



## **HNBA CALLS FOR PASSAGE OF COMPREHENSIVE IMMIGRATION REFORM IN THE 111<sup>TH</sup> CONGRESS**

Serving as the national voice for the concerns and opinions of Hispanics in the legal profession and in the Latino community is a fundamental component of the HNBA mission. The impending Congressional debate on Comprehensive Immigration Reform (CIR) directly affects the core mission of the HNBA, as any change in immigration law would be of significant concern to the Hispanic community and a number of HNBA practitioners. For that reason, the HNBA has a vested interest in the substance and process of enacting immigration reform legislation.

### **Significant CIR Milestones**

- During the 110<sup>th</sup> Congress, Congressman James Sensenbrenner (R-WI) introduced legislation in the House that would have criminalized “unlawful presence,” making the 12 million undocumented immigrants in the United States “aggravated felons.” The act spurred millions of Hispanics to take the streets and march against “H.R. 4437.”
- The Senate took a more decidedly comprehensive approach to the bill by contemplating legislation that attempted to reform the immigration system on a variety of fronts, including both legalization and guest worker programs. The bill set off a contentious national debate that pitted allegations of “amnesty” with exhortations of bringing the undocumented “out of the shadows.” In the end, cloture was invoked and the Senate considered in earnest the motion to limit debate and proceed to consideration of the immigration reform bill. Senators voted 53 to 46 against cloture; 60 votes in favor were needed to move forward. As promised, Senator Majority Leader, Harry Reid, pulled the measure from the floor and for all intents and purposes, dashed the nation’s hopes that a compromise on immigration reform could be reached by the end of the year.
- During his election campaign, President Barack Obama made these remarks at LULAC’s Annual Meeting: “I marched with you in the streets of Chicago to meet our immigration challenge. I fought with you in the Senate for comprehensive immigration reform. And I will make it a top priority in my first year as President - not only because we have an obligation to secure our borders and get control of who comes in and out of our country.” Eventually at the polls, Obama won 67 percent of the Hispanic vote.
- Signaling a nod to keeping his campaign promise, the President recently stated publicly that after the economy, immigration reform was a top priority. No specifics or timeline were issued by the White House.

Regardless of when the bill might actually be introduced, the HNBA considers itself a stakeholder in the debate and would conduct a thorough review of the legislation to assess its merit and its effect on the Hispanic community. The HNBA looks for the following key principles in any CIR bill it might endorse:



**A smart, effective border plan:** Maintaining and protecting the integrity of our borders is paramount to any border security plan, including the expansion of personnel, infrastructure, and technology at the physical borders and at U.S. ports of entry. Security initiatives also need to take into consideration the communities and landscapes they might affect.

**Feasible, workable, and humane legalization and guest worker programs:** Undocumented individuals living and working in the United States are vital to our economy and need a transparent, just, and fair system of integrating themselves into civil society, including programs with a pathway to citizenship and strong legal labor protections. Fees for such programs need to be reasonable and applications adjudicated in a timely manner after individuals meet certain qualifying criteria and after other applicants in the visa line are processed. The underlying precept should be the foundation of immigration law: keeping families intact and helping employers find workers for jobs that continually go unfilled.

**An employment verification system that does not discriminate against workers and ensures that employers are held accountable to hiring legal workers:** Unscrupulous employers have long taken advantage of employer verification systems, including the automated “E-Verify” system, as a means of discriminating against Hispanic or “foreign looking” workers and avoiding sanctions for hiring undocumented workers. Before this system is expanded, stronger legal protections for employees and stricter regulation of employers needs to be in place.

**A total overhaul of how immigration judges, DHS trial attorneys, USCIS, ICE, and detention centers function:** The standards and practices of immigration judges and DHS attorneys need to be reviewed and reformed to ensure fair and transparent adjudication of cases in a timely manner. Detention centers around the country need to be reexamined to ensure due process rights for detainees, including unaccompanied minors. USCIS needs to take a serious look at its fee structure for immigrant visas and the serious visa backlog it faces. ICE should also consider a moratorium on worksite raids and the entering of 287(g) agreements pending further review of their effectiveness.



## **HNBA SEEKS TO INCREASE THE DIVERSITY IN AND COMPENSATION FOR THE FEDERAL JUDICIARY**

The Hispanic community is the largest and fastest growing minority population group in the United States. Currently, there are 45 million Latinos in the U.S., representing 15% of the population. That percentage is expected to grow to 29% of the population by 2050. As the Hispanic population grows, it is paramount that it has trust and confidence in the U.S. legal system and governmental institutions. Through community education programs such as *La Promesa en el Derecho (The Promise in the Law)*, the HNBA is actively working to promote such trust and confidence. An important element of the HNBA's work in this area focuses on the preservation of a fair and independent judiciary, the cornerstone of the rule of law. Towards that end, the HNBA advocates for two principles which are inextricably interrelated: a bench that reflects the rich diversity of our country and appropriate compensation for our judges.

A federal district court judge earns about \$165,000 per year, while first-year associates at many large law firms earn a base salary of \$160,000 plus bonuses. The pay scale of federal judges has not been increased since 1992. In fact, between 1969 and 2001, the salaries of federal judges have declined by 28% relative to inflation, while the average American workers' wages have risen 21% against the same measure. Federal judges have not received a cost-of-living adjustment (COLA) in the last sixteen years, resulting in a cumulative compensation loss due to these denied COLAs amounting to \$256,000 per district court judge.

This state of affairs is prompting many talented potential judicial candidates to opt out and federal judges to resign or retire early. The pay disparity is likely to have a detrimental impact on the ethnic diversity of the bench because people of color are more likely to be the first members of their families to attend college or law school, and do not have inherited wealth to compensate for the low salaries. As Chief Justice Roberts has noted, a judiciary "restricted to persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or people for whom the judicial salary represents a pay increase. . . would not be the sort of Judiciary on which we have historically depended to protect the rule of law in this country." Moreover, inadequate pay "directly threatens the viability of life tenure, and if tenure in office is made uncertain, the strength and independence judges need to uphold the rule of law-even when it is unpopular to do so- will be seriously eroded."

Any state of affairs likely to result in a less diverse judiciary is unacceptable. Currently, only 7% of judges are Hispanic, compared to 15% of the population. No Latino has ever served on the U.S. Supreme Court. The Court of International Trade does not have any Latino judges. The HNBA urges all members of Congress to support the appointment and confirmation of talented, experienced Hispanics and other people of color to the federal bench and increased pay for all federal judges.



## **HNBA CALLS FOR THE TERMINATION OF THE §287(g) PROGRAM AND THE PASSAGE OF THE END RACIAL PROFILING ACT (ERPA)**

The Immigration and Nationality Act (INA) §287(g) authorizes the Secretary of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies to perform immigration law enforcement functions. The agreements required DHS to file a Memorandum of Agreement (MOA) with participating local law enforcement officers. Under §287(g), U.S. Immigration and Customs Enforcement (ICE) officers provide state and local law enforcement with the training and subsequent authorization to identify, process, and when appropriate, detain individuals they encounter during their regular, daily law-enforcement activity.

### **Key Problems with the §287(g) Program**

- Local enforcement of immigration laws undermines community trust and distracts police from their core mission; when police are deputized as ICE agents, immigrants are less likely to report crimes that affect them or that they witnessed.
- The Government Accountability Office (GAO) reports that the §287(g) program lacks internal controls, real oversight and supervision and effectively grants local police unbridled discretion to decide how and when to enforce federal immigration law. The program thus undermines the federal government's ability to set priorities in immigration enforcement.
- A person's immigration status is not readily ascertainable from his or her appearance. In enforcing immigration law, local police officers who are often inadequately trained and, in some cases, not trained at all, improperly rely on race or ethnicity as a proxy for undocumented status. In §287(g) jurisdictions, for example, state or local police with minimal training in immigration law are put on the street with a mandate to arrest "illegal aliens."

### **Recommendations**

- The §287(g) program should be terminated;
- Should DHS not immediately terminate the program, Congress should conduct a comprehensive, detailed review of the §287(g) program;
- ICE should require that all law enforcement agencies with §287(g) or other agreements with ICE collect data on all contacts with the public;
- DHS should issue guidance to all participants explicitly clarifying that their authority to engage in immigration enforcement is limited to narrow circumstances (*i.e.*, where there is a criminal immigration violation and any state-law limitations on authority are satisfied); and
- Congress should pass the End Racial Profiling Act (ERPA) without exemptions for immigration enforcement.



## **HNBA SEEKS FULL AND ACCURATE COUNT OF HISPANICS FOR 2010 CENSUS**

As the second largest and fastest-growing ethnic group in the United States, Hispanics will most certainly be affected by the results of the 2010 Census. The 2000 Census, despite producing a net over count of the total population, produced an undercount of Hispanics of around 3% (or one million Hispanics). A repeat undercount will not serve our Nation well. Census data help determine the number of seats states have in the U.S. House of Representatives, the boundaries of legislative districts, locations for schools and businesses, the allocation of \$300 billion in federal funds to local, state and tribal governments each year, and much more. Given its significance, it is vitally important to both Latinos and the country that Hispanics be fully and accurately counted in the 2010 Census. To achieve this goal, the HNBA advocates for:

### **Outreach to Hard-to-Count Communities**

HNBA encourages members of Congress to partner with the Census Bureau, state and local governments, civil rights and labor groups, housing and child advocates, businesses, and research organizations to conduct outreach to hard-to-count communities. Such collaboration is most essential for the 2010 Census due to the recession and large number of foreclosures in the Hispanic community, which will make enumerating this population even more difficult. Members of Congress are well-positioned to reach these communities through their district offices. They may participate, at a minimum, by distributing census materials to their constituencies and within the neighborhoods they serve.

### **Adequate Funding of the Census**

In order to reach hard-to-count communities, including Hispanics, the Census Bureau requires adequate funding. Presently, the Census activities are funded through 2009, including funds provided by the economic stimulus plan. However, additional funding is required to continue outreach efforts, including those in Spanish, for FY 2010. Congress needs to allocate an additional \$8 billion to fully fund this effort. Lack of funding will result in an undercount of the Hispanic population, which we cannot afford. In particular, funding levels must be maintained for the Census Partnership Program.

### **Cessation of Activities Likely to Suppress the Count**

Although the HNBA calls on members of Congress to support a moratorium on immigration raids at the time of the count because such raids are likely to suppress participation by Hispanics, Asian Americans and other immigrant groups, it also recognizes that passage of comprehensive immigration reform legislation is paramount to reaching the traditionally hard-to-count Hispanic community.