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EVALUATING A TEMPORARY GUEST WORKER PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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EVALUATING A TEMPORARY GUEST WORKER PROGRAM

THURSDAY, FEBRUARY 12, 2004

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:39 p.m. in Room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Kyl, Sessions, Craig, Cornyn, and Kennedy.

Chairman CHAMBLISS. This hearing will come to order.

Let me welcome all of you here today to discuss not only a very important issue but a very sensitive issue to all Americans, and obviously, with the size of the crowd and the enthusiasm that we feel out there, we know that there is tremendous interest in this issue.

I want to start off with four of our colleagues before Senator Kennedy or I, either one, make any comments on this issue and give you four gentlemen an opportunity to make some comments about your thoughts, your ideas, and if you want to, your pieces of legislation that certainly are going to be considered by this Subcommittee.

And I want to move right into that, because I know all of you have very, very busy schedules.

Senator Hagel, we are going to start with you, and John, we will come right down the row. Yes, sir.

Senator HAGEL. Mr. Chairman, I understand Senator McCain has a pending amendment that he is going to address, and if it is okay with the Committee, I would be very pleased—

Chairman CHAMBLISS. Sure.

Senator HAGEL. —to follow in behind Senator McCain.

Chairman CHAMBLISS. All right; Senator McCain, we will start with you, and then, we will come back to Senator Hagel and go to Senator Craig and Senator Cornyn. And welcome.

STATEMENT OF HON. JOHN MCCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman and Senator Kennedy. I will be very brief.

I would like to just begin by reading from a February 12, 12:00 a.m., the Arizona Republic, story by David Gonzalez. This is today, today. Law enforcement officials Wednesday apprehended 158 undocumented immigrants who were being held by armed smugglers

in a rented house in North Phoenix in filthy conditions without food or water. A Federal immigration official said he believes this is the highest number of people ever discovered in one location in the Phoenix area, which, in recent years, has become the nation's main transportation hub for illegal immigration.

Phoenix Mayor Phil Gordon said Wednesday's discovery underscores the need for Federal immigration reform, pointing out that although police can stop criminal activity, they can do little to stem the flow of undocumented immigrants into the city. Quote, it is a mandate that affects all of us, Gordon said, and we need an immigration policy that works, and we need to secure our borders. The Federal Government has to do something about these issues.

The story concludes, Mr. Chairman: The migrants had been living and sleeping and the floor in the rented four-bedroom house with no furniture and backed-up toilets overflowing with human feces. A backed-up drain in the back yard overflowed with human waste, Lundberg said. Several of the migrants told Federal investigators they had not eaten in 3 days. Investigators also discovered two weapons in a back bedroom of the house, an AK–47 assault rifle and a 9-millimeter semiautomatic rifle. Smugglers typically use guns to prevent immigrants from escaping without paying smuggling fees and to protect themselves from being robbed by gangsters who try to steal immigrants from smugglers.

We recently had a shootout on the Interstate south of Phoenix between different gangs. I point that out to you, today's paper, Mr. Chairman; that is why this Committee and the Congress of the United States needs to act. Do you know what the conventional wisdom is? We are going to talk about it; we are going to debate it; we are going to discuss it, and nothing is going to happen this year, because the issue is too hot politically, too hot politically.

Mr. Chairman, there are between 8 and 15 million people living here illegally. The size of that estimate shows us how little we know. We know that people are going to go where there are jobs. We know where there is a supply, there is going to be a demand. We know that because we have not won the war on drugs. The cost of an ounce of cocaine in the streets of Phoenix is less today than it was 10 years ago.

And the other aspect of this that we seem not to be concerned about as some would think is that hundreds are dying on the border as they are trying to get across, because they want to feed themselves and their families. And I would urge the Chairman, and I would welcome the Senator from Massachusetts back to Arizona. He was recently there on a political trip. We were pleased at your economic input, Senator Kennedy.

[Laughter.]

Senator MCCAIN. And to come and see our border. Our border is not secure. If we are going to assure the American people that we are going to win the war on terror, we have to have a secure border.

Last month, 34,000 people were apprehended just in the Tucson area of the Arizona–Mexico border. That is up 20 percent from last year. Our borders are not secure, and we are not going to secure our borders until we supply willing workers with willing employers

who will then stem this flow of people coming across our border illegally.

Mr. Chairman, there are about as many proposals as there are members of the United States Senate. It is time we all got together and sat down and came up with a common proposal and acted before we go out in the August recess, or we will not act in an election year, and hundreds more will die; thousands more will be in houses in Phoenix living in human waste and being killed and mistreated.

So the issue is of incredible urgency. I hope we can act. I believe we should act, and I believe we will not. And I thank you, Mr. Chairman, for allowing me to be here today.

Chairman CHAMBLISS. Thank you, Senator McCain. And I assure you, Senator Kennedy and I share your passion.

Senator Hagel?

STATEMENT OF HON. CHUCK HAGEL, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator HAGEL. Mr. Chairman, thank you; Senator Kennedy, thank you. Senator Kennedy, you have been engaged, involved for many years on this issue, and we are grateful for your continued leadership.

Mr. Chairman, on behalf of Senator Daschle and myself, we appreciate an opportunity to address this Committee on this critical issue of immigration reform, an issue, as Senator McCain noted, that Congress cannot defer any longer. Last month, Senator Daschle and I introduced S.2010, the Immigration Reform Act of 2004. Our legislation is a bipartisan, comprehensive proposal that addresses the complicated and difficult issues related to U.S. immigration law, and again, I wish to thank Senator Kennedy and his staff for their input.

Our bill would, very briefly, first, strengthen national security by identifying undocumented immigrants living in the U.S., tracking foreign workers entering our borders and increasing funds for border security; second, fix the current system for immigrants who follow the law by reducing visa processing backlogs, reuniting families and remedying current inequities under the current law; and third, improve economic stability by establishing an enforceable program to bring needed foreign workers into the U.S. for jobs that would otherwise go unfilled.

Let me briefly address each of those points, Mr. Chairman. National security: to track and identify immigrants living within and entering U.S. borders for work, our bill requires immigrants to undergo criminal and national security background checks prior to authorization. Participants in the bill's worker program would be required to maintain counterfeit-resistant authorization cards issued by the Department of Homeland Security. Individuals who continue to break immigration laws would be barred from all of these programs. Fees associated with our bill would be designated for border security.

Fixing the current system: our legislation reduces the existing backlog of applications for family-sponsored visas to ensure that immigrants will be allowed to reunite with their U.S. citizen and

legal resident family members. The bill provides designated funding to implement these changes.

Economic stability: to provide foreign workers for jobs that would otherwise go unfilled, our bill admits a limited number of workers through a willing worker program. Employers seeking to hire a foreign worker must first demonstrate that no qualified U.S. worker exists and that they will provide the same wage levels and benefits and working conditions as provided for U.S. workers. Workers will be admitted for a limited period of time and will be allowed to change employers. Visa renewals would be available on a conditional basis. Qualified workers and their families would be provided an opportunity to adjust their immigration status.

Last point I would make, Mr. Chairman: opportunity to become a stakeholder. Our legislation provides an opportunity for undocumented workers and families currently living in the U.S. to become invested stakeholders in the country, this country, the United States, if they can demonstrate that they have met all of the following requirements: pass national security and criminal background checks; resided in the U.S. for at least 5 years preceding the date of introduction; worked a minimum of 4 years in the U.S., one of which must occur post-enactment; paid all Federal taxes; demonstrated knowledge of the English language and American civics requirements and paid a $1,000 fine in addition to required application fees. Individuals who qualify for this program will submit an application to the Department of Homeland Security. Upon approval, DHS may adjust the immigration status of qualified applicants.

Senator Daschle and I look forward to working with your Committee, our colleagues here at this table and our colleagues in the Congress and the Bush administration on this important issue. And I would restate what Senator McCain said; you both have noted as well and obviously agree with your interest in this and holding hearings, that it is important this year that the Congress act on bipartisan legislation that addresses this very important issue.

Mr. Chairman, thank you; Senator Kennedy.

[The prepared statement of Senator Hagel appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much, Senator Hagel, and again, your leadership on this is critically important. And I am familiar with your bill, and you and Senator Daschle have done an awful lot of background, an awful lot of homework. So thank you for being here today.

Senator Craig?

STATEMENT OF HON. LARRY CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Well, Mr. Chairman, thank you for the courtesy of allowing those of us who are before you now to testify at this time in this most important hearing. I am pleased to see Senator Kennedy here, who has clearly been a leader on this issue.

A decade before our President came to office, this Nation began a period of open denial of the reality that our immigration laws were broken, Mr. Chairman, and that we chose not to control our

borders. I believe that to be a fact. It has to be a fact, if today we are to suggest that there are between 8 to 12 to 15 million undocumented foreign nationals in this country. 9/11 was a reality. It was a wakeup call. It did not solve the problem, nor when we closed our borders post–9/11, did we solve a problem; we created two problems.

And it is about that that I would like to visit with you today and also talk about the legislation that Senator Kennedy and I have introduced. Secretary Ridge and the administration and an awful lot of well-meaning people at this point are working overtime trying to gain control of our borders, both our land and water ports of entry. And I wish them well; the American taxpayer is investing a phenomenal amount of money at this time in trying to resolve this issue.

But where there is a dynamic force, there will be a dynamic will. And what I think that we fail to recognize that post–9/11 border closure created a new problem. It locked a large number of people in our country at a time when we were trying to keep people out of our country. Those who had flowed back and forth across our border on an annual basis to work in our economy all of a sudden found that it was nearly impossible to get home, and once they got home, it was nearly impossible to get back to where they may have worked for 3 to 5 years prior to border closures.

So while we were working to solve a problem, we were aggressively creating a problem. And I think that is a reality that we are currently experiencing today and one that we must openly deal with. The only way to solve our border problem is not to hire another 10,000 Border Patrolmen; it does not work, or what John McCain just said would not have happened in Phoenix, Arizona.

We have put not just 3,000 on the border; between 1965 and now, we have increased that number from 3,000 to 10,000, and yet, this past year, we arrested, detained and deported over 800,000 foreign nationals. So just locking up our borders, an impossible task; just hiring more people will not solve it. Control our borders, we must. That is step number one, and we are well on our way to trying to do it.

Step number two is obviously to create a problem that is dynamic, that recognizes the needs of our country and the needs and responsibility we have towards foreign nationals who would choose to come and work here in the economy. I say this only as a side note, but it is a note of reality. I chair a Committee that has nothing to do with immigration. It is called the Special Committee on Aging. But I asked Alan Greenspan a year ago to come before that Committee not to talk about prime rate but to talk about the demographics of aging.

Japan, a decade ago, flattened its economy; it stopped growing; it started dying. Why? Because there were more people leaving the work force than were entering the work force of Japan. It has a closed culture of its style, and no longer was it allowing the kind of immigrants into the country to work that it had in the past. Why? Korea's economy was doing well. It moved from the Korean to the Indonesian; the Indonesian economy was doing well. No one—or fewer were entering the work force; not no one.

If we were to follow that pattern, we would be in the same demographic situation by about 2020. But because we do not follow that pattern, because we clearly allow those who want to work and are eligible to work to come into our country and work when those jobs cannot be filled by U.S. citizens, we will be able to sustain the dynamics of economic growth.

My point here, Mr. Chairman, is that a good immigration policy is critical for this country if we are to sustain a dynamic economy. We must allow documented workers to come here to work and, hopefully, in almost all instances, to return to their homeland. That is the reality of part of what we are trying to deal with.

The third arm of, I believe, the whole issue is law enforcement and being able to make sure that those who are undocumented can be detained and deported and handled responsibly and fairly. But we cannot do that before we solve the problem of those who are currently in our country, and clearly, that is what we set about to do. I believe it is not just a single approach, but it is a multiple of three, and clearly, the Subcommittee that you chair and the full Committee of Judiciary has the unique responsibility of fashioning dynamic immigration law that will work.

Last year, in one of my counties only, in the State of Idaho, and it is certainly not a border state, local law enforcement detained and worked with the national immigration service to deport over 1,100 people. That is the reality of the situation. And yet, many of those people had been in that county for several years working. They were a necessary and needed part of our work force.

Now, what have I done to solve this? What has Senator Kennedy done? We introduced a bill that dealt with agriculture alone. But we believe it is a model piece of legislation that can be broadly approached to the whole economy. We call it AgJobs. Here in the Senate, it is 1645. It is, in my opinion, Mr. Chairman, the lead legislation. We have now 52 cosponsors, equally Democrat and Republican. Why? Because the Senator and I have worked to get it there.

But it is a work in progress that has been over 5 years in the designing of, and it recognizes the need to identify the current work force that is here; to cause them to be documented; to do background checks; and to cause those who do not fit to be removed. At the same time, it respects the humane treatment of those citizens and recognizes that once documented, they move from the back streets of our country and the alleys and the shadows to the front streets, where they can get the kind of care or they can be treated as they should be treated, fairly and responsibly by all, and therefore deny the risk of being exploited by an employer who might choose to employ them in an unscrupulous way.

That is the reality of what we are dealing with. We are also dealing with something else. Mr. Chairman, in certain economies, and the agricultural economy is a unique one, it is now estimated that as much of 75 percent of the ag economy in this country's work force is a foreign national work force, because the average American citizen just does not care to work in that kind of employment.

If we do not develop a viable program for agriculture, we run the risk in many instances of some of our farms shutting down. It is an issue of food supply; it is an issue of quality food supply; it is an issue of harvest.

Our bill is ready to go. I believe our bill has stood the test. It is a bipartisan, well thought-out, well-based bill, and what I am entering into the record today, Mr. Chairman, is something that no one else can do. I am entering the names of over 400 organizations across this country that have endorsed the Craig–Kennedy bill. Why? Because we have worked on it and built it in that way. And I am talking about the Farm Bureau on one side and the AFL–CIO on the other. I am talking about United Farm Workers. I am talking about a huge cross-section of the economy of our country that is associated with agriculture and numerous organizations from your State who also recognize, as they do from mine and others, that this is an issue whose time has come.

And I would suggest that if the bigger bite at the apple that our President is proposing—and I am proud that he has been willing to lead on this issue—is a bite too big to chew this year, that you really ought to look at AgJobs, because we are talking about entering this issue in a way and creating a pilot program that we think has all of the dynamics necessary to identify the undocumented, to get them documented, to treat them fairly, to do the background checks, and to create a system by which they may gain permanent status for working in this country. And you and I both know how critical it is to the particular segment of the economy that we are talking about that this bill specifically address this.

Thank you so much for your willingness to hear this. We will work overtime in the next few months to get that cosponsorship up to 60, and we think that this is the bill that ought to be introduced out of the Judiciary Committee this year; can be passed in the Senate; and I believe could be passed in the House.

Thank you.

Chairman CHAMBLISS. Thank you, Senator Craig, and thanks for your leadership on the issue. You and I have had many, many discussions about this and about your bill, and your vision, your insight, and your hard work on this is critically important as we go through this process, so we thank you.

Senator Cornyn?

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Chairman Chambliss, Senator Kennedy, thank you very much for the opportunity to talk just a few minutes about the legislation that I have filed about 8 months ago, now, in this important area. I look forward, after concluding my remarks, to joining you up there as a member of the Subcommittee, because I am interested in hearing what all of the witnesses have to say on this important topic.

But I think the fact that Chairman Chambliss, you have seen fit to convene this hearing demonstrates one important consensus in an area where it is hard to find very much agreement, and that is that the status quo, when it comes to immigration policy in this country, is simply unacceptable. It is broken, and it needs to be reformed.

I, too, think the President has spoken courageously on this subject when he outlined the immigration principles that he did last month, and I believe that the President's basic principles are em-

bodied in the bill that I will describe. In particular, the President's fourth principle of immigration reform as outlined in his speech is to provide incentives for temporary workers to return to their home country.

I believe this is a crucial component of comprehensive immigration reform, and it is one that among all of the options before you today is embodied only in my bill. We must provide incentives for risk takers to return to their home country with the capital and the skills they have acquired as temporary workers in the United States if we are going to begin to address the root causes of illegal immigration in the first place.

In meetings I have had with officials of the Mexican Government, both in Mexico City and here in Washington, I am repeatedly told that these officials, these leaders of Mexico, our neighbor, want their workers to return home, to return home with capital and skills. They need those small business owners, those entrepreneurs, to strengthen a weakened middle class that produces too few jobs now, which is really the reason people come to this country in the first place.

But our current immigration policy fails to give undocumented immigrants any incentive to make such a return. My bill would include a provision that would create an individual savings account from payroll taxes of temporary workers that they can only access when they return to their home country. The fact is there will be no end to illegal immigration across our southern border without economic recovery south of our border, in Mexico and Central America and beyond. And that will not happen unless workers return and build the economies in their home countries. Those of us here in America cannot afford for our southern border to remain a one-way street.

I know so often in this debate, there are those who say we are not interested in talking about immigration reform unless we are talking about amnesty. Well, I am not there; neither do I believe that the majority of the Congress. Conversely, there are those who say I am not interested in talking about immigration reform unless you are talking about building a wall between our southern border and the rest of the countries south of that border or, perhaps, deploying the military along our border.

Well, Mr. Chairman, I do not think you could build a wall high enough or wide enough to keep people out of this country who have no hope and no opportunity where they live. In fact, this is a term I wish I could claim credit for, but I was talking to one of my constituents today who will be a witness here later on, and he said what we have now is de facto amnesty.

And, you know, I think he is exactly right. We have a system now where we do not have the political will and have not had the political will, unfortunately, to enforce the laws that we have on the books. And I believe that has created a condition that is intolerable in a nation that values the rule of law. It has contributed to, I believe, general disrespect for the law and particularly those laws that govern immigration.

I believe that if we acknowledge the vital role of hardworking immigrants in our economy and create a comprehensive program, that it will be an important step toward reestablishing respect for

our laws and restoring safe working conditions for immigrants who work here. It will enhance America's homeland security, facilitate enforcement of our immigration and labor laws and protect millions who labor outside of the protection of those laws today.

My proposal will encourage undocumented immigrants to come out of the shadows, get on the tax rolls and to work within the law and then return to their homes and families with the pay and skills that they acquire as guest workers in the United States. I, too, agree with Senator Craig and Senator McCain and Senator Hagel that we must act now.

9/11 has created a condition where if we are going to have the homeland security that we need and that America demands, if we are going to have the border security that America needs and demands, we must have the immigration reform to go along with it. It is simply the other side of that same coin.

We must strengthen the security of our borders and reform our immigration policies for those who want to work within a legal framework to support themselves and their families, and I urge Congress to act without delay and to follow our President's lead and pass meaningful immigration reform. Our economy and our homeland security simply depend on it.

Thank you very much.

Chairman CHAMBLISS. Senator Cornyn, thank you very much. You come from a State that has a problem in this area that is certainly more critical than most every other State in the country, and we appreciate your insight and once again your leadership, and we look forward to working with you.

At this time, I want to ask our first panel to move forward: Hon. Asa Hutchinson, who is becoming a regular around here, Asa, the Under Secretary for Border and Transportation Security Directorate for the Department of Homeland Security; Hon. Eduardo Aguirre, U.S. Citizenship and Immigration Services, Department of Homeland Security; and Hon. Steven Law, Deputy Secretary, Department of Labor.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. I appreciate very much the Senators who have just spoken as well as our witnesses that we have here today for our hearing on Evaluating a Temporary Guest Worker Proposal.

President Bush has outlined his principles in a speech last month, and we have an administration panel that will explain and clarify the President's principles. This is the first hearing since the President's speech, and we expect to hold a series of guest worker hearings as we move forward in the legislative process.

Since September 11, 2001, the administration has continued making strides to strengthen our homeland security. Over 1,000 new Border Patrol agents have been added. The Department of Homeland Security has consolidated Customs Service agents and immigration personnel to enhance and streamline our border security. The entry-exit system, US–VISIT is now collecting biometric information for aliens traveling to the U.S. on a visa.

Even with our best efforts, illegal immigration remains a vast problem that is getting more and more out of control. Most esti-

mates, as Senator McCain mentioned in his comments, say there are 8 to 10 million or possibly more, and it is in the millions, and we have no idea exactly what that number is, and that is part of the problem.

Of those, it is estimated that 60 percent entered the United States without inspection, which is a criminal offense. Such a large number of illegal aliens creates a financial drain due to non-reimbursed medical and educational services, burdens on our judicial system and allows criminal acts to go unchecked.

Most illegal aliens come to the United States seeking jobs, the majority of them from Mexico. The U.S. per capita income is $32,000, while Mexico's per capita income is $3,700. Most of these folks are not security threats but are hardworking individuals who seek a better quality of life for them and their families. However, illegal entry into the United States is a security breach that we must address. It is also, unfortunately, a growing business for so-called coyotes, or human smugglers, who pack trucks full of workers and cross the border, sometimes with very, very tragic results.

Many U.S. employers of aliens have difficulties in finding Americans to fill jobs performed by illegal aliens. These jobs range from agriculture to construction to the carpet industry in my home state. Employers also have difficulty in determining who is legal and who is illegal, due to the lack of verifiable documentation in the hiring process. This wink and nod cycle contributing to hiring illegal aliens must stop, while still providing a method for U.S. employers to access the workers they need.

Finally, we must respect the rule of law when it comes to immigration reform. Along with any process for the employment of foreign workers, there needs to be enforcement against those who remain here illegally, outside the legal system. We have a serious lack of interior immigration agents, and we need to rethink our methods for how to conduct more vigorous enforcement actions against illegal aliens.

We need a total overhaul of our immigration policies. This overhaul should meet our National security needs and our economic interests and be a manageable policy for how many people we admit to the United States. The logical place to start is with reform of the H–2A Agricultural Worker Program, as stated by Senator Craig.

Based on the testimony and discussion of today's hearing, I plan to work with my colleagues and introduce an H–2A bill that will be a starting point for total immigration reform and is going to incorporate a lot of the provisions that are in bills that are already out there, which have already been well-thought through.

Farmers in my home State of Georgia who use the H–2A program tell me it is too burdensome and uncompetitive to use. Too often, farmers are not able to get through the bureaucratic channels in time to harvest their crops. The arcane, adverse effect wage rate and the labor regulations can make it more cost-effective to hire illegal workers rather than hire legal ones. And farmers who use the legal program are often the subject of frivolous lawsuits. These are some of the problems that we must avoid as we reform and improve our immigration policies.

Now, the President has laid out his principles for guest worker legislation, and we are going to hear from some administration officials today. As I told the President recently, I applaud him for taking on this issue. This is an issue that we have been giving a wink and a nod to, and it is time we quit doing that, we laid it on the table, and we addressed the issue.

I think, very honestly, the communication coming out of the White House that has gotten into the media relative to the principles laid out by the President have been misconstrued, and I look forward to hearing from our witnesses today to confirm or not confirm that, but I know with what he has told me, it does not coincide with a lot of what I have read in the media.

Interestingly enough, Senator Kennedy and I discussed this issue months ago between ourselves, as we looked forward to what we were going to be doing within this Subcommittee. And while he and I will disagree on some of the ways that we fix the problem, it is the great benefit that we have in this country that we can disagree over issues that are so sensitive and so critically important as this issue is. But the good news in that is that he and I agree that it is a problem, just as the President agrees it is a problem. So I look forward to moving through the process and building on that framework that the President has set forth as Congress begins the legislative process towards reform.

Now, there are certain concepts that I think are critically important, just like the President, just like every member who has testified, and there will be many more put forward. But I want to delineate several of these: first of all, to control illegal immigration, we must first control our borders. We, as members of the United States Senate as well as the other members of Congress on the other side of this great Capitol must commit to sufficient funding for our border security agencies, including the Border Patrol and our immigration enforcement agencies.

Secondly, we must treat those who are here illegally as exactly that. Under a guest worker program, they should be allowed work visas but not green cards. They should not be given advantages over those who are attempting to come to the United States through the legal process, which any guest worker program should continue to encourage.

Thirdly, foreign workers in a guest worker program must be temporary workers. Next, guest worker participants must have a job before they are given a guest worker status, and we must ensure that American workers are not displaced.

Guest worker legislation should make use of current program aspects that do work well. There are a lot of provisions in H–2A that work. There are a lot of provisions in H–1B that work. And we need to look at those programs and incorporate the aspects of those programs that do work.

We must dedicate resources for interior enforcement and strengthen the penalties against aliens in the United States who are not guest workers and who continue in their illegal status. Employers must share the burden to facilitate a workable program and to stop the hiring of illegal aliens. And lastly, no one in the United States illegally should have the privileges associated with those who are here legally.

Now, I understand that many of you in this room have been involved for a long time in figuring out workable immigration reforms. A lot of you have good ideas, and you are more of an expert than any of us are. So I appreciate your efforts, and we look forward to continuing to work with you as we move to reform the immigration policies of this country and make our situation much, much more workable.

I will now turn to my friend, my ranking member, Senator Kennedy, for any comments he wishes to make.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman, for having these hearings. And I join you in welcoming our colleagues who testified before us and who have given us a good deal of material to think about with their own programs. We thank them. And we look forward to our witnesses here today.

In announcing his proposal, President Bush recognized America's proud tradition of welcoming immigrants, and he acknowledged the central role that immigrants have played in our Nation's life, and he rightfully paid tribute to immigrants in our armed forces who have given their lives to defend our freedom and ideals. Much of our Nation's success can be traced to the hard work and contribution of new generations of immigrants, and many industries, particularly the farming and service sectors, depend overwhelmingly on immigrant labor. And these workers benefit the nation and improve the quality of our lives.

Yet, many are undocumented, and they live in constant fear of deportation and are easy targets of abuse and also unscrupulous employers. The status quo, as all of our colleagues have mentioned today, is unacceptable. We need sound immigration policies that provide a manageable, orderly immigration system. It is not enough just to bring the law into line with current economic realities. Reforms must also reflect the basic values of family unity and fundamental fairness and opportunity that is the heart of our heritage as a nation of immigrants.

These are complex issues, but they also demand immediate attention. And I believe the White House proposal falls short of the serious reforms needed. It creates a temporary worker program similar to the ones of the past that treated immigrant workers as second-class citizens. It does little to provide permanent legal status for the millions of hardworking, undocumented men and women in our communities.

The administration claims that these workers will come out of the shadows and sign up for a temporary worker program. But that result will never happen when the vast majority realize that they will be deported after their temporary status expires. Registering for work now only to be deported tomorrow is unfair and will not work.

That fundamental flaw in the President's plan can be easily corrected by a reform plan that includes a genuine earned legalization program for undocumented workers, a revised temporary worker program with protections for both U.S. and foreign workers and a

realistic path to citizenship for all deserving immigrants and a way to reunite immigrant families.

Obviously, as the terrorist attacks of September 11 made clear, our immigration policy also has to protect and control our borders, and the current enforcement policies are not effective. Others have said we have to reduce the size of the haystack to better identify those who intend to do us harm. Legalizing the flow at our borders will strengthen our security and reduce the threat from terrorists. The problems in security are terrorists, not immigrants.

We may not be able to enact all of these reforms this year, but we ought to try. We could get off to a good start by moving ahead on two long-stalled bills that have broad support. The first is the Agricultural Jobs bill that Senator Craig has mentioned. Last year, I had the opportunity to work with him and also Representative Cannon and Berman in introducing the AgJobs bill with the support of both the United Farm Workers and the agricultural industry, two diametrically-opposed groups who have not spoken to each other or, if they had, used words that we would not be mentioning here at this hearing; but nonetheless have been able to work out a process and a recommendation which I join with Senator Craig in believing that we should move ahead.

The legislation recognizes the importance of immigrant farm workers and respects and rewards their work. It will improve the wages and working conditions of all farm workers; give foreign-born workers a way to become permanent residents. Growers will have a reliable work force at harvest time without sudden immigration raids. No one benefits when crops rot in the fields because no farm workers are available.

The bill has over 52 sponsors, an equal number of Republicans and Democrats, and as Senator Craig pointed out, the support of more than 400 organizations. And with a nod from the administration, it would be enacted immediately.

The second bill is the DREAM Act, a bipartisan compromise reached by Senator Hatch and Senator Durbin to help undocumented children obtain legal status, go on to college, eventually to become U.S. citizens. Our Committee approved it last year, and it is ready for consideration on the floor. And we await the administration support for that program as well.

I hope we can work together to do as much as we can this year. The need is great. Some real bipartisan ground work has been laid. Let us build on it.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you.

Mr. Law, we are going to start with you. We will move down this way. Again, we welcome all three of you here today. We look forward to your presentation and look forward to working with you as we go through this process.

Mr. Law?

STATEMENT OF STEVEN J. LAW, DEPUTY SECRETARY, DEPARTMENT OF LABOR, WASHINGTON, D.C.

Mr. LAW. Mr. Chairman, members of the Committee, thank you very much for convening today's hearing on the President's proposal for a temporary worker program. As your colleagues so elo-

quently testified just a few minutes ago, this is an issue of pressing and urgent concern that impacts our economy, our work force, and our values as a nation.

These Senators and others have put forward proposals of their own that are bold and thoughtful. Many of them echo some though not all of the principles articulated by the President just last month, and we look forward to working with Congress to enact legislation that meets the President's standards for a vibrant temporary worker program that puts American workers first while dealing equitably with the millions of foreign workers who currently live and work in the shadows of American society.

All over the country, in rural areas and cities, in a wide range of fields and occupations, undocumented workers supply labor for jobs that are vital to our economy and where American workers are often unavailable. The President's proposal for a new temporary worker program responds to this economic need by allowing immigrant workers to be hired when there are no willing and available Americans to fill the job.

It would also bring millions of undocumented workers out of the shadows and into the mainstream economy, where they could work, invest, establish credit, and pay taxes. And by giving these workers temporary legal status, we will make them far less vulnerable to illegal exploitation, which drives down working conditions not only for undocumented foreign workers but also for American workers in the same fields and occupations.

And as I said, the President articulated several guiding principles for the design of such a temporary worker program. First, we must protect the homeland by controlling our borders. This new program should support our border control efforts through agreements with countries whose nationals participate in the program, and it must be consistent with ongoing efforts to promote and strengthen homeland security.

Second, the program needs to serve our economy by matching willing workers with willing employers. When no American worker is available and willing to fill the job, we need a streamlined and efficient program to connect willing foreign workers and American employers.

Third, this program should reflect compassion by extending temporary worker status to undocumented foreign workers who currently have a job. These workers would enjoy the full protection of U.S. labor laws and be permitted to travel in and out of the country without fear of being denied reentry.

At the same time, the program should also provide incentives for these workers to return home after their period of work has ended. The legal status granted by this program would last 3 years, with the possibility of renewal. Temporary workers should be able to return home with something saved up, for example, through special tax-deferred savings accounts or by receiving credit for working here in their home country's retirement system. They would also bring home their work experience, useful skills and an appreciation for American freedoms and labor standards, all of which will improve the economy and working conditions within their own countries. That helps foreign workers, but in the long run, it helps us as well.

And finally, the program needs to protect the rights of legal immigrants. The President has made it clear that we must not reward those who break America's laws with a preferred path toward citizenship. Undocumented workers cannot be given an advantage over those who have followed the rules, and although our proposal would allow undocumented workers to pay a fee and apply for a green card, they would have to take their place in line like everyone else.

The President's principles outline a new approach to some very difficult and pressing issues: the need for workers in a variety of sectors in our economy and a shadow labor market that needs to be brought out into the sunlight. Many important facets of the President's proposal will be administered by the Department of Homeland Security, and my colleagues will speak to those in a moment. It will be the Department of Labor's responsibility to ensure that American workers come first.

Employers will need to show that they have taken every reasonable step to find a worker from the U.S. before they are allowed to hire a temporary foreign worker. We will also develop user-friendly, streamlined mechanisms for employers to locate willing and available workers, first from the U.S. and, if none can be found, then, from elsewhere.

It is also our job to protect the rights of workers, whether they are U.S. citizens or temporary foreign workers. That includes the right to fair pay, protection from discrimination and retaliation and safe and healthy workplaces. And finally, it is the Department of Labor's mission to help train American workers so they can be first in line to claim the new jobs and opportunities that our dynamic economy will create in the decades ahead.

I look forward to answering any questions you may have about the Department of Labor's role in this proposed program, and now, I will turn it over to my colleagues.

Thank you.

[The prepared statement of Mr. Law appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much.

Mr. Aguirre, welcome back. We are glad to have you today.

STATEMENT OF EDUARDO AGUIRRE, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. AGUIRRE. Thank you, Senator. Thank you, Mr. Chairman, Senators, of course, my own Senator Cornyn.

My name is Eduardo Aguirre, and I have the honor of serving the administration and our great nation as the first Director of the U.S. Citizenship and Immigration Services, USCIS, within the Department of Homeland Security. This is my first opportunity to return to this Committee since my confirmation hearing on June 6 last year.

Eight short months later, it is indeed a privilege to appear before you today on this panel to discuss the President's recent proposal for immigration reform. On the occasion of my confirmation hearing, I shared with you my story of having arrived as a 15-year-old unaccompanied minor from Cuba. My parents sent me to escape a

repressive regime and to experience freedom and opportunities found only in America. That was, of course, the legal immigration track, the very system that I am now charged with fundamentally transforming into a more efficient and effective operation.

Upon creation of the USCIS, my team of 15,000 and I embrace a simple but imperative mission: making certain that the right applicant receives the right benefit in the right amount of time and preventing the wrong applicant from accessing America's immigration benefits.

We established three priorities, which guide every aspect of our work: eliminating the immigration benefits backlog while enhancing national security and improving customer service. Today actually marks our 349th day in existence, and I am particularly pleased with the progress that we have made. To date, we have initiated online features that allow customers to file electronically our commonly-used applications. We have established the Office of Citizenship. We have reduced lines. We have created a backlog reduction team and much more.

At the same time, we take national security very seriously. We conduct background checks on the front and back end on nearly every application for an immigration benefit. That means that 35 million IBIS checks were taking place last year. We make no apologies for our commitment to the integrity of the immigration system, and we will not cut a single corner if it means compromising security to process an application more quickly. We are making America safer against security and criminal threats, one background check at a time.

However, we will not declare victory on backlog reduction until we achieve the President's objective of universal 6-month processing by the end of fiscal year 2006. We will not declare victory on customer service until every legal immigrant is greeted with open arms and not endless lines, and we will not stop until we have restored public confidence in the integrity of America's immigration system.

On January 7th, President Bush courageously confronted a broken system, one that has been ignored for too long. From the East Room of the White House, he called to Congress to deliver true reform and a new temporary worker program that facilitates economic growth, enhances national security, and promotes compassion.

Deputy Secretary Law has already described the President's principles for a temporary worker program. I would like to quickly raise five points to complement my reflections on the process: first, this is not an amnesty program, which would otherwise join the illegal track with the legal one by facilitating green card status and potential naturalization. Rather, the President proposes a one-time, regulated opportunity for undocumented workers already here, as of the date of his announcement, to legitimize their presence and participate more fully in our economy for a finite period before returning home.

Second, enforcement is paramount to the temporary worker program. While Under Secretary Hutchinson will elaborate on the point as it relates to border and work site enforcement, I must add that in the context of processing benefit applications, security and

fraud prevention are synonymous with enforcement and must also be a priority.

Third, the program will require incentives. These incentives include enforcement as well as economic and social incentives. The temporary worker should be able to travel, knowing that he or she can go and return freely to the country of origin for celebrations, funerals or vacation and maintaining important ties that will aid the worker in his or her eventual, yet certain, return.

Since many of the individuals already present in the United States who would register to participate in this program would have accrued sufficient unlawful presence to be subject to the 3- and 10-year bars for reentry, any legislation to create this program would necessarily need to address those bars for individuals who register.

Fourth, the program should be fair and not come at the expense of legal immigrants, who have respected our laws and earned their place in line. If the temporary worker seeks existing paths to permanent residency, it is the President's belief that he or she should take their spot at the back of the line. Recognizing, however, that the current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants.

Fifth, the program must be one that can effectively be administered. The present proposal calls for aliens present in the United States as of April 7, 2004, to pay a fee upon registration in the program. In addition, USCIS would anticipate recovering the full cost of processing the applications through collection of processing fees, as is done currently with most of our applications today.

President Bush has set high expectations for what new citizens should know about our history and government. He has charged my Bureau with examining the standards of knowledge in the current citizenship test to ensure that new citizens know not only the facts of our history but also the details that shaped our history. We are not looking for the test to be harder; we are not looking to make it easier, either. We just want it to be more meaningful.

In his announcement, President Bush noted that we should have immigration laws that make us proud. We need a system that is compassionate, that serves the economy and fulfills security. That is the American way.

Mr. Chairman, this concludes my remarks, and I look forward to the opportunity to respond to your questions.

[The prepared statement of Mr. Aguirre appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much, and it is always a pleasure to have my long-time good friend, my former colleague in the House and now Secretary Asa Hutchinson.

Welcome.

STATEMENT OF ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Senators it is good to be before your Committee, and I would express my gratitude for your work on an issue that always does not

bring you the greatest accolades in your respective States but is very important for our country.

The President's leadership has brought to America's attention a long-neglected security problem for our Nation, that is, the 8 million undocumented immigrants who live outside the law and in the shadows of fear. The President's first principle that he articulated is that America must control our borders. This proposal gives the promise of strengthening our control over U.S. borders and, in turn, improving homeland security.

Because we know that illegal entry across our borders makes more difficult the urgent task of securing the homeland, we must be able to better account for those individuals who enter our country illegally. But I also remind this Committee that we are tempted simply to think about those who enter illegally across our land border, but it is a fact that almost 40 percent of the 8 million are estimated to be visa overstays, and therefore, we have to concentrate upon tightening our land borders, but also, the work that the Department has done through US–VISIT in biometrically checking and determining visa overstays is a very important part of the President's principle of controlling our own borders.

With a temporary worker program in place, law enforcement will be aided, because we will face fewer problems with unlawful workers and will be better able to focus on other threats to our Nation from criminals and terrorists. I would emphasize that this program is intended for those are here and working, as per the President's announcement on January 7th. There was no intent to encourage further illegal entries or to benefit those who enter illegally after the President's announcement. Accordingly, we would respectfully suggest that Congress carefully consider the effective date of any legislation.

Another important security feature of this initiative is that the temporary workers would be permitted to travel legally and freely across the border, resulting in more efficient management of our borders. Giving the aliens the ability and the incentive to travel through our ports of entry is a tremendous advantage, and when our US–VISIT program is fully implemented, we will also know when aliens enter and exit the United States to verify that participants are complying with the terms of the worker program, making it easier to enforce.

I take the rule of law seriously. For that reason, border enforcement will be critical to this process, and the Department of Homeland Security has set the stage for an effective border. Since September 11, the Border Patrol has increased the number of agents, as the Chairman indicated, from 9,700 to 10,800, as of December 1st of last year. On the northern border, we have tripled the number of Border Patrol agents. In addition, we are continuing installation of monitoring devices along the borders, along with air surveillance assets. We are looking for new technological solutions as well as the investment of human resources.

We believe that this program should link efforts to control our border in addition with international agreements with countries whose nationals will benefit from the program. We are currently negotiating interior repatriation agreements with Mexico that would help break the cycle of alien smuggling by returning aliens

closer to their home, in the interior of the country. Cooperation from the Mexican Government is very important in a number of other border security areas.

Let me assure you that a temporary worker program will not change our mission. We will still be engaged in enforcement, and unauthorized entry into the United States will still be illegal. And we will gain greater control over our borders by more effective deployment of technology, by coordinated law enforcement efforts and by increased manpower at our border hot spots.

The President's proposal for the temporary worker program also requires the return of temporary workers to their home country after their period of work has concluded. Requiring workers to return home at the conclusion of the work and not permitting the work under the program to be a basis to obtain lawful permanent residence status are important distinctions from other proposals. The President's plan provides a disincentive to immigrate illegally to the United States when this type of program is the beginning of a path to return home and not a path to permanent residency or citizenship.

Finally, workplace enforcement is a very important part of this initiative and our responsibilities. A temporary worker program would also require workplace enforcement. Employers should report to the Government the temporary workers they hire and who leave their employ so that we can keep track of people in the program and better enforce immigration laws. There are a number of existing systems that could serve as useful models for this new system.

Our work site enforcement mission is now located in Immigration and Customs Enforcement. ICE will continue to coordinate its employer sanctions and work site enforcement activities with other agencies such as the Department of Labor that Steven Law well represents at this table.

The President's proposal complements the Department's immigration enforcement initiatives as outlined in the 2005 budget. The budget outlines more funds for work site enforcement, detention and removal, fugitive operations programs. All of this is important to the first principle of securing our borders. Passing this temporary worker program will bring a benefit to the American economy, but it will also bring integrity to our immigration system. It is a reasonable goal for us all to pursue. We stand ready to work with you, and again, we are grateful for your strong efforts in this arena.

Thank you.

[The prepared statement of Mr. Hutchinson appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much, Mr. Secretary, and gentlemen, unfortunately, we are going to be interrupted by a vote. We will be back as soon as we can, convening again after that vote.

[Recess.]

Chairman CHAMBLISS. If we could have our witnesses back at the table, please.

Mr. Law, a critical component for any guest worker program is having a labor test to ensure that we do not displace American workers. You addressed that in your comments, which I greatly ap-

preciate. We have a labor certification process currently for our H–2A. We also have a labor attestation process for our H–1B. What test would you recommend for new workers, new guest workers, under the President's principles?

Mr. LAW. The President's proposal envisions something akin to an attestation-based program. You are right. There are a variety of labor-based visa programs that the Department of Labor administers labor certification processes for. Some of them are supervised recruitment, and, as you note, the H–1B program is very much of a de minimis attestation program.

We would envision something that would be attestation-based; in other words, it would allow employers to initiate recruitment of American workers prior to contacting us, prior to expressing a need for foreign temporary workers but that would have some rigor to it in terms of making sure that employers have taken every reasonable step to try to reach and recruit American workers before they then turn to the temporary worker program to find people to fill the job.

Chairman CHAMBLISS. Now, we are talking about more than a 90-day period or a 120-day period; we may be talking about workers staying in this country and being employed for maybe 2 years, maybe 3 years; I do not know what the period may be that ultimately comes out of any legislation. But I think it is safe to say we have talked in those parameters. Do you envision any tests being updated at any point in time, during whatever longevity period or legalized period there is for those folks to be here?

Mr. LAW. That is an issue that we want to work out with Congress. There are obviously incentives in different directions, depending on how complicated you make the system. If it becomes very repetitive and burdensome at some point, employers may not want to use the program at all. But clearly, we want to put forward a program that during the period of time that we are at least at the point at which employers want to find workers that the initial test, at the very least, makes it certain that the employer has taken every reasonable step to identify willing and available American workers before they avail themselves of the temporary worker program.

Chairman CHAMBLISS. Mr. Aguirre, you mentioned in your testimony that the administration would plan to address the problem of the 3-year and the 10-year bars currently in place for those applicants to a guest worker program. Would you like to elaborate on that for a minute, please?

Mr. AGUIRRE. Yes, Mr. Chairman. I think it will be imperative that that particular element be addressed in legislation and in such a way that if the violation of the law is restricted to the crossing of the border illegally or being in this country illegally, it needs to be taken into account so that it evaporates, if you will, under the new law, once someone registers.

But we need to make sure that if the criminality is related to something much more serious than that, perhaps people that are participating in smuggling rings or child molestation or rape or DWI or anything like that, that would be a separate type of a component. But if it is just the crossing portion, I would suggest that that ought to be waived.

Chairman CHAMBLISS. Okay; again, in your testimony, you mentioned a word that I do not use anymore, and it is the word called amnesty. It has such a negative connotation to it and maybe rightfully so, because this is one Senator who is not going to support a reform of an immigration system where we grant amnesty to folks who are here illegally.

I understand the President's plan to be absolutely opposed to that also; that he is firmly opposed to granting so-called amnesty to anybody who is here illegally. But I think it has come out in the media in a different form from that. You mentioned it in your comments, but I would like to give you an opportunity to again elaborate on that particular aspect of the President's principles.

Mr. AGUIRRE. Yes, Mr. Chairman; as I said in my testimony, the President's proposal is not amnesty. Now, let us define amnesty. The last time that amnesty was dealt with in this fashion was during President Reagan's term, and it allowed for these type of illegal immigrants to get on the track towards citizenship and certainly permanent residency.

This is exactly not that. This puts the individual in a temporary worker program, and it does not lead to permanent residency or, of course, to citizenship. Nothing prevents the individual from trying to get on that track through normal, legal means and, of course, putting them at the back of the line. So I think we are talking about apples and oranges here, and amnesty is not what the President is proposing.

Chairman CHAMBLISS. Okay; also, in your testimony, I wrote down a phrase you used which—in referencing those folks who are now here illegally who would be legitimized in some way. You said we would legitimize their presence. Now, under the President's principles, would there be any way for any individual who is here illegally today to have their presence legitimized if they are unemployed?

Mr. AGUIRRE. No, sir, the proposal here is a temporary worker permit. Now, let me correct that for a minute. It could apply to the families of individuals who are working here. But in terms of an adult, if they are not working, this program does not cover that particular situation.

Chairman CHAMBLISS. Secretary Hutchinson, is there any way, from a practical standpoint, to enforce the current laws on the books relative to sending back these 8, 10, 12 million people who are here illegally?

Mr. HUTCHINSON. Well, it is illegal for them to be here, and it is our responsibility to enforce the law. But obviously, the 8 million undocumented workers in the country at the present time, we do not know exactly where they are. We do not have the capability to change that circumstance unless they come in contact with the criminal justice system, and that is generally the way in which we carry out our responsibility to remove those who are illegally in the country, by prioritizing those cases, investigations, based upon leads.

But clearly, they are here. We do not know where a majority of them are. They live in the shadows, and that is what poses the security risk.

Chairman CHAMBLISS. All right; now, let us take that a step further and assume that we move ahead with legislation that legitimizes the presence of those persons who are here and are employed. There are still going to be some people who probably are not going to fit within that category who are here now illegally. How do we intend to enforce any new law that might come out of Congress and hit the President's desk relative to those folks who remain here illegally?

Mr. HUTCHINSON. Well, first of all, by not creating the economic incentives for people to come here illegally, and giving them a legal path to be a temporary worker will be a huge boon to our enforcement efforts, because our enforcement efforts can then be targeted upon those fewer that still try to circumvent, come across illegally or remain illegally or the employers who still try to hire illegals. And so, we are able to concentrate our enforcement efforts.

Secondly, it is very important to have an enforcement feature in whatever legislation that the Senate, the Congress, puts forth. And reporting requirements for the employers, tougher sanctions when necessary, greater ability of the employers to know that they are hiring individuals with a legal status in this country; these are important features of it.

We are enhancing our compliance efforts. The President, as part of the 1905 budget, has more than doubled the amount for work site enforcement; detention and removal space; even on the legal side, Senator Cornyn I know is interested in, that the immigration judges have more resources. So that is all a part of our ability to do this in the future.

Chairman CHAMBLISS. It seems as though the criminal community has been a step ahead of us under current law. When we said you have got to have a green card to be here, they immediately counterfeited green cards and give them to anybody who will pay for them. We went a step further and said you have got to have a Social Security card. They now counterfeit those and give them to anybody who will pay for them.

Are you confident that we are going to be able to craft a document that someone who fits within this program will be able to have in their possession that is going to identify them as being the person they say they are, plus, we are going to be able to create a document that will not be able to be counterfeited by the criminal underworld?

Mr. HUTCHINSON. I do have that confidence. Of course, it is contingent upon the right legislation being passed, but I think it is an important part of a temporary worker card that we use a biometric identifier; that we build in these type of features to it from the very outset, so that we know, and we can confirm, the validity of the worker card and that the person who possesses it is the same identify of the person it has been issued to.

It needs to be tied into our US–VISIT program, so that when they do go back and forth across the border, we can biometrically confirm that they did not give it to somebody else to come back in, but it is the same person who actually received this card. So if we have those tools, yes, I am confident that we can secure the system.

Chairman CHAMBLISS. Okay; thank you.

Senator Craig?

Senator CRAIG. Well, gentlemen, thank you all very much for your testimony and, I think, for clarifying the President's position as it relates to his speech and thoughts of several months ago. I felt very privileged being at the White House during that time and watching this President lead on this issue, because it is an issue that is demanding leadership at this moment.

Having said that, yesterday, Asa, Eduardo, I engaged your ultimate boss.

Mr. AGUIRRE. My wife?

[Laughter.]

Senator CRAIG. No, no, not your wife.

[Laughter.]

Mr. AGUIRRE. Pardon the interruption.

Chairman CHAMBLISS. That boy has learned something since he got to America.

[Laughter.]

Senator CRAIG. Yes, he sure has.

We talked about law enforcement, because you, as we, all agree, recognize that what is needed is a three-pronged approach: border control, a program of identification and legitimacy that treats all parties well but has structure and has integrity, and thirdly, law enforcement at the local level.

In one county, I mentioned in my opening statement, last year in Idaho, about 1,100 to 1,200 apprehensions of undocumented workers—not by the national immigration service but by the local county sheriff and deputy corps. It was the local taxpayer that withstood that expense. It was the local taxpayer that paid for the space in the jail. They were picked up and deported.

I do not understand why, in the budget that I heard yesterday, that there is a substantial proposal to increase the hiring of and the training of Federal enforcers; there is little to no contact, training and/or resource deployment to the local level, where the rubber truly meets the road. You just said most are identified through some form of action, some of them criminal, and they are identified as being undocumented at that time at the local level. That is how it happens.

I really would suggest—my counties are crying out for it—for some resource, some support and some training. If you want effective law enforcement—now, I know there are bias, and there are all those types of things, but I would think that training and an appropriate relationship could change some of that to the extent that once we have created a program that has responsibility in it and stability, that law enforcement does start at that level.

It is a substantial expense at the local level right now, one that they find burdensome at best. And we ought to try to see how we might resolve that. Jeff Sessions has legislation here; there is legislation in the House that is looking at something like that. And I think that truly, we have got to do that, because the totality of it is an important approach.

Now, the frustration I have with the President's proposal is quite simply this: if we are to suggest that the 8 to 12 million that are here only arrived yesterday, and they are going to be willing to go home, because they have not married, and they do not have children here, is to suggest that we do not know what we are talking

about when it comes to the range of types of people who are out there.

That is why, in my legislation, I do not do that. I do require that they show proof of 12 months here to identify; they have got to have been here 12 months. We do not obviously want to rush in, and we clearly have to understand that. We give them the right to earn, and they do not have to leave, unless their background check shows—that is what you explained, Eduardo.

I do not think that we are effectively recognizing the population we are dealing with, and if we want the largest number possible, Asa, of identified people out there that are brought forward and carded in the appropriate fashion to give them integrity and to give your effort integrity, then, we have got to go after the larger number. And the only way I believe you go after the larger number is if you recognize the character of the population.

Is a father going to come forward, only knowing that he will have to leave the country if he has children in this country who are, by definition, citizens if they were born here? I would doubt that. Would a mother do that? I would doubt that. That is the reality of a large chunk of that population.

Could you react to that comment?

Mr. AGUIRRE. Well, Senator, my reaction is that I think you have in your power, as you craft this legislation, the opportunity for, one, to extend for a significant period of time the renewal process here. The President has indicated that the initial temporary permit ought to be 3 years, but he indicated it should have the option of renewal. He did not have a cap on that.

And so, I think it is certainly within your power to do that. I also do not think that the President intends for individuals who are trying to apply for green cards, to force them to get out of the country to make that application. Once again, I think it is in your power to provide for a feature for those who, as you indicated, have an interest in staying here to go ahead and apply for the green card and get on a parallel track while they continue to be temporary workers, to progress through the queue and see when they get to that.

I think neither one of those are at all inconsistent with the President's attempt. The President is not interested in separating families, of course. On the contrary, I think we are bringing some significant compassion to the forefront here with this proposal that the President has.

Senator CRAIG. Thank you. I am pleased to hear that, because obviously, at least it is obvious to me, and I have spent a good deal of time on this issue over the last 5 years, that there has got to be flexibility within the character of what we do; at the same time, we have got to have integrity.

Let me go—my last question, so my other colleagues have ample time to ask, as it relates to identifying U.S. citizen domestic workers in this country before and the character, at least, in agriculture of the kind of work that we are dealing with. I propose a U.S. citizen registration system that the employer can go to. If there are not those on the system who have registered who are willing to work in that type of work, then, they can immediately activate the system of going after foreign nationals to meet that requirement.

If we are not careful, the 300-plus pages of the H–2A program are exactly what we are going to have again.

Mr. AGUIRRE. Right.

Senator CRAIG. And shame on us for being that silly. Now, last year, it identified by those who became good at making the system of H–2A work 40,000-plus employees for agriculture. But we know there were about 1.5 million out there. Do the math. Shame on us for creating a monster bureaucracy that does not work at all very well and is not timely to either a migrant population—and sometimes, in agriculture, migration is necessary based on seasonal harvest—versus a stationary population, which is also necessary, and it is all those combination of things that we ought to be smart enough to deal with.

Mr. AGUIRRE. Yes, sir.

Senator CRAIG. And my fear is if we try to fall back and tweak the old system, we will only add more layers of bureaucracy to it and create a greater nonfunctional environment and invite in the very illegality that exists today, because we cannot build it high enough; we cannot string the wires sharp enough; and we ought to be able to create something that has great fluidity in it and integrity.

Thank you all.

Chairman CHAMBLISS. Thank you, Senator Craig.

Senator Cornyn?

Senator CORNYN. Gentlemen, thank you very much for being here, and each of you have my tremendous admiration for the task that lies before all of us and the task that you perform daily in dealing with some of the most complex problems we have in this country.

One of the things that intrigued me about the President's principles when I heard him talk about it was the concept, what we have come to call in my office the concept of work and return. And Mr. Aguirre, Senator Craig talked about those who are already here and who have families and the difficulty of addressing that population, but, of course, any temporary worker program would not just address those who are already here but those who want to come here and work in the future.

And one of the unexpected results of our increase in border security is it has made it more difficult for people who want to go home and come back to do so. And indeed, as I alluded to in my comments earlier, what I have learned about this issue over the last 6 or 8 months has been that our friends in Mexico and other countries want their citizens to come home, to be able to come home and to do so, to cross the border back and forth legally and not to be trapped, in a sense, in sort of a counterintuitive way, in this country and have to subject themselves to the coyotes and others, the human smugglers who care nothing for them but only for the money that they pay to bring them back illegally.

But I was also intrigued after President Bush talked about this concept, which I will call work and return, that President Fox, Vicente Fox, also endorsed this concept. And here again, the notion that if Mexico, for example, one country that might be affected, is going to improve the quality of life and opportunity for its own people, it needs to have the hardworking risk takers able to come back

to visit family, to, hopefully, come back with the skills and the savings that they have been able to accumulate while temporarily away in this country, but then, they would be able to come back to buy a home, create a small business, and create jobs which ultimately, I think, are the long-term solution or at least part of the answer to our immigration problems.

Why does the administration think that it is so important to encourage return to home country? And could you talk about the financial incentives? Is that a part of what the President's proposal contemplates, that there be a financial incentive to return as well?

Mr. AGUIRRE. Well, Senator, let me see if I can touch on the ones that you mentioned. One, from the financial incentive standpoint, I think the President has proposed that we will work with foreign governments so that, as individuals return to their country, they are given credit for work they have performed so that, as they take advantage of their own retirement or Social Security system, whatever it may be called, they are not penalized for having been absent from this country.

I know your bill has a feature which, of course, allows for an escrow to be placed and for that escrow to somehow be returned to the individual as they depart the country. I think we have got to recognize that if we are talking about 8 million people, there are about 8 million stories out there. Each one of them has their own individual needs and wants.

And to assume that all of them want to stay in this country is certainly a fallacy. I recognize that some will. But I think there is a significant percent of that universe that has no interest in staying here. They came here for economic reasons, not for any other reason. And I think they would very much welcome the opportunity to go back to their homes with a little capital in their pockets and the opportunity to stay amongst their family and the land that they know and love of their birth.

We are going to have to find a bill that addresses the majority of the universe if not necessarily the entirety of the universe.

Senator CORNYN. Mr. Hutchinson, obviously, when I was talking about the tough job you have, you have got one of the toughest, trying to enforce the laws that we currently have on the books, when, unfortunately, my opinion is, and I think it has already been expressed, that we have lacked the political will. Certainly, we have lacked the will to provide the resources to law enforcement authorities to enforce our current laws.

But it seems to me that one of the benefits of a temporary worker program would be to differentiate between those who want to come here to work and to provide for themselves and their families and then return home, to differentiate between that population and those who want to come here to harm us, either the terrorists or the drug smugglers or other outright criminals.

I know one figure that I have seen that there are as many as 80,000 criminal alien absconders currently in our country now. Would you address the issue of how you think the President's principles, creation of a temporary worker program, would allow you to focus your resources on the people who want to harm us?

Mr. HUTCHINSON. It would from a number of ways. Right now, anecdotally, you have increased cross-border trafficking during the

holiday season. You have illegal immigrants that are wanting to go back home, so they go back through the port of entry. Then, after the holidays, they come back to their place of employment. They have to sneak across the land border to do that.

Obviously, our Border Patrol agents are engaged in reapprehensions. You have multiple apprehensions of the same individual who is simply going back and forth because of economic and family reasons. You take off that layer of enforcement requirements, and then, you are able to concentrate upon those who, as you said, are trying to cross to do us harm or that are trying to circumvent a system that is in place that would accommodate those economic workers in a legal way.

And so, from that standpoint, it helps us on the borders. Secondly, in terms of the employer systems, that it diminishes the draw of the illegals across the border. You set up a system that will diminish the incentives, and you allow us to concentrate in the workplace not on the 8 million that are here working but are in the shadows, that we do not know about; they will be given a temporary worker permit, those who accept that. We can concentrate our work site enforcement efforts, to a greater extent, on those who are circumventing the law or who might want to do us harm.

So I think there are significant advantages from an enforcement standpoint. It addresses what I consider a very significant security issue when these people are living in the shadows; are afraid to call the police in the event that they are abused or they see a crime.

Senator CORNYN. I know I was interested to hear your comment that 40 percent of the illegal population in this country is here; they are people who came to the country legally but have simply stayed and melted into the woodwork, and we do not know, really, where they are. Do you think a temporary worker program, requiring people to literally come out of the shadows, get on the tax rolls and identify themselves in a way that we could know where they are and know when they are, perhaps their temporary visa would expire, and so, we could enforce the laws that are on the books, would this temporary worker program help the Department of Homeland Security do that job better, along with the biometric technology that you have alluded to earlier?

Mr. HUTCHINSON. It would. It takes, again, some of the economic pressures away from individuals trying to find some legal visa that they can come in on and then overstay the visa. It takes off some of those economic pressures. Ultimately, I believe that we are going to be able to effectively address that whenever we implement fully the US–VISIT system, but as you know, Senator Kyl knows, the land border represents a huge challenge in this area. And if we can take off some of that pressure through this type of a temporary worker program, then, that is a step in the right direction.

Senator CORNYN. Thank you very much.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman.

There is just no doubt about it; this is a big deal. It involves a great deal of public policy considerations, and we have got to take our time and think through it. I have not supported to date the President's policies. I know you have not put out the details yet. But I am uneasy about it, and I have not done so.

I do think he deserves credit for confronting one of the biggest difficulties this country faces, and we might as well put it on the table. We might as well be honest with one another and talk about it. What I think is frustrating, people, is that the policy makers in this country are not listening to the American people. They have a good heart about it. They have good instincts about the matter. And I think they are saying we want to have an immigration policy that is generous; we want to be welcoming to people who come here. We want them to be a part of our economy and be successful at it and prosper and do those kinds of things, and we expect you politicians to figure out how to do it. And then, we expect you to make it work.

Well, we have not been making it work, and we know that. So I am reluctant to support any proposal that provides a major change in our immigration law if we do not first demonstrate a commitment to a system that will actually work to make the system legal. That is just the way I feel about it.

Senator Zell Miller and I have introduced a bill called the Homeland Security Act, and Mr. Ridge talked about it favorably, I think, the day before yesterday. Senator Craig asked about it and is a cosponsor of that bill. This bill would make it clear that local law enforcement could participate and be a responsible partner in this effort. We have, for example, 2,000 INS agents not on the border, in the homeland, as I understand it, for the whole 49 states.

There are 650,000 State and local officers. They have gotten the message one way or another that they are not really wanted in this effort, so they do not participate. I learned in Alabama from my police that if they apprehend illegals not to bother to call INS. Mr. Hutchinson and I have talked about it before. I think he got us from one to three agents in Alabama. We have got 4 million people. So this is not feasible. We are either going to have to have a massive increase in Federal law enforcement, or we have got to figure out a way to partner with State and local law enforcement to bring some integrity to this system.

One of the things I learned as a prosecutor for many years was the power, Mr. Hutchinson, of the NCIC, how magnificently effective that is to identify and capture fugitives and people who are on the loose. We have about 400,000, as I understand it, absconders. Those are people who, through one form or another, have been ordered deported—80,000, I believe, felon absconders.

What I learned and was shocked to learn is that that is not in the National Crime Information Center, and that means that a police officer, if they apprehend somebody who is suspicious, and they query that system, it will not come back that they are an absconder or even a felon there. So I guess—and I know you are making progress on it, and I wrote you about that recently. But I notice your letter indicated that you are putting in about 200 a day. That is going to be a long time to do 400,000.

One person, it seems to me, should be able to get 200 a day in the system. Can you tell me where we are on that?

Mr. HUTCHINSON. Certainly, and first of all, I support your effort to make more information available to local law enforcement. Alabama should be applauded by their investment in this initiative that would help train some local law enforcement with our MOU. You all have done great.

Senator SESSIONS. Yes; you worked hard at that, and we have trained a number of state troopers. But it was a pretty cumbersome process, and we need to make that more practical nationwide, I think. But thank you for breaking through the difficulties we face to make that a reality.

Mr. HUTCHINSON. And we are trying to do it in other places. We are trying to make that work, and we appreciate your partnership and leadership on it. Also, in terms of entering the information into NCIC, I agree completely that we are not satisfied with the pace of entering the information. I have pushed and will continue to push to get that done.

There were some understandable, practical reasons at the outset. You have got to get the approval of the NCIC to set the pattern for that. And then, you ask—

Senator SESSIONS. Who are they? Who is NCIC?

Mr. HUTCHINSON. Well—

Senator SESSIONS. Who do we have to get approval of?

Mr. HUTCHINSON. Actually, there is a board that governs—

Senator SESSIONS. Is that right?

Mr. HUTCHINSON. —the entry of records into NCIC that is not exclusively Federal law enforcement. It also includes private partners in there who have reluctance of putting some categories in. But we have reached an agreement with them certainly on the alien absconders to put that information in. There is not any hurdle now to put the alien absconder information in when we have a final order of removal.

You ask why we are only doing 200 a day. One, we are trying to increase that. We need to put more resources and capability, but the fact is you cannot put just simply a name in NCIC. And it is not a matter of just data entry. You have got to research every file to determine the accurate information that can be put in there so that whenever a law enforcement officer comes across an individual by that name, it is not a confusingly similar name that we arrest.

And so, the requirements are that accurate information. So we have got to go through all of the files; determine which ones can be put in, meets that criteria, so it is not just a matter of data entry. But you are fundamentally right. We have got to do better. We are pushing hard on that and hope to get some more results.

Senator SESSIONS. Well, on that question, have you formulated a system so that as of today and in the future, that when an order of deportation, removal gets entered that that immediately goes in the NCIC? It surely would be valid at the time that it is entered.

Mr. HUTCHINSON. We are addressing it on the front end, and I need to get back and answer that question specifically. I hope the answer is yes.

But in terms of the front end, we are trying to minimize the number of people who we do not have the right information on or

the right guarantee that they are going to show up. So we are trying to increase our detention and removal capability, our bond requirements, the information flow, alternatives to detention, so that when we get that final order, they will actually show up in court to be removed rather than us having to go out and look for them. So we are trying to address it on that front end.

Senator SESSIONS. And, Mr. Hutchinson, you would not dispute, would you, that if local law enforcement calls about one or two individuals that they think may be in violation of Federal immigration law, that there are not sufficient Federal agents to come and get them or spaces to house them.

Mr. HUTCHINSON. That is a correct statement.

Senator SESSIONS. So we have got a real problem there, and we just got to be honest what the problem is and begin to work on it. But I need, and I think the people want to see, a commitment from our Government that you are working through the problems so we can get to a point that we can have integrity in it. Do you agree with that?

Mr. HUTCHINSON. I agree 100 percent, and if I leave here without having taken the steps necessary to put that integrity in the system, then, I have failed in my job.

I should add that the President did the right thing by asking in the 1905 budget for a doubling of our work site enforcement but also the detention and removal facilities. We have pushed for this. The President put it in there so that we do have greater capacity in that area. But we are working through it both from a policy standpoint and a resource that needs to be devoted to it.

Senator SESSIONS. You talk about detention. We have got 20,000 beds now, I understand. Do you know how many you will be able to increase with this budget?

Mr. HUTCHINSON. Substantially, but also, it is a budget that allows for alternatives to detention. We are also trying to work on a policy change that helps us to expedite removal in certain circumstances rather than having to house them, so a number of things we are looking at in addition to the additional money that has been devoted.

Senator SESSIONS. I agree that that would be a very, very important thing, Mr. Chairman, that having been a Federal prosecutor, one of the things that drives you crazy, an open and shut matter that should not be in dispute takes inordinately long to accomplish. If you could make sure that people get a fair hearing and then eliminate the time and delays in it, I think this system would work a lot better and save a lot of money, free up money.

I would just conclude that, you know, I am worried that while we are not looking at some sort of retrospective amnesty, as occurred last time, we are talking about a prospective amnesty that could be even larger than the numbers we have had in the past unless we know what we are doing here and move with great care.

Thank you for opening it all up so we can talk about it openly as good Americans and welcome people who want to come here legally and make sure that those who attempt to come illegally are not successful.

Chairman CHAMBLISS. Thank you, Senator Sessions. And you have been a very strong voice and a very forceful leader on this

issue, and we look forward to working with you as we move the legislation relative to your particular bill down the road, too.

Senator Kyl?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman.

Let me begin by commending you for holding this hearing. It is important. I think the President should be commended for suggesting that we begin this conversation by laying out some principles of his own. It is time. He recognized that, and consistent with the leadership that he usually exercises, he took the bullet in his teeth and said let us start talking about it, and I think what Senator Sessions said about that is correct.

We are not all going to agree with every part of this proposal, perhaps, but I think it is great that the administration's spokesmen can be here to help provide further explanations about how the President will approach this and how, therefore, we might approach the issue as well.

I wanted to make a couple of preliminary comments about what I see happening back in Arizona, which I know that the panelists are generally aware of, but I think it sets the backdrop. I know Secretary Hutchinson has been there, for example, and I know he has seen it first hand. But I think my colleague John McCain referred to a newspaper article in the Arizona Republic this morning, which just helps to further demonstrate the nature of the problem.

In Arizona, probably half or more of the illegal immigrants entering the country come right through Arizona, probably through Cochise County, Arizona, if you want to know exactly where. It stresses our systems enormously. And the article that I referred to earlier here this morning or yesterday, I guess, 156 illegal immigrants were found in a home in Phoenix. Much of what the police found was similar to what they find almost every day: filthy conditions, illegal immigrants being held against their will by the coyotes or the smugglers with weapons, extracting further payment from the people's families, usually in Mexico but sometimes in other places in Central America.

This article, fortunately, did not refer to assault, battery, rape, but that frequently occurs with regard to the people who are being held. They said that the thing that was so interesting about this was that it was in a very nice part of town, whereas, most of these incidents have occurred in a relatively well-known part of town, where this happens every day.

Sometimes, the Phoenix Police get a call that there is a domestic disturbance or something like that. They show up, and there was no domestic disturbance. The coyote put in the call to get the police to come to clean out the safe house, because he has got a new load coming in that night, and he needs to make room for them. And the way the people are treated is abominable. Our police cannot take care of them, and if they do pick them up, the INS does not have anybody to take care of them, and so, they end up being put out on the street, and the system of lawlessness with respect to this continues.

My constituents are upset about it. The Mayor of Phoenix called on the Federal Government, rightly, to begin to do something about this. Our hospitals are having to take care of people who cannot pay their bills. As a result, they do not provide the care to the rest of us that we should be able to expect, because they cannot afford to pay for the doctors and nurses that they need in the emergency rooms.

We are having to take care of illegal immigrants in our prisons. As a result, they are overflowing, and we do not begin to get compensated under the so-called SCAP program of the Federal Government. Environmentally, there was a story in the paper yesterday that confirms—and I know Secretary Hutchinson saw this, too—there are some very sensitive areas along the border, wilderness areas and wildlife preserves and pristine forests, and the environment is being destroyed by virtue of the huge numbers of people who cross every day and the kind of trash they leave behind and so on.

So the effects are devastating to a place like my State. And while it is also true that people hire illegal immigrants, and frankly, a lot of it is well-known, and they do perform work that is valuable to our society, the taxpayers end up subsidizing the businesses that do the hiring, because the taxpayers are the ones who have to pick up all of these expenses that result from the kind of conduct that I discussed before.

I just would finally note in November, there was an incident that occurred that shows how violent and dangerous this is becoming: rival smuggling gangs. Smuggling illegal immigrants is now almost as remunerative as smuggling other contraband and drugs. But these two rival gangs shot it out right on the freeway between Tucson and Phoenix. Four people were killed, and two were wounded in the shooting when one gang kidnapped the other gang's illegal immigrants. Twenty-seven people were arrested in connection with that.

This is getting out of hand. And you have cities in Arizona that spend taxpayer money to set up shelters so that illegal immigrants can congregate to be hired illegally. Everybody just winks at the law. The Federal Government demands that documents of identification be confirmed before a person is hired, a driver's license and a Social Security card, both of which can be counterfeited for—I am not sure what the going price is now, maybe $65 or something like that.

So the Government pretends to have standards and criteria that everybody knows are violated. If this is a country of law, we have to begin to have a sensible law and enforce the law and everybody be committed to it. Now, I would like to say two things about that: what troubles so many Americans and Arizonans is that for a long time, governments at all levels, including the Federal Government, have not been very committed to enforcing the laws that are on the books.

The people know that. They see it every day. And they see that local law enforcement does not want to, either. So what does that tell them about laws? That some laws can be violated with impunity. That is the beginning of the end of society. It reminds me of the old Soviet thing: we pretend to work, and they pretend to pay.

We cannot let that happen here in the United States. And so, I want to commend the President for saying it is time that we begin to seriously discuss that, and I want to commend the three of you and in particular, because I know of his work, Secretary Hutchinson for ensuring that the administration has begun to put things in the budget that will help us enhance our enforcement, because I will guarantee you that people will not have an open mind about a reform until they believe we are committed to enforcing the law.

And I have had people ask me: why would we think a new law will be enforced if there does not seem to be any commitment to enforce the old law? So I applaud the administration for beginning to make the effort to show people that we mean business, we are going to enforce the law. And I am going to ask all of you what kind of further commentary you would like to make about that. I regret you perhaps did that earlier; if so, do not necessarily repeat yourself. I am sorry I could not be here at the very beginning.

But I also, in that same vein, would like to ask Mr. Aguirre, you, I know, talked a little bit about the backlog reduction team. You are familiar with the CRS report that says there is a backlog of over 6 million visa applications. Two questions for you: could you enlighten us a little bit about what the nature of those visa applications is? And secondly, how much it will cost for us to reduce—well, to eliminate that backlog and keep it eliminated? And I am not even going to ask you the next question, which is and how much more it will cost to implement a system which will, in one way or another, legalize the status of perhaps 10 or 12 million people who are here illegally today and implement a more liberal guest worker program for those who would come and go performing work here legally in the future.

Mr. AGUIRRE. Nothing like a simple question, Senator.

[Laughter.]

Senator KYL. Sorry.

Mr. AGUIRRE. Well, our Bureau is almost a year old, and we have been working very hard at trying to resolve the problems that have built up over the years. And indeed, we have a tremendous backlog, a backlog in almost every category. We have eliminated one, which is the foreign adoptions certificates, but we keep on going.

The backlog reduction for us has taken on just about a laser focus approach. We have a task force, and we are looking at specific initiatives that can bring not only a reengineering of process, which is so important, but moreso, bringing technology into the forefront that, for one reason or another, was not part of our Bureau or part of the old INS. We are bringing applications online so that people can better apply for some of the benefits, relieving some of the pressure of our Bureau to input some of the data that the client can do directly online.

We are bringing technology to reduce lines outside of our offices and so many other things, Senator. I would be happy to get back to you on the specifics of your question. I do not have that data with me. But because we take the President's initiative seriously, we have begun to look at what are some of the possible issues that we will deal with when and if the Congress acts on the President's initiative? And we would be happy to work with the Congress, certainly with the Senate and the House, on identifying practical rules

and regulations that would be the adjunct of any legislation that you pass.

And we intend to put a dollar value on that so that fees would be assigned to these temporary worker applications that would ultimately pay for the process and everything that goes with the background checks and things of that nature.

The President has promised that we will have our applications processed within 6 months by September of the year 2006. The President has given us, over a 5-year period of time, $500 million, $100 million at a time. And I feel comfortable that the budget that we have just crafted for the administration and that is being brought to the Congress will allow for that.

We have actually had to increase our fees, and we have announced and put for public comment an increase of the fees so that we can actually recoup the money that is being lost today. Until those fees are increased, we are losing $1 million a day, because some of these applications that go back several years are just now being processes, and the cost that was assigned then is not at all related to the cost that is today.

So we are working very hard on that, but I am very confident that what the President is proposing will not add undue wait on what we are doing. I think we will create new processes; we will not have to deal with old processes.

Senator KYL. Mr. Chairman, since I have a red light, let me just summarize, then, what I think I heard.

Mr. AGUIRRE. Yes, sir.

Chairman CHAMBLISS. Let me just say, Senator, you were not here to start with. I know you wanted to make an opening statement, and you have some leeway.

Senator KYL. I guess I kind of did that in the preamble to my question.

So you will, then, as soon as you can, submit to the Committee here, because I think this would be very helpful for our deliberations, a breakdown on the 6 million visa applications pending; how you intend to get those resolved; and by when, to the extent you can estimate that, how much money that will require; whether that means any additional funding from the Congress beyond what has been asked for; and the estimates that you talked about about how to deal with the future program that the President has recommended and that Congress might implement in some notional way.

Mr. AGUIRRE. Yes.

Senator KYL. And I understand that is not precise.

Mr. AGUIRRE. Yes, Senator.

Senator KYL. In that regard, let me just note that I appreciated in your testimony that there needs to be for enforcement—I forgot which one of you said it, but it is obviously very true—that there needs to be some kind of fraud-proof identification document for people, I would suggest for everybody who is seeking employment here, so as not to discriminate against everyone.

That, by the way, would be enormously helpful for ID theft, to avoid ID theft, because these fraudulent Social Security cards and driver's licenses are today used, and that is a crime out of control.

In any event, just to note, the laser visa for Mexican citizens, for those who want to come across for a 3-day, 50-mile visa, which we very much encourage, that was not inexpensive, but the Mexicans—I forgot, now, how many acquired that visa, because it was useful for them; it certainly is useful to us. We have made it as cheap as possible, and it is basically like a card that you swipe through.

The technology is here. We can do that. We need to make it as inexpensive as possible to encourage the use of something like that.

But the other question that I had asked, and if any of you would like, then, to respond to this, please do: it goes to the efforts that you might want to tell us about, just examples of some of the things that we are now doing to demonstrate this commitment to enforcing the law, both right now and prospectively. If you would like to make any comments in that regard, perhaps beginning with Secretary Hutchinson.

Mr. HUTCHINSON. Well, I would welcome that opportunity, and I was struck by your comment, Senator Kyl, that some of the citizens observe that we are not very committed to enforcing the laws. And I would not dispute that perception that is out there, particularly in some areas of the country, and I think that undermines the reforms that we need to undertake, because it all hinges upon our ability to enforce the existing and the future immigration laws that we might have.

I am very committed to making that perception change. If you look at Arizona, we have added additional Border Patrol agents substantially, as a result of our visits there and what you have educated us to as to some of the unique problems. ICE has instituted Operation ICE Storm there in the Phoenix area. They have added a greater response and enforcement capability. I know your chief; I think it is Chief Hurt there in Phoenix indicated that this resulted in a drop in some of the violent crime and residential crime that took place, a very substantial drop.

So we are investing and trying to make a difference in—your arena is a hot spot in terms of border crossing problems and illegality that we need to get a handle on.

You raise the issue of the Social Security, the fraudulent documents. From a policy standpoint, we are looking at that very aggressively, trying to enhance the integrity of that. Some of those, not Social Security cards but some of the other ID cards are dependent upon State action, and we are trying to set best practices for the States to respond to to give more integrity to those type of documents.

So a lot, we are doing; much more needs to be done, and we are not resting upon what we have done in your arena of the world, but we are going to enhance that even more.

The Department of the Interior was mentioned, which has a large strip of your border area there. I talked to their enforcement folks, Larry Parkinson, and we hope to be adding some of their capabilities to our enforcement efforts as well.

Mr. AGUIRRE. Senator, although our Bureau is charged with administering and servicing the immigration laws, we take the security component of what we do very seriously. We coordinate very closely with the groups that are under the responsibility of Sec-

retary Hutchinson, ICE and others. But we also recognize, over the years, that sometimes, we identify intuitively potential fraud. And it has turned out to be an impossibility to refer intuitively to the law enforcement side of our immigration set some of these wild goose chases.

So what we have also implemented here is an anti-fraud unit that, as soon as we identify a potential problem, our team goes and identifies it. And in the cases where there is something there, then, we turn it over to Secretary Hutchinson's team, and they have a better case to pursue. We, ourselves, are not in the law enforcement element, but we prepare a package for them.

Biometrics, of course, is at the core of the future of anything that we do. And it is our responsibility, in our Bureau, to create the cards, the green cards, the employment authorization cards, et cetera. And we have been working very closely with new technology to make sure that it matches up with what Secretary Hutchinson is doing and that our cards—one can never say that they are fraud-proof, but we will try to stay ahead of the criminals in making our cards as difficult to replicate as possible and that they are tied into a biometric function so that we have a secure environment.

Mr. LAW. Our job at the Department of Labor is to make sure that American workers come first when it comes to temporary worker programs. And we are working to refine our existing labor certification efforts to make sure that the system is more accurate, efficient, timely and preventive of fraud as possible.

I would just make one more observation from the labor market point of view to the issue that you raised earlier about the very sobering circumstances in your State and many other States about what is underlying that. That is that there are severe pressures and realities that impact labor markets right now that even the most committed, well-funded, pervasive law enforcement efforts can only make so much progress to address.

And if I can just briefly mention three of them, the first of them is this: as was said earlier, there are millions of undocumented workers currently holding jobs. Some of them have families; they are in their communities, and they exist in our country. Some have said 8; some have said 10; some have said 12; we do not even have a completely accurate count of how many there are, let alone exactly where they live or who they work for or what they are doing. And most of them lead lives of quiet desperation in the shadows, hoping never to be discovered.

Second, there are many, many American businesses that are simply desperate to find workers, even in this economy, where they cannot find American workers who are willing and available to take the jobs. If they do not fill those jobs, the service does not get done; the product does not get delivered, and there is desperation on that end as well.

And, then, of course, obviously, and it has been remarked many times before, outside of the borders of this country, there are many, many more people who, because of economic conditions at home or the promise of better things, are desperate to come to this country.

This amalgam of different forces that really are in many ways different labor market forces put tremendous pressure on the system, such that the President's proposal is not an enforcement be-

fore a new program; it is both working together to alleviate pressures on the system so that Secretary Hutchinson and others can devote their time and focus them on—

Senator KYL. Let me just interrupt you, because I do not think that you want to say that. We have existing laws.

Mr. LAW. Right.

Senator KYL. We do not have to pass new laws. We have existing laws that need to be enforced.

Mr. LAW. Right.

Senator KYL. And I know that the President is not saying we are going to wait until we have a new program and then, coincidentally with that, begin enforcing the law.

Mr. LAW. Absolutely not.

Senator KYL. Secretary Hutchinson has been very clear in all of the efforts that he and I have talked about, about the need to enforce existing laws. And my point is this: people are not going to be open to a program that is very necessary, a point I agree with you and certainly agree with the President on.

Mr. LAW. Absolutely.

Senator KYL. But they are not going to be open minded to consider that kind of a program unless they believe that we are committed to enforcing the law in this country.

Mr. LAW. Absolutely.

Senator KYL. So we should be sure to talk about enforcing existing law today and tomorrow.

You know, just, Mr. Chairman, please indulge me: the Phoenix Police Department estimates that two-thirds of the over 200 homicides in the Phoenix area last year involved illegal immigrants. This is not something that we can afford to wait to do until there is a new program.

Mr. LAW. Absolutely.

Senator KYL. But nobody is saying that enforcement of the existing law has to get to a perfect state before we begin implementing a new program. That would be impossible.

Mr. LAW. Right.

Senator KYL. But I hope that we all will begin to speak about this in a way that will begin to convince our citizens that their Government is serious about enforcing the law, so that when Congress considers a new law, they will be receptive and open minded to the changes that we are going to have to make, that frankly, a lot of them really do not want to accept the fact that we are going to have to accept a lot of illegal immigrants in this country.

They are going to do that, I think, reluctantly, grudgingly, perhaps, but I think they will do it if they know that we are committed to enforcing the new law that we pass. And that comes with a commitment to enforcing existing laws such as the commitment that the President has already begun through his budget submission and the good work that you all are doing.

Mr. LAW. Absolutely, and that is why the first principle of the President's proposal is to protect our borders first.

Thanks.

Chairman CHAMBLISS. Thank you, Senator Kyl. And you are absolutely right. We talked about this a little bit earlier with Secretary Hutchinson, and there are two points that you and I have

talked about outside of here. One is that we have got to have a law that we can enforce. Otherwise, the next generation is going to face the same problem we are facing. If we do not fix it now to where it works in the future, we have not done anything.

Second thing that I mentioned earlier that you and I had talked about is that I do not care what law we pass; if we as a Congress are not willing to commit the resources to it, it is just not going to work. And I think all three of you gentlemen would agree that you are going to have to have more tools to work with, which means you are going to have more money to make sure this program works.

I just have one question, additional question. Mr. Aguirre, how does the administration envision somebody being legitimized under this program? What are we going to do with the families of those individuals? They are going to be here, potentially for years. If they stay employed, and they renew their temporary status, they could be here years. Their families are going to grow up. What is going to happen to those kids when they reach age 18, let us say, and move into the market? What are we going to do with them?

Mr. AGUIRRE. Yes, sir, Mr. Chairman; I think what the President is trying to do is to allow for those who are working here who can support their families to provide for a colegitimization of the members of the family that are here. Of course, these individuals, in many cases, the kids are already in school. The mother may be working or not working. And we intend to maintain the family unit when the family is present.

Some of these people are not married. They are single and working hard, maybe two or three jobs a day. And that is certainly not within the scope of your question.

Chairman CHAMBLISS. Senator Craig, any followup?

Senator CRAIG. I do not.

Gentlemen, thank you very much. I think we all are beginning to grasp the scope of the problem and the realities of some of what we have got to do to get our arms around it and to give it the credibility that I think Senator Kyl speaks to so that the American public can see it, understand it and accept what we do here as the right direction, ultimately.

Thank you.

Chairman CHAMBLISS. Senator Sessions?

Senator SESSIONS. Sadly, I must say that we are further away from where we need to be than most of us want to admit. I mean, this is a big problem on enforcement. The steps that have been taken in recent years under President Bush's leadership are greater than, I think, we have probably taken in 20 years. I do not know, or at least a number of years, but we have got a long way to go. This thing, when you do not have local police participating; there is no place to put them; people are being released on bail, just immediately run off again instead of being deported; the system, NCIC is not identifying those who need to be identifying them.

We are way away. That is the problem, I think.

Senator SESSIONS. Senator Kyl, anything further?

Senator KYL. No, thank you, Mr. Chairman.

Chairman CHAMBLISS. Well, gentlemen, I think Senator Craig expressed the sentiment of all of us that you have a huge job out there, and we appreciate the great work that you are doing.

This is going to be a very, very difficult issue to get our arms around, particularly in the short-term. But we are taking the President's principles as a base. Whether we agree with all of them or not, again, I just have great respect for a leader who is willing to step forward and say this is a problem, and by golly, it is time to start addressing it, and let us figure out what the answers ought to be.

So, we look forward to working in a bipartisan way to build on those principles and incorporate the ideas of all members of the Senate to make sure that we do give you a law that is a workable law and that is a law that also will go hand in hand with the tools and the resources that we give you to, at some point in the very near future, alleviate what is a real problem today and if we do not not fix it, is going to be a bigger problem for the next generation.

Thank you for the great work that you do, and Senator Kennedy got held up. I know there are other members on the other side and probably on our side that will have questions, so the record will remain open. We will submit written questions, and we hope you will get those answers back to us very quickly.

Mr. AGUIRRE. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you very much. We stand adjourned.

[Pause.]

Chairman CHAMBLISS. To our other panel, I am sorry.

[Laughter.]

Chairman CHAMBLISS. Gentlemen, let me apologize. I got so wrapped up in what they were saying right at the tail end; we certainly did not mean to slight you or forget you. You all came a long way to be here, and we want you to know that we appreciate you.

Because of our time constraints, we welcome all of you to submit a written statement, but I would ask that you limit your oral statement to 5 minutes or less.

And, Mr. Birkman, we appreciate very much you being here from Texas and giving us your insight. We look forward to hearing from you.

STATEMENT OF RICHARD R. BIRKMAN, PRESIDENT, TEXAS ROOFING COMPANY, AUSTIN, TEXAS

Mr. BIRKMAN. Thank you, Mr. Chairman.

My name is Rick Birkman. I own Texas Roofing Company in Austin, Texas. I am here representing the National Roofing Contractors Association and the Essential Workers Immigration Coalition. My grandfather started Texas Roofing Company in 1935. As a third-generation roofing contractor, I have a personal interest in this issue, as it affects my business, my industry and my country.

If you would allow me, I would like to submit my written testimony for the record and talk today about several misconceptions that always arise when the subject of immigration comes up.

What I consider a myth, the first myth, is undocumented workers take jobs from Americans. We teach our young men and women that college is the only option for success in America; that working

with your hands, learning a trade or other service work is beneath them. Roofing, as with other trades, is tough, physically demanding work. In this technological age, hard manual labor and service work does not hold much attraction for today's generation.

But fortunately, the Hispanic community has always prided itself on trade work, close family ties, a strong faith, and strong work ethic that is the backbone of the Hispanic community. When we advertise for workers, we do not care who walks in the door. We do not say Hispanics apply only. But 99 percent of our applicants are Hispanic.

We have a labor crisis in our industry. We cannot fill the jobs we have now. If you could magically remove the millions of undocumented workers from the labor pool, it would cripple our economy.

The second myth is these workers are paid a couple of dollars a day and are mistreated by employers. Now, while I am sure that some of this occurs, it is the exception and not the rule. Walk in the door at Texas Roofing Company with no experience, and we will start you at $7.50 to $8.00 per hour. Walk in with experience in roofing, we will start you at $11.00 to $14.00 per hour. And we have foremen making up to $21.00 per hour. It is not uncommon for a journeyman roofer to make $40,000 to $55,000 a year with overtime.

Now, that is not a bad wage for Austin, Texas. Obviously, wages vary in other parts of the country, but this is typical with my peers in the roofing industry. These workers pay taxes and Social Security, a benefit that undocumented workers will never realize.

Have you ever wondered what happens to the billions of dollars that is paid into the Social Security Trust Fund by these undocumented workers? These men and women pay taxes, raise families and own homes, all in the pursuit of the American dream. They service the engine that keeps this country running, dirty work that few Americans are willing to do.

In closing, we have a security crisis in America that must be dealt with immediately. A guest worker program is a good first step toward regaining control of our borders. I would like to commend Senator Cornyn, my Senator from the great State of Texas, for introducing the Border Security and Immigration Reform Act of 2003. We also commend President Bush for his courage and leadership in presenting this bold proposal.

The immigration system that is in place today serves neither America's economic security nor its national security. We urge Congress to act. Thank you, Mr. Chairman, for this time.

[The prepared statement of Mr. Birkman appears as a submission for the record.]

Chairman CHAMBLISS. Mr. Birkman, thank you very much.

Mr. Papademetriou, who is co-director of the Migration Policy Institute here in Washington; we welcome you, and we look forward to your comments.

STATEMENT OF DEMETRIOS PAPADEMETRIOU, CO–DIRECTOR, MIGRATION POLICY INSTITUTE, WASHINGTON, D.C.

Mr. PAPADEMETRIOU. Thank you, sir. Thank you. I will try to be very brief, given the time.

It seems to me that the President's announcement and his ideas, as elaborated by the previous panel, are on the right track. But they are incomplete. They are trying to give a single answer to a problem that is far more complicated than simply adding some additional visas, temporary or otherwise, to our immigration system. Temporary workers, significantly large numbers of temporary workers, because I think that is what the administration is talking about, is indeed a migration management tool of the first order. But again, it is not enough.

It seems to me that in order for us to have immigration reform legislation that will be worthy of the name and will be worthy of the pain that this Committee and the Congress will have to endure in order to put a package together will have to get it right, more right than we have ever gotten it in the past. And getting it right requires that we think in terms of a three-legged stool. Some of my colleagues call it the three Es of immigration reform.

The first thing is that we have to do something about the 10 million people who are already here. I hear numbers 8 to 12, 15. I believe that the number is around 9 point something, and I think we have to be practical about it. I think it is imperative that we offer some sort of a means through which these people can earn legal status and a pathway to legal permanent status for those who meet whatever requirements all of us, this Committee, the U.S. Congress, chooses to require of them. We have to ask people to earn their new status through an earned regularization system. Reasonable people, in this room and elsewhere, can come up with what those criteria must be.

And in order to avoid the mistakes of the past and learn from the 1986 legalization program, we have to push the requirements forward. Ask people to prove after they have passed the security test that indeed, they can meet the necessary requirements in order to get legal permanent status. Those who do will actually continue to make enormous contributions to our country; those who do not then can be targeted for enforcement and removal.

The second part of this three-legged stool approach to immigration reform is dealing smartly with demand. Back in 1986, when we spent an awful lot of time, from 1981 to 1986 before we actually passed comprehensive immigration reform, we pretended that somehow, there was no real demand for these people; that somehow, the U.S. Congress could act, put together some sort of an enforcement package and some sort of a legalization, a partial legalization program, and somehow, people would just either disappear or obey the law.

But in reality, we forgot to take into account the market, so this next time around, let us make sure that we actually take into account the market, what my colleague here mentioned about demand for workers.

And that demand has to be met with a combination of visas. Some of them will have to be temporary work visas. Some of them will have to be permanent work visas, and reasonable people can actually tell the distinction. You will have to come up with legislation that will draw the line as to who should qualify for the one and who will qualify for the other.

But we will also have to do something about family visas. It is not only the delays in the system that Mr. Aguirre has talked about. It is also the reality that when we ask people not to be reunited or not to be united with their immediate families—and here, we can have a big discussion about, you know, what do I mean by family? What you may mean by family, Mr. Chairman, or what others may do. And that discussion is worth having. But if you split families and continue to expect people not to reunify with their spouses or with their children, that part of the legislation, of the law, will not be enforceable.

Finally, and I know that this next word is probably almost as much of an anathema as the amnesty word appears to be for some, we are going to have to really do enforcement. And this time around, at least, we are almost there in terms of the border enforcement. More will have to be done. We are going to have to be smarter; more resources will have to be put there.

But more importantly, we are going to have to rethink our interior enforcement. I know that it is important that we enforce the laws, but if we do not have laws that make sense, if we have laws that go against the market and against human nature, if we have laws, on the one hand, and then, through another act of Congress, we basically take away the power to enforce those laws, then, we do not have laws at all.

Employer sanctions is an idea that has failed to get roots in the United States, and, sir, if you will allow me, not because we do not have enough resources but because it happens to be a bad idea. It happens to be contrary to what we often hear, something that most Americans, once they have explained to them what the legislation really tries to do, really do not buy into it. It is a foreign idea. It was introduced in Europe. Europe, on a proportionate basis, invests 10 to 20 times as many resources in the enforcement of employer sanctions. It has developed special courts that penalize employers and send them to jail because regular courts were not doing that. And guess what? The added net illegal population in Europe now stands at roughly the same level as it is in the United States, about half a million new illegals every year.

We should consider why. Thank you very much, sir.

[The prepared statement of Mr. Papademetriou appears as a submission for the record.]

Chairman CHAMBLISS. Thank you, sir.

And Mr. Cervantes, I know we called on you at the last minute to replace Mr. Zevanta, and I am sorry he had this family emergency, but we appreciate having you here. Thank you.

STATEMENT OF CHARLES CERVANTES, GENERAL COUNSEL, U.S.–MEXICO CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. CERVANTES. Well, Mr. Chairman, it is my honor to be here, and Senator Craig and the other Senators who gave their good time, and frankly, very perceptive and educational information to me at this point.

The United States–Mexico Chamber of Commerce was formed 30 years ago to provide private sector input to the governmental activities of both countries. We have about 1,200 members on both sides of the border. We have the unique perspective of companies

on the Mexican side who are also buying and using this same labor pool. And so, we take that into account as we look at servicing our membership.

I am just going to highlight some of the areas that have been touched upon. Certainly, we are in favor of the President's proposal and want to help create a system that not only involves the employers but the employees and government. It is obviously an essential part here. We also want a system that will provide some sort of legal redress for predatory employers, those people who violate the human rights or civil rights of those persons who are in this country.

We agree also—I believe it was mentioned earlier—that the labor certification process as it exists today is archaic. It, in some cases, takes 3, 4, 5 years. We are looking at something that is more rapid fire, something that will address the needs of an employer when there is no willing American citizen to take the job and match it up very quickly. Five years is too long to make that match. That may be part of the problem.

Today, certainly, in the Chamber, we have promoted training programs not only for our small U.S. companies but also for Mexican companies to be able to use electronic commerce as a rapid way to communicate and also the use of biometrics. So perhaps the laws that have been on the books for 20, 25 years have not kept up with the technological capabilities which we have and which were mentioned by Secretary Hutchinson and also by Commissioner Aguirre.

The Mexicans have initiated, and we have worked with the Mexicans, the businesses and the Government in a number of areas, perhaps a tool that may be useful if the United States had a similar tool, and that is their Matricula Consular. I was fortunate to be one of the observers in the 2000 election. We went to 22 polling places. And the card that they used does have a biometric. It has got the thumbprint, an indelible thumbprint that cannot be removed and a photograph.

I mean, they have not gone as far as retinal scans, but certainly, we know that the FBI today is capable of processing and reading fingerprints with a rapidity similar to that which you can card scan those international product codes at the grocery store.

So we encourage continued coordination, and I think you need that coordination from the sending country so that they can provide some help on that end, particularly Mexico, if some of these workers are going to leave and go back. We have heard all of the different scenarios. But I think that to do it on one leg is not going to be sufficient. There has to be some coordination, particularly with this type of advanced technology that may not be foolproof, but you may get very close to eliminating fraudulent replication.

So the Chamber and its members, who are employees, employers, welcome the initiative by the White House, and we remain confident that this effort—and certainly, from what I have heard today, I think it is going to happen and hopefully on a bipartisan basis—that this will address the reality that we have all agreed today exists. We cannot look the other way. And coming up with a system, procedures and the use of technology such as biometrics that I think this body may be able to come up, craft a very good piece of legislation that will serve us all well, and we welcome it.

Chairman CHAMBLISS. Again, thank you, Mr. Cervantes, for being here on short notice.

Mr. Vernon Briggs, professor of industrial and labor relations at Cornell University, we are pleased to have you. We look forward to your comments.

STATEMENT OF VERNON BRIGGS, PROFESSOR OF INDUSTRIAL AND LABOR RELATIONS, CORNELL UNIVERSITY, ITHACA, NEW YORK

Mr. BRIGGS. Thank you, Mr. Chairman.

Let me start with some of my conclusions, since I am last here and I now sort of see why. We have actual experience with guest worker programs, and that experience has been awful. We have had recommendations by highest commissions that have studied these programs: the Jordan Commission, the Hessberg Commission, the Voss Commission, others. All have said, as I mention in this testimony, do not do this, unequivocally, unequivocally.

The wise counsel of distinguished Americans who have served on a host of national commissions cited in the testimony have intensely studied this issue and, in the starkest terms, have warned do not pursue this type of policy. In fact, I want to say right from the beginning of my testimony: I know of no other element of immigration policy, and I have been writing and teaching in it for 40 years, in which the message not to do something is so unequivocal. One has to have an enormous amount of gall to stand up against, I think, the evidence of the past—not me, and I have cited, because I have testified before, all of these groups of the past. I am not going to use my words. I am going to use their words on what experience has been.

And I am not going to go through—I will just mention that historically, guest worker programs started in World War I. In World War II, we had them; the Korean War; they were temporary things. And during wartime, we do a lot of things that are temporary in the national interest: wage and price controls, confiscatory taxes on profits, waiving antitrust laws. Guest worker programs were introduced in that. And they are understandable in periods of national peril. You do exceptional, extraordinary things.

When those wars ended, all of those other policies quickly ended. For some reason, this one, one of the histories has been, once employers get addicted to these programs, they do not want to let go. And the experience of all of those programs from the wartime periods was that they were continued. I cited it all for you. I will not go through it. You are welcome to read it: the British West Indies program, the rest of it.

We started some nontraditional programs, that is, peacetime uses, with the H–2 program. Most of that experience has been unsatisfactory, too, and I could cite you where it has actually been used in the Virgin Islands and Guam with disastrous consequences, documented by the staff of this Committee, the publications of this Committee, if you look at where I cite.

But let me turn now to this other idea of using it to combat illegal immigration. This is not a new idea. It has been around for 30 years. I have argued against it for 30 years, and it still comes back. It is a bad idea that just will not go away.

President Jimmy Carter requested, in 1978, that the National Commission on Manpower Policy study whether the H–2 program should be expanded as an alternative for illegal immigration as part of his initial package to deal with illegal immigration. That Commission, chaired by Professor Eli Ginsburg, a bipartisan commission of leading manpower experts, strongly recommended against expanding the H–2 program, because the evidence was that it would distort labor markets. It would make a self-fulfilling prophecy before long that you cannot find citizens to do the work.

During that same period, the Hessberg Commission was formed, the Select Commission on Immigration and Refugee Policy, the first commission to study this issue of immigration in a comprehensive way. Father Hessberg, as I quote here, says, this idea of temporary workers was tremendously attractive. These are his words. Perhaps I should say seductive. There is a superficial plausibility to this argument. And the Commission gave serious consideration for a year and a half. I can recall being very much entranced by it when I first joined the Commission. In the end, we were persuaded, after much study, that, quote, it would make—all this is a quote—it would be a mistake to launch such a program. And he lists six reasons—I will not go through them for limited time right now—explicitly saying why do not do this. The evidence and the testimony and their experience has been do not do it.

The final conclusion, after looking at those six reasons, quote, we do not think it wise to propose a program with potentially harmful consequences to the United States as a whole. This is bad policy for the whole country. It is not just bad immigration; it is an awful policy to even to begin to suggest. That is Father Hessberg, one of the most knowledgeable and sensitive men ever to write on immigration. And I welcome the opportunity I have had today to go back and reread all of that again. That was his testimony before this Committee that is cited here. Do not do this. That is his recommendation.

The Reagan administration proposed a guest worker program. Simpson and Mazzoli rejected it. They did not include it in their proposal. We know the SAW program came along by Congressman Schumer at the time. That proposal was very extremely controversial, sort of an earned amnesty, as we would say today. That program was a disaster. The New York Times called it, quote, one of the most extensive immigration frauds ever perpetrated on the U.S. Government, because of the document fraud. The estimate was that 200,000 people were going to come forth. 1.2 million came forth, and almost all of them got approved, because the documents, those documents to justify employment can be counterfeited, too. And I list this other testimony, just asking employers—those documents can all be fraudulently made, too, to justify whatever you try to set if you set up this type of program.

IRCA required that the Voss Commission be set up, the Voss Commission to study the effect of IRCA, the SAW program. The Voss Commission was an employer-dominated council, employer-dominated. Voss was director of the Department of Food and Agriculture.

After 6 years of study, they concluded that the SAW program was a disaster, and they recommended—and this ought to be to

those who support the AgJobs bill that is pending up here in Congress, and this is the exact quote from their final report: worker-specific and industry-specific legalization programs as contained in IRCA should not be the basis of future immigration policy, unquote. That ought to kill AgJobs. This cannot be said any clearer than that. Now, you go back and read the hearings on that, why they came to that conclusion.

We then get the Commission on Immigration Reform, chaired by Barbara Jordan. They go through it, clearly reject it. Their conclusion was, quote, a guest worker program would be a grievous mistake, a grievous mistake. That is their words, unquote. They give you the six reasons, five reasons in this case.

I would say unequivocally, we do not have to listen to professors. Look at experience. Look at what the commissions have said. These are bipartisan commissions, almost overwhelmingly unanimous in what that literature has shown. And this proposal ought to die today.

We do need to get on with the illegal immigration. This is the 12th time I have testified before Congress. I have been arguing against illegal immigration for a long time. Let us get on with the real issues: making employer sanctions really work. Let us stand up behind them. Let us enforce them and let us make clear that there are not going to be any amnesties. There are not going to be any guest worker programs. We are going to have an immigration system that is going to work.

And I point out to you in closing that we have 34 million low wage workers in the United States, one quarter of the United States labor force. And that is this betrayal. It is awful to sit here and listen to people say I cannot find people who are going to work. We have got 34 million low wage workers, making less than $8.70 an hour. In this particular study, it cites it. The problem is we have got an oversupply of 9 to 12 million illegal immigrants who are competing to keep their wages down, driving them down.

Getting illegal immigrants out of the labor force should be the first order of business. Then, we will talk about some other things. Let us be sure that we can enforce the immigration systems, as a couple of Senators have said here. Then, talk about amnesties or something else along this line later. But let us find out if we can stop illegal immigration first, because those other experiences have been that you cannot stop illegal immigration with guest worker programs. They generate illegal immigration. And that is the experience with every one of them, and every one of these commissions has said this.

There is no answer to illegal immigration by guest worker programs. All you do is legalize the ones that are here. That does not stop more from coming. You have got to prove that you can actually enforce the system first, and we can do it. But we cannot do it with a guest worker program or any prospect of amnesty, any prospect whatsoever. And hopefully, you will read the more reasoned arguments in the paper than my emotional argument during the testimony.

Thank you.

[The prepared statement of Mr. Briggs appears as a submission for the record.]

Chairman CHAMBLISS. Well, thank you very much, Dr. Briggs.

My logical question to you is if the guest worker is not going to work, and, as you state, that anybody can falsify documents and bring them in to Mr. Birkman and show him a green card and a Social Security card or any other kind of card that we require, at least at this point in time, is proved to be counterfeitable, what does he do? How do we sanction him for hiring somebody who walks in with a legitimate Social Security card, a green card, or any other document that appears legitimate on its face?

Mr. BRIGGS. I would say go back and say what Father Hessberg said on that commission. And he was for national identification cards. I know that is a no-no politically. But we are getting close to the time in which we are going to have to address these issues, not because of immigration reform but because of all of the other security issues we have got.

I have got, in about a half an hour from now, to show my driver's license to get on the airplane to go home tonight. Well, a driver's license can be fraudulently—what is the point of this, going through this? In fact, it is going to be checked three times tonight, showing this piece of thing. And does anybody believe that is protecting this Nation? It is just a harassment. We have got to address the issue of—we have got to come up with what is being suggested with some of these other—biometric identification cards. It is part of this world which we live in today. That is the sad part.

I do not say that because I want it to happen. Father Hessberg did not say it because he wanted it to happen. He said it has got to happen; it has got to happen. That is the age we live in. We are going to have to have some sort of identification, not that you have to carry around; not like a national ID that you have got to carry around all the time. But those few times, when you go in to look for a job, the most valuable thing this economy has to offer, a job, the most important thing of all, that you have to show a card that identifies who, in fact, you are.

And that means it is going to cost money to get to some sort of—these biometric cards that actually can show your data, who you actually are, not just a picture of you or a piece of paper. And we are going to have to bite that bullet. And all of these other documents can be easily counterfeited, and they are being.

And until that time, as Father Hessberg said, this is nothing about Big Brother-dom and all the rest of it. It is the reality of the world we live in.

Now, of course, his recommendations were left out of IRCA, and that is what made IRCA a failure. We knew it was not going to work without the ID. Employer sanctions will never work without a better ID system. We have got that deal with the fraudulent documents. All of those commissions say that. It is a bullet someone is going to have to bite if you really want to get this issue solved. And I think it is in the national interest, it is the national interest, to see this done—again, not an ID that you have to carry around, and a policeman can stop you on the corner, where is it, but in those cases where you want to get Social Security, or you want to get on an airplane, or you want to get a job, you are going to have to show it and be able to find out who it is.

Now, there are better people than me who know how to do those things, but I am told that they know how to do it, and apparently, they are doing it on some of the Border Crossing Cards already.

Chairman CHAMBLISS. Mr. Papademetriou, let me ask you, you probably heard my question to Mr. Aguirre relative to this family issue that you addressed, and that is whatever program we go to is going to create problems in and of itself, and one of them is these families of a legal worker here. How would you suggest we approach that with respect to somebody who is here legally under a guest worker program, that might legitimate them? What is going to happen to their wife? What is going to happen to their children from the standpoint of how we should address them?

Mr. PAPADEMETRIOU. Well, Mr. Chairman, it all depends on how many times you actually offer people a 3-year temporary, in quotes, visa. In other words, if you do that two or three times, I suspect several of those children who are American-born children will have reached the age of majority per the immigration rules, and they will be able to sponsor their parents. And then, you will have to have the choice of separating parents and children one more time or passing a different sort of legislation.

If I might, and I know I am being presumptuous, if I might, I would like us, if we are going to do it, to do it sort of right this time. They keep passing legislation for a specific period of time. There are not enough jobs; let us increase the visas. And they stay there permanently. There are too many jobs. Let us try to decrease the visas. And they stay low permanently.

This time, perhaps, we can try to pass legislation for all seasons rather than just for the next year or two. And it seems to me that in order to do that, we are going to have to get down and dirty and do something about all three things that we need to do. And there is no other way to do that, sir, no other way. I have studied this phenomenon for over 30 years. I have written about 180 different pieces on this, and I have advised many governments, and contrary to what my very good friend Vernon Briggs—we have even written together—says, let me just give you a very simple example, just about the national ID card.

There are countries in Europe that go beyond a national ID, and they have something that is called a population registry. That is not just a national ID. It is the requirement to actually go to the police and tell them that you have changed a job, that you have changed your location where you basically live, that you have changed whatever that is material about it. And the underground economy, fed primarily through illegal immigration in these very same countries, keeps increasing by 5 to 7 percent per year.

Sir, if there was an easy way to do this, we would have done it. An awful lot of people, Ted Hessberg and everybody else, and Vernon Briggs and others, have really thought very hard about this. It comes to a point where you basically have to say let us try to follow, perhaps, a zero-based policy review. Instead of building on bad ideas, perhaps we ought to start anew with some of these ideas.

I am saying this with the utmost respect, sir. For many reasons, including the fact that so many of these programs simply have too much baggage that really weigh them down, they have too much

history, and we really have to start thinking differently, recognizing that for better or worse, there is an extraordinary and increasing demand for the type of labor that Mexicans and others bring and contribute to this economy, for better or for worse, and trying to manage that flow is more, it is smarter, makes more sense, than either denying it, which is what my friend Mr. Briggs is doing, or Ted Hessberg or anybody else, or simply saying let us live with illegal immigration.

Just a small calculation, just to show you, back of the envelope completely, if you will allow me: some of your colleagues had a conversation with Mr. Hutchinson earlier, and he talked about enforcement dollars. Let me give you a simple calculation: we have about 10 million people who are here illegally. Suppose that about 60 percent of them actually play by whatever new rules this Congress devises. Forty percent of them, 4 million people, will not. These people are either going to be the nucleus of an ever-expanding additional illegal work force and illegal immigration force, if you will, or we are going to have to do something about them, such as pick them up and remove them.

The math is as follows: there are, let us say, 400 days—I do not want to make it difficult, 365—400 days in a year. Suppose that Mr. Hutchinson, with many more dollars, is able to pick up 500 of them each year. It will take him 20 years to remove these people. And this assumes there have been no new additions to the undocumented force in the United States.

So, picking them up, packing them over and throwing them overboard is not going to do it. You think of resources? About $100 a day to keep somebody in jail. That does not include investigative resources; it does not include the resources that it takes in order to really give their claim to perhaps that they should stay in the country, because they have some equities, or what have you. Removing an individual from the United States, even if you basically make it terribly, terribly, easy, and the 1996 legislation, three pieces of them, have made it relatively easy, relative to what it used to be before, is an issue that costs tens if not hundreds of thousands of dollars. We do not have the resources for that.

And if we are going to take the President's underlying assumption that part of the reason that we should be doing this is for security, domestic security reasons, in order for us to be more reassured that somehow, 35 or 1 or 500 among these 10 million of unknown people in the United States do not really wish us harm, we are going to have nearly 100 percent participation through any program that we devise, because that is the buy-in in order for them to pass through these security screens. There has got to be some buy-in. And that is an expectation that something is at the other side for them.

Some of them, I am convinced, many people disagree with me, some of them will actually choose to go back and forth. Ten or 15 years ago, the rule of thumb about Mexican migration to the United States was that it was something that we used to call circular: they come, they stay, they work in agriculture, they put together, you know, a bit of money, they go back, they try it, they open up a shop, buy some sort of a taxi, what have you; they succeed, perfect. They do not succeed, they come back here.

What the President's—in a sense, the genius part of the President's recommendations or principles is that reintroducing the possibility of a circularity, or, for that matter, Mr. Craig's bill, Mr. Kennedy's bill, reintroducing circularity, bringing the program more in harmony with reality, makes sense. But we must not forget that the other things will also have to be fixed.

This is about integrating our responses. If you only do one of them, you might as well not do it at all. The only reason that Mr. Kennedy's and Mr. Craig's legislation makes sense to do independently of anything else, because the circumstances in the agricultural labor market are so unique that they actually create an opportunity for us to do something unique to that particular sector.

Everything else will bleed into everything else. So it seems to me that it is important that we do that. And if we engage this conversation, we will have to think about worker standards. I do not think any reasonable American, I do not think that Vernon Briggs disagrees that we have to have worker protections and worker standards, and we have to make them meaningful. That means not only good laws but good enforcement methodology and resources to actually apply this enforcement methodology.

And we are not bereft of ideas, sir. Many of us can talk to your staff, as we talked with the staff of many of your colleagues, and we can come up with ideas. But it takes willingness on the part of the Congress to break the mold.

I am sorry, sir.

Chairman CHAMBLISS. We welcome your comments.

Senator Craig, do you have any—

Senator CRAIG. I will be brief, because the hour is growing late, but I thank all of you for your testimony, and Mr. Papademetriou, you have mentioned a portion of our bill. There is one element in it that we think brings people forward, and that is a nonpunitive ability to earn something. It is that pass-through with something on the other side. And we, therefore, stabilize a work force. We identify a work force. They identify themselves. They are not limited to stay in agriculture. They can work elsewhere in the economy, as long as, over a period of time, they earn that 360-day status within it to gain permanency.

The stick in this case has not worked. It will not work. It shoves them into the alleys and shoves them into the shadows, and then, they become victims of the system once again. Thank you for your testimony. You know, in my effort to try to understand this, and I nowhere near grasp the scope of it as you have with the work that both you and Mr. Briggs have done over the years. But the uniqueness of something has changed here, Mr. Briggs, I do believe, and I do not disagree with you that a lot of what we have tried in the past has not worked.

I am now beginning to read history and looking at the movement and the failures and the efforts. When organized labor, who once was quite hostile, is now recognizing the need to solve a problem and to create legitimacy and fluidity in approach, it helps us change the dynamics. The bias that is, in large part, built within all of the past laws that was dramatically placed there by an organized labor effort in this country that wanted to deny, because it

thought they were replacing, has changed significantly, I do believe.

That gives us an added resource in working collectively together to solve this problem, and I think that might make a modicum of difference that may dispel the ability for us to fail once again, because it is inherent within the current process.

Gentlemen, thank you all.

Chairman CHAMBLISS. Again, let me express my appreciation to you. Thanks for sitting through the first part of this hearing and for staying around. Your testimony has been very valuable. We will enter your complete statements into the record, and I assure you they will be studied.

Thank you very much. This time around, our record will remain open for 7 days. There may be some questions, gentlemen, that may be submitted to you in writing. We would appreciate you addressing those in short order and getting your answers back to us.

Thank you very much for being here.

[Whereupon, at 5:52 p.m., the Subcommittee adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

The voice of professional roofing contractors.

April 15, 2004

Ms. Camila McLean
Senate Judiciary Committee
Subcommittee on Immigration,
Border Security and Citizenship
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ms. McLean:

Please find attached a copy of the written responses of Richard Birkman to the written questions submitted by Subcommittee members, in regard to the "Evaluating a Temporary Guest Worker Proposal" hearing held on February 12, 2004.

If Subcommittee members or you should have any additional questions for Mr. Birkman or me, or if you should need additional information on the roofing industry, please do not hesitate to contact me at (202) 546-7584, or by e-mail at csilvertooth@nrca.net .

On behalf of Mr. Birkman and the National Roofing Contractors Association, I want to thank you for allowing our participation.

Sincerely,

R. Craig Silvertooth
Director of Federal Affairs
National Roofing Contractors Association
324 Fourth Street, N.E.
Washington, D.C. 20002

Attachment

Washington Office ■ 324 Fourth Street, N.E. ■ Washington, DC 20002 ■ 202/546-7584 FAX: 202/546-9289
E-mail: nrca@roofonline.org ■ Web site: www.roofonline.org

Publisher of *Professional Roofing* magazine. Printed on recycled paper

Responses
to
Written Follow-Up Questions for Mr. Rick Birkman
at
February 12, 2004
Immigration Subcommittee Hearing
"Evaluating a Temporary Guest Worker Proposal"

Senator Chambliss

1. When we hire, we don't specify that we are looking for a particular nationality. We hire based on qualifications and the desire to work. Roofing is difficult work. It's hot, dirty and physically demanding. As such, we don't have people beating down the door to sign up to become roofers.

   The National Roofing Contractors Association (NRCA) has spent millions of dollars promoting this industry to workers around the country with little success. And personally, I've placed ads, but have gotten little response. As long as we continue to pursue public policies designed to steer our children toward four-year college programs, I expect that the building trades will continue to face labor shortages. And for that reason, I'm happy to see President Bush put forward ideas that can address the problems I face as an employer.

2. We don't see many green cards. They are almost impossible to get. What I think is that foreign workers simply want a better life, a good paying job and a place to raise their families. We don't see travel back and forth across the border as a big issue because most of their families are already in the US.

Senator Sessions

1. When Texas Roofing Co. of Austin, Inc. hires an employee, we demand the proper documentation as required by law. We ask for nothing more than is required by law, as we have no interest running afoul of civil rights statutes. In the past, we have discovered that employees we thought were legal turned out not to be. At that point, they were terminated.

2. I assume my peers practice the same due diligence during the hiring process that my company does when we hire.

3. I honestly don't believe it's a question of money. We start employees with absolutely no experience at $7.50 – 8.00 an hour. I cannot emphasize strongly enough that roofing is strenuous, physically-demanding work – work that the overwhelming majority of

Americans would find unattractive at almost any wage. It is among the toughest work in all of the construction trades.

4. As I stated in my testimony, that wage is for experienced workers – not entry level employees. It's also a question of the available pool of labor. Many of the unemployed are either physically unsuited for this type of work, or believe the work is beneath them.

   Austin is a community that has grown in recent years because of the growth in the high technology sector, but when the high-tech bubble burst, many Texans in the Austin area lost their jobs. I have to imagine that the 6.3% unemployment figure you cite includes many of those Texans previously employed in high-tech companies. And frankly, that share of the available labor pool has shown little inclination for entering the roofing industry.

5. Our peak season is spring to fall with summer being the busiest time of the year.

School of Industrial and Labor Relations

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March 15, 2004

Senator Saxby Chambliss, Chairman
Senate Subcommittee on Immigration
Border Security and Citizenship
224 Dirksen Senate Office Building
Washington D.C. 20510

Attention: Ms. Camila McLean

Dean Senator Chambliss:

Attached are my written responses to the additional questions submitted to me following my testimony before the Committee on February 12, 2004. If I can be of further assistance, please feel free to call me.

Sincerely yours,

Vernon M. Briggs Jr.
Professor

Question 1: Probability of a Truly Guest Worker Systems

A. Actual experience, both in the United States and elsewhere would say "no" it is not possible for guestworker programs to be temporary. The single over-riding characteristic of past guest worker programs in the United States has been that they have lasted far longer than anticipated when introduced. As discussed in the testimony, these programs in the United States have historically been associated with war times. But when the wars were over, the program continued for years. Employers, once able to tap into a supply of workers who are contractually tied to them (or in the case of the current Bush proposal workers who would have to leave if they become unemployed and, thus, are dependent entirely on satisfying employer needs as a condition of their continued presence), become addicted to them. The experiences of Western European countries were essentially the same in the years following World War II. Despite their efforts to encourage them to return home, most guestworkers did not want to do so and it was not politically acceptable at the time to force them to leave. In the case of the United States, many remained in the country albeit as illegal immigrants. When the U. S. began to offer amnesties to illegal immigrants in 1986 (and on seven other instances since then), there is even more incentive for illegals to remain in the hope that another amnesty will be forthcoming in the future.

B. Once again, past experience clearly shows that large guestworker programs distort specific labor markets. Every commission that has studied these proposals has drawn that conclusion. They all have depressed wages (or kept wages from otherwise rising over time) which leads employers to argue for their continuance because "citizen workers cannot now be found to do the work." But citizen workers are only responding in ways that would be expected in a free labor market. If guestworker programs artificially depress wages in the sectors in which they operate (and all studies show that they do), those labor markets will cease being competitive. Workers will gravitate elsewhere. Moreover, the scale of the program proposed by the Bush Administration has the potential to destroy labor markets, not just depress wages. If any sizeable percentage of the current stock of illegal immigrants (estimated to be from 8 to 12 million persons) avails themselves of its provisions, their negative influences on the employment and incomes of low skilled workers could easily dwarf the adverse impacts found in earlier programs.

C. There is little chance that the vast majority of illegal immigrants who might avail themselves of the Administration's proposed program would ever be deported. Some may leave voluntarily but experience says that many (probably most) will not voluntarily leave. As envisioned, those eligible for this program are already here. Many have been here for a long time. It is logical that many will have brought their families with them or created new families while living here illegally. The proposed program promises to make matters even worse because it will permit family members to come in a legal status too. It also suggest that their temporary visas, which would good for three years, can be renewed for longer stays. This will virtually guarantee that family members will come. It is also likely that, while here guestworkers will add family members (who will be born in the U. S. and, therefore, be U. S. citizens) which will add to the difficulty of any

deportation process. No other guestworker program ever permitted families to accompany workers (but, over time they often did show up, albeit illegally). This program sanctions their presence and makes it a virtual certainly they will not leave. It also means that, if they stay, other extended family members will probably seek to re-unify with them in the future thus promoting either illegal immigration or more lengthy lines of persons waiting to be legally admitted under the various family preference categories of the legal immigration system.

2.Harm to Low Skilled Americans

A. As indicated earlier, it is a truism that illegal immigration harms low skilled citizen workers and low skilled permanent resident aliens (i.e., legal immigrants) the most. They bear the weight of the precence of so many illegal immigrants in the nation's labor market. Illegal immigrants, by virtual definition, are low skilled workers or, if they are skilled, are forced to work in low skilled jobs because they cannot use their credentials to get better jobs because of their illegal status. Hence, the problem of wage suppression as documented by Professor Borjas is far worse than he found in his studies when attention is focused only on the low wage segment of the U.S. labor market. Borjas was studying the macro wage impact on the nation of the entire foreign born population. He does not (because the data will not permit) focus only on the impact of illegal immigration. He does find (as did the special panel created by the National Research Council to do the wage impact analysis for the U.S. Commission on Immigration Reform in 1997 and earlier work done by the Bureau of Labor Statistics of the U.S. Department of Labor) that workers without high school diplomas are collectively the hardest hit by the on-going mass immigration that the nation is experiencing. The proposed guestwork program, with absolute certainty, will make this already severe cause of wage suppression for America's low skilled workers far worse. It will further widen the income disparity that is already characterizes the nation's income distribution.

3. Number of Amnesty Applicants Always Underestimated

A. The only legalized program specifically linked to agricultural workers was the highly controversial Special Agricultural Workers program (SAW) in 1986. The best estimate was that there were about 220 thousand illegal immigrants employed in the agricultural industry at the time. However, more than a million persons applied for legalization under SAW and slightly less than one million persons were granted amnesty. By this crude indicator, one would expect the ration to be about 5 to 1 -- or five times the predicted number.

B. The reason that estimates are usually too low is that they fail to predict the incidence of fraudulent applications due to the ease of access to counterfeit documents and the use of non-profit community groups to assist in the recruitment applications and the verifications of eligibility. Too often, there organizations do everything to make sure that all applicants are approved, whether or not they are actually eligible.

C. There are always unintentional additional costs to communities associated with the presence of guestworkers. In my testimony I noted that the Jordan Commission made special mention of this concern. Given that this program permits families to reunify, costs for housing, education, social services, incarceration -- to mention only the most obvious -- can be expected to soar. Rural areas, where these types of services are often minimal to begin with, will be severely impacted. Moreover, since the guestworker program put forth by the Administration is intended to take care of illegal immigrants already in the country, it does nothing to stop other illegals from coming. The continuation of illegal immigration will put added costs on public sector to provide for these inevitable social costs associated with their presence. Stopping (or substantially reducing) illegal immigration in what is needed

Additional information

A. The only way to get a grip on the problem of illegal immigration is to focus on keeping them out of the labor market. The Administration's proposal (as well as that of others for an "earned amnesty") rewards those who have broken the law and taken advantage of the failure of public policy makers to insist on the enforcement of employer sanctions. Moreover, as mentioned above, it does nothing to stop more from coming. In fact, these programs give hope to these illegal immigrants who do come that there will be yet another adjustment of status program in the future. Much more attention should be given to worksite enforcement and the creation of non-counterfeitable documents required to verify eligibility to work. Prosecution of employers who consistently violate the law must also be stressed. With 8-12 million illegal aliens in the country, there should be thousands of fines being made each week and thousands of repeat offenders in jails. The fact that there are not is testimony that Congress and the Administration are willing to pass tough laws but unwilling to enforce them. That is hypocritical. The basic issue is that the labor market serves as a magnet for illegal immigrants to seek jobs and for employers to take advantage of their presence. De-magnify the labor market and illegal immigration can be substantially reduced. Continue the status quo and this cancerous problem will continue to grow and fester.

February 12, 2004 Immigration Subcommittee Hearing "Evaluating a Temporary Guest Worker Proposal"
Written Follow-Up Questions for Under Secretary Asa Hutchinson

FROM SENATOR GRASSLEY:

For years, our nation's immigration laws have allowed illegal aliens to be released from detention while waiting to appear at their deportation hearings.

While reports have indicated that roughly 400,000 aliens have fled after receiving a final order of deportation from an immigration judge, I'm concerned that we don't have a true grasp of the number of alien absconders who live on our soil.

I also have grave concerns about policies that allow aliens to enter our communities because there is no space for detention. I applaud the President's proposal to increase funding for detention facilities and his support to hire new immigration enforcement officers, including personnel to find aliens that have defied final deportation orders. Nonetheless, alien absconders who are apprehended and then released may become a serious threat to United States citizens, not only in the border communities but in the heartland of America.

Of most concern are "other than Mexicans" (OTMs) who bypass Mexico to come to this country. For years, Mexican officials have seen the trend at their Southern border. The migration places a great burden on our border patrol agents.

I would appreciate a response to the following questions regarding the number and nationality of OTMs, and how the Department of Homeland Security is taking action to expedite their removal to their home country.

First, I understand the Bureau of Customs and Border Protection (BCBP), and formerly the U.S. Border Patrol, retains statistics on the nationality of persons caught or detained while attempting to cross a United States border illegally. One category of these persons in the Enforce database is known as "Other Than Mexican" (OTM). For the period from January of 2000 through the most recently available statistics, please state how many persons, whose country of origin is not in the Western hemisphere, were detained, both at the Northern U.S. border and at the Southwest U.S. border. Please provide these statistics by month. Within each month, please state the number of captured aliens for each country of origin.

Answer:
Beginning fiscal year 2000 through our most recent statistical date of March 24, 2004, the Office of Border Patrol (OBP) has apprehended 497,143 people from countries other than Mexico. The Office of Border Patrol has apprehended 15,655 people whose country of birth and citizenship is not in the Western Hemisphere. This is a cumulative total of apprehensions along the southern and northern borders. I have attached the month-by-

month breakdowns through this same time period. The reports indicate whether the apprehension was made along the southern or northern border and by country of citizenship.

Second, please state how many of the captured aliens, whose country of origin is not in the Western hemisphere, had links to terrorism. For each captured alien for whom BCBP found a link to terrorism, please state that persons country of origin, the terrorist organization or group the alien was found to be affiliated with or linked to, which border (Northern, Southwest) the alien was captured at, and the date of capture by BCBP.

Answer:
Of the 15,655 aliens apprehended, CBP does not have statistics that indicate if any were terrorist or associated with terrorist links. In fiscal year 2003, Border Patrol agents began compiling statistics on those aliens arrested from the 31 Special Interest Countries. From fiscal year 2003 to now, CBP has apprehended 1,076 aliens from special interest countries. See attachment for special interest countries.

Third, what is the policy of the Department of Homeland Security in regards to illegal aliens from countries "other than Mexico" who are apprehended at the border? Are there proposals to initiate expedited removal for OTMs, or allow for alternatives to detention, i.e. supervised parole, electronic monitoring, etc. Could you provide statistics of the whereabouts (states or detention facilities) of OTMs that have been apprehended? And, please address how the Department of Homeland Security has addressed the problems faced by the legacy INS in the reliability of the alien address information?

Answer:
At present, DHS has no specific policy regarding OTMs apprehended at the southern border. While OTMs as well as Mexicans are permitted to withdraw their applications for admission and can be returned voluntarily to their country of nationality, as a practical matter this option is not readily available for them as it is for Mexicans whose government will accept them back into Mexican territory. Thus, when apprehended, OTMs are routinely placed in removal proceedings under Immigration and Nationality Act § 240. It is not practical to detain all non-criminal OTMs during immigration proceedings, and thus most are released. A majority of OTMs later fail to appear for their immigration proceedings and simply disappear in the United States. DHS is reviewing the possibility of extending its expedited removal authority and means of addressing this problem. DHS is also considering a variety of alternatives to detention, especially for asylum-seekers.

OTMs are generally detained in the State in which they were apprehended. DHS has detention facilities, or contracts for detention facilities, throughout the United States. Many OTMs are detained in Texas and Arizona. DHS continues to evaluate a number of long-standing problems with keeping current and accurate data on aliens, including their addresses as part of the deportation process.

Fourth, please describe in detail how BCBP checks if the captured aliens, whose country of origin is not in the Western hemisphere, have links to terrorism. Your reply should include a list of agencies that BCBP consults, databases or watch-lists that BCBP uses, and any other methods, including interview or interrogations of the captured alien, or a search of the alien's person and property.

Answer:
OBP's initial procedures upon apprehending anyone who is Other than Mexican (OTM) will be to run immigration, criminal, and terrorist checks. Enforce and IDENT are the primary systems used to run these checks using biographic and biometric information. OBP accesses information from FBI's NCIC and IAFIS systems using Enforce and IDENT. If there are any criminal warrants, immigration warrants, or special lookouts, then the appropriate agency responsible for establishing the lookout will be contacted. If there are no outstanding criminal or immigration warrants, or other lookouts, then the person will be held or sent for immigration removal proceedings and returned to his or her country of citizenship.

In the case of an alien that falls within the Special Interest Alien Category, a Significant Incident Report (SIR) will be completed and sent to CBP's Situation Room in Washington D.C. Additional record checks will be conducted and a search of the person and his or her property will be performed. The apprehending station concurrently notifies the National Tracking Center's (NTC's) Justice Terrorist Task Force (JTTF), which is comprised of several anti-terrorist law enforcement agencies, including the FBI. JTTF in Washington D.C. will run extensive record checks through its databases and notify the apprehending location if the alien is on its watch list. It will then provide a disposition to the field office on whether this person should be detained or released. JTTF/FBI will also perform any investigation or interrogation of any lookouts for terrorist aliens reported by CBP. In addition, the NTC links OBP agents to the Terrorist Screening Center to check relevant terrorist watch lists.

Finally, which countries do we face challenges when attempting to repatriate illegal aliens who are apprehended and should be returned to their homeland? What recourse has our country taken with other nations who do not accept the return of their citizens? If no sanctions have been enforced, please explain why.

I would appreciate responses to these questions, and your serious consideration for reviewing our policy with regard to OTMs apprehended at the border.

Answer:
For years, the Governments of the People's Republic of China, Eritrea, Ethiopia, India, Iran, Jamaica, Laos, and Vietnam have, in many cases, refused or delayed issuing travel documents to their respective nationals for repatriation. The failure of these governments to cooperate in these efforts has resulted in a cumulative backlog in excess of 56,000 cases with final orders, of which approximately 1,500 are detained. Additionally, there are over 71,000 of these nationals who are currently in removal proceedings and who

may ultimately face a final order of removal.

The Department has authorities under Section 243(d) of the Immigration and Nationality Act to sanction countries that deny or unreasonably delay accepting their nationals who have been ordered removed. In October 2001, upon notification by the Attorney General (who possessed section 243(d) authority prior to the effective date of the Homeland Security Act), the Secretary of State imposed visa sanctions against the Government of Guyana (GOG) due to its failure to issue travel documents to its nationals facing removal from the US. Shortly after the imposition of those sanctions, the GOG agreed to issue documents for the removal of 111 Guyanese nationals who had been in custody for a significant period of time. Since that time, it continues to issue documents on a regular basis.
The Department will continue to make requests for travel documents with these countries and work with them to arrive at an acceptable arrangement for the timely issuance of travel documents. This is an important issue for the Department as the expeditious issuance of travel documents for those ordered removed is a critical requirement for the efficient and effective use of our detention bed space resources.

FROM SENATOR SESSIONS:

1) Document Fraud:

The challenge of combating document fraud in the arena of immigration law is daunting. Not only are fake documents easy to procure on the black market, employers presented with fake documents for employment purposes are only required to take them at their face value. It is my understanding that document fraud investigations at the Bureau of Immigration and Customs Enforcement (BICE) are conducted by the 2,000 special investigators in the interior.

A) Please list all of the official duties and areas of investigation for which the 2,000 BICE special investigators in our interior are responsible.

Answer:
There are 5,513 ICE Special Agents nationwide including Headquarter components. The programmatic areas/and or investigative disciplines consist of the following: Arms and Strategic Technology; National Security; Joint Terrorism Task Force (JTTF); Compliance Enforcement; Public Safety; Financial Infrastructure Protection; Financial Programs; Commercial Fraud; Intellectual Property Rights; Human Trafficking; Contraband Smuggling; Identity & Benefits Fraud; Human Rights Violations; Cyber; Law Enforcement Support Center (LESC); Undercover Operations; Investigative Support; Forensic Document Lab; Asset Forfeiture; Special Operations; and Mission Support.

B) If investigating cases of document fraud is one of the many duties listed in response to A, how many cases of document fraud were investigated last year by BICE special investigators?

Answer:
In FY 2003, 677 document fraud cases were initiated and 536 were completed.

C) How many document fraud cases were prosecuted last year as a result of investigation by BICE investigators?

Answer:
In FY 2003, 105 defendants were prosecuted for document fraud and 83 defendants were convicted.

D) If the Department of Justice prosecutes the document fraud cases BICE helps to investigate, please explain the procedure for cooperation between DOJ and BICE for prosecuting a document fraud case.

Answer:
Each Special Agent in Charge (SAC) Office has developed a cooperative working relationship with the United States Attorney's Office (USAO) within its jurisdiction. Typically, agents meet with an Assistant United States Attorney to discuss the merits of an investigation with respect to prosecution of target(s) and co-conspirator(s). Based on the prosecution guidelines of a particular judicial district, the USAO evaluates the case and decides if it will be accepted for prosecution.

2) Worksite Enforcement

One of the principles set out by the President in his guest worker proposal emphasized in your testimony was "Workplace Enforcement of Our Immigration Laws." Nothing could be more important than addressing our current lack of general worksite enforcement. If we do not enforce our immigration laws in the work environments that lure people here illegally, no guest worker program, new or old, will ever function successfully.

A) Peach farmers and ornamental horticulture growers in Alabama extensively use the H2A program want to follow the law, but the lack of routine worksite enforcement is punishing them by forcing them to compete with farmers that exclusively use illegal labor, a much cheaper alternative to the H2A program.

Last year over 3 million foreign workers had agriculture jobs in the U.S. Only 31,000 of those were working legally under H2A visas. The lack of routine worksite enforcement effectively allows employers to hire illegal workers.

1) Would you agree that routine worksite enforcement, for every type of employer (not just critical infrastructure employers) is essential for any guest worker program to function?

Answer:

ICE is committed to enforcing the immigration laws regarding employment eligibility as part of its mission of ensuring integrity within our immigration laws. Therefore, the President's FY 2005 Budget includes $23 million to more than double the number of traditional Worksite Enforcement investigations and therefore offer a credible deterrence to the hiring of unauthorized workers.

B) The President's FY2005 budget request increases resources for worksite enforcement by $23 million. However, I am worried that this amount will not significantly increase the amount of worksite enforcement cases brought by the Bureau of Immigration and Customs Enforcement because it will be used to hire BICE special investigators that have many duties in addition to worksite enforcement.

1) How many new special immigration investigators will an additional $23 million put in the interior?

Answer:
We estimate that this amount will fund an additional 400 positions.

2) Will those agents be dedicated solely to worksite enforcement or will they assume all the duties assumed by other special investigators?

Answer:
Yes - These special agents will focus primarily on worksite enforcement activities.

3) How many worksite investigations will be added annually as a result of this increase?

Answer:
The increase will enable ICE to more than double the number of traditional Worksite Enforcement investigations and therefore offer a credible deterrence to the hiring of unauthorized workers.

C) On page 4, your testimony describes the number of business audits that have been conducted and the number of unauthorized workers that have been identified since 9/11. Not mentioned in your testimony are the number of businesses that have been sanctioned for hiring illegal workers since 9/11.

Your office tells me in that 2002, "Notices of Intent to Fine" were sent to 42 employers and 66 employers actually paid fines, likely from notices issued the year before. In 2003, the number of fines paid dropped to 21 and the unconfirmed number of "Notices of Intent to Fine" I have been given is a mere 13. Those numbers seem incredibly low.

1) Why are the employer sanction numbers so low?

Answer:
Statistics relating to the number of Notices of Intent to Fine (NIFs) issued in the preceding 5 fiscal years are shown in the table below. NIF issuance has dropped steadily since national performance goals were revised in 1999 to encompass only criminal employer cases. Additionally, NIFs issued in 2002 were largely reflective of casework that was ongoing during 2001. Furthermore, because 9/11 occurred towards the end of FY01 the redirection of resources from traditional worksite enforcement activities towards national security initiatives resulted in a further reduction of this category for subsequent fiscal years.

Fiscal Year	FY99	FY00	FY01	FY02	FY03
Criminal Employer Cases Presented for Prosecution Source: LYNX	**182**	**109**	**239**	**21**	**4**
Notices of Intent to Fine Issued Source: LYNX	**443**	**213**	**141**	**73**	**16**
Number of Fines Collected Source: Debt Management Center	**890**	**478**	**292**	**115**	**54**
Fine Amounts Collected Source: Debt Management Center	**$3,690,575**	**$2,234,181**	**$1,599,323**	**$509,835**	**$212,322**

The downward annual trend in the number of *Notices of Intent to Fine* and other historical worksite enforcement program performance measures (administrative arrests, case completions, jobs made available, etc.) can be attributed to a number of factors:

1. ***Evolving Worksite Enforcement strategies and changing national performance measures:*** The need to focus diminishing program resources on the most egregious employer violators (cases involving a nexus to smuggling, fraud, or worker exploitation) resulted in a national targeting strategy that de-emphasized administrative (non-criminal) employer cases and fines. In FY99 "Criminal Employer Cases Presented for Prosecution" became the only worksite enforcement program production quota assigned to the field offices by INS Headquarters. Because a criminal employer investigation requires a much greater expenditure of investigative hours than an administrative case, the number of administrative case completions, fines, and administrative arrests declined dramatically as a result of this redirection. The institutional view of the usefulness of administrative fines has also evolved, as evidenced by a 1996 DOJ-OIG report to Congress[1] stating that civil

[1] Department of Justice Office of the Inspector General Report I-96-08 Efforts to Combat Harboring and Employing Illegal Aliens in Sweatshops

enforcement penalties were not an effective enforcement tool for use against egregious violators such as sweatshop employers. ICE is currently in the process of evaluating our national strategy, the use of resources, and the proposed increase of worksite enforcement resources to determine how ICE can effectively utilize its resources in this area.

2. ***The '96 Act (IIRIRA) Legislation restricting the issuance of fines for paperwork violations:*** The "good faith" amendment in the '96 Act[2] (Sonny Bono amendment) changed the rules on administrative fines. It required that employers be given 10 days to correct "paperwork" violations before they could be fined. This has enabled employers to take corrective action and avoid criminal or administrative sanctions.

3. ***The diversion of investigative resources from Worksite Enforcement activities to address the increased criminal alien workload:*** Throughout the 1990s state prison populations of deportable criminal aliens grew at a tremendous rate. This increase resulted from stiffer state sentencing laws ("3 strikes"), new prison construction, and amendments to the INA expanding the legal parameters for the deportation of criminal aliens. The task of locating and removing criminal aliens (prisons, parole, fugitives, etc.) eventually grew to the point that it consumed more investigative hours than any other enforcement activity (smuggling, fraud, worksite, etc.). The number of investigators in legacy INS remained relatively constant during this period.

4. ***The post 9/11 diversion of investigative resources towards non-worksite national Security investigations:*** The post 9/11 redirection of resources from other enforcement programs to perform national security related investigations (SEVIS, NSEERS, US Visit, Compliance Enforcement, etc.) resulted in fewer resources available to the traditional program areas (worksite enforcement, fraud, criminal aliens, smuggling, etc.).

5. ***The post 9/11 worksite enforcement program focus on removing unauthorized workers from critical infrastructure facilities:*** Since 9/11 the ICE worksite enforcement program has focused on removing unauthorized workers from critical infrastructure facilities[3] such as airports, military bases, research facilities, nuclear plants, etc. Traditional worksite investigations focusing on criminal employers were subordinated to accomplish this national security related activity.

2) How many "Notices of Intent to Fine" were issued in 2003?

[2] INA Section 274A(b)(6)(A) Good Faith Compliance Provision of Section 411 of IIRIRA September 30, 1996

[3] *Overstay Tracking* GAO Report to the Chairman, Committee on the Judiciary, House of Representatives dated May 20, 2004

Answer:
16 Notices of Intent to Fine were issued in 2003.

3) Please detail the process a special investigator must go through to seek approval to investigate a worksite.

Answer:
Worksite cases are assigned by Special Agents in Charge (SACs) in accordance with the guidelines contained in 8 CFR 274a and INA 274A(e).

4) Is BICE still operating under the worksite enforcement investigation procedure outlined in a memo by INS Commissioner Meissner which required all workforce enforcement investigations to be approved by headquarters before being allowed to proceed?

Answer:
The procedures specified in the referenced memo were revised in July 2003. In most circumstances SACs can open worksite enforcement investigations without prior approval from Headquarters.

5) What is the total number of "Notices of Intent to Fine" that have been issued in FY2004 and how many do you project for the rest of FY 2004? What number do you project for FY 2005 and for calendar year 2005?

Answer:
Post 9/11 worksite enforcement investigations have focused almost exclusively on identifying unauthorized workers at critical infrastructure facilities. While there are criminal and administrative investigations in progress that will yield substantial monetary penalties in FY 2004, no Notices of Intent to Fine have been issued thus far in FY 2004. We cannot at this time project the number of administrative fines that will be issued in 2005.

FROM SENATOR CORNYN:

1. I was encouraged by the Department's recent announcement concerning the U.S.-Mexico Memorandum of Understanding on repatriation. As you and I have discussed before, many Texas border towns were deeply concerned over the large number of undocumented aliens from the Arizona sector that were repatriated through Texas communities last September. Would you please update me on the state of negotiations with the Mexican government to ensure that a solid internal

repatriation program that returns Mexican nationals to their places of origin is locked in place well before the critical summer months?

Answer:
On February 20, Secretary Ridge and Secretary Creel signed two agreements that provide a framework for our two countries to further efforts to ensure a safe, orderly border. Specifically, they signed a Memorandum of Understanding on the repatriation of Mexican nationals and the 2004 Border Action Plan. As announced by Undersecretary Hutchinson on March 16, we have agreed to focus our efforts on the Arizona - Sonora region -- the most dangerous corridor along the southwest border with some of the harshest climactic conditions anywhere in North America. We are working with our Mexican counterparts to finalize the details of a repatriation program that protects migrants from the environment of the desert and breaks the connection between smugglers/traffickers and their victims. We are developing the appropriate mechanisms for Mexican nationals detained by DHS in Arizona to be repatriated to their places of origin in the interior of Mexico. This bi-national effort reflects our shared goal to reduce the number of migrant deaths and injuries while also disrupting smugglers who operate in the region.

2. In response to my concerns regarding the implementation of US-VISIT on the land border, you wrote in January that the Department, ". . . will be developing the comprehensive plan for deploying US-VISIT at our land borders. Moreover, it is anticipated that industry will provide innovative solutions to ensure that legitimate trade and travel across our borders are not negatively impacted." Given that a prime integrator will not be selected until May—only half a year before entry-entry exit tracking is to be instituted at our fifty busiest land ports of entry—would you please update me on what specific options, policies and procedures the Department is vetting now regarding US VISIT to ensure that it does not cause significant delays at our land border?

Answer:
The land border solution will be designed to be fast and easy, but also secure. Both the President and the Congress mandated that border security enhancements not adversely affect legitimate travel and trade. The Department is committed to meeting that mandate.

US-VISIT currently applies to most foreign nationals who apply at airports for admission into the United States pursuant to a nonimmigrant (temporary) visa. As of September 30, 2004 applicants for admission under the Visa Wavier Program will also be included in U.S. Visit.

Today, most visitors with visas who cross our land borders are referred to secondary inspection for processing. After January 1, 2005, this secondary inspection will include US-VISIT processing, collecting two index fingers scanned on an inkless device and a digital photograph. The CBP officer will be

able to match the visitor's information against the information collected by the Department of State at visa issuance. .

We are currently looking at ways to use technology to facilitate travel and collect entry and exit data. To that end, we are planning to test Radio Frequency (RF) technology at select primary lanes at certain land border crossings. These plans are not part of the statutory mandate for December 31, 2004, but development and testing of RF technology has been proceeding.

The Department of Homeland Security is also committed to developing a solution for the processing of Border Crossing Card (BCC) holders.

Most Mexican citizens who travel to and from the United States regularly may apply for a multi-use travel document, B1/B2 Visa/BCC also known as a "laser visa", which serves as either a BCC or a B1/B2 visa. Mexican citizens who use the travel document only as a BCC will not initially be subject to US-VISIT processing during primary inspection as their biometric data (fingerscans and photographs) is captured during the BCC issuance process. Readers for BCC's will be deployed at the 50 busiest land ports of entry by the end of June 2004. As US-VISIT expands to land borders, BCC holders waiting to stay longer than 72 hours or travel beyond 25 miles, will be included.

Since most Canadian citizens are visa exempt, they are currently not subject to the US-VISIT process. Canadian citizens who are required to obtain a visa in order to be admitted to the United States will be enrolled in US-VISIT upon entry.

FROM SENATOR KENNEDY:

For any immigration reform proposal to work, we need to encourage maximum participation by the undocumented. If only a fraction of the current undocumented population comes forward and signs up for the program, it won't meet its goals and we will essentially be in the same situation as we are in now. I've heard many immigrants who are long-time residents say "Why should I show up for a few years of legal status, if I'm going to be sent back to my country in three years. These are people who have lived here for a decade or more, put down roots, are raising U.S. children. Unless they are assured an opportunity to apply for permanent residence and ultimately citizenship, why would they come out of the shadows for a few years to risk deportation when the program ends?

Question: What are the incentives for undocumented persons who have lived here for years to enter the temporary program if they face deportation at the end of 3 years?

Answer:
The President has called for a 3 year, renewable temporary worker visa, so at the very least the worker would be able to remain in the program for 6 years. We look forward to working with Congress to determine what the appropriate total duration of the program

should be, so as to make the new program workable. The success of this program will require incentives, incentives to come out of the shadows and participate in the program, and incentives to return to the home country. One obvious incentive is economic and social opportunity. For example, the President's Temporary Worker Program would allow participates to create tax-deferred savings accounts that could be withdrawn upon return to their home country. This will be instrumental in expanding individual participation in the increasingly interlinked worldwide economy, encouraging savings or even capitalization in a business, house or land in the home country.

The United States has bilateral totalization agreements with some 20 countries around the world, which will allow workers from either country to combine earned Social Security credits and receive benefits in their home country. The Administration will work with our international partners to encourage their recognition of the temporary worker's contributions made in both countries.

The temporary worker will also benefit from skills learned and education attained during his or her work experience in America. This training will contribute to the temporary worker's marketability upon his or her return home.

An additional incentive is circularity. The temporary worker should be able to travel, knowing that he or she can go and return freely to the country of origin for celebrations, funerals or vacation, and maintaining important ties that will aid the worker in his or her eventual return. Since many of the individuals already present in the United States who would apply to participate in the President's Temporary Worker Program would have accrued sufficient unlawful presence to be subject to the 3 and 10-year bars for re-entry, any legislation to create this program would necessarily need to supercede those bars for individuals who register. It is terribly important to maintain the ties between these individuals and their homes abroad as an incentive for their eventual return.

Similar to other non-immigrant categories, the President believes that provisions should be made for families to remain in the United States or travel to the United States with the temporary worker, providing that the temporary worker can demonstrate an ability to financially support his or her family, and assuming that members of the worker's immediate family present no criminal or security risks. In addition, to truly meet the needs of the labor market and economy, the program should be non-sector specific.

Finally, eliminating the fear of deportation will be an incentive. Undocumented aliens will tell you that they often have trouble sleeping at night, and leaving for work each day, not knowing if they will make it home at the end of the day. They realize that a simple traffic violation, automobile accident or other everyday misstep could result in bringing them to the attention of federal authorities and their subsequent deportation.

The President's plan also recognizes that some temporary workers may decide to pursue American citizenship and remain in the U.S. They should be allowed to apply for lawful permanent residence in the normal way. They should not be given unfair advantage over people who have followed legal procedures from the start. Recognizing, however, that

current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants.

Question: Without a path to permanent residence, the President's proposal is doomed to fail. Is the Administration willing to work with Congress on a bi-partisan basis to correct these flaws and create a meaningful opportunity for permanent residence?

Answer:
The President believes that the program should be fair and should not come at the expense of legal immigrants, who have respected our laws and earned their place in line. As stated above, the President's plan calls for an initial three-year term that is renewable. We need to consider the number of renewals that the worker should be permitted to have prior to his or her mandatory return home. It is the President's belief that if the worker decides to pursue and is qualified to adjust to permanent status it should be through the current process and that individual should take a spot at the back of the line. Recognizing, however, that current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants. We look forward to working with Congress to reach the goals of the President's proposal.

Question: What is the status of the President's proposal? Is this proposal being drafted by White House staff, or does the President intend to work with Members of Congress to draft it?

Answer:
The President has outlined the parameters for the program, and the Administration intends to work with Congress to reach the goals of the President's proposal.

The success of the temporary worker program will depend, in part, on how "simple and user friendly" it is for employers and workers. If the program is not efficient and reliable, it will not be a viable alternative to hiring unauthorized workers. This suggests that the processing of applications will have to be quick. The Administration plans to pay for the program through fines and application fees. But, even if this scheme works, you will need start-up money to get the program off the ground. The Administration has included funding in its 2005 budget for the enforcement aspects of its proposal, but I don't see funding for start-up costs.

Question: How serious is the Administration about getting this proposal passed this year if there is no money in the 2005 budget to get it started? How do you propose to implement the President's proposal without start-up money?

Answer:
The President's proposal calls for aliens present in the United States as of January 7, 2004, to pay a fee upon registration in the program. In addition, USCIS would anticipate recovering the cost of processing the applications through collection of a processing fee

as is done currently with all immigration benefit applications. Once the parameters of the program have been determined (e.g., who is eligible and how the plan will be carried out), then a cost analysis would be done to set the fees.

While the full scope and further definition of the elements within the broader initiative remain under development, the FY 2005 President's budget does include an additional $23 million for ICE (400 FTE - Special Agents) for enhanced worksite enforcement, which will continue to be an important aspect of immigration enforcement. That funding would more than double the number of traditional worksite enforcement investigations.

Questions for the Record Submitted by Senator Dianne Feinstein
Panel 1
Questions for Asa Hutchinson

Evaluating a Temporary Quest Worker Proposal

The current undocumented population in the United States is estimated to be between 8 to 12 million. The President proposed his plan in large part to deal with this population. A large majority of these individuals work in low and semi-skilled sectors of our economy. Reports indicate that undocumented aliens have many reasons for entering the U.S. illegally; some would like to migrate to the US permanently, but are unable to do so because of backlogs in the employment-based immigration process; others enter illegally after waiting for years to be re-united with a spouse, parent, or children; others, who came to temporarily fill jobs that do not fit into the H-2B or H-2A seasonal program, find themselves "trapped" in the U.S. afraid of being caught upon exit or subsequent re-entry.

Question:
How would the President's proposal deal with this population of undocumented immigrants?

Answer:
The President has outlined the parameters for the program, which would allow illegal immigrants who were employed in the United States on January 7, 2004 to apply for temporary worker status. These undocumented workers will be required to pay a one-time fee to register for the program. All participants will be issued a temporary worker card that will allow them to travel back and forth between their home and the U.S. without fear of being denied re-entry into our country.

Question:
What are the incentives for these people to enter this program if the program does not include incentives to deal with the roadblocks in the way of adjusting status?

Answer:
One obvious incentive is economic and social opportunity. For example, the President's Temporary Worker Program would allow participates to create tax-deferred savings accounts that could be withdrawn upon return to their home country. This will be instrumental in expanding individual participation in the increasingly interlinked worldwide economy, encouraging savings or even capitalization in a business, house or land in the home country.

An additional incentive is circularity. The temporary worker should be able to travel, knowing that he or she can go and return freely to the country of origin for celebrations, funerals or vacation, and maintaining important ties that will aid the worker in his or her eventual return. Since many of the individuals already present in the United States who would apply to participate in the President's Temporary Worker Program would have

accrued sufficient unlawful presence to be subject to the 3 and 10-year bars for re-entry, any legislation to create this program would necessarily need to supercede those bars for individuals who register. It is terribly important to maintain the ties between these individuals and their homes abroad as an incentive for their eventual return

Finally, eliminating the fear of deportation will be an incentive. Undocumented aliens will tell you that they often have trouble sleeping at night, and leaving for work each day, not knowing if they will make it home at the end of the day. They realize that a simple traffic violation, automobile accident or other everyday misstep could result in bringing them to the attention of federal authorities and their subsequent deportation.

Question: What will happen to those undocumented aliens who do not present themselves to sign up for the guest worker program? What enforcement measures or efforts will be implemented at that time?

Answer:
ICE has already requested an additional 400 agent positions in FY 2005 to support its Worksite Enforcement Program. This resource enhancement will support the Temporary Worker Program by helping to assure compliance with U.S. immigration law. Workers without proper documentation or authorization encountered through traditional Worksite Enforcement efforts will be subject to administrative arrest and placement in removal proceedings. This would include undocumented aliens who have not presented themselves to sign up for the Temporary Worker Program. With the implementation of the Program, these additional resources will assist ICE in doubling its traditional Worksite Enforcement efforts, adding to the integrity of the program.

Question:
On what basis does the President believe that guest workers who participate in his proposed program will return to their home country after having worked in the U.S. for a least three years and have been able to bring their families here?

Answer:
The President has called for a 3 year, renewable temporary worker visa, so at the very least the worker would be able to remain in the program for 6 years. We look forward to working with Congress to determine what the appropriate total duration of the program should be, so as to make the new program workable. The success of this program will require incentives, incentives to come out of the shadows and participate in the program, and incentives to return to the home country. One obvious incentive is economic and social opportunity. For example, the President's Temporary Worker Program would allow participates to create tax-deferred savings accounts that could be withdrawn upon return to their home country. This will be instrumental in expanding individual participation in the increasingly interlinked worldwide economy, encouraging savings or even capitalization in a business, house or land in the home country.

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Similar to other non-immigrant categories, the President believes that provisions should be made for the alien's family to remain in the United States or travel to the United States with the temporary worker, providing that the temporary worker can demonstrate an ability to financially support his or her family, and assuming that members of the worker's immediate family present no criminal or security risks. In addition, to truly meet the needs of the labor market and economy, the program should be non-sector specific.

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The President's plan also recognizes that some temporary workers may decide to pursue American citizenship and remain in the U.S. They should be allowed to apply for lawful permanent residence in the normal way. They should not be given unfair advantage over people who have followed legal procedures from the start. Recognizing, however, that current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants.

May 5, 2004

The Honorable Dianne Feinstein
United States Senator
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein:

This letter is in response to your questions following my testimony "Evaluating a Temporary Guest Worker Proposal" on February 12, 2004.

What is the root cause of immigration? What causes individuals to leave their countries and come to the United States, specifically as it relates to working here?

Wars and large-scale disasters, whether natural or man-made, are obvious migration triggers as people flee for their lives. Beyond them, the triggers of international migration can be found in the quest to protect oneself and one's family from sustained physical jeopardy and to escape dramatic and persistent declines in economic opportunities. (Colombian and Argentinean emigration during the last few years are both examples of this phenomenon.) This migration cause is qualitatively different than the search for economic improvement, which is one of the migration constants.

Two elements within those broad causes are likely to remain important migration drivers in the next two decades. The first is political, social and cultural intolerance or, at the extreme, group-based, gross violations of human rights. The second is the systematic failure (some will say willful indifference) of governments to redress issues of cumulative disadvantage—that is, the various forms of economic exclusion and ethno-racial, religious, or linguistic discrimination that systematically disadvantage certain segments of a population.

Both of these migration drivers are always more or less in evidence. In most instances, however, they are not sufficient either to start a large new migration flow or to suddenly expand substantially an existing one. For that to happen, a number of preconditions ("facilitators") must be in place. The following are among the most notable such facilitators.

1400 16th Street, NW Suite 300 Washington, DC 20036-2257 www.migrationpolicy.org 202 266 1940 202 266 1900 fax

A. A tradition of migration

The pre-existence of a long-term political, social and economic relationship between a sending and destination society that includes a tradition of migration is a most potent facilitator of migration. When such a tradition exists, it simply leads to more migration until either a significant new variable enters the picture or the value of one of the existing variables changes decisively. An example of the former would be a dramatic and regime-wide change in attitudes toward some or all immigrants at the receiving society end. Terrorism concerns that prove real and sustained may in fact act in such a way, as might ethnic or religious violence that is thought to be exacerbated by migration. (In this regard, it will be worth watching in the years ahead at the acceptance of immigrants and other entrants from predominantly Muslim and Arab countries throughout the industrial West.) An example of the latter would be the persistent reduction in the economic but especially the opportunity differential between countries. The story of the dramatic decline in West European immigration to the United States and the rest of the traditional countries of immigration that began in the late 1960s or the stabilization of intra-EU migration since the 1980s are instances of this phenomenon.

B. Economic and internationalist elites

When receiving society elites are convinced of the economic benefits of legally authorized and orderly migration (and, within certain parameters, even of unauthorized migration) they can typically organize themselves to open the immigration valve further. In this scenario, migration's benefits will have to be thought of as being substantial enough—and government policies inadequate enough to meet perceived needs —to motivate economic and internationalist (what Kant referred to as "cosmopolitan") elites and their political allies to support significant openings to immigration flows. Canada's sustained interest in immigration is an example of such elite-driven legal opening, as are recent openings to migration in the U.K. and elsewhere in the EU, and the proposed openings in Germany. The US's glaring tolerance of unauthorized immigration is an example of how far some pro-immigration elites may go when adequate legal openings to immigration are politically unachievable.

The twin forces most responsible for the growth in irregular migration can be found in two actions. The first is the developed world's extreme governmental bias against low-skilled migration in the face of market forces that strongly value it (and broad classes of people who need it). The second is what broad segments of the developed world's non-governmental sector view as extreme parsimony toward various forms of social and humanitarian immigration.

The former is most obvious when a variety of personal and low-value-added service jobs go begging. Among these jobs are assistants and child- and elder-caretakers, restaurant kitchen and waiting staff, some retail service providers, etc., as well as seasonal and other types of difficult and low-wage work—work to which "first-worlders" no longer aspire or are interested in accepting. The latter plays itself out in much of the developed world's unease about the growth in family immigration.

C. Communities of co-ethnics

Mature and influential "anchor" ethnic communities in the country of destination can and do mobilize to become "enablers" of substantial migration flows when faced with a sharp deterioration in the circumstances of their co-ethnics/co-religionists in another country. This enabling function often includes offering to assist with the initial integration of the newcomers. Much of post-1970 Jewish emigration to the US and elsewhere in the West fits well under this model.

"Enablers," however, do not stop there. If the receiving society is unresponsive to their advocacy, they will often provide the essential "lubricants" for the unauthorized migration of their brethren. These may include the commitment of the necessary capital for their travel and entry and the provision of an incubating social and economic environment within their own community upon arrival. Examples of such "network" behavior abound throughout the advanced industrial world, although the role of the Mexican and Mexican-American communities in the United States may be classified as archetypical—and is widely replicated throughout the world.

D. Civil society

When key civil society institutions in the prospective destination country, such as religious and human rights ones, stand in strong philosophical opposition to the circumstances migrants are attempting to escape—and are willing to use their political capital in support of a migration "solution" to the problem—they are often at least partially successful. The examples of the resettlement of many Southeast Asians in the 1970s and 1980s throughout much of the West or the admission of those who manage to leave such places as Iran and much of the Middle East in the last two decades are good examples of such "success."

Civil society institutions typically pursue their pro-"protection" and, secondarily, pro-immigration work in alliance and through coalitions with ethnic, ideology-driven, and economic interests. In doing so, they and their allies quickly become key "stakeholders" in the effort to sustain and widen an opening to migration to the point where it becomes a permanent feature of a society. Once such coalitions mature, unilateral efforts by state bureaucracies to change the migration status quo stand low probabilities of success—particularly when other important societal actors, such as certain progressive trade unions, also join in. The support of much organized labor in the US for offering illegally resident immigrants legal permanent status, and its countenance of most forms of immigration, are examples of alliances that cross interests in ways that have earned them the name of "strange bedfellows."

Looking more broadly at the issue, economic and other forms of interdependence place countries and entire geographic regions in the grasp of an increasingly global migration system, in which economic and socio-political events have direct migration consequences. Witness, for example, U.S. fears in the mid-1990s that the failure to "rescue" the Mexican peso would greatly increase immigration pressures from that country or Europeans' concerns that the latest enlargement will have substantial (and presumably adverse) migration consequences for the EU-15.

The reality is that long-standing policy decisions (and non-decisions) about immigration have invited or subtly encouraged various types of migrants to enter the international migration stream. This fact alone deepens the urgency of dealing effectively with the broader legitimacy crisis fueled by poorly managed immigration. An underlying challenge, however, may be even more important. Namely, regaining the public's confidence that government can and will manage immigration competently, address public grievances relating to it and, in doing so, defuse growing xenophobia and the incidence of violence.

Given that poorly managed migration, in conjunction with other large socio-political, economic, and natural phenomena, can affect peoples' livelihoods in significant ways, it should not be surprising that the issue's political resonance ebbs and flows most consistently with an economy's overall performance. An example may suffice to make the point clearer. When entire industries retrench radically, invest heavily in and/or relocate abroad, or attempt to change their labor relations in their quest to enhance their global competitiveness, there seems to be rather little that the affected workers and the organizations representing them can do. But they can—and do—speak out against the one visible and tangible symbol of that change: immigrants.

The powerful forces identified here make clear the depth of the migration management challenge and point to the argument that international migration has reached a "management tipping point" where single-country solutions are no longer capable of addressing it effectively and to mutual advantage. This line of reasoning, however, does not absolve countries all along the migration process from making their own tough but smart governance and management choices.

Managing immigration more effectively in the years ahead, whether unilaterally, bilaterally, regionally, or multilaterally (even globally), requires that policy makers understand much better issues such as those below.

- The differences between factors that cause or at least substantially affect migration "events" and those that merely mediate them—and the policy levers policy makers can pull, and the sequence in which to pull them, in order to bring about a desired outcome.

- The reasons some people react to certain events by emigrating while so many others facing similar or worse circumstances stay put—and how governments can intervene in each instance so as to steer the outcomes toward the preferred direction.

- The role of organized people-smuggling syndicates in the growth of unwanted migration (they are thought to be a critical factor) and the imperative of reallocating resources and shifting detection and enforcement paradigms in order to tackle them robustly and systematically.

- The relationship ("fundamental difference" may be a more appropriate construction) between immigration decisions and creating opportunities for terrorists—and particularly the role that a country's foreign political and economic decisions, and failures in integrating one's immigrants effectively, play in the growth of this era's brush with nihilistic violence.

- The limits of unilateralism (or of unilateralism that masquerades as multilateralism by not negotiating with sending countries as true partners) in responding to unwanted migration.

The reality is clear: Migration ties sending, transit, and receiving countries—as well as immigrants, their families, and their employers—into often reinforcing intricate systems of complex interdependence. It takes the cooperation of virtually all these actors—as well as smart policy decisions, thoughtful regulation and sustained enforcement—to make real progress in limiting the effects of migration's challenges enough so as to draw out even more of its advantages.

Failure to understand the types of issues outlined above much better and to work with key societal actors in drawing out migration's benefits, will place governments further behind in the migration management effort. This is especially the case when taking into account the ongoing adaptations unwanted migrants make to their entry and labor market assimilation strategies. Making things worse are the public's impatience with experimentation and its intolerance for anything but almost-immediate results. The obsession with controlling international migration through unilateral law-and-order measures and the distorting effect of this approach on the public debate simply complicate matters further. All these factors allow governments precious little leeway to demonstrate the following:

- First, that immigration is not at the root of the North's major problems (although it exposes those problems and subjects then to public scrutiny).

- Second, that the problems to which migration contributes can in fact be managed.

- Third, that immigration, properly managed, can provide important answers to some of the North's most intractable longer-term economic, social protection, and demographic dilemmas.

If we have no employer sanctions, as you seem to suggest, what effect would this have on employers and migration? What would you suggest in place of employer sanctions so as to monitor employment site compliance with immigration laws?

We need to evaluate and rethink our willingness and capacity to enforce employer sanctions. U.S. labor markets are loosely regulated and the workforce is extremely diverse – a Northeastern University Center for Labor Market Studies report estimates that half of all new workers in the United States in the 1990s were foreign-born.

With these considerations, can the U.S. government do any better than Europe has done with employer sanctions, even with significant budgetary increases? Is it possible to do so without the racial and ethnic discrimination that is, and must always be, of concern to Americans (and is finally beginning to concern Europeans)? Finally, and the important civil liberties concerns temporarily aside, can the U.S. government enforce sanctions, in light of the fact that Democratic and Republican congresses and administrations have shown so little appetite for mandating the

personal documentation requirements that might give employer sanctions a chance to fail less completely than they do now?

Essentially, devising alternative compliance strategies will require a group of experts giving these issues thorough consideration.

Thank you for the opportunity to testify before the U.S. Senate's Subcommittee and for your questions.

Sincerely yours,

Demetrios G. Papademetriou
President

SUBMISSIONS FOR THE RECORD

Testimony of Eduardo Aguirre
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security

Before the
Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship

Regarding the
President's Proposed Immigration Reform

February 12, 2004
2:30 p.m.
Dirksen Senate Office Building
Room 226

Good afternoon, Chairman Chambliss, Ranking Member Kennedy, Members of the Subcommittee. My name is Eduardo Aguirre and I have the honor of serving this Administration and our great nation as the first Director of U.S. Citizenship and Immigration Services, within the Department of Homeland Security.

This is my first opportunity to return to this committee since my confirmation hearing on June 6, 2003. I am privileged to appear with Under Secretary Asa Hutchinson for Border and Transportation Security of the Department of Homeland Security, and Deputy Secretary Steven Law from the Department of Labor. We will testify on the President's recent proposal for immigration reform, offering our respective expertise and insights. I will begin, however, by providing an overview of the President's proposal.

On the occasion of my confirmation hearing, I shared with you my story of having arrived as a 15-year-old unaccompanied minor from Cuba. My parents sent me to escape a repressive regime and to experience freedoms and opportunities found only in America.

That was of course, the legal immigration track; the very system I am now charged with fundamentally transforming. A system you recognized was in need of reform and appropriately addressed in the Homeland Security Act of 2002, separating services from enforcement.

With the creation of the Department of Homeland Security, America's legal immigration system was put back on the right track, overnight. What remained were the many details and, as I prefer to say- God is in the details.

My team of 15,000 and I embraced a simple but imperative mission; making certain that the right applicant receives the right benefit in the right amount of time, and preventing the wrong applicant from accessing America's immigration benefits.

We established three priorities: eliminating the immigration benefits backlog, while enhancing national security and improving customer service.

These priorities dictate every facet of our business, consisting of family-based petitions; employment-based petitions; asylum and refugee processing; naturalization and citizenship services; special status programs; and document issuance and renewals.

Today marks our 349th day in existence. I am particularly pleased with the progress we have made and the professionalism exhibited by our employees, day-in and day-out, while mitigating security threats that we know to be real and relentless.

In the area of customer service, we have:

- Initiated on-line features that allow customers to file and pay for our a number of our commonly used applications, as well as offering individual case status updates;
- Established the Office of Citizenship to develop and implement public outreach and educational initiatives that better prepare immigrants for their rights and responsibilities;
- Improved access to information by establishing a toll-free, bilingual National Customer Service Center help line (800-375-5283); and
- Reduced the lines at a number of offices with the highest customer volume, such as New York, Miami and Los Angeles.

In the area of backlog reduction, we have:

- Created a Backlog Reduction Team to identify immediate changes to speed up adjudication processes as well as to revise implementation plans;
- Eliminated the backlog of applications for Certificate of Citizenship on Behalf of an Adopted Child with a program that proactively provides parents the certificate without application and without fee;

We take national security very seriously. We conduct background checks on the front and back end of nearly every application for an immigration benefit. That meant 35 million Interagency Border Inspection System checks last year.

In the vast majority of cases (97%), the checks take only minutes. In the event of a "hit", however, we will move cautiously until the issue at hand is resolved, even if that means a delay and contributing to the backlog. Last fiscal year, we processed about six million applications for an immigration benefit. Approximately 7% of the applications processed resulted in an initial security hit, and after further scrutiny, 2% resulted in confirmed security or criminal threat matches.

We make no apologies for our commitment to the integrity of the immigration system and we will not cut a single corner, if it means compromising security, to process an application more quickly.

Our intra-government coordination demonstrates that our approach realizes intended results. By way of example, within the last two weeks, our background check procedures identified

individuals wanted for murder in Portland and sexual assault in Miami. We are making America safer against security and criminal threats, one background check at a time.

But, that is just part of a typical day's work at USCIS. Today, we will:

- Process 140,000 national security background checks;
- Receive 100,000 web hits;
- Take 50,000 calls at our Customer Service Centers;
- Adjudicate 30,000 applications for an immigration benefit;
- See 25,000 visitors at 92 field offices offices;
- Issue 20,000 green cards; and
- Capture 8,000 sets of fingerprints and digital photos at 130 Application Support Centers.

Although our customers tell us that they are pleased with our new e-filing opportunities and on-line status checks, we are displeased with the length of time it takes to process benefit applications. We know that the dedication that led to effective background check processes must now be applied to backlog elimination efforts.

We will not declare victory in backlog reduction until we achieve the President's objective of universal six-month processing by the end of fiscal year 2006.

We will not declare victory in customer service until every legal immigrant is greeted with open arms and not endless lines.

And, we will not stop until we have restored public confidence in the integrity of America's immigration system.

That loss of confidence is an unfortunate yet legitimate obstacle and it can be attributed to the second track in our immigration system, the illegal track.

On January 7th, President Bush courageously confronted a broken system, one that has been ignored for too long. From the East Room of the White House, he called for Congress to deliver true reform and a new temporary worker program that facilitates economic growth, enhances national security and promotes compassion.

The President made clear his principles for reform, which are to: protect the Homeland and control our borders; match a willing worker with a willing employer, when no American can be found to fill that job; promote compassion; provide incentives for return to home country; and protect the rights of legal immigrants.

This is not an amnesty program, which joins the illegal track with the legal one by facilitating green card status and potential naturalization. Rather, the President proposes a one-time regulated opportunity for undocumented workers, already here as of the date of the President's announcement, to legitimize their presence and participate more fully in our economy, for a finite period, before returning home. And, it creates ongoing opportunity for individuals abroad to apply to come temporarily to the United States and legally fill jobs that American workers will

not fill, thereby presenting long-term, viable alternatives to the risks associated with illegal immigration.

As this committee appreciates, immigration laws are some of the most complex that we have as a nation, perhaps even more so than the tax code.

The President feels strongly that the Temporary Worker Program should be simple and user friendly. We have the wisdom born of experience, the reliability of modern technology and human expertise and ingenuity to realize the President's vision.

Simply put, I believe it is doable, and I raise five points that complement my reflections on process for the committee's consideration.

First, enforcement is paramount to the Temporary Worker Program. At present, we go to great lengths to inform the public abroad that America's immigration laws have not changed and enforcement and interdiction procedures continue. Additionally, we inform community based organizations at the grass-roots level that illegal immigrants, already here, should be mindful of their status and recognize that they are in violation of our laws and susceptible to detention and removal. Under Secretary Hutchinson will elaborate, but I remind you that America's borders are substantially more secure thanks in part to his leadership. Deputy Secretary Law will contribute to this point as well by addressing labor law enforcement.

I add that security and fraud prevention are synonymous with enforcement, and must be a priority. Identifying and registering the undocumented population will minimize threats and maximize security.

Because, we are talking about, in all likelihood, an entirely new immigration category, the program would require a dedicated biometric card for the worker, and also for participating family. As Under Secretary Hutchinson will mention, the temporary worker program would introduce effective measures to prevent fraud, by the employer and worker, and would be integrated with programs such as USVISIT.

Second, the American worker comes first. The President has made it clear that this program would match a willing worker with a willing employer, when no American is filling or can be found to fill the job. We know that employers in many sectors continue to experience difficulty filling employment vacancies. These challenges detract from an increasingly prosperous economy.

We also know that more than 14% of America's labor force is foreign-born and we anticipate that a high percentage of the estimated 8 million undocumented aliens in this country work. The fact that they are here, in the workforce, is proxy for their participation in the American economy and evidence of a market demand for their labor.

We know that many pay taxes, but, because of their undocumented status, they may be reluctant to assert their right to protections that American workers have, such as minimum wage, labor

protections, and health and safety requirements. As President Bush pointed out, this is not the American way.

Third, the program will require incentives. One obvious incentive is enforcement, for the employer and the worker. As I previously noted, Under Secretary Hutchinson will speak to enforcement. However, I contend the greater incentive is economic and social opportunity.

The President's Temporary Worker Program will offer portability of investments. This will be instrumental in expanding individual participation in the increasingly interlinked worldwide economy, encouraging savings or even capitalization in a business, house or land in the home country.

The U.S. has bilateral totalization agreements with some 20 countries around the world. The Administration will work with our international partners to encourage their recognition of the temporary worker's contributions made in both countries.

The temporary worker will also benefit from skills learned and education attained during their work experience in America. This training will contribute to the temporary worker's marketability upon his or her return home.

An additional incentive is circularity. The temporary worker should be able to travel, knowing that he or she can go and return freely to the country of origin for celebrations, funerals or vacation, and maintaining important ties that will aid the worker in his or her eventual yet certain return. Since many of the individuals already present in the United States who would register to participate in the President's Temporary Worker Program would have accrued sufficient unlawful presence to be subject to the 3 and 10-year bars for re-entry, any legislation to create this program would necessarily need to address those bars for individuals who register. It is terribly important to maintain the ties between these individuals and their homes abroad as an incentive for their eventual return.

Similar to other non-immigrant categories, the President believes that provisions should be made for family, to remain in the U.S. or travel to the U.S. with the temporary worker, providing that the temporary worker can demonstrate an ability to financially support his or her family, and assuming that members of the worker's immediate family present no criminal or security risks. I encourage the Committee to review the structure established by the H non-immigrant category, for best practices. In addition, to truly meet the needs of the labor market and economy, the program should be non-sector specific.

Finally, eliminating the fear of deportation will be an incentive. Undocumented aliens will tell you that they often have trouble sleeping at night, and leaving for work each day, not knowing if they will make it home at the end of the day. They realize that a simple traffic violation, automobile accident or other everyday misstep could result in bringing them to the attention of federal authorities and their subsequent deportation.

Fourth, the program should be fair and not come at the expense of legal immigrants, who have respected our laws and earned their place in line.

The President's plan calls for an initial three-year term that is renewable. We need to consider the number of renewals that the worker should be permitted to have prior to his or her mandatory return home. Standards, or thresholds, for renewal should include a job offer, a sound employment record, good moral character, and confirmation that the worker does not present any type of criminal or security threat. Furthermore, we should consider whether, like the H1B visa category, this program would permit the temporary worker to seek existing paths to permanent residency by way of sponsorship from an eligible family member or employer during the period of their work visa. It is the President's belief that if the worker were to make that choice, he or she should take their spot at the back of the line. Recognizing, however, that current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants.

Fifth, the program should be simple and user friendly – thus one that can be effectively administered. The President's proposal calls for aliens present in the United States as of January 7, 2004, to pay a fee upon registration in the program. In addition, US CIS would anticipate recovering the cost of processing the applications through collection of a processing fee as is done currently with all immigration applications. The processing fee would be set based on full cost recovery. This is important given US CIS is almost an entirely fee-based agency in the Federal government. On Monday, February 2nd, the President requested $1.711 billion in the FY 2005 budget for US CIS, $1.57 billon of which is mandatory spending, or fee revenues for immigration benefits.

Earlier this week, I announced a proposed fee increase to better reflect the cost of processing our cases. We have been losing just under $1 million a day since the start of this fiscal year because our fees are no longer covering the cost of processing the applications. These losses are attributed to the costs of doing business, particularly increased background checks and practical or legal limitations on our ability to charge fees for certain immigration benefits. Enactment of the President's proposal will result in an increased workload to USCIS, though it is expected that costs associated with the workload would be covered by registration and processing fees, like other application processing.

With respect to process, as I have suggested, in all likelihood, we are talking about an entirely new immigration category.

America has not seen immigration reform of this depth since enactment of the Immigration Reform and Control Act of 1986 (IRCA), which granted residency to three million aliens. While this program would be very different, for the purposes before us, I tasked my team to share with me lessons learned from that experience – that we can apply toward the President's Temporary Worker Program. Given our structure within DHS, US CIS will exceed the President's expectations.

I respectfully submit the following features:

- A one-time fee to be assessed upon the undocumented alien's registration separate from the application processing;
- A web-based mechanism for petitioning for program participation be used;

- A labor market driven program when no American workers can be found – therefore there no artificial numerical limitations;
- A retroactive date, requiring proof of employment, be utilized to prevent an impulse of illegal border crossings;
- A duration of time be required in the home country, prior to re-eligibility; and
- Options provided for ineligibility for or termination of status based upon the worker's failure to meet his or her responsibilities, or in the interests of national security or public safety.

Additionally, President Bush has set high expectations for what new citizens should know about our history and government. He has charged my bureau with examining the standard of knowledge in the current citizenship test, to ensure that new citizens know not only the facts of our history, but also the ideals that have shaped our history.

Every citizen of America has an obligation to learn the values that make us one nation: liberty, civic responsibility and tolerance for others.

My project management team recently met with over a dozen historians, civics experts, and adult educators to discuss the redesign of the U.S. history portion of the naturalization test with the goal of making the test more meaningful, substantive and fair. We are examining the meaning of significant events that occurred in our nation's history and exploring ways in which candidates may better retain the significance of these events. Recognizing that many Americans have strong beliefs about what our new citizens should know about our country, especially in our post-9/11 era, we plan to publish the proposed test content in the Federal Register and ask for public comments about it. We believe that many Americans would like to have a say in what we are asking our new citizens to learn, and we are eager to hear from them. We look forward to briefing you and other Members of Congress on our proposed new test content and receiving your feedback, as well.

In addition, the current testing process is not uniform, which can lead to unfair results. A candidate in San Francisco is, in all likelihood, not tested the same way or asked the same questions as a candidate taking the same exam on the same day in Boston. As a result, we are developing standardized testing procedures so that applicants can be assured that they are experiencing a fair testing process.

We do not want to make the test harder. We do not want to make it easier. We want to make it more meaningful, in a way that does not have an adverse impact on any particular group of applicants. Therefore, we will carefully pilot test the revised English, history and government tests before implementing them. And we will continue to consult with our stakeholders to solicit their input. In January, we received valuable feedback from over 120 community representatives, adult educators, and CIS officers at a stakeholder conference that addressed issues ranging from test question formats, test content and pilot test plans. Our newly created Office of Citizenship will be responsible for coordinating the development of educational materials designed to complement this important initiative.

Our plan is to implement the new tests and testing process in 2006. Given the high stakes – the prize of U.S. citizenship – this process is not one that can or should be rushed. We are committed to improving the current process and to doing it right.

In his announcement, President Bush noted, that we should have immigration laws that makes us proud. We need a system that is compassionate, that serves the economy and fulfills security; that is the American way.

This concludes my prepared remarks. I thank you for the invitation to testify before this committee and I would be happy to answer any questions.

February 25, 2004

The Honorable Saxby Chambliss
The Honorable Edward Kennedy
Immigration Subcommittee
Senate Judiciary Committee
524 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Chambliss and Kennedy:

Thank you, Chairman Chambliss, Senator Kennedy and other subcommittee members for the opportunity to submit these comments on guest worker reform legislation. The Associated Landscape Contractors of America (ALCA) and the Professional Lawn Care Association of America (PLCAA) believe that reform of the current guest worker program is essential for the continued prosperity of the landscape industry. The landscape contracting industry is estimated to be a $28 Billion industry representing approximately 70,000 firms. This industry employs more guest workers than almost all other American industry sectors because of the difficultly in finding American workers willing to do the manual labor associated with the landscaping. The vast majority of U.S. citizens, who are legally qualified to do the manual labor associated with the landscape industry, do not have the desire to do the type of work that this industry requires. The H-2B guest worker program has allowed numerous companies to continue to serve their local communities, despite the shortage of American workers. Unfortunately, without prompt reform of the current immigration system, the value of the guest worker program will be lost.

ALCA and PLCAA would like to urge this committee and its counterpart in the House of Representatives to pass sensible guest worker reform legislation this Congress. Last month, President Bush re-energized the immigration debate by outlining his principles for immigration reform to better protect our national security and economic interests, as well as, our humanitarian values. The president offered to work with Congress to develop comprehensive immigration reform legislation that addresses the problems with the current immigration system. Our associations urge Congress and the Administration to

meet the challenge laid out by the President and to pass sensible guest worker reform legislation. We would also like to commend Senators Hagel, Daschle, McCain and Cornyn for introducing legislation that recognizes the urgent need to reform the guest worker program. We would like to work with these bill sponsors, their House colleagues, the House and Senate Judiciary Committees and the Administration on the development of sensible legislation. In order to adequately address the problems with the current guest worker program, legislation must significantly raise or remove annual cap of 66,000 visas; discontinue "Premium Processing" fees; and make the timely processing of applications a statutory requirement.

Under the current law, only 66,000 guest workers may enter the United States during each fiscal year. This limit encompasses workers from all non-agricultural industries, including landscaping, health care, hotels, restaurants, and road and transportation builders. The number of guest workers in the United States is approaching the 66,000 cap. Once the cap is reached, the landscaping and lawn care industry will no longer have access to the additional workers it needs. Because of the current labor shortage, and projections that it will worsen as "baby boomers" retire, it is essential that Congress pass immigration reform legislation that increases the number of H-2B workers permitted into the United States each year.

In addition, the application, documentation verification and Premium Processing Fees for such workers are burdensome and costly to landscape employers, many of whom are small businesses. The Premium Processing Fees are intended to ensure the rapid processing of guest worker applications, but processing times have slowed significantly. Under the existing law, a company may only apply to bring guest workers to the United States within a maximum of 120 days before the time the worker would begin his/ her employment. However, the U.S. Citizenship and Immigration Service (USCIS), Department of Labor and state employment security agency processing of these applications often exceeds 120 days, even in cases where the Premium Processing Fees are paid.

Thank you very much for your consideration of this important issue. ALCA and PLCAA would like to encourage the Committee to pass immigration reform legislation that significantly raises or removes the annual cap of 66,000 visas, discontinues 'Premium Processing Fees' and makes the timely processing of guest worker applications a statutory requirement.

ALCA is the voice of the landscape industry. The association represents over 2,800 companies and affiliated professionals nationwide, employing over 30,000 individuals, including its core membership of exterior and interior landscape maintenance, installation and design/build contracting firms and suppliers. ALCA provides leading education, certification and other resources for its members.

PLCAA is the premier global trade association for residential and commercial lawn care professionals. Organized in 1979, PLCAA develops education programs, defines industry standards, and serves as the voice of the lawn care industry. Its members include

companies that range in size from small enterprises to large public corporations and franchise operations. Services to commercial, industrial, governmental and residential customers include fertilizer and pest control applications, mowing, seeding, sodding, aeration, dethatching, trimming, ornamental shrub and small tree care, landscaping, irrigation and renovation.

Sincerely,

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STATEMENT BY

Richard R. Birkman
President, Texas Roofing Company of Austin

on behalf of the

National Roofing Contractors Association (NRCA)

before the

Immigration, Border Security and Citizenship Subcommittee

of the

Senate Committee on the Judiciary

concerning

"Evaluating a Temporary Guest Worker Proposal"

February 12, 2004

Chairman Chambliss and members of the Subcommittee, my name is Rick Birkman, and I am President of Texas Roofing Company of Austin, Texas, a company specializing in commercial and industrial roofing and sheet metal. I would like to thank you for this opportunity to testify in support of President Bush's temporary guest worker proposal. Mr. Chairman, I am testifying here today on behalf of the National Roofing Contractors Association (NRCA), an organization in which I serve on the Government Relations Committee.

NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest trade associations in the country and has approximately 5,000 member companies. NRCA contractors typically are small, privately held companies; the average NRCA member employs 35 people in peak season, with sales of just over $3 million per year.

Mr. Chairman, I am also testifying on behalf of the Essential Worker Immigration Coalition (EWIC), of which NRCA is a member. EWIC is a coalition of businesses, trade associations and other organizations from across the industry spectrum concerned with the shortage of both unskilled and lesser-skilled ("essential workers") labor. A coalition membership list is attached.

NRCA and EWIC commend you, Chairman Chambliss, for holding this important hearing. NRCA also commends President Bush for re-energizing the immigration debate by putting the issue back on the front burner of the national agenda. And finally, I would like to personally commend Senator Cornyn, my Senator, for introducing the *Border Security and Immigration Reform Act of 2003* (S.1387). Sen. Cornyn's bill would amend the Immigration and Nationality Act to direct the Secretaries of Homeland Security and State jointly to establish a seasonal and non-seasonal guest worker program with eligible foreign countries. The bill would also provide eligibility to apply for permanent resident status to guest workers who have participated in the program for at least three years.

Labor Demographics

The Subcommittee's hearing on President Bush's proposal is particularly important given the labor demographics the American economy faces today and in the approaching decades. Like many of the family-owned member companies of NRCA, Texas Roofing Company has found it difficult to meet its labor demands solely through relying on the domestic workforce. In fact, I would estimate that 95 percent of my workforce today is Latino, most of whom were not born in the United States. This composition is not uncommon in the roofing industry, but it is in stark contrast to the workforce of my grandfather, L. Randolph Rampy, Sr., who founded his own roofing contracting firm in Lubbock nearly 70 years ago. I have a photograph taken in 1946 on the wall in my office, and in that photograph you'll see my grandfather's employees and notice that, with the exception of two employees, all of the men in the photograph are Caucasian.

During peak season, Texas Roofing Company employs approximately 60 full time roofing and sheet metal mechanics trained in all aspects of roofing for industrial and commercial structures. Starting pay for entry-level roofers begins at $9 per hour, and my foremen earn anywhere from $16.50 to $21 per hour depending on their level of experience. With overtime, some of my employees are earning over $50,000 annually. Despite this relatively attractive pay, which is even higher in other sections of the country, roofing contractors have jobs going unfilled because

there are few domestic applicants and current law provides insufficient mechanisms to fill the shortfall. Retirements and a high turnover rate due to the difficulty of the work contribute to the unfilled job numbers, but the most important variable is this – most native-born Americans simply don't view roofing as a desirable profession.

There are a variety of factors contributing to this perception, but two stand out in particular. The first reason is that the roofing trade is tough work, frequently performed under even tougher environmental conditions. In the heat of the summer, rooftops in Texas and much of the Southwest can soar upwards of 150 degrees. And in the winter, when many roof systems require repair due to inclement weather, roofers often work in wind chills well below zero.

The second reason is that the reigning educational philosophy in America today says that every student should go to college. This mindset exists despite the fact the Department of Labor's Bureau of Labor Statistics estimates that the U.S. will create 17 million new jobs by 2010, 58 percent of which will not require a four-year college degree. With educational dollars steered toward that goal, base industries such as construction and others represented among the EWIC member groups have suffered endemic labor shortfalls, as students have foregone opportunities in the construction and services industries.

NRCA's member companies, in particular, face an enduring shortage of workers, as there are not enough domestic workers to meet the labor demand facing the construction industry. The U.S. Bureau of Labor Statistics (BLS) projects that an additional 50,000 workers in the roofing industry alone will be needed during the next decade to keep pace with the demand for professional roofing services. BLS also projects that the number of essential worker jobs is expected to grow by more than 700,000 annually in the next four years. Foreign workers are necessary to fill these jobs, yet these laborers and potential employers face extraordinary hurdles in obtaining the required documentation and work-authorized status.

A Broken System

NRCA urges Congress to fix an immigration system that serves neither America's economic security nor national security needs. Compounding the shortage of domestic workers, U.S. businesses find a broken system consisting of statutes that largely prevent them from hiring the foreign essential workers necessary to satisfy the volume of services demanded by the American economy. In recent years, our nation's immigration policy has favored highly skilled and educated workers for our economy, as evidenced by the H-1B program. NRCA and EWIC agree that these highly skilled workers are necessary to drive forward innovation of ideas and products. However, once these ideas are developed and the ideas become products, essential workers are needed to manufacture, deliver and service those products. The question America must ask itself is this: Who will fill the millions of essential worker positions that we continue to create? We believe immigration must be one answer.

But current law does not provide an adequate answer. Today, roofing companies such as mine are extremely limited in their ability to hire foreign workers. One option is the H-2B visa program, which is capped at 66,000 per year. The program is highly complex, and all non-agricultural industries compete for these scarce visas. Further, the program is temporary. If an employer has long-term or permanent positions, that employer is out of luck since no long-term

temporary visa exists in our current system. A second option would be to apply for a "green card", but "green cards" are limited to 5,000 per year for essential workers, and currently there is a five- to 10-year waiting list. These limited programs and the complexity of immigration law make it difficult for roofing contractors nationwide to access a sustainable supply of essential workers.

As such, the merits of a properly structured guest worker program are clear. First, it would constitute a mechanism to address worker shortages in this country that can be flexible depending on the actual need and the state of the economy. Second, it would significantly contribute to the alleviation of illegal immigration by providing an orderly, structured, and safe process by which those outside the country looking for work can enter the country, obtain legal employment, and return home to their families. Third, this process can, in turn, help address the problem of those who have entered illegally, but cannot return to their home country for fear of ever being able to obtain entry into the U.S. (legally or illegally) again.

The President's Proposal

Mr. Chairman, as you know President Bush proposed a new temporary worker program to match willing foreign workers with willing U.S. employers when no Americans can be found to fill the jobs. He also outlined his principles for immigration reform, which he said were necessary to fix a broken system and to promote compassion for those who have helped make America prosperous. NRCA and EWIC are in strong agreement with the basic principles of the Bush plan which are:

- Protecting the Homeland by controlling our borders
- American workers come first – employers must make reasonable efforts to find an American to fill a job before extending job offers to foreign workers
- Serving America's economy by matching willing workers with willing employers
- Promoting compassion in order to prevent exploitation and to establish a mechanism that would allow temporary workers to travel back and forth between their home countries and the U.S. without fear of being denied re-entry to the U.S.
- Providing incentives for return to one's home country
- Protecting the rights of legal immigrants – the program would not connect participation to a green card or citizenship, thereby allowing undocumented workers to gain an advantage over those who have followed the rules

President Bush's plan would allow workers abroad and those already employed here illegally to obtain renewable three-year work visas in order to take jobs unfilled by Americans. Undocumented workers already in the U.S. could enter the program immediately after providing proof of employment. Workers participating in the program would be entitled to the same employment rights and protections to which native born workers are entitled. The plan also calls for an increase in the number of green cards for those wishing to reside in the U.S. permanently. And contrary to the assertions of some, the plan neither rewards anyone here illegally with "amnesty", nor offers anyone preference over those who have waited to enter the U.S. legally.

President Bush is to be congratulated for tackling such a complex and contentious topic, for it's the right thing to do. Despite the protests of those who would have America wall off its southern

neighbors, the nation's growing reliance on foreign labor is undeniable. Americans simply demand more services than our domestic workforce can supply. And yet, our current system fails to provide enough visas for employers to fill jobs they cannot satisfy domestically. It's also clear that something must be done to address the 8-10 million undocumented individuals who are currently in the U.S. The vast majority of immigrants want nothing more than to continue contributing to our society and to share in the American Dream, but the present system is one that allows those few who wish to do us harm to hide more easily among the undocumented population. Efforts to coerce countries of origin to stem the flow of migrants, employer sanctions, and stricter border-control mechanisms have utterly failed. The predicament facing the U.S., and most developed countries for that matter, is that our ability to control immigration has withered as our enthusiasm for doing so has simultaneously grown. The U.S. maintains a rigid patchwork of laws and mounts extensive unilateral law enforcement efforts, but the simple reality is that we have lost control of our borders, and even if we were to devise a means to curtail immigration significantly, our economy would suffer substantially.

The current system has also created an underclass of workers, vulnerable to exploitation by unscrupulous employers, often afraid to seek basic services such as medical care for fear of prosecution, and frequently at life's risk making the dangerous journey into the U.S. The President's plan recognizes that our current immigration system is broken and takes meaningful steps to fix these problems.

Conclusion

Foreign workers – legal and illegal, temporary and permanent – play a critical role in our economy and our society. They were vital to our economic growth in the past decade and will be irreplaceable in the next as we face demographic and societal trends that ensure America will not have the number of workers we need to sustain the level of economic growth that America demands.

Opponents of immigration would have us enact a moratorium on new arrivals. Some would have us station troops along our borders and expel the millions of undocumented already here. NRCA and EWIC suggest another path – an immigration system that recognizes the ongoing need of the American economy for foreign workers and assists in separating those who wish to destroy America from those who wish to help build it.

The Administration has stated unmistakably its interest in working with Congress to draft legislation incorporating the principles embodied in the President's proposal. NRCA and EWIC are encouraged that the Subcommittee has embraced the President's challenge to Congress, and we look forward to working with the Administration and Congress as the immigration reform debate moves forward.

EWIC Essential Worker Immigration Coalition

MEMBERSHIP LIST

EWIC Essential Worker Immigration Coalition (as of February 2004)

- American Health Care Association
- American Hotel & Lodging Association
- American Immigration Lawyers Association
- American Meat Institute
- American Road & Transportation Builders Association
- American Nursery & Landscape Association
- Associated Builders and Contractors
- Associated General Contractors
- Associated Landscape Contractors of America
- Building Service Contractors Association International
- The Brickman Group, Ltd.
- Carlson Hotels Worldwide and Radisson
- Carlson Restaurants Worldwide and TGI Friday's
- Cracker Barrel Old Country Store
- Harborside Healthcare Corporation
- Ingersoll-Rand
- International Association of Amusement Parks and Attractions
- International Franchise Association
- International Mass Retail Association
- Manufactured Housing Institute
- Nath Companies
- National Association for Home Care
- National Association of Chain Drug Stores
- National Association of Home Builders
- National Association of RV Parks & Campgrounds
- National Club Association
- National Council of Chain Restaurants
- National Retail Federation
- National Restaurant Association
- National Roofing Contractors Association
- National Tooling & Machining Association
- National School Transportation Association
- Outdoor Amusement Business Association
- Professional Lawn Care Association of America
- Truckload Carriers Association
- US Chamber of Commerce

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Guestworker Programs for Low-Skilled Workers: Lessons from the Past and Warnings for the Future

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Immigration policy is mine field of controversial issues. Programs to legally permit low skilled foreign nationals to work in the same labor market as U.S. citizens and permanent resident aliens are among the most explosive. Because such endeavors have been undertaken in the past, they have a track record. They have been the subject of extensive research. There is no need to speculate about what might happen if any new such venture-- such as that proposed by the Bush Administration on January 7 , 2004--were to be enacted. The outcome can be predicted.

The Traditional Role

The origin of guestworker policy in the United States and its historic role has been as a national emergency program. During World Wars I and II as well as the Korean Conflict, extensive reliance was made of such endeavors. Guestworker programs were included among other extreme policies such as wage and price controls and the relaxing of antitrust laws used by policymakers during times of national peril. They are extraordinary policies to be used as a last resort—and then only as temporary measures. Unlike the other extreme measures that were quickly abandoned after the wars were over, however, guestworker programs have proven to be difficult to end. Starting such programs has always been far easier than stopping them. Moreover, they all had unintended negative consequences that must be included in any assessement of such programs.

The First Bracero Program. Only months after Congress enacted the most restrictive immigration legislation it had ever adopted up until that time --the Immigration Act of 1917, the first publicly sanctioned foreign-worker program was initiated. Responding to strong pressure from agricultural growers of the Southwest, the Immigration Act of 1917 contained a provision granting entry to "temporary" workers from Western Hemisphere nations who would otherwise be considered inadmissible. The Secretary of Labor was authorized to exempt such persons (in this instance, Mexicans) from the ban on immigrants over the age of sixteen who could not read. In May 1917, with the nation officially at war with Germany, a temporary farmworker program for unskilled Mexican workers was created. It was later expanded to permit the employment of some of these laborers in nonfarm work. When the program was announced, a number of rules and regulations were set forth. Ostensibly, these rules were designed to protect both citizen workers and Mexican workers and to ensure that the Mexicans returned to their country when their work was completed. As soon became apparent, however, "these elaborate rules were unenforced." [1]

This temporary-worker program was established during World War I .The war ended in 1918, but the program was extended until 1922. In later years the program came to be referred to as "the first bracero program."[2] The term *bracero* is a corruption of the Spanish word *brazo*,

which means "arm." (Literally, the term means "one who works with his arms.") The program was terminated in 1922 because it could no longer be justified as a national defense policy. Organized labor contended that the program had undermined the economic welfare of citizen workers. Other critics argued that labor shortages no longer existed in the and but greedy employers wanted the program to continue so that they could continue tota a cheap source of docile workers. During the life span of the program, 76,862 Mexican workers were admitted to the United States. Of this number only 34,922 returned to Mexico.[3] Thus, the program spawned illegal immigration.

The Mexican Labor Program. With the advent of World War II, the military manpower requirements of the United States and the related need for laborers in manufacturing led to assertions that another labor shortage existed in the nation's agricultural sector. Growers in the Southwest had foreseen these developments before the attack on Pearl Harbor in 1941. They had made two fateful decisions: first to again tap the pool of cheap labor in Mexico in order to fill the alleged manpower deficit; and second, to ask the federal government to again serve as the vehicle of deliverance. The initial request in 1941 for the establishment of a new contract labor program was denied but by mid-1942 the federal government had come to favor the program. The government of Mexico, however, balked at the prospect. In the 1940s the Mexican economy was flourishing. Mexican workers feared that they might be drafted if they went to the United States; they had bitter memories of the efforts to "repatriate" Mexicans in the 1930s; and they were aware of the discriminatory treatment accorded people of Mexican ancestry throughout much of the American Southwest..

Negotiations between the two governments ultimately resulted in a formal agreement. In August 1942 the Mexican Labor Program--more commonly-known as the bracero program --was created by the U.S. Congress. Originally included within an omnibus appropriations bill known as Public Law 45 (P.L. 45), this program was extended by subsequent enactments until 1947. According to P.L. 45, braceros were permitted to work only in the agricultural sector. If they were found working in any other industry, they were subject to immediate deportation. Although the agreement expired on December 31, 1947, it continued informally and without regulation until 1951. In that year, under the guise of labor shortage caused by the Korean conflict, bracero concept was officially revived by P.L.78. This legislation was extended on three separate occasions until the program was unilaterally terminated by the United States on December 31, 1964.

Under P.L. 78, originally only Mexican workers could be hired. Their numbers varied each year but averaged several hundred thousand workers. Its biggest year was in 1959 when 439 thousand braceros were employed. Employers were required to pay the prevailing agriculture wage, provide free housing, provide adequate meals at a reasonable charge, and pay all transportation cost from government reception centers near the border to the work site. As in the earlier bracero program, these requirements often were not met.[4] Braceros were exempt from U.S. social security and income taxes, which meant that they received more income than a citizen worker employed at the identical wage rate.

In Mexico, the federal government determined the actual allocation process by which workers would be selected from the various states. The state governments in turn made similar decisions for their cities and other political subdivisions. Nevertheless, there were many more applicants than job openings in every designated labor market where recruitment occurred. Corruption in the allocation process soon became widespread at the local level. Potential

workers often were forced to pay a *mordida* (a bribe; literally, "a bite") if they wished to be chosen.

The bracero program of demonstrated precisely how border labor policies can adversely affect citizen workers in the United States. Agricultural employment in the Southwest was virtually removed from competition with the nonagricultural sector. The availability of Mexican workers significantly depressed existing wage levels in some regions, moderated wage increase that would have occurred in their absence, and sharply compressed the duration of employment (i.e., income earning opportunities) for many citizen farmworkers.[5]

In its thorough report on the bracero program in 1952, President Truman's Comission on Migratory Labor found that "wages by States [for agricultural workers] were inversely related to the supply of alien labor."[6] Citizen farmworkers in the Southwest simply could not compete with braceros. The fact that braceros were captive workers who were totally subject to the unilateral demands of employers made them especially appealing to many employers. It also led to extensive charges of abuse of workers by employers as most of the provisions for the protection of braceros' wage rates and working conditions were either ignored or circumvented.[7] Moreover, the bracero program was a significant factor in the rapid exodus of rural Mexican Americans between 1950 and 1970 to urban labor markets, where employment and housing often were difficulty to find.[8]

The drive to repeal Public Law 78 was led by the AFL-CIO, various Mexican American groups, and an array of other community organizations generally concerned with the welfare of low-income workers. The Kennedy administration, which came into office in 1961, did not initially support repeal of the program. Instead, it sought significant amendments to the law which were designed to strengthen the protection of domestic workers from the adverse effects of the program.[9] In mid-1961 the Department of Labor began setting an "adverse effect wage rate" for each state. These were minimum wage rates that the department determined had to be paid to prevent braceros from undercutting the wages of citizen agricultural workers. In most cases, the adverse –effect wage rates were actually higher than the prevailing wages. They had to be offered to citizen workers if the agricultural employer also intended to hire foreign workers. Under these terms, the bracero program became much less attractive to employers. The bitter political struggle ended in 1963 when the program was extended for one more year with the understanding that it would not be renewed after December 31, 1964. This was 22 years after it had been started. Ending the formal program did not stop its consequences as thousands of former braceros continued to come and seek jobs in southwestern agriculture, albeit as illegal immigrants.

The British West Indies Labor Program. Following the precedent of the Mexican Labor Program, the U.S. government established a similar nonimmigrant program to recruit workers from the British West Indies (Jamaican, the Bahamas, St. Lucia, St. Vincent, Dominica, and Barbados). A intergovernmental agreement was signed in April 1943 pertaining to the supply of agricultural workers. The agreement became the British West Indies (BWI) Program. The BWI program was established in response to concerns voiced by employers along the U.S. East Coast that they , too, were experiencing wartime manpower shortages. Because many of the potential BWI workers spoke English, they offered an advantage to employers over the Mexican workers recruited for the bracero program. Like the bracero program, BWI was formalized on the basis of P.L. 45 and was operative from 1943 through 1947. In terms of aggregate number – about 19,000 workers a year -- the BWI program was small compared to the bracero program.

But its impact was substantial in the particular agricultural labor markets where these workers were employed.[10] Of the eleven East Coast states that participated in the program, Florida was by far the largest recipient. During the actual war years, BWI recruits were also permitted to work in the nonagricultural sector.

During the years 1947-1952, the BWI program was converted into a temporary-worker program, as allowed under the provisions of the Immigration Act of 1917. Tripartite contracts were drawn up between US employers, the foreign workers, and the governments of the participating nations of the West Indies. The US government was not a direct participant. Travel and recruitment expenses were paid entirely by US employers, and the workers who were recruited were employed only in agriculture.

A review of the BWI program by the President's Commission on Migratory Labor in 1951 led to condemnation of the administration of the program. The Commission attacked the lack of "vigilance for the protection of living and working standards" of these workers.[11]

During the legislative debate over the continuation of the Mexican Labor Program in 1951, East cost employers -- especially those in Florida -- specifically requested that BWI workers not be included in the legislation. The language of the bill was changed and only "agricultural workers from the Republic of Mexico" were included. The East Coast employers preferred to keep the BWI program as it was, and hence the program continued to function according to the provisions of the Immigration Act of 1917.

The Non-Traditional Role

The vastness and complexity of the U.S. labor market has also, on occasions, led to the use of guestworker programs for low skilled workers during peace times under certain circumstances. There are sometimes spot shortages of labor that the normal working of a relatively free labor market cannot easily respond. These adjustment problems are normally due to geographical factors (i.e. isolated labor markets) or seasonal conditions (i.e., time limits on the duration of labor demand). But even in these seemingly logical cases, there have usually been undesirable side effects that challenge the efficacy of their replication in the future.

The H-2 Program. In 1952, the Immigration and Nationality Act was passed. Among its multiple provisions were the formal creation of the various entry categories for nonimmigrants. Among these was the H-2 program for "other temporary workers." Initially, it was agricultural employers who made the greatest use of the program. Its height of usage was in 1969 when over 69,000 visas were issued. In the Southwest especially, the arid nature of the much of the land means that it is often not possible for farmworkers to live nearby. Hence, either migrant workers who are citizens must be hired or foreign workers be recruited to do the seasonal planting and harvesting. The program also became popular with sugarcane growers in Florida and apple growers in the Northeast who argued that the arduous work only existed for short periods of time so it as difficult to attract and hold citizen workers. But other non-agricultural workers were also sought to do various service jobs that were of "a lower status than those entering on H-1 visas" (i.e., temporary workers "of distinguished merit or ability").[12] In 1986 IRCA split the H-2 visa into two separate temporary visas, the H-1A for non-agricultural workers and the H-2A for agricultural workers.

Theoretically, H-2 workers can only be admitted if unemployed citizen workers cannot be found to do the work. But the entire process of testing labor market availability and the appropriate wage rate to be paid has been a never-ending source of controversy. As a result (and because of the growing availability of illegal immigrants), usage of the program has declined significantly from the peak in 1969 although usage of H-2B visas has been soaring in recent years.

H-2 programs have also been criticized for being forms of indentured servitude. The participating workers are totally dependent on their employer. They are tied to their jobs by contractual terms. For this reason it is believed that they are preferred workers by employers if they can get them.[13]

The Virgin Island H-2 Program. In the 1950s the H-2 program was used on the U.S. Virgin Islands to allow unskilled workers from various neighboring islands to work in the agricultural and tourist industries. By the 1960, these foreign workers were being employed "for any job" on the Islands. More and more jobs ceased to be temporary so by the end of the 1960s H-2 workers accounted for almost half of the entire work force. The cost of living on the Islands is high so that citizen workers were reluctant to work for the low wages paid to the H-2 workers. Their unemployment increased dramatically. In the meantime, housing, education and social conditions worsened and the H-2 program was described as being "the biggest single problem" on the Island.[14] As the number of H-2 workers kept increasing, there was even fear that the native born population might lose political control of their homeland. Efforts were made to stop the children of the H-2 workers from attending public schools but federal courts intervened. As the Island's economy became dependent on H-2 workers a two tiered labor market developed. Ultimately the program was abandoned in 1975 but most H-2 workers were allowed to adjust their status to become permanent resident aliens because by this time they had put down roots in their new land.

The Guam Program The Island of Guam also made extensive use of the H-2 workers. In reality, the H-2 program ratified a practice that was already under way. Foreign workers had been recruited by defense contractors working on the rebuilding of the economy following World War II. When the H-2 program was created in 1952, many of these workers were granted this status even though that had been on Guam for many years. Before long a "triple wage system" evolved: one for "state siders"; one for native born on Guam; and the lowest wages for H-2 workers.[15] As criticisms mounted about the H-2 workers receiving "slave wages," the U.S. Immigration and Naturalization Service (I.N.S.) began to phase-out the program in 1959 for non-defense sector jobs and in 1960 for defense related jobs. But there was immense criticism by employers of these attempts. Finally the U.S. Department of Labor acknowledged that employers were not complying with the H-2 provisions and that as efforts to end the program were initiated, illegal immigration soared. Ending the program was no easy feat.

The Proposed Role: To Combat Illegal Immigration

As the scale of illegal immigration was finally acknowledged as an issue of national concern the 1970s, guestworker programs were proposed as a possible remedy by several scholars as well as by some employer groups.[16] Meanwhile, President Jimmy Carter requested the National Commission on Manpower Policy (NCMP) in August 1978 to study whether the

existing H-2 provisions of the Immigration and Nationality Act should be expanded as an alternative to employers (especially those in agriculture) using illegal immigrants. After lengthy study of the idea, the Commission advised the President in May 1979 that it was "strongly against" any such expansion of the H-2 program.[17]

During this same timespan, Congress established in October 1978 the Select Commission on Immigration and Refugee Policy (SCIRP) chaired by Rev. Theodore Hesburgh. It was requested to study all elements of the nation's immigration and refugee policies and to make relevant recommendations for changes. The notion of creating a guestworker program as a possible remedy to illegal immigration was given intensive scrutiny but it was finally rejected.[18]

In follow-up hearings jointly held the subcommittees on immigrants of both the Senate and the House of Representatives, Rev. Hesburgh carefully explained that:

> The idea of a large temporary work program is tremendously attractive. Perhaps a better word though, would be "seductive" There is a superficial plausibility to this argument and the Commission gave it serious consideration for more than a year and a half. I can recall being very much entranced by it when I first joined the Commission. In the end, we were persuaded, after much study, that it would be a mistake to launch such a program.[19]

He elaborated the reasons for its rejection as follows:

1. A large temporary worker program "would have to have some limits which would have to be enforced. It wouldn't be a completely open program." Who would be eligible? What kind of jobs can they hold? How long can they stay? Can they renew their participation? Who is going to enforce these terms and how capable would such a body be to perform these tasks?
2. "It is difficult to turn off such a program once it gets started."
3. "A large program would build a dependency on foreign labor in certain sectors of the economy."
4. "Certain jobs would be identified with foreigners", which would effectively stigmatize such jobs.
5. "A second class of aliens would be established in our countries who are not fully protected by the law and its entitlements and who could not participate effectively in mainstream institutions."
6. Without the strict enforcement of employers sanctions against hiring other illegal immigrants elsewhere in the economy, a temporary worker program "would stimulate new migration pressures in the long run, and again we have the specter of law disrespected as we have now."

In summing up, he concluded:

> "We do not think it wise to propose a program with potentially harmful consequences to the United States as a whole.[20]

Responding to the SCIRP report, the Reagan Administration accepted to wisdom of most of its conclusion but it proposed "an experimental temporary worker program for Mexican

nationals" be included in the reform legislation and, if it proved feasible, it be expanded significantly in scale.[21]

When Congress took up immigration reform in 1982, the sponsors of the orginal bill (Senator Alan Simpson and Representative Romano Mazzoli) did not include a temporary worker program. It did propose liberalizing the existing H-2 program (which did not have any ceiling on the number of workers who could be admitted). Over the ensuring five years as the various version of what would become the Immigration Reform and Control Act worked its way though the legislative process, no issue proved to be more difficult or controversial then efforts to add a guestworker program for the agricultural working to the bill. Numerous efforts were made. Indeed, after failing to be pass Congress in 1982 and 1984 it appeared that the legislation would die in 1986 for this very reason.[22] It was only after an extremely controversial amendment was offered by Rep. Charles Schumer that eventually would give permanent resident alien status (i.e. a greencard) to any person who could prove he/she had worked in perishable agriculture for 90 days between May 1, 1985 and May 1, 1986. It was, in reality a second amnesty to the general amnesty provided for elsewhere in the legislation. The provision set off a firestorm of protest but it was given a debate rule that prohibited any changes in this particular provision to be made on the House floor. Representatives opposed to the compromise had only one choice: kill the whole reforms package or accept this amendment as it is. It was not the first time that such debate restrictions have been attached to a controversial bill but it is certainly a tactic that undermines public confidence in the legislative process. The idea could not withstand a vote on its own merits. Despite such criticism, the amendment enabled IRCA to be passed and signed into law by President Reagan in 1986. As a consequence, this adjustment program—known as the Special Agricultural Workers program (SAW)—led to 1.2 million persons applying for its adjustment of status benefits. Of these 997 thousand applications were approved. The number of applicants far exceeded anyone's estimation of the number who would be eligible. The explanation for the excess in applicants was the widespread usage of fraudulent documents that were used to claim eligibly. Indeed the *N.Y. Times* described the SAW program as being "one of the most extensive immigration frauds ever perpetuated against the U.S. government."[23]

Because of concern about what the impact of IRCA might be on the agricultural industry, IRCA contained provisions to create the Commission on Agricultural Workers (CAW) in 1986. It was chaired Henry Voss, the Director of the California Department of Food and Agriculture. Despite being disproportionately composed of agricultural industry representative, the final report of CAW was remarkably frank. After 6 years of study, it described a story whereby the living and working conditions of farmworkers had shown little if any improvement due largely to the continuing influx of illegal immigrants.[24] It boldly stated that "there is a general oversupply of farm labor nationwide" due to the fact that "unauthorized migrants continue to cross the southern border in large numbers."[25] It noted:

> The surplus of labor in most areas militates against improvements in wages and working conditions for seasonal agricultural employees... Illegal immigration has a negative effect on workers who are faced with increasing job competition and employers who are concerned about their continuing access to a legal labor supply.[26]

The report stated that "employer sanctions have been ineffective" with fraudulent documents being the major cause for their failure. Based on the experience of the industry with SAW, the report concluded that "worker-specific and/or industry-specific legalization programs as contained in IRCA should not be the basis of future immigration policy."[27]

Within three years of the passage of IRCA, it was clear that the legislation had not succeeded in its efforts to stop illegal immigration. Employer sanctions, which was the "centerpiece" of the deterrent measures, were being circumvented by the use of fraudulent documents and by inadequate enforcement personnel and funds. Congress, rather than address there inadequacies, ignored the issue in 1990 when it passed the Immigration Act of 1990 that dramatically increased the annual level of legal immigration to the country based on the assumption that the "back door" of illegal immigration had been close. The premise was, of course, false. This legislation did, however, create another bipartisan commission to study the nation's immigration system. It was given seven years (six in reality) to conduct its investigation It was the Commission on Immigration Reform (CIR) and was chaired for most of its life by the late Barbara Jordan. CIR identified illegal immigration as the most pressing problem confronting the nation's immigration policy and recommended a number of policy changes. But with regard to guestworker programs, it adamantly rejected any notion that they be viewed as part of any solution. In its final report, CIR stated that it "remains opposed to implementation of a large scale program for temporary admission of lesser skilled and unskilled workers"[28] and it went on to say specifically that "a guestworker program would be a grevious mistake." [29] The Commission stated in unequivocal terms the reasons for its conclusions:

1. "Guestworker programs have depressed wages."
2. Those whose wages are most adversely affected are "unskilled American workers, including recent immigrants who may have originally entered to perform needed labor but who can be displaced by newly entering guestworkers."
3. " Foreign guestworkers often are more exploitable than a lawful U.S. worker, particularlywhen an employer threatens deportation if workers complain about wages or working conditions."
4. "The presence of large numbers of guestworkers in particular localities--such as rural counties with agricultural interests--presents substantial costs in housing, healthcare, social services, schooling and basic infrastructure that are borne by the broader community and even by the federal government rather than by the employers who benefit from inexpensive labor."
5. "Guestworker programs also fail to reduce unauthorized migration." [because] "they tend to encourage and exacerbate illegal movements that persist long after the guest programs end." ...[and] ... "guestworkers themselves often remain permanently and illegally in the country in violation of the conditions of their admission."

Concluding Observations

The reason for this lengthy statement is to document the mountainous hurdle of opposition that confronts anyone advocating any form of temporary worker program for foreign nationals presently outside the country or for illegal immigrants already in the country. The actual program

experience of the past as well as the wise counsel of the distinguished Americans who served on the host of national commissions cited in this testimony that have intensively studied these endeavors all warn in the starkest of terms against pursuing such programs. I know of no other element of immigration policy in which the message not to do something is so unequivocal.

The heart of the problem is that guestworker programs seek to reconcile two sharply conflicting goals: the need to protect citizen workers from the competition of foreign workers who are willing to work for wages and in conditions that few citizens would tolerate versus the wishes of some employers who rely on labor intensive production and service techniques to secure a plentiful supply of low cost workers. In addition, there are always unforeseen side effects that harm the wider society.

With 34 million low-wage workers in the current civilian labor force, the problem to confront is not a shortage of low skilled workers; it is the oversupply of from 9-12 million illegal immigrants that needs to be addressed. Getting illegal immigrants out of the labor force should be the first order of business for policymakers. Neither guestworker programs or amnesties of any kind should be part of the necessary efforts to end this labor market nightmare. Guestworker programs do nothing to stop further illegal immigration and, in fact, they serve to condone past illegal conduct. It is illegal immigration that must be stopped!

Except in national emergencies, guestworker programs are bad public policy. They may meet the short terms pleas of private interest groups, but they can never meet the higher standard of being public policies that serve the national interest.

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[3] George C. Kiser, "Mexican American Labor Before World War II," Journal of Mexican *American History*, Volume 2 (1972), p. 130

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[5] U.S. Senate Committee on the Judiciary, *A Report on Temporary Worker Programs: Background and Issues* (Washington, D.C.: GPO, 1980), pp. 47-51.

[6] President's Commission on Migratory Labor, *Migratory Labor in American Agriculture: Report* (Washington, D.C.: GPO, 1951), p.59.

[7] Galarza opcit chaps. 12, 13, 15, 16, 17

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[17] Eli Ginsberg, Chairman of the National Commission for Manpower Policy, Letter transmitted to Secretary of Labor Ray Marshall, May 1, 1979 printed in Edwin Ruebens, *op. cit,* p.100.
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[20] Ibid., p. 29. [Emphasis added]
[21] See details in Briggs *op. Cit., Immigration Policy...*, p. 115.
[22] In a review of those efforts, see Vernon M. Briggs Jr. *Mass Immigration and the National Interest*, 3rd Edition Armonk N.Y. M.E. Sharpe, Inc. 2003, pp. 179-185.
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[29] Ibid., p.95 [Emphasis added]

UNITED STATES-MEXICO CHAMBER OF COMMERCE
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Testimony of
Charles Cervantes
General Counsel
United States-Mexico Chamber of Commerce
Before the
Subcommittee on Immigration, Border Security and Citizenship
Senate Judiciary Committee

February 12, 2004

Mr. Chairman and members of the Committee,

I thank you for the opportunity to be here today to discuss the U.S. Immigration reform proposed by President George Bush on January 7, 2004. This initiative will offer both legal temporary worker status to undocumented men and women now employed in the U.S., and to those in foreign countries who have been offered employment here. The reform seeks to open up opportunities for foreign workers to come and work as guest workers in the U.S., when no Americans can be found to fill the jobs.

The United States-Mexico Chamber of Commerce (USMCOC) was established in 1973 as a 501 (c) (6) non-profit business association by a group of distinguished Mexican and U.S. businessmen. The coalition of businessmen created a bilateral organization to promote trade, investment and joint ventures on both sides of the border. Our goal has been help businesses bridge differences in legal, regulatory and economic systems, as well as language and culture between these two countries.

We believed immigration has been key in the growth and success achieved by this great nation throughout its history. Individuals from almost every country in the world have come to America and through their efforts in a search for a better future; they have provided with their work the bricks that built the foundation of this country

For decades, we have perceived the need for legislation that can regulate the movement of workers into the United States and legalize millions of undocumented immigrants living already in our territory. Due to the nature of the organization that I represent, it is in our own interest to oversee for both the well-being of the Mexican

immigrants who already live and work in this country, and the mechanisms that both Mexico and the U.S. should develop to stop illegal immigration crossing to the U.S. by creating more and better job opportunities for Mexican workers in Mexico.

Today, statistics show Hispanics as the largest group of immigrants living in the U.S. Within this major group, the Mexican community has shown its ability to enhance and strengthen the labor force of the U.S., specially reflected in industries such as construction or agribusiness, where the job demand has not been met by American workers. This situation is also reflected for legal white-collar Mexican employees that have gained their place in corporate America. Meanwhile, we have perceived how the business community of America has begun to fight on behalf of the 11 million undocumented workers it secretly employs. With the expiration of Section 245(i) of the Immigration and Naturalization Act and the imposition of 3 and 10 year bars to reentry for those who over stay their visas or enter illegally there is no incentive for these millions of workers to attempt to legalize their status.

There is concern among some in the Hispanic community that the proposed immigration reform does not go far enough. They are demanding another round of "legalization" for these undocumented aliens. . We presume that this reform has not been created to undermine immigration control or national security. The reform is intended to provide protection and insure the rights of foreign workers in this country while making certain that American jobs are not lost to Americans able and willing to fill them.

Undocumented workers now in the US would be able to obtain social security benefits and petition for the redress of grievances against predatory US employers. They would also be able to pursue permanent resident status through the current immigration system. This is consistent with professed American values concerning individual rights and liberties.

Instead of waiting for 3, 4, 5 years or more while the labor certification process is pursued, these workers could come and immediately fill the jobs for which they are qualified and for which American workers are unavailable. This is better than nothing but it does not solve the underlying problem of underfunded and understaffed federal and state agencies involved in the immigration process.

The Chamber applauds the efforts of the President to give some type of relief to the millions of undocumented workers already here as well as to US employers who are unable to find able and willing workers in this country and yet who cannot afford to wait years for a qualified alien worker to obtain permanent resident status. Business works at an infinitely faster pace than the cumbersome US immigration apparatus.

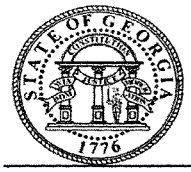
To further immigration control, this reform should encourage the use of mechanisms that help the U.S. authorities to control the flow of new immigrant guest workers from guest countries, such as the Mexican "Matrícula Consular" (ID Cards) issued by

the Mexican government to have some control on the amount of illegal Mexican aliens in the U.S., while providing them with an ID tool to facilitate their access to certain basic services such as a driver's license or admittance for opening a bank account.

While we are currently most concerned with legal and regulatory developments in the US, immigration shouldn't be perceived as a terrorist issue, since anti-terrorism should be an issue of effective intelligence and pertinent legal and military actions. This reform will provide better control for illegal aliens already in the country, which will lead to facilitation in the search for those who may want to harm the U.S. Thus, we also urge the Mexican government to work closely with the U.S., especially with the Department of Homeland Security to secure our common borders by screening the people entering the US from Mexico. By both countries coordinating efforts, they can develop a more highly sophisticated and technologically advanced Matricula, with the use of biometrics and joint databases.

The Chamber would also like to foster foreign investment in this country through a more aggressive use of the EB-5 Investor "green card" preference category. The EB-5 immigrant investor category grants conditional green cards to immigrants who invest in and manage U.S. companies that benefit the U.S. economy and create or save at least 10 full-time jobs for U.S. workers. The amount required to invest is normally $1 million, although that amount is reduced to $500,000 if the investment is made in a high unemployment area or rural region. Up to 10,000 foreign investors a year can qualify under the EB-5 program. If fully used, that would result in 100,000 new jobs a year, and an infusion of $5-10 billion annually into our economy. For a variety of reasons, including USCIS bureaucratic intransigence, the EB-5 program has been underutilized. New immigration reform can help us by boosting this program.

For all these reasons, we are convinced that the immigration reform proposed by the White House will help improve the community, the economy and the security of our country. Furthermore, it will not only benefit the U.S. but also the Mexican labor markets thereby strengthening our respective economies. The reform then will improve the quality of lives of those who have been working illegally in the U.S. and the ones who will be invited to work in the American labor market, at the time that will benefit the amount and quality of workers demanded by U.S. corporations.



Saxby Chambliss

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For Immediate Release
February 12, 2004

STATEMENT BY CHAIRMAN SAXBY CHAMBLISS

WASHINGTON – U.S. Senator Saxby Chambliss, R-Ga., Chairman of the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship, issued the following opening statement before a hearing titled: *"Evaluating a Temporary Guest Worker Proposal."*

"I appreciate the Senators and witnesses we have here today for our hearing on evaluating a temporary guest worker proposal. President Bush outlined his principles in a speech last month, and we have an Administration panel that will explain and clarify the President's principles. This is the first hearing since the President's speech, and we expect to hold a series of guest worker hearings as we move forward in the legislative process.

"Since September 11, 2001, the Administration has continued making strides to strengthen our homeland security. Over 1,000 new Border Patrol agents have been added. The Department of Homeland Security has consolidated customs agents and immigration personnel to enhance and streamline our border security. The entry-exit system, US-VISIT, is now collecting biometric information for aliens traveling to the U.S. on a visa.

"Even with our best efforts, illegal immigration remains a vast problem that is getting more and more out of control. Most estimates say there are 8 to 10 million illegal aliens in the U.S. Of those, it is estimated that 60% entered the U.S. without inspection, which is a criminal offense. Such a large number of illegal aliens creates a financial drain due to non-reimbursed medical and educational services, burdens our judicial system, and allows criminal acts to go unchecked.

"Most illegal aliens come to the U.S. seeking jobs – the majority of them from Mexico. The U.S. per capita income is $32,000 while Mexico's per capita income is $3,700. Most of these folks are not security threats but are hard-working individuals seeking a better life. However, illegal entry into the U.S. is a security breach that we must address. It is also unfortunately a growing business for so-called "coyotes," or human smugglers, who pack trucks full of workers and cross the border, sometimes with tragic results.

"Many U.S. employers of aliens have difficulties in finding Americans to fill jobs performed by illegal aliens. These jobs range from agriculture to construction to the carpet industry in my home state. Employers also have difficulty in determining who is legal and who is illegal due to the lack of verifiable documentation in the hiring process. This wink-and-nod cycle contributing to hiring illegal aliens must stop, while still providing a method for U.S. employers to gain access to the workers they need.

"Finally, we must respect the rule of law when it comes to immigration reform. Along with any process

[MORE]

Chambliss statement page 2

for the employment of foreign workers, there needs to be enforcement against those who remain here illegally outside the legal system. We have a serious lack of interior immigration agents, and we need to rethink our methods for how to conduct more vigorous enforcement actions against illegal aliens.

"We need a total overhaul of our immigration policies. This overhaul should meet our national security needs and our economic interests and be a manageable policy for how many people we admit into the U.S. The logical place to start is with reform of the H2A agricultural worker program. Based on the testimony and discussion of today's hearing, I plan to work with my colleagues and introduce an H2A bill that can be a starting point for total immigration reform.

"Farmers in my home state of Georgia who use the H2A program tell me it is too burdensome and uncompetitive to use. Too often farmers are not able to get through the bureaucratic channels in time to harvest their crops. The arcane Adverse Effect Wage Rate and labor regulations can make it more cost effective to hire illegal workers rather than legal ones. And farmers who use the legal program are often the subject of frivolous lawsuits. These are some of the problems we must avoid as we reform and improve our immigration policies.

"The President has laid out his principles for guest worker legislation. Building on that framework as Congress begins the legislative process toward reform, I believe we must adhere to the following concepts:

- To control illegal immigration, we must first control our borders. We must commit to sufficient funding for our border security agencies, including Border Patrol, and our immigration enforcement agencies.
- We must treat those who are here illegally as exactly that. Under a guest worker program, they should be allowed work visas not green cards. They should not be given advantages over those who are attempting to come to the U.S. through the legal process, which we should encourage.
- Foreign workers in a guest worker program must be temporary workers.
- Guest worker participants must have a job, and we must ensure that American workers are not displaced.
- Guest worker legislation should make use of program aspects that do work well, including H2A and H1B visa programs.
- We must dedicate resources for interior enforcement and strengthen the penalties against aliens in the U.S. who are not guest workers and who continue in their illegal status.
- Employers must share the burden to facilitate a workable program and to stop the hiring of illegal aliens.
- No one in the U.S. illegally should have the privileges associated with those who are here legally.

"I understand that many of you in this room have been involved for a long time in figuring out workable immigration reforms. I appreciate your efforts, and I look forward to working with you."

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[For more information, contact Chambliss' press office at 202-224-3423.]

Statement of
SENATOR LARRY E. CRAIG

before the Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security on
"Evaluating a Temporary Guest Worker Proposal"
February 12, 2004

Mr. Chairman, thank you for holding this hearing. I realize the primary focus of the Subcommittee hearing today is intended to be on the broad temporary guest worker issues, and especially on the framework for reform proposed recently by the President. I appreciate your welcoming statements, as well, from Members who have introduced bills in this area.

For the decade before this President came into office, the federal government led the way as our nation remained in denial, ignoring both the rapidly growing number of undocumented persons in this country and the increasing dependence of critical sectors of our economy on undocumented workers. Some would say, with justification, that the nation actually spent the last ***four*** decades looking the other way.

A few of us saw this problem and began talking about it some years ago but, for almost all of us, a real wake-up call came on September 11, 2001. There has never been a more graphic or horrible demonstration of the need to manage our borders effectively — and of the failure to do so for many years before.

In the last 2 1/2 years, we have made progress. President Bush has demonstrated tireless leadership on and since September 11. The new Department of Homeland Security has been established to bring rationality to our border, immigration, and homeland security efforts. With the hard work of Secretary Ridge and the Administration, our men and women in uniform, our country, and the Congress, our borders are more secure and our homeland is safer.

However, a lot of work remains to be done, and you, Mr. Chairman and Members of the Subcommittee, have recognized that by holding this hearing.

We face multiple challenges.

With an estimated 8 to 12 million undocumented persons in the country, we need to identify them, treat them humanely and reasonably, and bring them out of the underground economy. We need to face facts and realize that whole sectors of our economy are dependent on the labor of these workers — the vast majority of whom want nothing more than to work under decent conditions at jobs that, quite frankly, American citizens often do not want.

We need to restore the confidence of the American people that their government can and will manage our borders effectively and protect the public. We need to ensure respect for the law, from all parties.

We also need to realize that putting more locks on the border works both ways. As we have begun succeeding with better border enforcement, many undocumented workers have been locked in our country. Many of these workers would have preferred to leave the country when the growing season was over or other work was done. Now, they are trapped here, because getting smuggled home has become as dangerous as coming here in the first place.

We need to consider the economic impact of future demographics for our country. Japan has suffered a prolonged period of recession in part because it has a closed society and, now, an aging population. Last year, in hearings before the Senate Committee on Aging, Alan Greenspan and others testified that, as America also looks forward to a "greying" future, immigration and guest workers will have an important role to play in keeping our own economy vital and in making sure there are enough workers to support a growing number of retirees.

These are not easy or popular issues and I commend the President for his bold leadership, in stepping forward, issuing another kind of wake-up call, to focus the bright light of public attention on these issues. The Chairmanship of this Subcommittee is not an easy or popular job, so I also commend you for taking it on, Mr. Chairman.

I agree with the President, and with my colleagues who also have come here today to talk about their bills, on many of the broad, key principles necessary for a lasting solution.

Increased enforcement is part of the solution — but only part. In the last decade, we have tripled the number of agents securing our borders and enforcing our immigration laws. Worker identification checks have intensified. Formal removals have increased sixfold. However, the population of undocumented individuals living here has more than doubled.

Consider, also, what the "enforcement only" answer really means. No, Americans will not tolerate a vast, intrusive government sweep through our homes and neighborhoods to find, flush out, investigate, prosecute, and forcibly relocate men, women, and children numbering six to nine times the population of Idaho. We fought a Revolutionary War over that kind of government intrusion. From the founding of our republic, Americans have always abhorred other nations sending storm troopers door to door in communities, looking for suspected infractions of domestic laws.

Those who say, "Just round 'em up, just enforce the law," are only proposing an excuse, not a solution, while the status quo just gets worse.

Robust, expanded, guest worker reforms are part of the solution — but only part. The old Bracero program of the 1950s has been criticized — justly — in many respects. No one is proposing a revival of that kind program. However, our nation's experience with that program has provided us with empirical evidence, cited recently by the National Foundation for American Policy, that a guest worker program actually helps reduce illegal immigration. That and other experiences also have shown us that a guest worker program can be part of a more functional immigration system and can extend economic opportunity to those of our neighbors most in need.

However, guest worker programs take substantial time to stand up, in terms of design, administration, infrastructure, coordination with employers and prospective workers, and working with consulates around the world. As we also have learned from experience, very different factors, often unique to different industries and occupations, have to be considered. There are a lot of details to be debated and worked out. For example, depending on the supply of willing, available, domestic workers in different occupations, some industries need different mechanisms to guarantee that domestic workers have the first opportunity at domestic jobs. Historically, Congress has applied different labor standards to guest workers in different industries. Labor markets may be local, regional, national, or international. Work opportunities may be seasonal or permanent, migrant or stationary. We all realize that Congress is not going to rush forward with a one-size-fits-all program.

Amnesty is not the solution. It has been tried and it has failed. Even if, as a Federal Reserve study suggests, amnesty may have some economic benefits, we also have to consider the effects that blanket amnesty has on respect for the law and expectations of future rewards for unlawful activity. I am, and have always been, opposed to blanket amnesty. I am pleased that the President has stated his opposition.

An effective federal partnership with state and local law enforcement is also part of the answer. In Canyon County, Idaho, it's been reported that 1,200 undocumented aliens were arrested last year — by local law enforcement. In many cases creating partnerships — not unfunded mandates, but true partnerships — with local law enforcement would be far better than simply further expanding federal agencies. This would be more cost-effective, more practical, and more likely to build community support. Our colleague, Senator Sessions, has introduced a bill on this subject that I've cosponsored. I hope and believe that approach will be considered in other hearings.

Finally, a key part of any solution will be the fair, humane treatment of those undocumented workers already here, already contributing to our economy and paying taxes. They are among the most vulnerable persons in our nation and, too often, are exploited by labor smugglers — "coyotes." If these workers have been, and will be, law-abiding in every other respect, if they are willing to make sacrifices to ***earn*** the right to stay, then we can and should establish a system that allows them to stay here and work ***legally***.

I stress, as the President has stressed, that he has proposed a ***framework*** for guest worker reform. I applaud the Administration's repeated assurance that it is not taking any position on any one bill and has no intention to preclude any bill. The President has emphasized he wants to work out the details with Congress and we are ready to work with him.

Mr. Chairman, I appreciate this opportunity to highlight the fact that one bill already introduced in Congress is ready to move. We have a vehicle ready to road-test key principles in the President's framework. I also believe this bill is consistent with the broad goals and principles of our other colleagues who have introduced bills and are testifying here today.

That bill is AgJOBS — the Agricultural Job Opportunity, Benefits, and Security Act, introduced as S. 1645 and HR 3142. The Ranking Member of this Subcommittee, Senator Kennedy, is the bill's other principal sponsor in the Senate. The principal difference from other bills is that AgJOBS deals with one industry — agriculture.

AgJOBS is a mature product.

AgJOBS represents more than seven years of work on these issues. It reflects four years of tough, bipartisan negotiations among Republicans and Democrats in the Senate and House, employer and employee representatives, agriculture and other sectors of the economy, immigration issue advocates, church groups, state government agencies, Latino groups, and others. Legislation involving major labor and immigration issues simply does not become law, unless it achieves this kind of bipartisan and broad-based consensus. A majority of the Senate, and a majority of the Judiciary Committee, are cosponsors.

AgJOBS demonstrates the level of detail necessary to the successful design of a guest worker and immigration reform package.

This bill gives us the opportunity to use reform in agriculture as the demonstration program that will help us work out the details, anticipate challenges, prevent problems, and fine-tune the mechanics of an economy-wide reform package down the road.

Moving forward with AgJOBS as the pilot program for economy-wide reforms is practical. It is going to be easier and faster to set up a program involving one industry and about 500,000 eligible workers than to wait and debate the design of a program for 8 to 12 million workers.

Agriculture also has a unique history of guest worker programs and migrant employment. We have the necessary data and experience to draw on. There is no doubt in the minds of most of us that there really are few American citizens today who want to want to work, on a seasonal and migrant basis, at the hard physical labor of agriculture. In contrast, in some other industries, there remains the controversy over the availability of willing and qualified domestic workers and concern about their displacement by guest workers.

Agriculture is the industry most impacted by dependence on undocumented workers — not by anyone's design, but by circumstance and necessity. The government's own data — based, incredibly, on ***self-disclosure*** by workers, themselves — indicates that more than half of the agricultural work force is undocumented. Responsible private estimates run as high 75 to 85 percent. Farmers are going out of business today because they cannot find legal workers at the times they are needed.

With AgJOBS, we could begin immediately to improve our homeland security — and especially ensure the safety and security of our food supply — by knowing who is planting and harvesting our crops, where they came from, and where they are working.

With AgJOBS, we do not need to wait to start putting an end to the inhumane risks and exploitation suffered by these most vulnerable of workers. Every year, more than 300 persons die in the desert, or in boxcars, or being smuggled in other hazardous transportation. That is not tolerable in a humane society.

AgJOBS takes the same long-term approach consistent with the President's framework and other bills — an improved guest worker program. It also addresses the need for a transition program in the immediate term, by creating allowing workers the ***earned adjustment*** to legal status. This is not amnesty. Conditioning the right to stay here on a worker's commitment to 3 to 6 more years of physically challenging agricultural work is not a reward — it is an opportunity for the worker to rehabilitate his or her status under the law and ***earn*** the right to stay.

I ask to insert into the record some background and explanatory materials that discuss the bill in greater detail.

Finally, I ask to insert into the record a letter of support that I have just received from more than 400 organizations — national, state, and local organizations — asking Congress to enact AgJOBS into law expeditiously.

This letter is somewhat historic in its own right. In support of AgJOBS, it brings together employers and workers — from the American Farm Bureau to the United Farm Workers. Because of the promise of AgJOBS as a necessary pilot program, this support goes far beyond agriculture — from the U.S. Chamber of Commerce to the AFL-CIO. Its cosigners include the National Association of State Departments of Agriculture, worker and legal-service advocates, large and small employers, Latino groups, religious groups, social service organizations, and others.

Thank you, Mr. Chairman and Members of the Subcommittee.

# # #

THE NEED FOR AGJOBS LEGISLATION — NOW

February 2004

Americans need and expect a stable, predictable, legal work force in American agriculture. Willing American workers deserve a system that puts them first in line for available jobs with fair, market wages. All workers deserve decent treatment and protection of basic rights under the law. Consumers deserve a safe, stable, domestic food supply. American citizens and taxpayers deserve secure borders, a safe homeland, and a government that works. Yet Americans are being threatened on all these fronts, because of a growing shortage of legal workers in agriculture.

To address these challenges, a bipartisan group of Members of Congress, including Senators Larry Craig (ID) and Ted Kenndy (MA) and Representatives Chris Cannon (UT) and Howard Berman (CA), has introduced the ***Agricultural Job Opportunity, Benefits, and Security (AgJOBS)*** Act of 2003 — S. 1645 / HR 3142. This bipartisan effort builds upon years of discussion and suggestions among growers, farm worker advocates, Latino and immigration issue advocates, Members of both parties in both Houses of Congress, and others.

THE PROBLEMS:

Of the USA's 1.6 million agricultural work force, more than half is made up of workers not legally authorized to work here — according to a conservative estimate by the Department of Labor, based, astoundingly, on self-disclosure in worker surveys. Reasonable private sector estimates run as high as 75 % .

With stepped up documentation enforcement by the Social Security Administration and the Bureau of Immigration and Customs Enforcement (the successor to the old INS), aliens here illegally are not leaving the country, but just being scattered. The work force is being constantly and increasingly disrupted. Ag employers want a legal work force and must have a stable work force to survive — but federal law actually punishes "too much diligence" in checking worker documentation. Some growers already have gone out of business, lacking workers to work their crops at critical times.

Workers here illegally are among the most vulnerable persons in our country, and know they must live in hiding, not attract attention at work, and move furtively. They cannot claim the most basic legal rights and protections. They are vulnerable to predation and exploitation. Many have paid "coyotes" — labor smugglers — thousands of dollars to be transported into and around this country, often under inhumane and perilous conditions. Reports continue to mount of horrible deaths suffered by workers smuggled in enclosed truck trailers.

Meanwhile, the only program currently in place to respond to such needs, the H-2A legal guest worker program, is profoundly broken. The H-2A status quo is slow, bureaucratic, and inflexible. The program is complicated and legalistic. DOL's compliance manual alone is 325 pages. The current H-2A process is so expensive and hard to use, it places only about 40,000 – 50,000 legal guest workers a year -- ***2% to 3%*** of the total ag work force. A General Accounting Office study found DOL missing statutory deadlines for processing employer applications to participate in H-2A more than 40% percent of the time.

THE SOLUTION — AGJOBS REFORMS:

AgJOBS legislation provides a two-step approach to a stable, legal, safe, ag work force: **(1)** Streamlining and expanding the H-2A legal, temporary, guest worker program, and making it more affordable and used more — the long-term solution, which will take time to implement; **(2)** Outside the H-2A program, a one-time adjustment to legal status for experienced farm workers, already working here, who currently lack legal documentation — the bridge to allow American agriculture to adjust to a changing economy.

H-2A Reforms: Currently, when enough domestic farm workers are not available for upcoming work, growers are required to go through a lengthy, complicated, expensive, and uncertain process of demonstrating that fact to the satisfaction of the federal government. They are then allowed to arrange for the hiring of legal, temporary, non-immigrant guest workers. These guest workers are registered with the U.S. government to work with specific employers and return to their home countries when the work is done. Needed reforms would:

- Replace the current quagmire for qualifying employers and prospective workers with a streamlined "attestation" process like the one now used for H-1B high-tech workers, speeding up certification of H-2A employers and the hiring of legal guest workers.

- Participating employers would continue to provide for the housing and transportation needs of H-2A workers. New adjustments to the often-arbitrary Adverse Effect Wage Rate would be suspended during a 3-year period pending extensive study of its impact and alternatives. Other current H-2A labor protections for both H-2A and domestic workers would be continued. H-2A workers would have new rights to seek redress through mediation and federal court enforcement of specific rights. Growers would be protected from frivolous claims, exorbitant damages, and duplicative contract claims in state courts.

Adjustment of workers to legal status:

Outside the H-2A program, reforms would create a new program in which farm workers already here, but working without legal authorization, could earn adjustment to legal status. To qualify, an incumbent worker must have worked in the United States in agriculture, before September 1, 2003, for at least 100 days in a 12-month period over the last 18 months prior to the bill's introduction. (The average migrant farm worker works 120 days a year.)

This would not spur new immigration, because adjustment would be limited to incumbent farm workers with a significant work history in U.S. agriculture. The adjusting worker would have non-immigrant, but legal, status. Adjustment would not be complete until a worker completes a substantial work requirement in agriculture (at least 360 days over the next 3-6 years, including 240 days in the first 3 years).

Up to 500,000 workers would be eligible to apply. Their spouses and minor children would be given limited rights to stay in the U.S., protected from deportation. The worker would have to verify compliance with the law and continue to report his or her work history to the government. Upon completion of adjustment, the worker would be eligible for legal permanent resident status. Considering the time elapsed from when a worker first applies to enter the adjustment process, this gives adjusting workers no advantage over regular immigrants beginning the legal immigration process at the same time.

AgJOBS ***would not create an amnesty*** program. Neither would it require anything onerous of workers. Eligible workers who are already are in the United States could continue to work in agriculture, but now could do so legally, and prospectively ***earn adjustment*** to legal status. Adjusting workers may also work in another industry, as long as the agriculture work requirement is satisfied.

AGJOBS IS A WIN-WIN-WIN APPROACH.

Workers would be better off than under the status quo. Legal guest workers in the H-2A program need the assurance that government red tape won't eliminate their jobs. For workers not now in the H-2A program, every farmworker who gains legal status finally will be able to assert legal protection — which leads to higher wages, better working conditions, and safer travel. ***Growers and workers*** would get a stable, legal work force. ***Consumers*** would get better assurance of a safe, stable, American-grown, food supply — not an increased dependence on imported food. ***Law-abiding Americans*** want to make sure the legal right to stay in our country is ***earned,*** and that illegal behavior is not rewarded now or encouraged in the future. ***Border and homeland security*** would be improved by bringing workers out of the underground economy and registering them with the AgJOBS adjustment program. Overall, AgJOBS takes a balanced approach, and would work to benefit ***everyone***.

For more information, please contact:

Member	Staff	Phone	e-Mail
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Rep. Chris Cannon	Todd Thorpe	202-225-7751	todd.thorpe@mail.house.gov
Rep. Howard Berman	Bari Schwartz	202-225-4695	bari.schwartz@mail.house.gov

AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT OF 2003
S. 1645 / HR 3142

Summary of Significant Provisions
February 2004

Title I– Adjustment of Agricultural Workers to Temporary and Permanent Resident Status

Title I establishes a program whereby agricultural workers in the United States who lack authorized immigration status but who can demonstrate that they have worked 100 or more days in a 12 consecutive month period during the 18-month period ending on August 31, 2003 can apply for adjustment of status. Eligible applicants would be granted temporary resident status. If the farmworker performs at least 360 work days of agricultural employment during the six year period ending on August 31, 2009, including at least 240 work days during the first 3 years following adjustment, and at least 75 days of agricultural work during each of three 12-month periods in the six years following adjustment to temporary resident status, the farmworker may apply for permanent resident status.

During the period of temporary resident status the farmworker is employment authorized, and can travel abroad and reenter the United States. Workers adjusting to temporary resident status may work in non-agricultural occupations, as long as their agricultural work requirements are met. While in temporary resident status, workers may select their employers and may switch employers. During the period of temporary resident status, the farmworker's spouse and minor children who are residing in the United States may remain in the U.S., but are not employment authorized. The spouse and minor children may adjust to permanent resident status once the farmworker adjusts to permanent resident status. Unauthorized workers who do not apply or are not qualified for adjustment to temporary resident status are subject to removal. Temporary residents under this program who do not fulfill the agricultural work requirement or are inadmissible under immigration law or commit a felony or 3 or more misdemeanors as temporary residents are denied adjustment to permanent resident status and are subject to removal. The adjustment program is funded through application fees.

Titles II and III—Reform of the H-2A Temporary and Seasonal Agricultural Worker Program

This section modifies the existing H-2A temporary and seasonal foreign agricultural worker program. Employers desiring to employ H-2A foreign workers in seasonal jobs (10 months or less) will file an application and a job offer with the Secretary of Labor. If the application and job offer meets the requirements of the program and there are no obvious deficiencies the Secretary must approve the application. Employers must seek to employ qualified U.S. workers prior to the arrival of H-2A foreign workers by filing a job order with a local job service office at least 28 days prior to date of need and also authorizing the posting of the job on an electronic job registry.

All workers in job opportunities covered by an H-2A application must be provided with workers' compensation insurance, and no job may be filled by an H-2A worker that is vacant because the previous occupant is on strike or involved in a labor dispute. If the job is covered by

a collective bargaining agreement, the employer must also notify the bargaining agent of the filing of the application. If the job opportunity is not covered by a collective bargaining agreement, the employer is required to provide additional benefits, as follows. The employer must provide housing at no cost, or a monetary housing allowance where the Governor of a State has determined that there is sufficient migrant housing available, to workers whose place of residence is beyond normal commuting distance. The employer must also reimburse inbound and return transportation costs to workers who meet employment requirements and who travel more than 100 miles to come to work for the employer. The employer must also guarantee employment for at least three quarters of the period of employment, and assure at least the highest of the applicable statutory minimum wage, the prevailing wage in the occupation and area of intended employment, or a reformed Adverse Effect Wage Rate (AEWR). If the AEWR applies, it will not be higher than that existing on 1/01/03 and if Congress fails to enact a new wage rate within 3 years, the AEWR will be indexed to the change in the consumer price index, capped at 4% per year beginning December 1, 2006. Employers must meet specific motor vehicle safety standards.

H-2A foreign workers are admitted for the duration of the initial job, not to exceed 10 months, and may extend their stay if recruited for additional seasonal jobs, to a maximum continuous stay of 3 years, after which the H-2A foreign worker must depart the United States. H-2A foreign workers are authorized to be employed only in the job opportunity and by the employer for which they were admitted. Workers who abandon their employment or are terminated for cause must be reported by the employer, and are subject to removal. H-2A foreign workers are provided with a counterfeit resistant identity and employment authorization document.

The Secretary of Labor is required to provide a process for filing, investigating and disposing of complaints, and may order back wages and civil money penalties for program violators. The Secretary of Homeland Security may order debarment of violators for up to 2 years. H2A workers are provided with a limited federal private right of action to enforce the requirements of housing, transportation, wages, the employment guarantee, motor vehicle safety, retaliation and any other written promises in the employer's job offer. Either party may request mediation after the filing of the complaint. State contract claims seeking to enforce terms of the H-2A program are preempted by the limited federal right of action. No other state law rights are preempted or restricted.

The administration of the H-2A program is funded through a user fee paid by agricultural employers.

For more information, please contact:

Member	Staff	Phone	e-Mail
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Rep. Chris Cannon	Todd Thorpe	202-225-7751	todd.thorpe@mail.house.gov
Rep. Howard Berman	Bari Schwartz	202-225-4695	bari.schwartz@mail.house.gov

COMPARISON OF THE CURRENT H-2A AGRICULTURAL GUEST WORKER PROGRAM AND S. 1645 / HR 3142, THE AGRICULTURAL JOB OPPORTUNITY, BENEFTIS, AND SECURITY ACT OF 2003
February 2004

One-Time Adjustment to Legal Status (non-H-2A)

(Legislation would create a new program; therefore, this table contains no "Current Law" column)

Issue	Bipartisan AgJOBS Reform Plan
Agricultural Work Required to Adjust to Legal Status	Workers must prove that they worked in agricultural employment in the U.S. the lesser of 575 hours or 100 work days, during any 12 consecutive months in the 18 month period ending on August 31, 2003.
Application Process to Qualify to Adjust to Legal Status	Application must be made beginning 7 months after enactment (after regulations are issued) and not later than 18 months thereafter.
Proof of Qualifying Employment	Workers applying for adjustment have the burden of proving by a preponderance of evidence the qualifying days or hours of agricultural employment through employment records from employers, unions, government agencies and other reliable documentation.
Status of Adjusted Workers	Adjusted workers obtain temporary resident status. They may remain in the U.S. year-round. To qualify for temporary and permanent resident status, applicants are subject to the same admissibility standards as any other alien, except that they are granted a one-time waiver of ineligibility for unlawful presence.
Right to Work and Travel of Adjusted Workers	Adjusted workers must satisfy an annual agricultural work requirement during the qualifying adjustment of status period. They are allowed to work in industries outside of agriculture during periods in which they are not working in agriculture. Workers have the right to travel within the U.S. and between the U.S. and their resident country and will be given a counterfeit-resistant document of authorization to enter or reenter the U.S.
Agricultural Work Requirements to Adjust to Permanent Resident Status	The adjusting worker must perform at least 2060 hours or 360 work days, whichever is less, of agricultural employment in the U.S. during the 6 year period ending on August 31, 2009. Adjusting workers must work at least 75 work days of agricultural employment in each of three 12 month periods ending on August 31, 2006 and at least 240 work days of agricultural employment during the first 3 of the 6 years following adjustment to temporary resident status. Upon completion of the work requirement, workers obtain permanent resident status.

Issue	Bipartisan AgJOBS Reform Plan
Status of Spouses and Dependents	Spouses and minor children of workers who adjust status may not be removed nor given employment authorization while the qualifying worker is in temporary resident status. Once a worker obtains permanent resident status through satisfaction of the agricultural work requirement, he/she may seek to adjust the status of a spouse and minor child
Proof of Agricultural Work During Qualifying Period After Enactment	Adjusting workers claiming that they are deprived of qualifying days of work in agriculture through termination without just cause are entitled to arbitration of their termination. A favorable arbitration decision for a worker can result only in a credit of work days or hours but cannot be used for any other purpose in any other litigation. Workers also can get credit for days lost through an inability to work due to injury or disease arising out of agricultural employment during the qualifying period, as long as proven through medical records. Secretary of the Department of Homeland Security (DHS) has limited authority to relax hours of agricultural work requirement during the first 3 years due to a natural disaster.
Confidentiality of Information	Information provided by workers and employers to the Secretary of DHS shall remain confidential and can only be used to determine whether a worker qualifies to adjust to legal status.

H-2A GUEST WORKER REFORMS

Issue	Current Law	Bipartisan AgJOBS Reform Plan
DOMESTIC WORKER RECRUITMENT AND SEC. OF LABOR CERTIFICATION OF EMPLOYERS TO EMPLOY H-2A *FOREIGN GUEST* WORKERS		
Limitation on Covered Job Opportufnities	Job opportunities must be "agricultural" and must be "temporary" or "seasonal". Maximum duration of temporary jobs 364 days; maximum practical duration of seasonal jobs 10 months. Agriculture defined as in FLSA and Internal Revenue Code.	Job opportunities must be "agricultural" and must be "temporary" or "seasonal". Maximum duration of jobs 10 months. Agriculture defined as in Fair Labor Standards Act and Internal Revenue Code.
Mechanics of Process	Labor Certification: Application for temporary guest worker labor certification must be filed at least 45 days before date of need with local office and DOL regional office. DOL accepts or requests modification in 7 days. Certification 30 days before date of need. DOL has discretion to waive time frames in "emergency" situations. Requests for redetermination allowed.	Labor Condition Application: Process similar to H-1B high-tech program. Application for H-2A workers is filed with Secretary of Labor (SOL). Application provides assurances that employer will comply with program requirements most of which are set forth in the following Labor Standards section. Unless the application is incomplete or contains obvious inaccuracies, SOL must approve it.
Domestic Recruitment	Local and interstate orders, filed with DOL 45 days before date of need for workers. Newspaper, radio advertising and other requirements imposed by Secretary of Labor (SOL). Emergency provisions allow SOL to waive recruitment requirements where there is insufficient time before date of need and need could not have reasonably been foreseen.	Employer must contact former workers and advertise jobs in local paper likely to be patronized by farmworkers no later than 14 days before date of need for workers. Employer must file job order with local job service office 28 days prior to date of need and authorize posting of job on an electronic job registry. Interstate recruitment of workers is not required. Emergency provisions allow SOL to waive recruitment requirements where there is insufficient time before date of need and need could not have reasonably been foreseen.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
LABOR STANDARDS		
In General	Open-ended, terms and conditions of employment may not adversely affect U.S. workers.	Limited to standards in statute unless higher wages, benefits or working conditions are offered or provided to H-2A workers.
Wages	Highest of Adverse Effect Wage Rate (AEWR) administratively established by DOL, prevailing wage, or federal or state minimum wage. AEWR methodology set by SOL by regulation.	Similar to existing H-2A, except AEWR may not be higher than the applicable AEWR on 1-1-03. If Congress fails to enact a new wage rate within 3 years of enactment, thereafter the existing AEWRs will be annually indexed by the % change in the CPI, with a maximum adjustment of 4% annually. During 3 year period after enactment, GAO and Congressional commission study wage rate and make recommendations to Congress.
Housing	Employer must offer housing to all non-local workers. H-2A application limited to capacity of available housing. May use public accommodation housing. Local workers not requiring housing not counted against H-2A request up to number of local workers usually employed. No charge for housing permitted.	Employer must provide housing or a housing allowance. From the date of enactment, the housing allowance may be offered only if the Governor of State certifies that housing is available in the area of intended employment. Housing allowance is based on HUD Section 8 statewide average fair market rental rates for existing housing. In non-metropolitan counties the allowance is the statewide average fair market rental for existing housing for non-metropolitan counties and for metropolitan counties it is the statewide average for metropolitan counties.
Transportation	Reimburse in-bound if worker completes 50% of period of employment; pay outbound if worker completes 100% of period of employment. Transportation must be advanced if it is prevailing practice.	Same as existing H-2A program except no reimbursement if worker travels less than 100 miles or does not reside in employer provided housing or housing obtained through an allowance.
Workers' Compensation	State coverage or equivalent.	State coverage or equivalent.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Employment Guarantee	Employer guarantees employment for 3/4 of work hours of anticipated period of employment. Guarantee terminated if an "Act of God" terminates need for workers. Guarantee waived for workers terminated for lawful job related reasons or who abandon employment.	Same as existing H-2A program except statute defines "Act of God" circumstances that cause termination of guarantee.
Collective Bargaining Agreement	No Provision.	If the job opportunity is covered by a collective bargaining agreement, the employer does not have to provide the wages and other benefits required of employers without such an agreement.
Preference for U.S. Workers	Must hire qualified U.S. worker who applies until 50% of period of employment has expired. Prohibits entities from withholding U.S. workers until H-2A workers arrive.	Must hire qualified U.S. worker who applies until 50% of period of employment has expired. Prohibits entities from withholding U.S. workers until H-2A workers arrive and requires SOL to place U.S. workers with other employers for which DOL has job orders for similar job opportunities in the area of intended employment prior to displacing H-2A workers. If a U.S. worker displaces an H-2A worker and then quits the job, the employer may obtain a replacement H-2A worker in an expedited manner.
Lawful Job-Related Requirements	Permitted at the discretion of SOL. Complicated scheme for regulating productivity standards.	Permitted. Employers may use legitimate selection criteria that are normal or customary to the job.
Application of MSPA to H-2A Workers	H-2A workers are exempt from the coverage of MSPA.	H-2A workers are exempt from the coverage of MSPA. H-2A workers are provided a federal private right of action to enforce the housing, transportation, wage, employment guarantee, motor vehicle safety and retaliation provisions and any other written promises in the employer's job offer. Either party may request mediation after the filing of the complaint. H-2A worker must elect between DOL enforcement of rights or right to sue. State contract claims based on H-2A program requirements are preempted by federal right of action.

Issue	Current Law	Bipartisan Ag JOBS Reform Plan
Enforcement of Labor Standards	SOL has the authority to investigate compliance with H-2A requirements and assurances. SOL has authority to seek civil money penalties and backpay through an administrative hearing process for alleged violations of program requirements and has the authority to debar employers from the H-2A program for program violations.	Aggrieved persons or third parties can bring a complaint to SOL within 12 months of employer's alleged failure to comply with assurances, for misrepresentations in the labor condition application, and for displacement of U.S. workers. If, after investigation, SOL finds reasonable cause, the parties are entitled to a hearing and the SOL must make a finding not less than 60 days after the hearing. If a violation is found after a hearing, SOL may require backpay for wages and benefits not paid, as well as civil money penalties (CMPs) of up to $1,000 for non-willful violations, $5,000 for willful violations and $15,000 for displacement of U.S. workers. CMPs are capped for all types of violations at no more than $90,000.
Initial Waiver of Ineligibility for Unlawful Presence	Banned from admission up to 10 years for previous unlawful presence. Must show non-immigrant intent and meet other criteria for admissibility.	One time waiver of bar on admission for unlawful presence. Must show non-immigrant intent and meet other criteria for admissibility.
Strike and Lockout	Cannot hire an H-2A worker if the specific job opportunity for which the employer is requesting an H-2A worker is vacant because the former occupant is on strike or being out in the course of a labor dispute.	Same as current law.
GUEST WORKER ADMISSION AND ELIGIBILITY PROVISIONS		
Procedures for Admission of H-2A guest workers	Governed by current INS statute and regulations. Employer petitions INS and, upon approval, workers apply for visas and admission.	Employer files petition with Secretary of the Dept. of Homeland Security (DHS), accompanied by valid labor certification covering petitioner. Secretary of DHS is required to adjudicate petitions on an expedited basis within 7 working days and send copies of approved petition to petitioning employer and consular office where worker will apply.
Issuance of Identity and Employment Eligibility Document	Subject to current INS regulations and law. Receives same documents as all other admissions.	Requires counterfeit–proof document.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Extension of Stay of H-2A worker	Worker may remain in U.S. for 14 days after period of employment ends to seek additional employment. Cannot work for employer who files an extension until extension approved. Continuous stay for period of labor certification up to 3 years with successive certified employers.	Worker may remain in U.S. for period of labor certification plus 14 additional days after period of employment ends to seek employment. Can work immediately for employer who has filed an extension of stay but must within 60 days obtain valid work authorization documents. Continuous stay up to 3 years with successive approved employers, but no more than ten months in each job opportunity.
MISCELLANEOUS PROVISIONS		
Filing by Associations of Agricultural Employment	Permitted; association may be agent, joint employer or sole employer. Association must be joint employer for workers to transfer among members.	Similar to current law. Associations may file applications as actual employers or on behalf of members who have written agreements to comply with program requirements.
Public Notice and Access to Information	No provision.	Employers covered by a collective bargaining agreement must at the time of filing of the application give notice to the bargaining representative of the employees in the occupational classification at the place of employment for which H-2A workers are sought. Employers must keep copy of application at principal place of business for public inspection. SOL must keep a public list by employer of the applications filed under the H-2A program, including the wage rate, number of workers sought, period of intended employment and date of need. The list is available for examination at DOL in Washington, D.C.
Continuation of Obligation to Meet H-2A Standards Upon Withdraw from Program	May withdraw. Policy on applicability of program requirements not clear, but generally believed that H-2A obligations continue if any workers are recruited under H-2A terms.	May withdraw if no H-2A guest workers are employed. Any employer obligations incurred under other laws would continue.
Payment of Users' Fee	Employers pay fees set by SOL and INS.	Employers pay user's filing fee for filing labor condition application and for admission of H-2A guest workers. Fees established by federal standards.
Effective Date	Not applicable.	One year after enactment.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Regulations	Not applicable.	Secretaries of Labor and Agriculture and DHS consult regarding regulations, which must be issued 1 year after enactment.

For more information, please contact:

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Sen. Ted Kennedy	Esther Olavarria	202-224-7878	esther_olavarria@jucidiary.senate.gov
Rep. Chris Cannon	Todd Thorpe	202-225-7751	todd.thorpe@mail.house.gov
Rep. Howard Berman	Bari Schwartz	202-225-4695	bari.schwartz@mail.house.gov

February 12, 2004

Dear Member of Congress:

The undersigned organizations representing a broad cross-section of America join together to support enactment of S.1645 and H.R.3142, the Agricultural Job, Opportunity, Benefits and Security Act (AgJOBS). This landmark bipartisan legislation would achieve historic reforms to our nation's labor and immigration laws as they pertain to agriculture. The legislation reflects years of negotiations on complex and contentious issues among employer and worker representatives, and leaders in Congress.

A growing number of our leaders in Congress, as well as the President, recognize that our nation's immigration policy is flawed and that, from virtually every perspective, the status quo is untenable. Nowhere is the status quo more untenable than in agriculture. America needs reforms that are compassionate, realistic and economically sensible – reforms that also enhance the rule of law and contribute to national security. AgJOBS represents the coming together of historic adversaries in a rare opportunity to achieve reforms supportive of these goals, as well as our nation's agricultural productivity and food security.

AgJOBS represents a balanced solution for American agriculture, a critical element of a comprehensive solution, and one that can be enacted now with broad bipartisan support. For these reasons, we join together to encourage the Congress to enact S.1645 and H.R. 3142, the Agricultural Job, Opportunity, Benefits, and Security Act of 2003, before the 2004 Congressional April Recess.

Sincerely,

AGRICULTURE COALITION FOR IMMIGRATION REFORM
AMERICAN FARM BUREAU FEDERATION
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
AFL - CIO
U.S. CHAMBER OF COMMERCE
U.S. HISPANIC CHAMBER OF COMMERCE
NATIONAL COUNCIL OF LA RAZA (NCLR)
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (MALDEF)
LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)
WILLIAM C.VELASQUEZ INSTITUTE
UNITED FARM WORKERS (UFW)
NATIONAL CATTLEMEN'S BEEF ASSOCIATION
NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
CATHOLIC CHARITIES USA
THE EPISCOPAL CHURCH, USA
FARMWORKER JUSTICE FUND (FJF)
AMERICAN NURSERY & LANDSCAPE ASSOCIATION
ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAMS (AFOP)

BIRDS EYE FOODS
DEERE & COMPANY
TYSON FOODS INC.
UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES (UNITE)
UNITED EGG PRODUCERS
NATIONAL CHRISTMAS TREE ASSOCIATION
UNITED FOOD AND COMMERCIAL WORKERS UNION (UFCW)
UNITED FRESH FRUIT & VEGETABLE ASSOCIATION
U.S. APPLE ASSOCIATION
U.S. CUSTOM HARVESTERS, INC.
WESTERN GROWERS ASSOCIATION
WESTERN RANGE ASSOCIATION
WESTERN UNITED DAIRYMEN
ESSENTIAL WORKER IMMIGRATION COALITION
SERVICES EMPLOYEES INTERNATIONAL UNION (SEIU)
A. DUDA & SONS
EVANGELICAL LUTHERAN CHURCH IN AMERICA
AMERICAN HORSE COUNCIL
GENERAL BOARD OF CHURCH AND SOCIETY, THE UNITED METHODIST CHURCH
AGRICULTURAL AFFILIATES
AGRI-PLACEMENTS INTERNATIONAL
AL FRENCH, FORMER USDA DIRECTOR OF AG LABOR RELATIONS
NATIONAL IMMIGRATION FORUM
NATIONAL POTATO COUNCIL
NEW ENGLAND APPLE COUNCIL
COBANK
FIRST PIONEER FARM CREDIT
FARM LABOR ORGANIZING COMMITTEE, AFL-CIO (FLOC)
NATIONAL ASSOCIATION OF ELECTED AND APPOINTED LATINO OFFICIALS (NALEO)
AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)
NATIONAL CHICKEN COUNCIL
NATIONAL COUNCIL OF CHURCHES
NATIONAL MILK PRODUCERS FEDERATION
SOUTH EAST DAIRY FARMERS ASSOCIATION
NORTH EAST DAIRY PRODUCERS ASSOCIATION
NORTHWEST HORTICULTURAL COUNCIL
WINEAMERICA, THE NATIONAL ASSOCIATION OF AMERICAN WINERIES
WINEGRAPE GROWERS OF AMERICA
AMERICAN JEWISH COMMITTEE (AJA)
AMERICAN MUSHROOM INSTITUTE
CAMPAIGN FOR LABOR RIGHTS
COOPERATIVE PRODUCERS, INC.
COOPERATIVE THREE, INC.
COUNCIL OF NORTHEAST FARMER COOPERATIVES
DAIRYLEA COOPERATIVE
AMERICAN FROZEN FOOD INSTITUTE

NATIONAL MIGRANT AND SEASONAL HEAD START ASSOCIATION
GULF CITRUS GROWERS ASSOCIATION
GULF HARVESTING, INC.
LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT (LCLAA)
LEADERSHIP CONFERENCE ON CIVIL RIGHTS (LCCR)
MOARK LLC
TURFGRASS PRODUCERS INTERNATIONAL
SOCIETY OF AMERICAN FLORISTS
MAFO
MONROVIA GROWERS (CA, OR, GA, NC)
NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM (NAPALC)
NATIONAL EMPLOYMENT LAW PROJECT
ARAB AMERICAN INSTITUTE (AAI)
NATIONAL FARM WORKER MINISTRY
NATIONAL KOREAN AMERICAN SERVICE & EDUCATION CONSORTIUM (NAKASEC)
NORTHEAST FARM CREDIT REGIONAL COUNCIL
OFA - AN ASSOCIATION OF FLORICULTURE PROFESSIONALS
PAN AMERICAN RECRUITING
NORTHWOODS AGRI WOMEN
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IVAN KOHAR PARRA, EXECUTIVE DIRECTOR, LATINO COMMUNITY DEVELOPMENT CENTER

Statement by U.S. Senator Chuck Hagel
S.2010, the Immigration Reform Act of 2004
Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship

On behalf of Senator Daschle and myself I thank you Chairman Chambliss and Senator Kennedy for allowing me an opportunity to address the critical issue of immigration reform. Last month, Senator Daschle and I introduced S.2010, the Immigration Reform Act of 2004. Our legislation is a bi-partisan, comprehensive proposal that addresses the complicated and difficult issues related to U.S. immigration law.

Our bill will:

- *Strengthen National Security* by identifying undocumented immigrants living in the U.S., tracking foreign workers entering our borders, and increasing funds for border security;
- *Fix the Current System* for immigrants who follow the law by reducing visa processing backlogs, reunifying families, and remedying current inequities under the law; and
- *Improve Economic Stability* by establishing an enforceable program to bring needed foreign workers into the U.S. for jobs that would otherwise go unfilled.

National Security:
To track and identify immigrants living within and entering U.S. borders for work, our bill requires immigrants to undergo criminal and national security background checks prior to authorization. Participants in the bill's worker program would be required to maintain counterfeit-resistant authorization cards issued by the Department of Homeland Security. Individuals who continue to break immigration laws would be barred from these programs. Fees associated with our bill would be designated for border security.

Fixing the Current System:
Our legislation reduces the existing backlog of applications for family-sponsored visas to ensure that immigrants will be allowed to re-unite with their U.S. citizen and legal resident family members. The bill provides designated funding to implement these changes.

Economic Stability:
To provide foreign workers for jobs that would otherwise go unfilled, our bill admits a limited number of workers through a Willing Worker Program.

Employers seeking to hire a foreign worker must first demonstrate that no qualified U.S. worker exists and that they will provide the same wage levels and working conditions as provided for U.S. workers. Workers will be admitted for a limited period of time and will be allowed to change employers. Visa renewals would be available on a conditional basis.

Qualified workers and their families would be provided an opportunity to adjust their immigration status.

Opportunity to Become a Stakeholder:
Finally, our legislation provides an opportunity for undocumented workers and families currently living in the U.S. to become invested stakeholders in the country if they can demonstrate that they have met all of the following requirements:

- Passed national security and criminal background checks;
- Resided in the U.S. for at least 5 years preceding the date of introduction;
- Worked a minimum of 4 years in the U.S., (one of which must occur post-enactment);
- Paid all federal taxes;
- Demonstrated knowledge of English language and American civics requirements; and
- Paid a $1,000 fine, in addition to required application fees.

Individuals who qualify for this program will submit an application to the Department of Homeland Security (DHS). Upon approval, DHS may adjust the immigration status of qualified applicants. Senator Daschle and I look forward to working with your Committee and the Bush Administration on this important issue.

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Statement of
The Honorable Orrin Hatch.
United States Senator
Utah

February 12, 2004

PRINTABLE VERSION

Statement of Senator Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Subcommittee on Immigration, Border Security and Citizenship

Hearing on

"Evaluating A Temporary Guest Worker Proposal"

I want to thank Chairman Chambliss of the Immigration, Border Security and Citizenship Subcommittee for holding this important hearing. How we handle the issue of migrant workers and illegal immigration is a very difficult and complex question. Advocates on all sides of this issue are equally passionate about their respective points of view, and legitimate concerns have been raised. It is my hope that during the course of this hearing and subsequent hearings, we can obtain information that will help guide the committee's action on this topic.

Undoubtedly, the level of interest, and concern, over the migrant workers' issue has risen dramatically since President Bush announced his immigration agenda on January 7th of this year. As I understand it, President Bush is asking Congress to develop and pass an immigration package that incorporates the following principles: First, Congress would create a temporary workers' visa that allows migrant workers to fill positions but only when no qualified American is available. Second, although the plan may provide the workers relief from the consequences of their previous illegal presence in the United States, it will not give illegal aliens an advantage over the law abiding immigrants who have waited for their visas in their home countries. Third, in order for the program to function as intended, there must be sufficient enforcement mechanism and resources so that any law we pass can be implemented and any employer who still chooses to hire illegal workers will be severely punished. Finally, although the program only offers a temporary work visa, the President did say that we

should look at possibly opening up more opportunities for permanent residence in the United States for qualified applicants.

We should all commend the President for his courage in dealing with this important, but highly sensitive issue. It would have been easy for him to sidestep this topic or completely ignore it this year, but he recognizes that we cannot ignore the presence of eight million or more persons who are living within our borders, nor can we afford to disregard the positive or negative impact these undocumented aliens have on our society.

Notwithstanding my support for the President's new initiative, the President does not legislate immigration laws, Congress does. It is certainly possible for a carefully and responsibly crafted bill to create a win-win situation for both the foreign workers and the American economy. However, we first need to answer several questions before developing or passing a guest worker bill. These questions include: What enforcement mechanisms are needed to make sure that employers will not continue to use illegal workers? How do we strengthen our border protection and streamline our deportation process so that we do not see a rise in illegal immigration? How will we determine which sectors have a legitimate need for foreign workers so that Americans who want to and are qualified to do the same work do not become displaced? Finally, although I am very encouraged by the effort that Director Aguirre and Ombudsman Prakash Khatri have made to reduce the backlog that US Citizenship and Immigration Services inherited from its predecessor, the INS, I am concerned about how the agency will handle a sudden and dramatic increase in the volume of cases it will have to handle.

The President's proposal has received criticism from those on both sides of the issue. Those who believe that we need to get tough on illegal immigration view his proposal as condoning illegal behavior. Conversely, the President's political opponents seized this opportunity to criticize him for not extending enough benefits. If we are to develop a guest worker bill, the bill must reflect our nation's ability to dispense justice and mercy at the same time. I believe that we not only can, but must, balance justice and mercy in our immigration policy, but mercy and compassion be kept within the bounds of sound policy and national security.

As a matter of principle, our immigration policy should be based upon the premise that we welcome those who will contribute positively to our country, and we reject those whose presence will cause us detriment. Those who abused our hospitality by committing crimes, those who do not contribute positively to our society, and those who add to the burden of hardworking American

taxpayers, especially if they are without the right to be here in the first place, absolutely must leave. I share the frustration of many with our past inability to enforce our immigration laws. In addition to inadequacies in patrolling the border and expelling illegal aliens, we also have loopholes and inefficiencies in our deportation process so that even those who are caught cannot be expeditiously removed. I intend to have the Judiciary Committee review these issues and take action that will restore integrity and efficiency to our immigration system.

The President said that he is against blanket amnesty. I, too, oppose it. At the same time, we must not let our zeal in expelling illegal aliens get in the way of our common sense and our best national interests. In most circumstances, allowing essential foreign workers to remain on a temporary visa may be sufficient. However, we must not preclude the possibility of ever extending greater compassion to persons in extraordinary circumstances and who possess the qualities we desire in all Americans.

I am confident that we, in whom the American people have placed their trust to enact good laws, are capable of reaching an agreement on what makes the best sense and what best serves our national interest. I look forward to working with my colleagues on this Committee, the Administration, and representatives from the business and labor sectors in fashioning the most sensible and practical immigration legislation.

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PRINTER FRIENDLY VERSION

Testimony of Asa Hutchinson
Under Secretary for Border and Transportation Security
Department of Homeland Security
Before the Subcommittee on Immigration, Border Security, and Citizenship
Committee on the Judiciary
U.S. Senate
February 12, 2004

On January 7, the President announced his proposal for a new temporary worker program. In his announcement, the President set out several basic principles for the program. The three principles related to immigration enforcement are:

1. Protecting the Homeland by Controlling our Borders
2. Providing Incentives for the Return of Aliens to their Home Country
3. Workplace Enforcement of our Immigration Laws

Let me address these from an enforcement perspective:

I. PROTECTING THE HOMELAND BY CONTROLLING OUR BORDERS

A sensible immigration policy begins with security at our nation's borders. The President's proposed Temporary Worker Program is a bold step, aimed at reforming our immigration laws, matching willing workers with willing employers, and securing our Homeland. The President's proposal holds the promise of strengthening our control over U.S. borders and, in turn, improving homeland security. It is also a continuation of efforts to control our borders that intensified in the wake of the 9/11 attacks on our homeland.

Illegal entry across our borders makes more difficult the urgent task of securing the homeland. Our homeland will be more secure when we can better account for those who enter our country, instead of the current situation in which millions of people are unknown. With a temporary worker program in place, law enforcement will face fewer problems with unlawful workers and will be better able to focus on other threats to our nation from criminals and terrorists.

The President's proposed temporary worker program would provide participants in the program with lawful documentation. This would permit temporary workers to travel legally and freely across the border, resulting in more efficient management of our borders and more effective enforcement against those who are removable and those who pose a danger to our country. Giving aliens the ability and the incentive to travel through our ports of entry, rather than illegally between the ports, is a tremendous advantage to us. When US-VISIT is fully implemented, we will also know when aliens enter and exit the U.S. to verify that participants are complying with the terms of the worker program and making it easier for law enforcement to enforce the program.

Temporary workers will be able to establish their identities by obtaining legal documents under a worker program. It is critically important to create a system that prevents fraud as it was so prevalent under the 1986 Immigration Reform and Control Act (IRCA) worker and legalization programs. It is essential that a new temporary worker program provide uniform documentation for participants that is tamper-proof, as fraud-proof as possible. While this

program is a generous and compassionate one, we do not wish to reward those who game the program through fraud. Fraud prevention should be a component in creating this temporary worker program.

In order for a temporary worker program to work effectively, border enforcement will be critical. It is important to recognize that the Department of Homeland Security (DHS) has set the stage for an effective program. Since September 11, 2001, the Border Patrol has increased the number of agents from 9,788 to 10,835 as of December 1, 2003. Between the ports of entry on the northern border, the size of the Border Patrol has tripled to more than 1,000 agents. In addition, the Border Patrol is continuing installation of monitoring devices along the borders to detect illegal activity. Moreover, since March 1, 2003, all CBP officers have received antiterrorism training.

We believe the program should link efforts to control our border through agreements with countries whose nationals participate in, and benefit from, the program. We are currently negotiating interior repatriation agreements with Mexico that would help break the cycle of alien smuggling by returning aliens closer to their home in the interior of their country. Cooperation from the Mexican government will be especially critical, including possibly greater Mexican efforts to control the flow of Mexican migrants not qualified under the temporary worker program to the U.S. border and greater Mexican efforts to combat human smuggling organizations. U.S. Customs and Border Protection (CBP) will continue its Integrated Border Enforcement Team (IBET) operations on the Canadian border and continue its cooperative efforts with both the governments of Canada and Mexico.

A critical function of the Border Patrol is to save lives. A temporary worker program that permits participants to cross through our ports of entry freely, decreases the number of aliens who will desperately attempt to cross our border through desert land in dangerous conditions, thereby saving lives.

The Border Patrol is also adding sensors and other technology that assist in detecting illegal crossings along both our northern and southern borders, including Remote Video Surveillance (RVS) systems. These RVS systems are real-time remotely controlled force enhancement camera systems, which provide coverage along the northern and southern land borders of the United States, 24 hours per day, 7 days a week. The RVS system significantly enhances the Border Patrol's ability to detect, identify, and respond to border intrusions, and it has a deterrent value as well. There are currently 269 completed Remote Video Surveillance (RVS) sites in operation; 200 along the southwest border and 69 along the northern border. An additional 216 installations are in progress.

CBP pursues many initiatives in the ongoing effort to ensure a balance of two critical DHS objectives: (1) increasing security; and (2) facilitating legitimate trade and travel. These initiatives include the use of advance information, risk management, and technology, and partnering with other nations and with the private sector. Using these principles, CBP understands that security and facilitation are not mutually exclusive. Since 9/11, we have developed strategies and initiatives that make our borders more secure while simultaneously ensuring a more efficient flow of legitimate trade and travel. For example, CBP has continued to implement a variety of programs to both protect and facilitate trade and travel on our land

borders, including NEXUS and FAST, which speed the cross-border movement of trusted and vetted travelers and cargo.

In improving our nation's homeland security, CBP has created "One Face at the Border." This includes designating one Port Director at each port of entry and instituting a single, unified chain of command for all CBP Officers at all of our ports of entry and all our inspectors - whether they be legacy customs, immigration, or agriculture employees. CBP has also developed specialized immigration and customs antiterrorism response teams and consolidated its passenger analytical targeting units. These units coordinate with CBP's National Targeting Center, which serves as the interagency focal point for obtaining manifests and passenger information for flights of concern.

A Temporary Worker Program will not change CBP's mission. Unauthorized entry into the United States will still be illegal, and CBP will continue to improve our Homeland Security by gaining greater control over our borders and more effectively and efficiently inspecting and screening arriving passengers, vehicles, and conveyances. For this reason, as reflected in the President's 2005 Budget, it will be more important than ever to ensure that the Border Patrol has adequate funding for the personnel, infrastructure, equipment and technology to continue to adopt its tactics and deploy its resources to meet its priority anti-terrorism mission.

II. Providing Incentives for Return to Home Country

The President's proposal for the temporary worker program requires the return of temporary workers to their home country after their period of work has concluded. The legal status granted by this program would last three years, be renewable, and would have an end. Returning home is made more desirable because during the temporary work period, workers would be permitted to come and go across the U.S. borders so the workers can maintain roots in their home country.

In addition, the Temporary Worker Program would offer additional incentives for these workers to return home, including portability of investments and the skills learned and education attained during their work experience in America.

III. Workplace Enforcement of Immigration Laws

A temporary worker program would require workplace enforcement. The worksite enforcement mission is now located in Immigration and Customs Enforcement's (ICE) National Security Division. The goal is to maintain integrity in the employment procedures and requirements set forth under our immigration laws. The Critical Infrastructure Protection Unit within the ICE National Security Division is the unit responsible for coordinating enforcement of our employment requirements under the Immigration and Nationality Act. ICE will continue to coordinate its employer sanctions and worksite enforcement activities with agencies having relevant jurisdiction, such as the Department of Labor and the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices, where there are indications of worker abuse based on illegal status or intentional abuses of salary requirements and laws on account of an alien's illegal status. Further, monitoring will occur in situations such

as criminal and administrative investigations of employers, in conjunction with ongoing alien smuggling investigations, and in industries where intelligence and ICE auditing indicates widespread disregard of employment verification requirements.

Since 9/11, DHS has audited 3,640 businesses, examined 259,037 employee records, arrested 1,030 unauthorized workers, and participated in the criminal indictment of 774 individuals. Post-9/11 enforcement operations targeting unauthorized workers at critical infrastructure facilities identified over 5,000 unauthorized workers who obtained employment at airports, nuclear plants, sporting arenas, military bases, and federal buildings by presenting counterfeit documents to their employers and providing false information to security officials. DHS' challenge is to enhance public safety to ensure that individuals intending to do us harm are not providing access to controlled areas.

In addition to tougher worksite enforcement, we envision that a temporary worker program would also require employers to report when foreign workers enter and leave their employment to maintain the integrity of the immigration system. This would help DHS ensure that the temporary workers are maintaining their legal status under the program particularly when workers switch jobs. We look forward to working with Congress to achieve this goal.

Lastly, I want to highlight another key aspect to the President's proposal - ensuring that past illegal behavior is not rewarded. This proposal does not provide an automatic path to citizenship. The program has a finite period of time and requires workers to return home. Those that have broken the law and remain illegally in our country should not receive an unfair advantage over those who have followed the law. We recognize that some temporary workers will want to remain in the U.S. and pursue citizenship. They will be able to apply for green card status through the existing process behind those already in line.

IV. FY 2005 Budget for Immigration Enforcement

In conjunction with the temporary worker program, the President is committed to enhancing immigration security and enforcement, as the FY 2005 budget illustrates. The FY 2005 budget seeks $4.0 billion for ICE, $302 million more than FY 2004, and $6.2 billion for CBP, an increase of $258 million over FY 2004.

A. ICE Budget Requests

The FY 2005 President's Budget includes $41 million for ICE worksite enforcement, an addition of $23 million above the FY 2004 budget. This more than doubling of existing funds for worksite enforcement illustrates the President's commitment to serious immigration enforcement and the rule of law as part of a temporary worker program.

Detention and Removal of illegal aliens present in the United States is critical to the enforcement of our immigration laws. An increase of $108 million in FY 2005 will expand ongoing fugitive apprehension efforts and the removal from the United States of jailed offenders, and support additional detention and removal capacity.

In FY 2003, ICE removed 76,604 criminal aliens. Under "Operation Predator," ICE identifies, investigates, and removes child predators from America's streets. From July 9, 2003, when Operation Predator began, through December 2003, ICE apprehended 1,694 predators. The FY 2005 budget requests an appropriated funding increase of $78 million to fund improvements in immigration enforcement both domestically and overseas, including a doubling of current worksite enforcement efforts. This funding will be used to detect and locate individuals in the United States who are in violation of immigration laws, or who are engaging in immigration-related fraud. Also, pursuant to section 428 of the Homeland Security Act, the Department of Homeland Security will improve visa security by working cooperatively with U.S. consular offices to evaluate visa applicants.

As part of its overall immigration enforcement strategy, ICE will continue to analyze data generated through the Student and Exchange Visitor Information System (SEVIS) and US-VISIT program to detect individuals who are in violation of the Nation's immigration laws and pose a threat to homeland security. The FY 2005 budget's request of $16 million will increase the funding for ICE's SEVIS and US-VISIT compliance efforts by over 150 percent.

Pursuant to section 428 of the Homeland Security Act and the Memorandum of Understanding between the Departments of Homeland Security and State, ICE's FY 2005 budget request of $14 million includes an increase of $10 million to support a new Visa Security Unit (VSU). The VSU and DHS staff stationed at overseas posts, including Saudi Arabia, will work cooperatively with U.S. consular officials to promote homeland security in the visa process.

Immigration fraud poses a severe threat to national security and public safety because it enables terrorists, criminals, and illegal aliens to gain entry and remain in the United States. ICE's goal, in conjunction with CIS, is to detect, combat, and deter immigration fraud through aggressive, focused, and comprehensive investigations and prosecutions. The $25 million FY 2005 budget request will provide stable funding to ICE's benefits fraud program by replacing funding previously provided through the Examinations Fee Account.

The Institutional Removal Program is designed to ensure that aliens convicted of crimes in the U.S. are identified, processed, and, where possible, removed prior to their release from a correctional institution. The FY 2005 budget request of $30 million will further ICE's plans to expand the program nationally to all Federal, State, and local institutions that house criminal aliens, while ensuring more efficient processing and case management.

Fifty million dollars are requested to continue the implementation of the National Fugitive Operations Program, established in 2002, which seeks to eliminate the existing backlog and growth of the fugitive alien population over the next six years.

Eleven million dollars have been requested in the FY 2005 budget to establish non-traditional family and female detention settings and establish community supervision operations. The premise for this initiative is that the effective control of persons released into the community during immigration proceedings or while awaiting removal will stem the growth of the fugitive population.

From FY 2001 to FY 2002, the number of cases filed in Immigration Court increased by more than 8000. During that same period, the number of unresolved cases rose by nearly 40,000.

To keep pace with the increased number of cases and help eliminate the backlog, additional attorneys and support staff are required. Six million dollars are sought in the FY 2005 budget to increase the program staffing and help address the increased workload.

Adequate detention space has long been considered a necessary tool to ensure effective removal operations. An increase in bed space to accommodate a higher volume of apprehended criminal aliens results in a significantly higher appearance rate at immigration proceedings. When final orders of removal are issued, this will result in a greater number of removals and fewer absconders. With the $5 million request, ICE will enhance its ability to remove illegal aliens from the United States.

B. CBP and US-VISIT Budget Requests

In FY 2003, CBP processed 412.8 million passengers and pedestrians arriving in the U.S. – 327 million at land borders, 70.8 million at international airports, and 15 million at sea ports. The FY 2005 budget seeks $2.7 billion for border security inspections and trade facilitation at ports of entry and $1.8 billion for border security and control between ports of entry. This includes $10 million for Unmanned Aerial Vehicles testing and $64 million for border enforcement technology, such as sensors and cameras.

The FY'05 budget provides $340 million for US-VISIT, an increase of $10 million over the FY 2004 funding. Only one month old, US-VISIT has successfully and efficiently recorded the entry of 1,114,119 passengers and the exit of 3,067 travelers without causing delays at ports of entry or hindering trade. Eighty-four watch list hits, including serious criminals, have been verified under US-VISIT because of the biometric collection from nonimmigrant visa holders. Aliens who have repeatedly entered the U.S. illegally and used multiple aliases are now being detected. US-VISIT will play a key role in the President's temporary worker program by validating that aliens are complying with the terms of the worker program as they enter and exit through ports of entry, making it easier to enforce the program.

The President's proposed temporary worker program complements BTS' immigration enforcement initiatives and programs, particularly worksite enforcement, as well as the FY 2005 budget requests. The President is committed to moving this initiative forward. While the Administration certainly recognizes that immigration is a complicated, emotional issue, advocates across the immigration spectrum want reform of our unduly confusing and inconsistent immigration laws. Passing a temporary worker program that works to benefit the American economy while bringing integrity to our immigration system is a reasonable goal for all of us. The Administration is ready to work with the Congress to move forward in achieving this important goal.

STATEMENT OF STEVEN LAW
DEPUTY SECRETARY OF LABOR
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY AND CITIZENSHIP
SENATE JUDICIARY COMMITTEE

February 12, 2004

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the President's proposed Temporary Worker Program.

The President's proposal recognizes a reality of today's economy: there are millions of undocumented workers in the labor market filling jobs that are vital to our economy. The President's proposal for a new Temporary Worker Program will allow American businesses to hire needed workers to fill jobs for which there are no willing and available American workers. In addition, the proposal will bring undocumented workers into the mainstream economy, allowing them to more easily establish credit, invest, and purchase items like appliances, homes and automobiles. These purchases in turn will stimulate the nation's economy and create more jobs.

Principles of Immigration Reform

The President's proposal is based on several guiding principles:

We must Protect the Homeland by Controlling Our Borders. The Temporary Worker Program should link to efforts to control our border through agreements

with countries whose nationals participate in the program. It must support ongoing efforts to enhance homeland security.

The Program Should Serve America's Economy by Matching Willing Workers with Willing Employers. When no American worker is available and willing to take a job, the program should provide a labor supply for American businesses. It should do so in a way that is clear, streamlined, and efficient so people can find jobs and employers can find workers in a timely manner.

The Program Should Promote Compassion. Undocumented workers who had jobs in the United States as of January 7, 2004, when the President announced his proposal, should be eligible for temporary worker status to prevent exploitation. Participants would be issued a temporary worker card that will allow them to travel back and forth between their permanent home country and the U.S. without fear of being denied re-entry into America.

The Program Should Provide Incentives for Workers to Return to their Home Country After Their Period of Work Has Concluded. The legal status granted by this program would last three years, with the possibility of renewal. During the temporary work period, it should allow movement across the U.S. borders so the worker can maintain roots and remain in close contact with family members in their home country. Incentives to return home also include receiving credit for U.S. employment in their home country's retirement system and tax deferred savings accounts.

The Program Should Protect the Rights of Legal Immigrants. It should not reward with citizenship those who break America's laws. However, it should also

not preclude a participant from obtaining green card status through the existing process. It should not permit undocumented workers to gain an advantage over those who have followed the rules.

DOL's Role in the Temporary Worker Program

More specifically, I would like to speak with you today about the Department of Labor's role in the President's proposed Temporary Worker Program. While the details of the program will be developed with Congress, the Department most likely would be involved in helping American employers find the workers they need to keep the economy growing and carrying out our core mission of protecting all workers in America by vigorously and fairly enforcing our labor laws, including the right to fair wages and a healthy and safe work environment.

American Workers Come First

The President is committed to ensuring that every American who wants a job can find one. Under the President's proposal, employers would have to make reasonable efforts to find an American to fill a job before extending job offers to foreign workers.

The Department currently has a role in six visa programs: the employment-based permanent resident program; the H-1B program for temporary workers in professional occupations; the H-2A program for temporary or seasonal agricultural workers; the H-2B program for temporary non-agricultural or seasonal workers; the H-1C program for

temporary registered nurses; and the D-1 program for foreign crewmembers who perform short-term longshore activities at U.S. ports.

The Department currently works with employers to obtain the information needed to approve or deny labor certifications. Depending on the visa program, labor certification is either a statutory or a regulatory requirement that employers must satisfy prior to petitioning the Department of Homeland Security to be allowed to bring workers into the country. Generally, employers must show that they have tested the labor market and that no American workers are available to fill job vacancies. The type of labor market test required varies depending on the visa program applied for. For example, under the Permanent and H-2B programs, the employer advertises the job and interviews all applicants who apply and meet the employer's job requirements, and provides a report explaining why any U.S. workers who applied were rejected for lawful reasons. Employers must also offer the prevailing wages and working conditions of similarly situated U.S. workers. The H-2A program requires that employers place newspaper and radio advertising in areas of expected labor supply, and hire any qualified and eligible U.S. worker who applies for a job until fifty percent of the period of the work contract has elapsed.

In recent years, we have been working to make the Department of Labor's role in the visa application process more efficient. We are striving to reduce processing times by permitting employers to do more of the required recruitment of U.S. workers before they file their application with us, rather than beginning the process after they file their labor

certification application. The employer then would attest that all of the required steps have been fulfilled. To ensure compliance with the certification process, DOL would conduct spot audits as needed as well as random post-adjudication audits. We are also working to make it possible for employers to file applications electronically, thus speeding up the process considerably while still maintaining the program's integrity.

Under the President's proposal, eligible workers should have the freedom to move between employers, as long as each new employer has met the test of being unable to find willing and available American workers for the particular job. DOL is committed to minimizing fraud in the work-based visa programs, and our Inspector General has conducted a series of investigations on this issue to help us identify and address vulnerability and fraudulent activities. We look forward to working with Congress to determine the appropriate labor market test for the Temporary Worker Program, and to adopt strong audit and penalty provisions to ensure that employers and workers follow the rules.

Enforcement of the Labor Laws

As the President has indicated, under the current system we know that millions of hard-working men and women must live in fear and insecurity in a massive undocumented economy. Under the Temporary Worker Program, previously undocumented workers would be able to live legally and openly. They could feel free to candidly talk with government authorities about unfair or unsafe workplace conditions without fear of being deported.

One of the enforcement strategies of the Department of Labor has been to focus compliance resources on low-wage industries. These industries often have high numbers of immigrant workers who are vulnerable to exploitation. Typically, low-wage immigrant workers are reluctant to complain to Government authorities when their rights are violated. DOL employs targeted enforcement and compliance assistance to workers and employers to better ensure that the rights of these vulnerable workers are protected. In addition, in the FY 2005 budget we are proposing legislation to increase civil monetary penalties for violations of labor laws administered by the Department's Employment Standards Administration and Mine Safety and Health Administration. The proposal is intended to signal to employers that we absolutely refuse to tolerate repeated or egregious violations of the labor laws we enforce. As America's immigrant workforce grows, the Department of Labor will continue to increase its presence and accessibility to immigrant worker populations.

Reasonable Annual Increase of Legal Immigrants

The President has said that current limits on legal immigration are too low, and he has proposed an increase in the annual limit of legal immigrants allowed each year. Such an increase could result eventually in an increase in the number of permanent labor certification requests that the Department must consider.

The Department currently has a backlog in processing labor certification requests for the permanent program. To reduce this backlog, the Administration requested a significant

increase in the funding level for such processing for FY 2004 and Congress appropriated most of that request for an increase of $14.9 million over the FY 2003 level. In addition, to further address the backlog, in the FY 2005 budget request the Administration has proposed funding of an additional $11.1 million over the FY 2004 funding level. These additional funds, if appropriated for FY 2005, would be used by the Department to hire primarily contractor staff to assist in the processing of backlogged cases using centralized processing centers.

In addition, we are preparing legislation for consideration by Congress that would permit the Department to charge a modest application fee to employers for using the Permanent Program. This fee would help offset the program's operating costs and assist us in reducing the current large backlog of cases.

The Department is also in the process of finalizing a new regulation for the Permanent Labor Certification Program to streamline the current inefficient, labor-intensive program. These new rules will make the process far more efficient and cost effective, and will eliminate state and federal duplication of effort, while maintaining program integrity. We expect that the revised process will significantly reduce the average processing time for new applications filed by employers beginning in FY 2005.

Mr. Chairman, we recognize that immigration reform is a complicated, difficult issue that often generates strong opinions and sentiments. However, we are confident that we can work together with the Members of this Committee and Congress to enact responsible

immigration reforms that that benefit our economy, our workers, and the nation as a whole. We look forward to joining you in this effort.

Thank you for the opportunity to testify on this important proposal. I would be happy to answer any questions you or the Members of the Subcommittee might have.

Statement of Senator Patrick Leahy
Subcommittee on Immigration, Border Security and Citizenship
Hearing on "Evaluating a Temporary Guest Worker Proposal"
February 12, 2004

Today's hearing offers an opportunity to review the President's proposal to create a temporary worker program. Since the President's speech last month on his guest worker proposal, we have heard many questions and concerns from our constituents, from advocates for humane immigration policies, from labor unions, and from Hispanic Americans. I share many of the concerns these groups have raised, and I fear that the President's proposal is more about election-year politics than about creating a more rational and fair immigration policy.

As an initial matter, we do not even have a specific White House policy to review. I wrote to the President on January 23, pointing out the opposition that had already developed among Republicans in Congress to his ideas on immigration, and urging him to submit an actual legislative proposal to Congress to help change the dynamic that had developed since his speech. I have not yet received a response to my letter, and if the President will not send legislation to the Congress, it begs the question of whether he is really serious about getting a bill passed this year. Indeed, without a specific proposal, the President has failed to address some of the difficult questions that any temporary worker proposal raises – for example, under what circumstances, if any, can temporary workers change their employer without losing their legal status?

The *Washington Times* reported on Tuesday that Senator Kyl agrees that the President "needs to tell the public more specifically what he has in mind." I hope he would agree that the White House should demonstrate its seriousness about the proposal by submitting a bill.

The President's budget proposal deepened my concerns about his commitment to this issue. The budget included a nearly $100 million cut in the budget for the Bureau of Citizenship and Immigration Services (CIS), despite the fact that the CIS workload would increase exponentially if Congress created the sort of unlimited temporary worker program the President has advocated. Indeed, this budget is woefully insignificant even to accomplish the President's existing goal of cutting the backlog in processing legal immigration applications in half by 2006. And the budget proposal is farcical if the President believes that we should create a huge temporary worker program this year.

There are actual bills already before this Committee that are more deserving of our attention than the President's ill-defined proposal. Senator Hagel and Senator Daschle introduced a comprehensive immigration reform bill a few weeks ago that includes both a temporary worker program and an opportunity for participants in the program to gain legal status – an opportunity that the President has opposed, but which would seem to be crucial to any attempt to convince people who are here illegally to come forward. We will hear today from Senator Hagel, as well as from Senator McCain and Senator Craig about their own immigration proposals.

In addition, there are more-limited measures that the President should endorse and the Congress should pass without further delay. First, the Senate should take up S.1545, the DREAM Act, a Hatch-Durbin bill that this Committee has passed, which would provide legal status to some undocumented immigrants who were brought here as children, and which would allow states to offer them in-state tuition. Second, this Committee should take up S.1645, the AgJOBS bill, which Senator Craig and Senator Kennedy have introduced with widespread bipartisan support. Their bill would make it easier for agricultural employers to find workers, and for workers who are here illegally to earn legalization through their important contributions to the U.S. economy. I am pleased to be a cosponsor of both bills and urge the Committee and the Senate to act on them promptly.

Our nation cannot continue to ignore the fact there are 8 million to 12 million undocumented aliens within our borders. I hope that the President's commitment to this issue goes beyond the political calendar, and that this Committee and this Senate will proceed with a consideration of the significant bills already before us.

I would like to submit for the record an article written by Representatives John Conyers and Sheila Jackson Lee entitled "'Harvest of Shame' Again?" The article appeared in the February 2, 2004, edition of Legal Times, and it compares the President's guest worker proposal to the discredited *bracero* program that brought in Mexican farm laborers from 1942 to1964 – lessons that we cannot afford to ignore as we consider these policy changes.

# # # # #

Points of View

'Harvest of Shame' Again?

The president's guest worker proposal reminds us of the once-notorious bracero program.

By John Conyers Jr. and Sheila Jackson Lee

Forgive us if we are skeptical of the Bush administration's election-year conversion to immigration reform. President George W. Bush's proposal would, in truth, relegate millions of foreigners to permanent underclass status. The initiative is being offered by a president who for three years has either ignored immigration policy or weighed in only to deny legal protections to newcomers. We hope that the immigrant community sees this political ploy for what it is—a wolf in sheep's clothing offered by a party that has consistently opposed immigrants' rights.

Let's start with the administration's proposal itself. In a single stroke, Bush would take the millions of undocumented aliens in the United States and make them—as well as other foreigners living abroad—eligible for a massive new guest worker program. Many see in this initiative nothing more than a 21st century version of the bracero program.

Between 1942 and 1964, as many as 400,000 temporary foreign agricultural workers a year were legally employed in the United States by virtue of this now-notorious exchange with Mexico. They came as seasonal workers to plant and harvest crops. Many were housed in dilapidated shacks; they were paid poorly and sometimes not at all. If they spoke up for their rights, they were dismissed and shipped home. The program ended in 1964 in scandal after Edward R. Murrow's landmark television documentary, "Harvest of Shame," exposed its many abuses.

Under Bush's program, immigrants' right to stay in the United States would again be entirely contingent on getting and keeping a job with a U.S. employer. What is the guarantee that the abuses and exploitation of the past will not be repeated?

WHERE THINGS WILL GO WRONG

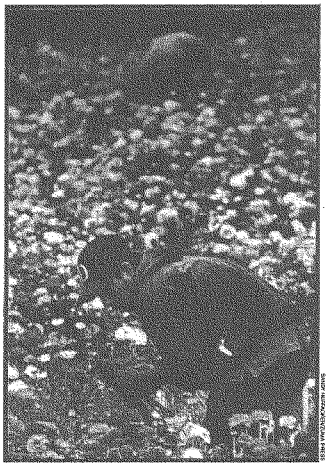
The flaws in Bush's immigration blueprint are many. The Department of Homeland Security already has a backlog of more than six million individuals waiting for their visa applications to be processed. Piling on millions of additional temporary worker applications without identifying any additional resources to screen or process them is an invitation to chaos. And President Bush has not said where the money will come from.

Also unanswered is why foreigners desperate enough to leave their homes to work illegally in the United States—the precise group being targeted by the administration—would choose to come forward to declare themselves under the new program. Essentially, they would be putting themselves, and their families, on a list to be deported as soon as their temporary visas expired.

For an alternate point of view, read Stuart Taylor Jr.'s Jan. 19 column, "They're Coming to America" (Page 46).

Another unresolved issue is how the proposal would interact with a harsh 1996 law specifying that anyone who has been unlawfully present in the United States for more than one year is barred from re-entry for up to 10 years.

The risks for American workers facing a massive influx of new competition are equally significant. We already have a temporary worker program, which includes several safeguards to protect Americans: Employers must attest that U.S. workers will not be harmed or displaced, that foreign workers will receive the same wages and benefits as U.S. workers do, and that foreign workers are not being used to replace striking U.S. workers. Under the new program, employers would apparently be free to ignore these common-sense requirements. The inevitable result: millions of American workers would be exposed to unfair competition from exploited foreign workers.



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A POOR TRACK RECORD

Immigrants should take note of the fact that this new program is being offered by the most anti-immigrant administration since the time of the infamous Palmer Raids, a series of mass arrests targeting foreigners with unpopular views after World War I. Since Sept. 11, the Bush administration has engaged in a policy of institutional profiling based on immigrants' country of origin and religious beliefs.

Lest we forget, after the Twin Towers fell, this administration responded by locking up thousands of immigrants without charges and with no access to attorneys, let alone any due process rights. It has since sought to cover its tracks by refusing to provide a cursory list of the immigrants' names and by ordering deportation hearings to be held in secret. This administration also drafted the tragically misnamed USA Patriot Act, which granted the attorney general the unilateral and indefinite power to detain immigrants on nothing but a personal whim.

The administration's track record on refugees is no better. The State Department has drastically cut annual refugee admissions from 100,000 in the Bill Clinton years to less than 30,000—the lowest point in the history of the refugee program. Officials have done so at a time when we face unprecedented resettlement needs, with more than 35 million refugees worldwide.

Finally, the record of the Congress to which President Bush has given the responsibility of drafting the details of his guest worker proposal should give all immigrants cause for concern. When the Republicans took over Congress in 1994, they wasted little time in using their new power to deny legal immigrants access to food stamps and other public benefits; to cut back on due process safeguards for victims of persecution seeking asylum; to permit deportation for minor acts that were not a cause for deportation when originally committed; to make it harder for immigrants to be reunited with their family members; and to end the ability of immigrants to readjust their status from within the United States.

Even more ominous are the proposals that the Republicans have pushed, but failed to enact only as a result of the threat of Democratic filibuster or presidential veto. These include efforts to deny immigrant children the right to a public education; to ban bilingual ballots; to slash the annual cap on legal immigration and to impose a harsh new cap on refugees; and to amend the Constitution to deny the birthright of citizenship.

HOPE FOR 'HUDDLED MASSES'

While Republicans have been busying themselves making our nation unwelcoming to new immigrants, Democrats have been advocating real and meaningful reform. We favor earned access to legalization for those who have outstayed a visa or entered illegally. This is *not* a blank check for anybody. It is a program through which longtime, hard-working residents of good moral character with demonstrated community ties could seek green cards.

Democrats also support a temporary worker program for agricultural and service workers, but only one that includes a mechanism for achieving permanent legal status and citizenship and that provides effective wage and employment protections. We also favor increasing family-based visas to begin to eliminate the cruel backlogs that now deny hope to millions of immigrant families. Part and parcel of these reforms would be efforts to strengthen safety and security at our borders, including ensuring that we have the necessary resources to enforce our laws.

Clearly, this nation needs immigration reform. But it must be the right reform. Since 1903, the Statue of Liberty has welcomed immigrants with the words, "Give me your tired, your poor, your huddled masses yearning to breathe free." More than 100 years later, we need a law that reinvigorates this welcome, not one that creates a second-class form of citizenship.

Reps. John Conyers Jr. of Michigan and Sheila Jackson Lee of Texas are Democratic members of Congress. Conyers is the ranking member on the House Judiciary Committee, and Jackson Lee is the ranking member of the House Judiciary Subcommittee on Immigration, Border Security, and Claims.

Statement of

Dr. Demetrios G. Papademetriou
President
Migration Policy Institute

before the

Immigration, Border Security and Citizenship Subcommittee
Of the
Committee on the Judiciary
United States Senate

Hearing on "Evaluating a Temporary Guest Worker Proposal"

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Introduction

Mr. Chairman, Senator Kennedy, Members of the Subcommittee.

President Bush has challenged us all to fix our broken immigration system. In presenting his vision, he has demonstrated remarkable political courage and a willingness to think outside of the box that has been unmatched by any other president in recent memory—and has created an opening for the US Congress and all of us to be equally thoughtful and courageous.

The task is daunting. We are asked to re-engineer an immigration system riddled with bad or no longer relevant ideas and weighed down with the cumulative inconsistencies of more than a century of political expedience and "delicate" compromises. Furthermore, we all understand that we must do so in ways that are both politically feasible and can be administered with relatively few resources and little taste for regulation and enforcement. Finally, we must do so in a climate that is ambivalent at best—both about immigration and about immigrants. A tall order indeed, but one to which we must nonetheless respond.

The Requirements of Reform

Reform that is worth describing as "comprehensive, thoughtful and smart" must meet the following requirements:

- It must recapture the initiative on immigration from where it has moved to in the last two decades or so—individuals (whether employers or families) and, increasingly, more or less organized smuggling networks.
- It must extend the rule of law to a policy domain that has become increasingly resistant to it by seeking to regulate, rather than deny, critical facts on the ground.
- It must reflect unambiguously our values as a people—values that, as the President has said repeatedly, do not stop at our borders—by choosing legality over illegality, safety over unnecessary danger, and orderliness over chaos.
- It must advance our long-term economic interests while remaining demonstrably consistent with our short- and mid-term ones.
- It must anticipate correctly the social consequences of economically-motivated immigration decisions and act wisely to address them—especially with regard to essential labor standards and protections.
- Finally, it must hold the line both on our legal obligations and, within reason, on the budget.

Success will require equal amounts of clarity of purpose and dedication, of imagination and perseverance, of political courage and political skill. The effort must be approached in the spirit of a "national project" in which all of America's voices, but particularly those of our civil society institutions, have a fair chance to be heard. This perhaps peculiar requirement is not an ideological statement; rather, it is the very essence of pragmatism. It is these institutions that will eventually determine whether or not the reform proposals this Congress passes will have a fair chance to succeed—whether we are talking about a new law enforcement regime, a regularization program that elicits as

close to 100 percent participation of the eligible population, or a temporary worker program that meets our labor market needs while protecting all workers.

Reactions to the President's Proposal

The President's announcement has provoked a maelstrom of political rhetoric: "Not Generous Enough!" howls the left. "Too Generous!" screams the right. "Just About Perfect!" purrs business. Of course, none of these interests are monoliths. Many Republicans appreciate the supreme act of leadership in the President's statement and, privately at least, most probably applaud his refreshing honesty. The Party's anti-immigration wing, however, is savaging the White House plan and simplistically demands that the government enforce the law instead. No amnesty for lawbreakers, say they. But this seemingly reasonable demand ignores two compelling facts.

- First, that some sort of a registration process—a census of the undocumented—is necessary if the government is to know much better who is already in our country. After all, this is the other half of the domestic security course we set for ourselves after September 11. Such knowledge will give Secretary Ridge the flexibility to deploy his (always limited) homeland security resources more effectively. But for that strategy to succeed, and for the security underpinnings of the President's immigration reform rationale to be validated, we need as close to 100 percent of the unauthorized immigrants as possible to participate in the registration program. After all, the best way to find the proverbial "needle in the haystack" is to make the haystack much smaller.
- The second thing anti-immigration Republicans ignore is a sequence of rather simple mathematical calculations. The illegally resident population is about 10 million persons.
    1. **Even if** two-thirds of that population participated in the Administration's "illegal-to-temporary-to-temporary(for a second time)-to-return-to-one's-home-country" sequencing scenario;
    2. **Even if** all of the program participants left within the 6 years envisioned by the President's plan (we all understand that the latter assumption is deeply flawed);
    3. **Even if** the government were to get radically more efficient and effective in its anti-illegal immigration course than at any non-military operation in the last 50 years;
    4. **Even if** the DHS and DOJ were given much higher levels of resources and made removing illegal immigrants priority one;
    5. **Even if** we were able to arrest and remove 500 unauthorized residents every single day (for this to happen, we would have to suspend not only all disbelief but also most considerations of legal and civil rights); and, finally,
    6. **Even if** not a single new immigrant came in illegally in the next two decades, it would still take nearly 20 years and billions of dollars to deport the remaining 3.5 million illegally resident persons.

Parts of the Republican Party, however, are not the only ones who have not thought hard enough about this issue. Some Democrats have already introduced their own large reform bills, often in bipartisan configurations, and other, more comprehensive bills may yet come. The authors of these bills wish to respond to the humanitarian challenge at the border and to the exploitation and broader labor market disorder large-scale unauthorized

immigration breeds, while acknowledging both the social and economic facts on the ground. (The President's proposal focuses primarily on the economic facts.) But, besides being more explicit about worker protections and attempting to tackle the legalization issue—both worthwhile legislative objectives—I see nothing in their architecture that suggests to me that true solutions are at hand.

Is this then, including this hearing, mostly about political posturing and electoral advantage as so many cynics suggest? I don't think so. There are certainly elements of both given that we are in an election year and that the issue is so politicized. But recent actions encourage me to think that there is, at long last, a truer recognition of the need to try to create a public policy and good government momentum on immigration. The President's acknowledgment that the system is a broken is consistent with the facts on the ground: nearly half-a-million new unauthorized immigrants (mostly Mexicans) are added to our society each year.

Hardly anyone, however, has raised the more important question: Will the President's plan, inchoate in structure and purposefully—even magnificently—ambiguous as it is, do what the President says it will do? Put differently, can the President's principles of reform form the nucleus around which a legislative reform package can be built that *would* accomplish most objective observers' interest in (a) channeling illegal migration into legal and safe routes and restoring the rule of law on this issue, (b) creating opportunities for those who are here illegally to earn permanent legal status by demonstrating their willingness and ability to meet tough but fair standards of conduct, (c) reunifying close family units in a timely manner, (d) meeting employer needs—and critical economic growth and competitiveness goals—in a timely manner without sacrificing worker protections, and (e) restoring faith on our immigration system and on those who are charged with managing it? And what would such an effort take?

Let me start with an obvious observation: Like single-cause fallacies, stable and lasting immigration reform cannot rest on a single idea, regardless of how compelling that idea might be. Accordingly, temporary work visas, the centerpiece of the President's proposal, cannot be a substitute for all that is needed on immigration. Perhaps more damning is my sense that if that is all that comes out of this round of immigration "reform," and if we get any of what we do in that regard wrong, the medicine may turn out to be worse than the disease!

Let me be clear. Temporary work visas are an important, even an essential, migration management tool. They give current and prospective foreign workers and employers a legal option; they provide an additional degree of needed confidence in terms of our domestic security; they should reduce the number of border deaths; they could curb many of the worse workplace and other abuses; they can restart the circular (back-and-forth) movement of workers from the region that has been lost as our border control policies have had the perverse effect of "locking people in" rather than keeping them out; they can be a down payment toward restoring order in what has become a disturbingly disorderly labor market situation; and, finally, they can begin to make the enforcement of our immigration, labor, and other laws more possible than it has been for decades.

Yet, necessary as temporary worker visas certainly are, they are not nearly sufficient enough to anchor a thoughtful comprehensive immigration reform plan on

them. For that, we need to think in terms of a **three-legged stool** in which many more temporary work visas are but one of the legs.

The President is right in his apparent sense that putting our immigration house in order requires eliminating a status quo in which illegality is the norm and replacing it with a stable new environment that clearly rewards playing by the rules. This goal, however, requires being more thorough in our thinking about the nature of immigration and more ambitious than the President's announcement has allowed us to be.

Stable reform requires three interdependent and fully integrated responses. **First, devising better (really, "smarter") border and interior controls.** Our border and port-of-entry immigration enforcement is, by and large, already receiving the level of resources and attention that it deserves (although it, too, would benefit from more cooperation from our contiguous neighbors). The best way to improve such controls further is to frame them within a larger immigration architecture that relieves some of the pressure on border enforcement, in part by undercutting the human smuggling syndicates that profit from the chaos of our immigration system. The latter—interior controls—requires that we engage in nothing less than a "zero-based" policy review, especially with regard to employer sanctions. We have never found the proper balance among preventing discrimination, protecting civil rights, resources, not placing an undue burden on the employer, and enforcing the law. By now, it should be obvious that a new strategy of interior enforcement that is credible is needed. In this regard, expanded pathways for legal migration and thoughtful regularization should be understood as guideposts that can point the way where enforcement of immigration law is more likely to succeed; they can never replace thoughtful regulation or smart enforcement.

Second, stable reform requires us to address the continuing demand for visas. Some of these visas should go to workers in our low-wage, low-value added (mostly but not exclusively service) economic sectors. Some of *those* visas, in turn, will need to be temporary but must have a tough but fair—and most importantly, clear—path to permanency. (The President's imaginative financial incentives for return are an excellent idea, but will not work in every case. Some workers will still want to stay and some employers will still want to keep their most reliable employees. Both should have a means for doing so.) The other work visas should be permanent at the outset.

These judgments may be politically complicated but basic rules can be devised that can make them less so. However, it is family (re)unification that must receive the lion's share of the new visas, at least until we honor a principle we all seem to agree on: family unity. Tough political choices will have to be made in this regard but keeping (or putting) immediate families (back) together is a "no-brainer"—morally and in terms of smart migration management.

Third, stable reform requires us to offer an opportunity to the unauthorized resident population in our midst to earn legal permanent status so that we can elicit near 100 percent participation. The first step in that effort must be the registration the President's plan calls for. Where the President's plan appears to come our short, however, is the reality that a program that leads only to temporary work visas is likely to partly fail in both of its key objectives: (a) getting the overwhelming majority of people to participate up front (for the domestic security purposes discussed earlier) and (b) moving people out of our country at the end of the plan's six year window.

Many of today's illegally resident immigrants have already spent years in the country, are parents of citizen children, qualify for but are unable to receive their immigration benefits in a timely fashion (at the end of the last fiscal year, DHS had more than 1.2 million pending green card applications), and are working at jobs that are permanent in every sense of the word. For most of these people, anything short of a real opportunity to obtain legal permanent residency is not likely to prove enough of an incentive to "play by the rules." If we think that picking a fight with the market is ultimately un-winnable, a fight with human nature will prove to be even more so, and the market will come readily to its aid—for a price: most of these people will very likely drop back out of status after the 6 years the President's plan offers, rather than return to a place that has not been their home for more than a decade. That is, if they choose to regularize in the first place.

A final issue is not directly related to the President's announcement and concerns pending legislation—AgJobs. The President chose not to mention this bill in his statement. Congress, however, cannot continue to ignore a policy area in which the cry for fundamental reform is the loudest. A bishop friend of mine has called the status quo in America's perishable crop fields unbearably immoral. And a number of your fellow legislators have worked very hard to put together a bill that may be less than perfect but is nonetheless good enough to enjoy wide bipartisan support—in and out of Congress. Let the AgJobs bill become law. It has been painstakingly negotiated; it has made its peace with American agriculture's long "exceptionalism;" and it is a vast improvement over the status quo. Speaking crassly, perhaps, it also gets one of the most intractable issues on immigration (a true political "third-rail" on an issue seemingly full of third rails) out of the way—so that you can concentrate on the critical task at hand.

As this Subcommittee goes down the path of considering immigration reform seriously, two things might be worth emphasizing once more. First, no bill can become law without bipartisan support—a rather obvious observation. However, this is putting the bar too low and I will gladly raise it for you. Politically speaking, doing relatively small things on immigration will require as many political investments on all your parts as going for the big prize. It is both the nature of the issue and the degree of "brokenness" from which the system suffers. So, why not do it right this time?

In that spirit, I offer my own lessons from the last time we sought to address illegal immigration in a significant way, 1986, in the hope that in doing so, we might keep good governance from getting lost in the predictable ideological divides.

Reforms Past and Future

The last time we decided to tackle immigration reform in a fairly thorough way (the Immigration Reform and Control Act—IRCA) it took five years and many dozens of hearings, consultations, and briefings of various forms. The process was contentious. Most of that effort's protagonists have moved on. Some still serve on this body but have moved on to different issues—probably wisely. Senator Schumer is one of them. And one, Senator Kennedy, sits here again in a key role, just as he has done on all immigration matters since the mid-1960s.

Senator, I don't know whether this represents good or bad judgment on your part; only history can judge that. But it does speak to a commitment, a depth of knowledge, and a level of experience that is unmatched by that of any other member of this Congress regardless of issue. Perhaps it is you, sir, who should be testifying and giving this partly historical part of the testimony that I present below.

The IRCA followed a three-pronged route to reform.

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1. It allowed nearly 2.8 million illegally resident foreigners who met an array of different requirements to gain legal permanent resident status—about half of those estimated to be in the United States illegally at the time.
2. Simultaneously, it banned the hiring of foreigners who did not have work authorization and established various forms of legal liability for employers who broke the rules.
3. Finally, it committed to strengthening border controls, a policy which was not accompanied by increased resources until the mid-1990s.

Viewed through the lens of both human rights and economics, the 1986 reforms were in many ways successful. They brought millions of hard working, law-abiding people out of the shadows with absolutely no disruption to the economy. And two government reports on the labor market adjustments of the legalized population (I believe in 1990 and 1994) showed that most assumptions about the effects of legal status on the life chances of that population were vindicated.

In retrospect, however, the reforms did little to control future illegal immigration. So that we do not repeat the most easily avoidable mistakes of the past—and not create another batch of academic papers about the "unintended consequences" of Congressional action on immigration—we should try to pull out some of the key lessons from our last experience with broad immigration reform in general and legalization in particular.

Lesson #1: Not Acknowledging the Robust and Growing Demand for Foreign Workers and Family Visas Is the Most Direct Path to Policy Failure

The 1986 law's first flaw was that it failed to address altogether the demand for foreign workers. No adjustments whatsoever were made to the visa system (at least until 1990) pretending that, in the language of the day, employers would be "weaned" from their already considerable reliance on foreign workers through a combination of an act of partial generosity (an amnesty) and an act of "tough love" (employer sanctions). The thought that reliance on (im)migrants had already become "structural" (that is, deeply imbedded in the economics of increasing segments on the US labor market and in the way in which our society was organizing itself) <u>and that it was expanding</u>, was something that few lawmakers were prepared to entertain.

It did not help that the fundamental architecture of the 1986 law was conceived of in 1981—a period of high unemployment, even higher interest rates, and a generalized sense of malaise. (As Senator Kennedy will recall, the outlines of IRCA were actually conceived by the Select Commission on Immigration and Refugee Policy earlier—during the even darker economic times of the very late 1970s.) By the time IRCA was enacted, however, the economy had rebounded and emerging labor mismatches (due to geography

and skills) and even shortages, were already becoming the name of the game. So, IRCA's relevance may have been D.O.A. in many fundamental ways, even had it gotten most of the things it was trying to achieve right!

A plea, then, if I may: If we are going to go through the extreme pain of fundamental immigration reform, let's draft laws for "all seasons"—or, at a minimum, for more than one season. For whatever we do this next time, will define how we respond to immigration for the next couple of decades—a time funnel that will surely exaggerate our failures beyond whatever we can imagine today.

Nor did the law's employer sanctions manage to regulate the voracious demand for more work visas in jobs that few Americans were eager to do then (and are even more reluctant to do now). Penalizing employers for hiring unauthorized workers is a European invention that has never worked particularly well for the Europeans themselves—despite a tradition of heavy-handed governmental involvement in regulating labor markets, extraordinary expenditures (certainly by our standards), large and often specialized enforcement bureaucracies, and, in some instances, the creation of administrative courts focusing on prosecuting employers who violate immigration and other social insurance and social protection laws. In fact, in several of the strongest European economies, such a Germany, the underground economy—fed in large part through illegal immigration—has been growing in recent years at rates of between 5-7 percent annually!

Given our loosely regulated labor markets and diverse workforce, can we do any better than Europe has done without anywhere near the financial investments we have been (and are likely to continue be) making? And can we do so without the discrimination that is always of concern to us and is finally beginning to be of concern to the Europeans? Finally, can we so in light of, lip service aside, successive Democratic and Republican congresses and administrations having shown little appetite for strongly enforcing employer sanctions' rules?

However, employer penalties were not IRCA's only "tip-of-the-hat" to enforcement. Enhanced border controls were to be the other part of the law's one-two punch in "regaining control" over the issue. This one, however, arrived too late to make a difference by conveying the intended signals to employers, would-be immigrants, and the rest of us. By the mid-1990s, when border enforcement and entry controls were really beginning to be funded, habits of illegal migration from Mexico had gone back to their pre-1986 pattern and the increased demand for low-wage labor was making "stopping" illegal immigration all but impossible.

Lesson # 2: Don't Do Things Halfway When it Comes to the Legalization Component of Comprehensive Immigration Reform.

The 1986 law's second major flaw was a shortsighted approach to legalizing immigrants. Most lawmakers fell into the intellectual and emotional trap of viewing legalization merely as an amnesty, that is, an act of generosity. The politics of the IRCA legalization drive as a result were limited to debates about how generous to be with the pardon of lawbreakers. Both the President's and, unsurprisingly, many of the reactions to his announcement seemingly reduced the proposals to fighting over the "A" word—if from different points. The problem is that difficult as the politics of the issue certainly

are, any reform legislation that wants to meet the test of time with some dignity, must avoid setting arbitrary standards for legalization simply because amnesty is such a politically dreaded word.

IRCA offered people the opportunity to legalize only if they could demonstrate that they had been in the US "continuously" since before January 1, 1982. This is what the political marketplace of the day could bear, the authors of that law would argue. And they would be in large part right. Except that the public policy/good governance consequences of that line of political thinking are extremely troubling. In the politics of that day—come to think of it, they were probably no more propitious for serious reform than they may be today—lawmakers invested far too little effort in managing a public debate about those immigrants who didn't qualify. When the law was implemented in 1987, five years of illegal arrivals didn't qualify for regularization, yet had little incentive to leave. Those 3 million still illegal immigrants simply burrowed themselves into our communities, continuing to do essential work for all of us but in an even more unprotected legal environment, reunifying with their families from abroad legally or illegally, building new families and having American children, and seeding the next generation of illegal immigration that we are trying to address today.

Lesson #3: Beware of Creating Unnecessary Incentives for Fraud

One of the most immediate—if completely predictable—effects of this cut-off was the birth of a thriving document fraud industry, as immigrants scrambled to document their *bona fides* with proof (including affidavits) for all sorts of things from their prior life.

The 1986 experience demonstrates the need for a broader, more thoughtful and more flexible approach to immigration reform. Regularization is a worthwhile project, but we should approach it as an opportunity to strengthen our nation and deal with what has become a social and human rights issue of the first order, not just as an amnesty that so many Americans find distasteful. We should thus start from a different point: instead of asking people to prove when they arrived or were hired, matters easily subject to fraud and so simple that they risk appearing to reward illegal immigration, we should ask unauthorized immigrants to earn their new legal status.

Unauthorized immigrants could begin the regularization process by registering with immigration officials and then be given, say, three years in which to qualify. The criteria for regularization should be forward-looking, easily proven, and consistent with what we as a society consider important. Steady employment, paying taxes, speaking English capably and having a clean criminal record are a good start. And the process should a pay for itself by collecting a substantial but reasonable fee from the immigrants who are regularized.

Lesson # 4: Speak Unilaterally, if You Must, but Think and Act Bilaterally, Even Multilaterally. After All, This Is What the Administration Is Doing.

The final flaw of IRCA was an understandable lack of thinking beyond our borders. The 1986 law was conceived of as a purely domestic action, with no serious thought given to what Mexico and other countries could bring to the table. The debate

was exclusively about our "sovereign right" to choose our immigrants and control our borders. Today, ten years after NAFTA, there is little dispute about the fact that our entry controls are stronger if they begin in Mexico, Canada, and elsewhere and that we can fight fraud and human smuggling better by cooperating with like-minded countries. I hope that we do not forget this lesson as we move ahead with comprehensive immigration reform.

Conclusion

If a comprehensive immigration accord becomes reality in the next few years, the shared reward of smarter, fairer, more orderly, safer, more economic-multiplier producing, and legal migration would certainly show ordinary Americans that we can have an immigration system that meets reasonable expectations of playing by the rules and benefiting our country as a whole.

Looking back at the failures of the past, the President's vision for immigration reform appears incomplete, not misguided. He has been ambitious in setting this issue so starkly before the Congress and the American public, but his plan for change is not yet ambitious enough. However, our national discussion about immigration reform is just beginning, and there is still time to craft a plan that is complete and bold enough to not repeat the mistakes of the past.