FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
Phone (202) 776-1757

December 17, 1998

President Bill Clinton
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Re: Appropriations for the Department of Labor Wage and Hour Division

Dear Mr. President:

The Department of Labor's Wage and Hour Division lacks the resources to fulfill its obligation to enforce labor laws for America's workers and the consequences of this harm fall harshly on immigrant workers in low-wage occupations. The organizations listed below, on behalf of low-wage immigrant workers, ask that you take action to secure from Congress supplemental funding for this fiscal year (FY 1999) and a substantial increase in appropriations for the next fiscal year (FY 2000).

The Department of Labor has conducted studies of several sectors of the economy, including the garment, poultry processing and agricultural industries. These studies reveal widespread violations of the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). Unlawful practices include child labor, substandard wages, denial of overtime pay (to the non-agricultural workers entitled to it), and dangerous housing and transportation of agricultural workers. In September, DOL released a study of the prosperous California grape industry which showed that seventy-seven percent of vineyards violated at least one provision of these laws. Of eighty-nine employers (growers and labor contractors), twenty-six employers failed to pay 369 workers the federal minimum wage rate of $5.15 per hour. We commend your Administration for targeting such industries for compliance efforts.

We have received reports, confirmed by Department of Labor officials in several areas of the country, that the Wage and Hour Division cannot investigate important cases due to inadequate funding. Specifically, officials have said that their travel budgets have been depleted except in a limited category of cases. Unable to spend money to travel to interview workers and employers, DOL cannot vindicate serious violations of workers' rights.

These workers deserve better treatment from our government and their employers.

Law-abiding *employers* also deserve better protection. Congress expressed its view in the preamble to the Fair Labor Standards Act that the use of substandard employment practices constitutes "an unfair method of competition in commerce." Absent a credible threat that government will discover and prosecute illegal conduct, some businesses will take the risk of violating employment laws. Other companies that wish to comply with the law will be pressured to remain competitive by lowering their own labor costs through similar methods. The Government must deter such cut-throat competition.

The Department's financial limitations are not temporary but rather ongoing and systemic. Although there have been some increases in the Wage and Hour budget in recent years, they have been insufficient to compensate for prior budget cuts. In agriculture, for example, by several measures the level of wage-hour enforcement is less than one-half of that which occurred during President Reagan's Administration. Under the Migrant and Seasonal Agricultural Worker Protection Act, in FY 1986, DOL conducted 4,769 investigations, spent 52,000 hours on direct enforcement and collected $1.6 million in civil money penalties. In FY 1997, DOL conducted just 1,816 investigations, spent only 22,814 hours on enforcement, and collected a mere $548,971.

The agency's insufficient funding not only reduces the quantity of investigations but the *quality* of investigations. Cases that are not investigated promptly and thoroughly are difficult to litigate well and, consequently, are less likely to secure for workers complete reimbursement of unpaid wages. Funding is needed to provide more bi-lingual investigators, specialized training for particular occupations and labor markets, more assistant solicitors of labor to litigate and settle cases, and other improvements.

To enable the Wage and Hour Division to carry out its labor law enforcement responsibilities in the areas of child labor, minimum wage, overtime, foreign contract labor and occupational safety and health, we ask that you request from Congress (1) a supplemental appropriations for the current fiscal year and (2) a *substantial* increase in the Wage and Hour enforcement budget for the next fiscal year.

Thank you for your consideration.

Sincerely,

Bruce Goldstein

BRUCE GOLDSTEIN
FARMWORKER JUSTICE FUND, INC.

NATIONAL COUNCIL OF LA RAZA

AMERICAN FRIENDS SERVICE COMMITTEE

NATIONAL IMMIGRATION LAW CENTER

FARM LABOR ORGANIZING COMMITTEE, AFL-CIO

LEAGUE OF UNITED LATIN AMERICAN CITIZENS

UNITE! UNION OF NEEDLETRADES, INDUSTRIAL & TEXTILE EMPLOYEES

ASSOCIATION OF FEDERAL, STATE, COUNTY & MUNICIPAL EMPLOYEES

NATIONAL EMPLOYMENT LAW PROJECT

CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION

WASHINGTON (STATE) ALLIANCE FOR IMMIGRANT AND REFUGEE JUSTICE

YALE LAW SCHOOL WORKERS' RIGHTS PROJECT

TEXAS APPLESEED ADVOCACY CENTER

SOUTH TEXAS CIVIL RIGHTS PROJECT

LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF TEXAS

RURAL COALITION

cc: Secretary of Labor Alexis Herman
Assistant Secretary of Labor Bernard Anderson
Acting Administrator, Wage and Hour Division, John Fraser

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FAX COVER SHEET

Please Deliver to:
Julie Fernandez

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 2

Message:

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

MEMORANDUM

TO: Julie Fernandez, White House Domestic Policy Council
Michael Hancock, Wage and Hour Division, Department of Labor

FROM: Bruce Goldstein

DATE: December 18, 1998

RE: Letter to President Clinton on Wage and Hour Division budget

No. Pages: 1 including this page

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As you probably know, several national and regional organization sent a letter to President Clinton and the Secretary of Labor on December 17, 1998, requesting that he seek from Congress additional funding for the Wage and Hour Division for both the current fiscal year and the next one. The following groups have asked to be placed on the letter to express their support for this request. I ask that you inform your superiors of this amendment to that letter. The groups are:

Service Employees International Union

Cuban American National Council

The Jesuit Conference

National Immigration Forum

Thank you.

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FAX COVER SHEET

This fax may contain confidential or privileged information. If you receive it in error, please contact the sender and do not distribute. Thank you.

TO: Maria Echaveste, Deputy Chief of Staff
Julie Fernandez, Domestic Policy Council
Earl Gohl, US DOL, Congressional Affairs
Mike Hancock, US DOL, Wage & Hour Division

FROM: Bruce Goldstein, Co- Executive Director

DATE: December 17, 1998

RE: Sign-on Letter to President Clinton:
Appropriations for the DOL Wage & Hour Division

No. Pages: 04 (including this page)

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RURAL COALITION

cc: Secretary of Labor Alexis Herman
Assistant Secretary of Labor Bernard Anderson
Acting Administrator, Wage and Hour Division, John Fraser

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

GENERAL GOVERNMENT & FINANCE
Old Executive Office Building
Room 246
Washington, DC 20503
Fax Number: 395-6988

FACSIMILE TRANSMISSION

Date: 12/16 Number of Pages including Cover: 5

PLEASE DELIVER THE FOLLOWING PAGES TO:

Steve Mertens

FROM:

X MICHAEL DEICH, Associate Director, General Government & Finance (202-395-3120)

___ Pat Romani (202-395-3120)

___ Ted Wartell (202-395-3801)

Julie

FYI

65581

Comments:

From Janet Murguia

DEC-16-1998 05:27 P.01/04

Mindy E. Myers

12/14/98 12:55:37 PM

Record Type: Record

To: Michael Deich/OMB/EOP

cc: Theodore Wartell/OMB/EOP

Subject: Migrant Farmworker/Census Conference

Maria asked that we forward this to you as well. I will send over the follow up paperwork that was faxed to Janet.

Thanks

---------------------- Forwarded by Mindy E. Myers/WHO/EOP on 12/14/98 12:55 PM ---------------------------

JANET MURGUIA

12/08/98 08:41:54 PM

Steve Martens:

Record Type: Record

To: Maria Echaveste/WHO/EOP, Marjorie Tarmey/WHO/EOP

cc: Karen Tramontano/WHO/EOP, Robin J. Bachman/WHO/EOP

Subject: Migrant Farmworker/Census Conference

I spoke this morning at the conference and I thought it important to download you on a couple of key points they wanted me to bring back to you and the White House policy/budget decision-makers.

First , the main consensus from all the participants was that their efforts to count migrant farmworkers and their families not be undermined by having INS follow census takers with raiding actions. In fact, they feel so strongly about this that they have asked the President to issue an Executive Order which would direct INS to cease from any raids on undocumenteds during any agreed upon "census-survey" window. **Second**, they felt strongly that the President's budget needed to reflect funding for farmworker housing, especially single, male housing units. This is something that was clearly a sore point -- they fear that this type of funding will be zeroed out and that it would be an outrage if that were to be true. They referenced both HUD and USDA but I'm not sure what accounts or specific program they were referring to -- Ilene Jacobs of CA who was the contact person for this part of the session promised to get me something in writing on this. If she does, I'll forward it to you. **Finally**, they raised their strong opposition to any new bracero program (i.e., H2-A). I told them that we would strongly resist unfair proposals but that there would be significant pressure to force a resolution and that we needed to look at constructive, progressive alternatives and invited their ideas. (I tried to prepare them for continued pressure from Sen. Wyden to address this issue). Hope this is useful; I'm glad I could help. Janet.

We've Thought Of Everything!

HYATT REGENCY SAN ANTONIO™

ON THE RIVERWALK

ATTENTION:	JANET MURGUIA, DEP. DIR. LEG. AFFAIRS
COMPANY:	THE WHITE HOUSE
FAX NUMBER:	202.456.6220
NUMBER OF PAGES:	2
FROM:	ILENE J. JACOBS DIR. LIT. CRLA INC.
DEPARTMENT:	CALIFORNIA RURAL LEGAL ASSISTANCE

NOTES: Please deliver to Ms. Murguia as soon as possible. She requested this following the census conference on December 8th.

Thank you.

Steve Martens

IF ANY OR PART OF THIS FAX IS MISSING, PLEASE CONTACT US AT:

123 LOSOYA ST.
SAN ANTONIO, TEXAS 78205
210.222.1234

Memorandum

To: Ms. Janet Murgui Deputy Director of Legislative Affairs, The White House
From: Ilene J. Jacobs Director of Litigation, Advocacy & Training, California Rural Legal Assistance
Re: Census 2000: Fa workers Count Conference, December 7th & 8th
Date: December 9, 19

I write to thar you for your encouraging remarks during the closing session of the Census 2000, Migrant and Seasonal rmworkers Count Conference on December 8th. Your comments about the Administration's comi tment to a complete and accurate Decennial Census relying on accepted scientific methodology were we received and very much appreciated by all of those assembled.

I write also i esponse to your request for a brief summary of the significant points raised by the advocates for and repr entatives of migrant and seasonal farmworkers who attended the conference and made requests of you d the White House. (I apologize for the informality of this memorandum. I am attending a conferenc n San Antonio and do not have access to my office computer.)

The salient points wer the following:

Census 2000

(1) A complete and a urate census, using reliable statistical methodology, is critical to improving the differential under unt of minorities and hard to count populations.

(2) The 2000 Decen l Census must account for impediments to the enumeration of migrant and seasonal farmworkers thro h improvements such as utilizing special toolkit enumeration methods designed to target and reach f mworkers and other hard to count minorities, employment of farmworkers partnership speci sts in targeted counties in which migrant and seasonal farmworkers are likely to reside at the time f the census, revision of the occupational question on the census questionnaire in order to account f r farm work during the work season (which often does not include Census Day, i.e., April 1st) and to a urately reflect wage earners with more than one occupation, and waiving employment requi ements so that trusted community members can be employed as enumerators.

(3) Trust and confid tiality are two of the most important elements for a successful 2000 Decennial Census; convers mistrust and fear of the government can have a severe adverse impact on a successful Censu The Census Bureau, State and Federal governmental agency partners, and non-governmental se ce provider partners of the Census Bureau risk losing the trust and confidence of minority and hard o count populations if INS raids are permitted to occur during Census enumeration.

Farmworker Issues

(4) Conference parti pants expressed grave concern about the proposed new "Bracero" program (and DOL related pro sed regulations), suggesting instead another amnesty program.

(5) Conference parti pants emphasized the enormous need for decent, affordable housing in all migrant and seasonal farm worker communities, for unaccompanied migrant workers as well as farmworker families; noting t t farmworker housing programs historically are underfunded.

(6) The need for agg ssive civil rights and fair housing enforcement in the farmworker community was noted as an extre ely important priority.

(7) The new $25 mil on budget allocation for a HUD Office of Rural Housing and Economic Development wa supported as an innovative and much needed program which will provide housing and related assis ce farmworkers. HUD was commended for its efforts to address desperate housing needs in rural co munities, which have experienced a vacuum of services.

(8) Efforts to increa and target disaster assistance for migrant and seasonal farmworkers were applauded.

Executive Office of the President of the United States
Office of Management and Budget
Education, Income Maintenance, and Labor Division
Labor Branch
New Executive Office Building
Rm. 8202
Washington, D.C. 20503

FAX TRANSMITTAL

DATE: Nov. 3, 1998

TO: Julie Fernandes -- DPC

FROM: Debra Bond

FAX: 202/395-1596 **VOICE:** 202/395-3262

Total number of pages (Including Transmittal Sheet): 4

Recipient's Fax Number: 6-5581

Recipient's Telephone Number: 6-6558

Comments:

Please call me to discuss the attached budget request from DOL. (395-7751) Thanks--

CLOSE HOLD. CLOSE HOLD. CLOSE HOLD. CLOSE HOLD. CLOSE HOLD.

U.S. Department of Labor
Employment Standards Administration
Enforcement of Wage and Hour Standards

Decision Paper: Achieving Labor Law Compliance for Garment and Farm Workers

Proposal: To provide $5,768,000 and 30 FTE to enhance Wage and Hour's principal domestic compliance initiatives in garment manufacturing (the "No Sweat" initiative) and agriculture (the "Salad Bowl" initiative) with greater sustained presence, more timely and effective litigation, and criminal prosecution. This request would allow Wage and Hour to place 30 additional investigators in the New York City (Brooklyn's Sunset Park area) and Los Angeles areas to increase FLSA compliance in the garment industry. Wage and Hour would open an additional District Office in Brooklyn and an Area Office in Los Angeles that would focus exclusively on garment industry compliance. Additional resources for enforcement travel will allow special deployment of investigative resources from other areas to carry out concentrated, short-term enforcement initiatives in both garment manufacturing centers and targeted agricultural commodities.

Wage and Hour also requests $2,779,000 and two FTE to contribute to the efforts of the Bureau of International Labor Affairs in the Department-wide initiative to implement programs designed to encourage the implementation and enforcement of basic labor standards in countries that trade with the U.S.

Rationale: One of Wage and Hour's strategic goals is to achieve compliance in nationally targeted low-wage industries, including garment manufacturing and agricultural production (five "salad bowl" commodities and forestry). To eliminate the exploitation of garment workers in sweatshops, the Department of Labor has implemented a multi-prong strategy of enforcement, education, recognition and partnerships to involve all segments of the industry - contractors, manufacturers, retailers, consumers, and worker representatives. The disregard of labor laws in the garment industry is rampant and well-documented by the Department's recent compliance surveys. For example, compliance with minimum wage and overtime in a 1998 survey in the Los Angeles garment industry remains at only 39 percent. The compliance rate in New York City, the second major garment center in the U.S., (in 1997 survey) is at only 37 percent. Although the Department has been vigorously pursuing and elaborating its "No Sweat" strategy, sweatshops are still very common - and it is becoming increasingly clear that more intense efforts are needed to bring a long-term solution to the vexing compliance problems in this industry.

Achieving compliance in this industry is very difficult. There is an incredible turnover rate among contractor shops and in the workforce. The 1998 Los Angeles compliance survey found that 56 percent of the employers investigated had been in business less than two years, and that 81 percent of the employers in business less than one year were in violation. We understand that the State of California registers 50 new contractor shops each week. Garment workers are transient, vulnerable workers with limited skills and are easy prey for exploitation. In recent years, as Wage and Hour has pursued its strategy, garment employers have become more sophisticated in their schemes to evade the law and the underground economy has been growing. Clearly, Wage and Hour needs to take more aggressive and stronger measures in order to effectively rid this country of sweatshops.

Quite similar circumstances and levels of compliance exist as well in agriculture, though compliance surveys are only now starting to be conducted in this sector. Workforce and employer instability are quite similar in garment manufacturing and many agricultural commodities, and Wage and Hour is pursuing parallel compliance strategies in these two sectors. Implementation of the strategies in targeted agricultural crops is complicated, however, by the short-term nature and seasonality of the work. Large numbers of migrant and local workers are employed at one time in a local area working on particular crops, often many for only short periods of time. Even where there is effective coordination with other agencies, including State labor agencies, effective educational and enforcement interventions require the deployment of significant resources, often exceeding the capacity of the local office. Additional enforcement travel funding enables the necessary and appropriate concentration of enforcement resources in particular areas and would significantly enhance the agency's ability to follow the work - and the workers - as it moves from crop to crop, and State to State.

The ability of the Wage and Hour Division to achieve substantial compliance in the domestic garment industry and U.S. agriculture is impacted by competitive pressures of the global economy. Globalization is often cited as the principal explanation for the decline in domestic garment manufacturing and employment in this industry. Similar arguments are made about certain agricultural commodities. It is often cited by some in these sectors that Wage and Hour's persistent, more comprehensive domestic enforcement efforts to achieve labor standards compliance will encourage more off-shore sourcing with commensurate declines in domestic employment, hurting the very low-wage workers we seek to protect. Wage and Hour's request for $2,779,000 and two FTE will be used to provide advice, assistance and support for international efforts to develop, implement, and enforce core labor standards in countries that trade with the U.S. in order to insure a quality workplace for American workers.

Budget Discussion/Implications: On the domestic front, the requested funding would provide for the establishment of an additional District Office in Sunset Park, Brooklyn, and an Area Office in East Los Angeles dedicated to the eradication of garment sweatshops in these principal manufacturing centers. The request includes additional funding required to provide adequate, pre-investigation surveillance and the timely pursuit of "hot goods" actions necessary for effective enforcement, and criminal prosecution against egregious violators. Additional funding for enforcement travel is also included to allow Wage and Hour to bring in additional investigators from other areas to conduct compliance surveys or other concentrated enforcement and education/outreach activities in both the garment and agriculture industries. Wage and Hour would be able to supplement the resources available for initiatives in garment or agriculture in local areas and at times when most needed. Requested funding would also facilitate the Department reaching out subsequent to initial enforcement in contractor shops or on farms to more effectively engage manufacturers, food processors, and retailers in eliminating labor abuses by their suppliers in these sectors. Funding is also requested for demonstration contracts to develop worker skills and model monitoring programs which have had a positive impact on improving compliance, particularly in the garment industry.

The resources requested for the Department-wide initiative to develop core labor standards in countries that trade with the U.S. will be used to provide education/outreach materials and training programs that can be adapted to the existing level of core labor standards that currently exist in particular countries. Special emphasis will be focused on wage practices in the garment and agricultural industries and in eradicating the exploitation of young workers.

Impact on Agency Strategic Goals: This proposal directly advances Wage and Hour's strategic goal to increase compliance in specified targeted industries. The garment industry and agriculture are nationally targeted low-wage industries. Focusing on egregious violators is consistent with another objective to reduce the rate of recidivism which is currently very high in these industries. Funding demonstration contracts for outreach to workers and education for contractors, manufacturers, processors and retailers is consistent with Wage and Hour's goal to improve customer satisfaction among employers and workers. The improvement in core labor standards in foreign countries will help to insure a quality workplace for American workers.

Impact on Agency Workloads and Performance: This request directly relates to Wage and Hour's ability to successfully accomplish the outcomes established in its strategic and performance plans. Despite considerable effort over the last five years, compliance in the Los Angeles garment industry has remained at only 39 percent. Additional resources will be required in order to increase compliance to achieve performance goals set for the 5-year GPRA plan.

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FAX COVER SHEET

Please Deliver to:
Julie Fernandez

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 5

Message:

I thought you'd be interested in the attached article on INS enforcement because it mentions the impact on the agency created when Georgia's Congressional delegation backed off the INS from immigration enforcement in the Vidalia onion fields.

Illegals on job being ignored: Patrol short of agents for work sites
By Jerry Kammer
The Arizona Republic, November 30, 1998

In 1996, national polls showed that the American public was alarmed about the rising tide of illegal immigrants.

So Congress got tough - sort of.

Lawmakers decided to double the size of the U.S. Border Patrol, pledging hundreds of millions of dollars to add 1,000 agents in each of the next five years.

Meanwhile, however, they have virtually ignored the other half of the enforcement effort - the agents who inspect workplaces in search of illegals.

Today, despite the massive border buildup, federal officials say the population of illegal immigrants is growing by about 275,000 a year. And the neglect of workplace enforcement has frustrated many.

"We passed that law to remove the incentive for people to immigrate illegally, and we haven't done that," said Sen. Jon Kyl, R-Ariz.

Mark Krikorian of the Center for Immigration Studies, which favors restrictions on immigration, said: "Congress is clearly more comfortable beefing up the Border Patrol than going after employers."

In Arizona, for example, the supervisor of the Phoenix-based work site enforcement unit says he has to ignore most of even the detailed tips that come into the office.

"I don't have anybody to assign them to," said Tony Esposito. "We're strapped, big time, and I'm not even working half the leads. I'm down to about 25 percent."

While the Border Patrol has boomed since 1996, adding more than 400 agents in Arizona alone, Esposito's unit has gained one agent.

His force of agents assigned to monitor the thousands of Arizona employers from Casa Grande north to the Utah border - where illegals form much of the workforce in construction, restaurant, hotel, landscaping and other industries - totals seven.

The number of Border Patrol agents in Arizona is 1,200.

Esposito added ruefully: "Then some people call in and expect us go after a guy standing on a corner, looking for a job."

The discrepancy between the increasingly muscular Border Patrol and the anemic work site enforcement units reflects America's ambivalence about its estimated 5.5 million illegal immigrants, who flout the law by their mere presence but also provide cheap labor at a time when unemployment is at a historic low, said Cornell University labor economist Vernon Briggs.

"The advocacy groups for illegal immigrants have basically said this is about the only thing they will accept," Briggs said.

It also reflects the clout of an eclectic coalition of business interests who want an inexpensive and easily controlled workforce, immigrant advocacy groups who press for human rights and civil libertarians who fear that an effective system of worker identification would lead to a national identity card and a Big Brother state, said former Sen. Paul Simon of Illinois.

"It certainly is inconsistent," said Simon, a past leader of unsuccessful immigration reform efforts.

The inconsistency is rooted not just on Capitol Hill, but also within the Immigration and Naturalization Service, whose budget proposal this year included no request for additional work site enforcement agents. The previous year, INS requested 130 agents nationwide, and Congress turned it down.

In 1986 Congress passed legislation that promised to protect illegals already settled in this country, while cutting off future flows. The act eventually provided amnesty to 3 million illegals, while establishing penalties for employers who knowingly hired people not authorized to work.

"It was supposed to be a delicately balanced compromise," said Russell Bergeron, the INS media relations director.

But, Bergeron said, the strategy flopped.

Instead of establishing firm obstacles to illegals, he said, the law spawned the counterfeit documents industry. In Phoenix and in many other cities, entrepreneurs can provide a fake Social Security card or resident alien card to any buyer on the street.

The INS has conducted seminars to show employers how to spot counterfeit documents used to show work eligibility. But INS officials say many employers, eager to tap the workforce that illegals provide, simply aren't interested.

"I think they should do a lot better than they are doing right now," said Esposito. "But the law doesn't say they have to do that."

Bergeron of the INS said the law actually discourages careful review of documents because it provides penalties if employers press workers too hard for documentation.

Counterfeit documents are not the only frustration the INS faces at the work site. **They also face political pressure when powerful employers complain that agents are disrupting their business.**

The INS got a big dose of that last spring, when howls from the Georgia congressional delegation forced them to back off from arresting illegals harvesting the Vidalia onion crop.

"What kind of system do you have when congressional pressure not to enforce the law brings about, in effect, a policy change?" asked Russell Ahr, special assistant to the INS district director in Phoenix. He called such congressional intrusion "absolutely demoralizing" for INS agents.

Instead of going after illegals in the workplace, the INS has stepped up its efforts against criminal aliens. It put particular emphasis on speedier deportation proceedings against illegal aliens serving time for serious crimes, to ensure that they will be expelled immediately after finishing their sentences.

"Criminals are the priority," said INS spokesman Bill Strassberger, acknowledging that work site enforcement has been given short shrift. "We can only do so much with the available resources, so the decision was made that removing the criminal alien from the United States is first and foremost."

Kyl, who led the move to build up the Border Patrol, rejected the idea that Congress is to blame.

"The INS ought to tell me they need more money," he said. "I have forced money down their throat. . . . I'm willing to give them more."

Kyl said he believed failure to enforce the law "will breed contempt for the law" - the same concern expressed by the late Barbara Jordan as she pressed for a tamper-proof system to thwart illegals' use of counterfeit documents.

A former U.S. representative from Texas, Jordan was chairwoman of the U.S. Commission on Immigration Reform. Under her leadership, the commission called for a computerized federal database into which employers would dial to confirm that a prospective employee was eligible to work.

The proposal drew furious protest from the broad range of opponents. The National Council of La Raza, a Hispanic advocacy group, said the database would become "a vehicle for wholesale discrimination." Civil libertarians said it foreshadowed Big Brother.

But Kyl rejects that argument: "I agree that our government gets involved in far too many things in people's lives. But in a society based on laws, you have to stop when the light turns red, and that is not an undue intrusion on your liberty.

"I think it's not too big an intrusion to have a piece of paper that says you are eligible to have a job in this country," Kyl said, "given the severity of the problem that we face."

While the proposal for a national registry was defeated, Congress did approve pilot projects that are being carried out in several states. If they succeed, Congress likely will revisit the issue of a nationwide effort.

Substance
Strategy
Wyden mtg.
SAP

1. wage

more internal work — we need something one of these days
but open to an enhanced prevailing wage.

2. Registry

USDA : wants us to consider the registry as an exclusive method for recruitment.

flesh it out — Pilot

EK → pilot would not be meant to remove employer's obligation to do their own recruitment

3. Housing

Limited — pilot

housing market test

~~* grower demonstrate that housing is available then can participate in the pilot.~~ (certificati)

~~(* employer play a role of some sort~~
~~pilot would link to CBOs to assist migrant workers)~~

go in w/ John's position + OMB add-ons.

→ but / try to develop some kind of pilot

This afternoon bi-partisan

~~[illegible]~~ L. Smith — Wyden
• Abraham — Feinstein
Berman — Kennedy
Bishop
Becerra
B. Graham

Mel

Registry

(4) Keep current law

(5) 8 1/2 % bonus for going home [?] in our back pocket

How else to do this (?)

INS

Leave ourselves open to enforcement mechanisms

require all H2A workers to go through a single port of entry.

entry - exit system

stick for employer. (higher sanctions

higher costs for employer (?)

not so radical

maybe won't solve the problem, but address it.

(6) Transportation H2A

grower has to pay.

options

how employer

· Admin. consensus on a key set of issu[redacted]

[redacted]unhap

B

HIB update

Mon: Deputy's mtg.

Go through issue by issue

w/a consensus position OR USDA – X on each
DOL – Y

Decision mtg.

(OMB: Letter on CJS bill middle of next week)

Wages & Costs

Cost 3 purposes: ① offset 8/2 %

② avoid depressing wages

③ disincentive to seek foreign illegal workers

Wyden says 105% if more than AEWR.

USDA cost: prevailing ⊕ housing

DOL cost: 133% (totally arbitrary)

Current cost = AEWR ⊕ housing ⊕ transportation

Total cost = 110% of wage ⊕ housing ⊕ transportation

Housing = 10-15%

Transportation = 8%

wage = 92%

133%
92% wage
8% transp.
33% housing
8% FICA/FUDA

110% — prevailing wage ⊕ 10%
or AEWR

~~Transportation~~

Transportation

Burden on worker
If completes 50% of K : gets inbound transportation
If completes 100% of K : gets return transportation

Growers will

Do we want this same benefit to inure to U.S. workers?) ~~[illegible]~~ no vehicle to require transportation for non-H-2A U.S. workers.
User fee to a pot where migrant workers

maintaining parity btwn ~~[illegible]~~ H2A & domestic

only Q: do we want growers to pay for transport or increase base wage to account for cost of transportation

but growers will always pay for transportation for foreign workers, regardless of wage paid.

HUD has a migrant worker housing program. In FY 2000 budget.

Housing

We agree

No vouchers if no guarantee of availability and securing housing.

impact on community + what good is a voucher w/out housing available that we can have.

CDBG: $4.2 billion
w/one or two small earmarks.
Could have another small earmark — HUD branch is opposed.

USDA: Farm labor housing program
small
only for U.S. workers.
FY 99 asked for $25-$30 total

USDA: can't say whether agrees that this is not an area where we would increase wage instead of providing the service itself.

HUD/USDA → expand
w/waivers of some regs.
(including U.S. worker only for them

DOL regs on type of housing provided (standards)

OSHA

$\boxed{\text{Scale}}$

what benefits to the community for building this.

Who pays(?)
- growers
+
- U.S. govt. (?)

apprehension about ~~total~~ shift to govt.

① whole shebang ② subsidize capital cost ③ or rehab

July 30th doxeement
on leg. proposals

Transfer of costs to workers (utilities)

utilities (?)
no transfer

maybe some sense of utilities allowance
to growers.

→ utilities/maintenance/repairs.

perhaps we could allow a charge of up to
$10/week for maintenance/repairs.

Enforcement

stepped up enforcement of stronger

CHC — (Require participation in employer verification
civil libertarians pilot program.
make it easier

→ better ensure that H-2A visas
get into the system
pilots

Pilot: H2A workers don't have to
go through the emp. verif. system (?)

(*) Way to create a pilot tailored
to these grower/employees.

Prevailing practice

from Magnus

15 min

CDBG
30% of \$4.5 billion

states for non-metro areas

HOME block grant 1.5 billion
40% to states

traditionally,

Mark Weatherly — OMB
USDA

non-monetary incentives to states to use the \$ in this way.

states to provide

Don't authorize a large new grant program for this.

HUD is overwhelmed w/ current responsibility

Willamette Week
Willamette, Ore. 8/5/98

Politics

NEWS STORY

photo by TANISHA WALLACE-PORATH

Growing Opposition

Ron Wyden's efforts to fix a flawed farmworker bill have united some of his traditional allies--but not in the way he hoped.

BY PATTY WENTZ
pwentz@wweek.com

Sen. Ron Wyden, who has long enjoyed strong labor support, is bringing unions together once again. This time, however, they are lining up against him.

Wyden is taking heat for helping fellow Oregon Sen. Gordon Smith hammer out a guestworker bill that allows temporary farmworkers from Mexico to enter the country for a limited time. Farmworker advocates say guestworkers will take jobs from domestic laborers and will be unlikely to protest poor working conditions ("Help Wanted," *WW*, July 1, 1998).

While Wyden insists that everything is on track, Oregon's farmworkers union--Pineros y Campesinos Unidos del Noroeste--says the Portland Democrat took a bad bill and made it worse. There is, however, a silver lining of sorts for PCUN, as the maverick labor group is now enjoying unprecedented support from other, mainstream unions.

Union critics of the Wyden/Smith bill say it has several problems. First, they note that the bill was supposed to require farmers to pay a fee that would cover the costs of transportation and housing for the workers. But the funding provision was wiped out right before the vote. The fear is that if the bill went through as is, Mexican workers would have to pay their own way north and find their own place to live.

In addition, while Smith first proposed a five-year pilot program that would have allowed 25,000 guestworkers per year, the Wyden-Smith bill proposes a permanent program that would allow unlimited workers into the country.

Wyden spokesman David Seldin says the unions don't need to worry. Wyden, he says, joined this battle to protect workers. If safeguards aren't reinstated, he says, Wyden will withdraw his support. "The bill will not become law without the transportation and housing provisions paid for," Seldin says.

PCUN President Ramon Ramirez says such assurances are cold comfort. Even if Wyden drops his name from the bill, Smith--a Republican who owns a pea-packing plant in Pendleton--will still be there working on behalf of the growers. "It's the Republican leadership of the house, not Ron Wyden, that will decide the fate of the bill," says Ramirez. "He's not in control. We told him all along: 'Don't submit a bill.

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July 29, 1998

Secretary of Labor. Alexis Herman
Washington D. C.

Subject: Opposition to the Wyden- Graham Senate Bill S 2337

Dear Madam Secretary:

The United Farm Workers AFL-CIO wishes to convey its opposition to the Wyden-Graham S 2337 guest worker program that has recently passed the Senate as an amendment to the commerce Justice State Appropriations bill. **There is no shortage of agricultural workers, but rather an oversupply of workers.** Workers at present are not being provided enough work because of this oversupply and the families of migrant children are worse off now than they have been for many years.

As there is no labor shortage, we can only come to the conclusion that this is yet another attempt by west coast agribusiness to flood the labor pool with a captive group of workers and thereby stop the organizing campaign of the United Farm Workers in California and in the Northwest. Unionization of workers has been the only way that farm workers have obtained decent wages, working conditions, medical and pension benefits.

The growers have adequate protection in case of a labor shortage with the present H2-A program, which they have used time and again, particularly in the East Coast. California has the largest number of farm workers in the United States, yet we have double digit unemployment in all of our rural counties. The unemployment numbers of the Rio Grande Valley of Texas, the base of a large number of migrant workers also has the highest number of unemployed farm workers. California has not had to rely on the current H2-A program for there has been no reported worker shortage in this state.

Every study has shown that there is no worker shortage, but rather a wage shortage and worsening conditions of farm workers. The New York Times published an in depth article that stated farm worker's wages had fallen 20 percent or more in the last two decades. Bringing in unlimited numbers of foreign workers as a captive labor group will exacerbate this condition. Growers are being rewarded for not improving conditions or raising wages of farm workers.

In 1990, I served as a member a Commission of Agricultural Workers that gave a a report to the U.S. Congress on the effect on farm workers of the special Seasonal Agricultural Worker provisions of the Simpson-Rodino Immigration Bill.

This commission included members of Agriculture, Henry Voss, Secretary of Agriculture for California, Lloyd Aubrey, the head of Industrial Relations for California, two grower representatives from California, Mike Dorado, California Grape and Tree Fruit League, and Russ Williams, Citrus Growers, an Cardinal Roger Mahoney. This

Commission also included grower representatives from Florida, Georgia and other parts of the Country.

In two years of hearings throughout the United States, not one grower complained of a labor shortage. The Commission reported there was no need for more foreign worker programs and that the current H2-A program was adequate in cases of emergencies. Additional studies have supported the earlier report to the Congress of the Commission.

The Commission on Immigration Reform report that no foreign worker Program was needed.

The General Accounting Office's report of December 31, 1997 that there is no current or impending labor shortage.

The Commission also recommended that the Department of Labor institute farm worker recruitment programs thru their employment offices. The registry that the Wyden bill proposes is unworkable and could be used to black-list union activities.(Union supporters have recently been threatened with having their names on a black list.) The Department of Labor needs to make employers recruit and hire workers directly. Agribusiness uses labor contractors and now they want the Federal Government to provide them with cheap labor.

Agribusiness has totally abdicated any responsibility toward their work force. No other employer in the U.S. could get away with the deplorable conditions of their workers. Workers cannot get jobs without having to go thru labor contractors and other exploiters. Agribusiness abuses the work force and now they want U.S. government to provide them with additional cheap foreign workers that have less of a voice and no protections..

In our offices, we have hundreds of farmwork that have signed up wanting to go to work. The poverty of workers now is worsened because of the large number of workers available, their crop season is shortened and they do not have the length of work time that they had before. The Wyden-Graham bill strips away all the protections that farm workers have under the current H2-A program, and allows the growers to bring in workers without the recruitment requirements. The Housing costs in the rural areas are extremely high and the housing allowance that this bill provides would be totally inadequate.

The Wyden-Graham Bill is totally unworkable, unfair and devastating to America's farm workers. **We urge you, as Secretary of Labor, to protect farm workers and not give in those who would take away the precious few protections farm workers to hold on to their seasonal jobs by negotiating away any of the provisions of the present H2-A program. We depend on you to hold the line for farm workers. Thank you.**

Sincerely,

Dolores Huerta

Dolores Huerta
Secretary-Treasurer

NCLR
NATIONAL COUNCIL OF LA RAZA
Raul Yzaguirre, President

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EXECUTIVE SECRETARIAT
OFFICE OF THE SECRETARY
DEPARTMENT

July 29, 1998

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

I am writing to thank you for your strong opposition to S. 2337, the Agricultural Jobs Opportunity Benefits and Security Act of 1998, and the subsequent amendment to S. 2260, the appropriations bill for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies.

Although in the end the bill's supporters were successful in attaching the amendment to S. 2260, we believe that this support resulted from the swift consideration of the amendment only two days after it had been introduced. The National Council of La Raza (NCLR) is convinced that when the effects of this new guestworker program are clearly illustrated, existing support for the amendment will erode.

Further, NCLR believes that the creation of such a program would have a devastating impact on U.S. migrant and seasonal farmworkers, the majority of whom are Hispanic. Contrary to what the amendment's supporters claim, this new program eliminates crucial protections afforded to both domestic and foreign workers in the current H-2A program, including requiring agricultural employers to conduct private market recruitment and provide housing.

Second, study after study has demonstrated that there is no labor shortage, and commission after commission has concluded that there is no need for a new temporary agricultural foreign worker program. These programs have been shown to cause the displacement of domestic farmworkers, along with lowering their wages and worsening their working conditions. Moreover, these guestworker programs also result in the exploitation of vulnerable foreign workers, whose desperation for work leads them to become no better than indentured slaves.

Finally, there are no convincing arguments to support the agricultural industry's call for more guestworkers. For far too long the U.S. government has granted agricultural employers a privilege to which few other industries are entitled. Rather then rely on market methods for recruiting workers, including offering adequate wages and favorable working conditions, growers have depended on Congress for assistance in obtaining workers.

On behalf of the hard-working men, women, and children who toil tirelessly in the fields everyday to put the food on our table, we thank you for your opposition to this brazen attempt to undermine the wages and working conditions of domestic farmworkers. We urge you to stand firm in opposing the creation of another *bracero* program, and send a clear message to Congress that you will veto legislation that includes a guestworker amendment.

Sincerely,

Raul Yzaguirre
President

cc: The Honorable Alexis Herman, Secretary of Labor
Maria Echaveste, Deputy Chief of Staff
Janet Murguia, Deputy Director, Legislative Affairs

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Talking Points on Graham-Wyden H-2a Bill

- Today Senator Graham (D/FL) and Senator Wyden (D/OR) announced their bill, the Agricultural Job Opportunity Benefits and Security Act of 1998, which amends the current H-2a program. The H-2a program admits temporary nonimmigrant agricultural workers in order to provide farmers with an adequate supply of laborers during the growing season.

- The H-2a program has been heavily criticized by the GAO, DOL's IG, and the Hill due to the difficult administrative burdens placed on growers. As a result, Congress has proposed many bills to restructure the H-2a program.

- The Administration has acknowledged the problems and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2a program to ease grower burdens while maintaining strong worker protections. We do not believe the legislative route is necessary or appropriate at this time.

- Problems with the bill. Among other things, the bill:

--shifts the burden of recruitment of U.S. workers from the employers who need workers to the DOL and the workers. (The bill establishes a "registry" of U.S. agriculture workers with the DOL. In essence, this means DOL is turned into the personnel department for the growers; growers have no obligation to recruit U.S. workers beyond going to DOL.)

--eliminates the 3/4 guarantee provision. Currently the grower must guarantee pay to the worker for 75% of the contract period. Growers have opposed this provision in the past claiming that there are factors outside of their control (for example, the weather) that may change the grower's need for workers. However, shifting the business risk to the worker would mean that a worker who is hired for two months and travels hundreds of miles to the employer may only be guaranteed work for a week without any recompense.

--revises the adverse effect wage rate (AEWR)1. The bill would require the prevailing wage or the AEWR, whichever is higher, be paid to the worker but limits the AEWR to no more than 105% of the prevailing wage rate. Given most workers currently receive the AEWR and it is higher than the prevailing rate, the effect of the proposed changes will likely be a decrease in worker wages.

--authorizes withholding of 20% of the worker's wages until the worker returns to his/her home country. Many H-2a temporary immigrants never

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leave -- remaining here illegally. The provision intends to provide workers an incentive to return home. However, given many of these workers earn at or near the minimum wage, withholding their wages takes away money that is vital for their and their families' livelihood.

--shifts other costs to the worker. These include reduced employer responsibility for transportation and housing.

- The Secretary of Labor issued a veto threat on Rep. Smith's bill (HR 3410) because it established a new guestworker program. Although the Graham-Wyden bill does not create a new guestworker program, it contains similar objectionable provisions included in the Smith (R/OR) bill (HR3410). Both bills:

  --significantly change the wage requirements thus decreasing workers wages;

  --withhold workers wages as an incentive for workers to return to their home countries;

  --eliminate the requirement that growers actively recruit U.S. workers outside the DOL; and,

  —weaken the housing and transportation requirements.

- The DOL opposes the Graham-Wyden bill. USDA believes there are merits to the bill including making the program more responsive to the labor needs of agricultural producers and providing an objective determination of the sufficiency and eligibility of the available labor supply. However, it does not believe the proposal would benefit the worker as much as the current program given the changes to the wage requirement and possible costs (such as housing) which can be imposed on the worker.

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SUMMARY OF SMITH/WYDEN/GRAHAM FARMWORKER GUESTWORKER LEGISLATION

Legislation has been passed in the Senate—as an amendment to the Commerce, Justice and State Departments' appropriations legislation—that would create a new agricultural guestworker program. The legislation is substantially different from the current H-2A program and would reduce employment opportunities, wages, and working conditions for U.S. workers. Below is a summary of the major provisions of the legislation and an analysis of the effects of these provisions.

TERMS AND CONDITIONS OF EMPLOYMENT

Wages

- Employer is obligated to pay the prevailing wage (or 105% of the prevailing wage under certain circumstances).
- The prevailing wage may be an hourly rate, a piece rate, a task rate, or a group rate.
- The employer is not required to pay by the prevailing method so long as employer method is "designed" to produce equivalent earnings.
- If the employer is paying by an incentive system, the employer is in compliance with the wage obligation if the average hourly rate for the entire group equals the required hourly wage.

Effect on Farmworker Wages

- Despite assurances to the contrary from Congressional staff, this provision appears to preempt any higher federal, state, or local minimum wage rate. The statutory language is very clear that the employer must pay **only** the required prevailing wage or the redefined adverse effect wage rate (up to 105% of the prevailing wage). Therefore, workers under this legislation may not benefit from the federal minimum wage (a recent prevailing wage survey in North Carolina found the prevailing wage to be $4.75 per hour, 40 cents below the federal minimum wage) or a higher state minimum wage.
- The redefinition of the adverse effect wage rate will lower farmworker wages. The current H-2A program requires the payment of the higher of the prevailing wage (the average wage in a crop in a limited geographic area), the federal, state or local minimum wage, or the **adverse effect wage rate** (the AEWR). The AEWR is intended to correct for the depressive effects of foreign workers (undocumented

workers and guestworkers) on wages in a local labor market. This wage depression is often reflected in the prevailing wage, where foreign workers can dominate a local labor market and thereby depress wages. The AEWR partially corrects for this depressive effect by measuring farmworker wages in a much larger segment of the labor market (currently state or regional labor markets) that will, at least in part, overcome the depressive wage effects in local labor markets.

- The incentive rate provision—a piece rate, task rate, group rate--means that individual employees may be paid less than the required minimum hourly rate so long as the aggregate hourly average for the entire group meets the minimum wage. For instance, if the required hourly wage was $5.00 per hour, the employer would be in compliance if the one-half of the group was paid $7.50 per hour and the other half of the group was paid $2.50 per hour.

Housing

- Employers who provide housing are permitted to charge for utilities and maintenance.

- A housing allowance is permitted if the employer does not provide or secure housing for workers. The housing allowance is calculated at the HUD Section 8 rate for the area, assuming two people per bedroom.

Effects on Farmworkers and Communities

- Allows growers to transfer some costs of housing they choose to provide to workers -- for maintenance, utilities and repairs -- even though these low-wage workers have no choice about their accommodations, thus lowering their actual earnings.

- Current law requires growers importing foreign farmworkers from hundreds and thousands of miles away to either provide or secure housing for them. The Smith/Wyden/Graham legislation allows growers to provide a payment -- voucher -- in lieu of housing unless the State determines and certifies that there is inadequate housing. The grower importing foreign farmworkers has no obligation to assure that housing is actually available that can be obtained with the voucher, so many workers may end up homeless, or be encouraged to overcrowd any available rental housing, and adversely impact the local community.

Transportation Reimbursement

- Workers may be reimbursed after 50% for incoming transportation costs and at the end of employment for return transportation. The statutory language indicates that the workers may request reimbursement from the employer but it is silent on the employers obligation to pay.

Effects on Farmworkers

- Unlike the current H-2A program, it is unclear that growers would have to reimburse workers for their transportation costs to and from the job. The cost of transportation to and from the job would be borne by low-wage workers traveling hundreds or thousands of miles for short-term, uncertain duration, employment.

The 50% Rule—Job Preference for U.S. Workers

- Only U.S. workers referred through the Registry are entitled to a 50% rule preference under which the employer must hire U.S. workers who apply for employment during the first one-half of the period of employment.

Effect on U.S. Workers

- Only U.S. workers registered and referred through the Registry may claim the benefit of the 50% rule preference. Workers who learn of the job through word of mouth (very common among farmworkers), a union hiring hall, or other means would not benefit from this provision, intended to give U.S. workers first preference for these jobs.

RECRUITMENT AND REFERRAL OF U.S. WORKER THROUGH THE REGISTRY

- DOL must create and maintain Registries of available farmworkers for referral to growers seeking foreign workers. Registries are limited to state or contiguous states and do not include traditional states from which migrant workers are recruited. Workers must request inclusion in a registry or registries.

Effects of the Registry:

Under current law, the responsibility for recruiting legal U.S. farmworkers when a grower is seeking to use foreign workers -- and thus give first employment preference to legal U.S. farmworkers -- is shared between the prospective employer and the U.S. Employment Service. These recruitment requirements are widely acknowledged to be largely ineffective (perhaps because employers seeking foreign workers do not want to hire U.S. workers), but the Smith/Wyden/Graham legislation will make them even less so:

- Growers seeking foreign workers would have no obligation to attempt to recruit legal U.S. farmworkers except through the Registry -- shifting all responsibility for domestic farmworker recruitment to a new, untried process for which the government and impoverished, low-skilled workers are entirely responsible.

- The Legislation would allow the new Registry only seven (7) days in which to try to locate and contact legal U.S. farmworkers to ascertain their availability and interest in accepting a grower's offer of employment and get these workers in touch with the prospective employer. Most U.S. farmworkers will be extremely difficult to locate and contact -- especially in such a short period of time -- due to the migratory and rural nature of their work.

- As a result, efforts to recruit legal U.S. farmworkers for these jobs will almost certainly be even less effective than at present and the use of foreign farmworkers -- single boys and young men -- will steadily increase.

- In effect, this proposed approach allows growers to concentrate all their worker recruitment efforts abroad, abandoning domestic worker recruitment to a new Federal bureaucracy.

- It appears that the Registry would only cover a State or contiguous States in a region. So, while growers are allowed to go abroad to recruit wherever they think workers are available, the Registry's search for available, legal U.S. workers would be confined to a region within the U.S., in many cases excluding farm labor supply areas.

THE EMPLOYER'S ASSURANCES

- The employer application does not need to contain a binding period of employment that is being offered to the prospective workers, U.S. or foreign. Further, an employer may withdraw an application, and is thereby relieved of its promises, so long as there is no alien worker currently employed.

- Employer is not required to employ referred workers who do not meet job-related criteria or continue to employ someone who fails to meet job related standards of conduct or performance, including minimum productivity standards, after a 3-day break-in period.

Effects on Farmworkers

- Eliminates current law's requirement that workers recruited be paid for at least three-quarters (75 percent) of the work contract period for which they were recruited. This will encourage growers to lure workers from hundreds and thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. (This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.)

- Under current law, an employer may only impose an employment related qualification or productivity standard if it is found to be the standard practice by employers in the crop and the area. This protection is intended to prevent employers from imposing unreasonable qualifications and productivity standards that either discourage or disqualify U.S. workers from seeking employment. Under this legislation the Department of Labor has no authority to determine the validity of employer imposed qualifications, productivity standards, or other employment related standards. The effect could be the arbitrary refusal to hire U.S. workers or the arbitrary firing of any worker.

DOL REVIEW OF APPLICATION

- The Department of Labor has seven (7) days to determine that the employer has made all the required assurances in the application. The Department has no authority to inquire if the assurances are true. If the form is filled out completely, the Department must accept the application and search the Registry for workers for seven (7) days. At the end of the search the Department must either refer the requested workers or grant the employer's request for foreign workers. Failure to meet the deadline allows the employer to make the request directly to the Secretary of State.

Effect on the Department of Labor and Farmworkers

- The Department no longer has authority to determine that the employment of foreign workers will have a detrimental impact on U.S. workers.

- The Department has only seven (7) days to locate transitory, migrant farmworkers for the job or else U.S. workers are deemed to be unavailable for employment. At the end of the seven day period the employer must be granted permission to import foreign workers unless the search located and referred sufficient U.S. workers.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
I. Substantive Worker Protections:	I. Substantive Worker Protections:	I. Substantive Worker Protections:
The specific information, protections, and assurances that must be given to both U.S. and foreign workers hired under the H-2A program are as follows:	The attestations grant workers limited workplace rights. The employer simply attests that the offer will provide the following:	The employer must provide certain "assurances" in its application about the terms and conditions under which workers will be employed.
1. Rate of pay is the highest of federal/state minimum wage, prevailing wage or adverse effect wage rate. (Statutory)	1. Employers pay the prevailing wage based on either the State Employment Security Agency (SESA) or employer developed wage data based on criteria to be developed by Secretary of Labor: no adverse effect wage rate (AEWR). Presently, the AEWR is usually the highest rate and as such controls most H-2A contracts.	1. The employer must offer to pay (and is not required to pay more) the higher of the prevailing wage or the adverse effect wage rate (AEWR). The AEWR, as determined by the USDA average wage for field and livestock workers, is redefined so that it can never be higher than 105% of the prevailing wage but may be less. The obligation to pay a higher state or federal minimum wage is not in the legislation.
2. Workers are entitled to disclosure of the all material terms and conditions of employment, including the following: (regulatory)	2. Workers entitled to a limited Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosure of the terms and conditions of employment only at the point the visa is issued, not a the time of recruitment with the following exceptions:	2. Workers are entitled to Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosure of the terms and conditions of employment only at the point the visa is issued, not at the time of recruitment.
(a) Any minimum "productivity" standard;	(a) not required to disclose productivity standards.	(a) no minimum productivity standard need be disclosed
(b) Employer must guarantee that at least three-fourths of the employment offered will be provided;	(b) no ¾ guarantee	(b) no ¾ guarantee
(c) List any qualifications necessary for the job.	(c) no similar protection	(c) occupational qualifications must be in the application.

Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
3. Employer temporary labor camp housing must be provided by the employer at no charge to migrant workers and must meet all federal, state and local health and safety standards. The employer may secure rental and/or public accommodations that meet local or state standards. If there are no local or state standards, the housing must meet Federal temporary labor camp standards. The housing must be provided at no charge to the worker. (Statutory)	3. Housing that meets the lesser of federal, state or local standards or voucher must be provided to migrant workers only if it is a prevailing practice. Employer may charge the workers for the housing. Employers housing providing by voucher exempt from housing standards under MSPA.	3. Housing or a voucher must be provided by the employer. Employer provided temporary labor camp housing must meet federal standards. Employer provided rental or public accommodations must be local standards, or, in the absence of local standards, State standards. The Federal standards do not apply even if there are no local or state standards. The employer may charge the worker for utilities, maintenance, and require the posting of a security deposit The employer may provide a housing voucher in lieu of housing. The voucher must be the equivalent of the HUD Section 8 fair market rental rated based on the assumption of two persons per bedroom. Three (3) years after enactment of this legislation (but not sooner); a governor may certify that there is not sufficient housing in the area of intended employment. The employer must then provide housing.
4. Transportation cost to the work site reimbursed after 50% of contract period: return transportation costs provided at end of contract. (Regulatory)	4. No similar protection.	4. Workers may apply to the employer for transportation reimbursement for incoming transportation after completion of 50% of the period of employment of the job opportunity for which the workers was hired and for return transportation at completion of the period of employment.
5. Assurance that workers' compensation is provided. (Statutory)	5. Similar protection.	5. Workers compensation or its equivalent must be provided.

Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
6. Employers may not discriminate against domestic workers in hiring, terms and conditions of employment, or termination in favor of foreign workers. U.S. workers given an affirmative preference. (Statutory)	6. Attestation that U.S. workers will not be adversely affected and qualified U.S. workers will be given preference in hiring.	6. Employer must assure that qualified U.S. workers will be hired if they are referred through the registry.
7. May not use H-2A workers to replace workers involved in a labor dispute. (Statutory)	7. Attest that there is no strike or lock out in the occupation at the place of employment.	7. "Assurance" that the job opportunity is not vacant because a worker is involved in a strike, lockout, or work stoppage in the course of a labor dispute.
8. Employer must observe all prevailing practice or benefits in the area, such as providing family housing, productivity standards, employer provided tools, etc. (Regulatory)	8. No similar protection.	8. No similar protection.
9. No MSPA transportation safety protection.	9. MSPA transportation safety protection provided.	9. MSPA transportation safety protections provided.

Existing H-2A Farm Worker Program

II. Recruitment and Hiring of U.S. Workers

1. Employer develop and implement an affirmative domestic worker recruitment plan.

(Statutory)

2. Qualified domestic workers must be given jobs within the first 50% of the contract period even if foreign workers are displaced.

(Was Statutory, now regulatory)

3. Job offer must be placed in the employment service interstate clearance system and distributed to areas of known labor supply.

(Statutory)

H.R. 2377 Farm Worker Program

II. Recruitment and Hiring of U.S. Workers

1. No similar protection.

2. Qualified U.S. workers given preference for first 25 days after job order filed or 5 days before date of need, which ever occurs later. U.S. workers can be rejected for employment as early as 5 days before work begins.

3. No similar protection. Local SESA office posting only. Nonemployer specific information about potential labor need may be disseminated but no intra- or interstate clearance system job order need be filed.

Wyden/Graham Proposal

II. Recruitment and Hiring of U.S. Workers

1. No positive recruitment obligation. The employer must "assure" that workers satisfactorily employed the previous year in the occupation and at the location have been sent a letter informing them of the job opportunity.

2. U.S. workers must be employed during the first 50% of the "anticipated period of employment shown in the employer's application" but only if referred by the registry.

3. No posting on the Interstate Clearance System required. A new system—the Registry—is created and is intended as the worker recruitment and referral system. The creation, maintenance, and operation of the Registry is the obligation of DOL.

The Registry—actually multiple registries encompassing either a single or a group of contiguous states—are intended to be the sole means by which the Secretary determines if there are U.S. workers are available for the jobs. The registry refers available workers to employers seeking foreign workers. The entire recruitment and referral period is 7 days long.

The Registry provisions appear to leave the hiring decision to the Department. According to Section 5(a) the Secretary determines if the worker is ready, willing and able to accept the job opportunity and will commit to work at the time and place needed. If so, the worker is provided employer information, the location where to report, and a statement of the terms

Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
		and conditions of employment. The employer is provided the names, addresses and social security numbers of the workers referred and information on how to contact the workers. The employer's request for foreign workers is then reduced by the number of referred workers.
4. User fee collected to partially defray administration of the program. (Statutory)	4. User fee collected to help defray administration of program.	4. The cost of administering the program are paid by the DOL Wagner-Peyser Act funds and general appropriation. No user fees charged employer.
III. Enforcement of Labor and Immigration Laws	III. Enforcement of Labor and Immigration Laws	III. Enforcement of Labor and Immigration Laws
1. DOL may enforce compliance with labor laws by H-2A employers like any other employer. (Statutory)	1. DOL may investigate only upon complaints by aggrieved person or organization, including bargaining representatives.	1. DOL may investigate only upon complaints by aggrieved person or organization, including bargaining representatives or at its discretion. Complaint investigations limited to allegations of violations within the last 12 months.
2. DOL may sue in court for violation of the terms and conditions of employment on behalf of workers. (Statutory)	2. No similar protection. May seek to collect back wages, civil money penalties or enforce debarment only.	2. No similar protection. May seek to collect back wages, civil money penalties or enforce debarment only.

Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
3. Violations may result in civil money penalties, full Fair Labor Standards Act back wage remedies, actual monetary damages or debarment. (Statutory)	3. Limited civil money penalties and back wage collection; debarment for one year only.	3. Limited civil money penalties and back wage collection; for wage violations, debarment for one year for first violation, three years for second violation, and permanent debarment for third violation. Civil money penalties up to $1000 may be assessed for misrepresentation of a material fact on the application or failure to meet a condition specified in Section 4, the "assurances." One year debarment for nonwage "substantial" violations.
4. H-2A employers must post a bond to assure the return of the H-2A workers at the conclusion of the contract or became employed by another certified employer.	4. Employer under no obligation to insure the worker leaves the U.S. upon completion of work. 25% of workers' wages withheld and returned only upon timely repatriation of the worker.	4. Employer under no obligation to insure the worker leaves the U.S. upon completion of work.
5. H-2A workers must leave the U.S. within 10 days of completion of the H-2A employment.	5. Worker under no obligation to leave U.S. until 14 days after end of employment.	5. Worker under no obligation to leave U.S. until 14 days after end of employment.
6. No limitations on number of H-2A workers but there must be an independent DOL determination of shortage after attempts to recruit U.S. workers. (Statutory)	6. 25,000 limitation on number of workers admitted and no independent DOL determination of shortage. USDA will allocate the worker to 5 regions to be determined. Effectively shifts control over immigration admissions from the government to the agricultural industry.	6. No limitation on the number of workers admitted under this program.
7. Workers excluded from MSPA. (Statutory in MSPA)	7. Workers partially covered by MSPA. Limited disclosure and housing rights.	7. Workers partially covered by MSPA. Limited disclosure and housing rights.

Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal
IV. Procedural Safeguards	IV. Procedural Safeguards	IV. Procedural Safeguards
1. Application normally must be filed with local SESA and DOL regional office at least 60 days before beginning of work so domestic farm workers can be recruited. (Can not require filing more than 60 days before date of need, can shorten time by regulation.)	1. Applications filed with local state employment service agency (SESA): no timeliness requirement.	1. Application must be filed with the Department of Labor not later than 21 days before date of need. An employer may withdraw the application so long as there are no foreign workers employed by the applicant. The withdrawal relieves the applicant of any obligations owed to foreign workers undertaken in the application. U.S. workers who have rights under other law or regulation governing recruitment may still have some rights.
2. DOL must approve or notify applicant of any legal objections to the application within 7 days. (Statutory)	2. DOL has no authority to review: SESA reviews only for "completeness and accuracy" within 7 days. May reject only for "incompleteness" or "obvious inaccuracy."	2. DOL reviews to ensure the "assurances" under Sec. 4(a) have been made. If complete, the application is approved within 7 days. If not the Department shall reject within 7 days. The applicant must be provided an opportunity to resubmit an amended application or, at the applicants option, an expedited review or de novo administrative hearing before an ALJ. The applicant may submit an application to the Attorney General for issuance of visas if the Secretary fails to refer sufficient workers from the registry or fails to submit the report of insufficient workers.
3. Emergency petitions for unforeseen need may be filed at any time and will be processed within one to two weeks. (Regulatory)	3. No comparable provision because not necessary.	3 Employers may seek a expedited approval if they did not use the program the prior year; who face an "unforeseen" need for workers; and whom the Secretary can not refer workers from the registry.

Existing H-2A Farm Worker Program

4. Application may be rejected by DOL if it does not adequately protect U.S. workers from adverse effects by the foreign workers.

(Statutory)

H.R. 2377 Farm Worker Program

4. DOL has no authority to determine whether or not the offer would adversely affect U.S. workers.

Wyden/Graham Proposal

4. DOL has no authority to determine whether or not the offer would adversely affect U.S. workers.

Miscellaneous provisions:

1. Workers who complete at least 6 months of work under the program for 4 consecutive years are given permanent immigration preference under 203(b)(1)(3).

2. The program appears to be in addition to, and not in lieu of, the current H-2A program for five years, after which the current H-2A program is eliminated.

Draft: 9/10/98

Problems with the Wyden/Graham Foreign Farmworker Bill

Reduces farmworkers' wages and earnings

Farmworkers are among the poorest and most vulnerable in our society. Average annual earnings for a farmworker family are only about $6,500 and farmworkers are employed on average only about 23 weeks per year. The Wyden/Graham bill will lower wages and annual earnings of U.S. farmworkers:

- Eliminates current law requirement that the minimum wage be based on the "Adverse Effect Wage Rate (AEWR)" -- the average Statewide agricultural wage rate -- to avoid undercutting prevailing wage levels through the use of foreign workers.

- Eliminates current law requirement that workers recruited be paid for at least three-quarters (75 percent) of the work contract period for which they were recruited. This will encourage growers to lure workers from hundreds and thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. (This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.)

- Allows growers to transfer some costs of housing they choose to provide to workers -- for maintenance, ultilities and repairs -- even though these low-wage workers have no choice about their accommodations, thus lowering their actual earnings.

Reduces Efforts to Recruit Legal U.S. Farmworkers

Under current law, the responsibility for recruiting legal U.S. farmworkers for the jobs for which a grower is seeking to use foreign workers -- and thus give first employment preference to legal U.S. farmworkers -- is shared between the prospective employer and the U.S. Employment Service. These recruitment requirements are widely acknowledged to not be highly effective, but the Wyden/Graham bill will make them even less so:

- Growers seeking foreign workers would have no obligation to attempt to recruit legal U.S. farmworkers except through the proposed Registry -- shifting all responsibility for domestic farmworker recruitment to a new, untried process for which the government and impoverished, low-skilled workers are entirely responsible.

- The Bill would allow the new Registry only 14 days in which to try to locate and contact legal U.S. farmworkers to ascertain their availability and interest in accepting a grower's offer of employment and get these workers in touch with the prospective employer. Most U.S. farmworkers will be extremely difficult to locate and contact -- especially in such a short period of time -- due to the migratory and rural nature of their work.

- As a result, efforts to recruit legal U.S. farmworkers for these jobs will almost certainly be even less effective than at present and the use of foreign farmworkers -- single boys and young men -- will steadily increase.

- In effect, this proposed approach allows growers to concentrate all their worker recruitment efforts abroad, abandoning domestic worker recruitment to a new Federal bureaucracy.

- In addition, it appears that the Registry would only cover a State or contiguous States in a region. So, while growers are allowed to go abroad to recruit wherever they think workers are available, the Registry's search for available, legal U.S. workers would be confined to a region within the U.S., in many cases excluding farm labor supply areas.

Adverse Impact on Local Communities

Current law requires growers importing foreign farmworkers from hundreds and thousands of miles away to house them. The Wyden/Graham bill allows growers to provide a payment -- voucher -- in lieu of housing unless the State determines and certifies that there is inadequate housing. The grower importing foreign farmworkers has no obligation to assure that housing is actually available that can be obtained with the voucher, so many workers may end up homeless, or be encouraged to overcrowd any available rental housing, and adversely impact the local community.

Shifts Costs and Risks from Employers to the Workers and the Government

- Growers would no longer have to guarantee any part of the work offered to recruit U.S. and foreign workers (three-quarter guarantee).

- Growers providing housing could charge low-wage, impoverished workers for the cost of maintenance, utilities and repairs of housing they occupy for only a short period of time.

- Growers would no longer have any domestic worker recruitment obligation except through the Registry (fee-based).

William Gill
(Becerra)

225-
2410

conv. w/ Debra Dixon
Hispanic Caucus

Late Amnesty
Mtgs. w/ Reno, Meissner, Gore, Clinton

INS told him that didn't think
anything could be done.

INS keeps appealing LULAC cases.

Day in court
These folks simply

Sacramento — July ruling
§ 377

Tuesday

continuously

options / ramif.

Janet — quick paper
on H2A

Mindy
Meyers

Problems with the Wyden/Graham Guestworker Bill

The overall concern with the Graham/Wyden guestworker bill is that it shifts costs and risks from employers to the workers and the government.

1. **Reduces farmworkers' wages and earnings**

Farmworkers are among the poorest and most vulnerable in our society. Average annual earnings for a farmworker family are only about $6,500 and farmworkers are employed on average only about 23 weeks per year. The Wyden/Graham bill will lower wages and annual earnings of U.S. farmworkers:

a. Eliminates current requirement that the lowest wage paid be based on the "adverse effect wage rate" (AEWR) -- i.e., the average statewide agricultural wage rate. This way of calculating the wage was designed to compensate for the presence of illegal workers by relying on a state-wide average, rather than a local prevailing wage (thus, dissipating the effect of the presence of illegals).

b. Allows growers to charge farmworkers for the cost of maintenance, utilities, and repairs for grower-provided housing. This change would simply transfer some of the costs of housing to the low-wage workers. This would, in effect, lower the worker's actual earnings.

2. **Growers would no longer have to guarantee any part of the work offered to recruit U.S. and foreign workers.**

Under current law, workers recruited must be paid for at least 75% of the work contract period for which they were recruited. The Wyden/Graham bill will eliminate this requirement:

a. Under the MSPA, migrant farmworkers are guaranteed 100% of the work contract period for which they were recruited.

b. This will encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise.

c. This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.

3. **Growers would no longer have any domestic worker recruitment obligation except through the proposed Registry.**

Under current law, if the grower is seeking to employ H2A workers, he much first recruit legal U.S. farmworkers for these jobs. The responsibility for this recruitment is shared between the prospective employer and the U.S. Employment Service. These recruitment requirements are widely acknowledged to be highly ineffective, but the Wyden/Graham bill will make them even less so by only relying on the proposed "Registry":

a. Growers seeking to employ H2A workers would have no obligation to attempt to recruit legal U.S. farmworkers except through the proposed Registry. Thus, all responsibility for the recruitment of domestic farmworkers would shift to a new, untried, process for which the government and impoverished, low-skilled workers are entirely responsible. This proposed approach allows growers to concentrate all their worker recruitment efforts abroad, abandoning domestic worker recruitment to a new federal bureaucracy.

b. The bill would allow the new registry only 14 days in which to try to locate and contact legal U.S. farmworkers to ascertain their availability and interest in accepting a grower's offer of employment and get these workers in touch with the prospective employer. This time period is drastically too short. Most U.S. farmworkers will be extremely difficult to locate and contact in short period of time due to the migratory and rural nature of their work.

c. As a result, efforts to recruit legal U.S. farmworkers for these jobs will almost certainly be even less effective than at present and the use of foreign farmworkers will steadily increase.

4. Does not provide adequate mechanism for housing foreign guestworkers

Current law requires growers who employ H2A workers to provide housing for them. The Wyden/Graham bill allows growers to provide a payment voucher in lieu of housing unless the State certifies that adequate housing is not available in the area.

Under the Wyden bill the grower employing H2A workers would have no obligation to assure that housing is actually available and could be obtained with the voucher. Thus, many workers will likely end up without housing or be encouraged to overcrowd any available rental housing.