

Responsible Reform of Immigration Laws Must Protect Working Conditions for all Workers in the U.S.

OVERHAUL OF OUR NATION'S IMMIGRATION LAWS IS LONG OVERDUE. The current system is a blueprint for exploitation of workers, both foreign-born and native, and is feeding a multimillion dollar criminal enterprise at the U.S.-Mexico border.

America deserves an immigration system that protects all workers within our borders—both native-born and foreign—and at same time guarantees the safety of our nation without compromising our fundamental civil rights and civil liberties.

Any viable solution to this crisis must address the reasons why people are coming to the U.S. Most immigrants come from countries where the international development process has failed, and many are from countries where International Monetary Fund (IMF), World Bank and trade policies have weakened countries' economies and labor protections, causing a devastating impact on all workers. In some developing countries, IMF policies have caused public-sector workers to lose their jobs and their union protections, forcing them into competition in the private sector, where few, if any, jobs are available, driving down wages and working conditions even further. Trade agreements such as the North American Free Trade Agreement undermine the agricultural economies of developing countries, leading workers to leave the fields and consider moving north. Without rising living standards abroad for workers and the poor, the pressure for illegal immigration will continue and escalate.

At the same time that global forces are pushing workers to our borders, judicial and public policies toward immigrants have created new so-called pull factors for migration into the United States, namely, an incentive for employers to recruit undocumented immigrants for economic exploitation. Too many employers seek to avoid, evade, and ultimately negate U.S. labor and employment laws through the recruitment and importation of undocumented workers. The U.S. Supreme Court created a powerful new incentive for such exploitation by its decision in *Hoffman Plastic Compounds v. National Labor Relations Board*. In that case, the Court determined that an undocumented worker is not entitled to back pay—the only monetary remedy available to workers under the National Labor Relations Act—when he or she is fired illegally for trying to organize a union. This has made the cost of exploiting immigrants insignificant to unscrupulous employers. The end result is that industries that cannot export jobs—such as those in construction—are attempting to use flawed immigration policies to import the labor standards of developing nations into the United States.

The broken immigration system has allowed employers to create an underclass of workers, which has effectively reduced working standards for all workers. Immigrant workers are over-represented in the highest risk, lowest paid jobs, but the exploited immigrants do not work in isolation. U.S.-born workers who work side by side with immigrants suffer the same exploitation. The U.S. Department of Labor, for example, determined the poultry industry—which is nearly half African American and half immigrant—was 100 percent out of compliance with federal wage and hour laws. The Department of Labor also estimated more than half of the country’s garment factories violate wage and hour laws, and more than 75 percent violate health and safety laws. Of course, workplaces that are dangerous for immigrant workers are equally dangerous for their U.S.-born counterparts and co-workers.

Our failed immigration policies also have encouraged employers to use guestworker programs to lower labor standards and working conditions for all workers within our borders. We’ve seen employers turn tens of thousands of permanent, well-paying jobs in the United States into temporary jobs through the use of various guestworker programs. The temporary guestworker jobs come with few or no benefits, lower wages and often are staffed through temporary agencies, whose fees come out of workers’ pockets. The foreign workers recruited to fill these jobs remain legally tied to the employers that recruited them and are thus naturally vulnerable to exploitation.

Guestworker programs, such as the L and H-1B visa programs, operate with little employer accountability and to the detriment of all professional workers. None of these programs connect to the realities of current U.S. labor market conditions. In fact, employers are allowed to turn permanent jobs into temporary jobs and import workers, despite the unusually high current rate of unemployment among professional and technical workers. As a result, working conditions for all professional workers have suffered: pressures caused by employer exploitation of professional guestworkers coupled with the increases in outsourcing continue to have a chilling effect on any real wage increases for professionals, even those not directly or immediately impacted by these matters.

Immigrant workers, like all workers, should be full social partners. We will continue to support effective, credible and enforceable rights for all workers, regardless of their country of origin or immigration status. At the same time, we will ensure that our member mobilization efforts include our immigrant brothers and sisters, and ultimately place immigration squarely within a progressive and sustainable economic agenda that benefits all working families in our nation.

We hereby renew our call for comprehensive and responsible reform of our immigration laws, which must—at a minimum—comply with the following standards:

- **Uniform enforcement of workplace standards must be a priority.** History, economics and common sense dictate that exploitation of workers will continue as long as it makes economic sense to do so, to the detriment of U.S.-born and foreign-born workers alike. Unfortunately, the lax enforcement of labor and employment laws has given too many unscrupulous employers the economic incentive to recruit undocumented workers, and has penalized those employers who abide by the law because it has put them at a competitive disadvantage.

The only meaningful way to remove that perverse economic incentive and to equalize the competitive playing field is to ensure that all those who gain the benefit of a worker’s labor, whether that worker is an employee or an independent contractor, abide by all

labor and employment laws. That means that the immigration reform law *must* provide real and enforceable remedies for labor and employment law violations that are available to *all* workers, regardless of their immigration status, and that there must be a mechanism by which all workers can vindicate their rights without having to face restrictive standing requirements or meaningless regulatory hurdles;

- **Reforms must provide a path to permanent residency for the currently undocumented workers who have paid taxes and made positive contributions to their communities.** Legalization is an important worker protection. History shows that legalizing this population benefits all workers: Wages and working standards of undocumented workers increased significantly after the legalization program of the 1986 Immigration Reform and Control Act, thereby raising the floor for all workers. Without a legalization program, the economic incentive to hire and exploit the undocumented will remain, to the detriment of U.S. workers who labor in the same industries as the undocumented, because all workers will see their working conditions plummet.
- **We must reverse the trend of allowing employers to turn permanent, full-time year-round jobs into temporary jobs through attempts to broaden the size and scope of guestworker programs.** Longstanding U.S. guestworker policy requires that temporary workers can be used only to satisfy short-term or seasonal labor needs. The agricultural guestworker program, for example, the best known of these programs, is designed to satisfy the seasonal needs of employers who need to temporarily hire large numbers of workers during the growing season, which may be as short as six weeks. Similarly, the H2-B program allows non-agricultural employers in industries such as landscaping, hospitality and crabbing, to hire non-U.S. workers on a temporary basis to fill their seasonal needs.

Guestworker programs are bad public policy and operate to the detriment of workers, in both the public and private sector, and of working families in the U.S. The abuses suffered by workers in the first such program, the post World-War II Bracero program, are well documented. The negative effects of the modern versions of the “guestworker” construct—such as the H1-B and H2-B programs—are all too evident today. Workers around the country are witnessing the transformation of formerly well-paying, permanent jobs into temporary jobs with little or no benefits, which employers are staffing with vulnerable foreign workers who have no real enforceable rights through the guestworker programs. These modern programs have had a major and substantial detrimental effect on important sectors of our economy.

The massive expansion of guestworker programs contemplated by current legislation before the Senate—which would more than quadruple the number of foreign workers admitted annually and would allow employers to import workers into the public and private sector—will not only harm U.S. workers, but also represents a radical and dark departure from our long-held vision of a democratic U.S. society. We are not a nation of “guests,” who, by definition, have only short-term and short-lived interests, but a nation of people who believe in investing in our communities, in our future, in the future of our children, and in our democracy. It defies everything that our nation stands for to legitimize a system that forces our communities to simply be “hosts” for “guests” who are only here to lend their labor, and who have no reason to become

invested in that community, and who will never have a voice in their future within that community. We are not a nation of guests; we are a nation of citizens.

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

We fully support the right of all workers to bargain collectively, and we fully support and endorse the existing arrangement within the H2A program that the Farm Labor Organizing Committee (FLOC) negotiated with the North Carolina Growers Association, which provides the protections of a collective bargaining agreement to Mexican H2A workers at the Mt. Olive, N.C., facility.

- **Long-term labor shortages should be filled with workers with full rights.** We recognize that our economy may face real labor shortages in the coming years, as the baby boomer generation retires. Instead of relying on a framework that guarantees the deterioration of working conditions in the U.S., we should focus on a meaningful solution that guarantees full workplace rights for all workers, both foreign-born and native, and also permits employers to hire foreign workers to fill proven labor shortages. The solution is simple: Congress should revise the permanent employment-based visas system and devote more resources to removing processing delays.

Employment-based admissions for permanent visas (commonly known as "green cards") are subject to labor certification provisions: the employer must show that there are not sufficient workers in the U.S. who are able, willing, qualified and available at the time and at the place where the foreign worker is to perform the job. To demonstrate this adequately, the employer must offer the job at a prevailing wage, and must attest that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed workers in the U.S. Congress has arbitrarily set the number of these visas at 140,000 annually. That approach should be changed so that the number of visas available responds to actual, demonstrated labor shortages, which will satisfy employers' needs for workers, and will prevent the creation of a secondary class of workers and residents, because the new foreign workers will have full employment rights and the promise of a permanent future in our democracy.

- **Reform of immigration laws must consider the root causes of migration, and must take into account the global economic policies, as well as U.S. foreign policy that are pushing workers to migrate.** Without rising living standards abroad for workers and the poor, the pressure for illegal immigration will continue. U.S. foreign policy, as well as trade and globalization policies, must be grounded upon a coherent national economic strategy, as described in An Economic Agenda for Working Families, adopted at the AFL-CIO's 2005 Convention.