

DRAFT

UNITY BLUEPRINT FOR RATIONAL IMMIGRATION REFORM



EXECUTIVE SUMMARY AND EXPLANATION

January 28, 2007

On January 19-20, 2007, a meeting was convened in Los Angeles to discuss the outline of a unity blueprint for immigration reform. The convenors include Pablo Alvarado, National Coordinator, National Day Laborers Organizing Network, Rosa Rosales, National President, League of United Latin American Citizens, Angela Sanbrano, Executive Director, Central American Resource Center (Los Angeles) and President of the National Alliance of Latin American and Caribbean Communities, Maria Elena Durazo, Executive Secretary-Treasurer, Los Angeles County Federation of Labor, AFL-CIO, Dolores Huerta, President, Dolores Huerta Foundation & Co-Founder of the United Farmworkers Union, Victor Narro, Project Director, UCLA Downtown Labor Center, Father Richard Estrada, Our Lady Queen of Angels, Antonio Gonzalez, President, William C. Velasquez Institute, Angelica Salas, Executive Director, Coalition for Humane Immigration Reform of Los Angeles, and Peter Schey, President & Ex. Director, Center for Human Rights and Constitutional Law (CHRCL).

In addition to the Convenors, representatives of several organizations involved in immigration reform work attended the meeting, including the Service Employees International Union, the American Federation of Labor (AFL-CIO), the International Brotherhood of Teamsters, the Mexican American Political Association, the Mexican American Legal Education and Defense Fund, the South Asia Network, Hermandad Mexicana Nacional, the Immigrant Legal Resource Center, the Asian Pacific American Legal Center, the National Korean American Service & Education Consortium, the Bay Area Immigrants Rights Coalition, and other networks and community-based organizations.

The Unity Immigration Reform Convenors believe that the interests of the nation, its children, its workers, and its immigrants may all be served through the adoption of rational, effective, and humane immigration reform proposals. They believe that the nation's interests are best served by reducing to the

maximum extent possible the size of the undocumented migrant population, preserving family unity, defending the rights of innocent children, fully protecting and enhancing the rights of U.S. and immigrant workers, and realistically addressing future flows of immigrants so that the undocumented population does not again mushroom over the next ten to twenty years.

The Convenors do not believe that a “guest worker” program is in the national interest. Nor do they believe that militarization of the borders, employer sanctions, and large-scale domestic enforcement are productive in reducing or controlling undocumented migration. Such measures have not in the past stopped migration or forced undocumented migrants to leave the United States. Instead, they simply drive immigrants underground, encourage a black market in immigrant labor, and cause the separation of families. Nor do such enforcement approaches in any way address the underlying root causes that drive migration to the United States, including massive inequality in wealth distribution, economic dislocation in major sending communities, the U.S. demand for labor, and free trade agreements that have caused workers to lose their jobs in migrant sending communities.

While the Convenors and others who attended the meeting to draft a unity blueprint are making specific proposals to vastly improve the rationality of U.S. policy, they also recognize that immigration policies should not be imposed unilaterally but developed cooperatively through multilateral agreements similar to those used to govern international flows of capital, goods, commodities, and information. The Convenors believe that nations have responsibilities beyond their borders, and unilateral actions taken by the United States can have serious negative repercussions for other countries linked to it in the global system. The Convenors therefore recommend that the United States engage in bi-national and multilateral discussions with major migrant sending countries to arrive at a coherent and long-term set of migration policies.

The Convenors intend to draft proposed legislation including suggested statutory language consistent with the summary outlined below after receiving recommendations and comments from interested groups. We hope that the unity blueprint for immigration reform will be considered by a wide range of organizations, improved upon, used to provide guidance in advocacy work, and provide options for members of the House and Senate to introduce as proposed legislation in the 110th Congress convened on January 4, 2007. We also welcome endorsements of the unity immigration reform proposal.

1. Protecting the well-being and safety of innocent immigrant and U.S. citizen children.

The rights of U.S. citizen and immigrant children are of major concern and must be properly addressed. Separation of children from their family creates extreme hardships and detrimentally impacts the well-being, safety, and security of thousands of innocent children each year.

1. Certain provisions of the Immigration and Nationality Act (INA) currently bar immigration petitions by parents of United States citizen children until such children turn 21 years of age. This bar is a relatively recent amendment to the INA. Repealing this bar and permitting the parents of U.S. citizen children to petition to legalize their status would decrease the undocumented population while promoting family values and the well-being of innocent children.

2. Thousands of undocumented immigrant youth enter the United States every year. The Development, Relief, and Education for Alien Minors Act (DREAM Act) has the potential to allow these immigrant children every opportunity to succeed and benefit our society. The DREAM Act, with proposed amendments to be elaborated on in a more detailed set of proposals now being drafted, will facilitate the education of immigrant youth and legalize a population that is otherwise almost certain to remain permanently residing in the United States in underground and unlawful status.

3. We support and will include in the unity reform proposals enactment of the CHILD CITIZEN PROTECTION ACT (H.R. 213), introduced by Congressman Jose Serrano (D-NY). The bill would allow an immigration judge to consider the well being of US citizen children before deporting an immigrant parent.

4. All apprehended unaccompanied immigrant children should be questioned about their possible eligibility for benefits under the Immigration Act, informed of their right to apply for such benefits, and provided with representation at Government expense or referrals to free legal assistance.

2. Achieving maximum compliance with and faithful enforcement of immigration laws by federal authorities by reinstating the authority of the federal courts to remedy decisions on applications and policies that violate the laws enacted by Congress

Legislation over the past ten years has severely limited judicial review of immigration cases. The judicial system must be available to provide an effective and meaningful check on the actions of federal agencies implementing the nation's immigration laws. Without the opportunity for judicial review of decisions in individual case and policies and procedures, federal agencies implementing the INA may deport immigrants and deny visas in violation of the laws enacted by Congress, and without accountability implement broad policies that are inconsistent with laws enacted by Congress.

1. Provisions in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) in which Congress stripped judicial review from non-citizens with final orders of removal by reasons of having committed certain criminal offenses should be repealed so that the federal courts may address the correctness of agency decisions in such cases.

2. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) which stripped the federal courts of jurisdiction to review discretionary decisions in cases involving cancellation of removal, certain waivers of inadmissibility, voluntary departure, or adjustment of status as well as removal orders based on certain criminal offenses should be repealed so that federal courts may remedy abuses of discretion and erroneous interpretations of federal laws.

3. Provisions of the 2005 Real ID Act that seek to eliminate habeas corpus review over orders of removal must be repealed so that federal courts have the opportunity to block unlawful deportations.

3. Achieving maximum protection of the labor rights and working conditions of U.S. workers

In order to fully protect U.S. workers, reduce to the maximum extent possible the unlawful exploitation of immigrant workers, and the incentive of some employers to hire undocumented workers rather than US workers, undocumented immigrants must have full and complete access to protective labor, health and safety laws. This is the most rational and possibly the only realistic approach to protect the interests of US workers while at the same time protecting immigrant workers from exploitation in the labor market.

1. Federal legislation should extend full coverage of all protective labor laws to all workers in the U.S., regardless of citizenship or immigration status, including temporary immigrant workers.

2. The current “labor certification” process must be strengthened and made more efficient by insuring that thorough and effective searches for US workers are performed before the Department of Labor certifies that no US workers are available for temporary or permanent positions that employers wish to fill with new immigrant workers. To avoid Department of Labor findings of the unavailability of US workers from becoming stale, labor certifications and visas based upon such certifications should be issued within six months of the Department of Labor’s decision that US workers are unavailable to fill job openings.

3. Current employer sanctions laws have been largely ineffective in reducing the employment of undocumented workers as employers simply pass on the costs of sanctions to immigrant workers and consumers. Employer sanctions should be repealed. To best protect the rights and working conditions of US workers, the focus of workplace enforcement should be on requiring employers to maintain legal standards in wages, working conditions, and the unionizing rights of workers.

4. In order to alleviate future labor migration, trade agreements such as NAFTA, which are a significant cause of undocumented migration to the U.S.,

must be reinterpreted or renegotiated to reduce rather than increase the underlying causes of undocumented migration.

5. The current administrative policy of the Immigration and Customs Enforcement prohibiting immigration enforcement during a labor dispute should be clarified, strengthened, and legislated into law.

6. Federal legislation should prohibit states from considering immigration status in determining workers compensation, disability and unemployment benefits. In all other respects, states will continue to regulate in this area.

7. Federal labor law should be amended to make it an unfair labor practice to threaten workers in relation to their immigration status to prevent them from organizing or filing complaints about violations of fair labor standards, anti-discrimination laws, or other statutes.

9. In order to further protect U.S. workers, the budgets for the Wage and Hour Division of the Department of Labor and the Occupational Safety and Health Administration should be substantially increased, including funding special programs for labor law enforcement in industries in which immigrants are concentrated.

10. Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance to low-income workers in matters relating to labor law violations regardless of the worker's immigration status.

4. Achieving maximum reduction in the size of the undocumented population

We believe that the national interests are best served by reducing to the maximum extent possible the size of the undocumented population residing in the United States. Undocumented immigrants are preferred by unscrupulous employers over US workers, they are often afraid to report crimes, they are less likely to pay taxes than documented workers, and they form an underground community that is entirely outside of the country's national security monitoring framework. A massive nation-wide deportation program involving millions of people is unlikely to ever be adopted or succeed if adopted. The nation's interests, the interests of US workers, and the interests of local communities would be better served by legalizing all immigrants who are residing permanently in the United States.

1. Congress should enact a single-tier legalization program that grants lawful resident status for undocumented immigrants who do not pose a national security threat, and have not engaged in any serious criminal conduct, and are residing in the United States on the date the legalization law is introduced in Congress. A legalization program should require that immigrants perform a

reasonable number of hours in community service rather than imposing high penalty fees, which many hard working immigrants with families to support are unable to afford. A legalization program should include clear standards, provide stays of deportation and temporary employment authorization for applicants who establish prima facie eligibility at the time of application, offer judicial review of decisions that violate the law, guarantee that applications will be confidential and only used to determine legalization eligibility, be accompanied by a significant outreach and publicity program, and provide funds for community-based non-profit organizations to assist in the acceptance of applications on behalf of the Citizenship and Immigration Services (CIS). Legalization applications should be processed within two years of the date of application. We see no rational reason for requiring that legalization applicants first be required to apply for a temporary status before being granted permanent resident status. Persons granted lawful permanent resident status should be eligible to apply to become citizens of the United States within five years after being granted permanent resident status.

2. Legislation should also address and support immediate adjustment of status for several hundreds of thousands of Central American, Haitian, and other refugees who many years ago came to the United States, many fleeing political and economic conditions encouraged by the United States, and who were at any time granted temporary status under the Nicaraguan Adjustment and Central American Relief Act, Temporary Protected Status, the American Baptist Church settlement, the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998, and similar laws that have permitted certain immigrants to reside in the United States under color of law. Such applications should be processed in one year. Because most immigrants beneficiaries of the program have been living in the United States under color of law for as long as twenty-five years, we propose that approved applicants be permitted to apply for citizenship three years after being granted lawful permanent resident status.

3. Eligibility for Legal Services.-Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for legalization.

5. Achieving operational control over future flows of new immigrants

The number of currently available visas does not come close to satisfying the actual need for visas based on family reunification, the U.S. demand for labor, and the local conditions that push migrants to leave their communities. The US Government defines the size of its undocumented population by making about one half of the known required number of visas available annually. The direct and obvious result of this policy is an ongoing and substantial increase in the size of the undocumented population as many immigrants refuse to be separated from their families for many years, or the long-term separation of families for those who wait often for five to ten years to be reunited with their

families. Either way, the result serves no substantial national interest. In fact, the current policy is a major reason for the size of the undocumented population.

In order to alleviate future flows of undocumented immigrants into the United States, and avoid a new population of undocumented immigrants expanding in future years, the current visa allocation system in 8 U.S.C.A §1151, INA §201, must be restructured to satisfy the realistic need for visas. Section 201 sets an annual limit on family-sponsored and employment-based visas. Section 202 sets a “per-country” limit for preference immigrants set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. As a result, there are massive backlogs for the processing of visas especially of applications filed on behalf of immigrants from Mexico, India, Philippines and China. Currently visas for the most favorable family preference category are being allocated to Mexican applicants who applied twelve years ago.

1. Each year, thousands of immigrants with an existing path to legalize their status through family or employment-based visas are prevented from moving from illegal to legal status if they have lived in the US without authorization for more than 6 months (3-year bar) or 12 months (10-year bar). The vast majority of immigrants with a path to legalization do not leave the country when faced with the 3- and 10-year bars, but instead remain here with their families in undocumented status. The 3 and 10-year bars enacted for the first time in 1996 must be repealed to allow immigrants with existing avenues to legalize their status to do so without having to return to their home countries for 3 or 10 years.

2. INA 245i must be restored so that tens of thousands of immigrants with an existing avenue to adjust their status through family members or jobs approved by the Department of Labor (for which no U.S. workers are available) may adjust their status even though they initially entered the country without inspection or overstayed their non-immigrant visas, rather than remaining in the U.S. in illegal status.

3. The relatively recently enacted “per country” quotas for visas should be repealed. Providing distant countries with little demand for migration to the U.S. the same annual number of family and employment-based preference visas as countries in close proximity to the US with high demand for visas is an irrational policy that significantly adds to the size of the undocumented population and in many cases needlessly causes prolonged family separation. Visas should be issued under a new regime according to global demand, not an unrealistic “per country” formula that entirely ignores the real demand for visas.

4. In order to bring future immigrant flows of immigrants within a legal framework, we propose legislation to approximately double the number of visas issued annually for family and employment-based categories, with about 500,000 visas issued annually for family-based preference immigrants and 250,000 visas issued annually for employment-based immigrants. In the event that demand for visas exceeds the number allocated in any fiscal year, the number issued in the

following fiscal year should be linked to the number of legitimate applications for visas filed during the previous fiscal year.

5. In order to facilitate the process of eligible immigrants residing in the United States to obtain visas Congress has made available, Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall be amended so as not to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for a visa or adjustment of status.

6. Prior to enacting further temporary worker legislation, Congress should hold hearings and assess the need for temporary rather than permanent workers, and how such need may be addressed in a manner that fully protects both US and immigrant workers. Title I of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 (AgJOBS), if considered for enactment, should be amended including as follows:

(1) in determining whether an immigrant has met the requirements for days worked in agriculture after being granted blue card status in order to qualify to apply for lawful permanent resident status, “extraordinary circumstances” (permitting an extension of time to accumulate the required number of work days) should include (in addition to injury, illness, and severe weather already mentioned in the bill), other reasons related to lawful labor activity such as strikes, absence due to sexual harassment, absence due to wrongful termination, etc.;

(2) AgJOBS blue cards should be available to workers who performed agricultural employment in the United States for at least 150 work days at any time during the three rather than two-year period ending on December 31, 2006;

(3) immigrants granted blue card status should be permitted to apply for the same status for their spouses and minor children whether such relatives reside unlawfully in the U.S. (as permitted by AgJOBS) or reside abroad;

(4) the term “Qualified Designated Entity” authorized to accept applications should include (in addition to farm labor organizations and associations of employers) non-profit organizations with substantial experience in the preparation and submission of applications for adjustment of status;

(5) the bill should make clear that an applicant may prove his or her eligibility with verifiable and reliable sworn declarations of third parties in the absence of government employment records or records supplied by employers or collective bargaining organizations;

(6) Section 105(c) should be amended to make clear that an applicant who presents a prima facie application shall not only obtain a temporary work permit and stay of deportation, as already permitted under the bill, but also shall not be detained;

(7) Section 106 should be amended to provide that applicants wrongfully denied visas may obtain judicial review rather than limiting judicial review to appeals from final orders of deportation, and that policies adopted that violate the law as enacted by Congress may be reviewed by the federal courts;

7. Reform of the H2A temporary agricultural worker program is needed. In the event that Congress moves to enact Title II (reforms of the H2A program) of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 (AgJOBS), it should adopt several amendments to the proposed legislation in order to far better protect US workers as well as the rights of H2A workers, including the following:

(1) Limiting how much H2A workers may be charged by recruiters (most H-2A workers report they pay up to \$1,000 in Mexico to get selected for jobs on US farms, and expect to earn \$5,000 to \$8,000);

(2) it is essential that recruiters' activities be controlled by legislation, including, for example, prohibiting recruiters from "blacklisting" workers for labor organizing activity or complaining about working conditions or wages, making false statements about the scope of the work or wages or working conditions, etc.;

(3) the law should make clear that fees and travel costs must not drive workers' wages below the minimum wage;

(4) while employers under H2A are prohibited from firing workers without just cause, the statute should define clearly what is and is not "just cause" to avoid protracted disputes which employers are far more able to undertake given their resources;

(5) the law should encourage use of banking institutions and remittances to sending communities by H2A workers, possibly with a defined match provided by employers;

(6) workers should be free to change employers upon a new employer obtaining approval of a labor certification regarding the unavailability of US workers;

(7) workers not fired for just cause, or terminated by an employer for engaging in protected labor activities, or who terminate themselves as a result of labor law violations should be treated as having "abandoned" their jobs or violated their non-immigrant status under Section 218B(e);

(8) the provisions for recruiting US workers should be substantially strengthened, including, for example,

(i) requiring that employers seeking H2A visas keep copies of and make part of the labor certification application letters sent by certified mail, return receipt requested, to former U.S. employees who worked the previous season in the same jobs informing them of the job opening,

(ii) requiring publication in more than one local newspaper about the available job opening and requiring that one publication used is in the language of the workers normally applying for such positions,

(iii) requiring that copies of job offers be provided to local non-profit organizations involved in job placement for low-income workers,

(iv) requiring that employers provide employment *within a set period time after receipt of a job application* (e.g. one week) to any qualified US worker who applies to the employer during the period beginning on the date on which the H-2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H-2A worker who is in the job was hired has elapsed, and requiring that the Secretary of Labor make all reasonable efforts to place the United States worker in an open and similar job acceptable to the worker *within a set period of time* (e.g. one week) as an alternative to the H2A employer. The proposed bill currently does not require that US workers applying after an H2A workers departs his or her home country within any set time, so employment of the US worker could legally be delayed by weeks or months until the US worker becomes discouraged and finds other employment;

(v) Section 218A(b)(3) should be amended so that the applicable adverse effect wage rate is not frozen for three years at the adverse effect wage rate for the State of employment in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations. 218B(e)

6. Achieving rational and humane operational control of the borders.

. If rational policies are adopted regarding legalization and future flows of immigrants, the need for massive border enforcement will become far less significant as migrants are able to enter the country legally rather than illegally. Militarization of the borders in essence is a concession of the failure of immigration policy, it is costly, largely ineffective in slowing migrant flows, and substantially increases the criminalization and violence along the borders. In conjunction with a broad legalization program and amendment of laws so that future flows of migrants take place under a legal regime rather than outside of

any legal framework, existing laws should be amended to substantially and promptly reduce militarization of the U.S.-Mexico border and promote humane and rational border enforcement. Current policies are causing thousands of deaths, assaults, and related violence endemic along the U.S.-Mexico border, destruction of eco-systems, and routine violations of the rights of U.S. residents and citizens. Existing laws also fail in any significant way to curb the rise of vigilantism and associated violence along the US-Mexico border.

1. In order to protect the rights of people apprehended in the United States in proximity to the borders, we propose that federal agents determine (among the many areas already addressed during questioning of detainees), whether the immigrant is in fact eligible for one of the benefits already granted by Congress to protect vulnerable populations, such as U visas for crime victims willing to cooperate with law enforcement agencies, T visas for victims of human trafficking, and SIJ visas for abused and abandoned unaccompanied immigrant children. Legislation should further require that federal agents stay the deportations of migrants who appear to be eligible for benefits already granted by Congress, and adjudicate applications for such benefits in accordance with the laws of Congress.

2. Legislation should prohibit the use of the military along the US borders except in times of national emergencies or war.

3. We propose that federal law prohibit and penalize violent vigilantism and private efforts to “control” the U.S. borders. This is a complex federal function and untrained private citizens, organizations, and businesses should be barred from engaging in unilateral activities to control the country’s borders that result in or are likely to result in violations of rights, injuries, or deaths, or may otherwise interfere with the country’s foreign policies and relations.

4. We believe that federal law should be amended to make clear that providing humanitarian assistance to migrants seeking to enter the United States without inspection who are injured or whose health or lives are in significant danger is not a criminal offense.

5. Federal law should make clear that border enforcement is strictly a federal function and ad hoc involvement by local law enforcement agencies should be prohibited.

6. We propose that much of the Secure Fence Act, passed by the House of Representatives on Sept 14, 2006 and by the Senate on Sept 30, 2006 (HR 6061) be repealed. The Secure Fence Act, like the 2005 Sensenbrenner House bill, carves a wide berth for the U.S. government to maximize border militarization and violence with little to no regard for the devastating costs to migrants and border communities. Driven by partisan politics and the lobbying efforts of businesses seeking to privatize border enforcement for corporate gains, the Secure Fence Act is bad policy. Legislation should repeal the provisions of the Secure Fence Act

that require expenditures for the construction of a Berlin-type wall between the United States and Mexico.

7. Enact legislation that requires a thorough assessment of appropriate use of deadly force and high-speed chases by agents of the U.S. Border Patrol in an effort to evaluate the extent to which the extraordinarily high number of border deaths at the hands of Border Patrol agents may be reduced.

8. Enact legislation to provide adequate funding for the efficient operation of ports of entry, including appropriate security and criminal background checks.

6. Achieving rational and humane interior enforcement policies

Congress has established a wide range of rights that certain immigrants possess in the United States, and interior enforcement activities in search of deportable immigrants should not proceed in a manner that tramples on these rights that Congress has extended. Mass and random enforcement activities disrupt families, employers, and communities. Immigrants detained for enforcement purposes should be processed in a manner consistent with U.S. laws and international obligations. While the previous Congress endorsed and enacted massive new detention programs, much of it privatized, there is little reason to believe that substantial outlays for detention nationwide are necessary or helpful. There is no useful gain achieved by recently enacted laws that cause indefinite detention of long-term immigrant residents with family members here, including US citizen family members, when they pose no risk of flight, and are clearly not a risk to the community or national security. These recent laws do only two things: They separate families and allow certain entities in the private sector money to profit at tax-payers' expense.

1. Federal law should be amended so that detention of immigrants who appear to be deportable is permitted in the discretion of the Department of Homeland Security unless the immigrant is unlikely to abscond and is not a risk to the community or national security. Repeal recently enacted laws that require mandatory detention in a wide range of cases in which even the Immigration and Customs Enforcement agrees the immigrant is not likely to abscond and is not a threat to the community or the national security.

2. Extend to all immigrants the right to judicial review of agency determinations regarding the immigrants' access to liberty pending the outcome of a formal deportation proceeding.

3. Enact legislation to permit the Department of Justice in removal proceedings to withhold deportation orders and grant lawful resident status to immigrants who have resided continuously in the U.S. for five years other than brief, innocent, and casual absences abroad, are not a national security threat, can establish at least five years of good moral character, and are willing to perform 100 hours of community service or pay a fee of \$1,000.

4. Prohibit mass and random detentions by federal agents during work site enforcement activities; restrict federal agents to only detaining and taking into custody persons reasonably suspected based upon articulable facts of being immigrants present in the United States in violation of the INA and therefore subject to removal.

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