

Testimony of
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Before the House Committee on Agriculture
January 28, 2004

Mr. Chairman, thank you for the opportunity to testify here today. I am not here to endorse any particular piece of legislation but rather to discuss how properly structured temporary worker visa categories, if enacted into law, can make a significant impact on reducing illegal immigration into the United States.

Those who say we should not permit more people to work on legal temporary visas until we “control the border” have it backwards: The only proven way to control the border is to open up paths to legal entry, allowing the market to succeed where law enforcement alone has failed.

I think the President deserves great credit for re-starting this debate and putting forward a set of principles that hold great promise for reducing illegal immigration, enhancing security, and establishing a humane and rational approach to migration.

The following numbers help illustrate the problem with relying almost exclusively on enforcement to limit illegal immigration. Between 1990 and 2000, the U.S. government increased the number of Border Patrol Agents from 3,600 to 10,000. During that same 10-year period, illegal immigration rose by 5.5 million. Over the past four years alone, more than 1,300 men and women (and some children) seeking to work in the

United States have died attempting to cross deserts, rivers, and mountains. The status quo is not acceptable.

Largely absent from the debate over immigration policy is an understanding that the past use of legal visas greatly reduced illegal immigration into the United States. Operating from 1942-1964, the bracero program allowed Mexican farm workers to be employed as seasonal contract labor. Although the U.S. government permitted the admission of Mexican farm workers prior to 1954, limited enforcement and other factors provided little deterrent to illegal entry.

A controversial crackdown on illegal immigration ensued in 1954. However, INS Commissioner (General) Joseph Swing preceded the crackdown by working with growers to replace an illegal and, therefore, unpredictable source of labor with a legal, regulated labor supply. Despite the view that employers preferred hiring people here illegally, in fact, Swing received favorable press from growers and in Congress for pushing the substitution of legal for illegal workers.

Senior immigration law enforcement personnel understood that market forces were the best way to control the Southwest border. A February 1958 Border Patrol document from the El Centro (California) district, referring to the bracero program, states, “Should Public Law 78 be repealed or a restriction placed on the number of braceros allowed to enter the United States, we can look forward to a large increase in the number of illegal alien entrants into the United States.”

Increased bracero admissions produced dramatic results. After the 1954 enforcement actions were combined with an increase in the use of the bracero program,

illegal entry, as measured by INS apprehensions at the border, fell by an astonishing 95 percent between 1953 and 1959.

INS apprehensions fell from the 1953 level of 885,587 to as low as 45,336 in 1959. (Apprehensions are recognized as an important indicator of the illegal flow. In general, apprehension numbers drop when the flow of illegal immigration decreases.) During that time, the annual number of Mexican farm workers legally admitted more than doubled from 201,380 in 1953 to an average of 437,937 for the years 1956-1959. In addition, the number of Mexicans admitted as permanent residents (green card holders) increased from 18,454 in 1953 to an average of 42,949 between 1955 and 1959.

However, complaints from unions that bracero workers created too much competition helped lead to the end of the program by 1964. And what happened to illegal immigration after we stopped letting in Mexican farm workers legally? It skyrocketed. From 1964 to 1976, while the number of Border Patrol Agents remained essentially constant, INS apprehensions of those entering illegally increased more than 1,000 percent, the start of the illegal immigration that we see up to the present day. (From 1964 -- when the bracero program ended -- to 1976, INS apprehensions increased from 86,597 to 875,915.) While economic conditions in Mexico and the lack of temporary visas for non-agricultural jobs also contributed, an internal INS report found that apprehensions of male Mexican agricultural workers increased by 600 percent between 1965 and 1970.

This did not surprise INS officials. At a Congressional hearing in the 1950s, a top INS official was asked what would happen to illegal immigration if the bracero program ended. He replied, "We can't do the impossible, Mr. Congressman."

The bracero program contained flaws, including evidence that there were employers who treated workers poorly and that years later a large number of bracero workers never received from the government wages that were withheld. In designing new temporary visa categories we should learn lessons from the past. Even if there were agreement on using temporary visas for economic, humanitarian, or enforcement reasons, there would remain the most complex and controversial issue in this debate – addressing the situation of those in the country illegally as part of a transition to a new system in agriculture and the service sectors. In a carrot and stick approach, what are the most appropriate carrots to make an effective transition to a new system? While many people, as previously, will choose to work in the United States on new temporary visas and go home, others, particularly those who have been here for several years, will likely seek a path to permanent residence. It is clear that the extent to which Congress follows through on the President’s call to increase legal immigration numbers, which would enable more workers to stay, assimilate, and become part of America, will be watched by both employees and employers.

Whatever its faults, the bracero program annually attracted up to 445,000 individuals a year who voluntarily chose to come here and work under its rules. Relatively few in comparison chose to enter the United States illegally to work in agriculture. While it is argued that bracero admissions harmed domestic agricultural workers, it is unlikely that the situation of domestic workers improved once they competed primarily against those entering illegally.

The evidence shows that even tampering with the bracero program increased illegal immigration. In 1960, under pressure from labor unions and some members of

Congress, the U.S. Department of Labor ended the “Special Program” that allowed a streamlined process for growers to designate specific workers with whom they wished to contract. Years before, INS Commissioner Swing had praised the Special Program, saying it “served to eliminate the situation under which the busy farmer and grower was faced with the prospect of using anonymous workers selected for him by a government agency.”

The Department of Labor’s action soon led to a decline in bracero admissions – and an increase in illegal immigration. While bracero admissions fell by approximately 30 percent between 1959 and 1960, INS apprehensions rose 55 percent during the same period. As rules governing the admission of braceros continued to tighten annual INS apprehensions averaged 89,223 between 1961 and 1964, an increase of 46 percent over the 1956-59 average of 61,106. Connected to this, annual bracero admissions averaged 212,750 for 1961-64, a drop of 51 percent from the 1956-59 average of 437,937.

The evidence indicates that a reasonable enforcement deterrent at the border is necessary to enable a temporary worker program to reduce illegal entry. Yet the evidence is also clear that enforcement alone has not proven effective in reducing illegal immigration. INS enforcement did not grow weaker after the 1960 curtailing of the bracero program or after the program’s subsequent demise in December 1964. And both after 1960 and 1964, without the legal safety valve that the bracero program represented, illegal immigration increased substantially.

The current agricultural guest worker category attracts an insufficient number of participants to be part of a solution to illegal migration. Fewer than 30,000 H-2A visas

were used in FY2003, compared to the 300,000 to 445,000 range of annual bracero admissions between 1954 and 1960.

Why are admissions in the H-2A category so low? A good summary of employers' complaints about H-2A comes from a surprising source, a former DOL official. "The program is indeed cumbersome and litigation-prone. Employers must wade through a regulatory maze in order to achieve some sort of basic understanding of what is required of them," testified John R. Hancock, the Department of Labor's Chief of Agricultural Certification Unit responsible for administration of the H-2 program, before a 1997 House Immigration Subcommittee hearing. "The current program with its multiple regulations and related requirements is too complex for the average grower to comprehend and use without the aid of a good lawyer or experienced agent. The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available."

Why did the end of the bracero program result in vastly increased illegal immigration? Policy makers should heed the findings of a House of Representatives report: "Reason clearly indicates that if a Mexican who wants to come to the United States for this employment can enter this country legally, with all the protection and benefits that a well-considered and well-administered employment program give him he will do so, rather than come in illegally..." The report goes on to note: "If, because the program is not available or is not realistically geared to the requirements of employers or workers, the Mexican seeking employment finds it's impossible or difficult to come in legally, many of them will find their own way across the long border between the United

States and Mexico and get employment where they can, under whatever wages and working conditions they are able to obtain.” The report was written in 1954.

Finally, to achieve the results discussed here in reducing illegal immigration, as should be clear, it is necessary for a bill to achieve enough of a consensus to pass both houses of Congress and become law. I hope that if the chairman and other members of the Committee find that the only viable way legislatively to enact these types of changes for agriculture or other industries is to do more in the area of moving those here illegally into legal status (including a path to a green card), that they will remain open to such an approach. Thank you.

APPENDIX

Table 1
H-2A Agricultural Work Visas
Issued by Fiscal Year

Fiscal Year	H-2A Visas Issued
2003	29,882
2002	31,538
2001	31,523
2000	30,200
1999	28,560
1998	22,676
1997	16,011
1996	11,004
1995	8,379
1994	7,721
1993	7,243

Source: U.S. Department of State

Table 2
INS Apprehensions and Bracero Admissions: 1942-1966

Year	Apprehensions	Bracero Admissions
1942	11,784	4,203
1943	11,715	52,098
1944	31,174	62,170
1945	69,164	49,454
1946	99,591	32,043
1947	193,657	19,632
1948	192,657	35,345
1949	288,253	107,000
1950	468,339	67,500
1951	509,040	192,000
1952	528,815	197,100
1953	885,587	201,380
1954	1,089,583	309,033
1955	254,096	398,850
1956	87,696	445,197
1957	59,918	436,049
1958	53,474	432,857
1959	45,336	437,643
1960	70,684	315,846
1961	88,823	291,420
1962	92,758	194,978
1963	88,712	186,865
1964	86,597	177,736
1965	110,371	0
1966	138,520	0

Source: 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, February 1980, p. 40; *Annual Report of the Immigration and Naturalization Service, 1959*; *INS Statistical Yearbook 1996*.

Addressing Countervailing Arguments

The data and contemporaneous analyses are so strong that it is difficult to dispute the beneficial impact the bracero program had on limiting illegal immigration. However, some countervailing arguments have emerged.

One argument is that while the bracero program certainly limited illegal immigration it also encouraged illegal entry by establishing a dependence on Mexican labor and creating employment networks among Mexicans at home and in the United States. There is valid data that show apprehensions increased from 11,715 in 1943 to 31,174 in 1944 and to 193,657 in 1947. However, to blame this on the still sparsely used bracero program misses the point.

Only an average of 43,079 Mexicans were admitted each year on the bracero program from 1943 to 1947. Apprehensions fell well below the 1947 level once the program was more fully utilized. One reason relatively few Mexicans used the bracero program is that “the INS...legalized on the spot illegal Mexican immigrants found employed in agriculture and contracted them to their employers as braceros. During the summer of 1947 the service legalized 55,000 undocumented workers in Texas alone,” according to author Kitty Calavita.

On-the-spot conversion into the bracero program combined with frustration with dealing with the Mexican government during the early days of the program, encouraged migrants simply to cross on their own, seemingly helping to explain the higher apprehension figures. Two aspects of the poor design of the initial bracero system explain the problem: 1) At first, Mexico limited bracero admissions to less than 50,000 annually, and 2) Texas, a large part of the agricultural labor market, was barred initially from using braceros.

More importantly, and perhaps a more obvious point, is that the bracero program became established during World War II and was later extended because of the demand for farm labor and the willingness of Mexicans to supply the labor. It is a large counterfactual assumption to posit if only there had not been a bracero program, then American growers would not have experienced demand for farm labor. Nor is it plausible to assert that this demand would have been filled domestically. The civilian unemployment rate in the United States was 3.8 percent in 1948. While the unemployment rate fluctuated over the next 16 years, it averaged 4.7 percent from 1948 to 1964. It seems implausible at best to argue that native U.S. labor would have filled the jobs on the farms if no Mexicans entered either legally or illegally during this period.

Even a critic of the bracero program, Cornell University Professor Vernon Briggs, who argues that bracero admissions later encouraged illegal migration, noted, “By the same token, however, it is simplistic to conclude that the problem would not eventually have surfaced in the absence of the bracero program.”

Another argument is that INS enforcement efforts should be at least partly credited for the reduction in illegal immigration. No one argues that a temporary worker program without any law enforcement deterrent would reduce illegal migration to the United States. Moreover, it is clear that a stronger immigration law enforcement action was necessary in 1954 in order to encourage both employers and potential employees that

they should avail themselves of the legal system that the bracero program provided. (Whether the 1954 “Operation Wetback” in all of its forms was necessary would be a more controversial assertion.)

The lack of border enforcement operations limited the effectiveness of the bracero program in reducing illegal immigration, as evidenced by the increase in apprehensions from 458,000 in 1950 to 875,000 in 1953, despite increases in bracero admissions. (Note, however, that from 1949 to 1950 when bracero admissions fell by 37 percent, apprehensions increased significantly.) In addition to the continuation of the almost automatic conversion to a bracero among many of those found illegally in the country by Border Patrol agents, it was not until 1954 that a more significant law enforcement deterrent emerged. “During the period 1941-52, the INS Border Patrol had been cut by 350 officers, while apprehensions increased by 4,000 percent. This changed in 1954 when the decision was made within the executive branch to increase the border patrol and attempt to get control of the situation,” explains the Congressional Research Service. (During this period the Border Patrol appeared to be large enough to apprehend significant numbers of people but not sufficiently manned to send the signals to deter large numbers from attempting illegal entry in the first place.)

**Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form**

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2001.

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1. **Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2001, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source: _____ Amount: 0 _____

Source: _____ Amount: _____

2. **If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2001, as well as the source and the amount of each grant or contract:**

Source: _____ Amount: 0 _____

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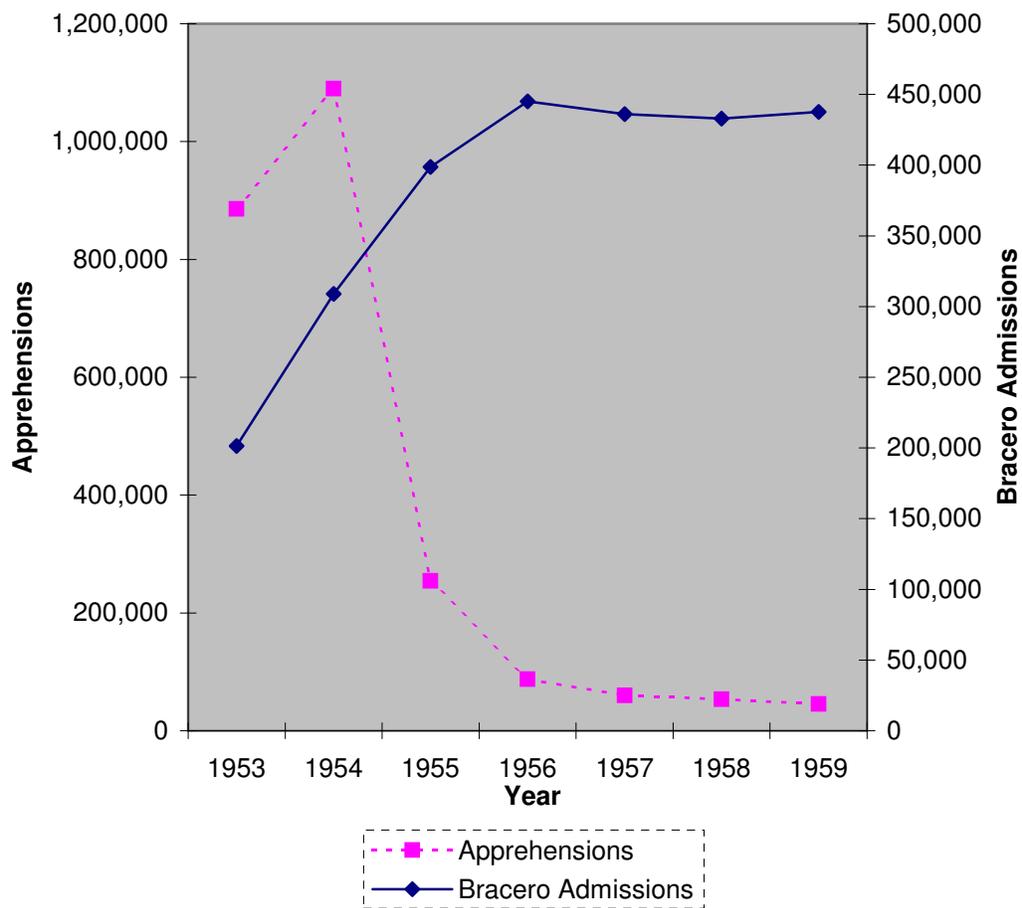
Signature: _____

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

BIO

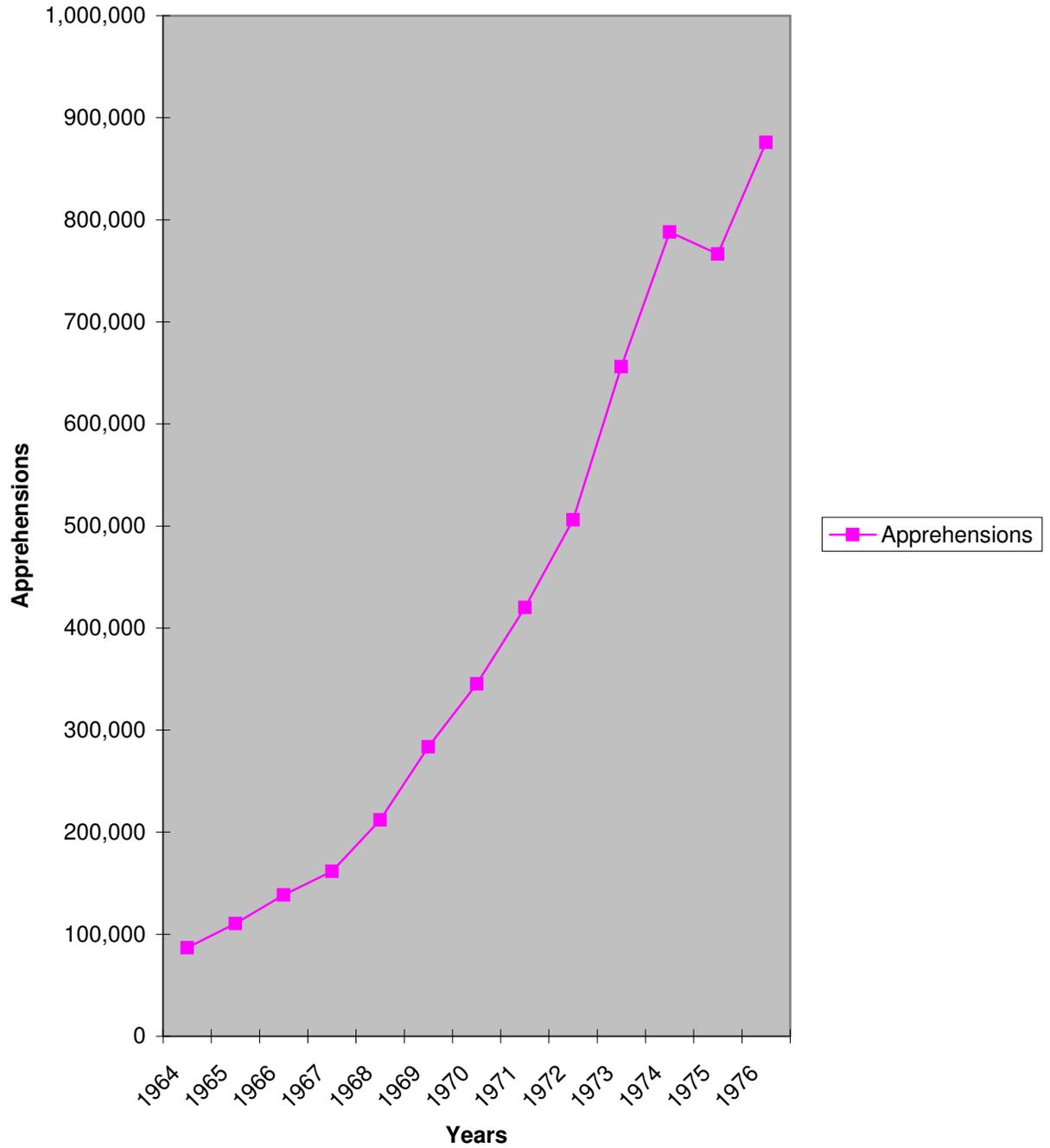
Stuart Anderson, Executive Director of the National Foundation for American Policy in Arlington, Va., served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. Stuart spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications.

Figure 1
Apprehensions and Bracero Admissions: 1953-1959



Source: 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, February 1980, p. 40; *Annual Report of the Immigration and Naturalization Service, 1959*; *INS Statistical Yearbook 1996*.

Figure 2
Increase in Illegal Immigration: Apprehensions After End of Bracero Program (1964-1976)



Source: INS Statistical Yearbook 1996.