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PROTECTING U.S. AND GUEST WORKERS: THE RECRUITMENT AND EMPLOYMENT OF TEMPORARY FOREIGN LABOR

HEARING

BEFORE THE

COMMITTEE ON
EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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PROTECTING U.S. AND GUEST WORKERS: THE RECRUITMENT AND EMPLOYMENT OF TEMPORARY FOREIGN LABOR

Thursday, June 7, 2007
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

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

Present: Representatives Miller, Woolsey, McCarthy, Wu, Holt, Davis of California, Bishop of New York, Sanchez, Sarbanes, Hirono, Yarmuth, Hare, Clarke, Courtney, Shea-Porter, McKeon, Petri, Platts, Wilson, Boustany, Foxx, Davis of Tennessee, and Walberg.

Also Present: Representative Kaptur.

Staff Present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health Safety Professional; Jody Calemine, Labor Policy Deputy Director; Fran-Victoria Cox, Documents Clerk; Lynn Dondis, Policy Advisor for Subcommittee on Workforce Protections; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Jeffrey Hancuff, Staff Assistant, Labor; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Joe Novotny, Chief Clerk; Alex Nock, Deputy Staff Director; Megan O'Reilly, Labor Policy Advisor; Michele Varnhagen, Labor Policy Director; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; Robert Borden, Minority General Counsel; Steve Forde, Minority Communications Director; Rob Gregg, Minority Legislative Assistant; Richard Hoar, Minority Professional Staff Member; Victor Klatt, Minority Staff Director; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; Loren Sweatt, Minority Professional Staff Member; and Cameron Coursen, Minority Assistant.

Chairman MILLER. The Committee on Education and Labor will come to order for the purposes of holding a hearing this morning on Protecting U.S. and Guest Workers: The Recruitment and Employment of Temporary Foreign Labor, and I want to thank our witnesses who are here today, and I am going to begin with an opening statement and then recognize Mr. McKeon.

Welcome to today's hearing on the recruitment and employment of temporary foreign labor. Hundreds of thousands of guest workers come to the United States each year under existing programs, and immigration legislation now pending in the Congress would further expand these sources of temporary foreign labor. As a country and a Congress, the debate is to reform our Nation's immigration system. It is critical that we pay particular attention to the treatment of guest workers and how well our current guest worker programs work. Examining guest worker programs and proposals for new programs raises a lot of questions.

One question is whether or not and to what extent temporary foreign labor is actually needed. That is, are we accurately measuring our labor needs? Are U.S. workers truly unavailable to fill the jobs? Is temporary foreign labor the right way to fill those needs?

Another question is this: If we have a new guest worker program, do those programs include adequate protections for both guest workers and U.S. workers?

While they are in this country, guest workers should receive basic labor protections and adequate legal safeguards. Denying or failing to enforce basic rights for guest workers who are here is harmful both to U.S. workers and to the overall U.S. economy. Yet, as we have seen in various reports and news accounts, our current guest worker programs are sorely lacking in meaningful labor protections. Problems with these programs occur from the very start of the process. In foreign countries, where guest workers are first recruited in exchange for thousands of dollars in fees, unscrupulous labor recruiters lure workers to the United States by promising them good jobs and a better life. Many of these workers who live in poverty in their home countries sell their land or take out high-interest loans or borrow from their neighbors so they can afford the recruiters' fees.

Guest workers come to this country with the hope of providing their families with a better life, but in far too many cases they arrive here only to find that they were cruelly deceived. They earn unlivable wages for extremely difficult jobs to which they have never agreed. They find themselves unable to repay their deep debts to their recruiters. Sadly, those are the least of their worries. Guest workers often endure sweatshop conditions and back-breaking work and inhumanely long hours. They are forced to work through illness and injury, sometimes with only one day of rest per week. Employers frequently withhold wages from guest workers, and in some cases they automatically deduct a majority of the worker's weekly pay to cover room and board. Meanwhile, the housing that is provided guest workers is often severely substandard with no electricity, hot water, doors or windows. There are cases where guest workers suffer physical violence at the hands of their employers and are threatened if they should try to leave. Consequently, they are left with little or no money, no voice and, quite often, more in debt. Unable to pay off the debt manufactured by the recruiters and their employers, the workers are trapped by fear.

It may seem impossible that I could be describing the working conditions in the United States in 2007, but I am not exaggerating.

These deplorable practices not only undermine living standards; they ruin lives.

In their worst form, these practices constitute the closest thing we have in this country to modern day slavery or indentured servitude. These practices drive down wages and working conditions for American workers, too, who must now compete to work alongside workers who are treated shamefully. Before we invite any more guest workers or create a new program to this country, we must fix the serious flaws in the current system.

First and foremost, we need to ensure that, if U.S. employers are permitted to hire guest workers or to fill job openings, it is only when there are absolutely no American workers or workers here with legal status available and willing to fill these jobs. Then we should allow new guest workers who we must provide with adequate labor rights and protections. If and when the abuses of these rights occur, we must enforce the law and hold employers and recruiters accountable.

I have introduced legislation, the Indentured Servitude Abolition Act of 2007, that would help put a stop to these practices. Among these things, the bill would hold recruiters and employers responsible for the promises that they make to prospective employees and for their treatment as guest workers. By preventing U.S. employers from exploiting cheap foreign labor, we will not only end these serious human rights violations, but we will also help fight against a race to the bottom in wages and benefits for all workers in this country. Dealing with labor recruiters, however, is just one part of the solution. We need strong, meaningful protection for all workers, and we need to ensure that those protections are vigorously enforced.

This morning's hearing is critically important to the work that we are doing to reform the Nation's immigration laws, and we have an incredibly distinguished panel of witnesses with us today, and I am pleased to welcome them again to the committee.

At this time, I would like to recognize Mr. McKeon.

[The prepared statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Chairman, Committee on Education and Labor

Good morning. Welcome to today's hearing on the recruitment and employment of temporary foreign labor.

Hundreds of thousands of guest workers come to the United States each year under existing programs, and immigration legislation now pending in Congress would further expand these sources of temporary foreign labor.

As the country and the Congress debate reforms to our nation's immigration system, it is critical that we pay particular attention to the treatment of guest workers and how well our current guest worker programs work.

Examining guest worker programs raises a lot of questions. One question is whether and to what extent temporary foreign labor is actually needed. That is, are we accurately measuring our labor needs? Are U.S. workers truly unavailable to fill jobs? Is temporary foreign labor the right way to fill any needs?

Another question is this: To the extent that we have guest worker programs, do those programs include adequate protections for both guest workers and U.S. workers?

While they are in this country, guest workers should receive basic labor protections and adequate legal safeguards. Denying or failing to enforce basic rights for guest workers who are here is harmful to both U.S. workers and the overall U.S. economy.

Yet, as we have seen in various reports and news accounts, our current guest worker programs are sorely lacking in meaningful labor protections.

Problems with these programs occur from the very start of the process, in foreign countries where guest workers are first recruited. In exchange for thousands of dollars in fees, unscrupulous labor recruiters lure workers to the United States by promising them good jobs and a better life.

Many of these workers, who live in poverty in their home countries, sell their land or take out high interest loans so that they can afford the recruiters' fees.

Guest workers come to this country with the hope of providing their families with a better life. But in far too many cases, they arrive here only to find out they were cruelly deceived.

They earn unlivable wages for extremely difficult jobs to which they never agreed. They find themselves unable to repay their deep debts to their recruiters.

Sadly, those are the least of their worries. Guest workers often endure sweatshop conditions and back-breaking work for inhumanly long hours. They are forced to work through illness and injury, sometimes with only one day of rest per week.

Employers frequently withhold wages from guest workers. In some cases, they automatically deduct the majority of workers' weekly pay to cover room and board. Meanwhile, the housing that is provided for guest workers is often severely substandard, with no electricity, hot water, doors, or windows.

There are cases where workers suffer physical violence at the hands of their employers and are threatened if they should try to leave. Consequently, they are left with little or no money, no voice, and quite often, more debt. Unable to pay off debt manufactured by recruiters and their employers, the workers are trapped by fear.

It may seem impossible that I could be describing working conditions in the United States in 2007. But I am not exaggerating. These deplorable practices not only undermine living standards, they ruin lives.

In their worst form, these practices constitute the closest thing we have in this country to modern-day slavery or indentured servitude.

These practices drive down wages and working conditions for American workers, too, who now must compete for work alongside workers who are treated shamefully.

Before we invite any more guest workers to this country, we must fix the serious flaws in the current system.

First and foremost, we need to ensure that U.S. employers be permitted to hire guest workers to fill job openings only when there are absolutely no American workers available, able, and willing to fill them.

Then, we must provide guest workers with adequate labor rights and protections. When and if abuses of these rights do occur, we must enforce the law and hold employers and recruiters accountable.

I have introduced legislation, the Indentured Servitude Abolition Act of 2007 (H.R. 1763), that would help put a stop to these practices. Among other things, the bill would hold recruiters and employers responsible for the promises they make to prospective employees and for their treatment of guest workers.

By preventing U.S. employers from exploiting cheap foreign labor, we will not only end these serious human rights violations, but we will also help fight against a race to the bottom in wages and benefits for all workers in this country.

Dealing with labor recruiters, however, is just one part of the solution. We need strong, meaningful protections for all workers—and we need to ensure that those protections are vigorously enforced.

This morning's hearing is critically important to the work that we are doing to reform the nation's immigration laws.

We have an incredibly distinguished panel of witnesses with us today, and I am pleased to welcome them to the Committee.

Thank you.

Mr. McKEON. Thank you, Chairman Miller, for convening this morning's hearing.

I thank each of our witnesses for joining us today, and I look forward to your testimony.

Last year, this panel held a series of hearings on the subject of illegal immigration, and I am pleased we are continuing our participation in the ongoing debate on this subject, a debate that is raging not just on the Senate side of Capitol Hill but here in the House and in communities throughout our Nation as well. One of those communities is my hometown, the Los Angeles suburb of

Santa Clarita. Southern California is the epicenter of the immigration debate, so this hearing hits home for me both literally and figuratively.

Last week, when I returned home for the Memorial Day recess, this topic was on the minds of just about everyone I visited with, from business and government leaders to local press and rank and file constituents. So I come to this hearing, first and foremost, as someone who understands the unique challenges faced by those who most directly are impacted by illegal immigration and the issues associated with it.

I also come to this hearing as a former small business owner, acutely aware of many of the staffing and employee benefits issues employers face each and every day. As such, I understand how and why an expansion of guest worker programs, a topic of today's hearing, would be embraced by many in the employer community. It would more directly avail them of a new pool of workers in a supposedly organized, orderly and legal way.

However, while I recognize the views of those who favor an expansion of guest worker programs, particularly programs in agriculture, which Chairman Miller and I both know are very important to our State, to the economy and to the Nation, I am not convinced that we can find a workable solution to our illegal immigration crisis without addressing border security first. While some see such an expansion as a pathway to citizenship, I, instead, see it as a slippery slope toward amnesty, and I believe history, in particular the ramifications of the 1986 immigration law, bears that out.

The immigration law Congress passed in 1986 asked for us to secure the border and put in place a reliable employer verification system. Twenty-one years later, this still has not been done. This was made crystal clear to me about a year ago when I had the opportunity to tour the U.S.-Mexico border near San Diego. Though we have made advances in our ability to stop illegal immigrants as they cross the border, especially since my previous visit to the border a few years earlier, 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. That visit more than anything else convinced me that we simply cannot tackle this issue without first prioritizing border enforcement. It is an economic security priority, and it is a homeland security priority, and it simply is not prudent to expand or to add further programs as part of a new effort until we address what is still left unresolved.

Just as in the last Congress when we first held hearings on this important issue, we would not be here today if not for the debate over how to best get a firm grip on our borders and how that debate is playing out in the halls of Congress and at kitchen tables across the Nation.

With that being said, existing guest worker programs do play a vital role in our economy and in our strategy on illegal immigration. That is why I am so pleased to have before us today a balanced and diverse panel of witnesses who will offer us testimony on guest worker programs—their past, their present and their future. Again, I look forward to gathering valuable input from them

as our committee fulfills its responsibility to engage in this critical debate.

I thank you all for being here.

[The prepared statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Senior Republican Member, Committee on Education and Labor

Thank you, Chairman Miller, for convening this morning's hearing, and I thank each of our witnesses for joining us today. I look forward to your testimony.

Last year, this panel held a series of hearings on the subject of illegal immigration, and I am pleased we are continuing our participation in the ongoing debate on this topic—a debate that is raging not just on the Senate side of Capitol Hill, but here in the House and in communities throughout our nation as well. One of those communities is my hometown: the Los Angeles suburb of Santa Clarita.

Southern California is the epicenter of the immigration debate, so this hearing hits home for me, both literally and figuratively. Last week, when I returned home for the Memorial Day recess, this topic was on the minds of just about everyone I visited with—from business and government leaders to local press and rank-and-file constituents. So, I come to this hearing—first and foremost—as someone who understands the unique challenges faced by those most directly impacted by illegal immigration and issues associated with it.

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However, while I recognize the views of those who favor an expansion of guest worker programs—particularly programs in agriculture, which Chairman Miller and I both know is as important to California's economy as it is anywhere else in our nation—I am not convinced that we can find a workable solution to our illegal immigration crisis without addressing border security first. While some see such an expansion as a pathway to citizenship, I instead see it as a slippery slope toward amnesty. And I believe history—in particular, the ramifications of the 1986 immigration law—bears that out.

The immigration law Congress passed in 1986 asked for us to secure the border and put in place a reliable employer verification system. Twenty-one years later, this still has not been done. This was made crystal clear to me about a year ago, when I had the opportunity to tour the U.S.-Mexico border near San Diego. Though we have made advances in our ability to stop illegal immigrants as they cross the border, especially since my previous visit to the border a few years earlier, the illegals and their smugglers have made advances as well. And as a result—for lack of a better phrase—it's a warlike atmosphere down there.

That visit, more than anything else, convinced me that we simply cannot tackle this issue without first prioritizing border enforcement. It's an economic security priority, and it's a homeland security priority. And it simply is not prudent to expand or add further programs as part of a new effort until we address what's still left unresolved. Just as in the last Congress, when we first held hearings on this important issue, we wouldn't be here today if not for the debate over how to best get a firm grip on our borders—and how that debate is playing out in the halls of Congress and at kitchen tables across the nation.

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Chairman MILLER. Thank you.

Our first witness will be Secretary Ray Marshall, who is an old friend and longtime friend to this committee, who currently holds the Audre and Bernard Rapaport Centennial Chair in Economics and Public Affairs at the University of Texas at Austin. He is

President of the Ray Marshall, Incorporated research and consulting firm. He served as U.S. Secretary of Labor from 1977 to 1981 under President Jimmy Carter. Secretary Marshall holds a Ph.D. in Economics from the University of California at Berkeley.

Mary Bauer has directed the Immigrant Justice Project of the Southern Poverty Law Center, a program designed to protect immigrant workers in the Southeast United States since its inception in 2004. Ms. Bauer is a graduate of the College of William and Mary, and she received her law degree from the University of Virginia.

James S. Holt is the President and Principal of James S. Holt & Company, Washington, D.C. Dr. Holt is formerly a senior economist with the law firm of McGinnis & William, serving as a consultant on labor and immigration matters, primarily those related to agriculture. Prior to that, he spent 16 years on the agriculture economics faculty at Pennsylvania State University.

Without objection, I would like to recognize our friend and colleague, Marcy Kaptur from Ohio, to introduce our next witness. Hearing no objection, Congresswoman Kaptur, please proceed.

Ms. KAPTUR. Thank you, Chairman Miller, Ranking Member McKeon, and all of the distinguished members of this extraordinarily important committee of the House. Thank you for allowing me a moment this morning to introduce a very significant citizen.

I never had the opportunity to meet Cesar Chavez, but I can tell you I have known Baldemar Velasquez for nearly half a century. He is a resident of our community in Ohio but was born to migrant farmers in 1947. He is the first member of his family to graduate from college with a sociology degree from Bluffton College, but he has spent his life truly laboring in the vineyards, both figuratively and practically. He has been laboring in the vineyards of justice, and he is here today, I know, to speak truth to power. I know how dedicated this man is, and I really wanted to be here today to make sure that, on the record, a citizen of this gravitas would be given a moment before the Congress of the United States to tell the story of the people that he has been struggling to give recognition to and justice to his entire life.

In 1967, he founded a group called the Farm Labor Organizing Committee, which is based in Toledo, Ohio, and it began by handing out leaflets to northwest Ohio farm workers. Nearly a decade later, there was an effort made by FLOC to demand union recognition and a multi-party bargaining agreement. In 1983, he led a 600-hundred-mile march from Toledo to Campbell Soup headquarters in New Jersey.

That is not the purpose of today's hearing, but it is important for people here to understand this gentleman was responsible for organizing both farmers and farm workers to deal with a major processing company in order to get proper treatment of the workers. I do not know of any person in our country who has achieved what he has achieved on the labor front.

Finally, in 1998, he led a 5-year boycott in protest of Mt. Olive Pickle Company in North Carolina and organized workers in our country as well as in Mexico and helped to sign the only binational labor agreement that I am aware of, including the opening of an office in Monterrey, Mexico so that workers could come to our country free of the kind of coyote bounty that they have to pay with un-

scrupulous labor traffickers, and he is here to talk about what happened as a result of that.

In 1990, Mr. Velasquez received the MacArthur Foundation Genius Award, so truly deserved. In 1994, the Governor of Mexico and its President awarded him the highest award they give to a noncitizen, the Aguila Azteca Award.

Mr. Velasquez presents as a very humble and religious man. Let me tell you he is one of the finest people I have ever met, and I am proud to introduce him this morning.

Chairman MILLER. Thank you, Congresswoman Kaptur. Thank you very much.

Mr. Velasquez, I do not have to tell you of Marcy's commitment to workers and to economic and social justice, and I assume you are very proud to be introduced by her. She is a remarkable Member of Congress.

Marcy, thank you so much for joining us.

Secretary Marshall, we are going to hear from you. We are going to turn the lights on here. There will be a green light and then an orange light when you should think about wrapping up and then a red light when you are more or less finished, but we will let you complete your sentences and paragraphs. Thank you, and welcome to the committee again.

STATEMENT OF RAY MARSHALL, FORMER U.S. SECRETARY OF LABOR, PRESIDENT EMERITUS, LBJ SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF TEXAS

Mr. MARSHALL. Thank you, Mr. Chairman and members of the committee. I appreciate your invitation to present my views on immigration reform, guest workers and H.R. 1763.

I have studied immigration for many years. I had responsibility for foreign worker matters in the Carter administration, and served on the Select Commission on Immigration and Refugee Policy and, more recently, on the Council on Foreign Relations Advisory Committee on Immigration. I have prepared a paper which I have submitted but would like to summarize the paper with the following points.

The first point is that, because of the slowdown in the growth of our native workforce, American economic growth for at least the next 20 years will depend heavily on immigration, which has contributed greatly to the vitality of the American economy.

The second point is that illegal immigration, however, subjects immigrants to grave dangers and exploitation, depresses wages of and working conditions for the most vulnerable American workers, undermines the rule of law, perpetuates marginal, low-wage industries, and makes it hard to relate immigration to economic and social policies to achieve broadly shared prosperity.

The basic cause of illegal immigration is the magnetic relationship between desperate foreign workers and employers who prefer compliant farm workers willing to accept lower wages and substandard working conditions. Once illegal immigrant networks become institutionalized, a coherent, comprehensive array of policies will be required to reduce their size, and these include border and internal security, adjusting the status of unauthorized immigrants and appropriate trade investment and aid policies with Mexico and

other immigrant source countries. For a number of reasons, however, I believe a large new guest worker program is not a good idea.

First, these programs subject guest workers to the exploitation and depressed conditions of American workers.

Second, there is no evidence that a large new guest worker program is necessary. First, the adjustment of status of unauthorized immigrants will produce a large but unknown number of newly legalized workers. Second, we already have temporary worker programs which should be improved to better meet the legitimate needs of employers and to prevent the abuse of guest workers and the adulteration of American jobs. H.R. 1763 would be a necessary part of this reform.

Third, for nontemporary workers, it would be better to admit workers as permanent residents with full employment and legal protections, including the right to earn citizenship. Because of the continuing importance of immigration and temporary worker programs for the American economy and society, an independent entity should be created to generate high-quality data, analyses and estimates concerning the need for foreign workers and the impact of foreign workers on the American economy and workforce. This entity should issue annual reports.

Thank you, Mr. Chairman and members of the committee. I will be glad to respond to your questions.

[The statement of Mr. Marshall follows:]

Prepared Statement of Ray Marshall, Former U.S. Secretary of Labor, President Emeritus, LBJ School of Public Affairs, University of Texas

Thank you Mr. Chairman and members of the committee. I appreciate your invitation to present my views on immigration reform, guest worker programs, and HR 1763.

I hold the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the University of Texas at Austin. I have studied immigration for many years, had responsibility for immigrants and foreign worker matters in the Carter administration, and served on the Select Commission on Immigration and Refugee Policy and the Council on Foreign Relations advisory committee on immigration.

I have submitted a paper on immigration reform which makes the following points:

1. Because of the slowdown of our native work force growth, American economic growth for at least the next 20 years will depend heavily on immigration, which has contributed greatly to the vitality of the American economy.

2. Illegal immigration, however, subjects immigrants to grave dangers and exploitation; depresses wages of, and working conditions for, the most vulnerable American workers; undermines the rule of law; perpetuates marginal low-wage industries; and makes it hard to relate immigration to economic and social policies to achieve broadly shared prosperity.

3. The basic cause of illegal immigration is the magnetic relationship between desperate foreign workers and employers who prefer compliant foreign workers willing to accept lower wages and substandard working conditions.

4. Once illegal immigrant networks become institutionalized, a coherent, comprehensive array of policies will be required to reduce their size, including border and internal security; adjusting the status of unauthorized immigrants; and appropriate trade, investment, and aid policies with Mexico and other immigrant source countries.

5. For a number of reasons, a large new guest worker program is not a good idea:

a. These programs subject guest workers to exploitation and depress conditions for American workers.

b. There is no evidence that a large new guest worker program is necessary.

i. The adjustment of status for unauthorized immigrants will produce a large, but unknown, number of newly legalized workers.

ii. We already have temporary worker programs, which should be improved to better meet the legitimate needs of employers, and to prevent the abuse of guest workers and the adulteration of American jobs. HR 1763 would be a necessary part of these reforms.

c. For non-temporary jobs, it would be better to admit workers as permanent residents with full employment and legal protections, including the right to earn citizenship. Although family unification should remain an important part of US immigration policy, we should give greater attention than we now do to education, skills, and work force experience.

6. Because of the continuing importance of immigration and temporary worker programs for the American economy and society, an independent entity should be created to generate high quality data, analyses, and estimates concerning the need for and impact of foreign workers on the American economy and work force. This entity should issue annual reports.

Thank you Mr. Chairman and members of the committee. I would be glad to respond to questions.

Chairman MILLER. Thank you, Mr. Secretary.

Ms. Bauer.

STATEMENT OF MARY BAUER, DIRECTOR OF THE IMMIGRATION JUSTICE PROGRAM, SOUTHERN LAW POVERTY CENTER

Ms. BAUER. Thank you, Mr. Chairman and members of the committee, for inviting me to speak today.

My employer, the Southern Poverty Law Center, recently published a report entitled "Close to Slavery" based upon interviews with thousands of guest workers, and that report was about the H-2 guest worker programs in the United States. The H-2 program in the U.S. has led to the creation of a quasi-criminal army of recruiters in Mexico, Guatemala and other countries to locate and hire H-2 workers for employ in the U.S. It has also led to the systematic exploitation of workers once they arrive in the U.S. H-2 workers can work only for an employer who files a petition for them to enter the country; the employer decides if he can come; the employer decides how long he can stay, and the employer holds all of the power over the most important aspects of a worker's life. Fear of retaliation under this system is a recurring theme of a worker's life. When recruited to work in their home countries, workers are often forced to borrow enormous sums of money, up to $20,000, borrowed at high interest rates to obtain the right to be employed at a temporary low-wage job in the U.S. Many workers have been required to leave collateral, often the deeds to their homes, in exchange for a chance to come to the United States to obtain an H-2 visa.

Once in the U.S., guest workers routinely receive less pay than the law allows, even far less than the minimum wage. In some industries that rely upon guest workers for the bulk of their workforce, wage and hour violations are the norm rather than the exception. Workers report to us time and time again that they have been lied to at the time of recruitment. They arrive in the U.S. to find that things are not as they expected, but by then they are deeply in debt and without options.

Guest worker programs also permit the systematic discrimination of workers based on age, gender and national origin. Under the system, workers simply lack the ability to combat exploitation. The DOL conducts very few investigations of employers, and work-

ers have little realistic opportunity or chance of enforcing rights on their own. The DOL contends that it even lacks the authority to enforce the rights of H-2B workers to receive sufficient work or to receive the prevailing wage that is theoretically due to the workers.

None of the significant protections that exist at least on paper for H-2A workers have even been adopted relative to H-2B non-agricultural workers, as DOL has never promulgated substantive labor protections for those workers. There is no requirement for transportation, no requirement for free housing in the H-2B context, no requirement that the housing provided be decent, and when they are abused on the job, H-2B workers are not even eligible for legal services.

Congress should pass the protections of Chairman Miller's bill. This bill would make clear that the systematic discrimination entrenched in this program is illegal. It would regulate recruitment costs, and it would make employers responsible for the actions of the recruiters that they choose. It is an important first step in the reform of these programs.

Congress should also make H-2B workers eligible for federally funded legal services. There is simply no reason that these workers who have come to the U.S. under the auspices of a government-sponsored program should be excluded from eligibility.

I would suggest that Congress should hold further hearings on the issue related to the administration of guest worker programs. In particular, Congress should ask the Department of Labor what actions it is taking to protect workers and similarly situated U.S. workers on the job. Why are there so few inspections? Why are there no substantive labor protections for H-2B workers?

In conclusion, the abuses of these programs are simply too common to blame on a few bad apple employers. They are the foreseeable outcomes of a system that treats foreign workers as commodities to be imported as needed without affording them adequate legal safeguards.

I thank you for this opportunity, and I await any questions you might have.

[The statement of Ms. Bauer follows:]

Prepared Statement of Mary Bauer, Director, Immigrant Justice Project, Southern Poverty Law Center

Thank you for the opportunity to speak about the abuse of guestworkers who come to the United States as part of the H-2 program administered by the U.S. Department of Labor ("DOL").

My name is Mary Bauer. I am the Director of the Immigrant Justice Project of the Southern Poverty Law Center. Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice in significant civil rights and social justice matters. Our Immigrant Justice Project represents low-income immigrant workers in litigation across the Southeast.

During my legal career, I have represented and spoken with literally thousands of H-2A and H-2B workers in many states. Currently, the Southern Poverty Law Center is representing workers in seven class action lawsuits on behalf of H-2A and H-2B guestworkers. We have also recently published a report about guestworker programs in the United States entitled "Close to Slavery," which I have attached to these comments as part of my written testimony.

The report discusses in much further detail the abuses suffered by guestworkers and is based upon thousands of interviews with workers as well as review of the research related to guestworkers and the experiences of legal experts from around the country. As the report reflects, guestworkers are systematically exploited be-

cause the very structure of the program places them at the mercy of a single employer and provides no realistic means for workers to exercise the few rights they have.

The H-2A (agriculture) and H-2B (non-agriculture) guestworker programs permit U.S. employers to import human beings on a temporary basis from other nations to perform work when the employer certifies that "qualified persons in the United States are not available and * * * the terms of employment will not adversely affect the wages and working conditions of workers in the U.S. similarly employed."[1] Those workers generally cannot bring with them their immediate family members, and their status provides them no route to permanent residency in the U.S.

Both the H-2A and H-2B programs are rife with abuses. The abuses typically start long before the worker has arrived in the United States and continue through and even after his or her employment here. Unlike U.S. citizens, guestworkers do not enjoy the most fundamental protection of a competitive labor market—the ability to change jobs if they are mistreated. If guestworkers complain about abuses, they face deportation, blacklisting or other retaliation.

Passage of Chairman Miller's bill, the Indentured Servitude Abolition Act of 2007 (HR 1763), would be an important first step toward reforming the guestworker program by addressing many of the serious abuses that routinely occur in the recruitment and hiring of guestworkers.

Guestworker Programs Are Inherently Abusive

When recruited to work in their home countries, workers are often forced to pay enormous sums of money to obtain the right to be employed at the low-wage jobs they seek in the U.S. It is not unusual, for example, for a Guatemalan worker to pay more than $2,500 in fees to obtain a job that will, even over time, pay less than that sum. Workers from other countries may be required to pay substantially more than that. Asian workers have been known to pay as much as $20,000 for an H-2A job. Because, generally, only indigent workers are willing to go to such extreme lengths to obtain these jobs, workers typically have to borrow the money at high interest rates. Guatemalan workers routinely tell us that they have had to pay approximately 20% interest per month in order to raise the needed sums. In addition, many workers have reported that they have been required to leave collateral—often the deed to a vehicle or a home—in exchange for the opportunity to obtain an H-2 visa. These requirements leave workers incredibly vulnerable once they arrive in the U.S.

Guestworkers under our current system live in a system akin to indentured servitude. Because they are permitted to work only for the employer who petitioned the government for them, they are extremely susceptible to being exploited. If the employment situation is less than ideal, the worker's sole lawful recourse is to return to his or her country. Because most workers take out significant loans to travel to the U.S. for these jobs, as a practical matter they are forced to remain and work for employers even when they are subjected to shameful abuse.

Guestworkers routinely receive less pay than the law requires. In some industries that rely upon guestworkers for the bulk of their workforce—seafood processing and forestry, for example—wage-and-hour violations are the norm, rather than the exception. These are not subtle violations of the law but the wholesale cheating of workers. We have seen crews paid as little as $2 per hour, each worker cheated out of hundreds of dollars per week. Because of their vulnerability, guestworkers are unlikely to complain about these violations, and public wage-and-hour enforcement has minimal practical impact.

Even when workers earn the minimum wage and overtime, they are often subject to contractual violations that leave them in an equally bad situation. Workers report again and again that they are simply lied to at the time they are recruited in their home countries. Another common problem workers face is that they are brought into the U.S. too early, when little work is available. Similarly, employers often bring in far too many workers, gambling that they may have more work to offer than they actually do. Because the employers are not generally paying the costs of recruitment, visas, and travel, they have little incentive not to overstate their labor needs. Thus, in many circumstances, workers can wait weeks or even months before they are offered the full-time work they were promised. Given that workers bring a heavy load of debt, that many must pay for their housing, and that they cannot lawfully seek work elsewhere to supplement their pay, they are often left in a desperate situation.

Guestworkers who are injured on the job face significant obstacles in accessing the benefits to which they are entitled. First, employers routinely discourage workers from filing workers' compensation claims. Because those employers control whether the workers can remain in or return to the U.S., workers feel enormous

pressure not to file such claims. Second, workers' compensation is an ad hoc, state-by-state system that is typically ill-prepared to deal with transnational workers who are required to return to their home countries at the conclusion of their visa period. As a practical matter, then, many guestworkers suffer serious injuries without any effective recourse.

The guestworker program appears to permit the systematic discrimination of workers based on age, gender and national origin. At least one court has found that age discrimination that takes place during the selection of workers outside the country is not actionable under U.S. laws.[2] Thus, according to that court, employers may evade the clear intent of Congress that they not discriminate in hiring by simply shipping their hiring operations outside the U.S.—even though all of the work will be performed in the U.S. Many foreign recruiters have very clear rules based on age and gender for workers they will hire. One major Mexican recruiter openly declares that they will not hire anyone over the age of 40. Many other recruiters refuse to hire women for field work. Employers can shop for specific types of guestworkers over the Internet at websites such as www.get-a-worker.com, www.labormex.com, www.landscapeworker.com or www.mexican-workers.com. One website advertises its Mexican recruits like human commodities, touting Mexican guestworkers as "happy, agreeable people who we like a lot."

In order to guarantee that workers remain in their employ, many employers refuse to provide workers access to their own identity documents, such as passports and Social Security cards. This leaves workers feeling both trapped and fearful. We have received multiple reports of even more serious document abuses: employers threatening to destroy passports, employers actually ripping the visas from passports, and employers threatening to report workers to the Immigration and Customs Enforcement agency if those workers do not remain in their employment.

Even when employers do not overtly threaten deportation, workers live in constant fear that any bad act or complaint on their part will result in their being sent home or not being rehired. Fear of retaliation is a deeply rooted problem in guestworker programs. It is also a wholly warranted fear, since recruiters and employers hold such inordinate power over workers, deciding whether a worker can continue working in the U.S. and whether he or she can return.

When the petitioner for workers is a labor recruiter or broker, rather than the true employer, workers are often even more vulnerable to abuse. These brokers typically have no assets. In fact, they have no real "jobs" available, since they generally only supply labor to employers. When these brokers are able to apply for and obtain permission to import workers, it permits the few rights that workers have to be vitiated in practice.

Few Legal Protections Exist for Guestworkers

The H-2A Program

The H-2A program provides some legal protections for foreign farmworkers. Unfortunately, far too many of the protections exist only on paper.

H-2A workers must be paid wages that are the highest of: (a) the local labor market's "prevailing wage" for a particular crop, as determined by the DOL and state agencies; (b) the state or federal minimum wage; or (c) the "adverse effect wage rate."[3]

H-2A workers also are legally entitled to:

- Receive at least three-fourths of the total hours promised in the contract, which states the period of employment promised. (This is called the "three-quarters guarantee. ")
- Receive free housing in good condition for the period of the contract.
- Receive workers' compensation benefits for medical costs and payment for lost time from work and for any permanent injury.
- Be reimbursed for the cost of travel from the worker's home to the job as soon as the worker finishes 50 percent of the contract period. The expenses include the cost of an airline or bus ticket and food during the trip. If the guestworker stays on the job until the end of the contract the employer must pay transportation home.
- Be protected by the same health and safety regulations as other workers.
- Be eligible for federally funded legal services for matters related to their employment as H-2A workers.[4]

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

The H-2B Program

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

Though the H-2B program was created two decades ago by the Immigration Reform and Control Act (IRCA) of 1986, the DOL has never promulgated regulations enacting substantive labor protections for these workers.[5]

Unlike the H-2A program, the procedures governing certification for an H-2B visa were established by internal DOL memoranda (General Administrative Letter 1-95), rather than regulation. An employer need only state the nature, wage and working conditions of the job and assure the DOL that the wage and other terms meet prevailing conditions in the industry.[6] Because the H-2B wage requirement is set forth by administrative directive and not by regulation, the DOL takes the position that it lacks legal authority to enforce the H-2B prevailing wage.

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

Guestworkers Cannot Enforce the Few Rights They Do Have

The legal rights of guestworkers can be enforced in two ways: through actions taken by government agencies, mainly the DOL, or through litigation. Neither method has proven effective at protecting workers from ongoing abuse.

Although abuses of guestworkers are routine, the government has not committed substantial resources to addressing these abuses. In general, Wage and Hour enforcement by the Department of Labor has decreased relative to the number of workers in the job market. The major agencies that might protect these vulnerable workers—the Department of Labor, the Occupational Safety and Health Administration, and state workers' compensation divisions—simply do not have sufficient resources or political will to do the job.

The DOL also takes the position that it cannot enforce the contractual rights of H-2B workers, and it has declined to take action against employers who confiscate passports and visas.

Government enforcement has proven largely ineffective. The DOL actively investigates only H-2A workplaces. In 2004 the DOL conducted 89 investigations into H-2A employers.[7] Today, there are about 6,700 businesses certified to employ H-2A workers.

There are currently about 8,900 employers certified to hire H-2B workers, but there do not appear to be any available data on how many investigations the DOL conducts of these employers. Our experience suggests it is far fewer than the number of H-2A employers investigated, something that is predictable, unfortunately, given the DOL's stance that it is not empowered to enforce the terms of an H-2B worker's contract.

Though violations of federal regulations or individual contracts are common, DOL rarely instigates enforcement actions. And when employers do violate the legal rights of workers, the DOL takes no action to stop them from importing more workers. Because of the lack of government enforcement, it generally falls to the workers to take action to protect themselves from abuses. Unfortunately, filing lawsuits against abusive employers is not a realistic option in most cases. Even if guestworkers know their rights—and most do not—and even if private attorneys would take their cases—and most will not—guestworkers risk blacklisting and other forms of retaliation against themselves or their families if they sue to protect their rights. In one lawsuit the Southern Poverty Law Center filed, a labor recruiter threatened to burn down a worker's village in Guatemala if he did not drop his case.[8]

Although H-2B workers are in the U.S. legally, they are ineligible for federally funded legal services because of their visa status. As a result, most H-2B workers have no access to lawyers or information about their legal rights at all. Because most do not speak English and are extremely isolated, it is unrealistic to expect that they would be able to take action to enforce their own legal rights.

Typically, workers will make complaints only once their work is finished or if they are so severely injured that they can no longer work. They quite rationally weigh the costs of reporting contract violations or dangerous working conditions against the potential benefits.

Historically farmworkers and other low-wage workers have benefited greatly by organizing unions to engage in collective bargaining, but guestworkers' fears of retaliation present overwhelming obstacle to organizing unions in occupations where guestworkers are dominant.

As a result of these enormous obstacles to enforcing workers' rights, far too many workers who are lured to the United States by false promises find that they have no recourse.

Substantial Changes Are Necessary to Reform These Programs

The SPLC report "Close to Slavery" offers detailed proposals for reform of the current guestworker programs. The recurring themes of those detailed recommendations are that federal laws and regulations protecting guestworkers from abuse must be strengthened; federal agency enforcement of guestworker programs must be strengthened; and Congress must provide guestworkers with meaningful access to the courts.

The passage of the Indentured Servitude Abolition Act of 2007 (HR 1763) or the inclusion of these protections in upcoming guestworker legislation would be an important first step toward reforming the guestworker program and leveling the playing field between guestworkers and their employers. It would make unlawful the recruitment charges that so oppress workers. It would require that workers be provided accurate information at the time of hire to permit them to make a reasoned choice about the job. It would make discrimination in the hiring of guestworkers for employment in the U.S. clearly unlawful in the same way that that discrimination would be unlawful if the hiring took place in the U.S. It would make employers jointly liable for violations committed by recruiters in their employ, and it would make possible the imposition of fines against recruiters and employers who violate their promises to workers. It is a good first step to strengthening workers' rights.

In addition, Congress must provide meaningful, substantive labor protections for H-2B workers. The Department of Labor has never promulgated substantive labor protections for these workers. Congress should demand that it do so promptly. Congress should also address the common problem of employers or persons who confiscate guestworker documents in order to hold guestworkers hostage.

Our government must take responsibility for stopping the abuses that routinely occur in the recruitment of guestworkers. While the abuses may begin in foreign countries, the abuses are directly related to the workers' employment in the U.S. and affect workers' ability to assert their rights to basic fair treatment in the U.S.

Congress must work to make the enforcement of workers' rights more possible in the real world. For too long, guestworker rights have existed mostly on paper. Congress needs to both demand that federal agencies do a better job and provide workers a real mechanism to obtain an attorney to enforce their legal rights when necessary. To that end, all low-income guestworkers should be made eligible for federally funded legal services, and there must be additional money allocated for those services.

Lastly, Congress should provide strong oversight of these programs. Specifically, Congress should hold hearings specifically related to guestworker program administration. A review of available evidence would amply demonstrate that these programs have led to the shameful abuse of workers. Congress must not allow that abuse to continue.

Conclusion

Guestworker programs currently in existence in the U.S. lack worker protections and lack any real means to enforce the protections that exist. Vulnerable workers desperately need Congress to take the lead in demanding reform.

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

ENDNOTES

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

[2] Reyes-Gaona v. NCGA, 250 F.3d 861 (4th Cir. 2001). For a discussion of this case, see Ruhe C. Wadud, Note: Allowing Employers to Discriminate in the Hiring Process Under the Age Discrimination in Employment Act: The Case of Reyes-Gaona, 27 N.C.J. Int'l Law & Com. Reg. 335 (2001)

[3] 20 C.F.R. § 655.102(b)(9)

[4] 45 C.F.R. § 1626.11

[5] See Martinez v. Reich, 934 F. Supp. 232 (D. Tex. 1996)

[6] GAL No. 1-95 (IV)(D) (H-2B); See DOL ETA Form 750

[7] Lornett Turnbull, "New State Import: Thai Farmworkers" The Seattle Times, February 20, 2005. See also Andrew J. Elmore, Reconciling Liberty and Sovereignty in Nonprofessional Temporary Work Visa Programs: Toward a Non-subordination Principle in U.S. Immigration Policy (unpublished 2007, on file with authors)

[8] Recinos-Recinos v. Express Forestry, Inc., 2006 U.S. Dist. LEXIS 2510 (D.La. 2006)

Chairman MILLER. Thank you very much.

Dr. Holt.

STATEMENT OF DR. JAMES S. HOLT, PRESIDENT AND PRINCIPAL, JAMES S. HOLT & CO., LLC

Dr. HOLT. Thank you, Mr. Chairman, for the opportunity to participate in this hearing. I am an agricultural economist, and I have spent more than 30 years in research and consulting on agricultural labor and employment issues and the H-2A temporary agricultural worker program.

The H-2 temporary worker programs were enacted 55 years ago. In fiscal year 2006, 59,112 seasonal agricultural job opportunities were certified for H-2 employment. This comprised less than 1 percent of U.S. agricultural job opportunities. Many H-2A aliens fill two or more certified jobs within the same season, so only about half that number of aliens are actually admitted each year as the number of job opportunities certified.

The most recent U.S. Department of Labor National Agricultural Worker Survey, or NAWS, illustrates the heavy dependence of U.S. agriculture on alien labor. Seventy-eight percent of hired crop workers in the U.S. are foreign-born, and 75 percent are born in Mexico. One of every 6 is a foreign-born newcomer, working their first season in the U.S. Fifty-three percent of all hired crop workers and 99 percent of newcomers report in the NAWS survey that they are not authorized to work in the United States. Experience on the ground suggests that closer to 75 percent of U.S. farm workers are not work-authorized.

In short, we currently have two agricultural guest worker programs operating in the U.S.—a legal guest worker program filling about 1 percent of the jobs and an illegal guest worker program filling more than three-quarters of U.S. agricultural jobs. This situation exists as a result of a cascade of failures—the failure of our border control system, the failure of our system for interior enforcement, the failure of the work authorization documentation procedures, the failure of our immigration laws to address realistic labor force needs, and the Labor Department's antagonistic administration of the H-2A program.

A legal, workable, agricultural guest worker program benefits farmers, alien workers, domestic farm workers, and the Nation. It benefits farmers by providing assurance of an adequate supply of seasonal workers at known terms and conditions of employment in an industry where more than 80 percent of jobs are seasonal and our workforce must be reassembled every year. It provides assurance that when farmers and their families invest millions in farm production assets there will be a workforce to perform the work. A workable guest worker program benefits alien workers by providing a legal, regulated way for aliens to work in the United States in jobs where their services are needed.

It may surprise members of the committee to learn that the pressure on employers to participate in the H-2A program often comes from their illegal workers who pay exorbitant costs to be smuggled into the U.S., often under life-threatening conditions, and who face fear and abuse while they are here.

The program benefits domestic workers. It assures open recruitment for and access to certified job opportunities for domestic

workers, and it provides labor standards and employment guarantees that are above the norms for most agricultural jobs.

Equally important, the H-2A program assures the viability of the jobs of U.S. workers. Every on-farm production job in the U.S. supports approximately 3.5 upstream and downstream jobs that are dependent on U.S. agricultural production and which would not exist if our agricultural products were imported.

An adequate supply of legal labor also benefits the Nation. It is not in our national interest to be significantly dependent on foreign sources for such commodities. However, it is also clearly not in our national interest to have such a basic industry as food and fiber production almost entirely dependent on a workforce which has entered and is working in the U.S. illegally.

This is what works about the guest worker program. What often does not work are the cumbersome bureaucratic procedures of the program. Notwithstanding statutory performance deadlines, certifications are often issued late. The problem is compounded by processing delays and approving petitions of the Department of Homeland Security and the issuance of visas at U.S. Consulates.

In the 2007 season, the arrival of many H-2A workers were seriously delayed, imposing substantial costs on producers of perishable agricultural commodities. The H-2A certification process is also unnecessarily complicated. Even though 97.5 percent of H-2A labor certification applications and 92 percent of the job opportunities on those applications were certified in fiscal year 2006, it nevertheless required an extremely labor-intensive and paper-intensive process for individually processing, recruiting on and adjudicating every single one of the 6,716 H-2A applications.

Critics of guest worker programs have characterized these programs as involuntary servitude because workers are admitted to work in a specific job opportunity and cannot change jobs without authorization. In my view, "involuntary servitude" is a bumper sticker slogan and is inaccurate. All guest worker programs admit workers for specific job opportunities. Workers are free to choose to take available guest worker jobs or not to do so. There is no legal impediment on their leaving a job with or without the employer's permission, provided they legally transfer to another guest worker job or depart the U.S. The fact that season-on-season return rates of H-2A workers is typically 75 to 80 percent and that illegal workers seek the protection of the program belies the slavery charge. Ironically, the same employers who are accused of enslaving their workers are often accused of exploiting the desire of alien workers for these jobs. With respect both to enslavement charges and recruiting abuses, it is useful to bear in mind that the overwhelming majority of immigrants emigrate illegally. It is not necessary for an alien to subject himself to enslavement or to extortive recruitment to secure an agricultural job in the U.S. If such practices occurred with any degree of frequency, they would be self-defeating.

In conclusion, it is clear that the status quo of the U.S. agricultural industry, almost completely dependent on unauthorized workers who have entered the U.S. illegally, is untenable. It is equally clear that ceding U.S. production of food and fiber to foreign producers is untenable.

The bipartisan AgJOBS' legislation is the appropriate way to protect U.S. workers, U.S. and alien farm workers and U.S. security.

Thank you.

[The statement of Dr. Holt follows:]

Prepared Statement of Dr. James S. Holt, President and Principal, James S. Holt & Co., LLC

Mr. Chairman, thank you for the invitation to provide testimony for this hearing. This statement supplements and expands on my oral testimony at the hearing of this Committee on June 7, 2007.

I am an agricultural labor economist, and a former professor of agricultural economics at The Pennsylvania State University. I have spent more than 30 years in research and consulting on agricultural labor and employment issues and the H-2A temporary agricultural worker program with government agencies, universities and private organizations. I have been a consultant to many of the grower associations who use the H-2A program as well as to national agricultural employer organizations who have an interest in immigration legislation, principally the National Council of Agricultural Employers (NCAE). However, I am not representing any specific organization here today.

I have also had the privilege of serving on two Dunlop Commissions, named for the late former Secretary of Labor Dr. John Dunlop. These Commissions were created to oversee and mediate collective bargaining agreements between agricultural growers and the Farm Labor Organizing Committee (FLOC), whose president is my colleague on this panel, Baldemar Valazquez. One of these collective bargaining agreements is particularly relevant to this hearing, because it is between FLOC and the H-2A grower's association in North Carolina.

I have also had experience with the H-2B non-agricultural temporary worker program, particularly for agriculturally-related occupations, and the H-1B high tech guest worker program. However, my focus in this testimony is primarily on lessons learned from the H-2A.

Background on Agricultural Employment and the Hired Farm Work Force

The H-2 agricultural and non-agricultural temporary worker programs were enacted 55 years ago as a part of the Immigration and Nationality Act of 1952. From 1952 until 1986, they were both "H-2" programs. However, almost from the outset the Department of Labor promulgated separate regulations governing the requirements for H-2 agricultural and non-agricultural programs, and this distinction was recognized statutorily in the division of the H-2 admission category into H-2A and H-2B in the Immigration Reform and Control Act of 1986. At present there are voluminous regulations governing the issuance of H-2A agricultural labor certifications, while the requirements for H-2B labor certifications remain minimal, and exist primarily in the form of guidance memoranda to Department of Labor certifying officers.

From 1970 through the late 1990's the number of H-2 and H-2A agricultural job opportunities certified fluctuated from about 15,000 to 25,000 annually. In the past decade usage has increased substantially, with 59,112 seasonal agricultural job opportunities certified in FY 2006. Many alien workers fill two or more H-2A certified job opportunities within the same season, so only about half as many H-2A aliens are actually admitted each year as the number of job opportunities which are H-2A certified.

Despite its recent dramatic growth, use of the H-2A program is miniscule in comparison with U.S. agricultural employment. There are about 3 million agricultural job opportunities in U.S. agriculture annually filled by hired workers. An estimated 2.5 million persons are employed to fill one or more of these job opportunities during the year. These 2.5 million persons constitute what we call the "hired farm work force". Thus, fewer than 2 percent of U.S. agricultural job opportunities are H-2A certified, and only about 1 percent of the hired farm work force are H-2A aliens.

The most recent U.S. Department of Labor's National Agricultural Worker Survey (NAWS) documents the heavy dependence of U.S. agriculture on alien labor. Seventy-eight percent of hired crop workers in the U.S. are foreign born, and 75% were born in Mexico. One of every six was a foreign born newcomers working his or her first season in the U.S. Fifty-three percent of all hired crop workers, and 99 percent of newcomers reported in the NAWS survey that they were not authorized to work in the U.S. Experience on the ground suggests that closer to 75 percent of U.S. farm workers are not legally entitled to work in the U.S.

The above statistics underscore that we currently have two agricultural guest worker programs operating in this country—a legal guest worker program that fills a miniscule 1 percent of U.S. agricultural jobs, and an illegal guest worker program that fills at least half, and likely more than three quarters, of U.S. agricultural jobs. This situation exists as a result of a cascade of failures—failure of our border control system, failure of our system for interior enforcement, failure of our work authorization documentation procedures, failure of our immigration laws to address realistic labor force needs, and the Labor Department's antagonistic administration of the H-2A program.

Benefits and Problems of the H-2A Program

A legal, workable agricultural guest worker program benefits farmers, alien farm workers, domestic farm workers, and the nation.

It benefits farmers by providing assurance of an adequate supply of seasonal workers at known terms and conditions of employment. In an industry where more than 80 percent of jobs are seasonal, and a work force must be reassembled at the beginning of every season, it provides assurance that when farmers and their families invest millions in farm production assets, there will be a labor force to perform the work. It also promotes continuity, stability and productivity in agriculture. While there are no official statistics, anecdotal evidence is that three-quarters or more of the H-2A work force in any given year are returning workers, and H-2A employers almost universally find that this stable, experienced work force is more productive, and employers can get by with fewer workers than when they are recruiting a new, inexperienced work force every year.

A workable guest worker program benefits alien workers by providing a legal, regulated way for aliens to work in the United States in jobs where their services are needed. It may surprise members of the Committee to learn that the pressure on employers to participate in the H-2A program often comes from their illegal workers, who pay exorbitant costs to be smuggled into the U.S., often under life threatening conditions, and face fear and abuse while they are here. As H-2A guest workers, they enter legally and work with rights and guarantees. Not withstanding the allegations of opponents of the program, H-2A aliens value their jobs, are careful to comply with program requirements, and return as legal workers year after year. In the words of one former illegal alien whose employer got into the H-2A program, "I thank God every day for the H-2A program".

The program also benefits domestic farm workers. It assures open recruitment for and access to H-2A certified job opportunities for local and non-local domestic workers who want such work. It assures that U.S. workers have preference in these jobs, even if they are already filled by aliens. It provides labor standards and employment guarantees that are above the norms for most agricultural jobs and for many rural non-agricultural jobs. Equally important, the H-2A program assures the viability of the jobs of U.S. workers in the upstream and downstream jobs that are dependent on agricultural production in the U.S. Every on-farm production job in the U.S. supports approximately 3.5 additional off-farm jobs that are dependent on U.S. agricultural production, which would not exist if our agricultural products were imported. These are long term seasonal and year round jobs at good wages and benefits which U.S. workers want.

An adequate supply of legal labor also benefits the nation. Food and fiber are basic commodities. It is not in our national interest to be significantly dependent on foreign sources for such commodities. However, it is also clearly not in our national interest to have such a basic industry as food and fiber production almost entirely dependent on a work force which has entered the U.S. and is living and working here illegally and without control. In a mature economy like that of the U.S., where the native born work force is growing at a substantially lower rate than job growth, our only policy options are a workable agricultural guest worker program or dependence on foreign producers for our food and fiber.

That is what works about the H-2A program. What often doesn't work are the cumbersome, bureaucratic procedures of the program. Many employers are daunted by imposing administrative processes, and simply never try to use the program. Those who do use it must navigate a gauntlet of obstacles. Not withstanding statutory performance deadlines, H-2A labor certifications are often issued late and after interminable haggling over the wording of documents. The problem of late labor certifications is compounded by processing delays in approving petitions at the Department of Homeland Security and issuance of visas at the U.S. consulates. To date in the 2007 season, the arrival of many H-2A workers has been seriously delayed, imposing substantial costs and potential losses on employers who are paying a premium to do things right and comply with the law. Even brief delays in the arrival of workers can be disastrous to producers of perishable agricultural commodities.

The H-2A certification process is also unnecessarily complicated. Even though 97.5 percent of H-2A labor certification applications, and 92 percent of the job opportunities on those applications, were certified in FY 2006, it nevertheless required an extremely labor intensive, paper intensive process for individually processing, recruiting on and adjudicating every single one of the 6,717 H-2A applications certified. This process is repeated annually, not withstanding the fact that approval rates have not changed significantly in decades, and the availability of legal U.S. workers as a percentage of the need has been in single digits. Undertaking a labor intensive process for demonstrating that there are not sufficient able, willing and qualified eligible (i.e. legal) workers to take the jobs offered for each and every application, even when the same labor market is tested multiple times a week and month for identical job opportunities, and when the USDOL's own statistics show that more than half of the work force is illegal, is government bureaucracy at its worst.

The Agricultural Job Opportunities and Benefits Act (AgJOBS)

In 2001 agricultural employers and farm worker advocates and unions achieved an historic milestone in negotiating an H-2A reform legislation package known as the Agricultural Job Opportunities and Benefits Act, or AgJOBS. AgJOBS has broad bipartisan support in Congress as well as among ethnic groups, religious groups, and farm worker and agricultural organizations that have historically battled over agricultural guest worker policy and procedures. It is intended to address many of the economic, justice and administrative problems with the current H-2A program.

AgJOBS reforms the administrative structure of the H-2A program to make it more efficient and more reliable as a source of timely legal labor. It also reforms the conditions for use of the program, making it more economically accessible to agricultural employers. It does this in a way that protects U.S. farm workers and assures access to agricultural jobs for those who want them. It also protects alien farm workers. Finally, it addresses the heavy reliance of U.S. agriculture on a currently illegal work force by providing a pathway to adjustment of status for illegal farm workers that is humane, and which will not cause chaos and disruption in the U.S. agricultural economy.

It is impossible to overstate the significance of the broad support AgJOBS has among historic adversaries. AgJOBS has the support of the two major U.S. farm worker unions, the United Farm Workers and the Farm Labor Organizing Committee, hundreds of other immigrant advocacy and labor advocacy groups, religious organizations, and the overwhelming majority of agricultural employer organizations.

Regulation of Foreign Worker Recruitment and H.R. 1763

Critics of guest worker programs, including the H-2A program, have characterized these programs as "involuntary servitude" because workers are admitted to work in a specific job opportunity, and can not change jobs without authorization. "Involuntary servitude" is a bumper sticker slogan. It is a pejorative characterization of guest worker programs that generates heat but not light.

All guest worker programs admit workers for specific job opportunities. None allow workers to enter the U.S. and simply roam around taking jobs at will. Control of the employment of guest workers, and assurance that they will work in the jobs for which they were recruited and needed, and not compete with U.S. workers in other jobs, is a fundamental principle of guest worker programs. This does not mean that the foreign workers are enslaved. Workers are free to choose to take available guest worker jobs or not to do so. There is no legal impediment to their leaving a job, with or without the employer's permission, provided they legally transfer to another guest worker job or depart the U.S. The fact that season-on-season return rates of H-2A workers is extremely high, and that illegal workers seek the protection of the program, belies the "slavery" charge.

Ironically, the same employer's who are accused of "enslaving" their workers are often accused of exploiting the desire of alien workers for these jobs. With respect both to enslavement charges and recruiting abuses, it is useful to bear in mind that only a tiny fraction of alien farm workers enter the U.S. through legal programs. The overwhelming majority immigrate illegally. It is not necessary for an alien to subject himself to enslavement or extortive recruitment to secure an agricultural job in the U.S. If such practices occurred with any degree of frequency, they would be self defeating. Guest workers would simply abandon the programs and enter and work in the U.S. illegally in the same manner that the vast majority of other alien farm workers do. The fact that they choose to enter legally, and in fact seek the protection of guest worker programs, belies the enslavement allegation. Evidence that the annual return rate of H-2A aliens in the program, and usually to the same

employer, is in the high double digits, and that they are not abandoning the program and resorting to the illegal immigration path chosen by the vast majority of their peers, further belies the enslavement charge. While occasional incidents in which foreign recruiters take advantage of foreign workers, especially first time participants in the program, undoubtedly occur, just as recruiting abuses occur in the U.S., the allegation that such practices are systemic, rampant, or even common is simply untrue.

H.R. 1763, provocatively entitled the "Indentured Servitude Abolition Act of 2007", would regulate all U.S. employers of workers recruited in foreign countries as well as the persons who recruit them. In other words, this bill seeks to regulate the activities of foreign nationals in foreign countries. Among other things it would make the U.S. employers strictly liable for any violations of the Act committed by a foreign recruiter "to the same extent as if the employer had committed the violation". Further, it would compel employers to notify the USDOL of any violations of which they became aware (though it would not absolve the employer of liability for the violation by so doing). The bill directs the USDOL to compile a list of foreign recruiters that it believes "have been involved in violations of the Act." It would be unlawful for an employer to employ any workers recruited by persons or entities on the list.

Proposals such as H.R. 1763 that impose strict liability on U.S. farmers for alleged violations of recruitment practices of alien workers in foreign countries are unreasonable and unworkable. It is not possible for U.S. employers to know about or control the actions of foreign nationals in foreign countries. Yet employers have no alternative but to rely on foreign nationals to perform at least some farm labor contracting activities in foreign countries. For example, in Mexico it is a violation of Mexican law for a foreign employer to recruit workers for employment outside the country. Such recruitment can only be done by Mexican nationals credentialed by the Mexican government.

Neither U.S. employers nor U.S. labor unions nor any other U.S. entity, no matter how well intended, has the ability to control the actions of foreign recruiters in a foreign country. This must be done by the foreign governments. Making U.S. employers of foreign guest workers strictly liable for the actions of foreign recruiters in foreign countries can only have the effect of making the liability incurred in employing legal guest workers so high that employers will be afraid to do so, and incentivize alien workers to resort to illegal immigration, where the high incidence of worker abuse is well documented.

Conclusion

The United States faces a serious economic, labor market and security challenge. The demographics of the U.S. population are such that we are barely replacing the existing work force through native born workers. We are not coming close to producing enough native born workers to meet the requirements of our growing economy. This has been true for more than a decade. Yet our legal immigration policies have been largely blind to the labor force needs of the economy. As a consequence, we now have millions of persons living and working in the U.S. illegally. And a good thing for us that this is so. Our economic growth over the past decade has been sustained and nourished by our failed immigration policies.

Agriculture has been particularly affected by the shortage of legal native born and immigrant workers, for reasons that are obvious on their face. With more available jobs than legal workers, the legal workers have migrated to the more skilled, year round, more pleasant, urban, higher paying jobs. This is not an indictment of U.S. agricultural jobs. It is a reflection of the reality that when there are more jobs than workers, the less attractive jobs are more likely to go unfilled. If these jobs were not critical to our national economy and security, this would not necessarily pose a problem. But when they are in an industry as critical as the food and fiber sector, it poses a serious problem.

It is clear that the status quo—a U.S. agricultural industry almost completely dependent on unauthorized workers who have entered the U.S. illegally, is untenable. It is equally clear that ceding U.S. production of food and fiber to foreign producers is untenable. The bipartisan AgJOBS legislation is the appropriate way to protect U.S. agriculture, U.S. and alien farm workers, and U.S. security and address the severe shortage of legal agricultural labor in the U.S. AgJOBS and other legal guest worker options should not be compromised and made unworkable by imposing unreasonable and unworkable conditions on their use such as those of H.R. 1763.

Chairman MILLER. Thank you.

Mr. Velasquez.

STATEMENT OF BALDEMAR VELASQUEZ, FOUNDER AND PRESIDENT, FARM LABOR ORGANIZING COMMITTEE (FLOC)

Mr. VELASQUEZ. Mr. Chairman and members of the committee, thank you for having me here today.

My union represents more than 12,000 workers, of which some 6,000 are in the H-2A guest worker program. As Chairman Miller has stated, until we can protect the basic human rights of current guest workers, it is difficult to talk about expanding these programs, which would also mean the expansion of the corruption that plagues the countries of origin.

The H-2A workers we represent are part of a collective bargaining agreement we signed with the North Carolina Growers Association, NCGA, and the sidebar agreement with the Mt. Olive Pickle Company. The 7,000 workers in this operation are the only ones in the Nation who have a dispute resolution mechanism through our grievance procedure, and the NCGA is the only group of employers to have a credible oversight of the recruitment efforts with our presence in Mexico and because I have seen it work. Indeed and although sometimes contentious, we have processed more than 4,000 inquiries, grievances and irregularities over the past 2 years.

I applaud Congressman Miller in calling attention to the problems posed by the recruitment of foreign workers. Some of the initiatives proposed by H.R. 1763 are timely and overdue. FLOC has paid the price for speaking out against the criminal elements that constantly latch onto any opportunity to bribe, extort or blackmail other human beings.

Foreign recruitment programs provide an additional opportunity for those types of criminals to flourish. After a series of attacks, burglaries, harassment by runners connected to recruiters, we were stunned by the tragic attack of our staff person, Santiago Rafael Cruz, who was bound and beaten to death on April 9th of this year. The police or the State of Nuevo Leon have detained but not charged an accomplice in that tragic murder. The detainee's criminal record bears out what we have suspected, that the attackers was a criminal element involved in predatory activity and human trafficking. The detainee had previously been arrested in the U.S. for human trafficking, drug trafficking and, if I recall, armed robbery.

If one were to ask us for recommendations gleaned from our experience to make a guest worker program viable, we would offer the following: It is important that we remove the prospects for any money changing hands in Mexico. It has been common practice for recruiters to collect up-front fees for visa interviews, visas, transportation, and recruiting costs. This opens the door for bribery and other invitations to pad the amount. The more desperate pay what they have to to be hooked into the system.

Secondly, H.R. 1763 offers some important measures like making the employer jointly liable for a recruiter's action, and more importantly, it protects workers from retaliation if he should complain.

The American Consulate should be allowed to keep a registry of repeat workers to minimize the reapplication process from 1 year to the next. This would lessen the logistics in managing large num-

bers of workers to be hooked into the system every year and lessen the contact with the recruiters in the foreign countries.

Third, a worker should be afforded the same labor rights as any other worker. The right to form a union should be made easier. Workers should be given full access to all labor forums in courts to redress grievances and problems. Lacking a collective bargaining agreement, the worker should be able to transfer his visa to another employer. As it is now, if a worker gets into a contentious situation with an employer, he cannot complain, and if he leaves, he becomes undocumented and cannot work for another employer.

Fourth, in the case of corporate contracted crops, most corporations should be charged a fee to offset the grower/supplier costs for the processing fees and expenses of the H-2A guest worker. It is unfair for the grower/supplier to shoulder all of the risks and expenses of a legal workforce. For large corporations, to balk at engaging this responsibility is to invite the further institutionalization of the thousands of undocumented workers currently harvesting crops who could be transitioned to a legal workforce.

Lastly, having demonstrated an agreed-upon number of years of faithful work and service, a worker should be allowed to obtain a temporary residence or at least to adjust to a visa where he will not have to repeat an application process. This is why we support the currently pending AgJOBS' legislation.

Finally, in all of these matters, with respect to the great religions of the world, I call on my own Judeo-Christian heritage. We are reminded that some of the best laws of our Nation have been those that adopt scriptural principles. On this very issue, what comes to mind are Exodus 22:21, "Do not mistreat or oppress the alien." Leviticus 19:34, "Treat the alien like your native-born," and especially Numbers 15:15, you are to "govern the alien with the same laws as you govern yourself."

I thank the committee, and I will be happy to answer any questions.

[The statement of Mr. Velasquez follows:]

Prepared Statement of Baldemar Velasquez, Founder and President, Farm Labor Organizing Committee (FLOC)

Mr. Chairman, members of the committee, my name is Baldemar Velasquez, President of the Farm Labor Organizing Committee (FLOC, AFL-CIO). My union represents more than 12,000 workers of which over 6000 are in the H2A guest worker program. I appreciate the invitation to testify before your Committee on Education and Labor and "Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor."

While the current debate on immigration reform focuses in large part on the issue of a guest worker program, there has been little attention paid to the conditions under which current guest workers live and work, or to the systematic violations of their labor and human rights in both their countries of origin—especially Mexico—and in the United States. Until we can protect the basic human rights of current guest workers, it is premature to talk about expanding these programs which would also mean the expansion of the corruption that plagues the country of origin.

Mr. Chairman, I will have been organizing farm workers for 40 years this coming September. I was raised as a migrant farm worker and from my earliest memory have come in contact, worked through and for countless of labor contractors. My family was originally contracted by Ohio and Michigan sugar beet companies from our home in the Rio Grande Valley in South Texas in the l950's. We worked in Ohio, Michigan, Indiana, Wisconsin, Texas and Florida, always in search and lured by promises of lucrative wages, conditions and good housing. The fruit of our labor was usually, poverty, housing and working conditions so bad that they could not even be described or chronicled in it's entirety by Edward R. Morrow's "Harvest of

Shame" or any of Woody Guthrie's tragic ballads. The sub-minimum wages, was not because we were bad workers, but time after time I watched hopelessly my father being taken advantage of by unscrupulous crew leaders, contractors, farmers, company field men and even local merchants and businessmen. Do not take me wrong, I do not mean to castigate all farmers, crew leaders, contractors etc. as bad people, most of them were just doing what was standard in the industry. We worked for many farmers who although compassionate and friendly would still house us in chicken coops, barns and sheds. That was just the way things were done. Maybe because it's the way their fathers had done it before them or maybe it's the way the companies they sold their produce to instructed them. My desire is that others not experience the same fate.

As I became more aware of the farmer's economic plight, I realized that he too was working within a set of constraints. Most farmers were contracted in the crops we harvested and paid an amount per unit, ton, 100 weight, etc. Our piece rate had to surpass the break-even point or else the farmer would make no profit. The company pressed the farmer and the farmer pressed us for productivity and I wondered if the company ever had any appreciation for those of us at the bottom of the supply chain of which he was the beneficiary.

Today's migrant simply reflects the globalized nature of the workforce and the nature of markets in general. Not only are we domestic migrants anymore, but also the integration of economies has caused the movement of people to correspond with the fluctuations of market shifts and pressures making us joined by Mexican and Central American migrants. NAFTA having displaced four million corn farmers in Mexico, who can longer compete with our heavily mechanized and highly subsidized U.S. farmers, cannot be absorbed into Mexico's lightweight job market. While we preach much about free markets when it comes to commodities and products we lack the same zeal when it comes to the labor market. Is it not the supply and demand that governs this market as well? Would it not behoove us to reflect on the treatment of labor as a commodity in relation to workers' human rights?

Water will run to a dry spot, like labor will run to where there is work, this is true for everybody, no matter what your trade is or what your profession is. But we migrants want the same thing as everybody else; the ability to feed, educate and clothe our families, no matter what it takes. Some of us come poor, illegal or contracted, all sharing one dream to better the lives of that next generation the follows us. So it is with the people that we in FLOC represent, migrant workers, domestic, undocumented and H2A visa workers.

I applaud Congressman Miller's initiative on H.R. 1763 in calling attention to the problems posed by the recruitment of foreign workers. It makes me recall the Farm Labor Recruiter's Registration Act. Oversight of foreign recruiters is long overdue and should be scrutinized as much as we do our domestic recruiters.

We probably know more than we would like to know as to the natural iniquities of foreign recruitment programs. But let us set things in perspective as to who the major players are and for whose benefit we all labor. Of all the crops we harvested, there is not a single one that is not a major industry. Cucumbers for pickles, what comes to mind are Vlasic Pickles, Mt. Olive Pickle Company, Heinz USA, Dean's Foods, etc. Tomatoes, Campbell's Soup, Hunts, Heinz etc. Tobacco, Phillip Morris, R.J. Reynolds, sweet potatoes, Gerber's, etc. All these companies understand the need for a labor supply to harvest the raw produce and fruit that goes into their final product. Their domestic supply chain goes from national to local companies, farmers and labor contractors, and this is simply their procurement system. Most of these companies, some publicly have supported "guest worker programs" to some degree. I contend that while many growers would like to see some way to legalize their work force that would compel workers to stay in agriculture, the real beneficiaries are the corporations who end up selling the finished product.

In 2004, we signed a collective-bargaining agreement with the North Carolina Grower's Association (NCGA) with a sidebar agreement with the Mt. Olive Pickle Company after a four and ½ year boycott. The unusual feature of the NCGA workforce was that they were almost entirely H2A workers. 8000 workers employed on some 1000 farms after year-end transfers. This agreement compelled FLOC to open an office in Monterrey, Mexico to oversee the seniority clauses in the agreement and serve as an education center for workers about the rules, obligations and rights before coming to the U.S. With the exception of the NCGA, we soon discovered the corruption endemic in the recruitment of the workers in their villages and towns. If we discovered an irregularity with the recruiters of the NCGA, we had a grievance procedure that we could use and as in many cases, no grievance was necessary and have been able to process matters through inquiries and fact sharing. Unfortunately, we had no way to redress problems with other recruiters especially in subsequent years when union members switched recruiters to try other types of employ-

ment in the U.S. Over the past two seasons we have processed over 4000 inquiries, grievances and irregularities. Some serious, some not but that is for some 6000-7000 workers, imagine what is happening to the other 50,000 H2A workers that came in 2006!

Indeed, more and more workers would come to us reporting abuses, overcharges and downright thefts by "runners" that worked independently to connect workers with recruiters. I personally did a speaking tour in March in four towns in Mexico to warn workers not to be mis-lead. I toured Cuidad Victoria in Taumalipas, Cuidad del Maiz, Tamazunchale and Tompamolon in San Luis Potosi. I spoke to a couple hundred workers in person in meetings and reached many more through radio and newspapers and told the workers about not paying any fees this year. Everywhere I spoke, workers approached me that had been taken advantage of and some gave up their passports with money never to hear from the recruiter or runner again!

FLOC supported a legal case known as Garcia-Alvarez that was mandated by a Federal case known as DeLuna that essentially eliminated the collection of fees from workers in Mexico. Prior to this legal precedent, workers had to pay their own expenses for the American Consulate interview and visa which was $100 a piece. They were also charged transportation and recruiting fees all totaled about $346.00. While the NCGA was immediately compliant, other "runners" and recruiters found it easy to prey on new workers or those who had little experience in the programs. Some workers ended up paying as much as $1500.00 to $2000.00. Garcia-Alvarez compelled those fees to be paid by the employers. Over the last two years for the 6000 to 7000 workers that came to work under the NCGA agreement, the employers paid what had been the "legitimate fees" ($346.00) that represented a savings to the workers about 4.8 million dollars. We have no idea of how many of the other 50,000 H2A workers ended up paying or not as the decision extended to them also.

Because of FLOC's continued pressure, we were continuously harassed and attacked by business and elements connected to the runners from the rural areas. Our offices were broken into twice, computers stolen and finally our staff person Santiago Rafael Cruz was bound and beaten to death in our office on April 9th. One of the suspects that has been detained in the murder in fact carries a criminal record for human trafficking, drug trafficking and armed robbery! We have suffered attacks by the local police, for no reason other than talking to workers in public places, they abducted three members and robbed them and dumped them out of town. The criminal elements seemed to have wanted to create a hostile atmosphere for FLOC and have succeeded in doing so. However, if intimidation was the purpose, it has backfired because there has been a global outcry and thousands of letters have been sent to the Governor of Nuevo Leon and President Calderon of Mexico calling for justice in the Santiago murder. The O.A.S.'s Inter-American Commission on Human Rights has taken this case and imposed protective measures for FLOC and our staff on the Mexican Government.

If one were to glean lessons from our experiences, we see certain measures that would be important in any guest worker program. First, there would have to be a way so to insure that no money is changing hands in Mexico. Not just recruiting fees but also the required payments to our Consulate for the visa interview and visa itself. For the Committee's information, the collection of fees is already against the law in Mexico but again there is a terrible enforcement problem there. The only reason that a worker might have to put up some deposit (perhaps in one of the national banks), is to secure the visa interview appointment. No shows become a problem for employers getting their workers in a short window of time and it is not simple for the Consulates to reschedule interviews. The grower tries to time the recruitment and interviews so that the workers arrives with no down time and can begin work right away. The deposit becomes an incentive for a worker to keep his appointment.

Secondly, H.R. 1763 initiates some important measures, like making the employer jointly liable for a recruiter's action, and protecting workers from retaliation if he should complain. It would seem that one could go a bit further by perhaps the Consulate keeping a registry of repetitive workers and minimize the recruiter's role in hooking workers into the system. In the end, this may help the employers and the Consulates cut down on logistics of processing the large number of workers.

Third, workers should be afforded the same labor rights as any other worker. The right to form a union, access to all labor forums and courts to redress grievances and problems. The most important of these rights is to withhold his labor if there is a lack of a dispute resolution mechanism. Lacking a collective-bargaining agreement, the worker should have the right to apply to transfer his visa to another employer. As it is now, if the worker gets in a bad situation with an employer, he cannot complain, if he leaves, he automatically becomes undocumented and cannot work for another employer with his visa.

Fourth, company beneficiaries should be charged a fee to offset their supplier's costs for the processing fees and expenses of H2A workers. It is unfair for the grower/supplier to shoulder all the risks and expenses of a legal workforce. For large corporations to balk at engaging this responsibility is to invite the further institutionalization of the thousands of undocumented workers that could be transitioned to a legal work force. H2A growers are already paying over $1000.00 per worker for processing and transportation and in the case of North Carolina, paying an adverse effect wage rate of over $9.00 per hour as compared to the Federal $5.15 minimum wage that non-H2A growers pay. The playing field is not level with those growers that continue to utilize undocumented workers.

Lastly, having demonstrated an agreed on numbers of years of faithful service and work, a worker should be allowed to obtain a temporary residence or a least adjust to a visa where he would not have to repeat an application process. If Congress can suggest the likes of a Z visa, why not a visa to travel and work with the above labor rights

If I may end with respect for the great religions of the world but calling on my own Judeo Christian heritage, let us remind ourselves that some of the best laws of our Nation have been those founded on Scriptural principles. On this issue, what comes to mind are Exodus 22:21 "do not mistreat or oppress the alien" and Leviticus 19:34 "treat the alien like your native born" and especially Numbers 15:15 "govern the alien with the same laws as you govern yourself."

I thank the Committee and would be happy to answer any questions.

Chairman MILLER. Thank you very much, and thank you all for your testimony, and I think—well, you can all comment on this question.

Secretary Marshall, in your statement, you say, "We already have temporary worker programs which should be improved to better meet the legitimate needs of employers and prevent the abuse." it is in your recommendation.

Ms. Bauer, you cite some of that abuse.

Dr. Holt, you point out the fact that, in the case of the H-2A program, it is minuscule when you compare it to the size of the agricultural economy and the number of workers needed, and it is also cumbersome; it is bureaucratic; people get delayed. All of these things happen for those people who try to use it.

My thought always was—and I have not been deeply involved in this for a number of years, but now I am back in the saddle here, trying to catch up. It was that it did not have to be efficient; it did not have to work; it did not have to protect people because you always had the safety valve of illegal workers who you could turn to, so you were never really prejudiced if it did not work out. You made the attempt. You did this. The fact of the matter is you could fill in all of the gaps with those people who did not have any status.

I just wondered if that is somewhat of an accurate perception or if I am missing something here, but there have been complaints about this for two decades, but it never seems to quite get fixed, and it looks to me like the pressure is off because of the relatively easy access to those without any status in the country.

Dr. HOLT. Mr. Chairman, I think one of the ironies is that the H-2A workers—or the H-2A employers are basically the ones who are in the process of trying to do it right, trying to employ legal labor. We have been at this process for two decades. I remember the first vote on the first piece of legislation, the first vote in Congress on what has now become AgJOBS, which took place in 1994. It is now 2007, but we have not done anything.

I think that what has happened in the interim is that, in 2001, there was a very historic coming together of farm worker interests, agricultural employer interests, church groups, ethnic groups, all recognizing that the time had come when it was necessary to really make the legal program workable so that this illegal program that is employing the vast majority of farm workers could be dispensed with, and that is where AgJOBS came from, and I think it is time for——

Chairman MILLER. Ms. Bauer, are you comfortable with that, with the pressure to get this right as suggested in the AgJOBS bill?

Ms. BAUER. Well, I do think that we have unanimity here that AgJOBS is a reasonable compromise. There is no doubt that it is not the perfect bill that everybody wants, but it is a bill upon which there is broad agreement and of which would reform the H-2A program in a way that is good for farm workers.

Chairman MILLER. Secretary Marshall, you raised the question of—and this was played out, I think, in a debate in the Senate over the last couple of days or certainly within the last week on the question of the size of the guest worker program and when you start a guest worker program. I guess now there will be a sunset on that program as the bill currently stands in the Senate. It is changing all the time, so I do not know if I am current or not.

There is this question that we are going to go through the process of trying to regularize the status of some 11 million people—the figure is 11 million or more or less in the country—and at the same time you are going to have—you know, the purpose is to have a fairly large guest worker program at the same time. You suggest that those two things may not make the most sense to do it at exactly the same time until we know the status and redetermine the status of people who are already here.

Mr. MARSHALL. Yes, that is correct, Mr. Chairman.

My view about it is that we really do not know how many people are here. Having looked at this over many years, I can tell you that the estimate of 12 million, which has become received wisdom, is wrong, but we do not know, and I think that is part of the problem nor do we know how many we really need in different industries. Employers would like to have a labor surplus. You know, that is understandable given their basic position. They would like to have more workers around. That is particularly true of agriculture workers. It has been our history.

Therefore, it seems to me that an important issue is do we really have a fair labor market test to see if there are people in the United States who can do that work. My view is, no, we did not have it when I was responsible for it, and we do not have it now, and we will not have it until we gain control of the illegal immigration problem and until we get serious about legalizing the whole process.

Now, I believe you can have a fair labor market test, but I do not think we have been doing it now. I would add to the fair labor market test a thing that I tried to do periodically, and that is to test the market myself. When the apple pickers said they could not find American workers to do the work, I recruited apple pickers for them. They did not like that, but I did it. When Senator Hatch of

Utah told me that they could not find cherry pickers if we kept illegal workers out of the country, we recruited cherry pickers in Utah. I believe that we should not just leave it up to the employers to attest that they have made an effort to recruit people. We should have a serious effort to determine if there are people in the country who can do the work and, once we do that, to then allow the foreign workers to come in.

I agree that the process now is too bureaucratic and time-consuming, but we can fix that. I think you will always have some time in order to make an accurate and an adequate labor market test.

Now, the other issue that you have to address is what should be the standard for the recruitment of the foreign workers. Now, what employers would like to do is to make the standard that the foreign workers can have the work unless you can find a domestic worker who can do the work as well as those foreign workers. That is an illegitimate standard in my judgment because what the employers frequently do is to cream the workforce in other countries. If it is agriculture, they would like to have prime working age males. Well, is that a standard? No. A good bit of what the recruiters do would be illegal if done in this country. It would violate our anti-discrimination laws. So it is fixing the standard, and I think that can be done, but there needs to be agreement on that, and the question is what is the legitimate minimum standard required to test the market. If you only want to get heroes and super workers to be your standard, then you will have a hard time finding a lot of people in the United States to do it, but I do not think that is a legitimate standard.

Chairman MILLER. Thank you.

You know, I was a number of years ago involved in a situation with the cane cutters in Florida where you had a huge population of Haitians who were here illegally as refugees and otherwise. They would not hire them, but they wanted to bring in Jamaicans under the H-2A program. So the workers could walk to the cane fields, but they were not available, apparently, and this does happen. Thank you.

Mr. McKeon.

Ms. Foxx.

Ms. FOXX. Thank you, Mr. Chairman.

I would like to ask Mr. Velasquez a question.

You talked about the agreement that you entered into with the North Carolina Growers Association in 2004. This would seem to be a fairly significant event given that the North Carolina Growers Association is one of the largest, if not the largest, user of H-2A workers.

Could you elaborate a little bit on how this agreement benefits both the farm workers and the growers association and why you have not gone farther or had not gone farther in terms of doing this in other States? Is North Carolina the only place you have done it? Why haven't you done it in other places?

Mr. VELASQUEZ. Well, we are going to be launching a new campaign this summer. If you want to support us, we can definitely enjoy having that support.

The truth of the matter is that one of the obstacles to expanding such a representation has to do with the right-to-work laws in the South, and the other matter has to do with the fact that most of these employers are small family farmers, similar to what we have in Ohio and Michigan and where their crops are contracted to large corporations. As I said in my testimony, it is difficult to go and say, "We are going to organize these farms," without having a broader strategy to involving the top of the supply chain, so to speak, and I think the large corporations who are the beneficiaries of these employees, these workers, whether they be undocumented or H-2A workers, are let off scot-free in terms of any responsibility. So, if you leave the farmer holding the bag, so to speak, for all of the expenses and costs and risks involved in that, that is really unfair, and so there has to be a broader effort to include the participation of these large corporations.

When we did the Mt. Olive Pickle Company, we were able to get a sidebar agreement with them to increase the price of cucumbers by 11 percent over a 3-year period. They get their last increase this year. If we could engage the other companies that support this, maybe then it would be easier to expand the representation of these workers whether they be undocumented or H-2A.

So that is the initiative that we are going to try to launch, and hopefully, if we are successful, we can get broader representation and spill this representation over to other H-2A guest workers in surrounding States.

Ms. FOXX. Thank you.

Mr. Chairman, just one brief comment. I live in an area that is very high in agriculture. There is Christmas tree growing especially in my area, but all kinds of agriculture, and particularly from Christmas tree growers I have heard that over and over and over the H-2A process is too complicated, too cumbersome, too bureaucratic. I have asked repeatedly from growers "tell me what is wrong with the system and how to make it better. I will try to work on legislation to do that." I never get any specific recommendations on how to do it. Everything in the Federal Government is too bureaucratic.

I wonder if any of you have real specific suggestions on how we could make the process better. I would certainly love to see that so that we could work on doing that because I do think that is one of the big impediments that we have.

Thank you, Mr. Chairman, and thanks to Mr. McKeon.

Chairman MILLER. Thank you.

Ms. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman. Thank you for this hearing. I think the timing is perfect being that it seems we will be debating sometime this year an immigration bill, and I guess that is what brings me to part of my questions. When we talk about having the guest worker program in whatever the immigration bill is going to be, the guest worker program will be staying here 3 years, going home, possibly coming back, and then never coming back again.

How do you think that would ever work out being that seasonal workers come in for the agriculture or the fields? Wouldn't more of those people go underground? I guess one of the things that—as to

those who are actually here on the visas, you had mentioned in your testimony that a lot of times their documentation is kept by the employer and not given back to them so that they cannot move on or leave.

How would that even work in the future? Are we setting up more possibilities of infringes on these workers?

Ms. BAUER. I think that is a really good question.

What we have said is, you know, before contemplating a gigantic expansion of these programs, we should look closely at how they operate, not on paper but in the real world, and in the real world the number one complaint that we get in our office is workers whose documents have been seized by their employers. That is under the H-2A program and the H-2B program. Sometimes workers call us, and they just want to go home. They just want to go back to Mexico or to Guatemala, and they cannot do it because they do not have their documents. That is really fundamentally abusive.

I think there is no doubt that a program that requires workers to return at some specific interval is going to fail as to some percentage of those workers. I mean we see that now. A lot of the workers we talk to cannot pay back their debt during the time that their visas are valid. They just cannot. The money does not work. When you see workers coming from Thailand paying $10,000 or $20,000 for an H-2A job that pays 7 bucks an hour, the math does not work out, and they have no choice but to remain and work unlawfully after they do that work, and I think, you know, absent some very substantial reform of this system, that will continue because—it will continue by necessity that workers will have to work unlawfully.

Mrs. MCCARTHY. Thank you.

Does anyone else want to make a comment?

Dr. HOLT. Yes, I would like to comment on that.

The abscond rate, if you will, the leakage out of the H-2A program, for example, is in the single digits and in the low single digits, and the reason for that is that aliens value and want to protect their opportunity to enter the United States legally and to work in a legal environment with labor force protections, so they are careful to abide by the rules. Now, there are, of course, a small number—but as I say, it is in the low single digits percentagewise—who see this as a vehicle to get into the United States and then scamper off. That is very small.

We have this notion that somehow or other temporary workers want to come here and live here forever, and the reality is they do not. The earnings of a farm worker in the H-2A program, for example, allow them to live and support their families handsomely in Mexico; whereas, it would be tough to get by were they living in this country so that up to 10 months—which is the limitation on seasonal work—so that up to 10 months of seasonal work and then returning to their home country, in fact, works extremely well.

Mrs. MCCARTHY. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman MILLER. Mr. McKeon.

Mr. MCKEON. Thank you, Mr. Chairman.

Dr. Holt, what mechanisms are in place for temporary farm worker programs to ensure that alien workers do not overstay their visas? I understand that a lot of the people who are here illegally came legally and then just overstayed their visas.

Dr. HOLT. That is apparently correct, but that is not true, as I have just mentioned, in the H-2A program. The fact of the matter is that the abscond rate, the failure to return, is in the low single digits, typically 4, 5 and 6 percent. Again, the reason for that is that, once in a program where they can support their families in Mexico and work seasonally in the United States, workers value the ability to stay in such a program, and if they abscond and violate their visas they cannot return. A worker, for example, who does not return in a timely manner is barred from participating in a program for 5 years under Federal law, so——

Mr. MCKEON. So what I have heard then on that regard is not accurate?

Dr. HOLT. Yes. Now, I think what you are referring to are non-agricultural workers on tourist visas and so forth and other kinds of visas, and I think clearly—I mean the reality here in taking the economy as a whole is our native-born workforce is growing at the rate of approximately .2 percent a year. Job growth in this country is growing at the rate of approximately 1.2 percent a year. Now, that is the reality. We are creating far more jobs than we are producing native-born workers to fill. There is only one other way that those jobs can get filled, and that is through immigration. Our legal immigration programs at this point are totally inadequate to fill that need. Now, of course, we could also decide, as a matter of national economic policy, that we do not want job growth, but that is not the path we have been following. We have been promoting job growth, but you cannot have job growth unless you have people to fill those jobs, and there are only two ways that they can arrive here, either be born here or emigrate. That is the reality.

Mr. MCKEON. In your testimony, you noted that 75 percent of the U.S. farm workers are not legally entitled to work in the United States. How can a guest worker program actually reduce unauthorized immigration? What can be done to such programs to encourage foreign labor who would otherwise come and work unauthorized to participate within the legal guidelines of a guest worker program?

Dr. HOLT. That is a very important question, and it is really the whole point behind the AgJOBS' legislation is to provide a workable legal path. Obviously, it is not going to work without strict border enforcement and effective control of illegal immigration, but the two have to go together. There needs to be a way to—we need to effectively control illegal immigration, but at the same time we need to have a workable, effective way for workers to enter the United States legally, and that is precisely what the AgJOBS' legislation is designed to do.

Mr. MCKEON. If the legal program only allows enough workers to come in to fill 10 percent of the jobs or 25 percent of the jobs, then there is going to be some other way that those jobs are filled, and that actually encourages illegal immigration then.

Dr. HOLT. That is absolutely right. The current system is in so many ways—it would be impossible to—we do not have the time here to—but in so many ways, it is set up to fail, and one of the

ways that it is set up to fail is that there is not a mechanism—the numerical limitations and so forth are such that we simply cannot bring enough workers in legally to fill the jobs we are creating. Fortunately, that does not exist in agriculture, but that is certainly the situation in the nonagricultural arena.

Mr. MCKEON. Thank you very much.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

We have a vote on. As you can tell, members have gone to vote. We should be back here in about 20 minutes. If you can stay, we would deeply appreciate it. Thank you.

[Recess.]

Chairman MILLER. Mr. Velasquez, if I might—excuse me, I have another—I was going to——

Mr. YARMUTH. Thank you, Mr. Chairman. I want to thank the panel, and I would like to provoke a free-ranging discussion of maybe a little bit on the philosophical nature, and I pose it—this is primarily directed to Secretary Marshall, but I would welcome responses from others.

When I talked about during the campaign, my campaign last year, and since then the issue of the minimum wage, I always tried to postulate the scenario that if we had a business or an industry that relied on essentially zero-cost labor, that this country wouldn't allow that industry to survive. It seems to me that when we talk about many of these questions involving guest workers and the industries or businesses that they serve, that we are getting close to the same type of issue that in some of these cases it appears as if the market, the free market, doesn't work in these industries in that if the agriculture industry could survive or was a viable, free market business, that it could pay living wages, and it could attract the workers that it needed. And the fact that it doesn't, at least presumably is not able to pay those wages, and survive and find the labor that it needs out of the existing marketplace, that our discussion becomes kind of an admission that the free market doesn't work in this business, and then we have to kind of go from those conclusions.

And I would like to hear your observations on that, in fact, whether we are faced with a situation, particularly with regard to agriculture, that the free market has broken down, it doesn't work in this country, or that, in fact, we might be faced with a possibility of having an industry that isn't viable.

Mr. MARSHALL. My view about it is that the market does not work very well in labor markets generally, not just agriculture, for a very important reason: People are not commodities, and therefore, you have got to consider the effect of the wage on the family, on the ability to preserve and promote human resources, which we all argue is one of the our most important resources.

And I agree with that completely, and that is the reason that I am in favor of restrictions on how low wages can get and favor the minimum wage and prevailing wage legislation. And I think the rationale for that is that you don't want to subsidize people who can't make it by paying a living wage, because if you let people operate without paying the living wage, they are being subsidized. Why would you want to subsidize your least deficient industries?

One of the problems in the immigration debates is that people will argue that having unlimited immigration and even illegal immigration, undocumented immigration improves the competitiveness of the American economy. My response to that is what do you mean by competition? I know what many economists mean, and that is low wages increase competition. My view, that is a losing strategy.

There are always countries with lower wages. There are always places with lower wages, and that is a contest you wouldn't want to win because what it implies is more unequal wages, which is what we have been getting in this country since the 1970s.

The other way to compete, which supports regulations and prevailing wage legislation, is we ought to be trying to compete by improving productivity and quality. That is a high-road, high-value-added approach to competitiveness. If that is your definition, then having wage-suppressing immigration destroys the competitiveness of the system, not supporting it.

Mr. YARMUTH. So my follow-up is I assume you would consider guest worker programs as some form of subsidy to these industries?

Mr. MARSHALL. Yeah. My view is unless you pay prevailing rates, and unless you really make a labor market test—if you made a labor market test, if you paid the adverse effect wage rate, then you are not allowing immigration to suppress wages; but if you didn't do that, you are allowing them to suppress wages, and I don't think you ought to do that.

A lot of my colleagues in economics defend it by saying it strengthens the competitiveness of the American economy. It is even short-sighted there. Take the H-1B program for the highly educated workers. If you suppress the wages for science and engineers, you will not have many American workers who want to get in—many American students. The anecdotal evidence tells me that is already happening, that they don't want to get into that because it is easier to get into something where immigration is not suppressing the wage, like law or business or some other field.

Now, how are we going to solve that? We have legislation being proposed. We solve that by giving a subsidy to people who will get into science and engineering. What you have done is try to fix one, and that might be one way to do it.

One of the reasons I believe we ought to embed immigration policy in overall economic and social policy is it cannot be considered apart from that, nor do I think you can consider it apart from international economic policy. Unless we pay attention to what is happening in the countries that are not creating adequate jobs for their people, then we are going to have to continue to fight the problem, and I don't think that is necessary.

Mr. YARMUTH. Thank you. That was the answer I was looking for.

Dr. Holt, you wanted to comment.

Dr. HOLT. Congressman, I would like to shed a little statistical light on this. The notion that agriculture is a minimum-wage industry is simply not correct.

You might be interested to know—and I just had a funny feeling that this question was going to come up at some point or other

today, and so last night I went and rechecked the statistics. The average hourly wage of field and livestock workers in agriculture for 2006 was $9.15. This is for production workers, field and livestock workers; in other words, it is not the veterinarians and crop technicians and so forth, it's the field and livestock workers. The average hourly wage is $9.15.

I also thought it would be interesting to look at what happened to these wages in agriculture during the last decade when we have had this period of explosive growth, if you will, in the proportion of agricultural workers that are illegal aliens just to see, because if the notion that H-2A employment is depressing agricultural wages when it constitutes less than 1 percent of employment is clearly not true on its face, but, after all, agriculture is 75 percent illegal.

So let us take a look at the wages. In the last decade, a period of explosive growth in illegal alien employment in agriculture, agricultural wages, the field and livestock worker hourly wage, increased 37 percent. The average wage for all production workers in the economy, nonagricultural workers, increased 34 percent.

Agricultural wages, even in a period of explosive growth in illegal employment, actually increased faster than the wages of production workers by a small margin. So it is not wages that make agricultural jobs unattractive, it is the fact that they are seasonal, first of all, and in an economy where we are producing only 2 percent—only.2 percent of our native-born workers, and the jobs are expanding at 1.2 percent, there are plenty of better year-round jobs. These jobs are in rural areas——

Chairman MILLER. I am going to ask you to——

Mr. BOUSTANY. Thank you.

Dr. Holt, in your testimony you described the Department of Labor's administration of the H-2A program as antagonistic. Can you explain what the Department is doing to improve the administration of that program, the H-2A program? What steps should they take administratively, and are any legislative changes needed, in your opinion?

Dr. HOLT. Again, I don't want to sound like a broken record. The ag jobs legislation, one of the reasons why it is over a 100-page piece of legislation, and the H-2A provisions are 60-some pages of that, is that it spells out and creates or sets out many reforms.

The problem with the administration of the program in the Department of Labor—and I don't want to—I have great respect for Dr. Marshall, and I don't—I am certain he dealt with these issues when he was Secretary, but this has been true for decades. The culture of the Labor Department is to obviously protect the jobs of United States workers, and that culture has created an antagonistic attitude towards foreign workers, guest workers, H-2A, H-2B whatever categories, in which at the working level the personnel in the Department sort of see it as their mission to try to make these programs as difficult to access and as unattractive as possible. And, frankly, much of the—many of the provisions of ag jobs are intended to try to hold that in check.

Mr. BOUSTANY. Certainly judging from what I hear in my district, which is a very agricultural-based district where we have both H-2A and H-2B visa workers that are greatly in demand, it

would certainly verify what you just said, that it is a very difficult process.

Secretary Marshall, would you like to comment on that?

Mr. MARSHALL. Yeah. I think that it is a fair characterization, but it takes two to tango, as they say. If all you can get is cooperation, both sides have to cooperate.

My operating philosophy was the agricultural employers dealt with me in good faith when I was Secretary, and we were very cooperative with them, and we didn't go to the lengths of testing the market or anything else, but had experiences with agricultural employers who would not do that. They would say that they were going to do something. Take the onion growers in Texas, for example. They told me they are going to do—if we would admit workers 1 year, then they would observe the law the next year. Well, they didn't do that. And I tried to enter into an agreement.

So I think that it would be better for everybody if you could have—I don't believe that it is necessarily true that you have to be antiemployer to be proworker. In fact, I think it makes sense to be proemployer and proworker, but if you are going to have legitimate concerns—and try to do things that will really protect the interest of the American workers. But the Labor Department is the only Department of government whose mandate is to protect the interest of American workers. That is its main mandate. But as I say, that doesn't mean that you have to be antiemployer where employers were willing to work, as most were.

Chairman MILLER. Thank you, sir.

Mr. BOUSTANY. Dr. Holt, one last question. In looking at the Department of Labor's enforcement rule regarding the H-2A and H2-B programs, can you comment on how the roles are different in that enforcement?

Dr. HOLT. Well, they are very different in that the Department by statute has an enforcement role in H-2A. There is no similar statutory mandate in the H-2B program. Now, I think it stretches credulity to say that the Labor Department, therefore, has no enforcement authority over H-2B, but unfortunately that is pretty much the attitude that they have taken, and the reality is that there is little or no enforcement in the H-2B program, I have to say.

Mr. BOUSTANY. Thank you, sir.

Ms. Bauer.

Ms. BAUER. Yes. I just wanted to follow up on that.

The government is involved at every level of these applications. I have no doubt that there is a lot of paperwork involved in the application process, and we, too, support the reforms of ag jobs, but as a practical matter the government involvement ceases the minute the worker shows up in the United States.

Agency after agency is involved in processing the paperwork to get the worker here, but once the worker is here, and he is abused on the job, there is very little government involvement.

We saw 89 inspections of H-2A employment places in the last year for which there were statistics at a time where there were thousands of H-2A employers. There is no statistics available on H-2B workplaces. What we see in practice then, particularly in the H-2B context, that wage violations are the norm. We are involved

in four class action lawsuits against just the forestry industry now. I can say I have spoken to thousands of forestry workers. I have never seen a forestry worker paid his complete legal wages. We don't see the Department of Labor—we don't see them enforcing those rights.

Mr. BOUSTANY. Thank you.

Chairman MILLER. Mr. Velasquez.

Mr. VELASQUEZ. In going back to some of the previous questions as well, I don't know how people think. I don't come to Washington very often, but you were talking about some of the philosophical questions around these issues. I think that what we failed to do is two things. One is give the worker an ability to create the necessary tensions in the workplace with the employer so that there can be a give and take back and forth. The other thing is we have not taken into account how we bring these issues onto ourselves in our trade agreements, like our North American Free Trade Agreement with Mexico. We can't have our cake and eat it. We cannot go around thinking that the principle of reaping and sowing doesn't apply to us.

If we have an agreement that pits, for instance, Northern American corn farmers with Mexican corn farmers, there is no contest. The Mexican farmers are not going to compete with the high subsidies that we give our farmers in this country. So you displace 4 million people, and now you whine about anywhere they go to make a living here in the United States.

So I think a couple of things that would be important is that we figure out a way to allow this international workforce, treat it like a commodity in terms of its relation to human rights and worker rights, and give the workers the necessary leverages for tensions, allowing them to have unions, allowing them to form unions so they can create their own deals.

The ag jobs legislation is, in effect, a reflection of that, where we allow workers and employers to have a negotiated agreement or adverse effect wage rate and other matters that would supersede any imposition by the Federal Government, and then workers would have an ability to police their own agreements with their employers.

We have got to give the workers the ability to have those tensions with the employers and so that everybody can win.

Chairman MILLER. Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Ms. Bauer, I understand that H-2B visa workers can't generally avail themselves of help from the Legal Services Corporation, and I am a civil rights and labor attorney by trade, and I find this interesting. I am wondering if you could flesh that out a little bit. Why can't LSC attorneys help H-2B visa holders?

Ms. BAUER. The statute that imposes restrictions against Legal-Services-funded entities lists categories of aliens who are eligible for Legal Services, and H-2B workers simply aren't on that list. So that may be some historical explanation for that, but it seems to us there is no sort of ongoing justification for that position. H-2A workers are eligible for those services. They are routinely represented by LSC-funded organizations. There are only a handful the organizations like mine in the country that represent H-2B

workers regularly and were basically being called upon to enforce or play the role that government should be playing with DOL, and to play the role that the Legal Services lawyer should be involved in.

Ms. SANCHEZ. Do you think this restriction against not allowing H-2B visa holders to access Legal Services, do you think that just harms the H-2B visa holders, or does it also impact the broader workforce.

Ms. BAUER. It absolutely harms people other than the H-2B worker. Even if we said we don't care about those foreign workers—I don't suggest that we should say that, but if we did say that, there is no doubt that having a class of workers that can be abused with impunity hurts U.S. Workers. It hurts anybody who would want a job in that industry.

And what we see, because there is no enforcement of rights in the H-2B system, is that wages in some of these industries have fallen, not just adjusted for inflation, but in real terms, and in some of these industries people are as a norm earning less than minimum wage, and that is because of that.

Ms. SANCHEZ. I also serve on the Immigration Subcommittee, and we had a similar panel where I asked everybody on the panel, do you think that our enforcement of labor laws in the United States is adequate, and all the witnesses agreed, no.

I asked them the next follow-up question: Do you believe that with more enforcement of our labor laws in this country, that we might be able to raise wages and working conditions in many of the industries where they say American workers don't want to work? And all of them agreed that that was the case.

And I find it very interesting, because I think at the heart of this tension is the imbalance of power between employer and worker. And so I would like to ask Mr. Marshall, if new workers in any proposed temporary worker program are reliant on their employers for their immigration status and their work authorization, how are those workers going to be expected to enjoy the same enforceable rights as other workers if they are dependent upon their employers to their——

Mr. MARSHALL. It would be very hard has been my experience. Our laws depend very heavily—our labor laws depend very heavily on complaints by the affected workers. If they are afraid to complain, then you can't enforce the law very well with that strategy.

That said, we had a program called the Employers of Undocumented Workers program, and what we did was vigorously enforce all the labor laws, not the immigration law, wherever we knew or had reason to believe that there were—had heavy employment of undocumented workers. We collected millions of dollars from violation of hour laws for example. We almost never found that anybody in those circumstances were—any of the employers involved in those cases were observing the law and were involved in various kinds of ways to game the system.

So what I believe is that two things: One, we need to be more imaginative about law enforcement, and by that I mean we need to induce as much self-regulation as we can and that can—as in the case of the ag workers bill, which would say that if you have

got—workers have their own organization, that you don't have to watch them as carefully as you would people who didn't.

I believe we ought to have labor manage the committees in workplaces on safety and health, for example, because we are never going to protect the safety and health of American workers through regulations and inspections. We are never going to have that many. But we can get the people at the workplace, and then you could use your regulatory resources to go after the worst offenders. You ought not to spread those resources evenly; you ought to go after—that strategy will then cause to you have few bad offenders, because a law, to be transparent, it ought to be fair, and it ought to be enforceable. And if you can do those things, then I think we can solve some of these problems, but if you don't do that, if they know you are never going to enforce a wage and hour law, people will abuse it.

Chairman MILLER. Gentlemen, the time is almost expired.

Ms. Shea-Porter.

Ms. SHEA-PORTER. Secretary Marshall, could you tell me, are things better or worse for farmers and also for the guest workers over the past 10 years or so; have we seen an improvement or a decline in protection for both groups?

Mr. MARSHALL. Let me say that I have not studied farm workers. Are you saying foreign or farm.

Ms. SHEA-PORTER. Farm workers for the H-2A and B.

Mr. MARSHALL. What I would say about that, and one of the reasons I recommend that we have a special entity that focuses on these matters is because we really don't know enough to answer that question. It is not an answer—Dr. Holt said, for example, that most farm workers don't make more than minimum wage, so that doesn't prove that they are not being suppressed. You have to look at the characteristics of those workers. Maybe they should be making $12 an hour if you look at their characteristics. It doesn't help to you compare them with production workers, because production workers' wages have been declining in the United States since the 1970s.

But to be able to really answer that question effectively, I think we need to have an organization that is credible, that focuses just on that issue. It is and will be a very important part of our workforce growth for at least the next 20 years. We ought to know more about it than we do. And my view is that we ought to be concerned about the conditions of the foreign workers as well as our own workers.

I think the way is to protect our workers and foreign workers, and the best way to do that is the adverse—to do the labor and market tests, see if you have really got a shortage. If you have a shortage, then it helps to us have those workers; if they are complementary to our workers, it helps us to have them here.

Ms. SHEA-PORTER. Ms. Bauer, would you like to take a shot at that? My own district in New Hampshire, people are very stirred up about it, even more so than last year. I wondered whether you thought from your experience whether it was better or worse?

Ms. BAUER. I do think that is an interesting question, and I agree with Secretary Marshall that it would be useful to have a lot more data. And that is one of the sort of interesting things we

found in writing our report, that the government didn't seem very interested in obtaining and keeping that data in a way that was useful. So when we tried to find out about H-2B workers, for example, and inspections, there wasn't any system for maintaining information about H-2B employers.

But I will say there has been a tremendous growth in the absolute number of guest workers, particularly through the H-2B program, over the last 10 years. And so in that sense, we have just seen a lot more workers, and so we have seen—in the work that I have done, we have simply received dramatically more complaints from workers. That may be relative to the number of workers who exist, but it also may be a reflection of increasingly bad conditions.

Ms. SHEA-PORTER. Okay. Because the good people in my district obviously want people to be treated fairly. That leads to the next question I wanted to ask you. You were talking about the coyotes who were taking documents and charging more. What is the number one reason people overstay their visa?

Ms. BAUER. I think there are several reasons for that, but we see a lot of workers who overstay in order to earn enough money to justify having come in the first place. That is what we see. We don't see people who largely come here because they have a dream of living in the United States.

It is true some percentage of people do that, and I just want to respond to a previous point that Dr. Holt made about the abscond rate. I don't think we have any data like for H-2B workers, but I think the abscond rate, the numbers that he suggested may not fully describe the situation. What we see is that workers often work for employers other than the guest worker employer during the term of their visa and still return on time. And so they wouldn't be counted in that abscond rate, and yet they are forced to go work unlawfully to earn enough money to pay back the debt that they have. So I think that the situation is somewhat more complex.

Ms. SHEA-PORTER. My time is running out, but I wanted to ask you, they overstayed to pay back because they were charged too much to come to this country. So the problem is sitting right there in Mexico, and the way that——

Ms. BAUER. That is absolutely right. Workers now, almost no one is paying less than $1,000 to get these jobs, and 5- to $10,000 or more is not unheard of. Lots of the workers we see are paying in the neighborhood of 5,000 each to get these low-wage jobs.

Ms. SHEA-PORTER. So even though our farmers may not be doing anything wrong, the problem—they come with the problem to start with.

Ms. BAUER. They absolutely come with the problem, and that changes their situation dramatically once they get to the U.S., because they are not at any point saying, this job stinks, I am walking away. They just can't; they will lose their home. They are in danger if they return without paying that debt, so they are stuck.

Ms. SHEA-PORTER. Thank you.

Chairman MILLER. They are paying that amount of money in what cycle, yearly?

Ms. BAUER. Each time they have to borrow that money, that is absolutely right. You can understand why a worker may choose not to go home.

Chairman MILLER. If they have a good employment record—now I am starting to draft immigration law, don't let me do this. If a worker comes and has a good employment record, what have you, why wouldn't we issue them a right to come back next season here where they don't have to pay? We have made it so hard to go home, you are more likely to stay, but why wouldn't we consider issuing them the right to—in the sense that if an employer wants them, they are in the pool without having to pay for this? We have tested them for a season; they performed adequately. This idea that you are borrowing somewhere between $1,000 and 10,000 every cycle to come here to work at $9 an hour, that is a loser.

Ms. BAUER. I think that is an excellent suggestion and——

Chairman MILLER. Before 9/11, a huge number of agriculture workers in California came for a crop and went home. The border was easier to cross. They didn't have legal status, but they wanted to go home, their family was home. They made some money, they went home. Now we made it so difficult that you stay here and continue your illegal status, or you come back and find a coyote to get back in, or have to do all these things, whereas if you talk to California growers, they would say, we would like this guy to come back every season. He knows the crop, the personnel——

Ms. BAUER. Yeah, outside of the FLOC context, every worker we talked to is paying a recruiter to get on the list and get hired.

Chairman MILLER. You are under assault because you are trying to break that link?

Mr. VELASQUEZ. Yes. As a matter of fact, the legitimate fees that were formerly charged to the H-3 workers ran around $346. That covers the consulate interview; that covers the visa, transportation from their home to North Carolina, which would reimburse them in the first week of employment, and some of the recruiting fees. We supported a legal case known as DeLuna and Garcia-Alvarez that a judge ruled to eliminate those charges, and that the employers had to pay those fees up front. Although the NCGA farmers were immediately compliant, that wasn't the case with all these other recruiters in Mexico.

Chairman MILLER. Yeah.

Mr. VELASQUEZ. And I think that those fees should be eliminated to avoid the invitation for abuse anytime money changes hands in Mexico.

Chairman MILLER. Ms. Clarke.

Ms. CLARKE. Thank you very much, Mr. Chairman.

I really believe that resolving this very complex issue in a humane and dignified way with one eye on the present and one eye to the future of our Nation, its growth, its development and preeminence in the worked is really critical.

The Federal H-2 guest workers programs, also known as the temporary workers program, have brought roughly 121,000 workers into the United States based on 2005 data.

While much of the focus has been on increasing the numbers of H-1B workers, other temporary workers have been ignored, specifically H-2A and H-2B workers who have been largely forgotten.

Often these workers are legally or practically unable to change their terms of employment or to switch employers and have hence, in effect, become captive workers.

Although there are differences in the H-2A and H-2B programs, there are two significant similarities I would like to point out. First, the workers are bound to the employers who petition the Department of Labor for their services. Even if the work situation is abusive, these workers are not permitted to leave their job. Secondly, though there are labor protections on the books, these protections exist only on paper.

In 2004, the Department of Labor conducted only 89 investigations into complaints filed against H-2A employers. There is no available data on how many investigations the Department of Labor conducted on H-2B employers. Even when the Department of Labor finds an employer in violation of various labor regulations, the Department has historically not prevented the employer from participating in the visa programs.

Before any decisions are made regarding the expanding number of temporary workers allowed in the country, I believe we first have to ensure that temporary workers are extended fair and enforceable labor protections.

I would like to extend a question to the panel. There are grave inequities between H-1B and H-2B programs. H-1B workers are generally protected by our labor laws. These workers can apply for permanent residence, and their families can accompany them to the United States. However, the H-2 workers cannot apply for permanent residence, nor can their families accompany them to the United States. H-2 workers generally do not have the basic protections of our labor laws. Essentially H-2 workers are second-class or indentured workers.

This two-tiered system is reminiscent of the way minorities were treated during segregation. Why is there such disparity between the treatment of H-1B and H-2 workers?

Ms. BAUER. If I may respond to that. I think that your point is absolutely correct, that H-2 workers are treated as second-class citizens. I am not an expert on the H-1 program, so I wouldn't want to comment on how that works in practice, because I know people have concerns about that program.

I would say that it is not appropriate for us to judge whether this program works by judging whether workers are willing to accept the system, because we could have a system that offered these positions to people and said, we are going to pay $1 an hour, and you have to live in cages, and there would be a certain number of workers in other countries who would take that.

The question really is are these conditions conditions that we consider fair and acceptable for workers to experience here in the United States? And I think if we look at the H-2 program, and we look closely at how it operates in practice, not on paper, I think we would have to conclude that these are not acceptable conditions.

Dr. HOLT. I would like to offer a different perspective, and, first of all, I would like to suggest that I think the premise of your question is not accurate. First of all, as earlier testimony and questions have pointed out, there is a huge difference between H-2A and H-2B on the H-2 side. With respect to H-1B—and I am not as—I don't

works as much in that area, but I have practiced in that area—frankly, there isn't a lot of—to characterize that as heavily enforced, I think, is simply wrong. In fact, I think if you lined up these three visa categories and said where is the most enforcement, it would be in H-2A. Where is the least enforcement? It with probably be in H-2B.

Enforcement is important, there is no question about that. The number of investigations is not a good measure of how much enforcement is concerned, because an investigation is only initiated if a workplace audit by a compliance office suggests that there is a problem that needs to be investigated. So that the reality is that in the H-2A arena, for example, one of the concerns that employers have, and one of the reasons why, frankly, the 1 percent of job opportunities in this country that are in the H-2A program, it is very much self-selected in terms of employers who are willing and, in fact, in many cases already in compliance with the programs and are willing to undergo the kinds of enforcement scrutiny that that program entails.

The other 99 percent is where we ought to be focusing our attention. When we talked, for example, earlier, in the earlier questions, about coyotes and so forth, we are talking about the persons who are bringing these people into the country illegally. It is not a question of do they hold visas and so forth; there aren't any visas. These are people who are paying to come into the country, are being smuggled into the country illegally, and often under conditions physically—we have hundreds of deaths, and I am sure you are all familiar with.

So I think the predicate of the question really needs to be reexamined.

Chairman MILLER. Thank you.

Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman, and thank you for this hearing, and thank you for your legislation to clean up and clamp down on recruiters. We have a lot of work to do. I am sorry I have missed the witnesses' testimonies, but I certainly enjoy listening to the responses to my colleagues.

I have a question for you, Mr. Velasquez. If the unions and the H-2A companies and employers in North Carolina have been able to get together to improve the treatment of workers, what can Congress do—using that experience as a model, what can we do to promote the same kind of collaboration? And would AGJOBS do something to help make that possible?

Mr. VELASQUEZ. Well, AGJOBS definitely gives us an opportunity to create what I called earlier the necessary tensions within the industry for self-regulation where workers and employers can cut out their own deals an set the standard instead of having Congress or the Department of Labor impose the standards on them.

I think the other thing, and I don't know if it is a bad word around this place, but the whole issue of the right to work laws in the South, how in the world can you organize these kinds of tensions when you have that kind of obstacle in front of you? We are constantly harassed by the Right to Work Foundation. They got their printout resignation forms with all kinds of legal citations circulated all over the place. These are the kinds of obstacles that we

have to put up with in trying to get people organized so that there can be the negotiated tensions with the employers. So, I mean, that is one thing we can look at.

The other thing is Congressman Miller's initiative on overseeing these recruiters, because the corruption in Mexico, let me tell you, it is not just a one-shot deal that these corrupt elements are involved in; they are involved in everything they can get their hands on. One day they may be a coyote smuggling people illegally. On the other hand, next day they may be working as runners between recruiters and workers, trying to hook people into the system for whatever fees they can bribe or extort or blackmail them out of.

I think that initiative is going to have to be very important to give us an ability to defend people. And if we don't have a leverage in order to utilize and fight back these kinds of elements, while we are stuck in the dark and fighting the way we do now, we have to pay a heavy price for it.

Ms. WOOLSEY. Well, thank you for that.

I have a general statement question that probably won't take long answers from any of you. We have all been following the immigration debate, and one of the requirements will be from any of the—either side of the debate would be that the Federal Government provide employers with the information they need in a system, a data system, that they can go to to find out a person's status, a worker's status, H-2 workers, any immigrant workers.

Well, I have to tell you my experience, the experience of my offices in California where we have a full-time person plus just working on immigration today, because that department is so bad. I cannot imagine turning our workers lives over to that system. They can't even now figure out if two people in one family should be here. So would somebody like to tell me what you think—how long you think it will take before something like that could actually work for the worker?

You want to start, Secretary Marshall?

Mr. MARSHALL. I don't know how long it will take, but I agree with your characterization of the present system——

Ms. WOOLSEY. Gentle, aren't I?

Mr. MARSHALL [continuing]. Is simply not adequate, and that is part of the reason I recommend that we come up with a different system that will give us one to provide the kind of data that we have some confidence in, and I think that can be done.

I actually—when I was working on immigration in the Carter administration, we proposed a system that I think would have gotten us much farther than we are now. An integral part of immigration reform, it was a simpler system, and that was the workers would not have to have any kind of card, but they would have to get—people who changed jobs and new workers, they would get a work authorization number, and they would get that from the employment service or somebody else. And the employer's sole obligation would be to check that number, like do you with a credit card.

Now, the credit card people told my staff that the problem we were thinking about was immigration control, was simple compared to the ones they deal with every day. Now, what we did was created the problem. There were two things. One, we found the Social Security data system was in such a mess that we didn't think

we could rely on that. And the other thing that we did was put the employer in charge of checking these credentials and at the same time create an invitation to fraud in the credentials. Well, the employer has neither the ability nor the will to check those numbers, so we needed to have a system that would generate the kind of data we needed. OMB told me at the time it cost a billion dollars to do that. My view is that in retrospect it would have been cheap if we had done that.

Chairman MILLER. Thank you.

Mrs. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you. I am afraid I might ask you the same question that you have been asked, so quickly break me off.

Just to go back, Secretary Marshall, I appreciated your comments. You spoke about recruiting, and perhaps others have asked about that. I was interested because as I have spoken to a number of employers in the San Diego area, for example, and we have talked about ways that you could incentivize people, or students particularly, to work in agriculture, certainly for summers, but even extended beyond that. You felt that the recruitment you had done was successful, and that doesn't seem to be the story that I hear. I am just interested what you were successful as doing, whether it was sustainable, whether people stayed on the job for long periods of time at least, during a harvest at least, and what we should learn from that, and what do you think is not being addressed in that area?

Mr. MARSHALL. My view is the primary recreating ought to be done by the employer. An employer ought to make a good-faith effort to find people. If an employer does not make a good-faith effort to find people, then I think one way to test the market is to have an outreach program. In fact, I think the outreach efforts, one of the most important inventions of the 1960s, we broke down a lot of discrimination in this country through outreach programs, going out finding people that employers told us they couldn't find. They said they didn't hire any women or minorities because they couldn't find them. Well, we found them. We had a program to do that. In fact, one of my programs was run by Alexis Herman.

Mrs. DAVIS OF CALIFORNIA. And did they stick with it?

Mr. MARSHALL. They stuck with it.

Now, I think it is important to make a distinction between what is a temporary job. I don't think you should have a temporary worker program for permanent jobs, that doesn't make any sense to me. If it is a permanent program and a permanent job, you ought to recruit people through green cards. That is better than a guest worker, in my view.

The common characteristic of H-1B and the H-2 programs is dependent on a particular employer. If the employer feels he gains some control over the educated worker under H-1B, then they won't sponsor them for green cards, they would keep them in the H-1B status, because this gives them more power over them.

But I think the idea of just assuming—I think it is because of a lot of myths. The mythology is these workers only take jobs that American workers won't take. There is no such job. It might be one

in a particular place, but there are no broad categories that if you made a good-faith effort to find people——

Mrs. DAVIS OF CALIFORNIA. I appreciate that, and I think we do need to look at it more. I think a lot of employers would challenge that today because they feel the folks aren't there, at least in what I say, a sustainable way beyond 2 weeks or long enough to really have been certainly working there for a period of time because the work is just too tough.

Mr. MARSHALL. It is, but American workers do tough work. And I think it would be an insult to American workers to say they won't do tough work.

You know, I have watched the work the American workers do and they do very tough work and are willing to do that, but if they have options, they won't take a job that is less than the option available to them, and I think that is the real problem.

Now, one of the difficulties of testing any of these things is that if the employer prefers the foreign worker, you are going to have a hard time testing the proposition, that there are no domestic workers prepared to take that job, and your statistics won't show that. The statistics will confirm that there are not many domestic workers in that job, and you shouldn't be surprised by that.

Mrs. DAVIS OF CALIFORNIA. May I ask—Dr. Holt?

Dr. HOLT. Yes. We are sort of engaging in an Alice in Wonderland discussion here. We know there are not enough U.S. Workers to fill these jobs, and we know that because we look at the statistics on the native-born population, and we are not producing them. It is not—you know, they can shift around. Secretary Marshall is quite right, workers have options, but if there are fewer workers than there are jobs—and in our current economy there are at least 12 million more jobs than there are native-born workers to fill them, and it may well be a good deal higher than that.

The bottom line is the jobs are not going to get filled by native workers, and there are is only one other place they can be filled. That is through immigration, or we dispense with the jobs. So the notion that we recruit our way through this need for foreign workers is simply—like I say, it is an Alice in Wonderland proposition, we can't do that because the bodies are not there.

Mr. MARSHALL. It is also false dichotomy. The only option is not guest work, the immigrants are not guest work. The other option would be to bring in green cards.

Dr. HOLT. Well, I would agree with that. I should have said foreign workers if I said guest work. The option is guest workers or foreign-born workers, and we are talking here about the mechanisms, I think, for how that happens. I would agree with that, Secretary.

Mrs. DAVIS OF CALIFORNIA [presiding]. Do you have a question?

Mr. PLATTS. Thank you, Madame Chair.

I appreciate the Chairman of the committee holding the hearing. I apologize. Being on seven subcommittees and having three of them at one time has been a little challenging, so I apologize.

Dr. Holt, I want to ask you specifically, I believe you worked with some businesses in my district in the process of certification of foreign workers going through the process, if I understand correctly, in trying to work through the Department of Labor——

Dr. HOLT. I am sorry, Congressman, what is your district.

Mr. PLATTS. Central Pennsylvania, York, Gettysburg. I am sorry, I should have helped you out there.

What I want to ask specifically is the—one of the things that has come back to us this year—and in your experience is this an accurate assessment—that it seems that year to year the expectations of what is required for the expectations for employment of foreign workers kind of ebbs and flows, there is no consistency, so that an employer does the exact same thing this year as they did last year, and nothing else has changed, but they are told, no, this year you are denied because you didn't do this or have this paperwork.

Is that an experience you have found in this process?

Dr. HOLT. Well, that has very much a problem. The H-2A regulations have not changed since they were first issued as interim final regulations in June of 1987. But the program and the requirements for the program has changed, what is required and considered adequate in an application, what is considered compliant with regard to enforcement. They have changed radically; sometimes they change within the same season. We had the experience this year of all of a sudden in March an application that was filed in February and was acceptable and certified was inadequately documented in March so that it is very much a moving target.

Mr. PLATTS. When that happened, is there any feedback given of why the change? Are you able to get any substantive explanations from anyone within the Department.

Dr. HOLT. Well, one of the clients that I work closely with is the National Council of Agricultural Employers that represents users around the country, and we have tried over and over again to raise these issues with the Department of Labor. And I want to say, I am sorry to have to say this, but the most substantive comment that we have had from—and this was from the Chief of the Division of Foreign Labor Certification in the Department of Labor in a meeting we had on just one of these issues this spring, because this year has been a very difficult year in that regard, if growers don't like the way that we administer this program, then they ought to not use it.

That doesn't get you very far.

Mr. PLATTS. Not real helpful.

Ms. BAUER. If I could follow up, I think we would be remiss if we left the committee with the impression that the Department of Labor was denying H-2A cases left and right. It may be there is paperwork involved and they request follow-up, but the vast, vast majority of these applications are getting approved.

Mr. PLATTS. They are getting approved, but in a very lengthy—and much lengthier than what we would like or is supposed to occur. The process or delays in processing has been significant in recent years?

Ms. BAUER. We have all, I think, agreed that we accept the proposals to streamline the H-2A application through the ag jobs bill, and we all sort of bought into that, but honestly, an H-2B application, for example, involves a few pieces of paper that have to be filled out and an ad that has to go into the local newspaper for 3 days. It is simply not an onerous process. And one can ask why that is, but we should not leave the committee with the impression

that this is so difficult that no one is able to successfully maneuver it, because the truth is that people are able to successfully maneuver it, and the Department of Labor rarely turns down these applications, even when the employer has a woeful history of labor violations.

Dr. HOLT. Congressman, I would like to point out that there is again a vast difference between the H-2B program and the H-2A program. An H-2B application is a few pages. An H-2A application is typically a half-inch of paper. The provisions for governing the H-2B program in the Code of Federal Regulations cover less than a page. The provisions for H-2A applications in the Code of Federal Regulations cover about 30 pages. We are talking apples and oranges here.

The requirements and the constantly changing interpretation of what these requirements really, in fact, require, that is the problem in the H-2A program, and what we have tried to do in ag jobs is put a wall around this and fix it and say, okay, here is what the requirements are. They aren't whatever you decide they should be when you get out of bed in the morning, they are going to be this, and so that everybody knows what the rules of the games are and they stay that way.

Mrs. DAVIS OF CALIFORNIA. Ms. Bauer, do you want to comment quickly on this? And then we will quickly turn to our last questioner.

Ms. BAUER. Yes. I just wanted to say that I think by focusing so much on the inadequacies of the protections for H-2B workers, I don't want to leave anyone with the impression that the H-2A program is paradise on Earth for workers. Many of the cases we refer to in our report are about about H-2A workers who are abused on the job and who also don't receive in practice the protections that are written into the law.

Mr. PLATTS. Thank you.

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

My sense of that is that there is a big discrepancy, too, in terms of what it actually costs people to obtain those. Was that in your testimony or——

Ms. BAUER. I think the practice—the distinction we often see is based largely on the countries that workers are coming from. That Mexican workers tend to pay 1- to $5,000, and workers—as you get further away from Guatemala, you don't see workers paying less than $2,500 and as much as $7,500. And Asian workers are paying at least 10,000 to get these jobs. I think that has where we see the divisions.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Ms. Shea-Porter? Final question.

Ms. SHEA-PORTER. I want to qualify something. I had asked if the coyotes were involved in the application process. I believe, Dr. Holt, that you said they were not, they only worked with the illegals, but I thought I heard Mr. Velasquez say they are involved in all aspects, even the ones who are actually getting visas; is that so?

Mr. VELASQUEZ. That has what I said, and I can probably provide names of some of those people.

Ms. SHEA-PORTER. Okay. I wanted to make sure.

Dr. HOLT. Well, we may be talking about terminology. The term "coyote" is usually used to refer to someone who specifically smuggles a person across the border illegally.

One of my admonitions to my clients who use the H-2A program is that you want to be careful not to be substituting a legal coyote, i.e., a facilitator through the H-2A program, for the illegal coyote that smuggled this person across legally.

My perspective is while I wouldn't sit here and say that there are not abuses, occasionally abuses, in the recruitment of H-2A workers, that through the legal program that they are, frankly, not frequent, they are pretty rare, and they pale to the point of disappearance compared with what occurs with respect to illegal—the admission—the entry of the illegal workers.

Ms. SHEA-PORTER. Mr. Velasquez, you say it is a significant problem for those actually following the process to get the visas, but they are still being exploited?

Mr. VELASQUEZ. I believe it is. In our experience the people we have run into in those villages, those remote areas, as to what happens, I just did an educational tour in four towns in northern Mexico, Ciudad Taumalipas, Ciudad del Maiz, Tamazunchale and Tompamolon, and everywhere I went, people said to me, I was ripped off by this runner promising me I was going to be taken by a recruiter.

It is not the recruiters, it is those criminal elements who work independently or on nobody's payroll, and those are the same types of people that the next day they may be an actual coyote smuggling people across the border.

Mrs. DAVIS OF CALIFORNIA. Thank you very much. Thank you all for the hearing. We appreciate your being here and staying on. And Members, as previously ordered, you will have 14 days to submit additional materials for the hearing record.

[The information follows:]

Prepared Statement of Hon. Jason Altmire, a Representative in Congress From the State of Pennsylvania

Thank you, Mr. Chairman, for holding this hearing about current and proposed guest worker programs, and their impact on American workers.

Currently, there are 120,000 guest workers in this country on H-2A and H-2B visas. The H-2A program is designed to allow the temporary admission of foreign workers into the United States for seasonal agricultural work. Similar to the H-2A program, the H-2B program allows temporary admission for non-agricultural work, such as landscapers, maids, and construction workers.

As the Committee is aware, the Senate is actively debating the Kennedy-Kyl bill, which introduces a new Y visa category for temporary guest workers and reforms the H-2A program. The House immigration bill, as embodied in the STRIVE Act, creates an H-2C visa with a cap of 400,000.

I have some serious concerns about both the Senate and House immigration proposals. Both substantially increase the number of guest worker visas available. Is there a clear demand for this increase in the number of visas? Are hard-working Americans available to fill these jobs? How will these proposals impact employment levels and the average citizen's wages?

As we move forward in the immigration reform debate, I hope we will take the time to thoroughly examine these issues and how changes to the guest worker programs will impact the average, hard-working American citizen.

I yield back the balance of my time.

[The prepared statement of the AFL–CIO follows:]

Prepared Statement of Jonathan P. Hiatt, General Counsel, American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)

Chairman Miller, Members of the Committee, thank you for allowing the AFL-CIO to contribute to the important discussion before the Education and Labor Committee regarding the recruitment and employment of temporary foreign labor.

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

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

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

Our failed immigration system has created a two-tiered society. Today, there are approximately 12 million undocumented immigrants in the United States, with a net annual increase in the 1990s of approximately 500,000 persons.[1] It is estimated that 80 percent of those persons are working.[2] Undocumented workers have no social safety net (other than emergency medical services), and do not have the protections of U.S. labor and employment laws. Protections against discrimination, for example, are not available at all to undocumented workers in parts of the United States.[3] The result of our failed immigration system is that there are two classes of workers, only one of which can exercise workplace rights. As long as this two-tiered system exists, all workers will suffer because employers will have available a ready pool of labor they can exploit to drive down wages, benefits, health and safety protections and other workplace standards.

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

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

The Law Must Provide a Clear Path to Legalization

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

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

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

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

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

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

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

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

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

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

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

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

In one outrageous but not uncommon case, forestry workers in Virginia brought an action alleging violations of minimum wage and overtime laws, as well as state claims related to their housing conditions: they were forced to live in a warehouse surrounded by barbed wire, were locked into the warehouse at night, and had a substantial portion of their pay check deducted to cover their substandard housing. During the plaintiffs' deposition, which was conducted at the employer's office, the employer's counsel asked the plaintiffs whether they had a valid work permit. When counsel for the plaintiffs objected, the employer asked for a break. A short time later, the local police arrived, and asked the workers whether they were illegal aliens. When the workers refused to answer—per the instructions of counsel—the police together with the employer called the Department of Homeland Security (DHS), whose agents arrived at the facility about two hours later. Thanks to the intervention of lawyers from around the country, the plaintiffs were able to convince DHS that this was a labor dispute in which it should not be involved, and the agents left.[15] However, the chilling effect of the employers' actions was felt by the remaining plaintiffs.

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

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

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

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

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

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

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

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

In order to mitigate the negative labor market impact of guest worker programs, longstanding United States guest worker policy requires that temporary workers should be used only to satisfy short-term or seasonal labor needs. The H2-A agricultural guest worker program, the best known of these programs, is designed to satisfy seasonal needs, requiring large numbers of workers during the growing season, which may be as short as 6 weeks. Similarly, the H2-B program allows non-agricul-

tural employers in industries such as landscaping, hospitality and crabbing, to hire non-U.S. workers on a temporary basis to fill their seasonal needs.

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

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

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

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

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

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

The United States Government Accountability Office (GAO) concluded last year that the DOL was failing even in that minimal task.[31] For example, from January 2002 through September 2005, DOL electronically reviewed more than 960,000 applications and certified almost all of them.[32] Moreover, GAO found over 3,000 applications that were certified even though the prevailing wage rate for the application

was lower than what is required by statute, in some cases, more than $20,000 lower than what is required by law.[33]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further, a robust remedial scheme is key to discouraging illegal conduct by employers. Penalties for violations of the terms and conditions of temporary worker programs should be strengthened and must include remedies that are real deter-

rents, including employer debarment. Enhanced monetary penalties such as punitive damages and compensatory damages should also be provided. All of these remedies must be available to workers and their representatives through private rights of action, as well as through strengthened and adequately funded government enforcement programs.

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

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

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

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

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

The proponents of guest worker programs offer no valid explanation as to why, as a matter of public policy, the permanent system we advocate is not the preferred model. The most common argument they make is that there are new circular migration patterns and workers who come here may not want to stay forever. There is nothing in our proposal, or in current law, that requires that workers who come to United States must stay here. The difference between the AFL-CIO framework and the guest worker framework is that under our model, the workers who don't want to stay here forever have full worker rights while they work here. Subjecting workers to diminished labor rights and protections simply because they will suffer those conditions only temporarily is not sound public policy. Nor is it just.

Immigration Laws Should be Enforced in Tandem with Labor Laws

The third guiding principle in the AFL-CIO's approach to reform is that enforcement of labor laws must go hand-in-hand with enforcement of immigration laws. Enforcement of immigration laws alone has failed to stem the tide of illegal immigration. The current mechanism for enforcement of those laws in the workplace—

the "employer sanctions" provisions included in the Immigration Reform and Control Act of 1986 (IRCA)[44]—completely ignores enforcement of labor and employment protections. Instead, the IRCA adopted the very same focus that the current legislative proposals have taken on: punishment (fines) for employers who knowingly hire and continue to employ undocumented workers. Such sanctions have failed to curtail illegal immigration. In fact, they may well have accomplished the opposite, given that sanctions have become one of the most powerful tools that employers have to defeat workers' attempts to organize or to otherwise enforce their labor rights.

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

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

Workplace enforcement of immigration laws without regard to workers' rights—as Immigration and Customs Enforcement (ICE) currently operates—lowers standards for all workers because workers are deterred from reporting violations. ICE's blatant disregard of workplace standards was exposed clearly in 2005 when a group of construction workers in North Carolina received a flyer at work, instructing them to attend a mandatory health and safety meeting. The flyer was printed on letterhead of the Occupational Safety and Health Administration (OSHA). However, when the workers arrived at the meeting, no OSHA officials were present. Rather, ICE officials were waiting, arrested more than 20 workers and placed them into deportation proceedings.[47]

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

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

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

by 36%, while the number of workers covered by statutes enforced by the Wage and Hour Division grew by 55%.[49] Today, there is approximately one federal Wage and Hour investigator for every 110,000 workers covered by FLSA.[50] By 2007, the DOL's budget dedicated to enforcing wage and hour laws will be 6.1 percent less than before President Bush took office.[51]

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

Conclusion

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

Thank you again for the opportunity to submit testimony.

ENDNOTES

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

[2] Id.

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

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

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

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

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

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

[9] See, Crespo v. Evergo Corp., 366 N.J. Super. 391 (App. Div. 2004), cert. denied, Crespo v. Evergo Corp., 180 N.J. 151 (2004) (holding that an undocumented worker suing for discriminatory termination could not recover either economic or non-economic damages absent egregious circumstances such as extreme sexual harassment); The Reinforced Earth Co. v. Workers' Compensation Appeal Board, 810 A.2d 99 (PA 2002) (holding that injured worker is entitled to medical benefits, but illegal immigration status might justify terminating benefits for temporary total disability); Sanchez v. Eagle Alloy, 254 Mich. App. 651 (2003)(Undocumented workers are covered by the state's workers compensation system, but time loss benefits are suspended from time that unlawful status is discovered); Tarango v. State Industrial Insurance System, 25 P.3d. 175 (NV 2001) (workers' compensation laws apply to all workers regardless of immigration status, but undocumented worker not entitled to rehabilitation benefits); Cherokee Industries, Inc. v. Alvarez, 84 P.3d 798 (OK 2003)(same).

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

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

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

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

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

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

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

[17] Id at p 3.

[18] Passel, supra, fn. 1 .

[19] *http://www.bls.gov.*

[20] Gerald Mayer, CRS Report RL33772, The Comprehensive Immigration Reform Act of 2006 (S. 2611): Potential Labor Market Effects of the Guestworker Program, December 18, 2006.

[21] The STIVE ACT provides for 400,000 visas in the first year, increasing based on employer demands to 600,000.

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

[23] Briggs at 621.

[24] Id.

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

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

[27] See Ernesto Galarza, Merchants of Labor: The Mexican Bracero Story (Rosicrucian Press 1964).

[28] See "H1-B Foreign Workers, Better Controls Needed to Help Employers and Protect Workers," HEHS-00-157 (September 2000); "High Skill Training Grants from H1B Visa Fees Meet Specific Workforce Needs, but at Varying Degrees," GAO-02-881 (September 2002); "The State of Asian Pacific America," Paul Ong (ed.), LEAP Asian Pacific American Public Policy Institute and UCLA Asian American Studies Center, 1994, pp. 179-180.

[29] *http://www.dol.gov/—sec/stratplan/strat—plan—2006-2011.htm;* See also, Ron Hira, Outsourcing America's Technology and Knowledge Jobs (EPI Briefing Paper: 2007), p. 2.

[30] 8 U.S.C. § 1182(n)(1)(G)(ii).

[31] H1-B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security GAO-06-720 Washington, DC: June 22, 2006.

[32] Id.

[33] Id. at 14.

[34] Ron Hira, Outsourcing America's Technology and Knowledge Jobs, supra n. 31.

[35] Id.

[36] See, Too Many Visas for Techies? U.S. workers gripe that lax rules may cost them their jobs, Business Week, August 25, 2003.

[37] See 45 C.F.R. § 1626.1 et seq.

[38] Mary Bauer, Close to Slavery, Guestworker Programs in the United States, Southern Poverty Law Center, 2007, available at www.splcenter.org.

[39] Id.

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

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

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

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

[44] 8 U.S.C. § 1105 et seq. (1986).

[45] Michael J. Wishnie, Current Issues in Immigration Law, 28 N.Y.U. Rev. L. & Soc. Change 389 (2004).

[46] Id.

[47] Steven Greenhouse, U.S. Officials Defend Ploys to Catch Immigrants, NY Times, Feb. 11, 2006, A8, col.

[48] See In re Herrera-Priego (Lamb, I.J.) (NY July 10, 2003) (where employer called INS raid on itself, during union organizing campaign).

[49] Annette Bernhardt & Siobhan McGrath, Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004, Economic Policy Brief No. 3 (New York: Brennan Center for Justice at NYU School of Law, September 2003).

[50] Id., at 2. There are nearly 88 million people covered by FLSA.

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

[Question for the record posed to Mr. Marshall follows:]

COMMITTEE ON EDUCATION AND LABOR,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, June 11, 2007.

Prof. RAY MARSHALL,
University of Texas at Austin, LBJ School Dean, Austin, Texas.

DEAR SECRETARY MARSHALL: Thank you again for taking the time to participate in the House Education and Labor's hearing titled "Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor." Your participation and testimony provided the Committee with important information and insight on this issue. As discussed during the hearing, the Committee would appreciate your assistance in providing written responses to the enclosed question to ensure that the Committee's hearing record is complete.

During your testimony you discuss how important immigration is to the vitality of our economy. In my district, on Eastern Long Island, many of the businesses, for years have relied on H2B visas to fulfill their seasonal work demands. However, this year businesses is my district were faced with numerous obstacles in obtaining the visas. Do you have any thoughts of how the visa application processes can be streamlined?

We would appreciate your responses no later than June 20, 2007. If you have any questions, please do not hesitate to contact Jody Calemine, policy advisor/counsel, or Tylease Fitzgerald-Alli, hearing clerk, at (202) 225-3725.

Sincerely,

GEORGE MILLER,
Chairman.

[Response to question posed to Mr. Marshall follows:]

LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS,
THE UNIVERSITY OF TEXAS AT AUSTIN,
Austin, TX, November 16, 2007.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN MILLER: This is in response to the question posed in Congressman Bishop's letter of June 11 concerning expedited procedures for H2B visas. I am sorry for this late response, but the letter just reached me this week.

I believe the H2B visa process should be streamlined, but without further information about how the process operates now, I do not have specific recommendations. I would, however, ask employees, labor organizations, and DOL staff for recommendations before making specific changes. I would also examine how other countries handle this issue. Promising processes include an examination of alternative domestic sources of labor, having DOL staff undertake continuing labor market tests for the availability of labor, domestic workers, pre-clearing employers or employer organizations that have good records for procedures that protect American and foreign workers' wages and working conditions, expediting the applications of employers who have agreements with legitimate workers' organizations representing foreign and domestic workers, and modernizing the process with the latest information technology. The guiding principle for all visa processes should be to meet the legitimate needs of all interests as efficiently as possible. What we should not do is allow employers to bypass labor protection processes and avoid genuine efforts to reduce their dependence on foreign workers.

I hope these thoughts are useful to you.

Sincerely,

RAY MARSHALL,
Audre & Bernard Rapoport Centennial Chair in Economics and Public Affairs.

[Additional material submitted by Mr. Marshall follows:]

Getting Immigration Reform Right

By RAY MARSHALL*

Congress' difficulty in passing immigration reform legislation comes as no surprise to those who have followed this issue over the years, especially the debates that led to the seriously flawed Immigration Reform and Control Act (IRCA) of 1986. Many of the factors that caused IRCA to fail are as prevalent now as they were in 1986. Diverse economic interests, personal biases, and political ideologies make it hard to build consensus for effective immigration policies. These complications are exacerbated by the absence of reliable information about the magnitude of illegal immigration and its impact on the American economy and society. Unlike many other policy issues, there are no clear political alignments on immigration, making it difficult to build the coalitions needed to align the complex components of a successful immigration policy.

By the time the reform bill was amended enough to pass the Congress, it became very clear to immigration experts that, instead of restricting their entry, IRCA would accelerate the flow of illegals into the United States, which is exactly what happened. Common estimates of the number of undocumented immigrants in 1986 were between 3 and 6 million; today, estimates range from 10 to 20 million. The illegal networks that give employers a dependable supply of immigrant labor are much more institutionalized and difficult to control. If the United States does not get policy right this time, 20 years from now the number of illegal immigrants probably will have at least doubled and be even more difficult—if not impossible—to control.

That said, however, immigration is not the problem: the United States is and will remain a nation of immigrants, who have contributed greatly to the vitality, diversity, and creativity of American life. Immigrants are particularly important to the U.S. economy, accounting for over half of the workforce growth during the 1990s and 86% of the increase in employment between 2000 and 2005. Because there will be no net increase in the number of prime-working-age natives (aged 25 to 54) for the next 20 years, the strength of the American economy could depend heavily on how the nation relates immigration to economic and social policy.

Illegal immigration, on the other hand, subjects migrants to grave dangers and exploitation, suppresses domestic workers' wages and working conditions, makes it difficult to adjust immigration to labor market needs, perpetuates marginal low-wage industries addicted to a steady flow of illegals, is unfair to people waiting to enter the United States legally, and undermines the rule of law. The issue is not immigrants, but their legal status, characteristics, and integration into American life.

Because of its importance to America's diverse and rapidly growing Hispanic population, immigration also has significant political implications. Hispanics' political power is enhanced by their geographic concentration in areas where Democrats and Republicans must contend for national dominance, especially in the Southwest and Rocky Mountain West. This reality was an important component of the political strategy fashioned by George W. Bush and Karl Rove. During his first term, President Bush courted Latinos with a strategy that included speaking Spanish, Hispanic appointments to prominent positions in his administration, and an immigration policy that included a guest worker program championed by Mexican president Vicente Fox. The Bush-Rove strategy was derailed by nativist Congressional Republicans, who adamantly opposed comprehensive immigration reform in favor of exclusive reliance on border security. As Bush and Rove feared, nativist elements in their party provided strong Hispanic support for Democrats in the 2006 elections, as they did in California under Republican governor Pete Wilson during the 1990s. Indeed, resentment toward the nativist pronouncements of anti-immigrant groups is one of the few unifying issues for America's diverse Latino population.

Because of deep international economic and demographic integration, immigration has important foreign policy implications, especially for U.S. relations with Mexico, the source of most illegal migrants to the United States. In fact, for many years, Mexican policy has been based on the expectation of heavy migration to the United States. In the 1970s, for example, Mexican foreign minister Jorge Castaneda (the father of former President Vicente Fox's first foreign minister) told us that, whatever we did, the United States would absorb a large part of Mexico's population growth. Those of us who were attempting to formulate policy for the United States

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**Ray Marshall was Secretary of Labor in the Carter administration. Holds the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the LBJ School of Public Affairs at the University of Texas.*

did not want to believe that we would have so little control of immigration, but he was right.

Migration clearly is very important to Mexico: it provides a safety valve to compensate for that country's failure to provide adequate domestic jobs for most of its workforce growth, and remittances from the 20 to 25 million Mexicans living in the United States have become second only to oil exports as a source of Mexican foreign exchange. Remittances also are the lifeblood of many rural communities and supplement that country's weak social safety nets. Given Mexico's slow growth and serious structural problems (poverty and inequality; corruption; low tax collections; poor education system; ineffective political checks and balances; inadequate infrastructure development; restrictive business regulations; rigid, antiquated, and inefficient labor market policies and institutions; and the limited capacities of governments at every level), it is unlikely that its citizens will have adequate job opportunities at home anytime soon. What the United States does about immigration therefore has important implications for Mexican economic and political developments, with significant positive or negative spillover effects for us.

Since past mistakes can provide lessons for more effective future policies, this paper will first explore the reasons for IRCA's failure, including some common myths about illegal immigration. This paper concludes with an analysis of a comprehensive mix of policies that could serve the best interests of the United States and other countries, especially Mexico.

IRCA's defects

IRCA's main technical defect was that it did not include a secure worker identity or work authorization system, without which all other control measures were less effective and often counterproductive. This reality was well known to participants in the immigration policy debates—both those who wanted tighter controls, who lost the legislative contest, and those who favored relatively open migration, who won. In connection with their work for the 1979-81 Select Commission on Immigration and Refugee Policies (SCIRP), Labor Department experts developed a work authorization process for new hires and job changers that would have made a federal agency, not employers, responsible for verification; the employer's only obligation would have been to verify an identification number the applicant obtained from the federal work authorization agency. Because of opposition from an alliance of open immigration advocates and civil libertarians worried about a national identity card, IRCA opted for an array of easily counterfeited identifiers, permitting a fair amount of fraud, especially in the Act's employment and adjustment-of-status programs, thus accelerating the flow of unauthorized immigrants. IRCA also gave employers responsibility for verifying work authorization documents, a task they had neither the ability nor the will to perform.

To understand why employers lacked the will to screen unauthorized applicants, it is necessary to examine the magnetic relationships between them and undocumented immigrants. For hard-to-fill jobs, employers often prefer unauthorized immigrants to legal residents. This preference is due not only to immigrants' willingness to accept lower wages, but also because they are a more dependable supply of labor for these jobs and, because of their limited options, are less likely either to leave or complain to government officials about abuses. Very effective informal immigrant information and support networks give employers a dependable supply of labor. Since 1986, these networks have been strengthened by the spread of relatively inexpensive information technology, especially cell phones and radios.

On the workers' side of the employment relationship, jobs which are unattractive to natives not only are much better than those available in their home countries, but also provide a measure of security for immigrants and their families, despite their illegal status.

These networks are strengthened and perpetuated by community support groups, home country officials, and employers' investment decisions. Once institutionalized, these bonds are very hard to break and tend to exclude natives from the process.

Myths strengthen the networks

These tight employer-immigrant relationships are reinforced by public attitudes and myths, the most prominent of which is that immigrants only fill jobs Americans won't take, an attitude encouraged by employers, immigrants, and their foreign and domestic supporters to justify illegal immigration. The truth is that there are no such occupations: according to the Center for Immigration Studies (CIS), of 473 occupational titles, only four (stucco masons, tailors, produce sorters, and beauty salon workers) have immigrant (legal and illegal) majorities, and natives hold over 40% of the jobs in these occupations. Like most enduring myths, this one has an element of truth and there may be few available legal residents in the areas where the jobs

are located. But, as noted, once the strong employer-immigrant bonds are established, it is hard for even willing natives to compete for these jobs, thus appearing to confirm the myth.

Those who perpetuate this myth ignore other options that can, and have, been used as an alternative to the employment of illegals, including actively recruiting legal residents; improving management (which often is very bad in low-wage occupations, where the costs of inefficiency are transferred to workers through such practices as piece rates); introducing technology to improve productivity, as was done in California agriculture after the end of the bracero program in 1964; or, obviously, improving wages, benefits, and working conditions.

Another popular misconception is that illegal immigration is really not so bad because its negative impacts on legal residents are small and it improves the competitiveness of the American economy. Again, there is enough truth to this argument to give it superficial plausibility. There are, however, several problems with equating the economic effects of illegal and legal immigration, as some analysts do. For example, studies of the impact of refugees—who are legal residents, usually with more human and financial capital—have been cited as evidence of the beneficial effects of illegal immigration. Similarly, legal immigrants, who tend to have both lower and higher levels of schooling than natives, cannot be equated to illegal immigrants with little or no formal education. It is significant that, controlling for other things, legalization improves immigrants' wages.

Economists disagree about the impact of illegal immigration on American workers. Some find little or no negative impact,1 while others report large and significant effects. For example, one widely cited study found that for the nation as a whole, between 1980 and 2000 immigrants (legal and illegal) reduced the wages of high school graduates by over 8%, college graduates by almost 4%, and all workers by over 3%.[2] Similarly, George Borjas, Richard Freeman, and Lawrence Katz found that in the decade before 1991, immigration contributed 15% to the decline in the relative earnings of high school dropouts.[3]

A resolution of this controversy is beyond the scope of this paper, but my experience, as well as my studies of the impact of immigration on labor markets, lead me to several conclusions:[4]

1. Much of the controversy among economists is over data and methods. Although there have been improvements, there are no accurate data on illegal immigration. There are, in particular, no longitudinal data that follow the same workers through time. Analysts therefore make mistakes when they attempt to reach longitudinal inferences from cross-sectional data. For example, data comparing the impact of immigrants on native employment and wages in metropolitan areas at different dates must account for inter-area migration. This is so because competing low-wage legal residents tend to avoid areas with heavy influxes of illegal immigration, while noncompeting higher wage legal residents tend to move into those areas. Any inter-city study that did not account for these migrations could conclude, erroneously, that illegal immigrants had no negative—or even positive—effects on native workers.

2. Labor market conditions clearly make a difference. The negative immigration effects for natives will be greater if there is widespread joblessness among native workers who, for reasons noted earlier, could not compete with the illegals even if they wanted to. The magnetic relations between employers and illegal immigrants are not likely to be detected by quantitative analyses.

3. Whatever the limitations of empirical research, economic theory predicts that natives whose work is complementary to that of immigrants (e.g., managers or skilled workers) will benefit from immigration, but that the wages of those workers who compete directly with immigrants will be reduced. Because of their bimodal education distribution, immigrants compete most directly with natives in high- and low-wage occupations. Immigration policy should therefore minimize wage competition and maximize complementarity.

4. Although the magnitude can be debated, there is little question that illegal immigration reduces the wages and dilutes the quality of jobs for low-wage domestic workers. It is true, of course, that immigration is not the only factor depressing these wages, but it is a significant one, especially for high school dropouts, whose real wages have fallen by over 18% since 1979 because of immigration, globalization, technological changes, the decline of private-sector collective bargaining, and weaker worker protections.[5] Public policy makers therefore should develop immigration, social, and high-value-added economic policies to enable these workers to maintain and improve their conditions.

5. Because many legal immigrants have higher levels of education than natives, they could displace and reduce the earnings of highly educated workers.[6] The impact on knowledge workers is intensified by low-cost information and communication technology, which greatly facilitates the outsourcing of this work. It is therefore

not surprising that the real wage growth of college-educated workers has stagnated since 2000.

Since workers tend to be segmented into non-competing groups, it is useful to examine the impact of immigrants on young and minority workers who compete most directly with them. In a careful assessment of these effects, three Northeastern University labor market researchers found that immigrants who arrived in the United States between 2000 and 2005 (over half [56%] of whom were illegal) accounted for an unprecedented 86% of the net increase in the number of employed persons, displaced native-born workers, and weakened the structure of labor markets.[7] The impact was particularly large for young native-born males (16 to 34), whose employment fell by 1.7 million between 2000 and 2005, while the number of young immigrant males increased by 1.9 million. The negative impact was greater for young blacks and Hispanics. These researchers also found that the employment of immigrants was accompanied by a shift in the structure of private labor markets toward more informal employment not covered by unemployment insurance, health benefits, and worker protections.[8]

The argument that immigration strengthens the competitiveness of the American economy depends on how competitiveness is defined. What many economists mean is that lower wages improve competitiveness because they reduce the price of American products. But, while this is an easy option for employers, wage competition is a losing strategy for workers, communities, and nations: there are always countries with lower wages. For example, the United States is losing jobs to Mexico, which, in turn, is losing jobs to China and other countries, where wages are much lower than Mexico's. Moreover, in a high-wage country, wage competition implies lower and more unequal wages, which is exactly what has been happening in the United States since the 1970s. There can be little doubt that growing inequality will weaken democratic institutions, economic performance, and national unity.

It is true, of course, that in a competitive global economy, earnings for similar workers tend to converge. The policy issue, however, is whether convergence takes the form of more rapidly rising wages in developing countries, which would be better for people everywhere, or lower wages in high-wage countries, which will increase inequality and reduce wages for many workers, as well as aggravate national and international tensions.

A better alternative, suggested by the experiences of some East Asian countries, would be for all nations to adopt value-added strategies to compete by improving productivity, quality, flexibility, and innovation. Given this definition, immigration that reduces American wages and perpetuates marginal, low-wage industries does not improve the kind of competitiveness we should encourage.

Immigration policy, therefore, should be designed to give greater attention to increasing the flow of workers whose skills and education are in short supply in the United States. This will not be done by illegal immigrants, who are predominantly workers with little formal education and limited English language skills. For example, according to The Instituto Tecnolθgico de Mexico, between 1992 and 2002 over three-fourths of illegal Mexican immigrants had less than eight years of formal education; 11% had no formal education at all, and one-third had less than four years.[9]

Because of education quality differences, for labor market performance data from the National Adult Literacy Survey (NALS) and the International Adult Literacy Survey (IALS) are more important than years of schooling. The latest of these surveys found that a majority of America's 16-to-65-year-old foreign-born residents performed at the lowest level on each of these surveys, while fewer than 11% performed at levels 4 or 5, the highest two literacy levels. Moreover, "The average literacy proficiency of the nation's immigrant population is considerably below that of their native born peers in the U.S. and their foreign born counterparts in most other high-income countries that participated in the IALS assessment."[10] These are significant findings because immigration will account for most of our future labor force growth and literacy is very important for personal and national success. Indeed, Andrew Sum and his colleagues found that "the literacy proficiency of the nation's immigrant population is strongly associated with their labor market behaviors and outcomes."[11] It will require considerable upgrading of immigrants' literacy skills to enable them to earn family-supporting incomes in the American economy and to enable the American economy to compete by raising value added instead of cutting wages and costs.

During the 1970s it was often argued that illegal immigrants had positive fiscal impacts because they paid more taxes than the cost of public services they used. This might have been true when most immigrants were mainly young adults without families, but that is no longer the case as immigrants settle into the United States and form or unite families. Since most illegal immigrants have low incomes, it is not surprising that the taxes they pay do not cover the cost of the public serv-

ices they receive. In a 2004 study, Gordon Hanson reported that 25% of illegals from Mexico, and 15% of natives, received some kind of welfare.[12]

In studies of New Jersey and California—two states with large immigrant populations—the National Research Council (NRC) found, on the basis of 1989-90 data, that the average immigrant household in New Jersey received a net fiscal transfer of $1,500 from natives, or 3% of average immigrant household income; in 1994-95, the average fiscal transfer from native to immigrant households in California was $3,500, 9% of average immigrant household income. For the United States, however, the NRC estimated that the short-run immigrant fiscal burden on native households was $200 or 0.2% of GDP.[13] Thus, while the fiscal immigration burden for the whole country is relatively small, it is larger in states with relatively generous welfare benefits and higher percentages of immigrants with low incomes and more children.

What should we do?

The foundation for an effective immigration policy is to recognize the power of the forces perpetuating illegal immigration and find ways to legalize the flows and make immigration an integral component of economic and social policies to promote broadly shared prosperity in the United States, Mexico, and other countries.

Effective immigration policy must contain a comprehensive mix of measures, including stronger border controls and internal enforcement processes; a secure work authorization system with strong penalties against employer and immigrant violators; a means to adjust the status of people who have lived and worked satisfactorily in the United States for some time, accompanied by a credible signal that there are unlikely to be future status adjustments; an immigration standard that gives greater weight to the country's labor requirements; and cooperation with Mexico and other countries to encourage economic development in immigrant-exporting areas through cooperative investment, trade, and aid measures; and strengthening NAFTA's labor agreements to limit wage-suppressing competition and give workers stronger voices in the work place and in national policy decisions. Following are seven specific proposals for immigration reform.

(1) Secure identifiers. The first priority should be to devise a secure work authorization system along the lines of the one we developed for SCIRP. Heightened concern about national security and advances in identification technology probably make a secure identifier more acceptable today than it was in the 1970s and 1980s.

(2) Strong border controls and visa enforcement. The United States needs strong border and internal enforcement systems to prevent unauthorized immigrants from entering the United States or remaining after visas expire. Border security is clearly very important, but by itself will not be adequate since over one-third of illegals have overstayed visas. Visa violations will undoubtedly increase with tighter border controls.

(3) Adjustment of status. The adjustment of status is one of the trickiest and most controversial immigration proposals. If it is not done right, immigrants will not come out of the shadows to legalize their status. Legalization also could accelerate the future flow of illegals, as IRCA did. And unless a credible enforcement strategy is implemented, these provisions are not likely to be very effective. Immigrants know that their chances of being apprehended and removed are smaller than the probability that they can either remain in the United States and work or ultimately acquire lawful status through various legal means. During the 1990s, for example, about 1.5 million illegals gained legal status and only about 412,000 were removed. This was in addition to IRCA's amnesty provision, which legalized the status of 2.7 million immigrants—2 million of them from Mexico. But legalization did not slow the influx of illegals, partly because the seriously flawed identification system invited fraud and partly because those whose status was legalized were not allowed to bring their families.

The most common objection to allowing long-time unauthorized immigrants to become legal residents and earn citizenship is that it rewards illegal behavior. It is true, of course, that the immigrants' behavior was illegal, but the law was so poorly constructed and haphazardly enforced that unauthorized immigrants have many co-conspirators. These include Congress, which passed a seriously flawed law and failed to adequately fund an effective enforcement strategy; businesses that hired workers with clearly fraudulent documents and, along with members of Congress, pressured officials not to enforce immigration laws; banks that issued credit cards to illegals; the IRS, which gave them taxpayer ID numbers; the public, which sympathized with hardworking immigrants who seemingly did little, if any, harm and purportedly only took jobs natives wouldn't take; various sympathetic support groups, who thought immigrants deserved the right to seek the American dream; labor unions—formerly among the staunchest opponents of immigrant worker programs—who now actively organize and protect undocumented workers; and public

officials in Mexico, who emphasize both the immigrants' constitutional right to migrate and America's dependence on illegal immigrants and have adopted measures, like photo ID cards, that facilitate illegal immigrants' ability to work and live in the United States. Given numerous co-conspirators, it would be hard to assign culpability only to immigrants, who could be excused for believing that their transgressions were not considered to be very serious. We would be more justified in condemning illegal immigration if we had a law that, instead of being a confusing fiction, met the standards of a good law, i.e., was fair, transparent, and enforceable.

Of course, another reason to adjust the status of these immigrants is that the alternative of a massive roundup, modeled after the 1950s' Operation Wetback, is unthinkable.

(4) Foreign worker adjustment entity. The composition and size of economic immigration should be calculated by an independent foreign worker adjustment body. And labor market needs should become a more important component of immigration policy, as they are in countries like Canada and Australia.

An adequately staffed independent agency could make technical projections of labor market needs and balance the interests of employers, workers, and the public. Immigration is too technical and political to be left entirely to Congress, especially where there is a need for flexibility and employers have inordinate power to import labor surpluses to keep wages down. In their immigration reform lobbying, for example, business groups make it clear that any outcome that gives them fewer foreign workers (legal and illegal) is unacceptable. Lindsey Lowell, of the Institute for the Study of Immigration at Georgetown University, has estimated that the allowable number of foreign computer and engineering workers admitted under the Senate's immigration proposals would increase by a factor of five by 2017 and would cause foreign workers to be about 19% more than BLS's total projected employment in these occupations.[14]

An independent foreign worker adjustment board could be part of the Department of Labor (DOL) and modeled after the Bureau of Labor Statistics (BLS), which has a reputation for integrity and whose commissioner is appointed for a five-year term, not at the will of the president. The advantage of lodging the foreign labor adjustment function in the DOL would be to use the expertise of the BLS and the department's foreign labor experts. In addition, DOL's rulemaking processes could be used to elicit public comment before rules are finalized. The DOL also is the only department of government with the explicit mandate to protect and promote the interests of American workers, whose welfare currently is not adequately protected in immigration or most other federal policies.

(5) Improve temporary worker programs. The United States should improve the administration of existing temporary worker programs, but should not adopt a large new guest worker initiative.[15] Experience in the United States and Europe shows that the short-run economic benefits of guest worker programs are more than offset by long-run social, political, and economic problems. It is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights. Because their frame of reference is conditions in their home countries, guest workers are willing to accept second-class status, at least for a while, but their children compare their conditions with those of natives and are likely to resent their inferior status. Indeed, much civil unrest in Europe has originated from the children of guest workers, who are disadvantaged because of their parents' conditions, even, as in the United States, where the children themselves are citizens.

In the late 1970s, an informal poll of a group of my fellow OECD labor ministers found that none of them would adopt a guest worker program if they had it to do over again. Moreover, all of them found that it was difficult to terminate these programs once they became institutionalized. Immigration experts have uniformly found that nothing is more permanent than a temporary guest worker program. For these reasons, while every major U.S. immigration study commission, including SCIRP and the 1995 U.S. Commission on Immigration Reform, started with the idea that a large new guest worker initiative might be desirable, after careful examination rejected such a program as bad policy.

Guest worker advocates usually contend that these programs will stem the flow of illegal immigration, citing the 1942-64 U.S.-Mexico bracero experience to justify this conclusion. It is true that in the 1950s, when the bracero program—ostensibly a temporary wartime agricultural worker initiative—more than doubled, peaking at over 450,000 workers, border apprehensions declined. However, the number of illegal immigrants probably remained much higher than the number of braceros. Between 1942 and 1946, about 4.6 million braceros were admitted and 5.2 million illegals were apprehended. Reliance on outmigration also caused the Mexican government to divert development resources from the migrant exporting regions to industries along the U.S.-Mexican border that mainly employed young women. Men

who congregated at the border to enhance their chances of becoming braceros entered the United States illegally both before and after the bracero program ended. The number of illegals is estimated to be three times the number of apprehensions.

Advocates cite the 1980 Congressional Research Service (CRS) study prepared for SCIRP to justify these programs, although they rarely give the full quote, which is:[16]

* * * the bracero program by itself did not prove to be a solution to the problem of large-scale illegal entry from Mexico. On the contrary, as it was administered during the early stages * * * the existence of the bracero program appeared to make the problem worse. It was not until sharply increased enforcement measures were combined with greatly expanded programs that it was possible to divert most of the illegal flow into legal channels. However * * * both these measures were effected at a considerable price, in terms of the apparent adverse effect on domestic agricultural workers * * * and the ill will created, particularly in the Mexican-American community by Operation Wetback.

It is significant that California tomato producers replaced 45,000 braceros with 10,000 local women, and with the termination of the bracero program, the United Farm Workers negotiated a 40% wage increase.[17] However, employers soon learned that the end of the bracero program did not stop the flow of workers from Mexico. The bracero program resulted in strong immigrant-employer bonds, which remained and spread to other industries and geographic areas on an illegal basis after the program ended. The bracero program thus sowed the seeds of increased illegal immigration. It is therefore a real stretch to argue that this experience supports the need to revive a large-scale guest worker program as an immigration control measure.

New guest worker programs not only are unwise, but unnecessary as well. If an independent entity concludes that more foreign workers are needed, they should be admitted as immigrants with full legal rights, including the right to earn citizenship. And, if qualified illegal immigrants' status is legalized and they unite their immediate families, there will automatically be a continuing flow of workers from Mexico and other source countries.

If it is concluded that more truly temporary foreign workers are needed, this should be achieved by improving the administration and strengthening the foreign and domestic worker protections of current programs. Employers and their supporters complain that these programs are too cumbersome and litigious, at least partly because they do not like the provisions protecting the interests of foreign and domestic workers. Employers have been able to "game" the system to get the foreign workers they prefer and want the recruiting standard to be predicated on finding U.S. workers who are as good as the highly screened foreign workers, not the proper legal requirement that we recruit domestic workers who meet reasonable minimum standards.

It is particularly important to strengthen the worker protections in present temporary worker programs. There is abundant evidence that desperate foreign workers are subjected to appalling abuses in the United States and their home countries; these include fraudulent claims by recruiters and contractors about the quality and amount of work in the United States, deplorable living and working conditions, and failing to pay for work done. The practice of seizing foreign workers' passports and other documents and their heavy dependence on particular employers often subject these workers to near-peonage conditions.[18] My experience suggests that employers' desire for low-wage compliant labor and guest workers' limited options make it difficult—but not impossible—to protect these workers. However, these protections must be included in a comprehensive immigration reform program.

The adverse effects on American workers by current temporary worker programs are not restricted to low-wage workers. Ron Hira has documented the failure of the H-1B and L-1 programs to protect American workers' jobs and wages.[19] Hira attributes these shortcomings to the absence of labor market tests to prevent adverse effects on American workers, allowing employers to pay wages far below prevailing rates, and deficient government oversight of these programs. According to Hira, "The poor design of the H-1B and L-1 program has led to outcomes directly contradicting the intent of the programs. H-1B and L-1 visas facilitate the outsourcing of U.S. jobs, rather than keeping them here."[20] Moreover, "While the regulations governing the prevailing wage appear to be reasonable on paper * * * [t]he implementation of the prevailing wage regulations is riddled with loopholes, enabling firms to pay below-market wages."[21] This conclusion is admitted by employers and documented by the Government Accountability Office. Because Congress has granted the DOL limited oversight authority, the department's Office of Inspector General has described the labor certification process as "simply a 'rubber stamp' of the employ-

er's application."[22] If guest workers depress science and engineering earnings, fewer Americans will enter these fields.

Specific suggestions for improving existing guest worker programs include:

1. Require realistic labor market tests before foreign workers are admitted. These tests should include outreach efforts by labor market intermediaries to recruit American workers who meet acceptable minimum qualifications. Employers should be required to pay prevailing wages for the positions they seek to fill with guest workers. Allowing employers to select more highly qualified foreign workers and pay them prevailing entry-level wages is tantamount to paying below-market rates. Guest workers should receive all of the labor protections of American workers, including a federal cause of action to enforce their contracts.

2. Give the Department of Labor adequate resources and authority to monitor guest worker programs, including holding employers responsible for their contracts with guest workers. Employers and labor brokers should not be allowed to seize guest workers' passports or other travel documents. Guest workers should be allowed to organize and file complaints with administrative agencies against employers who violate their contractual or employment rights. There should be meaningful penalties against employers who retaliate against complaining guest workers.

3. Only bona fide employers—not labor contractors or recruiters—should be allowed to sponsor guest workers. American consular officials should not issue visas to workers who do not have firm contracts with employers.

4. Congress should support efforts to streamline the administration of guest worker programs.

Thus, before deciding on how many new foreign workers to admit, Congress should first review the impact of comprehensive immigration reform and strengthen existing temporary worker programs, several of which have no quantitative limitations, including the H-2A foreign farm workers program, the L visas for workers transferred within multinational corporations; guest workers engaged in art, culture and religious work; and workers from Canada and Mexico with at least four-year college degrees who have job offers from American companies. Students with F-1 visas and visitors with J-1 visas are allowed to work under certain circumstances.[23] After these reviews if an independent entity determines that additional workers are needed, these should be admitted with full employment rights and on terms that do not attach them to particular employers or permit them to displace or reduce the wages and working conditions of American workers.

(6) Protective labor legislation. The rigorous enforcement of protective labor legislation, especially a higher minimum wage, also would protect foreign and domestic workers and make many jobs held by illegals more attractive to domestic workers. Some experts believe that a higher minimum wage would be sufficient to stem illegal immigration.[24] While a higher minimum wage and strengthened enforcement of protective labor laws are desirable, they would not be adequate immigration control measures. Many employers would prefer illegals to natives even at the minimum wage, many illegals are in informal and exempt sectors of labor markets not affected by the minimum wage, and a higher minimum wage would attract more illegal immigrants. The tight bond between immigrants and employers is not likely to be altered very much by minimum wage enforcement alone.

(7) Trade, investment, and aid programs. The ultimate solution to the illegal immigrant problem will be sufficient growth in Mexico and other source countries to provide suitable employment for their citizens. Unfortunately, Mexico's growth is unlikely to provide acceptable jobs for most of its new workers anytime soon. Mexicans migrate because of the low quality of jobs, not just the number; about 90% of all migrant workers have jobs when they migrate. Mexico's daily minimum wage is less than the U.S. hourly wage, the average Mexican wage is 10 to 20% of the U.S. wage, about half of its population lives below poverty levels, and half of its economically active population is in the informal sector. Although Mexico's official labor standards are high, and opportunities have improved for some workers, actual conditions for most workers are very poor and independent labor unions have great difficulty operating because they are subordinated to undemocratic, often corrupt government-controlled organizations. Hence, it is not surprising that polls show almost half (49%) of Mexico's adults say they would like to move to the United States.

Although there have been important improvements in political institutions and macroeconomic performance, Mexico's low-wage development policies are unlikely to stem the flow of illegal migration. As noted, Mexico is losing jobs to other countries, especially China, where average wages are less than half of Mexico's.

It is doubtful that the US will get much help from Mexico controlling illegal immigration. Mexico is unlikely to prevent its citizens from exercising their constitutional right to migrate, just as the United States is unlikely to surrender its sovereign right to control immigration. Mexico believes its citizens should have the right to

migrate to the United States, and have echoed the common myth that immigrants only take jobs US citizens will not fill. Before September 11, Mexican officials thought US employers' dependence on migrants was sufficiently strong and US immigration controls were sufficiently weak that the United States was unlikely to do much to stem the flow of unauthorized immigrants.

And the Bush administration initially supported President Vicente Fox's proposal for a bilateral guest worker initiative, modeled after the bracero program, as a way to control illegal immigration. However, this proposal was derailed by the terrorist attack of September 11 and has not gotten back on track. For reasons presented earlier, a large new guest worker program is not a good idea and would not do much to reduce the flow of illegal immigration.

The United States should, however, help Mexico promote job growth in its primary migrant-exporting areas. Desirable activities include trade and investment policies focused on those areas, infrastructure development, and strengthening NAFTA's weak labor side agreement, especially to give workers greater control of their own unions, thus strengthening their voice at work and in national policy making. The United States should make a major effort to help Mexico improve basic education, especially for low-income students and girls. There is considerable evidence that the education of girls is a very significant way to break intergenerational poverty cycles.[25]

The United States also should consider Mexico's proposal to create a joint Canadian-Mexican-U.S. development fund modeled after the very successful European Union experience, which did much to improve conditions in poorer European countries and stem the flow of migrants to the richer countries expected with economic integration. Of course, the rich-poor gaps in Europe were much smaller than in North America. Trade, investment, and aid programs should be used to leverage the structural reforms necessary for faster economic growth in Mexico.

Conclusion

By the spring of 2007, the future of immigration reform was highly uncertain. Comprehensive legislation crafted by a bipartisan group of senators and the Bush administration evoked stiff opposition from Democrats and Republicans. This bill would:

(A) strengthen border security, stiffen the penalties for hiring unauthorized workers, and require employers to verify the legal status of all employees.

(B) grant permanent residence (green cards) to most undocumented immigrants who were in the United States before January 1, 2007, pay fines and fees of up to $10,000, speak English, wait 8 years until the backlog of legal green card applications has been cleared (at the rate of 450,000 a year), and return home to file permanent residence applications. In the years before they can apply for green cards, the former undocumented immigrants would receive special Z visas, which could be renewed every four years for a fee of $1,500. The Z visa application process would be triggered by the completion of the border and internal security provisions discussed above, which the Department of Homeland Security estimates could take 18 months. These immigrants' immediate families already in the United States could qualify for Z visas, but they could not bring in any other family members.

(C) Create a vastly expanded new temporary worker program of 400,000 to 600,000 visas a year. However, this number was later reduced to 200,000. An earlier attempt to terminate the program after five years failed by one vote when Senator Ted Kennedy, the bill's Democratic manager, asked Senator Daniel Akaka to change his vote. This program would be created after the security triggers take effect and would be available only for jobs that employers show could not be filled domestically at prevailing wages. These temporary workers would have to buy health insurance for their families and could only change jobs among certified employers. These visas would be good for three two-year terms and their holders would have to return home for a year after their second and fourth years.

(D) Develop a point system for the admission of future immigrants. Points would be awarded for education, job skills, English proficiency, and work history. Until the backlog of applications is cleared, up to 80% of admissions would be based on family ties; thereafter, merit-based immigration would become more important.

Labor unions and some Congressional Democrats opposed the new temporary worker program, as well as the shift toward a more merit-based system, while some Republicans strongly opposed the legalization program, which, they said, would reward illegal behavior. And employers argued that the bill would neither admit enough workers nor allow companies to select the immigrants they wanted.

In my view, the most problematic provisions of the Senate bill are the temporary worker program, the requirement that the Z visa holders return home in order to apply for green cards, and the requirement that employers verify the legal status

of all workers; it would be more workable to phase in the verification of new hires and job changers. For reasons discussed above, the new temporary worker program is not a good idea and the requirement that these workers return home every third year is problematic. Although family unification must remain an important part of our immigration policy, it makes sense to shift more toward a merit-based system.

ENDNOTES

[1] David Card, Is the new immigration really so bad? National Bureau of Economic Research, August 2005.

[2] George B. Borjas and Lawrence F. Katz, "The evolution of the Mexican-born workforce in the United States." National Bureau of Economic Research, April 2005.

[3] Richard Freeman, America Works (New York: Russell Sage Foundation), p. 51.

[4] Ray Marshall, "Immigration and human capital," in David Hornbeck and Lester M. Salamon (eds.), An Economic Strategy for the Nineties (Baltimore, Md.: Johns Hopkins Press, 1991); and "Immigration: An international economic perspective." International Migration Review 18, Fall 1984.

[5] Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, The State of Working America, 2006-07 (WDC: Economic Policy Institute, 2007), p. 150.

[6] Ron Hira, "Outsourcing America's Technology and Knowledge Jobs," EPI Briefing Paper, March 15, 2007.

[7] Andrew Sum, Paul Harrington and Ishwar Khatiwada, "The Impact of New Immigrants on Young Native-Born Workers, 2000-05," Center for Immigration Studies, September 2006.

[8] Ibid.

[9] William P. Kocewicz, "What ails Mexico's economy," NRO Financial, May 3, 2006.

[10] Andrew Sum, Irwin Kirsch, and Kintaro Yamamoto, A Human Capital Concern: The Literacy Proficiency of US Immigrants, ETS, March 2004, p. 1.

[11] Ibid.

[12] Gordon H. Hanson, Immigration Policy, National Bureau of Economic Research, July 2004.

[13] James P. Smith and Barry Edmonson (eds.), The New Americans: Economic, Demographic and Fiscal Effects of Immigration. Washington, D.C.: Academy Press, 1997.

[14] B. Lindsey Lowell, Projected Numbers of Foreign Computer and Engineering Workers Under the Senate's Comprehensive Immigrants Reform Act (S.2611), Institute for the Study of International Migration, Georgetown University, August 2006.

[15] The Citizenship and Immigration Service issues 70 different types of visas that increase the number of foreign workers. In 2005, the types and numbers of non-immigrant admissions were:

Type of visa Number F-1 (student) 621,178 H-1B (high-skilled workers and fashion models sponsored by employers) 407,418 H-2B (seasonal nonagricultural workers) 122,316 L-1 (executives of foreign companies with U.S. offices) 312,144 B-1 (temporary visitors for business) 2,432,587 H-2A (temporary agricultural workers) 7,011* P-1 (internationally recognized athletes or entertainers) 43,766 Source: Elizabeth M. Grieco, "Temporary admissions of nonimmigrants to the United States," Annual Flow Report, July 2006, p. 3. Individuals admitted temporarily for specific purposes are expected to leave after six years (H-1B visas) and students are supposed to leave after completing their studies. However, Lindsey Lowell estimates that most "temporary" visa holders become permanent residents, including two-thirds of students and half of workers. *The 7,011 statistic for 2005 evidently is incorrect. There are three separate guest worker concepts: certifications, visas issued, and admissions. In FY05, 6,602 employers were certified by DOL to hire H-2A workers to fill 48,366 farm jobs. The DHS initially reported 7,011 H-2A workers because some of these workers were classified as H-2Bs. H-2A admissions for FY05 are likely to be closer to the 22,141 for FY04 than the 7,011 number reported for FY05 (See "H-2A, H-2B Programs," Rural Migration News, vol. 14, no. 1, January 2007).

[16] The Congressional Research Service, Temporary Worker Programs: Background and Issues, A report for the use of the SCIRP, 90th Cong., 2nd Session, February 1980, p. 22.

[17] Philip Martin, "Guest Workers for America," The Milken Institute Review, First Quarter 2007.

[18] See Steven Greenhouse, "Low pay and broken promises great guest workers." The New York Times, February 28, 2007; Southern Poverty Law Center, Close to Slavery, Montgomery, AL, 2007.

[19] Ron Hira, op cit.

[20] Ibid, p. 5.

[21] Ibid, p. 3.

[22] Ibid, p. 4.

[23] Philip Martin, op cit.

[24] See Michael S. Dukakis and J.B. Mitchell, "Raise wages, not walls," The New York Times, July 25, 2006, p. A23.

[25] Nancy Birdsall, Education: The People's Asset, CSED Worker Paper No. 5, September 1999; Nancy Birdsall, David Russ and Richard Sabot, "Inequality and growth reconsidered: Lessons form East Asia," Economic Review, Vol. 8, No. 3, 1995.

[Copies of the report, "Close to Slavery," submitted by Ms. Bauer, may be obtained by contacting the Southern Poverty Law Center at the following address: Southern Poverty Law Center, 400 Washington Ave., Montgomery, AL 36104, or, by Internet access at: *www.splcenter.org*.]

[Statement of Michael Dale and Laura K. Abel follows:]

Testimony of Michael Dale, Northwest Workers' Justice Project, and Laura K. Abel, Brennan Center for Justice at NYU School of Law, before the House Education and Labor Committee Hearing on Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor

Written Testimony Submitted June 21, 2007

Thank you for the opportunity to submit testimony regarding the current exploitation of workers participating in the H-2B temporary visa program. While we express no position here on the desirability of temporary work visa programs, we submit this testimony to make clear the role that a lack of access to legal representation plays in the exploitation of workers who are in this country on such visas. We will not repeat here the eloquent testimony by Mary Bauer, Jonathan P. Hiatt, and Baldemar Velasquez on June 7 regarding the severity and scope of the exploitation such workers face. Rather, we stress that it is essential that any future category of temporary work visas created by immigration reform legislation ensure that the workers have access to legal representation. Without such access any other employment rights they are afforded will not be meaningful. When workers on temporary visas are unable to enforce their employment rights, employer compliance with wage, hour and safety standards is reduced not only for those workers, but also for the U.S. workers with whom they compete.

I. Our relevant backgrounds

Michael Dale is the executive director of the Northwest Workers' Justice Project, a non-profit, privately funded legal services program that represents low wage, immigrant and contingent workers in the Pacific Northwest. Prior to founding the Northwest Workers' Justice Project in 2002, he was a migrant legal services lawyer for twenty-five years, directing the migrant farm worker project in Oregon for much of that time. In these capacities he has represented many H-2B workers in federal litigation and other proceedings.

Laura K. Abel is a Deputy Director of the Justice Program at the Brennan Center for Justice at NYU School of Law. Named for the late Supreme Court Justice William J. Brennan, Jr., the Brennan Center is a not-for-profit, non-partisan public policy and law institute that focuses on issues of democracy and justice. Among its goals, the Brennan Center works to ensure that low-income people have access to effective, enduring, and unrestricted legal assistance in civil cases.

The Northwest Workers' Justice Project and the Brennan Center have filed a complaint with the Mexican government, on behalf of twenty-one former H-2B workers and thirteen Mexican and U.S. labor and human rights organizations, regarding the denial of eligibility for legal representation of H-2B workers by civil legal aid programs that receive any federal funding from the Legal Services Corporation. The complaint, filed

under the North American Agreement on Labor Cooperation (commonly called the NAFTA Labor Side Agreement) is pending.[1]

II. Temporary workers are vulnerable to exploitation in the absence of legal representation

Although workers brought into this country by their employers under H-2B visas are covered by a number of federal and state laws, the vast majority are unable to enforce those rights because they lack access to legal representation. Most civil legal aid programs with the capacity to help low-wage, Spanish-speaking workers receive federal funding from the Legal Services Corporation ("LSC"). Agencies receiving any funding from LSC are barred by federal law from helping H-2B workers.[2] They are even precluded from using their non-federal funds to provide assistance, unless they do so through a legally and physically separate program.[3] The separation requirements are so expensive and cumbersome that few civil legal aid programs have been able to set up an affiliate entity, with the result that most civil legal aid programs are barred from helping H-2B workers even with their non-federal funding.[4]

Very few attorneys in private practice will help employees with temporary work visas – either for a fee or pro bono – because of language barriers, the need for specialized knowledge regarding the specific employment rights of temporary workers, the likelihood that any resulting legal fees will be small, and the scarcity of attorneys in the rural areas in which many temporary workers are located.[5] The result is a lack of access to legal representation for most H-2B workers.

In the absence of access to legal representation, H-2B workers have no recourse when they are deprived of their employment rights. The result is a high level of employment violations among employers participating in the H-2B program. Many workers participating in the program leave their families (and jobs) to come here, only to find that they are paid far less than they were promised (and less than the law requires), and they are transported, housed and expected to work in dangerous conditions. If a massive new temporary worker program is created without providing for legal representation, we would expect to see this experience replicated in hundreds of thousands of cases. These abuses will affect the temporary workers themselves, and will

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[1] The petition is available at www.dol.gov/ILAB/media/reports/nao/submissions/2005-01petition.htm#content. A supporting memorandum of law is available at www.dol.gov/ilab/media/reports/nao/submissions/2005-01memo.htm. An addendum is available at www.brennancenter.org/dynamic/subpages/download_file_35782.pdf.

[2] *See* Consolidated Appropriations Act, 2005, Pub. L. 108-447 (2004) ("None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119 . . ."); 45 C.F.R. § 1626.

[3] 45 C.F.R. § 1610.8.

[4] Congress could easily remove this restriction – with no cost to taxpayers – by changing language in a rider to the Commerce, Justice, and Science Appropriations Bill.

[5] *The Erlenborn Commission Report*, 15 Georgetown Immig. L.J. 99, 132-36, 148-49 (2000).

also create significant downward pressure on the wages and working conditions of all other workers.

Here are the stories of nine H-2B workers who came to the United States legally to do backbreaking work to benefit our economy.

A. Jose Alfredo Borjas Gonzalez, Manuel Camero Torres, Juan Carlos Lira, and Jose Antonio Vargas Cisneros

In November 2000, Jose Alfredo Borjas Gonzalez, Manuel Camero Torres, Juan Carlos Lira, and Jose Antonio Vargas Cisneros answered an advertisement in a local newspaper in Tamaulipas, Mexico soliciting workers to come to the United States under H-2B visas to work for Universal Forestry. The men contacted Nemisino Rivera, a Universal Forestry recruiter working in Mexico. Rivera explained Universal Forestry's terms of employment, none of which he put in writing, and many of which Universal Forestry soon violated.

For example, although Rivera told the workers that his company would pay for visas, transportation, housing, and any necessary equipment, it proceeded to charge the workers for each item. Likewise, although Rivera told the workers that they would have work for the entire visa work period of approximately ten months, that proved not to be true either. By violating the agreed upon terms of employment, the employer violated the workers' rights under federal law.

The employer also violated the workers' federal and state rights in another way – by providing them with dangerous transportation, housing and work conditions. For example, the men were transported from Mexico to Idaho in a van far too small for its passengers and in poor mechanical condition. The men later described the 60-hour trip as "inhumane" because of the extreme discomfort and overcrowding. Upon their arrival in Idaho, the four men were housed in a small two-bedroom, one-bathroom house, which they shared with thirteen other men. The house had no telephone, no heat, and no space for privacy or security. The workers slept on the floor wherever they could find space. On the first day of work, the men were told to clear brush on a mountain trail, even though it was so hot that one of the workers lost consciousness.

Despite the rigors of the work, the overseer refused to tell the men exactly what they would be paid. Based on discussions with other employees, they calculated that they would be paid only about $2 an hour, which was far below the federal minimum wage, the wage of $70 to $100 per day they had been promised, and the wage the employer had promised the government it would pay.

When the workers announced they would not work until they were paid what they had been promised, and were given safe housing and work conditions, the overseer threatened to report them to immigration authorities (although they were in the U.S. legally), and in an act of blatant extortion refused to return their immigration documents until each worker paid him $150.

The men sought legal assistance immediately, but because they are ineligible for legal assistance from LSC-funded civil legal aid offices they had considerable difficulty doing so. Finally, a year after they left Universal Forestry's employment, they were able to find a former legal aid lawyer, now in private practice, who was able to secure a special grant in order to take their case. Shortly after they filed a lawsuit against Universal Forestry, the company declared bankruptcy. Nonetheless, in 2005 they finally obtained a settlement providing them with some compensation for their work and for the many labor violations they suffered. Given the complexity of the legal issues involved, and the men's lack of familiarity with the U.S. legal system, it is likely that without the assistance of an attorney they would have received nothing.

B. Candelario Perez

Candelario Perez was brought to this country from Panama in 2000 to do intense physical labor – slashing and burning vegetation, clearing trails and planting trees – in the mountains near McCall, Idaho. His employer recruited him and five other men in their hometowns and arranged for them to get H-2B temporary worker visas. In flagrant violation of U.S. law, they were paid as little as $1 per hour for some of their work. The men were housed at a primitive campsite in the mountains, without restrooms or developed campground facilities. The men slept in a lightweight tent and in makeshift shelters made out of tarps. They did not have sleeping bags or mattresses. They were left to drink untreated drinking water from a nearby creek, which local residents say may carry giardia and e-coli bacteria. They continued sleeping in these conditions as the summer ended and nighttime temperatures approached freezing.

The men's H-2B visas made them ineligible for help from any LSC-funded civil legal aid office. Mr. Perez was eventually able to find a lawyer in private practice to represent him, but only after a year of seeking help. During that year, he was unable to collect the wages his employer owed him. Also during that year, the other five men left the area without being able to enforce their rights. As time passes, they are losing the right to bring some of their claims in court.

C. Edgar Peña, Guillermo Orozco, Anastacio Valdez, Rosa Hernandez and Other Workers From Santiago Ixcuintla

In the summer of 2005, between 30 and 40 workers from Santiago Ixcuintla, Nayarit, Mexico came to work at a corn packing operation in Colorado under H-2B visas. There, the workers suffered many violations of federal and state law.

For example, when it recruited the workers in Mexico, the food processing company promised there would be at least five days a week of work throughout the duration of their five-month visas. However, there were only a few days during the first several weeks that the workers were able to work, either for the company or for a nearby cherry farm. The pay was not the $6.26 per hour recruiters had promised. Instead, the workers received only about $2.12 an hour. The food processing company also deducted

money from the paychecks for recruitment fees, ultimately bringing the pay rate down even further. Recruiters also told the workers they would provide free housing. However, the company deducted additional money from the paychecks to cover rent costs.

Moreover, the workers were misclassified as H-2B workers, depriving them of important rights. H-2B visas and H-2A visas are both nonimmigrant visas for seasonal workers. Agricultural workers receive H-2A visas, while non-agricultural workers receive H-2B visas. The workers from Nayarit were working under H-2B visas, even though the work they conducted was predominantly agricultural in nature. In its application to the Department of Labor for the visas, the food processing company misrepresented the type of work their employees would be doing in order to ensure that its workers arrived on H-2B visas. Federal law requires that employers must provide H-2A workers with free housing, reimburse the employees for travel expenses, pay at least $8.93/hour (in Colorado), and either ensure that at least three quarters of the work promised actually is available or compensate the employees for that work. Perhaps most importantly, H-2A workers are eligible for representation by LSC-funded lawyers. None of these protections exist for H-2B workers.

After an entire week went by without work, seven of the men went to Colorado Legal Services ("CLS") to discuss enforcement of their rights in the matter. However, because they were working under H-2B visas and CLS receives federal funding, the program could not assist the workers.

After two and a half weeks of sporadic employment, substandard living conditions, and illegally low wages, the same seven workers were dismissed, in breach of their employment contract and in violation of federal law. They were the only ones dismissed out of the 30 or 40 men who came up from Nayarit, suggesting that the workers were retaliated against, in violation of federal law.

After these many legal violations, the workers attempted to enforce their rights by filing a complaint with the Colorado Department of Labor ("CDOL"). The CDOL, lacking Spanish-speaking staff and already overburdened with complaints, declined to pursue the complaint. The workers also attempted to seek assistance from Colorado Legal Services, but because the program receives LSC funding, the lawyers in that program were unable to assist the workers. Eventually, a private attorney agreed to take on the case, but by that time the visa had expired and all the workers had returned to Mexico, making it far more difficult for them to pursue their claims.

III. Conclusion

To ensure that no more temporary workers return home without hard-earned wages like Jose Alfredo Borjas Gonzalez, Manuel Camero Torres, Juan Carlos Lira, and Jose Antonio Vargas Cisneros, with far less compensation than they had been promised like Edgar Peña, Guillermo Orozco, Anastacio Valdez, and Rosa Hernandez, or after sleeping outside without sleeping bags or clean water like Candelario Perez, we urge that

workers in the H-2B temporary visa program, and in any new immigrant work program authorized by Congress, be eligible for legal representation from LSC-funded civil legal aid offices.

Mrs. DAVIS OF CALIFORNIA. Without objection, the hearing is adjourned.

[Whereupon, at 1:05 p.m., the committee was adjourned.]

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