

Testimony of Baldemar Velasquez

June 7th, 2007

Mr. Chairman, members of the committee, my name is Baldemar Velasquez, President of the Farm Labor Organizing Committee (FLOC, AFL-CIO). My union represents more than 12,000 workers of which over 6000 are in the H2A guest worker program. I appreciate the invitation to testify before your Committee on Education and Labor and "Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor."

While the current debate on immigration reform focuses in large part on the issue of a guest worker program, there has been little attention paid to the conditions under which current guest workers live and work, or to the systematic violations of their labor and human rights in both their countries of origin - especially Mexico - and in the United States. Until we can protect the basic human rights of current guest workers, it is premature to talk about expanding these programs which would also mean the expansion of the corruption that plagues the country of origin.

Mr. Chairman, I will have been organizing farm workers for 40 years this coming September. I was raised as a migrant farm worker and from my earliest memory have come in contact, worked through and for countless of labor contractors. My family was originally contracted by Ohio and Michigan sugar beet companies from our home in the Rio Grande Valley in South Texas in the 1950's. We worked in Ohio, Michigan, Indiana, Wisconsin, Texas and Florida, always in search and lured by promises of lucrative wages, conditions and good housing. The fruit of our labor was usually, poverty, housing and working conditions so bad that they could not even be described or chronicled in it's entirety by Edward R. Morrow's "Harvest of Shame" or any of Woody Guthrie's tragic ballads. The sub-minimum wages, was not because we were bad workers, but time after time I watched hopelessly my father being taken advantage of by unscrupulous crew leaders, contractors, farmers, company field men and even local merchants and businessmen. Do not take me wrong, I do not mean to castigate all farmers, crew leaders, contractors etc. as bad people, most of them were just doing what was standard in the industry. We worked for many farmers who although compassionate and friendly would still house us in chicken coops, barns and sheds. That was just the way things were done. Maybe because it's the way their fathers had done it before them or maybe it's the way the companies they sold their produce to instructed them. My desire is that others not experience the same fate.

As I became more aware of the farmer's economic plight, I realized that he too was working within a set of constraints. Most farmers were contracted in the crops we harvested and paid an amount per unit, ton, 100 weight, etc. Our piece rate had to surpass the break-even point or else the farmer would make no profit. The company pressed the farmer and the farmer pressed us for productivity and I wondered if the company ever had any appreciation for those of us at the bottom of the supply chain of which he was the beneficiary.

Today's migrant simply reflects the globalized nature of the workforce and the nature of markets in general. Not only are we domestic migrants anymore, but also the integration of economies has caused the movement of people to correspond with the fluctuations of market shifts and pressures making us joined by Mexican and Central American migrants. NAFTA having displaced four million corn farmers in Mexico, who can no longer compete with our heavily mechanized and highly subsidized U.S. farmers, cannot be absorbed into Mexico's lightweight job market. While we preach much about free markets when it comes to commodities and products we lack the same zeal when it comes to the labor market. Is it not the supply and demand that governs this market as well? Would it not behoove us to reflect on the treatment of labor as a commodity in relation to workers' human rights?

Water will run to a dry spot, like labor will run to where there is work, this is true for everybody, no matter what your trade is or what your profession is. But we migrants want the same thing as everybody else; the ability to feed, educate and clothe our families, no matter what it takes. Some of us come poor, illegal or contracted, all sharing one dream to better the lives of that next generation the follows us. So it is with the people that we in FLOC represent, migrant workers, domestic, undocumented and H2A visa workers.

I applaud Congressman Miller's initiative on H.R. 1763 in calling attention to the problems posed by the recruitment of foreign workers. It makes me recall the Farm Labor Recruiter's Registration Act. Oversight of foreign recruiters is long overdue and should be scrutinized as much as we do our domestic recruiters.

We probably know more than we would like to know as to the natural iniquities of foreign recruitment programs. But let us set things in perspective as to who the major players are and for whose benefit we all labor. Of all the crops we harvested, there is not a single one that is not a major industry. Cucumbers for pickles, what comes to mind are Vlasic Pickles, Mt. Olive Pickle Company, Heinz USA, Dean's Foods, etc. Tomatoes, Campbell's Soup, Hunts, Heinz etc. Tobacco, Phillip Morris, R.J. Reynolds, sweet potatoes, Gerber's, etc. All these companies understand the need for a labor supply to harvest the raw produce and fruit that goes into their final product. Their domestic supply chain goes from national to local companies, farmers and labor contractors, and this is simply their procurement system. Most of these companies, some publicly have supported "guest worker programs" to some degree. I contend that while many growers would like to see some way to legalize their work force that would compel workers to stay in agriculture, the real beneficiaries are the corporations who end up selling the finished product.

In 2004, we signed a collective-bargaining agreement with the North Carolina Grower's Association (NCGA) with a sidebar agreement with the Mt. Olive Pickle Company after a four and ½ year boycott. The unusual feature of the NCGA workforce was that they were almost entirely H2A workers. 8000 workers employed on some 1000 farms after year-end transfers. This agreement compelled FLOC to open an office in Monterrey,

Mexico to oversee the seniority clauses in the agreement and serve as an education center for workers about the rules, obligations and rights before coming to the U.S. With the exception of the NCGA, we soon discovered the corruption endemic in the recruitment of the workers in their villages and towns. If we discovered an irregularity with the recruiters of the NCGA, we had a grievance procedure that we could use and as in many cases, no grievance was necessary and have been able to process matters through inquiries and fact sharing. Unfortunately, we had no way to redress problems with other recruiters especially in subsequent years when union members switched recruiters to try other types of employment in the U.S. Over the past two seasons we have processed over 4000 inquiries, grievances and irregularities. Some serious, some not but that is for some 6000-7000 workers, imagine what is happening to the other 50,000 H2A workers that came in 2006!

Indeed, more and more workers would come to us reporting abuses, overcharges and downright thefts by “runners” that worked independently to connect workers with recruiters. I personally did a speaking tour in March in four towns in Mexico to warn workers not to be mis-lead. I toured Ciudad Victoria in Tamaulipas, Ciudad del Maiz, Tamazunchale and Tompamolón in San Luis Potosí. I spoke to a couple hundred workers in person in meetings and reached many more through radio and newspapers and told the workers about not paying any fees this year. Everywhere I spoke, workers approached me that had been taken advantage of and some gave up their passports with money never to hear from the recruiter or runner again!

FLOC supported a legal case known as Garcia-Alvarez that was mandated by a Federal case known as DeLuna that essentially eliminated the collection of fees from workers in Mexico. Prior to this legal precedent, workers had to pay their own expenses for the American Consulate interview and visa which was \$100 a piece. They were also charged transportation and recruiting fees all totaled about \$346.00. While the NCGA was immediately compliant, other “runners” and recruiters found it easy to prey on new workers or those who had little experience in the programs. Some workers ended up paying as much as \$1500.00 to \$2000.00. Garcia-Alvarez compelled those fees to be paid by the employers. Over the last two years for the 6000 to 7000 workers that came to work under the NCGA agreement, the employers paid what had been the “legitimate fees” (\$346.00) that represented a savings to the workers about 4.8 million dollars. We have no idea of how many of the other 50,000 H2A workers ended up paying or not as the decision extended to them also.

Because of FLOC’s continued pressure, we were continuously harassed and attacked by business and elements connected to the runners from the rural areas. Our offices were broken into twice, computers stolen and finally our staff person Santiago Rafael Cruz was bound and beaten to death in our office on April 9th. One of the suspects that has been detained in the murder in fact carries a criminal record for human trafficking, drug trafficking and armed robbery! We have suffered attacks by the local police, for no reason other than talking to workers in public places, they abducted three members and robbed them and dumped them out of town. The criminal elements seemed to have wanted to create a hostile atmosphere for FLOC and have succeeded in doing so.

However, if intimidation was the purpose, it has backfired because there has been a global outcry and thousands of letters have been sent to the Governor of Nuevo Leon and President Calderon of Mexico calling for justice in the Santiago murder. The O.A.S.'s Inter-American Commission on Human Rights has taken this case and imposed protective measures for FLOC and our staff on the Mexican Government.

If one were to glean lessons from our experiences, we see certain measures that would be important in any guest worker program. First, there would have to be a way so to insure that no money is changing hands in Mexico. Not just recruiting fees but also the required payments to our Consulate for the visa interview and visa itself. For the Committee's information, the collection of fees is already against the law in Mexico but again there is a terrible enforcement problem there. The only reason that a worker might have to put up some deposit (perhaps in one of the national banks), is to secure the visa interview appointment. No shows become a problem for employers getting their workers in a short window of time and it is not simple for the Consulates to reschedule interviews. The grower tries to time the recruitment and interviews so that the workers arrives with no down time and can begin work right away. The deposit becomes an incentive for a worker to keep his appointment.

Secondly, H.R. 1763 initiates some important measures, like making the employer jointly liable for a recruiter's action, and protecting workers from retaliation if he should complain. It would seem that one could go a bit further by perhaps the Consulate keeping a registry of repetitive workers and minimize the recruiter's role in hooking workers into the system. In the end, this may help the employers and the Consulates cut down on logistics of processing the large number of workers.

Third, workers should be afforded the same labor rights as any other worker. The right to form a union, access to all labor forums and courts to redress grievances and problems. The most important of these rights is to withhold his labor if there is a lack of a dispute resolution mechanism. Lacking a collective-bargaining agreement, the worker should have the right to apply to transfer his visa to another employer. As it is now, if the worker gets in a bad situation with an employer, he cannot complain, if he leaves, he automatically becomes undocumented and cannot work for another employer with his visa.

Fourth, company beneficiaries should be charged a fee to offset their supplier's costs for the processing fees and expenses of H2A workers. It is unfair for the grower/supplier to shoulder all the risks and expenses of a legal workforce. For large corporations to balk at engaging this responsibility is to invite the further institutionalization of the thousands of undocumented workers that could be transitioned to a legal work force. H2A growers are already paying over \$1000.00 per worker for processing and transportation and in the case of North Carolina, paying an adverse effect wage rate of over \$9.00 per hour as compared to the Federal \$5.15 minimum wage that non-H2A growers pay. The playing field is not level with those growers that continue to utilize undocumented workers.

Lastly, having demonstrated an agreed on numbers of years of faithful service and work, a worker should be allowed to obtain a temporary residence or a least adjust to a visa where he would not have to repeat an application process. If Congress can suggest the likes of a Z visa, why not a visa to travel and work with the above labor rights

If I may end with respect for the great religions of the world but calling on my own Judeo Christian heritage, let us remind ourselves that some of the best laws of our Nation have been those founded on Scriptural principles. On this issue, what comes to mind are Exodus 22:21 “do not mistreat or oppress the alien” and Leviticus 19:34 “treat the alien like your native born” and especially Numbers 15:15 “govern the alien with the same laws as you govern yourself.”

I thank the Committee and would be happy to answer any questions.