

**Testimony of the Hispanic Bar Association of Pennsylvania**

**Presented by Robert S. Nix, Board Member, Chair of Government Relations  
Committee and Judicial Nominations Committee**

**Before the State House Republican Policy Committee Public Hearing on  
Illegal Immigration**

**July 26, 2006**

***Introduction:*** Thank you, Chairman Civera, and committee members, for allowing me the opportunity to testify this morning on behalf of the Hispanic Bar Association of Pennsylvania (“HBA”).

My name is Robert S. Nix and I am a Board Member of the HBA. I also Chair the HBA’s Committees on Government Relations and Judicial Nominations. I am a third generation Mexican-American U.S. citizen. My family comes from Laredo, Texas, the area where my Apache and Mayan ancestors lived since before Spanish explorers arrived, well before there was ever an international border there.

***Testimony:*** On behalf of the HBA, I would like to make a few points on the public record as you consider a package of bills concerning undocumented immigrants in Pennsylvania. When I refer to the “package of bills,” I’m referring to HB 2760, 2761, 2819, 2820, and HR 799 – the so-called “National Security Begins at Home” initiative.

First of all, as a legal professional association, the HBA supports the rule of law and common sense immigration reform that provides practical solutions to a very complex problem. However, we must never lose sight of the fact that many undocumented workers support entire families and vulnerable children that are American citizens by not just choice --but by birthright. Those children were born here and are every bit an American as any one of us whose parents or grandparents may have come to this country in search of a better life for their families. Regardless of their color, language or station in life, we must find a humane solution to this very human problem. Reasonable steps must be taken, with compassion, to ensure that there is a road to legality for these workers and their families. Like it or not, they have become a part of the fabric of our country and an important part of the labor force in our economy.

Secondly, the HBA supports efforts to secure and defend America’s borders. The right to secure its borders is one of the most basic rights that a sovereign nation possesses. As a nation, we have always had that right. Since September 11<sup>th</sup>, with the tragic events in New York, Washington D.C., and Pennsylvania, the federal government has made it a top priority to secure our borders. Securing our borders is an important part of the President’s bigger domestic agenda. The President seeks comprehensive immigration

reform, and today immigration reform bills are pending in both legislative chambers. But those efforts seem stalled over how to deal with the estimated twelve (12) million undocumented immigrants present in the country, and how to balance border security and the economic demand for immigrant workers.

Although laced with hyperbole, HR 799 reflects an understandable frustration with the pace at which the federal government is addressing border security. But it also recognizes that solely the federal government can accomplish the task. Very few dispute that we currently have alarmingly porous borders, and that, particularly post September 11th, something needs to be done about it. As long as securing our borders is undertaken in an deliberate, objective and thoughtful manner that is practical and fair to real people in real-life situations, securing our borders is something that we should all embrace as a way of working towards a more comprehensive solution to the complex issue of immigration reform.

But the real issue here - and the focus of the other bills -- is how we view and treat the estimated 150,000 undocumented immigrants who are here among us now in Pennsylvania.

In sum, the HBA opposes the proposed package of legislation that is aimed at undocumented immigrants presently residing in the Commonwealth for four reasons.

First, the proposed legislation is preempted by federal law.

Second, the proposed legislation is ill-conceived because it is based upon false assumptions, myth and misconceptions of an entire class of people instead of facts.

Third, the legislation smacks of low politics, which unfairly scapegoats a vulnerable population, that cannot stand up for themselves, in an effort to score cheap political points.

Finally, the proposed legislation is short-sighted and self-destructive of Pennsylvania's future given the amount of harm it would cause.

1. The proposed legislation is preempted by federal law.

State and local governments may not usurp the federal government's power to regulate immigration. State and local laws that attempt to regulate immigration, concurrently or in contravention with federal policy, have previously been struck down under the doctrine of preemption.

For example, HB 2760 would make it a felony to knowingly or intentionally employ an "illegal alien." State employer sanction bills such as this are preempted by federal laws such as the Immigration Reform and Control Act of 1986 (IRCA).

Similarly, the Supreme Court has held that the power to determine immigration status is exclusively reserved to the INS. State bills denying eligibility for public benefits or services based on immigration status would depend upon a verification process requiring state agents or businesses to make independent determinations of immigration status to determine who qualifies for public services or benefits. Such bills would also be preempted by federal law.

The policy behind federal preemption of state or local laws that regulate immigration is sound. It is a mistake to let individual states throw the nation into the kind of chaos that would be caused by a confusing hodge-podge of differing, inconsistent, and contradictory immigration policies from state to state. If the federal solution is not to our liking, are we to build a wall around Pennsylvania, close the bridges and seal off the highways? As a recent *Philadelphia Inquirer* editorial stated, “the vacuum being filled by some states and municipalities is bound to create a patchwork of hostility and safe havens – and drive this vulnerable population even further into the shadows.” Moreover, immigration law is exceedingly complex, and it is not wise policy to require businesses and local government officials to make independent determinations of an individual’s immigration status due to the risk of inconsistent and inaccurate judgments.

For the state to get frustrated with the federal government and try and take federal matters into its own hands amounts to state activism. Which, taken to its worse extreme in some areas of our country could resemble a vigilantism that inevitably leads to a form of state-sanctioned lynch-mob mentality when it comes to immigration enforcement. We urge you to resist going down that path, because taking action at the state level, when it is preempted by federal law, ultimately, just complicates and slows down true reform at the national level.

2. The proposed legislation is ill-conceived because it is based upon false assumptions, myths and misconceptions.

There are basically two main false assumptions underlying the package of bills. First, the *economic argument* is that undocumented immigrants are a drain on the state budget. Second, the *public safety argument* is that undocumented immigrants are responsible for rising crime. Both assumptions are patently false.

- a. By any number of measures, undocumented immigrants are not a drain on the state budget. They don’t come here to take state services or benefits – they come here to work and to reunite with family. In fact, undocumented immigrants are ineligible for the vast majority of state and federal benefits and are generally only eligible for those that are considered essential to public health and safety. Indeed, many *legal* immigrants are also ineligible for most federal benefits.

It is a myth that undocumented immigrants come here to try and avail themselves of public benefits. Most undocumented immigrants, particularly the Hispanic, are too distrustful of government because of their experiences with foreign unjust and corrupt

governments, to come forward and apply for public benefits. Fearing authorities, undocumented immigrants tend to rely on help from family, neighbors, and churches, rather than government. They are an unassuming, hardworking, industrious people. They seek support from their community and generally keep to themselves. For example, with the well-publicized controversy over immigration, the parent company of Western Union just announced a noticeable drop in its money-wiring business because undocumented and documented immigrants alike are fearful of going to Western Union offices to wire money to family members in Mexico for fear that authorities would seek them out at those offices.

Another popular misconception is that undocumented immigrants don't pay taxes. The truth is that undocumented immigrants pay taxes in a number of ways, including income and sales tax. Experts say that more than half of the undocumented immigrants working in the country have taxes withheld from their checks. The majority of undocumented immigrants pay income taxes using Individual Taxpayer Identification Numbers or false Social Security numbers. It may seem ironic that many undocumented immigrants appear to break the law in order to comply with the law. They break the law by using fake social security numbers so that they can work legally and have taxes properly withheld by their employers to be paid into a social security system from which they themselves will never receive benefits. The truth is, they really just want to work as legally as they can to support their families.

Significantly, all immigrants, regardless of status, will pay on average \$80,000 per capita more in taxes than they use in government services over their lifetime. The Social Security Administration reports that it holds approximately \$420 billion from the earnings of immigrants who are not in a position to claim benefits.

Moreover, there is no evidence that what little public benefits undocumented immigrants do receive is a net drain on the economy. The ratio between immigrant use of public benefits and the amount of taxes they pay is consistently favorable to the U.S. In one estimate, immigrants earn about \$240 billion a year, pay about \$90 billion in taxes, and use about \$5 billion in public benefits. In another estimate, immigrant tax payments total \$20- \$30 billion more than the amount of government services they use.

No one disputes that the overall contributions of undocumented immigrants to our economy are significant. For example in the year 2000, undocumented immigrants from Mexico alone contributed between \$154 billion and \$220 billion to the U.S. Gross Domestic Product. The vast majority of economists agree that the net benefits to our economy of undocumented immigrants still outweigh the costs.

Nor does the evidence suggest that undocumented immigrants take jobs and opportunities away from Americans. Indeed, most economists agree that immigrant labor is needed to fill jobs in the U.S. that an older, more educated American workforce is not willing to fill, especially at the lower wages and poor working conditions that many of these jobs entail. Thus, undocumented immigrants fill important gaps in the labor market. According to

most economists, “immigrants are basically filling empty jobs, not taking them away from U.S. citizens.”

Moreover, this country has never needed the economic support of this workforce more. According to the U.S. Chamber of Commerce: “we’ve got 77 million people, baby-boomers, getting ready to retire. How are we going to replace them? We haven’t got 77 million people ready to go to work.”

You’ve already heard testimony from various industry representatives about how desperately their respective industries need immigrant labor to fill shortfalls in the U.S. labor supply. You heard testimony about how the visa system is completely inadequate to meet the U.S. economy’s need for immigrant labor – thus creating the market for undocumented immigrants to fill the void. As for immigrants, they would prefer to immigrate through legal, official channels, however, by all accounts the U.S. immigration system is broken. As put by a witness from the SEIU, “the problem is not immigration but our immigration system, which fails to provide orderly, legal channels to come to work in this country in the industries that need workers the most.”

Currently there are approximately nine (9) million undocumented immigrants working in the U.S. and there is substantial evidence that their presence in the labor force creates jobs and strengthens local economies. These workers, if utilized properly and integrated further into the American economy, will not only continue to enhance the fabric of American society by practicing their faith, raising their families and paying their taxes but could lead to a global economic surge worthy of the world’s greatest country.

The largest wave of immigration to the U.S. since the early 1900’s coincided with our lowest national unemployment rate and fastest economic growth. Immigrant entrepreneurs create new jobs for U.S. and foreign workers, stimulate local economies, and help revitalize decaying urban centers. Although there are no comprehensive studies of immigrant-owned businesses, there are countless examples. In the year 2000, in Silicon Valley, companies begun by Chinese and Indian immigrants generated more than \$19.5 billion in sales and nearly 73,000 jobs. Hispanics owned nearly 1.6 million businesses in 2002 – a 31% increase from 5 years earlier according to the Census Bureau. Hispanic consumers spend \$700 billion a year – a figure expected to climb to \$1 trillion by the end of the decade according to the U.S. Hispanic Chamber of Commerce.

According to demographers, the United States’ fertility rate has been declining for the last 200 years. But for the influx of primarily Hispanic immigrants, the nation’s fertility rate would be below the “replacement fertility rate” (the number of children the average woman must bear for a population to sustain itself). Europe, Japan, Russia are already struggling with an aging population and low fertility rates.

Demographically, here in Pennsylvania, we desperately need immigrants to fill an ever shrinking and aging workforce. In the 1990’s, Pennsylvania ranked 48<sup>th</sup> among the states in population growth. In 2000 Pennsylvania was the state with the 2<sup>nd</sup> highest percentage of population 65 or older and we had the 4<sup>th</sup> highest median age. Ninety percent of our

new job growth between 1996 and 2000 was due to immigrants. Yet we also have one of the lowest proportion of immigrants of any state (at 4.1% of our population being foreign born and the rest of the country 11.1% foreign born). We cannot afford to alienate a workforce we have come to depend on.

As a state, without Hispanic immigrants, we are headed in the direction of Europe, Japan and Russia – places destined for the back burner of the global economy because of their aging native populations, low birth rates, and dislike of foreign immigrants.

It strikes us as extremely short-sighted to be unwelcoming and intimidating to Hispanics in Pennsylvania. And let's not pretend that isn't about Hispanics. Because the large majority of immigrants and undocumented immigrants coming here are Hispanic – anti-immigrant sentiment is devolving quickly into anti-Hispanic sentiment. I read how some of you claim that you are not against *legal* immigration, only *illegal* immigration - but make no mistake about it – the laws intended to show disdain for and intimidate undocumented Hispanics, will inevitably send an important message to documented Hispanic immigrants and Hispanic citizens as well. This type of anti-immigrant sentiment is uncaring, unproductive and unworthy of our Commonwealth's legislature. The message will be clear. If you are Hispanic—YOU DO NOT HAVE A FRIEND IN PENNSYLVANIA.

b. The second main false premise on which the proposed legislation is based is the public safety argument -- that undocumented immigrants are responsible for rising crime. Last week, Northampton County District Attorney John Morganelli testified that undocumented immigrants come here to commit crime. But there is no valid support for that claim. Such a broad unsupported assertion is reckless and irresponsible, particularly when uttered by an elected official.

The vast majority of immigrants, documented or undocumented, don't freely choose to leave their home countries. They are forced to leave through war, famine, poverty, natural disasters, and oppression. Most undocumented immigrants come here for two reasons - to work or to reunite with family – not to commit crime. The vast majority are hard-working, decent, law-abiding people just trying to give their children a better life.

Of course, every group is going to have its few miscreants within it, including groups of lawmakers, and lawyers - but there is no evidence at all to suggest that undocumented immigrants commit crimes at a rate that is any higher than the general population. If anything, undocumented immigrants, by virtue of their status, have a vested interest in keeping a low profile and avoiding trouble with the law so that they don't have run-ins with authorities. A 2001 study for the U.S. Department of Justice on immigration and crime found that “most studies in the past century show that immigrants commit fewer crimes than the rest of the population.”

We worry that statistics may be used to create a problem. Just because someone arrested for a crime turns out to be undocumented does not mean that undocumented immigrants are responsible for an increase in crime. For example, District Attorney Morganelli

stated that he was pursuing fraudulent use of social security numbers in his county. When his staff then posts an increase in the number of arrests and prosecutions for fraud, it doesn't necessarily follow that fraud is on the rise in that county, but, rather, it may be a function of law enforcement focus. Others studies have not found a link between immigration and higher crime. All they show is that when anti-immigrant sentiment rises, undocumented immigrants tend to be blamed for crime.

3. The proposed legislation appears politically motivated to unfairly scapegoat undocumented immigrants.

At bottom, the underlying premise of the package of proposed legislation is that "they broke the law." Thus: "They broke the law in coming here, therefore, they're criminals without rights who should all be rounded up and deported, for breaking the law"-- so the argument goes.

That's probably the most flagrant hypocrisy in this entire issue – righteously blaming it all on the undocumented immigrant. It is, of course, easy to get away with that – since undocumented immigrants can't vote, but that's getting ahead of myself.

Here's the hypocrisy: as a nation, as a massive economic engine, as a land of insatiable consumers - all of us – every single person who has ever eaten almost anything grown in this country, gone to a restaurant, stayed at a hotel, hired domestic, landscaping or janitorial services, among many other things – we're all at fault. As a nation, in both practice and policy – we winked, and conveniently "looked the other way" for decades, by failing to enforce existing immigration laws, secure our borders, fix the guest worker program, or pressure our lawmakers to do something about any of it -- all so that we could feed the mighty U.S. economy's need for cheap labor and so that we could all benefit from the cheaper consumer prices that all of that undocumented immigrant labor provided. -- And *now* -- all of a sudden—we want to get tough and blame just the undocumented immigrant with punitive measures designed to "scare them away" - because *they* "broke the law" in coming here?

As a nation of consumers, we've come to depend on cheap immigrant labor, we've all benefited greatly from their hard work, and, up until now, as a nation, we haven't seemed to care whether the immigrants doing that labor were documented, or not. So, we all share the blame – the undocumented immigrants, the employers, the shareholders of the employers, the consumers, the lenders, the traders, the middlemen, the lawmakers and elected officials -- *everyone* -- we're all complicit in this together for the situation we find ourselves in. And now you want to conveniently blame *just* the undocumented immigrant? I don't think so!

By the way, a variant of this argument that we hear a lot is: "My ancestors came here legally – why can't *they*?" The fact of the matter is that if your ancestors came here before 1921 – they didn't come here "*legally*" - they just came here – because there were no immigration laws to speak of. There wasn't even such a thing as an entry visa until the Quota Act of 1921. As long as you weren't visibly coughing up a lung – you were

generally welcomed into the country, easy as pie. [unless, of course, it was between 1882 and 1943, and you happened to be of “Asiatic” descent, in which case, you were not allowed entry, at all.] Prior to 1968, thousands and thousands of new Americans came upon our shores seeking opportunity and a better life for their families.

However, since 1968, it has become increasingly more complex and difficult to enter this country “legally” -- and post September 11th, it is now next to impossible for the class of workers needed most by our economy to even get into the country. Trying to come into this country “legally” today, primarily for economic reasons, is nothing at all like it was for many of our ancestors, making it a useless and unfair analogy.

It’s not just the hypocrisy, but the *timing* of this proposed legislation that makes it ill-conceived and politically motivated. It’s well documented that the state government, and primarily state Republicans, have taken a beating from voters who are angry at the legislative pay raise of the previous summer. The fact that the pay raise awoke an angry state electorate from its slumber of apathy hit home last fall when Supreme Court Justice Russell Nigro was the first victim of the pay raise backlash in the November 2005 General election. Subsequently in May, when Republicans lost their two top senate leaders in the spring 2006 Primary election, along with eleven Republican House members (and six Democrats lost as well), it became clear to the majority Party in the legislature, that the state’s voters were still angry over the pay raise.

Picking up on the rising anti-immigrant sentiments coursing through the country this year and the frustration at a lack of action by the federal government on immigration, a few state Republican lawmakers seem to have found the perfect scapegoat at which to redirect the voters’ lingering anger -- undocumented immigrants who cannot vote. Who cares if this “red meat” legislation to appease the angry masses is ultimately preempted by federal law and founded on false assumptions? -- so long as it sufficiently re-directs the anger away from lawmakers, and on to someone else. The rest of the country’s doing it, U.S. Senator Rick Santorum’s made it the centerpiece of his reelection campaign – so why can’t the Pennsylvania General Assembly do it, too?

Within weeks of the jolting May 17 primary election, this package of bills was introduced in the House on June 14, 19 & 21. All we are saying is that there is something rotten here, something that if it succeeds, will have lasting negative effects. What you think might be good convenient politics now, may result in serious political fallout later on.

4. These bills are short-sighted and self-destructive to Pennsylvania’s future given the amount of harm they would cause.

The social and economic costs of this legislation package will affect Pennsylvania long into the future. Although the bills are purported to be directed only against “illegal aliens,” human nature is such that its intent easily mutates in the general population into broader anti-Hispanic sentiment, racial profiling, and even a rise in “white nativism”.

These bills will increase discrimination against all Hispanics, the fastest growing segment of the population.

A poll from last month by the Pew Center for Hispanic Studies found that 54% of Hispanics surveyed reported seeing an increase in discrimination directed against them as a result of the immigration policy debate. Irresponsible, unfounded allegations against undocumented immigrants, and official state and local attempts to regulate immigration will only further inflame anti-immigrant and anti-Hispanic sentiment.

Bringing local law enforcement into the mix on immigration law enforcement will only drive undocumented immigrants further underground where they become even more vulnerable. Philadelphia Police Commissioner Sylvester Johnson testified before the U.S. Senate Judiciary Committee on immigration how his department has worked hard to build bridges with immigrant communities to address crime – but that making local police officers into enforcers of immigration law will undermine all of that effort, undermine the entire concept of “community policing” and make it harder to solve crime. As the Rev. Luis Cortes said in his testimony at the same hearing (and focusing just on Pennsylvania), “suddenly you have 150,000 people who can no longer call the police in an emergency.” He cited an example of criminals taking advantage of people’s undocumented status to attempt to blackmail them in an effort to force them into selling drugs. His example of the rapist mockingly handing the phone to his undocumented immigrant victim- and daring her to call the police – is too disturbing to contemplate.

The economic costs of these bills would be devastating as well. Pennsylvania businesses, farms, our overall economy, indeed, our social and cultural fabric, would all suffer significantly. In addition the costs of implementing, enforcing, and litigating over these proposed laws will prove to be counter-productive.

But more importantly, were it not for an immigration influx, primarily, of Hispanics, the state would be literally dying, economically as well as demographically. Our aging population and work force, without Hispanic immigrants, will fall below the sustainability level. The revitalization of cities such as Philadelphia, Allentown, Reading, and, yes, Hazleton, is dependent upon, primarily, a large Hispanic influx. Do we really want to send this unwelcoming message to the state’s only hope for a brighter economic future?

**Conclusion:** In sum, here’s what it looks like to the HBA: you’re pushing a legislation package that is ill-conceived, full of disdain for those who are an asset to the Commonwealth and divisive to an important community that will not forget it. Legislation conceived of ill-motives and based on flawed assumptions is unworthy of this great body. Rest assured, this legislation will be preempted by federal law. It will serve no legitimate purpose but to alienate a community that this body will need in the future. Our hope is that you do not appeal to those in the general population who find comfort in small enclaves of intolerance, and who seek to act on their anti-immigrant sentiments in a misguided effort to send a message. Please consider the harmful ramifications and long-term consequences of your actions.

For all of these reasons, the Hispanic Bar Association of Pennsylvania, on behalf of all Hispanics in Pennsylvania, urges the State House Republican Policy Committee to resist using the pulpit of elective office to fan the flames of intolerance, divisiveness and xenophobia by attempting to take immigration matters into its own hands.

Instead, we urge you to work with groups like the HBA and others who seek thoughtful, responsible, fair, and comprehensive immigration reform, to put together programs to help our new immigrants become legal and productive Pennsylvania residents and citizens, and to lobby and pressure our federal leaders to act diligently in working out a compromise solution at the national level, where it should and needs to occur.

Thank you again for giving me the opportunity to appear before you and testify today.

Respectfully submitted,

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