

To: The Honorable Sen. Orrin Hatch

Feb. 26, 2004

Re: S.1645, the Agricultural Job Opportunity, Benefits, and Security Act of 2003

Dear Mr. Chairman:

The “AgJOBS” bill (S. 1645), referred to the Committee of the Judiciary, should be addressed presently, as a window of opportunity for timely action is at hand.

The bill would provide a legalization program for agricultural workers, including undocumented workers already in the U.S., to become temporary residents and to transition into permanent resident status after three years of agricultural work. The benefits that accompany permanent resident status, such as allowing spouses and children to become immigrants, would apply. As legal residents, agricultural workers would gain the right to enforce proper working conditions and wages. This memo focuses on Section 101 of the bill, but it is worthy of note that the bill also includes much-awaited reform of the H-2A agricultural guestworker program, streamlining the application process for employers to gain workers, and giving workers the right to enforce their H-2A rights in court.

Political climate: fair weather for change

As a co-sponsor of the bill, you recognize that this bill is highly supported (50 cosponsors), the largest ever Senate support for a bill of this kind. The strong bipartisan support also represents the culmination of almost nine years of wrangling over the issue: since 1995, legislation has been introduced every session to create an agricultural guestworker program and/or revise the H2A program. This 2003 AgJOBS bill has finally brought about a mutually agreeable solution.

The previous bills were not passed because they had neither the right national climate nor broad support from both parties and many varied communities involved with worker immigration issues. In 2001, the bill that dealt with H-2A worker reform (S.1313), introduced by Sen. Kennedy, was instantly relegated to last priority on September 11. Rep. Berman stated in the 2000 subcommittee hearing on the 1999 AgJOBS bill (S.1814) that he could not support the legislation as it was written at the time, because it did not reflect the “active participation of farmworkers or their advocates.” This AgJOBS bill of 2003 does—and Berman himself introduced an identical bill into the House.

President Bush has recently brought these issues to the forefront of the agenda in his January 7 Remarks on Immigration Reform from the White house. Sen. Craig and others have been encouraged by the President’s remarks—although he did not speak specifically about the current proposed legislation, many of the principles he embraced in his proposal are inscribed in the bill. He spoke of “promoting compassion” to undocumented workers by granting them temporary worker status, which would protect them from exploitation and unsafe border crossings. He also talked about the economic need to “match willing workers with willing employers,” citing the mutual benefit to agricultural employers and foreign immigrants of formalizing the migrant worker situation. Sen. Craig has stated that this bill would “road-test” the President’s key principles.

U.S.-Mexico Relations

President Bush and the Congress have an interest in strengthening good relations and official ties with Mexico. Mexico's president, Vicente Fox, has advocated for an immigration reform agreement, that Mexicans who migrate to and work in the U.S. should be granted lawful status. Consultation with Mexico was recommended following section 218 of the Immigration and Nationality Act [8 USC 1188]—in good faith, the opinion of the Mexican government and people should be thoroughly considered on this matter.

Groups Supporting bill:

A broad coalition of unions, workers, Hispanic groups, and religious groups have signed a letter of support for this bill mainly because it guarantees worker rights. These groups include United Farmworkers of America, Farmworker Justice Fund, National Council of LaRaza, Farm Labor Organizing Committee, National Immigration Forum, Migrant Legal Action Program, Catholic Migrant Farmworker Network, Hispanic Organizations Leadership Alliance, and hundreds of other national and state-level worker or immigration-related groups.

The National Council of Agricultural Employers also supports the bill—it has been waiting for years for a migrant worker reform bill to pass, as it would furnish them with temporary labor that is not filled by American workers. Farm employers support the bill because instead of granting amnesty to special agricultural workers (SAW) as in the 1986 Immigration Reform and Control Act, this bill would require workers to remain working in the farm sector for three years before being able to apply for permanent residency, guaranteeing a labor supply.

Points of Resistance

-Some groups are still dissatisfied with the proposed compromises in the legislations. The Federation for American Immigration Reform opposes the bill on grounds that it is unfeasible to give millions of applicants for the program the required security checks, that illegal immigration would continue unaffected, and that employers would still offer wages far below what most Americans would accept.

-Some conservative Congress members see the program as simply legalizing an illegal practice by allowing formerly undocumented workers to become documented.

-Since September 11, the nation has been wary of immigrants. There will still be some opposition to this act because of fears that it would create a mass entry of immigrants who would not be sufficiently background-checked.

-It will still take negotiations to pass the bill, since the President proposed that workers should return to their home country after not more than two three-year terms of service, which is counter to the bill's provision that temporary residents under the program can apply for permanent residency after three years.

Ramifications of bill becoming law:

-Immigration

55% of all illegal aliens come from Mexico, and the illegal alien population is growing by about 275,000 each year. The bill, if passed, would change the status of workers to give them the

rights and privileges of a legal resident, increase documentation of workers, and decrease the problem of illegal smuggling and undocumented workers. There may be an increase in the number of Mexicans who would want to work in the US once they are legally allowed to do so and protected by the law.

-Security

It is believed that the bill would increase homeland security, because many undocumented workers would become registered and more easily tracked. However, in the post-9/11 climate that still pervades, opponents would contend that the large number of people who would want to come to the US after the passage of this bill could pose a threat to security.

-Budgetary

The appropriations approved for the bill (\$40 million) would be a reasonable investment, given the benefits to the economy that the act could produce: more efficient matching of workers to do agricultural jobs highly needed in the US economy.

-Human Rights

There is an almost universal belief in all branches of government, farmworker groups, unions, and religious groups, that the current situation of migrant farmworkers in America is unacceptable from a human rights standpoint. This bill is a first step toward ensuring rights for undocumented farmworkers, who often live and work in deplorable conditions, and for whom labor laws are unenforceable.

Recommendations:

Scheduling a hearing on this bill within a few months is advisable. The time is ripe for change, and the Congress should have the opportunity to learn more about the issues surrounding this bill while the topic is up front on the agenda. If action is stalled another year, this window of opportunity may be lost, allowing the less-satisfactory status quo to prevail.

People who could be called to the hearing to speak include:

- A representative from the National Council of Agricultural Employers, to speak about how the bill would affect agribusiness in the U.S.
- Linda Chavez-Thompson, executive vice president of AFL-CIO, who has a background in states with large migrant agricultural worker issues
- Raul Yzaguirre, president of LaRaza, important Hispanic Community association*
- Hector Flores, president of the League of United Latin American Citizens (LULAC) (the nation's oldest and largest Hispanic organization)*
- Gil Moreno, president and CEO of the Association for the Advancement of Mexican Americans*
- A representative of the INS to talk about whether budget and scheme are realistic, and what the expected implications will be on immigration numbers and waiting periods for permanent residency and citizenship.

*also attended President's speech on immigration reform in January