

Testimony of Marcos Camacho
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Bakersfield, California
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Thank you to the Chair and the Members of this Committee for the opportunity to testify on behalf of the United Farm Workers regarding the labor movement and immigration policy. I am Marcos Camacho, an attorney in Bakersfield, California, and the General Counsel of the United Farm Workers, the labor union founded by Cesar Chavez.

Agricultural workers have confronted difficulties in immigration policy since the founding of this nation. Our government policies and enforcement efforts have often contributed to an imbalance in power that has subjected farmworkers to poor wages and working conditions.

The Bracero guestworker program became known for its abusive treatment of Mexican workers, despite the existence of protections for wages and benefits, and was finally ended in 1964. When, the farmworkers finally became free to demand better treatment, Cesar Chavez and the United Farm Workers provided a vehicle to dramatically improve the status and treatment of farmworkers in this country.

More recently, the H-2A guestworker program often has provided agricultural employers with workers whose restricted, nonimmigrant status ensures that they will not challenge unfair or illegal conduct. Generally, our guestworker programs have tied workers to a particular employer; if the job ends, the worker may not look for another job and must leave the United States immediately. The guestworker who wishes for a visa in the next year must hope that the employer will request one, because the employers control access to visas. Such workers are often fearful of deportation or not being hired in the following year, and are therefore reluctant to demand improvements. They work very hard for low wages. U.S. workers often recognize that they are not wanted by the employers who use the guestworker system. Currently, there are about 50,000 H-2A jobs approved annually, out of an agricultural work force of 2.5 million.

There are many abuses under the H-2A program ranging from minor to very serious trafficking in human beings. Unfortunately, our government has rarely enforced the protections in the H-2A program. In recent years, the United Farm Workers and the Farm Labor Organizing Committee have been asked by guestworkers from several nationsto help them improve conditions at their jobs in Washington State, Hawaii and North Carolina. We believe that unionization is the best hope that guestworkers have for better treatment and the best hope the government has of removing the H-2A program's reputation for abuse.

Today, we have reached a situation in agriculture that demands urgent action. There are about 2.5 million farmworkers in this country, not including their family members. More than 80% of them are foreign-born, mostly but not all from Mexico. Virtually all of the newest entrants to the farm labor force lack authorized immigration status. The helpful reports from the National Agricultural Workers Survey by the U.S. Department of Labor state that about 53% of farmworkers are undocumented. But most observers believe the figure is 60% or 70%, and much higher in specific locations. Many employers now hire farm labor contractors in the hope that they can shield themselves from liability for hiring undocumented workers in violation of our immigration law and from liability for labor law violations. The labor contractors compete against one another by offering to do a job for less money, and the cut-throat competition means that the workers must take lower wages. When one labor contractor is prosecuted for violating labor laws, he is easily replaced. Our current immigration system is causing employers to attempt to evade responsibility for their employees, while undocumented workers are too fearful of being deported to demand changes. In many cases, due to inadequate enforcement of labor laws, employers take advantage of undocumented workers by subjecting them to illegal wages and working conditions.

When the majority of workers in an economic sector are living in the shadows of society something must be done. The current situation is not good for farmworkers who want to be able to work legally and earn a decent living to support their families. It is not good for employers who want to hire people without worrying that they will be raided by the immigration service at the peak of the harvest of their perishable fruits and vegetables. It is not good for the government, which needs to know who is working in our economy and living among us. But it is no answer to say we will deport them and start again. The growers need these experienced workers to cultivate and harvest their crops. In fact, many growers contend that there are labor shortages in some areas because undocumented workers are too fearful of immigration raids to come to the open fields.

The United Farm Workers recognized several years ago that the status quo needed to be remedied. We also recognized that some of our long-held beliefs would need to be modified if we were to achieve any sort of reform. During the late 1990's, we strenuously and successfully opposed efforts in the House and Senate by agricultural employers to weaken H-2A protections and procedures and transform most farmworkers into vulnerable guestworkers with no path to citizenship. Our successful opposition led to a stalemate since we did not have the legislative support needed to enact our ideas about immigration and labor reform.

With the help of our good friend, Rep. Howard Berman, and other members of Congress, we entered into arduous negotiations with key leaders of the agricultural employers in the United States and other members of Congress, particularly Senator Larry Craig, Senator Edward Kennedy, and Rep. Chris Cannon. In 2000, we reached agreement on the Agricultural Job Opportunities, Benefits and Security Act, or "AgJOBS." AgJOBS has undergone several revisions over the years to build greater support for passage. Sen. Dianne Feinstein is now a strong supporter of AgJOBS. We

remain strong partners with agricultural employers to win passage of this important legislation despite many other differences between us. In 2006, the Senate included AgJOBS in the comprehensive immigration reform it passed. We are now seeking to pass AgJOBS as part of comprehensive immigration reform in 2007. We have been working with the White House and several Senators to bring AgJOBS to a conclusion.

AgJOBS would provide agricultural employers and the nation with a legal, stable, productive workforce while ensuring that basic labor protections would apply to farmworkers. AgJOBS has two parts. First AgJOBS would create an “earned adjustment” program, allowing many undocumented farmworkers to obtain temporary resident status based on past work experience with the possibility of becoming permanent residents through continued agricultural work. Second, it would revise the existing H-2A agricultural guestworker program.

The earned legalization program certainly should not be called “amnesty.” It is a difficult two-step process. The applicants for earned legalization will have to show that they have worked at least 150 days in U.S. agriculture during the past two years, and then must work at least 150 days per year in each of three years or at least 100 days per year in each of five years. Farmworkers will also have to show that they have not been convicted of a felony or serious misdemeanors. Spouses and minor children of the farmworkers will be eligible for a temporary status, too.

If they fulfill their obligations, they will be granted a green card for permanent resident status. They will have to pay substantial fees and fines at both steps. (Under the compromise worked out with the White House, farmworkers also will have to learn English, demonstrate that they have paid taxes during their prospective work period, return to their homeland to file the application for a green card with a U.S. consulate in their home country, and wait for the green card for 3 to 5 more years until backlogs in immigration applications have been cleared.). We expect that roughly 800,000 farmworkers will be eligible for this program, although such predictions are mere guesses. Through this multiyear process, the United States will have a stable, legal farm labor force that is highly productive.

This is a tough program. Farm work is dangerous, difficult, seasonal and low-paid. This truly will be an *earned* legalization.

AgJOBS also would revise the H-2A guestworker program. We feel that we made painful concessions to achieve this compromise. The program’s application process will be streamlined to become a “labor attestation” program similar to the H-1B program, rather than the current “labor certification” program. This change reduces paperwork for employers and limits the government’s oversight of the employer’s application. AgJOBS would retain both the “prevailing wage” and “adverse effect wage rates,” but would effectively lower the H-2A wage rates by about \$1.00 per year (to the 2003 adverse effect wage rates, which are issued by state), and freeze them for three years. The Government Accountability Office and a special commission would make recommendations to Congress about the wage rates within 3 years. If Congress has not

acted within 3 years, then the wage rates will be adjusted by the previous years' inflation rate. In addition, for the first time, farmworkers would have a right to file a federal lawsuit to enforce their H-2A job terms. AgJOBS also would allow some flexibility in the minimum wages and benefits when the workers at an H-2A employer are represented by a bona fide labor union under a collective bargaining agreement.

We believe that AgJOBS is a reasonable compromise under the circumstances. To conclude, we recommend the following: (1) We encourage you to pass AgJOBS. (2) Congress and the Administration should be vigilant about abuses under guestworker programs. Strong enforcement of the labor protections for guestworkers will prevent guestworkers from being exploited, prevent the wages and working conditions of United States workers from being undermined, and will take away the incentive that employers have to hire guestworkers rather than U.S. workers, including those who would earn legal immigration status under the AgJOBS earned legalization program. (3) Congress needs to adopt protections against abuses associated with foreign labor contracting. The U.S. Government is refusing to look at the abuses that occur during the recruitment of guestworkers in the foreign country. Yet, those abuses abroad, including payment of high recruitment fees, result in mistreatment of guestworkers on the job in the U.S., because the guestworkers must work to the limits of human endurance and avoid deportation at all costs to pay back those fees. The labor contractors' interest in such recruitment fees may have led to the murder earlier this year in Monterrey, Mexico, of Santiago Rafael Cruz, who was helping Mexican citizens employed as guestworker for North Carolina growers under a collective bargaining agreement with the Farm Labor Organizing Committee, AFL-CIO. (4) We also ask you to recognize that the best protection workers – both U.S. and foreign -- have at an employer that participates in a guestworker program is a labor union. Government policy should promote collective bargaining to reduce abuses under guestworker programs and give workers a meaningful voice at work.

Thank you for this opportunity to testify before the Committee on these important and timely issues.