

**FARMWORKER JUSTICE FUND
WASHINGTON, D.C.**

**PRELIMINARY ANALYSIS OF SENATOR
FEINSTEIN'S NEW AGRICULTURAL WORKER PROPOSAL**

On March 14, Senator Dianne Feinstein (D.-Cal.) circulated a proposed amendment regarding agricultural workers for possible submission during the immigration markup in the Senate Judiciary Committee. The amendment contains an alternative to the bipartisan, labor-management compromise known as "AgJOBS," S.359/H.R. 884, which has been championed by Sen. Craig and Sen. Kennedy. Our initial analysis is that supporters of farmworkers should oppose the Feinstein amendment if it is offered.

We appreciate Sen. Feinstein's support for granting an opportunity for some undocumented farmworkers to gain legal immigration status. Unfortunately, **by denying a large number of currently undocumented farmworkers a meaningful chance to legalize their status, the amendment would contravene the policy goals of stabilizing and bringing the rule of law to the farm labor force.**

The amendment's past-work requirement would substantially narrow the group of experienced farmworkers who would be eligible for the program. Under AgJOBS, an undocumented worker could obtain temporary resident status by showing, among other things, that he or she performed at least 100 work days in U.S. agriculture in a recent 12-month period. Sen. Feinstein's amendment, by contrast, would require proof of 100 work days in each of *three* prior years. The proposal is counterproductive and unrealistic. Due to turnover among farmworkers, a significant percentage has worked in the U.S. for less than three years. **Many farmworkers face difficulty obtaining records to prove three years of agricultural work because they were undocumented, often were paid informally or off the books, cannot locate their former labor contractor or grower, and lack resources to travel or send for obtain documents.**

A harsh and unrealistic past-work requirement is especially unnecessary because the AgJOBS future-work requirement ensures the applicants' commitment to performing farm work.

The amendment's future work requirement would make it very difficult or impossible for many farmworkers to complete the process of earning immigration status and oversteps the boundary between forced labor and an acceptable prospective work requirement. AgJOBS would allow participating temporary resident farmworkers to earn permanent status by performing at least 360 days of agricultural work within a three to six-year period, with 240 of those days required during the first three years. During that time, the workers could perform work in other occupations as well. Many workers would earn their permanent status within three or four years, but others would require five or six years. Sen. Feinstein would require a worker to complete at least *150* agricultural work days *in every year for five years*. And, participating workers could work only in agriculture.

In America, workers are supposed to have the economic and legal freedom to change jobs and seek better job terms. Workers' desperate need to obtain the many days of farm work will weaken

their bargaining power with employers and make them reticent to challenge illegal conduct for fear of being denied proof of the employment they need. Employers should compete for workers. A fixed five-year period is too long. Since the *average* number of workdays of unauthorized immigrant farmworkers is about 165 days per year (with many obviously earning less), the 150-day requirement is too high. **In addition, many farmworkers survive financially by performing some non-agricultural work; they should not be deprived of that freedom.**

In addition, Sen. Feinstein would **not** permit applications from people who qualify for the program but are residing abroad, which is counter-productive and unfair. This provision would exclude from the program the foreign workers who participated as legal guestworkers under the H-2A temporary foreign agricultural worker program. These guestworkers have earned this opportunity to become immigrants, and employers who hired legal guestworkers, instead of undocumented labor, should have the opportunity to employ them as immigrants. The amendment also would deny status to the thousands of people who regularly have crossed the border for seasonal work in the U.S. but return home at the end of the season; employers have come to depend on many of them. **Our policy should not force or encourage such migrant workers, presently in their homeland, to re-enter the U.S. illegally to file an application.**

Sen. Feinstein's amendments impose a higher, and unduly harsh, admissions standard for farmworkers than for any other foreign national seeking to adjust immigration status. Sen. Feinstein's amendment would disqualify any alien who has been convicted of any misdemeanor or felony in the United States, no matter how minor. In contrast, AgJOBS would disqualify aliens with a felony, 3 misdemeanors, or a single misdemeanor with at least 6 months of prison time served. One minor misdemeanor could be for speeding, for example, or a youthful indiscretion by a law-abiding adult, and might have arisen because the cost of defending did not seem worthwhile at the time. Such misdemeanors should not automatically deny someone the opportunity to earn immigration status.

Sen. Feinstein would impose applications fees plus a \$1000 fine on farmworkers in the program. With earnings frequently in the range of \$7500 to \$10,000, these workers, whose hard work benefits our economy, should not suffer such fines.

Sen. Feinstein would create a phased-in, five-year procedure for the applications that would be administratively unwieldy and confusing for the applicants.

The amendment does not address the H-2A agricultural guestworker program. This omission guarantees that it cannot pass. H-2A reform is a critical issue to many employers and Senators.

Most farmworker advocates view AgJOBS as containing major, painful concessions. Like most legislation, AgJOBS is not perfect, but it addresses a serious problem in a responsible manner. AgJOBS is a far more appropriate a solution.

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