

GUESTWORKER VISA PROGRAMS

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

—————
JUNE 19, 2001
—————

Serial No. 22
—————

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

—————
U.S. GOVERNMENT PRINTING OFFICE

73-263 PS

WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (202) 512-1800 Fax: (202) 512-2250
Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
GEORGE W. GEKAS, Pennsylvania	BARNEY FRANK, Massachusetts
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
BOB BARR, Georgia	ZOE LOFGREN, California
WILLIAM L. JENKINS, Tennessee	SHEILA JACKSON LEE, Texas
ASA HUTCHINSON, Arkansas	MAXINE WATERS, California
CHRIS CANNON, Utah	MARTIN T. MEEHAN, Massachusetts
LINDSEY O. GRAHAM, South Carolina	WILLIAM D. DELAHUNT, Massachusetts
SPENCER BACHUS, Alabama	ROBERT WEXLER, Florida
JOE SCARBOROUGH, Florida	TAMMY BALDWIN, Wisconsin
JOHN N. HOSTETTLER, Indiana	ANTHONY D. WEINER, New York
MARK GREEN, Wisconsin	ADAM B. SCHIFF, California
RIC KELLER, Florida	
DARRELL E. ISSA, California	
MELISSA A. HART, Pennsylvania	
JEFF FLAKE, Arizona	

PHILIP G. KIKO, *Chief of Staff-General Counsel*
JULIAN EPSTEIN, *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

GEORGE W. GEKAS, Pennsylvania, *Chairman*

DARRELL E. ISSA, California	SHEILA JACKSON LEE, Texas
MELISSA A. HART, Pennsylvania	BARNEY FRANK, Massachusetts
LAMAR SMITH, Texas	HOWARD L. BERMAN, California
ELTON GALLEGLY, California	ZOE LOFGREN, California
CHRIS CANNON, Utah, <i>Vice Chair</i>	MARTIN T. MEEHAN, Massachusetts
JEFF FLAKE, Arizona	

GEORGE FISHMAN, *Chief Counsel*
LORA RIES, *Counsel*
CINDY BLACKSTON, *Professional Staff*
LEON BUCK, *Minority Counsel*

CONTENTS

JUNE 19, 2001

OPENING STATEMENT

The Honorable George W. Gekas, a Representative in Congress From the State of Pennsylvania, and Chairman, Subcommittee on Immigration and Claims	1
--	---

WITNESSES

Ms. Susan Martin, Institute For the Study of International Migration, Georgetown University	
Oral Testimony	2
Prepared Statement	4
Mr. Randel Johnson, Vice President, Labor and Employee Benefits, U.S. Chamber of Commerce	
Oral Testimony	6
Prepared Statement	8
Mr. Mark Krikorian, Executive Director, Center for Immigration Studies	
Oral Testimony	14
Prepared Statement	16
Ms. Cecelia Muñoz	
Oral Testimony	25
Prepared Statement	27

APPENDIX

STATEMENTS SUBMITTED FOR THE RECORD

Mr. Ralston H. Deffenbaugh, Jr., President, Lutheran Immigration and Refugee Service	39
The Honorable Sheila Jackson Lee, A Representative in Congress From the State of Texas	42

MATERIAL SUBMITTED FOR THE RECORD

Letter from Dan Stein, Executive Director, Federation for American Immigration Reform	43
---	----

GUESTWORKER VISA PROGRAMS

TUESDAY, JUNE 19, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2 p.m., in Room 2237, Rayburn House Office Building, Hon. George W. Gekas [Chairman of the Subcommittee] presiding.

Mr. GEKAS. The hour of 2 having arrived, the Committee will come to order. This is a scheduled oversight hearing on the part of our Committee on the important issues surrounding guestworkers in the United States. The rules of House of Representatives and therefore, the rules of Committee require that at least two Members be present for any oversight hearing. Let the record indicate that present and accounted for are the gentleman from Texas, Mr. Smith, the former chairman of this Committee, and the current chair, thus constituting the required number of individuals to make up the hearing quorum. We have a number of witnesses who will scale for us the extent of the problem and some of the recommendations that might be necessarily considered as we move down the cycle of the new administration and its policies, which brings to mind, of course, that the new president has, as one of his core and central issues from his experience as governor of Texas, some of the very problems with which we will be grappling here today. That is, he comes richly endowed with governmental and personal experiences that will dictate to a great extent some of the paths that we will be following in the development of new or recurring programs touching upon the border and on the relationship between Mexico and the United States, in specific, and between the United States and other nations generally.

In that regard, we are going to be affected, I know I am myself already, feeling the gentle pressure of the accords or near accords that have been reached between the President and the president of Mexico. To that particular point, the Attorney General of the United States has made it clear that he's willing to sit down with us in advance of a final policy statement, shall we say, that might come from the White House on agreements or sentiments between the President of the United States and the president of Mexico.

So the guestworker program, both contemplated and existing, will be formulated or reformulated pursuant to the atmosphere that is now being created between the two nations. As further evidence of that important element is the presence of Phil Gramm, Senator Phil Gramm into the mix of points may in the general sub-

ject matter about which we are concerned, and so his forays into the guestworker world will also become a part of what we will be considering generally.

The witnesses are going to be touching upon, and we are most anxious to hear, we are going to consider them as not only a kind of a report on the status quo, but also on recommendations or advice that they might have about what may go right or might go wrong in any one of these particular aspects of the program.

With that, I will yield to the gentleman from Texas, if he wishes to make an opening statement.

Mr. SMITH. Mr. Chairman I do not have an opening statement. I just want to thank you for your continued good guidance of the Subcommittee. Like you, I look forward to hearing from our witnesses today, and they are all experts on this subject so I think we will be better informed after this hearing than we were before and look forward to asking them questions as well. I thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman. We will beckon the witnesses to come to the table to where their names are flashing at us. Obviously, they are not flashing at you. So far you are doing it correctly. The witnesses are all, as the gentleman from Texas has noted, experts in this field. One time when I was chairing a hearing in my role as chairman of the Senate, of Pennsylvania's Judiciary Committee, I noted to one of my colleagues that we are going to have experts testifying. And he said well, his own definition of an expert is somebody who is from out of town.

And so whether you are from out of town or not, we have already labeled you as experts. So we expect, and I know we will receive good testimony. The first witness will be Susan Martin, well-known to this Committee from the Institute for the Study of International Migration from Georgetown University. Our second witness will be Randy Johnson, the vice president for labor and employee benefits, the U.S. Chamber of Commerce. Then Mark Krikorian, the executive director for the Center for Immigration Studies, and then Cecelia Muñoz, the National Council of La Raza, the vice president of the Office of Research Advocacy and Legislation.

Mr. GEKAS. You all have extensive biographies and we cannot stay here until 8:30 to consider them all. But it should be recognized by the audience and by the record that those resumes, backgrounds, and experiences are extensive and form the seal and fiber of your background as you approach these issues. Let's begin with the general practice of accepting your written statements for the record without objection. And then asking each of you to try to limit your oral presentation to 5 minutes at the outset. And then the questions and answers that will be forthcoming will flush out some of the statements that you will be making at the outset.

So with that, we will begin as we introduce the witnesses with Susan Martin.

STATEMENT OF SUSAN MARTIN, INSTITUTE FOR THE STUDY OF INTERNATIONAL MIGRATION, GEORGETOWN UNIVERSITY

Ms. MARTIN. Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to testify on the issue of guestworker programs. I would like to begin where the Chair did

in setting some of the context for thinking about guestworker issues in terms of what appears to be new relationships that are developing between the U.S. and Mexico in a fairly cooperative and cooperative engagement on the issues of migration. There are many things the U.S. and Mexico can do cooperatively to facilitate migration between the two countries.

Expanding commuter lanes and making more productive use of remittances, the funding that workers send back to the Mexican community to improve the economic development of their home community. Joint review of some of the legislation of both the U.S. and Mexico that have particular impacts on Mexican migrants to assure that they are not having disproportionately impacts on these migrant, reducing border violence, and crime along the border that can be done building on the Grupo Beta model the Mexican government has put into effect, reducing smuggling and trafficking.

These are all types of issues that call for cooperation. The area that I would be most cautious about, though, is launching a new guestworker program, the specific area of attention in this Committee. I base my remarks on three pieces of research or analyses that I have been involved in. I served as the director of U.S. Commission on Immigration Reform, the Commission made recommendations of its extreme skepticism about guestworker programs, this being antithetical to the interests of the United States, in our 1995, 1997 reports.

I also served as coordinator of the United States of a bi-national study with the Mexican government on migration between the two countries. That group, 20 experts, 10 from each country, also came to the conclusion that a guestworker program should be viewed with great skepticism, particularly if it was to be promoted as a mechanism for reducing illegal migration between the two countries. That group of experts felt it would not serve that purpose. Also, I have been the co-chair of a transatlantic dialogue on migration issues that has met over the past few years and has reviewed the experience in Europe as well as North America, including the experience with guestworkers, and again came up with a number of sets of reservations about the effectiveness of these programs in either meeting labor shortages or regulating and managing migration.

This review has led me to believe that the only way a guestworker program should even be considered is under three circumstances or conditions that I would argue are unlikely to be met at present, or met sufficiently to justify a guestworker approach that would be an expanded one. One is that a country has to have control over illegal migration, and even more importantly, access to the workforce. To the extent that workers who participate in a guestworker program particularly a seasonal program, have easy access to permanent jobs in urban areas, then the guestworker program will only stimulate more illegal migration and illegal work rather than be a substitute for it.

It may very well create new networks and new recruitment in source countries such as Mexico that will again stimulate further illegal migration. Our experience, not just here but in Europe, shows that guestworker programs tend not to be substitutes for il-

legal migration except in very narrow circumstances where there are real constraints on illegal work.

The second thing is that for a guestworker program to operate effectively there must be mechanisms to, over time, reduce dependency of employers on this source of temporary workers, so that it doesn't again become a permanent aspect of life if you are to meet labor shortages. The H-1B program for high skilled workers has put that component into it by having fees going into training accounts in order to be able to raise the level of skills and help natives enter the work forces that the foreign workers are now coming into, particularly in information technology.

An approach of trying to train people for much of the seasonal work, particularly in agriculture work, doesn't make much sense, but a fund that would be initiated in order to look at alternatives to foreign workers in agriculture, in particular mechanization might be a very useful way of ensuring that a guestworker program serve transition needs and doesn't become a permanent element in any type of immigration program.

A third area, or third precondition for a guestworker program requires having adequate and more than adequate protection of the rights of the workers who are involved. By definition, guestworkers are very highly vulnerable to exploitation. Their ability to remain in the country is very much tied to the willingness of employers to continue to hire them during the temporary periods that they are in the country. Even if there is a possibility of permanent residence at the end of the stay in the interim, they are very vulnerable because they fear losing their employment, and therefore losing their ability to be in the U.S.

So any guestworker program must have many protections in place and extremely good enforcement regimes that will ensure that employers do not exploit the workers that are allowed in. These are not currently here in proposals, and I would say we should be very skeptical about any proposal that does not have all of these components. Thank you.

Mr. GEKAS. Thank you very much.

[The prepared statement of Ms. Martin follows:]

PREPARED STATEMENT OF SUSAN MARTIN

Mr. Chairman and Members of the Subcommittee, I want to thank you for this opportunity to testify at this hearing on guestworker programs. I serve as the Director of the Institute for the Study of International Migration in the Edmund Walsh School of Foreign Service at Georgetown University. My interest in these issues goes back a number of years. When I served as Executive Director of the U.S. Commission on Immigration Reform, we looked closely and very skeptically at proposals for an expanded temporary work program for unskilled foreign workers. As Coordinator of the Binational Study of Migration between Mexico and the United States, I examined the prospects for a bilateral program and agreed, as discussed below, with the findings of our expert panel that the two countries should be very wary about this approach. More recently, I co-chaired a transatlantic working group on migration that reviewed guestworker experiences in both North America and Europe before issuing its report, *Migration in the New Millennium*, that laid out criteria for temporary work programs.

To set the stage, let me begin with some general comments about migration and Mexico-US relations today, with the recognition that the majority of guestworkers, at least initially, would come from Mexico. Migration and border control issues are high on the US-Mexico bilateral agenda. With the exception of drug trafficking, no issue has provoked as much tension in US-Mexico relations as the unauthorized movements of Mexicans into the United States. Although the unprecedented eco-

conomic expansion of the last decade in the United States has reduced public anxiety about unlawful migration, a threatening downturn could well re-ignite a very acrimonious debate over immigration policy.

The apparent good will between Presidents Bush and Fox presents a rare opportunity to address immigration issues constructively. There is much that can be done to facilitate legal movements across our shared border, including commuter lanes, improvements in infrastructure, and increased staffing of inspection lanes. The United States could take steps to reduce backlogs in our legal immigration system by giving priority in admissions to nuclear families—a substantial portion of which are Mexican—and making the visa numbers available to meet that priority promptly. And we can restore eligibility for limited social benefits to lawful permanent residents, which would be of immense short-term help to the large number of working Mexican immigrants who now live in poverty.

On its side, Mexico could build on the highly successful units known as “Grupo Beta” that protect border crossers from violence and exploitation. More effective investment of the remittances sent by US-based migrants to their home communities could stimulate jobs and economic opportunities in Mexico. President Fox pioneered such efforts successfully while governor. Both countries should continue to work together to break up smuggling rings that exploit and often endanger migrants and often threaten law enforcement officials on both sides of the border.

With regard to guestworker programs, however, the two nations should be very cautious. Seasonal worker programs should be implemented only under certain conditions, none of which are present in current proposals.

First, there must be an adequate level of control over unauthorized entry and work or the guestworker program becomes a supplement rather than a substitute for illegal movements. The experience of the Bracero program, which authorized Mexican agricultural workers to enter the U.S. from 1943 to 1965, is a case in point. Apprehensions of unauthorized migrants reached its then peak of one million arrests in 1954 despite the Bracero program. In fact, most immigration experts believe that the Bracero program stimulated the unauthorized flow that has continued to this very day. With this experience in mind, the Binational Study of Migration between Mexico and the United States, conducted by 20 experts from both countries, concluded that an expanded foreign worker program “is unlikely to be an effective remedy to unauthorized migration.” No matter how generous the admission numbers are in the temporary work program, they are unlikely to be sufficient for all migrants seeking jobs. Moreover, many unauthorized migrants are employed in full-time, permanent jobs in urban centers—not in the seasonal work envisioned by most temporary work schemes. Since controls on illegal entry and, even more importantly, on illegal work are notoriously weak in the United States, a new guestworker program is likely to have the same effect.

Guestworker programs can also increase the reliance of employers on foreign labor, a dependence that is difficult to break even if changing economic conditions should lessen demand. To be an effective remedy to labor shortages, there must be incentives in place for employers to hire domestic workers or take other actions, such as mechanization, to reduce dependence on foreign workers. Without such incentives, the availability of cheap foreign labor hampers market reforms that would make these industries more efficient. A visit to the raisin grape harvest in California illustrated the point for me. While some growers mechanized and reduced their need for labor by a significant degree, others were unwilling to invest in new equipment and plantings—even though they could recoup their costs in as little as three years—as long as cheap labor was available. The situation with guestworker programs in Europe has been similar. Employers did not want the guestworkers to depart at the end of their stay, and they were influential in the adoption of policies that permitted the workers to remain permanently and bring their families. At a minimum, employers hiring temporary workers should be required to pay fees that would support mechanization and other initiatives to reduce the need for a continuing supply of foreign labor. Otherwise, government—in supporting the admission of temporary workers—will be subsidizing inefficiencies.

A third necessary ingredient involves protection of the rights of temporary workers and the communities in which they work. By definition, guestworkers are highly vulnerable to exploitation. Their ability to remain in the country is directly tied to the willingness of businesses to employ them. Even though some of the proposals would allow workers to seek new employers, complaints about wages and working conditions often give workers bad reputations that precede their searches for new work. The promise of permanent residence if they complete a designated number of days of work, a feature of some proposals, makes the temporary worker even more fearful of losing employment. A more effective set of worker protections, and signifi-

cant penalties for employers who violate them, must be a part of any temporary work scheme.

Provisions to meet these conditions could be integrated into new legislation, but they would diminish the attractiveness of a guestworker program to agricultural growers and businesses that now hire illegal workers. The controls on unauthorized movements are far from becoming effective and would require resources and political will that has been severely lacking.

Without such conditions in place, an expanded guestworker program is clearly undesirable.

The U.S. Commission on Immigration Reform, chaired by the late Barbara Jordan, concluded in 1995 that a guestworker program would be a "grievous mistake." Six years later, it would still be a grievous mistake to take this route, particularly in the absence of necessary safeguards, and Congress would be wise to proceed very cautiously.

Mr. GEKAS. We turn now to Mr. Johnson.

STATEMENT OF RANDEL JOHNSON, VICE PRESIDENT, LABOR AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE

Mr. JOHNSON. Thank you, Chairman Gekas, and thank you, Members of the Subcommittee for having this hearing. I do want to note to clarify for the record that I am also testifying here today on behalf of the Essential Worker Immigration Coalition, which is a broad based coalition of industries covering across-the-board kinds of jobs. A list of members of that coalition is attached for your information to my testimony. The subject of the hearing is guestworker proposals. However, I will concede up front that the bulk of my testimony concerns the worker shortage in this country. I think we did it that way because without making a credible case for this Subcommittee and others that there is such a shortage, I think all the discussions in the world about the possible contours of a guestworker program really become academic.

We recognize that, I think, making this case is a burden that the employer community must sustain, and hopefully we have done that in the statement I have presented to the Subcommittee today. Basically, the information I am going to try to go through very quickly focuses on general demographic data largely pulled from the Bureau of Labor Statistics backed up by anecdotal reports from members of the business community from across the country, from outside the Beltway, and then a brief discussion concerning everything that members of the business community are doing now to reach out to the domestic workforce, which is equally as important as the other items.

I will try to cover those items before I get into a brief discussion of the problems of current immigration law, and then make some general comments about guestworker programs. I am going to hit the highlights here, and hopefully Members of the Subcommittee can refer to the written statement. Even though there has been a recent economic slowdown, and one can debate how, to what degree and what depth that is, I think it is important to note that unemployment is still around 4.5 percent, and that is still extremely low by traditional tests. Moreover, if you look at various states, some of which I have mentioned in my testimony, it can be as low as 2.7 percent in Virginia, 2.5 percent in Colorado, Iowa at 2.7 percent. In other words, there is a general rate. It is still relatively low.

If you look at individual States, in some of those States it is extremely low. If you look at the Bureau of Labor Statistics data

which is about year old now, but it is still the best thing I think we have to go on, it projects by the year 2008, the U.S. Economy will have 161 million jobs but the total workforce will be just over 154 million which leaves us roughly a shortfall of about 7 million workers. Furthermore, I think, as we all know, the demographics tell us that the workforce is aging, and you can step out of immigration law and look at the whole debate on Social Security to see what we are facing is an inverse pyramid of an aging retiring workforce, and at the bottom of the point of the inverse pyramid is an inadequate workforce.

I think there is really not a lot of debate about those demographics but the basic point is that the workforce is shrinking, and according to the Bureau of Labor Statistics, there will be a shortfall of workers in the future. As important to emphasize is that this shortfall will not just be in the high tech areas, which I realize this Subcommittee has often focused on, but also in lower wage areas which are itemized in my testimony, or I should say, lower skilled areas. I do want to quote from a February 2001 analysis by the Arizona Mexico Commission, which said, and I quote, "today's shortages in labor exist beyond the agricultural fields and are found in hotels and resorts, restaurants, tourists attractions, hospitals, construction companies, landscaping, nursing homes, janitorial companies and most other labor intensive industries. "The bottom line is that if the U.S. Economy is producing jobs faster than it is producing people to fill those jobs, foreign labor must be accepted as a viable solution to the labor shortage." Then it goes on to talk about some of the demographics that I just mentioned.

Moving on, I just want to talk about a little bit and reference the Committee Members to discussion of the testimony regarding reports we have gotten from across industry, the American Health Care Association, the American Hotel and Lodging Association, National Restaurant Association, the National Roofing Contractors Association, the American Meat Institute, Association of General Contractors, all of which provide some reason of the workforce shortage problems they are seeing in their respective industries. I also have, after that, a lengthy discussion about what these same industries are doing on a voluntary basis to frankly grow the domestic workforce.

I did serve on the 21st Century Workforce Commission. I heard about shortages, and if you go to hearings and you listen to what the business community is doing in trying to reach out to the domestic workforce, I think it can be safely said that they're doing about everything that can be reasonably done. Is there more to be done? Perhaps. But it is not enough to solve the shortage. I wish I had time to go through that. Again, I hope the Subcommittee will.

Turning to problems in immigration law, right now the guestworker program is principally limited to H-2Bs, which is a very short term, less than 1-year program.

Reports from people who are experts in this area have told us that it is an unworkable program. Again, it is limited to seasonal temporary kind of jobs, no more than 1 year, which by the time you line up the documentation you need to fill the requirements of the Department of Labor and INS, it is already too late to make the program workable.

There is some, of course, availability of green cards for lower skilled workers, but it is very limited; it is around 5,000. I think the basic problem here is that unlike the H-1B program, immigration law does not right now—it is not responsive to the needs of the employer community to try to bring in new workers. With regard to guestworker programs, generally I would just like to note that, somewhat contrary to the prior speaker, one, I think they do constitute a mechanism that the Subcommittee should be looking at, with some safeguards generally, but as constituting a mechanism that can address worker shortages on a short-term basis, and then if there is no longer a need for those workers, then the program can be terminated or shut down temporarily.

I think they do provide an outlet for illegal immigrants in the sense that if there is opportunity to get jobs legally in America through a legal program, immigrants will more likely use that than try and cross the border in dangerous conditions to achieve illegal employment.

Lastly, I think that if we are going down this road to guestworker programs, the Subcommittee should consider what do you do in a situation where an employer and a worker want to try to transform that employment into a permanent basis and a permanent green card situation. I think that would involve some increase on the number of allowable green cards for lower skilled workers, but I realize that is a controversial area, and I raise it here for consideration.

Lastly, of course, is the undocumented worker situation. It will receive a lot of press down in Mexico and in America, I am sure, when the President makes his report. I think it is an area that the Subcommittee can't afford to ignore. On the other hand, I realize it is extremely controversial, as are the guestworker programs. Thank you.

Mr. GEKAS. We thank the gentleman.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF STATEMENT RANDEL K. JOHNSON

Chairman Gekas, Ranking Member Ms. Jackson Lee, and members of the Committee, I am Randel Johnson, Vice President, Labor and Employee Benefits at the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is a business federation representing more than three million businesses and organizations of every size, sector and region.

The Chamber is also a member of the Essential Worker Immigration Coalition (EWIC), and our testimony is on behalf of that entity as well. EWIC is a coalition of businesses, trade associations and other organizations from across the industry spectrum concerned with the shortage of both unskilled and lesser-skilled (“essential worker”) labor, outside of agriculture. (A list of the membership of the coalition is attached.) I am pleased to testify today before this subcommittee on the subject of those shortages, and the need for changes to our immigration system to help alleviate those shortages, particularly the utility of expanded temporary worker programs.

Information concerning my biographical background is attached. However, I would like to particularly note that I recently served on the 21st Century Workforce Commission established by the Workforce Investment Act and on the U.S.-Mexico Migration Panel sponsored by the Carnegie Endowment.

Even with the recent slowdown in the economy, our nation is still experiencing some of the lowest unemployment rates in decades, and is still below the 5½% that many economic texts used to say represented “full employment.” The national average also masks much lower unemployment rates in various areas of the country. Thirty-three states in the Union still have unemployment rates below the national average. Many of these states have had significant decreases in unemployment over

the last several years, including Virginia currently at 2.7%, Colorado at 2.5%, and Iowa at 2.7%.¹ Individual cities within these states have even lower rates. Even states that have had traditionally high unemployment are seeing jobs going begging. With the slowdown, labor markets have only moved from “very tight” to “tight”.

However, as we all know, the economy periodically undergoes these cyclical turns. If there is a shortage now, will there be one in the future? The evidence indicates the answer is yes. Bureau of Labor Statistics (“BLS”) projections indicate that by 2008 the U.S. economy will have 161 million jobs. Our total workforce, however, will be just over 154 million.² Furthermore, our workforce is aging. By 2008, the labor force age 45 and older will have the fastest growth rate and be a full 40% of the labor force.³ More than 60 million current employees will likely retire over the next 30 years.⁴ Finally, the rate of growth of our labor force will decrease, and, to quote Dr. Richard Judy of the Hudson Institute from his testimony last year before a House Subcommittee

“After 2011, the year in which the first of the Baby Boomers turns 65, their flight to retirement will reach proportions so huge as, barring unforeseen increases in immigration and/or participation rates among the elderly, to reduce the total size of the nation’s workforce.”⁵

A recent paper by the Employment Policy Foundation states that although the U.S. must do more to facilitate greater labor force participation rates by those not fully engaged in the labor force, and increasing productivity of those workers, neither will be enough to offset the demographic changes. “Immigration, always a key element in the American labor market, will become even more important as the American workplace attempts . . . to deal with a general shortage of labor . . .”⁶

A February 2001 analysis by the Arizona Mexico Commission reached similar conclusions:

Today, shortages in labor exist beyond the agricultural fields and are found in hotels and resorts, restaurants, tourist attractions, hospitals, construction companies, landscaping, nursing homes, janitorial companies and most other labor-intensive industries. . . .

The bottom line is that if the U.S. economy is producing jobs faster than it is producing people to fill those jobs, foreign labor must be accepted as a viable solution to the labor shortage. In addition, we must acknowledge that the Baby Boomer population is aging, and the total U.S.-born population, without immigrants, is shrinking. All across the world, increased immigration is seen as one solution to boost the workforce that is needed to sustain economies. The foreign worker, both legal and illegal, has been an integral part of our inflation-free economic growth, and must be valued as a contributor to our strong economy.⁷

In fact, many economists attribute the fact that the economy did not slow sooner to the impact of the immigrant workforce. According to Mark Zandi, chief economist at RFA Dismal Sciences in West Chester, PA, “There’s no question that without immigrants, the U.S. economy would have overheated long ago. Without immigration the Fed would have started raising rates back in 1997, and the expansion would have been over years ago.”⁸

It should be emphasized that, in spite of the slowdown, we are still creating jobs. Until the recent months, job growth in the services and construction sectors more than offset job losses in manufacturing and other areas to result in net increases in job creation in the economy.⁹ Recent reevaluations of the data by the Bureau of

¹Source: Bureau of Labor Statistics, Statewide Unemployment Statistics, May 2001, (<http://stats.bls.gov/eag/eag.map.htm>).

²Source: 2000–2001 *Occupational Outlook Handbook*, Bureau of Labor Statistics, “Tomorrow’s Jobs”. An unknown number of workers will hold more than one job, making the actual “gap” less.

³*Ibid.*

⁴Source: “Immigration is Critical to Future Growth and Competitiveness,” *Policy Background*, Employment Policy Foundation, June 11, 2001.

⁵Source: Dr. Richard Judy, Hudson Institute, Testimony before the House Subcommittee on Oversight and Investigation, Committee on Education and the Workforce, February 17, 2000.

⁶“Immigration is Critical to Future Growth and Competitiveness,” *Policy Background*, Employment Policy Foundation, June 11, 2001.

⁷“Labor Shortages and Illegal Immigration: Arizona’s Three-Pronged Strategy,” Arizona-Mexico Commission, February 2001, pp. 4–5.

⁸“Immigrants fill gap in open job market,” *USA Today*, June 23, 2000.

⁹Source: Bureau of Labor Statistics, National Current Employment Statistics website (Historical data for the “B” tables of the Employment Situation News Release) (<http://www.bls.gov/cesbtabs.htm>)

Labor Statistics have resulted in *increases* in the monthly net job creation for the last year.¹⁰

And the job growth is expected to continue. BLS projections show a 14% increase in employment (jobs held) from 1998–2008, a net increase of 20 million jobs.¹¹ However, what is most interesting is where the job growth will be. Although, as many know the projections show that the *fastest* growing occupations will be those requiring higher education (at least an associates degree), in fact, the *most* job growth (i.e., in absolute terms) will be in occupations requiring less formal education or training. Of the top ten occupations with the largest numerical job growth, all but two require less than a bachelor's degree; the majority (six) require only short-term on-the-job training. These include: retail salespersons, truck drivers, personal care and home health aides, and office clerks. Registered nurses are also included in the top ten. The next ten occupations with the largest job growth include nursing aides, janitors and cleaners, waiters and waitresses, and food counter and related workers. The top thirty include childcare workers, landscapers and groundskeepers, hand packers and packagers. Even among the fastest-growing occupations, six of ten do not require a bachelor's degree, and include medical assistants, and personal care and home health care aides.¹² Finally, the top ten occupations with the greatest retiree replacement needs (this group includes the occupations in which the average age of the current workforce is rapidly rising) include the following: secretaries, truck drivers, janitors and cleaners, registered nurses, bookkeeping and accounting clerks.¹³ In fact the Employment Policy Foundation estimates that the available native population available for "essential worker jobs" has *declined* since 1994 from 9 million to 7.6 million.¹⁴

Members of the Committee, I have just described the essential worker work force, and the employees of the majority of EWIC members. But let's get even more specific.

Chamber members across the country and across industries have reported workforce availability issues as among their top priorities. In fact, in recent testimony before the Senate Immigration Subcommittee, Elizabeth Dickson, Human Resource Specialist for Chamber member Ingersoll-Rand Corporation, and Chair of our Subcommittee on Immigration related her company's difficulties recruiting skilled welders in Texas, service and repair technicians, and tool and die workers.¹⁵ Here is some other data from the other organizations in EWIC.¹⁶

From the *American Health Care Association*: Long-term care facilities currently employ 1.5 million people, and the industry will create jobs for 600,000 Certified Nurse Assistants and 300,000 others over the next five years. According to the Department of Health and Human Services, the nursing home industry has a *current* shortage of 400,000 health care workers. The industry has had closures and facilities due to staff shortages, and just in Massachusetts, 10% of all homes there have closed in the last two years because of the shortage.

From the *American Hotel and Lodging Association*: A recent report by the American Economics Group estimated lodging industry employment at 1.9 million with estimates of over 2.6 million in 2010, meaning that the industry will require more than 700,000 additional workers in the next decade.

From the *National Restaurant Association*: Restaurants are the largest private-sector employer with over 11.3 million employees. By 2010 the industry expects to employ an additional 2 million workers. Labor shortages consistently poll among the top issues for restaurants/small business. According to the National Council of Chain Restaurants, workforce shortages, particularly in metropolitan areas, are among the most significant short and long term challenges to the industry.

From the *National Roofing Contractors Association*: The lack of qualified workers is the single biggest problem facing roofing contractors today. In a recent on-line survey of members, over 50% responded they could hire up to five additional employees right now if qualified workers were available. BLS data projects an additional 50,000 roofers will be needed over the next decade to keep pace with demand.

¹⁰ Source: BLS Current Employment Situation, May 2001, Table B.

¹¹ Source: Braddock, Douglas, "Employment Outlook: 1998–2008 Occupational Employment Projections to 2008," *Monthly Labor Review*, Bureau of Labor Statistics, November 1999.

¹² *Ibid*, Tables 3 and 4.

¹³ Source: "OOChart: Occupations with the greatest retiree replacement needs, projected 1998–2008," *Occupational Outlook Quarterly*, Spring 2001.

¹⁴ Source: "Immigration is Critical to Future Growth and Competitiveness," *Policy Backgrounder*, Employment Policy Foundation, June 11, 2001.

¹⁵ Testimony of Elisabeth C. Dickson before the Senate Subcommittee on Immigration on "Immigration Law Issues in the 21st Century," April 4, 2001.

¹⁶ Data in the following paragraphs provided to the U.S. Chamber from the associations listed.

From the *American Meat Institute*: Total employment in meatpacking has increased steadily since 1965 to more than 151,000 today. In meat processing, employment has almost doubled in that time period and in poultry processing the increase is more than 150%.

From the *Building Service Contractors Association International*: Current employment in building services is over 1 million, and has grown steadily in the last year. According to a survey by the Association, all responding members reported they expect to increase employment in the next year, and all reported difficulty filling vacant positions. These vacancies have resulted in curtailment of seeking additional service contracts and expansion plans. Notably, these shortages were noticed in an industry that employs anywhere from 40 to 99% women and minorities.

From the *Association of General Contractors*: Reports from members are that a lack of skilled workers has negatively impacted companies and their ability to plan and expand. It has hindered the ability to bid for projects because employers do not have the people to do the job. Members attributed the shortages to a lack of skilled workers (especially in the skilled building trades), that are available, and the lack of new workers entering those trades.

As you can see, this is a problem that is widespread and not likely to go away in the future. We must begin to address this situation. If the recently signed tax cut and the lowering of interest rates by the Federal Reserve rebound our economy as they should, all of our industries will be facing further difficulties in finding employees. We must address these needs now, before the long-term demographics described above make it truly a crisis that forces our economy into recession.

I should emphasize that the U.S. Chamber and its members, as well as the other members of the EWIC coalition are doing our part to increase the workforce domestically. We have participated in welfare-to-work, school-to-work, and even prison-to-work initiatives. We are working in cooperation with local community leaders and unions in Workforce Partnerships across the country, and are taking other initiatives to help bring workers to our jobs, including increasing wages and benefits, improving the work environment, and even offering incentives such as signing bonuses and other “perks.”

Through the Center for Workforce Preparation, the Chamber’s non-profit affiliate, we have taken a strong role in addressing the critical shortages in the availability of skilled and unskilled workers that business is experiencing today. Current efforts of the Center include the following:

- Identifying and supporting programs that bring new sources of labor to “work readiness”—former welfare recipients, people with disabilities, recent retirees, and others.
- Partnering with Job Corps, the U.S. Departments of Labor and Education and others in efforts to develop worker training programs that address and meet current business needs.
- Helping the Chamber’s federation of 3,000 state, local and metro chambers of commerce to effectively engage in workforce development by providing tools, models and best practices for implementation at every level.
- Informing businesses of the resources and opportunities available to them and their employees to obtain education and training.

I would be happy to provide the Committee members with additional information about these efforts, at your request.

Other EWIC associations are also doing their best to attract and retain workers:

The National Roofing Contractors Association’s 2000 Salary and Benefit’s survey reveals that average hourly wages and bonuses for roofing and sheet-metal workers have increased 15 and 25 percent since 1998, respectively. In addition to increasing salaries, the NRCA is involved in other workforce development initiatives, including a Job Corps Center in New York to provide roofing training to disadvantaged youths. The training includes a paid six to eight week school-to-work experience. NRCA partnered with the YMCA in Broward County, Florida to provide training to young adults age 18 to 25, in cooperation with the Florida Department of Juvenile Justice, which identified candidates to participate in the project. NRCA is developing a portable entry-level training program that be used by many agencies, NRCA affiliates and contractors to start-up training programs in their communities. Finally NRCA has partnered with the South Texas Community College to create a training facility for potential roofers at the College. The primary pool of applicants is expected to be Mexican-American migrant farm workers that may be interested in permanent, full-time jobs in roofing.

According to the National Restaurant Association, restaurants have been at the forefront of welfare-to-work initiatives—nearly three out of four quick service res-

restaurants have recently hired an employee who was a former welfare recipient. Restaurants also provide upward mobility—nine out of ten salaried employees at table service restaurants started as hourly employees. The industry is an important employer of new workers, providing opportunities for persons who are relatively inexperienced or unskilled to “learn the basics.”

According to the American Health Care Association, the industry has hired approximately 100,000 individuals from welfare-to-work initiatives over the last five years. The industry offers paid training for certification for Nurse Assistants, and many employers are offering signing bonuses, transportation allowances and other incentives. The industry also engages in extensive efforts to improve working conditions, career paths and other opportunities in long-term care.

The Building Service Contractors International Association reports that all of its members responding to a survey have continually offered wages above minimum, signing or referral bonuses and increased benefits to attract workers. Individual employers report advertising on Spanish-language radio stations to attract applicants, giving away televisions and trips for referrals, usage of welfare-to-work programs, and educational incentives.

The American Hotel and Lodging Association reports members offering a variety of incentives including free meals, bonuses, English classes, and paid benefits. PKF Consulting estimates that hospitality industry pay has increased 4–5% per year in the last five years; approximately double the national average. The lodging industry has been a leader in Welfare-to-Work initiatives. One member, Marriott, has graduated more than 3000 individuals from its Pathways to Independence program. Industry members are sponsoring school-to-work initiatives including Charter schools (the recently opened Marriott Hospitality High School here in Washington, for example), curriculum assistance and internship opportunities.

However, all of these efforts and the many others I have not mentioned will likely result in workers shifting from one industry with a shortage to another given the demographic projections I reported at the beginning of my testimony. Therefore, we must look at our immigration system to help “grow the pool.” Unfortunately, our current immigration system is of little help to the employer of essential workers. Like our education policy, in recent years our immigration policy has been heavily skewed toward generating additional highly skilled and educated workers for our economy; witness the recent debates over the H-1B program. We believe this is a correct strategy, since these knowledge workers are the driving force for development and expansion of ideas and products. However, once these ideas are developed and the ideas become products, essential workers are needed to manufacture, deliver and service those products. We still must answer the question: Who will fill the millions of essential worker positions that we will create? Immigration must be one answer, but current law does not provide the solution.

Our current immigration system provides visas to essential workers in very limited circumstances. The H-2B visa is a temporary visa issued to individuals who will be working in temporary, seasonal jobs outside of agriculture. The H-2B process is a cumbersome and bureaucratic one that involves two separate agencies, a lot of paperwork, and often more time than the job itself will last. In the past, this red tape has meant that very few employers bothered to try to use the program, but in recent years its use has escalated. This can be attributed primarily to the tight labor market. Recent news articles have pointed to usage of this category by hotels in Cape Cod, amusement parks in the Midwest, a tuxedo firm near Philadelphia, coal miners in Kentucky, resorts in Branford, Missouri, and others. Many employers who do not usually employ temporary workers are using the program to help “fill in” spot shortages. However, let me not understate this—the program is extremely *difficult to use*, especially for small businesses that must pay lawyers to help navigate the minefield of regulatory requirements.

However, while employers with truly temporary needs are forced to try to use the broken H-2B program, employers with long-term and permanent needs are out of luck, since no long-term temporary visa exists in our current system. In fact, there is no “H-1B” counterpart for essential workers. If an employer has a temporary long-term or permanent position, there is no legal mechanism to sponsor foreign nationals to fill that need.

Theoretically, such an employer could sponsor a foreign national for permanent residence—a “green card” under the formal labor certification program. However, our immigration system currently provides only 5000 green cards each year for persons coming to work in jobs that require less than two years of education or training.¹⁷ Waiting lines for these green cards can be over five years. Another category

¹⁷The Immigration and Nationality Act allows up to 10,000 visas each year. However, other recently-passed laws have diverted up to 5,000 of those visas for Central American Adjustments.

of green cards, for individuals working in jobs that require more than two years of training or experience but less than a bachelor's degree, shares its allotment of just over 49,000 visas with the H-1Bs and other highly-skilled workers. According to the INS, in 1998, the last year for which data have been published, just over 8,500 visas were issued to skilled workers.¹⁸ Furthermore the process to get into the "waiting list" can take three-years or more.

Special mention should be made here about the problem specific to employers of registered nurses. Recent testimony before the Senate Immigration Subcommittee outlined the nursing shortage. While such nurses would be considered "essential workers" under our broad definition, most agree that they deserve their own visa category. However, with the sunset of the H-1A program in 1997, registered nurses have had no nonimmigrant category that is usable. Since the H-1B program mandates that the offered position require a baccalaureate degree for entry, most registered nurses cannot use that category. The new "H-1C" visa enacted in 1999 provides only 500 visas a year, and because of the restrictions in the statute, less than 14 facilities nationwide are eligible to sponsor nurses under this program. The Chamber and its members support creation or expansion of a temporary visa category for registered nurses as one method to alleviate the documented current and future shortages of registered nurses.

As you can see, we have a current situation in which our nation has millions of jobs available, a decreasing workforce relative to the number of openings, and an immigration system that provides no practical legal mechanism for employers and foreign nationals to fill those openings. Is it any wonder we have such a large number of undocumented workers in this country?

However, the time has never been better to fix this problem. We are eagerly awaiting the outcome of the discussions of the high-level working group on immigration between the U.S. and Mexico inaugurated by President Bush and President Fox in February. These talks are important because the largest percentage of potential essential worker immigrants is likely to be from Mexico. However, we must point out that we do not believe that a Mexico-specific program will be entirely adequate to meet the needs of employers. Employers do not select their employees based on nationality, and there are many other nationalities that should not be left out.

The specific topic of this hearing is "guest workers." However, that term, having gained a negative connotation in past debates, is very unspecific. It can apply to any nonimmigrant visa category that allows work, including H-1B nonimmigrants, agricultural H-2A workers, even intracompany transferees, O and P artists and entertainers, and exchange visitors. We agree that there is a need for a workable temporary visa category for essential workers. EWIC is developing reforms to the current H-2B program to make it less bureaucratic and cumbersome, and a new H-1B-like category for longer-term needs.

Although clouded in much political rhetoric, the merits of properly structured guestworker programs are fairly self-evident. One, they constitute a mechanism to address worker shortages in this country that can be flexible depending on the actual need and the state of the economy. Two, although the exact benefits are difficult to quantify, they can alleviate illegal immigration by providing an orderly, structured (and safe) process by which those outside the country looking for work can enter the country, obtain legal employment, and return home to their families. (Of course, this also helps the country of origin as earned wages will be spent in the home economy.) Third, this process can, in turn, help address the problem of those who do enter illegally, but fear to return to their home country for fear of ever being able to obtain entry (legally or illegally) again. As one recent study put it:

From the U.S. perspective, temporary programs would address labor market shortfalls most directly and fairly for all parties. They would at the same time offer U.S. policymakers a new tool for managing both illegal migration and the border more effectively.¹⁹

On these general principles, I think almost all agree. Of course, many will differ on the details on what is a "properly structured" program and under what specific conditions should temporary workers be allowed into the country. We are not so foolish to think otherwise. However, the status quo is not acceptable and this is a debate that policymakers need to begin to wrestle with; EWIC looks forward to participating in that debate with the Congress, the Administration, and other interested parties. We are hopeful that there will be enough areas of common agreement to put the political rhetoric aside and develop positive solutions. As noted, we are

¹⁸ Source: 1998 Statistical Yearbook of the Immigration and Naturalization Service.

¹⁹ Carnegie Endowment for International Peace, *Mexico-U.S. Migration: A Shared Responsibility*, 2000.

developing several reform proposals and hope to submit those for consideration in the near future.

Such programs would allow employers to sponsor individuals legally, but temporarily. However, what if such a worker were to prove him- or herself such a valuable employee that the employer wished to promote him or her and offer permanent employment? Without additional green cards available, this proposition is hopeless. Employers need workers, but also long-term stability and flexibility in their workforce. Only with such stability would employers have incentives to keep and train their workers. Therefore, EWIC also believes that a temporary worker program should likely include some mechanism for increasing green cards for a number of essential workers, and streamlining the processing so that it does not take half a decade to obtain.

Finally, there is the question of the undocumented population. These individuals are here and working, many of them paying taxes according to data recently summarized by the *Washington Post*.²⁰ A National Academy of Sciences study in 1996 found that immigrants add \$10 billion a year to the economy—between \$20,000 and \$80,000 per person.²¹ This is a controversial area, and certainly not all experts agree, but one which needs to be examined as part of the overall debate concerning worker shortages and immigration reform generally.

In conclusion, the Chamber and its members are hopeful that this new era of frank discussion of essential worker issues may lead to real, substantial reform that will help all employers and continue to help our economy to grow. Thank you, and I welcome any questions you may have.

Mr. GEKAS. Let the record indicate that we have been joined at the Committee by the gentleman from Arizona, Mr. Flake, who has a unique perspective on all the matters under discussion here, and also the gentleman from California equally able to tell us details about these problems, the gentleman from California, Mr. Issa. So we will now turn to the next witness, Mr. Krikorian.

**STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR,
CENTER FOR IMMIGRATION STUDIES**

Mr. KRIKORIAN. Thank you, Mr. Chairman. In all the discussion about guestworker programs, one of things that hasn't been addressed is the assumptions that are underlying, the support for the program. What are the premises behind them and are these premises valid? And I wanted to go over quickly a summary of some of the things I have touched on quickly in my written testimony. The first assumption is the flow of workers from Mexico is inevitable. It is like the weather. There is really not much we can do about it, and therefore it ought to be orderly and lawful rather than disorderly and unlawful as it is today. Though that may seem true on the surface, a longer view makes it clear that immigration from Mexico has been caused by government policies. It is, in effect, an artifact of Federal Government policy over many years. And this, when you think about it, isn't that hard to understand, because migration is not just a matter of pushes and pulls, the poverty in the sending country and the opportunity in our country, but also the networks and the pipeline that connect the two countries. Nobody wakes up in Uruguay and says today I will move to Hoboken. People go to places where they have relatives and friends, acquaint-

²⁰Mary Beth Sheridan, "Illegals Paying Millions in Taxes," *Washington Post*, April 15, 2001. The article noted, relying on internal Social Security Administration documents, that "Over the eight-year period, the mystery workers were responsible for more than \$20 billion paid in Social Security taxes—but they received no credit for them. Their payments have helped contribute to the system's surplus. . . ."

²¹National Research Council, National Academy of Sciences, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, National Academy Press, 1997, cited in Moore, Stephen, *A Fiscal Portrait of the Newest Americans*, National Immigration Forum & the Cato Institute, 1998.

ances and countrymen. And government policy has created these networks which facilitate migration starting in the 1920's when Congress specifically exempted the Western Hemisphere from the immigration caps that were passed in 1921 and 1924 so as not to limit Mexican immigration.

During World War II, the Bracero program created very widespread links and networks between the United States and Mexico. The IRCA amnesty of the 1980s solidified many of those networks and likewise, the decisions over the past few years of the INS to effectively stop enforcing the employer sanctions has likewise helped solidify the networks that enable migration to go from Mexico to the United States.

As a result of these series of government decisions, Mexican immigration to the United States has ballooned. In 1970 there were 800,000 Mexican immigrants in the United States. 30 years later, there are 8 million Mexican immigrants. A tenfold increase in 30 years. And this is an increase that is a result of either conscious or unconscious decision, but nonetheless, government actions. So far from being an inevitable process with deep roots, migration from Mexico is really a relatively recent phenomenon created by government policies.

A second important assumption is that the poor are overpaid. In a free market economy when an employer doesn't have enough workers presenting themselves, he raises the wages or increases compensation in some other way. And the specific intent of a guestworker program is to short-circuit that process and to eliminate the needs to respond to the clues that the free market is sending.

So we have to ask ourselves are the poor, in fact, overpaid? Well, the wages of full-time workers during the 1990's fell by 7 percent, and the wages of farm workers during the 1990's fell by 10 percent. In those areas where there is, in fact, certain tightness in the labor market, we are seeing employers responding the way one would expect. For instance, all the fast food, major fast food companies are now offering health insurance, dental insurance, 401(k) plans, home and car insurance, stock options, the passage of the guestworker program would express the sense of Congress that this kind of trend is to be avoided. And that the better pay that the market would be offering the poor is something that we should not encourage.

The third assumption is that whatever the pay is, there are jobs that Americans simply won't do. In fact, this assumption, likewise, appears to be invalid. There are 12 million native-born workers with less than a high school education. It appears that their occupational distribution, except for agriculture and their median wages, are very similar to those of Mexican workers who are the people in question here. And extensive research from the Bureau of Labor Statistics, the Brookings Institute and elsewhere, does indicate that poor American workers and Mexican immigrant workers are, in fact, in direct competition.

Another assumption, a basic assumption of the guestworker program is implied by its name, guestworkers. These are people that will not settle permanently, but rather work here for a time and then leave. Unfortunately, all of human experience shows that

there is nothing as permanent as a temporary worker. The Bracero program resulted in enormous levels of legal and illegal migration from Mexico and created the flows that we are now grappling with today. Germany's guestworker program likewise created permanent immigration.

When Germany discontinued the recruitment of foreign workers from Turkey and southern Europe in 1973, from that point until today, the foreign population has increased by 82 percent in Germany. So clearly, the guestworker program has failed there as well.

The other assumptions I will just briefly touch on, there is an implicit assumption that there is no cost to taxpayers of a guestworker program, but because of permanent settlement and because of the poverty and low level of education of workers involved, there is inevitably going to be significant tax costs to government, State, local and Federal Government. A very important assumption which is made and never examined is that such a program is administratively feasible, that the INS, with all of its backlogs, with struggling with updating its computer system and eventually apparently will be reorganizing itself into separate subagencies, can somehow manage an additional enormous responsibility put on it by a guestworker program.

And the final assumption is that there really are no alternatives. That given all these other problems, there is still nothing we can do about it. We have to take these people because there is nothing else we can do about it that can avoid convulsions within our society. The fact, is we can easily stop illegal immigration without harming our economy. Low skilled workers account for less than 4 percent of our national output. Mexican immigration in the 1990's held down prices by, at most two-tenths of 1 percent.

So the various measures that we have explored in the past to limit illegal immigration would not be harmful or problematic to our economy or to our society, and in fact, that is the direction we should be looking at rather than institutionalizing the illegal immigration from Mexico through the guestworker program.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MARK KRIKORIAN

Mr. Chairman and members of the subcommittee: Thank you for offering me the opportunity to testify at this hearing on guestworker visa programs. My name is Mark Krikorian, and I am executive director of the Center for Immigration Studies, a non-profit, non-partisan research organization in Washington which examines and critiques the impact of immigration on the United States. Among its many activities, the Center is a subcontractor to the U.S. Bureau of the Census on an evaluation of the immigrant data in the Bureau's new American Community Survey.

With new administrations in Washington and Mexico City, there has been much discussion of a new guestworker program with Mexico, presented as a way to satisfy employer demands for low-skilled labor and to legalize today's large illegal immigrant population. Some guestworker proposals would include non-agricultural workers in addition to farmworkers, unlike our last major experiment with this concept, the Bracero program, which was limited to agriculture and was discontinued in 1964 because of flagrant abuses. Some of the other low-skill occupations for which guestworkers might be imported would be in the hotel, restaurant, construction, landscaping, and other industries.

In all the discussion of this issue, however, there has been no examination of the assumptions underlying any guestworker proposal. With the subcommittee's indulgence, I will endeavor to explore these assumptions and assess their validity.

ASSUMPTION 1. THE FLOW OF WORKERS FROM MEXICO IS INEVITABLE

The bedrock assumption undergirding a guestworker program is that the flow of workers from Mexico is unstoppable, a natural phenomenon like the weather which we are unable to influence. Therefore, it is said, managing the flow in an orderly and lawful manner is preferable to the alternative.

On the surface, the flow of Mexican immigration may indeed seem inevitable; it is very large, rapidly growing, and spreading throughout the country. But a longer view shows that this flow has been created in large part by government policies, both in the United States and Mexico. And, government policy having created the migration flows, government policy can interrupt the flows, though a social phenomenon like this is naturally harder to stop than to start.

Migration is often discussed in terms of pushes and pulls—poverty, oppression, and general societal dysfunction impel people to leave their homelands, while high wages and expanded economic and social opportunities attract people to this country. While true, this analysis is incomplete because it overlooks the connection between the sending country and the receiving country. No one wakes up in Timbuktu and says “Today I will move to Milwaukee!” Migration takes place by way of networks of relatives, friends, acquaintances, and fellow countrymen, and few people immigrate to a place where these connections are absent. Consider two countries on the other side of the planet—the Philippines and Indonesia. Both have large, poor populations, they are neighbors and share many cultural similarities, yet there are more than 1 million Filipinos in the United States and only a handful of Indonesians, and annual immigration from the Philippines is routinely 40–50 times greater than immigration from Indonesia. Why? Because the ties between the United States and the Philippines are numerous and deep, our having colonized the country for 50 years, and maintained an extensive military presence there for another 50 years. On the other hand, the United States has very few ties to Indonesia, whose people tend to migrate to the Netherlands, its former colonial ruler.

At the end of the Mexican War in 1848, there were only a handful of Mexican settlers living in the Southwest, many of whom soon returned to Mexico with the Mexican government’s assistance. The migration of Mexican workers began in a small way with the construction of the railroads beginning in the 1870s and later with the expansion of other industries. But the process of mass migration northward to the United States, and the development of the networks which made further immigration possible, began in earnest during the Mexican Revolution of 1910–1920. The Cristero rebellion of the late 1920s was the last major armed conflict in Mexico and was centered in the states of west-central Mexico; partly to prevent further trouble, the newly consolidated Mexico City regime adopted a policy of encouraging emigration from these states. The power of government-fostered migration networks is clear from the fact that even today these very states account for the majority of Mexican immigrants to the United States.

On the U.S. side, federal policies that established migration networks between the United States and Mexico arguably began in the 1920s, when Congress specifically excluded the Western Hemisphere from the newly enacted immigration caps so as not to limit the flow of Mexican immigrants. Then in 1942, the Bracero Program to import Mexican farmworkers was started under the cover of World War II, and it continued until 1964. About 4.6 million contracts were issued to Mexican workers (many were repeat contracts for workers who returned several times, so that an estimated 1 to 2 million individuals participated). By creating vast new networks connecting the United States and Mexico, the Bracero Program launched the mass illegal immigration we are still experiencing today. Illegal immigration networks were reinforced by the IRCA amnesty of 1986, which granted legal status to nearly 3 million illegal aliens, at least two-thirds of whom were Mexican. This new legal status conferred by the federal government generated even more immigration, legal and illegal, as confirmed by a recent INS report. And the federal government’s recent decision to abandon enforcement of the ban on hiring illegal aliens has served to further promote migration from Mexico.

As a result of this series of government decisions, the flow of Mexican immigration to the United States is quite large. The Mexican immigrant population has ballooned from less than 800,000 in 1970 to nearly 8 million today, nearly half of whom arrived just during the 1990s. Since 1980, the Mexican immigrant population has grown by 348 percent, creating a snowball effect through the reinforcement of old networks and the establishment of new ones. If present trends continue, within a few years Mexico will have sent more immigrants to the United States in 100 years than Germany (currently the leading historical source of immigrants) did in more than 200 years.

Far from being an inevitable process with deep historical roots, then, mass immigration from Mexico is a relatively recent phenomenon created by government policies.

ASSUMPTION 2. THE POOR ARE OVERPAID.

The objective of a guestworker program is to secure workers from outside the country because current residents aren't seeking out the jobs available at the wages offered. Ordinarily in a free-market economy, when a prospective buyer can't find sellers to trade with, he increases what he is willing to pay until a seller comes forward. With regard to employment, if workers are not responding in sufficient numbers to job offers, employers offer more money, or additional compensation in some other form, in order to purchase their labor.

Assuming for the sake of argument that a labor shortage exists at the bottom of the labor market, one needs to ask whether Congress should interfere with the natural workings of that market to prevent wage increases. In other words, should Congress redirect the Invisible Hand? A guestworker program would do precisely that—by artificially increasing the supply of low-skilled workers, it would short-circuit any market incentives for employers to increase the wages and benefits, and improve the working conditions, for entry-level blue-collar workers.

Support for a guestworker program, then, must be based on the assumption that the poor are overpaid and do not warrant increased compensation. Is this true? It would seem not. The inflation-adjusted wages of full-time workers with less than a high school education actually declined more than 7 percent during the 1990s. Given that at least three-quarters of Mexican illegals lack a high school education, it is likely that guestworkers would be competing with the very people who experienced this drop in wages. What's more, high-school dropouts are already the poorest workers in our country, so the drop in wages caused by additional imported labor, or the rise in wages caused by the lack of such labor, would have a much greater impact on their quality of life.

The drop in wages has been even more pronounced among the subset of the low-skilled workforce which would be most directly affected by a guestworker program—farmworkers. According to a March 2000 report from the Labor Department, the real wages of farmworkers fell from \$6.89 per hour in 1989 to \$6.18 per hour in 1998—a drop of more than 10 percent. A new guestworker program is likely to continue this downward trend in farmworker wages.

And wages aren't the only indicator. Of full-time workers without a high-school diploma, fully 54 percent are not offered health insurance by their employers. There are signs, however, that this trend may be shifting. Because of difficulty in recruiting and retaining low-skilled workers, the fast food industry, for instance, is beginning to offer medical and dental insurance. What's more, these employers, such as McDonald's, Burger King, and Taco Bell, are also beginning to offer 401(k) plans, stock options, home and car insurance, etc. The purpose of a guestworker program is to slow this kind of trend by removing the natural incentives for businesses to expand compensation. Passage of a guestworker program, then, would reflect the sense of Congress that the poor do not require the better pay that the market would otherwise begin to offer them in the absence of unskilled foreign labor.

ASSUMPTION 3. THESE ARE JOBS AMERICANS WON'T DO

Another premise of a guestworker program is that even increased wages and benefits will not attract sufficient workers to many low-skilled occupations. In other words, there are jobs Americans simply won't do, and foreigners, either as illegal aliens or as guestworkers, must be imported to do them.

With regard to jobs held by Mexican immigrants (who would be the main subjects of any guestworker program), this is partly correct. It seems very likely that most jobs held by Mexican immigrants are jobs that would not interest the majority of Americans, because they are generally low-paying jobs done by unskilled workers. However, it is also clear that there are millions of Americans who are already doing precisely these kinds of jobs. There are 8.3 million native-born full-time workers without a high-school education, and an additional 3.4 million native-born part-time workers without a high school education. There is a good deal of evidence that these workers are in direct competition with Mexican immigrants—i.e., these are jobs that Americans will do and are doing already.

With the exception of agricultural labor, native-born and Mexican-born workers have a similar distribution across occupations. Thus, natives who lack a high school education and Mexican immigrants appear to be doing the same kind of jobs and are therefore in competition with one another. Another way to think about whether Mexican immigrants compete with unskilled native-born workers is to look at their

median wages. If Mexican immigrants were employed in jobs that offered a very different level of remuneration than native-born dropouts, then it would imply that the two groups do very different kinds of work. But, in fact, the median wage of Mexican immigrants and native-born high school dropouts is very similar; the median weekly wage for native-born high school dropouts who work full time is \$350, while the median weekly wage for full-time Mexican immigrants is \$326. Like their distribution across occupations, the wages of the two groups seem to indicate that they hold similar jobs.

Other research has shown the same thing—that unskilled immigrants and natives compete for the same jobs. A report prepared by the Bureau of Labor Statistics concluded that native-born and immigrant high school dropouts are almost perfect substitutes for one another in the labor market. That is, they compete directly with one another for the same jobs. (“Skill Differences and the Effect of Immigration on the Wages of Natives” by David A. Jaeger, *Bureau of Labor Statistics Working Paper #274*, 1996). In a paper published by the Brookings Institution in 1997, Harvard economists George Borjas, Richard Freeman, and Lawrence Katz also found that natives and immigrants who lack a high school education tend to hold similar jobs and concluded that immigration had a significant adverse impact on the wages of natives without a high school education (“How Much Do Immigration and Trade Affect Labor Market Outcome?”, *Brookings Papers on Economic Activity*, Vol. 1, 1997). And a National Academy of Sciences report also came to the same conclusion—unskilled natives and immigrants tend to compete with one another for the same jobs (*The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, edited by Barry Edmonston and James Smith, National Academy Press, 1997).

ASSUMPTION 4. A FREE MARKET IN GOODS REQUIRES A FREE MARKET IN LABOR

President Vicente Fox of Mexico said in January, “When we think of 2025, there is not going to be a border. There will be a free movement of people just like the free movement of goods.” This moral equivalence of trade and immigration is another assumption underlying a guestworker program.

But this equivalence can only be true if people are no more than factors of production. In fact, though, trade and immigration are fundamentally different; while an imported good can be discarded when it has outlived its usefulness, an immigrant is a human being, created in the image of God, and thus more than merely a labor input.

The desire to benefit from a person’s labor without acknowledging his humanity is to be expected among employers, and has deep roots. Henry Ford once asked (though not in connection to immigration), “How come when I need a pair of hands in the factory, I always get a human being as well?” Likewise, after it became clear that Germany’s post-war guestworker program had failed, one observer noted ruefully, “We asked for workers, but they sent us men.”

Now there is no question that trade and immigration are similar in certain ways. Both alter the supply of labor and change the mix of skills in the economy. Whether the workers come or only the goods they have produced, the supply of some kinds of labor relative to others is increased. When we import goods, for example, we are importing both the unskilled labor that went into assembling the product as well as the skilled labor that went into designing it. To the extent that immigrants possess skills that are different from those of natives, they too will alter the mix of labor in the economy.

Whatever the similarities, it is the differences between trade and immigration that are most consequential. The moral issue alluded to above is the source of these differences—people are not objects. The great student of management, Peter Drucker, in his 1954 book *The Practice of Management*, acknowledged this, recommending “consideration of the human resource as human beings having, unlike any other resource, personality, citizenship, control over whether they work, how much and how well...” From this difference stem others; for instance that immigration, unlike trade, alters the supply of labor permanently, not just in the year that a product is imported. In other words, with trade, a society can quickly alter the mix of labor it consumes to suit its changing tastes and needs, whereas immigration is forever.

The difference between trade and immigration was remarked upon by Henry Simons, the pioneer advocate of the benefits of free market economics at the University of Chicago. He wrote in 1948 that “To insist that a free trade program is logically or practically incomplete without free migration is either disingenuous or stupid. Free trade may and should raise living standards everywhere . . . Free immigration would level standards, perhaps without raising them anywhere.”

Or, in the words of economist Hans-Hermann Hoppe, editor of the *Journal of Libertarian Studies*: “free trade and restricted immigration are not only perfectly consistent, but even mutually reinforcing policies.”

ASSUMPTION 5. GUESTWORKERS WILL GO HOME

The distinguishing feature of a guestworker program, as indicated by its name, is that the “guests” are expected to return home rather than settle permanently. This is an attempt to make the importation of people operate more like the importation of goods, such that only the product of their labor stays behind. Recent proposals have sought to ensure this in a number of ways—for instance, by suggesting that a portion of the worker’s pay be withheld and paid out after he returns to his home country.

History conclusively shows that such efforts are in vain and that the “guests” stay long after the party is over—precisely because people are not things, and have their own plans and purposes. The Bracero program, for instance, was supposed to be a temporary expedient during a wartime emergency, yet once farmers became addicted to it, they devoted resources to lobbying to keep it rather than to mechanization and innovation. Thus the “wartime” measure lasted for 22 years.

Not only did the program last longer than intended, but it also dramatically increased Mexican legal and illegal immigration; during the 22 years the program lasted, there was a total of 4.6 million Bracero entries, but also 5.3 million illegal-alien apprehensions and more than half a million Mexican legal immigrants. Rather than work temporarily and go home, large numbers of Mexican guestworkers over time settled and served as magnets for further immigration, sparking one of the largest migrations in human history.

Overseas the story is the same. Germany has become a “reluctant land of immigration” because of its program for guestworkers from Turkey, Yugoslavia, and Italy. The number of these workers peaked in 1973 at 2.6 million, when the oil crisis prompted the German government to stop recruiting guestworkers. The government expected that the now-unemployed guestworkers already in Germany would leave, because of back-and-forth migration patterns like those alleged to exist for Mexican workers in the Southwest. Instead, the Turkish and other workers stayed, figuring correctly that neither job prospects nor the social safety net were any better in their home countries. What’s more, now that they were established in Germany, they had their families join them, leading to an 82 percent increase in the number of foreigners in Germany between 1973 and 1999.

This could not have been otherwise. Once employers come to depend on foreign workers, they cease looking for alternatives, and foreign workers come to depend on their guestworker wages to support their families. In addition, guestworker programs distort the economy, as employers factor in the presence of workers in their future plans, vastly increasing the likelihood that the “guests” will move in for good.

The old aphorism is as true today as it has ever been: There is nothing as permanent as a temporary worker.

ASSUMPTION 6. THERE WILL BE NO SIGNIFICANT COST TO TAXPAYERS

The permanent immigration that always accompanies guestworker programs is relevant in examining another implicit assumption of supporters: That there will be no large fiscal cost to such a program.

In fact, because of the inevitable large-scale settlement of guestworkers and their families, friends, acquaintances, and fellow countrymen, the long-term budgetary fallout of a guestworker program would likely be enormous. The modern American economy increasingly rewards skilled workers, while offering very limited opportunities to the unskilled, a category that would include virtually all guestworkers and those who follow them into the United States. The best way to gauge the fiscal reverberations of a guestworker program is to look at the characteristics of current Mexican immigrants, since many of them who are now illegal would participate in such a program and because they are similar to the new guestworkers who would arrive from Mexico.

Due to their low levels of education, Mexican immigrants experience limited economic mobility in the United States. The average income of Mexican immigrants is less than half that of natives. While their income rises steadily the longer they live in the United States, even long-time Mexican immigrants do not come close to closing the gap with natives. According to data from the Census Bureau’s March 2000 Current Population Survey, more than *half* of legal Mexican immigrants who have been in the United States for more than 20 years and their U.S.-born children (under age 18) live in or near poverty.

This poverty guarantees high levels of welfare use. Even after welfare reform, welfare use among Mexican immigrant households remains much higher than that of natives. Based on Center for Immigration Studies analysis of the same Census Bureau survey, an estimated 33.9 percent of households headed by a *legal* Mexican immigrant and 24.9 percent headed by an *illegal* Mexican immigrant used at least one major welfare program. In contrast, 14.8 percent of native households used welfare. Moreover, Mexican immigrant welfare use remains much higher than that of natives even among those who have lived in the United for many years.

Also, more than half (52.6%) of Mexican immigrants do not have health insurance, compared to 13.5 percent of natives; Mexican immigration by itself accounts for 3.3 million or 29 percent of the growth in the size of the nation's total uninsured population since 1987. Even among *legal* Mexican immigrants who have lived in the country for more than 20 years, more than one-third are still uninsured.

It is unlikely that our society would want, or be able, to deny public services to the millions of guestworkers and those who will follow them. Much of the 1996 welfare reform that applied specifically to immigrants has been rolled back, and even those portions which remain have been almost completely negated by state decisions to provide benefits. Congress expressed unwillingness in 1996 even to give states the option of denying public education to illegal-alien children—so there would seem to be little likelihood that even a suspension of automatic birthright citizenship for children born here to guestworkers (as has been suggested by some) would have any effect in limiting their use of public services. There is, in other words, no way to avoid the high cost of cheap labor.

ASSUMPTION 7. MASS ACCESS TO FOREIGN LABOR WON'T SLOW INNOVATION

Another assumption that underlies a guestworker program is that the infusion of low-skilled foreign labor will not retard the process of technological innovation and increasing productivity. Unfortunately, elementary economics tells us that capital is likely to be substituted for labor only when the price of labor rises, something a guestworker program is specifically intended to prevent. A report released last week by the Federal Reserve Bank of Boston highlights this problem by warning that a new wave of low-skilled immigrants over the course of this century may slow growth in U.S. productivity.

In several industries, we have already seen this process of slowed technological development caused by unskilled immigration. A 1995 report on Southern California's apparel industry, prepared by Southern California Edison, warned of the danger to the industry of reliance on low-cost foreign labor:

"In Southern California, apparel productivity gains have been made through slow growth in wages. While a large, low-cost labor pool has been a boon to apparel production in the past, overreliance on relatively low-cost sources of labor may now cost the industry dearly. The fact is, Southern California has fallen behind both domestic and international competitors, *even some of its lowest labor cost competitors*, in applying the array of production and communications technologies available to the industry (such as computer aided design and electronic data interchange)." (Emphasis in original)

The threat to innovation posed by mass access to foreign labor, whether through illegal immigration or a guestworker program, is perhaps most evident in agriculture. During hearings on the proposed termination of the Bracero program in the early 1960s, California farmers claimed that "the use of braceros is absolutely essential to the survival of the tomato industry." Congress discontinued the program anyway and, as University of California economist Philip Martin has shown, the resulting mechanization caused a *quintupling* of production for tomatoes grown for processing, an 89 percent drop in demand for harvest labor, and a fall in real prices.

The competitive drawbacks of reliance on foreign labor are evident in other crops. For instance, a high-productivity, high-quality method of raisin production, called the "dried-on-the-vine" method, is not spreading as it should precisely because the widespread availability of foreign labor is a disincentive to raisin farmers to make the long-term capital investment to retrofit their vineyards. A guestworker program which would legalize the many illegal aliens in the raisin harvest would simply perpetuate this situation.

In sugar cane production in Florida we have seen the same phenomenon in reverse—the increased cost of West Indian guestworkers caused farmers to mechanize the harvest, yielding a radical increase in productivity, plus higher wages and more civilized working conditions for the remaining harvesters.

And in industries that are already moving toward increased productivity because of tight labor markets, a guestworker program would stall progress. Home construction, for instance, has seen a steady increase in factory-built homes (or components of homes), a development attributed by the National Association of Home Builders to the increased difficulty in finding workers. Whether the roof trusses and floor trusses are manufactured in a factory or entire panels or sections of the house, some two-thirds of houses and low-rise apartments are built with some factory materials, rather than “stick-built,” i.e., built from scratch on site. This process has led to increased productivity and lower costs—and would be threatened by a guestworker program.

ASSUMPTION 8. SUCH A PROGRAM IS ADMINISTRATIVELY FEASIBLE

In any large government program, plans on paper must translate into policies on the ground. Supporters assume that this will be possible for a large new guestworker program. Rep. Lamar Smith, then chairman of this panel, estimated that 1 million workers might enter the United States under the agricultural guestworker plan approved by this panel last year. That bill would have required: the establishment of a national agricultural worker registry and a variety of user fee schedules and related collection processes; the creation of a nationwide employment-eligibility verification system; the policing of wage, housing, and other guarantees among that group of 1 million guestworkers; the provision of remedies, such as back wages and employer penalties, for violations of the rules; the commission of at least five new studies; and more.

The “prospectus” for Sen. Gramm’s guestworker proposal says it would be for any kind of employment in any industry, thus ensuring that it would cover millions more people than the agriculture-only plan described above. This would demand even more herculean efforts from the various administrative agencies. According to Sen. Gramm’s prospectus, the plan would entail: a computer registry to monitor entry and exit of all guestworkers (and presumably everyone else entering or leaving the country, since there would need to be a way to distinguish guestworkers from others); a vast new amnesty program for illegal aliens already here, who would have six months to apply for a guestworker permit; an enrollment system for workers in Mexico, to be “devised by the government of Mexico”; a new identification card for all guestworkers; policing of employer efforts “to show that they had made a good-faith effort to hire Americans”; stepped-up enforcement of employer sanctions against whatever illegals remain; establishment of commissions to set the number of guestworkers permitted to enroll based on regional unemployment rates; establishment of new funds to receive the payroll taxes paid by guestworkers, to be used for emergency medical care and individual retirement accounts; and more.

It is not explained how the Immigration and Naturalization Service and the Labor Department are supposed to be able to accomplish these goals. The INS, in particular, is overwhelmed, and cannot keep up with the current workload, let alone take on vast new responsibilities. Data reported through the end of April show that the backlog of applications for immigration benefits has grown from 2.8 million in April 2000 to 3.2 million in April 2001. Meanwhile the backlog of asylum applications remains at about one-third of a million and the number of deportations has actually fallen slightly. The only sign that INS is making headway is a significant drop in the backlog of citizenship applications. What’s more, INS efforts to modernize its woefully inadequate computer systems have not yet borne fruit, as a General Accounting Office report highlighted last year. Furthermore, the president has placed a high priority on reorganizing the INS, by separating its service and enforcement functions. How could a vast new guestworker program be managed in the midst of a thoroughgoing institutional overhaul?

The outcome of burdening administrative agencies with the vast and varied new responsibilities of a guestworker program would be massive fraud. The amnesty included in the Immigration Reform and Control Act (IRCA) of 1986 is a case in point. As Paul Virtue, then general counsel of the INS, testified before this panel in 1999, “the provisions of IRCA were subject to widespread abuse, especially the Special Agricultural Worker (SAW) program.” There were nearly 1.3 million applications for the SAW amnesty—double the total number of foreign farm workers usually employed in the United States in any given year, and up to six times as many applicants as congressional sponsors of the scheme assured skeptics would apply. INS officials told the *New York Times* that the majority of applicants in certain offices were clearly fraudulent, but they were approved anyway, since INS didn’t have the means to prove the fraud. Some women came to interviews with long, painted nails, while others claimed to have picked strawberries or watermelons off trees. One

woman in New Jersey who owned a five-acre garden plot certified that more than 1,000 illegal aliens had worked on her land.

The consequences of disregarding administrative feasibility can linger for generations. During the first stage of the Bracero program, from 1942 to 1949, 10 percent of the agricultural and railroad workers' wages were put into a savings fund that was supposed to be paid to them after they returned to Mexico. This is similar to suggestions for a new guestworker program. Earlier this year, half a century later, four former braceros filed a class-action lawsuit against the U.S. and Mexican governments and several banks, alleging that much of the money was never repaid in Mexico. (Of the four "temporary" Mexican workers, three live in the United States.) This is part of what is sometimes referred to as a "reparations movement," modeled on black reparations efforts. It appears that Wells Fargo transferred the funds, but that they were "lost" by the Mexican banks. One lawyer for the plaintiffs estimated the withheld wages, plus interest, could be worth half a billion dollars. Even in 1945, a Mexican government report acknowledged that the savings program was a mistake because of administrative problems.

ASSUMPTION 9. THERE ARE NO ALTERNATIVES

Even though all the above assumptions underlying a guestworker program are groundless, the final premise of such a program could trump all these concerns: There is no acceptable alternative. In other words, the migration networks from Mexico are so entrenched and the industries so addicted to foreign labor that there is no longer any way to stop the flow of workers without wrecking our economy and convulsing our society.

Fortunately for America, the defeatism implicit in this assumption is unfounded.

Rather than accept as given that U.S. and Mexican interests overlap in this area, sound policy making must start from the realization that the interests of our two countries regarding immigration are diametrically opposed. Our national interest requires that unskilled immigration, including from Mexico, be reduced as much as possible. The flow of illegal aliens from Mexico must be interrupted and ended, not institutionalized through a guestworker program. And there would be very little economic impact of such a move; Center for Immigration Studies analysis finds that Mexican immigration in the 1990s held prices down by, at most, two-tenths of one percent. As unlikely as this seems, it is possible because unskilled labor accounts for such a tiny share of economic output.

As for actually stopping illegal immigration, we know how, and need only muster the necessary will and resources:

- *Employer sanctions.* Congress in 1986 finally prohibited the employment of illegal aliens in an effort to turn off the magnet of jobs attracting illegal aliens. But enforcement was lackluster at best and, in response to political pressure, the INS has in recent years essentially discontinued worksite employer sanctions enforcement altogether. To make employer sanctions work requires a number of steps, including: A large, permanent increase in the number of INS investigators doing worksite enforcement and prosecutors pursuing law-breaking employers; a national computerized system that allows employers to verify the work-eligibility of new hires (tests of such systems have been well-received by employers); and much stiffer fines and jail time for employers caught knowingly hiring illegal aliens.
- *Border enforcement.* Despite significant increases in funding in recent years, efforts at the border are still inadequate. At any given time, there are perhaps 1,800 Border Patrol agents along more than 2,000 miles of border with Mexico. The Border Patrol needs to be at least double its current size and the border needs a system of fences and other barriers to help the agents in their work.
- *Legal immigration.* While jobs are one of the magnets that draw illegal immigrants to the United States, the other, equally important, magnet is family and friends, the networks that make it possible to immigrate illegally in search of work in the first place. And these networks are created and nurtured by ongoing *legal* immigration. Communities of recent immigrants serve as magnets and incubators for illegal immigration, providing housing, jobs, and entree to America that would otherwise be very difficult to secure. And with at least one-fourth of each year's "legal" immigration made up of illegal aliens using the system to launder their status, the immigration system has evolved into a permanent, rolling amnesty for illegals. Limiting family immigration to the husbands, wives and young children of American citizens would be especially useful in stemming illegal immigration since it would serve to

end chain migration. With the end of chain migration, the networks that drive illegal immigration would gradually atrophy, as immigrants here had less frequent and intimate contact with their home communities, moved to different neighborhoods, and assimilated into the American mainstream.

- Finally, Congress can help allay the concerns of employers who have become dependant on unskilled foreign labor through transitional funding for research and development into new labor-saving technologies. This would be especially fruitful in agriculture, since the U.S. Department of Agriculture banned federally funded mechanization research during the Carter Administration. By promoting this kind of research—whether in agriculture, construction, garment manufacturing, or elsewhere—the federal government can help reduce the demand for labor which it fostered by permitting and encouraging unskilled immigration in the first place.

This examination of the assumptions underlying a guestworker program demonstrates that they are without foundation. Congress can use this information to finally bring an end to the period of mass immigration from Mexico—or it can supercharge illegal immigration by enacting a guestworker program.

REFERENCES:

- Steven A. Camarota. “Immigrants in the United States—2000: A Snapshot of America’s Foreign-Born Population”. Center for Immigration Studies *Backgrounder*, January 2001. <http://www.cis.org/articles/2001/back101.html>
- Steven Camarota. “Immigration from Mexico: Assessing the Impact on the United States.” Center for Immigration Studies. Forthcoming, July 2001.
- Commission on Agricultural Workers. *Report of the Commission on Agricultural Workers*, U.S. Government Printing Office, 1992.
- Congressional Research Service. “Farm Labor Shortages and Immigration Policy.” December 20, 1999.
- Cindy Hahamovitch. “The Politics of Labor Scarcity”. Center for Immigration Studies *Backgrounder*, December 1999. <http://www.cis.org/articles/1999/Background1299/Background1299.pdf>
- Hans-Herman Hoppe. “The Libertarian Case for Free Trade and Restricted Immigration.” Center for Immigration Studies *Backgrounder*, May 2001. <http://www.cis.org/articles/2001/back601.html>
- Mark Krikorian. “Guestworker Programs: A Threat to American Agriculture.” Center for Immigration Studies *Backgrounder*, June 2001. <http://www.cis.org/articles/2001/back801.html>
- Philip Martin. “There Is Nothing More Permanent Than Temporary Foreign Workers”. Center for Immigration Studies *Backgrounder*, April 2001. <http://www.cis.org/articles/2001/back501.html>
- Philip Martin. “Guest Worker Programs for the 21st Century”. Center for Immigration Studies *Backgrounder*, April 2000. <http://www.cis.org/articles/2000/back400.html>
- Philip Martin, Wallace Huffman, Robert Emerson, J. Edward Taylor, and Refugio I. Rochin, eds. *Immigration Reform and U.S. Agriculture*. University of California Division of Agricultural and Natural Resources Publication 3358. 1995.
- Bert Mason, R. Keith Stiegler, and Gregory T. Berg. “Alternatives to Immigrant Labor? Raisin Industry Tests New Harvesting Technology”. Center for Immigration Studies *Backgrounder*, February 1997. <http://www.cis.org/articles/1997/back297.html>
- Yoav Sarig, James F. Thompson, and Galen K. Brown. “Alternatives to Immigrant Labor?: The Status of Fruit and Vegetable Harvest Mechanization in the United States”. Center for Immigration Studies *Backgrounder*, December 2000. <http://www.cis.org/articles/2000/back1200.html>
- U.S. Department of Labor. “Findings from the National Agricultural Workers Survey (NAWS) 1997–1998: A Demographic and Employment Profile of United States Farmworkers”. Office of Program Economics Research Report No. 8, March 2000. <http://www.dol.gov/dol/asp/public/programs/agworker/report—8.pdf>
- Robert Warren. “Annual Estimates of the Unauthorized Immigrant Population Residing in the United States and Components of Change: 1987 to 1997” (draft report). U.S. Immigration and Naturalization Service, Office of Policy and Planning, September 2000. <http://www.house.gov/lamarsmith/INSreport.pdf>

Mr. GEKAS. We turn to our final witness, Ms. Muñoz.

**STATEMENT OF CECILIA MUÑOZ, NATIONAL COUNCIL OF LA
RAZA, VICE PRESIDENT OF THE OFFICE OF RESEARCH AD-
VOCACY AND LEGISLATION**

Ms. MUÑOZ. Thank you, Mr. Chairman. I will say that it is a pleasure to be at a hearing on guestworker issues that takes place in the absence of pending legislation. The last several times we have appeared before this Committee and the other body on this issue, it has been to respond to legislation, particularly in the agriculture context, which we vigorously oppose. So it is good to be able to step back from that and look at that issue more broadly.

Our experience, however, with guestworker proposals comes from the fact that we have existing guestworker programs now and legislative proposals that were designed to meet the needs of the agriculture industry. And while I know that agriculture is not the subject of today's hearing, our views on guestworker programs almost by definition have been shaped by the experience of workers, overwhelmingly Latino, workers in agriculture in the existing H-2A program which is our current guestworker program.

There is a second program, the H-2B program which is technically for nonagricultural occupations but the conditions there very much resemble the conditions in the H-2A program and the concerns that we have traditionally expressed about H-2A apply as well to the H2B program. We believe very strongly that any discussion of guestworker programs really need to frame a construct that is very, very different from what we experience under current law where we have programs that are rife with abuse, and conditions for workers which are truly appalling. We need to be talking about something very, very different if we are to have a discussion on guestworker programs.

In general, my organization's preference is to avoid guestworker programs as a response to labor needs or the perception of labor needs. If we believe that there is a need to add to the workforce or to create access to additional workers from other countries, we believe very strongly that we should be prepared to welcome those workers as full partners in our society with full rights, with rights that are vigorously enforced, and with the ability to make their lives in the same communities where they are engaged in labor. And guestworker programs are very, very different from that set of priorities.

In general, several guestworker programs have been proposed or expansions of existing programs have been proposed in recent years. Our position has been to oppose them and certainly, if there are proposals along the lines of the existing programs or that seek to expand the existing programs, or as we have seen lately, to weaken the protections of existing programs, our position would be the same. We would vigorously and firmly oppose those proposals. We have to say that we think and we hope that this hearing demonstrates that we may be entering a different era, and that particularly the existence of the negotiations between the United States and Mexico, while we think they provide some dangers in this debate of moving in the wrong direction, we also think they provide an opportunity to move in a new direction with respect to these issues, and we are hopeful that that is what the process will result in.

For that reason, we think it is important to hold hearings today to be thinking through the issues, and we want to articulate some conditions which we think would make a discussion of temporary worker programs more suitable and more advisable. Indeed, if we are going to have a discussion of temporary worker programs, we need to have that discussion on vastly different terms than the discussion we have had so far with a very, very different framework.

And in particular, we would argue that any discussion of temporary worker programs needs to meet certain principles. The first of those is that worker needs to be fully covered in terms of labor rights. That includes the portability of visas, the ability to change employers, particularly where employers are abusive, the ability to remain with their family, and the ability to participate in labor unions. People coming in under temporary worker programs need to have the same rights as members of our existing workforce, and those rights need to be vigorously enforced.

In addition, we think it is very important that any workers contemplated under temporary worker programs need to have access to legal services because the experience has been now for decades that these programs are rife with abuses, and while we do not argue that all employers bring workers in with the intention of abusing them, we know that it happens, we have seen it happen, and those workers need legal recourse.

We also believe that ultimately, for example, those who come in under temporary worker programs should have access to adjustment of status. If they are going to be part of our workforce, if we are going to benefit from their labor—and we need their labor—then they should be given the opportunity to remain in the United States and be a permanent and stable part of the workforce rather than a workforce that is expected to go back and forth without access to rights, without access to the same privileges that other workers have.

Finally, Mr. Chairman, I would say that stepping back from the temporary worker issue, specifically, we think this debate really needs to acknowledge that there are substantial numbers of folks in the industries that we are talking about, in the service sector, in hotels and restaurants and other industries who are here, who are working who are paying taxes, who are raising families without the benefit of immigration status.

And really, this discussion isn't complete unless we acknowledge that reality. These folks are important to these industries. We understand from the industry groups including EWIC, which is represented here at this table, that this is an important and valued part of the workforce, and ultimately it is in the interest of the not just the workers, but also of the industries in which they have worked to convert that into a stable permanent part of the nation's labor force.

We know those folks are here, that they are contributing, and that in many cases they're paying payroll taxes that they are not being credited for. It would be a mistake to have a discussion about a temporary worker program for these industries in the absence of a discussion of adjustment of status for folks who have already proven their value in the workforce.

So I would hope that the Committee will be willing to take a look and add that issue to the discussion of the temporary worker programs, and I thank you for the opportunity to testify today.

Mr. GEKAS. We thank the lady.

[The prepared statement of Ms. Muñoz follows:]

PREPARED STATEMENT OF CECILIA MUÑOZ

I. INTRODUCTION

My name is Cecilia Muñoz. I am the Vice President for the Office of Research, Advocacy and Legislation of the National Council of La Raza (NCLR). NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country through our network of 260 affiliate community-based groups and regional offices. NCLR has supported fair and effective immigration and farmworker policies for over two decades, and has provided a fact-based Latino perspective on the issue of immigration. NCLR approaches this issue as a civil rights organization, with an interest in protecting the rights of our constituency within the United States, and promoting the values and principles of the nation as a whole. I appreciate the opportunity to submit this statement before the Subcommittee today.

As the Subcommittee is aware, the nation has substantial history with guestworker programs, particularly in agriculture. This history began with the *bracero* program, which was created in the 1940s and initiated the stream of migrant labor from Mexico to the United States which exists to this day. For the nation's Latinos, the *bracero* program has come to epitomize a history of abuse and mistreatment of farmworkers, who continue to be the most vulnerable and poorly treated workers in the United States, whether they are imported from abroad, or hired from within the United States. These hard-working Americans toil in the fields for meager earnings and few benefits; they sustain multi billion dollar industries and literally put food on our tables. Yet, they remain largely invisible to the rest of the country. Under a century-old system of labor, farmworkers continue to be inadequately protected by federal laws and regulations, including worker protection standards that all other workers take for granted.

Almost exactly one year ago, I appeared before this Subcommittee to oppose legislation that had been introduced in this body to expand and weaken the protections of the H-2A program, which is the agricultural guestworker program under current law. I will not repeat the arguments I made in that testimony, but I remind the Committee that the conditions in which the nation's farmworkers live and work continue to deteriorate, as demonstrated by declining real wages, substantial unemployment, and deplorable housing conditions. For these reasons, NCLR continues to question the need for temporary worker programs in agriculture; we argued last year that the existence of a labor shortage in this industry would be indicated by increasing wages, increased demand for workers' time, and improving conditions. Indeed, the opposite is true.

II. THE OPPORTUNITY TO SHIFT THE DEBATE

For at least the last two decades, the guestworker debate has focused almost entirely on agriculture and has followed a basic framework: the agricultural industry lobbies to expand the H-2A program and reduce what they perceive as its obstacles, the same provisions that we believe are essential safeguards. NCLR, along with many allies in the immigrant rights movement, has opposed these changes vigorously on the grounds that they would worsen the already deplorable wages and working conditions for farmworkers. For the most part, this situation has resulted in a vigorous debate, but one which is essentially a stalemate, with no major legislative outcome.¹ Neither side has achieved its major objectives; the industry has not secured an increased supply of labor, and the immigrant and farmworker rights

¹There are a few major exceptions to this framework, most particularly the H-1B program, through which highly-skilled temporary workers are brought to the United States to work in high-tech and other specialized positions. NCLR has not taken positions on the recent expansions of the H-1B program, and has instead focused its efforts on temporary worker programs in agriculture.

movements have been unable to advance affirmative policies to improve conditions for the farmworker population.

NCLR believes that current circumstances may permit this dynamic to shift in a way that advances the issue beyond its current stalemate. Several factors contribute to this assessment. First, we note that this hearing does not address specific legislative proposals, but rather raises the issue more generally, creating an opportunity to advance affirmative proposals rather than to respond to legislative initiatives. Second, the debate has clearly expanded to include industries beyond agriculture who are approaching the issue differently. One of the many differences between the service sector and agricultural workers is the fact that workers in service industries are covered by the same labor protections as the rest of the American workforce; this cannot be said of agricultural workers. Indeed, the existence of the Essential Worker Immigration Coalition (EWIC) demonstrates a new atmosphere of respect for the role of immigrant workers—including those without immigration status—in the workplace, and a desire to provide mechanisms for a stable, permanent workforce, one with the same rights and protections that other American workers have come to rely upon.

Third, representatives of the agricultural industry and the key organization of the farmworker rights movement, the United Farmworkers of America, have held historic discussions and agreed in principle on a set of policy alternatives that both sides can live with. Though the results of these discussions have not yet been presented as a legislative proposal for others to respond to, NCLR believes that these organizations have moved the debate forward in a positive direction.

Finally, it must be said that the historic negotiations that were initiated between the United States and Mexico by both countries' newly-elected Presidents present a unique opportunity to advance this debate—and expand it beyond agriculture—in a constructive way that can address the needs of both businesses and workers alike. NCLR strongly believes that, while these discussions present a real opportunity to move the debate in a positive direction, they also present real dangers. We, like many others, are watching them closely. At its best, this new relationship provides a chance to inject some reality into this debate, acknowledging the need for immigrant workers in the U.S. and the critical role they play in our economy, and providing the most vulnerable of them with basic rights and protections that they currently lack. At its worst, this process could result in a new guestworker initiative in the model that we have come to know over the better part of the last century, one which results in mistreatment for both the workers in the temporary labor program, as well as those already working in those industries within the United States.

III. PRINCIPLES FOR THE CURRENT DEBATE

NCLR feels very strongly that both the United States and Mexico should avail themselves of their historic opportunity to fundamentally reshape the debate over temporary workers and the role of the undocumented workforce in the United States. A combination of factors, including the alarming and unacceptable number of deaths at the U.S./Mexico border, the significant and growing number of undocumented workers who have found a place in the U.S. labor force (which the Urban Institute has estimated at around 8.5 million), and increasing evidence demonstrating that a number of industries beyond agriculture rely on this labor force, all demonstrate that the immigration policies that the U.S. has aimed primarily at Mexico have failed and need to be reformulated. NCLR believes that the negotiations between these two nations, as well as any legislative discussion of these issues, should be guided by the following principles:

1. *Temporary worker programs by themselves are not a viable long-term policy option.* NCLR has opposed all proposed expansions to the H-2A program because we are strongly persuaded that they would negatively affect both the temporary workers and the U.S. agricultural labor force, and because we profess a strong preference for workers who are permanently, legally part of U.S. communities and the U.S. workforce. There is a real danger that the current debate will simply follow the structure which has been in place since the days of the bracero program; indeed, one such proposal is being talked about in the Senate. If such a proposal were to emerge from the negotiations between the U.S. and Mexico, or in the legislative process, NCLR would have no choice but to oppose it vigorously.
2. *Any temporary worker program that emerges from this debate must be markedly different from the status quo.* While NCLR's strong opposition to temporary worker programs in agriculture is well-known, we acknowledge the reality that some of the workers who currently come from Mexico and other countries to work in the U.S. in agriculture and other industries do so with

the intention of returning to their home countries. They do not seek to be immigrants, and often end up “trapped” in the United States because our border control policies make it difficult to depart and re-enter, swelling the ranks of the undocumented. It is reasonable, then, to construct a temporary worker framework that provides a role for such workers whose labor is needed in the U.S. However, this framework must be markedly different from the existing temporary worker construct. In particular, it is essential for any workers who participate to be fully covered by U.S. labor laws, including strong protections for wages, working conditions, and the right to unionize, and for the laws that cover agriculture to be strengthened to conform with labor laws covering the rest of the workforce. Similarly, it is essential that such laws be vigorously enforced, by strengthening the wage and hour division at the U.S. Department of Labor as well as by ensuring that these workers have access to legal services. In addition, it is important that workers who participate in temporary labor programs have the freedom to change employers, and even industries, in order to avoid conditions that resemble indentured servitude. They must also have the ability to keep their families with them if they choose. Finally, any temporary worker program must also include a path to adjustment of status for its workers; that is, they should be able to choose to remain in the United States as immigrants, having demonstrated that their labor is of value here.

3. *Temporary programs must be accompanied by opportunities for adjustment.* The debate on the need for temporary workers is incomplete without acknowledging the critical role that immigrant workers, including those without immigration status, play in our nation’s economic growth. The simple reality is that over eight million undocumented immigrants are currently in the U.S. workforce, and the industries in which they work tell us that they could not function without them. Many have been here for years, are paying taxes, raising families, and contributing to their communities. It is neither in the interest of the workers themselves, nor of their employers or of the larger communities in which they live, for this situation to remain unaddressed in this policy debate. It is time to reopen the question of legalization, to acknowledge the many contributions of this segment of the workforce.

IV. CONCLUSION

In conclusion, Mr. Chairman, I congratulate the Subcommittee for addressing this issue before it becomes the subject of competing legislative proposals. If this debate indeed presents an opportunity to move beyond the divisive and ultimately ineffective standoff over temporary labor, it is important to begin it on a much different footing than in recent years. NCLR believes that, in particular, it must start from the premise that the current conditions for farmworkers in the United States are unacceptable, and have been allowed to remain so for far too long. One important measure that NCLR intends to apply to the policy debate and its outcomes is the extent to which they produce long-awaited improvements in wages and working conditions for America’s farmworkers. We intend to work with the Subcommittee in order to ensure that this fundamental goal is met in the course of this policy debate.

In addition, the policy discussion that the Subcommittee initiates today presents opportunities that go well beyond the discussion of temporary worker programs. It is increasingly clear that the need for a comprehensive look at this issue goes well beyond the particular circumstances of the agriculture industry. Industry groups and labor unions in the service sector both point to the undocumented workforce in their industries to illustrate the need to ensure that the policy process results in a stable, permanent workforce with full access to labor and other rights. This set of concerns cannot be addressed by a temporary worker debate in the absence of real discussion of adjustment of status for those workers who have been contributing as workers and taxpayers.

In essence, NCLR believes that the fundamental opportunity here is a chance to reformulate immigration policy in a way that acknowledges that the immigration control policy debate of the last two decades has failed to achieve its purpose. In many industries, the important role of immigrant workers is readily acknowledged, at the same time that our policies are based on the premise that such workers be kept out at all costs. As a result, workers continue to be drawn to the United States by a thriving job market, often risking—and losing—their lives in the process. NCLR believes that a responsible debate must tackle this dilemma in a way that acknowledges these economic realities while preserving the nation’s right to control its borders, and preventing needless deaths at the border. We urge the Sub-

committee to proceed carefully and thoughtfully, and we appreciate the opportunity to provide our views.

Mr. GEKAS. We trust that the mere presence of the witnesses at the counsel table also indicates their willingness to answer questions. The Chair will yield to itself 5 minutes for the first set of questions.

It occurred to me when Ms. Martin was speaking, that the conditions that you outline for whatever future programs might be, in our mind, should keep in mind the safeguards that would ensure the viability of some of these programs. And one of them is in sync with what Ms. Muñoz was saying about the conditions of treatment and status, et cetera, of the workers. And I suppose that indicates a present absence of those conditions, or else you wouldn't be—could you articulate a couple of conditions that you feel are most fearful, we probably know them by in sync, but for the record, which ought to state a couple of conditions which now cause your opposition to expansion of the programs and might endanger your support of future programs?

Ms. MARTIN. Well, let me start by saying that I share very much Cecilia's view point that if we are talking about filling permanent labor permanent shortages in the labor market, we should be bringing people in with permanent status, so that they have the full rights and responsibilities and eventually can become U.S. Citizens. But the very nature of the guestworker program, there are going to be abuses because the guestworkers, and I almost hate using that term, because they are anything but guests; they are temporary workers who are often doing the worst job and the ones that are inherently dangerous, dirty and place them into a situation of potential abuse.

One of my main concerns in the current programs are that even if on paper there are certain protections, in reality they are not there because we do not have the enforcement capability to ensure that workers are protected. The wage and hour division and the other agencies that have that responsibility are seriously underfunded. It is very unusual for the employers to be visited for there to be any monitoring of those wages. So even if the paper safeguards are there, that doesn't necessarily mean that they are enforced and are in reality. But I will let Cecilia continue.

Ms. MUÑOZ. Yes, I mean, unfortunately, the conditions that we have seen apply both to the H-2A program and the H-2B program. Very often employers use intermediaries in order to hire workers, labor contractors, which ends up bypassing the labor protections that are built into the H-2A program, which are much weaker in H-2B. You end up with people being paid very low wages, well below the minimum wage, often working overtime and not being paid for it.

I was reviewing this morning an article from February of this year of The New York Times on workers employed in the H-2B program planting trees, as many as 1,000 or 2,000 trees a day and earning \$100 for their efforts, which is well below any standard wage in the United States. There is absence of housing for these workers. They either in the H-2A program live often in very deplorable housing conditions, very unacceptable houses, or they do not have housing at all. They are unable to remain with their families.

The conditions especially in agriculture, but also in some of these other sectors, really resemble the 19th century more than the 21st. They have not improved in decades. In fact, wages in real terms have been declining. The demand for the number of hours worked by individual worker has been declining. So you have an extremely poor population which doesn't receive the same protections that other American workers take for granted.

Mr. GEKAS. The question then turns to why shouldn't we turn to American workers to try to seek them out for this. In view of what Mr. Krikorian said about this, about 12 million Americans labeled as poor workers are extant. Why can't we tap them? But isn't it true, Mr. Krikorian, that the 12 million Americans are dispersed all over the country, and the concentration of the border states and their needs for agricultural workers impacts on that sector, and thus the 12 million who can be tapped among American workers is not realistic.

Mr. KRIKORIAN. You are right that the 12 million workers with less than a high school education are not concentrated in the southwest necessarily. But the reason that the demand for Mexican workers is great in the southwest is because there was an availability of these workers in the southwest. In other words, there is no objective demand for labor that is fixed and needs to be met. The demand for labor responds to the availability of labor. And because there has been access to large numbers of inexpensive, docile foreign workers from Mexico in the southwest, the industries there developed in such a way as to take advantage of that availability of labor. And if that had not been there or were to be restricted, the industry itself and its demands for labor would evolve and change as Adam Smith would have predicted were he here today.

Mr. GEKAS. Mr. Johnson, one quick question. My time is running out or has run out—but I am the Chair. I have the gavel. You have mentioned something that concerns me all the time, and other Members of the Committee, all of us in Congress, that a potential downturn in the economy would exacerbate the problems that the ladies at the witness table have outlined, the conditions and so forth, and then we also get the anti migrant workers sentiments also boiling. I would appreciate it if you could just quickly enunciate that a little more.

Mr. JOHNSON. I think, first of all, let me circle around and then come back, which is that no one would dispute that a temporary worker program, guestworker program, whatever you call it, whatever this new creation might be, it has got to have a fundamental requirement that employers have to outreach, improve, outreach to the domestic workforce, improve that, that despite those recruitment efforts, they can not fill those jobs. They would have to be required to pay the same wages that they are currently paying to Americans in those jobs, the same benefits.

So there are certainly built-in protections which argue against an employer using a guestworker program to bring in people to lowball the American workers if you have those kinds of protections in there. Yes, if there is a downturn in the economy, I think one thing that is worth looking at, I don't have an answer, Mr. Chairman, is that is there an economic level, unemployment data,

maybe state-by-state, at which the guestworker program would then no longer be operable.

So it would, in a sense, go into hibernation, so that you can turn it on when the economy needs it, you can turn it off when you can't. I know some people would say once a program is in place and that's certainly true about a lot of programs in the government, you can't turn it off, it keeps on moving. But I think that is an area worth exploring. I don't have an answer for it. I think the fundamental idea is that you have got to protect American workers first, and then use the guestworker program when that labor force is not there. Everyone would agree with mechanics of getting there, I can see would be a matter of some disagreement among people in terms of how many hoops do you have to go through.

Mr. GEKAS. The time of the Chair has expired. We now yield to the gentleman from Texas, Mr. Smith, a total of 5 minutes and not 1 second more than 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. First of all, Ms. Martin, I would like to thank you again for your service on the bipartisan Commission on Immigration Reform. You served with distinction as executive director of that commission, and it still has a lot of good recommendations that I wish we would adopt.

In your written testimony, you said the U.S. Commission on Immigration Reform chaired by the late Barbara Jordan included that a guestworker program would be a "grievous mistake." and then in your testimony, you said that a guestworker program can increase the reliance on employers on foreign labor, which I too consider to be a disadvantage, but would you explain a little more in detail why it is a disadvantage for U.S. Employers to rely upon foreign labor?

Ms. MARTIN. There are several reasons. One is that reliance, particularly on cheap foreign labor, is, in effect, a subsidy very often for very inefficient practices that are taking place in industries. I was particularly struck a few years ago in a visit to the raisin-grape harvest in California. I visited one grower who had mechanized, had replanted his grapes and had reduced his need for labor. For every eight workers prior to this, he only needed one worker now in order to be able to pick the grapes and everything else. I asked him why his colleagues had not taken the same step and he said it took 3 years to amortize the cost of the mechanization, and it was just not worth it for the other growers to make that commitment if they continue to have the supply of cheap labor.

Mr. SMITH. So it is to modernize the industry?

Ms. MARTIN. Yes.

Mr. SMITH. You and Mr. Krikorian both said the guestworker program would increase illegal immigration. Why do you think that is the case?

Ms. MARTIN. That has been the experience in the past that we have had efforts at having this type of guestworker program. A number of reasons. One is that we do not have effective controls on illegal work, that our employer sanction policies do not work, and the attempts to strengthen them have generally failed. We do not have enforcement at work sites in order to deter people from working illegally. It means anybody who comes in as a guestworker, particularly if it is a seasonal program, can easily

move into a farm into an urban area and get permanent employment.

And then I beg to differ from my colleague here, you cannot turn a guestworker program off that easily. Instead what we found with the Bracero program, and what we found in other countries is that we stop it, but the workers continue to come and the employers continue to want their labor.

Mr. SMITH. In other words, employers continue to rely on cheap foreign labor, and that is why it is hard to turn it off.

Ms. MARTIN. Exactly.

Mr. SMITH. Mr. Krikorian, you mention that a guestworker program would short-circuit any market incentives for employers to increase the wages and benefits and improve the working conditions for entry-level, blue collar workers. You said a new guestworker program is likely to continue this downward trend in farm worker wages. And I think you have explained that is because of the competition between the guestworkers and the citizens and recent immigrants themselves for those jobs. Is there any way to quantify the costs in wages to American workers and recent immigrants or the lost jobs to those groups?

Mr. KRIKORIAN. The lost jobs is probably something I don't know how you quantify that. But the reduction in wages, estimates are that perhaps half of the reduction in wages of low skilled American workers is called by immigration by the arrival of low skilled foreign workers and the arrival of millions more guestworkers, or foreign guestworkers, in whatever capacity, which can only accelerate that trend.

Mr. SMITH. Thank you. Mr. Johnson, I really do not have a question. I just want to make a comment on the point that you brought up, and that is the need perhaps I think you were inferring that we have a guestworker program because that would help shore up Social Security. The Social Security Administration tells me that individuals with less than a high school education, because they typically have a lower income tax, actually receive more in benefits from the Social Security trust funds than they pay into Social Security. So therefore, they are not going to really help solve the long-term problem we have.

You might want to check on that. That is what I was told. Ms. Muñoz, I am going to squeeze in a question for you. In your written testimony you said, we continue to question the need for temporary worker program in agriculture. We argued last year that the evidence of a labor shortage in this industry would be indicated by increasing wages, increased demand for worker time and improving conditions; indeed, the opposite is true.

I was not sure in that regard if you agree with Mr. Krikorian and he agrees with you. The question really is I couldn't tell whether you think there is a shortage in any industry today, a labor shortage or not.

Ms. MUÑOZ. I am not a labor economist, so I am not sure I am qualified to say whether there are shortages in other industries. In some ways, agriculture has really been a special case in that it has been an industry that has been essentially subsidized by the government through the access of quite a large supply to foreign work-

ers through the H-2A program in particular, and which has gotten sort of separate deals in immigration policy for quite a long time.

Mr. SMITH. If there has been a shortage in the ag industry, why is it that the wages have declined?

Ms. MUÑOZ. We argue that there isn't a shortage in the ag industry, and I understood that today's hearing was about guestworker programs more broadly and potentially applied to other industries where—

Mr. SMITH. What industries do you think there is a shortage in?

Ms. MUÑOZ. Again, we are not the folks arguing that there is a labor shortage. There are industry groups in the service sector which make that argument and which have raised the issue of temporary worker programs. Our argument is if we are going to go there, we need to be talking about something vastly different.

Mr. SMITH. My time is up, but let me make sure I understand. You do not think there is a shortage in the agriculture industry and that is the reason the wages have declined and not gone up?

Ms. MUÑOZ. We do not believe there is a shortage in agriculture.

Mr. GEKAS. What was the answer?

Ms. MUÑOZ. We don't believe there is a labor shortage in agriculture.

Mr. GEKAS. We now turn to the gentleman from Arizona, Mr. Flake, for a period of 5 minutes.

Mr. FLAKE. For those who suggest there is not a shortage to agriculture or other industries, I invite to you come to Arizona for a while. To follow up on that, Mr. Krikorian, you talk about Adam Smith and theories of, I guess, supply and demand and labor going or industry going where labor is. I am not wearing my Adam Smith tie today, so I am not going to argue Adam Smith, but it would seem a little strange to argue that, say, North Dakota would have the tourism industry that Arizona has if there was just cheap labor there. People come to Arizona it would seem for the weather, and we need workers because of that.

Mr. KRİKORIAN. Labor availability obviously is not all there is to shaping the economy. Clearly, unless you are in Canada where North Dakota might well be a winter wonderland, there wouldn't necessarily be a tourism industry even if there were a lot of cheap labor milling around. Nonetheless it is a fundamental component that shapes the nature of labor demand. In other words, labor availability shapes labor demands in a very substantial way.

Mr. FLAKE. Ms. Martin, you mentioned that we should only consider guestworker programs if several conditions are met, one of which is to have adequate control over unauthorized entry. Have you visited the southern border in Arizona?

Ms. MARTIN. Yes, I have.

Mr. FLAKE. Do you see us any time soon having adequate control?

Ms. MARTIN. I don't think we will ever have control with only border enforcement. I can—the only way we will ever be able to get a handle on illegal entry and illegal work is work site enforcement. We need an effective regime for enforcing sanctions against employers who hire illegal aliens. That is the magnet, and until we have the effective controls in which we are very far from having, we will continue to have people trying to get across the Arizona

desert because they have the jobs waiting for them at the other end.

Mr. FLAKE. I would suggest that, if that is what you are suggesting, then you are suggesting that we never implement any type of guestworker program, the conditions are not, because for those who have visited the Arizona border or any of the border States or those who understand the industry realize that to have complete control is a myth. You are simply going to have to give into the demands that are there.

Ms. MARTIN. I agree we will never have completed control, but we can certainly do a much of better job than we are currently doing, and if all of our enforcement resources are at the border rather than anything being on the interior, where the real reason that people come in illegally, I agree with you, we will continue to fail.

Mr. FLAKE. But you are effectively arguing that we should never have a guestworker program?

Ms. MARTIN. Under these circumstances I would argue that we should not.

Mr. FLAKE. Ms. Muñoz, in Arizona, we had a couple incidents recently where 18 immigrant persons died in the deserts. Last week, we had two more. It happens on a regular basis there. Part of the reason that, when interviewed, illegal immigrants will give to bring—and as a father with five children, I can't imagine what would bring me to strike out into the desert with my wife and kids, but it must be a big need I have for my family, and there must be a big pull on the other side with labor.

Ms. MUÑOZ. That's right.

Mr. FLAKE. But part of the reason that people give for bringing their family into those conditions and to take that chance is that they can't go back and visit them when they want to or risk going through the desert again themselves. Would not a guestworker program be humanitarian in that it gives people who come to work illegally the opportunity to return to Mexico and then return to their legal work?

Ms. MUÑOZ. We will argue it would be humanitarian only if it endowed those workers with access to rights and to bring their family legally, and to be treated the same way that other workers in this country are treated. That means really changing the fundamental framework around guestworker programs. The current existing H-2A and H-2B programs I would not describe as humanitarian by any measure. They may be a few notches better than dying in the desert, and we are looking very hard, and I am sure you are as well, for ways to help to prevent those tragedies from happening. But that is not a justification for the existing structure. It would need to be vastly different, including treating the workers more like human beings.

Mr. FLAKE. So having a job just below minimum wage is a few notches above dying in desert?

Ms. MUÑOZ. It is more than a job just below the minimum wage. There are people living in fields, in caves, and on river banks in this country because of these programs. The conditions are unbelievable in many cases and that is something that we know we can do better at.

Mr. FLAKE. Do you not see a situation with a guestworker program we could improve those conditions, or a guestworker program in and of itself might go forward toward improving those conditions?

Ms. MUÑOZ. As I said, under the right circumstances we are prepared to have that discussion. Those circumstances include labor rights, they include access to legal services, they include opportunities for people to make the choice to become permanent parts of our communities.

Mr. FLAKE. Thank you.

Mr. GEKAS. We thank the gentleman. Let the record reflect the presence of the lady from Pennsylvania, Ms. Hart a Member of Committee.

Now we turn to Mr. Issa for a period of questions.

Mr. ISSA. Thank you, Mr. Chairman. I guess I would focus on Ms. Muñoz as well as anyone. Let me just say that I agree with you that if guestworkers are to come here, they have to be afforded American rights, which would include access to legal counsel in the normal sense. They need to be treated as much like American citizens as possible. And I certainly believe that portability in any new guestworker program has to be what breaks with the old Bracero program. I don't think America, in this day and age, wants to be anything that wants to be linked as closely to indentured servitude as many of those programs were. I might mention that H-1Bs do a pretty good job and go to a pretty good job of going to Silicon Valley. It works pretty handily, and many companies have asked for reforms that would limit that, and I don't think this body would give them reform that would allow them to hold people against competitive pressures from other companies.

I think my question to you will stem more around where we disagree. A guestworker program, and anyone can chime in to give a short answer yes or no, a guestworker program is, certainly in my opinion, a worker program, not a family program. It is not an immigration program. It is an opportunity for disproportionate citizens of Mexico to earn more money to the benefit of their family and to the benefit of Mexico.

And so I guess the first point, because we are going to start to try to think about a new work, if one were implemented, would work. Is there anyone who sees a guestworker only, not a guest family, that is somehow completely unacceptable?

Ms. MUÑOZ. I would argue that it makes sense to give the workers the choice and ability to remain with their families. If they choose to do that, I think it would be wise to allow for that choice and structure of the program.

Mr. KRİKORIAN. Yes, Congressman, I will question the distinction because as I made clear in my written testimony, that there can never be a worker, only guestworker program. It would inevitably bring with it family members, and the Bracero program is a good example. There are about 4.6 million Bracero entries which accounted for maybe 1 or 2 million distinct people because some of them came and went. Half a million Mexican immigrants settled in the U.S. During that period and there were 5 million illegal alien apprehensions on the southern border at that time. So there

is no distinction between a worker only and a worker family program.

Mr. ISSA. Ms. Martin.

Ms. MARTIN. I am very skeptical that you can separate workers from their family. I think the urge for family reunification is so strong and the longer the worker remain in the United States, the more likely that the families will come, and that is another reason that it could very well fuel even more illegal immigration if they do not have legal.

Mr. JOHNSON. Congressman, I did serve on the bilateral study group between Mexico and America sponsored by the Carnage Institute. This was not a scientific survey. I would say many Mexicans on that panel were of the opinion that many Mexicans would choose to return to their home country if they could that safely and then be able to return again. I do think—so it is not necessarily they are going to bring their families if they can return and visit their families. I do think, with regard to an outlet for permanent immigration, it would be useful for the Subcommittee to consider that in a situation, if it was a guestworker program of more than a year where a worker—where a worker and an employer develop an excellent relationship, and that worker wants to stay in the country that perhaps there should be some increase in the number of green cards allowable so that that worker can go through the usual permanent immigration process. Some number, and I am not really prepared to say how many that would be.

Mr. ISSA. What if we were faced with a finite number that the people of America, through their representatives, are willing to come here legally or illegally? My question is, should we scrap the guestworker program because it inherently gives rise to illegal immigration, and that illegal immigration exceeds potentially the number of all legal immigrants that we want to have.

Do you think that any opportunity to promote opportunities in Mexico should be forgotten in order to get to this lower number? Hearing none, I will assume that. The one figure, and I will be quick, Mr. Krikorian, that I was a little skeptical about is you said that you felt the influx of guestworkers of all sorts, guests invited and somewhat invited had held down no more than two-tenths of 1 percent the rate of inflation. If I did my arithmetic reasonably well and figured that 5 percent of the workforce involved would be legal and illegal guestworker attention, that means they held down by 10 percent taking the normal multiplier, would you agree with that arithmetic?

Mr. KRIKORIAN. It seems counter-intuitive, but the reason immigration does not hold down inflation very much because it is primarily made up of people with low levels of skill and education. They work in low-skilled jobs, and their contribution to national output is extremely small so that even a substantial increase in their wages does not, in the end, really make all that much difference. For instance, in agriculture the retail price of fresh fruit and vegetables is maybe 10 percent labor costs of harvest. So even a dramatic increase in those labor costs still doesn't change the retail price of those fruit and vegetables all that much.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman. And we offer our gratitude to the members of the witness table who have presented statements that will be taken into account and which are important to us. We also assume, again, by your presence here, that you are willing to answer interrogatories of a written nature that may be submitted to you by any Members of Committee. And we now dismiss you with our thanks. Thank you very much. This hearing is closed.

[Whereupon, at 3:03 p.m., the Subcommittee was adjourned.]

A P P E N D I X

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF RALSTON H. DEFFENBAUGH, JR.

INTRODUCTION AND SUMMARY

Lutheran Immigration and Refugee Service (LIRS) was founded in 1939 to help resettle refugees fleeing Nazi Germany. Since then, LIRS has resettled more than 280,000 refugees from all over the world. It provides service and advocacy through its 41 Lutheran affiliate offices and sub offices, its Washington, D.C. office and its headquarters in Baltimore, Maryland. LIRS advocates for just, compassionate policies for all newcomers to the United States and administers a fund from Lutheran and Presbyterian churches that provides grants to independent grass roots service programs to serve particularly vulnerable newcomers. There is a strong tradition of Lutheran pastoral care and ministry for migrant farm workers, both legal and undocumented. LIRS has opposed employer sanctions since their inception and has spoken out against workplace raids to the present day.

Our nation's immigration policy with regard to economic migration is unacceptable and must change. The results of this policy include hundreds of deaths annually along the U.S.-Mexican border and elsewhere, abuse of the undocumented here in the U.S. and an inadequate match between the labor needs of our \$10 trillion economy and the poor and excluded who seek opportunity in it. As an alternative, we propose the substantial legalization of economic migration. Specifically, we call for "independent worker visas" that do not tie workers to any particular employer or economic sector and allow those with substantial equities in this country to adjust their status to that of permanent residence.

A DEADLY BORDER, A BROKEN POLICY

INS border enforcement strategy has, in effect, diverted migration flows to the most inhospitable desert and mountain regions causing dramatic increases in deaths due to exposure to the elements.¹ This has also increased the use of smugglers (and their fees) and the incidence of violence in the border areas. It has spawned rancor between property owners and migrants, including vigilante-style intimidation. Those who survive the crossing end up living underground, without legal status, sometimes in debt-peonage to criminal smuggling syndicates. They are also prey to employers who would use threats of deportation in order to squelch their rights. Many seek U.S. employment only on an occasional or seasonal basis and would actually prefer to return to their families in their own countries periodically but dare not do so due to the high risks associated with repeated entry. Our very immigration laws perversely *compel* them to remain here, apart from their families and unemployed.

Many of the problems of our present immigration policy originate from the termination of the 1942–64 Bracero program.² At the time, opponents assumed that ending the program would tighten the U.S. agricultural labor market, resulting in increased wages and improved working conditions. Farmers, on the other hand, believed that ending the program would result in crop loss, business failure and high-

¹Karl Eschbach, Jaqueline Hagan and Nestor Rodriguez, "Causes and Trends in Migrant Deaths along the U.S.-Mexico Border," University of Houston, Center for Immigration Research, March 2001.

²Pia M. Orrenius, "Illegal Immigration and Enforcement Along the U.S.-Mexico Border: An Overview," Economic and Financial Review, First Quarter 2001, Federal Reserve Bank of Dallas, p. 4.

er prices. Both sides were wrong. The actual result was the steady rise in undocumented economic migration.³

In 1986, the Immigration Reform and Control Act (IRCA) attempted to ‘freeze’ what is essentially a *cyclical* migration pattern. Amnesty was granted to those already here and employer sanctions were imposed to deter those who might seek to come in the future. Employer sanctions hurt migrants in that they cause increased use of subcontractors to absorb risk of liability and simple discrimination against those who merely appear foreign. In effect, they extract a “risk premium” from migrants’ wages that has been estimated to amount to an estimated 28% cut.⁴

INDEPENDENT WORKER VISAS

While we favor the option of permanent residence for those who have established substantial equities in this country, we recognize that temporary visas can alleviate much of the hardship occasioned by present policies. Many economic migrants have no need or desire to immigrate to this country and only seek work here on an occasional or seasonal basis.⁵ This is an interest that should be accommodated.

The key shortcoming in typical guest worker programs such as the Bracero and H-2A programs is that they are *employer-centered*. The employer is the sponsor/petitioner and the worker is more or less bound to that employer. This is an anti-competitive restriction of workers’ bargaining power and inhibits their assertion of legal rights with fear of immigration consequences. This amounts to an inappropriate privatization of our immigration policy. Making the legality of a person’s status in this country dependent upon her relationship with a particular employer virtually invites abuse.

Economic migrants, documented and undocumented, are presently working in virtually every sector of our economy, from manufacturing to services, from construction to domestic work. Industry-wide rather than employer-specific restrictions, such as a requirement to work in agriculture, would not only still constrain workers’ bargaining power but would also be an unrealistic response to the defects of current policy. A policy that ignores economic reality is bound to fail and perpetuate the same ills of the status quo. Sectoral restrictions would also hinder economic development in Mexico as they would limit the value of the human capital infusions that take place when migrants return.

Independent Worker Visas, on the other hand, would be migrant-centered visas for which the workers themselves apply, with no restrictions as to which employer or in which industry the bearer can work. Labor standards should apply equally to all workers with no discrimination on the basis of nationality or immigration status. Those who develop substantial equities in this country should be allowed to adjust their status to that of permanent residence.

Finally, we recognize no fundamental moral distinction between Mexicans dying on our southern border, Haitians drowning in the Windward Passage and Chinese suffocating in cargo containers. While there may be sound political reasons for beginning the reform of our economic migration policies in a bilateral arrangement with Mexico, we should do so with a view to expanding it to equally deserving people of other nationalities.

MIGRATION AND DEVELOPMENT

Immigration to the United States has been one of the most effective anti-poverty programs in the history of the world. This is not without repercussions in the countries from which immigrants come. Unlike refugees, economic migrants frequently return to their countries of origin and bring much needed capital—both human and financial—and, while they are here, provide an important source of income diversification and economic risk insurance for their families abroad.⁶ In 1992, the

³Demetrios G. Papademetriou and Monica L. Heppel, “Balancing Acts: Toward a Fair Bargain on Seasonal Agricultural Workers,” *Carnegie Endowment for International Peace*, 1999, fn. 18, p. 18 and fn. 16, p. 17.

⁴Douglas S. Massey, “March of Folly: U.S. Immigration Policy After NAFTA,” *The American Prospect*, no. 37, March-April, 1998. Massey also found that, prior to the advent of employer sanctions under the 1986 IRCA law, the key determinants of migrant wage levels were education, experience in the U.S. and English proficiency. After IRCA, the key determinants were social contacts.

⁵Belinda Reyes, “Dynamics of Immigration: Return Migration to Western Mexico,” Public Policy Institute of California, 1997.

⁶Douglas S. Massey, “March of Folly: U.S. Immigration Policy After NAFTA,” *The American Prospect*, no. 37, March-April, 1998. Massey summarizes empirical studies indicating that Mexican migration into the U.S. (and back to Mexico) is more closely correlated with variances in interest and inflation rates between the two countries than it is to wage levels or public benefits.

United Nations Development Programme estimated that rich country immigration controls against poor country labor cost the developing world \$250 billion or 10% of their combined GNPs.⁷ Economic migrants also return to their home countries with broader political experience with alternative standards of governance and higher expectations. These can provide significant constructive impetus for much needed reform, democratization and development in poorer countries.

While we do not oppose the admission of high-skilled workers, we emphasize freedom of movement for the poorest of migrants for a number of reasons. The humanitarian needs of the poor are especially compelling and, without legal alternatives, they are consequently more likely to take death-defying risks. Finally, the American economy is increasing in its capital and high-skill intensiveness. This results in a growing disparity between its proportionate low-skill labor factor endowment with respect to that of the rest of the world, particularly the developing world. In other words, the economic pressure for the equalizing immigration of low-skill workers will increase, both from the “push” of the developing world and the “pull” of our own economy.

BASES IN LUTHERAN IMMIGRATION STUDIES AND POLICY STATEMENTS

With specific reference to Mexico and its border with the U.S., the Lutheran *Message on Immigration* (ELCA, 1998),⁸ states that

We recognize the right of all countries to control their borders and their duty to protect their citizens from the illegal entry of drugs and criminals. But we have serious doubts about the rightness and effectiveness of current policy to erect imposing barriers between the United States and Mexico. We support the search for alternatives to this policy that would more appropriately reflect the relationship of two friendly nations whose peoples and economies are increasingly interdependent. [p. 9]

Far from a call for “open borders,” the *Message* nonetheless boldly suggests a highly constrained view of the substantive scope of the appropriate use of force in keeping people apart: e.g., the interdiction of drugs and criminals, not the separation of friendly, economically interdependent peoples.

Under “Advocating for Fair and Generous Laws,” the *Message* lists among objectives “giv[ing] content to our understanding of fair and generous immigration laws:

1. To admit to our permanent population a steady proportion of newcomers:
 - b. by facilitating the entry of persons possessing special skills or other capacities needed by the American economy and culture;” [pp. 6–7].

Finally, the *Message* recognizes that “The existence of a permanent sub-group of people who live without recourse to effective legal protection opens the door for their massive abuse and exploitation and harms the common good” and goes on to “urge leaders and citizens to seek feasible responses to this situation that offer flexible and humane ways for undocumented persons who have been in this country for a specified amount of time to be able to adjust their legal status” (p. 8).

In *Who is My Neighbor: A Statement of Concern* (LIRS, 1994), we acknowledge that “persons may feel their jobs threatened by newcomers into their communities” (§II.3) but also recognize that “To place one person or one need over another builds once more the walls which Christ came to remove” (§II.1). We affirm that those “fleeing desperate situations in which grinding poverty threatens the life and health of their families,” no less than those fleeing persecution, are our “brothers and sisters.” We must weigh “the needs of the very poor who leave their homes to seek a better life in this country and the needs of this nation to provide for the welfare of its citizens . . . We can help to fashion a national immigration and refugee policy that justly and compassionately weighs the rights and the legitimate needs of both those who reside within our borders and those who seek to enter” (§II.4).

Our *Study Document of Principles on the Issue of Undocumented Aliens* (LIRS, 1979), among “Recommended Current Criteria and Principles,” states that

Questioning the assumption that migrants make decisions to enter or return based on simple entry-cost/income-benefit analyses, Massey also rebuts the corollary notion that increasing barriers at the border will significantly prevent economic migration.

⁷United Nations Development Programme, *Human Development Report 1992*, pp. 66–67.

⁸The *Message* is grounded in the pan-Lutheran documents “A Statement on Immigration Policies: Moral Issues and National Interest” (Lutheran Council in the USA, 1969, Minutes Exhibit F) and “Immigration Policies: Moral Issues and National Interest” (National Lutheran Council Annual Meeting, February 2–5, 1960, Minutes Exhibit B).

it is imperative that . . . people in underdeveloped countries are dealt with justly and are able to pursue an adequate and satisfying way of life. Yet until such development is achieved, there must be a broadening of definition and understanding of those eligible for proper admission into the USA. *Stewardship compels acceptance of as many as possible of those who have endured economic suffering. Acceptance should not be limited to the victims of political persecution. Whatever this richly endowed nation can do it must do.*

5. *The advances that have been made in the field of civil rights demand that no restrictions be placed on the employment of the undocumented.* Employer sanctions for hiring the undocumented could be an invitation under 'color of law' for an employer to reject the applicant who is not an English-speaking Caucasian. Furthermore such sanctions would place the employer in an enforcement role which is inimical to good order.

A viable option [preferable to national identification] might be . . . enforcement of the labor practice laws already enacted, since one of the charges against the undocumented is that they lower present labor standards. This neither helps the U.S. worker nor the undocumented. [p. 4, emphasis added].

Freed in Christ: Race, Ethnicity, and Culture (ELCA 1993) states prophetically that we "look forward to the time when people will come from east and west, north and south to eat in the reign of God (Luke 13:29)" p. 2. In that light, it sets forth a bold advocacy agenda for equality that can inform the way we look at immigration:

This church will support legislation, ordinances, and resolutions that guarantee to *all persons equally*: civil rights, including full protection of the law and redress under the law of discriminatory practices; . . . *opportunity for employment* with fair compensation, and possibilities for job training and education, apprenticeship, promotion, and union membership; . . . We of the Evangelical Lutheran Church in America will advocate for just immigration policies, including fairness in visa regulations . . . [p. 7, emphasis added]

CONCLUSION

I thank the members of the House Subcommittee on Immigration and Claims for the opportunity to present this written testimony. I trust that you will bear it in mind in your quest for a just and equitable solution to the problems our present immigration system poses for economic migrants.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman for calling this very important hearing today. The debate surrounding a guest worker program is not a new one. The issue of a guest worker program has resurfaced since the labor market has produced a thirty year low in unemployment rates and many businesses are in dire need of employees.

It is my understanding that the Department of Justice, the Immigration and Naturalization Service, the Department of State, and the Department of Labor are putting together a proposal for a guest worker program. This hearing allows us to hear from experts in the field so we can then make any recommendations to the proposal which is currently being formulated.

I would like to note that before a guest worker program is established, our top priority should be legalization of undocumented workers. Bringing more workers into the United States is not the solution to our current problem. What we should be focusing on is legalizing the undocumented population and making legality the prevailing norm.

Legalization will make people feel safe to work. Legalization measures will allow employers to enjoy a more stable workforce. Families will remain united and individuals will be able to secure social protections such as the ability to join a labor union, have access to a driver's license, obtain a social security number, etc. Legalization will allow immigrants to fully incorporate into and participate in their communities.

After instituting a legalization program, if it is then determined that there is a need for guest workers, we would not oppose a short term guest worker program. Any guest worker program which is instituted should allow for a decrease in the amount of time it takes to process an application, portability, full worker protections which can be enforced, extension of work authorization to spouses, access to social

and health protections, and reasonable mechanisms for securing permanent residence for migrants who qualify for it and choose to do so.

MATERIAL SUBMITTED FOR THE HEARING RECORD

FAIR

Federation for American
Immigration Reform
Daniel A. Stein, Executive Director

National Office
1666 Connecticut Avenue, NW
Suite 400
Washington, D.C. 20009
(202) 328-7004 or
(877) 627-FAIR (3247)
FAX (202) 387-1447
E-mail address: fair@fairus.org
internet site: http://www.fairus.org

Los Angeles Office
1400 North Sweetzer Avenue
Suite 202
Los Angeles, CA 90069
(323) 656-4206
FAX (323) 656-HALT (4258)
E-mail address: fairla@earthlink.net

Board of Directors
Sharon Barnes, Chairman
Nancy S. Anthony
Henry Buhl
Donald A. Collins
Sarah C. Epstein
Otis Graham, Jr., Ph.D.
Garrett Hardin, Ph.D., Emeritus
The Hon. Richard D. Lamm
Stephen B. Swensrud
John Tanton, M.D.
Max Thelen, Jr.

National Board of Advisors
The Hon. Richard D. Lamm, Chairman
Duke Austin
Gerda Bilaltes
Dorothy R. Blair
Edith Blodgett
Frances Burke, Ph.D.
Cleveland Chandler, Ph.D.
William W. Chip
Pat Choate
William Collard, Esq.
Clifford Colwell, M.D.
Anne H. Ehrlich, Ph.D.
Paul R. Ehrlich, Ph.D.
Bonnie Erbe
Robert Gillespie
Lawrence E. Harrison
Edward H. Harte
Bonnie Hawley
Robert P. Higley
Walter E. Hoadley
The Hon. Walter D. Huddleston
Diana Hull, Ph.D.
The Hon. Fred C. Ikle
Jacquelyne J. Jackson, Ph.D.
Mrs. T. N. Jordan
Judith Kanofoky, Ph.D.
Alan Kuper
Gerhard Lenski, Ph.D.
Edward Levy, Ed.D.
The Hon. John W. Lindsay
Henry Luce III
Donald Mann
Henry Mayer, M.D.
The Hon. Eugene McCarthy
Joel McCleary
Scott McConnell
Helen Milliken
Peter Nunez
Robert D. Park
Fred Pinkham, Ed.D.
Thor Ramsing
Sidney B. Rawitz
Monica Bell Steensma
Alan Weeden

FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.

June 18, 2001

Hon. George Gekas, Chairman
House Judiciary Subcommittee on Immigration and Claims
B-370B Rayburn House Office Bldg.
Washington, DC 20515-6217

RECEIVED

JUN 19 2001

Immigration and Claims

Dear Chairman Gekas:

As you know the Federation for American Immigration Reform (FAIR) is the nation's largest organization dedicated to promoting better immigration controls and a return to moderate levels of legal immigration in order to serve the current and future best interests of the American people. As such we respectfully request that you insert this letter into the official record of tomorrow's hearing on guestworker visas. We commend you for holding this hearing since the issue of guestworker programs is both timely and critically important.

Worker Displacement and Wage Depression

In our view, temporary worker programs currently in use do not adequately protect American workers because they fail to meet a rigorous labor market test designed to assure that foreign workers do not displace American workers. Added to this, these programs tend to depress or dampen increased wages for Americans. The H-1B visa program for high-tech professionals is a good example. Similarly, the admission of nurses as temporary workers perpetuated the low wages that discourage Americans from pursuing this career. We are fearful this phenomenon of worker displacement and wage depression will be replicated in other sectors of our economy if existing or new guestworker programs are expanded or enacted.

Too often in the past, the assertions alone of employers and/or their employer associations have been taken at face value when appeals are made for increased foreign worker visas based on alleged worker shortages. Because these appeals may be self-serving, they should be tempered by using perhaps the most reliable source of worker supply data, the Department of Labor. Even while reviewing this data, however, any remaining doubt as to the need for additional workers should always be resolved in favor of our own workforce.

Employer Abuse

As a general rule in considering guestworker programs, allowance for rapid contraction of the program must be incorporated in order to accommodate unforeseen economic changes. Evidence of the need for this may be seen in the current H-1B program. The nation's latest economic slow-down has constricted the need for high-tech, information science professionals. The fact that foreign workers are being retained today while similarly qualified

Letter to Hon. George Gekas
 June 18, 2001
 Page 2.

American workers are being laid off is a clear indication that guestworker programs are susceptible to improper use. Some employers are using these programs not to meet a labor shortage, but instead to meet their bottom line desire to retain cheaper foreign labor.

Guestworker Amnesty

FAIR is also concerned with two proposals for a new guestworker program for low-skilled workers. One would include a deferred amnesty provision granting U.S. residence to guestworkers who either entered the country illegally or overstayed their visas and who have been working in agricultural jobs. Another under discussion and being studied by the Bush Administration aims to convert illegal aliens from Mexico (and perhaps other countries) into legal temporary workers. A problem with both proposals is that each rewards illegal behavior while encouraging further illegal immigration by giving an unmistakable signal that the United States is unwilling to regulate its border.

A second major flaw in these proposals is that they would treat all illegal workers in the United States as if they were needed—which they are not. It would also ignore the wage depression for low-earning, low-skilled American workers that has resulted from a glut of illegal alien workers.

A New *Bracero* Program?

Any new version of the earlier *Bracero* program for Mexican workers—especially one that incorporates illegal aliens currently working in the United States—would suffer from the same problem as the old one: when it comes time for the workers to leave, they won't go home. Instead, they will revert to working illegally.

The Problem With Employer Dependence on Cheap Foreign Labor

The rapid increase in the availability of illegal alien workers has led many seasonal crop and service sector employers to become dependent on this low-cost labor force. The proposal to give these workers legal status as temporary nonimmigrant workers or permanent legal status is improperly employer driven.

Existing visa programs for temporary workers contain only modest U.S. worker safeguards. However, employers complain that even these existing protections make it too burdensome for them. Any new program that strips off protections for American workers would further depress wages and working conditions and perpetuate the disincentive for Americans to take these jobs.

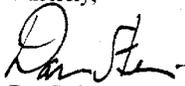
In summary form, Mr. Chairman, the following points are issues of great concern to FAIR. We urge you to give these points your careful consideration as you attempt to evaluate expanding existing or adding new guestworker programs.

Letter to Hon. George Gekas
June 18, 2001
Page 3.

- The conversion of illegal alien workers into legal temporary workers is a form of amnesty in that it rewards persons who have violated our immigration laws.
- The continued importation of low cost workers would perpetuate dependence on these workers and maintain below poverty-level wage rates.
- By eliminating or limiting temporary worker programs and with more restricted access by employers to foreign workers, the employers will have to offer better wages and working conditions to attract American workers, thereby providing better opportunities for America's workers—especially for America's working poor.
- Easy access to low-skilled, low-wage labor has also discouraged employers from mechanizing their operations, particularly in the agricultural sector. In this sector, America has fallen behind its international competitors in technological innovation.
- The beginning of the nation's major problem with illegal immigration is marked by the ending of the *Bracero* program when aliens who were experienced at working in the United States decided to stay illegally or return illegally from Mexico. This experience demonstrates the major flaw with current proposals to restart a similar program.
- Any guestworker proposal establishing a right for temporary legal workers to gain legal permanent residence at the end of a threshold guestwork period is clearly an amnesty, albeit a deferred amnesty.

Mr. Chairman, FAIR strongly urges you and members of your Subcommittee to place the interests of the American workforce first and foremost in your consideration of all guestworker proposals and that you avoid any actions that would have the effect of further eroding our already undermined effort to restore control over our nation's borders.

Sincerely,


Dan Stein
Executive Director