



# FARMWORKER JUSTICE NEWS

Volume 16, No. 1      Farmworker Justice Fund, Inc.      Fall 2003

## FARMWORKER IMMIGRATION COMPROMISE COULD BECOME LAW

**By Bruce Goldstein**

Major new developments in Congress on farmworker immigration issues could result in a substantial change for the better in the lives of hundreds of thousands of migrant and seasonal farmworkers who could be eligible for legal immigration status. The political reality of our times dictates that no Congressional action will be without its disadvantages and costs. Nonetheless, the proposed compromise deserves strong support.

On Tuesday, September 23, 2003, Sen. Edward Kennedy (D.-Mass.), Rep. Howard Berman (D.-Calif.), Sen. Larry Craig (R.-Idaho), Rep. Chris Cannon (R.-Utah), and Rep.

Ciro Rodriguez (chair of the Congressional Hispanic Caucus) announced their introduction of compromise legislation after negotiations among the legislators and the United Farm Workers of America (AFL-CIO) and major agribusiness employer organizations. The UFW consulted

(PCUN), and the Farmworker Justice Fund, Inc. Major agribusiness groups around the country formed a large coalition (the Agriculture Coalition for Immigration Reform) to negotiate and win passage of the compromise, although some current H-2A program employers oppose the compromise.

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The AgJOBS compromise will help empower farmworkers to demand better wages and working conditions.

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with other farm labor organizations, including the Farm Labor Organizing Committee (AFL-CIO), Pineros y Campesinos Unidos del Noroeste

The bill's name is THE AGRICULTURAL JOBS, OPPORTUNITY, BENEFITS AND SECURITY ACT

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## LAWSUIT CHALLENGES EPA'S FAILURE TO PROTECT CHILDREN FROM PESTICIDES

**By Shelley Davis**

Four Attorneys General and a coalition of eleven farmworker, environmental and faith-based groups, filed companion lawsuits charging that the U.S. Environmental Protection Agency (EPA) approved the use of five hazardous pesticides without adequately protecting infants and children, in violation of the Food Quality Protection Act of 1996 (FQPA). The two cases were filed in federal court in New York City on September 15, 2003.

The Farmworker Justice Fund is co-counsel in one of the two lawsuits. In the first lawsuit, Natural Resources Defense Council v. Horinko, the plaintiffs are NRDC, Farmworker Legal Services of New York, the Mid-Hudson Catskill Rural and Migrant Ministry, Pesticide Action Network North America, the Breast Cancer Fund, Physicians for Social Responsibility, New York Public Interest Research Group, Citizens Campaign for the Environment, Neighborhood Network Research

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## FARMWORKER IMMIGRATION

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OF 2003 (known as "AgJOBS"). In the House of Representatives, its number is H.R. 3142. In the Senate, it is S.1645. In the Senate, there were 9 Republicans and 10 Democrats as original cosponsors, but more are being added. The bipartisan support among conservative, moderates and liberals in Congress improves the chances of passing the legislation.

Sen. Bill Frist, the Majority Leader, has announced his willingness to schedule the legislation for consideration within several weeks. Rep. Dennis Hastert, the Speaker of the House of Representatives, has announced his support for the legislation. Such immigration legislation, however, remains very controversial among many politicians who wish to curtail immigration and view this legislation as inconsistent with their goals and as a bad precedent for later immigration policy reforms. The opposition is likely to be especially strong in the House, led by the notorious Rep. Tom Tancredo and aided by Rep. James Sensenbrenner, who is chair if the House Judiciary Committee. Others, primarily Republicans, are expected to strenuously oppose this compromise.

FJF strongly supports this compro-

mise because, despite significant concessions on H-2A issues and the legalization program, there are advances under the H-2A program and the compromise would allow hundreds of thousands of undocumented farmworkers to come out of the shadows and gain the freedom to demand better wages and working conditions.

The press conference announcing introduction of the compromise also

included Arturo Rodriguez, President of the United Farm Workers, Cecilia Munoz, Vice President of the National Council of La Raza, Richard L. Trumka, Secretary-Treasurer of the AFL-CIO, Bob Vice, former head of the California Farm Bureau and co-chair of the agribusiness coalition on immigration and labor, as well as others.

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## Thanks Ella!

**E**lla Ochoa, a member of the FJF Board of Directors for the last eight years, has resigned to focus on other challenges. Ella is the Executive Director of the NAF Multicultural Human Development Council, headquartered in North Platte, Nebraska. Ella came to FJF through her connections to the National Council of La Raza, which is FJF's parent organization. FJF has been very fortunate to have someone like Ella, whose skills and dedication to farmworkers have been immensely helpful. We wish Ella all the best.

## Online Tax-Deductible Donations Made Easier

The Network for Good has made donating to charities like the Farmworker Justice Fund, Inc. simple and quick. Just go to FJF's website, which is [www.fwjjustice.org](http://www.fwjjustice.org), and click on the button that says "Network for Good." You will be able to make a tax-deductible donation using a credit card, and the entire donation will go to FJF. You will receive an online confirmation. You will also receive a letter from FJF acknowledging your donation.

VISIT OUR WEBSITE AT:

[www.fwjjustice.org](http://www.fwjjustice.org)

# HELPING MIGRANTS TO PARTICIPATE IN THE COMMUNITY PLANNING PROCESS ON HIV PREVENTION

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By Myrtelina González

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Latinos, who are the fastest growing minority population in the United States, are also at an ever-increasing risk of contracting HIV/AIDS. The reasons for their high risk are as varied as the subcultures that exist within the Latino community.

Among migrant and seasonal farmworkers, the majority of whom are Spanish-speaking (84%) and of Mexican origin (77%), the National Commission to Prevent Infant Mortality estimates their rate of HIV/AIDS infection at about 10 times the US national average.

The reasons for this high infection rate are many. Away from their families and partners for months at a time, some migrant men engage in unprotected sex with men, prostitutes or multiple partners. Others are affected by alcohol and substance abuse; at times sharing needles to inject antibiotics or illegal drugs. In addition most are reluctant to use condoms and do not perceive themselves to be at risk.

With frequent mobility, migrants often lack a much-needed social support system or links to the community in which they work. Health and social service systems differ from state to state, and migrants are often isolated and unfamiliar with the services available in the communities to which they travel. As a result they may not know where to go for help. Continuity of care is often a casualty with each new move, and lack of understanding on the part of service providers exacerbates these problems.

Migrants work long hours, at physically demanding jobs, without sick leave or vacation days. As such, they cannot easily leave work to go to a clinic. Many clinics are not open dur-

ing evenings or weekends when the migrants could come in for services.

To increase the availability of HIV/AIDS prevention services to migrants, FJF, with support from the Centers for Disease Control and Prevention and the Health Resources and Services Administration, AIDS Bureau, organizes the Líderes Campesinos Por la Salud project. As part of this project, FJF in partnership with the U.S. Mexico-Border Health Association (USMBHA) and community-based organizations in five areas, trains farmworkers and their family members to be peer educators (or *promotores de salud*). Our *promotores* bring the message of HIV prevention to farmworkers, wherever they are: in the fields, at their homes in *colonias* or *barrios*, at community centers, churches, etc. But to ensure that the *promotores* have a broader impact, and that the concerns of migrants and their families are taken into account at the state or county level, FJF and USMBHA also train *promotores* to participate in the community planning process. Community planning groups, which function at the local, state and regional level, make recommendations as to how the government will spend its HIV prevention dollars. To ensure that some efforts target migrants, farmworkers must have a seat at the table.

To prepare *promotores* to be active and effective participants in the community planning process, the USMBHA has developed ENLACES, which is a skill building course specifically designed to increase Latino participation in the HIV Prevention Community Planning process. ENLACES also promotes stronger linkages between Latinos in the region, and encourages new collaborations. Several *Promotores de*

Salud, working on FJF's *Líderes Campesinos por la Salud* project, have participated in the ENLACES training and now belong to their local HIV Prevention Community Planning Group.

Community Planning Groups (CPGs), which receive federal funds, are required to have a membership that is reflective of the epidemic in their community, i.e., all populations infected and affected, should be "seated at the table." Teaching *Promotores de Salud*, who are migrant and seasonal farmworkers or their family members, how to navigate the system gives them a much needed voice within those community planning groups. It also makes them more visible to the communities in which they live and work, so that more efforts are directed to the fight against HIV/AIDS within the migrant communities. ❖

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## FARMWORKER IMMIGRATION

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All agreed that the compromise resulted from arduous negotiations over controversial issues and that it needs to be passed as-is (without amendments), first by the Senate and then by the House, and then signed by the President. The goal is enact it during the next few weeks.

The UFW at [www.ufw.org](http://www.ufw.org) has posted information on the agreement and has an automatic email system available to tell your members of Congress to support the compromise.

FJF has posted a detailed summary of the legislation on its website, [www.fwjjustice.org](http://www.fwjjustice.org), under "legislative developments." The companion bills are one hundred pages long and complicated. They are briefly summarized here.

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## LAWSUIT CHALLENGES EPA'S

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Center, Citizens' Environmental Coalition, and Environmental Advocates of New York. NRDC, FJF, and Earthjustice are representing them. The second case, State of New York v. U.S. Environmental Protection Agency, was brought by the states of New York, Connecticut, New Jersey and Massachusetts.

The two cases challenge the EPA's decisions to allow five highly toxic pesticides to be used on food crops. Three of the five pesticides, diazinon, disulfoton and oxydemeton-methyl are organophosphate insecticides, which were derived from nerve gas, and cause injury to the brain and nervous system. The others are alachlor, which disrupts the endocrine system, and captan, which is a probable human carcinogen.

The lawsuits contend that the EPA failed to protect children, who are more sensitive to the toxic effects of chemicals and more highly exposed to such products than are adults. Specifically the plaintiffs claim that the EPA should have designated children of farmworkers, farmers and rural as a "major identifiable subgroup" under the FQPA, and that the Agency should not have prohibited the use of the five pesticides on food unless it found that there is a reasonable certainty of no harm to these highly exposed children.

In 1998, NRDC, FJF and others had filed a petition, asking EPA to designate farm children as a vulnerable population, but the EPA never responded to the petition. The FQPA governs the allowable levels of pesticide residues that may remain on food, called a "food tolerance." Without a food tolerance, the pesticide cannot be used on that specific food crop.

The nation's two and a half million farmworkers have approximately one million children living in the United

States. More than 320,000 children under the age of six live on farms in the United States. In addition, many hundreds of thousands of children play or attend schools on or near agricultural land, and others have family members who work on farms or handle pesticides as part of their jobs.

Children of farmworkers and those living in agricultural communities are heavily exposed to pesticides. Farmworker children come in contact with pesticides through residues on their parents' skin and clothing, con-

taminated soil in their play areas, pesticide-laden dust tracked into their homes, food eaten directly from the fields, drift from aerial spraying, contaminated well water, and breast milk. Furthermore, these children often accompany their parents to work in the fields or help out by working themselves. The U.S. General Accounting Office has reported that seven percent of farmworkers with children five years old or younger took their children with them, at least sometimes, when they worked.

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## FJF's New Staff Member Introduces Himself

**H**ello. My name is Juan Hernandez, I am a native Texan born and raised in Brownsville, Texas. I have joined the staff of Farmworker Justice Fund, Inc. as the Capacity Building Assistance Coordinator to work with the HIV/AIDS Prevention Programs & Services. In this position, I will assist farmworker organizations around the country in designing, implementing, and evaluating HIV/AIDS programs that serve the migrant farmworker community.



Needless to say, I am thrilled to have this grand opportunity to continue to labor in community development with the dedicated FJF staff and partners. Through both personal and professional experiences I recognized how terribly desperate circumstances are for some of the most marginalized people in our society, the migrant farmworker community. I sometimes think how for the majority of this community seeking that idea of the American dream soon enough becomes a blistering nightmare. Language, lack of official status, culture, illiteracy and extreme poverty all fuel that nightmare. I am compelled to work with those persons and institutions that wish to try to improve the quality of life for this community not out of sympathy rather empathy as the son of former farmworker.

I am a recent Returned Peace Corps Volunteer. For the last three years I have lived and worked in Honduras as an Economic Development Consultant. In that time I had the opportunity to work at the grassroots, national and international levels through community development projects and programs that I helped design, implement and monitor/evaluate. These ranged from the creation of a vocational educational system, community cultural revitalization, environmental programs embedded in local agriculture, financial lending/saving programs, and potable water systems.

Prior to entering Peace Corps I was a research associate for the North Central Regional Center for Rural Development. Focusing on the social and economic impacts of public policy on rural communities. I also attended Iowa State University where I earned a dual Masters of Science in Industrial Relations and Rural Sociology. Both degrees grounded my educational experience in issues related to community development and group dynamics.

# JIM LEONARD IS “ALL-STAR VOLUNTEER”

James B. Leonard, who has volunteered as a lawyer to FJF since 1999, was recognized as an “All-Star Volunteer” for 2003 by the Washington Post, Hecht’s Department Store, Levi’s, Dockers, and the Points of Light Foundation. His name appeared with other prizewinners on July 4, 2003 in the Washington Post. FJF received a donation of \$501. And Jim received, in addition to recognition, a pair of Dockers pants!

FJF nominated Jim for this award because of his selfless dedication to the cause of farmworkers and assistance to the Farmworker Justice Fund. Jim is a vital part of FJF and we don’t know now what we’d do without him.

Jim Leonard retired after more than twenty-five years as an attorney with the U.S. Department of Labor, following other government work and an excellent education. At FJF, he has worked on complex class-action litigation in federal court for immigrant tree planters in the southeast, child labor legislation in Congress for farmworkers, advocacy in the Department of Labor for better enforcement of the laws, and training of farmworker lawyers and paralegals all over the country. He also wrote a manual on the “hot goods clause” of the Fair Labor Standards Act and established a network and set of procedures for submitting appropriate cases to the Department of Labor, which is permitted to seek a court injunction

against the shipment of goods produced by workers whose rights to minimum wage have been violated. Several “hot goods” cases have been brought through Jim’s fine legal work and collaborations with offices all over the country.

Through these efforts, and many others, Jim has been extraordinarily helpful to FJF’s legal work. He also has been an excellent fundraiser for FJF. He and his family have been remarkably generous toward FJF.

Additional recognition for Jim’s work was in the October issue of *The Washington Lawyer*, a monthly magazine of the Bar Association of the District of Columbia. Congratulations Jim! ❖

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## LAWSUIT CHALLENGES EPA’S

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Children age ten or older may and do work on large farms, and children as young as eight may and do work on their parents’ farms or on small farms. There are an estimated 300,000 children who are farmworkers in the United States.

Farmworker children are also exposed to pesticides in utero, when pregnant farmworker women are exposed at work. In addition, per pound of body weight, children eat, drink, and

breathe more than adults. Children also engage in more frequent hand-to-mouth contact, and therefore have higher rates of oral exposure from pesticide-contaminated objects, dust, or soil.

Congress unanimously passed the special protections for infants and children in the Food Quality Protection Act of 1996, in response to a 1993 report issued by the National Academy of Sciences (NAS). The

NAS report, called, *Pesticides in the Diets of Infants and Children* pointed out that the EPA does not adequately protect children when it regulates pesticides.

By protecting farmworker children, who are the most vulnerable and highly exposed, the EPA would be protecting all children from the harmful effects of pesticides, but because these children of poor, Latino immigrants lack political power, the EPA has chosen to put their health at risk. ❖

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## FARMWORKER IMMIGRATION

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### Two-Part Compromise

The compromise contains two major parts: (1) a legalization program, or “earned adjustment” program, that allows undocumented farmworkers who have been working in American agriculture to apply for temporary immigration status and then gain per-

manent immigration status upon completing a multi-year agricultural work requirement, and (2) revisions to the H-2A agricultural guestworker program that streamline the process by reducing employer’s paperwork and time frames for H-2A applications, modify the wage-setting process, create incentives for employers to negotiate in good faith with labor unions, and give the guestworkers the right to enforce their H-2A rights in federal court.

### The Legalization Program

The legalization program, if passed by Congress, would allow an undocumented farmworker to obtain a “temporary resident” immigration status upon proving that he or she performed agricultural work for at least 100 days, during any 12 consecutive

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# PROMOTING ENVIRONMENTAL HEALTH ON THE CALIFORNIA – MEXICO BORDER

By Virginia Ruiz

On September 18, 2003, the Farmworker Justice Fund hosted a day-long forum in San Diego for community health outreach workers and promotores de salud. The forum, "Promoting a Clean Environment for Healthy Kids" brought together 70 community health workers and others from health clinics, farmworker groups, environmental organizations and government agencies in San Diego and Imperial Counties in California and Tijuana, Mexico.

This was the first such conference in the California-Baja California border region, focusing on the links between the environment and the health of low-income border residents, especially children.

Keynote speaker Diane Takvorian, Executive Director of the Environmental Health Coalition, began the day by highlighting some of the environmental hazards affecting low-income Latino communities in San Diego and Tijuana and the community responses to them. In one such campaign, residents of the Barrio Logan area were organizing to move truck traffic out of their neighborhoods to reduce their children's exposure to diesel fuel emissions, which is linked to increased cancer risk.

The conference also featured nine workshops on pesticide safety at home and at work, adult and childhood lead poisoning, air pollution, and water contamination. At each workshop, speakers described the adverse health effects associated with an environmental hazard and offered practical ways in which border residents could protect themselves or their families. For many, this event provided them with an introduction to environmental health issues, while for others it deepened their knowl-

edge. All agreed to use the information obtained at the forum to educate at least 15 members of their community. We received excellent feedback about the conference.

As one participant wrote

in her evaluation, "I was very pleased with all the information and eager to share the information with the rest of my community."

Co-sponsors of the event included the San Diego County Office of Border Health, Environmental Health Coalition, California Office of Environmental Health Hazard Assessment, The Community Health Worker Regional Development Center, Scripps Health/San Diego



Conference participants discuss the effects of contaminated drinking water on their health

Border Area Health Education Center, The Community Health Worker/ Promotoras Network, and the San Diego County Office of the Agricultural Commissioner. Support for the conference was provided by The California Endowment, the U.S. Health Resources and Services Administration, Border Health Program, and the U.S. Environmental Protection Agency, Office of Research and Development. ❖

## FARMWORKER IMMIGRATION

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months during the past two seasons. Agricultural employment includes field and livestock employment but generally excludes work performed in meat and poultry processing plants. There would be an eighteen-month application process. Most applications would be filed with a government-approved organization ("qualified designated entity" or QDE), such as a nonprofit organization, a farm labor union, or an employer association. Legal assistance programs funded by the federal government would be permitted to assist applicants. The application procedure is designed to ensure applicants have actually per-

formed agricultural work and are otherwise eligible for immigration status, while recognizing the difficulty applicants will have in securing evidence of their past employment, which frequently occurred "off the books."

Farmworkers who gain temporary resident status would have up to six years to perform additional agricultural work to convert to permanent resident alien status (and gain a "green card"). As a temporary resident, the worker would be able to work in any employment, when not working in agriculture, and to cross the border. The temporary resident's status will terminate after six years unless he or

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# GOVERNMENT OF MEXICO ACCEPTS CASE ON H-2A GUESTWORKERS

By Bruce Goldstein

On February 11, 2003, the Farmworker Justice Fund (FJF) and Central Independiente de Obreros Agrícolas y Campesinos (CIOAC), an independent labor union in Mexico that represents farmworkers and small farmers, filed a request for action by the governments of the U.S., Mexico, and Canada under the "labor side agreement" of the North American Free Trade Agreement (NAFTA), which is formally known as the North American Agreement on Labor Cooperation (NAALC). On Friday, September 5, 2003, the National Administrative Office in Mexico City for the NAALC informed the Farmworker Justice Fund, Inc. that the Government of Mexico had accepted the petition, would investigate, and prepare a report. Further proceedings are possible if violations by the U.S. Government are found.

The request focuses on the treatment of Mexican citizens who are recruited to work as farmworkers in the state of North Carolina by several hundred agricultural employers and their recruiter, known as the North Carolina Growers Association (NCGA). Mexican workers are recruited under a special visa program of the United States called the H-2A temporary foreign agricultural worker program. About 10,000 of these "H-2A workers" are now hired annually in North Carolina, more than are hired in any other state.

Under the NAALC, each nation has promised to cooperate to improve its treatment of workers and its enforcement of the labor laws. The submission is designed to encourage inter-governmental consultations to produce some improvements for the Mexican farmworkers.

The NAALC requires each of the three nations to cover "migrant work-

ers" under its labor laws to the same extent as other workers and to enforce their own labor laws effectively. The submission challenges the unequal treatment of these migrant workers under the U.S. labor laws and the failure of the U.S. government to enforce the labor laws with respect to the workers in North Carolina under the H-2A program.

The purpose of the submission is to (1) **remedy discriminatory legal standards** that deny the H-2A program farmworkers the rights of other workers, including other farmworkers in the United States, and deny workers rights guaranteed under international labor law, including the right to organize unions free from retaliation and to bargain collectively, and (2) **end a persistent pattern by the U.S. Government of failing to enforce effectively the applicable labor laws**, including the requirements of the H-2A guestworker program.

The submission to the NAO in Mexico City under the NAALC focuses on several problems, including the following:

- ◆ Exclusion of H-2A Migrant Workers from the federal labor law called the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA").
- ◆ Denial of right to join and organize labor unions and engage in collective bargaining.
- ◆ Restricting Workers' Ability to Receive Visitors in Employer-Provided Housing and on Employer Property.
- ◆ Blacklisting: denying Mexican citizens access to H-2A jobs
- ◆ Government Allows H-2A Employers' Manipulation of the Length of Season to Avoid

Obligations to Employees, including transportation cost reimbursements.

- ◆ Denial of Access to Workers' Compensation for Work-Related Injuries and Illnesses.

Many of these problems were identified in a report by Human Rights Watch, "Unfair Advantage," which included a case study on the H-2A guestworker program in North Carolina and concluded that the H-2A guestworkers were not being extended internationally-recognized labor standards. The report is available online at [www.hrw.org](http://www.hrw.org).

FJF, represented by Bruce Goldstein and Virginia Ruiz, and CIAOC will prepare additional materials to submit to the Mexican Government with the goal of persuading it to demand significant improvement in labor-law enforcement and changes in the H-2A program. While the NAALC procedures are weak, and the governments themselves determine what action should be taken, the NAALC is one tool that transnational farmworkers should use to improve their conditions. If initial consultations among the nations do not lead to satisfactory results, a nation can request a committee of experts to investigate and provide recommendations to resolve the matters. On some limited issues, arbitration is possible, though it is unlikely to be requested by any of the three nations and may not be requested by a non-governmental party. ❖

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# SISTER CITY PROJECT UP AND RUNNING

By Steven Diego Díaz

The Farmworker Justice Fund, Inc. along with the Mexican Red Cross, of Reynosa, Tamaulipas, Mexico, Valley AIDS Council, and Planned Parenthood, both of McAllen, Texas, are collaborating on an initiative to provide HIV prevention information on both sides of the U.S.-Mexico border in the cities of McAllen and Reynosa.

The name of the project is the Sister City Project. It is funded by the Centers for Disease Control and Prevention in Atlanta, Georgia. The project is an attempt to provide HIV prevention services to the thousands of migrant and maquiladoras (assembly plant) workers that cross the border from Reynosa and other border communities into the U.S. each day to work and shop. The project began in September 2003 and will run through February 2004.

For some years now, HIV prevention services provided through programs such as FJF's Promotores de Salud have been available in the U.S., but limited HIV prevention information is

available on the Mexico side of the border region. Farmworker Justice Fund staff recently visited Reynosa and trained 10 Promotores de Salud in Reynosa, Tamaulipas. They will be supervised by the Mexican Red Cross volunteer Eliseo Arellano, who will assist in the provision of more training through other area providers.



Sister City Project participants in Reynosa, Mexico

The Promotores training is part of a larger effort that involves a social marketing campaign aimed at the migrant workers in the region using flyers and radio spots. Planned Parenthood and Valley AIDS Council have agreed to support this effort on the U.S. side of the region by distributing flyers for the project and making available HIV and Sexually Transmitted Diseases testing, free of charge or at a sliding fee scale. ❖

## FARMWORKER IMMIGRATION

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she applies and receives permanent status. The program does not continue on an ongoing basis.

To obtain permanent immigration status, the person would need to work in U.S. agriculture for at least 360 days in the six-year period beginning September 1, 2003. At least 240 of those days must occur during the first three years. In addition, in at least three of those six years, the person must work at least 75 days per year in agriculture.

Employers would be obligated to supply employment records to help document compliance with the prospective work requirement. Workers who are fired without "just cause" will be able to file an administrative complaint to obtain credit for the lost

employment. Credit for work also will be given to farmworkers who lose work time due to on-the-job injuries.

Once the worker obtains permanent status, his or her spouse and minor children also will be eligible for permanent status. While the farmworker holds temporary status, such immediate family members who lack authorized immigration status and are not eligible for this legalization program will not be entitled to status or to work authorization; however the government may not deport such immediate family members while the farmworker holds temporary resident status (absent another ground for deportation).

The requirements for immigration are stringent, especially the future-work requirement. Undoubtedly some labor contractors and growers will take advantage of temporary residents by threatening to refuse to issue proof

of employment unless the farmworkers accept unfair or illegal working conditions. Still, the compromise represents significant progress after many years of fruitless battles in Congress over immigration policy.

Estimates on the size of the legalization program are necessarily based on inadequate statistics. The publicized estimate of 500,000 eligible farmworkers is based on a conservative calculation that undoubtedly underestimates the number of eligible farmworkers.

## The H-2A Guestworker Program

The compromise would revise the H-2A temporary foreign agricultural worker program, which currently

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# FJF'S EXPERTISE SERVES NON-FARMWORKER ADVOCACY

By Bruce Goldstein

Farmworkers are one of the few occupational groups in the U.S. to have experienced the extensive use of "guestworkers" – foreign workers on temporary non-immigrant visas – and developed extensive knowledge and advocacy around the issue. That experience has led the Farmworker Justice Fund to develop expertise on this topic. Now FJF's expertise is being used by non-farmworker groups.

During the last few months, several members of Congress have introduced legislation that would establish guestworker programs, either as stand-alone systems or as part of more comprehensive reform of the immigration laws. These proposals may include agriculture but they are far

broader and are aimed at many more occupations. When Rep. Jeff Flake (R.-Ariz.) and Rep. Jim Kolbe (R.-Ariz.) were investigating policy options for legislation that they were drafting, their staffs interviewed FJF's Bruce Goldstein extensively. While the legislation that resulted, which Sen. John McCain (R.-Ariz.) sponsored in the Senate, is not something FJF could support (because it is heavily focused on guestworker status, rather than on a true immigration status), FJF appreciated the opportunity to present its views and the manner in which the Congressional staff conducted the discussion.

Many organizations have sought FJF's analysis of the legislation once it was introduced. FJF's was quoted in several newspaper articles about the bills. When Sen. John Cornyn introduced

his own guestworker legislation, which is more plainly objectionable, FJF also was sought out for its critique. Several organizations have been drafting principles regarding the rights of workers under immigration policies, which FJF also has been assisting.

Ironically, farmworkers have been at the "cutting edge" of immigration policy for many years; a significant percentage of farmworkers has always been a transnational labor force and there have been various policies adopted to accommodate employers' ever-present quest for the next exploitable group of workers. FJF, therefore, has become knowledgeable about a topic that it hopes will have limited relevance to others in the United States. Clearly, however, a debate has begun that will not end soon. ❖

## American Film Institute Sponsors Film

**F**JF staff speak at many public meetings. One recent example was the showing of the film "H-2 Worker" at the American Film Institute's (AFI) new center in Silver Spring, Maryland. In early September in honor of Labor Day, the AFI hosted a labor film festival, which it cosponsored with the Metropolitan Washington Council, AFL-CIO, and the Debs-Jones-Douglass Institute.

FJF's Bruce Goldstein spoke to the audience about the struggles of the workers in the film and in the most recent efforts to achieve justice for farmworkers, including those who are hired as "guestworkers" under the H-2A program.

This year's films focused on the lives of immigrant workers. One of the films shown was "H-2 Worker," about "guestworkers" who came from Jamaica on temporary work visas to cut sugar cane in Florida. Stephanie Black's film from 1989 won the best-documentary award at Robert Redford's Sundance Film Festival. FJF cosponsored a showing of the film on Capitol Hill shortly after its release and participated in an AFI showing of the film at the Kennedy Center at that time.

The AFI event brought back many memories of advocacy efforts during the late 1980's and early to mid-1990's. The Florida sugar barons have mechanized the harvest so the Jamaican workers do not cut Florida sugar cane any more, but tens of thousands of H-2A workers are hired, mostly from Mexico, under similar circumstances in other crops. Now North Carolina dominates the H-2A program, and the Farm Labor Organizing Committee, AFL-CIO, is organizing in the state's cucumber fields, where many guestworkers toil over crops that are made into pickles. Boycott Mt. Olive Pickles! As you can see, the film is still very relevant.

## FARMWORKER IMMIGRATION

*Continued from Page 8*

approves about 41,000 jobs per year (although the actual number hired may be significantly less). The H-2A program's application process for employers would be streamlined.

The current "labor certification" process would be replaced with a "labor attestation" system similar to the H-1B so-called "high tech" visa program. Employers' paperwork and government oversight during the application and recruitment process would be reduced. Employers would "attest," or promise, to meet the law's standards, with follow-up enforcement available when those attestations are violated.

In addition, the program's principal wage rate — known as the "adverse effect wage rate" — would be rolled back one year to 2002 and frozen for three years while two government studies are performed to enable Congress to reconsider the system. These wage rates, which are significantly above the federal minimum wage, vary state by state and are based on regional surveys of average agricultural wage rates. Employers contend that the wage rates are now too high (because they are well above the state and federal minimum wage and many local piece rates where H-2A employers are located). Most farmworker advocates disagree. Nonetheless, a compromise was needed. If Congress does not act within three years, then the wage rates will be increased automatically after the third year by the previous year's increase in the Consumer Price Index.

The other principal labor protections will remain and will become part of the law, not just the regulations. For example, H-2A program employers must hire qualified U.S. farmworkers who apply during the first one-half of the season. Transportation costs will continue to be reimbursed by employers. While most H-2A employers will be obligated to con-

tinue to provide free housing to farmworkers, some will be permitted to offer housing allowances, but only when a state's governor certifies that there is sufficient housing in the area for farmworkers.

One of the significant improvements under H-2A concerns the guestworkers' right to enforce their employment contracts. H-2A guestworkers are specifically excluded from the principal federal employment law for farmworkers, known as the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA" or "MSPA"). While this exclusion will remain, for the first time the H-2A guest workers would have the right under federal law to enforce the terms of their employment in federal courts (rather than be limited to state contract claims in local state courts).

### Challenges Ahead

The legislation has a good chance of enactment and signature by the President but there are many obstacles to passage. AgJOBS needs support to overcome vigorous opposition.

If the legislation passes, there will be many challenges ahead. The resources to help farmworkers apply for status are quite limited. Farmworkers and their organizations will need financial resources and legal advice. The Department of Homeland Security would have responsibility for writing regulations to implement the law. Monitoring and intervention would be needed to ensure that the law is implemented and not stymied by overzealous concern about immigrants and homeland security.

The potential exists for abuses by employers against farmworkers who will be desperate to support their applications for temporary resident status with evidence of their agricultural employment and then proof of performing the prospective work requirement.

Legalization offers an opportunity to empower farmworkers but by itself does not mean improvement in wages and working conditions or the ability to organize a labor union free from retaliation. Legal immigration status puts undocumented farmworkers, and therefore all farmworkers, in a better status with respect to both their employers and the government. Farmworker supporters will need to help the workers turn that potential into a reality.

For their part, employers in labor-intensive agriculture should stop expecting new waves of vulnerable foreign workers and new government policies that facilitate such labor flows. Instead, fruit and vegetable growers should stabilize the work force that would be legalized by improving wages and working conditions and modernizing labor practices. Instead of viciously battling labor unions, agricultural employers should start negotiating in good faith to retain workers and maximize productivity. The U.S. Government should help stabilize the work force by making agricultural employment less objectionable to workers. Discrimination in labor laws against farmworkers should be substantially reduced to make agricultural work more attractive. In addition, much greater enforcement is needed to send the message that labor violations really will be punished.

This could be an important opportunity to help farmworkers. This legislation, if enacted, would not be a panacea but it could help several hundred thousand undocumented farmworkers gain legal immigration status and help them and other farmworkers to improve their living and working conditions. FJF has been a vital part of this debate for many years and will continue to be of service to the farm labor organizations and members of Congress on these issues. ❖

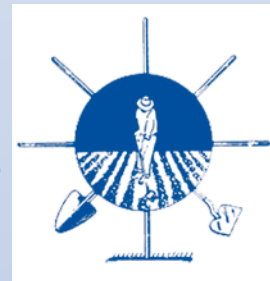
## HELP FJF EXPAND IN ITS 22<sup>ND</sup> YEAR

**P**lease support the work of the Farmworker Justice Fund by making a generous, tax-deductible donation. (FJF is a 501(c)(3) nonprofit corporation.) Help us make 2003, our twenty-second anniversary — our most effective year of advocacy ever.

FJF plays a leadership role in advocacy for migrant farmworkers in the nation's capital. We have creatively used all available tools to further the cause of farmworkers. Litigation. Administrative and Legislative Advocacy. Training and technical assistance for lawyers, paralegals, government personnel, health care providers, and farmworkers. Media work and other public education. Building coalitions of farmworker organizations, Latino organizations, civil rights groups, immigrants rights advocates, labor unions, religious institutions, environmentalists, and many others. These activities and more have made a difference in the lives of thousands of farmworkers. Labor law. Immigration policy. Occupational Safety and Health. Access to the Justice System. Women's Issues. All of these have been advanced by FJF's work. In each of these areas, FJF has helped to defend farmworkers' interests against attacks and rollbacks.

Despite our important work and the efforts of many others, the wages, working conditions and living conditions of most of America's migrant farmworkers remain unacceptable. Please help the Farmworker Justice Fund, Inc. continue and expand its work by making a financial contribution to our work. Thank you very much.

**Mail to:**  
**Farmworker Justice Fund, Inc.**  
1010 Vermont Avenue, NW, Suite 915  
Washington, DC 20005



I would like to support the Farmworker Justice Fund, Inc. in its twenty-first year of helping migrant and seasonal farmworkers.

Enclosed is my tax-deductible donation of \$\_\_\_\_\_. Please place me on your mailing list.

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**Make tax-deductible online donations at [www.fwjjustice.org](http://www.fwjjustice.org)**

# Second Annual Socially-Responsible Winetasting

**W**ould you like to learn more about wine? Do you want to know which wineries are unionized? Does the opportunity to taste some of these wines interest you?

If the answer to any of these questions is “yes,” we hope you will join us during the evening of Wednesday, December 3, for our second annual socially-responsible wine tasting. You’ll be able to sample a variety of fine wines from California and Washington State—all produced at wineries whose farmworkers earn decent wages, receive fringe benefits and work under safe conditions negotiated by their union, the United Farm Workers of America. Whether you’re new to wines or a connoisseur, you’ll discover wines suited to your taste - and price range.

At last year’s socially-responsible winetasting, sponsored by the Farmworker Justice Fund, we learned that there are some great wines at various price levels produced by wineries whose farmworkers are treated decently.

Washington Post wine reviewer Michael Franz will again be on hand to tell us the story behind the wines and provide tasting tips. Novices as well as knowledgeable wine drinkers found Michael’s presentation to be entertaining and informative.

The winetasting will again be held at the Samuel Gompers Room of the AFL-CIO headquarters in downtown Washington, D.C. There is no nicer space to taste wines.

The wine tasting is a benefit for the Farmworker Justice Fund, Inc., which needs your financial support to continue its twenty-two years of effective advocacy for migrant and seasonal farmworkers.

Please support the wine tasting and the work of the Farmworker Justice Fund, Inc. by becoming a Benefactor of this event for a donation of \$500, or a Sponsor for \$250. Benefactors will receive six tickets and sponsors will receive three tickets; both will be recognized in the event program. Individual tickets will be available at \$75. FJF is a 501(c)(3) not-for-profit organization; donations are tax-deductible to the full extent of the law. Online credit card payments are accepted at our website through PayPal. For more information, visit our website, [www.fwjjustice.org](http://www.fwjjustice.org) under “special events,” or call Lorna N. Báez at 202-783-2628.

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