

H2A - 6/3

Legislation

- Bob Graham - Guestworker legislation
(Gordon Smith, chairs)
by Sen?

- Feinstein

- CHC - ~~working~~

worked ~~about~~ that we will make a deal

CHC would helpful to get.

Domestic.

Binjamin

Campbell

Timing - ~~fixed~~

- Conardell holds on nominees (500 nominees)

Conardell letter to Lott - promised a bipartisan promise

- Approved 3K applications

- H2A Act

- Reviewed many ~~process~~ options but process but did not come to only

- Earl called Conardell's staff. Working on side-by-side of boths)

- Conardell list

Wyden, Smith - want to do bill but willing to consider other options

★ Legislation Policy Discussion

(2)

RS

- Campbell
- Domenici
- Mc Cain

- Syme
- Collins

Don't have closure votes

CMS - staff meeting

Labor - ~~staff~~ will meet
Legislation -

H2A - Reg - April

DPC

DOT

INS

USOA

OMB

Labor

Nov 1997

H2A-5/27

- NE (Tom Mull)
- Kelly - Possible, can meet palace ~~for~~ H2A they are not H2B - more likely
 - Reid - Possible prison governor
 - Bryson - possible
 - * - Edwards - possible/open. Victoria wanted for Durban
 - * - Cleland - very hard
 - * - Hollings - ?
 - Robb - possible. Graces will never support him. Thomas + Apple
 - Bingham - ~~is~~ screwed up.
 - * - Lincoln - Lambert - have not spoken to them. Pro-ghostwork in there
 - Mayriner - ~~not~~ not a WH - Sweeney call
 - ~~Baucus~~ - don't have much a relationship
 - * - Wyden
 - * - Bob Graham - (Caroline Barker) - not very close to a bill.
Going down legalization route smile, crazy Wyden?
- Don't pay social security taxes.

~~Next~~ Next time to publish survey.

- Amendment to Reg Approps?

- Conedell - holds nomination. Looking *

- Dear Colleague - OHC - ~~Letter~~ ~~Carson~~ Letter opposing ghostworkers.

Spina 5:30 pm call this

Daily
Lally
about
Brown

H2A ISSUES

May 26, 1999

- Update on legislation and Hill interest - what do we know?

- Hearing

- Legislation

* Guestworker legislation - Who is working on legislation?

* Feinstein - working on a legalization proposal but not guestworker legislation

Bill part of ~~bill~~ Wyden last year. we opposed, haven't worked, seriously,

- Coverdell - holding up Labor nominees b/c he wants consultation process. *that one*

* How do we respond to Coverdell?

position. INS
incumbent.

- Finalized the H2A accomplishment document

- Gerry Shea

- To whom do we send these document?

- Peggy Taylor 637-5070

- Hill meetings

* Who and when

* Do we have a position on legalization legislation?

508-6963

- Next Steps

Coverdell

- not meeting w/ him is the right
- already met w/ Labor + INS
- ask Caroline what's the problem?
- Move through ~~Executive~~ Code - Laffer

Legalization

- We opposed
- Need a policy decision on legalization
- Unleash Wyden - only want their bill
- Bob Graham - wants to do something
- Feinstein - Concern w/ Legislature

AGS NET

- Verification ^{America Job Bank} ~~Verification~~ - Connect out to verify, State, + SSA - similar
- Graham is working on a letter ^{employment verification. Can't match -}
- Went post - local INS offices.
- to clearing to show documents -
- Blacklist ~~immigrants~~.

ER

Other Policies

- Develop other policies?
- Do something

Talking Points

- Wyden bill - Debra Bond
- Accomplish

Trasim de La

- Michael Kudo
- Mike Ins ~~6/11/99~~

H2A - 4/15

- Darryl
1st week of June
Debra on leave
- Carol Kitz -
examine the report
service.

What are people hearing on Ag Net

Separated out notification out of AgNet - ~~error~~

Having problems b/c ~~not~~ verification is not part of this - even
may hire Under.

Policy Decision 

~~John Earl~~ John Earl

- met w/ Fernstein - ~~like~~ will not support it there is no verification component - refer legal workers.

Opticis:

State can verify for benefits, UI

- Charger user pin or user Lee to others

- No change in the pilot.

America's Sub Bank is connected to NY - no verification

INS has pilot authority under ~~100000~~ ¹⁰⁰⁰⁰⁰ ~~100000~~

INS don't ~~want~~ want to ~~be~~ expand too much the no
evaluation yet.

intermediary?

Intermediary? ^{employment}
- State officer supplemented by organizations
~~try to do~~

Batching - ~~data~~ ^{- CN's} ~~SSA~~ ^{SSA} ^{Legal} ^{ing} + USC names

En do (D/Check)-9

First - hand concern

Wyden bill registering - OOC, check

Options

- ① On line w/o
- ② On line w/ intermediary transfer
- ③ On line w/ intermediary - verification - name & identity
- ④ SESA - (they can check for E&K)

Employee still must check. (-9. unless ↑)

Position - linking verification to ~~the~~ ^{no voucher} A3 net

Lawsuit - AIB vs. A3 net - requiring more info

Ask USDA, SSA,

INS -

DOJ - civil rights

Labor - have verbal in A3 net

Power systems

RECRUITMENT PROPOSAL

“AMERICA’S AGRICULTURAL LABOR NETWORK (AGNET)”

Problem -- Federal government recruitment assistance.

Growers are required under the H-2A program to conduct positive recruitment efforts prior to applying for foreign workers. One aspect of this requirement is to post the job opportunity with the local Employment Service office.

Unfortunately, less than 2% of agricultural job placements are through the local Employment Service office. Between June 1995 and July 1996, about 190,000 migrant and seasonal farm workers sought employment through the U.S. Employment Service State offices and only about 65,000 were actually placed in agricultural jobs. This method of placement has become increasingly ineffective for this industry which has become more reliant on using private sector intermediary labor brokers -- farm labor contractors. The Federal government should re-target its resources to more effectively aid growers and workers in finding labor and employment.

Proposal -- America’s Agricultural Labor Network (AgNet).

The majority of farm workers find employment through a kinship/friendship network. One problem with this method is that it spawns and reinforces illegal migration to the U.S.; another is that it is highly inefficient in a geographically diffuse labor market. Workers spend time trying to locate employment when they could be earning money. The Federal government could serve as an information broker by developing a system that allows growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.). This would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. Growers that apply for H-2A workers would be required to participate in AgNet. However, this would not be the only grower recruitment requirement. The system would be evaluated three years after implementation to assess its impact on this industry.

Model -- America’s Job Bank.

America’s Job Bank (AJB) is a partnership between the U.S. Department of Labor and the state-operated public Employment Service. AJB links these state offices electronically through an Internet web site. There is no charge to employers or job seekers to use this service.

- For job seekers, AJB provides a nationwide listing of job opportunities and allows them to file a resume that enables employers to find them.
- For employers, AJB provides a quick way to list job openings, national exposure, and an easily accessible applicant pool.

Approximately 900,000 jobs are listed in AJB on an average day.¹ It takes about 72 hours to register with AJB and about 24 hours to list a job vacancy. These times will improve over the coming year as the software is updated.

America's Agricultural Labor Network (AgNet).

What is AgNet? America's Agricultural Labor Network (AgNet) would be an information system devoted to the agriculture industry which would contain job opportunities and worker resumes. AgNet would be based on AJB, but would be a separate web site. The two sites would be linked so basic information in AgNet is automatically placed in AJB.

The State Employment Service would serve a similar function, as in AJB, to scan listings for obvious problems prior to posting on the Internet. This provides some basic quality control. However, this is not a process for verifying an applicant's immigration status.

What information will be available in AgNet? The job listing would provide the conditions of employment including location, crop, duration of employment, wages, skills requested, and whether housing and/or transportation is provided. In addition, it would include information on how to contact the employer and the required worker disclosures. The worker resumes would include, among other things, qualifications, desired location and crop, and information on how to be contacted. The contact and hiring arrangement is between the grower, or FLC, and the worker, not the government. Examples from AJB are attached. The specific information included in the system would be modified to reflect the agriculture industry.

The system must meet the challenges of helping workers gain access to it and connecting English-speaking growers with many Spanish-speaking workers. The system will initially be in English but to address this concern will eventually be designed in Spanish as well.

Who can use it? This system would be accessible to the public generally including growers, workers, farm labor contractors, community based organizations² (CBOs), and unions. Browsing the system is anonymous. CBOs could serve as a point of contact for workers or growers. The system could be designed to have "counselor/broker accounts" to allow an organization to search for jobs for multiple workers or list jobs for multiple growers. Such a design change would likely not be available until later in 1999.

How will workers and growers gain access to the system? Given this is a low-wage industry, gaining access to AgNet will be a challenge. Some places that may be able to provide access

¹ Very few of these listings are for agricultural jobs, with only 479 such listings nationwide on October 5, 1998.

² Community based organizations include churches, farm labor organizations, and agricultural grower organizations.

include local libraries, CBOs, unions, State Employment Service offices, and U.S. Department of Agriculture extension offices.

What are the benefits of AgNet? AgNet would be a free service provided to workers and growers. Ideally, workers would be able to plan their entire employment cycle using this system. For example, the worker could line-up jobs from Florida up to New York. This would provide more control and stability for the worker.

Growers would benefit by gaining access to a two-sided recruitment system. Now, growers file requests for workers with the Employment Service and wait for referrals -- a one-sided system. Under this system, growers would be able to search for, identify, and contact qualified, available workers in addition to listing their job openings. Also, the grower would gain exposure to a national audience of workers. With electronic posting, the grower would have complete control of his/her job postings and would be expected to suspend them once his/her jobs had been filled.

Who will own AgNet? AgNet will be owned and operated by a partnership. The partnership will consist of farm worker and grower organizations, supported by the U.S. Department of Labor and U.S. Department of Agriculture. The partnership will determine the final design of the system. Due to the time it would take to establish a partnership, initial implementation of the system will be through the current AJB partnership between the State Employment Service and the U.S. Departments of Labor and Agriculture.

How will growers and workers learn about the system? The critical link to the success of this system is buy-in by the farm worker and grower organizations. Given most workers find jobs through word of mouth, the partnership will have to conduct extensive outreach. In addition to fliers and newspaper ads, public service announcements on Spanish radio could serve as a good median. The Federal government could also conduct outreach efforts through its programs including the U.S. Department of Agriculture extension offices.

How long will it take to set up AgNet? The system could be activated in approximately one month after initial design modifications are made. It will take additional time to implement further design changes, requested by the partnership, that reflect this industry's needs. The preliminary goal would be to have 10,000 job opportunities in AgNet by the end of January, 1999.

Who will pay for AgNet? The Federal government will provide this service through a grant to the partnership. Initial funding will be provided to the State Employment Service until the partnership is formed. Given the software for the labor network has already been developed, it will cost a minimal amount of money to activate this system. Additional customizing of the system (e.g., Spanish language version or adding the "counselor/broker" features) will cost a relatively small amount of money. There will be a separate cost for training and outreach to the various CBOs and unions.



Job Seeker Registration Update



Please complete the form below and click 'Update Registration' to update your registration.

⇒ Last Name:		
⇒ First Name:		M.I.:
⇒ Street Address 1:		
Street Address 2 / P.O. Box:		
⇒ City:		
⇒ State:		⇒ Zip/Postal:
⇒ Country:	United States	
⇒ Primary Phone:		
123-456-7890x123		
Alt. Phone:		
123-456-7890x123		
Fax:		
123-456-7890		
Email:		
⇒ U.S. Military Veteran Status	Not A Veteran	

Only enter data in the password fields if you wish to change your password

⇒ Password:	
⇒ Verify Password:	

[[Questions/Comments](#) | [Customer Evaluation](#) | [Frequently Asked Questions](#) | [Non-Frames Version](#)]

Copyright © America's Job Bank 1998



Job Referral Information

Applicants will be instructed to address referrals as you indicate below to the address, phone and/or fax number entered below. Please choose at least one form of contact information and make any changes that are needed to the default referral information taken from your company profile.

Company

☐ **Mail**Address City State Zip Code Country Contact Name ☐ **Phone**Phone Number
123-456-7890x123

Speak With

☐ **Fax**Fax Number
123-456-7890

Deliver To

☐ **Email**☐*Company Resume Builder / Online Application*

[[Questions/Comments](#) | [Customer Evaluation](#) | [Frequently Asked Questions](#) | [Non-Frames Version](#)]

Copyright © America's Job Bank 1998



Job Order Entry

The following information is necessary to allow us to enter your job into our on-line search system. Please complete the form below and click 'Submit Job' when you are done.

Title			
Location	City	State	Zip
Country	United States		

☐ If this job is a regional, statewide, or country-wide job, click this checkbox and complete as much information as possible above.

Number of positions available

Number of hours per week

Months of experience required

Salary should be entered in the following format ###,###.##. Comma is optional. Do not use decimal unless cents are really part of the salary (i.e. 15.50 per hour). Do not use alpha characters (i.e. 50K per year). Salary/Pay Unit should not exceed the equivalent of \$500/hour (i.e. \$1.04 million/year).

If you do not enter a salary, your job will not be considered when a job seeker does a search using salary as a search criteria.

Salary Range \$ to \$ per

Duration

Required Education

Required Degree or Formal Training

Required License, Certificate, or Registration

Company URL

If your company has a World Wide Web home page, you can include a link to it here by entering your company URL.

Job Description

Please list the job skills and experience requirements, as well as any other information applicants should know. The most important skills and experience should be listed first so applicants can quickly determine if they are qualified. Please use plain text without HTML formatting tags.

AgNet Design Issues/Options

April 1999

1. Recruitment

▪ Of Potential Employers (Growers and Farm Labor Contractors)

It is presumed that properly registered farm labor contractors (crew leaders) as well as agricultural producers who are potential employers will be able to use the AgNet system to list job opportunities. The issue involves the means to be used to recruit potential employers to use the system to advertise their job opportunities. The Department could contract with prominent agricultural employer associations, and use (fund?) the U.S. Employment Service's (USES) network of State Employment Security Agencies (SESAs) in rural/agricultural areas and the National, Regional and State Monitor Advocates.

▪ Of Potential Workers

Potential workers must also be recruited to use the system to identify their availability for agricultural employment. The Department could contract with consortia of labor unions, community-based and non-governmental organizations, perhaps including agricultural employer associations, in identified labor supply areas, and use (fund?) the SESAs in rural/agricultural areas and the Monitor Advocate network.

2. Registration -- Process

Potential employers and workers who are recruited to use the system must be able to gain entry to register in the system. The issue arises as to whether they will be able to directly enter and on-line register their job opportunities/availability (like with America's Job Bank), and/or whether an intermediary registration agent would be the means to post the information. As a practical matter, an intermediary registration agent would be required even if direct, on-line entry were available. The intermediary registration agent(s) could be the same entities used for recruitment, or this function could be limited to the SESAs.

Presumably, the AgNet database must be universally accessible via the Internet for search, but not necessarily for data entry/modification. The data entry/modification function raises security issues which would argue for limiting the availability of this function to the intermediary registration agent(s). Verification of the employment eligibility of workers who want to register in the system (discussed below) also must be considered in designing the registration process.

3. Registration -- Content

A second registration issue involves whether, as a condition for gaining entry to the system, there would be minimum data requirements and standards regarding the job announcements

posted and the workers registering, and – if so – (1) how these requirements/standards would be maintained and (2) whether minimum standards carry a legal obligation that somehow could be enforced (which too relates directly to the process to be employed).

▪ **Potential Employers**

The question of minimum data requirements and standards regarding posting of agricultural job opportunities can become quite complicated. For example, would an employer-registrant be required to provide, at a minimum, the information required to be disclosed about a job opportunity under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) – even if the employer were MSPA exempt? Would the employer-registrant have to identify the location of the work; the crops; the tasks to be performed; declare a start and end date for the job opportunity – or be denied entry to the system? Would the employer-registrant have to list an hourly wage rate – as opposed to a piece rate – or promise to pay at least the Federal/State minimum wage? Could the employer-registrant list minimum skill/experience requirements even if these were not justified by the job offer/tasks to be performed?

Would the employer-registrant be required, at a minimum, to make the same minimum employment guarantees currently required to gain access to the InterState Clearance System (see attachment)? (If not, what would be the implications for the InterState Clearance System?) How would the registration process/intermediary assure that the minimum data and standards were provided?

Would the terms and conditions of the employer's job offer be legally enforceable by virtue of registration (*i.e.*, as a condition of access), or only under MSPA if the employer-registrant is MSPA-covered, or otherwise? (If not, what would be the consequences if employer-registrants falsely describe the job or terms and conditions offered?)

▪ **Potential Workers**

Similar issues arise with respect to worker-registrants. In addition to identifying and contact (*e.g.*, mailing address and phone number, if they have such) information, will worker-registrants be required to provide age and gender data? Will they be required (instead of offered the opportunity) to list prior agricultural work experience? Will they be required to specify times of availability, or locations where they are willing to work, or the minimum terms and conditions under which they are willing to work? For workers who are not home-based in the U.S. or are on the move, what options will be available to locate and contact them regarding job offers? What are the consequences of worker-registrants providing false information in registering with the system?

4. Verification (and Follow-up)

In all but one scenario (described below), agricultural employers would continue to be responsible for verifying the employment eligibility of any workers they hire through the existing I-9 process (or through the INS verification pilot program). The question is whether –

as a condition of registry in the AgNet system – worker-registrants’ employment eligibility will somehow be verified. This has implications for both the usefulness of the system and its administration. If AgNet does not verify employment eligibility, it will have little attractiveness and probably quite limited use by agricultural employers – it will be hard if not impossible to “sell.” On the other hand, if AgNet does verify employment eligibility (which America’s Talent Bank does not) it will be less attractive to agricultural workers – even legal U.S. workers – and no doubt raise serious concerns among immigrant advocacy groups based on data problems and discriminations fears. If AgNet does verify employment eligibility, it requires an administrative structure capable of following up with worker-registrants who do not initially pass through the verification process to give them an opportunity to do so. If AgNet does not verify employment eligibility and is to be administered in whole or part by the USES/SESAs, it recreates the problem of having the taxpayers support a job matching service that – to some extent – serves illegal workers.

If AgNet is to require employment eligibility verification as a condition of worker registration, there are at least three options for doing so:

- The worker-registrant could be required to present her/himself to an intermediary registration agent which would administer the I-9 process. This approach rules out direct on-line entry of worker registration, which for the workers is largely impractical in any case. However, due to the ready availability of false documentation, it also does little to increase the likelihood that the system will not register/refer illegal workers and, therefore, be quite unattractive to many agricultural employers. (As discussed further under the third option below, if the USES/SESAs exclusively performed this function as the only intermediary registration agent, and supplied the workers with completed I-9 forms, employers who hire these workers could rely on the SESA’s I-9 and not have to independently verify the worker’s employment eligibility or risk any liability if it should turn out that the worker is not employment eligible. Nonetheless, workers so verified may nonetheless be illegal having presented falsified employment authorization documents or falsified SESA I-9s.)
- Whether through direct, on-line entry or through an intermediary registration agent, the worker registration data could be passed through the INS verification pilot program and only those registrants who are verified would be entered to the system. This approach too creates difficulties with direct, on-line entry because registrants using this avenue would not know if they did or did not successfully navigate INS verification unless they later followed up to check that they are successfully registered in the system. With respect to intermediary registration agents, this function might discourage some organizations from signing on to serve as intermediaries, or might be seen by some as an opportunity to provide services to legal U.S. workers who are not so recognized by the available verification data.
- If worker registration were performed only through the USES/SESAs, the worker registration data could be passed through the INS verification pilot or the SAVE system – available only to governmental entities. The SESAs would provide the administrative

structure to follow-up with unsuccessful worker registrants and could perhaps use contracted union/CBO/NGO consortia to help unsuccessful worker registrants remedy data problems that prevented their employment eligibility verification. This approach has an additional, significant advantage from employers' perspective – under the INA, if a SESA (and only a SESA) verifies employment eligibility, the employer to whom the worker is referred may rely on that verification and does not have to verify independently so long as the employer has the evidence of the SESA's verification (that is, the SESA's completed I-9) obtained from the worker. In the AgNet context, SESAs could presumably provide the service of giving workers passing verification a completed I-9 to be presented to prospective employers, but this would involve an administrative burden on both the SESA and the worker, and these documents too could be readily falsified to be used by others than those who went through the verification process. The alternative would be – if allowable under current law – to deem that workers registered on AgNet – after passing through SAVE or INS pilot program verification through the USES/SESAs – are both verified and referred by the SESA, thereby relieving the employer who hires workers from the AgNet registry of having to independently verify the worker's employment eligibility or having any legal liability if it turns out that the worker is, in fact, illegal and should not have been verified.

5. System Operation

The next issue is who builds, owns and operates the AgNet system (in any case presumably modeled on America's Talent Bank software). The logical possibilities include the Department of Labor, the SESAs, or a private firm or consortia. If operated by a governmental entity, the imperative to require employment eligibility verification as a condition of worker registry may be greater.

6. Job Matching Protocol

Presuming that the above-listed registration issues can be successfully resolved, the question arises as to where responsibility resides for matching jobs and workers – with AgNet, with the employers who register, or with the workers who register? In other words, is it AgNet's job to:

- merely provide the benign but inactive media by which employers and workers can find their way to each other; or,
- also link registered employer's job opportunities with appropriate registered workers by contacting the employers with a list of possible workers and registered workers with a list of potential job opportunities; or,
- also link registered employer's job opportunities with appropriate registered workers and contact workers to verify their interest in and availability and suitability for each employer's job, and then refer these workers to the employer and somehow supervise the

employer's interaction with the referred workers and the *bona fides* of an employer's decision to not offer employment to any of the referred workers?

The workload and cost implications of the various approaches are significantly different, as are the likely variation in the usefulness and effectiveness of the system, and the ability to measure and evaluate its usefulness and effectiveness.

7. Linkage to H-2A Access

Another issue that must be addressed – at least at some point – is whether use of AgNet will become a prerequisite for access to the H-2A program, especially if the development and implementation of AgNet means the demise – if only as a practical result – of the existing InterState Clearance System. This raises corollary questions regarding whether use of AgNet will be sufficient, by itself, to meet H-2A domestic recruitment requirements even for agricultural employers which use much more pro-active, aggressive means to locate and recruit foreign farm workers to meet their employment needs.

RFL-C10 - 5/12/99

Verification Pilots - Charley Wilson / Guy

- Working SSA

- Biggest concern w/ INS

- No match letters - try to reconstruct their data base to give proper audit in their act

- ER using no match letters to threaten organizing efforts - ER Energy used to fire employees - SSA trying to contact ER

- Could take precautions in the letter ~~to be~~

④ - Problems in CA FTN - joint mtg w/ SSA & INS in uporn - become mtg about andoc.
P2 -

- Enumeration verification program -

Q. Why INS & SSA ~~also~~ involved in pilot?

SF - SSA encourage er to sign up for the INS verification program. SSA^{OC} did not know why this occurred.

④ - SSA^{OC} promised to take 9 steps - to address some ~~issues~~ very alarmed

Seems to be a regional problem - a consultant may be active. CE has been abusing it.

- When organizing occurring, letters can be chilling.

- Vanguard / Yakima - NE / most producing industry

No match list has gone to er. in one plant 7-10 workers names appeared on the list. INS began their interviews roughly 1/2 has self-terminated, the rest were able to

new problems
w/ new letters

Follow up w/
SSA.

Meeting

mm

(2)

document but database was wrong.

- INS met w/ the meatpacking industry - union not invited last week. (1) INS is now staggering their industries

(2) If idea is to open up position for a documented worker. then what is the follow up.

- INS hostile view towards union. Barbara Hughes (Bob Boech's office) looks for recognition of unions role.

- Targeting of states (eg NE) that is 80% organized

(3) ~~may~~ may come to us depending on INS response

(2/17)

- Educate people

- Pilot -

- AG Net

- study

GAO (1997)

H2A - Mike Jones

Senate - leaving this afternoon. [•] Hearing - [•] when is not dealing the ports & will talk to labor if anything comes up.

House - ?

Legislative Strategy - Admin - get ~~it~~ ^{Admin} packaged well + meet w/ key bill people
(Question to our proposals - big yawn)
How many roles do we have

H1B - Peggy

^{Data} ~~Issue~~ - we need better data about what going on - are we training workers or importing workers -

^{Lawrence} INS data - had 1 year in Oct - INS changing the system but

- At some point this issue will be raised

- concern may try to use COP 2000.

Make round
Recommendation
Legislation
Backpacked

Timeline in
INS
COP

(3)

AILA - webpage

H1B
Regs

- Educate people what is going on

- Law in effect who reg - waiting to come ~~to~~ OMB.

- More work need to be done at DOL before get to OMB.

Training



- Training & provision - design + how it can be used ~~retail~~ vs local.

- Unions want a role. President Ban.

- Training has ~~been~~ not had much input & not happening
~~the~~ want union role.

Microsoft workers developing their own workers.

- Ideas how \$ spent - design of the part.

NBC



GAO Report - ~~Debra~~ Debra F. December ~~1997~~ 1997

possible
vehicle

Cochran/Kohl - ^{Smith} Approp.

~~State~~ Sleen - NM
Kopher / De Laun

- AG bill has been removed

Judiciary

- ~~Robert~~ Smith - still
out

NEU + leadership

on floor =

Abraham

- not on list of priorities

- doing a hearing

- Don't understand -

- Stuart Anderson - incl. H. leadership
+ genius want to do.

Magnitar - Democrats who voted

Bob Kerry -

Robb -

Harry Reid -

Bryan -

Hollings?

Edwards - ?

Alamo

59

Earl Gold

Apple growers -> Schumer - OK but apple workers

Fernstein - don't need ~~re~~ legalization. May be drain
the AgNet - you want to

Unemployment data - ~~↑~~ ~~past month~~ ~~on~~

unemploy rate ~~14-19%~~ 14-19% last

month - Monterey, Merced, San Joaquin Co.
County - March

Nat'l unemploy 4.6%

Talking to Bryan

Reid - NV

Kerry - NE

Edwards - Victoria Respects

Paper

Nat'l Journal Article

Give sheet - ~~an~~ employees

Council - Sec. to Secretary Herman - this year
NG Net

① Reg proposal - stuck OMB

② Move to process - ~~DOJ~~ DOL - INS - practical steps have
not been taken

KY growers are excited.

INS - 351C ~~etc~~ visas taking out systems.

NEC all numbers

- huge applications

H2A -

Verification

List of ideas for H2A - ~~the~~ ^{large H2A} ~~part of problem~~

Cannot to get ~~PAWS~~ ^{INS} growers to participate in the pilot
+ push toward ~~resystem~~

Ag. employees participation is low. ~~INS~~ ^{probably}
ble reduce work here.

~~Ag.~~ Labor Contractors + Growers - jointly liable.

Operation Job - ^{INS helps} replace illegal workers w/ a law-
~~income~~ welfare worker

CYacine Valley example

Want or to participate in the pilot
they have actively expressed in pilot participation.

Pilot

① If complaint arose. 8 cover INS investigation - focus on best bond

② ^{Survey} ~~work~~

③ ^{Geographic}

Participation in the pilot, just means less disruption

ble they already checked workers. - no greater or lesser
focus

Meat packing in ~~NE~~ ^{NE/Operation Vanguard} to remove illegal workers - holding er
responsible.

SAVE
electronic
to report

Ag. Net Job bank if INS - DOL ~~with~~

① SSA + INS

Employer service is not running thru the SAVE.

Practical problem - but need right data + no citizenship
included

(2)

Armies don't want to ~~have~~ verification - we told them ~~it~~ it's their responsibility

SENTRY

Biometric, spot check

POLL ELECTION - don't check poll workers - potential problem

Grand Admin Plan - GAP - all employers, not productive so lead based. Better to do survey focused on certain industries

Garment Industry - ?

Lead driven - anonymous phone calls, citizens' complaints uncover work (after case developed), other law enforcement

Work Site investigations - low #s
Defendant -

Chances

Options

Plot

I - 9 -

Pilot - More of ~~the~~ more burden, may be to ~~the~~ ^{eliminate} the

of undoc workers.

(3)

Barbara

Enforcement priorities generally.

Violations - multiple tips, investigation.

Timing of Enforcement is a concern - during the ~~harvest~~ harvest

(DOL - complaint driven ~~for~~ some are random)

Raid decisions depend on budget, resources, type of tip, history w/ er or industry, ~~to~~ subjective

Barbara will get

Description enforcement operation

Pilot - measurable growth of pilot. Still working out the details. OSC concerned about ^{expensive} giving b/c ^{concern of} ~~cost~~ & not ~~valuation~~.

Machine Reader Pilot - SSN, DOB,

Pilot

CA, NY, FL, IL, TX

- No charge for equipment

IRCA # IIRCA / IIRCA -

Design a new pilot - under IRCA - IVP, JVP



Hold harmless for er - under IIRCA not liable under criminal + civil. Up to er to make case of good faith action. ~~to transfer that system to~~ protect from er cover INS # ee-wyphelischer

Rebuttal presumption

(5)

Wyden bill

① Permit legal workers - want govt to verify. Will participate in pilot if can get a H2A worker right away

② Wages - Advice effort - Ag develops -
(Data / Person - previously wage + cost.
(Commission proposal)

③ Housing

Have not given in on anything

Ag Net - Why can't DOL - go to INS SAVE System.
Want to go to SAVE System

Conrad - develop a process to avoid disruption of the harvest.
mtg w/ metzger

Tony Podesta represent growers (Charles Benson) 2 mtgs
this year

- Rescind ^{local office} \$10 million - subs, to buy equipment, national
Ag Net - tailored to ag industry. Given info not useful ^{data} ~~base~~
(America's Job Bank funded by DOL - NY State Employ
Service - Wyden bill)

~~But~~ Wyden bill - DOL would do all the work. Human
Resources - If can't find worker, ~~then~~ ^{give} H2A workers
automatically

- NEC - asked advice of many - but could come with aggr.
Penn State person -

2nd mtg
Recruitment

Wages

6

Housing

Wyden bill - give voucher - for what?

Prop. - Pilot of voucher - OK

Ag. law - exemption in on loan + grant program to have
~~to~~ migrant

(CA growers don't have hiring)

DOE housing requirement too stringent - COSTA - try to make
changes.

CSRE w. ~~some~~ made deal years ago² or regis)

Other
Issues

Transportation - Growers are not ~~pushing~~ pushing

Em. On H2A don't have to pay the FICA tax - Wyden - give it to
transportation cost that is required.

1st mtg - 70% of farmworkers are undocumented.
Know they are vulnerable but labor shortage
GAO + IG study - H2A need to reform

- Recruitment

- Wage

- Housing

Want a process, want WH to lead.

Maia, Elene + Benton met - 2 weeks ago - looking for stuff
but not change position.

CJS - may come up.

Barbara 3/19

Conradell

~~Saxby~~ Chambliss

Bishop

No repeat of last year ^{when INS} Even legal workers leave
Trying to enforce the law

Some growers are being more responsible

INS asked for

1-9
INS

60% of illegal worker
Coordinated w/ Labor ~~have~~ have asked to
H2A but others have

Focus -

~~the~~ after smuggling & farmworker connector
Smuggling is very bad - bad working conditions
by being inconsistent protecting H2A growers to help
level the playing field.

Smuggling - they agreed

~~they~~ Playing a ~~level~~ level playing field - \$1 diff
for H2A workers.

Can't promise ~~not~~ ^{will be} in field

How can we help to educate the growers?

Can you get us info, who are the contact person

Atlanta Regional Office have doing outreach
Will tell them what the problem growers
letters asked for there firms last year
437 growers, 24 did not provide stuff
Not names of ~~business~~ farm corporations be
ongoing investigations

Alan Ehrenbaum sign the letter

H2A - large industry seek this

No easy answer

(Earl - Coverbell)

Worksite priorities - Barbara

H2A 4/26

Joel
Bruce

Chuska

Kevin

Brian Kennedy

Larry Marklund

Opposition to guestworker program

Still have coalition in House - 104th +h
votes in there

~~W~~ want with ~~W~~ to threaten bill - come through Approps.
105th program
If WH votes, then Approps chairs,

Current

104th Congress - H2A amendment 242-180 defeated - included
B Republicans restrictionists +
Democrats - unfair to worker

105th Congress -

Growers worked on proposal in July 23

Transformed into amend in Senate - Appropriations bill -

~~the~~ amendment was dropped on the floor
unknown to Senate staff - 68-31

They think they can ~~for~~ turn around the vote
Have lopsided vote but working to change that.

Object b/c already have H2A program + would remove
the worker protections

Growers want to:

- lower wage

- housing

- no elite fee upfront

- recruitment

minimum work guarantee -
remove protection ~~on~~ for over recruiting.

Bills proposed these things to
eliminate competition of workers.

H2A is abusive

H2 workers - 1990 sugarcane workers in FL in Louisiana

Can't complain b/c fired or blackballed

(2)

- ER - have no obligation to keep you on.
- Have no right to stay in country
- ER gets some benefit under H2A -

Concern that this is about control.

Current program H2A is ~~a~~ bad enough

Inside the State -

Role of state - bracero program = similar to H2A worker
protections on paper but ~~not~~ unenforceable b/c
too difficult to enforce

Bills - would eliminate worker protections.

1980s - bills were proposed but failed.

SAW program + LAW program -

Arizno / Karna growers

11% unemployment

Imperial Valley

25% unemp

South Florida

double digit unemployment

2-3 times unemployment rates - they are plenty of LAW & LPR
US cit workers

Real wages have gone ~~down~~ for 20 yrs. Piece rates have not
changed.

DOL / Rick Miner - Study - earnings ~~is~~ ^{are} stagnant.
housing, fuel.

Need to ~~encourage~~ encourage er/growers to be capitalist - pay ^A more
productivity ~~to~~ ^{not} improve wages. Only after this, ~~if~~ ^{then}
bring in LPR

(3)

- 1986 IRCA - Compromise - guaranteed 1.1 million workers were legalized - SAWs.
- Labor union organizing has improved work conditions, etc.
- Done in CA - collective bargaining - passed laws.
- Can't organize giant programs.

Bracero & H2A - non-migrant
mexican ~~1984~~ just between Mexico & US - k

SAW - Special Agricultural Worker - allowed to become temporary resident alien - put on 90 days - Seasoned ag before - May 1, 1984 - special procedures to show evidence - proved status - temp. res. for 2 yrs - LPR effect

Replenishment Agricultural Workers - SAWs DOL + AG - 4 year program was there a shortage of workers 1989-1993 - assessment of need + supply. If determination, labor shortage, INS would make visas available - temporary for a certain period of time.

~~the~~ have not gone into effect b/c no shortage.

- Shortening of H2A program - Apply 90 days ⁸⁰⁻⁶⁰ before last day of work, reg codified in statute.

Shortening of days - is a problem -
work recruits - 50 years before season.

DOL - reg. 45 days - don't like + ~~they~~ think DOL doesn't have the time to look at requirements

Joel Najar
NCLR

- Latino only opposes b/c experience in Bracero program - slavery.
- Even w/ Et sanctions, Latinos oppose agt guestworker program

- Nat'l Confer Agt Guestworker - last year + 1st week of May - lobbying - not a solution
- Growers saying to Latinos only ~~of~~ civil to get them legalize so ~~stay~~ propose guestworker program
- Guestworker program does not ~~↓~~ under mining
- " " have fewer rights + glut of workers
- Ex. Vidalia onion - conditions for workers did not improve but ~~was~~ backed off.

Senate - I in debate, mischaracterized by Wyden - protested his house - Latinos, workers, unions.

Conditions for farmworkers improved.

Ed start to act like others - b/c enjoy many exception to the law

Christine MALDEF

- New proposals to last year's bill
- legalization - don't like
- Forcing them to compromise would be in a difficult position on guestworker plan
- Stand firm on ~~current~~ position

Michael

Fernstein opposes b/c guestworkers will stay
Lamar Smith - opposes mining

FAIR -

Pro-mining -

Non-mining to be

Kevin

- Bishops have long history since 1930s, + negotiating w/ ag + farmworker. Church - programs violate fundamental human rights.

(5)

Bishops see first hand the problems - long hours, no health care, ^{some} children labor; housing allowance - dirt & housing; no minimum hour; union organizing.

Price of produce would ↑ would be minimal - scare tactics

Talks
Administration Chgo ← Regs ^{INS} < DOZ
AGNet

Secretary of Labor - Conradell on Vidalia
~~AGNet~~

AGNet - in theory, produce is years away - ~~to~~ Very few farmworkers get job thru employment services. ~~AGNet~~ Labor & informal ways - ~~last~~ word of mouth.
Substantive of wage & must change.
- Initial step -

Hearing

- Abraham - mid-May
- Appropriations - June 15 Commerce bill

Senate Approps ~~to~~ July + Sept - Commerce, Justice

Lobbying

- move to proposal
- agst

House - Berman
Haysman Cam

Lamar Smith - write letter with
opinion

Senate - Kennedy
Wellstone

Difficult issues for farm
farmworkers

(4)

- No change in advocacy groups.
- Swartz memo does not propose any change.
- Even if in proposal now, could be yanked out.
- Conf Report: eliminated legalization proposal - last year

Med to President's help to oppose bills.

Vetos

- votes to sustain veto in House
- need to work in Senate.

Exceptions

- WI
- SSDI
- State laws

Permanence

Irene Bueno

05/24/99 09:41:09 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: H2A farmworkers/Legalization Issue - Guidance on Next Steps

This is an update on H2A farmworker/legalization issue and to get your guidance on next steps.

HEARING - A hearing was held last month in the Senate Judiciary Committee members. While there was some criticism of the current H2A program - too cumbersome, too many requirements, etc. , there seemed to be less enthusiasm by Committee members to consider legislation that creates a new guestworker program. However, there seemed to be interest in establishing a new legalization program for farmworkers who are in the US already but here illegally.

✓ LEGALIZATION LEGISLATION- Senator Feinstein is working on legalization legislation that would require workers to work for a certain period of time, eliminate some of the housing and transportation requirements under the H2A program, and to be paid at a rate above prevailing wage but lower than the wage required under the current H2A program but it would not establish a new guestworker program. We have opposed establishing a new legalization program that was part of the guestworker legislation last year and I assume that we would continue to oppose such legislation, however, I plan to convene the appropriate people to make sure that this where we want on legalization legislation. I think it is important that we know our position so we can continue our efforts to oppose guestworker legislation - if it looks like the bill considered last year , to support the current H2A program with some improvements as proposed in the DOL reg and our budget proposal for a AgNet Program. Please advise if you have any concerns with this approach.

H2A ACCOMPLISHMENT DOCUMENT - We have developed an H2A accomplishment that describes the current H2A program, why it works, what changes we are making to simplify the program, and the Administration's budget proposal to create an Ag Net program that helps hook up growers with farmworkers. (See Attached).

AGNET - While I think there is support for the AGNet proposal, there is concern on the Hill that the workers listed on AgNet have not been verified as legal workers. We are working with DOL and INS to develop a proposal that we could offer to strengthen this part of the AgNet program. I will keep you apprised of these efforts.

STRATEGY - DOL has met with some key Democrats that voted for the guestworker proposal last year to educate them about this issue and they are having some success. WH Leg and I plan to follow up these meetings with the staff and provide them information on the current H2A program using our H2A accomplishments document. I have some discussions with some of the advocacy groups on this issue and they have urged the Administration to go out early and oppose legislation. However, I think it is difficult to oppose anything that has not yet been introduced but we can oppose what was introduced last year. A representative from the growers group sent me a letter with some information about their efforts to find common ground- but have not heard from them otherwise. At one point, OMB heard from them that there was DOL circulating a letter recommending a veto threat of any guestworker legislation but we confirmed that that was not the

case b/c no legislation has been introduced.

CONGRESSIONAL HISPANIC CAUCUS (CHC) - Last week, the CHC sent a letter to the President urging the Administration to oppose guestworker legislation and to request a meeting. I will discuss with Janet about her advice as to how to proceed but I recommend we convene a meeting with them soon to discuss this matter. *Janet will schedule mtg*

COVERDELL - I understand that Coverdell is still not pleased with the current state of affairs and continues to threaten to hold up Labor nominees when they get to the floor. However, Jeffords has indicated that he will not hold up Committee consideration of the nominees b/c of Coverdell. WH Leg Affairs will continue to monitor this situation but at this point, they do not recommend that we do anything with regard to this threat at this time.

Please let me know if you have questions, comments, concern, etc. Thanks.



H2APROG3.W

Irene Bueno



 **06/08/99 06:43:43 PM**

Record Type: Record

To: Maria Echaveste/WHO/EOP@EOP, Janet Murguia/WHO/EOP@EOP, Barbara Chow/OMB/EOP@EOP, Caroline R. Fredrickson/WHO/EOP@EOP

cc: Clara J. Shin/WHO/EOP@EOP

Subject: Coverdell/guestworkers

I spoke with Elena about re-engaging Coverdell in a process to address his issues about guestworkers with the hopes that he will withdraw his threat to put holds on Labor nominees.

While Elena agrees that DOL should do whatever it thinks needs to do to address Coverdell concerns to help its nominees, she does not think that having WH/DPC involvement would be helpful in the long run since it unlikely that we would change our position on this issue.

Please let me know if you have any questions or would like to discuss this further.

Thanks.

MIGRANT FARMWORKERS:

IMMIGRATION POLICY AND “GUESTWORKER” LEGISLATION

Introduction Immigration policy has played a key role in the agricultural labor market. Immigration policies have contributed to farmworkers’ low wages, poor working conditions and inadequate housing.

During the 106th Congress, agribusiness again will demand creation of a new “guestworker” program to replace the H-2A temporary foreign agricultural worker program. The employers’ legislation in the 104th and 105th Congresses would have removed the H-2A program’s modest protection against displacement of U.S. workers, depression in wages and abusive working conditions. Such legislation is antagonistic to the goals of improving wages and working conditions, reducing unemployment and underemployment, ending child labor, improving occupational safety and health, stimulating rural housing development, and modernizing agricultural labor relations.

A Demographic Portrait of Farmworkers There are approximately 1.6 million migrant and seasonal farmworkers working in labor-intensive agriculture: fruits, vegetables, tobacco and greenhouses.

High Unemployment, Underemployment A U.S. General Accounting Report to Congress issued in December 1997 concluded that there was no current or imminent shortage of labor for seasonal agricultural employers. The report found double-digit unemployment rates in many of America’s major agricultural-production counties, where migrant farmworkers reside. High rates have persisted in other migrant-labor base-areas of California, Arizona, Texas and Florida.

Low Wages, Poor Housing Consistent with a labor surplus, farmworkers’ wages have declined in real terms over the past twenty years. Farmworkers’ poverty rates have increased to well over half the workforce. Farm jobs are rated among the three most dangerous occupations in the United States. Health insurance is rarely provided. There is a critical lack of decent, affordable housing for migrant workers. Moreover, recent studies confirm that there are widespread violations of minimum wage and other required labor standards.

Citizenship Status Most farmworkers are immigrants. Many secured “green cards” under the Immigration Reform and Control Act of 1986 (IRCA). IRCA contained a “special agricultural worker” program which provided lawful immigration status to 1.1 million undocumented workers who could prove prior agricultural employment in the United States. Employers have increasingly hired undocumented workers, often through abusive labor contractors. Recent studies suggest that 40 or more percent of individuals performing farmwork lack authorized immigration status.

Expanding Fresh Fruit and Vegetable Business The GAO reported that the fruit, vegetable and horticultural (“FVH”) sector has grown significantly during recent years. Productivity increases, rapid expansion of domestic and foreign consumption of fresh produce and other factors caused their total value to soar by 51% in the decade ending 1995. Our exports of fruits and vegetables doubled in value between 1989 and 1997, reaching \$9 billion in FY 1997 and \$ 10.6 billion in FY 1998. Studies also show that substantial wage increases for seasonal farmworkers would cause only minor produce price increases, keeping American consumers content and the nation internationally competitive.

Migrant Farmworkers and Immigration Policy

Guestworker Legislation During the 104th and 105th Congresses Agricultural employers have lobbied during the last four years for a new temporary foreign agricultural worker program. In March 1996, the House voted 242-180 against a proposed new guestworker program of 250,000 workers. In July 1998, the Senate, with less than one hour of debate, suddenly inserted into an appropriations bill a new, unlimited guestworker program. The House did not vote on the amendment. The Clinton Administration opposed the amendment and it was omitted from the October 1998 budget agreement. A broad coalition of labor, Hispanic, immigrants rights, civil rights, religious and other groups opposed the agricultural employers' demands.

The H-2A Guestworker Program Agricultural employers who anticipate a labor shortage may apply for permission to hire temporary foreign workers under the H-2A guestworker program. It has its origins in World War II, was codified by Congress in 1952, and was streamlined in the 1986 immigration law. It allows agricultural employers in the United States to hire foreign workers to perform seasonal farmwork under a temporary visa when insufficient numbers of United States workers are available. *As "non-immigrants," H-2A workers do not acquire any rights to live or work in the United States beyond their temporary employment at a particular employer. H-2A workers must return to their home country at the termination of their temporary employment in America. Permanent labor certification is not an option for such temporary jobs.*

The H-2A program has been growing in the last several years and now fills more than 25,000 jobs. The GAO found that the Department of Labor approves 99% of employers' applications for such guestworkers. Many of the participating employers grow apples or tobacco on the east coast, but other employers include sheep ranches in the West and greenhouses in New York and Oregon.

How the H-2A Program Works An employer expecting a labor shortage may file an application for a labor certification 60 days (or more) before the date of need. *The Department of Labor must review the application within 7 days* to ensure it complies with the law. Following a domestic recruitment period that does not fill all jobs, DOL must issue the labor certification *no more than 20 days before work begins.*

Protections for U.S. Workers and Guestworkers Congress recognized that a person in guestworker status is vulnerable. Many foreign workers from poor nations would accept labor standards that U.S. workers could not accept. In addition, guestworkers frequently live under the realistic fear that if they stand up for their rights, join a union, or do not work at the limits of human endurance, they will be fired and deported and then blacklisted. The H-2A statute contains modest protections against employers' undercutting of U.S. labor standards. Most importantly:

- ◆ H-2A visas may not be issued for temporary foreign workers until the employer has applied to the U.S. Department of Labor for a "certification" that (1) there are not sufficient U.S. workers who are able, willing, qualified and available to perform work at the place and time needed, and (2) the wages and working conditions of workers in the United States similarly employed will not be "adversely affected" by the importation of H-2A workers

- ◆ employers must recruit U.S. farmworkers for the jobs using the U.S. Employment Service's interstate job clearance order process, and through "positive recruitment," which means the use of private-market mechanisms in known areas of labor supply
- ◆ employers must provide free housing (with some exceptions detailed in the regulations)
- ◆ employers submit a proposed "job offer" which must contain all material terms and conditions of employment and forms an enforceable work contract
- ◆ to protect against undermining of wage rates, wages must be set at the highest of: (a) the local labor market's prevailing wage, (b) the state or federal minimum wage, and (c) the "adverse effect wage rate" (the "AEWR"). The AEWR is set by DOL and, though it has failed to do so, is supposed to alleviate the depressing effect on wages caused by the presence of foreign workers (both undocumented and guestworkers). The AEWR is the regional average hourly wage for field and livestock workers.
- ◆ Employers must provide workers with a minimum amount of work opportunities (at least three-fourths of the work-days in the stated season) or pay for any shortfall (absent an Act of God).

The growers' complex, lengthy proposals remove most of these labor protections and would authorize a series of wage and other employment practices that are currently illegal and completely inappropriate.

A Lack of Enforcement Unfortunately, the Department of Labor has not complied with its responsibility to prevent employer abuses of the H-2A program, as documented in several government studies and media exposés. Large grower trade associations manipulate the system. DOL frequently permits approves H-2A job offers whose wages and working conditions are so unattractive that few, if any, U.S. workers will accept them, and the guestworkers generally have no economic power to demand improvements.

Regulatory Reform Responds to H-2A Employers But Not Workers In response to growers' allegations of excessive H-2A bureaucracy, in October 1998 the Department of Labor proposed several changes in the regulations to "streamline" the H-2A program to benefit employers. The Department has ignored several studies which have recommended regulatory changes to improve worker protections.

Immigration Status v. Guestworker Status The H-2A guestworker program continues to be available to growers. However, our government should not force migrant farmworkers into a choice between undocumented status and guestworker status. Neither one is acceptable because they provide employers with extraordinary power over workers and deny workers access to our democratic institutions and economic opportunities as well as to a reasonable family life. Indeed, some undocumented workers have preferred their status because, unlike guestworkers, they possess the freedom to "vote with their feet" by quitting a job that has unacceptable employment terms. But it is a false choice. The indentured servitude authorized by guestworker programs should not be a policy option. **If this country needs more farmworkers, or wishes to regularize the status of undocumented farmworkers, they should be provided *immigration* status.**

For more information Contact Bruce Goldstein, Farmworker Justice Fund, Inc., 1111 19th Street, N.W., Suite 1000, Washington, D.C. 20036 (202) 776-1757.

CRS Report for Congress

Congressional Research Service • The Library of Congress

Immigration: The "H-2A" Temporary Agricultural Worker Program

Joyce Violet
Specialist in Immigration Policy
Education and Public Welfare Division

Summary

In recent years, there have been various legislative efforts to modify or supplement the existing H-2A temporary agricultural program authorized by the Immigration and Nationality Act (INA). Different provisions to expand the current program have passed the Senate and been approved by the House Judiciary Subcommittee on Immigration and Claims. Concern centers on making the program easier for growers to use while still maintaining protections for domestic labor. Growers have made limited use of the program in the past and a few years ago program usage was in decline. Current trends, however, show an increase due in part to increased demand from tobacco growers. This report will be updated to reflect legislative and other changes.

Background

Throughout the 20th century, U.S. agricultural producers have depended on foreign workers as a significant part of their seasonal workforce. Between 1942 and 1964, Mexican farm workers generally worked legally in the United States under the auspices of the Mexican Bracero program, a temporary foreign agricultural worker program established initially to meet World War II labor shortages. U.S. agricultural producers employed more than 400,000 workers a year under the program at its peak in the last half of the 1950s.¹ Since the end of the Bracero program, Mexican farm workers increasingly have worked here illegally. In what is believed by some to be a conservative figure, the U.S. General Accounting Office (GAO) recently estimated that approximately 600,000 farm workers were working in the United States without legal authorization.²

¹ For a discussion of the impact of the Bracero program, see *Immigration: the Labor Market Effects of Temporary Alien Farm Worker Programs*, CRS Report 95-712, by Linda Levine

² *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers* (GAO/HEHS-98-20), December 1997, p. 7.

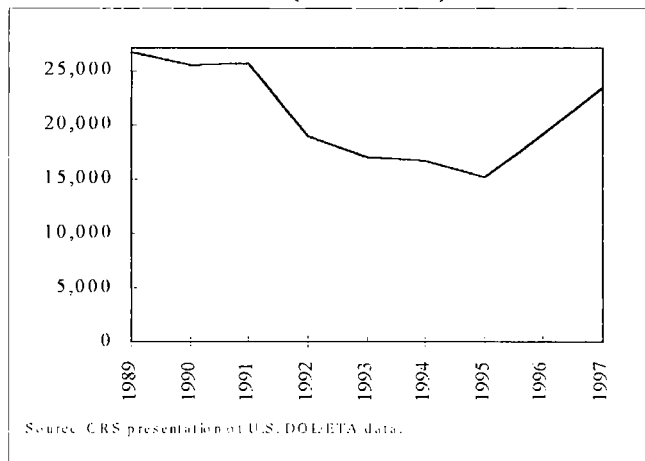


Since 1964, the only legal temporary foreign agricultural worker program in the U.S. has been the permanent but much smaller H-2/H-2A program. It was first authorized as the H-2 program in 1952 and amended as the H-2A program in 1986.

The H-2A Temporary Agricultural Worker Program

The "H-2A" program is authorized by the Immigration and Nationality Act (Section 101(a)(15)(H)(ii)(A) — hence its name). It provides for the temporary admission of foreign agricultural workers to perform work which is itself temporary in nature, *provided U.S. workers are not available*. The program is not subject to numerical restrictions. It is administered by the Labor Department's Employment and Training Administration (DOL/ETA) and the Department of Justice's Immigration and Naturalization Service (INS).

Figure 1. Number of H-2A Jobs Certified (1989-1997)



Numbers and Use. The H-2A program has always been very small in relation to the total number of U.S. farm workers. In 1997, approximately 2 million workers were employed in agricultural and related occupations, excluding farm operators and managers.³ The Department of Labor approved 23,352 H-2A job certifications in 1997. The program's numbers have also varied over the years (see **Figure 1**). The increase in job certifications beginning in 1996 reversed a declining trend. The average annual number of approvals over the 3-year period 1989-1991 was about 26,000. The average for 1992-1994 declined to about 17,500. In 1995, there were 15,117 approvals. The decline in H-2A job certifications during these years was due mainly to reduced demand by Florida sugarcane producers because of mechanization. Between 1988 and 1992, H-2A certifications in Florida declined by 61%, from about 11,000 to 4,300 approvals.

Various factors accounted for the increase in approvals in 1996 and 1997. According to DOL/ETA, significant factors were applications from new participating states, and returning participants requesting certifications for new crops and services. Increased demand from tobacco growers accounted for the largest number of new job certifications. Of the 23,352 H-2A job certifications approved by DOL/ETA in 1997, 62% were in tobacco. North Carolina alone accounted for 28% of all H-2A job certifications awarded, most of which were in the tobacco industry (see **Table 1**). Led by North Carolina, 9 states accounted for 80% of H-2A activity. The other 8 states were Virginia (16%), Kentucky (10%), New York (9%), Connecticut (6%), Massachusetts (4%), Tennessee (3%), Idaho (2%), and Texas (2%).

³ U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998, p. 179.

Table 1. FY 1997 H-2A Workers Approved-by State and Crop

State	Crop/Agricultural Work	No. workers approved	State	Crop/agricultural work	No. workers approved
Alabama	Shepherd	4	North Carolina	Tobacco, vegetables	6,444
Alaska	Animal slaughter	2	North Dakota	Shepherd, custom combine	4
Arkansas	Vegetable harvest	14	Nebraska	Custom combine	17
Arizona	Shepherd, farmwork, fruit harvest	197	New Hampshire	Apples, diversified crop, vegetables	334
California	Shepherd, sheep shearer	441	New Jersey	None	
Colorado	Shepherd, sheep shearer	212	New Mexico	Sheep shearer	1
Connecticut	Apples, Christmas trees, dairy/poultry	1,290	Nevada	Shepherd, onions, garlic, farmwork, livestock	427
	diversified crop, nursery, sod		New York	Apples, horticulture, livestock	2,122
	tobacco, vegetables		Ohio	Vegetables, tobacco, nursery	113
Delaware	None		Oklahoma	Custom combine, vegetables, farm machinery	451
Dist. of Columb.	None		Oregon	Shepherd, sheep shearer	74
Florida	Sugarcane	4	Pennsylvania	Diversified crops	8
Georgia	Greens/vegetables	170	Rhode Island	Apples, diversified crops	11
Hawaii	None		South Carolina	None	
Idaho	Shepherd, sheep shearer, irrigators	557	South Dakota	Sheep shearer, custom combine	20
Illinois	Vegetables	185	Tennessee	Tobacco, tomatoes, nursery	755
Indiana	None		Texas	Farmworker, field crops, beekeeper, livestock,	521
Iowa	Dairy farm	6		custom combine, pecans, horticulture, vineyard,	
Kansas	Custom combine	92		horse trainer, sod, farm machinery	
Kentucky	Tobacco, hay, straw, nursery	2,402	Utah	Shepherd, sheep shearer	179
Louisiana	Sugar cane	173	Virginia	Tobacco, hay, cabbage, vegetables,	3,706
Maine	Apples, blueberries, diversified crop, nursery,	451		produce, berries, apples	
	vegetables				
Maryland	None		Vermont	Apples, diversified crops	449
Massachusetts	Apples, farmworker, diversified crop,	969	Washington	Shepherd	16
	nursery, sod, tobacco, vegetables		West Virginia	None	
Michigan	None		Wisconsin	None	
Minnesota	None		Wyoming	Shepherd, sheep shearer	261
Mississippi	Nursery, watermelons	45			
Missouri	Sheep shearer	6			
Montana	Shepherd, custom combine, irrigators	164			

Source: CRS presentation of U.S. DOL/ETA data. In most cases, the data in this chart are from hand counts of regional files. DOL does not guarantee the accuracy of this data but feels that it is a reasonable indicator of key H-2A activity in each state.

Procedures. The H-2A program requires an affirmative search for available U.S. workers and a determination that admitting alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Employers must apply to the Labor Department for certification that unemployed domestic workers are not available and that there will not be an adverse effect from the aliens' entry. The Labor Department's certification is advisory only; the final decision to admit H-2A workers is made by INS.

Employers seeking alien workers are required to apply for certification at least 60 days in advance of the estimated date of need.⁴ (Prior to the 1986 amendments, applications were required 80 days in advance of the estimated need.) The Labor Department is required to approve or deny certification not later than 20 days before the date of need. Expedited procedures are provided for administrative review of denial of certification, as well as for a new determination if an application is rejected on the grounds that U.S. workers are available and this proves not to be true. Protections for alien workers include free housing and workers' compensation provided by the employer.

Issues and Debate

Growers have long complained that the H-2/H-2A program is overly cumbersome, while farm labor advocates have argued that it provides too few protections for U.S. workers. In part, the ongoing debate reflects the inherent conflict in the program goals of expeditiously providing employers with foreign workers while protecting U.S. workers.

In a recent audit the Labor Department's Office of the Inspector General concluded that "the H-2A certification process is ineffective. It is characterized by extensive administrative requirements, paperwork and regulations that often seem dissociated with DOL's mandate of providing assurance that American workers' jobs are protected."⁵ There is general agreement between advocates for U.S. farm workers (e.g., the Farmworker Justice Fund, Inc.) and representatives of agricultural interests (e.g., the National Council of Agricultural Employers) that the H-2A program is marked by excessive administrative requirements and paperwork. However, this is one of the few points of agreement between growers and U.S. farm workers regarding this program.

Summarizing the current debate, agricultural employers argue that the H-2A program in its current form is insufficiently flexible and entails burdensome regulations and potential litigation expenses for employers. Proponents of this view support extensive changes that they believe would increase the speed with which employers could hire foreign workers, and reduce the government's ability to delay or block such employment. More recently, proponents of an expanded program have expressed concern that the large number of illegal aliens in agriculture, in combination with stepped up INS enforcement and recent immigration reforms, will result in a labor shortage. As a result, they believe that there is a need to allow for an expansion of the H-2A program. However, opponents of expansion

⁴ This time period may be waived in emergency situations for employers who did not use the H-2A program the preceding year, provided that there is an opportunity to obtain sufficient labor market information on an expedited basis. See 20 C.F.R. § 655.101(f)(2) (1997).

⁵ *Consolidation of Labor's Enforcement Responsibilities for the H-2A Program Could Better Protect U.S. Agricultural Workers*, Report 04-98-004-03-321, March 31, 1998, p. iv.

contend that there is already a surplus of U.S. farm workers and that a sufficient number of seasonal agricultural workers would continue to be available in the unlikely event that illegal immigration is significantly reduced. Opponents also argue that any further streamlining efforts, such as reducing advanced filing deadlines and relaxing employment certification procedures, would weaken protections for domestic workers.

Legislation in the 104th Congress. A legislative measure to replace the labor certification requirement with a labor condition attestation was proposed but not adopted in the 104th Congress. As noted above, labor certifications require that employers attempt to recruit U.S. workers or demonstrate a worker shortage as conditions for Labor Department certification. The labor condition attestation, however, would have required only that employers state the specified wage rate and that the employment of the farm workers would not adversely affect U.S. workers. DOL would have been authorized to enforce the attestations in response to complaints that they were not being met or that they misrepresented the facts.

The 104th Congress bill would have supplemented the H-2A program with a large-scale, pilot "H-2B" temporary agricultural worker program. Opponents of the proposed new program, such as organized labor, argued that it would result in temporary foreign workers taking jobs from U.S. workers and remaining in the country as illegal immigrants. The measure was approved by the House Agriculture Committee, but it was defeated when offered as a House floor amendment to an omnibus immigration bill. Instead, Congress mandated a review of the existing program by GAO to determine if it provided an adequate supply of agricultural labor in the event of shortages of domestic workers.

In its report issued in December 1997, GAO found that no national agricultural labor shortage then existed or was likely in the near future. However, they stated that "localized labor shortages may exist for specific crops or geographical areas." In keeping with the subtitle of the report, "Changes Could Improve Services to Employers and Better Protect Workers," GAO suggested improvements in the H-2A program. These included shortening the notice required of employers petitioning for foreign workers from 60 to 45 days in advance of anticipated need, and adopting specific wage guarantees for workers.

Legislation in the 105th Congress. Different approaches toward expanding the H-2A program passed the Senate and were approved by the House Judiciary Subcommittee on Immigration and Claims. On March 12, 1998, the House Immigration Subcommittee approved H.R. 3410, the "Temporary Agricultural Worker Act of 1998," for full committee consideration. The bill was introduced by Representative Robert Smith, the Chairman of the House Agriculture Committee, and closely resembled H.R. 2377 which he introduced the previous August. H.R. 3410 would have established a 2-year pilot version of the large-scale temporary agricultural worker program authorized by legislation reported by the House Agriculture Committee in the 104th Congress but not adopted.

H.R. 3410 was opposed by the Administration, as was the amendment to the Senate-passed S. 2260, the FY1999 Commerce, Justice, State (CJS) Appropriations bill, discussed below. The Senate amendment evolved from S. 2337, introduced on July 21, 1998 by Senator Gordon Smith of Oregon for himself and Senators Wyden, Craig, Graham, Gorton, Bumpers, Hatch, McConnell, and Mack. An amended version of the bill was adopted on by a vote of 68-31 on July 23, 1998 as a floor amendment to S. 2260. It proved controversial during conference negotiations, and was not retained in the final law.

The Senate amendment would have established a nationwide system of registries, to be maintained by the Department of Labor.⁶ These registries would operate both as a database of currently available, legal U.S. workers and the gateway to the employment of foreign workers. The new program would require employers seeking workers through the registry to do so at least 21 days in advance of need. Employers using the registry would apply first, a process which would require assurances that they would pay a specified wage rate, comply with relevant labor laws, contact former employees, and provide workers compensation. Employers would then either be referred U.S. workers or notified of their unavailability at least 7 days before the date of need. At that point, the employer could petition for H-2A workers to make up the shortage. Another departure from current practice would have allowed H-2A workers to apply for immigrant status under the current numerical limits after the 4 consecutive years of employment for 6 months in H-2A status. Opinions differed widely on the likely impact of the Senate-passed program on both U.S. workers and illegal immigration. Similar legislation is expected to be introduced in the 106th Congress.

The Department of Labor's Proposed Regulations. DOL would prefer that the H-2A program be streamlined through administrative rather than legislative changes. Toward this end, it has proposed amending its regulations to:

- Transfer responsibility for approving H-2A visa petitions from INS to DOL; and
- Reduce from 60 to 45 days the period of time prior to need that employers must file labor certifications;
- Reduce from 30 to 15 days the period of time prior to occupancy employer-provided housing would be available for inspection;
- Allow more flexibility in the required use of registered farm labor contractors;
- Eliminate the requirement that employers notify the local Job Service of the H-2A worker's departure to the employer's place of employment.⁷

The first change noted above would require a delegation of the Attorney General's authority for final approval of H-2A petitions to the Secretary of Labor, a step which has been initiated by INS. Quoting from the Supplementary Information accompanying the proposed regulations:

Removing the INS adjudication will result in a streamlined process through which an importing employer needs to file only with one Federal agency. The Federal Government will ensure that the employer's petition moves through the remainder of the process, eliminating the need for the employer to interact with various different agencies.⁸

⁶ See *Comparison of Senate-passed Temporary Agriculture Worker Program with Existing H-2A Program*, CD Memorandum, by Joyce Violet (available from author upon request).

⁷ *Federal Register*, October 2, 1998, pp. 53244-53248.

⁸ *Ibid.*, p. 53246.

MEMORANDUM

TO: Irene Bueno
FROM: Rick Swartz
DATE: April 22, 1999
RE: Update on efforts to explore possible common ground on farmworker issues

Enclosed is an April 6 draft memo which I prepared with input from Demetri Papdemetriou. It attempts to frame a range of farmworker issues, and to identify options to address them which might provide a basis for further discussions by all parties to determine if there is any prospect for common ground. The April 6 draft identifies and discusses six baskets of issues:

- Legal status for undocumented farmworkers now in the U.S.
- Access to Housing, Health Care, Education and Essential Human Services
- Employment Registry, Rights and Working Conditions
- Targeted Enforcement against Exploitation, Smuggling and Dangerous Conditions
- Temporary Foreign Worker Programs and International Considerations
- Assistance for State and Local Governments

Also enclosed is a memo from the Farmworker Justice Fund which is highly critical of this process, the draft proposed framework and my role, together with my response, are a memo from DOL economist Rick Mines commenting on the proposed draft framework also is enclosed.

On April 20, the policy committee of the National Council of Agricultural Employers (NCAE), comprised of about 15 industry leaders from across the country, authorized NCAE's representatives to explore with other parties each of the six basket of issues which the April 6 draft framework discusses. On April 30, Bishop DiMarzio, Chair of the Board of Migration and Refugee Services at the U.S. Catholic Conference, will convene a day-long meeting of church leaders and staff from around the country to discuss prospects for farmworker reform, the framework I have proposed and related matters. Demetri and I have been asked to make presentations, as have NCAE and farmworker unions and advocates. Other groups are still reviewing the proposed draft framework, with some expressing interest in the direction suggested, and others expressing skepticism.

It appears likely that Senator Abraham will convene a hearing on these matters the week of May 10, without any legislation yet introduced. Witnesses are expected to be asked to frame issues and identify options, and to comment on prospects for consensus among diverse interests.

Please feel free to call with any questions or concerns.

DRAFT ** DRAFT ** DRAFT ** DRAFT ** DRAFT ** DRAFT ** DRAFT **

CONFIDENTIAL

NOT FOR FURTHER DISTRIBUTION AT THIS TIME

**DETERMINED TO BE AN
ADMINISTRATIVE MARKING**

INITIALS: By DATE: 12/28/2017
2017-1120-S

**Proposed Framework for Consideration of Fundamental Reform of the Agricultural
Labor System in the United States**

April 6, 1999

This paper is premised on a judgment that 1999 may present an historic opportunity for Congress, the President and the nation to reform in fundamental ways the agricultural labor system in the United States. During recent weeks, there have been informal exchanges among private interests about possibilities for common ground on agricultural labor issues generally. Based upon these conversations and a sample of congressional offices, outlined below is a proposed framework for consideration of fundamental reforms of the agricultural labor system.

It should be understood that no interested party has yet endorsed any of these proposals. It also must be acknowledged that farmworker issues have for years been fraught with conflict, accusation, litigation, injustice and distrust.

Despite the challenges and suspicions, the framework proposed represents a good faith effort to invite all parties to consider whether at this time there is a "package of reforms" which would represent a dramatic improvement for farmer and farmworker alike. No one in this debate can or even attempts to defend the status quo. The challenge to the political system is to find the will to overcome past injustices and conflicts in order to address, for the future, the legitimate needs of all of those involved in agricultural labor.

Proposed Framework

Reform issues related to farm labor are many and complex. A framework to encourage a search for common ground and consensus among all major public and private interests is daunting, and could be approached differently by others. The approach taken here is to suggest six "baskets" of major issues, to break these down into more discreet subissues, and then to identify a menu of two or more reform ideas on each.

The hope is that such a menu, briefly explained and simply presented, may enable parties on all sides to identify one or more options which they can "work with" for each of the issues discussed. If there is sufficient interest, then perhaps over the next week or two the various parties can discuss informally whether despite past differences they can see the possibility of a reform package that would be worth serious consideration. If substantive dialogue can proceed there may be some promise of success. At the least, good faith efforts, even if they fail, would show respect for the urgency and opportunity to reform a farm labor system in America which no one defends.

- Legal status
- Access to housing, health care, education and essential human services
- Employment registry, rights and working conditions
- Targeted enforcement against exploitation, smuggling and dangerous conditions
- Temporary foreign worker programs and international considerations
- Assistance to state and local governments

A. Issues Related to Legal Status

The U.S. agricultural industry, particularly the labor-intensive fruit, vegetable and horticultural sector, for decades has employed a high proportion of foreign workers. Heavy reliance on foreign workers is indeed the norm in agriculture in virtually all industrialized nations. It is estimated that in recent years approximately 2.5 million persons are hired annually to do farm work. About one third work fewer than 25 days a year, a third between 25 and 150 days a year, and a third work more than 150 days at hired farm work.

Of the approximately 800,000 persons engaged in farm work more than 150 days a year and of the approximately 800,000 who work between 25 and 150 days a year, a significant proportion are undocumented immigrants not authorized to work in the United States. Although precise statistics are not available, experts and government agencies have estimated that between 30 and 60% of this work force is comprised of undocumented immigrants. That is, perhaps 480,000 to 960,000 of the current farm labor work force is undocumented.

Any possible consensus package of farmworker reforms must address the issue of legal status. Consultations to date suggest that many interested parties agree that it would be devastating to the entire U.S. agriculture economy if the current undocumented work force were suddenly to disappear.

It makes sense to consider options to provide the right to work and somehow legalize the status of undocumented workers already here. This would ensure employers that much of their current work force would be brought within the law, and would enable the INS and other authorities to establish and appropriately regulate their presence. For workers, legal status would eliminate the fears and risks of a covert existence, and provide hope for a more secure future under the protection of the law.

Options related to legal status include:

1. Accord H-2A status to current undocumented agricultural workers, with an opportunity to secure permanent legal residence under prescribed conditions.

The Senate approved such a concept in 1998, and the Congress adopted such a legalization program for undocumented farmworkers as part of the Immigration Reform and Control Act of 1986. However, consultations suggest that the specific requirements and provisions of both the 1998 Senate proposal and the 1986 law would not attract widespread support in 1999. A compromise "in the middle," however, may be possible.

For example, current undocumented agricultural workers could be offered an opportunity to apply from within the United States to become “legal” H-2A workers. If they abide by all legal requirements of H-2A workers and continue to work for a prescribed number of years and/or total months in agriculture, they would earn the right to adjust their status to legal permanent residence. If this general concept provides a basis for consensus, the challenge will be to find consensus on the specific terms to be met to establish eligibility for such a program. Such a program could also apply to persons not currently in the United States who may in the future be lawfully admitted under a reformed H-2A program upon documented shortages of legal workers.

2. Strengthen the capacity of community-based groups and employers to assist the current undocumented agricultural work force and future H-2A admissions acquire legal status.

Implementation of the type of program outlined above will require close cooperation between employers, government agencies and community-based groups which work with migrant workers. Public and private resources would be required to educate, counsel and otherwise assist farmworkers, determine whether they may be eligible, decide whether to apply and to navigate successfully and lawfully the application process. Application fees paid by the employer and/or worker could subsidize such assistance, together with direct government and philanthropic grants. The role of employers and private institutions would not only assist workers, but dramatically reduce risk of fraud in the application process. This institutional infrastructure will also be key to the worker registry, discussed in Section C.

3. Provide a waiver of relevant provisions of the 1996 Immigration Act which bar lawful reentry to the U.S. of undocumented persons who have resided unlawfully in the U.S. for more than 180 days since January of 1997.

The Senate adopted such a provision in 1998 to enable members of the current undocumented agricultural work force to qualify for participation in a modified H-2A program.

B. Access to Housing, Health Care, Education and Essential Human Services

In April of 1997, the U.S. Department of Labor published a “Profile of U.S. Farmworkers.” Regarding farmworker income and poverty, it found:

- ◆ Farmworkers had low individual earnings from farm work; the median income from farm work was between \$2,500 and \$5,000. Three fourths earned less than \$10,000 annually.
- ◆ Only one-fourth of the farmworkers had non-farm work earnings. The median personal income from farm work and other work source combined was between \$5,000 and \$7,500.
- ◆ Few farmworkers had assets. About half (49%) owned a vehicle and about one third owned or were buying a house or trailer in the United States.
- ◆ Farmworker households also had low family incomes. The median was between \$7,400 and \$10,000, and over three fifths of farmworker households were in poverty.

- ◆ Despite pervasive poverty among farm workers, few used social insurance or social service programs.

Employers and farmworker advocates, experts and government officials, agree that seasonal migrant farmworkers, whether U.S. citizen, legal immigrant or undocumented, need decent, affordable housing in order to make the journey required to perform their work. There is general agreement that throughout the United States, there are severe shortages of decent, affordable or even habitable housing for farmworkers.

There also is general consensus that migrant workers generally do not earn enough to pay for health care and seldom have health insurance. The U.S. Public Health Service funds some migrant health centers, but available resources are inadequate to meet the need. Mobile units can be effective but few exist.

Although many farmworkers fit the income eligibility profile for Medicaid, Social Security insurance, and other federal or local assistance programs, many do not obtain benefits. Undocumented workers and some legal immigrants are ineligible. Many farmworkers who are eligible may not understand so or lack assistance in seeking needed programs. Current use is remarkably low.

The lives of farmworker children, now as in the past, are difficult, poignant and all too often mired in poverty, poor health and inadequate educational opportunities. Child labor in the fields remains an issue. Children feel economic pressure to drop out of school in order to work. Some migrant children are U.S. citizens born of undocumented immigrants, and the fear of deportation of their parents often means children do not secure benefits or services for which they are eligible. The Migrant Head Start program and other initiatives can be beneficial, but as is the case regarding housing and health care, available resources are inadequate to meet the need.

Consultations suggest there is widespread consensus among employers and farmworker advocates that there are great needs to reform and adequately fund initiatives related to the access of farmworkers to housing, health care, education and other essential human services, and that such efforts are in the public interest.

Options to address these needs include:

1. Housing

- New federal funding to states, local governments and private institutions to address farmworker housing shortages nationwide.

Several states, including Florida and Washington, are now developing initiatives. For example, Florida Governor Bush is seeking \$30 million in federal funds to initiate a statewide network of affordable housing for migrant and seasonal farmworkers. Components of this initiative include for rental housing, inmate-modular produced homes, grants to non-profit groups to help develop and manage such programs, and related assistance. Governor

Locke of Washington has proposed significant housing initiatives as well, including \$6 million of state funding.

Employers and farmworker advocates alike might consider whether initiatives underway in Florida, Washington and other states are worthy of support and provide a model to help meet farmworker housing shortages in other parts of the country.

- Provide adequate funding to support existing USDA, HUD and related federal, state and local farmworker housing programs.

Existing federal programs such as USDA Section 514-516 farm labor housing programs, community development block grant housing rehabilitation and similar state and local programs require greater funding to meet significant housing needs across the country. It is beyond the scope of this paper to identify what levels may be required. If farmers and farmworker advocates alike agree they have a common interest in the availability of more and better farmworker housing, a comprehensive analysis can be undertaken to determine which programs require what level of funding to meet the need. Questions of eligibility are also very important.

- Provide tax credits or other incentives such as matching grants for agricultural employers, housing developers, or non-profit housing organizations to help meet the need for housing, and consider federal preemption of local regulations which unreasonably restrict farmworker access to housing.

Providing housing for workers who may be in the area only for weeks has proven an intractable problem in many areas. As discussed in section E, employers who use H-2A temporary workers must provide some access to housing, but even if consensus on how to do this can be reached many other farmworkers have severe housing needs. And in some locales zoning laws and political opposition prevent the construction of farmworker housing even when the employer is willing to pay for it.

If there is general consensus on the need, then interested parties might consider tax credits, grants and other concrete reforms to fairly enable both public and private institutions greatly expand their efforts to meet the need.

2. Health Care, Education and Other Services

- Create private insurance pools, perhaps with tax credits, to encourage private health and disability insurance.
- Tax credits or other incentives to fund private insurance could significantly expand coverage. Such initiatives could reduce cost often born by local hospitals for emergency care. Prevention programs can reduce overall costs as well.

It is difficult to insure workers who sojourn for short periods among multiple employers. An option is to consolidate or pool employer/employee premium payments and coverage. Some programs to this effect exist or are under consideration.

- Provide eligibility and facilitate access of legal immigrant and citizen farmworkers to publicly funded health and other human services programs.

Senator Moynihan is proposing legislation to restore federal benefit eligibility for some programs to certain legal immigrants, including some who are farmworkers. The Administration has made similar proposals. Outreach and assistance from community-based groups needs expanded public and/or private funding to assist those who are eligible actually access services. Migrant education, Head Start, job training, and similar programs could similarly be reviewed to identify eligibility issues and access and barriers to access which may warrant appropriate reforms.

- Provide adequate funding for health, education and human services programs which target farmworkers.

If there is sufficient interest from farmers and farmworker advocates, a comprehensive review can be undertaken to determine funding requirements for appropriate federal and/or state and local programs. For example, a \$50 million increase for migrant education programs would reach an additional 75,000 – 100,000 migrant children. A \$50 million increase in USDA's Community Facilities Program would allow significant expansion of child care in underserved rural communities, among farmworkers.

Some experts believe that one reason why the agricultural labor supply may be constricting is that recently enacted restrictions on legal immigrant access to human services has made it very difficult for some farmworkers to stay in agriculture. This is because either new restrictions on eligibility and/or fear of immigration consequences make it impossible for them to provide for their families, given the seasonal nature of the work and associated low incomes. Accordingly, issues related to access to essential services may be relevant to issues of domestic labor supply of legal workers.

C. Employment Registry, Rights and Working Conditions

Regardless of conflicting opinions about a shortage of farmworkers, whether today or in the future, in the aggregate or on a spot basis, there may be consensus that there is a need for great improvement in matching available citizen and legal immigrant workers with available jobs. There may also be a general consensus that it is important to more effectively uphold and enforce the rights and duties of workers and employers alike to the full extent the law prescribes. Law-abiding employers are undercut competitively by those who violate the law. Upholding rights and obligations is important not only to the wellbeing of workers but also to encourage them to stay within the agricultural sector. And despite disagreements about whether there are or may be labor shortages and how this should be documented before the admission of temporary foreign workers is authorized, there is agreement that foreign workers should not be admitted if there are enough U.S. citizens and legal immigrant workers to fill the available jobs.

Options to address these considerations include:

1. Establish an effective agricultural worker registry

Although there are sharp disagreements as to whether a “worker registry” mechanism should substitute for the “labor certification” requirement under current law before a temporary foreign worker can be admitted, there may be agreement that an effective farmworker registry is a good idea. The challenge is to construct the registry so that it works effectively to in fact match available workers with available jobs.

The Department of Labor’s FY 2000 budget request includes \$10 million to develop “Agnet,” a farm work registry modeled on the computerized “America’s Job Bank.” Some are concerned that regardless of how any such registry is established, many if not most farmworkers will have difficulty accessing or using it. They will require assistance, and therefore community-based groups working with farmworkers will need expanded capacity to provide such assistance, which may be essential to enable a registry to work effectively on behalf of employer and worker alike.

To achieve these goals, it would appear that employers, farmworker advocates, community-based groups and government officials will need to come together to construct it. The question is if there is sufficient will on all sides to cooperate for this purpose. Any effort to secure broad support for comprehensive reform of our agriculture labor system must include basic agreement on how to construct and implement an effective agricultural worker registry, regardless of whether employer reliance on such a registry should substitute for the labor certification requirement of the current H-2A law.

2. Affirm and clarify the employment rights of all farmworkers and strengthen respect for such rights as a matter of employer practice and social norms.

Under federal, state and/or local laws, farmworkers, like other workers, have a range of rights related to wages, safe working conditions, discrimination, child labor, collective bargaining, etc. Many farmworkers may not understand their rights or are afraid to assert them, especially the undocumented. Many employers do or wish to obey the law but some do not. Government agencies have the authority to monitor and enforce, but sometimes lack adequate resources or arguably misallocate available resources.

For decades there have been disputes over what rights farmworkers enjoy and the extent to which these rights are honored. If employers and farmworker advocates are willing to come together to seek consensus on fundamental farmworker reforms, it would seem appropriate that they should together attempt to achieve a new consensus regarding appropriate rights and how more effectively to uphold them.

This paper will not attempt such a review, which would best be undertaken by individuals and groups more expert and directly responsible. Topics which such an effort might address could include child labor, safe working conditions, field sanitation, reform of outmoded provisions of the Migrant and Seasonal Agricultural Worker Protection Act and

strengthening programs to educate employer and worker alike and to maximize voluntary compliance as a matter of norm and practice.

D. Targeted Enforcement against Exploitation, Smuggling and Dangerous Conditions

Leaders of both the agriculture industry and farmworker advocates agree that today, as in the past, there are certain employers and farm labor contractors who persistently exploit, violate the law, perpetuate unsafe working conditions and actively recruit undocumented workers because they live in fear, have fewer rights and are more vulnerable to threats and reprisal. There also is agreement that strengthened INS border enforcement has led to a dramatic increase in organized smuggling of undocumented immigrants, at higher cost and greater danger.

Consultations suggest that law-abiding employers and farmworkers have a shared interest in much greater enforcement efforts targeted at such actors. Options include:

1. Establish and adequately fund “swat teams” at DOL, INS and other relevant federal agencies with the sole and exclusive mandate of targeting all who engage in such notorious practices. Consultations among experts might produce specific targeting guidelines and effective enforcement practices for these purposes. Such initiatives might also provide federal funding and/or expand cooperation with state and local authorities to the same end.
2. Dramatically increase penalties against those convicted of multiple offenses, patterns and practices and otherwise punish the bad actors as severely as possible while increasing their risks of being investigated, prosecuted and convicted.
3. Expand significantly cooperation with authorities in Mexico and other sending countries against abusive practices of farm labor contractors on foreign territory, coupled with continued expansion of international cooperation against alien smuggling rings.

Other initiatives might be developed if all parties work together to implement a renewed commitment to end the most egregious practices, practices which not only harm workers but which undermine the competitiveness of law-abiding employers.

E. Temporary Foreign Worker Programs and International Considerations

Agricultural employers agree with farmworker advocates that temporary foreign workers should not be admitted to the United States unless there are no legal immigrants or U.S. citizens willing and able to fill available jobs. They disagree, however, on whether such shortages now exist or might in the future, whether increased wages and improved conditions would attract a greater and sufficient number of domestic farmworkers to fill available jobs and about what specific requirements employers should have to fulfill before they are allowed to employ temporary foreign workers.

Agricultural employers have stated that the goal of a reformed temporary agricultural worker program should be “to facilitate increased U.S. economic activity and employment in agriculture and in its related “upstream” and “downstream” occupations, while not adversely affecting the wages, working condition and employment opportunities of U.S. residents who do seasonal agricultural field work.” (The Case for a New Temporary Alien Agriculture Program, NCAE, p.17).

Consultations suggest that, thus stated, most interested parties would accept this as appropriate public policy goal. Some have argued, however, that by definition temporary worker programs, and/or the changes in the H-2A program the Senate adopted in 1998, would adversely affect the wages and opportunities of U.S. residents.

It may well not be possible to resolve to the satisfaction of all fundamental conflicts over macroeconomic and normative considerations which inform conflicting opinions. It may be possible, however, to seek basic consensus on the key issues and options which must be resolved if there is to be any chance of employers and farmworker advocates to agree to a comprehensive package of reforms, including but not limited to reforms in the H-2A program. It is also important to address international considerations, and the interest and roles of foreign governments, related to temporary foreign workers.

To this end, key issues include:

- Can a farmworker registry to match U.S. workers with jobs be effectively implemented, and if so, should employer participation in such a registry substitute for H-2A labor certification requirements under current law?
- What wages must be paid H-2A workers as a condition of their admission, the adverse effect wage rate which current law requires, the prevailing wage plus 5% provision the Senate approved in 1998 or some other standard?
- What housing, insurance, transportation, and other benefits must be provided H-2A workers as well as U.S. workers as a requirement of H-2A admissions?
- What incentives and/or requirements can best ensure that employers will have a strong preference to employ and retain U.S. citizens and legal residents, and will apply for H-2A workers only as a last resort when resident workers are not available?
- To the extent H-2A workers are admitted on a temporary basis, what requirements or provisions can fairly and best ensure that they return to their home country as may be required?
- Under what circumstances should H-2A workers who in the future may be admitted to the U.S. to work for the first time, become eligible to reside permanently?
- What role and programmatic initiatives are warranted regarding the involvement of foreign governments in the recruitment and protection of H-2A workers?

- To what extent, if any, should preference for H-2A participation be given nationals of certain countries, for example, Central Americans or Caribbeans from countries devastated by recent hurricanes?

There are a number of additional issues regarding proposed or possible changes in the H-2A program. But consultations suggest that the major issues identified above are the most important to resolve if there is any hope to achieve a broad-based, bipartisan consensus. Possible options to this end are identified below:

[Balance of this section to be written after Monte/Jim/Demetri review, with certain ideas to be taken from Demetri's first draft]

F. Assistance to State and Local Governments

Communities and counties where migrant and seasonal farmworkers live or sojourn often face strains on their local educational and service infrastructures. This is because of the seasonal nature of the work, high unemployment during the off-season and/or because of significant numbers of legal and unauthorized immigrant residents who often are not eligible for or cannot access federally funded programs. For these and related reasons, it may be appropriate to consider targeted federal assistance to such locales, given the importance of their vitality to the nation's agricultural production and economy, including the importance of agriculture to American exports.

There are precedents for federal impact aid or reimbursement to local governments related to special needs because of the presence of significant non-citizen populations. For example, the federal government reimburses for a period of time certain state and local government services provided to refugees fleeing persecution who are admitted to the U.S. Targeted assistance grants from HHS likewise help address local costs arising from refugees. In 1986, Congress provided impact aid to state and local governments related to a federal policy to provide legal status to certain undocumented immigrants.

In addition to proposals for federal funding for farmworker housing and other ideas identified above, it may be appropriate to consider impact aid approaches to assist state and local governments related to farmworkers. If there is a general consensus to pursue this concept, specific proposals can be developed in consultation with appropriate state and local actors.

Conclusion

As stated in the preface, the framework proposed herein represents a good faith effort to invite all parties concerned about the U.S. agricultural labor system to consider whether at this time in our history consensus can be achieved on a "package of reforms" which would represent a dramatic improvement for farmer and farmworker alike.

No one can defend the status quo. The ideas outlined above are not the only or necessarily best options. Hopefully this paper will stimulate better ideas, and help to activate the

political will to overcome past conflicts and injustices to achieve reforms which will serve well in the future farmers, farmworkers and the public interest.

RICK SWARTZ & ASSOCIATES

1869 Park Road, NW
Washington, DC 20010
E-mail: RickSwartz@aol.com

Tel: (202) 328-1313
Fax: (202) 797-9856

CHRON

Bruce Goldstein
Farmworker Justice Fund
1111 19th St., NW
Suite 1000
Washington, DC 20036

April 14, 1999

VIA FAX

Dear Bruce:

I have received from others your memo of April 7 responding to the draft "framework" which Demetri Papademetriou and I circulated to you and others on April 6, which explores possible common ground among diverse interests regarding a basket of needs and concerns affecting farmworkers. I'm sure it took significant effort to respond in writing so promptly and in such detail.

Thank you for taking the time to speak with Demetri and me regularly during the past several months as we have developed the draft framework. We have appreciated the opportunity to report to you about the meetings held and ideas heard in the course of attempting to discern possible common interests, and the character of conflicts, among different parties to the agricultural labor system. It has been important to hear your perspectives and concerns and to have the opportunity to report on our work to help ensure a transparent process.

I should note that while I respect your right to express your opinions in whatever manner you choose, I believe that some of the specific statements in your April 7 memo fail to acknowledge our conversations about this work, including statements from you which I understood to convey that certain interests had and would "vilify" this process, and me. I apologize if I mistakenly took this to mean that the only way I could keep them informed was through you. Demetri and I would be pleased to talk with any other farmworker advocates as you may suggest.

Recognizing your strong belief that it is not possible to find common ground, Demetri and I will undertake our best to share with others and take into account those legitimate points which your April 7 memo includes.

We would also be pleased to respond directly to you or others who received your April 7 memo, and invite your and their suggestions in this regard. We would be pleased to take individual calls, to participate in a conference call or meeting, to respond in writing or simply to take questions in any public or private forum which may be suggested.

In consideration of your observations, Demetri and I hope that we can clarify certain matters and find a way to identify initiatives which will benefit farmworkers and improve the American agricultural labor system. I trust we can at the least agree that the status quo is indefensible. Please let Demetri or me know how we can best work with you as we proceed.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Swartz". The signature is stylized with a large, sweeping "R" and a long, horizontal stroke extending to the right.

Rick Swartz

cc: Demetri Papdemetriou, Frank Sharry, Angela Kelley, Ann Hoffman, Muz Chishti, Joel Najar, Charles Kamasaki, Cecilia Muñoz, Wade Henderson, Margie McHugh, Josh Bernstein, Antonio Gonzalez, Robert Rubin, Bishop DiMarzio, Mark Franken, Michael Hill

P.S. I've just learned that the Department of Labor has received a copy of Demetri's and my "confidential" draft. Could you shed any light on how it got to DOL and/or if to your knowledge it has been circulated to others beyond those to whom it was addressed? Thanks.

Subject: need for transition

Date: Wed, 14 Apr 1999 17:00:30 GMT

From: Mines Richard <mines-richard@dol.gov>

To: demetri <demetri@ceip.org>

Rick
FYI

Demetri:

Someone sent me this paper which makes reference to someone named Demetri in the text. I send along my comments with all due respect.

Tu amigo,

Rick

Comments on "Proposed Framework..Agricultural Labor System..."

The paper is well written and the motivation to achieve a compromise which helps all parties is proper. Also, the idea that now is the time to begin discussing this general topic is quite correct.

Unfortunately, the paper has a fundamental flaw. It frames the debate in the context of a guestworker program, yes or no. And, as can be seen in Section E, the subscript of this treatment reduces the argument to how much do we reduce the protections of farmworkers.

The fundamental debate should be directed elsewhere than the locus of this properly motivated but misdirected paper. It should be clearly on the following question:

"How do we move from a cheap labor system in agriculture to a modern labor system."

In other words, how to we expand the debate out more widely to cover issues of trade, technology and modern labor management techniques and the sharing of labor across employers and regions. This paper distracts us from these broader questions and assumes that the current cheap labor system is permanent. However, many would argue that the cheap labor system is a loser. That the U.S. agriculture must adapt efficiencies in labor use through technological change, improved cultivars, and enhanced labor management. If we stubbornly hold to the old system because it is too much trouble to change, we may be doomed to a loss of market share. It may be misguided for public policy to actively help an industry maintain a system that needs to transition to a new form in order to remain competitive.

Now, let go through the sections of the paper one by one. There are many good ideas in the paper which could be incorporated in an effort to transition from a cheap labor system rather than trying to maintain it.

With regard to the legal issue, the problem with the paper is that in discussing the increasing illegalization of the farm labor force it ignores the main problem-excessive turnover due to poor working conditions and wages. Of course, the labor force has become more unauthorized in the last decade. The turnover rates have been over 15% per year on average and the newcomers are predominantly recent arrivals from Mexico and Guatemala. The

challenge is not how to adjust a guest worker program to the low wages and conditions that these people are tolerating but how to change the system so that the current labor force stays and that workers who have worked at farmwork or who still work somewhat at farmwork return to the fields. The primary objective should be a transition to a new agriculture based on a stabilization of a smaller, better paid, more heterogeneous labor force.

A distraction in the paper is its mention of the H2A program as if it were a general term for any guestworker program. The H2A program is a specific historic program based on certain age-honored protections. If the authors want to discuss guestworker programs in general, they should not call them H2A programs.

In ignoring the need for a transition, the authors miss the essential issue with any approach-evolving to better labor conditions so that workers will remain in farm work. As such, any guestworker program has to be time-limited, numerically capped, and based on improving conditions in the current market determined by recently arrived immigrants.

Now, to mention some of the good and thoughtful ideas of the authors. Employers and worker support groups should be prepared for an enlarged presence of legal farmworkers. They should be trained in how to select, screen, and prepare farmworkers for a changed 'immigration status'. Also, the idea of waiving those already here from punishments for being present (like in the 1998 Senate bill) is crucial. We should legalize those already here rather than starting up new networks from abroad.

With respect to improved housing, social services, pooled insurance systems and health care. I support all these with one or two caveats. The best way to improve the life of farmworkers is to pay them more, give them more work per year, and give them protections in the work place.

When 500 farmworkers in Tulare County, CA were asked during a health survey in 1982 for the county health department: "what is your main health problem", the majority answered: "low wages."

The agricultural industry, as contemplated by the paper, should pay part of the social costs of a transition to a stable labor force. Also, government subsidies should not be limited to workers. Technological and labor management subsidies are needed to allow employers to make the proper investments in their businesses. Many sectors could shift to a less labor-using and a more back-saving technology, although with considerable effort, if they were provided with the proper subsidies and encouragement from the public sector. Again, the idea with subsidies is to change, to stabilize the system, not to prolong artificially a cheap labor system.

The idea of the registry is not a bad idea. However, it has to be put in context. Under current conditions, many employers are used to a high turnover system. They don't need a registry of their old employees. They can get newer, more docile workers off the street. The ability of a farmer to attract workers depends on a multi-year effort to develop trust. If employers are not willing to make the effort, if they prefer to stick with the current high-turnover system then the employment services, farmworker advocates, and service agencies won't cooperate. They will refuse to refer workers to jobs at which the referred workers are bound to fail or be rejected for a more docile group of workers.

With respect to enforcement of labor standards, I believe this is crucial. The wage and hour division, OSHA, EPA and private parties have to greatly increase their pressure on bad actors.

With respect to Section E, I would keep all the protections. The industry must face a transition to better conditions. The public sector should support the grower community through technological change, marketing programs, labor-sharing schemes and social service support.

Assistance to local governments is a good idea as well. But, again it must be balanced by the subsidization of a transition away from a cheap labor system.

Conclusion:

The current system of US agriculture faces an important watershed. Will it insist on retaining its age-old high turnover, flow-through labor market, in which it seeks to compete with low wages or will it transition to a new system in which high technology and enhanced labor efficiency make it the envy of agricultural producers around the world?

Los Angeles Times

Tuesday, April 20, 1999

Migrants' New Roots Transform Rural Life

As immigration laws and agriculture change, Mexican workers abandon seasonal shuttling to settle in the Central Valley. They are reviving farm towns even as they still face poverty and hostility.

By BETTINA BOXALL, Times Staff Writer

PORTERVILLE, Calif.—Every year the routine was the same. Maricela Leon's father would leave their small and head north to pull oranges from the squat citrus trees of the San Joaquin Valley. The man who would become her husband did the same thing, shuttling back and forth across the border.

No more.

Now they live among the sculpted grapevines and manicured fruit orchards of Tulare County, immigrants rather than migrants, their lives no longer torn in binational halves.

They have settled in rural California, along with great numbers of other Mexican agricultural workers who are transforming the small towns and dusty hamlets of the state's rich farming valleys.

The standard image of postwar rural America—the withering farm town—has been turned on its head in speck-on-the-map burgs with population growth and birthrates reminiscent of prewar years.

Grape- and olive-picking dollars are making down payments on paint-thirsty houses. Towns long dominated by whites are electing their first Latino officials. The leisurely twang of the Okies who came here from the Dust Bowl has all but disappeared from many Main Streets, replaced by rapid-fire Spanish.

There are still plenty of Mexican migrants who chase harvests around the

state. But for a variety of reasons, more and more farm workers have sunk roots near the fields they labor in.

The 1986 Immigration Reform and Control Act legalized 1.1 million agricultural workers, two-thirds of them in California. In the last decade, many of them have brought their families across the border, both legally and illegally.

Crop plantings have become more diverse and labor-intensive. New varieties have extended harvest seasons, in some areas providing field work nearly year-round. Farmers have responded to tougher regulation of migrant housing by offering less of it.

And the border crackdown of recent years has had the unanticipated effect of discouraging undocumented workers from making the increasingly risky trip back to Mexico—locking many of them in rather than out.

"What's happened is that many people who used to go back and forth to Mexico have settled in California with their families," observed Philip Martin, a UC Davis agricultural economics professor.

As a result, "there's a revival of rural communities that was just completely unexpected," said anthropologist Juan-Vicente Palerm, the director of the UC Institute for Mexico and the United States. "We have a new kind of rural society taking shape in California. . . . It's not a fluke. It's not a transitional thing."

But the towns are also among the most poverty-stricken in the state, raising concerns that farm worker settlement has moved poor people and their problems from Mexican villages to California communities ill-equipped to handle them.

"While there may be an undeniable vibrancy about some of these communities, they are strikingly poor, have limited tax bases and offer relatively few services," stated a 1997 Urban Institute report, which concluded that many California farm towns now resemble overgrown labor camps, with swiftly expanding, impoverished populations that have little chance of upward mobility.

Dirt-Poor in California

Leon's father left the fields three years ago to work in a local meat market, but her mother and husband still pick. A decade after Leon, 28, and her husband moved from Mexico to Tulare County, they remain dirt-poor.

He makes \$6,000 or \$7,000 a year harvesting citrus, and they live in a two-bedroom, \$325 a-month rental in Porterville. She takes care of their three young children and sometimes helps him in the groves. For now she receives welfare for the children, who were born here.

Still, Leon said softly in Spanish as her brightly dressed 2-year-old clung to her, "We're better off here. There's no work in Mexico. We still manage here."

Candelario de la Torre, 47, lives nearby in the village of Poplar. He brought his wife and seven children up to Tulare County from Mexico in 1995 after years of working in a Los Angeles chrome-plating plant and sending

money back home. He has applied for residency under the 1986 law, but his family is undocumented.

He prunes, picks kiwis, and during the grape harvest rises at 4 a.m. to drive south to Arvin. For his dusty days of reaching and stooping he earns about \$6,500 a year, a sum supplemented with money from his grown children, who also work in the fields.

Like Leon, he'd rather be poor here than in Mexico. Even in poverty, you can eat better than some of the well-to-do there, he said.

Anyway, he added, Poplar seems almost like his native town. It is full of people from his home state of Colima.

Many little farm communities "have become basically Mexican towns where anywhere from 70% to 90% of the population are Mexican immigrants or children of Mexican immigrants," said Palerm, who has studied the demographic changes in some 200 small farm towns across the state.

Much of the towns' metamorphosis is a function of Latino immigration and higher birthrates. But whites have also departed, often for larger cities in the region, such as Visalia and Fresno.

"All the white kids I went to school with aren't here," said Manuel Jimenez, a UC Extension farm advisor who grew up and still lives in Woodlake, a scruffy little community of 6,200 to which his Mexican farm worker father immigrated in the late 1940s. The near total Latinization of some towns actually saddens him. "You want that diversity of community," he mused.

As farm communities have evolved, so has the traditional resentment of newcomers. Now, fault lines sometimes develop within the Latino community, with residents viewing migrants and newly arriving settlers as competitors for field work.

In the Santa Barbara County town of Guadalupe, which has grown nearly 80% with farm worker settlement in the last two decades, "people who come into the community without any ties are now received with an enormous amount of hostility," Palerm said.

In the early 1990s, when the community of about 6,450 was trying to clean up its commercial district, it bulldozed shanties that had been rented to migrant workers, forcing them to go to nearby Santa Maria for housing. "This was done under strong Latino pressure," Palerm added.

He agrees that the farm towns are struggling—indeed, he contends that California is home to the fastest-growing concentration of rural poor in the nation. But he argues that is the result of low agricultural wages, not of importing poor people.

He also insists there are reasons for hope.

The farm worker towns "are not the basket cases they are often portrayed to be," Palerm maintained. "There is an economic ladder. It's not very big, but it's there"—in the form of home ownership and new, albeit struggling, mom-and-pop businesses and services for the burgeoning populations.

Porterville real estate agent John Contreras estimates that 70% of the

starter homes he sells are bought by farm laborers. The houses are usually small fixer-ups in the \$50,000 to \$65,000 range, within reach of families making \$12,000 to 15,000 a year if they qualify for federal housing loans or low down payments.

"You think they don't have that much money, but they do," said Contreras. "I had one the other day. I said, '\$10,000 down,' and they said, 'No problem.'"

Brothers Antonio and Armando Vicencio both own their homes, Antonio in a new subdivision in Farmersville and Armando in Tulare. Working year-round on an Exeter fruit farm, they have climbed the labor ladder to where Armando makes \$30,000 a year as a foreman and Antonio \$25,000 as a farmhand.

They first made the trip to Tulare County as teenagers in the late 1970s, when they crossed the Mexican border each year to pick fruit. In 1980, they decided to stay put after they were hired by a Tulare County grower. Armando married another picker. The couple now have three children, and his wife is a cashier at a Wal-Mart.

Antonio married a woman he met on one of his trips home to Zacatecas and brought her north. In 1988, they returned to Mexico, but after four years of trying to scratch out a living, they came back for good to this land of arrow-straight fields and two-lane avenues running up to the Sierra foothills.

His three children "needed school and needed to learn English," said Antonio, who like his brother has applied for citizenship.

Regional Poverty Runs Deep

The issues of farm worker settlement are those of immigration writ large.

"If you're optimistic that integration is going to work, you say 'What's the issue?' " said Martin, one of the authors of the Urban Institute report. "If you're pessimistic, you say 'There's a real problem here.' "

The counties to which the farm laborers are attracted have job ladders that are skinny and short and poverty rates that are among the highest in the state.

In Tulare County, 28% of the population was living in poverty in 1995, up more than 5% since 1990, according to U.S. Census data. In both Tulare and Fresno counties, officials say one in four is receiving some sort of public assistance.

The statistics are reflected in everything from shabby, overcrowded housing to the situation the Farmersville football team found itself in.

When the fast-growing community of 7,450 recently opened its own high school, the "Home of the Aztecs," at the edge of the fields, so many members of the team lacked health insurance that the town had to raise money for the policy premiums.

Most students in the district qualify for free or discounted breakfasts and lunches. Children come to school in the winter without jackets. Many don't have the eyeglasses they need.

Growing Pains Split Community

Farmersville was built by Dust Bowl refugees, and as Latinos have become the majority, there has been friction. Seven years ago, Latino residents took to the streets for a rock-throwing protest after the white police chief allowed the Border Patrol to raid local homes.

Latino political power has been slow to emerge in the farm towns, hampered because there are large numbers of noncitizens and the undocumented. That is beginning to change as more swear allegiance to their new home and become voters.

Roberto de la Rosa, executive director of a Tulare County community group that helps farm workers, said people stood in line in near-freezing temperatures for a recent citizenship workshop. At the Fresno office of the Immigration and Naturalization Service, 1,900 people a month are applying for citizenship.

In Lindsay, about 10 miles southeast of Farmersville, the town's first elected Latino councilman spends part of his Sunday afternoons preparing farm workers for their naturalization exams.

"It really is the world turned upside-down," said Valeriano Saucedo, a Stanford-educated son of Texas migrants who has been mayor for the last six years. "When I was in high school the Hispanic population was 15% to 20% [and whites the majority]. Now, it's the opposite."

That reversal is evident in any number of ways, he said. The high school soccer team, which didn't exist when he was a student in the 1960s, is stronger than the football team. At the annual orange blossom festival this spring, the choral pieces were sung in Spanish. The town is interested in creating a Mexican-style town square, where businesses would ring a plaza.

One of the reasons the farm communities have swelled with settlers is because the fields have changed, demanding more labor for more months.

In Tulare County, cotton acreage has plunged to its lowest levels since the 1930s, giving way to more profitable—and often more labor-intensive—plantings of fruit, nuts and grapevines.

Development of new varieties of fruit and vegetables has stretched the picking season.

Table grapes used to be harvested from mid-July to September. Now, in Fresno County, the harvest runs from June to early November. The navel orange season used to start in November and end in mid-March. Now it extends from late September to mid-June.

Delfina Lara doesn't care how long the seasons are. Like most children of farm workers, she wants no part of picking.

"It's no good. It's hard," said Lara, 18.

Her father has toiled for nearly four decades in Tulare County's citrus groves, first as a migrant shuttling back and forth to his family in Mexico and now as a Woodlake resident.

None of his seven children are following in his footsteps. Delfina, the mother of a toddler, is finishing high school. Two of her older brothers work in manufacturing plants in the county, another in a print shop. A sister has a scholarship to Fresno State.

Asked if they are happy here, Lara's parents shrug as if it's a silly question. Why wouldn't they be? The family is all together.

Copyright 1999 Los Angeles Times. All Rights Reserved

Headers

Return-Path: <wewing@irsa-uscr.org>

Received: from rly-yc05.mail.aol.com (rly-yc05.mail.aol.com [172.18.149.37]) by air-yc01.mail.aol.com (v59.4) with SMTP; Tue, 20 Apr 1999 13:55:30 -0400

Received: from irsainet.irsa-uscr (irsainet.irsa-uscr.org [207.238.5.66])
by rly-yc05.mail.aol.com (8.8.8/8.8.5/AOL-4.0.0)
with ESMTP id NAA13541;
Tue, 20 Apr 1999 13:55:19 -0400 (EDT)

Received: by IRSAINET with Internet Mail Service (5.0.1460.8)
id <2Z18PYLN>; Tue, 20 Apr 1999 13:52:41 -0400

Message-ID: <F10A2E1AFCCDD011ADCA00A024BC475E5A4F5D@IRSAINET>

From: Walter Ewing <wewing@irsa-uscr.org>

To: Walter Ewing <wewing@irsa-uscr.org>

Subject: LAT: Migrants' New Roots Transform Rural Life

Date: Tue, 20 Apr 1999 13:52:35 -0400

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.0.1460.8)

Content-Type: text/plain;
charset="iso-8859-1"

FILE COPY

Business

GO

Site Index

GO

latimes.com

BUSINESS & TECHNOLOGY

Love that new car smell?

Sunday, April 11, 1999

Immigration Policies Threaten U.S. Growth

■ Economy: A decade of restrictions has compounded severe labor shortages in many fields.

By NANCY CLEELAND, Times Staff Writer

Asparagus rots in the fields of Imperial County for a lack of farm hands. A hospital in one of Chicago's poorest neighborhoods threatens to shut down because it can't find enough skilled nurses. California's high-tech firms warn of a coming crisis as they approach the annual limit on hiring foreign programmers.

A severe labor shortage, the likes of which hasn't been seen since the 1960s, is hampering a wide range of sectors across the country.

But in contrast with earlier periods of low unemployment, businesses today cannot easily turn to immigrants to fill the gaps.

Instead, more than a decade of restrictive legislation and policies that targeted legal as well as illegal immigration has come back to haunt the economy and threaten to pinch off its growth.

The limits, imposed to protect the jobs of Americans during a prolonged recession, have made the importation of even highly trained professionals, such as engineers, increasingly difficult and time-consuming. In the case of the so-called unskilled, such as nannies and laborers, it is virtually impossible to legally bring workers to the U.S.

Also, processing times for the visas and labor certification letters necessary to bring in workers have lengthened dramatically--in some cases from a matter of months to years--which has the effect of shrinking the immigrant work force even more.

"There's no question that there's a growing labor shortage, and [restricted] immigration is part of the reason," said Frank Sharry, director of the Washington-based National Immigration Forum. "But we're still in this anti-immigration hangover. I don't think the powers that be have quite gotten that the laws they put on the books three years ago are causing problems."

There are signs, however, that folks in Washington are beginning to listen. From a bill to allow up to 500 foreign nurses to work in poor urban neighborhoods, which recently cleared the House Judiciary Committee, to a resurrected proposal to create a guest farm worker program, legislation that didn't stand a chance a few years ago is getting at least an audience in Congress.

Privately, some respected legislators and lobbyists even raise the possibility of another amnesty program for undocumented

ADVERTISEMENT

Looking for your dream job?

Looking

for your

dream job?

All you need is

a little help.

immigrants.

The prospect comes not a moment too soon for employers in strapped industries such as health care, agriculture and the hotel business, where job calls go unanswered and hiring raids by competitors are becoming increasingly common.

"I'm a third-generation farmer, and I have never seen it this bad," said Steve Scaroni, president of the Imperial Valley Vegetable Growers Assn. "We've lost asparagus, cauliflower, broccoli, peaches, grapes. These are things I know for a fact. And I've heard of more. It's not just Imperial County. It's statewide and it's nationwide."

So far, the labor shortages have been spotty--specific to certain industries and regions. And their relationship to shifting immigration laws and policies is, in many cases, complex. What is clear, however, is that a 15-year trend toward restricting immigration is running headlong into an economic boom that is gobbling up workers.

"We are living with concepts and laws that are largely outmoded," said Darryl Buffenstein, an immigration attorney who consults with the U.S. Chamber of Commerce. "And it is my very firm belief that the effect it has on the economy is dramatic. It's not something that's been documented, but I see it every day in my practice."

Buffenstein's expertise is in white-collar immigrants, particularly the foreign-educated programmers and engineers who have helped drive the growth in information technology. In the immigration-law world, those workers are relatively blessed: Congress last year agreed to double the number of temporary visas for high-skilled immigrants under the H-1B program, to 115,000.

Demand is still greater than supply, however, and attorneys expect the visas to run out by late May, four months before the end of the U.S. fiscal year. Negotiations have begun to try to raise the cap again, but opposition is strong, particularly among those who argue that older U.S. workers can and should be trained for the jobs.

California employers also are hamstrung by a backlog in the local Department of Labor office, which must certify the need for immigrant tech workers. Processing times in the California office run as long as four months, while in Vermont, applications are turned around in a matter of days. The time lag becomes increasingly important as the visa ceiling nears.

Buffenstein noted that before a 1990 immigration reform law, there was no limit to the number of temporary visas for high-skilled workers. "Why now," he said, "at a time of such incredible economic performance, are we even having a debate about a cap?"

In contrast, hospitals facing a shortage of nurses would be grateful for a cap of any size. Four years ago, during a time of mergers and layoffs in the health-care industry, temporary visas for immigrant nurses were eliminated, in part to protect U.S. jobs and wages.

The unforeseen effect on hospitals--particularly those in tough inner-city neighborhoods and rural backwaters that have trouble attracting and retaining nurses--has been devastating.

The elimination of visas didn't cause the shortage. That grew out of demographic shifts, changes in health-care systems and waning interest in nursing by students and colleges. But it took

away a crutch that hospitals once relied on to get them through shortages.

"Historically, foreign-educated nurses have been used to fill the gaps," said Barbara Nichols, chief executive of the Commission on Graduates of Foreign Nursing Schools in Philadelphia. "They work mostly evenings, nights, weekends and in areas where a majority of nurses will not work."

During the last U.S. nursing shortage, in the late 1980s, a temporary-visa program with no cap was hastily created, paving the way for about 30,000 foreign nurses a year. The program was allowed to expire in 1995.

A new shortage of nurses, particularly those with special skills, has caused hand-wringing in hospitals across the country. Just last month, St. John's Regional Medical Center in Oxnard announced it would close one of its acute-care wings and curtail some elective surgeries for lack of nurses.

And in Chicago, the shortage had threatened to close an entire hospital in the poor and crime-ridden neighborhood of Englewood. The near-collapse of St. Bernard Hospital prompted Rep. Bobby L. Rush (D-Ill.) to introduce legislation to create another temporary-visa program for nurses. In a nod to organized labor, however, the program he envisions is far smaller and more limited than previous ones.

Only 500 nurses would be allowed in on a temporary basis each year under Rush's nursing relief bill, which recently cleared the House Judiciary Committee and is headed for a vote by the full House. The law also limits recruiting to relatively large hospitals serving poor communities. "I can assure you," he pledged in introducing the bill to Congress, "that this proposal does not have a detrimental effect on American nurses."

To hear farmers talk, the shortage of agricultural workers is even more acute than that of nurses--and more threatening to the economy. It is perhaps the most urgent of shortages, because crops won't wait. "We can't just shut down the production line for a week or two," said Jack King, national affairs director for the California Farm Bureau.

The roots of the farm worker shortage differ greatly from those for skilled workers, however, having to do with tougher enforcement of existing laws rather than new laws. Record-level staffing of Border Patrol agents at the U.S.-Mexico border has made illegal crossings far more difficult, risky and costly.

Growers from Imperial County to the Central Valley said the enforcement effort, along with periodic audits by the Immigration and Naturalization Service, have cut deeply into their work force, which they concede is composed primarily of illegal immigrants holding false documents.

They've also lost scores of workers to the expanding U.S. economy, where low-skilled immigrants have found more stable, less physically taxing work in restaurants, in hotels and on construction sites.

Last year, during the peak summer harvesting season, growers in the Central Valley were about 80,000 workers short of the normal 230,000, said Manuel Cunha, president of the Nisci Farmers League in Fresno. Raids from desperate out-of-state growers added to the uncertainty. "Contractors were pulling workers right off the fields, offering \$75 and a free ride to Oregon," Cunha said.

The raisin harvest was extended a month, and still some

grapes were lost.

In a region with double-digit unemployment, reports of such severe shortages have been met with skepticism. Farm worker advocates argue that improving wages and working conditions and guaranteeing more stable employment might pull in the chronically unemployed and create a more humane and long-term solution than a guest worker program.

But Cunha and other growers, who insist the high Farm Belt unemployment figures are inflated by fraud, said 20% wage increases during last year's raisin harvest failed to solve the problem. Attempts to recruit welfare and unemployment recipients also failed, in part because the state was reluctant to funnel workers into short-term, temporary jobs.

"We really put a lot of effort into it," Cunha said. "But when it came time, we put in our job order requests to the state, and we were lucky to fill 1% of them."

Now California growers are bracing for a new season of labor shortages and crop losses, and more intense competition for what workers they do find.

"Last year they barely got by," said King of the California Farm Bureau. "This year we're already seeing serious problems in the Imperial Valley. It doesn't bode well for the rest of the state. We could be in real trouble here."

* * *

* **EMPLOYMENT GAINS:** The return of the chronically unemployed to the job market has helped fuel the economy and eased social ills. A1

* * *

Coming to Stay

Legal immigration of all types dropped in 1997, the last year for which figures are available. Numbers of immigrants admitted as permanent residents (green card holders):

All Categories:

In thousands

1996: 915,900

1997: 798,378

* * *

Employment-Based*:

In thousands

1996: 117,499

1997: 90,607

*People admitted specifically because they have certain needd job skills.

Source: Immigration and Naturalization Service

Copyright 1999 Los Angeles Times. All Rights Reserved

1 Search the archives of the Los Angeles Times for similar stories about:
UNITED STATES -- IMMIGRATION, UNITED STATES -- LAWS,
IMMIGRATION REFORM, UNITED STATES -- LABOR, LABOR
SHORTAGES, UNITED STATES -- ECONOMY, IMMIGRANTS --
EMPLOYMENT. You will not be charged to look for stories, only to retrieve one.

Mexican consul says federal immigration program working April 17, 1999

STATESBORO, Ga. (AP) - The Mexican consul to Georgia says a federal program that allows temporary visas to immigrants for migrant farm work is accomplishing its goal. Teodoro Maus said Friday at a forum concerning migrant workers and the state's Vidalia onion industry that the federal H-2A visa law makes economic sense for both farmers and workers.

"The employers with great difficulty are accepting that they should take H-2A workers, because the law itself is very good, but the carrying out is also complicated," Maus said. "And I think they don't realize that economically it is also better." The law was enacted in 1986 to allow farmers to legally get the labor necessary to harvest their crop.

It requires farmers who hires such temporary immigrants to provide adequate housing, transportation to the nearest town once a week, worker accident insurance, and a wage of at least \$ 6.30 an hour. That wage is \$ 1.15 more than that of the minimum for domestic seasonal workers in Georgia. The jobs must be advertised for two weeks so citizens and permanent residents can apply first.

Maus said H-2A workers return year after year, cutting down on the need for retraining and providing stability. United Farm Workers regional director Frank Curiel said the union wants to do away with the rule. Instead, those workers who are in the country illegally should be granted amnesty - which was done in 1986 - and the borders should be sealed. "All the reports coming out of Washington are saying there's enough workers here in this country to provide the necessary work for agriculture," Curiel said. "But why is agriculture taken away from the supply and demand? If there's not enough workers, let's raise the wages."

But in keeping with the spirit of the forum, Curiel said the best way to work out a solution is through cooperation. "I'm a product of Cesar Chavez. I know how to fight. I know how to boycott," Curiel said. "But the idea here would be to work together to make it a win-win situation for both workers and growers."

While supporting current regulations, Maus said the United States must change its attitude about farm workers and view them as people and not just cheap labor. State agriculture commissioner Tommy Irvin called for a simplification of the H-2A regulations, saying "we must have these migrant workers. We still need to make the immigration laws easier for farmers to understand."

The forum came after Immigration and Naturalization Service agents arrested 27 illegal aliens in the Vidalia area. The arrests came at the beginning of the harvest of the Vidalia onion season - valued as high as \$ 100 million dollars for local growers. Last year, the INS backed off on similar arrests under a compromise worked out with growers after Sen. Paul Coverdell, R-Ga., intervened. The latest arrests "could be a good sign," Irvin said, adding that the INS did not arrest workers in the field - which farmers claim scares off workers who have legal documentation.