Immigration—H2A

PHOTOCOPY
PRESERVATION

Idea - H2A

9/24/1999

H2A BACKGROUND AND ISSUES

Background

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 United States of which it is estimated that approximately half are undocumented. In FY 98 there were 35,000 workers in the H-2A program. — how are the rest documented?

Under the current program, 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.

The H-2A program has been heavily criticized by the General Accounting Office (GAO), DOL's Inspector General, and the Hill primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. Furthermore, there are concerns with the number of undocumented farmworkers who are vulnerable. As a result, Congress has proposed legislation during the last Congress to restructure the H-2A program that the Administration, farmworker organizations, unions and immigrant groups and anti-immigration groups have opposed.

Players

why?

Administration - The Administration does not believe that legislation is necessary or appropriate at this time and 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. The Administration has developed guiding principles in reforming the H-2A. The Administration is working administratively to reengineer and streamline the H-2A program and has a budget proposal to create a program that would facilitate in matching. (See attached document-H2A Progress document for more details on the Administration's position). what)

The Administration has opposed several past efforts to create a new H-2A programs. Earlier this year, Administration officials participated in a briefing sponsored by the Senate Democratic Policy Council in opposition to H2A reform efforts in which we handed out the H2A accomplishment document.

In the White House, Maria E. and Barbara Chow are very involved in this issue. The Departments of Labor and Agriculture are very much involved and are sometimes at odds. INS is involved to some extent. Internal deliberations on H-2A matters are often communicated to the grower's representatives by some unknown source despite my best efforts to keep these deliberations internal.

Growers – Growers are represented by Anthony Lake and Tony Podesta and Charles Hansen of Podesta.com. Growers need a reliable source of workers because of the perishable nature of their products (i.e. fruits and vegetables). In an effort to make is easier for growers to hire farmworkers when they are needed, the growers are proposing to reform drastically the H2A program by changing the wage, housing and transportation requirements and certification process. This summer, they presented a proposal that includes a reform of the H2A program and legalization of undocumented farmworkers. (See attached side-by-side).

In a recent meeting with grower's representatives with Maria, Barbara and myself, we indicated that while we recognize their concerns, we did not think their proposal is consistent with Administration principles and that we are particularly concerned about the legalization proposal. The H2A reform proposal would not provide adequate protections for farmworkers and the legalization proposal would not undermine our efforts to fight illegal immigration.

Broker – Rick Swartz who is active in the immigrant rights community has been hired by the growers to seek a compromise on this issue.

Farmworkers – The main group representing the farmworkers is Bruce Goldstein with Farmworker Justice Fund. They oppose any efforts to eliminate or weaken the current H2A program. While they may be supportive of a legalization program, they would not do so in exchange for decimating the current H2A program. They are pleased that the Administration opposes current H2A reform efforts but they sometimes oppose our administrative proposals to reform the H2A program because they contend that we are weakening worker protections. The United Farmworkers –Delores Huerte- also opposes reforming the H2A program.

– why do they think current prog not work? why do not oppose reform?

Unions – The AFL-CIO opposes H2A reform efforts.

Immigrant Advocacy Groups – Various immigration groups – NCLR, U.S. Catholics, National Immigration Law Forum, etc. oppose creating a reforming H2A program. However, the grower's point to a recent reports that seems to indicate the Latinos are supportive of a guestworker program and legalization and suggest that the leadership of organizations are out of touch with their membership.

Anti-immigrant groups – Groups that generally oppose increased immigration also oppose efforts that make it easier for immigrants to enter the country.

Carnegie Endowment for International Peace– recently published a monologue on this issue and recommends a experimental time limited agricultural work program; legalizing undocumented farmworkers if they continue to work in agriculture; enhance opportunities for US workers to work in agriculture; address health, housing and other needs of participants in a new agricultural work program; and minimize the level of control over workers exerted by employers and recruiters (a.k.a. farm labor contractors). I am meeting with Alex Alienkoff from Carnegie next week to discuss this monologue.

Border State Governors – Recently, Governor Hull (R-AZ) and other border state governors including Governor George W. Bush have stated their support for legislation to create a new guestworker program for a variety of industries – agriculture, restaurants, etc. They are responding to increase border crossing in their states. Senators Kyl and Kay Bailey Hutchinson indicated they plan to introduce legislation but that its unlikely it would be enacted into law since the Administration would veto the legislation.

Legislation/Legislative Players

Senators Graham (D-FL) , Wyden (D-OR) , Gordon Smith (R-OR) and others – last year, Wyden successfully added on the Senate floor an amendment to the Ag appropriations bill that would have reformed the current H2A program. It caught many by surprise and Democrats voted for it because they trusted Wyden. The Wyden amendment was passed by a vote of 68-31 with Democratic support. As a result of the opposition by the Administration and House Republicans lead by Rep. Lamar Smith, this provision was eventually eliminated. It is expected that in the next week or two they are introducing their legislation that is similar to the grower's proposal.

Senator Abraham (R-MI)– held a hearing on this issue earlier this year. Generally, Abraham does not plan to move any controversial legislation through his committee unless there is consensus on legislation. However, based on last year's vote, there may be some semblance of consensus that may prompt Abraham to move this bill through his Committee.

Senator Feinstein (D-CA) – was initially interested in working on legislation with Graham and Wyden but has since backed down and is pushing our AgNet proposal in the budget.

Senator McConnell (R-KY)– successfully included a minor H2A reform provision in the Senate passed Ag bill that we oppose.

Senator Coverdell (R-GA) - Due to a raid of vidalia farmers last year, Coverdell has indicated his intent to hold DOL nominee until his issues are addressed. DOL is working with him to try to address his issues.

Rep. Lamar Smith (R-TX) – opposes any effort to make it easier for immigrant to enter the US but Speaker Hastert is sympathetic to the grower's concerns and need for farmworkers.

Rep. Berman (D-CA) – has been a strong supporter of farmworkers rights and has opposed grower's efforts to get his support on their legislation.

Outlook

Next week or following week, Senator Graham, Wyden, Gordon Smith, and Max Cleland and perhaps others, will introduce a bill that is similar to the grower's proposal. Growers' representatives have indicated that they do not plan to try to attach this bill to an appropriations bill in Committee. Of course, they are limited on the floor because of Rule 16. Therefore, the likelihood this bill will move in the Senate this year is slim. However, leadership could pressure Abraham to move a bill.

In the House, there is less momentum and I am not aware of any legislation that will be introduced in the House. However, after a bill is introduced in the Senate the momentum may increase and a bill may be introduced but again I think it's unlikely it will move unless Hastert pressures Smith to move a bill.

Next Steps

In the meantime, the Administration will continue to oppose legislation but to work to reform the current H2A system. I am working with Barbara Chow and her staff to move the administrative proposals.

In anticipation of the introduction of this legislation, there has been increased press interest in the Administration's position on this issue. In response, I am referring them to the H2A document that we have developed and will develop some basic questions and answers.

Please let me know if you have further questions.

Attachments
- H2A Progress Document
- Side by Side

Administration Progress on H-2A Reform

September 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 United States of which it is 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 General Accounting Office (GAO), DOL's Inspector General, 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 legislation 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

- On June 29, 1999 DOL published 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.

Border State Governors – Recently, Governor Hull (R-AZ) and other border state governors including Governor George W. Bush have stated their support for legislation to create a new guestworker program for a variety of industries – agriculture, restaurants, etc. They are responding to increase border crossing in their states. Senators Kyl and Kay Bailey Hutchinson indicated they plan to introduce legislation but that its unlikely it would be enacted into law since the Administration would veto the legislation.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
Proposed Foreign Farm Worker I. Substantive Worker Protections:	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.	This proposal would create two categories of nonimmigrant, temporary guestworkers in agriculture. One would be through a dramatically altered H-2A program, the other through a separate guestworkers program, each with substantially different substantive and administrative provisions. The altered H-2A proposal will be addressed first, followed by a summary of the new guestworker program.
1. Rate of pay is the highest of federal/state minimum wage, prevailing wage or adverse effect wage rate (AEWR) (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.	1. The adverse effect wage rate (AEWR) would be eliminated and replaced by a prevailing wage plus 5% wage. There is no obligation to pay a higher state or federal minimum wage. An employer is only obligated to ensure the work force on average is paid the legally required minimum wage. Workers would no longer have any individually protected minimum wage but rather be lumped with a large group who on average must make the minimum.

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Existing H-2A Farm Worker Program	**H.R. 2377 Farm Worker Program**	**Wyden/Graham Proposal**	**Grower Proposal**
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.	2. It appears there would be no disclosure of minimum productivity standards, no three-quarter employment guarantee, and only limited and untimely disclosure of terms and conditions of employment.
(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) (c) occupational qualifications must be in the application.	

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower 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 An employer who provides temporary labor camp housing is entitled to a 40% credit against the moneys otherwise paid to the Trust Fund for FICA/FUTA. 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.	3. The employer would not have to provide housing if the State made a finding that there is adequate housing for migrant agricultural workers in the area of intended employment. No standards are specified for making such a determination and apparently federal housing standards would be preempted by local and State standards, not matter how inadequate to protect health and safety.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
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 Secretary 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. The reimbursement is paid from the Trust Fund. A pilot project is established to provide transportation advances for domestic workers referred thorough the registry. The pilot is to be funded by the Trust Fund and a report to Congress on the pilot must be submitted after 2.5 years of operation.	4. The obligation to reimburse workers for transportation related expenses would shift from the employer to a government agency. It appears that the funding for the transportation reimbursement is the same as the provision in last years bill that was eliminated. *Other issues concerning substantive worker protections are not addressed in the proposal but are probably intended to track those in Wyden/Graham.*
5. Assurance that workers' compensation is provided. (Statutory)	5. Similar protection.	5. Workers compensation or its equivalent must be provided.	
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.	

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
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.	

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
II. Recruitment and Hiring of U.S. Workers	II. Recruitment and Hiring of U.S. Workers	II. Recruitment and Hiring of U.S. Workers	II. Recruitment and Hiring of U.S. Workers
1. Employer develop and implement an affirmative domestic worker recruitment plan. (Statutory)	1. No similar protection.	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.	1. The employer would only be obligated to hire U.S. and adjusted nonimmigrants who apply through the Registry. They would not be obligated to recruit workers nationwide but only regionally, even if there are workers available outside the region.
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)	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.	2. U.S. workers must be employed during the first 50% of the "anticipated period of employment shown in the employer's application."	2. The Registry would be created to refer qualified U.S. and the newly created "adjusted nonimmigrant alien" workers. H-2A workers could not participate in the Registry.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
3. Job offer must be placed in the employment service interstate clearance system and distributed to areas of known labor supply. (Statutory)	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.	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 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 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	3. U.S. workers could be referred to any available job but "adjusted nonimmigrant aliens" only to those jobs in their Registry region.

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		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—the Registries, the transportation reimbursements, the housing credit, and other administrative costs—are reimbursed from the Trust Fund. The Trust Fund receives the employer payments--equivalent to the FICA and FUTA payment owed if the workers were covered by those acts--and 20% of each foreign worker's gross wages. The money is paid to Treasury. The FICA/FUTA payments are used to fund the administration of the program. The remaining money is held in trust for each worker and the 20% is reimbursed if the worker returns to his/her country of origin as required by the legislation.	4. The Registry would verify employment eligibility for those workers it refers and those other workers sent to the registry for verification by the employer. 5. The Registry would be responsible for all recruitment and referral of workers, including determinations concerning qualifications and availability of workers. 6. "Adjusted nonimmigrant aliens" could be "sanctioned" for failing to report to a job they committed to on the Registry. 7. Only those employers seeking H-2A workers would be required to use the Registry even though all agricultural employers can require their workers to use the Registry. 8. There is no funding for the Registry mentioned in the proposal. *Other issues concerning recruitment and hiring of U.S. worker are not addressed in the proposal but are probably intended to track those in Wyden/Graham. This would mean no*

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
			positive recruitment, no 50% rule protection, no recruitment through the Interstate Clearance System, and no obligation to contact former employees.
III. Enforcement of Labor and Immigration Laws 1. DOL may enforce compliance with labor laws by H-2A employers like any other employer. (Statutory)	III. Enforcement of Labor and Immigration Laws 1. DOL may investigate only upon complaints by aggrieved person or organization, including bargaining representatives.	III. Enforcement of Labor and Immigration Laws 1. DOL may investigate only upon complaints by aggrieved person or organization, including bargaining representatives. Investigation limited to allegations of violations within the last 12 months.	III. Enforcement of Labor and Immigration Laws *There is no discussion of H-2A enforcement in this proposal. The author may intend the provisions contained in Wyden/Graham be incorporated.*

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
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.	
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."	
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. 20% of workers' wages withheld and that portion not used as administrative fees are returned only upon timely repatriation of the worker.	
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.	

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
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.	

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IV. Procedural Safeguards	IV. Procedural Safeguards	IV. Procedural Safeguards	IV. Procedural Safeguards
1. Application normally must be filed with local SESA and DOL regional office at least 45 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.	1. Labor certification would be eliminated and replaced by a Registry.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
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.	2. Employer would file an application with the Registry 28 days before the date of need.
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.	3. DOL could not make a determination about whether or not the admission of foreign workers would adversely affect the job opportunities, wages, or working conditions of U.S. workers.

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
4. Application may be rejected by DOL if it does not adequately protect U.S. workers from adverse effects by the foreign workers. (Statutory)	4. DOL has no authority to determine whether or not the offer would adversely affect U.S. workers.	4. DOL has no authority to determine whether or not the offer would adversely affect U.S. workers.	
		Miscellaneous provisions:	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).	1. Aliens who can prove 180 work days in agriculture during 18 month period would be eligible for the "adjusted nonimmigrant alien" status.
		2. The program appears to be in addition to, and not in lieu of, the current H-2A program.	2. Agricultural employers may petition for adjustment or the worker may apply for adjustment through a QDE. The standard of proof for workers and QDEs, but not for employers, would be higher than under the IRCA SAW program.
			3. The IRRIRA bar would be waived for purposes of apply for this status.
			4. Workers with "adjusted" status could only remain in the U.S. for 10 months in any calendar year. The proposal is silent on where the aliens would reside during the remaining two months. Those workers with "adjusted" status and a minor, U.S. born child could remain in the U.S. all 12 months.
			5. "Adjusted" workers would be

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Existing H-2A Farm Worker Program	H.R. 2377 Farm Worker Program	Wyden/Graham Proposal	Grower Proposal
			ineligible for all government benefits, except emergency services. 6. Adjusted workers could only work in agr 7 years after adjustment. Those who may remain in the U. S. all 12 months of the year must demonstrate 8 months of employment in 5 of the 7 years since adjustment. 9. Adjusted workers must apply for permanent status within 6 months of qualifying or loose all immigration rights, including adjusted status, and are subject to deportation. 10. An annual quota is imposed on adjustment from adjusted status to permanent residence status. 11. Adjustment of adjusted workers does not count against any quotas nor will they be offset against any quotas. Presumably to encourage them to work more in agriculture, or leave the country (and avoid the problem of public opposition based on their access to taxpayer supported benefits).

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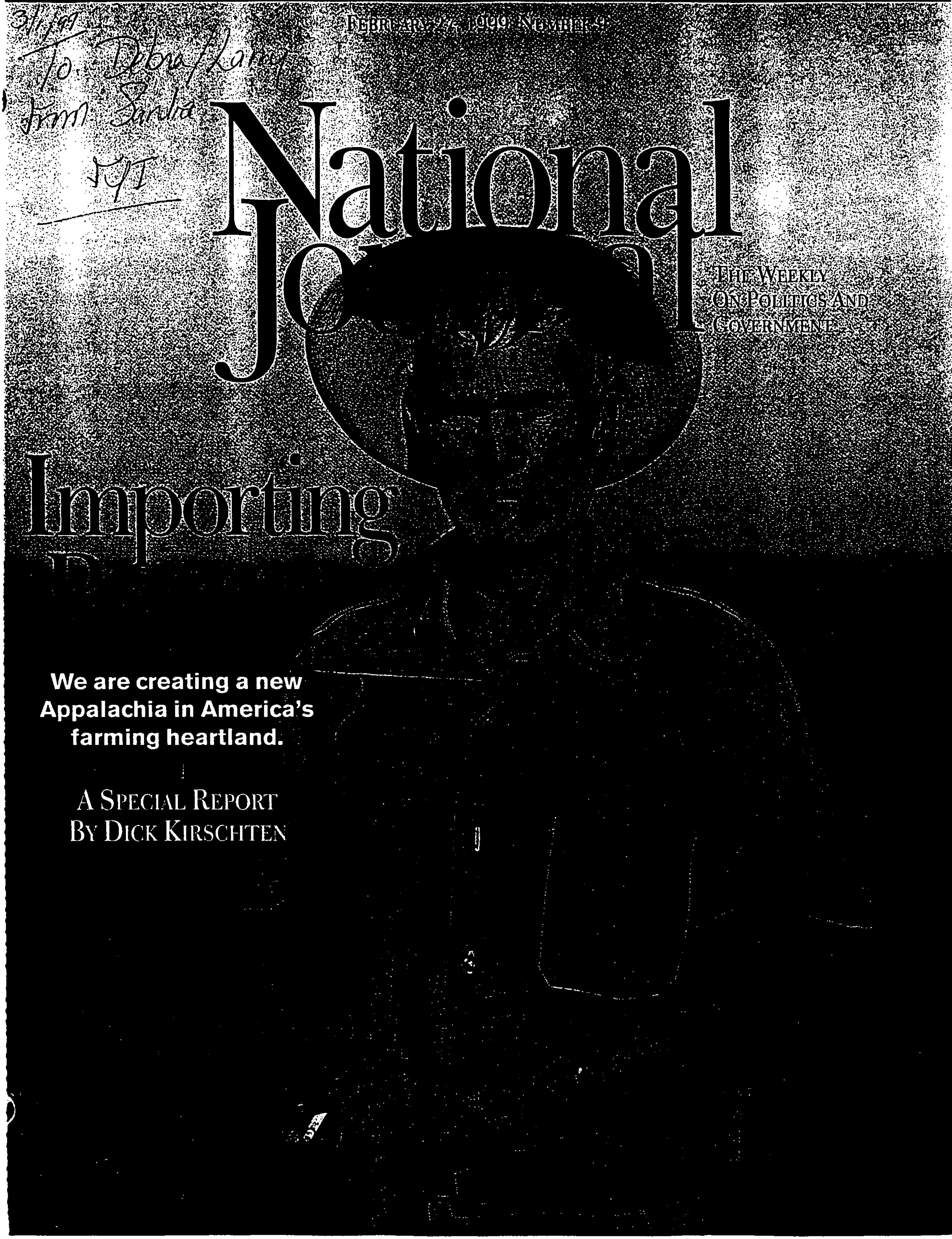
GRAMM SETS SIGHTS ON BELOVED LIB LAW | BUDGET: IT'S CATs VS. BLUE DOGS

3/1/99
To: Debra/Larry
from Sandra

FEBRUARY 27, 1999 NUMBER 9

National Journal

THE WEEKLY ON POLITICS AND GOVERNMENT



Importing

We are creating a new Appalachia in America's farming heartland.

A SPECIAL REPORT
BY DICK KIRSCHTEN

Inviting Workers, Importing Poverty

CHANGES IN CALIFORNIA'S VAST AND FERTILE CENTRAL VALLEY HAVE GROWERS ASKING FOR MORE FARMWORKERS AND ACTIVISTS PREDICTING PERMANENT POVERTY.

BY DICK KIRSCHTEN

HELP WANTED:

Growers are turning to higher-profit, more labor-intensive crops as the price of water and irrigation rises.

PAUL CONKLIN

FRESNO, Calif.—Nestled between the snow-capped Sierra Nevada and the coastal Diablo Range, the table-flat San Joaquin Valley is the very picture of fertile agricultural abundance. The southern arm of California's great Central Valley, it's the heart of the state's $25 billion-a-year farming industry and the most productive crop-growing area in the world. This great productivity rests above all on one thing: cheap imported labor. California's cornucopia was and is made possible by a steady stream of migrants—Dust Bowlers from the Midwest in the 1930s, Chinese before them, and

Mexicans and others after them. This endless supply of workers willing to do back-breaking labor in the 90- to 100-degree heat of the San Joaquin and Sacramento valleys for low piecework wages has given Americans some of the least expensive fruits and vegetables in the world for 150 years.

But California's huge population of poor agricultural laborers has never before meant a huge, permanent population of rural poor. Its field workers have traditionally comprised a population in transit, in both geographic and economic terms. Poor workers migrated into and out of the Central Valley in accord with the seasons, and they also migrated out of piecework and poverty and into better-paying, more-secure jobs.

Now, a great alteration is under way in the great valley. Changes in public sentiment, in law enforcement, and in the very nature of California agriculture are working together to create what many social welfare experts fear may become a new, Western Appalachia—a large, permanent culture of deep rural poverty, whose faces may change from one wave of immigrants to the next, but whose conditions never improve. The causes are complex:

- Anti-immigrant sentiment, in California and nationally, in recent years has had its effects. Responding to voter sentiment, Congress in recent years has pumped huge sums into tighter border enforcement and a crackdown on unauthorized foreign workers who use fraudulent documents. A perverse and unintended consequence of this crackdown may be to encourage illegal immigrants to stop migrating in and out of the U.S and to stay here permanently. Because entering the country has become more costly—and so much more difficult—experts say that illegal immigrants who once moved annually back and forth across the California-Mexico border now tend to stay longer. Afraid they will never be able to get back into the United States if they leave, these immigrants are settling down in once-diverse rural towns that are becoming little more than dormitories for poor Hispanic farmworkers.
- Meanwhile, restrictions on federal welfare benefits for immigrants and their families have increased the burdens on the private charities that provide emergency aid, as well as on local governments, whose tax resources are dwindling in the face of increasing demands for public services. The result: a chronically impoverished population that is less and less able to turn to either state or private charity for more than the most temporary relief.
- Central Valley agriculture itself has changed, in a way that has heightened the demand for cheap labor. At the end of the infamous bracero ("seasonal laborer") program—which from 1942-64 shuttled, in all, some four million to five million temporary workers back and forth between the United States and Mexico—many experts thought that mechanization would greatly reduce the future need for field workers. But just the opposite has happened. As state and federal water subsidies have ebbed, irrigation has become more expensive in the Central Valley, and growers have shifted to higher-profit crops, such as grapes and tree fruits, that are more labor-intensive than those grown before.

In sum, California (and therefore the nation) is more dependent than ever before on illegal immigrants to harvest its crops. "The reality is that right now, the Central Valley agriculture industry couldn't survive without illegal immigration," said a California state official who asked not to be identified.

Needing ever-greater numbers of cheap harvesttime laborers, the growers say they are finding ever fewer. Many report labor shortages—some say the shortages amount to tens of thousands of workers—during the peak harvest seasons, when workers are in greatest demand. Industry spokespeople argue that the lightly used temporary visa program currently available to the growers is too cumbersome and unworkable.

PAUL CONKLIN

BROKEN CIRCLE:
Anti-immigration laws have made it harder for seasonal farmworkers to cross the U.S.-Mexico border in either direction.

AS CALIFORNIA GOES . . .

The pressure of these combined effects on California's farming culture is leading to a much larger, cumulative change, a profound perceptual shift in basic attitudes toward immigrants and immigration. As an overarching answer to their labor woes, California's agricultural interests—following in the footsteps of high-technology employers, who recently won increased immigration quotas for temporary workers—are pushing a concept of immigration that is more European than American: the concept of the immigrant not as future citizen, with all the mobility that this implies, but as the guest worker, allowed to enter only for limited stays and with no ability to climb to citizenship.

Instead of the Ellis Island model of American immigration—under which Americans assume foreigners come here and, over a generation or two, work themselves up the economic ladder to become middle class, or even rich—the country may be moving back toward a bracero-style system, under which the importation of workers is strictly regulated. Workers are imported as seasonally needed, and when no longer needed, they are—at least in theory—sent back home.

The new Californian approach is finding increasing favor with agricultural employers from other states. Bert Mason, an agricultural economist at California State University (Fresno), says that what strikes him as most interesting about the latest guest-worker debate is the broadening geographical base of support for the concept. Recent immigrants, many of them illegals, have moved into low-wage jobs across the United States, and employers are increasing-

KEN LIGHT

ly reliant on them, notes Mason. California's preoccupation with imported labor is no longer unique.

Last year, growers from states across the country joined California in lobbying for a new federal guest-worker law that will allow the regulated importation of additional foreign workers, most of them from Mexico and Central America.

Perennially an issue ardently pursued by California farm interests, with some support from allies in Texas and Florida, the initiative this time around was spearheaded by Oregon's two Senators, with strong support from colleagues from Arkansas, Georgia, Idaho, Kentucky, Michigan, and North Carolina.

The growers were rebuffed after a similar attempt in Congress in 1996, but last year they surprised many observers by gaining Senate approval—by a lopsided vote of 68-31—of a measure that sponsors say could lead to a sixfold increase in agricultural guest workers, to perhaps 120,000 a year. The legislation died in conference, facing a White House veto threat and resistance from House opponents of increased immigration. The measure almost certainly will come up again this year.

Stop the Cycle

But not everyone in the Central Valley agrees with the growers that guest workers are the answer. Many local leaders—mayors, union officials, academics—think the idea of importing more guest workers is pure folly. They fear that the valley is becoming a port of entry for poverty—a new, Western Appalachia, from which many families will never escape.

"We have one of the highest rates of unemployment in the state, and it is chronic, long-term unemployment that doesn't get much better, even during the peak of the harvest season," says Fresno County supervisor Juan Arambula. *(For more about the burden on local communities, see p. 530.)* Arambula and others scoff at the notion of a labor shortage in the valley. To them, the growers' real objection is to paying the decent wages that American workers demand. "The growers want to displace local workers with workers they can send back to Mexico," charges labor activist Dolores Huerta, who co-founded the United Farm Workers and helped end the bracero program in 1964.

Arambula, Huerta, and others in their camp note that the wealth generated in the valley accrues to relatively few of its residents. They cite figures that do seem to describe a culture of entrenched poverty. At least a third of the area's children live in poverty, and the prenatal care available for pregnant women is generally inadequate. Public assistance rates are high, and unemployment—even during harvest season—is often two to three times the state average. School dropout rates are worrisome, as is the incidence of crimes involving young people. These real indicators of poverty put tremendous strains on local and state government, and on taxpayers.

Former Modesto Mayor Carol Whiteside, who is heading an effort to upgrade and diversify the region's job base beyond agriculture, says that some immigrants do make it up out of poverty, but that this does little to alleviate the chronic situation. "The people who come here have the lowest-level jobs, the fewest language skills, the least family structure and civic support," she said. "Then when they gain those things, they move on, and we are constantly backfilled by new immigrants" with the same problems.

Poverty, of course, is relative. Compared with life in rural Mexico or Central America, immigrants in the valley feel they have improved their lot; that's why they risk their lives to come to America. Despite per capita incomes as low as $4,000 a year, farmworker families make ends meet by doubling up in homes with relatives or friends. Some earn extra income during harvest season by renting out sleeping space in sheds or garages to migrant workers. And legal immigrants can earn as much as 26 weeks of unemployment insurance benefits.

In a sense, the growers and the farmworker advocates are both right. The Central Valley has ever been thus—a constant magnet for workers from elsewhere desperate for jobs and willing to accept low wages, but bringing with them problems that are difficult for local governments to handle.

"These are never going to be very high-paying jobs, and they are never going to be very attractive to people who become permanent residents and get some education," says economist Mason. As people settle into towns, or leave the valley altogether in hopes of better jobs, growers will clamor for new field hands.

PHOTO © KEN LIGHT

BEYOND CALIFORNIA:

Growers in other states, too, such as Texas, also see an increasing need for a new guest-worker program.

THE PROMISED LAND?

A Spanish-language television station's splashy billboard in downtown Fresno depicts a slice of apple pie and a dish of flan, the classic Hispanic custard. Add the two together, and you have "the best of both worlds," the advertisement's pro-diversity motto proclaims.

But researchers studying the impacts of immigration in rural California fear the opposite. The authors of a 1997 book, *Poverty Amid Prosperity: Immigration and the Changing Face of Rural California*, published by Washington's Urban Institute, contend that toughened border enforcement in the past decade has served to lengthen the stays of illegal immigrants who enter the U.S. to harvest crops.

A 1999 report by the Public Policy Institute of California, a nonprofit San Francisco-based think tank, notes that income inequality has grown faster in California, where immigrants now make up 36 percent of the male work force, than in the rest of the nation. In California, from 1969-97, "the rich got a little richer, and the poor got a whole lot poorer," the report notes, adding that "immigration has disproportionately increased the number of low- and lower-middle wage earners."

Whiteside, who heads the Modesto-based Great Valley Center, a foundation-supported agency that seeks to bolster the region's economy, warns: "The Central Valley will either end up as a contributor to the state's economic development, or it will wind up as California's Appalachia."

In many respects, the valley, with its rich harvests and rapid and diverse population growth, bears little resemblance to the mined-out mountains and isolated, inbred Cumberland Plateau communities that inspired the Kennedy Administration's Appalachia anti-poverty crusade nearly four decades ago. But there also are parallels to the observations in Harry M. Caudill's 1962 book, *Night Comes to the Cumberlands*, about a region that for 130 years had grown poorer because "the nation . . . siphoned off hundreds of millions of dollars' worth of its resources while returning little of lasting value."

Whiteside decries the loss of human resources: the "brain drain" caused by young residents' fleeing the valley after getting an education, and by the departures of "middle-aged Caucasian people who have lived here for decades or generations but have little confidence in the area's future, and plan to retire elsewhere."

What particularly galls many local leaders is that crops harvested in the valley are hauled elsewhere for processing, in plants that provide higher salaries and more-stable employment than field work. "In the summertime, one of the lanes of Route 99, the valley's major north-south freeway, will be red from all of the tomatoes that fall off the tractor-trailer rigs," Fresno County supervisor Arambula notes.

Arambula likens the area to "a Third World country that exports its raw natural products to be refined elsewhere and have the earnings accrue to someone else."

Whiteside, an aide for seven years to former Republican Gov. Pete Wilson, agrees with Arambula's assessment. With the exception of E & J Gallo Winery Inc., no major corporations are headquartered in the valley. "We are everybody's branch office, which means that the fate of the region is controlled by outsiders, much as colonies historically have been run," she complains.

Although the valley's population is growing, she adds, that fact can be misleading. Much of the growth is driven by the development of bedroom communities, built on the fringes of the valley, for people who commute to jobs in cities along the coast and who contribute little to the local economic base other than low-paying service-industry jobs.

Arambula and Whiteside hope that they and other local officials can attract new industries, agriculture-related and otherwise, to provide better jobs and upward mobility for the valley's low-income residents. But there are plenty of doubters.

Ernest Velasquez, of Valley Catholic Charities of the Diocese of Fresno, says the region's powerful growers will fight to preserve the economic status quo. "It is not in the interest of agribusiness in the Central Valley to have highly paid labor," he notes. "The biggest fear of the landowners is to have someone come in and open up factories."

The status quo may be fine for the growers, but it's not a good deal for the average taxpayer, argues Velasquez, who served for nine years as Fresno County's welfare director. The problem is that farm work does not provide year-round employment. "The public pays a price for it, because when there are no crops to be picked, folks apply for whatever benefits they can qualify for."

Help Wanted

The fact that Manuel Cunha Jr. is now president of the Nisei Farmers League tells a lot about California's farming history. Second-generation Japanese-Americans, or Nisei, whose parents were barred from owning land, became prosperous growers after World War II and formed their own trade association. In 1972, the group magnified its influence by opening its doors to all comers. Its membership now includes Anglos, Hispanics, even Laotian and Hmong truck farmers. Now, little more than a third of its 1,000 members are of Japanese descent.

Cunha, a former college professor of Portuguese ancestry, who became head of the league in 1995, is a highly vocal proponent of an expanded guest-worker program. He's made the rounds in Washington in support of a campaign coordinated by the National Council of Agricultural Employers, with lobbying advice from such Washington consulting firms as McGuiness & Williams, podesta.com, and Rick Swartz & Associates Inc.

During an interview in his Fresno office, Cunha presents carefully prepared charts illustrating the overlapping harvest seasons for his state's crops and insists that there was a shortage of 80,000 workers during the brief, but critical, raisin harvest in the Central Valley last September.

The growers' association executive speaks vehemently about the disinclination of many unemployed local laborers to do the hard work that immigrants willingly perform. Noting that "welfare-to-work" programs in the Central Valley have produced virtually no new agricultural workers, Cunha scornfully asserts that "Americans have lost their work ethic." He also complains about restrictions against the use of child labor in farming jobs that the Labor Department deems hazardous.

Two Mayors, Two Visions

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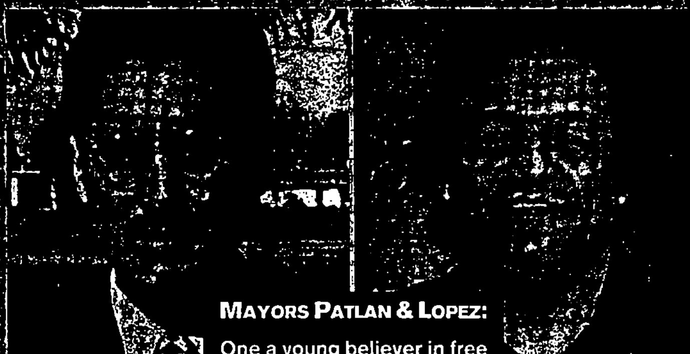

MAYORS PATLAN & LOPEZ: One a young believer in free enterprise, the other a veteran provider of government aid and assistance.

[illegible] much in common. Both grew up in farmworker families and worked in the fields as youngsters. Both now preside over predominantly His-panic towns of just over 10,000 peo-ple who have some of the state [illegible]

Such complaints go beyond California, however. The argument for a new guest-worker program got a well-publicized push last May, when the Immigration and Naturalization Service launched "Operation Southern Denial" during the peak harvest season for Georgia's hot new Vidalia onion industry. After just one day of raids, which netted fewer than two dozen undocumented workers, an outcry from growers and lawmakers forced the INS to back off.

As Sen. Larry E. Craig, R-Idaho, a leading guest-worker proponent, explained in a Senate floor speech last summer, such raids can devastate a harvest. "A single INS raid, netting a handful of illegal workers, can scare and clean out thousands of workers in surrounding counties," he declared. Noting that farmers have limited means to detect fraudulent identification papers, Craig said: "Employers in such cases typically have complied with the law. But, of course, the crops were left rotting in the fields."

Despite their worries, growers—especially those in California—have shown little interest in seeking temporary workers under an existing guest worker program called H-2A, under which only about 24,000 visas are currently issued each year. The principal complaint about the program is that bureaucratic red tape makes it unworkable. Farm interests say they are required to apply for visas too long in advance and that it is all but impossible to certify, as the program requires, that local workers are not available.

Current H-2A rules also require that employers participating in the program provide housing for workers and pay them at a premium rate known as the "adverse-effect wage." The pay differential is significant. Most California farmworkers, paid by how much they pick, get little more—and sometimes less—than the state-set minimum wage of $5.75 an hour. But the "adverse-effect wage" for California this year has been set at $7.23 an hour.

The Senate last year approved legislation to create a more user-friendly H-2A program. The bill's key features included a federal registry of authorized local farmworkers, which growers would have to exhaust before applying for visas to bring in temporary hands. Growers would also have to pay transportation expenses and provide either housing or a housing allowance. The measure lowered wages for temporary workers, however, to an amount equal to the local prevailing wage rate plus 5 percent.

Senate bill

Some experts believe it would be a good idea to have an expanded guest-worker program, provided that ways can be found to ensure decent wages and working conditions and to somehow guarantee that workers actually return to their country of origin. Because the workers' wives and children presumably would stay behind, U.S. health care facilities and schools would bear less of a burden.

"We've created too many incentives for people to stay," says Demetrios G. Papademetriou, co-director of the International Migration Policy Program at the Carnegie Endowment for International Peace. "A pattern that was circular for generations has been interrupted because the cost of crossing the border has become prohibitive. We need to try to re-create incentives for people to go back and forth."

Agricultural economist Mason sees the issue as a matter of lesser evils. "These entry-level jobs have to be filled from somewhere, so let's give the guest-worker program a shot," he says. "It can't be any worse than the situation we've got now." Is it?

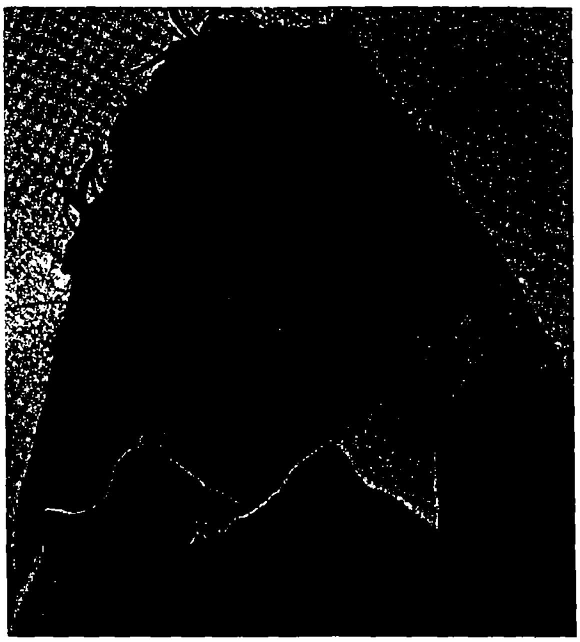

PHOTO © KEN LIGHT

WHAT FUTURE?:
California's Central Valley needs diversification if young people are to have a hope of climbing out of poverty.

He argues that the current system, which operates "with a wink and a nod" toward the use of illegal labor, is inhumane. "You've got the poorest and most-recent immigrants—who are the most easily exploited—working in the worst situations. They are working for the worst employers, the worst *raiteros* [transportation providers], and the worst farm-labor contractors."

Too Much Help Already

But opponents of a new guest worker system argue that the social costs of bringing more poor Central Americans into the country are too high. And they say that any labor shortage in the Central Valley is caused not by a lack of local workers, but by the horrible conditions to which growers subject workers—conditions that only workers from other countries, with even-worse wages and conditions, will tolerate.

That unemployment among legal workers is high is indisputable. A recent analysis by the California Rural Legal Assistance Foundation Inc., *Joblessness in the California Heartland*, indicates that 18 of the state's top agricultural counties—including 14 in the Central Valley—already have more potential workers than there are jobs. At the height of the 1997 growing season, for example, unemployment rates in all but one of the valley's counties exceeded the statewide average of 6.3 per cent. In most, it was twice that figure.

The U.S. Labor Department also says there is no shortage of agricultural workers. John R. Fraser, administrator of the department's Wage and Hour Division, acknowledges that sometimes getting agricultural workers to the right place at the right time is an obstacle, but he insists that "fundamentally, this is not a labor-shortage problem." Even allowing for the fact that an estimated 600,000 farmworkers are undocumented immigrants, Fraser insists there is an adequate supply of legal farm labor, "even during peak harvest months."

Fraser says that arguments for bringing in additional immigrant workers also ignore the consequences for the one million legal U.S. farmworkers who rely on this work for their livelihoods. More immigrants means that wages stay low, and agricultural wages have been stagnant for 20 years, he notes. That makes it more difficult for the legal workers to make a decent living and climb out of poverty. He cites studies indicating that legal farmworkers average only 26 weeks of work a year, which produces annual earnings of only about $6,000. (The federal poverty line for a family of four is roughly $16,000 a year.)

Huerta of the farmworkers' union, which has just 26,000 members under contract in California, out of an estimated total of 300,000 farmworkers, argues that the push for new guest worker legislation is designed to keep the labor market perpetually over-supplied and stymie the union's efforts to win bargaining rights. "The [expanded] H-2A bill would legalize what the growers are already doing," Huerta says. "They are saying, 'Reward us for the terrible treatment we give these people.' "

Last year, Fraser's agency conducted a spot survey of California raisin growers and found that 20 per cent of the growers who hire their own workers, and more than half of the farm-labor contractors who supply workers for growers, were paying less than the $5.15-an-hour federal minimum wage, which is 60 cents lower than the state's required minimum wage.

Such inspections are comparatively rare, however. The Sacramento office of the U.S. Labor Department has just 20 wage-and-hour investigators to cover a 33-county area.

Enforcement of wage and working-condition laws, both state and federal, is woefully inadequate, says Fresno-based legal-aid attorney Jeffrey T. Ponting. "If they were to investigate every farm in the state of California, at the current rate they wouldn't get to every farm until 2056," he estimates.

Ponting also says that state enforcers pay insufficient attention to field sanitation requirements, letting labor contractors who fail to supply portable toilets get off with minimal fines. "Growers who pay a fair wage and provide toilets and cool ice water with individual cups don't have problems with labor shortages, even when harvesting has to be done in 106-degree heat," Ponting observes. "Workers will come back to them, year after year."

Noting that most field laborers are paid on a "piece-rate" basis, Ponting adds that even the most experienced pickers often have a hard time earning the minimum wage at prevailing rates. Fresno County supervisor Arambula agrees. "When I hear people say, 'We can't find enough workers,' what I don't hear is, 'at these current wages and conditions.' " Noting his county's high unemployment and public assistance burdens, he called it "incomprehensible that we would consider bringing in large numbers of foreign workers under some expansion of the guest worker proposal."

Urban Institute immigration expert Michael Fix, one of the authors of *Poverty Amid Prosperity*, observes that while many underemployed immigrant workers are "stacking up in the small towns of the Central Valley," many others migrate to cities, where their economic fate does not always improve.

Get report or [illegible] file

The Latino advocacy group National Council of La Raza reported in 1997 that 30 per cent of all Hispanics and 40 per cent of Hispanic children live below the official poverty line.

EUGENE RICHARDS

CALIFORNIA CORNUCOPIA:
For 150 years, the San Joaquin Valley has supplied Americans with some of the least expensive food in the world.

Hispanic work-force participation rates exceed those of both blacks and whites, but many Hispanics nevertheless continue to join the ranks of the working poor, notes Roberto Suro in his 1998 book, *Strangers Among Us: The Promise and the Peril of Latino Immigration*.

"The Latino poor are here, and they are not going to go away," Suro writes. "Unless new avenues of upward mobility open up for Latino immigrants and their children, America's underclass will quickly double, and over the course of a generation, it will double again."

Whether California's Central Valley, and to some degree its cities, will become a permanent home for poverty is not a matter of small concern to Californians, or to state politicians. Many white and middle-class residents have been moving from California to neighboring states in recent years because they feel that California has already become too poor and too Hispanic.

For newly installed California Lt. Gov. Cruz M. Bustamante, a son of the Central Valley born to Mexican farmworker parents and the highest-ranking Hispanic in state government, the matter of bringing in guest workers raises serious questions. He's sensitive both to the concerns of his state's powerful agribusiness industry and to the potential social costs of a growing poverty population.

If there is to be a guest worker program to meet the labor shortages that occur in some seasons, the former assembly speaker said through a spokesman, there must be assurances that "the voters are not liable for the aftereffects." Bustamante said there are bound to be costs to such a program, and he wants to know how health care and housing for migrant workers will be paid for. "This is a zero-sum game," he noted. "Somebody is going to have to pay." ■

1mm -
H2A

MEMORANDUM FOR MARIA ECHAVESTE, BARBARA CHOW, AND ERIC LIU

FROM: Irene Bueno and Debra Bond

SUBJECT: AgNet – Outstanding Design Issues

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plain word? carrot — 1 how many would; what? of workers re attacks (H2A?

As you know, we recently developed a detailed description of "America's Agricultural Labor Network" (AgNet). While working with the various agencies on the description, a number of program design issues were raised and discussed. In order to proceed with discussions with the grower and farm worker communities, we need final decisions on a number of these issues.

Below is a brief description of the outstanding issues with DOL, USDA, DOJ, OMB, SSA, and DPC positions as appropriate. Please let us know if you would like to discuss any of the issues prior to making a decision. The latest version of the AgNet description is attached for your reference.

1. <u>Use of AgNet Database for Enforcement Purposes</u>

The AgNet description says that workers and growers will be informed that INS and DOL will not have access to the database of information for targeted enforcement purposes. However, INS and DOL will have access during the course of an investigation – either compliant or self-directed – but could not use the database to develop a list of workers/growers to target.

Positions: The INS, DOL, and OMB (EIML staff) want to use this information for enforcement purposes. Concerns were raised regarding a link between AgNet and enforcement because it may be a disincentive for growers to use the system. OMB's Privacy Office also raised concerns about the enforcement link because it may be a disincentive for workers to use the system.

Recommendation: The position reflected in the AgNet description was a compromise between the differing views. INS, DOL, and OMB (EIML staff and the Privacy Office) have agreed to this position.

We recommend maintaining the current position that the database can be used during the course of an investigation but not as a source to develop candidates for targeting.

_____ Agree _____ Disagree _____ Let's discuss

2. <u>SSN Written Consent</u>

A feature of AgNet is verification of the worker's Social Security number (SSN) prior to posting his/her worker profile. By verifying the worker's SSN in advance, AgNet provides an extra service and addresses a key concern of employers -- mismatched SSNs. Currently, employers only learn that numbers are mismatched after-the-fact, on a quarterly basis. In some cases, after the mismatched numbers are identified, the Social Security Administration (SSA) sends a letter to employers asking that employees clarify the mismatches. This letter often intimidates employees and they often leave the work site. Employers become concerned that they may have hired an undocumented worker subjecting them to employer sanctions. Under AgNet, the employer would not have to worry about mismatched SSNs because workers will not be in the system unless their SSN has been verified.

OMB (EIML, OIRA, and Privacy Office staff) had numerous, contentious conversations with SSA regarding the method of consent required prior to verification. In order for SSA to verify a person's SSN, it requires that the person consent to the verification. The issue then is how the worker provides consent – i.e., by clicking a box on AgNet "yes, I consent" (electronic consent) or by signing a written consent.

SSA regulations require some minimal attempt to verify the identity of the worker providing consent. In practice, this has translated into a written consent. Without discussing the merits of SSA's practice, the written consent provides SSA with proof that can be used in cases where a person contends that SSA verified without their consent.

SSA will not allow an electronic consent. The main concern is that the consent could be open to widespread fraud. For example, if a person knew 7 of the 9 digits of your SSN, they could use this system repeatedly to figure out the last 2 digits and thus SSA would have verified that the person was correct. Recognizing that the likelihood of this occurring is small, it is still possible. Thus, OMB agreed to a written consent.

Positions: OMB and SSA agreed that a worker would have to provide written consent prior to verification. The consent would have to be maintained for five years by someone (either the Partnership, AgNet grantees, or the New York Employment Service – the maintainers of the AgNet database) in order for SSA to audit if needed. This of course makes using AgNet more complicated, but is necessary to maintain the system's integrity and guard against possible fraud.

DOL has recently raised objections to requiring a written consent because it believes the requirement will increase the cost and complexity of worker entry and will be a significant obstacle to worker participation.

Recommendation: We recommend maintaining the current position that requires a written consent prior to SSN verification.

_____ Agree _____ Disagree _____ Let's discuss

3. Contents of Worker Profile and Grower Job Listing

The AgNet description is silent on whether workers and growers will be required to enter certain information in order to post of AgNet. For example, whether the worker has to provide work experience/qualifications, and whether the grower has to provide MSPA disclosures such as wages and duration of work.

Positions: After vigorous debate during a DPC meeting on AgNet, the agencies agreed not to require information but to provide data fields that would allow workers and growers to enter the information if they chose to do so. DOL was represented at this meeting. The decision was a compromise between DOL's desire not to turn AgNet into an enforcement system, and USDA's/OMB's desire to provide data fields for growers to use to fulfill their obligations under MSPA if they choose to do so.

DOL has revisited its position provided at the earlier meeting. DOL now recommends requiring growers to provide information required by the Migrant and Seasonal Worker Protection Act (MSPA) which includes the terms and conditions of employment such as wages and work duration. USDA is not opposed to this requirement but notes that this will likely be an obstacle initially with growers.

An alternative to requiring MSPA disclosures is to require information that is mandated to use the Interstate Clearance System (ICS). This includes a commitment to:

ICS > MSPA ?

- provide free housing that meets minimum safety and health standards;
- pay at least the prevailing wage for the crop in the local area; and,
- guarantee the first week's wages in the event that the promised work is not available.

[illegible]

Because the workers' advocates will likely see the development of AgNet as effectively replacing the ICS, if ICS requirements are not included in AgNet advocates may view it as negating the important gains they made in years of litigation to get the Employment Service to serve the agricultural labor force. On the other side, DOL agrees with USDA that requiring ICS information would be a major disincentive for growers to use this system.

Recommendation: DOL and OMB (EIML staff) recommend requiring the disclosures required in MSPA. In addition, we also recommend requiring basic information in the worker profile. USDA is comfortable with this position.

_____ Agree _____ Disagree _____ Let's discuss

4. Grower Verification

The AgNet description says that the Partnership will determine how a grower's registration will be reviewed; for example, to verify whether the grower is a legitimate business (similar to the worker SSN verification). Currently, AJB verifies employers through the unemployment insurance system. Unfortunately, this method of employer verification cannot work in the AgNet context.

Position: We believe that everyone is in agreement that the growers should be verified to determine that they are legitimate. Unfortunately, we have not been able to figure out what database we can use to verify them against.

Recommendation: We recommend continuing to explore this issue. We also recommend informing the grower and worker communities of our intention to verify growers somehow.

_____ Agree _____ Disagree _____ Let's discuss

5. Access to Job Listings

The AgNet description is silent on whether a grower, worker, or their agent will be required to register in order to search listings in AgNet.

Positions: AgNet is modeled on America's Job Bank (AJB). AJB allows browsing of the system without registration. One could argue that because tax payer money is being used to finance the system, that searching the system should be open to anyone regardless of whether or not they have registered. On the other hand if registration is not required, the system could potentially be used by illegal workers (or their representatives) to learn about jobs and apply directly with the grower. DOL raised this as an issue but did not provide a position.

Recommendation: We recommend requiring registration prior to providing access to search AgNet listings.

_____ Agree _____ Disagree _____ Let's discuss

6. AgNet Performance Goals

The AgNet description contains an initial goal to have 10,000 job opportunities listed in AgNet by the end of March 2000.

Positions: DOL has recently objected to the inclusion of a goal because it views it as premature and incomplete. OMB staff note that including a goal in the description is consistent with previous documents on AgNet – that were developed with DOL. When DPC requested comment in August, DOL did not object to either the inclusion of a goal or the number used in the description.

Recommendation: We recommend maintaining the current goal provided in the AgNet description.

_____ Agree _____ Disagree _____ Let's discuss

7. Linkage to the H-2A Program

The AgNet description says "If the system is successful, use of AgNet for recruitment will be taken into account in assessing the adequacy of a grower's effort to recruit U.S. workers."

Positions: After vigorous debate during a DPC meeting on AgNet, the agencies agreed that if the system worked we would recognize use of AgNet as a legitimate form of recruitment. DOL was represented at this meeting. The decision was a compromise between DOL's desire not to revise grower's recruitment requirements and OMB's desire to lessen the burden on growers if the system worked. This would not be the only form of recruitment required on growers but could be one of them.

DOL has revisited the position provided at the earlier meeting. DOL believes that there was agreement not to link AgNet with the H-2A program. In its view, if the decision is to link it to the H-2A program, then the AgNet description should state that it would not meet (on its own) the recruitment obligations in the H-2A program. OMB (EIML staff) believes that there was a decision to revise the recruitment requirements on growers if AgNet works to allow growers to count use of the system as a legitimate form of recruitment. Recognizing that the current system run by the Employment Service in DOL accounts for less than 2% of agricultural job placements annually it may not make sense in the long-term to continue requiring its use if AgNet works.

Recommendation: We recommend maintaining the current position in the AgNet description that if AgNet works, use of the system will be taken into account in assessing the adequacy of a grower's effort to recruit U.S. workers. We do not object to adding a statement that use would not meet on its own the recruitment obligations on growers seeking foreign workers.

_____ Agree _____ Disagree _____ Let's discuss

Administration Progress on H-2A Reform
September 23, 1999

Immigration — H2A

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 United States 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 General Accounting Office (GAO), DOL's Inspector General, 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

- On June 29, 1999 DOL published 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.