

POLICY BRIEF

Immigration Legislation
September 2005 No. 3

Summary of AgJOBS Vote in April 2005 in the U.S. Senate

Senators Larry Craig (R-Idaho) and Edward Kennedy (D-Mass.), supported by major agribusiness groups and the United Farm Workers of America, introduced the Agricultural Job Opportunities, Benefits and Security Act of 2005 ("AgJOBS"), S. 359, in February 2005. Representatives Chris Cannon (R-Utah) and Howard Berman (D-Cal.) introduced the companion bill, H.R. 884, in the House of Representatives. AgJOBS contains two main components: (1) an earned legalization program for undocumented farmworkers to gain legal immigration status and (2) modification of the H-2A temporary foreign agricultural worker program.

In April 2005, the Senate had an opportunity to consider AgJOBS. On April 13, 2005, Senators Craig and Kennedy submitted the AgJOBS bill as an amendment, Senate Amendment No. 375, to a supplemental appropriations bill for the war in Iraq and Afghanistan, HR 1268. On April 14, 2005, Senators Chambliss (R-Ga.) and Kyl (R-Ariz.) submitted an alternative guestworker proposal as an amendment to HR 1268 (Sen. Am. No. 432). Chambliss and Kyl proposed a harsh guestworker program that provides no opportunity to earn permanent immigration status, i.e., no program for earned legalization. Essentially, it streamlines the H-2A program to an employer-friendly, anti-worker format and provides for a new guestworker program, the Blue Card Program, for year-round agricultural jobs. On April 15, 2005, Senator Frist (R-Tenn.) presented a cloture motion to end debate on both proposals.

Several amendments to AgJOBS were submitted by Senators Feinstein, Cornyn, Kyl, and Chambliss. Senator Feinstein (D-Cal.) proposed harsh changes which would have made the opportunity to legalize status much more difficult for farmworkers. Sen. Feinstein proposed an increase in the work requirements to unrealistic levels that would make legalization challenging for many workers. Her amendments would require that in order to qualify for temporary resident status, a farmworker must have worked at least 575 hours or 100 work days during each of three prior years, as opposed to AgJOBS's requirement of the same amount of work for just one 12 month period. To qualify for permanent legal status, Sen. Feinstein would require a worker to complete at least 575 hours or 100 work days per year for five years, in contrast to AgJOBS's requirement of 360 work days or 2060 hours over a three- to six-year period. Also, Sen. Feinstein's amendments would disqualify any alien who has been convicted of any misdemeanor in the U.S., no matter how minor, in contrast to AgJOBS's disqualifying threshold of 3 misdemeanors or a single misdemeanor with at least 6 months of prison time served. Further, Sen. Feinstein's amendment would remove the ability of workers

The Farmworker Justice Fund would like to express its sympathy and support for victims of Hurricane Katrina. FJF is working with other organizations to request short-term and long-term relief for affected farmworkers and family members.

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AgJOBS Vote in April 2005, cont.

to apply from outside of the U.S., a change which would prevent many recent H-2A guestworkers, among others, from obtaining legal status.

Sen. Cornyn (R-Tex.) offered amendments to remove the earned legalization program of AgJOBS and to modify the H-2A program, such as by slashing H-2A program wage rates. Sen. Kyl proposed to remove the language providing for adjustment to permanent status as well as the sections regarding confidentiality of information submitted by the worker to the government and eligibility of participating farmworkers for government-funded legal services. Sen. Chambliss offered an amendment substituting his own bill.

During the debate on AgJOBS, several Senators, including Republicans Larry Craig and George Voinovich (R-Ohio), as well as Democrats Edward Kennedy, Patrick Leahy (D-Vt.), and Ron Wyden (D-Or.) strongly supported AgJOBS. While speaking in support of AgJOBS, these senators highlighted AgJOBS's benefits to both agricultural workers and

agricultural employers through the streamlining of the H-2A program and the opportunity for undocumented workers to earn legal status, thereby enabling them to come out of the shadows. They also noted that AgJOBS would give dignity to agricultural workers and help create a stable workforce for employers, while preventing displacement of U.S. workers. In addition, Sen. Craig inserted into the legislative record the letter supporting AgJOBS signed by 509 organizations, representing agricultural employers and farmworkers, as well as many others. In demonstrating the need for AgJOBS, Senators Craig and Voinovich expressed concern about the current instability of the agricultural workforce; Senator Craig warned of the possible danger of the U.S. becoming a net importer of food.

Supporters of AgJOBS also critiqued Senator Chambliss' bill, noting that it demonstrated a preference for employers over employees, contained no path to permanency for undocumented workers, and was unlikely to bring workers out of the shadows as there was little incentive to sign up for the program.

National Farm Bureau Withdraws AgJOBS Support

The American Farm Bureau Federation (AFBF), part of the original coalition that ratified AgJOBS, withdrew its support for the AgJOBS bill this year. AFBF indicated an opposition to the AgJOBS wage rates and private right of action and expressed concern about giving "amnesty" to illegal aliens. AFBF has, however, committed to "offer[ing] a legitimate and fair opportunity for some agricultural workers to apply for a permanent resident visa."

In April of this year, AFBF supported an alternate proposal by Senators Jon Kyl (R.-Ariz.) and Saxby Chambliss (R.-Ga.) which was defeated in the Senate by a vote of 77-21. This anti-worker and anti-immigrant proposal would have eliminated the modest labor protections in the H-2A agricultural guestworker program, including by slashing wage rates for U.S. and foreign workers, and would not have offered undocumented workers any opportunity to earn permanent immigration status.

FJF is disappointed that this long-time ally of AgJOBS has chosen an ideological extreme over a shared and realistic compromise. As AFBF knows, the current situation for both farmworkers and employers is abysmal and agriculture needs a workable solution. Hopefully, AFBF will follow the lead of the California Farm Bureau, the National Council of Agricultural Employers, the American Nursery and Landscape Association and scores of other agricultural employer organizations around the country that continue to actively support AgJOBS.

AgJOBS Vote in April 2005, cont.

Speaking in opposition to AgJOBS were Senators Robert Byrd (D-W. Va.), Saxby Chambliss, John Cornyn, James Inhofe (R-Okla.), Jon Kyl, and Jeff Sessions (R-Ala.). These Senators mischaracterized AgJOBS as a program rewarding "illegal aliens" by giving them "amnesty." Senator Sessions, a vigorous opponent of AgJOBS, highlighted the debate by lamenting the fact that "if you become a legal permanent resident, then you are no longer an indentured servant. You are not required to work in agriculture. You can work on any job you want." Some Senators also noted their opposition to addressing immigration matters in the context of a defense appropriations bill and their opposition to industry-specific immigration fixes.

Senator Feinstein said that she supported the concept of AgJOBS, but only with the inclusion of her harsh amendments. Senator Feinstein stated that without her proposed amendments, she believed AgJOBS would be a magnet for "illegal" immigrants, and yet she noted that such a program was necessary because many U.S. workers were not interested in agricultural employment.

The Senate decided that AgJOBS and several other proposed amendments to

the supplemental appropriations bill could receive a vote only if each of them first obtained sixty votes in support of "cloture," that is, to stop a potential filibuster. On April 19, during the vote on cloture regarding AgJOBS, a majority of 53 Senators (55, including two Senators absent from Congress) voted in support of AgJOBS by voting for cloture.

Although the result was disappointing because AgJOBS did not receive 60 votes needed to proceed, the vote demonstrated that the majority of the Senate supports AgJOBS. Importantly, several senators indicated that their opposition to cloture was based on the circumstances surrounding the vote; namely, that the immigration amendment had been added to a supplemental appropriations bill. In fact, four Republican cosponsors of AgJOBS voted against cloture on AgJOBS, apparently for this reason. Senators Kennedy and Craig indicated afterward that they believe they can obtain the additional five votes to prevent a filibuster on AgJOBS. Further, Senator Craig announced that he would seek an appropriate opportunity for another vote on AgJOBS in this session of Congress.

The alternative to AgJOBS, the Chambliss-Kyl amendment, received only 21 votes in support of cloture and 77 votes against it - a resounding defeat

Combined Federal Campaign

The Farmworker Justice Fund, Inc. now participates in the Combined Federal Campaign ("CFC"). Federal employees may make tax-deductible donations through the 2005 CFC to support our work on behalf of farmworkers. Please remember FJF during the holidays. FJF appears on the CFC National List of organizations and our identification number is 1075. Previous announcements had listed an incorrect identification number, so please use ID # 1075.

I would like to support the Farmworker Justice Fund, Inc. in its work to help migrant and seasonal farmworkers.

Enclosed is my tax-deductible donation of \$_____. Please place me on your mailing list.

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail _____

You may donate with a credit card online at www.fwjjustice.org or send a check to:
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AgJOBS Vote in April 2005, cont.

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The inability of Chambliss and others to win passage of similar proposals during the 1990s led to the labor-management negotiations which resulted in the bipartisan compromise on AgJOBS. The overwhelming defeat of the Chambliss-

Kyl amendment signified recognition that Congress must offer some undocumented workers the opportunity to earn permanent immigration status, rather than a mere temporary work permit, and that H-2A guestworker program reform must be balanced.

FJF has prepared some plain-language materials about AgJOBS in an effort to make the information more accessible to members of the farmworker and immigrant communities. We have initiated a Community Education Series, including 2-page summary of AgJOBS; a list of Frequently Asked Questions (FAQ's) about both the earned legalization program in AgJOBS and the changes AgJOBS will make to the H-2A temporary foreign agricultural worker program. These popular education materials can be downloaded in Adobe Acrobat (pdf) format by visiting our website at www.fwjjustice.org/LEGISLAT.HTM



FJF Executive Director Bruce Goldstein and Rep. Luis Gutierrez at 2002 U.S. Capitol immigration rally.

Farmworkers and the Kennedy-McCain Immigration Bill

On May 12, 2005, Senators Kennedy (D-Mass.) and McCain (R-Ariz.) and Representatives Kolbe (R-Ariz.), Flake (R-Ariz.), and Gutierrez (D-Ill.)

introduced the Secure America and Orderly Immigration Act, S. 1033/H.R. 2330, a bipartisan proposal to reform our broken immigration system. FJF praises the authors' efforts to address immigration policy comprehensively, to help the public move away from the harsh rhetoric of immigration restrictionists, and to offer an alternative to proposals for exploitative guestworker programs.

The Kennedy-McCain bill is not intended to substitute for the AgJOBS farmworker immigration bill (Agricultural Job Opportunities, Benefits and Security Act of 2005, S.359/H.R. 884). The Kennedy-McCain bill does not contain the AgJOBS provisions and does not, by itself, adequately answer issues facing many farmworkers. By leaving room for AgJOBS, the bill's authors recognized that Congress will need to address the specific circumstances in the agricultural industry.

The Kennedy-McCain bill proposes numerous immigration provisions, as well as immigration enforcement measures. The programs of particular interest to FJF are the earned legalization program (H-5B program) and the future temporary foreign worker program (H-5A program).

Kennedy-McCain Immigration Bill, cont.

The H-5B Earned Legalization Program

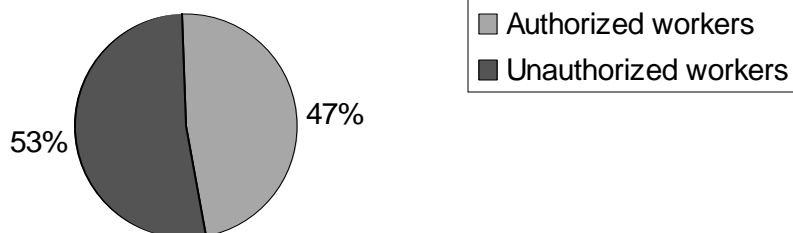
Under the Kennedy-McCain earned legalization program, eligible undocumented workers could obtain an H-5B visa granting them a temporary 6-year nonimmigrant status, followed by an adjustment to permanent status. To obtain the H-5B visa, undocumented workers would need to show that they resided in the U.S. prior to the date of the bill's introduction, were continuously present since then, and meet additional requirements, such as continued employment or education, payment of fines and application fees, and background checks. H-5B visa holders could work in any occupation (or pursue the educational requirement) and travel outside the U.S. After six years, workers could gain permanent residency upon satisfaction of several requirements, including knowledge of civics and English or pursuit of such knowledge, tax payments, background checks, and payment of additional fines and fees.

Under AgJOBS, undocumented workers and recent H-2A guestworkers could gain a temporary resident status if they worked 100 days in U.S. agriculture

during a 12-month period in the recent past. These workers could then earn permanent legal status based on their continued agricultural work for at least 360 days over a three to six-year time period.

Key provisions in the Kennedy-McCain bill could make it difficult for many farmworkers to participate in the H-5B program. First, the requirements regarding the study of English and civics are major barriers for otherwise eligible farmworkers due to an average education level of about 7th grade (from a foreign country), geographic isolation in rural areas with limited resources, and frequent relocation for jobs. Second, the H-5B program would not adequately address the "public charge" doctrine, under which poor people can be denied immigration status. A special rule in AgJOBS grants eligibility to farmworkers who, despite their poverty, demonstrate a history of employment in the United States without reliance on public cash assistance. Third, the applicants would have to demonstrate compliance with all tax obligations; for farmworkers, whose employers often pay them off the books and don't report (or make) tax payments, these burdens would be difficult.

Percentage of Authorized and Unauthorized Workers in Agriculture



Findings from the National Agricultural Workers Survey (NAWS) 2001-2002: A Demographic and Employment Profile of United States Farmworkers (U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Program Economics, Research Report No. 9, March 2005) (2001-2002 data). The NAWS Report covers hired farmworkers in crop agriculture (except for H-2A temporary foreign agricultural workers), but not workers in livestock agriculture.

Kennedy-McCain Immigration Bill, cont.

Finally, the Kennedy-McCain bill would only allow adjustment to legal status for currently undocumented workers who



have been present in the United States continuously since prior to the Act's introduction. The bill would exclude those who are or have been in the U.S. lawfully under a guestworker program, such as H-2A workers. It would

also exclude migrant workers who have temporarily returned to their home countries. Under AgJOBS, recent H-2A guestworkers would be eligible, and other international migrant farmworkers who have been employed in the U.S. recently could apply from abroad. In these and other ways, the Kennedy-McCain bill would not address the needs of many farmworkers in the ways that AgJOBS does. Nonetheless, many farmworkers would benefit from the H-5B program.

Family members of workers could be better served by the Kennedy-McCain proposal, as spouses and children of the participating workers also would be eligible to adjust to legal status. Under AgJOBS, spouses and minor children could remain in the U.S. during the farmworker's temporary resident status but without legal immigration status or work authorization. Family members would, however, gain permanent status at the same time as the farmworker.

The H-5A Guestworker Program

The Kennedy-McCain bill would create a large new guestworker program, the Essential Worker Visa Program, or H-5A Program. The H-5A program would not change the H-2A agricultural guestworker program, and jobs that fall into the H-2A classification (generally, seasonal jobs on farms) would not be eligible for the H-5A program. The H-5A program would differ significantly from the H-2A program.

Under H-2A, presently and if AgJOBS were to pass, a foreign worker obtains a temporary work visa though the employer and may only work for that employer. An H-2A employer must offer and provide specific wages, benefits and other terms of employment (e.g., the "adverse effect wage rate" or the prevailing wage, whichever is higher; minimum work guarantee; free housing; etc.). AgJOBS would streamline the H-2A procedures for the benefit of employers but provide H-2A guestworkers with the right to enforce their labor contracts in federal court.

The H-5A program would give the guestworker far more freedom, while not imposing significant obligations on employers. Under H-5A, the foreign worker would pay a \$500 fee to apply for a 3-year, nonimmigrant work visa, renewable for another 3 years. The applicant would need to prove that s/he has a job offer from a U.S. employer. Upon arriving in the U.S., the worker would be free to switch employers, but a worker who became unemployed would have to return to her/his home country after 45 days and until s/he received another job offer. The H-5A program would not require specific wage rates or other job terms, but would require an employer to provide H-5A workers with the same wages and working conditions as U.S. workers similarly employed. In the H-5A program, the enforcement procedure would allow workers to file complaints with the Secretary of Labor, but not a federal lawsuit. H-5A workers would not be eligible for federally-funded legal assistance. However, H-5A workers (unlike H-2A workers currently and under AgJOBS), could eventually earn permanent immigration status after 4 years of H-5A employment.

FJF has significant concerns about the labor protections in the H-5A program. The prospective guestworker's obligation to obtain a job offer from a U.S. employer as a condition of gaining a visa to enter

Kennedy-McCain Immigration Bill, cont.

the United States would exacerbate the trend of U.S. employers toward retaining large labor contractors to recruit foreign workers. Many foreign labor contractors would commit serious abuses that benefit the ultimate employer through cheaper labor costs and high productivity from foreign workers who fear retaliation and deportation. The Kennedy-McCain bill contains some significant protections against potential abuses, but the protections would be insufficient. Nevertheless, FJF recognizes the substantial advantages in the Kennedy-McCain bill compared to other guestworker proposals, including the opportunity to gain permanent immigration status, and the need to compromise to obtain broad, bipartisan support for the bill.

This nation needs strong and sensible solutions to the immigration crisis confronting our country. As Congress debates this important issue, desperate migrant workers are dying in the fields and deserts in their efforts to support their families. AgJOBS is a balanced, realistic solution for the immediate needs of American agriculture, a critical element of a comprehensive solution, and one that can be enacted now with broad bipartisan support. While the Kennedy-McCain bill provides an opportunity for broad, comprehensive reform of our nation's broken immigration system, it is likely to be another step in a legislative process that may require many compromises. FJF continues to monitor the immigration policy debate for opportunities to advance farmworkers' interests and, for now, remains strongly supportive of AgJOBS.

Other FJF Policy Briefs

*No. 1
Agricultural Immigration
Legislation
September 2004*

*No. 2
Toxic Pesticides and
Farmworkers
October 2004*



The Cornyn-Kyl Immigration Reform Legislation

Senators John Cornyn (R-Tex.) and Jon Kyl (R-Ariz.) introduced the Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, on July 19, 2005. FJF is deeply disappointed by the Cornyn-Kyl bill because it fails to meet the humanitarian and economic needs of this country and of the immigrant workforce.

The Cornyn-Kyl bill contains two measures that are of particular concern. First, the bill proposes a guestworker program that would be unlimited in size and largely unregulated. The lack of protections for foreign workers would create an exploitable labor force and an incentive for employers to hire foreign workers rather than U.S. workers. Not all occupations would be covered under Cornyn-Kyl; importantly, it would exclude occupations covered under the H-2A temporary foreign agricultural worker program and makes no effort to revise the current H-2A guestworker program. However, the bill seeks passage of a resolution stating that "consideration of any comprehensive immigration reform . . . will include agricultural workers."

Second, the proposed Deferred Mandatory Departure ("DMD") program would allow undocumented persons who are employed and have been continuously present in the U.S. since one year prior to the introduction of the bill to sign up for deferred mandatory departure and plead guilty to being unlawfully present in the country. The obligation to leave the U.S. could be delayed for up to 5 years, but with fines beginning at \$2000 in the second year and increasing each year for failure to depart. As is evident from its

Cornyn-Kyl Immigration Reform, cont. face, instead of bringing undocumented workers and families out of the shadows, the Cornyn-Kyl bill would ensure that undocumented persons remain hidden.

AgJOBS continues to be the best legislative solution to the immigration crisis in the agricultural arena. AgJOBS is a bipartisan, mature piece of legislation reached after years of compromise between farmworkers, their advocates and the grower community. It provides a sensible, realistic, and humane solution to the broken immigration system in the

agricultural context. In contrast, the Cornyn-Kyl bill is an unrealistic, unilateral bill that would further drive undocumented workers and families underground and would endanger U.S. and foreign workers. Such harsh, one-sided proposals have been defeated time and again (the most recent defeat was the vote of 77-21 against the Chambliss-Kyl agricultural guestworker bill in April 2005). The continued defeat of such proposals signifies Congressional recognition that some undocumented workers must be granted the opportunity to earn permanent immigration status.



Rep. Jackson-Lee's Save America Comprehensive Immigration Act of 2005

On May 4, 2005, Rep. Sheila Jackson-Lee (D-Tex.) introduced the Save America Comprehensive Immigration Act of 2005. The bill is a comprehensive revision of current immigration laws. Among its many provisions would be an increase in the family-based visa system and a reduction in long backlogs and other unreasonable obstacles in immigration applications.

The bill includes three programs that would enable some undocumented persons to adjust status to lawful permanent residency. Access to legalization would be available for certain persons able to establish presence in the country for at least five years, students attending a school in the U.S. for at least five years, and those who have been present in the U.S. since 1986, among other requirements. Unlike many recent immigration proposals in Congress, Rep. Jackson-Lee's bill does not contain a new guestworker program. However, it would make changes to current guestworker programs by enhancing recruitment and training for U.S. workers.

The proposal, which contains many beneficial changes to immigration law, does not specifically address farmworker issues. Some of the legalization provisions, such as the 5-year continuous residence requirement, could be difficult for farmworkers to satisfy due to the cyclical patterns of migrating agricultural workers. The bill would not specifically change the H-2A agricultural guestworker program. However, Rep. Jackson-Lee is a cosponsor of the AgJOBS farmworker immigration bill.

FJF commends Rep. Jackson-Lee for her thorough and thoughtful bill, and in particular notes that her bill does not contain any new guestworker programs, programs which often subject immigrant workers to workplace abuses and displace US workers. Unfortunately, for these very reasons, her bill is controversial and an unlikely vehicle for a compromise. Moreover, AgJOBS better addresses the unique needs of farmworkers. Accordingly, FJF continues to support AgJOBS as a fair and realistic compromise with broad bipartisan support and a strong possibility of enactment.

Upcoming FJF Conference

Imported Labor in the U.S.: A Symposium on Guestworker Programs and Foreign Contract Labor

On October 17, 2005, FJF is sponsoring a day-long conference in Washington, D.C. called "Imported Labor in the U.S.: A Symposium on Guestworker Programs and Foreign Contract Labor." Co-sponsors of the symposium are the AFL-CIO, the National Council of La Raza, Service Employees International Union, and the Southern Poverty Law Center.

The purpose of this conference is to educate worker and immigration advocates, the media, and Congressional staff about foreign contract labor systems, including guestworker programs, which have operated in the United States during the past 150 years. Several Congressional proposals on immigration policy would create new guestworker programs or expand existing ones to address the presence of undocumented workers in this country and to regulate future migration. This symposium will provide people with essential information about the operation of guestworker programs and international labor contracting systems in the U.S. so that they may evaluate proposals for guestworker programs and devise their own policy suggestions.

For more information, visit the special events area of our website or contact Lorna Baez or Virginia Ruiz at (202)783-2628.

Findings from the 2005 NAWS Report

Findings from the National Agricultural Workers Survey (NAWS) 2001-2002: A Demographic and Employment Profile of U.S. Farm Workers. U.S. Department of Labor, March 2005.

- ☀ In 2001-2002, 21% of all farmworkers were hired by farm labor contractors, an increase of 50% from 1993-1994.
- ☀ The majority of farmworkers (72%) anticipated staying in farm jobs for more than 5 years.
- ☀ Farmworkers, excluding foreign-born newcomers, were employed on U.S. farms an average of 66% of the year (34.5 weeks) and in other non-farm jobs 10% of the year during 2001-2002.
- ☀ Seventy-seven percent of farmworkers, excluding foreign-born newcomers, reported working at least 100 days in farm work in the 12-month period before their interview.
- ☀ The large majority of farmworkers (79%) were paid by the hour. When paid an hourly wage, the average worker received only \$6.84 per hour.
- ☀ There were not steady wage increases over the ten-year period from 1993 to 2002: real hourly earnings decreased between 1993 and 1996 and between 2000 and 2001.
- ☀ The average total family income range was \$12,500 to \$14,499.
- ☀ Despite low income levels, only 22% of workers stated that they or someone in their household had received public benefits, such as food stamps, in the previous 2 years.
- ☀ Only 8-12% of workers reported that health insurance was an employment benefit and only 23% of all workers were covered by any type of health insurance, including Medicaid.

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More Immigration Legislation Resources

The following organizations have more information and analysis about immigration reform on their websites:

- AFL-CIO www.aflcio.org
- American Immigration Lawyers Association www.aila.org
- Civil Rights Coalition for the 21st Century www.civilrights.org
- Coalition for Comprehensive Immigration Reform www.cirnow.org
- Friends of Farmworkers http://friendsfw.org
- National Council of La Raza www.nclr.org
- National Immigration Forum www.immigrationforum.org
- National Immigration Law Center www.nilc.org
- Service Employees International Union www.seiu.org

POLICY BRIEF No. 3 - IMMIGRATION LEGISLATION

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