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GUEST WORKER PROGRAMS: IMPACT ON THE AMERICAN WORKFORCE AND U.S. IMMIGRATION POLICY

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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GUEST WORKER PROGRAMS: IMPACT ON THE AMERICAN WORKFORCE AND U.S. IMMIGRATION POLICY

Wednesday, July 19, 2006
U.S. House of Representatives
Committee on Education and the Workforce
Washington, DC

The committee met, pursuant to call, at 10:30 a.m., in room 2175, Rayburn House Office Building, Hon. Howard McKeon [chairman of the committee] presiding.

Present: Representatives McKeon, Petri, Johnson, Norwood, Ehlers, Biggert, Osborne, Wilson, Porter, Kline, Inglis, McMorris, Price, Foxx, Drake, Kuhl, Miller, Kildee, Payne, Andrews, Woolsey, Hinojosa, McCarthy, Tierney, Kucinich, Wu, Holt, Davis of California, Van Hollen, Ryan, and Bishop.

Staff present: Robert Borden, General Counsel; Byron Campbell, Legislative Assistant; Steve Forde, Communications Director; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Legislative Assistant; Jessica Gross, Press Assistant; Kai Hirabayashi, Professional Staff Member; Richard Hoar, Professional Staff Member; Jim Paretti, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Deborah L. Emerson Samantar, Committee Clerk/Intern Coordinator; Loren Sweatt, Professional Staff Member; Toyin Alli, Staff Assistant; Jody Calemine, Counsel, Employer and Employee Relations; Tylease Fitzgerald, Legislative Assistant/Labor; David Hartzler, Junior Technology Assistant; Tom Kiley, Communications Director; Ricardo Martinez, Legislative Associate/Education; Rachel Racusen, Press Assistant; Marsha Renwanz, Legislative Associate/Labor; Michele Varnhagen, Labor Counsel/Coordinator; and Mark Zuckerman, Staff Director/General Counsel.

Chairman MCKEON [presiding]. A quorum being present, the Committee on Education and the Workforce will come to order.

We are holding this hearing today to hear testimony on guest worker programs' impact on the American workforce and U.S. immigration policy.

I ask unanimous consent for the hearing record to remain open 14 days to allow member statements and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

Good morning. Thank you for joining me at this hearing on U.S. immigration policy and proposals, the first in a series of similar discussions this panel will hold here in Washington and throughout the Nation over the next several weeks.

Last fall, our committee held a broad-based hearing on immigration and its impact on the American workforce, and this morning we will continue to direct our attention toward that topic, while sharpening our focus on guest worker programs and proposals in particular.

We will hear testimony about the state of these programs currently, the impact they have on our workforce and the ramifications of their potential expansion as part of a congressional response to the illegal immigration crisis.

Anyone familiar with this committee knows that we are not shy about confronting controversial and often divisive topics, and today is no exception. But the fact is, illegal immigration is a threat to our nation's workforce, and as Congress considers proposals to secure the borders and strengthen enforcement, this panel is obligated to address it head on.

But before we begin, let me remind my colleagues about an unspoken rule we have adopted in recent years. That is that we may disagree, but we don't have to be disagreeable. And I hope and trust that we will continue that tradition here this morning.

There is no one in this room—committee members, witnesses, staff or the general public—who does not have strong feelings on the subjects of illegal immigration and border security. And on guest worker programs I don't suspect the feelings are much weaker. Some Democrats support an expansion of guest worker programs, and some don't. And the same goes for Republicans.

In recent months, we have seen these divisions manifest themselves here on Capitol Hill and throughout the nation. Some see an expansion of guest worker programs as a path to citizenship, while others see it as a slippery slope toward amnesty.

But even amidst all of this disagreement, there has been one common, consistent thread in this debate: Everyone involved shares the desire to tighten our borders and embolden our enforcement measures. Let's not lose of that important fact.

I had that fact in mind during the Independence Day District Work Period when I had the opportunity to tour the U.S.-Mexico border. Though we have made advances—this was the first time I would been there, I mean the first time recently, but I had been to the border before, and I have seen the advances made in our ability to catch illegal immigrants as they cross the border. The illegals and their smugglers have made advances as well. And as a result, for lack of a better phrase, it is a warlike atmosphere down there.

When I was down there several years ago, there really wasn't much talk of violence. This time, there was quite a bit of showing the violence that has been erupting lately.

As a representative of southern California for more than a decade, the burdens of illegal immigration are neither new to me nor to my constituents. However, having recently been elected chairman of this committee, I have begun to view the issue from a slightly different perspective, one that is often overlooked by the

national media and even some of our colleagues here in Washington.

Without a doubt, border security is first and foremost a national and homeland security priority, and I cannot imagine that many here would argue with that statement. However, securing our borders also will pay major dividends for our nation's students and workers, the two groups of greatest interest to this panel. These two groups will be the focus of a series of hearings we are kicking off here today.

These hearings also will give us a chance to probe more deeply the border security proposals offered by both the House and the Senate. Stakeholders, advocates and media reports have unearthed some troubling provisions, particularly with the Senate proposal, that I believe need a closer look. Members should feel free to take that closer look during these upcoming hearings.

Before us today is an incredibly balanced, diverse panel of witnesses who will offer us testimony on guest worker programs—their past, their present and their future. I look forward to gathering valuable input from them as our committee fulfills its responsibility to engage in this critical process.

Our goal is to send President Bush a stronger border security and enforcement bill that will serve the interests of American students and workers—nothing more, nothing less.

I look forward to further engaging in this debate, and I now yield to my friend, Mr. Miller, so that he may present his opening statement.

[The prepared statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Chairman, Committee on Education and the Workforce

Good morning, and thank you for joining me at this hearing on U.S. immigration policy and proposals—the first in a series of similar discussions this panel will hold here in Washington and throughout the nation over the next several weeks.

Last fall, our Committee held a broad-based hearing on immigration and its impact on the American workforce, and this morning, we'll continue to direct our attention toward that topic, while sharpening our focus on guest worker programs and proposals in particular. We'll hear testimony about the state of these programs currently, the impact they have on our workforce, and the ramifications of their potential expansion as part of a congressional response to the illegal immigration crisis.

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There is no one in this room—Committee Members, witnesses, staff, or the general public—who does not have strong feelings on the subjects of illegal immigration and border security.

And on guest worker programs, I don't suspect the feelings are much weaker. Some Democrats support an expansion of guest worker programs, and some don't. And the same goes for Republicans. In recent months, we've seen these divisions manifest themselves here on Capitol Hill and throughout the nation. Some see an expansion of guest worker programs as a path to citizenship, while others see it as a slippery slope toward amnesty. But, even amidst all of this disagreement, there has been one common, consistent thread in this debate: everyone involved shares a desire to tighten our borders and embolden our enforcement measures. Let's not lose sight of that important fact.

I had that fact in mind during the Independence Day district work period, when I had the opportunity to tour the U.S.-Mexico border. Though we've made advances in our ability to catch illegal immigrants as they cross the border, the illegals and their smugglers have made advances as well. And as a result—for lack of a better phrase—it's a war-like atmosphere down there.

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Before us today is an incredibly balanced, diverse panel of witnesses, who will offer us testimony on guest worker programs—their past, their present, and their future. I look forward to gathering valuable input from them, as our Committee fulfills its responsibility to engage in this critical process. Our goal is to send President Bush a strong border security and enforcement bill that will serve the interests of American students and workers. Nothing more, nothing less.

Mr. MILLER. Thank you, Mr. Chairman.

I must say, like many in the press and in the Congress and in the public, I am somewhat confused as to why we now have this sort of spasm of hearings on immigration coming at the end of this congressional session when we have had almost 2 years to consider this subject.

I don't know if this is about immigration or whether this is about an internal fight within the Republican caucus, both in this House and in the Senate, and whether there is some effort here to now disassociate members of the Republican caucus from legislation supported by President Bush and Senator Hagel and Senator Reid and Senator Kennedy and Senator McCain and Frist and others, I guess, but hopefully that will evolve as these hearings continue to play themselves out.

The hearing today on the guest worker programs and its implications for immigration policy and domestic policy comes at a time when there is a great deal of discussion going on, both on Wall Street and on Main Street, about the American middle class and the security of the American middle class, the fact that its wages, if they have risen at all for some workers, have risen very slowly, the fact that a disproportionate amount of the increase in productivity has been taken through corporate profits and by corporate CEOs and the upper echelon and not shared with the workers at the same time that these very same workers see their wages stagnating, their pensions and health care benefits are disappearing, costing them more or are outright being terminated. People are deeply concerned about their future.

And so when we discuss the implications of a guest worker program, we have to discuss it in the atmosphere of where the American middle class clearly feels that it is starting to lose ground and becomes concerned about whether or not their children will in fact, as so many generations have believed and have come true in this

magnificent country will their children live a better life than they have lived.

We have been here once before during the 1980's when we dealt with immigration reform, and at that time we did create an amnesty program for immigrants that met certain conditions, but what we didn't do is we really never dealt with the question of enforcement of the laws of this nation, either at the border or internally in terms of the workers protections and the wage and hour laws of this nation.

Since that time, obviously, we have seen a huge demographic change and economic changes here at home, in our hemisphere, and around the world as we live in a more globalized world in terms of our trade and our economy.

It is no secret to anyone in this country that we have had a great number of illegal immigrants entering the United States year after year, and it is estimated now that we have some 12 million individuals living in this country without benefits of the law. And that has caused a great deal of concern in the country.

But, again, I think any discussion of the guest worker program must begin with the question of enforcement, both on the border and internally. On the border, we see where the administration and the Congress to date have not kept faith with the American people in terms of either with the 9/11 report told us we should be doing or what the administration told us they would do in terms of additional detention beds, in terms of additional immigration agents, and we see that that is in fact lacking a great deal.

We also see that worksite immigration enforcement operations where companies were dramatically scaled back. As a matter of fact, they were scaled back by 99 percent, which the Immigration and Naturalization Service, which is now in Homeland Security, in 1999, they initiated fines against 417 companies for these illegal policies. In 2004, they initiated three fines operations against people for that illegal policy. So, obviously, the enforcement of those immigration laws has been lacking greatly, and employers have felt free that there was no jeopardy into flaunting the laws to hiring whoever they would, with or without a legal documents.

We also see that the Wage and Hour Divisions have continued to be cut. We now have one staff person for every 2,800 businesses, and we see that even in this year's budget it is in for a continued cut, as is OSHA and as we see also the fact that the National Labor Relations Board gives scant attention to some 22,000 workers who are fired or otherwise discriminated against each year.

So at a time when we are talking about what rights and how many guest workers we will have in this country, we must understand that these labor laws that are intended to protect the workers of this nation must be strengthened, additional resources must be given to them, and they must be vigorously enforced against all workers, old and new, that benefit from the strength of our economy. If we fail to do that, then in fact I think you can reasonably predict that a guest worker program would undermine the wages of this country, it would undermine the working conditions in this country, it would undermine the employment opportunities in this country of many workers who are desperately seeking that work or to hold on to the jobs that they now have.

We also are presented, and I would like to enter into the record, account after account of employers using subcontractors or the classification of workers as independent contractors time and again to avoid the discussion of the legal status of these workers at the workplace. And, again, that undermines people who are not—we are no longer in the realm of the jobs that Americans don't want. We are in the jobs that Americans would like to have but because of subterfuge and the failure to obey the law, they are able to either pay people off of the books and therefore not have the cost of hiring that person as opposed to an American worker, a legal worker in this country.

So all of a sudden people who find themselves working at a decent wage in this country find that job undermined because the cash payment of workers and the violation of the laws with scant chance of them being caught by Federal authorities now see an economic advantage to hiring that illegal worker.

We also must know the terms and conditions under which these guest workers would come to this country, they would reside in this country and what would their rights be. Are these workers who are going to live at the will of their employer, can their opportunity to secure a second—as the Senate bills provides for, a second permit, would that be held so that an employer could disrupt that by firing them, unjustly or otherwise? And what will the status of those workers be to be able to enforce those same laws that are designed there to protect the entire workforce?

So there are a lot of questions to be answered in this hearing, but first and foremost we must begin with the enforcement, the resources of the laws in this country that are designed, one, to protect the border and, two, to protect the workers of this country so that they can in fact earn those wages that are sufficient to support their families.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Ranking Minority Member, Committee on Education and the Workforce

Good morning. This hearing comes at a time when the rights and living standards of workers in the U.S. are being threatened as they have been at no other time in the postwar history of our country. Workers' wages have stagnated over the last several years; their pension and health benefits are disappearing; and their rights to organize are being constantly eroded. The policies pushed by the Bush administration and the Republican Congress are partly to blame.

The truth is that any discussion about immigration must include a discussion of the fact that American workers are losing ground—and it's not because they don't work hard enough.

The expressed purpose of this hearing is to examine the desirability of enacting a new guest worker program, as President Bush has proposed.

Congress has not comprehensively considered our immigration laws since 1986. At that time, it was estimated that the number of illegal immigrants inside the country was between 2 and 3 million. The Congress acted, on a bipartisan basis, to create an amnesty program for immigrants in the U.S. who met certain conditions, establish new visa programs for legal immigration, and impose sanctions on employers who continued to hire illegal immigrants. Regrettably, the employer sanctions were never seriously enforced.

Illegal immigration started to explode again in the late 1990's as demographic and economic changes, including globalization, NAFTA, and the creation of the World Trade Organization, forced additional immigrants to seek employment and economic opportunities in the U.S.

In recent years, the number of illegal immigrants entering the U.S. each year has approached 500,000. Today, it is estimated that 12 million people are in the U.S. illegally, either without a visa or after having overstayed a visa. Most of these immigrants of working age are employed.

President Bush and the Republican majority have largely ignored this growing problem and in many ways have actively made it worse.

The Bush Administration has cut back on the number of visas available for individuals to arrive legally and increased delay times for individuals who try to play by the rules. It's no surprise that making it harder for people to enter the country legally would make it more likely that they would enter the country illegally.

Until recently, the Bush Administration and Republican Congress also failed to beef up border enforcement. In the 9/11 Act of 2004, they promised to provide 2,000 additional border patrol agents, 8,000 additional detention beds, and 800 additional immigration agents per year. Instead, they have delivered only 800 border patrol agents and 5,000 detention beds, and they are short nearly 1,000 immigration agents.

Between 1999 and 2004, worksite immigration enforcement operations against companies were scaled back 99 percent—99 percent!—by the Immigration and Naturalization Service, which subsequently was merged into the Department of Homeland Security. In 1999, the U.S. initiated fines against 417 companies. In 2004, it issued fine notices to only three.

The Bush administration also has failed miserably to enforce our nation's labor laws and ensure decent working conditions for all workers.

The Wage and Hour Division at the Department of Labor, which enforces minimum wage, overtime, and child labor protections, has seen a 12 percent cut in staffing since 2001, with just one staff person for every 2,800 business establishments. The 2007 appropriation for wage-and-hour law enforcement in the Labor Department spending bill falls $4.1 million short of what even the Bush Administration claims is necessary to maintain current service levels.

The Occupational Safety and Health Administration has seen an 8 percent cut in staffing since 2001, with one OSHA staff person for every 1,700 business establishments. Its budget has been cut by 3 percent since 2001, adjusted for inflation.

The National Labor Relations Act, which guarantees workers the right to organize and collectively bargain, has extremely weak remedies. As a result, some 22,000 workers are fired or otherwise discriminated against each year for exercising their rights under the National Labor Relations Act.

We cannot let globalization or immigration become a race to the bottom. Our labor laws must be strengthened and vigorously enforced to ensure that all workers—old and new—benefit from the strength of our economy. The violation of one worker's rights hurts all workers, regardless of whether that worker is documented or not or U.S.-born or not.

I look forward to the testimony of today's witnesses. I hope we can have an honest and open discussion about our economic and employment needs and how we would need to structure a guest worker or any other program to ensure that it treats all workers fairly and makes our country stronger for all.

Chairman MCKEON. Thank you, Mr. Miller.

We have a distinguished panel of witnesses here with us today, and I will begin now by introducing them.

First, we have Ms. Elizabeth Dickson, the general manager of Global Immigration Services for Ingersoll-Rand Company, a large and diversified industrial manufacturer. She directs the company's immigration and international visa functions to facilitate the transfer of international personnel worldwide and develops company policy for international assignments, immigration, I-9 regulatory compliance and associated travel issues. Ms. Dickson has 17 years experience in human resources, immigration and expatriate management.

Then we will hear from Ms. Luawanna Hallstrom, chief operating officer and general manager of Harry Singh and Sons, the largest single-vine grape tomato producer in the nation. For 2 decades, she has worked on immigration reform targeted to sustain the country's agriculture industry so that it remains economically

viable and helps to create secure borders. In addition, she has been appointed to the California Board of Food and Agriculture by Governor Schwarzenegger.

Then we will hear from Mr. Jack Martin, special projects director for the Federation for American Immigration Reform, F-A-I-R, or FAIR. Having joined FAIR in 1995, Mr. Martin is a retired U.S. diplomat with consular experience who has authored studies of immigration issues. Mr. Martin has testified on the issue before the U.S. Congress, the U.S. Civil Rights Commission and the U.S. Commission on Immigration Reform.

Then we will hear from Ms. Rebecca Smith, the coordinator of the Immigrant Worker Project at the National Employment Law Project, NELP—I love these acronyms. Ms. Smith has 20 years' worth of experience working on behalf of low-wage and immigrant workers. Her primary areas of practice include immigrant workers' employment rights and wage and hour and unemployment insurance. Ms. Smith is a graduate of the University of Washington Law School.

And finally, we will hear from Dr. Phil Martin, professor of Agricultural and Resource Economics at the University of California-Davis and chair of the Comparative Immigration and Integration Program. Along with studying the effects of migration and its economic impact on a number of countries, Dr. Martin was appointed to the Commission on Agriculture Workers to assess the effects of the Immigration Reform and Control Act of 1986. He received his doctorate degree from the University of Wisconsin-Madison.

You notice that you have those little lights in front of you. We have asked that your testimony be limited to 5 minutes, and if you have more, the full testimony will be included in the record. When your time starts, a green light comes on; when you have a minute left, a yellow light comes on; when you are supposed to be finished, the red light comes on. I would ask that you follow that.

And the members will follow that, as we have our questioning period after the testimony.

Thank you very much.

Ms. Dickson?

STATEMENT OF ELIZABETH DICKSON, MANAGER OF GLOBAL IMMIGRATION SERVICES, INGERSOLL–RAND CO., TESTIFYING ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Ms. DICKSON. Chairman McKeon, Ranking Member Miller and distinguished members of the committee, good morning, and thank you for the opportunity to testify today.

I am Elizabeth Dickson, the corporate immigration service manager for Ingersoll-Rand Company, and I am part of the Global Mobility Services Team. I also chair the U.S. Chamber of Commerce Subcommittee on Immigration, and our company is a member of the Essential Workers Immigration Coalition.

I am testifying today on behalf of my company and the U.S. Chamber of Commerce.

It is a privilege for me to be here today discussing immigration policy, as Congress wrestles with comprehensive immigration reform issues. It is very important to note that an overhaul of our

immigration policy to meet our national security and economic needs is vital after a 20-year hiatus.

Common demographic and job growth projections, combined with numerous on-the-ground reports from many employers across the economic spectrum faced with the day-to-day realities of the workplace, indicate that this country is facing, and will continue to face, a growing shortage of workers in many areas.

The Chamber's testimony reviews much statistical data, the view of various experts and reports from across the employer community to bolster this conclusion. Depending on the state of the economy, job growth and levels of unemployment, this shortage will rise and fall and will vary across industries and in different categories of jobs.

We believe it is also apparent that the very limited nature of the country's current temporary worker program is inadequate to meet these challenges in the future. The H-1B Program is focused on highly skilled immigrant workers, while the H-2B Program allows for recruitment of lower-skilled workers, but it is limited to short-term seasonal types of work.

Both programs have very low caps—65,000 and 66,000, respectively—considering the overall workforce of 140 million employees.

This year the United States hit the H-1B cap for fiscal year 2007 on May 26 before many students even received their diplomas, a development which has profound impact on American companies and their ability to hire highly skilled workers who contribute to our economy and innovative product design.

Ingersoll-Rand has five foreign students caught in this, in our Advanced Development Program, which recruits highly talented graduates from U.S. universities. Their employment authorization will expire in May 2007 before any H-1B visas will be available in October. Ingersoll-Rand will be required to send these talented individuals overseas to wait for visa numbers. Obviously, this is going to impact business initiatives, project work and hurts our competitiveness.

Currently, there is no temporary worker program that addresses the huge gulf between these programs and many other kinds of skilled and semi-skilled workers. We had gotten involved in this because we had difficulty recruiting welders to our facility. We have our own welding school, and we train welders. Even when we train workers, many of the students cannot grasp the techniques and skilled nuances.

Welders are neither seasonal to meet the requirements of the H-2B Program, nor qualified to meet the requirements of an H-1B visa. This can mean severe delays in product delivery to our customers, which impacts our goodwill and can affect our competitiveness.

Additionally, we have no mechanism to bring in some of our own IR Canada service technicians to support service and repair business when required, because, again, they don't meet either the H-1B and it is not seasonal work. Tool and die workers and machinists, we have also experienced shortages in finding those types of workers.

Employers need a way to recruit foreign workers when they can't find U.S. workers. We need a reasonably efficient manner without

navigating a lot of bureaucratic hoops to fill jobs when U.S. workers are not available.

How such a program would be structured and what steps employers would go through, what enforcement mechanisms would be in place are still to be determined. The Senate has put forth one approach, and there are some limits to that approach.

And one of those issues I would just like to highlight is the Davis-Bacon Act prevailing wage issue, which appears to require that the level of wages paid to workers on Davis-Bacon Act contracts would have to be paid to temporary workers even if they are on non Davis-Bacon Act projects. The result could be that foreign workers could be paid much more than American workers. Obviously, this is an irrational result. I am not an expert in this area, but it is something that concerns the Chamber and its members.

Experts have often noted a temporary worker program that meets the needs of our economy will also increase national security, creating an orderly, legal, open process, which foreign workers could be recruited for jobs, screened and tracked while in the United States, will eliminate the job magnet, which now spurs illegal immigration, as those jobs would have to be filled through a new temporary worker program.

Additionally, we understand the need for a tougher employment verification system and support that, but the new system must be efficient, foolproof, failsafe and provide employers who comply with protections from liability. After all, an I-9 must be completed for every worker that you hire, including U.S. nationals.

It is clear that the economy cannot expand without the workers it needs and that an expanding economy benefits everybody.

Thank you for this opportunity to testify on behalf of the chamber and the business community.

[The prepared statement of Ms. Dickson follows:]

Prepared Statement of Elizabeth Dickson, Immigration Services Manager, Global Mobility Services Team, Ingersoll Rand Co., and on Behalf of the U.S. Chamber of Commerce

Chairman McKeon, Ranking Member Miller, and distinguished members of the Committee, good morning, and thank you for the opportunity to testify today before the Committee.

I am Elizabeth Dickson, the Corporate Immigration Services Manager and work with the Global Mobility Services Team for Ingersoll Rand Company. I am also Chair of the U.S. Chamber of Commerce Subcommittee on Immigration and our company is a member or the Essential Worker Immigration Coalition (EWIC). I am testifying today on behalf of Ingersoll Rand Company and the U.S. Chamber of Commerce. It is a privilege for me to be here today discussing immigration policy as Congress wrestles with comprehensive immigration reform issues. It is very important to note that an overhaul of our immigration policy to meet our national security and economic needs is vital after a 20-year hiatus.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector, and region. The Chamber's membership also includes 104 American Chambers of Commerce abroad ("AmChams") located in 91 countries, which represent American companies and individuals doing business overseas as well as foreign companies with significant business interests in the United States.

The Essential Worker Immigration Coalition (EWIC) is a coalition of businesses, trade associations, and other organizations from across the industry spectrum that support reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity.

Ingersoll Rand Company Limited, a Bermuda corporation, and its affiliated group ("Ingersoll Rand" or "IR") with worldwide corporate headquarters located in

Montvale, NJ, USA, is a global provider of products, services and integrated solutions to industries as diverse as transportation, manufacturing, construction and agriculture. The company brings to bear a 100-year-old heritage of technological innovation to help companies be more productive, efficient and innovative. Its business sectors encompass the global growth markets of Climate Control Technologies, Industrial Technologies, Compact Vehicles Technologies, Construction Technologies, and Security Technologies. Ingersoll Rand features a portfolio of worldwide businesses comprising leading industrial and commercial brands such as Bobcat compact equipment, Club Car golf and utility vehicles, Hussmann stationary refrigeration equipment, Ingersoll Rand industrial and construction equipment, Schlage Locks, and Thermo King transport temperature-control equipment.

Ingersoll Rand operates more than 80 manufacturing facilities, 38 of which are located within the United States, and markets its products and services, along with its subsidiaries, through a broad network of distributors, dealers, and independent sales and service/repair organizations. Ingersoll Rand employs approximately 40,000 employees worldwide. Annual net sales of IR products in 2005 were in excess of $10.5 billion. Since 2000, the company has acquired more than 50 businesses, extending the range of products and services it can provide to customers and enhancing its ability to drive total and recurring revenue growth in international markets.

Overview

Common demographic and job growth projections, combined with numerous "on the ground" reports from many employers across the economic spectrum faced with the day to day realities of the workplace, indicate that this country is facing, and will face, a growing shortage of workers in many areas. Depending on the state of the economy, job growth and levels of unemployment, this shortage will rise and fall and will vary across industries and in different categories of jobs.

It is apparent that the very limited nature of the country's current temporary worker programs is inadequate to meet the challenges of the future. We are requesting that Congress consider these issues and structure expanded temporary worker programs that employers could use, in a reasonably efficient manner without numerous bureaucratic hoops and hurdles to fill jobs with immigrant workers when U.S. workers are not available. Obviously, there are many details to be sorted out as to how such a program should be structured, and how many steps employers should go through and what enforcement mechanisms are adequate. The Senate bill has outlined one version of a possible program, but it is certainly only one possible approach and has its own problems.

Importantly, as experts have often noted, a temporary worker program that meets the needs of our economy will also increase national security. Creating an orderly, legal open process by which foreign workers can be recruited into jobs when U.S. workers are not available, and screened and tracked while in the United States, will eliminate the "job magnet" which now spurs illegal immigration as those jobs would have been filled through the new temporary worker program. Hence, adequate temporary worker programs will strongly complement our efforts to control the nation's borders.

Of course, a tougher employer verification system has to part of this mix in order to "seal the system" and prevent participants in the new programs from dispersing into the economy outside of legal channels.

Lastly, it appears that specific economic data is relatively limited with regard to the impact of temporary worker programs (with the exception of agriculture), perhaps because of the very limited nature of our current existing programs, particularly when viewed as a very small part of the workforce of over 140 million employees. However, it is clear that an economy cannot expand without the workers it needs and that an expanding economy benefits everyone. Further, the studies with regard to immigration, in general, overwhelmingly conclude that immigration provides a net benefit to the economy, with perhaps some adverse impact on the very low skilled. This adverse impact cannot be dismissed lightly and needs to be addressed, but must also be weighed against the overwhelming net benefits of immigration to the economy.

Demographic Realities and Workforce Needs

While the population of the United States as a whole is admittedly set to increase over the next few decades, the population is aging, more educated, and participating at lower rates in the workforce. A brief review of the relevant statistics and analysis may be helpful. Of course, when discussing workforce growth and future demographics, there is some guess-work involved, but in general the data leads to the conclusion that, without change, workforce growth will not be great enough to fill available jobs.

The number of people in the labor force ages 25 to 54 (the prime workforce) is projected to increase by only 0.3 percent between 2004 and 2014. Those in the age group of 16 to 24 years are actually expected to decrease in numbers as part of the labor force.[1] Those age 55 years and older will increase by 11 million between 2004 and 2014-going from 15.6 percent to 21.2 percent of the workforce. By 2014, those aged 55 and older will have the fastest growth rate and will be a little more than one-third of the working-age population at 33.7 percent (compared with only 26.2 percent in 1994).[2] According to estimates released in February 2005, the fertility rate in the United States is projected to fall below "replacement" level by 2015 to 2020, declining to 1.91 children per woman (lower than the 2.1 children per woman rate needed to replace the population).[3] By 2010, 77 million baby boomers will begin to retire and, by 2030, one in every five Americans is projected to be a senior citizen.[4]

The increase in school attendance has also affected the number in people going into lower-skilled worker positions, or positions that do not require a college degree. Young people have stayed in school longer, and there has been an overall labor force participation decline among those 16-24 years old. In fact, almost counter intuitively, the Bureau of Labor Statistics ("BLS") declared that rising school attendance actually strengthened the impact of the recession in 2001.[5] Another factor that will lead to a decline in overall workforce participation is the growing phenomenon of early retirement. The participation rate of those 55 years and older drops off sharply and is about half of the 24-54 year old age group, at 43.2 percent. It is also expected that women's participation rate in the workforce has peaked, and will no longer help fuel the labor force as it has over the last few decades The aggregate labor force participation rate has continued to decline, from 61.7 percent over the 1997-2000 period to 66.0 percent in 2004 and is set to continue its downward trend.[6]

The BLS also has projected job growth, both in low-skilled and high-skilled occupations. The BLS expects between 2004 and 2014 the number of U.S. jobs will increase by 18.9 million.[7]

Many occupations projected to grow in our economy will not require a college degree-only two of the top 10 largest growth occupations will require a Bachelor's degree or more. Six of the top 10 largest growth occupations from 2004-2014 require only moderate or short-term "on-the-job" training, including retail salespersons, customer service representatives, nursing aides, janitors and cleaners, waiters and waitresses, and combined food preparation and serving workers[8] About 37 percent of new job openings in the 2004-2015 period are projected to be filled by people with a high school education, or less.[9] These jobs are most often held by either younger or less-educated cohorts, which are not expected to grow in number at all.

The Construction Labor Research Council issued a labor supply outlook where it found that the construction industry would need 185,000 new workers annually for the next 10 years.[10] The National Restaurant Association projects that the restaurant industry will add more than 1.8 million jobs between 2005 and 2015, an increase of 15 percent.[11] However, the U.S. labor force is only projected to increase 10 percent during the next 10 years, which will make it more challenging than ever for restaurants to find the workers they need.[12] The National Restaurant Association study notes that the 16 to 24 year old labor force-the demographic that makes up more than half of the restaurant industry workforce-is not predicted to grow at all in the next 10 years.[13]

A panel on the future of the health care labor force in a graying society concluded that "[t]his will not be a temporary shortage. * * * Fundamental demographic changes are occurring in America, and the coming labor crisis will be with us for decades."[14] Currently, the American Hospital Association reports high vacancy rates and more difficulty in recruiting workers for positions ranging from housekeeping and maintenance to nursing assistants and registered nurses.[15] The impact of such workforce shortages, according to the Association, translates into severe emergency room overcrowding, emergency patients diverted to other hospitals, delayed discharge/increased length of stay, increased wait times for surgery, cancelled surgeries, discontinued programs, reduced service hours, and others.[16]

The BLS reports that the hospitality industry will need 304,200 additional employees by 2014 and predicts a 16.4 percent growth rate. At a recent hearing, a hotel corporation in Harrisburg, Pennsylvania reported that they have on average 25 to 40 job openings posted every week. This corporation participates in about 25 job fairs a year, advertises in newspapers and recruits extensively, and yet still has trouble finding workers.[17]

The views of experts reflect this reality. Edward Lazear, Chairman of the President's Council of Economic Advisers said in a speech on July 13, 2006 that "the slowing growth of the population and the aging of the baby boomers will mean a smaller supply of workers to support the economic engine. By far the single most

important determinant of jobs in the economy is population."[18] In The Jobs Revolution: Changing How America Works by Steve Gunderson, Robert Jones, and Kathryn Scanland, the authors note that the "most inescapable challenge facing the American workforce in the coming 20 years is that, barring substantial change, we will not have enough people to fill it."[19]

Justin Heet of the Hudson Institute acknowledged in Beyond Workforce 2020: The Coming (and Present) International Market for Labor that the "level of productivity gains that would be necessary to alleviate workforce growth declines will be too high to be relied on as a public solution to the triangle of retirement/healthcare/workforce considerations."[20] He concluded that governments in the developed world will need to use immigration in order to compliment their native workforce.

Secretary of Labor Elaine Chao has noted the phenomenon of the "Incredible Shrinking Workforce."[21] She stated that to keep up with the slower growth of the workforce and the increasing number of retired Americans we needed "to introduce new populations * * * into the workforce * * * to meet this challenge head-on."[22]

The Chicago Council on Foreign Relations issued a report in 2004 which noted that today's economies are "highly dependent on immigration, legal and illegal, temporary and permanent." It explained how the different economies rely "on the labor of those who arrived under employment-based categories as well as those who arrived under family reunification or humanitarian categories." It also reaffirmed the demographic trends and labor market projections explained earlier that "foreshadow increasing economic dependency on immigrant labor."[23]

It should be noted that the BLS predicted that there would be job growth in lower-skilled areas, it also predicted that there would be growth in higher-skilled areas. Job growth will be most significant at opposite ends of the spectrum, in professional and related occupations and service occupations, which will make up over 60 percent of expected job growth.[24] The BLS expects large increases in highly-skilled occupational groups such as education and training, health care, computer and mathematical science, architecture and engineering, life and physical science, community and social services, and legal.[25] There will also be a need in the United States for more highly-skilled workers to fill these jobs.

The Chamber's own surveys, not surprisingly, reflect the problems employers have in finding the workers that they need. On April 19, 2005, the Chamber's Center for Workforce Preparation, which was created as a Chamber affiliate to address labor shortages and to engage businesses in incorporating effective recruitment, retention, and training solutions, launched a Workforce Needs Assessment Survey of chambers, businesses, and associations. Difficulties in finding both entry-level and skilled workers, and developing solutions for this problem, ranked extremely high in importance to those surveyed.

Existing Temporary Worker Programs

The three commonly used temporary worker programs in existence today are the H-1B, the H-2B and the H-2A programs. The H-1B program is exclusively for workers with a minimum of a bachelor's degree or the equivalent. The cap is currently at 65,000, but there is an additional 20,000 reserved for graduates of U.S. colleges and universities with a master's or doctorate degree. The H-1B cap has been reached eight times in the last ten years.

Companies use the H-1B visa to recruit professionals and highly-skilled workers. Companies also use these visas to recruit workers that have just graduated from U.S. colleges and universities, often in the math and science fields (which many times graduate more foreign-born students than native-born students). The employer must pay a $1,500 fee that provides scholarships and training for U.S. workers and a $500 anti-fraud fee. An employer must notify its U.S. workforce of the potential hire, in addition to certifying, according to established wage surveys, that it is paying the H-1B employees at the prevailing wage for U.S. workers and that the H-1B professionals are working under the same conditions as their U.S. counterparts, including hours, shifts and benefits. The employer must also attest that the H-1B worker is not a replacement worker for a labor dispute or strike. The employer must then receive approval from the Department of Labor, the Department of Homeland Security, and then receive the visa through the Department of State.

The Chamber, as part of the steering committee of the Compete America coalition, has consistently urged Congress to increase this cap or to make it market-based. The cap in 2006 was hit on June 1, and thus, without congressional intervention, most employers must wait more than a year to be able to hire new H-1B workers. Congress increased the cap on these visas during the high-tech boom at the end of the 1990s, but the cap reverted to its original number in 2003. These visas have historically responded visibly to market demand; demand decreased significantly

and the cap was not even close to being hit as the tech bubble burst and the economy declined in 2001.

Ingersoll Rand prides itself on being a U.S. based company that strives to keep the majority of its manufacturing operations within the U.S. borders. We have manufacturing plants in 24 states and 120 facilities located throughout the United States. Over 45-50% of our profits are tied to export sales. Unfortunately, market forces and the lack of highly qualified U.S. workers have created a problem of identifying and retaining U.S. workers. Indeed, recruiting engineers within the U.S. often results in foreign born applicants. Let me give you some examples of the difficulties we face:

• As the company continues to expand its quality initiatives, Metrologists have become a professional engineering occupation in very short supply. There are only about five universities in the U.S. with Masters programs specializing in metrology and almost all the students enrolled in such programs are foreign nationals. Human Resource Managers advise me that they simply cannot find Americans to fill such positions. Metallurgical engineers have been an identified shortage occupation for years in the United States and are key contributors to machinery development projects for construction products.

• Thermo King refrigeration technologies unit conducted a 13-month search for a qualified plastics engineer for their product development team and could only locate a Canadian national. This same division looks for researchers on cooling technologies. We funded research at Pennsylvania State University and hired a Graduate Research Assistant performing the work. This man was a PhD candidate from China with extensive research projects experience. Thermo King could not locate any qualified U.S. applicant.

• We have also recently recruited for Product Design Engineers with specialized skills and experience. In one position, the engineer is responsible for Power Electronics Engineering, as a member of a dedicated Product Development team to create globally competitive, robust, and maintainable power products for the Industrial Technologies' electric power tool business. The minimum requirements for this position are a Master's degree in Power Electronics, with three or more years of professional experience in Power Electronics design. We had been unsuccessful in locating a U.S. worker, but were able to recruit a U.S.-educated worker with a Ph.D. who has a thorough understanding of switched mode power supply design and all aspects of power electronics.

• At Security Technologies we hired a Senior Reliability Test Engineer with a BS degree in Engineering from Turkey and an MS degree in Industrial and Systems Engineering from a U.S. university to work on new product development for locking devices. In 2005 this sector acquired an electronic lock company based in Turkey and this foreign national engineer has been invaluable to the integration of this acquisition into our Security Technologies portfolio of products as he has a thorough understanding of both European and U.S. engineering standards.

The other major temporary worker program is the H-2B program, which is designed specifically to allow foreign nationals to work for a sponsoring employer in a job that is only temporary in nature; for example, to fill a seasonal job (but not in agriculture), to meet a one-time project or need, to add additional staff during a time of exceptionally high peak load, or to fill a position that is intermittently used in the business. H-2B visas are used in industries such as landscaping, seasonal hospitality (such as resort hotels, restaurants and attractions), and seasonal construction, as well as to meet specific needs in manufacturing, retail and other industries.

The cap on H-2B visas is 66,000 annually, and the cap has been hit the last two years, affecting small businesses in particular. Congress passed an exemption for repeat users, but that will soon sunset, and without relief, many small employers quite possibly will be adversely impacted. The H-2B program helps supplement the native-born workforce, but it cannot be used to fill all types of jobs because of the seasonal nature of the visa. A company has to first recruit and advertise for the opening in the U.S. The employer must then obtain a temporary labor certification from the Department of Labor, receive approval from the Department of Homeland Security, and then request that the visa be issued through consular process of the Department of State.[26]

Unfortunately, for Ingersoll Rand, market forces and the unavailability of U.S. workers has created a problem of identifying and retaining lesser-skilled workers. Here are some examples:

• Ingersoll Rand cannot find the welders it needs in the domestic economy, despite its best efforts to do so, and has no option to use a temporary worker program under current law to fit this situation. We train welders at our own facilities. Even when we train U.S. workers, many of the students cannot grasp the technique and

skill nuances. Welders are neither seasonal to meet the requirements of the H-2B program, nor qualified to meet the requirements of an H-1B visa. This can mean severe delays, which impedes the good will we have with our customers, and can affect our competitiveness.[27]

• Technicians for the Air Solutions Group's service and repair business are also in short supply. We have identified skilled technicians at our IR Canada operations who have the product knowledge and technical experience to service IR compressors in the U.S., however as the products they would be servicing are manufactured in the U.S., not Canada, they would require work permits and there is no appropriate visa category to allow such skilled technicians to travel intermittently to the U.S. to perform service on U.S.-manufactured machinery.

• Experienced tool and die workers, with knowledge in stamping technology and machining are scarce. Our manufacturing plants in the Detroit area continue to experience difficulty finding electricians for their manufacturing operations, with the automotive industry being primary competitors for such skilled workers. Experienced machinests are also critical. We are very concerned about the looming shortage or these types of workers as the older generation retires, and we see no evidence of younger skilled and semi-skilled workers coming into the ranks to backfill these key positions.

Another type of temporary visa available for employers today is the H-2A agricultural visa. This visa will be covered by another panelist, but the program has proven to be difficult to use and not responsive to the realities of the agricultural workplace, and as even the Department of Labor has said, it is cumbersome and litigation-prone.[28]

The existing types of temporary worker programs do not begin to meet all of the complex needs of the U.S. economy. In sum, the H-1B program is focused on higher-skilled immigrant workers, while the H-2B program is limited to short-term, seasonal types of work, although it allows for recruitment of lower-skilled workers. Further, particularly when viewed against a domestic economy of over 140 million workers, and given the demographics and job growth projections already discussed, the caps are simply unrealistic. There is no temporary worker program that addresses the huge gulf between these programs and the complexities of the many different kinds of jobs and skill levels. Employers need a way to recruit foreign workers when they cannot find a U.S. worker, and currently there are few realistic mechanisms to accomplish that.

The Impact of Temporary Worker Programs on the Economy

As the discussion above has indicated, based on demographic and job projection data, and reports from the employer community and various experts, this country faces worker shortages across a spectrum of occupations and industries. The discussion has also indicated that existing temporary worker programs are inadequate to meet this need.

While it appears that there are few studies that evaluate the direct effect of a low-skilled temporary worker program on U.S. workers, there is data on how H-1B temporary workers affect the wages of natives and how immigration in general affects U.S workers. Studies have found that H-1B workers have little or no adverse impact on wages or unemployment rates on native-born workers.[29] The majority of more general studies have found that immigration does not, or else rarely, depresses wages. In a January 2006 study, economists Gianmarco Ottaviano and Giovanni Peri found that during the period of 1980-2000 the average U.S. worker experienced an increase of 2 percent in the real value of his wage because of immigration, primarily because capital increases as labor increases.[30] Even studies that have found that immigration lowers wages have estimated that a 10 percent increase in the share of foreign-born workers reduces native wages by less than 1 percent.[31] Immigrants spend money, which creates jobs, and can often increase the wages in areas that are depressed.[32] Again, the vast majority of studies indicate a net plus to the economy from immigration and workers in general.[33]

As labor economist Dan Siciliano stated, "the empirical evidence indicates that businesses expand through the investment of more capital when the labor supply is not artificially constrained."[34] The United States sees real economic growth from immigration, and immigrants help fill the growing gaps in our labor force, as native-born workers obtain higher levels of education and retire. In fact, the Bureau of Labor Statistics includes immigrant labor in its forecasts, and it predicts high levels of growth in the U.S. economy assuming that immigrant labor, legal and illegal, continues at least at the same rate as it is now.[35] A temporary worker program is needed to ensure that U.S. companies have enough workers to fill the jobs they are creating.

It is a myth that employers are just pursuing a temporary worker program to avoid using domestic workers or so that they can hire "cheap labor." Many industries pay much more than minimum wage and still cannot find workers-the debate is not about cheap labor, it is just about finding labor. For example, an average construction worker makes $20.03 an hour.[36] Many roofers earn well over $50,000 annually, yet many of these jobs go wanting.[37] Further, any temporary worker program enacted by Congress will require that employers pay participants in the program at least the same wages and benefits they pay comparable U.S. workers. The upfront fees and legal costs associated with any program provide a built in disincentive to use these programs unless a real shortage exists.

The Chamber recognizes that the business community must also help domestic workers find suitable employment, and through its Center for Workforce Preparation, these efforts include:

- Identifying and supporting programs that bring new sources of labor into the workforce-mature workers, former welfare recipients, individuals with disabilities, youth, and others. By bringing these skilled individuals into the workforce, employers will have greater access to qualified employees.
- Replicating successful workforce and education models that focus on partnership development between businesses, chambers, government, and education institutions.
- Educating businesses on innovative recruitment and retention strategies such as workplace flexibility as a management tool that allows businesses to address the labor shortage by retaining their workers.
- Connecting businesses to qualified and skilled youth who are already trained and available to establish careers in high-demand industries such as construction and health care.
- Informing businesses on using the Earned Income Tax Credit as a retention tool to support entry-level workers.
- Working with five states and the District of Columbia to develop a national and portable credential that defines, measures, and certifies that entry-level job seekers have the employability skills like problem solving and critical thinking that employers require.
- Forming solutions around issues such as workplace housing that impact an employer's ability to recruit and retain skilled workers.
- Building the capacity of over 135 chambers to advance their role in building workforce and education partnerships between businesses, community colleges, and the public workforce system.
- Helping the Chamber's federation of 3,000 state, local, and regional chambers of commerce to effectively engage in workforce development by providing tools and promising practices.
- Connecting businesses to market-responsive community colleges and other educational programs available to them to create continuous skills training for their employees to ensure that their skills keep pace with changes in technology.

It is also important to restate the Chamber's commitment to filling jobs with U.S workers before seeking to fill these vacancies with potential new guestworkers or immigrants abroad. Indeed, industries and businesses that are our members are some of the leaders in the nation's welfare-to-work, school-to-work, and prison-to-work efforts. Because many of these jobs are entry-level, requiring little or no experience, and often few skills, they are the stepping stones for many on their road to the American dream. Employers are taking all the reasonable steps that they can to fill these jobs with the current United States workforce, but still many jobs are going unfilled.

Realistic Temporary Worker Programs Will Strengthen National Security and Our Borders

While much of the above discussion has focused on the need for expanded temporary worker programs to meet the needs of an expanding economy, these programs will also enhance our national security and control over our borders. This precise point was explained in a letter by several past governmental officials charged with enforcing our immigration and border security laws, which has been attached to this testimony for your review.[38] This linkage is also clear by a matter of simple logic. When available jobs are filled (after recruitment in the domestic labor pool) by legal foreign workers, there will no longer be jobs to be filled by those who may come here illegally and thus, the magnet that drives much illegal immigration will be gone.[39] Further, because these workers will have been screened and channeled through a controlled program, border officials will be able to focus their resources on those that pose a real threat to our country-not job seekers, but criminals.

The Senate Temporary Worker Program

The Comprehensive Immigration Reform Act of 2006 recognizes the importance of an adequate labor force for economic growth, and creates a new temporary worker program (an H-2C visa) beyond the programs already in existence. The Senate-passed bill has numerous labor protections to both ensure that U.S. workers will not be adversely affected by the program and to ensure that those coming as temporary workers receive appropriate protection. For example, employers cannot use the program unless they have first tried to recruit U.S. workers for the job. Employers must pay the higher of the wage paid to similarly situated employees or the prevailing wage for the occupation, adding a further incentive to look for U.S. workers first. The bill includes strong provisions to ensure that these workers are not used to replace laid off workers or to be used in the case of a labor dispute, such as a strike. H-2C workers must receive the benefits and have the same working conditions typical to similarly employed U.S. workers. Temporary workers would be eligible for worker's compensation coverage, and they would be able to change jobs the day they arrived, so they would not be tied to their employer. Employers in areas of high unemployment, of 9 percent or more for workers who have not finished a high school degree, would be unable to use the temporary worker program.

The Chamber and EWIC believe the number of temporary workers in the Senate passed bill is inadequate, capped at only 200,000. The Chamber supports a market-based cap that was included the Senate bill as introduced. This market-based cap could increase and decrease based on need for these visas, within limitations.

The bill would also provide temporary workers with a way to obtain permanent legal status if they are sponsored by their employer. The employer must go through a labor certification process, called the PERM process, to ensure that the worker they are sponsoring will not displace a U.S. worker or be used in lieu of a U.S. worker. This is not a wide open door for a green card. This PERM process is a complicated test of the labor market. The Department of Labor must certify that there are not sufficient U.S. workers who are able, willing, qualified and available; and that the employment will not adversely affect wages or working conditions of similarly situated U.S. workers. Employers are required to perform extensive tests of the local job market prior to filing the application. The Department of Homeland Security must then approve the application, and then the employee would be required to undergo full background checks and security clearances through the adjustment process of the Department of Homeland Security or the Consular Process of the Department of State.

The temporary worker provisions of the Senate-passed bill also contain a number of troubling provisions. In particular, section 404 of the bill, related to employer obligations, includes a number of requirements that are unclear, unnecessary, or simply unwise and we hope that should Congress move to enact a new temporary worker program that these problems will be addressed. The most troubling provisions include:

- A requirement to pay adverse affect wage rates when such a provision is unnecessary because the bill also contains a requirement to pay prevailing wages (compare new sections 218B(c)(1)(A) with 218B(c)(2));
- An overly long non-displacement attestation of 180 days, where 60 days would be more appropriate (see new section 218B(c)(1)(B));
- Confusing prevailing wage language that could be read as vastly expanding the Davis-Bacon Act so that temporary worker participants on a non Davis-Bacon Act projects could have to be paid Davis-Bacon wages (see new section 218B(c)(2));
- Overly broad and vague language regarding the working conditions for the temporary worker. Conditions should be normal to those similarly employed by the employer at the same place of employment (see new section 218B(c)(3);
- Confusing new language in the no strike / lockout language. The new term "work stoppage" has been introduced, which is unclear and significantly broader than similar language for other temporary worker programs (see new section 218B(c)(4));
- We are unsure of the real world impact of requiring the provision of insurance for workers not covered by state workers compensation laws. We would certainly support the proposition that a temporary worker be covered under state workers' compensation laws in the same manner as U.S. workers, but if state law does not cover a similarly situated U.S. worker, we do not believe it is appropriate to cover a temporary worker (see new section 218B(c)(5));
- The requirement that the petition be filed within the 60 day period before the employer needs services does not reflect reality. DHS simply cannot process applications that quickly. We suggest 180 days so that the employer can properly plan ahead and to be more consistent with other nonimmigrant program requirements (see new section 218B(c)(12)); and

• The debarment requirements do not give the government enough discretion. It appears one error on a petition would lead to a three year debarment period from use of the program. We suggest DOL be given the discretion to review the facts to see if a pattern or practice exists by making it clear the government has the discretion to debar the employer.

ENDNOTES

[1] Bureau of Labor Statistics, Labor Force Projections to 2014: Retiring Boomers at 26, November 2005.

[2] Id at 28.

[3] World Population Prospects: The 2004 Revisions at 71, February 24, 2005, available at *http://www.un.org/esa/population/publications/WPP2004/2004Highlights—finalrevised.pdf.*

[4] Jim Edgar, Doris Meissner, Alejandro Silva, Keeping the Promise: Immigration Proposals for the Heartland at 12, Report of an Independent Task Force, which brought together forty leaders from business, academia, and civil society (The Chicago Council on Foreign Relations)(2004).

[5] Bureau of Labor Statistics, Labor Force Projections to 2014: Retiring Boomers, at 30, November 2005.

[6] Id at 32-37.

[7] Bureau of Labor Statistics, Occupational Employment Projections to 2014 at 70.

[8] Id at 77.

[9] Id at 80.

[10] Information from the National Roofing Contractors Association. See also Bureau of Labor Statistics, Occupational Employment Projections to 2014 at 94.

[11] From information gathered and forwarded to the Chamber by the National Restaurant Association.

[12] Id.

[13] From information gathered and forwarded to the Chamber by the National Restaurant Association.

[14] American Hospital Association, Trend Watch, June 2001.

[15] 2004 American Hospital Association Survey of Hospital Leaders; some occupations, such as registered nurses, come under the H-1B visa program. While the primary focus of this testimony is on the projected shortages of low skilled workers, the Chamber is acutely aware of the continued need to also increase access to highly skilled workers under the H-1B visa program.

[16] Id.

[17] Carol Green Ross, Harrisburg Hotel Corporation, testimony before the Senate Judiciary Committee, July 5, 2006.

[18] Edward Lazear, Chairman, Executive Office of the President Council of Economic Advisors speech before the National Economists Club July 13, 2006 "A Success Story: American Productivity." *http://www.whitehouse.gov/cea/lazear-national-econ-club-speech-20060713.pdf1*

[19] Steve Gunderson, Robert Jones, and Kathryn Scanland, The Jobs Revolution: Changing How America Works at 29 (2004).

[20] Justin Heet, Hudson Institute Beyond Workforce 2020: The coming (and present) international market for labor June 23, 2003 at 11, available at *http://www.hudson.org/files/publications/workforce—international—mkt—labor.pdf*

[21] Secretary of Labor Elaine Chao, State of the Workforce, August 30, 2001, available at *http://www.dol.gov/—sec/media/speeches/20010830—stateoftheworkforce.htm.*

[22] Id.

[23] The quotes in this paragraph come from Keeping the Promise: Immigration Proposals for the Heartland at 33; a more complete citation of the report can be found in footnote 4.

[24] Bureau of Labor Statistics, Occupational Employment Projections to 2014 at 71-80, November 2005.

[25] Id at 72.

[26] Carol Green Ross, Harrisburg Hotel Corporation, testimony before the Senate Judiciary Committee, July 5, 2006. To see the process, visit the Department of Labor Web site, *http://www.flc.doleta.gov/foreign/h-2b.asp*

[27] "Finding What Works: Immigration Helps Fill Jobs for Many Companies" The Record: Business at B-1, June 4, 2006.

[28] John Hancock, Department of Labor before the Subcommittee on Immigration and Claims of House Committee on the Judiciary, Sept. 24, 1997 cited in Stuart Anderson, "Making the Transition from Illegal to Legal Immigration," The National Foundation for American Policy, November 2003, available at *http://www.nfap.com/researchactivities/studies/Nov—study2.pdf*

[29] Stuart Anderson, "H-1B Professionals and Wages: Setting the Record Straight" National Foundation for American Policy, March 2006, available at *http://www.nfap.com/research activities/articles/NFAPPolicyBriefH1BProfessionalsAndWages0306.pdf*

[30] Gianmarco I.P. Ottaviano and Giovanni Peri, University of Bologna and University of California, Berkley. "Rethinking the Gains from Immigration: Theory and Evidence from the U.S". (Working Paper). National Bureau of Economic Research. See also, David Card, University of California Berkley, "Is the New Immigration Really So Bad?" National Bureau of Economic Research, January 2005, available at *http://www.phil.frb.org/econ/conf/immigration/card.pdf*

[31] Economic Report of the President at 105, February 2005.

[32] Orn Bodvarsson and Hendrik Van den Berg "The Impact of Immigration on a Local Economy: The Case of Dawson County, Nebraska." Great Plains Research Vol. 13, No. 2, 2003, at 291-309. For a good summary of the differences in how economists calculate the effects immigrants have on the economy, see Alan B. Krueger, Princeton University, Memo on : "Two Labor Economic Issues for the Immigration Debate" April 4, 2006, available at *http://www.americanprogress.org/atf/cf/{E9245FE4-9A2B-43C7-A521-5D6FF2E06E03}/krueger—im-*

migration.pdf. For a broad overview and discussion on the economic theory surrounding the impact of immigrants on wages, see Roger Lowenstein, "The Immigration Equation." New York Times Magazine, July 11, 2006.

[33] While of course it can be debated, many economists have found that immigration represents a net plus for the economy. For example, see the open letter economists signed June 19, 2006 available at *http://www.independent.org/newsroom/article.asp?id=1727*

[34] Dan Siciliano, a labor economist at Stanford University, testimony before the House Committee on Education and the Workforce, November 16, 2005.

[35] Bureau of Labor Statistics, Labor Force Projections to 2014: Retiring Boomers at 26-27, November 2005.

[36] Information gathered from the Associated General Contractors, wage rates can also be found at the Bureau of Labor Statistics June 2006 hourly earnings on construction, available at *http://www.bls.gov.*

[37] Richard Birkman, President, Texas Roofing Company in Austin, testimony before the Immigration, Border Security and Citizenship Subcommittee of the Senate Judiciary Committee, February 12, 2004.

[38] Coalition for Immigration Security, composed of numerous former DHS officials, stated this very point in their April 2006 letter on the relationship to importance of legal channels of immigration for border security. See also Stuart Anderson "Making the Transition from Illegal to Legal Migration" National Foundation for American Policy, November 2003.

[39] For an example of how a temporary worker program would lower illegal immigration, see Stuart Anderson "The Impact of Agricultural Guest Worker Programs." The National Foundation for American Policy, November 2003. The bracero program operated from 1942-1964, allowed U.S. farmers and growers to employ temporary Mexican farm workers. The Immigration and Naturalization Service ("INS") encouraged farmers to use only legal labor through the bracero program, and about 300,000 to 445,000 were permitted each year. The bracero program essentially brought illegal immigration to a halt as the U.S. government increased legal means of entry. Farmers and growers willingly used the program instead of hiring illegal workers. The INS admitted itself that the bracero program helped them control the border. When the bracero program was discontinued, illegal immigration rose sharply almost overnight.

Chairman MCKEON. Thank you very much.

Ms. Hallstrom?

STATEMENT OF LUAWANNA HALLSTROM, GENERAL MANAGER AND COO, HARRY SINGH AND SONS, ON BEHALF OF THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS AND THE AGRICULTURE COALITION FOR IMMIGRATION REFORM

Ms. HALLSTROM. Mr. Chairman and members of the committee, I appreciate the opportunity to testify on behalf of Harry Singh and Sons, a third-generation, family owned farming operation located in Oceanside, California. We are currently the largest single fresh market vine ripe tomato producer in the U.S.

I am also here to testify——

Chairman MCKEON. Can you pull your mike just a little closer, please?

Ms. HALLSTROM. I am also here testifying as co-chair of the Agricultural Coalition for Immigration Reform and officer of the National Council of Agriculture Employers that serve as the national voices of labor-intensive agriculture on immigration reform.

I am extremely grateful that this committee is addressing the critical issue of the guest worker programs and their impact on American workers and immigration policy, as I live with these issues every day.

It is imperative that Congress enact legislation this year that in addition to enforcement provisions also contains a reformed guest worker program for agriculture and a workable mechanism for addressing a large number of undocumented workers that contribute to our economy by filling jobs that Americans will not take and are not available for.

My grandfather was an immigrant from India and came here with nothing in his pockets at the age of 16. He had a very strong

work ethic and a dream. From these humble beginnings, he was able to build a very successful farming business.

Labor-intensive agriculture in the U.S. faces a shortage of workers, as well as a shortage of legal workers. Our business has experienced difficulty for a number of years in obtaining a sufficient number of workers for vegetable production and harvesting. Given the topic of this hearing, I will focus on the guest worker issue.

We have a large farming operation on Camp Pendleton where we have been farming on the military base since 1940. And after the terrorist attacks of 9/11, we became involved with the Department of Homeland Security in designing security guidelines for the access of our farm workers onto a military base to work on the farm. This resulted in a loss of 75 percent of our workforce after the extensive document verification process was completed.

With the loss of most of our workforce at the peak of our harvesting of our tomatoes, we lost $2.5 million within 45 days, as we watched our crop rot in the field. We believe that our 9/11 experience illustrates what will happen to most farm employers involved in labor-intensive agriculture if an electronic employment verification system, like that contained in the bill passed by the House, is enacted without a workable guest worker program.

Must of the national agriculture workforce estimated is at about 75 percent undocumented. They would be excluded through an effective verification system, and our industry would collapse without a workable guest worker program to replace it.

In order for us to survive post-9/11, we had no choice but to attempt the use of the H-2A Agriculture Guest Worker Program. We are now the largest California user of a dysfunctional 50-year-old H-2A Program, which currently supplies less than 3 percent of the U.S. seasonal agricultural workforce. The program is administratively cumbersome, it is costly, it requires farmers to wade through 33 pages of Federal regulations to try and comply with the complex requirements.

We have had to hire additional staff, lawyers and consultants to keep up with the demands of the program and to protect ourselves from frivolous lawsuits. And we struggle to keep up with the spiraling adverse effect wage rate. Every year it changes on March 1. The wage rate is not market based, it does not relate to the specific job. In the area of employment, this year's average wage hike came at a half-a-million-dollar price tag that we could have not budgeted for.

The H-2A Program does not take jobs away from American workers. We are required to recruit U.S. workers, and we may end up with hundreds of calls, several interviews and a few hires, of which many don't show up to work, oftentimes, maybe 1 or 2 days, at best.

Americans do not raise their children to be farm workers. They aspire for higher education, upward mobility and year-round employment. In 1998, Senator Feinstein encouraged California growers to work with the State Welfare and Employment Development Offices to recruit U.S. workers for farm jobs. And after extensive advertising, there were 137,000 able-bodied candidates that were identified, but only 503 of those applied for work, and only three actually showed up. This effort substantiated what growers in all

states will tell you: American workers do not want to perform seasonal, agricultural work.

We strongly believe that a workable guest worker program would substantially reduce illegal migration of workers into agricultural jobs, and we believe this is supported by a program that went from 1942 to 1964, called the Bracero Program. It greatly reduced illegal migration into farm jobs.

It is my belief that our nation will not solve the problem of illegal migration without comprehensive approach to immigration, and as part of our strategic plan for national security, I would like to see us maintain the ability to provide a safe, reliable and domestic food source.

I thank the committee for listening to my views.

[The prepared statement of Ms. Hallstrom follows:]

Prepared Statement of Luawanna Hallstrom, Harry Singh & Sons, on Behalf of the National Council of Agricultural Employers and the Agriculture Coalition for Immigration Reform

Mr. Chairman and members of the Committee: I appreciate the opportunity to testify on behalf of Harry Singh & Sons, a third generation family-owned farming operation located in Oceanside, California. I serve as General Manager of the company, as well as Business Manager for its marketing company, Oceanside Produce, Inc. We are the largest vine-ripe tomato producer in the U.S.

I also am testifying as co-chair of the Agriculture Coalition for Immigration Reform (ACIR) and officer of the National Council of Agricultural Employers (NCAE). ACIR is a coalition of over 150 state, regional and national agricultural organizations and commodity groups, representing thousands of employers that was formed six years ago for the purpose of promoting comprehensive immigration reform as it relates to agricultural employers. NCAE is a Washington, D.C.-based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in fifty states who employ a substantial portion of the nation's hired farm workforce. Its members include growers, farm cooperatives, packers, processors and agricultural associations.

I am very pleased that this Committee is addressing the critical issue of guest worker programs and their impact on American workers and immigration policy. As Congress hopefully attempts to reconcile the differences between the House and Senate immigration reform bills this year, it is imperative that a final product contain a reformed guest worker program for agriculture and a workable mechanism of addressing the large number of undocumented workers that contribute to our economy by filling jobs that Americans will not take.

My testimony focuses on the following issues that are raised by the topic of this hearing:

1) What is the current experience of American agriculture with a guest worker program?

2) What impact will a workable agricultural guest worker program have upon the American workforce?

3) Will an agricultural guest worker program help reduce illegal migration of workers into agricultural jobs? and,

4) What are the consequences of enacting immigration reform legislation that includes enforcement only or enforcement first provisions without providing a means toward a legal workforce?

1. What is the current experience of American agriculture with a guest worker program?

Our farm's experience with 9/11 illustrates what will happen to most agricultural employers once an effective electronic employment eligibility verification system similar to that proposed in H.R. 4437, the House-passed immigration reform bill, is established. Let me explain. Part of our farming operation has been on a military base, Camp Pendleton, since 1940. After the terrorist attacks on 9/11, the Department of Homeland Security (DHS) was tasked to secure our military bases. As a result, DHS established security procedures that checked on the background of all of the farm workers who worked on the Camp Pendleton property. While these workers provided us with documents that appeared genuine, DHS was able to check

the documents against government databases and determined that most our workforce was not properly documented. We terminated those workers without proper work authorization. The result of eliminating most of the workforce necessary to hand harvest our tomato crop was disastrous, as we lost $2.5 million because we were unable to harvest our crop in a timely manner.

Enactment of a mandatory electronic verification of the authenticity of employment documents would have the same effect on nearly all agricultural employers. Agriculture is the one U.S. industrial sector where the government has some reasonably good statistics on the employment of illegal aliens and they are stunning! In the U.S. Department of Labor's (DOL) most recent survey (1998-99), 52 percent of the seasonal agricultural workers surveyed indicated that they were unauthorized to work. Agricultural labor economic experts indicate that a straight-line extrapolation to 2005 of the last DOL study suggests that the percentage of U.S. farm workers who were unauthorized to work in 2005 was approximately 75 percent.

Once the current system of visual inspection of employment documents is replaced by an electronic means of quickly checking records against government databases, we anticipate that the vast majority of the agricultural workforce will be screened out of jobs. The question then becomes, how do we replace them? A guest worker program and some means of dealing with the current experienced, but undocumented workforce, become essential to the survival of labor intensive agriculture.

Agriculture has a guest worker program called the H-2A program that has been around for nearly 50 years without significant reform. It does not work. Our business has learned this the hard way. Our experience is instructive.

To survive the events after 9/11 that I have described, we were forced into the H-2A agricultural guest worker program. Our experience with this program has been almost as bad as that we encountered in losing our crop. The government bureaucracy did not move quickly enough to approve our emergency application in a timely manner. The regulatory complexity of the program has forced us to hire an army of lawyers and consultants in order to try to make it work. It is now clear to us why this dysfunctional guest worker program provides less than three percent of the temporary and seasonal agricultural workers required by labor intensive agriculture. The vast majority of family farms in this country do not have the resources required to make this program work.

There are three broad reasons why the H-2A program needs to be reformed.

First, the program is administratively cumbersome and costly. Even at its present level of admission, fewer than 50,000 workers annually, which accounts for less than three percent of the 1.6 million seasonal job opportunities nationwide, the program is nearly paralyzed. Secondly, the program sets minimum wage and benefit standards that many employers cannot afford or cannot qualify for. The vast majority of agricultural workers, legal and illegal, get little or no benefit from the H-2A "protections".

The regulations governing the program cover 33 pages of the Code of Federal Regulations. ETA Handbook No. 398, the compendium of guidance on program operation, is more than 300 pages. Employers must apply for workers a minimum of 40 days in advance of the date workers are needed. Applications, which often run more than a dozen pages, are wordsmithed by employers, by DOL and by attorneys. Endless discussions and arguments occur over sentences, phrases and words.

Each employer applicant goes through a prescribed recruitment and advertising procedure, regardless of whether the same process has been undertaken for the same occupation by another employer only days earlier. The required advertising is strictly controlled by the regulations and looks more like a legal notice than a help wanted ad. Increasingly, DOL is requiring that advertising be placed in major metropolitan dailies, rather than the local newspapers that farm job seekers are most likely to read, if they are looking for farm work at all. The advertisements rarely result in responses, yet they are repeated over and over again, year in and year out.

Certifications are required by law to be issued not less than 20 days before the date of need, but the GAO reported in 1997 that they were issued late more than 40 percent of the time. Even after all this, the employer has no assurance that the "domestic" workers referred to it are, in fact, legal. Most state job services refuse even to request employment verification documents, much less verify that they are valid. It is the experience of H-2A employers that a substantial and increasing proportion of the "domestic" workers referred, are in fact illegal aliens themselves. Yet, these referrals are often the basis for denial of certification to employ legal alien workers.

Finally, a high proportion of the workers referred to H-2A employers—referrals that are the basis for denial of the employer's H-2A labor certification—either fail to report for work or quit within a few hours or days. This forces the employer to file with DOL for a "redetermination of need". Even though redeterminations are

usually processed within a few days, the petition and admission process after redetermination means that aliens will, at best, arrive about two weeks late.

The second reason why reform is needed is that the current H-2A program requires wage and benefit standards that are unreasonably rigid or not economically feasible in many agricultural jobs, and effectively exclude those jobs from participating in the H-2A program. The most glaring example is the so-called Adverse Effect Wage Rate (AEWR). The AEWR sets an artificially high minimum wage standard that makes it uneconomical to use the H-2A program in many agricultural occupations. The current AEWR in California is $9.00 an hour. The AEWR standard, in effect, makes the average wage in one year the minimum wage in the ensuing year. Since the AEWR is set at the average of the wages for all agricultural workers in the state, it will be above the actual wages paid for about half of the agricultural employment in the state, and below the actual wage for about half of all agricultural employment in the state. Since, by definition, half of all employment will always have an actual wage below the average wage, this standard will always set an uncompetitive wage for some occupations, no matter how much agricultural wages rise.

A third major problem area with the current H-2A program is that it is litigation-prone. Hostility to the program by those who oppose guest worker programs coupled with overly complex and burdensome regulatory requirements have combined to make the few users of the program litigation magnets. We are living examples of this truth. Notwithstanding the fact that we hired lawyers and experts to guide us through this complex program, we were nonetheless sued and incurred significant costs through the process. Most agricultural employers could not have withstood the costs and interference with their farming operations.

In sum, our personal experience with the current H-2A guest worker program has been a nightmare, as has that of a substantial number of other current users that are part of ACIR and NCAE. Others in agriculture closely observe the difficulties that we have experienced and are discouraged from using the program. A reformed guest worker program that is simple to use, provides legal workers in a timely manner and is affordable is essential to the survival of labor intensive agriculture.

2. What effect will a workable guest worker program have upon the American workforce?

As I have indicated above, agricultural labor economists indicate that a substantial number of agricultural jobs are filled by persons who identify themselves as falsely documented. They are not so-called American workers or domestic workers. More importantly, however, they are not taking the jobs of Americans. No informed person seriously contends that wages, benefits and working conditions in seasonal agricultural jobs can be raised sufficiently to attract domestic workers away from their permanent nonagricultural jobs in the numbers needed to replace the illegal alien agricultural work force and maintain the economic competitiveness of U.S. producers.

Seasonal farm jobs have attributes, which make them inherently uncompetitive with nonfarm work. First and foremost is that they are seasonal. Many workers who could do seasonal farm work accept less than the average field and livestock worker earnings because they prefer the stability of a permanent job. Secondly, many seasonal farm jobs are located in rural areas away from centers of population. Furthermore, to extend the period of employment, workers must work at several such jobs in different areas. That is, they must become migrants.

It is highly unlikely that many U.S. workers would be willing to become migrant farm workers at any wage, or for that matter that, as a matter of public policy, we would want to encourage them to do so. In fact, the U.S. government has spent billions of dollars over the past several decades attempting to settle domestic workers out of the migratory stream. The success of these efforts is one of the factors that has led to the expansion in illegal alien employment. In addition to seasonality and migrancy, most farm jobs are subject to the variations of weather, both hot and cold, and require physical strength and stamina. It is highly unlikely that a significant domestic worker response would result even from substantial increases in wages and benefits for seasonal farm work.

In one of the most ambitious efforts to recruit domestic workers to fill seasonal agricultural jobs in eight rural counties compromising the San Joaquin Valley of California, California agricultural organizations in 1998 sought the assistance of the State Department of Social Services and its offices in the eight Valley counties to recruit persons to work in agriculture. This effort followed passage of the federal welfare reform legislation. The agricultural groups also sought the assistance of the Employment Development Departments in these counties in a widespread effort to recruit seasonal agricultural workers to prevent a labor shortage.

This effort was encouraged by Senator Feinstein and was overseen by State agencies, working in cooperation with the growers. The State welfare agency advertised for the agricultural jobs through bilingual radio and television, as well as traditional channels. Of the 137,000 able-bodied candidates identified by the welfare agencies in the San Joaquin Valley, only 503 applied for work and only 3 actually showed up to work. This effort substantiated what growers in all states will tell you is the case. American workers do not want to perform seasonal or even much year-round agricultural work. A workable agricultural guest worker program will not take jobs from U.S. workers. Coupled with a workable employment verification system it will fill agricultural jobs with legal guest workers who will replace the undocumented-not U.S. workers.

3. Will an agricultural guest worker program help reduce illegal migration of workers into agricultural jobs?

We strongly believe based on history and our personal experience that a workable guest worker program will substantially reduce illegal migration of workers into agricultural jobs. We work very closely with the workers on our farms. Most of my family and I have performed work in the fields and hear the stories of the workers, their families and friends. We know that the natural desire of most economic migrants is to visit their families in Mexico or wherever their homes are during the Christmas holidays. While we support a controlled border and the enforcement of our immigration laws, ironically, one of the counterproductive effects of increasing border interdiction efforts during the past decade has been to force these persons to remain permanently in the U.S. and put down roots.

The Immigration Reform and Control Act of 1986 (IRCA) has been subject to criticism, much of it justified. One of the conspicuous absences among the provisions of the IRCA was enactment of significant guest worker provisions. While it attempted to address the problem of the job magnet for undocumented workers and legalization of the undocumented, it failed to include meaningful guest worker provisions that would provide future legal channels for aliens seeking to fill jobs in the U.S. for which domestic workers were unavailable. In our opinion, without the legal channels provided by workable guest worker programs, an enforcement-only policy directed at the border will never succeed.

History supports my viewpoint. The largest guest worker program in the U.S. in recent memory involved agricultural workers. It was called the "bracero" program and was implemented in various forms between 1942 and 1964. While the bracero program had its problems, in part because many of the labor laws that exist today were not in place during its existence, it was extremely successful in controlling illegal migration of aliens into agricultural jobs. A recent study of the bracero program by Stuart Anderson of the National Foundation for American Policy on "The Impact of Agricultural Guest Worker Programs on Illegal Immigration," concluded:

"By providing a legal path to entry for Mexican farm workers the bracero program significantly reduced illegal immigration. The end of the bracero program in 1964 (and its curtailment in 1960) saw the beginning of the increases in illegal immigration that we see up to the present day." (Anderson, at page 2).[1] The Anderson study quoted a Congressional Research Service report in 1980 that also concluded that "Without question the bracero program was * * * instrumental in ending the illegal alien problem of the mid-1940's and 1950's." (Anderson at page 2). During period from 1964 (when the bracero program ended) to 1976, INS apprehensions of illegal aliens in agriculture increased more than 1000 percent. (Anderson, page 3.)

Interestingly, a commentary in the Wall Street Journal last week by leading conservative thinkers picked up on this point and concluded:

"What this history teaches us is that the only way to control immigration is with a combination package-securing the border, enforcing the law in the workplace and create legal channels for workers to enter the country."[2]

The article cited as examples of this point the history of the bracero program noted above.

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[1] Stuart Anderson is the Executive Director for the National Foundation for American Policy. He served as executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He also served previously as a staff member and Staff Director of the Senate Subcommittee on Immigration for Senators Abraham and Brownback.

[2] Wall Street Journal, "A Conservative Statement for Immigration Reform," July 10, 2006, Page A11.

4. What are the consequences of enacting immigration reform legislation that includes enforcement only or enforcement first provisions without providing a means toward a legal workforce?

ACIR and NCAE, representing a vast cross-section of labor-intensive agriculture throughout the U.S., have supported for many years a simple, effective and non-discriminatory process of determining the employment eligibility of new hires. We supported such a system ten years ago as part of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as long as the process is simple, manageable and provides clear delineation of compliance responsibilities. Growers are tired of living with the uncertainty of the current legal system where we have to accept employment documents but are never certain whether they are legitimate or not and get sued if we are "too picky" in seeking employment documents.

It is imperative that a workable verification system be coupled with a workable H-2A guest worker program and means of providing earned legal status for our experienced agricultural workers. Without this comprehensive approach to the problem of illegal immigration, it is my opinion that our nation will not solve the problem of illegal immigration nor will many industries, like agriculture, be able to survive. A comprehensive approach to immigration reform is absolutely essential.

As I stated at the beginning of my statement, American agriculture is suffering under an unworkable, costly and litigious guest worker program that is almost worse than not having one at all. We know that between 50 and 75 percent of our workforce provides employment documents that we must accept under the law or face discrimination suits, but which are invalid. A workable verification system hopefully will eliminate document fraud, but it also will eliminate an estimated 75 percent of the labor intensive agricultural workforce. The workers need to be replaced with legal alien workers because few American workers will perform seasonal and physically difficult agricultural production jobs. As discussed above, the current H-2A agricultural guest worker program simply is too dysfunctional to provide a legal source of labor to supplement the domestic agricultural work force.

Given the large proportion of illegal workers in the current farm labor market, the reduction in domestic production as a result of enforcement only or enforcement first approach to immigration reform likely will be substantial. A leading agricultural labor economist who has studied this issue for many years, Dr. James Holt, indicates that the loss of agricultural production resultant from labor shortages will have employment impacts well beyond farm workers and farmers. Since agricultural production is tied to the land, the labor intensive functions of the agricultural production process cannot be foreign-sourced. We cannot, for example, send the harvesting process or the thinning process overseas. Either the entire product is grown, harvested, transported and in many case initially processed in the U.S., or all of the functions are done somewhere else, even though only one or two steps in the production process may be highly labor intensive.

When the product is grown, harvested, transported, and processed somewhere else, all the jobs associated with these functions are exported, not just the seasonal field jobs. These include the so-called "upstream" and "downstream" jobs that support, and are created by, the growing of agricultural products. U.S. Department of Agriculture studies indicate that there are about 3.1 such upstream and down stream jobs for each on-farm job. Most of these upstream and downstream jobs are "good" jobs, i.e. permanent, average or better paying jobs held by citizens and permanent residents. Dr. Holt anticipates that we would be exporting about three times as many jobs of U.S. citizens and permanent residents as we would farm jobs filled by aliens if we restrict access to alien agricultural workers. Not only would the volume of U.S. agricultural production be reduced, but the U.S. would be substantially more dependent on foreign suppliers for food. I believe that substantial reliance on foreign countries to feed us creates a national security issue for America.

While agriculture confronts the challenges of the proposed immigration reform legislation that we have discussed today, growers in many parts of the country have faced or now face shortages of farm workers. Growers in Yuma, Arizona, central California, Oregon, Washington, Florida, New York and many other states cannot find sufficient labor to produce or harvest crops and tend livestock. We truly are facing a "perfect storm" of labor shortages. We lack a sufficient number of workers in many areas and clearly lack a sufficient legal workforce.

In conclusion, I want to thank again the Committee for allowing me to share my views. On behalf of my business and the vast number of American farmers whose views I have shared with you today, I urge Congress to pass comprehensive immigration reform this year. Agriculture has been actively encouraging Congress for the past ten years to fix the broken immigration system and provide our vital industry a means to obtain a legal workforce. We cannot wait another year. Thank you.

Chairman MCKEON. Thank you very much.

Mr. Martin?

STATEMENT OF JACK MARTIN, SPECIAL PROJECTS DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. JACK MARTIN. Mr. Chairman, Mr. Ranking Minority Member, members of the committee, I appreciate this opportunity to testify on behalf of the 200,000 members and activists of the Federation for American Immigration Reform. We are concerned about temporary worker visas, as currently authorized and administered, and in particular the proposed expansion of those visa programs contemplated by legislation, adopted by the Senate in May.

I know that my testimony will run longer than 5 minutes. I would appreciate it if my written testimony were included in the record.

In summary, I would note that at the current debate with regard to legislation on national security and border security between the Senate and the House of Representatives, that the House legislation does not directly address the issue of temporary workers. But, of course, the Senate legislation does, and therefore I find it entirely appropriate that the House revisit this issue of temporary workers with the view in mind toward reconciling differences with the Senate approach.

First of all, I would note that there has been a tremendous increase in the issuance of temporary worker visas into the United States, as may be seen on the chart that I have included in my testimony. The increase between 2004, from 1995, is more than two and a half times. In 1995, it was more than double the number of temporary workers admitted in 1985.

This tremendous expansion in temporary workers authorized by our immigration law is vastly in excess of the expansion of the workforce and therefore is definitely having an impact on job opportunities for American workers.

Second, I will discuss briefly why this has an impact on American workers. Third, I would point out that in this scenario of impact on American workers we are looking at a very significant further increase if the provisions adopted by the Senate bill should happen to go in to force.

And, finally, I would like to share with you a number of recommendations of the Federation for American Immigration Reform for reforms in temporary worker programs.

First of all, I would note that this enormous increase in temporary workers in the United States leaves in the United States at the present time, according to estimates put out by the Department of Homeland Security, roughly 1.2 million temporary workers at any time in the United States. This is in addition to illegal workers who are also working in many of the same jobs in which legal temporary workers are working.

Turning to the harmful effects of temporary workers, I would point out articles that recently appeared in the major media. For example, in the Washington Post, on July 10, they reported surveys of wages paid in the United States in various categories. What they found is that there is a widening wage gap and that the increasing number of foreign workers in the workforce is one of the compo-

nents that explains this widening wage gap between the well off in our society, the well paid and those who are working in the lowest paid jobs in the country.

The Congressional Budget Office noted in November of 2005 that, "Although the impact of an influx of foreign-born workers on the earnings of native-born workers is difficult to quantify, the presence of an increasing number of immigrant workers clearly reduces overall earnings growth."

A teamster's local spokesman in Hayward, California was reported in the Contra Costa Times just this week as saying, "In our struggle to get higher wages for our employees, our problem is probably magnified in occupations where there is an immigration population workforce. It is particularly a problem where there are undocumented workers in those occupations. But, in addition, where there are temporary workers, it will have the same effect as undocumented workers, particularly if a program is adopted that would convert undocumented workers into legal, temporary workers."

Basically, we are also facing a pincer squeeze between offshoring of U.S. jobs and importing foreign workers.

And, finally, in summary, I would say that this problem is going to be aggravated if the enormous increases in temporary workers, which would more than double temporary workers in the next 6 years, proposed by the Senate is adopted. And if the Congress should return to legislation similar to bills already proposed by members on both sides of the aisle, the Federation for American Immigration Reform would be pleased to work with Members of the Congress.

[The prepared statement of Mr. Jack Martin follows:]

Prepared Statement of Jack Martin, Special Project Director, Federation for American Immigration Reform

Mr. Chairman, Ranking Minority Member and members of the committee, on behalf of the more than 200,000 members and activists of the Federation for American Immigration Reform (FAIR), thank you for this opportunity to share with you our concerns about temporary worker visas as currently authorized and administered and about the proposed expansion of those visa programs contemplated by S. 2611.

I am Jack Martin, FAIR's special projects director. FAIR is a national, non-profit public interest organization working to end illegal immigration, to restore moderate legal immigration and to reform our immigration laws to bring them into accord with long-tem national interests.

First, I would direct your attention to the fact that temporary worker visas have been enormously increased in recent years and the fact that those increases will continue if nothing is done to limit them. Second, I will describe why the large-scale admission of foreign workers as currently authorized and with currently inadequate oversight is harmful to American workers. Third, adding insult to injury, the current harmful situation would be made even more of a threat to the American worker if the provisions of S.2611 were adopted. Finally, I would like to share with you a series of recommendations that we think are essential to bringing foreign worker programs into accord with the nation's long-term interests.

Background: Enormous Increases in Recent Years

In fiscal year 2004 the federal government recorded more than 1.3 million entries of foreigners with visas that allowed them to work in the United States. This was two-and-one-half times as many entries as in 1995. The 1995 entries more than doubled the number of work-related entries recorded in 1985.1 So, it is clear that there is an ongoing very large expansion of foreign temporary workers in the U.S. workforce who legally have been admitted into the country.

Temporary foreign workers and trainees (H visas) numbered 74,869 in FY-85. They rose to 152,460 in FY-95 and to 506,337 in FY-04. Those represented increases of 104% and 232% respectively—overall a 576% increase.

Intra-company transfer entries (L visas) numbered 65,349 in FY-85. They rose to 112,124 in FY-95 and to 314,484 in FY-04. Those represented increases of 72% and 181% respectively—overall a 381% increase.

Exchange visitor entries (J visas), which allow temporary employment and are increasingly used for workers who shuttle between summer season and winter season jobs, numbered 110,942 in FY-85. They rose to 201, 095 (81%) in FY-95 and to 321,975 (60%) in FY-04—overall a 190% increase.

Those were the only three programs that existed in 1985 for foreign nonimmigrant workers. Ten years later those three programs had been augmented by several additional programs created in 1990 to provide visas for workers of "extraordinary ability," athletes, artists, religious workers, NAFTA treaty workers, etc. These additional categories accounted in FY-95 for an additional 68,204 entries, and by FY-04 these programs accounted for 178,044 entries, an increase of 161%.

There are annual limits for some of these temporary worker programs, i.e., H-1B professional workers (65,000) and H-2B unskilled workers (66,000). However, the H-1B visa category allows workers without limitation to enter outside the limit if they are working for universities, or for a non-profit organization or a governmental research center. A further exemption exists for aliens who have earned an advanced degree from a U.S. school—up to an additional 20,000 workers. H-2B unskilled workers who had received visas in prior years were also exempted from the ceiling by a provision proposed by Sen. Mikulski that was enacted this year.

Because of the exemption from limits for some H-visa temporary workers and the absence of limits on other categories of temporary workers, it may be assumed that admission of foreign workers will continue its rapid escalation without changes in the law. In addition, the limit on the entry of Mexican professionals under the NAFTA treaty ended in 2004, and it is likely that a surge of entries under that provision will occur. In FY-04, only 2,100 of the 66,200 entries were by Mexicans, with the rest by Canadians. With the limit on Mexican entries now expired, entries from that country could surge to the Canadian level or still higher.

Some of the employment categories for nonimmigrant workers allow the worker to stay for extended periods of time, e.g., H-1B workers for up to 6 years and intra-company transferees for up to 5-7 years. Other workers may enter for periods of less than one year. The Office of Immigration Statistics in the Department of Homeland Statistics (DHS) estimated the number of the temporary workers on average during 2004 at more than 1.5 million persons.2 Based on 2004 admission records, about 20% of that number is likely to be accompanying family members, so the number of workers would be about 1.2 million, although the OIS cautions that its estimate is probably understated—in effect they acknowledge that their records do not allow them to know how many temporary foreign workers there are in the country. Thus, about one percent of the entire civilian labor force is filled with legally admitted foreign workers. While the number of foreign-worker admissions has increased by 426% since 1985, the civilian workforce has increased by about 29%.

These estimates do not include the illegal alien population, which we estimate to be between 11 and 13 million persons, about 7.2 million of whom are in the workforce according to a Pew Hispanic Center estimate.3 That represents about an additional 5 percent of the workforce.

Large-Scale Admission of Foreign Workers is Harmful to American Workers

What is the impact of the rising influx of foreign workers on U.S. workers? The Washington Post reported on July 10 on the national trend of a widening wage gap which contributes to growing income inequality in our nation.4 The report noted that immigration is a factor contributing to this phenomenon, especially for the country's low-wage workers. Of course, it is not just legal and illegal immigrants that compete for jobs and contribute to the pool of job applicants available to employers, but foreign nonimmigrant workers as well.

Just as the massive influx of illegal workers has depressed wages in regions and industries where large numbers of those workers are employed, so to is the current flow of legal foreign temporary workers already at a level where they too can affect overall wage conditions. As the Congressional Budget Office noted in a recent report, "Although the impact of an influx of foreign-born workers on the earnings of native-born workers is difficult to quantify, the presence of an increasing number of immigrant workers clearly reduces overall earnings growth."5

A similar observation was made recently by a Teamsters Local spokesman in Hayward, California, "In our struggle to get higher wages for employees, our problem is probably magnified in occupations where there is an immigrant population work

force. It is particularly a problem when there are undocumented workers in those occupations."6 This observation was buttressed by a study by the Contra Costa Times. It reported that using occupations identified by the Pew Hispanic Center as having the largest share of foreign-born Latinos, it found that between 2001 and 2005 the area's average wage in those occupations had fallen from 22 percent below the average wage to 27 percent below the average wage.7

The Pincer Squeeze

The American public has become painfully aware of the fact that workforce opportunities are increasingly constricted not just by competition from the increase in both foreign legal and illegal workers, but also by the export overseas, i.e., "outsourcing," of a rapidly escalating number of jobs previously done at home. The American worker has to contend not only with the jobs exported abroad but also with foreign workers imported into the country—or not kept out of the country—who are taking American jobs.

This pincer squeeze may benefit American employers who strive to hold down labor costs as they attempt to maximize profits and justify multi-million dollar bonuses, but it is not appreciated by the American worker who finds jobs rebuilding New Orleans—his home city—denied to him because they are filled by foreign workers. It is not appreciated by unemployed high-tech workers who have been unable to find permanent jobs in their professional field since being laid off several years ago by high-tech firms, even though the employers have continued to hire tens of thousands of foreign high-tech workers since then. Those American workers wonder why foreign temporary workers are needed when highly-skilled American workers are laid off.

L-1 Visas

There is evidence that the L-1 visa is being used as a means to get around the H-1B numerical limit. Because L-1 visas have no numerical limit, and because there is no prevailing wage test for these visas, they offer a means to a company headquartered abroad or with foreign operations to circumvent the conditions in the H-1B visa program to protect American workers from unfair foreign competition.8 According to the DHS Office of Inspector General, "...the [approval criteria] is so broadly defined that adjudicators believe they have little choice but to approve almost all petitions."9

H-1B Visas

While U.S. employers argue that the H-1B program is essential to their competitiveness by allowing them to hire the "best and brightest" from wherever, their practices belie this claim. If employers were truly hiring the "best and brightest," they would be sponsoring them for immigrant visas rather than letting them go. In FY-05, there were only about 19,500 professionals foreign workers holding advanced degrees—out of the hundreds of thousands currently working in the country—who changed status to permanent resident through sponsorship by an employer. It appears that U.S. employers are content to discard their supposed "best and brightest" foreign workers and hire new foreign workers at lower starting wages. Further, a large share of H-1B's go to consulting companies, e.g. Tata, Infosys, HCL, that operate as "body shops" using the visas to bring in people from overseas and then rent them out to companies in the US as some sort of commodity.

The only semblance of protection for American workers in the H-1B program is a requirement that employers pay the prevailing wage to their foreign workers. However, a recent study found that the Department of Labor (DoL) was approving Labor Condition Applications (LCAs) even though the wage offers were below the prevailing wage. In addition, according to the Programmers Guild, DoL uses as a standard for determining the prevailing wage the 17th percentile of the average U.S. worker. It is obvious that such a standard allows employers to use the visa program as a way to hire foreign workers at lower wages than American workers.10 The Programmer's Guild has assembled recent evidence of discrimination against U.S. high-tech workers by about employers who advertise jobs as "H-1B only."11

H-2A Visas

The widespread hiring of illegal alien workers in seasonal agriculture rather than using existing programs for temporary workers (H-2A visas) is not because those visas are limited. They are unlimited. The reason is that the employers are able to evade the protections in the visa program for both U.S. workers and for the foreign temporary workers. While it is understandable that agricultural producers want to minimize their labor costs, it is unconscionable to continue to permit the conditions that have driven down real wages today in seasonal agricultural labor to less that

they were decades ago. It is not fair to U.S. workers including those who are legal residents of our country.

J-Visas

The exchange visitor program (J visas) has morphed into a program very different from what was intended when it was created. It was designed to provide foreign youth the opportunity to come here on vacation and work temporarily to defray the expenses of their travel and living costs. Some might work as au pairs in a family while others worked in resorts, but the idea was that these would be temporary seasonal jobs after which these visitors would return home. Instead, there is now a large foreign workforce using these visas to work here year-round moving from seasonal summer job to seasonal winter job.

Treaty Visas (TN)

The NAFTA Treaty provisions for mobility of foreign professional workers might make sense among countries of comparable economic development, such and the U.S. and Canada, but it makes little sense between the U.S. and Mexico. TN visas that were capped at a low level during the first 10 years after adoption of NAFTA became unlimited in 2004. We do not yet have evidence that this will lead to a large migration of Mexican professionals to the United States, but we do not need an infusion of Mexican professionals coming here to gain a larger income, and Mexico will not benefit from losing its professionals.

Adding Insult to Injury—S. 2611

As if there were not already enough foreign competition for U.S. jobs, the Bush administration has proposed and the Senate has passed legislation that would further increase the rate at which foreign temporary workers taking U.S. jobs. S.2611 would create a new temporary worker category (H-2C visas) that would annually admit an additional 200,000 foreign unskilled workers for stays up to 6 years. It would increase the ceiling for professional foreign workers (H-1B visas) by 50,000 per year and expand it much further both by broadening the exemption from the ceiling to cover any foreigner with a university degree and by providing for a potential annual increase in the ceiling by 20%. Increasing anything by 20% per year allows for a doubling in size in less than 4 years and an increase by ten-fold in less than 13 years.

The Senate bill would also expand the criteria for issuing visas for foreign athletes (P visas) and allow indefinite stays for intra-company foreign workers (L visas) if an employer has sponsored the worker for immigrant status. Finally, the Senate bill would increase work opportunities for foreign students studying in the United States and for up to two years after graduating, and it would expand the NAFTA categories under which workers from neighboring countries are allowed to take U.S. jobs without limit.

Just the increased H-1B ceiling and the new H-2C visa provisions alone, because they allow for stays of up to 6 years, could result in a foreign workforce that in six years could grow to more than 2.8 million workers—more than double the 2004 level. In effect, even if there continued to be an H-1B visa ceiling, which was established to limit the impact of foreign workers on job opportunities for U.S. professionals, it would become meaningless.

FAIR's Perpsective and Recommendations

FAIR believes that foreign temporary worker programs make sense only if they are carefully circumscribed to prevent their use by employers as a means to undercut wages and working conditions for American workers. In general, we believe that with a population that will reach 300 million this year the talent and skills to meet any job requirement can be found or trained within our own labor force without importing foreign workers.

We accept that there is a legitimate role for intra-company exchanges in a global economy, but those foreign assignments should be only for management personnel, not for run-of-the-mill employees who could be hired from within the U.S. workforce. There is substantial indication that U.S. and foreign companies are using the L-visa program to train foreign workers in the United States as part of a strategy to use them abroad in order to facilitate the off-shoring of U.S. jobs.12 We do not believe that facilitating the trend in off-shoring is essential to U.S. competitiveness. We note the effort of some Members of Congress to correct abuses in the L-visa program—for example H.R.3322 and H.R. 4378 introduced last year—and the former also aimed at correcting H-1B abuse.

Recommendations

• Temporary foreign workers should be admitted only to take temporary jobs. Visas should not allow entry for multi-year periods—those jobs are not temporary jobs, and they should be reserved for U.S. workers. Temporary foreign workers should not be allowed to bring accompanying family members, thereby underscoring their temporary nature. Exceptions to this principle are appropriate for the H-1B program, because it is used as a precursor for permanent residence, and for intra-company transfers, because those jobs in theory are generated by international investment.

• The test of a need for temporary foreign workers should be based on market forces. Only if the wages offered are rising significantly faster than inflation, can it be assumed that a shortage exists. Rising wages are the signal that employers are attempting to encourage more Americans to enter that job field.

• Temporary foreign workers should never be admitted during a period when similarly qualified U.S. workers are being laid off, as was done during the high-tech melt-down and is currently occurring in the automobile industry. The H-1B visa program as well as other temporary worker provisions should be amended to tie admissions to changing employment conditions. As long as employers continue to be able to substitute foreign workers willing to work for lower wages than comparable American workers, there will be an incentive for them to discriminate in favor of the lower wage worker.

• Numerous studies have documented that the "comparable wage" criteria in the H-1B visa program is violated on a wide-scale basis.13 This is possible because of the lack of any systematic follow-up monitoring by the Department of Labor to assure that employers are abiding by the terms of the Labor Certification Application that led to the issuance of the visa. Employers of temporary foreign workers should be required to submit periodic reports to the DoL that identify the wages paid to such workers as they are reported to the SSA and to the IRS. Those reports should then be compared by the DoL with the LCA to assure that employers are in compliance with the approved employment conditions.

• Temporary foreign workers should be laid off before U.S. workers are laid off during any company down-sizing. The foreign workers should not be available to employers to use as a means to lower U.S. wages and working conditions. While it is possible that reforms might lead to some employers off-shoring jobs, the U.S. should compete internationally on the basis of productivity rather than depressing wages in the United States towards Third-World levels.

• The number of unskilled foreign workers—both legal and illegal—should be decreased to create greater opportunity for our unemployed workers to find jobs that pay a living wage. The large number of unskilled, unemployed Americans belies the need to continue the increase in admission of foreign unskilled workers, let alone further increase their numbers as proposed in S.2611. The shrinking opportunities for American high-school drop outs increasingly consign them to permanent underclass status.

• The Intra-company transfer program (L visas) should be restricted to only foreign management personnel. Other workers that they wish to train or serve as trainers in this country should be admitted only as temporary workers, i.e., for periods of less than a year rather than the current 5 year period that demonstrates that the position is not temporary.

• The religious worker program is riddled with fraud, as documented in a recent report by the DHS Office of the Inspector General.14 Not only is there widespread use of false documents to obtain R visas, the loophole is being used by persons with potential links to terrorist organizations. The federal government should not be required to judge whether persons calling themselves religious workers are bona fide members of a legitimate religious organization. A hands-off approach would result in a natural test based on whether a religious movement is able to grow from within its domestic supporters.

• The NAFTA Treaty has opened a door for an unlimited flow of Mexican professionals to enter the United States in search of improved working conditions. This is in the interest of neither American professionals, whose earnings could be diminished by this flow, nor the Mexican people, who can be stripped of important human resources in their efforts to develop their country. Congress should call on the administration to negotiate a modification to the treaty that would establish that the reciprocity provision be interpreted to limit the number of visas issued to nationals of any of the parties to no more than the number issued reciprocally to Americans applying to work in that country.

• The creation of a plethora of new special visa categories in 1990 was, in effect, simply a means to increase the number of foreign workers taking U.S. jobs. All of the additional categories, except for visas created by treaty, should be abolished,

and the foreign applicants for U.S. jobs should be required to enter the country with either an intra-company transfer visa (L)—narrowed to managerial personnel, or a temporary worker visa (H)—with a market-based test, or an exchange visitor visa (J)—limited in duration and non-renewable.

After all, if visas for fashion models can be accommodated within the H-visa category, there is no reason a special visa category is required for professional athletes or any other specialized workers.

Conclusion

It will be clear from the above analysis that FAIR views the various current visa programs that allow aliens to work temporarily in the United States as excessive, poorly conceived, subject to abuse, and in many ways unfair to the American worker. It should also be clear that FAIR finds the expansion of foreign temporary worker programs provided for in S.2611 unwarranted, and injurious to the American workforce.

It must be noted H.R.4437, passed by the House last December, while essential in gaining control over the enormous flood of illegal immigrants entering the U.S. workforce, does not attempt to deal with the reforms to foreign worker programs that we have identified. Therefore, while we commend this committee for focusing on the potential harmful effects of S.2611, if its provisions were enacted, we call on the House of Representatives at an early opportunity to take up the issue of reforming the existing temporary foreign worker programs to provide better safeguards to both American workers and foreign temporary workers. FAIR would welcome the opportunity to work with Congress in this process.

ENDNOTES

[1] These visa admissions data and those following are compiled from the Immigration Statistical Yearbook annual reports of the Immigration and Naturalization Service and currently by the Department of Homeland Security.

[2] Grieco, Elizabeth M., "Estimates of the Nonimmigrant Population in the United States: 2004," Office of Immigration Statistics, DHS, June 2006.

[3] Passel, Jeffrey S., "The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey," Pew Hispanic Center, March 2006.

[4] "Well-Paid Benefit most As Economy Flourishes," Washington Post, July 10, 2006 (A01).

[5] "The Role of Immigrants in the U.S. Labor Market," Congressional Budget Office, November 2005.

[6] "Analysis finds that industries with a large number of foreign-born workers experience depressed wages," Contra Costa Times, July 16, 2006.

[7] Ibid.

[8] Wasem, Ruth E., "Immigration Policy for Intracompany Transfers (L Visas): Issues and Legislation, Congressional research Service (RS21543), June 12, 2003.

[9] "Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program," (OIG-06-22), DHS Office of Inspector General, January 2006.

[10] See "The H-1B Prevailing Wage is Substantially Below the Median Wage of U.S. Workers," Programmer's Guild website at *http://www.prweb.com/releases/2006/7/prweb407549.htm,* consulted July 13, 2006.

[11] "Programmers file federal complaints over 'H-1B only' ads," The Computer World, June 19, 2006.

[12] Brian Grow, "A Mainframe-Size Visa Loophole," Business Week, March 6, 2003.

[13] The State of Asian Pacific America, Paul Ong, LEAP Asian Pacific American Public Policy Institute and UCLA Asian American Studies Center, 1994, pp. 179-180; Balancing Interests: Rethinking U.S. Selection of Skilled Immigrants, Stephen Yale-Loehr and Demetrios Papademetriou, Carnegie Endowment for International Peace, 1996; Debunking the Myth of a Desperate Software Labor Shortage, Norm Matloff, testimony to the U.S. House Judiciary Committee, Subcommittee on Immigration, April 21, 1998 (as updated, September 10, 2002); Characteristics of Specialty Occupation Workers (H-1B), Immigration and Naturalization Service, July 2002; Building a Workforce for the Information Economy, National Research Council, 2001; The State of Working America 2000/2001, Economic Policy Institute, Cornell University Press, January 2001.

[14] "Fraud Found in Visas for Churches," The Boston Globe, July 11, 2006.

Chairman MCKEON. Thank you very much.

Ms. Smith?

STATEMENT OF REBECCA SMITH, COORDINATOR, IMMIGRANT WORKER PROJECT, NATIONAL EMPLOYMENT LAW PROJECT

Ms. SMITH. Good morning, and thank you for this opportunity to testify on behalf of the National Employment Law Project. We are

a nonprofit advocacy organization, and we work with groups across the country on issues of concern to low-wage workers.

Because we work with all kinds of workers in all kinds of industries and immigration statuses, I would like to talk about protection of the wages and working conditions of American workers, broadly defined, protection of the wages and working conditions of all those at work in America.

I would like to look at this through the lens of wage and hour law enforcement for low-wage workers and then talk a bit about immigrant workers and guest workers and their special vulnerabilities and then suggest ways in which we might be able to do a better job for workers in our country and level the playing field for honest employers and reduce the incentives for exploitation.

We have 7.5 million workers in our country who work full-time but earn poverty-level or less than poverty-level wages. Many of the industries in which they work are frequent violators of wage and hour laws. Government studies show between 50 and 100 percent of employers in garment, in nursing homes and in the poultry sectors in violation of basic wage and hour laws.

In our work with community groups and lawyers who represent low-wage workers, we hear about straight up violations of minimum wage laws, and we also hear about other processes by which employers misclassify workers as independent contractors or pass their labor responsibilities to a chain of subcontractors.

These violations have a huge impact on the low-wage workforce to the tune of about $19 billion per year. But government and other studies also show they have an impact on revenue—between $3 billion and $4.7 billion a year in lost taxes because of misclassification of workers as independent contractors alone.

Enforcement of wage and hour laws has been on a 30-year decline in the number of investigators at the Department of Labor, Wage and Hour Division, and the number of compliance actions.

In the years 2000 to 2004, the number of compliance investigators at DOL went from 946 to 788, at a time when the number of employers in the country increased from 7.8 million to 8.3 million. Clearly, we can do a better job at enforcement of wage and hour rights and all sorts of basic labor rights for low-wage workers.

Guest worker programs, in particular, are ripe for violations of the law. I am most familiar with temporary worker programs for low-wage workers, H-2B and H-2A. Particularly in H-2B, recruitment of U.S. workers is so casual that employers who wish to bypass a local workforce can do so. Once they have done that, guest workers who sometimes enter the country after mortgaging their very homes for the privilege of working in the United States are also subject to labor law violations.

And because both their job and their ability to remain in the United States is tied to an employer, they are especially vulnerable to exploitation.

What are some things that we can do? An overriding principle I think must be that American workers are best protected when all workers in America are protected. The first level, I believe, and the most important thing that this body can do is to create a legalization program so that the workers who are at work building our

economy are released from fear and can assert their own labor rights.

But beyond that, we need more enforcement. We need more personnel and more focus on industries that are known violators. We have to look at the mechanisms that protect workers such as whistleblower protections, access to legal counsel, the ability to bring their own claims, and I believe that enforcement must be immigration status blind. Employers must be sanctioned for violating core labor rights no matter what the status of workers at work on their worksite in order to reduce the incentive to exploit workers.

For guest workers, we need to make sure we have an adequate labor market test. We need to make sure that wages are at a level to avoid wage depression, and we need enforcement, enforcement, enforcement, coupled with portability.

I also believe that we need to work on family unity provisions for guest workers so as a reward for building our economy these workers are allowed to step forward and become citizens of our United States.

These are some suggestions that would provide a measure of justice to low-wage workers who build our economy and a level playing field for the honest employers, the majority of employers who abide by our labor laws.

Thanks for the opportunity to testify.

[The prepared statement of Ms. Smith follows:]

Prepared Statement of Rebecca Smith, Coordinator, Immigrant Worker Project, National Employment Law Project

On behalf of the National Employment Law Project (NELP), I thank the Committee for the opportunity to submit testimony on immigration and labor policy. National Employment Law Project is a nonprofit law and policy organization dedicated to research and advocacy on issues of concern to low wage, immigrant and jobless workers. These include automobile industry workers in the Midwest currently suffering job losses, those displaced from their jobs due to Hurricane Katrina, home health care workers and grocery delivery workers not paid minimum wages, and the some six million undocumented workers laboring at the lowest-paid, highest-risk jobs in our economy. For over 30 years, NELP has served as a leading voice for low-wage workers, with an emphasis on policies and practices that defend and expand baseline workplace rights.

Summary of Testimony: Immigration Reform and Labor Law

Across the country, low-wage U.S. citizens and immigrant workers are all too frequently paid less than the minimum wage, denied overtime pay, and retaliated against for speaking up about it. In particular, immigrant workers in the United States work exceedingly hard, often in situations of wage exploitation, discrimination and exposure to life-threatening dangers on the job. Because of their recent arrival in the United States and immigration status, undocumented immigrants can face staggering levels of vulnerability to exploitation by unscrupulous employers, and nearly insurmountable barriers to enforcing rights. Guestworker programs offer additional avenues for abusive employers, by their ability to undercut wage and working conditions for workers already present in the country, and the opportunity for abuse of guestworkers themselves, from extortionate recruiting fees, to wage abuses, to unaddressed workplace injuries and blacklisting.

Today's Committee Hearing is a welcome opportunity to discuss ways in which America can better protect the labor rights of all those who work to build our economy. These protections must begin with beefed-up enforcement of existing labor standards that protect all workers' most basic rights to minimum wage and overtime pay. Further, we must look at the mechanisms that protect workers, such as "whistleblower" protections, access to legal counsel and to enforcement of their own rights.

For currently undocumented immigrant workers, the biggest reform that will protect labor rights is to eradicate the fear of retaliation that comes with their status.

Only a legalization program will do this. Next, we must guarantee that core labor standards apply to all workplaces, no matter what the immigration status of the workers employed there. By so doing, we can reduce incentives for unscrupulous employers to hire and exploit vulnerable guestworkers and undocumented workers.

Finally, a guestworker program should not be the centerpiece of any immigration reform proposal, and additional policies and resources must be devoted to ensuring that they are not used to undermine labor standards at home, while protecting the basic human rights and labor rights of guestworkers themselves.

Problem: Inadequate Enforcement of Labor Rights of Low-Wage Workers

In 2003, 7.5 million individuals in America were classified as "working poor," working at least 27 hours per week, but still making below the federal poverty threshold. Three in five of these workers were employed full time, many of them in service industries, natural resources and construction.[1] Two-thirds of the undocumented workforce, or four million workers, are low-wage workers making less than twice the minimum wage.[2] Many employers of low-wage workers, especially in industries in which immigrant workers are overrepresented, are also frequent violators of wage and hour laws. Recent government studies find as many as 50-100% of garment, nursing home, and poultry employers in violation of the basic minimum wage and overtime protections of the Fair Labor Standards Act.[3] The Bureau of Labor Statistics found that 2.2 million hourly workers were paid at or below the federal minimum wage in 2002.[4]

Enforcement of the wage and hour rights of low-wage workers has not kept up with the frequency of violations. Between 1975 and 2004:

- The number of federal DOL Wage and Hour investigators declined by 14%.
- The number of compliance actions completed declined by 36%. This is a rough indicator of the number of establishments investigated each year, and includes a range of actions taken by the U.S. Department of Labor—from full investigations into a workplace (often covering all workers) that result in a judgment against the employer, to individual complaints where the Department settles with the employer, to investigations that uncover no violations.
- The total amount of back wages assessed by the Department of Labor grew by 7%, after adjusting for inflation. "Back wages" are the wages that the employer owes the worker—for example, as a result of paying less than the legally-required minimum wage.
- The number of workers due to receive back wages declined by 24%.[5]

In the period between 2000 and 2004, the number of Department of Labor Wage and Hour compliance investigators shrank from 946 to 788 nationwide, while the number of businesses in the United States grew from 7.8 million to 8.3 million. In that same period, the number of compliance actions completed by the Department of Labor went down 15%.[6]

In addition, employers all too frequently pass off their workplace responsibilities to subcontractors or misclassify workers as independent contractors. The laws enacted to protect workers' right to be paid for their labor were crafted with an understanding of the need to hold liable all of those who employ workers, regardless of certain employers' attempts to disclaim liability;[7] but sometimes companies are successful in structuring their relationship with low-wage workers to evade liability for gross violations of wage and hour laws. For example, a federal district court in Florida held that large timber companies did not employ and thus were not responsible for egregious wage and hour violations experienced by the H-2B guestworkers who planted seedlings developed by the timber companies' laboratories and greenhouses on the timber companies' land, according to the timber companies' planting schedule and following the timber companies' extremely precise planting guidelines.[8]

In the area of workers' freedom of association, many workers who would choose to be represented by a union do not have that opportunity. While most workers would vote for union representation if an election was held at their worksite, employers often pressure workers not to join a union. A recent study shows that about thirty per cent of employers fire pro-union employees.[9]

All totaled, labor law violations have a huge impact on the low-wage workforce's ability to get by: The Employer Policy Foundation estimated that workers would receive an additional $19 billion annually if employers obeyed workplace laws.[10] These violations also have an impact on revenue: the General Accounting Office estimated that misclassification of employees as independent contractors alone reduces federal income tax up to $4.7 billion.[11] Coopers & Lybrand (now PriceWaterhouse Coopers) estimated in 1994 that proper classification of workers would increase tax receipts by $34.7 billion over the period 1996-2004.[12] A government-sponsored national review of misclassification of workers in the context of the unemployment insurance program estimated losses at $436 million annually in underreported wages.[13]

In particular, undocumented workers, who form a large part of the low-wage workforce in the United States, are vulnerable to workplace abuse, discrimination and exploitation, as well as the fear of being turned over to immigration authorities.[14] These workers' ability to exercise freedom of association and to bargain over terms and conditions of employment was severely undermined by the U.S. Supreme Court's decision in Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002), holding that an undocumented worker fired in "crude and obvious" violation of the National Labor Relations Act, is nonetheless ineligible for a back pay award under the NLRA.[15]

At a time when the federal minimum wage is at its lowest level in 51 years, we must do better to protect the most basic minimum wage and other labor rights of the lowest-paid workers in our workforce.[16]

Additional Challenges: Guestworker Programs Can Mean an Unfair Deal for U.S. Workers and Foreign Workers Alike.

The single most important thing that this body can do to protect the labor rights of immigrant workers is to adopt a legalization program that allows currently undocumented workers to be full participants in civil and economic society. Being in legal status would allow workers to make claims for compensation for workplace injuries, complain about substandard conditions, organize, or simply vote with their feet. By contrast with legalization programs, guestworker programs present a huge challenge for labor law enforcement.

The United States long has depended on immigrants to compensate for perceived and actual shortfalls in the native-born labor force. Many programs have been created over the years in an effort to regulate the flow of immigrant labor, most notably the bracero program that brought millions of Mexican farm workers to the United States between 1942 and 1964. More recently, industries in the service and manufacturing sectors rely upon immigrant workers who enter the country through both temporary and permanent visas.

Numerous examples of abuses exist under the current programs.[17] A recent example from my home State of Washington illustrates how the system works, at its worst, for both US and foreign workers:

In 2004, workers from Thailand were brought to the Yakima Valley in Washington State in 2004 as H2A agricultural workers.[18] As required under the program, the jobs were first announced through the local Yakima County Worksource agency, which, according to court documents, referred over a thousand farm workers for the some 250 jobs. Workers say that they were interviewed and told they had a job, but not told when and where to show up for work, so the company was able to claim that it did not have enough workers.[19]

An international subcontractor recruited workers from Thailand as H-2A workers. In order to get work, these workers say they incurred costs of $10,000—17,000 for transportation, passports, visa fees and other fees. If they didn't have the money, the labor contractor was only too happy to lend it, often secured by mortgages on the workers' homes.[20]

Once in the U.S., the workers were housed in overcrowded, substandard housing, according to their complaint. Deductions from wages were made for state and federal income tax—in a state that doesn't have an income tax.[21] In September, a settlement with the state required restitution of $230,000 to workers and the state.[22]

The workers covered by this settlement agreement are among the lucky ones. Lucky because both state and federal departments of Labor got involved in their dispute. Further lucky because they are now among the only H-2A workers in the country covered by a union contract. The notoriety of the case and intense efforts by workers and their advocates produced a first-ever contract with the United Farm Workers. UFW, and its Vietnamese and Thai speaking organizers, now administer a contract that covers hundreds of workers in several states and is far more protective of workers' rights than the H-2A program provisions themselves.[23]

The H2A program is not the only U.S. guestworker program subject to abuse. For example, a number of lawsuits have alleged that recruiters require that employees pay large recruitment fees and/or pledge collateral with the employer's representatives in order to be hired under the H-2B non-agricultural temporary worker program.[24] A recent compilation of the stories of individual guestworkers chronicles unredressed workplace complaints, unaddressed workplace injuries and retaliation in the forestry industry.[25] The L-1 intra-company transfer visa, and the temporary H-1B and TN visas, all generally focused on high-tech workers, draw allegations that they drastically lower wages, by "in-shoring" technical workers and then sending jobs overseas.[26] These visa programs are generally less protective of both US and foreign workers than the H2A program, in that they have less regulations about the amount of work offered or wage levels, or of transportation and "recruitment"

fees. None requires that employers make as extensive a search for U.S. workers as is required under H-2A.

Nor is the U.S. the only country to struggle with guestworker programs. Recent news reports include allegations of 36,000 Chinese, Bangladeshi and other foreign workers employed in Jordan, housed two dozen workers in a 20 by 10 foot space and threatened with guns when they asked for their minimum wages.[27] In the United Kingdom, Indian workers testify they are "too frightened to stand up for themselves" are recruited with the promise of good working conditions and housing, but are then required to work many more hours, and for less pay, than promised.[28] In Ireland, allegations last year of Turkish construction workers employed at slave wages for up to 80 hours per week became a national issue.[29]

Guestworker programs have the potential to undermine labor standards for U.S. and foreign workers alike. Specifically, for U.S. workers, they have the potential to decrease job availability, since labor shortages can be more perceived than real.[30] In certain labor markets and certain geographic locations, they have the potential to dilute labor standards.[31] For the foreign workers, guestworker status often results in a system of bondage, where, by law, the workers cannot change employers, remedies for labor law violations are limited,[32] and termination of employment subjects them not only to loss of jobs but to deportation. Moreover, the H-2A and H-2B programs have produced a veritable army of recruiters who profit from selling the right to work in the United States to desperate workers.

Solution: Policies That Protect All Workers

The lessons of low-wage work in the United States, including work by U.S. citizens, guestworkers under various programs, and undocumented workers, show that comprehensive immigration reform for low-wage immigrant workers is inextricably linked to labor rights enforcement for all low-wage workers. Comprehensive immigration reform must mean comprehensive enforcement of the hard-won labor protections that all workers in the United States rely upon, as a matter of law, economics and human rights.[33]

A true legalization program for currently undocumented workers in the United States is the first line of protection for workers—a path to citizenship and reduction of fear of retaliation will act as a wage-buoying mechanism. Some additional suggestions for policy makers as you look at this area include the following:

Beefed up labor law enforcement: Workplace enforcement of labor standards should be at a level designed to send a message that America will not tolerate nonpayment and underpayment of wages. This means more emphasis on enforcement: more personnel, and more focus on industries that are known violators of wage and hour laws, so that at a minimum, low-wage workers get the wages that they are entitled to under current law.

Combat independent contractor and subcontracting abuse: Companies should not be allowed to evade responsibility by contracting it away to labor brokers. This means holding accountable worksite employers who use contractors and regulating both domestic and foreign labor recruiters themselves.

An "immigration status-blind" enforcement system: Immigration status should be entirely irrelevant to whether or not a worker is protected by core labor standards, including protection against discrimination on the job, access to workers' compensation, and ability to exercise freedom of association and bargain collectively. Workplaces with immigrant workers should have the same labor protections as those with only citizen workers, so that employers are not allowed to misuse immigration laws to circumvent their legal obligations.

All workers should have meaningful access to systems of labor law enforcement: This means preserving historic boundaries between labor law enforcement and enforcement of immigration law; protecting workers who come forward with complaints by granting "whistleblower" protections; and that all workers, without discrimination, should have access to representation by federally-funded legal services programs.

Firewall between immigration and labor law enforcement. Federal agencies in the United States have specifically recognized that the failure to ensure equal access to labor law enforcement for undocumented migrants has a detrimental impact on all workers, nationals and migrants alike. Since the late 1990's U.S. immigration authorities have had a policy which gives some protection to workers when an employer threatens to turn them into immigration personnel in retaliation for workplace complaints.[34] Unfortunately, incidents of retaliation are sometimes overlooked.[35]

"Whistleblower" protections. As noted above, it is all too common for employers to misuse immigration status and cause the deportation of workers who complain.

Measures must be taken to ensure that workers with valid claims have the right to be present in the U.S. to present them.

Eligibility for legal help. In 1974, the U.S. Congress passed the Legal Services Corporation Act (LSCA), which was designed to provide equal access to the civil justice system for people who cannot afford lawyers.[36] Legal Services Corporation programs are prohibited from providing legal assistance "for or on behalf of" most immigrant workers who are not lawful permanent residents.[37] One of the key reasons that working people need access to the civil justice system is to enforce their labor rights. As a practical matter, without the means to bring suit in court, workers' rights cannot be adequately enforced.[38]

Principles for a Guestworker Program

These same principals of stepped-up enforcement of core labor standards, regulation of subcontracting activities and guaranteed equality under the law apply equally to workplaces with guestworkers. Because of the enormous potential for guestworker programs to be misused to bypass an available workforce and to take advantage of the lack of freedom of guestworkers themselves, the following is a list of additional principles that would need to be a part of guestworker program reform designed to protect the labor rights of both American- and foreign-born workers.

Developing a labor market test. The notion of a labor market test under current guestworker programs generally means that the employer is required to advertise jobs in order to test the availability of U.S. workers. As illustrated in the example from Yakima, these efforts can be less than good-faith. They should be combined with efforts to develop a set of objective labor market indicators that will help identify the industries and geographical areas in which there is an undersupply of workers.

Wages and working conditions that avoid depression of wages. While most economists agree that the presence of immigrant workers does not cause a general depreciation in wages for United States workers, the data on the bracero program show wage depression caused by the presence of foreign workers from poorer countries who accept lower pay to obtain jobs in this country. Therefore, it is necessary to include enhanced wage standards in a viable guestworker program.[39]

Portability. One of the primary problems with guestworker systems is that a guestworker's job AND his or her ability to remain in the country depend on remaining in the good graces of the employer. This is a situation made for employers who would take advantage of workers. Along with beefed up enforcement of wage and hour laws, workers must have the ability to change jobs in order to equalize bargaining power.

Regulation of megacontractors and the entities that use them. Subcontracting of workplace responsibilities and classifying workers as "independent contractors" are a large and growing problem within the United States. The H-2A and H-2B programs have engendered an industry of international labor recruiters who profit from selling the right to work in the United States. These recruiters must be regulated, but experience has shown that they cannot be adequately regulated without placing responsibility on the employers who use them. Recruiters should be licensed, bonded, required to make written disclosures of terms and conditions of employment, and transportation and "recruitment" fees should be abolished.[40]

Family Unity. Some principles make sense as a matter of law. Others make sense as a matter of economics. Two additional principles make sense as a matter of human rights and human dignity. An observer of the German guestworker programs once said, "we wanted guestworkers, but they brought us human beings." In recognition that guestworkers are people with families, they should be allowed to bring their families with them as they come to the U.S., and to travel in and out of the country. In addition, while some guestworkers would prefer to return home after their term of work in the U.S. is over, others put down roots and wish to stay. Guestworkers should be provided a path to citizenship in exchange for their help in building our economy.

Conclusion

Protection of the labor rights of low-wage workers, both citizens and immigrants, has not been as central to the national debate on immigration reform as we believe it should. All too often, the immigration debate has been framed in terms of "us"—U.S. citizens—against groups of "them" that may include lawfully present immigrants and undocumented immigrants.

The foregoing are some suggestions that would provide a measure of justice to low-wage workers who cook and clean and build and harvest and take care of our children and elders, no matter when or how they entered the country, or where they were born. Ultimately, the choices about a guestworker program need to be made

in consultation with low-wage worker groups who are most directly affected by the choices that you make here, and who have come out in the millions to show their support for comprehensive immigration reform in recent months. I thank you for the opportunity to share my own thoughts and experiences.

ENDNOTES

[1] U.S. Bureau of Labor Statistics, A Profile of the Working Poor, 2003 (Mar. 2005), at *http://www.bls.gov/cps/cpswp2003.pdf.*

[2] Jeffrey S. Passel, Randolph Capps, Michael E. Fix, Undocumented Workers, Facts and Figures, Urban Institute (2004), at *http://www.urban.org/url.cfm?ID=1000587&renderforprint=1.*

[3] (Poultry—100% noncompliance) U.S. Department of Labor, FY 2000 Poultry Processing Compliance Report (2000); (Garment—50% noncompliance) Labor Department: Close to Half of Garment Contractors Violating Fair Labor Standards Act, DAILY LAB. REP. (BNA) 87 (May 6, 1996); (Garment—54% noncompliance) David Weil, Compliance With the Minimum Wage: Can Government Make a Difference? at *http://www.soc.duke.edu/sloan—2004/Papers/Weil—Minimum%20Wage%20paper—May04.pdf.* (agriculture—"unacceptable" levels of noncompliance) U.S. Department of Labor, Compliance Highlights 1,3 (Nov. 1999); (nursing homes—60% noncompliance), U.S. Department of Labor, Nursing Home 2000 Compliance Fact Sheet, available at *http://www.dol.gov/esa/healthcare/surveys/printpage—nursing2000.htm.* In addition, last year a nongovernmental survey of hundreds of New York City restaurants found that more than half were violating overtime or minimum wage laws Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition, Behind the Kitchen Door: Pervasive Inequality in New York City's Thriving Restaurant Industry, Jan. 25, 2005, at *http://www.rocny.org/documents/ROC-NYExecSummary.pdf.*

[4] See, Workers are Paid at or Below Minimum Wage in 2002, BLS Says, 173 Lab.Rel.Rptr. 16, Economic News, (Sept. 1, 2003). Certain workers, such as domestic workers and home health care workers subject to FLSA's "companionship exemption," are not covered by minimum wage at all. See, 29 USC § 213 (a)(15).

[5] Annette Bernhardt and Siobhun McGrath, Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975—2004, Brennan Center for Justice (September 2005), at *http://www.brennancenter.org/resources/downloads/Trends%20in%20Wage%20and%20Hour%20Enforcement%20Revised.pdf.*

[6] Data from Brennan Center for Justice.

[7] Nationwide Mutual Insurance v. Darden 503 U.S. 318, 326 (1992).

[8] Gonzalez-Sanchez, et al. v. International Paper, et al., No. 4:00cv36/RV/SMN (March 27, 2002). The definitions of the employment relationship under the NLRA and the anti-discrimination laws are significantly narrower than under the FLSA, thus making it harder for workers to enforce their rights under those laws with respect to the businesses that benefit from their labor. Recent court opinions regarding independent contractor status and joint employment under Title VII have applied the restrictive common law approach that has been developed under the National Labor Relations Act. See Cilecek v. Inova Health System Services, 115 F.3d 256 (4th Cir. 1997); Llampallas v. Mini-Circuits Lab., Inc., 163 F.3d 1236 (11th Cir. 1998). See also, Caldwell v. Servicemaster Corp., 966 F. Supp. 33 (D.D.C. 1997). Congress gave the NLRA the restrictive common-law definition of employment relationships and rejected the Supreme Court's early effort to apply a broader definition. See NLRB v. United Ins. Co., 390 U.S. 254 (1968). The National Labor Relations Board (NLRB), which is owed deference by the courts in interpreting and enforcing the NLRA, has developed its own method of implementing the common law standard. Similarly, the narrower definition under the OSHA makes it harder for workers to hold businesses liable. In considering whether an employment relationship exists, the Occupational Safety and Health Review Commission (OSHRC) states that it relies primarily on who has control over the work environment such that "abatement" of occupational hazards can be obtained. The OSHRC examines a series of factors related to control over the day-to-day details of a worker's employment. The OSHRC's approach differs slightly from the common law right-to-control test. In one way, it is even harsher on workers than the common law: the OSHRC ignores several of the factors used in the right-to-control test that that would help subcontracted workers prove the existence of multiple employers. In another way, the OSHRC slightly liberalizes the common law standard: in determining who has control, the agency will analyze the "economic realities," or the substance of relationships, rather than merely their form or contractual labels. However, this standard is not nearly as broad as the test under the Fair Labor Standards Act (which also looks at "economic realities" but emphasizes the "economic dependence" of workers rather than on control over the work environment.)

[9] Peter D. Hart Research Associates, The Public View of Unions (2005), Chirag Mehta and Nik Theodore, Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns, University of Illinois at Chicago: Center for Urban Economic Development, (December 2005), at *www.araw.org/docUploads/UROCUEDcompressedfullreport%2Epdf.*

[10] Craig Becker, A Good Job for Everyone, Legal Times, Vol. 27, No. 36 (Sep. 6, 2004), at *http://www.aflcio.org/issues/jobseconomy/overtimepay/upload/FLSA.pdf.*

[11] U.S. General Accounting Office, Pub.No. GAO/GD-89-107, Tax Administration Information: Returns Can Be Used to Identify Employers Who Misclassify Employees (1989).

[12] Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers, Coopers & Lybrand (1994).

[13] Planmatics, Inc., Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs (February 2000).

[14] See, e.g., Rivera v. NIBCO, 364 F.3d 1057, 1064 (9th Cir. 2004), cert. denied, 125 S.Ct. 1603 (2005). For more stories of immigrant workers subject to workplace abuse and threats of retaliation, see, Anais Sensiba and Shaun Yavrom, Student Attorneys, International Human Rights

Law Clinic, American University, Washington College of Law Employment Rights are Human Rights, (Mar. 2005), at *http://www.nelp.org/docUploads/workersrights1205%2Epdf.*

[15] Hoffman has engendered unexpected consequences in other areas of law. both New Jersey and California courts have concluded that victims of discrimination who are undocumented have no right to certain forms of compensation. See, Morejon v. Terry Hinge and Hardware, 2003 WL 22482036 (Cal.App, 2 Dist. 2003); Crespo v. Evergo Corp., 841 A.2d 471 (N.J. Super. A.D. 2004), cert. denied 849 A.2d 184 (2004). Since Hoffman, at least two state courts have limited undocumented workers' access to workes' compensation in certain circumstances. Sanchez v. Eagle Alloy, 658 N.W. 2d 510 (Ct. Apps. Mich 2003); The Reinforced Earth Company v. Workers' Compensation Appeal Board, 810 A.2d 99 (Pa, 2002).

[16] Jared Bernstein and Isaac Shapiro, BUYING POWER OF MINIMUM WAGE AT 51-YEAR LOW, Congress Could Break Record for Longest Period Without an Increase, Economic Policy Institute and Center for Budget and Policy Priorities (Jun. 20, 2006), at *http://www.epinet.org/issuebriefs/224/ib224.pdf.*

[17] For example, a number of lawsuits have alleged that recruiters require that employees pay large recruitment fees and/or pledge collateral with the employer's representatives in order to be hired under the H-2B programs. Perez-Perez, et al, v. Progressive Forestry Services, Inc., et al, U.S. District Court for the District of Oregon, Civ. No 98-1474-KI (D. Or.) (1998); Vicente Vera-Martinez v. Grano Reforestation, Inc., U.S. District Court for the Western District of Arkansas; Case No. 03-6002 (2003); Escolastico De Leon Granados,et al. v. Eller and Sons Trees Inc., et al. , Northern District of Georgia, Case No. 1:05-CV-1473 (2005); Hugo Martin Recinos-Recinos, et al. v. Express Forestry, et al. U.S. District Court for the Eastern District of Louisiana, Case No. 05-1355 (2005).

[18] Under the H2A program, foreign agricultural workers can be allowed to enter the country temporarily to fill jobs for which there is a worker shortage. Employers must file a job offer with the US Department of Labor which must meet certain minimum standards for wages, amount of work guaranteed, and provision of housing and transportation, among other things. They must first recruit within the US, and, if no workers can be found, they may then be "certified" to recruit abroad. Like many other recruiters, Global Horizons advertises itself and its world-wide network of contract labor providers on the internet.*http://www.gmpusa.com/*

[19] Employment Security Department Notice of Discontinuation of Services, May 10, 2005; Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief and Damages, Perez-Farias v. Global Horizons, Inc., U.S. District Court, Eastern District of Washington, No. 05-DV 3061 MWL, (filed Apr 13, 2006). In addition, workers allege they were subjected to production standards not part of the job offer and not provided with promised transportation.

[20] Class Action Complaint, Yapunya v. Global Horizons, Inc. et al. U.S. District Court, Eastern District of Washington (filed Jun. 10, 2006).

[21] Settlement Agreement, Global Horizons Inc., Department of Labor and Industries, Employment Security Department, ¶ 6-8.

[22] State Agencies Reach Settlement with Farm-Labor firm, Press Release, Washington State Department of Labor and Industries, (Sep. 22, 2005), at *http://www.lni.wa.gov/news/2005/pr050922a.asp.*

[23] For example, the contract provides for seniority provision, wage payments 2% above the required pay under the H-2A program, and a grievous procedure for violations of the contract or H-2A requirement, bereavement and transportation pay for workers who must return home to deal with family emergencies.

[24] The H-2B program is the non-agricultural temporary worker program, typically used in the reforestation, landscaping and hospitality industries, among others. Under federal rules, labor contractors and employers must guarantee them a minimum hourly wage, or "prevailing wage," and certify that they have been unable to find enough domestic workers to do the job. The program policies are in a U.S. Department of Labor policy memorandum, U.S. Deparatment of Labor, Employment & Training Admin, Attachment to GAL No. 1-95,Procedures for Temporary Labor Certification in Non-Agricultural Occupations, (Nov. 10, 1994), at *http://wdr.doleta.gov/directives/attach/GAL1-95—attach.pdf.* A number of lawsuits have alleged that recruiters require that employees pay large recruitment fees and/or pledge collateral with the employer's representatives in order to be hired under the H-2B programs. Perez-Perez, et al, v. Progressive Forestry Services, Inc., et al, U.S. District Court for the District of Oregon, Civ. No 98-1474-KI (D. Or.) (1998); Vicente Vera-Martinez v. Grano Reforestation, Inc., U.S. District Court for the Western District of Arkansas; Case No. 03-6002 (2003); Escolastico De Leon Granados,et al. v. Eller and Sons Trees Inc., et al. , Northern District of Georgia, Case No. 1:05-CV-1473 (2005); Hugo Martin Recinos-Recinos, et al. v. Express Forestry, et al. U.S. District Court for the Eastern District of Louisiana, Case No. 05-1355 (2005).

[25] Beneath the Pines: Stories of Migrant Tree Planters, Southern Poverty Law Center, *http://www.splcenter.org/images/dynamic/main/ijp—beneaththepines—web.pdf*

[26] Grant Gross, U.S. lawmakers: L-1 visa program needs changes, Computerworld, February 5, 2004), at *http://www.computerworld.com/printthis/2004/0,4814,89884,00.html;* L Visas: Losing Jobs through Laissez-Faire Policies? Hearing before the Comm. On International Relations, 108th Cong., 2d Sess. (Feb. 4, 2004) Serial No. 108-78.

[27] Jordan Accused of Harboring Sweatshop Factories, National Public Radio (Jun 26, 2006).

[28] One of many stories recounted in "Nowhere to Turn: Citizens' Advice Bureau Evidence on the Exploitation of Migrant Workers," (2004), at *http://www.citizensadvice.org.uk/nowhere-to-turn.pdf*

[29] Statement by Minister Micheál Martin to Seanad Éireann in relation to Rights of Migrant Workers, (April 12, 2005), at *http://www.entemp.ie/press/2005/20050413.htm.*

[30] [O]ne often gets the feeling that when growers say they can't find workers, they fail to complete the sentence. What they really mean is that they can't find workers at the extremely low wages and working conditions they offer. * * * Guest Worker Programs: Hearing before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary, 104th Cong. (1995)

(statement of Richard M. Estrada, Commissioner, U.S. Commission on Immigration Reform), at *http://www.utexas.edu/lbj/uscir/120795.html.*

[31] See, e.g., Ernesto Galarza, MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY (1964).

[32] For example, H-2A workers are excluded from the protections of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), which is the principal federal employment law for agricultural workers. 29 U.S.C. A.§ 1802(8)(B)(2) and (10)(B)(iii); A Federal appeals court in North Carolina has held that it is not unlawful for an employer to practice age discrimination in hiring prospective guest workers Reyes Gaona v. North Carolina Growers' Association, 250 F.3d 861 (4th Cir. 2001).

[33] Recently, the Inter-American Court of Human Rights issued an advisory opinion (Opiniθn Consultiva 18) on the treatment of unauthorized migrant workers and their labor rights in the countries that make up the Organization of American States. OC-18 provides that as a matter of compliance with the anti-discrimination provisions of various Inter-American human rights treaties, countries must protect the rights of all migrant workers. The Legal Status and Rights of Undocumented Migrants, September 17, 2003, at *http://www.corteidh.or.cr/serie—a—ing/serie—a—18—ing.doc.*

[34] U.S. Immigration and Naturalization Special Agent Field Manual, § 33.14 (on file with author).

[35] See, Brendan Coyne, Immigrants Face Retaliation for Asserting Workplace Rights, THE NEW STANDARD, (Jun. 1, 2006) at *http://newstandardnews.net/content/index/dfm/items/3241;* Did Injury Claim Prompt Cessna Raid?, IMMIGRATION NEWS BRIEFS, Vol. 9, No. 21 (Jun. 4, 2006).

[36] Legal Services Corporation Act, as amended 1977, 42 U.S.C.A. § 2996, et. seq.

[37] 42 U.S.C.A. § 2996, 45 C.F.R. § 1626.1. This provision is currently being challenged as a violation of the NAFTA Labor Side Agreement. Mexico NAO Submission 2005-1 (H-2B Visa Workers), *http://www.dol.gov/ilab/media/ reports/nao/submissions/2005-01petitition.htm, http://www.dol.gov/ilab/media/reports/nao/submissions/ 2005-01memo.htm.*

[38] For example, in adopting the Migrant and Seasonal Agricultural Workers Protection Act, Congress identified the lack of a private right to sue as a primary reason for failure of its predecessor statute. S.Rep.No. 1206, 93d Cong., 2d Sess. 3 (1974); H.R.Rep.No. 1493, 93d Cong., 2d Sess. 1 (1974). Accordingly, one of the "major purpose[s]" of the 1974 Amendments was to "creat[e] a civil remedy for persons aggrieved by violations of the act." Id. Congress deemed "an unfettered federal civil remedy" to be "crucial to the effective enforcement of existing law," Id.

[39] 20 C.F.R. § 655.102(b)(9); Under the current H-2A program, an employer, by regulation, is required to pay at least the highest of the state or federal minimum wage rate, the local "prevailing wage" for the particular job, or an "adverse effect wage rate (AEWR). The AEWR was created under the bracero program as a necessary protection against wage depression. The Department of labor issues an AEWR for each state based on U.S. Department of Agriculture data. In the H-2A program, while AEWRs are typically a higher wage than either minimum or prevailing wages, they have in effect become a "maximum" wage for workers. Whatever its specific shortcomings, the notion of an adverse effect wage rate for workplaces that hire guestworkers could guard against wage depression.

[40] Some of these provisions are in the pending Senate bill, S. 2611, as well as in H.R. 2298, sponsored by some members of this Committee. Others are already outlaws in at least two of the source countries for guestworkers in the U.S. See, Art 28 Ley Federal de Trabajo (Mexico) and Art 34 of Decree Number 14-41 (Guatemala). The 11th Circuit has ruled that recruitment fees and travel costs must be repaid by employers at the beginning of employment to the extent that they reduce wages below the minimum wage. Arriaga v. Fla. Pac. Farms, L.L.C., 305 F.3d 1228, 1231 (11th Cir. 2002).

Chairman MCKEON. Thank you.

Dr. Martin?

STATEMENT OF PHILIP MARTIN, PH.D., PROFESSOR, DEPARTMENT OF AGRICULTURAL AND RESOURCE ECONOMICS, UNIVERSITY OF CALIFORNIA–DAVIS

Dr. PHILIP MARTIN. Good morning, and thank you, Mr. Chairman and members of the committee, for the opportunity to testify on guest worker programs. I am Philip Martin, a professor of agricultural and resource economics at the University of California-Davis.

The intent of guest worker programs is to add workers to the labor force temporarily but not add permanent residents to the population. If we wanted to add both workers and people long term, of course, we would have immigration policy.

But the guest worker program really aims to slot people in to the labor force temporarily and then later have them leave. There are many such programs around the world, and almost without excep-

tion their results can be summarized in a simple phrase: There is nothing more permanent than temporary foreign workers.

In almost all countries, in virtually all time periods, guest workers programs tend to become larger and to last longer than originally anticipated, and some of the migrant workers settle with their families.

The reasons why guest worker programs fail to live up to their promise are straightforward. Employers make investment decisions that assume migrant workers will continue to be available, and that is an economic distortion because some, but not all, employers are assuming that migrants will keep labor costs lower than if migrants were not available.

The result is that we get examples of farmers, for example, planting apple trees in places where there really aren't many people and then complain that without the migrants they will go out of business.

The political effect is very predictable. Guest worker programs are always easier to start than to stop.

The distortion is the one "D". The second "D" is dependence, the fact that some migrant workers, their families, communities and the workers' governments of origin assume that the foreign jobs and remittances will continue. If the opportunity to work is curbed, then migrants may migrate illegally to avoid reductions in their income.

Distortion and dependence should make governments cautious about guest worker programs. If the United States launches new guest worker programs, steps should be taken to minimize both distortion and dependence by ensuring that U.S. employers who hire migrants have incentives to look for alternatives and to give foreign workers incentives to follow programs rules and return to their countries of origin.

Most guest worker programs allow employers to hire migrants after recruitment does not yield local workers, and as you know, government is ill-suited to second-guessing employer hiring decisions, which is one reason why the labor certification process is contentious.

Once employers learn the tricks of getting their need for guest workers certified, most assume they will continue to hire guest workers, and that is where the distortion creeps in.

U.S. law and international norms call for U.S. workers to be hired if they are available and any migrant workers to be treated as U.S. workers. One way to minimize distortion is to realize that the payroll taxes for Social Security and unemployment insurance add at least 20 percent to wages. Those taxes should be collected on migrant wages to level the playing field between U.S. and migrant workers, but some of those payroll taxes could be used to combat distortion.

For example, in an industry such as agriculture, it is hard for one farmer to mechanize since the packers and processors have to handle either hand or mechanically picked fruit but not both. If guest workers had an easily identifiable class of Social Security numbers, distortion could be reduced if, for example, half of the payroll taxes on their wages were devoted to labor-saving or job-improving innovations. The amount of funds available would de-

pend on the number and the wages of guest workers, and to recognize that each sector is different, you could have boards of employers, workers and government deciding how to spend the funds.

Since guest workers are supposed to be temporary workers, many do arrive with plans to return, but many wind up settling. To reinforce returns, the other half of payroll taxes could be refunded when the migrant surrenders his or her work visa to a U.S. consulate in the country of origin. And those refunds could be matched to promote development.

Instead of launching a massive new guest worker program, it might be prudent to experiment with several types of programs on a pilot basis to determine which works best, and that way we could answer important questions, such as whether payroll taxes devoted to mechanization and labor force development do in fact avoid distortion in sectors employing guest workers and whether refunds of Social Security taxes encourages the returns required by guest worker program rules.

Thank you for your attention, and I look forward to your questions.

[The prepared statement of Dr. Philip Martin follows:*]

Prepared Statement of Philip Martin, Professor of Agricultural Economics, University of California-Davis

Thank you for the opportunity to testify on guest worker programs. I am Philip Martin, Professor of Agricultural and Resource Economics at the University of California at Davis. I served as one of 11 members of the bipartisan U.S. Commission on Agricultural Workers that reported on the effects of the Immigration Reform and Control Act in 1992.

The intent of guest worker programs is to add workers to the labor force temporarily, but not add permanent residents to the population. There are many such programs. Almost without exception, their results can be summarized in a simple phrase: there is nothing more permanent than temporary foreign workers. In almost all countries and in virtually all time periods, guest worker programs tend to become larger and to last longer than anticipated, and some of the migrant workers settle with their families.

The reasons why guest worker programs fail are straightforward. Employers make investment decisions that assume migrant workers will continue to be available, an economic distortion because some but not all employers are assuming that migrants will keep labor costs lower than if migrants were not available. The result is that some farmers plant apple trees in places with few residents, and then complain that without migrants they will go out of business. The political effects are predictable: guest worker programs always prove to be far easier to start than to stop.

The second D is dependence, the fact that some migrant workers, their families and communities, and the workers' governments assume that foreign jobs and remittances will continue to be available. If the opportunity to work abroad is curbed, migrants may migrate illegally to avoid reductions in their incomes. Most researchers conclude that Bracero programs sowed the seeds of subsequent unauthorized Mexico-US migration, via distortion in US agriculture and dependence in rural Mexico.

Guest worker programs aim to admit workers at the extremes of the job ladder, such as health care and IT professionals at upper levels and farm workers and landscapers at the bottom. This testimony focuses on unskilled workers, but there is also distortion and dependence in programs admitting foreign professionals. The major policy option to deal with "shortages" of professionals is to add to the supply with additional training and higher wages, while the major policy option to deal with "shortages" of unskilled workers is to reduce the demand for farm workers and landscapers via mechanization, job restructuring, and trade policies.

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We could have an interesting discussion of what is now being called "human capital mercantilism," the policy of maximizing the brainpower within the borders of a country to gain a competitive edge in a globalizing world. Centuries ago, mercantilism was a theory that aimed to maximize a country's gold and silver holdings. It ultimately failed, proving to be capable of providing only short-term wealth.

The same may prove to be the case for mercantilism focused on "human capital." Moreover, if industrial countries were to succeed in attracting more human capital from developing countries, they may wind up widening the inequalities that stimulate and encourage unwanted south-north migration.

Rules and Incentives

Distortion and dependence should make governments cautious about guest worker programs. If the US launches new guest worker programs, steps should be taken to minimize distortion and dependence by ensuring that US employers hiring migrants have incentives to look for alternatives and to give foreign workers incentives to follow program rules and return to their countries of origin.

Most guest worker programs allow employers to hire migrants after recruitment does not yield local workers. Government is ill-suited to second-guess employer hiring decisions, which is one reason why the labor certification process is often contentious. However, once employers learn the tricks of getting their "need" for guest workers certified, most assume they will continue to hire foreign workers. As a result, investments in labor-saving and job-improving innovations slow, and distortions increase as migrant-dependent sectors become isolated from the wider US labor market.

US law and international norms call for US workers to be hired if available and any migrant workers to be treated as US workers. One way to minimize distortion is to realize that payroll taxes for social security and unemployment insurance add at least 20 percent to wages. These taxes should be collected on migrant wages to level the playing field between US and migrant workers, but some of these payroll taxes could be used to combat distortion. For example, in an industry such as agriculture, it is often hard for one farmer to mechanize, since peach packers and processors handle either hand or mechanically picked fruit, but not both.

If guest workers were given an easily-identifiable class of Social Security numbers, distortion could be reduced if, say, half of the payroll taxes on their wages were devoted to labor-saving and job-improving innovations. The amount of funds available for such projects would depend on the number and wages of guest workers. To recognize that each sector is different, boards representing employers, workers, and government could decide how to spend the funds.

Guest workers are supposed to be temporary workers, not settled residents. Most are young and, despite plans to return, many form or unite families in the countries in which they work. To reinforce rules that expect returns after one, two or three years abroad, the worker's share of payroll taxes could be refunded when the migrant surrenders his/her work visa to a US consulate in the country of origin. Government and NGO institutions could match payroll tax refunds to support development projects that create jobs in migrant home areas.

Enforcement and Pilots

One promised effect of guest worker programs is reduced illegal migration. However, if unauthorized workers are also available, some employers will hire them rather than guest workers, and some migrants will elect illegal entry and employment instead of the legal program.

During 22 years of Bracero programs between 1942 and 1964, some 4.6 million Mexicans were legally admitted, but over 5.3 million were apprehended, demonstrating that even a large guest worker program can be accompanied by larger illegal migration. Note that both admissions and apprehensions double-count individuals who were admitted/apprehended several times. (see table below)

Instead of launching a massive new guest worker program, it may be more prudent to experiment with several types of programs on a pilot basis to determine which works best. In this way, we could have answers to important questions, such as whether payroll taxes devoted to mechanization and labor force development avoid distortion in agriculture, meatpacking, and other sectors, and refunds of Social Security taxes encourage the returns required by guest worker program rules.

Thank you for your attention, and I look forward to your questions.

BRACEROS PROGRAM STATISTICS

[1942–1964]

Year	Braceros	Apprehensions	Mexican immigrants
1942	4,203	11,784	2,378
1943	52,098	11,175	4,172
1944	62,170	31,174	6,598
1945	49,454	69,164	6,702
1946	32,043	99,591	7,146
1947	19,632	193,657	7,558
1948	35,345	192,779	8,384
1949	107,000	288,253	8,803
1950	67,500	468,339	6,744
1951	192,000	509,040	6,153
1952	197,100	528,815	9,079
1953	201,380	885,587	17,183
1954	309,033	1,089,583	30,645
1955	398,650	254,096	43,702
1956	445,197	87,696	61,320
1957	436,049	59,918	49,321
1958	432,857	53,474	26,721
1959	437,643	45,336	22,909
1960	315,846	70,684	32,708
1961	291,420	88,823	41,476
1962	194,978	92,758	55,805
1963	186,865	88,712	55,986
1964	177,736	86,597	34,448
Total	4,646,199	5,307,035	545,941

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Chairman MCKEON. Thank you very much.

There has been a lot of good thought that has gone into your testimony, a lot of expertise, and I appreciate the things that you have said. And I know that your full comments, if you didn't get a chance, will also be in the record and give us a chance to read those.

The reason that we are holding this and a series of hearings in this and other committees is there is such a vast difference between the Reid-Kennedy Senate bill and the House bill, and the problem with the revenue generator in the Reid-Kennedy bill that precludes us from going to conference that needs to be fixed on their side. It gave us the opportunity to hold these hearings to point out the differences and to readdress this issue again so that we could really focus on this, because it is a major important issue in front of the Congress, in front of the country right now, something that we really need to deal with.

And it was brought home to me when I made my visit to the border last week. We went to the San Ysidro Depot. That is the busiest entry point in our border. And you almost have to go there to see it to really get a feel for what is going on. They handle 50 million checks a year through that entry point. Twenty-four lanes of traffic lined up as far back as you can see people waiting to enter the country and then a line of people walking across the border that extended back about a mile.

They had agents there that there were checking, they had technology, a lot of things happening, but still just the day before we got there they had caught a convicted criminal, they had caught, I think, 169 people trying to enter illegally, they had caught, I think, 40-some cases of contraband, either drugs or agricultural things that were being brought into the country, weapons, illegally. That was in 1 day through that one entry point.

They showed us pictures of some of the sophisticated means that were being used to bring people in. They had a person that had been sewed into the seat of the car, another picture of a person that was sewed into the dashboard. They had a couple that had been put into the engine compartment of a car and then the gas tank. I mean, these are the kinds of methods that are being used to just come through those entry points. So it is a very sophisticated matter.

Then we visited with the Border Patrol and saw the things that are happening there to bring people in, and it really is a very serious matter.

And then they told me about—we have heard the number 11 million to 12 million people that are here in the country illegally, and the number that they are using down there is more like 20 million that are already here in the country illegally. And then the difference we see between, I think you mentioned in your testimony, between the House bill and the Reid-Kennedy bill was that, if it were passed, it would open up over the next 20 years another 60 million people coming into the country.

So there is great concern out there.

One of the things that I think was mentioned in your testimony that has been troubling to me, you know, we have debates about Davis-Bacon and we can have different feelings on that, but when you see in the Reid-Kennedy bill, the underlying legislation, an amendment that was in there expanded the guest worker program would require or guarantee that federally determined prevailing wage of Davis-Bacon would be guaranteed for guest workers, which would mean in some locations the wage would be guaranteed to guest worker even if that same wage was not guaranteed to American citizens.

And I would like to know what the panel thinks about that difference between the two bills. Anyone wish to comment on that?

Dr. Martin?

Dr. PHILIP MARTIN. This was actually the provision under the Bracero Program. Braceros was guaranteed a minimum wage, U.S. farm workers were not, between 1942 and 1964 because the minimum wage did not apply to agriculture at that time.

My assumption is, is that the Davis-Bacon thing would likely be changed since it seems difficult in today's environment to maintain

that. But there is a precedent for that, because, in a sense, that is actually what happened under the Bracero Program. There was a minimum wage guarantee for braceros but not for U.S. workers.

Chairman MCKEON. And you said that was when?

Dr. PHILIP MARTIN. Forty-two to 1964.

Chairman MCKEON. OK, but that has been fixed.

Dr. PHILIP MARTIN. Well, the program ended, but I would assume——

Chairman MCKEON. But that has been fixed.

Dr. PHILIP MARTIN [continuing]. That we would not repeat that kind of thing.

Chairman MCKEON. Well, we would if we had that bill, and that is why—I would hope that that would not happen, but that is why we are trying to hold these hearings to show these differences. Because one of the things I think that really upsets people is where you have people that are in the country illegally that are receiving benefits that citizens would not receive.

Does that red mean my time is up already? I talk too much?

Ms. DICKSON. I think I mentioned in my statement that that is one of the concerns that the Chamber has. We don't obviously want to see anything that is not going to be equal. And the other provisions of the guest worker program would require not only the recruitment of U.S. workers but prevailing wage. We want to make sure that everybody gets the same wage.

Chairman MCKEON. Doing the same job.

Ms. DICKSON. Yes.

Chairman MCKEON. Thank you.

Ms. HALLSTROM. I also wanted to comment. We use the guest worker program at this time. Our wages are $9 an hour. We provide free housing, free transportation, and these are not benefits that are taken away from American workers because we first and foremost have to recruit and offer these same benefits to American workers.

I would like to remind everybody that the Federal minimum wage is at $5.15. We are well above that, even without all of the benefits that are provided even the current guest worker programs.

Mr. JACK MARTIN. Mr. Chairman, in my prepared testimony, I point out that one of the criteria that we insist is necessary for the operation of any type of a temporary worker program is that it reflect real wage measures, supply and demand. If wages are holding steady in an area or are declining, this is an indication of the fact that there is no real need for bringing in any temporary workers, and we would insist that only if wage offers are increasing that there is any demonstration of any need for bringing in temporary workers.

And if they are brought in, they should only be brought in temporarily, not as in many of the temporary worker programs that are operating at the present time for multiple years. Those are not temporary jobs. The workers are not temporary. They will end up staying in the United States.

Ms. SMITH. I think your comments illustrate the lengths that people will go to come to the United States to work when you talked about the border and two-thirds of the undocumented workers in our workforce are low-wage workers, are these folks who are

earning poverty-level wages. I think a legalization program will have an effect on that.

Beyond that, we do have to be careful to offer prevailing wages, both to the U.S. workers that we are recruiting and to foreign workers, and I don't think we have got that figured out yet. Even the adverse effect wage rate that is used in agriculture operates, in some sense, as a maximum wage rather than a minimum wage, because employers can bypass U.S. workers who are not willing to work for the lower amount, who want to work for a higher amount.

Chairman MCKEON. Mr. Andrews?

Mr. ANDREWS. Thank you, Mr. Chairman.

I would like to thank the chairman for declaring Democratic victory in the effort to take over the Senate by recognizing that Senators Reid and Kennedy are the lead forces in this bill. I thought that the lead forces were——

Chairman MCKEON. Would the gentleman yield?

Mr. ANDREWS. Sure, in a minute.

Chairman MCKEON. I am happy to do that because they did, they won. Only 23 Republicans voted for it over there.

Mr. ANDREWS. Among which was Senator McCain who is the leading candidate for your Presidential nomination and with whom is the president of the United States, President Bush. So I think we should call it the Bush-McCain-Reid-Kennedy bill, just as a beginning.

[Laughter.]

Chairman MCKEON. I have no problem with that.

Mr. ANDREWS. Mr. Martin, a woman in my state had worked in a small factory for about 9 years, and there was a raid on that factory by immigration officials in February. She was detained in the raid; she is an undocumented worker. She had three children who are U.S. citizens. She has no record of any criminal activity. She has, by all accounts, met her financial and social obligations to the country.

Should she be deported?

Mr. JACK MARTIN. Well, Mr. Andrews, I assume that you are not suggesting that the immigration authorities of this country should not be enforcing the immigration laws.

Mr. ANDREWS. I am certainly not. Should she be deported?

Mr. JACK MARTIN. The immigration law of the country, which has been adopted by the Congress, specifies that people who have illegally entered the country or who have overstayed their permitted entry are subject to deportation, and, yes, certainly they should be deported.

I think, Congressman, that most people do not recognize that the children born in this country of foreign parents who are here illegally in most cases acquire the citizenship of the parent as well. And in the case of the deportation of a person who is illegally in the country, if there is an issue of children having U.S. citizenship because they were born here, they can return to the home country where they also have nationality, and it is the decision of——

Mr. ANDREWS. But your position is their mother should not be able to stay with them here in the United States.

Mr. JACK MARTIN. If there is an issue of separation of children from the parents, that is an issue that is decided by the parent. That is not decided by U.S. law or U.S. policy.

Mr. ANDREWS. So the woman would decide to be deported and leave her children here?

Mr. JACK MARTIN. If a woman decides to leave children in this country, that is the decision of the parent, and I would hope that provisions are made under our law for the appropriate care for those children.

Mr. ANDREWS. Now, Ms. Dickson, I assume from your testimony that you would favor, if she met the criteria, the right of this individual to earn legal working status; is that correct?

Ms. DICKSON. Well, I think we have this large undocumented population that we have to deal with in a reasonable way. I think if you deported all these people, it is going to have a definite impact on the economy. And, certainly, in this area there are humanitarian concerns that come in as well. To me, the path that the president and the Senate bill has outlined is an earned legalization. There are a number of steps to it.

This woman, from what you are describing her, has paid her taxes, has been a responsible citizen, has held the job, probably has a home and is raising three children.

Mr. ANDREWS. So my understanding is that you would support the Bush-McCain-Reid-Kennedy approach.

Ms. DICKSON. Yes, or something like that.

Mr. ANDREWS. Let me ask you this, though: Should this woman be paid prevailing wage? If people make $9.50 an hour doing this work in her labor market, should she also be paid $9.50 an hour at a minimum?

Ms. DICKSON. Yes. We believe that that is part of the temporary guest worker program, that the person would be paid a prevailing wage.

Mr. ANDREWS. And how should that standard be calculated? Should we simply, if the employers says, "Well, the prevailing wage here is $7.50 an hour," should we just accept that or she we have some objective criterion against which to measure that assertion?

Ms. DICKSON. Well, we do have a similar situation in the H-1B Program where there is a tiered level of salaries that are acceptable for different occupations. They are put out by the Office, what is it, OES——

Mr. ANDREWS. But is there a similar Federal agency in unskilled work? Isn't the only real measure of relatively unskilled labor rates prevailing wage rates under the Davis-Bacon law?

Ms. DICKSON. I don't believe so. I am certainly not an expert in that. But, I mean, when you go on to the Bureau of Labor Statistics, they do have listed a four-tier wage system for almost every occupation, and I think it is based on education, experience, work. You could probably slot people into that and see what—and those wages are geographic, so the wages we use for H-1B workers are tied to a certain state, a geographic area and vary depending on where it is, and we are required by law to pay prevailing wages.

Mr. ANDREWS. I see that my time is up. I would simply refer you to a 40-year record of using the Davis-Bacon standards for guest

workers that I think should be included as it has been in the Senate bill.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman.

I would like to thank the witnesses today for their hard work and terrific testimony.

I am going to try abide—in fact, I am sure the chairman will insist that I abide by the 5-minute rule, so I would like to move to this pretty quickly.

Just a quick question, Mr. Martin. Looking at your numbers, it looks like, according to your chart, that the legal temporary workers here today constitute just under 1 percent of the workforce. Did I read that right?

Mr. JACK MARTIN. That is correct.

Mr. KLINE. OK. Then very quickly I would like to ask each of you, just to make sure I know where you stand, do you or the organization that you are representing believe that we need, and therefore should have, a temporary guest worker program? Not addressing the undocumented illegal aliens that are here today but just in general, does our economy do we need a temporary guest worker program?

If you could just go right down the line.

Ms. DICKSON. Yes, we believe that a temporary guest worker program that was based on market need.

Mr. KLINE. Thank you.

Ms. HALLSTROM. Absolutely. At this point, we know that we could not operate just with what happened to us after 9/11 without the guest worker program. And, again, if we were to have an enforcement-only policy, our industry would collapse.

Mr. KLINE. Thank you.

Mr. Martin?

Mr. JACK MARTIN. We believe that there may be temporary needs but only on a temporary basis and that a temporary worker program should not be used as a permanent feature of the labor market.

Mr. KLINE. Thank you.

Ms. SMITH. We already have a number of temporary worker programs, and our point of view would be we need to enforce the standards we have in those programs.

Mr. KLINE. I understand we have them. The question is, do you think we need temporary guest workers?

Ms. SMITH. I think that depends on the particular labor market and the particular labor market test.

Mr. KLINE. OK. Thank you.

Dr. PHILIP MARTIN. I would keep the temporary workers. I would try to improve their operation, and instead of expanding them a lot, if we are going to need workers for future labor shortages, expand immigration.

Mr. KLINE. All right. OK. Thank you very much.

So you all agree that we need or should have a temporary guest worker program of some sort. Mr. Martin is squirming just a bit,

but I think that is what I heard from that. It could be case-by-case basis.

Let me ask this question now, and I am not—I will run out of time before we get the answer, but what do you think is the greatest single obstacle to having an effective temporary guest worker program today?

And by that I mean, is it difficulty in acquiring the visa, is it length of regulation, is it restriction in the numbers and types of visas, H-1B, H-2A?

And if you could just, sort of, give me your best shot. I will try to get all the way down the line again.

Ms. DICKSON. I think for some occupations, such as the semi-skilled workers and the unskilled workers, there is no visa category available. In addition to that, the cap on some of the temporary worker programs we have, the H-1B and H-2A, are not adequate as our workforce declines and baby boomers actually retire.

Mr. KLINE. OK. Thank you.

Ms. Hallstrom?

Ms. HALLSTROM. First and foremost, I would say that in the agricultural industry, most farmers have not jumped into the current H-2A Program for lack of housing, which is fundamentally the most important thing that you have to have. We would have lost our entire crop had we not built housing back in 1986. And that is the only thing that allowed us to jump in and save that crop.

The other thing is that if we were to have large numbers of farmers jump into the program right now, we don't have the infrastructure, even with the consulate in Mexico, to be able to handle that volume, so there would need to be a period of time to be able to phase and build that infrastructure.

And I would also like to add that one of the major deterrents as well is the adverse effect wage rate that is not market-based.

Mr. KLINE. OK. Thank you.

Mr. Martin?

Mr. JACK MARTIN. I would say one of the greatest problems is the fact that the operation of most of the temporary worker programs that we have at the present time do not reflect real wage conditions.

The best example of that was the continued hiring of H-1B professional workers during a period of time when tens of thousands of Americans, similarly qualified Americans, were being laid off. Any temporary worker program that we have ought to embody programs that would require hiring of Americans first when similar workers are available, laying off foreign temporary workers first when there is a downturn in the economy and in effect protecting jobs for American workers.

Mr. KLINE. OK. Thank you.

Ms. Smith?

Ms. SMITH. I would say that the Department of Labor's enforcement obligations are not clear in at least some programs and not seriously enforced, that workers are subject to both job loss and deportation if they complain and that it is not a substitute for a legalization program.

Mr. KLINE. OK. Thank you.

And I see my time has expired, but if you have got a 10-second answer, I think I can get away with this.

Dr. PHILIP MARTIN. Where there is no cap, the reason is there are undocumented workers available. So there is no cap in H-2A but there is plenty of unauthorized.

On the other programs, it takes infrastructure to buildup infrastructure, the body brokers, the people to bring people in. That is why the programs usually start small. Remember these programs, H-1B, H-2A, started in 1990. It took a decade to buildup that infrastructure. Once it builds up, the tendency is for the programs to get larger, both in the United States and other countries.

Mr. KLINE. OK. Thank you.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Mr. Grijalva?

Mr. GRIJALVA. Thank you very much, Mr. Chairman. I appreciate the witnesses being here today.

It is kind of an interesting meeting. Being a first-generation American citizen in this country who is a proud son of a bracero who came to work in this nation, it is kind of a little—very interesting meeting.

And I say that because I think we are kind of missing the point as we are talking about a temporary guest worker program.

It is disheartening to read and be reported that the White House and the president are saying we are not going to deal with immigration until after November. It is disheartening to hear from our congressional leaders, Senator Frist and here in the House, saying we are not going to deal with immigration till after the election—I think an issue the American people are frustrated and demanding something be done.

I was hoping these hearings were about debating something, but I think all we are doing with these hearings is deepening the divisions that exist in this country, hardening the attitudes and marginalizing—I have to say this—marginalizing people across this nation based on race and national origin. And I don't think that this is the purpose of a realistic debate and discussion about immigration reform. It is disheartening.

And whatever short-term gain people might view politically from this delay in tactics and doing nothing, I repeat, is only short term. This issue must be dealt with, and it must be dealt wit comprehensively.

I was going to ask a question that, Mr. Martin, you mentioned it in one of your responses to another question, that one of the realities, as we talk about temporary worker programs, is the reality of 12 million unauthorized, undocumented, living and working in this nation. What is FAIR's position about reconciling that reality as we talk about a temporary guest worker program? What do we do about those families, the children, et cetera?

Mr. JACK MARTIN. Congressman, we basically would look at that as two separate issues. The focus of the legislation that was adopted by the House of Representatives in December was aimed at securing our borders, increasing enforcement of our immigration laws——

Mr. GRIJALVA. Right.

Mr. JACK MARTIN [continuing]. In the interior of the country, not a massive deportation program, as it has sometimes been characterized, but one that we create conditions over time that would encourage those illegally in the country to return to their home countries.

Mr. GRIJALVA. But absent any earned legalization, as is in the Hagel-Martinez bill, compromise, absent any of that process, what do you do with that reality? You either ignore it or, as your organization promotes, you enforce it. And if you enforce it, doesn't that correlate to deportation at a massive level?

Mr. JACK MARTIN. Our starting point with regard to that, Congressman, is that it is a mistake to work from the assumption that all of the people who are illegally in the country at the present are needed workers in our workforce. That seems to be the assumption from any plan that would accord those people permanent residence in this country.

The fact is that a large number of illegal workers in this country are having adverse effects on all sectors of the population who are low-income workers in this country, and that cuts across the board with regard race and ethnicity. It hits all of those populations in this country.

Mr. GRIJALVA. To quote you, Mr. Martin, "The presence of increasing numbers of immigrants workers clearly reduces overall earning growth," as you said. "This occurs simply because foreign-born workers earn less than the native workers, and that difference lowers the average earnings of the U.S. workforce as a whole."

That is what you just said, and I think that points to the point that Ms. Smith made about all workers should be treated, at least in the earning power side of it, with some level of equity.

Mr. JACK MARTIN. Absolutely, Congressman. As my colleague, Dr. Martin pointed out, the fact that there is an unlimited number of temporary agricultural workers possible under the law that is not being used indicates the fact that employers find it more convenient——

Mr. GRIJALVA. Thank you.

Mr. JACK MARTIN [continuing]. To avoid following the legal provisions and hire——

Mr. GRIJALVA. Let me get one question in to Ms. Smith, if you don't mind.

Ms. Smith, I know that labor unions and lawyers are worried about temporary guest worker programs based on past history and abuses—the Bracero Program was one of them, ripe with exploitation and abuse—but if we were talking about a temporary guest program, what would be the three solid recommendations you would provide this committee if indeed we are going to talk about that program and indeed it is something that would become a part of legislation and implemented?

What would be the three basic recommendations?

Ms. SMITH. Enforcement, enforcement, enforcement. But along with that portability so that workers can vote with their feet if conditions aren't adequate at a workplace and the ability to have a path to citizenship as part of the guest worker program.

Mr. GRIJALVA. Thank you very much.

And thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Ms. Biggert?

Mrs. BIGGERT. Thank you, Mr. Chairman. It certainly has been an issue that has been a topic of discussion for quite a while, and certainly I think is one of the toughest issues that we face in Congress, and I think that is why we have to spend a lot of time on this.

Appreciate all your testimony.

Ms. Hallstrom, many in Congress have been saying that first we have to secure the borders, and then we will move toward a comprehensive program where we move in to the guest worker programs and consider that once the border is secure.

How would this approach affect the agricultural community?

Ms. HALLSTROM. Well, while other industries might have time to wait for other provisions of immigration reform, agriculture would not. There is already extensive losses to crops, as we speak, and they have been building over the last year and a half, and I know that this is also because of the increased border security. So already our industry is drastically feeling the pinch here. We can't survive with an enforcement only.

I think that it is interesting that people seem so surprised by the large number of illegal immigrants in this country and the fact that they do support our country. This issue has been swept under the carpet for so long that we no longer can ignore it.

The question even posed earlier from Mr. Andrews, one of the things that we have difficulty with answering these questions is because we have a law that is very much like a 25-mile-an-hour speed limit; it doesn't work, and we are not prepared to answer a lot of these questions. We don't know how. We are all stymied by our situations.

I think that we seriously need to take a look at this comprehensively because if we fail to do that, we will be in the same place 5, 10, 15, 20 years from now, and this country can't afford that anymore for many reasons, national security being foremost.

Mrs. BIGGERT. One of the things I think that you said was that American workers do not want to perform seasonal work, and is that because—well, one would be because it is not full-time work, they are laid off, but the other question that always comes up is that American businesses would rather have four workers because they pay them less.

Is there any statistics that show that that really isn't true, that we really cannot find the workers to do that and yet we have been talking about foreign workers are paid less?

Ms. HALLSTROM. Well, you could use us as the pilot child here. We have had to use the program since after 9/11, and we would much more prefer to have a domestic labor force, and the cost and the difficulties that we have incurred is not a choice that we would make if we had other choices.

I think at this point we are desperately seeking reform, not only for ourselves but for the entire industry.

Mrs. BIGGERT. Ms. Dickson, you talk about the labor shortage that your company has experienced at all levels, skill levels. Are there training schedules or training opportunities that you engage in to ensure that your workforce has the skills it needs?

Ms. DICKSON. Yes. My company and most large companies invest tremendous amounts of money in training programs. All of our manufacturing sites have training facilities for technical training skills, to be sure, like our welding schools and things like that. In addition to that, we have personal development programs. We have what is called Ingersoll-Rand University, which is based at one of our campuses in Davidson, North Carolina that provides training.

We also have a number of programs with vocational and technical schools, junior colleges to improve training. We have a very generous tuition reimbursement program for both bachelor's degrees and for a masters program. We have a very highly competitive in-house masters MBA program.

Mrs. BIGGERT. But you still need other——

Ms. DICKSON. Our biggest issue, as we are looking at the demographics in a manufacturing environment, and we have a lot of very highly skilled manufacturing workers who are now at the top age where they are going to start retiring, from the demographics we see, it does not appear that we are going to have the workers in the 25 to 45 age bracket coming in to fill these jobs, such as welders, machinists, tool and die workers. So that is at a different level all together.

Mrs. BIGGERT. What about the guest worker that comes in and then doesn't work out?

Ms. DICKSON. Well, we are actually required——

Mrs. BIGGERT. Can you hire——

Ms. DICKSON. I mean, the only guest worker programs that really we have access to right now are the H-1B programs, the L1s, which are limited to our own employees, TNs. We have always when we brought somebody from another country, H-1Bs your mandatory to return them to their home country. We do it with other people.

One example is, one of our factories a couple of years ago we had hired a bunch of engineers from Canada and then the product was not selling due to the energy crisis, and we relocated all of them with their families back to Canada. If we brought somebody here, we feel it is our obligation to return them.

Mrs. BIGGERT. Thank you.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you. We have a couple of votes on the floor. We will get Ms. Davis's testimony, and then we will recess for the votes.

Ms. Davis?

Mrs. DAVIS OF CALIFORNIA. Thank you. Thank you, Mr. Chairman.

And thank you to all of you for being here. I know that this is such an emotional issue to everybody, and sometimes we do see things a little differently.

Mr. Chairman, I appreciate the fact that you were at the San Ysidro border station recently, and I think when we see that from San Diego, we are amazed by the thousands and thousands and thousands of legal crossers there, which are contributing to our economy. What we want to do is be sure that we can identify those people who are there to do us harm, not there to contribute to the

economy. The vast bulk of people are there for that reason to contribute.

I think we also see some differences, we see some desperation when you see people in gas tanks; the sophistication, surely, but also the desperation, and we need to change that.

Could you please focus, and quickly, I guess, as well, on that which you think you actually hear from one another you agree on in this important debate? One thing I have heard is the enforcement at the employer workplace. Why do you think we have done such a poor job of this?

Certainly, this administration, perhaps past administrations to a much lesser extent, have not done a good job. What do you ascribe that to? Do you ascribe it to the fact that people know there is nobody out there to check on them? But what is it, particularly?

And, also, if you could speak very quickly to what kind of a verification system do you actually think employers would have some confidence in?

Ms. Hallstrom, you mentioned that you have a stringent program that you had to create at Pendleton. Very understandable; that is a military base. What about that do you think would work?

And for all of you, what do you think we could all have confidence in, and do you think that we have the capacity here in the country, knowing what we know about bureaucracy, to actually develop something that would work?

Ms. DICKSON. I am actually in charge of I-9 compliance in my company as well, so we certainly take I-9 very, very seriously. And we believe that we are complying with the law because we check the documents that are presented. Unfortunately, there are fraudulent documents that are presented, but you cannot ask for specific documents, you can't ask about somebody's national origin.

So while a lot of employers are certainly thinking that they are doing the right thing, we certainly would welcome some sort of a foolproof system. And I know there is a lot of discussion about the Social Security Administration being able to make sure that we could verify Social Security numbers for people.

Our concern is whatever system is put in place it has to have data integrity, because we do I-9s for everyone. We do I-9s for anybody we are going to hire. So if the data is incorrect, and the current pilot program has a very high error rate, that would be unacceptable when an employer goes to verify an American worker's Social Security number and gets a false read and denies them a job.

Mrs. DAVIS OF CALIFORNIA. Just to your information, quickly, how many times have you all been audited for those reasons? How many inspectors have ever come in terms of the people you are in contact with?

Ms. DICKSON. I don't think there has been a lot of I-9 inspections over the last several years, and I think some of that relates to the fact that a new I-9 form was due to be developed a number of years ago, and it has been back and forth under development in OMB, and it is very difficult to enforce something when the list of documents that is on the current I-9 form is no longer acceptable, but we can't ask for documents.

Mrs. DAVIS OF CALIFORNIA. Thank you. I appreciate that. Because of time——

Ms. HALLSTROM. I think I would like to start, first off, by saying that I think part of the problem, again, is I will go back to the fact that we have got this 25-mile-an-hour speed limit and it doesn't work.

There was a testimony made several years ago by a border enforcement officer and he was asked, how would we deal with this if we were to stop guest worker programs and some of these other programs, and he said that we can't do the impossible. And so that is what they are up against oftentimes. I have spent a fair amount of time on the border.

We as employers do what we are asked to do, and we do the best job we can. I will say on the I-9 inspections, I frequently will come out—when I say frequently, you know, maybe once a year we will get an inspection. This last year, 2006, we did get an inspection, and even though we used the H-2A Program through some of the domestic hires, we were just recently sent a list of 12 employees that we have to release because their documents do not seem to be valid for employment.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Mr. JACK MARTIN. We think that there should be a level playing field so that all employers are playing by the same rules. At the present time, employers are often forced to look the other way because of the fact that their competitor would put them out of business if they did not do so.

The basic pilot system exists, it works. My organization participates in that program. We are sure because of that that we have nobody who is illegally in the country working for our organization. But very few employers have signed up for that because they would be at a competitive disadvantage if they did so. If——

Mrs. DAVIS OF CALIFORNIA. Do you know how many employers—I am sorry—have actually been investigated?

Mr. JACK MARTIN. There are about 6,000 employers across the country who are now participating in that system, which is a very small number. It has been evaluated by outside experts. It has been found to work efficiently, and that would go a long way toward solving the problem. But there would still be the problem of identity theft, and secure documents are going to be needed to get around that problem.

Mrs. DAVIS OF CALIFORNIA. OK.

Ms. SMITH. We have serious concerns about employer sanctions. I think our history has shown that we really don't have the will to enforce this kind of employer sanctions against employers, and most observers, I think, would say that the employer sanction system has resulted in discrimination against workers who look or sound foreign.

In addition, it has really been turned on its ear, in my view, by employers who don't take so much interest in knowing a worker's status when they hire them, but as soon as a worker is injured on a job or makes a complaint, employers then engage in intense efforts to find out that worker's status.

So I would like to suggest a different kind of enforcement, and when I say enforcement I mean let's protect everyone on a work site, let's protect their basic core labor rights, and in that way deter

employers who would misuse immigration status or would hire and take advantage of undocumented workers.

Chairman MCKEON. We really need to move on.

Mr. HINOJOSA. Mr. Chairman, I ask unanimous consent that my statement be allowed in the record?

Chairman MCKEON. No objection, so ordered.

[The prepared statement of Mr. Hinojosa follows:]

Prepared Statement of Hon. Rubén Hinojosa, a Representative in Congress From the State of Texas

Mr. Chairman, before I ask my questions, I would like to share with the committee the deep frustration in my community about the majority's refusal to work in a good faith effort to fix our broken immigration system and address our workforce needs in a way that benefits employees and employers equally. We are tired of road shows designed to fan the flames of anti-immigrant sentiment for potential gain at the ballot box. We want comprehensive immigration reform.

If the majority were serious about border security and immigration policy, they would not be holding show hearings. Instead, they would be hard at work negotiating an immigration bill. The house passed a bill. The senate passed a bill. Now is the time to negotiate and compromise to produce a final product. That is how our legislative process works.

It requires a good faith effort to produce the right policy to serve our nation. That is unfortunately, in short supply.

The Republican record speaks for itself. The majority has consistently blocked efforts to increase resources for border security. Its record for protecting our workers is even worse. The federal minimum wage has not been increased in nearly a decade. Enforcement of our labor laws has fallen dramatically during this administration's tenure.

This record of inaction and neglect cannot be papered over by a hearing.

Question for Ms. Rebecca Smith, National Employment Law Project

In your testimony, you highlight a path to citizenship as a critical component to any guest worker program. Could you please elaborate on how this pathway benefits both U.S. born workers, immigrant workers, and the communities where they reside?

Question for Luawanna Hallstron, Harry Singh and Sons and Elizabeth Dickson, U.S. Chamber of Commerce

Both of you expressed concern about an enforcement-only or an enforcement-first approach to immigration reform. Could you discuss the economic impact of implementing a Sensenbrenner-type bill without addressing the workforce aspect of immigration?

Chairman MCKEON. We will recess for 15 minutes, if we can have your patience, and we will be back at 12:15. Thank you very much.

[Recess.]

Miss MCMORRIS [presiding]. The committee will come to order.

Welcome back. Thanks for your patience.

We are expecting a few more members that have questions, so we are going to start with Mr. Bishop since he is here.

Mr. BISHOP. Thank you, Madam Chairman.

I have, I guess, just two questions. One I would like to put to Mr. Martin.

Douglas Holtz-Eakin, director of CBO, Congressional Budget Office, was here last year and gave testimony to this committee to the following effect. He indicated that if we want our economy to grow at roughly the rate of 3 or 4 percent a year, which is our historical rate, if that is our assumption, given the impending retirement of the massive baby boom generation and given significant reduction in the birth rate, the domestic birth rate, the only way we are

going to have a sufficient workforce to accommodate an economy that grows at 3 or 4 percent a year is if we have immigration reform that expands the number of guest workers. I am paraphrasing his testimony, but that was essentially his message.

And so I have a two-part question. One, do you accept that assessment? Do you accept, in effect, the numbers? And, two, if you do, how would you suggest that we handle a labor market that we won't be able—or a labor need that we will not have bodies to fill?

Mr. JACK MARTIN. As I understand the question, there are really two parts, one of them the demographic adjustment to baby boom.

And I think that a panel of experts that I heard addressing this, speaking to the Social Security Advisory Board, unanimously agreed that immigration should not be used as a tool during an adjustment period, that that was a mistake. We are going to have an adjustment. It may require people working, but I personally am prepared to do that, and I am engaged in that process at present time.

An aspect of that question is whether or not we simply need to have a large workforce, a continually expanding workforce, and my view on that, not as an economist, is that our economy has adjusted to a tremendous influx of additional workers, and I think that reciprocally if the workforce were to shrink, that our economy would also adjust to that shrinkage.

Mr. BISHOP. Let me now ask a question of each of the panelists. And thank you, by the way, very much for your testimony.

The McCain-Hagel-Martinez compromise bill in the Senate has a path to earned legalization for people who have been here 5 years or more.

Let me just ask directly, do you or do you not support, either you or the organizations you represent, support a path to earned legalization for those who have been in this country working and basically living by the laws of our society for the——

Ms. DICKSON. The Chamber of Commerce definitely supports a path for earned legalization as long as they met the criteria that was outlined in those things.

Mr. BISHOP. OK. Thank you.

Ms. HALLSTROM. Yes, we do support what you are speaking of, because right now we have much of top management, I believe, that is supporting the agricultural business, and many of those people would be directed out of this country. I don't know where we would find that management and that experience.

Also, it is very important, the adjustment of status is critical for our ability to be able to transition into a future guest worker program.

Mr. JACK MARTIN. Our view is that an amnesty, which is basically what is referred to as an earned legalization, would be repeating the mistakes of 1986. It would send a message abroad that we were not serious about enforcing our immigration laws and would encourage a continuing flow of illegal workers coming into the country.

Mr. BISHOP. So the short answer is no.

Mr. JACK MARTIN. So we are absolutely opposed to that provision.

Mr. BISHOP. I want to come to the other two, but if I could engage you for a second. So it is your honestly held belief that a path to earned legalization that is 11 years in duration, that requires the payment of a $4,000 fine, that requires learning English, learning civics and paying all back taxes constitutes a free pass? Is that your definition of amnesty?

Mr. JACK MARTIN. In the sense that what you refer to as a fine was what was referred to in 1986 as a fee that paid for the administration of the program. We don't see that as anything that justifies, in effect, allowing people who come into the country to adjust their status and sends a signal abroad that others——

Mr. BISHOP. But, if I may, you use the term, "amnesty," which is a term that has a fair amount of emotional content in it. Do you believe, for example, if someone is arrested for drunken driving and they are given probation, does that constitute amnesty or have they been sanctioned in some way?

Mr. JACK MARTIN. I would say that that simply is not comparable to the situation of people who have come into the country illegally or overstayed their visas.

Mr. BISHOP. I will disagree with you, but fine.

Ms. Smith?

Ms. SMITH. We absolutely believe in a legalization program as the centerpiece to immigration reform, as is provided in the Senate bill and also the ag jobs portion. We have some concerns that legalization may present some barriers to some folks, as you have indicated with the fines and the amount of time that it takes to legalize.

Mr. BISHOP. Dr. Martin?

Dr. PHILIP MARTIN. I think the practical answer is, eventually some people are going to—it is too difficult to do anything other than provide a path for at least some of them.

Mr. BISHOP. Thank you. I see my time has expired.

Thank you, Mr. Chairman.

Miss MCMORRIS. OK. I will ask a couple of questions.

One for Dr. Martin. You suggested a pilot project, pilot program for any new guest worker proposals. Would you just share a little bit as to how you envision that being structured, and would you propose guest workers for specific industries, limiting the number of workers or some other outline for a new program?

Dr. PHILIP MARTIN. OK. Thank you for the question.

When we look at guest worker programs around the world, most of them are rule-based, which means employers have to satisfy certain rules, then they are allowed to recruit temporary workers.

The general experience is that once the employers and the migrants abroad learn the rules, then the whole program gets static. There is not much incentive to look locally for workers, because you have now got an experienced workforce abroad, and you can get increased dependence in the sending areas on foreign jobs and remittances.

So in order to make the programs live up to their name, which is adding workers temporarily to the labor force, not adding settlers to the population, it seems to me that you have to have economic mechanisms to reinforce those rules.

What I have proposed is a pilot by which one takes the payroll taxes, which otherwise would accrue simply to the Federal Government, and divide them with some of the money going to employers or going to boards representing workers, employers and government, so that we are not faced with the same issue of dependence on foreign workers 10 or 15 or 20 years down the road.

I would do pilots on an industry basis, and you could even do them even on a subsector basis but with the amount of money available to be spent, dependent, of course, on how many guest workers there were and what wages they earn. And then on the side of the migrants, I would do refunds of part of their payroll taxes to give them an incentive to return back home.

So I guess conceptually, no matter what rules you establish, the migrant and the employer often have an incentive to prolong what is supposed to be a temporary arrangement. If you are going to avoid that happening in a new set of guest worker programs, you are going to have to come up with economic mechanisms to reinforce the rules. If you have only rules, there will never be enough enforcement people, and that is why we get this line about, "nothing more permanent than temporary workers."

Miss MCMORRIS. So is there another country that has a similar type of program that you have seen?

Dr. PHILIP MARTIN. Well, the countries that come closest are countries like Singapore where, remember, they have the things that start first with enforcement, which most people on the panel have said, you need to have enforcement so that people hire legal rather than unauthorized workers. And then, second, yes, they do have economic mechanisms, mostly on the employer side, because that is a country with fairly harsh rules on the worker side.

I would rather see the United States use economic mechanisms to encourage returns rather than the fairly drastic kind of enforcement measures they use on the worker side. But that is an example of a country that uses economic mechanisms to try to reinforce what the program rules say.

Miss MCMORRIS. Thank you.

Ms. Hallstrom, as someone who represents a district largely dependent upon agriculture, coming from Washington state, I just wanted to have you highlight—or you did in your testimony highlight some of the obstacles to the current H-2A Program, and we have heard some of those in the past.

Would you talk a little bit—you mentioned the merit of litigation. Would you just kind of explain the kinds of lawsuits that have been brought against your company and if you have any suggestions for reducing the litigation?

Ms. HALLSTROM. Well, I would.

I would also like to, before we get off of the last comment, to say that I don't think that there is any evidence out there to show that the domestic workforce is going to get any better for agriculture. I know that in California, and I believe to the U.S., there has been a lot of money, effort, time spent in trying to discourage migrant seasonal labor within the domestic workforce. We look more to provide opportunities for year-round work and not so much migrant because that doesn't really support the family unit. So I just wanted to mention that.

In regards to your question on frivolous lawsuits, they run the gamut. And I will tell you that the current 50-year-old program is very cumbersome, it is very time-consuming. It is difficult, it is hard to understand. Our very first experience with a lawsuit was the first year that we had to, under an emergency request, jump into an H-2A Program that I thought I understood just on paper and looking at the issues around the need for reform guest worker program since 1986.

I mean, the whole reason I got into this was because in 1986 I saw what happened and I said, "Oh, my God, this is a train wreck waiting to happen. In a few years, we are not going to have a labor force." So it was more of an interest of trying to figure out why we ended up with a one-legged stool approach back then.

We immediately hired an immigration attorney, labor attorney to help us get through what we knew was going to be a difficult process. We were stumbling through, we had never gone through the program on the ground, and so we had to learn the hard way of the difficulties, the communication between the different departments and even within our own business between field and the advertisements that didn't really sound like much of a job offer, it sounds more like a legal document.

And so in all of that there were miscommunications, and we ended up with in the first year a lawsuit based on the fact that we were told that we didn't communicate clearly.

Well, you know, first time we would ever used the program, we jumped into it, we have legal counsel to avoid those things, and we still ended up there. And fortunately for us, the judge recognized that situation, and we got through it. But we probably spent about $250,000 in legal fees just trying to get to that decision.

Later, we further saw problems with we would have a disagreement with maybe an employee that said that we didn't offer them a job, perhaps a domestic worker that said that they were not offered that particular job.

And in doing the research, we have learned through the years how specifically you have to document every single thing you say, every phone call, every protocol. Because we found out through documenting that the job that the person was actually applying for was a completely different job, it had nothing to do with the H-2A Program at all, and we still ended up having to settle out of—I think it was $16,000. So it is more of a nuisance than anything else.

So those are some of the examples that I am talking about. They take money, they take time, and, frankly, our fellow farmers around the country see this stuff and they just go, "You want to use that?"

Miss MCMORRIS. Thank you.

Ms. SMITH. If I may, my testimony, as well, includes examples of a number of non-frivolous serious abuses in the H-2A Guest Worker Program as well as the H-2B Program, and what I would like to say that I think we need to have a little more focus on is in this delicate balance of protecting American workers and making sure that we respect the human rights and the labor rights of guest workers, prevailing wage and labor standards are the centerpiece.

We need to make sure that U.S. workers are protected by recruitment at the prevailing wage and that then if it is true that U.S. workers cannot be located, that guest workers be brought in, again, at that higher wage. And prevailing wage is based on employers' own reports of what it is that they are paying workers. So we need to spend careful attention on labor standards in order to protect both our resident workforce and the foreign workforce.

Miss MCMORRIS. OK.

Mr. Martin?

Mr. JACK MARTIN. If I could just add with regard to that issue of prevailing wages, prevailing wages are of course one of the elements in the H-1B Program, but studies that have been done have found, first of all, that employers are paying significantly lower than the prevailing wage to H-1B workers, and there is hardly any enforcement at all by the Department of Labor, which encourages that type of activity, in addition to which the prevailing wage standard is interpreted by the Department of Labor in a fashion that, in effect, allows employers to pay lower wages to temporary foreign workers as opposed to American workers.

So it is not sufficient simply to have a prevailing wage standard in the law but rather to have mechanisms to make sure that real prevailing wages are going to be paid in any situation where you have temporary workers. And those should be temporary rather than at present time where, in effect, they are being occupied by people who are staying permanently in the country.

Ms. DICKSON. I would have to beg to disagree. We certainly take the prevailing wage aspect of H-1B workers very seriously, and the way the law is actually written you have to pay the geographical prevailing wage, which there are a number of excellent surveys out there, including what is from the Bureau of Labor Statistics, which is the one we generally go to, or the actual wage paid to other workers in the same occupation.

And large companies, we use the Hay System. We have minimum-maximums for every job, as rated in our company, and any H-1B worker that is hired is being paid the appropriate wage, if the geographical wage is higher or the actual wage. In our company, generally the actual wage is higher. So the person is generally paid higher than the geographical prevailing wage. This has to be documented. We also post at the worksite the wage that the person receives, and there are instructions on that how to notify wage and hour.

There is an enforcement mechanism. I am not saying that there aren't some employers out there that are not doing it properly, but the majority of employers are doing it properly and take that very, very seriously. And there is an enforcement mechanism to come in an investigate those employers who are not.

Miss MCMORRIS. OK. I think that concludes our day.

Thank you for appearing before the committee.

If there is no further business, this initial hearing of the series is now adjourned.

[Whereupon, at 1:02 p.m., the committee was adjourned.]

[Additional submissions for the record follow:]

[The prepared statement of Mr. Norwood follows:]

Prepared Statement of Hon. Charlie Norwood, a Representative in Congress From the State of Georgia

Mr. Chairman, I'm happy to engage in a real debate about the future of America's guest worker policy in this committee. The debate is long overdue, and the American people deserve an explanation from their elected representatives about where they stand on the issue.

After all, 62 senators recently thumbed their noses at the average American worker by voting to pass S. 2611, the Reid/Kennedy "Comprehensive Immigration Reform Act of 2006." I find the title of the legislation insidious, since the only comprehensive aspect is the extent to which it sells out the rule of law.

At its very core, the Reid/Kennedy legislation extends amnesty to millions of illegal aliens currently living in our country.

The senior senators from Nevada and Massachusetts might disagree, but there is no denying this fact. And worse still, if Reid and Kennedy have their way, our government will likely open up a flood of up to 100 million new legal immigrants over the next 20 years.

This avalanche of humanity across our borders is not only unsustainable; it threatens the very way of life American citizens now enjoy.

Mr. Chairman, our school systems, hospitals and social service networks cannot support the creation of the new "guest worker" program called for in the Reid/Kennedy bill. And I say the words guest worker with more than just a little irony, since there is nothing temporary about the Reid/Kennedy plan for earned legalization and a path to citizenship for millions of illegal aliens.

Oh no, the folks that have flouted the rule of law time and time again will not be going home any time soon.

But the Reid/Kennedy legislation goes even further. The Democrats who want to grant amnesty to the people who broke our immigration law also want to place them at the front of the line for a pay raise!

This is not an exaggeration. The Reid/Kennedy legislation would expand Davis Bacon wage rates to the private sector for the first time in American history. And rather than extending this wasteful largesse to American workers, which would be bad enough, the Democrats want to shower it upon illegal aliens. This dastardly plan puts lawbreakers first at the expense of the American worker, offers them a better wage rate, and is completely unacceptable.

Mr. Chairman, the U.S. Congress does not need to repeat the same mistakes it made in 1986 by granting amnesty to illegal aliens. History has shown that amnesty does not work. And we certainly do not need to compound those mistakes by dramatically extending Davis Bacon wage rates to current illegal aliens.

House Republicans have a far better plan. First, we must secure the border and immediately stop the flood of illegal immigration. This is non-negotiable. Before Congress even begins to discuss a revamped guest worker program, the President must demonstrate once and for all that the border is secure.

Second, we must strengthen existing interior enforcement law and actually apply penalties to illegal immigrants who break our immigration laws.

When these critical demands are met, Congress can then begin to talk about a work-visa program that works.

My colleagues on both sides of the aisle agree that we must work to achieve this goal. The American economy cannot survive without foreign labor, and it is foolish to deny that fact. However, it would be more than foolish to support the Reid/Kennedy legislation as means to achieve our goal. In fact, it would be downright treasonous. Thank you Mr. Chairman, I yield back.

[The prepared statement of Mr. Owens follows:]

Prepared Statement of Hon. Major R. Owens, a Representative in Congress From the State of New York

Mr. Chairman, as the witness for this side of the aisle, Rebecca Smith, will confirm this morning, the federal Department of Labor is failing to enforce important labor laws, especially those that apply specifically to low wage American workers and guest workers under the existing H2A and H2 B programs. This is no accident. The current Administration has failed to hold business owners and operators accountable for egregious safety violations that have killed 35 coal miners so far this year and we're only halfway through the calendar year. The recently confirmed Assistant Secretary for Occupational Safety and Health, Mr. Foulke, says that his number one priority is to promote voluntary compliance programs for employers as opposed to enforcing safety and health laws. And over the past 5 years, the number

of private collective-action filings under the Fair Labor Standards Act (FLSA) has increased by 87 percent. That is a striking statistic and it is clearly a result of the Bush Administration's failure to enforce wage and hour laws.

As for the current guest worker programs, rampant violations of FLSA, the Occupational Safety and Health (OSH) Act, the Service Contract Act, and the Migrant and Seasonal Agricultural Worker Protection Act simply are ignored by DOL, even when publicly documented in the press. Our next full Committee hearing should focus on these dangerous enforcement lapses at DOL.

To encourage the Chairman to schedule such a hearing, I ask unanimous consent that the Sacramento Bee's investigative report on the H2 B program entitled "The Pineros: Men of the Pines" be included in the record in its entirety. This series documents the DOL's complete disregard of blatant wage and hour, child labor, safety and health, and federal contracting violations in our national forests. It also points out that the left hand doesn't know what the right hand is doing at DOL when it comes to H2B programs. Federal contractors who are repeatedly violating wage and hour laws may once in a while be cited by DOL's Wage and Hour Division, which would make them liable for immediate debarment. But even in those few instances where the Sacramento Bee reporter, Mr. Tom Knudson, found that forestry contractors had been cited by DOL for wage violations, rather than being debarred they were approved by the Employment and Training Administration at the very same time as meeting all DOL qualifications for obtaining a new cadre of H2B workers.

Mr. Chairman, I also ask unanimous consent that a report by the Southern Poverty Law Center on this issue, "Beneath the Pines: Stories of Migrant Tree Planters," be included in the record in its entirety.*

In closing, I would like to commend Attorney General Eliot Spitzer from New York State. Recognizing the federal DOL's failure to enforce FLSA and other important statutes designed to protect hard working Americans (including immigrants), Attorney General Spitzer has brought 575 actions against employers for wage and hour and overtime violations. As a dedicated public official, he is holding unscrupulous employers accountable and helping low income workers get the wages they are legally entitled to get. He is ensuring that New York residents know if they work hard and play by the rules, they will be treated fairly, even if and when an employer tries to cheat them. I maintain that the Republican leadership in this House and in the Senate could learn a great deal about American fairness from Attorney General Spitzer. In fact, when the Chairman calls a hearing on DOL labor law enforcement failures, I promise to help him get Mr. Spitzer as a witness.

[Newspaper article submitted by Mr. Owens follows:]

[Three-part series from the Sacramento Bee, November 13–15, 2005]

Part 1: Forest Workers Caught in Web of Exploitation

Foreign guest laborers take jobs most Americans don't want. But those invited to work in the woods have hardly been offered our hospitality. On public and private land, they suffer injury, abuse, even death.

By TOM KNUDSON and HECTOR AMEZCUA, *Bee Staff Writers*

During the day, the men swung machetes and worked in the woods. At night, they lay in ragged tents, wrapped themselves in layers of clothing and nearly froze.

As the migrant workers suffered, U.S. Forest Service officials in Idaho supervising the work were taking notes. But their primary concern was trees, not people. "Pace too slow," one jotted in a memo. "Foreman not active enough vis a vis quality, production, direction."

Pineros—pine workers, as Latino forest laborers are known—have long battled abusive working conditions. But today, there is a new edge to the drama: Much of the mistreatment is unfolding inside a government program that invites foreign workers to the United States to fill labor shortages.

Unlike millions of Latin Americans who cross the border illegally to work in El Norte, the pineros toiling on federal land in Idaho were in this country legally, part of a small army of foreign residents who fill low-paying, non-farm jobs under a little-known federal guest worker program.

Yet the 10,000 or so forest guest workers, who plant trees across the nation and thin fire-prone woods out West as part of the Bush administration's Healthy Forests Initiative, have hardly been treated with hospitality.

A nine-month Bee investigation based on more than 150 interviews across Mexico, Guatemala and the United States and 5,000 pages of records unearthed through the

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*Submitted and placed in permanent archive file, "Beneath the Pines: Stories of Migrant Tree Planters," Immigrant Justice Project, Southern Poverty Law Center, 2006. *http://www.splcenter.org/* (Submitted by Rep. Owens).

Freedom of Information Act has found pineros are victims of employer exploitation, government neglect and a contracting system that insulates landowners—including the U.S. government—from responsibility.

Foreign guest workers take jobs most Americans don't want—in fact that is a condition of their employment. They mow lawns, wash dishes, clean hotel rooms. Of the estimated 66,000 guest workers in this country, forest workers are the second-largest group, after landscape laborers.

And employers want more of them. This spring, Congress passed legislation making it easier for companies to hire the nonresident employees, officially known as H2B workers to distinguish them from H2A guest workers in agriculture. Bush administration officials support expanding the H2B work force, saying legal temporary foreign workers help solve myriad problems of undocumented labor.

But in the backwoods, where pineros often lack adequate training, protective gear or medical supplies, where they sweat, struggle and suffer, the current forest guest worker program casts a shadow across its future.

"There is a move to use this program and hold it up like it's a darling child, but on the ground, it's so problematic," said Maria Andrade, a Boise, Idaho, attorney who works with migrant laborers.

Guest forest workers are routinely subjected to conditions not tolerated elsewhere in the United States, The Bee investigation found. They are gashed by chain saws, bruised by tumbling logs and rocks, verbally abused and forced to live in squalor.

Rainstorms pummel them. Cold winds sweep over them. Hunger stalks them. And death claims them. Across Honduras and Guatemala, 14 guest workers lay in tombs, victims of the worst non-fire-related workplace accident in the history of U.S. forests.

In addition:

• Over the past decade, forest contractors certified by the U.S. Department of Labor to hire foreign guest workers have shorted them out of hundreds of thousands of dollars in wages and violated scores of state and federal laws. Some employers have taken workers' visas and personal papers, including deeds to cars and even a home—in effect, holding them hostage to hard labor.

• The H2B forest workers toil in a regulatory void. Rules that protect H2A farmworkers—such as requirements for free housing and access to federal legal services—don't extend to forest guest workers.

• In national forests, where the contractors are paid with tax dollars, federal officials overseeing the work witness the mistreatment and wretched working conditions. But they don't intervene. Responsibility for workers, they say, rests with the Department of Labor and the forest contractors themselves.

• And, where government oversight of contractors exists, it's often inconsistent. Companies cited by one branch of the Labor Department for abusing forest guest workers are regularly certified by another branch to recruit and hire more.

This fall, 17 guest workers slashed through dense stands of pine and fir in Montana's Bitterroot National Forest for a contractor with a history of labor violations: Universal Forestry of Orofino, Idaho.

While cutting a dead tree without safety goggles—another violation—one of them was struck in the face by a branch, which gouged a deep crescent beneath his eye. The company declined to discuss the situation in Montana. But other crew members complained of unsafe working conditions, of unexpected payroll deductions and of hunger.

"We are uneasy because we don't even have enough money to eat," said Luciano Hernandez, who said he was down to his last $15.

One worker found nutrition in a tiny pond behind a gas station. Tying a piece of line to a branch, he baited a hook with chicken scraps and caught two small trout. Back at his cabin kitchenette, as the fish were being fried, a colleague eyed them hungrily.

"You can even eat the bones!" said Luis Andres Molina Hernandez.

"No, you can't," replied the fisherman, Johnny Beitia.

"Yes, you can," said Molina, peeling away a partly cooked bone, placing it on his tongue and swallowing. "But you have to be careful."

For years, the plight of H2B forest workers has remained out of sight, concealed by the remote job sites and the wariness of the workers, who generally don't speak English and fear retaliation by employers. Last spring, though, allegations of shabby treatment surfaced in a petition filed with Mexico's government under the North American Agreement on Labor Cooperation, a part of the North American Free Trade Agreement devoted to labor rights and standards.

"Abuse is endemic to this system," said Mary Bauer, a lawyer with the Southern Poverty Law Center in Alabama who has sued three forest contractors on behalf of

guest workers. "Basically, we're importing indentured servants to perform government functions. That's really what this is."

The labor contractors who hire guest workers and put them to work on public and private land characterize accounts of mistreatment as overblown. They say they are beleaguered by government regulations, worker advocates and pineros who distort the truth and don't work hard enough.

"There are so many things you are continually battered with," said Robert "Wade" Zaharie, an Idaho contractor previously cited for federal labor violations and sued by his workers. "In this industry, you are always going to be painted as a bad person."

Paved with yearning for a better life, the road to a forest guest worker job begins in the gullied fields and gritty towns of Mexico and Central America. It springs from a landscape of scrawny cattle, rickety bikes and stifling poverty, where workers earn as little as $2.50 a day.

It weaves through a blur of bus stations, cheap motels and crowded work vans and ends in forests across the United States, where many arrive in debt to their employer for travel and other expenses.

Mexicans and Central Americans first began to trek north as H2B workers in the late 1980s, following the landmark 1986 federal Immigration Reform and Control Act's sanctions for hiring undocumented workers.

Since then, the demand for legal guest workers in forestry has soared, from about 4,000 in 1996 to about 27,000 in 2004, records show. Though not all those requests are filled, the H2B workers represent a large portion of the estimated 15,000 to 20,000 Latinos laboring in America's woods.

Over the years, the work of novelist John Steinbeck, CBS newsman Edward R. Murrow and labor organizer Cesar Chavez thrust the plight of farmworkers into the public consciousness, peeling away their status as los olvidados, the forgotten ones.

But forest workers continue to live and work in obscurity.

"Somos los desconocidos"—we are the unknown ones, said Odilio Castro, an undocumented pinero injured by a falling tree last year in the Sequoia National Forest. "When you tell somebody you work in the woods, they have no idea what you do."

The forest worker season begins in November on corporate pine plantations in the South, where trees grow in rows and most of America's wood is now harvested. But by April, the pineros drift toward the jade-green forests of the mountain West.

Pineros plant trees and thin vegetation on a gargantuan scale. Saddled with gear—from the bags of seedlings weighing up to 50 pounds that swing from their hips to the gallon-sized jugs of gas, oil and water strapped to their belts—they trudge across rough ground where heavy equipment can't go: the slippery slopes, soggy stream banks and rock-infested ridges.

Whether here as legal or undocumented workers, pineros share a common experience. They tend to live on the rundown edges of rural towns, sleeping three or four to a bed and sprawling across the floors of rental homes, trailers, budget motels and even tarp lean-tos. Often, they're on the move—commuting long distances to work, slipping through mountain resorts before dawn.

Other things set the legal guest workers apart.

"Most are the kind of people who would not pay a 'coyote' to cross the border," said Maria Andrade, the Idaho lawyer. "Some are professionals in their home countries. Most have never been to the U.S. before. They have no family members here, no support network."

That isolation increases the danger, as an inspector for the U.S. Occupational Safety and Health Administration discovered in 2002 at a job site in the Ouachita National Forest in western Arkansas.

"They go just as fast as they can through the woods, cutting on the run," the inspector wrote. "Almost all the employees have been hit by branches of trees other employees have felled * * * . One worker was operating a chain saw * * * when the saw became pinched, he jerked the saw back and the chain on the saw tore into his leg, creating a gash approximately 5-6 inches in length * * * . When he exposed his injured leg, it was obviously infected."

Vicente Vera Martinez, a Mexican truck driver, remembers the incident well. He was the one hurt.

"It happened so fast," he said when tracked back to his home in Santiago Ixquintla, south of Mazatlan. "The pine tree was a little crooked. The chain saw wasn't sharp. I had to force it. That's what caused the saw to kick back."

Sitting on a plastic chair in his father's backyard, Vera Martinez pulled up his left pant leg to show the scar. It resembled a giant brown leech. His father, Jesus Vera Flores, scowled.

"We had no training," said Vera Flores, who worked with his son in Arkansas. "The foreman just took us to a place and said, 'Get to work.'"

"They wouldn't give us goggles," he added. "The chaps only came to above our knees. The saws had no safety locks. When my son was hurt, we had to carry him down a hill. It took about an hour. The van we were riding in didn't have a first-aid kit."

Three years later, word of the critical OSHA inspection still had not reached top levels of the Ouachita National Forest, much to the surprise of some there. In response to The Bee's inquiries, the forest's public affairs officer, Cheryl Chatham, said, "We're going back and taking a look at what's going on out there."

For many forest guest workers, though, the greatest pain is financial. Back home, recruiters tell them they will earn $7 to $13 an hour—a fortune for most Latin Americans. But once in the United States, many see their wages whittled away—sometimes to less than the minimum wage—by deductions for gas, food, lodging, tools and even, in one case, using a portable outhouse. Often, the work is spotty.

Rafael Perez Perez listened to a recruiter and couldn't resist.

Perez was a Mexican bookseller in 1996 when he traveled north as an H2B worker to earn some extra money for his wife and four children by planting trees in Mississippi. Earlier this year, he sat in a hotel restaurant in the provincial capital of Aguascalientes, took a sip of black coffee and pulled out a check he earned working on Georgia Pacific land.

For 15 hours of work, Perez grossed $105.01—$7 dollars an hour. But after deductions for travel ($20), a recruiting fee ($50), a salary advance ($25), Social Security and Medicare ($8.03), his actual paycheck was for just $1.98—13 cents an hour.

"It was unbelievable," Perez said. "I didn't even bother to cash it because it cost $2 to cash a check."

"If we worked 12 hours, the foreman would write down eight," Perez said. "If we planted 2,000 trees, they'd say you planted 500 of them bad. They had the perfect formula to have the worker unable to escape."

With so little money, Perez and his fellow guest workers had to borrow from their employer, contractor Progressive Forestry Services Inc. That meant more deductions. With every paycheck, "we would earn less and owe more," he said, "until we realized, 'We're never going to be able to pay this off.'"

The low point came over a hot plate with other workers in a motel room on Dec. 25. "We didn't have money to go to a restaurant. So we bought hot dogs for Christmas dinner—nothing else, just hot dogs. It was very sad."

Perez quit after two months and returned to Mexico. Later, he and three others sued Progressive Forestry in a class-action federal court case. The total settlement for 380 guest workers was $127,500. Perez recovered $4,175.

Following the suit, Progressive Forestry's owners formed new firms and continue to employ H2B workers. They said Perez's lawsuit destroyed their company and they disputed his charges.

"The guy did not want to work," said Bruce Campbell, a co-manager of Progressive Environmental LLC in Idaho. "He was—and I hate to use the word—a bad egg. He was not there to work. He was there causing problems."

Robert Zaharie, who signed Perez's $1.98 check as Progressive's president and has since formed the forest contracting firm Alpha Services LLC, responded via fax: "Employers lose thousands of dollars each year being humanitarians," he wrote. "When workers show up, employers give cash advances. * * * Sometimes they leave with the money and never work. We have been more indentured to our workers than they have ever been to us."

Former partners turned competitors, Zaharie and Campbell are part of a tangle of Idaho-based H2B contractors linked by legal woes and regulatory infractions. Zaharie began his career with Evergreen Forestry Services, which has been cited for hundreds of federal labor law violations. Evergreen's owner, Peter John Smith III, joined Campbell's company while appealing the government's efforts to put him out of business. Universal Forestry's owner, Heber Matute, once worked for Smith.

"Most of these guys know each other," said Jill Ellis, co-owner of Renewable Forestry Services Inc., an H2B reforestation firm in Georgia. "It's amazing. If you tried to chart it, it would look like tree roots."

Only a handful of outsiders have peered into the world of forest guest workers. One is anthropologist Josh McDaniel, who interviewed contractors and pineros and published his findings with a colleague this year in the Journal of Forestry, one of the nation's most prestigious forestry publications.

"Contractors seemed to play a lot of games with workers' pay," said McDaniel, who recently stepped down as an assistant professor at Auburn University to move to Colorado with his wife. "They would withhold money until workers had nearly

fulfilled their contracts. Then they would work them really hard until they would leave and forfeit their last big chunk of money."

Pineros have little recourse. Under the H2B program, they cannot take a job with another employer. That, McDaniel said, is an invitation to abuse.

Legal responsibility for guest workers is spread widely. The State Department, Immigration and Customs Enforcement and the Border Patrol oversee visas and entry to the United States. The Department of Labor, which certifies employers to hire workers, is charged with monitoring pay and working conditions.

McDaniel found that oversight of workers is rare. "There are not a lot of inspections," he said. "The crews are really hidden. I had a hard time finding them—and I was really trying. There is very little regulation at all."

Regulation of H2B workers fell into a bureaucratic catacomb from the very start, when Congress split a pre-existing guest worker program for agriculture into two branches in 1986. At the time, it grafted rules to protect farmworkers, including the right to a federal legal aid lawyer, onto the H2A branch of the legislation. But it left the H2B limb bare.

"There weren't many H2B visas issued then, so it wasn't an issue," said Michael Dale, an Oregon lawyer and migrant advocate.

Candelario Perez is one of many guest workers who have found themselves in need of those protections. Like most, he borrowed money for the journey to the United States—$900 for a plane ticket, $300 for his visa, even $50 for a physical required by the guest worker program.

Back home in Panama, a company recruiter had told him he would earn $10.50 an hour. But that promise was evaporating. Working for Universal Forestry in Idaho, his paychecks were late. Deductions for gas, food, motels and a chain saw eroded his pay. Perez and his co-workers grew so desperate, they poached deer out of season. "I was hungry," he said. "I had to eat."

Feeling cheated, he sought legal help. But by law, he could not turn to the first line of defense for most migrant workers: a legal aid lawyer. Instead, after months of looking, he found Andrade, the private attorney from Boise, who took his case.

In general, H2B workers aren't that lucky.

"Most private attorneys don't want them," said Roman Ramos, a paralegal with Texas Rio Grande Legal Aid Inc. "For all practical purposes, there is nobody to turn to. It would take an act of Congress to give these folks some protection."

Perez's plight was among those presented this spring in Mexico under the NAFTA labor accord. The petition bulges with allegations of wage exploitation, wretched living conditions, backbreaking labor and regulatory neglect.

It says that Perez and five co-workers were forced to camp in the mountains as temperatures approached freezing. "There were no sleeping pads, mattresses or sleeping bags," the petition reports. "The only drinking water was untreated and came from a creek."

On Sept. 26, 2000, Perez and another worker filed complaints with the Department of Labor. Four months later, the department responded that, "it could not take action because the complaints were in Spanish," says the petition.

Finally, in early 2003, the federal agency found Universal had shorted 29 forest guest workers out of more than $6,400 in wages, including Perez, who was owed $631.25.

Allegations about living conditions went unsubstantiated, the petition says, because the Labor Department was too slow. The work was done, and the workers gone, by the time the government got involved.

Only months after the Labor Department's findings, Universal was back at work on a federal contract in the Clearwater National Forest in Idaho. The focus once again was the trees, not wages or working conditions.

"Francisco worked the crew straight thru lunch and finished planting out the trees at 1410 (2:10 p.m.)," one Forest Service inspector wrote in his field diary on May 24.

"It was a sunny, hot day and the crew was dragging," he added. "I told Francisco that even though it was hot and the guys appeared tired they still needed to dig deep holes to accommodate the 14" roots. Francisco got on the crew and they finished out the day OK."

Asked about that field diary, the supervisor of the Clearwater National Forest, Larry Dawson, said it did not bother him. Contractors set working hours, not the government, he said.

"If the contractor makes the choice to continue working, recognizing that they're hot and conditions are difficult, we continue to hold them accountable to plant the trees correctly," Dawson said.

"If they're hot, yeah, what else is there to say?" he added. "Of course, it is difficult work."

Migrant advocates had another take on such incidents. "We are financing these abuses—and the profits people wring from them," said Maria Andrade.

Universal's owner, Matute, said he doesn't mistreat his employees, but acknowledged he works them hard.

"With these government jobs, I have pressure to get the job done," he said. "I am pressing the guys to do the job that needs to be done. Otherwise, I don't get paid."

Emilio Morales Donis of Guatemala City, who worked four months for Universal in 2002, said he felt Matute sometimes pushed too hard—and not always on the job. He said he watched Matute seize the passports of a group of Mexican H2B workers. "They couldn't even go out on the street because they had no documents, Morales said. "In my way of thinking, he detained them like slaves."

Matute said he needed the documents to fill out office paperwork. "Everybody got them back," he said.

Jesus Vera Flores and Vicente Vera Martinez, the father and son from Santiago Ixquintla, say something similar happened to them as they sought employment with another contractor for work in the Arkansas national forest. They turned over the deeds to their cars as a guarantee they would finish the work.

"We felt like we were imprisoned, held captive," said Vera Martinez. "What else did he need, a whip?"

In the choppy, green hills of northern Guatemala, Edilberto Morales Luis has more than memories to remind him of his time as a guest worker in U.S. forests.

A quiet, solidly built man in his mid-20s, Morales is the lone survivor of a van accident in Maine that took the lives of 14 H2B forest workers.

It happened not on the job—but on the grueling drive to work on private land owned by a timber company called Pingree Associates. Shortly before 8 a.m. on Sept. 12, 2002, the driver of a van in which Morales was riding lost control while crossing a one-lane wooden bridge and tumbled upside-down into the Allagash River.

One morning last spring, Morales shuffled across a small bedroom in his home and pointed to a picture of eight guest workers, posing for a group photo in the Maine woods.

"He died. He died. He died," he said, touching one face after another. "That one's my uncle. He died."

In early 2002, Morales had left Guatemala with an H2B visa to work for Evergreen Forestry Services, an Idaho-based reforestation contractor. But there was something he and his co-workers on the Maine job did not know, something buried in the U.S. government's files: Evergreen had a long record of mistreating workers.

"Subject has a lengthy and woeful history of non-compliance," a federal inspector wrote in 1998. "(Its) history reads like 'The Anatomy of a Worst Violator.'" Evergreen had altered timecards and failed to pay overtime, the files say, shorting workers out of more than $250,000 in all.

Two years later, another investigator cited Evergreen for a thicket of additional violations, including transporting workers in an unsafe van. "The vehicle * * * had visible bald tires," the investigator wrote.

The Bee tried to reach Peter Smith, Evergreen's owner, on several occasions, but he did not return calls.

Government files also contained letters from migrant advocates, pleading with the Labor Department to stop Evergreen from hiring foreign workers. Yet while one branch of the Labor Department, the wage and hour division, was repeatedly citing Evergreen, another branch—the employment and training administration—was authorizing it to hire H2B workers.

After the van accident, migrant advocates were outraged.

"The very agencies whose duty it was to protect workers fell down on the job," said Lori Elmer, an attorney for forest workers in North Carolina. "They had all the information and still didn't do anything. It was a complete breakdown."

In December 2002, the Labor Department revoked Evergreen's license. Last year, it fined the company $17,000—$1,000 for each fatality, $1,000 for Morales and $2,000 for failing to register the van or driver as required under the Migrant and Seasonal Agricultural Worker Protection Act.

That fine has not been paid and Smith remains in business at Progressive Environmental, where he became president this year, Idaho state records show.

Since 2003, Smith's new company has been awarded $238,000 in government contracts for work on Forest Service and U.S. Bureau of Land Management land in Oregon and Montana, according to the Federal Procurement Data System, an online inventory of federal contracts.

Labor Department spokeswoman Dolline Hatchett said Smith's involvement with another reforestation company is legal because he has appealed the agency's revocation of his license. "It's all still up in the air," she said.

Scattered across Central America are the remains of 14 Evergreen workers whose perspectives on the matter will never be heard. One is Morales' uncle, Juan Saenz Mendez, who had journeyed north to earn money for his wife and six children.

Today, Saenz lies in a concrete-block tomb draped with pink, green, white and black ribbons. At midday, the cemetery is quiet. The ribbons flutter in a hot breeze.

"We will always remember you dear Juanito," the inscription on the tomb reads, in Spanish. Below that, it adds:

El sueno Americano nos privo de tu presencia—the American dream has deprived us of your presence.

Part 2: Hidden Hazards

Although Congress has expressed it outrage at the treatment of forest workers, the government has done little to improve conditions. For those who toil deep in the woods, the threat of being injured or killed is an everyday reality.

Six federal departments and a constellation of state agencies share responsibility for reforestation workers. But the occupational safety and health officials who inspect work sites rarely visit a reforestation job. Redding Tree Growers, for example, has not been inspected by the California Division of Occupational Safety and Health in more than a decade.

The reason? Workers, most of whom speak no English, rarely complain to authorities. Accidents, which normally trigger an investigation, often go unreported. Crews work in remote locations and move frequently, making them hard to target for random inspections.

In more than two decades of thinning and planting across the West, pinero Santiago Calzada has seen a government safety inspector just once.

"Contractors do whatever they want," said Calzada, who lives in Medford. "And there are hardly no witnesses."

The U.S. Forest Service, which spends millions of taxpayer dollars on reforestation of public lands every year, says safety, pay and immigration violations are not its problem. "We're the Forest Service. We're not the INS or the Department of Labor," said Matt Matthes, a Forest Service spokesman in California.

But the INS—known now as U.S. Immigration and Customs Enforcement—hasn't inspected a reforestation job in California in years. Instead, it has shifted its attention to terrorism and national security.

Twelve years ago, a story in The Bee about the poor conditions endured by undocumented forest workers on federal land touched off a flurry of media coverage and a critical congressional report titled: "Look Who's Minding the Forest: Forest Service Reforestation Program Due For a Major Overhaul."

"We cannot tolerate these conditions, or even the perception that we allow such conditions to exist," wrote the chief of the Forest Service in 1993, Dale Robertson. "Let me state this very clearly: It is Forest Service policy to do business only with responsible contractors who obey federal, state and local laws."

The Forest Service has not walked that talk.

Despite calling for tougher law enforcement and assembling a 264-page watch list of troubled contractors, the agency today routinely contracts its work out to reforestation companies that violate state and federal safety, health and labor laws.

Matthes says it's only reasonable. "If somebody gets caught doing something wrong and they fix it, they're good," he said. "How can the federal government punish them? It's like society. If somebody's done their time, they deserve a fair shake again."

But others in the Forest Service said the agency has simply lost interest—again.

"We're not very good at managing things like this anymore," said Stan Bird, a veteran Forest Service contracting officer in John Day, Ore. "Years ago, it was important. But it's gotten lost in the midst of a lot of other priorities."

In the Klamath National Forest in California, federal law enforcement officer Jeff Brown worked a flurry of cases in the mid-'90s involving undocumented workers. Since then, Forest Service reforestation officials have not referred a single case to him. "In my opinion, the problem is still out there," Brown said. "It hasn't gone away."

Doing business through reforestation contractors allows the government and private timber companies to duck legal responsibility for workers. But the government often pays so little for jobs that contractors are forced to cut corners and put workers at risk, some industry veterans say.

"The forest industry takes reforestation workers for granted," said Dan Robertson, president of the Northwest Reforestation Contractors Association and one of the few insiders calling for reform. "They don't have a lot of concern about whether contractors are complying with all of the laws. As long as they think they are, they pretty much ignore it. And government is by far the worst."

Forests have always been risky places to work. Logging, in fact, is the most dangerous job in America, with a mortality rate of 92 workers per 100,000. Although thinning crowded stands of pine and fir is similar to logging, scant figures are available for Latino reforestation workers. But they are part of a deadly demographic tide: Latino laborers are 33 percent more likely to die on the job than other workers, according to the U.S. Bureau of Labor Statistics.

On the west side of Medford, Ore., statistics are more than numbers in a report. They wear blue jeans and baseball caps and go to work in the woods. They speak little or no English, pack lunches of tortillas and beans and cash their paychecks not at banks but at Latino-owned convenience stores.

For a few weeks in 2004, Medford was home to Ricardo Ponce Leon, who had heard about the fistfuls of dollars that could be earned in America's forests. The son of a poor brick-maker from Michoacan, the 18-year-old hungered for prosperity and prestige.

"He wanted to be a don," said his father, Manuel Ponce. "He wanted the best the U.S. could offer."

It didn't work out that way. One morning, spraying brush-killing chemicals on private land across the border in California, Ponce hopped on a trailer for a ride to a new work site. The dual-axle trailer, carrying a heavy tank of liquid brush-killer, bumped and rattled down a dirt road. Ponce slipped, fell to the ground and was run over.

"I tried to give him mouth-to-mouth resuscitation," said one of his co-workers, who declined to identify himself out of fear of jeopardizing his job with Total Forestry Inc., the company that employed Ponce. "I could hear a sound coming from his chest, like a gurgling."

Ponce died a few minutes later—at 11:29 a.m. on Aug. 4, 2004. He had earned $13 an hour and been on the job 21/2 weeks. On July 31, he had wired $310 from his first paycheck to his mother in Mexico. The cause of death, according to the Shasta County Office of the Coroner, was "blunt force injuries" including "multiple abrasions and contusions of the head, torso and extremities."

The California Division of Occupational Safety and Health fined Total Forestry $9,075. But the company appealed and the fine is still pending. Reached by phone in his Redding office, Jeffrey Webster, the firm's president, declined to comment, then hung up. He did not respond to a written inquiry.

At Total's cramped office in a dreary industrial section of Medford, secretary Daisey Walker was also tight-lipped. "No comment," she told a Bee reporter. Pressed to say something, Walker added tersely, "What happened was horrible."

From his home in the dry hills outside Morelia, Mexico, Ponce's father has plenty to say.

"Nobody has given me any answers about what happened," he said. Growing angry, he exclaimed: "I want to know who killed my son!"

Ricardo Ponce Leon was covered by the State Compensation Insurance Fund, a quasi-public entity that compensates workers—documented or not—and their families for workplace injuries or death. But more than a year after the accident, Ponce's family has received no compensation—"ni un cinco,"—not even five centavos, Manuel Ponce said.

Until The Bee began looking into Ponce's death this spring, even the California Division of Workers Compensation was not aware of it.

"Good Lord!" said Susan Gard, an information officer for the agency that monitors claims and resolves disputes between workers and insurance companies. "It just seems like they would have paid it. I can't explain why it's taken a year."

Now, the State Compensation Insurance Fund is taking a fresh look and—prodded by The Bee's reporting—hopes to make a payment to the Ponce family, according to the fund's spokesman.

Just seven months before Ponce's death, a Canadian panel cited "unacceptably high rates of deaths and serious injuries" among British Columbia's forest workers and called for sweeping changes to reduce them.

"Working in the woods involves inherent risks that cannot be completely eliminated," the Canadian Forest Safety Task Force reported. "This, however, does not justify the acceptance of unsafe behaviors and practices and the inevitability of thousands of injuries and deaths."

The task force's report, which covered reforestation workers as well as loggers, cited a litany of reasons for the crisis, including poor nutrition, inadequate training, fatigue, unsafe work habits, pressure to work quickly and a growing reliance on contractors—all factors documented in the detailed diaries of U.S. Forest Service job inspectors:

• From the Sierra National Forest, California—June 2003: "I noticed the crew was passing the chain saw along to cut brush. None of them were wearing chaps."

• From the Shasta-Trinity National Forest, California—July 2003: "2 guys knew how to thin, but the other three were rank beginners that did not know much about running a chain saw."

Such inexperience can cost workers dearly.

Stepping through the front door of his home in a backwater town in the San Joaquin Valley, Odilio Castro doesn't walk. He hobbles.

New to forest work, Castro took a job in the Sequoia National Forest last year, working for a forest contractor called Patty's Farm Labor of Strathmore.

"They never told me about the dangers of working around dead trees," Castro said.

Cutting through a small tree with a chain saw, he heard a rush of air as a larger dead tree, propped up by the small one, crashed to the ground, crushing him.

Face down in the dirt, he cried out for help. As co-workers rushed to his side and cut the tree into pieces to free him, he kept thinking: "I hope it's not bad. I hope it's not bad."

But it was. The calamity, Castro said, did more than crush his shoulder and mangle his leg. It shortchanged his future. "I can't do anything," he said. "I can't work. I can't bend over. I can't walk very much, not even to the corner."

The California Division of Occupational Safety and Health fined Patty's Farm Labor $20,845 for six violations of workplace safety law, including the failure to develop an injury prevention program.

Nonetheless, owner Patricia Soto said her company is committed to safety. "We provide training," she said. "We have safety meetings once a month."

Even a history of safety problems does not bar a company from getting government work, state and federal records show. Since 1995, 3 J Reforestation has been inspected three times by the Oregon Occupational Safety and Health Division, cited for more than a dozen violations and fined repeatedly. Four workers have been hurt, including one in California.

Over the same period, the company was awarded government reforestation contracts worth hundreds of thousands of dollars for work across Oregon and California. On one of those jobs, 3 J's owner, Jose Quezada, called up the Forest Service, worried about the safety of his workers.

As Chuck Sallander—a contracting officer's representative for the Siskiyou National Forest in Oregon—wrote in his work notes in 2004: "Contractor called me at home yesterday evening (and) had a concern voiced by his foreman. * * * He said cutting material 12 inches (in diameter) was too dangerous for his crew. They weren't qualified. I agreed that I didn't want anybody hurt."

Sallander passed the concerns along to his supervisor, but they were rejected. "Contracting officer's decision is that contractor is required to cut trees up to 12 inches," Sallander noted.

Recently, Sallander explained the decision, saying that because the company's workers had been certified to work on forest fires—where big trees are cut—they could topple foot-thick timber, too. "It didn't wash," he said of Quezada's concerns. "He agreed and finished the contract."

The greatest dangers for pineros are not always the obvious ones. One of the riskiest jobs isn't cutting trees down—it's planting them in the ground, another Canadian report found.

"Planters typically cover 16 kilometers (9.6 miles) per day over difficult terrain," said the study published in the Journal of Occupational and Environmental Medicine in 2002. "In the process of planting, 20 percent will suffer a debilitating injury, a rate far in excess of the all-industry norm of five percent. * * * Long-term implications for degeneration of the musculoskeletal system cannot be ignored."

Eladio Hernandez, a former Oregon tree planter, calls it "probably the hardest job in the world."

"Slopes are slippery," he said. "There's poison oak and ivy. Every day, you come back with a fever. It's that difficult. You either get used to it or quit."

The travails of tree planters are also spelled out in Forest Service work notes. "Very, very rocky. Planters seem to hit rocks with every swing," wrote one inspector for the Idaho Panhandle National Forest in 2003. Last year, weather was a problem. "It's pouring rain," the inspector wrote. "This may affect planting quality as it's quite miserable out."

Pressure is built into the job. If seedlings get too hot or dry, they die. If they're planted improperly, contractors are penalized financially, pineros are reprimanded and sometimes fired. Most planting is done in the spring when temperature swings are extreme.

"Most of the time you are going to be either cold and wet—or hot," said Larry Dawson, supervisor of the Clearwater National Forest in Idaho. "And you are going to be tired. Very often it's raining. Sometimes it's sleeting."

One morning in June, Modesto Alvarez, an undocumented tree planter from Honduras, pulled on work boots before dawn at the Budget Inn motel in Oroville and stepped into a van crowded with 13 other forest workers. Their destination: a tree-planting job in part of the Tahoe National Forest logged in the 1980s. But Alvarez was also headed for trouble.

Not far from Lake Spaulding, Alvarez strapped a bulging sack of seedlings to his hips and trudged across a gray, crumbly slope just below the snow line. Every few feet, he would stop, lift a silver-gray digging tool called a "hoedad" high into the air and slam it to the ground. Stooping over, he would take a seedling from his bag, plant it, tamp the dirt and move on.

Lift, slam, stoop, plant. Alvarez worked his way through puddles of shade and sun. Lift, slam, stoop, plant. A metallic clinking filled the air—the sound of hoedads striking rocks. Thirsty, Alvarez bent down and sipped from a snowmelt creek. The work was tough. But a Forest Service inspector watching the crew was making it tougher.

"She would just start yelling at us," Alvarez recounted during an interview in his home near Fresno. "Sometimes we'd pull a tree out of our bag—and accidentally drop one—and she would start yelling at us."

The inspector pressured the crew to plant in areas littered with rocks, something Alvarez considered risky. "To do what they tell us to do, that is how we get hurt," he said.

Swinging his hoedad one day around noon, Alvarez felt it come to a sudden stop on a rock torpedoed in the soil. The shock ricocheted up his arms. Arriving at the motel that evening, "I couldn't even step out of the van, I had to roll out," he said. "It was hard to breathe. It's a pain that won't go away."

Reached at her office, the Forest Service inspector, Carla Kempen, said she was not aware Alvarez had been hurt. She declined further comment.

"Carla is very demanding," said Oscar "William" Iraheta, foreman for Central Valley Forestry, the Exeter company that contracted with the government to plant the trees. "She insists the job be done exactly the way she wants it done. That's good for them. But for us—it's a lot more work."

Since that day, Alvarez has not worked in the woods. Nor has he received any compensation for the injury. Indeed he never submitted a claim, erroneously believing that because he is undocumented he would not qualify. He is now working in pain, his wife said, picking broccoli in the San Joaquin Valley.

"Up in the mountains, they rush us to do everything," Alvarez said. "But when we are hurt, they don't rush to help us."

Nowhere is the lack of enforcement more obvious than in the laissez-faire attitude toward safety gear on the job—a dramatic contrast from most liability conscious American work sites.

State and federal laws require pineros to wear hard hats, cut-resistant chaps and boots, earplugs and face protection when they're thinning with chain saws. In the woods, the laws of the land are optional.

No one was paying attention to OSHA rules at a thinning job in the Bitterroot National Forest in Montana this fall where pineros scrambled across rugged mountain slopes, slashing away with chain saws and gathering trees and limbs into piles.

Most wore no eye or face protection, no earplugs. Several struggled for solid footing in the cheap boots they brought with them from Mexico. On slopes steep enough for skiing, they slipped. They slid. They stumbled.

"This company is not taking safety equipment seriously," said Gustavo Ferman Dominguez, one of the workers. "We have to buy our own gloves. They don't give us goggles for the chain saws. They don't give us boots."

Ferman pulled his own boots off to make a point. "Look at this!" he said, pointing to the soft toes, traction-free soles and a chain saw nick. He had just decided to quit. "It's not worth breaking a leg."

Manuel Burac, Universal's foreman, agreed the workers needed better footwear. "My view is the company should buy them boots," he said.

But safety goggles pose a problem because they fog up. "I haven't been using them myself," Burac said.

What about training? "There was no training," said Luis Andres Molina Hernandez, a pinero working for Burac. "They just asked: 'Which one of you guys know how to use a chain saw?'"

Burac was sympathetic, but added that his company routinely hires inexperienced forest workers, making his job more difficult. "I feel the company should be better training all the workers when they get here," he said.

Emergency medical gear was missing, too. When Eliseo Dominguez was hurt one morning, struck below the eye by a branch while cutting a tree without safety goggles, there was no first aid within miles.

The van used to rush the worker to a hospital was littered with empty soda bottles, yogurt cups, a canteen, a deck of cards, a bandana, a rain slicker—everything, it seemed, but a first-aid kit. "Someone cleaned the van out one day," said Felix Rodriguez, the Universal employee who drove to the emergency room that day. "And they took it."

The morning Carlos Valdez was blinded in his right eye in the Tahoe National Forest in 2002, safety gear was an issue, too. "He was not wearing his goggles," said Francisco Acevedo, owner of the company doing the work, Redding Tree Growers.

Valdez, though, remembers it differently. "They did not have goggles," he said. "They were not available to me."

Rosie Lopez, who manages safety matters for the company, said ensuring workers wear safety gear is the foreman's job. But she added:

"Some workers decline to use it. They have their rights, too, you know. They have the option and the right to decline what to wear and not to wear."

By law, all serious injuries must be reported to the California Division of Occupational Safety and Health within eight hours. But Valdez's wasn't.

"We have no record of it," said Dean Fryer, a spokesman for the agency. "Without doubt, we should have been notified."

In Oregon, Dan Robertson, the reforestation contractor association president, said underreporting of injuries is widespread. He sees the proof when his own injured workers come to him for advice.

"A lot of guys who come here have never been through a workers' compensation claim," said Robertson, the owner of Professional Reforestation Inc. on the Oregon coast. "And they've been hurt before. You have to explain everything."

Reforestation contractors "aren't reporting their injuries," he said. "They will report the bad ones, you see, because they don't want to pay for it. And they will pay for the minor ones out of their pocket to keep their (insurance) rates down."

Redding Tree Growers did inform its insurance company about Valdez, who is receiving a disability payment of $371 per week from the insurer. But Rosie Lopez said she didn't know she was required to tell the state. "I was not aware I was supposed to report it," she said.

Tahoe forest officials weren't notified, either. "Unless we see it or someone informs us, there's not any reason we would know,' said Henry Hansen, a contracting officer for the Tahoe National Forest. "It's the contractor's worker and the contractor's responsibility."

After the accident, Valdez prayed often. "I'd get down on my knees and say, 'Please God. I don't want to lose my eye. Please, save my eye.'" At night, asleep, he'd dream he could see.

Twenty-three when he was hurt—now 26—Valdez said those dreams have faded. But the consequences of living with one eye have not. He lives by himself in a trailer, working as a janitor for a local church, where he also sings in the choir.

"I'm scared," he said. "There are things I'd like to do that I am not able to. I'd like to work in construction—but I can't. I'd like to play ball, but I can't catch the ball the way I used to. Nothing, not even $100,000, can replace an eye."

Part 3: Going Home

Forest workers endure miserable conditions and wage exploitation. They return to their native countries with hopes of riches dashed; and too often, they return in coffins. The leading killer: Van crashes.

In the impoverished Guatemala border town of La Mesilla, 15-year old Santa Pablo Bautista failed to heed her father's pleas to stay home on their tiny hillside farm.

Juan Carlos Rios, 22, was equally dismissive when his mother begged him not to leave Jerez, Mexico.

Born into poverty, both felt the tug of money to be made in El Norte.

Two months after arriving to harvest brush in Washington state, Santa Pablo lay in a hospital with a fractured arm, broken jaw and cuts across her face. Days after taking a job as a tree planter in Oregon, Juan Carlos Rios returned home in a casket.

Forest work has always been dangerous. But Juan Carlos was not killed, nor Santa Pablo injured, in the woods. Instead, disaster struck on the highway—on long-distance, pre-dawn commutes in unsafe, unstable vans that tumbled and veered out-of-control on windy mountain roads.

The number one cause of death among pineros—Latino forest workers—is not the slip of a chain saw or the falling trees known as widow-makers. It is van accidents. And unlike most highway tragedies, the crashes that claim migrant lives are not born of chance alone.

They are the byproducts of fatigue, poorly maintained vehicles, ineffective state and federal laws, inexperienced drivers and poverty-stricken workers hungry for jobs.

"When you add everything up, it's a formula for disaster," said Robert Perez, a Fresno lawyer who has represented scores of Latino laborers hurt and killed in van accidents.

All told, 21 pineros are known to have died in van accidents over just the last three years: 14 in Maine, five in Washington and two in Oregon. But those numbers don't begin to measure the pain: across Guatemala and Honduras, at least 15 women have lost their partners and 69 children no longer have their fathers.

Six years ago, the deaths of 13 San Joaquin Valley farmworkers in a van crash prompted California legislators to pass the nation's toughest migrant vehicle safety law. The law made seat belts compulsory for everyone riding in vans carrying nine or more passengers and required that bench seats be bolted to the floor. It mandated that vans be inspected and certified safe yearly and that drivers pass a driver-training course for multi-passenger vans.

Other states have not been so vigilant. In Oregon and Washington, for example, migrant labor law does not require annual vehicle inspections or a special test for drivers who transport migrant workers in vans.

"California has done it," said Matthew Geyman, a Seattle attorney representing the families of four forest workers from Guatemala who died in the 2004 van crash in Washington. "We could use California as a model. It would save lives."

But even California's tough law goes only so far. Last year, 1,300 migrant worker vans were pulled over by the California Highway Patrol and 2,882 citations were issued, up 150 percent from 2002. And many violations go undetected.

"I don't want to put the finger on nobody because I'm in this business. But I see a lot of contractors with vans with no certification, nothing," said Raul Acevedo, a supervisor for Central Valley Forestry, a reforestation contractor based in Exeter.

"Why do I have to spend so much money myself fixing my vans * * * and why don't (other) guys?" Acevedo asked. "It's not fair. I wish somebody could do something."

At the federal level, the Migrant and Seasonal Agricultural Worker Protection Act requires that vans pass a safety test for such things as brakes, wipers and mirrors. But unlike California's law, it does not mandate that every passenger have a seat belt. And inspections are rare.

"This is a national problem and one which calls for a national solution," said Sen. Dianne Feinstein, D-Calif., who plans to reintroduce legislation, modeled on California's law, requiring seat belts for all migrant workers riding in vans.

"Migrant workers should not have to put their lives at risk just to travel to their job site," she said.

Feinstein first tried to pass such a law in 2000, following the San Joaquin Valley tragedy, but her effort failed after farm interests objected to the cost of retrofitting older vans with seat belts.

Unlike California's law, the existing federal migrant worker statute does not require drivers to take and pass a special safe-driving course for multi-passenger vans. Instead, it requires only that they pass a physical exam.

"A physical is fine and well and dandy. But it doesn't have anything to do with safety," said Martin Desmond, former executive director of the Northwest Reforestation Contractors Association. "It is just sort of a meaningless exercise."

The road has long been a risky place for farmworkers. But over the past two decades, as Latinos have moved rapidly into the forest work force, timber country highways have turned deadly, too.

"Most of the liability in our industry is on the transportation side," said Robert "Wade" Zaharie, an Idaho reforestation contractor who employs Latino crews and requires all workers—not just drivers—to attend a defensive driving class.

"We're telling (employees) if they ever observe that a foreman is not driving safely, let the office know immediately," Zaharie said. "You just can't afford that liability."

Zaharie blamed the problem on bad habits learned south of the border. "Unfortunately, we're dying for people that have more common sense in our industry," he said "If you follow this back into Mexico, or any of your Latin countries, there are tons of accidents down there. They don't have as dear a respect for life, in general."

The life of Alberto Martin Calmo is remembered every day in his parents' adobe home in the hardscrabble hills outside the village of Todos Santos in northern Guatemala. His grave is a mile or so away—on a scenic knoll in a neighborhood of pines. A picture of his body in a casket hangs near the front door.

"I look at that picture and I cry," said his mother, 60-year-old Luisa Calmo Ramirez. "All I do is cry."

Her 31-year-old son died in the van accident in Washington in March 2004. Today, Luisa and her 70-year-old husband, Macario Martin Ordonez, are raising three of their son's children—ages 8, 10 and 12. In the months after their father's death, the children seemed not to comprehend the loss.

"They would ask me, 'When is papa coming home?'" said Luisa. As she spoke, she hovered over a wood fire on the dirt floor of her living room, cooking tortillas for the family.

"I would tell them: 'Please be quiet. He'll come back someday.' But of course he won't," she said, speaking in her native Mam language and struggling to hold back tears.

Her dead son's wife stayed in the United States with two younger children—leaving the rest to her and Macario.

"I am old and it is hard to work," Macario said one windy afternoon this spring. "My son used to send home money. He was taking care of us. Now there is nothing."

All highway travel is dangerous. But for the pineros, it is a roller-coaster ride. Mountain roads twist, dip, climb and corkscrew. Often the weather is hostile.

Fatigue compounds the risk. Crews routinely work six days a week, sometimes seven. Just getting to work is an ordeal. Commutes of 100 miles are not unusual, beginning before dawn and dragging on for hours. The three fatal forest labor crashes all happened in the early morning: at 6:08 a.m. in Oregon, 6:45 a.m. in Washington and 7:55 a.m. in Maine.

Forest Service work notes reflect that peril, too: "Contractor arrived at 7 a.m. They still haven't found a place to stay. * * * It takes them four hours driving time each way," wrote Karen Bell, a contract inspector on the Sierra National Forest in 2003.

"Reforestation workers don't get paid for travel time," said Dan Robertson, president of the Northwest Reforestation Contractors Association. "So in order to get in an eight-hour day, they get up at four in the morning."

In many cases, the biggest safety hazard is the vehicle itself. Just ask Rose Marie Ramey, the owner of Ramey's Broken Arrow Cabins and RVs in north-central Idaho.

This summer and fall, Ramey rented cabins to a crew of 17 pineros thinning trees under a government contract on the Salmon-Challis National Forest.

Their clothes were ragged. Their tools were worn. But it was the vans that Ramey found frightening. They were cluttered with gas cans, chain saws, machetes, oil and cooking gear. And there were so few seats some workers sat on the floor.

Residents of the scenic mountain town of Gibbonsville sprang into action. Some contributed clothes. Mike McLain, a river guide, built a metal roof rack for the gear. And Ramey's son got workers up off the floor. "He went down to the junkyard and bought seats for them," Ramey said.

"To me, it was unnerving," she said. "And dangerous."

And it can be deadly.

Around 3 a.m. on Monday, Jan. 3, 2005, a van pulled up at an apartment complex in Salem, Ore. Inside, Francisco Sanchez Rios and his cousin Juan Carlos were waiting—eager to begin new jobs as tree planters. They stepped out into the darkness and hopped in the vehicle: a silver 2002 Ford E350 with a bald left rear tire.

Three hours and 150 miles later, on an icy stretch of road near the coast, Francisco felt the van veer to the right. "We were skidding," he said. As the van plunged off the road, the driver screamed.

Pinned beneath the overturned vehicle, Francisco remembers crying out: "Juan! Where are you?" In the darkness, Francisco said he heard a reply from his cousin: "Please help me." Then, on the wet ground along the right side of the vehicle, Rios died of massive chest and abdominal injuries, just three days shy of his 23rd birthday.

An Oregon State Police investigator later found that three factors had contributed to the crash: poor driving, icy conditions and the bald tire that failed to grip the road.

The tire "was worn down to the cords in areas throughout the circumference. * * * The spare tire was located and found to be inflated, having more than adequate tread depth," the inspector wrote in his report.

"The night before we had dinner together," said Juan Carlos' sister, Lorena Rodarte Rios, of Salem, choked by grief a week after the accident. "He was very happy because the job was going to pay well, around $10 an hour. It was his dream to provide for his mother in Mexico. He was his mother's right hand."

In a dry, dusty neighborhood in Jerez, Mexico—southwest of Zacatecas—Rios' mother, Nicolasa, took the news hard. For days, she cried. When her son's body arrived on Saturday, Jan. 15, Nicolasa was stricken with anguish—too stunned to even attend a wake in the carport outside her home.

Finally, as mourners wailed and a hearse arrived Sunday to take Juan Carlos' body to church for a funeral Mass, Nicolasa stepped outside to say goodbye. She leaned over the coffin and rubbed her son's face, gently at first, then more forcefully.

"Please let me go with him," she sobbed, inconsolably.

"I am going crazy!" she screamed. "Let me go with him!"

As her older son, Javier, struggled to pull her away, Nicolasa tugged desperately at the coffin, then let go, wobbled a few steps and fainted.

Juan Carlos Rios was hired to plant trees on property owned by Menasha Forest Products Corp., a major U.S. timber firm. But Menasha maintains it bears no responsibility for the death because it, in turn, hired a labor contractor to plant the trees and transport the workers.

"It was not our vehicle. They were not our employees. They were contract employees," said Barbara Bauder, director of human resources and community relations for Menasha in the Oregon coastal community of North Bend.

"It was a tragedy," Bauder added. "But since it wasn't people we knew and they really weren't from our area, it didn't hit quite so close to home."

In August, the U.S. Department of Labor agreed with Menasha's assessment of blame. It fined the timber company's contractor—BP Reforestation—$3,000, saying it failed to provide safe transportation. The contracting company has appealed the fine and did not return calls from The Bee.

At Menasha, Bauder said she was not aware the tree-planting contractor had been fined. "They had worked for us for about 12 years, and we expect they will bid on jobs again this winter," she said. But, she added, "It certainly doesn't make us happy they were driving with a bald tire."

Federal law requires that any drivers who transport workers be designated as foremen by the contractor and be authorized to drive by the Department of Labor. But that law is routinely ignored.

The driver of the Oregon van—who also died in the crash—was not authorized. Nor were two van drivers on a job visited by The Bee last month on the Bitterroot National Forest in Montana. One had only a Mexican driver's license.

The older van being used on that job was a nightmarish sight. Electrical wires snaked out from inside the passenger door. The driver's door and window were lashed together with rope. Across the West, forest worker vans often are in such sorry shape they are known throughout the industry as "crummies."

The gray-and-white crummy in Montana was owned by Universal Forestry of Orofino, Idaho. And its passengers were worried. "You've got to do like the Flintstones to make the brakes work," said Tomas Quezada, lifting his knees and slamming both feet down to mimic the braking style of Fred Flintstone, the cartoon character.

Forest Service documents show federal officials are aware of migrant worker transportation hazards—and sometimes take steps to shield themselves from responsibility.

"(Driver) was back from town but did not get parts he needed to repair the van," wrote Jerry Branning, a Forest Service contract inspector on a Universal Forestry job in the mountains of Idaho in 2002.

"He needs brake pads for front," Branning added. "He will drive it to (town) slowly and carefully with minimum brake use."

A year later, when Branning gave Universal workers a short ride to a hard-to-reach job site in his government truck, he was reprimanded by Forest Service contracting officer Terri Ott. "We cannot assume responsibility and liability for transporting contractor personnel," Ott wrote in a memo obtained through the federal Freedom of Information Act. "This behavior * * * is unacceptable."

Ott declined to elaborate. But her boss—Larry Dawson, supervisor of the Clearwater National Forest—said she made the right call.

"I couldn't say it any better," Dawson said. "Ms. Ott was ensuring that (Branning) was not providing any more assistance or any less assistance than is required in the contract. That's the way we operate."

But migrant advocates say such a hands-off approach to transportation only serves to compound the already substantial dangers pineros face.

"It is worse than tragic that so many of them lose their lives just getting to these jobs—it is shameful," said Rebecca Smith, an attorney with the National Employment Law Project in Olympia, Wash. "We need to do everything that we can to ensure their transportation and workplace safety."

Even well-maintained forest worker vans can be risky, especially when they're fully loaded. This year, the National Highway Transportation Safety Board put out a safety advisory, warning drivers that a fully loaded 15-passenger van is far more likely to roll over than a lightly loaded one because of its higher center of gravity.

The advisory does not mention the added factor of big metal roof racks—popular on many forest worker vans—that when loaded with gas cans, water coolers, jugs of oil, chain saws and hand tools can make the vans rock like ships at sea.

"With the rack, you can feel the van leaning one way, and then another, even at a safe speed," said Manuel Burac, a foreman and driver for Universal Forestry. "Personally, I prefer trailers because you have more stability on curves."

And no study has examined the most common factor in forest worker van accidents: exhaustion.

In the pre-dawn darkness, a Dodge van crowded with forest workers crept south out of Shelton, Wash., in March 2004. Its destination: a brush-picking job in the Gifford Pinchot National Forest 100 miles away.

Inside, 15-year-old Santa Pablo Bautista—thin as a marsh reed and saddled with debt—sat behind the driver, sleeping. Like all 10 passengers, she was not wearing a seat belt. In the back, three co-workers huddled together on a bench seat that had no seat belts and was not even bolted to the floor.

The brush they all were harvesting that Saturday, known as salal, is the mainstay of Washington's $236 million floral greens industry. Waxy and wilt-resistant, salal branches—or "tips," as they are known—are bunched around orchids, roses and other flowers in bouquets and floral arrangements sold around the world.

The van climbed east on Highway 12, winding through the Cascades between Mount Rainer and Mount St. Helens. Outside, the sky was turning gray. Like Santa Pablo, most of the passengers were asleep. And as the wheels hummed on the pavement, the driver also was weary from long hours in the woods and behind the wheel.

It was Saturday. But Santa Pablo had little choice but to work. In Guatemala, her family had paid a smuggler 16,000 quetzales—$2,031 U.S. dollars—to sneak her into Mexico and transport her to the U.S. border. In Washington, Alberto Martin Calmo—who was sitting one seat away from Santa in the van—had paid $2,500 to another coyote to get her across the U.S. border and to the Pacific Northwest.

Santa's motivation was simple. "She was a little girl, but she made a decision to help me," said her father, Cipriano Pablo Jeronimo, a coffee farmer who earns about $40 a month and volunteers for a nearby Catholic church. "She said: 'Look Dad, I want to go so I can help you support the church.'"

Near the small town of Morton, the van drifted into the westbound lane. Up ahead, a Ford pickup was approaching fast. In the chaos of mangled metal and shattered glass that followed, three brush-pickers died almost immediately, including one riding on the unbolted bench seat. Two more succumbed later at the hospital. Santa Pablo—all 4 feet 4 inches and 100 pounds of her—was thrown from the van and lay in a bloody heap along the road.

She was flown to Emanuel Children's Hospital in Portland, treated for lacerations to her face and head, a broken jaw, fractured arm and nose. One year later, she sat on a rumpled couch in a rundown apartment in a rundown section of Shelton.

"This was a big tragedy for us," she said. "Everybody in that van was from the same village."

Santa Pablo knew she was going back to work, even though she remained in pain and faced the prospect of more cosmetic surgery. "Before I used to feel good. And nothing hurt," she said. "I was happy. Now everything has changed."

In April, two investigators for the Washington Department of Labor and Industries sat down with Pablo, trying to sort out who was responsible for the crash—the driver or a floral greens packing company?

"Did you have to sign some kind of paper before you started working?" they asked.

"No, none," Pablo replied.

"Did they explain to you how to do your job?"

"Well, no."

"You gave the brush daily to the driver?"

"Yes, daily."

"Whom did the driver turn the brush over to?"

"Well, that I don't know."

Unable to find a paper or human trail to a company, the agency determined that the driver, Cornelio Matias-Pablo, was in business for himself. But Cornelio—who died in the crash, too—had no workers' compensation insurance. So the state of Washington is paying death benefits to five children in Guatemala and two in the United States, and medical bills for Santa Pablo and four other survivors, all still in the United States. The tab has reached around $1 million.

"It's unrealistic to expect someone like Cornelio, who was an undocumented Guatemalan, to comply with minimum wage laws, worker safety laws, worker compensation insurance laws and vehicle safety laws," said Matthew Geyman, the Seattle lawyer representing the families of dead crash victims.

"To me, it seems like we should say to this (floral greens) industry that is making millions of dollars off these workers: 'Why don't you do something to make this a safer industry?'" Geyman said.

The Washington Department of Labor and Industries is moving in that direction. Since 2003, as part of a stepped-up enforcement campaign, it has audited 25 floral greens packing companies. In 17 cases, the department determined the packing companies were, in fact, employers of pickers and other workers—and it assessed them $86,261 in workers' compensation insurance premiums.

But while the department goes about its work, the pickers are still riding to remote job sites in rickety, unsafe vans. Last spring, Santa Pablo was once again among them.

After commuting an hour or so to work, she cut brush from 8:30 to around 4:30, thrashing through thick, wet stands of salal, stopping here and there to slice off the nicest-looking branches with a clawlike cutting tool known as a ring. She gathered the branches into bundles, bound them together with rope, hoisted them on her back, stooped over and trudged down a hill to a dirt road and the van.

At the end of the day, a foreman gathered up her brush—and that of other pickers—to sell to a packing company. The pickers were paid by the bundle. The only woman on the crew and not as strong or as quick as other workers, Santa Pablo's cut was just $23—the equivalent of $2.87 an hour. That's well below both the federal minimum wage ($5.15 an hour) and the Washington state minimum wage ($7.35 an hour)—and a violation of federal and state law.

Santa Pablo would like to go home, to return to her parents' small ranch outside the indigenous Mam village of Todos Santos in the deep green hills of Guatemala. But she can't. She is a prisoner to debt as well as danger.

"I think about the accident," she said. "I don't understand why this happened to me. And it makes me sad."

[Letter submitted by the U.S. Chamber of Commerce follows:]

CHAMBER OF COMMERCE OF THE UNITED STATES,
1615 H. STREET, NW,
Washington, DC, July 28, 2006.

Hon. HOWARD P. "BUCK" MCKEON,
Chairman, Committee on Education and the Workforce, Washington, DC.

Hon. GEORGE MILLER,
Ranking Member, Committee on Education and the Workforce, Washington, DC.

DEAR CHAIRMAN MCKEON AND RANKING MEMBER MILLER: On behalf of the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, I would like to thank you for holding a hearing on guestworker programs on July 19, 2006 and for allowing the Chamber to testify. I would also like to take the liberty of requesting that this letter be included in the hearing record.

After the hearing, I feel it is necessary to point out an inaccurate portrayal of the number of temporary workers that currently come into the U.S. The representative from Federation of Americans for Immigration Reform (FAIR) presented a chart during the hearing, and also in his written testimony, that misrepresents the number of temporary workers that come into the United States each year under the various programs, including the H-1B high-skilled and the H-2B seasonal programs.

In his testimony, Jack Martin of FAIR said, "temporary foreign workers and trainees (H visas) numbered 74,869 in FY-85. They rose to 152,460 in FY-95 and to 506,337 in FY-04. Those represented increases of 104% and 232% respectively—overall a 576% increase." These numbers represent admissions to the United States, not the actual number of workers that come into the country each year. Every time a temporary worker leaves and comes back into the U.S., he or she would be counted as a separate admission, so many workers are double and possibly even triple counted, particularly in today's mobile economy. In addition, many types of H visas can be renewed, and so the number FAIR used includes workers that were counted under previous admission years. The number FAIR used also includes spouses and dependents, who are not permitted to work while in the U.S.

A better way to count the actual number of temporary workers would be to see how many H visa applications were approved by the Department of Homeland Security—not every single time a temporary worker or their dependent crosses into the U.S.

I have also attached a study to this letter on how H-1B workers are paid the same as U.S. workers and how they do not drive down the wages of Americans, and request that this also be included in the record.

Thank you again for allowing the U.S. Chamber of Commerce to testify on guestworker programs last week. We look forward to working with you and the rest of the House Education and the Workforce Committee as the immigration debate continues.

Sincerely,

RANDEL K. JOHNSON,
Vice President, Labor, Immigration & Employee Benefits.

[Letter submitted by the construction industry follows:]

Washington, DC, July 19, 2006.

Hon. HOWARD P. "BUCK" MCKEON,
Chairman, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN MCKEON: On behalf of the undersigned organizations, representing over 300,000 construction and construction related firms across the country, we are writing to commend you for holding this hearing today on "Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy." Our industry remains steadfast in its belief that a comprehensive approach to immigration reform is needed. This includes addressing the current and future labor needs of our economy, in addition to strengthening our national security.

The construction industry has made, and will continue to make, overwhelming contributions to the U.S. economy. In 2005 alone, the industry's annual put-in-place volume of projects was worth more than $1.1 trillion. According to the Bureau of Labor Statistics, the construction industry will create 792,000 new jobs between 2004 and 2014. As such, the construction industry continues to outpace other industry sectors in employment growth over the last 12 years. In 1993, construction firms employed more than 4 million people; today, there are over 7 million employees in the industry, representing an increase of more than 50 percent in just over 10 years. By comparison, the overall American economy produced job growth of 20 percent during the same period.

An industry of this size demands significant human resources both now and in the future. As such, any approach to immigration reform must include a process which:

- allows employers to hire from abroad when they are not able to find US workers,
- puts in place a reasonable and workable system for employers to check the work authorization of their employees, and,
- allows screened, qualified undocumented immigrants to earn lawful permanent status.

Again we thank you for holding this hearing to address guest worker programs in the U.S. economy and ask you to remain steadfast in supporting the security of our nation's borders, while also protecting the health of our economy.

Respectfully submitted,

AIR CONDITIONING CONTRACTORS OF AMERICA,
ASSOCIATED BUILDERS AND CONTRACTORS,
ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
MASON CONTRACTORS ASSOCIATION OF AMERICA,
NATIONAL ASSOCIATION OF HOME BUILDERS,
NATIONAL ROOFING CONTRACTORS ASSOCIATION,
NATIONAL UTILITY CONTRACTORS OF AMERICA,
NATIONAL ASSOCIATION OF PLUMBING HEATING COOLING CONTRACTORS.

[The prepared statement of Associated Builders and Contractors follows:]

Prepared Statement of Associated Builders and Contractors

Associated Builders and Contractors (ABC) appreciates the opportunity to submit the following statement for the official record. We would like to thank Chairman McKeon, Ranking Member Miller and members of the House Committee on Education and the Workforce for holding today's hearing on "Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy."

ABC is a national trade association representing more than 23,000 merit shop contractors, subcontractors, materials suppliers and construction-related firms with-

in a network of 79 chapters throughout the United States and Guam. Our diverse membership is bound by a shared commitment to the construction industry's merit shop philosophy. This philosophy is based upon the principles of full and open competition unfettered by the government, nondiscrimination with regard to labor affiliation, and the award of construction contracts to the lowest responsible bidder through open and competitive bidding. This process assures that taxpayers and consumers receive the most for their construction dollar.

The construction industry is a vital part of the American economy. According to the U.S. Census Bureau, construction growth significantly outpaced national gross domestic productivity growth over the last 12 years, increasing 137 percent while the Gross Domestic Product (GDP) increased about 88 percent in the same period. Today, the annual value of construction is worth more than $1.16 trillion, representing more than 9 percent of the national GDP.

Of the nation's 5.6 million employer firms, more than 12 percent are construction firms, according to the U.S. Small Business Administration. Over the past 12 years construction continues to outpace the nation's other industry sectors in employment growth. In 1993, construction firms employed 4,779,000 people and today, the industry employs 7,227,000. The growth of 2,498,000 represents a 52.27 percent increase, based on numbers from the Bureau of Labor Statistics (BLS). The construction employment increase far outpaces overall U.S. employment growth, which was only 20 percent during the same period.

However, construction growth is not projected to slow. The BLS reports that another 792,000 new construction jobs will be created between 2004 and 2014. Therefore, ABC's member companies continue facing an ever-growing worker shortage problem. Despite, ABC's continued efforts promoting workforce recruitment, education and training in the construction industry through school-to-work programs, college and university outreach, professional development of training staff and the building of a strong chapter delivery system, the industry still faces difficulty in filling jobs. Combined with an aging domestic workforce and historically low American birthrates, the construction industry's future labor needs are especially acute unless additional labor sources are identified. An industry of this size demands significant human resources both now and in the future.

While today's hearing specifically focuses on guest worker programs and the impact on the American workforce, ABC has remained steadfast in its belief that this is one element in a comprehensive approach required to effectively reform our immigration policies. Any successful immigration reform measure must work to ensure the enforcement of our laws, the security of our borders, interior enforcement and the prosperity of our economy.

As one of the nation's largest employers, the construction industry needs to be able to employ foreign workers when it is unable to find U.S. workers to fill jobs. Yet, the current immigration system today does not provide sufficient opportunity for workers to enter the country legally. While some have suggested relying on H-2B visas, bureaucratic red tape combined with limited availability of H-2B visas render that option unavailable. Furthermore, in most cases that category is not an option for ABC member firms as it is only useful to those employers with seasonal or one-time occurrence needs. The construction industry works year-round and employees must attend many job training and safety courses before setting foot on a jobsite. While some employees can learn their job in a few days, the skills required for many of the construction trades often take years to learn and are usually taught through a combination of classroom instruction and on-the-job training. It is vital to the industry that any guest worker program takes into account both the length of time which may be required to properly train our employees and that a project may not necessarily be completed within a few years.

While ABC is very supportive of a guest worker program, we are troubled by a Senate bill provision that would greatly expand the Davis-Bacon Act (DBA) (40 U.S.C. §3141 et seq.). Specifically, the provision would require DBA prevailing wage rates for guest workers employed on private construction projects, despite well documented problems with the DBA wage determination process. Currently, the DBA only applies to federal construction projects and some federally supported projects. According to the U.S. Census Bureau the vast majority of construction work in the United States is done privately and includes most homebuilding. Already, any foreign workers currently in construction are covered by prevailing wage protections under the U.S. Department of Labor (DOL) foreign labor certification regulations, and a citation to the flawed and fraud-prone DBA wage determinations is ineffective. Thus, the bill would greatly expand reliance on the flawed Davis-Bacon wage surveys.

The DBA requires federal contractors and their subcontractors working on contracts for construction, alteration, and/or repair in excess of $2000 to pay employees

the local prevailing wage rates and benefits for each class of worker. Over the years, the DBA requirements have been extended to other laws which provide federal assistance for construction through grants, loans, loan guarantees and insurance. These are known as Davis-Bacon Related Acts (DBRAs). Some estimates the DBA and DBRAs covers as much as 25 percent of the nation's construction work, according to the Office of Management and Budget, Prevailing Wage Determination Program Assessment.

The DBA requires the Secretary of Labor to determine the prevailing wage rate for each locality. Under current regulations, DOL's Wage and Hour Division sets the wage for each class of worker in each locality by conducting its own voluntary wage surveys of contractors and other interested parties.

By the Wage and Hour Division's own admission in its Prevailing Wage Resource Book, the accuracy of its wage determinations is completely dependent upon identifying the correct interested party and successfully securing their participation. Not surprisingly, there have been consistent problems with the accuracy of the DBA wage determinations.

In fact, a series of audits by outside agencies as well as the DOL's own Office of Inspector General (OIG) have revealed substantial inaccuracies in Davis-Bacon wage determinations and suggested that they are vulnerable to fraud. The Government Accountability Office (GAO) has issued multiple reports dating from the late 1970s to the late 1990s detailing problems with the determinations. In addition, DOL's OIG released three reports highly critical of the wage determination program.

In an effort to address these concerns, the Wage and Hour Division made some modifications to the wage determination program in the late 1990s and early this century. These modifications, however, have resulted in little improvement. In 2004, the OIG released a report stating that the $22 million the Wage and Hour Division spent to modify the program had yielded limited improvement and that the problems with inaccuracies identified in past reports remain. In fact, the OIG found one or more errors in 100 percent of the wage surveys they reviewed. It also concluded that because response to the survey is voluntary, employers and third parties with a stake in the outcome of wage determinations are more likely to participate. As a result of GAO and OIG audits and its own research, OMB concluded in a 2003 assessment report that the DB wage determination program is not performing.

Despite the DBA's inclusion in the Senate immigration measure, ABC applauds the Senate's efforts which have resulted in a comprehensive immigration reform bill that includes the need for a guest worker program and to deal with the nation's undocumented workers. To address the concerns created by the ongoing influx of undocumented workers, and to keep our nation's economy growing, Congress must deal with the need for a guest worker program that can serve as a legal vehicle to help meet our economy's labor demands.

Again, thank you for your commitment and leadership on this essential issue. ABC looks forward to working with your committee to ensure comprehensive immigration reform is reached.

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[The prepared statement of the Textile Rental Services Association of America follows:]

Prepared Statement of the Textile Rental Service Association of America (TRSA)

Mr. Chairman and Members of the Committee, I appreciate the opportunity to submit this Statement as President & CEO of the Textile Rental Service Association of America (TRSA). Since 1913, TRSA members have provided textile maintenance and rental services to commercial, industrial and institutional accounts—more than 90 percent of TRSA member companies are small businesses. TRSA members serve hygienically clean textile items to millions of customers in commerce, industry, and other professions. Customers of uniform and linen supply companies and commercial launderers include: automobile service and repair facilities; food processing companies; pharmaceutical manufacturers and other manufacturing facilities; hotels, restaurants, hospitals, nursing homes, doctors' and dentists' offices and clinics; retail stores and supermarkets; and a variety of other industrial and service companies. The combined linen supply and industrial laundering industry generates revenues of approximately $12 billion annually while employing nearly 132,000 workers nationwide.

Why is Immigrant Labor Important to our Industry

The pool of available American workers is dwindling. The United States' population is aging and growth rates are decreasing. According to the U.S. Bureau of Labor Statistics, employees aged 45 or older will comprise over 50 percent of the workforce by 2012, and one in every five Americans will be a senior citizen by 2030.

In addition, Americans are also better educated than ever before in our history. The number of 25 year olds with a high school diploma has grown from less than 50 percent in the mid-1960's to more than 85 percent in recent years. As a result, American employers are finding it increasingly difficult to fill many low- or semi-skilled positions with American workers.

Notwithstanding wages averaging $3.00 over the federal minimum wage, companies of all sizes in our industry are faced with the challenge of worker shortages. Throughout the United States, the immigrant workforce is essential to the textile services industry to fill these positions. Even with the influx of new technology, the textile service industry remains a highly labor intensive industry. On average, each plant has 120 employees. Approximately 60 percent of these industry employees work on the production floor. Increasingly over the past 20 years, these jobs have been filled by immigrant labor.

Industry is Growing

In the coming years, our worker shortage issues will only intensify. TRSA surveys indicate that the industry grew by 7.4 percent in 2004 and has outpaced GDP growth for more than a decade. The healthcare textile services sector is growing even faster—enjoying double-digit expansion. The Bureau of Labor Statistics predicts a 7.9% growth rate in dry cleaning and laundry jobs by 2014. Immigrant labor is essential to sustain the growing demand in our industry.

Need for a Guest Worker Program

TRSA supports federal legislation that would create an expanded guest worker program that allows additional citizens from other countries to fill jobs that Americans don't want to do. TRSA advocates a program that truly addresses the need for low and semi-skilled workers. A recent speaker at a TRSA Washington event, Dan Griswold of the Cato Institute sums it up this way: "Demand for low-skilled labor continues to grow in the United States while the domestic supply of suitable workers inexorably declines—yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths at the border, artificially depressed wages, and threats to civil liberties." He adds, "American immigration laws are colliding with reality, and reality is winning."

TRSA Supports Measures to Address Adequate Workforce Demands

TRSA supports language in the Comprehensive Immigration Act of 2006, S. 2611, that recognizes that need to strengthen our national security while addressing the demand of an adequate workforce to maintain our economic growth. We believe this is not an either or proposition. We can have strong border security along with a legal method for a substantial number of workers to come into the U.S. and help American businesses meet it labor demands.

In addition to substantial measures and resources to help secure our nation's borders, S. 2611 would provide a path for undocumented workers to gain legal status. The bill would also significantly increase the number of foreign-born workers that would be allowed in the U.S. annually. TRSA is a strong supporter of these provisions in the immigration reform bill that allows those who want to contribute to the U.S. economy to do so legally.

S. 2611 recognizes the economic and social contributions that hard-working immigrants have made in every local community throughout the nation. It also offers a fix to our immigration system that respects the vast contributions these individuals have made to our economy.

Serious Concerns with H.R. 4437

TRSA has serious concerns with H.R. 4437 because of its focus on an "enforcement-only" approach to immigration reform that has proven to be ineffectual in addressing our immigration challenges. The House measure is counterproductive because it lacks a rational immigration policy to provide adequate legal channels for immigrants to enter the country to work, pay taxes, and contribute to society. Additionally, the bill does not provide a viable system for those who are already here the opportunity to earn their way to legal status.

TRSA also has concerns with the worker verification system mandated by the bill. The current voluntary "Basic Pilot Program" on which it is based has proven to be very unreliable. Also, this new employment eligibility verification program requirement would be an additional regulatory layer on top of the current I-9 program requirements.

Additionally, we have serious concerns about the practicability of all the employers in the country having to verify both current and prospective workers within six years under a system that has yet to be proven reliable. Not to mention, the huge potential costs to employers associated with paperwork, civil and criminal penalties resulting from errors from a flawed verification system.

Furthermore, in an age of counterfeit documents, employer verification is a daunting task. Employers must be given some safe harbor if they are trying in good faith to comply. The primary burden of enforcing U.S. immigration laws should not fall on employers.

Conclusion

The textile services industry has a strong desire to comply with I-9 requirements. TRSA member companies have an excellent track record of verifying worker eligibility. TRSA further assists our members by providing guidance on ensuring worker eligibility in our newsletters and magazine.

TRSA members take the appropriate steps to ensure they utilize legal sources of immigrant labor. Many member companies have even used the existing guest worker programs already established under the Department of Homeland Security.

The time is now for the House and Senate to reach agreement on a strong bipartisan immigration compromise that deals compassionately and realistically with the existing large number of undocumented workers and future immigration levels in the United States.

Thank you for your consideration.

[The prepared statement of the AFL–CIO follows:]

Prepared Statement of the Building and Construction Trades Department, AFL–CIO

Witnesses testifying before this Committee and other committees of the House of Representatives and the Senate, as well as members of Congress, have made numerous comments and statements concerning application of a prevailing wage requirement to the temporary foreign guest worker program described in S. 2611, the Comprehensive Immigration Reform Act of 2006, which was passed by the Senate in May 2006. These comments and statements generally reflect misunderstanding and confusion concerning the intended purpose and effect of the prevailing wage requirement in S. 2611 that requires clarification and explanation.

The Senate bill creates a new temporary foreign guest worker program called the "H-2C visa program." The bill includes numerous labor protections intended to assure that admission of H-2C guest workers does not adversely affect American workers wages and living standards while at the same time preventing exploitation of the foreign guest workers. S. 2611 prohibits employers from hiring temporary foreign guest workers under the "H-2C visa program" unless they have first tried to recruit American workers for a job vacancy. In attempting to recruit American workers, employers must offer to pay not less than the wage rate they actually pay comparable employees in their incumbent workforce or the prevailing wage for the occupation, whichever is higher. Then, in the event an employer is unable to recruit a qualified American to fill the job vacancy, the employer must submit an application to the U.S. Department of Labor for a determination and certification to the Secretary of Homeland Security and the Secretary of State, which confirms that American workers who are qualified and willing to fill the vacancy are not available, and that employment of a foreign guest worker will not adversely affect the wages and living standards of American workers similarly employed.

The Senate bill contains additional provisions intended to ensure that employers do not hire temporary foreign guest workers to replace American workers who are on lay off, on strike, or are being locked out in the course of a labor dispute. In addition, the Senate bill requires employers to provide the same benefits and working conditions to temporary foreign guest workers that they provide to their American employees in similar jobs. Furthermore, employers would be required under the Senate bill to provide workers compensation insurance to temporary foreign guest workers they hire.

Most of the criticism of the prevailing wage requirement applicable to foreign guest workers under the "H-2C visa program" in S. 2611 is that it entitles them to payment of a higher wage rate than American workers similarly employed. This is a misperception of the prevailing wage requirement in S. 2611 based on a misunderstanding of its purpose and intent.

The perceived impact of foreign workers on our labor market has been a major issue throughout the history of U.S. immigration policy and law, because such workers can present a threat of unfair wage competition. This perception is because foreign workers whose desperation for jobs, low cost of living in their countries of origin, and restricted status in the United States can cause them to accept wages and living standards far below U.S. standards. Thus, Congress enacted the Foran Act in 1885, which made it unlawful to import foreign workers to perform labor or service of any kind in the United States.

This bar on employment-based immigration lasted until 1952, when Congress enacted the Immigration and Nationality Act, which brought together many disparate immigration and citizenship statutes and made significant revisions in the existing laws. The 1952 Act authorized visas for foreigners who would perform needed services because of their high educational attainment, technical training, specialized experience, or exceptional ability. Prior to admission of these employment-based immigrants, however, Section 212 of the 1952 Act required the Secretary of Labor to certify to the Attorney General of the United States and the Secretary of State that

there were not sufficient American workers "able, willing and qualified" to perform this work and that the employment of such foreign workers would not "adversely affect the wages and living standards" of similarly employed American workers. Under this procedure, the Secretary of Labor was responsible for making a labor certification. In 1965, Congress substantially changed the labor certification procedure by placing the responsibility on prospective employers of intended immigrants to file labor certification applications with the Secretary of Labor prior to issuance of a visa.

The current statutory authority that conditions admission of employment-based immigrants on labor market tests is set forth in the exclusion portion of the Immigration and Nationality Act, which denies entry to the United States of immigrants and nonimmigrants seeking to work without proper labor certifications. The labor certification ground for exclusion covers both foreigners coming to live as legal permanent residents and as temporarily admitted nonimmigrants. Section 212(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5), states:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

For many years beginning in 1967, DOL's labor certification regulations implementing Section 212(a)(14) (since recodified as § 212(a)(5)) have provided that, in order to determine whether prospective employment of both immigrant and nonimmigrants seeking to perform skilled or unskilled labor in the United States will adversely affect "wages" or "working conditions" of American workers, the Secretary of Labor must determine whether such employment will be for wages and fringe benefits no less than those prevailing for American workers similarly employed in the area of intended employment of the foreign worker. For many years until March 28, 2005, the minimum wage rate that the Secretary of Labor would accept as not adversely affecting the wages of American workers similarly employed were, where available, the wage rates prescribed by the Secretary pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act.

Thus, the DOL regulations implementing the labor certification requirement in Section 212(a)(5) of the Immigration and Nationality Act provided that, where available, the prevailing wages shall be the rates determined to be prevailing for the occupations and in the localities involved pursuant to the provisions of the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. See e.g., 32 Fed. Reg. 10932 (July 26, 1967) (codified as 29 C.F.R. § 60.6). Reference to wage rates determined to be prevailing pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed continued until March 28, 2005. See 20 C.F.R. § 656.40 (2004). These prevailing wage rates were applied to job openings for which employers sought DOL labor certifications without regard to whether they were otherwise covered by the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. Thus, the idea of using prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act is not new or expansionary.

In fact, until the 1990's, the only time DOL's regulations permitted use of a prevailing wage rate other than one issued under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act for alien labor certification purposes was when there was no such rate available. See 20 C.F.R. § 656.40(a)(2) (2004). In that case, DOL guidelines, which were initially adopted in October 1997 and modified in April 1999, provide that prevailing wage rates for labor certification purposes can be based on wage surveys conducted under the wage component of the Bureau of Labor Statistics' expanded Occupational Employment Statistics ("OES") program or an employer-provided wage survey. DOL's guidelines further provide that alternative sources of wage data can be used where neither the OES survey nor the employer provides wage data upon which a prevailing wage determination can be established for an occupation for which an employer is seeking a labor certification, so long as the data meets the criteria set forth therein regarding the adequacy of employer-provided wage data

On May 6, 2002, the Secretary of Labor published proposed changes in the labor certification regulations, which essentially codified DOL's guidelines permitting use of prevailing wage rates based on the wage component of the OES wage survey or

employer-provided wage survey data that meets the requirements described in the DOL guidelines. 67 Fed. Reg. 30466 et seq., 30478-79 (May 6, 2002). In addition, the Secretary's proposed regulations eliminated mandatory use of prevailing wages determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act where otherwise applicable. Id. at 30478.

The Secretary of Labor's May 6, 2002 Notice of Proposed Rulemaking explained that she had decided that it is inappropriate to use prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed. The reason offered in the Notice of Proposed Rulemaking for this conclusion was that the procedures used to determine Davis-Bacon Act and McNamara-O'Hara Service Contract Act prevailing wage rates are significantly different from those set forth in DOL's guidelines for determining prevailing wage rates for labor certification purposes in occupations for which a prevailing wage rate under one of these laws is not available. Id. at 30479. Hence, the Secretary's reason for eliminating mandatory use of prevailing wage rates determined pursuant to these two federal prevailing wage laws was not that they were less accurate than the wage component of the OES program, but merely because their respective methodology is different. Id. Eventually, the Secretary of Labor adopted the changes proposed in the 2002 Notice of Proposed Rulemaking on December 27, 2004, which became effective on March 28, 2005. 69 Fed. Reg. 77326 et seq., 77365-66 (December 27, 2004).

Notwithstanding, the Republican Policy Committee's July 11, 2006 report and many conservative pundits have argued recently that audits of the Davis-Bacon wage survey process demonstrate that it is less accurate than the wage component of the OES program. It is doubtful, however, that the OES program or any other wage survey process could withstand the kind of scrutiny applied to the Davis-Bacon wage survey process. After all, both the OES program and the Davis-Bacon wage survey program depend entirely on the voluntary participation of employers to submit wage data, and the Davis-Bacon wage survey process now includes a nationwide employer payroll-auditing component, which better assures the accuracy of the wage data submitted by participating employers. The OES program does not include an auditing component.

In any event, this recitation demonstrates that use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed is not a concept introduced for the first time in S. 2611. On the contrary, use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed was integrally intertwined for nearly 40 years in the labor certification process. Use of prevailing wage rates based on these federal prevailing wage laws were regarded as best serving the intended purpose of the labor certification process, which is to protect American workers from unfair wage competition by foreign workers seeking permanent and temporary employment opportunities in the United States.

It was understood that, in rare instances, this process might result in payment of higher wages to newly hired foreign workers than to an employer's incumbent workforce. The possibility that mandatory use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act might create such a wage disparity is minimal inasmuch as it is highly unlikely that an employer will opt to hire a foreign worker if it upsets the employer's wage structure, unless the employer truly has no other choice. In that case, the employer is more likely than not to raise the incumbent workforce's wage rate. In any event, this dynamic provides the greatest assurance that employers cannot take advantage of a pool of foreign workers willing to accept employment at a depressed wage rate because they are desperate for jobs, come from countries that have low costs of living, and have restricted status in the United States.

In addition, Congress recently enacted the Consolidated Appropriations Act of 2005 that added Section 212(p)(4) to the Immigration and Nationality Act, 8 U.S.C. § 1182(p)(4), which provides:

Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

The Secretary of Labor's recent adoption of new regulations that eliminated mandatory use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act, coupled with enactment of Section 212(p)(4) of the Immigration and Nationality Act, has undoubtedly reduced the prevailing wage rates used in the foreign worker labor certification process. These actions have adversely affected the wages of American workers similarly employed, because the minimum wages employers are now required to pay foreign workers issued permanent and temporary employment-related visas are more likely to be lower. This is exactly the opposite effect intended by Congress when it incorporated the labor certification process in the Immigration and Nationality Act in 1952 and amended it in 1965.

It was precisely because of these changes that the Senate decided to codify the prevailing wage provision applicable to the new "H-2C guest worker visa program" created by S. 2611, so that American workers' wages would not be further adversely effected. Thus, contrary to the assertions of some, use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum wage rates that will not adversely affect the wages of American workers similarly employed is entirely in harmony with the intended purpose and intent of the labor certification process that has been consistently applied to applicants for employment-based permanent and temporary visas seeking to perform skilled and unskilled labor since 1952. As such, codification of such a requirement in the new "H-2C guest worker visa program" created by S. 2611 in no way represents an expansion of the Davis-Bacon Act, nor will it provide greater wage protection to foreign guest workers than to American workers similarly employed.

[The prepared statement of the Coalition for Immigration Security follows:]

Prepared Statement of the Coalition for Immigration Security

The undersigned each have held high-ranking positions in the Executive Branch with responsibilities for enforcing our immigration laws and securing our borders from those who would seek to harm the United States or violate its laws. We are proud to have been part of the effort since September 11, 2001, to secure our borders and bring integrity back to our immigration system.

As the Congress considers immigration legislation, some have portrayed the debate as one between those who advocate secure borders and those who advocate liberalized employment opportunities. This is a false dichotomy. The reality is that stronger enforcement and a more sensible approach to the 10-12 million illegal aliens in the country today are inextricably interrelated. One cannot succeed without the other. Without reform of laws affecting the ability of temporary, migrant workers to cross our borders legally, our borders cannot and will not be secure.

Since 9/11, the Executive Branch and Congress have worked together to make significant but incomplete efforts to secure our borders. Among the many accomplishments achieved are:

- Spending: Overall border enforcement spending is up 58% to $7.3 billion in 2005;
- Creation of CBP and ICE: The Department of Homeland Security (DHS) created a single agency, U.S. Customs and Border Protection (CBP), devoted to securing our borders and with a priority mission of keeping terrorists and terrorist weapons out of the country, and we created a single agency, U.S. Immigration and Customs Enforcement (ICE), devoted to enforcing our immigration laws in the interior of our country.
- US-VISIT: DHS deployed an integrated entry-exit immigration enforcement system, enrolling over 50 million travelers and identifying over 1000 criminals and inadmissible aliens.
- A Single, Consolidated Terrorist Watchlist: At the President's direction, the Terrorist Screening Center now maintains the nation's single, consolidated watchlist of known and suspected terrorists against which all applicants for entry into the country and all detained illegal entrants are now checked.
- SEVIS: DHS developed a student tracking system confirming over 870,000 students in the 2004-05 academic year and removing over 60,000 questionable schools from the program.
- Border Patrol: We have increased the number of agents by over 40% and deployed sophisticated equipment, including UAVs and sensors, to secure our borders.

• Expedited Removal: ER is now operational at all Southern Border sectors to deter illegal entry by non-Mexicans and to maximize use of available detention bedspace.

• Detention and Removal: ICE achieved a record number of approximately 160,000 deportations, including a historic number of 13,000 fugitives with outstanding orders of removal in FY04.

• Database Integration: DHS has integrated legacy databases such as IDENT and IAFIS to identify tens of thousands of persons arrested or wanted by federal or local law enforcement to be detained by CBP inspectors and Border Patrol agents.

• Application Backlog Reduction: U.S. Citizenship and Immigration Services has reduced the backlog of benefit applications from a high of over 3.8M in January of 2004 to under 700,000 in January of 2006, a reduction of 83%.

These accomplishments and others have significantly improved the security to our international travel systems and laid the groundwork to achieve operational control of our land borders with Canada and Mexico.

Clearly, more must be done to strengthen enforcement, and we support additional programs and spending, such as increasing the numbers of Border Patrol agents, deploying more sophisticated technology through the Secure Border Initiative and additional infrastructure to build a "virtual" fence along the Southern Border; ending the "catch and release" policy, deportation procedures that allow for more streamlined litigation to deport illegal aliens, further build-out of entry-exit tracking and facilities, and strengthening our interior enforcement capabilities, such as fugitive operations teams at ICE.

But enforcement alone will not do the job of securing our borders. Enforcement at the border will only be successful in the long-term if it is coupled with a more sensible approach to the 10-12 million illegal aliens in the country today and the many more who will attempt to migrate into the United States for economic reasons. Accordingly, we support the creation of a robust employment verification system and a temporary worker program in the context of an overall reform of our border security and immigration laws.

With each year that passes, our country's shifting demographics mean we face a larger and larger shortage of workers, especially at the low-skilled end of the economy. Entire segments of the economy in a growing number of urban and rural areas depend on large illegal populations. Existing law allows only a small fraction of these workers even to attempt to enter the United States legally, even though our unemployment rate has fallen below 5 percent.

Thus, each week our labor market entices thousands of individuals, most from Mexico but many from numerous other countries, to sneak across our border, or to refuse to leave when a temporary visa expires. These numbers add up: DHS apprehends over 1 million migrants illegally entering the United States each year, but perhaps as many as 500,000 get through our defenses every year and add to our already staggering illegal immigrant population. As believers in the free market and the laws of supply and demand, we believe border enforcement will fail so long as we refuse to allow these willing workers a chance to work legally for a willing employer.

Most such migrants are gainfully employed here, pay taxes, and many have started families and developed roots in our society. And an attempt to locate and deport these 10 to 12 million people is sure to fail and would be extraordinarily divisive to our country.

But others seeking to cross our borders illegally do present a threat—including potential terrorists and criminals. The current flow of illegal immigrants and people overstaying their visas has made it extremely difficult for our border and interior enforcement agencies to be able to focus on the terrorists, organized criminals, and violent felons who use the cloak of anonymity that the current chaotic situation offers.

An appropriately designed temporary worker program should relieve this pressure on the border. We need to accept the reality that our strong economy will continue to draw impoverished job seekers, some of whom will inevitably find a way to enter the country to fill jobs that are available. A successful temporary worker program should bring these economic migrants through lawful channels. Instead of crossing the Rio Grande or trekking through the deserts, these economic migrants would be interviewed, undergo background checks, be given tamper-proof identity cards, and only then be allowed in our country. And the Border Patrol would be able to focus on the real threats coming across our border. This will only happen, however, if Congress passes a comprehensive reform of our border security and immigration laws.

Moreover, current law neither deters employers who are willing to flout the law by hiring illegal workers, nor rewards employers who are trying to obey the law.

Bogus documents abound, and there is currently no comprehensive and mandatory mechanism for employers to check the legality of a worker's status. An effective temporary worker program would include a universal employment verification system based on the issuance of secure, biometrically-based employment eligibility documents and an "insta-check" system for employers to confirm eligibility. We recognize the cost of such programs but believe the cost of the current morass is much greater.

Lastly, individuals who have maintained employment in the United States for many years without evidence of ties to criminal or terrorist behavior should be granted the opportunity to make in essence a plea bargain with law enforcement. By paying a stiff fine and undergoing a robust security check, these individuals can make amends for their mistake without crippling our economy and social structures by being part of a mass deportation. Each day that we fail to bring these people out of the shadows is another day of amnesty by default.

In conclusion, we encourage the Congress and Administration to work together to enact legislation that takes a comprehensive approach to immigration reform. We support strong immigration enforcement but it will only be successful when coupled with realistic policies related to our labor markets and economic needs.

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