



NATIONAL COUNCIL OF
AGRICULTURAL EMPLOYERS
ALERT MEMORANDUM

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Date: October 12, 2005

To: NCAE Members

From: Sharon M. Hughes, CAE
Executive Vice President

Subject: **Climate Right for “Perfect Immigration Reform Storm”—
Advocates for Immigration Enforcement and Guest Worker
Reform Collide, as Congress and President Seek Action this Fall.**

NCAE’s job as your voice on agricultural labor in Washington, D.C. requires a long-term view and patience. Ten years ago, NCAE saw the danger to its members when Congress proposed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that sought to impose an electronic verification system of work authorization documents, increase employer sanctions penalties and allow the government to seize the farms and businesses of those found liable for hiring undocumented workers. Not a pleasant prospect for employers of an agricultural workforce estimated to be comprised of workers, 50 to 70 percent of whom provide fraudulent work documents that look genuine and which employers legally must accept.

NCAE worked hard to eliminate the worst part of IIRIRA and reform the H-2A program—the only means of getting temporary and seasonal foreign agricultural workers. While the rest of the business community was in denial about the large undocumented workforce in all facets of the economy, NCAE saw the handwriting on the wall and persisted in moving the debate forward on the need to deal with the large undocumented workforce in agriculture through a workable guest worker program and a means of getting legal status for experienced undocumented workers. Over the years there have been many doubters about the seriousness of the problem and much frustration about Congress’ unwillingness to embrace guest worker reform.

Fast forward to today, and the winds of change NCAE felt ten years ago have reached an intensity that poses both great promise and danger to NCAE members and the business community. Darkening the horizon this past year are at least five Republican sponsored bills in the House of Representatives¹, which would include some or all of the following: require some form of mandatory and universal electronic work document

¹ For example, see H.R. 19 (Rep. Calvert); H.R. 98 (Rep. Dreier); H.R. 3938 (Rep. Hayworth); H.R. 3333 (Rep. Tancredo); and H.R. 3095 (Rep. King).

verification with a new counterfeit-proof Social Security card with biometric identifiers; substantially increase employer sanctions penalties up to \$50,000 per alien and jail terms of up to one year per illegal alien; require employers to pay transportation costs to return illegal aliens to their countries of origin; deny employers of undocumented workers IRS deductions from gross income of wages paid; require employers who obtain Social Security Administration (SSA) mismatch letters to use electronic verification of Social Security cards; and hire 10,000 new investigators to enforce employer compliance.

At the same time, IRS is sending detailed questionnaires to employers with large numbers of SSA mismatch letters, inquiring as to hiring practices. Federal racketeering (RICO) cases continue to be filed against agricultural employers alleged to have hired undocumented workers by private lawyers seeking triple damages, the most recent being in Idaho against large seed companies and a food processing company.

Raisin and grape growers in California have experienced up to an estimated shortage of 40,000 workers this past month, with potentially devastating losses. Growers in Yuma, Arizona anticipate an even greater disruption of the lettuce harvest this November than they faced last year as a result of government stoppage of buses bringing commuters and border crossers. Florida agriculture is concerned about shortages, including the loss of a sizeable part of its workforce to reconstruction work in the Gulf States after Hurricane Katrina.

Rays of promise also are breaking through. For the first time in twenty years, the leadership of the House, Senate and the President are all calling at the same time for action this Fall on immigration reform legislation. Earlier this year, a majority of the U.S. Senate voted for the NCAE-backed AgJOBS bill (S. 359 and H.R. 884) that will provide H-2A reform and earned adjustment of status for experienced farm workers in undocumented status. The House Committee on Agriculture Chairman, Bob Goodlatte, has introduced an H-2A reform bill that contains many positive reforms; however, it does not deal with the existing experienced undocumented workforce in a practical and bipartisan manner, as does AgJOBS.

The business community has stepped up to the plate and now is making the same arguments as agriculture about the need to provide a workable guest worker program and earned adjustment of status for the 10 to 12 million estimated undocumented workers in all industries. Business is pushing hard for companion bills that were introduced in the Senate and House by Senators McCain and Kennedy and Representatives Kolbe, Flake and Gutierrez (S. 1033 and H.R. 2330) to address this problem comprehensively. Senators Cornyn and Kyl introduced another more restrictive comprehensive industry bill (S. 1438). House Judiciary Committee Chairman, Jim Sensenbrenner, is rumored to be drafting reform legislation; however, it is unclear yet whether it will focus on enforcement only or contain some type of guest worker provisions.

Congress is expected to remain in session until November or December of this year, so there is time for Congress to act this year and finish up next Spring, if necessary. The Senate Judiciary Committee is expected to start the process of enacting legislation

through a hearing set for October 18. The Speaker of the House of Representatives has committed to act this year. President Bush has publicly encouraged Congress to pass legislation this year and has been actively seeking support by bringing key legislators to the White House over the past several months.

The next few months are critical for agricultural employers. Will reform include only increased employer enforcement and penalties, as many in Congress prefer, or will meaningful guest worker reform and earned adjustment of status also be included as part of a comprehensive package? While now there are many bills in the mix, AgJOBS still remains the best-known product, with bipartisan support and a proven record of majority Senate support. NCAE urges you to continue your support for AgJOBS (or similar legislation) as a stand-alone bill or as the agricultural piece of a broader bill.

The winds of change are swirling. Only through your support of NCAE and aggressive lobbying of your congressional representatives can you help harness the growing immigration reform tempest into the much-needed H-2A and earned adjustment of status reform that agriculture needs for its survival. Otherwise, the hostile elements described above, fostered by immigration restrictionists and enforcement-only advocates who do not understand nor care about America's economic future, will win the day—a sad day for American agriculture.