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Catholic Social Teaching, the Right to Immigrate, and the Right to Regulate Borders: A Proposed Solution for Comprehensive Immigration Reform Based Upon Catholic Social Principles

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“Brother Bishops, I want to encourage you and your communities to continue to welcome the immigrants who join your ranks today, to share their joys and hopes, to support them in their sorrows and trials, and to help them flourish in their new home. This, indeed, is what your fellow countrymen have done for generations. From the beginning, they have opened their doors to the tired, the poor, the “huddled masses yearning to breathe free” (cf. *Sonnet inscribed on the Statute of Liberty*). These are the people whom America has made her own.”¹

– His Holiness Pope Benedict XVI

I. INTRODUCTION

In the past decade, political leaders from both sides of the political aisle have discussed and debated proposals to reform America’s immigration system. A number of key immigration reform proposals have been introduced in Congress in the past several years only to fail to capture any of the political headwinds necessary to move the legislation successfully through the halls of Congress to a signature from the President of the United States.

On November 20, 2014, President Barack Obama announced a series of executive actions on immigration² which the administration noted were intended to “modernize and streamline the U.S. immigration system.”³ The first major part of the actions was an expansion of the “Deferred Action for Childhood Arrivals” (DACA) program⁴ to all those individuals who entered the United States before the age of sixteen and who have

1. See His Holiness Pope Benedict XVI, Address at the Celebration of Vespers and Meeting with the Bishops of the United States of America (Apr. 16, 2008), https://w2.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080416_bishops-usa.html [<https://perma.cc/22AQ-KAEZ>].

2. See Michael D. Shear, *Obama, Daring Congress, Acts to Overhaul Immigration*, N.Y. TIMES (Nov. 20, 2014), http://www.nytimes.com/2014/11/21/us/obama-immigration-speech.html?_r=0.

3. See Memorandum on Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century, 2014 DAILY COMP. PRES. DOC. 00881 (Nov. 21, 2014).

4. See Michael Jeb Richard, *Deferred Action for Childhood Arrivals: Place a Bet or Wait on a Dream*, 40 S.U. L. REV. 293, 306–07 (2013) (“Subject to qualifying, applying, and passing health screening and background checks, DACA is designed to provide certain, qualified, unlawful childhood arrivals who are not in immigration detention and either: a) are already present in the United States; b) are currently in removal proceedings; c) have been issued a final removal order; d) have been issued an order of voluntary departure; e) have applied for asylum before June 15, 2012; or f) have applied for Cancellation of Removal before June 15, 2012, with a two-year prolongation of removal and work authorization, both subject to renewal.”).

continuously lived in the United States since at least January 1, 2010.⁵ It also extended the deferred action period⁶ and employment authorization period from two years to three years.⁷ Significantly, the second major part of the actions paved the way for a creation of a new “Deferred Action for Parents of Americans and Lawful Permanent Residents” (DAPA) program to allow individuals who have continuously lived in the United States since at least January 1, 2010, and who had a son or daughter who is a United States citizen or lawful permanent resident as of November 20, 2014, to request deferred action and employment authorization from the United States Customs and Immigration Service.⁸ The new DAPA program could potentially affect approximately 4 million undocumented individuals and essentially allow the individuals to defer deportation and apply for authorization to work legally within the United States.⁹ Nonetheless, the new actions do not offer any pathway to permanent legal status or to citizenship.¹⁰

The executive actions have not been without controversy.¹¹ On December 16, 2014, Judge Arthur Schwab of the United States District Court of the Western District of Pennsylvania discussed the constitutionality of the executive actions on immigration in a memorandum opinion which addressed the applicability of the executive actions in a case involving a defendant who pled guilty to a violation of 8 U.S.C. § 1326, re-entry of a removed alien.¹² In his memorandum opinion in *United States v. Juarez-Escobar*, Judge Schwab opined that the execution actions go beyond permissible

5. See *Executive Actions on Immigration*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/immigrationaction> [<https://perma.cc/3RQY-N2DA>] (last updated Apr. 15, 2015) [hereinafter U.S. CITIZENSHIP & IMMIGRATION SERVS.].

6. See Mike Warley, Note, *Deferred Action for Childhood Arrivals: A Case of Prosecutorial Discretion or Inappropriate Agency Rulemaking?*, 26 GEO. IMMIGR. L.J. 683, 687 (2012) (“Deferred action is largely a product of administration convenience and prioritization. The process has also been called ‘nonpriority status.’ The practice of assigning nonpriority status can be traced to a memo issued by former Immigration and Naturalization Service (“INS”) Commissioner Doris Meissner in 2000, outlining the importance of prosecutorial discretion in immigration matters, including the exercise of deferred action. This memo was used to guide enforcement officers in assigning nonpriority status in a general sense.”).

7. See U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 5.

8. *Id.*

9. See Shear, *supra* note 2.

10. See Russell Berman, *What Obama’s Immigration Action Actually Does*, ATLANTIC (Nov. 21, 2014), <http://www.theatlantic.com/politics/archive/2014/11/what-obamas-immigration-action-actually-does/383037/> [<https://perma.cc/ZQ7K-E72G>].

11. See Andrew Beatty, *Obama Vows to Fight Immigration Ruling*, YAHOO! NEWS (Feb. 17, 2015), <http://news.yahoo.com/judge-delays-obama-immigration-order-084206941.html> [<https://perma.cc/5VR3-JC6K>].

12. See *United States v. Juarez-Escobar*, 25 F. Supp. 3d 774, 776 (W.D. Pa. 2014).

prosecutorial discretion¹³ and were unconstitutional as violations of the separation of powers as well as the Take Care Clause.¹⁴ And in February 2015, Judge Andrew Hanen of the United States District Court of the Southern District of Texas granted a preliminary injunction in favor of a group of state officials who filed a lawsuit to prevent implementation of the DAPA program and the expansion of the DACA program.¹⁵ Judge Hanen also expressed concerns regarding the constitutionality of the actions.¹⁶

On May 26, 2015, a three judge panel of the United States Court of Appeals for the Fifth Circuit denied a motion by the United States government to stay the injunction granted by Judge Hanen.¹⁷ The Court noted that “Congress has developed an intricate process for unlawfully present aliens to reside lawfully (albeit with legal status as opposed to lawful presence) in the United States on account of their child’s citizenship.”¹⁸ The Court also stated that it “would expect” to find an explicit delegation from Congress to authorize the DAPA program, “but no such provision exists.”¹⁹ In

13. *Id.* at 787. The Court stated the following:
However, President Obama’s November 20, 2014 Executive Order goes beyond prosecutorial discretion because:

- (a) it provides for a systematic and rigid process by which a broad group of individuals will be treated differently than others based upon arbitrary classifications, rather than case-by-case examination; and
- (b) it allows undocumented immigrants, who fall within these broad categories, to obtain substantive rights.

Id.

14. *Id.* at 797.

15. *See Texas v. United States*, 86 F. Supp. 3d 591, 677 (S.D. Tex. 2015).

16. *Id.* at 655–56. The Court stated the following:

Exercising prosecutorial discretion and/or refusing to enforce a statute does not also entail bestowing benefits. Non-enforcement is just that—not enforcing the law. Non-enforcement does not entail refusing to remove these individuals as required by the law *and then* providing three years of immunity from that law, legal presence status, plus any benefits that may accompany legal presence under current regulations. This Court seriously doubts that the Supreme Court, in holding non-enforcement decisions to be presumptively unreviewable, anticipated that such “non-enforcement” decisions would include the affirmative act of bestowing multiple, otherwise unobtainable benefits upon an individual. Not only does this proposition run afoul of traditional exercises of prosecutorial discretion that generally receive judicial deference, but it also flies in the face of the very concerns that informed the *Heckler* Court’s holding.

17. *See Texas v. United States*, 787 F.3d 733, 743 (5th Cir. 2015).

18. *Id.* at 760.

19. *Id.*

denying the motion to stay, the Court of Appeals found the United States did not make a strong showing that it would likely succeed on the merits.²⁰

On June 23, 2016, the United States Supreme Court issued a *per curiam* opinion in *United States v. Texas*, upholding the decision of the United States Court of Appeals for the Fifth Circuit.²¹ The decision essentially blocked the executive actions from going into effect.²² Despite the Supreme Court's decision, there still is a broader question of how to comprehensively reform the immigration system on a large scale through legislation passed by Congress.

Many policymakers have stressed the importance of reforming the immigration system in a comprehensive way. Currently, an estimated 11 million individuals may be residing within the United States on undocumented status.²³ With the status of millions of individuals in the balance, the current debate concerning immigration reform has elicited strong passions among many on all points on the political spectrum. One major organization, the Federation for American Immigration Reform (FAIR), "seeks to reduce overall immigration to a level that is more manageable and which more closely reflects past policy. . . . [F]rom well over one million presently, to 300,000 a year"²⁴ On the other side of the debate, the National Council of La Raza (NCLR) has been supportive of comprehensive immigration reform which provides a pathway to citizenship for the 11 million undocumented immigrants currently residing within the United States.²⁵ Immigration reform developed into a key issue in the 2016 presidential race,²⁶ particularly with the Republican primary campaign.²⁷

20. *Id.* at 767.

21. See *United States v. Texas*, 136 S. Ct. 2271 (2016).

22. See Ariane de Vogue & Tal Kopan, *Deadlocked Supreme Court Deals Big Blow to Obama Immigration Plan*, CNN (June 23, 2016, 6:54 PM), <http://www.cnn.com/2016/06/23/politics/immigration-supreme-court/> [<https://perma.cc/ACX4-P4TU>].

23. See Adrian Florido, *11 Million and Growing: Breaking Down the Number of Undocumented Immigrants in the US*, PUB. RADIO INT'L (May 10, 2013, 12:45 PM), <http://www.theworld.org/2013/05/11-million-and-growing-breaking-down-the-number-of-undocumented-immigrants-in-the-us/> [<https://perma.cc/QKA9-G8PS>].

24. See *Who We Are*, FED'N FOR AM. IMMIGRATION REFORM, <http://www.fairus.org/about> [<https://perma.cc/3P6G-FXL7>] (last visited Sept. 12, 2016).

25. See *Fighting for Immigration Reform*, NAT'L COUNCIL OF LA RAZA, <http://www.nclr.org/issues/immigration/reform/> [<https://perma.cc/7EG9-22FQ>] (last visited Sept. 12, 2016).

26. See Dan Nowicki, *Immigration at Front of 2016 Presidential Race*, USA TODAY (May 15, 2015, 9:39 AM), <http://www.usatoday.com/story/news/politics/elections/2015/05/15/immigration-2016-presidential-race/27360717/> [<https://perma.cc/EJ3T-KHL7>].

27. See Francine Kiefer, *At Debate, Tough Immigration Reform Talk Shows GOP Challenge in Winning Latino Votes*, CHRISTIAN SCI. MONITOR (Aug. 7, 2015), <http://www.csmonitor.com/USA/Politics/2015/0807/At-debate-tough-immigration-talk-shows-GOP-challenge-in-winning-Latino-votes> [<https://perma.cc/L5CU-4J2U>].

Numerous significant attempts to pass legislation intended to reform the immigration system in a comprehensive fashion have stalled in Congress within the past ten years. In early 2013, eight United States Senators from across the political spectrum announced the general principles of a comprehensive immigration reform plan intended to provide a path to legalization for thousands of undocumented immigrants, enforce the United States border, and provide a system of admitting new foreign students and workers into the United States while protecting the interests of all workers.²⁸ Nicknamed the “Gang of Eight,”²⁹ the efforts of the Senators had early momentum but fell short in the 113th Congress.³⁰ Other attempts, including the 2005 McCain-Kennedy bill, the 2005 Cornyn-Kyl bill, the 2007 Kennedy-Kyl bill, and the 2010 United States Senate Democrats plan all fell short at some point in the federal legislative process.³¹ However, efforts to restrict immigration have quickly surfaced at the local and state level in the meantime. Some policymakers, sensing inaction at the federal level, focused efforts on the passage of local and state legislation to enforce the nation’s immigration laws.³² At the local level, the cities of Hazleton,

28. See Brad Plumer, *READ: Senators Release Bipartisan Plan for Immigration Reform*, WASH. POST (Jan. 28, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/28/read-senators-release-their-plan-for-immigration-reform/> [https://perma.cc/7674-8TY6].

29. See Rachel Weiner, *Immigration’s Gang of 8: Who Are They?*, WASH. POST, (Jan. 28, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/01/28/immigrations-gang-of-8-who-are-they/> [https://perma.cc/6PZ3-Y268]. The Gang of Eight includes four Republican and four Democratic senators. *Id.* The Republican senators include Senator Marco Rubio of Florida, Senator Jeff Flake of Arizona, Senator John McCain of Arizona, and Senator Lindsey Graham of South Carolina; the Democratic senators include Senator Dick Durbin of Illinois, Senator Robert Menendez of New Jersey, Senator Chuck Schumer of New York, and Senator Michael Bennett of Colorado. *Id.* It should be noted that since this time Senator Rubio has expressed reservations concerning his prior support for the proposal. See Reena Flores, *Marco Rubio Answers for His Failed 2013 Immigration Plans – Again*, CBS NEWS (Feb. 27, 2015, 10:50 AM), <http://www.cbsnews.com/news/marco-rubio-answers-for-his-failed-2013-immigration-plans-again/> [https://perma.cc/5KK8-54RC].

30. See Flores, *supra* note 29.

31. See Rachel Weiner, *How Immigration Reform Failed, Over and Over*, WASH. POST (Jan. 30, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over/> [https://perma.cc/SW64-2XX6].

32. For an excellent discussion and overview of state and local legislation relating to immigration prior to 2007, see Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27 (2007).

Pennsylvania,³³ Farmer's Branch, Texas,³⁴ and Fremont, Nebraska³⁵ enacted ordinances imposing penalties upon persons and business entities who knowingly rent a dwelling unit to undocumented immigrants. At least six states, five following the lead of Arizona's S.B. 1070, have enacted laws which require local police to determine the immigration status of detained or arrested individuals when they have "reasonable suspicion" the individuals are undocumented.³⁶ Numerous academic commentators have written law review articles concerning the legality and effects of state and local enforcement of immigration,³⁷ and the 2012 United States Supreme Court

33. For a comprehensive discussion of the issues concerning the Hazleton ordinance, see Garrett Kennedy, *Illegal is Not Simply Illegal: The Broad Ramifications of a Pennsylvania Town's Attempt at Immigration Control, and the Inherent Problems of Racial Discrimination*, 10 U. PA. J. BUS. & EMP. L. 1029 (2008).

34. See Nathan G. Cortez, *The Local Dilemma: Preemption and the Role of Federal Standards in State and Local Immigration Laws*, 61 SMU L. REV. 47, 61 (2008).

35. See generally Chad G. Marzen, *Hispanics in the Heartland: The Fremont, Nebraska Immigration Ordinance and the Future of Latino Civil Rights*, 29 HARV. J. ON RACIAL & ETHNIC JUST. 69 (2013).

36. See *State and Local Immigration Laws*, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org/immigrants-rights/state-anti-immigrant-laws> [<https://perma.cc/ENK3-D4EP>] (last visited Aug. 30, 2015); *SB 1070 Four Years Later: Lessons Learned*, NAT'L IMMIGRATION LAW CTR. (Apr. 23, 2014), <https://www.nilc.org/issues/immigration-enforcement/sb-1070-lessons-learned/> [<https://perma.cc/77UM-HPXJ>].

37. Law review scholarship in this area is vast. Articles include the following:
2014: Ming Chen, *Immigration and Cooperative Federalism: Toward a Doctrinal Framework*, 85 U. COLO. L. REV. 1087 (2014); Christine N. Cimini, *Hands Off Our Fingerprints: State, Local, and Individual Defiance of Federal Immigration Enforcement*, 47 CONN. L. REV. 101 (2014); Benjamin Galloway, Comment, *Perpetual Congressional Inaction: State Regulation of Immigration in Response to Lack of Reform*, 65 MERCER L. REV. 795 (2014); Catherine Y. Kim, *Immigration Separation of Powers and the President's Power to Preempt*, 90 NOTRE DAME L. REV. 691 (2014);

2013: Erica L. Sharp, Note, *The Resolution of the "Show Me Your Papers" Circuit Split: Constitutionality and Consequences of Enforcing State and Local Immigration Laws*, 19 WIDENER L. REV. 465 (2013); Emily Sitton, Comment, *Challenging State and Local Anti-Immigrant Employment Laws: An Evaluation of Preemption, Equal Protection, and Judicial Awareness Tactics*, 91 OR. L. REV. 961 (2013);

2012: Kristina M. Campbell, *Humanitarian Aid is Never a Crime? The Politics of Immigration Enforcement and the Provision of Sanctuary*, 63 SYRACUSE L. REV. 71 (2012); Jennifer M. Chacón, *Overcriminalizing Immigration*, 102 J. CRIM. L. & CRIMINOLOGY 613 (2012); Patrick J. Charles, *Recentering Foreign Affairs Preemption in Arizona v. United States: Federal Plenary Power, the Spheres of Government, and the Constitutionality of S.B. 1070*, 60 CLEV. ST. L. REV. 133 (2012); Marisa S. Cianciarulo, *The "Arizonification" of Immigration Law: Implications of Chamber of Commerce v. Whiting for State and Local Immigration Legislation*, 15 HARV. LATINO L. REV. 85 (2012); Mary Fan, *Rebellious State Crimmigration Enforcement and the Foreign Affairs Power*, 89 WASH. U. L. REV. 1269 (2012); Lauren Gilbert, *Immigrant Laws, Obstacle Preemption and the Lost Legacy of McCulloch*, 33 BERKELEY J. EMP. & LAB. L. 153 (2012); Kevin R. Johnson, *Immigration and Civil Rights: State and Local Efforts to Regulate Immigration*, 46 GA. L. REV. 609 (2012); Kris Kobach,

The Fiscal and Legal Foundation of State Laws on Illegal Immigration, 51 WASHBURN L.J. 201 (2012); Calvin L. Lewis, David Strange & Michael Blake Downey, *Why Arizona Senate Bill 1070 Is Constitutional and Not Preempted by Federal Law*, 89 U. DET. MERCY L. REV. 283 (2012); George A. Martinez, *Arizona, Immigration, and Latinos: The Epistemology of Whiteness, the Geography of Race, Interest Convergence, and the View from the Perspective of Critical Race Theory*, 44 ARIZ. ST. L.J. 175 (2012); Karla Mari McKanders, *Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities*, 61 CATH. U. L. REV. 921 (2012); S. Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Importance of the Political in Immigration Federalism*, 44 ARIZ. ST. L.J. 1431 (2012); Daniel J. Tichenor & Alexandra Filindra, *Raising Arizona v. United States: Historical Patterns of American Immigration Federalism*, 16 LEWIS & CLARK L. REV. 1215 (2012); Ashleigh Bausch Varley & Mary C. Snow, *Don't You Dare Live Here: The Constitutionality of the Anti-Immigrant Housing Ordinances at Issue in Keller v. City of Fremont*, 45 CREIGHTON L. REV. 503 (2012); David P. Weber, *State and Local Regulation of Immigration: The Need for a Bilateral (Reciprocal) Ratchet*, 18 ILSA J. INT'L & COMP. L. 707 (2012); L. Darnell Weeden, *The Supremacy Clause Preemption Rationale Reasonably Restrains an Individual State Pursuing its Own Separate But Unequal Immigration Policy*, 14 SCHOLAR 679 (2012);

2011: Kristina M. Campbell, *The Road to S.B. 1070: How Arizona Became Ground Zero for the Immigrants' Rights Movement and the Continuing Struggle for Latino Civil Rights in America*, 14 HARV. LATINO L. REV. 1 (2011); Michael Carroll, *The Supremacy Clause Versus S.B. 1070: Can Arizona's Strict Illegal Immigration Law Withstand Constitutional Challenge?*, 4 ALB. GOV'T L. REV. 897 (2011); Gabriel J. Chin & Marc L. Miller, *The Unconstitutionality of State Regulation of Immigration Through Criminal Law*, 61 DUKE L.J. 251 (2011); Keith Cunningham-Parmeter, *Forced Federalism: States as Laboratories of Immigration Reform*, 62 HASTINGS L.J. 1673 (2011); Ingrid V. Eagly, *Local Immigration Prosecution: A Study of Arizona Before SB 1070*, 58 UCLA L. REV. 1749 (2011); Yolanda C. Garcia, Giana Ortiz & Victoria Neave, *Where are the Courts Drawing the Line? The Contours of Preemption and Other Constitutional Bases for the Enjoinment of Modern State-Propounded Immigration-Related Statutes and Ordinances*, 37 T. MARSHALL L. REV. 81 (2011); Kati L. Griffith, *Discovering "Immemployment" Law: The Constitutionality of Subfederal Immigration Regulation at Work*, 29 YALE L. & POL'Y REV. 389 (2011); David A. Harris, *Immigration and National Security: The Illusion of Safety Through Local Law Enforcement Action*, 28 ARIZ. J. INT'L & COMP. L. 383 (2011); Andrea Christina Nill, Comment, *Latinos and S.B. 1070: Demonization, Dehumanization, and Disenfranchisement*, 14 HARV. LATINO L. REV. 35 (2011); Kris W. Kobach, *Arizona's S.B. 1070 Explained*, 79 UMKC L. REV. 815 (2011); Kris W. Kobach, *Fact or Fiction?: Setting the Record Straight on S.B. 1070*, 23 REGENT U. L. REV. 353 (2011); Jamie Longazel & Benjamin Fleury-Steiner, *Exploiting Borders: The Political Economy of Local Backlash Against Undocumented Immigrants*, 30 CHICANO-LATINO L. REV. 43 (2011); Karla Mari McKanders, *Unforgiving of Those Who Trespass Against U.S.: State Laws Criminalizing Immigration Status*, 12 LOY. J. PUB. INT. L. 331, 362-63 (2011); Frank Melone, Elizabeth Pitrof & Ann Schmidt, *Arizona S.B. 1070: Straw Man Law Enforcement*, 14 HARV. LATINO L. REV. 23 (2011); Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Law*, 58 UCLA L. REV. 1819 (2011); Scott Nakama, *Senate Bill 1070: The Implications of Arizona's Immigration Law Upon MLB*, 8 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 23 (2011); Lindsay Nash, *Expression By Ordinance: Preemption and Proxy in Local Legislation*, 25 GEO. IMMIGR. L.J. 243 (2011); Rachel R. Ray, *Insecure*

Communities: Examining Local Government Participation in U.S. Immigration and Customs Enforcement's "Secure Communities" Program, 10 SEATTLE J. FOR SOC. JUST. 327 (2011); Thomas A. Saenz, *A New Nullification: Arizona's S.B. 1070 Triggers a National Constitutional Crisis*, 21 BERKELEY LA RAZA L.J. 5 (2011); David A. Selden, Julie A. Pace & Heidi Nunn-Gilman, *Placing S.B. 1070 and Racial Profiling into Context, and What S.B. 1070 Reveals About the Legislative Process in Arizona*, 43 ARIZ. ST. L.J. 523 (2011); Rick Su, *Police Discretion and Local Immigration Policymaking*, 79 UMKC L. REV. 901 (2011); Dale B. Thompson, *Immigration Policy Through the Lens of Optimal Federalism*, 2 WM. & MARY POL'Y REV. 236 (2011);

2010: Keith Aoki & John Shuford, *Welcome to Amerizona—Immigrants Out!: Assessing "Dystopian Dreams" and "Usable Futures" of Immigration Reform, and Considering Whether "Immigration Regionalism" is an Idea Whose Time Has Come*, 38 FORDHAM URB. L.J. 1 (2010); Kristina M. Campbell, *The High Cost of Free Speech: Anti-Solicitation Ordinances, Day Laborers, and the Impact of "Backdoor" Local Immigration Regulations*, 25 GEO. IMMIGR. L.J. 1 (2010); Kristina M. Campbell, *Imagining a More Humane Immigration Policy in the Age of Obama: The Use of Plenary Power to Halt the State Balkanization of Immigration Regulation*, 29 ST. LOUIS U. PUB. L. REV. 415 (2010); Gabriel J. Chin, Carissa Byrne Hessick, Toni Massaro & Marc L. Miller, *A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070*, 25 GEO. IMMIGR. L.J. 47 (2010); Yule Kim, *The Limits of State and Local Immigration Enforcement and Regulation*, 3 ALB. GOV'T L. REV. 242 (2010); Karla Mari McKanders, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, 26 HARV. J. RACIAL & ETHNIC JUST. 163 (2010); Huyen Pham & Pham Hoang Van, *The Economic Impact of Local Immigration Regulation: An Empirical Analysis*, 32 CARDOZO L. REV. 485 (2010); Careen Shannon, *Regulating Immigration at the State Level: A Focus on Employment*, 3 ALB. GOV'T L. REV. 218 (2010); Rick Su, *Local Fragmentation as Immigration Regulation*, 47 HOUS. L. REV. 367 (2010); John Ryan Syllaios, *The Future of Discriminatory Local Ordinances Aimed at Regulating Illegal Immigration*, 16 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 639 (2010); L. Darnell Weeden, *It Is Discriminatory for Arizona or Society to Engage in the Anti-Immigration Practice of Profiling Hispanics for Speaking Spanish*, 12 LOY. J. PUB. INT. L. 109 (2010);

2009: Pratheepan Gulasekaram & Rose Cuison Villazor, *Sanctuary Policies & Immigration Federalism: A Dialectic Analysis*, 55 WAYNE L. REV. 1683 (2009); Elizabeth McCormick, *The Oklahoma Taxpayer and Citizen Protection Act: Blowing Off Steam or Setting Wildfires?*, 23 GEO. IMMIGR. L.J. 293 (2009); Karla Mari McKanders, *The Constitutionality of State and Local Laws Targeting Immigrants*, 31 U. ARK. LITTLE ROCK L. REV. 579 (2009); Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 VAND. L. REV. 55 (2009); L. Darnell Weeden, *Standing and Speaking Constitutional Truth to Local Power Regarding Undocumented Immigrant Residents Dwelling with We the People of the United States*, 34 S. ILL. U. L.J. 55 (2009);

2008: Helen M. Harnett, *State and Local Anti-Immigrant Initiatives: Can They Withstand Legal Scrutiny?*, 17 WIDENER L.J. 365 (2008); Clare Huntington, *The Constitutional Dimension of Immigration Federalism*, 61 VAND. L. REV. 787 (2008); Kevin R. Johnson, *A Handicapped, Not "Sleeping," Giant: The Devastating Impact of the Initiative Process on Latina/o and Immigrant Communities*, 96 CAL. L. REV. 1259 (2008); Kris W. Kobach, *Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration*, 22 GEO. IMMIGR. L.J. 459 (2008); Christina M. Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567 (2008); Juliet P. Stumpf, *States of Confusion: The Rise of State and Local Power Over Immigration*, 86 N.C. L. REV. 1557 (2008); Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619 (2008); Rick

decision in *Arizona v. United States*³⁸ still leaves many legal issues concerning immigration unresolved.³⁹

Amidst all of the debates among policymakers over immigration, many questions remain unanswered. What is a realistic solution to immigration? What is a *just* solution to immigration? What is a *humane* solution to immigration? Is there a way to promote the universal common good?

In the immigration debate, the Catholic legal tradition offers key insights into the universal common good and maintaining the balance between the

Su, *Notes on the Multiple Facets of Immigration Federalism*, 15 TULSA J. COMP. & INT'L L. 179 (2008); L. Darnell Weeden, *Local Laws Restricting the Freedom of Undocumented Immigrants as Violations of Equal Protection and Principles of Federal Preemption*, 52 ST. LOUIS U. L.J. 479 (2008);

2007: Marlin W. Burke, *Reexamining Immigration: Is It a Local or National Issue?*, 84 DENV. U. L. REV. 1075 (2007); Kristina M. Campbell, *Local Illegal Immigration Relief Act Ordinances: A Legal, Policy, and Litigation Analysis*, 84 DENV. U. L. REV. 1041 (2007); Muzaffar A. Chishti, *Enforcing Immigration Rules: Making the Right Choices*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 451 (2007); Kathryn J. Couch, *This Land Is Our Land, A Local Solution to a Local Problem: State Regulation of Immigration Through Business Licensing*, 21 GEO. IMMIGR. L.J. 641 (2007); Eric L'Heureux Issadore, *Is Immigration Still Exclusively a Federal Power? A Preemption Analysis on Legislation by Hazleton, Pennsylvania Regulating Illegal Immigration*, 52 VILL. L. REV. 331 (2007); Karla Mari McKanders, *Welcome to Hazleton! "Illegal" Immigrants Beware: Local Immigration Ordinances and What the Federal Government Must Do About It*, 39 LOY. U. CHI. L.J. 1 (2007); Matthew Parlow, *A Localist's Case for Decentralizing Immigration Policy*, 84 DENV. U. L. REV. 1061 (2007); and

2006: Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179 (2005–2006).

38. See *Arizona v. U.S.*, 132 S. Ct. 2492 (2012).

39. Law review articles responding to the issues left by *Arizona v. United States* include: Kerry Abrams, *Plenary Power Preemption*, 99 VA. L. REV. 601 (2013); Kristina M. Campbell, *(Un)Reasonable Suspicion: Racial Profiling in Immigration Enforcement After Arizona v. United States*, 3 WAKE FOREST J.L. & POL'Y 367 (2013); Jennifer M. Chacón, *Policing Immigration After Arizona*, 3 WAKE FOREST J.L. & POL'Y 231 (2013); Jennifer M. Chacón, *The Transformation of Immigration Federalism*, 21 WM. & MARY BILL RTS. J. 577 (2012); Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703 (2013); Lauren Gilbert, *Obama's Ruby Slippers: Enforcement Discretion in the Absence of Immigration Reform*, 116 W. VA. L. REV. 255 (2013); Lucas Guttentag, *Immigration Preemption and the Limits of State Power: Reflections on Arizona v. United States*, 9 STAN. J. C.R. & C.L. 1 (2013); Melissa Keaney & Alvaro M. Huerta, *Restrictionist States Rebuked: How Arizona v. United States Reins in States on Immigration*, 3 WAKE FOREST J.L. & POL'Y 249 (2013); Christopher N. Lasch, *Preempting Immigration Detainer Enforcement Under Arizona v. United States*, 3 WAKE FOREST J.L. & POL'Y 281 (2013); Christopher N. Lasch, *Federal Immigration Detainers After Arizona v. United States*, 46 LOY. L.A. L. REV. 629 (2013); and Karla Mari McKanders, *Federal Preemption and Immigrants' Rights*, 3 WAKE FOREST J.L. & POL'Y 333 (2013).

individual's right to immigrate and a nation's right to regulate its borders for safety and security. The Catholic legal tradition emphasizes the significance of the universal common good in policy decisions and applying the Catholic legal tradition to the contemporary debates over comprehensive immigration reform can provide key insights to policy discussions.⁴⁰

A number of scholars have commented on the significance of religious traditions to the debate concerning immigration policy in the United States.⁴¹ In this Article, we contend that the Catholic legal tradition is relevant to the contemporary debate among policymakers, as it balances policy considerations of the right to immigrate as well as the right of a nation to regulate its borders advocated on both ends of the policy debate.

Section I of this Article discusses the current policy debate concerning comprehensive immigration reform and recent major legislative proposals for comprehensive immigration reform, including the plan of the "Gang of Eight" in 2013. Section II explains the biblical foundations concerning migration and key elements in Catholic social teaching concerning immigration.

In Section III, we provide the outline of a contemporary proposal for comprehensive immigration reform that incorporates Catholic social principles. To highlight the value of the universal common good and to balance both strands of Catholic social thought, we advocate a proposal for immigration reform which largely emphasizes community service, instead of fines, as a precondition for undocumented individuals to earn legalized

40. See LIBRERIA EDITRICE VATICANA, CATECHISM OF THE CATHOLIC CHURCH paras. 1907, 1908 and 1909 (2d ed. 1997) [hereinafter CATECHISM OF THE CATHOLIC CHURCH]. The Catechism notes that the universal common good is comprised of three elements in the Catholic tradition: first, respect for the person; second, the upholding of the social well-being and development of the group; and finally, peace. *Id.*; see also Robert J. Muise, Note, *Professional Responsibility for Catholic Lawyers: The Judgment of Conscience*, 71 NOTRE DAME L. REV. 771, 788 (1996).

41. See Victor C. Romero, *Christian Realism and Immigration Reform*, 7 U. ST. THOMAS L.J. 310 (2010); Donald Kerwin, *Toward a Catholic Vision of Nationality*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 197 (2009); Vincent D. Rougeau, *Catholic Social Teaching and Global Migration: Bridging the Paradox of Universal Human Rights and Territorial Self-Determination*, 32 SEATTLE U. L. REV. 343 (2009); James Parry Eyster, *Pope John Paul II and Immigration Law and Policy*, 6 AVE MARIA L. REV. 85 (2007) (discussing the contributions of Pope John Paul II to Catholic social teaching concerning immigration law); Michael A. Scaperlanda, *Reflections on Immigration Reform, the Workplace and the Family*, 4 U. ST. THOMAS L.J. 508 (2007); Marah Carter Stith, *Immigration Control: A Catholic Dilemma?*, 84 U. DET. MERCY L. REV. 73 (2007); Rebecca van Uitert, *Undocumented Immigrants in the United States: A Discussion of Catholic Social Thought and "Mormon Social Thought" Principles*, 46 J. CATH. LEGAL STUD. 277 (2007); Michael Scaperlanda, *Immigration and Evil: The Religious Challenge*, 83 U. DET. MERCY L. REV. 835 (2006); and Amelia J. Uelmen, *Strangers No Longer: Immigration Law & Policy in the Light of Religious Values*, 83 U. DET. MERCY L. REV. 829 (2006).

status.⁴² In addition, following the lead of an article in the *Economist* in February 2015, we advocate a part of the proposal where individual states can have a role in comprehensive immigration reform⁴³ that is consistent with Catholic social teaching.

I. THE CURRENT DEBATE CONCERNING IMMIGRATION REFORM

A. *Immigration to the U.S.—Statistical Trends and the Emerging Issue of Immigration to the U.S.*

The boom in immigration to the United States has been occurring for a number of years. According to the Congressional Research Service, immigration to the United States in the early part of the twenty-first century is approaching levels comparable to the rise in immigration in the early twentieth century.⁴⁴ While in the early twentieth century the wide majority of new immigrants were European,⁴⁵ immigrants to the United States today come from a variety of countries in various continents, with the highest sending countries being Mexico, the Philippines, China, Vietnam, Dominican Republic, India, El Salvador, Cuba, Korea, and Colombia.⁴⁶ In 1910, approximately 14.8 percent of all individuals residing within the United States were foreign-born;⁴⁷ one hundred years later, in 2010, that figure stood at 12.9 percent.⁴⁸ While these percentages may not appear to be substantial to the lay observer, the actual numbers show a significant increase in the number of foreign-born residents of the United States. In 1960, just under 10 million individuals within the United States were foreign-born; in 2010, that number stood at approximately 40 million.⁴⁹

42. The possibility of a community service requirement has been suggested in the past by at least one policymaker, United States Senator Marco Rubio of Florida, one of the original “Gang of Eight” in the United States Senate. For more information, see Matthew Kaminski, *Marco Rubio: Riding to the Immigration Rescue*, WALL STREET J. (Jan. 14, 2013, 2:47 PM), <http://www.wsj.com/articles/SB10001424127887323442804578235844003050604>.

43. See *Let the States Decide*, ECONOMIST, Feb. 7, 2015, at 14–15 [hereinafter *Let the States Decide*].

44. See WILLIAM A. KANDEL, CONG. RESEARCH SERV., R42988, U.S. IMMIGRATION POLICY: CHART BOOK OF KEY TRENDS, at Summary (2014).

45. See Marvin H. Morse & Lucy M. Moran, *Troubling the Waters: Human Cargos*, 33 J. MAR. L. & COM. 1, 17 (2002).

46. See KANDEL, *supra* note 44, at 3.

47. *Id.* at 2.

48. *Id.* at 7.

49. *Id.* at 4.

Of the 40 million foreign-born individuals residing within the borders of the United States, the Department of Homeland Security's Office of Immigration Statistics estimates that approximately 11.5 million individuals are residing without legal authorization.⁵⁰ Of this figure, an estimated 42% entered the United States from approximately 2000 to 2010.⁵¹

With millions of undocumented immigrants residing within the United States, the debate over immigration has become largely divided. Some policymakers appear to prefer an approach of further securing the United States–Mexico border, strengthening the U.S. Border Patrol and adding unmanned aerial drones to border security as a prerequisite to set in place before passing legislation to address the status of undocumented immigrants within the United States.⁵² Some policymakers opine that an earned legalization program would be synonymous with an “amnesty.”⁵³ Other policymakers advocate the importance of passing a reform proposal and setting into place an earned legalization program for the undocumented.⁵⁴ Although the contemporary debate is quite polarized, immigration reform is not a subject completely new to the congressional policy agenda.

B. Background of Key Modern Immigration Laws

A number of key immigration laws enacted in the past thirty years inform and guide the contemporary discussions concerning immigration reform. In the 1980s, immigration to the United States spiked⁵⁵ as the United States became a hospitable place for new immigrants with its economic growth.⁵⁶ Support networks for the immigrants also grew within the United States, quickly becoming a factor that encouraged more immigration.⁵⁷ With approximately 2 million individuals who entered the country with undocumented status in the 1980s, policymakers increasingly called for reform of the

50. *Id.* at 5.

51. See KANDEL, *supra* note 44, at (summary).

52. See Roxana Tiron, *Republican Road to Immigration Law Needs Amnesty Defined*, BLOOMBERG (July 10, 2013, 11:12 AM), <http://www.bloomberg.com/news/2013-07-10/republican-road-to-immigration-law-needs-amnesty-defined.html> [https://perma.cc/SG4Y-W84V].

53. *Id.*

54. See Brian Latimer, *Gutierrez: House Has Enough Votes for Immigration Reform: “Now We Need to Get It Done,”* NBC LATINO (July 22, 2013, 5:13 PM), <http://nbclatino.com/2013/07/22/gutierrez-house-has-enough-votes-for-immigration-reform-now-we-need-to-get-it-done/> [https://perma.cc/33K6-TNT9].

55. See Peter H. Schuck & Theodore Hsien Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979-1990*, 45 STAN. L. REV. 115, 116 (1992).

56. See ELIZABETH S. ROLPH, RAND CORP., IMMIGRATION POLICIES: LEGACY FROM THE 1980S AND ISSUES FOR THE 1990S 9–10 (1992).

57. *Id.*

immigration system.⁵⁸ Congress quickly enacted the Immigration Reform and Control Act of 1986 (IRCA) to attempt to update the United States' patchwork synthesis of various immigration laws.⁵⁹

1. *The Immigration Reform and Control Act of 1986*

IRCA⁶⁰ represented Congress' first comprehensive legislation to address the issue of undocumented immigrants residing within the United States.⁶¹ IRCA had three main goals: 1) to establish a program to legalize certain undocumented immigrants residing within the United States; 2) to further secure the borders of the United States; and 3) to enact tough sanctions upon employers who knowingly employ undocumented immigrants.⁶²

The main feature of IRCA commonly discussed in the contemporary policy debates today was the granting of amnesty to certain undocumented immigrants.⁶³ IRCA permitted immigrants who were continuously and unlawfully present within the United States prior to January 1, 1982 to apply for status as a legal permanent resident (LPR) following temporary residency of eighteen months, provided they were of "good moral character"⁶⁴ and met certain requirements for proficiency in the English language as well as demonstrated knowledge of United States history and governmental institutions.⁶⁵ In addition, the legislation granted a path to legalized status

58. See Schuck & Wang, *supra* note 55.

59. *Id.* at 116–17.

60. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

61. See Natalya Shatniy, *Economic Effects of Immigration: Avoiding Past Mistakes and Preparing for the Future*, 14 SCHOLAR 869, 878–79 (2012).

62. See S. 744 and the Immigration Reform and Control Act of 1986: *Lessons Learned or Mistakes Repeated?: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. 2 (2013) (statement of Rep. Bob Goodlatte, Chair, H. Comm. on the Judiciary).

63. See Juan P. Osuna, Comment, *Amnesty in the Immigration Reform and Control Act of 1986: Policy Rationale and Lessons from Canada*, 3 AM. U. J. INT'L L. & POL'Y 145, 145–46 (1988) ("On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986. This landmark legislation contains two key provisions: employer sanctions and legalization, or amnesty, or undocumented aliens.").

64. See 8 U.S.C. § 1101(f); BETSY COOPER & KEVIN O'NEIL, MIGRATION POLICY INSTITUTE, LESSONS FROM THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (Aug. 2005), http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf [<https://perma.cc/8BSU-NGJ9>].

65. See 8 U.S.C. § 1255; BRYAN C. BAKER, UNITED STATES DEPARTMENT OF HOMELAND SECURITY OFFICE OF IMMIGRATION STATISTICS, NATURALIZATION RATES AMONG IRCA IMMIGRANTS: A 2009 UPDATE 1 (Oct. 2010), <http://www.dhs.gov/xlibrary/assets/statistics/publications/irca-natz-fs-2009.pdf> [<https://perma.cc/T9SQ-HYQ9>].

to thousands of special agricultural workers (SAWs).⁶⁶ In total, approximately 2.7 million individuals eventually became legal permanent residents under IRCA.⁶⁷

While IRCA contained a pathway to legal permanent resident status for thousands of undocumented immigrants, the legislation also toughened sanctions against illegal immigration. To further the goal of securing the border, IRCA provided for a fifty-percent increase of the staff of the United States Border Patrol.⁶⁸ Congress also enacted provisions toughening employer sanctions of the knowing hiring and retention of undocumented immigrants, as it sought to curb illegal immigration through eliminating the “magnet” of unauthorized employment.⁶⁹ ICRA made three types of activity illegal:

- 1) the knowing hiring of persons not authorized to work in the United States; 2) the continued employment of persons not authorized to work (though persons previously employed were not subject to these restrictions); and 3) the hiring of an individual without verifying or correctly documenting the person’s identity and eligibility to work legally in the United States.⁷⁰

Despite these strict measures, Congress would further implement vastly tougher changes to the immigration laws approximately a decade later.

2. *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

For a decade following the passage of IRCA, illegal immigration remained a significant issue in United States policy and policy shifted from an emphasis

66. COOPER & O’NEIL, *supra* note 64, at 4 (“The Special Agricultural Worker (SAW) program provided permanent residency to aliens who could demonstrate they had 60 days of seasonal agricultural work experience in qualifying crops from May 1985 to May 1986. SAW applicants could apply for permanent residency status without meeting the civics and language requirement for applicants to the general legalization program, and the program was funded through appropriated funds, not applicant fees. Nearly 1.3 million people applied for the SAW program, far more than the 250,000 who were projected to do so.”).

67. See BAKER, *supra* note 65, at 1.

68. See Jesus A. Trevino, Comment, *Border Violence Against Illegal Immigrants and the Need to Change the Border Patrol’s Current Complaint Review Process*, 21 HOUS. J. INT’L L. 85, 89 (1998).

69. See John B. Kaiser, Note, *IRCA’s Employer Sanctions Provisions Under Meister v. INS: Constructing a Constructive Knowledge Standard*, 4 GEO. IMMIGR. L.J. 681, 685 (1990) (“Throughout the legislative history of the Act, Congress made clear its belief that employment is a magnet that draws aliens to enter this country illegally. Consequently, Congress believed that the most effective response to the overwhelming influx of unauthorized aliens was legislation containing employer sanction provisions. In this regard, a 1986 Committee Report on employer sanctions provisions expressed the concern that unless employer sanctions become law, employment of unauthorized aliens would increase.”).

70. COOPER & O’NEIL, *supra* note 64, at 2–3; see also Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

on legalization programs to increased restrictions on immigration. Increased hostility to immigration also started to emerge.⁷¹ In the mid-1990s, Congress took sweeping action⁷² concerning immigration policy with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.⁷³

IIRIRA completely changed the landscape of immigration law and the focus of immigration legislation from legalization of the undocumented to a renewed emphasis on border security and penalization of illegal immigration. The legislation not only provided for an increase of 5,000 Border Patrol agents for the forthcoming five years, it also allocated funds for the construction of a fourteen-mile triple fence along the border between the United States and Mexico near San Diego, California to increase border security.⁷⁴ Significantly, the law also tied certain immigration offenses to the Racketeer Influenced and Corrupt Organizations Act (RICO). RICO, originally intended to combat organized crime,⁷⁵ today largely applies more to white-collar crimes.⁷⁶ IIRIRA connects offenses such as the unlawful procurement of citizenship and the forgery and production of false immigration documents

71. See Anthony Distinti, Note, *Gone But Not Forgotten: How Section 212(C) Relief Continues to Divide Courts Presiding Over Indictments for Illegal Reentry*, 74 *FORDHAM L. REV.* 2809, 2821 (2006) (“The 1990s witnessed a growing societal resentment toward aliens in the United States. The animosity spiked after the 1993 World Trade Center bombing and the 1996 Oklahoma City bombing.”).

72. See Brent Asseff, Note, *Reinstatement of Removal and IIRIRA Retroactivity After Fernandez-Vargas v. Gonzales: Restoring Section 212(C) Discretion and Fairness to Immigration Law*, 46 *U. LOUISVILLE L. REV.* 157, 160 (2007).

73. See *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. 104-208, 110 Stat. 3009-546.

74. See *IIRIRA 96 – A Summary of the New Immigration Bill*, SISKIND SUSSER (Nov. 30, 1996), <http://www.visalaw.com/iirira-96-a-summary-of-the-new-immigration-bill/> [<https://perma.cc/R8KR-F3GU>] [hereinafter SISKIND SUSSER].

75. See 18 U.S.C. §§ 1961–1968 et. seq. (2013); FRANK B. CROSS & ROGER LEROY MILLER, *THE LEGAL AND ENVIRONMENT OF BUSINESS: TEXT AND CASES* 149–50 (9th ed. 2015). Cross & Miller describe the RICO statute as follows:

In 1970, in an effort to curb the entry of organized crime into the legitimate business world, Congress passed the Racketeer Influenced and Corrupt Organizations Act (RICO) as part of the Organized Crime Control Act. The statute makes it a federal crime to (1) use income obtained from racketeering activity to purchase any interest in an enterprise, (2) acquire or maintain an interest in an enterprise through racketeering activity, (3) conduct or participate in the affairs of an enterprise through racketeering activity, or (4) conspire to do any of the preceding activities.

76. See CROSS & MILLER, *supra* note 75, at 147.

to RICO and subjects offenders to RICO's significant criminal and civil penalties.⁷⁷

Arguably the most dramatic change IIRIRA implemented was a move from "deportation" proceedings to "removal" proceedings and more stringent bars to admissibility for undocumented immigrants.⁷⁸ IIRIRA implemented a three-year bar to any legal admission into the United States for any individual unlawfully present in the United States for more than 180 days and less than a year, and a ten-year bar to any legal admission for any individual unlawfully present in the United States for more than a year.⁷⁹ Finally, IIRIRA expanded the listing of aggravated felonies which could constitute grounds for removal of an alien, including crimes such as "thefts, burglaries, crimes of violence punishable by a sentence exceeding one year, rape, sexual abuse of a minor, money laundering, fraud or tax evasion of \$10,000 or more, kidnapping, child pornography, RICO offenses, pimping, and document trafficking."⁸⁰ While IIRIRA shifted the legislative focus on immigration from legalization initiatives for undocumented immigrants to curbing illegal immigration, the tragedy of the terrorist attacks of September 11, 2001 brought renewed focus among policymakers to national security.

3. 2002 Enhanced Border Security and Visa Entry Reform Act and 2005 Real ID Act

The tragedy of the September 11, 2001 terrorist attacks profoundly affected immigration law and policy within the United States. Each one of the hijackers involved in the four separate hijackings of passenger airplanes had lost their lawful immigration status yet still remained within the United States.⁸¹ As one commentator noted, the tragic events of September 11 heightened concerns regarding the risks of immigration in connection with the overall security of American institutions.⁸² Within four years,

77. *Id.* at 150. Cross & Miller state that "[A]ny individual who is found guilty is subject to a fine of up to \$25,000 per violation, imprisonment for up to twenty years, or both." *Id.*

78. See Patricia Flynn & Judith Patterson, *Five Years Later: Fifth Circuit Case Law Developments Under the Illegal Immigration Reform and Immigrant Responsibility Act*, 53 BAYLOR L. REV. 557, 561 (2001).

79. See SISKIND SUSSER, *supra* note 74.

80. Teri E. O'Brien, Note, *Richardson v. Reno: What is the Proper Application of the Illegal Immigration Reform and Immigrant Responsibility Act to Criminal Aliens?*, 38 SAN DIEGO L. REV. 333, 335 (2001) (quoting Jason H. Ehrenberg, *A Call for Reform of Recent Immigration Legislation*, 32 U. MICH. J.L. REFORM 195, 195 (1998)); see also 8 U.S.C. § 1101(a)(43) (2016).

81. See *Identity and Immigration Status of 9/11 Terrorists (2011)*, FED'N FOR AM. IMMIGRATION REFORM, <http://www.fairus.org/issue/identity-and-immigration-status-of-9-11-terrorists> [<https://perma.cc/P2MU-ZHX4>] (last updated Nov. 2011).

82. See Peter Margulies, *Uncertain Arrivals: Immigration, Terror, and Democracy After September 11*, 2002 UTAH L. REV. 481, 481.

Congress would enact two additional significant pieces of legislation with a major goal to improve security.

The first major law, the 2002 Enhanced Border Security and Visa Entry Reform Act,⁸³ aimed to close loopholes in immigration law in effect at that time which assisted the 9/11 hijackers not only in gaining admittance into the United States but also in avoiding detection of their involvement in terrorist activities.⁸⁴ The Act not only provided for an increase in the numbers of INS and Customs Services Inspectors,⁸⁵ but also appropriated \$150 million to the INS and U.S. Customs Service to improve technology to monitor the status of foreign visas⁸⁶ and called for increased interagency sharing of information concerning the admissibility and removability of aliens between law enforcement, intelligence agencies and other agencies in the federal government.⁸⁷ The National Immigration Forum specifically outlined many of the Act's security provisions as follows:

The Border Security Act creates layers of security by providing multiple opportunities for our government to turn away or apprehend potentially dangerous travelers. First, non-immigrant visa applicants from countries designated as state sponsors of terrorism will receive extra scrutiny before any visa is issued to them. Second, the Act will require that all consular officers receive extra training in screening for security threats. Third, the Act will require the government to determine the feasibility of *pre-clearing* foreign passengers (a procedure enabling foreign travelers to submit voluntarily to screening in advance of their departure for admissibility to the U.S.). The feasibility of expanding *pre-inspection* is also to be determined. (In this procedure, U.S. immigration officers are stationed at *foreign* airports and travelers are inspected by U.S. officers *before departure*). Fourth, the Act will require all airlines to transmit to U.S. authorities the names and other information about passengers and crew of all flights heading to the U.S. prior to their arrival. Passenger names can then be checked against a list of names of persons who should be denied entry. That way, officials will have yet another chance to intercept anyone who should be denied entry to the U.S. as soon as they get off the plane. The Act will also require airlines to provide departure manifests on passengers and crew before they depart the U.S. Fifth, the Border Security Act will remove a requirement in

83. See Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 143.

84. See *Backgrounder, Immigration and National Security: The Enhanced Border Security and Visa Entry Reform Act*, NATIONAL IMMIGRATION FORUM (Apr. 8, 2002), <http://immigrationforum.org/images/uploads/BorderSecurityAct.pdf> (hereinafter National Immigration Forum).

85. See Catherine Etheridge Otto, Comment, *Tracking Immigrants in the United States: Proposed and Perceived Needs to Protect the Borders of the United States*, 28 N.C. J. INT'L L. & COM. REG. 477, 492 (2002).

86. *Id.* at 497.

87. *Id.* at 498–500.

current law that passengers on flights arriving in the U.S. be cleared through the immigration inspection process within 45 minutes.⁸⁸

Finally, Congress also enacted the 2005 REAL ID Act in 2005.⁸⁹ Congress passed the legislation with the intention of implementing specific standards that states must comply with in issuing driver's licenses and other forms of official identification.⁹⁰ Many policymakers and commentators have raised privacy concerns⁹¹ regarding the Act, and many states have opposed the law.⁹² In fact, as of April 2013, according to the National Council on State Legislatures, only nineteen states were in full compliance with the Act,⁹³ and some policymakers have advocated for its repeal.⁹⁴

Although Congress has enacted legislation in the past twenty years in the field of immigration law that focuses on security and reducing illegal immigration, bill after bill advocating comprehensive immigration reform in the past decade has fallen short at some point in the legislative process. The road toward comprehensive immigration reform has been a long and winding one, with many twists and turns in the past several years, all leading toward the most recent comprehensive legislation proposed in 2013 by the "Gang of Eight."

C. Recent and Current Proposals for Immigration Reform

Following a difficult reelection campaign in 2004, President George W. Bush called for comprehensive immigration reform in his first State of the Union address at the beginning of his second term.⁹⁵ In his remarks, President

88. See NATIONAL IMMIGRATION FORUM, *supra* note 84.

89. See REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 302.

90. See Manoj Govindaiah, *Driver Licensing Under the REAL ID Act: Can Current Technology Balance Security and Privacy?*, 2006 U. ILL. J.L. TECH. & POL'Y 201, 202.

91. See, e.g., Geoffrey D. Kravitz, *REAL ID: The Devil You Don't Know*, 3 HARV. L. & POL'Y REV. 431 (2009).

92. See Patrick R. Thiessen, *The REAL ID Act and Biometric Technology: A Nightmare for Citizens and the States That Have to Implement It*, 6 J. TELECOMM. & HIGH TECH. L. 483, 489 (2008) (noting "[t]he National Governors Association, National Association of State Legislators, and the American Association of Motor Vehicle Administrators have all issued statements in opposition to the Act").

93. See *Countdown to REAL ID*, NAT'L CONFERENCE ON STATE LEGISLATURES, <http://www.ncsl.org/issues-research/transport/count-down-to-real-id.aspx> [<https://perma.cc/B3MQ-84H3>] (last visited Sept. 19, 2016). As of the date of this publication, twenty-four states were in full compliance, three were noncompliant, and the remaining twenty-three states had received an extension from the federal government. *Current Status of States/Territories*, DEP'T OF HOMELAND SEC. (Oct. 7, 2016), <https://www.dhs.gov/current-status-states-territories>.

94. See *Bill Introduced to Repeal Failed REAL ID Act*, AM. CIVIL LIBERTIES UNION (July 31, 2009), <http://www.aclu.org/technology-and-liberty/bill-introduced-repeal-failed-real-id-act> [<https://perma.cc/XE4J-XWBP>].

95. See George W. Bush, President of the U.S., State of the Union Address (Feb. 2, 2005), <http://georgewbush-whitehouse.archives.gov/news/releases/2005/02/20050202-11.html>.

Bush presented the general outlines of a call for immigration reform and placed it highly on his second term agenda with the following remarks:

America's immigration system is also outdated—unsuited to the needs of our economy and to the values of our country. We should not be content with laws that punish hardworking people who want only to provide for their families, and deny businesses willing workers, and invite chaos at our border. It is time for an immigration policy that permits temporary guest workers to fill jobs Americans will not take, that rejects amnesty, that tells us who is entering and leaving our country, and that closes the border to drug dealers and terrorists.⁹⁶

Later that year, two major bills would be introduced in Congress intended to provide comprehensive immigration reform, but both would fail before receiving a vote in 2005.

1. Secure America and Orderly Immigration Act of 2005 (McCain-Kennedy Bill) and Comprehensive Enforcement and Immigration Reform Act of 2005 (Cornyn-Kyl Bill)

In May 2005, Republican Senator John McCain and Democratic Senator Edward Kennedy introduced the Secure America and Orderly Immigration Act of 2005 (the McCain-Kennedy bill).⁹⁷ The heart of the McCain-Kennedy legislation offered a path to legalization for thousands of immigrants. The bill would have created a new work visa program for future foreign workers which would allow the admittance of up to 400,000 workers who could apply for a green card after four years.⁹⁸ For those already present in the United States with undocumented status, the bill would have enabled workers to pay a \$1,000 fine and enter a guest worker program for six years.⁹⁹ After an additional six years and the payment of another \$1,000 fine, the worker would be able to apply for a green card.¹⁰⁰

A competing proposal, the Comprehensive Enforcement and Immigration Reform Act of 2005 (Cornyn-Kyl bill) was introduced in the United States

96. *Id.*

97. See *McCain-Kennedy Bill Opens Citizenship Path*, WASH. TIMES (May 12, 2005), <http://www.washingtontimes.com/news/2005/may/12/20050512-111803-6952r/?page=all> [<https://perma.cc/YK26-H6EA>].

98. *Id.*

99. *Id.*

100. *Id.*

Senate in July 2005 by Republican Senators John Cornyn and Jon Kyl.¹⁰¹ The Cornyn-Kyl bill would have created a new “W” visa, valid for two years, for temporary guest workers.¹⁰² In addition, the bill required undocumented immigrants who were employed within the prior twelve months to take a “mandatory departure” and reapply legally, and those who were undocumented to leave within five years or otherwise face a ten-year bar to admission and monetary penalties.¹⁰³ While both bills did not make it to either the floor of the United States House of Representatives or United States Senate in 2005, both proposals laid the groundwork for another attempt at comprehensive immigration reform approximately one year later.¹⁰⁴

2. *Comprehensive Immigration Reform Act of 2006*

In February 2006, Republican Senator Arlen Specter introduced the Comprehensive Immigration Reform Act of 2006, which incorporated many elements of both the competing Kennedy-McCain and Cornyn-Kyl bills of 2005.¹⁰⁵ The legislation would have created a temporary guest worker program for individuals to earn a three-year work visa, but it would have limited the program to a total of 200,000 workers per year.¹⁰⁶ In addition to provisions strengthening border security, the legislation also called for the construction of a 370-mile fence between the borders of the United States and Mexico.¹⁰⁷ Furthermore, the Act would have also barred any individual convicted of a felony or three misdemeanors to become a United States legal resident or citizen and would provide for the penalty of up to a \$20,000 fine and three years’ imprisonment for any employer who knowingly hired an undocumented immigrant.¹⁰⁸

Unique to Senator Specter’s proposal was the proposal of a three-tiered system for undocumented immigrants. Those unlawfully present in the United States for less than two years would be required to return to their country

101. See *Federal Immigration Reform Bills in the U.S. Senate*, NAT’L CONFERENCE ON STATE LEGISLATURES (Feb. 2, 2006), <http://www.ncsl.org/research/immigration/federal-immigration-reform-bills-in-the-us-senat.aspx> [https://perma.cc/6TE9-UXDZ].

102. *Id.*

103. *Id.*

104. See Merav Lichtenstein, Note, *An Examination of Guest Worker Immigration Reform Policies in the United States*, 5 CARDOZO PUB. L. POL’Y & ETHICS J. 689, 712 (2007).

105. See *Specter Releases Draft Guest Worker Bill*, WASH. TIMES (Feb. 24, 2006), <http://www.washingtontimes.com/news/2006/feb/24/20060224-114952-2039r/> [https://perma.cc/YS48-8PHD].

106. See *Senate Passes Immigration Bill*, CNN (May 26, 2006, 3:42 AM), <http://www.cnn.com/2006/POLITICS/05/25/immigration/> [https://perma.cc/TQ3T-F7SV].

107. *Id.*

108. *Id.*

of origin.¹⁰⁹ Those present for two to five years would be required to apply for the guest worker program.¹¹⁰ Those individuals present more than five years would be able to earn citizenship provided they work for six years, pay a penalty and back taxes, and demonstrate English language competency.¹¹¹ Despite passing the United States Senate by a 62-36 vote,¹¹² the House passed a different version of comprehensive immigration reform and both chambers could not reach an agreement in the conference committee on a compromise package.¹¹³ Consequently, the bill failed.¹¹⁴

3. *Comprehensive Immigration Reform Act of 2007*

Following the defeat of the Comprehensive Immigration Reform Act of 2006, another senator would introduce one final major attempt at comprehensive immigration reform by the conclusion of President Bush's second term. In 2007, Senator Harry Reid introduced the Comprehensive Immigration Reform Act of 2007, largely fashioned as a compromise between the 2005 McCain-Kennedy Bill, the 2005 Cornyn-Kyl Bill, and the Comprehensive Immigration Reform Act of 2006.¹¹⁵ As Mark R. von Stenberg and Eric Jones noted, the bill called for the creation of two new types of visas, a "Y" visa and a "Z" visa.¹¹⁶ They reported the "Y" visa would be available to a maximum of 200,000 guest workers per year, and limited to five years total.¹¹⁷ Stenberg and Jones also noted that the provisions of the bill enabled any undocumented immigrant present in the United States after January 1, 2007 to apply for a "Z" visa, which would enable the individual to live within the United States for a period of eight years.¹¹⁸ As both commentators note, at the conclusion of those eight years, an individual would pay a fine of \$2,000 and back taxes if the individual wished to

109. *Id.*

110. *Id.*

111. *See* CNN, *supra* note 106.

112. *Id.*

113. *See* Lichtenstein, *supra* note 104, at 712.

114. *Id.*

115. *See* Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (2007); *see also* 84 NO. 24 INTERPRETER RELEASES, COMPREHENSIVE IMMIGRATION REFORM DEBATE EXPECTED TO BE RENEWED ON SENATE FLOOR 1366 (2007).

116. *See* Mark R. Von Stenberg & Eric A. Jones, *Immigration and Nationality Law*, 42 INT'L LAW. 679, 681 (2008).

117. *Id.*

118. *Id.*

obtain lawful permanent resident status.¹¹⁹ Despite strong backing by President Bush,¹²⁰ the bill failed to garner the 60 votes necessary in the United States Senate to invoke cloture for the bill to proceed further.¹²¹

4. 2013 “Gang of Eight” Legislation

In January 2013, at the beginning of the 113th Congress, eight Senators—four Republicans and four Democrats—outlined a comprehensive bipartisan framework for reform. The framework included four main “legislative pillars” which stood as the key philosophical elements of the plan.¹²² The basic “legislative pillars” pronounced a call to:

Create a tough but fair path to citizenship for unauthorized immigrants currently living in the United States that is contingent upon securing our borders and tracking whether legal immigrants have left the country when required;

Reform our legal immigration system to better recognize the importance of characteristics that will help build the American economy and strengthen American families;

Create an effective employment verification system that will prevent identity theft and end the hiring of future unauthorized workers; and,

Establish an improved process for admitting future workers to serve our nation’s workforce needs, while simultaneously protecting all workers.¹²³

Central to S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act,¹²⁴ was a pathway to citizenship for undocumented immigrants, but certification of border security was placed as a precondition to any undocumented immigrant earning lawful permanent resident status.¹²⁵ The Act provided a record expenditure on border security

119. *Id.*

120. *See Senate Immigration Bill Suffers Crushing Defeat*, CNN (June 28, 2007, 8:44 PM), <http://www.cnn.com/2007/POLITICS/06/28/immigration.congress/index.html> [<https://perma.cc/8R3W-23X2>].

121. *See* Lawrence M. Krutchik, Note, *Down but Not Out: A Comparison of Previous Attempts at Immigration Reform and the Resulting Agency Implemented Changes*, 32 NOVA L. REV. 455, 457 (2008).

122. *See* SENATOR CHARLES SCHUMER ET AL., BIPARTISAN FRAMEWORK FOR COMPREHENSIVE IMMIGRATION REFORM (2013), http://www.flake.senate.gov/documents/immigration_reform.pdf [<https://perma.cc/XY4B-ZJW9>].

123. *Id.*

124. *See* Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Congress (2013).

125. *See* AM. IMMIGRATION COUNCIL, A GUIDE TO S. 744: UNDERSTANDING THE 2013 SENATE IMMIGRATION BILL (2013), <http://www.immigrationpolicy.org/special-reports/guide-s744-understanding-2013-senate-immigration-bill> [<https://perma.cc/PTL5-29W2>] [hereinafter AM. IMMIGRATION COUNCIL].

measures.¹²⁶ In addition to deploying at least 38,405 full-time Border Patrol agents to monitor the southern border,¹²⁷ the legislation also provided for the construction of a fence at least 700 miles along the United States–Mexico border and also provided funding for twenty-four-hour surveillance of the border utilizing the latest security technology and the use of drones¹²⁸ for monitoring.¹²⁹ Furthermore, the legislation also would have required businesses to use the E-Verify employment verification system.¹³⁰

While the proposal called for an unprecedented investment in border security, it also followed the path of the prior McCain-Kennedy Bill of 2005, Comprehensive Immigration Reform Act of 2006, and Comprehensive Immigration Reform Act of 2007, and provided a path of earned legalization for thousands of undocumented immigrants. The “Gang of Eight” legislation would have created a new “Registered Provisional Immigrant (RPI)” status for those who are undocumented, have paid assessed taxes and a fine of \$1,000, have passed background checks, and have not been convicted of a felony or three misdemeanors.¹³¹ One of the requirements of RPI status

126. *Id.*

127. See S. 744, § 1102; AM. IMMIGRATION COUNCIL, *supra* note 125.

128. A growing number of academic commentators are analyzing the legal considerations concerning the nonmilitary use of drones and other unmanned aerial vehicles. Articles include: Travis Dunlap, Comment, *We’ve Got Our Eyes on You: When Surveillance by Unmanned Aircraft Systems Constitutes a Fourth Amendment Search*, 51 S. TEX. L. REV. 173 (2009); Saby Ghashray, *Domestic Surveillance Via Drones: Looking Through the Lens of the Fourth Amendment*, 33 N. ILL. U. L. REV. 579 (2013); Philip J. Hiltner, Comment, *The Drones are Coming: Use of Unmanned Aerial Vehicles for Police Surveillance and its Fourth Amendment Implications*, 3 WAKE FOREST J.L. & POL’Y 397 (2013); Margot E. Kaminski, *Drone Federalism: Civilian Drones and the Things They Carry*, 4 CAL. L. REV. CIRCUIT 57 (2013); Benjamin Kapnik, *Unmanned But Accelerating: Navigating the Regulatory and Privacy Challenges of Introducing Unmanned Aircraft Into the National Airspace System*, 77 J. AIR L. & COMM. 439 (2012); Chris Schlag, Note, *The New Privacy Battle: How the Expanding Use of Drones Continues to Erode Our Concept of Privacy and Privacy Rights*, 13 PITT. J. TECH. L. & POL’Y 1 (2013); Michael J. Schoen & Michael A. Tooshi, *Confronting the New Frontier in Privacy Rights: Warrantless Unmanned Aerial Surveillance*, 25 NO. 3 AIR & SPACE LAW. 1 (2012); Timothy T. Takahashi, *Drones in the National Airspace*, 77 J. AIR L. & COM. 489 (2012); Timothy T. Takahashi, *Drones and Privacy*, 14 COLUM. SCI. & TECH. L. REV. 72 (2012); John Villasenor, *Observations from Above: Unmanned Aircraft Systems and Privacy*, 36 HARV. J.L. & PUB. POL’Y 457 (2013); Courtney E. Walsh, *Surveillance Technology and the Loss of Something a Lot Like Privacy: An Examination of the “Mosaic Theory” and the Limits of the Fourth Amendment*, 24 ST. THOMAS L. REV. 169 (2012).

129. See S. 744, § 1106; AM. IMMIGRATION COUNCIL, *supra* note 125.

130. See S. 744, § 3101; AM. IMMIGRATION COUNCIL, *supra* note 125.

131. See S. 744, § 2101; AM. IMMIGRATION COUNCIL, *supra* note 125.

is an immigrant be employed continuously with only sixty-day gaps permitted between employment periods.¹³² After six years in good RPI status, an immigrant could renew RPI status for an additional six years.¹³³ An individual on RPI status could apply for legal permanent resident status after ten years, but would have to wait in the “back of the line” for processing of an application for lawful permanent resident status.¹³⁴ After maintaining permanent resident status for three years, an individual would be able to apply for citizenship.¹³⁵ Thus, an individual would have to wait approximately at least thirteen years to become a citizen under the proposal.¹³⁶

One of the key issues in immigration reform is the debate over how to consider the situation of children of undocumented immigrants. Many policymakers¹³⁷ and academic commentators¹³⁸ advocate the DREAM

132. See S. 744, § 2101; AM. IMMIGRATION COUNCIL, *supra* note 125.

133. See S. 744, § 2101; AM. IMMIGRATION COUNCIL, *supra* note 125.

134. See S. 744, § 2102; AM. IMMIGRATION COUNCIL, *supra* note 125.

135. See S. 744, § 2102; AM. IMMIGRATION COUNCIL, *supra* note 125.

136. See AM. IMMIGRATION COUNCIL, *supra* note 125.

137. See Jordan Fabian, *Why a GOP Bill for Dreamers Isn't Enough for Democrats*, ABC NEWS (July 12, 2013), http://abcnews.go.com/ABC_Univision/Politics/gop-dream-act-democrats/story?id=19649383.

138. The DREAM Act, and state versions of the legislation, have become the subject of numerous law review articles. These articles include:

2004: Andrew Stevenson, Note, *Dreaming of an Equal Future for Immigrant Children: Federal and State Initiatives to Improve Undocumented Students' Access to Postsecondary Education*, 46 ARIZ. L. REV. 551 (2004); Laura S. Yates, Note, *Plyler v. Doe and the Rights of Undocumented Immigrants to Higher Education: Should Undocumented Students Be Eligible for In-State College Tuition Rates?*, 82 WASH. U. L.Q. 585 (2004);

2005: Kathleen A. Connolly, Comment, *In Search of the American Dream: An Examination of Undocumented Students, In-State Tuition, and the DREAM Act*, 55 CATH. U. L. REV. 193 (2005); René Galindo, Christina Medina & Xóchitl Chávez, *Dual Sources of Influence on Latino Political Identity: Mexico's Dual Nationality Policy and the DREAM Act*, 11 TEX. HISP. J.L. & POL'Y 75 (2005); Thomas R. Ruge & Angela D. Iza, *Higher Education for Undocumented Students: The Case for Open Admission and In-State Tuition Rates for Students Without Lawful Immigration Status*, 15 IND. INT'L & COMP. L. REV. 257 (2005);

2006: Jaelyn Brickman, Note, *Educating Undocumented Children in the United States: Codification of Plyler v. Doe Through Federal Legislation*, 20 GEO. IMMIGR. L.J. 385 (2006); Susana Garcia, Comment, *Dream Come True or True Nightmare? The Effect of Creating Educational Opportunity for Undocumented Youth*, 36 GOLDEN GATE U. L. REV. 247 (2006); Youngro Lee, Note, *To Dream or Not to Dream: A Cost-Benefit Analysis of the Development, Relief, and Education for Alien Minor (DREAM) Act*, 16 CORNELL J.L. & PUB. POL'Y 231 (2006); Laura J. Callahan Ragan, Note, *Educating the Undocumented: Providing Legal Status for Undocumented Students in the United States and Italy Through Higher Education*, 34 GA. J. INT'L & COMP. L. 485 (2006); Vicky J. Salinas, Comment, *You Can Be Whatever You Want When You Grow Up, Unless Your Parents Brought You to the Country Illegally: The Struggle to Grant In-State Tuition to Undocumented Immigrant Students*, 43 HOUS. L. REV. 847 (2006);

2007: Jeffrey Fung, Note, *Pushing the Envelope On Higher Education: How States Have Coped with Federal Legislation Limiting Postsecondary Education Benefits to Undocumented Students*, 6 WHITTIER J. CHILD & FAM. ADVOC. 415 (2007); KoKo Ye Huang, Note, *Reimagining and Redefining the Dream: A Proposal for Improving Access to Higher Education for Undocumented Immigrants*, 6 SEATTLE J. FOR SOC. JUST. 431 (2007); Jessica Sharron, Comment, *Passing the DREAM Act: Opportunities for Undocumented Americans*, 47 SANTA CLARA L. REV. 599 (2007);

2008: Katie Annand, Note, *Still Waiting for the Dream: The Injustice of Punishing Undocumented Immigrant Workers*, 59 HASTINGS L.J. 683 (2008); Aimee Deverall, Comment, *Make the Dream a Reality: Why Passing the DREAM Act is the Logical First Step in Achieving Comprehensive Immigration Reform*, 41 J. MARSHALL L. REV. 1251 (2008);

2009: Joshua A. Boggioni, Comment, *Unofficial Americans—What to Do With Undocumented Students: An Argument Against Suppressing the Mind*, 40 U. TOL. L. REV. 453 (2009); Michael A. Olivas, *The Political Economy of the DREAM Act and the Legislative Process: A Case Study of Comprehensive Immigration Reform*, 55 WAYNE L. REV. 1757 (2009); Michelle A. Wheelhouse, Note, *Second Class Students: Federal Limits on State Benefits for Higher Education*, 12 J. GENDER RACE & JUST. 655 (2009);

2010: Gabriel J. Chin, *Sweatt v. Painter and Undocumented College Students in Texas*, 36 T. MARSHALL L. REV. 39 (2010);

2011: Steven W. Bender, *Faces of Immigration Reform*, 6 FIU L. REV. 251 (2011); Ashley Feasley, *The DREAM Act and the Right to Equal Educational Opportunity: An Analysis of U.S. and International Human Rights Frameworks As They Relate to Education Rights*, 24 ST. THOMAS L. REV. 68 (2011); Michael A. Olivas & Kristi L. Bowman, *Plyler's Legacy: Immigration and Higher Education in the 21st Century*, 2011 MICH. ST. L. REV. 261; Heidi Timmerman, *Dare to DREAM Act: Generation 1.5 Access to Affordable Postsecondary Education*, 39 W. ST. U. L. REV. 67 (2011);

2012: Laura Corrunker, *“Coming Out of the Shadows”: DREAM Act Activism in the Context of Global Anti-Deportation Regimes*, 19 IND. J. GLOBAL LEGAL STUD. 143 (2012); Sallie Dietrich, Note, *Redefining “American”: The Constitutionality of State DREAM Acts*, 31 L. & INEQ. 165 (2012); Hiroshi Motomura, *Making Legal: The DREAM Act, Birthright Citizenship, and Broad-Scale Legalization*, 16 LEWIS & CLARK L. REV. 1127 (2012); Paulo Edmundo Ochoa, Note, *Education Without Documentation: As Plyler Students Reach New Heights, Will Their Status Make Them Morally Unfit to Practice Law?*, 34 T. JEFFERSON L. REV. 411 (2012); Mariela Olivares, *The Impact of Recessionary Politics on Latino-American and Immigrant Families: SCHIP Success and DREAM Act Failure*, 55 HOW. L.J. 359 (2012); Michael A. Olivas, *Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students*, 21 WM. & MARY BILL RTS. J. 463 (2012); William Whaley, *The California DREAM Act: A Dream (Not DREAM) Come True*, 43 MCGEORGE L. REV. 625 (2012);

2013: Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 TEX. L. REV. 781 (2013); Rick Su, *The States of Immigration*, 54 WM. & MARY L. REV. 1339

(Development, Relief and Education for Alien Minors) Act to provide a path to earned legalization for immigrants who finish high school or earn a GED and either complete a certain number of collegiate credit hours or a certain number of years of military service. The “Gang of Eight” legislation also included a version of the DREAM Act which would have permitted an individual who has earned either a GED or high school diploma, who has served either four years in the military, or who has completed two years of collegiate credits to apply for citizenship after only five years of RPI status.¹³⁹

Finally, the legislation also sought to create a special program for undocumented agricultural workers.¹⁴⁰ Undocumented agricultural workers could apply for a “blue card” if they have completed at least 100 work days or 575 hours of agricultural employment in the two year period preceding December 31, 2012.¹⁴¹ An individual in “blue card” status would be able to apply for lawful permanent resident status after five years as well as paying back taxes and a fine.¹⁴² After those five years as a lawful permanent resident, the individual would be able to apply for citizenship.¹⁴³ Thus, the “Gang of 8” proposal was distinctive among proposed recent immigration legislation and proposals in that it is a unique conglomeration of proposals. Not only did it contain an unprecedented investment in border security, personnel, and technology—and included an earned legalization program—but it also addressed immigration labor concerns¹⁴⁴ and it contained a version of the DREAM Act.

(2013); and William Wojnarowski, Note, *The Illinois DREAM Act: A Constitutional Nightmare*, 2013 B.Y.U. EDUC. & L.J. 175.

139. See S. 744, § 2103; AM. IMMIGRATION COUNCIL, *supra* note 125.

140. See S. 744, § 2211; AM. IMMIGRATION COUNCIL, *supra* note 125.

141. See S. 744, § 2211; AM. IMMIGRATION COUNCIL, *supra* note 125.

142. See S. 744, § 2212; AM. IMMIGRATION COUNCIL, *supra* note 125.

143. See S. 744, § 2212; AM. IMMIGRATION COUNCIL, *supra* note 125.

144. A number of scholars and commentators have addressed legal and policy issues relating to guest worker programs in law review scholarship. Articles include:

2004: Patricia Medige, *Perspectives on the Bush Administration’s New Immigrant Guestworker Proposal: Immigration Labor Issues*, 32 DENV. J. INT’L L. & POL’Y 735 (2004); Kristi L. Morgan, *Evaluating Guest Worker Programs in the U.S.: A Comparison of the Bracero Program and President Bush’s Proposed Immigration Reform Plan*, 15 BERKELEY LA RAZA L.J. 125 (2004); Frank W. Munger, *Social Citizen as “Guest Worker”*: *A Comment on Identities of Immigrants and the Working Poor*, 49 N.Y. L. SCH. L. REV. 665 (2004);

2005: Tom Tancredo, *Cui Bono? The Case for an Honest Guest Worker Program*, 10 TEX. REV. L. & POL. 63 (2005);

2007: Karla M. Campbell, *Guest Worker Programs and the Convergence of U.S. Immigration and Development Policies: A Two-Factor Economic Model*, 21 GEO. IMMIGR. L.J. 663 (2007); Andrew J. Elmore, *Egalitarianism and Exclusion: U.S. Guest Worker Programs and a Non-Subordination Approach to the Labor-Based Admission of Nonprofessional Foreign*

Despite the fact that the “Gang of Eight” proposal did not make it through both houses of the 113th Congress, there are still many calls for comprehensive immigration reform. One major voice which sounds during all of the discussion on immigration is that of Catholic interests and the perspective of Catholic social teaching.¹⁴⁵ Catholic social teaching on migration and immigration, based upon biblical foundations, has evolved through the twentieth century up to the current papacy of Pope Francis, the first modern Jesuit pope.

II. IMMIGRATION AND CATHOLIC SOCIAL TEACHING

Catholic social teaching on the issue of immigration has at its foundation the Old Testament, the New Testament Gospels, and the teachings of Christ. Additionally, numerous papal encyclicals, pastoral letters of the Catholic bishops, the U.S. Conference of Bishops, the Catholic Catechism, and the

Nationals, 21 GEO. IMMIGR. L.J. 521 (2007); Philip Martin, *Guest Workers: New Solution or New Problem?*, 2007 U. CHI. LEGAL F. 289 (2007); Maria L. Ontiveros, *Noncitizen Immigrant Labor and the Thirteenth Amendment: Challenging Guest Worker Programs*, 38 U. TOL. L. REV. 923 (2007); Cristina M. Rodríguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and Americans Owe One Another*, 2007 U. CHI. LEGAL F. 219 (2007);

2008: Howard F. Chang, *Guest Workers and Justice in a Second-Best World*, 34 U. DAYTON L. REV. 3 (2008);

2009: Sharmila Rudrappa, *Cyber-Coolies and Techno-Braceros: Race and Commodification of Indian Information Technology Guest Workers in the United States*, 44 U.S.F. L. REV. 353 (2009);

2010: Marsha Chien, *When Two Laws are Better Than One: Protecting the Rights of Migrant Workers*, 28 BERKELEY J. INT’L L. 15 (2010);

2011: Dorothy E. Hill, *Guest Worker Programs Are No Fix For Our Broken Immigration System: Evidence from the Northern Mariana Islands*, 41 N.M. L. REV. 131 (2011);

2012: Jennifer J. Lee, *Private Civil Remedies: A Viable Tool for Guest Worker Empowerment*, 46 LOY. L.A. L. REV. 31 (2012); and Maria L. Ontiveros, *A Strategic Plan for Using the Thirteenth Amendment to Protect Immigrant Workers*, 27 WIS. J.LL. GENDER & SOC’Y 133 (2012).

145. The “broadest definition” of “Catholic social teaching” “encompasses the entire body of theories and principles on social, political, and economic life that have been developed throughout the Church’s nearly 2000-year history.” See MICHELE R. PISTONE & JOHN J. HOEFFNER, *STEPPING OUT OF THE BRAIN DRAIN: APPLYING CATHOLIC SOCIAL TEACHING IN A NEW ERA OF MIGRATION* 21 (2007).

comments of both Pope Benedict and Pope Francis have served to focus the lenses of Catholic social teaching on the issue of immigration reform.

A. *The Old Testament*

The primary teachings of the Old Testament on migration focus on the significance of upholding the respect and dignity of aliens. The main passages from the Old Testament are as follows:

“You shall not oppress an alien; you well know how it feels to be an alien, since you were once aliens yourselves in the land of Egypt.”¹⁴⁶

“When an alien resides with you in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt.”¹⁴⁷

“For the Lord, your God, is the God of gods, and awesome, who has no favorites, accepts no bribes, who executes justice for the orphan and the widow, and befriends the alien, feeding and clothing him. So you too must befriend the alien, for you were once aliens yourselves in the land of Egypt.”¹⁴⁸

“Cursed be he who violates the rights of the alien, the orphan or the widow!”¹⁴⁹

In addition to the foregoing references to aliens, there are numerous other Old Testament Biblical quotations on the need for justice and mercy concerning sojourners, widows, orphans, resident aliens, and the poor, as well as prohibitions against their oppression.¹⁵⁰

146. *Exodus* 23:9.

147. *Leviticus* 19:33–34.

148. *Deuteronomy* 10:17–19.

149. *Id.* at 27:19. This was one of the twelve curses of the Levites. *See id.* at 27:14–16.

150. These quotations are as follows: *Zechariah* 7:9–10 (“Thus says the LORD of hosts: Judge with true justice, and show kindness and compassion toward each other. Do not oppress the widow or the orphan, the resident alien or the poor; do not plot evil against one another in your hearts.”); *Jeremiah* 7:5–7 (New American Bible, Revised Edition) (“Only if you thoroughly reform your ways and your deeds; if each of you deals justly with your neighbor; if you no longer oppress the alien, the orphan, and the widow; if you no longer shed innocent blood in this place or follow after other gods to your own harm, only then will I let you continue to dwell in this place, in the land I gave your ancestors long ago and forever.”); *Ezekiel* 47:22 (“You shall allot it as heritage for yourselves and for the resident aliens in your midst who have fathered children among you. You shall treat them like native Israelites; along with you they shall receive a heritage among the tribes of Israel.”); *Hebrews* 13:2 (“Do not neglect hospitality, for through it some have unknowingly entertained angels.”); *Deuteronomy* 26:5 (“Then you shall declare in the presence of the LORD, your God, “My father was a refugee Aramean who went down to Egypt with a small household and lived there as a resident alien. But there he became a nation great, strong and numerous.”); *Leviticus* 25:35 (“When one of your kindred is reduced to poverty and becomes indebted to you, you shall support that person like a resident alien; let your kindred live with you.”); *Deuteronomy* 10:17–18 (“For the LORD, your God, is the God

B. The New Testament

Similar to the calls in the Old Testament to welcome the foreigner and stranger, the New Testament also contains a number of passages referring to these duties. In the Gospel of Saint Matthew, Jesus teaches followers to welcome the stranger, stating “For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me.”¹⁵¹ Both the Gospels of Saint Luke¹⁵² and Saint Matthew¹⁵³ remind followers that the stranger is Christ, Himself.¹⁵⁴

The Holy Family’s migration and flight into Egypt further illustrate the duty within Catholic social teaching to welcome the stranger and not to oppress the alien. The angel of the Lord appeared to Joseph in a dream and commanded the Holy Family to flee into Egypt to escape Herod’s murderous pursuit of the King of Kings. Saint Matthew describes the Holy Family’s journey as follows:

When they had departed, behold, the angel of the Lord appeared to Joseph in a dream and said, “Rise, take the child and his mother, flee to Egypt, and stay there until I tell you. Herod is going to search for the child to destroy him.” Joseph

of gods, the Lord of lords, the great God, mighty and awesome, who has no favorites, accepts no bribes, who executes justice for the orphan and the widow, and loves the resident alien, giving them food and clothing.”); *Genesis* 18: 1–8 (“The LORD appeared to Abraham by the oak of Mamre, as he sat in the entrance of his tent, while the day was growing hot. Looking up, he saw three men standing near him. When he saw them, he ran from the entrance of the tent to greet them; and bowing to the ground, he said: ‘Sir, if it please you, do not go on past your servant. Let some water be brought, that you may bathe your feet, and then rest under the tree. Now that you have come to your servant, let me bring you a little food, that you may refresh yourselves; and afterward you may go on your way.’ ‘Very well,’ they replied, ‘do as you have said.’ Abraham hurried into the tent to Sarah and said, ‘Quick, three measures of bran flour! Knead it and bake bread.’ He ran to the herd, picked out a tender, choice calf, and gave it to a servant, who quickly prepared it. Then he got some curds and milk, as well as the calf that had been prepared, and set these before them, waiting on them under the tree while they ate.”); and *Genesis* 12:1 (“The LORD said to Abram: Go forth from your land, your relatives, and from your father’s house to a land that I will show you.”).

151. *Matthew* 25:35.

152. *Luke* 24:13–15.

153. *Matthew* 25:42–45 (“For I was hungry and you gave me no food, I was thirsty and you gave me no drink, a stranger and you gave me no welcome, naked and you gave me no clothing, ill and in prison, and you did not care for me. Then they will answer and say, ‘Lord, when did we see you hungry or thirsty or a stranger or naked or ill or in prison, and not minister to your needs?’ He will answer them, ‘Amen, I say to you, what you did not do for one of these least ones, you did not do for me.’”).

154. *Luke* 24:13–15.

rose and took the child and his mother by night and departed for Egypt. He stayed there until the death of Herod, that what the Lord had said through the prophet might be fulfilled, “Out of Egypt I called my son.”¹⁵⁵

In comments on this journey, His Holiness Pope Pius XII stated that “Jesus, Mary and Joseph, living in exile in Egypt to escape the fury of an evil king, are, for all times and all places, the models and protectors of every migrant, alien and refugee of whatever kind who, whether compelled by fear of persecution or by want, is forced to leave his native land, his beloved parents and relatives, his close friends, and to seek a foreign soil.”¹⁵⁶

C. *Papal Documents from His Holiness Pope Pius XII to His Holiness Pope Benedict XVI*

A number of papal documents highlight the important themes of Catholic social teaching on immigration. On August 1, 1952, at Castel Gandolfo near Rome, Pope Pius XII issued the Church’s Apostolic Constitution *Exsul Familia Nazarethana*¹⁵⁷ on the spiritual care of the migrant. The Pope detailed the history of the Church’s charity work and declared that immigrants need special care.¹⁵⁸ Accordingly, the Pope established pastoral policies regarding the loss of security and human dignity for the millions of immigrants displaced after World War II.¹⁵⁹ Pope Pius XII affirmed the migrants’ right to a life with dignity, and therefore a right to migrate towards that end.¹⁶⁰ In addition to these comments, Pope Pius XII also remarked that sovereignty is not absolute.¹⁶¹ *Exsul Familia Nazarethana* thus has become the basis for Church’s modern immigration policy.

On April 11, 1963, in the middle of the Cold War and two months before his passing, Pope John XXIII issued a major papal encyclical, *Pacem In Terris*.¹⁶² His Holiness Pope John XXIII addressed the right to emigrate and immigrate as follows:

The Right to Emigrate and Immigrate – Again, every human being has the right of freedom of movement and of residence within the confines of his own State. When there are just reasons in favor of it, he must be permitted to emigrate to other countries and take up residence there. The fact that he is a citizen of a particular

155. *Matthew* 2:13–15.

156. See Pope Pius XII, *Exsul Familia Nazarethana* (Aug. 1, 1952), <http://www.papalencyclicals.net/Pius12/p12exsul.htm> [<https://perma.cc/ZKN7-VZTN>] [hereinafter Pius XII].

157. English translation from Latin “Exile of the Family of Nazareth.”

158. See Pius XII, *supra* note 156.

159. *Id.*

160. *Id.*

161. *Id.*

162. See Pope John XXIII, *Pacem in Terris* (Apr. 11, 1963), http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html [<https://perma.cc/ZG7X-CKZX>].

State does not deprive him of membership in the human family, nor of citizenship in that universal society, the common, world-wide fellowship of men.¹⁶³

Pacem In Terris clearly states that every human has the right to residence within their own State and declares that a person may for just reasons immigrate to another country, but that it is not an absolute right. Subsequent documents from the papacy of His Holiness Pope John Paul II sounded similar themes.¹⁶⁴

On October 12, 2012, His Holiness Pope Benedict XVI delivered his Message for the World Day of Migrants and Refugees and addressed migration rights, human trafficking, comprehensive programs regulating legal entry, and an orderly migration policy that does not close borders. From the Vatican, His Holiness Pope Benedict XVI addressed the crowd and stated:

Certainly every state has the right to regulate migration and to enact policies dictated by the general requirements of the common good, albeit always in safeguarding respect for the dignity of each human person. The right of persons to migrate . . . is numbered among the fundamental human rights, allowing persons to settle wherever they consider best for the realization of their abilities, aspirations and plans. In the current social and political context, however, even before the right to migrate, there is need to reaffirm the right not to emigrate, that is, to remain in one's homeland. False Today in fact we can see that many migrations are the result of economic instability, the lack of essential goods, natural disasters, wars and social unrest. Instead of a pilgrimage filled with trust, faith and hope, migration then becomes an ordeal undertaken for the sake of survival, where men and women appear more as victims than as agents responsible for the decision to migrate. As a result, while some migrants attain a satisfactory social status and a dignified level of life through proper integration into their new social setting, many others are living at the margins, frequently exploited and deprived of their fundamental rights, or engaged in forms of behaviour harmful to their host society. The process of integration entails rights and duties, attention and concern for the dignified existence of migrants; it also calls for attention on the part of migrants to the values offered by the society to which they now belong.¹⁶⁵

These comments reaffirmed not only that individuals have a right to migrate, but that the right is subject to the state's interest in regulating borders to preserve the common good. His Holiness Pope Benedict XVI continued:

163. *Id.* at para. 25.

164. *See generally* Eyster, *supra* note 41.

165. *See* Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees (2013)* (Oct. 12, 2012) http://www.vatican.va/holy_father/benedict_xvi/messages/migration/documents/hf_ben-xvi_mes_20121012_world-migrants-day_en.html [<https://perma.cc/B4B7-ZJ77>].

In this regard, we must not overlook the question of irregular migration, an issue all the more pressing when it takes the form of human trafficking and exploitation, particularly of women and children. These crimes must be clearly condemned and prosecuted, while an orderly migration policy which does not end up in a hermetic sealing of borders, more severe sanctions against irregular migrants and the adoption of measures meant to discourage new entries, could at least limit for many migrants the danger of falling prey to such forms of human trafficking. There is an urgent need for structured multilateral interventions for the development of the countries of departure, effective countermeasures aimed at eliminating human trafficking, comprehensive programmes regulating legal entry, and a greater openness to considering individual cases calling for humanitarian protection more than political asylum. In addition to suitable legislation, there is a need for a patient and persevering effort to form minds and consciences. In all this, it is important to strengthen and develop understanding and cooperation between ecclesial and other institutions devoted to promoting the integral development of the human person.¹⁶⁶

*D. U.S. Conference of Catholic Bishops 2003 Pastoral Letter
and USCCB—Florida Catholic Conference Support
of Comprehensive Immigration Reform*

In addition to the papal documents described above, the U.S. Conference of Catholic Bishops in the United States has also been active with advocacy of immigration reform. On January 22, 2003, the United States Conference of Catholic Bishops published its pastoral letter “Strangers No Longer: Together on the Journey of Hope.”¹⁶⁷ This lengthy letter, written in conjunction with the Mexican Episcopal Conference, largely addressed the issue of migration between the United States and Mexico.¹⁶⁸ In the letter the bishops set forward five key principles of immigration reform based upon Catholic social teaching:

1. Persons have the right to find opportunities in their homeland;¹⁶⁹
2. Persons have the right to migrate to support themselves and their families;¹⁷⁰

166. *Id.*

167. *See Strangers No Longer: Together on the Journey of Hope*, U.S. CONFERENCE OF CATHOLIC BISHOPS (Jan. 22, 2003), <http://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope.cfm> [<https://perma.cc/F2GR-KFK7>].

168. *Id.*

169. *Id.* at para. 34 (“All persons have the right to find in their own countries the economic, political, and social opportunities to live in dignity and achieve a full life through the use of their God-given gifts. In this context, work that provides a just, living wage is a basic human need.”).

170. *Id.* at para. 35 (“The Church recognizes that all the goods of the earth belong to all people. When persons cannot find employment in their country of origin to support themselves and their families, they have a right to find work elsewhere in order to survive. Sovereign nations should provide ways to accommodate this right.”).

3. Sovereign nations have the right to control their borders;¹⁷¹
4. Refugees and asylum seekers should be afforded protection; and¹⁷²
5. The human dignity and human rights of undocumented migrants should be respected.¹⁷³

The U.S. Conference of Catholic Bishops has strongly indicated support of comprehensive immigration reform legislation.¹⁷⁴ In addition, the bishops have called upon Catholics to become involved in the civic process. For example, in June 2013, the Florida Catholic Conference, the Archbishop of Miami, and the Bishops of Florida issued a joint statement in support of immigration reform and called upon all Catholics to contact their legislators to express support for comprehensive immigration reform.¹⁷⁵

E. Catechism of the Catholic Church

The Catechism of the Catholic Church also emphasizes that there is a duty on more prosperous nations to welcome immigrants who seek an economic livelihood, subject to the interests of the state in promoting the common good for all. The Catechism states:

The more prosperous nations are obliged, to the extent they are able, to welcome the *foreigner* in search of the security and the means of livelihood which he cannot find in his country of origin. Public authorities should see to it that the natural right is respected that places a guest under the protection of those who receive him.

171. *Id.* at para. 36 (“The Church recognizes the right of sovereign nations to control their territories but rejects such control when it is exerted merely for the purpose of acquiring additional wealth. More powerful economic nations, which have the ability to protect and feed their residents, have a stronger obligation to accommodate migration flows.”).

172. *Id.* at para. 37 (“Those who flee wars and persecution should be protected by the global community. This requires, at a minimum, that migrants have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority.”).

173. *Id.* at para. 38 (“Regardless of their legal status, migrants, like all persons, possess inherent dignity that should be respected. Often they are subject to punitive laws and harsh treatment from enforcement officers from both receiving and transit countries. Government policies that respect the basic human rights of the undocumented are necessary.”).

174. See Kathleen Naab, *Bishops Seize ‘Best Chance’ for Immigration Reform*, NAT’L CATH. REG. (Sept. 6, 2013), <http://www.ncregister.com/daily-news/bishops-seize-best-chance-for-immigration-reform/> [<https://perma.cc/95PH-R6FD>].

175. See *A Statement by the Bishops of Florida in Support of Immigration Reform*, FLA. CONFERENCE OF CATHOLIC BISHOPS (June 5, 2013), <http://flaccb.org/documents/2015/8/130605ImmigrationReformStmt.pdf> [<https://perma.cc/8K9D-2NPP>].

Political authorities, for the sake of the common good for which they are responsible, may make the exercise of the right to immigrate subject to various juridical conditions, especially with regard to the immigrants' duties toward their country of adoption. Immigrants are obliged to respect with gratitude the material and spiritual heritage of the country that receives them, to obey its laws and to assist in carrying civic burdens.¹⁷⁶

F. Comments of Pope Francis Concerning Migration and Immigration

Comments of His Holiness Pope Francis have indicated that advocacy of the rights of migrants and immigration reform may be a key theme of his papacy. In his first official trip outside of Rome, he celebrated mass on July 8, 2013 on the Sicilian island of Lampedusa.¹⁷⁷ In his homily, he strongly appealed against a “globalization of indifference” toward the plight of migrants.¹⁷⁸ After his trip, the Pope tweeted the following: “We pray for a heart which will embrace immigrants.”¹⁷⁹

Pope Francis also specifically addressed the humanitarian situation and plight that often faces migrants from Central America and Mexico who cross the border into the United States in a July 2014 message. Pope Francis noted that “[he was] keen to call attention to the tens of thousands of children who emigrate alone, unaccompanied, to escape from poverty and violence: this is a class of migrants who, from Central America and from Mexico, cross the border with the United States of America in extreme conditions, in search of a hope that that most of the time is in vain. They increase day by day. Such a humanitarian emergency demands, first of all, urgent intervention, such that these minors are received and protected.”¹⁸⁰

Most recently, Pope Francis reaffirmed his focus on the fundamental dignity of all human beings in a February 2015 address to Prefects of Various Italian Cities.¹⁸¹ In the comments, Pope Francis emphasized the significance of

176. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 40, para. 2241 (emphasis added).

177. See Alessandro Bianchi, *Pope Francis Commemorates Migrant Dead at Lampedusa*, REUTERS (July 8, 2013, 7:46 AM), <http://www.reuters.com/article/2013/07/08/us-pope-lampedusa-idUSBRE9660KH20130708> [<https://perma.cc/GNQ7-WDYA>].

178. See John L. Allen, Jr., *Francis Blasts ‘Globalization of Indifference’ for Immigrants*, NAT’L CATH. REP. (July 8, 2013), <http://ncronline.org/blogs/ncr-today/francis-blasts-globalization-indifference-immigrants> [<https://perma.cc/YJ34-9V2N>].

179. See Aaron Blake, *U.S. Catholic Leader Invokes Pope’s Immigration Comments*, WASH. POST (July 9, 2013), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/07/09/u-s-catholic-leader-invokes-popes-immigration-comments/> [<https://perma.cc/8L3H-HGWN>].

180. See Pope Francis, *Message of Pope Francis on the Occasion of the “Mexico/Holy See Colloquium on Migration and Development”* (July 14, 2014), https://w2.vatican.va/content/francesco/en/messages/pont-messages/2014/documents/papa-francesco_20140711_messaggio-movilidad-humana.html [<https://perma.cc/JLB2-GDY2>].

181. See Pope Francis, *Address of His Holiness Pope Francis to the Prefects of Various Italian Cities* (Feb. 6, 2015), http://w2.vatican.va/content/francesco/en/speeches/2015/february/documents/papa-francesco_20150206_prefetti-citta-italia.html [<https://perma.cc/6U2K-KDE3>].

applying the rule of law to protect human rights.¹⁸² The Pope specifically stated:

In these years characterized by the phenomenon of migration, linked to the escalation of violent conflicts in the world and their tragic consequences for the people and the economies of so many countries, prefectorial surveillance demands particular sensitivity with regard to immigration. The exercise of this duty entails the need to identify in the daily management of situations, often urgent, the correct application of norms, to guarantee, along with the correct observance of the law and the other provisions in force, scrupulous respect for the fundamental rights of every human being.¹⁸³

As all of the foregoing documents and comments indicate, the Catholic tradition has much to contribute toward comprehensive immigration reform. The section below seeks to advance a policy proposal based largely upon the above principles and themes of Catholic social teaching.

III. A PROPOSED SOLUTION FOR IMMIGRATION REFORM INCORPORATING CATHOLIC SOCIAL PRINCIPLES

A. *An Introduction*

The biblical quotations, papal encyclicals, statements of the Catholic bishops, and other elements of Catholic social teaching on immigration discussed earlier do not indicate advocacy of an absolute right to immigration or of an “open borders” philosophy. Instead, these documents generally call upon policymakers to carefully consider and evaluate policies relating to immigration. The great question of the extent of a citizen’s duties to both the state and to God—recalling the biblical exhortation to “[R]epay to Caesar what belongs to Caesar and to God what belongs to God”¹⁸⁴—is a vast scholarly and theological question worthy of careful analysis beyond the scope of this article.¹⁸⁵ However, these considerations are subject to a condition that cannot be compromised in Catholic social teaching—that such policies must not be “contrary to the demands of the moral order, to the

182. *Id.*

183. *Id.*

184. *Matthew* 22:21.

185. The authors would like to acknowledge Professor Marianne Jennings, Professor Emeritus of Legal and Ethical Studies in Business at the W.P. Carey School of Business at Arizona State University, for raising this fundamental question during a presentation of this work at the 2013 Academy of Legal Studies in Business national meeting in Boston, Massachusetts.

fundamental rights of persons or the teachings of the Gospel”¹⁸⁶ as outlined in paragraph 2242 of the *Catechism of the Catholic Church*. In essence, such policies cannot violate the inherent dignity and fundamental worth of the human person;¹⁸⁷ otherwise, the foundations of all law may be placed in peril.¹⁸⁸

B. The Universal Common Good and Balancing of the Right to Migrate and the Right to Control Borders

In Catholic social teaching, the promotion of the universal common good is the goal policies are encouraged to achieve.¹⁸⁹ In the context of immigration, two major strands emerge within Catholic documents. On the one hand, articulated in Pope John XXIII’s encyclical *Pacem in Terris* and reaffirmed in subsequent documents is the right of individual persons to emigrate and migrate. However, another element of Catholic thought as discussed above in both papal encyclicals and other documents emphasizes the right of a

186. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 40, at para. 2242.

187. See U.S. Conference of Catholic Bishops, *Economic Justice for All* para. 28 (1986), http://www.usccb.org/upload/economic_justice_for_all.pdf [<https://perma.cc/LN2X-UUCV>]. The Bishops stated:

The basis for all that the Church believes about the moral dimensions of economic life is its vision of the transcendent worth—the sacredness—of human beings. *The dignity of the human person, realized in community with others, is the criterion against which all aspects of economic life must be measured.* (1) All human beings, therefore, are ends to be served by the institutions that make up the economy, not means to be exploited for more narrowly defined goals. Human personhood must be respected with a reverence that is religious. When we deal with each other, we should do so with the sense of awe that arises in the presence of something holy and sacred. For that is what human beings are: we are created in the image of God (Gn 1: 27).

Id.

188. See JOSEPH PATZINGER, *VALUES IN A TIME OF UPHEAVAL* 28 (Brian McNeil, trans., 2006). Cardinal Ratzinger (His Holiness Pope Benedict XVI) wrote:

One essential point remains controversial, namely, the right to life for every person, the inviolability of human life in all its phases. In the name of freedom and in the name of science, increasingly serious holes are being torn in this right. Where abortion is considered a right inherent in human freedom, this means that the freedom of one person is given priority over the other’s right to life. Where experiments on unborn human beings are demanded in the name of science, the dignity of man is denied and trampled on precisely in those who are most defenseless. It is here that the concepts of freedom and science must be demythologized if we are not to lose the foundations of all law, respect for man and for his dignity.

Id.

189. See Rougeau, *supra* note 41, at 352 (“Catholic social teaching is directed to a global social question. The common good the teachings describe is not only the good produced by life within societies, but also a global common good resulting from the interaction of nation-states.”).

sovereign nation in the international system to control its borders, subject to the common good.

The reconciliation of these two strands of Catholic social teaching in the immigration context is a difficult proposition. However, in the secular context, law balances various policy objectives and individual rights with doctrinal balancing tests in many situations. For example, in products liability law concerning design defects the risk-utility test¹⁹⁰ adopted by numerous jurisdictions¹⁹¹ balances the benefits of a product's design with the risks inherent in such a design. In constitutional law, the rational basis test,¹⁹² intermediate scrutiny test,¹⁹³ and strict scrutiny test¹⁹⁴ weigh the interests of the government versus the alleged infringement of individual rights under the Equal Protection Clause. With regard to Catholic social teaching, the analysis in immigration law is a balance between the rights of individuals to migrate and the right of a sovereign nation to control its borders. The proposal outlined below seeks to balance these two strands of Catholic social thought.

C. A Proposal for Immigration Reform Incorporating Catholic Social Principles

To date, the United States Conference of Catholic Bishops has expressed strong support with a number of elements of the "Gang of Eight" proposal.

190. See *Barker v. Lull Engineering Co.*, 573 P.2d 443, 456 (Cal. 1978) ("Second, a product may be found defective in design if the plaintiff demonstrates that the product's design proximately caused his injury and the defendant fails to establish, in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design.").

191. For an excellent discussion of the risk-utility test in the design defect context, see David G. Owen, *Design Defects*, 73 MO. L. REV. 291 (2008).

192. See William Woodyard & Glenn Boggs, *Public Outcry: Kelo v. City of New London—A Proposed Solution*, 39 ENVTL. L. 431, 445 (2009) ("Courts apply the rational basis standard of judicial review by asking whether the governmental action at issue is rationally a means to an end that may be legitimately pursued by the government.").

193. See R. Randall Kelso, *Standards of Review Under the Equal Protection Clause and Related Constitutional Doctrines Protecting Individual Rights: The "Base Plus Six" Model and Modern Supreme Court Practice*, 4 U. PA. J. CONST. L. 225, 234 (2002) ("Under intermediate review, the legislation must: (1) advance important or substantial government interests; (2) be substantially related to advancing those interests; and (3) not be substantially more burdensome than necessary to advance this interests.").

194. See Woodyard & Boggs, *supra* note 192, at 447 ("To pass 'strict scrutiny' judicial review, the government must have a 'compelling' government interest and the government action must be the least restrictive means for achieving that interest.").

In balancing both the rights of individuals to migrate and the right of a nation to control its borders, this proposal inspired by Catholic social principles seeks to uphold the universal common good and provide a feasible recommended path to legal status for undocumented immigrants.

1. Fines v. Community Service Approach

One characteristic apparently common to all major proposals for comprehensive immigration reform in the past several years is that in order for an undocumented individual to apply for a provisional license or for citizenship, the undocumented individual must pay a fine—in addition to application fees—to obtain the provisional license or citizenship.¹⁹⁵ Such a fine necessarily implies that a violation of federal immigration law has occurred and that the fine is punishment for the offense. Within the context of the Catholic tradition, just punishment certainly is recognized as appropriate if proportionate to the nature of the offense.¹⁹⁶ In the Catholic tradition, punishment for offenses is recognized not only to safeguard the common good and protect the safety of others, but has a “medicinal purpose” in attempting to rehabilitate the offender.¹⁹⁷

It is a delicate effort to balance the right of an individual to emigrate and the right of the state to impose punishment for a violation of immigration law. We propose that instead of the imposition of fines as a precondition to obtain a provisional license or citizenship, comprehensive immigration reform should incorporate a community service element¹⁹⁸ as a precursor to a provisional license and citizenship.

In the Catholic tradition, the rights and responsibilities of citizenship are attached to the promotion of adherence to the universal common good. Paragraph 2237 of the *Catechism of the Catholic Church* states that “the political rights attached to citizenship can and should be granted according to the requirements of the common good.”¹⁹⁹ In addition, the *Catechism* also

195. See *supra*, Part I.

196. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 40, at para. 2266.

197. *Id.*; see also Joseph L. Falvey, Jr., *Crime and Punishment: A Catholic Perspective*, 43 CATH. LAW. 149 (2004) (contending that in the Catholic tradition retribution has also served as a justification and purpose for punishment).

198. Community service as an alternative to fines and imprisonment has increased as a viable alternative to sentencing in criminal law. See Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 625 (1996) (“Community service orders have become increasingly common in recent years, but almost entirely as supplemental sanctions for offenses traditionally punished with probation and not as substitute sanctions for offenses traditionally punished with imprisonment”); see also Corrie Caler, *No Prison Time for Environmental Crimes: Does Community Service Satisfy the Goals of Criminal Sanctions for Environmental Crimes?*, (unpublished note) (on file with author).

199. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 40, at para. 2237.

indicates that it is a citizen's express *duty* to contribute to the "life of the political community" and to the common good.²⁰⁰ The *Catechism* states:

It is the *duty of citizens* to contribute along with the civil authorities to the good of society in a spirit of truth, justice, solidarity, and freedom. The love and service of *one's country* follow from the duty of gratitude and belong to the order of charity. Submission to legitimate authorities and service of the common good require citizens to fulfill their roles in the life of the political community.²⁰¹

Citizens can encourage undocumented individuals to contribute to civic engagement and community life by implementing a community service requirement. In the classic study *Bowling Alone: The Collapse and Revival of American Community*, Professor Robert Putnam recognized that many Americans in the late twentieth century felt "vaguely and uncomfortably" disconnected from one another.²⁰² He argues that a decline in social capital²⁰³ and civic participation has led to the need for Americans to reconnect with each other.²⁰⁴

One of Putnam's observations is that diverse and different individuals must connect with one another to rebuild social capital.²⁰⁵ The very name of the U.S. Conference of Catholic Bishops' 2003 pastoral letter on immigration is *Strangers No Longer: Together on the Journey of Hope*.²⁰⁶ A community service requirement as part of comprehensive immigration reform not only incorporates and integrates the undocumented into the greater community but keeps the undocumented from being strangers. It not only keeps the undocumented out of the "shadows"²⁰⁷ but provides all

200. *Id.* at para. 2239.

201. *Id.* (emphasis added).

202. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 402, 417–18 (2000).

203. *Id.* at 19 ("Whereas physical capital refers to physical objects and human capital refers to properties of individuals, social capital refers to connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them. In that sense social capital is closely related to what some have called 'civic virtue.' The difference is that 'social capital' calls attention to the fact that civic virtue is most powerful when embedded in a dense network of reciprocal social relations. A society of many virtuous but isolated individuals is not necessarily rich in social capital.").

204. *Id.* at 28.

205. *Id.* at 411.

206. See *Strangers No Longer: Together on the Journey of Hope*, *supra* note 167.

207. See Cardinal Timothy Dolan, *Catholic Bishops: Fix Unjust Immigration System*, USA TODAY (June 9, 2013, 2:03 PM), <http://www.usatoday.com/story/opinion/2013/06/09/immigration-catholics-bishops-column/2397239/> [<https://perma.cc/5TN5-FCYV>].

with the agency to work toward the greater common good of not only society but the United States.

The adoption of a community service requirement as part of comprehensive immigration reform best balances the two different strands in Catholic social thought, but it also emphasizes a key tenet of the Catholic tradition—the individual’s responsibility for civic engagement.

2. *Provisional Immigration Status Proposal*

To reflect the foregoing principles inspired by the Catholic social tradition, we propose that an undocumented individual who demonstrates at least twenty hours per week in employment for a period of one year and who avoids the commission of two misdemeanors, excluding minor traffic offenses), one aggravated misdemeanor or one felony be eligible for provisional immigration status. Incorporating the community service approach as a precondition for provisional immigration status, an individual would be required to perform at least 500 hours of community service or public service and pay an application or processing fee to receive provisional immigration status.

As part of the balancing approach, while the opportunity to obtain provisional immigration status would exist for those who are employed and engage in community service or public service, any individual who is convicted of the commission of two misdemeanors, excluding minor traffic offenses, one aggravated misdemeanor, or one felony while granted status in the program would be permanently ineligible to obtain provisional immigration status.

3. *Citizenship Proposal*

A number of prior comprehensive immigration reform proposals, including the “Gang of Eight” proposal, have offered a pathway to citizenship for certain workers. The current “Gang of Eight” proposal provides a path to citizenship for certain undocumented individuals who meet certain requirements. However, these individuals could obtain citizenship only after a waiting period of thirteen years.²⁰⁸ A key aspect of Catholic social teaching is the importance of the institution of the family for social life.²⁰⁹ The *Catechism of the Catholic Church* contains seven paragraphs on the family and society and emphasizes that civic authorities have a “duty to honor the family”²¹⁰ and that “[t]he family must be helped and defended

208. See AM. IMMIGRATION COUNCIL, *supra* note 125.

209. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 40, at para. 2207.

210. *Id.* at para. 2211.

by appropriate social measures.”²¹¹ In addition, one of the “Seven Themes of Catholic Social Teaching” according to the United States Conference of Catholic Bishops is a “Call to Family, Community and Participation.”²¹² The bishop’s conference specifically remarked in the document that “[m]arriage and the family are the central social institutions that must be supported and strengthened, not undermined.”²¹³

One of the shortcomings of the “Gang of Eight” proposal as it currently stands is that it only provides a path to citizenship after a period of thirteen years for certain individuals. This lengthy time requirement by its nature may weaken familial bonds and is a lengthy impediment to the unity of the family. To balance policy concerns regarding the unity of the family and the state’s interest in ensuring that new citizens contribute to the common good of society, we propose that an individual who obtains a provisional immigration license under our proposal and maintains that status for a period of five years will be eligible to apply for citizenship—provided that in the five year period in provisional immigration status the individual avoids commission of two misdemeanors, excluding minor traffic offenses, one aggravated misdemeanor, or one felony. Integrating the community and public service component of the provisional immigration license proposal, an individual applying for citizenship would have to complete another 500 hours of community or public service, pay an application fee for citizenship, and complete at least 100 hours of the study of civics and pass an exam at the completion of studies.

4. Federal and State Cooperation in Immigration Reform

One of the contemporary debates concerning immigration reform among academics and policymakers is the extent of federal and state/local control concerning immigration policy.²¹⁴ The boundaries between federal and state/local control have often been generally seen as being in conflict, rather than complementary, with each other.²¹⁵

211. *Id.* at para. 2209.

212. *See Seven Themes of Catholic Social Teaching*, U.S. CONFERENCE OF CATHOLIC BISHOPS, <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm> [<https://perma.cc/6GY7-ZMZM>] (last visited Sept. 21, 2016).

213. *Id.*

214. *See supra*, Introduction.

215. *Id.*

A February 2015 editorial in *The Economist* suggested that amidst congressional inaction on immigration reform, individual states could create a complementary visa system.²¹⁶ The editorial noted that in the countries of Canada and Australia, states as well as provinces can directly recommend individuals to obtain visas.²¹⁷ In the Canadian system, the federal government, provinces, and territories share responsibility for the selection of immigrants.²¹⁸ Eight out of ten provinces/territories in Canada have “Provincial Nominee Programs” (PNP), which allow the provinces/territories to tailor the programs to their own specific needs to meet demands in the labor market.²¹⁹ The federal government handles national security and health checks before issuing a Canadian permanent visa.²²⁰

As *The Economist* article noted, Australia also has a state sponsored visa program.²²¹ In Australia, skilled workers who are nominated by a territory or state can be eligible for an “Australian Skilled–Nominated Visa.”²²² Several requirements exist, including being less than fifty years old when applying, having competent English skills, and being nominated for work in an occupation that is on the Australian “Skilled Occupation List.”²²³ One who obtains an Australian Skilled–Nominated Visa must take part in occasional surveys, keep authorities informed as to any changes in address, and live in the participating state/territory for at least a period of two years.²²⁴ If one successfully obtains an Australian Skilled–Nominated Visa, then the individual receives a five-year multiple entry visa.²²⁵ If one lives in Australia for at least two of the five years, then the Australian Visa Bureau can reissue the visa.²²⁶ In addition, Australian law provides that if an individual lives in Australia for four consecutive years, that individual may apply for citizenship.²²⁷

216. See *Let the States Decide*, *supra* note 43.

217. *Id.* at 15.

218. See *Immigration to Canada through a Provincial Program*, CIC NEWS, <http://www.cicnews.com/2015/02/immigration-canada-provincial-program-024553.html> [<https://perma.cc/9EXE-FNY2>] (last visited Aug. 30, 2015) [hereinafter *Immigration to Canada through a Provincial Program*].

219. *Id.*

220. *Id.*

221. See *Let the States Decide*, *supra* note 43.

222. See *Australian State Sponsored Visa: Skilled–Nominated Visa (subclass 190)*, AUSTL. VISA BUREAU, <http://www.visabureau.com/australia/sponsored-visas.aspx> [<https://perma.cc/S6M9-WC5E>] (last visited Sept. 21, 2016) [hereinafter *Australian State Sponsored Visa: Skilled–Nominated Visa*].

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. See *Australian State Sponsored Visa: Skilled–Nominated Visa*, *supra* note 222.

The Economist urged the United States to adopt a similar program as Australia and Canada, but on a more comprehensive scale.²²⁸ Examining this issue through the lens of Catholic social teaching, if one looks at it from a universal common good perspective, cooperation between the federal government and the state governments on immigration policy within the United States appears to promote the universal common good rather than inhibit it, as might occur with conflicts between the federal government and the state governments. Looking at both Canada and Australia, both programs appear to be targeted more toward educated and skilled workers being sponsored by individual states, provinces and territories.²²⁹ Under the perspective of Catholic social teaching, skilled workers be protected—especially the most vulnerable, such as migrant workers.²³⁰

Under a proposal incorporating tenets of Catholic social teaching, the states can adopt a visa system similar to the ones in Canada and Australia, as outlined in *The Economist* editorial that complements the provisional immigration status proposal outlined earlier. One possibility is an individual state Department of Labor could certify to the United States Citizenship and Immigration Services that the state needs workers of a certain occupation, grants state visas for provisional immigration status, and follows the same rules concerning avoidance of certain serious crimes, such as committing excessive misdemeanors, an aggravated misdemeanor, or a felony in a five-year time period. However, this program would not only include workers in skilled occupations, but also other occupations as well to be more inclusive.

5. DREAM Act

Finally, another critical aspect of comprehensive immigration reform is the question of how to approach the status of children who arrive in the United States with undocumented status. As previously discussed, the “Gang of Eight” proposal includes a DREAM Act proposal that provides a path to citizenship for individuals who are undocumented while a minor who earn

228. See *Let the States Decide*, *supra* note 43.

229. See *Immigration to Canada through a Provincial Program*, *supra* note 218; *Australian State Sponsored Visa: Skilled—Nominated Visa*, *supra* note 222.

230. See *Catholic Church Teaching on Vulnerable Migrant Populations*, U.S. CONFERENCE OF CATHOLIC BISHOPS (Jan. 2011), <http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/vulnerablemigrantpopulations.cfm> [<https://perma.cc/L8UW-HTQ3>]; see *supra* Part II. IMMIGRATION AND CATHOLIC SOCIAL TEACHING.

a high school diploma or GED and either complete two years of collegiate credits or serve four years in the military.²³¹ The response of Catholic leaders has included a number of expressions of support of DREAM Act legislation. In a 2012 essay in the *Notre Dame Journal of Law, Ethics and Public Policy*, Cardinal Roger Mahony outlined seven myths about the DREAM Act legislation and contended the DREAM Act will contribute to the growth of the United States.²³² In his July 2013 testimony before Congress, Archbishop Jose Gomez expressed support for S. 744's five-year path to citizenship and stated that it enables undocumented youth to "become part of our society as soon as possible, so they can begin contributing fully to our nation."²³³

Our proposal would also contain S. 744's version of the DREAM Act. Notably, all paths to citizenship would be five years between the citizenship proposal outlined earlier and the DREAM Act proposal— such legislation would provide a five-year path to citizenship for all undocumented individuals. Doing so provides support for the integrity of the family unit.

IV. CONCLUSION

The Catholic tradition emphasizes that individuals are created in God's own image. Therefore, there is an inherent human dignity and worth in every human being. The contemporary immigration debate contains much discussion about safety and security concerns, the economic impact of immigration, and the appropriateness of "amnesty" for undocumented immigrants. In the midst of a largely polarized debate among policymakers and pundits, the Catholic tradition emphasizes the universal common good. It also proposes a compromise—a comprehensive path to legalization for undocumented immigrants emphasizing both public and community service as a precondition for legalized status, as well as cooperation between the federal and state governments concerning immigration. A solution rooted in Catholic social teaching not only best highlights the common good, but

231. See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 2103 (2013); AM. IMMIGRATION COUNCIL, *supra* note 125.

232. See Cardinal Roger M. Mahony, *The DREAM Act: We All Benefit*, 26 NOTRE DAME J.L. ETHICS & PUB. POL'Y 459 (2012).

233. *Addressing the Immigration Status of Illegal Immigrants Brought to the United States as Children: Hearing Before the Subcomm. on Immigration & Border Security of the H. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Archbishop Jose Gomez), <http://www.justiceforimmigrants.org/documents/USCCB-Kids-testimony-2013.pdf> [<https://perma.cc/B9TS-9D6R>].

also intends to unite individuals of diverse backgrounds within the United States as *E Pluribus Unum*.²³⁴

234. See Barbara Jordan, *Nancy Hanks Lecture*, 5 TEX. J. WOMEN & L. 225, 226 (1996) (“The Latin phrase on the Great Seal of the United States literally translated means one from many.”).

