

FARMWORKER JUSTICE BULLETIN



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Immigration Legislation Update

October 2005

Senator Feinstein Supports Legalization Program for Farmworkers But Plans to Introduce Flawed Proposal to Alter the Bipartisan AgJOBS Bill

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During the October 18, 2005 Senate hearing on comprehensive immigration reform, Senator Dianne Feinstein (D.-Cal.) stated that she plans to introduce legislation addressing the need for immigration reform in the agricultural context. This bulletin analyzes the amendments offered by Sen. Feinstein during a debate on the AgJOBS farmworker immigration bill in April 2005 (AgJOBS is S.359/H.R. 884).¹

Sen. Feinstein acknowledges that California's status as the "No.1 agriculture-producing State in the Nation . . . is based on the hard work of people who have been living on the edges of society, living in fear, and constantly worried about being removed from this country." Sen. Feinstein said, "[I]t is time for the Government to recognize that these people have made a substantial contribution to our country and offer them a way to adjust their status." We applaud Sen. Feinstein's support of legal immigration status for undocumented farmworkers. Unfortunately, based partly on her view that AgJOBS is a "magnet for illegal immigration," her amendments would severely restrict the coverage of the earned legalization program, unfairly eliminating from the program thousands of farmworkers. The amendments also would contravene the goal of stabilizing the farm labor force. The AgJOBS compromise represents a balanced, sensible approach after years of conflict and hard-fought negotiations. Sen. Feinstein's amendments would disrupt this balance to the detriment of workers, the agricultural industry, and overall policy objectives.

Senator Feinstein's proposed change to the AgJOBS work requirement for temporary legal status is unrealistic and would exclude many hardworking farmworkers, to the detriment of the overall policy goals and the needs of agricultural employers and workers. Under AgJOBS, an undocumented worker could apply for temporary resident status and would need to show, among other things, that he or she performed at least 100 work days of agricultural employment in the U.S. 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 agricultural workers, a significant percentage of farmworkers have resided and worked in the United States for less than three years. Not allowing them to adjust to legal status deprives the agricultural industry of these willing and able workers. Their labor is needed.

¹ 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. Senator Feinstein's amendments (amendments 435, 526, 531-535) were submitted to change Senate Amendment no. 375.

- The additional past-work requirement is unnecessary because the future-work requirement ensures the applicants' commitment to performing farm work. By meeting the AgJOBS past-work requirement of one year, these workers have already demonstrated their desire to work hard and contribute to the economy. They should be given the opportunity to continue their work in agriculture to earn immigration status.
- Many farmworkers will have difficulty obtaining employment records to prove their past work in agriculture because they were undocumented, often were paid informally or off the books, cannot locate their former labor contractor or grower, and lack funding to obtain documents. The three-year requirement will exacerbate the difficulty and unjustifiably prevent many hard-working farmworkers from entering the program.
- Contrary to Sen. Feinstein's claim, AgJOBS is not a "magnet" for illegal immigration and her proposal would not improve upon AgJOBS by discouraging additional migrant workers from coming to the U.S. Like Feinstein's amendment, AgJOBS would limit eligibility to workers who were present in the U.S. and who performed agricultural work prior to December 2004. Sen. Feinstein's requirement of additional years of work prior to 2004 has no correlation to discouraging future undocumented immigration.

Sen. Feinstein's proposed future-work requirement to qualify for permanent residence would be counterproductive and inconsistent with America's values. AgJOBS would allow 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 *100* agricultural work days *in every year for five years*.

- **Sen. Feinstein's proposal oversteps the boundary between forced labor and an acceptable future-work requirement.** The AgJOBS future-work requirement was a sensitive issue during negotiations. In America, workers are supposed to have the economic and legal freedom to change jobs and seek better job terms. AgJOBS would require the temporary residents in the program to perform a substantial amount of employment for at least three years in agriculture, the lowest-paying sector in the nation. Workers' desperate need to obtain the 360 days of farm work would weaken their bargaining power with employers. Many workers would not challenge unfair or illegal conduct for fear of being denied proof of the employment they need. Sen. Feinstein's requirement of 100 work days per year in each of 5 years would deprive farmworkers of the economic bargaining power they deserve for an even longer period of time. Her proposal is too harsh. The delicate compromise in AgJOBS should be retained.
- **The extended 5-year work requirement serves no purpose other than to reward employers at the expense of workers by creating a captive workforce.** In America, employers should compete for labor and should seek to retain their workforces by offering good job terms. The proposed increased work requirement has no correlation to discouraging illegal immigration, the alleged purpose. The presence of so many workers who would be desperate for agricultural employment and for proof of that employment, would remove any incentive for employers to improve job terms to retain their workers.

Senator Feinstein's amendment to prevent applications from being filed in foreign countries is counterproductive and harsh. It would punish employers and workers who used the legal guestworker system and would encourage undocumented immigration. In contrast to Sen. Feinstein's proposal to prohibit applications from abroad, AgJOBS would authorize

the Department of Homeland Security to accept applications from workers who are residing abroad. Such workers would still need to show that they had performed the necessary agricultural work in the U.S. during the recent past (but prior to 2005). They would then be permitted to re-enter the U.S. as temporary residents and could perform the future-work requirement to obtain permanent status.

- **Sen. Feinstein's amendment would unfairly exclude from the AgJOBS program the foreign workers who participated as legal guestworkers under the H-2A temporary foreign agricultural worker program.** U.S. agricultural employers receive approval from the government each year to hire about 45,000 foreign workers through the H-2A temporary agricultural guestworker program. Under the program, workers must leave the U.S. once the job ends. Those workers who complied with their obligation to leave the U.S. should not be penalized for doing so. (Indeed, had they remained illegally in the U.S. once the job ended, they would be eligible for AgJOBS under the Feinstein amendment, an illogical result). As experienced farmworkers who have helped the U.S. economy, they should be encouraged to apply through U.S. consulates abroad.
- **Sen. Feinstein's amendment would penalize employers who hired legal workers through a guestworker program instead of relying on undocumented labor.** Rather than penalizing employers who used guestworkers, all employers should have the same right to a legalized and stable workforce.

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.

Senator 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's disqualifying threshold would disqualify aliens with a felony, 3 misdemeanors, or a single misdemeanor with at least 6 months of prison time served.

- **Sen. Feinstein's proposal is unduly harsh and counterproductive.** The AgJOBS proposal is already stricter than the usual immigration admission standard. Sen. Feinstein would make it far harsher and such discrimination is unwarranted. By disqualifying workers who have one misdemeanor conviction no matter how minor, Senator Feinstein would deny eligibility to people who are law-abiding, hard-working contributors to America's economy but who committed a minor infraction, such as underage alcohol possession or speeding. In many instances, the person may have pled guilty to a minor charge to avoid the time-consuming, costly defense of the case, without knowing the potential consequences. In addition, farmworkers who gain temporary resident status will be prevented from gaining permanent status if they commit such infractions. Such workers should be given the opportunity to continue to perform work; we need their labor.

AgJOBS resulted from a delicate, balanced compromise that should not be upset. Most farmworker advocates view AgJOBS as containing major, painful concessions. We are told that many agricultural employers feel the same way. The numerous legislators who played a role in this ten-year process probably feel similarly. It is a reasonable compromise that occurred only after contentious legislative battles and torturous negotiations. Like most legislation, AgJOBS is not perfect, but it addresses a serious problem in a responsible manner.

More information about AgJOBS and other guestworker and immigration proposals affecting farmworkers is available on our website at www.fwjjustice.org, under Legislative News. The Farmworker Justice Fund, Inc. is a national advocacy, litigation and education organization.