



City and County of San Francisco
IMMIGRANT RIGHTS COMMISSION

Are We a Nation of Immigrants?

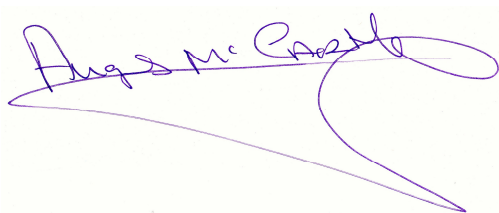
Summary Report on
Comprehensive Immigration Reform:
San Francisco's Role in Shaping National
Immigration Policy

June 2010

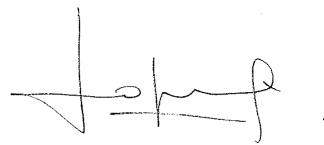
Since 1997, the San Francisco Immigrant Rights Commission (IRC) has been focused on improving the quality of life and civic participation of immigrants in the City and County of San Francisco. A third of all San Francisco residents are immigrants and nearly half of all residents speak a language other than English at home. The IRC recognizes the voice of these important contributors to San Francisco's success. On November 9, 2009, the IRC, in partnership with the Office of Assemblyman Tom Ammiano, the American Immigration Lawyers Association-Northern California Chapter, and the San Francisco Office of Civic Engagement & Immigrant Affairs, presented a symposium on ***Comprehensive Immigration Reform: San Francisco's Role in Shaping National Policy***. The purpose of the Symposium was to hear from a panel of national experts on the role of local communities and jurisdictions in shaping policy and preparing for comprehensive reform.

The following report includes the statements, perspectives and advice of immigration policy experts and the invited testimony of several individuals who have experienced numerous challenges with the U.S. immigration system. As our nation's leaders begin the dialogue on comprehensive immigration reform, it is the IRC's hope that they remember the human faces and stories of millions of residents who have risked their lives seeking freedom and opportunity in America. This should be the basis for developing a fair and humane immigration system that works for all.

On behalf of the Immigrant Rights Commission, thank you to our co-presenters and partners for making the symposium a success. The IRC especially thanks Assemblyman Tom Ammiano, San Francisco Board of Supervisors President David Chiu and Supervisor David Campos, for their support and leadership; the Programs & Access Committee (Chair Gilberto J. Alexander and Commissioners Felix Fuentes and Vera Haile) for their guidance, former IRC President and current HRC Commissioner Jamal Dajani for his visionary leadership, and the staff of the Office of Civic Engagement & Immigrant Affairs for organizing the symposium and preparing this report.



Commissioner Angus McCarthy
Chair, Immigrant Rights Commission



Lorena Melgarejo
Vice Chair, Immigrant Rights Commission

SUMMARY REPORT ON COMPREHESIVE IMMIGRATION REFORM: SAN FRANCISCO’S ROLE IN SHAPING NATIONAL POLICY

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I. EXECUTIVE SUMMARY

"The contribution of immigrants can be seen in every aspect of our national life. We see it in religion, in politics, in business, in the arts, in education, even in athletics and in entertainment. There is no part of our nation that has not been touched by our immigrant background."

John F. Kennedy, 1958¹

"The question we Americans need to address, before it is answered for us, is: Does this First World nation wish to become a Third World country? Because that is our destiny if we do not build a sea wall against the waves of immigration rolling over our shores...Who speaks for the Euro-Americans, who founded the USA?...Is it not time to take back America?"

Patrick Buchanan, 1990²

"For all the noise and anger that too often surrounds the immigration debate, America has nothing to fear from today's immigrants. They have come here for the same reason that families have always come here—for the hope that in America, they could build a better life for themselves and their families. Like the waves of immigrants that came before them and the Hispanic Americans whose families have been here for generations, the recent arrival of Latino immigrants will only enrich our country."

Barack Obama, 2008³

Are we a nation of immigrants? Have we ever truly embraced the diverse contributions of people from across the globe with different faces, languages, religions and perspectives? Why does immigration continue to be such a controversial, polarizing issue today, not just in the United States but in nearly every part of the world?

The benefits of immigration — productivity, dynamism, and the diversity of people, perspectives, and talents that increase competitiveness in a global economy — have been overshadowed by a new level of racism, vitriol and anti-immigrant sentiment fueled by a poor economy and international terrorism. The clash of economic globalization and a post-9/11 environment of fear and insecurity have contributed to today's confusing and contradictory patchwork of U.S. immigration laws and policies. The result is the scapegoating of immigrants and a broken, ineffective system that many believe is out of tune with reality.

There are an estimated 10 to 11 million unauthorized immigrants currently living or working in the United States.⁴ Like generations of immigrants before them, most arrived seeking the same things as all Americans: 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 than integration and engagement, has failed to control the flow of unauthorized immigration. The result is billions of wasted tax dollars and an environment of

¹ Kennedy, John F. *"A Nation of Immigrants,"* New York, Harper and Row, 1964.

² Buchanan, Patrick, *NY Post*, June 20, 1990.

³ Obama, Barrack, Obama & McCain back-to-back speeches at NALEO, June 28, 2008.

⁴ Passle, Jeffrey and Cohn, D'Vera, *Undocumented Immigration Now Trails Legal Inflow, Reversing Decade-Long Trend*, Pew Hispanic Center: Pew Research Center, October 2, 2008.

fear, intimidation and confusion, making the need for widescale change painfully urgent. According to a recent report by the Immigration Policy Center (IPC), resolving the problem of illegal immigration and fixing an inadequate system starts with understanding the following root causes and structural problems:

- ✓ **Insufficient numbers of visas** are made available to bring in either high-skilled or less-skilled workers at the levels needed to meet the changing needs of the U.S. economy and labor market.
- ✓ **Family members** who are eligible for visas must wait up to 20 years to be reunited with family living in the United States.
- ✓ **Wage and workplace violations** by unscrupulous employers who exploit immigrant workers are undercutting honest businesses and harming **all** workers.
- ✓ **Inadequate government infrastructure** is delaying the integration of immigrants who want to become U.S. citizens.⁵

On November 9, 2009, the San Francisco Immigrant Rights Commission (IRC), in partnership with the Office of Assemblyman Tom Ammiano, the American Immigration Lawyers Association- Northern California Chapter, and the Office of Civic Engagement & Immigrant Affairs, presented a symposium on *Comprehensive Immigration Reform: San Francisco's Role in Shaping National Policy*. As a follow-up to an earlier public hearing on the impact of existing Federal Immigration Enforcement Policy on Local Communities held on April 13, 2009, the symposium was planned for the IRC to hear from a panel of national experts on the role of local communities and jurisdictions in shaping and preparing for comprehensive reform.

This report includes the statements and dialogues of national experts, their advice to the IRC and the testimony of several individuals who are facing varying challenges with the current immigration system. These and other first-personal stories of heart-wrenching courage shared during the earlier public hearing link the human face to the debate on immigration reform.

Developing pathways to legal status for undocumented individuals while developing enforceable but realistic, fair and humane policies are key to comprehensive immigration reform. While there are many challenges to completely revamping a broken system, there are also great opportunities to create fair and equitable laws and policies that embrace what is best about America— the dynamism, creativity and innovation that comes from a rich heritage of diverse people and perspectives.

⁵ Immigration Policy Institute, *"Focusing on the Solutions: The Key Principles of Comprehensive Immigration Reform,"* March 2010.

II. SAN FRANCISCO, A CITY OF IMMIGRANTS

San Francisco today is a vibrant, dynamic, international city shaped by its immigrant roots. Over a third of the city's current population is immigrant and nearly half of all residents speak at least one of 112 different languages other than English at home.⁶ Diversity is represented at all levels of local government, business and education, and the city enjoys a reputation as a center of multiculturalism and innovation.

However, San Francisco has not always been so welcoming to newcomers.

During the late 1800s and early 1900s, millions of immigrants began arriving in America in pursuit of freedom and better lives. Immigrants arriving on the east coast, mostly from Europe, were greeted with open arms by the sight of Ellis Island and the Statue of Liberty.

Immigrants to the west coast, however, experienced quite a different reception. Spurred by the discovery of gold, the great wave of west coast immigration began with Asians, mostly Chinese immigrants from Guangdong Province in Southern China, arriving around the mid-1800s to the far western frontier of the continental United States. Largely recruited as cheap labor in the agriculture, mining and railroad industries in California, these laborers were initially welcomed, but eventually perceived as a "yellow peril"⁷ threat as the local economy began to decline.

San Francisco soon became the breeding ground of racist, anti-immigrant sentiment when the Board of Supervisors passed a series of discriminatory local ordinances, including the Lodging House law, the Queue Ordinance, the Cubic Air Ordinance, the Laundry Ordinance, and other legislation aimed at curtailing the rights and dignity of Chinese residents. The city's public officials and leaders not only encouraged and sanctioned riots and mob violence against Chinese residents, but also initiated a national movement that led to the passage of the *Chinese Exclusion Act of 1882*, the first and unfortunately not the last discriminatory attempt to limit immigration solely on the basis of race or nationality. More than 30 anti-Chinese laws were passed at the local and state levels targeting Chinese immigrants, and thus, denying them the right to participate in the society that they helped to build. Subsequent laws would severely curtail each successive wave of immigration from Asia and other non-European countries.

Angel Island Immigration Station operated from 1910 to 1940, when large groups of newcomers arrived on the west coast through the Port of San Francisco. Unlike Ellis Island which was

⁶ U.S. Census Bureau Fact Sheet, City and County of San Francisco, 2000. The San Francisco metropolitan area is the fifth most linguistically varied metropolitan area in the country and includes Alameda, Contra Costa, Marin, San Francisco and San Mateo counties. The most frequently spoken languages in the City and County of San Francisco are English, Spanish, Cantonese, Mandarin, Tagalog and Vietnamese.

⁷ KQED, San Francisco, The Story of Chinatown from the PBS Series *Neighborhoods: Chinatown, A Portrait of a World-Renowned Neighborhood*, *Chinatown Resource Guide: The Story of Chinatown*. The *Burlingame Treaty of 1869* encouraged the Chinese to immigrate to the United States in greater numbers. Reacting to the America's fear of the "yellow peril," in 1877 Denis Kearney organized the Workingman's Party with the rallying cry, "The Chinese Must Go!" which led to the looting and burning of many Chinese businesses., July 1997.

created for the purpose of admission, the purpose of Angel Island was exclusion. Passengers were first separated by nationality, with Europeans and travellers holding first or second class tickets processed on board the ships they arrived in and allowed to disembark. Asians, mostly from China, and other immigrants, as well as those who needed to be quarantined for health reasons, were sent to Angel Island for processing. There they were greeted by barren buildings, interrogators, armed guards and barbed wire. Seventy percent of the newcomers interrogated and detained at Angel Island, sometimes for years, were Chinese.

Angel Island Station was closed in 1940 after a fire destroyed many of the buildings. The Exclusion Act was repealed in 1943, when the U.S. and China became allies during World War II. In 1962, most of Angel Island was converted to state parkland. But even after racial barriers to immigration were repealed, new waves of immigrants arrived only to encounter discrimination from banks, landlords and retail establishments.

In 1989, San Francisco passed the *City and County of Refuge Ordinance* (widely known as the Sanctuary Ordinance)⁸ 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. Municipalities across the country adopted 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 immigrant enforcement activities, particularly raids of homes and places of employment, have undermined sanctuary ordinances and created fear among the city's most vulnerable residents, calling to question basic protections for immigrants even in a city of refuge. Many of the problems stem from conflicting federal immigration policies and practices.

San Francisco has come a long way from a dark time in its history thanks to more enlightened leadership and the reality of changing demographics. The population and decisionmakers have changed and so have the resulting decisions.⁹

⁸ *San Francisco City and County of Refuge Ordinance*, San Francisco Administrative Code Chapter 12H: Immigration Status.

⁹ On November 10, 2009, the San Francisco Board of Supervisors passed Ordinance No. 228-09, amending Chapter 12 of the San Francisco Administrative Code relating to the Confidentiality of Immigration Status of Juveniles. The Ordinance was vetoed by the Mayor on October 28, 2009, and the mayoral veto was overturned by the Board on November 10, 2009.

History of the Immigrant Rights Commission, A Voice for Immigrant Communities

For more than 13 years, the San Francisco Immigrant Rights Commission, a 15-member policy advisory body, has been at the forefront of immigrant and diversity issues. 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 of the Commission serves for a term of two years.

The IRC is responsible for the following:

- Making recommendations to the Board of Supervisors and the Mayor to further involve immigrants in local governmental processes;
- Holding public hearings to obtain input from the immigrant community about programs, policies, and issues that relate to immigrants who are residents of the City and County;
- Advising the Board of Supervisors and the Mayor on state and federal legislation related to immigrants;
- Cooperating with and making recommendations to other City and County departments, agencies, and commissions that administer and enforce regulations relating to health, human services, law enforcement, and human rights that affect immigrants with the aim of improving the coordination of services within the City and County;
- Preparing and submitting to the Board of Supervisors and the Mayor an annual report on the review and evaluation of services and programs in place for immigrants residing in San Francisco, any outstanding needs, and recommendations and plans as to a program for responding to the health, human service, and employment needs of immigrants in a manner that is not duplicative;
- Conducting outreach to, and education of, the public to increase public awareness of the contributions made by immigrants to the local economy, educational institutions, and other fields in San Francisco;
- Handling complaints regarding violations of the city's Language Access and Immigrant Rights Ordinances.

About the Office of Civic Engagement & Immigrant Affairs

In February 2009, by order of the Mayor and under the direction of the City Administrator, all Language Services and Immigrant Affairs functions were consolidated under the Office of Civic Engagement & Immigrant Affairs (OCEIA), a division of the City Administrator/General Services Agency.

OCEIA promotes civic participation and inclusive policies that improve the lives of San Francisco's residents, particularly immigrants, newcomers, underserved and vulnerable communities. OCEIA seeks to bridge linguistic and cultural barriers to ensure that San Francisco's diverse residents have equal access to city services and opportunities to participate and contribute in meaningful ways to the success of the community and to the city.

The Office is responsible for a broad range of areas, including:

- Planning, implementing and coordinating citywide 2010 Census outreach efforts and staffing the 25-member San Francisco 2010 Census Complete Count Committee.
- Partnering with and staffing the 15-member Immigrant Rights Commission to meet the needs and concerns of San Francisco's immigrant residents.
- Developing broad civic engagement initiatives, with a focus on the inclusion of immigrant, low-income and vulnerable communities.
- Overseeing implementation and citywide compliance with Language Access and Immigrant Rights Ordinances.
- Analyzing current policies and documenting best practices for language access and rights, civic engagement and census outreach.
- Identifying resources, training and technical assistance for departments to successfully meet their obligations to the Language Access Ordinance.
- Conducting community outreach and education on city services, language access, Sanctuary City, Municipal ID Card and other programs.
- Administering the Day Laborers program and 2010 Census community outreach grants.

III. U.S. IMMIGRATION POLICY: FIXING A BROKEN SYSTEM

Regardless of perspective, nearly everyone can agree that the U.S. immigration system is broken and ineffective. Long-standing problems with unauthorized immigration, worker visas, border security, enforcement and immigrant integration have resulted in an over-burdened system of antiquated quotas and conflicting laws and policies.

There is little question that reform is needed, but the challenge is, exactly what kind of reform?

A brief review of key immigration laws and policies may help contextualize why fair, humane and comprehensive immigration reform, rather than reactionary anti-immigrant legislation, is necessary to remedy current problems.

Since its inception, the United States has struggled with issues of immigration and the presence of “foreigners” and “others.” Anti-immigrant views have a long history in this country, triggering hostility, hatred and sometimes violence due to national, cultural, linguistic and religious differences, as well as perceived threats to the “dilution of the American culture,” the economy or national security. Immigrants from Germany, Ireland, Asia, Mexico, the Middle East and other parts of the world have all been targets of American nativism, racism and bias.

The *Naturalization Act of 1790*, the first U.S. law relating to immigration, authorized the naturalization of only “free White persons” of “good moral character,” thereby setting a precedent of racial discrimination that would continue for over 175 years. Up until the late 1800s, there were no significant federal restrictions placed on immigration to the United States. A period of mass immigration began in the 1840s, with over 1.7 million immigrants mostly from Great Britain, Germany and Ireland escaping crop failures, famine, social turbulence triggered by rapid European industrialization and political unrest.¹⁰ Spurred by the discovery of gold in California, a new wave of massive immigration began in the mid-1850s, with nearly 2.6 million immigrants arriving in the United States, largely on the west coast. As immigration continued to rapidly increase, the makeup of the immigrant population began to change and so did public attitudes. The backlash against certain groups of immigrants was severe as the economy later declined.

The *Immigration Act of 1875*, often referred to as the “Asian Exclusion Act,” was the first restrictive immigration measure to exclude certain groups of people, including persons convicted of “acts of moral turpitude” and prostitutes. The unstated purpose of the Act was to prevent single Chinese women from immigrating and marrying Chinese men already in the U.S.¹¹ In 1882, Californians lobbied Congress to successfully pass the *Chinese Exclusion Act*, the first explicitly race-based immigration law, which barred Chinese laborers and prohibited Chinese immigrants from naturalizing. Thus began a series of anti-Asian immigration laws that

¹⁰ *Immigration to the United States, 1789-1930*, Harvard University Open Collections Program, Harvard University Library, ©2010 The President and Fellows of Harvard University, <http://ocp.hul.harvard.edu/immigration>.

¹¹ Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Politics and society in twentieth-century America. Princeton, N.J.: Princeton University Press, 2004.

would continue past the middle of the next century, restricting immigrants from Asia from becoming U.S. citizens, marrying, voting, working and otherwise participating in American society. The *Immigration Act of 1917* restricted immigration from Asia by creating an "Asiatic Barred Zone," a region that included much of eastern Asia and the Pacific Islands. In 1921, new legislation extended the basis for exclusion to include numerical restrictions set according to national origin. The *Immigration Act of 1924* changed these quotas, limiting annual European immigration to two percent of the foreign born population in the 1890 Census, which was to be enforced by a militarized Border Patrol.¹² This act resulted in quotas that favored northern and western European immigrants over those from Southern and Eastern Europe, excluded all Asians, and placed no quotas on the western hemisphere. The 1924 *Oriental Exclusion Act* prohibited most immigration from Asia, including foreign-born wives and children of American citizens of Chinese ancestry. The 1929 *National Origins Formula* imposed a cap on national immigration and completely barred any immigration from Asia, although immigration from the western hemisphere was still permitted.

In 1934, the *Tydings-McDuffe Act* granted independence to the Philippines, a former U.S. colony, at the same time stripping Filipinos of their U.S. citizenship and severely restricting immigration from the Philippines. Japanese immigrants were a long-time target of west coast agricultural interests, who pressured and convinced the federal government during World War II that Japanese Americans were threats to national security. Following the attack on Pearl Harbor by the Japanese government, Executive Order 9066 was signed by President Roosevelt in 1942, resulting in the forced relocation and unconstitutional internment of over 120,000 Americans of Japanese descent and Japanese nationals living along the Pacific coast. Denied any form of due process, over two thirds of the individuals interned in "war relocation camps" were native-born American citizens. Even the U.S. Census Bureau aided the internment effort by releasing confidential neighborhood information in violation of the U.S. Constitution.¹³

The *McCarran-Walter Act of 1952* ended the blanket exclusion of immigrants based on race but imposed a "racialized immigration quota system and new ideological grounds for exclusion."¹⁴ The power of the government to deport illegal immigrants suspected of communist sympathies was increased. Discriminatory immigration laws slowly made their way off the books with the 1943 *Chinese Exclusion Repeal Act*, removal of the "White" prerequisite for naturalization in 1952, and equally-allocated quotas in 1965.¹⁵ The *Immigration and Nationality Act of 1965* ended quotas based on national origin, while giving preference to those with U.S. relatives. Ironically, this attempt to eliminate discriminatory quotas also created the concept of the "illegal" Mexican by placing an unprecedented quota on Mexico, despite a history of

¹² Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*.

¹³ Mayer, Thomas S., *Privacy and Confidentiality Research and the U.S. Census Bureau: Recommendations based on a review of the literature*, Statistical Research Division, U.S. Bureau of the Census, Washington, D.C., February 7, 2002, page 24, Section 5.3.

¹⁴ Campi, Alicia J., Ph.D.I., *The McCarran-Walter Act: A Contradictory Legacy on Race, Quotas, and Ideology*, Immigrant Policy Center, June 1, 2004

¹⁵ Haney-López, Ian. *White by Law: The Legal Construction of Race*. Critical America. New York: New York University Press, 1996. In 1935 the U.S. and Nazi Germany were the only countries in the world with a "White" racial prerequisite for naturalization.

government-encouraged labor migration.¹⁶ This was not the first or last effort to control immigration from Mexico. In 1954, the U.S. Immigration and Naturalization Service conducted “Operation Wetback,” a mass effort to remove about 1.2 million unauthorized immigrants from the southwestern United States, with a focus on Mexican nationals.

Despite the abolishment of outwardly race-based discriminatory laws, the per-country quota system established in 1952 created the foundation for current immigration law and remains largely intact today. This has resulted in a twenty-year backlog for family re-unification of U.S. citizens, primarily people of color. Another unintended consequence of the 1965 Act involved the family reunification provision, which created a form of chain migration among Latino and Asian immigrants.¹⁷ In *Adams v. Howerton*, however, the U.S. Ninth Circuit Court of Appeals decided that LGBTQ couples did not qualify for the family reunification provision in the 1965 amendment.¹⁸ In fact, until it was removed from the books in 1990, people identified as LGBTQ were excluded from naturalizing as U.S. citizens.¹⁹

Landmark humanitarian legislation in 1980 created a path to naturalization for refugees, a new class of immigrants. Since not all people fleeing persecution were given refugee status, immigrant advocates lobbied Congress to regularize all unauthorized immigrants residing within U.S. boundaries. The *Immigration Reform and Control Act of 1986* granted amnesty to unauthorized immigrants who arrived in the United States prior to 1982, but victory came at the cost of militarizing the U.S.-Mexico border, enacting employer sanctions, and narrowing future paths to naturalization.²⁰

The 1990s saw the curtailing of immigrant rights to an almost unprecedented degree, with everything from trying to eliminate birthright citizenship guaranteed by the 14th amendment to state and local governments enforcing federal immigration laws.²¹ In 1994, California’s *Proposition 187* was passed by an overwhelming majority as the “Save our State” initiative, but was never implemented because it was found to be unconstitutional. *Proposition 187* called for excluding the children of undocumented parents from compulsory education, public benefits, and a host of other crucial services. Nevertheless, politicians rode the electoral success of Proposition 187 through the passage of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)*, a massive, complex piece of legislation that made significant changes to asylum law, immigration detention, criminal-based immigration and forms of immigration relief. The result was a build up at the border, retroactive criminal

¹⁶ Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Politics and society in twentieth-century America. Princeton, N.J.: Princeton University Press, 2004. A bilateral agreement between the U.S. and Mexico was uninitiated during WWII to bring in much needed labor to fill in for Americans overseas. This was called the *Bracero* program. Mexican labor migration was also encouraged to fill gap left by exclusion of Asian immigrants.

¹⁷ Hing, Bill Ong. *Deporting Our Souls: Values, Morality, and Immigration Policy*. Cambridge: Cambridge University Press, 2006.

¹⁸ See *Adams v. Howerton* 673 2d (1982) at 1036.

¹⁹ Luibhéid, Eithne. *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, 2002.

²⁰ LeMay, Michael C., and Elliott Robert Barkan. *U.S. Immigration and Naturalization Laws and Issues: A Documentary History*. Primary documents in American history and contemporary issues. Westport, Conn: Greenwood Press, 1999.

²¹ Haney-López, Ian. *White by Law*.

deportations, and greater immunity from judicial review.²² *IIRAIRA* also created section 287(g) of the *Immigration and Nationality Act*, allowing state officers and employees as well as local law enforcement to assume federal immigration responsibilities.²³

Immigration legislation changed dramatically after September 11, 2001. Following a decade of enforcement based legislation, just as serious talks about comprehensive immigrant reform began to take place, the 9/11 attack in New York City occurred. In a post 9/11 environment, the focus shifted back to enforcement, with the curtailing of civil liberties, increased border protection, and increasingly restrictive legislation against foreigners in the United States, particularly those who were Muslim or from the Middle East. Anti-terrorism efforts, starting with the *USA Patriot Act*, were quickly enacted to improve national security and safety. Increased enforcement powers and broader authority were given to the Department of Homeland Security (DHS) and the Office of Citizenship and Immigration Services (USCIS). Local, state and federal law enforcement agencies were required to use strict criteria in locating, reporting, and/or deporting unauthorized immigrants.

The *Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act* was introduced in 2005, which proposed to criminalize undocumented immigrants, encourage greater cooperation by state and local governments, and shield government from any monetary claims to damages under Civil Rights law.²⁴ While *CLEAR* failed to become law, the *REAL ID Act* passed in 2005, creating the nation's first digital ID card for American citizens. *REAL ID*, although not yet implemented, placed further restrictions on political asylum, severely curtailed habeas corpus, increased immigration enforcement mechanisms, altered judicial review, and imposed federal restrictions on issuing state drivers licenses to immigrants and others. The *Secure Fence Act* passed in 2006 allowed for 700 miles of reinforced fencing to be installed across the Mexico-U.S. border.²⁵

More recent legislation has focused on border security, increasing the enforcement authority of federal agencies, and further curtailing the rights of both legal and unauthorized residents. Immigrants have been long 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 adopt the American culture. But post-9/11 efforts to fight global terrorism and "make America safe" have had a more drastic effect on how immigrants are currently viewed in the United States, as cases of hate crimes, harassment, racial profiling and discrimination have increased significantly.²⁶

²² LeMay, Michael C., and Elliott Robert Barkan. U.S. Immigration and Naturalization Laws and Issues.

²³ "Section 287g of Immigration and Nationality Act; Delegation of Immigration Authority." U.S. Immigration and Customs Enforcement. 2007. March 12, 2010 <<http://www.ice.gov/pi/news/factsheets/070622factsheet287gprogoover.htm>>.

²⁴ "H.R. 3137--109th Congress: CLEAR Act of 2005." GovTrack.us (database of federal legislation). 2005. March 12, 2010 <<http://www.govtrack.us/congress/bill.xpd?bill=h109-3137&tab=summary>>.

²⁵ "H.R. 6061--109th Congress: Secure Fence Act of 2006." GovTrack.us (database of federal legislation). 2006. March 12, 2010 <<http://www.govtrack.us/congress/bill.xpd?bill=h109-6061&tab=summary>>.

²⁶ The Pluralism Project, Harvard University, *Post 9/11 Hate Crime Trends: Muslims, Sikhs, Hindus and Jews in the U.S.* (2005).

In 2006, John Tirman, executive director of MIT's Center for International Studies and former program director of SSRC's Program Director of the Global Security and Cooperation Program at the Social Science Research Council (SSRC), wrote, "The security anxieties sparked by immigration are disproportionate to the actual problems posed. The arrest of people on legitimate terror lists was obviously an overdue measure. But otherwise there is little cause for alarm from immigrants. Economic opportunity, social cohesiveness, and national safety are not threatened by the ordinary labor migration that has enriched the United States for three centuries. Unauthorized immigration is well understood by scholars, and reasonably promising solutions are available. If the political process is working properly, the dislocations caused by previous mistakes in immigration policy should be readily and humanely correctible."²⁷

Comprehensive reform is needed to address current realities: 1) the increased number of undocumented immigrants; 2) increased demand for foreign workers; 3) lost tax dollars and other revenues because undocumented immigrants and workers cannot be incorporated into the system; and 4) families torn apart by antiquated quotas and discriminatory laws.

Without comprehensive reform of U.S. immigration laws and relevant institutions, the current problems and divides will only deepen and worsen.

²⁷ Tirman, John, *Immigration and Insecurity: Post-9/11 Fear in the United States*. MIT Center for International Studies Audit of the Conventional Wisdom, June 2006, 06-09.

IV. SYMPOSIUM PROCEEDINGS

During an earlier hearing held jointly with the Human Rights Commission in April 2009, the Immigrant Rights Commission heard direct testimony from over 100 city residents on how their lives had been impacted by federal immigration enforcement policies, from Immigration and Customs Enforcement (ICE) raids to living in a constant state of fear and intimidation. Planned as a follow-up to this hearing, the Symposium on Comprehensive Immigration reform was held on November 9, 2009 to hear from national experts on how local communities could impact the shaping of new federal immigration policies and programs. Following are summary and verbatim remarks from experts and invited individuals.

OPENING REMARKS

San Francisco Board of Supervisors President David Chiu opened the symposium by thanking the Immigrant Rights Commission and sharing his personal experience working for immigration reform in Washington, D.C. during a dark, unsuccessful time for immigrant rights. President Chiu championed San Francisco's record as a city that is friendly to immigrants and one that was built on immigrant labor. He noted that this conversation on Comprehensive Immigration Reform could not be more timely and is more important with a new administration that recognizes the importance of an immigrant rights movement. He expressed hope that the next question our nation addresses after healthcare reform is how we value the constitutional and civil rights that all individuals must have. He thanked participants for being part of such an important conversation and introduced Assemblyman Ammiano, a lifelong champion of immigrant rights.

Assemblyman Tom Ammiano thanked the Immigrant Rights Commission and the San Francisco Board of Supervisors for their support of immigrant rights. Ammiano reminded attendees that institutions are often unfriendly and difficult for immigrant to navigate. He shared his own personal experiences fighting for immigrant rights in San Francisco as both an educator with the San Francisco Unified School District and as a member of the Board of Supervisors. While acknowledging some progress in ensuring immigrants rights and access to services, he noted that there is still a long way to go. San Francisco is often attacked for its pro-immigrant programs and policies, such as the Municipal ID Card and Sanctuary City Ordinance, but must continue to promote ideas to other parts of the state and country. He ended by reaffirming his support of Comprehensive Immigrant Reform and by saying that if San Francisco is anything, it is a city of opportunity.

KEYNOTE ADDRESS

F. Dan Siciliano

Senior Lecturer in Law and Associate Dean for Executive Education and Special Programs at Stanford Law

There is a cohort, a population of somewhere between 8 million and 11.5 million in the United States, that is essentially cut off from the main economy. This is unwise, as immigrants provide a type of innovative engine for the economy, even in these relatively dark times. They provide a certain component to the economy which allows us to innovate and grow at a rate that we otherwise would not.

Immigrants of all types are net contributors to the economy, and help the pie of resources grow bigger, rather than reduce the pie of resources.

Three important points:

1. **Immigrants are net contributors to the economy.** It is easy to be distracted by the fiscal Analysis, which is about tax revenues and expenditures. Entire categories of people, at a certain period in the economy are net users of tax resources. As it happens, we are all net users. We're not producing enough revenue to cover all the expenses. That is a fiscal analysis, not an economic analysis.
2. **Immigrants, on average, consume fewer resources over their entire lifetime if they are allowed to integrate fully in the society.** A recent analysis on the 2008 census data demonstrated this second interesting point. Immigrants provide an extraordinarily important component of the economy, which is called heightened mobility of labor. Immigrants are able and willing to move to places with high demand for jobs and leave places with low demand for jobs. This mobility of labor has been radically decreased in the United States because of the housing situation. Immigrants are more mobile than any other segment of the society. They will probably be the lubrication that gets the gears of the economy going again because they are able to move.
3. **The notion of dynamic talent is a tricky concept in the United States.** It is an unknown phenomenon that it is hard for individuals who are relatively well-off to take outside risk and to put everything on the line. Research from a Kansas City foundation shows that 91 percent of those U.S.-born workers in the United States from the 1990s to 2005 were better off because of immigrants, both documented and undocumented, and their earnings were enhanced by 2.7 percent. This is because the economy is not a fixed pie. When you expand the labor curve, a simple economist will say that the price of labor goes down and we are all hurt. Wrong. The expansion of the available labor force creates opportunities that did not exist before. You have innovation, and in turn, those immigrants consume. You have a dynamic economy which means that 91 percent of U.S. born workers enhanced their wages.

If you look at the last 15 years, 25 percent of publicly traded companies in the United States are essentially from the Bay area region and venture backed. One out of four was started by an immigrant. We have great data on this. It is all the companies that we know. In the next two years, we'll have much better data. With small and medium-sized companies, it is the same disproportionate effort of immigrants forming businesses, which employ people and grow the economy. It turns out that we now know that cultural and economic development is not so much about keeping the wrong people out of the country, but it is about letting the right people into a country. The right people, as it happens, are a broad swath of the people. There is no gene for the human spirit, but there is a little signal.

SUMMARY REMARKS BY EXPERT PANELISTS

Cindy Avitia

Congressional Assistant to Congresswoman Zoe Lofgren, Chair of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

I am representing the office of Congresswoman Zoe Lofgren, and my family is from Mexico. It is hard not to speak personally about comprehensive immigration reform and what it means. To give you a brief legislative update, one of the things that I said before ever working for a congressperson, if they knew how immigration law worked, they would have never signed the 1996 bill.

Needless to say, now is the time for consensus building in both the House and Senate. On June 25, 2009, President Obama met with members of the House and Senate. President Obama said the time for a comprehensive immigration reform is here. The Immigration Subcommittee has been working 12 hours per day. All the pieces are together. We have been working on how to build consensus around those pieces and how to best put together the most viable will.

The Senate will go first, and it is imperative that the Senate be able to move forward and get 60 votes in order for us to know that at the end of the effort, there will be a bill going to the president. We are waiting on Senator Schumer. Once the Senate moves forward, the House is ready to move forward as well. The Congresswoman has been working with several bipartisan colleagues, which we feel is imperative and allays fears about being voted out of office.

Mary Giovagnoli

Director, Immigration Policy Center, American Immigration Council- Washington, D.C.

It is important and exciting for the Commission to be taking on this issue and to be thinking through how to play a role. It cannot be done unless everyone across the country is part of moving forward. Though the public has already decided that Comprehensive Immigration Reform is necessary, it is only a matter of time until Congress catches up.

My own connections with a name like Giovagnoli are as a third generation Italian. I believed for the 13 years that I was in INS²⁸ and then DHS²⁹ that I was able to help make changes within the government structure. I was later detailed to Senator Kennedy's Office, where I worked on the immigration bill. When it was time to go back to DHS, I decided I needed to be more engaged in the public debate. There are some things you cannot do as a public servant that you can do on the outside. That's how I ended up at the Immigration Policy Center, where we are all about trying to provide the facts and information that shape the debate in the way that supports the idea that immigration is important to America. We are part of the American Immigration Council, formally known as the American Immigration Law foundation.

Information reform is like a Rubik's Cube, with multiple complex sides that are often not all correct at the same time. CIR is a multi-faceted movement with many complex issues that interact with each other. There are issues of legalization, documentation, family backlogs, due process, worker verification and interior enforcement. We have a system that does not match up with what we need. Immigration has become such a polarizing issue that we have been unable to talk about things we need to do for a very long time.

In 2007 when I was with Senator Kennedy's office, we were all shocked by the degree to which a very small percentage of the population was able to manipulate the debate and create an atmosphere of real fear and hatred toward immigrants. People who work in the immigration field have been trying to promote a more positive message, but also figure out how we transfer all of the goodwill and all of the positive energy of immigrants and those who support immigrants into actual political will. In 2008, you saw the time of real rethinking, and then sort of defensive work in congress. In a lot of ways, the great success of the 2008 congressional year was that no major bad immigration legislation passed. With the election of President Obama in 2008, one of the things that we saw was a clear impact of immigrants in many key swing states. The White House has been very consistent about saying that this is an issue that they have prioritized.

It is up to all of us throughout the country to be able to help create the atmosphere where it is going to change from something that people are talking about to something that people are doing. The more voices, and from different parts of the community, that are saying this is what

²⁸ Immigration and Naturalization Service

²⁹ Department of Homeland Security

matters. That is the kind of thing that members of Congress need to hear to be able to have the gumption to lead into the immigration issue, as opposed to run away from it.

Bill Ong Hing

Law Professor, U.C. Davis School of Law and author, "Deporting Our Souls- Values, Morality and Immigration Policy; "Immigration and the Law- A Dictionary," and "To Be an American, Cultural Pluralism and the Rhetoric of Assimilation"

What can we do as San Francisco residents? I urge you to set up a mechanism where you can regularly get your message to Washington, either by going yourself to testify, or by sending residents of the county. They do not see enough immigrants in the halls of Washington.

While we all hope and wish for Comprehensive Immigration Reform, the question we have to ask ourselves is, at what price? If we get an immigration bill introduced that is serious before the spring, there will be provisions I will not be happy with. I know they are going to be in there. The Commission should be aware of these provisions.

First of all, the estimated 10 million to 12 million undocumented Immigrants in the country may be forced to plead guilty to a crime before they can file their applications— they may also have to pay an attached fine.

The second is an attack on family immigration. The legislation that was introduced in 2007 would have eliminated the sibling category and the category for adult sons and daughters of lawful permanent residents. Somehow there is a judgment made by our representatives in Congress that those relatives do not reflect American values. We should be prepared for increased funding for employer sanctions and Border Patrol. Both versions of the bill seriously considered today include expansion of the E-Verify system. Employer sanctions should be eliminated, but may be expanded as part of the legislation. The other part of the legislation that will expand is probably an expansion of such concepts as aggravated felonies and elimination of due process rights.

When the legislation becomes serious and introduced, you should speak out against these provisions. Instead of addressing the problem of undocumented immigration, the real issue is the Mexican economy and the imbalance of economies in North America. We should be looking to the European Union as an example, as they were faced with similar challenges.

Nelly Reyes

Principal, Nelly Reyes Immigration Services

I came to the United States in 1981 and have been a resident of San Francisco for the past 20 years. In my immigration practice, which I started with the help of the Immigrant Resource Center, I saw many people were not able to immigrate because of a lack of money. Still to this point, I see a lot of immigrants who want to get their work permits. I ask them how long they have been here. Sometimes they have been here since the 1970s, 1980s, and 1990s. Many of them are elderly and ready to retire.

Sometimes I think about how small the world is and I see how immigration laws are changing. In the 1990s, I did not see people asking, “What are we going to do about immigration reform?” Then I started to think about what immigrants bring to the economy, and it is true. A lot of them were buying homes together.

We need this immigration reform, but I would like to see a media campaign that presents the benefits that immigrants bring here. We only hear that immigrants are taking jobs away, depressing salaries, and committing crimes. That is not true. Immigrants contribute greatly to tourism, and many other elements of the San Francisco economy.

FIRST PERSON VERBATIM TESTIMONY

Perna Lal

Activist

My parents brought me here when I was 14, from the island country of Fiji and the South Pacific. And they came here illegally and applied for a green card. My grandmother is a U.S. citizen and today my parents and my sister, and my entire family here are citizens. I am the only undocumented in my family. It took so long to get my parents residency that I aged out. They do not care when you turn 21.

Even waiting nine years, they are asking me to go to the back of the line again. I will be 23 by the time I can immigrate to the country legally. I graduated from college with a bachelor's in political science with a master's as well. In 2007, the Dream Act, which would give undocumented citizens like me the opportunity to stay in the country, failed to pass. We are fighting for the Dream Act to pass. We want to stay in this country to fight to stay where we call home.

Andy MacKay

CEO, 20/20 Productions Inc.

Good evening - my name is Andy, and I'm a Non-Resident Alien.

I'd like to start with a quotation: "Small businesses are the heart of the American economy. They're responsible for half of all private sector jobs — and they create roughly 70 percent of all new jobs in the past decade. So small businesses are not only job generators, they're also at the heart of the American Dream."

That's a quotation from a chap called Barack Obama, the US President, earlier this year. But how does the US Government treat small business when it comes to immigrants and non-immigrants setting up and operating US companies? I can only speak to my own situation on this, but I have read and heard countless episodes of people in the same predicament.

Our journey started eight years ago, in Edinburgh, Scotland. My company, 20/20 Productions, which I've been running since 1990, provides event and video production and graphic design services for a wide range of Clients, both corporate and non-profit, ranging from start-ups to the United Nations (literally!). In 2002 we decided to expand to offer a global presence by establishing a US office to offer services to US and international companies.

My company has only two full-time employees, however we use a lot of contract labor for event and video projects, all legitimate and above board. Our total payroll over the last seven years has amounted to over \$1 million, and all profits have been reinvested in the US, nothing has been sent back to the UK.

Here's my experience with the INS/BCIS/USCIS, as they have been severally called during my short time in this country:

- 2002** Successfully issued an L1A visa (as a multi-national executive or manager) – moved to San Francisco and opened the office.
- 2003** Renewed successfully in US (we were given approx 8 months to prove the business viability not practical at all). Thanks to my attorney Erica Tomlinson for her experience, patience, and persistence.
- 2005** L1A visa renewed successfully (multi-national executive or manager). But we had to return to the UK for visa processing.
- 2007** Applied for green card EB1(C) – multi-national executive or manager. Denied. They basically didn't believe that I am or ever have been, executive or manager either in UK or US, over the last 18 years. Also, they refused to recognize our employee as a professional, even though her 4-year degree was exactly related to her job description.

We appealed to the Administrative Appeals Office – and have been in total limbo for 15 months waiting to hear, until last Friday (November 6th 2009), when we found out that the appeal was dismissed on similar grounds to the original denial. At least we now know.

With something as important as the green card process, there should be some chance to physically appear before authorities to explain your case. This would make things so much easier to adjudicate, particularly in business matters, which may not be as straightforward as most cases.

During the green card fiasco, we were unable to leave the USA for a family bereavement – we were 'land locked' as the L1 visa had expired. We couldn't get a renewal appointment for five months – which must be done outside the US. Why, if you've already had several successful renewals? We ended up driving down to Tijuana with our family in order to be able to return to the UK, by which time the visa was only valid for five months before having to resort to changing visa to E2 Treaty Investor, as the L1A was maxed out at seven years. Again, we had to travel back to the UK in order to have the interview (at a cost of approx \$6k for flights for the family), rather than being able to process in the US.

The staff in the London Embassy (both Brits and Americans), were exceedingly rude to both me and my wife during the interview process. There seems to be a "guilty unless grudgingly proven innocent" power complex towards applicants. We're a small company, but have been in the US for nearly seven years, and just had our best year, which made it all the more annoying and confusing, given that some of the world's largest companies were on their knees at that time. The officer seemed unaware of US tax accounting and general business practices, and insulted both my own and my attorney's intelligence on the E2 visa requirements from the start.

However, my wife Fiona said that he developed a nervous twitch during the interview, as I think he expected me to roll over and give up after his first tirade. After a 40 minute battle with the officer (through the lovely, inviting glass screen), the E2 visa was approved, but he ended with a finger wagging, saying that we'd have to come up with something a lot better in two years time if we want to renew successfully.

As currently there is no route to a green card for E2 holders – a ridiculous situation for a Treaty Investor to be in, we will have to constantly renew (and travel) at the will of the authorities. So how does the immigration system affect businesses and the families involved?

- It disrupts our ability to function and plan effectively as a business, with long and unpredictable wait times.
- It makes you unproductive and therefore uncompetitive due to the huge amount of repetitive information demanded.
- It creates unnecessary costs (travel, legal and processing fees), which are a burden to both the business and families involved. It should be dealt with face-to-face by interviews at local offices, or at least within the US.
- It causes huge stress to the family – difficulties planning/traveling/scheduling. Always a “temporary” feeling – very “alien.”
- There is inconsistent judgment and requirements throughout the system – our L1 was granted and renewed three times, then green card denied on same basis after seven years.

Finally, how far does this attitude go through the immigration organization, and are there any rays of hope? Following my torrid experience at the Embassy in London, I returned to the US, arriving at SFO. The Immigration Officer checked through my file online and asked “You’ve been here in L1 status for seven years – why don’t you get a green card?”

I told him, “I applied last year, but it was denied.”

“But yet they gave you an E2 Investor visa?” he said.

“Yes” I said “I’m bewildered.”

“Me too sir” he said. “Welcome back!”

Shirley Tan

Housewife and Mother

Thank you for the opportunity to appear before you this evening. I am a 44-year-old mother and housewife from Pacifica, California. I am grateful to share my story with you on an issue that is so critically important to my family and others in the same situation. I am honored to be here today with my partner of 23 years Jay Mercado. I met her as a graduation present when my father brought me to the U.S. We met through our parents, who knew each other through the rotary club, and our love was instantaneous. Since that day, we have been committed to each other, and our family, unequivocally. Our relationship continued even after I returned to the Philippines following the expiration of my six month visa. Our relationship was expensive, given the long distance bills.

When I returned to the Philippines, I learned that the man who had, ten years before, brutally murdered my mother and sister, and almost killed me as well, was released from prison. I feared for my safety and I knew I was in danger and understood that in order to live, I had to leave the Philippines. Without anywhere else to go, I decided to go to Jay where I would be safe. In 1995, I hired an attorney to apply for asylum and legalize my stay in the United States. When my application was denied, my attorney appealed the decision and Jay and I diligently inquired on a regular basis about the status of the appeal. Again and again, we were told "It is good that we have not heard anything yet, let's just wait."

I did not know it, but my appeal had also been denied. All the while, Jay and I went about building our life together. I gave birth to Jashley and Joriene, the biggest joy in our lives and became a full-time mom.

Our family has always been like every American family, and I am so proud of Jay and the twins. The boys attended Catholic school through 6th grade and are now in Cabrillo Elementary School. They excelled in their classes and has always been in the top of their class. I volunteer in every activity at their school, and when the school needs a parent to pitch in, I have always been the first one they call. Jay was a member of the school board at their Catholic school. I am a Eucharistic minister at Good Shepherd church, where Jay and I both sing in the Sunday mass choir.

Our family is fortunate. We have never felt discriminated against in our community. Our friends, mostly heterosexual couples, call us the "model family," and even said we are their role models. We try to mirror the best family values, and we attribute the fact that our children are so well-adjusted to the love, security and consistency that we, as parents, have been able to provide. Jashley and Joriene's classmates at school know they have two moms, and it has never been an issue.

Our lives, I can say without any doubt, were almost perfect until the morning of January 28, 2009. That morning, at 6:30 a.m., Immigration Custom Enforcement agents showed up at my door. They were looking for a "Mexican girl," and, having nothing to fear, Jay did not think twice about allowing them into our home when they asked permission to search it. It turned out they were really looking for me. The agents showed me a piece of paper, which was a 2002 deportation letter, which I informed them I had never seen. Before I knew it, I was handcuffed and taken away, like a criminal, as Jay's frail mother watched in hysterics. I was put into a van with two men in yellow jump suits and chains and searched like a criminal, in a way I have only seen on television and in the movies.

All the while my family was first and foremost the center of everything on my mind. How would Jay work and take care of the kids if I was not there? Who would continue to take care of Jay's ailing mother, the mother I had come to love, if I was not there? Who would be there for my family if I was not there?

In an instant, my family, my American family, was being ripped away from me. And when I did return home, I had an ankle monitoring bracelet. I went to great lengths to hide it from my children.

I have a partner who is a U.S. citizen, and two beautiful children who are also U.S. citizens, but not one of them can petition for me to remain in the United States with them. Because my partner is not a man, she cannot do anything to help me. Nor can my children, who keep asking why this happened to us and what will ultimately happen to our family.

Passage of the Uniting American Families Act (UAFAs) will not only benefit me, but the thousands of people who are also in the same situation as I am. And so I respectfully submit to the committee today that changing the immigration laws of this country to include permanent partners will serve in the long run to keep families like ours together. Americans will be able to live at home with their partners rather than living in fear or in exile.

After 23 years building our life together, Jay and I know that our family is still at great risk of separation. We have a home together. Jay has a great job. We have a mortgage, a pension, friends and a community. We have everything together and it would be impossible to re-establish elsewhere. We have followed the law, respected the judicial system and simply want to keep our family together.

For my children, and couples and families like ours, it is critically important that we end discrimination in U.S. immigration law. So I ask that you please look closely at UAFAs and how important its passage is for the thousands of couples who are affected by the unjust discrimination we are facing in the immigration process.

Before I close, I would like to take this opportunity to extend my gratitude to Congresswoman Jackie Speier and her staff, who have shown so much compassion especially for my children. Congresswoman Speier has been supportive throughout this ordeal and went out of her way to help me and my family. And I would like to extend a very special thank you to Senator Dianne Feinstein, a member of this committee, for everything she also did for Jay, myself and our children. Because of Senator Feinstein's efforts and the efforts of her staff, my deportation has been temporarily delayed until 2011. It is because of her great compassion that I am able to be with you today.

It is a great privilege to be here with you today. I was honored to receive your invitation and before you today not only because of my own family, but on behalf of the thousands of permanent partners who deserve equal treatment and to be able to remain with their loved ones and their children.

I humbly ask for your support of the Uniting American Families Act which would allow me to remain with my family and to strive for citizenship in this wonderful country that has been so good to me and my partner and such a blessed home to our children. Thank you.

Melanie Nathan

Attorney and Member of the Marin Human Rights Commission

My name is Melanie Nathan and I thank the Commissioners, esteemed panelists and symposium organizers for this opportunity. I am a personal advocate and conflict resolution specialist. I serve as Vice President on the Board of Fair Housing of Marin (FHOM) and was recently appointed by Supervisor Steve Kinsey to the Marin Human Rights Commission. I hold two law degrees and practiced Law in South Africa before immigrating to the United States in 1985.

In March of this year, I was faced with a “Sophie’s Choice” – I could stay in the U.S. with my 12-year old daughter, in a shared custody arrangement, or leave her behind to go into exile with my spouse and our 4-year old. Our four year nightmare involved navigating the complex immigration system to keep our family together. Had we not been of the same sex, we would have had no problems at all.

After receiving help from Senator Feinstein, I lead the effort to obtain the introduction by Senator Feinstein of Private Bill #867 for Shirley Tan and when my advocacy became public scores of binational couples began contacting me for help; and not a day goes by without a new request. I testified before the California State Assembly Judicial Committee for AJR 15 and provided written testimony to Senator Leahy for the Uniting American Families Act (UAF, H.R. 1024) at the Senate Judiciary Committee hearing June 3, 2009. The IRC in making its recommendations to the Mayor and Board of Supervisors, to “improve, enhance and preserve the quality of life and civic participation of ALL immigrants in the City and County of San Francisco,” must specifically include the plight of same sex couples in bi-national relationships at the fore of any immigration reform discussion for this city in particular.

Current immigration and naturalization laws fail so many immigrants and families, yet same-sex relationships stand on prejudicial ground when compared to heterosexual counterparts. Without specific language such as that proposed by UAF, which seeks to include permanent partners in the Immigration and Naturalization Act, same sex binational couples will remain victim to the Defense of Marriage Act, which compels discrimination against LGBT couples with regard to any federal benefits, including the right to sponsor a spouse and no right to a K1 – fiancé visas for same sex couples.

We are advised that Senator Chuck Schumer of New York will introduce Comprehensive Immigration Reform (CIR) in January 2010. Congressman Gutierrez of Illinois will introduce CIR for the house in the next weeks, around Thanksgiving. While Senator Schumer is likely to include the UAF- Uniting American Families Act in such legislation, it is not a slam dunk and Gutierrez’s office, despite his support for UAF, has been quiet on his version of CIR. It is critical that LGBT couples are included in both the House and Senate versions of Comprehensive Immigration Reform.

This equality based legislation is critical to the tens of thousands of gay and lesbian couples who are either living in exile, or illegally - in fear, in detention or separated from their loved ones. California makes up a large percentage of binational couples and many are from the Bay Area. I believe it would be remiss for San Francisco, the Mayor, and the Board of Supervisors of this LGBTQ iconic city to fail its locals by not placing UAFA's inclusion as a critical element to any advocacy relating to new, amending or modifying immigration legislation.

San Francisco has its work cut out for it when it comes to immigration reform, and it must stand up for all its residents. While certain religious communities strongly support immigration reform, it is apparent they will oppose the inclusion of UAFA and may well shoot themselves in the toe rather than support fully inclusive reform that excludes no one.

From the LGBT perspective I believe this is going to be tough and I respectfully submit to the City and County of San Francisco that they consider the following list of ideas which I have cryptically penned for this testimony. I am only reading a few of them and will provide my testimony in writing to the commission.

1. Form an urgent advisory committee or instruct a point person to:
 - a. Work with our Congressional representatives and Senators through the development of CIR to promote the inclusion of UAFA;
 - b. Work for a "Plan B" to help our LGBT binationals should LGBT interests not be met in the short and long term;
 - c. Work with legislators to promote and establish a moratorium for couples who through inequality are either heading for exile, in detention or subject to deportation pending such legislation.
2. Encourage supportive resolutions from organizations in our Bay area communities, including city councils, county boards, chambers of commerce, et cetera.
3. Engage religious communities in discussions pertaining to immigration equality.
4. Consider LGBT inclusion in CIR an "equality issue," not only an immigration issue and perhaps involve other commissions to this end;
5. Provide leadership to other counties and cities in our state, especially in the Bay Area, regarding the inclusion of UAFA and requests for them to engage representatives;
6. Reach out to binational couples who are living in isolation and provide legal resources to those in exile or hiding;
7. Work toward change in the detention policies of ICE and support decent detention facilities that are not prisons;

8. Encourage our residents to reach out to Congress on their own – our D.C. representatives avow that there is nothing stronger than personal stories. Walking into the halls of Congress is empowering and people are not asked for documents. Even undocumented people can walk those halls.

My respectful and urgent request is that Mayor Newsom makes calls to Representative Gutierrez's office and to Senator Schumer to inform them how important it is for our city that comprehensive immigration reform includes UAFA. Congressman Gutierrez has stated, "Family unity is a cornerstone of our immigration system." We need to ensure he receives a message from San Francisco, this week, that our LGBT families matter equally and that there is no real CIR until we are all included.

V. RECOMMENDATIONS

Since 1997, the IRC has been focused on improving the quality of life and civic participation of all immigrants in the City and County of San Francisco by advising the Mayor and Board of Supervisors on issues and policies related to immigrants.

The IRC recommends that the following principles be incorporated into federal immigration reform:

- ✓ Prioritize family immigration petitions, re-unifications, status adjustments and related applications by increasing USCIS resources for this specific purpose.
- ✓ Outlaw discrimination in family re-unification laws by expanding equal rights of family re-unification to same-sex couples and their families.
- ✓ Honor the contributions of immigrants by instituting legalization programs for undocumented immigrants, multi-status families, refugees and asylum-seekers. Provide some level of legal status and tax identification to undocumented individuals to not only allow them to work and contribute to the national economy, but also improve national security.
- ✓ Respect the dignity of all immigrants by: (a) insuring equal access to social and health services, (b) de-criminalizing undocumented immigrants; (c) prohibiting harassment and discrimination of immigrants at our borders and within our country, and (d) preserving due process and basic human rights of all residents, regardless of status.
- ✓ Protect the labor rights of immigrant workers by ensuring that national and international economic laws, trade agreements and policies are consistent with human rights, labor rights, trade justice and sustainable approaches to the environment and economic development.

The IRC also recommends that adequate resources be allocated to support citizenship and naturalization efforts. At the local level, empower the Office of Civic Engagement & Immigrant Affairs to continue working with the USCIS, the IRC and the city's vast network of service providers, including social service and faith-based organizations to prepare for changes, including increased ESL language training, citizenship preparation, immigrant integration and civic engagement. City officials and leaders should continue to focus on highlighting the positive attributes and benefits of immigration and the contributions of immigrants to the social and economic success of the city. An investment in community should be made to ease racial tensions due to cultural and linguistic differences.

In preparation for Comprehensive Immigration Reform, the American Immigration Lawyers Association recommends the following:

- ✓ Government must collaborate with community-based organizations who know immigrants best to assist with education, outreach, and application preparation for those who will be eligible for adjustment of status.
- ✓ To prepare for future flows, employment-based visa allocation should be set according to flexible standards based on economic and labor market conditions.
- ✓ Don't count family reunification and humanitarian paroles as deducting from the overall cap for visas.
- ✓ Allow same-sex and unmarried long term couples to use family immigration system.
- ✓ Re-capture family and employment based visas that were unused the previous year.
- ✓ Commission a report on effectiveness of border and interior enforcement strategy.
- ✓ Congress should restore fairness and flexibility to our system by authorizing immigration judges and officials to exercise discretion in considering the individual circumstances of each case.
- ✓ Congress should ensure that detention conditions are humane and safe by enacting detention standards legally enforceable against any facility used to hold immigration detainees for short or long-term periods.
- ✓ Congress should establish criteria to ensure that detention is reserved for those individuals who are a flight risk or a risk to public safety.
- ✓ Utilize and provide funding for community-based alternatives to detention without requiring electronic monitoring devices.
- ✓ Restore federal jurisdiction over immigration enforcement according to established doctrine of federal pre-emption.³⁰

³⁰ American Immigration Lawyers Association. "Solutions That Work: A Policy Manual for Immigration Reform," March 16, 2010. <<http://www.aila.org/content/fileviewer.aspx?docid=31528&linkid=216406>>

VI. CONCLUSION

The Immigrant Rights Commission urges local, state and national leaders to pass comprehensive and humane immigration legislation based on the principles of fairness and equity upon which this country was founded. The Commission recognizes that fixing a broken system is difficult, given the complexity and ambiguity of current U.S. immigration laws and policies that were designed to exclude, not include, certain individuals. But immigration reform must and will happen in our lifetime. 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. Laws must balance the needs of the nation with fair and humane policies and practices.

The potential benefits far outweigh the risks:

- ✓ Comprehensive immigration reform generates an increase in U.S. GDP of at least 0.84 percent. Summed over 10 years, this amounts to a cumulative \$1.5 trillion in additional GDP. It also boosts wages for both native-born and newly legalized immigrant workers.³¹
- ✓ Assuming that newly authorized workers improve education levels and English skills, as happened in previous reforms, wages would rise by another \$8.6 billion; along with initial increases from authorization and the multiplier impacts, this is a total gain for California of \$16 billion annually.³²
- ✓ The Congressional Budget Office and the Joint Committee on Taxation estimated that the 2006 proposal for Comprehensive Immigration Reform would have increased federal revenues by about \$66 billion over the 2007-2016 period.³³
- ✓ Comprehensive immigration reform would allow California to collect an additional \$310 million in income taxes and \$74.4 million in sales tax revenue for a combined \$384.4 million of additional tax revenue in the short term.³⁴
- ✓ 66% of voters (across party lines) support Comprehensive Immigration Reform and would like to see Congress take the issue on in 2010.³⁵

³¹ Hinojosa-Ojeda, Dr. Raúl. "Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform". (Center for American Progress: American Immigration Council, 2010)

³² Emanuel Pastor, et al., "The Economic Benefits of Immigrant Authorization in California" (University of Southern California: Center for the Study of Immigrant Integration, 2010)

³³ Congressional Budget Office "Cost Estimate for S. 2611 Comprehensive Immigration Reform Act of 2006" May 16, 2006. <<http://www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf#page=29>>

³⁴ Emanuel Pastor, et al., "The Economic Benefits of Immigrant Authorization in California"

³⁵ Brodnitz, Pete. "Immigration Reform: National Polling," January 11, 2010. America's Voice. <http://amvoice.3cdn.net/56a19baae3cb88385d_tsm6va6cl.pdf>

- ✓ A majority of voters believe that economic crisis makes immigration reform more important to solve.³⁶
- ✓ In a period from 2001-2008, 20% fewer Americans would like to see a cut back in immigration levels.³⁷

According to a recently-released report by the University of Southern California Center for the Study of Immigrant Integration, California could reap an economic boom worth \$16 billion by legalizing its 1.8 million undocumented adult Latino immigrants. The economic benefits would come as newly legalized immigrants earned higher wages, spent more consumer dollars, paid more taxes and helped create jobs. "People keep using our economic condition as an excuse to not do comprehensive immigration reform," said Manuel Pastor, one of the study's authors. "It's just the opposite: What we need to do to right our economy and move forward is create a path to legalization."

Comprehensive immigration reform would benefit every sector of the U.S. economy better than simply expanding a program for temporary workers without giving a path to naturalization.³⁸ Foreign born persons residing in San Francisco who have not naturalized are represented in greater proportion than those who have naturalized in industries such as: construction, arts, entertainment, and recreation, and accommodation and food services.³⁹ Since immigrant-heavy industries are expected to see the greatest benefit from comprehensive immigration reform, these industry sectors of San Francisco's economy may see greater relative gains with better immigration policies and laws.⁴⁰

San Francisco, California and the nation are successful because of the collective energy and contributions of America's diverse people. But freedom, liberty and justice must extend to **all the people**, not just some.

Postscript:

Change must happen, but progress will not be easy. As this report was about to go to print, Arizona Governor Jan Brewer signed what is considered the most restrictive, anti-immigration (some say, anti-immigrant) law in the nation today. SB 1070, which takes effect in Summer 2010, makes it a state crime to be in the country illegally, and legal immigrants will be required to carry paperwork proving their status. Arizona state and local police will be allowed to ask about a person's immigration status if there is "reasonable suspicion" that he or she is in the country illegally. Critics of the legislation fear that criminalizing what is now a civil matter will lead to widespread racial profiling and further fuel hatred and discrimination against immigrants, documented or not. We are back to the future.

³⁶ IBID.,

³⁷ Jones, Jeffery. "Fewer Americans Favor Cutting Back Immigration." July 10, 2008. Gallup.
<<http://www.gallup.com/poll/108748/Fewer-Americans-Favor-Cutting-Back-Immigration.aspx>>

³⁸ Hinojosa-Ojeda, Dr. Raúl. "Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform." (Center for American Progress: American Immigration Council, 2010)

³⁹ American Community Survey, "2006-2008 American Community Survey Three Year Estimates." U.S. Census Bureau American Fact Finder.

⁴⁰ Hinojosa-Ojeda, Dr. Raúl. "Raising the Floor for American Workers"

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