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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Legalization Meeting (partial, DOB SSN) (1 page)	00/00/0000	b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Irene Bueno
OA/Box Number: 17169

FOLDER TITLE:

H2A Background: H2A Farmworkers/Legislation [2]

2017-1120-S
ry2227

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RICK SWARTZ & ASSOCIATES, INC.
1869 Park Road, N.W., Washington, D.C. 20010
Telephone:(202)328-1313 Fax:(202)797-9856
Email: RickSwartz@aol.com

FAX

DATE: 6/24/99

TO: Irene Bueno

OF: White House

FAX #:

FROM: Rick Swartz

RE:

Immediate Response Requested: Yes No

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER PAGE: 8

MESSAGE:
Attached is the proposal the growers have been floating re ag workers which they look forward to discussing tomorrow.

~~CONFIDENTIAL~~ – DO NOT CIRCULATE

Please

DRAFT DISCUSSION OUTLINE OF PROPOSED LEGISLATION ADJUSTING THE CURRENT ILLEGAL AGRICULTURAL WORK FORCE TO LEGAL STATUS AND REFORMING THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

June 14, 1999

DETERMINED TO BE AN ADMINISTRATIVE MARKING
INITIALS: Ry DATE: 12/28/201
2017-1120-S

Title 1. -- Adjustment to Legal Status

1. Eligibility

- Aliens who can demonstrate employment for a minimum of 180 workdays (or 1040 hours) in agriculture during the 18 month period beginning 12 months prior to the date of enactment.
- Definition of "agriculture" in last year's bill will apply (at least for the present)
- "Work day" to be defined as any day in which the alien was employed one or more hours in agriculture.
- Agricultural employers may petition for adjustment (and admission, if aliens are outside the United States at the time of adjustment) of aliens whom their records show they employed for 180 days or more during the qualifying period.
- Aliens who are not petitioned for by an agricultural employer may seek the assistance of a Qualified Designated Entity (QDE) established by INS for this purpose, in obtaining proof of qualifying employment. The standard of proof and obligations of QDE's would be higher than for the SAW program to minimize fraud.
- Aliens will be granted a new temporary nonimmigrant status (not H-2A)
- The IRRIRA bar on receipt of immigration benefits will be waived with respect to the alien's adjustment to the new temporary nonimmigrant status. Otherwise, existing admissibility criteria will apply. The IRRIRA bar will continue to apply with respect to new illegal presence occurring after adjustment.
- Adjusted nonimmigrants will be permitted to stay in the United States up to a maximum of 10 months in a calendar year, whether or not they are employed, and will be free to enter and depart the United States at will, subject to the 10 month limitation.

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- ➢ Adjusted aliens who have established a permanent residence in the United States and have a U.S.-born minor child will be permitted to remain in the U.S. and will not be subject to the 10 month maximum stay. (Look to Central American adjustment program for concepts and definitions.)

- Adjusted aliens will be ineligible for welfare benefits, unemployment insurance, etc. except emergency services, as provided in existing law for newly adjusted aliens.

- Adjusted aliens will be issued a counterfeit-proof document, and will be required to document entries into and departures from the United States through a check-in, check-out procedure.

2. Work Authorization of Adjusted Aliens

- Adjusted aliens will be free to work in agriculture anywhere in the United States (but will only be referred through the registry within a region, as provided below).

- Adjusted aliens are not permitted to engage in nonagricultural work while in adjusted status.

- Employers of adjusted aliens must comply with all employment-related laws, but no special standards will apply to their employment.

- Employers of adjusted aliens must provide a written record of employment to the alien with a copy to the INS.

- Adjusted aliens would be subject to FICA and FUTA taxes on the same basis as US workers.

3. Adjustment to Permanent Resident Alien Status

- Adjusted aliens become eligible to apply for adjustment to permanent resident alien status upon accumulating a documented record of employment in agriculture in the United States for at least 180 work days (or 1040 work hours) in 5 of the 7 years following adjustment to the new temporary nonimmigrant status.

  ➢ Adjusted aliens not subject to the 10 month maximum stay restriction will be required to work in agriculture a minimum of 8 months in 5 of the 7 years following adjustment to qualify for adjustment to permanent resident alien status.

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> ➢ For the purposes of this 8 month work requirement, there will be no work hour equivalent.

- Adjustment of adjusted nonimmigrant aliens to permanent resident alien status will be outside current quotas, and will not entail any offsets from existing immigrant or nonimmigrant quotas.

- Aliens must apply for adjustment to permanent resident alien status within 6 months of qualifying for such status.

- Aliens qualifying for permanent resident status per the above criteria will be given temporary resident alien status upon establishing their eligibility for permanent resident status, and will be free to enter and remain in the United States and work in any employment, similarly to permanent resident aliens, until they are adjusted to permanent resident alien status.

- An annual quota may be imposed on the number of nonimmigrant alien agricultural workers who can adjust to permanent resident alien status in a year, for example 20 percent of those adjusting to nonimmigrant alien status or a fixed number.

  ➢ If an annual numerical quota is imposed on the number who can adjust to permanent resident status in a year, priority in adjustment in any year will be given to applicants on the basis of the number of days they have worked in agriculture since adjusting to legal status.

  ➢ Temporary resident aliens who are not adjusted to permanent resident alien status based on an annual quota for such adjustments can continue to advance their priority for adjustment by performing additional agricultural work after adjustment to temporary resident alien status.

- Temporary resident aliens will continue to be debarred from welfare benefits, as during adjusted nonimmigrant status. Upon adjustment to permanent resident status, they would be treated the same as other new permanent resident aliens with respect to eligibility for welfare benefits.

- Adjusted aliens who do not apply for permanent resident alien status within the 6 month qualifying period will loose their status and employment authorization, and become subject to removal.

~~CONFIDENTIAL~~ – DO NOT CIRCULATE

Title 2. – Establishment of an Agricultural Worker Registry

- A registry will be established similar to that in last year's bill.
- The following workers will be eligible to be listed on the registry: (1) U.S. workers (as currently defined), and (2) adjusted nonimmigrant aliens who opt to be listed.
- Traditional H-2A workers will not be eligible for listing on the registry.
- The legal right to work in the United States will be verified by the registry before referring any worker to a job opportunity.
- U.S. workers will have preference in referral by the registry, and may be referred to any job opportunity nationwide for which they are qualified and make a commitment to be available at the time and place needed.
- Adjusted nonimmigrant aliens who opt to be listed on the registry will only be referred to job opportunities for which they are qualified within a prescribed geographic region.
- The registry will be required to contact workers, determine that they are qualified and interested in the job opportunity, and obtain an affirmative commitment from workers to report for work at the time and place needed, as a condition for being referred and determining that the workers are "available".
- Adjusted nonimmigrant aliens who opt to be listed on the registry and who fail to report to a registry job opportunity for which they had made an affirmative commitment and been referred would be sanctioned.
- All U.S. agricultural employers will be eligible to use the registry, but only applicants for H-2A aliens will be required to do so.
- Agricultural employers may require their new hires to go through the registry as a means of verifying employment eligibility.

~~CONFIDENTIAL~~ – DO NOT CIRCULATE

Title 3. – Reform of the H-2A Program

1. In General.

- The reformed H-2A program would be structured similarly to last year's bill by replacing the current labor certification process with a registry.

- There will be a one-time (per alien) waiver of the IRRIRA bar on receipt of immigration benefits for aliens entering the H-2A program. The bar would continue to apply to illegal presence occurring after the granting of the one-time waiver.

2. Application, Recruitment and Referral of Workers

- Among the changes from last year's registry would be the following:

  - H-2A employers will be required to file an application for workers with the registry at least 28 days in advance of the date workers are needed.

  - There will be emergency application procedures similar to those in last year's bill permitting filing applications after the normal advance application deadline.

  - H-2A applicants will be required to advertise the availability of their jobs through the registry in publications in the local labor market likely to be patronized by potential farmworkers, if any.

  - H-2A applicants will be required to accept all qualified U.S. referrals who make a commitment to report to work at the time and place needed, and those adjusted nonimmigrants on the registry which serves the employer's geographical area. H-2A employers will not be required to exhaust the registry nationwide for adjusted aliens.

3. Employment Standards and Other Provisions

- Wage provisions as in last year's bill, but clarify language to provide that when a piece rate is paid and the average hourly earnings of piece rate workers, taken as a group, are below the average hourly earnings of field and livestock workers in the state (current AEWR), the employer would only be required to assure that the worker's average hourly earnings, taken as a group, would increase by 5% or such lesser amount as necessary to bring the group's average hourly earnings to the state average for field and livestock workers.

- Housing provision as in last year's bill, except that the state would have to make the determination that there is adequate housing for migrant agricultural workers in the area of intended employment to trigger the housing allowance option.

- There will still be a transition period for providing housing in areas without adequate housing.

- A Commission will be established to study the problem of in-season housing for migrant agricultural workers, including the operation of the housing provisions of the H-2A program, and report back to Congress.

- The liability of housing providers to agricultural workers will be limited to housing-related liabilities (i.e. not other employment-related liabilities).

- Transportation reimbursement provisions the same as in last year's bill

- A cost-based user-fee, with the relevant categories of costs defined in statute.

Title 4. – Miscellaneous Provisions.

- A co-operative industry-government targeted enforcement program will be authorized aimed at improving agricultural employers' knowledge of and compliance with labor, employment and immigration laws, focused on "bad actors". This would be an industry-wide program not focused on H-2A employers and not financed out of H-2A user fees.

- One or more bilateral commissions would be established between the U.S. and H-2A sending governments to provide consultation on operation of the H-2A program.

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ISSUES TO BE ADDRESSED IN SEPARATE HOUSING LEGISLATION

- Correct the FmHA ban on occupancy by aliens of housing assisted by FmHA financing.
- Provide tax credits for construction of migrant in-season farmworker housing.

Administration Progress on H-2A Reform

June 23, 1999

Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about $6,500 and farm workers are employed on average only about 26 weeks per year.

The H-2A "guest worker" program admits temporary nonimmigrant agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season, if there is an inadequate supply of domestic workers. There is no cap on the number of H-2A visas granted annually. Currently, there are 1.8 million hand-harvest farm workers in the US of which its estimated that approximately half are undocumented. In FY 98 there were 35,000 workers in the H-2A program.

Employer Obligations

Under the current program, in order to hire H-2A workers, an employer must demonstrate to the Department of Labor (DOL) that:

> (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and,
>
> (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers.

To meet these criteria, employers are required to:

- ✓ engage in positive recruitment efforts;
- ✓ pay workers the higher of the minimum wage, locally prevailing wage, or an "adverse effect wage rate" (AEWR), the average wage paid to non-managerial agricultural workers in the state;
- ✓ provide free and safe housing to workers coming from outside the commuting area;
- ✓ reimburse workers' inbound transportation if they complete half the contract, outbound also if they complete the contract; and,
- ✓ guarantee 3/4 of the hours of the contract the grower offers; and,
- ✓ hire any qualified U.S. worker who applies during the first half of the work contract.

Administration Principles on Reform

The H-2A program has been heavily criticized by the GAO, DOL's IG, and the Hill primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. As a result, Congress has proposed many different bills to restructure the H-2A program.

The Administration has acknowledged problems with the program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections. The Administration does not believe that legislation is necessary or appropriate at this time.

The Administration's guiding principles in reforming the H-2A program are to create a system:

- ✓ with procedures that are simple and the least burdensome for growers;
- ✓ which assures an adequate labor supply for growers in a predictable and timely manner;
- ✓ that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers;
- ✓ which avoids the transfer of costs and risks from businesses to low wage workers;
- ✓ that encourages longer periods of employment for legal U.S. workers; and,
- ✓ which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions.

The Administration is committed to improving the H-2A program to assure growers of an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society.

FY 2000 Budget Initiative

- The President's pending Budget requests $10 million to fund America's Agricultural Labor Network ("AgNet") that would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. AgNet would serve as an information broker through an electronic system that allows both growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.).

H-2A Regulatory Reform

- DOL will soon publish a final regulation that will complete an earlier proposal to:

  –reduce the length of time that employers must file an H-2A application from 60 to 45 days before the date when employees are needed;

  –reduce the deadline for when employer-provided housing must be available for inspection before the date of need; and,

  –modify the requirement that certified H-2A employers provide notice of the exact date on which H-2A employees have departed for the place of employment.

- INS will soon issue a final regulation that will complete an earlier proposal to delegate H-2A petitioning authority to DOL. This proposed change would significantly reduce the burden to growers when filing for H-2A workers by removing an entire step from the current process.

- DOL has also made additional administrative changes to the H-2A program such as modifications to the positive recruitment requirement. DOL intends to consistently meet the existing 20 day deadline to issue approved certifications for growers.

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DRAFT DISCUSSION OUTLINE OF PROPOSED LEGISLATION ADJUSTING THE CURRENT ILLEGAL AGRICULTURAL WORK FORCE TO LEGAL STATUS AND REFORMING THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

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- U.S. workers will have preference in referral by the registry, and may be referred to any job opportunity nationwide for which they are qualified and make a commitment to be available at the time and place needed. * wage rate
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Title 3. – Reform of the H-2A Program

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  - H-2A applicants will be required to accept all qualified U.S. referrals who make a commitment to report to work at the time and place needed, and those adjusted nonimmigrants on the registry which serves the employer's geographical area. H-2A employers will not be required to exhaust the registry nationwide for adjusted aliens.

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wage rate
- drop AEWR
- min. wage.

group's average hourly earnings to the state average for field and livestock workers.

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- There will still be a transition period for providing housing in areas without adequate housing.

tax credits other incentives

- A Commission will be established to study the problem of in-season housing for migrant agricultural workers, including the operation of the housing provisions of the H-2A program, and report back to Congress.

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- Transportation reimbursement provisions the same as in last year's bill

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Title 4. – Miscellaneous Provisions.

% model

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- One or more bilateral commissions would be established between the U.S. and H-2A sending governments to provide consultation on operation of the H-2A program.

CONFIDENTIAL – DO NOT CIRCULATE

ISSUES TO BE ADDRESSED IN SEPARATE HOUSING LEGISLATION

- Correct the FmHA ban on occupancy by aliens of housing assisted by FmHA financing.
- Provide tax credits for construction of migrant in-season farmworker housing.

NCLR
NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
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Fax: (202) 776-1792

FAX COVER MEMO

DATE: 7/14/1999

TIME: ________ am / pm

COST CENTER #______

TO NAME: Irene Bueno

COMPANY: White House

CITY: ____________

FAX#: (202) 456/5581

FROM NAME: Concepcion Elizabeth Romero, Administrative Assistant
Office of Research, Advocacy & Legislation (ORAL)

Direct Line: (202) 776-1782
Fax: (202) 776-1794

# of pages in transmission, including cover 6

MESSAGE: ____________________

July 6, 1999

Dear Senator:

The undersigned organizations write to you out of our deep concern for the plight of migrant farmworkers in the United States, to urge you to oppose any new agricultural "guestworker" proposals offered this year that would worsen already abysmal work terms and conditions for migrant farmworkers.

Lobbyists for agricultural employers have pressed for major "guestworker" legislation over the last several years. They succeeded in the 105th Congress in attaching a proposal to the Senate-passed Commerce, Justice, State, Judiciary bill that would have worsened farmworkers' wages and working conditions, reduced labor law enforcement, increased already high employee turnover in the industry, and discouraged modernization of labor practices in agriculture. We write today in anticipation that they may again try to convince the senate to adopt a similar proposal during the appropriations process. We would urge the Senate to reject any such effort.

As we end this century, the people who cultivate and harvest our fruits, vegetables, tobacco and greenhouse crops continue to be the poorest of the working poor. Most farmworkers experience sub-poverty-level wages, poor working conditions, inadequate access to health care, exposure to dangerous chemicals, and high rates of violations of minimum wage and other legal obligations. Most studies show that, despite low unemployment and rising incomes in other sectors of our economy, seasonal farmworkers have been experiencing declining real wages and high unemployment and underemployment. Recent government studies of the agricultural labor force have been unanimous in finding a farm labor surplus in the United States.

Employers who fear labor shortages should seek to attract and retain farmworkers by improving wages and working conditions. The employers' guestworker proposals of the recent past, by contrast, have been designed to add temporary foreign farmworkers to the labor supply under wages, working conditions and recruitment procedures that would be worse than those under the notorious Bracero program, which ended in 1964 and remains a stain on our nation's history.

We ask that you support farmworkers and oppose efforts, such as last year's, that would revise the current H-2A temporary foreign agricultural worker program in ways that worsen already meager protections or create a new one. Our nation's labor laws and the existing H-2A program's worker protections already are too weak to protect farmworkers and their families from unfair treatment. We will be back in touch with you as specific legislative proposals emerge.

Sincerely,

NATIONAL ORGANIZATIONS

Americans for Democratic Action
American Friends Service Committee
Cuban American National Council, Inc
Farm Labor Organizing Committee
Farmworker Housing Development Corporation
Farmworker Justice Fund
Hermandad Mexicana Nacional
International Labor Rights Fund
Jewish Council for Public Affairs
Labor Council for Latin American Advancement
League of United Latin American Citizens
Mennonite Central Committee U.S., Washington Office
Mexican American Legal Defense and Education Fund
National Association of Community Health Centers
National Association of Social Workers
National Center for Latinos with Disabilities
National Consumers League
National Council of La Raza
National Farmworker Ministry
National Immigration Law Center
National Korean American Service & Education Consortium, Inc.
National Labor Committee in Support of Worker and Human Rights
National Lawyers Guild, Cross Border Litigation Committee
National Lawyers Guild, Labor and Employment Committee
National Network for Immigrant and Refugee Rights
United Farm Workers of America, AFL-CIO
United Methodist Church, General Board of Church and Society

STATE & LOCAL ORGANIZATIONS

American Friends Service Committee, Fresno, CA
Arizona Interagency Farmworker Coalition, AZ
Arizona Latin American Medical Association, AZ
Asian Committee Mental Health Services, CA
Asian Law Alliance, CA
Audubon Partnership Economic Development, NY
Border Agricultural Workers Program, TX
Border Association for Refugees from Central America, TX
California Association for Bilingual Education, CA

California Rural Legal Assistance Foundation, Inc., CA
Campesinos Unidos, Inc., CA
Casa de Maryland, MD
Casa Familiar, San Ysidro, CA
Catholic Charities of the Archdiocese of Louisville, KY
Catholic Charities, Fresno, CA
Catholic Migrant Farmworker Network, ID
CAUSA, OR
Centro 16 de Septiembre, TX
Centro Hispano de Hawaii, HI
Coalition for Humane Immigrant Rights of Los Angeles, CA
Colonias Unidas, TX
Colorado Migrant Coalition, CO
Colorado Migrant Seasonal Farmworkers Program, CO
Columbia Basin Health Association, WA
Comité Hispano de Virginia, VA
Committee for Hispanic Children and Family, NY
Community Alliance of Lane County, OR
Consejo Counseling & Referral Service, WA
County Judge Dolores Briones, TX
Darin M. Camarena Health Center, Inc., CA
DC Immigrant Coalition, DC
Department of Social Work, Florida Atlantic University, FL
East Bay Citizenship Network, CA
ECO-Action, Orlando, FL
Escuela de La Raza Unida, CA
Esperanza Peace & Justice Center, TX
Eugene-Springfield Solidarity Network/Jobs with Justice, OR
Everglades Community Association, Inc., FL
Farmworker Coordinating Council, Palm Beach County, FL
Farmworker Legal Services, NY
Florida Impact, FL
Foro de la Comunidad, OR
Friendly House, AZ
Guadalupe Social Services, Catholic Charities of the Diocese of Venice, FL
Hands Across Cultures, Corp., NM
Harvest America Corporation, KS
Hawaii Hispanic News, HI
Heartland Alliance for Human Needs and Human Rights, IL
Hispanic Community Center, Lincoln, NE

Home Education Livelihood Program, Inc., NM
Housing Opportunities of Houston, Inc., TX
Houston Esperanza CDC, TX
Houston Immigrant and Refugee Coalition, TX
Idaho Migrant Council, ID
Immigrant Legal Resource Center, CA
Immigration Law Enforcement & Monitoring Project, AFSC, TX
Iniciativa Frontera, TX
Karen Woodall & Associates, FL
Las Americas Immigrant Advocacy Center, TX
Latin Americans for Social and Economic Development, MI
Latin American Solidarity Organization, WA
Latino Concern Group, KY
Latino Learning Center LULAC Council 688, TX
Latino Legislation Day-2000, WA
Latinos Unidos Siempre, OR
Lawyers Committee For Civil Rights Under Law of Texas, TX
Louisville Area Council on Latin Americans, KY
Maine Rural Workers Coalition, ME
Mano a Mano Family Center, OR
Massachusetts Immigrant and Refugee Advocacy Coalition, MA
Mexican American Legal Defense, TX
Mexican American Unity Council, Inc., TX
Migrant Farmworker Justice Project, FL
Multicultural Area Health Education Center, CA
NAF Multicultural Human Development Corporation, NE
National Council of La Raza, Regional Office, TX
National Lawyers Guild, San Diego Chapter, CA
Nebraska Appleseed Center for Law in the Public Interest, NE
Nebraska Mexican American Commission, NE
Network for Immigrant Justice, OR
Nevada Hispanic Services, Inc., NV
North Carolina Farmworkers Project, NC
North Texas Immigration Coalition, TX
North Texas Immigration Coalition, TX
Northern California Coalition for Immigrant Rights, CA
Oregon Action, OR
Oregon Latino Voters Education Project, OR
Oregon Law Center, OR

Otero County Housing Authority, CO
Diocesan Migrant and Refugee Services Catholic Diocese of El Paso, TX
Peace and Justice Commission, Holy Spirit Catholic Parish, TX
Peace and Justice Committee, Saint Raphael's Church, Inglewood, FL
Pineros y Campesinos Unidos del Noroeste, OR
Portland Network for Immigrant and Refugee Rights, OR
Project PPEP, Inc., AZ
Proyecto Azteca, TX
Proyecto de Trabajadores Agricolas, NC
Proyecto Libertad, TX
Public Justice Center, Inc., Baltimore, MD
Ramona Casas, Co-Director, Project Arise, TX
Rocky Ford Jobs Services, CO
Rural Opportunities, Inc., NY
Rural Organizing Project, OR
San Francisco Sanctuary Covenant, CA
Sea-Mar Community Health Center, WA
Sisters of Charity and Nazareth, KY
Student Action with Farmworkers, NC
South Puget Sound Hispanic Chamber of Commerce, WA
South Texas Civil Rights Project, TX
Southern Oregon Economic Development Coalition, OR
Sparks Housing Development Corporation, TX
Texas AFL-CIO, TX
Texas Appleseed Advocacy Fund, TX
Texas Catholic Conference, TX
Texas Immigrant and Refugee Coalition, TX
Texas League of United Latin American Citizens, TX
The ECO-Store, Orlando, FL
United Farm Workers (AFL-CIO) of Texas, TX
United Farm Workers of America, WA
United Migrant Opportunity Services, Inc., WI
United Network for Immigrant and Refugee Rights, TX
Virginia Justice Center for Farm and Immigrant Workers, VA
Voz Hispana Causa Cesar Chavez, OR
Washington Alliance for Immigrant and Refugee Justice, WA
Washington Association of Churches, WA
Watts/Century Latino Organization, CA
Western Arizona Center for Child Education, AZ
Worker's Rights Project, University of North Carolina School of Law, NC
Worker's Organizing Committee, OR

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 776-1757
Fax: (202) 776-1792
e-mail: fjf@nclr.org

FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 2

Message:

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
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e-mail: fjf@nclr.org

FAX ALERT

TO: **Farmworker Supporters**
FROM: **Bruce Goldstein, Co-Executive Director**
DATE: **July 14, 1999**
RE: **Guestworker Legislation Imminent: Growers' Media Strategy Is Active**
Pages: **1**

An agricultural industry weekly newspaper, *The Packer*, in its July 12th edition contains an editorial that asks for "relaxed rules to secure ag labor" and suggests that introduction of a guestworker bill is imminent. It says, "Sen. Bob Graham D.-Fla., is expected to introduce legislation to streamline the bureaucracy-laden H-2A guest worker program, which allows foreign workers to harvest crops when U.S. workers aren't available."

Since Graham's staff person told me to expect that it would be added as an amendment to an appropriations bill, introduction must be imminent. We do not know the exact timing.

As to substance, the editorial's content suggests that the bill "could include" the "amnesty" provision that we have seen in an outline that is circulating. The editorial refers to a 5-year/180-day-per-year guestworker status that in theory would allow an application forl immigration status. It really doesn't; the supposed "amnesty" is even more phony than last year's provision (which was removed from the guestworker amendment in the appropriations bill when it was sent to the Senate).

The Packer wouldn't run the editorial at this time without Monte Lake's approval (he's the chief lobbyist for agribusiness on these issues).

The growers' outline that we've seen contains *two* new guestworker programs. One would create a huge guestworker program with *no* protections for recruitment, wages, working conditions, benefits, or law enforcement. These workers could eventually apply for phony amnesty. The second would be a "reform" of the H-2A program, eliminating most of the worker protections, similar to last year's bill. The growers apparently view the worker protections of the old *bracero* program as too liberal to be included in their proposals. If it weren't so shockingly serious, it would be laughable. //

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 21, 1999
(Senate Floor)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 1906 – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, FY 2000

(Sponsor: Stevens (R), Alaska; Cochran (R) Mississippi)

This Statement of Administration Policy provides the Administration's views on the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, FY 2000, as reported by the Senate Committee. As the Senate develops its version of the bill, your consideration of the Administration's views would be appreciated.

The allocation of discretionary resources available to the Senate under the Congressional Budget Resolution is simply inadequate to make the necessary investments that our citizens need and expect. The President's FY 2000 Budget proposes levels of discretionary spending that meet such needs while conforming to the Bipartisan Budget Agreement by making savings proposals in mandatory and other programs available to help finance this spending. Congress has approved, and the President has signed into law, nearly $29 billion of such offsets in appropriations legislation since 1995. The Administration urges the Congress to consider such proposals as the FY 2000 appropriations process moves forward.

The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. However, the Committee bill is over $500 million, or four percent, below the program level requested by the President. The FY 2000 Budget would increase spending within the discretionary caps for agriculture and other programs in the bill by 3.6 percent over comparable FY 1999 spending. We urge the Senate to consider the over $600 million in user fees proposed in the FY 2000 Budget in order to fund high-priority programs. Given the current period of financial stress in the agricultural sector, now is not the time to reduce assistance to farmers, ranchers, and rural residents.

Below is a discussion of the Administration's concerns with the Committee bill.

Food and Drug Administration

While the Administration is pleased that the Committee has provided a $62 million increase over the FY 1999 enacted level for the Food and Drug Administration (FDA), we are disappointed that the Committee did not fund the full request for the FDA, including important youth tobacco prevention activities and the proposed seafood inspection program transfer.

The Administration is concerned that the Committee's reduction of $56 million from the President's request for non-foods/tobacco FDA activities would jeopardize the FDA's ability to improve the public health infrastructure through enhanced product safety assurance and injury reporting systems. The Administration is also concerned about the Committee's reduction to the FDA building and facilities account, which would delay the completion of FDA field lab consolidation and replacement. The Committee bill does not include the $20 million requested for the replacement of the outdated Los Angeles regional lab, or the $3 million needed to continue work on the Arkansas regional lab. The Administration urges the Senate to fund these activities at the President's requested level.

The Administration is committed to Youth Tobacco Prevention activities and urges the Committee to provide the requested increase of $34 million for these programs. Every day, three thousand young people become regular smokers. Reducing young people's tobacco use would improve public health for generations to come. This is particularly important in light of the recent decision of the conferees on the FY 1999 Emergency Supplemental Appropriations Act to permit States to retain the entire amount secured from tobacco companies without any commitment whatsoever from the States that those funds be used to reduce youth smoking. To help discourage youth smoking, we urge the Congress to consider the Administration's proposal to increase tobacco taxes.

The Administration urges the Senate to approve the proposal to consolidate Federal seafood inspection activities. The Senate is encouraged to fully fund the requested $3 million for training, education, and other costs associated with the program's transfer.

Food Safety Initiative

The Administration appreciates the Committee's support for the President's Food Safety Initiative (FSI) through increases above the FY 1999 enacted and House bill levels provided to the Department of Agriculture (USDA). We are also encouraged by the increase above enacted that the Committee has provided to FDA for FSI activities. Nonetheless, we are concerned that the Committee has provided only $46 million of the $62 million increase over FY 1999 levels requested in this bill for the Initiative. American consumers enjoy the world's safest food supply, but still too many Americans get sick, and in some cases die, from preventable food-borne diseases. The President's requested increase would also provide critical resources to expand USDA's and FDA's food safety research, risk assessment, and other capabilities. We strongly urge the Senate to provide full funding at the requested levels for these activities and consider the Administration's proposal to charge user fees for Federal meat and poultry inspection services in support of a safe food supply.

Women, Infants, and Children Program

The Administration strongly supports the Committee's $30 million increase for WIC over the House level. The Committee mark would sustain a participation level of 7.4 million in FY 2000. We remain concerned that even this funding level will be insufficient to support the projected participation level of 7.5 million, thereby not achieving our longstanding goal of full participation.

Common Computing Environment

The Administration is very concerned by the Committee's decision not to fund the Common Computing Environment, either directly through the Support Service Bureau, as requested in the President's budget, or by providing additional funds to the county-office agency salaries and expense accounts. Some in Congress have criticized USDA this year for delays in providing the crop-loss assistance funds to farmers that were provided in P.L. 105-277, the FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, and for long waiting periods some farmers and rural residents have faced in receiving other assistance through USDA county offices. Yet this bill would not provide the funds needed to address the very problems that contributed to the delays. At a time when the farm community is under financial stress and the demand for farm credit and other programs is high, the need for timely and efficient service to producers and rural residents has never been greater. Without the proposed $74 million in funding, it will not be possible to modernize the technology in USDA's local field offices, create "one-stop shopping" for rural customers, and promptly deliver the programs that Congress enacts with available staffing levels.

Conservation and Environmental Programs

The Committee bill appears to cut spending on key USDA conservation programs by at least $140 million from the President's request. The $26 million reduction in the Environmental Quality Incentives program (EQIP) would mean 13,000 farmers and ranchers not receiving needed financial and technical assistance to stop soil erosion, improve waste treatment in animal feeding operations, and implement other voluntary conservation measures critical to protecting our natural resources. To advance this important work further, including addressing the significant backlog of farmers' requests for aid, the Administration requested a $100 million increase in the EQIP program as part of its Clean Water Action Plan. The combination of the EQIP reduction and the Committee's failure to fully fund the request of additional technical assistance to animal feeding operations could damage livestock owners' progress toward ensuring that their operations are environmentally sound and community-friendly.

Other valuable environmental programs would be severely underfunded by the Committee bill, and we urge the Senate to restore funding for them. The Committee has failed to fund the $50 million discretionary portion of the Administration's request for the Farmland Protection Program, which is part of the Administration's Lands Legacy Initiative. America's farmers need these funds to help them stay on their land, through easements that permanently protect 80,000 acres of prime farmland from development. We urge the Senate to provide the $50 million in discretionary funds requested for the program and redirect its savings from the Conservation Farm Option to this program, as well as to the Wildlife Habitat Incentives Program to assist over 3,000 farmers in protecting and restoring wildlife habitat.

In addition, the Committee has not provided the $12 million requested in the Conservation Operations account to assess the effects of soil management on carbon sequestration, and $5 million for USDA's initiative to help communities make use of geospatial data to make more informed land use decisions and promote smart growth. The Administration recommends that funds be redirected to these high-priority activities, such as by eliminating the Forestry Incentives Program as requested and as provided for by the House bill.

Outreach for Socially Disadvantaged Farmers

The Committee bill does not provide the requested $7 million increase for the Outreach for Socially Disadvantaged Farmers program. This program has proven effective in mitigating the decline in the number of minority farmers by increasing their participation in agricultural programs, assisting them in marketing and production, and improving the profitability of their farming operations. USDA loan default rates have also improved in areas where this program operates. The requested increase is needed to expand this program beyond the limited areas in which it now operates, to further these farmers' equal access and their opportunity for success, and to continue USDA's work to improve its civil rights performance.

Research

The Committee bill would fund USDA's National Research Initiative at $81 million below the request of $200 million, while providing funding for a large number of unrequested, earmarked research grants. We urge the Senate to increase the funding for competitive research grants and to reduce earmarks for lower-priority programs.

Rural Development

The Administration appreciates the Committee's support for priority USDA rural development programs, such as water and wastewater loans and grants, Business and Industry guaranteed loans, and rental assistance for very-low income rural residents. The Administration is concerned, however, that the Committee bill's funding for Rural Development salaries and expenses would jeopardize effective implementation of these programs. The $25 million, or five percent, reduction from the requested salaries and expenses funding could require Rural Development to eliminate over 400, or six percent, of its staff through a reduction-in-force. We urge the Senate to provide the requested level of funding to ensure an adequate delivery system for these vital programs for rural America.

In addition, the Committee bill's provisions for the Rural Community Advancement Program (RCAP) do not provide the full funding flexibility authorized for the program in the 1996 Farm Bill that was requested by the Administration and included in the House bill. The flexibility to shift funds among programs can better ensure that Federal funds can be adapted to unique local economic and community development needs, and we urge the Senate to lift this limitation.

Commodity Futures Trading Commission

The Administration is disappointed that the Committee mark reduces funding for the Commodities Futures Trading Commission (CFTC) by $7 million, or 11 percent, from the President's request. This will result in a hiring freeze, difficulty in meeting workload demands, and possible layoffs. We urge the Senate to restore funding so that the CFTC will have staffing sufficient to maintain oversight and integrity of trading on futures exchanges.

Amendment to Non-Immigrant Farm Worker Program

The Administration strongly opposes the provision of the McConnell amendment to the non-immigrant farm worker program adopted by the Committee that would adversely affect the recruitment of legal U.S. farm workers. The first part of this amendment would shorten the time before work begins that an employer must apply for using foreign workers from 60 to 45 days. While this is not objectionable, it is unnecessary because this is part of a Department of Labor regulation that will be published in the Federal Register by the end of the month. The second part, which affects the time the Department of Labor (DOL) issues its certification of the number of jobs that may be filled with guest workers, is objectionable because it substantially shortens the recruitment period for legal U.S. farm workers down to only 3-8 days. This is not long enough to recruit legal U.S. workers fairly and properly, and does not allow for proper certification checks on incoming foreign workers.

Food and Nutrition Service Research

The Administration strongly objects to any provision of the Committee bill that would prohibit the use of Food and Nutrition Service (FNS) funds for research and evaluations on nutrition programs. To address program integrity and performance issues properly, it is crucial that research on nutrition programs also occur in the context of the programs' administration. We urge the Senate to provide funding for these activities within FNS.

****

H2A MEETING
July 9, 1999

- INTRODUCTION - try to develop a consensus view on this ~~topic~~ proposal by ~~identifying~~ the issues + make a recommendation
If not, ~~at the~~ may need to handled at higher level
- LEGISLATIVE UPDATES

- PRESENTATIONS OF AGENCY'S VIEWS

  - LABOR

  - USDA

  - INS

- DISCUSSION - Identify the issues
  - legalization
  - H2A
  - New guestworker program

- NEXT STEPS

Earl Gohl

Draft: 7/15/99, 11am

H-2A STREAMLINING

MEASURES TO IMPROVE PROGRAM PERFORMANCE

BUDGET INITIATIVES:

FY00

- President's budget includes $10 million to establish America's Agricultural Labor Network (AgNet). AgNet would serve as an information broker by linking growers to workers and workers to employment opportunities, increasing workers' employment and earnings each year.

REGULATORY CHANGES:

Were just finalized - give time to see if it works before changing

* Reduce the lead time for employer's application for temporary agricultural labor certification from 60 days to 45 days before the date of need.

* Increase time for employers to prepare worker housing. Allowing housing to be inspected just 20 days before the date of need.

* No longer require employers to notify the local State Employment Security Office (SESO) of the exact date on which the H-2A workers depart for the employers place of business. Absent written notification, it is assumed the workers depart three days before date of need.

* No H-2A grower-applicant will be required to use a farm labor contractor found to have violated Federal labor or immigration law.

* INS and DOL are proceeding with the transfer of the visa petition adjudication process from the INS to DOL. The result of this transfer is that one entire step of the process will be eliminated and paperwork and processing time will be reduced by 7 - 10 days.

ADMINISTRATIVE CHANGES:

The Department has made administrative changes to the H-2A program to enhance effectiveness and efficiency while maintaining worker protections. Changes made over the past two years include:

* Clarifying that only U.S. workers who are identified by name, address, and social security number can be counted as "available" so as to reduce the number of H-2A workers requested by an employer.

* Directing that greater care be exercised in reducing the number of H-2A positions certified in instances of "last minute" referrals where historical records or other information indicate a likelihood that some proportion of the referred U.S. workers would not make themselves available for work. ?

* More narrowly targeting recruitment efforts (by employers and SESAs) to those areas most likely to produce qualified and available U.S. workers.

* Encouraging routine posting of approved agricultural job orders on America's Job Bank.

* Reaffirming and clarifying the regulatory provisions which allow H-2A workers to move from one certified employer to another, and the requirement placed only on the final H-2A employer to pay for (or provide) the worker's transportation home.

* Improving performance in meeting the deadlines of notifying employers of application deficiencies within 7 days of application, and issuing final certification (where warranted) at least 20 days prior to the date of need.

* Clarifying that regional offices can issue certifications prior to 20 days before date of need provided that the applicant has met all the program requirements.

H-2A Program Utilization

- Since 1994, the number of H-2A applications has increased by 82 percent, and the number of workers has nearly tripled. Many applications are filed on behalf of multiple employers by an association. In 1998, it is estimated that over 4,000 employers were certified for workers. The increase in H-2A program utilization indicates that the program can and does meet local labor needs, while maintaining basic labor protections for U.S. and foreign workers.

Year	Applications Certified	Workers Certified
1994	1,767	12,173
1995	1,773	13,709
1996	1,948	18,297
1997	2,281	22,352
1998	3,189	34,898

Administration Progress on H-2A Reform

June 23, 1999

Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about $6,500 and farm workers are employed on average only about 26 weeks per year.

The H-2A "guest worker" program admits temporary nonimmigrant agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season, if there is an inadequate supply of domestic workers. There is no cap on the number of H-2A visas granted annually. Currently, there are 1.8 million hand-harvest farm workers in the US of which its estimated that approximately half are undocumented. In FY 98 there were 35,000 workers in the H-2A program.

visas

Employer Obligations

Under the current program, in order to hire H-2A workers, an employer must demonstrate to the Department of Labor (DOL) that:

(a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and,

(b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers.

To meet these criteria, employers are required to:

- ✓ engage in positive recruitment efforts;
- ✓ pay workers the higher of the minimum wage, locally prevailing wage, or an "adverse effect wage rate" (AEWR), the average wage paid to non-managerial agricultural workers in the state;
- ✓ provide free and safe housing to workers coming from outside the commuting area;
- ✓ reimburse workers' inbound transportation if they complete half the contract, outbound also if they complete the contract; and,
- ✓ guarantee 3/4 of the hours of the contract the grower offers; and,
- ✓ hire any qualified U.S. worker who applies during the first half of the work contract.

Administration Principles on Reform

The H-2A program has been heavily criticized by the GAO, DOL's IG, and the Hill primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. As a result, Congress has proposed many different bills to restructure the H-2A program.

The Administration has acknowledged problems with the program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections. The Administration does not believe that legislation is necessary or appropriate at this time.

The Administration's guiding principles in reforming the H-2A program are to create a system:

- ✓ with procedures that are simple and the least burdensome for growers;
- ✓ which assures an adequate labor supply for growers in a predictable and timely manner;
- ✓ that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers;
- ✓ which avoids the transfer of costs and risks from businesses to low wage workers;
- ✓ that encourages longer periods of employment for legal U.S. workers; and,
- ✓ which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions.

The Administration is committed to improving the H-2A program to assure growers of an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society.

FY 2000 Budget Initiative

- The President's pending Budget requests $10 million to fund America's Agricultural Labor Network ("AgNet") that would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. AgNet would serve as an information broker through an electronic system that allows both growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.).

H-2A Regulatory Reform

- DOL will soon publish a final regulation that will complete an earlier proposal to:

  –reduce the length of time that employers must file an H-2A application from 60 to 45 days before the date when employees are needed;

  –reduce the deadline for when employer-provided housing must be available for inspection before the date of need; and,

  –modify the requirement that certified H-2A employers provide notice of the exact date on which H-2A employees have departed for the place of employment.

- INS will soon issue a final regulation that will complete an earlier proposal to delegate H-2A petitioning authority to DOL. This proposed change would significantly reduce the burden to growers when filing for H-2A workers by removing an entire step from the current process.

- DOL has also made additional administrative changes to the H-2A program such as modifications to the positive recruitment requirement. DOL intends to consistently meet the existing 20 day deadline to issue approved certifications for growers.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Legalization Meeting (partial, DOB SSN) (1 page)	00/00/0000	b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Irene Bueno
OA/Box Number: 17169

FOLDER TITLE:

H2A Background: H2A Farmworkers/Legislation [2]

2017-1120-S
ry2227

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

[001]

Legalization Meeting –
try Tuesday 6/29 – anytime between 10-3:00 (assuming 211 is available)

DOL
- John Fraser - 693-0051(Gayle); DOB SSN
- Earl Gohl - 693-4621, DOB -(b)(6) SSN -(b)(6)

DOJ
- James Castello514-3392 (DOB(b)(6) SSN -(b)(6) or John Morton –SSN-(b)(6) (b)(6) DOB(b)(6) (e-mail)
- Patty First 514-4810; DOB -(b)(6) SSN(b)(6) (e-mail)
-

INS
- Bob Bach (Jackie 305-8539) – DOB(b)(6) SSN(b)(6)
- Cathy St. Denis – 514-3195 (e-mail) DOB:(b)(6); SSN(b)(6)(e-mail)
- Allen Erenbaum 514-8102 DOB:(b)(6) SSN(b)(6)(e-mail)
- Owen (Bo) ~~Owens~~ Cooper – don't have – ask Cathy (e-mail)
-

USDA
- Linda Delgado – Dep Sec Rominger's office – 720-3631; DOB-(b)(6) SSN(b)(6)
- Al French (not available 6/23-6/24) 720-4737; DOB SSN

OMB (e-mail)
- Barbara Chow
- Larry Matlack
- Darrell Park

WH (e-mail)
- Janet Murguia (Erica Morris)
- Caroline Fredrickson
- Broderick
- Brian Kennedy
- Maritza Rivera/Debbie Mohile

Clara J. Shin/WHO/EOP@EOP
Maritza Rivera/WHO/EOP@EOP
Myrta Sale/OMB/EOP@EOP
Moe Vela/OVP@OVP
Scott Busby/NSC/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP
Michael Deich/OMB/EOP@EOP
Theodore Wartell/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Theresa A. Bell/OMB/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Barbara Chow/OMB/EOP@EOP
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Broderick Johnson/WHO/EOP@EOP
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Dawn M. Chirwa/WHO/EOP@EOP
Brian V. Kennedy/OPD/EOP@EOP
Courtney O. Gregoire/OPD/EOP@EOP

Message Sent To:

USDA PRELIMINARY VIEWS ON H-2A REFORM/LEGALIZATION PROPOSAL

July 7, 1999

BACKGROUND

Both farm employers and workers are dissatisfied with the current employment situation in agriculture where the majority of U.S. workers has been displaced by illegal alien workers, wages are being depressed by illegal aliens, employers are becoming increasingly dependent on fraudulently documented workers and, simultaneously, are at greater risk of economic loss through disruption of their operations by the enforcement actions of the Social Security Administration and the Immigration and Naturalization Service (INS). Anecdotal reports indicate some crops have been left in the field due to a lack of labor and farmers beginning to switch to less labor-intensive crops–to the detriment of not only farm workers but an even greater number of workers in farm-associated activities. All of these concerns appear to be worsening; and all could be improved by H-2A program reform.

Agricultural employers have unsuccessfully sought legislative reform of the current H-2A program for several years. These efforts have been countered by promises to streamline the current H-2A program and an inter-Departmental work group has discussed this since 1995. A rule to streamline and improve the operation of the H-2A program was published in the Federal Register on June 29, 1999. Neither farmers or workers will regard these rule changes as significantly addressing their concerns. These concerns include the adequacy of existing mechanisms to either match U.S. farm workers with jobs or to enable employers to obtain a sufficient number of legal workers on a timely basis.

The current proposal is the result of discussions among Administration officials, farm employers, and farm worker advocates in an effort to design a compromise that would reach a consensus. It includes a proposal similar to the guest worker proposal approved by the Senate in 1998 combined with a proposal for a one-time opportunity for alien farm workers with a significant agricultural work history to adjust their status first to a new category of non-immigrant alien and eventually to the status of permanent legal resident. Permanent legal residency status would be subject to an annual cap and contingent upon the performance of at least 180 days of farm work in at least five of seven years.

A properly constructed supplemental worker program could benefit U.S. farm workers and an even greater number of the workers in associated industries; could benefit the agricultural economy by helping U.S. producers compete in domestic and export markets of fruits, vegetables, and horticultural specialties; could reduce or eliminate the competition of illegal alien workers who displace U.S. workers and depress their wages and working conditions; and would constitute the only means of maintaining an adequate workforce during peak periods of labor need without exacerbating unemployment levels during off seasons.

LEGALIZATION

General

The proposal envisions that aliens' status may be adjusted if they can demonstrate 180 workdays in the 18 month period beginning 12 months prior to the date of enactment. This is a high workday standard because, on average, farm workers perform farm work only 25 weeks per year.[1] By extending the qualifying period past the date of enactment, it might encourage illegal entry by workers seeking to obtain requisite qualifying work. Might it not be better to specify that all of the qualifying work must have been performed at least 6 months prior to the date of enactment?

Legalization - Effects

The legalization proposal would benefit illegal alien workers presently in the agricultural workforce by eliminating their vulnerability for exploitation due to their illegal status and, it would establish a means for their eventual adjustment to permanent legal resident status and naturalization. In addition, they would be free to move from one agricultural employer to another. It would benefit farm employers by increasing the availability of legal workers. This availability, combined with the registry verification procedure and counterfeit-proof documents, would enable employers to determine worker eligibility and should substantially reduce the number of illegal aliens in the agricultural workforce. It would not benefit U.S. workers because, unlike H-2A workers, adjusted workers would compete for their jobs. However, since the workers to be adjusted are already part of the agricultural workforce, they should not depress wages or displace U.S. workers any more than at present or in the foreseeable future.[2]

Legalization - Fraud

The Special Agricultural Worker program experienced considerable fraud, in part because it was an advantage to employers to legalize as many potential workers as possible. A similar incentive for employers would exist under this proposal for employers to assist alien workers to apply or adjustment of status. This suggests the need for rigorous verification of qualifying employment.

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[1] U.S. Department of Labor; National Agricultural Worker Survey; Research Report No. 5; May, 1994; page 31.

[2] Although many farmworkers–an estimated 600,000–are not legally authorized to work in the United States, INS does not expect its enforcement activities to significantly reduce the aggregate supply of farmworkers. General Accounting Office, GAO/HEHS-98-20 H-2A Guestworker Program, page 5.

This incentive should not exist relative to workers adjusting to permanent resident status because employers would have no reason to assist persons who did not work. In addition, since the record of qualifying employment would be maintained contemporaneously and could be verified by payroll tax reports, it would be difficult and expensive to falsify.

H-2A REFORM

The principal advantages of the proposed H-2A temporary agricultural worker program is that H-2A workers are non-immigrants who do not remain in the United States during the off-season, their number is limited to the shortfall of available U.S. workers, they do not compete with U.S. workers, the program assures employers of an adequate and reliable legal workforce at the time and place needed, and participating employers must first offer U.S. workers and adjusted aliens first refusal of H-2A jobs with enhanced compensation and employment standards. There are other advantages to legalization which are discussed above.

The proposal envisions a one-time per worker waiver for aliens entering the H-2A program. This would enable the conversion of illegal aliens presently in the United States to legal H-2A workers and discourage overstays or future illegal entry which would cause a loss of their H-2A eligibility.

Agricultural Worker Registry

The proposed agricultural worker registry would be similar to the job matching database used by the Job Service except that, through the Internet, it could be accessed by workers, employers, worker advocate organizations, and public assistance agencies in addition to the Job Service. It would replace the current Job Service recruitment system which succeeds in placing workers in one percent of agricultural jobs and two percent of H-2A jobs.[3] The eligibility of each worker will be verified before referral to a job. All farm employers may use the registry to obtain legal workers but only H-2A applicants will be required to, and they will not be certified if qualified workers are available through the registry. H-2A applicants would be required apply 28 days in advance of need (12 days less than at present) and to advertise that their jobs are available through the registry. Emergency applications could be made after the filing deadline, but U.S. workers would be assured of the full period to obtain jobs by displacing alien H-2A workers who may have already been hired.

The registry would have the potential to replace farm labor contractors for recruitment purposes. By eliminating the cost of these intermediaries, funds would become available that could be used

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[3] Office of Inspector General, U.S. Department of Labor, Report Number: 04-98-004-03-321, March 31, 1998, page 5, 7.

for higher wage levels.
The registry would enable farm workers and their service organizations to take charge of their own job matching activities from any location with a Internet-connected computer rather than rely solely on Job Service offices.

Employment Standards

Wages offered by H-2A employers would, as a minimum, be equal to the prevailing rate for the occupation if greater than the average hourly field and livestock wage rate for the State (adverse effect wage rate (AEWR)) or, if less than the AEWR, five percent above the prevailing rate or such lesser amount necessary to bring the rate equal to the AEWR. This rate, combined with free housing and free transportation, will result in significantly enhanced compensation for U.S. workers employed by H-2A employers. To the extent the program is used, it will move overall farm labor wage rates higher.

In some instances the proposed wage standards would be less than current program requirements but would be more comparable with labor market conditions. Currently, almost half of H-2A employers pay a prevailing rate that is higher than the AEWR. It is not known which standard would be of greater benefit to U.S. workers: the present standard which is prohibitively costly for many employers or the more affordable proposed market oriented standard which would enable a greater number of U.S. workers access to enhanced H-2A job offers. Resulting from greater employer use the H-2A program.

Wage standards would be applied to piece rate workers on a group basis.

Transportation

Transportation costs for workers residing beyond commuting distance will be reimbursed by H-2A employers on the same basis as the present H-2A program.

Housing

H-2A employers will be required to provide free housing to all workers residing beyond commuting distance to the job. If the State determines that there is adequate rental housing available in the area, this obligation may be met by the payment of a housing allowance. All housing must meet the standards for rental housing in the State.

The concept paper calls for a transition period for providing housing in areas without adequate housing. The concept paper states that a housing allowance could not be used in such areas but does not describe what would occur.

MISCELLANEOUS PROVISIONS

Compliance Assistance

The proposal calls for a cooperative industry-government targeted enforcement program to improve agricultural employers knowledge of and compliance with labor, employment, and immigration laws, focused on "bad actors." Compliance training is much needed because many farm employers, particularly farm labor contractors, are poorly educated and not knowledgeable with respect to their legal responsibilities.

Bilateral Commissions

The proposal would establish bilateral commissions between the U.S. and sending governments to provide consultation on operation of the H-2A program.

H2A ISSUES
June 29, 1999

INTRODUCTION

PURPOSE

BACKGROUND

- Timing

- Proposals

DISCUSSION

NEXT STEPS

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

TESTIMONY
OF
PAUL VIRTUE
GENERAL COUNSEL
IMMIGRATION AND NATURALIZATION SERVICE
DEPARTMENT OF JUSTICE

A HEARING ON
PAST DESIGNATION OF TEMPORARY PROTECTED STATUS AND FRAUD IN PRIOR AMNESTY PROGRAMS

BEFORE
THE HOUSE IMMIGRATION AND CLAIMS SUBCOMMITTEE
HOUSE JUDICIARY COMMITTEE

THURSDAY, MARCH 4, 1999
2237 RAYBURN HOUSE OFFICE BUILDING
10:00AM

Legalization

Brief Background on the Legalization Program

More than three million aliens filed applications for legalization under the provisions of the Immigration Reform and Control Act of 1986. The statute was drafted both to encourage undocumented aliens to present themselves to the INS for legalization and to address the migrant worker's lack of documents that could be used in support of an application. These and other factors led to a high degree of fraud in the program. INS was committed then, as it is, now to fighting application fraud, but a variety of factors made it difficult to attack fraud at the level of the individual applicant. INS anti-fraud efforts concentrated on filers of false affidavits and false document vendors. This category of fraud was most prevalent both in the underlying legalization program and in applications for class membership in the legalization litigation.

Fraud

The legalization program was created under the Immigration Reform and Control Act of 1986 (IRCA). IRCA was passed in a legislative environment in which sweeping changes were being made to the Immigration and Nationality Act. In addition to IRCA, the last days of the 99th Congress also saw the passage of the Immigration Marriage Fraud Amendments of 1986, as well as the Immigration and Naturalization Act Amendments of 1986.

IRCA was intended to solve the problem of illegal immigration through a two-pronged approach: The first prong created a system of employer sanctions, intending to remove the job "magnet" that attracts illegal immigrants. To address the illegal population already present in the United States. the second prong provided a means by which long-term illegal residents, in addition to c:rtain agricultural workers, could obtain lawful permanent resident status, thus becoming "legalized."

The legalization provisions of the IRCA provided for adjustment of the status of aliens who had resided in the United States continuously in unlawful status since January 1, 1982. Upon satisfactory proof of such continued residence. an alien was granted temporary resident status, followed by a grant of permanent resident status after eighteen months. These provi::ons are referred to as "245A," for the section of the Immigration and Nationality Act containing the provisions, or more generally as "legalization."

In addition to section 245A legalization, agricultural workers who could demonstrate that they performed qualifying agricultural work in the United States for at least ninety days during a designated period were granted temporary lawful resident status which was automatically converted to lawful permanent status after one year. This program was known as the Special Agricultural Worker program (SAW).

Number and Characteristics of Applications

INS statistics indicate that 1,763,434 aliens applied for legalization under the general provisions of section 245A. Of that number, 1,660,157 were approved for temporary resident status, and 1,593,046 aliens ultimately acquired permanent residence through the program. INS statistics do not track the reasons for the denial, so it is impossible to present an accurate count of how many of the denials were based on application fraud.

Under the SAW programs, 1,277,514 aliens applied for legalization. As of August 15, 1992, 1,076,560 aliens received temporary residence. As of September 30, 1997, 1,091,846 had received permanent resident status. As in the case of 245A legalization applications, INS statistics do not track the reasons that an application was denied. You will notice that these numbers reflect a larger number of permanent residents through the SAW program than temporary residents. The Legalization Application Processing System (LAPS) database was set up to track and process SAW and legalization applications. This discrete database was established both because of the temporary nature of the legalization program and because of the confidentiality provisions of the IRCA. Because the legalization/SAW program was reaching its conclusion, the LAPS system was closed out in August 1992. Because of appeals of revocations and denials, individuals continued to receive permanent residence after the LAPS close-out. It is this fact that accounts for the discrepancy.

Fraud During the Legalization and SAW Programs

As I stated earlier, the rate of suspected fraud in the SAW cases was far greater than in the 245A legalization program. This was generally because of the easier standards of proof required to establish eligibility for SAW status. Whereas section 245A legalization applicants had to provide documentary proof of continuous unlawful residence from January 1, 1982 to the date of filing the application, SAW applicants were allowed to meet their burden by filing affidavits if no other documents were available. This more lenient documentary requirement was an acknowledgement by the Congress of the transitory nature of migrant agricultural employment and its effect on the farm worker's ability to keep and produce documentary evidence relating to eligibility for SAW status.

The great attraction for SAW fraud was permanent residence, which allowed the successful SAW applicant to in turn petition for additional relatives. Employment authorization, which the INS was required by law to provide upon the presentation of a nonfrivolous application, also encouraged many aliens to file applications. Compounding the problem was the fact that the SAW statute did not allow a finding that an application was frivolous until the evidence of agricultural work was disproved by the INS. Since much of the evidence for agricultural work was in the form of affidavits, disproving the application was a difficult proposition.

Anti-Fraud Enforcement Efforts

Because of the importance of the affidavit in the SAW application process, the INS focused its enforcement efforts on addressing the creation and sale of false affidavits. By far the most prevalent fraud in the SAW program was committed by farm labor contractors or farm owners who sold their affidavits to aliens.

As part of the implementation of the legalization and SAW programs, the INS created Document Analysis Units. A unit was created at each of the INS' four Regional Processing Facilities. These units analyzed and developed intelligence regarding persons suspected of committing legalization and SAW fraud, and developed profiles of individual violators and document packages. By the second quarter of fiscal year 1990, over 920 arrests for SAW fraud had been made, yielding 822 indictments. These arrests led to the conviction of 513 document vendors and SAW fraud arrangers. In addition, this intelligence was used in evaluating the applications of aliens who claimed to have worked for individuals who were known document vendors.

INS efforts to combat fraud were affected by two external factors: the confidentiality provisions of IRCA and judicial decisions regarding the use of intelligence regarding fraud. One of IRCA's hallmarks was its strict confidentiality provisions. These provisions were meant to ensure that "illegal" aliens were not discouraged from filing applications for fear of INS enforcement actions against them. Thus, no employee of the

Department of Justice was permitted to use any information from a legalization application for any purpose other than to make a determination on the application. Also, no employee of the Department of Justice was permitted to make any publication in which information submitted by a particular individual could be identified. These provisions were to be enforced by criminal sanctions and a $10,000 fine. Although the confidentiality provisions were intended to allow for the prosecution of fraud and for the termination of temporary resident status for fraud, the definitions of permissible activity were complex and were poorly understood by the enforcement community. This lack of understanding, combined with the fear of monetary penalties, placed a chill on prosecution of all but the most clear and egregious violations.

INS efforts to combat fraud in individual applications were also hampered by the results of litigation. Concentrating anti-fraud efforts on document or affidavit vendors was meant to provide intelligence in dealing with the fraudulent applications filed as a result of those document vendor's crimes. However, the district court in Abdullah v. INS, held that the INS could not deny applications simply because the supporting documentation was from a past employer convicted of fraud, without adequately considering the merits of the applicant's individual case. The INS thus had to go "back to square one" in the adjudication of many cases, thus wasting valuable anti-fraud intelligence.

A similar case involved an INS regulation stating that uncorroborated personal testimony by a SAW applicant would not meet the alien's burden of proof. In Haitian

Refugee Center, Inc. v. Nelson, the court held that this regulation imposed an impermissible burden of proof. Easily met standards of proof, judicial decisions, and the confidentiality provisions of the statute meant that the INS was severely limited in combating fraud against individual applicants.

The Legalization Litigation

The implementation and operation of the Legalization program were subject to early litigation. The two principal lawsuits, Catholic Social Services v. Reno ("CSS") and LULAC v. INS (later amended to "Newman v. INS"), challenged INS regulations published under the general legalization provisions of section 245A. The CSS case challenged INS regulations that disqualified aliens who left the United States without advance parole after the application period began and then returned.

The LULAC/Newman case centered on the statute's requirement that an applicant for legalization must have maintained continuous unlawful presence. The regulation in place at the time provided that an alien who left the United States and returned using a facially legitimate but invalid visa was no longer unlawfully present for purposes of legalization.

In both cases, the government argued that the lawsuits could not be maintained by aliens who had not actually applied or attempted to apply (by submitting a complete application and fee to an INS officer) before May 4, 1988. The litigation ultimately reached the Supreme Court in 1993, where the government's position prevailed. Despite the Supreme Court's decision, the government's efforts to end the litigation were unsuccessful in the lower courts. During the ongoing litigation, thousands of aliens who had failed to apply for legalization during the one-year statutory application period were granted work authorization and stays of removal on the basis of membership in the class action lawsuits.

Fraud in Obtaining Class Membership in the Litigation

As the result of a court order, the INS was required to accept legalization applications and affidavits of class membership from aliens seeking class membership in the CSS and LULAC/Newman cases. In LULAC, class members are allowed to file skeletal applications (i.e. applications without all supporting documents) together with a nonrefundable fee. Applicants were required to establish only their identity; that they reentered the United States with a nonimmigrant visa or other travel document after January 1, 1982 and before May 4, 1988; and the reasons why an application was not filed during the one-year application period.

CSS applicants for class membership were required to file an application for legalization (Form I-687) and establish by independent evidence such as a bus ticket, airplane ticket, or declaration of a third party that they were outside of the United States due to a brief, casual and innocent absence after May 1, 1987 and before May 4, 1988. In addition, these applicants had to submit a declaration explaining the reasons why no application was filed during the application period. If these conditions were met, the INS was required to issue an Employment Authorization Document.

Many aliens claim eligibility for legalization through these lawsuits, which are commonly referred to as the "late amnesty" litigation. The approximate number of aliens affected by the litigation is as follows: In the CSS case, 180,287 aliens sought class membership. Of this total, 40,306 received class membership. In the LULAC/Newman case, 50,778 aliens sought class membership. Of this total, 25,768 received class membership.

INS together with the Department of Justice prosecuted a large number of cases involving class membership fraud. By far, the largest operation was Operation Desert Deception in Las Vegas, Nevada. The organizations and individuals targeted in that investigation filed some 22,000 applications, many of which were fraudulent, for both legalization and class membership. As of June 1996, this operation had resulted in 55 criminal convictions. Of these, the most noteworthy was the conviction of Jose Velez, the director of the Nevada chapter of LULAC and then National President of LULAC at the time the offenses leading to his conviction took place. Between March 1988 and

January 1991, Velez and his co-conspirators submitted approximately 3,000 fraudulent applications.

1996 Statutory Amendments

Section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted on September 30, 1996. That section provides that courts may only hear cases brought by persons seeking relief under the IRCA if they in fact filed a timely application for legalization before May 4, 1988, or "attempted to file a complete application and application fee with an authorized legalization officer of the INS but had the application and the fee refused by that officer."

Based on the enactment of IIRIRA section 377, the United States Court of Appeals for the Ninth Circuit on January 16, 1998 instructed the district court to dismiss the CSS case and vacated all interim relief orders in the case. The LULAC/Newman case was remanded to the district court to determine if there were any persons who could meet the standard established in IIRIRA section 377.

In April 1998, following the Ninth Circuit's dismissal in CSS, plaintiffs filed a nearly identical lawsuit (CSS2) in the same district court (the U.S. District Court for the Eastern District of California). On July 2, 1998, Judge Lawrence Karlton entered a preliminary injunction ordering INS to stay the removal and continue to extend employment authorization benefits to a nationwide class of former class members in the original CSS lawsuit. The Ninth Circuit then stayed the district court's orders granting these benefits in CSS2, so former CSS class members currently enjoy no benefits as class members. LULAC/Newman class members continue to receive employment authorization and, under the court's order, "shall not be removed" by INS. Both cases are thus currently pending in District Court, essentially to determine whether there are persons who meet the standard set forth in IIRIRA section 377

Preventing NACARA and HRIFA Fraud

NACARA and HRIFA provide various forms of immigration benefits and relief from removal to certain Central Americans, Cubans, Haitians and nationals of former Soviet bloc countries. Specifically, the laws provide that eligible Nicaraguans, Cubans and Haitians can be considered for adjustment of status to that of permanent resident.

The interim regulation provides for a discretionary waiver of interview in some NACARA adjustment cases. INS' internal guidance relating to the interview waiver provision , however, restricts its use to very specific situations. The guidance requires an interview in cases in which the evidence submitted to document presence in the United States is not verifiable from INS records. We have also designed mechanisms to identify and deter fraudulent applications by persons undeserving of the special relief accorded to eligible Nicaraguans, Cubans, and Haitians

Conclusion

The 1986 Immigration Reform and Control Act provided a generous amnesty for people who were unlawfully present in the United States. Unfortunately, the prospect of work authorization and permanent residency in the United States attracted a significant amount of opportunism and fraud. Moreover, the confidentiality provisions of the statute and evidentiary provisions that shifted the burden of proof to the government have made it difficult, and in some cases, impossible to deny or revoke status in individual cases. Accordingly, INS, the Criminal Division of the Justice Department, and the United States Attorneys have focused their investigative and prosecution efforts on fraudulent document vendors and application preparers. In the SAW program, those efforts have led to 920 arrests, 822 indictments, and 513 convictions for fraud and related criminal activity. INS and the Department of Justice have been and remain committed to identifying and prosecuting criminal fraud to the fullest extent of the law and the prudent management of available resources.

While it does not lead to lawful status in the United States, temporary protected status does afford work authorization and a temporary stay of removal. We recognize the opportunity for the abuse of this humanitarian provision of the statute. We have taken what we believe to be prudent measures to identify and address fraudulent attempts to gain the benefits of this temporary protection. Some of those measures were discussed with you prior to the most recent designations of Nicaragua and Honduras. We found your recommendations most helpful and we would be happy to consider any further recommendations you may have in this regard.

Mr. Chairman, that concludes my testimony, I am happy to answer any questions you may have.