

Yale University

## EliScholar – A Digital Platform for Scholarly Publishing at Yale

---

Harvey M. Applebaum '59 Award

Library Prizes

---

2013

# Strange Bedfellows: Business, Labor, Guest Workers, and Immigration Reform in the United States, 1986-2013

Tom Stanley-Becker  
*Yale University*

Follow this and additional works at: [http://elischolar.library.yale.edu/applebaum\\_award](http://elischolar.library.yale.edu/applebaum_award)

---

### Recommended Citation

Stanley-Becker, Tom, "Strange Bedfellows: Business, Labor, Guest Workers, and Immigration Reform in the United States, 1986-2013" (2013). *Harvey M. Applebaum '59 Award*. 5.  
[http://elischolar.library.yale.edu/applebaum\\_award/5](http://elischolar.library.yale.edu/applebaum_award/5)

This Article is brought to you for free and open access by the Library Prizes at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in Harvey M. Applebaum '59 Award by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact [elischolar@yale.edu](mailto:elischolar@yale.edu).

Strange Bedfellows:  
Business, Labor, Guest Workers, and Immigration Reform in the United States, 1986-2013

Tom Stanley-Becker  
Politics and Markets  
Political Science Senior Essay  
Advisor: Peter Swenson  
April 19, 2013

In March 2013, a new U.S. guest worker program became the focal point of an unprecedented accord between the United States Chamber of Commerce and the American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) as well as other labor unions. Heralded on Capitol Hill, the guest worker accord is a linchpin of comprehensive immigration reform, and appears to clear the way for sweeping new congressional legislation introduced on April 17 that will embed labor market policy concerning temporary, foreign workers in a bipartisan overhaul of immigration law designed to stop the entry of undocumented aliens and grant legal status to the 11 million living in the nation illegally. This essay examines the newfound accord between business and organized labor, longstanding antagonists on guest worker policy. The analysis centers on the period following congressional adoption of the Immigration Reform and Control Act (IRCA) in 1986, while tracing the roots of the current grand bargain back through a century of U.S. guest worker policy. Notably, it was division between business and unions over a guest worker program that helped doom congressional immigration reform in 2007, despite IRCA's inefficacy in stemming the tide of undocumented immigrants and shielding this population from exploitation. In light of that failure and also in response to the increasing influence of the Latino electorate, a bipartisan Senate "Gang of Eight" seeking immigration reform pressed for direct negotiations between the Chamber of Commerce and AFL-CIO in January 2013.

Why have business and unions now come to terms over guest worker policy? The answer, this essay argues, lies mainly in the altered stance of the union movement, set in the context of three critical factors: the demand of business for an expanding supply of guest workers in all sectors of the economy; the increasing population of undocumented workers,

which a 2002 U.S. Supreme Court ruling, *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, has effectively deprived of the right to engage in labor organizing; and the growing influence of immigrant voters in national politics.<sup>1</sup> At the same time, it reveals tensions that have emerged between business and congressional Republican opponents of immigration reform that would increase the influx of guest workers while granting legal status to the undocumented.

A central question also concerns the nature of the landmark accord. Forged under intense bipartisan congressional pressure, the accord recognizes the guest worker program as a necessary condition of immigration reform, nesting labor market policy within the play of partisan politics, as reshaped by the outcome of the 2012 Presidential election. Existing scholarship highlights the significance of “odd bedfellows” in the contemporary politics of coalition-building and compromise on immigration reform. The question of guest worker policy, however, has not been the focal point of studies of partisan coalition, or of alliance between business and organized labor. The unprecedented guest worker accord, this essay argues, is not a cross-class alliance between business and organized labor, rooted in shared interests in government regulation of the global boundaries of the free market in labor. Rather, the tightening linkage between the expansion of a guest worker program and immigration reform that would legalize the employment of currently undocumented workers has spurred a form of logrolling such that business and organized labor have compromised on the divisive issue of guest workers in order to advance their distinct interests in these linked arenas. The accord papers over fundamental disagreement concerning the flow of guest workers.<sup>2</sup> On federal authority over the reach of the

---

<sup>1</sup> *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002); Julia Preston, “U.S. Citizens Join Illegal Immigrants in Pressing Lawmakers for Change,” *The New York Times* (March 13, 2013).

<sup>2</sup> There is a vast literature on immigration and the politics of immigration reform. This essay has benefited in particular from three recent studies. First, Daniel J. Tichenor in “Splitting the Coalition: The Politics Perils and

U.S. labor market across the globe – in contrast to immigration reform – business and unions remain unallied. The guest worker accord is perhaps best termed a truce.

## I

### U.S. Guest Worker Policy and Immigration Reform

On June 7, 2007, the U.S. Senate failed to invoke cloture on pending comprehensive immigration reform legislation. Again, on June 28, cloture failed on a final version of the measure, returned to the chamber at the urging of President George W. Bush. All that the Senate could agree on was that the immigration system was broken. In the words of then Senator Barack Obama (D-IL), “the time to fix our broken immigration system is now.” So, too, Senator Jeff Sessions (R-AL) stated, “we are supposed to reform this broken system.” The failed Comprehensive Immigration Reform Act (CIRA) had three central provisions: stricter border control; legalization for 12 million undocumented aliens, with a path to citizenship; and creation of a guest worker program. Similar legislation had died in the Senate in 2006. Designed to amend IRCA of 1986, the legislation had been in the making since President Bush had called for

---

Opportunities of Immigration Reform,” in *Building Coalitions, Making Policy: The Politics of the Clinton, Bush, and Obama Presidencies*, eds., Martin A. Levin, Daniel DiSalvo, & Martin M. Shapiro (Baltimore: Johns Hopkins Univ. Press, 2012), 75-117, explores how immigration reform defies “the familiar partisan and ideological divides of American politics,” has “regularly split partisan bases,” and requires “strange bedfellow coalitions for initiatives to gain enactment.” *Ibid.* at 76. But Tichenor does not focus specifically on business and labor or perceive the growing importance of the issue of guestworkers, concentrating instead on the distinctive politics involved in addressing illegal and legal immigration. Second, Tichenor’s work with Janice Fine on organized labor’s evolving position on immigration, particularly, “A Movement Wrestling: American Labor’s Enduring Struggle with Immigration, 1866-2007,” *Studies in American Political Development*, 23 (April 2009), 84-113, provided essential background to an understanding of labor’s shifting stance on guest workers. See also Brian Burgoon, Janice Fine, Wade Jacoby & Daniel Tichenor, “Immigration and the Transformation of American Unionism,” *International Migration Rev.*, 44:4 (Winter 2010), 933-73. Finally, while not focused specifically on immigration, Peter A. Swenson’s *Capitalists against Markets: The Making of Labor Markets and Welfare States in the United States and Sweden* (New York: Oxford Univ. Press, 2002) provided valuable insights into the circumstances under which a cross-class alliance between business and labor supported labor market interventions and social welfare policies during the New Deal era in the U.S. and a later period in Sweden. Swenson’s work also provided an analytical framework for distinguishing between such alliances, class compromises, and logrolling.

immigration reform in his 2005 State of the Union Address.<sup>3</sup>

Among the most divisive elements of CIRA was the new guest worker program, which would have provided employers an annual labor supply of 200,000 low-wage, foreign workers each year in retail, service, health care, and other sectors of the economy. The program had bipartisan support, as an instrument for filling menial jobs that Americans refused and as a legal alternative to undocumented workers that would check the influx of unauthorized immigrants. In sponsoring the legislation with Republican Senators John McCain and Jon Kyl, both of Arizona, Senator Edward Kennedy (D-MA) explained: “if we eliminate this program, you will have those individuals that will crawl across the desert and continue to die as they do now. Or you can say, come through the front door and you will be given the opportunity to work for a period of time in the United States – two years – and return.” But the guest worker program also drew intense opposition, opening fissures within the two parties. “That provision comes at the request of the Chamber of Commerce and big business that want an opportunity to continue the flow of cheap labor,” argued Senator Brian Dorgan (D-ND), who introduced a series of amendments aimed at gutting the guest worker provision. As cloture failed on CIRA, however, Senate Republican leaders endorsed the logic of increasing the supply of temporary, foreign workers. “We need to create a guest worker program for those businesses in need of foreign workers,” stated Senator Orrin Hatch (R-UT). One lesson of the legislative debate was that a guest worker program would remain a linchpin of immigration reform.<sup>4</sup>

The preoccupation of Congress with the market in low-wage, foreign labor reflected a century of experience with federal guest worker programs. Introduced as a wartime exigency

---

<sup>3</sup> 110 Cong. Rec. (Senate) 6512, 6513 (May 23, 2007); George W. Bush, *State of the Union Address* (Feb. 2, 2005), available at <http://millercenter.org/president/speeches/detail/4464>. The history of the reform efforts under President George W. Bush is traced in Ruth Ellen Wasem, *Brief History of Comprehensive Immigration Reform Efforts in the 109<sup>th</sup> and 110<sup>th</sup> Congresses to Inform Policy Discussions in the 113<sup>th</sup> Congress*, CRS Report 7-5700 (Feb. 27, 2013).

<sup>4</sup> 110 Cong. Rec. (Senate) 6980 (June 4, 2007), 6435 (May 22, 2007), 8661 (June 28, 2007).

during the First World War and expanded with the establishment of the Bracero Program during the Second World War, the guest worker system was centered in agriculture at its inception and involved seasonal, temporary workers from neighboring countries, mainly Mexico. By mid-century, it became embedded, as a broader program, in the nation's first comprehensive immigration law, the 1952 Immigration and Naturalization Act. And by the century's end, congressional proponents of immigration reform had come to envision guest workers, employed in all sectors, as a solution to the seeming impossibility of securing the borders against illegal migrants in search of work, in the aftermath of IRCA. Thus employer demand for guest workers became joined to immigration reform. At the same time, controversy mounted over the extent of the flow of guest workers, the regulation of their wages and working conditions, and the legitimacy of government authority over the program.<sup>5</sup>

As a wartime measure intended to meet a temporary labor shortage, the Bureau of Immigration, then within the Labor Department, adopted regulations permitting the entry of Mexican and Canadian farm workers during the First World War. Between 1917 and 1921, some 75,000 guest workers, mainly from Mexico, entered under a provision of the 1917 Immigration Act allowing immigration officials, with the approval of the Secretary of Labor, to issue rules "to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission." The program expanded to admit Mexicans to work on railroads and in coal mines that had "a direct bearing on the conduct of the war." The agriculture program continued until 1921, and thereafter in "particularly meritorious cases" of employer

---

<sup>5</sup> Congressional Research Service, *Temporary Worker Programs: Background and Issues*, Report Prepared at the Request of Senator Edward M. Kennedy for the Use of the Select Commission on Immigration and Refugee Policy, 96<sup>th</sup> Cong., 2d Sess. (Feb. 1980); Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* 237 (Princeton, Princeton Univ. Press 2004).

necessity.<sup>6</sup>

Under the wartime program, American employers had to apply to the U.S. Employment Service and demonstrate the inadequacy of the U.S. labor supply to fill the jobs. They also had to explain to immigration officers at the border how they would use the foreign labor and provide information about wages, housing, and length of employment. The regulations required payment of guest workers' wages at the same rate paid to domestic workers, stipulated a half-year term of work, with a possible extension for another six months, and allowed workers to change employers within the authorized industries if they notify the Immigration Service.<sup>7</sup>

During the Second World War, the Bracero Program emerged as a temporary solution to labor shortages in agriculture and became the nation's single largest guest worker program. Created through a treaty with Mexico in 1942, the program imported a total of 168,000 Mexican "braceros" – meaning farmhands, derived from the Spanish word, "brazo" or arm -- during the war. As agricultural firms' demand for temporary, foreign labor persisted, Congress adopted Public Law 78 in 1951, granting the wartime measure a permanent status. Under the new legislation, the program expanded, leading Ernesto Galarza, of the National Farm Labor Union, to note that farm employers no longer relied on illegal immigrants but viewed "the legal braceros as a practical and safe alternative and had joined associations to procure them." Public Law 78 required employers to pay braceros the prevailing wage in the area, guarantee work for three-fourths of the contract period, and provide free housing, meals for a reasonable cost, and transportation to federal reception centers. But public enforcement of the rules was limited. Still, a committee appointed by the Labor Department found that the government was even "less

---

<sup>6</sup> CRS, *Temporary Worker Programs*, 6-15.

<sup>7</sup> *Ibid.*

successful” in ensuring “that our own domestic farm workers will not be adversely affected by the employment of Mexicans.”<sup>8</sup>

Along with the Bracero Program, Congress codified a guest worker system under the 1952 Immigration and Nationality Act (INA), providing for a visa system to admit immigrants for temporary work – the system that would evolve into the present H-2 program. The INA provided for admission of three categories of temporary workers: persons of distinguished merit and ability, others, and trainees. The second, catch-all category of “others,” because it was defined in section 101(a)(15)(H) of the Act, became known as the H-2 program. For the first time, the INA also introduced a preference for immigrants with specialized skills in short supply in the U.S, though retaining the national origin quotas established by the 1924 Immigration Act.<sup>9</sup>

In 1965, Congress linked immigration reform with revision of guest worker policy, simultaneously adopting the Hart-Celler Act, which repealed national origin quotas for immigrants based on a hierarchy of racial desirability, and terminating the Bracero Program, which had come under increasing attack from the labor movement, Mexican-Americans, and civil rights organizations. “The adverse effect of the Mexican farm labor program as it has operated in recent years on the wage and employment conditions of domestic workers is clear and cumulative,” President John F. Kennedy had noted in 1963. “We cannot afford to disregard it.” In response to Kennedy’s concerns, the Secretary of Labor, Arthur Goldberg, the former General Counsel of the Steelworkers and the Congress of Industrial Organizations (CIO), held public hearings in all states where guest workers were employed and set “adverse effect rates” that employers were required to pay guest workers in order not to lower the prevailing American

---

<sup>8</sup> Douglas S. Massy, Jorge Durand, & Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002), 35; CRS, *Temporary Worker Programs*, 15-19, 33-35, 45.

<sup>9</sup> Ngai, *Impossible Subjects*, 237-39; CRS, *Temporary Worker Programs*, 58-76.

wage rate. A year later, Congress dismantled the Bracero Program, which had admitted almost five million Mexicans since the era of the Second World War.<sup>10</sup>

Yet the temporary H-2 visa system persisted under the INA. Under this system, the Attorney General administered the market in guest workers, deciding on the legitimacy of the demand – the “question of importing any alien” on petition by the “importing employer.” In order to resolve such questions, the Attorney General developed a formal process of consultation with the Department of Labor (DOL), which certified that domestic workers were not available for the job at issue. The Bracero program brought only Mexican workers; but employers could import workers from any country under the INA’s H-2 system.<sup>11</sup>

The Department of Labor standard for determining the availability of domestic workers, and therefore the validity of the demand for H-2 guest worker visas, has been a source of continuing controversy. In 1965, for example, Florida celery growers unsuccessfully sued the Secretary of Labor for refusing to certify the need to import celery cutters. A year later, the Senate narrowly defeated a measure, sought by agricultural employers, to transfer the certification process for farm workers from the DOL to the Department of Agriculture. At the same time, the AFL-CIO proposed amendments to the INA to prevent importation of workers for temporary or seasonal jobs, but Congress also rejected the union proposals.<sup>12</sup>

Under IRCA in 1986, Congress again reformed immigration law, aiming to decrease the influx of illegal immigrants, but left the guest worker visa policy substantially unchanged. The new legislation required employers to verify all employees’ eligibility to work before hiring

---

<sup>10</sup> Massy, *Beyond Smoke and Mirrors*, 40-41, 51-52; CRS, *Temporary Worker Programs*, 59, 63; Ngai, *Impossible Subjects*, 227. See generally Garcia y Griego, “The importation of Mexican contract laborers to the United States, 1942-1964: antecedents, operation, and legacy,” in *The Border That Joins: Mexican Migrants and U.S. Responsibility*, eds., Peter G. Brown & Henry Shue (Totowa, N.J.: Rowman and Littlefield, 1983), 49-98.

<sup>11</sup> CRS, *Temporary Worker Programs*, 59, 63.

<sup>12</sup> *Ibid.* 667-67.

them and imposed sanctions on employers for hiring undocumented workers. Simultaneously, Congress granted legal status to unauthorized aliens who had lived in the U.S. since 1984. But IRCA merely split the H-2 system into two separate guest worker programs, the H-2A program for agricultural workers and the H-2B program for non-agricultural workers. It also substituted the new Department of Homeland Security's U.S. Citizenship and Immigration Services for the Attorney General as the final authority on visa applications, though the certification process remained the same. For example, under the H-2A program – as it still stands – the Department of Labor must guarantee the protection of domestic labor by certifying both that “there are not sufficient workers who are able, willing, qualified . . . and available” and that “the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.” H-2 visas are generally valid for a term of one year and can be renewed in increments up to a year for a total temporary residence of three years.<sup>13</sup> The Immigration Act of 1990 imposed a 66,000 annual cap on H-2B visas and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 left the program intact.<sup>14</sup>

It was in the legislative contest that ultimately ended in the failure of comprehensive immigration reform in 2007 that guest worker policy emerged as a linchpin of reform. The debates over the CIRA marked a turning point, as the guest worker program moved from the margins to the center of immigration reform. Proposing a plan in his 2005 State of the Union Address to decrease the population of undocumented workers, which had expanded dramatically under IRCA, President George W. Bush pointed to guest workers as the solution. Under the Bush plan, as the administration later detailed, illegal immigrants would become lawful guest

---

<sup>13</sup> Andorra Bruno, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues* (CRS R42434 Dec. 13, 2012), 72-4, 8.

<sup>14</sup> See Warren R. Leiden & David L. Neff, “Highlights of the U.S. Immigration Act of 1990,” *Fordham Int’l L.J.* 14:1 (1990), 328-39, 332; Tichenor, “Splitting the Coalition,” 94.

workers, but only for six years; thereafter, they would have to return to their countries of origin. In 2006, Senators Kennedy and McCain introduced a bipartisan measure that maintained the link between legalization and guest workings, aiming to combine strengthened border control, more effective verification of authorization to work, earned legalization for the undocumented, and an expanded guest worker program.<sup>15</sup>

For the first time, then, the congressional plan debated in 2006 and 2007 made guest worker policy integral to comprehensive reform of the immigration system; an expansive market in foreign labor became linked to the remedy for illegal immigration and resolution of the status of the millions of undocumented workers. No longer limited to seasonal or other temporary jobs, the guest worker provisions encompassed all unskilled and low-skilled labor. The scope and duration of the employment – as well as the extent of the flow of guest workers – proved to be among the most divisive elements of the reform legislation, as it evolved, over the course of two years of debate and amendment, into CIRA of 2007. The measure would have created a new Y visa, admitting a wide variety of workers for a two-year term, which could be renewed twice, so long as the worker left the country for at least one year before reentering.

The bipartisan argument on behalf of the new guest worker program advanced three principle claims: first, only an increased supply of foreign workers could fill the demand for low-skill, low-wage labor that Americans rejected, particularly during times of low unemployment; second, the option for legal guest work would lessen the entry of undocumented immigrants that had taken place under IRCA; and third, the threat to American workers arose not from a regulated guest worker program but from the presence of undocumented aliens who were subject

---

<sup>15</sup> Bush, *State of the Union*; Fine & Tichenor, “A Movement Wrestling,” 109; “That’s Hospitality,” *The New Republic* (April 17, 2006); Tichenor, “Splitting the Coalition,” 103. The Judiciary Committee also drafted a bill as did two border-state Republican, John Cornyn (R-TX) and Jon Kyl (R-AZ). See Fine & Tichenor, “A Movement Wrestling,” 109.

to exploitation and unprotected by law. As Kennedy put it, as the Senate considered cloture on the legislation in the spring of 2007:

I have listened to those who have been opposed to the temporary workers, saying there are no rights and protections for these temporary workers .... They ought to read the bill, because any temporary worker who is going to be hired is going to be guaranteed the prevailing wage, they are going to be protected by the OSHA provisions, they are going to be protected by workmen's compensation, and they are going to have the opportunity ... to begin to go up the ladder in terms of getting a green card. So that is the choice.

If we act to eliminate the temporary worker program, we are going to find what we have at the present time, that hundreds of individuals die in the desert; that we are going to have those individuals who are able to gain entry in the United States and are undocumented and they are going to be exploited, as they are exploited today, and they will drive down wages, as happens today. That happens to be the situation. Some like some temporary worker programs better than others, but we have the one we have in this bill and we have every intention to try and make it work.

Summing up Senate Republican support, Kyl explained that the guest worker plan would “relieve the magnet for illegal immigration” and also offer “a pressure cooker safety valve.”<sup>16</sup>

By contrast, critics assailed the compromises embodied in CIRA, claiming that the expansion of the U.S. labor market across national boundaries would undermine the position of American workers. A group of Democratic Senators opposed the grand bargain engineered by Kennedy, which had the support of President Bush, instead backing an amendment introduced by Senator Dorgan that would have eliminated the guest program from the immigration reform bill. Dorgan argued that it was “big business” that wanted to “move American jobs overseas in search of cheap labor,” and now to “enjoy the opportunity to bring, through the back door, cheap labor from other countries.” According to Senator Barbara Boxer (D-CA), the co-sponsor of Dorgan’s amendment, “It is a pool of cheap labor at the expense of the American worker.” When that amendment failed by a single vote, after Kennedy persuaded Senator Daniel Akaka (D-HA) to change his vote, Dorgan aimed to limit the guest worker program by introducing a sunset amendment ending it after five years. Again, he objected to the compromise with business

---

<sup>16</sup> 110 Cong. Rec.(Senate) 7158-59 (June 6, 2007), 6438 (May 22, 2007).

interests: “the price for the support of the U.S. Chamber of Commerce was to allow them to bring in this cheap labor in the form of guest or temporary workers.” That amendment carried by a 49-48 vote, not strictly along party lines. And shortly before that, another amendment, co-sponsored by Obama, among others, reduced the annual flow of guest workers allowed under the new program from 400,000 to 200,000.<sup>17</sup>

Ultimately, it was the sunset clause on the guest worker program that blocked comprehensive immigration reform, unbalancing the compromise, according to Senate Republicans. Without a permanent guest worker program as the linchpin of reform, CIRA died when the Senate failed to invoke cloture. “The temporary worker program is one of the key elements of this bill,” Senator Lindsey Graham (R-SC) had warned. “If we do away with the temporary worker program, the only thing I can promise you for sure is the next Congress and the next generation of political leaders will look back on our time in shame. They will be cursing us because we failed to rise to the occasion and to logically deal with a problem that is crying out for a solution.” So, too, McCain, a co-sponsor of CIRA, along with Kennedy, explained that a permanent guest worker program was a condition of immigration reform. “Like any legislation on an expansive issue like immigration reform, this is a complex compromise agreement,” he stated, predicting that the sunset amendment would “kill this legislation.”<sup>18</sup> And he was right.

A year later, with the creation of a new guest worker policy blocked in Congress, the Bush administration responded to business demands to revamp the existing H-2 guest worker program, dating from the 1952 INA, by streamlining the application process in order to facilitate the hiring

---

<sup>17</sup> Tichenor, “Splitting the Coalition,” 105; 110 Cong. Rec. (Senate) 6435, 6444 (May 22, 2007), 6590 (May 24, 2007); Jessica Bastian, “Strange Bedfellows: The Road to Comprehensive Immigration Policy in 2007,” *Critique: A Worldwide Student Journal of Politics* (Fall 2009/Spring 2010), 154-84, 171-74. Bastian states that the vote on the Dorgan sunset amendment was on June 7, but it was actually on June 6. See [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=1&vote=00201](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00201).

<sup>18</sup> 110 Cong. Rec. (Senate) 6447 (May 22, 2007), 6594 (May 24, 2007), 7158-59 (June 6, 2007).

of guest workers. The administration revised regulations enforced by the Departments of Labor and Homeland Security, which corporate spokespersons had criticized as overly restrictive and bureaucratic. “You have to go through four government agencies and often hire a lawyer and an agent,” claimed a vice president of governmental affairs for the American Hotel and Lodging Association. “It’s unbelievably complicated, cumbersome and expensive.” The new rules replaced the process requiring state or federal officials to review employer efforts to hire domestic workers with one allowing employers merely to attest to such efforts. Proposed in early 2008, the revised regulations became final a month before Bush left office in January 2009.<sup>19</sup>

In 2010, however, the Obama administration revised the H-2 regulations again, returning to government verification of employer recruitment of American workers and largely reversing the streamlined application process for guest labor. According to the DOL, employers were failing to comply with the rules concerning “recruiting, hiring and paying U.S. workers ... in accordance with established program requirements.” While the Obama administration prevailed in nullifying the key changes in the H-2A program, a federal district court enjoined the administrative reforms of the H-2B program on the grounds that the DOL lacked authority over the certification process.<sup>20</sup>

In all branches of the federal government, therefore, the guest worker program has emerged as a focal point of political and legal contestation. A century after its origins during the Great War, as a temporary measure, the program has become a permanent labor market instrument,

---

<sup>19</sup> Bruno, *Immigration of Temporary Lower-Skilled Workers* 5, 8-9; Steven Greenhouse, “Business and Labor United: Working Together to Alter Immigration Laws,” *The New York Times* (Feb. 8, 2013). The H-2A agricultural guest worker program does not limit the number of visas that can be granted. The number of visas issued has climbed steadily over the last decade to around 60,000 in 2011. The H-2B program, in contrast, currently has an annual statutory cap of 66,000. The top employment categories for workers entering the country on a H-2B visa in recent years are landscaping, forestry, housekeeping, and amusement parks.

<sup>20</sup> Bruno, *Immigration of Temporary Lower-Skilled Workers*, 10-12.

inseparable from the agenda of comprehensive immigration reform. As Senator Kyl had pointed out, when CIRA failed in 2007, the solution to the problem of the undocumented would involve a quid pro quo: “one side pockets the ability of all the illegal immigrants to stay here, to get citizenship rights if they go through all of the process that enabled them to do that, but the temporary worker program, which is desired by many in the business community . . . , is only going to be temporary, and that might go away. That is not a fair way to proceed to the legislation, to have what you like is permanent, what I like is only temporary.”<sup>21</sup> In exchange for legalization of the undocumented leading to citizenship, business required a permanent guest worker program.

## II

### Business on Guest Worker Policy

For a century, business has advocated for expanding the supply of guest workers into the United States. But newly emerging in the contest over immigration reform in 2007 – and becoming more marked since then – is the sweep of employer demand for foreign workers across all sectors of the economy. By 2007, the demand was no longer centered in agriculture, and seasonal forms of labor, as it was at the inception of the guest worker program. Rather, employers asserted a widespread need to import labor in virtually all industries based on market forces. By 2013, a broad coalition of employers, led by the Chamber of Commerce, claimed that no sector should be denied access to guest workers and that the market, not government, should regulate the entry of foreign workers into the United States.

---

<sup>21</sup> 110 Cong. Rec.(Senate) 6592 (May 24, 2007).

It was mainly agricultural employers who sought the guest worker programs during the first and second World Wars. Confronting a seasonal need for unskilled labor, growers advanced a powerful argument for temporary guest workers to promote wartime food production. But even during the Great Depression, with unemployment soaring, growers called on the federal government to import Mexican laborers. And agricultural employers remained the primary advocates for guest worker programs up through the turn of the century. Even after the 1986 passage of IRCA, growers were the primary employer witnesses testifying on behalf of guest worker programs at congressional hearings.<sup>22</sup>

In the 1990s, addressing congressional concerns about the entry of undocumented workers despite IRCA's employer sanctions, growers testified that stemming the tide of illegals would create a labor shortage and necessitate an increased flow of guest workers. At a 1995 hearing of the House Subcommittee on Immigration and Claims, for example, the President of the California Farm Bureau, Bob L. Vice, speaking on behalf of the National Council of Agricultural Employers, asserted that "controlling illegal immigration" through "simplified employment verification ... will likely result in future labor shortages for agriculture." That was obvious from the fact that "INS and individual agricultural employer audits indicate that the percentage of unauthorized workers can range as high as 50 to 70 percent" – even though "Farmers are not ignoring the law." The point was that growers would need a supply of guest workers if the demand for foreign labor could not continue to be met with undocumented immigrants: "A

---

<sup>22</sup> Michael Snodgrass, "The Bracero Program, 1942-1964," in *Beyond la Frontera: The History of Mexico-U.S. Migration*, ed., Mark Overmyer-Velazquez (New York: Oxford Univ. Press, 2011) 79-102, 82-83; Ngai, *Impossible Subjects*, 136-37.

workable temporary worker program is an integral part of the retooling of IRCA based on the past 10 years' experience."<sup>23</sup>

Agricultural employers further argued that bureaucratic procedures obstructed their use of the H-2A visa program, which had been revamped in IRCA. It was not "a reliable source of temporary and seasonal alien agricultural workers for many who have tried to use it," Vice testified. Notably, however, the H-2A program permitted an unlimited number of guest workers to be employed in the fields – as long as employers first sought to hire native workers. But growers contended that the program involved "extensive complex regulations that hamstring employers who try to sue it and ... costly litigation challenging its use when admissions of alien workers are sought." If government successfully ended the flow of undocumented workers without altering the H-2A program, the result would be "lack of an adequate number of workers during peak harvest time" which would "result in the loss of crops which will rot or be unsuitable for market."<sup>24</sup>

During the hearings that proceeded floor consideration of the CIRA, however, it was no longer agricultural business that led the campaign for an expanded guest worker program. Nor was the central concern rotting crops but rather the release of the market in guest workers from government authority. In 2006, the primary employer spokesperson at a House subcommittee hearing concerning "Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy," was not a farmer but Elizabeth Dickson, the Corporate Immigration Service Manager for Ingersoll-Rand Co., a diversified manufacturing and technology company. Dickson was also the chairperson of the Chamber of Commerce Subcommittee on Immigration,

---

<sup>23</sup> Statement of Bob L. Vice, President, California Farm Bureau Federation, Guest Worker Programs, Hearing Before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, U.S. House of Representatives, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 75-76, 79, 74-74 (Dec. 7, 1995).

<sup>24</sup> *Ibid.* 81; Bruno, *Immigration of Temporary Lower-Skilled Workers*, 23

and her company belonged to a new employer advocacy group called the Essential Worker Immigration Coalition. In her testimony, the examples of guest workers needed by her company were not fruit pickers, but rather welders, service technicians, and tool and die makers. She also stressed labor needs in construction, health care, and hospitality. She criticized the H-2B program's restriction "to short-term seasonal types of work," and called on Congress to revise the administrative procedures and complex application process, and "structure expanded temporary worker programs that employers could use, in a reasonably efficient manner without numerous bureaucratic hoops and hurdles to fill jobs with immigrant workers when U.S. workers are not available." Rather, than impose an artificial, governmental limit on the number of guest workers in an expanded program, like the total of 200,000 in the measure then pending in Congress, Dickson explained that the Chamber favored "a market-based cap" that "could increase and decrease based on the need for these visas."<sup>25</sup>

The Essential Worker Immigration Coalition (EWIC) had been formed a decade earlier, at the instigation of meat packers. Since the failure of CIRA, it has emerged as the principal advocate for a wide range of service sector employers seeking expanded guest worker programs in order to fill low-skill and unskilled jobs. Among EWIC's members are the primary trade associations in the service sector, including the American Health Care Association, the National Restaurant Association, the Hotel & Lodging Association, the National Council of Chain Restaurants, the Association of Amusement Parks, the Nursery and Landscape Association, and

---

<sup>25</sup> Statement of Elizabeth Dickson, Manager of Global Immigration Service, Ingersoll-Rand Co, testifying on behalf of the U.S. Chamber of Commerce, Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy, Hearing before the Committee on Education and the Workforce, U.S. House of Representatives, 109<sup>th</sup> Cong., 2d Sess. 8, 9, 5, 12, 17 (July 19, 2006); <http://company.ingersollrand.com/Pages/default.aspx>.

the American Staffing Association. Single firms also belong to EWIC, such as Walmart and Tysons Foods.<sup>26</sup>

Even as the Gang of Eight pressed business and unions to reach an agreement over guest worker policy, an EWIC spokesman testified at a hearing of a House Subcommittee on Workforce Protections in March 2013 that employers in a spectrum of industries could not find a sufficient supply of American workers and needed a greater flow of guest workers. According to Laura Reiff, counsel to EWIC, employers were concerned that jobs remained unfilled, “despite extensive efforts to recruit and retain U.S. workers,” in meat processing, specialty construction, manufacturing, restaurants and food service, hospitals, hotels and resorts, and senior care facilities. Likewise, at the same hearing, executives in the hotel and health care industries – the President of a Michigan resort hotel and the Chief Operating Officer of Medicalodges, Inc., an integrated senior care corporation – also advocated an expanded guest worker program. Summing up the business position, EWIC’s Reiff called for a broadly inclusive program “that allows employers from across the spectrum to obtain workers from abroad.” As she put it, “Only allowing some industries the workers needed at the expense of other industries is not in our national interest.”<sup>27</sup>

---

<sup>26</sup> Gordon Lafer, “Summer Jobs,” *Eugene Weekly* (July 28, 2011) (Lafer is a Professor of Political Science at the University of Oregon); EWIC Essential Workers Immigration Coalition, “Business Group Concerned about an Immigration Commission,” Statement 3 (March 8, 2013) (listing all members). The Chamber is also a member of EWIC. *Ibid.*

<sup>27</sup> Laura Reiff, Principal Shareholder, Greenberg, Traurig and Chair of the Business Immigration and Compliance Group and on behalf of the Essential Worker Immigration Coalition, “Examining the role of Low-Skilled Guest Worker Programs in Today’s Economy,” hearing before the House Education and the Workforce Committee, Subcommittee on Workforce Protections, 113<sup>th</sup> Cong., 1st Sess. 5, 6, 8 (March 14, 2013), available at <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=322497>; Testimony of Fred Benjamin, Chief Operating Office of Medicalodges, Inc.; Statement of R. Daniel Musser III, President, Grand Hotel, Mackinac Island, MI, *ibid.* Consistent with the argument of this paragraph, business interests, particularly high tech companies, are currently advocating for an expanded high skill visa program. See, e.g., Dean C. Garfield, President & CEO, Information Technology Industries Council (ITI), “Enhancing American Competiveness through Skilled Immigration,” hearing before the Subcommittee on Immigration and Border Security of the House Committee on the Judiciary, 113<sup>th</sup> Cong., 1<sup>st</sup> Sess. (March 5, 2013). Organized labor has opposed the expansion.

Displacing the government's authority to control its borders, EWIC envisions the unlimited access of U.S. employers to an expanding and unregulated market in foreign labor through a new guest worker program. "This visa program," Reiff testified, "must give the employer, not the government, the primary say in which workers they need to staff their businesses and give the labor market the primary say in how many workers enter the country annually in a legal process." Advocacy of an expansive free market in guest workers has also been central for the Chamber of Commerce since the failure of CIRA: "The new program must also give the U.S. labor market ... the primary say in how many workers enter the country annually through workable legal programs."<sup>28</sup>

Yet as business promotes unrestricted employment of guest workers, a key part of the Republican Party's base opposes not only the entry of immigrant workers, the undocumented and temporary guests, but the agenda of immigration reform. Particularly in the House, Republicans come from districts with electorates more white and native-born than those in Democratic strongholds: 131 House Republicans represent districts that are more than 80% white in contrast to only 31 Democrats elected in such homogeneous districts. And only 46 House Republicans come from districts that are less white than the national average. Thus, congressional Republicans confront rival pressures, from a business leadership advocating a broad new guest worker program and an electorate hostile to increasing the flow of foreign labor into the country and granting any form of amnesty to undocumented workers.<sup>29</sup>

---

See Department for Professional Employees, AFL-CIO, *Gaming the System 2012: Guest Worker Visa Programs and Professional and Technical Workers in the U.S.* (2012). That controversy is beyond the scope of this essay.

<sup>28</sup> Reiff testimony, 6; U.S. Chamber of Commerce, Press Release, U.S. Chamber Continues to Support Legal Immigration and Invites the AFL-CIO Back to the Negotiating Table (March 13, 2010), available at <http://www.uschamber.com/press/releases/2010/march/us-chamber-continues-support-legal-immigration-and-invites-afl-cio-back-ne>.

<sup>29</sup> Rebecca Leber, "House Immigration Hearing Is Stacked With Reform Opponents," *ThinkProgress* (Feb. 5, 2013); Scott Bland, "Why Immigration Reform Could Die in the House,"

In turn, conservative Republicans leaders have attacked the Chamber’s position on guest workers. Echoing the allegations of Democratic Senator Dorgan in 2007, Republican Senator Jeff Sessions of Alabama issued a press release early in 2013 claiming that all Americans “should be concerned about the immigration agenda of the U.S. Chamber of Commerce.” According to Sessions, the Chamber is uninterested in a lawful immigration system or securing the borders, but simply wants “to get as much cheap labor as possible.” Challenging the Chamber’s view of the free market, Sessions argued, “Surely the Chamber hasn’t abandoned belief in the power of the market; such a visa program is certain to take jobs from American workers and depress wages.”<sup>30</sup> In advocating too robustly for an unrestricted guest worker program and the worldwide reach of the U.S. market in immigrant labor, business risks division from longstanding allies in the Republican Party.

### III

#### Organized Labor on Guest Worker Policy

In 2007, the union movement was split internally on whether to endorse the guest worker provision that led to the defeat of the comprehensive immigration reform legislation in the Senate. The AFL-CIO opposed it. But several influential unions, including the Service Employees International Union (SEIU), the Hotel Employees and Restaurant Employees (HERE), and the United Farm Workers (UFW), supported the legislation. Notably, all of the union proponents had left the AFL-CIO in 2005 to form Change to Win – a schism spurred in

---

*National Journal* (Ja. 29, 2013); Rosalind S. Helderman, “Conservatives make moral case for immigration,” *The Washington Post* (March 21, 2013), A4.

<sup>30</sup> Benjy Sarlin, “Sen. Jeff Sessions (R-AL) Slams Chamber Of Commerce Over Immigration,” TPMLIVEWIRE (Feb. 27, 2013).

part because of disagreement over the place of guest workers in immigration reform. By 2009, however, the unions had reached consensus in recognizing that any legislative bargain on immigration would have to include an expanded guest worker program in exchange for granting legal status to undocumented workers, a central goal of organized labor. Simultaneously, then, as business advocacy of guest worker programs has widened, there has been a reorientation of the union position, shaped by division and change within the union movement, as well as by the changing ethnic composition of the U.S. workforce since the adoption of IRCA in 1986. At the same time, the 2002 Supreme Court ruling in *Hoffman Plastics Compounds, Inc. v. NLRB*, a construction of IRCA that effectively denies the growing population of undocumented workers the right to organize, has heightened the labor movement's support for immigration reform granting legal status to those workers.

The American labor movement has long held contradictory views on immigration – exclusionary and racist in opposing competition from immigrant workers of color and inclusionary and egalitarian in seeking to organize and protect the rights of a diverse population of workers. Until the debates of the last decade, however, it has consistently opposed guest workers, beginning with the importation of Chinese immigrants – “coolies” – in the mid-nineteenth century, and continuing in response to the enlargement of the Bracero Program. As business had broadened its demands for a guest worker system, beyond agriculture to all sectors of the economy, the opposition of the AFL-CIO has intensified.

Founded in 1886 as a coalition of unions of skilled, craft workers, the American Federation of Labor (AFL) initially viewed unskilled immigrants as a threat to the labor standards established by affiliated unions. As the AFL's first President, Samuel Gompers, recalled his own experience as a skilled cigar maker confronting competition from immigrant workers employed

at low wages under brutal conditions: “the Bohemians came to New York and allowed themselves to be used by the employers to build up the tenement-house factory system which threatened to submerge the standards of life and work that we had established.” Racism also fueled the opposition of craft unions to the influx of unskilled and vulnerable immigrant workers. Gompers testified in Congress in 1902 that the issue of Chinese exclusion was as much one “of the quality of American citizenship as that of cheap labor.”<sup>31</sup>

By the New Deal era, however, as the AFL and the newly formed Congress of Industrial Organizations (CIO) focused on organizing workers in the new mass production industries, millions of southern and eastern European immigrants joined the labor movement. From its inception, the CIO, composed mainly of unions whose rank and file were recent immigrants, supported more liberal immigration policy, such as an end to national origin quotas.<sup>32</sup>

Even before the founding of the AFL, however, the early union movement had opposed the importation of foreign contract labor as a form of servile work. The Knights of Labor advocated congressional adoption of the 1885 Alien Contract Labor Act, which prohibited importation of immigrants under contract to work in the United States. A half century later, organized labor opposed the extension of the Bracero Program, arguing that Mexican workers had left the fields, after the First World War, to compete with U.S. workers for more skilled jobs. The AFL claimed that the Bracero system “depressed wages and destroyed working conditions.” The CIO called on the Department of Labor to “protect American standards of living and to prevent exploitation of citizens of friendly nations.” Opposition continued after the Second World, as U.S. workers testified before congressional committees in the early 1950s “that the local people who are

---

<sup>31</sup> Samuel Gompers, *Seventy Years of Life and Labor* (Ithaca, NY: Cornell Univ. Press, 1984), 61; Fine & Tichenor, “A Movement Wrestling,” 84, 85, 97-99; U.S. Senate, Committee on Immigration, Chinese Exclusion, 57<sup>th</sup> Cong., 2d Sess. 265 (1902).

<sup>32</sup> Fine & Tichenor, “A Movement Wrestling,” 97-99.

American citizens cannot get work.” Meanwhile, in an argument tinged with racism, CIO President Philip Murray attacked the Immigration and Naturalization Service for failing to prevent illegal immigration from Mexico: “the influx of wetbacks will continue to displace hundreds of thousands of American agricultural laborers and seriously lower working standards.” Pressing Congress to terminate the Bracero Program, the National Agricultural Workers Union pointed to “discrimination against employment of domestic farm labor” and called on the Department of Labor to enforce its own regulations protecting the jobs of U.S. workers.<sup>33</sup>

For over a century, then, the union movement has challenged the premise of guest worker policy – the claim of business that a market in foreign workers is necessary to fill jobs refused by U.S. workers. In the words of AFL-CIO General Counsel Jonathan Hiatt, testifying before a House subcommittee on the guest worker provision of the pending CIRA legislation in 2007: “Proponents claim that they need guest workers to do the jobs that Americans will not do. However, the reality is that there are no jobs that Americans will not perform if wages and other working conditions are adequate.” According to Hiatt, the demand for an expanded guest worker program was “driven entirely by the desire of some in the business community to have a constant and exploitable pool of workers.”<sup>34</sup> By contrast, the AFL-CIO advocated raising wages and improving conditions as an alternative to importing foreign labor.

In summing up the AFL-CIO’s position in the debate on CIRA, Hiatt not only disputed the need for an expanded supply of foreign labor but underscored the abuse of guest workers in both

---

<sup>33</sup> *Ibid.*, 93, 101; Senate Committee on Labor and Public Welfare, Subcommittee on Labor and Labor Management Relations, *Migratory Labor: Hearing before the Subcommittee on Labor and Labor Management Relations of the Committee on Labor and Public Welfare*. 82d Cong., 2d Sess. 229 (Feb. 15, 1952); “Imperial Valley Farm Labor Quiz Under Way: Federal and State Agencies Investigate Reports of Discrimination in Hiring,” *Los Angeles Times* (Feb. 25, 1959). Organized labor was persuaded not to oppose the “food for victory” program only in exchange for guarantees that both Mexican and American workers would be protected against exploitation and that Mexican workers would be returned home after each season. CIS, “Temporary Worker Programs,” 20.

<sup>34</sup> Prepared Statement of Jonathan P. Hiatt, General Counsel, AFL-CIO, “Protecting U.S. and Guest Workers: The Recruitment and Employment of Temporary Foreign Labor,” Hearing of the House Committee on Education and Labor, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. 51 (June 7, 2007).

the recruitment and employment process while pointing to the effect of the existing H-2 system in depressing the wages of U.S workers, particularly workers of color. He presented evidence of an exploitative recruitment system involving labor contractors that left impoverished guest workers vulnerable to exploitation in the U.S. “Guatemalan workers, for example, are charged as much as \$5,000 by the recruiters . . . . The result is that workers arrive in the United States so heavily indebted that they can not leave their jobs, even if the law allowed them to do so.” Moreover, in hiring workers outside U.S. borders, recruiters were to free to discriminate by age, sex and race, practices illegal in the United States. Hiatt also argued that guest workers were afraid to challenge the terms of labor or assert rights, since their immigration status was tied to their employment contract: “if a temporary worker loses his or her job, he or she is faced with the choice of leaving the United States or becoming undocumented. Workers do not want to face that choice, and therefore, they do not complain about workplace violations.” The vulnerability of guest workers was further heightened by the fact that they tended “to be isolated, transient, non-English-speakers unfamiliar with U.S. laws.” Therefore, employers violated the “prevailing wage” rule “with impunity” while the Department of Labor claimed it had “no authority to enforce the conditions in the employer’s applications for guest workers, nor the ability to enforce the terms of workers’ contracts.” Finally, Hiatt pointed out that the guest worker policy would mainly depress the wages of “young native-born minority men and . . . foreign-born minority men in their early working years.”<sup>35</sup>

Accordingly, the AFL-CIO opposed the CIRA plan for a new guest worker program, on the grounds that it “greatly expands the number of guest workers that employers are allowed to import every year,” but was “not limited to seasonable jobs, which means that it is expanding significantly the types of jobs that employer would be able to fill with easily exploitable

---

<sup>35</sup> *Ibid.* 54, 53, 51.

temporary foreign workers,” Hiatt explained. “The huge expansion of guest worker programs contemplated by current legislation will not only harm United States workers, but also represents a radical and dark departure from our long-held vision of a democratic United States society. We are not a nation of ‘guests.’”<sup>36</sup>

Nonetheless, while opposing guest worker programs, the union movement has increasingly focused on the imperative of organizing immigrant workers, particularly in the increasingly dominant service sector of the economy. Since 2000, union membership has risen 21% among Latinos while falling 13% among white workers.<sup>37</sup> It was the contradiction between organizing Latino workers while opposing guest worker programs that led SEIU and HERE to take the lead in reevaluating organized labor’s position on the policy as an expanded guest worker programs emerged as a condition of immigration reform.

After the failure of CIRA in 2007, therefore, the stakes for organized labor of defining its support for immigration reform were high. It was apparent, noted a spokesman for the Migration Policy Institute, that in playing “a major role in gaining legal status for illegal immigrants, labor’s image will soar among immigrants and that might help persuade many immigrants to push to join unions.” Conversely, if the union movement blocked immigration reform by refusing to accept any new guest worker program as a precondition, if it again “says no to a broad legislative package because of its stand on temporary worker status for future immigrants, it risks missing a window of opportunity to realize the promise of legalization. It will be faced with the disappointment of millions of undocumented workers.” Notably, Republican leaders aimed to capitalize on the AFL-CIO’s opposition to CIRA, assigning blame to unions for the

---

<sup>36</sup> *Ibid.* 52, 55.

<sup>37</sup> Melanie Trottman, Miriam Jordan & Kris Maher, “Unions Seize on Immigration Debate,” *The Wall Street Journal* (Feb. 4, 2013); Greenhouse, “Business and Labor United.”

failure of immigration reform. “I don’t think it is any secret that in the past, unions killed immigration reform,” Senator Marco Rubio (R-FL) claimed in March 2013.<sup>38</sup>

The imperative for unions of advancing immigration reform, particularly securing legal status for undocumented workers, also stemmed from Supreme Court’s decision in *Hoffman Plastics*. According to a 2009 report by the Pew Research Hispanic Center, of approximately 12 million undocumented immigrants in the U.S., 8.3 million appeared to be working.<sup>39</sup> It was this population that the Court effectively stripped of the right to organize in *Hoffman Plastics*. Paradoxically, the Court based its restriction of workers’ rights on the employer sanctions provisions of IRCA, which unions had promoted.

Just two years after the passage of IRCA, *Hoffman Plastics*, which makes chemical compounds for pharmaceuticals, construction, and household products, hired Jose Castro to operate various blending machines for the compounds. When Castro joined an organizing drive by the United Rubber Workers, he was laid off along with other union supporters, a violation of his rights to engage in labor organizing. Though discovering that Castro was undocumented and had submitted fraudulent papers to Hoffman, the National Labor Relations Board ordered the company to pay him as backpay what he would have earned had he not been fired for exercising his rights. But the Supreme Court reversed, holding that an employer who unlawfully fires an undocumented worker for supporting a union cannot be ordered to pay lost wages to the employee precisely because the penalty would undermine IRCA’s ban on hiring “illegal aliens.” The dissenting opinion highlighted the restriction on workers’ rights and the license granted to

---

<sup>38</sup> Melanie Trottman, Miriam Jordan & Kris Maher, “Unions Seize on Immigration Debate,” *The Wall Street Journal* (Feb. 4, 2013); Greenhouse, “Business and Labor United;” Muzaffar Chishti, “Guest Workers in the House of Labor,” *New Labor Forum* 13:2 (Summer 2004), 67-75, 75; Greg Sargent, “A bait and switch on immigration reform,” *The Washington Post* (March 22, 2013).

<sup>39</sup> 535 U.S. 137 (2002); Jeffrey Passel & D’Vera Cohn, “A Portrait of Unauthorized Immigrants in the United States,” Pew Research Hispanic Center (April 14, 2009).

employers to violate federal labor law by firing undocumented workers for union activity without incurring any financial penalty. “The Court does not deny that the employer in this case dismissed an employee for trying to organize a union – a crude and obvious violation of the labor laws,” wrote Justice Breyer, but after *Hoffman Plastics*, employers “could conclude that they can violate the labor laws at least once with impunity.”<sup>40</sup>

Following *Hoffman Plastics*, undocumented workers have become increasingly fearful of being fired for joining unions. At the same time, unions have found evidence that employers invoke the threat of immigration enforcement under IRCA’s I-9 process – the process for verifying work authorization – to check undocumented workers’ exercise of their labor rights. As an AFL-CIO organizer explained, “Among the first questions we get from immigrants who are undocumented is, ‘If I join, will it get me in trouble.’” Advocating legalization, Oscar Sanchez, a 35 year old car wash worker in Los Angeles claimed, “With papers, more of us will want to join the union. We won’t fear deportation.”<sup>41</sup>

For the union movement, therefore, organizing the undocumented has become inseparable from immigration reform. And unions are no less aware than business of the influence of the Latino electorate, and its demand for immigration reform. Creating a robust relationship between the Democratic Party and Latino voters is a central element of organized labor’s political agenda. In 1999, the AFL-CIO had established an Immigration Committee, and since then it has reversed many of its more restrictive positions on immigration, calling for abolition of sanctions against employers who hire undocumented workers and a general amnesty for undocumented immigrants while sponsoring an Immigrant Worker Freedom Ride that evoke the civil rights movement’s 1961 freedom rides into the deep South. Mobilizing roughly 1,000

---

<sup>40</sup> *Ibid.* 149, 153, 154.

<sup>41</sup> Trotman, “Unions Seize on Immigration Debate;” Julie R. Watts, *Immigration Policy and the Challenge of Globalization: Unions and Employers in Unlikely Alliance* (Ithaca: Cornell Univ. Press. 2002), 156-58.

immigrant workers, many undocumented, the Ride ended in Washington, D.C. with a call for amnesty.<sup>42</sup>

Nevertheless, the question of guest worker policy split the union movement as it came to embrace comprehensive immigration reform. While the AFL-CIO remained opposed to expanding the guest worker supply, unions in the service sector composed mainly of low-wage, immigrant members began working with business in support of immigration reform, and in the process altered their stance on guest workers. As early as 2000, SEIU and HERE established connections with EWIC, the business coalition that includes many trade associations whose firms employ the membership of SEIU and HERE, for example, the American Health Care Association, the American Hotel and Lodging Association, the National Council of Chain Restaurants, and the National Retail Federation, as well as corporations hostile to unions, such as Walmart and Marriott. In cooperating with corporations that had been their antagonists in resisting unionization, SEIU and HERE came to endorse an expanded guest worker program as a foundation for immigration reform affording legal status and a path to citizenship for undocumented workers. Among the leading exponents of SEIU's immigration reform policy was Eliseo Medina, the son of a Bracero. Paradoxically, it was the service unions' unskilled, low-wage members who were most likely to be adversely affected by an expanded guest worker program.<sup>43</sup>

In 2005, when five unions, led by SEIU, HERE, and UFW, split from the AFL-CIO to form Change to Win, differences over immigration policy fueled the schism. All of the departing unions had large immigrant memberships and aimed to continue organizing immigrant workers. In resigning as chairman of the AFL-CIO Immigration Committee, John Wilhelm, President of

---

<sup>42</sup> Watts, *Immigration Policy*, 145-46; Tichenor, "Splitting the Coalition," 99.

<sup>43</sup> Fine & Tichenor, "A Movement Wrestling," 108-09.

HERE, claimed that AFL-CIO bureaucracy was blocking the Committee's immigration reform projects. The AFL-CIO President, John Sweeney, countered that Wilhelm had undermined efforts to obtain worker protections in the reform legislation pending in Congress and "unilaterally abandoned support for standards," which had provoked "objections from almost every other AFL-CIO affiliate and prevented a consensus from forming around early drafts of the McCain-Kennedy immigration reform legislation." Sweeney assailed HERE's position in "abandoning standards and allowing for expanded temporary worker programs without effective labor protections." According to Sweeney, HERE had agreed to "acquiescence to the corporate demands of the Republican sponsors of the bill," deepening the difficulty of securing substantive labor protections in CIRA.<sup>44</sup>

The division within the labor movement over guest workers shaped the contest over immigration reform on Capitol Hill. In testimony before a Senate Judiciary Committee in 2006, Executive Director of SEIU's Pennsylvania State Council, Eileen Connelly accepted a guest worker provision, stating that "real immigration reform" had to include "ample legal flows so that employers have enough workers." She recognized that a "new temporary worker program," however, must include "strong prevailing wage protections, must regulate the role of foreign labor contractor, must give immigrants the right to join U.S. unions and protect workers during organizing campaigns."<sup>45</sup> A year later, the AFL-CIO's General Counsel, Jon Hiatt, opposed the program, claiming that the flow sought by employers imperiled the rights of both the guest

---

<sup>44</sup> The other two unions that split from the AFL-CIO were the Teamsters and the United Food and Commercial Workers. Andrew Pollack, "Immigrant Workers and the Split in the AFL-CIO," *Socialistaction* (Sept 3, 2005), at <http://socialistaction.org/2005/09/immigrant-workers-the-afl-cio-split/>.

<sup>45</sup> Statement of Eileen Connelly, Executive Director, SEIU Pennsylvania State Council, Harrisburg, Pennsylvania, Comprehensive Immigration Reform: Examining the Need for a Guest Worker Program, Hearing Before the Senate Committee on the Judiciary, 109<sup>th</sup> Cong., 2d Sess. 32 (July 5, 2006); Steven Greenhouse, "Labor Coalitions Divided on Immigration Overhaul," *The New York Times* (June 26, 2007).

workers and U.S. workers in low-wage industries, who were disproportionately immigrants and people of color.

As the debate over the guest worker provision of CIRA – and Senator Dorgan’s amendments – played out on the Senate floor in 2007, SEIU, HERE and the UFW endorsed the legislation while all other unions opposed it. HERE’s Wilhelm acknowledged the flaws, but advocated continuing with the legislative process to revise the measure in the House: “We don’t support the bill in its present form, but we think that the process is best served if the bill passes out of the Senate.” Medina of SEIU agreed: “We have thousands of members who are undocumented who would have legal status” if CIRA passed. These are “workers who want to organize, to do so without the fear of deportation, and that helps unionization drives. It’s not just a question of helping us as labor; it helps all workers because if you have a significant number of workers without any rights, that suppresses wages for everyone.” But the AFL-CIO assailed the legislation’s guest worker provisions. “The bill’s guest worker provisions pit workers against other workers. It creates a new underclass of workers,” argued Sweeney, pointing to the “potential for abuse and exploitation of these workers while undermining the wages and labor protections for all workers.”<sup>46</sup>

Meanwhile, Senator Dorgan introduced into the record letters from the Laborers, UFCW, Teamsters, Boilermakers and AFL-CIO, all supporting his amendment to eliminate the guest worker program. The joint letter from the Teamsters, Laborers and UFCW condemned the program as “a Bracero-type guestworker model” that would force “future immigrant workers to

---

<sup>46</sup> *Ibid.*; Tichenor, “Splitting the Coalition,” 100; 110 Cong. Rec.(Senate) 6450 (May 22, 2007).

be obligated into indentured servitude.”<sup>47</sup> Less than a month later, the Senate failed to invoke cloture on the legislation.

Yet the failure of CIRA indicated that if the union movement envisioned immigration reform granting legal status to and a path toward citizenship for the undocumented, it would have to reach consensus in accepting a guest worker program as the linchpin of future legislative initiatives. In April 2009, as the Obama administration set out its political agenda, the divided union movement reached agreement on a “Unity Framework” for comprehensive immigration reform that gave sanction to a new guest worker program. Facilitated by former Secretary of Labor Ray Marshall, the agreement included provision for a new federal agency to regulate the flow of guest workers. The union consensus hinged on government administration of the program, as opposed to a market controlled by business. “The system for allocating employment visas – both temporary and permanent – should be depoliticized,” the unions stated, “and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and – based on a methodology approved by Congress – determine the number of foreign workers to be admitted for employment purposes, based on labor market needs.”<sup>48</sup> In response to the imperative of achieving immigration reform – in both the workplace and the political arena – labor unified in accepting a guest worker program as the quid pro while proposing that its scope be governed by an expert agency.

---

<sup>47</sup> Greenhouse, “Labor Coalitions Divided;” Tichenor, “Splitting the Coalition,” 100; 110 Cong. Rec.(Senate) 6450 (May 22, 2007). A *New York Times* report from June 26, 2006, explained that the AFL-CIO was “focused on protecting the gains its mostly middle-class members have made in pay and benefits over the decades. To the labor federation, the big worry is that the bill’s guest worker provision will pull down wages, take away jobs from Americans and exploit immigrants.” On the other side of the split, *The Times* reported, the three disaffiliated unions “dislike the guest worker program but are willing to support the bill to pursue a larger goal: a path to legalization for the estimated 12 million illegal immigrants in the country.” The unions believed that “it will be far easier to unionize immigrants – perhaps the most fertile ground for labor’s growth – when illegal immigrants are given legal status.” Greenhouse, “Labor Coalition Divided.”

<sup>48</sup> “Change to Win and AFL-CIO Unveil Unified Immigration Reform Framework,” Press Release, Change to Win and AFL-CIO (April 14, 2009), at <http://www.seiu.org/2009/04/change-to-win-and-afl-cio-unveil-unified-immigration-reform-framework.php>.

## IV

### The 2013 Accord between Business and Organized Labor on Guest Workers

After weeks of negotiation behind closed doors, as rumors circulated that the talks had broken down, late on Friday, March 29, 2013, the Chamber of Commerce, the AFL-CIO, and other major unions reached an accord on the outlines of a new guest worker policy. The Senate “Gang of Eight” – a bipartisan group that had coalesced, after the 2012 election, to draft a consensus immigration reform bill – lauded the accord as a turning point. “This issue has always been the dealbreaker on immigration reform,” Senator Charles Schumer (D-NY) declared. “But not this time.” A *Washington Post* headline announced, “A path clears for immigration bill – Last big hurdle said to be overcome.”<sup>49</sup>

The deal reflected not only the immediate pressures exerted by the Gang of Eight but the evolving response of unions to the guest worker question, as well as the longstanding demands of business, set against the imperatives of immigration reform and the changing demographics that underlay the power of the Latino electorate. On Capitol Hill, the agreement appeared to clear the way for a resurrection of the political compromise on immigration reform that had broken down in 2007. For business and organized labor, however, the accord represented a truce, rather than a new alliance of interests on governance of the nation’s global labor market.

The negotiations between business and labor began in early 2013, after Senators Schumer and Graham, members of the Gang of Eight, pressed for an agreement on a new guest worker program that would establish the flow of foreign workers into the nation and stipulate their conditions of employment. “Future flow has been one of the shoals upon which the good ship

---

<sup>49</sup> Ashley Parker & Steven Greenhouse, “Agreement is Reach On Guest Worker Issue,” *The New York Times* (March 31, 2013); David Nakumra, “A path clears for immigration bill: Last Big Hurdle Said To Be Overcome,” *The Washington Post* (March 31, 2013).

immigration reform has floundered [sic],” Schumer stated on February 4, 2013, explaining that the Gang of Eight had reached out to the AFL-CIO and the SEIU, as well as to business groups, such as the Chamber. “It would be best, from our point of view, if business and labor could agree on a future flow proposal,” Schumer said. “Obviously we’d have to agree with it too. That would be very helpful.” Consisting of four Democrats and four Republicans – Schumer, Dick Durbin (D-IL), Robert Menendez (D-NJ), Michael Bennet (D-CO), Graham, McCain, Marco Rubio (R-FL), and Jeff Flake (R-AZ) – the Gang of Eight has defined four “pillars” of reform that build on past principles: legalization and a path toward citizenship; immigration law shaped by concerns of family and economy as well as border control; an effective employment verification system; and a new guest worker plan. But in an extraordinary effort to foster compromise, congressional policy-makers effectively delegated construction of the guest worker provision to business and organized labor, conditional on their reaching agreement.<sup>50</sup>

Pressure from both political parties, each determined to appeal to the Latino electorate, propelled the negotiations forward. After IRCA’s adoption, naturalization rates soared as did voter registration among Latino immigrants. President Clinton was elected with 60% of the Latino vote in 1992, and 72% in 1996. By 2000, Republican Party strategists were warning that “if we’re only getting 25 percent of the Hispanic vote, you wait three, four presidential election and we’ll be out of business.” As a presidential candidate, George W. Bush outspent Al Gore in wooing Latino voters with Spanish-language ads and direct mail appeals, increasing the Republican share of the Latino vote to 34% in 2000, and to 40%, a record for Republicans, in

---

<sup>50</sup> Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake, “Bipartisan Framework for Comprehensive Immigration Reform,” available at <https://broker4.gotoassist.com/h/dell-us-gts?Question=DR327-844>; Laura Meckler, “Business, Labor Tackle Worker Visas: High-Level Talks aim to Devise a Senate Bill Provision to Admit Immigrants for Low-Skilled Jobs,” *The Wall Street Journal* (Ja. 30, 2013); Michael Rose, “AFL-CIO, Chamber Agree on Some Aspects of Potential Immigration Overhaul Legislation,” *Daily Labor Reporter* 35 (Feb. 21, 2013), A-11.

2004. Notably, the Bush administration's 2004 plan for comprehensive immigration reform, with an expanded guest worker program as its centerpiece, was designed not by economists or demographers, but by Bush's chief political strategist, Karl Rove. Yet after the failure of comprehensive reform in 2007 and the sharply anti-immigrant turn taken by candidate McCain during the Republican primaries, Obama captured over two-thirds of the Latino vote in 2008, as Latino turnout increased to 9% of the total vote, double what it was in 2000. And demographic projections suggest that the importance of Latino voters will continue to rise, not only in swing states, such as Nevada and Colorado, but even in solidly Republican states, such as Texas. Following the 2012 election, both parties set out to vie for the Latino vote by delivering comprehensive immigration reform.<sup>51</sup>

At the same time, neither party wants to alienate its base. Just as Democrats recognize organized labor's resistance to guest worker program, Republicans focus on the reaction of white, working-class voters not only in the South and South-west, but in swing states in the upper Mid-west. When the Bush administration proposed immigration reform in 2004, congressional Republicans complained that "Hispandering" for votes would lead to backlash at the party's base. Accordingly, the Gang of Eight turned to business and unions to strike a bargain on the guest worker program, which had derailed CIRA, "giving the SEIU, AFL-CIO, and Chamber of Commerce," noted political bloggers, "room to work out a solution that might win over populist Democrats and business-friendly Republicans alike."<sup>52</sup> Meanwhile, pundits

---

<sup>51</sup> Tichenor, "Splitting the Coalition," 95-97, 99, 101, 107-09; Mark Hugo Lopez & Paul Taylor, "Latino Voters in 2012 Election," *Pew Research Hispanic Center* (Nov. 7, 2012), available at <http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>; Paul Taylor, Ana Gonzales-Barrera, Jeffrey Passel & Mark Hugo Lopez, "An Awakening Giant: The Hispanic Vote is Likely to Double by 2030," *Pew Research Hispanic Center* (Nov. 14, 2012), available at <http://www.pewhispanic.org/2012/11/14/an-awakened-giant-the-hispanic-electorate-is-likely-to-double-by-2030/>.

<sup>52</sup> Benjy Sarlin, "Labor and Business Groups Deny Immigration Are Collapsing," *Talking Points Memo* (Feb. 14, 2013); Tichenor, "Splitting the Coalition," 100, 91,102; Michael Rose, "AFL-CIO, Chamber Agree."

warned that without an accord between business and unions, the immigration reform initiative could fall apart; and the press reminded the public that division over guest workers had blocked reform in 2007.<sup>53</sup> “Ask top GOP or Democratic lawmakers what their biggest fear is for immigration reform,” noted Talking Points Memo, “and they’ll likely describe an apocalyptic war between labor and big business over guest workers.”<sup>54</sup>

Despite bi-partisan pressure to come to terms, negotiations between the Chamber and the AFL-CIO reflected deep divisions over the size, scope, and administration of any new guest worker program, especially with respect to the authority of government to adjust both the flow and the wages of the foreign workers. Initially, in January 2013, Ana Avendano, the principle AFL-CIO representative in the negotiations, observed, “If there’s a process in which workers can come into the economy in a way that’s more flexible and meets business needs, and workers can exercise their rights ... that’s a win-win situation.” Similarly, in addressing the State of American Business in January 2012, Chamber President Donohue spoke of consensus, explaining that the Chamber was “teaming up with labor unions . . . to build a coalition for comprehensive reform.” But the distance between the Chamber and the union movement was reflected in their conflicting, original positions on the annual number of visas to be issued under the new program – 400,000 according to the Chamber, but 10,000 according to organized labor.<sup>55</sup>

By February, the negotiations appeared close to collapse, based on reports circulating in the press. Predictions of failure, however, led business and the unions to issue a joint statement

---

<sup>53</sup> Kevin Bogardus, “Talks continue between AFL-CIO, Chamber on immigration reform,” *The Hill* (Feb. 14, 2013).

<sup>54</sup> Benjy Sarlin, “Labor and Business Groups Deny Immigration Talks Are Collapsing.”

<sup>55</sup> “As Immigration Reform Heats Up, Changes Proposed For Troubled Guest Worker Programs,” *Huffington Post* (Ja. 17, 2013); Thomas J. Donahue, “State of American Business,” U.S. Chamber of Commerce (Ja. 10, 2013), available at <http://www.uschamber.com/press/speeches/2013/state-american-business-remarks-thomas-j-donohue-president-and-ceo-us-chamber-co>; David Nakamura, “Chamber, labor unions at odds over guest worker program,” *The Washington Post* (March 15, 2013).

explaining: “We are continuing to talk and remain committed to comprehensive immigration reform.” At the end of the month, Chamber President Donahue and AFL-CIO President Richard Trumka and other labor leaders again issued a *Joint Statement of Shared Principles* declaring: “We have found common ground in several important areas, and have committed to continue to work together and with Members of Congress to enact legislation that will solve our current problems in a lasting manner.” The *Joint Statement* spoke of reconciling the supply of guest workers with the rights of American workers: “Current immigration policies are rigid, cumbersome and inefficient. What is needed is . . . a system that provides for lesser-skilled visas that respond to employers’ needs while protecting the wages and working conditions of lesser-skilled workers – foreign or domestic.”<sup>56</sup>

According to the *Joint Statement*, business and the unions embraced three central principles. The first was that “American workers should have a first crack at available jobs.” This commitment extended to “improving the way that information about job openings in lesser-skilled occupations reaches the maximum number of workers, particularly those in disadvantaged communities.” The second agreed was the need for guest workers, acknowledging “instances – even during tough economic times – when employers are not able to fill job openings with American worker,” and therefore providing that the regulations should be simplified: “it is important that our laws permit businesses to hire foreign workers without having to go through a cumbersome and inefficient process.” The *Joint Statement* continued that the challenge was to balance market considerations with rights protections – “to create a

---

<sup>56</sup> Anna Palmer, “Labor-Chamber immigration talks stall,” *Politico* (Feb. 13, 2013); “The Odd Alliance Between Labor and Big Business on Immigration Reform,” *Business Week*, Feb. 25, 2013; “Joint Statement of Shared Principles by U.S. Chamber of Commerce President and CEO Thomas J. Donohue & AFL-CIO President Richard Trumka” (Feb. 21, 2013), at <http://www.aflcio.org/Press-Room/Press-Releases/Joint-Statement-of-Shared-Principles-by-U.S.-Chamber-of-Commerce-President-and-CEO-Thomas-J.-Donohue-AFL-CIO-President-Richard-Trumka>.

mechanism that responds to the needs of business in a market-driven way, while also fully protecting the wages and working conditions of U.S. and immigrant workers.” The objective was to establish “a new kind of worker visa program that does not keep all workers in a permanent temporary status, provides labor mobility in a way that still gives American workers a first shot at available jobs, and that automatically adjusts as the American economy expands and contracts.” There was agreement that the system for regulating employment visas must be “more transparent” and based on “real-world data about labor markets and demographics,” and that it was possible “to craft a workable demand-driven process fed by data that will inform how America addresses future labor shortages.” Finally, there was consensus on the need for a new, independent entity to administer the program: “a professional bureau in a federal executive agency, with political independence analogous to the Bureau of Labor Statistics ... to inform Congress and the public about these issues.”<sup>57</sup>

Notably, the shared principles involved a commitment to compromise. For the first time, the AFL-CIO agreed to a guest worker program for low-skilled workers. It also agreed that the program would expand and contract with the economy. The Chamber agreed that workers with the new form of visa would not be tied to a single employer and therefore would not fear deportation if they organized or raised grievances. And the Chamber also agreed to the creation of an independent, expert agency to inform Congress about the issues, though not one with final, regulatory authority.<sup>58</sup>

Notwithstanding the expression of unity in February, however, deep differences persisted – differences that also re-opened splits within the union movement. The building trades unions, representing skilled construction workers, have long been adamantly opposed to guest worker

---

<sup>57</sup> *Ibid.*

<sup>58</sup> Notwithstanding the remaining difference, some press reports already reported an agreement. See, e.g., Brian Bennett, “Labor, business leaders agree to immigration deal,” *Los Angeles Times* (Feb. 22, 2013).

programs. Notably, during the 2007 Senate debates, the AFL-CIO's Building and Construction Trades Department issued its own *Statement of Principles on Comprehensive Immigration Reform*, which urged Congress to “reject the creation of a new temporary worker program for the building and construction industry,” and cited “the long history of their abuse and the attendant exploitation of temporary workers and erosion of U.S. workers’ economic standards,” explaining that a new guest worker program would “permit employers to meet labor shortages by importing temporary non-immigrant labor instead of investing in recruitment and training of new U.S. workers.”<sup>59</sup> Echoing this position in the 2013 negotiations, the building trades unions opposed an expanded guest worker program and aimed to exclude construction jobs from those that could be filled by foreign workers.

In addition to the division over locating guest workers in construction jobs, in late March a dispute arose when Republicans in the Gang of Eight signaled their objection to the wage provisions of the agreement being negotiated by business and labor. They rejected a standard dating back to the Bracero program, which required guest workers’ wages not have an “adverse effect” on U.S. workers’ wages. The AFL-CIO’s Avendano denounced the Republican proposal for three tiers of wages, two below the existing median wage, as “congressional sanctioned poverty.”<sup>60</sup>

Despite the lines of division, the negotiations ended in the March 29 accord on a new guest worker program to propose to the Gang of Eight. Confirmed during a conference call among Senator Schumer, Chamber President Donahue, and AFL-CIO President Trumka and transmitted

---

<sup>59</sup> “The Building and Construction Trades Department’s Statement of Principles on Comprehensive Immigration Reform,” 1-3 at

<http://www.bctd.org/BCTD/media/Documents/Newsroom/Policy%20Statements/BCTDStatement.pdf>.

<sup>60</sup> Kevin Bogardus, “AFL-CIO official downplays tension with Chamber in immigration talks,” *The Hill* (March 27, 2013); Carrie Budoff Brown, “Immigration talks back on track, union says,” *Politico* (March 27, 2013); AFL-CIO, “Republican Demands for Poverty Wages Stall Immigration Bill Negotiations,” available at <http://www.aflcio.org/Blog/Political-Action-Legislation/Republican-Demand-for-Poverty-Wages-Stalls-Immigration-Bill-Negotiations>.

to White House Chief of Staff Denis McDonough, the accord involves a significant set of compromises on the major disputed issues. The agreement provides for the creation of a new W visa. 20,000 new visas would be available starting on April 1, 2015, with the number rising after that to a maximum of 200,000 – a bargain struck between the 400,000 demanded by business and the 10,000 acceded to by unions. The number of available W visas would expand to 75,000 by 2019, and then fluctuate up to the maximum based on a formula taking into account the annual rate of change in unemployment and job openings as well as employer demand for W visas. However, employers would also be able to apply for a special “safety valve” exception to the annual cap if they engage in enhanced recruitment efforts, with employers in designated shortage occupations getting priority. While employers would be entitled to register full-time jobs not requiring a college degree for W visa holders, after trying first to recruit U.S. workers, no openings could be registered in cities with unemployment over 8.5%, or following layoffs, or during a strike or lockout. Specific exceptions relating to the construction industry would limit the number of W visas available to construction workers to a maximum of 33% of the total amount, with a cap of 15,000, while also excluding construction jobs requiring more than a year’s training, such as crane operators and electricians, from labor open to W visa holders. A guest worker applying for a W visa in response to a specific posting must first work for the posting employer, but then would be free to change employers without losing legal status, with the right, after one year, to apply for permanent resident status. Employers must pay W visa holders the highest prevailing wage in an occupation, as determined by the Department of Labor, or the actual wages earned by other workers in the same job. W visa holders will be covered by state and federal employment laws, to the same extent that other U.S. workers are covered. And further protection of foreign workers is provided by rules requiring recruiters of foreign workers

to register with the Secretary of Labor. Finally, the agreement calls for the creation of a Bureau of Immigration and Labor Market Research within the U.S. Citizenship and Immigration Services to conduct research, make annual recommendations on whether the cap on W visas should be adjusted, and develop a method for designating occupations with is a shortage of workers.<sup>61</sup>

The unprecedented guest worker accord is all the more striking in light of the antagonism between business and unions over other areas of labor policy. In 2009, for example, the Chamber mounted a successful campaign against the Employee Free Choice Act, spending over a million dollars in advertising to defeat labor's key legislative priority. And even as the guest worker negotiations were ongoing, the Chamber promoted law suits aimed at paralyzing the National Labor Relations Board by nullifying President Obama's recess appointments to the Board.<sup>62</sup>

The guest worker accord, then, brings together adversaries as odd bedfellows within a bipartisan coalition.<sup>63</sup> It is the linkage between immigration reform and guest worker policy that grounds the new agreement between business and unions. Rather than reflecting a fundamental convergence of interests on the flow and regulation of guest workers, or a settlement, as after a strike, the guest worker accord represents a set of joined but distinct interests created by the

---

<sup>61</sup> Ashley Parker & Steven Greenhouse, "Agreement Is Reached On Guest Worker Issue;" Sara Murray, "Deal Reached on Key Immigration Hurdle," *The Wall Street Journal* (March 30, 2013); Randy Johnson, "W-Visa Explained," *Free Enterprise* (April 5, 2013), available at <http://www.freeenterprise.com/immigration/w-visas-explained>; AFL-CIO, "5 Things You Need to Know About the Immigration Agreement," available at <http://www.aflcio.org/Blog/Political-Action-Legislation/5-Things-You-Need-to-Know-About-the-Immigration-Agreement>.

<sup>62</sup> Sam Stein, "EFCA Ad War Heats Up: SEIU Responds to Chamber's Latest," *Huffington Post* (May 14, 2009); John Logan, "NLRB isn't dead yet, but GOP trying to kill it," *The Hill's Congress Blog* (Feb. 14, 2013).

<sup>63</sup> Several scholars have noted how the politics of immigration reform creates strange bedfellows. See in particular Tichenor, "Splitting the Coalition." See also Julie R. Watts, *Immigration Policy and the Challenge of Globalization: Unions and Employers in Unlikely Alliance* (Ithaca: Cornell Univ. Press, 2002); Philip Martin "Immigration, labour markets and immigration reform in the United States," in *Immigration and the Financial Crisis: The United States and Australia Compared*, ed., John Higley, John Neuwenhuisen, & Stine Neerup (Cheltenham: Edward Edgar, 2011), 16-34, 27 (also referring to "strange-bedfellow coalitions" created by inclusion of guest worker provisions in 2007 legislation). As noted above, the categories of cross-class alliance, compromise, and log rolling are borrowed from Swenson, *Capitalists Against Markets*.

nesting of the guest worker issue within the broader issue of immigration reform. Once a new guest worker program became a condition of comprehensive immigration reform, the interest of business in legalizing its employment of the broadest possible population of foreign labor and the interest of unions in organizing that population came to coincide. Moreover, with the growing salience of the Latino vote, newly evident in the 2012 election, both business and unions have interests in promoting the immigration reform of the Gang of Eight. Thus, a form of logrolling underlies the guest worker accord, a compromise that masks continuing division over both the global reach of the U.S. labor market and the authority of government over guest worker employment.

The question of the flow of guest workers remains at the nub of the conflicting interests of business and unions. For the Chamber of Commerce, even the limited extent of the annual guest worker supply established an important principle – that business could employ guest workers in non-seasonal, non-temporary jobs requiring no special skills, a transformation of the program’s origin in wartime, agricultural work. As the Chamber’s vice president Randy Johnson put it, the W-visa program, though “relatively small ... creates a workable architecture for a visa system employers can use when an insufficient number of U.S. workers are available.” But what market forces, and under what governmental regulations, determine the availability of U.S. workers? According to the rules of the market otherwise embraced by the Chamber, when demand exceeds supply, the price should rise, resulting in expanded supply. That was the argument advanced by the AFL-CIO’s General Counsel in opposing an expanded guest worker

program under the failed CIRA initiative: there are “no jobs that Americans will not perform if wages and other working conditions are adequate.”<sup>64</sup>

The fundamental disagreement as to whether business should address the ostensible inability to fill jobs with American workers by raising wages and improving labor conditions or by importing, temporary foreign labor is papered over by the accord proposal to create a Bureau of Immigration and Labor Market Research. As introduced by former Labor Secretary Ray Marshall, the concept facilitated the reunification of labor’s position on immigration reform in 2009, and union leaders adhered to the idea throughout the negotiations. “Instead of a system that works at the whim of any employer, it will be a data-driven system,” argued AFL-CIO President Trumka. And the proposal generated business intense opposition. “There are no experts who will know exactly what the economy will need – this was proved by command and control economies .... The bureaucracy will never be able to respond to the economy,” countered a representative of hotel employers. “We oppose the commission because it would never be able to determine shortages in a timely manner that reflect the always-changing realities of the marketplace,” explained the Chamber’s Johnson.<sup>65</sup> The accord leaves unspecified the standards such a Bureau might use to regulate future flows; nor does the accord propose that the Bureau should possess authority beyond making recommendations to Congress.

It is a truce, then, that business and labor have reached in constructing a guest worker accord as a linchpin of immigration reform. The terms of the contest are vividly captured in a *Wall Street Journal* editorial on the proposed guest worker research Bureau. “Mr. Trumka wants us to believe that a group of appointees in Washington will be able to know how many cherry pickets,

---

<sup>64</sup> Johnson, “W-Visa Explained;” Prepared Statement of Jonathan P. Hiatt, General Counsel, AFL-CIO, “Protecting U.S. and Guest Workers: The Recruitment and Employment of Temporary Foreign Labor,” Hearing of the House Committee on Education and Labor, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. 51 (June 7, 2007).

<sup>65</sup> Greenhouse, “Business and Labor United.”

construction workers or software engineers are needed in 2014. The Chinese Communists don't even believe they can do that anymore." The *Journal* concluded, "Only employers know how many workers they need, and they need to know they can get them when they need them."<sup>66</sup> By no means did the guest worker accord resolve the most fundamental dispute between business and unions – on the authority of democratic government in regulating the terms of the U.S. market in global labor.

## Conclusion

On April 17, 2013, only weeks after business and organized labor reached the accord on guest workers, the Gang of Eight introduced an 844-page comprehensive immigration reform bill in the Senate – The Border Security, Economic Opportunity and Immigration Modernization Act of 2013. The goal was to begin debate on the measure on the Senate floor by early June. That would be exactly six years after the last Senate floor debate ended, in failure, on comprehensive immigration reform in 2007.<sup>67</sup> As outlined by business and unions in the accord, the guest worker provisions stand as a linchpin of the new legislation, designed to preempt political conflict and hasten reform of the immigration system.

The legislation, however, has already drawn guarded criticism, as well as praise, from business and labor. The Chamber of Commerce pointed toward the complex process of partisan debate that is about to unfold, first in the judiciary committee and then on the Senate floor, signaling the process of lobbying that would also unfold: "We welcome this legislation as a

---

<sup>66</sup> "Immigration Poison Pill: Big Labor's 'commission' to kill a guest-worker program," *The Wall Street Journal* (Feb. 21, 2013).

<sup>67</sup> Julia Preston, "Beside a Path to Citizenship, a New Course for Immigration," *The New York Times* A10 (April 17, 2013); David Nakamura & Aaron C. Davis, "Foes will seek to delay bill to death," *The Washington Post* (April 17, 2013), A6.

critical step toward a final law that will work for our economy and for our society. There is no doubt that there will be additional input and analysis through Senate hearings and amendments, and we look forward to being part of that needed process.” Already, a spokesman of the American Hotel and Lodging Association has warned that the guest worker flow is insufficient: “The number of visas seems fairly low . . . . We hope to get those numbers to a more reasonable level that actually reflects the needs of the economy . . . . It’s a political decision at this point.” By contrast, the AFL-CIO president, Richard Trumka expects that revisions will further guarantee workers’ rights: “there are several details in the bill that cause unintended, but serious, harm to immigrant workers and the broader labor market. We will work to correct those problems now that a bill is before the Senate Judiciary Committee.” In the words of President Obama, the legislation takes “common-sense steps that the majority of Americans support” to advance principles “largely consistent” with his vision of immigration reform as arresting illegal entry and legalizing the status of the nation’s undocumented workers while creating a route toward citizenship.<sup>68</sup>

The point of this essay is not to anticipate the outcome of the guest worker accord in the congressional arena but rather to reveal how it emerged, as business and unions, antagonists for a century on the employment of temporary, foreign workers, have struck a truce under pressure from the Gang of Eight. Within the frame of immigration reform and partisan political contest, the truce marks an uneasy balance between the interest of business in expanding an unregulated free market in foreign labor and the interest of unions in protecting the rights of both American

---

<sup>68</sup> U.S. Chamber of Commerce, “U.S. Chamber Expressed Support for Introduction of Comprehensive Immigration Reform” (April 17, 2013), available at <http://www.uschamber.com/press/releases/2013/april/us-chamber-expresses-support-introduction-comprehensive-immigration-reform>; Kevin Bogardus & Jennifer Martinez, “Industry charges at visa caps in Senate immigration bill,” *The Hill* (April 16, 2013); Statement by AFL-CIO President Richard Trumka on Gang of Eight Immigration Bill (April 17, 2013), available at <http://edit.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-On-Gang-of-Eight-Immigration-Bill>; Preston, “Beside a Path to Citizenship.”

and immigrant workers and enabling their involvement in labor organizing. Whether the truce can hold as the guest worker accord proceeds through the legislative process is another question.

*Acknowledgments:*

I would like to thank my advisor, Professor Peter Swenson, for his many probing comments about this essay and, in particular, for helping me to frame its argument.

## Bibliography

### *Primary Sources*

#### Government documents

Benjamin, Fred. Chief Operating Officer, Medicalodges, Inc. Statement before the House Education and the Workforce Committee, Subcommittee on Workforce Protections. *Examining the Role of Lower-Skilled Guest Worker Programs in Today's Economy*. House of Representatives. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 14, 2013. Available at <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=322497>.

Bruno, Andorra. *Immigration: Policy Considerations Related to Guest Workers Programs*. RL32044. Washington, D.C.: Congressional Research Service, March 16, 2010.

Bruno, Andorra. *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*. R42434. Washington, D.C.: Congressional Research Service, December 13, 2012.

Bureau of Labor Statistics. U.S. Department of Labor. "The Employment Situation – January 2013." News Release, USDL-13-0144, February 1, 2013. [http://www.bls.gov/news.release/archives/empsit\\_02012013.pdf](http://www.bls.gov/news.release/archives/empsit_02012013.pdf)

Bush, George W. *State of the Union Address* (Feb. 2, 2005). Available at <http://millercenter.org/president/speeches/detail/4464>.

Congressional Research Service. *Temporary Worker Programs, Background and Issues: a Report Prepared at the Request of Senator Edward M. Kennedy, Chairman, Committee on the Judiciary, United States Senate, for the Use of the Select Commission on Immigration and Refugee Policy*. Prepared by the Congressional Research Service. Library of Congress. 96<sup>th</sup> Cong., 2<sup>nd</sup> Sess., February 1980. Washington, D.C.: U.S. Government Printing Office, 1980.

Connelly, Eileen. Executive Director, SEIU Pennsylvania State Council. Harrisburg, Pennsylvania. Statement to the Senate, Committee on the Judiciary. *Comprehensive Immigration Reform: Examining the Need for a Guest Worker Program, Hearing Before the Committee on the Judiciary, United States Senate*. 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 5, 2006. Washington, D.C.: U.S. Government Printing Office, 2006.

Dickson, Elizabeth. Manager of Global Immigration Service, Ingersoll-Rand Co. Statement made on behalf of U.S. Chamber of Commerce to the House, Committee on Education and the Workforce. *Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy, Hearing before the Committee on Education and the Workforce, United States House of Representatives*. 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 19, 2006. Washington, D.C.: U.S. Government Printing Office, 2006.

Garfield, Dean C. President and CEO, Information Technology Industries Council (ITI).

Statement to the House, Subcommittee on Immigration and Border Security of the House Committee of the Judiciary. *Enhancing American Competitiveness through Skilled Immigration: Hearing before the Subcommittee on Immigration and Border Security of the House Committee on the Judiciary*. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 5, 2013.

Hiatt, Jonathan P., General Counsel, AFL-CIO. Statement to the House, Committee on Education and Labor. *Protecting U.S. and Guest Workers: The Recruitment and Employment of Temporary Foreign Labor: Hearing before the Committee on Education and Labor, House of Representatives*. 110<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 7, 2007. Washington, D.C.: U.S. Government Printing Office, 2007.

Levine, Linda. *Farm Labor Shortages and Immigration Policy*. 7-500 CRS Report for Congress. Washington, D.C.: Congressional Research Service, November 9, 2009.

Musser, R. Daniel III. President, Grand Hotel, Mackinac Island, MI. Statement before the House Education and the Workforce Committee, Subcommittee on Workforce Protections. *Examining the Role of Lower-Skilled Guest Worker Programs in Today's Economy*. House of Representatives. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 14, 2013. Available at <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=322497>.

Reiff, Laura. Principal Shareholder, Greenberg Traurig LLP and Chair of the Business Immigration and Compliance Group and on behalf of the Essential Worker Immigration Coalition. Statement before the House Education and the Workforce Committee, Subcommittee on Workforce Protections. *Examining the Role of Lower-Skilled Guest Worker Programs in Today's Economy*. House of Representatives. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 14, 2013. Available at <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=322497>.

Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake. "Bipartisan Framework for Comprehensive Immigration Reform." Available at <https://broker4.gotoassist.com/h/dell-us-gts?Question=DR327-844>.

The White House. "Building a 21<sup>st</sup> Century Immigration System." May 2011.

U.S. Congress. House. Committee on Agriculture. Subcommittee on Risk Management and Specialty Crops. *Agricultural Guest Worker Programs: Joint Hearing before the Subcommittee on Risk Management and Specialty Crops of the House Committee on Agriculture and the Subcommittee on Immigration and Claims of the House Committee on the Judiciary, House of Representatives*. 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., December 14, 1995. Washington, D.C.: U.S. Government Printing Office, 1996.

U.S. Congress. House. Committee on Agriculture. *Temporary Guest Worker Proposals in the Agriculture Sector: Hearing before the Committee on Agriculture, House of Representatives*. 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., January 28, 2004. Washington, D.C.: U.S. Government Printing Office, 2004.

- U.S. Congress. House. Committee on Education and the Workforce. *Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy: Hearing before the Committee on Education and the Workforce, House of Representatives*. 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 19, 2006. Washington, D.C.: U.S. Government Printing Office, 2006.
- U.S. Congress. House. Committee on Education and Labor. *Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor: Hearing before the House Committee on Education and Labor, House of Representatives*. 110<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 7, 2007. Washington, D.C.: U.S. Government Printing Office, 2007.
- U.S. Congress. House. Committee on the Judiciary. *America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration. Hearing before the Committee on the Judiciary, House of Representatives*. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., February 5, 2013. Washington, D.C.: U.S. Government Printing Office, 2013.
- U.S. Congress. House. Committee on the Judiciary. Subcommittee on Immigration and Claims. *H-1B Temporary Professional Worker Visa Program and Information Technology Workforce Issues: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives*. 106<sup>th</sup> Cong., 1<sup>st</sup> Sess., August 5, 1999. Washington, D.C.: U.S. Government Printing Office, 2000.
- U.S. Congress. House. Committee on the Judiciary. Subcommittee on Immigration and Claims. *Guest Worker Programs: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives*. 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., December 7, 1995. Washington, D.C.: U.S. Government Printing Office, 1996.
- U.S. Congress. House. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Claims. *How Would Millions of Guest Workers Impact Working Americans and Americans Seeking Employment? Hearing before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary, House of Representatives*. 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., March 24, 2004. Washington, D.C.: U.S. Government Printing Office, 2004.
- U.S. Congress. House. Committee on Oversight and Government Reform. Subcommittee on Domestic Policy. *Evaluating the Labor Department in New Orleans: DOL's Performance in Investigating and Prosecuting Wage and Hour Violations and Protecting Guest Workers: Hearing before the Subcommittee on Domestic Policy of the Committee on Oversight and Government Reform, House of Representatives*. 110<sup>th</sup> Cong., 1<sup>st</sup> Sess., October 29, 2007. Washington, D.C.: U.S. Government Printing Office, 2009.
- U.S. Congress. Senate. Committee on Immigration. *Chinese Exclusion, Committee on Immigration, United States Senate*. 57<sup>th</sup> Cong., 1<sup>st</sup> Sess. Washington, 1902.
- U.S. Congress. Senate. Committee on the Judiciary. *Comprehensive Immigration Reform: Examining the Need for a Guest Worker Program: Hearing before the Senate Committee on the Judiciary, United States Senate*. 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 5, 2006. Washington, D.C.: U.S. Government Printing Office, 2006.

U.S. Congress. Senate. Committee on the Judiciary. *Comprehensive Immigration Reform: Hearing before the Committee on the Judiciary, United States Senate*. 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., February 13, 2013. Available at <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=322497>.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Citizenship. *Evaluating a Temporary Guest Worker Program: Hearing before the Subcommittee on Immigration, Border Security, and Citizenship of the Senate Committee on the Judiciary, United States Senate*. 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., February 12, 2004. Washington, D.C.: U.S. Government Printing Office, 2004.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Citizenship. *Securing our Borders under a Temporary Guest Worker Proposal: Hearing before the Subcommittee on Immigration, Border Security, and Citizenship of the Committee on the Judiciary, United States Senate*. 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., April 1, 2004. Washington, D.C.: U.S. Government Printing Office, 2004.

U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor and Labor Management Relations. *Migratory Labor: Hearing before the Subcommittee on Labor and Labor Management Relations of the Committee on Labor and Public Welfare*. 82<sup>nd</sup> Cong., 2<sup>nd</sup> Sess., Feb. 15, 1952. Washington, D.C.: U.S. Government Printing Office, 1952.

U.S. Congress. Senate. Roll call votes.  
[http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=1&vote=00201](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00201).

U.S. Government Accountability Office. *H-1B VISA Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program: Report to Congressional Committees*. Washington, D.C.: U.S. Government Accountability Office, January 2011.

U.S. General Accountability Office. *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers: Report to Congressional Committees*. Washington, D.C.: The Office, December 1997.

Vice, Bob L. President, California Farm Bureau Federation. Statement to House, Subcommittee on Immigration and Claims of the Committee on the Judiciary. *Guest Worker Programs: Hearing Before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives*. 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., December 7, 1995. Washington, D.C.: U.S. Government Printing Office, 1996.

Wasem, Ruth Ellen. *Brief History of Comprehensive Immigration Reform Efforts in the 109<sup>th</sup> and 110<sup>th</sup> Congresses to Inform Policy Discussions in the 113<sup>th</sup> Congress*. 7-5700 CRS Report for Congress. Washington, D.C.: Congressional Research Service, February 27, 2013.

110 Cong. Rec. (Senate) (2007).

## Legal Cases

*Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

## Newspapers, online articles

Bennett, Brian. "Labor, business leaders agree to immigration deal." *Los Angeles Times*, Feb. 22, 2013.

Bland, Scott. "Why Immigration Reform Could Die in the House." *National Journal*, Jan. 29, 2013.

Bogardus, Kevin. "AFL-CIO official downplays tension with Chamber in immigration talks." *The Hill*, March 27, 2013.

Bodardus, Kevin. "Talks continue between AFL-CIO, Chamber on immigration reform." *The Hill*, Feb. 14, 2013.

Bogardus, Kevin & Jennifer Martinez. "Industry charges at visa caps in Senate immigration bill." *The Hill*, April 16, 2013.

Brown, Carrie Budoff. "Immigration talks back on track, union says." *Politico*, March 27, 2013.

Dwoskin, Elizabeth. "The Odd Alliance Between Labor and Big Business on Immigration Reform." *Business Week*, Feb 25, 2013.

"Forced Labor on American Shores." *The New York Times*, July 8, 2012.

Greenhouse, Steven. "Business and Labor United: Working Together to Alter Immigration Laws." *The New York Times*, Feb. 8, 2013.

Greenhouse, Steven. "Labor Coalitions Divided on Immigration Overhaul." *The New York Times*, June 26, 2007.

Greenhouse, Steven. "Wall-Mart Suspends Supplier of Seafood." *The New York Times*, June 29, 2012.

Helderman, Rosalind S. "Conservatives make moral case for immigration." *The Washington Post*, March 21, 2013.

"Immigration Poison Pill: Big Labor's 'commission' to kill a guest-worker program." *The Wall Street Journal*, Feb. 21, 2013.

"Imperial Valley Farm Labor Quiz Under Way: Federal and State Agencies Investigate Reports of Discrimination in Hiring," *Los Angeles Times*, Feb. 25, 1959.

Jablon, Robert. "LA jury awards \$4.5 million to Filipino teachers." *Associated Press*, Dec. 18,

2012.

Jamieson, Dave. "As Immigration Reform Heats Up, Changes Proposed for Troubled Guest Worker Programs." *Huffington Post*, Jan. 17, 2013.

Kirschten, Dick. "The Hispanic Vote -- Parties Can't Gamble That the Sleeping Giant Won't Awaken." *National Journal* 2410, Nov. 19, 1983.

Lafer, Gordon. "Summer Jobs." *Eugene Weekly*, July 28, 2011.

Leber, Rebecca. "House Immigration Hearing Is Stacked With Reform Opponents." *ThinkProgress*, Feb. 5, 2013.

Logan, John. "NLRB isn't dead yet, but GOP trying to kill it." *The Hill's Congress Blog*, Feb. 14, 2013.

Meckler, Laura. "Business, Labor Tackle Worker Visas: High-Level Talks aim to Devise a Senate Bill Provision to Admit Immigrants for Low-Skilled Jobs." *The Wall Street Journal*, Jan. 30, 2013.

Murray, Sara. "Deal Reached on Key Immigration Hurdle." *The Wall Street Journal*, March 30, 2013.

Nakamura, David. "A path clears for immigration bill: last big hurdle said to be overcome." *The Washington Post*, March 31, 2013.

Nakamura, David. "Chamber, labor unions at odds over guest worker program." *Washington Post Politics*, March 15, 2013.

Nakamura, David and Aaron C. Davis. "Foes will seek to delay bill to death." *The Washington Post*, April 17, 2013.

"The Odd Alliance Between Labor and Big Business on Immigration Reform." *Business Week*, Feb. 25, 2013.

Palmer, Anna. "Labor-Chamber immigration talks stall." *Politico*, Feb. 13, 2013.

Parker, Ashley and Greenhouse, Steven. "Agreement Is Reached On Guest Worker Issue." *The New York Times*, March 31, 2013.

Pollack, Andrew. "Immigrant Workers and the Split in the AFL-CIO," *Socialistaction*, Sept 3, 2005. Available at <http://socialistaction.org/2005/09/immigrant-workers-the-afl-cio-split/>

Preston, Julia. "Beside a Path to Citizenship, a New Course for Immigration." *The New York Times*, April 17, 2013.

Preston, Julia. "U.S. Citizens Join Illegal Immigrants in Pressing Lawmakers for Change." *The New York Times*, March 13, 2013.

Rose, Michael. "AFL-CIO, Chamber Agree on Some Aspects of Potential Immigration Overhaul Legislation." *Daily Labor Reporter*, Feb. 21, 2013.

Sargent, Greg. "A bait and switch on immigration reform." *The Washington Post*, March 22, 2013.

Sarlin, Benjy. "Labor And Business Groups Deny Immigration Talks Are Collapsing." *Talking Points Memo*, Feb. 14, 2013.

Sarlin, Benjy. "Sen. Jeff Sessions (R-AL) Slams Chamber Of Commerce Over Immigration," *TPMLIVEWIRE*, Feb. 27, 2013.

Stein, Sam. "EFCA Ad War Heats Up: SEIU Responds to Chamber's Latest." *Huffington Post*. May 14, 2009.

"That's Hospitality." *The New Republic*, April 17, 2006.

Trottman, Melanie, Jordan, Miriam, and Maher, Kris. "Unions Seize on Immigration Debate." *The Wall Street Journal*, Feb. 4, 2013.

Werner, Erica. "Labor union and business leaders focus on crafting a guest worker program." *The Commercial Appeal*, Feb. 5, 2013.

### **Miscellaneous**

AFL-CIO. "5 Things You Need to Know About the Immigration Agreement," available at <http://www.aflcio.org/Blog/Political-Action-Legislation/5-Things-You-Need-to-Know-About-the-Immigration-Agreement>.

AFL-CIO. "Joint Statement of Shared Principles by U.S. Chamber of Commerce President and CEO Thomas J. Donohue & AFL-CIO President Richard Trumka." Feb. 21, 2013. <http://www.aflcio.org/Press-Room/Press-Releases/Joint-Statement-of-Shared-Principles-by-U.S.-Chamber-of-Commerce-President-and-CEO-Thomas-J.-Donohue-AFL-CIO-President-Richard-Trumka>.

AFL-CIO. "Republican Demands for Poverty Wages Stall Immigration Bill Negotiations," available at <http://www.aflcio.org/Blog/Political-Action-Legislation/Republican-Demand-for-Poverty-Wages-Stalls-Immigration-Bill-Negotiations>

American Federation of Teachers. *Importing Educators: Causes and Consequences of International Teacher Recruitment*, 2009.

American University Washington College of Law International Human Rights Law Clinic and

Cento de los Derechos Del Migrante. "Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry." Washington, D.C.: American University Washington College of Law and Centro de los Derechos del Migrante, 2010.

Building and Construction Trades Department, AFL-CIO. "The Building and Construction Trades Department's Statement of Principles on Comprehensive Immigration Reform." Available at <http://www.bctd.org/BCTD/media/Documents/Newsroom/Policy%20Statements/BCTDStatement.pdf>.

Costa, Daniel. "Litigation reveals extensive abuse of guest workers in the U.S." *Economic Policy Institute*, Dec. 14, 2012.

Department of Professional Employees, AFL-CIO. *Gaming the System 2012: Guest Workers Visa Programs and Professional and Technical Workers in the U.S.*

Donahue, Thomas J. "State of American Business." January 10, 2013, at <http://www.uschamber.com/press/speeches/2013/state-american-business-remarks-thomas-j-donahue-president-and-ceo-us-chamber-co>.

Eisenbrey, Ross. "Guestworker expansions don't belong in comprehensive immigration reform." *Economic Policy Institute*, Jan. 30, 2013.

EWIC Essential Workers Immigration Coalition. "Business Group Concerned about an Immigration Commission." Statement 3, March 8, 2013.

Farmworker Justice. *No Way to Treat a Guest: Why the H-2A Agricultural VISA Program Fails U.S. and Foreign Workers.*

Hira, Ron. "Bridge to Immigration or Cheap Temporary Labor? The H-1 & L-1 Visa Programs Are a Source of Both." *Economic Policy Institute*, Feb. 7, 2012.

Human Rights Watch. "HIDDEN IN THE HOME: Abuse of Domestic Workers with Special Visas in the United States," June 2001.

Ingersoll Rand, <http://company.ingersollrand.com/Pages/default.aspx>.

International Labor Recruitment Working Group. *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*, Feb. 2013.

Johnson, Randy. "W-Visa Explained." *Free Enterprise*, April 5, 2013. <http://www.freeenterprise.com/immigration/w-visas-explained>.

Lopez, Mark Hugo and Taylor, Paul. "Latino Voters in 2012 Election." *Pew Research Hispanic Center*, Nov. 7, 2012. Available at <http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>.

Marshall, Ray. "Getting Immigration Right." *Economic Policy Institute*, March 15, 2007.

Passel, Jeffery and Cohn, D'Vera. "A Portrait of Unauthorized Immigrants in the United States." Pew Research Hispanic Center, April 14, 2009.

Service Employees International Union, CTW, CLC. "Change to Win and AFL-CIO Unveil Unified Immigration Reform Framework." Press Release, Change to Win and AFL-CIO, April 14, 2009. <http://www.seiu.org/2009/04/change-to-win-and-afl-cio-unveil-unified-immigration-reform-framework.php>.

Southern Poverty Law Center. "Close to Slavery: Guestworker Programs in the United States," Feb. 2013.

Southern Poverty Law Center. "SPLC wins record \$11.8 million judgment for guestworkers in suit against forestry company," Oct. 30, 2012.

Taylor, Paul, Gonzale-Barrera, Ana, Passel, Jeffrey and Lopez, Mark Hugo. "An Awakening Giant: The Hispanic Vote is Likely to Double by 2030." *Pew Research Hispanic Center*, Nov. 14, 2012. Available at <http://www.pewhispanic.org/2012/11/14/an-awakened-giant-the-hispanic-electorate-is-likely-to-double-by-2030/>.

Trumka, Richard. President, AFL-CIO. Statement on Gang of Eight Immigration Bill, April 17, 2013. Available at <http://edit.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-On-Gang-of-Eight-Immigration-Bill>.

U.S. Chamber of Commerce. Press Release, "U.S. Chamber Continues to Support Legal Immigration and Invites the AFL-CIO Back to the Negotiating Table," March 13, 2010. Available at <http://www.uschamber.com/press/releases/2010/march/us-chamber-continues-support-legal-immigration-and-invites-afl-cio-back-ne>.

U.S. Chamber of Commerce. "Regaining America's Competitive Advantage: Making our Immigration System Work." Labor, Immigration & Employee Benefits Division and American Council on International Personnel. August 12, 2010.

U.S. Chamber of Commerce. "U.S. Chamber Expressed Support for Introduction of Comprehensive Immigration Reform." April 17, 2013. Available at <http://www.uschamber.com/press/releases/2013/april/us-chamber-expresses-support-introduction-comprehensive-immigration-reform>.

Wickramasekara, Piyasiri. "Circular Migration: A Triple Win or a Dead End." Global Union Research Network, Discussion Paper No. 15, 2011.

## ***Secondary Sources***

### **Books**

Amin, Mohammad. *Can Guest Worker Schemes Reduce Illegal Migration?* Washington, D.C.:

- World Bank, Development Research Group, Trade Team, 2006.
- Bean, Frank D., ed. *At the Crossroads: Mexican Migration and U.S. Policy*. Lanham, Md.: Rowman & Littlefield, 1997.
- Calavita, Kitty, *Inside the State: The Bracero Program, Illegal Immigrants, and the INS*. New York: Routledge, 1992.
- Castles, Stephen and Mark J. Miller. *The Age of Migration: International Population Movements in the Modern World*. New York: Guilford Press, 1993.
- Cornelius, Wayne A., ed., *Controlling Immigration: A Global Perspective*. Stanford, Calif: Stanford University Press, 2004.
- Gompers, Samuel. *Seventy Years of Life and Labor: An Autobiography*. Edited by Nick Salvatore. Ithaca, NY: Cornell University Press, 1984.
- Hahamovitch, Cindy. *No Man's Land: Jamaican Guestworkers in America and the Global History of Deportable Labor*. Princeton: Princeton University Press, 2011.
- Higley, John, Nieuwenhuysen, John P., and Neerup, Stine, eds. *Immigration and the Financial Crisis: The United States and Australia Compared*. Cheltenham: Edward Elgar Publishing, 2011.
- Joppke, Christian. *Immigration and the Nation-State: The United States, Germany, and Great Britain*. Oxford: Oxford University Press, 1999.
- Levin, Martin A., DiSalvo, Daniel, and Shapiro, Martin M. *Building Coalitions, Making Policy: the Politics of the Clinton, Bush, and Obama Presidencies*. Baltimore: Johns Hopkins University Press, 2012.
- Massey, Douglas S., Jorge Durand, and Nolan J. Malone. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation, 2002.
- Mize, Ronald L. *Consuming Mexican labor: from the Bracero Program to NAFTA*. Toronto, Ontario: University of Toronto Press, 2011.
- Ness, Immanuel. *Guest Workers and Resistance to U.S. Corporate Despotism*. Champaign, IL: University of Illinois Press, 2011.
- Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press, 2004.
- Overmyer-Velázquez, Mark, ed., *Beyond la Frontera: the History of Mexico-U.S. Migration*. New York: Oxford University Press, 2011.
- Sassen, Saskia. *Guests and Aliens*. New York: New Press, 1999.

Saxton, Alexander. *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California*. Berkeley: University of California Press, 1971.

Stalker, Peter. *The Work of Strangers: A Survey of International Labour Migration*. Geneva: International Labour Office, 1994.

Swenson, Peter A. *Capitalists against Markets: The Making of Labor Markets and Welfare States in the United States and Sweden*. New York: Oxford University Press, 2002.

Watts, Julie R. *Immigration Policy and the Challenge of Globalization: Unions and Employers in Unlikely Alliance*. Ithaca: Cornell University Press, 2002.

### Articles

Bastian, Jessica. "Strange Bedfellows: The Road to Comprehensive Immigration Policy in 2007." *Critique: A Worldwide Student Journal of Politics* (Fall 2009/Spring 2010): 154-184.

Burgoon, Brian, Fine, Janice, Jacoby, Wade and Tichenor, Daniel. "Immigration and the Transformation of American Unionism." *International Migration Review* 44, no. 4 (Winter 2010): 933-73.

Castles, Stephen, "The Guest-Worker in Western Europe – An Obituary." *International Migration Review* 20, no. 4 (Winter 1986): 761-78.

Chishti, Muzaffar, "Guest Workers in the House of Labor." *New Labor Forum* 13, no. 2 (Summer 2004): 67-75.

Fine, Janice and Tichenor, Daniel J. "A Movement Wrestling: American Labor's Enduring Struggle with Immigration, 1866-2007." *Studies in American Political Development* 23, no. 1 (April 2009): 84-113.

Garcia y Griego, Manuel. "The importation of Mexican contract laborers to the United States, 1942-1964: antecedents, operation, and legacy." In *The Border That Joins: Mexican Migrants and U.S. Responsibility*, edited by Peter G. Brown and Henry Shue, 49-98. Totowa, N.J.: Rowman and Littlefield, 1983.

Ilias, Shayerah, Fennelly, Katherine, and Federico, Christopher M. "American Attitudes Toward Guest Worker Policies." *International Migration Review* 42, no. 4 (Winter 2008): 741-66.

Leal, David L. "Latinos, immigration and the US recession." In *Immigration and the Financial Crisis: The United States and Australia Compared*, Higley, John, Nieuwenhuysen, John P. and Neerup, Stine, eds. 57-73. Cheltenham: Edward Elgar Publishing, 2011.

Leiden, Warren R. and Neff, David L. "Highlights of the U.S. Immigration Act of 1990." *Fordham International Law Journal* 14, no. 1 (1990): 328-39.

- Martin, Philip. "Immigration, labour markets and immigration reform in the United States." In *Immigration and the Financial Crisis: The United States and Australia Compared*. Higley, John, Nieuwenhuysen, John P., and Neerup, Stine, eds. 16-34. Cheltenham: Edward Elgar Publishing, 2011.
- Martin, Philip L. and Teitelbaum, Michael S. "The Mirage of Mexican Guest Workers." *Foreign Affairs* 80, no. 6 (Nov. – Dec. 2001): 117-31.
- Ruhs, Martin, and Martin, Philip. "Numbers vs. Rights: Trade-Offs and Guest Worker Programs." *International Migration Review* 42, no. 1 (Spring 2008): 245-65.
- Smith, Rebecca. "Guest Workers or Forced Labor?" *New Labor Forum* 16, no. 3/4 (Fall 2007) 70-78.
- Snodgrass, Michael. "The Bracero Program, 1942-1964." In *Beyond la Frontera: The History of Mexico-U.S. Migration*. Overmyer-Velazquez, Mark, ed. 79-102. New York: Oxford University Press, 2011.
- Tichenor, Daniel J., "The Politics of Immigration Reform in the United States, 1981-1990," *Polity* 26, no. 3 (Spring 1994): 333-62.
- Tichenor, Daniel J. "Splitting the Coalition: The Political Perils and Opportunities of Immigration Reform." In *Building Coalitions, Making Policy: the Politics of the Clinton, Bush, and Obama Presidencies*, Levin, Martin A., DiSalvo, Daniel and Shapiro, Martin M., 75-117. Baltimore: Johns Hopkins University Press, 2012.