COMPREHENSIVE IMMIGRATION REFORM: LABOR MOVEMENT PERSPECTIVES

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

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COMPREHENSIVE IMMIGRATION REFORM: LABOR MOVEMENT PERSPECTIVES

THURSDAY, MAY 24, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:15 a.m., in Room 2142, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Berman, Jackson Lee, Delahunt, Sánchez, Ellison, Conyers, and Gallegly.

Staff Present: Ur Mendoza Jaddou, Chief Counsel; J. Traci Hong, David Shahoulian, Majority Counsel; George Fishman, Minority Counsel; and Benjamin Staub, Professional Staff Member.

Ms. LOFGREN. The hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public who are here today for the subcommittee's 13th hearing on comprehensive immigration reform.

Our series of hearings on comprehensive immigration reform began at Ellis Island where we examined the need for comprehensive immigration reform to secure our borders, to address economic and demographic concerns; and there we reviewed our Nation's rich immigrant history. We have studied immigration reform from 1986 and 1996 in the effort to avoid the mistakes of the past. We have considered the problems with and have proposed solutions for our current employment and worksite verification system. In light of the recent Senate immigration agreement to eliminate family priorities in immigration and replace those priorities with a completely new point system, we have studied the contributions of family immigrants to America and various immigration point systems used around the world. We have explored the costs of immigration on our States and localities, and last week we had two hearings to explore the importance of immigrant integration and the future of undocumented immigrant students in the United States.

This week we have turned our attention to organizations and individuals who represent the vast majority of individuals who will be directly affected by comprehensive immigration reform. This past Tuesday we heard from faith-based and immigrant communities. And today we will explore the positions and viewpoints of

labor unions, especially in light of the recent action in the Senate that yielded an immigration agreement being debated there this week.

The legislative proposals for comprehensive immigration reform currently being considered in the Senate would allow for the temporary entry of hundreds of thousands of new foreign workers into the U.S. labor force. As such, U.S. workers and labor unions who represent those workers have a stake in the debate in which to ensure that any enacted legislation addresses the issue of safeguarding the welfare of U.S. workers.

The subcommittee has held two hearings, one called by the majority and one by the minority, on the impact of foreign workers on the Nation's economy and workforce. The subcommittee, however, has not yet been afforded the opportunity to hear from you. Perhaps more importantly, the subcommittee has not had the opportunity to review the history of temporary worker programs and the state of current labor protections within the Immigration and Nationality Act. A better understanding of current labor protections and the effect of foreign workers in different industries will help the subcommittee in its consideration of comprehensive immigration reform.

So we thank you, distinguished witnesses, for being here today to help us sort through what is a complex and extremely important issue.

I would now like to recognize our Ranking Member, Congressman King, for his opening statement.

[The prepared statement of Ms. Lofgren follows:]

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public to the Subcommittee's thirteenth hearing on comprehensive immigration reform.

Our series of hearings on comprehensive immigration reform began at Ellis Island, where we examined the need for comprehensive immigration reform to secure our borders, to address economic and demographic concerns, and there we reviewed our nation's rich immigrant history. We have studied immigration reform from 1986 and 1996 in an effort to avoid the mistakes of the past. We've considered the problems with and proposed solutions for our current employment and worksite verification system. In light of the recent Senate immigration agreement to eliminate family priorities in immigration and replace those priorities with a completely new and untested point system, we studied the contributions of family immigrants to America and various immigration point systems used around the world. We have explored the costs of immigration on our states and localities. Last week, we had two hearings to explore the importance of immigrant integration and the future of undocumented immigrant students in the United States.

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Thank you again to our distinguished witnesses for being here today to help us sort through what is a complex and very important issue.

Mr. KING. Thank you, Madam Chair, and I thank you for this hearing today.

I thank the witnesses for appearing before this panel, and I understand, to a significant degree, the hoops that some of you have to jump through, from perhaps missing a red-eye flight to getting an early wake-up call. And I think the public does not appreciate the sacrifice that you all make for an opportunity to be able to speak some words into the public record. What we need to do here is listen to that input and evaluate it. So let me start off by quoting Cornell University Professor Vernon Briggs.

We do listen when you come here, Professor.

In one of those statements, it says—this is a quote—"Samuel Gompers was chosen as President of the new American Federation of Labor in 1886, and with the exception of 1 year, he held that office until he died 38 years later, in 1924. Gompers was himself a Jewish immigrant from England, as were many of the members and leaders of the unions affiliated with the AFL. From his earlier days of involvement in his own craft union, the Cigar Makers, Gompers became intimately aware of immigrants' adverse effects on its members' wages and employment opportunities. Indeed, it was his own union that in 1872 introduced in San Francisco the usage of the union label to distinguish for the consumers the best cigars produced by workers employed under a union agreement from those manmade by nonunion immigrant workers."

That was an original view on where the song came from that Al Gore grew up singing, "look for the union label."

"Thus, despite his own immigrant roots, Gompers recognized that organized labor's first responsibility was to protect the economic well-being of workers and not immigrants per se, and that is when there was a conflict in their respective interests," close quote.

What a difference 100 years make. In fact, what a difference 20 or 21 years make. American unions were some of the strongest supporters of employers' sanctions that were enacted as part of the Immigration Reform and Control Act of 1986. Yet now, unions are fairly unanimously seeking amnesty for 12 to 20 or more million illegal immigrants in America.

I hope to learn more at this hearing about why America's labor movement has reversed course and no longer believes that mass levels of immigration hurt rank-and-file members. We will hear from a rank-and-file member about what he thinks about the decisions of union leaders. When there is an excess of supply, of labor, employers are able to cut wages. Illegal immigrants and large-scale

temporary worker programs can reduce wages and take jobs from both citizens and legal immigrants. The illegal immigration largely impacts low-skilled Americans, and guest worker programs can impact higher-skilled Americans, but let us focus on low-skilled Americans who would be most severely impacted by amnesty.

A study by Harvard economist George Borjas shows that cheap immigrant labor has reduced by 7.4 percent the wages of American workers performing low-skilled jobs. A report by the Center for Immigration Studies concludes that immigration may reduce the wages of the average native in a low-skilled occupation by $1,915 per year, on average.

Contrary to the assertion that Americans will not take low-skilled jobs, Americans in fact do these jobs every day. Some claim that illegal immigrants are doing jobs that Americans will not do, but when an illegal immigrant finds a job here, that does not mean that no Americans will take the job. In fact, 79 percent of all service workers are native-born, as are 68 percent of all workers in jobs requiring no more than a high school education. Illegal immigrants make up only 17 percent of workers in building cleaning and maintenance occupations, 14 percent of private household workers, 13 percent of accommodation industry workers; they make up only 13 percent of food manufacturing and industry workers, 12 percent of the workers in construction and extraction occupations, and only 11 percent of workers in food preparation and serving occupations and 8 percent of workers in production occupations.

We must put citizens and legal immigrants first. Americans need these jobs: 17 million adult citizens do not have a high school degree, 1.3 million are unemployed, and 6.8 million have given up looking for jobs. The percentage of 16- to 19-year-olds holding jobs in the United States is now at its lowest point since 1948. And of those who are simply not in the workforce, of working age, there are 69 million Americans to recruit these 7 million to replace the illegal workers from. Rather than legalize illegal immigrants, we should enforce the laws on the books. That will reduce illegal immigration, increase wages, and make many jobs more attractive to American workers.

The result of a large low-skilled immigrant workforce is that the most vulnerable Americans must compete with those illegal immigrants for jobs. Illegal immigrants deprive American citizens and legal immigrants of the same American dream. That is wrong and regrettable.

I look forward to some enlightenment on how it is that the unions in this country can think that you could suspend the law of supply and demand with regard to that most valuable commodity of labor, and flood the marketplace and expect that you can keep wages and benefits up for the workers who you are pledged to protect.

With that, Madam Chairman, I would yield back the balance of my time.

The gentleman yields back.

Ms. LOFGREN. Other Members of the Committee, by unanimous consent, will put any opening statements they have in the record, and we will reserve the opportunity for the Chairman of the Com-

mittee and for the Ranking Member of the full Committee, when they arrive, to deliver their statements.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

We have heard in two prior hearings about the effect of immigration on U.S. workers. Before we proceed, I would like to summarize those hearings.

Some economists say immigration has a great effect; some say it is minimal. Some say that immigration is wonderful, while their opponents seem to claim that every immigration program is an amnesty that hurts American workers. Some say that immigration reform is necessary because it is in keeping with our Civil Rights traditions, while others doubt that new immigrant communities will ever assimilate, and in fact might spell the end for America.

We have heard some new voices cry out for protection of African-American jobs. But those voices are not necessarily ones we hear on other critical issues like full employment, education, and the jailing of our young men. It bears repeating: the legitimate interest in protecting American workers must not be used illegitimately to drive wedges among ethnic groups. We have seem the advertisements and heard the example that jobs in one African-American community were now going to immigrants. But which immigrants? Haitians and Jamaicans. I and others have fought hard to ensure that immigration policies are fair to Caribbeans and Africans; driving wedges among the various Black communities in the name of derailing immigration reform is not in the spirit of our work or of the Civil Rights movement.

For those who profess concern about American jobs, you need to be identifying pragmatic solutions, not just crying "amnesty" and opposing the hard and necessary challenge of immigration reform. We need more serious and innovative proposals such as that put forth by Ms. Jackson-Lee to use immigration fees to fund job training programs. This proposal takes us out of the think tanks and into the real world.

That's why today's hearing is so important. Today, we have a chance to hear about some of the *real-world solutions* to the need to protect workers from exploitation and abuse, from the very entities who exist to give workers a voice. I am proud to welcome the representatives from organized labor today.

Much of the debate over immigration has centered on guestworker programs and legalization, and I look forward to hearing the panel's thoughts on these issues.

First, *the undocumented:* There are about 7.2 million unauthorized workers, representing about 4.9% of the labor force. In certain industries, there is a higher share 14% in food manufacturing, 13% of agricultural workers, and 12% of construction workers. Thus, many workers in industries represented by our panel are undocumented and unprotected. Bringing them out of the shadows can enable these unions to perform their traditional roles of protecting and organizing the workers. We have heard that unions were critical players in assimilating immigrants into American society. How best can we structure a program that will meet the needs of both the economy and the workers?

And then there is the issue of the guestworker programs. All agree that such programs should not create a permanent underclass. I understand that there is some disagreement on how best to avoid that, and I am interested in hearing the various viewpoints.

Some important questions occur when thinking about guestworker programs:

How can we ensure that there are meaningful protections against worker exploitation, including mistreatment all the way to the level of involuntary servitude?

What kind of protections should be put in place to guard against false promises or abuse by labor brokers as well as bad apple employers?

What should the role of organized labor be with these workers? We already have guestworker programs—how can they be improved?

Does it make sense—whether for the worker, the employer, or our country—to have arbitrary rules requiring workers to go home or to skip a year of employment?

Is restricting guestworkers' ability to come in with family a positive restriction, or will it create isolation and even encourage illegal immigration?

Should there be a path toward eventual legal status or citizenship? Should there be some credit toward such programs?

What kind of safeguards could be built in to ensure that these workers are not being used to undercut organizing efforts or to drive down wages?

Again, I welcome the panelists, and look forward to today's discussion.

Ms. LOFGREN. In the interest of proceeding to our witnesses, I am happy to introduce you all. We have a distinguished panel of witnesses today.

I am first pleased to extend our welcome to Jonathan Hiatt, General Counsel of the AFL-CIO. Mr. Hiatt has served in this capacity since his appointment in 1995 by the Federation's President, John Sweeney. Prior to his work as General Counsel, Mr. Hiatt served for 8 years as the General Counsel of the Service Employees International Union. He directs the AFL-CIO's lawyers' coordinating committee, and he sits on several boards of directors, including those of the National Employment Law Project and the D.C. Employment Justice Center. He earned his bachelor's degree from Harvard College and his law degree in my area, at the University of California-Berkeley, Boalt Hall School of Law.

Next I am pleased to introduce Fred Feinstein, Senior Fellow and Visiting Professor at the University of Maryland, today representing SEIU and UNITE HERE. Mr. Feinstein formerly worked as a General Counsel at the National Labor Relations Board and prior to his work at the Labor Relations Board. Mr. Feinstein served as the Chief Labor Counsel and Staff Director of the House's Labor Management Relations Subcommittee for a total of 17 years. He was a lead staffer on the Family Medical Leave Act and the Worker Adjustment and Retraining Notification Act. Among his many other distinguished teaching posts, he was an elementary public school teacher in East Harlem, New York. He earned his bachelor's degree from Swarthmore College and his law degree from Rutgers Law School.

I would like next to welcome Michael Wilson, the Legislative Political Affairs Director of the United Food and Commercial Workers International Union, the UFCW. Mr. Wilson has served in this capacity at the UFCW since 2005, having served as the union's chief lobbyist for 6 years. Within former President Clinton's administration, he served as the Chief of Staff for the Assistant Secretary of Labor of the Employment Standards Administration and as a Senior Legislative Officer in the Office of Congressional and Intergovernmental Affairs at the Labor Department. In the early years of his career, he served as a legislative and press assistant for former Congressman Charles Hayes of Illinois.

We have a substitution. Unfortunately, Marcos Camacho, the General Counsel for the United Farm Workers of America, had a disruption on his flight, and so he did not land at Dulles this morning. Bruce Goldstein, the Executive Director of the Farm Worker Justice Group, is here in his stead to submit his statement. Bruce Goldstein joined the Farm Worker Justice Group as a staff attorney in 1988, and then he served as co-Executive Director starting in September 1995, when he was named Executive Director in July of 2005. He received his bachelor's degree in 1977 from the New York State School of Industrial and Labor Relations at Cornell University and his law degree from Washington University in St. Louis. He has worked at the National Labor Relations Board; at a legal services office in East St. Louis, Illinois; and in private law

practice—concentrating in labor law, personal injury, and civil rights. We thank you for your attendance.

Finally, I would like to welcome our minority party's witnesses, the first of whom is Dr. Vernon Briggs, Emeritus Professor of Industrial and Labor Relations at Cornell. A prolific university scholar, Dr. Briggs has served as an advisor to a host of Federal agencies, among them the Department of Labor; the Department of Health, Education, and Welfare; and the U.S. Civil Rights Commission. He has served as a board member of the Center for Immigration Studies since 1987. He earned his bachelor's degree from the University of Maryland and his master's and doctorate degrees from Michigan State University. This is Dr. Briggs' second appearance before this subcommittee on the topic of comprehensive immigration reform. We welcome you back.

We also have Greg Serbon with us, the State Director of the Indiana Federation for Immigration Reform and Enforcement. Mr. Serbon was a member of the Teamsters Union, Local 738, in Chicago, Illinois from 1981 to 1987. He has been a member of the Pipefitters Local 597 in Chicago from 1988 to the present, and since 2004 he has directed Indiana's Federation for Immigration Reform and Enforcement.

As I believe all of you have been advised, your entire statements will be made part of our official record. We would ask that you summarize your testimony in about 5 minutes. There are little machines on the desk. When the light turns yellow, it means you have only 1 minute to go, and when the light turns red, it means you have actually used 5 minutes. This always comes as a surprise because the time just runs, but we would ask that you try and wrap up when the time is up.

I am just very pleased to be here. I was thinking, as I was looking at you, that my grandfather, who was an immigrant, was a Teamster his whole life, and my father was Recording Secretary of his Local 888 in California, and my mom's dad was a machinist, and my grandmother was a machinist. What you talk about today means a great deal to me, personally, and I think to the country generally.

So let us begin with you, Mr. Hiatt.

TESTIMONY OF JONATHAN HIATT, GENERAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

Mr. HIATT. Thank you very much, Madam Chairman and Members of the Committee. Thank you again for this opportunity. We have been invited to share the labor movement's perspective, so I intend to focus on the areas of immigration policy that have the greatest impact on workers.

The AFL-CIO has called on Congress to legalize the status of the growing undocumented immigrant workforce, which as long as it exists in the shadows is negatively impacting all workers, foreign- and U.S.-born. We have also strongly opposed the perpetuation of the inherently abusive temporary guest worker programs. We have advanced this position both because it is morally just and humane and because current policies have brought about a two-tiered workforce consisting of one class of permanent U.S. residents with full

workplace rights and another of undocumented and temporary guest workers with few workplace protections of any kind. These policies have offered employers a ready pool of exploitable labor in this country and depressed wages, benefits, health and safety protections, and other labor standards for everyone else. Let me offer you a couple of examples as to how this occurs.

In 2005, a group of temporary worker program construction workers in North Carolina who had been raising health and safety concerns received a flyer at work instructing them to attend a mandatory health and safety meeting. The flyer was printed on OSHA letterhead, but when they arrived at the meeting, there were no OSHA officials present. Instead, ICE officials were waiting. They arrested more than 20 workers and placed them into deportation proceedings.

More recently, a group of forestry workers in Virginia who had been brought into the country under the H-2B guest worker program, filed a complaint alleging violations of minimum wage and overtime laws as well as State claims relating to their housing conditions. They had been forced to live in a warehouse surrounded by barbed wire. They were locked into the warehouse at night. They had substantial portions of their paychecks deducted to cover for this housing. During the plaintiffs' depositions, the police, together with the employer, called the DHS, whose agents arrived at the facility about 2 hours later. Ultimately, the plaintiffs were able to convince DHS that this was a labor dispute in which it should not be involved, and the agents left. But in both of these examples, you can imagine the chilling effect of the employer's actions that was felt by all of the workers.

These scenarios are not uncommon. Undocumented and guest worker status have given employers a powerful tool to use in their attempts to repress worker rights. A recent report by Human Rights Watch, that we put into the record, that focused on the meatpacking industry, shows that employers commonly take advantage of workers' fear of drawing attention to their status, just to keep workers in abusive conditions that violate basic human and labor rights.

So the labor movement recognizes that comprehensive immigration reform is long overdue, but we fear that the legislative proposals that are pending before Congress do not address the root problems and would only make matters worse. Instead, we believe that the answer to the immigration crisis is to reform immigration law in a way that places worker rights at the forefront and would remove the economic incentives to exploit immigrant workers that are currently driving illegal migration. Our approach has three core principles:

One, the law has to provide a fair and effective mechanism by which the roughly 12 million undocumented workers in the country today can regularize their status. Two, foreign workers in the future must come into the U.S. with full and equal access to workplace protections through the permanent visa system. Three, enforcement of labor laws must go hand in hand with enforcement of immigration laws.

All three of these principles are addressed at some length in my written testimony, as are the fundamental worker protections that

we believe must be built into any temporary worker program, whether the existing H programs or any other version.

So let me just conclude with a brief explanation about our position on future flow, itself.

We recognize that even with the legalization of the current undocumented population, there will continue to be a need from time to time, in discrete sectors and in varying locations, for workers beyond those available and willing to work at prevailing wages and working conditions domestically. We do not agree, however, that such needs, especially for permanent work as opposed to seasonal or short-term jobs, should be met through the guest worker programs or what are now being called by some "temporary worker visa programs."

Proponents of these programs claim that we need guest workers to do the jobs that Americans will not do. However, the reality is that there are no jobs that Americans will not do if the wages and working conditions are adequate. Of the BLS' 473 occupational titles, only four today are even majority foreign-born, and even in the low-wage sectors—hospitality, janitorial, landscaping, poultry, for example—a great majority of the staffing nationwide is by U.S. workers.

Until now, guest worker programs have been limited to filling temporal shortages. The pending bills would represent an enormous policy change, giving the business community an enormous windfall—the right for the first time to fill permanent, year-round jobs with exploitable temporary workers. The result would be to pit foreign workers against U.S. workers, an even further depression in wages and working conditions.

So our solution to the acknowledged need for future flow is to restructure the current permanent employment visa category in a way that reflects real market conditions and guarantees full labor rights for future workers. Rather than setting an arbitrary cap or one based on political compromise, we propose the number be adjusted to reflect real, independently determined employer needs for long-term shortages, with workers admitted with a green card and with permanent status from the outset, that there is no justification for bringing them in with anything less than the same set of workplace rights and protections that apply to all workers.

Thank you.

Ms. LOFGREN. Thank you very much, Mr. Hiatt.

[The prepared statement of Mr. Hiatt follows:]

PREPARED STATEMENT OF JONATHAN P. HIATT

Testimony of Jonathan P. Hiatt

Before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

May 24, 2007

Madam Chairwoman, members of the subcommittee, thank you for inviting me to testify before your committee on the labor movement's view of immigration reform.

My name is Jonathan Hiatt, and I am General Counsel to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which is a voluntary federation of 55 national and international labor unions. Members of unions affiliated with the AFL-CIO are construction workers, teachers and truck drivers, musicians and miners, firefighters and farm workers, bakers and bottlers, engineers and editors, pilots and public employees, doctors and nurses, painters and laborers – and more. The AFL-CIO was created in 1955 by the merger of the American Federation of Labor and the Congress of Industrial Organizations. Since its founding, the AFL-CIO and its affiliate unions have been the single most effective force in America for enabling working people to build better lives and futures for their families.

The AFL-CIO has been involved in the struggle on behalf of immigrant workers' rights for decades. In 2000, the AFL-CIO Executive Council adopted an historic resolution that, for the first time, called for legalization of the undocumented population and welcomed immigrants, regardless of immigration status, into the labor movement.

Since then, we have continually supported comprehensive immigration reform, which is now long overdue. The current system is a blueprint for exploitation of workers, both foreign-born and native, and is feeding a multimillion-dollar criminal enterprise at the United States-Mexico border.

Our failed immigration system has created a two-tiered society. Today, there are approximately 12 million undocumented immigrants in the United States, with a net annual increase in the 1990s of approximately 500,000 persons.[1] It is estimated that 80 percent of those persons are working.[2] Undocumented workers have no social safety net

[1] Jeffrey S. Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, (Pew Hispanic Trust: 2005), at 1, 10. In the decade 1995-2004, 700-750,000 persons entered the U.S. unlawfully or overstayed a visa, id. at 6, but approximately 200,000 died, departed, or regularized their status each year, yielding a net increase in the undocumented population of approximately one-half million persons annually. Jennifer Van Hook, et al., *Unauthorized Migrants Living in the U.S.: A Mid-Decade Portrait* (MPI: 2005), at 2 (estimating that in 1995-2004, 200,000-300,000 undocumented immigrants "leave the United States, die, or become legal immigrants")

[2] *Id.*

(other than emergency medical services), and do not have the protections of U.S. labor and employment laws. Protections against discrimination, for example, are not available at all to undocumented workers in parts of the United States.[3] The result of our failed immigration system is that there are two classes of workers, only one of which can exercise workplace rights. As long as this two-tiered system exists, all workers will suffer because employers will have available a ready pool of labor they can exploit to drive down wages, benefits, health and safety protections and other workplace standards.

The AFL-CIO's answer to the "immigration crisis" is to reform immigration law in a way that places workers' rights at the forefront, and ensures that we will be able to take control of our borders by removing the economic incentives to exploit immigrant workers that are currently driving illegal migration.

Our approach has three core principles: (1) the law must provide a real mechanism by which all undocumented workers can regularize their status; (2) foreign workers must hereafter come into the United States with full and equal access to workplace protections, which means that future flow needs should not be met by temporary worker programs; instead, Congress should reform the employment-based permanent visa system to tie the number of visas available to real economic indicators; and (3) enforcement of labor laws must go hand-in-hand with enforcement of immigration laws.

The Law Must Provide a Clear Path to Legalization

First, the law must provide a real mechanism so that all undocumented workers can regularize their status. Undocumented workers face serious obstacles in enforcing their labor rights. In addition to language and cultural barriers, workers' lack of formal status forces many of them to work in substandard conditions, because they fear that if they report violations, they will face deportation. Unfortunately, that fear is all too real.

In a well-publicized case in Minneapolis in 1999, workers at the Holiday Inn Express voted in favor of union representation in a National Labor Relations Board (NLRB) election. Days later, the manager called eight of the workers, all Mexicans, into the office, where the workers were met by immigration authorities, who asked them whether they had "papers." When the workers admitted that they did not, they were handcuffed and taken to an INS detention facility.[4]

That scenario is not uncommon. "Undocumented" status has given employers, and their counsel, a powerful tool to use in their attempts to repress worker rights. A recent report by Human Rights Watch that focused on the meatpacking industry, which is known to employ undocumented workers, found that many employers take advantage of

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[3] In the Fourth Circuit, which covers Maryland, Virginia, West Virginia, North Carolina and South Carolina, undocumented workers have no standing to bring complaints under Title VII. *See Egbuna v. Time-Life Libraries, Inc.*, 153 F.3d 184 (4th Cir. 1998).

[4] *Illegal Immigrants Help Unionize a Hotel but Face Deportation,* NY Times, Jan. 12, 2001, A24 col. 1.

workers' fear of drawing attention to their undocumented status "to keep workers in abusive conditions that violate basic human rights and labor rights."[5]

That tool was made even more powerful by the Supreme Court, in *Hoffman Plastic Compounds v. NLRB*[6], when it held that undocumented workers are not entitled to backpay, the National Labor Relations Board's traditional remedy. This holding has, in practice, made it much more difficult, and in some cases impossible, for an entire class of workers to exercise the right to join a union and bargain collectively.

A group of Spanish-speaking mineworkers in Utah learned that lesson first-hand, when they attempted to organize the Kingston Co-Op Mine in 2003. Workers at that mine earned $5.25-$8.00 per hour, with virtually no health care or other benefits, substantially less than the approximately $20 per hour that unionized mine workers earn.[7] Many of the workers had worked for the Company for many years, and some had returned to Mexico annually. There is evidence that Company representatives had assisted some of the workers to come into the United States to work, and turned a blind eye to the workers' lack of work authorization, until the workers began to organize.

As is common in organizing campaigns, just prior to the union election, the employer sent a letter to most of the workers who would be voting, requiring the workers to provide proof of work authorization. The employer then fired some of the workers, ostensibly for their failure to provide adequate proof of work authorization.

The union filed charges with the NLRB alleging that the employer had fired the workers in retaliation for their attempt to join a union. Even though the Board found merit to the charges, it refused to seek reinstatement or back pay for the great majority of the workers because the Board determined that the workers lacked work authorization.[8]

Undocumented status has also resulted in denial of protections afforded to workers under state laws, further exacerbating the creation of a two-tiered workforce. Following the *Hoffman* decision, several states have limited or eliminated such basic workplace protections as compensation for workplace injuries and freedom from workplace discrimination.[9] These rights and remedies are in some instances the only protections available to workers. [10]

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[5] Lance Compa, *Blood, Sweat and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, (Human Rights Watch: Jan. 2005), *available at* http://www.hrw.org/reports/2005/usa0105/.

[6] 535 U.S. 137 (2002)

[7] Effective January 1, 2006, hourly wages for underground bituminous coal miners as set forth in the National Bituminous Coal Wage Agreement ranged from $19.35-$20.42.

[8] C. W. Mining Co. a/k/a Co-Op Mine, NLRB Case Nos. 27-CA-18764-1; 27-CA-19399; 27-CA-19453-1; 27-RC-8326; 27-CA-19481-1; 27-CA-19529.

[9] *See, Crespo v. Evergo Corp.*, 366 N.J. Super. 391 (App. Div. 2004), *cert. denied, Crespo v. Evergo Corp.*, 180 N.J. 151 (2004) (holding that an undocumented worker suing for discriminatory termination could not recover either economic or non-economic damages absent egregious circumstances such as extreme sexual harassment); *The Reinforced Earth Co. v. Workers' Compensation Appeal Board*, 810 A.2d 99 (PA 2002) (holding that injured worker is entitled to medical benefits, but illegal immigration status might justify terminating benefits for temporary total disability); *Sanchez v. Eagle Alloy*, 254 Mich. App. 651 (2003)(Undocumented workers are covered by the state's workers compensation system, but time loss

In fact, some state laws now essentially reward employers for suddenly "discovering" that a worker is unauthorized, thus releasing the employer or workers' compensation insurance carrier from any back pay or front pay obligation. In Michigan, for example, workers who are injured on the job and who used false documents to secure employment are not entitled to wage loss benefits. Employers are free to "discover" the workers' use of false documents after the worker is injured, which has encouraged employers to investigate the workers' documentation only after an injury occurs.[11]

Workers' rights are being chilled in other equally troubling ways. For example, an Assistant United States Attorney in Kansas has been encouraging employers, insurance companies and others to verify injured workers' immigration status after workers file a workers' compensation claim, and refer those cases to his office for prosecution for document fraud. That has resulted in the injured workers being deported and thus unable to pursue workers' compensation claims.[12]

Workers who try to vindicate their rights through private labor and employment law enforcement, that is, by filing lawsuits, are facing similar obstacles. Employers and their counsel often seek discovery of the immigrant-plaintiffs' immigration status,[13] an action that serves to chill immigrants' willingness to pursue their workplace rights.[14]

In one outrageous but not uncommon case, forestry workers in Virginia brought an action alleging violations of minimum wage and overtime laws, as well as state claims related to their housing conditions: they were forced to live in a warehouse surrounded by barbed wire, were locked into the warehouse at night, and had a substantial portion of their pay check deducted to cover their substandard housing. During the plaintiffs' deposition, which was conducted at the employer's office, the employer's counsel asked the plaintiffs whether they had a valid work permit. When counsel for the plaintiffs objected, the employer asked for a break. A short time later, the local police arrived, and

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benefits are suspended from time that unlawful status is discovered); *Tarango v. State Industrial Insurance System*, 25 P.3d. 175 (NV 2001) (workers' compensation laws apply to all workers regardless of immigration status, but undocumented worker not entitled to rehabilitation benefits); *Cherokee Industries, Inc. v. Alvarez*, 84 P.3d 798 (OK 2003)(same).

[10] Workers often have no choice but to turn to state law for protection. For example, federal anti-discrimination laws only protect employees working for employers who employ at least 15 employees. 42 U.S.C. § 2000e(b). State discrimination laws often protect employees working for employers with fewer employees. *See*, Cal. Gov Code § 12900 (2007)(any employer five or more employees subject to provisions); ORS § 659.001 (2005)(employer with one or more employees subject to provisons); Rev. Code Wash. (ARCW) § 49.60.040 (2007)(eight employees).

[11] *Sanchez*, 254 Mich. App. at 671-672.

[12] *See* Brent I. Anderson, The Perils of United States Employment for Falsely Documented Workers (and whatever you do, don't file a work comp claim), paper submitted to American Bar Association, Labor and Employment Law Workers' Compensation Committee Midwinter Meeting (March, 2006).

[13] *See e.g. Morejon v. Terry Hinge and Hardware*, 2003 WL 22482036 (Cal. App. 2 Dist., 2003); *de Jesus Uribe v. Aviles*, 2004 WL 2385135 (Cal. App. 2 Dist. 2004); *Veliz v. Rental Service Corporation USA, Inc.*, 313 F.Supp.2d 1317 (2003); *Hernandez-Cortez v. Hernández*, 2003 WL 22519678 (D. Kan. 2003).

[14] *See Rivera v. NIBCO, Inc.*, 364 F3d 1057 (9th Cir. 2004), *cert. denied, NIBCO, Inc. v. Rivera*, 544 U.S. 905 (2005) (declining to order disclosure of immigration status and noting chilling effect).

asked the workers whether they were illegal aliens. When the workers refused to answer – per the instructions of counsel – the police together with the employer called the Department of Homeland Security (DHS), whose agents arrived at the facility about two hours later. Thanks to the intervention of lawyers from around the country, the plaintiffs were able to convince DHS that this was a labor dispute in which it should not be involved, and the agents left.[15] However, the chilling effect of the employers' actions was felt by the remaining plaintiffs.

Under current law, the exploitation of undocumented workers is economically attractive. The law has strengthened the perverse economic incentive that employers have to violate immigration laws. As long as employers have access to a class of workers that they can prevent from exercising labor rights by merely asking a simple question: *do you have papers?*, the incentive to exploit will continue.

One key to removing that incentive is to regularize the status of the undocumented population. In order to be effective, a legalization program must be inclusive, practical and swift.[16] Any program that denies a substantial number of workers the ability to adjust their status, either by including burdensome requirements or fees and fines that are outside the reach of the undocumented workers, will exclude millions of workers. A program must also be practical in order to encourage people to come out of the shadows, and it must be implemented quickly. A program that does not meet these criteria will perpetuate a two-tiered system that operates to the detriment of *all* workers in the U.S., because having a large secondary class of workers who cannot exercise workplace rights enables employers to drive down wages, benefits, health and safety protections and other workplace standards across the board.

Unfortunately, the current legislative proposals do not satisfy this first principle. The Security Through Regularized Immigration and Vibrant Economy Act of 2007, the "STRIVE" Act, contains a "touch back" provision that would require workers to leave the United States before they qualify for permanent status. That provision discourages workers from applying for legalization for several reasons. Many workers fear that they would not be able to return if they were required to leave the country, and would opt to remain in undocumented status. Others will likely lose their jobs, given that it is unlikely that employers will hold open jobs for those who are "touching back."

We understand that politics are pushing legislators to take a punitive approach to legalization. The "touch back" provision is one example. We urge Congress to rethink that approach, because it is not only punishing the undocumented, but also creating obstacles to having one class of workers in the country, with equal rights for all.

Future Foreign Workers Must Come into the U.S. with Full Rights.

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[15] Ana Avendaño and Marielena Hincapie, *The Rollback of Immigrant Workers' Civil Rights,* Awakening from the Dream (Carolina Academic Press: 2005).

[16] *See* Ray Marshall, *Getting Immigration Reform Right,* (Economic Policy Institute: 2007), at 6.

A second guiding principle in AFL-CIO's immigration policy is that workers who come to the United States in the future to fill actual labor shortages should enter with full rights. Current legislation addresses the influx of future workers through guest worker programs or, as they are now sometimes called, "worker visa programs." That is a framework driven entirely by the desire of some in the business community to have a constant and exploitable pool of workers.

Proponents of these temporary worker programs claim that they need guest workers to do the jobs that Americans will not do. However, the reality is that there are no jobs that Americans will not perform if wages and other working conditions are adequate. There is no industry in the United States today that relies entirely on foreign workers, and of 473 occupational titles, only four are even majority foreign-born-- stucco masons, tailors, produce sorters and beauty salon workers.[17] The industries in which the undocumented predominately work – hospitality and janitorial, services, construction, landscaping, meatpacking and poultry, for example – are all staffed by a great majority of U.S. workers.[18] More than 80% of workers in construction and in the janitorial industries are U.S. citizens or lawful permanent residents.[19] The truth is that the business community wants guest workers to fill these jobs because that will allow it to fill permanent, year-round jobs with exploitable temporary workers. The result will be an even further depression in wages, particularly in the low-wage labor market.

A recent report by the non-partisan Congressional Research Service concluded that a guest worker program such as the one approved by the Senate in the 109th Congress (S. 2611) "could be expected to lower the relative wages of competing [U.S.] workers," and would have the greatest impact on young native-born minority men and on foreign-born minority men in their early working years.[20] Notably, the size of that guest worker program (capped at 200,000 visas annually) is less than half the size of current proposed programs.[21] Logic dictates that the impact on those workers would be even more profound if a larger program were implemented.

In order to mitigate the negative labor market impact of guest worker programs, longstanding United States guest worker policy requires that temporary workers should be used only to satisfy short-term or seasonal labor needs. The H2-A agricultural guest worker program, the best known of these programs, is designed to satisfy seasonal needs, requiring large numbers of workers during the growing season, which may be as short as 6 weeks. Similarly, the H2-B program allows non-agricultural employers in industries such as landscaping, hospitality and crabbing, to hire non-U.S. workers on a temporary basis to fill their seasonal needs.

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[17] *Id* at p 3.
[18] Passel, *supra*, fn. 1 .
[19] http://www.bls.gov.
[20] Gerald Mayer, CRS Report RL33772, *The Comprehensive Immigration Reform Act of 2006 (S. 2611): Potential Labor Market Effects of the Guestworker Program*, December 18, 2006.
[21] The STIVE ACT provides for 400,000 visas in the first year, increasing based on employer demands to 600,000.

The United States has been experimenting with temporary worker programs for almost a century, without a single success.[22] The most famous of those experiments, the Bracero program, began in 1942 as an agreement between the United States and Mexico to address the labor shortages in agriculture and in the railroad industry. More than four and a half million Mexican workers toiled in the United States under the program between 1942 and 1964. Once the contract period ended, however, they were required to turn in their labor permits and leave the United States with no right to long-term or permanent residence.

The failure of guest worker programs has been recognized by every single Congressional Committee that has studied them. For example, in 1977, the Carter Administration included a recommendation in its immigration reform package that a temporary worker program should be given a comprehensive review. The Carter Administration distanced itself from the failed Bracero program – much like all the proponents of current guest worker proposals are doing in the current legislative cycle – but implied that a new framework for a temporary worker program might meet the needs of business while not causing a detrimental impact on wages and working conditions for workers already in the U.S.[23] The Commission for Manpower Policy, responding to President Carter's charge, disagreed, and concluded after a detailed study that it was "strongly opposed" to any expanded temporary worker program because such programs depress wages and increase the population of undocumented workers.[24]

Similarly, the "Jordan Commission," which was created by the 1986 Immigration Reform and Control Act to study the nation's immigration system squarely rejected the notion that guest worker programs should be expanded. In its 1997 final report, that Commission specifically warned that such an expansion would be a "grievous mistake," because such programs have depressed wages, because the guest workers "often are more exploitable than a lawful U.S. worker, particularly when an employer threatens deportation if workers complain about wages or working conditions," and because "guest worker programs also fail to reduce unauthorized migration" [in that] "they tend to encourage and exacerbate illegal movements that persist long after the guest programs end." [25] In fact, there is not one publicly funded, nonpartisan study that has found any merit in guest worker programs.[26]

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[22] The Immigration Act of 1917 (one of the most restrictive pieces of immigration legislation in U.S. history) included a temporary farm worker program, which lasted until 1922. The program allowed employers to import almost 77,000 workers into the US, fewer than half of whom returned to Mexico once the program was suspended. Vernon M. Briggs, Jr., *Non-Immigrant Labor Policy in the United States*, Journal of Economic Issues, Vol. XVII, No. 3, Sept. 1983.

[23] Briggs at 621.

[24] *Id.*

[25] *See* United States Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy*, United States Commission on Immigration Reform, 1997. An earlier well-known Commission--the Select Commission on Immigration and Refugee Policy (SCIRP)--chaired by Rev. Theodore Hesburgh had reached the same conclusions. *See,* National Commission on Immigration and Refugee Policy, *United States Immigration Policy and the National Interest: Final Report.* National Commission on Immigration and Refugee Policy, 1981.

[26] By contrast, business groups and political right-wing groups have found common ground. *See* Tamar Jacoby and Grover Norquist, *Hard Lines Don't Speak for GOP*, Miami Herald, December 19, 2005.

Proponents of the latest breed of guest worker programs have distanced themselves from the discredited Bracero and other past programs by labeling the new proposals as "break-the-mold" programs. Yet, the new proposed programs offer even fewer protections to workers than those provided in the Bracero program. Braceros, for example, were entitled to free housing, medical treatment, transportation, and pre-set wages that were at least equal to those of U.S. citizen farm workers, and a contract in Spanish. Despite these protections, Braceros experienced numerous abuses, including racial oppression, economic hardship, and mistreatment by employers, and the program also had a well-documented downward effect on the wages of U.S. citizen farm workers.[27] The new guest workers, who would not even have the promise of such protections, can fare no better.

The H1-B program, which Congress created in 1990 to ease the claimed temporary shortage of skilled workers in the high technology field, also shows why this new approach is flawed. In 1998, as a temporary remedy for a claimed desperate labor shortage in the high technology field, Congress nearly doubled the number of H1B visas available for the following three years, and imposed a fee on employers that was meant to fund training programs to improve the skills of U.S. workers. More than fifteen years after the inception of the H1-B program, employers continue to call for more H1B visas, while little effective training of U.S. workers has been accomplished, and wages and other conditions in the industry have deteriorated.[28]

One of the fundamental flaws in the H1-B program is that it does not test the U.S. labor market. As the DOL acknowledges on its own website, "H1-B workers may be hired even when a qualified United States worker wants the job, and a United States worker can be displaced from the job in favor of the foreign worker."[29] Employers are simply required to file an attestation of the wages and working conditions offered to the H1-B workers with the Department of Labor's Employment and Training Administration. The Department of Labor has no authority to verify the authenticity or truthfulness of the information; the Department can only review the application for omissions and obvious inaccuracies.[30]

The United States Government Accountability Office (GAO) concluded last year that the DOL was failing even in that minimal task.[31] For example, from January 2002 through September 2005, DOL electronically reviewed more than 960,000 applications

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[27] See Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story* (Rosicrucian Press 1964).
[28] *See* "H1-B Foreign Workers, Better Controls Needed to Help Employers and Protect Workers," HEHS-00-157 (September 2000); "High Skill Training Grants from H1B Visa Fees Meet Specific Workforce Needs, but at Varying Degrees," GAO-02-881 (September 2002); "The State of Asian Pacific America," Paul Ong (ed.), LEAP Asian Pacific American Public Policy Institute and UCLA Asian American Studies Center, 1994, pp. 179-180.
[29] http://www.dol.gov/_sec/stratplan/strat_plan_2006-2011.htm; *See also,* Ron Hira, *Outsourcing America's Technology and Knowledge Jobs* (EPI Briefing Paper: 2007), p. 2.
[30] 8 U.S.C. § 1182(n)(1)(G)(ii).
[31] H1-B Visa Program: *Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security* GAO-06-720 Washington, DC: June 22, 2006.

and certified almost all of them.[32] Moreover, GAO found over 3,000 applications that were certified even though the prevailing wage rate for the application was lower than what is required by statute, in some cases, more than $20,000 lower than what is required by law.[33]

The H1-B program was enacted to fill a spot labor shortage, while workers in the U.S. obtained adequate training and education in high tech and professional jobs. In reality, the poor design of the H1-B program has failed to meet the training objectives, and instead has facilitated and accelerated the outsourcing and offshoring of jobs. The largest users of the H1-B program are outsourcing firms, whose business is to move jobs overseas.[34] These firms import H1-B workers, train them in U.S. companies, and then send the workers back home, taking with them the jobs that they were previously doing in the United States.[35] In fact, in many instances, U.S. workers were forced to train their H1-B replacements.[36]

The nation's experience with the H2-B program, aimed at low-wage seasonal jobs, is also instructive, particularly because the new proposed guest worker programs are aimed at much the same population of workers, and in fact, are modeled on the H2-B program. In practice, the H2-B program is rife with abuses. Workers on H2-B visas are particularly vulnerable because they tend to be isolated, transient, non-English-speakers unfamiliar with U.S. laws. Like the workers who would come into the United States under the proposed new programs, H2-B workers have little access to legal services because the Legal Services Corporation (LSC)-funded attorneys are generally not permitted to represent H2-B workers, and very few states have unrestricted legal services offices that represent H2-B workers.[37]

A recent report by the Southern Poverty Law Center exposes the substantial current exploitation of workers in temporary worker programs.[38] For workers who toil in those programs, that exploitation begins at home, where workers are usually recruited by labor contractors who require that workers pay a sizeable fee for the opportunity to work in the programs. Guatemalan workers, for example, are charged as much as $5,000 by the recruiters, and it is not uncommon for workers in Asia to pay as much as $20,000 for their guest worker visas. Workers who are recruited into these programs are often poor, and are forced to turn to loan sharks in order to finance the recruiters' fees. Workers are also often required to leave behind with an agent of the employer or recruiter collateral, such as a deed to a home or a car, to ensure that workers will comply with the terms of their contracts. The result is that workers arrive in the United States so heavily indebted that they can not leave their jobs, even if the law allowed them to do so.

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[32] *Id.*
[33] *Id.* at 14.
[34] Ron Hira, *Outsourcing America's Technology and Knowledge Jobs, supra n.* 31.
[35] *Id.*
[36] *See, Too Many Visas for Techies? U.S. workers gripe that lax rules may cost them their jobs,* Business Week, August 25, 2003.
[37] *See* 45 C.F.R. § 1626.1 *et seq.*
[38] Mary Bauer, *Close to Slavery, Guestworker Programs in the United States,* Southern Poverty Law Center, 2007, available at www.splcenter.org.

Once in the United States, guest workers have few labor protections. A major flaw in current guest worker programs is that there is no effective means to enforce the requirements of the program. Even though the current H2-B program requires that employers pay the "prevailing wage," that requirement is often ignored, with impunity.[39] The DOL has determined that it has no authority to enforce the conditions in the employer's applications for guest workers, nor the ability to enforce the terms of workers' contracts.[40] Therefore, workers who are not being paid, or are being paid below the prevailing wage, have no way to enforce those provisions other than through private law suits, which are expensive.

Guest worker programs also allow employers to evade U.S. anti-discrimination laws altogether. Current law allows recruiters and labor contractors to discriminate based on gender, age, and presumably any other category protected under U.S. laws, as long as that conduct takes place outside the United States.[41] If an applicant in the United States is denied a job on the basis that he or she is over 40 years old, and the application was made within the United States, the employer would be violating the Age Discrimination in Employment Act (ADEA)[42] and the worker could sue to recover damages and to enjoin the employer's practice. However, if the employer is applying that practice just across the border in Mexico, and hiring workers who will be entering the United States through a guest worker program, then U.S. laws do not stop that employer from freely discriminating because courts have concluded that our employment laws do not cover conduct outside the United States.

Before Congress expands or creates yet another guest worker program, it must address the flaws in the current programs.

First, Congress must build protections into the infrastructure of the programs that protect against worker abuse. At a minimum, for-profit labor contractors should not be permitted to participate in any temporary worker programs. Only the end-use employer should be able to petition for workers, and employers should be banned from using for-profit foreign labor contractors in the process.

Another fundamental protection that any temporary worker program must provide is an effective mechanism to test the U.S. labor market through a rigorous labor certification process before allowing employers to bring in foreign workers. Attestation programs, which essentially allow employers to monitor themselves, do not protect workers.

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[39] *Id.*

[40] *See,* DOL General Administrative Letter No. 1-95.

[41] *See, Reyes-Gaona v. NC Growers' Ass'n,* 250 F.3d 861 (4th Cir. 2001)

[42] The ADEA makes it unlawful "for an employer" to "fail or refuse to hire" or "otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1).

We believe that there should be a "two-test" principle for labor certification: a finding that there are no U.S. workers available to fill the position and another that granting certification will not depress the standards of, or otherwise cause harm to U.S. workers. This principle applies to all guest worker programs, whether high skill or low-wage.

A rigorous labor certification process must accurately determine labor shortages, include adequate wage protections, guard against the displacement of U.S. workers, and provide an adequate system for advertising jobs beyond the local labor market. We believe that state Employment Security Agencies must be an integral part of the process, given that they are best positioned to analyze employers' need for foreign workers, provide assistance to employers regarding the recruitment of U.S. workers, and determine the prevailing wages.

The trigger for any temporary worker program visas should be based on a thorough and adequately funded labor certification process that includes mandatory public posting of the jobs with the state Employment Service, so that the state agencies can review job postings against the visa applications received. Because state Employment Security Agencies are uniquely linked, workers in Kansas can learn that there are openings in landscaping jobs in Iowa, for example, and should be able to apply for those jobs before employers are allowed to import workers.

One of the fundamental flaws of temporary worker programs is that they give employers tremendous control over workers because if a temporary worker loses his or her job, he or she is faced with the choice of leaving the United States or becoming undocumented. Workers do not want to face that choice, and therefore, they do not complain about workplace violations. Two fundamental changes to current programs must be enacted to mitigate this chilling effect: (1) Congress should provide meaningful whistleblower protections, so that workers who expose workplace violations and as a result are fired, do not have to face immediate removal; and (2) workers should have the ability to leave unsatisfactory jobs without having to face the choice of departing the United States or becoming undocumented.

Such appropriate "portability", however, should not allow a subsequent employer to avoid the requisite labor market testing and certification, since otherwise the essential fundamental labor protections will be undermined. Workers in any non-immigrant category (that is, temporary), and especially those in the low-wage labor market, will always face pressure to find a new job quickly, because by definition, they are not entitled to unemployment insurance or any other safety net benefits. If subsequent employers do not have to test the labor market and therefore are not subject to prevailing wage standards, those employers will be able to employ the temporary foreign workers at substandard wages and working conditions. Therefore, portability must come with a requirement that every subsequent employer undergo the same U.S. labor market testing and certification process before hiring a foreign temporary worker. The H1-B program currently includes this framework or portability, but given that H1-B employers are not

required to test the U.S. labor market to begin with, the H1-B program does not serve as the model of portability.

As discussed above, another flaw of guest worker programs is that they allow U.S. employers to discriminate based on race, gender, age, and national origin, which is outlawed in the U.S.[43] Discrimination in relation to jobs that are performed in the United States should not be tolerated no matter where it occurs. Congress must specify that Title VII, Section 1981, the ADEA, and all other U.S. employment and labor laws govern the conduct of any employer or other labor recruiter who participates in any temporary worker program, even if the conduct occurs outside the United States.

Congress should also specify that workers who labor in temporary worker programs are entitled to workers' compensation coverage and full remedies, even if they leave the U.S. after they are injured on the job. Current law makes it practically impossible for guest workers who are injured on the job to exercise their rights under workers' compensation laws because injured workers are forced to leave the program and return to their home country, or become undocumented.

Statutory labor protections are only as good as their enforcement mechanism. Guest workers face particular difficulties in enforcing their labor rights. Workers often have little education, do not understand the U.S. legal system, have no access to legal aid lawyers, and have great difficulty in finding private lawyers to represent them. Requiring that employers post a bond that is at least sufficient in value to cover the temporary workers' legal wages, and crafting a system to allow workers to make claims against the bonds would make it easier for workers to collect the money they are owed.

Further, a robust remedial scheme is key to discouraging illegal conduct by employers. Penalties for violations of the terms and conditions of temporary worker programs should be strengthened and must include remedies that are real deterrents, including employer debarment. Enhanced monetary penalties such as punitive damages and compensatory damages should also be provided. All of these remedies must be available to workers and their representatives through private rights of action, as well as through strengthened and adequately funded government enforcement programs.

Finally, guest workers must be able to adjust their status if they wish to do so. This "path to permanency" is important, but it does not solve the problems that workers face while they are laboring in the guest worker programs. In other words, if the H2-B program were to continue with all its current flaws, and Congress simply added a provision that would allow H2-B workers to adjust their status after laboring in H2-B status for a certain number of years, that "path to permanency" would do nothing to fix the problems with recruiters, non-payment of wages, or the inability of H2-B workers to exercise labor rights. All that such a "path to permanency" would do is limit the number of years that the particular workers in question are exploited. It would *not* remove in any way the attraction for employers to use an ever-changing source of foreign workers to depress wages and other labor standards.

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[43] *See Reyes-Gaona v. NC Growers' Ass'n,* 250 F.3d 861 at 865.

The STRIVE Act, unfortunately, provides virtually none of the guest worker program protection recommended above. It greatly expands the number of guest workers that employers are allowed to import every year, and is modeled on the failed and flawed H2-B program. The STRIVE Act is not limited to seasonal jobs, which means that it is expanding significantly the types of jobs that employers would be able to fill with easily exploitable temporary foreign workers, and for the first time opening up permanent jobs to temporary guestworkers. Under the STRIVE Act, employers would be able to import foreign temporary workers to perform all kinds of permanent jobs that don't require a college degree, such as grocery store clerks, a host of construction jobs, janitors, poultry workers, and truck drivers, just to name a few.

The huge expansion of guest worker programs contemplated by current legislation will not only harm United States workers, but also represents a radical and dark departure from our long-held vision of a democratic United States society. We are not a nation of "guests," who, by definition, have only short-term and short-lived interests, but a nation of people who believe in investing in our communities, in our future, and in our democracy.

In the AFL-CIO's view, there is no good reason why any immigrant who comes to this country prepared to work, to pay taxes, and to abide by our laws and rules should be denied what has been offered to immigrants throughout our country's history: a path to legal citizenship. To embrace instead the creation of a permanent two-tier workforce, with non-U.S. workers relegated to second-class "guest worker" status, would be repugnant to our traditions and our ideals and disastrous for the living standards of working families.

Instead we should revise the current immigration law in a way that guarantees full labor rights for future workers and reflects real labor market conditions by restructuring the current permanent employment visa category. Under current law, Congress has set an arbitrary cap of 140,000 permanent visas (green cards). We propose that the number be adjusted to reflect real employer needs for long-term labor shortages. Employers should be required to test the labor market by first offering jobs to workers who are already in the United States at wages that are attractive to U.S. workers. If there are no workers inside the United States available to fill the job, then the employer should be able to hire a foreign worker and sponsor him or her for a green card. The number of such visas should be tied to real economic indicators that reflect true labor shortages.

The proponents of guest worker programs offer no valid explanation as to why, as a matter of public policy, the permanent system we advocate is not the preferred model. The most common argument they make is that there are new circular migration patterns and workers who come here may not want to stay forever. There is nothing in our proposal, or in current law, that requires that workers who come to United States must stay here. The difference between the AFL-CIO framework and the guest worker framework is that under our model, the workers who don't want to stay here forever have full worker rights while they work here. Subjecting workers to diminished labor rights

and protections simply because they will suffer those conditions only temporarily is not sound public policy. Nor is it just.

Immigration Laws Should be Enforced in Tandem with Labor Laws

The third guiding principle in the AFL-CIO's approach to reform is that enforcement of labor laws must go hand-in-hand with enforcement of immigration laws. Enforcement of immigration laws alone has failed to stem the tide of illegal immigration. The current mechanism for enforcement of those laws in the workplace – the "employer sanctions" provisions included in the Immigration Reform and Control Act of 1986 (IRCA)[44] – completely ignores enforcement of labor and employment protections. Instead, the IRCA adopted the very same focus that the current legislative proposals have taken on: punishment (fines) for employers who knowingly hire and continue to employ undocumented workers. Such sanctions have failed to curtail illegal immigration. In fact, they may well have accomplished the opposite, given that sanctions have become one of the most powerful tools that employers have to defeat workers' attempts to organize or to otherwise enforce their labor rights.

In adopting the IRCA, Congress acted to cut off the "job magnet" that was causing illegal immigration by requiring, for the first time, all workers in the United States to have permission to work in the country and obligating employers to verify that status. Even though that law was designed to hold employers accountable for the hiring of undocumented workers and to stop the exploitation of workers, the result has been quite the contrary: the IRCA essentially privatized immigration policy by deputizing employers to be agents of the immigration service. Employers have repeatedly used the power the IRCA granted them to defeat collective action and to retaliate against workers who attempt to enforce their labor and employment rights.

The principal study conducted on the relationship between workplace immigration enforcement and labor disputes reveals a deep entanglement between workplace immigration enforcement and workers' exercise of labor rights.[45] Government data on workplaces raided in New York, one of the largest DHS districts, reveals that 55% of the workplaces raided by INS were the subject of at least one formal labor complaint – that is, a charge had been filed with a federal or state employment or labor agency. That figure likely underestimates the actual number of workplaces in the midst of a labor dispute at the time of the immigration tip or raid because it does not include informal complaints to employers, much less litigation or union grievances.[46]

Workplace enforcement of immigration laws without regard to workers' rights – as Immigration and Customs Enforcement (ICE) currently operates – lowers standards for all workers because workers are deterred from reporting violations. ICE's blatant disregard of workplace standards was exposed clearly in 2005 when a group of construction workers in North Carolina received a flyer at work, instructing them to

[44] 8 U.S.C. § 1105 *et seq.* (1986).
[45] Michael J. Wishnie, *Current Issues in Immigration Law*, 28 N.Y.U. Rev. L. & Soc. Change 389 (2004).
[46] *Id.*

attend a mandatory health and safety meeting. The flyer was printed on letterhead of the Occupational Safety and Health Administration (OSHA). However, when the workers arrived at the meeting, no OSHA officials were present. Rather, ICE officials were waiting, arrested more than 20 workers and placed them into deportation proceedings.[47]

Effective enforcement of health and safety laws depends on workers to report hazardous conditions. Genuine health and safety meetings, unlike the sham one that ICE used to trap the workers, are key to that process because they enable workers to learn to identify hazards, and to protect themselves. The chilling effect on worker rights from these types of actions is clear.

The data on workplace enforcement of immigration laws also make clear that the benefit to an employer from exploiting workers is far greater than his cost of violating the immigration law. In fact, the immigration law actually gives employers a powerful weapon to use against workers. In many instances, employers have actually called for raids at their own workplaces, and have been able to effectively intimidate workers in the exercise of workplace rights – from joining a union to filing health and safety claims – without employers having to pay any meaningful penalty for their violations of workplace *or* immigration laws.[48] As long as unscrupulous employers continue exploiting immigrant workers while facing no real chance of being prosecuted for providing unsafe working conditions, or for other violations of labor laws, the rights of all workers will be seriously undermined and illegal immigration will continue.

Moreover, enforcement of U.S. labor and employment laws has been particularly dismal under the Bush administration, which has had an extremely negative impact on low-wage immigrants and U.S. workers. The Department of Labor's (DOL) own studies conducted in 2000 (the last year such were conducted) found that 100 percent of poultry employers were out of compliance with the minimum wage and overtime protections of the Fair Labor Standards Act (FLSA), and as many as 50 to one 100 percent of garment and nursing home employers were in violation of those same protections. And these are industries in which immigrant workers are overrepresented. Yet in the face of these wholesale violations, the Department of Labor's resources dedicated to enforcement have been falling for many years. For example, from 1975–2004, the budget for the DOL's Wage and Hour Division investigators, responsible for investigating and enforcing the minimum wage laws, decreased by 14% (to a total of 788 individuals nationwide) and enforcement actions decreased by 36%, while the number of workers covered by statutes enforced by the Wage and Hour Division grew by 55%.[49] Today, there is approximately one federal Wage and Hour investigator for every 110,000 workers covered by FLSA.[50]

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[47] Steven Greenhouse, *U.S. Officials Defend Ploys to Catch Immigrants,* NY Times, Feb. 11, 2006, A8, col.
[48] *See In re Herrera-Priego* (Lamb, I.J.) (NY July 10, 2003) (where employer called INS raid on itself, during union organizing campaign).
[49] Annette Bernhardt & Siobhan McGrath, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004,* Economic Policy Brief No. 3 (New York: Brennan Center for Justice at NYU School of Law, September 2003).
[50] *Id.*, at 2. There are nearly 88 million people covered by FLSA.

By 2007, the DOL's budget dedicated to enforcing wage and hour laws will be 6.1 percent less than before President Bush took office.[51]

Congress should opt for a far more potent "employer sanction," one that will remove the perverse economic incentive that is driving employers to recruit and employ undocumented workers, and will therefore stem the tide of illegal immigration. That "sanction" involves the vigorous and adequately funded enforcement of existing labor and employment laws.

Conclusion

Immigration reform is an emotionally and politically charged issue that affects the supply of labor, wage levels and working conditions for all workers, both immigrant and U.S.-born, in the United States. Any significant changes in United States immigration policy would deeply affect the personal and workplace lives of tens of millions of workers and their families, whether they are citizens, legal residents or undocumented persons. The current system does not serve us well, and the time is right to enact comprehensive immigration reform. For such reform to be meaningful and fair, it must be framed around workers' rights because that is the socially, economically, and morally right thing to do.

Thank you again for the opportunity to testify. I welcome your questions.

[51] Judd Legum, Faiz Shakir, Nico Pitney, Amanda Terkel, and Payson Schwin et.al., *Labor—Bush Priorities Hurt Workers, Help Employers (Under the Radar)*, The Progress Report, June 14, 2006.

Ms. LOFGREN. Mr. Feinstein.

TESTIMONY OF FRED FEINSTEIN, SENIOR FELLOW AND VISITING PROFESSOR, UNIVERSITY OF MARYLAND, REPRESENTING SEIU AND UNITE HERE

Mr. FEINSTEIN. Thank you, Madam Chairwoman. It is a pleasure to be here today.

My name is Fred Feinstein, and I am testifying today on behalf of SEIU and UNITE HERE—two unions that together represent more than 2.2 million workers, a significant percentage of which are immigrants. Along with each of the union witnesses here today, SEIU and UNITE HERE believe that our system of immigration is fundamentally broken. The status quo is unfair to immigrant workers and unfair to all workers in this country.

Comprehensive immigration reform is a critical challenge we face as our country goes through one of its most rapid economic transformations in its history. As many have said to this Committee, reform has to be comprehensive if it is to succeed. SEIU and UNITE HERE support a fair, practical, and tough proposal that will bring an estimated 12 million undocumented individuals out of the shadows, reunite families, secure our borders, and create a legal channel for new workers to enter our country and join our civic society.

Reform must start with a workable plan to legalize the undocumented population. It is in all of our interests to eliminate the vulnerability of this population of workers because it is undermining the working conditions of all workers. Provisions that place serious barriers to legalization like cumbersome and risky, so-called "touch-back requirements," will discourage people from coming forward, and the problems of an undocumented population will continue.

A workable legalization program is part of what is needed to end the flourishing underground economy that is not only exploiting workers, both immigrant- and native-born, but is draining resources from our communities across the country. Those who claim it would be wrong to provide a means for legalization of the undocumented worker conveniently overlook that it is employers, consumers, homeowners, building owners, and many others who have benefited from the hard work of the undocumented worker. The people who oppose legalization never acknowledge that, demanding stiff sanctions for the immigrant while supporting, quote, "amnesty" for those who have benefited from their hard work.

Once we address the past failures of our immigration system, we have to move forward to implement the program that is fair to all workers. It is essential that fundamental labor protections be in place if a new worker program is to succeed. While there are some differences in some aspects of immigration reform, I believe that all unions agree that adequate labor protections are of the utmost importance. In my remaining time, I will describe the labor protections that we believe are essential to the success of immigration reform.

First, workers lawfully entering this country must be provided the opportunity to remain in this country. Some who come here to work will want to return home after a period of time, but that should be a choice, not a mandate. Workers who know they will be

forbidden to stay do not have the same interests and concerns of their coworkers. Their interests are short term and immediate. With a temporary status, they do not have the same stake in upholding and enforcing workplace standards. They do not have the same motivation or ability to support and build decent workplace conditions, and they can do little when unscrupulous employers take advantage of them in ways that undermine the broader interests of all workers. History has taught us that temporary worker programs create a second-class status for immigrant workers, to the detriment of all workers, and all such programs have failed in the past.

A second fundamental labor protection is that immigrant workers have the same rights and mobility as all workers. When they do not, it again creates the opportunity for exploitation by the unscrupulous employer at the expense of workers and employers who play by the rules. Responsible employers are placed at a competitive disadvantage when competitors can drive down labor costs by taking advantage of workers who lack adequate labor protections. Likewise, when an employee cannot leave an abusive employer, all workers and responsible employers suffer. Immigration law must not provide any employer with these kinds of opportunities.

Another critical element to protecting the rights of all workers is assuring that no more workers than needed are authorized to enter this country. By developing accurate measures of labor market needs, the appropriate number for the future flow of workers should be set at a level that first and foremost does not create a downward pressure on wages or working conditions. It is a number that should not be arbitrary or inflexible but be based on reliable assessments that new workers will not undermine the working conditions of both immigrant- and native-born workers.

Finally, there must be adequate enforcement of labor protections. One of the historic problems of our immigration system has been the failure to enforce labor protections. Enforcement mechanisms and penalties that effectively deter violations are essential in assuring that labor protections are more than hollow promises.

Thank you for this opportunity.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Mr. Feinstein follows:]

PREPARED STATEMENT OF FRED FEINSTEIN

Madam Chairwoman and distinguished members of the Subcommittee:

My name is Fred Feinstein. I am testifying on behalf of the Service Employees International Union and UNITE/HERE. I am also a senior fellow and visiting professor at the University of Maryland. I served as General Counsel of the National Labor Relations Board from 1994 through 1999, as well as Chief Counsel of the Labor Management Relations Subcommittee in the House of Representatives where I worked from 1977 to 1994.

With 1.8 million members, the Service Employees International Union is America's largest union of health care workers, property services workers, and the second largest union of public services workers. SEIU is also the largest union of immigrants, representing thousands of U.S. immigrants from diverse backgrounds and places of origin. Many of these members perform some of our nation's most needed, yet under valued work that is essential to our economy, families and communities.

UNITE/HERE's 440,000 members work in the hotel, restaurant, food service, laundry, garment and apparel industries. Immigrants make up a large percentage of its membership. In 2003 the UNITE/HERE and SEIU sponsored the historic Immigrant Workers Freedom Ride, which for the first time knit together labor, immigrant advocates, clergy, and community organizations in the struggle for com-

prehensive immigration reform. These unions lead the dramatic reversal of the AFL-CIO policy in 2000 repudiating employer sanction and calling for repeal and support of comprehensive immigration reform.

Comprehensive immigration reform is a critical challenge we face as our economy goes through the most rapid transformation in history. To that end, SEIU and UNITE/HERE have long advocated for reforms that would fix our broken immigration system so that we may bring order out of chaos, protect America's working communities, and restore fairness.

TODAY'S BROKEN IMMIGRATION SYSTEM AND ITS IMPACT ON WORKERS

We have seen first hand how the system is broken. It's broken because hard working people across the country have to live in the shadows, afraid of what lies around the corner. Employers, consumers and numerous others benefit significantly from their presence, but they remain vulnerable, exploitable and subject to harsh sanction at any minute. They live with the constant fear that they will be separated from families, loved ones, friends, neighbors and the communities they have helped to build in many cases for decades. The immigration system is broken because vulnerable immigrant workers are exploited in ways that are not only inhumane and unjust but that also undermine the conditions faced by all workers, especially those in low wage industries. The status quo is unfair to the immigrant and unfair to all workers.

As Congress debates the nuts and blots of reform legislation, let us not forget the real people this debate touches. Ercilia Sandoval, from El Salvador is an active member of SEIU and works as a janitor for GCA Services in Houston Texas. Ercilia is a mother of two young girls, and came to the U.S. under temporary protected status. She works the night shift so that she can care for her children during the day. But, like so many janitors, the $8/ per hour salary is often not enough to make ends meet. Life got even harder for Ercilia last year when she found out that she had rapidly advancing breast cancer. Without access to health insurance, Ercilia had to wait months until she was able to receive chemotherapy treatment. Today, she is continuing the fight for her life, for her family, and for her rights. In fact, she is leading her local union's fight for health care access for janitors. Ercilia works hard, plays by the rules and wants a better life for her children—as do all workers.

The two unions have countless success stories of immigrant workers who are working hard everyday, paying taxes, and joining with their union brothers and sister to improve the wages, hours and working conditions. Many become union stewards and leaders, helping to ensure workers rights in the workplace, those who become U.S. citizens are leaders in civic life and become active in political campaigns. Take, Alba Vasquez, an immigrant from Uruguay, who works as at Madison Square Garden in New York City. In addition to her 3p.m. to 11 p.m. shift at Madison Square Garden, Alba worked a second job during the day so that she could afford to put her four children through Catholic school. Now that her children have grown, Alba has embraced her rights as a U.S. citizen and as a voter. She is active in her local union's campaign to fight for economic development that will guarantee god jobs, affordable housing, and a leader in the campaign for health care for all. There are millions more Alba's in the U.S. today that are awaiting the opportunity to more fully enrich our nation. As they wait, however, their lives are too often driven by fear and unnecessary hardship.

Under today's current broken system, both native and immigrant workers are under attack. Allowing unscrupulous employers hire undocumented workers cheats all workers out of fair wages, deny basic labor rights, and fire—or deport—anyone who seeks speaks up or asserts their labor rights. The exploitation of undocumented workers chips away at hard-earned labor rights, and drives down wages for all U.S. workers. At a time when wages for working Americans are stagnant and opportunities to rise up the economic ladder are disappearing, this shadowy culture of exploitation is particularly unacceptable.

Until we fix the root causes for the broken system, U.S. communities will continue to experience disruptive raids, family separation, and unnecessary economic hardship. While enforcement is critical to comprehensive reform and U.S. security, seemingly arbitrary raids on working communities will not achieve our large goals of fixing the broken system. Instead, an increasing number of work place raids like those at Swift and New Bedford will create more chaos and family tragedies that hurt communities. We need a more workable approach that is inline with reality and matches our economic needs and our values.

THE COMPREHENSIVE SOLUTION:

Last November, voters sent a strong message to elected leaders that Americans want Congress to fix our nation's problems, including our failed immigration system. Candidates who ran on anti-immigrant, anti-immigration, and enforcement-only messages lost their races because voters saw through the political rhetoric, not solving the problem. Voters know that deporting 12 million individuals is unrealistic and morally repugnant. Americans understand that we need to make our system match our Nation's economic goals, and then we need to make sure it's fair, sustainable, and enforceable.

To that end, SEIU and UNITE/HERE support a fair, practical and tough proposal that will bring out of the shadows an estimated 12 million undocumented individuals, reunite families, secure our borders and create a legal channel for new workers to enter our economy, have workplace protections, and join our civic society. Hard working, tax-paying immigrants who are living in this country should be given the opportunity to come forward, pay a fine, and earn legal status and a path toward citizenship. This will enhance border security and buttress our economy.

SEIU and UNITE/HERE are committed to the following provisions being included in this year's comprehensive immigration reform legislation:

Legalization—In order to end illegal immigration as we know it, we must enact laws that ensure that every job in this country is held by an individual legally authorized to work in this country. Congress should not be satisfied with a program that is less than comprehensive. We must face reality that long-term undocumented individuals, but otherwise law-abiding workers will not leave the country voluntarily.

We must all agree that if legalization is less than comprehensive and includes hurdles that are sure to deter people from participating; undocumented workers will continue to fuel an underground economy, with negative impacts on all workers, employers, and communities. We must put an end to a system in which employers avoid payroll taxes, deprive communities of other revenues and receive an unfair advantage over law-abiding competitors by violating labor laws. All of us as taxpayers pick up the tab when our broken immigration system allows employers to cheat our communities out of needed revenues. The benefits of a comprehensive and workable legalization program are clear: high levels of participation in the legalization program put significant pressure on employer's to comply with withholding requirements and labor protections as it becomes more difficult for unscrupulous employers to prosper in an underground economy.

Because a goal of any legalization program should be to legalize as many people as possible, it is counterproductive to include provisions that would erect permanent barriers to people achieving lawful status. Any bill that places serious burdens on legalization such as requiring people to leave the county or placing insurmountable obstacles on the path to legalization for some people is unworkable. Again, the legalization provisions must be expansive to ensure as many undocumented as possible participate, not make ineligible the very people who need to come out of the shadows.

We are committed to shrinking the undocumented population, so that our law enforcement officials can concentrate their resources on those who would do us harm. Rounding up dishwashers, meat cutters, factory workers, mothers and fathers is not a good or productive use of our law enforcement resources.

Those who claim it would be wrong to provide a means for legalization of the undocumented conveniently overlook that it is employers, consumers, homeowners, building owners and many others who have benefited from the hard work of undocumented workers. We all benefit when they clean our offices and hotel rooms, care for our children, and tend to our family members when they are sick or in need. The people who oppose immigration reform never acknowledge that they are demanding stiff sanctions for the immigrant while supporting "amnesty" for those who have benefited from their hard work.

New worker program—SEIU and UNITE/HERE recognize the need for new workers in the low-wage sector of our expanding economy. However, any new worker program must include worker protections including: portability of visas so that workers can change jobs, the right to join unions and have full labor rights, the right of immigrants to bring their families with them, and the ability to self-petition for permanent residency and citizenship. Visas should not be tied to employers who can threaten workers with deportation if not compliant. We must craft a new worker program that will include accurate mechanisms to determine the labor market need for workers. We must transform the current illegal flow into a program with legal channels that lead to an increased number of permanent work authorizations. Finally, any new worker program should include sufficient enforcement resources to

ensure the effective implementation of labor rights of both U.S. citizens and new worker visa holders.

Looking at the question of labor protections in more detail, there are several kinds of labor protections that are needed to assure immigrant workers are not exploited and can't be used to undermine the working conditions of all workers. While we have not always agreed on every aspect of what is needed in immigration reform legislation, on the question of labor protections the labor movement speaks with one voice.

One of the most important labor protections is that workers lawfully entering this country to live and work must be provided the opportunity to remain in the country. Workers who know they will only be permitted to remain in the country for a short time do not have the same interests and concerns of the rest of the workforce. Their interests are short term and immediate and employers can exploit this status in ways that undermine the broader interests of all workers. When people are restricted to temporary status, they don't have the same stake in upholding and enforcing workplace standards as other workers. They don't have the same motivation to support and build the decent workplace conditions, but rather are confined as second-class participants in the workforce. They are more vulnerable to the kinds of exploitation that undermine our workforce today. They can fall prey to the unscrupulous employer who can manipulate their tenuous ties to the broader community. History has taught us that temporary worker programs create a second-class status for immigrant workers that undermines the conditions of all workers and are bound to fail.

We cannot tolerate a repeat of the failed "guest worker" programs that are temporary in nature. If workers are good enough to be brought to our country to do our least desirable work, they should be given the option to put down roots and become full participants in our nation and our civic society. If they are good enough to care for our children and aged, cut our grass, and clean our toilets, they are good enough to be given the option to become permanent residents and eventually citizens.

Immigrant workers must also have the same rights under employment laws as any other worker.

When an immigrant worker does not have the same rights under labor law as all workers it creates an opportunity for exploitation by the unscrupulous employer at the expense workers and employers who play by the rules. Responsible employers can be undercut and placed at a competitive disadvantage when unscrupulous competitors drive down labor costs by exploiting vulnerable immigrant workers who lack adequate labor protections. Immigration law must not provide the unscrupulous employer this opportunity.

Another critical element of protecting the rights of workers is assuring the number of workers permitted to enter the country is not greater than what is necessary to meet well defined labor market needs. The goal is to set a number at a level that first and foremost does not create a downward pressure on wages or working conditions. The number should not be arbitrary or inflexible, but should be based on a reliable assessment that new workers will not undermine wage or working conditions. New workers should be admitted to this country if and only if it is determined they will not undermines the wages and working conditions of all the workers in this country, both immigrant and native born.

Finally, there must be adequate enforcement of labor protections. One of the historic problems of our immigration laws has been the failure to enforce the labor protections and standards. There must be effective enforcement mechanisms in place and adequate penalties to deter violations of the law. Employment law protections must be more than hollow promises.

Other Necessary Requirements for Comprehensive Reform—SEIU and UNITE/HERE were instrumental in reversing the labor movement's position supporting employer sanctions. We did this because the experiment of employer sanctions imposed by the Immigration Reform and Control Act (IRCA) in 1986 to close the job market to illegal aliens backfired and only harmed workers. UNITE/HERE and SEIU have had first hand experience when organizing workers of employers calling Immigration and Custom Enforcement to break union strikes and organizing campaigns. We have worked diligently to craft an alternative to supplement employer sanctions in the negotiations on comprehensive immigration reform. Comprehensive reform must include:

Vigorous Labor and Civil Rights law enforcement—Employer sanctions must be supplemented with vigorous labor law enforcement. All workers—U.S. born and immigrant—must have the ability to assert their rights under local, state and federal labor and civil rights laws. They must be able to freely join unions and have private right of action to ensure their rights are preserved and protected. Immigra-

tion reform legislation must encourage vigorous labor and civil rights enforcement provisions by both governmental and non-governmental agencies, with these agencies given the necessary resources to ensure that employers who seek competitive advantages by exploiting workers will face significant fines and be barred from future immigrant worker programs.

Our childcare providers, food servers and dishwashers, home health care aides, hotel workers, janitors and thousands of other service sector workers toil hard each and every day to feed and make a better life for their families. SEIU and UNITE/HERE members are working on payrolls and paying taxes through employer withholding. Reform must help ensure that all workers will be paid legally, under local, state and federal law, with proper withholding for employment taxes, social security, eligibility for unemployment and worker compensation programs. Employers must be required to meet their tax and employment payroll obligations, and not allowed to misclassify workers as independent contractors to avoid payroll obligations, Social Security, unemployment compensation, and Medicare taxes. When employers are allowed to pay workers in cash, under-the-table, or as "contractors"—everyone loses—businesses, communities, workers and taxpayers.

Keeping families together—SEIU and UNITE/HERE strongly support all efforts to eliminate the family backlog and increase the number of visas available to reunite families. If our economy demands new workers, those workers should be able to bring their families with them, and family members should be work authorized. If low-wage workers are to support themselves, they must be allowed to work. When workers are temporary and not allowed to bring family members with them they can become a drain on their communities. By keeping families, together workers are full participants in their communities and workplaces.

Electronic Employment Verification System—We recognize it is likely that Congress will include some form of an EEVS in immigration reform. We believe it is important that any EEVS system have sufficient safeguards to protect against worker abuse. This would include fixing deficiencies in the Electronic Verification pilot program before it is expanded to cover all workers. The system should only apply to new hires and there should be stringent protections to guard against using the system for discriminatory purposes. There must also be effective guarantees of due process rights to protect against erroneous determinations, adequate privacy and identity theft protections and workable and fair documentation requirements.

Due Process Protections—It is critical that enforcement measures do not eviscerate due process protections and civil liberties. Likewise, SEIU and UNITE/HERE will not support any legislation that empowers and encourages state and local law enforcement officials to enforce civil violations of federal immigration laws. Such proposals would irreparably harm the critical relationships law enforcement officials have built in order to fight crime and interact with immigrant neighborhoods and communities

CONCLUSION:

SEIU and UNITE/HERE are committed to passing comprehensive immigration reform, and continues to work in partnership with immigrant advocates, business, religious and labor leaders who recognize the need for a "break the mold" reform package. We have rededicated our efforts and the resources of SEIU and UNITE/HERE to make reform a reality.

Ms. LOFREN. Mr. Wilson.

TESTIMONY OF MICHAEL J. WILSON, INTERNATIONAL VICE PRESIDENT AND DIRECTOR, LEGISLATIVE AND POLITICAL ACTION DEPARTMENT, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW)

Mr. WILSON. Thank you, Madam Chair, and distinguished Members of the subcommittee.

I am Michael J. Wilson, and I am with the United Food and Commercial Workers Union. UFCW is the largest private-sector union in North America and is one of the largest unions of immigrant workers of the United States, with more than 200,000 new immigrants as members. We are the primary worker representative in industries that are major employers of immigrant workers—

meatpacking, food processing and poultry—and we have a 100-year history of fighting on behalf of packing and processing workers.

Without objection, I would like to enter my testimony and highlight an enhanced written statement.

The workers we represent know——

Ms. LOFGREN. Without objection.

Mr. WILSON [continuing]. The need for immigration reform. Some of them are undocumented, but many more want to bring their families here to join them in the "land of the free and the home of the brave."

A good first step would be appropriate border enhancements to prevent illegal immigration, combined with a fair path to earned legalization for those who are here, employed, are part of the community, and would otherwise obey the law and pay a reasonable fine. Unfortunately, if combined with a massive Bracero-like guest worker program with little or no hope for an adjustment of status, it would be a bad first step or, as the Sunday *New York Times* described the Senate compromise, "awful." the *Times'* editorial called it—and I quote—"the creation of a system of modern peonage within our borders."

The Southern Poverty Law Center recently issued a report entitled, "Close to Slavery: Guest Worker Programs in the United States." It documents the specific situations in the existing H-2 programs where workers are underpaid, where there are workplace injuries without recourse, where there are even cases of workers owing money to their employers after having served as guest workers. Here is a specific example:

Sam Kane Beef, one of the country's largest independently owned beef slaughter plants, located about 5 miles northwest of Corpus Christi, employs about 600 people; at one time, 121 were Mexican guest workers. They were told that the pay would be good. They were led to believe that the working conditions would not be overly difficult. They were also assured that they would have, quote, "the same rights as American workers."

Yet, when a UFCW representative spoke with these workers after they had been on the job for less than 3 weeks, they related that they had been misled. Injuries were a major concern. They claimed that there was no medical personnel on the plant premises. The workers had no health insurance. If a worker became injured, he had to go to the management in person to request a day off without pay. The workers were forced to live in substandard company housing. They were docked hours and denied benefits even after working 11 to 12 hours a day.

These workers were paid $6.65 an hour, approximately half the industry wage for the same work. When the President says that these are the jobs that Americans will not do, this is exactly what we mean when we say that these are jobs that Americans will not do for those wages, nor should anyone.

It is peonage; it is close to slavery. These are strong words but are the real world of lives of guest workers in America. The fact is that guest worker programs have created an underclass of workers who are afforded neither full rights on the job, full participation in the community, nor full protection at the workplace. This creates a culture in which people believe that a person's race or national

origin relegates him to a life of low-paying/no future jobs. It also discourages domestic workers from those lines of work; thus segregating the workforce.

Finally, when guest workers choose to exert workplace rights—the right to a safe workplace or the right to form a union—they risk losing their jobs or being deported. They face the same challenges that any worker who speaks up confronts, with the notable difference that they are temporary guest workers. This amounts to compulsory consent to exploitation, and it lowers working standards for all working people.

The sad fact is that our Nation is currently incapable of enforcing our Nation's most basic labor laws and workplace protections. Our union regularly witnesses employers who fire and discipline workers, whether they are immigrant-, native-born, or guest workers because they were injured on the job or they dared support union representation. Every time one of these firings takes place—and they take place frequently—the employer violates Federal law with little or no consequence for doing so. To suggest that a new guest worker program can be constructed with adequate workplace protections is disingenuous and flies in the face of history and current practices.

Just as it is entirely appropriate for Congress to insist that enhanced border protection be in place prior to finalizing the legalization component of immigration reform, the Congress should insist that prior to new and expanded guest worker programs, there must be reform of the current programs. Comprehensive immigration reform should be based on our Nation's values of equal opportunity, responsibility, and justice. A new guest worker program, without significant reform of existing programs, undermines any reform effort before we even get started.

That concludes my statement, and I would be glad to answer any questions.

Ms. LOFGREN. Thank you very much, Mr. Wilson.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF MICHAEL J. WILSON

Good morning. My name is Michael J. Wilson and I am representing the United Food and Commercial Workers International Union (UFCW). UFCW is the largest private sector union in North America—and it is one of the largest unions of new immigrant workers in the United States with more than 200,000 new immigrants as members. I am an International Vice President of the union and Director of the Legislative and Political Action Department.

We are the primary worker representative in industries that are major employers of immigrant workers—meatpacking, food processing, and poultry—and have a hundred-year history of fighting for safe working conditions and good wages on behalf of packing and processing workers.

Immigrants and their families come to this country prepared to work, pay taxes, and to abide by our laws and rules. They contribute more than $300 billion to our economy annually.(American Immigration Law Foundation, Spring 2002; UCLA, 2001.[1] In fact, each new immigrant contributes roughly $1,200.[2] They play a vital role in our economy and are tighly woven into our nation's social fabric.

Roughly 25 million immigrants, from nearly every country in the world, are living and working in the U.S., yet our country effectively has no immigration policy. In fact, our current approach is geared more to 19th and early 20th century immigra-

[1] "Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration," (University of California, Los Angeles), August 29, 2001.

[2] American Immigration Law Foundation, Spring 2002.

tion patterns than to the realities of the 21st century, fostering rampant abuse and exploitation of both immigrants and U.S. citizens.

Unscrupulous companies take advantage of the lack of a consistent system to recruit and lure immigrant workers across borders with little or no regard for federal law or workplace regulations. The employment verification system is inaccurate, inefficient, and easily manipulated by employers eager to take advantage of cheap foreign labor.

The mass and random enforcement activities that occur as a result—such as those which took place in the Swift & Company meat processing plants in December—lead to the disruption of families, the economy, and our communities. During the raids, ICE agents violated the agency's own policies and procedures. The raids were designed and executed as political theatre—which is all they could be, given that the U.S. has no systematic or effective immigration system. In the process, more than 10,000 workers, both immigrant and non-immigrant, were criminalized simply for showing up to do their job, and subjected to gross violations of their human and civil rights. *Worksite raids, family disruption, and the criminalization of work—do not constitute an effective immigration system.*

In some economic sectors, American businesses need immigrant workers. But despite the various provisions for the free flow of capital and goods that are built into U.S. International Trade Policy, insufficient consideration has been given to the transnational flow of people that has become part and parcel of the 21st century global economy.

For example, 13 years of NAFTA have resulted in the loss of millions of domestic jobs for American workers. At the same time, in Mexico, real wages have declined significantly, millions of farmers have been dislocated, and millions more consigned to poverty, fueling the labor flight into the U.S.[3]

The result of our outdated immigration system—exacerbated by trade policies that are effectively devoid of enforceable labor protections—is an unauthorized U.S. population of an estimated 11.5 to 12 million as of March 2006.[4] As a result, immigrants and native-born American workers in underpaid economic sectors are experiencing workplace abuse and the erosion of wages and working conditions. Our country's archaic immigration policy—incapable of dealing with 21st century immigration patterns and economic realities—is undermining the very ideals and values our country was built on, and serving neither business nor workers.

Some have suggested that a new guestworker visa program would be the legislative solution to satisfy the international supply and national demand for labor without letting workers "sneak in." Some have described these programs as "break the mold" or "different" than prior efforts. Such proposals fail to acknowledge the disastrous effects of past and present guestworker programs and the obstacles that would impede the creation of new and improved temporary worker plans.

The post-World War II Bracero program was synonymous with worker abuse. Modern versions of the same—such as the H2-B—have had similar negative effects. In 1997 the U.S. Government Accountability Office reported that modern H-2A workers "are unlikely to complain about worker protection violations, such as the three-quarter guarantee, fearing they will lose their jobs or will not be accepted by the employer or association for future employment."[5] The Southern Poverty Law Center has said that our existing guestworker programs "can be viewed as a modern-day system of indentured servitude." Even Ways and Means Chairman Rangel recently described our country's experience with guestworker programs as ". . . the closest thing I've ever seen to slavery."

Guestworkers, especially in low-wage economic sectors, face exploitation at nearly every step from securing visas to working in sweatshop conditions. We've seen the effects of today's guestworker programs in our own industries—meatpacking and food processing—sectors that new guestworker legislation will likely effect.

For example, Sam Kane is one of the country's largest independently owned beef slaughter and processing plants. It is located about five miles northwest of downtown Corpus Christi and employs approximately 600 people—121 of whom at one time were Mexican guestworkers. They were told that the pay would be "good" and were led to believe that the working conditions would not be overly difficult. They

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[3] Scott, Robert E and David Ratner. (2005, July 25). "NAFTA's cautionary tale: Recent history suggests CAFTA could lead to further U.S. job displacement." The Economic Policy Institute. <http://www.epi.org/content.cfm/ib214>

[4] Passel, Jeffrey S. (2006, March 7). "Size and Characteristics of the Unauthorized Migrant Population in the U.S." The Pew Hispanic Center. < http://pewhispanic.org/reports/report.php?ReportID=61>

[5] "Changes Could Improve Services to Employers and Better Protect Workers." GAO/HEHS 98–20, pp 60–61.

were also assured that they would have the "same rights as American workers." Yet when a UFCW representative spoke with some of these "guests" after they'd been on the job for less than three weeks, they related that they had been misled and their promised rights severely curtailed.

Injuries became of major concern for the workers. They claimed that there was no nurse or clinic on the plant premises, and they had no health insurance. If a worker became sick, he or she had to go to the plant in person to request a day off without pay. Forced to live in substandard company housing, the workers were docked hours and denied benefits even after working 11–12 hours a day.

This kind of gross inhumanity and abuse in sectors where guestworkers are employed is thoroughly documented in a recent report by the Southern Poverty Law Center landmark report, "Close to Slavery; Guestworker Programs in the United States.

These workers were paid $6.65 an hour approximately half of the industry wage for the same work. When the President says that these are jobs that Americans won't do, this is exactly what we mean when we say that these are jobs that Americans won't do at these wages. In 2007, no one should do this work at these wages, and the government should not help employers keep wages down.

The facts are incontrovertible: guestworker programs create an underclass of workers and engender racial and other discriminatory attitudes toward individuals who are afforded neither full rights on the job, full participation at the workplace, or full connection to the community. This creates a culture in which people believe that a person's race, color, or national origin relegates them to a life of low-paying, no-future jobs. It also discourages domestic workers from those lines of work, segregating the workforce. Finally, when guestworkers choose to exert workplace rights—the right to a safe and healthy workplace or the right to form a union—they risk losing their jobs or being deported. They face the same employment dangers that any worker who speaks up confronts—you or I or any of your constituents, with a notable difference—they are temporary guestworkers. In effect, this amounts to compulsory consent to abuse and exploitation, and lowers working standards for all working people.

In 2005 the Brennan Center for Justice reported that there has been a "significant reduction in the government's capacity to ensure that employers are complying with the most basic workplace laws."[6]

The sad fact is that our nation is currently incapable of enforcing our country's most basic labor laws and workplace protections. The United Food and Commercial Workers International Union has regularly witnessed employers who fire and discipline workers—whether immigrant, native-born, or a "guest"—because they were injured on the job; or they spoke out in support of union representation; or they sought the correction of a workplace safety and health hazard. Every time one of these of firings take place—and they take place frequently—the employer violates federal law with little or no consequence for doing so.

It is more than naive to suggest that a new guestworker program can be constructed with adequate workplace protections—it is disingenuous. The outcome is sadly foreseeable: no matter how many abstract protections get written into a guestworker program, the approach will inherently provide employers with the opportunity to abuse and exploit workers, especially in low-wage jobs. A notable exception is AgJobs, which was negotiated between the employers and the union representing the workers, and will be enshrined in law.

American democracy works because it is inclusive. But all guestworker programs permanently exclude individuals who contribute to our economic well-being from participating in our democratic process. America's immigration system requires comprehensive reform that serves everyone who lives and works in America.

The following are the UFCW immigration reform principles which we believe are necessary to protect workers:

- **A Path to Citizenship:** Nearly 12 million immigrants provide their labor and talent to American employers. They make significant contributions to their communities, but are afforded neither labor rights nor due process protections. We must create a real pathway to citizenship for immigrant workers who have established themselves in the community, who are employed, and who have otherwise not broken the law.
- **End Worksite Immigration Enforcement:** Worksite programs like "Basic Pilot" and the ICE Mutual Agreement between Government and Employers (IMAGE) are riddled with problems, fail to adequately protect workers from

[6] "Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975–2004." Brennan Center for Justice, Economic Policy Brief, No. 3, September 2005.

discrimination, exploitation, and harassment, and fail as a substitute for a systematic approach to a fair and orderly immigration process.

- **Meaningful Employer Punishments for Immigration and Labor Law Violations:** Too often, when companies cannot export jobs in search of cheap wages and weak labor laws, they import workers to create a domestic pool of exploitable labor. The law must criminalize employers who recruit undocumented workers from abroad or otherwise circumvent immigration policies, and provide meaningful, enforceable penalties for companies that violate health, safety, and labor laws.
- **No New Guestworker or Temporary Worker Programs:** Guestworker programs allow employers to turn permanent, full-time, family-supporting jobs into temporary, go-nowhere jobs that exploit immigrants and native-born workers alike. When guestworkers choose to exert workplace rights, they risk losing their jobs or being deported. Guestworker programs create an underclass of workers and engender racial and other discriminatory attitudes toward individuals who are afforded neither full rights on the job nor participation in our society. In addition, existing guestworker programs should be reformed so that they include real worker protections—including the right to self-petition for legalization and the freedom to change jobs—and penalties for employers who break the law. Reform of existing programs should be a requisite prior to the creation of broad new programs. Anything less will inevitably lead to the kinds of problems and scandals which will shame us all.
- **Revise the Permanent Employment-Based Visa System:** Instead of short-term "guestworker" visas, labor shortages should be filled with workers with full rights, a path to permanent residence, and, if they choose, citizenship. The number of visas available should respond to actual, demonstrated labor shortages. U.S. employers should be required to hire U.S. workers first, and wage rate requirements should be high enough to make jobs attractive to U.S. workers.
- **Wage and Working Condition Protection for All Workers:** All workers, including future immigrant workers, should have the same workplace protections as U.S. citizens, including fair wages, a safe workplace, and the right to join a union. Immigrant workers who report employer violations should be ensured whistleblower protections with special protections that include extending their immigration status and work authorization during the complaint process.

The interests and lives of America's working families cannot be compromised. A single-minded immigration policy that disregards legal, labor, and workplace protections and only serves to provide employers with workers will inevitably result in economic and social calamity. Workers need to be at the heart of an effective and comprehensive reform of our immigration laws. Meaningful immigration reform should begin with the enforcement of basic workplace protections already on the books. Anything less, especially the enactment of a massive new guestworker program will exacerbate the systemic problems of our current system hurting all workers, their families, and their communities and robbing America of its fundamental values of inclusion and justice.

Ms. LOFGREN. Mr. Goldstein.

TESTIMONY OF BRUCE GOLDSTEIN, EXECUTIVE DIRECTOR, FARMWORKER JUSTICE, ON BEHALF OF MR. MARCOS CAMACHO, GENERAL COUNSEL, UNITED FARM WORKERS OF AMERICA

Mr. GOLDSTEIN. Thank you to the Chair and to the Members of this Committee for the opportunity to testify on behalf of the United Farm Workers regarding the labor movement and immigration policy.

Agricultural workers have confronted difficulties in immigration policy since the founding of this Nation. Our government policies and enforcement efforts have often contributed to an imbalance in power that has subjected farm workers to poor wages and working conditions. The Bracero program became known for its abusive treatment of Mexican workers, despite the existence of protections

for wages and benefits, and was finally ended in 1964. When the farm workers became free to demand better treatment, Cesar Chavez and the United Farm Workers provided a vehicle to dramatically improve the status and treatment of farm workers in this country.

Now we have the H-2A guest worker program, which was created at the same time as the Bracero program, and it is quite similar to it. Generally, our guest worker programs have tied workers to a particular employer. If the job ends, the worker may not look for another job and must leave the United States immediately. The guest worker who wishes for a visa the next year must hope that the employer will request one because the employers control access to visas. Such workers are often fearful of deportation or of not being hired in the following year, and are therefore reluctant to demand improvements. They work very hard for low wages. U.S. workers often recognize that they are not wanted by employers who use the guest worker system. Currently, there are about 50,000 H-2A jobs approved annually out of an agricultural workforce of about 2.5 million.

There are many abuses under the H-2A program, ranging from very minor to very serious trafficking in human beings. Unfortunately, our government has rarely enforced the protections in the H-2A program. Today, on page 3 of *The New York Times,* there is a report about the visas and the H-2A program, including the murder of an organizer of the Farm Labor Organizing Committee, AFL-CIO, while organizing in Mexico.

In recent years, the United Farm Workers Union and the Farm Labor Organizing Committee have been asked by guest workers from several nations to help them improve conditions at their jobs in Washington State, Hawaii, and North Carolina. We believe that unionization is the best hope that guest workers have for better treatment and the best hope that the government has of removing the H-2A program's reputation for abuse.

Today, we have reached a situation in agriculture that demands urgent action. Between 53 and 70 percent of farm workers are undocumented. In some crops, it is 80 percent. Many employers now hire farm labor contractors in the hope that they can shield themselves from liability for hiring undocumented workers in violation of the immigration law and from liability for labor law violations. In many cases, due to inadequate enforcement of labor laws, employers take advantage of undocumented workers by subjecting them to illegal wages and working conditions.

When the majority of workers in an economic sector are living in the shadows of society, something must be done. The current situation is not good for farm workers who want to be able to work legally and earn a decent living to support their families. It is not good for employers who want to hire people without worrying that they will be raided by the Immigration Service at the peak of their harvest of their perishable fruits and vegetables. It is not good for the government either.

The United Farm Workers Union recognized several years ago that the status quo needed to be remedied. We prevented legislation from being passed that would have transformed agriculture into a harsh guest worker program with no path to citizenship, but

we were unable to pass the kind of legislation that we preferred. With the help of Representative Berman and other Members of Congress, we entered into arduous negotiations with key leaders of agricultural employers in the United States and other Members of the Congress. The result was AgJOBS. The "AgJOBS," the Agricultural Job Opportunities, Benefits and Security Act, would provide agricultural employers and the Nation with a legal, stable, productive workforce while ensuring that basic labor protections would apply to farm workers. AgJOBS has two parts.

First, AgJOBS would create an earned adjustment program, allowing many undocumented farm workers to obtain temporary resident status based on past work experience with the possibility of becoming permanent residents through continued agricultural work. Second, it would revise the existing H-2A program. The Earned Legalization program certainly should not be called "amnesty." This is a tough program. Farm work is dangerous, difficult, seasonal, and low-paid. This truly will be an earned legalization. Applicants will have to work 3 to 5 additional more years in agriculture to earn their green cards.

To conclude, we recommend the following: We encourage you to pass AgJOBS. Congress and the Administration should also be vigilant about abuses under guest worker programs. Strong enforcement of labor protections is needed. Congress also needs to adopt protections against abuses associated with foreign labor contracting. The U.S. Government should be looking to the recruitment systems abroad that bring workers into the United States.

Thank you very much for the opportunity to testify today.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Mr. Camacho follows:]

PREPARED STATEMENT OF MARCOS CAMACHO

Thank you to the Chair and the Members of this Committee for the opportunity to testify on behalf of the United Farm Workers regarding the labor movement and immigration policy. I am Marcos Camacho, an attorney in Bakersfield, California, and the General Counsel of the United Farm Workers, the labor union founded by Cesar Chavez.

Agricultural workers have confronted difficulties in immigration policy since the founding of this nation. Our government policies and enforcement efforts have often contributed to an imbalance in power that has subjected farmworkers to poor wages and working conditions.

The Bracero guestworker program became known for its abusive treatment of Mexican workers, despite the existence of protections for wages and benefits, and was finally ended in 1964. When, the farmworkers finally became free to demand better treatment, Cesar Chavez and the United Farm Workers provided a vehicle to dramatically improve the status and treatment of farmworkers in this country.

More recently, the H-2A guestworker program often has provided agricultural employers with workers whose restricted, nonimmigrant status ensures that they will not challenge unfair or illegal conduct. Generally, our guestworker programs have tied workers to a particular employer; if the job ends, the worker may not look for another job and must leave the United States immediately. The guestworker who wishes for a visa in the next year must hope that the employer will request one, because the employers control access to visas. Such workers are often fearful of deportation or not being hired in the following year, and are therefore reluctant to demand improvements. They work very hard for low wages. U.S. workers often recognize that they are not wanted by the employers who use the guestworker system. Currently, there are about 50,000 H-2A jobs approved annually, out of an agricultural work force of 2.5 million.

There are many abuses under the H-2A program ranging from minor to very serious trafficking in human beings. Unfortunately, our government has rarely enforced the protections in the H-2A program. In recent years, the United Farm Workers and

the Farm Labor Organizing Committee have been asked by guestworkers from several nationsto help them improve conditions at their jobs in Washington State, Hawaii and North Carolina. We believe that unionization is the best hope that guestworkers have for better treatment and the best hope the government has of removing the H-2A program's reputation for abuse.

Today, we have reached a situation in agriculture that demands urgent action. There are about 2.5 million farmworkers in this country, not including their family members. More than 80% of them are foreign-born, mostly but not all from Mexico. Virtually all of the newest entrants to the farm labor force lack authorized immigration status. The helpful reports from the National Agricultural Workers Survey by the U.S. Department of Labor state that about 53% of farmworkers are undocumented. But most observers believe the figure is 60% or 70%, and much higher in specific locations. Many employers now hire farm labor contractors in the hope that they can shield themselves from liability for hiring undocumented workers in violation of our immigration law and from liability for labor law violations. The labor contractors compete against one another by offering to do a job for less money, and the cut-throat competition means that the workers must take lower wages. When one labor contractor is prosecuted for violating labor laws, he is easily replaced. Our current immigration system is causing employers to attempt to evade responsibility for their employees, while undocumented workers are too fearful of being deported to demand changes. In many cases, due to inadequate enforcement of labor laws, employers take advantage of undocumented workers by subjecting them to illegal wages and working conditions.

When the majority of workers in an economic sector are living in the shadows of society something must be done. The current situation is not good for farmworkers who want to be able to work legally and earn a decent living to support their families. It is not good for employers who want to hire people without worrying that they will be raided by the immigration service at the peak of the harvest of their perishable fruits and vegetables. It is not good for the government, which needs to know who is working in our economy and living among us. But it is no answer to say we will deport them and start again. The growers need these experienced workers to cultivate and harvest their crops. In fact, many growers contend that there are labor shortages in some areas because undocumented workers are too fearful of immigration raids to come to the open fields.

The United Farm Workers recognized several years ago that the status quo needed to be remedied. We also recognized that some of our long-held beliefs would need to be modified if we were to achieve any sort of reform. During the late 1990's, we strenuously and successfully opposed efforts in the House and Senate by agricultural employers to weaken H-2A protections and procedures and transform most farmworkers into vulnerable guestworkers with no path to citizenship. Our successful opposition led to a stalemate since we did not have the legislative support needed to enact our ideas about immigration and labor reform.

With the help of our good friend, Rep. Howard Berman, and other members of Congress, we entered into arduous negotiations with key leaders of the agricultural employers in the United States and other members of Congress, particularly Senator Larry Craig, Senator Edward Kennedy, and Rep. Chris Cannon. In 2000, we reached agreement on the Agricultural Job Opportunities, Benefits and Security Act, or "AgJOBS." AgJOBS has undergone several revisions over the years to build greater support for passage. Sen. Dianne Feinstein is now a strong supporter of AgJOBS. We remain strong partners with agricultural employers to win passage of this important legislation despite many other differences between us. In 2006, the Senate included AgJOBS in the comprehensive immigration reform it passed. We are now seeking to pass AgJOBS as part of comprehensive immigration reform in 2007. We have been working with the White House and several Senators to bring AgJOBS to a conclusion.

AgJOBS would provide agricultural employers and the nation with a legal, stable, productive workforce while ensuring that basic labor protections would apply to farmworkers. AgJOBS has two parts. First AgJOBS would create an "earned adjustment" program, allowing many undocumented farmworkers to obtain temporary resident status based on past work experience with the possibility of becoming permanent residents through continued agricultural work. Second, it would revise the existing H-2A agricultural guestworker program.

The earned legalization program certainly should not be called "amnesty." It is a difficult two-step process. The applicants for earned legalization will have to show that they have worked at least 150 days in U.S. agriculture during the past two years, and then must work at least 150 days per year in each of three years or at least 100 days per year in each of five years. Farmworkers will also have to show

that they have not been convicted of a felony or serious misdemeanors. Spouses and minor children of the farmworkers will be eligible for a temporary status, too.

If they fulfill their obligations, they will be granted a green card for permanent resident status. They will have to pay substantial fees and fines at both steps. (Under the compromise worked out with the White House, farmworkers also will have to learn English, demonstrate that they have paid taxes during their prospective work period, return to their homeland to file the application for a green card with a U.S. consulate in their home country, and wait for the green card for 3 to 5 more years until backlogs in immigration applications have been cleared.). We expect that roughly 800,000 farmworkers will be eligible for this program, although such predictions are mere guesses. Through this multiyear process, the United States will have a stable, legal farm labor force that is highly productive.

This is a tough program. Farm work is dangerous, difficult, seasonal and low-paid. This truly will be an earned legalization.

AgJOBS also would revise the H-2A guestworker program. We feel that we made painful concessions to achieve this compromise. The program's application process will be streamlined to become a "labor attestation" program similar to the H-1B program, rather than the current "labor certification" program. This change reduces paperwork for employers and limits the government's oversight of the employer's application. AgJOBS would retain both the "prevailing wage" and "adverse effect wage rates," but would effectively lower the H-2A wage rates by about $1.00 per year (to the 2003 adverse effect wage rates, which are issued by state), and freeze them for three years. The Government Accountability Office and a special commission would make recommendations to Congress about the wage rates within 3 years. If Congress has not acted within 3 years, then the wage rates will be adjusted by the previous years' inflation rate. In addition, for the first time, farmworkers would have a right to file a federal lawsuit to enforce their H-2A job terms. AgJOBS also would allow some flexibility in the minimum wages and benefits when the workers at an H-2A employer are represented by a bona fide labor union under a collective bargaining agreement.

We believe that AgJOBS is a reasonable compromise under the circumstances. To conclude, we recommend the following: (1) We encourage you to pass AgJOBS. (2) Congress and the Administration should be vigilant about abuses under guestworker programs. Strong enforcement of the labor protections for guestworkers will prevent guestworkers from being exploited, prevent the wages and working conditions of United States workers from being undermined, and will take away the incentive that employers have to hire guestworkers rather than U.S. workers, including those who would earn legal immigration status under the AgJOBS earned legalization program. (3) Congress needs to adopt protections against abuses associated with foreign labor contracting. The U.S. Government is refusing to look at the abuses that occur during the recruitment of guestworkers in the foreign country. Yet, those abuses abroad, including payment of high recruitment fees, result in mistreatment of guestworkers on the job in the U.S., because the guestworkers must work to the limits of human endurance and avoid deportation at all costs to pay back those fees. The labor contractors' interest in such recruitment fees may have led to the murder earlier this year in Monterrey, Mexico, of Santiago Rafael Cruz, who was helping Mexican citizens employed as guestworker for North Carolina growers under a collective bargaining agreement with the Farm Labor Organizing Committee, AFL-CIO. (4) We also ask you to recognize that the best protection workers—both U.S. and foreign—have at an employer that participates in a guestworker program is a labor union. Government policy should promote collective bargaining to reduce abuses under guestworker programs and give workers a meaningful voice at work.

Thank you for this opportunity to testify before the Committee on these important and timely issues.

Ms. LOFGREN. That is just notifying us that we are going into session in 15 minutes, not that we have votes now. Thank goodness.

Dr. Briggs.

TESTIMONY OF VERNON BRIGGS, Ph.D., PROFESSOR OF INDUSTRIAL AND LABOR RELATIONS, CORNELL UNIVERSITY

Mr. BRIGGS. Thank you very much.

With the revival of mass immigration since 1965 and with Congress seemingly poised to move the Nation into an era of massive

immigration, the impact of immigration policy on the labor market has once again become of critical importance to the Nation's labor movement. Immigration affects the size, the skill distribution, the composition, and the geographic distribution of the Nation's labor force. Therefore it impacts local wages and incomes and employment in local, regional, and national labor markets.

The labor movement must have a voice in immigration policy, a big voice. It is a dilemma. It can either favor restrictions and tight enforcement of immigration laws, and in doing so it risks alienating the growing immigrant population and component of the labor force. If it supports expansionary policies, and lax enforcement, it risks harming the American labor force that is its actual base. And when I use "American labor force," I mean the native-born; I mean the permanent resident aliens; and I mean the naturalized citizens; the whole labor force, that is, the American labor force. It cannot be supportive of both. You cannot have it both ways.

Prior to 1990, organized labor always sided with the best interests of the American labor force, even though it was founded by immigrants. Most importantly, many of the leaders were immigrants. From 1860 until 1990, labor supported every effort to regulate immigration in the Nation's history. Every law that was passed had the fingerprint of labor on it.

Samuel Gompers, the first President of the American Federation of Labor in America, the movement's greatest labor leader, said in his autobiography that organized labor was the first group in 1892 to recognize the importance of regulating immigration in the best interests of American workers, and acted to do accordingly. Also in his autobiography he says immigration, in all of its most fundamental aspects, is a labor issue. Fundamentally, it is a labor issue because all of them, no matter how they are coming in, will work, and so will most of their relatives, and so it is a labor issue.

Even the famous labor leader A. Philip Randolph, a labor leader and civil rights leader who led the march in Washington here in 1963, stated in the 1920's that the Nation was suffering from "immigration indigestion." It needed restrictive immigration policies. He supported it. He even advocated zero immigration.

All of the research on the labor market has shown that those positions of labor in the past years were justified. The eras of mass immigration did depress wages. They did spread poverty. They were a cause of unemployment, of overcrowding in cities and of all the rest of it, mass unemployment.

Well, since 1990, there has been a shift in the organized labor position. It has begun to favor amnesty. Some strong parts of the labor movement have supported either reform or expansion of guest worker programs. It has accepted a "chain migration" agenda and has picked up the immigrant agenda, the immigrant rhetoric, and has demonized critics of those policies. It has taken to ignoring research findings about the adverse impacts of immigration on low-wage workers.

The real imperative of immigration reform should get illegal immigrants out of the labor force. Then there would not be a dilemma for organized labor, and if government were to do its job and actually enforce the laws, we would not even be here today discussing

this issue. Until then, a choice must be made. I feel it has been a mistake for the organized labor to abandon its pre-1990's role where it supported the policies which were in the best interests of American worker are always first, always first, and you have to make a choice. Always first, as it did before the 1990's. Why?

Because if mass immigration continues to be unregulated, it will be impossible for unions to improve wages and hours and working conditions for working people and especially, low-skilled workers. The labor market will continue to be flooded. Unions cannot defy market pressures. Workers will pay dues, but they will not get much out of their union participation.

Secondly, support for an immigrant agenda will alienate large portions of the labor force who are adversely affected by labor's revised stance and who are adversely affected by the presence of the massive infusion of illegal immigrants, amnesty recipients, chain migration, guest workers, and all the rest of it that now organized labor, in part, seems to be supporting. They will not support labor. The people who will be hurt will be justified in that conclusion.

Finally, it raises the question that the labor movement will lose the moral support of the general public. And I quote John Mitchell's, from the United Mine Workers, famous statement to this effect that labor has always benefited from the idea that, whether or not people belong to unions or not, they always knew the labor movement had in its heart the best interest of American workers, first and foremost. That is the real danger.

So, consequently, I would conclude by simply saying that what is bad economics for working people cannot be good politics.

Ms. LOFGREN. Thank you, Dr. Briggs.

[The prepared statement of Mr. Briggs follows:]

PREPARED STATEMENT OF VERNON M. BRIGGS JR.

Over its long history, few issues have caused the caused the American labor movement more agony than has the issue of immigration. It is ironic this is the case since most adult immigrants directly join the labor force as do eventually most of their immediate family members. But precisely because immigration affects the size, skill composition and geographical distribution of the nation's labor force, it also influences local, regional and national labor market conditions. Hence, organized labor can never ignore the public policies that determine immigration trends.

In the process, however, organized labor is confronted with a dilemma. If it seeks to place restrictions on immigration as well as to press for serious enforcement of its terms, the labor movement risks alienating itself from those immigrants who do enter (legally or illegally) and do find jobs which may make it difficult to organize them. If, on the other hand, they support permissive or expansionary immigration admission policies and/or lax enforcement against violators of their terms, the labor force is inflated and the ensuing market conditions make it more difficult for unions to win economic gains for their existing membership and to organize the unorganized. The main reason most workers join unions in the United States is, after all, is because they believe unions can improve and protect their economic well-being (i.e., their wages, hours of work, and working conditions). It also is implied that if organized labor were to become an advocate for immigrant causes (e.g., support for guest worker programs; the non-enforcement of employer sanctions against hiring illegal immigrant workers; or favoring mass amnesties that reward those who have illegally entered the country and are illegally employed), such positions would be adverse to the best economic interests of the vast majority of American workers who are legally eligible to work but who do not belong to unions. These legal American workers (i.e., the native born citizens, naturalized foreign born workers, permanent resident aliens, and those foreign born nationals given non-immigrant visas that permit them to work temporarily in the United States) would face the increased competition for jobs as well as wage suppression from such pro-immigrant policies.

Hence, immigration has always been a "no-win" issue for the American labor movement.

Nonetheless, a choice must be made. At every juncture and with no exception prior to the late 1980s, the labor movement either directly instigated or strongly supported every legislative initiative enacted by Congress to restrict immigration and to enforce its policy provisions. Labor leaders intuitively sensed that union membership levels were inversely related to prevailing trends in immigration levels. When the percentage of the population who were foreign born increased, the percentage of the labor force who belonged to unions tended to fall; conversely when the percentage of the population who were foreign born declined, the percentage of the labor force who belonged to unions tended to rise. History has validated those perceptions. To this end, the policy pursuits of the labor movement over these many years were congruent with the economic interests of American workers in general—whether or not they were union members (and most were not).

But by the early 1990s, some in the leadership ranks of organized labor began to waffle on the issue. This was despite the fact that the nation was in the midst of the largest wave of mass immigration in its history while the percentage of the labor force who belonged to unions was plummeting. In February 2000 the Executive Council of the American Federation of Labor—Congress of Industrial Organizations (AFL-CIO) announced it was changing its historic position. It would now support expanded immigration, lenient enforcement of immigration laws and the legislative agenda of immigrant advocacy groups. Subsequently, AFL-CIO officials publicly explained that the organization was now "championing immigrant rights as a strategic move to make immigrants more enthusiastic about joining unions."

In mid-2005, four unions who had belonged to the AFL-CIO disaffiliated and formed a new federation—Change-to-Win (CTW). The largest of these to disaffiliate was the Service Employees International Union (SEIU). While there were other issues involved in this split-up, SEIU had been the leading voice for the efforts to change labor's historic role on the subject of immigration within the AFL-CIO. It continues to be in its new role in CTW.

But the key point is that hitherto the labor movement had been the nation's most effective advocate for the economic advancement of all American workers eligible to legally work. With these position changes, the issue is open to question. Working people—especially those on the lowest rungs of the economic ladder—can no longer be assured that the most effective champion they have ever had is still there for them. The potential loss of public support for organized labor among the general populace may in the long run prove to be more costly than any short run tactical gains achieved by this shift in its advocacy position.

A BRIEF REVIEW OF LABOR'S PRE-1990 POSITION

Although efforts of working people to band together to form organizations to represent their collective interests date back to the earliest days of the Republic, it was not until the1850s that several craft unions were able to establish organizations that could survive business cycle fluctuations, anti-labor court rulings, and employer opposition to their existence. By this time, immigration had already become a controversial subject among the populace. Immigrants were used as strikebreakers and as an alternative source of workers that could be used to forestall union organizing. Already unions were contending that rising immigration levels were making it difficult to secure wage increases and improvements in working conditions. But the federal government had yet to formulate any specific policies to regulate the flow.

With the coming of the Civil War in 1861, labor shortages quickly developed in the industrialized North. As a consequence the first statutory immigration law was adopted in 1864 by Congress. The Contract Labor Act, as it became known as, allowed employers to recruit foreign workers, pay their transportation costs, and obligate them to work for them for a period of time for no wages until they could repay the transportation and often their subsistence costs during this period of virtual servitude. The program continued after the war ended. Free labor, quickly deduced that they could not compete with such workers who could not quit and who were not paid. The National Labor Union (NLU), the principle labor organization at the time, viewed the Contract Labor Act as an artificial method to stimulate immigration and to suppress wages for all workers. They sought repeal of the authorizing legislation and were successful in doing so in 1868. But the practice itself was not banned and it continued to flourish as a private sector recruiting device.

The NLU then shifted it attention to the large-scale immigration of unskilled Chinese workers who were also largely recruited through the use of contract labor. Employers consistently paid Chinese workers less than white workers (which is often done today with illegal immigrant workers). Naturally, the belief that Chinese work-

ers would work for considerably less than they would raised the ire of the white workers. Chinese workers were also used as strikebreakers. As the practice of hiring Chinese workers for low pay spread to the East from the West Coast, the NLU responded to the pleas of workers to end such practices. The NLU sought repeal of the Burlingame Treaty of 1868 with China that allowed Chinese immigrants to enter the country on the same terms as immigrants from other countries (although they could not become naturalized citizens).

By 1872, however, the NLU had passed away after as it unsuccessfully tried to become a political party. A new national labor organization, the Knights of Labor, had been formed by this time. It picked up the baton of trying to reform the nation's quiescent immigration system. Concluding that the revival of mass immigration was serving to depress wages for working people and to provide employers with ample supplies of strikebreakers that hampered union organizing, it too sought repeal of the Burlingame treaty and for legislation to end the practice of contract labor. They were unable to have the Treaty revoked but they did succeed in getting it amended to allow the United States to "suspend" the entry of unskilled Chinese immigrants. This was done in 1882 with the passage of the Chinese Exclusion Act that suspended Chinese immigration for ten year (and the practice continued until the law was repealed in 1943 and China was given a small quota). The Knights then successfully lobbied for passage of the Alien Contract Act of 1885 (and strengthening amendments in 1887 and 1888). This legislation forbade all recruitment of foreign labor by American employers under contractual terms. This ban remained in effect until 1952 when, unfortunately, it was repealed and this practice is today once more becoming a mounting concern for both organized labor and American labor in general (i.e., the H1-B visa issue, etc.).

Despite these successes by the Knights, by the 1880s their organizing appeal (that emphasized long run political reforms) had lost its following. The American Federation of Labor (AFL) came into being during this decade. Its member unions tended to focus on the achievement of short run economic gains in "the here and now."

Samuel Gompers was instrumental in the formation of the AFL. He was its president for all but one year between 1886 and 1924 and is generally recognized as being the most influential labor leader in American history. Gompers was himself an immigrant (as were many of the nation's union leaders during the movements formative years). Nevertheless, when the Supreme Court finally confirmed in 1892 that the federal government has sole responsibility for the formulation and enforcement of the nation's immigration laws, the opportunity for organized labor to press national political leaders to adopt finally an immigration policy that set limits, screens applicants, and that could be held accountable for its employment and wage consequences. In his autobiography, Gompers boasted that "the labor movement was among the first organizations to urge such policies." For as he famously stated: "we immediately realized that immigration is, in its fundamental aspects, a labor problem." For no matter how immigrants are admitted legally or enter illegally, they must work to support themselves. Hence, the labor market consequences should be paramount when designing the terms of the nation's immigration policy.

In 1896, the AFL leadership first addressed directly the issue of limiting immigration. Gompers at the AFL convention that year proclaimed "immigration is working an great injury to the people of our country." At its convention the following year, the AFL adopted a formal resolution calling on the federal government to impose a literacy test for all would-be immigrants in their native languages. As the preponderance of immigrants at the time were illiterate in their native tongues, the implicit goal of the requirement was to to reduce the level of unskilled worker immigration into the country. It renewed this effort in 1905 and did so at every subsequent convention until such legislation did become the law of the land in 1917.

When the Immigration Commission (i.e., the Dillingham Commission) issued its famous report in 1911 on the impact of the immigration on the U.S. economy and society, its findings confirmed the AFL beliefs that mass immigration was depressing wages, causing unemployment, spreading poverty and impairing the organizational abilities of unions. In the wake of the release of this historic report, the Immigration Act of 1917 was passed. It enacted a literacy test for would-be immigrants and it also contained the Asiatic Barred Zone provision that banned virtually all immigration from Asian countries. In 1921, the prospect of the renewal on mass immigration from Europe led to the passage of the Immigration Act of 1921 (a temporary step) and then the Immigration Act of 1924 (a permanent step). These laws imposed the first ceiling on immigration from Eastern Hemisphere nations in the country's history at about 154,000 visas a year. Within the overall cap, the law also called for differential country quotas based on national ethnicity that were overtly discriminatory. National origins became the basis for admission or exclusion under this adopted immigration system.

The AFL and most national labor leaders strongly supported all of these legislative initiatives. For instance, A. Philip Randolph, who would soon become president of an AFL affiliated union and who would later become a national leader of the civil rights movement in the 1940s-1960s era, wrote in strong favor of the adoption of these restrictive laws. He claimed the nation was suffering from "immigration indigestion." Mass immigration, he claimed was imperiling union organizing and was especially harmful to the economic welfare of African American workers who were just beginning to migrate out of the South in significant numbers. He even suggested that the appropriate immigration level should be "zero."

With the passage of these immigration laws as well as the onset of the depression in the 1930s and World War II in the 1940s, immigration levels fell dramatically while union membership levels soared to unprecedented heights. In the immediate postwar years, the AFL did support efforts to admit a limited number of refugees. But it also reaffirmed its belief that there was no need to increase the level of immigration or to change any of the existing immigration statutes. The AFL did strongly criticize the continuation of the Mexican Labor Program (popularly known as the "bracero program") that had been introduced as a temporary guest worker program during the war years but had remained operational after the end of the war because it was popular with agricultural employers. Organized labor, supported by emerging research findings, contended that employers regularly undermined the worker protections and wage requirements so that Mexican workers were exploited while American workers were discouraged from being employed in this industry. In the process, unionization efforts were thwarted. The AFL lobbied hard for its termination—which finally happened at the end of 1964.

After the AFL merged with the CIO in 1955, both new combined federation did join efforts launched by the Kennedy Administration and completed by the Johnson Administration in 1965 to eliminate the overtly discriminatory features of the prevailing immigration laws. Organized labor concurred with other reform advocates that the discriminatory features of these laws were hampering efforts by the country to even reach the low immigration ceiling that was in effect. Nations with high quotas could not fill them while nations with low quotas had massive backlogs. Organized labor supported efforts to find a new admission selection system that was not discriminatory. But organized labor agreed with the other reform groups of that time that there should not be any increase in the low level of overall immigration. The politicians that crafted the new legislation assured labor and the nation that passage of the Immigration Act of 1965 would not lead to a return to mass immigration. But it did—and it continues to do so.

In 1965 the foreign-born population was only 4.4 percent of the total population (the lowest percentage in all of American history). Union membership, however, was near its all time high—30.1 percent of the employed non-agricultural labor force were union members in 1965. But both trends were about to be sharply reversed.

The new legislation introduced family reunification as the basis for almost three-quarters of the available visas. The number of immediate family members whose numbers were not limited rose far faster than were anticipated. Furthermore, there were no enforcement teeth included in the new law—which gave implicit sanction to illegal entry. There were no penalties for those employers who hired them. Illegal entries quickly soared—especially in the Southwest where former "bracero" workers just kept coming—albeit illegally—after the program was terminated on December 31, 1964. A new admission category for refugees was quickly overwhelmed by political decisions to admit vast numbers of persons well beyond what was specified in the law. Thus, because there were so many unexpected consequences from the legislation adopted in 1965, immigration reform was back on the table by the mid-1970s.

The Select Commission on Immigration and Refugee Policy (SCIRP)(also known as the Hesburgh Commission) was created by Congress in 1978 in response to a package of legislative proposals by the Carter Administration to address the immigration policy crisis. SCIRP's findings led to the passage of the Refugee Act of 1980 and set the basis for the terms of the Immigration Reform and Control Act (IRCA) that was adopted in 1986. The key provision of IRCA was the enactment of a system of sanctions that made it illegal for employers to hire illegal immigrants. It also provided for what was believed at the time to be a "one-time" amnesty for those who had entered the country while the law was ambiguous. Once more, organized labor strongly supported these endeavors and it lobbied hard for their adoption. They also pressed for "an eligibility verification system that is secure and non-forgeable" and expressed strong opposition to "any new guest worker program" at the 1985 AFL-CIO convention. Following the passage of IRCA, the 1987 AFL-CIO convention adopted another resolution calling IRCA "the most important and far reaching immigration in 30 years" and "applauded the inclusion in that law of employer sanctions and a far-reaching legalization program."

A BRIEF REVIEW OF LABOR'S POST-1990 POSITION

When Congress turned to reform of the nation's legal immigration system in the late 1980s, organized labor opted not to take an active role in the legislative debates for the first time in its history. The AFL-CIO did not specify any changes it wanted but it did indicate what it opposed. At its 1989 convention, it stated its opposition to any efforts to reduce the number of immigrants admitted on the basis of family reunification; it opposed any suggestion to increase the number of employment-based immigrants—favoring greater investment in the nation's education and job training efforts to meet any skilled labor needs. It did seek a cap on the number of non-immigrant work visas issued to foreign performing talent and their traveling crews.

When the Immigration Act of 1990 did pass, it slightly increased the number of available family-based immigrant visas; it more than doubled the number of employment-based visas; it added a new "diversity admission" category for 55,000 immigrants admitted on a lottery basis from countries that had had low number of immigrants in the preceding 5 years. The cap on the number of nonimmigrant visas for performing talent was included.

At its 1993 Convention, the AFL-CIO drastically reversed itself from it past course. It passed a resolution that praised the role that immigrants have played "in building the nation." It proceeded to demonize unidentified critics of immigration reform—especially critics of illegal immigration (which by this time was a national issue again despite IRCA). It then called upon local unions to develop programs to "address the special needs of immigrant members and potential members." Clearly, a new immigration position was emerging within the leadership of the AFLCIO.

At the same time, the Commission on Immigration Reform (CIR) (also known as the Jordan Commission) had been created by Congress and had begun its task of assessing the effectiveness of the existing immigration system. It issued a series of interim reports, to which the AFL-CIO leadership seemed to be responding. When its final report was issued, it concluded that "our current system must undergo major reform." It recommended a 35 percent reduction in the annual level of legal immigration admissions; elimination of a number of extended family admission categories; no unskilled workers be admitted under the employment-based admission categories; elimination of the diversity admission category; inclusion of a fixed number of refugee admissions within the annual admission ceiling; no new guest worker programs; and a crackdown on illegal immigration.

The AFL-CIO responded by rejecting virtually all of these recommendations. It even denied that illegal immigrants were to adversely affecting the economic well-being of low skilled American workers. When Congress responded to the interim reports of CIR by introducing legislation in 1996 that sought to codify most of CIR recommendations, the AFL-CIO joined with a coalition of business, agri-business, Christian conservatives and libertarians to separate all of the proposed legal immigration reforms from the proposed comprehensive bill and then kill them. They them stripped-away the key provisions requiring employers to verify the Social Security numbers of new hires as a way to combat illegal immigration as well the proposal to limit refugee admissions. Thus, organized labor's leadership abandoned the efforts to improve the economic circumstances of low skilled workers in the country by reducing their competition with illegal immigrants. Their explanation was that their organizing efforts in many urban areas had led to more contact with concentrations of immigrants—many of whom were illegal immigrants. Hence, they concluded that they needed to take a more accommodative stance on these key issues that many immigrants cared about.

When the Clinton Administration announced in 1999 that it was essentially abandoning worksite enforcement of employer sanctions (and the subsequent Bush Administration followed suit), organized labor concluded that, as a matter of self-defense, it needed to become an advocate for the immigrant community in general and illegal immigrants in particular. The labor movement was increasingly finding that employers were violating the immigration laws with impunity. Unions do not hire employees; employers do—and more and more of them were hiring illegal immigrants for low skilled jobs in particular. Under these circumstances, unions were either going to have to abandon organizing significant sectors of certain industries or they were going to have to become supporters of immigrant causes in order to ingratiate themselves to those they were seeking to organize. They believed that if unions gave up organizing workers who were illegal immigrants, employers would have even more incentive to hire illegal immigrants. Thus, organizing illegal immigrants is not a matter of principle, it is a matter of necessity. Advocating for their protection, they concluded, was simply part of the organizing reality they confront.

At the October 1999 AFL-CIO convention, the pro-immigrant element made its move from the convention floor. Unions representing janitors, garment workers, hotel workers and restaurant workers argued that the labor movement needed to abandon its past and embrace immigrant causes if it is to survive. They sought to end the use of employer sanctions and they sought to enact another mass amnesty for those who had entered illegally since the last general amnesty in 1986. To avoid a public confrontation, the issue was deferred until the AFL-CIO Executive Council could take up the issue in February 2000. It did so and following that meeting it announced that it would seek to have the employer sanctions provision of IRCA repealed and that it would fight for another general amnesty for most of the millions of illegal immigrants in the country at the time. At the leadership level, at least, organized labor chose to become a supporter of the immigrant agenda—even if that agenda imperiled the economic well-being of vast numbers of the American work force.

CONCLUDING OBSERVATIONS

By 2006, the foreign born population has swollen to 12.1 percent of the population and almost 15 percent of the labor force. Union membership in 2006 had continued the decline that had begun following the passage of the Immigration Act of 1965—falling to only 12 percent of the employed nonagricultural labor force. The revival of the phenomenon of mass immigration is, of course, not the only explanation for the decline in union membership. There are multiple factors—all of which are beyond the scope of this testimony. But mass immigration is one of the key factors—especially because of the large component of the total flow are illegal immigrants (estimated in 2006 to number close to 12 million persons, of whom an estimated 7.4 million are illegal immigrant workers).

As the findings of two national Commissions as well as the bulk of credible research on the impact of immigration on the nation's work force, immigration laws need to be strengthen—not weakened. Employer sanctions set the moral tone for the rationale for existence of immigration policy as a worksite issue. One has to be eligible to work in the United States, not simply want to work in the United States. If that is the case, there has to be some way to restrict access to employment only to those who are permitted by existing law to work. Employer sanctions are designed to accomplish this feat. But to be meaningful, they have to be enforced at the worksite. Such inspections must become routine. Furthermore, the identity loophole of the use counterfeit documents must also be closed. There can be no more amnesties (no matter what euphemism is used). There has been no ambiguity in the law since 1986. Persons who have brazenly violated the law against their employment not only should not be at the worksite, they should not even be in the country. Certainly there is no reason to legalize their status so that they can continue to complete with American workers for whom the workplace is supposedly reserved. If illegal immigrants can be kept out of the workplace, there would no longer be any dilemma for organized labor to confront. The real onus is on government to get illegal immigrants out of the labor force.

Until that time, however, organized labor seems convinced that it has no choice but to abandon its traditional role of the past when it sought to monitor the impact of immigration on the well-being of the working people of the country. But in the process of becoming an advocate for the pro-immigrant political agenda, there is a heavy cost.

First, it means that it is unlikely that any organizing success of immigrant workers will be able to translate in to any real ability to improve the wages and benefits of such workers. None of the basic parameters have changed. As long as the labor market continues to be flooded with low-skilled immigrant workers (many of whom are illegal immigrants), unions will not be able to defy market forces that will serve to suppress wages and to stifle any opportunity to improve working conditions. New recruits will pay dues but they cannot expect to see much in the way of material gain form becoming union members.

Secondly, organized labor will run the risk of alienating itself from the millions of low skilled American workers who must compete with the waves of unskilled immigrant workers now in the labor market and the many more who will continue to seek access to the jobs it has to offer. The more organized labor speaks on behalf of illegal immigrants the sooner more American workers are going to realize that the labor movement does not really have their real interests at heart. Indeed, it would be harming them.

Third and last, the greatest danger that this shift in position raises is the prospect that the broader public itself will lose faith in the moral credibility of the labor movement. Is it actually a voice that speaks for the best interests of all working

people (members or not) which it often claims to be—or is it just another selfish interest group willing to sacrifice the national interest for selfish gain? The entire nation has a stake in the struggle to develop a viable and enforceable immigration policy. Future generation will be impacted by decisions made today. For this reason it would be wise if the leadership of organized labor today would reflect on the words of a labor leader of the past, John Mitchell, the influential President of the United Mine Workers, who in 1903 stated:

> *Trade unions are strong, but they are not invincible nor omnipotent. And it is well that they are not so, for the wisdom that they have shown has been largely due to the ever present necessity of appealing to the public for sympathy and support. In the long run the success or failure of trade unions will depend on the intelligent judgment of the American people.*

If the labor movement is to prosper, it should reflect on the wisdom of Mitchell's words when it comes to the design of immigration policy. In seeking to ally itself in the post-1990s with other societal groups that have wider political agendas, the leadership of organized labor is now supporting policies that are patently harmful to the well-being of the nation's labor force. What is bad economics for working people can never be good politics for unions. The "American people" know this.

Ms. LOFGREN. Mr. Serbon.

TESTIMONY OF GREG SERBON, STATE DIRECTOR, INDIANA FEDERATION FOR IMMIGRATION REFORM AND ENFORCEMENT

Mr. SERBON. Thank you.

First off, I would like to state that I do not represent my local or the National Union. This is my view on immigration as State Director for the Indiana Federation for Immigration Reform and Enforcement and also as a union member. Being a union construction worker and an immigration activist, I am in a unique position because I travel to many different job sites and have the opportunity to speak with coworkers about immigration, both legal and illegal.

Union workers have set wages for different trades. Since the influx of legal immigrant and illegal alien workers in our trade, I have witnessed the wage an illegal alien receives as significantly lower than that of what union scales are. Because illegal aliens are willing to work for lower wages than an American and a legal immigrant who is doing the same job, employers are willing to hire an illegal alien over an American citizen and a legal immigrant. If an illegal alien is competing for the job available, an American citizen and a legal immigrant will not get the job. This is just one of many problems I see with the current state of legal and illegal immigration in America at the present time.

The language barrier on a job site is a serious safety hazard with many illegal aliens not being able to understand even simple English. The problem will continue and may become worse because Senate bill 1348 does not adequately address the requirement to speak English in the current version.

I have witnessed immigrants taking chances no American would take to complete a job; for example, someone using a broken piece of equipment or not using personal protective equipment when using power tools that could result in an eye or a hearing injury. Some of the problems I have mentioned have led to higher accident rates among illegal alien construction workers. I believe that any law you pass increasing foreign workers will only make this problem worse.

Lately I have been asking my coworkers how they feel about this Senate immigration bill 1348 and its provisions to increase the amount of foreign workers into the country. Congressmen, I have never heard so many angry responses from my coworkers in all of the years I have been involved in the immigration reform movement. Congress cannot bring hundreds of thousands of uneducated, non-English-speaking people into America and expect our work environment and living standards to remain the same.

The single biggest complaint from my coworkers is about the amnesty or granted earned citizenship for people with no respect for the rule of law and a slap in the face to those of us who abide by the laws you pass. Lawmakers should never be in the position of advocating rewarding law-breaking. Our current immigration law does not exempt anyone illegally in America from deportation simply because they are hard workers.

The founder of the AFL, Samuel Gompers, wrote a letter to Congress in 1924 concerning immigration. He stated "America must not be overwhelmed. Every effort to enact good immigration reform legislation must expect to meet a number of hostile forces."

Currently, there are two hostile forces of considerable strength. One of these is composed of corporate employers who desire to employ physical strength at the lowest possible wage. They prefer a rapidly revolving labor supply at low wages to a regular supply of American wage earners at a fair and livable wage.

The other is composed of organizations, some radical, who benefit from illegal aliens. They oppose all restrictive legislation, suggesting that the immigration policy of the United States should be based in the best interests of immigrants, not the best interests of the United States and its citizenry.

America can not sustain mass immigration it is currently being asked to receive. We are on the undisputable path to a bleak future of limited air quality, limited water resources and poor living conditions, failing public education, and any resemblance of the American dream. What if so many people receive the American dream, and 1 day it were depleted?

Congressmen, history is repeating itself as this hearing is taking place. Self-interest groups are at the table, including the U.S. Chamber of Commerce, La Raza, big Corporate America, none of which have the best intentions for the American worker.

My whole reason for being a union member and an immigration reform activist is to support the rights of the American worker to be first in the job market and require a safe workplace with a fair, livable wage. In my opinion, large-scale increases in workers you plan to legalize and import will be a serious problem to my fellow American workers and to their quality of life.

Thank you.

Ms. LOFGREN. Thank you very much, Mr. Serbon.

[The prepared statement of Mr. Serbon follows:]

PREPARED STATEMENT OF GREG SERBON

Congressmen I want to thank you for inviting me to testify before the committee and allowing me to share with you my thoughts and views on America's immigration problem.

Being a union construction worker and an immigration activist I'm in a unique position because I travel to many different jobsites and have the opportunity to speak with co-workers about immigration.

Union workers have set wages for the different trades. Since the influx of legal immigrants and illegal alien workers into our trade, I have witnessed the wage an illegal alien receives is significantly lower than what union scales are.

Because illegal aliens are willing to work for lower wages than an American and legal immigrant who is doing the same job, employers are willing to hire an illegal alien over an American citizens and legal immigrant. If an illegal alien is competing for the job available, the American citizen and the legal immigrant will not get the job. This is just one of many problems I see with the current state of legal and illegal immigration in America at the present time.

The language barrier on the job site is a serious safety hazard with many illegal aliens not being unable to understand even simple English. This problem will continue and may become worse because Senate Bill 1348 doesn't adequately address the requirement to speak English, in the current version.

I've witnessed immigrants taking chances no American would take to complete a job. For example someone using a broken piece of equipment or not using personal protective equipment when using power tools that could result in eye or hearing injury.

Some of the problems I've mentioned have led to higher accident and death rates among illegal alien construction workers. I believe any law you pass increasing foreign workers, will only make these problems worse.

Lately I've been asking my co-workers how they feel about the Senate's immigration bill 1348 and its provision to increase the amount of foreign workers into our country. Congressmen, I have never heard so many angry responses from my co-workers in all the years that I've been involved in the immigration reform movement.

Congress cannot bring in hundreds of thousands of uneducated, non-English speaking people into America and expect that our work environment and living standards will remain the same.

The single biggest complaint from my co-workers is about the amnesty. Granting a path to earned citizenship for people who have no respect for the rule of law, is a slap in the face to those of us who abide by the laws you pass! Lawmakers should never be in the position of advocating and rewarding law breaking. Our current immigration law does not exempt anyone illegally in America from deportation simply because they are hard workers!

The founder of the AFL, Samuel Gompers, wrote a letter to congress in 1924 concerning immigration. He stated America must not be overwhelmed! Every effort to enact good immigration reform legislation must expect to meet a number of hostile forces. Currently there are two hostile forces of considerable strength.

One of these is composed of corporate employers who desire to employ physical strength (broad backs) at the lowest possible wage. They prefer a rapidly revolving labor supply at low wages, to a regular supply of American wage earners at a fair and livable wage.

The other is comprised of organizations, some radical, who benefit from illegal aliens. They oppose all restrictive legislation suggesting that the immigration policy of the United States should be based on the best interest of immigrants, not the best interest of the United States and it's citizenry. America cannot sustain the mass immigration it is currently being asked to receive. We are on an undisputable path to a bleak future of limited air quality, limited water resource, poor living conditions, failing public education and any resemblance of the American Dream. What if . . . so many people received the American Dream . . . one day it was depleted?

Congressmen history is repeating itself as this hearing is taking place. The self interest groups are at the table, including the U.S. Chamber of Commerce, La Raza (which means "the race") who primarily represent people who are Mexican, Big Corporate America, none of which have the best of intentions for the American worker.

My whole reason for being a union member and an immigration reform activist is to support the rights of the American worker to be first in the job market and require a safe work place with a fair, livable wage. In my opinion the large scale increase in workers you plan to legalize and import, be a serious problem to my fellow American workers and their quality of life.

Thank you

Ms. LOFGREN. Thanks to all of you for your testimony.

We will now begin our series of questions. Each of us is allotted 5 minutes, and I will begin.

I think that in listening to our labor witnesses, you have been actually very clear as to the outlines of what you think is required for any future immigration program, and although people sometimes say there are divisions in labor, I think there are certainly variations on a theme; but really, you have been clear and remarkably coherent, consistent, and together on that, and so that is very helpful to me as we move forward, knowing not only what the point of view is but why.

One of the things that is being debated in the Senate bill—and I am wondering if you have an opinion on it—is this point system. It troubles me in a sense because, just as with the temporary worker program where working people are sort of fungible units instead of individuals, for the future full of workers—and they would not just be Ph.Ds. Obviously, they would be people with skillsets and the like—they are sort of fungible units.

How do you think that would work in your union environment? If the four union representatives could address that.

Mr. HIATT. Congresswoman, I do not think that there is anything wrong with the concept of a system that actually measures the economic need for future flow. In fact, that is something that we advocate. I cannot pass judgment on the specific formula that has been suggested in the Senate or on the specific allocation of points. There are some very troubling aspects to it, among which include the fact that whatever that formula is would be set in stone for a very lengthy period of time and it has no flexibility.

Ms. LOFGREN. So it needs to be reality-based.

Mr. HIATT. It has to be reality-based. And I think that if you have a reality-based system that truly looks not just by employer attestations and employers' saying we need workers because we can bring in more vulnerable, exploitable labor that way, and you have a truly independent economic analysis of what is needed, in what sectors and when, that cannot be satisfied at prevailing wages domestically, then it is fine to have——

Ms. LOFGREN. You really need to test the market.

Mr. HIATT. That makes sense much more than an arbitrary cap or a political compromise. So I like the concept, itself, but I think it has to remain flexible and it has to be geared toward the economic realities in any given sector at any given time.

Ms. LOFGREN. Five minutes goes so quickly.

Since you are here, Mr. Wilson, I have a question, and we have not really had a chance to ask this.

We had, at an earlier hearing, Swift & Company testify about the ICE raids, and they were a basic pilot company, and they testified that they lost $30 million as a consequence of the ICE raid, even though they testified that they had tried to comply by using the basic pilot. They were not really able to testify about the impact of that raid on the individual workers, and I think most of those employees were represented by UFCW.

Can you talk about the impact on those workers, both legal and undocumented?

Mr. WILSON. Well, it is hard to do it in the time frame we have here, but let me say, I think the biggest problem from our perspective with the ICE raids is that you have law enforcement officers who essentially scoop workers up and sort them out; and so people

who were scooped up and taken as part of these raids were both legal immigrants and native-born Americans. You know, they divided people by the way they looked, and they decided you go over here, and you go over here, and we need to see your documents.

It was a very chilling—a very chilling situation that happened inside those plants. We had people who were taken hundreds of miles away from home simply because they did not have their documents with them. When they could prove that they were legal, they were left hundreds of miles from home and told, "Okay. You are free. You can go now." They were provided no transportation home.

You have heard about the breakup of families where there were kids left at schools or at daycare centers, and nobody knew who was going to get them or when. But a lot of those communities are still facing, you know, real tragedies about what happened in the ICE raids, and it is a human disaster. It really is.

Ms. LOFGREN. Thank you for that.

I just want to ask—and maybe I can ask Mr. Feinstein, since I have not directed a question to you.

As to the idea of separating the families from the employees on these temporary worker programs in the Senate, does eliminating the families provide you protection for the workers, that you can see?

Mr. FEINSTEIN. No, absolutely not, and we are strongly opposed to those provisions. Workers coming to this country have to be afforded fair and humane conditions, and that certainly does not qualify as one.

Ms. LOFGREN. My time is up, and I am going to try to set a good example of living within the time frame.

We have reserved the opening statement of the Chairman of the Committee for his arrival.

Would you wish to give your opening statement now, Mr. Conyers, or continue to reserve?

Mr. CONYERS. I would rather wait.

Ms. LOFGREN. All right then.

We will then turn to the Ranking Member, Mr. King, for his 5 minutes of questioning.

Mr. KING. Thank you, Madam Chair.

Again, I thank the witnesses for being here today. I am just going to start out by being—I am going to attempt to be succinct here.

When you grant a legalized status to 12 or 20 or more million people—and by the way, no one is talking about this as the amnesty to end all amnesties. That has already gone by the wayside. It is a presumption that this is an amnesty along the way to many more amnesties in the future.

This is a destruction of the rule of law, the most essential pillar of American exceptionalism. That is what is at stake here with this Senate bill and with what we are discussing here in the House, even though we do not have a bill before us. It is a destruction of the rule of law. It is a destruction of the middle class, and it is a suspension of the law of supply and demand. And I have heard it here in this testimony, and so I am not going to take care of what I think might be the end result for the Republican Party because

I do not know that there is a majority among the witnesses that might be able to speak to that. But I would then just submit my first question to Mr. Feinstein, and that would be—no. Let me make another presumption.

I am going to presume that because this law of supply and demand has been suspended from the logic calculus of the union leadership, I can only come to one conclusion. And if you try to be rational about it, it comes to this conclusion: which is, I believe, that the leadership in the unions have made a political calculus, and that political calculus is we are going to have to suspend an increase in wages and benefits for our rank-and-file members for a temporary period of time so we can get tens of millions of enough people in here who will give us the political power to eventually get what we really want.

So my question then to Mr. Feinstein, first, is: If one were to go through your testimony and redact everything that grants political power and leverage and influence to the unions, what would be left that you are advocating for for the general public that Dr. Briggs addressed?

Mr. FEINSTEIN. Well, I am not sure I completely follow the question, but——

Mr. KING. My question simply is, if you take out the political influence, the political power and those things, what is left? What does the general public look at? Because Dr. Briggs testified that he is concerned that the general support for unions will be eroded by this new position within the last 10 years or so. So what is left? What is the general public going to see that comes out of here that is really good for the average American citizen?

Mr. FEINSTEIN. Well, our position is that we need to fix a broken system, and the impetus, the goal, the objective of the reform that is needed is precisely to eliminate the downward pressures on the wages and working conditions of American workers.

Mr. KING. But you have to suspend the laws of supply and demand to do that.

Mr. FEINSTEIN. Quite to the contrary.

We feel that the status quo—what is happening now with people having to function in the shadows with an underground economy that is flourishing, is that there needs to be a fix in——

Mr. KING. Then why does your position so dramatically disagree with and oppose the philosophies of Gompers, see Cesar Chavez, the labor workers for centuries—not centuries, but generations in this country; why have you come to this new realization of this new position that supply and demand, that border enforcement, employer enforcement, keeping a tight labor supply; keeping a tight labor supply is good for workers in America, organized and not organized, merit shop and union shop employees? How can you come to this new conclusion here without some new basis for the economy?

Mr. FEINSTEIN. I would respectfully disagree with the analysis that this is a new and different, fundamentally different approach. I think that the labor movement has always stood for protecting the wages and working conditions of all American workers, and we believe that today in this climate that we are faced with now requires the kinds of solutions that we have proposed——

Mr. KING. My clock is ticking. I wish I had the opportunity to complete. I want to quickly say that wages in the packing plants in my area used to be matched that of teachers 20 years ago. Today they are half that of teachers, Worthington, Minnesota, the list goes on. But, Dr. Briggs, can you give me some light on this subject matter of how this law of supply and demand can be suspended in the minds of the leadership.

Mr. BRIGGS. It is hard to understand how you can favor amnesty programs that would essentially legitimize the presence of illegal immigrants, plus the massive chain migration that will come within the next 20 years, a massive infusion of people poorly educated, poorly skilled coming into the labor market without having awful adverse effects on the bottom of the labor market particularly and especially those people in the segment of the labor market where the impact of illegal immigration is so massive.

Ms. LOFGREN. The gentleman's time has expired. I would turn now to Mr. Gutierrez.

Mr. GUTIERREZ. Thank you. Thank you to everyone who has come from the panel. I would just like to ask Mr. Hiatt, the AFL-CIO, John Sweeney in particular, representing the AFL-CIO when Senator Kennedy and I introduced the SOLVE Act stood with us here outside this very building—it had a temporary worker program—could you explain to us what has changed since the SOLVE Act?

Mr. HIATT. As with AgJOBS, as with all these different bills we have to look at all of the elements of the bill and the context in which they occur. Even the SOLVE Act had all kinds of worker protections which have not existed in any of the bills that have been introduced then, several of which we would strongly urge be put back into existing bills. But I think that what has changed, we look at the trends that have existed over the past several years whereby both the undocumented immigration, illegal immigration, and guest workers have such a depressive effect on wages, on standards.

Mr. GUTIERREZ. Just because we are allies, they are not going to give me more than 5 minutes to have this conversation. I wish with friends they would give more time. I share with you concerns about the temporary worker program. The difference that I find and I would like you to respond to this is when I got here in 1993, the labor movement gave me a response to NAFTA. The labor movement said this is what we believe in, and the labor movement gave me particular parameters that helped us work together.

Have you submitted to anyone your new worker program to the Congress and just what it would look like and the parameters or are you just against any new worker program as part of comprehensive immigration?

Mr. HIATT. Not at all. In fact, you have one of the documents we have submitted to the record is our model for foreign workers coming in instead of temporary worker programs. Because we do see that there is a difference between the foreign worker programs on the one hand and illegal immigration on the other. It is clearly better to have workers here on status, but we do believe there is a much better alternative, not that there isn't going to be need for temporary worker and permanent worker programs.

So we do have an affirmative alternative and that is in the record, and I alluded to it in my remarks here. It is expanded upon in the written testimony. But for permanent jobs, which is so much of what you are trying to address in this new legislation as opposed to seasonal agricultural short-term work, we suggest people come in——

Mr. GUTIERREZ. Do you support the AgJOBS proposal?

Mr. HIATT. We supported it because the two farm worker unions, the UFW and FLOC, have both agreed as much of a political compromise as anything else that in order to address these problems unique to the agricultural sector that——

Mr. GUTIERREZ. So when it comes to the agricultural sector you do support the AgJOBS proposal. I just want to make sure since the AgJOBS proposal is similar, if not identical in many of its aspects, to how we would treat, number one, future flow of workers. As a matter of fact, future flow of workers under the STRIVE Act would come to this country and, number one, would get a 3-year visa renewable for 3 years, be able to come with their spouses and family members to the United States. After 6 years, they would be able to self-petition. That visa that they could would be portable. They would have all of the labor rights that any other American worker.

We included after the SOLVE Act, which the AFL-CIO did support, which did have a temporary worker program, we included recruitment of American workers as a required creation of a commission. New workers may not be employed, same working conditions, new workers cannot undermine labor organizing, independent contractors could not be allowed. I mean, we included many more provisions, I assure you, to protect workers.

And let me just end with this, I think that we have had—I have had, anyway, and I know Members of this panel have had a very rich experience with members of the AFL-CIO and organized labor, and I just want to make sure that as we negotiate, as you negotiate a contract for your members, as we negotiate something for the undocumented in this country and for future flows and our immigrant class in this country, that we take into consideration the same political realities that you shared with us, Mr. Hiatt, as it referenced the AgJOBS bill when we look at the totality of the issue.

I want to continue to strengthen because I know that we have common goals. Thank you so much.

Mr. HIATT. We appreciate that, Congressman. We are working with your staff and look forward to it.

Ms. LOFGREN. The gentleman's time has expired. The gentlelady from Texas, Ms. Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Let me thank the Chairwoman, and as always, the Ranking Member. We have had a marathon series of hearings which I think provide the grounding for a large, challenging journey to comport or to find some reconciliation with the Senate bill, and certainly now I think we are going to be called the cleanup batters, frankly, because America's eyes are now turning to the House of Representatives.

Might I just make the comment as it relates to labor, because your base is diverse. When you go out beyond the Beltway, even though leadership has taken a very progressive, if you will,

proactive response to the immigration issue, when you leave and go into your district there is a great deal of questioning among working people, among your union members. I think you are well aware of that.

So might I thank you ahead of time for the heavy lifting that is going to be required and as well, to extend a hand of friendship on how we work together to get the most effective people that solves the Nation's problems and really reinforces America's values, which is a Nation that provides opportunity, a Nation that builds upon her diversity, and is strengthened by her diversity.

So I have a series of questions, and I think you have indicated previously in your testimony that, as I understand it, that you raise some concerns about the temporary worker structure, whether it is called temporary worker or guest worker, and frankly, that is, I think, one of the glaring lines that most people don't understand.

They are welcoming, and I think 78 percent of the people believe that we should have earned access to citizenship. Their neighbors who are working, paying taxes, buying homes, going to school. They almost ask why not. And if you look at it from a security perspective, wouldn't you want to know who is in your neighborhood?

But help me, I will raise these two questions if the four representatives from the union movement would answer these. One, what do we do about the temporary worker need from the business community perspective and the way it is now structured. Number two, in some of our communities, the question is raised I am unemployed, I am not a union member, why can't I be employed? That is particularly a large question in the African American communities, in the underemployed communities, in rural communities.

And so a number of us have been working on this concept of a training, work-related, work retention, hire America first, some of that language is in there; recruiting of America workers, et cetera, so that more people can become stakeholders of fixing the broken immigration system. And I would welcome your thoughts on how that approach could be utilized as we move forward on a comprehensive immigration reform and, Mr. Hiatt, would you start, please?

Mr. HIATT. Thank you, Congresswoman. Let me try to combine the two, an answer to the two questions in one. One of the biggest problems under the current system is how easy it is for employers to recruit foreign workers without giving a chance to domestic workers who would be willing to do that same work at decent wages and with decent working conditions.

They know that they can—they can use labor recruiters who will shed all liability from the employer themselves, take on all the liability from the employers themselves, to bring in workers that can discriminate once they cross the border and the recruiters can recruit workers based on age, based on gender, based on race or ethnicity without coming under the reach of U.S. discrimination laws.

The employers, under most of our temporary work programs today, simply have to attest they have tried looking for domestic workers at prevailing wages, can't get them, and they have a need, and they are home scott free.

So we believe that the protections, whether you are talking about short-term temporary work where there needs to be a temporary worker program, or the incredible expansion that the proposals today would look to in expanding so-called temporary worker programs to permanent jobs, has to protect the workers in your district, U.S. workers in your district by ensuring that not only where there is a legitimate need because there truly are no workers in the local labor market, but any of the other labor markets in this country who are willing to do those jobs at decent wages and working conditions.

Then and only then can you bring in workers. And when you do, you bring them in at the same rates at the same conditions as domestic workers with permanency so that you don't have two tiers, two classes of workers.

When Congressman King was asking why has the labor movement changed on this, on favoring one group of immigrant workers over our U.S. born workers, that simply is not the case. We believe that we are working on behalf of both sets of workers here because we are trying to avoid a two-tiered system.

Ms. LOFGREN. The gentlelady's time has expired. I would recognize the gentlelady from California Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Madam Chair. I want to thank all the witnesses for being here today and testifying. I have several questions that I want to run through and have a limited amount of time, so I ask you all to be brief. The first question is a yes-or-no question for all the panelists. Do you generally believe the U.S. has done a good job of enforcing labor laws respecting wage and hour, workplace safety, and rights to organize?

Mr. HIATT. No, it has not.

Mr. FEINSTEIN. No.

Mr. WILSON. Absolutely not.

Mr. GOLDSTEIN. No.

Mr. BRIGGS. An awful job.

Mr. SERBON. No.

Ms. SÁNCHEZ. Thank you. The second yes-or-no question for the entire panel. Would increased enforcement of these laws in conjunction with a worker program help improve wages, safety and labor rights?

Mr. HIATT. Absolutely yes.

Mr. FEINSTEIN. Absolutely.

Mr. WILSON. Yes.

Mr. GOLDSTEIN. Yes.

Mr. BRIGGS. Of course.

Mr. SERBON. Maybe.

Ms. SÁNCHEZ. Let the record reflect I almost got unanimity on two questions that I asked. My third question is for Mr. Feinstein. So long as the employer controls the visa process, can we hope to raise workplace standards?

Mr. FEINSTEIN. No, I don't believe we can.

Ms. SÁNCHEZ. Thank you. Mr. Hiatt, the new temporary worker program in the bill currently being debated by the Senate would force workers who have worked in the U.S. for 2 years to leave the U.S. For 1 year before they could come back for another 2-year stint. These workers would be forced to leave no matter how valu-

able they had become to their employers or their coworkers; for example, if they were working in an organizing drive. And I am concerned about the fact that the bill seems to treat workers as fungible units rather than the hard working individuals they are, that contribute value to businesses and to their communities. What impact do you think such a schedule would have on labor unions working to organize these workers and their U.S. coworkers?

Mr. HIATT. We completely share your concern, and just as with so many other aspects of these temporary worker programs that keep the workers from feeling an investment in their communities, investments in their unions, investment with their coworkers, it would make it much more difficult.

Ms. SÁNCHEZ. Thank you. When we talk about future flow worker programs one of the things that we tend to hear a lot about is whether there are enough U.S. workers to do the jobs that are needed for our economy, and I agree that there are jobs that U.S. workers would take if the wages and the benefits were high enough. I don't completely agree with you, Mr. Wilson, that every single job is a job that a U.S. worker would take if the pay and benefits were high enough, because I think that our economy has moved in a different direction in terms of information and technology, and it continues to move that way, and so I think there comes a balancing point at which you can't pay somebody $75 and hour to do certain jobs because then the products that result from that, people won't pay the increased cost.

I think in most cases, you are correct, but I don't agree 100 percent with that statement that you made.

But one thing that does trouble me is this definition of need in terms of sectors where they say they need workers because I think that there are U.S. workers that would fill some of those jobs, again, if the wages an benefits were high enough. I am wondering, Mr. Wilson or Mr. Camacho, perhaps if you have any ideas as to how we would ascertain whether there was, in fact, a labor need or how you would define need for employers who are looking to bring workers from other countries to fill those jobs. Any ideas? If you could respond in writing at a later date.

Mr. GOLDSTEIN. I am filling in for Mr. Camacho of the United Farm Workers, I am Bruce Goldstein with Farmworker Justice.

Ms. SÁNCHEZ. My apologies.

Mr. GOLDSTEIN. We believe that employers in agriculture need to improve wages and working conditions to attract farm workers and retain farm workers and reduce turnover in these jobs. Our hope is that if we can pass AgJOBS and legalize most of the farm labor force, that the employers in various ways will be required both economically and legally to improve conditions to stop the high turnover that leads to more migration. We intend, through union organizing, to achieve that goal, but we will need assistance from Congress in a variety of ways and the Administration to promote union organization and also to enforce labor laws to take away the incentive that employers have to bring in undocumented workers.

Ms. SÁNCHEZ. Mr. Wilson.

Mr. WILSON. I think there are ways we can ascertain whether there is a need, but I say the way you cannot do that is simply by

an employer attestation. An employer attestation alone will not do that.

Ms. SÁNCHEZ. I appreciate your answer. Finally, Mr. Hiatt, in the few seconds that remain, if we can eliminate the underground economy through a permanent visa program or the right kind worker program, how much healthier would our economy be in terms of wages, workplace safety, and tax revenue to this country?

Mr. HIATT. I think it would be significantly healthier, Congresswoman. I am not sure I can answer that in numerical terms, but there are many studies in addition to all the anecdotal evidence about the depressive effect that the current policies are having. I don't think there is any question it would be a lot healthier.

Ms. SÁNCHEZ. Thank you. I yield back.

Ms. LOFGREN. The gentlelady's time has expired. Mr. Ellison, the gentleman from Minnesota is recognized for 5 minutes.

Mr. ELLISON. Let me thank all of the panelists and not just thank you for coming today, but for the work you have done over the years. I really appreciate it for working people. I want to ask a question that is on topic, but a little slightly—it is an issue I haven't heard enough about. You may not be prepared to discuss what I will ask you, but I ask you for your best if you could.

How has our trade policy impacted immigration? I know all of you are concerned about trade policy, it is something that you are focused on. I want to talk about whether American trade policy and how it has driven immigration, and I wonder if any of you would be willing to offer a viewpoint on the topic. Mr. Wilson.

Mr. WILSON. I would like to touch on that a minute. We believe that the enactment and subsequent reaction to NAFTA has had a tremendous impact on immigration. That when—I am not an economist, but I pretend to be one sometimes, and I would say when you drive down the price of corn in Mexico the way we have, and you drive people off the farms, people are going to look for ways to sustain themselves and take care of their families. Part of the reaction to that has been how people have migrated from places where they couldn't support themselves, to doing what they need to do to come to a place where they can support themselves. That has driven a lot of the immigration from Mexico to the United States.

Mr. ELLISON. Mr. Wilson have you or any or your colleagues on the panel, do you have any documentary evidence, I am not asking for evidence of causation, because that is tough, but just even correlation. I mean we had one level of immigration pre-NAFTA, we got it, an then what happened to the rates after that?

Mr. WILSON. I don't have anything at hand. I am sure there are studies out there. We can try to provide that for the record.

Mr. ELLISON. Dr. Briggs.

Mr. BRIGGS. The mistake, I think, was not including immigration as part of NAFTA. I opposed NAFTA because it didn't have any labor standards. I think most of our trade policy has been a disaster for working people. It has not had any labor standards imposed on countries that are being able to produce products abroad and bring them into the United States at lower cost simply because there are no labor standards those countries. Firms in this country have gone there to produce. So I think they are linked.

Mr. ELLISON. Right now there are two front burner hot topics in Congress, one is immigration, the other one is trade. And I would love to hear them talked about together much more because my intuition tells me they are tightly linked together. Does anybody on the panel have any information on statistical information, any kind of regression analysis in terms of what impacts and what drives immigration and what impact trade has on it. Do you have information on that. Does anybody have any information on that. Does anybody know where I can find information on that?

Mr. HIATT. We will get you some, Congressman.

Mr. ELLISON. Let me ask you this, what does your intuition tell you, and I thank you, Mr. Wilson, for jumping out there and giving me your views, what does your intuition tell me about how important trade policy is on the conversation we are having today?

Mr. FEINSTEIN. I would concur with Mr. Wilson's remarks that there clearly is a correlation, an important correlation, and often overlooked correlation.

Mr. ELLISON. Why is it so overlooked? It seems like, I mean, the common narrative is America is this great job magnet and people are coming here just to work, and that sounds like that has some level of plausibility. But I also believe that people in Mexico probably like their families, their communities, and probably don't want to leave them unless they have to, yet many of them are. So it can't just be the attraction of work here, it must be something going on there, and maybe it is related to how—Mr. Hiatt.

Mr. HIATT. I was going to say I think it is overlooked for much the same reason, that the assumptions about globalization, when people talk about the benefits of globalization growing the world economy, unfortunately much too often they are talking about for a relatively small slice of the world's population and ignoring the impact, the negative impacts that we are seeing with the widening income gap not only in this country, but around the world.

The potential globalization is fantastic but the realities are very much underplayed by the media, by policy makers, and, as you say, are not getting enough attention.

Mr. ELLISON. If we accept Mr. Wilson's premise that dumping cheap corn and grains in Mexico is wiping out small farmers, which is making them have to leave their home to come find work, how high—I mean can we ever build a wall high enough to address that problem?

Mr. HIATT. Not at all.

But the answer is that you can not separate the enforcement of labor and employment laws from the enforcement of immigration laws. If you don't do something so that you have adequately funded and vigorous enforcement of our labor and workplace protections, then no wall is going to deal with these immigration problems.

Ms. LOFGREN. The gentleman's time has expired.

Mr. ELLISON. Madam Chair, would I be able to submit the documentation that I hope to get for the record?

Ms. LOFGREN. Certainly. That is correct. The gentleman from California, Mr. Berman, is recognized for 5 minutes.

Mr. BERMAN. Thank you, Madam Chair. I apologize for missing some of the questions, but very interesting testimony. I agree with the Chairwoman about what you said, the Ranking Member, just

as I was leaving seemed to be making a point about unions' support for any status adjustment for the millions of people who are now in this country without documents, without status, call them what you want, undocumented workers, illegal immigrants, that that was—he didn't put it quite that way, but I heard it that way, a crass decision to lower, to suppress wages and dilute benefits and working conditions in order to sign up more members.

Now one of us, one of us is not in the real world. Those people are here. They are having that effect now. And why something which under different kinds of conditions that for me make it very different than what is referred to as an amnesty, but give them a way in which they can legalize their status in addition to the tremendous benefits to our country in dealing with that problem, gives them more freedom to fight for their rights, why that is an action to depress, further depress wages, I don't understand. I just wanted to take exception.

This is not about some new wave, this is about people who are here and working now in the situation where they can be readily and are, in many cases, exploited, and it is an effort to correct that situation. I don't think it is a crass decision to sign up members. It is to give these people an ability if they want to feel like they can engage in collective bargaining and the benefits of that process in order to keep their wages and the wages of other workers from being depressed.

What I would be curious, if the panel, different members of the panel could just react to that notion. Mr. Hiatt, if I recall correctly, you talked about—there is a distinction here that I think you made between the notion of seasonal workers and the way we are now talking about temporary workers. When I hear people talk about temporary workers, and it is in the context of demographics, we are going to have jobs that the existing American workforce will not be able to fill.

They are really—no jobs are permanent in one sense, but in the context in which we think about this, they are really permanent jobs but we are, and to some extent, the Senate bill does this, we have designated the people who will fill those jobs as temporary workers. They will be year-round jobs, they will continue to exist, but we will funnel workers in those jobs and then out of those jobs because temporary means temporary.

So we deem these permanent new jobs to be temporary jobs by calling the workers who will fill them temporary workers. And that is different than a seasonal kind of work where there may be a greater justification for having temporary workers fill, perform that work, leave, come back the next season, leave. They are also sort of permanent jobs but they aren't full-time jobs, and perhaps there are particular difficulties in recruiting U.S. workers for those kind of jobs because it requires either being employed a large part of the year or leaving another presumably permanent job or stringing together a series of the right kinds of seasonal jobs that may not be very practical.

I just realize I have talked my time, right. I guess I won't even pretend to ask a question.

Ms. LOFGREN. Thank you, Mr. Berman. But it was very interesting to listen to.

Mr. GOLDSTEIN. Can I answer? Earlier, Mr. Gutierrez raised the question about that very issue and it does need to be understood that AgJOBS is about the H2-A provisions of the guest worker program, it is about seasonal jobs that by definition last 10 months or less. That is not a model for year round permanent jobs.

Ms. LOFGREN. The point that Mr. Berman made very eloquently.

Mr. WILSON. If I could add to that briefly. In the case that I talked about, the Sam Kane Beef Company, the Bush administration Labor Department approved those temporary workers for what they described as the "11-month meat cutting season," something which we are completely unfamiliar with.

Ms. LOFGREN. The gentleman's time has expired. The point is well taken.

Mr. BERMAN. It is the Lent month without meat.

Ms. LOFGREN. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. I will be very brief. I thank Professor Berman for his customary illumination. I think it is difficult—I think the whole immigration issue has to be put into the context of the globalization of the economy, if you will, and I think it is Mr. Hiatt that talked about the benefits of globalization seeming to get stuck with a very small slither of the population, whether it be domestically or internationally.

We talk about the flow of labor back and forth over national boundaries. I found it interesting that President Fox from Mexico felt comfortable making the statement by the year 2020, there will be no immigration into the United States because the Mexican economy will absorb; will have need for a much more expanded workforce. I would be interested in your comments on that particular statement. But at the same time, and I pose this to those of you in the labor movement, what is happening in terms of the globalization of the union movement.

There was an interesting piece by Harold Meyerson back about a month ago talking about unions for a global economy and the mergers going on between two British unions, and I think it is the steel workers. If the benefits of trade, of the global economy are going to be allocated and diffused throughout societies, isn't it going to be necessary for the organized labor movement to go global, and when is it going to happen? Are there any visionaries left in the organized—within the labor movement to proceed in that direction?

Mr. HIATT. Congressman, there is a lot of interesting work going on in terms of the globalization of the labor movement. The example you mentioned, there was a long article about it a couple of weeks ago in *The Financial Times* about the steel workers and a couple of those British unions. Even in less formal ways, there is collaboration going on between unions and the labor movements in the various countries on trade, on world migration, and on a lot of these other issues, how to deal with multinational companies.

I think the point that you made is very good, and the point that several of you have made about the tie into trade is critical because until we have raised the labor standards in all these countries, which is at the heart of our trade policy and our brother and sister trade union movements' trade policies, then there will be a magnet

effect in the immigration policies of different countries where employers will have it easy exploring labor. That is the connection.

Mr. DELAHUNT. Let me see if I can reframe it. I hear from those that are most concerned about immigration and the hordes of immigrants that are invading the country that they would be wise to advocate for trade agreements that incorporate labor standards and advocate on behalf of the globalization, if you will, of labor movements. It would be, I think, an interesting effort if we could work together in terms of pushing that agenda forward. It will be interesting to see as we proceed with this how ardent they are in terms of helping workers in other countries so that we don't find ourselves in this particular conundrum.

Mr. FEINSTEIN. If I can add, I certainly agree with that, as Mr. Hiatt said, the labor movement is certainly cognizant of what you are saying and waking up to the fact that employers are global employers, and right now the president of the service employees union is in China, and I hear recently in the last week, another officer of the union was in Mexico. I think there is an increasing recognition that it is absolutely critical that the labor movement itself globalize.

Mr. GOLDSTEIN. Just very briefly, *The New York Times* today, page 3 has an article about the Farm Labor Organizing Committee organizing in Mexico, and a terrible price being paid for it, but it is necessary to be done.

Mr. DELAHUNT. I look forward to the Ranking Member and others in the minority on this Committee advocating in the future for labor standards in trade agreements.

Ms. LOFGREN. The gentleman's time has expired. The Chairman of our Committee, Mr. Conyers, we had reserved time for your opening statement, if you wish to give one and you also have your opportunity to ask questions, Mr. Conyers, should you wish to do so now.

Mr. CONYERS. Thank you. It seems like, among the Democrats and the Congress, the biggest problem is guest workers. It seems like among the Republicans the biggest problem is how do we deal with the 12 million that are here. And I would like to look at the guest worker problem with you because that is the one that is troubling to me.

Before I do that, I wanted Dr. Briggs to know I received his letter and his article. I have glanced at the letter and not read the article, but I will be back in touch with you and we will continue our discussion. You shocked me by saying that you were against NAFTA because they didn't include labor immigrant—immigration issues. I was against it for that reason and many more. So there may be points in this discussion that may be more common between us than meets the eye.

Mr. BRIGGS. Sure.

Mr. CONYERS. A hypocritical term, a guest worker, no rights. It is almost involuntary servitude. It is an embarrassment to the Nation. And here is a nearly evenly divided Congress trying to work out the perfect solution which obviously, if and when I write a bill, it might contain a lot of things that are just not reasonably do-able.

But give me a brief take on the guest worker provisions with my friends of labor, would you please.

Mr. HIATT. Congressman, we completely agree with you, it is a hypocritical concept and especially when, as Congressman Berman was saying, we are talking about coming in for work that is not just for a brief guest period, but a long-term period, and that is what is so much now of the legislation being considered would be. We believe that it is a concept that is contrary to everything this country stands for, both in terms of the workplace, and in terms of the community as well, the notion that people would be expected to come in and not put down roots in their communities.

In our proposal, we appreciate the notion that there need to be alternatives to the magnet of illegal immigration. So I think that the motivation among many people is fine, but I think that you can fix it in a much better way. In the case of permanent work, we should look at the green card program that exists now, the permanent visa program. If there are permanent jobs in certain industries where there really is a need and not just a question of trying to attract workers in to work for substandard wages and benefits, then bring them in but bring them in on a permanent basis with all of the rights of permanency from the beginning. It doesn't do any good to say there with will be a path for permanency 3 years down the road or 6 years. That may be fine for that individual at some point, but for the system, it doesn't a do any good because the employers are still able to game the system and drive down standards during that period of time. That is the problem with the guest worker concept.

Mr. CONYERS. Mr. Feinstein.

Mr. FEINSTEIN. I think we essentially agree with what was just said. SCIU and UNITE HERE do not favor a guest worker program; they are strongly opposed to it. They recognize the need for future workers in this country, and that system has to be based on certain fundamental principles. They are quite consistent with what was just said.

Workers coming to this country in the future must be able to stay. They must have that option. There must be labor protections that are the equivalent to every other American worker. There must be mobility. Future workers have to be able to move from one employer to the next. And there must be an accurate way of determining what is the appropriate number and level of people who should be awarded the opportunity to come to this country. Those are all critical elements in any kind of program of new workers.

Mr. CONYERS. Mr. Wilson.

Mr. WILSON. I agree with what my colleagues have said, I think the problem, and I think you hit the nail on the head, is that existing programs are shameful. They are a scandal that if anyone would look at, it would make all of us ashamed. But I think the problem is that despite writing strong enforcement provisions into the law, the truth of the matter is they are not enforced and what happens in the real world is people are abused and exploited.

In spite of the best intentions of the things that Congress has done, and there is a real disconnect between what we would like to have happen for the future and the way people are really treated in the workplace.

Mr. CONYERS. Mr. Goldstein.

Mr. GOLDSTEIN. Well, guest worker programs have obviously been extraordinarily problematic. In agriculture, they are kind of exhibit A for this country, farm workers are exhibit A on how guest worker programs tend to operate. There needs to be a lot more protections, and they are not in a lot of these proposals. I do think that the United Farm Workers Union, for years, has—well, some of us farm workers advocates, we prefer to abolish guest worker programs altogether, but there is a certain reality that sometimes you have to face, some people disagree with that proposal, and so the United Farm Workers Union has reached a reasonable compromise on agriculture jobs.

Mr. CONYERS. Dr. Briggs.

Mr. BRIGGS. I believe the guest worker program is fatally flawed and I gave testimony before the Senate 3 years ago on this precise issue. I will send you a copy of that, too. Every immigration commission has said no more guest worker programs and listed all the reasons why these programs cannot be made to work. If there is one thing that the research is overwhelming on, it is no guest worker programs. With the past experiences, these things cannot be made to work. I would urge you to go back to the Jordan Commission, that is the best study ever done on immigration, and the research done to back up their recommendations. All of them overwhelmingly said no guest worker programs.

Mr. CONYERS. Thank you. Mr. Serbon.

Mr. SERBON. Thank you. In my opinion, what reason would an American employer employ American citizens when they can constantly get a flow of cheap labor, if you want to call it that. These people will be exploited. You get 2 years and you are gone. They can constantly turn over their workforce. I have gone to jobs where the whole workforce was immigrants, illegal or legal, whatever, but if they can constantly get new workers every 2 years and get rid of the old ones, you are not getting any benefits, when you are here, you leave, and it is just abuse in my eyes, and I don't like to see anybody abused and I believe this system would be abused, and also I believe that it seems like H1-B is a program that every time you turn around they are trying to increase the numbers and this is what will happen with this program in my eyes.

Mr. CONYERS. I can't believe my ears that all of you almost agreed with each other. That is an amazing situation. Of course, you know the pragmatic problem is that we need a zillion people to do the seasonal work, and isn't that, Mr. Goldstein, the real thing that keeps us from all doing what we all agree ought to be done? Is that just about it? When you come—I mean, the agriculture people would hemorrhage if they heard this testimony and that we had enough people in Congress to really put this program in jeopardy.

Mr. GOLDSTEIN. Right. Of the 2½ million farm workers, 1.4 million of them are undocumented. So if you deport every one of them, I don't know what agribusiness is going to do, create a guest worker program to provide them foreign labor so we can produce our fruits and vegetables? I don't know. To me, it seems likes AgJOBS is a realistic response to a situation: you offer people who are here on undocumented status working in agriculture and can prove it and are not criminals, give them the chance to learn illegal immi-

gration status by working 3 to 5 years in agriculture. It is good for employees, its good for the country, it is good for workers.

Mr. BRIGGS. The problem is if you keep giving agriculture a source of extra labor. As the Voss Commission pointed out, the fundamental program in agricultural labor, is the people can't earn a decent income. The people that work in the industry are kept at poverty levels. If you add more workers into that industry, even seasonally, you simply reduce the opportunities for overtime, you keep no pressure for wages ever too go up, and you make it a self-fulfilling prophecy that American workers won't do this work. If we had to rely on the market, wages would go up. Farm labor costs are an incidental, minor part of final products costs——

Ms. LOFGREN. The gentleman's time has expired. I think we have concluded but there is a unanimous consent request that Mr. Berman, the author of the AgJOBS bill, be allowed to ask one question. Without objection, that request is granted.

Mr. BERMAN. Could I extend that the unanimous consent request just to make a parenthetical comment?

Ms. LOFGREN. If you make it part of your question, yes.

Mr. BERMAN. The reason AgJOBS—there is only one reason that I was involved with a bill that didn't repeal the H2-A program, it is because I couldn't have passed such a bill. And my question really for—and the union went through a tortuous problem of accepting certain things that are an anathema to them in order to get something that was more important.

My question to Mr. Hiatt, Mr. Feinstein and Mr. Wilson is in our search to try—if the five of us and Ms. Sánchez and Mr. Delahunt had the power to write this bill, so much of what you said I agree with completely, we would do it. If the consequence of—I want you to deal with the consequences of what is going on right now in the effort to bring up the wages of low paid workers and hold certain industries in the United States, in the world, we are dealing with in this Congress, with this Administration in our pursuit of the most sensible, rational logical approach to achieve our values and goals, we end up with nothing happening, and what does that mean for working people in this country and the country?

Mr. HIATT. Congressman, I think if we were talking only about agricultural jobs——

Mr. BERMAN. I am talking about the whole.

Mr. HIATT. I understand. A political compromise that had to include the continuation of temporary guest worker programs, and we could try to get as many of the protections that, for example, we have all agreed to with the immigrant rights groups, all the labor movement that has been submitted today through the leadership conference on civil rights, there may be a compromise there that we could live with, but what is so different here that you pointed out, Bruce Goldstein pointed out a few moments ago, and I wish I had responded to Mr. Gutierrez about is how the political compromise that is under discussion now extends the guest worker concept to permanent jobs, not just to seasonal and short-term ones.

So our answer to your question would be that leaving people worse off today, leaving our U.S.-born workers and immigrant workers worse off today under that type of compromise, would be

worse than with no bill at all. We would rather wait and fight next year, or in 2009, for a bill that does not move us backwards.

Mr. FEINSTEIN. If I could say that the question you pose is obviously an enormously important one. The status quo is simply not acceptable. It is unacceptable in all the many ways in which have been described today, and it is a condition that needs to be changed.

As to whether or not there is sufficient space in this political environment to make the kind of changes that are necessary, that is the question of the moment. What is going on in the Senate, the debate in the Senate gives us all enormous concern. But I would say this, that the fact that the leadership of this Committee, the Members of this Committee are in the middle of this process gives some encouragement and hope that if anybody could do it, we are certainly hopeful that you can.

Mr. WILSON. The challenges of how to do a political compromise on immigration are enormous. They always have been. And I think the main problem with the compromise that is out there now is it really is a question of whether we are better off with this or better off without this. The challenge we face is at every step along the way is to offer the kinds of suggestions that can improve it, hoping that it will get better and fearing that it might not.

I don't have an answer for you, but the most critical part I would say that we would have to include is to make sure that there is the kind of enforcement that really happens, not just from the government, but give people a private right of action. You have got to do that because the existing regime, not just the existing Administration, but the existing regime, is not going to make it happen. We are going to have more scandals in guest worker programs in the future just as we do today.

Ms. LOFGREN. The gentleman's time has again expired. Actually, all time has expired. I would like to thank all of the witnesses for their testimony today. Without objection Members will have 5 legislative days to submit any additional written questions for you which we will forward, and we ask that you answer as promptly as you can so that those questions can be made part of the record. Without objection, the record will remain open for 5 legislative days for the submission of any additional materials. I think this hearing today has helped a great deal to illuminate the issues that we have before us. It is actually extremely interesting that in many points, the Democratic and the Republican witnesses see this in the same way, and our challenge will be to move forward with a comprehensive immigration reform bill that addresses these very important issues successfully. So we do thank you for your testimony and your time and this hearing is adjourned.

[Whereupon, at 10:57 a.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

"THE AFL-CIO'S MODEL FOR 'FUTURE FLOW': FOREIGN WORKERS MUST HAVE FULL RIGHTS," SUBMITTED BY JONATHAN HIATT, GENERAL COUNSEL, AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

AFL-CIO's Model for 'Future Flow': Foreign Workers Must Have Full Rights

A REAL SOLUTION TO THE CURRENT IMMIGRATION CRISIS requires that we address the "future flow" issue, that is, the conditions under which workers and families will be coming into the United States in the future. The jobs foreign workers will be filling are permanent jobs. There are two choices for these workers to come into our economy: a path that allows workers to come in with full rights and as full members of society, or one that invites workers in for a limited period of time, with limited rights, as temporary workers.

So far, business and many pro-immigration advocates have focused only on a temporary worker program, without recognizing that a viable alternative exists. The choice is ***not*** between the status quo and a new guest worker program, as they purport, but between a path that already exists and has been the bedrock of our immigration policy—one based on permanent status—and a path that, by definition, brings in temporary workers to do permanent jobs—that is, a new guest worker program.

Our solution for future flow is simple: Fix the existing permanent employment system.

Scholars have long recognized that the genius of U.S. immigration policy throughout our history has been the opportunity afforded to immigrants for full membership in society. The multi-year study conducted by the bipartisan U.S. Commission on Immigration Reform (better known as the Jordan Commission) concluded that "a properly regulated system of ***permanent*** admissions serves the national interest" and warned that a temporary worker program would be a "grievous mistake."

We recognize that the permanent employment system isn't working, mainly because it is based on a system of arbitrary caps that are the result of political compromises that have no relation to economic realities. The current number of visas available for permanent jobs was set by Congress more than a decade ago and has not changed. Yet the fundamental policy behind the permanent system remains valid: Employers that demonstrate they cannot find workers in the United States to do jobs that are permanent (that is, not seasonal or temporary in nature) should be able to bring in foreign workers under conditions that guarantee there will be no negative impact on the wages and working conditions of other workers in that industry. The key to protecting U.S. labor standards is that the new foreign workers should come in with full rights.

Our solution is based on the following principles:

- The number of employment-based visas available should be set each year by the U.S. Department of Labor based on macroeconomic indicators and the needs of particular industries.
- There should be no country caps or arbitrary caps on particular occupational classifications.
- If the Labor Department determines a particular industry is experiencing a long-term labor shortage and is in need of 10,000 workers in the year 2008, for example, that industry would be allocated 10,000 visas for that year.
- If the Labor Department determines there is no labor shortage in that same industry the following year, no visas would be allocated to the industry for that year.
- Employers in the industries designated by the Labor Department as experiencing a long-term labor shortage would be required to prove they have attempted to recruit workers already in the United States to fill those jobs at the prevailing wage and under other conditions that will not cause a depression in wages or working conditions in that industry.
- The prevailing wage would be determined by the appropriate state workforce agency with data based on geographical regions of the United States.
- Once an employer's petition to hire a foreign worker is approved, the job would be listed on a computerized job bank available at U.S. consulates around the world.
- Workers would apply from their home countries for jobs listed in the job bank, and employers would hire workers from those applications.
- The foreign workers would be paid the prevailing wage and would have the full protections of U.S. labor and employment laws.
- No employer or labor contractor would be allowed to recruit abroad.
- The hired foreign worker would enter the United States with a conditional "green card," which would ripen into a standard "green card" as soon as the government processes the foreign worker's petition to remain in the United States.
- The family-reunification system should continue to be an important part of U.S. immigration policy, with the highest priority going to the spouses and minor children of U.S. citizens and legal permanent residents.
- Congress must appropriate adequate funds to ensure no backlogs exist and all visas that can be distributed each year are actually distributed, under both employment and family classifications.

Scholars agree that temporary worker programs are bad public policy. We know from experience that those programs have created an exploitable and exploited cheap labor force while denying workers the legal rights and obligations of lawful permanent residents and U.S. citizens. If those programs are to exist at all, they should be limited in size and scope and continue to apply only to seasonal labor shortages. They should not be the model for how future foreign workers join the U.S. economy.

Reform of existing temporary worker programs is an essential component of immigration reform. Otherwise, those programs will continue to be vehicles by which employers exploit workers for economic gain, causing depression in wages and deterioration of working conditions in the industries in which they operate. At a minimum:

- Labor contractors should not be able to participate in the system. Only the entity actually employing the worker may participate in the program.
- The Labor Department must promulgate regulations requiring employers to bear the costs of recruitment fees, hiring, subsistence and travel so workers are not exposed to large debts that hinder their ability to enforce their rights.
- Meaningful and enforceable whistle-blower protections must be added, including the right of workers to file complaints for violations of the programs.
- Prevailing wages must be set at levels that guarantee that employers will not cause wage depression in wages in the industries in which the H2B programs operate.
- The Labor Department must remain the "gatekeeper" to better monitor employers and prevent employers from gaming the system.
- Workers' compensation must be provided to guest workers—regardless of whether they are still in the United States—on the same terms as other workers.
- Guest workers should be protected from discrimination in hiring and on the job on the same terms as workers hired in the United States. Congress should clearly and effectively provide recourse for workers to oppose discrimination.
- Congress should require all employers to certify to the Labor Department, at the conclusion of a guest worker's term of employment and under penalty of perjury, that they have complied with the terms of the contract and the law.
- Employers using guest workers should be required to post a bond that is at least sufficient in value to cover the workers' legal wages. A system should be created to permit workers to make claims against the bonds.
- There should be a massive increase in funding for enforcement of guest workers' rights by the Labor Department, the Occupational Safety and Health Administration and other government agencies with authority over aspects of the guest worker program.
- The Department of Labor should create a streamlined process for denial of guest worker applications from employers that have violated the rights of guest workers.
- The Labor Department should be authorized to enforce all terms—including contractual terms—of the guest worker agreement.
- Congress should make all guest workers eligible for federally funded legal services on the same terms as lawful permanent residents or citizens.
- Congress should provide both a civil cause of action and criminal grounds for arrest against employers or agents who confiscate or hold documents.
- Congress should provide a federal cause of action allowing guest workers to enforce their contracts.

The United States is the largest migrant-receiving nation in the world and has the best record of integrating immigrants into our national fiber. We've accomplished that because we have always welcomed immigrants as full members of society. We should continue in that strong tradition.

"Q&As on AFL-CIO's Immigration Policy," submitted by Jonathan Hiatt, General Counsel, American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

Q&As
on
AFL-CIO's Immigration Policy

Q: What Is the AFL-CIO's Immigration Policy?

A: The union movement's policy is to treat ***all*** workers as workers, and therefore build worker solidarity to combat exploitation and raise standards for all.

Throughout the history of our country, immigrants have played an important role in building our nation and its democratic institutions. Immigrants also have played a vital role in building the union movement. The AFL-CIO's immigration policy recognizes the important contributions foreign-born workers make to our economy and to our community, and it welcomes immigrant workers into our movement.

The trade union movement was built by immigrants. Irish ironworkers and German bricklayers—just to name a few—established working standards for all trades across the nation. From the birth of America's union movement, immigrant laborers have used all means available to fight for workers' rights. It is more important than ever that we stand alongside our immigrant brothers and sisters at a time when workers are under attack from corporate forces on all fronts.

We know from our long experience that employers try to destroy worker solidarity by attempting to divide workers along race, gender, and in the last decade, immigration status. The U.S. Chamber of Commerce's recent campaign to deny millions of workers the freedom to form unions by dividing them into "supervisors" and "non-supervisors" is the most recent example of this well-established union-busting tool of dividing workers into different "classes."

Q: Does the AFL-CIO Support Reform of our Immigration Laws?

A: Yes. Overhaul of our immigration system is long overdue. The current system is a blueprint for exploitation of workers—both native-born and foreign—and is feeding a multimillion-dollar criminal enterprise at the U.S.-Mexico border.

We believe America must have an immigration system that protects all workers within our borders, and at the same time guarantees the safety of our nation without compromising our fundamental civil rights and civil liberties.

Q: What Is the Cause of Illegal Immigration?

A: Globalization and the failure of the U.S. government to enforce workplace laws are pushing workers from their home countries and pulling them into the United States. Failed development policies and trade agreements have destroyed the economies of developing nations and forced workers to migrate in search of jobs. NAFTA, for example, destroyed the agricultural economy in Mexico. Millions of agricultural workers have lost their livelihoods and moved into Mexican urban areas to compete for jobs. This has lowered wages in urban centers and displaced workers who now have moved north, looking for work.

At the same time, lax enforcement of labor laws created an incentive for corporations to recruit and hire workers who came to the United States from Mexico without authorization to work—the undocumented. Because those workers are often unable to exercise their workplace rights, corporations have created an entire class of workers—numbering in the millions—who are forced to labor in substandard conditions. The only way to remove the economic incentive to exploit workers—and thus diminish illegal immigration—is to ensure that all workers have full labor rights.

Q: How Do Employers Benefit from Illegal Immigration?

A: Employers and contractors who rely on undocumented workers often are able to avoid abiding by U.S. workplace laws, gaining a substantial economic advantage over employers who play by the rules. In the construction industry, contractors often misclassify undocumented workers as "independent contractors" to avoid their responsibility to carry workers' compensation insurance, pay required state and federal employment taxes and skirt various other legal requirements. The National Employment Law Project estimates that employers and contractors who regularly misclassify workers as "independent contractors" have a 30 percent competitive advantage over those who operate lawfully.

The U.S. Supreme Court handed employers yet another economic incentive to recruit and employ undocumented workers in its 2002 decision in the *Hoffman Plastics Compounds v. NLRB* case. The court ruled that undocumented workers are not entitled to back pay, the only monetary remedy available under the National Labor Relations Act (NLRA). In other words, an employer who illegally fires an undocumented worker during an organizing campaign faces no out-of-pocket cost for that illegal action. Unfortunately, courts have extended that rule to other employment laws, including workers' compensation laws. In a perverse example, one state court determined that a contractor whose negligence on a construction site caused a worker to become incapacitated was not required to compensate the worker for lost earnings at the rate he was earning in New York but rather at the rate he would have been earning in Mexico. Essentially, employers and contractors now are able to import the workplace standards of developing countries into the United States.

Q: Don't Undocumented Workers Benefit from Being in the United States Illegally?

A: In our view, illegal immigration is driven by economic incentives that allow employers to exploit a certain class of workers—currently, undocumented workers. Illegal immigration benefits no one except employers who want to operate at the margin and need an exploitable workforce to do so. Blaming workers for their own exploitation serves only to move the spotlight away from improper corporate behavior by focusing it on the workers.

Q: How Should the Immigration Laws Be Changed?

A: The current immigration system provides no protections for either native- or foreign-born workers. Corporations have the best of all worlds right now: They are able to use the broken immigration laws to recruit and import undocumented workers and at the same time avoid their obligations to abide by U.S. labor and employment laws. The result is that corporations have been able to create a secondary class of workers in our nation numbering in the millions—the "undocumented," whose inability to meaningfully exercise their labor rights has allowed employers to lower working standards for all workers.

Immigration law reform has to make protection of workers its main priority. That means reform must satisfy five interrelated principles: (1) It has to provide a mechanism for currently undocumented workers to be able to exercise their labor rights, which means it must provide a real path to legalization; (2) It must require the government to enforce labor and employment laws vigorously in order to remove the employers' incentive to recruit and employ undocumented workers; (3) It must reject the creation of temporary worker programs (also known as "guest worker" programs) that harm workers; (4) It must guarantee that new foreign workers will be able to fully exercise their labor rights; (5) It must preserve social protections and guarantee civil rights and civil liberties to all.

Q: Why Does the AFL-CIO Oppose Guest Worker Programs?

A: Guest worker programs allow corporations to turn permanent jobs into temporary jobs staffed by foreign workers who often are unable to exercise their labor rights. Under any guest worker program, a corporation has the ability to import foreign workers who remain under an employer's control, not only for their livelihood, but also for their legal immigration status. Workers are unlikely to complain about substandard working conditions because if they do they could lose their jobs and face deportation.

Guest worker programs also transform the fundamental nature of U.S. society. We are a nation of citizens, not guests. Workers who are imported into the United States only for their labor, and only temporarily, have no incentive to invest in their communities, to buy homes or to engage in the long-term struggle for good jobs, health care or pensions. Guest worker programs essentially create a second class of citizens who remain marginalized with no voice in our democracy.

Q: Why Does the AFL-CIO Support 'Legalization'?

A: The current immigration system operates entirely to benefit corporate interests. We recognize that the law-breakers are the employers and contractors who have been freely employing undocumented workers to maximize their profits at the expense of established U.S. workplace standards. We recognize that the current system has allowed contractors and employers to create an underclass of workers who number in the tens of millions and whom they can exploit for economic gain. We also know these workers don't labor in isolation; they work right alongside U.S. citizen workers. We know the anti-worker corporate argument that immigrants are doing the work U.S. workers won't do is false. The overwhelming majority of jobs in all industries across the economy—more than 80 percent in construction and more than 86 percent in the service industry—are being done by U.S. citizens and legal immigrant workers. Yet, there is overwhelming evidence that in industries that rely on immigrant labor, employers and contractors use immigrant labor to undermine wages and working conditions. The only way to remedy that is to ensure all workers have full labor rights. We must fight to bring all currently undocumented workers who are already working in our industries and on the jobs we are trying to organize to the same level as other workers. And the only way to do that is to legalize the existing undocumented workforce. Otherwise, we continue to supply employers and contractors with a steady supply of exploitable workers.

Q: Does this Mean the AFL-CIO Supports 'Open Borders'?

A: No. We recognize that the United States has the sovereign authority and constitutional responsibility to set and enforce limits on immigration. An "open borders" policy would play into the hands of corporations that would like nothing better than to treat workers as commodities. The U.S. government's failure to enforce U.S. workplace standards has created a de facto open border enabling corporations to reach around the globe and encourage workers to come to this country in search of jobs. That is why protection of workers should be the cornerstone of any new immigration law.

Q: Why Should We Simply Allow People Who Came to the United States Illegally to Stay Here?

A: The United States is, and always has been, the largest immigrant-receiving nation on earth. That is the fiber of who we are. And the reason we have been able to prosper and become the most powerful nation in the world is that we have been able to value the complex contributions our citizens make. What has set us apart from the rest of the world is that we are a nation of citizens, not guests. Integrating waves of immigrants into the fiber of our nation has required struggle—often painful struggle. But to make sure all of our citizens have a voice in our society, our nation has done it. We have encouraged newcomers to invest in their communities, to establish roots, to buy homes, to send their children to college—in short, to be a part of the "American Dream." And the union movement has been the driving force for that dream. We engaged workers in the struggle for the eight-hour workday, for the freedom to form unions and for health and safety protections on the job. When we did that, we didn't carve any worker out because we understood that dividing workers into different "classes" only benefits employers. If we engage in policies that allow corporations to create a secondary class of citizens, with no political and civil rights, we will only be supporting the creation of a class of workers who have absolutely no incentive to engage in the long-term fight for good jobs with decent benefits, including health care and pensions.

Additionally, it is neither realistic nor responsible to assume we are going to deport all undocumented workers. At a time when public budgets already are strained because of current government policies that punish workers and give to the rich, trying to "deport" all undocumented workers is fiscally irresponsible. A report by the Center for American Progress recently concluded that mass deportations would cost the U.S. Department of Treasury at least $206 billion over five years ($41.2 billion annually) and could cost as much as $230 billion or more. Spending $41.2 billion annually would exceed the entire budget of the U.S. Department of Homeland Security for fiscal year 2006 ($34.2 billion) and is more than double the annual cost of military operations in Afghanistan ($16.8 billion).

Mass deportations also would have a profoundly negative effect on U.S. citizens and on our communities, given that 85 percent of immigrant families with children are "mixed status" families, which means at least one household member is a U.S. citizen or a lawful permanent resident.

Q: Does the AFL-CIO Support Any of the Current Legislative Proposals?

A: No. The U.S. House version of immigration reform (H.R. 4437) is a mean-spirited attack on workers and immigrants. It will do nothing meaningful to address the immigration crisis. That bill makes criminals of the currently undocumented population, which will only serve to drive millions of people into further desperation and poverty. The U.S. Senate version does not adequately protect workers. It creates a three-tiered, apartheid-like structure for dealing with the current undocumented population and still leaves workers in temporary status for years and years. It also creates a large, new guest worker program that will only help corporations drive down workplace standards for all workers.

Q: What Is the AFL-CIO Doing to Make Sure Immigration Laws Are Fixed in the Right Way?

A: We are working with our affiliates and our community partners, including worker centers—in communities, in the courts and on Capitol Hill—to make sure Congress understands that immigration reform must focus on the needs of workers, not corporations. The struggle for workers' rights is a difficult one and workers must stand together to make sure corporations are not able to dilute the strength of our voice by painting us as anti-immigrant.

Q: What Is the Difference between the AFL-CIO's Immigration Policy and Change to Win's Immigration Policy?

A: Change to Win has not articulated an immigration policy. Two of the Change to Win unions, SEIU and UNITE HERE, support the expansion of guest worker programs that is reflected in current legislative proposals. Two other Change to Win Unions, United Food and Commercial Workers and the Teamsters, have issued statements strongly opposing guest worker programs and have been lobbying with the AFL-CIO against the expansion of those programs.

For more information, visit www.aflcio.org/issues/civilrights/immigration/ or contact Ana Avendaño at 202-637-3949 or by e-mail at aavendan@aflcio.org.

"AFL-CIO EXECUTIVE COUNCIL STATEMENT: RESPONSIBLE REFORM OF IMMIGRATION LAWS MUST PROTECT WORKING CONDITIONS FOR ALL WORKERS IN THE U.S.," SUBMITTED BY JONATHAN HIATT, GENERAL COUNSEL, AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

AFL-CIO EXECUTIVE COUNCIL STATEMENT SAN DIEGO, CA • MARCH 1, 2006

Responsible Reform of Immigration Laws Must Protect Working Conditions for all Workers in the U.S.

OVERHAUL OF OUR NATION'S IMMIGRATION LAWS IS LONG OVERDUE. The current system is a blueprint for exploitation of workers, both foreign-born and native, and is feeding a multimillion dollar criminal enterprise at the U.S.-Mexico border.

America deserves an immigration system that protects all workers within our borders—both native-born and foreign—and at same time guarantees the safety of our nation without compromising our fundamental civil rights and civil liberties.

Any viable solution to this crisis must address the reasons why people are coming to the U.S. Most immigrants come from countries where the international development process has failed, and many are from countries where International Monetary Fund (IMF), World Bank and trade policies have weakened countries' economies and labor protections, causing a devastating impact on all workers. In some developing countries, IMF policies have caused public-sector workers to lose their jobs and their union protections, forcing them into competition in the private sector, where few, if any, jobs are available, driving down wages and working conditions even further. Trade agreements such as the North American Free Trade Agreement undermine the agricultural economies of developing countries, leading workers to leave the fields and consider moving north. Without rising living standards abroad for workers and the poor, the pressure for illegal immigration will continue and escalate.

At the same time that global forces are pushing workers to our borders, judicial and public policies toward immigrants have created new so-called pull factors for migration into the United States, namely, an incentive for employers to recruit undocumented immigrants for economic exploitation. Too many employers seek to avoid, evade, and ultimately negate U.S. labor and employment laws through the recruitment and importation of undocumented workers. The U.S. Supreme Court created a powerful new incentive for such exploitation by its decision in *Hoffman Plastic Compounds v. National Labor Relations Board*. In that case, the Court determined that an undocumented worker is not entitled to back pay—the only monetary remedy available to workers under the National Labor Relations Act—when he or she is fired illegally for trying to organize a union. This has made the cost of exploiting immigrants insignificant to unscrupulous employers. The end result is that industries that cannot export jobs—such as those in construction—are attempting to use flawed immigration policies to import the labor standards of developing nations into the United States.

The broken immigration system has allowed employers to create an underclass of workers, which has effectively reduced working standards for all workers. Immigrant workers are over-represented in the highest risk, lowest paid jobs, but the exploited immigrants do not work in isolation. U.S.-born workers who work side by side with immigrants suffer the same exploitation. The U.S. Department of Labor, for example, determined the poultry industry—which is nearly half African American and half immigrant—was 100 percent out of compliance with federal wage and hour laws. The Department of Labor also estimated more than half of the country's garment factories violate wage and hour laws, and more than 75 percent violate health and safety laws. Of course, workplaces that are dangerous for immigrant workers are equally dangerous for their U.S.-born counterparts and co-workers.

Our failed immigration policies also have encouraged employers to use guestworker programs to lower labor standards and working conditions for all workers within our borders. We've seen employers turn tens of thousands of permanent, well-paying jobs in the United States into temporary jobs through the use of various guestworker programs. The temporary guestworker jobs come with few or no benefits, lower wages and often are staffed through temporary agencies, whose fees come out of workers' pockets. The foreign workers recruited to fill these jobs remain legally tied to the employers that recruited them and are thus naturally vulnerable to exploitation.

Guestworker programs, such as the L and H-1B visa programs, operate with little employer accountability and to the detriment of all professional workers. None of these programs connect to the realities of current U.S. labor market conditions. In fact, employers are allowed to turn permanent jobs into temporary jobs and import workers, despite the unusually high current rate of unemployment among professional and technical workers. As a result, working conditions for all professional workers have suffered: pressures caused by employer exploitation of professional guestworkers coupled with the increases in outsourcing continue to have a chilling effect on any real wage increases for professionals, even those not directly or immediately impacted by these matters.

Immigrant workers, like all workers, should be full social partners. We will continue to support effective, credible and enforceable rights for all workers, regardless of their country of origin or immigration status. At the same time, we will ensure that our member mobilization efforts include our immigrant brothers and sisters, and ultimately place immigration squarely within a progressive and sustainable economic agenda that benefits all working families in our nation.

We hereby renew our call for comprehensive and responsible reform of our immigration laws, which must—at a minimum—comply with the following standards:

- **Uniform enforcement of workplace standards must be a priority.** History, economics and common sense dictate that exploitation of workers will continue as long as it makes economic sense to do so, to the detriment of U.S.-born and foreign-born workers alike. Unfortunately, the lax enforcement of labor and employment laws has given too many unscrupulous employers the economic incentive to recruit undocumented workers, and has penalized those employers who abide by the law because it has put them at a competitive disadvantage.

  The only meaningful way to remove that perverse economic incentive and to equalize the competitive playing field is to ensure that all those who gain the benefit of a worker's labor, whether that worker is an employee or an independent contractor, abide by all

labor and employment laws. That means that the immigration reform law *must* provide real and enforceable remedies for labor and employment law violations that are available to *all* workers, regardless of their immigration status, and that there must be a mechanism by which all workers can vindicate their rights without having to face restrictive standing requirements or meaningless regulatory hurdles;

- **Reforms must provide a path to permanent residency for the currently undocumented workers who have paid taxes and made positive contributions to their communities.** Legalization is an important worker protection. History shows that legalizing this population benefits all workers: Wages and working standards of undocumented workers increased significantly after the legalization program of the 1986 Immigration Reform and Control Act, thereby raising the floor for all workers. Without a legalization program, the economic incentive to hire and exploit the undocumented will remain, to the detriment of U.S. workers who labor in the same industries as the undocumented, because all workers will see their working conditions plummet.

- **We must reverse the trend of allowing employers to turn permanent, full-time year-round jobs into temporary jobs through attempts to broaden the size and scope of guestworker programs**. Longstanding U.S. guestworker policy requires that temporary workers can be used only to satisfy short-term or seasonal labor needs. The agricultural guestworker program, for example, the best known of these programs, is designed to satisfy the seasonal needs of employers who need to temporarily hire large numbers of workers during the growing season, which may be as short as six weeks. Similarly, the H2-B program allows non-agricultural employers in industries such as landscaping, hospitality and crabbing, to hire non-U.S. workers on a temporary basis to fill their seasonal needs.

  Guestworker programs are bad public policy and operate to the detriment of workers, in both the public and private sector, and of working families in the U.S. The abuses suffered by workers in the first such program, the post World-War II Bracero program, are well documented. The negative effects of the modern versions of the "guestworker" construct—such as the H1-B and H2-B programs—are all too evident today. Workers around the country are witnessing the transformation of formerly well-paying, permanent jobs into temporary jobs with little or no benefits, which employers are staffing with vulnerable foreign workers who have no real enforceable rights through the guestworker programs. These modern programs have had a major and substantial detrimental effect on important sectors of our economy.

  The massive expansion of guestworker programs contemplated by current legislation before the Senate—which would more than quadruple the number of foreign workers admitted annually and would allow employers to import workers into the public and private sector—will not only harm U.S. workers, but also represents a radical and dark departure from our long-held vision of a democratic U.S. society. We are not a nation of "guests," who, by definition, have only short-term and short-lived interests, but a nation of people who believe in investing in our communities, in our future, in the future of our children, and in our democracy. It defies everything that our nation stands for to legitimize a system that forces our communities to simply be "hosts" for "guests" who are only here to lend their labor, and who have no reason to become

invested in that community, and who will never have a voice in their future within that community. We are not a nation of guests; we are a nation of citizens.

In our view, there is no good reason why any immigrant who comes to this country prepared to work, to pay taxes, and to abide by our laws and rules should be denied what has been offered to immigrants throughout our country's history, a path to legal citizenship. To embrace instead the creation of a permanent two-tier workforce, with non-U.S. workers relegated to second-class "guestworker" status, would be repugnant to our traditions and our ideals and disastrous for the living standards of working families.

We fully support the right of all workers to bargain collectively, and we fully support and endorse the existing arrangement within the H2A program that the Farm Labor Organizing Committee (FLOC) negotiated with the North Carolina Growers Association, which provides the protections of a collective bargaining agreement to Mexican H2A workers at the Mt. Olive, N.C., facility.

- **Long-term labor shortages should be filled with workers with full rights.** We recognize that our economy may face real labor shortages in the coming years, as the baby boomer generation retires. Instead of relying on a framework that guarantees the deterioration of working conditions in the U.S., we should focus on a meaningful solution that guarantees full workplace rights for all workers, both foreign-born and native, and also permits employers to hire foreign workers to fill proven labor shortages. The solution is simple: Congress should revise the permanent employment-based visas system and devote more resources to removing processing delays.

  Employment-based admissions for permanent visas (commonly known as "green cards") are subject to labor certification provisions: the employer must show that there are not sufficient workers in the U.S. who are able, willing, qualified and available at the time and at the place where the foreign worker is to perform the job. To demonstrate this adequately, the employer must offer the job at a prevailing wage, and must attest that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed workers in the U.S. Congress has arbitrarily set the number of these visas at 140,000 annually. That approach should be changed so that the number of visas available responds to actual, demonstrated labor shortages, which will satisfy employers' needs for workers, and will prevent the creation of a secondary class of workers and residents, because the new foreign workers will have full employment rights and the promise of a permanent future in our democracy.

- **Reform of immigration laws must consider the root causes of migration, and must take into account the global economic policies, as well as U.S. foreign policy that are pushing workers to migrate.** Without rising living standards abroad for workers and the poor, the pressure for illegal immigration will continue. U.S. foreign policy, as well as trade and globalization policies, must be grounded upon a coherent national economic strategy, as described in An Economic Agenda for Working Families, adopted at the AFL-CIO's 2005 Convention.

"FUNDAMENTAL WORKER PROTECTIONS IN FOREIGN TEMPORARY WORKER PROGRAMS"
BY THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS, MAY 2007

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Fundamental Worker Protections
In Foreign Temporary Worker Programs

May 2007

Advocates for comprehensive immigration reform have been divided on whether the expansion of temporary worker programs is the proper mechanism to address the future flow of foreign workers. Even within the LCCR community, there have been and continue to be policy differences in this critical area. Regardless of such differences, however, we believe that there should be unanimity as to the worker protections that must accompany any temporary worker program.

This document does not mean that the LCCR is endorsing a new temporary worker program as the preferred method of addressing the future flow of workers into the United States. Rather, the following recommendations are what we believe to be essential "fixes" to current temporary worker programs, and therefore the fundamental protections that must be included in any non-immigrant program.

First, protections must be built into the ***infrastructure*** of the programs that protect against worker abuse.

- ***Labor contractors should not be able to participate in worker visa programs***; Only the end-use employer should be able to petition for workers. Abuses in current guestworker programs start in the home countries. Labor recruiters charge workers thousands of dollars for their visas (which leaves workers indebted to loan sharks at unconscionable rates at home), and require them to leave collateral at home (which the employers, through the recruiters use to force workers to remain silent). The result is that temporary workers arrive in the US so indebted to the labor recruiter that they can't walk away from the job, even if they had the opportunity to do so. As an initial step, agents of employers should be barred from petitioning for workers.
- ***There must be an effective mechanism to test the US labor market before allowing employers to bring in foreign workers.*** This mechanism must accurately determine labor shortages, include adequate wage protections, guard against the displacement of US workers, and provide an adequate system for advertising jobs beyond the local labor market. Employer attestations do not adequately test the labor market.
- ***Workers Should be Able to Change Jobs in a Way that Preserves Labor Standards***. Worker visas should be portable, that is, workers should be able to walk away from abusive employers. It is often presumed that "full portability," which means that workers can walk away from the employer that brought them into the US and work for any other employer, without requiring that any subsequent employer test the labor market and prove that no US workers are available, is the fix to the abuses inherent in temporary worker programs. That approach is misguided because it abrogates essential fundamental wage protections. Workers in any non-immigrant category (ie, temporary), and

* LCCR greatly appreciates the assistance of Ana Avendano (AFL-CIO), Fred Feinstein (University of Maryland), Charles Kamasaki (National Council of La Raza), and William E. Spriggs (Howard University) in the preparation of this document.

especially those in the low-wage labor market, will always face pressure to find a new job quickly because by definition, they are not entitled to unemployment or any other safety net benefits. If subsequent employers do not have to test the labor market and therefore are not subject to prevailing wage standards, those employers will be able to employ the temporary foreign workers at substandard wages and working conditions. Therefore, portability must come with a requirement that every subsequent employer test the US labor market before hiring the foreign temporary worker.

- ***Employers should not be able to use temporary worker programs to evade US civil rights, employment or labor laws***. Congress must specify that Title VII, Section 1981, the ADEA, and all other US employment and labor laws govern the conduct of any employer (or labor recruiter, if they are able to continue to participate in the program) who participates in any temporary worker program, even if the conduct occurs outside the United States.
    - Current law allows employers and recruiters to discriminate based on gender, age, and, presumably any other category protected under US laws, when their conduct occurs outside the US. *See, Reyes-Gaona v. NC Growers' Ass'n*, 250 F.3d 861 (4th Cir. 2001).
    - Congress should also specify that workers who labor in temporary worker programs are entitled to workers' compensation coverage and full remedies, even if they leave the US after they are injured on the job. Current law makes it practically impossible for guestworkers who are injured on the job to exercise their rights under workers' compensation laws.

Second, all protections that are included in any statute must be ***enforceable***. We agree that current enforcement mechanisms are a failure. At a minimum, enforcement mechanisms should be improved by:

- ***Requiring that employers post a bond that is at least sufficient in value to cover the temporary workers' legal wages***, and crafting a system to allow workers to make claims against the bonds.
- ***Adding meaningful whistleblower protections***, which allow workers and their representatives to sue to enforce all state and federal labor and employment laws as well as the conditions in temporary workers' contracts without workers having to face deportation or removal when they file a claim with any local, state or federal agency or court alleging a violation of any labor or employment law. .
- ***Strengthening the penalties against employers who fail to comply with the worker protections.*** Penalties must include remedies that are real deterrents including debarment and enhanced monetary penalties, such as punitive damages, treble damages and compensatory damages. All of these remedies must be available to workers and their representatives as a private right of action.

Third, we should ensure that workers who labor in the temporary worker programs have a ***path to permanent residency***. At a minimum, temporary worker programs should ensure that:

- All temporary worker programs give the workers who labor in them a real ability to become permanent residents, that is, to get a "green card."
- Any time spent in a temporary worker program must be credited toward "presence in the US" requirements for purposes of public benefits and naturalization.

"GRAFT MARS THE RECRUITMENT OF MEXICAN GUEST WORKERS" BY ELISABETH MALKIN, *THE NEW YORK TIMES*, MAY 24, 2007, PAGE 3

Graft Mars the Recruitment of Mexican Guest Workers
The New York Times
May 24, 2007 p. 3
By ELISABETH MALKIN

TAMPAMOLÓN CORONA, Mexico — Cástulo Benavides, a union organizer, came to this forgotten mountain town to tell its men how to get legal jobs in the tobacco fields of North Carolina.

But this year he introduced them to a change in a longstanding practice: the men will not have to pay anyone to get those jobs.

"That's something that we won with the union," Mr. Benavides explained to the workers in the sweltering municipal auditorium here. "We are stepping on some people's toes, and we're doing it hard."

The response, if that is what it is, has been brutal. In April, Mr. Benavides's co-worker Santiago Rafael Cruz was bound and beaten to death at the union's office in Monterrey, in northern Mexico.

The Ohio-based union, the Farm Labor Organizing Committee, says the killing was a political attack after the union cleaned up corrupt practices of recruiting workers, like charging them a fee to be hired.

Mr. Rafael Cruz's killing comes as the United States Senate has restarted debate on a long-stalled immigration package that proposes an expanded guest worker program. But the way those workers are recruited in Mexico has received little attention in the debate.

Before planting and harvest time in the United States it has been common for local recruiters to fan out across Mexico's parched countryside to sign up guest workers. The recruiters charge the Mexicans hundreds of dollars, sometimes more, for the job and the temporary visa that comes with it.

"That line of corruption touches both countries," said Baldemar Velásquez, the president of the union. "And the people at the bottom in Mexico end up paying the price."

The aftermath of Mr. Rafael Cruz's killing has rippled all the way to Washington.

On May 8, Representative Marcy Kaptur, an Ohio Democrat, and a dozen other legislators wrote to President Felipe Calderón of Mexico and the governor of the state of Nuevo León, of which Monterrey is the capital, urging them to thoroughly investigate the killing and provide protection for the rest of the Mexico staff of the farm workers' union.

Closed-circuit cameras have been installed in the union offices, and the police provide regular patrols.

A spokesman for the Nuevo León attorney general's office would not comment on whether the police were investigating leads related to Mr. Rafael Cruz's work. The spokesman asked not to be identified, according to department policy.

The union opened its office in Monterrey two years ago to help the 6,000 Mexican guest workers it represents in a collective bargaining agreement with the North Carolina Growers Association, a group of 650 farmers.

The association includes most of the growers in the state who employ legal guest workers, said Stan Eury, its executive director. Even so, a majority of farmers in North Carolina, as in the rest of the United States, hire undocumented immigrants.

Last year the United States issued about 37,100 temporary visas for agricultural workers, said Todd Huizinga, a spokesman for the United States Consulate in Monterrey. Mexico accounted for 92 percent of them.

In Monterrey, part of the union's work has involved monitoring the association's Mexican recruiting agency, called Manpower of the Americas. That company sends out local recruiters to hire the workers and then processes their visas at the consulate.

After a lawsuit led to a settlement between the union and the growers' association in 2005, all of the workers' recruiting fees were dropped for two years. For now it is the growers, not the workers, who must pick up recruiters' charges, along with the costs of the visas.

"We did everything we could to get the word out," Mr. Velásquez said. "We took away a gold mine from these operators."

Since the start, though, the union has been threatened and harassed in Monterrey, he said. Its office was broken into twice and computer equipment was stolen.

Mr. Rafael Cruz, 29, who was originally from Oaxaca, began working with Mr. Benavides in Monterrey in February after working for the farm workers' union in the United States. He was sleeping in the union's office while looking for an apartment.

Mr. Velásquez was careful to exclude the growers' association and the local recruiting agency's management from his allegations. Local recruiters working for other agencies may have felt threatened by a series of meetings the union held in March, union workers say.

"Who knows what underling was trying to prove himself," Mr. Velásquez said.

Mike Bell, president of the recruiting agency, Manpower of the Americas, said his company kept a tight rein on its local recruiters.

"I was already doing a good job policing before the union ever showed up," said Mr. Bell, a North Carolina native who said his company sent about 12,000 Mexican workers — including the 6,000 in North Carolina — to jobs all over the United States.

"We don't sit outside some bar and say, 'Everybody pay up and we'll get you a job,' " he said.

Aside from the agreement reached in North Carolina, there is nothing to stop the recruitment abuses, experts on the guest worker program say.

Roman Ramos, a paralegal at Texas Rural Legal Aid in Laredo, has followed the agricultural guest worker program, known as H-2A, for 25 years. He was skeptical that the agreement would have a wide impact. "There is no indication from any source that what is happening in North Carolina is in any form, way or fashion happening anywhere else in the country," he said.

"Other recruiters are still charging workers," he added. "Everybody makes money out of these guys."

The starting rate is typically $600, he said. That figure includes an unspecified fee that is split between the local recruiter and the agent who has been contracted to supply workers to the American employer.

Once workers return home with money from their work, it is common for the recruiter to stop by again. Workers know that a couple of hundred dollars in cash, or maybe a goat or a sheep, will get them on the list next year.

Two years ago, Juan Bonifacio González gave about $450 to a woman here everybody knew as "La Tolentina," who promised to get him a legal guest worker visa. After months of promises she disappeared. Mr. González borrowed the money from a local moneylender and says he is still paying back his loan, which has tripled with interest.

There are no jobs in this town of 14,000, lost in the steep hills of the state of San Luis Potosí. The mayor recently invited the farm workers' union to come and speak about legal job opportunities in North Carolina, where the federally mandated wage for agricultural guest workers is $9.02 an hour.

That seems a fortune to the mostly Nahuatl-speaking Indians here, where the average wage is less than $4 a day.

A few had worked in North Carolina and wanted to go back. Florencio Hernández Angelina spent the past three harvests there. This year he wanted help in changing employers. The grower splits her work force between legal guest workers and illegal migrants. "She gives us fewer hours," Mr. Hernández said.

She prefers the illegals, he said, because she pays them less.

"CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES," BY MARY BAUER, THE SOUTHERN POVERTY LAW CENTER, 2007

CLOSE TO SLAVERY

Guestworker Programs in the United States

a report by the
Southern Poverty Law Center

About the Southern Poverty Law Center

The Southern Poverty Law Center, based in Montgomery, Alabama, is a nonprofit civil rights organization with more than 250,000 members nationwide. It was founded in 1971 to combat bigotry and discrimination through litigation, education and advocacy. Its Immigrant Justice Project has filed numerous lawsuits and class actions on behalf of migrant laborers and guestworkers in a variety of industries across the South. Mary Bauer, director of the Immigrant Justice Project, is the principal author of this report. Sarah Reynolds, an outreach paralegal, was the primary researcher.

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Executive Summary

In his 2007 State of the Union Address, President Bush called for legislation creating a "legal and orderly path for foreign workers to enter our country to work on a temporary basis." Doing so, the president said, would mean "they won't have to try to sneak in." Such a program has been central to Bush's past immigration reform proposals. Similarly, recent congressional proposals have included provisions that would bring potentially millions of new "guest" workers to the United States.

What Bush did not say was that the United States already has a guestworker program for unskilled laborers — one that is largely hidden from view because the workers are typically socially and geographically isolated. Before we expand this system in the name of immigration reform, we should carefully examine how it operates.

Under the current system, called the H-2 program, employers brought about 121,000 guestworkers into the United States in 2005 — approximately 32,000 for agricultural work and another 89,000 for jobs in forestry, seafood processing, landscaping, construction and other non-agricultural industries.[1]

These workers, though, are not treated like "guests." Rather, they are systematically exploited and abused. Unlike U.S. citizens, guestworkers do not enjoy the most fundamental protection of a competitive labor market — the ability to change jobs if they are mistreated. Instead, they are bound to the employers who "import" them. If guestworkers complain about abuses, they face deportation, blacklisting or other retaliation.

Federal law and U.S. Department of Labor regulations provide some basic protections to H-2 guestworkers — but they exist mainly on paper. Government enforcement of their rights is almost non-existent. Private attorneys typically won't take up their cause.

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1 Department of State, Nonimmigrant Visas Issued, 10/01/04 — 9/30/05, available at http://travel.state.gov/pdf/FY2005_NIV_Detail_Table.pdf

"This guestworker program's the closest thing I've ever seen to slavery." CHARLES RANGEL, HOUSE WAYS AND MEANS COMMITTEE CHAIRMAN

Bound to a single employer and without access to legal resources, guestworkers are:

- routinely cheated out of wages;
- forced to mortgage their futures to obtain low-wage, temporary jobs;
- held virtually captive by employers or labor brokers who seize their documents;
- forced to live in squalid conditions; and,
- denied medical benefits for on-the-job injuries.

House Ways and Means Committee Chairman Charles Rangel recently put it this way: "This guestworker program's the closest thing I've ever seen to slavery."[2]

Congressman Rangel's conclusion is not mere hyperbole — and not the first time such a comparison has been made. Former Department of Labor official Lee G. Williams described the old "bracero" program — the guestworker program that brought thousands of Mexican nationals to work in the United States during and after World War II — as a system of "legalized slavery."[3] In practice, there is little difference between the bracero program and the current H-2 guestworker program.

The H-2 guestworker system also can be viewed as a modern-day system of indentured servitude. But unlike European indentured servants of old, today's guestworkers have no prospect of becoming U.S. citizens. When their work visas expire, they must leave the United States. They are, in effect, the disposable workers of the U.S. economy.

This report is based on interviews with thousands of guestworkers, a review of the research on guestworker programs, scores of legal cases and the experiences of legal experts from around the country. The abuses described here are too common to blame on a few "bad apple" employers. They are the foreseeable outcomes of a system that treats foreign workers as commodities to be imported as needed without affording them adequate legal safeguards or the protections of the free market.

The H-2 guestworker program is inherently abusive and should not be expanded in the name of immigration reform. If the current program is allowed to continue at all, it should be completely overhauled. Recommendations for doing so appear at the end of this report.

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2 U.S. Representative Charles Rangel, speaking on CNN's *Lou Dobbs Tonight*, Jan. 23, 2007.
3 Quoted in Majka, Theo J. and Patrick H. Mooney, *Farmers' and Farm Workers Movements* (Twayne Publishers 1995) 152.

PART 1

A Brief History of Guestworkers in America

Foreign-born workers have been significant contributors to the U.S. economy for centuries.

From the early 1800s until the outbreak of World War I, millions of European immigrants — Irish, British, Germans, Italians, Scandinavians, Russians, Hungarians and others — arrived in the United States, and their labor helped fuel the country's economic and geographic expansion. For most of this period, under the Naturalization Act of 1790, the borders were open and there were no numerical limits on immigration. The first major attempt to regulate or stem the flow of these workers came in 1882, when Congress passed the Chinese Exclusion Act to ban the employment of Chinese laborers.

During the latter half of the 1800s, following the end of the Mexican-American War in 1848, tens of thousands of migrant workers from Mexico began arriving. Unlike their European and Asian counterparts, they were able to move freely across the border to temporary jobs in ranching, farming, mining and other industries, and then, in many cases, back home again. The establishment of the U.S. Border Patrol in 1924 made access to jobs in the United States more difficult for Mexican workers, however, and for the first time they were seen as "illegal aliens."[4] But there remained no numerical limits on legal immigration from Mexico until 1965.

World War I brought migration from Europe largely to a halt and created a greater demand for Mexican labor. Soon afterward, the Great Depression arrived and Mexican workers were seen as a threat to American jobs. More than 500,000 people, including some United States citizens, were forcibly deported.

The onset of World War II created another labor shortage, and Mexican workers were again called upon to fill the void.

THE BRACEROS

In 1942, the U.S. State Department reached a bilateral agreement with Mexico creating the bracero[5] program, which Congress later approved. To assuage critics, proponents of the program asserted

4 "Migrations: A Collection of Views on Mexican Migration to the United States," Center for Latin American Studies, University of California-Berkeley, available at http://socrates.berkeley.edu:7001/Outreach/education/migrations2003/index.html

5 The word "bracero" is derived from the Spanish word for "arm," as in a farm hand or labor for hire. It refers both to the guestworker program operated between 1942 and 1964 and to individual, legally hired Mexican farm workers who participated in the program.

Labor organizers in the 1950s exposed widespread abuses of migrant farmworkers.

that Mexicans, who had been deported en masse just a few years earlier, were easily returnable.[6] This program was designed initially to bring in a few hundred experienced laborers to harvest sugar beets in California. Although it started as a small program, at its peak it drew more than 400,000 workers a year across the border. A total of about 4.5 million jobs had been filled by Mexican citizens by the time the bracero program was abolished in 1964.

Interestingly, the program had many significant written legal protections, providing workers with what historian Cindy Hahamovitch, an expert on guestworker programs, has called "the most comprehensive farm labor contract in the history of American agriculture."[7] Under this program:

- Employers were required to have individual contracts with workers under government supervision;
- Workers had to be provided housing that would comply with minimum standards;
- Workers had to be paid either a minimum wage or prevailing wage, whichever was higher;
- If employers failed to pay the required wages, the U.S. government would be required to support them;
- Employers had to offer at least 30 days of work; and,
- Transportation costs were to be shared by the workers, the growers and the government.

But the bracero program did not look so rosy in practice. Mexican workers, who generally did not read English, were often unaware of contractual guarantees. And there were numerous reports of employers shortchanging workers — just as in today's H-2 guestworker program.

The Mexican workers, who were called braceros, also had 10 percent of their pay withheld, ostensibly to pay for a Social Security-type pension plan. The money was to be deposited into a Mexican bank on behalf of the workers. It was never paid, however. Several lawsuits have been filed to recover what is now estimated to be hundreds of millions of dollars owed to Mexican workers.

In 1956, labor organizer Ernesto Galarza's book *Stranger in Our Fields* was published, drawing attention to the conditions experienced by braceros. The book begins with this statement from a worker: "In this camp, we have no names. We are called only by numbers." The book concluded that workers were lied to, cheated and "shamefully neglected." The U.S. Department of Labor officer in charge of the program, Lee G. Williams, described the program as a system of "legalized slavery."

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6 Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America*, (Princeton University Press 2002) p. 173

7 Cindy Hahamovitch, *The Fruits of their Labor: Atlantic Coast Farmworker and the Making of Migrant Poverty, 1870-1945* (University of North Carolina Press) 168

More than 4.5 million jobs were filled by Mexican braceros between 1942 and 1964. A Department of Labor official in charge of the program called it a system of "legalized slavery."

The availability of braceros undermined the ability of U.S. workers to demand higher wages. During the 1950s, growers brought in braceros when their U.S. workers either went on strike or merely threatened to do so. In the late 1950s and early 1960s, Cesar Chavez mounted farmworker protests over the program and later said that organizing the United Farm Workers would have been impossible had the bracero program not been abolished in 1964. The grape strike in which the union was born, in fact, began the following year.[8]

The bracero program is now widely believed to have contributed greatly to patterns of unauthorized immigration from Mexico to the United States.

After the bracero program was dismantled in 1964, foreign workers could still be imported for agricultural work under the H-2 sections of the Immigration and Nationality Act. The H-2 program had been created in 1943 when the Florida sugar cane industry obtained permission to hire Caribbean workers to cut sugar cane on temporary visas. The appalling conditions experienced by sugar cane cutters have been well-documented.[9] In one well-publicized incident, on November 21, 1986, Caribbean H-2 sugar cane cutters stopped work on a large sugar plantation in south Florida, objecting to the work conditions. Workers reported that the company had tried to pay a rate lower than what was promised in the work contract, and more than 300 workers refused to go to work as a result. The company called in the police, who used guns and dogs to force workers onto buses, on which they were removed from the camp and deported. This incident became known as the "dog war."[10] It has come to symbolize for many people the potential for extreme abuse in a guestworker program that permits employers to control the worker's right to remain in the United States.

The H-2 program was revised in 1986 as part of the Immigration Reform and Control Act, which divided it into the H-2A agricultural program and the H-2B non-agricultural program. There are no annual numerical limits on H-2A visas. The annual limit on H-2B visas was 66,000 until 2005, when it was increased substantially by exempting returning workers from those limits.

In 2005, the last year for which data are available, the United States issued about 89,000 H-2B visas[11] and about 32,000 H-2A visas. The countries sending the most workers to the United States under these programs were Mexico, Jamaica and Guatemala; about three-fourths are Mexican.[12]

As will be shown in this report, this current guestworker system is plagued by some of the same problems as the discredited bracero program. •

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8 David Bacon, *Fast Track to the Past: Is a New Bracero Program in Our Future? (and what was life like under the old one)* published at http://dbacon.igc.org/Imigrants/17FastPast.htm (2002)

9 Alex Wilkenson, *Big Sugar: Seasons in the Cane Fields of Florida* (Alfred A. Knopf) (1989)

10 David Bacon, "Be Our Guests," The Nation, September 27, 2004

11 This includes H-2B and H-2R (returning worker) visas.

12 Department of State, Nonimmigrant Visas Issued, 10/05/04 – 9/30/05, available at http://travel.state.gov/pdf/FY2005_NIV_Detail_Table.pdf

PART 2

How Guestworker Programs Operate

The United States currently has two guestworker programs under which employers can import unskilled labor for temporary or seasonal work lasting less than a year: the H-2A program for agricultural work and the H-2B program for non-agricultural work.[13]

Although the H-2A and H-2B programs offer different terms and benefits, they are similar in one significant way: Both programs permit the guestworker to work only for the employer who petitioned the Department of Labor (DOL) for his or her services. If the work situation is abusive or not what was promised, the worker has little or no recourse other than to go home. That puts the worker at a distinct disadvantage in terms of future opportunities in the United States, because his ability to return during any subsequent season depends entirely on an employer's willingness to submit a request to the U.S. government. In practical terms, it means that an employee is much less likely to complain about workplace safety or wage issues.

Under federal law, employers must obtain prior approval from the DOL to bring in guestworkers. To do that, employers must certify that:

- there are not sufficient U.S. workers who are able, willing, qualified and available to perform work at the place and time needed; and,
- the wages and working conditions of workers in the United States similarly employed will not be "adversely affected" by the importation of guestworkers.[14]

The H-2 visas used by guestworkers are for individuals only and generally do not permit them to bring their families to the United States. This means that guestworkers are separated from their families, including their minor children, for periods often lasting nearly a year.

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13 There are other guestworker programs (such as the H-1B program for more highly skilled workers), but this report focuses only on H-2 workers because current congressional proposals for large-scale guestworker expansion appear most closely aimed at replicating the experiences of the H-2 programs.

14 8 U.S.C. §1188(a)(1); 1101(a)(15)(H)(ii); 20 CFR Part 655

The fundamental legal protections afforded to H-2A workers do not apply to guestworkers under the H-2B program.

THE H-2A PROGRAM

The H-2A program provides significant legal protections for foreign farmworkers. Many of these safeguards are similar to those that existed under the widely discredited bracero program, which operated from 1942 until it was discontinued amid human rights abuses in 1964. Unfortunately, far too many of the protections — as in the bracero program — exist only on paper.

Federal law and DOL regulations contain several provisions that are meant to protect H-2A workers from exploitation as well as to ensure that U.S. workers are shielded from the potential adverse impacts, such as the downward pressure on wages, associated with the hiring of temporary foreign workers.

H-2A workers must be paid wages that are the highest of: (a) the local labor market's "prevailing wage" for a particular crop, as determined by the DOL and state agencies; (b) the state or federal minimum wage; or (c) the "adverse effect wage rate."[55]

H-2A workers also are legally entitled to:

- Receive at least three-fourths of the total hours promised in the contract, which states the period of employment promised. (This is called the "three-quarters guarantee.")
- Receive free housing in good condition for the period of the contract.
- Receive workers' compensation benefits for medical costs and payment for lost time from work and for any permanent injury.
- Be reimbursed for the cost of travel from the worker's home to the job as soon as the worker finishes 50 percent of the contract period. The expenses include the cost of an airline or bus ticket and food during the trip. If the guestworker stays on the job until the end of the contract the employer must pay transportation home.
- Be protected by the same health and safety regulations as other workers.
- Be eligible for federally funded legal services for matters related to their employment as H-2A workers.[56]

To protect U.S. workers in competition with H-2A workers, employers must abide by what is known as the "fifty percent rule." This rule specifies that an H-2A employer must hire any qualified U.S. worker who applies for a job prior to the beginning of the second half of the season for which foreign workers are hired.

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55 20 C.F.R. § 655.102(b)(9)
56 45 C.F.R. § 1626.11

THE H-2B PROGRAM

The fundamental legal protections afforded to H-2A workers do not apply to guestworkers under the H-2B program.

Though the H-2B program was created two decades ago by the Immigration Reform and Control Act (IRCA) of 1986, the DOL has never promulgated regulations enacting substantive labor protections for these workers.[17] IRCA, in fact, does not explicitly require such regulatory safeguards, providing only the guidance that the importation of H-2B workers must not adversely affect U.S. workers' wages and working conditions.

And, unlike the H-2A program, the procedures governing certification for an H-2B visa were established not by regulation but rather by internal DOL memoranda (General Administrative Letter 1-95) and therefore were not subject to the public comment and review process required when new federal regulations are adopted. An employer need only state the nature, wage and working conditions of the job and assure the DOL that the wage and other terms meet prevailing conditions in the industry.[18] Because the H-2B wage requirement is set forth by administrative directive and not by regulation, the DOL takes the position that it lacks legal authority to enforce the H-2B prevailing wage.

While the employer is obligated to offer full-time employment that pays at least the prevailing wage rate, none of the other substantive regulatory protections of the H-2A program apply to H-2B workers. There is no free housing. There is no access to legal services. There is no "three-quarters guarantee." And the H-2B regulations do not require an employer to pay the workers' transportation to the United States. •

H-2B guestworkers, who labor in non-agricultural industries such as forestry, seafood processing and tourism, do not have the same fundamental legal protections as H-2A agricultural workers.

SELECTED DIFFERENCES IN REGULATORY SAFEGUARDS FOR H-2A WORKERS AND H-2B WORKERS	H2A	H2B
50% Rule	yes	no
3/4 Guarantee	yes	no
Free Housing	yes	no
Social Security Tax Exemption	yes	no
Eligible for LSC-Funded Legal Services	yes	no

17 See Mortner v. Reich, 934 F. Supp. 232 (D. Tex. 1996)
18 GAL No. 1-95 (IV)(D) (H-2B); See DOL ETA Form 750

PART 3

Recruitment: Exploitation Begins at Home

The exploitation of H-2A and H-2B guestworkers commences long before they arrive in the United States. It begins, in fact, with the initial recruitment in their home country — a process that often leaves them in a precarious economic state and therefore extremely vulnerable to abuse by unscrupulous employers in this country.

U.S. employers almost universally rely on private agencies to find and recruit guestworkers in their home countries, mostly in Mexico and Central America.

These labor recruiters usually charge fees to the worker — sometimes thousands of dollars — to cover travel, visas and other costs, including profit for the recruiters. The workers, most of whom live in poverty, frequently must obtain high-interest loans to come up with the money to pay the fees. In addition, recruiters sometimes require them to leave collateral, such as the deed to their house or car, to ensure that they fulfill the terms of their individual labor contract.

The entirely unregulated recruiting business can be quite lucrative. With more than 121,000 such workers recruited in 2005 alone, tens of millions of dollars in recruiting fees are at stake. This financial bonanza provides a powerful incentive for recruiters and agencies to import as many workers as possible — with little or no regard to the impact on individual workers and their families.

WORKERS START OFF DEEPLY IN DEBT

Typically, guestworkers arriving in the United States face a fee-related debt ranging from $500 to well over $10,000. Many pay exorbitant interest rates on that debt. When that's the case, they have virtually no possibility of repaying the debt by performing the work offered by the employer during the term of the contract.

Overwhelming debt is a chronic problem for guestworkers. Although U.S. laws do provide some obligation for employers to reimburse workers for their travel and visa costs,[9] in practice it is rare that guestworkers are fully reimbursed. Most struggle to repay their debt, while interest accrues.

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9 See Arriaga v. Florida Pacific Farms, 305 F. 3d 1228, 1237 (11th Cir. 2002); 20 C.F.R. § 655.102(b)(5)(i)

The U.S. forestry industry recruits many of its guestworkers from Huehuetenango in Guatemala, where many indigenous people live in extreme poverty with few opportunities to earn wages.

These obstacles are compounded when employers fail to offer as many hours of work as promised — a common occurrence.

Guatemalan guestworkers represented by the Southern Poverty Law Center paid an average of $2,000 in travel, visa and hiring fees to obtain forestry jobs in the United States. Guatemalans are recruited largely from Huehuetenango, an extremely poor region where many indigenous people live. Often illiterate, many speak Spanish as their second language, with varying degrees of proficiency. They generally work as subsistence farmers and have virtually no opportunity to earn wages in rural Guatemala. Thus, their only realistic option for raising the funds needed to secure

The Recruiting Bonanza

The recruitment of guestworkers is a lucrative business for the companies that help U.S. businesses obtain cheap foreign labor.

A deposition in a lawsuit filed by the Southern Poverty Law Center provides a glimpse into this world, in which workers pay thousands of dollars to recruiters in their countries for the right to work in low-wage jobs in the United States.[1]

The lawsuit, filed in 2006, contends that Decatur Hotels and its president, F. Patrick Quinn III, violated the Fair Labor Standards Act when the company failed to reimburse guestworkers for the exorbitant fees paid to aggressive labor recruiters working as agents of the hotel chain.

When Decatur Hotels, which owns 15 luxury hotels in New Orleans, decided to import up to 290 guestworkers to fill hotel jobs vacated by Hurricane Katrina evacuees, the company hired a Baton Rouge-based company called Accent Personnel Services Inc. Accent advertises on its website that it helps businesses obtain government approval to employ guestworkers and also recruits them.

Virginia Pickering, president and owner of the company, testified in a deposition that Accent earned $1,200 for each person recruited to work for Decatur Hotels — $300 each from Decatur Hotels and another $900 each from recruiters working in Peru, Bolivia and the Dominican Republic. That means that if Decatur imported the full 290 workers for which it was certified by the Department of Labor, Accent would have earned nearly $350,000. Accent did not have to pay for travel or visa costs out of those fees.

Each of the workers paid between $3,500 and $5,000 to cover recruiting fees, travel and visas. Like many other guestworkers, they plunged their families into debt to raise this money. For most workers, it was more than a year's salary.

The guestworkers soon found out they could not earn enough to make ends meet — much less pay back their debts. The recruiters had promised a minimum of 40 hours of work per week and plenty of overtime. Instead, they found themselves working about 25 hours a week, sometimes far less.

Even though desperate for wages, these workers are prohibited by law from seeking alternative employment.

"It is modern-day slavery," said Daniel Castellanos Contrera of Peru.

Another worker, who did not want to be identified because of the possibility of being blacklisted, said, "People came with debts and children to support — and the illusion that this would help their future. In the end, we have only bigger problems and deeper debt."

1 Castellanos-Contreras v. Decatur Hotels, LLC, E.D. Louisiana, Case No. 06-4340, filed August 2006

Leonel Hernandez-Lopez of Guatemala, like many other guestworkers, was required to leave the deed to his home with recruiters as "collateral."

H-2B jobs in the United States is to visit a loan shark, who will likely charge exorbitant interest rates. Many of these workers report having been charged 20 percent interest *each month*. Given that the pine tree planting season is three months long and workers often earn less than $1,000 per month, they have little hope of repaying the debt doing the work for which they were hired.

The fees paid by these Guatemalan workers amount to far more than the actual cost of travel and visas. Roundtrip airline tickets can be bought for $500 to $600. A visa typically costs $100. Assorted other fees may add several hundred. The remainder is often pocketed by the recruiter or the agency for which he works.

In addition, the majority of Guatemalan forestry workers interviewed by the Southern Poverty Law Center were required to leave some form of collateral, generally a property deed, with an agent in Guatemala to ensure that the worker will "comply" with the terms of his contract. If a worker violates the contract — as determined by the recruiter — that worker will be fined. Some workers have been required to pay as much as $1,000 to secure the return of their deed. This tactic is enormously effective at suppressing complaints about pay, working conditions or housing. U.S.-based companies deny knowledge of the abuse, but there is little doubt that they derive substantial benefit from their agents' actions. It is almost inconceivable that a worker would complain in any substantial way while a company agent holds the deed to the home where his wife and children reside.

The story told by Alvaro Hernandez-Lopez is typical of guestworkers recruited from Guatemala. In 2001, at age 45, he came to the United States to work for Express Forestry Inc. in the Southeast. He continued coming for two more planting seasons. "What I earned planting trees in the States was hardly enough to pay my debt," he said. "It was really hard for us to fight to get to the States legally and then not earn any money. We were told we had to leave our deeds to get the job. On a blank paper we had to sign our names and hand over our deeds. They said that if we didn't sign this paper they wouldn't bring us to the States to work."

Forestry worker Nelson Ramirez, also from Guatemala, describes a similar experience when he signed up to work for Eller and Sons Trees Inc. in 2001. A labor recruiter required that his wife sign a paper agreeing to be responsible if he were to break his contract. "I didn't understand exactly what this threat meant but knew that my wife would have to sign if I was going to get the visa," Ramirez said. "The work was very hard, but I worried about leaving because my wife signed this form to get me the job and I worried about her."

These tactics are not limited to any particular industry or country. Recruits in some parts of the world are required to pay even greater sums of money to obtain guestworker visas. Some Thai and Indonesian workers imported to North Carolina on H-2A visas, for example, each paid $5,000 to $10,000 or more for the right to be employed in short-term agricultural jobs at less than $10 per hour. In practice, they were not paid even that.

Guestworkers recruited from Bolivia, Peru and the Dominican Republic each paid between $3,500 and $5,000 to obtain temporary, low-wage jobs in New Orleans hotels after Hurricane Katrina. The hotel owner certified to the U.S. government that no American workers were available.

WORKERS PAY UP TO $5,000 FOR POST-KATRINA HOTEL JOBS

Following Hurricane Katrina, a major hotel company in New Orleans, Decatur Hotels LLC, decided to arrange for H-2B guestworkers to fill hotel jobs that had been vacated by employees who apparently were driven from the city by the massive destruction. In its request to the Department of Labor for permission to hire up to 290 guestworkers, the company claimed to "have offered work to hurricane evacuees" but "no one applied."[20]

Agents for the company, however, found plenty of willing workers in Peru, Bolivia and the Dominican Republic. Each recruit paid between $3,500 and $5,000 to come to the United States for hotel jobs — maintenance, housekeeping, guest services, etc. — that were scheduled to last just nine months. According to the terms of the written contract, each would have to work full-time for three to four months just to recoup the recruiting fees, not counting any interest on loans they may have taken out. When they arrived, they found they were not even able to work full-time with the hotels, making their situations even more desperate.

"Every one of us has to sell things in order to have the money to come here," said Francisco Sotelo Aparicio, who came from Peru to work for Decatur Hotels. "I sold some of my land, my belongings, and we leave our families to try to come out ahead. … We want to keep working legally, but it is very hard to do so when we make such little money and have so much debt. We become desperate."

In many cases, the only way for guestworkers to make enough money to repay their debt is to seek additional employment — but that is illegal. The guestworker system permits them to work only for the employer who arranged with the Department of Labor to import them.

Many of the workers interviewed by the Southern Poverty Law Center know full well that they will be unable repay their recruiting debt because their pay is so low and the jobs are seasonal or temporary.

This raises the question: Why do workers choose to come to the United States under these terms?

The simple fact is that workers from Mexico, Guatemala and many other countries often have very few economic opportunities. In recent years, rural Mexicans have had an increasingly difficult time making a living at subsistence farming, and in some regions there are virtually no wage-paying jobs. Where jobs exist, the pay is extremely low; unskilled laborers can earn 10 times as much, or more, in the United States as they can at home. So even though they risk being cheated, many workers are willing to take that chance. Most perceive the guestworker program as their best chance to get to the United States and provide a better life for their families. These desperate workers are easily deceived by recruiters.

In a few cases, guestworkers have told the Southern Poverty Law Center, employers have simply

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20 Castellanos-Contreras v. Decatur Hotels, LLC, E.D. Louisiana, Case No. 06-4340, filed August 2006.

provided a backdoor for migrant workers to get to the United States. Once here, they overstay their visas, becoming unauthorized workers, or "jump" contract by going to work elsewhere. Even though expensive, the cost to the worker commonly is less than what it would cost to enter the United States illegally. Certainly it is less dangerous to enter with an H-2 visa than to attempt to cross the border unlawfully.

Some employers seek long visa periods, claiming to have eight or 10 months of work, for example, when they actually have only two to three months of work to offer. The period after which the employer has no work to offer but when the visa is still valid is referred to by many workers as the "tiempo libre" or "free period." Numerous workers have told the Southern Poverty Law Center that their employers explicitly advised them that they were free to seek work elsewhere during this period. While that clearly violates immigration law, workers often believe themselves to be in legal status, because their visa appears valid and because they were given permission by their employer. For some employers, this is the only way they are able to continue to attract a workforce year after year, since the wages are so low and the costs of recruitment so high.

One employer sued by the Southern Poverty Law Center had extensive notes showing the deposits left by workers in order to secure their jobs. Next to one worker's name was written: "he only wants the visa to travel to Florida. He must leave a 5000 deposit." Clearly, these are visas available for sale.

As long as the guestworker system relies on a series of unregulated foreign recruiters, it is subject to this sort of wanton selling of visas.

A prohibition on charging fees to workers for recruitment or transportation would help

Irla

In December 2000, Irla's husband left his small town in Guatemala for the first time to work in the United States. With an H-2B visa in hand and a job planting pines in the forests of the South, he hoped to earn enough money to make a better life for his family.

He incurred debt to pay about $1,000 in fees to a recruiter and was told to leave the deed to his house with a lawyer in town to guarantee his return when the seven-month visa expired.

He didn't earn much money planting pines. But after three months, the planting season ended and he found other jobs. He worked in a factory, harvested grapes and worked in tomato and tobacco fields. Only at this point was he able to send more money home. To some guestworkers, this is known as the "visa libre" period, and recruiters sometimes promise such opportunities even though this type of arrangement violates the rules of the guestworker system.

"We all knew the men would not earn much in the actual planting season," Irla said. "My husband and the others would work their three months with the planting company and then would find other work. My husband could not afford to send money to us or to pay his debt until he had a different job."

Irla's husband continued to go to the United States every season for the following four years. The deed to his home stayed in the hands of the lawyer in Guatemala. Many other women in Irla's community were in the same situation. They stayed at home to care for the children, waiting patiently for money that rarely arrived.

"We do this for our kids," Irla said. "We have to work so they can eat, and it is not the same when the husband is not here."

After completing his fifth three-month planting season in the United States, Irla's husband again found other work. On the way to his job, he was killed in a car accident. At 32, he left five children behind. The last time Irla saw him was in November 2004.

Even after five years, he still owed about $700.

"He should have earned a lot of money with all that time in the United States," Irla said. "There were no earnings to show. Now I am working without him for our five kids. I think it will take me about three years to pay this debt. I am the only one working for the food."

The lawyer will not give Irla back the deed to their house until she repays the debt. "If I don't pay this debt they say they will take my house."

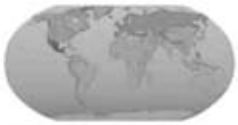
Irla now wishes he had remained in Guatemala picking coffee. "It would have been better if he had not gone and we could have just eaten greens and tortillas. I would rather have him here now."

Next to one worker's name was written: "he only wants the visa to travel to Florida. He must leave a $5000 deposit." Clearly, these are visas available for sale.

negate the financial incentive for the recruiting industry in Mexico and elsewhere to send more workers than are needed. Presumably, if the workers could not be charged, then employers would pay for recruiting, and they would recruit only the number of workers needed.

Unfortunately, it is hard to imagine enforcing such a rule. For example, until recently, one U.S. embassy in Latin America routinely asked prospective H-2 workers how much they had paid in recruitment fees, apparently out of concern that a high level of indebtedness would cause workers to overstay their visas in order to repay the debt. Workers were told by their recruiters what the "correct" — that is, false — answer should be, and workers dutifully understated the fees that they have paid.

A fundamental problem with the guestworker system is the requirement that a worker may travel to the United States on an H-2 visa only after he has a job offer from a U.S. employer. Placing this power in the hands of employer representatives operating in other countries is a recipe for worker abuse. •



	MEXICO	GUATEMALA	EUROPE
H-2A	28,563	87	323
H-2B	60,258	3,681	4,979

H-2 guestworkers come to the United States from across the globe, but about three-fourths are from Mexico, and about nine in 10 come from Latin American countries.

PART 4

Holding the "Deportation Card"

The most fundamental problem with guestworker programs, both historically and currently, is that the employer — not the worker — decides whether a worker can come to the United States and whether he can stay.

Because of this arrangement, the balance of power between employer and worker is skewed so disproportionately in favor of the employer that, for all practical purposes, the worker's rights are nullified. At any moment, the employer can fire the worker, call the government and declare the worker to be "illegal."

Otto Rafael Boton-Gonzalez, an H-2B forestry worker from Guatemala, has seen first-hand how this works. "When the supervisor would see that a person was ready to leave the job because the pay was so bad, he would take our papers from us. He would rip up our visa and say, 'You don't want to work? Get out of here then. You don't want to work? Right now I will call immigration to take your papers and deport you.'"

Many abuses, perhaps most abuses of guestworkers, flow from the fact that the employer literally holds the deportation card. One of the most chronic abuses reported by guestworkers concerns the seizure of identity documents — in particular passports and Social Security cards.[21] In many instances, workers are told that the documents are being taken in order to ensure that they do not leave in the middle of the contract.

The Southern Poverty Law Center has received dozens of reports of this practice and has, in the course of its legal representation of workers, confirmed that it is routine. While some employers state that they hold the documents for the purpose of "safekeeping," many have been quite candid in explaining that there is a great risk that workers will flee if the documents are not held. One employer sued by the Southern Poverty Law Center stated in her deposition that the company kept workers' Social Security cards in the office because "if they have their Social Security card, they'll leave."[22]

Juan, a forestry worker, said, "The boss took our passports and kept them. He took them as soon

21 Unlike H-2A workers, those with H-2B visas must pay Social Security and Medicare taxes but have no prospect of receiving benefits under the programs. They also are subject to federal income tax withholding.
22 Deposition of Sandy Thomas, page 77, Recinos-Recinos v. Express Forestry, E.D. Louisiana, Case No. 05-1555

Employers often confiscate visas and other documents from guestworkers, ensuring they cannot leave their jobs.

as we arrived from Mexico. We would ask for them and he would always say no. When we got paid, we would want to go cash our pay checks. The boss would say, 'Go talk to the driver and he'll change them for you.' They would not give us our passports to cash our pay checks. They would say that the higher company office ordered them to do this. My passport gives me permission to be here so no one will bother me because I am legal. I cannot prove I am legal if I do not have my passport."

There is no realistic mechanism for workers to recover their identity documents. Numerous employers have refused to return these documents even when the worker simply wanted to return to his home country. The Southern Poverty Law Center also has encountered numerous incidents where employers destroyed passports or visas in order to convert workers into undocumented status. When this happens, there is little likelihood of a worker obtaining assistance from local law enforcement officials. In many jurisdictions, lawyers representing workers advise them to avoid calling police because they are more likely to take action against complaining workers than against the employer.

LIVING IN FEAR

In other instances, employers have quite explicitly used the threat of calling the U.S. Immigration and Customs Enforcement agency as a means of asserting control over the workers. For example, in one case where workers refused to work until they received their pay after not having been paid in several weeks, the employer responded by threatening to call immigration and declare that the workers had "abandoned" their work and were thus "illegal" workers. Such threats are common and are made possible by a system under which visas are issued solely for employment with the petitioning employer.

Even when employers do not overtly threaten deportation, workers live in constant fear that any bad act or complaint on their part will result in their being sent home or not being rehired. Fear of retaliation is a deeply rooted problem in guestworker programs. In 1964, the Mexican-American labor organizer and writer Ernesto Galarza found that despite the prevalence of workers' rights violations, only one in every 4,300 braceros complained.[23]

In examining the H-2A program in North Carolina, Human Rights Watch found "widespread fear and evidence of blacklisting against workers who speak up about conditions, who seek assistance from Legal Services attorneys, or who become active in [the union]"[24] Human Rights Watch also found evidence of a "campaign of intimidation" against workers to discourage any exercise

23 Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story* (Rosicrucian Press (1964)) at 51. See also Michael Holley, Disadvantaged by Design: How the Law Inhibits Agricultural Guestworkers from Enforcing Their Rights, 18 Hofstra Lab. & Emp. L.J. 675, 685 (2001)

24 Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards* (ILR Press) 2000 at 148

of freedom of association by the workers. The U.S. Government Accountability Office (formerly the General Accounting Office) similarly reported in 1997 that H-2A workers "are unlikely to complain about worker protection violations, such as the three-quarters guarantee, fearing they will lose their jobs or will not be accepted by the employer or association for future employment."[25]

The North Carolina Growers Association blacklist has been widely publicized. The 1997 blacklist, called the "1997 NCGA Ineligible for Rehire Report" consisted of more than 1,000 names of undesirable former guestworkers.[26]

Fear of retaliation among workers is a constant concern — and one that is warranted. There is no question that many H-2 employers take full advantage of the power they hold over guestworkers. •

Workers live in constant fear that any bad act or complaint on their part will result in their being sent home or not being rehired. Fear of retaliation is a deeply rooted problem in guestworker programs.

25. *Changes Could Improve Services to Employers and Better Protect Workers*, GAO/HEHS 98-20, pp 60-61
26. David Bacon "Be Our Guests," *The Nation*, September 27, 2004

PART 5

Wage and Hour Abuses

Despite federal law requiring the payment of the Adverse Effect Wage Rate to H-2A workers and the prevailing wage rate to H-2B workers, in practice many guestworkers earn substantially less than even the federal minimum wage of $5.15 per hour.

Legal Services attorneys have represented H-2A workers in hundreds of lawsuits against their employers. And more than 20 lawsuits have been filed on behalf of H-2B workers across the nation in recent years, many by the Southern Poverty Law Center. Given that only a handful of lawyers provide free legal services to these low-wage workers, these numbers reflect a grave problem: Employers using the services of guestworkers in many industries routinely violate basic labor laws.

To understand the wage and hour issues faced by workers, it is useful to examine two industries — forestry and seafood processing — that have become reliant on guestworkers for the majority of their labor. It is no coincidence that in both industries wage and hour violations are the norm, rather than the exception.

FORESTRY WORKERS

Although an H-2B contract between employer and worker specifies a minimum hourly wage — the prevailing wage, which has run in recent years from approximately $6 an hour to more than $10 per hour, depending on the year and the state — tree planters are more often paid by the number of seedlings they plant. They are told that they are expected to plant at least two bags of 1,000 seedlings each in an eight-hour day, a task that is often impossible. Payment ranges from $15 to $30 per bag.

An experienced hand-planting crew can average 1,500 well-planted seedlings per person per day. On rough sites, a worker might average just 600 trees per day; in open fields, a worker might plant up to 2,000 in a day.[27] At the average rate of 1,500 trees, a worker could earn between $22.50 and $45 a day, far less than the legally required wage. By law, the employer is obligated to make up the difference between the bag rate and the prevailing wage rate. This is rarely done.

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27 Clark W. Lantz, et al., *A Guide to the Care and Planting of Southern Pine Seedlings*, United States Department of Agriculture, Forest Service Southern Region, Management Bulletin R8-MB39, Revised October 1996, page 24.

Most workers report working between eight and 12 hours a day. But they rarely, if ever, earn overtime pay, despite the fact that they often work six full days a week and average well over 40 hours. In addition, they are routinely required to purchase their own work-related tools and incur other expenses and deductions, unlawfully cutting into their pay.

Guestworkers in some industries are systematically cheated out of wages they earn, even when they carefully document their hours.

Virtually every forestry company that the Southern Poverty Law Center has encountered provides workers with pay stubs showing that they have worked substantially fewer hours than they actually worked. Relying on interviews with more than 1,000 pine tree workers, the Center has concluded that this industry systematically underpays its workers.

Escolastico De Leon-Granados, an H-2B worker from Guatemala, said he was consistently underpaid while working for Eller and Sons Trees Inc. "We worked up to 12 or 13 hours and we could only plant 1,300 or 1,500 seedlings," he said. "Our pay would come out to approximately $25 for a 12-hour workday. At the end of the season, I had only saved $500 to send home to my family."

Because of the lack of enforcement by government officials and the vulnerability of guestworkers, this exploitation has continued largely unfettered for many years.

In an attempt to reform this widespread wage abuse, the Southern Poverty Law Center has filed four class action lawsuits against large forestry contractors since 2004. To date, two of those lawsuits have been settled, resulting in contractors agreeing to pay back wages to class members and change the way they do business.[28] Two other cases are pending.[29] Substantially similar allegations have been made in lawsuits filed by other advocates, several of which were settled with payment or entry of judgment.[30]

SEAFOOD WORKERS

In the seafood industry, workers in Virginia and North Carolina have filed at least 12 lawsuits against 10 companies since 1998. Most of the lawsuits contain virtually identical allegations: that workers were paid on a piece rate; that they did not earn the minimum wage; that there were unlawful deductions for tools, travel and uninhabitable housing taken from their pay; and that they were not paid overtime wages for hours worked over 40 in a week.[31]

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28 *Salinas-Rodriguez v. Alpha Services LLC*, Civil Action. No. 3:05-CV-440WHB-AGN, U.S. District Court for the Southern District of Mississippi, Jackson Division; *Recinos-Recinos v. Express Forestry*, Civil Action No. 05-1361 (TJS), U.S. District Court for the Eastern District of Louisiana. As part of the settlement agreement with Express, the Southern Poverty Law Center agreed "to include a statement from the company in any written material announcing the settlement. The statement says the "defendants have stated that they decided to settle this case to avoid the costs and hassles of future litigation."

29 *Leon-Granados v. Eller and Sons Trees, Inc.*, Civil Action No. 1:05-CV-1473-CC, U.S. District Court for the Northern District of Georgia, Atlanta Division and *Rosales-Perez v. Superior Forestry*, Civil Action No. 1:06-CV-00036 U.S. District Court for the Middle District of Tennessee, Columbia Division

30 *See Perez-Perez, et al. v. Progressive Forestry Services, Inc., et al*, Civ. No 98-1474-M-(D. Ct.); *Moreno-Leon v. Franklin Stanley*, U.S. District Court for the Western District of Arkansas, El Dorado Division, Case No. 99-1002; *Vicente Vera-Martinez v. Gaona Reforestation, Inc.*, U.S. District Court for the Western District of Arkansas, Case No. 03-6002; *Gonzalez-Sanchez v. International Paper Co.*, 346 F.3d 1011; *Martinez-Mendoza v. Champion International Corporation*, 340 F.3d 1200 (11th Cir. 2003); *Linares-Ruiz v. Georgia-Pacific Corp.*, 88 Fed.Appx. 382 (11th Cir. 2003)

31 *See Zamora v. Shores and Rudolf Seafood, Inc.*, U.S. District Court for the Eastern District of Virginia CV88CV501; *Maria Demesio Adayte v. Shores*

Virtually all of these cases were settled before trial. While a few were settled on confidential terms, a number of the settlements required the payment of substantial sums of money to the workers. In one case, *Zamora v. Shores and Ruark Seafood, Inc.*, workers sued an employer that had been twice cited by the U.S. Department of Labor (DOL) for failing to pay minimum wage and overtime wages to its workers. Each time the company was fined by the DOL it continued this unlawful practice. Even so, the DOL continued to grant the company's requests to import H-2B workers to process seafood. In 1999, the company paid more than $103,000, excluding attorneys' fees and costs, to settle a lawsuit filed by 51 workers.[32] A second suit ended in the settlement of claims by an additional 10 workers.

These lawsuits and DOL enforcement actions, while limited in scope, illustrate that wage and hour abuses of guestworkers are not a question of a few "bad apple" employers. Rather, when an industry comes to largely rely upon extraordinarily vulnerable guestworkers for the bulk of its labor, there is a race to the bottom in terms of wages to be paid. This creates problems for the workers but also for employers who want to comply with the law, because they are left at a competitive disadvantage relative to employers who cheat their workers. •

Simón*

Simón was recruited in Mexico to work in the sweet pepper and jalapeño fields in Georgia. He worked long hours — up to 70 hours a week. He kept a notebook in which he wrote down the time of day when he started and stopped working so that he could compare it with his pay stub at the end of the week.

He found that the pay stubs did not include all of the hours he worked. Sometimes, as many as 30 hours per week were missing.

"I worried about this," he said. "I had left my town in Mexico to come work here because I needed the money to support my family, and they were not paying us for our work. They were not honoring the contract."

One night a Legal Services employee visited the camp where Simón and the other H-2A workers lived, and he learned that he had a right to earn the federal minimum wage for every hour worked. But when he spoke to his supervisor about the missing hours, he was told he could lose his job if he talked to Legal Services again.

He continued talking to Legal Services, though in another town. When Simón tried to come to the United States the following year, he discovered he had been blacklisted.

"When I talked with the contractor in Mexico, he said that I could not go back to work for the company. He told me it was because I had talked with Legal Services. I had other co-workers who had talked with Legal Services who had the same problem and were not allowed on the list to return to work."

* Not real name

and Ruark Seafood, Inc., U.S. District Court for the Eastern District of Virginia; *Alcaraz-Garcia v. Gloucester Seafood, Inc.*, U.S. District Court for the Eastern District of Virginia, 4:00CV169; *Soto-Lopez v. JE W Seafood of Virginia, Inc.*, U.S. District Court for the Eastern District of Virginia, 3:98CV790; *Perez-Sandoval v. International Seafood Distributors, Inc.*, U.S. District Court for the Eastern District of Virginia, 3:99-cv-00689; *Perez-Segura v. Bay Water Seafood, Inc.*, U.S. District Court for the Eastern District of Virginia; *Quiroz-Loaiza v. Shoes And Shores, Inc. t/a Virginia Packing*, U.S. District Court for the Eastern District of Virginia, 99CV133; *Rios-Isabel Miranda-Garcia v. Gloucester Seafood, Inc.*, United States District Court for The Eastern District Of Virginia, 4:01CV39; *Bethian Benitez, et al. v. Sea Safari, et al.*, U.S. District Court for the Eastern District of North Carolina, 2001; *Fonseca Aguilar, et al. v. Carolina Seafood Ventures, et al.*, U.S. District Court for the Eastern District of North Carolina, August 2002; *In re Stephenson*, U.S. Bankruptcy Court for the Eastern District of Northern Carolina, October 2002

32 See Lawrence Lucore III, "Fifty-One Workers Will be Paid Back Wages", *Richmond Times Dispatch*, July 10, 1999

"Some days we had to spend much of the day clearing brush to make the land able to be planted. We were not paid at all for [this time]. We also never received overtime pay, despite the fact that we worked much more than 40 hours per week."

ARMENIO PABLO-CALMO, H-2B WORKER FROM GUATEMALA.

Wages Set Too Low

Federal regulations require employers who hire H-2A workers to pay at least the highest of the state or federal minimum wage, the local "prevailing wage" for the particular job, or an "adverse effect wage rate (AEWR)."

The AEWR was created under the bracero program as a necessary protection against wage depression. The Department of Labor (DOL) issues an AEWR for each state based on U.S. Department of Agriculture (USDA) data.

The AEWR has often been criticized by farmworker advocates as being too low. Farmworker Justice explains why:

"First, the USDA survey that DOL uses for the AEWR measures the average wage rates. Employers that have a hard time finding U.S. workers should compete against other employers by offering more than the average wage to attract and retain workers. Second, the AEWR is based on the previous year's wage rates and does not reflect inflation. Third, the USDA surveys of the average wage include the 55% or more of farmworkers who are undocumented, so the wages are depressed compared to what they would be if only U.S. citizens and authorized immigrants had the job. In addition, the AEWR's, by themselves, also do not prevent employers from imposing very high productivity standards that desperate foreign workers will accept but that would cause U.S. workers to insist on higher wages."[1]

As a practical matter, the substantive wage rates set forth in the H-2 visa programs are illusory and unenforceable.[2]

H-2B workers often face an even worse situation with regard to wages than H-2A workers. Under the law, they are entitled only to the "prevailing wage" for their work; there is no adverse effect wage rate for those workers. Of course, even though these workers are entitled to payment of prevailing wages and to employment in conformity with required minimum terms and conditions as provided for in the employer's labor certifications, federal law provides no real remedy when these rights have been violated.

In the forestry industry, prevailing wages in recent years have actually fallen, not only adjusted for inflation but in real terms. For example, in 2005 the prevailing wage rate for tree planters in all counties of Alabama was $9.20 per hour; in 2006, the wage rate was only $7.29 in Dale County, Alabama; other counties had similar decreases. There are two explanations for this trend. First, the DOL has recently modified its methodology for determining the prevailing wage in a way that is extremely favorable for employers.

Second, when an industry relies on guestworkers for the bulk of its workforce, wages tend to fall. Guestworkers are absolutely unable to bargain for better wages and working conditions. Over time, wages fall and the jobs become increasingly undesirable to U.S. workers, creating even more of a demand for guestworkers.

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1 Bruce Goldstein, Guestworker Policy: H-2A Program Adverse Effect Wage Rates Are Too Low, Farmworker Justice, May 2006, available at www.fwjustice.org/immigration_Lobby/HGotDocs/FAQAEWR.doc

2 See Michael Hoffey, Disadvantaged by Design: How the Law Inhibits Agricultural Guestworkers from Enforcing Their Rights, 18 Hofstra Lab. & Emp. L.J. 597-636; see also Andrew J. Elmore, Reconciling Liberty and Sovereignty in Nonprofessional Temporary Work Visa Programs: Toward a Non-subordination Principle in U.S. Immigration Policy (unpublished 2007, on file with authors)

PART 6

Contract Violations

A chronic problem faced by guestworkers is that employers recruit too many of them, a situation that leads to workers not being able to earn as much as they were promised.

Because the workers themselves, not the employers, absorb most of the costs associated with recruitment, employers often grossly exaggerate their labor needs when seeking Department of Labor (DOL) approval to import workers. To be sure, sometimes employers genuinely do not know months ahead of time exactly how many workers they will need, and they may worry that some workers will leave.

Under the H-2 program, employers are obligated to offer full-time work when they apply to import foreign workers; anything less will not be approved by the DOL. There is virtually no enforcement of this requirement in practice, however.

DOL regulations require that H-2A workers be guaranteed 75 percent of the hours promised in the contract — a provision called the "three-quarters guarantee." That does not mean employers always comply. Many of the terms in a worker's job offer are simply not honored. The DOL's inspector general found in 2004 that the North Carolina Growers Association overstated its need for workers and overstated the period of employment, factors that likely led workers to abandon their contracts early and not receive the return transportation to which they were lawfully entitled. [33]

In the H-2B program, there is no regulation of the number of hours that must be guaranteed to workers. The DOL, in fact, asserts that it has no authority to enforce the provisions of an H-2B contract under most circumstances. Thus, if a worker arrives in the United States on an H-2B visa and is offered no work for weeks on end (and this has occurred many times) that worker has virtually no recourse. He may not lawfully seek employment elsewhere. He likely has substantial debts on which he must continue to make payments. As an H-2B worker, he more than likely is obligated to pay for housing; certainly, he must pay for food.

The ramifications to the worker of being deprived of work for even short periods are enormous

33 Office of Inspector General, *Evaluation of the North Carolina Growers Association*, March 31, 2004. See also Leah Beth Ward, *Lax Regulations Trouble Critics of Labor Pipeline, Desperate Harvest*, Charlotte Observer, November 1, 1999

"Every one of us took out a loan to come here. We had planned to pay back our debt with our job here. They told us we would have overtime, that we could get paid double for holidays, that we would have a place to live at low cost, and it was all a lie."

under these circumstances. Fundamental to the problem is that the worker is not free to shop his labor to any other employer.

It is extremely common for seafood processing employers to seek more laborers than they can use. They routinely apply for workers in their plants for periods longer than needed for their seasons, as they are unsure exactly when their season will begin or end. As a result, many guestworkers have no work for three or four weeks at the beginning or end of their visa term. For low-wage workers desperately in debt, this can be devastating.

MISCLASSIFICATION

Other contract violations are routine. One of the most common is that of misclassification. This occurs most often when workers who should be characterized as H-2A workers (because, for example, they are picking produce in the field) are instead brought in as H-2B workers (and labeled as packing shed workers, for example). This results in workers being paid substantially less than the wage rate they should lawfully be paid. It also results in the workers being denied the substantially better legal protections afforded to H-2A workers, such as free housing and eligibility for federally funded legal services.

Another common form of misclassification involves employers who simply misstate the kind of work H-2B employees will be performing, so that the prevailing wage rate is set for one kind of work, such as landscaping, when the workers actually will be doing work that warrants a higher prevailing wage rate, such as highway maintenance. Again, there is virtually no recourse for a worker in this

Angela*

Angela was studying psychology in the Dominican Republic when she decided to become a guestworker in a New Orleans hotel, in part to earn money to pay medical bills for her cancer-stricken mother.

Like most guestworkers, Angela was promised plenty of work. She would need it, because she had taken on $4,000 in debt to pay the fees necessary to obtain the job and the nine-month H-2B visa.

"Every one of us took out a loan to come here," she said. "We had planned to pay back our debt with our job here. They told us we would have overtime, that we could get paid double for holidays, that we would have a place to live at low cost, and it was all a lie."

When she arrived in New Orleans in April 2006, she was given a desk job at the hotel, earning $6 an hour. She worked full-time, with some overtime, for the first month. But then her hours started dwindling; soon she was working only 15 to 20 per week, earning an average of $120 per week. She hardly had enough money to eat three meals a day after paying for housing and transportation.

"We would just buy Chinese food because it was the cheapest. We would buy one plate a day for about $11 and share it between two or three people. Sometimes we would eat bread and cheese. Sometimes we would make rice."

Her visa did not allow her to seek other employment, not even a part-time job and she fell deeper in debt.

She felt trapped by debt and by the promise she had made: She and her mother had signed a guarantee that she would finish the contract — or pay $10,000. If she could not pay, the recruiters would take her mother's belongings.

"I felt like an animal without claws — defenseless. It is the same as slavery.

"There are some people that believe the guestworker program is a good idea, but it is not. ... You put all your savings and hope into what this work promises and you accept the small amount of hours they give, the poor working conditions, and the low pay."

Angela's plans are ruined. "I cannot even talk to my mother about all of the troubles I have been having because I don't want her to worry and feel sicker. This is the other part that I have to swallow. It's like you are in hell and you are closed in and you don't know where the exit is. It's terrible."

* Not real name

Employers violate guestworker contracts with impunity, frequently misclassifying workers to avoid paying higher wages.

circumstance, as the DOL denies that it has any enforcement authority to address these kinds of abuses and H-2B workers are ineligible for federally funded legal services. As a practical matter, the only thing that workers can do, then, is to receive far less than they are legally entitled to under the law.

Lawyers for guestworkers in North Carolina report numerous accounts of H-2A workers who were deliberately sent by their employers to work on other operations owned by employers or their relatives, operations that would have to pay U.S. workers substantially more than the Adverse Effect Wage Rate. In one case, several H-2A Christmas tree workers were assigned by their employer to work in his home construction business, where they performed skilled carpentry work at far less than the prevailing wage.[34]

This is just one more way that employers can exploit the guestworker system for profit — and the vast majority of workers can do nothing about it. ▪

34 Interview with Mary Lee Hall, Legal Aid of North Carolina

PART 7

Injuries without Effective Recourse

Guestworkers toil in some of the most dangerous occupations in the United States.[35] Fatality rates for the agriculture and forestry industries, both of which employ large numbers of guestworkers, are more than 10 times the national average.[36] Unfortunately, when H-2 workers suffer injuries on the job, all too often they are denied access to appropriate medical care and benefits. Those who are seriously injured face enormous, often insurmountable obstacles to obtaining workers' compensation benefits.

In most instances, guestworkers are entitled to workers' compensation benefits — on paper, at least.

The reality is that many injured guestworkers are not able to obtain the benefits to which they are entitled under this system. Because workers' compensation is a state-by-state scheme, with varying rules, some states are more accessible to transnational workers than others. And workers often lack the knowledge needed to negotiate the complex system in order to have benefits continue when they leave the United States.

There simply are no clear rules in the H-2 regulations guaranteeing that workers' compensation benefits will continue after an injured worker returns to his home country. Indeed, the insurance carrier of one large company employing substantial numbers of guestworkers has a policy of affirmatively cutting off workers when they leave the United States, which they inevitably must do. This inhibits the workers' ability to gain access to benefits and provides a financial incentive for employers to rely on guestworkers.[37]

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35 Bureau of Labor Statistics, Census of Fatal Occupational Injuries, at 13 (2005) (Forestry, agriculture, and construction rank two, six, and ten, respectively, in the fatality rate.)

36 Id.

37 See Sarah Cleveland, Beth Lyon and Rebecca Smith, *Inter-American Court of Human Rights Amicus Brief: The United States Violates International Law When Labor Law Remedies are Restricted Based on Workers' Migrant Status*, 1 See of J. of Soc. Just. 795 (2003). See also Cathleen Caron, *Portable Justice and Global Workers*, 40 Clearinghouse Review 349, XX (January-February 2007)

Guestworkers perform some of the most difficult and dangerous jobs in America, but many who are injured face insurmountable obstacles to obtaining medical treatment and workers' compensation benefits.

Some states (for example, New Jersey) mandate that examining physicians be located in the state where an injury occurred. This means that injured workers have difficulty obtaining benefits while in other states and in their home countries. Some states require workers to appear in the state for hearings. And most states do not have clear rules permitting workers to participate by telephone in depositions and hearings before the workers' compensation body. These rules put guestworkers at an enormous disadvantage in obtaining benefits to which they are entitled. As a practical matter, workers also have an extremely difficult time finding a lawyer willing to accept a case for a guestworker who will be required to return to his or her home country. In 2003, a group of civil rights and immigrant rights groups filed an amicus brief with the Inter-American Court of Human Rights relating to the treatment of immigrants in the United States. Among their many complaints: the discrimination against foreign-born workers in the state-by-state workers' compensation scheme. That brief states:

> "Workers' compensation laws in many states bar the non-resident family members of workers killed on the job from receiving full benefits. In those states, whenever the family member is living outside the United States and is not a United States citizen, the family members do not receive the full death benefits award. There are several ways in which states limit compensation to nonresident alien beneficiaries. Some states limit compensation compared to the benefits a lawful resident would have received, generally 50% (Arkansas, Delaware, Florida, Georgia, Iowa, Kentucky, Pennsylvania, and South Carolina). Some states restrict the types of non-resident dependents who are eligible to receive benefits as beneficiaries (Arkansas, Delaware, Florida, Kentucky, Pennsylvania). Other states limit coverage based on: The length of time a migrant has been a citizen (Washington), or the cost of living in the alien resident beneficiary's home country (Oregon). Alabama denies benefits to all foreign beneficiaries."[38] (internal citations omitted)

Such policies obviously disproportionately impact the families of guestworkers killed on the job.

FORESTRY INJURIES COMMON

The forestry industry illustrates the problems many guestworkers face in gaining access to benefits. Getting injured on the job — either in the forest or in the van traveling to and from the forest — is a common occurrence for tree planters. They rarely receive any compensation for these injuries.

In their 2005 investigative series about guestworkers in the forestry industry, journalists from the *Sacramento Bee* wrote, "Guest forest workers are routinely subjected to conditions not tolerated elsewhere in the United States.... They are gashed by chain saws, bruised by tumbling logs and rocks, verbally abused and forced to live in squalor."[39]

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38 Cleveland, Lyon and Smith, *supra*, at 859

39 Tom Knudson and Hector Amezcua, "The Powers, Part 1" *Sacramento Bee*, November 13, 2005

Enrique Napoleon Hernandez-Lopez cut his thumb while planting trees but didn't receive medical attention for seven days. He spent 14 days in the hospital for an infection and nearly lost his thumb.

Leonel Hernandez-Lopez of Guatemala was working as a tree planter in 2004 when he cut his right knee badly on the job. "I was very sick for 30 days, with six stitches on my wound," he said. "I never received any help from the company, even having to pay for my own medicine from my own pocket. All the while I had to keep paying rent on the hotel room where I was staying, even though I made no money. … The only thing I received from the company was belittling, humiliation, mistreatment and bad pay."

Mexican forestry worker Jose Luis Macias was spraying herbicides in 2005 and took a bad fall after stepping on a branch that snapped. "I fell backwards down about five meters and my leg ended up bent underneath me," he said. "The supervisor told me, 'Get up, get up,' so that I would continue working. When he saw I did not want to get up, he said, 'Don't be a stupid wimp,' so I had to keep spraying. My leg was swollen and I asked the crew leader to take me to the doctor. He told me … he didn't have time to be taking me to the doctor. Finally I went to the doctor on my own. I have thousands of dollars in medical bills and I have never received any money for the time I lost from work. This was more than a year ago and my leg still swells, hurts and I almost can't work."

The pressure on workers to keep injuries to themselves is tremendous. Again, this is related to employers' absolute control of the right of guestworkers to be present in, work in and return to the United States.

Workers who report injuries are sometimes asked to sign forms saying they are quitting. They are told that if they sign and go home, they may be allowed to come back the following year.

They also face the implied and real threat of blacklisting.

A 1999 study by the Carnegie Endowment for International Peace reported that "[b]lacklisting of H-2A workers appears to be widespread, is highly organized, and occurs at all stages of the recruitment and employment process. Workers report that the period of blacklisting now lasts three years, up from one year earlier in the decade."[40]

Filing a workers' compensation claim is often the end of the only paying employment available to a worker. Workers generally file such a claim only when they perceive that the gravity of their injury will itself interfere with their ability to work again. If the injury appears temporary and the worker believes he will recover, he often takes the chance of not filing a claim to preserve his option for future employment. •

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40 See Demetrios Papademetriou and Monica Heppel, *Balancing Acts: Toward a Fair Bargain on Seasonal Agricultural Workers*, International Migration Policy Program, Carnegie Endowment for International Peace (1999) p. 13

PART II

Lack of Government Enforcement

Government enforcement of basic labor protections has decreased for all American workers in recent decades. The number of wage and hour investigators in the Department of Labor (DOL) declined by 14 percent between 1974 and 2004, and the number of completed compliance actions declined by 36 percent. During this same period, the number of U.S. workers covered by the Fair Labor Standards Act *increased* by more than half — from about 56.6 million to about 87.7 million.[41] The Brennan Center for Justice concluded in 2005 that "these two trends indicate a significant reduction in the government's capacity to ensure that employers are complying with the most basic workplace laws."[42]

This decline in enforcement has particularly grave consequences for guestworkers, who are far more vulnerable to abuses than U.S. workers and in great need of government protection.[43]

Conspicuously absent from proposals to expand guestworker programs — including proposals to create hundreds of thousands, or millions, of new guestworker positions — is any discussion about a substantial increase in the federal budget for the DOL and the Occupational Safety and Health Administration to ensure that guestworkers are protected on their jobs.

The rights of guestworkers can be enforced in two ways: through actions taken by government agencies, mainly the DOL, and through lawsuits filed by private attorneys, federally funded Legal

41 Brennan Center for Justice, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004*, Economic Policy Brief, No. 1, September 2005

42 Id.

43 See Mary Lee Hall, *Defending the Rights of H-2A Farmworkers*, 27 N.C.J. Int'l L. & Com. Reg. 521, 522 (2002)

The documentary "Harvest of Shame," broadcast by CBS in 1960, called America's attention to the callousness with which U.S. agricultural giants treated migrant farmworkers.

Services (H-2A workers only) or non-profit legal organizations like the Southern Poverty Law Center.

Workers face high hurdles to obtaining justice through either method.

Government enforcement has proven largely ineffective. The DOL actively investigates only H-2A workplaces. In 2004 the DOL conducted 89 investigations into H-2A employers.[44] Today, there are about 6,700 businesses certified to employ H-2A workers.

There are currently about 8,900 employers certified to hire H-2B workers, but there do not appear to be any available data on how many investigations the DOL conducts of these employers. Evidence suggests it is far fewer than the number of H-2A employers investigated, particularly given the DOL's stance that it is not empowered to enforce the terms of an H-2B worker's contract. The Southern Poverty Law Center's extensive experience in the field suggests that there were not many.

Though violations of federal regulations or individual contracts are common, DOL rarely instigates enforcement actions. And when employers do violate the legal rights of workers, the DOL takes no action to stop them from importing more workers. The Government Accountability Office reported in 1997 that the DOL had never failed to approve an application to import H-2A workers because an employer had violated the legal rights of workers.[45]

Government officials have demonstrated a lack of will to address even the most serious abuses. For example, a forestry contractor was sued in North Carolina on behalf of a group of H-2B tree planters who were housed in a storage shed with only one cold water spigot to share between them. They cooked over fires and with a gas grill through the snowy North Carolina winter. The workers claimed that when they tried to leave, their supervisor locked the gates and refused to let them go unless they repaid money he had lent them to buy sleeping bags and fuel for the gas grill, and paid him rent for a portable toilet.[46]

The DOL's wage and hour division had earlier documented what it called "a woeful history of labor violations," including unsafe living and working conditions and wage abuses. Yet the forestry contractor continued to receive permission to import guestworkers. When the DOL's Employment and Training Administration refused to cancel guestworker services to this employer, North Carolina's monitor advocate, a state official who is supposed to enforce farmworker rights, filed a complaint with the DOL's inspector general. A year and a day after the filing of that complaint, 14

44 Lornet Turnbull, "New State Import: Thai Farmworkers" The Seattle Times, February 20, 2005. See also Andrew J. Elmore, Reconciling Liberty and Sovereignty in Nonprofessional Temporary Work Visa Programs: Toward a Non-subordination Principle in U.S. Immigration Policy (unpublished) 2007, on file with authors)

45 See General Accounting Office, H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers, (December 1997)

46 Interview with Lori Elmes, Legal Aid of North Carolina

Guestworkers risk blacklisting and other forms of retaliation against themselves or their families if they sue to protect their rights. In one lawsuit, a labor recruiter threatened to burn down a worker's village in Guatemala if he did not drop his case.

Guatemalan men employed by this forestry company were killed on the way to work when their van crashed into a river in Maine.[47]

As a practical matter, the nature of the guestworker program makes DOL enforcement of some provisions unrealistic. Regulations, for instance, require employers to provide H-2A workers with a minimum of three-fourths of the hours specified in the contract and to pay for their transportation home. But there is currently no mechanism, such as a certification by the employer, that allows the DOL to effectively monitor whether employers comply with these requirements. After the contract period expires, the worker must leave the country and is therefore not in a good position to take action to protect his rights.

TRANSPORTATION COSTS

In addition, there are requirements that DOL refuses to enforce. In 2001, the 11th U.S. Circuit Court of Appeals, in *Arriaga v. Florida Pacific Farms*[48] found that guestworkers' payment of transportation and visa costs effectively brought their wages below the minimum allowed. The employer was thus obligated to reimburse workers those costs in the first week of work, to the extent that those expenditures effectively cut into the workers' receipt of the minimum wage. This is now settled law in the 11th Circuit, and other courts have followed with similar rulings.[49] However, even in the states within the 11th Circuit's jurisdiction — Alabama, Florida and Georgia — the DOL has refused to enforce the ruling and has failed to protect workers when they need it most.[50]

The DOL also takes the position that it cannot enforce the contractual rights of workers, and it has declined to take action against employers who confiscate passports and visas.

Because of the lack of government enforcement, it generally falls to the workers to take action to protect themselves from abuses. Unfortunately, filing lawsuits against abusive employers is not a realistic option in most cases. Even if guestworkers know their rights — and most do not — and even if private attorneys would take their cases — and most will not — guestworkers risk blacklisting and other forms of retaliation against themselves or their families if they sue to protect their rights. In one lawsuit the Southern Poverty Law Center filed, a labor recruiter threatened to burn down a worker's village in Guatemala if he did not drop his case.[51]

While H-2A workers are eligible for representation by federally funded Legal Services lawyers, these lawyers are prohibited from handling class actions lawsuits. Given workers' enormous fears of retaliation and blacklisting, any system that relies on workers asserting their own legal rights is unlikely to bring about systemic change. Having access to class action litigation would at least

47 Id.
48 305 F.3d 1228 (11th Cir. 2002)
49 *De Luna-Guerrero et al. v. North Carolina Grower's Ass'n.*, 338 F. Supp. 2d 649, 662 (E.D. N.C. 2004) (H-2A guestworkers); *Martinez-Bautista v. D&S Produce*, 447 F. Supp. 2d 954, 963-964 (E.D. Ark. 2006) (H-2A guestworkers)
50 *See, e.g. Luna-Guerrero v. North Carolina Grower's Association*, 370 F. Supp. 2d 386, 390 (E.D.N.C. 2005)
51 *Recinos-Recinos v. Express Forestry, Inc.*, 2006 U.S. Dist. LEXIS 2140 (D.La. 2006)

permit cases to be brought by one or two workers brave enough to challenge the system.

In addition, H-2A workers are specifically exempted from the major statute designed to protect agricultural workers in the United States from abuse and exploitation — the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). Adopted in 1983, it replaced the Farm Labor Contractors Registration Act of 1963, which was enacted in the wake of the Edward R. Murrow film about farmworkers, *Harvest of Shame*, aired by CBS during Thanksgiving in 1960. Among other things, the AWPA provides migrant farmworkers a legal mechanism to enforce the terms of the promises made to them and the other terms of their agreement in federal court. But the powerful protections of that law are not available to H-2A workers.

For H-2B workers, the situation is perhaps even more dire. Although they are in the U.S. legally and are financially eligible, they are ineligible for federally funded legal services because of their visa status. As a result, most H-2B workers have no access to lawyers or information about their legal rights at all. Because most do not speak English and are extremely isolated, usually both geographically and socially, it is unrealistic to expect that they would be able to take action to enforce their own legal rights. Moreover, many of these workers have few rights to enforce.

Typically, workers will make complaints only if they are so severely injured that they can no longer work, or once their work is finished. They quite rationally weigh the costs of reporting contract violations or dangerous working conditions against the potential benefits.

As a result, far too many workers are lured to the United States by false promises only to find that they have no recourse. •

Tobacco Workers

In 2005, H-2A farmworkers who had worked in Kentucky filed a complaint with the Department of Labor (DOL) about the conditions they had experienced on the job. The workers alleged that the tobacco grower illegally farmed out the workers to other growers who were not authorized to participate in the H-2A program. The workers further alleged that, after a period of heavy rains, the grower plowed under more than a third of her tobacco crop. The complaint stated that, because the grower now needed fewer laborers, she fired two of her H-2A workers on the pretext that they were doing poor work.[1]

The fired workers were lucky enough to locate a legal services organization, which assisted them in filing a detailed eight-page complaint against the grower with the DOL. The workers complained about being illegally fired and about not being paid all the wages and reimbursements owed them under the H-2A program.

When the legal services lawyer periodically called the DOL to check on the status of the investigation, he was told inconsistent things, including that the investigator had gone out to conduct an immediate investigation and that the complaint had not yet been assigned to an investigator. In fact, the DOL waited nearly six months before sending an investigator to look into the allegations. During that six-month interval, the alleged legal violations became more than two years old — and the DOL has a policy that it will not investigate claims that are more than two years old. As a result of the DOL's failure to conduct a timely investigation, the workers' theoretical rights were effectively nullified.

1 Workers' complaint and DOL response on file with the author.

PART 9

Labor Brokers

Many large employers who rely on guestworkers increasingly are attempting to avoid responsibility for unlawful practices by obtaining workers indirectly through a subcontractor. This use of labor brokers puts workers at greater risk of abuse and makes enforcement of their rights even more difficult than it is already.

A lawsuit filed by the Southern Poverty Law Center (SPLC) against the food giant Del Monte vividly illustrates this problem.

The class action lawsuit was filed in 2006 on behalf of migrant farmworkers who were systematically underpaid while working in south Georgia for Del Monte subsidiaries. The plaintiffs are Mexican guestworkers as well as domestic farmworkers who were recruited to plant and harvest vegetables at Del Monte operations.[52]

These workers were promised and were entitled to receive the Adverse Effect Wage Rate, which is established by the Department of Labor (DOL) each year to ensure that the employment of foreign workers does not drive down wages paid to U.S. workers. The plaintiffs, who are indigent farmworkers, left their homes and families and spent considerable sums of money to travel to Georgia to work for Del Monte. They were consistently cheated out of the wages to which they were entitled. But despite the fact that they labored on Del Monte farms and lived in housing provided by Del Monte, the company claims none of the workers were its employees.

Del Monte, in fact, accepts no responsibility for the workers because Del Monte was not the company that petitioned the government for the H-2A workers. The petitioner, rather, was a crew leader — a person with no fields, no crop, no farm, no housing and no capital.

Increasingly, the people bringing guestworkers into the United States are not the companies that end up using the labor, even though the entities applying to DOL for permission to import workers are required to prove a shortage of U.S. workers for available positions. Given that labor brokers

52 *Hector Luna, et al. v. Del Monte Fresh Produce (Southeast) Inc., et al.*, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:06-cv-02000-JEC

The men had been recruited to plant pines in North Carolina, but after they arrived in the state, they were transported by van to Connecticut and forced to work nearly 80 hours a week in nursery fields. Their passports were confiscated and they were threatened with deportation and jail if they complained.

have no actual "jobs" available, it is difficult to fathom that they are suffering from a shortage of workers. The DOL is approving these applications anyway.

In Florida, the majority of H-2A applications are now submitted through such intermediaries. This trend greatly concerns guestworker advocates because it permits the few protections provided for these workers to be vitiated in practice. Having a legal remedy against a labor contractor with no assets is no remedy at all.

Two recent lawsuits illustrate how labor brokers traffic in vulnerable foreign workers whom they hire out to a variety of different employers. These workers, who usually speak no English and have no ability to move about on their own, are completely at the mercy of these brokers for housing, food and transportation. No matter how abusive the situation, even if they are not paid and their movements are restricted, they typically have no recourse whatsoever.

GUATEMALANS HELD CAPTIVE

According to a lawsuit filed in February 2007, 12 Guatemalan guestworkers claim they were held captive by agents for Imperial Nurseries, one of the nation's largest wholesalers of plants and shrubs. The men had been recruited to plant pines in North Carolina, but after they arrived in the state, they were transported by van to Connecticut and forced to work nearly 80 hours a week in nursery fields. They were housed in a filthy apartment without beds, and instead of the $7.50 an hour they were promised, they earned what amounted to $3.75 an hour before deductions for telephone service and other costs. Their passports were confiscated, they were denied emergency medical care, and they were threatened with deportation and jail if they complained. Some of the workers escaped without their passports and soon were replaced by fresh recruits from Guatemala. Eventually, one of the workers managed to explain his situation to the congregation of a local church, which helped him find legal aid.[53]

In a statement to *The New York Times*, a lawyer representing Imperial Nurseries said the allegations "relate to the conduct of an independent farm labor contractor which was responsible for compensating its employees."[54]

In a similar case, lawyers with Legal Aid of North Carolina are representing a group of Thai workers who have filed for immigration relief as victims of trafficking. These workers also have filed a federal lawsuit against a company called Million Express Manpower Inc. They claim the company held them captive — sometimes watching over them with guns — in North Carolina and in New Orleans, where they were transported to help demolish flooded buildings after Katrina.

These cases are symptomatic of a flawed program that encourages the private trafficking of foreign workers with barely any government oversight. •

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53 Nina Bernstein, "Federal Lawsuit to Accuse Nursery of Bait-and-Switch with Guatemalan Workers," The New York Times, Feb. 8, 2007
54 Id.

PART 10

Systematic Discrimination

Discrimination based on national origin, race, age, disability and gender is deeply entrenched in the H-2 guestworker system.

In fact, one federal appellate court has placed its stamp of approval upon such discrimination. In *Reyes-Gaona v. NCGA*,[55] the 4th U.S. Circuit Court of Appeals found that even explicit age discrimination in hiring H-2A workers was not unlawful. In that case, there was little dispute that the recruiter, Del-Al Associates, which recruits thousands of guestworkers to the United States, told Luis Reyes-Gaona, who applied in Mexico to be an H-2A worker in North Carolina that it was the policy of the North Carolina Growers Association (NCGA), for whom Del Al was recruiting, that NCGA would not accept new employees over the age of 40. The court found that because this choice had occurred outside the territory of the United States, it was not actionable under the Age Discrimination in Employment Act.

Although it is possible that other courts will reach a different conclusion on this issue, there is little doubt that such discrimination is pervasive. Indeed, the ability to choose the exact characteristics of a worker (male, age 25-40, Mexican, etc.) is one of the very factors that make guestworker programs attractive to employers.

Marcela Olvera-Morales is a Mexican woman who worked as a guestworker in 1999 and 2002. In 2002, the Equal Employment Opportunity Commission (EEOC) issued a determination finding reasonable cause to believe that she faced unlawful discrimination on the basis of gender. She alleged that a recruiter — the International Labor Management Corp., which places thousands of guestworkers in U.S. jobs — systematically placed women in H-2B jobs while placing men in H-2A jobs, which provide better pay and benefits. Statistical data showed that the likelihood the gender-based difference in the granting of visas was due to chance was less than one in 10,000. That case is pending in federal court.[56]

Similarly, clients of the Southern Poverty Law Center who worked for Decatur Hotels, a luxury hotel chain in New Orleans, in February 2007 filed a complaint with the EEOC charging systematic discrimination on the basis of national origin. In that case, the employer filed three sepa-

55 250 F.3d 861 (4th Cir. 2001). For a discussion of this case, see Ruha C. Walcot, Note: *Allowing Employers to Discriminate in the Hiring Process Under the Age Discrimination in Employment Act: The Case of Reyes-Gaona*, 27 N.C. J. Int'l Law & Com. Reg. 335 (2001)

56 See *Olvera-Morales v. Sterling Onions*, 322 F. Supp. 2d 311 (N.D.N.Y. 2004)

Norma and other women from Hidalgo, Mexico, took guestworker jobs harvesting tomatoes in Florida only to find they were locked up at night by their employers and not allowed to communicate with others.

rate applications with the DOL to seek workers. Each job classification in the applications was to be paid at a different wage — $6.02 per hour for Bolivians, $6.09 per hour for Dominicans and $7.79 per hour for Peruvians. The rate that workers were paid was based solely on their national origin, regardless of the kind of work they actually performed.

SEXUAL HARASSMENT

Women are particularly vulnerable to discrimination. Numerous women have reported concerns about severe sexual harassment on the job. There have been no studies that quantify this problem among guestworkers. However, in a 1993 survey of farmworker women in California, more than 90 percent reported that sexual harassment was a major problem on the job.[57]

In 1995, the EEOC met with farmworkers in Fresno, Calif., as part of an effort to develop a more vigorous enforcement program in the agricultural industry. William R. Tamayo, regional attorney for the EEOC in San Francisco, said, "We were told that hundreds, if not thousands, of women had to have sex with supervisors to get or keep jobs and/or put up with a constant barrage of grabbing and touching and propositions for sex by supervisors."[58] The farmworkers, in fact, referred to one company's field as the "fil de calzon," or "field of panties," because so many women had been raped by supervisors there.[59]

Given the acute vulnerability of guestworkers in general, one can extrapolate that women guestworkers are extraordinarily defenseless in the face of sexual harassment. Indeed, given the power imbalance between employers and their guestworkers, it is hard to imagine how a guestworker facing harassment on the job could alleviate her situation. Assuming that she, like most workers, had taken out substantial debt to obtain the job and given that she would not be permitted to work for any employer other than the offender, her options would be severely limited.

Martina*, a guestworker from Mexico, has first-hand experience with gender discrimination and sexual harassment. She came to the United States with an H-2B visa to process crabs. She knew from past work that men always process oysters and women always process crabs. And the men

* Not real name

57 *Cited in Lessons from the Fields: Female Farmworkers and the Law*, Maria Ontiveros, 55 MELR 157, 168 (2003) (study by Maria Elena Lopez Trevino, *The Needs and Problems Confronting Mexican American and Latin Women Farmworkers: A Socioeconomic and Human's Right Issue* (1995) (unpublished on file with author); Maria Elena Lopez Trevino, *A Radio Model: A Community Strategy to Address the Problems and needs of the Mexican American Women Farmworkers* (1989 MS thesis, Cal State University)

58 William R. Tamayo, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. Davis L.Rev. 1075, 1080. (2000)

59 Id.

One website advertises its Mexican recruits like human commodities, touting Mexican guestworkers as "people with a strong work ethic" and "happy, agreeable people who we like a lot."

are paid higher wages than the women. One year Martina was brought in to work during oyster season. When she arrived at the airport, she was met by the plant manager who made it clear that she had been hired to be his mistress. The DOL has approved H-2B visas for this plant for years.[60]

It is no coincidence that these forms of discrimination exist in guestworker programs; many of the recruiting agencies tout the great benefits of hiring workers from one country or another.

Employers can even shop for guestworkers over the Internet at websites such as www.get-a-worker.com, www.labormex.com, www.landscapeworker.com or www.mexican-workers.com. One website advertises its Mexican recruits like human commodities, touting Mexican guestworkers as "people with a strong work ethic" and "happy, agreeable people who we like a lot."

When employers are permitted to shop for workers as though they were ordering from a catalog, discrimination is the likely, perhaps inevitable result.

60 Interview with Carol Brooks, North Carolina Justice Center; settlement documents on file with author

PART II

Housing

When it comes to housing, guestworkers aren't treated like "guests" of the United States at all. In fact, they are frequently forced to live in squalor. Many find themselves held captive by unscrupulous employers or labor brokers who confiscate their passports, restrict their movements, extort payments from them and threaten them with arrest and deportation if they attempt to escape.

Under federal regulations, employers hiring H-2A workers must provide them with free housing. The housing must be inspected and certified in advance as complying with applicable safety and health regulations.

In practice, the quality of housing provided to H-2A workers varies widely and is often seriously substandard, even dangerous.

H-2B workers have even less protection. There are no general federal regulations governing the conditions of labor camps or housing for H-2B workers. State and local laws also generally do not cover housing for H-2B workers. In practice, this means that H-2B workers are often provided housing that lacks even basic necessities, such as beds and cooking facilities.

Because the Department of Labor has failed to promulgate any regulations, employers that choose to provide housing to H-2B workers (and most do, for reasons of practical necessity) are permitted to charge rent. The rent — often exorbitant — is generally deducted from the workers' pay. This often results in workers earning far less than they expected and sometimes substantially less than the minimum wage.

In addition, housing for both H-2A and H-2B workers is often located in extremely isolated rural locations, subjecting workers to other kinds of difficulties. In most instances, workers lack both vehicles and access to public transportation. As a result, they are totally dependent upon their employers for transportation to work and to places like grocery stores and banks. Some employers charge exorbitant fees for rides to the grocery store. Much of the housing provided to workers lacks telephone service, isolating workers even further.

These conditions not only create daily hardships for guestworkers, they increase employers' already formidable power over them.

Migrant workers historically have lived in squalid conditions. Here, old buses were used to house workers in the 1950s.

Hernan was one of six Mexican H-2B workers who traveled to the United States in September 2006 under a contract that called for them to work in the forestry industry in Arkansas. Upon arrival, their employer asked for their passports and visas to "make copies" but never returned them.

Instead of Arkansas, they were taken to a sweet potato farm in Louisiana and left there to work. As it turned out, they were doing H-2A work on H-2B visas and for an employer who had not applied for their visas. Under the law, H-2A workers have more rights and benefits than H-2B workers.

The Mexicans lived in an abandoned two-story house with no door on the hinges and no glass, except for a few broken shards, in the windows.

NO ELECTRICITY

"There was no electricity when we first lived there," Hernan said. "There was no heat. There were a few mattresses but no blankets. There were only a few pieces of furniture. At night we would push them against the window frames to keep the air out because there was no glass. We told the company we could not sleep well enough at night to even work. When it rained the house leaked. We had to find corners in the house to hide so we would not get wet.

"We were picking sweet potatoes and were paid by the bucket. The first week we were not paid. The second week we were paid $70. We had been working every day from 5 a.m. to 5 p.m., with 30 minutes for lunch. We had to find a ride to Wal-Mart to get bedding. We hardly had enough money."

Eventually, the original contractor returned to Louisiana because he heard the workers were complaining about low wages and wanted their passports back so they could go home. The contractor told them that anyone who didn't like the work could give him $1,600 and he would return their passports. The workers did not have the money, so they left without telling the contractor — without money and without their passports. Their wives in Mexico began receiving threats from the contractor, who has left messages at a community phone saying that their husbands must each pay him $2,000 or he will report them to immigration for deportation or incarceration. These six workers are now trying to find a way to get their legal documents returned to them.

A group of about 20 guestworkers from Thailand recently faced an equally desperate situation. According to a lawsuit filed on their behalf by Legal Aid of North Carolina in February 2007, they each paid $11,000 to obtain agricultural jobs. Recruiters told them, falsely, that they would have employment for three years earning $8.24 an hour.[61] When they arrived in August 2005, one of the men acting as a labor broker confiscated their passports, visas and return airplane tickets.

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61 Maangmol Asanok, et al. vs. Million Express Manpower Inc. et. al., filed Feb. 12, 2007 in the U.S. District Court for the Eastern District of North Carolina

Guestworkers who had jobs picking tomatoes in South Carolina lived in this "house" in 2005.

Initially, they were housed in a local hotel, three men to a room. After a few weeks, the number of rooms was reduced, so that they were living five to a room. Eventually, they were moved to buildings behind the house of the labor broker, where they shared one bath. Some workers had to sleep on the floor. After a few more weeks, their employer began to reduce their food rations, leaving them hungry.

Throughout their stay, the Thai workers were told they would be arrested and deported if they escaped. On several occasions, according to the lawsuit, the labor broker and his son displayed guns to the workers.

WATCHED BY GUARDS

Less than two months after their arrival, some of the workers were taken to New Orleans, where they were put to work demolishing the interiors of hotels and restaurants ruined by the flooding from Hurricane Katrina. They lived in several storm-damaged hotels during their stay, including one that had no electricity or hot water and was filled with debris and mold. It had no potable water, so the workers were forced to use contaminated water for cooking.

During their stay in New Orleans, the workers were guarded by a man with a gun. They also were not paid for the work, so they had no money to buy food. Some were eventually taken back to North Carolina. The men who remained in New Orleans managed to escape with the help of local people who learned of their plight. The other workers also escaped after their return trip.

In 2003, a group of women from Hidalgo, Mexico, traveled to Cocoa, Fla., on H-2A visas to harvest tomatoes. They did not know they would be locked up. "El patron would put a lock on the gate where our trailers were, and he or a trusted worker were the only ones who could open it," one of the women told the *Palm Beach Post*. Another said, "After a time, they would not let us communicate with other people. Everything was locked up with a key."[62]

The Hidalgo women were lucky enough to find lawyers who could help them hold their employer accountable through a class action lawsuit (the settlement of which is confidential). But too often, workers do not have access to legal assistance and must choose between continuing to endure such deplorable abuses or attempting to escape into a foreign land without passports, money, contacts or tickets home.

These are not isolated cases. Time and again, advocates for guestworkers hear these stories. •

62 Christine Evans, "Cocoa Farm Imprisoned Women, Suit Says," *Palm Beach Post*, Dec. 7, 2003

PART 12

Recommendations

As this report shows, the H-2 guestworker program is fundamentally flawed. Because guestworkers are tied to a single employer and have little or no ability to enforce their rights, they are routinely exploited. The guestworker program should not be expanded or used as a model for immigration reform. If this program is permitted to continue at all, it should be radically altered to address the vast disparity in power between guestworkers and their employers.

RECOMMENDATIONS

I. Federal laws and regulations protecting guestworkers from abuse must be strengthened:

- Guestworkers should be able to obtain visas that do not tie them to a specific employer. The current restriction denies guestworkers the most fundamental protection of a free labor market and is at the heart of many abuses they face.

- Congress should provide a process allowing guestworkers to gain permanent residency, with their families, over time. Large-scale, long-term guestworker programs that treat workers as short-term commodities are inconsistent with our society's core values of democracy and fairness.

- Employers should be required to bear all the costs of recruiting and transporting guestworkers to this country. Federal regulations should be consistent with the 11th U.S. Circuit Court of Appeals decision in *Arriaga v. Florida Pacific Farms.* Requiring guestworkers to pay these fees encourages the over-recruitment of guestworkers and puts them in a position of debt peonage that leads to abuse.

- Entities acting as labor brokers for employers that actually use the guestworkers should not be allowed to obtain certification from the Department of Labor to bring them in. Allowing these middlemen to obtain certification shields the true employer from responsibility for the mistreatment of guestworkers.

- Congress should require the Department of Labor to promulgate labor regulations for H-2B workers that are comparable to the H-2A regulations. It is unconscionable that H-2B workers do not have even the minimal protections available to H-2A workers.

- Congress should require employers to pay at least the "adverse effect wage rate" in all guestworker programs to protect against the downward pressure on wages. Guestworker programs should not be a mechanism to drive wages down to the minimum wage.

- Congress should eliminate the barriers that prevent guestworkers from receiving workers' compensation benefits. Workers currently must navigate a bewildering state-by-state system that effectively blocks many injured workers from obtaining benefits.

- Guestworkers should be protected from discrimination on the same terms as workers hired in the United States. Permitting employers to "shop" for workers with certain characteristics outside of the United States is offensive to our system of justice and nondiscrimination.

II. Federal agency enforcement of guestworker protections must be strengthened:

- Congress should require that all employers report to the Department of Labor, at the conclusion of a guestworker's term of employment and under penalty of perjury, on their compliance with the terms of the law and the guestworker's contract. There currently is no mechanism allowing the government to ensure that employers comply with guestworker contracts.

- Employers using guestworkers should be required to post a bond that is at least sufficient in value to cover the workers' legal wages. A system should be created to permit workers to make claims against the bond. Guestworkers, who must return to their country when their visas expire, typically have no way of recovering earned wages that are not paid by employers.

- There should be a massive increase in funding for federal agency enforcement of guestworker protections. Guestworkers are the most vulnerable workers in this country, but there is scant government enforcement of their rights.

- The Department of Labor should be authorized to enforce all guestworker agreements. The DOL takes the position that it does not have legal authority to enforce H-2B guestworker contracts.

- The Department of Labor should create a streamlined process to deny guestworker applications from employers that have violated the rights of guestworkers. Employers who abuse guestworkers continue to be granted certification by the DOL to bring in new workers.

III. Congress must provide guestworkers with meaningful access to the courts:

- Congress should make all guestworkers eligible for federally funded legal services. H-2B workers are currently not eligible for legal aid services.
- Because of the unique challenges faced by guestworkers, the restriction on federally funded legal services that prohibits class action representation should be lifted.
- Congress should provide a civil cause of action and criminal penalties for employers or persons who confiscate or hold guestworker documents. This common tactic is designed to hold guestworkers hostage.
- Congress should provide a federal cause of action allowing all guestworkers to enforce their contracts.

These reforms are overdue. For too long, our country has benefited from the labor provided by guestworkers but has failed to provide a fair system that respects their human rights and upholds the most basic values of our democracy. The time has come for Congress to overhaul our shamefully abusive guestworker system. ▪

Acknowledgements

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CLOSE TO SLAVERY

Guestworker Programs in the United States

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PREPARED STATEMENT OF TERENCE M. O'SULLIVAN, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (LIUNA) GENERAL PRESIDENT, MAY 24, 2007

Statement of Terence M. O'Sullivan,
LIUNA General President,
As Submitted to the House Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law's Hearing on "Comprehensive Immigration Reform: Labor Movement Perspectives"

May 24, 2007

LIUNA – the Laborers' International Union of North America – is encouraged that Congress is attempting to address the immigration crisis in our country. It is in the best interest of our country to pass comprehensive immigration reform.

As a union predominantly of construction workers who have joined together to improve their lives, we have a special interest in immigration reform. Any reform will significantly impact the working men and women of our union and for whom our union stands. According to the Pew Hispanic Center, construction work is the third largest employment sector for undocumented workers, behind only farming and cleaning – 14 percent of the undocumented population works each day in construction.

Without a doubt, our nation legitimately demands strengthened borders to protect our nation and to restore the integrity of the immigration system.

But our heritage, values and future also demand immigration reform which provides the current population of undocumented workers with an earned a path to legal permanent residence and citizenship while respecting family unity.

We are a nation of citizens, not of guests.

As a union founded by immigrants who became citizens and built our country – and of immigrants who are building our country today and are yearning to be citizens – we are extremely disappointed that the U.S. Senate is rushing to pass an expansive guest worker program that mirrors the failed and shameful Bracerro type programs of the past. Guest workers who are *legally* in the U.S. today face harsh abuses. Creating an even greater pool of temporary workers with not a single new real protection will only exacerbate those abuses, and further play into the hands of unscrupulous employers seeking to drive down wages and standards for all who work in the U.S.

LIUNA sees immigrant workers on construction job sites building America every day in every state in the country – in highway construction, tunnel and pipeline construction, removing hazardous waste and asbestos, building homes and building hospitals. In our outreach to workers who do not have the benefit of a union, we all too often find immigrant workers who were brought here with authorized work status – not far different from what the Senate is proposing to expand – being abused and exploited by the employers who brought them here and used as pawns to drive down wages and standards for all.

Not far from the Capitol, we have met with immigrants with work authorization who were required by their employer to work night hours on a dangerous construction job to avoid the possibility of being seen by safety and health inspectors.

We have seen employers, authorized by the Department of Labor to hire guest workers, and unfairly deduct money for training, rent or transportation from workers' wages.

We have seen employers hire immigrant workers to do dangerous asbestos removal without necessary safety precautions on the job site to protect themselves or the communities in which they work.

It is not uncommon for unscrupulous construction contractors to purposely seek out temporary immigrant workers rather than local hires because they know they can pay them less, protect them less and respect them less. That is wrong for immigrants, and it is wrong for non-immigrants.

Workers under current temporary programs often can not quit their jobs or fear standing up for their fundamental human rights because they are bound to their employer for their legal right to be here.

In one of the most shameful debacles of recent history – Hurricane Katrina – companies promised immigrant workers good jobs, and then housed them in terrible conditions, left them stranded without transportation and often cheated them out of pay. The practice of treating immigrant workers as expendable labor was flaunted. Employers legally displaced needy local residents, legally exploited immigrant workers, and legally drove down standards, adding insult to injury in a time of crisis.

LIUNA will not support the creation of a new guest worker program without serious reforms – most fundamentally, a realistic path to citizenship that encourages immigrants to put down roots and stay to pursue the American Dream. That is what our members believe in and that is what America believes in.

Any future immigrant worker program must also protect immigrants – and thereby workers who are already here – by:

- Allowing immigrant workers to self-petition to change their status from temporary guest workers to become permanent residents and eventually citizens. Allowing only an employer to self-petition increases dependence on an employer and makes all workers more vulnerable. This must be combined with an increase in green cards for family members.

- Ensuring that immigrant workers are able to leave a job site and find new employment, balancing the power of employers.

- Ensuring that all workers are protected by federal and state labor laws, including the freedom to join together in a union, payment of overtime, protection by safety and health laws and access to full and fair worker's compensation. To protect our nation's living standards, prevailing wages under the Davis-Bacon and Service Contract Acts must be paid when applicable, and wages not proscribed by these acts should be determined by the Bureau of Labor Statistics Occupational Employment Statistics Data. The use of independent wage surveys is unacceptable.

- Requiring employers to certify before hiring guest workers, that they advertised an open position at the prevailing rate of pay, that there is no labor dispute, and that no U.S. workers will lose their jobs.

- Affording the Department of Labor resources so that an adequate number of OSHA inspectors speak English and Spanish, and providing stronger oversight to see that workers are given correct protective equipment and training on hazardous jobsites.

We urge members of this Subcommittee to consider the abuse and exploitation currently occurring under our temporary worker programs when considering creation of new guest worker programs.

The abuses undocumented workers face, and their manipulation by unscrupulous employers to drive down wages for all working Americans is shameful enough. For Congress to institutionalize these wrongs in the form of a new guest worker program is inexcusable.

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