

# American Federation of Labor and Congress of Industrial Organizations



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June 1, 2005

To: National and International Union Presidents  
From: John J. Sweeney   
Re: Immigration Reform bill

On May 12, 2005 Senators McCain and Kennedy introduced a comprehensive immigration reform bill that will provide a path to legal status to the 12 million people who have been working hard, paying their taxes and contributing to their communities. The bill also creates a new temporary worker program, which will provide foreign workers from all over the world the opportunity to work in the United States in non-agricultural, non-degreed jobs, including in the service and hotel industries, construction, retail, food processing, meatpacking, and other currently unionized industries.

Attached is a document that sets forth a unified response from the labor movement to this bill. This is the product of staff-level work with the affiliates who have expressed an interest in working on immigration matters. We are strongly supportive of the concept of legalization, recognizing that raising the floor for undocumented workers and bringing them out of the shadows will improve working conditions for all workers. We are also in agreement that if this bill moves forward, we will seek expand its labor protections considerably to ensure a positive outcome for all workers.

If you have any questions about the statement, please contact Ana Avendaño-Denier, Director of the Immigrant Worker Program at (202) 637-3949.

JJS/WS/mrt  
Attachment

**LABOR'S CONTINUED SUPPORT FOR COMPREHENSIVE IMMIGRATION REFORM  
AND OUR RESPONSE TO THE MCCAIN-KENNEDY BILL**

Reform of the nation's broken immigration system has been a top priority for the labor movement for many years, and we continue to support comprehensive immigration reform. One of our fundamental principles has been that the foundation of any reform of our immigration laws must begin with a broad legalization plan that provides undocumented workers and their families who have been working hard, paying taxes and contributing to their communities with the opportunity to adjust to a legal status. Undocumented workers are often unable to exercise their legal rights, and are subject to exploitation that leads to the deterioration of working conditions for all workers. Ending the exploitation of workers, whether US born or foreign-born, has been our other equally important fundamental guiding principle.

We recognize that immigrants have been under attack in the public eye, and as a unified labor movement, we have taken strong public measures to protect immigrants' rights, including:

- Strongly supporting the AgJOBS bill, which would have brought much needed legalization to farm workers, within a framework that adequately protects those workers' rights;
- Strongly opposing Senator Chambliss' substitute amendment to that bill, which would have stripped the temporary worker program of all labor protections and government oversight;
- Strongly opposing the REAL ID Act, which is a mean-spirited attack on immigrants that pushes immigrants further into the shadows and provides no real solution to the broken immigration system.

We will continue to oppose legislation that does not provide workers a path to permanent residence in the United States.

We recognize that the Secure America and Orderly Immigration Act recently introduced by Senators Kennedy and McCain is an important legislative accomplishment, because of its bipartisan nature and because it contains a path for many of those currently living and working within the United States to earn their way to permanent legal status and promotes the reunification of families.

If this proposal moves forward, we will seek to expand its labor protections considerably to ensure a positive outcome for all workers.

Some of the provisions of the bill that must be adjusted are:

***LEGALIZATION PROGRAM:***

**The bill does not give protection to workers who provide correct information to the employer after legalizing**

- This will likely result in millions of workers losing their jobs because employers will claim that they are required (under "no falsification" policies) to terminate anyone who has provided any false information at any time;
- This is a current standard industry practice. In many instances, workers who have come forward are re-hired immediately, under their proper name, but at starting wages, with loss of seniority and benefits.

**Although workers are required to pay any back taxes owed before they become eligible to legalize, the bill gives employers who employed them complete amnesty from criminal and civil tax liability**

- Although the supposed rationale for this provision is that employers will otherwise be unwilling to provide workers with documentation they need to legalize their status, this amnesty applies to all employers who have ever employed an undocumented worker at any time, regardless of whether the employer helps the worker to legalize her status.

***TEMPORARY WORKER PROGRAM***

**The bill requires that workers present a job offer in order to get a visa, which will likely result in massive recruiting abroad at exploitative conditions, and lead to the deterioration of wages and working conditions in industries that recruit H5A workers**

- Although the job offer must first be posted on America's Job Bank for 30 days, there is no requirement that the jobs be posted at any prevailing or other specific wage, which creates an incentive for employers seeking to hire H5A workers to offer wages far below those which any worker who was already in the country and in a position to actually choose among available jobs would ever willingly accept. Because visa seekers must have a job offer to be eligible for a visa, they will be forced to accept those terms;
- There are no restrictions on conditions employers are permitted to impose in that offer, including the length of employment, etc. H5A workers are permitted to quit, and seek other employment, but if they do so before the

term specified in the offers, they may be subject to damages for breach of contract;

- The visas will be available world-wide, and workers in Mexico, or Thailand, or Bosnia, or other remote developing nations are not going to have access to job offers in their native countries unless companies recruit them, either directly (as some companies do now), or through labor contractors;
- The likely result is that Tyson and other recruiters are going to be selling "McCain/Kennedy job offers" around the world, for thousands of dollars (disguised as transportation costs), and then bringing these workers to the US to work to the limits of human endurance in order to repay that debt;
- While the legislation provides some regulation of labor recruiting activities, the weak enforcement system and small fines will not deter employers and recruiters from engaging in this lucrative practice.

**The bill requires that workers return to their native country or the country of their last residence if they are unemployed for more than 45 consecutive days; any unemployed worker who is still in the US after 45 days of unemployment forfeits his legal status and may never again be eligible for an HSA visa. These draconian measures will result in exploitation of visa holders and drive many of them into the underground economy, thereby driving down wages and working conditions for all workers in the U.S.**

- Workers who are fearful that they will lose their legal status if they become or remain unemployed will be much more willing to accept standard wages than they would if they had the same rights as U.S. workers;
- Workers from distant countries cannot realistically be expected to travel back and forth to their home countries every time they suffer a 6-week spell of unemployment and are much more likely to continue to work illegally.

**The size and scope of the program does not address the current illegal flow of workers**

- There are a minimum of 400,000 visas available each year, and the number grows based on a demand-based formula. The visas are only available for non-degreed, non-agricultural jobs (like construction, retail, packing and food processing);

- The visas last a minimum of 3 years, and are renewable for a second 3-year term which means that in year 3, there could be nearly 1.5 million H5A workers in the US, and nearly 4 million by year 6;
- The visas are not targeted at countries that are currently the source of illegal immigration. Given that visas will be available all over the world, illegal immigration from Mexico and Central America is likely to continue;
- The bill does not remove the incentives to hire undocumented workers created by the Supreme Court's *Hoffman Plastic Compounds v. NLRB* decision. Coupled with the fact that the bill does not target sending countries, the lack of a *Hoffman* fix will continue to give an incentive to employers to recruit and hire undocumented workers;
- Many industries that now hire undocumented workers are likely to continue hiring undocumented workers rather than going through the H5A program. For example, construction employers who need workers for projects that last a few hours or a few days are not going to use the electronic verification system to find workers, and will continue to exploit the readily available undocumented pool of workers.

**Meaningful enforcement for labor protections are necessary, not a new weak administrative process.**

- Any violation of the law by an employer will be handled by the Secretary of Labor under a new administrative process that has even less teeth than the NLRB process;
- For example, Secretary Chao can only *start* an investigation after she determines that there is "reasonable cause" to start the investigation. That means that anyone who wants to prosecute a violation has to convince the Secretary that a violation has occurred before she even starts the investigation;
- If Secretary Chao fails to or refuses to determine that there is "reasonable cause," then an aggrieved person has the right to petition the Secretary for a hearing—which she again has the discretion to refuse. The bill does not provide for any appellate process.

**The bill should do more to reduce organizing hurdles**

- Any H5A worker who is out of work for 45 consecutive days will fall out of status and become “undocumented,” regardless if she is out of work because of a job-related injury, or because of an unlawful termination. (The average length of unemployment right now is 19 weeks);
- Requiring that these workers find jobs so quickly in order to keep their legal status makes workers reluctant to engage in organizing, because of the very real fear of losing their jobs;
- The “portability” provision means little under these circumstances; undocumented workers now have full “portability” because of the lack of enforcement of immigration laws, and readily change jobs. What undocumented workers lack--and what H5A workers will lack—is the ability to bargain for improved wages and working conditions;
- The bill does not address employers’ ability to threaten to withhold sponsorship for a green card if the worker engages in organizing, which is a standard union-busting method, particularly in the construction industry;
- There are no anti-retaliation protections for workers who expose violations of labor laws;
- The “whistle-blower” protections are not meaningful: the bill provides that a worker who is in status will remain in status if he exposes a violation of the SAOIA; his lawful stay period is not extended and if he is blacklisted for making such a complaint (and thus remains out of work for longer than 45 days), he becomes undocumented.