law enforcement, it's been really a revelation over the last several years. Secure Communities is active in throughout almost the entire country and almost every single county, it's active in San Francisco, and the number of deportations, let me hit on that number before I go into the solutions. So there have been over 246,000 deportations under the Secure Communities program nationally. In California there have been 90,000 deportations. California has the highest number of Secure Communities deportations compared to any other state. Much more than Arizona, Alabama, and those other states with very blatantly anti-immigrant laws like SB 1070. In San Francisco we also have Secure Communities, it's very much active, it's been active for the past several years. We've had 705 deportations under this program, 705 in San Francisco, and keep in mind that seven out of ten, about 70% of the people deported under the Secure Communities program from San Francisco do not have criminal convictions or arrested on lesser offenses, like misdemeanors and traffic infractions and non-violent felonies. So the vast majority of people deported from San Francisco don't meet the stated purposed of the program, which is to go after people with serious or violent felony convictions. So, I could talk about the impact on domestic violence victims, but I'm going to skip that. There's a strong impact on domestic violence victims I can get into, if you have any questions about that. There's also a problem with racial profiling, with pre-textual arrests because the way this program operates prior to the person receiving due process. So what's happening at the local level? Well counties, including Santa Clara County in California, Cook County in Chicago, Washington D.C. have adopted what's called ICE detainer reform, meaning that, that their local law enforcement is not responding to ICE detainer requests for certain categories. And I want to just highlight Santa Clara's. Their policy is not to respond to any ICE detainer requests unless the Feds put in a written agreement that they'll fully reimburse the full cost of holding someone under an ICE detainer, and even if there is this written agreement, they will only respond to an ICE detainer request if the person has a serious or violent felony conviction. That way you're going to target those you're going after, you're not going to be this mass deportation program, which is the way it's happening right now in California and in San Francisco. And so, local immigrant rights groups in San Francisco, particularly the San Francisco Immigrant Rights Defense Committee, which is a coalition of over 30 organizations that's been active since 2008, they're working on ICE detainer reform in San Francisco that's going to really mirror Santa Clara's and are going to try to push this through this year, not as a resolution, but as a binding ordinance. So that's something that, please look out for, and it'd be really great if this Commission considered supporting that type of a binding ordinance. At the state level, you heard about the TRUST Act. The TRUST Act is a statewide standard that would not go as far as Santa Clara, it would be basically a baseline standard, a floor, not a ceiling, and the TRUST Act is a state bill that's pending. Assemblymember Ammiano, who used to be a very prominent supervisor in San Francisco, is the author of this. The bill would say that we're not responding to any ICE hold requests at the state level for any of our 58 sheriffs, unless someone has a serious or violent felony conviction. That bill is going to be pushed through this year, it got very close last year, it was passed by both Houses last year, it was on the Governor's desk, he vetoed it for technical reasons, he wanted to add some additional crimes for where he would respond to an ICE hold, but he promises that he'll be working with

us this year to get a bill that he could sign where, you know, we're hopeful, but we definitely want more movement and more action from his office. And so, that's also something we would love for you to support, is the TRUST Act to pass this year, and as you hear, the way this interacts with comprehensive immigration reform, the sooner this passes, the better, because we don't want the two to get mired with each other. Thanks very much.

Chair Hing: Thank you Ms. Chan, we have supported the TRUST Act in the past and if you could give us language of the local proposal we would appreciate it.

Ms. Chan: Great, we'd be glad to do that. I'll send that via email. And thanks very much for organizing this hearing and for the invitation.

Chair Hing: Thank you. Laura Polstein, from CARECEN, Central American Refugee Center?

Ms. Laura Polstein: Good afternoon, thank you so much for holding this. So, I wanted to tell the story of one of our clients who couldn't make it today to tell her story, so I'll just go through the details of what happened to her on her behalf. So essentially, this is a woman who is an immigrant, and living here, has been living here for over 15 years, has U.S. citizen children here, was married to a man here who abused her pretty badly, and over the course of about ten years, there were multiple instances in which the police were called. In one of those instances, our client was actually the one who was arrested. And there's many different reasons that, we've heard different stories. I mean, not from this one person but, in different situations there's many different reasons why the wrong person might be arrested in an incident like that, right? There's language barriers, there's sometimes just literally confusion, the police do not know who is the victim and who is the aggressor. In this case, our client had acted out of self-defense, and she was arrested and processed, and the DA actually brought charges against her, but they were ultimately dismissed when it came out that she was the one who had been victimized over this course of many years. She now has a restraining order against her husband, she was in a domestic violence shelter, and she has custody of their children. But in all of this, when she arrested, even though she was never convicted of the charges once the truth came out, she was referred to immigration. And she's now been fighting her deportation for the last two or three years. And she has to appear before a judge, and you know, the fear of that, the stress of that on top of everything else, has been just a nightmare for her and her story is not singular. We have a lot of other people in these types of situations, so it really just speaks to the need of what my colleague mentioned in regards to local policy and ICE holds. And so, that's that piece, and I know we had mentioned that I also had something to share in regards to federal policy, should I wait for that portion?

Chair Hing: No, please do it now.

Ms. Polstein: Okay, sorry, so it's shifting gears a lot. So, at CARECEN you know, we were founded by refugees and exiles in the 1980's, so we're still known as a place where people come when they're here seeking asylum. And what we've been seeing lately is that we have a lot of people coming from Central America and from parts of Mexico, who are here really truly seeking asylum, and seeking refuge because they've been targeted by different gangs. And it's a huge problem that we see at the federal level, that there's not really space within the current legal framework for people to actually win asylum on that kind of basis. And despite, like some limited successes, mostly the door is closed. And so we see that as just a policy recommendation that, that we would make, that would help the people that are coming through our doors, for there to be a basis to win asylum when you're being targeted by these criminal organizations. And then, another sort of piece to that is the slightly more, I guess nuanced policy recommendation, is that more and more we've been seeing that people cross the border and, if they're from Central America, typically they seem to be processed with what's called expedited removal. So it's like, fast-track deportation without seeing a judge, but they're sort of allowed to proceed and then required to report to the federal building here in San Francisco. And I think there's, it's a problematic policy, and it would be preferable, although, truly I think people should be welcomed and not required to go through any process like this but, it would be preferable if people were at least given a notice to appear in immigration court and allowed to see a judge, because the perception is that those check-ins with immigration that any minute they can deport you. The person you check-in with is uniformed, has weapons and everything on them, so it's a situation that causes a lot of fear for people who are asylum-seekers. So that's the, the federal piece.

Chair Hing: Thank you Ms. Polstein.

Ms. Polstein: Thank you.

Chair Hing: Back to your first issue: you referred to the domestic violence client. Do you see a problem with, let me put it this way. San Francisco is a sanctuary city, what is that, did that policy get followed in that case, or other cases that you have?

Ms. Polstein: Yes, so I think the answer to that would be, probably yes, because the sanctuary city, unfortunately doesn't trump Secure Communities. So, my colleague explained a little bit that Secure Communities is a fingerprint-sharing database, it triggers these ICE holds, they're issued in all types of situations but they're most certainly issued when people are undocumented and they're booked on any arrest. And so the fact that we're a sanctuary city actually doesn't, it doesn't prevent that, what happened to our client, it doesn't prevent that from happening into the future because it's so automatic. So even though the police may have been prohibited under the sanctuary ordinance from calling up ICE and saying, 'Hey we've got this person here,' Secure Communities meant an automatic trigger and give the police no discretion. Actually, just want to add, we discussed this case specifically with the San Francisco Police, and they expressed that this is a problem, this is a conflict and they don't, they don't know how to protect victims in this situation. If the Sanctuary City Ordinance isn't really able to protect them given Secure Communities, and that's one of the reasons why they've been supportive of the local efforts to reform ICE holds in San Francisco.

Chair Hing: Thank you for clearing that up.

Ms. Polstein: Yeah.

Chair Hing: Thank you.

Ms. Polstein: Thank you. That's it right?

Chair Hing: Thank you.

Ms. Polstein: Okay, thank you.

Chair Hing: Nilouf Khonsari, from Pangea Legal Services and the Iranian Bar Association? Welcome.

Ms. Nilouf Khonsari: Thank you. Thank you commissioners. Yes, I'm with Pangea Legal Services, which is a new non-profit organization serving immigrants from Africa, Latin America, and the Middle East and I'm here to talk about the impact on our Middle Eastern community today. I'm here joined with two clients of ours, it's difficult for them to stand actually, Shokrollah Ahmadzai and Kadima Ahmadzai, and they're son-in-law will also be speaking on their, well actually just, their son-in-law will be speaking on their behalf in just a moment. These, these lovely clients of ours are -

Chair Hing: Welcome.

Ms. Khonsari: Are from Afghanistan, Mr. Ahmadzai was, was a bank manager in Afghanistan and he was extremely hard-working from a very young age. He worked for a long time at this bank. As you know, political tensions and conflict in Afghanistan has had a long history and Mr. Ahmadzai was a victim of the political violence. He was imputed with political opinions that he didn't actually have, and because of working at the Central Bank. And he was particularly targeted because of, because of these political opinions, that were imputed on him, and a mine was placed in his house. This mine exploded while Mr. Ahmadzai was at home and it caused his, his left leg to blow off. It is now amputated. And since that incident, since that attack, Mr. Ahmadzai has been a refugee. He fled from Afghanistan, he was in limbo in Pakistan for a number of years, he eventually was able to join his daughter, who is also here today, Maria, in the U.S., hoping that he would get reprieve and, and protection, and have some kind of a closure to what happened and be able to start his life again. So, he, he arrived in the U.S. We submitted an asylum application for Mr. Ahmadzai and this was submitted in December of 2010. It's now February 2013 and Mr. Ahmadzai has not been given an interview for asylum yet. Normally, interviews are given within one, two, three, maximum months of submitting the application, getting the fingerprints taken. The application was received, notices were sent, fingerprints were taken, and he's still waiting for his, for an interview date. This leads me to, the issue, the problem, the bigger problem of security background checks and delays. This is not a problem, these security background checks are not a problem unique to Mr. Ahmadzai and Kadima. They've been, they've been waiting and in limbo and suffering, you know, just not having any closure and not having any answers, looking for answers for a long time. But there are many, many of these kinds of situations. I've had dozens of intakes and consultations and represented dozens of other Middle Eastern clients from Afghanistan, Iran, places from the Middle East where you know, these security background checks are run, and there are delays, six months, a year, sometimes even two years. And, and it doesn't happen just at the pre-asylum stage, it happens after an asylum interview, this long wait; it happens, it happens when there are refugees. I've done work in Turkey and worked with hundreds of refugees, and Iranian refugees in Turkey who have, individuals who've been accepted as a refugee by UNHCR, referred to the U.S., accepted in everywhere, submitted all their records, and cleared in every way, but except for the security background check. And what, what I do know, and it's not from reading materials, because these security checks are very highly confidential, high security, no information is shared, and that's the problem, we need transparency in this process. What I do

know from conversations from individuals, from various agencies is that, the Department of Homeland Security and the State Department has about, these twelve different departments that the security checks are run through. An individual's security check, or biographic information is processed through each of these departments, one at a time. And what happens is, each one of these clearances is only valid for a certain period of time, let's say six months or eight months, each one varies, and by the time the check, the clearance reaches the twelfth department, or you know, department number ten, the first one may have expired. And the process starts again. So, in terms of solutions, you know, we really need contact. We've contacted the asylum office, but the asylum office also has these strict, confidentiality guidelines and high security guidelines. They can't share very much information. We need direct contacts within the State Department, within the Department of Homeland Security, to be able to follow-up on cases and to be able to receive answers and to speed up these, these processes if there's going to be a security background check on individuals like these.

Chair Hing: Right. If we could move on to your, your clients' family, we would appreciate it.

Ms. Khonsari: Yes. Thank you.

Chair Hing: Thank you very much. And incidentally, we did invite the head of the local asylum office to join us today and she didn't respond.

Ms. Khonsari: Yeah.

Chair Hing: You want to introduce your...?

Ms. Khonsari: Yes, I'd like to introduce, so this is Shokrollah and his wife Kadima, his son in-law, John, or Habib Ahmadi will speak on their behalf, because he speaks English.

Commissioner Toye Moses: Excuse me, through the Chair. Which agency you representing again?

Ms. Khonsari: Pangea, Pangea Legal Services. And the Iranian American Bar Association.

Commissioner Moses: Thanks.

Chair Hing: John, can you fill us in, for a couple minutes? Thank you.

Mr. Habib Ahmadi: Hi, I'm here to speak for Shokrollah Ahmadzai, which is my father in-law, and Kadima Ahmadzai, my mother in-law. And I will, I will share the story, some of the story Nilouf mentioned and went through most of stuff. But, I'm here to share a little bit of his story, how much this gentleman went through, emotional and impact. So, I know the whole story, we applied as a political asylum in about almost a year and a half, and this gentleman is waiting for, I mean every day by day he ask me that, how long will it take to get interview by officer, and Nilouf Khonsari, and she's contacting immigration every two months or every three months, by letter or email. And they have about nine kids living back in Pakistan. As we know, that, that country, Afghanistan, you know, we know what's going on there. So, and I just want to mention that, that I hope you guys can do something for Shokrollah Ahmadzai, they went through a lot of stuff. And I really, really, it's a long story, Nilouf knows about it, you know, I can't even talk. This gentleman in mine explosion. The mine was placed in his house by enemy.

Chair Hing: Right. We will follow up, actually, with more information, through the attorney. Thank you very much. And please tell your mother and father in-law thank you very much and we wish you the best of luck, and we will make recommendations on asylum, I assure you.

Mr. Habib Ahmadi: I appreciate. Thank you very much. Thank you all.

Commissioners: Thank you.

Chair Hing: Is Maria Dominguez here? Come on up. Maria Dominguez is a representative of the Oakland ID Coalition. And while San Francisco has its own municipal identification program, Oakland has taken it a step further and we do allow people to cross the bridge and speak here on occasion. Ms. Dominguez?

Ms. Maria Dominguez: In my defense, I go to school at U.C. Hastings, so

Chair Hing: I didn't want to say that actually (laughter).

Ms. Maria Dominguez: Well, good afternoon, buenas tardes to the Immigrant Rights Commission, all the commissioners, thank you for allowing me to speak. So as you may all be aware, the Oakland, City of Oakland launched its municipal ID card program on February 1st. First of all, we do have to thank San Francisco and San Franciscans' really hard work on getting this ID card started, because Oakland followed the San Francisco model. And without the San Francisco model, we probably wouldn't have been successful, to be honest, because we only had the New Haven model prior to that, and because it was such a smaller town, there wasn't so much political clout behind the program. But we took it a step further and we included a debit card component in our program. Specifically, to build on what San Francisco had already identified, which was a need to bank the unbanked and connect the people to the economic activities of the City. And to really acknowledge that, one, people need access to bank accounts or other financial institutions that will enable them to store their cash and move them away from, you know, being further victimized by crime, and so that was, you know very important. And second, also, so that the card and the program would have extra functionality that would attract other people in the Oakland community besides undocumented immigrants. So, we identify that there's a large non-immigrant population in Oakland that also does not have access to financial institutions for various reasons. Some of you are already aware, because maybe sometimes people don't have good credit history or they don't have proper identification to go and apply for, for a bank account. So, there has been a lot of criticism about Oakland's card because it is very unique. It has a picture, and an address, and a birthday, but it also doubles up as this debit card, and that's very unique because most debit cards do not have a birthday or an address on its face. And so, there's a group in Southern California, that you know, came up with this big piece in the media on why it's, this is going to create a lot of identity fraud issues, because someone, when they present their ID card, that this extra information of theirs could be compromised. So, the Oakland City ID Coalition, which I'm a part of, has been working closely with the card-issuer, which is SF Global, and the bank that is working with SF Global to you know, back up this debit card component, to make sure that they can ensure us and the community that they're going to take as many security cautions as possible so that a person's account is not, you know, stolen, so that they're, they have cited that there's going to be a PIN that goes along with this, to use this debit card you have to have a PIN and that it's unique and you know, not very new to a lot of us who already have debit cards. So we're really holding the bank and SF Global accountable so that they can ensure to work with the community to do community education programs on how does one maintain their identity safe and try to prevent this fraud from happening. And we really talked it over with the community, and the community felt really strongly that the risks outweighed, or that the benefits outweighed the risks and that if someone were, for example to lose their debit card and their, let's say California ID together, it would create a similar circumstance where someone would be able to have, you know, both these pieces of information together, except that again, the ID card is very unique, and it's two in one. So, I'm happy to take questions from the Commission.

Chair Hing: Thank you, it's better than carrying cash around, that's.

Ms. Dominguez: That's, I mean, mostly the gist and also that we're working closely with other, you know, groups in Oakland that are interested in becoming part of this program, either to give a discount, like kind of, I think the conversation was here in San Francisco, could also be used as a library card and whatnot so, again we're just trying to, the gist of the debit card was to really widen the usage and also the user so that it wouldn't just be another card that, like the matricular, would identify everyone in our community who's undocumented.

Chair Hing: Thank you Ms. Dominguez, appreciate it. The next speaker is Professor Marci Seville of the Professor of Law at Golden Gate University and the Director of Women's Employment Rights Center.

Professor Marci Seville: Thank you very much for the invitation. I'm here on behalf of the California Domestic Worker Coalition that I've been working with as their counsel for several years. I want to speak briefly and then we actually have two domestic workers here to tell their stories. We all see domestic workers around our city, as it becomes increasingly affluent. They are doing the work that makes all other work possible. We see the doctors and the lawyers and the government officials and the growing high-tech industry of affluent people who know they can leave their homes to be taken care of and their children to be taken care of and their elders to be taken care of because of the domestic workforce. And of course, not surprisingly, domestic workers are largely immigrant women and women of color. So, it, it's very much a pressing issue in terms of what you are dealing with here. Historically, and continuing through the present, domestic workers have been excluded from the most fundamental labor rights that are available to most other workers. And I've provided a packet with a lot more detailed information, both locally, nationally, internationally, about some of the efforts that are going to address that. So just very briefly, under California law, most nannies and caregivers are excluded completely from the right to any overtime pay, regardless of how many hours they work, regardless of whether they work seven days in a row, work all night long, they just don't have a right to any overtime. They have no right to sit down and have a meal, or have a rest break like other workers do. And there's no provision at all that they get adequate sleep, even though that's a health and safety issue, not just for the worker, but for the person that's being cared for, particularly elder and people with disabilities who are under their care.

Housekeepers who very often go from house to house and clean a few hours every week or every other week, and who are continually working with toxic materials, who are climbing and stooping and lifting, have no workers compensation protection like other workers. And they're excluded from occupational, safety, and health protections, even though they're the very people with exposures to those kinds of hazards. And then, California's anti-discrimination law, the Fair Employment and Housing Act, requires that there be five employees, and unless you're working at a very impressively large estate as a domestic worker, you don't have five employees. Which means that a household could say, 'I don't want an African American or a Latina or a Filipina nanny, I want a white nanny.' And there's no recourse under the California Fair Employment and Housing Act for that worker, even if it's just blatantly stated because you have to have five employees in order to have coverage. So those are just some of the highlights of the ways that not only historically, but presently, domestic workers are left out in the cold when it comes to labor rights. And of course, even when domestic workers do have rights, such as minimum wage or San Francisco higher minimum wage, San Francisco sick leave, they are among the greatest victims of wage theft. So even when there are rights, what we see is a routine violation of those rights, routinely we see people working 60, 70, 80 hours a week, and earning \$250 or \$300. So, domestic workers have formed, over the last several years, a statewide coalition, the California Domestic Worker Coalition, I'm honored to have a couple of the workers here, and we are working to have a California Domestic Worker Bill of Rights. We had a bill sponsored by Assemblymember Ammiano, AB 889, and it was sadly vetoed by the Governor last September. We are moving forward another bill this year, AB 241, we're going to say, 'AB 241, we're going to get it done,' this year and that's why we're here. We're here to ask for support on this very important piece of legislation. So I would like to actually invite the workers to come up.

Chair Hing: Please.

Professor Seville: Maria Luna, would you like to speak first?

Chair Hing: Let's, clerk, madame clerk, let's allow two to three minutes for each. We supported AB 889 last year as well. Thank you.

Ms. Maria Luna: [Spanish].

Chair Hing: Buenas tardes.

Ms. Luna: [Spanish, interpreted by OCEIA Interpreter] Good afternoon, my name is Maria Luna, I am here representing all the domestic workers in this country. I've been working for fourteen years as a domestic worker. I'm taking care of kids, I'm taking care of elderly people, as of now I'm still taking care of elderly people. Like the lawyer said, I'm getting older, I can't work as I used to, and I don't see myself with the retirement. I'm not going to be able to get a retirement, I don't see my future. I don't have a bright future, I don't see I'm going to get a fair retirement. For fourteen years, my work has been invisible. No one has seen it. No one has seen all those kids being well-taken care of, all those elderly people that I've given them love, I've given them compassion, patience. No one has seen those shiny houses, those shiny glasses. My work has been invisible, no one has seen it. And I dream there's millions. Here you're seeing only one face. But don't see only my face, see every woman's face. There's millions in this country, in this world, women are being seen as nothing. But well, I'm not upset. I mean, I come here to ask for your support, of course I'm not going to be upset. I'm one of the ones who really fought for this Bill of Rights, and that's what I'm asking you guys to do, to help us, support us, to get this Bill of Rights. Thank you.

Chair Hing: And now, señora, muchas gracias. Commissioner Fuentes? [in Spanish] Help me explain in Spanish that we are going to help her.

Commissioner Fuentes: Commissioner, the Chair Hing is saying that we're going to support you.

Chair Hing: I want you to speak in Spanish! (laughter)

Commissioner Fuentes: [in Spanish].

Chair Hing: Is there another, professor? Sorry.

Mary: Good evening everyone, my name is Mary, and I am a domestic worker. In the year 2002, I was recruited in the Philippines by an employer to come to the United States and become a nanny. Even though all of my family is in the Philippines, I agreed because life in the Philippines was hard and I needed to support my six children. When I first came to the United States, I stayed in L.A. where I worked as a nanny taking care of the baby. In 2002 the family left to go back to the Philippines. They took my passport and left with the extended family member to work as a housecleaner for \$300 a month. Cooking,

cleaning, doing the laundry all by myself. When the family no longer needed me, my employer had a friend in Seattle and Washington who said she had a job for me, so I traveled to Seattle to be a housekeeper. Again, I was only paid \$300 a month because they said I will get my own room, but at this job I was not only a housekeeper, they asked me to help them with their catering business and be a caregiver. My employer made me cook and clean at events without any extra pay. Sometimes I would be asked to fill in as a caregiver until the relatives came home, where I would only get paid \$20 for the whole day. I would cook and clean, in addition to taking care of three patients. I was miserable because I was treated without any dignity and had no friends, I wanted to get out so I asked a friend of mine from the Philippines who now lives in Modesto, California, to help me. In October 2003, my friend's husband picked me up from Seattle and took me to Modesto. At first I thought I was going to be working at the restaurant, but instead they made me do housekeeping and childcare because no job. They give a room to live in, but didn't pay me anything. This situation was worse than the one in Seattle since I could not send my family any money so I decided to escape. When I was about to leave, my friend got home and was so angry about my leaving she started to beat me up. Luckily I was able to get away from him and live in Modesto to work in a care home in Fremont, where I would get \$50 a day for working almost 24 hours. There I assisted elderly clients, would clean up, feeding, and bathing, I worked there for about a year then I moved to different care home to work. At this care home I experienced even more exploitation and abuse. The employer would always tell me, 'You're going to complain, but you have no rights, you are illegal here.' Finally, in 2012, I decided to stand up for my rights and approached Filipino Advocates for Justice to help me file a complaint against my employer. Since then I have received a settlement and joined PA WIS, a Filipino caregiver support group that helps other people in similar situations. Today I am a part of PA WIS, fighting for the rights of all domestic workers, documented and undocumented. The best way to stop the abuse of, of undocumented like me, is to give us a legalization, legalization. Thank you all for your time. [Submitted written testimony. See Section B., "5. Mary"]

Chair Hing: Thank you very much. May we have a copy of your report, of your statement, if you don't mind? Thank you. Just hand it to the clerk. Okay, that is the end of the first panel, am I correct? So we're going to move onto the next issue, which is the, the visa issue. So those on that group, I know we don't have a table, but it's family visa backlogs, the binational same sex marriage issue, high tech issues, and diversity issues. So we're going to begin with Lillian Galedo, who is the director of the Filipino Advocates for Justice.

Ms. Lillian Galedo: Good evening, thank you so much for having this hearing. I am the Executive Director of Filipino Advocates for Justice. We are a 40-year old social service and advocacy organization in Alameda County, and have been BIA recognized since the early 2000's. I'm speaking about family reunification and problems in the visa system. Family reunification has been the cornerstone of US immigration law since 1965 based on the logic that immigrants thrive and are more likely to succeed in their integration to their new country when they have a base of mutual support and are surrounded by their loved ones. This works. But for at least three decades now thousands of families have had to wait years and years to have the benefit of united families. The hardship created by these long separations is likely one of the primary causes for the number of undocumented in the U.S. Quite simply people come regardless of the risks in order to be with their immediate family members. Immigrants from the Philippines have one of the longest backlogs or waiting periods for family visas. For instance, unmarried sons/daughters of US citizens must wait about 15 years before they get a visa. Unmarried sons and daughters of legal permanent residents wait about 11 years. Married sons and daughters of U.S. citizens wait about 21 years, and brothers and sisters of U.S. citizens must wait about 24 years before they'll get a visa. This of course is outrageous, so much can change or happen during those many years. The Filipino community is more than 60% foreign born and Filipino families are of mixed legal and undocumented individuals so this pain of separation is widespread in our community. Following me is a speaker to share her story. This is Emiliana, but, before we go to her, I'd like to share some proposals for fixing this problem. For at least a decade now we have been discussing the following remedies, most of which have previously been introduced by more enlightened members of Congress including Congressman Mike Honda but no action has been taken. He has a bill that has many, many, many new remedies and I'm only going to focus on a few. We need to raise the worldwide number of family sponsored immigrants to at least 480,000 and allocate the unused visas from previous years to those people waiting in line. We need to raise the per-country immigration limit from 7% to 10%. We need to increase from age 18 to 21 years in terms of who is eligible to be petitioned by immigrant parents. We need an increase in government discretion and flexibility in resolving barriers to family unity and death should not be a way to invalidate a petition, particularly since these waiting periods are so long for a citizen or LPR to reunite with a wife, husband or children. And we have a particular demand, which is that immediate family members of naturalized Filipino WWII veterans who were denied citizenship when they served in the U.S. military in World War II should be exempt from numerical limitations because of this historic injustice. I want to invite Emiliana to talk about her story. She's going to speak in Tagalog and our immigration counselor will translate for her. [Submitted written testimony. See Section B., "3. Lillian Galedo"]

Chair Hing: Good, thank you.

Emiliana: [Tagalog, interpreted into English] My name is Emiliana Ocampo, and I'm a U.S. citizen, a caregiver with six children. I first entered the United States in 1989 with my husband and my youngest son. When I first arrived, I was excited to be here, but I was also sad because I had to leave five of my children behind. I was separated from my children and I missed them a lot. My two sons came in and arrived in 1995 and though I was very happy, my family was still separated and it was not complete. And because, and it will never be complete because of the wait, when we were waiting for my children to come in, my husband passed away, so I'm now a widow. Since then I've been working, I worked at Oakland Airport as a screener, but I wasn't able to keep the job and now I work as a caregiver. I'm still working at 80 years old so I could support my children. In 1996, when I got my U.S. citizenship, I petitioned for my three other married children. But when we petitioned them, we didn't know how long it was going to take before they could come and reunite with us. It's now been fourteen years since the petition, and they're still not here. We were told when I came to the Philippines, that we have to wait another four years before they can be processed. I was 57 when I was with, my family was separated, and we don't, we have another four years before we can be back together and we don't know what's going to happen in four years. I'm now 80 years old and I still have to work and support my family back home. And they can't fully, they can't fully support themselves. We ask that you support to fix the long waiting periods and the backlogs of the visa system. Thank you. [Submitted written testimony. See Section B., "2. Fely"]

Chair Hing: Thank you for helping, thank you. We have a couple of speakers from Self Help for the Elderly who also have family backlog issues?

Mr. Mann Lee: Good afternoon everyone, thanks, thanks for this opportunity and time to have me to share some stories with you. I'm a social worker and on behalf of Self Help for the Elderly, before we're going to invite my two guests to share their stories, I just want to ask one question here: who lived in America before the Europeans arrived? I think most of us know the answers. American Indians. This is one of the hundred civic questions that come from, to date, that is set by USCIS. They want to ask, I believe they want us to remember, I believe the country wants to remind us that we all come from immigrants, even immigrant family, third generation, second generation, whatever, so forth. We've build the country a lot and yesterday we did it, today we are doing it. And tomorrow we will keep doing it, we, the immigrant, is the resources, of the motivation, and innovations. And so I'm going to ask my two speakers to share their stories, to see how important that the immigrant is to our country. Thanks. Besides, I'm going to do the interpreter because they speak Chinese.

Mr. Zhao Yong: [Chinese, interpreted into English] His name is Zhao Yong, and he is a new immigrant. And he came to America and joined some vocational training and looked for a job, and today he got a job. He doesn't think he is a burden to our society, to our country, he is still doing the contribution. But not the things that some people thinking, 'Oh, I'm a new immigrant and I'm doing a lot of bad things to the society and make the society or member or countries looking for money, I'm still making money too.' Thanks.

Chair Hing: Thank you.

Ms. Hin Ka Chan: [Chinese, interpreted into English] I'm a new immigrant too, however I'm going to do the citizenship test soon and once I become a U.S. citizen I just want to say, is there any way to speed up the process to have my son come to United States? Why? Because I'm getting older and I don't want to get us and other people to take care of me, I don't want to give this burden to another people. Once my son come to this country, and he will responsible to my everything and he going to take care of me and this is the right thing to do, so I just want to see if there's any chance to speed up the process and besides, if there's a quota increasing, that would be fantastic too, because now today the quota is so limited. Thank you.

Chair Hing: Thank you. Mr. Lee? Can I ask you, very quickly?

Mr. Lee: Sure.

Chair Hing: How did each one of these individuals immigrate to the United States? Was it through a family immigration visa?

Mr. Lee: The lady, she got, her daughter is her petitioner and her daughter asked to get a family visa to come here.

Chair Hing: Right, so she immigrated through her daughter. And the gentleman?

Mr. Lee: His father in-law.

Chair Hing: Right, so they're both examples of the family immigration system?

Mr. Lee: Yeah, right.

Chair Hing: Right, thank you very much.

Mr. Lee: Sure, no problem, thank you very much.

Chair Hing: I want to move on now to Zachary Nightingale, and we're going to move to the issue of same-sex marriage. Mr. Nightingale? Mr. Nightingale's an attorney with the law firm of Van Der Hout, Brigagliano, and Nightingale.

Mr. Zachary Nightingale: That's right. Good afternoon, thank you for addressing this very important issue of same sex binational couples and our current immigration system. As is probably very well known, you know, family unification is a very prominent theme in the way our immigration visa system is currently set up under federal law, but of course because of the Defense of Marriage Act, the federal law doesn't recognize same sex couples and it doesn't even recognize same sex marriages which are legally valid in the jurisdictions in which they have occurred, which of course now includes many U.S. states and a number of foreign countries as well. So what that means is that a legally married couple in the state or country in which they were married, can't use that marriage certificate to get standard immigration benefits that they would easily be able to get for their legal spouse if the spouse is of the opposite sex. We of course are all eagerly awaiting a decision on the constitutionality of the Defense of Marriage Act from the Supreme Court. And in a moment I'm going to introduce some clients of ours whose situation is basically blocked from moving forward despite a marriage certificate because, because they're not considered married under the federal law. What I would like to address for a moment is the problem that even for example, if the Supreme Court overturns the Defense of Marriage Act and the federal law is no longer prohibited from recognizing same sex marriages, where there's a marriage certificate, that's not going to actually resolve the problem we have under the federal immigration system and that's because so many people, immigrants both in the U.S. and abroad, don't live in jurisdictions where they, where this is a same sex marriage law. So, I'd like to point out three areas where this would continue to be a problem. It is a humanitarian issue if you look at asylum, asylees and refugees. The United States of course welcomes refugees and asylees and is generous enough to recognize that people who suffer persecution because of their sexual orientation or their gender identity can receive protection in the United States under asylum. However, because if they come from a jurisdiction where they don't have same sex marriage, if they have a partner abroad, they cannot be reunited with their partner. The United, the UAFA, United American Families Act, is a bill that has been reintroduced in Congress and we are hoping to be included in the immigration reform, that would recognize permanent partners of immigrants or United States citizens which are basically partners where there need not be a, there needs to be a permanent family relationship, but not a marriage certificate. And so for example if you have an individual granted asylum in the United States but they have a same sex partner abroad, they're not in a jurisdiction where they could possibly legally marry a same sex partner, they can still reunite the family just as a married couple gets asylum would be. It's also a good business practice, there's estimated to be 40,000 same sex binational couples in the United States and many of them are sponsored by employers, and becomes a business problem when an employer wants to offer a job to the best qualified candidate, but their same sex partner can't immigrate because there's not provision to have them both immigrate and they, and we're often trying to find a work-around under existing law, but oftentimes, you're going to hear in a moment, it's not always possible. So, it becomes a business problem where employers cannot recruit the best candidates because of this problem. And lastly, it's just plain fair. Some people live in jurisdictions where they don't have same sex marriage, if they don't have immigration status they're picked up by immigration for having overstayed their visa or something, and they're detained in a state where they don't have same sex immigration. Even if DOMA falls, there's, their long-time partner can't sponsor them, and they're stuck, and there's no resolution. And so the UAFA would address these humanitarian, and fairness issues beyond just getting rid of the Defense of Marriage Act.

Chair Hing: Thank you Mr. Nightingale. You want to introduce your client?

Mr. Nightingale: Yes, Susanne Schwarzer and Mary McNamara are here and I'd like to have them come up. And one of them will explain their family situation.

Chair Hing: Thank you very much.

Mr. Nightingale: Thank you.

Chair Hing: Thank you for joining us.

Ms. Mary Mary McNamara: Thank you very much. My name is Mary Mary McNamara and with me is my wife, Susanne Schwarzer. I'm a U.S. citizen, I have been in this country for 26 years, Susanne is a citizen of Germany, she came here for her PhD, which she got in 2007. We got married in October of 2008, in front of our family and friends, and it was the happiest day

of my life and I've had many, many happier and happiest days since then. And I just want to say, I prepared remarks today, but we both were profoundly moved by what we heard today from the, everybody, from the domestic workers, I hope I don't cry, and I hope that the injustices that they suffer are remedied. I, I own my own business here, I've had my professional education here, employ people here, I have deep ties to the community. Susanne teaches at City College, she devotes a great deal of her time, for free, to that institution, which we love, and hundreds of San Francisco citizens have been educated in her classroom. She's a liaison for a group of Europeans who come here every year to learn about the United States, she's deeply involved in our community. We live together in our own home, we're luckier than most people, I do realize that. But this August we face a deadline that no couple should have to face, and that is that Susanne, who is here on a business visa, will be deported unless DOMA is changed and unless the immigration services acts very quickly to implement those regulations that would be necessary to keep her in the country. Even if DOMA is overturned, the immigration service will need months to figure out what to do with people like us. And at the earliest, Supreme Court will rule in June. We've got an August deadline, it's simply not enough time. And of course there's no guarantee that DOMA will be overturned. The choice we face is a terrible one: either I leave the country with Susanne and I give up my business here, which employs six people, I give up my entire career, and I face the prospect of starting all over in Europe; or Susanne and I are separated indefinitely, and that is, I would propose, an injustice. We decided to get married in 2008 because we love each other and wanted the simple dignity of not hiding our relationship. And we believe in this wonderful country and we ask for a modest change in the law. [Submitted written testimony. See Section B., "6. Mary McNamara"]

Chair Hing: Thank you very much. Is Phyllis Christopher here? Thank you for joining us.

Ms. Phyllis Christopher: Thank you so much for inviting me. I have a similar story to the two lovely women who just spoke. I'm going to be really brief because there's a whole host of negative effects that these laws have on same sex binational couples. By way of introduction, I'm turning 50 this month, and it feels really old to be told that I can't live with the person I love. Just because she's born in Britain. It feels more insulting and ignorant than ever, and I've been dealing with this issues for many years, at one point I lived in Britain. It was very difficult, I too gave up my business, I'm a photographer, it didn't exactly translate to Northern England. I went at a very economic-depressed time, it was economically devastating for me, emotionally devastating for my biological family here, and the group of friends that I've made over 25 years in San Francisco. As you know, there is still not one single permanent, affordable route into this country for my partner. There's nothing. If you're rich, you can create a business plan for awhile; if you're Elton John and get an entertainment visa; if you're Ellen Degeneres's wife you can get an entertainment visa, you know, they're not really married. My main point, okay, my parents are getting up in age, my father has lung cancer right now. Naturally I'd like to look after them, and I have a partner who would love to help me do that, but she's not allowed to live here. I can rarely visit because we never know if she'll be harassed at the border, or just turned around and sent back to the U.K. This shouldn't be a country that makes me choose between caring for my elderly parents or having to move countries to be with the woman I love. My motto has become, 'I pay all of my taxes, I would like all of my rights.' It's pretty simple. What we need in this country are politicians who will do their job, which is to logically see through bigotry and religious hysteria, and give us our constitutionally guaranteed rights, not deny us happiness for no good reason at all. And I know we all know that DOMA's probably going to come down, I hope it does. It's becoming too late for me. I gotta go back to England or I'm going to lose my relationship. So, until the day this country has a form that shows dignity, that we can both fill out, that will respect our union, that's not going to make me hire a lawyer who can't do anything anyway, I'm going to go to a country that treats me like a human being. Thank you so much.

Chair Hing: Thank you. And Ms. Christopher? You are affiliated with a local organization and?

Ms. Christopher: Out of Immigration, yes.

Chair Hing: And, thank you. Because I wanted to get that on the record.

Ms. Christopher: Okay, thank you very much.

Chair Hing: Erik Schnabel? Sorry if I mispronounced your last name.

Mr. Erik Schnabel: Thank you for allowing us to speak today. My name is Erik Schnabel, I have been a resident of San Francisco for the past fourteen years. Although I'm a US Citizen, my partner of nine years, the love of my life, is undocumented. Why is he undocumented? Simply put, like many others who are undocumented it is because our immigration system is broken and needs changing. The story of our immigration system is filled with stories like his- he came to the US for a better life, leaving behind his family and friends to take a job in the U.S. But he is also undocumented because of homophobia and the way in which, for my partner and thousands of gay, lesbian, bisexual and transgender immigrants to the United States that most doors to legal status are closed to them. My partner is the "typical immigrant story". Originally from the Philippines, he worked hard, as a

church choir director with the hope that it would lead to a path for sponsorship through his church. However, the church because of its homophobic beliefs, refused to sponsor a queer person for his green card. Even more so, like many immigrant workers, he was used as a form of cheap labor and would only sponsor him for his green card if he worked as a virtual indentured servant to them. Faced with these choices- to be something that he was not, live a life that he didn't believe in and give his life to them for years, waiting to get this sponsorship, he walked away from his potential green card; to live his life with dignity and to be with the one that he loved. As a result, we have lived for the past five years like many other undocumented immigrants- in the shadows of society, in fear that every day could be our last together, that he could be picked up and taken from me and our life together at a moment's notice. That a simple traffic stop will lead to something worse. This has impacted us greatly- we had to move homes when he first became undocumented, picking up everything to ensure his safety. We have sometimes had to leave behind friends who we felt couldn't be trusted. He has lost jobs and been prevented from getting other jobs because of his status. Now he works for little pay under the table to support himself. In the last few years, I have often had to support him financially at different times to ensure that we can get by. But at least we are together, for too many couples I know this situation has led to exile or separation for the partners. A major difference from that of many immigrants is that one the main avenues that he could have for legal residency was closed to us because as an LGBT couple, a possible path to him becoming a legal resident by me sponsoring him for his green card was closed to him because of the discrimination towards LGBT people in the immigration sponsorship system. There is a bill that would change this discrimination in Congress, the Uniting American Families Act, which Mr. Nightingale referred to, which would change immigration sponsorship for legal status to include permanent partners, not just spouses. We were married in New York in 2011, but it still has no impact on his immigration status. This Uniting American Families Act has been brought up for the last 10 Congresses, and to date has never received a vote despite having the most number of co-sponsors of any immigration bill in Congress. We may finally get to see this injustice turned around, as discussions have started including the Uniting American Families Act in the Comprehensive Immigration Reform bill currently being discussed in Congress. We know that it is currently included in President Obama's framework for the bill. However despite reassurances from Democratic Senators who said that it would be included, we were largely disappointed to see that it was not included. Now it seems almost daily we hear news coverage from Republican Senators falling over themselves to say that the issue of binational same-sex couples will be a 'poison pill' that will 'kill the bill.' While many LGBT binational couples will benefit from the potential path to citizenship that may be included in the comprehensive immigration reform bill, that's simply not good enough. For too long, LGBT binational couples have waited patiently for the Uniting American Families Act to be brought up for a vote, only to be disappointed. We are here today to say that we demand a fair, humane comprehensive immigration reform bill; one that does not make the current situation with our broken immigration system worse, where too many immigrants are excluded, where the line that people must be made to wait in is made shorter, and where our immigration system is based on uniting families will finally acknowledges LGBT families, so that my partner and I, and the at least 40,000 other LGBT binational couples are able to finally be able to sponsor our partners for legal status. Thank you. [Submitted written testimony. See Section B., "8. Erik Schnabel"]

Chair Hing: Thank you very much. At point I'd like to call Petra Tang, who's going to testify on high tech and STEM visas.

Ms. Petra Tang: Good afternoon Chairman Hing and members of the Commission, I appreciate the opportunity to testify before you.

Chair Hing: Speak into the microphone, thank you.

Ms. Tang: Thank you. And share my thoughts about the need for comprehensive immigration reform, specifically the need for expanded science, technology, engineering, and math, otherwise known as STEM, and high tech visas and why this good for the city of San Francisco and the United States. My name is Petra Tang and I am a partner at the immigration law firm of Berry, Appleman, and Leiden. Our headquarters are in San Francisco. We practice exclusively in the area of corporate immigration law, and our clients in San Francisco and the Silicon Valley, and our clients range from across a broad spectrum of global industries, from science and technology, to engineering and financial services. And of course as expected, there's a particularly heavy focus in the Bay Area on high technology. Chairman Hing's opening remarks really resonate with me, when you mentioned innovation. Innovators, that is what my clients are all about. We live in an area, an era, of incredible technological advances in the science and tech worlds. It is hard to imagine a world without cell phones and tablets, and every year there are faster chips, higher resolution screens, longer lasting batteries. The forward progress in other fields, such as medicine and manufacturing is moving just as quickly. Many of these advances come from foreign born, high skilled engineers, scientists, and researchers. Indeed, foreign born workers and entrepreneurs are leading the charge. It is no secret that some of the best known companies in America were started by people born elsewhere. In a study by Professor Vivek Wadhwa of Duke University, on this topic, he found that in a quarter of the U.S. science and technology companies, the chief executive or lead technologist was a foreign born. Indeed, in 2005 these companies generated \$52 billion in revenue and employed 450,000 workers. It is imperative for San Francisco and the Bay Area to continue to attract and educate highly skilled foreign born students and workers in STEM fields,

to have an immigration system that keeps those professionals here in the United States. According to the American Enterprise Institute, each foreign born U.S. worker, educated in STEM, creates an average of 2.6 American jobs. Immigration reform is essential to keep these highly skilled and talented individuals in the Bay Area and the U.S., rather than drive them away. My clients are confirming the difficulties they face hiring and retaining the best and the brightest STEM workers. The most common work visa in this country for these workers is the H1B visa. There is an annual cap on the number of new H1B visas and every year my clients are faced with this situation, that they may not be able to hire the skilled professionals that they need. Every year my clients must turn away a percentage of potential new hires because they did not make the cap. The bottom line is that the recruiters and staffs who work with are desperate to find qualified workers. And even when the workers are able to get the temporary work visas to stay, it can take many years for STEM and high tech workers to obtain permanent residency, not unlike the family-based situation. This is a result of the per country limitation on green cards, and for some individuals from China or India, that path to a green card can take more than a decade. In that time, they raise their families in the U.S., they have U.S. citizen children, and are productive members of their communities. Yet they live under the shadow, not knowing if they must leave. And during this long decade, our clients are finding that more and more of their talent is deciding that the long and wait and uncertainty is not worth it anymore. And they're choosing to leave and take their talent elsewhere. There are a number of proposals in the 'I-squared' Act being pushed forward as a part of comprehensive immigration reform and I'd like to just turn for a moment, some of those proposals that might be helpful to retaining talent in the Bay Area. Number 1: Increase the number of H1B visas available every year. The current cap is set at 65,000. [Number 2] Uncap the existing H1B limit for advanced degree holders. This would mean allowing foreign born U.S. STEM advanced degree holders to apply for H1B visas without limit. [Number 3] Exempt U.S. STEM degree holders, dependents, and people of extraordinary ability and outstanding professors and researchers from the employment-based green card cap. At this time, there are hundreds of thousands of workers, foreigners, working on temporary work visas who are in the queue for a green card. They are skilled workers who have been honing their skills in the U.S., who are increasingly frustrated with the system. We stand to lose them to other countries, such as Singapore, Canada, and Australia, who are welcoming them with open arms and providing a faster route to the green card for these STEM skilled workers just makes sense. In conclusion, thank you for the opportunity and privilege to testify before you today. If we can commit to employment immigration reform, we can attract and keep the highly skilled immigrants who only allow San Francisco to prosper. Thank you. [Submitted written testimony. See Section B., "9. Petra Tang"]

Chair Hing: Thank you very much. The next witness is James Byrne, an immigration lawyer who's also with the Irish Immigration Pastoral Centre and the San Francisco Irish American Bar Association. Mr. Byrne, in December I understand there was a proposed trade-off, more STEM visas in exchange for dropping the diversity program, what do you think of that?

Mr. James Byrne: Well I'm not here Mr. Hing, to pit one group against another, and I think you know that [laughter]. I think, I think we're all for a great tapestry. And I've been practicing immigration law for 30 years and one of the more interesting things that I came upon was, I was in immigration court one day, and there was a Tamil. And these Tamils were from the Island of Sri Lanka, and Sri Lanka, as many of you know, underwent a terrible war that lasted over ten years between the Tamil and the Sinhalese. And I assumed while this Tamil gentleman was in court that he was going to apply for political asylum in the United States. And much to my chagrin, he just asked for continuance, and I went up to somebody who seemed to know what was going on, and he said, 'No, he just wants for time. He's headed to the Canadian border and he's going to apply for asylum in Canada.' Not because U.S. law was against the Tamils, but simply for the fact there was a much larger Tamil community in Canada that could deal with the everyday needs of immigrants. And therefore, he, he felt that he was going to be in a much better situation. And today, I'm sure Professor Hing is well aware of the fact, that over 80% of the immigrants to the United States come from approximately 20 countries. And while there is nothing wrong with that, there is also nothing wrong with expanding the tapestry from other countries, as they have contributions to give, as well as the other 20 countries that make up the vast majority of immigrants to come to this country. And so, today exists a diversity lottery system that Professor Hing says that they want to sacrifice in the name of STEM. And I'm not here to defend the diversity lottery, which basically gives a lot of re-visas to people from those countries that don't send a lot of immigrants, but simply to talk about the idea, that diversity in immigration is in and of itself a good thing. That there aren't a lot of people from Sri Lanka in America, there are not a lot of people from Chile or Argentina, there are not a lot of people from Estonia and Latvia, and that there is nothing wrong with making some ability so that they can have a chance at the American Dream. And that is what the lottery does, in probably very unartful fashion, but the concept of promoting the tapestry is what we're here to defend. And it is that tapestry that we would like encompassed in any reform of the immigration law so that, maybe the Tamil will still head to Canada, thank God the war is over, but there will be an ability for other communities to establish themselves like all the other communities have. And that has been the history of America. And now it is only the communities that are here that can bring, that can bring their fellow countrymen and women, and not the communities that have no foot. And I'm not saying rob Peter to pay Paul, but expand the tapestry, make the pizza more interesting. Thank you.

Chair Hing: Thank you Mr. Byrne. Yeah. I'm sorry, I missed one name on the same sex marriage issue, it's Christopher Barnett, is that? Yeah, I'm sorry. Please step forward.

Mr. Christopher Barnett: Thirteen is a lucky number, so. I'm very grateful to live in a city that has a Human Rights Commission, and-

Chair Hing: This is the Immigrant Rights Commission.

Mr. Barnett: Or Immigrant Rights Commission

Chair Hing: The other one is our competitor, but go ahead.

Mr. Barnett: Pardon me, I'm a little bit nervous. Greetings, my name is Chris Barnett, and I'm here today to speak as a volunteer with Out for Immigration and as a citizen, same sex binational couple in marriage, my thanks go out to all present, especially this Commission for holding this hearing, and give myself and others a chance to weigh in on the need for comprehensive immigration reform, which we all agree, hopefully is something that we might see happen this year. March 12th this year will mark me, will mark since my husband and I met in San Francisco. And the reasons why I find myself married to an undocumented immigrant are complex and a direct result of the HIV travel ban, which was the law for over two decades. I could speak to many aspects of the how's and why's of our story, but I am taking this opportunity today to focus on economy and business as an aspect of why we must advocate for inclusive comprehensive immigration reform. Many Americans view immigration through a scarcity and a fear-based lens in which immigrants, especially the undocumented ones, come here to take jobs and resources away from hard-working citizens. A nuts and bolts challenge to this idea is expressed in the fact that close to 70% of our domestic food production is handled by immigrants, many of them undocumented ones. Without this immigrant labor we would have to import more food, we'd have to pay more for our food, and we'd have less food security. This is but one broad example of where our national discourse on immigration reform is too often tone deaf to the realities on the ground. On a very personal level, our business, in which our own immigrant story is playing out, is a fine arts-related concern situated just blocks away from this very spot. And I've been self-employed there since 1991. Because they offered the only option for economic survival for us when his visa lapsed in 1997, and my health was at that time too frail to consider leaving the country, as so many of us have done. The business, which is mine on paper, it has become ours in reality. While we're not a huge enterprise, it keeps a dozen of us employed and ensures our access to quality health care. We've created jobs with real living wages and benefits. As employees gain seniority, their income potential supports buying homes and raising families. We support numerous local non-profit organizations with substantial in-kind donations every year and have earned a strong professional reputation for the work that we do. We're very proud of what we've created, and our business would not be what it is without my husband's contributions. From the inception of our nation, nation, we've lived with deep dichotomies around immigrants and immigration. And while the vast majority of us have immigrant roots, our history too often is one in which exclusion is perpetrated on newer arrivals by those who were here before them. While we build our national identity on the value brought by waves of immigrants, too far we often diminish their humanity and greet them with fearful distrust when in fact we are who we are, and we have what we have, because we are a land of immigrants. Our nation has become a dynamic, wonderful, ever-evolving story of human possibility and LGBT families like mine are part of this fabric. Thank you so much for giving me, us, an opportunity to speak today and I especially want to thank you for acknowledging that same sex binational couples and their families want inclusion in any legislation which will address our, reforming our broken immigration system. Thank you very much.

Chair Hing: Thank you, we agree with you. Thank you.

Mr. Barnett: Appreciate it very much.

Chair Hing: I'm going to skip ahead to one of the speakers, and then before my co-commissioners start throwing things at me, after our next speaker we will take a short recess. But I'm going to call David Bacon to come up at this point. Taking him a little bit out of order for family reasons. And I've invited Mr. Bacon to testify on two issues, although I can't control him, to speak about the issue of trade, trade agreements, and, and employer sanctions. Mr. Bacon?

Mr. David Bacon: Well, thank you very much for giving me the chance to speak before the Commission today. I'm former union organizer and so a lot of the way that I look at these issues is through the lens of working people and what these changes mean for workers. And I also come before the Commission today as an active participant in what's called the Dignity Campaign, which is a proposal for immigration reform that's based on human labor and civil rights. So, to start with trade policy. We need an immigration policy that looks at the reason why people come here as well as what happens to people once they get here. Personally, I think that movement and migration is human right, but we live in a world in which a lot of migration is involuntary. It's coming from communities that are displaced by poverty or what we euphemistically call 'economic reforms.' Our trade policies and the economic policies that we impose on countries like Mexico or El Salvador or the Philippines, make that poverty

worse. And as people get poorer and their wages go down, it creates opportunities for large corporations. For instance, in El Salvador today, the U.S. Embassy is telling the Salvadorian government to sell off its water system, its hospitals, its schools, and its highways, to give U.S. investors a chance to go into partnership and own these things. This is part of what we enabled in the Central American Free Trade Agreement, to make El Salvador a good place to do business. Alex Gomez is a Salvadorian trade union leader who's actually in San Francisco today, talking about what's going to happen in El Salvador as a result of this. And what he says is that tens of thousands of workers in El Salvador are going to lose their jobs if these institutions get privatized. And what will happen then is that they'll have to leave El Salvador. He says four million people have already left El Salvador, two million of them have come to the United States. Not because they love the U.S. or don't love the U.S., but simply because they can't survive in El Salvador. And people overwhelmingly, most of those two million people have come here without papers because there aren't visas for the two million people who come from this small country. The North American Free Trade Agreement did much more of that. We think that the NAFTA, we look at NAFTA and we think that it hurt us because we see the loss of jobs here in the United States, but what actually happened to people in Mexico was even greater. For instance, the North American Free Trade Agreement let U.S. corporations dump corn on the Mexican market. One company, Smithfield Foods, now sells a third of all the pork that's consumed in Mexico. What the result of that was, was that prices dropped so low that Mexican farmers couldn't survive and they had to leave. Mexico used to be self-sufficient, both in meat and in corn. In fact, corn cultivation started in Mexico and now Mexico is a net corn importer and meat importer from the U.S. So in the time that that agreement has been in effect, from 1994, the number of people in the United States who are born in Mexico went from 4.5 million to 12.6 million people. About 11% of all the people born in Mexico now live here in the United States. Now 5.7 million of those people were able to get some kind of visa to come here, but another 7 million couldn't and came anyway because they had very little choice about it. Our immigration law has then turned those people into criminals, saying that if they work it's a crime. So we need a different kind of immigration policy that stops putting such pressure on people to leave, and that turns people into criminals once they get here. What would it look like? Well first of all, the trade act that was proposed by Mike Michaud, the Congressman from Maine, says, 'Let's hold hearings about NAFTA and CAFTA and tell the truth about what actually happened to us here in this country, but also what happened in Mexico and Central America.' Then let's re-negotiate those agreements to eliminate the causes of displacement. We'll provide compensation to those communities that suffered the effects of those trade agreements and stop negotiating new trade agreements that displace people and lower their living standards. Let's make sure that all future trade treaties, for instance, require adequate farm prices and incomes in farming communities, and don't require the privatization of public services. And finally, we should ratify the UN Convention on the Rights of Migrants and their Families, because it gives us an alternative way of looking at what our relationship should be with those countries that are sending migrants to the United States. [Submitted written testimony. See Section B., "1. David Bacon"]

Chair Hing: Thank you very much.

Mr. Bacon: Thank you very much. Go on to employer sanctions as well?

Chair Hing: Please.

Mr. Bacon: Okay. Well, thank you for giving me this double opportunity then. We all remember that Immigration Reform and Control Act in 1986 because of the amnesty. But we forget that it also had employer sanctions in it. And employer sanctions is the part of the law that says that employers are going to be fined and punished if they hire undocumented people. Now that sounds like an anti-employer kind of law, but it's not. What it really is is an anti-worker law. For instance, no employer has ever gone to jail in the United States for violating that law. But in the last four years alone, hundreds of thousands of workers have been fired for not having papers. So now in Congress we're talking about a new kind of immigration reform and I think this is our opportunity to push for the repeal of this law. Something, well okay, if there's legalization program and everybody gets legal status, what difference would it make? But forgetting, as we just talked about, in term of trade policy, that the day after, more people are going to come here from other countries. And these are people who belong in our communities, they're the husbands and wives, and parents and cousins, and people from the same towns of people who were already here. And we need to keep this law from being applied to them. Employer sanctions, passed in '86, it didn't keep people from coming here obviously, since there are 13 million undocumented people who were already here. What it really did was it criminalized work. And now unfortunately, the proposals we're hearing in Congress aren't talking about getting rid of it; in fact it would really reinforce it and make it worse. And looking concretely at how it's actually been used in our own community here, one way is to screen people when employers are going to hire them. This is a database, it's called E-Verify. Now, supposedly this is a system that's only going to be used in terms of the hiring process, but it's actually being used currently when people are already employed. In other words, people are, people who are already working for a company have their names passed through the E-Verify database. This has led to the firings of workers over in the East Bay who work for waste management corporation. Companies also announce that they're going to do this when people start to organize unions. That's happening in the Meat Pueblo supermarkets in San Jose and in Oakland. Then there's another way that this gets used, which is even more dangerous,

and that is that ICE, the Immigration and Customs Enforcement, goes to a company, they go into the company's personnel records. They then compare them to this E-Verify database, and then send the company a list of names that they say are people who don't have any papers, who the company has to fire. That's what happened a year ago at Pacific Steel, over in Berkeley. That's why 214 people, some of them had worked in that foundry, in those union jobs, for over 20 years, then lost their jobs. And really, hundreds of thousands of people have lost their jobs. 475 janitors here, union janitors in San Francisco, lost their jobs because of that. Well, the Administration can decide not to enforce the law in the same way the DREAMers got the Administration to stop enforcing immigration laws that deals with young people in school. And I think that it's possible to get the Administration to stop enforcing this aspect of the law as well too, or at least these audits. But unless we change the law itself, basically immigration authorities are going to find another means for the enforcement of it. So what is the alternative? And what should we advocate for? First of all, I think that we need to repeal employer sanctions and dismantle that E-Verify database, and stop trying to enforce immigration law in the workplace and especially have employers do it. And we also have to stop states from passing employer sanctions laws. You know we got really upset here in San Francisco when Arizona did it, and we forgot that California passed the state employer sanctions law before 1986, before the federal law went into effect. The consequences of that, for instance, are that employers, that workers who lose their jobs can't collect unemployment, can't collect disability because they're not legally in the country. We should give a Social Security Number to every worker in the United States, regardless of their immigration status. Everybody is paying into this system, so that people who are paying in deserve benefits, and the consequences of not doing that are: that older people, working people who retire who don't have any papers are going to be living on dog food. So we decided a long time ago in this country that we didn't want that, so the way of eliminating that is to give people Social Security Numbers instead of enforcing immigration law. We should make, making threats against workers because of their immigration status a crime, this means overturning the Hoffman decision and the Sure-Tan decision, which is Supreme Court decisions that say that, 'Yes, anybody can organize a union in this country, but if you're undocumented and your employer fires you for doing that, that you can't get your job back and you can't get back pay for the time that you were out of work.' Which essentially means that there's no punishment and therefore no rights. So we need to increase people's organizing rights by prohibiting enforcement or during labor disputes, or against workers who complain about illegal conditions. We should eliminate the exclusion of undocumented workers from legal aid services. Right now if you're a farm worker and you want to complain about unpaid wages and you don't have any papers, you can't go to any federally funded legal aid services corporation. And finally, I think that looking at working people as a whole, we ought to take, pay some attention to what Congresswoman Sheila Jackson Lee proposed seven years ago in her first immigration bill. Which was, let's reduce the job competition between immigrants and people who are unemployed in this country by setting up job creation and job training programs for all unemployed workers so that we're not pitted against each other by employers who want the cheapest labor that they can get. And these are all proposals that are being made in what's being called the Dignity Campaign, an immigration proposal and I'll leave some copies of it with you.

Chair Hing: Thank you very much. Ladies and gentlemen, we're going to take a five minute recess and I mean five minutes. Thank you.

Chair Hing: Can we get started again? We're going to go back on the record and go to the third grouping and this general grouping is on legalization and some of the proposals that are floating around. And, I was going to ask Clarisa Sanchez to come up first. Are we rolling, clerk? Yes, okay. And are you testifying along with Christopher Martinez?

Ms. Clarisa Sanchez: Actually, Christopher will be giving the majority of the presentation.

Chair Hing: Okay, that's fine.

Ms. Sanchez: Or the testimony.

Chair Hing: And then you have a client, Mario, with you?

Ms. Sanchez: Yes, we do.

Chair Hing: Thank you. Thank you for joining us.

Mr. Christopher Martinez: Thank you very much for having us. My name is Christopher Martinez and I am the Director of Refugee and Immigrant Services for Catholic Charities CYO. And first I'd like to say thank you to the Immigrant Rights Commissioners for hosting this, this hearing, for this very important issue. Once again, it comes to no surprise that the city of St. Francis is taking a lead in advocating to change and fix our broken immigration system, so thank you very much for doing this. Really quickly, I want to say that Catholic Charities CYO celebrated its 105th anniversary, and has been providing legal immigration services for the past 30 years. Our goal is to help newcomers understand the law, guide them through the process,

in an efficient and professionally caring manner, and we are very excited to join in the push for comprehensive immigration reform. And I'd like to read the rest of it so I can get, make sure I have enough time to say everything I want to say. We're talking about the legalization of the undocumented. So the first thing we want to do is, there's definitely some key areas that I want to just emphasize when talking about the undocumented. First, and this has been stated by many advocates in our community already: there must be a path to citizenship for the 11 million undocumented living in the United States. We must not fall short on our efforts for citizenship, excuse me, for the undocumented. Even amid proposals that they receive legal status, but no chance to become citizens. We should not sanction a permanent underclass in our society. It is important that we continue to stress that all persons in our society deserve the right to pursue the American Dream. There will be forces at play that will push for no compromise, and will want to provide the undocumented with less than full rights. We must resist these forces. Everyone should be given a chance to earn the right to become an American. Second, we must continue to preserve the keeping of families together. This is the cornerstone of our national immigration system. Immigrant families helped build this nation, as we've heard already. Good policy would promote family unity by ensuring that undocumented parents, approximately 98,000 of whom were deported and separated from their U.S. citizen children last year, are allowed to remain, with their families. I want to share with you really quickly the story of Elsa, who couldn't be here today, obviously. We have the case of the Madrano family. Jose Madrano is a U.S. citizen and his wife Elsa is from Mexico. She entered the United States without documentation thirteen years ago, however this was her second entry. She actually tried to enter initially in 1999 using a fake U.S. birth record. She was ordered removed for a false claim to U.S. citizenship. She met her husband in 2002 and in 2011, he filed a family-based petition for his spouse. The petition was approved, but because the way the law's written, she must return to Mexico to process the visa at the consulate in Ciudad Juarez. However, on bad legal advice, she left the United States. When she attempted to regain re-entry, the consulate denied her immigrant visa and informed her that because of the false claim of U.S. citizenship, she is now subject to a permanent bar from re-entry. There exists no waiver for this bar. That means Mrs. Madrano is permanently banned from returning to the United States. Mrs. Madrano has been in Mexico since then; her daughter Elisa is a U.S. citizen and she suffers from leukemia. And now both father and child are separated from their mother. And for all intents and purposes, permanently, until the law is changed. Now what I'd like to do is, I'd like to invite my colleague Clarisa Sanchez, who is going to invite our client, Mario, to share his story of, a little bit related to what Mr. Bacon was saying about employer relations and sanctions, and, Clarisa?

Chair Hing: Thank you.

Mr. Mario: Good evening commissioners my name is Mario, I am father of four wonderful and intelligent U.S. citizen children, husband to a beautiful a U.S. citizen wife and loyal, married. Employee of National Food Corporation. Two weeks ago my employer's HR Department questioned me about my legal status after four years of service to them. I feel I needed to tell them the truth of living in this county without legal papers since age of 16. I am now 39 years old; in my attempt not to be fired, I informed them my wife has petitioned me and I will file a provisional waiver for an unlawful presence as soon as the petition is approved next month. As you can imagine I have lived with much anxiety since then. The HR hasn't yet taken future actions as of today. They have mentioned that in situations as such as mine they have laid off, then rehire employees once they become legal. However, if I am let go I run the risk of not being rehired once my legalization process is over. Since my type of case is not expected to be approved until the end of the year I cannot remain an employee and am not able to provide for my family, to my wife and children during all this time. We all stand to lose everything we have worked so hard to achieve and because of my illegal entry years ago when I was teenager. I deeply thank you for your time commissioners and for everything you are doing here today. Thank you so much, gracias.

Chair Hing: De nada. What is the name of, are those your two sons?

Mr. Mario: Yes.

Chair Hing: What are their names? How old are they?

Mr. Mario: Tell your names. What's your name?

Chair Hing: Que?

Mr. Mario: Danny.

Chair Hing: Danny?

Mr. Mario: Danny and Danny. But we call them Danny and Daniel.

Chair Hing: Danny and Daniel. Okay. You know, your father, we're very happy that your father came, and he's very brave to come here and testify. And so, you should be proud of him. Okay?

Mr. Mario: Thank you.

Chair Hing: See you later.

Ms. Sanchez: Mario is fortunate enough to have a path towards legalization under our current immigration system. But as he and his family patiently wait for their case to be renewed, reviewed by immigration, they face the reality of losing their livelihood and their home. All due to Mario's employer's fear of being sanctioned for continuing to employ him now that they have, they know he is undocumented. And then in the interim, we wanted to share with you his story because we wanted to illustrate to you the compounded fear that he, hundreds of San Franciscans, and thousands of immigrants throughout the Bay Area, will continue to face as we hear today, and across this, this city, and through the U.S., continue to push for comprehensive immigration reform. So thank you very much, for inviting us here today.

Chair Hing: Thank you very much. The next witness is Francisco Ugarte, an attorney with Dolores Street Community Services.

Mr. Francisco Ugarte: Before the Commission, and thank you so much for holding this hearing, but also in bringing all of these advocates together. It's a really beautiful experience and to hear the stories. I am also very proud to say that three other attorneys are here from our office at Dolores Street Community Services. We specialize in removal defense and there are also people that we represent at Dolores Street who are going to be providing their testimonies, highlighting stories of family separation, and the broken nature of our immigration system, and the urgent need for a fair and just path to legalization. The scope of the problem, as we've heard tonight, is enormous. There are 11 million undocumented people in the United States. It's not only a Latino problem: there are 280,000 undocumented people from the Philippines; 200,000 from India, 170,000 from South Korea; 130,000 from China. It is a broad-based problem. Millions more wait for visas, that's what we've heard. And we're also seeing a brutal deportation enforcement regime where 400,000 people are deported every year based on irrational quotas set forth by the federal government. Half of those people have never been convicted of a crime and around 46% of deportees have indicated that they have a minor child. Local law enforcement is working in collaboration with federal immigration enforcement and so we see people placed into deportation proceedings for such things, such as driving without a license, and there's going to be one person testifying tonight who has had that very experience. There is a crisis in family unity. Ten percent of children in California have at least one undocumented parent and 50,000 of the first six- 50,000 people, for the first six months of 2010 who were deported indicated they have a United States citizen child. We've heard about visa backlogs and we also know that immediate relatives can petition for their family members and see their visa get adjudicated very quickly, but the laws are written to prevent that very thing from happening for so many people who've experienced deportation or have been unlawfully present in the United States. Children cannot petition for their parents until they're 21 years old. So if you're a three year old child whose lost their parent and you're the only United States citizen in the family or you have two other brothers or sisters who are citizens, you can't petition your parent until you're 21. But even worse, if that parent had more than one year of unauthorized presence in the United States, they will have a mandatory ten-year bar from ever returning to the country. Now there are waivers included in the law; however, you can only get a waiver if you have a United States citizen spouse or parent or a lawful permanent resident spouse or parent who will suffer a hardship. So that means that a deportee cannot consider a child in a hardship, to a child, to get over the ten-year bar waiver. So the laws are irrational and they prevent family reunification. The, the need for immigration reform is absolutely imperative. We can look at local and state reform, but federal reform is where we need it the most. So there's a lot to talk about here about the areas of the law, but including the inability to defend against deportation. Individuals used to be able to, prior to 1996, claim hardship to themselves if they had seven years' presence in the United States as a means to defend against deportation. Currently, an individual needs ten years of continuous presence, and they have to show an extremely unusual hardship to a U.S. citizen relative, that the law has said, courts have interpreted this standard to be more extreme than the normal effect of a deportation in family separation. So that's what we attorneys have to prove to try and prevent deportation. So I'm going to finish my comments and I'll let Denia...

Chair Hing: Okay, thank you. Denia, would you please introduce yourself, and the challenges that your family faces?

Ms. Denia Perez: Yes. First of all, thank you so much for inviting me, for having me here. I appreciate the opportunity. As Francisco and Bill said, my name's Denia Perez and I am a DREAMer. I have recently been granted DACA and I know that it was thanks to a lot of, I know that it was thanks to all of the advocacy efforts and bravery of my fellow DREAMers and so I just wanted to acknowledge all the work that was done so that I am here today and that I just want to appreciate the work that has been on the road that has been paved. I wanted to take this moment to talk about a lot of the stories of people like my parents. I am fortunate to be in a group of immigrants that recently has gotten a lot of attention and support from the mainstream media, including a lot of so-called 'Tech Titans,' and I'm very lucky and privileged to be able to be heard and to have expressed

my desire to stay in this country and to have that validated. But people like my parents, who are working just as hard, who just, have just as much of a right to be here and consider themselves just as American as I do, are not seen in the same light as I am, and so I wanted to talk about their case and how they were placed into removal proceedings. A lot of people here have talked about the visa backlogs and how broken the system is, but I wanted to bring awareness to an issue of 'notario fraud,' that I think is going to be a problem, even once immigration reform gets passed, and I think it's really important that if and when something does change, that we do a lot of work to ensure that our communities are educated and that they are going through the proper channels to submit their application and make sure that it gets processed in the correct way. My parents were placed in deportation because of a fraudulent asylum case through a notario. That notario was prosecuted and my parents fortunately were recently granted prosecutorial discretion so they weren't actually removed, but we lived in fear for over fourteen years of being separated as a family. I have three U.S. citizen brothers, and so their cancellation case was dependent on their extreme hardship. But, there are many other families who haven't been as fortunate as mine, and so I'm very lucky to be here and lucky to have my parents, but I hope that if and when something does get done, we are very intentional about outreaching to our communities and ensuring that, as few people as possible, hopefully no one, gets caught in fraudulent applications and, or get taken advantage of. So, thank you.

Chair Hing: Thank you very much. Yaniris? Yaniris faces a slightly different situation, variation on this case, where Mr. Ugarte alluded to the difficulty of the three and ten-year bars, and when somebody gets removed and, and how difficult cancellation is. And, you are a U.S. citizen and I want to explain, I want you to explain what your family went through, and what you're going through now.

Ms. Yaniris: Good evening, my name is Yaniris. First of all, thank you for having me today. I share my family's story today and hope, in desperate support of an immigration, comprehensive immigration bill. Last fall, I wrote an urgent request for ICE to terminate the removal proceedings against my father. My dad worked as a utility worker for 25 years in the same hotel. In 2007, my senior year of high school, my dad was apprehended by immigration. A year later, he was granted cancellation of removal. Fourteen days after, the Board of Immigration Appeals overturned the decision and in 2010, my dad was, again, facing removal proceedings. In the midst of this, my older brother who was a DREAMer, was deported in 2009. He was caught tagging with his friends and his case went along way quicker than my father's. He was in Santa Rita Jail for two weeks, then Arizona for about three months, and then quickly deported to Mexico, a place that he didn't, had no connection to. Unfortunately, my family's nightmare continues as my father's hope to remain in the United States have come to an end. My father's case, we lost unfortunately, my dad was deported last November, and the impact on my now fifteen year old brother, who was born in the United States, have been drastic, and on myself as well. Today, my brother and I have lost our home, our medical care, and we continue facing the real life prospect of losing our academic aspirations. All of these aspects of our lives, all of these goals, dreams, will never outweigh the reality of losing our father and my older brother. As the eldest U.S. citizen in my family, I devote my life to guide my younger brother, because I know he is unable to obtain the same kind of education I receive here at Cal, if he were to live and move back with my dad. I am, however, aware that I will never be able to provide my brother with the same comfort he seeks from my, from our father. So I urge that immigration officials cease the deportation of non-priority undocumented people such as my father, who have strong community and family ties. We also sought humanitarian parole relief- that was denied. And, we literally exhausted many, many different avenues with the help and support of Professor Hing so I'm still very grateful and thankful for his support despite of what's happened to my family. Thank you.

Chair Hing: Thank you.

Commissioner Gaime: Can I ask two questions? One, how old are you? And then two, is your father barred by the three year or? OK.

Ms. Yaniris: Yeah.

Commissioner Gaime: How old are you?

Ms. Yaniris: I am twenty-two.

Commissioner Gaime: When was your father deported?

Ms. Yaniris: Last November. And yeah, he is barred with the ten-year bar. And my older brother I can, you know, petition for him but that's about a fourteen year period and he is turning twenty six in August.

Chair Hing: Thank you. Mr. Ugarte, were your clients was going to testify at this point or later on this?

Mr. Ugarte: [inaudible]

Chair Hing: Okay.

Mara Gallegos: Good afternoon. Before anything I want to thank you.

Chair Hing: Can you speak into the microphone? Thank you.

Mara Gallegos: Good afternoon. Before anything I want to say thank you for having me here. I know many people have dreams. Many of them sleep dreaming and many of them wake up dreaming. And that was when my parents had. I'm sorry, my parents had a dream. My name is Mara, I am daughter of Betty Valdez and Julio Gallegos. My parents were deported in 2008. They came to the US to, for a better life, whose biggest dream was for my brothers and I, sorry, to have a better future. But that all changed. Now we just say hello and bye through the phone. It's hard for them not seeing my sister and I grow. And it's also hard for my sister and I not growing with them and seeing my little brothers grow as well. It's really hard not only for my family and I, but also for other families that are going through the same situation. This deportation problem is a cause of many tears and is affecting many families. I do, I am aware that I am not going to be able to give my sister the same love and attention my parents gave her. That's why I devote for all of this immigration reforms to actually come, come possible, true and for my parents to be here with us, seeing us grow, as well as my brothers. I have two brothers that are in Mexico. One of them is eight years old and the other one is five and my sister that's with me is eleven years old.

Chair Hing: Thank you. Is Angel Ku here? Angel you're a DREAMer also.

Mr. Angel Ku: Yes, I am.

Chair Hing: Please, go ahead.

Mr. Ku: Hi everyone so my name is Angel Ku or *Angel Ku*, so I don't know how to start I mean, I am a DREAMer but at this point I think it got kind of old to talk about where I came from and blah blah blah. But it's been, I am twenty three years old I've been in this country for 22 years and quite frankly it's been really frustrating. I mean, this past fall I graduated with a degree in cell molecular biology at San Francisco State but now for the past two weeks I've been going through interviews for the graduate school process. I've been granted admission at the University of California in San Francisco in their pharmaceutical sciences and pharmacogenomics program. But quite frankly this journey has been extremely exhausting, just not just me but my sister as well. I get tired of carrying around my passport and just having to have second looks or just to be treated differently. I've been working so hard to try and just move forward to give hope to my family. My parents have inspired me a lot, my dad works two shifts. He's been working ever since he got here when he was seventeen years old. And my mother has, you know she has, she's developed a lot of health problems because of the work she did in house cleaning and just doing everything, taking care of children. And quite frankly this deferred action thing, it's been great but what I want to give to this country, deferred action doesn't let me do that. I would love to apply for grants to do research. I would love to take part in these programs but I'm simply held back because of that dream. My interviews they, people ask me why haven't you applied for this and I have to tell them well I'm not considered a U.S. citizen or resident even if I have deferred action. And I think that's something that should be seriously taken into account when moving forward immigration reform. When we give statuses to these students and these parents it is important to, sort of, not not think about it as OK, we are going to give them conditional status and really just a gray area, but to actually give them something that's meaningful that's actually not only going to push forth their advancement but this country'd advancement as well. I would love to submit an NSF or NIH grant and really begin to dive into the type of research I want to do which is addressing disparities in health through a biomedical lens. And in addition, I also want to address this conversation we've been having between a good student, the good DREAMer and the bad DREAMer. I work with a lot of youth and it just breaks my heart when a lot of them tell me I've aged out of the DREAM act, I came here too late, and sort of. They're breaking into tears and I have to tell them the only thing I've told myself and I've told my sister is, whatever the laws are we are going to find a way to get through this. But to be quite honest I've been telling that to students for the past five years and it's been getting really exhausting. I think that as we move legislation forward we need to step away of this good DREAMer, bad DREAMer but rather look at them as what they are, which is this are children. They have potential, I myself, you know, I'm not the perfect person. My mom would attest to that and I have gotten in trouble in school in the past but if it wasn't for the fellow Americans who believed in me, and professors and students and you know just community members who saw my potential, I that I became the young man that I am today and the same goes for the youth, you know. I grew up in Marin County but I worked with a lot of youth that live in San Francisco, in the East Bay and it's rough, I don't know how they do it but they do it. And I think that as we move forward we need to take that into consideration. And with that I just want to thank you for this opportunity. And thank you so much for your work.

Chair Hing: Thank you Angel. At this point I would like to call Cynthia Rice who is an attorney with the California Rural Legal Assistance Foundation. One of the proposals, various proposals for immigration reform include broad guest worker programs and among other things, I'd like you to address that proposal.

Ms. Cynthia Rice: Thank you very much for convening these hearings and taking a look at these very important issues. I am a litigation coordinator for California Rural Legal Assistance Foundation, and for about fifteen years, CRLA Foundation, the Farmworker Justice Fund, the United Farmworkers, and CRLA have been monitoring H2A activity in the state of California. As Professor Hing mentioned, this program is rather euphemistically called 'the guestworker program.' I say euphemistically because these workers are not treated as guests, they're treated as indentured servants. Unlike the H1 programs and the limits on the number of visas that are available for these program, H2A programs generally have no caps, which in the view of advocates mean, that there is no cap on exploitation of workers from second and third world countries by employers who no longer want to deal with organized or knowledgeable U.S. workers who know their rights. Since we started monitoring H2A activity in California, we've probably looked at a couple of hundred H2A applications, which run the gamut from one or two shepherders per year, who in California were allowed to be paid as little as \$5 a day in the United States of America, in the state of California, until California wage an hour laws were amended as recently as 2006. In addition to shepherders, the most recent and most aggressive, shall we say, an H2A application was submitted in Imperial County, California. This will be the third year that they're bringing in over 500 workers into Imperial County, California to work in the lettuce, broccoli, and cauliflower fields of the Imperial Valley. Imperial County had a 29% unemployment rate last August. 29% of the population of Imperial County was out without work in August. At the lowest level of unemployment that Imperial County suffered in 2011, it was 23%. That's in December, at the peak of harvest. Yeah, growers like the grower that petitioned for that particular H2A certification complain that they can't get U.S. workers to do these jobs. The reason is: they choose as Mr. Bacon pointed out, they choose to compete in a manner that is noncompetitive. They don't offer working conditions or working standards that are going to attract U.S. workers and they are uncomfortable with the notion that if workers don't like the jobs that they have, they can vote with their feet. Well the beauty to growers and other agricultural employers of the H2A programs, is that the workers cannot vote with their feet. Once they enter the country, they are limited to being, to the employment that they have with the grower or farm labor contractor that petition for them. If they don't like the job, if they're exploited, if their wages are not paid, if they're, they're not given their meal and rest periods, if they're housed in horrific conditions, they can't go to another employer and force competition with that unscrupulous employer. They can go home. Sometimes to Mexico, across the border, in the case of workers being brought into Imperial County. Sometimes to Thailand, which was the case with Global Horizons, which brought workers in from Thailand and then subjected them to exploitation in California and Washington and in Hawaii. Sometimes in, to areas, increasingly to areas further and further into South America and to Peru and Argentina, where there is a new and burgeoning H2A recruiter system which is identifying whole new groups of workers to exploit from those countries who haven't yet gotten the word about how, just how bad H2A jobs can be. The, the flip side of the H2A program that I've kind of referred to, is that it has, perhaps not unique, but really mentionable impact of hurting not only the H2A workers that are coming in, but hurting domestic workers that are here and suffering from those 29% unemployment rates. CRLA and CRLA Foundation have represented domestic workers that have been flat-out displaced as a result of the fact that a grower in Oceanside, California successfully obtained an H2A certification, arguing that he was experiencing a labor shortage. As soon as those workers came into the country, he fired 82 U.S. workers. In, in that same county, as a result of the kind of gradual, gradual creeping up of the use of H2A workers, there has been an increased creeping up of production standards in tomato and strawberry harvesting. Why is that? If you look at who is working in California fields right now, you have a group of new workers that are coming into the occupation, if you will, but we have a very large group of workers who legalized in 1986 as a result of this special agricultural worker protection. Those men and women are my age, and still working in the fields, and probably still have a good ten or twelve years in them, just like me, if they have conditions under which they can work. Right now, guest workers are being brought in, quote unquote, to be the guests of this country, and work at extremely exaggerated production standards that men and women who are in their 30's, 40's, 50's just cannot make. That means that workers who are in their 40's and 50's who've been working in mixed crews in the Imperial Valley; in Yuma, Arizona; in Oceanside, California; up in the Sacramento Delta, and even in, we think, some of the surrounding areas of the Bay Area, are now being displaced by almost exclusively 20 to 27 year old single male workers who are leaving their families behind and creating working conditions that just cannot be sustained by U.S. workers. I am so excited about the City of San Francisco taking a serious look at this issue. It's very important that organizations and oversight agencies and Commissions like the Immigrant Rights Commission, seriously look at these issues, because particularly in California, there is a growing movement by the agricultural community, supported by one of our senators, to aggressively encourage the development of a new H2A program, which would lessen restrictions and increase the availability of foreign workers to the agricultural community. This will drive down competition, it will drive down standards, it will displace further and further workers. And as you have heard today, from witness after witness, there are plenty of workers in California who can take these jobs, who would love to have these jobs, who don't want to have to worry about a safe verification or having their undocumented status found out as a result of a Social Security match letter. We need comprehensive immigration reform without the unfair competitive advantage being offered to any particular industry, such as growers, and the other major industry that you just, temporary workers, carnival operators. So when you're making your

recommendations, I hope that you will, you will take into consideration that, the fact that true comprehensive immigration reform needs to leave out those categories of exploitable workers and offer a path to a legal residency and citizenship for the workers who have worked in the agricultural fields and the surrounding areas in California for decades and decades. Thank you very much for your time.

Chair Hing: Thank you very much, Ms. Rice. We're actually going to move on to the next panel, I believe. Yeah, and so, we're moving into the enforcement area, and the first person I'd like to call on is Amria Ahmed, an attorney with the Arab Resource and Organizing Center. Sorry if I mispronounce your name.

Ms. Amria Ahmed: Not a problem. Good evening. First I'd like to thank San Francisco Immigrant Rights Commission for putting this event together and inviting community organizations like the Arab Resource and Organizing Center, AROC. My name, like Professor Hing had said, is Amria Ahmed, and I am the staff attorney at the Arab Resource and Organizing Center. The passing of immigration reform legislation seems eminent. We hope that it will reasonably and fairly address substantive immigration problems and articulate policy that address the underlying injustices that shape current immigration implementation and enforcement. Arab and Muslim communities, like other immigrant communities, are directly targeted as a result of the war on terror and the war on drugs. And if not directly targeted, we are subject to by-products of that war, or those wars. Immigration issues cannot be separated from the issues of national security, especially if we are talking about individuals emigrating from Arab and Muslim countries. Not because Arab and Muslim immigrants pose a threat, but because local, state, and federal governments treat us as a threat. This translates into institutionalized suspicion, discrimination, harassment, and entrapment that disproportionately results in arrests, detentions, and ultimately deportation at alarming rates. With Obama having deported the largest number of immigrants than any other President, 400,000 as was said before. Arabs and Muslims coming from Morocco to Malaysia have been subject to deteriorating civil liberties in governmental accountability that started well before 9/11. And that affects the community as a whole regardless of the immigrant, immigration status of the individual members. As a Yemeni immigrant living in an immigrant community most of my life and now as an immigration attorney I am aware of the direct consequences that the war on terror or intensified national security concerns impose on the immigration process. Where short delays have been the norm for decades, now families can wait for years to bring their immediate relatives from Yemen or Iraq to the U.S. as a result of the USCIS Controlled Application Review and Resolution Program abbreviated as CARRP. CARRP deals with identifying and processing cases with national security concerns. Any immigration case can, that is considered to be a national security concern then requires the case to be vetted which can result in delays, some indefinite. USCIS never discloses which cases are CARRPed but it's not a coincidence that security screenings under the guise of administrative delays are prevalent at embassies in Arab and Muslim majority countries around the world. Quite arbitrarily cases are thrown into the abyss of the administrative processing and then take years and years to come to a conclusion. At times some immediate relatives are waiting just as long as those in preference categories for a visa. Granted, that the U.S. has a sovereign right to secure itself against threats posed by individuals seeking admission, but the process should be fair and transparent. As it stands the implementation of the policy of screening immigrants is extremely flawed. Consider the case of a Yemeni mother who was approved as an asylee who then filed to reunite with her two minor children, a two year old daughter and a four year old son. Pretty straight forward, right? It's just a matter of getting the paperwork done but unfortunately not so. Due to seemingly never-ending administrative processing those two children have remained separate from their mother for three years now. This begs the question what kind of security concern can a three year old and a five year old pose? How much screening do they require? In addition to the quagmire of family reunification that results from security concerns, Arab and Muslims immigrants face suspicion even after they arrive to the U.S. The Arab and Muslim immigrant community shares a lot of similar experiences with other immigrant communities. Today it's the Arab and Muslim community that are viewed as a threat. In conclusion, the unnecessary and unreasonable implications of the war on terror and the national security concerns on the immigration process need to be addressed. There needs to be oversight and transparency, a committee of non-governmental groups should be established to review the policy and create an oversight procedure that can be publicly reviewed. With that I would like to thank you for the invitation to speak tonight.

Chair Hing: Thank you very much. Were there clients from CARECEN or from Dolores Street that I've left out that were going to testify?

Director Pon: I think the CARECEN clients left.

Chair Hing: OK. Yeah, thank you. Please introduce yourself.

Mr. Alberto: [Spanish] I speak English but I feel comfortable if I say this in Spanish. [translated from Spanish]: Hi, my name is Alberto, and I wanted to thank you all for having me here. I can speak English but I am more comfortable speaking in Spanish. I'm here to talk about the fact that those of us who are undocumented, we're really looking forward to a solution to the problem of living in the shadows. I was arrested; I was pulled over and arrested for driving without a license. And I was driving

with my partner, who is a legal permanent resident, and I just want to talk about how those of us who are living here would like a solution for our situation and a way to legalize and drive with a license. And I just want to say that, those of us who are here, are here to contribute and if there is an immigration reform that gets passed it would only benefit the country and it would help us be more integrated because we already are making a contribution and we are already here and we want to make a better life for ourselves and our family, and so if something does get passed it would be for the benefit of all of us. And again I just want to reiterate, I want to thank you again for allowing me to be here and have the opportunity to share my story, cause there are many like myself who are in this situation and I just appreciate the opportunity to be here and share with you.

Chair Hing: Thank you. It's our honor to have you here today. Thank you. Let's move onto the couple attorneys who are going to talk about second chance for immigrants with convictions and begin with Su Yon Yi, who's with the Immigrant Legal Resource Center.

Ms. Su Yon Yi: Hi, thank you so much for this opportunity to testify. My name is Su Yon Yi, I'm with the Immigrant Legal Resource Center. I, in particular, I wanted to testify about how the immigration laws are hurting immigrants and devastating immigrant families. In particular, I will focus on how the immigration law is really harsh and unforgiving when it comes to crimes, no matter how minor the crime was, or how long ago it was committed. To start, I wanted to share a story about Jorge. He has been in the country since 1966. He has a green card, he's a lawful permanent resident. He lived in California, he lives in California with his wife, his four children, and his grandchildren. And he's been a farmworker for 45 years. In 2009, after he went into the immigration office to renew his green card, he found himself in an immigration detention center in Arizona for something that happened over 20 years ago. In 1990, he was convicted of a drug offense, for buying some drugs and then selling it to a friend who told him he needed some money to pay for his dad's operation. So because of this offense, he ended up in immigration detention and had to fight to stay here. Luckily for him, the conviction occurred before 1996, when a lot of the bad immigration laws were passed. Because it was before 1996, he was able to apply for this thing called 212(C) waiver. Because he could have, he was eligible for that he can go in front of an immigration judge and tell him why he should be granted a second chance and be allowed to stay here with his family. So, for him, the story turned out well because he won 212(C) relief and now he's on his way to becoming a U.S. citizen. I also wanted to highlight two of the important changes that happened in immigration law in 1996. First, the immigration laws that were passed in 1996 greatly expanded what we, what is termed 'aggravated felonies.' Before 1996, this category was limited to really serious offenses, like murder, rape, or drug trafficking. But after 1996, even the most minor offenses fall into this category. So, some examples are: misdemeanor theft, for taking \$10 worth of video games, or \$15 worth of baby clothes, selling \$10 worth of marijuana, that's an aggravated felony. Or giving someone, a friend, a car to use in a burglary, that was an aggravated felony. So the second change that happened in 1996 was that, an immigrant who fell into this aggravated felony category could no longer go in front of an immigration judge and ask for that second chance. So, in 1996, 212(C) was eliminated and then now we have this more limited waiver. And today, when it comes to a non-citizen with an aggravated felony, the judge's hands are tied. They can't consider how long the immigrant has been here, they can't consider how long ago the conviction occurred or how serious it was, they can't consider rehabilitation. The result is that most definitely this person will be deported and permanently separated from their families. So because of this we recommend that immigration reform should include a broad waiver that allows immigrants to go before an immigration judge and ask for the second chance. We also a lot of additional recommendations for immigration reform that are laid out in these documents about principles for immigration reforms and I didn't bring enough cause I didn't know there were so many of you but-

Chair Hing: We'll make copies.

Director Pon: You can just submit that.

Ms. Su Yon Yi: Thank you.

Chair Hing: Thank you very much. Next witness is Anoop Prasad who's also, who's a staff attorney with the Asian Law Caucus. Thank you Mr. Prasad.

Mr. Anoop Prasad: Hi. My name is Anoop Prasad, I'm a staff attorney for immigrant rights at the Asian Law Caucus. I'd like to thank you for this opportunity.

Chair Hing: Into the microphone please.

Mr. Prasad: I've been encouraged as of late by the bipartisan realization that something is critically wrong with our immigration system. However, at the same time there's been a failure to address by Washington. The sources of most egregious wrong is been committed by our immigration system and those are coming from our detention and deportation systems. Today alone

over 1,100 people were deported. The White House has refused to consider any reduction in deportation levels. It's even called for increase in enforcement as part of immigration reform. Things has gotten so out of hand that, if we wanted to return to a clean slate of where we were after the '86 legalization, we would have to release over ninety percent of people in detention right now. The administration promises that the people in detention and the people we are deporting are dangerous criminals. However, statistics show that the overwhelming majority of people being deported have no history of violent crime. In fact, soft drug offenses are the single biggest category of deportable offenses. The laws have gotten so harsh that single simple possession of a small amount of drugs results in mandatory detention. That means you get detained without a bond hearing and it results on a lifetime bar to getting status. And even if the offense is decades old, it doesn't matter, there is no waiver. We must restore proportionality to our immigration system. Often I go into court and I watch hearings take place and the hearings only last a few minutes. The judges deport permanent residents after looking just at their conviction records. The person I talk to and the person the judge sees are two completely different people. The people I talk to have family members here, they've been rehabilitated, they've given back to their communities. But the judge doesn't get to look at any of that. All the judge looks at is the conviction records. And this is the fundamental problem with our criminal deportation system. It judges people based on their worst acts alone, their worst fifteen minutes of their lives. It is a standard by which none of us would want to be judged. I wanted to tell you about a client, who hasn't yet been deported, his name is Samuel Lim. He is a San Francisco resident. He came to the U.S. as a green card holder when he was a child. He is a really bright kid. When he was 16 he graduated high school in here in San Francisco, and was admitted to UC Santa Cruz. The summer before he was going to start college, he got involved with a group of kids who took place, took part in a robbery. He was tried as an adult and sentenced to nine years in prison even though he had no prior criminal records. While he's been incarcerated he finished college, he took part in the California Department of Corrections' Fire Camp Program. He trained as a firefighter, he's trained as an EMT. For the last two years he's been a first responder in the city of Susanville. Later this year, he's going to be turned over immigration and go in front of an immigration judge. But the judge will never know any of that. He'll never know he lived here since he was a child. He'll never hear from his heartbroken mother. He'll never hear from the people whose lives he saved as an EMT. All he'll see is that one criminal conviction when he was sixteen. We need to fix our criminal deportation system and our detention system so it's proportional and embraces American values of giving people a second chance and redemption. Thank you.

Chair Hing : Thank you. Mr. Prasad, Did you bring a client with you, Dean Santos?

Mr. Prasad: Yes, Dean Santos, a member of ASPIRE is going to speak about his own experience in our detention system.

Chair Hing: Thank you.

Mr. Dean Santos: Good evening everybody, I have a prepared statement today to make sure I don't freeze out in front of you all, like I did last time. My name is Dean Santos and I am twenty-two, I go to Notre Dame de Namur University where I am the head of the Immigrant Rights Project of the Sr. Dorothy Stang Center for Social Justice. And I'm also a member of ASPIRE, Asian Students Promoting Immigrant Rights through Education. And I like to share my story, my personal story regarding being caught up with the wide net of Secure Communities. Two years ago, I made the mistake that threatened to ruin my life. I was arrested for petty theft and I was detained by ICE after serving my sentence. After being apprehended, I remember being given two choices: to either deport myself through voluntary departure or to fight my case and be detained indefinitely. And I chose to fight my case; I have too much to lose. I remember calling my mother. I told her how sorry I was, and that was the hardest thing because she sacrificed everything, yet I screwed it all up with one bad judgment. Going back to the holding facility, I remember being in a corner crying and an older gentleman comes up to me and tries to comfort me, rubs my back and says: 'Mijo, mijo, everything is going to be okay.' And I was thinking to myself: 'How is everything going to be okay? I lost control of my life.' And I asked him: 'Are you fighting your case too?' And he says ', Yes, I am fighting my case too. I am fighting it for my daughter.' That right there make me cry, even more, broke my heart. The man was arrested for driving without a license and we were both being sent to Florence, Arizona. After that incident we were both put on a plane and sent to Florence, Arizona where I spent the best winter break of my life. And I'm talking about this story to the Commission to highlight the casualties of Secure Communities because even though the policy itself was aimed to get the heinous, worst criminals, what not, whatever that means, it catches a lot of low priority cases. And because of that, families are broken apart; lives are ruined, communities torn apart. And I was lucky enough to actually find, get help from my own community where I was saved from the claws of deportation. I am speaking for those who are detained because, I feel their pain too, I have felt that pain. And with talks of comprehensive immigration reform abound there's a lot of talks of enforcement. What does that mean? Militarization of the border, expansion of Secure Communities, mandatory E-Verify, where has this 'hang everyone' approach. And I'd like to highlight that enforcement should not be the priority but rather should be focused on fixing our broken immigration system. Thank you.

Chair Hing: Thank you Mr. Santos. Can you leave a copy of your statement?

Mr. Santos: If you can read my writing.

Chair Hing: Well, won't you write it up and email it to us?

Mr. Santos: Okay.

Chair Hing: Thank you. Now we are going to turn to asylum at this point and the first speaker is Nunu Kidane who is the director of the Priority African Network. Thank you for being here. I think you have been here since four o'clock. You deserve a medal.

Ms. Nunu Kidane: Thank you Mr. Commissioner, and Mr. Chairman and fellow commissioners. I'm really pleased to be here. It's a privilege to speak with you today and I want to thank you for all the work that you are doing, sitting here and listening to the testimonies. I was, I was just so moved and I echo everything that they have to add. And I thank you for taking the time to listen, and to put this in policy and to take them forward. My name is Nunu Kidane and I'm the director of Priority African Network which is based in Oakland California. I'm one of those that was allowed to come across.

Chair Hing: You spend, she spends a lot of time in San Francisco. That's how we let her in (laughter).

Ms. Kidane: My organization actually does not, is not a service-providing one but we work directly with community associations and groups from different African countries. And what this means basically is we have regular forums called the African Leaders, the African Community Leaders Forum in which we talk about both immigration and housing and services and resources that are available, including health and capacity building. And we do this because we know typically when people talk about immigrants, they have an image in mind of who they are talking about. And it is true that the majority of immigrants are in fact Spanish-speaking and there is a network of information that is available so people could just call La Raza and you know, get access to information. When it comes to African immigrants it doesn't always work that way so we provide this as a channel to make information available. I'm also member of the Black Immigration Network which is a national group of people of African descent who want to see immigration reform proceed in more humane and dignified way. The community that I work with, as I just mentioned, African immigrants, is probably one of the least visible. We've talked, we've heard a little bit about invisibility from the domestic workers. We are part of the domestic workers. We are part of the LGBT community. We are part of the people that have been impacted with Secure Communities so we are the whole gamut because, I think what makes us unique in many ways is the fact that we transcend not only immigration status but also the racial status. So when we talk about racial profiling, which typically happens in terms of what we hear about Arizona, it puts a whole other meaning in terms of what it is to be black and immigrant. Just to give you a little bit of working numbers: the African immigrant community group, the population is increasing nationally. It's definitely increasing here in the Bay Area. I'm sure is not a surprise to you all you have one, a commissioner who is from Eritrea. I myself am from Eritrea. We have people in the audience as well who are from different African countries. So the visibility and the increase is quite evident. It's estimated that two to five percent of the whole immigrant population in the Bay Area are immigrants from different African countries. So, how does this all link with immigration reform and detention and asylum cases? And, to make my statements somewhat brief, I will mention that I'm sure it comes as no surprise to any of you that the profound reality of what we understand to be race in America is operating very much within the immigration sphere. So when it comes to detentions, not only do we get picked up more because we are black, we are identified primarily on the basis of our, the color of our skin, and highly more likely to be picked up for immigration infringements as well. I would like to read for you sort of a quick statement that appeared in a book that a friend of mine just sent me. The book is called *The Immigration Crucible: Transforming Race, Nation, and the Limits of Law* by Phillip, I can't even pronounce his last name I'm sure you know him, do you know him? Kretsedemas. Anyway here goes, this is the quote that I wanted to read to you: 'The only national study of local law enforcement practices has shown that Mexican nationals constitutes 70 percent of all immigrant violators apprehended by local police between 2002-2004 despite the fact that Mexicans comprise, comprise only 56 percent of the unauthorized Mexican population immigrant population- migrant population. Apprehension rates however, of Caribbean and African immigrant violators were even more skewed. Members of this population were apprehended at a rate that was five times the size of their presence in the unauthorized migration, migrant population.' This is quite a significant statement, I think, in terms of how disproportionately the immigration system is affecting people. I can tell you briefly that the communities that I work with so believe in the morality and equality and fairness of what it means to be in the United States. So when we have the community gatherings they are absolutely incredulous when we talk about these new policies that are coming out and they keep saying, 'Well this is not what I thought America was about' and I have to say, I completely agree. Our responsibility is to say then, the ideals that this country stands for. It's your responsibility to make sure that it's changed, that it is in fact practicing the highest level of ideals and morality and legality and fairness of play. So thank very much again for giving me the opportunity to speak with you today.

Chair Hing: Thank you Ms. Kidane. We are going to move on to representatives of the African Advocacy Network, Adoubou Traore and the project director, as well as, paralegal Charles Jackson. Thank you.

Mr. Adoubou Traore: Thank you. I think there couldn't be a better introduction for allowing the voiceless and the faceless in the faceless.

Chair Hing: Can you lift up the microphone? You are the tallest person to testify, you got to, you have to do some work there.

Mr. Traore: So I was saying that you know that there couldn't be any better introduction than what my sister Nunu has just said and giving a chance to our voiceless and the faceless to be heard and participate in the debate. So we both work for the African Advocacy Network. We exist as a project over Dolores Street Community Services. And we essentially serve African and Afro-Caribbean immigrants with legal services. And in our everyday work, I can tell you for sure that all the people coming into our office to request services strongly believe in abiding by the law of the land they have chosen to, for some of us, to live all their entire lives in. And each of them has a story to tell. It takes some of them six months, one year, two years, sometimes three years to make it to the border of the United States. Yet once they are at the border they would go through different services, immigration services. Because they strongly believe that if they take the chance and explain why they are sitting at that border they'll be, they'll have the possibility of explaining why they are here and they, you know, would show the way how they can access you know, legal path. Yet they go to a border, they talk to immigration services and then they say, 'Okay, you know, you are going to go and be in front of a judge.' And then you know this is where most of or all of the problems start. So sometimes we have prolonged delays at the immigration court where some respondents are waiting for more than 2 years before their cases are heard. Currently cases filed in 2012 have been scheduled for 2015. Cases that could've been resolved at the asylum office level are being shifted to court. Most times ICE will fail to timely file cases. And attorney Francisco is in here, he's been helping us a lot: going after ICE agents, calling himself, making sure the files are transferred to a court. And of course you know this has its toll on our people: depression, fear, constant fear of being deported, and this is something we'd like to see addressed. And another thing is that you know, some countries like Haiti or Liberia for more than 20 years, Liberia has a very specific story with the United States. And supposedly the only American colony in Africa and after the Liberian War they were on the TPS. And then they came here, it's been more than 20 years these people are on the TPS. Then it was changed into DED. DED, which is 'Deferred Enforced Departure.' But the problem is that you know, these people have been here they can't get out of the United States. They will never become American citizens. They will never become permanent residents and they will never, ever have a chance to bring their children, to bring their spouses, and to bring anybody from their families here. So the result is that you know, we have dislocated families. And again we put a lot of hope in the immigration reform. And I would like again you know to echo what an attorney said. I was sitting in the other room and he was making a case for smaller communities. Of course you know we do support all the efforts that are made for larger communities, but again you know we like that you know smaller communities and most of you know the growing ones, like the African and the Afro-Caribbean communities also be, to be taken into account. I would like just to finish with one question and it is about the VAWA and the question is how will the reform address VAWA, and mostly the fact that you know it has lapsed. Because, you know, again, you know, these are some of the situations that, you know, the people that we are serving, you know, are dealing with on an everyday basis. And I would like, you know, to reiterate the fact that, you know, we are putting a lot of hope that, you know, people are going to be given a chance. They just want to obey the law, just show them the way. And I believe that, you know that if the comprehensive immigration reform shows them the way maybe, you know, then the next issue will be how we can take care of all these people who are just praying every day, that you know they are just given a chance to be a part of the process. Thank you.

Chair Hing: Thank you very much. Yes mister, go ahead please. You are on the schedule. That's true. Go ahead.

Mr. Charles Jackson: My name is Charles Jackson, and on behalf, looking about issues that we've. I just briefly want to talk about the background check and then, and... We all know that all applicants for immigration benefits are subject to background checks to ensure that they are entitled to the benefits but due to 9/11 background checks are not being conducted purely for security reason, based on the sweeping antiterrorism law. Now some applicants are interviewed by some office but are still waiting for that decision. Some background checks continue over a year. All the applicants who have no connection with terrorism have had the application for permanent residency denied or delayed due to this sweeping law about [inaudible] support. For example, a teenage girl was abducted in the Democratic Republic of Congo at age twelve. She spoke against her captors and then she finally escaped to the United States. Now application filing is on hold on the grounds on the time she was kidnapped she was a member of a terrorist act organization. So these are some of the issues that we bring up, and so we bring this to attention so it becomes part of a larger discussion in your forum. Thanks.

Chair Hing: Thank you very much. Thank you to both of you. Miss Frydman who's on the schedule actually could not make it tonight so that actually concludes the invited testimony for this hearing. Thank you for all the advocates and community members who have spoken. We will actually now continue to public comments so I want to remind anyone on the public who would like to speak, you'll have 2 minutes and please bring those up to the clerk. Chair, Director were these two already?

Director Pon: Those two already testified with Self Help for the Elderly.

Chair Hing: Right. Each public comment will be limited to two minutes. Thank you. The first person is Alicia Contreras. Is the microphone level?

Director Pon: Yes, she'll help.

Ms. Alicia Contreras: Good evening everybody.

Chair Hing: Good evening. Thank you.

Ms. Contreras: My name is Alicia Contreras. I am originally from Mexico and I'm here to thank you, everyone for the work you are doing and to say the two things that I think are very important for a good immigration reform. The first is that we have to look also at where the problem starts and, whatever we do in the U.S. If we don't work internationally with our partners it's not going to be complete, because a lot of my people from Mexico has to, have to immigrate here because the free trade is messing up the whole industry in agriculture in Mexico and unless there is fairness there, I mean what are the people in Mexico supposed to do when the free trade is not fair for Mexico? I believe that there has to be a win-win situation for both countries. Violence is huge, if the U.S. doesn't support Mexico to deal with the violence that is completely out of control. Where do you want the people to survive? I'm terrified of Mexico. I don't feel safe going to visit my family. And the second part is same sex immigration reform. I fell in love in 1996 with a woman who is a U.S. citizen. I had a good job in Mexico. I won an award that allowed me to come to the U.S. in 2001, 2000 excuse me. We got together. In 2001 she adopted a kid which I love dearly. I was there from day one. The kid is African American. She was born in the U.S. For the next ten years every year we had to suffer the pain of, am I going to get a renewal with my work visa? Last, two years ago, I had to leave to Mexico because that was the end of all the years that I could have with H1B visa. And that year my lawyer told me: well, you have to leave to Mexico. You have to go to Mexico and wait there. The green card application is in and you just have to wait one year at least outside of Mexico. Three months or five months later my partner was diagnosed with cancer. If we were heterosexual we would have marriage twelve years ago. I will be a citizen by now and instead I was terrified because the kid is also my kid and I have no rights. We didn't even think of who would take care of the kid. Thanks to our lawyer we found a way for me to come back before the end of the year. But I had to wait for another year without work because I was not allowed to work during this period. I have always respected all the laws of the U.S. I believe in the U.S. and I hope we have a fair reform that does not discriminate sex, same sex couples. Thank you very much.

Chair Hing: Thank you Ms. Contreras. The next speaker is Maria Ibarra.

Ms. Maria Ibarra: Hi, my name is Maria Ibarra. My English is not too good but so so. I'm a single mother, I have two kids. They don't speak Spanish. I am illegal. I have a problem to work in this country because I'm illegal person. Now, my situation is a little complicated. I don't know where I am, I try working but because my permit to work is not, it is expired and go apply for another one is hard for me. That means I need go back to Mexico and my kids don't speak Spanish, only English and for me it's difficult. But Mexico all work for my kids. My daughter asked, 'Mommy I need this, mom I need that, mommy mommy, mommy, mommy. And I'm a single mother. I'm tired looking for job. I'm tired of hear to say, 'I'm sorry, I'm sorry, I'm sorry, I'm sorry.' What I do with that? My kid, my daughter asking for something, I do the same thing, 'Honey I don't have money for buy this, honey I don't have money for do that. Why? Because I don't have, I'm not legal in this country, I have a problem to work in this country.' See, tomorrow I need to go to the DMV, apply for my ID. My permit to work is not okay. My social security is only for working. I'm a little worry about go over there and say. You know? What I do? I don't have nobody take care of my kids. I'm a single mother. I take my kids the whole life by myself. Give me answer about that. That's what I need. Answer. What I do? I'm tired, I'm real tired. Everything. That's all.

Chair Hing: Thank you Ms. Ibarra. The next speaker is Jackie Gonzales.

Ms. Jackie Gonzales: Good evening Commission thank you for the time. I am an attorney at Dolores Street Community Services and I appreciate your patience with giving our organization and clients so much of your time this evening. I should be at home preparing for a hearing I have tomorrow morning. This is a case I have been working on for about two years, almost the same time that I have been at Dolores Street. I felt compelled to stay because we hear the testimony of everyone that's been here tonight and it's been sprinkled throughout their testimony getting detained and getting sent to Florence, Arizona and getting sent out of San Francisco and I, a lot of the issues that we are discussing today I can appreciate as an attorney, are issues that the commission cannot resolve because these are, immigration as we all know is a federal issue but I think that the City of San Francisco has taken very important positions historically related to immigration and it makes me so happy to see the

Commission here this evening dedicating their time to this. As you know, this city passed a resolution against SB1070 in Arizona and I think it's very important that we take a position right now. Every day that people are detained here in San Francisco they are transferred out of San Francisco immediately. Our office provides frontline defense pro bono to immigrants here in the City of San Francisco. The case I am representing a gentleman in tomorrow is a man who has lived in the city for nearly fifteen years. He was detained outside his home on January 9th while was taking his daughter to school. Our office went, filed to request that he remain here so we could represent him for free because he is a member of this community, there are people willing to testify for him and Immigration said we did not move quickly enough. We did not move quickly enough to try to ask that he remain here. And tomorrow that man is going to go in front of a judge and all I can do is speak over the phone because they said that witnesses cannot appear to testify on his behalf. So when we think about the people that we are losing, I want you to appreciate that those people are not even getting deported from the City of San Francisco to Mexico, to Honduras, to wherever they are getting sent. They are getting first transferred to a state where we have taken a public position as a city that we do not condone the things that happen in that state. So at a minimum I think that this committee should seriously consider taking a position on the practice of removing residents of the City of San Francisco to places where they have lack of access to their family, to counsel and to just community support that would enable them to be released from immigration custody which they should not be in in the first place. Thank you very much.

Chair Hing: Thank you for that recommendation. It makes sense. The final speaker is Bianca Rojo.

Ms. Bianca Rojo: Hello, good night, I guess. Thank you so much for your time, I know it's been a couple of hours since we all have been here. My name is Bianca Rojo and I am a true proud San Franciscan. I was born here, I was raised here in the Tenderloin and the reason why I'm up here speaking is because I want to thank you for giving attention to such an important issue as immigration. The reason why I'm speaking is because I am a U.S. citizen. I'm 22 years old and since 2005 my parents have been deported. So it is a very important issue to focus on deportation and the, who it affects, people in our community who work hard, two, three jobs at a time to help our economy grow, but it is also important to understand and pay attention to the effects, not just physical, but emotional effects of the children who are left here behind, U.S. citizen children in our communities. At a young age of fifteen I've been taking care of my younger brother who at that time was fourteen years old, thirteen or fourteen years old. And it's very important to know that in our community we were all, we all came from somewhere. Somewhere. It doesn't matter if it was from Europe, from Mexico but it's, it's been very hard to know that there are so many people in our community who are continuously being deported because of they're, quote unquote, considered criminals. At a young age, at five years old, I was afraid to see the police. Even if I was a U.S. citizen I was afraid that one day I was going to wake up and my parents were not going to be here. And that reality came true. So until now, I'm 22 years old and I still don't have my parents here. So it's very important to understand the effects that it causes the entire family, not just the person who came and immigrated here. So thank you very much for your time, and I appreciate all of your comments. Thank you.

Chair Hing: Thank you very much. Thank you for everybody who attended. Is there any new Commission business? Any comments from commissioners? Commissioner?

Commissioner Moses: Where do we go from here?

Chair Hing: Well, a report will be written digesting the testimony and the recommendations and that report will be done very quickly and very soon. I'm looking at the group of people that's going to help me write that draft. And then as the Commission understands, on March 14th we are having a meeting with policymakers where we will deliver the recommendations, probably in advance, and then have a conversation with them. Our task between now and then is to get relevant people to that meeting. Commissioner?

Commissioner Haile: I just wondered if we could get a list of recommendations from tonight to hang on to, for the March meeting. I would hope, in March, we would be able to come up with something we could . . . by.

Chair Hing: Definitely. That's part of the goal. Thank you.

Director Pon: Through the Chair, Commissioner, part of our intention is to have an official record of this hearing. We will, staff will be compiling the minutes and we will be glad to summarize or work with Professor Hing's students to summarize the recommendations. That's the intention- that you go into the policy discussion already with the packet of information from tonight's hearing and a set of recommendations.

Chair Hing: Thank you. Hearing no other business, the meeting is adjourned. Thank you.

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SECTION B. WRITTEN TESTIMONY SUBMITTED TO THE IRC

The following individuals submitted written testimony to the Commission. Their statements are included below.

1. David Bacon
2. Fely
3. Lillian Galedo, Filipino Advocates for Justice
4. Andy MacKay
5. Mary
6. Mary McNamara
7. Mona
8. Erik Schnabel
9. Petra Tang

1. David Bacon

Thank you for inviting me to address the commission today. I am here as part of the Dignity Campaign, a network of organizations supporting a proposal for immigration policy based on human, civil and labor rights.

We need an immigration policy that looks at the reasons why people come. I believe that movement and migration is a human right, but we live in a world in which a lot of migration isn't voluntary, but is forced by poverty and so-called economic reforms.

Our trade policy, and the economic policies we impose on countries like Mexico, El Salvador or the Philippines make poverty worse. When people get poorer and their wages go down, it creates opportunities for U.S. corporate investment, which is what drives our trade policy. But the human cost is very high.

In El Salvador, as we are speaking here today, the US embassy is telling the government to sell off its water, hospitals, schools and highways to give US investors a chance to make money. This policy is enabled by the Central American Free Trade Agreement, whose object was to increase opportunities in El Salvador for US investors. It was imposed on El Salvador in the face of fierce popular opposition.

Alex Gomez, a leader of the public sector unions in El Salvador, is in San Francisco today to explain what the consequences of this latest free trade initiative will be. He says if these public resources are privatized, tens of thousands of workers will lose their jobs, and their unions will be destroyed. They will then have to leave the country to survive.

He says four million have already left El Salvador, and two million have come to the US, not because they love it here, but because they can't survive in El Salvador. These migrants come without papers, because there are no visas for two million people from this small country.

The North American Free Trade Agreement did even more damage than CAFTA. It let U.S. corporations dump corn on the Mexican market, to take it over with imports from the U.S. Today one company, Smithfield Foods, sells a third of all the pork consumed in Mexico. Because of this dumping, and the takeover of the Mexican food market, prices dropped so low that millions of Mexican farmers couldn't survive. They too had to leave home to survive.

Mexico used to be self-sufficient in corn and meat. Corn cultivation started there. Now it's a net corn and meat importer from the U.S.

During the years NAFTA has been in effect, the number of people in the U.S. born in Mexico went from 4.5 million to 12.67 million. Today about 11% of all Mexicans live in the U.S. About 5.7 million of the Mexicans who came here were able to get some kind of visa, but another 7 million couldn't. They came anyway because they had very little choice, if they wanted to survive.

Our immigration laws turn those people into criminals. They say that if those migrants without papers work here it's a crime. But how can they survive here if they don't work?

We need a different kind of immigration policy – that stops putting such pressure on people to leave, and that doesn't treat them as criminals if they do.

What would it look like?

First, we should tell the truth, as the TRADE Act, introduced into Congress by Mike Michaud from Maine would have us do. We should hold hearings about the effects of NAFTA and CAFTA, and collect evidence about the way those agreements have displaced people in the U.S. and other countries.

Then we need to renegotiate those existing agreements to eliminate the causes of displacement, and provide compensation to communities that have suffered the effects of free trade and corporate economic reforms intended to benefit U.S. investors.

It makes no sense to negotiate new trade agreements that displace people or lower living standards, so we should prohibit them, and especially make sure all future trade treaties require adequate farm prices and income in farming communities, and don't require the privatization of public services.

Increasingly the intent of international agreements, like Mode 4 of the World Trade Organization, treat displaced migrants as a vulnerable labor force, and seek to regulate their flow with guest worker programs. We should ban the inclusion of guest workers in any future trade agreement or treaty

We should also prohibit U.S. military intervention or aid to support trade agreements, structural adjustment policies or market economic reforms, and stop the U.S. embassy from putting pressure on countries to adopt measures that benefit corporate investors at the expense of workers and farmers.

Finally, we should ratify the UN Convention on the Rights of Migrant Workers and Their Families, as an alternative framework for recognizing the rights of displaced migrants.

We also have to look at how migrants are criminalized once they arrive in the U.S., especially the criminalization of work.

We remember the 1986 Immigration Reform and Control Act because of the amnesty, which gave legal status relatively quickly to almost four million people. But the law also contained employer sanctions for the first time, which we often forget. That provision says that employers will be fined if they hire undocumented workers.

This sounds like a law against employers, but it's not. It's an anti-worker law. No boss ever went to jail for violating it, and the fines are not great, and in any case are forgiven for employers who cooperate with immigration authorities. But over the last four years, hundreds of thousands of workers have been fired for not having papers.

Now Congress is talking about a new reform, and we have to use this opportunity to push to repeal this law. Some think that since a new legalization will give workers legal status, sanction won't really affect anyone anymore.

But even the most positive predictions about a new legalization still assume that millions of people will not qualify. And the day after a new law passes millions more people will come to the U.S. because of the same pressures that caused past waves of migration. This is especially true if a new immigration reform ignores the need to renegotiate trade agreements and eliminate the huge displacement of people they cause.

These future migrants are not really strangers. They will be the husbands and wives, parents, cousins, people from the same town as the people who are already here, already part of our communities.

So we need to keep this law from being applied to them, to making it a crime for them to work. Unfortunately, though, Congress isn't talking about getting rid of employer sanctions. In fact, they want to make the current application even worse.

So it's very important for us to look at how has this law been used. One way is when the employer uses it to screen people they are going to hire, using a database called E-Verify. Congress and the administration are calling for making it mandatory for all employers to use this database.

For people who are currently working now and have no papers, what it means is that if you lose your job, it will be hard to find another. That exposes people to pressure by employers to work for low wages in illegal conditions.

But employers today also use it to reverify the immigration status of people they've already hired. This is a violation of the law. Once an employer accepts the I-9 form filled out by a job seeker, along with their ID, they can't reverify this at some point in the future. But they do. This just happened, for instance, to three workers who belong to the International Longshore and Warehouse Union at Waste Management, Inc. in San Leandro, California. The union has gone to the Oakland City Council to protest these illegal firings, because WMI operates under a city garbage contract.

Employers also announce they intend to begin using the E-Verify database when their workers start to organize. That's what's happening at the Mi Pueblo supermarkets in northern California, where E-Verify checks are being used to terrorize workers to keep them from supporting a union.

But there's another employer sanctions are enforce that is even more dangerous. Immigration agents, working for the Immigration and Customs Enforcement (ICE), go into the personnel records of an employer. They then compare the information given by workers on the I-9 form to the E-Verify database, looking for workers who don't have legal immigration status. ICE then makes a list of those workers and sends it to the company, telling the employer to fire them.

This is what happened at Pacific Steel Castings in Berkeley, California, last year. Two hundred and fourteen workers were fired as a result. Some had worked in the foundry for over 20 years. They lost their homes, and their children's dreams of going to college were destroyed.

Hundreds of thousands of workers have lost their jobs in these enforcement actions, called I-9 audits, over last four years. Almost five hundred janitors in San Francisco, and over a thousand in Minneapolis. Thousands of workers doing some of the hardest work imaginable in meatpacking plants around the country. Farm workers. Construction workers.

I believe it is possible to stop these firings. The courageous young people who convinced the administration to stop deporting students brought to the U.S. without papers as children, the Dreamers, showed that it is possible to change the way the government enforces immigration law. The administration can decide not to use this enforcement method that has such a destructive impact on workers and their families.

But we must also change this law. Otherwise, our experience over the 25 years since it passed is that immigration authorities will simply find another method for making it a crime to work for people who don't have papers.

We also need to recognize that employer sanctions are linked to the growth of guest worker programs. One of the main purposes of making it a crime to work without papers is to force people to become guest workers. The Southern Poverty Law Center and others who have documented their extreme exploitation of workers have called guest worker programs Close to Slavery.

When employer sanctions are used to make workers vulnerable to pressure, to break unions or to force people into guest worker programs, their real effect is to force people into low wage jobs with no rights. This brings down wages for everyone. Employer sanctions make it harder for all workers to organize to improve conditions, not just for the workers who have no papers.

Instead of accepting as a fact of life that this part of the law will continue, or even worse, that E-Verify will become a mandatory national program, we should immediately repeal employer sanctions, and dismantle the E-Verify database. We have to stop enforcing immigration law in the workplace, because its real effect is to make workers vulnerable to employers, and to make it harder for all workers to organize to improve conditions.

We should also prohibit states from enacting their own employer sanctions laws. It's not just Arizona or Alabama or Mississippi that have done this. California passed a state employer sanctions law before the federal law passed in 1986.

What would really help workers to raise wages and improve conditions is a much stricter enforcement of worker protection and anti-discrimination laws, for all workers. Funding for the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board and other labor law enforcement agencies should be increased.

Threats by employers using immigration status to keep workers from organizing unions or protesting illegal conditions should be a crime. Two Supreme Court decisions, Hoffman and Sure-Tan, need to be overturned as well. They say that if workers are fired for union activity and have no papers, the boss doesn't have to rehire them or pay them lost wages, because employer sanctions makes it illegal to employ them to begin with. But no punishment for violating labor rights really means those workers have no labor rights at all. This too hurts other workers in the same workplace who also want to organize a union, since it makes the undocumented so vulnerable. Instead, we should increase organizing rights by prohibiting immigration enforcement during labor disputes or against workers who complain about illegal conditions.

And instead of pitting workers against each other, as our current system does, we need to reduce job competition. Congresswoman Sheila Jackson Lee of Houston had an innovative proposal that would have set up job creation and training programs for unemployed workers at the same time it gave legal status to workers without papers. This is the kind of proposal that people can fight for whether they are out of work, or working without immigration status.

Social Security numbers should be made available for everyone, regardless of immigration status, instead of treating the numbers as a means for enforcing immigration law. All workers contribute to the Social Security fund, but because undocumented people are working under bad numbers, they pay in but can never collect the benefits. This will come back to haunt us when those workers need disability payments or get too old to work, which is the reason why we set up the Social Security system to begin with. We don't want old people eating dog food, regardless of where they were born.

By the same token all workers should be able to receive unemployment benefits regardless of status, since they and their employers pay into the funds. Employer sanctions disqualify the undocumented from these benefits.

These are all proposals contained in the Dignity Campaign, a proposal for immigration reform based on human, civil and labor rights.

Thank you for this opportunity to present them to you today.

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2. Fely

My name is Fely and I'm a widower, a mother of six, and a caregiver. I first arrived in the United States in 1989 with my husband and youngest son. At the time, my youngest son was the only one who was qualified to come along with us. Although it meant leaving the rest of my children behind, we wanted to give them a better life. When we were given the chance to leave our life in the Philippines and come here to the US, we took it.

My father was a veterano who fought in WWII and received his US citizenship. After he received his citizenship he petitioned my husband and I to come to the US where my youngest son was also a beneficiary of our petition. After my father's petition and waiting eight years for our visa, we moved our lives to the US. I was sad to leave my home and my children, yet I was also very excited for our new lives. In the US both my husband and I received our first job as cashiers at St. Vincent de Paul. After I got laid off, I then worked at the Salvation Army. After working at the Salvation Army, I got a job as a screener at the Oakland airport. In 2011, I lost my job as a screener and became a caregiver.

In 1990, my husband was able to petition for two more of our children to come to the US. After the petition we waited for five years before a visa was available for them to come here. Though I was happy that two more of my children were going to join us, my hopes for reuniting my entire family shattered as my husband passed away in the month of October 1992.

In 1996, I became a naturalized citizen and petitioned for the rest of my three children to join us. When we petitioned they told us that they didn't know how long we had to wait before a visa would be available. Last year, when it seemed like a visa was just about to be available, I went home to the Philippines to wait with my children. To our surprise, the following month we were told that there would be a backlog for an additional four years. It has now been 16 years and we're still waiting for a visa to be available for my children.

I'm not sure what will happen in the next four years and I fear for the worst. I was 55 years old when my whole family was separated from each other and I'm now 80 years old. I'm still working to support my children back home because life in the Philippines is very hard. I want to be able to be with my family and my children, so I travel every year back home and back to the US to be with family. It's important for families to live happy lives, but it is also important for us to be together so we can help support each other. We need our families for support and we need to support fixing the long wait and the backlogs to the visa system that keeps us separated from our families.

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3. Lillian Galedo, Filipino Advocates for Justice

Good evening. I am the Executive Director of Filipino Advocates for Justice. We are a 40-year old social service and advocacy organization located in Alameda County, and have been BIA recognized since the early 2000's.

I'm speaking today about the issue of Family Reunification.

Family Reunification has been the cornerstone US Immigration Law since 1965 based on the logic that immigrants thrive and are more likely to succeed in their integration to their new country when they have a base of mutual support and are surrounded by their loved ones.

For at least three decades now thousands of families have had to wait years and years to have the benefit of united families.

The hardship created by these long separations is likely one of the primary causes for the number of undocumented in the US. Quite simply people come regardless of the risks in order to be with immediate family members.

Immigrants from the Philippines have one of the longest backlogs or waiting periods for family visas. For instance: the wait for

F1(unmarried sons/daughters of US citizen)	- 15 years
F2A (unmarried children of LPR)	- 4 years
F2B (unmarried son/daughter of LPR)	- 11 years
F3 (married son/daughter of US citizen)	- 21 years
F4 (siblings of US citizen)	- 24 years

This is outrageous, so much change can happen during those many years, including the death of the petitioner which also nullifies the petition.

The Filipino community is more than 60% foreign born and Filipino families are a mix of legal and undocumented individuals so the pain of separation is wide spread in our community. Following me is a speaker to share her story.

But, before we go to her, we'd like to share some proposals for fixing this problem.

For at least a decade now we have been discussing the following remedies, most of which have previously been introduced by enlightened members of Congress including Congressman Mike Honda but no action has taken place.

Concretely, we need to:

- Raise the worldwide number of family sponsored immigrants to: 480,000 and allocate the unused visas from previous years.
- Raise the per-country immigration limit from 7% to 10%.
- Increase from age 18 to 21 years who is eligible to be petitioned by immigrant parents.
- Increase government discretion and flexibility in resolving barriers to family unity
- Death should not invalidate the petition of a citizen or LPR to reunite with a wife, husband or child(ren).
- Immediate family members of naturalized Filipino WWII veterans should be exempt from numerical limitations because of the historic injustice they have born with respect to recognition by the US as US veterans.
- Family visas should be equally available to same sex permanent partners.
- Repeal the 3 and 10-year bars that prevent immigrants from legalizing their status.
- Allocate a visa outside the per-country limits and worldwide ceiling to any individual waiting for a family-based preference visa for more than one year, or permit such applicants temporary admission pending the processing of their visas.
- Reclassify spouses and minor children of permanent residents to immediate relatives.
- Reduce the affidavit of support income test required of family-based immigrant sponsors from 125% to 100% of the federal poverty level.
- Lower fee structures to accommodate low-income, and larger families.
- Eliminate the cap on the total number of family-based visas available.
- Increase funding to the U.S. Citizenship and Immigration Service to expedite the processing of visa applications and to expedite adjustment of status procedures.
- Applicants for admission who can substantiate that they have been displaced by NAFTA policies should be given priority for entry into the U.S

Thank you.

###

4. Andy MacKay

US Immigration –Small Business Perspective
Andy MacKay, CEO, 20/20 Productions Inc (UK Citizen)

Immigration History

L1A – 2002, 7 years (renewed 3 times)

EB1C – denied, appealed, denied again

E2 – initial in 2009, plus renewal to 2016

My current situation is that we successfully renewed our E2 in 2011 (far smoother this time than the original E2 interview in London) and are now into our second year of a 5 year term – almost like a ‘mini Green Card’ to us, as we’ve usually had to travel and renew every 2-3 years -luxury!

These are some of my thoughts on the current US immigration system, which I put to the USCIS Chief of Public Engagement, whom I met at the EIR launch in Mountain View last year.

First of all, from my own experience of the immigration process (visa and green card applications):

With the L1A and E2 non-immigrant (i.e. temporary) visas, it has been mandatory to leave the U.S. in order to attend an interview, which in itself is a drain on small businesses' time and resources, and should I feel be possible to be carried out within the U.S. (particularly for renewals).

By contrast, when applying for the EB1(c) Permanent Resident status, there is no opportunity for a face-to-face interview, which, given the importance of getting the correct result to both the applicant and the USCIS, I would have thought is a necessity. This is particularly pertinent to the Entrepreneur/Small Business sector, where, as we heard last week, there is not necessarily a precedent or established awareness of the business model, given the pace at which new industries and technologies are emerging.

I understand that interviews are mandatory for Family and Marriage-related green card applications, so would think it natural to include business applications in the process, thus giving applicants an opportunity to discuss their case and evidence with an officer, who may otherwise not necessarily be aware of the particular circumstances. Whilst Michael Moritz's stated pipe dream of ‘in-house’ immigration offices is an extreme (!), I believe there is a case for judging cases more locally, by specifically trained officers who are aware of the localized situation (egg Silicon Valley startups, small businesses). This may add to the workload/headcount for USCIS but of course a by-product of that is the government is thereby creating employment (tongue in cheek!).

Secondly, I believe that in this economic situation there is an issue of job preservation as well as job creation. Thousands of small businesses rely on a network of locally-based vendors and contractors to assist in their business, and I believe that this should be taken into account within the parameters of the green card adjudication. Small businesses may have few full-time employees, and grow gradually, but often they are paying hundreds of thousands of dollars and more to U.S. contractors/taxpayers to fulfill their workload, all adding to the country's wealth and employment figures. The denial of just one potential immigrant employer can have a knock-on effect and jeopardize that situation unless taken into account.

One major hurdle that we ourselves will face in the future if we continue on the E2 visa and are unable to convert to a green card is that one of our children, now aged nearly 12, will time out at age 21 and be forced to leave the country that he has grown up in since he was 18 months old. His 9 year old brother however, as he himself states periodically, is an American citizen, and can't be ‘thrown out’. This issue of no route to permanent residency for E2 Treaty Investors is surely an easy fix, and must be considered important in preserving foreign investment in the US.

Another point is about the introduction, or rather lack of introduction, of Premium Processing for EB1C (Multi-national Executive or Manager). I addressed this question to the Chief of Public Engagement, and was told back in February 2012 that it was imminent. One year later -watch this space..... The ability to be able to get a swift decision on immigration for businesses is

key to the success or failure of any business enterprise, so it is disappointing that this relatively simple (and money-making for USCIS) exercise has not been given higher priority.

I'm happy to discuss any of these matters with interested parties, and look forward to the US Government's future development of the immigration system.

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5. Mary

Good evening, everyone.

My name is Mary and I am a domestic worker. In the year 2000, I was recruited in the Philippines by an employer to come to the United States and become a nanny. Even though all of my family is in the Philippines, I agreed because life in the Philippines was hard and I needed to support my 6 children.

When I first came to the U.S., I stayed in L.A. where I worked as a nanny, taking care of the baby. In 2002, the family left to go back to the Philippines. They took my passport and left me with the extended family members to work as a housecleaner for \$300/month. Cooking, cleaning, doing the laundry, all by myself.

When the family no longer needed me, my employer referred me to her friend in Seattle who said she had a job for me, so I traveled to Seattle to be a housekeeper. Again, I was only paid \$300/month because they said I would get my own room. But at this job, I was not only a housekeeper—they asked me to help them with their catering business and be a caregiver. My employer made me cook and clean at events without any extra pay. Sometimes, I would be asked to fill in as a caregiver at their relative's care home—where I would only get paid \$20 for the whole day. There, I would cook and clean in addition to taking care of 3 patients.

I was miserable because I was treated without any dignity, had no friends and could not send money home. I wanted to get out so I asked a friend of mine from the Philippines who now lived in Modesto, CA to help me.

In Oct. 2003, my friend's husband picked me up from Seattle and took me to Modesto. At first I thought I was going to be working at a restaurant, but instead they made me do housekeeping. They gave me a room to live in, but didn't pay me anything. This situation was worse than the one in Seattle since I could not send my family any money so I decided to escape. When I was about to leave, my "friend" got home and was so angry about my leaving she started to beat me up.

Luckily, I was able to get away from her and leave Modesto to work in a care home in Fremont, where I would get at least \$50/day for working almost 24 hours. There I assisted elderly clients with clean up, feeding, and bathing. I worked here for about a year then moved to a different care home to work.

At these care homes, I experienced even more exploitation and abuse. The employers would always tell me, "You're going to complain?! But you have to rights, you are illegal here!"

Finally, in 2012 I decided to stand up for my rights and approached Filipino Advocates for Justice to help me file a complaint against my employer. Since then, I have received a settlement and joined PAWIS, a Filipino caregiver support group that helps other people in similar situations. Today, I fight for the rights of all domestic workers—documented and undocumented.

The best way to stop the abuse of undocumented workers like me is to give us legalization.

Thank you all for your time.

###

6. Mary McNamara

My wife, Susanne, and I married in San Francisco on October 25, 2008, on a beautiful San Francisco Summer's day. We were surrounded by our family and friends and danced into the wee hours. Our witnesses signed the marriage license, we recorded it at City Hall and joined the thousands of other Californians who every day register with the state as married people. It was the happiest day of my life until then. Since then, I have had many happiest days of my life during my married life with Susanne.

We own a home together, share all of our finances, travel to see our families and friends and care for each other in every way. We are just like every other married couple in love, except for the fact that, this coming August, we face the prospect of Susanne's being deported and my leaving the country. I am a proud citizen of the United States. I have spent 26 years of my life here, I received my professional education here, I own a business here, employ people here and have deep ties to this community.

Susanne is a citizen of Germany and came here in 1999 to pursue advanced degrees in German language and literature. She earned her Ph.D from U.C. Davis in 2007. She always wanted to be a teacher and, before she met me, had planned to return to Germany to teach there. But, luckily for me, she changed her plans to be with me. For the past five years, she has taught at City College. Hundreds of SF citizens have learned the language and culture of Germany in her classroom. In addition to her classroom work at CCSF, she is the liaison for a group of German students who come to SF every year to learn about the United States. She is deeply involved in our community, giving free time to her students and to CCSF in these very difficult times for the college.

Susanne has been able to teach and contribute to CCSF because she was granted a business visa to work as a professor. That business visa has a maximum length of six years. The six years will expire this August and she will face deportation.

Even if DOMA is overturned, we have been advised that it will take time to work through the implications for immigration. We do not have that kind of time. The Supreme Court is expected to rule no earlier than June. Even if the Supreme Court strikes down DOMA, it is not at all clear that the administration will have time to work through the immigration issues before Susanne's August deadline.

And, of course, there is no guarantee that the Supreme Court will overturn DOMA. If DOMA stands, we have no options under current law. The choice that we face is a terrible one: Either I leave the country with Susanne and lose my business, my career and face the prospect of starting my life all over again in Europe, or Susanne and I must be separated indefinitely. It's a choice that no couple should have to face.

Susanne and I decided to marry in 2008 because we loved each other and wanted the simple dignity of not hiding our committed and permanent relationship. We believed in this wonderful country and that Americans would do the right thing and recognize that everyone deserves a fair chance to choose the person that he or she loves and to be treated equally under the law. It seemed to us a simple truth that, whatever one's moral or social beliefs, casting a person out of the country who is as married as the millions of other binational couples in the country is simply unfair. We ask for a very modest change in the law – one that recognizes the human reality of our lives and the thousands of others like us.

Thank you.

###

7. Mona

I'm a single mom with one child, a son. Both my parents and all my siblings are US citizens and live here in the US.

In 2000 when my son was 10, my parents brought him to America to show him all the good things this country has to offer. He fell in love with America and decided to stay. I couldn't imagine myself living so far away from him and the rest of my family, so I left for the US on a 10-year multiple-entry tourist visa.

I thought it would be easy to find a job here because I am highly educated and have many skills but I was not able to find a sponsor for a work visa. After exhausting all my resources and with my visa expiring, I found an immigration lawyer who promised me a H1B visa and extension of my multi-entry tourist visa for \$3500. Both failed and I was out \$3500.

I could no longer go back to the Philippines because we spent all our savings trying to get me a job. So my US citizen dad, petitioned me under Section 245(i). The petition was approved with the priority date of April 18, 2001. I am told the wait could be 15 years.

I couldn't work legally, so I tried to get an investor's visa by borrowing funds to start a small business while I waited for my priority date. But after a year the business failed in the big recession. I was broke and owed people money.

Meanwhile, my son graduated at the top of his class in 2007. He was accepted to UC Berkeley but we were getting deeper in debt paying tuition and fees and had borrowed much of it. We have been surviving on contributions from family and church friends, straining relations with both.

Just this year, thanks to President Obama, my son's temporary deferred status was approved through the Deferred Action for Childhood Arrivals. He got his SSN and California ID Card. What a blessing.

We are hoping for at least 2 things to happen within the next couple of months: 1) the passage of the DREAM Act; and 2) a substantial reduction of visa backlogs [especially for those of us who are already here in the US].

I am absolutely sure that I can significantly contribute to this economy. I just need the chance to work legally to be able to help my family and give back to the community.

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8. Erik Schnabel

Hello, SF Immigrant Rights Commission, thank you for allowing me to speak with you this evening. My name is Erik Schnabel and I have lived in San Francisco for 14 years. Although I'm a US Citizen, my partner of 9 years, the love of my life, is undocumented. Why is he undocumented? Simply put, like many others who are undocumented it is because our immigration is broken and needs changing. The story of our immigration system is filled with stories like his- he came to the US for a better life, leaving behind his family and friends to take a job in the US. But he is also undocumented because of homophobia and the way in which for my partner and thousands of gay, lesbian, bisexual and transgender immigrants to the United States that most doors to legal status are closed to them.

My partner is the "typical immigrant story". Originally from the Philippines, he worked hard, as a church choir director with the hope that it would lead to a path to sponsorship for a green card. However, the church because of its homophobic beliefs refused to sponsor a queer person for his green card. Even more so, like many immigrant workers who are used as cheap labor, the church because of greed and corruption, would only sponsor him for his green card if he worked as an indentured servant for them, working without pay in whatever way they wanted. Faced with these choices- be something that he is not and live a lie and give his life to them for years living as an indentured servant to their every whim; he walked away from his potential green card; to live his life with dignity and to be with the one that he loved.

As a result, we have lived the past 5 years like many other undocumented immigrants- in the shadows of society, in fear that every day could be our last together, that he could be picked up and taken from me and our life together at a moment's notice. That a simple traffic stop will lead to something worse. This has impacted us greatly- we had to move homes when he first became undocumented, picking up everything to ensure his safety. We have sometimes had to leave behind friends who we felt couldn't be trusted with our secret. He has lost jobs and been prevented from getting other jobs because of his status. Now he works for little pay under the table to support himself. In the last few years, I have had to support him financially at different times to ensure we get by. But at least we are together, for too many couples I know this situation has led to exile or separation for the partners.

A major difference from that of many immigrants is that one of his major avenues for getting legal residency was closed to us because we are an LGBT couple. Even though we were legally married in New York in 2011, the path to him becoming a legal resident by me sponsoring him for his green card was closed to him because of the discrimination towards LGBT people in the immigration sponsorship system. There is a bill that would change this discrimination currently in Congress, the Uniting American Families Act, which would change immigration sponsorship for legal status to include permanent partners, not just spouse. However this bill has been introduced for the past 10 Congresses, and to date has never received a vote despite having the most number of co-sponsors of any immigration bill in Congress.

But we may finally get to see this injustice turned around, as discussions have started about including the Uniting American Families Act in the Comprehensive Immigration Reform bill. It is currently included in President Obama's framework for the bill. However despite reassurances from Democratic Senators that it would be included in the Senate framework for the bill, many of have been disappointed that it was not included. Now it seems almost daily that we hear news coverage from Republican Senators falling over themselves to say that the issue of binational same-sex couples will be a "poison pill" that will "kill the bill".

While many LGBT binational couples will benefit from the potential path to citizenship that may be included in the CIR bill, this is simply not good enough. For too long, LGBT binational couples have patiently waited for the Uniting American Families Act to be brought up for a vote, only to be disappointed. We are here today to say that we demand a fair, human comprehensive immigration reform bill; one that does not make the current situation with our broken immigration system worse, where too many immigrants are excluded, where the line that people must wait in is made shorter, and where our immigration system based on uniting families will finally acknowledges LGBT families, so that my partner and I, and the at least 40,000 other LGBT binational couples are able to finally be able to sponsor our partners for legal status. Thank you!

###

9. Petra Tang

Chairman Hing and Members of the Committee, I appreciate the opportunity to testify before you and share my thoughts about the need for comprehensive immigration reform, specifically the need for expanded Science, Technology, Engineering and Math (STEM) and high-tech visas and why this is good for the city of San Francisco.

My name is Petra Tang and I am a partner at the Immigration law firm of Berry Appleman & Leiden with headquarters in San Francisco. We practice exclusively in the area of corporate immigration law. Our clients in San Francisco and the Silicon Valley range from across a broad spectrum of global industries, from science and technology, to engineering and financial services. As expected there is a particularly heavy focus in the Bay area in high technology.

Preliminary Comments

We live in an era of incredible technological advances in the science and tech worlds. It is hard to imagine a world without cell phones and tablets. Every year there are faster chips, higher-resolution screens, longer-lasting batteries. The forward progress in other fields such as medicine and manufacturing is moving just as quickly. Many of these advances come from foreign-born highly skilled engineers, scientists, and researchers. Foreign-born workers and entrepreneurs are leading the charge. It is no secret that some of the best known companies in America were started by people born elsewhere. Duke University's Professor Vivek Wadhwa conducted extensive research on this topic and found that in a quarter of the U.S. science and technology companies, the chief executive or lead technologist was foreign-born. In 2005, these companies generated \$52 billion in revenue and employed 450,000 workers. In Silicon Valley, the percentage of immigrant-founded startups had increased to 52 percent.

It is imperative for San Francisco and the Bay Area to continue to attract and educate highly skilled foreign-born students and workers in STEM fields and to have an immigration system that keeps those professionals here in the U.S. According to the American Enterprise Institute, each foreign-born U.S. worker educated in STEM creates an average of 2.6 American jobs. Immigration Reform is essential to keep these highly skilled and talented individuals in the Bay Area and the U.S., rather than driving them away.

Client Experiences

My clients are confirming the difficulties they face hiring and retaining the best and the brightest STEM workers. The most common work visa used in this country for these workers is the H-1B visa. There is an annual cap on the number of new H-1B visas and every year my clients are faced with the situation that they may not be able to hire the skilled professionals that they need. Every year my clients must turn away a percentage of potential new hires because they did not "make the cap". The bottom line is that the recruiters and staffers we work with are desperate to find people.

Even when the workers are able to get the temporary visas to stay, it can take many years for STEM and high tech workers to obtain permanent residency. This is a result of the per country limitation on green cards and for some individuals from China or India that path can take a decade or longer! In that time, they raise their families in the U.S., have U.S. citizen children and are productive members of their communities. Yet they live under the shadow of not knowing if they must leave. And during this long decade, our clients are finding that more and more of their talent is deciding that the long wait and the uncertainty is not worth it anymore. They are choosing to leave and take their talent either home or to another country where they can achieve stability for their families faster. Without a doubt this "brain drain" is a big loss to the companies in San Francisco and the US.

Proposals

There are a number of proposals being pushed forward as part of Comprehensive Immigration Reform and I'd like to turn for a moment to some proposals that might be helpful to retaining talent in the Bay Area and keeping San Francisco companies globally competitive and on the cutting edge- of innovation.

Increase the number of H-1B Visas Available

The current H-1B cap is limited to 65,000 new H-1Bs per year. A proposal to increase that number to 115,000 would give employers more ability to hire talent.

Uncap existing H-1B limit for Advanced Degrees

Allow foreign born US STEM Advanced Degree holders to apply for H-1B visas without limit. Foreign students are now the majority in U.S doctorate programs. The National Bureau of Economic Research found that more than 67% of doctorate students in engineering were from outside the U.S.. That is up 27 percent between 1973 and 2003.

Exempt US STEM degree holders, dependents and people of extraordinary ability and Outstanding Professors and Researchers from the employment-based green card cap

At this time, there are hundreds of thousands of foreigners working on temporary work visas who are in the queue for a green card. These are the skilled workers who have been honing their skills in the U.S. who are increasingly frustrated with the system. We stand to lose them to other countries such as Singapore, Canada, and Australia who are all welcoming skilled workers with open arms. Providing a faster route to the green card for these STEM skilled workers just makes sense. Stemming the "brain drain" must be a priority and reforming our green card system to address this is critical.

Recapture green card numbers that were not used in previous years

Despite the huge need, through bureaucracy, many green card numbers have remained unused over the years. Recapturing those numbers now to be used in the future or be rolled over to subsequent years will help relieve the green card back log.

Conclusion

Thank you for the opportunity and privilege to testify before you today. If we can commit to employment immigration reform, we can attract and keep highly skilled immigrants who will only allow San Francisco to prosper.

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IV. IMMIGRATION POLICY SUMMIT MINUTES



CITY AND COUNTY OF SAN FRANCISCO

IMMIGRANT RIGHTS COMMISSION

San Francisco Immigrant Rights Commission
Special Meeting on Immigration Policy
Thursday, March 14, 2013, at 9:00 a.m.
California State Building, Milton Marks Auditorium
455 Golden Gate Avenue San Francisco, CA 94102

1. Call to Order and Roll Call

The meeting was called to order at 9:07 a.m.

Present: Commissioners Coll, Fuentes, Haile, Hing, Kennelly, Kong, Maldonado, Moses, and Paz.

Not Present: Commissioners Chee (unexcused), Enssani (unexcused), Gaime (excused), and Ng (excused).

Staff Present: Adrienne Pon, Executive Director (Office of Civic Engagement & Immigrant Affairs); and Whitney Chiao, Executive Coordinator; Richard Whipple, Deputy Director of Programs; Danielle Lam, Outreach and Events Coordinator; Keyla Cordero, Language Specialist; and Ray Law, Language Specialist.

2. Announcements

There were no announcements.

3. Introductions/Opening Statements

Chair Hing welcomed audience members, commissioners, and staff. He stated that Vice Chair Kennelly would moderate the state and local policy discussion following the teleconference.

4. National Policy Discussion

Chair Hing introduced conference call participants and noted that several congressional offices offered to meet separately with representatives of the commission to discuss specific immigration reform issues rather than participate in the call. D.C. participants suggested that community members write letters to Congress urging their support on specific policies. They could not provide a timeline for reform nor details about the status of conversations with the so-called "gang of eight" bipartisan group of senators currently working on a CIR bill.

5. State and Local Policy Discussion

Vice Chair Kennelly welcomed state and local policy makers and invited Kimberly Alvarenga, District Director of Assembly Member Tom Ammiano's Office to speak. Ms. Alvarenga reported Assembly Member Ammiano is waiting for feedback from Governor Brown regarding the reintroduced California TRUST Act.

Chair Hing welcomed District Attorney George Gascón and invited him to speak. D.A. Gascón thanked the IRC for its work and shared his personal story as an immigrant. As a police officer, he worked primarily in immigrant communities. In 2006, he was recruited and became the Chief of Police of Mesa Arizona where he felt there was a very antagonistic environment not only against immigrants but against Latinos in general, despite the fact that many were second, third, even fourth, and fifth generation Americans. The anti-immigrant environment permeated throughout politics in the state where immigrants were

being wrongly blamed for every problem, whether economic or criminal. He opposed Sheriff Arpaio, known to be one of the biggest nativists in the U.S. today and a symbol of the anti-immigrant movement. He has been involved in all the litigation against Arizona's SB 1070 and other efforts throughout the country in Georgia, South Carolina, Utah, and Alabama. He believes that the Secure Communities Program (S-Comm) needs to be either completely eliminated or tremendously reformed, since most of the people detained or being deported under S-Comm are not priority criminal cases identified by ICE, and often are victims of violence themselves. He stated that we have to be realistic about a thoughtful path to legalization and citizenship. An immigration system needs to be created that recognizes the economic and social realities of the U.S. today—large numbers of unauthorized immigrants in this country have been attracted by the thirst for labor in many industries (agricultural, service or technology) and this industry thirst for labor will continue. An immigration policy needs to recognize this and allow for people to come and work legally. Even those in the Republican Party who probably a year ago would have completely opposed any kind of discussion over immigration reform recognize the need to part of the immigration reform discussions. DA Gascon's final advice to the commission and the audience was to be realistic about what they want to see, to be focused, and to seize the opportunity. He reaffirmed his commitment to change and his continued partnership with the commission.

In response to Chair Hing's question, District Attorney Gascón confirmed that the District Attorney's Office believes that people who have committed aggravated felonies can demonstrate remorse and should be granted second chances. He warned the commission that anti-immigrant groups frame immigrants as criminals to build support for their causes. Chair Hing thanked District Attorney Gascón for attending the summit and sharing his thoughts with the commission.

Supervisor David Campos stated that he recently passed a resolution in support of same sex binational couple and reuniting families. He explained that comprehensive immigration reform should begin at the local level. He urged the commission to pressure the Board of Supervisors and Mayor's Office to pass legislation that protects San Francisco residents. Supervisor Campos thanked the commission for its work and encouraged them to support comprehensive immigration reform that includes all individuals.

Vice Chair Kennelly welcomed John Loftus, San Francisco Police Department (SFPD) Deputy Chief of Operations. Officer Loftus reported that SFPD honors the City of Refuge Ordinance by excluding immigration questions when working with community members. He noted that SFPD is a progressive police department and will continue to support the commission.

Former IRC Commissioner Chris Punongbayan, Deputy Director of the Asian Law Caucus, commended the commission for playing a strong convening role. He encouraged the commission to consider three groups when discussing immigration reform: law enforcement, businesses, and faith communities. He also urged the commission to convene with the Santa Clara Board of Supervisors, unify positions, and support California as one strong voice. Mr. Punongbayan acknowledged the commission's work on repealing employer sanctions and urged them to work with other counties and take the lead on the issue.

Gabrielle Villareal from the California Immigrant Policy Center provided an overview of key issues and requested that the commission consider drafting recommendations on border measures. Ms. Villareal stated that she would send language from the Southern Border Community Coalition for the commission to review. Commissioner Paz questioned the Chamber of Commerce's position on employer sanctions.

Former IRC Chair and Irish community activist Angus McCarthy stated that he has been involved in many immigration reform efforts through several presidential administrations. He suggested that the commission consider having diverse discussions and be willing to compromise when presenting recommendations, noting that amendments could be made later in the process. Chair Hing responded that his position was to present the full report including all recommendations and to negotiate and compromise afterwards. Mr. McCarthy recommended that the commission apply street-smart, strategic approaches to its recommendations and to include diverse voices in the debate.

Cinthya Muñoz commended the commission on their recommendations for reflecting the San Francisco community. Ms. Muñoz urged the commission to support the state and local TRUST Acts. She encouraged the commission to adopt Santa Clara's policy on ICE detainees.

Clarisa Sanchez stated that Catholic Charities CYO serves San Francisco, San Mateo, and Santa Clara. She encouraged commissioners and advocates to engage the community and focus on addressing their concerns.

6. Next Steps

Commissioner Haile suggested that the commission expand their communications and go beyond Sacramento and Washington DC. She stated that the commission should speak with Republicans but limit compromise because it dilutes the IRC position.

Commissioner Paz echoed Commissioner Haile's comments and suggested that the commission contact Santa Clara as a first step. Commissioner Paz noted that he preferred to see a balance between compromise and upholding the commission's principles and values when creating recommendations. Commissioner Maldonado encouraged the commission to work with representatives from the labor unions and determine their positions on comprehensive immigration reform. Director Pon summarized that the commission should clarify their recommendations and those with advocates; prioritize the recommendations; and leverage the commission's strengths to mobilize the community. Commissioner Fuentes echoed Director Pon's comments about mobilizing the community.

7. Closing Remarks

Vice Chair Kennelly thanked all participants for their attendance and feedback. Chair Hing requested audience members who wanted to participate in public comments to step forward to the podium.

8. Public Comment

There were no public comments.

9. New Business

There was no new business.

10. Adjournment

The meeting was adjourned at 11:15 am by Chair Hing.

Meeting minutes prepared by Danielle Lam, edited/reviewed by Adrienne Pon.

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