



October 21, 2013

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street NW,
Washington, DC 20007
1626rulemaking@lsc.gov.

Re: Notice of Proposed Rulemaking as to 45 CFR 1626: Restrictions on Legal Assistance to Aliens

Dear Senior Assistant General Counsel Freedman:

Farmworker Justice, a national advocacy organization representing migrant and seasonal farmworkers, submits these comments in support of the proposed changes to the Legal Services Corporation (“LSC”) rule regarding H-2 Forestry and Agricultural workers located at 45 CFR 1626.11. Farmworker Justice seeks to improve the wages, working and living conditions of all farmworkers, including H-2A agricultural guestworkers, H-2B guestworkers working in agriculture and U.S. farmworkers. We monitor and advocate on behalf of H-2A temporary agricultural guestworkers and H-2B guestworkers working in agriculture¹ and U.S. workers in corresponding employment to ensure that their legal rights are enforced. Additionally, Farmworker Justice has litigated on behalf of H-2B forestry workers who were employed at the largest re-forestation contractor in the United States. The lawsuit involved multiple violations of the law, including pay violations.

We write in support of the addition of paragraph (b) to 45 CFR 1626.11 to implement the FY 2008 amendment to section 504(a)(11)(E) of the FY 11996 LSC appropriations legislation, which extended eligibility for assistance to H-2B visa forestry workers. Guestworkers such as H-2B forestry workers and other vulnerable low-wage workers need access to legal services representation to enforce their workplace rights in order to prevent a downward pressure on wages and a worsening of workplace standards for all workers. We commend the regulation formally implementing the expansion of LSC eligibility to H-2B forestry workers. While the

¹ Even though the H-2B program is a non-agricultural temporary guestworker program, some workers in the program do work that is classified as agricultural work under other laws, such as the Migrant and Seasonal Agricultural Worker Protection Act, even though they are not classified as agricultural workers for purposes of the H-2A program.

changes to the regulation adequately reflect the statutory language, we note that non-forestry H-2B workers and undocumented workers remain excluded from legal services organizations that receive LSC support. Congress should further expand LSC eligibility to all low-income workers regardless of their immigration status.

Legal Services Corporation legal assistance is necessary to combat the exploitation and abuse of H-2A and H-2B workers and resultant harm to U.S. farmworkers and forestry workers. Both H-2A and H-2B workers generally come from developing countries, have limited education and English-language skills, and are dependent on their employers for their employment while in the United States. The guestworkers' bargaining power is limited by their restricted non-immigrant temporary work visas – tying them to a particular employer, requiring them to leave the country at the end of the job, and offering no way to obtain a visa in a future year absent an employer's request. Many guestworkers justifiably fear that their challenges to unfair or illegal employment practices will result in retaliation in the form of discharge and deportation or denial of a job and visa in the future. Under these circumstances, violations of guestworkers' labor rights are rampant.

Abuse of H-2B forestry workers in particular, has been documented by several sources, such as the Sacramento Bee's series, "The Pineros;"² the Southern Poverty Law Center's Immigrant Justice Project's report, "Beneath the Pines;"³ and a 2010 U.S. Government Accountability Office report, "H-2B Visa Program: Closed Civil Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse."⁴ On March 1, 2006, the Senate subcommittee on Public Lands and Forests in the Energy and Natural Resources Committee held a hearing to discuss the ongoing occupational safety and health, wage violation, and other problems faced by H-2B forestry guestworkers. We incorporate the hearing record, including the testimony of D. Michael Dale, Executive Director Northwest Workers' Justice Project, into these comments.⁵

When guestworkers do choose to come forward and speak up about their abuse, it is essential that they are able to access free legal assistance. While the Department of Labor does conduct important enforcement actions, its resources are too limited to fill the existing need. Ultimately, agency enforcement of labor standards can only go so far. Workers need to have the ability to take steps to protect themselves, and often will need specialized legal assistance to do so. H-2B workers are working in the United States legally as "guest" workers at the invitation of the United States, under guarantees of labor protections designed to protect them, and importantly, to protect the wages and working conditions of US workers. Additionally, farmworkers and forestry workers' cases are not very appealing to private attorneys. These cases can be complicated and time-consuming and unless there is a Fair Labor Standards Act violation or civil rights violation, these cases do not award attorneys' fees to prevailing plaintiffs. Moreover, monetary damages are so low that it is not profitable for an attorney to take on the case.

² <http://www.sacbee.com/static/content/news/projects/pineros/c1/>

³ <http://www.splcenter.org/sites/default/files/downloads/beneaththepines.pdf>

⁴ <http://www.gao.gov/assets/320/310640.pdf>

⁵ <http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=642f1811-0058-4190-bac6-19a975c575c1>

In order to improve enforcement of our nation's labor laws, Legal Services Corporation services should be used to enforce all workers' labor rights regardless of their immigration status. When only certain classes of workers are able to enforce their rights, a perverse incentive exists to hire those workers who are less able access justice. This erodes workplace standards across the board, so all workers suffer. The expansion of LSC eligibility to H-2B forestry workers is a step in the right direction to improving labor law enforcement in agriculture. Congress should repeal the immigration-related restrictions on LSC organizations and allow them to serve all low-wage workers. Thank you for your consideration of these comments.

Sincerely,

Adrienne DeVartanian
Director of Immigration and Labor Rights

Megan Horn
Staff Attorney/Policy Analyst