

June 3, 2013



## **Analysis of Senate Judiciary Committee Amendments Affecting Farmworkers**

On April 17, 2013, the Senate “Gang of 8” (Senators Schumer (D-NY), McCain (R-AZ), Durbin (D-IL), Graham (R-SC), Menendez (D-NJ), Flake (R-AZ), Bennet (D-CO) and Rubio (R-FL)) introduced the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, to reform the nation’s broken immigration system. Two major components of the bill would have profound impacts on farmworker families. These components are the result of intense negotiations that resulted in a detailed compromise among Senators Feinstein (D-Cal.), Bennet (D-Col.), Rubio (R-Fla.), and Hatch (R-Ut.), agribusiness representatives and the United Farm Workers. The two-part agricultural compromise includes both a legalization program for farmworkers (the Blue Card Program) and a new nonimmigrant agricultural visa program. For more information on these provisions, please visit [www.farmworkerjustice.org](http://www.farmworkerjustice.org).

Between May 9 and May 21, 2013, the Senate Judiciary Committee debated and amended S. 744. Of the roughly 300 amendments filed by Senators on the Judiciary Committee, more than half of them were offered and debated, with votes on the majority of those. After five days of mark-up, the Senate Judiciary Committee passed S.744 out of Committee by a vote of 13-5, with all of the Democrats and three Republicans, Sens. Flake, Graham and Hatch, voting in favor of the bill. The bill is expected to go to the Senate floor, where there will be another robust debate over the bill and numerous amendments, likely beginning June 10. During the mark-up, Sen. Hatch said he will demand passage of several extremely problematic amendments, which seek to limit the access of aspiring Americans to benefits for which they have contributed or will contribute.

The provisions of the agricultural compromise were largely unchanged, with only two amendments directly impacting the Blue Card Program (see discussion below). S.744 itself retained its broad framework. The four Judiciary Committee members who sponsored the “Gang of 8” largely voted together to defeat substantive efforts to change the core elements of the compromise. One exception was the sponsors’ approval of major changes to the H-1B visa program to obtain the support of Sen. Hatch.

The following discussion highlights some amendments that were debated in the Senate Judiciary Committee, both positive and negative, with a breakdown by those amendments which passed and those which failed. The selection of amendments includes both those important to farmworkers and amendments that reveal the character of the debate.

### **Select Amendments that Passed**

**Below is a discussion of some of the amendments that passed during the Senate Judiciary Committee and will be incorporated into the version of the bill that will be debated on the Senate floor:**

**Amendments Specific to the Blue Card Program:** Among the amendments that passed are two amendments that directly impact the Blue Card Program. The Blue Card Program is the legalization piece of the agricultural compromise that would allow undocumented farmworkers and their immediate family members to earn immigration status followed by an opportunity to earn legal permanent residence status through continued work in agriculture. Sen. Feinstein’s amendment 13 would ensure that the government grant program for organizations working on legalization would include those assisting applicants for blue card status. As originally written, section 2106 provided for grants to assist applicants for the Registered Provisional Immigration (the broad legalization program, or “RPI”) and DREAM programs, but not blue card workers. Also, Sen. Schumer’s 2nd degree amendment to Sen. Flake’s amendment 3 addressed the requirement regarding presence in the United States. The amendment requires spouses and children of blue card workers to have been present in the U.S. on or before December 31, 2012 and to have maintained “continuous presence” in the U.S. from that date until the date on which blue card status is granted.

**Amendments That Improved Subtitle F of Title III, Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad:** Farmworker Justice has been working with the UFW, FLOC, the International Labor Recruitment Working Group, and ATEST to ensure that these provisions were included in the original bill and to strengthen them. Subtitle F would regulate international labor recruiters to protect U.S. and international workers and to maintain the integrity of our immigration system. The Department of Homeland Security would establish a system under which international labor recruiters would need to register. Employers seeking foreign workers would be required to use only registered recruiters. Recruiters would be required to disclose information to workers, abide by certain rules, register and post a bond to ensure that victimized workers would have recourse for damages. Victimized workers could file an administrative complaint or a lawsuit against recruiters for violating the law. Sen. Blumenthal’s amendments 3, 4 and 5 passed with strong support by voice vote. They added a private right of action against employers who fail to use registered labor recruiters; a requirement that the Department of Homeland Security consult with the Department of Labor when developing regulations to implement the anti-human trafficking/foreign labor recruiter provisions; and additional disclosure requirements that strengthen the bill’s protections, regardless of the visa category, by increasing transparency in the international recruitment of workers.

**Amendments That Affect Farmworkers as Well as the Broader Immigrant Community:**

- **Children and Parental Rights:** Sen. Franken’s amendment 7, the HELP Separated Children Act, passed unanimously. His amendment contains specific procedural safeguards to protect children and parental rights when parents or guardians of minor children in the U.S. are detained. The safeguards include the rights of parents to make phone calls to arrange for child care; to have regular phone calls and contact visitations with their children and to participate in family court hearings.
- **Enforcement at Sensitive Locations:** Sen. Blumenthal’s amendment 8 would limit immigration enforcement actions at highly sensitive locations, including places of worship, schools, hospitals and locations serving pregnant women and children.

- **Victims of Domestic Violence:** Sen. Franken’s amendment 9 would ensure that victims of domestic violence would be eligible for certain housing assistance.
- **Access to Federal Student Aid:** Sen. Hirono’s 2<sup>nd</sup> degree amendment to her own amendment 21 added provisions that would allow those in RPI status who entered the U.S. under the age of 16 and all Blue Card holders to be eligible for Federal Student Aid benefits, excluding Pell grants.
- **Back Pay for Immigrant Workers:** In addition to making other technical changes, Sen. Schumer’s amendment 1 corrected erroneous language in the “Hoffman Plastics fix” in the bill. The *Hoffman Plastics* Supreme Court decision prohibited an undocumented immigrant worker who was fired for union activity from receiving back pay due to his lack of immigration status. The provision in the bill provides that back pay and any other remedies provided under federal, state or local law relating to workplace rights, except for reinstatement of unauthorized workers, would be available to all workers regardless of their immigration status.
- **Employment Records:** Blumenthal’s amendment 18 would make it in an unfair immigration-related employment practice for an employer who is required to maintain employment records to refuse to provide them to a worker upon request. Workers who are denied their employment records would be able to file a complaint with the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Practices, the agency charged with enforcing unfair employment practices.
- **Workplace Enforcement:** Sen. Grassley’s amendment 31 would require U.S. Citizenship and Immigration Services to produce a weekly report to Immigration and Customs Enforcement of all final nonconfirmations of individuals’ employment authorization.
- **Criminal Provisions Relating to Grounds for Admission and Deportation/Removal:** Sen. Schumer’s 2<sup>nd</sup> degree amendment to Grassley’s amendment 44 would add to the list of aggravated felonies a third conviction for driving under the influence or driving while intoxicated (collectively referred to as a DUI), for which the term of imprisonment is at least one year. The bill already contains provisions that make an individual with 3 DUIs inadmissible and removable. However, immigrants who are found to have committed an aggravated felony face specific harsher immigration consequences than those who are inadmissible or removable under other provisions of the INA. These include: 1) there is no waiver available for people trying to obtain any form of immigration status (this would affect RPI or blue card applicants); 2) if someone is deported for an aggravated felony, they can never come back and if they do enter illegally, there are harsh criminal consequences; and 3) there is no form of relief available for people in removal proceedings no matter how long they have had a green card, or any other sympathetic circumstances. The 2<sup>nd</sup> degree amendment passed with support from all Senators except for Sen. Leahy.

### Select Amendments that Failed

**The following are some significant amendments that were voted on and defeated by the Senate Judiciary Committee:**

**Amendments Related to the Legalization Application Process:** Sen. Sessions's amendment 16 would have required mandatory in-person interviews for everyone with a final order of removal and other specified criteria in order to obtain RPI or blue card status. This would have slowed the application process and significantly increased the cost of the bill. Sen. Grassley's amendment 16 would have increased the fees and fines in the legalization programs based on the cost of inflation. Sen. Grassley's amendment 17 would have eliminated all judicial review for revocations and denials of applications for legal status and legal permanent residence status. Sen. Cornyn's amendment 5 would have, among other things, eliminated the confidentiality provisions for individuals whose applications for legalization are denied. There are currently provisions that allow for information sharing in particular circumstances, such as when there is a perceived threat to public safety. This provision would have deterred individuals from applying for legalization for fear of immigration enforcement actions.

**Amendments that Would Have Placed Restrictions on Legalization:**

- **Bars to Legalization:** Sen. Cornyn's amendment 3 would have added the following to the list of offenses that would make someone ineligible for legalization: any conviction for domestic violence, child abuse and neglect, assault resulting from bodily injury, violation of a protective order or driving under the influence. Some advocates against domestic violence expressed opposition to this amendment because it could inadvertently sweep up domestic violence victims acting in self-defense or who were falsely accused; and it could deter immigrant victims from reporting abuse or otherwise seeking help. Sen. Lee's amendment 8 would have prohibited individuals who have absconded or had been ordered removed and later attempted to reenter the U.S. from participating in the legalization programs.
- **Border Security Triggers:** Currently, the blue card legalization program for agricultural workers has no border security triggers for implementation. Sen. Cruz's amendment 1 would have added specific border security requirements before both RPI and blue card applications could be processed.

**Amendments That Would Restrict Citizenship:** Sen. Cruz's amendment 3 would have barred anyone who has ever been willfully in unlawful presence from *ever* becoming a citizen. In addition to participants in the legalization program, this would have affected many current and eligible legal permanent residents under the current immigration system, including farmworkers who legalized under IRCA in 1986 and never became citizens.

**Amendments That Would Restrict Benefits:** Sen. Cruz's amendment 2 would have prohibited anyone who has ever been in unlawful status at any time or ever entered the country unlawfully from ever receiving any federal means-tested benefits or coverage under the Affordable Care Act. Like Cruz's proposed restriction on citizenship, this amendment would also have affected many current and eligible legal permanent residents under the current immigration system.

**Amendments Related to Identity Theft:** Sen. Grassley's amendment 34 would have made any use of a Social Security number that is not one's own a crime. Under current law, it is only a crime to use someone else's Social Security number. This amendment would have expanded the crime to people who make up social security numbers. It also would have made the penalty for

identity theft to facilitate or assist in hiring undocumented workers a crime punishable by 20 years in prison.

**Amendments That Would Restrict Eligibility for the Child Tax Credit:** Sen. Sessions's amendment 30 would have made anyone filing their taxes with an ITIN number (a number for people without Social Security numbers) ineligible for the child tax credit and amendment 31 would have made individuals with RPI and blue card status ineligible for the child tax credit. As the child tax credit is aimed at alleviating child poverty, the current status requirement is based on the dependent child (he or she must be a citizen or legal permanent resident), regardless of the status of the tax filer. This would have harmed many low-income, mixed-status families, including many farmworker families.

**Amendments That Would Have Reduced Access to Green Cards:** Sessions's amendment 1 attempted to strike the merit-based visa system and replace it with a new merit-based system that prioritizes applicants with higher education levels and higher-skilled workers than the bill's current scheme. While the current merit-based system is far from ideal, it does offer some lesser-skilled workers, including farmworkers, an opportunity to self-petition for legal permanent residence. Sessions's amendment would have eliminated these provisions.

Several positive amendments also did not pass because they were deemed inconsistent with the core of the "Gang of 8" agreement. For example, Sen. Hirono's amendment 10 would have allowed a U.S. citizen suffering "extreme hardship" to petition for an immigration visa for a sister, brother or adult child (an important proposal because the bill's future immigration system eliminates certain family-based visa categories, including married children over 31 and siblings).

Sen. Leahy also offered and withdrew his amendment 7, which would have allowed LGBT U.S. citizens whose marriages are recognized by state law to sponsor their foreign spouses for immigration status. In a heartfelt speech, Sen. Leahy noted that "discriminating against people based on who they love is a travesty." Senator Leahy withdrew the amendment without a vote because the Gang of 8 opposed it. Several Republicans in the Gang of 8 opposed the amendment and characterized it as a "deal killer," and Democratic members of the Gang said that they would oppose it to win passage of the bill.

**Next Steps:** When the bill reaches the Senate floor, some Senators, with support from various constituencies, will seek to improve the bill while others will seek to undermine key components of immigration reform. The Gang of 8 will likely attempt to win a majority of votes in favor of the bill by preventing changes that effect the core of their agreement. Efforts at major changes to the agricultural worker programs in the bill could reopen the long, complex negotiations, and cause farmworker, agribusiness and some Senators to stop supporting the legislation. For this reason, it is unlikely that the essential elements of the agricultural compromise, including the painful concessions made by all parties, would change even if some amendments are approved. However, it remains to be seen if the Gang of 8, or the group of four Senators who negotiated the agricultural compromise, will retain the same degree of control over the bill once it reaches the Senate floor. Farmworker Justice will continue to monitor and analyze the amended immigration bill and its impact on farmworkers and their families and support farmworker organizations' quest for positive immigration reform.