

# United States Senate

WASHINGTON, DC 20510

November 1, 2007

President George Bush  
The White House  
Washington, DC 20500

Dear Mr. President:

We're concerned by reports that the Administration plans to revise the regulations to the H-2A visa program for agricultural workers in response to requests by certain agricultural employers. The most appropriate mechanism to address the needs of agricultural employers and workers and ensure a safe and secure food production system is the AgJOBS bill now pending in Congress.

We understand that agricultural employers have asked the Department of Labor to convert the H-2A program from a labor certification program to a labor attestation program, which would have the effect of reducing government oversight over the process. The H-2A statute currently requires an agricultural employer seeking temporary workers to apply to the Department of Labor for a certification demonstrating that there is a true labor shortage and that the wages and working conditions offered by the employer would not adversely affect the wages and working conditions of U.S. farmworkers. Congressional action would be required to adopt a labor attestation process, which takes at face value employers' assertions that there are no U.S. farmworkers able, willing, and qualified to fill available agricultural jobs. If such a process is adopted, additional protections to prevent the exploitation of U.S. and foreign workers would be necessary. Such protections are a critical component of the compromise reflected in the AgJOBS bill.

We also understand that some agricultural employers have asked the Department of Labor to repeal the existing preference for hiring U.S. farmworkers. This provision, known as the "50 percent rule," requires employers to hire qualified U.S. workers who apply to an H-2A program employer before 50% of the season has elapsed. In the Immigration Reform and Control Act of 1986, Congress ordered the Department of Labor to continue this job preference for U.S. workers and conduct a study to determine its costs and benefits. Your father's administration conducted that study and decided to maintain the 50% rule, based on the substantial benefits to U.S. workers and employers and the minimal costs involved. Hundreds of thousands of U.S. workers are currently employed in agriculture, and they need to keep their jobs to support their families.

We understand that employers have asked that the Adverse Effect Wage Rate in the H-2A statute be abolished. Instead, they are seeking a lower "prevailing" wage rate – often calculated as a piece rate – that would significantly reduce agricultural wages and could result in workers being paid rates below the federal minimum wage. The Adverse Effect Wage Rate was initiated by President Kennedy's administration to prevent the abuses prevalent under the notorious Bracero program. It is a reasonable wage reflecting the average hourly wage rate paid in the previous year to non-supervisory field and livestock workers. The elimination of this important wage protection would violate the

basic principles underlying the H-2A statute by undermining the wages and working conditions of U.S. workers, and deterring them from taking agricultural jobs.

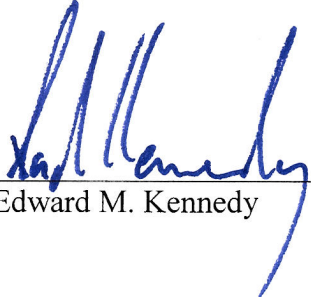
Finally, H-2A reform is not enough to address the severe agricultural labor shortages being experienced all over the country. Currently, the H-2A program fills fewer than 60,000 out of a total of over 3 million agricultural jobs. Nationally, only 1.9% of farm jobs are certified for H-2A workers. The Administration has demonstrated that it does not presently have the capacity to process the number of H-2A applications needed to meet our agricultural labor needs. Today, even with the low rates of use, processing bottlenecks leads to weeks of delay for employers in need of additional workers. We agree that reform of the H-2A program is needed to address these bureaucratic delays, but the Administration should recognize that this program will fail unless adequate resources are devoted to it.

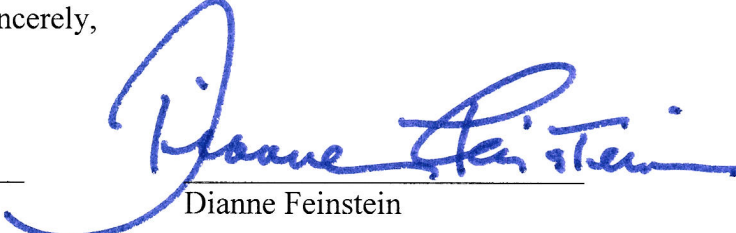
U.S. agricultural employers need a legal, stable workforce. This need can be addressed only if temporary workers are brought in under circumstances that do not undermine the wages and working conditions of U.S. farmworkers. The Department of Labor must enforce – and preferably, strengthen – existing wage and labor protections. Employers’ demands for changes in the H-2A program should be rejected. The Administration must recognize the need for an immediate solution to the agricultural labor crisis.

The best solution to the current crisis in agriculture is the AgJOBS legislation, which offers both a short-term solution to the agricultural labor crisis and longer term H-2A reform. This legislation is bipartisan, and is supported by major agribusiness and farmworker organizations. We request your cooperation in passing AgJOBS before the end of the current session of Congress, and we look forward to working with you and those in the Administration to achieve this very important goal.

With respect and appreciation,

Sincerely,

  
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Edward M. Kennedy

  
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Dianne Feinstein

cc: The Honorable Elaine Chao