

TOWARD COMPASSIONATE, JUST, AND WISE IMMIGRATION REFORM

Social Policy Resolution
CA09.11.71



Evangelical Lutheran Church in America
God's work. Our hands.

Adopted by the 2009 Church Council.

The Evangelical Lutheran Church in America (ELCA) has a long history of helping immigrants, refugees, and asylum seekers settle in the United States and supporting fair and generous immigration policies.¹ Social conditions and historical events in this decade call for renewed attention to immigration. One factor is the estimated 12 million unauthorized immigrants (close to one-half of unauthorized-immigrant households are couples with children²) residing in the United States — living in the shadows, vulnerable to injustice and mistreatment, and representing a mass violation of the rule of law. Other factors include the 2006 immigration demonstrations across the nation and the emphasis on national security and immigration enforcement following the September 11, 2001, terrorist attacks. The ELCA recommits itself to join with others in seeking compassionate, just, and wise immigration reform through this social policy resolution.

Theological Commitments

In 1998, the ELCA adopted a message on immigration that reiterated long-standing Lutheran commitments to both newcomers and just laws that serve the common good.³ Its core conviction was that "hospitality for the uprooted is a way to live out the biblical call to love the neighbor in response to God's love in Jesus Christ."⁴ Two biblical references guided the message's direction: 1) "The stranger who resides with you shall be to you as the citizen among you; you shall love the stranger as yourself, for you were strangers in the land of Egypt: I am the LORD your God" (Leviticus 19:34) and 2) "I was a stranger and you welcomed me" (Matthew 25:35). In Jesus of Nazareth, the God who commands us to care for the vulnerable identities with the human stranger — the person unknown and regarded with suspicion who stands on the receiving end of both welcome and hospitality and rejection and resentment.⁵ Not cited in the 1998 message but also relevant is Romans 13:1-7 and related Lutheran interpretations of the role and authority of government.

Created in the image of God

"Human beings are created 'in God's image' (Genesis 1:27) as social beings whose dignity, worth, and value are conferred by God."⁶ We are created to live together with God and one another in love and freedom, reflecting or imaging God's perfect love and freedom.⁷ Therefore, this church seeks to oppose anything that disables or destroys a person's capacity to relate to God and others in this way. With respect to work, the honoring of God's image involves advocating for a "sufficient, sustainable livelihood for all," while recognizing that individuals amount to significantly more than their capacity for labor.⁸ Further, "through our work we should be able to express this

God-given dignity as [people] of integrity, worth, and meaning."² Thus, "[n]o one should be coerced to work under conditions that violate their dignity or freedom, jeopardize their health or safety, result in neglect of their family's well-being, or provide unjust compensation for their labor."¹⁰

A just government that serves the common good

God appoints and authorizes governments to preserve the created order and serve the common good, primarily through the exercise of judgment between right and wrong, good and bad.¹¹ The ELCA further specifies that governments are to serve the global common good, for example, through fair trade policies or refugee assistance.¹² Governing authorities are to seek justice, foster peace, protect people, and support their well-being.¹³ This church therefore acknowledges the rule of law and the role of government in facilitating orderly migration and integration, and in preventing migration that might be dangerous or harmful to host communities.¹⁴ The law must be just, governance must be good, and enforcement must be humane. It also should be recognized that just as there are legitimate grounds for the use of force, there are also legitimate grounds for showing restraint.¹⁵ The fairness of laws and the practices of governance and enforcement require constant evaluation in light of the Christian doctrine of sin. The ELCA's posture toward governing authorities is one of critical respect — respectful of their role to serve the common good, yet critical of unjust and harmful ideologies, structures, and processes.

A Broken Immigration System

Families separated, people marginalized, and communities at risk

Because of overstaying their work, student, or tourist visas or crossing the border illegally, an estimated 12 million immigrants live in the United States without legal status.¹⁶ Backlogs for family preference visas result in people waiting up to 15 years or more to be reunited with loved ones. Many without legal immigration status, desperate to survive and provide for their families, consistently risk dangerous border crossings and abrupt, forced separation from their families after they arrive. To them, these alternatives are considered better than the socio-economic pressures they face in their home countries.

Although laws prohibit employers from hiring unauthorized workers, many employers, for a variety of reasons, are not in compliance. Numerous major industries (e.g., agriculture, construction, and hospitality), small businesses, and family households across America find such workers indispensable. Many employers turn to the undocumented workforce for flexible, industrious, and low-cost labor to do work United States citizens often will not do. The cost savings, however, are realized at the expense of unauthorized workers and the wider community when employers pay lower wages, evade state and federal taxes, and withhold payment for benefits such as health and disability insurance. Fearing immigration officials, detention, and deportation because of their unauthorized status, undocumented workers are vulnerable to exploitation. Consequently, unfair and unsafe work conditions often go

unchecked, illnesses and injuries go untreated, crimes and abuse go unreported, and this country's labor laws often go unenforced.

The "new security paradigm" and enforcement-only approaches

The September 11, 2001, terrorist attacks on the United States renewed the federal government's policy emphasis on national security, focusing particular attention on border control and interior enforcement. One fear was that lax immigration controls and the non-enforcement of existing laws would allow terrorists to cross borders illegally, remain here indefinitely, and move about inconspicuously. Other concerns related to drug trafficking, the entry of criminals, and connections with increasing gang-related activity in the United States. As federal immigration responsibilities migrated from the Department of Labor to the Department of Homeland Security, immigration issues have increasingly been viewed through the lens of national security. The blurring of the distinction between anti-terrorism efforts and the prosecution of routine worksite immigration violations — both responsibilities of U.S. Immigration and Customs Enforcement — has resulted in false characterizations of unauthorized immigrants.

Meanwhile, the U.S. Customs and Border Protection's budget has grown by 80 percent from \$6 billion in 2004 to over \$10 billion in 2009, with resources being directed primarily toward expanding its security personnel and infrastructure (e.g., physical and virtual fencing, and enforcement).¹⁷ Increased patrolling and fencing along the southern border of the United States have made attempts to cross the border illegally more difficult. Yet many continue to opt for more remote locations, more hazardous conditions, and more expensive traffickers (who are often connected to organized crime). As a result, deaths in the desert average more than one a day.¹⁸ Fence building also has been fraught with controversy because of impacts on border communities and United States-Mexico relations, environmental and private property concerns, and exceptionally high costs and mismanaged construction.¹⁹ Immigration raids, round-ups, and crackdowns conducted like military operations on businesses and homes have had negative side effects. They have heightened fear and mistrust among unauthorized and authorized immigrants, and have separated and traumatized families and communities across America.²⁰

Further, the practice of detaining immigrants is skyrocketing, even while alternatives have proved more humane, less costly, and more effective.²¹ The federal government currently detains more than 375,000 immigrants and refugees in a nationwide immigration detention system, much of it operated by for-profit corporations.²² Vulnerable people, such as families with children, torture survivors, asylum seekers, trafficking victims, and those with serious medical conditions such as HIV and AIDS, are detained pending court hearings for civil immigration violations. They are jailed in remote federal prisons and detention centers, contract prison facilities, and rented space in local jails and state prisons, and are often mixed in with criminal populations. Most detainees lack legal counsel, and many suffer from overcrowding, inadequate medical and mental health care, vulnerability to physical and sexual abuse, and neglect, leading in some cases to death. Detention also

imposes heavy financial and emotional costs on families living without the support of the detained person. Finally, many of those deported are removed without attorney involvement or a hearing before a judge, even when their deportation may mean significant danger and deprivations, including lifelong exile from their family.²³

The massive number of unauthorized immigrants residing in the United States also has cast doubt on the federal government's competence to carry out its immigration responsibilities. Such doubt follows from unresolved congressional debate, an overwhelmed and under-resourced immigration system, and obvious violations of immigration law on a vast scale. Meanwhile, some state and local governments have expanded their authority and dramatically increased their legislative activity concerning immigration, with some taking over enforcement responsibilities.²⁴ While states with the largest foreign-born populations (i.e., traditional immigrant-receiving states) tend to propose bills that expand immigrants' rights, states newly experiencing rapid immigration growth (i.e., new destination states) tend to propose bills that contract immigrants' rights, such as imposing certain prohibitions on the receipt of state public benefits and services.²⁵ Racism, prejudice, and negative stereotyping have been a part of these debates as well.²⁶

Refugees struggling to rebuild their lives in the United States

Refugees are among the most vulnerable people in the world.²⁷ Their stories often are filled with fear, pain, and loss because of the forced separation of families, persecution, war, and genocide. Many have been warehoused in camps for up to a decade or more in dangerous conditions and with limited support, where neither repatriation nor integration into the camp's host country is feasible. Even when individuals are resettled, their family members often are not, causing further sorrow. The United States has been a world leader in providing protection and assistance to refugees both internationally through humanitarian assistance and domestically by resettling refugees and integrating them into communities. However, resettlement agencies complain of chronic underfunding — which some view as inconsistent with this nation's humanitarian intentions and federally mandated resettlement programs. Current economic conditions have made it difficult for resettled refugees to find the security and stability to rebuild their lives. Agencies supporting such integration are in critical need of further resources to provide the basic services refugees need to survive in this country. These organizations currently rely on private sources of funding to help underwrite the cost of services and to compensate for a lack of sufficient federal support. These private sources have decreased because of the weakened economy.

Resolutions

In light of current immigration laws, practices, and policy debates; their impact on immigrant communities and this country as a whole; and existing ELCA theological and moral commitments, this church commits itself to the following actions, balancing humanitarian, labor, and security issues:

1. Reunite families and integrate the marginalized

This church urges the United States government to prioritize family reunification. Many refugee and immigrant families, including "mixed families" (families composed of United States citizens, often children, and/or legal permanent residents), are separated with no viable means of timely reunification. This church calls for Congress and the executive branch of government to address statutory and administrative factors and the lack of humanitarian waivers that contribute to barriers and backlogs separating families and the systematic marginalization of human beings. The ELCA also advocates for the welcome and care of unaccompanied children who have lost or are separated from their families. It again calls for "flexible and humane ways for undocumented [individuals] who have been in this country for a specified amount of time to be able to adjust their legal status."²⁸ They should be permitted to come out of the shadows and have immediate family members join them on a path to earned legalization.

2. Protect the rights of people at work

New legislation should facilitate an orderly, regulated future flow of workers, consistent with America's labor needs and obligations, to contribute to the global common good. Legal pathways for entry to work in the United States ought to correspond to the annual need for foreign workers. Migrant workers should be permitted to have immediate family members join them and together be offered a path to permanent residency. They also should be free to travel within and outside the United States. Worksites must provide fair wages, benefits that do not undercut domestic workers, and conditions and protections comparable to domestic expectations (e.g., legal recourse for exploitation, freedom to change employers). A secure, efficient, mandatory, and enforceable means of verifying a job applicant's eligibility to work in the United States should be implemented.²⁹

3. Establish just and humane enforcement

This church believes that governing authorities have the responsibility to protect the nation's borders and maintain its security. It supports the establishment of clear protocols for raids on worksites and safeguards that ensure immigrant families and local communities are not harmed. It is troubled by the use of criminal charges in routine immigration-status violations and advocates against this approach. The ELCA also supports increasing the use of more humane, less costly, and more effective alternatives to detention, such as supervised release programs. When detention is necessary, compliance with humane standards and access to vital services must be ensured at every facility housing detainees. Families with children should never be detained in penal settings. Children should be united with family members whenever possible or provided with guardianship if needed. Immigrant children in federal custody ought to be treated in accordance with child welfare principles consistent with their best interests. This church advocates for a fair deportation process consistent with American values, for example, the right to appointed legal representation and a hearing before a judge. It supports the right to judicial review and advocates for increased access to legal counsel for immigrants to seek

opportunities for relief from detention and deportation. Finally, the ELCA calls for a moratorium on and a comprehensive assessment of fence building along the United States-Mexican border, noting especially its impact on local communities.

4. Revitalize refugee protection and integration

This church calls for reform of the United States refugee resettlement system in order to address the growing demand for resettlement worldwide and to facilitate refugee integration within this country. The United States government should continue to use refugee resettlement strategically as part of a larger protection response, seek to end the warehousing of refugees, and find sustainable solutions for refugees who are unable to return home. Special attention must be paid to protecting and integrating refugees created by actions of the United States that contribute to refugee flows in the world. The ELCA also calls for renewed commitment to family unity and family reunification as a basic human right integral to long-term integration. Finally, increased federal support of local agencies and organizations that welcome refugees and assist them in rebuilding their lives is urgently needed.

5. Address root causes of forced migration

Immigration and refugee laws and their reform should not be considered in isolation from United States foreign policy and globalization issues. In particular, this church acknowledges the obligation of the United States to serve the common global good. This includes the need for better economic and trade policies designed, for example, to strengthen Mexican and Central American economies and create job opportunities with family-sustaining wages for would-be migrants. In general, the United States, in concert with other nations, must address through policy and action the root causes of forced migration, such as extreme poverty, unemployment, political persecution, armed conflicts, genocide, environmental degradation, religious intolerance, trade policies, and other forms of injustice. The aim is for would-be migrants to be free to remain in their homeland, support their families, and contribute to their communities. This church supports the ratification of international legal instruments that defend the rights of migrants, refugees (including unaccompanied children), and asylum seekers. The ELCA advocates especially for the right to migrate to support oneself or one's family, the right not to be forced to migrate, the right to be reunited with family, and the right to just working conditions.

End Notes

1. Cf. "Immigration" (Chicago: Evangelical Lutheran Church in America, 1998).
2. <http://pewhispanic.org/reports/report.php?ReportID+107>. See also Jeffery S. Passel and D'Vera Cohn, "A Portrait of Unauthorized Immigrants in the United States" (Washington DC: Pew Research Center, 2009).
3. "Immigration," 6.
4. Ibid., 3.
5. "Jesus characterizes ... hospitality in part as the exemplary recipient of hospitality. From his conception in Mary's womb by the power of the Holy Spirit to his birth in a manger through to his burial (in a tomb of Joseph of

- Arimathea), Jesus was dependent on the welcome of others." Amos Yong, *Hospitality and the Other: Pentecost, Christian Practices, and the Neighbor* (Maryknoll, NY: Orbis Books, 2008), 101. Cf. Luke's account (24:13-35) of Jesus appearing as a stranger on the road to Emmaus.
6. [*Sufficient, Sustainable Livelihood for All*](#) (Chicago: Evangelical Lutheran Church in America, 1999), 9.
 7. One of the ELCA's ecumenical partners articulates this point: "In the mystery of the one God, the three divine persons — Father, Son, and Holy Spirit — live in, with and for one another eternally in perfect love and freedom." *The Study Catechism, The Presbyterian Church (U.S.A.)*, 1998.
 8. Cf. *Sufficient, Sustainable Livelihood for All*, 9. The language of "work" as opposed to "labor" is preferable when considering matters of employment. "Work, for example, a good gift from God and an expression of a person's intellectual and physical powers, is spoken of by the negative term 'labor' in order to represent the relation of worker and employer as an exchange rather than a partnership." Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2005), 36.
 9. *Sufficient, Sustainable Livelihood for All*, 9.
 10. *Ibid.*, 9.
 11. Cf. Romans 13:1-7. "[A]ll political authority, orderly government, laws, and good order in the world are created and instituted by God ..." Article XVI (German text), *The Augsburg Confession in The Book of Concord*, eds. Robert Kolb and Timothy J. Wengert (Minneapolis: Fortress Press, 2000), 48.
 12. [*For Peace in God's World*](#) (Chicago: Evangelical Lutheran Church in America, 1995), 5.
 13. Cf. Luther's discussion on the relationship between the practices of government and the well-being of society embedded in his commentary on the daily bread petition of the Lord's Prayer. See Martin Luther, *Large Catechism in The Book of Concord*, 449ff.
 14. The ELCA message on terrorism adds a word of caution to national security concerns. "Governments often abuse and violate their authority under the guise of seeking security. They may deny the rightful aspirations of an oppressed group, violate human rights, or inflict their own unjustifiable violence on people in the name of fighting terrorism." "Living in a Time of Terrorism," 5. The message also shows a sober awareness of the limits of such interests. "The security that governments — including that of the United States — can provide from the threats of terrorism has limits. Human beings, finite creatures that we are, are always vulnerable; eliminating vulnerability would also do away with freedom. Governments cannot provide perfect or total security; when they claim to do so, they become agents of arrogant pride and the injustice and insecurity that flow from pride. If they are to secure freedom for vulnerable people, governments must recognize their limits in providing security," 6.
 15. Cf. George W. Forell and James F. McCue, "Political Order and Vocation in the Augsburg Confession," in *Confessing One Faith: A Joint Commentary on the*

- Augsburg Confession by Lutheran and Catholic Theologians*, eds. idem (Minneapolis: Augsburg Publishing House, 1982), 330f.
16. Jeffery S. Passel and D'Vera Cohn, i.
 17. Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Migration Policy Institute, February 2009), 9.
 18. *Ibid.*, 15.
 19. *Ibid.*, 11ff.
 20. See Randy Capps, Rosa Maria Castaneda, Ajay Chaudry, and Robert Santos, *Paying the Price: The Impact of Immigration Raids on America's Children*, a report by The Urban Institute for the National Council of La Raza, 2007.
 21. *DHS and Immigration*, 50ff.
 22. See "The History of Immigration Detention in the United States," Detention Watch Network www.detentionwatchnetwork.org/node/2381. See also "Breaking Down the Problems: What's Wrong with Our Immigration System?" Immigration Policy Center, Special Report, October 2009, 16.
 23. See generally INA s. 292, 8 U.S.C. s. 1362 (non-citizens removed have the privilege of being represented by counsel, but at no expense to the government); Department of Justice, Executive Office for Immigration Review, FY 2007 Statistical Yearbook (Apr. 2008), G1 (in 2007, approximately 58 percent of non-citizens in removal proceedings were not represented by counsel); INA s. 235(b)(1)(B)(iii), 8 U.S.C. s. 1225(b)(1)(B)(iii) (non-citizens who are considered "arriving aliens" under the law, and who are not determined by an Asylum Officer to have a credible fear of persecution, are removed from the United States under a process called expedited removal, without hearing or review); Department of Homeland Security Office of Inspector General, *Removals Involving Illegal Alien Parents of United States Citizen Children*, 5 (Jan. 19, 2009) (Between 1998 and 2007, more than 100,000 non-citizen parents of United States citizen children were removed from the United States.)
 24. See "Regulating Immigration at the State Level: Highlights from the Database of 2007 State Immigration Legislation and the Methodology," Laureen Laglagaron et al. (Migration Policy Institute, October 2008). In 2007, 1059 immigration-related bills were introduced by state legislators.
 25. *Ibid.*, 3f., 27.
 26. "Policies, practices, and attitudes that are hostile to immigrants living in the United States and that unduly curtail the legal arrival of immigrants, refugees and asylum seekers fail to live up to our country's tradition of welcoming newcomers in a fair and generous way." "Living in a Time of Terrorism" (Chicago: Evangelical Lutheran Church in America, 2004), 6.
 27. Refugees are defined as individuals who have "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" according to the United Nations' 1951 "Convention Relating to the Status of Refugees," which was adopted by the United States in the Refugee Act of 1980. Cited in "Immigration," 10.
 28. "Immigration," 8.
 29. *Meissner and Kerwin*, 28.

