

TESTIMONY
of
Max Fernandez
Before the
Committee on Appropriation
Subcommittee on Commerce, Justice, Science and Related Agencies

I present this written testimony to the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies.

The testimony is presented to the Committee for use during its consideration of the request to continue funding of Legal Services. I believe Legal Services continually misuses the government funding and urge the Committee to (1) de-fund Legal Services, (2) reduce the funding, or (3) place strict limitations on the use of the funding and activities of legal services for which the funding can be used.

I have had to defend myself and my ranch against lawsuits brought by Legal Services, the Northwest Justice Project.

In 2002 I was sued by Legal Services on behalf of two sheepherders. Under the H2A program sheepherders are paid wages set by the U.S. Department of Labor. Legal Services chose to ignore the established DOL wage rate and filed a lawsuit claiming under state law that the sheepherders were entitled to different wages.

I won at every court proceeding. See *Berrocal v. Fernandez*, 120 Wn.App. 555 (Div. III, 2004); *Berrocal v. Fernandez*, 155 Wn.2d 585 (2005). I was forced to spend tens of thousands of dollars to defend myself and prove I was right. The worker got free legal services. I had no way to recover the costs or fees.

The difficulty is that Legal Services tried to circumvent a clear determination of appropriate wages by the U.S. Department of Labor by calling the claim something else. I believe this is an attempt by legal services at "social engineering" in an effort to better the conditions of workers, rather than a claimed violation of the wage and hour law.

Today I am facing another lawsuit brought by Legal Services on behalf of three sheepherders. Legal Services claims that I did not pay the wages required by the U.S. Department of Labor and that I did not meet the requirements of employment mandated by the Department of Labor. It is important to note that Legal Services first raised this same allegations to the U.S. Department of Labor who investigated and found I had done nothing wrong. Unhappy with the result, Legal Services sues and I am again forced to defend myself against three sheepherders who pay nothing for legal

services and the funding for legal services comes through my tax money. The Immigration Act does not allow Legal Services to bring a private cause of action, so Legal Services re-characterized the claim, and brought suit.

The three workers abandoned their jobs and are in this country illegally. The H2A visa requires them to return to their home country when their employment ends, whatever the reason. They have not done so and Legal Services knows where they are and continues to assist them.

Those same workers, who remained in this country illegally, have brought a lawsuit against the U.S. Department of Labor challenging the H2A program. *Mendoza, et al v. Hilda Solis and U.S. Dept. of Labor*, U.S. District Court, District of Columbia No. 1:11-CV-07190-BAH. Once again, Legal Services is representing them.

Legal Services is not truly interested in representing individual cases, but is interested in advancing their own social causes. During the investigation of the claims brought to the U.S. Department of Labor, the Legal Services attorney admitted that the purpose of the claims was to "...obtain permanent residency for the workers". (Attachment 1)

When the lawsuit was filed I called Legal Services and spoke to the attorney handling the case. I told her I was an immigrant from Chile and needed help in a lawsuit. The attorney declined, stating that she would not help because I came here legally, they only represent illegals.

I believe that Legal Services abuses its position and the funding it receives.. I encourage the Committee to conduct further investigation into these abuses and to de-fund Legal Services or to impose strict limitations on the use of the funds.

The illegal worker is provided everything for free and spends nothing. Legal Services even assists the workers to circumvent the immigration laws to allow them to remain in this country. Again, there is no cost to the worker. An agricultural employer, like me, must spend a considerable amount of money to defend themselves and prove they are right . There is no ability to recover those costs against Legal Services.

Legal Services is not representing individuals in legitimate claims, they are working to advance social causes. That is wrong and must be stopped.