Responses to
Senator Grassley's Questions for Janet Murguia

(NCLR responses are *italicized*.)

1. **Employer Sanctions:** In 1989, Cecelia Munoz [sic][1] – then a Senior Vice President with La Raza, today, Director of President Obama's Domestic Policy Council – wrote a report for your organization entitled "Unfinished Business: The Immigration Reform and Control Act of 1986." The report stated that Congress had a "moral obligation to repeal employer sanctions" put in place by the 1986 law, claiming that they infringed on citizens' civil rights. Does your organization stand by that report and its recommendations? Does your organization support sanctions for employers who hire those unauthorized to work in the United States? Would La Raza oppose a comprehensive immigration reform proposal that includes mandatory E-Verify?

   NCLR Response: *Based on the moral principle that the federal government should not create or maintain policies known to cause significant levels of employment discrimination against an already disadvantaged minority group, NCLR and dozens of other civil rights organizations did indeed call for the repeal of employer sanctions. In the debate leading up to the Immigration Reform and Control Act (IRCA), NCLR and others had raised concerns about the potential for such discrimination, and the case for repeal was strengthened by the actual knowledge that the feared discrimination did in fact occur, and on a broad scale.*

   It is important to understand the context in which this report was written. By the time the NCLR report was printed, more than a dozen reports issued by independent private organizations and government entities had found that the employer sanctions provisions of IRCA, which began to be enforced three years earlier, had led to significant increases in employment discrimination against Latinos, Asians, and others who appeared "foreign," including U.S. citizens, lawful permanent residents, and others authorized to work in the U.S. Two initial General Accounting Office (GAO, now known as the Government Accountability Office) studies mandated by IRCA had come to similar conclusions. In March 1990, the final GAO report in the series found that employer sanctions had resulted in a "widespread pattern" of discrimination caused solely by employer sanctions, against lawful workers, based on characteristics like speech accent, surname, and physical appearance. Specifically, the GAO found that 19% or 891,000 employers had adopted "unlawful discriminatory hiring practices" as a result of employer sanctions. Such practices included 461,000, or 10% of employers engaged in discrimination based on "foreign" appearance or accent; 346,000 or 8% had applied the verification system only to persons who appeared or sounded "foreign"; and an additional 430,00 or 9% adopted "citizens only" hiring policies, thus illegally excluding lawful permanent residents.

[1] *The referenced report was actually printed and issued in 1990, although earlier drafts were circulated in various formats. The correct spelling of Ms. Munoz's first name is "Cecilia."*

In calling for repeal of employer sanctions, NCLR also noted the significant evidence that employer sanctions were ineffective in deterring and preventing unauthorized migration. NCLR recommended, instead, increased border enforcement, a recommendation which policy makers did pursue, and a series of other measures, including strengthened labor laws, more aggressive labor law enforcement and targeting immigration enforcement resources at those employers most likely to violate the law which, unfortunately, policy makers subsequently did <u>not</u> pursue. It is uncertain whether NCLR's recommended enforcement regime would have been as or more effective than that which ultimately was put in place in IRCA, and subsequent to IRCA. The growth of the undocumented population from perhaps three to four million post-legalization to more than 11 million today suggests that an enforcement strategy relying on employer sanctions as its lynchpin has not been especially effective. What <u>is</u> certain is that the hundreds of thousands – and possibly a higher number – of U.S. citizens and other legal residents whose employment opportunities were eliminated or diminished because of discrimination caused by employer sanctions would not have been harmed by the enforcement strategy NCLR proposed in 1989.

Regarding NCLR's views on employer sanctions today, while as a civil rights organization we cannot comfortably "support" any government policy that creates rather than removes incentives for employers to discriminate against Hispanics, Asians, and others who may appear "foreign," we recognize the reality that this policy is firmly in place and unlikely to be repealed any time soon. In that context, we are hopeful that technological and other improvements being tested, including measures to strengthen the accuracy of systems like E-Verify and provide prompt remedies to authorized workers that are adversely affected by errors, may be able to reduce substantially the incidence of sanctions-related discrimination. Assuming the inclusion of a broad earned legalization program with a clear path to citizenship, strengthened labor law enforcement, improvements to legal immigration, and measures to promote more effective integration of immigrants into the mainstream, we are open to supporting a comprehensive bill that might include a mandatory E-Verify system, provided that effective protections and remedies against errors and discrimination that harm lawful workers are also included.

2. **Temporary Worker Program:** On January 29, President Obama offered an outline of a plan for comprehensive immigration reform. While he addresses legal immigration by talking about family reunification, increasing numbers, and enhancing tourism, he does <u>not</u> mention the need for a future guest worker program to help low-skilled immigrants. In your testimony, you stated that "we must provide a way for immigrant workers to enter the U.S. through safe and legal channels in order to meet legitimate workforce needs across sectors of our economy." What's your reaction to the fact that the President has ignored the need for a guest worker program, particularly for low-skilled and year round employment?

NCLR Response: *NCLR's views on guestworker or temporary worker programs are well known, and have been consistent for over three decades. First, we would greatly prefer the admission of permanent legal immigrants, as opposed to guestworkers, to fill legitimate labor market needs, because historical experience demonstrates that*

temporary workers who have less than full labor rights are inherently exploitable, and that such exploitation adversely affects the wages and working conditions of all workers. Second, to the extent that new or expanded guestworker programs are enacted, they should include full labor rights, a standard that few such proposals have met. Third, we have long argued for increased investments in building the human capital of domestic workers, through education and workforce development efforts, to minimize the need for temporary workers. Finally, we note that most other countries that have relied on temporary worker programs experienced both continued illegal migration, as well as the creation of a permanent subclass of ethnic minorities that have not been integrated into the mainstream society. At a minimum, this experience suggests we should approach expansion of such programs with extreme caution.

We would prefer that legitimate labor markets needs be addressed largely through the legal immigration system, and in that connection we are heartened by recent press reports that organized labor and business have agreed on a set of principles that should underlie reforms in that area.

We are aware of, and have reviewed with interest, the various interpretations of both the President's January 29 remarks, and of the subsequent publication of portions of draft legislation. Unlike some who have speculated as to the Administration's motives, we do not assume that the omission of some elements that should be included in a comprehensive bill, especially from a set of leaked documents, is meaningful at this stage of the process.

3. **Limitations on Immigration Levels:** Do you think there should be limits on immigration levels? If not, why not? If so, what limits should be in place and how do we enforce those limits?

***NCLR Response**: NCLR believes that as a sovereign nation the United States has a right to control its borders, and limiting immigration is an inherent part of that right. Limits on immigration – including numbers and characteristics of those permitted to enter from abroad – are thus fully legitimate matters for public discussion and policy debate.*

While we cannot address in this brief response every one of the numerous aspects around what would constitute appropriate limits and how they should be enforced, we can summarize our views in three points. First, many scholars and philosophers have labeled core immigration questions – who is allowed to enter the U.S. and on what terms – as especially challenging because they inevitably require a series of balancing tests. Thus, for example, the "rights" of family members in the U.S. to petition for their relatives abroad are juxtaposed against the "rights" of those already here whose interests might be adversely affected. Similarly, the "right" of a business to petition to hire a worker from abroad must be weighed against workers already here who may be hurt as a result. In short, these are questions of "right vs. right," not "right vs. wrong." And at some level the interests of families must be balanced with those of businesses and workers because

they are inextricably linked. Both serve our goals of strengthening our economy and of successful immigrant integration.

Second, in weighing conflicting rights, we believe a number of factors tip the balance toward a more inclusive immigration policy. For one thing, our long history as a "nation of immigrants" distinguishes us, for the better we believe, from virtually every other country on earth. From our very founding and throughout our history, some suggested that "new factors"—such as changes in the economy, or limits on resources, or the purportedly inferior character of the newest wave of immigrants—required major new restrictions on immigrants. In every case they were proven wrong by subsequent events. New immigrants settled the frontier, helped save the Union, provided the muscle for the Industrial Revolution, contributed mightily to winning two World Wars, and now are at the forefront of both generating new scientific and technological innovations and providing the services the aging Baby Boom generation requires. Immigration also reinforces key American values, such as family reunification, and the notion embodied in the American Dream that in our country anyone can work their way up from nothing to the economic mainstream through hard work and ingenuity.

In addition, while every policy produces both costs and benefits, our reading of the empirical evidence suggests that the vast majority of economists and social scientists from across the ideological spectrum have found that immigration increases economic growth and otherwise benefits the country as a whole. Thus, NCLR believes that maintaining a generous legal immigration system reflects our highest ideals <u>and</u> is good for the economy and the country.

Third, in our view, appropriate limits on immigration would: (A) Reaffirm the principle that family reunification should remain the cornerstone of the legal immigration system. In such a system, U.S. citizens and lawful permanent residents would not have to wait for decades or longer to reunite with family members who live abroad; (B) Include "safe and legal channels to meet legitimate workforce needs" in a way that balances the interests of employers and workers, while also ensuring sufficient resources so that today's "children have the skills they need for the highest-paying jobs of tomorrow," as we noted in our testimony. Such a system must include full labor rights and protections, as well as strengthened labor law enforcement; (C) Be enforced through a combination of measures, including border enforcement, labor law enforcement, removal of violators, with priority on offenders who pose a safety or security threat, and, as we noted in our answers above, targeting immigration enforcement resources on unscrupulous actors who deliberately prey on vulnerable workers and are the most-likely violators. Such a system must not encourage employment discrimination against Latinos and others who may appear "foreign," and should not condone or encourage racial profiling; we are hopeful that improvements in technology can facilitate these outcomes, as well as help develop more effective mechanisms to detect and remove those who overstay their visas.

4. **Legalization Program Details:** Should Congress consider a bill to legalize people unlawfully in the country, who should be eligible for the program? Please answer the following questions related this issue.

- Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program?
- Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?
- Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?
- Should gang members be allowed to benefit from a legalization program?
- If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?
- Should people here illegally be given probationary status, or legal status, without a background check done first?
- Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?
- Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?
- Should people that apply for legalization be required to submit to an in-person interview with adjudicators?
- Should people that have been denied legalization be placed in immigration proceedings and removed?
- If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

NCLR Response: *NCLR agrees with the bipartisan group of Senators working on immigration reform legislation and many bipartisan, independent commissions that have concluded that a program to legalize those here in unauthorized status is an essential element of immigration reform. Such a legalization program must be broad in scope, excluding only those that pose a demonstrable threat to public safety. While some might disagree, the alternatives are far worse. Any attempt to round up and deport 11 million people in our communities would violate the civil rights and disrupt the lives of millions of U.S. citizens and legal residents. Similarly, attempts to create a climate that is so hostile that unauthorized persons might "self deport," have already resulted in unacceptable levels of racial profiling and abuse, including the unlawful detention and in some cases even deportation of U.S. citizens.*

A this point, it is unclear what the exact sequence of procedural steps will be required to legalize; suffice it to say here that the program should be designed to maximize coverage of the undocumented population and afford the government the opportunity to screen out those that pose a threat to public safety. If the program will involve an initial registration period followed by a final adjudication, then certainly those registered should receive temporary deferred action status with work authorization. This would allow sufficient time for appropriate background checks and, if required, in-person interviews with an examiner. In any event, the deferred status should be renewable until such time as a final decision on the application is made.

Regarding program financing, several studies of IRCA implementation found that the effective operation of legalization was endangered by financing provisions that almost resulted in the closure of INS processing offices at the height of the application surge. NCLR believes that the statute should provide financing sufficient to ensure an effective legalization program.

Consistent with decades of Supreme Court precedents, NCLR supports judicial review of government actions that may have serious consequences for the rights and well-being of individuals in immigration proceedings.