



United Farm Workers support for the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 and the agricultural labor provisions included in S. 744

The United Farm Workers of America supports S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 and the agricultural labor provisions included in S. 744. It is cruelly ironic that the people who feed the United States live in a deep, all encompassing fear that they themselves cannot provide food for their families. The human cost and stress for farm workers and their families as they live in fear of deportation and harassment due to our broken immigration system threatens our nation's food supply and is a source of great shame for our nation. The compromise legislation by Senators Schumer, McCain, Durbin, Graham, Menendez, Flake, Bennet, and Rubio, including the agricultural provisions submitted by Senators Feinstein, Hatch, Bennet, and Rubio will go a long way toward improving the lives of farm workers and our broken immigration system.

First and foremost, in changing our broken immigration system, we seek an end to the status quo of poverty and abuse for farm workers; we should not continue to treat farm workers as second-class workers. We also know that any new immigration policy must consider the future of the work force upon which American agriculture and American consumers depend.

In seeking to accomplish these goals, we outlined several principles at the end of 2012. The bipartisan compromise legislation addresses each of these areas and overall represents a step forward for farm workers.

Creating a roadmap to citizenship for New Americans working in agriculture in the United States today.

S. 744 creates a workable legalization program with a roadmap first to permanent resident status, and then to citizenship, for the farm workers who are currently working in the fields, including their spouses and children. S. 744 does so through a special earned legalization program for agriculture that would allow certain undocumented farm workers and H-2 agricultural guest workers to apply for and obtain immigration status in a two-step process. While we believe professional farm workers who would like to become US citizens have already earned the right to apply for permanent legal residence

through their work feeding the nation, we support the compromise legislation that provides a workable roadmap to permanent legal residence and ultimately citizenship.

Under the proposed new immigration process, farm workers would be able to work in the fields without fear of getting deported immediately and will be able to reunite with their families in a relatively short period of time. S. 744 will give professional farm workers presently in the U.S., who have been contributing to our country, temporary legal status and the right to earn a green cards in the future by continuing to work in agriculture. Farm workers are the backbone of our agriculture industry here in the United States and a speedier process toward proper documentation provides an incentive for those farm workers who are currently working in agriculture to continue working in agriculture

New Agricultural Worker Visa Program addresses key UFW principles:

The bill also would create a new agricultural worker visa program, for the employment of foreign citizens in the future, that would eventually replace the H-2A temporary foreign agricultural worker program. Creating a new visa program is a complicated task. The goal of which is to create a program that is both workable for employers so as to create meaningful legal channels for employment-based immigration, and to protect the wages and working conditions of both domestic workers and foreign workers. The new W3/W4 agricultural worker visa program created in S. 744 reflects key UFW principles.

1. **Equality of Treatment** – the new agricultural visa program will allow farm workers to have the same rights and protections as current U.S. farm workers.
2. **No Discrimination** – the program does not create major incentives to discriminate against U.S. workers (including newly legalized workers). The goal of the program is to ensure that the wages and benefits paid to foreign guest workers do not undercut the wages and benefits of U.S. workers. We believe that the wage rate, housing allowance, transportation provisions, and 75% guaranteed pay for W3 contract workers, the requirement to cover workers compensation (even in states that do not currently require this for agricultural workers), and the equal treatment of wages and benefits clause are the major factors that will ensure that temporary workers will only be recruited when necessary to address a real labor shortage.
3. **Fairness in pay** – While we continue to believe that farm workers are paid too little, not too much as some have argued, we do believe that the new wage rates for agricultural visa holders will protect current farm worker wage rates and also protect farm worker wages from further declines.
4. **Economic freedom and opportunity** – Experiences under the Bracero, H-2A and other “guest worker” programs have demonstrated that if temporary workers are tied to a single employer, the law must require significant minimum labor standards and procedures to protect foreign workers from abuse, prevent displacement of U.S. workers, and protect against depression of wages and working conditions for all workers. We believe S. 744 has the minimum labor standards and procedures to meet these goals. In addition, S. 744 allows for a “portable” visa (W4) that will allow these visa holders the right to quit and go to work for an employer who offers better wages and working conditions. S. 744 also allows for “contract” visa holders (W2) to enter the “portable” visa program once they have completed their initial contract.

5. **Eligible to earn permanent residence** – no one working in our country helping to feed our country should be condemned to permanent second class status. Those temporary workers who, in practice, work much of the year and also year after year, should be able to earn the right to apply for permanent residence. S. 744 will allow some farm workers in these new visa programs to eventually apply for permanent legal residence. But, we do believe this is an area of the legislation that members of Congress can significantly improve.

The protections in S. 744 against the current corrupt recruitment practices we witness around the world are critical for all workers, including agricultural workers. Many foreign citizens recruited for jobs under temporary work visas are charged high recruitment fees to obtain U.S. employment even though these recruitment fees are prohibited under the H-2A program. Workers have little incentive to come forward to report violations as they will likely lose their chance of obtaining a visa if they do so, limiting any ability to repay the debt they have accrued. In some cases, recruiters misrepresent the amount and conditions of work that will be available in the U.S – current contract disclosure requirements are so weak that they are often ignored. Upon arrival in the U.S., these indebted workers are too fearful of losing their jobs and being deported to challenge unfair or illegal conduct. Moreover, employers regularly rely on international labor recruiters to discriminate in hiring on the basis of gender and age. Responsible, law-abiding employers should not suffer unfair competition from businesses that benefit from abusive international labor recruiting.

S. 744 would address this problem by improving and strengthening protections for internationally recruited workers and by creating a registry of international labor recruiters that would require foreign labor contractors to register and post a bond. Employers that use recruiters for guest workers should disclose to the government the identities of the recruiters and the nature of their contracts and financial agreements. Employers should be responsible for abuses inflicted on workers when they have used unlicensed recruiters, do not report violations they know about, or act in reckless disregard of the fact that the foreign labor recruiter is acting in violation of the law.

The law should include meaningful enforcement mechanisms that include penalties and remedies adequate to deter the ultimate employers from using abusive recruiters and to remove abusive recruiters from the labor market. The U.S. Department of Labor, which enforces most employment laws, should have responsibility for this law's enforcement. Due to the government's limited resources, the law should also provide a private cause of action in federal court to create a credible threat of enforcement of the obligations of both employers and labor contractors. The Senate immigration bill's original language encompasses the concepts above and provides important tools to increase transparency and improve enforcement. Americans want integrity in their labor supply chain and this concept is consistent with current codes of conduct of major retailers like Costco. The recruitment standards in this legislation must be maintained and strengthened to achieve this goal.

The agriculture labor provisions within S. 744 area are the result of a compromise between the United Farm Workers and all of the nation's major grower associations representing both large and small farms. The compromise reflects efforts not just to resolve the deep problems facing today's agricultural workforce but to ensure that comprehensive immigration reform is supported in every sector of our economy. There were difficult concessions for both employers and farm workers. For farm workers, who still face exclusion from many of the national labor laws (overtime provisions of the Fair Labor Standards Act, certain prohibitions on child labor, National Labor Relations Act protections on the right to collective action and to organize, etc.) several pieces of the compromise

were difficult to accept. In particular, the compromise wage rate provisions for crop workers and other agricultural workers; moving the administration of the guest worker program away from the Department of Labor to the Department of Agriculture; the elimination of the long-standing “50%” rule, which guaranteed a job for domestic farm workers who seek agricultural jobs at employers participating in the visa program by the middle of the season; and the new border commuter program were provisions that concerned us.

We will continue to work with the sponsors of this important legislation to seek improvements where possible, to ensure the path to citizenship does not narrow, and to ensure this compromise becomes law.

We urge support for S. 744 and agricultural compromise included therein. We believe S. 744 will significantly improve the lives of farm workers and our nation’s immigration system.