

Congress of the United States
House of Representatives
Washington, DC 20515

May 15, 1998

The Honorable Dan Glickman
Secretary
United States Department of Agriculture

The Honorable Alexis Herman
Secretary
United States Department of Labor

The Honorable Janet Reno
Attorney General
United States Department of Justice

Dear Secretaries Glickman and Herman and Attorney General Reno:

We are writing to direct your immediate attention to a situation in South Georgia involving the Immigration and Naturalization Service (INS) and Vidalia onion farmers. On May 13, 1998 a squad of approximately 45 INS officers conducted a raid without search warrants on G&R Farms in Glennville, Georgia. The agents have continued enforcement activities in the region and on May 14, 1998, began a series of meetings with area farmers.

At a meeting on the afternoon of May 14, 1998 INS officials presented growers the enclosed agreement for their approval. While it is our understanding that a tentative agreement was reached this morning, the apparent lack of regard for farmers in this situation and the intimidation tactics being employed by federal officials are completely unacceptable.

We fully recognize the role and responsibilities each of your agencies play in migrant labor enforcement, but we are disturbed by the manner in which your agencies conduct themselves, particularly the INS. This issue has been widely debated in Congress and we have brought this issue to the attention of each of your agencies. Your decision to ignore every available warning sign has led to the current situation which threatens one of Georgia's most famous and economically valuable crops, Vidalia onions.

Farmers face many challenges in tending a crop from planting through harvest including adverse weather conditions, insects, disease and other natural disasters. However, this recent crisis was a bureaucratic disaster; one that could and should have been avoided.

Contrary to what some INS agents have reported, it is not only illegal workers who flee upon the arrival of INS agents. Legal workers also scatter, leaving the farmer with only a fraction of his workforce, and rotting crops, until INS eventually departs. Vidalia onion farmers are merely the latest to experience the hardships associated with labor interruptions during the narrow window of opportunity to harvest their crop.

While there appears to be a temporary agreement, in the coming weeks and months, we implore you to work with each of your offices on a long-term solution to a problem we have feared would result in tragedy. Accordingly, we would like to meet with your departments to discuss legislative solutions to this problem.

Sincerely,

Sally Chambliss

Charlie Norde

Richard Pombo

Jim Walsh

Sanford Bishop

Pat Dondelli

James H. King

Jack Kingston

**AN AGREEMENT BETWEEN INS AND
THE VIDALLA ONION GROWERS AND PACKERS**

MAY 14, 1998

This Agreement does not preclude any revisions based on future legal reviews to insure that all aspects of the agreement are compliance with all existing rules, regulations and laws. The agreement recognizes all privacy rights and concerns of all individuals.

For the purposes of this agreement The Farm employer means all onion growers and packers.

1. By next season each farm employer will provide adequate housing for each migrant worker employed.
2. Each farm employer will agree to be the sole employer of all workers and crew leaders will be agents of the farm employer. Farm employers will therefore be the sole proprietor of all business records pertaining to all employees.
3. Each farm employer will verify all employee identification numbers through the Social Security Enumeration Verification System (EVS) and will provide the identical information to INS, separating the name of crew leaders with their workers.
4. Farm employers will allow INS unfettered access to any employees who INS requests for follow-up interview.
5. For the immediate situation, all employers will provide INS with immediate lists of most recent payroll records and Form I-9's and agree to waive any grace periods for production of these business records.
6. It is required that there be 100% agreement and compliance by all Farm employers by individual county for this agreement to take effect. Upon such compliance INS agrees to curtail enforcement operations in that county pending review of those farm employer's business records.

Lacking full compliance by farm employers, in each individual county, INS will continue enforcement operations for an indeterminate amount of time in that particular county.

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BNA

Daily Labor

REPORT

No. 97

Wednesday, May 20, 1998

News

Farm Workers INS Raid on Georgia Onion Field Draws Congressional Protest, Call for Action

Angered by recent Immigration and Naturalization Service enforcement actions targeting Vidalia onion farms in southern Georgia, a bipartisan group of legislators is demanding a meeting with Clinton administration officials to discuss long-term solutions to what they see as problems associated with the migrant labor program.

Decrying the "apparent lack of regard for farmers" and "intimidation tactics" employed by federal officials, the group has asked Attorney General Janet Reno, Labor Secretary Alexis M. Herman, and Agriculture Secretary Dan Glickman to pay "immediate attention" to the adverse effects of the INS raids in the agricultural sector. "Contrary to what some INS agents have reported, it is not only illegal workers who flee upon the arrival of INS agents," Rep. Saxby Chambliss (R-Ga.) and others wrote to the cabinet officials.

"Legal workers also scatter, leaving the farmer with only a fraction of his workforce, and rotting crops, until INS eventually departs," wrote Chambliss, a member of the House Agriculture Committee. Chambliss also is the sponsor of legislation (H.R. 2595) that would establish a new temporary farm worker program to allow more foreign workers to enter the United States and work legally on a temporary basis.

"Vidalia onion farmers are merely the latest to experience the hardships associated with labor interruptions during the narrow window of opportunity to harvest their crop," the Georgia Republican asserted in a May 15 letter. He blasted the administration for continuously ignoring "every available warning sign," which he said has led to a dire threat to "one of Georgia's most famous and economically valuable crops, Vidalia onions."

G&R Farms Targeted

The incident triggering the congressional protest took place May 13 when, according to Chambliss, approximately 45 INS officers raided G&R Farms in Glennville, Ga., without search warrants. While singling out INS for particularly disturbing conduct, Chambliss said he is bothered as well by the manner in which the Labor and Agriculture departments are operating to carry out their responsibilities in migrant labor enforcement.

Recognizing the need agricultural employers have for easy access to farm workers, particularly in light of the impact of strengthened restrictions on illegal immigration, a House Judiciary panel approved legislation (H.R. 3420) to test new procedures for temporarily employing foreign agricultural workers. Voicing the administration's opposition to establishment of a new guest worker program, Herman has indicated she would recommend that President Clinton veto the bill (49 DLR A-11, 3/13/98).

Meanwhile, onion fields are one of five agricultural sectors the Labor Department has targeted for nationwide investigations stressing compliance with child labor laws. The others are lettuce, tomatoes, cucumbers, and garlic (244 DLR AA-1, 12/19/97).

Herman and Glickman recently traveled to Florida to examine ways in which their agencies can work together to improve the lives and working conditions of farm workers, while at the same time maintaining a stable and reliable agricultural workforce (73 DLR A-1, 4/16/98).

Shortly thereafter, Reno announced the creation of a new federal task force to crack down on what she called "modern-day slavery" in the American workforce (79 DLR AA-1, 4/24/98). The attorney general cited abuses of migrant farm workers as one of the reasons for the new enforcement effort.

Joining Chambliss in calling for the meeting with administration officials were Sens. Paul Coverdell (R-Ga.) and Max Cleland (D-Ga.) and Reps. Sanford Bishop (D-Ga.), Jack Kingston (R-Ga.), Richard Pombo (R-Calif.), Gerald Solomon (R-N.Y.), and James Walsh (R-N.Y.).

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**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION**

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

May 20, 1998/6:29pm

TO: JULIE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 5581

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:	CONGRESSIONAL AFFAIRS	202/219-5120
	INTERGOVERNMENTAL AFFAIRS	202/219-5736
	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE:

Congress of the United States

Washington, DC 20515

May 15, 1998

**The Honorable Dan Glickman
Secretary
United States Department of Agriculture**

**The Honorable Alexis Herman
Secretary
United States Department of Labor**

**The Honorable Janet Reno
Attorney General
United States Department of Justice**

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Sincerely,

Sauby Chantler

Charles H. Brown

Richard A. Potts

Jim Walsh

Conrad R. P. J.

Paul D. Doudley

Henry H. H.

Jack Kingston

**AN AGREEMENT BETWEEN INS AND
THE VIDALIA ONION GROWERS AND PACKERS**

MAY 14, 1998

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AN AGREEMENT BETWEEN INS AND
THE VIDALIA ONION GROWERS AND PACKERS

MAY 14, 1998

SIGNATURE PAGE:

FARM EMPLOYERS:

INS REPRESENTATIVE:

2025

Opinion

Telegraph

Great onion raid leaves bitter taste

Some of the most famous onion patches in the world lie in 13 counties in south Georgia, home of the Vidalia onion. Known throughout the world for its mild sweetness, the Vidalia onion is a mainstay of the south Georgia economy. On Wednesday, the Immigration and Naturalization Service descended on south Georgia and brought the onion harvest to a halt looking for illegal aliens.

What better time to look for illegal aliens than during the onion harvesting season? The crop is worth \$50 million, and for three days it stagnated, waiting to be harvested.

The fields had already been "pulled" (prepared for harvest) when 45 INS agents appeared. The INS then held the onions hostage, not letting harvesters back into the fields until the farmers and the INS reached an agreement. That agreement came Friday afternoon.

It mandates adequate housing, verification of Social Security numbers and "unfettered access" to employees. It also requires all farmers in a county to comply or, the agreement stated, "INS will continue enforcement operations for an

indeterminate amount of time." With a gun to their heads, farmers had little choice but to sign.

Sen. Paul Coverdell called the INS action "the worst of bully government." Rep. Saxby Chambliss called it "exactly the type of situation we were trying to avoid."

Chambliss had introduced the Farmer Temporary Employment Act last year, but it still sits in the Agriculture Committee. The measure recognized reality. Temporary workers are a fact of agricultural life from coast to coast. American workers are not interested in working the hot fields of Georgia, California and Texas. Farmers turn to available laborers, some of whom do not have the right to work here.

Chambliss's bill would have made this and other INS raids unnecessary, while protecting workers and taxpayers.

The INS raid produced whopping results. The migrant population of Tombs and Tattnall counties is estimated at 3,900. INS arrested 21 in the sweep, hardly worth the effort and aggravation imposed on farmers and workers alike.

Yes, the INS was doing its job. But in doing so it should provoke revived interest in Chambliss's legislation.

Editorials

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Our Views

Opinion editorials in this newspaper are primarily a commentary on the Macon Telegraph editorial board, although the publisher and the editor have the final say. The opinions expressed in opinion editorials and local columns, cartoons and letters to the editor are expressions of their own views.

The Macon Telegraph
May 18, 1958

The man with the blue eyes and golden voice

Entertainment icons don't get much bigger than "Ol' Blue Eyes." Frank Sinatra was bigger than life when death finally caught up with him at age 82. Now he's legend.

Sinatra's trademark song was "My Way," which is usually how he did things. He sang his way to international fame in more than 200



Sinatra's performing talents went beyond music. He managed what few singers do in becoming a film actor so accomplished that he didn't need to showcase his music. He showed his acting range as a character fighting drug addiction in "The Man With the Golden Arm." When his Hollywood career was taking a dive he zoomed back on top as the ill-fated Maggio in "From Here to Eternity."

But even if he'd never been in front of a camera, Sinatra's voice would have been

**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

200 Constitution Avenue,
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Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

June 30, 1998/9:35am

TO: JULIE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456-5581

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES: CONGRESSIONAL AFFAIRS
INTERGOVERNMENTAL AFFAIRS
IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5120
202/219-5736
202/219-5288

MESSAGE:

Congress of the United States
House of Representatives
Washington, DC 20515

June 26, 1998

The Honorable Alexis Herman
Secretary, U.S. Department of Labor
Third Street and Constitution Avenue, NW
Washington, DC 20210

RECEIVED
1998 JUN 29 A 6:26
EXECUTIVE SECRETARIAT
OFFICE OF THE SECRETARY
DEPARTMENT OF LABOR

Dear Secretary Herman:

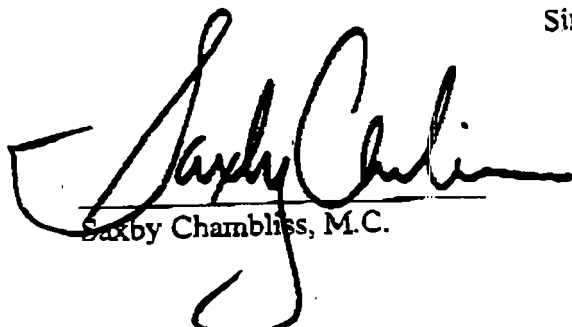
It has recently come to our attention that you have expressed frustration regarding the pending confirmation of Department of Labor appointees before the U.S. Senate. We can assure you that we are equally frustrated; however, our frustration stems from the continued lack of regard your agency holds for Georgia's family farmers and their mounting difficulties with the H-2A temporary labor program.

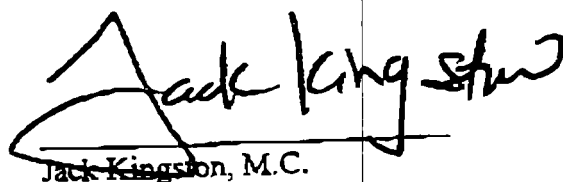
We have spent more than three years attempting to work with your agency and others to address the problems with the H-2A program -- both from a legislative and an administrative perspective. And given the fact that the most recent migrant labor agricultural crisis involving Georgia's vidalia onion crop remains unresolved, we are seriously troubled by your substantial involvement and preoccupation with the Senate confirmation process, instead of working with legislators of both parties to reach reasonable solutions to an unworkable temporary labor program.

We strongly believe movement toward such a resolution is possible provided your agency makes the following changes to the current H-2A program, such as: amending Contract Time to include the "duration of crop activity"; continue to require employer-provided housing, but allow a reasonable charge as an incentive to provide quality housing; and eliminating the requirement that Farm Labor Contractors must be hired by employers who apply for H-2A certification if use of these farm labor contractors is the prevailing practice in the area.

Madam Secretary, the ball is truly in your court. We respectfully request you cease placing the interests of Washington bureaucrats ahead of Georgia's family farmers. Your agency clearly has the means and the tools to adequately address many of the problems our farmers face. Now is the time to place politics aside and join us in reaching a resolution before another agricultural crisis is at hand.

Sincerely,


Saxby Chambliss, M.C.


Jack Kingston, M.C.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

July 30, 1998

The Honorable Paul Coverdell
United States Senate
200 Russell Building
Washington, D.C. 20510

Dear Senator Coverdell:

We have long been aware of your interest in reforming the current H-2A program, and I have appreciated our discussions on the changes your farmers feel are necessary to the current program. You have raised a number of important issues regarding migrant workers in agriculture which the Department needs to consider carefully.

In response to your recent correspondence related to the Georgia growers' "10-point" plan, I have outlined to you our concerns with these proposals, but have indicated a willingness to discuss them in greater detail. The Department of Labor takes your concerns very seriously and wants to respond constructively. I propose that we organize a bi-partisan working group to carefully examine your specific concerns along with others proposed by Members of Congress. It would be my intention to begin work on this in the fall.

If the efforts of this working group lead to a consensus on how best to address these important labor issues, I will give the group's views the most serious consideration with the understanding that this is becoming a concern among a growing number of Members of Congress.

We look forward to working with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexis M. Herman". The signature is fluid and cursive, with the first name "Alexis" being more prominent.

Alexis M. Herman



UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF THE ASSISTANT SECRETARY OF CONGRESSIONAL
AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue, N.W.
Room S-1325
Washington, DC 20210

Confirmation: 202/219-4692

TO: JULIE FERNANDEZ

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456-5581

FROM: GERI PALAST

NUMBER OF PAGES INCLUDING COVER: 11

FACSIMILE REPLIES: CONGRESSIONAL AFFAIRS

202/219-5120

INTERGOVERNMENTAL AFFAIRS

202/219-5736

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5288

MESSAGE: *This is the Coverdell counter proposal. Let's talk.*

MEMORANDUM TO SECRETARY HERMAN**FROM: SENATOR COVERDELL****DATE: JUNE 26, 1998****SUBJECT: H-2A REFORM**

Your call this morning was appreciated, and I am responding as promised to your comments on the H-2A reform proposal we submitted. I am providing a copy of this memorandum to Congressman Bishop and intend to discuss this with him as soon as possible.

As mentioned in our conversation, we are working off of the original 10-point proposal developed by the Georgia growers and brought to your attention by Congressman Bishop last November. I will walk through the enclosed 10 points and provide comments on each in context with the changes you have proposed.

POINT 1--(You have made a change) You have proposed adjusting the time from 60 days for filing an application to 45. This is not exactly what the growers had requested (30 days), but it is progress. However, it bears mentioning that the general benefit of this requirement is, in essence, supplanted by the 50% rule.

POINT 2--Congressional Research Service (CRS) has determined that you can act on this administratively (see attached opinion). You have refused to act on this proposal despite the fact that a poor market condition could result from an "act of God". A farmer should not have to pay wages for work not performed on top of the financial disaster suffered by the farm. We request that you adopt this proposed change.

POINT 3--Given the Department's views on wage issues, we have dropped this from consideration.

POINT 4--Given the Department's views on the 50% rule, we have dropped this from consideration.

NO **POINT 5--**In previous meetings with growers, CRS staff has indicated that administrative flexibility does exist for housing provisions in the H-2A program (charges for utilities and maintenance). We fully understand that housing will be necessary. We just ask that farmers be given an incentive to provide quality housing by allowing them to charge reasonable rates (perhaps capped at \$25 per week) for utilities and maintenance. Further, we would be willing to work under the housing regulations in the FSLA/MISPA law governing migrant workers. We request that you adopt this proposed change.

POINT 6--Given the Department's views on wage issues, we have dropped this.

POINT 7--Your staff has indicated that this proposal is acceptable under current law. We would like a written clarification on this issue.

*What
is
it
about?*
POINT 8--CRS has determined that you can act on this matter administratively (see attached opinion) Your staff has indicated that the Department may be willing to allow farmers to require bonding for Farm Labor Contractors (FLC). Frankly, it is beyond our understanding why the Department would not allow such a proposal that would protect workers and farmers, so I would hope that the Department would adopt this change.

NO
POINT 9--(You have made a change) The change you have made is of limited effectiveness because you have stipulated that the Farm Labor Contractor must have a demonstrated history of misconduct. We need to eliminate this requirement and give farmers an option to use a FLC or not. If FLC's are often the problem in farm labor situations, which the Labor Department readily concedes, why should farmers be denied the opportunity to create mid-level managers (field supervisors) who will be more accountable for the treatment of the workers instead of having to employ itinerant, unproven FLC's. We request that you make a further change to your proposal to drop the requirement entirely.

POINT 10--We have decided that drop this proposal.

To summarize,

You have addressed (but not sufficiently) points 1 and 9
We have dropped points 3, 4, 6, and 10
We need a written clarification on point 7

We are requesting that you act on just 3 of the original 10 points. (points 2, 5 and 9).

We recognize that you had 7 changes in your proposed rulemaking. However, we feel that only 2 addressed the needs that we outlined in the 10-point plan. Further, none of the changes you have made, it has been determined, will have a demonstrable (or desired) effect on the labor situation in Georgia.

We look forward to discussing this with you next week. Thanks for your consideration and willingness to address our concerns.

CRS-3

2. Contract time should be amended to include "or duration of crop activity," and hardest conditions as well as acts of God should be considered legitimate reasons for ending the contract.

It appears that the requirement concerning reasons for contract termination may be changed administratively. Under 20 C.F.R. § 655.102(b)(12), promulgated first in 1978, the job offer must provide that the employer may only terminate the work contract before the specified expiration date if an "Act of God," such as a fire or hurricane, renders the fulfillment of the contract impossible. None of the statutes which appear to be general authority for this regulatory provision—8 U.S.C. §§ 1101(a)(15)(F)(ii), 1184(c) and 1188, and 29 U.S.C. §§ 49 et seq.—specifies and mandates the conditions for contract impossibility and subsequent termination. The "Act of God" language appears in regulations that predate the enactment of the IRCA, which apparently led to an overhaul of the regulations at 52 Fed. Reg. 20496 (1987); before 1987, only fire was given as an example of an Act of God. Part 655 of title 20 C.F.R. was added in 1978 at 43 Fed. Reg. 10306 (1978). In 1978, the language concerning reasons for contract impossibility and termination was found at former 20 C.F.R. § 655.202(b)(12) and remained basically the same until 1987.¹

It also appears that the requirement regarding the guaranteed contract period may be changed administratively, consistent with a 1974 court order. The requirements of 20 C.F.R. part 653 apply to seasonal agricultural job clearance orders. Under 20 C.F.R. § 653.501(d)(2)(x), the job order must state the terms and conditions of employment, including, among others, any time for which work is guaranteed and, for each guaranteed week of work, the exclusive manner in which the guarantee may be abated due to "weather conditions or other acts of God beyond the employer's control." This regulation is authorized generally by the Wagner-Peyser Act, codified as amended at 29 U.S.C. § 49 et seq., particularly by 29 U.S.C. § 490(c), which authorizes the Secretary of Labor to promulgate necessary regulations under the U.S. Employment Service program. It is also authorized by 29 U.S.C. §§ 1821(a)(4) and 1831(a)(1)(D), which concern required disclosure to migrant and seasonal agricultural workers and are part of the Migrant and Seasonal Agricultural Worker Protection Act (MASAWPA), codified at 29 U.S.C. §§ 1801 et seq. By its terms the MASAWPA does not apply to H-2A workers directly (29 U.S.C. § 1802(9)(F)(v) and (10)(E)(iii)), but under the adverse effect criteria of the INA many of the protections in the MASAWPA apply to working conditions for H-2A workers set out in the regulations. However, neither of these statutes, the Wagner-Peyser Act and the MASAWPA, appears to contain any specific requirement or direction

¹ The 1978 regulations in part 655 replaced prior regulatory provisions found at 20 C.F.R. §§ 602.10 et seq. These prior regulations contained a longer list of examples of Acts of God than do the current regulations, but essentially permitted early contract termination only for "reasons beyond the control of the employer (due to an Act of God . . .)." These earlier regulations were implemented in 1967. 32 Fed. Reg. 4570 (1967). Before the promulgation of the 1967 provisions, the contents of job offers were not as detailed as they are now.

CRS-18

of employment to the reception centers, unless he could establish that he had provided the worker with such transportation or its cost. The Secretary of Labor was authorized to provide transportation to the worker from recruitment centers outside the continental United States to the reception centers and back.

8. Strengthen the program of registering farm labor contractors (FLCs) by requiring both certification/licensing and bonding. At a minimum, allow employers to require bonding as a condition of employment.

It appears that the implementation of a bond requirement in the registration program would necessitate legislative action, although employers probably could contractually require a bond. Guidelines for the registration of FLCs are established in detail under title I of the MASAWPA, codified at 29 U.S.C. §§ 1811-1816 (this is the authority for the regulations in 29 C.F.R. §§ 500.40 to 500.50 concerning the registration of FLCs). A person cannot engage in FLC activities (recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker) without a certificate of registration, as required by 29 U.S.C. § 1811. Under the 29 U.S.C. § 1812, the Secretary of Labor "shall issue a certificate of registration . . . to any person who has filed . . . a written application" containing certain required documentation [emphasis added]. The Secretary may refuse to issue a certificate on grounds enumerated at 29 U.S.C. § 1813. These grounds do not include a failure to be bonded. Therefore, a bond requirement for registration probably would have to be added by legislative action; the Secretary apparently does not have the authority to deny a certificate because a prospective FLC is not bonded.

One should note that one of the requirements in the written application for registration is a statement listing vehicles to be used in transporting workers and documentation that the FLC is in compliance with the MASAWPA requirements for such vehicles, including insurance or a bond. It appears that a certificate would not be issued if a prospective FLC did not have vehicle insurance. The existence of this specific insurance/bond requirement and the contrasting absence of a general bond requirement seems to be a further indication that a general bond requirement would need to be legislatively authorized. Also, under 29 U.S.C. § 1854, there is a private right of action by persons injured by a violation of MASAWPA, but no provision concerning bonding of any co-defendants.

The Secretary is permitted to request, among the documents required for registration, "other relevant information" in the declaration of the applicant's residence and prospective FLC activities. The Secretary probably could request information about whether the FLC applicant is or will be bonded without specific statutory authority.

An employer probably could require a bond from the FLC as part of its contract with the FLC without any statutory or administrative authority to do so. There do not appear to be any restrictions or prohibitions on requiring a bond in the contract between the FLC and the employer or association in the

CRS-19

INA, the MASAWPA or the statutes establishing the U.S. Employment Service system. Most of the statutory and regulatory conditions concern the work contracts with the agricultural workers, to protect them by ensuring a minimum standard of working conditions and wages. Only a few pertain to the relationship between the FLC and the employer or association. Under 29 U.S.C. §§ 1821(e) and 1831(d), for example, FLCs are required to furnish wage and work records of each worker to the employer or association. FLCs are prohibited by 29 U.S.C. § 1844 from violating, without justification, the terms of written agreements with employers or associations pertaining to any contracting activity or worker protections under the statute.

9. Eliminate the requirement that FLCs must be hired by employers who apply for H-2A certification if use of FLCs is the prevailing practice in the area.

★ → It appears that this requirement, found at 20 C.F.R. § 655.103(f), can be changed administratively. None of the relevant statutes contains an explicit direction concerning the use of FLCs in recruitment efforts. However, the legislative history of 8 U.S.C. § 1188 and the statute itself indicate that the employer of H-2A workers must demonstrate a recruitment effort at the level of non-H-2A employers in the area in order to obtain a certification. Under 8 U.S.C. § 1188(a)(1)(A), the Secretary of Labor must certify that there are not sufficient workers who are able, willing, qualified, and available to work at the time and place where they are needed. Under 8 U.S.C. § 1188(b)(4), the Secretary may deny a certification if he determines that the employer has not made the required positive recruitment efforts where the Secretary finds there is a significant number of U.S. workers who, if recruited, would be able, willing, qualified and available to work at the time and place needed. According to the legislative history, "In this last point [the adequacy of recruitment efforts where U.S. workers can be expected to be found], the Committee intends that the Department of Labor shall consider, among other things, the recruitment efforts for workers made by non-H-2A employers located in the area of intended employment and the efforts made by the employer to obtain H-2A workers." H.R. Rep. No. 682, 98th Cong., 2d Sess., pt. 1, at 80-81 (1986).

Apparently, the rationale behind 20 C.F.R. § 655.103(f) is that where the prevailing practice of employers in a locality and industry is to use FLCs, a failure by H-2A employers to use FLCs is equal to a failure to exert the same recruitment effort. Therefore, even if the Department of Labor eliminated the absolute requirement to use FLCs where it is the prevailing practice, it may still question whether a certification applicant had fulfilled the requirement of exerting the same recruitment effort, if such an applicant failed to use an FLC where the prevailing practice was to use one. Thus, although the elimination of the FLC requirement might allow more technical flexibility, in practice it might not result in any greater actual flexibility. The FLC requirement may be a recognition or codification of how Regional Administrators actually evaluate labor certification applications.

11:35 FROM:

ID: 2025434576

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Congress of the United States
Washington, DC 20515

June 3, 1997

The Honorable Alexis Herman
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Secretary Herman:

Immigration policy in the United States has been driven by many factors, including the goal to improve the American economy. For years, migrant workers have provided labor to agricultural employers who face a severe shortage of domestic help. These migrant workers provide a reliable resource that contributes significantly to the economy in our states. Farmers are increasingly dependent upon migrant workers, and we all must develop a program that allows migrant workers to enter the country legally to perform agricultural work and then return to their native countries. An existing program may provide the answer.

The Department of Labor's H-2A program, as it was originally intended, allowed U.S. employers who face a shortage of domestic workers to import migrant workers under certain government restrictions. The program, however, imposes unwieldy requirements upon those employers who wish to work within the system. A few changes will not only make the program effective, but ensure that the needs of the agriculture employers are met.

We urge the Department of Labor to make the H-2A program functional through the following:

- * Change the filing date from 60 to 30 days. The labor needs of agricultural employers are very hard to predict and the requirement of commitments from domestic workers 60 days prior to the date of employment is unrealistic. In order to maximize the use of skilled domestic workers, the filing date must be reduced to 30.
- * Contract time should be amended to include the "duration of crop activity." Contracts may currently end because of droughts and floods, but not because of market forces or the duration of crop activity. It is difficult to determine the beginning or the ending dates of crop production, and employers must have the economic option of terminating contracts when the work is complete.

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ID: 2025434675

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*
③ Allow the federal minimum wage instead of the Adverse Effect Wage Rate (AEWR) to be used as a "training wage" for inexperienced workers. Employers depend on skilled agricultural workers and must be allowed to specify this important experience as a condition of being hired. For those who need to gain experience, employers should be able to pay the federal minimum wage.

*
④ Change to 50% rule so that once employers are certified and the foreign workers are employed, employers must only hire local applicants and that the obligation to hire local workers be for the duration of the H-2A certification period of the duration of the crop activity.

*
⑤ Continue to require employer-provided housing, but allow a reasonable charge for maintenance, repair, and utilities. Employers have a responsibility to provide decent housing to migrant workers, and this small charge would allow employers to provide better housing with more amenities.

*
⑥ Eliminate the Adverse Effect Wage Rate and use the prevailing wage rate for the area in which employment occurs.

*
⑦ Allow foreign workers to move from one certified H-2A program to another and require the final employer to transport the worker back to his home country. This safety net can protect those workers who are unhappy in one work situation and wish to transfer to another.

*
⑧ Strengthen the registration requirement of farm labor contractors to require certification/licensing and bonding.

*
⑨ Eliminate the requirement that farm labor contractors must be hired by employers who apply for H-2A certification if use of these farm labor contractors is the prevailing practice in the area. Employers increasingly use their own crew leaders and should not be forced to hire farm labor contractors.

*
⑩ Create a national verification system so that employers can check on the status of domestic workers who are hired during the H-2A process. Employers must be able to insure that those persons that are hired prior to the H-2A workers are not illegal workers that will be seized in border patrol raids.

We respectfully request your review and determination on the Department of Labor's authority to make the previously mentioned changes through administrative adjustments. In addition, we would like to inform you that the House of Representatives is drafting legislation to provide agricultural employers a practical and effective program to employ skilled guest workers who, after working for a short time, return to their native countries. We are requesting a meeting

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ID: 2025434576

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within the next 30 days to discuss these important issues to America's farming community. We look forward to hearing from you as soon as possible in regards to a meeting.

Sincerely yours,

Lucy Kingston

John Linder

Mac Collins

Sayby Chawlin

Sapho Bishop

Charlie Nowood



STATE OF GEORGIA
OFFICE OF THE GOVERNOR
ATLANTA 30334-0900

April 23, 1997

Zell Miller
GOVERNOR

The Honorable Paul Coverdell
United States Senator
200 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Coverdell:

I would like to take this opportunity to make you aware of my thoughts relating to the temporary visas issued for foreign agricultural workers (H2A visas). As Governor, I am increasingly concerned about the future of fresh market production in our state. I believe that if Georgia growers must continue to rely on immigrant farm workers to plant and harvest our fruits and vegetables, and if Congress continues to mandate an increased emphasis on enforcement of employer sanctions, the financial risk of growing these crops may prove to be too great.

As you know, the H2A visa program is the only program that allows agricultural employers access to legal foreign workers. Unfortunately, few farmers are willing to participate in the current H2A program, because this program has proven to be too expensive, too slow, and extremely cumbersome. Simply put, this program should either be streamlined and simplified or eliminated in its entirety and replaced with a new guest worker program.

It is my understanding that Georgia growers have already been working diligently towards achieving fair and workable changes in the H2A program. Please review the enclosed ten proposed recommendations made by the industry and other officials in Georgia which outlines a short-term solution to improving the present program. I fully support effectuating these changes as soon as possible to give the agricultural community some much-needed relief. I am also enclosing copies of the resolutions passed by the two houses of the Georgia General Assembly which supports these proposed changes.



The Honorable Paul Coverdell

April 23, 1997

Page Two

In addition, I would like to see the 105th Congress continue to examine the agricultural labor issues facing this nation. I urge you to work with us to ensure that Georgia can maintain its position as a leader in producing quality fresh market fruits and vegetables for the consumers of this country.

With kindest regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "Zed Miller".

Zed Miller

ZM/tmc

Enclosures

cc: The Honorable Tommy Irvin



STATE OF GEORGIA
OFFICE OF THE GOVERNOR
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UNITED STATES DEPARTMENT OF LABOR
FACSIMILE TRANSMISSION

**OFFICE OF THE ASSISTANT SECRETARY OF CONGRESSIONAL
AND INTERGOVERNMENTAL AFFAIRS**

200 Constitution Avenue, N.W.
Room S-1325
Washington, DC 20210

Confirmation: 202/219-4692

TO: CECILIA ROUSE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456-2223

FROM: GERI PALAST

NUMBER OF PAGES INCLUDING COVER: 11

FACSIMILE REPLIES: CONGRESSIONAL AFFAIRS

202/219-5120

INTERGOVERNMENTAL AFFAIRS

202/219-5736

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5288

MESSAGE: *This is the Coverdell counter proposal. Let's talk.*