



Migration and Refugee Service

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Necessary Elements for Just Comprehensive Immigration Reform

Element 4: Restoration of the Due Process Protections

Background: Due Process is a legal principle, derived from the 5th and 14th Amendment of the Constitution, to protect the rights of citizens and ensure that the government treats individuals fairly and does not abuse its power by acting in an arbitrary, oppressive, or capricious manner. While immigrants are not entitled to the same level of protections that citizens are, immigration proceedings and the treatment of immigrants must adhere to some level of due process.

In 1996, responding to a wave of anti-immigrant sentiment, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) became law. IIRIRA was originally intended to hasten the deportation of immigrants who had been convicted of criminal offenses. Unfortunately, IIRIRA vastly expanded the types of criminal offenses that triggered deportation, eliminated the ability of an immigration judge to waive deportation upon a showing of rehabilitation or hardship, created three and ten year bans for re-entry of immigrants and required the detention without bail of any immigrant who faced removal for a criminal offense.

IIRIRA provisions are still in place, and immigrants continue to face mandatory detention and deportation for petty offenses, severe penalties and multi-year bans to re-entry. These penalties continue to needlessly tear apart American families and degrade human beings. For this reason, restoring due process protections to immigrants and their families is an important issue that must be addressed in the ongoing comprehensive immigration reform.

Issue: Anti-immigrants' rights advocates believe that immigrants are not entitled to greater constitutional protections because of their status. Pro-immigration reformers believe that immigrants should be afforded basic due process protections to protect them from harsh and arbitrary detention and inhumane treatment.

Position of the U.S. Conference of Catholic Bishops: The Catholic Bishops recognize the inherent value and dignity of human life and for this reason, advocate for increased due process protections for immigrants and their families, including:

- **Restoration of judicial discretion in deportation proceedings:** Prior to IIRIRA, judges had some authority to grant relief from deportation in certain cases;
- **Elimination of the 3 and 10 year bars for undocumented presence:** Under IIRIRA, an immigrant who remains in the U.S. without a visa for more than 180 days cannot apply to return for three years and an immigrant who is here for more than 365 days cannot apply to return for ten years;
- **Elimination of the one-year filing deadline for asylum-seekers:** The one year filing deadline inhibits some individuals from applying for asylum because of a lack of information or resources;
- **Reform of mandatory detention laws, so that asylum-seekers and others who are no threat can be released until their court dates:** Currently, a large number of non-violent asylum-seekers are detained in prison-like conditions at great cost to the government and in violation of these individuals' basic human rights.