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February 20, 2009

Honorable George Miller, Chair
Committee on Education and Labor
2181 Rayburn House Office Building
Washington, DC 20515

Re: Regulations H2B temporary foreign worker program
Via facsimile and e-mail

Dear Chair Miller:

On December 19, 2009, regulations making major changes in the H2B program were published by the Bush Administration, to take effect on January 18, 2009. The regulations are having a devastating impact on U.S. workers as well as vulnerable H2B temporary foreign workers in construction, landscaping and other service industries. On behalf of the Low Wage Worker Legal Network and the additional signatories listed below, we urge you to take prompt measures to ensure that the regulations be suspended, and that the former H2B regulations be reinstated pending a thorough review by the administration.

The rules reduce oversight of the H-2B application process, where abuses of workers have been extensively and convincingly documented. In particular, acting without Congressional authorization, the Departments of Homeland Security and Labor will (1) replace agency certification of the need for H-2B workers with an employer "attestation;" (2) eliminate the role of local state workforce agencies in assisting workers to secure work in affected occupations, and (3) impose additional burdens on United States workers who apply for H-2B positions. The reduction in oversight will increase likelihood that U.S. workers will be passed over for available jobs, and that vulnerable immigrant workers will suffer unremedied exploitation.

The rules expand the definition of "temporary" from one year to three years. This means that relatively long-term jobs will be eligible for H-2B employment, and the abuses of both US and foreign workers that are part and parcel of the program will spread.

The rules purport to reverse, with a stroke of a pen, a well-established legal principle laid down by a half dozen court rulings in separate federal circuits. Rather than requiring, under certain circumstances, that U.S. businesses pay the costs of visas, passports and transportation to bring workers into the country, the agencies would impose these costs on desperate foreign workers themselves.

There have already been impacts from the rules: on February 11, 2009, the U.S. Court of Appeals for the Fifth Circuit reversed a lower court and split with legal principles set in other federal courts, holding that an H2B employer was not liable for these costs. The reversal was based on statements in the preamble of the new rules.

Finally, the rules do nothing to solve the fundamental flaws in this broken program that systematically indenture foreign workers and facilitate the displacement of U.S. workers.

As the Department of Homeland Security admitted in its proposed regulations, abuses in the current system have led "to human trafficking and alien worker indenture." At a time when workers within our country and beyond its borders are desperately competing for scarce available jobs, the new rules are a national shame that will lead to degeneration of working conditions in existing jobs. We ask that you exercise all power at your disposal to ensure that the integrity of the program is restored, not further undermined, and that the system's intent to protect the wages and working conditions of all workers be fulfilled. Should you require further information about the harmful effect of the regulations, feel free to contact any of these signatories to this letter.

Sincerely,

MEMBERS OF THE LOW WAGE WORKER LEGAL NETWORK

Centro de los Derechos del Migrante, Inc. ("CDM" or Migrant Rights Center)
Equal Justice Center, Texas
Friends of Farmworkers, Inc.
Global Workers Justice Alliance
North Carolina Justice Center, Immigrants, Legal Assistance Project
Northwest Workers Justice Project
Southern Poverty Law Center
Working Hands Legal Clinic
Workers Rights' Law Center of New York, Inc.

OTHER SIGNATORIES

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
American Federation of State, County and Municipal Employees (AFSCME)
Building and Construction Trades Department, AFL-CIO
California Rural Legal Assistance Foundation
Change to Win
Coalition of Immokalee Workers
Center for Community Change
Chicago Workers' Collaborative
Colorado Immigrants' Rights Coalition
Communications Workers of America (CWA)
Cornell Labor Law Clinic
CATA (the Farmworkers Support Committee)
Farm Labor Organizing Committee, AFL-CIO (FLOC)
Farmworker Justice
Florida Immigrant Advocacy Center

Interfaith Worker Justice
International Brotherhood of Boilermakers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Teamsters (IBT)
Jobs with Justice
Laborers' International Union of North America (LIUNA)
Labor & Employment Committee/National Lawyers' Guild
Legal Aid Justice Center – Immigrant Advocacy Program (Virginia)
Michigan Migrant Legal Assistance Project, Inc.
National Council of La Raza
National Employment Law Project
National Immigration Law Center
National Immigration Project/National Lawyers' Guild
National Network for Immigrant and Refugee Rights
New Orleans Workers' Center for Racial Justice
OneAmerica
Pinos y Campesinos Unidos (PCUN)
Service Employees International Union (SEIU)
UNITE HERE
United Association of Plumbers and Pipe Fitters (UA)
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
United Church of Christ, Justice and Witness Ministries
United Electrical, Radio and Machine Workers of America (UE)
United Farm Workers Union
United Food and Commercial Workers International Union (UFCW)