

FARMWORKER JUSTICE BULLETIN



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Farmworkers and Immigration

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The Hutchison-Pence Proposal – Unrealistic, Unworkable, and Bad for Workers

Sen. Kay Bailey Hutchison (R.-Tex.) and Rep. Mike Pence (R.-Ind.) have suggested a framework for major changes to immigration policy. Thus far, the House of Representatives has objected to the comprehensive immigration bill that the Senate passed in May and refuses to convene a House-Senate conference committee to resolve the differences between the Senate bill and the House legislation authored by Rep. Sensenbrenner (R.-Wisc.). Although portrayed as the basis for a compromise, the Hutchison-Pence proposal is unrealistic, unworkable, contrary to our democratic values and inconsistent with the needs of workers. The Pence-Hutchison guestworker proposal (which is not yet in the form of legislation) resembles the plan that Sen. Hutchison put forward during the May debate and which failed by a resounding vote of 67-31.

Along with border enforcement measures, the Hutchison-Pence proposal would create a large new guestworker program. The guestworker program would not begin until the President sends Congress a border security certification, but could not begin earlier than two years after enactment of the law. The guestworker proposal would only be available to workers from NAFTA and CAFTA countries (North and Central American nations in trade agreements with the U.S.) who voluntarily departed the United States to their home countries for the chance of returning through a guestworker program. If workers were later accepted into the guestworker program, they would receive an initial two-year visa which could only be renewed upon passage of an English proficiency exam. Under this program, workers remain guestworkers dependent on employers for continued sponsorship for at least 10 years, followed by a five-year period as the holder of a so-called X-Change visa, which requires the sponsorship of an employer, before they would be eligible to apply for lawful permanent residence. The Hutchison-Pence proposal does not address the backlogged immigration system. Workers from other countries would be expected to depart the U.S. voluntarily, but would not be given an opportunity to return through the guestworker program. The Hutchison-Pence proposal fails to offer undocumented workers a workable, fair opportunity to come out of the shadows to earn lawful immigration status and would only drive workers further underground.

The worker protections in the Hutchison-Pence proposal are minimal and would fail to protect US workers and foreign guestworkers. Under the Hutchison-Pence proposal, employers would only need to recruit US workers for 30 days and the proposal provides no details about how such recruitment should take place. The vague wage provisions would be meaningless to protect workers as they only would require that employers pay a “wage that is commensurate with trade or industry in that locality.” Although workers could change employers, they would be required to leave the country if they did not find employment within 45 days. Further, the visa of any fired worker would be cancelled immediately. These provisions would leave employees at their employers’

whim. The lack of protections for foreign workers would create an exploitable labor market and an incentive for employers to hire foreign workers rather than US workers.

The Hutchison-Pence proposal does not mention any limitations on job categories eligible for participation in the guestworker program or describe how this program would interact with other already existing guestworker programs, such as the H-2A temporary agricultural worker program. The proposal does not attempt to address problems in the H-2A program that led to the labor-management compromise in the bipartisan Agricultural Job Opportunities, Benefits and Security Act of 2005 (“AgJOBS”), which is included in the Senate immigration bill, S. 2611. If the Hutchison-Pence guestworker programs were open to agricultural workers, it would undermine worker protections as employers could choose to bypass the protections in the H-2A program. Moreover, agricultural workers would have difficulty maintaining continued employment due to the seasonal nature of agricultural work and could therefore face problems with the 45-day unemployment period. Accordingly, agricultural workers may find themselves as guestworkers for even longer than 17 years before they would be eligible to apply for lawful permanent residency adjustment.

The Hutchison-Pence proposal would deny undocumented farmworkers a realistic path to lawful permanent resident status and would expose all workers, both US workers and foreign guestworkers, to exploitative working conditions. AgJOBS, by contrast, would provide employers with a stable, legal supply of farm labor by offering farmworkers the opportunity to earn legal immigration status over a period of several years. AgJOBS would improve national security by bringing workers out of the shadows, thereby allowing the government to better focus its enforcement resources. In the event of a future labor shortage, the AgJOBS bill would make balanced revisions to the H-2A agricultural guestworker program to make the program more accessible to employers while preserving important labor protections for both guestworkers and U.S. workers. AgJOBS contains painful concessions made by worker advocates but it is a realistic and fair solution to the immigration crisis in agriculture. The Hutchison-Pence proposal does not offer effective or reasonable solutions.