

**TESTIMONY ON GUESTWORKER PROGRAMS
BEFORE THE IMMIGRATION SUBCOMMITTEE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

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**NATIONAL COUNCIL OF LA RAZA
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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 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

¹ There 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.

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