C losing our eyes, we can imagine a husband and father waking in the middle of the night, clearing the cobwebs from his mind and the sleep from his eyes, as he darts up from his mat laid out on a dirt floor. Danger is near, and he must protect his family. He gently wakes his young wife, she grabs the baby, and they disappear into a crisp moonless night. As they travel a desert path the father’s mind is racing. Will they have enough water to stay hydrated? Will they have enough food to maintain their strength? Will bandits rob them, or worse, beat them, leaving them for dead? Or worse yet, will the father be killed and the mother and baby sold into slavery?

After several harrowing days, they arrive at their destination in a foreign land. Relieved to have survived the desert, the father’s mind races once again. Will they be turned out as unwanted immigrants without proper papers? Will there be work? Will the labor, especially if illegal, be exploited? What will happen if the baby gets sick and needs attention? Will language be a barrier or a cause for discrimination? Where will they worship? Will they be accepted as members into this new society if they can’t return home? The list of worries could go on endlessly.

Although this story or ones like it occur daily around the globe, I have in mind a particular husband, José, his wife, María, and her child, Jesus, as they fled across the desert into Egypt to escape Herod’s jealous wrath. For Christians, the Holy Family serves as an exemplar of the refugee, alien, and pilgrim. I agree with Pius XII who said: “The émigré Holy Family of Nazareth, fleeing into Egypt, is the archetype of every refugee family. Jesus, Mary, and Joseph, living in exile in Egypt to escape the fury of an evil king, are, for all times and places, the models and protectors of every migrant, alien and refugee of whatever kind who, whether compelled by fear of persecution or by want, is forced to leave his native land, his beloved parents and relatives, his close friends and to seek a foreign soil.”

The Holy Family’s journey must be placed into the context of the history of the people of Israel for the Jewish people often found themselves in the position of stranger in the strange land. Foreshadowing the current world-wide problem of human trafficking, we find Joseph—a different Joseph—being sold by his brothers. And, in an ironic turn of events, we find Joseph’s family migrating to Egypt during a famine. For me, one of the more beautiful stories of family, fidelity, transnational migration, and solidarity is found in the Book of Ruth.

Growing out of their understanding of God and His purposes and situated within their own migrant experiences, the people of Israel came to understand that the alien should be treated no differently than the citizen. In Leviticus, we find an express command: “When an alien resides with you in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt. I, the Lord, am your God.” In his dissent in the 2004 case of Soskin v. Reinertson, former Tenth Circuit Judge Robert Henry—now President of Oklahoma City University—quoted this passage from Leviticus. In that case, a majority of the three judge panel upheld the State of Colorado’s decision to solve part of its fiscal difficulties by stripping some legal aliens of Medicaid benefits to which they had previously been entitled. I like to think Judge Henry quoted Leviticus in his opinion to remind his colleagues on the panel (a Catholic and a Jew) and perhaps the rest of us of our duty to the alien in our midst.

As the point of departure, we need to remember the source of the alien’s dignity and, where appropriate, propose that source to the broader society. The alien possesses inherent dignity on an equal basis with the citizen because she was created by God and in God’s image. We get a glimpse of that in our nation’s birth certificate, the Declaration of Independence: “We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.” Christian revelation gives us further light to see some of the implications of this reality. In one of Pope John Paul II’s most oft cited passages from Vatican II, the Council Fathers said: “The truth is that only in the mystery of the incarnate Word does the mystery of man take on light. … Christ… by the revelation of the
mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear.”

In addition to the fact that she possesses inherent dignity by the very fact of her being, I want to tease out two other implications from this reality. First, whether she arrives as a refugee like Mary—forced to flee her home—or as a highly recruited scientist, she will arrive with a unique brokenness that may be overlooked by our culture’s elites who blindly view the individual as a sovereign self-creator, an autonomous chooser of her own destiny, unconnected (if she so chooses) to place, people, history, or culture.

As objective experience should make clear, as the people of Israel testify, and as the mystery of the Trinity and the mystery of the Church confirm, human beings are made for community. Human beings are made for community, each one chosen by God and placed in a particular and concrete community where the person’s humanity is cultivated. As the person reaches adulthood, she, in turn, participates in the development of her culture—her community. Emigration causes separation between the émigré and her family, nation, community, and culture of origin, resulting in a real loss for both émigré and her native community. The refugee, exiled from her home is likely to be acutely aware of the loss of homeland, experiencing life (often decades later) as an amputee as one Cuban refugee novelist put it. The immigrant who enthusiastically enters the country, affirmatively choosing to begin a new life in the United States may be less aware of the loss, but it exists whether acknowledged or not. And, we, on the receiving end, should be aware of this loss.

Second, Christ’s profound gift of himself to the human race teaches us something about our response: We are called to respond in love to all we encounter, spending ourselves for our neighbor including the immigrant and whether the immigrant has the proper documentation or not. In the Gospel, a lawyer asks Jesus what he must do to have everlasting life. Jesus replied: “What is written in the law? How do you read it?” The lawyer responded: “You shall love the Lord your God with all your heart, with all your soul, with all your strength, and with all your mind; and your neighbor as yourself.” Jesus concurred: “You have answered correctly. Do this and you shall live.” But, as lawyers are wont to do, he pressed the case further, asking Jesus: “And who is my neighbor.” As my wife, María always says, be careful what you ask for because you may get it, and the lawyer certainly did. In telling the parable of the Good Samaritan, Jesus instructed the lawyer that his neighbor included even the much loathed foreigner.

Recognizing the inherent dignity of the alien and remembering, with the Catholic Bishops of Mexico and the United States, that “all the goods of the earth belong to all people,” we are called to stand in solidarity with the alien. The Pontifical Council for the Pastoral Care of Migrants and Itinerant People addressed the question of solidarity in some detail in its 2004 instruction, *Erga Migrantes Caritas Christi* (The Love of Christ Toward Immigrants). They said: “it is important that communities do not think that they have completed their duty to migrants simply by performing acts of fraternal assistance or even by supporting legislation aimed at giving them their due place in society while respecting their identity as foreigners. Christians must in fact promote an authentic culture of welcome capable of accepting the truly human values of the immigrants over and above any difficulties caused by living with persons who are different. Christians will accomplish all of this by means of a truly fraternal welcome in the sense of St. Paul’s admonition, “Welcome one another them, as Christ welcomed you, for the Glory of God.” The pontifical council proposes three stages of welcome: assistance in a general sense (a first, short-term welcome), true welcome in the full sense (longer-term projects) and integration (an aim to be pursued constantly over long period and in the true sense of the word).”

The Bishops of Mexico and the United States have written that “[t]he Church in our two countries is constantly challenged to see the face of Christ, crucified and risen, in the stranger. The whole Church is challenged to live the experience of the disciples on the road to Emmaus as they are converted to be witnesses of the Risen Lord after they welcome him as a stranger. Faith in the presence of Christ in the migrant leads to conversion of mind and heart, which leads to a renewed spirit of communion and to the building of structures of solidarity.” And, the Pontifical Council put it this way (¶ 101), “Faced with the vast movement of people … faith reminds us how we are all pilgrims on our way towards our true homeland. ‘Christian life is essentially a living through the Passover with Christ, or a journey, a sublime migration towards total Communion of the Kingdom of God.’ … The ‘foreigner’ is God’s messenger who surprises us and interrupts the regularity and logic of daily life… In ‘foreigners’ the Church sees Christ who ‘pitches His tent among us’ and who ‘knocks at our door.’”

Do we have the ears to hear and the eyes to see Christ in our midst in the form of the alien? The organizers of this wonderful symposium have asked me to address specifically two questions: Whether there is a middle ground between amnesty and mass deportation of immigrants illegally in the United States and what would responsible immigration reform look like? My response to the second question will also answer the first. For those of us who call ourselves Christian, any analysis...
of immigration law and policy must begin and end with seeing the face of Christ in our immigrant brothers and sisters, whether documented or undocumented.

Against, this backdrop, I’ll provide my take on what responsible immigration reform looks like. But first, one caveat, the debunking of a widespread myth that tends to unduly raise the rhetorical temperature surrounding the immigration debate, and the call for a shift in perspective. The caveat: I am providing my take on immigration reform, which is based partly on foundational principles and partly on prudential judgment. Others, including other Christians who share my foundational principles, might arrive at very different answers based upon their own prudential weighing of the issues.

Now to debunk a prevalent myth. The myth: Illegal immigrants are line jumpers, cutting in line in front of others who are waiting patiently for their turn to enter the United States legally. The myth debunked: For most illegal immigrants no line for lawful entry exists. The United States grants ten thousand immigrant employment visas annually to low-skilled workers worldwide. Currently, we have more than ten million illegal immigrants residing the United States. If they lined up today, and if we allotted all ten thousand spots to these individuals, the one millionth would be eligible to receive a visa in the year 2112 and the ten millionth in 3012—one thousand years from now.17

A prevalent perspective: Illegal immigrants are law breakers, and we ought to have zero tolerance for lawbreakers. “Most undocumented non-citizens, however, are “lawless” only in the sense that they are evading a broken federal-immigration system, risking life and what little money they have in order to provide for family. They are lawless in the way that Jean Valjean was lawless in “Les Misérables,” stealing bread to feed his family. I would hope that as a nation we would model the bishop who responded with mercy and love when Valjean was first released from prison. But there are many who model Inspector Javert, preferring to use their resources and creative energy in pursuit of modern day bread thieves.”18

The older Christian and natural law tradition—developed in a world with a healthy respect for private property but a world in which it was understood that one’s private property was held in a sort of trust for the common good, recognized a distinction between the culpable thief and our modern day Jean Valjeans who cross the desert in the hope of a better life. St. Thomas Aquinas writes that whatever “people have in superabundance is due, by natural law, to the purpose of succoring the poor.”19 Since “in the cases of need all things are common property,” if a person’s “need be so manifest and urgent ... then it is lawful for a man to succor his own need by means of another’s property by taking it either openly or secretly: nor is this properly speaking theft or robbery.” In short, any analysis that simply concludes that aliens here in violation of our positive law are lawbreakers requires further analysis mining the crucial distinction between positive law and natural law.

My own solution to illegal immigration does not differ significantly from that proposed by President George W. Bush several years ago. I lay its four pillars and the rationale behind those pillars out in more detail in an essay, Reflections on Immigration Reform, the Workplace, and the Family published five years ago in the University of St. Thomas Law Review.20 First, immigration reform must, once and for all, effectively end illegal immigration, which undermines the rule of law, potentially fails to protect the most vulnerable of United States workers, and creates a shadow population in the United States who are themselves vulnerable to exploitation. Second, we need a healthy guest worker program that can breathe with the economy, contracting in lean times and expanding in good times. Key elements of this proposal include a labor market test to protect United States workers, job portability to protect the alien from exploitation by the employer and either a short duration so that the alien does not develop entrenched ties to the United States or a path to permanent residency and citizenship. I am agnostic between these two proposals, but what I don’t want is a growing population of “guest workers” who become members of our community but with no real path to full and permanent membership. Third, justice requires a path to legalization for many of the people illegally in the United States today. As one amnesty opponent conceded: “The equities are such that compelling some illegal aliens to leave at this point would be unduly harsh—many have been here for a decade or more, have strong community ties, and no longer have any meaningful connection to their native lands. There is no good reason to target such people at this point.”21 Fourth, the United States government should use foreign policy tools to decrease the push factors that compel people to leave their homes, their families, their communities, their native language and culture, in search—often harrowing—of a better life.

In the end I am skeptical that we will have meaningful immigration reform at the federal level. Even if we could arrive at a political solution—something that has evaded us for at least five years, I doubt that we have the will to enforce the solution, and I fear that we will continue the politically damaging cycle of illegal immigration followed by some sort of amnesty.

Michael A. Scaperlanda is the Associate Dean for Academic Affairs and the Associate Director of the Law Center
at Oklahoma University College of Law. After graduating from the University of Texas School of Law with High Honors in 1984, Professor Scaperlanda spent one year clerking for the Chief Justice of the Texas Supreme Court and four years practicing law in Washington, D.C. and Austin, Texas. Since joining the OU faculty in 1989, he has served as Special Assistant to University President, Faculty Fellow in the Norman Campus Provost’s office, Associate Dean for Research, and as Chair of numerous committees. In recognition of his scholarly accomplishments, he was named the Gene and Elaine Edwards Family Chair in Law in 2000.

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ENDNOTES

2 Pope Pius XII, Apostolic Constitution Exsul Familia (1952), available at http://www.papalencyclicals.net/Pius12/p12exsul.htm. See also Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Erga Migrantes Caritas Christi (The Love of Christ Toward Immigrants) ¶ 15 (2004), available at http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20040514_erga-migrantes-caritas-christi_en.html (“In the foreigner a Christian sees not simply a neighbour, but the face of Christ Himself, who was born in a manger and fled into Egypt, where he was a foreigner, summoning up and repeating in His own life the basic experience of His people”); Catholic Bishops of Mexico and the United States, Strangers No Longer: Together on the Journey of Hope ¶ 26 (2003), available at http://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope.cfm (“Recalling the migration of the Chosen People from Egypt, Jesus, Mary, and Joseph themselves were refugees in Egypt... From this account the Holy Family has become a figure with whom Christian migrants and refugees throughout the ages can identify, giving them hope and courage in hard times”).
3 Genesis 37.
4 Genesis 42-46.
6 Leviticus 19:33-34.
7 353 F.3d 1242, 1265 n. 1 (10th Cir. 2004) (Henry, J., dissenting).
9 See Michael Scaperlanda, Immigration and Evil: The Religious Challenge, 83 UNIV. DET. MERCY L. REV. 835, 836 (2006) (“This secular liberal anthropology—this understanding of the human person—untethers the individual from her native culture, its history, its tradition, its development, its politics, its economics, its arts, and its education. She has no responsibility for the common good of her native land. She is the chooser, and if she chooses to alienate herself from family and country in order to build a different life in a different country who is to say she is wrong? ... Catholicism proposes a radically different understanding of the person and her place in the community. She is chosen by the true sovereign prior to becoming a chooser. ... God chose each person, placing her within a particular family, a particular culture, and at a particular time. And, he gives us freedom, allowing us to become choosers of our own life’s plan”) and Steven Legomsky, Emigration, Obligation, and Evil: A Response to Professor Michael Scaperlanda’s Keynote Address at Fordham University, 83 UNIV. OF DET. MERCY L. REV. 849, 852 (2006) (“The bonds that link most individuals to their communities and countries of origin—as Professor Scaperlanda emphasizes—are powerful. The decision to pull up stakes, leave family members and friends behind, and move to a new country whose culture, language, religion, climate, economy, racial makeup, and so forth, might be radically different and unfamiliar is not the usual human impulse”).
10 See Gustavo Pérez Firmat, Next Year in Cuba: A Cuban’s Coming of Age in America 22 (1995).
13 Erga Migrantes Caritas Christi, supra note 3, at ¶ ¶ 39 & 40.
14 Id. at ¶ 42.
15 Strangers No Longer, supra note 3, at ¶.
16 Erga Migrantes Caritas Christi ¶ 101.
