



Turn Around America

AFL-CIO Recommendations for the Obama Administration

Immigration

I. Introduction

Immigration is an important issue for the labor movement. Fifteen percent of the current workforce is foreign-born, and that number is expected to increase significantly as baby boomers leave the labor market. The conditions under which those workers enter the country and the conditions under which they work has significant impact on labor standards in general, and thus affects all workers.

At least 12 million people are here without authorization, and that number increases by an estimated 300,000 every year. Not all people who are here without authorization crossed the border illegally: at least forty percent of the undocumented population came into the country with authorization (a visa), and simply stayed.

Having access to a large unauthorized workforce has allowed employers to create an underground economy, without basic protections afforded to U.S. workers, where employers often misclassify workers as independent contractors, and thus avoid payroll taxes, depriving federal, state and local governments of additional revenue.

In addition, increasingly, employers have been permitted to use guest worker programs to suppress wages and other standards in entire industries, including construction (through the H2B program) and the professional and high technology sector (through the H1B program), and in year-round or even permanent jobs.

Current programs provide very little, if any, protections for the indentured foreign workers, and operate to the detriment of US workers. The Department of Labor is highly politicized and often acts as an agent of employers. For example, DOL takes the position that it has no authority to enforce the prevailing wage or other requirements in the H2B program. Thus, H2B employers regularly violate prevailing wage and other laws with no accountability. In addition, unions or other interested parties do not have standing to challenge the DOL's approval of a guest worker petition. In some cases, employers have been able to import workers into jobs that are not covered under the H2B program. Employers who use the H1B system do not have to test the US labor market at all.

The country has been engaged in a heated debate about how to fix the broken immigration system. The heart of the debate centers on two questions: (1) what should be done about the situation of the undocumented, and how should we address the "future flow" of people into the United States.



The labor movement supports an inclusive, practical and swift adjustment of status program will raise labor standards for all workers, recognizing that rounding up and deporting the 12 million or more immigrants who are presently in the U.S. without legal authorization may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to regularize their status, we will continue to have a large pool of unauthorized workers whom employers will continue to exploit in order to drive down wages and other standards to the detriment of *all* workers. Of course the program must be designed this time to ensure that the adjustment of status mechanism will not encourage future illegal immigration.

The worker adjustment program must also be accompanied by a secure and effective worker authorization mechanism, which will take verification and enforcements out of the hands of employers. The mechanism must rely on one secure identifier, which every employer will be required to rely on, at the risk of facing strict liability.

The labor movement also favors addressing “future flow” through an independent government agency that assesses and manages true labor market shortages. In determining what constitutes a true labor shortage (rather than one that is artificially induced by the lowering of wages and other benefits), the agency must ensure the preservation of labor standards. Thus, for example, determinations of need must include the protection of prevailing and/or adverse wage and benefit rates, and must preclude the phony misclassification of workers as independent contractors.

One of the great failures of our current immigration system is that the level of legal immigration is set arbitrarily by Congress --- as a mere product of political compromise—without regard to real labor market needs. The current number of employment-based permanent visas (“green cards”), for example, was determined more than a decade ago. There is no relationship between that number (140,000 visas per year, divided among various categories) and the real needs of the economy. Thus, even though a particular sector may be facing a real, market-tested, long-term labor shortage, employers in that sector cannot bring in a “green card” foreign worker without having the application be subject to a long wait (sometimes as long as 20 years).

The failure of the “green card” system has encouraged employers to fill permanent jobs with indentured guest workers, who by nature have diminished rights. The labor movement strongly opposes guest worker programs, which provide very little, if any, protections for the indentured foreign workers, and operate to the detriment of US workers.

Finally, the labor movement supports rational control of the border. A new immigration system must include rational control of the borders. Of course border security is clearly very important, but by itself will not be adequate since over one-third of unauthorized immigrants have overstayed visas. If we seek only to address border controls, without at the same time reforming the manner by which we assess real labor market shortages in determining future flow needs, while also preserving prevailing wage and other labor



standards, we will not have reduced the incentive that employers have to hire undocumented workers. In other words, tightening the border controls alone will simply result in more visa violations and other ways of undermining the new border security measures.

II. Orientation/Approach that New Administration Should Take

A legislative solution that focuses on workers' rights is a must. Instead of crafting legislation that simply provides corporations with more and more indentured workers (as the Bush Administration did), the new Administration must craft a legislative solution that addresses the employment component of immigration reform through the assessment of labor market shortages. In other words, the number of employment visas available in the future must be tied to labor market conditions.

III. Current State of Affairs/Legacy of Bush/Major Challenges that Must be addressed

The Bush Administration has allowed all temporary worker programs operate with no oversight or accountability and significantly eased the already weak worker protections in the various temporary immigration programs through the regulatory changes. For example, DOL refuses to enforce labor standards in the H-2B program and essentially rubber stamps H-1B applications. The Administration is currently attempting to change regulations to make it much easier for employers to bring in temporary workers without having to test labor markets. Halting these regulations (or reversing them where necessary) will be a major, but necessary, challenge to the new Administration.

The new Administration must change the way that immigration laws are enforced so that they do not negatively impact workers' rights. The Bush Administration has been conducting raids, in communities and in workplaces that have had no measurable impact on the immigration crisis, yet have chilled workers rights. Labor law violations have been ignored altogether, and there has been no coordination between DOL and ICE in enforcement actions.

The Bush Administration has also made it difficult for undocumented workers to file and pursue administrative claims (before the NLRB, EEOC, etc.). Employers and agencies have been allowed to inquire into immigration status beyond that which the law requires, which has had an obvious chilling effect. The new Administration faces the challenge of changing the approach that the agencies take to processing workers' claims by, among other things, preventing inquiries into immigration status.

IV. Recommended Key Priorities for New Administration

Priorities for Day 1

- Repeal (or freeze) new regulations regarding the H-2B and H-2A programs;
- Transfer authority for determining prevailing wages for temporary worker programs back to the State Workforce Agencies;



- Establish a mechanism to enforce existing H-2B worker protections;
- Issue H1-B anti-retaliation regulations;
- Revise and formalize the Internal Operating Instruction re interference with labor disputes;
- Halt the SSA no-match program.

Priorities for First Hundred Days

- Issue a set of principles for immigration reform that focus on protecting workers' rights along the lines outlined above.

Priorities for the First Year

- Enact legislation that comprehensively reforms our immigration laws.
- Begin to implement legalization program.

Longer Term- Priorities

- Create Independent Agency to recommend to Congress the number and characteristics of immigrants to be admitted for employment purposes.
- Implement a secure worker identification system.

V. Positions of Interest

Department	Agency	Position	Nature of Position
Department of Homeland Security	Office of the Secretary	Secretary of Homeland Security	PAS
DHS	Immigration and Customs Enforcement	Assistant Secretary	PAS
DHS	ICE	Chief of Staff	NA
DHS	ICE	Chief, Policy and Strategy	NA
DHS	ICE	Director of Operations	
DHS	Office of State and Local Coordination	Director, State and Local Affairs	NA
DHS	Office of Civil Rights and Civil Liberties	Officer for Civil Rights and Civil Liberties	PA
Department of Justice	Civil Rights Division	Assistant Attorney General	PAS
DOJ	Civil Rights Division	Principal Deputy Assistant Attorney	NA



		General for Civil Rights	
DOJ	Civil Rights Division	Deputy Special Counsel for Immigration-Related Unfair Labor Practices	CA
DOJ	Executive Office for Immigration Review	Director	CA
DOJ	Exec. Office for Immigration Review	Deputy Director	CA



AFL-CIO Immigration Transition Issues
Agency Discussion
December 4, 2008

1. Ensure that employers do not use immigration laws to defeat workers' exercise of workplace rights, including the right to join and form unions.
 - Revive Operating Instruction 287.3a, (Revised 12/04/96; Added to INSERTS April 1999), redesignated as 33.14(h) of the SAFM) and the Nov. 23, 2003 USDOL Memorandum of Understanding.
 - Issue a directive to all field offices to abide by the terms of the Operating Instruction;
 - Train all ICE agents involved in workplace enforcement on the use of the OI;
 - Designate a person in each Regional Office and in Headquarters as the contact point on the OI;
 - Ensure that all signatories to 287(g) Agreements are trained on the OI, and agree to abide by it.
 - Develop protocol for DOL involvement in ICE workplace enforcement actions, ie to prosecute labor violations alongside immigration violations
2. Remove obstacles that impede the ability of workers to exercise workplace rights
 - Develop protocol for providing immigration relief to victims of labor law violations who file complaint, charges, etc. (eg, deferred departure, S visas, U visa)
3. SSA: stop the no-match program
4. H2B:
 - DOL should enforce prevailing wage and other contract provisions (as it does in the H2A program)
 - DHS should aggressively employ its authority to do random audits
 - Pull the proposed regulation (RIN 1205-AB54) in which DOL claims that it has no authority to enforce H2B provisions; abandons labor certification in favor of attestation; removes State Workforce Agencies from certification process, etc.
5. Reinstate Worker Exploitation Task Force (multi-agency group, unions, CBOs)
6. Ensure independence of immigration ALJs. (OPM changed a rule that had exempted ALJs from performance appraisals. That should be changed back.)