

Testimony of  
**The Honorable Elaine Chao**

Secretary of the Department of Labor

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STATEMENT OF  
SECRETARY OF LABOR ELAINE L. CHAO  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
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Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the President's plan for comprehensive immigration reform. I would like to begin by underscoring the point that the effectiveness of border security and interior enforcement initiatives is tied to creating a legal avenue for the workers our economy needs to keep growing. This will allow U.S. enforcement to focus on achieving control of our borders. When integrated with a workable and enforceable temporary worker program, U.S. border security and enforcement resources can be maximized to strengthen our homeland security, stop illegal immigration, and meet U.S. needs for a legal workforce.

Last year, the President proposed that we reform our current system for admitting and employing temporary foreign workers in this country. The President set forth principles that should guide comprehensive immigration reform. Those principles are:

? Protect the Homeland by Controlling Our Borders: A new program must support ongoing efforts to enhance homeland security.

? Serve America's Economy by Matching a Willing Worker with a Willing Employer: When no U.S. worker is available and willing to take a job, the program should provide workers for American employers. The process should be as clear, streamlined, and efficient as possible so people can find jobs and employers can find workers in a timely manner.

? Protect the Rights of Legal Immigrants: The program should not permit illegal immigrants to gain an advantage over those who have followed the rules.

? Provide 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.

? Promote Compassion: The program should afford illegal immigrants who are currently working an opportunity to join the temporary worker program and avoid exploitation.

Participants in a new program would be able to travel back and forth between their home and the U.S. without fear of being denied re-entry into America.

A reformed temporary worker program based on these basic principles will provide America with several benefits, including:

? A More Secure Homeland by Improving the Efficiency and Management of All People

Crossing Our Borders: It is in the interest of our country, and each community, to identify foreign visitors and immigrants and clarify the nature of their intentions during their stay.

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

I know there are several immigration and temporary worker-related bills under consideration in Congress. I am not here today to endorse any particular bill you may be considering. Instead, I will share with you the Administration's plan for comprehensive reform that addresses border security, interior enforcement, and a temporary worker program. Reform must address these three aspects to be effective, but also must not allow amnesty.

I will focus my comments on the need for a reformed temporary worker program as an integral component in improving the safety and border security of the nation. An improved temporary worker program will enhance border security and interior enforcement by providing a workable and enforceable process for hiring foreign temporary workers.

The President's plan for reform recognizes that foreign workers are drawn to this country because of economic opportunity. These workers find employment here because many important sectors of our economy rely on foreign temporary workers to fill certain jobs when there are shortages of willing and able U.S. workers.

But, the current system for hiring and admitting foreign workers is complex and burdensome for both the employer and employee. The Department of Labor has initiated some regulatory reforms over the past couple of years to help improve procedures in the labor certification process. But making additional effective improvements to our system of admitting and tracking temporary foreign workers will require legislative as well as administrative changes.

The President's plan seeks to address problems in the current temporary worker system by streamlining the process so that willing workers can efficiently be matched with employers who need foreign temporary workers to fill jobs for which there are no willing U.S. workers. The President's plan would also bring illegal immigrants who currently work in an underground economy into the open. And, of course, any reforms that improve the process for workers and employers must be matched with reforms that improve the safety and border security of our country as a whole.

Our current system is overloaded, ineffective at deterring fraud, does not work well for workers or employers, and strains the nation's enforcement abilities. Our country faces a continuing high demand for foreign labor in several sectors of the economy. This demand is strongest among lower skilled occupations and for seasonal positions in businesses and agriculture. This constant, and in many cases increasing, demand for foreign labor strains our current admission system. As the members of this committee know, some visa programs have annual limits that are often reached in the first few months of the year. This environment creates an unfair system of winners and losers that does not serve our national economic interests.

The Department hears about these problems from employers and from members of Congress. Each year, we receive scores of inquiries from Congressional offices about pending visas or

requesting the re-classification of entire groups of workers from one visa category to another with available slots.

When the demand for visas overwhelms the supply, many workers resort to illegal border crossings. Once in our country, these workers often use fraudulent documentation in order to obtain employment. As a result, employers can unwittingly hire illegal workers because there is no quick and efficient way to verify the authenticity of identification documents. And of course, some employers knowingly resort to hiring illegal workers because they fail to obtain legal foreign workers or because they do not want to incur the expense of navigating the complex bureaucracy required to obtain a foreign worker with a visa.

A well-designed temporary worker program will help alleviate each of these concerns by providing stability and certainty to workers, employers, and the American people. With a technologically advanced new system in place, workers will have visa documentation that clearly establishes their eligibility to work. Employers will have access to a verification system that enables them to quickly check the eligibility and verify the identity of potential employees. And with increased enforcement efforts, the American public will have confidence that employers are obeying the law and hiring only those people who are in the country legally.

The reforms should enable those who are here unlawfully an opportunity to come forward, apply for a legal temporary work status, and participate in the legal economy. But these people will not be granted amnesty for their violations of law. President Bush strongly opposes amnesty, because it unfairly rewards lawbreaking and because amnesty encourages further illegal immigration. At a minimum, those who come forward will not be offered an automatic pass to citizenship and should be expected to pay a substantial fine or penalty to participate in the temporary program. Applicants for the temporary worker program, including those already in the country, should undergo credentialing procedures and background checks, and at a minimum should have to meet the legal admissibility standards set by Congress. Felons and those in removal proceedings would not be eligible to participate in the program.

Workers should also be issued biometric, tamper-resistant cards that will allow them to cross U.S. borders during their stay here. Currently, many illegal immigrants do not leave the U.S. because it can be costly and dangerous to make a return trip. A new temporary worker program will remedy this situation by providing workers with temporary status the ability to freely travel back and forth to their home country. This will help enable temporary workers to maintain ties to their home and help encourage them to return when their temporary visa expires.

That is a basic outline of how a new program would be structured for workers. Now let me share with you this Administration's view of the responsibilities a new program would entail for employers.

The President is committed to ensuring that every U.S. worker who wants a job can find one. Under the President's plan, U.S. workers come first. U.S. employers would have to make reasonable efforts to find a U.S. worker to fill a job before extending job offers to foreign workers. The temporary worker program must include strong workplace enforcement provisions and incentives for foreign workers to return home when their time in the program is done. These program requirements are necessary to ensure that we protect our jobs for U.S. workers.

The Department of Labor has a limited, but important, role in the current work visa programs. As a prerequisite to hiring a foreign worker through most work visa programs, an employer must first have attempted to hire U.S. workers for the job openings. If that effort proves unsuccessful, an employer may then apply to hire foreign workers with a temporary work visa. The effort by employers to seek out and attempt to hire sufficient numbers of U.S. workers is referred to as a "labor market test."

The Department is responsible for verifying that an employer who wishes to hire temporary foreign labor has properly complied with the labor market test. In addition, the Department is responsible for enforcing the labor standards associated with these temporary worker programs to prevent the exploitation of the temporary workers and guard against adverse employment effects on U.S. workers.

Our colleagues at DHS and DOJ enforce the immigration laws. DHS also conducts security checks, determines admissibility, and adjudicates benefits, and we anticipate they would continue their role of ensuring that workers abide by the program requirements, and that employers hire only documented temporary foreign workers.

On the topic of matching willing workers with employers, this Administration believes that the private marketplace, rather than a vast government bureaucracy, is better suited to meet this challenge. The federal government will have a great deal of work to do in completing background checks on temporary worker applicants, issuing visas, and improving border security. Private organizations, whether they are nonprofit or for profit, could help match employers with available workers. Of course, such a system will have to contain some government controls and regulations to prohibit, for example, the imposition of excessive fees on workers. But this Administration fundamentally believes that the private marketplace is best equipped to design and manage an efficient matching system.

The Department of Labor takes very seriously its responsibility to ensure that our workforce, including foreign workers admitted under temporary worker programs, is fully protected by our nation's labor laws. The Department will continue its strong enforcement of labor laws to protect the health, safety, working conditions and pay of all workers. It is this Administration's policy to hold employers accountable and to enforce all labor laws without regard to the legal status of workers. These efforts not only help protect foreign born workers from exploitation, but also help ensure that U.S. workers are not undercut by unscrupulous employers.

The Administration looks forward to working with the Senate and the House in the coming months. I know Senators are deeply interested in the temporary worker program and members of this committee have introduced bills suggesting significant changes in that system. Reforming our temporary worker programs is a difficult and complicated undertaking. Working together, I am confident that reforms will be enacted to protect homeland security, restore the rule of law, serve the economic needs of our nation, and honor our history of openness to legal immigration.