

CLINIC's Legislative Priorities: 2012
Approved by CLINIC's Board of Directors on November 13, 2011

CLINIC supports the legislative advocacy efforts of the United States Conference of Catholic Bishops' Office of Migration and Refugee Services, including the priorities outlined below. Comprehensive Immigration Reform, including a broad earned legalization program, remains the best way to achieve meaningful reform for the greatest number. Some relief would also come from restoring section 245(i) of the Immigration and Nationality Act (INA)¹ and repealing the three-and ten-year bars to admission to the United States established in INA § 212(a)(9)(B)² and INA § 212(a)(9)(C)³, as has been described in previous years' priorities. In 2012, CLINIC will focus its legislative advocacy engagement on the following items.

1. End the expansion of anti-immigrant enforcement legislation

Through ICE's Agreements of Cooperation in Communities to Enhance Safety and Security, known as ICE ACCESS Programs, local law enforcement agencies collaborate with the federal government in local communities either on the street or in jails and prisons. The three most well-known of the 14 programs are: the Criminal Alien Program (CAP), the Secure Communities Program, and the 287(g) Program. Through these programs, local law enforcement officers assist ICE with such duties as identifying non-citizens, issuing detainers or "holds" for non-citizens, and placing non-citizens in removal proceedings. These programs have a propensity to "criminalize" the entire issue of immigration. They also often erode years of trust and cooperation between the local law enforcement agency and the immigrant community. Given the complexity of immigration law and the limited supervision of local law enforcement agencies, these programs can lead to the deprivation of individuals' constitutional and civil rights. Additionally, they can often divert scarce resources from more effective safety and crime prevention methods which promote the common good. Immigration is a federal responsibility and the civil enforcement of immigration laws should be left to the federal government and not transferred to local law enforcement authorities whose critical role is maintaining public safety and fighting crime in communities.

ICE states that it places a high priority on targeting non-citizens who commit serious crimes and pose a threat to public safety. Secure Communities, CAP, and the 287(g) program each have a three tiered system to prioritize the identification, detention and removal of noncitizens. Level 1 is for the most serious offenders (felony offenses against a person such as murder, kidnapping and major drug offenses), Level 2 for non-violent offenders (felony offenses against property such as burglary and larceny), and Level 3 offenders (misdemeanor offenses). Unfortunately,

¹ INA § 245(i) provided the immediate relatives of U.S. citizens and lawful permanent residents (who entered the United States without inspection) the opportunity to complete their applications for permanent residence in the United States instead of having to be separated from their families while processing their applications abroad.

² INA § 212(a)(9)(B) creates a three year bar to admission for persons who depart the United States after accruing 180 days of unlawful presence in the United States and a ten year bar for persons who depart after accruing one year of unlawful presence.

³ INA § 212(a)(9)(C) states that any person seeking admission to the United States who has been unlawfully present in the United States for an aggregate period of more than one year is inadmissible. Such persons must wait ten years from the date of their last departure before they are eligible to request permission to re-enter the United States.

data shows that most of the individuals affected by the programs have been those cited for misdemeanor and non-serious offenses. For example, through May 2011, 59% of all immigrants whom ICE has arrested through the Secure Communities program have either no convictions or have been convicted only of misdemeanors, including traffic offenses. One-third of immigrants arrested by ICE through Secure Communities never been convicted of anything.⁴

Future legislation should codify these priorities, require that the agency comply with them, and establish a mechanism for oversight of the enforcement programs that would provide individuals a way to make complaints, have their individual cases investigated and seek redress.

Additionally, Congress can enact legislation requiring that the Secure Communities program be used as a post-conviction enforcement tool, rather than the current approach of investigating individuals at the time of arrest. Finally, Congress can institute safeguards for families, establishing protections for the children of individuals who are detained through these federal enforcement programs.

2. Permanently Extend the Non-Minister Section of the Special Immigrant Religious Worker Visa Program

The special immigrant non-minister religious worker program is set to expire on September 30, 2012. Ideally, a permanent extension of the program would be passed by Congress as part of comprehensive immigration reform. This would alleviate the need for USCIS to suspend processing of such cases between expiration of the current program and enactment of an extension, as has been done in the past.

3. Permanently Restore Supplemental Security Income (SSI) Eligibility to Elderly and Disabled Refugees and Asylees

The SSI Extension for Elderly and Disabled Refugees Act, which was signed into law in September 2008, expired on September 30 of this year, leaving an estimated 5,600 elderly and disabled asylees and refugees without crucial benefits. The law provided a temporary extension of the seven-year limit on SSI benefits imposed by welfare reform laws for elderly and disabled non-citizen asylees and refugees who are pursuing naturalization. Once they are citizens, they are no longer subject to the time limit on SSI. However, many vulnerable individuals are unable to meet the English language requirements for naturalization and do not qualify for a disability waiver. The loss of SSI is a major hardship for these individuals, who are unable to work due to advanced age or disability. They fled persecution, violence, or even torture and were offered protection by the U.S. government. A permanent extension of the program would fulfill the United States' promise of protection, and prevent these groups from falling into extreme poverty. SSI benefits have already expired or will end soon for several thousand due to the current limitations.

⁴ National Day Laborer Organizing Network, et. al., "Restoring Community: A National Community Advisory Report on ICE's Failed Secure Communities Program," August 2011: 5
<http://altopolimigra.com/documents/FINAL-Shadow-Report-regular-print.pdf>.

4. Waive the English Language Requirement for Naturalization Applicants Aged Sixty and Over

In addition, Congress should extend the waiver of the English language requirement for naturalization applicants at 8 CFR 312.1(b) to cover all elderly citizenship applicants who are aged 60 and over (regardless of the number of years of lawful permanent residence). This change would allow most elderly or disabled refugees who are losing SSI, as well as other vulnerable elders, to meet the naturalization testing requirements by taking the history/civics test in their native language. Furthermore, it provides the elderly an option to learn U.S. history and civics in their native language, increasing their opportunity to become informed and engaged U.S. citizens.

5. Advocate for a Technical Amendment to the Child Status Protection Act (CSPA)

The CSPA does much to protect children to prevent them from aging out of eligibility to adjust status to permanent resident by adjusting their age based on a calculation of how long the petition on their behalf has been pending. However, a recent Board of Immigration Appeals decision states that the Act does not protect the children of permanent residents who naturalize and become U.S. citizens. The children are automatically converted to the first family-based preference category – whether or not that category has a longer backlog than the category they were part of before their parents naturalized. These children are, in effect, being punished as an unintended consequence of their parents achieving U.S. citizenship. For example, the backlog for individuals from Mexico is three years for the F-2A category, and 18 years for the F-1 category. A technical correction to the CSPA can alleviate this burden. In fact, the CSPA already includes a provision to ensure that children from the Philippines are not penalized when their parents naturalize. They are permitted to opt out of the automatic conversion to the first family-based preference category and permitted to choose the preference category which results in the shortest waiting time for a current priority date.

6. Identify and Advocate for Legislative Solutions That Will Lead to Greater Federal Funding For USCIS

CLINIC's member agencies have identified USCIS processing times and repeated fee increases as a systemic problem in need of reform. Two issues worthy of additional exploration are outlined here. It is our understanding that USCIS does not have automatic access to revenue that exceeds its annual budget. Congress and the Office of Management and Budget (OMB) are required to approve USCIS's access to such revenue. By eliminating this requirement, USCIS could more readily access revenue (from unanticipated filing surges) that exceeds its budget.

In addition, fee increases often lead to surges in application filings, which ultimately result in processing delays. Congress should authorize regular, annual appropriations for USCIS to support application processing costs, including the costs of processing of humanitarian applications/petitions for which the agency charges no fees (asylum and refugee services, U-visa applications, military naturalization applications, etc.). Such an appropriation would eliminate

the need for the surcharge on all other USCIS applications/petitions and help to offset the cost of application/petition filings when the agency raises fees.

7. Expand the Mandate of and Increase Funding to USCIS's Office of Citizenship

Citizenship and immigrant integration is a high priority for CLINIC's network. Congress should review the mandate of the Office of Citizenship and expand its integration responsibilities. Congress must also continue to fund the Office to direct its national citizenship program on an ongoing basis. This program should continue to provide free citizenship information and educational materials. Funding should continue to be appropriated that would allow the Office of Citizenship the flexibility to provide grants to charitable networks and immigration programs as part of a coordinated national citizenship program. The national citizenship program supports ESL and citizenship classes; outreach regarding citizenship services, the naturalization process, and the rights and responsibilities of citizenship; naturalization application assistance; and training and technical assistance to charitable organizations providing ESL-citizenship classes and naturalization legal assistance.

8. Expand Funding for Legal Orientation Presentations and Pro Bono Coordination

CLINIC has advocated with the Executive Office for Immigration Review (EOIR) for years regarding federally-funded legal orientation presentations (LOP) and pro bono representation for detained immigrants. CLINIC piloted the federal LOP program and in the past has received LOP funding for its work in California and Texas, and has worked with Catholic partner agencies on proposals throughout the country. CLINIC and EOIR have recently launched a program to provide legal orientation presentations to custodians of Unaccompanied Alien Children (UAC), to inform them of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking.

The LOP program has been extremely successful; however, it covers programs at only 27 detention sites and 4 UAC sites nationwide, and it does not fund any legal representation of detainees. CLINIC and its member agencies strongly support increased Congressional appropriations and report language specifically related to funding legal orientation presentations for custodians of children released from detention all across the country and at all facilities used by Immigration and Customs Enforcement (ICE) to hold detainees for more than 72 hours. An EOIR evaluation of legal orientation presentations found that they increase the efficiency of the detention and court systems, saving both time and money for the government.⁵

In addition, Congress should appropriate funds for a pro bono coordinator in each immigration court, employed by a non-governmental organization (NGO), to coordinate pro bono representation. Similarly, Congress should appropriate funds for the coordination of pro bono representation before the Board of Immigration Appeals (BIA) and for vulnerable groups, including children.

By increasing funding for LOPs and pro bono coordination, Congress would increase the number of individuals who receive legal orientation, as well as saving the government resources. Pro

⁵ See EOIR, "Evaluation of the Rights Presentation," available at <http://www.usdoj.gov/eoir/statspub/rtspresrpt.pdf>.

bono coordination enhances efficiency, helps to protect the integrity of our justice system, and leads to increased representation in particularly meritorious cases.

9. Ensure that Humane Detention Standards are Implemented by DHS and Followed by all Facilities Housing ICE Detainees

Congress should pass legislation to require DHS to create an alternative-to-detention program for individuals who are not subject to mandatory detention, including asylum seekers, torture survivors, children, and victims of domestic violence. Where immigration detention cannot be avoided, CLINIC and its member agencies strongly support legislation that would require NGO input into rulemaking to strengthen ICE's detention standards and make them more appropriate to immigration detainees. The current standards are primarily based on criminal penal detention models. Changes would include improvements in detention conditions, including prompt medical care in compliance with accreditation requirements; access to legal counsel; and distinct standards for families, children, and victims of persecution and torture. In the interim, ICE's current standards are not codified into law, and currently no federal legislation requires compliance. To ensure that they are enforceable, legislation should require compliance with certain critical standards such as those relating to medical care, telephone and law library access, visitation, mail, legal orientation presentations, and transfers by statute.

10. Require appointed counsel for particularly vulnerable individuals in removal proceedings

Under federal law, persons in removal proceedings have a right to counsel, but at “no cost to the government.”⁶ In certain cases, government-appointed counsel would serve the government's interest by promoting better prepared cases, more efficient proceedings, shorter detention periods, and correct legal decisions. At least one federal appeals court has recognized that in certain cases government-funded representation would be constitutionally required. The “at no cost to the government” statute should be amended to include an exception for indigent individuals with a claim to U.S. citizenship; minors; individuals who are mentally ill, impaired or otherwise incompetent; and to others whose cases raise humanitarian concerns or who cannot effectively represent themselves. In addition, legislation should create a government-funded program to coordinate pro bono representation for all indigent, unrepresented individuals.

⁶ INA § 292.