

TESTIMONY OF MOST REVEREND NICHOLAS DIMARZIO

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On

The Implementation of Comprehensive Immigration Reform

Before

**The House Judiciary Subcommittee on Immigration, Border Security, and
Claims**

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I am Bishop Nicholas DiMarzio, bishop of Brooklyn, chairman of the Catholic Legal Immigration Network, Inc. (CLINIC), and a consultant to the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration. I would like to thank subcommittee Chairman John Hostetler (R-Ind.) and Ranking Member Sheila Jackson Lee (D-Tx) for having me today to testify before the subcommittee.

Today, I would like to concentrate my testimony in the following areas:

- elements necessary to correct inefficiencies which occurred in implementing the 1986 Immigration Reform and Control Act (IRCA)---the last legalization program—and to ensure efficient processing of applications for any legalization enacted this year;
- the value of a comprehensive approach to immigration reform as an antidote to the immigration crisis we face in our country today, including how such an approach is consistent with, and beneficial to, national security goals; and
- elements of H.R. 4437 which we find problematic because they harm legal immigrants, refugees, and asylum-seekers.

The Role of the Catholic Church in Immigration Reform

The Catholic Church has a long history of involvement in the immigration issue, both in the advocacy arena and in welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. Many Catholic immigration programs were involved in the implementation of IRCA in the 1980s and continue to work with immigrants today. In fact, the U.S. Conference of Catholic Bishops (USCCB) was a national coordinating agency for the implementation of IRCA. We have a strong working relationship with the Department of Homeland Security (DHS) and with U.S. Citizenship and Immigration Services (USCIS), the agency that would be largely responsible for implementing any new legalization and temporary worker programs. There are currently 158 Catholic immigration programs throughout the country under the auspices of the U.S. bishops.

Our experience in working with immigrants throughout the years compels us to speak out on the issue of immigration reform, which we believe is a moral issue which impacts the human rights and human life of the person. The Church's work in assisting migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience; "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament, the image of the migrants is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way; "I was a stranger and you welcomed me" (Mt. 25:35). Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod. (Mt. 2:15).

In modern times, popes over the last hundred years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all people have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.¹ Pope John Paul II stated that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work; "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."² In his pastoral statement, *Ecclesia in America*, John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of unauthorized migration."³

In an address to the faithful on June 5, 2005, His Holiness Pope Benedict XVI referenced migration and migrant families; "... my thoughts go to those who are far from their homeland and often also from their families; I hope that they will always meet receptive friends and hearts on their path who are capable of supporting them in the difficulties of the day."

In the pastoral letter *Strangers No Longer: Together on the Journey of Hope*, the United States and Mexican bishops point out why we speak on the migration issue; "As pastors, we witness the consequences of a failed system every day in the eyes of migrants who come to our parish doors in search of assistance. We are shepherds to communities, both along the border and in the interior of the nation, which are impacted by immigration. Most tragically, we witness the loss of life at points along our southern border when migrants, desperate to find employment to support themselves and their families, perish in the desert."⁴

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

Implementation of Comprehensive Immigration Reform

As the then Director of the U.S. Catholic Conference's Migration and Refugee Services (MRS), I oversaw the Catholic Church's participation in programs to assist the millions of aliens who applied for immigration benefits under IRCA. Since that time, I was appointed a bishop by the Holy Father, where I now head the diocese of Brooklyn, one of the largest and most diverse dioceses in the country.

From my position as a bishop, not only do I minister to a diocese that has within it many immigrants, I also serve as Chairman of Board of Directors for the Catholic Legal Immigration

¹ Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)* September, 1952.

² Pope John Paul II, *Sollicitudo Rei Socialis (On Social Concern)* No. 39.

³ Pope John Paul II, *Ecclesia in America (The Church in America)* January 22, 1999, No. 65.

⁴ *Strangers No Longer: Together on the Journey of Hope*. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States. January 23, 2003, No. 57.

Network, Inc. (CLINIC), which advises and provides immigration services for dioceses all around the country.

My time with MRS, my experience as a bishop, and the research that the Church has conducted over the last several decades lead me to conclude that it is possible to establish a program to permit deserving undocumented aliens to apply for earned legalization without crippling the process of adjudicating other applicants for immigration benefits or jeopardizing our national security. In order to do this, however, Congress will have to provide a number of things:

- Adequate Resources
- Proper Planning Before Implementation
- Establishment of a Separate Entity within USCIS to Implement the Bill
- The Use of Qualified Designated Entities
- Rigorous Background Checks

These five elements are a subset of a larger list of necessities that I outline later in my testimony. However, because the subject of today's hearing is the question of the adequacy of an already over-burdened USCIS to process applications for legalization, I will set out those factors at this point in my testimony.

Adequate Resources

It will be essential that Congress provide adequate resources for DHS to implement and execute any earned adjustment program. As passed by the Senate, the Comprehensive Immigration Reform Act (CIRA) of 2006 anticipates this by establishing fees that will generate approximately 66 billion dollars of revenue dedicated to processing applications for earned adjustment.

The fee-generated funds, alone, will not be adequate, however. Congress will also need to directly appropriate funds to get the program started. And it will need to be vigilant to ensure that fee-generated funds are not diverted for other purposes, as has often been done in the past

While some may quarrel with the use of appropriated funds for this purpose, I would suggest that the alternative would likely require the expenditure of far more funds and yield a less desirable result. Imagine how much it would cost to apprehend, detain, and deport the estimated 12 million aliens who are in the United States illegally? The cost of properly implementing an earned adjustment program is tiny when compared to the cost of the alternative approach.

Mr. Chairman, we believe that any comprehensive legislation can be implemented through reasonable fees imposed on applicants and with some supplemental funding appropriated by Congress. Fees should not be imposed, however, which place the program out of the reach of qualified applicants.

Proper Planning Before Implementation/Reasonable Enactment Period: Sufficient time should be given between enactment and implementation so that regulations, procedures, and infrastructure are in place. Deportations of prospective applicants who qualify should be suspended between the two dates. However, Congress should mandate an expedited rulemaking process so that the program is not delayed significantly. If key issues are not resolved at the

program's outset, inefficiencies and litigation will occur. The application period for the program should last at least one year so that all qualified applicants can raise the application fee and apply for the program.

Rigorous Background Checks and Security Clearance Procedures: Given the terrorist threat, any program will lack credibility and support if it does not a "good moral character" requirement and rigorous identity and security clearance procedures. Steps must be taken, however, that persons are not denied eligibility based on appearance or demeanor, and that sufficient checks and balances are in place to ensure that no one who qualifies is unjustly denied from the program.

Establishment of a Separate Entity within USCIS to implement the bill: A separate entity, similar to the asylum corps, should be created within USCIS to implement legislation; such an entity should be adequately funded through appropriations. A program that attempted to operate through existing systems would worsen the backlog and customer service problems that have plagued DHS in the past.

The Use of Qualified Designated Entities: Qualified designated entities (QDEs) which are Board of Immigration Appeals (BIA)-recognized should be created to assist in implementation of any new program. QDEs play a crucial role in public education, outreach, convincing applicants to come forward, preparing strong applications, and liaising with the government.

Mr. Chairman, these elements are crucial to the successful implementation of comprehensive immigration reform legislation. Other important elements should also be included in any final measure:

Operational Terms: Operational terms in the bill, such as "continuous residence," "known to the government," and other important eligibility criteria should be specifically defined to avoid delays and to eliminate confusion. The lack of a precise definition of these terms caused many cases to languish in 1986.

Generous Evidentiary Standards: Evidentiary standards should be based upon "preponderance of evidence" and should include a wide range of proof, since migrants do not often create a paper trail. This would allow the maximum number of persons to participate in the program.

Broad Humanitarian Waiver: A broad humanitarian waiver of bars to admissibility, such as unlawful presence, fraud, or other minor offenses is necessary. See refugee waiver (INA 209c) or NACARA waiver.

Confidentiality: Applicants for either the legalization program or temporary worker program should be extended confidentiality and not be subjected to deportation or arrest if they do not qualify. Such confidentiality should be preserved unless criminal issues are raised that are not associated with undocumented status. Without this assurance, it is likely that many persons would not come forward and the goals of the program would not be achieved.

Derivative Benefits: Immediate family members should receive the same benefits under legalization/temporary worker program as the worker. This would keep families together and minimize fraudulent applications from family members desperate to remain with their loved one.

The Need for Comprehensive Immigration Reform

Mr. Chairman, we believe that the best way to secure our borders and to ensure that our immigration laws are just and humane is to enact comprehensive immigration reform legislation. Since 1993, when the U.S. Border Patrol initiated a series of enforcement initiatives along our southern border to stem the flow of undocumented migrants, Congress has appropriated and the federal government spent about \$25 billion on border enforcement, tripling the number of Border Patrol agents and introducing technology and fencing along the border. During the same period, as Congress has enacted one enforcement-only measure after another, the number of undocumented in the country has more than doubled and, tragically, nearly 3,000 migrants have perished in the desert of the United States. It is clear that another approach is necessary.

Mr. Chairman, the U.S. Catholic bishops believe that any comprehensive immigration reform bill should contain the following elements:

- policies which address the root causes of migration, such as the lack of sustainable development in sending nations;
- a legalization program which gives migrant workers and their families an opportunity to earn legal permanent residency;
- a temporary worker program which protects the labor rights of both U.S. and foreign workers;
- reform of our family-based immigration system to reduce waiting times for family reunification; and
- restoration of due process protections for immigrants.

As you know, the U.S. Senate passed the Comprehensive Immigration Reform Act (CIRA) of 2006, which contains many of the elements the Catholic Bishops believe are necessary to comprehensively reform our flawed immigration system. Although it does not contain all the elements the U.S. bishops would like to see in legislation, it is the right approach and direction our country should be taking in tackling the problem of illegal immigration. In our view, an enforcement-only approach to immigration reform will not address the need for legal avenues for future flows of immigrants to come to the United States to work or join family members, nor would it address the plight of 11-12 million undocumented in the nation. We encourage you to work with your Senate colleagues to produce a bill which encompasses the elements outlined above.

I would like to say upfront, Mr. Chairman, that we are wary of recent suggestions that the Senate-passed bill's legalization, temporary worker, or immigrant visa provisions be modified in

a way that would delay their implementation or subject them to subjective “triggers.” We believe that any bill which Congress enacts should not only be comprehensive in nature, but must be implemented in a carefully calibrated manner. Indeed, we note that the Senate-passed already contains a number of mechanisms designed to ensure proper implementation of the legislation. We firmly believe, however, that Congress should not enact into law a scheme that would require further congressional action before implementation of the legalization, temporary worker, or immigrant visa provisions or subject those provisions to “triggers” that are vulnerable to the vicissitudes of political pressures, rather than objective measurements of what is necessary in order to properly implement the legislation.

Mr. Chairman, I would like to concentrate at this point in my testimony on how the enactment of comprehensive immigration reform would enhance, not undermine, our ability to protect the nation from terrorist threats. The overriding principle which supports this view is that by enacting comprehensive immigration reform, we would better be able to identify who is already in the country and to identify and control who enters it. By enacting a program which provides an earned path to citizenship, for example, a far greater portion of the 11-12 million undocumented persons in the nation likely would emerge “from the shadows” and identify themselves to the government. The establishment of additional employment and family-based visas for low-skilled workers and their families would provide legal avenues for those seeking to enter the United States, helping to better ensure that the government knows who is entering the country and for what purpose. The current reality is that our government is unaware of the identities of the overwhelming majority of the 11-12 million undocumented who are in the United States and unable to monitor efficiently those who cross the border illegally.

Mr. Chairman, I am not alone in this assessment. I would like to submit for the record, with your permission, a statement from nine former Department of Homeland Security (DHS) officials who agree that the best way to secure our borders is to enact comprehensive immigration reform legislation. In their letter, they write, ‘...enforcement alone will not do the job of securing our borders. Enforcement at the border will only be successful in the long-term if it is coupled with a more sensible approach to the 10-12 million illegal aliens in the country today and the many more who will attempt to migrate to the United States for economic reasons.’”

In addition, the Catholic Legal Immigration Network, Inc. (CLINIC) recently completed a study on national security and immigration policy. As part of that study, CLINIC staff interviewed a wide range of counter-terrorism experts in order to examine what the United States must do to reduce the threat of terrorism and how immigration policy and U.S. immigration system fits into an overall security strategy. The study provided several policy recommendations to enhance national security through the U.S. immigration system, including the enactment of comprehensive immigration reform.

- First, in our view and the view of these experts, national security should not simply be equated with protection from physical attack. It also entails protecting our economic and political interests; immigration policies should not deny us access to the global economy. Policies which attempt to prosecute, jail, and deport 7.2 million undocumented workers--- five percent of the U.S. workforce---do not protect our economic security and weaken us.

Policies which would separate 10 percent of U.S. families by deporting their undocumented family members undermine our values.

- Second, we should better assess the effectiveness of immigration policies as a deterrent to terrorists. Does a certain immigration policy relate to a legitimate national security goal? For example, we do not believe that the summary return of asylum-seekers, the indefinite detention of immigrants, or the removal of due process protections necessarily make us safer, but they certainly have the effect of impinging on civil rights and undermining the fairness of our laws.
- Third, our immigration policies should help our relationship with immigration communities, not alienate them. The United States should be able to identify and run background checks on non-citizens, but is unable to do so if these non-citizens feel safer underground. Enabling state and local law enforcement to enforce immigration laws also has the effect of alienating major immigrant communities and reducing our ability to identify and prosecute smugglers, traffickers, and would-be terrorists.
- Fourth, comprehensive immigration reform should make our nation safer, not less safe. By bringing 11-12 million undocumented persons “out of the shadows,” we can identify who they are, where they live, and with whom they may be affiliated. By creating legal avenues for migration, we are better able to control who is coming into the country and for what purpose.
- Finally, we must implement a policy of assimilation of immigrants to make us more secure. As we have seen in other nations, such as France and England, the lack of integration policies have led to violence and unrest. We also need to assimilate in order to ensure our economic stability, so that new workers may advance and develop in their skills.

Mr. Chairman, it is clear that national security is not just about keeping those who harm us out of our country, but about keeping those who help us in and allowing others who want to help us to enter. Comprehensive immigration reform will help us achieve this goal

The Immigration Reform Debate and H.R. 4437

As you know, in December 2005, the House of Representatives passed H.R. 4437, the Border Security, Anti-Terrorism, and Illegal Immigration Control Act of 2005. While the U.S. bishops appreciate the need to secure the nation’s borders and believe that passage of a House bill was a necessary first step to begin the immigration debate, the USCCB opposes H.R. 4437 because we believe it is overly punitive, too narrowly focused and would cause harm to legal immigrants, asylum-seekers, refugees, and the nation. We strongly believe that an enforcement-only approach will not solve the problem of illegal immigration, but could exacerbate it by driving migrants further underground and into the hands of unscrupulous smugglers. Mr. Chairman, with your permission I would like to submit a copy of correspondence opposing the legislation, dated December 14, 2005, to all members of the House of Representatives from Most Reverend Gerald R. Barnes, bishop of San Bernardino and chairman of the USCCB Committee on Migration.

Mr. Chairman, let me say that, despite the opposition of the USCCB to H.R. 4437, we are not opposed to all aspects of the bill. Steps taken in Title I, for example, to increase resources for border security are necessary to ensure security for our country. We also appreciate the leadership of the House of Representatives in launching the immigration debate, which, although contentious, is necessary for the betterment of our communities.

Mr. Chairman, I would like to highlight some of the major provisions of H.R. 4437 which we find problematic and which we believe would undermine the fairness of our immigration laws without necessarily making our nation safer.

Criminalization of Undocumented Presence. As you know, Mr. Chairman, Section 203 of H.R. 4437 would make undocumented presence in the country a criminal offense and a felony, subject to at least one year of jail time. While the authors of H.R. 4437 have indicated their willingness to reduce the nature of the offense to a misdemeanor rather than a felony, we believe that this provision would unjustly and unwisely make undocumented immigrants—especially those who are here presently--criminals and would not serve the best interests of our nation. It is well established that the large majority of immigrants who come to this nation do so to work to support themselves and their families. Indeed, over eighty percent of the undocumented population in this nation is involved in either a part-time or full-time employment. They benefit our nation in terms of the taxes they pay and the work they perform. Instead of criminalizing these persons, we should permit those who are deserving to earn a legal status so they can come forward and contribute to our nation without fear.

Criminalization of those who “assist” undocumented persons. Section 202 of H.R. 4437 would expose to felony prosecution anyone who “assists” an undocumented person or provides assistance that permits an undocumented alien to “remain in the United States,” knowingly or in reckless disregard to whether a person was in the country illegally. In our view, Section 202 goes well beyond the scope of addressing alien smuggling and has the great potential to implicate many good Samaritans under the broadened definition of smuggling, including church personnel. For example, under Section 202, a church group or priest that provides food aid, shelter, emergency medical care or other forms of assistance to an individual could be imprisoned and risk forfeiture of their assets for “assisting” an undocumented person. Certainly alien smuggling and trafficking for profit or commercial gain are activities that need to be sanctioned. Existing law already provides for harsh penalties for such behavior. However, H.R. 4437 goes far beyond increasing penalties for these heinous activities. Instead, it would jeopardize millions of Americans---neighbors, family members, faith institutions, and others—who live and work with undocumented immigrants.

Criminalization of Passport or Visa Fraud. Section 213 would make a variety of forms of passport, visa, and immigration fraud criminal offenses, making even one such instance punishable by more than a year in prison, and, thus, making them aggravated felonies that would render persons so convicted inadmissible and ineligible for any immigration benefit. Although no one supports passport or visa fraud, distinctions should be made for those who engage in it for nefarious purposes and desperate refugees who are fleeing persecution. Often times, refugees must fabricate documents to escape persecution because they cannot obtain valid ones from the

authorities persecuting them. Not only would this section render legitimate refugees ineligible for relief because of the means they had to use to escape their persecutors, it also would jeopardize battered women and children acting under the direction, force, or coercion of a parent, guardian, smuggler, or trafficker.

Mandatory Detention for Undocumented Aliens Apprehended at or Between Ports of Entry. Section 401 would require the mandatory detention of an alien apprehended at a U.S. port of entry or along an international land or maritime border of the United States. We are concerned that this provision is so overly broad that persons who are in the country legally and vulnerable populations will be harmed, such as U.S. citizens without proper documentation, legal permanent residents, asylum-seekers who are not in expedited removal and have a credible fear of persecution, unaccompanied children, and trafficking victims. It also would add additional stress to our overly burdened detention system, leading to increased use of local jails and the commingling of non-violent offenders with violent ones as well as the separation of families.

Enforcement of Federal Immigration Laws by State and Local Authorities. Sections 220-222 would grant broad authorization to state and local law enforcement authorities to enforce federal immigration laws. We reject the premise in these sections that all persons suspected of being undocumented immigrants should be rounded up by state and local police agents. State and local law enforcement authorities have many serious concerns on their hands, such as protecting our communities from violent criminals. If these provisions are enacted into law, we fear that immigrant communities would no longer trust local police to protect them or to share with them important information about crime in their neighborhoods. We also are fearful that massive-scale enforcement of civil immigration laws by ill-trained state and local police officials will result in inadvertent deprivations of even citizens' and lawful permanent residents' civil and constitutional rights.

Expedited Removal. Section 407 would expand and mandate the use of expedited removal with respect suspected illegal aliens who are not nationals of Canada, Mexico, or Cuba and who are apprehended within 100 miles of a U.S. international land border, within 14 days of entry. We are concerned that bona fide asylum seekers would be harmed by this provision, since in many instances Border Patrol agents, untrained in the finer details of asylum law, will be making life and death decisions for individuals.

Indefinite Detention of Individuals who cannot be returned to their country. Section 602 would permit the indefinite detention of certain aliens who cannot be removed to their country of nationality. As you know, the U.S. Supreme Court has stated that a person can only be held for a period reasonably necessary to effectuate removal, and found six months to be reasonable. Holding a person longer than the period of their penalty violates basic human rights.

Creation of 700 miles of Fencing. H.R. 4437 would mandate the construction of 700 miles of fencing along the U.S.-Mexico border. We do not believe that the erection of such a wall would address the underlying causes of migration and would not deter desperate migrants from attempting to enter the nation. It could lead, however, to an increase in smuggling networks and to more dangerous attempts to enter the country, increasing the number of migrant deaths. As I

explained earlier in my testimony, Mr. Chairman, we believe that the adoption of comprehensive immigration reform will help ease the pressure along our southern border.

Elimination of Diversity Visa Program. Section 1102 would eliminate the Diversity Visa program, created in 1990 to give foreign nationals of nations without a high volume of immigrants an opportunity to immigrate to the United States. This program has been successful in bringing in a diverse number of individuals who have at least a high school education and some job training. Given the new security checks for those entering the country, we see no justification for the elimination of this program.

Mr. Chairman, these are some of the provisions in H.R. 4437 which cause us grave concern, although they do not represent the totality of our concerns. We hope we can work with you and your staff in the days and months ahead to ameliorate these provisions and work toward a just comprehensive immigration reform package.

Conclusion

Mr. Chairman, I would like to thank you for inviting me to testify before your subcommittee today. Our nation stands at an important time in her history, when we need to remain vigilant against outside threats without sacrificing values which we hold dear—justice, fairness, and opportunity. We must honor and continue our history as an open and democratic society which values hard work and the contributions of immigrants. As soon as possible, I ask that you work with your Senate colleagues to fashion a comprehensive immigration bill which is just, humane, and provides for the security needs of our country.