



NEWS FROM EPI

**FOR IMMEDIATE
RELEASE**

Wednesday, March
28, 2007, AM

CONTACT

Nancy Coleman
Karen Conner
Stephaan Harris
202-775-8810
news@epi.org

FLAWED IMMIGRATION LAWS VICTIMIZE FOREIGN & NATIVE WORKERS, EXPERTS SAY

Reforms proposed to benefit economy as well as native and migrant workers

Members of Congress are scurrying to put together immigration legislation that will combine proposals on border security, worksite enforcement, guest worker programs, and citizenship for undocumented workers – a tall order for one of the country’s most divisive and least understood issues. As part of its Agenda for Shared Prosperity policy initiative, the Economic Policy Institute convened national experts today who illuminated the effect of immigration on the labor market and economy and uncovered the flaws of federal policy, with the hope of better informing the current debate.

Former Secretary of Labor Ray Marshall (LBJ School of Public Affairs), whose new report analyzes the weaknesses of the Immigration Reform and Control Act of 1986 and disproves common myths of undocumented workers, led the panel, which focused on current and proposed guest worker programs. Ron Hira (Rochester Institute of Technology) explained why and how the guest worker programs primarily designed for high-skilled foreign workers need to be repaired and not expanded, and Mary Bauer (Southern Poverty Law Center) exposed the systematic abuses many guest workers face in the United States and their home countries.

Hira’s new report, [*Outsourcing America's technology and knowledge jobs: High-skill guest worker visas are currently hurting rather than helping keep jobs at home*](#), comes as Congress once again considers changes to U.S. high-skill immigration policy, in which foreign workers, companies, and universities often complain rules are too strict for high-skilled foreign workers while native U.S. workers feel shut out of good jobs by the competition. Hira’s report disproves claims that, because of a shortage of U.S. scientists and engineers, our H-1B visa program has to expand because employers will be forced to hire foreign workers in their home countries. H-1B supporters also claim this program is *the* gateway to immigration for the “best and brightest” foreigners.

The report finds the H-1B program instead accelerates the outsourcing of high-wage, high-skill jobs to low-cost countries, while the largest program users are offshore outsourcing firms who sponsor very few of their workers for green cards. Hira also pointed out three major fundamental flaws in the program design. First, firms do not have to test the labor market before hiring a foreign worker. Second, the program’s prevailing wage guidelines are riddled with loopholes, so that firms can easily pay foreign workers below-market wages that can also depress the wages of U.S. workers. Third, the program has little oversight. Hira added the oversight problem plagues the L-1 visa program, which, like the H1-B, accelerates the outsourcing of U.S. jobs.

“It’s clear that abuse of these programs can displace U.S. workers,” Hira said. “The system is badly broken and there needs to be fair treatment of everyone involved.”

Bauer’s report, [*Close to slavery: Guestworker programs in the United States*](#), uncovers abuse and exploitation experienced by guest workers who toil in low-wage jobs through the H-2 visa program, which U.S. employers used to bring in 112,000 foreign workers in 2005 alone for such industries as agriculture, construction and food processing. Based on actual

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interviews of guest workers as well as research on legal cases, guest worker programs and experts, the report finds little protection for many low-wage guest workers, whose only recourse to on-the-job mistreatment is returning to their home country. The report finds such common occurrences as workers routinely cheated out of wages, paid less than the federal minimum wage and denied overtime pay, held virtually captive by employers or labor brokers who seize their documents and control deportation, forced to live in squalid conditions, and denied medical benefits for on-the-job injuries.

“This is a modern-day system of indentured servitude,” Bauer said. “When their visas expire, these workers leave here and become disposable workers of the U.S. economy.”

Bauer presents a brief history of low-skilled labor exploitation, with a concentration on the *bracero* program, in which more than 4.5 million jobs were filled by Mexican workers from 1942 to 1964 and was later called “modern day slavery” by a U.S. Labor Department official. She shows how then and now, regulations that entitle workers to workers’ compensation benefits for medical costs and health and safety protections, for example, are routinely ignored.

The report also points out little-known aspects of this system, including the fact that U.S. companies usually secure workers through recruiting firms that often charge workers, mostly from Mexico and other Latin American countries, exorbitant fees for visas and other documents. What’s more, many of these workers take out high-interest loans to pay those fees, leaving many of them highly in debt before the work begins. And sometimes, U.S. employers who use this labor pool default on work and pay agreements.

Marshall’s report, [*Getting immigration reform right*](#), gives an overall picture of federal policy failure by looking at how the 1986 Act he discusses actually hastened the flow of undocumented workers, partly due to fraud from an insecure work authorization system. He also debunks inaccuracies about undocumented workers and how much migrant labor affects the economy. Marshall finds, for example, that only four of 473 occupational titles studied by the Center for Immigration Studies have immigrant majorities, torpedoing the idea that migrant workers “take over” many fields from native workers.

Many of the solutions proposed by the three experts involve systematic changes, just as President Bush and Congress are wrestling with immigration reform. Hira, writing about the H-1B and L-1 visas, said the real impact of those programs on the U.S. workforce has to be understood. He suggests the following principles must go into rewriting the law: U.S. workers must not be displaced by guest workers; employers must demonstrate they have looked for and could not find qualified U.S. workers; guest workers must be paid market wages; and guest-worker employers should be subject to random audits to ensure they are fulfilling their obligations under the law.

Bauer proposed a multi-pronged approach to prevent mistreatment faced by low-skilled laborers in the H-2 programs. First, she recommends strengthening federal laws to protect guest workers, with such provisions as allowing workers the opportunity to gain permanent residency in the United States over time and not have visas tied to a specific employer. Second, the report calls for federal agencies to better enforce protections already on the books, including a requirement that all employers who use guest workers report to the Department of Labor after the conclusion of a term of employment to better screen violations. Third, the report calls for Congress to provide meaningful access to the courts.

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Congress should provide a federal cause of action allowing all guest workers to enforce their contracts, and the restriction on federally funded legal services that prohibits class-action legal representation should be lifted, Bauer added.

Marshall proposes several solutions, mostly involving a change in U.S. immigration policy, that reflect the role that globalization is playing in migrant labor. His suggestions include:

- Devise a secure work authorization system that properly identifies workers and features strong penalties against employer and immigrant violators.
- Create an independent foreign worker adjustment board to make projections of labor market needs. Immigration policy should give greater attention to increasing the flow of workers whose skills and education are in short supply in the United States.
- Assist Mexico to promote job growth in its primary migrant-exporting areas and create trade, investment, and aid program deals that could reduce the country's poverty, facilitate the creation of unions, and give workers opportunities that some now only find in the United States.

“The U.S. has to get it right this time,” Marshall said. “An effective immigration policy has to strengthen our economic and social stability and relations with Mexico and other countries. Or else, we’re headed for 20 more years of problems.”

Ray Marshall was Secretary of Labor in the Carter administration. He is Professor Emeritus and holder of the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs of the LBJ School of Public Affairs at the University of Texas. He is author of more than 30 books and monographs, including *Thinking for a Living: Education and the Wealth of Nations*, and *Back to Shared Prosperity*. He is a member of the board at EPI.

Ron Hira is Assistant Professor of Public Policy at the Rochester Institute of Technology. He is an expert in offshore outsourcing and industrial policy, and teaches courses on technological innovation, communications, and public policy. He is a Licensed Professional Engineer, and the co-author of *Outsourcing America*.

Mary Bauer is director of the Immigrant Justice Project of the Southern Poverty Law Center, a nonprofit civil rights organization with more than 250,000 members nationwide. The Project has filed numerous lawsuits and class actions on behalf of migrant laborers and guest workers in a variety of industries across the South

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