

TESTIMONY PRESENTED BY

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**ON BEHALF OF
SERVICE EMPLOYEES INTERNATIONAL UNION
and
UNITE/HERE**

**BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY
AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

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Madam Chairwoman and distinguished members of the Subcommittee:

My name is Fred Feinstein. I am testifying on behalf of the Service Employees International Union and UNITE/HERE. I am also a senior fellow and visiting professor at the University of Maryland. I served as General Counsel of the National Labor Relations Board from 1994 through 1999, as well as Chief Counsel of the Labor Management Relations Subcommittee in the House of Representatives where I worked from 1977 to 1994.

With 1.8 million members, the Service Employees International Union is America's largest union of health care workers, property services workers, and the second largest union of public services workers. SEIU is also the largest union of immigrants, representing thousands of U.S. immigrants from diverse backgrounds and places of origin. Many of these members perform some of our nation's most needed, yet under valued work that is essential to our economy, families and communities.

UNITE/HERE's 440,000 members work in the hotel, restaurant, food service, laundry, garment and apparel industries. Immigrants make up a large percentage of its membership. In 2003 the UNITE/HERE and SEIU sponsored the historic Immigrant Workers Freedom Ride, which for the first time knit together labor, immigrant advocates, clergy, and community organizations in the struggle for comprehensive immigration reform. These unions lead the dramatic reversal of the AFL-CIO policy in 2000 repudiating employer sanction and calling for repeal and support of comprehensive immigration reform.

Comprehensive immigration reform is a critical challenge we face as our economy goes through the most rapid transformation in history. To that end, SEIU and UNITE/HERE have long advocated for reforms that would fix our broken immigration system so that we may bring order out of chaos, protect America's working communities, and restore fairness.

Today's Broken Immigration System and Its Impact On Workers

We have seen first hand how the system is broken. It's broken because hard working people across the country have to live in the shadows, afraid of what lies around the corner. Employers, consumers and numerous others benefit significantly from their presence, but they remain vulnerable, exploitable and subject to harsh sanction at any minute. They live with the constant fear that they will be separated from families, loved ones, friends, neighbors and the communities they have helped to build in many cases for decades. The immigration system is broken because vulnerable immigrant workers are exploited in ways that are not only inhumane and unjust but that also undermine the conditions faced

by all workers, especially those in low wage industries. The status quo is unfair to the immigrant and unfair to all workers.

As Congress debates the nuts and bolts of reform legislation, let us not forget the real people this debate touches. Ercilia Sandoval, from El Salvador is an active member of SEIU and works as a janitor for GCA Services in Houston Texas. Ercilia is a mother of two young girls, and came to the U.S. under temporary protected status. She works the night shift so that she can care for her children during the day. But, like so many janitors, the \$8/ per hour salary is often not enough to make ends meet. Life got even harder for Ercilia last year when she found out that she had rapidly advancing breast cancer. Without access to health insurance, Ercilia had to wait months until she was able to receive chemotherapy treatment. Today, she is continuing the fight for her life, for her family, and for her rights. In fact, she is leading her local union's fight for health care access for janitors. Ercilia works hard, plays by the rules and wants a better life for her children – as do all workers.

The two unions have countless success stories of immigrant workers who are working hard everyday, paying taxes, and joining with their union brothers and sister to improve the wages, hours and working conditions. Many become union stewards and leaders, helping to ensure workers rights in the workplace, those who become U.S. citizens are leaders in civic life and become active in political campaigns. Take, Alba Vasquez, an immigrant from Uruguay, who works as at Madison Square Garden in New York City. In addition to her 3p.m. to 11 p.m. shift at Madison Square Garden, Alba worked a second job during the day so that she could afford to put her four children through Catholic school. Now that her children have grown, Alba has embraced her rights as a U.S. citizen and as a voter. She is active in her local union's campaign to fight for economic development that will guarantee good jobs, affordable housing, and a leader in the campaign for health care for all. There are millions more Alba's in the U.S. today that are awaiting the opportunity to more fully enrich our nation. As they wait, however, their lives are too often driven by fear and unnecessary hardship.

Under today's current broken system, both native and immigrant workers are under attack. Allowing unscrupulous employers hire undocumented workers cheats all workers out of fair wages, deny basic labor rights, and fire – or deport – anyone who seeks speaks up or asserts their labor rights. The exploitation of undocumented workers chips away at hard-earned labor rights, and drives down wages for all U.S. workers. At a time when wages for working Americans are stagnant and opportunities to rise up the economic ladder are disappearing, this shadowy culture of exploitation is particularly unacceptable.

Until we fix the root causes for the broken system, U.S. communities will continue to experience disruptive raids, family separation, and unnecessary economic hardship. While enforcement is critical to comprehensive reform and U.S. security, seemingly arbitrary raids on working communities will not achieve our large goals of fixing the broken system. Instead, an increasing number of work place raids like those at Swift and New Bedford will create more chaos and family tragedies that hurt communities. We need a more workable approach that is inline with reality and matches our economic needs and our values.

The Comprehensive Solution:

Last November, voters sent a strong message to elected leaders that Americans want Congress to fix our nation's problems, including our failed immigration system. Candidates who ran on anti-immigrant, anti-immigration, and enforcement-only messages lost their races because voters saw through the political rhetoric, not solving the problem. Voters know that deporting 12 million individuals is unrealistic and morally repugnant. Americans understand that we need to make our

system match our Nation's economic goals, and then we need to make sure it's fair, sustainable, and enforceable.

To that end, SEIU and UNITE/HERE support a fair, practical and tough proposal that will bring out of the shadows an estimated 12 million undocumented individuals, reunite families, secure our borders and create a legal channel for new workers to enter our economy, have workplace protections, and join our civic society. Hard working, tax-paying immigrants who are living in this country should be given the opportunity to come forward, pay a fine, and earn legal status and a path toward citizenship. This will enhance border security and buttress our economy.

SEIU and UNITE/HERE are committed to the following provisions being included in this year's comprehensive immigration reform legislation:

Legalization – In order to end illegal immigration as we know it, we must enact laws that ensure that every job in this country is held by an individual legally authorized to work in this country. Congress should not be satisfied with a program that is less than comprehensive. We must face reality that long-term undocumented individuals, but otherwise law-abiding workers will not leave the country voluntarily.

We must all agree that if legalization is less than comprehensive and includes hurdles that are sure to deter people from participating; undocumented workers will continue to fuel an underground economy, with negative impacts on all workers, employers, and communities. We must put an end to a system in which employers avoid payroll taxes, deprive communities of other revenues and receive an unfair advantage over law-abiding competitors by violating labor laws. All of us as taxpayers pick up the tab when our broken immigration system allows employers to cheat our communities out of needed revenues. The benefits of a comprehensive and workable legalization program are clear: high levels of participation in the legalization program put significant pressure on employer's to comply with withholding requirements and labor protections as it becomes more difficult for unscrupulous employers to prosper in an underground economy.

Because a goal of any legalization program should be to legalize as many people as possible, it is counterproductive to include provisions that would erect permanent barriers to people achieving lawful status. Any bill that places serious burdens on legalization such as requiring people to leave the county or placing insurmountable obstacles on the path to legalization for some people is unworkable. Again, the legalization provisions must be expansive to ensure as many undocumented as possible participate, not make ineligible the very people who need to come out of the shadows.

We are committed to shrinking the undocumented population, so that our law enforcement officials can concentrate their resources on those who would do us harm. Rounding up dishwashers, meat cutters, factory workers, mothers and fathers is not a good or productive use of our law enforcement resources.

Those who claim it would be wrong to provide a means for legalization of the undocumented conveniently overlook that it is employers, consumers, homeowners, building owners and many others who have benefited from the hard work of undocumented workers. We all benefit when they clean our offices and hotel rooms, care for our children, and tend to our family members when they are sick or in need. The people who oppose immigration reform never acknowledge that they are demanding stiff sanctions for the immigrant while supporting "amnesty" for those who have benefited from their hard work.

New worker program – SEIU and UNITE/HERE recognize the need for new workers in the low-wage sector of our expanding economy. However, any new worker program must include worker protections including: portability of visas so that workers can change jobs, the right to join unions and have full labor rights, the right of immigrants to bring their families with them, and the ability to self-petition for permanent residency and citizenship. Visas should not be tied to employers who can threaten workers with deportation if not compliant. We must craft a new worker program that will include accurate mechanisms to determine the labor market need for workers. We must transform the current illegal flow into a program with legal channels that lead to an increased number of permanent work authorizations. Finally, any new worker program should include sufficient enforcement resources to ensure the effective implementation of labor rights of both U.S. citizens and new worker visa holders.

Looking at the question of labor protections in more detail, there are several kinds of labor protections that are needed to assure immigrant workers are not exploited and can't be used to undermine the working conditions of all workers. While we have not always agreed on every aspect of what is needed in immigration reform legislation, on the question of labor protections the labor movement speaks with one voice.

One of the most important labor protections is that workers lawfully entering this country to live and work must be provided the opportunity to remain in the country. Workers who know they will only be permitted to remain in the country for a short time do not have the same interests and concerns of the rest of the workforce. Their interests are short term and immediate and employers can exploit this status in ways that undermine the broader interests of all workers. When people are restricted to temporary status, they don't have the same stake in upholding and enforcing workplace standards as other workers. They don't have the same motivation to support and build the decent workplace conditions, but rather are confined as second-class participants in the workforce. They are more vulnerable to the kinds of exploitation that undermine our workforce today. They can fall prey to the unscrupulous employer who can manipulate their tenuous ties to the broader community. History has taught us that temporary worker programs create a second-class status for immigrant workers that undermines the conditions of all workers and are bound to fail.

We cannot tolerate a repeat of the failed "guest worker" programs that are temporary in nature. If workers are good enough to be brought to our country to do our least desirable work, they should be given the option to put down roots and become full participants in our nation and our civic society. If they are good enough to care for our children and aged, cut our grass, and clean our toilets, they are good enough to be given the option to become permanent residents and eventually citizens.

Immigrant workers must also have the same rights under employment laws as any other worker. When an immigrant worker does not have the same rights under labor law as all workers it creates an opportunity for exploitation by the unscrupulous employer at the expense workers and employers who play by the rules. Responsible employers can be undercut and placed at a competitive disadvantage when unscrupulous competitors drive down labor costs by exploiting vulnerable immigrant workers who lack adequate labor protections. Immigration law must not provide the unscrupulous employer this opportunity.

Another critical element of protecting the rights of workers is assuring the number of workers permitted to enter the country is not greater than what is necessary to meet well defined labor market needs. The goal is to set a number at a level that first and foremost does not create a downward

pressure on wages or working conditions. The number should not be arbitrary or inflexible, but should be based on a reliable assessment that new workers will not undermine wage or working conditions. New workers should be admitted to this country if and only if it is determined they will not undermine the wages and working conditions of all the workers in this country, both immigrant and native born.

Finally, there must be adequate enforcement of labor protections. One of the historic problems of our immigration laws has been the failure to enforce the labor protections and standards. There must be effective enforcement mechanisms in place and adequate penalties to deter violations of the law. Employment law protections must be more than hollow promises.

Other Necessary Requirements for Comprehensive Reform – SEIU and UNITE/HERE were instrumental in reversing the labor movement’s position supporting employer sanctions. We did this because the experiment of employer sanctions imposed by the Immigration Reform and Control Act (IRCA) in 1986 to close the job market to illegal aliens backfired and only harmed workers. UNITE/HERE and SEIU have had first hand experience when organizing workers of employers calling Immigration and Custom Enforcement to break union strikes and organizing campaigns. We have worked diligently to craft an alternative to supplement employer sanctions in the negotiations on comprehensive immigration reform. Comprehensive reform must include:

Vigorous Labor and Civil Rights law enforcement - Employer sanctions must be supplemented with vigorous labor law enforcement. All workers -U.S. born and immigrant- must have the ability to assert their rights under local, state and federal labor and civil rights laws. They must be able to freely join unions and have private right of action to ensure their rights are preserved and protected. Immigration reform legislation must encourage vigorous labor and civil rights enforcement provisions by both governmental and non-governmental agencies, with these agencies given the necessary resources to ensure that employers who seek competitive advantages by exploiting workers will face significant fines and be barred from future immigrant worker programs.

Our childcare providers, food servers and dishwashers, home health care aides, hotel workers, janitors and thousands of other service sector workers toil hard each and every day to feed and make a better life for their families. SEIU and UNITE/HERE members are working on payrolls and paying taxes through employer withholding. Reform must help ensure that all workers will be paid legally, under local, state and federal law, with proper withholding for employment taxes, social security, eligibility for unemployment and worker compensation programs. Employers must be required to meet their tax and employment payroll obligations, and not allowed to misclassify workers as independent contractors to avoid payroll obligations, Social Security, unemployment compensation, and Medicare taxes. When employers are allowed to pay workers in cash, under-the-table, or as “contractors”—everyone loses—businesses, communities, workers and taxpayers.

Keeping families together- SEIU and UNITE/HERE strongly support all efforts to eliminate the family backlog and increase the number of visas available to reunite families. If our economy demands new workers, those workers should be able to bring their families with them, and family members should be work authorized. If low-wage workers are to support themselves, they must be allowed to work. When workers are temporary and not allowed to bring family members with them they can become a drain on their communities. By keeping families, together workers are full participants in their communities and workplaces.

Electronic Employment Verification System- We recognize it is likely that Congress will include some form of an EEVS in immigration reform. We believe it is important that any EEVS

system have sufficient safeguards to protect against worker abuse. This would include fixing deficiencies in the Electronic Verification pilot program before it is expanded to cover all workers. The system should only apply to new hires and there should be stringent protections to guard against using the system for discriminatory purposes. There must also be effective guarantees of due process rights to protect against erroneous determinations, adequate privacy and identity theft protections and workable and fair documentation requirements.

Due Process Protections– It is critical that enforcement measures do not eviscerate due process protections and civil liberties. Likewise, SEIU and UNITE/HERE will not support any legislation that empowers and encourages state and local law enforcement officials to enforce civil violations of federal immigration laws. Such proposals would irreparably harm the critical relationships law enforcement officials have built in order to fight crime and interact with immigrant neighborhoods and communities

Conclusion:

SEIU and UNITE/HERE are committed to passing comprehensive immigration reform, and continues to work in partnership with immigrant advocates, business, religious and labor leaders who recognize the need for a “break the mold” reform package. We have rededicated our efforts and the resources of SEIU and UNITE/HERE to make reform a reality.