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REMARKS FOR ASYLUM PANEL DISCUSSION

By Jonathan Robert Nelson, Member, Christian Legal Society
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The Christian Legal Society, through its Center for Law & Religious Freedom, defends religious liberty and the right of life from the courts to Congress. Although I am speaking as a member of CLS, the specific views and opinions I voice today are my own.

I thank the American Bar Association, and you, for allowing me to express a religious perspective in this public forum. My aim is to stimulate discussion, and quicken hearts, not to turn you all into Presbyterians.

I'll start with a couple of Bible verses reminding us of how and why the Golden Rule applies to the immigration policies we pursue. Deuteronomy 10: 18-19 says: "18 He [meaning God] defends the cause of the fatherless and the widow, and loves the alien, giving him food and clothing. 19 And you are to love those who are aliens, for you yourselves were aliens in Egypt."

In Exodus 23, at verse 9, it says: "Do not oppress an alien; you yourselves know how it feels to be aliens, because you were aliens in Egypt."

In the New Testament, the Good Samaritan and the woman at the well were aliens. Jesus identified the Good Samaritan – that is, the alien – as the example to follow, rather than callous and self-interested legal and religious figures who had no time to do justice for the injured man on the road. He also identified the woman at the well, despite her apparent faults and shortcomings, as worthy of his redemptive counsel and assistance. His teachings remind us that --at our best -- we are all aliens sent out to help other aliens find a place of safety in this world.

These commands have universal moral authority. Indeed, the world's refugee laws, including America's Refugee Act of 1980, were enacted out of

a sense of shame that the nations largely failed to live up to these standards during the Second World War.

The Border Protection bill that passed last month also misses the mark. Sections 203 and 604 of the bill would make unlawful presence in the United States an aggravated felony punishable by up to one year and one day of imprisonment, and permanently exclude any alien who has misused a Social Security number or an identity document. They would turn eleven million aliens into the worst class of criminals with a stroke of the pen. They would also make them ineligible to apply for asylum or almost any other kind of relief from removal.

Surely, our security needs do not require or justify the oppression of aliens. America's motto is "In God We Trust." If we trust God for our security, then in enacting security laws should we not also honor God's clear commands to respect, and love, the aliens among us?

Another provision of the Border Protection bill, Section 202, seems to expand existing prohibitions on alien smuggling to criminalize possibly pastors, doctors, and attorneys helping needy refugees and other fellow humans. This "Bad Samaritan" provision could subject them – or “us” -- to prison sentences of up to 20 years. We are already seeing criminal prosecutions in the United States of Good Samaritans who find aliens who are dying in the desert and take them to a hospital. These prosecutions under current law seem unwise. So does the proposal to extend the law to authorize the criminal prosecution of more Good Samaritans.

In America, we have the right to practice our religions freely. Congress has directed that foreign governments be judged by similar standards in the International Religious Freedom Act of 1998, or "IRFA".

CLS co-sponsored and supported the enactment of IRFA. But CLS has become deeply concerned that administrative judges have been ignoring the findings, policies and guidelines of IRFA in religious asylum claims, and that government lawyers in the Office of Immigration Litigation have been urging judges to contravene United States policy as expressed in IRFA.

Last August, for example, the Fifth Circuit Court of Appeals upheld a Board of Immigration Appeals decision in the case of Li v. Gonzales. That case involved a Chinese Christian who was punished for worshiping in a house

church instead of the State-approved church. The Board had found that the Government of China was not engaging in religious persecution by criminally prosecuting and beating Mr. Li. The Board found instead that China was exercising a legitimate sovereign right, because it had not criminalized Mr. Li's beliefs, but only his way of practicing his religion.

The American religious community expressed outrage and the US Commission on International Religious Freedom intervened for the first time ever in an individual case. CLS and several other organizations filed amicus briefs urging the court to reconsider its ill-advised decision. In October and November, the Board and the Court vacated their decisions in Li. But the Board has not yet repudiated its reasoning in that case, and other, similar problems are still occurring in other cases across the country. The Chaldo-Assyrian Christian cases that have been raised by the US Commission on International Religious Freedom are just an example of these.

To address another issue that affects asylum applicants, Christian values seem violated by the notion that we should have "zero tolerance" for immigration violators. The slogan of "zero tolerance" does not seem to reflect the way that Christians believe we should treat other people, because we know that we may be judged by the standards that we apply to others. The Christian tradition is to forgive sin, encourage repentance and restitution, acknowledge rehabilitation and rejoice in redemption. US immigration laws reflected these values until about ten years ago. I urge Congress to restore these values throughout the immigration system.

Employment authorization is one area where forgiveness might be built back into the system. Asylum applicants and other eligible aliens must apply for a new employment card every year. But government processing delays and mistakes, and fecklessness on the part of aliens and their lawyers, often cause gaps in employment authorization. Aliens have to work like the rest of us in order to live, but if an alien works even one day without authorization, he or she forfeits important immigration rights. There are also situations where the government refuses to issue employment documents, for example when asylum cases are suspended for "repapering." I'd like to see Congress enact a law to permit aliens to apply for retroactive authorization to work during their gap periods, and clearly require employment authorization for all asylum applicants whose cases have been pending for more than 90 days.

This morning I have argued that our immigration laws have profound religious implications. One court recognized this fact last year when Government lawyers argued for a kind of "zero tolerance" interpretation of the naturalization laws. The court rightly said that such an interpretation "would require a holding that Congress had enacted a legislative doctrine of predestination and eternal damnation, whereas the statutes contemplate rehabilitation." Section 612 of the Border Protection bill would change the law to enact the very interpretation that the court rejected with that language.

I hope that Congress might leave questions of predestination and eternal damnation to the Almighty. As fallible humans, we would all do well to remember that God told even His chosen people that they were not to imitate the Egyptians who had oppressed them, but were to love the aliens among them. If Americans wish God's blessing upon us, should we not do the same?

Thank you.