

Testimony of

# Stephen J. Law

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STATEMENT OF STEVEN J. LAW  
DEPUTY SECRETARY OF LABOR  
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SUBCOMMITTEE ON IMMIGRATION,  
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COMMITTEE ON THE JUDICIARY  
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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the President's principles for a new Temporary Worker Program.

Last year, the President proposed that we examine and reform our current system for admitting and employing temporary foreign workers. The President's proposal for a new system recognizes that many sectors of our economy rely on temporary foreign workers to fill workforce shortages when there are insufficient numbers of willing or able domestic workers.

The current system for hiring and admitting temporary workers to the U.S. is complex and burdensome for both the employer and employee. The President's proposal would address this problem by streamlining the process so that willing workers can efficiently be matched with employers who need foreign workers. The President's plan would also seek to bring undocumented workers who currently labor in an underground economy into the open.

The President's proposal is based on five basic principles:

? Protecting the Homeland by Controlling Our Borders: The program must support ongoing efforts to enhance homeland security.

? Serve America's Economy by Matching a Willing Worker with a Willing Employer: When no American worker is available and willing to take a job, the program should provide a labor supply for American employers. It should do so in a way that is clear, streamlined, and efficient so people can find jobs and employers can find workers in a timely manner.

? Protecting the Rights of Legal Immigrants: The program should not permit undocumented workers to gain an advantage over those who have followed the rules.

? Promoting Compassion: The program should grant currently working undocumented aliens a temporary worker status to prevent exploitation. Participants would be able to travel back and forth between their home and the U.S. without fear of being denied re-entry into America.

? Providing Incentives for Return to Home Country: The program will require the return of temporary workers to their home country after their period of work has concluded.

A temporary worker program based on these basic principles will provide America with the following benefits:

? A More Prosperous Economy: The program would allow workers to find jobs and employers to find workers, quickly and simply.

? A More Secure Homeland by Improving the Efficiency and Management of All People Crossing Our Borders: It is in the interest of the Nation, and each community, to identify foreign visitors and immigrants and make clear the nature

of their intentions.

? A More Compassionate System: All workers in America will be protected with labor laws, the right to change jobs, fair wages, and a healthy work environment.

### State of the Economy

The U.S. economy continues to grow at a steady pace and our labor market is healthy. We ended 2004 with an annual GDP growth rate of 4 percent, which exceeds the annual average of the last 25 years. The overall monthly unemployment rate continues to hover around 5.2 percent, which is below the monthly average of the last 50 years.

In April, the economy added 274,000 payroll jobs. That is a significant contribution to the 3.5 million jobs that have been added since the employment recovery began in June 2003. Employment growth has been increasing in most industries, and, at the end of March, there were 3.6 million unfilled job openings in the United States.

### Historical Reliance on Foreign Born Labor

As our economy has grown over the past 15 years, so has our reliance on foreign born labor. From 1990 to 2004, foreign born workers increased from 9 percent of the civilian labor force to 14.5 percent. America now has 21.4 million foreign born workers. That is a 50 percent increase in just 15 years. More than 50 percent of foreign born workers are non-citizens. Without their contribution to the economy, our output of goods and services would be significantly less.

It is important to note that the growth in the foreign born labor force has not produced significant adverse effects on native workers. For example, between 2002 and 2004, about 1.2 million foreign born workers were added to the workforce, at the same time the unemployment rate for native born workers went from 5.7 percent in 2002 to 5.5 percent in 2004.

### Future Need for Foreign Workers

Significant ongoing changes in the U.S. population and our labor market mean America will continue to need foreign workers in the future. As we often hear, the American population is aging and the baby boomer generation is approaching retirement. There are currently 23 million workers age 55 or older who will be approaching retirement in the next few years. This is more than a 50 percent increase from 10 years ago. And while the number of older Americans in the workforce has been increasing significantly over the past 10 years, the number of young workers - ages 16 to 24 - in the workforce has changed little. This indicates there is an even bigger workforce shortage looming on the horizon.

This is a real problem, especially for employers in need of workers to fill jobs that do not require a college degree. Between 2002 and 2004, the number of native born persons in the workforce who were 25 or older with no more than a high school diploma decreased by 817,000. During that same time period, the number of foreign born workers in that category increased by 758,000.

Many businesses in America rely on highly skilled foreign workers as well. The Department of Labor's analysis of relative wage and employment growth in recent years show wages in some occupations requiring advanced education are increasing faster than the number of people employed in those occupations. This suggests a tightening labor market in those occupations.

For example, between 2002 and 2003, wages for pharmacists increased 44 times faster than employment. Wages for dispensing opticians grew 18.5 times faster than employment.

If these trends continue, it is possible that the demand will be met by more U.S. college students preparing for careers in these occupations, but we may also have to consider increased immigrant or guest workers to meet future demand for these jobs.

Another occupation that continues to see demand exceed supply is computer hardware engineers. This occupation category is one that has frequently utilized foreign workers under the H-1B visa category. Even with foreign workers and some of the highest wage levels among reported occupations, pay of computer hardware engineers still increased nearly 2 times faster than employment, demonstrating continued demand for workers in this occupation.

Of course the continual labor shortages experienced by American businesses are not news to the Members of this Subcommittee, or to your colleagues in the Senate and the House. Every year, the Department of Labor receives numerous letters from members of Congress inquiring about the status of work visas on behalf of their constituents who rely on foreign labor to augment their workforces. It is a clear statement of the need for foreign workers that the 66,000 cap on visas under the H-2B visa program was reached barely 5 months into fiscal year 2004. Moreover, the demand for temporary foreign workers extends to many sectors of our economy, ranging from food processing to recreational establishments.

## Enforcement

The Department of Labor takes very seriously its responsibility to ensure that this Nation's foreign workers, including those admitted under a temporary worker program, have fair and equitable protection under our labor laws. After all, this is about immigration, not exploitation.

Just as an example, following the U.S. Supreme Court's 2002 ruling in *Hoffman Plastic Compounds, Inc. v. NLRB*, the Department initiated an aggressive enforcement and communications plan that reinforces our commitment to enforcing workplace protection laws on behalf of workers without regard to their immigration status.

Moreover, one of the Department's key enforcement priorities is ensuring compliance in low-wage industries that employ vulnerable workers, many of whom are immigrants. In fact, in fiscal year 2004 alone, the Wage and Hour Division (WHD) within the Employment Standards Administration collected more than \$43 million in back wages for 84,897 workers in selected low-wage industries - an increase of over 22 percent of low-wage workers receiving back wages since fiscal year 2001.

In FY 2004, the Department also collected \$465,000 for 1,600 workers under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

Such enforcement efforts help discourage employers from attempting to exploit foreign born workers who are desperate for work and who may be willing to work for sub-minimum wages and under unsafe conditions. Strong enforcement also helps to prevent fraud and abuse in temporary worker programs.

## Compliance Assistance

In addition, the Department has made immigrant workplace safety a priority and is committed to identifying ways to improve the safety and health of our immigrant workers. For example, through the Department's Hispanic Worker Taskforce, the Occupational Safety and Health Administration (OSHA) has planned, developed, and delivered a variety of informative, educational, and cooperative programs and materials for the Hispanic community. A wide variety of publications are now printed in Spanish, including an easy-to-use publication that describes worker rights. The Secretary's commitment to this issue was demonstrated by the Hispanic Safety and Health Summit that she held in July 2004.

And we are seeing the results of these efforts. Workplace fatalities among Hispanic workers declined in 2002 for the first time in seven years. And fatalities among Hispanic workers are down 11.6% since 2001.

Such enforcement and compliance assistance activities not only protect foreign born workers from exploitation, but also help ensure that American workers are not undercut by unscrupulous employers.

## Conclusion

The Administration looks forward to working with you in the coming months. Reforming our temporary worker programs is a difficult undertaking. Working together, we can enact reforms that will benefit workers, employers, and the American economy.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you may have.