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SUPREME COURT OF VIRGINIA  
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SUPREME COURT OF VIRGINIA

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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 950131

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**ORCHARD MANAGEMENT COMPANY, ET AL.,**

*Appellants,*

v.

**FERNANDO VARGES SOTO, ET AL.,**

*Appellees.*

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**JOINT APPENDIX**

---

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8/12/83

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF FREDERICK

SANTIAGO LEBRON, JR., et al.,  
Plaintiffs,

v.

MOTIONS FOR JUDGMENT  
4024

ORCHARD MANAGEMENT COMPANY,  
Defendant.

The Plaintiffs, by counsel, move this Court for judgment against the Defendant for the following reason and in the following amounts:

1. A judgment was entered against the Defendant in a Court of Record of the Commonwealth of Puerto Rico, a territory of the United States of America, and in favor of each of the following Plaintiffs, in the following amounts, on the following dates and at the following Puerto Rican Court numbers:

Santiago Lebron, Jr., \$1,897.45, October 10, 1979, Case No. 78-2705

Carlos Santiago, \$1,897.45, October 10, 1979, Case No. 78-2705


Catalino Lopez Feliciano, \$1,177.50, January 30, 1980, Case No. 78-1837

Fernando Varges Soto, \$2,467.42, November 21, 1979, Case No. 78-3299

WHEREFORE, by virtue of the Full, Faith and Credit clause of the United States Constitution, Plaintiffs are entitled to have their judgments recognized by the Commonwealth of Virginia and docketed, accordingly. Furthermore, Plaintiffs seek an award of court costs for this cause of action and accrued interest.

SANTIAGO LEBRON, JR., et al.

By Counsel

  
Steven D. Rosenfield  
Rosenfield & Green  
917 East Jefferson Street  
Charlottesville, Virginia 22901  
Counsel for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing Motions for Judgment was mailed or hand delivered to W. A. Johnston, Harrison & Johnston, 21 South Loudoun Street, Winchester, Virginia 22601, on this 16<sup>th</sup> day of August, 1983.

Steven Rosenfield  
Steven D. Rosenfield

~~FILED~~  
~~FRED. CO. CLEARY & OFFICE~~  
~~GEORGE P. WATKINS~~  
~~1983 AUG 12 AM 9 19~~

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO,

Plaintiff,

v.

At Law No. 4024

ORHARD MANAGEMENT COMPANY,

Defendant.

GENERAL COURT OF JUSTICE  
SUPERIOR COURT  
HUMACAO SECTION

BIENVENIDA SOTO VEGA et al.

Plaintiff

CIVIL NO. 78-3299

v.

RE:

ORCHARD MANAGEMENT CO.

BREACH OF CONTRACT

Defendant  
-----

- J U D G M E N T -

Pursuant to the documentary evidence contained in the files in this case and to the uncontested allegations, the Court finds the following facts and issues judgment in accordance therewith:

1. That plaintiff (sic) was duly served with process pursuant to the Rules of Civil Procedure.

2. That defendant is a company dedicated to the harvest of apples and other fruits and owns several farms in the State of Virginia.

3. That between plaintiff and defendant there existed an employment contract which was negotiated through the Department of Labor and Human Resources of Puerto Rico.

4. That by virtue of said contract, defendant agreed to pay to the plaintiff a minimum hourly wage of \$2.71 per hour, to provide work eight hours daily, six days a week, for a period of seven weeks and four days.

5. That the plaintiff, by virtue of the employment offer made and accepted, travelled to the place of work on September 11, 1978.

6. That defendant did not receive plaintiff Fernando Vargas Soto in its facilities, and he was referred to another

employer called Messick and Beaver, who dismissed him after having satisfactorily worked on September 15, 1978.

7. Plaintiff Bienvenida Soto Vega is the mother of Fernando Vargas Soto, with whom the latter used to live at the time when he accepted the employment offer. On September 12, she found out through the nation's means of communication that the workers hired were facing refusal on the part of the contracting employers to receive them, housing and food problems, dismissals and other problems. The anxiety, inability to sleep and the apprehension caused by her inability to obtain information about the location and condition of her son, seriously affected her health, because she is an elderly and sickly person, and all the above caused her to suffer high blood pressure, diabetic reactions, and acute headaches.

Having considered the above findings of facts and in view of the applicable legal dispositions, judgment is entered on the complaint, and defendant is hereby ordered to pay to plaintiff Fernando Vargas Soto \$967.42 for wages and \$1,500.00 as compensation for the damages. Plaintiff Bienvenida Soto Vega shall be paid the sum of \$600.00 for damages.

Defendant is further ordered to pay the costs and corresponding legal interest counting from the date of this judgment.

Let it be registered and notified.

In San Juan, for Humacao, Puerto Rico, this 21st day of November, 1979.

(Signed: Wilfredo Alicea López)  
WILFREDO ALICEA LOPEZ  
Superior Judge

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO, et al.,

Plaintiffs,

v.

At Law Nos. 4024-4056

Consolidated Cases

ORCHARD MANAGEMENT COMPANY, et al.,

Defendants.

BRIEF IN SUPPORT OF  
SUMMARY JUDGMENT FOR PLAINTIFFS

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and

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Counsel for Plaintiffs

November 15, 1983





A number of issues raised by the Defendants deserve only a modicum amount of discussion. The Defendants maintain that the submission of a Clearance Order is merely a solicitation of an offer and that the Virginia Employment Commission, the United States Employment Service and the Puerto Rican Employment Service are agencies who acted in behalf of the potential workers, thereby shifting any breach of contract concerns to them. This contention by the Defendants has been rejected by every Court to have considered it (as discussed earlier in this Brief), but most recently by the Rios, supra, Court. It is not necessary for this Court to evaluate whether or not the Defendants used the employment services of the Virginia Employment Commission, the United States Employment Service or the Puerto Rican Employment Service as an agent or whether they were acting solely in behalf of the Plaintiffs. A discussion of this point is not necessary for three reasons. First, a question of agency is an issue of a substantive defense which the Defendants waived by accepting default judgments. Secondly, the standard enunciated in the Thomas, supra, case speaks only of an activity which created a nexus with the forum jurisdiction, such that the activity was of minimum contact. Under the Thomas test, the defendants were subject to long-arm jurisdiction of Puerto Rico's Rule 4.7 by initiating a job offer which it could foresee was going to Puerto Rico and which did not require the physical presence of the defendants or their agents in Puerto Rico. The Thomas Court specifically adopted the rule that an offer by mail, in and of itself, was sufficient. Thirdly, the various employment services are a creature of legislative enactment and served as neither

agent for the workers or the growers under the circumstances presented in this case.

The intent of the Puerto Rican legislature as expressed with the passing of the amendment resulting in the present Rule 4.7, was to "incorporate into our procedural legislation the modern tendency to widen the jurisdiction of the state courts over non-residents of the forum." A. H. Thomas Co. v. Superior Court, supra, 867 n. 2. The extension of an offer of employment into Puerto Rico is the precise type of "minimal contact" contemplated by the legislature when it adopted Rule 4.7. It is an affront to any notion of state sovereignty to allow a business the benefits of going into another state to obtain employees, under contract, without also being subject to the jurisdiction and legal process of that state. The Wagner-Peyser Act creates no shield from liability for the breach of the contracts created by such interstate contacts.

#### Fair Play and Substantial Justice

The final and third prong of the Thomas test is a determination of whether due process was extended to the Defendants under the long-arm statute. The Rios Court summed up this issue as follows:

It is clear that the broad social purpose of the Wagner-Peyser Act and the protections imposed thereunder, as to the temporary foreign worker regulations, would be negated by permitting employers to utilize such procedures and then renege on their contractual offer without allowing recourse to the employees who suffered damages in their home state or territory. Defendants made a business judgment to seek foreign labor with the knowledge that they would have themselves within the mandated rules and regulations of the federal government. They were aware that their job offer would be forwarded to surplus labor in areas such



VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO, et al.,

Plaintiffs,

v.

ORCHARD MANAGEMENT COMPANY,

et al.,

Defendants.

LAW NOS. 4024-4056

Consolidated Cases

STIPULATION OF FACTS

The parties hereby enter into an agreed Stipulation of Facts. The purpose of this Stipulation is to agree to facts that may be relevant to the Court's decision in these cases and thereby eliminate the need for evidentiary hearing. By entering into this Stipulation, neither plaintiffs nor defendants concede the relevance or materiality of a particular stipulated fact to the issue presented by the cases.

1. All the facts in this Stipulation are applicable to each case consolidated and attached to this Stipulation and identified as Consolidation of Cases, except as otherwise noted.

2. Hereinafter the term "plaintiffs" shall include each plaintiff identified in the Consolidation of Cases, and the term "defendants" shall include each defendant identified in the Consolidation of Cases, except as otherwise noted.

3. Each plaintiff obtained judgment against a defendant in the Superior Courts of Puerto Rico. Each judgment was obtained by default after service of process was made upon the defendant in accordance with the requirements of the Commonwealth of Puerto Rico statute. A copy of each judgment order that has been filed in the respective court file is made a part of this record. The amount of each judgment is listed in the Consolidation of Cases. Plaintiffs seek to enforce the default judg-

ments by means of these lawsuits. The validity of the default judgments obtained in the Puerto Rico courts is the only issue presented by these cases.

4. On or about April 23, 1978, each defendant submitted a Clearance Order-Rural Manpower Job Offer (Form MA 7-90) to the local office of the Virginia Employment Commission in Winchester, Virginia.

5. Defendants were required to file the Clearance Orders by the U.S. Department of Labor Regulations because defendants had submitted applications for alien employment certification seeking permission to hire temporary foreign workers if enough qualified U.S. workers were not available and because the regulations governing the temporary foreign work program require growers seeking such workers to file such Clearance Orders. 20 C.F.R. § 655.203(d)(1).

6. The Virginia Employment Commission is a state component of the United States Employment Service created by the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k, and administered by the the U.S. Department of Labor.

7. The regulations which govern the Employment Service System are set forth at 20 C.F.R. § 653.500 et seq. (1982) (formerly located in 20 C.F.R. § 653.108(1978)). According to these regulations, a local office which receives a Clearance Order first attempts to recruit workers in the local labor market. 20 C.F.R. § 653.501(d)(7) (formerly 20 C.F.R. § 653.108(c)(7)). If the local office is unable to recruit sufficient local workers, the local office will place the Clearance Order into the intrastate clearance system for recruitment of workers throughout the state.

20 C.F.R. § 653.501(d)(7) (formerly 20 C.F.R. § 653.108(c)). If the state agency is unable to locate sufficient workers within the state, the state agency places the Clearance Order into the interstate clearance system for circulation to so-called labor supply states. 20 C.F.R. § 653.501(e)(2) (formerly 20 C.F.R. § 653.108 (d)). The U.S. Department of Labor determines the areas of labor supply to which the Clearance Order shall be sent. 20 C.F.R. § 653.501(e)(3) (formerly 20 C.F.R. § 653.108(e)(2)(i)(A)). See also 20 C.F.R. § 655.205(a).

8. The Clearance Orders submitted by defendants were submitted in accordance with 20 C.F.R. § 655.200 et seq., the temporary foreign labor certification regulations.

9. The extent of the circulation of Clearance Orders submitted by defendants was determined solely by the availability of local labor and the distribution policies of the U.S. Department of Labor, and defendants made no specific requests concerning the circulation of their Clearance Orders.

10. Under the applicable law of the United States at the time that defendants submitted their Clearance Orders in April, 1978, the Commonwealth of Puerto Rico was not eligible to participate in the federal employment system created under the Wagner-Peyser Act. See Hernandez Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977), cert. denied, 436 U.S. 945 (1978). In Quiros, the First Circuit held that Puerto Rican workers could not be considered "available" within the meaning of the Immigration and Nationality Act as long as the special conditions placed on their employment by Puerto Rico Public Law 87 remained in effect.

11. Following the United States Supreme Court's denial of certiorari in the Quiros case on June 5, 1978, the legislature of



of Puerto Rico took steps to amend Puerto Rico Public Law 87. On July 13, 1978, the Commonwealth of Puerto Rico enacted into law an amendment which authorized the Commonwealth Secretary of Labor and Human Resources to exempt prospective employers from Public Law 87 under certain circumstances. Thereafter, the U.S. Department of Labor, at the request of the Commonwealth of Puerto Rico Secretary of Labor, forwarded the defendants' Clearance Orders to Puerto Rico on August 2, 1978. The Puerto Rico Department of Labor and Human Resources then proceeded to recruit Puerto Rican workers against defendants' Clearance Orders.

12. Defendants' Clearance Orders clearly specified the manner in which interested workers were to be referred to defendants. Item 15 of defendants' Clearance Orders, dealing with referral instructions, stated "referral of crews and of individuals shall be made through the Winchester local office...." Item 16, dealing with collect calls, stated that collect calls were to be accepted by the Order Holding Office, and Item 19 gave the address of that office (Virginia Employment Commission, P.O. Box 845, Winchester, Virginia 22601), the name of the representative at that office (Eugene Schultz, Farm Placement Supervisor), and the telephone number of that office (703/662-2549).

13. At no time did either the plaintiffs, the Puerto Rico Department of Labor and Human Resources, or anyone else contact the said Winchester local office or defendants regarding referral of the said plaintiffs against defendants' Clearance Orders.

14. At no time did defendants execute a Delegation of Hiring Authority authorizing either the U.S. Department of Labor or the Puerto Rico Department of Labor and Human Resources to act as their agent for purposes of hiring.

15. Puerto Rican workers were recruited with respect to the defendants' Clearance Orders without any of the defendants or their duly designated agents being contacted.

16. Prior to the arrival of plaintiffs in Virginia, the Commonwealth of Puerto Rico Secretary of Labor sent a TWX to the Regional Administrator of the Employment and Training Administration in Philadelphia, Pennsylvania listing the names of Puerto Rican workers who had accepted the Clearance Orders of particular Virginia apple growers. When the plaintiffs arrived by bus in the Winchester area in early September, 1978, the passenger manifests prepared by the Puerto Rico Department of Labor listed the name of the particular Virginia apple grower to whom the plaintiff was assigned. The plaintiffs did not in all cases work for the same Virginia apple growers to whom they had been assigned either on the TWX referred to above or the passenger manifest.

17. With respect to the items mentioned in Stipulation No. 16, the plaintiffs fall into one of six different categories vis-a-vis the defendants against whom they obtained default judgments in Puerto Rico. The categories depend on whether a particular plaintiff was listed on the TWX as being assigned to the defendant grower against whom he later obtained the default judgment; whether a particular plaintiff was listed on the passenger manifest as being assigned to the defendant grower against whom he later obtained the default judgment, and whether a particular plaintiff actually worked for the defendant grower against whom he later obtained the default judgment. The breakdown of the six categories are as follows:

<u>Category</u>	<u>Listed on TWX for Defendant</u>	<u>Listed on Passen- ger Manifest for Defendant</u>	<u>Actually Worked for Defendant</u>
1	No	No	No
2	No	No	Yes
3	No	Yes	Yes
4	No	Yes	No
5	Yes	Yes	Yes
6	Yes	Yes	No

18. The plaintiffs who fall into each of the six categories specified in Stipulation No. 17 are as follows:

Category 1: Fernandos Varges Soto (Docket No. 4024)  
Luis A. Medina Ponce (No. 4035)  
Wilson Acevedo Perez (No. 4039)  
Juan Veya Ruiz (No. 4042)  
Abigail B. Quinones (No. 4043)  
Edwin Acevedo Caro (No. 4044)  
Miguel Laboy Colon (No. 4047)  
Augustin Morales Pagan (No. 4052)  
Eddie Perez Vega (No. 4053)

Category 2: To be supplemented later

Category 3: Catalino L. Feliciano (No. 4025)  
Carlos Santiago (No. 4026)  
Santiago Lebron, Jr. (No. 4027)  
Juan R. Mariani (No. 4048)  
Benjamin R. Rodriguez (No. 4049)  
Angel M. F. Rivera (No. 4050)

Category 4: Carlos Flores Keyes (No. 4028)  
William Del Valle Fonseca (No. 4029)  
Rufino E. Carrasquillo (No. 4030)  
Jose R. Garcia Colon (No. 4031)  
Jose O. P. Hernandez (No. 4032)  
Porfirio R. Esparra (No. 4033)  
Saul Nieves Caban (No. 4034)  
Jose A. Arrizagu (No. 4036)  
Jose Ortiz Hernandez (No. 4037)  
Efrain A. Cordero (No. 4038)  
Ramon Hernandez Silva (No. 4040)  
Guillermo Solo Lopez (No. 4041)  
Nelson M. Santiago (No. 4045)  
Edgardo N. Rodriguez (No. 4046)  
Edy Perez Vega (No. 4051)  
Jose M. Perez Medina (No. 4054)

Antonio Echevarrin (No. 4055)  
Angel Perez Mendez (No. 4056)

Category 5: To be supplemented later.

Category 6: To be supplemented later.

19. At no time did the defendants withdraw their respective  
Clearance Orders.

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VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO, et al.,

Plaintiffs,

v.

At Law Nos. 4024-4056  
Consolidated Cases

ORCHARD MANAGEMENT COMPANY, et al.,

Defendants.

PLAINTIFFS' SUPPLEMENTAL BRIEF

INTRODUCTION

This Supplemental Brief is submitted to augment and update the Brief filed by the Plaintiffs in November, 1983. In 1983, there were three other identical state cases pending. The facts from the case at bar compared with the facts from these three other state court decisions are indistinguishable. Fruit growers from New York, Maryland, West Virginia and Virginia utilized the Wagner-Peyser system allowing government offices in and among the states and Puerto Rico to recruit workers to harvest their crops. The fruit growers knew that recruiting could take place in Puerto Rico and had that information confirmed before workers left Puerto Rico. All of the fruit growers from these four states accepted default judgments in Puerto Rico and all affirmatively defended in their respective states on the ground that Puerto Rico courts did not have valid long-arm jurisdiction consonant with the due process clause of the United States Constitution. The cases from New York, Maryland and West Virginia are now concluded with each ending favorably for farmworker plaintiffs.



Since 1983, only this case from Virginia is not final.

In 1992 the United States Supreme Court denied certiorari in Drilake Farms, Inc. v. Surrill, \_\_\_ W.Va. \_\_\_, 411 S.E.2d 248 (1991), cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1662 (1992) (Drilake is attached as Exhibit A) the farmworkers' case from West Virginia wherein the United States Solicitor General's office recommended the denial of certiorari thereby rendering all of the state decisions, heretofore decided, in tact. (U.S. Solicitor General's Brief is attached as Exhibit D.)

#### STATEMENT OF FACTS

The parties have stipulated to the facts in this case and they are a part of the Court's record and file. In addition, each side has summarized the pertinent facts in their first Briefs to the Court, each of the other 3 state courts who have ruled in this matter have recited facts indistinguishable from those here, and the Brief of the United States Solicitor General in the Drilake case (Exhibit D), has again summarized the facts. Furthermore, the U.S. Supreme Court also summarized how the Wagner-Peyser Act system functions. Snapp v. Puerto Rico, 458 U.S. 592 (1982) (Attached as Exhibit E). It would appear unnecessary to reiterate those facts yet one more time here.

#### ARGUMENT

THE ACTIONS OF DEFENDANTS IN SUBMITTING JOB OFFERS TO PLAINTIFFS UNDER THE WAGNER-PEYSER LEGISLATIVE SCHEME GAVE THE PUERTO RICAN COURTS JURISDICTION TO RENDER THE JUDGMENTS ENFORCEABLE IN VIRGINIA UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION.

The issue as framed above is identical to the framing in Plaintiffs' initial 1983 Brief. It is also substantially similar to the issues addressed by each of the state courts and by the U.S. Solicitor General, as will be discussed. Because Plaintiffs' initial Brief adequately discusses the law pertaining to the long arm statute of Puerto Rico and its relationship to the Due Process Clause of the United States Constitution, this discussion will focus on the case law that has developed since 1983.

#### State Decisions

As stated earlier, there are now three state court decisions which are final:

1. Drilake Farms, Inc. v. Surrill, \_\_\_ W.Va. \_\_\_, 411 S.E.2d 248 (1991), cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1662 (1992) (Exhibit A);

2. Rios v. Altamont Farms, Inc., 64 N.Y.2d 792, 476 N.E.2d 312, 486 N.Y.S.2d 913, (1985) (attached hereto as Exhibit B) rev'g. Rios v. Altamont Farms, Inc., 475 N.Y.S.2d 520 (N.Y. App. 1984), cert. denied, 476 U.S. 905 (1985) (attached hereto as Exhibit C); and,

3. Gregory-Ayala v. Rinehart Orchards, Inc., Civil No. 13,575 (Cir. Ct. for Washington Co., Md. 1/23/86) (previously submitted).

The most often quoted decision is from the lower court dissent of Justice Levine in Rios v. Altamont Farms, Inc. (Exhibit C). The New York Court of Appeals, the highest court of

that state, adopted the Rios dissent as their opinion when they reversed the lower court. In addition, the Supreme Court of Appeals of West Virginia, the highest court of that state, relied upon Justice Levine's dissent extensively in Drilake. The plaintiffs, likewise, adopt the decision of Justice Levine and the decision of the Supreme Court of Appeals of West Virginia as their argument here.

The plaintiffs offer several added observations. First, the Brief of the U.S. Solicitor General in Drilake is attached as an exhibit (Exhibit D) because, like the neutrality of a court, the Solicitor General had no vested stake in the outcome once they concluded that there were no special federal implications of the West Virginia decision. The Solicitor General analyzed the Supreme Court of Appeals of West Virginia decision and decisions cited by the parties and concluded that there were no cases in conflict. The Solicitor General cited the decisions in Rios v. Altamount, Neizel v. Williams, 543 F.Supp. 899 (M.D. Fla. 1982) (attached hereto as Exhibit G) and Garcia v. Vasquez, 524 F.Supp. 40 (S.D. Tex. 1981) (attached hereto as Exhibit H) as consistent holdings with the decision in Drilake. Exhibit D, pgs. 12-13. Like the Supreme Court of Appeals of West Virginia, the Solicitor General distinguished the cases of Chery v. Bowman and Lopez-Rivas v. Donovan often cited by the defendants. Drilake, 411 S.E.2d at 254-55, Exhibit A; Brief of U.S. Solicitor General, pgs. 13-16, Exhibit D.

A second observation involves the history of these

defendants with regard to Puerto Rican workers. Several weeks before the plaintiffs were expected in Virginia, the fruit growers association of Frederick County, Virginia, which includes all of the defendants here, filed suit in federal district court in Harrisonburg seeking an injunction so that they could recruit foreign workers in addition to the domestic workers they were expecting. Frederick County Fruit Growers v. Marshall, No. 78-0086-H (W.D. Va. Aug. 31, 1978) appeal dismissed and remanded, 594 F.2d 857 (4th Cir. 1979) (unpublished). Significantly, the government of the Commonwealth of Puerto Rico asked the district judge for permission to intervene, which was granted, and took a position, at court, which informed the district court and the fruit growers about the massive efforts at recruiting farm workers for the upcoming harvest. Later, in Snapp v. Puerto Rico, 458 U.S. 592, 598 (1982) Justice White stated at footnote 5:

The theory of the complaints was that the apple growers were discriminating against the Puerto Ricans in favor of Jamaican workers. In August 1978, apple growers in several states, including Virginia, filed suit in federal District Court seeking an injunction against the United States Secretary of Labor, the Commissioner of the Immigration and Naturalization Service, and their subordinates, to permit the recruitment and employment of foreign workers. Puerto Rico was allowed to intervene in this suit to represent the interests of its residents in these work opportunities. The growers complained that the federal employment service had not produced sufficient laborers to assure that the harvest, which was about to begin, could be successfully accomplished with sufficient speed. The District Court issued a preliminary injunction ordering that a certain number of foreign workers be allowed to enter this country to pick apples. Frederick County Fruit Growers Association, Inc. v. Marshall, No. 78-0086(H) (W.D. Va. Aug. 31, 1978). The Jamaicans secured entry under this order. Prior to issuing this injunction, however, the Court was assured by the apple growers that they recognized their obligation to give priority to Puerto Rican workers,

notwithstanding the court order. Puerto Rico's complaint was founded on the charge that the apple growers failed to meet this commitment, and, thus, failed to meet their obligation under federal law. (Emphasis added.)<sup>1</sup>

The representation described by Justice White and made by these same defendants to a federal judge in Virginia adds a factual element that was not present in Drilake, Rios, Gregory-Ayala, Neizel and Garcia. The defendants argue to this Court that they had no earthly idea that Puerto Rican workers actually might be recruited. They say their job offers might have gone to countless states and territories of this country. Thus far, apple growers have not succeeded with this argument. Moreover, every court has specifically found that defendant apple growers have purposefully availed themselves of the interstate recruitment system under the Wagner-Peyser Act, that defendant apple growers knew recruitment was taking place in Puerto Rico, that farm workers from Puerto Rico were arriving in 4 eastern states, that many of the Puerto Rican workers who arrived performed some work without pay and that at no time did defendant apple growers withdraw or cancel their job offers. Only in Virginia did the defendants "assure" a judge weeks before the arrival of Puerto Rican farm workers (same Plaintiffs here) that Puerto Rican farm workers would be a "priority" to them.

A third observation is that Justice Levine's factual account best fits the pertinent facts to the applicable law. Rios v.

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<sup>1</sup> This statement comes from Judge Turk's opinion in the same Snapp case at the district court level. Commonwealth of Puerto Rico v. Snapp, 469 F.Supp. 928, 930 (W.D. Va. 1979). (Attached hereto as Exhibit F).



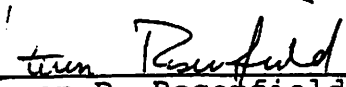
Altamont, 475 N.Y.S.3d at 524-25 (Exhibit C). Justice Levine cogently weaves those facts through a minimum contacts review, Rios, at 525-26, through a fair play and substantial justice analysis, Rios, at 526, and concluding with a summary of the facts and law of the case, Rios, at 526. The New York Court of Appeals and the Drilake court, likewise, agreed with Justice Levine. The Drilake court summarized their conclusion stating that the defendant apple growers "purposefully availed themselves of the Puerto Rican government's employment services in order to solicit workers at stated contract terms." 411 S.E.2d at 253.

#### CONCLUSION

The defendants have a formidable task. Every state to decide the issue pending before this Court has decided in favor of the plaintiff farm workers. The two federal district courts to decide this same issue also found in favor of farmworkers. The United States Supreme Court has twice denied certiorari to state decisions (New York and West Virginia) favorable to plaintiffs and the U.S. Solicitor General concluded there was not a conflict with any other court decision ruling favorably with the plaintiff farmworkers.

This Court is asked to apply its own judgment, but to do so with the benefit of other considered judicial judgments. This Court is requested to apply the Full, Faith and Credit Clause of the United States Constitution and enter judgment against the apple growing defendants in favor of the plaintiffs.

Respectfully submitted,  
FERNANDO VARGES SOTO, et al.  
By Counsel

  
\_\_\_\_\_  
Steven D. Rosenfield  
Attorney at Law  
917 E. Jefferson Street  
Charlottesville, Virginia 22902  
(804) 296-4139  
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Plaintiffs' Supplemental Brief was mailed to William A. Johnston, III, Harrison & Johnston, 21 South Loudon Street, Winchester, Virginia 22601, on this 27th day of May, 1994.

  
\_\_\_\_\_  
Steven D. Rosenfield

6-13-94

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO, et al.,

Plaintiffs,

v.

At Law Nos. 4024-4056  
Consolidated Cases

ORCHARD MANAGEMENT COMPANY, et al.,

Defendants.

PLAINTIFFS' REPLY BRIEF

This memorandum is intended to address certain claims made by the Defendants in their Updated Brief recently filed. In summary, the Defendants hinge their argument on their assertion that submission of Job Offers into the Wagner-Peyser system did not constitute an offer of employment to farm workers in Puerto Rico because it was not foreseeable that their offers would go to Puerto Rico. In support of their assertion, the Defendants rely on three federal court decisions, which they attached to their Updated Brief.

Defendants reliance on federal court decisions

The defendants rely on three federal district court decisions which they argue is favorable to their position: Lopez-Rivas v. Donovan, 629 F.Supp. 564 (1986); Chery v. Bowman, 901 F.2d 1053 (1990); Western Colorado Fruit Growers Ass'n. v. Marshall, 473 F.Supp. 693 (1979). These cases offer no help to the defendants on the issue before this Court.

The West Virginia Supreme Court and the U.S. Solicitor General<sup>1</sup> both rejected the defendants' reliance on the above-cited cases. In Surrillo v. Drilake Farms, Inc., 411 S.E.2d 248, 254-55 (1991) the West Virginia high court said that Lopez-Rivas was a case decided on a different issue from the personal jurisdiction issue before the court (quoting from the district court disposing of the case under an issue of subject matter jurisdiction, 629 F.Supp. at 567); the West Virginia court, at p. 255, distinguished the facts in Chery recognizing that Chery distinguished itself from Rios: "In Rios , unlike this case, the defendant apple growers received substantial benefits from the forum state's (Puerto Rico's) labor department in recruiting and processing the laborers who ultimately became the plaintiffs" Chery at 1957; and, the court, at p. 254, pointed out that in Western Colorado Fruit Growers and Lopez-Rivas none of the farm workers actually appeared at the job site.<sup>2</sup>

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<sup>1</sup> At the request of the United States Supreme Court the U.S. Solicitor General was asked to address whether certiorari should be granted in Surillo. Exhibit D of Plaintiffs' recently filed Supplemental Brief contained the Brief of the Government. Inadvertently, the last page of the Solicitor General's Brief was not attached. Page 16 merely said:

Conclusion  
The petition for a writ of certiorari should be denied.  
Respectfully submitted.  
Kenneth W. Starr  
Solicitor General [along with the names and  
titles of 4 other attorneys in that office]  
August 1992

<sup>2</sup> In the case at bar, some of the plaintiffs arrived and worked for certain defendants, Stipulation of Facts ¶16 & ¶17; many others waited in Puerto Rico for transportation which was not provided.

[

The U.S. Solicitor General opined that "[e]very court presented with the question at issue in this case has concluded that personal jurisdiction exists in forum States over employers who hire plaintiffs from those States through the Wagner-Peyser system." The Solicitor General went on to analyze the same three cases cited by defendant in the case at bar substantially the same way as the West Virginia Supreme Court of Appeals. Brief for the United States as Amicus Curiae, pgs. 12-15 (Exhibit D of Plaintiffs' Supplemental Brief). The defendants' reliance on the federal decisions in Lopez-Rivas, Chery and Western Colorado is misplaced and is a desperation reach for some authority to support their position.

#### International Shoe test

In the final analysis, the state courts of New York, Maryland and West Virginia found that the two part test in International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 has been met by the Puerto Rican farmworkers. Citing McGee v. International Life Ins. Co., 355 U.S. 220, 222-23, 78 S.Ct. 199, 200-01, 2 L.Ed.2d 223 (1957), Justice Levine points out that "[i]t is now well settled. . . that the requisite minimum contacts can be established without the defendant having ever physically entered or acted in the forum State; the test can be satisfied solely through a defendant's communications to that State." (Emphasis in original.) Rios v. Altamont Farms, 475 N.Y.S.2d at 525-26 (Justice Levine dissenting) (Exhibit C of



Plaintiffs' Brief). The "minimum contacts" required for the first part of the International Shoe test was found easily by the courts in West Virginia, New York and Maryland. Surrillo v. Drilake Farms, Inc., 411 S.E.2d 248, 253 (W.Va. 1991) ("it seems clear that the defendants purposefully availed themselves of the Puerto Rican government's employment services in order to solicit workers at stated contract terms and that this solicitation resulted in Puerto Rican workers agreeing to the terms communicated to the defendants"); Rios v. Altamont Farms, 475 N.Y.S.2d at 526 (Justice Levine dissenting) ("There can be no question whatsoever that in filing the orders in local New York State employment offices, defendants deliberately set in motion the job recruitment machinery of the interstate clearance system"); Gregory Ayala v. Rinehart Orchards No. 13,575 Washington County, Maryland, at 5 (attached as Exhibit I hereto) ("Application of the [the two pronged test] to the facts of this case leaves no doubt that Appellees' activities constituted minimum contacts with Puerto Rico such that Appellants' lawsuits do not offend notions of fair play and substantial justice.")

To accept the defendants' position that once they put their job offers in the interstate clearance system they were immune from suit from any farm worker in any state outside of Virginia arrogantly defies constitutional standards and contract theory. These defendants knew that their job offers would be going to Regions all over the country (Attachment 2 to Plaintiffs' 1983

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Brief) for the benefit of finding them labor.<sup>3</sup> The Wagner-Peyser Act was a blessing to fruit growers because it gave them a system of hiring laborers whereby the various state sovereignties would act as recruiters and processors. Puerto Rican workers had been used the preceding year, 1977, and the government of Puerto Rico had intervened in Federal District court in Virginia 3 weeks before the 1978 harvest to advocate for their workers. The defendants cannot now claim they did not know their offers of employment would go to Puerto Rico or could not have expected Puerto Rican workers.

The second element of the International Shoe test seeks to apply the foundation of due process analysis: is the maintenance of the suit in the forum state consistent with notions of fair play and substantial justice. Gregory-Ayala v. Rinehart Ochards at 5. The Maryland Court concluded:

The second element of the International Shoe test is easily satisfied in this case. Requiring [farmworkers] to defend these actions in Puerto Rico would be entirely consistent with notions of fair play and substantial justice. The argument in favor of jurisdiction is especially compelling when the relative burdens on each party of litigating in a distant forum are compared. [The Farmworkers] are impoverished, Spanish-speaking migrant farm

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<sup>3</sup> The defendants' assert at p. 10 of their Updated Brief that they did not benefit from the recruitment conducted by the Puerto Rican government. It is preposterous to believe that these business defendants would have engaged in a process of allowing others to recruit in their behalf had there not been some benefit to them. The entire Wagner-Peyser system was designed to assist, aid and help fruitgrowers and other agricultural businesses in finding American laborers to do seasonal jobs and which requires large pools of laborers. Even the Chery court, upon which the defendants heavily rely, said that the apple growers "received substantial benefits from the forum state's (Puerto Rico's) labor department in recruiting and processing the laborers. . .". Chery at 1057.

workers who willingly traveled over 1500 miles to pick apples for less than the federal minimum wage. [Fruit growers], on the other hand, are business entities that could more easily bear the burden of out-of-state litigation. If [Farmworkers] were required to bring suit in Maryland courts, economical and logistical realities would in effect render the [Fruit growers] judgment-proof. It would be financially impossible for [the Farmworkers] and their witnesses (most likely fellow migrant workers) to travel to Maryland for the trial and any related court proceedings. Imposing the burden of producing defense witnesses in Puerto Rico hardly amounts to a denial of due process when a converse ruling effectively would confer upon the orchardists total immunity from suit.

Gregory-Ayala at 9, (Exhibit I).

Likewise, Justice Levine compared the relative positions of the parties and said that "fair play and justice demand that [the farmworkers] be permitted to litigate their claims in their home forum." Rios v. Altamount Farm at 528, (Exhibit C).

The defendants do not address this prong of the International Show test in any brief that has ever been submitted by them to this Court. It must be conceded that all of the fairness equities are on the side of the farmworkers.

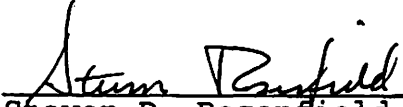
This Court is urged to follow the reasoning and analysis of the 3 other states to reach a final decision. Indeed, the facts before this Court are more compelling because of the assurances given by these same defendants to a federal judge 3 weeks before the harvest that they would "give priority" to Puerto Rican workers.

#### CONCLUSION

The defendants cannot overcome the Full and Faith and Credit Clause of the U.S. Constitution and show that a due process


violation occurred by the Puerto Rican trial courts in rendering default judgments in favor of the Puerto Rican farmworkers. Clearly, the fruit growers before this Court and along the east coast made a calculated decision to reject Puerto Rican workers and to try to rely on Jamaican workers. Their strategy included allowing default judgments to occur in Puerto Rico and to defend in their respective states on a claim that Puerto Rican courts lack long arm jurisdiction. Virginia is the last state in which this issue is being litigated. There can be no way to distinguish the Virginia cases from those of West Virginia, New York and Maryland. The strategy followed by the Virginia fruit growers was wrong. Judgment is asked for the individual plaintiff farm workers.

Respectfully submitted,  
FERNANDO VARGES SOTO, et al.  
By Counsel

  
Steven D. Rosenfield  
Attorney at Law  
917 E. Jefferson Street  
Charlottesville, Virginia 22902  
(804)296-4139

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Plaintiffs' Reply Brief was mailed to William A. Johnston, III, Harrison & Johnston, 21 South Loudon Street, Winchester, Virginia 22601, on this 13th day of June, 1994.

  
Steven D. Rosenfield

11/9/94

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

FERNANDO VARGES SOTO, ET AL,

Plaintiffs

v.

At Law Nos. 4024-4056  
Consolidated Cases

ORCHARD MANAGEMENT COMPANY, ET AL,

Defendants

FINAL ORDER

These consolidated cases are now ready for decision after more than 10 years of litigation. These cases originated in the Courts of Puerto Rico which rendered judgments against the Defendants, in favor of the Plaintiffs. The Plaintiffs sought to enforce their judgments in Virginia and the Defendants challenged the jurisdiction of this Court. The parties stipulated to the facts of this case and each side filed a Motion for Summary Judgment. On or about February 1, 1994, a Substitute Judge was designated by the Chief Justice of the Virginia Supreme Court to bring this matter to a final resolution. This Court heard argument of counsel on May 9, 1994, and scheduled briefing by the parties which was completed on June 14, 1994.

Based upon the stipulated facts submitted by the parties and relying on the decisions cited by Plaintiffs, summary

judgment is GRANTED in behalf of each Plaintiff and DENIED for each Defendant. The specific amounts of judgment for each Plaintiff against the corresponding Defendant follows.

Certain Plaintiffs were awarded attorney's fees from the Puerto Rican Courts which shall be a part of the judgment award.

<u>Plaintiff</u>	<u>Defendant</u>	<u>Judgment Amount</u>	<u>Judgment P.R.</u>
Santiago Lebron, Jr.	Orchard Management Co.	\$1,897.45	10/10/79
Carlos Santiago	Orchard Management Co.	\$1,879.45	10/10/79
Catalino L. Feliciano	Orchard Management Co.	\$1,177.50	1/30/80
Fernando Vargas Soto	Orchard Management Co.	\$2,467.42	11/21/79
Miguel Laboy Colon	Ray D. Rinker Estate	\$1,140.64 200.00	1/4/80 Atty Fee
Juan R. Mariani	Henry Brumback and Woodbine Farm, Inc.	\$2,025.88	8/23/79
Benjamin R. Rodriguez	Henry Brumback and Woodbine Farm, Inc.	\$2,062.32	8/23/79
Angel M.F. Rivera	Stanley L. Bauserman	\$1,004.00	6/29/79
Augustin M. Pagan	Garland R. Cather	\$2,018.96	5/30/80
Edy Perez Vega	Garland R. Cather	\$2,018.96	5/30/80
Angel Perez Mendez	Garland R. Cather	\$2,018.96	5/30/80
Antonio Eschevarrin	Garland R. Cather	\$2,018.96	5/30/80
Jose M. Perez Medina	Garland R. Cather	\$1,077.26	2/11/81
Eddie Perez Vega	Garland R. Cather	\$1,276.96	9/5/80
Saul Nieves Caban	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee

Luis A. Medina Ponce	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Edgardo N.R.Rodriguez	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Jose A. Arrizagu	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Jose O. Hernandez	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Efrain A. Cordero	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Wilson Acevedo Perez	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Ramon Hernandez Silva	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Guillermo Solo Lopez	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Nelson Merc. Santiago	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Juan Veya Ruiz	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Abigail B. Quinones	Philip Graize and Fred Land	\$1,518.96 300.00	10/22/79 Atty Fee
Edwin Acevedo Caro	Philip Graize and Fred Land	\$2,063.00 300.00	2/9/81 Atty Fee
William D.V. Fonseca	Messick and Beaver	\$4,315.64 200.00	1/28/80 Atty Fee
Rufino E.Carrasquillo	Messick and Beaver	\$4,060.64 200.00	1/28/80 Atty Fee
Carlos Flores Reyes	Messick and Beaver	\$4,128.64 200.00	1/28/80 Atty Fee
Jose R. Garcia Colon	Messick and Beaver	\$4,130.64	6/16/80
Jose O.P. Hernandez	Messick and Beaver	\$4,130.64	6/16/80
Porfirio R. Essparra	Messick and Beaver	\$4,120.64	6/16/80

This Court also awards to each Plaintiff interest at the legal rate of 6% from the date of judgment in Puerto Rico up through the date of filing these lawsuits in Virginia in March, 1982, after which time the judgment rate of interest shall be computed pursuant to Virginia law:

- 3/82 - 6/30/83 at the judgment interest rate of 10%;
- 7/1/83 - 6/30/87 at the judgment interest rate of 12%;
- 7/1/87 - 6/30/91 at the judgment interest rate of 8%;
- 7/1/91 - present at the judgment interest rate of 9%.

Counsel for Defendants having indicated that Defendants intend to seek an appeal from the judgment herein and that all Defendants wish execution of the judgments against them, and each of them, to be suspended during the appeal, the Court herewith fixes the aggregate penalty of the Appeal Bond for Suspension of Execution of Judgments (under § 8.01-676.1C, Code of Virginia) in the sum of ONE HUNDRED SEVENTY-SEVEN THOUSAND THREE HUNDRED EIGHTY-FIVE DOLLARS AND NINETY-FIVE CENTS (\$177,385.95), the liability of each Defendant (as well as the corresponding Principal and Surety on the Appeal Bond for Suspension) being several, not joint. The execution of the judgments herein is hereby suspended during the pendency of the appeal, subject to timely filing of the Appeal Bond and timely prosecution of the appeal.

The Clerk is directed to send a certified copy of this Order



BK985861425

to counsel of record.

Lewis Hall / Gifford  
Judge Designate

November 9, 1994  
Date

Seen:

Steven D. Tsenfeld  
Counsel for Plaintiffs

William Johnston  
Counsel for Defendants

### ASSIGNMENT OF ERROR

The Trial Court erred in entering the Order of November 9, 1994, granting summary judgment in favor of the Plaintiffs and denying summary judgment in favor of the Defendants, because:

A. The Puerto Rican Courts lacked personal jurisdiction over Defendants.

B. The Puerto Rican Courts found that jurisdiction rested on the existence of employment contracts negotiated through the Puerto Rico Department of Labor and Human Resources. Plaintiffs now admit that was error.

C. Defendants had no "minimum contacts" with Puerto Rico, that is, Defendants did not purposefully avail themselves of the privilege of conducting activities within Puerto Rico.

Constitution, statutes and regulations:	Page
U.S. Const.:	
Art. IV, § 1 (Full Faith and Credit Clause)....	8
Amend. V (Due Process Clause) .....	8, 11
Immigration and Nationality Act, 8 U.S.C. 1101 <i>et seq.</i> .....	1
Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 301(c), 100 Stat. 3411 .....	2
8 U.S.C. 1188 .....	2, 3
Wagner-Peyser Act of 1933, 29 U.S.C. 49 <i>et seq.</i> ....	2
Act of June 22, 1962, No. 87, 1962 P.R. Laws 228.....	4
Act of July 21, 1977, No. 7, 1977 P.R. Laws 553.....	4
Act of July 13, 1978, No. 54, 1978 P.R. Laws 537.....	4
8 C.F.R. 214.2(h) (3) (1978) .....	2
20 C.F.R.:	
Sections 653.500 <i>et seq.</i> (1991) .....	3
Sections 655.90 <i>et seq.</i> (1991) .....	3
Section 655.200 (a) (1978) .....	2
Section 655.201 (b) (1978) .....	3
Section 655.201 (c) (1978) .....	2
Section 655.202 (1978) .....	3
Section 655.203 (c) (1978) .....	3
Section 655.204 (b) (1978) .....	3
Section 655.205 (a) (1978) .....	3
Section 655.206 (a) (1978) .....	2, 3
29 C.F.R. Pt. 501 .....	12

# In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-1208

DRILAKE FARMS, INC., ET AL., PETITIONERS

*v.*

JULIO SURREILLO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

## STATEMENT

1. During the time period relevant to this case, regulations promulgated pursuant to the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, imposed restrictions on the ability of agricultural employers within the United States to hire temporary foreign

workers. Agricultural employers desiring to hire temporary foreign workers were required to obtain the Department of Labor's certification that qualified United States workers were unavailable and that the employment of temporary foreign workers would not adversely affect the wages and working conditions of similarly employed United States workers. 8 C.F.R. 214.2(h)(3) (1978).<sup>1</sup> Before providing such certification, the Department of Labor required employers to utilize the interstate employment referral system created pursuant to the Wagner-Peyser Act of 1933, 29 U.S.C. 49 *et seq.* (Wagner-Peyser system), in an attempt to recruit workers from within the United States to fill available job openings. See 20 C.F.R. 655.201(c) (1978). Employers could obtain permission to employ temporary foreign workers only if efforts to recruit United States workers through the Wagner-Peyser system failed. 20 C.F.R. 655.200(a), 655.206(a) (1978); see generally *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 594-596 (1982).

To initiate the process leading to the hiring of foreign workers, employers were required to submit an application for certification to employ temporary foreign workers to a local employment office at least 80 days before the employers' "date of need." 20 C.F.R. 655.200(a) (1978). The application had to include a job offer giving notice of the job opening and detailing the terms and conditions of employment, including the employer's promise that "[t]he job oppor-

<sup>1</sup> This regulatory requirement was essentially codified by the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 301(c), 100 Stat. 3411, as amended (presently codified at 8 U.S.C. 1188).

tunity is open to all qualified U.S. workers." 20 C.F.R. 655.201(b), 655.202, 655.203(c) (1978). The local employment office would then prepare a job clearance order and begin recruiting workers for the employer in the local labor market; in addition, the job clearance order would be circulated to other regions of the country through the Wagner-Peyser system in an attempt to fill the employer's needs. 20 C.F.R. 655.204(b), 655.205(a) (1978). Finally, twenty days in advance of the employer's "date of need," the Department of Labor would certify the number of workers located within the United States and the number of foreign workers, if any, that the employer would be permitted to employ. 20 C.F.R. 655.206(a) (1978).<sup>2</sup>

2. Petitioners are a West Virginia corporation and its officer who sought to hire temporary foreign workers to harvest their fall apple crop in 1978. Pet. App. 29a-30a. In keeping with the requirements of the Immigration and Nationality Act, petitioners submitted to their local employment office an application for certification to obtain foreign labor, together with the requisite job offer. Resp. App. 3a. The job offer, set forth on a Department of Labor "clearance order" form, identified a number of regions to which it would be circulated, including Region II (containing Puerto Rico). *Id.* at 11a, 13a.<sup>3</sup>

<sup>2</sup> Essentially the same system remains in effect today under revised statutory and regulatory provisions. See generally 8 U.S.C. 1188; 20 C.F.R. 653.500 *et seq.*, 655.90 *et seq.* (1991).

<sup>3</sup> At the time petitioners submitted their job clearance order, Puerto Rican workers were considered "unavailable" for employment within the meaning of the Immigration and Nationality Act because of special conditions placed on their

Petitioners did not formally authorize either the Department of Labor or the Puerto Rico Department of Labor and Human Resources to act as their hiring agent. Petitioners did, however, sign the required assurance stating that they would cooperate with the Wagner-Peyser system in recruiting United States workers. Resp. App. 7a. At no time during the hiring process—even after being informed that Puerto Rican workers had been recruited—did petitioners terminate the process by withdrawing their certification application and rescinding their job offer. Pet. App. 49a-50a; Resp. App. 8a-9a.

The Puerto Rican government recruited workers for petitioners. Pet. App. 32a; Resp. App. 5a-6a. The Puerto Rico Department of Labor and Human Resources screened applicants and required workers to obtain the necessary documentation. It also arranged transportation from Puerto Rico to petitioners' job site. Pet. App. 32a.

By letter dated August 16, 1978, the Department of Labor advised petitioners that 19 Puerto Rican workers were available for employment and that it could certify that petitioners were therefore entitled

employment by Puerto Rican law. Act of June 22, 1962, No. 7, 1962 P.R. Laws 228, amended by Act of July 21, 1977, No. 7, 1977 P.R. Laws 553; see generally *Hernandez Flecha Quiros*, 567 F.2d 1154 (1st Cir. 1977), cert. denied, 436 U.S. 945 (1978). Thereafter, while petitioners' clearance order was being circulated, the Puerto Rican legislature amended its laws to exempt workers under the Wagner-Peyser system from those special conditions. Act of July 13, 1978, No. 54, 1978 P.R. Laws 537. At Puerto Rico's request, petitioners' clearance order was then forwarded to the Puerto Rico Department of Labor and Human Resources. Pet. App. 1a-32a & n.2; Resp. App. 5a.

to hire eight temporary foreign workers. Pet. App. 32a-33a; Resp. App. 7a-8a. The letter also indicated that the names and locations of the 19 Puerto Rican workers would be made available at the Winchester office of the Virginia Employment Commission, the local employment office at which petitioners had submitted their job clearance order. Resp. App. 8a. In fact, however, that office furnished to petitioners the names and social security numbers of 13 workers, only two of whom presented themselves for employment. *Ibid.* Twenty-five other Puerto Rican workers, whose names had not been furnished to petitioners, simply arrived unannounced in Winchester on September 8, 1978, the date specified by petitioners. *Ibid.*; Pet. App. 33a.

Petitioners hired all 27 of the Puerto Rican workers who arrived at the work site on September 8, including respondents.<sup>4</sup> After working a short time, respondents were fired. Pet. App. 33a, 50a.

3. Respondents filed three suits in Puerto Rico Superior Court, seeking damages for breach of contract. Although petitioners were notified of the suits, they did not appear, and respondents obtained default judgments against them. Pet. App. 33a; Resp. App. 2a-3a.<sup>5</sup> Respondents then sought to enforce the de-

<sup>4</sup> Respondents are 14 of those workers, together with the parents of two additional workers who were minors at the time. Pet. iii-iv.

<sup>5</sup> The judgments stated that respondents had accepted petitioners' job offer, made in Puerto Rico, and that the resultant contract bound petitioners to provide respondents with a stated quantity of work, but that petitioners had breached that contract by firing respondents prematurely without legal cause or justification.

ault judgments in the West Virginia courts. Pet. App. 34a; Resp. App. 2a.

The West Virginia trial court granted summary judgment for petitioners. Pet. App. 1a-14a, 15a-2a. The court found that the mere transmittal of petitioners' job clearance order to Puerto Rico did not constitute "minimum contacts" sufficient to vest the Puerto Rico courts with *in personam* jurisdiction over petitioners, and that any contracts entered into between petitioners and respondents were formed in Virginia, not Puerto Rico. *Id.* at 4a-10a. Accordingly, the court concluded that the Puerto Rico default judgments were not entitled to full faith and credit.

4. The West Virginia Supreme Court of Appeals reversed. Pet. App. 23a-60a. The court explained that the dispositive question was whether petitioners had sufficient "minimum contacts" with Puerto Rico to establish personal jurisdiction. *Id.* at 37a (citing *Tulko v. Superior Court*, 436 U.S. 84 (1978); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)). In answering that question, the court noted, "[o]ne essential inquiry" was whether petitioners had purposefully acted to obtain benefits or privileges in the forum state. Pet. App. 38a (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 44 U.S. 286 (1980); *Hanson v. Denckla*, 357 U.S. 85 (1958)).

Applying those standards, the court found that petitioners "purposefully availed themselves of the Puerto Rican government's employment services in order to solicit workers at stated contract terms and that the solicitation resulted in Puerto Rican workers agreeing to the terms" offered by petitioners. Pet.

App. 48a. Not only did petitioners "deliberately set in motion the hiring procedures of the interstate clearance system," but they actually knew that workers were being recruited in Puerto Rico on their behalf and that "a number of Puerto Rican workers had been found to fill, at least in part, the jobs the [petitioners] had available." *Id.* at 49a-50a. In addition, the court relied on the fact that "[petitioners] did nothing to reject these workers or to discourage further recruiting" and "even provided them with work for several days before firing them." *Id.* at 50a. Under those circumstances, the court found, "it was reasonably foreseeable that the [petitioners] would be sued in Puerto Rico." *Ibid.*

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## DISCUSSION

In our view, the determination of whether an agricultural employer should be subject to out-of-state litigation based upon interstate recruitment activities under the auspices of the Wagner-Peyser system—like other questions of personal jurisdiction—necessarily depends upon the particular facts and circumstances of the case. In this case, the West Virginia Supreme Court of Appeals did not adopt an inflexible rule subjecting all agricultural employers using the Wagner-Peyser system to jurisdiction for any related claim in any State. Instead, the court determined that petitioner's own knowledge, acts, and omissions made it reasonable for the courts of Puerto Rico to assume jurisdiction over respondents' claims for breach of contract.

The West Virginia Supreme Court of Appeals' determination does not frustrate the federal interest in the effective operation of the Wagner-Peyser system.

It also does not conflict with any decisions of this Court or of any other court. To be sure, the correctness of the decision below is open to question, but in the final analysis that decision amounts to nothing more than a fact-bound application of settled law. We accordingly believe that further review is unnecessary.

1. a. The West Virginia Supreme Court of Appeals correctly articulated the established legal standards that govern this case. As the court recognized, the Full Faith and Credit Clause makes the valid judgments of the courts of one State enforceable in all other States. *Shaffer v. Heitner*, 433 U.S. 186, 210 (1977). A judgment rendered without *in personam* jurisdiction, however, violates due process, and is therefore "void in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

It is well settled that the Due Process Clause permits a state court to exercise personal jurisdiction over a non-resident defendant only if there exist "minimum contacts" between the defendant and the forum State "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). This Court has abandoned "more formalistic tests that focus[] on a defendant's 'presence' within a State in favor of a more flexible inquiry into whether a defendant's contacts with the forum made it reasonable, in the context of our federal system of government, to require it to defend the suit in that State." *Quill Corp. v. North Dakota*, 112 S. Ct. 1904, 1910 (1992).

Thus, "[w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there," due process is satisfied "if the defendant has 'purposefully directed' his activities at residents of the forum \* \* \* and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-473 (1985) (citations omitted); see *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 297; *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

In *Burger King*, 471 U.S. at 473, the Court applied these due process principles to a forum's assertion of jurisdiction over claims arising out of a contract between residents of different States. In that case, residents of Michigan entered into a contract with a Florida corporation, Burger King Corporation, authorizing the operation of a Burger King franchise in Michigan. When the franchisees failed to make payments due under the terms of the franchise, Burger King terminated the agreement, and instituted an action against the franchisees in federal court in Florida. On the facts presented, the Court held that the franchisees could reasonably be subjected to suit in Burger King's home State of Florida.

Although the Court stated that entering into a contract with an out-of-state party is not itself sufficient to create jurisdiction in the other party's forum State, 471 U.S. at 478, it reasoned that parties who "purposefully derive benefit" from their "interstate activities" can be held responsible for "consequences that arise proximately from such activities." *Id.* at 473. The Court emphasized that "the Due Process Clause may not readily be wielded as a territorial

shield to avoid interstate obligations that have been voluntarily assumed." *Id.* at 474. The Court concluded that it was not fortuitous to subject the defendant franchisee to suit in Florida, because the defendant "[e]schew[ed] the option of operating an independent local enterprise" and "deliberately 'reach[ed] out beyond' Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise." *Id.* at 479-480.

b. The court below applied these accepted legal principles in finding that the Puerto Rico courts possessed *in personam* jurisdiction over the breach-of-contract action against petitioners. The court properly enunciated the governing standards set forth in this Court's decisions, and found that in the circumstances of this case the requirements of due process had been satisfied. The assertion of jurisdiction in Puerto Rico did not rest solely on the fact that petitioners entered into contracts with out-of-state residents. The court instead applied the principles established in *Burger King*, and relied upon petitioners' entire course of conduct in recruiting, hiring, and firing respondents to support the conclusion that it was reasonable to subject petitioners to jurisdiction in Puerto Rico.

The court expressly found that petitioners knowingly authorized the circulation of an offer of employment in Puerto Rico, and that they engaged in this "interstate activit[y]" in order to "purposefully derive [the] benefit," see *Burger King*, 471 U.S. at 473, of hiring out-of-state and foreign workers. Petitioners contend (Pet. 23-34), however, that the court below erred in relying on the actions of respondents and of third parties such as the Puerto Rico Department of Labor and Human Resources to support its

finding that petitioners had minimum contacts with Puerto Rico.

Contrary to petitioners' assertion, the court did not improperly "shift the focus" from petitioners' conduct to that of respondents or others. Pet. 24-25. Instead, the court found that petitioners "purposefully availed themselves of the Puerto Rican government's employment services in order to solicit workers at stated contract terms" and that petitioners had "knowledge that recruiting was taking place [in Puerto Rico] on their behalf." Pet. App. 48a-49a. Nonetheless, petitioners "did nothing to reject these [Puerto Rican] workers or to discourage further recruiting," and "even provided [the workers] with work for several days before firing them." *Id.* at 50a.

It is apparent from these findings that the court properly looked to the conduct of petitioners themselves in determining whether the requirements of the Due Process Clause had been satisfied. See, e.g., *Burger King*, 471 U.S. at 474-476. Moreover, after analyzing the facts set forth above, the court concluded that "it was reasonably foreseeable that [petitioners] would be sued in Puerto Rico," Pet. App. 50a—precisely the standard that petitioners claim the court *should* have applied. Pet. 27; see *Burger King*, 471 U.S. at 474 (" '[T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.' "). Although one may quarrel with the court's ultimate conclusion in this regard, that conclusion at most represents an erroneous application of settled principles to the specific facts of this case.



2. We also do not share petitioners' view that certiorari is warranted because the decision of the West Virginia Supreme Court of Appeals conflicts with the federal scheme established by the Wagner-Peyser Act or with the decisions of other courts.

a. Petitioners express concern (Pet. 34-38) that the decision below will inflict a "crippling blow" on the Wagner-Peyser system by discouraging employers from participating in that system for fear of subjecting themselves to suit in "the state courts of every state to which the job order is sent." Pet. 35. This overstates the effect of the court's holding. The court expressly relied on the fact that respondents were actually recruited and hired as a result of the circulation of petitioners' job clearance order in Puerto Rico; nothing in the court's opinion forecloses a different result in a case where those factors are not present.

In any event, regulations promulgated by the Department of Labor in 1987 have expanded the administrative relief available to workers dissatisfied with the conduct of participating employers under the Wagner-Peyser system, thus increasing the likelihood that such disputes will be resolved administratively rather than through litigation. See 29 C.F.R. Pt. 501. Accordingly, the issue of personal jurisdiction in suits arising out of employment relationships created through the Wagner-Peyser system is less likely to arise in the future, and employers are unlikely to be deterred by the speculative threat of burdensome litigation resulting from unresolved administrative claims.

b. We also disagree with petitioners' contention (Pet. 38-42) that the decision below is in direct conflict with the decisions of other courts. Every court

presented with the question at issue in this case has concluded that personal jurisdiction exists in forum States over employers who hire plaintiffs from those States through the Wagner-Peyser system. See Pet. App. 23a-60a; *Rios v. Altamont Farms, Inc.*, 64 N.Y. 2d 792, 476 N.E.2d 312, 486 N.Y.S.2d 913, cert. denied, 473 U.S. 905 (1985); *Neizil v. Williams*, 543 F. Supp. 899 (M.D. Fla. 1982); *Garcia v. Vasquez*, 524 F. Supp. 40 (S.D. Tex. 1981).

Petitioners assert that those decisions are inconsistent with *Chery v. Bowman*, 901 F.2d 1053 (11th Cir. 1990), but that case is not on point. In *Chery*, an individual learned of the defendant's employment offer while in Virginia and was hired by the defendant in that State. That individual, acting on his own behalf, then recruited other workers from Florida who traveled to Virginia and were also hired by the defendant. After being discharged, those workers brought suit against the defendant in Florida, asserting as the basis for personal jurisdiction the fact that Wagner-Peyser job clearance orders submitted by the defendant had been circulated in Florida.

Noting that the defendant "had no contact with the state of Florida" other than the mere submission of the job clearance orders, and that "any contact created by [the] clearance orders was fortuitous, particularly since [defendant] hired none of the plaintiffs as a result of the clearance orders being sent to Florida," the court concluded that personal jurisdiction was absent in Florida. 901 F.2d at 1056. The court distinguished *Rios v. Altamont Farms, Inc.*, *supra*, explaining that "[i]n *Rios*, unlike this case, the defendant apple growers received substantial benefits from the forum state's (Puerto Rico's) labor department in recruiting and processing the laborers who

ultimately became the plaintiffs." 901 F.2d at 1057.

Like *Rios*, the decision below is easily distinguishable from *Chery*. Petitioners' contacts with Puerto Rico were not limited to the mere submission of a clearance order that happened to circulate in Puerto Rico. Instead, the Puerto Rican government took action in response to petitioners' clearance order by recruiting employees for petitioners, and petitioners actually hired those employees after they had traveled from Puerto Rico to Virginia in reliance on petitioners' job offer. Petitioners derived "substantial benefits" from their utilization of the Wagner-Peyser system to recruit employees in Puerto Rico, see 901 F.2d at 1057, and thus *Chery* is inapposite.

To be sure, the Eleventh Circuit's opinion in *Chery* is in some tension with the decision below, because it asserts that "the Department of Labor's act of sending the clearance orders into a state does not constitute contact with that state by the agricultural employer." 901 F.2d at 1056-1057. Moreover, before explaining that the *Rios* decision—which is essentially identical to the decision below—was distinguishable on its facts, the *Chery* court observed that "we are not persuaded by" the reasoning of *Rios*. *Id.* at 1056.

Nonetheless, we do not believe that the tension between *Chery* and the other decisions in this area requires the Court's attention. The result in *Chery* is entirely consistent with the results in those other cases, all of which involved claims by individuals who had actually been hired pursuant to job clearance orders circulated in the forum State. As the *Chery* court itself recognized, 901 F.2d at 1057, that distinction has considerable significance for purposes of personal jurisdiction; an employer who has received

benefits from the efforts of the forum State to recruit employees, and who has in fact hired the employees so recruited, obviously has more significant contacts with, and more reason to expect to be sued in, the forum State than does an employer in the situation of the *Chery* defendant. Thus, *Chery* can easily be reconciled with the decision below and with the other cases to the same effect, and review is therefore unnecessary.

Petitioners' reliance (Pet. 41) on *Lopez-Rivas v. Donovan*, 629 F. Supp. 564 (D.P.R. 1986), is likewise misplaced. The *Lopez-Rivas* court did not address the issue of personal jurisdiction, choosing instead to decide the case on the ground that subject matter jurisdiction was lacking. See 629 F. Supp. at 567 ("Regardless of the validity of defendants' \* \* \* personal jurisdiction \* \* \* arguments, the court considers the challenge to our subject matter jurisdiction as fundamental and dispositive of plaintiffs' claims."). The issue decided in *Lopez-Rivas* was whether the placement of a job clearance order in the Wagner-Peyser system established an obligation on the part of the employer to hire all workers who accepted such employment offers. Clearly, that determination has no bearing on the question of personal jurisdiction at issue here. Indeed, the *Lopez-Rivas* court recognized as much; the court observed that the circumstances before it were "quite distant from" the "entirely different factual and legal scenario" of those workers "who were in fact hired for the 1978 apple harvest and who did in fact go to the farms in the continental United States." 629 F. Supp. at 569.

# **CLEARANCE ORDER** **RURAL MANPOWER JOB OFFER**

1. Indu Code 0175		2. ESARS Order Number 111-VA-4-430A 884430	
3. Occupational Title and Code Harvest Worker, Fruit 403.687-018			
4. Employer's Name and Address (Number, Street, City, State, and ZIP Code) Richard Management Company P.O. Box 472 Berryville, Virginia 22611 Harry Byrd, III		5. Period of Employment From 9-5-78 To 10-27-78	
6. Clearance Order Issue Date 4-28-78		7. Job Offer Expiration Date 11-3-78	
8. Crew Leader's Name and Address PEN ORDER		9. Social Security Number Home Phone	
		10. Leader's Functions Supervises <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Transports <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Pays <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Assumes OASI <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
11. Wage Rates, Special Pay Information and Deductions Each worker will receive 32¢ per 2400 cubic in. box (29¢ per U.S. Standard Bushel of 2150.42 cu. in.) which is designed to produce at least the current adverse effect hourly rate. It is estimated that this piece rate will produce average (See Attachment #1)		12. No. Normal Hours of Work Per Day 8 Per Week 48 Normal work days (circle) S (M T W T F S)	
13. Job Specifications Pick apples from trees and when necessary pick from ladders ranging up to 24 feet in length. The average length of ladders runs from 16'-24' and weighs approximately 50 lbs. Fruit picked must be placed in picking bags or buckets which are attached to the body with a shoulder harness and weigh between 30 - 50 lbs. when full. When filled with fruit the bags or buckets are to be emptied into field bins by releasing an opening at the bottom of the bag or bucket. Workers may be required to pick the entire tree or to spot pick the fruit. Individual workers without crew leaders are supervised by the employer, or his agent, who provides daily transportation, training, job instruction, and who keeps payroll records. The crew leader will supervise those workers in the crew and will be (See Att.#1)		14. No. & Type of Workers Needed Total Number 35 No. Individual No. Family No. Group	
15. Location of Job Orchards are located 1 mile north of Berryville, Va. and 3 miles north of Winchester, Virginia.		16. Board Arrangements Crew leaders are responsible for making arrangements for feeding their crews. Meals for (See Att.#2)	
17. Location and Description of Housing Workers will be housed without charge in facilities of the Frederick County Fruit Growers Association at 801 Fairmont Avenue, Winchester, Virginia or in any other (See Att.#2)		18. Number and Capacity of Housing Units 37 Rooms 800 persons 77 Single Rooms 267 persons	
19. Housing meets Federal or higher State standards and is approved for occupancy by the following number of persons: 1067		20. Referral Instructions Referral of crews and of individuals shall be made through the Winchester local office (See Att.#2)	
21. Transportation Arrangements See Attachment # 2.		22. Collect Calls Accepted By Employer <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO By Order Holding Office <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
23. Address of Order Holding Office Virginia Employment Commission P.O. Box 845 Winchester, Virginia 22601		24. Distribution of Clearance Order Virginia State Office Florida State Office Winchester local office Region II Region IV Region III Region VI	
25. Name of Agency Representative Eugene Schultz, Farm Placement Supv.		26. EMPLOYER CERTIFICATION: This Job Offer describes the terms and conditions of employment offered by me. Signature Title	
27. Telephone 703-662-2549			

DATE 4-28-78ORDER NUMBER III-VA-4-430A,884430EMPLOYER Orchard Management Co. , Berryville, Virginia**Item 8. hourly earnings of \$3.25 per hour.**

In the event the piece rate per box does not produce the current adverse effect hourly rate, then said adverse effect hourly rate will become the minimum hourly wage guarantee.

The worker is guaranteed the opportunity of employment for at least 3/4 of the available work period, and is covered by workmens compensation which is provided by the employer.

Without prejudice to the employment guarantee for opportunity of doing not less than 75% of full time work during the total contract employment period, the employer shall provide sufficient work to enable the worker, being willing and able to work, to earn a sum not less than the sum of \$56.00 (hereinafter referred to as "the stipulated minimum earnings") in respect of each payroll period of two weeks; or pay the worker an allowance of a sum which together with the sum earned by the worker during such payroll period will equal the stipulated minimum earnings; or if the worker has not earned any wages during such period, the employer shall pay to the worker a sum in the amount of the stipulated minimum earnings.

Workers are paid each Saturday by the employer or crew leader whichever is applicable. The employer is subject to the federal minimum wage laws and will furnish to each worker on payday an itemized accounting of earnings and of all legal and authorized deductions. The piece rate shown on this order is not below the prevailing rate established the previous season.

The employer agrees to pay the crew leader up to 9¢ per box according to the number of functions he performs such as: supervision, transportation of crew, record keeping, paying of workers, and assuming OASI deductions. That further, the Farm Labor Contractor shall be responsible for the payment of OASI and Unemployment Insurance taxes, and shall present evidence to the grower, including but not limited to his employer identification number, that he is in fact paying said taxes.

**Item 9. In an emergency, a worker may be requested, but not required, to work on Sunday.****Item 10. Individual workers preferred; however, employer will accept crews with small families, due to a lack of unlimited housing. The acceptance of this job order constitutes certification that the worker/workers is either a U. S. citizen or a legal resident of the U. S. and can legally work in the U. S. No illegal aliens will be accepted.****Item 11. responsible for transporting the crew from the area of recruitment to the area of employment as well as the daily transportation of workers to the orchard. The Farm Labor Contractor (Crew Leader) and all designated employees must have a current and valid FLCR certification which fully complies with the Farm Labor Contractor Registration Act as amended, and must be authorized to transport and house migrant workers prior to the acceptance of this job offer. Any of the afore mentioned must**

DATE 4-28-78ORDER NUMBER 111-VA-4-430A  
884430

Orchard Management Company, Berryville, Virginia

EMPLOYER \_\_\_\_\_

- Item 11. be able to present all of the necessary documents to substantiate that he is in compliance with the Act.

The employer will request crew leaders to furnish a complete roster of their crew at the local office where they are interviewed at the time of their interview. The Crew Leader will also be required to furnish the employer with written evidence that the crew leader has made an affirmative determination that each member of his crew is either a U. S. citizen or an alien lawfully admitted into the U. S. and authorized to work.

The employer maintains the right to discharge an obviously unqualified worker, malingerer, or recalcitrant worker who is physically able but does not demonstrate the willingness to perform the job of picking apples.

- Item 13. crew members will be available on a weekly fee basis in the central dining hall at a cost of \$22.75 per week. Varied nutritional menus each day consist of two hot meals and a packed lunch. All individual workers are fed in the central dining hall as prescribed above.

- Item 14. housing owned or leased by FCFGA. All housing complies with applicable federal housing regulations. Housing consists of frame and cinder block structures as indicated on the attached ES-338. Beds, mattresses, electricity, hot and cold water for bathing and laundry, flush toilets, and showers are provided without charge by the employer. Kitchen with cooking stove and refrigerator is provided to the crew leader, cooking utensils must be furnished by the crew leader. Blue Cross non-occupational hospitalization insurance is available at weekly rates for singles and family groups.

The employer shall provide a suitable burial for the worker if he dies during the continuance of his employment hereunder, or in lieu thereof at the request of the next of kin, pay the cost involved in the preparation and transportation of the deceased worker to the place of origin.

- Item 15. office in order to ascertain current employment, crop, and housing information and to enable proper arrangements to be made.

- Item 17. The employer agrees to reimburse any worker for reasonable transportation expenses and reasonable subsistence expenses from the worker's place of recruitment to Winchester, Virginia and who continues under employment for a period of (15) consecutive calendar days, or 50% of the contract period, whichever is shorter. Those workers paying the transportation and reasonable subsistence expenses from the place of recruitment to Winchester, Virginia who are unable to complete the minimum employment for legitimate medical reasons shall also be reimbursed for the same. In addition, those workers paying such transportation and subsistence expenses who are terminated by employer as a result of an act of God (an act of God shall mean any frost, hail, storm, flood or other

4-28-78

III-VA-4-430A ,884430

DATE

ORDER NUMBER

EMPLOYER

Orchard Management Co. , Berryville, Virginia

Item 17. natural calamity other than drought of such character as to make further fulfillment to this contract impossible), or as a result of a mutual agreement of worker and employer, shall be reimbursed for the same. All payment aforesaid shall be due on a day not later than the first work day subsequent to the completion of the aforesaid minimum employment period. In the case of a medical termination or in the case of termination as a result of an act of God, the employer will also provide or pay the cost of return transportation and subsistence enroute from place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will bear transportation expenses. [If the worker completes his contract, the employer will provide or pay the cost of return transportation and subsistence enroute from the place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment, and has subsequent employment with an employer who will bear transportation expenses.] If the worker voluntarily abandons his employment, or is terminated for cause, prior to completion of his contract, the employer will not be responsible for providing or paying for the cost of return transportation and subsistence enroute from the place of employment to the place of recruitment. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to applicable regulations of the Interstate Commerce Commission. Transportation from the worker's on-the-job site living quarters to the place where the work is to be performed will be provided by the employer without cost to the worker.

The crew leader will transport workers from the place of recruitment to Winchester, Virginia and return when the season is completed. Regular ICC regulations apply.

COMMUNITY SERVICES

Winchester/Frederick County Health Department  
150 Commercial Street  
Winchester, Virginia 22601  
Telephone: (703) 662-0319

Clarke County Health Department  
7 East Main Street  
Berryville, Virginia 22611  
Telephone: (703) 955-1033

-----Protects Against Disease. Health officials work with local doctors, parents, and schools to protect children against various diseases. A program of the department campaigns against tuberculosis and venereal disease and investigates communicable diseases.

-----Services to Mother and Child. Health department personnel help the expectant mother to obtain regular medical supervision and advice about caring for herself and her baby.

-----Provides Information. The Health Department is a ready source of information about child health nutrition, protection against disease, and informs of places to go in case of sickness or other problems.

-----Safeguards Living Conditions. Health Department safeguards living conditions and administers the Virginia Migrant Housing Law.

\*\*\*\*\*  
Winchester Memorial Hospital  
South Stewart Street  
Winchester, Virginia 22601  
Telephone: (703) 662-4121

-----In case of medical emergencies, the hospital is available and willing to render service.

Intercounty Health, Inc.  
Migrant Health Service  
Family Service Clinic  
126 East Martin Street  
Martinsburg, West Virginia 25401  
Telephone: (304) 263-2021

-----Health Department officials may refer individuals to this clinic which is designed to handle most medical problems of migrant workers.

Frederick County Department of Social Services  
117 West Boscowen Stre  
Winchester, Virginia 22601  
Mrs. Gwen E. Mandel  
Telephone: (703) 662-4666

Winchester Department of Social Services  
22 Wolfe Street  
Winchester, Virginia 22601  
Mrs. Florence Smallwood  
Telephone: (703) 662-3807

Clarke County Department of Social Services  
21 South Church Street  
Berryville, Virginia 22611  
Mrs. Gay M. Allen  
Telephone: (703) 955-3700

-----As a rule, a person must be a local resident in order to qualify for many of the welfare services. However, welfare workers can generally secure help for people in an emergency and are also likely to know about other groups in the area who can offer assistance to non-residents.

\*\*\*\*\*

Salvation Army Headquarters  
303 South Loudoun Street  
Winchester, Virginia 22601  
Telephone: (703) 662-4777

-----This organization furnishes overnight lodging to destitute transients. Religious services are conducted at the Headquarters.

\*\*\*\*\*

American Red Cross  
436 North Braddock Street  
Winchester, Virginia 22601  
Telephone: (703) 662-5412

-----The American Red Cross generally provides emergency relief required as the result of a natural disaster, which consists of food, clothing, and shelter.

-----Families of servicemen and veterans are eligible for emergency financial help. Widows and children of deceased servicemen and veterans may be assisted until eligibility for government benefits can be established.

\*\*\*\*\*

Frederick County Department of Education  
36 East Whitlock Avenue  
Winchester, Virginia 22601  
Telephone: (703) 662-3888  
Michael Morrison  
Telephone: (703) 667-8152



Clarke County Department of Education  
309 West Main Street  
Berryville, Virginia 22611  
Telephone: (703) 955-2438

-----The county education department is responsible for the educational programs for both migrant children and adults. Children of migrant workers are enrolled in the public school system and enjoy the same educational opportunities as residents of the county.

Winchester Public Schools  
104 North Braddock Street  
Winchester, Virginia 22601  
Mr. Raymond Ratcliff  
Telephone: (703) 667-4253

-----Children of migrant workers who live in the Winchester Labor Camp are enrolled in the City School System and enjoy the same educational opportunities as residents of the city.

\*\*\*\*\*

Rural Manpower Service

Clearance Order - Rural Manpower Job Offer

-----  
Date \_\_\_\_\_ Order No. \_\_\_\_\_

Employer \_\_\_\_\_

Occupational Title and Code Apple Picker - 403.687-018  
-----

The terms and conditions herein stated will apply to all workers.

I understand the conditions offered on the Rural Manpower Job Order # \_\_\_\_\_  
and if hired by the named employer, I will accept the terms and conditions  
offered.

Crew Leader \_\_\_\_\_

Family Head \_\_\_\_\_

Worker \_\_\_\_\_

## Rural Manpower Service

## Clearance Order Rural Manpower Job Offer

**General Information:** The Winchester area consists of Clarke, Frederick and Shenandoah counties. The contour of the land varies from flatlands to mountainous areas; however, a large percentage of the apples grown are on hilly slopes. Trees are planted in rows approximately 30 feet apart and vary in height from 8 to 25 feet. Apples vary in size from 2" to 5" diameter, normally 2½". There are 100-125 apples per bushel. Varieties grown are for processing and fresh market use.

**Timetable:** Picking usually begins mid-August and ends first week in November. Volume picking starts about September 10-12, peaking by mid-October. Work is continuous depending upon weather conditions through November 10.

**Working Conditions:** Work is all out-of-doors and the worker is generally exposed to hot sun, heavy morning dew, rapid changes of temperature and gusty winds. Early morning frosts are generally expected about mid-October. The average work week contains 6 days and a work day from 8 to 10 hours. In an emergency, workers may be requested to work on Sundays.

**Job Description:** Most of the work is done from ladders in tall trees. Some of the work is done from the ground, picking from the lower limbs of the trees. Most picking from young trees or dwarf trees is done from the ground. Worker carries and picks into a metal frame canvas-covered picking bag or bucket. These have canvas straps which slip over the head, resting on the shoulders. It may be carried on either side or in front of the picker. They hold a little over a half bushel of apples, weighing approximately 35 pounds when full. Worker is required to handle ladders up to 16-24 feet long and weighing 25-50 pounds. He places the ladder firmly within or against the tree in a leaning position, taking care not to break limbs or damage trees and in a secure position to prevent slipping or falling. Apples within reach are normally picked from the ground, working upward on the ladder. Apple is palmed with fingers spread from the side, snapping the apple loose from the branch with an inward, upward twist of hand and wrist. Care should be taken at this point not to break spurs (Next year's crop setting) or ends of branches. When the picking bag is full, worker climbs down ladder, emptying bag into 14-20 bu. field bins. Care should be taken in lowering bag to bottom of bins and in releasing apples slowly to prevent bruising. Each picker is assigned an identification ticket or number. Before leaving the tree, his identification mark should be placed in the field container. Bins are strategically placed throughout orchard by field crews along rows being picked. Each tree is picked completely before moving to the next tree in the row. Trees may be strip picked or spot picked, depending upon employer's instructions. Spot picking is determined by color and size, whereas strip picking is the removing of all apples on trees, regardless of color and size. Drop picking is the picking up of all usable apples on the ground.

**Other Job Requirements:** Persons seeking employment as apple pickers should be available and willing to work the entire season. Experience, although not necessary, is desirable; however, three to five days training should develop a beginner into an average picker. During the harvest period a good picker should pick 100 bushels a day or better. An average picker will pick approximately 75 bushels a day. Experience has indicated that a wiry type of individual between the weights of 140 to 190 pounds is best adapted to picking fruit and maneuvering the ladder.

**Physical Demands:** Worker should be able to remain on feet for prolonged periods standing or rungs of ladders at heights up to 24 feet, carrying a loaded picking bag. Worker should have normal balance control and full use of arms and legs, with good eye-hand coordination. He should not have allergies pertaining to ragweed, goldenrod or insect sprays. Must not be subject to dizzy spells, hernia or rapture. Must be free from communicable diseases. Must be normal in regard to stooping, reaching, and being able to carry up to 50 pounds. Good eyesight is necessary to determine color and size of fruit to be picked.

## Part II

## Employment Service Program

2042-2044

1000-2999

Placement Process

R-12/11/64

2042

Selection of Areas of Clearance. Clearance orders for agricultural workers are to be extended to the smallest number of local offices consistent with the main objective of locating the required workers. All available evidence should be examined for clues to potential labor availability. Among such clues are: past experience in clearance of similar orders; current out-of-State farm labor bulletins; current out-of-State job inventories; national, regional, and out-of-State work guides which indicate areas where workers are being released and the time of their release; current in-season ES-223 reports (see part III, section 4800); and semi-monthly summaries on labor supply furnished by the Bureau's national office. The appropriate use of telephone and telegraph will assist in speeding up this search for areas of recruitment.

\*2044

Planning the Extension of Orders Into Interstate Clearance. In extending a clearance order for agricultural workers, the following must be observed:

- \*A. When to extend an order. Additional workers may be needed to meet a labor shortage which exists after planning to utilize available local workers and migrant workers under the Annual Worker Plan. This determination should be made as early as possible during the preseason planning period so that Form ES-560-A may be extended to predetermined areas to supplement the schedule of operation being carried out under the [Annual Worker Plan] *RURAL MANPOWER MOBILITY PLAN - MTL 1299*

MA-7-90  
MTL 1299

- B. Telephone and telegraph orders. Telephone and telegraph orders can be used to expedite recruitment in the supply area, but in every case these orders should be confirmed by agricultural clearance orders on Form ES-560-A. Unless an emergency exists, actual referral and departure from the applicant-holding local office should await the receipt of Form ES-560-A *MA 7-90 - MTL 1299*

- C. Methods of referral. When clearance is undertaken on an employer order, an important consideration that should be discussed with the employer is the relative merits of different types of referral. These are:

1. Positive recruitment. Positive recruitment is the most effective type of referral action for the employer and the applicant, and the least time-consuming as far as the employment service is concerned. All local offices should recommend this type of referral action ~~(see sections 1810-A; 1831-C-8)~~ (MTL 117). It should be emphasized that the employer or his recruiter must adhere to the established itinerary, or give prompt notification of any necessary changes. This contributes greatly

\*Revises section 2044 A as issued 4/29/60.

## Part II

## Employment Service Program

2044(2)

1000-2090

Placement Process

4/29/60

2044 Planning the Extension of Orders into Interstate Clearance--continued

## C. 1--continued

to the effectiveness of positive recruitment. The employer should also be informed of the general manner in which local offices operate under positive recruitment procedures. It is particularly important that the order-holding office review advertising copy, if advertising is authorized by the employer, so that the skills required for the job opening are clearly described and that the employment service practices and procedures with respect to advertising are observed. This is done in order to attract a greater number of workers with the desired qualifications to the local office for interview (see sections 1550-1560). It is equally important that the advertising copy be submitted to the applicant-holding local or State office for review, and verification of the address of the local office before it is released for publication. In positive recruitment as in other types of referral actions, the role of the applicant-holding office is to select, screen, and refer workers to the employer or his representative. For that reason, the employment service will not accept an order specifying positive recruitment if advertising states that applicants will be interviewed in a location other than the local office. However, consistent with that practice, the employer may arrange with a local office for referral of applicants to a location other than the local office after preliminary screening of applicants by local office personnel. Such practice assures the local office an opportunity to render the basic screening, selection, and referral services.

Often an employer will wish to have his hiring representative interview applicants more hours per day or days per week than the local office is open. When such requests are made to the order-holding office they will be transmitted, with the employer's reasons stated, as a part of the employer's order. Many applicant-holding offices find it possible to make special arrangements to remain open for recruitment purposes for some evening, Saturday, or holiday hours.

Where it is not possible to remain open for the purposes of continuing recruitment during evening, Saturday, or holiday hours, it is sometimes possible for the local office to refer previously screened applicants to the employer representative at a place, mutually agreed to, other than the local office.

## Part II

## Employment Service Program

2044(3)

1000-2009

Placement Process

4/29/60

## 2044 Planning the Extension of Orders into Interstate Clearance--continued

## C. 1--continued

Local offices also can approve advertising containing the local office telephone number and directing applicants to call the local office in order to make an interviewing appointment for hours when the office is closed. If necessary, the local office may approve the inclusion in an advertisement of a telephone number--other than the local office number--which can be used for evening hours or for a Saturday or a holiday.

MA-7-90  
MFL-1249 When the openings occur in several occupations, a basic Form ES-560-A covering instructions and requirements common to all openings must be prepared (a multiple order). The order must be accompanied by a sheet which specifies for each occupation the number of openings, rates of pay, and specific duties and qualifications. The use of the multiple order is limited to positive recruitment except as noted under mail referral (see 5 below).

2. Delegated hiring authority. Frequently, an employer is unable, or does not wish, to engage in positive recruitment. In such instances, the employment service can offer an effective alternative to positive recruitment, i.e., delegated hiring authority, which results in the saving of time and effort on the part of the employer. The use of this type of referral action requires that the order be supported by a written delegation of hiring authority from the employer on Form ES-569, Designation of Hiring Agent ~~(see section 1820)~~ which remains in effect until it is cancelled by the employer. ~~(see sections 1810-2, 1831-5-9)~~ (MFL 1179)

The order-holding office prepares a complete clearance order for each occupation in which vacancies exist. (Multiple orders may not be used under delegated hiring authority as they are under positive recruitment.) When the order is submitted to the State office, a copy of Form ES-569 is attached. The order-holding office bears in mind that under the delegation of hiring authority "any agent designated under this authority..(a) may bind the Principal (employer) for such obligations.....(b) as may be specifically authorized in the job order." This places important responsibilities upon the applicant-holding office.

6/2/60

# EMPLOYMENT SECURITY MANUAL

MTL 1179

Part II	Employment Service Program	1872(2)
1000-2999	Placement Process	R-8/25/69

## 1872 -Form ES-569, Designation of Hiring Agent--continued

B. Source of Supply. Form ES-569 will be requisitioned from the KA national office, and is not to be reproduced by State agencies.

C. Preparation. An original of Form ES-569 is prepared by the order-holding office for the signature of the employer who delegates hiring authority to the Employment Service.

The signature of the employer or his authorized representative, and the signature of two witnesses and the full address of each will be obtained. The employer must sign this document in the presence of these two witnesses.

D. Distribution. None. Original is filed with the employer records in the local office.

Part II

Employment Service Program

2044(4)

1000-2999

Placement Process

4/29/60

2044

Planning the Extension of Orders into Interstate Clearance--continued

## C. 2--continued

In another type of operation, the applicants are selected by representatives of the order-holding State agency who follow a recruitment itinerary which has been worked out with applicant-holding State agencies. This type of referral action may be used in most cases where several employer orders can be served at the same time and where the employment is in related activities.

3. Direct referral. Direct referral provides for a face-to-face interview between the employer and the applicant. This is most effective when short distances are involved. However, it is effective also if the employer agrees to pay transportation expenses, when greater distances are involved [~~see sections 1810 C; 1831 C 10~~]. (MTL 1179)
4. Telephone referral. The telephone interview between the employer and the applicant, preferably at the employer's expense, makes possible an immediate offer of employment, or a pre-interview to determine the desirability of a face-to-face interview. This latter arrangement is particularly of importance to the employer when he agrees to provide for any portion of the transportation costs [~~see sections 1810 D; 1831 C 11~~].
5. Mail referral. Mail referral may be offered to an employer when he expresses a desire to review applications before arrangements are made for a face-to-face or telephone interview. However, the practice is not recommended in the referral of agricultural workers. This type of referral action is more effective when a representative from the local office presents the clearance application to the employer in person and assists in the analysis of the applicant's qualifications in relation to the requirements specified in the clearance order [~~see sections 1810 E; 1831 C 12~~]. (MTL 1179)

NOTE: A local office may issue a clearance order specifying any one or a combination of different types of referral actions, e.g., direct referral to continue after positive recruitment.



Part II

Employment Service Program

2044(4)

1000-2999

Placement Process

4/29/60

2044 Planning the Extension of Orders into Interstate Clearance--continued

## C. 2--continued

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HUMBERTO GREGORY-AYALA, et al.	* NO. 13,575 CIVIL
Appellants	*
vs.	*
RINEHART ORCHARDS, INC.	*
Appellee	*
* * * * *	
	* IN THE CIRCUIT COURT
	*
JULIO C. RODRIGUEZ-WALKER, et al.	*
Appellants	*
vs.	*
HEPBURN ORCHARDS, INC.	
Appellee	* FOR WASHINGTON COUNTY

MEMORANDUM OPINION AND RULING ON MOTIONS

Humberto Gregory-Ayala, et al. and Julio C. Rodriguez-Walker, et al. appeal from the judgment of the District Court for Washington County entered on March 30, 1984 in favor of Rinehart Orchards, Inc. and Hepburn Orchards, Inc. Appellants, Puerto Rican migrant farm workers, seek to enforce default judgments entered in Puerto Rico against Appellees, Washington County apple growers, for breach of their employment contracts with the Appellants.

The parties do not dispute the basic facts underlying the default judgments. Traditionally, the Appellee fruit growers have been unable to recruit enough local workers to successfully harvest their fall apple crops. In order to secure sufficient harvest labor for the 1977 and 1978 seasons, Appellees Rinehart and Hepburn submitted Clearance Order-Rural Manpower Job Offers to the Hagerstown office of the Maryland Employment Security Administration (MESA). 60

These clearance orders are an integral part of the interstate clearance system established by the Wagner-Peyser Act (29 U.S.C.S. § 49 et seq.) to help employers recruit non-local workers when the supply of local workers is insufficient to meet their labor needs. Alfred L. Snapp and Son v. Puerto Rico, 458 U.S. 592, 595, 102 S.Ct. 3260 (1982). If an adequate labor supply is unavailable locally or statewide, the Employment and Training Administration of the United States Department of Labor forwards the clearance orders to various states having a surplus of labor in an effort to locate and identify available and qualified United States workers. Employers who wish to hire temporary foreign workers, as Appellee Rinehart did in 1977, must first attempt to recruit domestic workers through the interstate clearance system before a temporary foreign labor certification application will be approved. Immigration and Nationality Act, 8 U.S.C.S. § 1101(a)(15)(H)(ii).

The Department of Labor directed Appellees' clearance orders to Puerto Rico, an area determined to be a potential source of domestic labor, although neither Appellee had specifically requested that the order be sent to this location. The Regional Administrator of the Employment and Training Administration promptly notified Rinehart and Hepburn that their orders had been transmitted to Puerto Rico. Appellants contend that "extensive recruitment" took place with respect to the clearance orders; however Appellees did not directly participate in this effort. A large number of Puerto Rican laborers responded to Appellees' job orders and approximately seventy-two workers, including Appellants, traveled to

Washington County to harvest apples for Appellees. Before Appellants left Puerto Rico, Appellees were advised of the number of workers whom they should expect.

Shortly after Appellants arrived and began to pick apples, problems developed between them and Appellees. Consequently, Appellants returned to Puerto Rico where they instituted lawsuits against the Appellees - alleging unlawful treatment and breach of contract.

Although both Rinehart and Hepburn received proper notice of the pendency of these suits, neither chose to defend the actions on grounds that the Puerto Rican court lacked personal jurisdiction. The District Court (San Juan Part) of the Commonwealth of Puerto Rico determined that jurisdiction under Puerto Rico's "long arm" statute (Rules of Civil Procedure of the Commonwealth of Puerto Rico, 32 L.P.R.A. AppII, Rule 4.7) extended to Appellees and rendered default judgments in favor of Appellants. Appellants then sought to enroll and enforce these judgments in Maryland in accordance with the Maryland Uniform Foreign Money-Judgment Recognition Act and the full faith and credit clause of the United States Constitution. The District Court for Washington County denied Appellants' petition without opinion on March 30, 1984.

A valid judgment in favor of a plaintiff may only be entered by a court having jurisdiction over the defendant's person; otherwise, the judgment is treated as void and will not be given full faith and credit by other states. Pennoyer v. Neff, 95 U.S. 714 (1877); Durfee v. Duke, 375 U.S. 106, 84 S.Ct. 242 (1963).

In resolving the issue of whether the Puerto Rican court acquired jurisdiction over Appellees, the test is two-fold. The standards of both the Puerto Rican "long arm" statute and the Due Process Clause of the Fourteenth Amendment to the United States Constitution must be met. However, the courts of Puerto Rico have repeatedly held that the reach of Puerto Rico's "long arm" statute is coextensive with that of the due process clause. Vencedor Manufacturing Company, Inc. v. Gougler Industries, Inc., 557 F.2d 886 (1st Cir. 1977); Ramon Vela, Inc. v. Sagner, Inc., 382 F.Supp. 478 (Puerto Rico 1974).

Due process permits a forum state to exercise in personam jurisdiction over a nonresident defendant only when the defendant has "minimum contacts" with the forum state so that maintenance of the suit in that state does not offend "traditional notions of fair play and substantial justice". International Shoe Company v. Washington, 326 U.S. 310, 66 S.Ct. 154 (1945). The minimum contacts element of this test is satisfied when a defendant "purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws". Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228 (1958).

Minimum contacts can be established solely through the defendant's communications with the forum state, and in contract litigation, such as this case, due process is satisfied if the "suit is based on a contract which had a substantial connection" with the forum state. McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199 (1957). The Supreme Court

has stated and restated that the "minimum contacts" test of International Shoe is not to be applied mechanically; but rather, courts must weigh the facts of each case in deciding whether minimum contacts are present.

The second element of the International Shoe test - whether maintenance of the suit in the forum state is consistent with notions of fair play and substantial justice - deals with policy and equity considerations. Rios v. Altamont Farms, Inc., 475 N.Y.S.2d 520 (1984) (Levine, J. dissenting). While the burden on the defendant is always a primary concern, other relevant factors are "the forum state's interest in adjudicating the dispute,...the plaintiff's interest in obtaining convenient and effective relief,...the interstate judicial system's interest in obtaining the most efficient resolution of controversies,...and the shared interest of the several states in furthering fundamental substantive social policies..." (citations omitted). See Worldwide Volkswagen Corporation v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980). The Supreme Court noted in its most recent case dealing with the "minimum contacts" issue that the presence of these considerations may establish jurisdiction upon a lesser showing of minimum contacts than is ordinarily required. Burger King, Corp. v. Rudzewicz, \_\_\_ U.S. \_\_\_ 105 S.Ct. 2174 (1985).

Application of the above criteria to the facts of this case leaves no doubt that Appellees' activities constituted minimum contacts with Puerto Rico such that Appellants' lawsuits do not offend notions of fair play and substantial

justice. All of the parties agree that this case is "truly analogous" to Rios v. Altamont Farms, Inc., 486 N.Y.S.2d 913 (1985) wherein the Court of Appeals of New York held that Puerto Rico had properly exercised personal jurisdiction over the defendant fruit growers whose only connection with the forum state was the filing of clearance orders which were transmitted to Puerto Rico and acted upon there. In so deciding, the Court reversed the order of the Supreme Court (Appellate Division) and reinstated the trial court's decision for reasons stated in the dissenting opinion of Justice Levine at the Appellate Division [Rios v. Altamont Farms, Inc., 475 N.Y.S.2d 520 (1984)].

The clearance orders filed by the Appellees in the local MESA office represented offers of employment to the responding, qualified Puerto Rican laborers. The orders contained all of the essential terms and conditions normally found in a job offer, including a job description, the rate of pay, the term of employment, the daily working hours, a list of insurance benefits, and even a provision for financing the worker's transportation from the place of recruitment to the job site. Additionally, the orders, signed by each Appellee, state: "THIS JOB OFFER DESCRIBES THE ACTUAL TERMS AND CONDITIONS OF THE EMPLOYMENT BEING OFFERED BY ME AND CONTAINS ALL OF THE MATERIAL TERMS AND CONDITIONS OF THE JOB." Many federal courts have construed clearance orders to be job offers. See Garcia v. Vasquez, 524 F.Supp. 40 (Tex. 1981); Neizil v. Williams, 543 F.Supp. 899 (Fla. 1982); Aguero v. Christopher, 481 F.Supp. 1272 (Tex. 1980).

By filing clearance orders with the Maryland employment office, the Appellees deliberately set in motion the job recruitment machinery of the interstate clearance system. Although Appellees did not specifically direct the orders to Puerto Rico, both Rinehart and Hepburn purposefully sent a job offer - a legally operative instrument - into the stream of interstate commerce for the express purpose of recruiting out-of-state farm labor. Furthermore, these clearance orders were the basis for employment contracts with the responding Puerto Rican workers. Appellees received notice that their job orders reached Puerto Rico and that recruitment was taking place with respect to them. However, they did not withdraw the orders nor otherwise act to prevent the Puerto Rican laborers from traveling to their orchards. Rather, Appellees ratified the contracts by employing the Appellants and other workers upon their arrival.

Without importing migrant farm labor, Appellees Rinehart and Hepburn could not have successfully harvested their 1977 and 1978 apple harvests. Each benefited financially from the free labor exchange provided by the interstate clearance system. Appellees purposefully submitted job clearance orders to MESA knowing that they would be sent to so-called "labor supply" states, such as Puerto Rico. Upon learning the destination of their clearance orders, Appellees availed themselves of the benefits of the recruitment services performed by the Puerto Rican Department of Labor and Human Resources. Therefore by availing themselves of Puerto Rico's employment services, the Appellees also availed themselves of the benefits and protections of Puerto Rico's laws. 66



Examination of the employment contracts entered into by Appellants and Appellees reveals that the contracts were substantially connected to Puerto Rico. The U.S. Department of Labor's Employment and Training Administration delivered the job orders to Puerto Rico where they were communicated to local workers, including Appellants, by employees of Puerto Rico's Department of Labor and Human Resources. Appellants accepted the job offers in Puerto Rico when they agreed to fill the harvesting positions. Sufficient action was taken in Puerto Rico in reliance upon the job offers so as to constitute part performance thus making the offers irrevocable. While still in Puerto Rico, Appellants committed themselves to work for the Appellees and made all of the necessary arrangements for their departure. With Appellees' full knowledge and at least tacit consent, the Appellant migrant workers left their homes and families in Puerto Rico and traveled to Appellees' Maryland orchards.

Puerto Rico's connections with the employment contracts on which this litigation is based are far more substantial than those involved in McGee v. International Life Insurance, supra. In that case, the only connections between the forum state (California) and the life insurance contract at issue were (1) an offer to continue life insurance coverage mailed by the Texas insurer to a California resident and (2) premiums mailed by the insured from California to Texas. The Supreme Court held that these communications sufficiently connected the contract of insurance and the forum state to give the California court

personal jurisdiction over the Texas insurer. In the case at bar, the overwhelming response of both Puerto Rican laborers and government officials to Appellees' job orders and the efforts of both groups to fill the positions clearly show Puerto Rico's substantial connection to the resulting employment contracts.

The second element of the International Shoe test is easily satisfied in this case. Requiring Appellees to defend these actions in Puerto Rico would be entirely consistent with notions of fair play and substantial justice. The argument in favor of jurisdiction is especially compelling when the relative burdens on each party of litigating in a distant forum are compared. Appellants are impoverished, Spanish-speaking migrant farm workers who willingly traveled over 1500 miles to pick apples for less than the federal minimum wage. Appellees, on the other hand, are business entities that could more easily bear the burden of out-of-state litigation. If Appellants were required to bring suit in Maryland courts, economical and logistical realities would in effect render the Appellees judgment-proof. It would be financially impossible for Appellants and their witnesses (most likely fellow migrant workers) to travel to Maryland for the trial and any related court proceedings. Imposing the burden of producing defense witnesses in Puerto Rico hardly amounts to a denial of due process when a converse ruling effectively would confer upon the orchardists total immunity from suit.

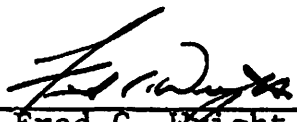
Furthermore, Puerto Rico is the logical choice of jurisdiction for these actions when the interests enunciated in Worldwide Volkswagon v. Woodson, supra, are considered. The Appellants' interest in obtaining convenient and effective relief is evident. The Puerto Rican court determined that Appellee Rinehart owes Appellants Gregory-Ayala, Millan and Carrero over \$2,000.00 each; Appellee Hepburn owes Appellants Rodriguez, Perez, Cintron and Sanchez in excess of \$1,000.00 each. Just as Appellants require the meager wages they earn in order to support themselves and their families, they also need those sums claimed to be owed by Appellees for breaching the employment contracts and terminating the jobs. Puerto Rico has a strong interest in adjudicating disputes involving its citizens and in providing a means of redress for its citizens as well as securing its full and equal participation in the federal employment program established by the Wagner-Peyser Act. See Alfred L. Snapp & Son v. Puerto Rico, supra.

Finally, the shared interest of the states in furthering the social policies of the Wagner-Peyser Act indicates that jurisdiction is proper in Puerto Rico. One important purpose of the Act is to offer some protection to migrant workers who move about the country searching for manual labor. See Garcia v. Vasquez, supra. Unless migrant workers, such as Appellants, are able to bring lawsuits in their home states for alleged violations and abuses by employers who participate in the federal labor exchange system, the Act would afford no protection to the workers.

For the foregoing reasons and applying the joint statement of facts, this court holds that the Puerto Rican District Court properly exercised in personam jurisdiction over the Appellees Rinehart and Hepburn. Therefore, the Puerto Rican judgments against Appellees will be given full faith and credit in Maryland. The Motion for Summary Judgment filed on behalf of the Appellants is granted; the Motion For Summary Judgment by the Employers is denied.

It is this 23rd day of January, 1986, ORDERED, by the Circuit Court for Washington County that judgments be entered in favor of Humberto Gregory-Ayala in the amount of \$2,269.40, Lorenzo Mercado Millan in the amount of \$2,269.40 and Maximiliano Carrero in the amount of \$2,025.00 against Rinehart Orchards, Inc. plus costs of suit; and it is further

ORDERED, that judgments be entered in favor of Julio C. Rodriguez in the amount of \$1,054.20, Rodolfo Perez in the amount of \$1,052.61, Daniel Cintron in the amount of \$1,075.20 and Natanael Sanchez in the amount of \$1,035.20 against Hepburn Orchards, Inc., plus costs of suit.

  
Fred C. Wright, III  
Judge

cc: Gregory S. Schell, Esq.  
S. Steven Karalekas, Esq.

RINEHART ORCHARDS, INC.

v.

HUMBERTO GREGORY-AYALA et al.

\* \* \*

HEPBURN ORCHARDS, INC.

v.

JULIO C. RODRIGUEZ-WALKER et al.

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In the  
Court of Appeals  
of Maryland  
Petition Docket No. 16  
September Term, 1986  
(No. 13,575 - Circuit Court for  
Washington County)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Circuit Court for Washington County, and the answer and response filed thereto, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy  
Chief Judge

Date: May 2, 1986

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October 21, 1986

The Honorable Robert K. Woltz  
Judicial Center  
5 North Kent Street  
Winchester, Virginia 22601

Re: Puerto Rican Plaintiffs v. Fruit Growers  
Law Nos. 4024-4056  
Consolidated cases

Dear Judge Woltz:

I received just yesterday a copy of the Order from the Court of Appeals of Maryland rendering final the decision by the Circuit Court for Washington County, Maryland in the case of Rinehart Orchards, Inc. v. Homberto Gregory-Ayala, et al. The decision rendered by the Circuit Court for Washington County and the affirmation by the Court of Appeals of Maryland leaves final the holding in Maryland that Puerto Rican workers are entitled to judgments against fruit growers who utilize the Wagner-Peyser system and against whom judgments were obtained in Puerto Rico. The Court may recall that the Maryland case is identical with the cases pending before this Court.

Sincerely yours,



Steven D. Rosenfield

SDR/sem

Enclosure

cc: Ronald J. Brown  
S. Steven Karalekas