

**AMERICA'S AGRICULTURAL LABOR CRISIS:  
ENACTING A PRACTICAL SOLUTION**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES AND BORDER SECURITY

OF THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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OCTOBER 4, 2011

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**Serial No. J-112-45**

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Printed for the use of the Committee on the Judiciary



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## **AMERICA'S AGRICULTURAL LABOR CRISIS: ENACTING A PRACTICAL SOLUTION**

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**TUESDAY, OCTOBER 4, 2011**

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES AND BORDER SECURITY,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Subcommittee, presiding.

Present: Senators Schumer, Feinstein, Franken, Blumenthal, Cornyn, Grassley, and Sessions.

### **OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK**

Chairman SCHUMER. The hearing will come to order. I will make an opening statement; Senator Cornyn will; Senator Feinstein, because of the huge interest in California on this issue, will also make an opening statement. And if one other Republican comes, whoever you choose, they may. And that will be it in opening statements, and then we will get to our witnesses.

Well, I thank everybody for coming. Today's hearing is on the current American agricultural labor crisis and the existential threat American agriculture faces from efforts in the House to pass mandatory e-verify laws without addressing the immigration status of the current agricultural labor force.

Agriculture is an important industry, we know for all America—many people do not realize because New York City is so large—but also for New York State. We have 35,000 farms. They account for \$5 billion in sales. They use nearly one-quarter of New York's total land area. We are first or second or third in a lot of things, like dairy and apples and cherries and lots of nice good things, lettuce, I think. Sauerkraut we are No. 1. Bet you did not know that. That is a special kind of cabbage. I have been there.

Anyway, we put it on the hot dogs at the Yankee games. After last night, I am a little reluctant to bring that up.

Given the amount of jobs and economic activity that are at stake, we must do everything we can to give our producers the tools they need to succeed.

But whether it is apple farmers in western New York, strawberry growers in the Mohawk Valley, tomato farmers in the Hudson Valley, dairy producers in northern New York, or nurseries on Long Island, everywhere I go in my State—and I think it is similar

in other States—folks tell me that the long-term viability of their farms is threatened because they cannot find the workers they need to remain competitive in the global market.

Some might ask, in these times of double-digit unemployment, Why can't farms hire American workers? It is a logical question if you are not familiar with agriculture.

Well, every farmer I have met in my travels in New York has aggressively tried to hire Americans to work in nurseries, farms, and vineyards. And I will tell a little story. I met a young lady about 10 or 12 years ago—15 or 20 years ago. Her father was a big real estate developer in New York. She loved flowers, and so she opened nurseries on Long Island. She was a very idealistic, progressive liberal person, and she had this idea: Why don't I hire the people in the South Bronx who are unemployed? She put up signs in the South Bronx. She said, "We will pay you \$8 an hour." The minimum wage was then \$4 or something, so double. She built a little church, a little school, little buildings on her property so they would come out 40 miles. And she said, "If you want this job, \$8 an hour, meet at the bus at 6 a.m., and we will drive you out there to Suffolk County." The buses filled up, but after 1 day the people quit. Americans do not do this work. It is back-breaking, it is hard, and for whatever reason, we can tell our farmers to hire Americans, but it just does not work.

My friends in the Long Island Farm Bureau can tell you that many of their members pay more than \$12 to \$15 per hour per worker, so it is a good salary, and they actively seek to hire American workers, arrange for transportation and drop-off, as I said.

But what they find—even in this difficult economy and even if they offer Americans twice or sometimes three times the minimum wage and provide benefits—American workers simply will not stay in these jobs for more than a few days.

This is not an indictment of either the agricultural industry or the American worker. It is simply a statement of fact that the average American will not engage in seasonal agricultural work that requires them to move several times a year throughout the country and work 7 days per week in extreme heat and cold.

So who is stepping in to take these jobs, these difficult seasonal agricultural jobs? Whether it is California or Texas or New York or anywhere else in the country, immigrants who need these jobs to support their families they left behind in their native country are the ones who do it.

Unfortunately, many of these immigrants that work in agriculture are in illegal status, giving our family farmers the Hobson's choice of hiring workers in illegal status or going out of business.

This conundrum is about to reach a dangerous boiling point, as mandatory e-verify laws like those already passed in Alabama, Arizona, and Georgia—as well as those proposed in the House and the Senate—now pose a potentially fatal threat to the livelihood of American farmers.

At this point I would like to introduce two articles into the record, if there is a no objection, so without objection, they are introduced.

[The articles appears as a submission for the record.]

Chairman SCHUMER. One is a September 30th article from the Dothan Eagle in Alabama where John McMillan—the Republican Commissioner of Agriculture elected just last year—indicated that the Alabama immigration law, which includes mandatory e-verify, would “have an adverse impact on the farm economy in the State of Alabama.”

A September 29, 2011, article from Reuters where Commissioner McMillan also reported “crops rotting in fields as a result of day laborers leaving the State ahead of the law taking effect” in Alabama.

As the witnesses will testify today, if Congress passes mandatory e-verify laws without providing growers a way to keep their current workforce, it will be issuing a death sentence to many, many farmers and family farms throughout America.

Let me just give you a few statistics that one of our witnesses, Bob Smith, will tell us about today:

In the Northeast, mandatory e-verify threatens the existence of 1,700 family farmers that are already on the brink because of the labor shortage.

Nearly 50,000 agricultural jobs in the Northeast alone would be eliminated if mandatory e-verify is passed.

If those Northeast agricultural jobs are lost, 55,000 off-farm jobs in agriculturally related businesses could also be lost. That is 100,000 jobs. Many of these jobs are held by American citizens in agricultural marketing and processing, farm suppliers, and farm service businesses.

So it is time for Congress to pass a practical solution to this problem, such as add jobs, which Senator Feinstein has worked long and hard on, and stop the ideological rhetoric that does not match the reality on the ground. We need a solution that severely penalizes farmers who hire illegal immigrants and exploit their workers. But we also need a solution that provides farmers with the ability to transform their current workforce into a tax-paying, English-speaking, legal workforce.

The current situation is untenable. Every day American farms are closing. America has to import more and more food from abroad because it is far cheaper to buy foreign food than it is to produce food here. Failing to act is both a food security threat and an economic security hazard.

I am confident our distinguished panel today will help us better understand these problems and guide us toward the best solution for reforming our agricultural immigration system.

I now turn to Senator Cornyn for an opening statement.

#### **STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Well, thank you, Mr. Chairman, and I appreciate your calling this hearing, and I appreciate all the witnesses being here today. I do want to give a special recognition to Dr. Knutson, who is going to be on this first panel, who is a professor emeritus at Texas A&M University in College Station. Aggies know something about agriculture, and we are glad you are here to share some of your expertise with us.

Also in the audience I know we have Ray Pruitt, who we worked with very closely, representing a lot of the agriculture interests in South Texas that is a huge breadbasket really for the rest of the State and, indeed, the country.

Since 1975, Dr. Knutson has been on the faculty at Texas A&M Department of Agricultural Economics. He is the author of more than 600 publications on agriculture policy and marketing, including a July 2011 study with Dr. Dennis Fisher entitled "Impacts of Immigration Reform Proposals on the Agriculture Sector," obviously a timely topic for today's hearing.

Mr. Chairman, I would ask consent that that report be made part of the hearing record.

Chairman SCHUMER. Without objection.

[The report appears as a submission for the record.]

Chairman SCHUMER. Also while we are doing it, without objection, the statement of Chairman Leahy will be entered into the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator CORNYN. Our topic today is a familiar one to those of us who have worked many years on immigration reform, but that familiarity makes the problem no less confounding. We cannot sugarcoat the facts. We should not sugarcoat the fact. Between 50 and 70 percent of the Nation's nearly 2 million farm laborers are in this country without legal authorization—50 to 70 percent. That fact alone shouts loudly that our immigration system is simply broken.

State laws have tried to fill the gaps where the Federal Government has failed, but it strikes me as bizarre that we find ourselves in the situation where the Congress that has passed our immigration laws is somehow concerned that the House may pass a bill that will actually require those laws to be enforced, although I do agree with the Chairman that it is important to provide a legal workforce for our agricultural sector. We neither effectively enforce the laws on the books, nor do we have an adequate legal system for agricultural employers to retain immigrant labor.

The Chairman has mentioned Chairman Smith of the House Judiciary Committee who is leading an effort in the other chamber to, I believe, address both problems: No. 1, to find a way to effectively enforce our immigration laws through a mandatory e-verify program, but—and this is an important "but"—to craft also a solution for agricultural employers so they can access legal immigrant labor when employers are unable to find Americans to work the fields.

Federal legislation mandating the use of e-verify is being spurred, at least in part, by the actions of 18 States that have required the use of e-verify for employers in those States. And, again, the States are acting because they look to Washington and see inaction and failure so far when it comes to reforming our immigration system. And they are, of course, experiencing the costs associated with education, law enforcement, and health care for a huge immigrant population in a disproportionate sort of way and one that Washington refuses to or is incapable of stepping up and indemnifying them for.

I believe that mandating the use of e-verify on a nationwide scale is an important credibility-building measure. The Federal Government does not have credibility in this area, and we have got to regain it. So we have to convince the American people that Congress is serious about fixing our broken system, but we must also be mindful of the current economic climate and take care that we are not causing major disruptions to or burdens on our employers who are trying to do the right thing.

As we will hear from Dr. Knutson, major disruptions in the agricultural labor supply will have real consequences for U.S. farm exports and cause an immediate and a substantial rise in food prices. In other words, we must tread very carefully here.

I hope this hearing will help us explore ways to dramatically increase utilization of the existing agricultural guest worker program, known as H-2A. H-2A's problems are well documented, and I expect we will hear more about those problems today. But if H-2A cannot be improved, we should scrap it in favor of a broader guest worker program that really works.

Mr. Chairman, I stand ready to work with you and with agricultural employers in Texas and across the country and with anyone else who is attempting in good faith to solve these difficult problems.

Thank you.

Chairman SCHUMER. Thank you, Senator Cornyn.

Senator Feinstein.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR  
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I have worked for 10 years now trying to come up with a solution to the diminution of agricultural labor in this country, and during that period of time, what I have seen is the outsourcing of American agriculture to other countries. What I have seen is a diminution in the amount of value of the American agricultural crop. I will give you an example.

California is the largest farm State in America. In 2008, it was a \$39 billion plus industry. In 2009, it dropped to \$34.5 billion. We have 81,500 farms, and people cannot get consistent and stable labor. It is a killer, ladies and gentlemen, an absolute killer, and it has been going on for years.

I am announcing my intent to introduce next week a 5-year emergency AgJOBS bill. There will be no amnesty. There will be no citizenship. But what it will provide is a blue card to an agricultural worker who has met certain criteria to be able to remain in the country with his family provided that individual works agriculture a certain number of days a year. It will have a phase-in e-verify, and it will have the reformed H-2A program as part of it. And by the reform program, I mean the program that was negotiated between the growers and the farm workers.

Let me give you a few examples of what is happening. Steve Scaroni of Scaroni Ranches was in the lettuce and broccoli industry for over three decades. He moved more than 2,000 acres and 500 jobs from his \$50 million operation in Heber, California, to Guadalajara, Mexico, as a result of the labor crisis. He explains: "I have

no choice but to offshore my operation.” Today he exports 2 million pounds of lettuce per week to the United States.

Mel-Delin Dairy, a 250-acre farm with 900 cows in Turlock. The family farm has been employing migrant labor for 20 years. Ray Sousa, owner of Mel-Delin Dairy, states, “I have not had a non-Hispanic want to do this work in 10 years. Once Americans get the job description, they lose interest real quick.”

Phil Martin, an agricultural economist at the University of California-David, reiterates this point. He says, and I quote, “A whole lot of 18-year-olds prefer to work at McDonald’s for minimum wage rather than milk cows.” And that is despite the dairy industry’s average wage of \$11.38 an hour. That tells you something, ladies and gentlemen.

California garlic and pepper farmer Tim Ciala says that the local labor supply has been tight and the production of California peppers has largely transferred to Mexico. The Cialas are third-generation California farmers. Mr. Ciala says, and I quote, “Labor is always an issue. We might have all the people we need to harvest the crop 1 week and then not the next. Unfortunately, even in tough economic times, there are not a lot of people who want to do this work. It is hard work.”

The produce grown on Mr. Ciala’s family farm is distributed to companies nationally for use in sauces, soups, pasta sauces, and other consumer goods. However, Mr. Ciala observed that the industry is changing due to the labor shortage. Smaller fruits and vegetables and anything labor intensive is going away and does not get planted anymore.

Asparagus plantings in California’s Imperial Valley have declined from 786 acres in 2006 to 373 acres in 2008, a reduction of over 50 percent. Ayron Moiola of the Imperial Valley Vegetable Growers Association predicts that California’s asparagus crops will disappear completely in the Imperial Valley if the demand for specialized asparagus planters and harvesters is not met. According to Ms. Moiola, asparagus in the Imperial Valley is an indicator as to what happens with crops that are labor intensive and what happens when labor becomes unfeasible economically and also just hard to find.

The United States Department of Agriculture data show that over 9,000 acres of U.S. garlic crops have gone out of production in the last 11 years, and the supply of American grown garlic has been reduced by 94 million pounds. China—big surprise—has surpassed the United States as the lead supplier of garlic consumed by Americans. We are giving away our industry.

John Reelhorn runs the Belmont Nursery in Fresno, California, a family run company founded in 1942. California’s nursery and floral crop industry is valued at about \$4 billion, making California the top producer of nursery greenhouse plants and trees in the United States. Despite the recession, Mr. Reelhorn has not seen American workers pursuing jobs on California farms. He states, and I quote, “A lack of timely and thoughtful resolution of the farm labor crisis will hasten the offshoring of our specialty crop and livestock agriculture.”

And it goes on and on and on. I have assembled a book that looks like this. We have copies. And throughout this whole book are sto-



ries from other States of the demise of American agriculture, which, while we fiddle and sit here, agriculture goes offshore. And the good produce that my State used to perform, superior to virtually anything, is no longer around. It is wrong. It is just plain wrong.

I do not understand why people in this body cannot come together. All right? People do not want amnesty. They do not want to provide citizenship. So there is an alternative. The alternative is a 5-year bill allowing people who have been working to continue to work 60 seconds—so that we can begin to restore our agricultural industry in the United States of America. If we fail to do that, for shame, we really do not belong in this office. And I feel that to the depths of me. Of course, it has been 10 years of trying, and my frustration is a little high at the moment, but thank you very much, Mr. Chairman.

Chairman SCHUMER. Thank you for your heartfelt and outstanding testimony and, even more importantly, for your leadership on this issue where hopefully we can make some progress.

Let me now introduce our first panel and thank all of them for coming. Gary Black is the Commissioner of the Georgia Department of Agriculture, a position he was elected to in 2010. He first began his career with the Georgia Farm Bureau in 1980, was field rep, later served as coordinator for the State Young Farmer Program. In 1989, leaders of the Georgia Agribusiness Council, a Chamber of Commerce-like organization for farmers and ag business owners tapped Mr. Black to serve as president, a position he held for 21 years before being elected agriculture commissioner.

Tom Nassif is president and chief executive officer of the Western Growers Association, an agricultural trade association whose members from Arizona and California pack, grow, and ship 90 percent of the fresh fruits, nuts, and vegetables grown in California and 75 percent of the commodities in Arizona. Under President Reagan, he served as Deputy Assistant Secretary for the Near East and South Asian Affairs and as Ambassador to the King of Morocco.

Bob Smith is senior vice president of at Farm Credit East, the largest agricultural lender to agriculture in New York State, with \$2.2 billion in loans to capitalize farms and farm-related businesses. In addition to providing credit, Farm Credit East also provides other financial services and benchmarking to help farmers succeed.

And Dr. Ronald Knutson is a professor at the Agricultural and Food Policy Center at Texas A&M University. He is the author of over 600 publications on agricultural policy and marketing, a member of the Board of Trustees of the Farm Foundation, and boards of the American Economic Association and Foundation.

Gentlemen, each of your statements will be read into the record. We would respectfully ask you to limit your statements here to 5 minutes each, and then we will do questions. Thank you all for being here.

Mr. Black, you may proceed, and we will move across the panel from your right to left.

**STATEMENT OF GARY W. BLACK, COMMISSIONER, GEORGIA  
DEPARTMENT OF AGRICULTURE, ATLANTA, GEORGIA**

Mr. BLACK. Thank you Mr. Chairman, Ranking Member Cornyn, members of the Committee, and ladies and gentlemen. It is a genuine honor for me to be here before you Committee today. I am not, however, clever enough to offer a sound-bite solution to the important topic under consideration. My purpose is to tell you that the need for a stable, legal supply of agricultural workers is real and that it impacts our economy and the safety of the food that your families and all Americans put on the table every day.

I am sure that you all know that the Georgia General Assembly passed an immigration reform bill during the past legislative session. The law requires the Georgia Department of Agriculture to conduct a study of the conditions, needs, issues, and problems associated with the agricultural labor situation in Georgia and to recommend any actions or legislation that the department deems necessary or appropriate. This charge includes recommendations for H-2A reform and the evaluation of a potential for a State-run guest worker program.

I am not at liberty today to report on the details of the study at this time, but we will be happy to share our findings with the Committee when it is complete in January 2012. However, I can provide you with a snapshot of what is happening with ag labor in Georgia today.

Due to the reports of labor shortages for the spring harvest, Governor Deal asked my department to help evaluate the labor situation in early June. We took a brief, unscientific snapshot of the labor situation at that time by conducting a survey of Georgia's agricultural employers. The survey suggested that there were unmet labor needs during the 2011 spring harvest season. Specifically, the survey revealed significant concerns among blueberry and fresh vegetable producers. However, we must consider additional variables for this past growing season, including unusually high heat and lack of rain, which caused an unexpected rush in harvest. But the bottom line is that the pool of 230 respondents reported on June 10, 2011, that they were not able to fill 11,080 agricultural jobs.

Also in June, at the urging of one of his board members from the Vidalia region, I contacted Brian Owens, commissioner of the Georgia Department of Corrections, to see if there was anything he could do short term to help meet the labor needs of producers. He offered to organize a pilot program where farmers could use probationer details to meet their labor needs. Two farmers participated in the pilot program and voiced mixed results. Both stated that the program could fill niche needs, but should not be relied upon as a primary source for field employees.

The pilot program drew criticism. I do have a unique perspective on this issue. I went undercover at a crew on July 6th and picked yellow squash for 6 hours, and survived. If the Committee has questions about this experience, I would be pleased to answer them following the testimony.

I believe the only viable solution lies in developing a guest worker program for the 21st century. I have listened to farmers for 6 months. Here is a brief summary of what they are telling me:

We desire and must have a legal workforce. The H-2A program is flawed. I need workers year round. Do Americans want their farm products produced here or abroad? I would love to have local workers who were drug-free, sober, reliable, and skilled at this work. Tell me where I can find them. And the litigious climate fostered by legal services is a burden too heavy to bear.

Senator Chambliss' HARVEST Act addresses some of these concerns, and there are other pieces of legislation with good components. Some believe H-2A can be reformed; others believe that the brand is damaged and deserves a new logo. What I know is that in the near future we must design a program that works for all producers, one that is cost-effective and is administered in a way more conducive for success.

Regretfully, a large number of illegal immigrants are working in agriculture today. A penalty-based work authorization permit should be considered for offenders. Such a measure could require substantial monetary fines, an annually renewed biometric permit supported by fees that is restricted for agriculture, and then strict employer enforcement after implementation.

The proposal to move guest worker administration to USDA has promise. I urge consideration of allowing States to work under MOUs for administration of any new program at the State level. These relationships work well for FDA, EPA, and USDA in other arenas. Why not let Georgians help Georgians when it comes to administering guest workers so long as the State meets requirements established and monitored by Federal authorities.

Sunday evening on Baltimore's gridiron the choices were simple: the Ravens or the Jets, one or the other. Sunday afternoon fans cheered 43 veterans and rookies at Dover's Monster Mile. Herein lies a parallel to this debate. I am convinced, Mr. Chairman, that the NASCAR approach to developing a 21st century guest worker program for American agriculture is what we need. It will take a multitude of fresh ideas to solve this problem while keeping our National defense and food security interests in sharp focus. We can continue to go around and around for a while, but my hope is that we can soon take a victory lap together. We cannot put off addressing this critical issue any longer.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Black appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Black.

Mr. Nassif.

**STATEMENT OF TOM NASSIF, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WESTERN GROWERS ASSOCIATION, IRVINE, CALIFORNIA**

Mr. NASSIF. Chairman Schumer, good morning, Ranking Member Cornyn and members of the Committee. A special thank you to Senator Feinstein, with whom I have had the pleasure of working over the last 10 years on immigration reform, for her tremendous efforts to bring bipartisan solutions and bringing employers and labor unions together to try and find a solution. Western Growers represents California and Arizona fresh produce. It is about half of all the produce grown in the United States.

Studies conducted by the University of California-Davis demonstrate that every California agricultural job creates two non-farms jobs in our economy, and every farm dollar generates \$1.27 for the California economy. Nationwide, the Department of Labor reported that 24 million jobs, a full 14 percent of all people employed in the United States, are supported by the U.S. food and fiber industry.

Today I am here to talk about a labor crisis. This is not a new challenge for agriculture. We have been working to secure a legal workforce for more than 15 years. But without immigration reform and with a diminishing labor supply and threats due to I-9 audits and ICE raids, coupled with e-verify legislation at the State and Federal levels, it is clear that U.S. agriculture will be decimated without a workable mechanism to provide the workers we need.

Even before the challenge of e-verify legislation, the need for a workable agriculture labor program, especially for our current experienced workforce, could not have been clearer.

In California, a State with no e-verify legislation pending, and across the country, agricultural employers are facing an increasingly difficult time finding a sufficient legal workforce. Western Growers recently polled our members: 62 percent said they are experiencing labor shortages today.

The existing challenges we face in securing a stable workforce will pale in comparison to the devastating impact of e-verify legislation in the absence of a workable labor program.

The trends in California are startling. Our members and other specialty crop producers across the country are looking to foreign countries as they make plans to expand their businesses and will create additional jobs abroad, stimulating their economies.

In the absence of a workable ag labor program for those presently employed in our industry, e-verify not only promotes the movement offshore of what was once U.S. production, it is a jobs killer for rural America.

Right now, the only program available to secure a legal workforce is the H-2A program. H-2A is presently used by only 2 to 3 percent of agriculture, and even then, the just released nationwide study of H-2A users commissioned by the National Council of Agricultural Employers that was presented to the House Subcommittee on Workforce Protections last month reports that 72 percent of workers arrived late, on average, 22 days after the date of need. Crops must be harvested when they are ready to pick, not when they are ready to wilt.

In order to move us closer to a solution to meet our labor needs, we must consider a new approach to an employee visa program. The number of visas would be determined by the number of employer requests for workers on a monthly or annual basis and could vary year to year based on market conditions.

Senator Feinstein has come up with many solutions, and I am anxious to see what her new legislation looks like because her past legislation has looked very good to our industry.

A workable program would also provide farm workers with the same protections, no more, no less, than U.S. workers with respect to all employment-related laws and employment taxes. There

would be no reason for an employer to prefer a temporary foreign worker over a U.S. worker.

It is also imperative that this program address not only the need for future employees, but also the need to retain our experienced employees, the people who are already here. They are highly skilled employees we depend upon to keep us competitive by maximizing efficiencies through their experience and their training.

If there are indeed 1.2 million or more falsely documented workers in agriculture and they were no longer able to work, then the two non-farm jobs that support them would also be lost. This is a potential loss of 3.6 million jobs in agriculture, most of which will be done and are being done today by citizens of the United States. With less domestic production, more food will have to be imported, compromising the safety and security of our food supply since only 1 to 2 percent of imported food is inspected.

There is not a person in the country that is not connected to this problem. If you eat fresh produce, drink milk, grill steaks, or purchase plants for your yard, you are benefiting from the hard work of a foreign agricultural worker.

On behalf of Western Growers and the produce industry across the Nation, I am appreciative of this Committee's willingness to examine the labor crisis facing U.S. agriculture. We look forward to rewriting immigration policy for agriculture with you.

Thank you very much.

[The prepared statement of Mr. Nassif appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Nassif.

And now my fellow New Yorker, Mr. Smith, welcome.

**STATEMENT OF ROBERT A. SMITH, SENIOR VICE PRESIDENT,  
FARM CREDIT EAST, COBLESKILL, NEW YORK**

Mr. SMITH. Thank you. Thank you, Chairman Schumer and members of the Committee. Thank you for the opportunity to testify on agricultural labor-related issues. My name is Robert A. Smith; I am senior vice president with Farm Credit East.

While there are many significant risks that family farms face, the concern with maintaining a stable labor supply is a risk factor with which our farmer members are most concerned. Many successful, forward-looking operations that have positioned themselves for decades for growth opportunities that could create more American jobs are holding back over concern with immigration enforcement actions and the possibility of mandatory e-verify.

The reality is that over the past two decades, farmers have come to rely on immigrant workers who present the necessary identity and work authorization documents and are then employed under the same Federal and State terms as other workers.

We believe this is a jobs and food security issue. If as a country we fail to find a workable solution to enable labor-intensive agriculture to maintain the necessary workforce, we will see another part of our economy move offshore where barriers to entry for new agricultural enterprises are minimal. To some degree we need to ask ourselves, Do we prefer to have our food produced domestically with the use of some foreign labor or in other countries with foreign labor for all of the jobs?

To better understand this issue, we prepared a vulnerability assessment to estimate the economic impact of the loss of alien workers on farms in our six-State area, based upon the assumption that an estimated 70 percent or more of them provide work authorization documents that appear to be but are not legitimate.

Our analysis indicates that a labor shortage as a result of effective immigration enforcement actions without improved agricultural worker programs would have the following impact:

Approximately 1,732 Northeast farms are highly vulnerable to going out of business or being forced to severely cut back their operations.

These highly vulnerable farms are some of the most productive in the region; their total sales of farm product are estimated to exceed \$2.4 billion, or 36 percent of the value of the region's agricultural output.

Next, 20,212 full-time and 29,894 seasonal positions on farms would be eliminated if those highly vulnerable farms go out of business. The reduction in the farm payrolls is estimated to be \$528 million annually. This means significantly less spending and economic activity in local communities as funds generated do not churn through the economy as they currently do.

The highly vulnerable farms operate over 1.1 million acres. If these farms were to cease operations, some of the acreage might switch into less intensive agriculture, but thousands of acres would potentially be converted to non-agricultural uses.

The economic impact of the loss of 1,700 farms goes well beyond the farm gate. We estimate that 55,311 off-farm jobs in agriculturally related businesses in the Northeast could be impacted. Many, if not most, of these positions are full-time jobs held by local citizens. These are positions with agricultural marketing and processing businesses, farm suppliers, and farm service businesses.

As noted in our analysis, some of the farms that we consider highly vulnerable will survive in agriculture, but shift to less labor intensive farm operations. Clearly one of the great attributes of American agriculture is our production diversity. With this shift away from labor-intensive crops will come significantly reduced employment and payroll.

Census data analysis indicates that the labor expense to grow 1,000 acres of grain is \$31,980, the labor cost for 1,000 acres of vegetables is \$355,000, and the labor cost for 1,000 acres of fruit is \$922,000. These are at-risk payrolls that impact on local economic activity.

An enhanced enforcement-only approach without an effective alien worker program to provide a legal workforce for agriculture is counterproductive to efforts to reduce unemployment. It will mean that American citizens involved in the food chain will be unemployed and more consumer dollars will flow out of the United States to purchase products that could have been grown in the United States.

In closing, we all support efforts to secure our Nation's borders and control entry of alien workers on America's terms. A critical part of that solution must be a workable program for agriculture that meets those objectives while providing America's farms with a reliable source of experienced farm labor.

Thank you very much.

[The prepared statement of Mr. Smith appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Smith.  
Mr. Knutson.

**STATEMENT OF RONALD D. KNUTSON, PH.D., PROFESSOR  
EMERITUS, TEXAS A&M UNIVERSITY, COLLEGE STATION,  
TEXAS**

Mr. KNUTSON. Chairman Schumer and Senator Cornyn and members of the Subcommittee, thank you for the opportunity to testify on farm labor policy.

As emeriti professors from Texas A&M University, Dr. Fisher and I have researched the agriculture economic conditions that make the farm labor situation unique. Dr. Fisher has served as a farm labor specialist in Oregon, Michigan, and New York. We concluded that the current H-2A program is broken. Agriculture needs a much better solution.

Reform of labor policy is essential. If farm labor is not available on a timely basis, large quantities of fruits and vegetables will be wasted. About 1 million farm workers are primarily employed to produce fruits, vegetables, and nursery crops. At least 61 percent of the farm workers are unauthorized.

There are several myths regarding the economics of agriculture and the farm labor workforce. These myths can mislead individuals who seek solutions to farm labor problems.

The first myth is that farm labor is readily available from the non-farm labor force. This is not true. Experience indicates that there are many farm jobs that non-farm laborers cannot or will not do. This was the central conclusion of a study completed by USDA and the University of California. Back-breaking hand labor is essential for harvesting most perishable fruits and vegetables.

These are jobs that must be performed on a timely basis, or food is wasted and farm income declines. Waiting for a work permit to be issued under the H-2A program is not a viable option. This is the principal reason most farmers do not use the program.

A second major myth is that large corporate agribusiness firms employ most of the farm labor. This is not true. In 2009, 2.2 million farmers were family farms, and only 61,000 were non-family farms. Over 46,000 family farms having less than \$250,000 in sales were organized as corporations. Likewise, all types and sizes of farms, including small farms, utilize farm labor. In 2009, 16 percent of the labor utilized on small farms having \$10,000 to \$250,000 in sales was hired farm labor. These farms would be particularly adversely affected by actions that limit the availability of hired farm labor.

A third myth is that farmers could pass on the increased hired farm labor cost to buyers. This is not true. Farm prices are determined nationally and globally by competitive forces. Mexico, Peru, Chile, Argentina, and South Africa are major sources of fruit and vegetable supplies for U.S. consumers. Chinese exports of apples have risen from near zero in the early 1990s to nearly double U.S. apple exports. Farmers whose operations are disrupted by changes in labor policies and costs increasingly run the risk of financial failure. In 2007, USDA determined that 20 percent to 40 percent of

the farms in each farm type were in an unfavorable financial position. Higher labor costs will contribute to higher imports, reduced exports, and farm financial failures.

Our fourth myth is that large agribusiness firms are directly involved in farm production that utilizes large amounts of farm labor. This is not true. Agribusiness corporations that produce farm commodities are the exception rather than the rule.

Our fifth myth is that there is a national farm labor market and that farm labor shortages are not real. This is not true. In fact, farm labor markets are local and are dispersed throughout the United States.

The fact that the H-2A program accounts for only less than 5 percent of the hired farm labor workforce indicates that the immigration program is broken. It is time to replace the H-2A with a more flexible market-oriented program. Such a program must be attractive to current workers; farmers must be able to attest to their labor needs; farmers must be able to change their hired farm labor workforce on a timely basis; and there must be flexibility for workers to shift among farmers.

A more healthy American diet will require increased production of fruits and vegetables. Farm labor policies involving a higher level of Government regulation would lead to fewer jobs and increased fruit and vegetable imports.

[The prepared statement of Mr. Knutson appears as a submission for the record.]

Chairman SCHUMER. Thank you, Dr. Knutson. And now we will go to questions. We are going to limit it to 5 minutes per member.

My question first, a simple yes-or-no answer if you can give it, to each of the panelists: Do you think our agricultural labor crisis in your region or State can be fixed without legalizing the current workforce?

Mr. NASSIF. Absolutely no.

Chairman SCHUMER. No? Mr. Smith.

Mr. SMITH. No.

Chairman SCHUMER. Dr. Knutson.

Mr. KNUTSON. No.

Chairman SCHUMER. Mr. Black.

Mr. BLACK. Mr. Chairman, if legalizing means providing a work permit, that is the way I interpret that rule. We must have a viable guest worker program for agriculture.

Chairman SCHUMER. That is one way of legalizing, absolutely. OK. Thank you. Let the record show all four did not believe it could happen without legalizing in some way or other the current workforce.

Next question, this is for Mr. Black, Commissioner Black. I talked about two articles in my opening statement where the agriculture commissioner of Alabama stated that the Alabama law would have an adverse impact on the farm economy. There were similar statements from Brian Tolar, your successor at the Georgia Ag Business, who estimated the monetary loss of unharvested crops due to the lack of immigrant workers to be in the range of \$300 million, with an overall adverse impact on the State of Georgia approaching \$1 billion. Do you basically agree with Mr. Tolar's estimates?



Mr. BLACK. Well, the estimates were really premature, and, Senator, there are some new studies. We are looking at some of those figures right now. Mr. Tolar's group and about five others engaged in this study. The preliminary numbers that I saw this morning were somewhere in the neighborhood of about \$150 million. So the economic losses were real.

This year, I would say it was more of an impact of the fear of the law rather than the law itself because there were some deadlines that were simply not—

Chairman SCHUMER. Right. So you would say they are very significant but not as high as the initial estimate.

Mr. BLACK. Yes, sir, that is correct. That is what is being aired right now.

Chairman SCHUMER. OK. Thank you.

Next question, and this one is for Mr. Nassif. Can you please give us a short verdict specifically on whether Arizona's new e-verify law has helped or hurt farmers to find American farm workers in Arizona? Some have suggested that mandatory e-verify will create 7 million jobs for American citizens. What do you think this legislation will do for the agricultural economy based on the experience that is occurring in Arizona?

Mr. NASSIF. Certainly in Arizona it has not helped the agricultural industry. It has been very difficult to find workers in Arizona. We tried going to the Department of Labor and asking for a simple fix that would allow us to bring those who live on the other side of the border, because Yuma is on the border, across to be able to work in our fields. And we said they do not want to have housing. If they want housing, let us provide housing for those that want it. But if they do not want housing, do not make us spend hundreds of thousands of dollars for this housing. None of those workers use the housing. The Department said, "I am sorry. We do not think we have the authority to be able to change that." Well, every time we get a new administration in, they find some way of changing the regulations on H-2A. This would be a modest fix that would not hurt anybody. The worker would have the right to say yes or no outside of the hearing of the employer, but even small changes like that they are unwilling to do.

Chairman SCHUMER. But you agree that this e-verify imposition in Arizona has hurt agriculture significantly.

Mr. NASSIF. It certainly has.

Chairman SCHUMER. And the contrast with California, where there are still plenty of troubles, as my colleague has indicated, but it is considerably worse in Arizona right now?

Mr. NASSIF. Of course, in California we have no e-verify, and we still have shortages.

Chairman SCHUMER. Right. A final question for Mr. Smith. Many of our farmers in the Northeast, they love farming. It has been in their family for generations. But the profits are razor thin, if existent at all. How would raising labor costs, even by relatively small amounts, affect so many of our family farmers in the Northeast?

Mr. SMITH. It would have a major impact, a major negative impact. The truth of the matter is that on many of our farms, labor is a major portion of the cost; 20, 30 percent of their total production often for Northeast farms goes to labor. So you have a 10-,

15-, 20-percent increase, that puts them in many cases in a non-viable situation. They just simply do not have the profit levels to survive that kind of situation.

Chairman SCHUMER. Thank you. My time is up.

Senator CORNYN.

Senator CORNYN. Mr. Black, can you explain what an employer is required to do by current law to determine whether someone can legally work at their workplace?

Mr. BLACK. Well, I have had many farmers report to me, Senator, over time that if they are presented with documentation that appears to be authentic, that is, completion of the I-9 and that kind of documentation, that there comes a real challenge of the farmer's inability to question the authenticity.

Senator CORNYN. And I think, Mr. Nassif, you mentioned that you think about 70 percent—or I think maybe Mr. Smith, about 70 percent are falsely documented?

Mr. SMITH. I said that, yes.

Senator CORNYN. So just so we are correct, current Federal law requires an employer to do their best to try to confirm the legal eligibility of somebody to work, but under the current system, somebody can falsely claim a legal work status in the United States and, frankly, we do not expect employers to be the police or to do the Federal Government's job. They accept those documents at face value and, unfortunately, in a majority of cases, they end up being false.

So it strikes me that we might be able to find a sweet spot here for people who are concerned about finding a legal workforce and also address what I think ought to come first, and that is, the concerns from the American people that the Federal Government is simply not doing its job enforcing the law. In other words, I think what we might be able to do—and, frankly, I think that Congressman Smith's e-verify bill may have brought us to this place. The threat of accurate confirmation of the eligibility or ineligibility of a prospective worker has brought us to the place where maybe we might be able to address a bill something like Senator Feinstein and others have proposed to create a legal workforce and not a pathway to citizenship. I think that could well be progress.

But I am intrigued, Mr. Black, by your testimony where you say the Federal Government does not necessarily need to administer a temporary worker program that would actually work, unlike the current H-2A program, but could create one and then delegate the actual implementation to the States through an MOU for the day-to-day responsibilities of administering the program. You talked about how that relationship currently exists in an area like environmental enforcement and food safety regulations. Could you put a little meat on the bone and tell me how you think that might work?

Mr. BLACK. Yes, sir. I have looked to the successes of our agency when it comes to implementation of food safety laws, to implementation of pesticide labeling laws, the wide range of issues that, and quite frankly, I am a pretty big proponent that there are many things the States can do perhaps more economically, and also closer to home. If the Federal Government could give us the rules to live by, could audit the systems, provide the standards, provide the

training, perhaps return Federal tax resources to help support the program like they do with other initiatives, I think the idea is worthy of consideration.

Senator CORNYN. Well, I hope federalism is not dead and that we recognize that the States are completely competent to administer many of these programs, and it does not have to be done nationally, and there could also be some flexibility associated with regional differences.

Mr. BLACK. Yes.

Senator CORNYN. Dr. Knutson, let me ask you, when the unemployment rate is so high, why will unemployed non-farm workers not take certain farm jobs? In some States H-2A wages are 30 percent higher than the Federal minimum wage. That is almost \$9.50 an hour. Why is ag labor so different?

Mr. KNUTSON. This is a very puzzling issue. It is true that agriculture is a back-breaking job; it requires you get down on your hands and knees and so forth and so on. I happen to feel that Federal policies regarding unemployment compensation may well be contributing to this issue. The more you extend the period, the less incentive there is for these people to take farm jobs.

Now, that certainly is not the only explanation, but it is the only one I have not heard mentioned and talked about. Now, that is a highly political statement, I recognize that fact. But I think it is something that needs to be researched as to what kinds of disincentives are developed by our current Federal policies to get American citizens employed in agriculture.

Senator CORNYN. Thank you, Mr. Chairman. Thank you, Dr. Knutson.

Chairman SCHUMER. Senator Feinstein.

Senator FEINSTEIN. I drove down Highway 1 in the Castroville area, Mr. Chairman, and I would say the temperature was about 95, 96 degrees, and I watched row crops being harvested. And I will tell you, I would not last 10 minutes out there doing that kind of work. It is extraordinary difficult, and it is not true that these are unskilled workers. They are skilled workers. You watch their hands. You watch them pick. You know how they pick. You watch them prune. And it is precise because there is knowledge there. So I have come to have a great respect for people who have the stamina and the ability to be able to do these jobs.

Now, I have also come to the conclusion that Americans do not, and do not want to have the stamina and do not want to do those jobs. But people who do I think should.

Now, I wanted to ask a question about e-verify. Senator Leahy and I wrote a letter to Ali Mayorkas, who is Director of the United States Citizenship and Immigration Services, and we asked him about the potential use of the program within the ag industry, and he wrote back to us, and he said, you know, the usual, that it is designed to provide simple, convenient employment verification, and lack of computer access in remote areas could be managed through the use of e-verify employer agents. There are companies that run e-verify queries on behalf of other employers for a fee since EEAs design and build their own software to interface with e-verify using an access method known as web services. The bottom line is he said this could be worked out.

But, on the other hand, if my bill were in law, you would have a counterfeit-proof blue card which would have biometric data in it, which seems to me to be equal to e-verify. Let me ask everybody what they would think of that. Mr. Black, and we will go right down the row.

Mr. BLACK. Senator, I do not know about the comparison of the two, but as I stated in my testimony, absolutely a biometric card I believe is actually the direction we need to go. Now, how that fits into the actual logistics of e-verify I am not—I would not want to—

Senator FEINSTEIN. Well, it would be an option.

Mr. BLACK. Yes.

Senator FEINSTEIN. Tom.

Mr. NASSIF. We believe that is a very viable solution, Senator.

Mr. SMITH. Senator, it seems like that would work. It is just important that the existing workforce be able to be included as part of the eligible workforce.

Senator FEINSTEIN. Right, right.

Mr. KNUTSON. I agree with the concept.

Senator FEINSTEIN. OK. So that is one way of doing it that does not disadvantage the farmer that does not have computer knowledge. You know, I am not of the computer generation. I sort of managed to do without it, surprisingly, yes, and I find it challenging to learn.

[Laughter.]

Senator FEINSTEIN. In any event, going back to the bill, I think most of you know about the H-2A reforms in the bill, but one thing I want to ask you about, yes or no, is: Would you put a 5-year limit on it? Now, again, this has no amnesty and no pathway to citizenship. Would you put a 5-year limit on it or would you have no limit? Mr. Black.

Mr. BLACK. Your 5-year notion, it is certainly something we would love to talk about. I think that is a good idea. It is a good place to start, yes, ma'am.

Senator FEINSTEIN. OK. Tom.

Mr. NASSIF. While we would prefer a permanent resolution of this issue, we would certainly support a pilot program of 5 years in order to find out how well it works or does not work, and then hopefully that would be a blueprint for future legislation.

Mr. SMITH. I understand the need for the 5-year limit or at least the viableness of the 5-year limit, but would prefer a permanent solution because that allows farmers to really make the investments that they need to do. If they are going to expand markets, going to grow agriculture in this country, you need a permanent solution over time.

Senator FEINSTEIN. Thank you.

Mr. KNUTSON. What I really worry about is the impact on smaller farms. I think that smaller farms have a real difficult time coming to grips with the technology involved in communication with Government agencies at this point in time. And I am not saying they are computer illiterate necessarily, but it is a difficult process. So I worry that you are going to put a lot of small farms out of business.

Senator FEINSTEIN. Well, my 5-year bill would not have e-verify. It would have a counterfeit-proof card.

Mr. KNUTSON. Well, if you are talking about—I thought you said that you were putting in e-verify.

Senator FEINSTEIN. We are looking at putting it in, but the alternative—I am trying—

Mr. KNUTSON. I agree with the alternative, but when it comes to e-verify, it seems to me that the impact on small farms—and by small farms I mean less than \$250,000 in sales—would be very adverse.

Senator FEINSTEIN. Would you gentlemen agree to—do you oppose e-verify for this purpose?

Mr. BLACK. Do I oppose e-verify?

Senator FEINSTEIN. That is right.

Mr. BLACK. E-verify is a real problem without the fix and a viable guest worker program, yes, ma'am.

Senator FEINSTEIN. Tom.

Mr. NASSIF. Our position has been and is that we do not oppose border security, employer sanctions, enforcement of the laws, e-verify, so long as we have a viable program for maintaining our present workforce and for bringing in new employees.

Mr. SMITH. E-verify without a worker program would just create devastation in agriculture, so you need a worker program. But keep in mind e-verify creates unfairness out there. The reality is that farmers have hired people, have looked for the documentation. They have gotten that documentation. And now we are going to go back, after those workers have been there 10 or 15 years, and say now you lose your workers? That is unfair. Those farmers have invested millions of dollars, have viable farms out there, using at that point in time what was appropriate. They provided the identity information to the farm business. They accepted it. They have to accept it. And they were hired. And now those workers are experienced workers that are needed on farms.

So, you know, there is a lot of unfairness there. If we are going to do e-verify, we have to have a viable worker program.

Senator FEINSTEIN. Right. Mr. Knutson.

Mr. KNUTSON. I agree with that statement.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Chairman SCHUMER. Thank you. I think the record shows that without significant changes, every one of the witnesses agrees that e-verify would not work. Just standing on its own, making it permanent would not work for agriculture. OK.

Senator Grassley had to leave, so without objection, I will ask that his statement be put into the record.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman SCHUMER. Now we have Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Schumer. Thank you for holding this hearing, which I think addresses a very, very important subject for the entire country, not just for your areas.

Let me begin with Commissioner Black because you have a background not only in this area of providing verification of workers and so forth, but also food safety. I wonder if you could tell us how these requirements in terms of e-verify and the H-2A requirements

impact safety, particularly at the local level, where you have implemented projects and requirements that are innovative and evidently successful.

Mr. BLACK. Yes, Senator. I really believe it becomes a question—and Senator Feinstein did mention it earlier—as to whether we want the product produced here or abroad. I think we have Americans that want local production of food. I am seeing citizens of Georgia every day becoming more engaged in the fact that food production is as important a component of national security as anything else we do. They also recognize that we have had some challenges with our energy production and where that is coming from, and they do not want that to happen with our food.

Therefore, we are at a very important crossroads. We must have an agricultural guest worker program that works for all producers, for without that labor we will continue to see production drift elsewhere. And I do not think that is acceptable.

Senator BLUMENTHAL. And food coming from elsewhere may not be subject to the same scrutiny and oversight and—

Mr. BLACK. There are some challenges there, and we have even our own FDA challenges and border challenges of being able to inspect where that is coming from. It is a free and open global market, but I think for our economy, for jobs locally, and for that wholesomeness of locally produced or at least nationally produced food, our citizens expect us to put together a program to allow that to happen.

Senator BLUMENTHAL. So it is not just an issue of price or cost. It is also the potential safety of food coming from abroad if it is not produced here, and also the ability to control what the standards are applied when there is sufficient oversight at the local level through these—

Mr. BLACK. Yes, sir, and I would maybe venture to say this also—there is a cost to doing this, but there is a cost to not doing it. One of the costs to not doing it is a price I do not think we can pay.

Senator BLUMENTHAL. And I gather all of you support the food safety goals and standards that come with production in this country as opposed to importing from abroad. Is that correct? The record will note that I think they all—all the witnesses agree.

Let me ask you, Mr. Smith, because you come from a part of the country that borders on Connecticut, are there any regional differences particular to the Northeast that make us different so far as this subject is concerned?

Mr. SMITH. Thank you, Senator. It is good to see you. And we do serve farmers in Connecticut, and we have a number of offices in the State of Connecticut.

Senator BLUMENTHAL. And you do great work, and we appreciate it. Thank you.

Mr. SMITH. Thank you. Yes, some States are certainly more vulnerable to labor shortages than other States as an overall industry. Industries that have labor-intensive agriculture—fruits, vegetables, dairy, nursery/greenhouse—are going to be more vulnerable to potential changes in labor than in other States. In the Northeast, a very high level of those production, Connecticut is the third most vulnerable State in the Nation when it comes to labor shortage if

you look at it from the standpoint of the amount of labor cost as it relates to the total production in the State.

Senator BLUMENTHAL. And are there differences among the crops, the kinds of crops produced that make us particularly susceptible?

Mr. SMITH. Absolutely. Again, greenhouse/nursery products—and Connecticut is very big in greenhouse/nursery, dairy, fruits and vegetables. We have got a number of great apple orchards and wineries in Connecticut, all vulnerable to not having adequate labor due to immigration enforcement efforts.

Senator BLUMENTHAL. Thank you. My time has expired, but this has been a very, very valuable panel, and I want to thank the Chairman again for having this hearing.

Chairman SCHUMER. Thank you, Senator Blumenthal, and I thank the witnesses. Exactly right.

Senator Sessions, do you have some questions?

Senator SESSIONS. Thank you, Mr. Chairman.

Gentlemen, the first thing I would suggest to you is that the first priority is what is in the national interest, what is in the interest of the United States, and the United States has a powerful interest in a lawful system of immigration.

Second, I would suggest to you, you are not entitled to an unlimited amount of low-cost labor even if that is your desire. The world is filled with people who could get rich if they had a very high level of low-skilled or low-wage workers. So that is the problem we have got.

The proposals that were made previously in the AgJOBS bill—and hopefully, if Senator Feinstein offers more, it will be better, but if it is not different, if it not going to pass. And that legislation had people coming for 3 years with their families, being able to extend for another 3 years, I think another 3 years indefinitely. By then they have children. Somebody said, well, we no longer need you, you should go home, you create a social problem of real great worth.

I believe a guest worker program can be crafted that would be passable and would serve the national interest. I cannot see it being anything other than staying less than 1 year and without families for agricultural workers.

I do believe that farmers can find employees that work on their farms from American citizens. That is the advantage. What our Nation should seek to do is to create a situation that would reduce food stamps, which have tripled in the last 10 years, gone up 300 percent. We have got other welfare programs and unemployment insurance and the highest unemployment we have had. So, obviously, the national interest says let us use as many of the American workers as we possibly can to fill these needs.

Do you think that you could be supportive of a plan that allowed workers to come for less than a year, to work and to return to their country and not place roots and bring families with them? Maybe you can give me your opinion of that. Do you want to start, Mr. Black?

Mr. BLACK. Yes, sir, Senator. I tell you, any steps we could take to having a viable guest worker program for agriculture in this Na-

tion, that is what I am for. We have had some experience with local workers——

Senator SESSIONS. It is a little more expensive to have to pay somebody's entrance and back and forth for the farmer or the agribusiness and so forth. They would like for the person to be able to stay, and that was what was promoted previously. So do you think you can live with this kind of system?

Mr. BLACK. Well, currently under H-2A they do go back and forth, and there are provisions for that. I think there is a tremendous bureaucracy that needs to be revamped, and that is why I am for actually rebranding this program as opposed to just putting duct tape on it again. But, you know, I would love to have some more discussions at the proper time and be able to share some experiences about employing local folks. There is no doubt in my mind that is an aspiration that every producer I represent would love to attain, and I would love for us to get there. I think it is a generational issue, and it is not going to be solved in the coming months.

Senator SESSIONS. I am going to push back a little bit. I think people are willing to work, but they are not willing to take a job for 3 months and then be cast aside with no health care, no benefits, and no job security. So therein that niche lies some justification for a limited, well-managed guest worker program, I think.

Mr. BLACK. Yes, sir.

Senator SESSIONS. And then to the extent we can, bring as many citizens into full-time agricultural employment I think is not an unrealistic goal.

Mr. Nassif.

Mr. NASSIF. Yes, Senator, thank you very much. If we are talking about new workers coming in, first of all, our industry is no longer just seasonal. It is not just 3 months. Most of our farms run 12 months of the year because the people who buy, the retail and food service companies, require an adequate, consistent quality and sufficient volume 12 months of the year. So——

Senator SESSIONS. Well, you could stagger the——

Mr. NASSIF. So our farmers go from region to region so we have 12 months of the year, and, of course, the more experience they have, the more valuable they are. So our preference would not be for less than 12 months. And, of course, we would want those new employees to be able to return so long as they obey the laws of the United States and the State in which they work. It is a wholly different question if we are talking about an existing workforce, but I assume you are talking about just new employees and not the existing workforce.

Chairman SCHUMER. Thank you, Senator Sessions.

Senator Franken will be next, and I think there is a great interest in this subject shown by the number of seven members have shown up, which is a lot for a hearing on a Tuesday morning. Senator Franken.

Senator FRANKEN. This is a very, very important hearing, and that is why, Mr. Chairman. And I am sorry that I missed your testimony. I was in an important hearing in the Energy Committee, but this is very important to Minnesota. We have the seventh larg-



est number of farms in the country as a State, and we have some nurseries.

In fact, Mr. Nassif, last month Joe Bailey, the head of the Minnesota-based Bailey Nurseries testified before the House Education and Workforce Subcommittee. Now, Bailey's is one of the largest wholesale nurseries in the country, and Joe voluntarily enrolled his company in e-verify, and on top of that he dramatically expanded his recruitment efforts. And even then Joe Bailey was short 100 workers.

Mr. Nassif, I am curious to know if this is a common experience, a farmer going out of his or her way to comply with the law and then finding that there is just no way to get enough workers. Is that common, in your view?

Mr. NASSIF. Yes, Senator, it is very common. Senator Feinstein has done some extensive studies on this in California to show that no matter what you do and how hard you recruit and the advertising you do and the efforts you make, you get very few people to respond, and those that respond either will not stay or stay maybe a day or two and then leave the fields. The United Farmer Workers Union, as you know, made a big effort—Take My Job—and look what happened. I think there was something like 10,000 inquiries and maybe a couple of people actually worked on a farm.

There is not any question that we cannot find a legal workforce in the United States, and that is why we have programs that allow us to go abroad to do that.

Senator FRANKEN. I was interested in reading your testimony, and I read all your testimony last night. You actually have a sub-heading, "Steps toward a solution," which caught my eye.

Mr. NASSIF. Yes.

Senator FRANKEN. And I was interested to read about your proposed solution. Can you tell us a little bit more about it?

Mr. NASSIF. Well, Senator Feinstein, as I understand it, is introducing a new solution next week—

Senator FRANKEN. And I am a cosponsor of that.

Mr. NASSIF [continuing]. Which may be very similar to what we are talking about. But basically we are talking about two separate programs: one for new employees and one for existing employees. And, obviously, it is extraordinarily important that we maintain our current workforce because of the experience they have had, the loyalty that they have shown, and their ability to produce more per acre in harvest than we could retraining new employees and bringing them in.

So we want to make sure that we have a program that allows them to be here legally. We are not asking for any special treatment. We are saying let us have a market-based approach so that the new employees coming in versus those who are already here versus any legal workforce would all be subject to the same sorts of laws. And the way we pay for a program like that is we take, for example, Medicare, which they would not be eligible for if they are here illegally, and put that money into cities and counties and States that have had to pick up the tab for some of this health care, take unemployment insurance and put that into the program to help offset the cost of administering a program like that, and take the Social Security funds, which they are not eligible for and

which probably have collected hundreds of billions of dollars in Social Security that will never be paid to these farm workers, and put that in a fund for them so that when they do return after the end of their program to their country of origin, whatever that country might be, this would be a savings account for them, and allow us to bring the temporary workers in, the new workers in without families in the United States to be able to do that work, but be able to keep the legal workforce we have.

We know that, although we have supported ag jobs for a decade, the pathway to citizenship, given the political realities, is not going to work. So we are suggesting now some program that does not necessarily need to a pathway to citizenship but allows them to be able to live here in peace and security for their jobs and well-being and still be able to benefit the best interests of the United States.

Senator FRANKEN. Well, I think whatever we do—and I know I am about to be out of time, so I will just—I think whatever we do is going to have to be in the context of comprehensive immigration reform. But in the meantime, thank you for your solution.

I would not mind asking more questions a little later, but for now thank you, Mr. Chairman, for holding this very important hearing.

Chairman SCHUMER. Thank you, and we will have a second panel, which Senator Franken has graciously agreed to preside over since I must be gone. But I want to thank the witnesses for excellent testimony that maybe, I think—I do not know if my colleagues would agree—will help us move to a solution to this area which cries out for a solution. And I would say from the comments of some of my Republican colleagues and some of my Democratic colleagues, we may not be that far apart, and we have to come up with a solution. The future of agriculture, we have someone from the Southwest, someone from the Northeast, someone from the West, and someone from the South who all agree we need to do something, and simply the advent of e-verify without some solution for existing workers does not work.

So thank you all very much, and we will go on to the second panel. I want to thank Senator Franken for chairing the hearing, and I want to apologize to the witnesses in the second panel that I have been called away and cannot stay. Thanks.

Senator FRANKEN. [Presiding.] We have three witnesses for our second panel, and I would like to introduce them.

Mr. Rodriguez, who is taking his seat, is the second president of United Farm Workers of America. I think we know who the first one was. He became UFW president in May 1993 after the death of Cesar Chavez, the founder of the UFW. As president of the UFW, Mr. Rodriguez represents 30,000 farm workers in ten States and fights for workers to earn decent pay, health coverage, and protections against toxic poisons.

Connie Horner is the president of Horner Farms in Homerville, Georgia. Horner Farms is a small, family owned organic farm. It currently grows blueberries, strawberries, and blackberries, and is planning to grow kiwi, grapes, bananas, and raspberries—you are shaking your head. Is that misinformation?

Ms. Horner. Yes, that was from 2 years ago or so. We are now primarily blueberries and a nursery.

Senator FRANKEN. OK. Sorry that we had some outdated information, but primarily blueberries, which is what you are going to be testifying on anyway. I read your testimony.

Despite trying to follow the rules, Ms. Horner lost 70 percent of her blueberry crop this year even after listing "Help Wanted" notices at three branches of the Georgia Department of Labor. And that is accurate, right?

Ms. HORNER. That was last year.

Senator FRANKEN. Last year.

Eric Ruark is the director of research at the Federation for American Immigration Reform. At FAIR he provides research and drafts for issue briefs, reports, and other publications. He is the author of a report entitled, "Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce."

Why don't we start our testimony with Mr. Rodriguez?

**STATEMENT OF ARTURO S. RODRIGUEZ, PRESIDENT, UNITED FARM WORKERS OF AMERICA, KEENE, CALIFORNIA**

Mr. RODRIGUEZ. Thank you very much, Chairman Franken and other members of the Committee, Senator Dianne Feinstein, whom we have worked closely with throughout the years, for holding this hearing and for inviting me here today.

At the peak of the harvest, more than a million men, women, and children were toiling in our Nation's fields producing our fruits and vegetables and caring for our livestock. Yet most Americans have the luxury to operate in ignorance or denial about how the food we eat gets on our tables every day.

Quite simply, agriculture in the United States is dependent on a hard-working, dedicated, tax-paying, immigrant workforce. We believe American agriculture employs about 1.1 million unauthorized workers on crop farms and in livestock, and those workers have families. There are over half a million children in the United States who have a parent who is an unauthorized farm worker; 70 percent of these children are U.S. citizens.

These are facts. It is time for Congress to look beyond the harsh rhetoric of the anti-immigrant lobby and their talk show bullies and recognize what everyone knows is true: America needs these workers. Everyone in this room is directly sustained by farm laborers every day.

There is another indisputable fact: The life of a U.S. farm worker in 2011 is not an easy one. Most farm workers live in poverty, endure poor working conditions, and receive no Government assistance. The simple reason that the agriculture industry depends so heavily on immigrants is because undocumented workers take jobs many American workers will not do, for pay other American workers will not accept, and under conditions other American workers will not tolerate.

It is not the farm workers' fault that 15 States do not even provide the basic protection of workers' compensation for farm workers injured at work.

It is not the farm workers' fault that more than 70 years after Congress passed the National Labor Relations Act, farm workers

still do not have the right to join a union to improve their wages and working conditions, except in California.

It is not the farm workers' fault that year after year farm labor contractors violate the laws with impunity while the growers who employ the contractors avoid any responsibility for the workers who are abused on their farms.

We know from a campaign we initiated that was alluded to earlier—"Take Our Jobs!"—that it is simply not possible to replace the 1 million professional farm workers who live and work here without legal status. This is why the enforcement-only strategy to deal with the complex issue of immigration puts agriculture on a collision course.

The sponsor of the e-verify bill in the House, Congressman Smith, basically admits that this is true. His answer is yet another guest worker program which would bring in another 500,000 workers at a wage rate far lower than the average wage paid to farm workers in this country today. While Americans are not going to replace the unauthorized workers, it is all too easy to replace the hundreds of thousands of legal U.S. workers who currently work in agriculture with guest workers earning less. And that is exactly what will happen if the Smith bill or a similar proposal becomes law. For months, we have heard that the e-verify bill is a jobs bill for American workers, but for the poorest workers in America it will turn out to be just another jobs give-away.

For over 10 years the UFW has sought a bipartisan solution to this dilemma, and we have worked very closely with Senator Feinstein.

Because our current labor force is comprised of professional farm workers with essential skills needed to sustain the viability of the agricultural industry, AgJOBS would give undocumented farm workers presently here the right to earn legal status by continuing to work in agriculture. We have had to make many hard compromises to come up with a bill that is supported by both farm workers and agricultural employers, and we will remain open to new ideas, such as one suggested earlier by Senator Feinstein.

We want to see a permanent solution for the current farm labor force that is here and their families. What we cannot accept is compounding the problem by adding yet another exploitative guest worker program that does not provide a path to legal status for workers already here. It is totally un-American to allow an industry to build near complete reliance on guests.

In agriculture it is not possible to enforce your way to a legal workforce. That goal will only be realized by improving the ability of farm workers to earn a living wage and by offering experienced immigrant workers a permanent place in this industry.

We hope that this hearing will lead Congress to see the urgency of this issue and the need for a compromise that is faithful to the workers here. A failure to do so would be both a human and economic tragedy for our Nation.

Thank you very much.

[The prepared statement of Mr. Rodriguez appears as a submission for the record.]

Senator FRANKEN. Thank you, Mr. Rodriguez.

Ms. Horner, I apologize for getting some of the information wrong in your introduction, but please proceed.

**STATEMENT OF CONNIE HORNER, PRESIDENT, HORNER FARMS, INC, HOMERVILLE, GEORGIA**

Ms. Horner. Thank you. Chairman Schumer, Ranking Member Cornyn, Senator Feinstein, and distinguished members of the Committee, I need your help to continue to do the right thing. I need legal, experienced, seasonal workers to maintain my farm and harvest food that helps feed Americans. I want to hire legal workers. But the process must be cost-effective and, most important, simple. In short, I need your help to make it easier to do the right thing.

I manage a family owned organic farm. I am one of about 2,000 United States blueberry farms. Our farm is small, but we share many challenges of large farms across Georgia and the Nation.

In 2006, we hired 67 individuals over the course of the year. They were pleasant, productive, and efficient. We later received nearly 60 Social Security mismatch letters. Unknown to me, almost 90 percent of my hires were most likely falsely documented workers.

This is reality for many growers, but it was unacceptable to us. We researched options and found H-2A. In 2007 and 2008, we filed joint H-2A contracts with a larger farm. We believed H-2A participation would supply legal, reliable, experienced workers. We were wrong.

After suffering hail damage from a 2009 storm, we needed just five additional workers. Department of Labor employees assured us that they could fill over 500 farm jobs due to the large number of local unemployed Americans. I spent hours on the phone with three branches of the Department of Labor begging them for workers. Interested Americans only wanted air-conditioned positions and refused to work outside. About 80 percent of our fruit rotted on the bushes.

Our 2009 DOL experience forced us back to H-2A in 2010. The larger farm refused to participate in the program, so we entered into our own H-2A contract and brought back the seven best farm workers from 2008. We spent more than \$12,000 in H-2A non-payroll-related costs. H-2A compliance documentation consumed 14 reams of paper. That is 1,000 sheets of paper per needed worker.

H-2A also requires us to hire local workers. In 2010, we sent out 58 local hire letters. Only 13 people accepted the jobs and came to work. Of those, six worked 3 days or less, one lasted longer than 2 weeks, and none—zero—finished the harvest season. By chance, we discovered many of our referred workers were parolees. I will not participate in a program that puts my family in unnecessary danger.

I'd guess none of you would choose to be a new surgeon's first patient. Why? Because we all want to deal with experienced, efficient service providers. Farmers are no different. Yet almost all of H-2A's local worker referrals had no farm experience. As a result, production suffered and I was drowning in required paperwork instead of working in my fields.

Our 2010 H-2A nightmare confirmed that the program is not the labor answer for American agriculture. I believe H-2A is a well-

meaning mess that has turned Government red tape into a crimson tide. I want to keep our farm operating, but I need skilled, experienced seasonal labor to make that work.

So where do we go from here? American agriculture depends on skilled, dedicated foreign workers. Few Americans are interested in manual labor farm jobs. It is not about wages. It is about choices. Americans have job choices, and they choose not to pursue agricultural work.

E-verify enforcement without labor solutions will cripple American agriculture. For proof, just look at Georgia's experience this year. E-verify should not be the first step in solving this crisis but, rather, the final step.

In short, today's H-2A would make Rube Goldberg proud. It takes a simple task and makes it extremely complicated. We need a new 21st century agricultural visa program that is simple to administer and includes current experienced agricultural workers.

How important is this issue? Imagine a food version of OPEC. That is our future if we fail to develop a practical solution to this labor crisis and we become dependent on foreign countries for our food.

I appreciate this opportunity to speak to you today. I believe that we can work together and solve this crisis. Then you can get back to other pressing issues, and I can get back to farming.

Thank you.

[The prepared statement of Ms. Horner appears as a submission for the record.]

Senator FRANKEN. Thank you, Ms. Horner.

Mr. Ruark.

**STATEMENT OF ERIC A. RUARK, DIRECTOR OF RESEARCH,  
FEDERATION FOR AMERICAN IMMIGRATION REFORM,  
WASHINGTON, DC**

Mr. RUARK. Senator Franken, Ranking Member Cornyn, members of this Committee, thank you all very much for the opportunity to testify here today. I am Eric Ruark, director of research for the Federation for American Immigration Reform, known as FAIR. FAIR is a national, nonprofit public interest organization representing more than 200,000 members and activists nationwide. We have been working for more than 30 years to promote policies that will end illegal immigration, restore moderate legal immigration, and to reform our immigration laws to bring them into accord with the national interest. I am here today to testify about the employment of illegal workers in the agriculture industry.

The H-2A visa program was created under the Immigration Reform and Control Act of 1986 specifically to allow the agriculture industry to transition to a legal workforce. Since then, large commercial farming operations actually have increased their reliance on illegal labor. The H-2A program has not been successful because the Federal Government has failed to secure the border and to enforce immigration law in the interior. Large commercial farming operations have taken advantage of this laxity, choosing to employ low-wage illegal workers in large numbers, over a million by last count if workers on livestock farms are included.

Representatives lobbying on behalf of commercial farming interests oppose efforts that would result in a conversion to a legal agricultural workforce. They claim that converting to a legal workforce is cost prohibitive both for farmers and for consumers, and some have said explicitly that without illegal workers, crops would rot in the fields.

No one would dispute that farm work is tough and that picking crops is not a job that many Americans would choose to do. But that does not mean there are not Americans who are willing to work as farm laborers and that fair wages and adequate working conditions would not attract more American farm workers.

In the first quarter of 2011, there were over 28 million working-age American citizens with a high school diploma or less who were not in the workforce. It is simply not credible to argue that none of these Americans would be willing to do farm work when today up to 30 percent of hired farm laborers are American citizens.

What I have found from examining data from the Department of Labor and the Department of Agriculture is that large commercial farms are the major employers of illegal workers and can afford to pay wages up to 30 percent higher than they currently pay and still remain profitable, even if the increases are not passed on to the consumers in higher retail food prices.

Large commercial farming operations are a vital component of the Nation's food supply chain. When considering immigration and labor policy, the Federal Government must consider the interests of the agriculture industry, but that does not mean that the interests of the agriculture industry should trump the interests of the American public. Nor should they be allowed to continue to enjoy profits while depending on a low-wage, mostly illegal workforce.

Now, I want to underline this point. There are those who are profiting from hiring illegal farm workers while the economic and social costs of illegal immigration are passed on to the American people.

Yes, if illegal workers were replaced with legal workers, profit margins would be reduced, and it is likely that food prices would increase. But these increases in consumer prices would be very small, which has been demonstrated by other researchers. And I believe that Americans would be willing to add a few dollars to their weekly grocery bill if they knew that this was the result of farm workers being paid a living wage.

To argue that our food supply is dependent upon the use of illegal workers should raise some very fundamental questions, particularly the ways in which the men and women who pick our crops are treated by their employers. There is an essentially moral question that underlies this discussion that we cannot dismiss simply by talking about price points or global competitiveness.

If we as Americans want to have an honest food system that has integrity and one in which farm workers earn an honest wage for their labor and are not subjected to adverse working conditions, we must recognize the effect that a constant flow of illegal aliens is having on farm workers in this country.

To maintain, as some industry representatives have, that depressed wages for hired farm workers are not the result of the use of illegal workers and that the failure of these jobs to provide a liv-

ing wage is not the No. 1 reason why Americans are discouraged from taking these jobs flies in the face of all logic and in the face of all evidence.

It is also misleading to declare that the H-2A program is a failure when it has been vastly underutilized by employers who have chosen to hire illegal workers. It may not be that Americans would take all available jobs vacated by illegal workers, but working to achieve a legal agricultural workforce will result in better wages paid to farm laborers and better working conditions on farms, and this will attract more Americans to these jobs.

Thank you very much.

[The prepared statement of Mr. Ruark appears as a submission for the record.]

Senator FRANKEN. Thank you.

I just want to take my prerogative as Chairman to question last. First we will turn to Senator Feinstein, who, again, has spent a tremendous amount of time and thought and effort in this field. Senator?

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I really appreciate that.

Mrs. Horner, I think you have told it the way it really is. We have compiled this booklet of stories, and they are all like yours.

Mr. Ruark, come to California, come to the Central Valley, come at harvest season and really see what it is like, because I think you are in some kind of a dream world.

Arturo, let me ask you some questions. We have worked now for 10 years to try to find something that would work, that the growers will accept, that you on behalf of the workers will accept, and I thought we had it. And as I said earlier, I see no way where a bill that has citizenship is going to fly in this Congress, certainly not in the Senate—we cannot get 60 votes—and not in the House of Representatives.

I think this hearing has been very helpful with respect to e-verify. But assuming we took the basic structure of the AgJOBS bill, the emergency AgJOBS bill, and maybe toughened a couple of numbers in the eligibility requirement part and the length people would have to work on a farm, and had the counterfeit-proof ID, which we have in the bill, would you support it?

Mr. RODRIGUEZ. We would obviously want to discuss it and see what the legislation actually says in detail, but, Senator, I think we would be concerned, first, about ensuring that there is a permanent solution for the workers that are here right now and their families, and that there is legal status given to those workers so that they do not have to fear ICE or the immigration raids that are currently going on right now in California and every other State in this country; and, second, that the guest worker proposal that is in AgJOBS remain the guest worker proposal that is part of this; that we do not move toward the guest worker proposal that is being proposed right now in the House of Representatives because we feel that would undermine everything that we have worked so hard for these past years. Really, to us, the the House guest worker is un-American and really won't protect Americans here in the United States.



Senator FEINSTEIN. Right. Well, we would leave the guest worker proposal except change the date to 2010 for the 3-year period, which was negotiated. So the guest worker proposal that was negotiated would remain.

With respect to families, there would be the blue card, and the blue card would enable somebody to stay in the country for the length of the bill. And that would be 5 years as planned.

Now, what is the reason for this? We all hope that there can be an overall immigration reform bill. We all know the system is broken. There just are not 60 votes for it in the Senate, and I doubt very much that there are the votes for it in the House. And that is for the rest of this session.

My thinking always has been get people working in the industry, get farmers able to count on a workforce, get people out of the shadows, at least with respect to agriculture, and begin to rebuild this agriculture industry, be able to provide Mrs. Horner with the workers she needs every year with some stability. And I think that is the best we can do right now.

I am going to try. I am going to put it in. I am going to try. And if we go down, we go down. But at least we are going to try, because what I am afraid is that a lot of this land is going to get sold off because farmers are getting fed up that they cannot find workers to work their farms. And then once that happens, we lose our industry. Certainly in California that is the case.

You can say anything you want.

Mr. RODRIGUEZ. No, Senator, I mean, obviously, we have worked with you for the last 10 years. We are very thankful for the dedication and the commitment you have made to this particular issue. Certainly no other Senator in the Nation has worked on this as hard as you have, and we will continue to try to work with you to find solutions because we truly believe that there needs to be a permanent solution to the current workforce that is here right now today with their families. And we also believe that any guest workers that are brought into this country need to be done so with labor protections to ensure that they are not going to displace American workers.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator Feinstein, and, again, thank you for your leadership on this issue.

Now to the Ranking Member.

Senator CORNYN. Mr. Rodriguez, I see from your background you are actually from San Antonio, although you live in California.

Mr. RODRIGUEZ. That is right, sir.

Senator CORNYN. I have got my boots on, too, to prove it.

Senator CORNYN. Well, I do, too.

Mr. RODRIGUEZ. Good.

[Laughter.]

Senator CORNYN. I wanted to press you a little bit on what you said about guest worker programs because, of course, we have a legal guest worker program known as H-2A, but obviously it does not work and it needs to be fixed. At least that is my view.

You have used some pretty tough language about guest worker programs. I think you used the word “un-American.” Would that also include your feelings about the current H-2A?

Mr. RODRIGUEZ. No. But Senator, I think you are aware that in AgJOBS we have discussed with Senator Feinstein and many others that there are acceptable adaptations, adjustments to the H-2A guest worker program to make it more feasible, to make it workable for the agricultural industry as well as for workers, and as well as for protecting American jobs. We will continue to be in support of that—as long as other conditions are met.

Senator CORNYN. I recognize that people of good faith are trying to figure out a very complex puzzle and trying to figure a way to come up with solutions. But it has been my experience—and we have some Texans here today, other Texans. Do you still call yourself a Texan, by the way?

Mr. RODRIGUEZ. I sure do.

Senator CORNYN. OK, good. Good.—who have advocated for room to allow people who do not necessarily want to come to the United States and become citizens to come and work legally here and then return home with the savings and perhaps the skills they have acquired working in the United States.

As a concept, do you oppose that?

Mr. RODRIGUEZ. Well, that is currently what the H-2A program does do, and it does allow for workers to come here and work for a temporary period of time based on the need and then to return home, and not bring their families here. And we are not necessarily totally in support of that because we would like to see people that come here to work in this country have a stake here. We believe that is important. When you take ownership, you take a lot more pride in the work that you are doing. And certainly the current labor force that is here today has a lot of pride, they have a lot of roots. They have been here, some for generations now, and that is what we are most concerned about, to ensure that those workers are protected.

Senator CORNYN. I understand, and I believe that one of the most important things we can for all of the population, immigrant population, native-born population, is to make sure we have a legal framework that protects them and protects the country. And I think that is where we are trying to get.

Mr. Ruark, the data shows that 20 to 40 percent of the farms in each farm type classification are in less than a favorable financial position. That is from 2007 data. Would you agree that these are the farms that would be the most vulnerable to labor cost increases?

Mr. RUARK. I would not agree with that. I think the farms that are in the most favorable condition are the ones who are utilizing illegal workers the most, and so the farms that we see, the smaller operating farms, the farms with smaller profit margins, usually do not hire seasonal workers or do not hire them on a large scale. So I think they would be less affected by that.

Senator CORNYN. Since according to different testimony more than 50 percent, some have said as high as 50 percent of the people working in agriculture now in America do not have legal authorization to do so, what is the effect on wages for American citizens

when people rely on that population for jobs in the ag sector? Does it depress American wages?

Mr. RUARK. Absolutely. I do not know how someone can argue that an employer having access, abundant access, to people who are willing to work for low wages is not going to depress wages for everyone. We do not only see it in the agriculture sector, but I think it is most pronounced, and the wages in the agriculture sector are lower than in other low-skill occupations. And the unemployment rate, if I may add, is also higher for agricultural workers.

Senator CORNYN. I just have to ask this question, too, because those of us who live along the U.S.-Mexico border know that the costs associated with our current system fall most directly on local citizens in terms of education, health care, and law enforcement costs for our current system. And yet the Federal Government does not live up to its responsibility either to secure the border or provide a legal immigration process that would satisfy our economic needs. And yet the costs follow local taxpayers the most. Is that your experience?

Mr. RUARK. Yes, Senator. The way that my organization, FAIR, looks at it is that the Government really is helping to subsidize low-wage labor and that the employers who utilize it are profiting from that, but the costs are borne at the State and local level. So it is taxpayers really who are supplementing this by the additional costs of illegal immigration.

Senator CORNYN. And I bet that you and Mr. Rodriguez could agree on one thing, and that is, people who operate outside the ambit of the law are vulnerable to exploitation of a variety of kinds. Would you agree with that, Mr. Rodriguez?

Mr. RODRIGUEZ. Yes.

Mr. RUARK. I would say without a doubt, absolutely.

Senator CORNYN. Thank you.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator Cornyn.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Franken.

Let me begin by asking you—first of all, thank you for being here today. I will begin by asking you the question you may have heard Senator Schumer ask of the last panel. I would like to ask it of you, and I think the responses may be somewhat different. But do you agree that the solution to the problems we have been addressing here really require legalizing the current status of workers who are now on our farms working to harvest our crops?

Mr. RODRIGUEZ. Yes, and their families.

Senator BLUMENTHAL. And their families.

Ms. Horner.

Ms. HORNER. Absolutely.

Mr. RUARK. No.

Senator BLUMENTHAL. I suspected your answer might be different, and so my question to you is—you have heard here today most recently, most immediately from people who are actually in the trenches, so to speak. Ms. Horner operates a 50-acre farm, and you have heard her describe her difficulties, and you have heard members of the other panel. So why do you disagree?

Mr. RUARK. Well, I want to commend Mrs. Horner for her commitment to a legal workforce. That is something that not all employers are committed to. And I think she raises some valid questions about the H-2A program and how it can be improved.

Senator BLUMENTHAL. But it is not only she who has raised them, so—

Mr. RUARK. No, absolutely. She is testifying today.

Senator BLUMENTHAL. The previous panel, who are very well versed and experienced in the real, practical, everyday reality of what Ms. Horner describes as “a well-meaning mess.”

Mr. RUARK. So your question is why does FAIR oppose legalization, Senator?

Senator BLUMENTHAL. Correct.

Mr. RUARK. OK. We oppose amnesty for a number of reasons. I think the most—

Senator BLUMENTHAL. Not necessarily amnesty, but—

Mr. RUARK. Legalization.

Senator BLUMENTHAL [continuing]. Some legalized status, and Mr. Black said some permit program, which would conceivably involve screening and other kinds of criteria applied.

Mr. RUARK. I think what we have seen in the past when legalization programs have been implemented, that helps to facilitate the movement of workers out of the agriculture industry, actually. We saw it in 1986. Following 1986, there was a steadily increasing number of illegal workers who came in to replace the steady number of legalized workers who were moving out into other occupations, construction, service industry, you know, all those other jobs that supposedly Americans are not supposed to be working. And so I think that is a real problem, but I think the biggest problem is whether we reform H-2A or we institute a new guest worker program. If we do not enforce those measures, the same problems are going to arise, and there is not a lot of confidence among the general American public that whatever is put into place is going to—the requirements are going to be upheld by—

Senator BLUMENTHAL. And I think as a former prosecutor, enforcement is the key to any law.

Mr. RUARK. Right.

Senator BLUMENTHAL. Without it, the law is meaningless. But also the law has to be enforceable.

Mr. RUARK. Correct.

Senator BLUMENTHAL. It has to be practical and real in terms of what it requires so that people really can comply voluntarily, because most laws depend on voluntary compliance for the most part and on the deterrence that comes with strong enforcement. Would you agree?

Mr. RUARK. Absolutely. Strong deterrence, strong enforcement is something we support wholeheartedly.

Senator BLUMENTHAL. So some reform of the law, not just stronger enforcement, is required here, is it not?

Mr. RUARK. I would agree with that, but I would not say legalization can be part of it. FAIR is never going to support that. I do not think the American people will ever support that until they have the confidence that the integrity has been replaced within the system. And over the past 25, 30 years, I think it has been dem-

onstrated that the system is not working. And the disagreement I think we see here is why. Is it because it is unfeasible, or is it because there has been an outlet for employers to hire people illegally which affects the whole industry in a negative way, and also discourages Americans from seeking employment as farm workers?

Senator BLUMENTHAL. Do you disagree with the witnesses who testified here that they have difficulty—in fact, they find it impossible sometimes to fill those jobs with people who are here legally? Certainly you have heard Ms. Horner describe her very, very impressive efforts to do the right thing.

Mr. RUARK. I would not disagree with those statements, but I would say our disagreement comes in why that is, why the difficulty is—why they are having so much difficulty attracting workers. I think in some areas, in some sectors, there may be a short-term shortage of workers, but I do not think overall that we lack a labor supply who would and could do these jobs if we incentivized them.

Senator BLUMENTHAL. And the—and I know I am at the end of my time, Mr. Chairman.

Senator FRANKEN. Please take your time.

Senator BLUMENTHAL. But the key word here is “incentivize.” I would like to invite you to give us your views on what kinds of incentives would be necessary. Obviously the current ones are not sufficient.

Mr. RUARK. Well, I think for workers it is tightening the labor market, which would raise wages and conditions. And I think both of those things have been depressed by the access of employers to illegal workers. But I think the way to incentivize employers is to say, “We are going to hold you accountable, and we are going to make sure that if you violate the law knowingly, you will be prosecuted,” that criminal charges will be brought against employers who knowingly hire people illegally. That threat is implicit, but I do not think that, especially in the agriculture sector, there is a great fear that they are going to be held accountable for breaking the law.

Senator BLUMENTHAL. Well, I want to thank you for your testimony. I would just close with the observation that for the employers who are self-enforcing, so to speak—and Ms. Horner is one of them, and others who were here today—the prospect of following the law leaves them right now in really an untenable situation because they have had that difficulty of really enlisting a sufficient legal workforce.

So I think the reform of the law is not just about enforcement. It has to be about changing fundamentally the way that we provide rights and the labor force for these employers, and I would invite you to think more about what kinds of reforms will lead to better enforcement but also to the availability of a more abundant and available labor force. Thank you.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator, and thanks to all the witnesses. This has been a very good panel.

I think there is agreement here that this system is broken. I think there is disagreement over what to do. Mr. Ruark talked about there being a short-term shortage of farm workers if we sort

of adopted his solution, speaking of which, Ms. Horner, when you have blueberries that are ready to be picked—I am talking short term here—how many days do you have to pick them?

Ms. HORNER. For good quality, 7.

Senator FRANKEN. So it is a 7-day window?

Ms. HORNER. Yes. We pick each field an average of every 7 days to make sure that the fruit goes high quality, fresh market. After that, the quality deteriorates, and we usually have to go into the process market, if you can get it in. High bush is typically all fresh, and then the later varieties are usually processed.

Senator FRANKEN. OK.

Ms. HORNER. So if your labor is 10 days late, you are going to have a mess for the entire 11 weeks of your blueberry season.

Senator FRANKEN. And, obviously, with the H-2A program, the experience has been—and, Mr. Rodriguez, you can speak to this because you have experience observing this—that there are often delays in getting workers. And you were unable to get enough workers as it was, but even when there are workers, just standardly there are delays, right?

Ms. HORNER. The H-2A experience I had with bringing labor was successful. Our labor did get there in time. We actually brought them—we made sure we had a window of 7 to 10 days to get them in. I did not have a problem actually bringing H-2A workers. It was everything that went on after that where my problems came in.

Senator FRANKEN. That is that they did not—

Ms. HORNER. They were inexperienced, which is a huge production problem. And I have got information in front of me where the best H-2A workers averaged about \$11 an hour where a migrant worker averages about \$16 an hour. And then your Americans, the legal referrals, they average less than \$3.75 an hour in earned wages. So there is just a huge difference in trying to work with migrant versus H-2A versus legal Americans who are inexperienced. These workers are skilled. It is amazing to watch them pick blueberries. They are like little machines. It is amazing.

Senator FRANKEN. And in certain crops, am I right, Mr. Rodriguez, you can do damage to the future bearing potential if you pick improperly?

Mr. RODRIGUEZ. There is no doubt. I mean, if you do not know how to prune a vine, for example, in table grapes or orchards or any of those berry crops that require pruning, you can not only affect next year's crop but affect the crop many years into the future and do serious damage to the vine or to the trees.

The same thing with row crops. If you do not know how to pick them right, you are stepping all over the place, you are smashing other crops, you are killing the strawberries, mutilating the strawberries, and the same thing with the berries. You have to be experienced; otherwise, you will squeeze them or you will not pick them right, and you will not grab the stem right. Yes, it does require a skilled professional workforce.

Senator FRANKEN. And I want to ask you about—you discussed in your testimony—oh, by the way, I just want to put this in the record. I am sure it is, but the National Council of Agricultural Employers recently issued a report finding that 72 percent of grow-

ers participating in the H-2A program reported that their guest workers arrived after the date they were needed, on average 22 days late.

Ms. HORNER. Which is why we made sure we moved our date——

Senator FRANKEN. You did everything incredibly right.

Ms. HORNER. I did everything. Yes, I did.

Senator FRANKEN. You just anticipated everything. You worked as hard as you could. You were doing the paperwork.

Ms. HORNER. I was drowning in——

Senator FRANKEN. Would you like to work in the Senate?

[Laughter.]

Senator FRANKEN. Because—anyway——

Senator BLUMENTHAL. You have the right to remain silent.

[Laughter.]

Ms. HORNER. Thank you, sir.

Senator FRANKEN. Mr. Rodriguez, you discussed the United Farm Workers “Take Our Jobs” program, which is a campaign where you literally invited people across the Nation to take your jobs. Ten thousand people inquired about those jobs, but you said only seven eventually accepted a job in agriculture. What were the main reasons that the people did not take those jobs?

Mr. RODRIGUEZ. It was actually 11, Senator.

Senator FRANKEN. I am sorry, 11.

Mr. RODRIGUEZ. Yes, it was a misprint on our part.

Senator FRANKEN. Well, in that case, that sounds like a success.

Mr. RODRIGUEZ. There were a number of different reasons. Some were mentioned here earlier by Ms. Horner: some people were wondering if there was going to be air-conditioning provided.

Senator FRANKEN. Does air-conditioning fields cost a lot to the growers?

[Laughter.]

Mr. RODRIGUEZ. Unfortunately, yes. They were asking about whether transportation would be provided. Potential workers would ask if somebody could come and pick them up at their homes and take them to their jobs and return them? They asked how many hours do I have to work? What are the breaks like? Very unfamiliar—with what it takes to work in the fields, the types of skills it requires, the types of stamina and endurance that someone has to have to be able to do that work.

Senator FRANKEN. I will end my questioning now, but I am really curious about those 11 people.

Mr. RODRIGUEZ. You know, to be honest with you, we do not know a whole lot about them. We know they were there, they were working, and they were doing their job. But we did not get back information as to how long they actually stayed with it after they started and that type of thing.

Senator FRANKEN. Well, then, I guess we will just wrap up. I want to thank you all for your testimony. I think that, again, we would all agree that we have a broken system and that there are different viewpoints on what to do with the short-term problems and with the long-term problems. But this concludes our hearing. I would like to again thank Commissioner Black, President Nassif, President Rodriguez, Mr. Smith, Dr. Knutson, Ms. Horner, and Mr. Ruark for testifying at today’s hearing.

The record will remain open until Tuesday, October 11, 2011, for further testimony and questions. I would like to thank the following individuals and groups for submitting testimony for the record: the National Council of Agricultural Employers, the National Milk Producers Federation, Upstate Niagara Cooperative, Maple Lawn Farms, St. Alban's Cooperative Creamery, Idaho Dairymen's Association, Foremost Farms USA. I ask unanimous consent that these statements be inserted in the record of this hearing. Without objection, so ordered.

[The statements appear as a submission for the record.]

Senator FRANKEN. This hearing is now adjourned.

[Whereupon, at 12:15 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record.]



## QUESTIONS AND ANSWERS

**Senator Charles E. Grassley**

**Questions for the Record**

**Gary Black**

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.

- a. What are the problems you face or see with the certification process?

*Commissioner Black: First and foremost, I think H-2A needs more than reformation. The United States needs a guest worker program that works for all aspects of the agricultural industry. My constituents prefer to work with the Department of Labor as little as possible, so in that regard, an attestation process would be better. As with most policy changes, the details will make or break a change, but I support reducing bureaucratic red tape and making finding a workforce for farmers easier.*

- b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.

*Commissioner Black: Producers would welcome a dependable workforce of Americans; however, it is not a reality at this time. By simply documenting the attempt would be the preference, but I would also like to see some protection for producers against frivolous lawsuits in this regard.*

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It’s free. It’s easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

*Commissioner Black: Historically, Georgia producers enter into an agreement with individuals and/or crew leaders to provide labor prior to harvest. Employees present at employment an I-9 or other documents that appear to be authentic. We know the illegal document industry is vibrant, but employers have been forbidden to question the authenticity of documents. E-Verify changes these ground rules considerably. Now all or some of his workforce is flagged in the system. This, in itself, creates a conundrum with an E-Verify mandate without creating a guest worker program. Once a guest worker program exists and guest workers are recognized by the E-Verify system, an E-Verify mandate would work.*

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".

- a. Do you support the biometric "blue card" idea proposed by Senator Feinstein?

*Commissioner Black: I look forward to hearing more about her entire proposal. From what I understand the "blue card" idea creates a mechanism for those currently here to be recognized as a guest worker in the agricultural industry, but the "blue card" holder would not be granted citizenship. I support this idea if the worker only works in agriculture. Further, in order to establish taxpayer confidence in such a program, we must consider an annual renewal of the card supported by a work authorization permit fee, perhaps in the realm of \$500.00. My proposal for penalty based work authorization is highlighted in answers to question five. Supposedly, biometric cards are fool-proof with regards to counterfeiting. Requiring an annual renewal might provide an attractive "belt and suspenders" level of protection on the cards. The annual fee should be dedicated to administering the data at the federal level and then allow the states to contract to implement the program at the local level through existing agencies, i.e. State Departments of Agriculture.*

- b. If biometric "blue cards" were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?

*Commissioner Black: I do not have a preference, but someone must pay, and pay annually to underwrite the administration of the program. I think this cost could*

*be shared between the potential "blue card" holder and the employer. I envision a guest worker program where the prospective employer registers with USDA or the Georgia Department of Agriculture (GDA), receives a "blue card." The cardholder then pays a cost and agrees to work in the agricultural industry. Simultaneously, the farmer could apply to USDA or GDA requesting farmworkers.*

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won't do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

*Commissioner Black: I think this is best learned from the 1986 decision to grant amnesty to all those in the United States. Currently, we have labor issues in the agricultural sector because no one wants to do these jobs. Therefore, I find it to be necessary to allow for workers that only work in the agricultural sector and are not citizens.*

5. In your testimony you stated that a penalty based work permit, with substantial monetary fines, should be considered.
  - a. If the unauthorized workers who are already in the country were allowed legal status and work authorization, what should the penalty be?
  - b. How much in monetary fines is substantial?
  - c. Would we put a penalty on the employer or the employee, or both?

*Commissioner Black: As I mentioned in question 3, the cost could be shared. I believe the following provisions of a new agricultural guest worker program must also be considered as the starting point for discussions.*

- A) Establish a six month discovery period whereby all who are here illegally working in agriculture are required to disclose their status, plead guilty to the

*crime of illegally entering the United States, accept a substantial financial penalty (\$10,000 payable over five years), and waive rights to any publically funded entitlement benefit.*

- B) Conversion would also require the current illegal worker to submit to and pay \$500 for an annually renewable biometrically secure work visa which would interface with a totally new data management system, i.e. new identification number, fingerprint, retina scan, etc. This work authorization must be specifically for agriculture. No other work would be authorized. This data could be tracked via the biometric card and associated with the new guest worker employee number. Any violations would result in immediate deportation. For instance, violation of a minor law might trigger immediate deportation or at least flag record for non-renewal the following year.*
- C) Workers must be covered by workers compensation and health insurance.*

*Radius of operation, touch-back processes, and other ideas must be thoroughly discussed during the process as well. I firmly believe that a program similar to the one outlined above must be considered if we are to meet the needs of 21<sup>st</sup> century agribusinesses.*

**Senator Jeff Sessions  
Questions for the Record  
Gary W. Black**

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

*Commissioner Black: I unequivocally agree.*

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

*Commissioner Black: I believe the adoption of a guest worker program that uses biometrically secure work visas (as explained in question 7), would solve these issues. It is important that these biometrically secure work visas authorize the employee location, period of work, and place of work. It is also vital that a program contains strict employer enforcement and accountability.*

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

*Commissioner Black: I have answered these questions in the body of question number seven.*

4. If only a fraction of agricultural employers use the H-2A program how can we determine whether it is really meeting the needs of agricultural employers?

*Commissioner Black: I have no doubt that it is not meeting the needs of farmers. Producers have tried to use H-2A, and the feedback has consistently been that it is cumbersome and costly. A few of the reasons farmers do not use H-2A include the use of individual contracts, the 50 percent rule, and eligibility requirements. These are the reasons farmers choose not use H-2A, and these are the very reasons why H-2A is not working.*

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

*Commissioner Black: Question 5a) No. Our data indicates that wages paid by farmers (with proper deductions for income tax and FICA) are almost exclusively based on*

quality and productivity. That is the way it must work in a market-based economy. Question 5b) No. If your proposition is that depressed wages contribute to labor shortages or "instability," I do not share this view for reasons mentioned in the previous answer. Question 5c) No. If the genesis of this question is to somehow link the migration of workers into other trades because of depressed farm wages, it is unfounded in my view. One could try to establish a similar link by faulting American families for not paying 15% of their disposable income for food, rather than the current level of 9.68% and be just as far off base. Wages are not the culprit. The work is difficult, perhaps too difficult when "easier" jobs or simply filing for unemployment are options.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.

*Commissioner Black: Georgia farmers tell me that they are often visited from unemployed citizens inquiring about job openings, only to have the unemployed ask the farmer to "just sign the paper" so he or she may continue to receive their benefits. In my testimony before the committee I highlighted one recent experience of a vegetable farmer in middle Georgia who employed a local worker for two half-days. The worker earned \$119.00 and left the job site to file unemployment though plenty of work was available. The worker received an unemployment settlement of \$263.00 per week. The farmer successfully fought the claim having it rescinded, but he really lost twice. He lost the worker, and then assumed the opportunity cost of having to fight a false claim.*

*It may be inconceivable to some, but agricultural jobs require various skill sets. That is why I believe we all should consider the tone of phrases like "who will take agricultural jobs." Picking up trash and sweeping floors in a packing shed is a basic minimum wage worthy job. Harvesting fresh fruits and vegetables demands a completely different set of physical and mental talents, and the production unit pay systems utilized by the producers I know reflect this value. Migrant Vidalia onion harvest crewmembers will easily reach wage levels ranging from \$13-\$18/hour. Producers can readily document that local crews cannot meet these wage and productivity standards.*

*I wish that every field worker in Georgia was a Georgian who needed a job and was willing to invest his or her life permanently or part time in agriculture and perform their duties at a high standard. Every dairyman in Georgia would be delighted to exclusively employ local, reliable, drug-free, sober citizens from the community to harvest milk 24/7/365 from our domestic herd of 80,000 dairy cows.*

*We have created an entitlement society that will not allow this to happen today. Change occurred over generations. It will take at least a generation to repair. During this period, all our constituents expect bell peppers, cucumbers, peaches and blueberries to be available at retail. My constituents remind me with ever increasing voracity that they want products produced closer to home. Small producers will not be able to satisfy the market, yet major retailers will not have empty shelves in the produce section. This leads*

*us to an interesting proposition. Without labor, we have no local products. Stores will offer produce year-round, so where will it come from? Thousands of miles from here produced under environmental and labor conditions we have no control over whatsoever. This is not in the best interest of the nation. Nor is another program based upon amnesty and pathways to citizenship. Hopefully, the details covered in answers to question seven will stimulate thoughts regarding an alternative.*

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?

*Commissioner Black: I believe that we can learn something from the 1986 decision by Congress. Amnesty is not the answer. Here we are twenty-five years later, and we still need workers in agriculture. Congress considered legislation in the past decade that would have in effect granted "amnesty" from agricultural work after a certain period of good service. I am delighted this legislation failed. Any plan to convert or grant work authorization to current illegal agricultural workers must require that the workers remain in agriculture. If they are allowed to migrate to a traditional green card status, we will rapidly be in the same situation again. This is where I believe labor competition, particularly in some skilled trade areas, is real and must be eliminated.*

*I believe the following provisions of a new agricultural guest worker program must be considered as the starting point for discussions.*

- A) *Establish a six month discovery period whereby all who are here illegally working in agriculture are required to disclose their status, plead guilty to the crime of illegally entering the United States, accept a substantial financial penalty (\$10,000 payable over five years), and waive rights to any publically funded entitlement benefit.*
- B) *Conversion would also require the current illegal worker to submit to and pay \$500 for an annually renewable biometrically secure work visa which would interface with a totally new data management system, i.e. new identification number, fingerprint, retina scan, etc. This work authorization must be specifically for agriculture. No other work would be authorized.*
- C) *Workers must be covered by workers compensation and health insurance.*

*Being a citizen of this country is a privilege and opportunities are endless. In order to solve this problem without having this same discussion in twenty-five years, we need to create a guest worker program that meets the needs of 21<sup>st</sup> century agriculture. This type of guest worker program would provide a stable workforce for producers as well as create a database of potential workers. The potential workers would have to have a*

*background check, insurance, and pay a fee for the opportunity to work in the agricultural industry. If the worker is not accounted for by the producer or database monitoring authority, he or she would be considered here illegally and deported without an opportunity to return.*



Senator Charles E. Grassley

Questions for the Record

Connie Horner

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.
  - a. What are the problems you face or see with the certification process? Let me be very clear, a certification or attestation process is irrelevant. Neither will fix the program. I would consider it Humpty Dumpty - You cannot fix it.
  - b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain. Please re-read my testimony; it will answer most of your questions. Americans don’t want seasonal farm labor jobs at virtually any wage. Why? They have choices. Air-conditioned jobs that pay comparable wages are available. I tried to hire Americans and the U.S. Department of Labor could not supply just five workers—despite near-record unemployment rates. Of those few Americans whom I was able to hire locally, only 1 finished the harvesting season in 2009. Most lasted a few days. The result: 80% of my crop rotted in the fields. In 2010, I sent out 58 hire letters. Thirteen individuals accepted the jobs and came to work. None - ZERO finished the harvest season.
2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It’s free. It’s easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size? The mechanics of E-Verify may be fine, but requiring farmers to use E-Verify without a new mechanism to provide **authorized**, seasonal farm labor will create OPEC II. The second generation

OPEC will be the *Organization of Produce Exporting Countries*. We'll depend on foreign countries for our food because E-Verify will cripple American agriculture. E-Verify should be the final check that a seasonal farm worker is here legally once a new foreign worker authorization system is created and field-tested by American farmers. The current E-Verify program is a checking system—not a farm labor solution.

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".
  - a. Do you support the biometric "blue card" idea proposed by Senator Feinstein?  
Blue, red, green—it doesn't matter. The issue is simple: How does the U.S. Government turn an unauthorized seasonal farm worker into an **authorized** worker? The process must be simple, attractive to foreign workers and cost effective for American farmers. Forget tying it to H2A. If the Senator's Blue Card system provides the authorization that would be great.
  - b. If biometric "blue cards" were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers? I do not know enough about the technology and costs to say much on this issue. For example, will every employer need equipment, or is it more about government tracking people as they enter and leave the U.S.? I believe there are ways to generate funds that would help with the cost of such a program. For example, employers can withhold payroll funds from "blue card" holders to help underwrite the cost of administering the program.
4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won't do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If

Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work? I did not ask for amnesty or citizenship anywhere in my testimony. You are making the solution far more complicated than it has to be. Farmers need our legislators to figure out a way to change an individual's work status from unauthorized to authorize. That's all. A biometric Blue card will probably work. Since employers are currently withholding all the necessary payroll taxes from these individuals, and they are not entitled to the benefits of those deductions in the future, just replace those withholdings with school taxes, and a UTA (Unauthorized to Authorized) tax. These taxes should be set high enough to off set the financial burden on the local communities. These workers would **only** be eligible for the Blue Card as long as they remain employed in Agriculture. And for the record again, these foreign workers ARE doing jobs that Americans won't do!

**Senator Jeff Sessions**  
**Questions for the Record**  
**All Witnesses**

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced? Yes, but that means that our borders must first be secured. I'd guess that thousands of individuals illegally cross our borders every day. Stop that, and then start enforcement. A permanent solution must start with border Security!
2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer. If the proper steps are taken and if they are taken in the proper order, then yes. However, if you start with e-verify, you will end up with OPEC II - the second generation OPEC will be the *Organization of Produce Exporting Countries*.
3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers. I believe foreign workers have contributed to the increase in Healthcare and education cost; however, I believe the increased Government-wide infrastructure is solely due to irresponsible government spending and lack of oversight. Senator Feinstein's Blue Card may temporarily solve this labor crisis. Since employers withhold all the required Federal and State payroll taxes from these guest workers that will never receive the benefits of these deductions, I would suggest converting those deductions to a UTA (Unauthorized to Authorized) tax and School tax from the newly authorized individuals. These two taxes should be sufficient to off set the burden to the local communities. As far as the out-of-control government spending, voters will hopefully address that in 2012.
4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers? Talk to the farmers who have used the program in the past, and ask them why they stopped. We know that good news travels fast; we also know that bad news travels even faster! H2A is Bad News. As I stated in my testimony-H2A would make Rube Goldberg proud. It is a well-meaning mess.
5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers. No. No. and No. It's not about wages. It's about choices. Americans have other choices and they choose not to pursue seasonal farm work. Skilled, experienced blueberry pickers earn between \$10 and \$20 an hour. Average earnings of Americans that I have employed on my farm are less than \$3.75 per hour, yet these workers must be paid at the very least minimum wage, but in most of my cases, they are bumped up to the H2A AEWR (Adverse Effect Wage Rate), which was at one time 60% higher than minimum wage! No company can survive by employing unskilled, inexperienced workers. Every business' success is determined by the skill and/or experience of its employees. Farming is no different. American Farmers need skilled, experienced workers to survive; and Americans need American Farmers to survive - again OPEC II.
6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer. I believe unemployment benefits should have a lifetime limit on them. I believe continuing to extend these benefits may be contributing to our recession; however, I don't believe these individuals will end up working on a local farm. I am glad that America offers safety net programs to help individuals who need temporary assistance; however, the abuse of these generous programs is widespread. Individuals, who are identified as abusers of unemployment and other entitlement programs, should be removed from such programs and no longer eligible for

benefits in the future. If the government stops paying entitlement program abusers, we should never have to raise the debt ceiling again.

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided? Do not offer amnesty and fraud will be avoided. Don't make the solution to this crisis harder than it is. We need an individuals' work status changed from Unauthorized to Authorized - That's all. If the Blue card enables the current, experienced work force to legally work in agriculture that would be wonderful.

**Senator Jeff Sessions  
Questions for the Record  
Connie Horner, President, Horner Farms, Inc.**

1. How much would it cost Horner Farms per year to hire a purely legal workforce? Horner Farms, Inc. would go bankrupt before a purely legal workforce was obtained. Please refer to my testimony. Americans will NOT do these jobs. If you eliminate our current, experienced work force, you will create OPEC II. (Organization of Produce Exporting Countries!) I prepared a spreadsheet using my 2010 harvest season payroll information from both my H2A workers and my DOL referrals. The migrant workers information was gathered from several local farmers. This spreadsheet should answer some of your questions.
2. How much would Horner Farms have to offer in compensation (per hour or annually) to get American workers to accept entry-level and other positions? How much higher is that wage than current wages? Horner Farms, Inc. will go out of business offering the compensation it would require to attract and keep American workers. Again, please refer to my spreadsheet. It should answer this question.
3. What efforts has Horner Farms undertaken, aside from government implemented recruitment programs, to recruit American workers? H2A, 3 branches of the DOL, word of mouth, and advertised in several bordering states.
4. Many small farms across the country participate in internship programs where students work for school credit. Does Horner Farms participate in any internship or fellowship programs to recruit workers? No, I am not aware of any such programs in my community or surrounding areas.
5. You testified that you did not experience delays in obtaining H-2A workers because you anticipated the time it would take to process the applications. Your primary issue with the current H-2A program seems to be the amount of paperwork.
  - a. Would you agree that it is within the capability of agricultural employers to anticipate the time it will take to get H-2A workers, and thus have them on hand when it is time to harvest? No. I paid dearly in 2010. My H2A workers showed up the first day of my 2-week cushion. I had to create busy work for my DOL referrals as well as my H2A workers until my fruit was ready to be harvested - two weeks later! Even the

best farmers cannot predict the exact day that their crops will be ready, nor can they predict the backlog of applicants at any particular embassy. I was just lucky until 2010, when it cost me thousands.

- b. Would a program that allowed workers to come to America for less than a year and prohibit them from bringing their families meet the needs of your farm? Honestly, my concern is only that my workers are skilled and experienced. A program that simply provides legal bodies with no blueberry picking experience will not help me at all. And I'm certain that other farms across the country need skilled, experienced workers specific to their farming operations. So to be clear, legal bodies without experience will NOT solve this crisis. Remember OPEC II - For American Agriculture to survive, we need an experienced, skilled workforce. Refer to my spreadsheet!

Horner Farms, Inc.

**Hand picking 100,000 pounds of blueberries over a 6 week highbush season will take:**

<b>Workers</b>	<b>Payroll \$9.50/hr</b>	<b>Payroll \$11.00/hr</b>	<b>Payroll \$16.00/hr</b>
<b>11</b> Migrant Cost/lb.	\$50,104.50 <b>\$0.50</b>	\$50,121.00 <b>\$0.50</b>	\$50,176.00 <b>\$0.50</b>
*Skilled, experienced, undocumented workers paid a piece rate of 50 cents a pound average \$16.00 per hour picking blueberries. They pick an average of <b>32 pounds</b> of good quality blueberries per hour. *Payroll includes 1 hour of Employee Orientation which includes (but is not limited to) Food, Farm & Pesticide Safety training.			
<b>OR</b>			
<b>15</b> H2A & <b>24</b> DOL Referrals Cost/lb.	\$77,127.50 \$6,764.00 <b>\$83,891.50</b> <b>\$0.84</b>	\$77,127.50 \$7,832.00 <b>\$84,959.50</b> <b>\$0.85</b>	\$98,688.48 \$11,392.00 ##### <b>\$1.10</b>
*After 2 years of experience, H2A workers averaged \$11.00/hr. or <b>22.4 pounds</b> of blueberries per hour. DOL referrals in 2010 earned an averaged wage of \$3.71 per hour. They picked only <b>7.41 pounds</b> of blueberries per hour. DOL referrals had to be paid the H2A AWER instead of their actual earnings. These workers only worked an average of 3 days before quitting. 116 hire letter must be sent to attain 24 American DOL referrals, as per our 2010 DOL experience. *Payroll includes 1 hour of Employee Orientation which includes (but is not limited to) Food, Farm & Pesticide Safety training.			
<b>OR</b>			
<b>519</b> Americans Cost/lb.	##### <b>\$1.33</b>	<b>\$154,154.00</b> <b>\$1.54</b>	<b>\$224,224.00</b> <b>\$2.24</b>
* <b>2509 hire letters</b> must be sent to attain <b>519</b> American workers. Americans only work an average of 3 days. Farms cannot survive paying <b>inexperienced, unskilled</b> workers to harvest their crops. *Payroll includes 1 hour of Employee Orientation which includes (but is not limited to) Food, Farm & Pesticide Safety training.			

**Senator Cornyn QFRs for Dr. Ronald D. Knutson (Immig. Subcomm. Hrg. on Agricultural Labor Shortages)**

1. Have you analyzed the study conducted by Mr. Ruark for FAIR, titled "Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce" (April 2011)? Mr. Ruark, who sat on the hearing's second panel, argues that U.S. agriculture can transition to a legal workforce without a meaningful increase to food costs.

Answer: Yes, Dr. Fisher and I spent a considerable amount of time evaluating the issues related to the report authored by Mr. Ruark for FAIR. With regard to the food cost issue, any policy that increases labor costs will increase food prices. However, this effect would be small relative to adverse impacts on farmers, which Mr. Ruark completely ignores. Farmers would experience losses in incomes, which in many cases could mean financial failure, as cogently noted by Senator Schumer. Further mechanization would be encouraged, which would be at the expense of product quality. In addition, imports would increase as production shifts to other countries. As a whole, workers would see few benefits, if any. Mr. Ruark assumes that farmers have a sufficient income, due largely to higher commodity prices, that they would simply absorb higher labor costs out of their profits from farming. This conclusion of Mr. Ruark defies economic logic. It ignores that, even with improved economic conditions in agriculture, many farms, of all farm sizes, are experiencing financial stress. Moreover, fruit, vegetable, and nut farmers have not experienced commodity price increases that are comparable to that of corn farmers. Increased corn prices are largely a result of government mandates for ethanol use and high energy prices. There is no assurance that these political and economic conditions will exist in the future. The key point is that the cause and effect relationships are complex, not simplistic as assumed by Mr. Ruark.

2. What conclusions do you draw from your analysis of Mr. Ruark's study?

The Ruark Report has several serious flaws that make it unreliable. Three of the most serious include: First, Mr. Ruark assumes that higher hired farm labor wages will result in unemployed nonfarm labor taking jobs currently performed by migrant labor. Experience in farm labor markets has repeatedly proven this assumption to be false. Explanations for this fact include the back-breaking nature of farm labor harvest work, the requirements of migrating from one farm, region, and crop to another, being away from family, living conditions, and the long-term existence of government program benefits such as unemployment compensation and food stamps. Besides, we have evidence that nonfarm workers do not step up to take up available farm jobs. Nonfarm workers did not respond when the Bracero program was terminated in the mid-1960s, and they did not respond this season as Georgia farmers were unable to find harvest workers at substantially increased wages. Second, Mr. Ruark assumes that farmers have the ability to pass on his proposed increases in labor costs to higher levels of the food chain. This notion is more problematic than the perspective that farmers could absorb increases in labor costs. Farm prices are determined in highly competitive domestic and international markets. The notion that farmers might have the ability to pass on cost increases is absurd. The adjustment process to higher labor costs would be complex with major adverse effects being shared by farmers, farm



workers, and consumers. Third, Mr. Ruark assumes that adjustments to fewer unauthorized workers could occur without labor shortages. This would not happen under the complex provisions of the H2-A program. The local nature of farm labor markets and the lack of mobility of farm labor under the H2-A program would assure labor shortages and crops that are not harvested and thus rot in the fields.

**Senator Charles E. Grassley**  
**Questions for the Record**  
**Dr. Ronald D. Knutson**

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.

- a. What are the problems you face or see with the certification process?

Answer: The main problem with the current certification process is that of delay and the inability of laborers to transfer from one farm job to another employer. The consequence of delay in certification is farm labor shortages, loss of productivity, and produce waste. The current H2-A certification process is a major reason why undocumented ag workers are employed.

- b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.

Answer: I support attestation because it would overcome one of the major roadblocks to participation is the H2-A program. However, there are several other bureaucratic H2-A roadblocks that result in needless delays.

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It’s free. It’s easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

Answer: E-Verify is not a viable alternative for agriculture. The reason lies in the diversity of farms, the requirements for short-term labor moving on a migratory basis from farm-to-farm, and the lack of a viable U.S. domestic farm labor workforce. Small farms having less than \$250,000 in sales would be particularly adversely affected.

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a “blue card” and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the “blue card”.

- a. Do you support the biometric “blue card” idea proposed by Senator Feinstein?

Answer: Yes, as long as it is implemented in a manner that avoids needless bureaucratic regulation and is properly enforced.

- b. If biometric “blue cards” were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?

Answer: The employer, although employer access to readers should be provided by local USDA offices (county extension, FSA, etc.)

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won’t do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

Answer: By requiring that the “blue card” workers return to their home country on a regular basis and by requiring that they enter the regular path to citizenship if they so desire.

**Senator Jeff Sessions  
Questions for the Record  
All Witnesses**

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

Answer: It should be clear, enforceable, and enforced. The current system has none of these features.

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

Answer: The blue card proposal by Senator Feinstein may offer that possibility if the government enforces the program. The current program clearly does not offer that possibility, and if it was enforced, it would have serious adverse economic consequences.

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

Answer: The apparent side effects in terms of costs of education, health care, and related infrastructure should have been foreseen. Requiring farmer-employers to bear these costs is not workable. Future costs could be controlled by not allowing new blue card holders to bring family members to the United States. A new blue card holder is defined as one not currently working in the United States.

4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers?

Answer: Clearly, the program is not meeting the needs of agricultural employers. Those who assert otherwise do not understand the program, how it is being mismanaged, and the conditions in agriculture.

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs?

Answer: No, they do not take farm jobs for a variety of reasons that are not wage related. These reasons include factors such as the back-breaking nature of farm work, field-work climate conditions, being away from family proximity, moving from one job to another, and liberal social/unemployment benefits associated with not working.

Do you agree that these depressed wages increase the instability of the agricultural workforce?

Answer: No, to the extent that there is instability, it is a function of the lack of a clear and workable government policy.

Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

Answer: Migration of employees out of agriculture into other sectors under the current program/policy is inevitable.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.

Answer: Yes, but recognize that farm work is not attractive, period.

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?

Answer: The decision of whether amnesty should be provided is a political decision, not an economic decision. There are always economic incentives for fraud. Policies/programs/enforcement need to exist that minimize/curb those economic incentives.

**Senator Jeff Sessions  
Questions for the Record**

**Dr. Ronald Knutson, Professor Emeritus, Texas A&M University**

- I. There are many anecdotal reports of labor shortages in the agricultural industry, yet the overall production of fruit and vegetables in the country has remained stable. Basic economic theory shows that where the demand for labor is greater than the supply, the cost of labor will rise. However, the average earning of farm workers is not rising. (Philip Martin, *Farm Labor Shortages: How Real? What Response?* Oct. 29, 2007).

- a. How can we know if there is a labor shortage where production and basic economics indicate the opposite?

Answer: Under current federal policies there is not a chronic labor shortage problem because undocumented workers have been plentiful. The existence of an ample supply of undocumented workers keeps the wage rate at competitive levels.

- b. How do you define a labor shortage?

Answer: A labor shortage exists when the required supply of labor is not available at the time and place where it is needed.

- c. If there is a farm labor shortage, why haven't labor wages risen?

Answer: There is no labor shortage. The crucial constraints on the U.S. farm labor wage rate and on the demand for farm labor, are the competitive position of U.S. farm products internationally, either in terms of imports or exports. This international competitive constraint is the most important factor influencing the farm wage rate.

2. Technological developments in the agricultural industry are ever-expanding. These are necessitated by many factors, not the least of which, as you mentioned in your testimony, is that "there are no holidays" when it comes to harvesting perishable crops. Not only has the harvesting of tomatoes, raisins, oranges, olives, and other commodities been mechanized, scientists have developed other ways to cut the time and cost of harvesting and other farm work. For example, certain fruit trees are being engineered to grow lower to the ground, eliminating the need for ladders and climbing. If this alleged labor shortage exists even in the face of over 9% unemployment in this country, what role does mechanization play in alleviating the consequences of the shortage?

Answer: While the trend toward mechanization exists, research by Martin and Calvin and by Huffman clearly indicates that there are significant limitations on the ability to mechanize many of the fresh produce crops. While genetic modification of trees may be cited as examples, hand labor is still vital to producing tree crops for the fresh market. There are substantial limits, imposed by consumers, on the ability to produce

mechanically harvested crops that taste good. Agricultural mechanization has nothing to do with the 9% unemployment rate. High unemployment is a function of failed economic policies.

3. According to data from the Bureau of Labor Statistics and the Pew Hispanic Center, in 2009, 72.6 million American workers age 16 and over were paid at hourly rates, representing 58.3% of all wage and salary workers. About 8.3 million illegal immigrants were in the work force at that time, most of them in the low-wage category. Therefore, it is clear that Americans who work in low-skilled job categories compete much more heavily with foreign workers for their jobs than Americans in high-skilled jobs. In addition, the wages paid to low-skilled American workers and legal workers are depressed by the importation of illegal workers. According to Harvard economics professor George Borjas, "a 10% increase in the number of workers depresses a worker's wage by 3 or four percent. Over the past 20 years, immigration (much of it illegal) increased the number of workers without a high school diploma by 16 percent, implying a 6 percent decline in the wage of low-skilled workers. The typical high school dropout earns \$21,000 annually. Immigration lowers this worker's salary by around \$1,300." (*Making it Worse*, The National Review, February 9, 2004, at 24). Do you agree or disagree with these conclusions? Please explain your answer.

Answer: I have no reason to dispute the findings of Professor Borjas. However, I do not believe that the farm labor sector competes with the nonfarm labor sector at the lower end of the wage scale. The reason is that the nonfarm workers will not take farm jobs.

4. You testified that agribusiness is not directly involved in farm production, and that all but 60,846 of the 2.2 million U.S. farms are "family farms."

- a. How do you define "agribusiness?"

Answer: I draw a distinction between farming activities, typically performed by family farms, and those activities performed by other agriculture-related business firms before and after the "farm gate." Agribusiness supplies farmers with inputs used in production, including credit, and extends through the remainder of the food value chain to the final consumers. The reason I draw this distinction is that before and after the farm gate, the market structure takes on many of the industrialized characteristics of the remainder of the American economy. The most important of these characteristics is the ability to directly influence prices and other terms of trade. Farmers do not have this ability to influence prices, except through government mandates.

- b. Many family farms operate under contracts with large agribusiness firms such as chicken farmers. What percentage of farms in the U.S. operates under contracts for agribusiness firms or supply agribusiness?

ERS/USDA has very good data on the contracting issue. This is data compiled by James M. MacDonald and Penni Korb, EIB-35, April 2008 and is available at: <http://www.ers.usda.gov/Publications/EIB35/> (accessed October 20, 2011). It indicates wide variation among farm products in the amount and type of contracting. For example, in 2005, marketing and production contracts covered 41 percent of the value of U.S. agricultural production. Most of these contracts set a portion of the terms of trade for marketing farm products. A few subsectors, such as are used in poultry, utilize production contracts for virtually all of the production.



**Senator Charles E. Grassley**

**Questions for the Record**

**Thomas A. Nassif**

- I. There has been much discussion about moving the H-2A program from a certification process to an attestation process.
  - a. What are the problems you face or see with the certification process?
  - b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.

**We support the attestation process. The only legal agricultural worker program (H-2A) supplies roughly 60,000 seasonal workers each year, only 2-3% percent of farm employers’ needs. The program has become virtually unworkable, with arbitrary delays and denials during the certification process, leading to workers not showing up when they are needed to pick perishable crops.**

**The administrative processes for obtaining H-2A approval are more daunting than ever. Most employers simply never attempt to use the program and those that do must navigate a gauntlet of obstacles. The process is unnecessarily complicated and labor intensive.**

**Approvals are often issued late notwithstanding statutory deadlines. The delay is compounded by DOL’s continuous demands for wording modifications in the certification process which often inconsistently apply or misapply the regulations.**

**While an attestation process is certainly superior to a certification process, as long as the Labor Department maintains administration of the H-2A program, the H-2A program will remain dysfunctional.**

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It's free. It's easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

**In order for E-Verify to work for agriculture, it must be used in conjunction with a program that allows agriculture to have a stable legal workforce. There is no such program at present. A high percentage of the harvest labor, labor on dairy farms and in nurseries is not in our country legally, although they all have documents that appear proper. E-verify will remove most of these workers from the farms and there will be no way to replace this skilled workforce. A program must be adopted that will provide legal workers to our farms and nurseries. Without these farm workers, Americans that have jobs supporting farms will also lose their jobs. American agriculture will be forced to move out of the United States.**

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".
- a. Do you support the biometric "blue card" idea proposed by Senator Feinstein?
- Yes**
- b. If biometric "blue cards" were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that would presumably be required of employers?

**The "blue card" would be read by law enforcement authorities who already have and use readers. The agriculture employer would use the information on the card for e-verify. If the e-verify system works, then the "blue card"**

**will work with it. If the e-verify system does not work, the “blue card” will still be available to law enforcement personnel. It does not appear there will be additional cost of any significance.**

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won't do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

**We have suggested programs to provide a source of legal workers for farms and nurseries. They include existing workers as well as new workers. We have not suggested amnesty. Our suggestion requires workers to remain in agriculture for a temporary period and then to return home. This requires a program that allows a way for farm workers to come and go legally. Knowing of your support for agriculture, and your views on illegal immigration, this approach is consistent with your views.**

Senator Jeff Sessions  
Questions for the Record  
All Witnesses

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

**Western Growers has long been an advocate for immigration reform that provides clarity to agricultural producers across the country. Any effective immigration reform includes enforcement but enforcement alone is insufficient. A workable mechanism for agriculture is necessary to enable us to obtain the workforce we need to continue to farm in the United States. A workable mechanism ensures that existing workers can be employed legally and provides for future labor needs.**

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

**There are ways to ensure that workers remain temporary and return to their home country when they are no longer needed by the market. Congressman Lungren (R-CA) proposed such an approach (H.R. 2895) that works in concert with the E-Verify legislation (H.R. 2885) sponsored by House Judiciary Committee Chairman Lamar Smith (R-TX) and passed by the Committee on September 21, 2011. H.R. 2895 would establish an agriculture labor program that restricts the employment of the program's visa holders to agricultural jobs and also creates a trust into which FICA withholdings from temporary workers are deposited. E-Verify plus the ag employment restriction would ensure that the only economic opportunity for temporary workers in the United States on an agriculture visa would be in agriculture. In addition to these enforcement measures, the trust provides an incentive to return home, as workers will be able to collect their withholdings only when they return home and only if they fully comply with the terms of their visas.**

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

**To address any concerns in this regard, Congressman Lungren's proposed agricultural labor program provides a number of safeguarding mechanisms: 1) Agriculture workers would not qualify for federal financial assistance; 2) Administration of the program is paid for by the requesting employers through a fund comprised of employers' contributions of FICA and FUTA withholdings; and 3) Funds collected through employer user fees would be provided to hospitals for**

unreimbursed emergency medical expenses accrued during the treatment of agricultural workers. We must also remember that currently, the approximately 7-12 million employees who are in the United States illegally but who have presented what appear to be bona fide documents to employers across all industry sectors have FICA withheld from their paychecks. These deductions will unlikely never be collected.

4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers?

The fact that an “uncapped” visa program only provides 2 to 3 percent of the intensive labor needs of America’s farms and ranches when the workforce is over 70 percent falsely documented proves that the H-2A program does not come close to meeting the needs of agricultural employers. The lack of use is due to the structural limitations and chronic problems of the H-2A program, limitations and problems which have been well documented over the years, and which have been exacerbated under the current Administration.

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

With respect, we reject the premise of the question, that wages in agriculture are “depressed.” First, there is a common misconception that there is an adequate and willing pool of U.S. workers that would take farm jobs if farmers only paid more money. Under the H-2A program, few U.S. workers respond to rigorous recruiting efforts even though they would be paid an artificially inflated wage required under regulations that ignore the prevailing market wage rate. Moreover, even if higher wages would attract more U.S. workers -- and they will not -- growers cannot afford to pay wages that would make them even more non-competitive with farmers in countries with lower wages and without the environmental and food safety regulations with which U.S. farmers must comply. Ultimately, it is the nature of the work that makes farm work unattractive—it is in rural and remote locations far from cities; it is seasonal and migratory; and it requires arduous physical labor in varying climates outdoors.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.

**Our experience does not support the assertion that unemployment benefits contributes to the unwillingness of American workers to seek agricultural jobs.**

As was mentioned in my testimony farmers have tried working with state workforce agencies to recruit unemployed workers and provide them with employment harvesting produce. In the late 1990's, at the insistence of Senator Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran 9 to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other factors impacting employment levels. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies stated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work because it suffered from such a low success rate, and that seasonal agriculture was "not a fit" for these individuals.

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?

We do not know of any new temporary farm worker program being suggested by anyone that provides for amnesty for farm workers. What is needed to support US agriculture, as you know, is a program that provides a legal supply of farm workers. This is necessary to keep the American jobs that result from agriculture and nurseries. Without this labor supply, we will lose American agriculture as we know it currently and Americans will lose their jobs. You can help prevent this. As you have seen in your state, since the passage of E-Verify, harvest labor has been unavailable and crops have been left to rot. We are certain you do not want to spread this across America. Please help us prevent this by providing a program that will permit a temporary legal workforce so American farmers do not have to move their production overseas.

**Senator Jeff Sessions  
Questions for the Record**

**Tom Nassif, President and CEO, Western Growers Association**

1. You testified that members of the Western Growers Association believe that there is a diminishing labor supply in the agriculture industry. Yet there is no data to support this contention. In addition, the actual meaning and qualification of "labor shortage" in terms of jobs left unfilled is unclear. It is impossible to know if there is a labor shortage where the term is undefined.

- a. How do your members define "labor shortage" when reporting a diminishing labor supply?

**In a recent Western Growers survey of a sample of our members, we asked our members if they "experienced challenges in securing adequate numbers of laborers this year." 62% answered in the affirmative. These members describe the shortfall between the total farm employees needed this year and the number of farm employees hired, as a shortage of farm labor causing a significant economic impact on their farms.**

- b. Did you follow up with the members that reported a diminishing labor supply? If so, what evidence did they provide you to support their claim of a diminishing labor supply?

**Yes. The survey participants reported estimates of their anticipated crop losses due to labor shortages, if any. Only 7 respondents indicated they did not anticipate any losses. However, as a result of insufficient labor to harvest the crop, most respondents indicated that they anticipate losses from \$40,000 on the low end to over \$1 million, and in one case potentially millions of dollars. Other respondents cited incurring higher labor costs due to labor shortages.**

- d. What percentage of your members utilize the H-2A program?

**Very few members use the H-2A program. In the survey discussed above, only 3 growers indicated that they utilize the H-2A program to recruit farm employees. Western Growers also provides H-2A services for its members, however this service is used by only 2-4 employers per year.**

2. In your testimony, you described your members' efforts hire American workers.

- a. What individual efforts have your members undertaken aside from government implemented recruitment programs, like the H-2A program?
- b. In Canada, all employers that seek to hire temporary foreign workers must first recruit and offer jobs to those receiving unemployment benefits from the Canadian government. Do the members of your organization make any efforts to recruit American workers who are currently receiving unemployment benefits?

**Western Growers members have and continue to seek qualified legal workers to help us harvest the food to feed America. Most rely on referrals and callbacks to secure their workforce. When our members finish callbacks and identify labor needs some work with state workforce agencies and others advertise positions through traditional news sources to secure the remaining workforce.**

In the late 1990's, at the insistence of Senator Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran 9 to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other factors impacting employment levels. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies stated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work because it suffered from such a low success rate, and that seasonal agriculture was "not a fit" for these individuals.

Other regions of the country have also tried to recruit domestic employees. In 2006, in Washington State, a tight labor supply for the cherry harvest was a warning sign of a looming labor shortage for the much larger apple harvest. Again, state and local agencies teamed up with grower associations to conduct an advertising blitz and provide special training on how to safely pick apples without harming their market value or damaging the trees' future productivity. In that program, over 1700 workers were sought; roughly 40 were successfully placed. In 2007, the North Carolina Farm Bureau Federation set up a statewide hotline for job seekers, and advertised it in print and on radio. North Carolina needs roughly 60,000 crop and livestock workers each season. Two calls were received; one was from a grandmother who felt that farm work would do her grandson good.

Recently, the United Farm Workers Union documented the same conclusion. In 2010, the Union launched the "Take Our Jobs" program, including a media blitz that garnered national coverage. As of mid-October, which generally marked the end of the growing season and the campaign, 10,021 people had inquired about jobs in the fields, yet only nine people had taken jobs. The President of the Union testified at the hearing that most of them quit after a few days.

The agricultural labor program proposed by Congressman Lungren makes moot any assertion that domestic workers are willing to agricultural jobs by providing farm workers with the same protections, no more, no less, than U.S. workers with respect to all employment related laws and employment taxes. Thus there would be no reason for an employer to prefer a temporary foreign worker over a U.S. worker.

3. You testified that Arizona's E-Verify law has hurt the Arizona agricultural industry. However, Arizona Farm Bureau spokesman Joseph Sigg recently stated that "E-Verify has not been measurably disruptive to the labor supply of Arizona agriculture." ("E-Verify and Agriculture—Arizona Perspective," Bellingham Herald, Sept. 30, 2011). Are you aware of any evidence or data to support your contention? If so, please provide it to the Committee.

**In light of state mandated E-Verify, H-2A is the only mechanism for producers to obtain a legal workforce. A majority of specialty crop agriculture production in**



Arizona takes place in Yuma. The Western Growers members who farm in Yuma hire Mexican H-2A workers who live in Mexico and commute to work. Many of these H-2A employees prefer to return home after each work day. The Department of Labor appears, at best, indifferent to agriculture's needs in this area. These employees decline to use the approved housing that is required to be provided to them by the growers under H-2A regulations. Despite repeated requests for an adjustment to the requirements, the Department of Labor has taken the position that employers must make the housing available for the H-2A commuters *prior* to obtaining employer H-2A certification, regardless of whether the H-2A workers intend to use it. This imposes a significant cost on the growers without affording any benefit to the intended H-2A worker beneficiaries.

4. What percentage of your members hire workers who are illegally within this country and who therefore cannot be legally employed?

Our members only hire workers who present work authorization documents that appear valid on their face. However, according to the National Agricultural Worker Survey (NAWS), over 50% of the hired farm labor force is unauthorized. Experts believe that the actual percentage is much higher, as the NAWS relies on workers self-disclosing their status to an interviewer who is acting on behalf of the U.S. Government. Credible evidence resulting from employment-based immigration enforcement and other sources points to at least 70% of the farm labor force lacking proper work authorization.

**Senator Charles E. Grassley**

**Questions for the Record**

**Arturo Rodriguez**

1. **There has been much discussion about moving the H-2A program from a certification process to an attestation process.**

- a. **What are the problems you face or see with the certification process?**

The certification process is integral to protecting the rights of US workers, but requires active oversight by DOL of the employer's recruitment and hiring of US workers and the details of the job offer if it is to be effective. Unfortunately, DOL does not have adequate resources to fulfill its obligations under the certification process. As a result, the current certification process can be easily manipulated by growers seeking to hire H-2A workers. It does not prove that US workers are not available; it simply proves that the U.S. Department of Labor does not have the resources or is otherwise incapable of recruiting thousands of qualified US workers at wages which are unattractive even to US workers who are currently doing farm work.

For example, livestock workers in the western states currently earn \$10 to \$12 per hour according to surveys conducted by the United States Department of Agriculture. Is it surprising that the Department of Labor is unable to recruit several thousand sheep herders when the sheep ranchers only pay \$750 per month or less than \$5 per hour (the sheep herders are required to be on call 24 hours per day seven days per week)?

**b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.**

The UFW opposes replacing the current certification process with an attestation process. If the objective is to protect the jobs of US workers, and in particular, the 600,000 to 800,000 US workers who currently work in agriculture, the certification process needs to be strengthened, not weakened. It is critical that the 50% rule which requires US workers to be hired for the first 50% of the contract period be retained as this is the only meaningful protection for US workers at present. In addition, Congress should consider eliminating the economic incentives which lead employers to prefer H-2A workers over Americans. Currently, agricultural employers are exempt from paying employment taxes on their H-2A workers, unlike the other H visa programs which require the payment of these taxes, giving H-2A workers a 10% cost advantage over Americans. If Congress is serious about protecting US jobs it needs to level the playing field by eliminating these exemptions and the exclusion of H-2A workers from the protections of the Migrant and Seasonal Agricultural Worker Protection Act.

The current certification process requires active oversight to evaluate offered job terms and claims of labor shortages; however, an attestation process typically requires only that the employer sign a brief form promising to comply with whatever obligations it has. This change may satisfy employers’ demands for ease in application but ignores the irreparable damage that would be caused by false attestations and lack of DOL supervision of the recruitment process. An attestation process could lead to the widespread displacement of US workers.

2. **There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It's free. It's easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?**

We believe that E-Verify or a similar system may have a place as part of a comprehensive solution that deals with the current unauthorized workforce. However, we believe that the most likely response to making E-Verify mandatory for agricultural employers will be to transfer the hiring function to farm labor contractors, making enforcement more difficult. Congress should consider making agricultural employers jointly liable with their contractors for complying with the E-Verify requirements, and at the very least, amend the Migrant and Seasonal Agricultural Worker Protection Act to make it a violation for farm labor contractors to hire unauthorized workers.

3. **Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".**
- a. **Do you support the biometric "blue card" idea proposed by Senator Feinstein?**

**b. If biometric “blue cards” were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?**

We wholeheartedly support Senator Feinstein’s efforts to create a workable “blue card” program for undocumented workers in the agricultural sector. If biometric cards are required, the employer will have to bear the cost of the biometric reader just as the employer will have to bear some of the costs associated with the E-Verify program. However, it may be possible to make readers available to small employers either through the employment service system, grower associations, or independent companies which would provide verification services for a fee.

**4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won’t do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?**

The underlying problem is that the US has an unstable agricultural labor market that requires constant replenishment with new workers from abroad. The reasons for this chronic labor market instability were accurately described in a 1994 study by the United States

Department of Labor:

*The constant outflow of workers is a consequence of the difficulties of making a living from U.S. farm work. Most migrant farmworkers live a marginal existence, even after they stop migrating and settle in one location. The majority of migrants and former migrants live in poverty endure poor working conditions, and receive no government*

*assistance. Thus, only those migrants with few alternatives stay in farm work. This leads to a maturing labor force composed mostly of workers with low levels of education and lacking English skills, whose improvements in working standards are continually undermined by new workers willing to work for less.*

*The poor living and working conditions of migrant and formerly migrant farmworkers are the result of labor practices that shift production costs to workers. In particular, the farm labor system relies heavily on temporary jobs, often uses the highly competitive subcontracting market for labor management, and frequently recruits workers in a way that results in a chronic oversupply of labor. Each of these practices reduces employee costs at the expense of worker earnings. As a result, migrant workers, their families and communities, rather than producers, tax-payers and consumers bear the high costs of agriculture's endemic labor market instability.*

*The high outflow of farmworkers to non-farm work in the United States and the constant replenishment from abroad means the agricultural labor market serves as an entry point for low-wage, low-skilled immigrants for the entire U.S. economy. To slow this influx of new entrants and stabilize the farm labor market requires diverting the costs of instability from the migrants back to the employers, taxpayers, and consumers who benefit from their labor. (Emphasis added)*<sup>1</sup>

This analysis is not new. Twenty years ago, the last blue-ribbon commission established by Congress to study the question reached the same conclusion. We find ourselves in the current situation because unfortunately the recommendations of that commission were never implemented.

In 1986 when Congress passed the Immigration Reform and Control Act ("IRCA") it authorized a Commission on Agricultural Workers to study the effects of the Act on the agricultural industry and make recommendations for the future. The Commission could not be accused of being a bunch of liberals or labor activists; eight out of the eleven Commissioners were appointed by Ronald Reagan or Strom Thurmond. Only two of the Commissioners, Dolores Huerta and Cardinal Mahoney, could be described as representing the interests of the

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<sup>1</sup>*Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, Research Report No.5, U.S. Department of Labor Office of Program Economics, May 1994.

farmworkers. Its recommendations therefore should be taken seriously by Republicans as well as Democrats.

The Commission noted that while IRCA was successful in legalizing large numbers of agricultural workers, “ineffective enforcement of employer sanctions and inadequate border controls have curbed neither illegal immigration nor the employment of unauthorized workers in agriculture.” What agriculture needed most was a more stable labor market– “ the goal of controlling illegal immigration would be best served by the development of a more structured and stable domestic agricultural labor market with increasingly productive workers:

*Such a system would be characterized by more effective recruiting and job matching, reduced worker turnover and higher retention rates, a more dependable labor supply, institutionalized opportunities for training and advancement, and a better balance between labor supply and demand. Such a system would further address the needs of seasonal farmworkers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply. Market mechanisms would provide the incentives that would ultimately lead to and maintain this stabilization.*

*A stable and reliable workforce is critical to the long-term health of the industry and would thus provide clear benefits to both workers and employers.*

However, none of the Commissions’s specific recommendations to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment were ever implemented:

Recommendation: “Illegal immigration must be curtailed.” **Not done**

Recommendation: “The Department of Labor’s U.S. Employment Service should develop a new and/or alternative system for recruiting qualified farm labor to meet agriculture’s constantly changing labor needs.” **Not done**

Recommendation: “The U.S. Department of Agriculture’s Extension Service, the U.S. Department of Labor’s Employment Service, and state agencies and universities should undertake a major effort to educate growers, packing house operators, farm labor contractors, workers, and worker organizations in the need for and benefits of improving labor management

practices in agriculture.” **Not done**

Recommendation: “Agricultural employees should be provided with federal/state unemployment insurance coverage that provides them with protection against unemployment comparable to that of other workers in the United States.” **Not done**

Recommendation “Congress should encourage all states to provide Workers’ Compensation Insurance coverage comparable to that of other workers in the United States.” **Not done**

Recommendation “Farmworkers should be afforded the right to organize and bargain collectively, with appropriate protections provided to all parties.” **Not done**

Recommendation “The enforcement of protective statutes for farmworkers should be made more effective..All laws relating to farm labor should be uniformly enforced by the agencies concerned so that employers not in compliance do not gain an unfair competitive advantage over those employers in full compliance with the various laws and regulations.” **Not done**

The Commission concluded that “to the extent that job opportunities are secured by legal workers in a more stable labor market, the pull factor for illegal immigration is reduced.” That is just as true now as it was twenty years ago. We need a stable, legal workforce for agriculture.

Simply enacting mandatory E-verify with or without an expanded guest worker program will not address the underlying problem. Only a comprehensive approach addressing the above factors and offering undocumented workers an opportunity to earn lawful immigration status will work.



### **Feds: Margate Company Lured Haitians to U.S. with False Promises**

From OrlandoSentinel.com, "Jon Burstein, Sun-Sentinel, 25 Oct 2011.

FORT LAUDERDALE— The operator of a now-defunct Margate company promised steady-paying jobs to Haitian workers, but left them in the U.S. desperately fending for themselves or living in trailers without electricity, according to federal prosecutors.

Marie Nicole Dorval, the president of Manidor Financial Group Inc., was criminally charged on Monday with a single count of conspiracy to commit visa fraud. She is accused of using a network of recruiters in Haiti to lure 145 people to South Florida in April 2009 on temporary work visas.

The workers paid Dorval and her recruiters, thinking they would be getting jobs in construction or on a farm with the chance of eventually getting green cards to stay, according to the U.S. Department of Justice's Civil Rights Division.

Once the workers arrived in South Florida, there was no work or housing, according to court records. Some were eventually transported to Gainesville-area farms where they lived in trailers with floors covered in filth and no beds, federal prosecutors said.

Dorval, 41, could face up to five years in prison on the single charge filed in Fort Lauderdale federal court. Prosecutors wrote in court documents that they believe the trial will last "0 days," a clear indication they think the criminal case will end in a plea deal.

Six of the workers had attempted to sue Dorval in 2009, saying they had each paid in excess of \$3,500 to come to the United States. They alleged they were stranded in Florida and told not to complain or else immigration officials would be called, according to the Broward Circuit Court lawsuit.

That case was dismissed. The workers' attorney, Barry Silver, said his clients "pretty much disappeared into the woodwork" after the lawsuit was brought.

"We're still trying to track them down and if we can, we will refile the case," Silver said. "[Manidor] seemed like an exceptionally shady operation."

Court documents did not list a criminal defense attorney for Dorval. An attorney who represented her in the civil lawsuit against Manidor did not return a phone call.

The case marks the second time in two years that a South Florida company has been accused of luring Haitians to the United States with the false promise of steady wages under a temporary worker program.

The owners of two North Miami Beach companies are facing federal charges in Gainesville. They are accused of luring about 50 workers to the United States, then taking their passports and

forcing them to live in substandard conditions on an Alachua County farm.

Several workers suffered permanent scars when they were forced to pick beans in a field that had just been sprayed with chemicals, according to court records.

Carline Ceneus, owner of Carline Hot Pickers, and Willy Paul Edouard, owner of Puroul Picking, could go on trial as early as January.

[jburstein@tribune.com](mailto:jburstein@tribune.com) or 954-356-4491

Source: OrlandoSentinel.com, "Feds: Margate company lured Haitians to U.S. with false promises" by Jon Burstein, Sun-Sentinel, 25 Oct 2011.

Senator Jeff Sessions  
Questions for the Record All Witnesses

**1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?**

The UFW agrees that our immigration system should be clear and capable of enforcement. We believe that in order for our currently broken immigration system to be clear and capable of enforcement, it must be reformed in a comprehensive manner which offers the current undocumented an opportunity to earn legal immigration status and stabilizes the farm labor market. We believe that our immigration policy should be fair and consistent with American values.

**2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.**

Our current guest worker programs are seriously flawed in that they tie the guest worker to a particular employer thus destroying a free labor market capable of balancing supply and demand. This leads employers who use the guest worker programs to become dependent on guest workers resulting in a temporary program becoming permanent.

The sheep industry in our western states provides a good example of how dependence on guest workers becomes permanent. The sheep industry has used foreign sheep herders for over five decades. During that time there has been little or no improvement in the wages and working conditions offered by the industry. Today livestock workers in the western states other than sheep herders are paid \$10 to \$12 per hour. H-2A sheep herders who are expected to be on call 24 hours per day, 7 days per week are paid only \$750 per month. Even if the sheep herders only worked 40 hours per week, that works out to less than \$5 per hour. As long as the sheep industry is guaranteed workers at less than \$5 per hour, there will always be a "need" for these guest workers.

**3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.**

The current H-2A guest worker program in agriculture does not impose significant education, healthcare, and increased government-wide infrastructure costs on taxpayers, at least as far as the H-2A workers themselves are concerned.

Agricultural employers, including those who employ guest workers, should be responsible for providing health care for their workers to the same extent as other employers.

How any new guest worker would address these issues depends on the specifics of the legislation.

**4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers?**

Our current guest worker programs including the H-2A program attempt to balance the needs of employers for workers against the desire to protect the wages and working conditions of American workers. Clearly, American workers would be better off if there were no guest worker programs. Conversely the needs of employers would best be met through a program that admitted an unlimited number of workers without any labor protections.

Only a fraction of agricultural employers utilize the H-2A program because it is generally cheaper to employ unauthorized workers than to employ H-2A workers or legal American workers. If the goal is simply to maximize the number of H-2A workers employed, that could be done by eliminating the labor protections so that the cost of employing guest workers was less than the cost of employing unauthorized workers; however, that would not protect the wages and working conditions of the 600,000 to 800,000 American workers who still work in the agricultural sector.

**5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.**

Depressed wages certainly are one factor. Another reason is that our laws often treat agricultural workers differently than other workers. For example, 15 states still exclude farm workers from coverage under their workers' compensation laws despite the fact that agriculture is one of the more dangerous occupations. American workers rightly associate farm work with substandard wages and working conditions.

The poor living and working conditions of farm workers are the result of labor practices that shift production costs to workers. In particular, the farm labor system relies heavily on temporary jobs, often uses farm labor contractors for labor management, and frequently recruits workers in a way that results in a chronic oversupply of labor. Each of these practices reduces employee costs at the expense of worker earnings. As a result, farm workers, their families and communities, rather than producers, tax-payers and consumers bear the high costs of agriculture's labor market instability.

If we are serious about slowing the influx of new entrants and stabilizing the farm labor market, we need to focus on diverting the costs of instability from the farm workers back to the employers, taxpayers, and consumers who benefit from their labor.

**6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.**

I do not believe that the availability of unemployment benefits to workers who are unemployed through no fault of their own contributes to the lack of American workers willing to take agricultural jobs. Actually, it is just the reverse, it is the unavailability of unemployment benefits to agricultural workers which makes these jobs less desirable to Americans. Although unemployment benefits were extended to farm workers in 1978, only a few states provide full coverage. Many states exclude seasonal employees and farm workers' employment patterns often make it difficult for them to qualify for benefits. Seasonal agricultural workers are, by definition, employed for less than a full year. As a result, significant unemployment and underemployment among farm workers is common – particularly within the fruit, vegetable, and horticultural specialty sector. If we want Americans to take these jobs it is essential that farm workers receive the full protection of unemployment insurance programs and the differential coverage of farm workers across the unemployment insurance programs of various states be eliminated.

**7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?**

Unfortunately, all immigration programs including guest worker programs such as the H-2A program and H-2C proposal are susceptible to fraud. For example, the Orlando Sentinel reported just yesterday that 145 workers were fraudulently lured to South Florida to do farm work on temporary work visas. See attached story, "Feds: Margate Company Lured Haitians to U.S. with False Promises"). The blue card legalization program contained in AgJOBS is designed to combat the type of fraud we saw in the SAW program. The prospective work requirement would discourage applicants who did not really have prior experience working in agriculture. Another significant measure to prevent fraud is the limitation on the ability of the so-called "notario publicos" and for-profit immigration agencies to participate in the legalization program.

**Senator Jeff Sessions  
Questions for the Record  
Arturo S. Rodriguez, President, United Farm Workers**

**1. You testified that the passage of H.R. 2847, the "American Specialty Agriculture Act" sponsored by House Judiciary Chairman Lamar Smith would cause displacement of**

American workers and characterized it as “un-American.” However, H.R. 2847 would require employers to take certain steps to recruit American workers.

**a. Please explain why you believe that H.R. 2847 is un-American.**

I believe that H.R. 2847 will not protect the wages and working conditions of American workers and would, if enacted, lead to massive displacement of the 600,000 to 800,000 Americans who still work in the agricultural sector. The centerpiece of the bill is a wage methodology which will significantly lower wages for farm workers in the United States, both legal and unauthorized workers. Up to 500,000 workers or one quarter of the entire farm labor workforce would be admitted to the US for short-term employment at wages below those currently paid US workers.

Under H.R. 2847 the prevailing wage is defined as the “first level” in a four level wage system. The first level is actually the median wage for the lowest third of workers in an occupation while the level four wage is the median for the top two-thirds of the wage distribution. The mean wage or the average wage for workers in the occupation is actually the level three wage. In practice, 80 to 85% of the workers surveyed are paid more than the first level wage—it is by definition a substandard wage. In many areas of the country, the level one wage is a dollar or more less than the average wage paid crop workers. If large numbers of workers are admitted to the United States at this wage rate, the average wages paid agricultural workers will fall to even lower levels than they are today, hastening the exodus from agriculture of the remaining US workers.

In fact, the incentive to displace US workers, as opposed to unauthorized workers, is greater precisely because US are generally paid more than unauthorized workers. The incentives to replace US workers with new H-2C workers are further enhanced when one considers that the employer will not have to pay FICA or FUTA taxes on the H-2C workers’ wages. This makes it roughly 10% cheaper to employ an H-2C worker than to employ an American worker, even without the considerable wage differential established by the new wage methodology.

A concrete example will show just how large the economic incentive to discriminate against US workers would be under the proposed legislation.. The most recent information available from DOL’s Online Wage Library for Foreign Labor Certification shows that livestock workers in Ventura County, California are paid an average of \$12.00 per hour. For a year-round employee that adds up to an annual income of \$24,960. Under the Smith bill, an employer seeking to hire a livestock worker under the H-2C program would only have to advertise the job at \$8.93 per hour. US workers would either have to accept a rate more than three dollars under the going rate or see the job go to a guest worker. For the employer hiring an H-2C worker instead of an American will save \$6,386 per year in wages. However, that is not the only saving; the employer doesn’t have to pay

employment taxes on the wages of the H-2C worker resulting in an additional saving of about \$2500 per year. The total saving to the employer is nearly \$9,000 per year.

The short-term impact of the Smith bill in reinstating the level one wage under the H-2A program would be to transfer approximately \$150 million per year from US workers and guest workers to the current H-2A employers. The long-term impact should the program expand to the 500,000 worker cap would be to reduce the earnings of the poorest group of workers in America by at least a billion dollars per year.

In addition to the lower wage standard, the Smith bill drastically reduces employer responsibilities to inform US workers about job opportunities and eliminates or weakens labor protections which have been in effect for decades:

- Protections for US workers in the recruitment process have been weakened. The proposed H-2C program would limit the ability of US workers to learn about job opportunities by reducing requirements for job postings and limiting the role of state workforce agencies. Also, instead of requiring the employer to petition DOL for certification of a labor shortage, the proposed H-2C program would only ask an employer seeking H-2C workers to include labor attestations in his application to the Department of Agriculture. An unscrupulous employer can claim that no American workers are available (or at least none willing to work for a wage lower than the wage paid 80% of the workers in comparable employment) whether or not any efforts were made to recruit workers.
- The most important protection for US workers– the 50% rule has been eliminated. The 50% rule requires that the employer hire US workers who apply for the first 50% of the contract period. The 50% rule is virtually the only way an American worker can be hired under the existing program since American workers very rarely find out about the job opportunities before the work actually starts.
- Instead of providing workers with free housing that has been inspected and meets federal standards as the current law requires, the employer can provide a voucher unless the Governor certifies there is not adequate housing available; workers who live on the border do not have to be provided with any housing;
- The guarantee of employment for three-fourths of the hours worked in the contract is reduced to an almost meaningless guarantee of 50% of hours offered; the guarantee is the principle protection against over-recruitment;
- The transportation reimbursement is no longer from the place from which the worker traveled to come to the employer's job site but only from place where the

worker was approved to enter the U.S. i.e. a consulate which could be hundreds of miles from the worker's home.

– The bill also contains language which would eviscerate worker protections under the holding of Eleventh Circuit Court of Appeals in *Arriaga v. Florida-Pacific Farms* and thereby allow their employers to reduce their wages below the minimum by imposing on the worker the obligation to absorb visa, transportation and other costs relating to their entry into the US. This harkens back to practices long outlawed for US workers.

– The bill contains a number of provisions relating to legal services, access to labor camps, compulsory arbitration and mediation which are transparently designed to make it as difficult as possible for the guest workers to enforce their contract rights against their employers.

The elimination of the 50% rule, the substitution of an attestation procedure for labor certification, and the transfer of program responsibilities from the Department of Labor to the Department of Agriculture all send a clear signal that guaranteeing employers access to cheap foreign labor is more important than protecting the wages and working conditions of U.S. workers.

**b. Do you agree that any temporary guest worker program must ensure that American workers are not displaced and encourages the hiring of American workers?**

I certainly agree that any guest worker program must ensure that American workers are not displaced and encourage the hiring of US workers. However, Congress must do more than merely exhort employers to do the right thing. Congress needs to remove the economic incentives in the current program which make it cheaper to hire an H-2A worker than to hire an American. In contrast to the other H-visa programs, under the H-2A program, agricultural employers do not have to pay FICA and FUTA taxes on the wages of the H-2A workers making it about 10% cheaper to hire H-2As than to hire Americans. In addition, H-2A workers are excluded from coverage under the Migrant and Seasonal Agricultural Worker Protection Act providing employers with another reason to prefer H-2As to Americans. If Congress wants to protect US workers from being displaced, they need to level the playing field. by eliminating these exemptions and exclusions. Further, Congress must increase funding to DOL so that it has adequate resources to review H-2A applications under the certification process



and ensure that US workers are not be displaced or adversely affected by the hiring of temporary foreign workers.

2. **You testified that those who do not have experience working on a farm are less productive than those who do have that experience. I am sure this is true in every industry. However, other industries have invested their time and money in training a legal workforce. Isn't it true that there would be a larger legal workforce in the agricultural industry if the farmers had invested in training those who are in this country legally?**

We can all agree that there are many things the agricultural industry could have done and should have done to attract and retain a legal work force. Today, the agricultural sector is in danger of losing the services of a million experienced workers. The costs of replacing this workforce with new guest workers is enormous and counterproductive. I am convinced that providing legal status to these workers remains the best solution to a difficult problem for employers, workers and the national interest.

In addition to legalizing our current experienced workforce, agricultural employers should be encouraged to engage in the same strategies as other employers to attract and retain a lawful workforce by offering higher wages, improved working conditions, training, and opportunities for advancement.

**Senator Charles E. Grassley****Questions for the Record****Eric A. Ruark**

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.

- a. What are the problems you face or see with the certification process?

ANSWER: The paperwork for the certification process has been criticized by employers as being too complicated, and the turnaround time not fast enough to meet employers' time sensitive needs. These complaints should be addressed, but improvement on these fronts is certainly attainable. The Department of Labor should be able to anticipate when and where seasonal labor is needed and quickly accommodate legitimate requests for seasonal workers. One of the problems with the non-utilization of the H-2A program is that it has not allowed the program to adapt itself to genuine labor market needs, nor to the needs of employers who wish to participate. If few employers use the program, and some only sporadically, it is not a true test of its functionality.

- b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to "attest" that they've tried to find or hire an American first? Please explain.

ANSWER: The certification process is not fatally flawed the way an attestation process, as I understand it, would be. A change to attestation would allow employers to make claims of labor shortages without having to prove them to be true. This would be, to borrow a phrase, like allowing the fox to guard the henhouse. An apt comparison would be with the current wage and displacement attestation process in the H-1B program, which the evidence shows has not prevented abuses. Similar abuses would likely characterize an H-2A program that depended on employer attestation.

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many

employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It's free. It's easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

ANSWER: FAIR recognizes and very much appreciates Senator Grassley's work on E-Verify. We support the program, which is extremely efficient, accurate, and conducive to use by businesses of all sizes and types. Those are the very reasons that employers who hire illegal workers oppose it. That does not mean that there are not things Congress can do to make E-Verify work even better. The first is to make E-Verify mandatory for all U.S. employers, including agricultural employers. An employer who willingly hires illegal workers is never going to volunteer to use the program, and the current I-9 requirement makes it easy to get away with breaking the law.

Requiring the Social Security Administration to notify the Department of Homeland Security when a Social Security number is being used in a way that indicates identify theft would close a loophole that currently exists. As it stands now, the Social Security Administration has a firewall that prevents it from alerting DHS that a SSN is being used fraudulently to receive work confirmation through E-Verify.

Another crucial component is to ensure that federal legislation making E-Verify mandatory does not preempt individual States from working in tandem with federal authorities to make sure that employers are complying with the law, and to allow States the ability to hold employers who violate the law accountable. No law passed by Congress is effective if it is not enforced, and immigration law illustrates that point well. If there is not an active partnership between Federal, State, and Local governments, or if State and Local governments are prohibited from enforcing federal immigration law, the effectiveness of E-Verify will be greatly diminished.

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".

- a. Do you support the biometric "blue card" idea proposed by Senator Feinstein?

ANSWER: FAIR would not support a "blue card" as proposed by Senator Feinstein, whether it included a biometric component or not. The plan as outlined by Senator Feinstein rewards illegal immigration and the employers who profited from hiring them. What is described above is a form of amnesty that is accompanied by a sort of indentured servitude for the workers who qualify. It is also unlikely that there would be a system put in place that would ensure that qualifying workers would exit the United States upon the expiration of their visa. There is a legal way to bring agricultural workers into the United States. FAIR would like to see Congressional efforts focused on making adjustments to improve the H-2A program.

b. If biometric "blue cards" were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?

ANSWER: If any "blue card" program were to be implemented by Congress, despite strong public opposition, it would an amnesty and employers who wished to participate should bear the full costs of instituting that program. A majority of the American people rightly oppose amnesty because it rewards illegal immigration, but employers should not profit from their illegal behavior, either.

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won't do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

ANSWER: Amnesty for those working illegally in the United States in agriculture would facilitate the movement of these workers into other occupations. The history of the 1986 amnesty demonstrates just that. However, that movement takes places, even without an amnesty program. There is no shortage of farm workers in the United States; instead there is a shortage of workers who are willing to take these jobs at the wages and conditions that are being offered by the operators of large commercial farms. That is why those employers rely upon a constant supply of illegal alien workers.

If Congress legalized those currently working illegally in agriculture, the previous pattern would be repeated. Those workers would soon move into other occupations, leaving a void to be filled with a new cohort of illegal, low-wage workers. In fact, the Department of Labor operates training programs precisely in order to train agricultural workers to move into higher paying jobs. Employers who now hire illegal workers will be unlikely to end the practice as long as the opportunity exists to do so with little to no consequence. Right now, large growers have little incentive to hire legal workers.

**Senator Jeff Sessions  
Questions for the Record  
All Witnesses**

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

ANSWER: The U.S. immigration system should be designed with one clear purpose in mind, namely, the best interest of the American people. As it now stands, our immigration system consists of a collection of disparate programs designed for the benefit of special interests, and often benefits immigrants more than it does U.S. citizens.

The immigration laws, however, are clear, and can be enforced. The problem we face is not a lack of resources but a lack of commitment from the federal government to ensure that these laws are enforced, as written by Congress. If the President, as the nation's Chief Law Enforcement Officer, were to make clear his intention to carry out his duties in enforcing current immigration law he would send a powerful message to illegal aliens residing in the country, and to the rest of the world. Instead, the Obama Administration has sued Arizona and Alabama for attempting to assist the federal government with immigration enforcement and has promised to work to grant amnesty to over ten million illegal aliens.

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

ANSWER: The way to insure that guest worker programs are truly temporary is for the federal government to track the entry *and* exit of admitted guest workers. No such entry-exit controls currently exist and, combined with weak interior enforcement efforts, it is all too easy for guest workers to overstay their visa and remain illegally in the United States. And it is all too easy for these illegal aliens to find employment. Mandatory E-Verify would prevent many of those illegally in the United States from finding work and would compel them to return to their home countries.

The second problem is that U.S. employers who employ guest workers continually call for increases in guest worker admissions because expanding the labor pool benefits employers. The key to regulating the number of guest workers admitted is for the Department of Labor to assess reports of labor shortages, not to accept at face value the claims made by employers. The DOL must require a genuine labor test and require prevailing wage rates, such as the Adverse Effect Wage Rate. The reason many agricultural employers circumvent the H-2A program is to avoid complying with wage requirements. If employers were made to pay prevailing wage rates and were held liable for employing illegal workers, or abusing guest worker programs, there would be much less demand for these programs.

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

ANSWER: If guest workers are in the United States contributing to the U.S. economy and paying taxes –taking for granted that these workers are legal –then it is likely that the

individual guest worker is covering his/her cost to the taxpayer. But there are other costs that are often overlooked, some of which Senator Sessions highlights in his question. What we must also consider are the costs caused by guest workers who displace American workers, or reduce the earning power of all workers in the U.S. There are hidden, but very real costs. Less foreign workers would mean fewer Americans out of work and collecting government benefits as a result.

The added cost to building and repairing infrastructure is also something that is almost always left out of a discussion about guest worker programs. Guest workers often stay in the United States for many years, and these programs are constantly adding more people to the U.S. population. Infrastructure costs, especially for public education, are outpacing our ability to pay for them.

Guest worker programs can address these issues by being designed and implemented to only bring in workers that are necessary to the country's economic needs, not to meet U.S. employers' desire to pay their workers lower wages. Employers who sponsor a guest worker should be required to provide health insurance for that employee. This would guarantee that U.S. taxpayer will not end up footing the cost of medical care for guest workers.

4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers?

ANSWER: It is because only 3-5% of agricultural workers are H-2A, as compared to approximately 50% who are illegal, that a legitimate labor shortage, if one indeed exists, cannot be ascertained. Further, employers cannot claim that the program has ever been extensively used since it was implemented in 1986. Interestingly, since 2006, when broad amnesty legislation failed to pass Congress, H-2A use has significantly increased. This suggests that employers will use the program if they believe they will have limited access to illegal workers.

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

ANSWER: Decreased wages are the main reason why Americans are reluctant to take farm jobs. Since the 1970s, wages for all low-skilled workers have remained stagnant, and the pay for farm workers has remained below that of other low-skilled workers. This situation has caused workforce instability because there is a tremendous incentive to enter into another occupation at the first opportunity, no matter the status of the worker. The history of the 1986 amnesty demonstrates this, as does the economic data since then. The solution of agribusiness to this problem has been to constantly replenish its labor force with more recently arrived illegal aliens. It is now often cheaper to rely on human labor because the labor costs are so low then it is to mechanize farming operations. In this respect, the United States is far behind most other developed nations.

It is important to note that small farms have been increasing in recent years, which is notable in the face of the argument put forward by agribusiness that farming in the United States is on the verge of vanishing completely. These small farms provide a model where the labor force is relatively stable because these farms are not relying on the labor of illegal aliens, and pay higher wages to the workers they do hire. These are the true family farms that Americans most associate with our agricultural heritage.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.  
ANSWER: It is logical to think that receiving government benefits while not working is more attractive to some American workers than toiling for poverty wages. If agricultural wages were increased by eliminating agricultural employers' access to a low-wage illegal workforce, and the government incentivized Americans to work, even if they still received supplemental benefits from the federal government, more American workers would be drawn to agricultural jobs and the fiscal burden of illegal immigration would be greatly reduced.
7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?  
ANSWER: Any amnesty program will contain ample incentive and opportunity for fraud, and all amnesty draft bills preclude information sharing with ICE. The very nature of illegal immigration and the massive identity fraud industry that accompanies it will make any effort to verify information a massive undertaking. DHS has consistently said that it lacks resources for enforcement efforts. It is not plausible to think that DHS could administer the labor-intensive administrative processes accompanying an amnesty, such as criminal background checks, verification of employment history, etc. The way to avoid such fraud is to avoid any program that includes amnesty.

**Senator Jeff Sessions  
Questions for the Record**

**Eric Ruark, Director of Research, Federation for American Immigration Reform**

1. Are low wages the sole reason why Americans do not make up the majority of farm laborers?  
ANSWER: Low wages are not the *sole* reason why Americans are not the majority of farm laborers, but it is the *main* reason. As evident from the testimony given at the hearing by agribusiness representatives, operators of large commercial farms take no responsibility whatsoever for the fact that wages for farm workers have remained stagnant for the past 30 years. Their argument is that having half of all farm laborers working illegally has not driven down wages and working conditions in the sector. This is simply beyond the realm of believability.  
Researchers have shown that an increase in wages, even as little as one percent, leads to an increase in domestic workers. Because farm laborers are not paid a living wage, there is no incentive for Americans to take these jobs. If it is true, as it was suggested in the hearing, that Americans do not do farm work because they are lazy, obese, welfare-dependent, addicted to drugs, etc., then this is a national crisis that cannot be solved by the importation of foreign workers.
2. Will Americans fill farm jobs vacated by illegal workers? Why?



ANSWER: Some Americans will fill farm jobs vacated by illegal workers. The evidence shows that Americans are about one-third of farm laborers and that Americans are willing to take these jobs if they offer adequate pay. The Congressional Research Service found that welfare recipients were willing to work if the transportation and housing arrangements offered to H-2A workers were offered to them.

Farm jobs are usually not careers, no matter the status of the worker, yet, Americans have done farm jobs and, until very recently, were the majority of farm laborers. Traditionally, teenagers or younger workers did farm work as entry-level jobs to pay for college or as an introduction to the workforce.

The reason this has changed is due to consolidation of food production by agribusiness and operators of large commercial farms *deciding* to pursue business practices that maintain low labor costs by *choosing* to hire illegal workers. This practice had been made possible and even enabled by the federal government at great expense to the American people. The real question is how many Americans will take farm jobs if wages and conditions improve, and how much demand there will be for seasonal guest workers. That question cannot be answered until the widespread use of illegal workers is ended. What we must also consider is: Should we have jobs in the United States that "Americans won't do?"; Do we as a society accept the permanent exploitation of low-wage foreign workers?

3. How do you answer those who claim that legalization of illegal alien farm workers would be the most effective and practical solution to creating a stable agricultural workforce?

ANSWER: The history of the 1986 amnesty is the best answer to the argument that legalization would provide a stable agricultural workforce. As mentioned above, there is a great deal of turnover among farm laborers. When better opportunities are available farm workers take them. The lack of a stable workforce characterized the agricultural industry long before its opposition to recent increases in immigration enforcement efforts. Legalization is not the solution; providing jobs that pay a living wage is the answer.

Furthermore, the willingness of employers to hire illegal workers and to rigorously defend the practice when challenged is unlikely to change as long as the opportunity to hire illegal workers continues to exist, no matter what program is in place to provide them with legal workers. If agricultural employers were required to use E-Verify, and those who broke the law were held accountable, a much more stable *legal* workforce would materialize. It may not happen overnight, but the current situation did not arise overnight, either. If not enough U.S. workers return right away to agricultural work, the H-2A program can fill the gap.

4. To what extent is interior immigration enforcement a key component of making any guest worker program function properly?

- a. Is not enforcement a key component of keeping all employers, including agricultural employers, on a level playing field?

ANSWER: Interior enforcement is *the* key to any guest worker program. Illegal immigration would be substantially reduced if the job magnet were taken away. That can only be accomplished if laws against illegal hiring are vigorously enforced and penalties for employers consistently applied. Agricultural employers seem to believe that they have a special exemption from complying with the law.

- b. If we do not have interior enforcement won't all employers, including agricultural employers, be tempted to increase their profits by using illegal labor, which is always cheaper?

ANSWER: The temptation is there right now, and some employers who would prefer to follow the law are pushed to hire illegal workers. If there is little chance of facing punishment for breaking the law, it is a rational economic decision for an employer to hire illegal workers in order not to allow a competitor employing illegal workers from gaining an advantage. But some employers do not hire illegal workers because they understand the harm this does to the United States. Employers who do the right thing should not be put at a disadvantage. Those who follow the law should have confidence that the government which has put those laws in place will do its best to uphold them.

5. Do you agree that it is fairer and better public policy to pay a little extra for fruits and vegetables than to subsidize illegal immigration, where the profits are realized only by employers and the soaring costs of health care, education, and welfare are borne by the American taxpayers?

ANSWER: It is without a doubt better to pay a little more, and the emphasis here should be a "little more," for fruits and vegetables in order to ensure a legal workforce. More and more Americans are getting better informed about where the foods that they eat come from, but sometimes we pay more attention to how farm animals are treated than we do about how farm workers are treated. We have created a system where millions of Americans are out of work and farm work cannot provide them with a means to support a family because employers have made a business decision to drive down wages by employing and exploiting illegal workers. A system has been created where large commercial farms are enjoying huge profits while American taxpayers are left to pay the costs of illegal immigration.

There was testimony that unless the demands of the agriculture industry were met, food prices would rise precipitously or food production would be "off-shored." There is no evidence that supports this contention, and, as my research, and the work of Philip Martin, a professor of agricultural economics at UC-Davis, has demonstrated, higher wages paid to workers would have little impact on consumer food prices.

6. You testified that unemployment rates are higher than average for farm workers and that wages for farm workers are lower than average. Can you elaborate on this statement, and explain why this is?

ANSWER: The unemployment rate is higher than average for a number of reasons. There is a high turnover rate for farm workers due to the physical demands and the seasonal nature of the work, coupled with low pay. The use of illegal workers has had a profound effect on wages and on conditions for hired farm workers. Illegal immigration creates disincentives for legal workers to take these jobs, but also gives an incentive for employers to hire illegal workers, relegating legal workers to the unemployment roll. The Congressional Research Service found that even during the economic prosperity of the 1990s, the unemployment rate for farm workers consistently remained about twice the national average.

Such high unemployment rates indicate no existing labor shortage in the United States, apart from localized and temporary ones. Because of an oversupply of labor,

wages have been depressed, and because the highest concentration of illegal workers is in this sector, wages have been kept even lower than in other low-skill occupations. Between 1994 and 2008, the average wage for farm workers was half that of workers with comparable skill levels. The most obvious sign of an *oversupply* of labor is when unemployment rates remain relatively high and wages relatively low.

**Senator Charles E. Grassley**

**Questions for the Record**

**Robert A. Smith**

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.
  - a. What are the problems you face or see with the certification process?
  - b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.

**Response for 1a and 1b:** Our focus has been on determining the potential impact of successful immigration enforcement actions on agriculture in the six-state Northeast region that we serve. We do not have special expertise on the problems with the H-2A program or the best approach for a new agricultural guest worker program. Our view is that most farm businesses simply do not have large Human Resource departments to work through the challenges of the current H-2A program – this is especially burdensome for small and mid-size operations, but the uncertainty of the current H-2A program is a problem for all size farm businesses. An attestation program would seem to help address the uncertainty concern, but other changes may also be required.

Organizations such as the American Farm Bureau Federation, National Council of Agricultural Employers and Agricultural Coalition on Immigration Reform are more knowledgeable about how a workable agricultural guest worker program should be structured.

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is

about functionality. The system is web-based. It's free. It's easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

**Response:** We have no recommendations on how to improve the E-Verify program. The concern that we have expressed is that to allow for continuation of many labor-intensive agricultural operations, we need a workable agricultural guest worker program in place prior to mandatory E-Verify. This view is not intended as a criticism of E-Verify; it is reflection of the reality of the agricultural workforce in which a significant portion of the workforce may not be authorized and our desire to maintain a diverse agriculture industry in the United States.

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a "blue card" and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the "blue card".
  - a. Do you support the biometric "blue card" idea proposed by Senator Feinstein?
  - b. If biometric "blue cards" were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?

**Response:** While Senator Feinstein's approach should be considered, Farm Credit East has not taken a formal position on this and we would look to other organizations such as American Farm Bureau and the Agricultural Coalition for Immigration Reform to review this proposal and express their position on this approach.

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won't do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If

Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

**Response:** This is an interesting question and one that we may not have the necessary expertise to address in detail. It would seem that a relatively simple agricultural guest worker system that enables employees to become legal and restricts the legal authorization to agricultural employment opportunities would address this concern. Again, we may not fully understand this issue to address it in an effective manner.

**Senator Jeff Sessions  
Questions for the Record  
Robert A. Smith**

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

**Response:** We should have an immigration system that is clear and can be enforced, but that also provides for an effective agricultural guest worker program.

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

**Response:** Our research has been focused on understanding the impact of successful immigration enforcement on the six-state Northeast region that we serve. We are not experts on the current H-2A program or on how a guest worker program needs to be structured to allow an efficient approach to allow workers to come into the US and leave the US in an efficient manner.

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

**Response:** I am unaware of data on the cost of agricultural guest workers on the taxpayer. One would hope that these issues could be fully addressed in creation of a workable agricultural guest worker program that has no net cost to the US government.

4. If only a fraction of agricultural employers use the H-2A program, how can we determine whether it is really meeting the needs of agricultural employers?

**Response:** As noted above, we do not have special expertise on the H-2A program. Organizations such as the National Council of Agricultural Employers and American Farm Bureau Federation may have better insights on the problems and limitations of H-2A. We do note, that the H-2A program is not available for most dairy farm workers.

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

**Response:** No. We are unaware of research that has shown that wage levels for farm workers have created uncertainty in the agricultural workforce. A workable guest worker

program that ensures a legal and stable workforce for agriculture would presumably be focused on agricultural employment opportunities and not employment opportunities in other industries. We do note that global competition plays some role in wage levels – for labor intensive farms it can be difficult to dramatically increase wage levels and remain competitive.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.

**Response:** We have not reviewed or discussed this issue.

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?

**Response:** While we believe that a workable agricultural guest worker program should be established and that there should be a process to allow experienced workers to continue to work on US farms, we do not have a recommendation/suggestion on issues associated with amnesty and citizenship.



## SUBMISSIONS FOR THE RECORD

Judiciary Committee  
 Subcommittee on Immigration, Refugees and Border Security  
 United States Senate  
 Hearing on  
 "America's Agricultural Labor Crisis: Enacting a Practical Solution"  
 Testimony of  
 Gary W. Black  
 October 4, 2011

Thank you Mr. Chairman, Ranking Member Cornyn, and members of the subcommittee, thank you for the opportunity to appear before you today to talk about the labor needs of Georgia's agricultural industry.

With over a \$68 billion impact, agriculture is the leading industry in Georgia, employing one in seven Georgians. We lead the country in production of poultry, pecans, and peanuts. Cotton, peaches, fresh market vegetables, blueberries, and ornamentals are also prominent in our agricultural portfolio. Also, it is important to note that the famous Vidalia onions, a labor intensive vegetable, can only be found in our state. Needless to say, Georgia has a vested interest in making sure our agricultural employers have the manpower necessary to effectively run their operations.

This past spring, Georgia producers began calling my office to report labor shortages. In May of this year, Governor Deal asked the Georgia Department of Agriculture (Department) to evaluate the labor situation in the agricultural sector. My department created an informal survey and worked with various agricultural associations for dissemination to their members – the twelve Georgia Commodity Commissions, Georgia Fruit and Vegetable Growers Association, Georgia Farm Bureau, Georgia Agribusiness Council, Georgia Urban Ag Council, and others. The survey accepted responses for fifteen days, and we heard from roughly 230 producers representing Georgia's diverse agricultural economy. Our brief, unscientific snapshot suggested a degree of unmet labor needs during the 2011 spring harvest season.

The survey revealed significant concerns among blueberry and fresh market vegetable producers. Additional variables for this past growing season included unusually high heat and lack of rain causing an unexpected rush in harvest. Bottom-line, the pool of respondents reported on June 10, the unmet availability of 11,080 jobs.

During the month of June, the Georgia Labor Commissioner, Mark Butler, worked with various agricultural associations to place unemployed Georgians in these positions. Even with unemployment rates hovering around ten percent, this task was not as easy as it would seem. For example, last Thursday one Georgia producer shared his story with us. He had one employee that worked half a day one week and two half days the next week. This employee earned a total of \$119. The employee walked off the job and did not return though plenty of work was available. In addition, the employee filed an unemployment claim, and the producer received notification that the employee was eligible for \$235 weekly benefits for seventeen weeks. The producer filed a timely appeal, and it was finally determined that he was not responsible. In addition to harvesting his crops to earn a living, the producer had to take time to ensure he

was not held financially responsible for the employee's irresponsibility. We have heard similar complaints from producers regarding the fifty percent rule of H-2A. I do not believe employers should bear this unnecessary burden as they try to create jobs and stimulate our economy. Producers would rather employ Americans, and this aspiration should not be overlooked. Unfortunately, the immediate reality trumps those aspirations.

Simultaneously, we worked with Governor Deal and the Georgia Department of Corrections to develop a pilot program utilizing probationers to fill Georgia's agricultural labor needs. Two producers participated in this program - one with a large farm and one with a small farm. The larger farmer was originally sent 58 probationers to help with his harvest. By combining the probationers with his existing workers, he could accurately compare their productivity. He found the probationers to be half as productive as his other workers, and he even switched to two shifts in hopes of preserving energy. The smaller farmer needed 10-20 workers a day to pick squash and cucumbers. Out of 104 probation workers, this farmer eventually found 15-20 reliable workers. There were some obvious challenges with using probation labor, and the two producers found that the probationers were unable to harvest at the same rate as the other workers. At the end of the day, both producers agreed that the program had potential to meet the niche needs for farmers desperate for workers.

Additionally, the Georgia Department of Corrections is working to establish a transitional inmate workforce program for agriculture -- a program that has worked well for other industries in the past. Corrections officials believe they can offer opportunities for nonviolent offenders with skills developed by working in the prison farm system. Agricultural producers would qualify for the Work Opportunity Tax Credit (WOTC) which can be as much as \$2,400. The WOTC is 25% of qualified first-year wages for those employed at least 120 hours and 40% for those employed 400 hours or more. This program is strictly voluntary, and no one is required to participate.

During the legislative session of 2011, the Georgia General Assembly passed into law House Bill 87, the "Illegal Immigration Reform and Enforcement Act of 2011." We do not yet know the total economic impact of this legislation on the agriculture industry in Georgia. In addition to an E-verify mandate, the law instructs the Department to conduct a study on the legislation's impact, and the results are due by January 1, 2012 to the Governor, President of the Senate, and Speaker of the Georgia House. The legislation also charged the Department with exploring a state guest worker program. We continue to explore and hear from Georgians what their needs are for labor.

It cannot be contested; the success of Georgia's agricultural industry rests on a legal workforce upon which producers may rely. In my view, it is not just a labor issue but also a food safety issue. We need to make sure we know who is on our nation's farms, and we need to make sure that America does not become reliant on third world countries to put food on the family tables across this country.

Looking at current legislation, I think the HARVEST Act introduced by my home-state senator, Saxby Chambliss, has potential to address some of the labor needs of agriculture. Moving the administration of H-2A program from the United States Department of Labor to the United States Department of Agriculture places the program in an agency familiar with the intricacies of the type of work and labor needed. By expanding eligibility, those producers needing year-round labor who currently have no guest worker program to rely on, may participate. It remains to be seen if H-2A can be revised and sanity restored to the bureaucratic process, or if we should take the workable aspects of the

program and rebrand it. Either way, something must be done. With a new brand or not, the goal must be a program that works for all farmers.

Regretfully, a large number of illegal immigrants are working in agriculture today. A penalty-based work authorization permit should be considered for offenders. Such a measure could require substantial monetary fines, an annually renewed biometric permit supported by fees that is restricted for agriculture and strict employer enforcement after implementation.

I also think it is not beyond the realm of possibility for the federal government to create a guest worker program and then delegate to states through an MOU the day to day responsibilities of administering the program. This relationship already exists and works well with states implementing environmental and food safety regulations set forth by the federal government.

A robust agricultural guest worker program, properly designed, will not displace American workers. As my testimony shows, in Georgia, even with current high unemployment rates, it is difficult for farmers to fill their labor needs. I encourage you all to work together to develop a guest worker program that is fair to the American employer, fair to the American worker, and fair to the temporary guest worker.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.



October 2011

Honorable Charles Schumer  
Chairman  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Honorable John Cornyn  
Ranking Member  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn:

I am writing on behalf of the more than 1,200 dairy-farmer members of Dairylea Cooperative located throughout the Northeast. Our farms make up the rural fabric of the Northeast states and are very important to their local economies. They produce more than 5 billion pounds of milk annually, which supports a very robust processing and manufacturing sector in our region. All in all, our farms support more than 10,000 jobs throughout the Northeast. We are an industry that – given the right environment – will thrive and continue to provide wholesome dairy products to the growing population here in the U.S and even the world.

The need for a stable workforce for dairy farmers is extremely important to stability and growth. In 2010, we surveyed our members and 78% of respondents noted access to a stable workforce as the largest impediment for growth on their farm. Cows need to be milked 365 days a year and multiple times per day. It is this nuance that has made it very difficult for dairy to access the labor programs provided by the H-2A Seasonal Labor Program, as our labor needs are not seasonal. In the absence of comprehensive immigration reform or a guest worker program, our farms are left with no options, as immigrant laborers are a significant part of the dairy workforce. Dairy jobs are very labor intensive and are not glamorous; unfortunately our farms indicate when they do attract domestic workers, they stay for only a short period of time or are not reliable. Time and time again, our members note that their immigrant workforce is among the most loyal and dedicated employees; all of whom are productive members of society. Our farms, which had to endure catastrophic milk prices just two years ago, do not have the financial resources to withstand major labor disruptions which would make it impossible to produce and market their milk.

A mandatory e-verification bill was passed by the House Judiciary Committee last month. This bill does not address the needs of agriculture and while we recognize the need to address the larger immigration issue, we need help ensuring our farms have access to a stable work force through a guest worker program.

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5001 Brittonfield Parkway • P.O. Box 4884 • Syracuse, New York • 13221-4844  
(315) 433-0100 • Fax: (315) 433-2345



Reliable and timely access to legal foreign labor, when there are insufficient U.S. workers available to the dairy industry, is key to the Administration's mission of protecting and creating jobs.

We feel strongly that Congress needs to help us by addressing the chronic labor shortages faced by dairy and believe a workable agriculture program is absolutely necessary to our industry's survival. A failure to do so will risk damaging the economic vitality of the nation's dairy industry and may put our country in a situation where we are someday forced to import dairy products and vegetables because our nation's farmers were left with no options for labor.

We appreciate the efforts of the Subcommittee in its recognition of these problems and the potential catastrophic effects on agriculture if a solution is not formulated. Please do not hesitate to contact our office if additional information is needed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Wickham".

Greg Wickham  
Chief Executive Officer  
Dairylea Cooperative Inc.

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5001 Brittonfield Parkway • P.O. Box 4884 • Syracuse, New York • 13221-4844  
(315) 433-0100 • Fax: (315) 433-2345

**DEPARTMENT OF LABOR'S FOLLOW-UP RESPONSE TO QUESTIONS  
REGARDING H-2A APPEALS:**

**Why have there been so many appeals of H-2A cases? Why has the  
Department of Labor (Department) lost so many appeal cases?**

There have been approximately **440** appeals of H-2A applications in FY 2011 to date. This represents approximately 9 percent of the total final determinations issued in FY 2011 (4,867 including certifications, denials and withdraws). About 78 percent of the appeals were filed in the first half of FY 2011. It represented a significant increase in the number of appeals in the H-2A program over the previous year. The initially high number of appeals (60%) was the direct result of employers/growers not providing required documentation with their H-2A application. Our program experience tells us that with any new regulation there is a period of adjustment during which program compliance is not going to be as high as it would be a year or so later.

Specifically, the Department has determined that one of the most common reasons for denial was the employer's failure to provide the documentation required to issue the labor certification within 30 days of the employer's need for workers: the statutory time period within which the Department must issue the determination. The vast majority of these cases became approvable within a few days of the appeal because the required documentation was provided as part of the employer's appeal. The appellate process allowed the Chicago National Processing Center (NPC) to accept additional documentation from the employers, as required by regulations, and render a positive decision. **Therefore, the appeal in essence was resolved informally and was not "lost" by the Department as some are claiming.**

The Department was made aware that the increased rate of denials forced growers into the program's appellate process which created additional burden and delays. To ameliorate this problem, the Department implemented, within the limits of its statutory requirements, a more flexible process in late January 2011 to provide employers with additional time to submit documents necessary to meet program requirements and receive a certification rather than a denial. **These revised procedures have already significantly reduced the number of appeals filed. For example in the last quarter of FY 2011, only seven appeals have been filed.**

Office of Foreign Labor Certification H-2A Appeals Information

	10/01/2010 – 01/31/2011	02/01/2011 – 06/30/2011	07/01/2011 – 9/29/2011	Total
<b>Total Number of Cases Appealed</b>	190	235	9	434*
<b>Total Number of Appeals on Denial Decisions</b>	156	205**	5	366
<b>Total Number of Appeals on Denials for Employer's Failure to Provide Documentation Required</b> <ul style="list-style-type: none"> <li><i>Recruitment Reports</i></li> <li><i>Workers' Compensation</i></li> <li><i>Housing</i></li> <li><i>Surety Bonds</i></li> </ul>	133	80	4	217

Over 90% of the appeals which were filed from October 1, 2010 – June 30, 2011 were a result of the strict application of the regulatory required 30-day determination due-date (employers failed to provide the required documentation and the vast majority of cases were denied). The vast majority of the cases became approvable upon receipt of the required documentation – the cases which had been appealed were remanded back to the Chicago National Processing Center (NPC) for further processing where majority were certified.

\*The difference between the 440 cases and 434 is the OALJ case docketing system had duplicate entries.

\*\*It is important to note that a large portion of the appeals were carried over from cases that were decided in the prior period, before the strict interpretation of the regulations ceased. Employers were afforded the opportunity to provide their documents to the CNPC after the 30<sup>th</sup> day without facing a denial. As a result, the number of appeals dropped considerably during the last quarter.

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## Ag commissioner pushes passage of trade deals



Credit: Lance Griffin/lgriffin@dothaneagle.com

Alabama Agriculture Commissioner John McMillan, center, speaks Thursday at the Wiregrass Research and Extension Center. McMillan urged Congress to ratify free trade agreements he said would benefit Alabama.

By: [Lance Griffin](#)

Published: September 30, 2011

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HEADLAND – While Alabama’s [agriculture commissioner](#) believes state farmers could be pushing more products overseas with the approval of pending free trade agreements, he wonders if the [new immigration law](#) will leave a shortage of workers to meet the predicted demand.

[Agriculture Commissioner John McMillan](#) made a stop in Headland on Friday and urged [President Barack Obama](#) and [Congress](#) to ratify pending free trade agreements with [South Korea](#), [Panama](#) and [Colombia](#).

[McMillan](#) said the agreements could increase state exports of peanuts, [forest products](#), beef, processed [food](#) and other goods.



McMillan said the agreements could add as many as 15,000 jobs to Alabama through increased demand for goods, with many of those trickling into the Wiregrass. He said the agreements would help local farmers and producers compete globally.

“Our competition has not been sitting on the sidelines,” McMillan said.

McMillan said the Second Congressional District produces about \$2 billion in exports annually.

However, McMillan also said farmers are concerned about how the newly-enacted immigration law will impact the labor pool.

McMillan said he has received numerous calls from farmers about the new law since a federal judge upheld most of the law in a ruling Wednesday. Part of the law holds employers accountable for hiring illegal immigrants.

“It’s going to have an adverse impact on the farm economy in the state of Alabama. No question we will lose a lot of that-type workers,” McMillan said.

McMillan said his department is scheduling a series of webinars around the state to inform farmers and others about the details of the state immigration law. One is scheduled for Oct. 14 from 10 a.m. until 1 p.m. at the Wiregrass Extension Center Auditorium in Headland.

“There is going to be some red tape and expense with the new law and we want to our farmers and others to know about the law,” McMillan said.

McMillan said the general public is invited to the webinar.



# EPI BRIEFING PAPER

ECONOMIC POLICY INSTITUTE • MARCH 21, 2011 • BRIEFING PAPER #295

## FARM EXPORTS AND FARM LABOR

### Would a raise for fruit and vegetable workers diminish the competitiveness of U.S. agriculture?

BY PHILIP MARTIN

A quarter of the fresh fruit produced in the United States and almost a tenth of the fresh vegetables are exported. These exports—largely enabled by technology and transportation revolutions allowing fruits and vegetables to be consumed far from their place of production<sup>1</sup>—are a significant and growing force in the U.S. economy. In 2008, U.S. agricultural exports of \$115 billion exceeded agricultural imports of \$80 billion, generating a \$35 billion farm trade surplus. Between 1989 and 2009, the value of U.S. agricultural exports rose 2.5 times, while exports of high-value agricultural products, including fruits and vegetables, more than tripled.

However, over the same 20-year period, average hourly earnings for U.S. farmworkers only increased \$1.52, from \$8.55 to \$10.07 (in 2009 dollars). The workers who are helping to produce these labor-intensive commodities are not seeing much benefit from rising exports.

How would the competitiveness of U.S. fruit and vegetable exports be impacted if farmworker wages rose? And how would this affect the pocketbooks of U.S. consumers? By examining the links between U.S. farmworker wages and fruit and vegetable exports, this briefing paper answers these questions. Specifically, the paper finds:

- A 40% increase in farmworker earnings would lift a typical seasonal farmworker's earnings from about \$10,000 a year to \$14,000 a year, above the poverty line for an individual.<sup>2</sup>

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- A 40% increase in farmworker earnings would *at the most* raise U.S. household spending about \$16 a year, roughly the price of two matinee movie tickets. U.S. consumers, who spent less than \$430 per household on fresh fruits and vegetables in 2009, would need to spend less than \$446 to accommodate the tiny share of retail prices going to farm labor.<sup>3</sup> (This \$16 estimate assumes that rising wages would not change production or consumption, which likely *would* change, as follows.)
- If farm labor costs rose, farm operators could and likely would make changes that increase worker productivity, including providing workers with productivity-increasing harvesting aids, hastening the adoption of productivity-increasing growing and harvesting techniques, providing labor aids that reduce the physical demands of farm work and thus expand the potential workforce, and speeding the mechanization already underway in harvesting of commodities such as oranges and raisin grapes as well as in pre-harvesting activities such as pruning. (Producer responses would of course vary by commodity, producer size, and location.)
- If higher wages prompt changes by farm operators to boost worker productivity, wage increases might expand, rather than reduce, U.S. fruit and vegetable production.
- The impact of any price changes from increased wages (i.e., production cost increases not offset by corresponding increases in productivity but passed along to consumers) would be small because the major export markets for U.S. fresh fruits and vegetables—Canada and Mexico—have few lower cost alternative sources. (Rising U.S. farm wages may have relatively few short-term impacts on certain high-value exports to Asian markets, but these exports could be threatened in the long run by the lower-cost, high-quality production in places such as China even at current wages.)

In short, increasing farmworker wages to raise farmworkers out of poverty poses little threat to consumer pocketbooks or U.S. exports.

## U.S. fruit and vegetable production and trade today

There are several ways to define the U.S. fruit and vegetable industry. The most common definition of labor-intensive agricultural commodities combines the three major categories of fruits (specifically, fruits, berries, and nuts), worth \$19 billion in the 2007 Census of Agriculture; vegetables (specifically, vegetables, potatoes, and melons), worth \$15 billion; and horticultural specialties such as greenhouse and nursery crops, worth \$17 billion. Total fruit, vegetable, and horticultural (FVH) sales in 2007 were \$51 billion, 35% of the value of all U.S. crops. Field crops such as corn, wheat, and soybeans composed much of the balance.

Dependence on hired workers varies within the FVH sector. Most fresh fruits and berries are harvested by hand, while most nuts are harvested by machine. The mechanization in fruits that are processed varies—most grapes used for wine are harvested by machine, but most oranges processed into juice are picked by hand (see the appendix for more details). Potatoes account for an eighth of the value of vegetables and melons, and they are harvested mechanically, while most lettuce and all fresh-market tomatoes are hand-harvested. Greenhouse, nursery, and floriculture production may be the most labor-intensive subsector of U.S. agriculture; since most nursery plants, flowers, and mushrooms involve hand labor, mechanization has proven difficult. However, with trade in these commodities sometimes restricted to avoid the spread of pests and diseases, opportunities to export and exposure to imports is uneven in this sector.

U.S. employment of hired FVH farmworkers has been relatively stable because expanding production of labor-intensive commodities such as cherries and strawberries has offset declining production of labor-intensive asparagus and similar commodities. In some cases, work previously performed by nonfarm workers in packing sheds has moved into the fields, as with packing broccoli and melons. Hard-to-mechanize greenhouse and nursery crop production has expanded with population and housing growth.

The U.S. population increased about 20% between 1991 and 2006. By comparison, **Table 1** shows that U.S.

TABLE 1				
U.S. fresh fruit and vegetable production and trade				
		Average		
	Measurements	1990-92	2005-07	Percent change
<b>Acreage</b>				
<i>All fruit (fresh and processed)</i>	1,000 bearing acres	2,839.6	2,972.0	5%
<i>All vegetables (fresh and processed)**</i>	1,000 acres	3,356.2	3,193.6	-5
<b>Total production</b>				
<i>Fresh fruit*</i>	Million pounds	19,540.7	20,930.1	7%
<i>Fresh vegetables</i>	Million pounds	35,334.6	47,964.0	36
<b>Per capita consumption</b>				
<i>Fresh fruit*</i>	Pounds	67.7	75.5	12%
<i>Fresh vegetables**</i>	Pounds	141.6	178.8	26
<b>Imports</b>				
<i>Fresh fruit</i>	Million pounds	2,133.4	6,651.3	212%
<i>Fresh vegetables</i>	Million pounds	3,873.5	10,205.3	163
<b>Exports</b>				
<i>Fresh fruit</i>	Million pounds	4,428.8	5,240.2	18%
<i>Fresh vegetables</i>	Million pounds	2,948.6	4,011.2	36
<b>Import share of consumption</b>				
<i>Fresh fruit*</i>	Percent	12%	30%	140%
<i>Fresh vegetables</i>	Percent	11	19	76
<b>Export share of production</b>				
<i>Fresh fruit*</i>	Percent	23%	25%	10%
<i>Fresh vegetables</i>	Percent	8	8	0

\* Excludes bananas.

\*\* Excludes potatoes, sweet potatoes, dry peas, dry beans, and lentils. Includes melons.

SOURCE: USDA, Economic Research Service, Fruit and Tree Nuts Situation and Outlook Yearbook, Vegetable and Melons Situation and Outlook Yearbook.

fresh fruit production increased just 7% during this period, while U.S. fresh vegetable production increased 36%. Land devoted to fruit production increased 5%, while land devoted to vegetable production fell 5%. Increased vegetable production from fewer acres reflected higher yields, some made possible by producing two or more crops a year on some farmland.

The United States exports about 25% of its fresh fruit production and 8% of its fresh vegetable production. The higher value of fruit compared with vegetables helps to

justify the transportation costs involved in trade. The two leading destinations for U.S.-produced fruits and vegetables are Canada and Mexico (Japan is third). As **Table 2** shows, the leading exported fruits are apples, grapes, and oranges, and the leading exported vegetables include lettuce, tomatoes, and carrots. Total fresh fruit exports were about \$3 billion in 2009, and total fresh vegetable exports about \$1.5 billion (note that the sub-totals in the table are smaller because only the leading export commodities are included there). The top five fruit

TABLE 2

## Major fresh fruits and vegetable exports, 2009

Fresh fruits	Value (\$ millions)
<i>Apples</i>	\$753
<i>Grapes</i>	588
<i>Oranges</i>	345
<i>Strawberries</i>	325
<i>Cherries</i>	286
<i>Grapefruit</i>	185
<i>Pears</i>	153
<i>Peaches</i>	137
<i>Lemons</i>	110
<i>Subtotal</i>	\$2,882
<b>Fresh vegetables</b>	
<i>Lettuce &amp; cabbage</i>	\$431
<i>Tomatoes</i>	179
<i>Carrots</i>	127
<i>Onions</i>	126
<i>Potatoes</i>	125
<i>Broccoli</i>	119
<i>Subtotal</i>	\$1,107

NOTE: Includes only fresh fruits and vegetables with export values over \$100 million in 2009.

SOURCE: USDA, ERS. Fruits: <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/trade.htm>.  
Vegetables: [www.ers.usda.gov/Briefing/Vegetables/trade.htm#Export](http://www.ers.usda.gov/Briefing/Vegetables/trade.htm#Export)

exports accounted for 80% of the total, and the top five vegetable exports accounted for 90% of the total.

Tree nuts such as almonds, pistachios, and walnuts (grouped with fruits in most FVH data but not included in the table) are the most valuable FVH exports. The value of almond exports, almost \$2 billion a year recently, exceeds the value of vegetable exports, while the value of walnut exports, almost \$700 million, exceeds the value of fresh grape exports. The production of tree nuts is not labor intensive.

On the import side, **Table 3** shows that fresh fruit and vegetable imports have been rising faster than exports. There are several reasons for rising imports, including a year-round U.S. demand that prompts imports of fruits and vegetables when they are not produced in the United States. With the exception of well-known cases such as

Mexican tomatoes arriving during the winter months when Florida is also reducing tomatoes, it is relatively rare for imports to arrive in the United States during peak periods of U.S. production of the same commodities.

### U.S. farmworkers and labor costs

Historically, most U.S. farm work was performed by farm operators and their unpaid family members. During the 1990s, when U.S. Department of Agriculture's Farm Labor Survey asked farm operators how many unpaid family members worked on their farms, it found there were an average of 1.3 million hired workers among the 3.5 million persons employed on U.S. farms, suggesting that hired workers were one-third of average farm employment. If farm employers and unpaid family members worked the same number of hours as hired workers, then

TABLE 3

## Fresh fruits and vegetables, import shares of U.S. consumption, 2007

Commodity	Import share of consumption 2007	Commodity	Import share of consumption 2007
Mangoes	100%	Apricots	22%
Limes	100	Watermelon	21
Bananas	100	Raspberries	14
Papayas	94	Onions	14
Green onions*	91	Snap beans	11
Pineapples	90	Broccoli	11
Asparagus	78	Peaches and nectarines	10
Kiwifruit	78	Carrots	10
Avocados	64	Cherries	9
Grapes	57	Strawberries	8
Cucumbers	52	Oranges	8
Squash	51	Apples	7
Blueberries	43	Lemons	7
Tomatoes	41	Cauliflower	6
Cantaloupe	35	Grapefruit	5
Honeydew	33	Cabbage	5
Radishes	29	Spinach	4
Tangerines	27	Head lettuce	3
Pears	23	Sweet corn	2
Plums	22	Leaf/romaine lettuce	2

\* Green onion data from USDA, Agricultural Marketing Service.

SOURCE: USDA, Economic Research Service, Fruit and Tree Nuts Yearbook and Vegetables and Melons Yearbook; USDA, Agricultural Marketing Service, Fresh Fruit and Vegetable Shipments.

one-third of the work on U.S. farms was performed by hired workers.

#### **Farm employers, by size of farm, geography, and commodity**

Less than a quarter of all U.S. farms, 482,000 of 2.2 million in 2007, hire workers, and only 36,000 of these had farm labor expenditures of \$100,000 or more (fewer than 10,000 had annual payrolls of more than \$250,000). These large farm employers accounted for 75% of total farm labor expenditures, and on these farms, hired workers do most of the farm work.

In 2007, five states accounted for 43% of the \$22 billion in hired farm labor expenditures: California (\$5

billion), Florida (\$1.2 billion), Texas (\$1.2 billion), Washington (\$1.2 billion), and Oregon (\$815 million).<sup>4</sup> U.S. farmers reported hiring 2.6 million workers directly<sup>5</sup> (the same worker reported by two farmers is counted twice), and the same five states accounted for 41% of direct-hire workers: California (448,000), Florida (115,000), Texas (155,000), Washington (240,000), and Oregon (106,000).

Farmers spent an additional \$4.5 billion on contract labor, that is, workers brought to farms by farm labor contractors and custom harvesters. Farmers do not report to the Census of Agriculture how many workers were brought to their farms by contractors and other intermediaries. However, if total farm labor expenses of \$26.4

TABLE 4

**Fruit-vegetable-horticultural farms, labor expenses and workers hired,  
United States, 2007**

	All farms with labor expenses	Vegetables & melons	Fruits & nuts	Greenhouse, nursery	Three sectors	Share of all	Dairy
<b>Direct hire farms (number)</b>	482,186	13,642	36,293	23,615	73,550	15%	30,994
<b>Labor expenses (\$000)</b>	\$21,877,661	\$2,201,929	\$3,514,033	\$4,698,926	\$10,414,888	48%	2,837,455
<b>Distribution</b>	100%	10%	16%	21%	48%	48%	13%
<b>more than \$250,000</b>	14,627	1,721	2,574	3,147	7,442	51%	2,676
<b>Contract farms (number)</b>	182,701	5,265	30,075	7,638	42,978	24%	5,313
<b>Labor expenses (\$000)</b>	\$4,514,166	\$883,842	\$1,977,432	\$306,091	\$3,167,365	70%	123,747
<b>Distribution</b>	100%	20%	44%	7%	70%	70%	3%
<b>more than \$50,000</b>	11,261	1,399	4,847	802	7,048	63%	543
<b>Direct hires farms (number)</b>	482,186	13,642	36,293	23,615	73,550	15%	41,965
<b>Workers hired</b>	2,636,509	255,940	613,889	351,064	1,220,893	46%	207,307
<b>more than 150 days</b>	911,439	84,987	148,705	180,850	414,542	45%	115,003
<b>fewer than 150 days</b>	1,725,070	170,953	465,184	170,214	806,351	47%	92,304
<b>fewer than 150 days (share)</b>	65%	67%	76%	48%	66%		45%

SOURCE: Census of Agriculture 2007, U.S., Table 62.

billion are divided by the average earnings of U.S. hired workers in 2007, \$10.21 an hour, then the number of full-time equivalent (2,000 hours) jobs on U.S. farms was 1.2 million.

FVH commodities accounted for a third of U.S. crop sales, while FVH farms accounted for one-half of direct-hire labor expenses and 70% of contract labor expenses. Over 73,500 FVH farms hired farmworkers in 2007, but fewer than 7,500 had labor expenditures of \$250,000 or more. The Census of Agriculture does not release the share of total labor expenditures accounted for by these large farm employers, but it is likely that they pay two-thirds or more of farm wages. Similarly, the roughly 7,000 FVH farms that spent \$50,000 or more on contract labor likely accounted for two-thirds or more of total contract labor expenses.

**Table 4** highlights several features of farm labor expenditures. First, most FVH employers were fruit and nut farms, but almost half of the 7,442 FVH farms with \$250,000 or more in labor expenditures were greenhouse

and nursery operations. Second, greenhouse and nursery operations accounted for a fifth of total farm labor expenditures, which was almost as much as fruit and vegetable farms combined. Third, dairy farms, the major employer in the livestock sector of farmworkers, accounted for 13% of total farm labor expenses, and the roughly 2,700 largest dairies (each with labor expenditures of \$250,000 or more) likely accounted for two-thirds or more of dairy labor expenses.

Some 65% of the 2.6 million workers hired by U.S. farms in 2007 were employed fewer than 150 days on the farms that reported them, a common definition of seasonal worker. FVH farms had about the same share of total, year-round, and seasonal hires as their share of farm labor expenses, 45-47% versus 48%. Fruit farms reported the most seasonal hires, about 465,000, and greenhouses and nurseries reported about the same number of seasonal workers as vegetable and melon farms, about 170,000. While fruit and vegetable farms might be expected to hire more seasonal than year-round workers, it is surprising that

almost half of the workers hired by greenhouses, nurseries, and dairies were employed for less than 150 days by the operator reporting them.

### ***Immigrant farmworkers***

Most U.S. farm employers are older white males, while most U.S. hired workers are younger Hispanic immigrants. The U.S. Department of Labor's National Agricultural Worker Survey (NAWS), which surveys workers employed on U.S. crop farms, reported that almost three-fourths of crop workers were born in Mexico and a quarter were born in the United States. Over half of the workers interviewed between 2005 and 2007 were unauthorized (Carroll, Saltz, and Gabbard 2009).<sup>6</sup> The unauthorized share of workers was highest in the Western states, more than 60%, and lowest in the Midwest, less than 30%.

The NAWS interviews over 2,000 crop workers<sup>7</sup> each year. Despite the stable 50% share of crop workers who are unauthorized, several trends point to improving conditions for farmworkers. First, the share of workers hired directly by farmers, rather than via farm labor contractors, rose from 75% in the late 1990s to more than 85% between 2005 and 2007; directly hired workers tend to earn higher wages and are more likely to receive work-related benefits. Second, a rising share of crop workers—75% of those interviewed between 2005 and 2007—had only one farm employer, and the average weeks of farm work have been rising since the late 1990s (Carroll and Saltz 2008). Third, after a few years of modest increases, average hourly earnings in 2007 reached \$9.35 an hour in the USDA's employer survey and \$8.65 an hour in the NAWS.

About three-fourths of the workers interviewed between 2005 and 2007 for the NAWS worked in fruit and nut crops (33%), vegetables (24%), and greenhouse and nursery crops (21%). Crop workers earned an average \$8 an hour in 2006, half of the almost \$17 average hourly earnings<sup>8</sup> of U.S. production workers<sup>9</sup> (Carroll and Saltz 2008). Because crop workers work two-thirds as many hours as full-time workers ( $2/3 \times 2080 = 1387.4$ ), their annual earnings of \$11,100 averaged one-third of the almost \$35,000 average of nonfarm production workers. In addition, most crop workers reported no employment-related benefits, such as health insurance or pensions, from farm employers.

Most hired workers stay in the seasonal farm workforce a decade or less, and the NAWS found that 15% of crop workers were newcomers (i.e., in the U.S. farm workforce for less than a year) between 2005 and 2007. Relatively low wages and seasonal jobs reduce the appeal of working on crop farms. Those attracted to this work are generally workers whose alternative U.S. job options are limited by lack of English-language skills, education, and other factors.

This last point deserves elaboration. Farm employers often say that seasonal farm jobs require skills that most U.S. workers do not have, and so employers presumably have an incentive to recruit and retain skilled farmworkers. However, it is more common for farmers to call labor contractors and other intermediaries and request a crew of workers than for employers to have formal recruitment systems and measures of on-the-job performance.<sup>10</sup>

Furthermore, many of the foreign workers employed on U.S. farms do not have experience in their country of origin with the commodity in which they are employed in the United States. For example, Jamaica, Mexico, and Thailand are not major producers of tree fruits such as apples, a commodity that employs workers from these countries in the United States, and Mexico and Central American countries are not major producers of oranges, raisin grapes, and many of the other U.S. commodities that employ workers from these countries. The major skill of immigrant farmworkers may be their willingness to work at the wages and conditions presented to them rather than experience with the commodity from their countries of origin.

An analysis of California unemployment insurance (UI) data suggests very high turnover among farmworkers in that state (Khan et al. 2004). California requires employers who pay \$100 or more in quarterly wages to obtain a UI reporting number and pay UI taxes,<sup>11</sup> and those with agricultural Standard Industrial Classification or North American Industry Classification System codes reported 1.1 million unique Social Security numbers (SSNs) in 2001,<sup>12</sup> a year in which average employment on the state's farms was about 400,000.

There were about a million unique SSNs or farmworkers in 1991, 1996, and 2001, and they had an average 1.7 million jobs each year, but there is little continuity



from year to year. Only 25% of the SSNs were reported by farm employers in all three years, and only 40% of the SSNs reported by agricultural employers in 1996 were also reported by agricultural employers in 2001.

### **Adjusting to higher wages: case studies**

What would happen to fruit and vegetable production and exports if farmworker wages and labor costs rose? Farm operators could adjust to rising labor costs in several ways. First, they could increase the productivity of current workers by picking fields less often or providing workers with productivity-increasing harvesting aids, such as from-the-field conveyor belts that reduce the time required to carry harvested commodities. Taking this idea a step further, operators could introduce labor aids to raise productivity and encourage farmworkers to remain in the farm workforce longer; making farm work less physically demanding may also induce new workers into the farm workforce. An example of a productivity-increasing labor aid is a lightweight ladder for climbing trees; alternatively, farm operators could switch to dwarf trees and eliminate the need for ladders altogether.

Second, farmers could mechanize activities to reduce the need for hand-harvest workers. Mechanization has been the dominant response to higher labor costs throughout U.S. history, and helps to explain how the United States went from 95% of the population living on farms in the first Census of Population in 1790 to less than 2% today. Mechanization can focus on pre-harvest activities, as when chemicals or precision planters reduce the need for hand-weeding and hand-thinning of crops; harvesting; and post-harvest handling, as when harvested crops are placed in 1,000-pound bulk bins and moved with forklifts rather than in 50- or 60-pound lugs that are carried manually.

### **Higher wages in apple production**

The state of Washington produces 55-60% of U.S. apples. Washington apple growers aim to sell their crop as fresh apples to consumers, and generally do, since the price of apples sold for processing is much lower. China, the world's largest apple producer, accounts for a quarter of the world's apple exports and the United States a sixth of global exports. However, China does not export fresh

apples to the United States, only processed apple products such as apple juice.

The United States exports almost a quarter of its apple production and is a net exporter of fresh apples. One reason for rising fresh-apple exports is newer varieties preferred by consumers. For example, between 1990 and 2010, the Red and Golden Delicious varieties fell from more than 80% of the apples produced in the Western states to less than 40%, while the Gala and Fuji varieties more than doubled, from less than 10% to almost 25%. Diversifying varieties has lengthened the apple harvesting season, which now runs from mid-August to late October, up to four weeks longer than in the past.

If labor costs rose, Washington's fresh apple industry would likely make several changes that increase worker productivity. Most newly planted apples are semi-dwarf or dwarf and planted in rows with trellises to support the weight of the fruit. Newly planted varieties often require more careful pruning, which occurs during the winter months when unemployment rates are typically high for seasonal farmworkers.

Apples growing on dwarf trees are much easier for pickers to locate, and so the use of dwarf trees increases worker productivity. Fewer ladders would reduce falls, improving worker safety, and enlarge the pool of apple pickers beyond the young men who are best suited to climb ladders.

Most apples are picked for piece rate wages that range from \$15 to \$25 per 1,000-pound bin, and most pickers earn more (up to 25% more) than Washington's minimum wage, which was \$8.55 in 2010. Older and lower-value varieties such as Red and Golden Delicious are often picked only once or twice, while newer and higher-value varieties are picked more often, increasing hours per acre. If piece rates and hourly earnings rose, the shift from traditional to newer apple varieties would likely accelerate, which would make labor more productive because most new plantings use dwarf rootstocks.

Harvest mechanization is less likely than increased use of mechanical aids. Apples bruise easily, and this limits the use of the shake-and-catch harvesting machines widely used to harvest tree nuts. Apples are also relatively heavy, so bins full of them could tip the hydraulic platforms on which workers might stand for picking. However, hydraulic

platforms can be used to prune trees, limiting the need to move and climb ladders.

Washington is also the major producer of sweet cherries, whose production has more than doubled in the past two decades. Cherries are an unusual commodity because grower prices have remained high despite sharply rising production. As a result, growers have been willing to pay high piece rate wages for harvesting cherries, and many harvest workers earn \$13 to \$15 an hour. Washington's demand for harvest labor has a saddle shape; it peaks in June-July for the harvest of cherries and again in September-October for apples. Thinning apples and picking pears in August are lower-wage jobs, which is one reason why some Washington apple growers have turned to foreign "guest" workers so they can employ "loyal" workers, that is, workers who remain available for both higher- and lower-wage jobs.

### **Higher wages in orange production**

Almost all Florida-produced oranges, the official state fruit, are turned into juice, while two-thirds of California-produced oranges are sold fresh to consumers. U.S. production of oranges for juice has been declining since the late 1990s due to the urbanization of farmland, freeze and hurricane damage, and two diseases, citrus canker and citrus greening. Imports of frozen concentrated orange juice from Brazil, the world's largest orange juice producer and exporter, have been rising despite a tariff of 7.85 cents a liter. About 30% of U.S. orange juice is imported, mostly from Brazil. Tropicana, owned by PepsiCo, and Minute Maid, owned by Coca-Cola, account for two-thirds of U.S. retail orange juice sales.

Florida's orange groves are often owned by corporations or have absentee owners who rely on a variety of intermediaries to produce oranges. For example, a farm management company may care for the ripening fruit, and a contractor may harvest it and haul it to a processor. Florida has more farm labor contractors than any other state, more than 2,500 in recent years, and they vary in their capabilities and adherence to labor and immigration laws. Some provide only harvest workers, while others buy the orange crop on the tree and profit from the difference between what they receive from the processor and what they paid for the on-tree crop.

Florida's layered labor market has contributed to 14 slavery and involuntary servitude cases involving farm labor contractors between 1996 and 2006.<sup>13</sup> However, owners and operators of orange groves are rarely punished; they claim ignorance of the contractor's activities and assert that a farmer hiring a contractor to harvest oranges is analogous to a homeowner hiring a painter to paint a house. Orange grower Jim Griffiths said: "I wouldn't have the slightest idea who any of them [workers] were or where they are from. Theoretically, you can be fined or penalized for that [hiring unauthorized workers]. But it doesn't matter to me because I don't ever see them or know anything about them.... That's the responsibility of the guy [contractor] hiring them to determine whether they're legal or not. The liability goes back to him."<sup>14</sup>

An acre of oranges yields 300 to 400 ninety-pound boxes of fruit worth \$5 to \$6 or \$0.05 to \$0.06 a pound.<sup>15</sup> Harvesters receive \$0.75 to \$0.80 for each box picked and dumped into 900-pound field bins, less than a cent a pound. Orange harvesting involves climbing ladders, picking oranges, dropping them into a picking sack that weighs 60 to 70 pounds when full, and emptying the sacks into the bins, after which a "goat truck," often a school bus with the sides and roof cut off to resemble a flatbed truck, takes the bins to a trailer that hauls the fruit to a juice concentrate plant.<sup>16</sup>

Florida orange production is moving from the center to the southwest of the state. Newer plantings with smaller trees planted closer together are better suited to mechanical harvesting, which involves continuous-canopy harvest machines that have fingers that reach into trees, pull ripe fruit off the branches, and drop it into a catching frame or to the ground to be picked up. The machines are expensive, and usable only in orange groves that have been designed and pruned for mechanical harvesting, but they reduce harvesting costs by up to 50% compared to hand-harvesting.

Less than 10% of Florida's oranges are mechanically harvested. Mechanization would be sped up by rising wages, improvements in the machines and farming practices, or reduced tariffs that currently protect the Florida growers from cheaper Brazilian imports. The key short-term issue involves the request to approve a chemical loosening agent to facilitate mechanical harvesting of Valencia oranges,

whose trees hold both mature fruit and next year's crop. If too much force is applied to harvest the mature fruit, then the next year's crop is damaged, and an abscission chemical would loosen only the mature fruit.

### **Higher wages in lettuce production**

California (75%) and Arizona (25%) produce virtually all U.S. lettuce; Arizona production is limited to the winter months. U.S. lettuce production increased more than 20% between 1990-92 and 2005-07, but there has been a shift in the type of lettuce preferred by consumers over the past quarter century. Leaf (13%) and romaine (27%) lettuces are increasing their share of the market, while the share of iceberg or head lettuce has declined, though it is still 60% of U.S. lettuce production. More than 60% of U.S. lettuce is sold in bags, and a rising share is produced under contract for the companies that dominate the bagged salad market, Dole and Fresh Express.

A handful of large producers dominate the production of lettuce, which occurs in Salinas most months of the year and in the California-Arizona desert during the winter months. Large lettuce producers have a history of innovation, from developing vacuum tubes that cool heads of lettuce quickly to packaging lettuce in refrigerated bags.

Most head lettuce is harvested by crews of about 40 workers who walk behind slow-moving conveyor belts, cut heads of lettuce, and place them on the belt, where they are conveyed to packers who wrap them with film and pack them into cartons. Most fields are picked twice. Most growers are reluctant to adopt a once-over mechanical harvester because heads of lettuce do not ripen uniformly, so they could lose a quarter of the crop with a once-over harvester. Baby-leaf lettuces are usually harvested by \$250,000 machines that have a band saw to cut up to seven tons an hour, replacing 140 hand workers.

Lettuce has been called green gold because of its profitability, and unions were quick to target large and profitable lettuce growers in the 1970s. Most of the large growers had union contracts with the United Farm Workers or Teamsters that offered entry-level wages twice the minimum wage as well as work-related benefits (including health insurance and pensions) that were rare for seasonal farmworkers. However, rising illegal migration in the

1980s reduced the number of union contracts, and today most lettuce is produced by nonunion workers.

There were reports of labor shortages in the Yuma-area lettuce industry in 2005-06. Large growers operate in this region about four months a year, and they have traditionally relied on green-card commuters, Mexicans with U.S. immigrant visas who elect to live in Mexico and commute daily to U.S. jobs. Green cards were readily available for Mexicans living in the border-area who had U.S. job offers in the 1960s and 1970s. As the number of green-card commuters shrank, younger workers with false documents sometimes joined border-area crews. However, stepped-up border-area enforcement, plus low wages in the border area, encourage younger workers to migrate to the interior of the United States, where they are not subject to daily Border Patrol inspections. The shrinking and aging green-card commuter workforce, plus the availability of low-cost housing in the Yuma area, has encouraged some lettuce firms to hire H-2A workers, legal guest workers who must be provided with housing while they work seasonally in the United States.<sup>17</sup> The fact that some of these H-2A workers live in Mexico instead of in Yuma-area housing explains why there are more H-2A admissions in Arizona in Department of Homeland Security data than in any other state.

The United States exports about 10% of the lettuce it produces, and 85% of U.S. lettuce exports go to Canada. The United States is a net importer of lettuce from Mexico, but imports account for less than 2% of U.S. lettuce consumption. The major reason why some United States growers produce lettuce in Mexico is because they need a backup source of supply in the event that disease or weather, especially in Arizona during the winter months, interrupts production and triggers penalty clauses in their contracts to provide bagged salads. Lettuce growers operating in Mexico acknowledge that wages are lower there, but production costs are similar because of the need to pay transportation costs to the United States.

### **Higher wages in tomato production**

There are three major types of tomatoes grown in the United States. Mature-green tomatoes are picked "green" and ripened with ethylene, a gas that turns them red and yields the hard "slicing tomato" desired by U.S. fast-food

chains. Vine-ripened tomatoes picked when red are preferred by many consumers. Processing tomatoes are grown primarily in California, picked red by a once-over harvesting machine, and turned into catsup and other tomato products. Almost 40% of U.S. tomatoes are imported, primarily vine-ripe tomatoes from Canada and Mexico.

Florida produced almost 60% of U.S.-grown mature-green tomatoes in 2007, primarily during the winter months, and California almost 30%, primarily during the summer months.<sup>18</sup> Mature-green tomatoes are hand-picked into 32- to 35-pound buckets. In Florida, where tomato production is concentrated among 16 growers in the Bradenton-Palmetto region south of Tampa and around Immokalee, pickers receive \$0.40 to \$0.45 a bucket, a piece rate of 1.5 cents a pound which has not changed significantly in two decades. Most Florida growers extend their season by growing tomatoes in Georgia, South Carolina, North Carolina, Tennessee, and Virginia, and rely on labor contractors to supply crews who move north with the harvest.

The Coalition of Immokalee Workers organized boycotts of fast food chains, the major buyers of mature-green tomatoes, until they agreed to raise the price they paid for Florida mature-green tomatoes by a cent a pound and pass the extra penny on to pickers. Taco Bell (2005), McDonald's (2007), Burger King (2008), and Subway (2008) signed agreements with the CIW. However, the extra payments made by these tomato buyers accumulated in trust accounts until November 2010, when the Florida Tomato Growers Exchange allowed its member-growers to distribute the extra money paid by buyers of tomatoes to workers.

The United States is a net importer of tomatoes from Canada and Mexico; the United States exports mature-green tomatoes and imports vine-ripe tomatoes. Canada's greenhouse-grown vine-ripe tomatoes, many grown around Leamington, Ontario with the help of Mexican workers admitted under the Seasonal Agricultural Workers Program, are exported to the Eastern and Midwestern states (Cook and Calvin 2005).

There are several possible responses to an increase in wages for tomato pickers. First, there could be renewed interest in mechanization, especially if tomato varieties that did not have to be staked and were amenable to once-over harvesting were developed. Second, since most mature-

green tomatoes are used in the food-service industry, higher wages could lead to higher prices and reduced usage of slicing tomatoes. Third, imports of mature green tomatoes from Mexico and other countries might rise.

### Adjusting to higher wages in trade: likely scenarios

The United States is a net exporter of some fruits and vegetables, such as fresh apples and lettuce, and a net importer of others, such as orange juice and fresh tomatoes (Calvin and Cook 2001). Because fresh fruits and vegetables are mostly water,<sup>19</sup> high transportation costs mean that the major U.S. export markets for fresh fruits and vegetables are neighboring Canada and Mexico. The effects of rising farm wages on fruit and vegetable exports are likely to be minimized by the fact that other suppliers of these commodities to Canada and Mexico face higher transportation costs than the United States. Furthermore, increases in U.S. productivity in producing these commodities could limit price increases.

Fruit and vegetable exports can be broken down into three types, and for each the impact of rising U.S. farm wages is likely to be modest:

1. *Exports facing limited competition.* U.S. exports of fresh apples and lettuce to Canada and Mexico are likely to face little competition from local production or other exporters if rising U.S. farm wages raise production costs. The major effect on U.S. exports of these commodities is likely to be some reduction in consumer demand as a result of higher prices. The exact amount of the drop in demand depends on the price elasticity, which is low for most fruits and vegetables.
2. *Season- and transportation-dependent exports.* The United States exports high-value fresh fruits and vegetables such as cherries and lettuce to Japan and Hong Kong when there is limited local production. Rising farm wages, even if passed on to consumers, may have limited short-term impacts on fruit and vegetable exports to these distant markets, where the major threat to U.S. exports comes from lower-cost and high-quality production that is closer to these markets, such as Chinese production for Japan.

3. *Storable exports competing with low-cost production abroad.* Fresh apples can be stored up to a year and raisins and frozen or canned fruits and vegetables can be stored several years. The long-run competitiveness of storable U.S. fruit and vegetable exports depends on increasing yields and productivity in the United States to compete with lower-cost production elsewhere. Currently, the federal government subsidizes research to improve yields and curb diseases in specialty crops and, after a several decade hiatus, has recently resumed limited support for labor-saving mechanization research. However, the major federal assistance to U.S. fruit and vegetable exports are subsidies to commodity groups to promote their commodities abroad.

Similarly, fruit and vegetable imports can be categorized in three ways, and again the impact of rising U.S. farm wages would be small:

1. *Imports that compete directly with U.S. commodities.* Relatively few fruits and vegetables are imported during times of peak U.S. production; instead, most fulfill off-season demand. There is often some spillover between imports and U.S. production as production winds down abroad and picks up in the United States, as when Mexican table grape imports in May-June compete with early U.S. production. However, imports are minimal during the July-September peak period of U.S. table grape production.
2. *Imports that meet off-season demand.* U.S. consumers increasingly purchase fresh fruits and vegetables year round, allowing producers in Chile, Mexico, and other countries to supply commodities when there is little or no U.S. production. Because imports are measured on an annual basis, they can rise year-after-year without threatening U.S. farmers and farmworkers if they fill off-season demand in the United States.
3. *Imports of commodities that the U.S. does not produce.* The U.S. produces very few bananas and other tropical fruits, and these accounted for just over 10% of the 270 pounds of fruit consumed by the average

American in 2009. Noncompetitive imports affect U.S. farmers and farmworkers only indirectly, as more banana imports may reduce demand for apples, unless overall fruit consumption rises.

### Next steps for foreign workers

Farm employers and worker advocates in December 2000 agreed on an immigration reform plan known as AgJOBS that would allow currently unauthorized farmworkers and their families to become legal immigrants and would make it easier for farm employers to recruit and employ H-2A workers. In the decade since the AgJOBS proposal was negotiated, U.S. fruit and vegetable production has expanded, the share of unauthorized farmworkers has been stable at about 50%, and more farmers, notably vegetable growers operating during the winter months in Arizona and fruit growers in Washington, have turned to the H-2A program to obtain workers.

The changes in the U.S. fruit and vegetable industry since AgJOBS was negotiated suggest three possible next steps:

1. *Examination of the obstacles to productivity-increasing and labor-saving changes in the major crops employing farmworkers.* For example, Environmental Protection Agency approval of abscission chemicals to loosen ripe oranges could accelerate mechanical harvesting of Florida oranges that are processed into juice, as could falling costs for the experimental technology-dependent scout-and-harvest mechanization systems that use scout machines to locate ripe fruit and transmit the information to other machines for harvesting.

Commodities with expanding acreage are likely to mechanize faster, since most new plantings of perennials are designed for the use of machines and mechanical aids in pre-harvest and harvest activities. The federal government plays key direct and indirect roles in shaping the level of production, methods of production, and exports, so its programs, subsidies, and regulations warrant careful examination to determine how rising wages are likely to affect U.S. farmworkers and trade patterns.

2. *A focus on the commodities and areas with growing dependence on H-2A workers.* Even without the employer-friendly changes to the H-2A program included in AgJOBS, the number of H-2A workers has been expanding. Many are in the United States for 10 months or more, meaning that H-2A workers may fill 10% of the roughly one million farm jobs in the United States lasting more than 150 days in U.S. agriculture (there were 911,000 more-than-150-day jobs on U.S. farms in the 2007 Census of Agriculture).

What are the implications of the expanding H-2A program for the legalization envisioned in AgJOBS? Are Arizona vegetable and Washington fruit farmers relying on H-2A workers to be their core labor forces and turning to farm labor contractors who may employ unauthorized workers to supplement these core labor forces? Many of the farm employers who have turned to H-2A workers in recent years stress the importance of "loyal" workers, noting that some U.S. workers left the farm for construction and other nonfarm jobs between 2005 and 2007. With the Department of Labor routinely certifying the employment of H-2A workers for 10 months, what was once a "seasonal workers for seasonal jobs" program is becoming a program to fill what in agriculture are considered almost year-round jobs.

3. *Examination of the horticultural end of the FVH spectrum, i.e., greenhouses and nurseries, as well as dairies that employ large numbers of farmworkers.* Greenhouses and nurseries are major farm employers; they hired twice as many more-than-150-day workers as vegetable farmers in 2007 and the same number of less-than-150-day workers as vegetable farmers. Greenhouses and nurseries face uneven competition from imports—there are many flower imports, but few plant imports (except from Canada). Many U.S. nurseries are located in fast-growing urban areas where workers have a better chance of finding non-farm employment in the off-season.

The dairy industry had higher farm labor expenditures than vegetable and melon farms in 2007, and would be allowed to hire H-2A workers if AgJOBS

were enacted. Dairies are very dependent on government policies, from protectionist trade policies to subsidy programs that prop up milk prices, and dairy is likely to loom larger in farm labor debates as fruit and vegetable producers mechanize.

## Conclusion

Most U.S. farm exports are field crops such as corn and wheat, but a rising share consists of high-value commodities, including fresh fruits and vegetables. Labor costs are 20-40% of the *variable* production costs incurred to produce apples and other tree fruits as well as lettuce and other vegetables. If farm labor costs rise, employers would respond by trying to raise productivity via increased investments in productivity-increasing techniques for use by hand-pickers (lighter ladders, conveyor belts) and labor-saving technologies (harvest machines). They may also make management changes, such as repicking fields less often or recruiting and retaining the best workers.

Producer responses to rising wages are likely to vary by commodity, size of employer, and area. Large farms produce most U.S. fruits and vegetables, and they are more likely than smaller growers to develop and adopt new technologies and to make changes to their labor-management systems. Rising wages, for example, may encourage some producers who now rely on labor contractors and other intermediaries to hire such workers directly.

Efforts to mechanize pre-harvest, harvest, and post-harvest tasks are ongoing. However, implementing mechanization often requires changes in farming practices, such as planting smaller trees and pruning them to facilitate the use of machines, making machines cost-effective compared with hand harvesters, and changing handling and selling practices to accommodate machine-picked fruits and vegetables. Government can play an important role in accelerating mechanization through research subsidies and regulatory changes, and by encouraging cooperation between farm operators and packers and processors.

U.S. production and exports of fruits and vegetables are rising, but hired farmworkers are sharing little of the increased revenues from the trend of increasingly affluent

and health-conscious consumers buying more produce. Between 1989 and 2009, average hourly earnings for U.S. farmworkers increased only \$1.52, from \$8.55 to \$10.07 (in 2009 dollars). If farm wages rose, there is little threat to consumer pocketbooks because of the tiny share of the retail price that goes to farm labor. And if higher wages prompt changes in farm management practices that increase worker productivity, then a wage increase might even serve to expand rather than reduce U.S. production of fruit-vegetable-horticulture commodities.

—*Philip Martin is professor of Agricultural and Resource Economics at the University of California, Davis, chair of the University of California's Comparative Immigration and Integration Program, and editor of the monthly Migration News and the quarterly Rural Migration News. He studied Labor Economics and Agricultural Economics at the University of Wisconsin-Madison, where he earned a Ph.D. in 1975.*

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## Appendix: Status of mechanization in fruits and vegetables

Most U.S. fruits and vegetables are harvested mechanically (see **Table A1**). About 75% of U.S. vegetable and melon acreage was machine-harvested in 2000, as was 55% of U.S. fruit production (Sarig et al. 2000). The harvesting of vegetables is easier to mechanize because most are annuals, so the harvest machine can destroy the plant. The harvesting of commodities that are processed often occurs before the harvesting of the same commodity for the fresh market.

Mechanizing the harvest of a fruit or vegetable is more akin to a process than an event, reflecting the fact that new plant varieties may have to be developed to facilitate machine harvesting, farming methods may have to change, and packing and processing systems may have to be adapted to deal with the machine-harvested commodities. Some vegetables that grow below ground, such as potatoes, are harvested mechanically by machines that scoop up the commodity, sift it from the soil, and

**TABLE A1**

### Harvest mechanization in U.S. fruit and vegetable crops

Commodity	Typical type of harvest		Commodity	Typical type of harvest	
	Fresh	Processed		Fresh	Processed
<b>Deciduous tree fruits</b>			<b>Below-ground vegetables</b>		
<i>Apple</i>	Hand	Hand (a)	<i>Beets</i>	Hand	Machine
<i>Apricots</i>	Hand	Hand (a)	<i>Carrots</i>	Machine (k)	Machine
<i>Avocados</i>	Hand	NA (b)	<i>Garlic</i>	Hand	Machine
<i>Cherries, sweet</i>	Hand	Hand (a)	<i>Green onions</i>	Hand	Hand
<i>Cherries, tart</i>	NA	Machine	<i>Leeks</i>	Hand	Machine
<i>Dates</i>	Hand	Hand	<i>Onions</i>	Hand/machine (e)	Machine
<i>Figs</i>	Hand	(c)	<i>Parsnips</i>	Hand/machine	Machine
<i>Kiwi</i>	Hand	NA	<i>Potatoes</i>	Machine	Machine
<i>Nectarines</i>	Hand	Hand (a)	<i>Sweet potatoes</i>	Machine	Machine
<i>Olives</i>	NA	Hand/machine	<i>Radishes</i>	Hand/machine (h)	NA
<i>Peaches, freestone</i>	Hand	Hand (a)	<i>Turnips/rutabagas</i>	Hand	Machine
<i>Peaches, clingstone for canning</i>	NA	Hand/machine	<b>Above-ground vegetables</b>		
<i>Pears</i>	Hand	Hand (a)	<i>Artichokes</i>	Hand	NA (b)
<i>Plums</i>	Hand	Hand (a)	<i>Asparagus</i>	Hand	Hand
<i>Prunes</i>	Hand	Machine	<i>Broccoli</i>	Hand	Hand/machine
<b>Grapes</b>			<i>Brussels sprouts</i>	Hand	Hand
<i>Wine/juice (grapes)</i>	NA	Machine (i)	<i>Cabbage</i>	Hand	Machine
<i>Raisins</i>	NA	Hand/machine	<i>Cauliflower</i>	Hand	Hand
<i>Table grapes</i>	Hand	NA	<i>Celery</i>	Hand	Machine
<b>Berries</b>			<i>Corn, sweet</i>	Hand/machine	Machine
<i>Blueberries, cultivated</i>	Hand	Hand/machine (l)	<i>Cucumbers</i>	Hand	Hand/machine
<i>Blueberries, wild</i>	Hand	Machine	<i>Eggplant</i>	Hand	Hand
<i>Cranberries</i>	Machine	Machine	<i>Herbs</i>	Hand	Machine
<i>Raspberries/blackberries</i>	Hand	Hand/machine (l)	<i>Lettuce</i>	Hand/machine (j)	NA
<i>Strawberries</i>	Hand	Hand	<i>Lima beans</i>		Machine
			<i>Mushrooms</i>	Hand	Hand (a)

cont. on page 16



TABLE A1 (CONT.)

## Harvest mechanization in U.S. fruit and vegetable crops

Commodity	Typical type of harvest		Commodity	Typical type of harvest	
	Fresh	Processed		Fresh	Processed
<b>Citrus fruit</b>			<b>Above-ground vegetables</b>		
<i>Grapefruit</i>	Hand	Hand (a)	<i>Okra</i>	Hand	Hand
<i>Lemons/limes</i>	Hand	Hand (a)	<i>Peas</i>	Hand	Machine
<i>Oranges</i>	Hand	Hand/machine	<i>Peppers, chili</i>	Hand	Hand/machine (f)
<i>Tangerines</i>	Hand	Hand (a)	<i>Peppers, sweet</i>	Hand	Hand
<b>Melons</b>			<i>Potatoes</i>	Machine	Machine
<i>Cantaloupe, honeydew</i>	Hand	(a)	<i>Snap beans</i>	Hand/machine (g)	Machine
<i>Watermelon</i>	Hand	(a)	<i>Spinach</i>	Hand/machine (m)	Machine
<b>Tree nuts</b>			<i>Squash and pumpkins</i>	Hand	Machine
<i>Almonds</i>	NA	Machine	<i>Squash, summer</i>	Hand	Hand
<i>Hazelnuts</i>	NA	(d)	<i>Sweet potatoes</i>	Hand/machine	Machine
<i>Macadamias</i>	NA	(d)	<i>Tomatoes</i>	Hand	Machine
<i>Pecans</i>	NA	Machine			
<i>Pistachios</i>	NA	Machine			
<i>Walnuts</i>	NA	Machine			

NA = not applicable.

a. These commodities are hand-harvested and destined to be sold fresh, but some are diverted to processing if they cannot be sold fresh.

b. California avocados and artichokes are harvested for the fresh market, while processed avocados and artichokes are imported.

c. Dried figs dry on the tree and fall naturally to the ground for collection.

d. Most nuts that grow on trees are harvested with machines that grasp the trunk or limb and shake them to the ground or into a catching frame.

e. Hazel nuts and macadamia nuts do not ripen uniformly. These nuts dry, fall to the ground, and are collected by machine.

f. Nonpungent onions with a high water content are often hand-harvested, while pungent onions with less water are more often machine-harvested.

g. Green chili peppers for canning are hand-harvested, while red chili peppers used to make ground paprika are machine-harvested.

h. Snap beans are hand- and machine-harvested in Florida; hand-harvested beans usually have a higher grower price.

i. Radishes sold in bags without tops are machine-harvested, but radishes sold in bunches with tops are hand-harvested.

j. Up to 10% of wine grapes, mostly those destined for ultra-premium wines costing more than \$14 a bottle, are hand-harvested.

k. Baby lettuces are often harvested with a saw-band machine.

l. Bunched carrots with tops are hand-harvested.

m. Berries destined for the fresh market are often hand-harvested, while those that are frozen, etc. are machine-harvested.

n. Bunched spinach is hand-harvested; bagged spinach is machine-harvested.

SOURCE: Adapted from Calvin and Martin (2010); Sarig et al. (2000).

convey it to a truck or wagon. Most vegetables that grow above the ground, including lettuce and fresh-market tomatoes, are hand-harvested.

Some fruits and nuts that grow on trees are harvested by machines that grasp the trunk or limbs and shake the commodity to the ground or into a catching frame. The key to mechanizing the harvest of tree crops is to develop shake machines that have sufficient force to dislodge the fruit or nut crop without damaging the tree and thus reducing yields in future years. Fruits that are processed are more amenable to being shaken off trees than fruits that are sold fresh, so as a result tart cherries are more

likely to be harvested mechanically than sweet cherries. In some cases, abscission or loosening chemicals are applied to the ripe fruit to make them easier to dislodge by shaking. Florida oranges that are processed into juice are likely to be harvested mechanically if abscission chemicals are approved to loosen the fruit from the stems (Roka 2009).

Mechanical harvesting is generally motivated by efforts to save labor costs. The process of developing new plant varieties and machines to harvest fruits and vegetables is often lengthy, and can be sped up or slowed down by government, which can be involved in the process in many stages, from research to grading the commodity.

The poster child for successful government intervention to mechanize a harvest is the processing tomato industry, whose harvest in California was mechanized in less than a decade after the Bracero program, which had allowed the seasonal importation of contract workers from Mexico, was terminated in 1964.

Tomato harvest mechanization combined the efforts of plant scientists, who developed a uniformly ripening tomato plant, with those of engineers, who created a machine that cut tomato plants, shook off the tomatoes, and conveyed the fruit past sorters before dumping it into large tubs for transport to processing facilities. Government research funds subsidized the university scientists and engineers who developed the plants and machines, and the new system played a key role in winning acceptance

of mechanically harvested tomatoes by overcoming the perennial price-quality struggle between growers and processors. Growers are paid by weight, and they are penalized by processors if their deliveries contain excess material such as dirt clods and green tomatoes. Government-operated grading stations took random samples of tomatoes from their 12.5-ton containers prior to shipment, thereby reducing rejection rates and speeding mechanization.

In a few cases, harvesting by machine improves the quality of the commodity. For example, because grape-harvesting machines—more than 90% of California's wine grapes are harvested mechanically—can operate as efficiently at night as during the day, they can take advantage of lower night-time temperatures that reduce the stress on harvested grapes.

## Endnotes

1. Historically, most fresh fruits and vegetables were consumed near their place of production, making them available only seasonally. But technology and transportation revolutions, supported by the availability of labor and water, allowed production for many more months in California to compete with seasonal production in New Jersey and other Eastern garden states in the 1950s, and interstate highways that lowered transportation costs contributed to California's current 40% share of U.S.-produced fresh fruits and vegetables. The United States is hardly alone in this agricultural revolution; the separation of production and consumption is spreading throughout the world, increasing the trade in fresh fruits and vegetables.
2. The poverty line for an individual was \$10,830 in 2009 and 2010 (<http://aspe.hhs.gov/poverty/10poverty.shtml>). For more on the relationship between farmworker wages and food costs, see "Immigrant Workers and Fresh Fruits and Vegetables" ([www.youtube.com/watch?v=BNbQ0xdLXqQ](http://www.youtube.com/watch?v=BNbQ0xdLXqQ)).
3. Of the less than \$430 spent per U.S. household on fresh fruits and vegetables in 2009, only about 10%, or roughly \$40, went to farm labor costs. Farmers themselves receive a relatively small share of the retail and export price of fruits and vegetables, usually less than 30%, and farm labor costs are typically less than one-third of a farmer's production costs. So if farm labor costs rose 40% and neither production nor consumption changed, household spending would rise about \$16 a year.
4. Census of Agriculture 2007, State Table 7, pp. 336-44.
5. About 35% or 910,000 of these 2.6 million workers hired were employed 150 days or more on the responding farm.
6. The share of U.S.-born crop workers varies by region. Between 2005 and 2007, 24% of workers interviewed by the NAWs were born in the United States. The highest share of U.S.-born workers, 48%, was in the Midwest (some were follow-the-crop migrants based in southern Texas), followed by 36% in the East (some were follow-the-crop migrants based in Florida), and 6% in the Western states.
7. A "crop worker" is defined by the NAWs as someone who performs "seasonal agricultural services...in the vast majority of nursery products, cash grains, and field crops, as well as in all fruits and vegetables," and "also includes persons who work in the production of silage and other animal fodder" but does not include "poultry, livestock and fishery workers, secretaries, mechanics, or H-2A foreign temporary workers." Introduction, National Agricultural Workers Survey, DOL website, <http://www.doleta.gov/agworker/report9/introduction.cfm>
8. Average Hourly Earnings of Production Workers in Manufacturing Industries by State, U.S. Census Bureau, [www.census.gov/compendia/statab/2011/tables/11s1013.xls](http://www.census.gov/compendia/statab/2011/tables/11s1013.xls)
9. The definition of "production workers" includes those "engaged in fabricating, processing, assembling, inspecting, receiving, storing, handling, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial and guard services, product development, auxiliary production for plant's own use (e.g., power plant), recordkeeping, and other services closely associated with these production operations." Definitions, Annual Survey of Manufacturers, U.S. Census Bureau, <http://www.census.gov/manufacturing/asnm/definitions/index.html>
10. There are no survey data that provide the share of farm employers with formal hiring and performance measurement systems. Their number is believed to be small. Fewer than 5% of farmworkers in California are employed on farms with union contracts, and the association for human resources professionals formed to deal with unionized workforces in the 1970s and 1980s, the Ag Personnel Management Association, has shrunk ([www.agpersonnel.org](http://www.agpersonnel.org)).
11. California farm employers have reported their employees and earnings to the California Employment Development Department each quarter since 1978, when unemployment insurance coverage was extended to almost all farm employers.
12. Some SSNs were excluded from the analysis, including the 602 of the total 1,067,948 that had 50 or more employees in 2001 (their 59,776 wage records or jobs were also excluded) and the 2,750 SSNs that had less than \$1 in earnings and jobs that paid more than \$75,000 in one quarter (their 62,571 wage records were excluded).
13. See "Modern-Day Slavery," *Palm Beach Post*, December 7-9, 2003 ([www.palmbeachpost.com/hp/content/moderndayslavery/index.html](http://www.palmbeachpost.com/hp/content/moderndayslavery/index.html)). Contractors are reported to have provided drugs and women to their workers in so-called \$21 clubs, where men are charged \$20 for sex and \$1 for a condom.
14. Quoted in Diane Lacey Allen, "Migrant Workers Find Jobs Easily in Polk County and Across Florida," *The Ledger*, May 22, 2005 ([www.theledger.com/apps/pbcs.dll/article?AID=/20050522/NEWS/505220407/1039](http://www.theledger.com/apps/pbcs.dll/article?AID=/20050522/NEWS/505220407/1039)).
15. Florida typically produces over 200 million 90-pound boxes of oranges a year. In 2006-07, production is expected to be less than 140 million boxes because of 2004-05 hurricane damage and citrus canker; growers received \$10 a box in 2007. However, production is expected to rebound toward 200 million boxes a year.
16. Some 1,800 "goat trucks" were registered in Florida in 2004, and they are allowed to operate within 150 miles of the registered address. Accidents involving goat trucks, which often lack windshields, have prompted calls to ban them from state roadways.
17. The H-2A program, created in 1952 and modified in 1986, allows U.S. farm employers anticipating too few U.S. farmworkers to request that the Department of Labor certify their need for temporary foreign workers ([www.foreignlaborcert.doleta.gov/h-2a.cfm](http://www.foreignlaborcert.doleta.gov/h-2a.cfm)).
18. Florida and California also produce plum, cherry, and grape tomatoes; they accounted for 25% of Florida's tomato production in 2007 and 17% of California's.
19. The water content of fresh fruits and vegetables is typically 85% or more. For example, the water content of apples is 84%, oranges 87%, lettuce 96%, and tomatoes 94%. See [www.ca.uky.edu/entri/pubs/entri129.pdf](http://www.ca.uky.edu/entri/pubs/entri129.pdf)

## References

- Calvin, Linda, and Roberta Cook (coordinators); Mark Denbaly, Carolyn Dimitri, Lewrene Glaser, Charles Handy, Mark Jekunowski, Phil Kaufman, Barry Krissoff, Gary Thompson, and Suzanne Thornsby. 2001. "U.S. Fresh Fruit and Vegetable Marketing: Emerging Trade Practices, Trends, and Issues." Agricultural Economic Report No. 795. Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, January. <http://www.ers.usda.gov/publications/aer795/>
- Calvin, Linda, and Philip Martin. 2010. "The U.S. Produce Industry and Labor: Facing the Future in a Global Economy." Economic Research Report No. (ERR-106). Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, November. <http://www.ers.usda.gov/Publications/ERR106/>
- Carroll, Daniel, and Russell Saltz. 2008. "NAWS Findings: 1989-2007." Powerpoint presentation at the conference, "Immigration Reform and Agriculture: Implications for Farmers, Farm Workers, and Communities," May 8, Washington, D.C. <http://migration.ucdavis.edu/cf/files/2009-may/Carroll-SaltzNAWS.pdf>
- Carroll, Daniel, Russell Saltz, and Susan Gabbard. 2009. "The Changing Farm Workforce: Findings From the National Agricultural Workers Survey." Powerpoint presentation at the conference, "Immigration Reform and Agriculture: Implications for Farmers, Farm Workers, and Communities," May 21, Washington, D.C. <http://migration.ucdavis.edu/cf/files/2009-may/Carroll-SaltzNAWS.pdf>
- Cook, Roberta, and Linda Calvin. 2005. "Greenhouse Tomatoes Change the Dynamics of the North American Fresh Tomato Industry." Economic Research Report 2. Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, April. <http://www.ers.usda.gov/publications/err2/err2.pdf>
- Khan, Akhtar, Philip Martin, and Phil Hardiman. 2004. "Expanded Production of Labor-Intensive Crops Increases Agricultural Employment." *California Agriculture*, January-March, pp. 35-39. <http://californiaagriculture.ucop.edu>
- NAWS. National Agricultural Workers Survey. Washington, D.C.: U.S. Department of Labor. <http://www.doleta.gov/agworker/naws.cfm>
- Roka, Fritz. 2009. "Farm Labor Issues Facing Florida Tomato and Orange Producers." Presentation at the conference, "Immigration Reform: Implications for Farmers, Farm Workers, and Communities," Washington, D.C., May 21-22. <http://migration.ucdavis.edu/cf/files/2009-may/Roka.pdf>
- Sarig, Yoav, James Thompson, and Galen Brown. 2000. "Alternatives to Immigrant Labor? The Status of Fruit and Vegetable Harvest Mechanization in the United States." Washington, D.C.: Center for Immigration Studies, November. [www.cis.org/FarmMechanization-ImmigrationAlternative](http://www.cis.org/FarmMechanization-ImmigrationAlternative)
- USDA, Economic Research Service. 2010a. "Vegetable and Melons Situation and Outlook Yearbook." Washington, D.C.: U.S. Department of Agriculture. <http://usda.mannlib.cornell.edu/usda/ers/89011/89011.pdf>
- USDA, Economic Research Service. 2010b. "Fruit and Tree Nuts Yearbook Situation and Outlook Yearbook." Washington, D.C.: U.S. Department of Agriculture.



October 11, 2011

U.S. Senator Charles E. Schumer  
 United States Senate Judiciary Subcommittee on Immigration, Refugees and Border Security  
 305 Hart Senate Office Building  
 Washington, DC 20510

Re: Hearing on "America's Agricultural Labor Crisis: Enacting a Practical Solution"

Dear Senator Schumer:

Farmworker Justice submits this letter to supplement the record of the October 4, 2011 Immigration, Refugees and Border Security subcommittee hearing on "America's Agricultural Labor Crisis: Enacting a Practical Solution."

First, we request that the record include Farmworker Justice's recent report *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, which is available at <http://farmworkerjustice.org/images/stories/eBook/pages/fwj.pdf> and is attached. The report offers an in-depth look at the federal H-2A agricultural guest worker program, exposing the fundamental flaws of guest worker models and revealing the program's effect of keeping wages low in the U.S. for both foreign and domestic workers. The report offers short-term and long-term solutions to eliminate abuses and ensure a sustainable labor force for American agriculture.

Second, on the issue of farmworker wages and the ability of employers to raise wages while maintaining competitiveness in a global market, we request that the March 21, 2011 Economic Policy Institute Briefing Paper, "Farm Exports and Farm Labor: Would a Raise for Fruit and Vegetable Workers Diminish the Competitiveness of U.S. Agriculture?" by Phil Martin be included in the record (it is attached and is also available at <http://www.epi.org/page/-/old/briefingpapers/BriefingPaper295.pdf>). The nation's seasonal farmworkers have contributed to a major expansion of our exports of fruits and vegetables but have not shared in the benefits of this trade. As noted in Prof. Philip Martin's paper, farmworkers' wages could be increased substantially to reduce poverty among agricultural workers without diminishing trade and without major price increases for American consumers.<sup>1</sup> The impact of any price changes from increased wages would be

<sup>1</sup> Most U.S. farm exports are field crops such as corn and wheat, but a rising share consists of high-value commodities, including fresh fruits and vegetables. While the value of U.S. exports of fruits and vegetables tripled between 1989 and 2009, the average hourly earnings of farmworkers only increased \$1.52, from \$8.55 to \$10.07 (in 2009 dollars). A 40% increase in farmworker earnings would lift a typical seasonal farmworker above the poverty line. "Of the less than \$430 spent per household on fresh fruits and vegetables in 2009, only about 10%, or roughly \$40, went to farm labor costs." In order to accommodate the increase in farm labor earnings, households would only have to spend an additional \$16 a year.

small because the major export markets for U.S. fresh fruits and vegetables have fewer lower cost options. Since fresh fruits and vegetables are mostly water, their higher transportation costs mean that the major U.S. export markets for these goods are in neighboring Canada and Mexico. The effects of rising farm wages on fruit and vegetable exports are likely to be minimized by the fact that other suppliers of these commodities to Canada and Mexico face higher transportation costs than the United States.<sup>2</sup> With regard to concerns raised about increased imports, Prof. Martin also notes that greater demand by consumers for year-round access to healthy foods in the U.S. has led to increased imports of fruits and vegetables when they are not produced in the United States, but that we continue to have a positive balance of trade in these products. As explained by Philip Martin in his paper, "[w]ith the exception of well-known cases such as Mexican tomatoes arriving during the winter months when Florida is also reducing tomatoes, it is relatively rare for imports to arrive in the United States during peak periods of U.S. production of the same commodities."<sup>3</sup> Despite the rise in imports, U.S. agricultural exports still exceeded agricultural imports by \$35 billion in 2008.

Third, on the issue of U.S. farmworkers, we would like the record to include a recently filed EEOC lawsuit against Georgia employer and H-2A program user Hamilton Growers, Inc., doing business as Southern Valley Fruit and Vegetable, Inc. According to EEOC's lawsuit and [press release](#), "the company engaged in a pattern or practice of firing virtually all American workers while retaining workers from Mexico during the 2009 and 2010 growing seasons. The agency also alleges that the employer fired at least 16 African American workers in 2009 based on race and/or national origin when their termination was coupled with race-based comments by a management official. The lawsuit also alleges the employer provided lesser job opportunities to American workers, which resulted in their earning less pay than their Mexican counterparts, and subjected American workers to different terms and conditions of employment, including less desirable job assignments." The press release further notes that "[t]he EEOC has reason to believe that the practices alleged in the lawsuit are relatively common in the industry." EEOC's lawsuit supports the widespread evidence of discrimination against US workers by H-2A program users that is also discussed in Farmworker Justice's report "*No Way to Treat a Guest*," and in Farmworker Justice President Bruce Goldstein's testimony from the September 13, 2011 House Education and Workforce, Subcommittee of Workforce Protections hearing entitled "Workforce Challenges Facing the Agriculture Industry" (attached).

Thank you for your consideration of these materials.

Sincerely,



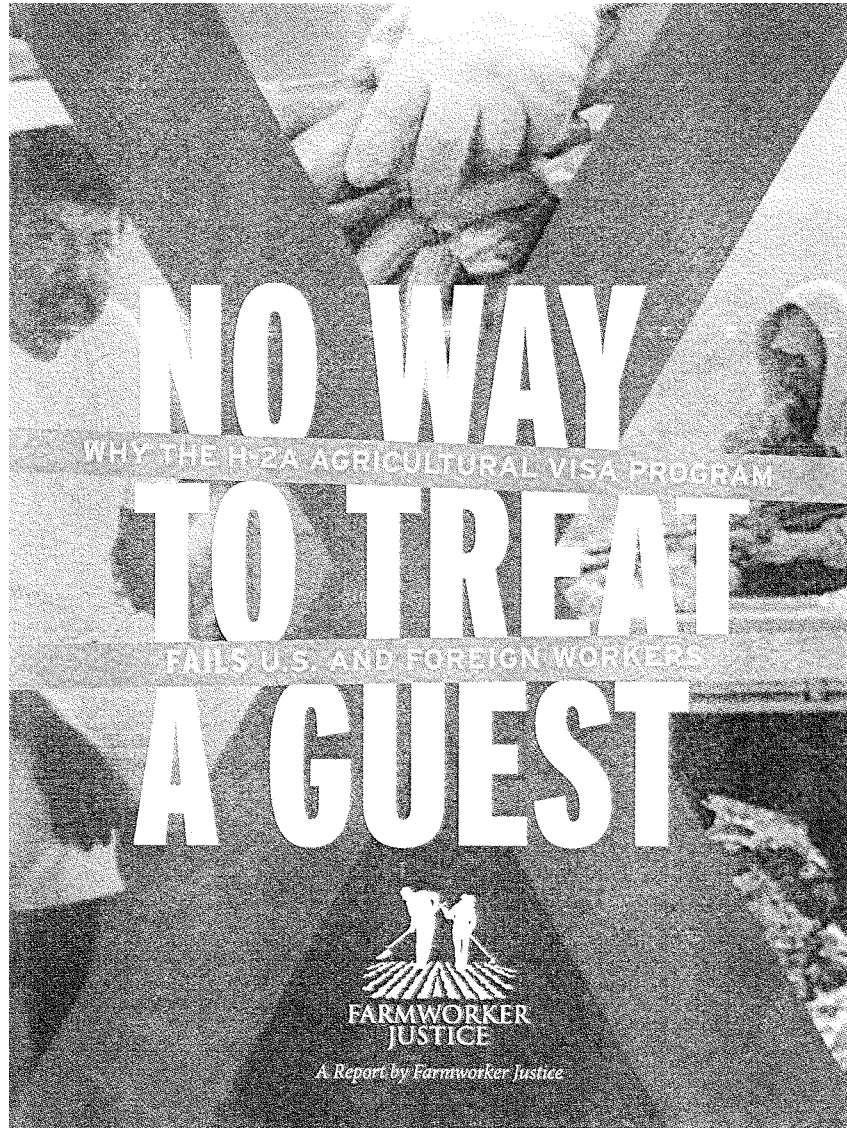
Bruce Goldstein  
President, Farmworker Justice

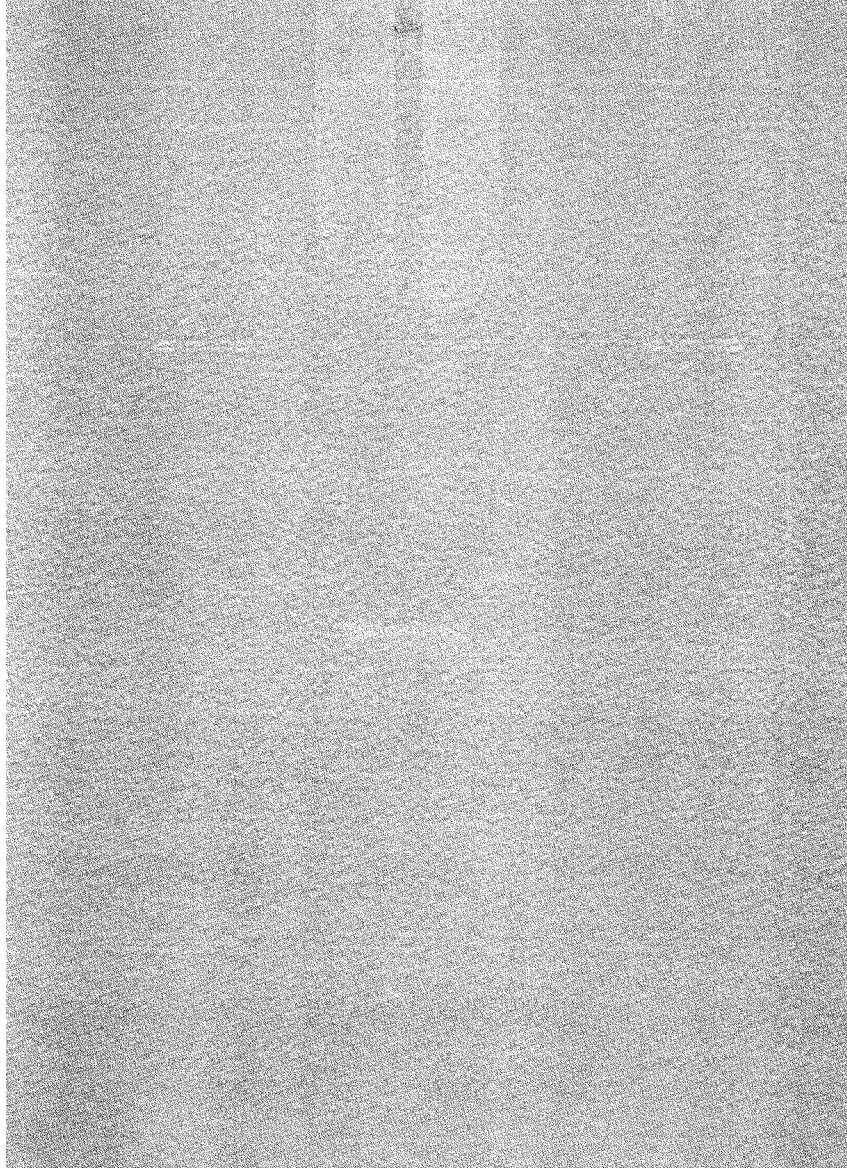
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If farm labor costs increase to raise farmworkers out of poverty, farm operators could and likely would make changes that increase worker productivity, including providing workers with productivity increasing harvesting aids, hastening the adoption of productivity-increasing growing and harvesting techniques, and providing labor aids that reduce the physical demands of farm work. In this instance, higher wages would prompt farm operators to boost worker productivity, thus expanding, rather than reducing, U.S. fruit and vegetable production.

<sup>2</sup> Martin, Philip. "Farm Exports and Farm Labor: Would a raise for fruit and vegetable workers diminish the competitiveness of U.S. agriculture?" Economic Policy Institute, March 21, 2011.

<sup>3</sup> Ibid.







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Layout and design is by Kate Tallent Design.

Farmworker Justice is solely responsible for all content.

Learn how you can help empower farmworkers to improve their wages, working conditions, health, safety, immigration status and access to justice by visiting our website, [www.farmworkerjustice.org](http://www.farmworkerjustice.org); reading our blog, [www.harvestingjustice.org](http://www.harvestingjustice.org); and joining us on Facebook at [www.Facebook.com/farmworkerjustice](http://www.Facebook.com/farmworkerjustice). Farmworker Justice, founded in 1981 and based in Washington, D.C., is a not-for-profit 501(c)(3) organization. Donations to Farmworker Justice are tax-deductible to the full extent of the law.

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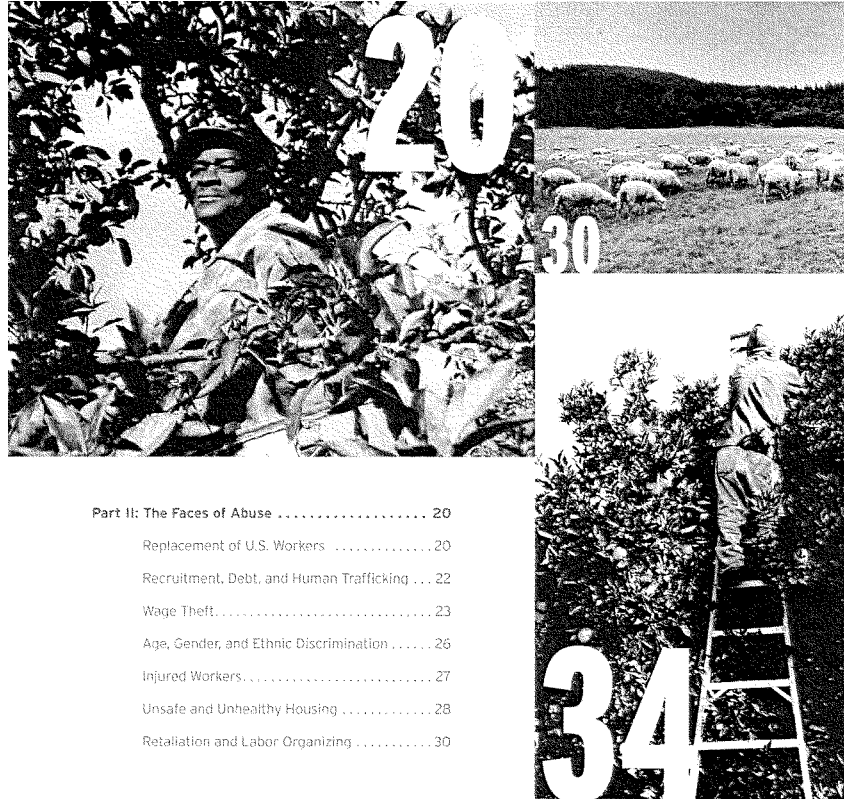
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# EXECUTIVE SUMMARY



What is the problem with a farm labor force composed of temporary foreign guest workers? Just ask Kathern, a truck driver, farmworker, and mother from Moultrie, GA, who knows all too well the abuses suffered by domestic and foreign workers as a result of the H-2A agricultural guest worker program. A lifelong Georgia resident, Kathern was fired in September 2010, after just three days of work, by an employer who primarily hires H-2A guest workers. She explains. >>

6 - NO WAY TO TREAT A GUEST: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers

"To me, it's just like the farmers can take advantage of the [guest workers], where they can't take advantage of the Americans--you know what I'm saying? Because we know the laws when the [guest workers] don't...It's not fair on their part that they come out here and work like they do and they [abuse] them like that. And it's not fair on our part, the way they treated us."

The H-2A program allows agricultural employers to hire foreign guest workers on temporary work visas to fill seasonal jobs. In order to participate, employers must demonstrate a shortage of U.S. workers and that their wages and working conditions meet certain minimum requirements. Yet, as the stories in this report illustrate, the H-2A program is fundamentally flawed and characterized by rampant abuse of both domestic and foreign workers.

#### SUMMARY OF FINDINGS

*No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, a product of interviews with current and former H-2A workers, information from media exposes, lawsuits against H-2A employers, and the experiences of workers and advocates over the past 30 years, demonstrates that:

- Guest worker programs drive down wages and working conditions of U.S. workers and deprive foreign workers of economic bargaining power and the opportunity to gain political representation.
- The H-2A program's protections for U.S. workers and against exploitation of guest workers by employers are modest; in fact, they are similar to those in the Bracero program (1942-1964), which was terminated due to its notorious labor abuses.
- Once an employer decides to enter the H-2A program, the law creates incentives to prefer guest workers over U.S. workers. For example, the employer must pay Social Security and unemployment taxes on U.S. workers' wages but is exempt from paying these taxes on guest workers' wages.
- Violations of the rights of U.S. workers and guest workers by H-2A program employers are



rampant and systemic. The U.S. Department of Labor (DOL), which has primary responsibility for administering the H-2A program, frequently approves illegal job terms in the H-2A workers' contracts. U.S. workers who apply for H-2A jobs are rejected or forced to quit. Employees at H-2A employers routinely experience wage theft and other unlawful practices.

→ Abuses in the recruitment of foreign workers are endemic. H-2A employers and their recruiting agents in Mexico and other poor countries exploit the vulnerability of foreign citizens. Many guest workers must pay recruiters for H-2A jobs and enter the U.S. indebted, desperate to work, and fearful that the loss of their job will lead to financial ruin. The H-2A recruitment system has led to numerous documented cases of debt-peonage, human trafficking, and forced labor.

→ More than one-half of the farmworkers on U.S. farms and ranches lack authorized

immigration status. The presence of so many undocumented workers deprives all farmworkers of bargaining power and political influence. Deporting all or most undocumented farmworkers would be costly and impractical, inflict harm on hundreds of thousands of hard-working farmworkers and their families, many of whom are United States citizens, and deprive agriculture of the workforce it needs to produce our fruits, vegetables and livestock.

### RECOMMENDATIONS

This report culminates in a series of recommendations to reduce the violations of the modest labor protections in the H-2A agricultural guest worker program, fix our

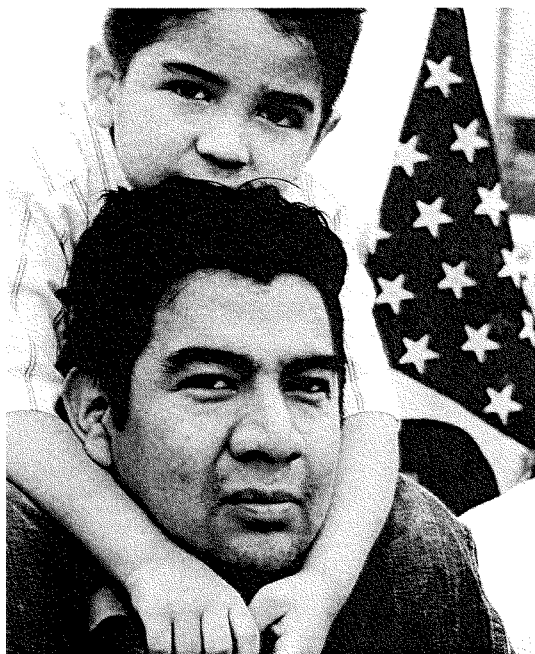
broken immigration system, and empower farmworkers to improve their wages and working conditions, occupational safety, health and access to justice. Foreign guest workers should not be treated as disposable human machines, nor should they be used to deprive U.S. workers of available jobs or to undermine wages and working conditions of U.S. workers. H-2A guest workers should be treated with dignity. Ultimately, the people who put food on our tables should have the opportunity to become full-fledged immigrants on a path to citizenship. Key recommendations include:

→ **Cracking Down on Abusive Employers:** DOL should increase oversight and enforcement in the H-2A program. DOL must address illegal job terms and program violations more effectively, including rejecting terms aimed at discouraging U.S. workers, obtaining complete remedies for victimized workers, imposing fines on employers that deter illegal conduct, and barring employers from the program when serious violations occur.

→ **Ending Systemic Abuses During Recruitment:** The Administration should exercise jurisdiction over H-2A recruitment abroad and hold employers accountable for the actions of their recruiters. The root of much guest worker exploitation lies in the foreign country when the workers are recruited, yet our government does almost nothing to protect workers during the recruitment process. Recruitment practices, including discrimination, that would be illegal if they occurred in the United States should not be tolerated just because they occur abroad. DOL should shine light on the dark world of labor recruitment, examine the international recruitment mechanisms that result in foreign workers' indebtedness, and hold employers accountable when recruiters and contractors acting on their behalf violate the law.

→ **Collaboration with Local Stakeholders:** DOL should work closely with farm labor unions and other advocacy organizations to educate and empower workers to prevent and remedy abuses by employers.

→ **Wages and Labor Protections that Protect U.S. and Foreign Workers:** H-2A program wage rates and labor protections should be strengthened to improve wages and working conditions to attract and retain U.S. farmworkers and stop abuse of guest workers.



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The financial incentives for H-2A employers to prefer guest workers over U.S. workers, including exemptions from Social Security and unemployment taxes, should be removed. Proposals in Congress to reduce H-2A wage rates and labor protections or to create entirely new guest worker programs with little or no protections should be rejected.

→ **Freedom to Change Employers and Become Full Members of Society:** Congress should revise the status of H-2A workers to reduce their vulnerability. H-2A workers should be allowed the freedom to change employers and should be given the opportunity to earn immigration status. Guest workers' forced tie to a single employer leaves them reluctant to challenge illegal or unfair employer practices. Similarly, their inability to obtain a permanent


immigration status, no matter how many seasons they return to the U.S. on an H-2A visa, deprives them of the opportunity to better their conditions. Congress should apply the concept of a free labor market and our history as a nation of immigrants to the H-2A program.

→ **A Compromise to Ensure a Stable, Decently Treated Workforce: Congress should pass the Agricultural Jobs, Opportunities, Benefits, and Security Act (AgJOBS).**

AgJOBS is a bipartisan compromise between growers and farmworker groups that would allow currently unauthorized farmworkers to earn legal immigration status by continuing to work in U.S. agriculture, make balanced changes to the H-2A program, and provide U.S. growers with a stable, productive, and decently-treated farm labor force.

PART  
01

# AN INHERENTLY FLAWED SYSTEM



Each year, thousands of workers from countries around the world leave their homes to spend a few months harvesting crops on American soil. Participants in the H-2A temporary foreign agricultural worker program, these "guests" have often paid significant sums to recruiters and government agencies to obtain jobs, visas, and transportation. They expect to work hard at jobs for which American workers are unavailable. They expect to be provided with livable housing and safe working conditions. And they expect to earn enough to return home and feed themselves and their families. >>

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Yet when they arrive in the United States, many H-2A workers find a much harsher reality. Social and geographic isolation, lower than advertised wages, less work than promised, dirty and dilapidated housing, dangerous working conditions, and even forced labor or slavery typify the experience of many guest workers. Some have been brought to replace domestic workers who still want the work and are entitled to such jobs. But, allowed to work only for a single employer who can send them home at will, most H-2A workers are too fearful of retaliation to speak out about these harsh (and frequently illegal) working conditions.

This report, *No Way to Treat a Guest*, documents the inherent flaws of the H-2A program and the abuses that result. The H-2A program allows agricultural employers to hire foreign workers on temporary work visas to fill seasonal jobs when they can demonstrate a shortage of U.S. workers and that their wages and working conditions meet certain minimum requirements. Short summaries of the history, legal framework, and current location of H-2A jobs provide the background necessary to understand the

  
MORE THAN  
**50%**

of the farmworkers on U.S. farms and ranches lack authorized immigration status.

Deporting them all would decimate American agriculture. In fixing our broken immigration system, skilled, law-abiding farmworkers should be given the opportunity to earn legal immigration status and continue their work in agriculture.

program. The bulk of this report explores the various ways in which the H-2A program harms both U.S. and foreign farmworkers, using examples of abuse from recent media and lawsuits. Real-life stories, summarized from interviews conducted by Farmworker Justice with both domestic workers and H-2A workers, illustrate the effects of these abuses on workers.<sup>7</sup>

These stories are a wake-up call to policymakers and others who are searching for solutions to ensure an adequate supply of farm labor and continued production of abundant, safe, healthy food on the nation's farms and ranches. Currently, the majority—50% to as much as 70%—of the nation's 2 to 2.5 million farmworkers lack authorized immigration status. Many of the rest are U.S. citizens or lawful permanent resident immigrants. Though H-2A guest workers account for only a small percentage of farmworkers in the U.S., their treatment sets the bar low for the entire agricultural industry, and their availability depresses wages and working conditions for U.S. workers.



Workers' last names and the names of their employers have been omitted to protect them from possible retaliation. Some workers have also requested that false names be used to further protect their anonymity.



"The H-2A guest worker program, like the infamous *bracero* program, is not a practical or humane solution to ensuring a productive and available farm labor force. The H-2A system virtually guarantees foreign workers will be exploited during recruitment abroad and in the fields of this country, and that U.S. farm workers will lose job opportunities and suffer depressed wages. The impact of mandatory E-Verify would be millions of new guest workers in agriculture on top of the millions of undocumented workers already here. The H-2A law and its enforcement should be strengthened to reduce abuses. But the only equitable and practical answer is for Congress to allow farm workers who are currently undocumented to earn legal status by continuing to work in agriculture."

—Arturo Rodriguez,  
president, *United Farm Workers of America*

In the ongoing contentious debate about immigration policy in the U.S., some portray guest worker programs as necessary to provide a legal and stable labor force in industries, particularly agriculture, where the work is seen as undesirable to most Americans. Yet the abuses endemic to the H-2A program suggest that guest worker programs cannot and should not be the model for America's farms. The creation of a large temporary workforce with few rights, no freedom to change employers, and no path to permanent status not only harms both U.S. and domestic workers, but also runs contrary to our nation's commitment to economic and political freedom. Ours is a nation of immigrants, not of guest workers.

Instead, Congress should give undocumented farmworkers an opportunity to earn legal immigration status. If allowed to continue at all, the H-2A program should remain a supplementary source of labor in times of bona fide local labor shortages. Some policymakers and employers call for radically de-regulating the H-2A program by slashing wage rates, eliminating housing requirements, weakening labor protections and reducing government oversight. But this report makes clear that, on the contrary, the H-2A program's abuses need to be addressed through increased labor protections, oversight and enforcement.

## A HISTORY OF AGRICULTURAL GUEST WORKER PROGRAMS

The search for a cheap, seasonal, farm labor force to produce America's food while maximizing the profits of U.S. agribusiness has nearly always begun abroad. From the beginning of the American colonies, the importation and oppression of **slave labor** allowed growers of cash crops—including tobacco, sugar, and cotton—to minimize labor costs while maintaining a stable, highly productive workforce. Similar concerns led 19<sup>th</sup> century growers establishing new farms on the frontier to use low-paid

seasonal agricultural workers from **China**, the **Philippines**, and **Japan**.<sup>2</sup> The economic desperation and tenuous immigration status of foreign farmworkers, along with racial discrimination, deprived them of bargaining power with their employers and of political power to affect the policies of the U.S. government.

The **first bracero (literally, "strong-arm")** guest worker program was created in 1917 at the behest of growers, who argued that World War I had created a labor shortage crisis in agriculture. The program allowed more than 70,000 Mexican workers to enter the US temporarily for work in cotton and sugar beets.<sup>3</sup> Though it ended in 1921, many workers stayed after their term of employment, some because employers refused to pay for their transportation home. The Great Depression led to a crackdown on immigrant workers, who were seen as a threat to American workers, and many of the former *braceros* were repatriated to Mexico.<sup>4</sup>

The onset of World War II led to renewed grower complaints of a labor shortage, despite pronouncements by the Secretary of Labor that there were 1.6 million surplus domestic farmworkers.<sup>5</sup> A new **bracero program** was established in 1942 through a bilateral agreement between the governments of the U.S. and Mexico. Over the next 22 years, an estimated two million Mexican men entered the U.S. to work as *braceros*.<sup>6</sup>

The *bracero* program became notorious for the rampant abuse of foreign workers, despite significant legal protections for both domestic and foreign workers. For example, workers were guaranteed sanitary housing, access to medical care, round-trip transportation, and the prevailing wage for their task and crop. They were not to be used as strikebreakers.<sup>7</sup> In practice, however, few *braceros* were willing to speak up to enforce their rights, because they were tied to a single employer, and renewal of their contract depended on the employer's good will.<sup>8</sup> Many were cheated out of wages. Housing conditions were deplorable. Workers were transported in unsafe vehicles and were denied access to healthcare. The

<sup>2</sup> Philip Martin, *Importing Poverty: Immigration and the Changing Face of Rural America* (New Haven: Yale University Press, 2009), 20-23.

<sup>3</sup> Martin, 23-24.

<sup>4</sup> Gary G. Gutter, "H-2A Guestworker Program: A Legacy of Importing Agricultural Labor" in *The Human Cost of Food: Farmworkers' Lives, Labor, and Advocacy*, ed. Charles D. Thompson and Melinda J. Wiggins (Austin: University of Texas Press, 2002), 115.

<sup>5</sup> Deborah Cohen, *Braceros: Migrant Citizens and Transnational Subjects in the Postwar United States and Mexico* (Chapel Hill, NC: University of North Carolina Press, 2010), 22.

<sup>6</sup> Martin, 26.

<sup>7</sup> Cohen, 22.

<sup>8</sup> Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story* (San Jose, CA: The Roxis/Scian Press, 1964), 237.

## A FARMWORKER'S STORY

## David (Salinas, CA)

David, now 80, looks back fondly at the relationships he made as a bracero in the 1950s. "We thought of each other as brothers. We all got along very well," David said of his fellow workers.

Yet his description of his bracero experience makes clear the powerlessness and vulnerability of the men who came north to pick American crops. In large part, this was due to the abundant supply of willing young Mexican men desperate for a job. David fit this bill. A native of Zacatecas, Mexico, he traveled three days to the contracting office in Chihuahua, where he found 20,000 people angling for work. He slept in a ditch near the train station for one month, only to be sent home when they announced that the visas had all been distributed.

But David did not give up, and he finally got a visa and a job to drive tractors in Texas. Once in the U.S., the braceros were fumigated and sprayed with DDT before being shipped off to their workplaces. "We were shoved into the trucks, just like they do with animals," said David.

Like the H-2A program of today, David was tied to a single employer. When the contract was over, he had to return to Mexico. David travelled back and forth a number of times, each time obtaining a new contract, sometimes lasting just 40 days. He worked in Texas, Arkansas, and California. He picked cotton and was a tractor driver in corn, sorghum and other crops.

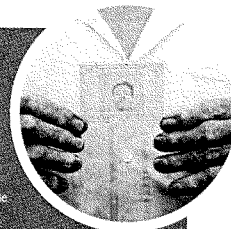
Living situations varied depending on the employer. During

one contract, David lived in crowded tin barracks filled with 40 workers or more. Workers slept in bunk beds in the same room with the stoves and kitchen facilities.

In Texas, David worked 12-hour days and was paid 50 cents an hour. But the desperation for work meant that no one demanded to see a contract or better pay. "No one asked [about wages] because they needed the work," said David.

David returned home after his last bracero contract in 1958. He returned to the U.S. in 1960 on a permanent work visa. David settled down in Salinas, studied welding, and started a family. He now has six children and nine grandchildren.

In the early 2000s, David and other former braceros discovered that the Mexican government had never repaid them the wages withheld in "savings accounts," legally guaranteed to them upon return to Mexico. Though the government agreed in 2008 to pay up to \$3,500 to those who could prove they had been braceros, David no longer had any documentation. "I fought and tried to get it," said David. But he ultimately failed to obtain even this token of acknowledgement for the years spent as a low-paid temporary worker in America's fields.



availability of braceros undercut the wages of U.S. workers.<sup>9</sup> In many locations where large numbers of braceros filled jobs, their lack of economic bargaining power meant that they could not seek wage increases; thus, the "prevailing wage" in such places stagnated and became unattractive to U.S. workers. In short, conditions were in many ways similar to today's H-2A workers, but the large scale of the bracero program captured the attention of the labor and civil rights movements and eventually the public.

Congress finally shut down the bracero program in 1964, but left in place another avenue to "import" foreign workers, the **H-2 program**.<sup>10</sup> This program began during World War II and

became codified in the immigration law in 1952. For many years, it was used mostly by East Coast apple growers and by Florida sugar cane growers to hire workers from the Caribbean. The H-2 program's provisions were similar to those in the bracero program, but it was not accompanied by government-to-government agreements. Abuses in the sugar cane industry were rampant, generating significant publicity and lawsuits.<sup>11</sup>

The Immigration Reform and Control Act (IRCA) of 1986 separated the H-2 program into two temporary worker programs: **H-2A for agricultural workers** and **H-2B for non-agricultural workers**. Both programs continue to be marked by worker abuses to this day, even as they expand into new industries and sectors. The H-2A program, in



Decades of experience have revealed that guest worker programs

### DRIVE DOWN WAGES

and working conditions of U.S. workers, and deprive foreign workers of economic bargaining power and the opportunity to gain political representation.

<sup>9</sup> "Bittersweet Harvest: The Bracero Program, 1942-1964, Broken Promises," National Museum of American History, online at <http://americanhistory.si.edu/bracero/bracero.html>, exhibition.cfm?key=1267&key=7705&page=780.

<sup>10</sup> The law that governs the H-2A program (8 U.S.C. §1185) uses the term "import" when referring to the human beings who are brought to work in the United States on temporary work visas. While the term "import" is associated with commodities, the U.S. Constitution used that term to refer metaphorically to chattel slavery.

<sup>11</sup> For example, Stephanie Black's film "H-2 Worker" (1990), won awards at the Sundance film festival for its expose of worker exploitation in the Florida cane industry.

the tradition of the agricultural guest worker initiatives that came before it, provides growers with an endless supply of physically strong, economically vulnerable, politically powerless workers from poor countries, who will work to the limits of human endurance in dangerous conditions for low wages.

### REGULATORY FRAMEWORK: LESSONS FROM DECADES OF ABUSES

*Recognizing that guest worker programs leave workers—both domestic and foreign—open to exploitation and abuse, policymakers since World War II have instituted procedures and labor protections for workers. The current H-2A regulations were codified by the Reagan Administration in 1987. Yet over the*

years, employer groups have lobbied hard to “streamline” the program. In the final days of the second term of the George W. Bush Administration, the Department of Labor (DOL) substantially revised the H-2A program regulations, removing many labor protections, slashing wage rates and reducing government oversight. In 2010, the Obama Administration reversed these changes and restored most of these provisions.

The law and regulations governing the H-2A program require that in order to accept an employer into the program, the Department of Labor must certify that (1) there are not enough U.S. workers “able, willing, qualified, and available” to perform work at the place and time needed; and (2) the wages and working conditions of U.S. workers will not be “adversely affected” by the importation of guest workers. In theory, the law means that employers must recruit and hire qualified

#### A FARMWORKER'S STORY

## Gilberto, Francisco, Gabriel, and Ramon (Yuma County, AZ)

These four men, all legal permanent residents of the United States, live in the border region of San Luis, Arizona/Sonora. With more than 50 years of farm work between them, they are hardly the inexperienced Americans that some growers claim are the only alternative to H-2A.

In June, 2009, all four obtained jobs harvesting melons for a farm labor contractor. Every day a bus would pick them up at 1:00 am for the two and a half hour trip. Sometimes they'd have to wait another two hours to enter the fields. Though the work ended around 3:00 pm, often the bus did not arrive for another two hours. The men said they were not paid for the time spent on the bus, nor for the time spent waiting to enter the fields or board the bus.



One afternoon, a few weeks into the season, the bus did not arrive to take them home. They heard that their bus had been diverted to pick up H-2A workers. The crew was forced to walk miles in

the hot desert to find the nearest phone. Finally, at around midnight, the labor contractor arrived to drive them home.

Sure enough, when reporting to work the next day, the crew was told that they had been fired and replaced by H-2A workers. “They told us there was no work for San Luis people,” said Gabriel. But why choose H-2A workers over domestic residents? Gabriel explained that while the domestic workers would finish working in the early afternoon, the employer could make the H-2A workers work longer hours, through the hottest and most dangerous part of the day.

Not only had they been abandoned in the fields, but they were now jobless. Francisco expressed his frustration: “I felt really bad because at that time there was not a lot of work available. I needed work... the contractor should be punished for what he did to us so it will not happen to other workers.”

Yet the employer was not punished. Though over 80 complaints of unpaid wages and violations of employment terms for this employer were submitted to DOL during summer 2009, DOL has continued to allow the contractor to employ more H-2A workers, approving its request for nearly 700 workers in the fall of 2009 and more than 1,160 workers in summer and fall 2010.

U.S. workers before hiring guest workers. In addition, the employer must offer and provide wages and other job terms high enough to attract and retain U.S. workers.

The labor certification process required by the H-2A law, in theory, demands more government oversight and employer accountability in the H-2A application process than the attestation process in place for the H-1B program for higher-skilled jobs, for example.<sup>32</sup> In practice, however, the additional scrutiny of employers and their job terms that should happen under labor certification rarely occurs. In Fiscal Year (FY) 2009, DOL certified 94% of the worker positions requested by growers<sup>33</sup> and routinely approved applications that contained illegal job terms.

Below is a list of the key H-2A program rules that, in theory, are supposed to protect workers. Unfortunately, in practice, many are not adequately enforced, and others have flaws leading to abuses:

**Wages** offered by H-2A growers must be the highest of: (a) the local labor market's "prevailing wage" for a particular crop as determined by DOL and state agencies; (b) the state or federal minimum wage; or (c) the "adverse effect wage rate" (AEWR), an hourly wage determined by DOL for each state based on the USDA's annual Farm Labor Survey of average regional hourly wages for non-supervisory crop and livestock workers. In most cases, the AEWR is the highest rate.

→ *In theory*, this protects U.S. farmworkers by ensuring that growers cannot undercut their wages, and protects vulnerable foreign workers who would feel compelled to accept a substandard wage.

→ *In practice*, the wage levels are based on surveys of wage rates that are depressed because they include earnings of undocumented workers, not just U.S. workers. The wage rates are also outdated because they are based on the previous year's surveys. In addition, many growers violate the wage requirements.

**Recruitment of U.S. workers** must occur through the interstate employment service system and

through private-market efforts to find and hire farmworkers. Growers must post job orders with the state workforce agency (SWA) between 60 and 75 days before the date of need. Job qualifications and requirements must be reasonable and must not discriminate against U.S. workers.

→ *In theory*, this protects U.S. workers by ensuring that growers attempt to hire U.S. workers first.

→ *In practice*, growers' recruitment of U.S. workers often is inadequate and many employers impose inappropriate job requirements to "scare away" domestic workers.

**"Fifty Percent Rule"** requires employers to hire any qualified U.S. worker who applies for work until one-half of the season has ended.

→ *In theory*, this protects U.S. workers' jobs by preventing growers from choosing an H-2A guest worker over a qualified U.S. worker and by mandating that farms hiring additional workers for peak harvesting time must continue to accept domestic applicants.

→ *In practice*, many U.S. workers are not offered available jobs at H-2A employers or are quickly forced to quit.

**"Three-fourths work guarantee"** requires that employers offer recruited workers at least  $\frac{3}{4}$  of the number of working hours in the work period outlined in the contract (except when impossible due to "Acts of God") or pay wages for any shortfall in work opportunities.

→ *In theory*, this protects U.S. and foreign workers by discouraging over-recruitment and guaranteeing income for migrant workers who have traveled long distances to work.

→ *In practice*, many workers are not paid all the wages they are promised under the three-fourths guarantee.

**Housing** that meets DOL standards for temporary labor camps must be provided at no cost to the workers who do not live in the local area. Employers must also provide three meals a day (at a cost to the worker) or, alternatively, convenient cooking and kitchen facilities for workers to make their own meals.

→ *In theory*, this serves as an important safeguard against homelessness,



"The treatment of temporary guest workers is of great importance to the civil rights community because guest workers face severe social and economic discrimination as well as a shortage of labor protections. Guest workers have long been the most vulnerable and poorly treated workers among us. Ending the abuse of guest workers in America's fields and giving them a chance to earn legal status is critically important and will also help ensure the fair treatment of America's farmworkers."

— Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights

<sup>32</sup> The attestation process allows employers to promise compliance with the H-1B requirements. DOL takes this promise at face value during the application process, with the assumption that it will later audit employers for compliance. By contrast, certification in the H-2A program means that DOL must review employment contracts and verify the employers' compliance before approving H-2A applications.

<sup>33</sup> "The Foreign Labor Certification Report: 2009 Data, Trends, and Highlights Across Programs and Sectors," U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification (2010), online at: [http://www.foreignlaborcert.dhs.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.dhs.gov/pdf/2009_Annual_Report.pdf)



Growers complain that government oversight makes the H-2A program too difficult and costly for them to use. But they bring scrutiny upon themselves by routinely failing to comply with rules designed to protect workers. Growers' H-2A applications far too often contain

**ILLEGAL OR QUESTIONABLE** job terms that would be easy to correct before submission to DOL. Troubling job terms that H-2A growers have frequently sought to impose include, for example, past experience or employer references for entry-level field work (aimed at discouraging U.S. workers from applying); inflated "productivity" requirements (to provide excuses for firing workers); and demands that workers agree to give up their rights to pursue legal remedies in court.

acknowledging that both foreign and U.S. workers would have trouble finding temporary accommodations in rural areas with limited housing.

→ *In practice*, housing is often appallingly substandard, oversight is lax, and farmworker advocates have been prevented from meeting workers in their homes, which growers claim is their private property. In some locations, employers claim that workers are "local" and can commute to their own homes each day, even when they have overly long commutes.

**Transportation costs** incurred by the worker to arrive at the place of employment must be reimbursed by the employer after workers complete half the season. Employers must pay the cost of returning home for those who complete the full season.

→ *In theory*, this facilitates recruitment of migrant domestic workers from outside of an employer's immediate location, reduces the debts incurred by foreign workers on their way to the U.S., and ensures that foreign workers can afford to return home.

→ *In practice*, workers are routinely fired

or coerced to sign voluntary quit forms before the end of the contract to subvert this requirement.

**Workers compensation** must be provided for occupational-related injuries.

→ *In theory*, this protects both U.S. and foreign workers by ensuring medical care for injured workers and that the cost of health care for work-related injuries will not be borne by the worker.

→ *In practice*, employers send injured foreign workers home after being injured, making it very difficult to access workers' compensation.

The modest legal protections put into place by DOL, many of which also existed under the bracero program, have not changed the inherent and systemic problems with the H-2A program. DOL oversight is lax, and most applications are approved, even for growers publicly known to ignore the law. The H-2A program continues to displace U.S. workers, and leads to rampant abuses, including wage theft, discrimination, and even debt peonage. These abuses, with personal examples, are discussed in further detail in the next section.



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## WHY DO EMPLOYERS USE GUEST WORKERS?

Employers have a long history of advocating for access to temporary foreign agricultural workers. In most cases, once growers enroll in the program, they never return to hiring domestic labor. But why do growers like H-2A workers so much? H-2A workers are an extraordinarily productive labor force employed at relatively low cost, for the following reasons:

### 1. Foreign workers are economically desperate.

Most H-2A workers come from home countries plagued by economic crises and poverty. They are thus willing to accept wages and working conditions that U.S. workers could never afford to accept due to the high cost of living in the U.S.

### 2. Temporary workers lack full rights.

H-2A workers have limited, non-immigrant status, and cannot stay in the U.S. beyond their work term with a particular employer. Workers are tied to the employer who brought them to the country and can only work for that employer. Most are hesitant to report abuses because employers can freely fire (and deport) "troublemakers," or decide not to re-hire them again. H-2A workers are excluded from the main employment law for farmworkers. Additionally, foreign workers generally lack knowledge of U.S. laws and employment norms and may not know when an employer is breaking the law.

**3. Employers can "hand-pick" a certain demographic of workers.** Our government has not sought to apply U.S. anti-discrimination laws to H-2A employers' recruitment of foreign workers that occurs abroad. Growers thus can pick their ideal workforce—mostly young men removed from daily family obligations who will work long hours for low pay.

**4. H-2A employers are exempt from paying Social Security and unemployment taxes on guest workers' wages.** Since H-2A employers must pay federal social security and unemployment taxes if they hire U.S. workers, they can save substantial money by hiring guest workers.

**5. Employers can avoid the wage demands of the labor market.** Once an employer receives approval of its job offer from the Department of Labor, it may reject qualified U.S. workers who seek a higher wage or an extra benefit, such



"Everyone is hurt when growers abuse the guestworker program...Not only do the guestworkers suffer, but U.S. workers are cut out of the labor market, and the growers gain an unfair advantage over their competitors."

—Mel Fowler Green, Southern Migrant Legal Services, Texas RioGrande Legal Aid, quoted in Southern Migrant Legal Services, Press Release: Workers Sue East Tennessee Tomato Farm For Discrimination and Retaliation (Apr. 12, 2011)

as paid sick days, and fill the slot with a guest worker willing to accept the approved terms. Similarly, a demand for higher wage rates by a labor union can be easily rejected. Thus, the minimum wage rates and other job protections required by the H-2A program usually become the maximum that a worker can hope to attain and that an employer need offer.

It is clear that a vulnerable foreign labor force allows employers to squeeze out maximum productivity at minimal labor cost. But an important question remains: Why can agricultural employers access unlimited numbers of foreign guest workers while employers in other industries must compete for workers in the labor market?

## WHO USES H-2A? AN ANALYSIS OF DOL DATA

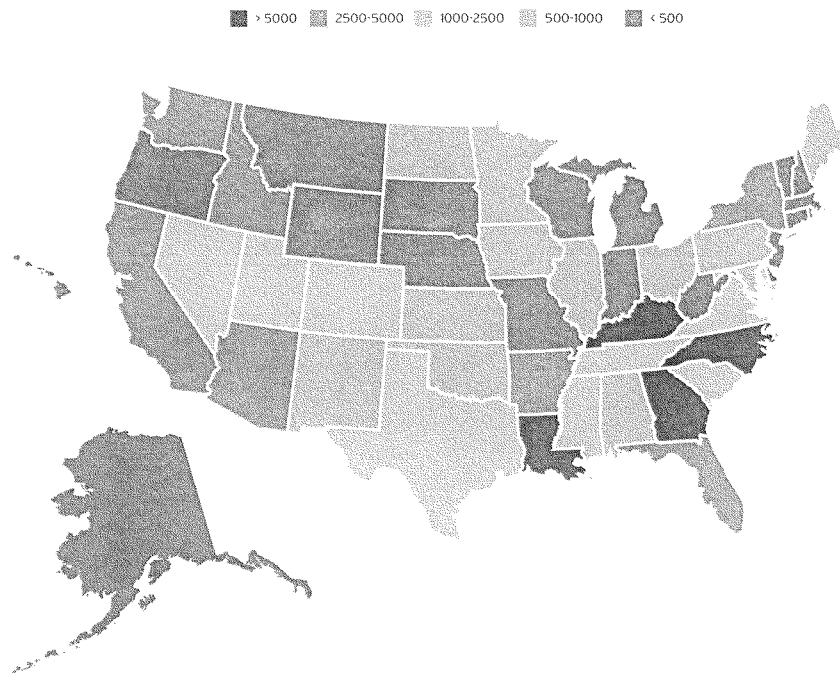
The H-2A program historically has been concentrated in particular geographic areas and crops, but it has spread to new states and crops in the last decade. Every state had H-2A

workers in fiscal year (FY) 2010 (see Figure 1). H-2A workers make up a significant section of the workforce in North Carolina tobacco, New York apples, Louisiana sugarcane, and Florida citrus. They pick strawberries in California, harvest onions in Georgia, and cut lettuce in Arizona. Some H-2A workers even labor in the wheat fields of Texas and the corn fields of Minnesota. In short, H-2A workers are involved in nearly every segment of the agricultural industry in the United States. Still, at approximately 80,000 certified positions, the H-2A

program represents only a small percentage of the nation's 2 to 2.5 million agricultural workers.

North Carolina has been the state most heavily invested in the H-2A program during the last 15 years, with 9,387 positions certified in FY 2010, comprising nearly 12% of the national H-2A workforce. Other states with more than four thousand H-2A positions in FY 2010 included Louisiana, Georgia, Florida, Kentucky, and Arizona (see Figure 2).

Figure 1: Number of H-2A Workers Certified by State (FY 2010)<sup>14</sup>



<sup>14</sup> Analysis by Farmworker Justice based on data from H-2A Disclosure Database at <http://www.feddatacenter.com/CaseH2a.aspx>. Analysis of the H-2A disclosure data file requires careful assessment, as the database contains some duplicate records for the same application. This occurs when a master application is submitted by a grower association filing as joint employer with its members, and both the master application and employers' requests are entered into the data file separately using the same case number. Therefore, to avoid double counting, we used only the record with the largest (summary) number from the column, "Number of Workers Requested" for records with the same case number. Source: Personal email from Chantessa Henshaw, Program Management Analyst, Office of Foreign Labor Certification.

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The expansion of the H-2A program has continued during an economic downturn and high unemployment (see Figure 3). In FY 2005, the DOL's Office of Foreign Labor Certification (OFLC) approved 48,336 H-2A positions. In FY 2009, OFLC approved 86,014, an increase of nearly 80% in just four years.<sup>16</sup>

There are U.S. workers who want agricultural jobs, but the H-2A program often allows employers to avoid hiring them. All the

top six H-2A states, with the exception of Louisiana, had a 2010 average unemployment rate higher than the U.S. average of 9.6%. In North Carolina, for example, the 2010 average unemployment rate was 10.6%.<sup>17</sup>

Yet, because the H-2A program lacks an adequate test of the labor market, employers who could have recruited and hired U.S. workers were permitted by DOL to hire foreign guest workers instead.

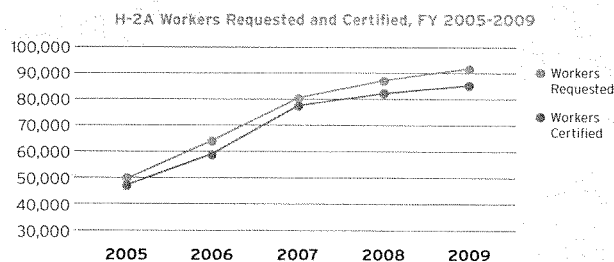
Figure 2: Top 15 H-2A States (FY 2010)<sup>15</sup>

STATE	Workers Certified	% Certified
North Carolina	9,387	95.0%
Louisiana	6,981	93.3%
Georgia	5,561	69.8%
Kentucky	5,455	98.7%
Florida	4,510	92.7%
Arizona	4,309	86.0%
New York	3,858	94.1%
Washington	3,014	94.8%
Arkansas	3,006	86.9%
California	2,629	94.5%
Idaho	2,547	89.2%
Virginia	2,455	97.6%
Texas	2,319	75.3%
South Carolina	2,247	91.5%
Tennessee	2,183	96.5%



The H-2A program's protections for U.S. workers' job preference and against exploitation of guest workers by employers are modest; in fact, they are similar to those in the bracero program (1942-1964), which was terminated due to its NOTORIOUS LABOR ABUSES.

Figure 3: Increase in H-2A Requests and Certifications (FY 2005-2009)<sup>16</sup>



<sup>15</sup> "% Certified" is N\*100, where N = (the number of workers certified by DOL/number of workers requested by employers).

<sup>16</sup> U.S. Department of Labor, Office of Foreign Labor Certification, Foreign Labor Certification Performance Reports, FY 2006 and FY 2009. Online at: <http://www.foreignlaborcert.dol.gov/>

<sup>17</sup> "News Release: Regional and State Unemployment - 2010 Annual Averages," U.S. Department of Labor, Bureau of Labor Statistics (25 February 2011, online at: <http://www.bls.gov/news.release/pdf/squeue.pdf>).

<sup>18</sup> Data from Foreign Labor Certification Performance Reports, FY 2006, FY 2007, FY 2009. Online at: <http://www.foreignlaborcert.dol.gov/>

PART  
02

# THE FACES OF ABUSE



## REPLACEMENT OF U.S. WORKERS

Though the regulations governing the H-2A program require employers to give job preference to qualified U.S. workers, in practice the H-2A program puts U.S. workers out of work. Growers can often be heard chanting the chorus that U.S. workers "just don't work as hard" or are "not as loyal" as foreign workers. But rather than prove the inherent laziness of all Americans, these claims simply reveal the disproportionate power that employers hold over a foreign labor force with few rights. >>

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U.S. workers have alternatives and can change jobs if they are unhappy with their workplace—a freedom not allowed H-2A workers. Additionally, H-2A growers can save money by hiring guest workers; they do not have to pay Social Security and unemployment taxes on the wages paid to H-2A workers, but must do so for U.S. workers. Growers have thus gone to great lengths to unlawfully exclude qualified U.S. workers in favor of guest workers.

The gimmicks used to deny employment to qualified U.S. workers are plentiful. Real-life examples include interviews scheduled at inconvenient times or locations; hiring that occurs too early in the season, leading workers to arrive for work when there is none; limiting domestic workers' hours in order to discourage them from continuing to work; employment contracts demanding that workers give up their right to sue a grower for lost wages; and unrealistic work

demands and productivity quotas. Employers know that they can—and often do—chase away willing U.S. workers with such unfair terms.

Other times there is no pretense: Domestic farmworkers are simply turned away or fired in favor of guest workers. For example, in 2006, after harvesting citrus fruit for an Arizona labor contractor for three previous seasons, a crew of domestic employees was told by their foreman that the company would no longer hire domestic labor, but would instead use H-2A. Sure enough, when they arrived at the *corralon* (pick-up spot) the buses previously reserved for them were now filled with H-2A workers "from all over Mexico." Fernando, a U.S. citizen and displaced worker, asserted, "I'm not against H-2A workers, but they should hire us, the experienced workers, first." A complaint alleging discrimination against the U.S. workers is currently pending in federal district court.<sup>19</sup>



"I think it was more or less, they didn't want the Americans out there."

—Kathern (Colquitt County, GA)

#### A FARMWORKER'S STORY

### Mary Jo and Kathern (Colquitt County, GA)

Mary Jo and Kathern are longtime residents of Colquitt County, Georgia. Both have worked in agriculture for much of their lives, and Mary Jo grew up with her grandmother, who worked as the live-in housekeeper for a farm family. She learned to pick vegetables at the age of fourteen. More recently, she was a crew leader on some other farms in the area. "I love to work," said Mary Jo.

In September 2010, both Mary Jo and Kathern were out of work. At the unemployment office they saw an H-2A job-order for machinist picking advertising \$9.11 per hour for 40 hours a week of work. The work was at the same farm on which Mary Jo grew up, which was now owned by the sons of her grandmother's employer. They both signed up.

But when Mary Jo, Kathern, and their coworkers arrived at the farm at 7:00 am, they found that to get the advertised wage, workers would have to meet a production standard of nine buckets an hour. Furthermore, the U.S. workers who arrived were forced to wait until 9:00 am before being allowed into the fields, even though a number of Mexican H-2A workers were already working.

Once in the fields, Kathern and Mary Jo had a hard time making the standard. After filling each bucket, they spent valuable time walking to the tractor—parked across the field—to unload. Meanwhile, the tractor serving the H-2A workers was close by. "They were trying to get us to quit," said Kathern. "[but]

I said, 'we need to prove to 'em that we at least want to work.'"

At about 10:30 am, Mary Jo, Kathern, and their co-workers were told their work for the day was done. "They sent all the blacks home," said Mary Jo, while the H-2A workers continued to work.

They were given work only every other day, and experienced the same frustrating routine. Finally, the workers who did not meet the production standard, including Mary Jo and Kathern, were fired. After transportation costs Mary Jo came home with less than \$30 for three workdays. "I've never been fired," said Mary Jo. "This is the first time it's ever happened to me."

Kathern explained, "The farmers can take advantage of the [guest workers] where they can't take advantage of the Americans... because we know the laws when [they] don't... I think it was more or less, they didn't want the Americans out there."



<sup>19</sup> Personal phone interview, 16 May 2011. See Figueroa et al. v. Servicios Agrícolas Mex, Inc. et al., No. 2:07-cv-02581-EHC (D. Ariz. Filed 19 December 2007).

## A FARMWORKER'S STORY

## Chinnawat (Johnston County, NC)

The soft tone of Chinnawat's voice indicates a man who possesses wisdom born of experience. A victim of human trafficking and recruitment fraud, Chinnawat was brought to North Carolina from his native Thailand to do farm work in 2005. He had previously been recruited for temporary work in other countries, including Taiwan, where he had a "good experience." But the U.S. guest worker program would prove much less hospitable.

The H-2A recruiter's promises sounded reliable: \$8 an hour; 40 hours a week; free housing and food; a year-long contract, with the promise that it would be extended for two years. Chinnawat took out loans with his house as collateral to pay the approximately \$11,250 recruitment fee, figuring that even at 3% interest per month it was a smart investment for three years of "good work, good pay" as an H-2A worker in America's vegetable fields.

On arrival in North Carolina in August 2005, the workers were sent to a motel where they slept as many as 6 or 7 to a room, the first sign, perhaps, that conditions might be different than promised. Chinnawat volunteered to cook for the workers and also worked picking broccoli and potatoes.

Soon they were moved to a barn behind the labor contractor's house, shared with insects and mice. They slept on the dirty vinyl floor and washed their hands and clothes at an outdoor faucet. At first the contractor provided decent food but soon became stingier, giving them only rice and vegetables. Workers had to scrounge for extra food in the fields. But the workers were afraid

to complain, explained Chinnawat, because they needed work.

Within weeks, work dried up, and only a few workers were allowed in the fields each day. The rest received no pay. Many "panicked," said Chinnawat, as they had no money to pay interest on their debt. Yet they were told not to leave the farm and feared that the police might arrest them if they disobeyed. The contractor would clean his gun in the workers' presence, an unspoken sign, said Chinnawat, of his power to endanger them and their families.

After Hurricane Katrina, the contractor took Chinnawat to New Orleans to do clean-up work. But this, too, lasted only a few days. Without money for food, Chinnawat was so hungry he caught and cooked a pigeon from the street.

Returning to North Carolina, Chinnawat decided that he could no longer live in these conditions.

Fortunately, he met a legal aid attorney,

who helped him organize an escape from the farm and connected the workers with an organization in Virginia. Chinnawat obtained a visa reserved for victims of trafficking. He now works in northern Virginia as a chef in a Thai restaurant, and lives with his wife and one of his two children.



Once an employer decides to enter the H-2A program, the law creates incentives to

**PREFER**  
GUEST WORKERS  
over U.S. workers.  
For example, the employer must pay Social Security and unemployment taxes on U.S. workers' wages but is exempt from paying these taxes on guest workers' wages.

As Dawson Morton, a legal services attorney in Georgia, recently said on HDNet's *Dan Rather Reports*, growers are "using the temporary guest worker program not as a temporary replacement but as a permanent workforce."<sup>22</sup> The protections aimed at preventing the H-2A program from replacing U.S. workers are clearly ineffectual. H-2A employers are thus given wide latitude to turn away domestic workers in favor of vulnerable foreign workers.

## RECRUITMENT, DEBT, AND HUMAN TRAFFICKING

Temporary workers from Mexico, Jamaica, or Peru do not just happen to appear by magic in places like Moultrie (GA), Red Creek (NY),

Petoskey (MI), or Yakima (WA) to take jobs in the fields. Rather, nearly all H-2A employers rely on private recruiters to find available workers in their home countries and arrange their visas and transportation to the fields.

Because it takes place outside the United States, this recruitment network is unregulated and highly exploitative.

Despite recently revised regulations making growers promise that neither they nor their agents have received fees from workers to obtain a job, some growers are quite willfully ignorant of what goes on across the border. With many potential recruits hoping to escape poverty at home, recruiters have a significant incentive to charge recruiting fees at great personal profit.

<sup>22</sup> "All I Want is Work," *Dan Rather Reports* (HDNet), Episode 532 (2 October 2010), online at: [http://www.hd.net/allifeeshaw\\_transcripts.php?ann=A66805&Dan\\_Rather\\_Reports&ser=532](http://www.hd.net/allifeeshaw_transcripts.php?ann=A66805&Dan_Rather_Reports&ser=532)

Thus, most H-2A workers arrive in the United States with significant debt. Some have paid as much as \$11,000 for the chance at a job. Others have left the deed to their house or car in the hands of a recruiter as collateral to ensure that they will "comply" with the terms of their contract. Some fear for their own physical safety or that of their family members if they cannot repay their debt. Many have been lied to about the conditions of the work, including wages, crops to be picked, length of their visa, and type of housing. Tied to one employer, workers have no choice but to work at whatever wage the employer offers. In short, the H-2A program creates conditions ripe for debt-peonage, not unlike the labor arrangements suffered by many African Americans in the post-Civil War South.

This system of debt can lead to forced labor as well. The H-2A recruitment company Global Horizons Manpower, Inc. faces well-publicized and documented accusations of human trafficking and enslavement. During 2004-2005, the company allegedly brought more than 400 Thai H-2A workers to farms in Hawaii and Washington with promises of long-term employment, forced them into debt with recruiting fees of up to \$21,000, and held them in forced labor conditions. According to an indictment filed by the Department of Justice

against the company's CEO and other executives, the object of this scheme was

...to obtain cheap, compliant labor performed by Thai H2A guest workers indebted by the defendants' recruiting fees, and to compel the workers' labor and service through threats to have the workers arrested, deported, or sent back to Thailand, knowing the workers could not pay off their debts if sent home, thus subjecting the workers to serious economic harm including loss of their family property.<sup>23</sup>

The Global Horizons scheme is the largest human trafficking case in U.S. agriculture, but it is by no means a unique case of recruitment abuses. As long as the H-2A program allows growers to rely on unregulated foreign recruiters, worker debt, fear, and illegal human trafficking will be the program's inevitable byproducts.

## WAGE THEFT

Foreign workers' vulnerability and lack of knowledge about their rights make them



I'm working,  
doing my best, feeling  
the sun on my back,  
working hard like a  
donkey, just so  
I could give my  
money to these  
people? How do you  
think  
I feel? You just feel  
like crying.

—Manuel  
(Okeechobee, FL)



<sup>23</sup> U.S. v. Orjan et al., Indictment, No. 130-CV-576 (Dist. HI., filed 1 September 2010), at 4.



"They want to keep the beds filled with hands that can work. They don't care about the people."

—Javier (Yadkin County, NC)

particularly susceptible to wage theft and other labor law violations.

Employers have devised many ways of ducking their obligations to pay workers the DOL-mandated wage, leading to lawsuits compelling H-2A employers to pay workers what they are rightfully owed. For example, in 2007, 80 H-2A workers in Georgia sued their employer for routinely underpaying them and missing paychecks. The employer had allegedly prepared backdated checks to hide late payments and false checks to hide non-payments, and had made the workers endorse blank checks.<sup>12</sup> In another class action suit in 2007 in Florida, an H-2A employer was sued for failing to report

all the hours employees had worked, in order to pay them less than required by the AEWR.<sup>13</sup> These are hardly isolated incidents; it is clear that wage theft is rampant throughout the H-2A program.

Some employers pay a piece rate rather than hourly wages. In theory, a piece rate encourages workers to work faster than they would under an hourly rate and produce more for the employer. But when employers set the rate low, and workers' earnings fall below the minimum H-2A rate, H-2A employers are required to supplement piece-rate earnings with "build up" pay to equal the AEWR or minimum wage for every hour worked. Often, however, the opposite happens:

#### A FARMWORKER'S STORY

### Manuel\* (Okeechobee, FL)

Manuel, a father of four from Veracruz, Mexico, has been working in citrus orchards since he was a child. But in recent years, Manuel has had trouble making ends meet from work in Mexico. "There's nothing here, nothing to eat," said Manuel, so he looked north for work.

In December 2008, Manuel was able to land an H-2A job picking oranges for a Florida contractor that provides labor for one of the largest citrus companies in the U.S. He was told he'd be making \$9.82 an hour. On arrival in Florida, he set out working long, hard days, sometimes 12 hours or more in the fields. But when his first paycheck arrived, Manuel learned that in order to keep his job he would have to kick back some of his promised pay to his employer.

"When we came out of the bank, the boss was already on the bus waiting for us," remembered Manuel. The boss had a "blacklist" in his hand indicating how many tubs of oranges each worker had filled. Workers were forced to pay back the difference between their piece rate earnings and the legally required Adverse Effect Wage Rate (AEWR)—also known as build-up pay—to the crewleader. "He was robbing us...he stole a lot of money," said Manuel, who had to kick back as much as \$130 some weeks.

Though the workers knew that they were legally entitled to be paid the hourly AEWR, their employer took advantage of the fact that their visas were dependent on him. "Many people wanted to complain but they were afraid...to have to come back to Mexico," Manuel explained. In fact, they had been told that anyone who

refused to kick back the build-up pay would be sent home.

When it came to the halfway point in the season, the employer decided to change the terms of transportation reimbursement, as well. "The boss said, 'I'll reimburse you [for the cost of getting to Florida], but then you have to pay me for where you live.' But how is that possible? We, the farmworkers, know we have the right to a house, transportation, stove, and a refrigerator. We didn't know why he was charging for that," exclaimed Manuel.

The loss of money for transportation and kick backs left Manuel struggling to feed even himself, much less send money back home to support his family. "I didn't have anything to eat...I was starving," said Manuel. He left to return to Mexico two months before the contract was over, forced out by the employer for daring to voice his concerns.

Manuel spoke passionately about the feeling of being cheated: "I had the money in my hands, I thought it was mine. But I'm working, doing my best, feeling the sun on my back, working hard like a donkey, just so I could give my money to these people! How do you think I feel? You just feel like crying."



\*Not real name.

<sup>12</sup> *Morales-Arcelles et al. v. Shannon Produce Farms, Inc. et al.*, 2007 U.S. Dist. LEXIS 51950 (S.D. Ga. 2007).  
<sup>13</sup> *Pareco Castillo v. H-2A Services of Cent. Fla., Inc.*, No. 8:07-CV-01804 (M.D. Fla., filed Oct. 3, 2007).



Employers claim that employees worked fewer hours than they actually did in order to make it appear that the workers averaged the minimum wage per hour. Other times workers are forced to "kick back" the make-up pay to a crew leader, rendering the AEWB meaningless.

Growers have also been known to apply productivity standards, requiring workers to fill a specified number of buckets per hour or day. Often this is another way to weed out American workers; as the productivity demands get harder without a real pay increase, U.S. workers are less likely to apply for the jobs that desperate guest workers will reluctantly accept.

H-2A workers are dependent on employers for their visas and livelihoods. They are often fearful that if they demand the wages owed to them they will be fired and deported or refused re-hire

next year. But even when H-2A workers do decide to seek out help to recoup their rightful wages, potential remedies are limited. H-2A workers are excluded from the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the chief labor law aimed at protecting farmworkers. H-2A workers are thus not entitled to sue in federal court for lost wages, housing benefits, transportation reimbursement, and other requirements of the H-2A contract.

H-2A workers often cannot receive back pay for wage theft because they lack meaningful access to attorneys and the court system. Few private attorneys accept farmworker cases due to language barriers, the low dollar value of cases even when they are egregious, the slim chance that losing employers will pay attorneys' fees (the law usually does not require that they do so), rural isolation of the



"The growers only want single men with no families and the H-2A jobs make it worse."

— *Testimony from a female farmworker to the Michigan Civil Rights Commission, quoted in A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan (2010).*



Recruitment abuses are endemic to the H-2A program, and the vulnerability and powerlessness of guest workers has led to numerous cases of debt peonage.

### HUMAN TRAFFICKING AND FORCED LABOR.

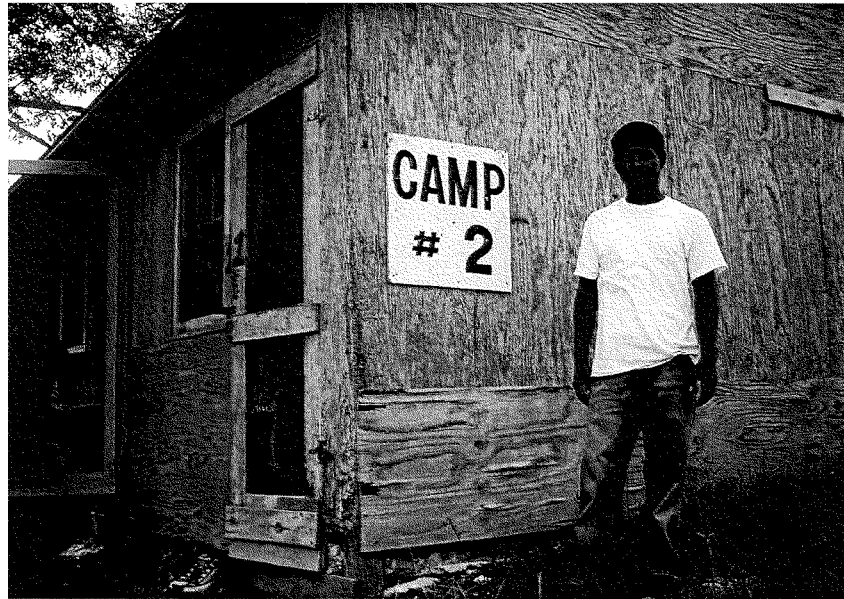
clients, conflicts of interests in suing local farmers who they have represented, and the workers' inability to remain in the local area during the litigation. Legal aid programs are permitted to represent H-2A workers, but they are underfunded and cannot reach many of the workers who need help.

### AGE, GENDER, AND ETHNIC DISCRIMINATION

Though EOL does not publish statistics on age and gender of H-2A workers, it is well known that women and older adults are basically absent from the H-2A program. That is because the H-2A program allows agricultural employers a luxury denied to all other domestic employers:

access to a demographically "ideal" workforce.<sup>24</sup> Since the Civil Rights Act of 1964 and the Age Discrimination Employment Act of 1967, employers in the U.S. have been forbidden to use race, color, religion, sex, national origin, and age as factors in hiring practices. Yet the government refuses to investigate and curb abuses that occur during recruitment abroad.

Consequently, H-2A employers' recruiters often search out a very specific demographic, thought to be perfect for farm work: young single men without family in the United States, who will devote all day every day to work. Workers who don't fit into this category have very little chance of being selected for an H-2A visa. Thus, the H-2A program is fundamentally anti-family. Young men come to the U.S. without their family members, often for separations of many months, causing stress for spouses and children, as well as guest workers.



<sup>24</sup> See *River-Garcia v. NLRB*, 250 F.3d 868 (4th Cir. 2000).

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## A FARMWORKER'S STORY

## Javier\* (Yadkin County, NC)

Javier, 50, has more than 15 years experience as a worker in the H-2A program. Every year, Javier would travel from his home outside Guanajuato, Mexico to North Carolina for a job in the tobacco fields. With few jobs at home, this was the only way he could provide for his wife and four children.

Since the summer of 2010, however, Javier has been physically unable to work. That summer, Javier and his H-2A coworkers were exposed to pesticides on more than one occasion. Once, an employee of the grower was spraying pesticides less than 20 meters from them. Another time, on a hot day in August, Javier and about 18 other workers began to feel sick. Some were vomiting, and many experienced such strong cramps that they couldn't stand up and had to lie down. "We felt, We felt like animals in the field," Javier reported. He reports feeling that he had "chills all over his body."

Many of the workers returned to the labor camps but housing conditions were crowded and not suitable for recovery. Sixteen workers were packed into each room, sleeping nearly on top of each other, Javier explained. "I was so close to others, sometimes I'd wake up feeling someone's foot in my back or in my stomach." There were only two showers to use to wash the chemicals off their bodies.

For a few days, Javier felt sick but continued to go to work. "I had to work...for my kids," said Javier. Finally, he felt so bad

that he phoned a local clinic outreach worker to take him to the hospital. He was sent back to the camp with a note that he could not work in tobacco.

No longer useful to his employer, Javier was told that he should go back to Mexico to recover. He was encouraged to sign a paper saying that he was leaving, with the understanding that if he signed he'd be allowed back in future seasons. He paid his own bus ticket for the trip home to Mexico.

Nine months later, Javier still has nausea, feels dizzy, and has trouble walking. He feels too sick to work, but still owes the debt he incurred to support his family when he could not finish the season. He cannot afford the necessary specialized medical care and has even had to take one of his kids out of school because he can no longer pay for it.

"I am full of outrage that I can't support my family," he said.

Javier succinctly described why H-2A employers dispose of workers injured on the job. "They want to keep the beds filled with hands that can work," he said. "They don't care about the people."



Women constitute more than 20% of farmworkers, yet there are very few, if any, in the H-2A program. Often, women interested in being guest workers are funneled into the H-2B non-agricultural guest worker program, a program with even fewer protections than H-2A. This systematic gender discrimination came to light in a class action lawsuit led by Marcela Olvera-Morales, a Mexican farmworker, against International Labor Management Corporation, Inc. (ILMC), a major labor recruiter connected with the North Carolina Growers' Association. Olvera-Morales contended that ILMC had chosen less-qualified male workers for H-2A jobs, while intentionally sending her and other women to H-2B jobs, knowing that those jobs were less desirable.<sup>25</sup>

The culture of discrimination in H-2A extends to race and national origin as well. Indeed, employers are basically free to act on negative racial and ethnic stereotypes regarding both U.S. and foreign

workers. For example, one H-2A employer from North Carolina has explained that he hired Asian workers to "try a new breed" because Hispanic workers had been "Americanizing" and "getting lazy."<sup>26</sup> This kind of explicit racial discrimination, illegal in the rest of the country, seems commonplace in the fruit and vegetable fields of this country.

## INJURED WORKERS

Agriculture is one of the most dangerous industries in the United States. According to the Bureau of Labor Statistics, crop production workers had a fatal injury rate nearly ten times the average rate for all industries. Non-fatal injuries are extremely common as well; in 2009,

<sup>25</sup> Olvera-Morales v. Int'l Labor Mgmt. Corp., Inc., et al., 2008 Westlaw 506070, \*1 (M.D.N.C. Feb. 20, 2008). See also, "Close to Slavery,"

<sup>26</sup> Deposition of Roe Raynor, Volume I, in *Bracero v. New Tree Personnel Services, Inc.*, 1:09-CV-06074-CCL (D. P.R., 2006) at 226, 309.

there were 4.9 non-fatal work-related injuries for every 100 full-time crop workers.<sup>27</sup>

On paper, the H-2A regulations require employers to provide H-2A workers with workers' compensation insurance to protect them in case of a work-related injury. But in reality, complex workers' compensation rules, which vary from state to state, often prevent H-2A workers from accessing these benefits, especially after they have returned to their home country, which the program demands.<sup>28</sup>

Severely injured workers and their families are thus never compensated for the lost income from their injury. Employers may also encourage workers not to apply for benefits, may simply return injured workers to their home countries, or may get injuries taken care of quietly, in order to prevent a hike in insurance premiums.

The H-2A program does not require employers to provide health insurance, and foreign non-immigrants are not eligible for Medicaid, so few H-2A workers can access health care for non-work-related illnesses or injuries. Though there is no data on the number of H-2A workers with health insurance, a 2003 report estimated that only 5-11% of all farmworkers had employer-provided insurance.<sup>29</sup> Federally funded community health centers are available to H-2A workers at

low cost but often are not located near enough to workplaces.

The experiences of injured or ill workers highlight the status of guest workers as disposable commodities to be retained only as long as they are useful to an employer. H-2A workers with health problems are often fired or coerced to sign "voluntary" quit forms in exchange for unenforceable promises that they will be hired the following year. When workers return to their home countries, it is often very difficult for them to pursue their workers' compensation claim, and frequently comprehensive medical care is inaccessible.

## UNSAFE AND UNHEALTHY HOUSING

Under the regulations, H-2A employers are required to provide or pay for housing for all guest workers and any domestic workers who are not reasonably able to return home each day.<sup>30</sup> Employer-provided housing must meet DOL safety standards for farm labor camps, including adequate sanitation, water supply, toilet, laundry, bathing facilities, and pest control.

In reality, H-2A workers frequently describe their housing as dirty, cramped, unsanitary,



<sup>27</sup> U.S. Department of Labor, Bureau of Labor Statistics, Census of Occupational Injuries and Illnesses 2009, Hours-Based Fatal Injury Rates, online at [http://www.bls.gov/iif/oshwc/osh/oi/oi\\_rates\\_2009hb.pdf](http://www.bls.gov/iif/oshwc/osh/oi/oi_rates_2009hb.pdf); Industry Injury and Illness Data 2009, Summary Table 1, online at [http://www.bls.gov/iif/oshwc/osh/oi/oi\\_s24135.pdf](http://www.bls.gov/iif/oshwc/osh/oi/oi_s24135.pdf)

<sup>28</sup> "Close to Slavery," at 26.

<sup>29</sup> Vilarejo D. 2003, The Health of US Hired Farmworkers. *Annu Rev Public Health* 24: 175-93.

<sup>30</sup> 49 C.F.R. 655-122 (b).

## A FARMWORKER'S STORY

## Juan (Rockcastle County, KY)

Juan, 30, lives in Hidalgo, a state in central Mexico, where he has two young children, ages four and one and a half. In 2008, he began working in Kentucky tobacco on an H-2A visa. Because he speaks some English, Juan became the leader of his crew, serving as the liaison between his employer and the other workers. Still, Juan's leadership position did not protect him from the poor housing and working conditions faced by H-2A workers on his employer's farm.

In the summer of 2010, Juan's crew was housed by his employer in dilapidated trailers near the fields. According to Juan, the trailers had holes in the roofs, leaky pipes, and were infested with rodents. He and his coworkers were given dirty second-hand mattresses, blankets, and sheets. "The mattresses were in bad shape," said Juan. When it rained, water would leak in from the roof and moisture would infiltrate from below, leaving the trailers damp and moldy.

Juan and his fellow H-2A workers spent their own money and time trying to fix up the trailers, including multiple attempts to repair the water pipes and patch the holes in the roof, but the conditions were constantly deteriorating. "Even after we fixed it, water would get in," Juan explained. They were also illegally required to pay for utilities, including electricity and water.

Conditions in the fields were not much better. Juan and his coworkers were exposed to pesticides but did not

receive any training or protective equipment to help them reduce the risks to their health. Some workers became sick from pesticide exposure, and many suffered from nausea and dizziness. A few seasons ago, one worker was taken to the hospital for pesticide poisoning.

All the while, Juan wasn't paid adequately for his work. Though Juan and his coworkers had been promised \$3.00 an hour, they were often paid only about \$6.00. A recruitment fee of \$800 was deducted from Juan's paycheck. Many weeks they only were needed for three days of work. During these idle times they were forced to seek work on neighboring farms to make money.

In August, 2010, Juan was fired. He says his employer was not satisfied by the workers' pace and demanded they work faster. But it is clear that the employer was not keeping up his side of the bargain — providing livable housing, honest wages, and decent working conditions. "[The H-2A contract] had no enforceability," said Juan.



or pest-ridden—and sometimes all of the above. Indeed, farmworker housing has not improved much since the images portrayed in Edward R. Murrow's documentary on the conditions of farmworkers, "Harvest of Shame," shown on Thanksgiving, 1960. H-2A employers have placed five men in a single motel room with one bathroom, and reports have described workers sleeping on the floor because of worn and moldy mattresses. Other problems have included crumbling buildings; rat infestations; moldy toilets, showers, and sinks; and in one case workers were even known to be living in a converted chicken coop.<sup>28</sup> Because a tangled mass of state and federal regulations and agencies

holds authority over farmworker housing, deplorable conditions may go unnoticed.<sup>29</sup>

Employers have long tried to reduce or eliminate the housing requirement. For example, H-2A growers in border regions, particularly in the Yuma, AZ region, have recently claimed that their workers don't want housing, and would rather cross the border to return to their homes in Mexico each night.<sup>30</sup> Instead, they have advocated for a "border commuter" program that would exempt employers near the border from the H-2A housing requirement. Sen. Chambliss (R-GA), though not from a border state, introduced a bill including such a program in 2010. This idea is not new; similar claims were made in the 1970s by H-2 employers

<sup>28</sup> For reports of these conditions, see: Complaint in *Asahok et al. v. Million Express Manpower, Inc., et al.*, NO. CV-00048-BD (E.D. NC, 2007); Barry Yeaman, "Silence in the Fields," *Walter Jones*, *Crossing* (February 2009), accessed 21 April 2011 at <http://endthejones.com/john-yeaman/2009/02/silence-in-the-fields/>; U.S. Department of Labor, *WHS&A Compliance Action Report, Domani Farms, Corona, MI* (21 August 2007); Leah Bell Ward, "Desperate Harvest," *Charlotte Observer* (30 August 1990), accessed 21 April 2011 at <http://www.berkeley.edu/arkhiv/ewds/agworkerstale/aleperale040999.html>.

<sup>29</sup> Depending on the kind of housing and state it was built, H-2A housing may be governed by OSHA, ETA, state or local housing standards, or a combination of those. See 20 C.F.R. 653.122(c).

<sup>30</sup> Griselda Alvarez, "Jones: Change farmworker housing rules," *YumaSun.com* (9 March 2010), accessed 21 April 2011 at <http://www.yumasun.com/news/workers/68302-housing-farmers.html>.

from the Presidio region of Texas when they refused to offer housing to their guest workers.

Of course, under the current regulations, workers are not required to accept housing if they would rather commute daily from Mexico. Furthermore, anecdotal evidence suggests that current H-2A workers in the border region come from a variety of places, including Guanajuato in central Mexico and Oaxaca in distant southern Mexico.<sup>34</sup> A "border commuter" housing exemption would leave Mexican border towns with the burden of providing sufficient housing for the influx of workers from other regions arriving for the opportunity to become H-2A workers. Many workers could end up in substandard housing or homeless, sleeping

on the streets or in fields. Additionally, the existence of large numbers of workers crossing the border daily would increase the danger that Mexican drug cartels could take control of labor camps in Mexico and recruit workers for drug smuggling. A border commuter program would harm H-2A workers, U.S. workers, and the border communities.

## RETALIATION AND LABOR ORGANIZING

H-2A workers who wish to stand up to unfair or illegal conduct have reason to fear retaliation

### A FARMWORKER'S STORY

## Diego (Harnett County, NC)

Diego, 48, has experienced first-hand the stark contrast between life before and after the signing of a union contract. A veteran of nine seasons in the North Carolina tobacco fields, Diego is a lifetime farmworker from San Luis Potosi, Mexico. He is proud of his strong work ethic and his participation in the protests that led to the collective bargaining agreement between the Farm Labor Organizing Committee, AFL-CIO (FLOC) and the North Carolina Growers Association (NCGA). "There have been many positive changes," since the adoption of the contract, Diego said.

Diego first came to North Carolina under a 6-month H-2A contract in 2003. He paid a recruiter \$4,700 to obtain the job and had to pay similar sums to return each year. The wages were low and he was often paid on a piece rate. Workers were on call 24/7. "We were obligated to go to work at any time the boss wanted to take us to the field," explained Diego.

Diego described his housing conditions as especially bad in those first years; he recalled abandoned houses, insect-infested mattresses, and overflowing toilets that went unrepaired for days. "The boss didn't care," remembered Diego.

Remarkably, Diego and many of his fellow H-2A workers risked their jobs by protesting for better conditions. In 2004, FLOC, a farmworker union with roots in the Midwest, signed a collective bargaining agreement with NCGA, the umbrella company that organizes H-2A visas and paperwork for many North Carolina growers. The agreement covers thousands of H-2A workers and has set up a grievance procedure for

workers and growers to address complaints.

Since the signing of the FLOC contract, Diego has seen marked improvements. Workers no longer pay recruitment fees to be hired back each year and are reimbursed for visa fees on arrival in North Carolina. Wages have increased. Workers can take water breaks to protect themselves from heat-related illness without fear of getting fired, and they even get paid leave in the event of a family death. Growers respond to union concerns - when FLOC representatives came to Diego's camp to document poor housing conditions, his boss immediately bought new mattresses and kitchenware for the workers.

Diego is overjoyed that the wages and working conditions as part of the FLOC contract have allowed him to support his family, including 11 children. "I've been able to provide for them, give them clothes...not the best clothes...I'm very happy now that they can be in school and college," exclaimed Diego.

"I encourage all workers to join a union," said Diego. "[Workers] should get involved in FLOC because of all the good they've been able to do. I invite all the friends to join us and work with us."



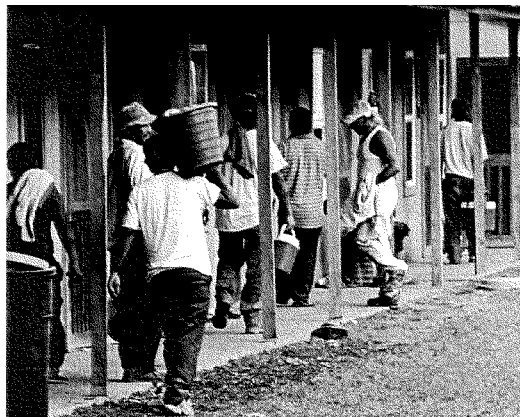
<sup>34</sup> Mara Knaub, "Farmworkers - 'Who Else Would Do All the Work?'" *Yumajun.com* (6 December 2010), accessed 21 April 2010 at <http://www.yumajun.com/articles/workers/H-2A-immigrant-labor.html>.

in the form of discharge and deportation as well as denial of a job and visa in a future season. Because foreign citizens have no ability to apply independently for an H-2A visa, they must hope that an employer will request a visa for them. Employers have been able to retaliate against H-2A workers who assert themselves simply by refusing to offer visas to the workers in a following season.

In other industries, workers may achieve bargaining power and protection from retaliation through unionization. Though California's Agricultural Labor Relations Act grants farmworkers the right to join a union and mechanisms to engage in collective bargaining, farmworkers in most other states do not have the right to unionize, and agricultural workers are excluded from the National Labor Relations Act, leaving them vulnerable to being fired for simply joining a union.

H-2A workers experience even greater barriers to unionization than do other farmworkers, as their livelihoods are precariously dependent on the goodwill of their employer. They work for short periods in seasonal work, so they often lack the trust established among co-workers over a longer period of time. Furthermore, an H-2A employer may recruit guest workers at the wages and working conditions approved by DOL and can reject U.S. workers and guest workers who ask for higher wages or benefits, making it difficult for unions to persuade workers that they can negotiate better job terms. As a result, few H-2A workers enjoy collective bargaining rights.

However, in recent years, as a result of intensive outreach and organizing efforts, farmworker unions have begun to win contracts with some H-2A growers. The Farm Labor Organizing Committee, AFL-CIO (FLOC) now represents several thousand guest workers employed at several hundred North Carolina H-2A growers through the North Carolina Growers' Association, an umbrella organization that is the largest H-2A importer in the country. In these unionized fields, workers have seen positive changes in their working conditions. For example, FLOC has been able to set up an office by the U.S. Consulate in Monterrey, Mexico to help secure visas and educate new workers about their rights under the contract. Through its grievance-arbitration procedure, FLOC has



worked to ensure that H-2A workers gain employment in future seasons, free from retaliation.

In 2010, FLOC's President Baldemar Velasquez reported that several hundred disputes were resolved through grievance-arbitration. For example, 57 complaints regarding the proper reimbursement of workers' transportation costs were settled. The union helped workers in more than 50 cases address health and safety needs and handled 60 wage dispute cases. In some cases, the union's presence helped overcome problems that were primarily failures to communicate effectively. FLOC has said that it still faces challenges in representing workers under the H-2A program but expects to continue making progress, particularly if it succeeds in its campaign to organize additional H-2A employers in North Carolina.

The opportunity to bargain collectively allows farmworkers to assert their rights, improve their wages and working conditions, protect themselves from retaliation, and achieve a voice in the workplace and in the public sphere. The presence of a union that helps workers in both the U.S. and the workers' homelands can be especially helpful in reducing the extensive and serious abuses associated with recruitment. Unions can also help ensure that job applicants need not pay recruiters for access to jobs under the H-2A program. Expansion of union capacity to help H-2A workers would reduce exploitation and abuse in the H-2A program and enable workers to improve their wages and working conditions.

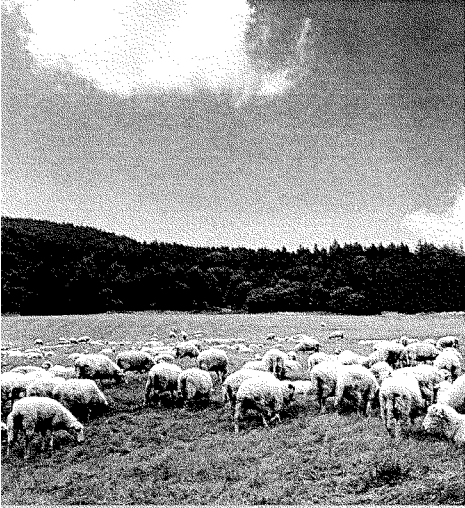


"It's really changed for the better...I encourage all workers to join a union."

—Diego (Harnett County, NC)

PART  
03

# A PROGRAM TO FILL SEASONAL JOBS



**SHEEPHERDERS:  
A DANGEROUS EXCEPTION**

The H-2A program is designed by law to satisfy temporary seasonal jobs that would otherwise go unfilled. Yet the ranching lobby, politically powerful in western states like Colorado, Utah, and Wyoming, has effectively lobbied DOL for a special exemption for sheep (and goat) herders. Herding is extremely tough, year-round work, and herders often spend extensive time in complete isolation, following the herd as they move through grazing areas. ➤

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## A FARMWORKER'S STORY

## Pedro\* (Delta County, CO)

Pedro arrived in the U.S. from Peru on an H-2A visa in spring 2009. In Peru, Pedro had worked for ten years in farming before becoming a philosophy and Spanish teacher. When he heard he could make significant money as a sheepherder in the U.S., he jumped at the chance to better provide for his wife and child. He paid approximately \$5,500 in visa and recruiting fees.

But when he arrived in Colorado, Pedro's image of the U.S. as a land of opportunity quickly vanished. He learned that he would be working 11-14 hour days, seven days a week, for only \$750 a month, minus a \$27 deduction for health insurance. His employer, a rancher contracting with the Western Range Association, took his passport and other documents and refused to return them.

On the ranch, he was housed in a small sheepwagon with holes and a door that did not shut properly. There was no bathroom or refrigerator to store food. Though his employer was supposed to provide him with food every weekend, he would often not show up. When he protested, the ranch owner threatened to send him back to Peru.

"One thinks that life over here is easy, that everything is beautiful and that all the people are good people...but once one arrives here, well, I had the misfortune of bumping into very bad people," said Pedro.

\*Not real name

Soon, Pedro was sent to herd sheep in the mountains and subsequently became ill. Though money was being deducted from his pay each month for health insurance, the rancher refused to take him to the doctor. He had no easy access to a phone and was mostly cut off from communication with the outside world. He could not use ranch vehicles to go to town and buy food. When he asked if he could have a friend take him to town, the rancher replied that he could not have friends or talk to neighbors.

Finally, in August 2009, Pedro realized that the only way out was to escape. He called 911, but could not identify his exact location. He then walked to a neighbor's house and found someone to drive him to the police station. The local police led him to a legal services attorney, who was able to help him reclaim his documents and some of his stolen wages.

"I knew that slavery had once taken place," said Pedro. "But here in the United States, slavery is still being experienced...a form of modern-day slavery."



DOL directives allow ranchers to employ H-2A herders for year-long contracts with possibility of extension, and pay them only \$750 a month (the current "prevailing wage" for sheepherding in many western states), though they are required to be on call nearly 24 hours a day, 7 days a week. Special regulations allow sheepherders to be housed in wagons or tents and permit employers to provide alternatives to toilets, showers, running water, and electricity if these amenities are not available.<sup>25</sup>

Sheepherders are particularly vulnerable to abuse. A survey of 93 herders by Colorado Legal Services found that more than 80% were not permitted to leave their ranch, to have visitors, or to engage in social activities at any time during their employment. Seventy percent reported that they never had access

to a functioning toilet and less than one-third had refrigerators to store food in their mobile campers. Many herders reported that their employer confiscated their passports and other documents, and some had pay withheld until they returned home to Peru. Wage theft, dilapidated housing, and forced labor are commonplace in this industry.<sup>26</sup>

It is no wonder that with conditions like these, which often border on modern slavery, ranchers cannot find U.S. workers to fill sheepherding jobs. Indeed, the experience with H-2A in the herding industry highlights how easy it is for unscrupulous employers to use the H-2A program to find low-paid exploitable workers, rather than improving pay and conditions to attract workers in the normal job market. In fact, a recent lawsuit in Utah alleges



"I knew that slavery had once taken place. But here in the United States, slavery is still being experienced...a form of modern-day slavery."

—Pedro (Delta County, Colorado)

<sup>25</sup> U.S. Department of Labor, Employment and Training Administration, Field Memorandum No. 32-10, "Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations Under the H-2A Program" (14 June 2010), online at: [http://web.dhs.gov/dhs/policy/data/ETEC/ETEC\\_32-10M10.pdf](http://web.dhs.gov/dhs/policy/data/ETEC/ETEC_32-10M10.pdf)

<sup>26</sup> Colorado Legal Services Migrant Farm Worker Division, "Overworked and Underpaid: H-2A Herders in Colorado" (14 January 2010), online at: <http://users.brii.com/USCIS/CIOL/Overworkedandunderpaid.pdf>



"This guestworker program's the closest thing I've ever seen to slavery."

—Rep. Charles Rangel (D-NY), quoted in *Southern Poverty Law Center, Close to Slavery* (2007)

that in order to pay the low monthly prevailing wage, an employer categorized one worker as a shepherd, though he was primarily engaged in non-range work, including mowing private lawns.<sup>17</sup> These stories should provide pause for those who would expand the H-2A program into other non-seasonal agricultural work.

### DAIRY, MUSHROOMS, GREENHOUSES: AN UNCHECKED EXPANSION OF GUEST WORKER INDUSTRIES

In recent years, dairy farmers, recipients for many years of significant government subsidies and price regulations, have begun to turn their political power toward a new goal: gaining access to the H-2A program.

Though dairy barns clearly require year-round, permanent workers, the industry has argued that the lack of willing and available domestic workers has created a desperate need for foreign workers, and that those workers should come through the H-2A program. At the time of this report's preparation, companion bills called "The H-2A Improvement Act," introduced in the Senate (S. 852) and the House of Representatives (H.R. 1720), would codify the shepherd exception and add dairy to the list of non-seasonal industries open for H-2A work.

But supporters of the dairy extension fail to mention the history of poor working conditions in the dairy industry, even without the H-2A program. For example, legal advocates in California, the largest dairy-producing state, have noted that many milkers work more than 12 hours a day, six days a week, with no overtime pay, rest breaks, or meal periods.<sup>18</sup>



<sup>17</sup> See complaint in, *Saenz-Moreira et. al. v. Alfred et. al.*, No. 2:11-CV-00200 (C.D. Uta., filed Feb. 24, 2011).

<sup>18</sup> Julia Montanero, "The Impact of Limiting Workforce-wide Lawsuits on Low-Wage Workers," *The California Labor & Employment Law Review*, Vol. 22, No. 3, May 2008, at 21.





Workers are also subject to the hazards of lax safety requirements; for example, a dairy worker in upstate New York was recently killed when trying to climb over a gate, a "common" practice, according to the newspaper report.<sup>49</sup> Rather than being allowed to bring in foreign workers, dairy owners should be required to attract U.S. workers by offering jobs with fair pay and workplace safety.

Rather than "improve" the H-2A program, the dairy extension would simply expand the guest worker scheme into an already abuse-ridden industry. If it passes, other year-round agricultural industries, including mushroom

farms and greenhouses, seem ready to line up and demand access to H-2A guest workers.<sup>50</sup> There is no end to the list of industries that could lower wages, claim "labor shortages," and demand cheap foreign labor. Soon, all our low-wage industries could become populated by low-paid guest workers with few rights.

Instead, the H-2A program should be restricted to seasonal work, and both U.S. and foreign workers must be provided with stronger protections. The H-2A guest worker program should not be the model for American agriculture or other low-skilled jobs. America is a nation of immigrants and should remain so.




Proposals to slash wage rates and remove labor protections from the H-2A program are not only cold-hearted but had public policy.

<sup>49</sup> David C. Shampine, "Death of migrant worker caused by fall, ruled accident," *Watertown (NY) Daily Times* (24 March 2010), at <http://www.watertowndailytimes.com/article/2010/03/24/NEWS/3303249965>.

<sup>50</sup> See, for example, the testimony of Pennsylvania state senator Arthur Hershey before the U.S. Senate Judiciary Committee (5 July 2006), where Mr. Hershey suggested that the mushroom industry should be allowed to use guest workers.

PART  
04

# RECOMMENDATIONS



## H-2A PROGRAM RECOMMENDATIONS

The narrative and worker stories in this report show the mistreatment of both domestic and foreign workers under the H-2A temporary foreign agricultural worker program. The abuses are widespread because the guest worker program model is deeply flawed. The constraints on guest workers deprive them of the ability to protect themselves from illegal and unfair treatment and from retaliation for speaking out. The law gives employers incentives to discriminate against U.S. workers. >>

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The inability of the government to monitor the job terms and practices of thousands of agricultural employers encourages employers to take advantage of the guest workers' vulnerability with little risk of getting caught violating the law. The H-2A guest worker program cannot and should not be the principal vehicle for filling the nation's agricultural job needs. Farmworkers should be given the opportunity to become immigrants and productive citizens of this country.

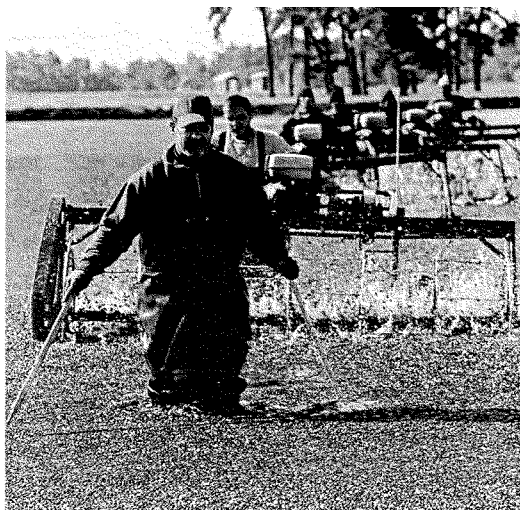
Though the Department of Labor under Hilda Solis restored most of the longstanding wage and other labor protections that Secretary Elaine Chao had removed, systematic problems persist. Farmworker Justice suggests a number of further steps that policymakers must take, in both the short- and long-term, to protect U.S. workers in agriculture, prevent exploitation of guest workers, and help ensure an adequate supply of citizens and authorized immigrants to keep America's agriculture sector productive.

At the time of writing, a new campaign is underway to eliminate or weaken job protections, government oversight, and enforcement mechanisms under the H-2A program, or to create a new guest worker program altogether. Some policymakers have argued that, in the face of a government crackdown on employers who hire unauthorized immigrants, these changes are necessary to facilitate the hiring of legal guest workers. This report demonstrates that instead of diminished protections, the H-2A program requirements should be strengthened and enforcement increased to end abuses in the program.

## SHORT TERM

### **Congress should pass the Agricultural Jobs, Opportunities, Benefits, and Security Act (AgJOBS).**

→ AgJOBS is a bipartisan compromise between growers and farmworker groups that would allow currently unauthorized farmworkers to earn legal status by continuing to work in U.S. agriculture, make balanced changes to the H-2A program, and provide U.S. growers with



a stable, productive, and decently-treated farm labor force.

### **DOL should increase oversight and enforcement of worker protections in the H-2A program.**

- DOL should investigate more H-2A employers and do so more thoroughly to remedy violations and deter unlawful practices.
- DOL should undertake regular unannounced visits to all H-2A employers to gauge compliance with H-2A regulations and work orders.
- DOL should require State Workforce Agencies (SWAs) to be more vigilant in reviewing H-2A applications for illegal job terms.
- DOL should take steps to eradicate common employer violations, including misstating the number of hours worked by piece-rate workers to deny workers the minimum hourly wage rate, erecting artificial and illegal barriers against U.S. workers who apply for H-2A jobs, and falsely claiming that workers are not entitled to their outbound transportation expenses because they quit work before the end of the season.



"The reality is that the majority of farmworkers in our country are undocumented. We need a fair, orderly way for those who harvest our fruits and vegetables to come out of the shadows and for farmers to retain a skilled, stable, and productive workforce. The H-2A program needs reform to better protect workers from abuses, but even if reformed it is not a practical solution for filling the hundreds of thousands of jobs in agriculture.

The AgJOBS compromise, supported by farmworker groups and growers, is the solution."

— Rep. Howard Berman (D-CA)



"I think the Department of Labor has to take responsibility for these workers. We are inviting them; they're called 'guest workers.' This isn't how you treat guests."

—Rep. George Miller (D-CA), quoted in "Corruption Leads to Deep Debt for Guest Workers," NPR (May 8, 2007)

→ DOL should work closely with labor unions, community-based organizations, and legal advocates to communicate effectively with H-2A workers. To collect evidence of illegal conduct, DOL must recognize and overcome the guest workers' fear of retaliatory discharge, deportation and denial of jobs in future seasons, as well as educational, linguistic and cultural barriers.

→ DOL should take better advantage of its power to bar employers from the program for violating workers' rights.

**DOL should exercise jurisdiction over H-2A recruitment abroad.**

→ The Department of Labor, in cooperation with the Department of State and the Department of Homeland Security (DHS), should examine the international recruitment mechanisms that result in foreign workers' indebtedness. Workers' desperation to earn enough money to repay the employers' recruiters and bring home money to their families leaves them vulnerable to exploitation.

→ Employers should be required to disclose any arrangements with and identities of labor contractors and recruiters and to determine and disclose all contracting and recruiting in foreign countries, including by sub-contractors and sub-agents.

→ DOL should require H-2A employers to disclose in advance how foreign workers will be transported to the place of employment in the U.S. and by whom.

→ All recruiters and employers' agents should be licensed and listed online in an easily accessible format.

→ DOL should cooperate with labor unions to establish fair recruiting processes in the foreign country.

**DOL should relieve workers' debt by mandating immediate reimbursement for work-related expenses.**

→ Workers should be reimbursed for transportation to the place of employment within the first week of arrival, rather than at the halfway mark of the contract.

→ Employers should be required to reimburse visa and passport fees paid by workers.

**DOL should ensure that both domestic and H-2A workers, especially those employed near the U.S.-Mexico border, are provided with housing as required by the H-2A program.**

→ Special attention must be paid to worker housing and conditions at the U.S.-Mexico border to ensure that employers do not deny housing to those workers who want it based on the claim that workers can commute to their homes in Mexico each night.

→ Employers should be required to pay workers for time spent waiting to cross the border, reducing the incentive for employers to give preference to "border commuters" and deny them housing.

**DOL, DHS, and the State Department should coordinate data and action on H-2A workers.**

→ DOL currently collects data on employer requests/certifications, DHS collects worker entry and exit data at the port of entry, and the Department of State collects data on visas issued. Collaboration between agency data collection activities would paint a fuller picture of the origin and destination of H-2A workers, allow for better assessment of regional labor needs, and facilitate



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enforcement against unscrupulous employers and recruiters.

→ The Department of State should ask workers to present an H-2A contract at their visa interview to ensure that workers have been given a contract in their language that complies with the law. H-2A employers should be penalized when workers have not been given their contracts.

**Employers under the H-2A program should take responsibility for foreign recruitment.**

→ Employers must monitor the actions of recruiters in foreign countries that supply them with guest workers and act to end recruitment abuses.

→ Employers should be held jointly liable when recruiters working for them break the law.

## LONG TERM

**H-2A workers should be allowed the freedom to change employers.**

→ Tying guest workers' visas to a single employer leaves them vulnerable to abuse and reluctant to challenge illegal or unfair employer practices. Congress should amend the law to extend the fundamental protections of a free labor market to H-2A workers.

**H-2A workers should be able to earn permanent immigration status in order to enforce their rights and improve their conditions.**

→ No matter how much time they spend in the United States, H-2A guest workers can never earn permanent status or become citizens with the right to vote. Congress should end this anti-American system that treats guest workers as short-term commodities, and provide a process for H-2A workers to obtain permanent residency.

**The H-2A program should remain available for temporary and seasonal workforce needs only.**



→ The H-2A program was designed for seasonal jobs where U.S. applicants are lacking. Proposals to extend the H-2A program to year-round jobs in dairies or other industries should be rejected.

→ The exemption for sheepherding, a year-round industry with a history of worker abuse, should be ended.

**H-2A workers should be covered by the labor laws applicable to farmworkers.**

→ H-2A workers are currently excluded from the most important labor law that protects farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). Congress should end this unfair exclusion and extend AWP rights to H-2A workers, including a federal private right of action to enforce their job terms, disclosure of job terms at the time of recruitment, and safe transportation vehicles.

→ Congress should deter wage theft by ensuring that H-2A workers are entitled



"H-2A guestworkers may be less aware of U.S. laws and protections than domestic workers, and they are unlikely to complain about worker protection violations...fearing they will lose their jobs or will not be hired in the future."

— U. S. General Accounting Office (GAO), *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers* (1997).



"NCLR has serious concerns about the treatment of farmworkers in this country. Our broken immigration system, including the problematic H-2A guest worker program, contributes to the poor wages, working conditions and health of farmworkers. The ability to legalize immigration status is instrumental to enabling farmworkers to bargain for better working and living conditions. Congress should fix our broken immigration system to ensure our country has a productive, legal farm labor force that benefits from strong workplace protections for all workers."

—Janet Murguía,  
president, National  
Council of La Raza  
(NCLR)



to liquidated (double) damages when employers fail to pay the AEWR.

→ To encourage attorneys to accept farmworkers' cases, workers who win litigation for violations of the H-2A program protections should be entitled to an award of attorneys' fees and court costs.

**H-2A program wage rates should reflect the wage necessary to attract U.S. workers in the labor market:**

→ The H-2A hourly wage rates set under the Adverse Effect Wage Rate methodology are too low, as they fail to account for wage depression caused by the presence of guest workers and undocumented workers in the farm labor force. Wage rates are outdated, as they are based on the previous year's surveys, and they allow growers who have trouble finding workers to avoid offering *higher than average* wages, as the market would demand. Instead, the AEWR is a regional average. DOL should revise the method for determining the AEWR to prevent downward pressure on the wages of domestic farmworkers.

→ The rules regarding piece rates should be changed to end abuses. Piece rates delineated in the H-2A contract should rise annually with changes in the Adverse Effect Wage Rate.

**Employers should be required to pay Social Security and unemployment taxes on guest worker wages.**

→ The exemption from Social Security (FICA) and federal unemployment (FUTA) taxes on wages paid to H-2A workers is currently a huge monetary incentive for H-2A employers to choose guest workers over domestic workers. Congress should end this incentive for H-2A employers by requiring them to pay an amount equivalent to FICA and FUTA taxes for their H-2A workers. Payment of these taxes would also strengthen the social safety net.

**Anti-discrimination laws should apply to recruitment of H-2A workers abroad.**

→ Workers recruited abroad for employment in the United States, including for H-2A program jobs, should not be subjected to hiring practices that would be illegal if they occurred in the U.S. Employers should be held "strictly liable" for recruitment practices by recruiters or sub-contractors on their behalf.

**Workers who have already worked in the H-2A program should have a guaranteed "right of recall."**

→ Workers who perform well and complete their contracts for an H-2A employer should be entitled to be hired the following season, assuming there remains a labor shortage. This requirement would reduce workers' fear of retaliation for joining a labor union or raising a concern.

→ Employers should be obligated to arrange a visa for returning workers, rather than subjecting workers to the process of paying recruiters in the foreign country every year for access to a visa and a job.

**Increased union representation would help H-2A workers protect themselves from abuse and exploitation.**

→ DOL should recognize and support the important role of union organizing and collective bargaining for workers on both sides of the border. DOL should work with the State Department and other agencies to support the efforts of unions to open foreign offices to prevent recruitment abuses.

→ DOL should facilitate the efforts of unions to provide workers with bona fide grievance-arbitration processes, which can be efficient mechanisms to resolve disputes.

# APPENDIX:

## RESOURCES ON H-2A PROGRAM ABUSE

### Recent Media Coverage:

*Courthouse News Service:* Dan McCue, "[Blacks Say Mexicans Favored on Farm](#)," (June 23, 2011)

*Honolulu Star Advertiser:* Nelson Deranciang, "[Aloun Farms owners hit with more accusations](#)," (June 20, 2011)

*Yakima (WA) Herald:* "Farm workers laid off in 2008 win settlement against grower," (May 21, 2011)

*The Denver (CO) Post:* Felisa Cardona, "[Third Peruvian shepherd claims abuse in Craig ranch lawsuit](#)," (April 29, 2011)

*The Wenatchee (WA) World:* Amy Taxin, "[Yakima farms named in human trafficking case](#)," (April 21, 2011)

*Courthouse News Service:* Dan McCue, "[Labor Abuse Reported in Tennessee](#)," (April 14, 2011)

*The Gainesville (FL) Sun:* Kimberley Moore Wilmoth and Karen Voyles, "[Federal officials: Human trafficking a pervasive problem](#)," (March 29, 2011)

*Moultrie (GA) Observer:* Kevin Hall, "[Labor Dept. hits J&R Farms](#)," (November 18, 2010)

*Deseret (UT) News:* Lee Davidson, "[A Story of Modern Slavery in Utah](#)," (April 15, 2010)

*Yuma (AZ) Sun:* James Gilbert, "[In the Fields, Farmworkers see abuse, fraud](#)," (January 24, 2010)

*The Honolulu Advertiser:* Jim Dooley and Christie Wilson, "[Aloun Farms owners indicted in forced labor of Thai workers](#)," (August 29, 2009)

*New York Times:* Dan Frosch, "[In Loneliness, Immigrants Tend the Flock](#)," (February 21, 2009)

*FoxNews.com:* Jennifer Lawinsky, "[Tennessee Woman Accuses Farm of Favoring Foreigners](#)," (January 6, 2009)

*High Country (CO) News:* Rebecca Claren, "[Guest workers: Laborers or commodity?](#)" (June 13, 2008)

*Yakima (WA) Herald:* Leah Beth Ward, "[Farm workers' lawsuit names Zirkle fruit](#)," (March 3, 2008)

*WTVB-TV (NC):* Steve Daniels, "[Guest worker program: Are we treating them like guests?](#)" (November 15, 2007)

*The Washington Post:* Laura Wides-Munoz, "[Migrants See Abuse in Guest Worker Jobs](#)," (June 2, 2007)

*NPR:* Jennifer Ludden, "[Corruption Leads to Deep Debt for Guest Workers](#)," (May 8, 2007)

*Raleigh (NC) News-Observer:* Kristin Collins, "[Workers: Promise became a prison](#)," (March 10, 2007)

*New York Times:* Eduardo Porter, "[Who Will Work the Farms?](#)" (March 23, 2006)

### Magazine/ TV:

*Dan Rather Reports (HDNet TV):* "All I Want is Work," (October 12, 2010) - [transcript](#)

*Mother Jones:* John Bowe, "[Bound for America](#)," (May/June 2010)

*The Nation:* Felicia Mellow, "[Coming to America](#)," (June 25, 2007)

*The Nation:* David Bacon, "[Be Our Guests](#)," (September 27, 2004)

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## APPENDIX: (CONT).

*Boston Magazine*: Michael Blanding,  
"The Invisible Harvest," (October 2002)

*Equal Justice Magazine*: Daniel Cox,  
"Discrimination on the Farm," (Fall 2002),  
reprinted in *Reed Magazine* (February 2005)

*Vanity Fair*: Marie Brenner, "In the Kingdom of  
Big Sugar," (February 2001)

*Mother Jones*: Barry Yeoman, "Silence in the  
Fields," (January/February 2001)

*Charlotte (NC) Observer*: Leah Beth Ward,  
"Desperate Harvest," (October 1999) -  
three-part series

### Reports:

Colorado Legal Services Migrant Farm Worker  
Division, Overworked and Underpaid: H-2A  
Herders in Colorado (January 2010)

Farmworker Justice, Litany of Abuses; More -  
Not Fewer - Labor Protections Needed in the  
H-2A Guestworker Program (December 2008)

Southern Poverty Law Center, Close to  
Slavery: Guestworker Programs in the United  
States (March 2007)

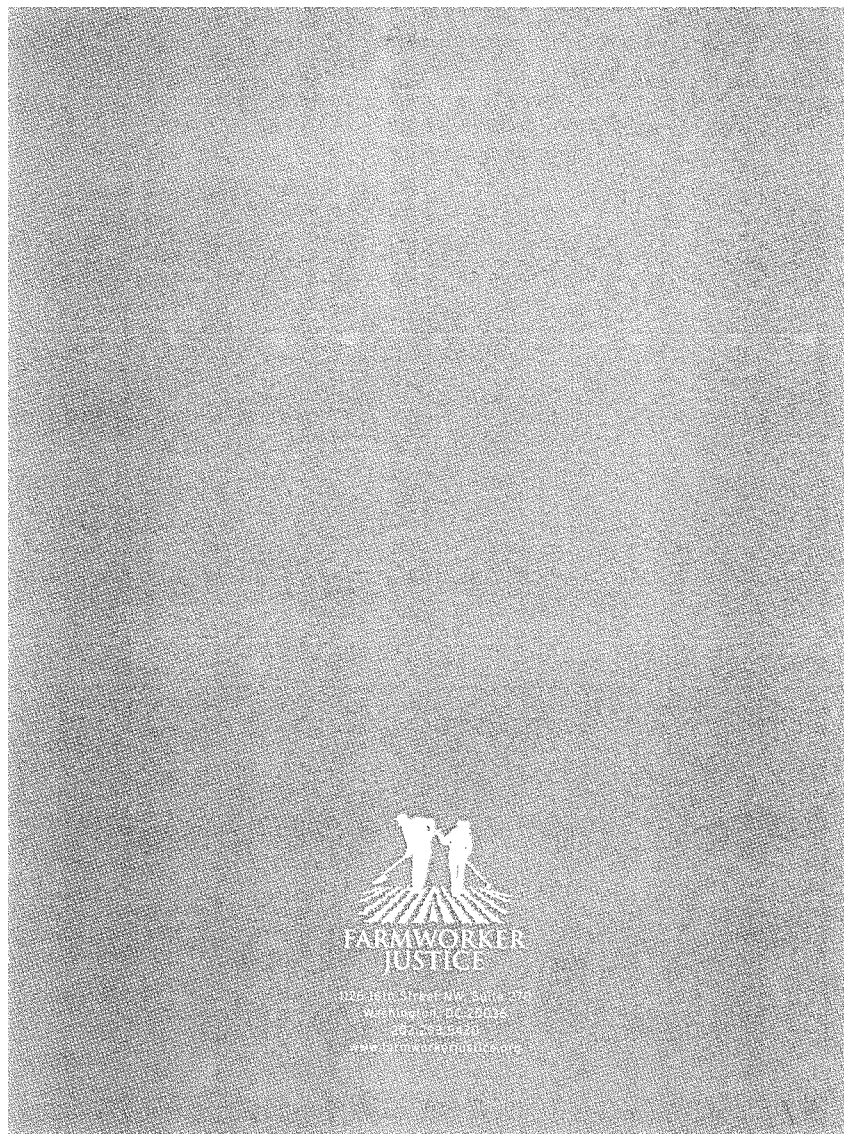
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Cover (clockwise from left): Student Action with Farmworkers; Shutterstock; David Bacon; p.6 David Bacon; p. 10 David Bacon; p. 11 Rebecca Young; p. 13 Tim Freilich, Legal Aid Justice Center (VA); p. 14 Rosa Varela, Community Legal Services (AZ); p. 15 From the film, *After I Pick the Fruit*, by Nancy Ghertner, to be released in October 2011; p. 16 Rebecca Young; p. 17 From the film, *After I Pick the Fruit*, by Nancy Ghertner, to be released in October 2011; p. 20 From the film, *After I Pick the Fruit*, by Nancy Ghertner, to be released in October 2011; p. 21 (top to bottom): *Dan Rather Reports*; Georgia Legal Services; p. 22 Farmworker Justice; p. 23 Miriam Strauss; p. 24 David Bacon; p. 25 From the film, *After I Pick the Fruit*, by Nancy Ghertner, to be released in October 2011; p. 26 Student Action with Farmworkers; p. 27 Farmworker Justice; p. 30 Courtesy of Diego; p. 31 Student Action with Farmworkers; p. 33 Kimi Jackson, Colorado Legal Services, from "Overworked and Underpaid: H-2A Herders in Colorado" (2010); p. 34 Farmworker Justice; p. 39 Rebecca Young; p. 40 Student Action with Farmworkers; p. 43 Tim Freilich, Legal Aid Justice Center (VA)





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Statement of  
Foremost Farms USA, Cooperative  
Baraboo, Wis.  
to  
Senate Judiciary Committee  
Sub Committee on Immigration, Refugees and Border Security  
Washington, D.C.

Please enter the following statement into the record for the October 4, 2011, Sub Committee hearing titled: "America's Agricultural Labor Crisis: Enacting a Practical Solution".

Foremost Farms USA is a dairy cooperative that has members in seven states in the Upper Midwest and is based in Baraboo, Wis. Foremost Farms welcomes the opportunity to provide this statement to the members of the Senate Judiciary Committee in regards to immigration legislation and the dairy industry.

Dairy is an important industry in the Midwest. Wisconsin alone has 1.2 million cows that generate \$26.5 billion worth of economic activity annually. In a 2009 University of Wisconsin study, it was estimated that 40% of all dairy farm employees in Wisconsin are foreign born. We estimate over 60% of Foremost Farms' milk is harvested by foreign born workers today compared to less than 10% just 10 years ago. Immigration legislation is one of the most important issues our members are concerned about.

As you examine the options for immigration reform through legislation, we ask you to keep in mind the unique needs of the dairy industry. We also request you keep in mind that our labor supply has increasingly come from immigrants as native born Americans shy away from working on farms for many reasons.

These needs include:

- Dairy is not a seasonal business. It is not a five-day-a-week business. It is a seven-day-a-week, and increasingly, 24-hour-per-day business that requires skilled and reliable employees.

- Dairy relies on immigrants. A study by the National Milk Producers Federation of 47 states found that 62% of the nation's milk supply is harvested by immigrants.
- A mandatory enforcement policy without meaningful immigration reform would hurt many jobs that rely on the dairy industry. The same NMPF study estimates that if the immigrant population harvesting milk today were not here, 133,000 related jobs would be gone.
- Any immigration legislation needs to deal with the skilled employees currently working on our dairy farms. These jobs require skill and experience. Milking cows and feeding calves is no longer what you would call unskilled labor. There must be a way that current employees can gain legal status.
- A visa program that recognizes the reality of labor shortages on farms and also addresses the year-round nature of dairy farming will go a long way to correcting many years of inaction.

Foremost Farms USA and its dairy producer member-owners respect the difficult decisions you are asked to make every day. We appreciate the opportunity to offer this statement to help you understand and then address the immigration and farm labor crisis we face.

Thank you for your attention.

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*Foremost Farms USA, Cooperative is among the top ten dairy cooperatives in the U.S. based on milk volume. Its 2,100 dairy farmer members live in Wisconsin, Minnesota, Iowa, Illinois, Indiana, Michigan and Ohio. The cooperative marketed 5.6 billion pounds of milk in 2010, and employs over 1,100 people. Foremost Farms has nine cheese plants, five dairy ingredient plants and one butter plant with 2010 revenues of \$1.4 billion.*

**Testimony of Bruce Goldstein, President, Farmworker Justice**  
**United States House of Representatives**  
**Committee on Education and the Workforce**  
**Subcommittee on Workforce Protections**

**September 13, 2011**

Mr. Chairman and Members: Thank you for the opportunity to testify about workforce challenges facing our nation's agricultural industry. My organization, Farmworker Justice, for thirty years has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice.

Our nation's broken immigration system, labor laws that discriminate against farmworkers, and the labor practices of many agricultural employers have combined to create an agricultural labor system that is unsustainable and fundamentally unfair to the farmworkers who harvest our food. More than one-half of the approximately 2 million<sup>1</sup> seasonal workers on our farms and ranches lack authorized immigration status.<sup>2</sup> Undocumented workers' fear of deportation deprives them of bargaining power with their employers and inhibits them from challenging illegal employment practices. The presence of so many vulnerable farmworkers depresses wages and working conditions for all farmworkers, including U.S. citizens and lawful immigrants. In the face of increased deportations and other immigration enforcement, harsh anti-immigrant state laws, and ill-advised proposals to mandate employers' use of the E-Verify system, there is an urgent need for Congressional action. The sensible, rational and moral solutions include ending discrimination in labor laws, improving wages and working conditions for farmworkers, and establishing a program to allow undocumented farmworkers to earn legal immigration status. Some Members of Congress who oppose earned legalization are proposing new agricultural guestworker programs. But we

<sup>1</sup> There are at least 1.8 million agricultural workers in the United States. Martin, P. Conference Report, Immigration Reform: Implications for Farmers, Farm Workers, and Communities, University of California D.C. Campus, May 12-13, 2011. Available at <http://migration.ucdavis.edu/cf/files/2011-may/conference-report.pdf>. Other estimates range from 2.0 to 2.5 million individuals working as hired farmworkers over the course of the year. See Kandel, W. Profile of Hired Farmworkers, A 2008 Update, U.S. Department of Agriculture, Economic Research Report, No. 60, July, 2008. Available at <http://www.ers.usda.gov/Publications/ERR60/>.

<sup>2</sup> Findings from the National Agricultural Workers Survey (NAWS) 2001 – 2002: A Demographic and Employment Profile of United States Farm Workers, available at <http://www.dolcta.gov/agworker/report9/chapter1.cfm#eligibility>.

already have an agricultural guestworker program available to employers, the H-2A program, and its provisions do not need to be expanded because — unlike most other visa programs — it has no limit on the number of guestworkers that may be brought in annually. As detailed in our report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, the H-2A program, despite its labor protections, is fundamentally flawed and rife with abuses that harm U.S. and foreign workers.<sup>3</sup> Certainly it should not be made any worse by reducing government oversight, lowering wage rates and removing labor protections, as these new legislative proposals would do. Moreover, it makes no sense to bring in hundreds of thousands of new guestworkers — under either the H-2A program or a new guestworker program — when there are already hundreds of thousands of undocumented farmworkers, in addition to citizens and documented immigrants, performing agricultural work productively. More importantly, large-scale guestworker programs are anathema to American values of freedom and democracy. A practical, meaningful, fair solution has to include an opportunity for our current workforce to earn immigration status.

The treatment of U.S. farmworkers (U.S. citizens and lawful resident immigrants) in this country is unreasonable and unsustainable. As in generations past, today's farmworkers experience high rates of unemployment and low wages. Poverty among farmworkers is more than double that experienced by other wage and salary workers.<sup>4</sup> Farm work is one of the most hazardous occupations in the country, with routine exposure to dangerous pesticides, arduous labor and extreme heat. Despite these working conditions, farmworkers are excluded from many labor protections other workers enjoy, such as many of the OSHA labor standards, the National Labor Relations Act, overtime pay, and even the minimum wage and unemployment insurance at certain small employers.

Such poor conditions and discriminatory laws have resulted in substantial employee turnover. In the absence of an immigration system that functions sensibly to control our borders and to provide immigration visas when workers are needed, most of the newly hired farmworkers have been undocumented. Still, even the lowest estimates indicate that there are at least 540,000-

<sup>3</sup> Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, September 2011. Available at <http://farmworkerjustice.org/images/stories/eBook/pages/fwj.pdf>. We ask that this report be included in the record of this hearing.

<sup>4</sup> See Kandel, W. Profile of Hired Farmworkers, A 2008 Update, United States Department of Agriculture, Economic Research Report, No. 60, July 2008. Available at <http://www.ers.usda.gov/Publications/FRR60/>.

600,000 legally authorized U.S. workers in the agricultural labor force.<sup>5</sup> Improving wages and working conditions, increasing farmworkers' legal protections, and implementing the other recommendations made by the Commission on Agricultural Workers and other observers over many years would help attract and retain US workers in the farm labor force.<sup>6</sup>

H-2A workers constitute another three to five percent of our agricultural workforce. Employers complain that the program is too bureaucratic, burdensome and expensive. The reality is that the H-2A program has not been needed because employers have had adequate supplies of labor, including the million or more undocumented workers currently in the farm labor force. The H-2A program is very similar to the old Bracero program, which at its peak allowed as many as 400,000 workers per year in to the United States. If employers substantially increased their demand for guestworkers, the government could expand its staff to accommodate the increased volume of applications.

In the context of mandatory E-Verify legislation, agribusiness has been lobbying for changes to the H-2A program, but their demands go far beyond a request for increased government resources to accommodate greater numbers of guestworkers. Rather, these grower groups have demanded that the wage rates be lowered, labor protections be removed and government oversight minimized so that they may offer job terms that U.S. workers would not accept and have unfettered access to the millions of foreign citizens who would accept the opportunity to work in American agriculture at extremely low wage rates and under poor conditions.

Rep. Lamar Smith's and Rep. Dan Lungren's guestworker proposals seek to respond to growers' demands and apparently seek to persuade them to support mandatory use of the E-Verify system. Their proposals create labor attestation guestworker programs instead of using the current labor certification system, meaning employers simply promise to comply with required job terms

<sup>5</sup> Estimations based on assuming 30% undocumented workers of a total labor force of 1.8-2 million farmworkers (this is highest number of undocumented workers in most estimates. Official government statistics indicate a rate closer to 50%).

<sup>6</sup> *Report of the Commission on Agricultural Workers*, Washington D.C. November, 1992. See also the testimony of Robert A. Williams, Director of Florida Legal Services' Migrant Farmworker Justice Project, before the House Judiciary Committee, subcommittee of Immigration Policy and Enforcement, Hearing on H.R. 2847, the "American Specialty Agriculture Act," September 8, 2011 (incorporated herein by reference). Available at <http://judiciary.house.gov/hearings/pdf/Williams%2009082011.pdf>.

and other requirements, with limited government oversight. Both guestworker proposals also would move the application process and enforcement of the worker protections from DOL to USDA, despite its lack of experience enforcing labor protections and despite the fact that other guestworker programs are run by the DOL. In addition, both programs would slash wages for U.S. workers and foreign workers; eliminate or greatly reduce worker protections, including recruitment protections for US worker, minimum work guarantees and housing requirements; and make other changes to ensure farmers have a steady stream of cheap replaceable workers. Both proposals also limit worker access to attorneys and courts to enforce their few remaining rights. Contrary to Rep. Smith's professed dedication to protecting American workers, these proposals would lead to massive job loss for U.S. workers as they encourage growers to hire cheap exploitable guestworkers. For those American workers lucky enough to keep their jobs, they would experience wage cuts and diminished working conditions and protections. And these bills do nothing to address the status of the many undocumented workers already here productively harvesting our crops. While supporters of this approach may believe undocumented workers will return to their home countries, the reality is that these workers will be pushed further underground where they are likely to be exploited by the worst employers. Chairman Smith's mandatory e-verify legislation, the Legal Workforce Act, encourages this hidden world of exploitation through various loopholes for agricultural employers. These guestworker proposals bring to mind the words of a farmer from Edward Murrow's famous documentary *Harvest of Shame*, who said, "[w]e used to own our slaves; now we just rent them."

The Bush Administration, in its last few days, sought to appease growers by making drastic anti-worker changes to the H-2A program regulations, slashing wage rates and job protections for U.S. and foreign workers. Even these anti-worker changes, which resulted in wage cuts of \$1.00 to \$2.00 per hour, did not approach in scope the proposals put forth by Lungren and Smith. Fortunately, Secretary Solis reversed these changes, largely restoring the Reagan regulations and their modest wages and labor protections, most of which had evolved over decades of experience with agricultural guestworker programs. The Department also instituted additional common-sense protections, such as a requirement to disclose job terms to workers.



As detailed in our report, *No Way to Treat a Guest*, even with its modest protections, the H-2A program is plagued with pervasive abuses.<sup>7</sup> The abuses are inextricably part of the H-2A program due to its inherently flawed nature: (1) H-2A workers are tied to their employer and dependent on them for present and future employment, as well as their ability to remain in the country; (2) H-2A workers are temporary non-immigrants who can never become permanent members of our society no matter how long they work here; and (3) H-2A workers are desperate to earn income as they typically arrive heavily indebted due to travel costs and recruitment fees with the frequent fear that their families at home may suffer repercussions if they are unable to repay their debt quickly. For all these reasons, H-2A workers are extremely reluctant to challenge unfair or illegal treatment. While a small percentage of H-2A workers have rights and remedies under collective bargaining agreements, the vast majority have no union to represent them. Moreover, H-2A growers frequently exercise their right to contact their elected representatives to complain about the H-2A program's requirements, but guestworkers have no political representation in the United States and therefore have no meaningful voice in policy debates that directly affect them. This political power imbalance is another reason guestworker programs are inappropriate solutions in the United States.

Once employers decide to apply for H-2A guestworkers, many employers prefer them over U.S. workers because guestworkers are cheaper than U.S. workers for several reasons. First, the H-2A employer does not pay Social Security or Unemployment Tax on the guestworkers' wages, but must do so on the U.S. workers' wages. Second, guestworkers' vulnerability also means that they work to the limits of human endurance for the modest wages offered in the H-2A program, while most U.S. farmworkers would expect higher wages for such onerous, often dangerous productivity demands. The H-2A workers are highly prized for their productivity. These financial incentives lead to discrimination against U.S. workers. Unfortunately, the main job preference for U.S. workers, known as the "50% rule," is not adequately enforced and has been eliminated in the Smith and Lungren proposals. A third incentive to hire H-2A workers is that while recruiting in foreign countries, employers can and do select workers based on ethnicity, age, gender, and race, which is far more difficult to do inside the United States. "[D]iscrimination based on national origin, race,

<sup>7</sup> See also Cindy Hahamovitch, *No Man's Land*, Princeton: Princeton University Press, 2011.

age, disability and gender is deeply entrenched in the H-2 guestworker system.”<sup>8</sup> Almost uniformly, H-2A workers are single relatively young men who are not accompanied by their families.

These and other incentives to use H-2A workers have led to tremendous obstacles for U.S. workers who seek jobs at H-2A employers. While the majority of the agricultural workforce is undocumented and in need of an earned legalization program, there are still roughly 600,000-800,000 legal immigrants and citizens who seek employment in agriculture. Unfortunately, H-2A program employers routinely turn away U.S. workers, discourage them from applying for H-2A jobs, or subject them to such unfair and illegal working conditions and production standards that workers either vote with their feet or are fired. For example, two American women in Georgia were fired by an H-2A employer after just a few days in the fields for allegedly failing to meet a production standard which had not been approved by the government and about which the workers had not been told until arriving at the farm.<sup>9</sup> The H-2A application’s job offer stated the workers would be paid \$9.11 an hour and would be provided with 40 hours of work a week. During the few days they worked, these women were not allowed to begin working until after many H-2A workers had started picking; they were only allowed to work for a few hours in the morning even while H-2A workers continued to work; and they were forced to spend time bringing their buckets of zucchini a great distance to tractors. One of these women had actually grown up on the farm in question and picked vegetables as a child.<sup>10</sup> Their discharges illustrate the challenges willing U.S. workers face at many H-2A employers. There are many similar cases around the country. The regulations governing recruitment, including the 50% rule, which is the principal job preference for U.S. workers in the H-2A program, are key measures designed to protect the ability of U.S. workers to obtain employment with H-2A employers.

Despite restored protections in the H-2A program and unionization of some H-2A employers, systemic problems persist that the Department of Labor should stop. We commend DOL for increasing its overview of H-2A applications, as required by the statute, which has led to the rejection of unlawful job terms, such as clauses that waive farmworkers’ right to bring lawsuits and require them to accept arbitration instead, and other requirements designed to discourage US

<sup>8</sup> Southern Poverty Law Center, “Close to Slavery,” (2007) p. 34.

<sup>9</sup> See OSC Charge Form, EEOC Atlanta Office, Kathern Bentley v. J & R Baker Farms, LLC, March 25, 2011; OSC Charge Form, EEOC Atlanta Office, Mary Jo Fuller v. J & R Baker Farms, LLC, March 25, 2011.

<sup>10</sup> See *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, September 2011.

workers from applying for H-2A jobs. Despite employer pushback and complaints, DOL must continue to increase its oversight and enforcement of the H-2A program. As detailed in our report, *No Way to Treat a Guest*, violations of basic program requirements are rampant: employers frequently fail to pay transportation costs and wages owed; workers live in abysmal housing and work under hazardous conditions; and workers even suffer trafficking violations, including confiscations of their passports and verbal and physical abuse.<sup>11</sup> Government also must do more to overcome the systemic problem of growers using farm labor contractors as a shield against responsibility and liability for violations of labor and immigration laws—the growers and their labor contractors must be held jointly responsible.

In conclusion, there are sensible policy solutions to provide the nation's agricultural sector with a stable, legal farm labor force that is treated fairly. Discriminatory labor laws should be reformed, enforcement of labor laws should be enhanced and employers should be encouraged to offer job terms that attract and retain productive farmworkers. Congress should not get mired in guestworker program proposals that have been tried and rejected in the past. The proposed new guestworker programs would only worsen the situation, and contravene our traditions of freedom, opportunity and democratic principles. Congress and the Administration should strengthen the current H-2A labor protections, including by ending employers' incentives to hire vulnerable guestworkers rather than US workers. Most importantly, Congress should provide current undocumented agricultural workers with an opportunity to earn permanent immigration status. These recommendations will help ensure a productive, law-abiding, fair farm labor system and maintain our nation's commitment to economic and democratic freedom. Thank you for this opportunity. ///

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<sup>11</sup> See also Southern Poverty Law Center, "Close to Slavery," 2007.

**Statement by U.S. Senator Chuck Grassley**  
**Immigration Subcommittee Hearing**  
**“America’s Agricultural Crisis: Enacting a Practical Solution”**  
**October 4, 2011**

The United States is blessed with a rich agricultural bounty which provides food not only for U.S. consumers but also for a growing world population. American farmers are the most productive food producers in the world. In fact, each farmer feeds more than 120 people at home and abroad.

George Washington once said that "Agriculture is the most healthful, most useful and most noble employment to man." Although I'm biased, I couldn't agree more. I have a special interest in today's hearing because I am a family farmer. I understand the agricultural needs of my state. However, I also know that the needs of California and Vermont, for example, are different from Iowa. Even though our industries are not identical, our interests and goals are the same. We must be able to meet the needs of agriculture. We must look for solutions that serve the industry and our country in the long-run.

America's agricultural industry depends, in part, on the ability of farmers and ranchers to recruit and hire workers. Unfortunately, more than half of today's U.S. agricultural workforce is undocumented. Some employers claim it's because Americans will not perform the hard work that is required. Some are using undocumented labor to cut costs. Regardless of the reason, we find ourselves in a situation where employers are hiring illegal workers, allowing them to undercut their competition and to ignore the legal avenues we have in place to bring in foreign workers.

I am well aware of the legislative proposals that would put millions of agricultural workers on a path to citizenship. I was here in 1986 when we legalized more than one million workers in the Special Agricultural Worker program, known as SAW. We underestimated how many people would come forward and take advantage of it. We weren't prepared to root out the fraud, and there was plenty of it. More importantly, in 1986, we said it would be a one-time fix. It's obvious we were wrong. We certainly cannot go down that road again.

Instead, we must consider a long-term solution to the industry's needs. The answer is to reform our current agricultural guestworker program known as the H-2A visa program.

Senator Chambliss has a bill, S. 1384 or the Harvest Act, that would make significant improvements to the H2A visa program. I agree with many aspects of Senator Chambliss' proposal, including making sure we streamline the process for employers and reducing the red tape that comes with using the program. I am a proponent for expanding the program to include various agricultural industries in the program, such as dairy, animal agriculture and agricultural processing. Many employers in my home state say they're unable to use the program because it's restricted to seasonal or temporary work. We must make the program work better for those who desperately need the workers. I hope to hear some constructive suggestions today to that end.

While I am a champion of the ag industry, I do have concerns that many agricultural employers are convinced that they won't survive if they are required to electronically verify their workers. E-Verify is a useful tool that's accessible to anyone with a computer. It's reliable. It's free. It's web-based and easy to use. More importantly, it's helpful for employers who want to abide by the law and employ a legal workforce.

Opponents of E-Verify, I'm afraid, are using agriculture to argue against mandatory E-Verify participation. I have long said that E-Verify must be a staple in every workplace, and that includes the agricultural sector. I'm not in favor of carving out exemptions for certain industries, and I am willing to do what I can for small businesses and industries that need help to fully comply with potential requirements.

I thank the Chairman for holding this hearing today, and I'm glad we have a well-rounded group of witnesses to discuss the labor needs surrounding agriculture. I'm also glad to be a part of the discussion on how to improve the current immigration system to ensure that they have access to the workers they truly need. I hope my colleagues will join me in this effort to help the farmers and ranchers that feed America.

Testimony of Connie Horner

Before the  
Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security  
October 4, 2011

Chairman Schumer, Ranking Member Cornyn, and distinguished members of the Committee, I need your help to continue to do the right thing. I need legal, experienced, seasonal workers to maintain my farm and harvest food that helps feed Americans. I want to hire *legal* workers. Yet, the hiring process must *be cost-effective* and—most important—*simple*. In short, I need your help to make it *easier* to do what's *right*.

I'm Connie Horner, from Homerville, Georgia. I manage a 9-year old, 8-acre, family-owned, organic blueberry farm. There are approximately 2000 U.S. farmers in 20 states growing 500 to 600 million pounds of cultivated blueberries annually, with a wholesale value of about \$1.5 billion. In Georgia, I am one of about 350 growers who produce blueberries with a total farm gate value of \$120M to \$140M annually. We are by any measure a small family farm. Yet, the challenges we face are shared by farms small and large across Georgia and the nation. As you are all aware, earlier this year farmers in Georgia found themselves in the national spotlight when a new state law quickly resulted in a farm labor disaster.

This is our story. In 2006, we hired 67 individuals who worked for varying lengths of time over the course of the year. They were pleasant, productive and efficient. Unfortunately, as months passed, we received nearly 60 Social Security mismatch letters. Translation: unknown to me at the time, more than 80% of my hires were most likely falsely documented workers.

Though this is the reality for many growers, to us it was unacceptable, so we researched options and learned of the H2A program.

In 2007, and 2008, we filed joint H2A contracts with a larger farm. We believed participating in H2A would ensure reliable, legal, experienced workers. We were disappointed. The first year, workers' wages were 60% more than minimum wage and production dropped substantially. The second year, along with a new crew, we brought back the best workers from 2007, but again, production suffered.

In 2009, due to crop damage from a 5-minute hailstorm, we only needed 5 additional workers during harvest. We had previously cancelled our H2A contract on the advice of three gentlemen from the Department of Labor (DOL) who assured us that they could supply over 500 farm jobs due to the overwhelming number of Americans out of work. I was calling 3 branches of the DOL several times a week, begging them for workers. The Americans interested in working wanted only air-conditioned positions and refused to work outside. About 80% of our fruit rotted on the bushes.

Once again, we were faced with a serious dilemma: where do we find a legal, reliable, experienced, productive workforce? There was no easy answer; so again, we were forced to go back to H2A. The larger farm refused to participate in the program, so we brought back the best employees from 2008. We spent over \$12,000 in H2A non-payroll related costs for only 7 H2A employees. The paperwork required to comply with regulatory, documentation and reporting requirements consumed 14 reams of paper—7,000 sheets. Essentially, that's 1,000 sheets of paper per needed employee! (This year we discontinued H2A and used less than one ream for the same number of needed employees.)

Besides the 7 H2A workers we brought from Mexico in 2010, we were required to send out 58 local hire letters. We received no response from 25 (43%), 18 (31%) were hired but never showed up, and of the 13 (22%) that were hired and came to work - 6 worked 3 days or less, 1 lasted longer than 2 weeks, and *none finished the season*.

Many of the DOL referrals were criminals, which we discovered only by their excuses for not coming to work. They needed to visit parole officers or have ankle bracelets removed. Fortunately, few of them came to our farm. The H2A rule requiring employers to hire everyone without question is irresponsible and potentially dangerous! It is one of the many reasons Horner Farms will no longer use this program.

In addition, we are currently involved in a lawsuit where our 2010 H2A contract is in question. Our contract, though it was approved by all the necessary Government agencies, accepted and signed by me and all my employees, is in danger of being voided. So, even though we paid the agreed upon contracted wage rate, this lawsuit may require us to pay 26% more in back wages. I'm not a lawyer, but voiding a legally constituted contract that was agreed upon by all relevant parties is unacceptable.

I'd guess none of you would choose to be a new surgeon's first patient. We all want to deal with experienced, efficient service providers. Farmers like me are no different. Our very survival as farmers in this country depends on access to experienced, efficient workers. Yet, under the H2A program, worker referrals typically had no experience with farm work. As a result, production suffered greatly and with the tremendous added paperwork requirements; my time was no longer spent in the fields where I am most effective, but in the office surrounded by mountains of paperwork.

After 2010, we knew that H2A was not the answer for us. Having survived the process for 3 out of 4 years, it was clear to us that the H2A program was a Rube Goldberg solution to the labor issue facing farmers. We hoped to phase out H2A over time with the purchase of a mechanical blueberry harvester. We planned to slowly convert our farm to all machine harvestable varieties. Because organic farming is more labor intensive, we know that we might not be able to remain organic.

We purchased our harvester in December of 2010. Our harvester was the first of its kind in the State of Georgia, and we did have better results than we initially thought possible. But, mechanization is not an answer for everyone, and even for us, it brings a whole new set of challenges. First, in blueberry production, only a few varieties are suitable for machine-harvesting. This means we will have to replace 82% of our farm with new, unproven, machine harvestable varieties, and that will take us 5 to 10 years if things go well. We will struggle each and every year to get the necessary maintenance done to ensure a good crop. We will no longer have farm labor around to perform other routine tasks like weed control, which we must do by hand to maintain our organic certification. We will no longer be able to pack our own fruit, because machine-harvested blueberries require much more sophisticated sorting, grading, and packing equipment that a farm our size cannot afford. We have also discussed downsizing our farm to make it more manageable for the five of us.

I believe H2A is a well-meaning mess. It has an admirable goal of protecting workers while supplying farms with needed labor. Yet, the H2A regulations and requirements have turned government red tape into a crimson tide. H2A is NOT the answer to the labor crisis we are facing today. As I understand the numbers, H2A provides only 2 to 4 percent of the hired farm workforce. Yet, 70% or more of experienced farm workers are thought to be unauthorized to work in the U.S. That's something like one million people. If we had to replace those one million workers through H2A, the program would

have to handle 10 or 15 times as many workers as it ever has! It would collapse, and farming would collapse along with it.

The National Council of Agricultural Employers recently commissioned a major research project into the H2A program that has documented its failings. The research project included a nationwide user survey, which was overseen by Carol House, a statistician who used to direct all of the statistical efforts of the USDA, including the Census on Agriculture. She recently provided expert testimony for a September 13 House hearing on the subject. Also testifying at the House hearing was Libby Whitley Fulton, who is an H2A employers' agent with vast experience. I am including their testimony with my own statement in the hopes that it can be made part of the record of this important hearing.

Tweaking H2A is not the answer. Growers and producers in America need a 21<sup>st</sup> century farm labor solution that is more suited to the realities of farming. A program needs to give workers the freedom to move among crops and among employers as most do now. The program must provide workers needed in the future, and it also needs to provide a worker visa that allows the existing, experienced workforce to continue to work. I don't see how you can solve the problem otherwise.

Our farm's story is a bit different than most in our area, so when the Georgia legislature passed an immigration enforcement law this past spring, we didn't feel the brunt of it. Others did. Much of the migrant farm labor supply skipped coming to Georgia out of fear of the new law. Commissioner Black is in a better position to go into the numbers on worker shortage and crop loss, but the situation was devastating, with vegetables, berries, and fruit left to rot. Farms felt the impact first, but so did community-based businesses that serve the farming and farm worker communities. It was a man-made disaster that threatens to repeat itself in more and more states unless Congress finally acts.

Let me close with this reality: American Farmers feed Americans! We are already dependent on other less reliable countries for our oil – we are becoming more aware of the enormous risks involved in that. Do we really want to regulate our farmers out of business? Do we want to be dependent on foreign countries for growing our food? That will be our children's future, unless you all finally take smart and sensible action to resolve this national crisis.





## *Idaho Dairymen's Association, Inc.*

1182 Eastland Drive North, Suite A  
Twin Falls, ID 83301

Phone: (208) 733-6372  
Fax: (208) 735-5955

October 4, 2011

The Honorable Charles E. Schumer, Chair  
Immigration, Refugees and Border Security Subcommittee  
Judiciary Committee  
United States Senate  
Washington, D.C. 20510

The Honorable John Cornyn, Ranking Member  
Immigration, Refugees and Border Security Subcommittee  
Judiciary Committee  
United States Senate  
Washington, D.C. 20510

**Hearing on "America's Agricultural Labor Crisis:  
Enacting a Practical Solution"  
Statement of Bob Naerebout, Executive Director  
Idaho Dairymen's Association**

Thank you for holding this hearing on the impact of federal immigration policy on the nation's family farmers and ranchers. The Members of the Idaho Dairymen's Association (IDA) appreciate the opportunity to provide comments to the subcommittee on how those policies currently affect them and what changes are needed to ensure that agriculture has a legal and consistently available workforce now and in the future.

The dairy industry in Idaho is made up of 569 dairy farms that produced 12.75 billion pounds of milk in 2010. That ranks the state #3 in the nation in milk production. Our dairy farms directly employ about 8,300 people. There are currently 25 dairy processing facilities in the state with a total of 2,371 people working. The dairy industry in the state supports 22,406 secondary jobs. That is a total of just over 33,000 people in Idaho whose jobs depend on a healthy dairy industry in the state.

Because of the seriousness of this issue to our Members, The Idaho Dairymen's Association has taken a leadership role on immigration reform issues at the federal level for several years. IDA is on the Executive Committee of the Agriculture Coalition for Immigration Reform and is a part of the National Milk Producers Federation Immigration Task Force.

**A New Start is Necessary.**

IDA agrees with the vast majority of agricultural producers and their trade organizations that the current H-2A program is irreparably broken. IDA supports the creation of a market-based system for accessing agricultural workers when they are needed. That system must also be constructed to function in a timely manner.

Attempts to extend eligibility for H-2A to dairy producers miss the mark because of the many shortcomings of the program itself. Those include the fact H-2A provides only a very small percentage, well less than 10%, of the workforce needs to sectors of the industry that are eligible, those who use the program report significant lags between the time the workers are needed and approval of applications and the fact that none of the proposals introduced in this Congress to date would include the current experienced dairy workforce in the program.

**Access to Labor on Dairies is also an Animal Care Issue.**

Access to labor on dairies is of course an economics issue but it is also an animal care issue. Jobs on dairies are skilled positions that take the right temperament and training to work with cattle including feeding, breeding, milking and caring for animals in the hospital and maternity pens as well as young calves.

Dairy producers invariably report that they have repeatedly tried to hire local workers. There are many reasons local workers either do not apply or don't last even the first day if they do accept a position, but the pay is not one of them. Jobs on dairies pay well above the minimum wage and often come with benefits like housing, health insurance and vacation.

The fact is dairy cows are milked at least twice a day, seven days a week, 365 days a year including weekends and holidays. It is imperative for dairy producers that the workers who care for their cattle want to do the job and are willing to accept the literally everyday realities of dairy farm life.

**An Effective Agricultural Worker Visa Program to Accompany Mandatory E-Verify is Compassionate to Workers and a 'Must' for Farmers.**

Passage of a bill by the House of Representatives' Judiciary Committee mandating the use of the E-Verify system to check the work authorization of new employees without inclusion of an effective program for agriculture labor poses one of the most significant threats to the American food supply in recent memory. The fact is most of agriculture, including dairy, relies on immigrant labor. Legislation requiring farmers to perform an enforcement role that is clearly the federal government's responsibility is also unfair.

The solution is to provide an effective agricultural worker visa program that recognizes there are people currently in the country doing those jobs that others have no interest in and that provides visas of adequate length to satisfy the diverse needs of all of the industry. That approach is both compassionate to those who have come to this country for no other reason than economic opportunity and recognition of the fact that farmers have no option but to rely on immigrant labor.

**Five Principles for an Effective Agricultural Work Visa Program.**

Idaho dairy producers believe there are five basic principles that must be met for any immigration reform legislation to provide a meaningful program that will allow American agriculture to continue to provide consumers the safest, most affordable food supply in the world. Those principles are:

1. The legislation must allow individuals in the experienced dairy workforce currently in the country to obtain a visa authorizing them to work here legally. That can include requirements that the worker pay a fine, learn English and have and maintain no criminal record.
2. The legislation must provide work visas of adequate length to address the year-round job needs of dairies.
3. The legislation must provide a workable program that dairy producers can access for labor. That likely means a program administered by the United States Department of Agriculture instead of the Department of Labor.
4. The program must include a transparent rulemaking process so that the responsible regulatory agency cannot make changes solely at its discretion. For example, the Department of Labor recently issued, without notice or the opportunity for input, new worker housing guidance for the sheepherder visa program that producers are now forced to comply with.
5. The legislation should allow organizations linked to agriculture to file program paperwork with the regulatory agency on behalf of producers seeking workers.

Again, I thank the Members of the Subcommittee for holding this hearing and for the opportunity to provide input on this issue of utmost importance to Idaho dairy producers. It is time for the Congress to provide certainty to American agriculture on at least one issue, farm labor, so that family farmers can get back to doing what they do best – feeding the public, serving as the economic engine in rural areas of the country and providing a large net positive to the U.S. balance in international trade.

*The Idaho Dairymen's Association (IDA), based in Twin Falls, ID, was established to continue to develop and sustain an economically viable Idaho dairy industry that works together to achieve success in the domestic and global marketplace in meeting the needs of the Idaho dairy farm families. Founded in 1944, IDA represents all dairy producers within the state of Idaho.*

Statement of Dr. Ronald D. Knutson

Before the Subcommittee on Immigration, Refugees and Border Security,  
Committee on Judiciary, United States Senate

Hearing on

"America's Agricultural Labor Crisis: Enacting a Practical Solution"

October 4, 2011

Chairman Schumer and Members of the Subcommittee; thank you for the opportunity to testify on issues related to immigration reform and agricultural labor. This is an extremely important topic that requires careful analysis and understanding prior to moving forward with legislative action. The reason lies in the fact that the hired farm labor force is critically important in producing and in harvesting the highly perishable segment of the U.S. food supply. These perishable commodities include fruits, vegetables, and milk. If farm labor is not available at the time it is required, these foods will go to waste or not be produced. This fact makes farm labor unique and requires carefully designed legislative solutions that cut through the red tape and delay typically associated with H-2A government regulations.

My colleague, Dr. Dennis Fisher, and I have spent substantial time studying the conditions in agriculture that make farm labor uniquely important. Each of us is Professor Emeritus of the Department of Agricultural Economics at Texas A&M University. I am the former Director of the Agriculture and Food Policy Center at Texas A&M, which has responded to many Agriculture Committee requests for analysis of agricultural policy issues and policy options. Dr. Fisher has served as a farm labor Extension and research specialist in Oregon, Michigan, and New York. Our experience and research have led us to the conclusion that there is no quick-fix solution to farm labor issues. The current H-2A program is broken and requires a major overhaul, or even replacement with a new program, to deal with the unique requirement for a timely, flexible, and

market-oriented farm labor supply. The remainder of my testimony explains these unique conditions, which serve as the basis for this conclusion.

Despite ever-increasing levels of mechanization, farming is dependent on hired farm labor, which must be available when it is needed. In 2007, there were approximately 1.8 million farm workers, of which 1.4 million were employed on crop farms, and 429,000 were employed on livestock farms. This indicates that about 77 percent of farm workers are used primarily in crop production. Of those used for crop production, about 75 percent are believed to work in fruit, vegetables, and nursery crops. Estimates of the number of unauthorized workers range as high as 61 percent and perhaps higher in many areas.

There are several myths regarding the economic nature of agriculture and the farm labor workforce. These myths can substantially mislead individuals who seek solutions to farm labor issues.

The first of these myths is that farm labor should be readily available from nonfarm sources, particularly in a time of high unemployment. Anyone who has worked on a farm knows that there are many jobs associated with agricultural production and processing that domestic nonfarm laborers will not do. This fact has been repeatedly demonstrated. While the process of farm mechanization goes forward, back-breaking hand labor is still essential for harvesting most perishable fruits and vegetables sold fresh in our supermarkets and farmers' markets. This is not just our assertion based on our anecdotal experience; it was a central conclusion of a set of case studies completed by the Economic Research Service of the U.S. Department of Agriculture (ERS/USDA) and the University of California, which was recently published by ERS/USDA. In animal agriculture, while hand milking is no longer required, skilled milkers must be available to operate machines that are used to milk, feed, and clean up after cows two or three times a day, seven days a week. There are no holidays and no weekend breaks for harvesting perishable crops or for milking cows. These

are jobs that must be performed on a timely basis, or food is wasted, and farm income declines. Waiting for a visa or work permit to be issued under the H-2A program is not a viable option for most farmers. That is one of the reasons most farmers do not use the program.

A second farm labor myth is that large corporate agribusiness firms employ most of the farm labor. In 2009, data from ERS/USDA indicate that there were 2.2 million U.S. farms. All but 60,846 of these were family farms. A family farm is defined as one in which ownership and control of the farm business is held by a family of individuals related by blood, marriage, or adoption. All types and sizes of farms, including small farms, utilize the corporate form of business organization. For example, in 2007, over 46,000 farms having less than \$250,000 in sales were organized as corporations. All of these were family-held corporations. Likewise, all types and sizes of farms, including small farms, at times, utilize hired farm labor. For example, in 2007, family farms classified as limited resource, retirement, residential lifestyle, and lower-sales typologies were found to have hired farm labor expenses that ranged from an average of \$4,951 to \$8,081. These small farms would be very adversely affected by actions that limit the availability of labor and/or raise wage rates paid for hired farm labor. In 2009, 16 percent of the labor utilized on farms having \$10,000 to \$250,000 sales was hired farm labor. It is reasonable to assume that most of this labor was employed at harvest time when the urgency of having a labor supply is the most critical. For farms having over \$250,000 in sales, an average of 48 percent of the labor was hired in 2009.

A third myth is that farmers are in a market position to simply pass on the cost of farming to buyers of their produce. Farm prices are determined nationally or globally by competitive supply and demand forces. U.S. farmers compete with farmers in Mexico and other supplying or potential supplying countries. Loss of market is a particularly likely consequence for asparagus, apples, oranges, grapes, and tomatoes. Mexico, Peru, Chile, and South Africa stand as major sources of fruit and vegetable supplies for the U.S. consumers. U.S. exports of oranges, lettuce, raisins, strawberries,

and asparagus have been adversely affected by increased competition for the important Japanese market. Chinese exports of apples have risen from near zero in the early 1990s to nearly double that of the United States. While U.S. farmers would like to be in a position to set their own prices and pass on their costs to consumers, this is not possible. Farmers must make production, farm labor, marketing, and financing decisions that directly affect their profitability in this highly volatile market environment. Seasonal and annual price instability creates great uncertainty regarding income expectations and the resulting financial stability of farms. Those who make the wrong decisions run the serious risk of financial failure. In 2007, ERS/USDA determined that 20 percent to 40 percent of the farms in each farm type were in a less than favorable financial position. Research clearly indicates that higher labor costs run the risk of higher imports and reduced exports.

Our fourth myth is that agribusiness firms are directly involved in farm production that utilizes farm labor. Farmers who produce fruits, vegetables, and milk are a distinctly separate segment of the food supply chain. It is true that as the food supply chain has evolved, agribusiness firms have found it desirable to contract with farms in advance of harvest, sometimes in advance of planting, for commodities. Where they exist, such contractual arrangements have been found to be mutually beneficial to both sellers/farmers and buyers. In cases where commodities are exported, such contractual arrangements may be essential to be competitive internationally. Agribusiness corporations that produce farm commodities and are not family owned are the exception rather than the rule. Agribusiness corporations are the primary firms that are involved in developing the genetic breeding for plants, livestock, and poultry. They allow our family farms to maintain their competitiveness. Agribusiness includes all firms that supply farm inputs and that handle, process, and distribute/market farm products.

Our fifth myth is that the farm labor market is national in scope, that labor issue shortages are not real, and that farm labor issues can be addressed

on a national legislative basis. The fact is that farm labor markets are local and are dispersed throughout the United States. The demands for farm workers vary widely from commodity. Often, a large number of workers is required for specific time periods. These are facts that are based upon experience. When fruits and vegetables destined for the fresh market mature, they must be harvested, or they go to waste. Cows must be milked twice or three times a day.

Our analysis clearly indicates that the H-2A immigration program is broken. In 2009, only 86,000 workers were certified for H-2A visa status, which is the only available guest farm worker program. H-2A accounts for less than 5 percent of the hired farm labor workforce. Proposals such as requiring farmers to e-Verify will only add to the problem. If controls are to be placed on the employment of illegal immigrants by border controls or by enforcement of the current federal immigration law, there must be means by which farmers employ farm labor while avoiding labor shortages. These effects were actually experienced, for example, when the Bracero program was ended and during the recent farm labor shortages experience in Georgia testified to in this hearing. The end of the Bracero Program in 1964 precipitated severe labor shortages, a spike in wage rates, limited local labor response, increased mechanization, higher produce prices, and a loss of export markets to other countries. Experience with H-2A indicates that there is a need to abandon the H-2A program and to develop a more flexible, market-oriented program designed for farm labor. Such a program must be easily accessible to current workers; farmers must be able to attest to their labor needs; they must be able to make changes in their hired farm labor workforce on a timely basis in response to crop and market conditions; and there must be flexibility for workers to shift between employing farmers as is inherent in the term "migrant labor."

The shift in American diet is new, major, and will require increased production of fruits and vegetables. Farm labor immigration policy will have a major impact on whether the fruit and vegetables used to improve the health of Americans will be produced in the United States or in foreign



countries. Initiatives that involve an even higher level of government regulation will assure that an increased share of fruit and vegetable production, as well as of other agricultural products, will be produced overseas—outsourced.

**Impacts of Immigration Reform Proposals  
on the Agriculture Sector**

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July 2011

**Dr. Ronald D. Knutson, Professor Emeritus, Texas A&M University**

**Dr. Dennis U. Fisher, Professor Emeritus, Texas A&M University**

## **Impacts of Immigration Reform Proposals on the Agriculture Sector**

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Dr. Ronald D. Knutson, Professor Emeritus, Texas A&M University

Dr. Dennis U. Fisher, Professor Emeritus, Texas A&M University

### **About the Authors:**

Dr. Knutson was the director of the Agriculture and Food Policy Center, Department of Agricultural Economics and Texas A&M University from 1988 to 2001 and continued to be employed by Texas A&M University until 2010. Prior to his employment by Texas A&M as a professor in 1975, Dr. Knutson was employed by Purdue University and by USDA's Agricultural Marketing Service and its Farmer Cooperative Service. He received his B.S. and Ph.D. from the University of Minnesota and his M.S. from Pennsylvania State University. In 2003, Dr. Knutson was named a Fellow by the American Agricultural Economics Association, its highest honor.

Dr. Fisher was employed by Texas A&M University, as a professor and extension economist from 1980 to 2005 in the Department of Agricultural Economics. In 2005, he retired as Professor and Extension Specialist Emeritus, although he continued to teach agribusiness management through 2008. Previously, he was employed by Cornell University, Oregon State University, and Michigan State University. Dr. Fisher's research on farm labor issues, such as workmen's compensation and wage rates, was used by the Departments of Labor in Michigan, Oregon, and New York for addressing legislative and regulatory farm labor issues. From 1974-79, he served as a member of the Northeast Farm Labor Research Committee and was chairman of that Committee from 1978-79. Dr. Fisher also served as a consultant to H.J. Heinz, Inc. on farm labor bargaining strategies. He received his M.A. and Ph.D. from Michigan State University and his B.S. from Washington State University.

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### Executive Summary

Immigration policy is one of the major U.S. policy issues affecting the agriculture sector. Despite ever-increasing levels of mechanization, farming is dependent on hired farm labor, of which as much as 53 percent may be unauthorized. There are many jobs associated with agricultural production and processing that domestic labor demonstrably prefers not to perform. As a result, special policies historically have existed to authorize immigrants to enter the United States on a temporary basis. In addition, many unauthorized workers have entered the United States to work in agriculture and many other occupations. In this economic and employment environment, question arises as to how the almost insatiable demand for fresh and perishable fruits and vegetables is to be satisfied. Will it be from domestic production or from imports and are we willing to give up export markets to foreign producers?

The purpose of this study was to analyze the impacts of U.S. immigration policies and programs on the agriculture sector. This analysis includes current policies and those that have been proposed. The U.S. agriculture sector includes all functions related to food, fiber, and specialty crop production from input resources used in production through final sale to consumers, including exports and imports. Farm products/commodities are produced by the farm sector by combining inputs purchased from the input sector. Farmers combine these purchased inputs with their land, water, labor, and management skills to produce commodities. This study has been undertaken in response to a report titled *Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce* authored by Eric A. Ruark, hereinafter referred to as the Ruark Report. The authors of this study were retained by the Agriculture Coalition for Immigration Reform to provide an objective analysis of the Ruark Report.

### Findings

- A significant share of the U.S. production moves as commodities directly into export markets where farmers and agribusiness firms compete with

those in other major agricultural countries. In labor intensive fruits, vegetables, and specialty crops, the U.S. farmers face substantial export and import competition from Mexico, Central America, Chile, Columbia, Peru, and increasingly China. The U.S. value of fresh fruit and vegetable imports has grown to the point where it is more than twice the value of exports. Increases in U.S. costs of production would have substantial adverse effects on the global competitive position of U.S. farmers because prices are determined globally. Therefore, farmers are not in a position to pass through cost increases.

- In 2007, there were 2.2 million U.S. farms of which 2.1 million were family farms and only 91,000 were nonfamily farms. Family farms are closely held by their operator/manager and the operator's household. All types and sizes of farms, including small farms, utilize the corporate form of business organization. Of the nonfarm corporations, only 10,237 farms are other than family-held corporations, which is less than one-half of one percent of all farms.
- Agribusiness involvement in farm production is the exception rather than the rule. Agribusiness includes all firms that supply farm inputs and that handle, process, and distribute/market farm products.
- Using the same data source as Ruark, 20 percent to 40 percent of the farms in each farm type were determined to be in a less than favorable financial position in 2007. These are the farms that would be most vulnerable to any labor cost increases.
- Farmers must make production, marketing, and financing decisions that directly affect their profitability in this highly volatile market environment. Seasonal and annual price instability creates great uncertainty regarding income expectations and the resulting financial stability of farms.



- In 2007, there were approximately 1.8 million farm workers of which 1.4 million were employed on crop farms and 429,000 were employed on livestock farms. This indicates that about 77 percent of farm workers are used primarily in crop production. Of those used for crop production, about 75 percent are believed to work in fruit, vegetables, and nursery crops. Estimates of the number of unauthorized workers range as high as 53 percent.
- Farm labor markets are local and are dispersed throughout the United States and the demands for farm workers vary widely between commodities and locations. Often, a large number of workers is required for specific time periods. When fruits and vegetables destined for the fresh market mature, they must be harvested, or they go to waste. Cows must be milked twice or three times a day. These facts enhance the potential for and dangers from labor shortages.
- Crop budgets indicate that labor costs range from about 50 percent to 70 percent of variable production costs for fresh fruits and vegetables. Research clearly indicates that higher labor costs run the risk of higher imports and reduced exports. Mexico, Peru, Chile, and South Africa stand as major sources of fruit and vegetable supplies for the U.S. consumers. U.S. exports of oranges, lettuce, raisins, strawberries, and asparagus have been adversely affected by increased competition for the important Japanese market. Chinese exports of apples have risen from near zero in the early 1990s to nearly double that of the United States.
- For commodities where hired labor is a high proportion of production costs, labor-saving mechanization may be induced to increase global competitiveness. This is what happened when the Bracero program was terminated in the mid 1960's resulting in a substantial reduction in farm labor employment. However, to maintain quality, 47 fresh fruits and vegetables are harvested by hand.

- Most of the work done by hired farm workers is highly laborious, back breaking, and difficult. It is often performed in hot and humid field conditions with the sun beating down on the workers. Moreover, this work has been demonstrated to be highly seasonal, meaning that these U.S. employees/workers would have to move around the United States, at least regionally, to harvest crops on a timely basis.
- The only three options for increasing the earning of farm workers include increasing the minimum wage; imposing effective border/immigration controls to reduce the supply of unauthorized labor; and enforcing the current federal law prohibiting employers from hiring illegal immigrants. Each of these options would raise production costs, reduce exports, and increase imports. The latter two options would create farm worker shortages.
- There is a broad-based consensus that the U.S. immigration system is broken. In 2009, only 86,000 workers were certified for H-2A visa status, which is the only available guest farm worker program. This is less than 5 percent of the hired farm labor workforce.
- If controls are to be placed on the employment of illegal immigrants by border controls or by enforcement of the current federal immigration law, there must be means by which farmers employ farm labor while avoiding labor shortages. This would require a streamlined H-2A program. This means making the H-2A program more employer-friendly and less bureaucratic. If this cannot be effectively accomplished, current policies, while not perfect, generate an ample farm labor supply with relatively few instances of labor shortage, and a reasonable level of competitiveness in domestic and international markets.

### Conclusions

- Agribusiness firms, working with farmers, are a key to the success of the U.S. agriculture system, which is being replicated throughout the world. Agribusiness direct involvement in farm production is the exception

rather than the rule. Instead, because of the demonstrated efficiency of the farm sector and huge investments that farmers make in land, buildings, and equipment, agribusiness firms generally contract for farm production with farmers as contract-growers.

- Farmers do not set the price for their production. They are price takers with the price being determined by domestic and world supply and demand forces. The notion that farms hiring farm labor would have sufficient market power to pass on higher labor costs is clearly erroneous. Price instability combined with weather uncertainties directly impact farms' willingness and ability to make commitments to employ farm labor.
- All of the information was available to make a determination of the true economic effects of higher labor costs on farms. Using averages on a commodity sector basis ignores the distribution of impacts on the family farms.
- The highly variable demands of local labor markets make local labor shortages inevitable. The local nature of labor markets makes a nationwide analytical approach to assessing the economic impacts irrelevant and unreliable. Pursuing labor policies designed to substantially increase farm worker wage rates would result in a loss of markets for domestic producers; increased mechanization; and an inability to attract local labor.
- Hiring U.S. unemployed workers at higher farm-labor wage rates is not an option for dealing with labor shortages. Authorities on farm labor who understand farming uniformly agree with this conclusion.
- The notion that farmers would or could absorb increased labor costs from profits is unrealistic and reflects a lack of understanding of how firms and markets operate. This is reality both domestically and internationally.
- Avoiding farm labor shortage while maintaining the competitiveness of U.S. agriculture in international markets requires either a streamlining of the H-2A program to create a regular and ample flow of guest farm workers or continuing the current set of policies. Any other option will assure higher food costs, increased imports, reduced exports, and periodic farm labor shortages with consequent supply interruptions.

- Immigration policy regarding farm labor will have a major impact on whether the fruit and vegetables used to improve the health of Americans will be produced in the United States or in foreign countries. The initiatives proposed in Ruark's report will assure that an increased share of fruit and vegetable production, as well as of other agricultural products, is produced overseas—outsourced.

## Impacts of Immigration Policy Proposals on the Agriculture Sector

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### Introduction

Immigration policy is one of the major U.S. policy issues affecting the agriculture sector. Despite ever-increasing levels of mechanization, many important farm production and processing sectors across the United States are dependent on hired farm labor, over half of which is unauthorized. There are many jobs associated with agricultural production and processing that domestic labor demonstrably prefers not perform. As a result, special policies historically have existed to authorize immigrants to enter the United States on a temporary basis. In addition, due to ineffective border protection, many unauthorized workers have entered the United States to work in agriculture and many other occupations. In this economic and employment environment, questions arise as to how the almost insatiable demand for fresh and perishable fruits and vegetables is to be satisfied. Will it be from domestic production or from imports, and are we willing to give up export markets to foreign producers?

The purpose of this study was to analyze the impacts of U.S. immigration policies and programs on the agriculture sector. This analysis includes current policies, those that have been proposed, and those that might be proposed. The analysis includes regulations or actions that influence the prices paid for agricultural labor, whether this labor is employed by farmers as hired farm workers or paid for by farmers as agricultural service workers. It also includes workers employed by agribusiness firms in packing plants for handling fresh produce. As will be seen subsequently, in the food supply chain, it is becoming increasingly difficult to separate the produce handling function from the processing function.

This study has been undertaken in response to a report titled *Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce* authored by Eric A. Ruark, hereinafter

referred to as the Ruark Report.<sup>1</sup> Mr. Ruark is the director of research for the Federation for American Immigration Reform, which issued the Ruark Report. The authors of this study were retained by the Agriculture Coalition for Immigration Reform to provide an objective analysis of the Ruark Report.

Throughout this analysis of the impacts of U.S. immigration policies and programs on the agriculture sector, comments are made about how our results differ from those of the Ruark Report, apparent sources of these differences, and how they led to flaws and errors in the Ruark Report and in its conclusions.

### **Agriculture Sector, Agribusiness, Farmers, and the Food Value Chain**

There are two common paradigms for the agriculture sector, neither of which reflects reality. Farm organizations and many farm-state politicians prefer to paint the agriculture sector as being made up of many small family farmers who sell their production in open markets and are in constant need of government subsidies to make ends meet. At the other extreme, there are consumer, environmental, and organized labor advocacy groups which paint the agriculture sector as being controlled by large national and multinational agribusiness firms that control most of the food production in the developed countries of the world and employ most of the farm labor and produce most of the products. Neither of these two paradigms reflects reality.

The U.S. agriculture sector includes all functions related to food, fiber, and specialty crop production from input resources used in production through final sale to consumers, including exports and imports. Farm products/commodities are produced by the farm sector by combining inputs purchased from the input sector. The input sector is composed of agribusiness firms who sell and supply to farmers the inputs (hired labor, seeds, genetics, fertilizer, pesticides, machinery, energy products, buildings, credit, etc.) used in production. Farmers combine these purchased inputs with their land, water, labor, and management skills to produce agricultural

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<sup>1</sup> Eric A. Ruark. April 2011. *Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce*. Washington, D.C.: Federation for American Immigration Reform, Available at: [http://www.fairus.org/site/DocServer/agribusiness\\_rev.pdf?docID=5541](http://www.fairus.org/site/DocServer/agribusiness_rev.pdf?docID=5541) (accessed June 16, 2011).

commodities. These commodities are transported and transformed by agribusiness firms through various stages of handling and processing.

A significant share of the U.S. production moves as commodities directly into export markets where farmers and agribusiness firms compete with those in other major agricultural countries. For grains, oilseeds, rice, livestock, poultry, and cotton, the major competitors include countries such as Brazil, Argentina, Australia, Canada, Vietnam, and increasingly the Eastern European bloc of countries.

In labor intensive fruits, vegetables, and specialty crops, the main U.S. export competition is from Mexico, Central America, Chile, Columbia, Peru, and increasingly China.<sup>2</sup> These same countries are also important processing sites and sources of supply for U.S. supermarkets and other food distributors. For many fruit and vegetable products, these imports compete directly with U.S. farmers for U.S. consumers' food expenditures.<sup>3</sup>

Agribusiness firms supply farmers with inputs and turn commodities produced by farmers into the consumer-ready food products and textile products. They, in turn, market those products to consumers through the supermarkets, convenience stores, fast-food outlets, restaurants, school breakfast and lunch programs, hospitals, and elderly care facilities. Agribusiness firms also distribute the nursery plants, shrubs, trees, flowers, and natural turf-grass that becomes part of our landscaping. In addition, over 40 percent of domestic and export corn use is turned into ethanol by agribusiness firms.<sup>4</sup>

<sup>2</sup> Sophia Wu Huang and Fred Gale. April 2006. "China's Rising Profile in the Global Market for Fruits and Vegetables." *Amber Waves*. Washington, D.C. Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/AmberWaves/April06/DataFeature/> (accessed June 21, 2011). See also Sophia Wu Huang, June 2004, *Global Trade Patterns in Fruits and Vegetables*. Washington, D.C.: Economic Research Service, USDA, WRS-04-06. Available at: <http://www.ers.usda.gov/publications/WRS0406/WRS0406.pdf> (accessed June 21, 2011).

<sup>3</sup> Barry Krissoff and John Wainio. May 2007. "U.S. Fruit and Vegetable Imports Outpace Exports." *Amber Waves*, Washington, D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/AmberWaves/May07/SpecialIssue/PDF/Fruit.pdf> (accessed June 21, 2011).

<sup>4</sup> Food and Agricultural Policy Research Institute. 2011. U.S. Baseline Briefing Book: Projections for agricultural and biofuel markets. Columbia, MO: University of Missouri FAPRI. MU Report #02-11. Available at: [http://www.fapri.missouri.edu/outreach/publications/2011/FAPRI\\_MU\\_Report\\_02\\_11.pdf](http://www.fapri.missouri.edu/outreach/publications/2011/FAPRI_MU_Report_02_11.pdf) (accessed July 29, 2011).

***Position of Fruits, Vegetables, and Specialty Crops in the Food Chain***

The process of moving agricultural products from farms to consumers is referred to as a value chain, because value is added at each step as products move from the farm to the consumer. Figure 1 presents the 2009 value chain for fresh fruits and vegetables. One of the most important points from this value chain is that imports of fresh fruits and vegetables have more than twice the value of exports. Some products, such as bananas, are not produced in the United States; and some fruits, vegetables, and specialty crops are imported when these commodities are not in season in the United States. However, many of these imported products are produced by U.S. farmers and compete directly for consumers' food expenditures. Fresh tomatoes are an excellent example. ERS/ USDA reports that fresh-market tomato imports account for about one-third of U.S. tomato consumption, up from one-fifth in the early 1990s.<sup>5</sup> Over the past decade, imports have made significant inroads into the U.S. fresh-tomato retail market. Imports from Canada's hothouse tomato industry peaked in 2005 but have lost market share to rising competition from Mexico. With government subsidies, Mexico has invested heavily in the greenhouse/hydroponic culture of vegetables, resulting in a larger share of the U.S. import market. In 2010, Mexico accounted for 71 percent of the U.S. import market for greenhouse tomatoes, while Canada's share fell by half to 27 percent.<sup>6</sup>

Agribusiness firms are often portrayed as villains in the agriculture sector and in the food value chain. For example, Ruark erroneously states,

*Large agribusinesses that directly own farms or contract them out to independent operators or simply buy the produce for further processing contend that a low-wage, foreign-born workforce is vital to the survival of farming in the United States.... What the agribusiness industry neglects to acknowledge is that they could choose to absorb the entire incremental cost (i.e. without raising food prices at all) of a*

<sup>5</sup> Gary Lucier and Lewrene Glaser. 2011. "Vegetables and Melons: Tomatoes." *Briefing Room*. Washington, D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/Briefing/Vegetables/tomatoes.htm> (accessed June 21, 2011).

<sup>6</sup> Lucier and Glaser.



*legal workforce earning higher wages and still realize considerable profits.*<sup>7</sup>

This statement reflects a lack of understanding of the U.S. agriculture sector and of its position in the world agriculture and food value chain. Dating as far back as the National Commission on Food Marketing in 1966, there have been several studies of the evolving agriculture and agribusiness system.<sup>8</sup>

These studies have uniformly verified that the the U.S. agriculture/agribusiness system is highly efficient, highly competitive, and operates with normal levels of profitability. The most recent of these studies, in 2008, finds that agricultural and food prices are determined by global changes in production and consumption of key commodities, the depreciation of the value of the dollar, and growth in the production of biofuels; they are not determined by the market power or excess profits of either farmers or agribusiness.<sup>9</sup>

The fact is that agribusiness firms, working with farmers, are a key to the success of the U.S. agriculture system, which is being replicated throughout the world. Agribusiness includes all firms that supply farm inputs and that handle, process, and distribute/market farm products. While agribusiness firms may be directly involved in farm production, this is the exception rather than the rule. Agribusiness firms generally contract for farm production with farmers as contract-growers. The contracting strategy is preferred because of the huge investments that farmers make in land, buildings, and equipment; because of the organizational and management complexities, and because of the demonstrated efficiency of the farm sector.

### **Farm Sector**

The farm sector is composed of farms that produce agricultural commodities. The farms are operated by farmers who provide resources,

<sup>7</sup> Ruark, p. 3.

<sup>8</sup> National Commission on Food Marketing. 1966. *Food from Farmer to Consumer*. Washington, D.C.: Report to President. See also Foltz, William E. 1967. "The Food Marketing Commission and Market Structure and Performance." *Journal of Farm Economics* 49, 2. 413-24.

<sup>9</sup> Wallace Tyner, Phillip Abbot, and Christopher Hurt, 2008. *"What's Driving Food Prices."* Oak Brook, IL: Farm Foundation Issue Report. Available at: <http://www.farmfoundation.org/news/articlefiles/404-FINAL%20WDFP%20REPORT%207-28-08.pdf> (accessed July 20, 2011).

such as land, buildings, machinery, labor, capital, and/or management, used in the production of agricultural products regardless of the legal form of business organization. Many of the inputs used in production are acquired from the input sector. The farm sector is part of a much broader agriculture sector that includes all functions related to food, fiber, and specialty crop production from inputs used in production through final sale to consumers, including exports and imports.

Most of the agricultural production comes from family farms that vary widely in size. The U.S. government defines a farm as a unit of production that annually sells \$1,000 or more of agricultural products. In 2007, there were 2.2 million U.S. farms of which 2.1 million were family farms and only 91,000 were nonfamily farms (Table 1). Family farms are closely held by their operator and the operator's household. The operator of a family farm is the farm's manager. A family farm may be legally organized as a sole proprietorship, partnership, or family corporation.<sup>10</sup> Nonfamily farms are organized as nonfamily corporations or cooperatives, as well as farms having hired managers. The other farm typology headings in Table 1 are believed to be self-explanatory.

In contrast, the definitions in the Ruark Report are very unclear, and characterizations of farms in the Ruark Report are erroneous. His report indicates that he analyzed "rural residence farms and commercial farms."<sup>11</sup> His "rural residence farms" may be the same as the Census of Agriculture "residential lifestyle farm," but the use of different terminology makes the intention unclear. The Ruark Report does not define a commercial farm. The Economic Research Service (ERS), in USDA's farm structure glossary of terms does not define a commercial farm.<sup>12</sup> However, in 2010, a report using ARMS data, the same source of data used by Ruark, defines a

<sup>10</sup> Economic Research Service, March 29, 2011, "Farm Structure: Glossary." *Briefing Room*. Washington D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/briefing/farmstructure/glossary.htm#familyfa> (accessed June 28, 2011). See also Hoppe, Robert A. Penni Korb, Erik J. O'Donoghue, and David E. Banker. June 2007. *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition*. Washington, D.C.: ERS, USDA, EIB-24. Available at: <http://www.ers.usda.gov/publications/cib24/cib24.pdf> (accessed June 18, 2011).

<sup>11</sup> Ruark, p. 9.

<sup>12</sup> ERS/USDA. March 29, 2011.

noncommercial farm as having sales of less than \$10,000.<sup>13</sup> This ERS report, titled, *U.S. Farm Structure: Declining—But Persistent—Small Commercial Farms*, and the companion report from which it was derived, indicate that all farms having over \$10,000 are defined as being “commercial farms.” ERS indicates that farms having over \$250,000 in sales accounted for 75 percent of the production.<sup>14</sup> Ruark indicated that the large-scale commercial farm sizes he analyzed account for 84 percent of the production.<sup>15</sup> Therefore by the ERS definition, “small commercial farms” having sales of \$10,000 to \$250,000 produce 15 percent of the farm output.<sup>16</sup> *Therefore, at least 14-15 percent of the farm output produced by “commercial farms” is excluded from Ruark’s analysis. Therefore, it is clear that Ruark used a different definition of a “commercial farm” than the Economic Research Service, which is the source of the ARMS data used by Ruark. However, the specific definition used by Ruark is unclear.*

There is a large amount of data in Table 1. This mass of data can be boiled down into two very important findings: (1) All of the Census of Agriculture farm types employ over 2.6 million farm workers. Even the farm types having less than \$250,000 sales employ over 400,000 workers; 15 percent of the hired farm workforce. Therefore, any policy changes, such as those discussed by Ruark, affect all farm types. (2) Each of the forms of business organization is used by each of the farm types. Once again, this is a fact even for the small farm types.

Table 1 clearly indicates that each of the Census of Agriculture farm types employs a large number of hired farm laborers. Therefore, the immigration policy actions affect the availability or price of hired farm labor, as discussed by Ruark, and would affect each farm type. For example, 11

<sup>13</sup> Hoppe, Robert A. September 2010. “U.S. Farm Structure: Declining—But Persistent—Small Commercial Farms.” *Amber Waves*. Washington, D.C.: Economic Research Service, U.S. Department of Agriculture. Available at: <http://www.ers.usda.gov/AmberWaves/September10/Features/USFarm.htm> (accessed June 29, 2011). See also Hoppe, Robert A., James M. MacDonald, and Penni Korb. February 2010. *Farms in the United States: Persistence Under Pressure*. Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, EIB 63. Available at: <http://www.ers.usda.gov/Publications/EIB63/EIB63.pdf> (accessed June 29, 2011).

<sup>14</sup> Robert A. Hoppe and David E. Banker, July 2010. *Structure and Finances of U.S. Farms: Family Farm Report, 2010 Edition*. Washington D.C.: Economic Research Service EIB-66, USDA. Available at: <http://www.ers.usda.gov/publications/eib66/eib66.pdf> (accessed July 20, 2011).

<sup>15</sup> Ruark, p. 6.

<sup>16</sup> Hoppe, September 2010.

percent of the 35,000 limited resource farms employed hired farm labor. Of these 35,000 farms, 2,125 farms employed migrant labor. These limited resource farms spent an average of nearly \$5,000 on hired farm labor. All family farms in the limited resource, retirement, residential lifestyle, and lower-sales occupation farming typologies have hired farm labor expenses that range from an average of \$4, 951 to \$8,081 (Table 1). These small farms could be very adversely affected by actions that limit the availability of labor and/or raise wage rates paid for hired farm labor.

The Ruark Report implies that it is only the large farms that utilize corporate forms of business organization. The data in Table 1 clearly indicate that all types and sizes of farms, including small farms, utilize the corporate form of business organization. The difference is that family farm corporations are all family-held. Only 25,000 farms, 1.6 percent of the all farms, are organized as nonfamily corporations (Table 1). Of these nonfarm corporations, only 10,237 farms are other than family-held corporations, which is less than one-half of one percent of all farms. It can probably be safely assumed that most of these 10,237 farms are owned by publically-traded agribusiness firms. Instead, Ruark erroneously equates all large farms with large-scale agribusiness units.<sup>17</sup>

Table 2 provides a comparison of 2004 and 2007 data for the same types and sizes of farms as in Table 1. It also indicates the percent of U.S. total farm sales for each farm type and size. The reason the 2004 data are important is because: (1) they are derived from the ARMS survey, which is the same source of data as Ruark relied on for his analysis, and (2) they provide an indication of the dynamic structural developments occurring in the farm sector.

Table 2 data indicate that, while the total number of farms increased, almost all of this increase appears to have been in the “other farms” category (limited resource, retirement, and lifestyle farms). As has been the case in recent decades, small- and medium-size farms, where farming is the primary occupation, decreased in number, while larger farms and other farms increased. However, a portion of this decrease in the number of small- and

<sup>17</sup> Ruark, p. 8.

medium-size farms and increase in larger farms was because commodity prices began to escalate sharply beginning in 2007. This increased the value of sales for virtually all crop farms. Therefore, the share of production for very large family farms increased from 45 percent of total sales to 52 percent, while nonfamily farms increased their share of sales from 15 percent to 22 percent (Table 2).

Farmers do not set the price for their production. They are price takers with the price being determined by domestic and world supply and demand forces. The notion that farms hiring farm labor would have sufficient market power to pass on higher labor costs is clearly erroneous. Farm commodities are relatively homogeneous the world over. Therefore, farmers cannot expect to sell their produce above world prices. This is in sharp contrast to companies such as General Electric, Ford Motor Company, Cargill, ADM, Kraft Foods, Tysons, Smithfield, Del Monte, and H.J. Heinz that are able to brand their products. However, even the market power of agribusiness firms such as Cargill, Kraft Foods, Tysons, Smithfield, Del Monte, and H.J. Heinz can be dramatically overestimated, because they compete in world markets. For example, leading meat packing companies and poultry processing firms have found it necessary to divest of parts or all of their operations to adjust to adverse market conditions during the past two highly turbulent decades.

#### **How Profitable is Farming?**

As noted previously, the 2004 data are unique in that they draw on ARMS data. Although the ARMS data used by Ruark were for 1996-2008, data for 2004 provide insight into the information that was available and, therefore, how Ruark's methods and analysis were used to bias the results. This fact is seen in the analysis by Hoppe et al. titled, *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition*, (hereinafter the *2007 Family Farm Report*) a report compiled periodically for the U.S. Congress.

While Ruark cites the *2007 Family Farm Report*, he chooses not to present the results of some very important analyses that were conducted by Hoppe et al. Table 3, which was drawn from the *2007 Family Farm Report*, reveals this information. Line 4 is the average net farm income. It indicates that net

farm income ranged from an *average* of \$1,812 for limited resource small family farms to \$288,000 for very large family farms. Nonfamily farms *averaged* \$176,000. Net farm income includes cash and noncash items, meaning that it is based on accrual accounting and is calculated for the farm business.

Another way to look at family farm profitability is the percent of households with negative farm earnings. Farm earnings are based on cash items only, with the exception of a deduction for depreciation. Farm earnings also exclude the share of net income generated by the farm but paid to other households, such as the households of partners. For family farms, Table 3 (line 8) indicates the percent of farms having negative farm earnings ranged from 44.4 percent for the lower-sales occupation farming family farms to 16.3 percent for the very large family farms. Negative farm earnings were experienced by 52.8 percent of the operator households for nonfamily farms.

Despite positive average net farm incomes for all farm types, once adjustments are made for interest paid and charges for unpaid operators' labor and management, all of the smaller family farm types had negative returns on assets and equity.<sup>18</sup> The large family farm had a return on assets of only 2.5 percent and a return on equity of only 1.8 percent. Only the very large family farms and the nonfamily farms had returns on assets and equity of about 7 percent.

The *2007 Family Farm Report* also indicates the financial position or vulnerability measures, which are presented in the bottom four lines of Table 3. These data indicate that, with the exception of one family farm type, 60 percent to 72 percent of the farms in each family farm size category were in a favorable financial position. The one exception: 79 percent of the retirement farms were in a favorable financial position. A favorable financial position means that the farm has a positive net farm income and debt/asset ratio no more than 40 percent.

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<sup>18</sup> Return on assets = 100% X (net farm income + interest paid - charge for unpaid operators' labor and management)/ total assets. Return on equity = 100% X (net farm income - charge for unpaid operators' labor and management)/ net worth.

That means 20 percent to 40 percent of the farms in each farm type were determined to be in a less than favorable financial position. *These are the farms that would be most vulnerable to any of the hired labor cost increases. By using averages and ignoring most of the family farms, this fact was not considered in the Ruark analysis and conclusions.* Marginal incomes were experienced in a range of from 11.3 percent of the very large family farms to 33 percent of the residential lifestyle family farms. Marginal-income was defined as a negative net farm income and debt/asset ratio no more than 40 percent. The range of farms judged to be marginally solvent was from 1.7 percent for the lower-sales occupation farming family farms to 14.6 percent for the very large farms. Marginal-solvency was defined as farms with a positive net farm income and a debt/asset ratio greater than 40 percent. Those farms determined to be financially vulnerable ranged from 1.7 percent of the nonfamily farms to 4.9 percent of the very large farms. Financially vulnerable farms were defined as having a negative net farm income and debt/asset ratio greater than 40 percent.

*All of the information was available to Ruark to make a determination of the true economic effects of higher labor costs on farms. The 2004 data suggest that while some farms may have been able to withstand this higher cost, others would not have survived. Frequently, even if farm businesses may be able to pay higher prices for labor, legally documented workers may not be willing to do back-breaking farm work. Moreover, the costs and uncertainties created by agricultural economic conditions and by the current legal environment take a heavy toll on businesses and their workers in both favorable and unfavorable financial positions.*

### **Agricultural Price Instability**

Agricultural economic conditions vary widely among crop and livestock enterprises, from year to year, and from week to week within each year. This variability occurs primarily because of the balance between consumption, available supply, and stocks.<sup>19</sup> The erratic nature of these price movements is seen in Figure 2. Farmers must make production,

<sup>19</sup> Brian D. Wright. 2011. "The Economics of Grain Price Volatility." *Applied Economic Perspectives and Policy*. 33,1, pp. 32-58.

marketing, and financing decisions that directly affect their profitability in this highly volatile market environment.

Fruit and vegetable prices vary widely seasonally, as illustrated by Figure 3, for cantaloupes, spinach, and tomatoes. To be specific, during the period, April 14, 2007 to April 4, 2009, the weekly price of tomatoes varied from \$6.39/carton to \$25.57/carton; during the period, September 3, 2005 to April 4, 2009, the weekly price of spinach varied from \$5.80/carton to \$20.84/carton; and during the period, March 31, 2007 to April 4, 2009, the weekly price of cantaloupe varied from \$4.48/carton to \$22.58/carton.<sup>20</sup>

This level of seasonal and annual price instability creates great uncertainty regarding income expectations and the resulting financial stability of farms. This price instability combined with weather uncertainties directly impacts farms' willingness and ability to commit to farm labor employment.

#### **Farm Labor and the Farm Sector**

There is a broad-based consensus that the U.S. immigration system is broken.<sup>21</sup> This fact has had direct impact on the agriculture sector, particularly on those components that hire substantial farm labor, such as fruits, vegetables, and specialty crops.<sup>22</sup> Over half of the hired workers employed in U.S. crop agriculture are believed to be unauthorized.<sup>23</sup>

Ruark asserts that there is no nationwide labor shortage<sup>24</sup> and that a reduced supply of migrant workers is not likely to cause a labor shortage because there is a sufficient supply of native workers to fill the void.<sup>25</sup> Obviously,

<sup>20</sup> Marco A Palma, Luis A. Riberia, David Bessler, Mechel S. Paggi, and Ronald D. Knutson. November 2010. "Potential Impacts of Foodborne Illness Incidences on Market Movements and Prices of Fresh Produce in the U.S." *Journal of Agricultural and Applied Economics* 42, 04, 731-4. Available at: <http://purl.umn.edu/100526> (accessed June 17, 2011).

<sup>21</sup> Ruth Ellen Wasem. February 2, 2010. *Immigration Reform Issues in the 111th Congress*. Washington, D.C.: Congressional Research Service, RL30395. Available at: <http://nationalaglawcenter.org/assets/crs/RL30395.pdf> (accessed June 21, 2011).

<sup>22</sup> Calvin, Linda, and Philip Martin. November 2010. *The U.S. Produce Industry and Labor: Facing the Future in a Global Economy*. Washington, D.C.: Economic Research Service, USDA, ERR-106, p. iii. Available at: <http://www.ers.usda.gov/Publications/ERR106/ERR106.pdf> (accessed June 21, 2011).

<sup>23</sup> Calvin and Martin, p. iii. See also Linda Levine. November 9, 2009. *Farm Labor Shortages and Immigration Policy*. Washington, D.C.: Congressional Research Service, RL30395, p. 3. Available at: <http://nationalaglawcenter.org/assets/crs/RL30395.pdf> (accessed June 21, 2011).

<sup>24</sup> Ruark, p. 6.

<sup>25</sup> Ruark, p. 5.



this is not the case. The most recent example of a farm labor shortage was in Georgia. After enacting a law designed to enforce federal law regarding the hiring of illegal immigrants, Georgia farmers have been forced to leave millions of dollars' worth of blueberries, onions, melons, and other crops unharvested and rotting in the fields.<sup>26</sup>

Ruark concludes that the impacts on the farm sector of higher labor costs needed to attract native workers would be quite small; and when part of the higher cost is passed on to consumers, the impact becomes negligible.<sup>27</sup> These and other assertions and conclusions by Ruark are the subject of this White Paper section.

### **History and Status of Farm Labor Policy**

The United States began its temporary farm labor program in response to a domestic labor shortage in agriculture.<sup>28</sup> While these guest worker programs began as early as 1917, the first major program was the Bracero program, which required that the USDA work with the Mexican Government to recruit farm labor. U.S. farmers desiring to hire farm labor were required first to try to recruit domestic workers for positions. If no domestic workers could be found, the employer could then apply for certification of a domestic labor shortage. Employers were required to pay the prevailing wage for hired labor in agriculture; to provide the same safety and health protections; to cover transportation costs and living expenses. The Bracero program brought almost 4.5 million Mexicans to the United States between 1942 and 1964.<sup>29</sup> While the Bracero program eliminated labor shortages, there were allegations that the program was abused by some farmers; sometimes its laborers were abused by farmers; and the program was poorly administered. As a result, the program was terminated in 1964.

<sup>26</sup> Jay Bookman, June 17, 2011. "Ga's farm-labor crisis playing out as planned." Available at: <http://blogs.ajc.com/jay-bookman-blog/2011/06/17/ga-farm-labor-crisis-playing-out-as-planned/> (accessed July 20, 2011).

<sup>27</sup> Ruark, p. 17.

<sup>28</sup> Deborah Waller Meyers, January 2006. "Temporary Worker Programs: A Patchwork Policy Response." *Insight*. Washington, D.C.: Migration Policy Institute, Independent Task Force on Immigration and America's Future, No. 12. Available at: [http://www.migrationpolicy.org/ITFIAF/TFL\\_12\\_Meyers.pdf](http://www.migrationpolicy.org/ITFIAF/TFL_12_Meyers.pdf) (accessed June 22, 2011).

<sup>29</sup> Meyers, p. 2.

The Bracero program was replaced in part by the H-2 visa for temporary workers, which allowed employers to hire workers from abroad for both agricultural and non-agricultural jobs. However, it too was poorly administered and was found to have substantial employer abuses.<sup>30</sup> As a response, in 1986 the H-2 program was revamped by the Immigration Reform Control Act (IRCA) with a special category for obtaining agricultural visas. A key objective of the IRCA (1986) was to reduce the use of unauthorized workers in the United States.<sup>31</sup> The H-2A program, instituted requirements for employers, and a certification process designed to combat employer abuse. Also, the employer is required to provide housing. The U.S. Department of Labor (USDOL) must certify, with the state labor department's concurrence, that qualified domestic workers are not available and that the terms of employment will not adversely affect the wages and working conditions of similarly employed US workers. The USDOL reviews the employers' recruiting attempts, as well as the wages and working conditions offered.<sup>32</sup>

Workers must receive written contracts, a guarantee of work for at least three-quarters of the contract period, free housing, transportation, and meals or cooking facilities, and prescribed wages and working conditions. The wage must be the highest of three wage rates: the federal or state, minimum wage, the prevailing wage for the job as determined by the U.S. Department of Labor, or the "adverse effect" wage rate (AEWR).<sup>33</sup> The AEWR is the regional weighted average hourly wage rate for field and livestock workers combined. It is estimated by the U.S. Department of Agriculture's annual Farm Labor Survey. Regions are multi-state except for California and Hawaii. In 2009 the method of calculation was changed briefly by the Bush

<sup>30</sup> Alexandra Villarreal O'Rourke. Spring 2006, "Embracing Reality: The Guest Worker Program Revisited." *Harvard Latino Law Review*, 9, pp. 181-2.

<sup>31</sup> P. I. Martin, W. Huffman, R. Emerson, J.E. Taylor and R.I. Rochin. 1995. *Immigration Reform and U.S. Agriculture*. Oakland, CA: University of California, Division of Agricultural and Natural Resources, Publ. 3358.

<sup>32</sup> Meyers, pp. 8-9.

<sup>33</sup> U.S. Department of Labor, Employment and Training Administration. February 18, 2010. "Temporary Agricultural Employment of H-2A Workers in the United States: 2010 Adverse Effect Wage Rates, Allowable Charges for Agricultural Workers' Meals, and Maximum Travel Subsistence Reimbursement." *Federal Register* 75, 32, pp. 7293-94. Available at: <http://edocket.access.gpo.gov/2010/2010-3078.htm> (accessed July 20, 2011).

Administration resulting in a \$1 to \$2 decrease in the AEWR.<sup>34</sup> During that time farmers could use the lower rate if their application was received before a certain date. The previous method was restored in 2010.

The H-2A program, which has no cap on the number of visas issued, is not used as extensively as it could be. In 2009, only 86,000 workers were certified for H-2A visa status.<sup>35</sup> This was only 3.3 percent of the 2.6 million hired farm labor workforce. The reasons are: (1) the highly bureaucratic nature of the H-2A application process; (2) unauthorized farm labor is more readily available; and (3) there are no regulatory costs associated with the employment of unauthorized workers. Those employers who use the H-2A program and bear the regulatory costs associated with it, do so to avoid the potential consequences of an enforcement policy against employing unauthorized labor.

#### **Requirements for Hired Farm Workers**

In 2007, there were approximately 2.64 million hired farm workers (Table 1). Figure 4 indicates the distribution of hired farm labor in terms of expenditure across the United States. It clearly indicates the heavy concentration of farm labor in the fruit, vegetable, and specialty areas of California, Washington, and Oregon; citrus and vegetable production areas of Arizona; the Snake River dairy and vegetable production area of Idaho; the Rio Grande Texas citrus and vegetable growing area; the High Plains beef and dairy production areas in Texas, Kansas, and Nebraska; the Upper Midwest dairy, fruit, and vegetable growing areas of Michigan and Wisconsin; the Northeast apple growing and milk production areas of New York; the Carolina and Georgia poultry, pork, tobacco, vegetable, and peach production area, and the fruit and vegetable production area of Florida. Figure 5 indicates the heavy concentration of hired farm labor expenditures

<sup>34</sup> U.S. Department of Labor. 2011. "H-2A Adverse Effects Wage Rates, 2000-2011." Available at: [http://www.fwjjustice.org/files/AEWRs\\_Table\\_2000-2011.pdf](http://www.fwjjustice.org/files/AEWRs_Table_2000-2011.pdf) (accessed July 20, 2011).

<sup>35</sup> United States Department of Labor. 2010. *The Foreign Labor Certification Report: 2009 Data, Trends and Highlights Across Programs and States*. Washington DC.: Employment and Training Administration, Office of Foreign Labor Certification. Available at: [www.foreignlaborcert.doleta.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.doleta.gov/pdf/2009_Annual_Report.pdf) (accessed June 27, 2011).

in California (about 23 percent) while each remaining state accounts for less than 6 percent of total U.S. farm labor expenditures.

In 2010, 72.8 percent (762,000) of the workers were hired directly by farmers. The remaining 27.2 percent (286,000) were employed by farm labor contractors, and are referred to as agricultural service workers.<sup>36</sup> The share of workers hired by farm labor contractors increased from 22 percent in 1990 to 27 percent in 2010.<sup>37</sup> Based upon the previously discussed Census of Agriculture estimate of 2.6 million farm workers, the ERS farm worker estimates reported by Hertz are believed to be highly conservative.<sup>38</sup> Martin estimates that there were 1.8 million farm workers in 2007 of which 1.4 million were employed on crop farms and 429,000 were employed on livestock farms.<sup>39</sup> This indicates that about 77 percent of farm workers are used primarily in crop production. Of those used for crop production, about 75 percent are believed to work in fruit, vegetables, and nursery crops.<sup>40</sup>

Fruit and vegetable production is highly seasonal, being heavily concentrated in the planting and harvest periods, but particularly in the harvest periods. This is clearly illustrated in Figures 6-11, which indicate that the U.S. peak farm labor employment is in July but continues strong through October. The U.S. total employment is heavily influenced by

<sup>36</sup> Hertz, Tom. June 25, 2011. "Farm Labor." *Briefing Room: Rural Labor and Education*. Washington, D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm> (accessed June 25, 2011)

<sup>37</sup> Hertz.

<sup>38</sup> Farm labor numbers can be obtained from several sources and the numbers vary substantially. The sources include the Current Population Survey, Farm Labor Survey, and Census of Agriculture. Kandel seems to be one of the few statisticians and researchers who has been willing to discuss these data issues. He points out that these sources will differ depending on the definitions of farm workers and the nature of the data collection process. He points out that the Current Population Survey and the Farm Labor Survey are cross-sectional surveys that count the number of workers at points in time. The Census of Agriculture is annual data that is designed to count all individuals who did some farm work during the year. This Census number is more than double the largest estimate from the other sources. Consequently, the first two sources are closer to counting the number of jobs at one point in time and the Census is closer to counting the total number of workers who would have been hired for farm jobs during the full year. William Kandel. 2008. *Profile of Hired Farmworkers: An 2008 Update*. Washington, D.C.: Economic Research Service ERP 60, USDA. Available at: <http://www.ers.usda.gov/Publications/ERR60/> (accessed July 28, 2011).

<sup>39</sup> Philip Martin. 2011. "Immigration Reform: Implications for Farmers, Farm Workers and Communities." Davis, CA: University of California, Davis. Available at: <http://migration.ucdavis.edu/cf/files/2011-may/conference-report.pdf> (accessed July 28, 2011).

<sup>40</sup> Levine, 2009, p. 6. This includes 413,000 hired crop workers estimated by ERS/USDA and 265,000 agricultural contract/service workers. In this calculation it is assumed that all of the contract/service workers are crop workers.

California, which shows a similar pattern. On the other hand, Florida has the highest employment in January-April. Because of the seasonal nature of farm labor employment, the duration of employment is short. Walters, Napasintuwong, Iwai, and Emerson found that in the period, 2001-4, the average job duration for a hired farm worker hired by a grower was about 55 days, and the average for a contractor was about 52 days.<sup>41</sup> They also found that in 2004, seasonal workers averaged 135 total days of employment annually, suggesting that workers moved among two or three jobs having an individual job duration of 52 to 55 days.<sup>42</sup>

### **Authorized Versus Unauthorized Workers**

Authorized labor includes workers who are citizens of the United States, have green cards, or have temporary work visas and related documentation. Unauthorized labor includes workers who are not citizens of the United States, do not have green cards, or do not have temporary work visas and related documentation. As noted previously, a key objective of the IRCA (1986) was to reduce the use of unauthorized workers in the United States.<sup>43</sup> It has not achieved this objective. It has been estimated that about 8 percent of the hired farm workers were unauthorized in 1989, 44 percent in 1993, 52 percent in 1998, 55 percent in 1999-2000, but a slightly lower 53 percent in 2001-2002, a level at which it has remained.<sup>44</sup> Due to the legality issues, it is suspected that these estimates substantially understate the number of unauthorized workers because: (1) the potential illegality issues associated with hiring unauthorized workers are widely known, and (2) the number of hired farm workers is frequently understated. With regard to the latter, there are large inconsistencies between ERS data on hired farm labor and Census

<sup>41</sup> Lurleen M. Walters, Orachos Napasintuwong, Nobuyuki Iwai, and Robert D. Emerson. 2006. "The U.S. Farm Labor Market Post-IRCA: An Assessment of Employment Patterns, Farm Worker Earnings and Legal Status." Orlando, FL: SAEA Selected Paper, p. 15. Available at: <http://purl.umn.edu/35449> (accessed June 23, 2011).

<sup>42</sup> Walters et al. p. 16.

<sup>43</sup> Martin et al.

<sup>44</sup> Wallace Huffman. 2007. "Demand for Farm Labor in the Coastal Fruit and Salad Bowl States Relative to Midland States: Four Decades of Experience." Ames, Iowa: Iowa State University, ISU Economics Working Paper #07013, pp. 11-12. Available at: [www.econ.iastate.edu/research/webpapers/paper\\_12827\\_07013.pdf](http://www.econ.iastate.edu/research/webpapers/paper_12827_07013.pdf) (Accessed June 22, 2011).

<sup>44</sup> Huffman, p. 11.

of Agriculture data.<sup>45</sup> Analyses by Walters et al. indicate that during the three periods from 1989-2004, the percentage of unauthorized labor used as contract labor was substantially higher than for workers directly employed by growers/farmers. For example, during the period, 2002-4, growers employed about 46 percent unauthorized labor while contractors employed 62 percent unauthorized labor.<sup>46</sup> Once again, these data could underestimate the unauthorized farm workforce. Martin estimates that if two-thirds of the estimated 1.4 million workers employed on crop farms sometime during the year are unauthorized, and a third of the estimated 429,000 livestock workers are unauthorized, there were a total 1.1 million unauthorized farm workers in 2007.<sup>47</sup>

### **Farm Labor Markets**

Ruark denies the existence of nationwide labor shortages. Since labor markets are local and may even be crop specific, this begs the question of whether there are local labor shortages. He even states that the 50-plus percent of the farm labor force that is unauthorized labor can be replaced with insignificant impact. Levine concludes that considering the availability of both authorized and unauthorized farm labor, there is no nationwide shortage. However, she concisely indicates:

*This finding does not preclude the possibility of farm worker shortages in certain parts of the country at various times during the year. The analysis does not address the adequacy of authorized workers in the seasonal farm labor supply relative to grower demand.*<sup>48</sup>

Farm labor markets are local and are dispersed throughout the United States. This fact was illustrated in Figure 4. In addition, a large number of workers are required for specific time periods. This fact was illustrated in Figures 6-11. Crops must be planted and harvested on a specific time schedule to

<sup>45</sup> Compare, for example, the ERS data from Table 1 in Levine (2009) with the Census of Agriculture data reported in Table 1 of this report.

<sup>46</sup> Walters et al., p. 1, Table 1.

<sup>47</sup> Martin, 2011, p. 7.

<sup>48</sup> Levine, November 9, 2009, p. 13.

maximize yields and avoid waste. Cows must be milked every day of the year either two or three times a day. Sows that are birthing must be tended 24 hours a day.

When fruits and vegetables destined for the fresh market mature, they must be harvested, or they go to waste. Calvin and Martin analyzed several specific cases indicating the critical nature of needs, the demands for seasonal labor, and the competition among crops and local markets. They note the Mexican "green card commuters" who live in Mexico and commute daily to the Yuma, California, lettuce fields.<sup>49</sup> They analyze the labor intensive six-week April and May harvest and packing period for asparagus in California, which ends up competing with equally labor-intensive cherry picking.<sup>50</sup> With new varieties, the labor-intensive apple harvest in Washington State runs from the first week in August through the first half of November, with the peak being in the first half of October.<sup>51</sup> The extended harvest season for cherries competes with the early season apple harvest.

Calvin and Martin understand the urgency of avoiding labor shortages by stating:

*For most crops, a harvest delayed by labor issues means less profit for growers, since even a short delay can reduce quality and price. In the case of a longer delay, the entire crop may be lost if the quality deteriorates to the point that it cannot be marketed.*<sup>52</sup>

They go on to list three responses to higher wage rate, none of which is to hire unemployed U.S. workers as Ruark speculates.<sup>53</sup> The three options listed by Calvin and Martin include: (1) use less labor, (2) use labor more efficiently, and (3) mechanize to replace costly labor.

The amount of work varies substantially from year-to-year due to acreage changes, weather, yield changes, competition from other crops, and

<sup>49</sup> Calvin and Phillips, p. 41.

<sup>50</sup> Calvin and Phillips, pp. 34-8.

<sup>51</sup> Calvin and Phillips, pp. 14-8.

<sup>52</sup> Calvin and Martin, p. 5.

<sup>53</sup> Ruark, p. 18.

commodity prices. In this setting, local labor shortages are inevitable. A labor shortage is a situation where there are not sufficient farm workers who are able, willing, qualified, and available to perform work at the place and time needed. When a crop is ready to harvest, the labor supply must be available, or the product will not be marketable. Therefore, timing is critical.

The local nature of labor markets makes Ruark's nationwide analytical approach to assessing the economic impacts irrelevant and unreliable. *A reliable approach would require that ERS give him access to individual ARMS farm data to determine the amount of hired labor utilized and the impacts of his proposed cost increases on costs and profit margin.* Access to such data is not readily available. However, insight can be obtained from the analysis of Calvin and Martin and from data contained in budgets developed by University Extension economists. Crop budgets gathered by North Carolina State University Extension indicate a range of labor costs as a percent of operating costs from 55 percent to 77 percent.<sup>54</sup> Calvin and Martin conservatively conclude that labor makes up almost half of variable production expenses for U.S. fruits and vegetables.<sup>55</sup> Without question, if 20 or 30 percent is added to labor costs of this magnitude, as, in effect, Ruark proposes, there would be a major economic impact.

#### **Limited Access to U.S. Labor**

Ruark concludes that the economic impact of replacing unauthorized farm labor with authorized workers would be insignificant.<sup>56</sup> However, he admits that the intended consequence of his proposals would be substantially higher labor costs. This conclusion of economic insignificance is erroneous for four principle reasons: (1) loss of markets for domestic production; (2) increased mechanization, (3) inability to attract domestic labor, and (4) unwillingness of Americans to take farm jobs despite high rates of unemployment.

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<sup>54</sup> North Carolina Market Ready Plants for Human Health Institute. 2011. *NC Enterprise Budgets*. Raleigh, NC: North Carolina State University. Available at: <http://plantsforhumanhealth.ncsu.edu/extension/programs-resources/enterprise-budgets/fruits/> (accessed June 25, 2011).

<sup>55</sup> Calvin and Martin, p. iii.

<sup>56</sup> Ruark, p. 18.



*Loss of markets.*

Markets for U.S production would be lost to international supplies/imports and international export markets. Holt correctly points out that increases in farm wages will increase the cost of production, with the greatest increases being in those commodities where labor costs are the highest proportion of production expenses.<sup>57</sup> The research of Calvin and Martin confirms Holt's analysis. Calvin and Martin conclude that higher labor costs run the risk of leading to higher imports.<sup>58</sup> After completing individual case studies, they find that this is a particularly likely consequence for asparagus,<sup>59</sup> apples,<sup>60</sup> and oranges.<sup>61</sup>

The highly competitive and tentative nature of world export markets is revealed in Figures 12 through 16 and Tables 4 and 5. For example, China had very little participation in the fresh apple export market in 1991-92 and rose to become the second largest competitor in 2010-11 (Figure 12). A major user of farm labor in both countries, China passed the United States in 2003-04 apple exports. For fresh oranges, the United States was the leading world exporter in the early 1990s but dropped to third place in recent years (Figure 13). For raisins, the United States was equal with Turkey in the early 1990s but fell to 59 percent of Turkey's export volume by 2010-11 (Figure 14). In the fresh strawberry export market, Spain has been and continues to be the leading supplier with Italy being the only country losing substantial market share and with the United States gaining volume in this highly competitive and labor-intensive market (Figure 15). Figure 16 indicates that Peru has become the dominant force in the fresh asparagus export market with a growing market share over the time period for which these data were available.

<sup>57</sup> James S. Holt. 2008. "Farm Labor Shortages and the Economic Evidence of the Declining Competitiveness of U.S. Fruit and Vegetable Producers: A White Paper." Washington, D.C.: James S. Holt & Co. Available at: [http://web17.streamhoster.com/ddc/ACIR/20080429/James\\_S\\_HoltPhD.pdf](http://web17.streamhoster.com/ddc/ACIR/20080429/James_S_HoltPhD.pdf) (accessed June 21, 2011).

<sup>58</sup> Calvin and Martin, p. iii.

<sup>59</sup> Calvin and Martin, pp. 34-8.

<sup>60</sup> Calvin and Martin, pp. 14-18.

<sup>61</sup> Calvin and Martin, pp. 20-4.

Tables 4 and 5 show the primary U.S. sources of imports and markets for each of the commodities discussed by Calvin and Martin in their case studies. These two tables demonstrate the changing relative importance of individual trading partners from 1990-92 to the present. For example, Mexico, Peru, Chile, and South Africa stand as major sources of supply for the U.S. consumers (Table 4). Exports of virtually all of the products in Table 5 were adversely affected by increased competition for the important Japanese market (Table 5). The only rational conclusion to be drawn from these data is that international markets are very sensitive to price changes and that market position can be quickly gained or lost. Attempting to sell above world market prices, usually results in a rapid loss of market share. Therefore, labor costs are very important factors in determining competitiveness.

***Increased mechanization, employment, and competitiveness.***

For commodities where hired labor is a high proportion of production costs, labor-saving mechanization may be induced to restore competitiveness.<sup>62</sup> The theory and fact of induced innovation was developed by Hayami and Ruttan as a principle consequence of labor constraints, supply constraints, production disruptions, and increased demand.<sup>63</sup> Calvin and Martin stress that the interest in mechanization rises and falls with the price and availability of labor.<sup>64</sup> As a result, both authorized and unauthorized hired farm labor use will decline, and U.S. unemployment will increase. As noted previously, the decline in employment is accelerated by increased imports and the loss of international markets. This is exactly what happened when the Bracero program was discontinued in 1964. Martin attributes a decline in employment for tomato harvesting from 45,000 harvest workers to fewer than 5,000 to the development of the harvester for processing tomatoes.<sup>65</sup> Despite mechanization, the U.S. subsequently lost a substantial share of the processing tomato market to Mexico. In 2004, Mexico was the largest

<sup>62</sup> Huffman, pp. 17, 5-8, and 13-16.

<sup>63</sup> Yujiro Hayami and Vernon Ruttan. 1985. *Agricultural Development*, Baltimore: Johns Hopkins University Press.

<sup>64</sup> Calvin and Martin, p. 10.

<sup>65</sup> Philip Martin. November 2007. "Farm Labor Shortages: How Real? What Response." *Backgrounder*. Washington, D.C.: Center for Immigration Studies, pp. 10-11. Available at: [http://www.cis.org/no\\_farm\\_labor\\_shortages.html](http://www.cis.org/no_farm_labor_shortages.html) (accessed June 21, 2011).

exporter of fresh tomatoes followed by Turkey, United States, and the European Union. The United States was the leading tomato importer.<sup>66</sup> Martin and Calvin provide a list of 47 fresh fruits and vegetables that are harvested by hand.<sup>67</sup> These include: apples, apricots, avocados, cherries, dates, figs, nectarines, peaches, pears, plums, prunes, table grapes, wild blueberries, kiwi, raspberries, blackberries, strawberries, grapefruit, lemons, limes, oranges, tangerines, cantaloupe, honeydew, watermelon, beets, garlic, green onions, leeks, artichokes, asparagus, broccoli, Brussels sprouts, cabbage, cauliflower, celery, cucumbers, eggplant, herbs, mushrooms, okra, peas, chili peppers, sweet peppers, squash, pumpkins, and tomatoes. Nine other fresh fruits and vegetable are harvested by a combination of hand labor and machines.

The case studies of six leading fruits and vegetables by Calvin and Martin indicate the industries' vulnerability to reduced farm labor demand due to both mechanization and imports. While only 8 percent of U.S. fresh apple consumption was imported in crop years 2005/06 to 2007/08, this was a 38 percent increase from 1990/91-1992/93 with China being the major new competitor as previously discussed.<sup>68</sup> Imports of oranges are increasing, but the real challenge is in maintaining U.S. export markets in Canada, Japan, Hong Kong, and South Korea.<sup>69</sup> Raisin imports have increased 182 percent from 4 percent of U.S. fresh consumption in 1990/91-1992/93 to 12 percent in 2005/06 to 2007/08 with the major competitor being Turkey.<sup>70</sup> Calvin and Martin note that the demand for raisin harvest labor has declined from 50,000 to 20,000-30,000. To remain world market competitive, producers aim to reduce costs through harvesting systems that employ even less labor.<sup>71</sup> U.S. fresh strawberry production has grown 81 percent between 1990-92.<sup>72</sup> Like apples, only 8 percent of U.S. fresh strawberry consumption was imported in 2005-07. However, this was a 137 percent increase from 1990-92 with most of the increase coming from Mexico. U.S.

<sup>66</sup> Food and Agriculture Organization, 2009. *FAOSTAT*. Rome, Italy: United Nations. Available at: <http://fao.org/site/291/default.aspx> (accessed June 25, 2011).

<sup>67</sup> Calvin and Martin, pp. 8-9.

<sup>68</sup> Calvin and Martin, p. 14.

<sup>69</sup> Calvin and Martin, p. 23.

<sup>70</sup> Calvin and Martin, p. 25.

<sup>71</sup> Calvin and Martin, p. 29.

<sup>72</sup> Calvin and Martin, p. 31.

asparagus production has decreased 28 percent from 139 million pounds in 1990-92 to 99 million pounds, in 2005-07. However, imports have increased 402 percent from 51 million pounds to 258 million pounds with the primary competition being from Peru and Mexico. Calvin and Martin observe that mechanical harvesting may be too late for this industry.<sup>73</sup> Clearly, higher labor costs would have the potential for destroying this industry. Americans are being encouraged to consume more lettuce. While production of lettuce increased 18 percent from 1990-02, imports increased more than six-fold.<sup>74</sup> Like tomatoes, the principle competition is from Mexico and Canada. Not to worry, imports still account for only 2 percent of consumption. However, lettuce is highly labor intensive, with little prospect for mechanization replacing hand harvesting. Thus increased labor costs make even U.S. lettuce production vulnerable to competition. A summary of these data numbers is presented in Table 6. Evidence of leading competitors in export markets is presented in Figures 12 through 16. U.S. export and import trading partners are presented in Tables 4 and 5.

***Inability to attract domestic labor.***

Ruark appears to be convinced that, given a higher wage and a lack of employer access to unauthorized labor, unemployed U.S. laborers will leave their unemployment checks and families behind and flock to farm employment opportunities to pick strawberries, lettuce, asparagus, apples, and the many other hand-harvested agricultural products. This conclusion or assumption by Ruark is highly unlikely. The fact is that most of the work done by hired farm labor is highly laborious, back breaking, and difficult. It is often performed in hot and humid field conditions with the sun beating down on the workers. Moreover, this work has been demonstrated to be highly seasonal, meaning that these U.S. employees/workers would have to move around the United States, at least regionally, to harvest crops on a timely basis. While Ruark assumes that this would happen, no authorities on farm labor who understand farming agree with this assumption/conclusion. For example, Martin, a farm labor authority cited by Ruark, states:

<sup>73</sup> Calvin and Martin, p. 38.

<sup>74</sup> Calvin and Martin, p. 39.

*The removal of unauthorized or guest workers from the farm workforce rarely prompts U.S. workers to replace them. The more common response is for growers to demand fewer workers, often by mechanizing hand-harvest tasks.*<sup>75</sup>

This quotation from Martin is consistent with the previous overt omission by Calvin and Martin of the option of hiring U.S. unemployed workers as an option for dealing with higher hired farm-labor wage rates. Instead they list the following options:<sup>76</sup>

1. Many Americans would not be available to do highly laborious and difficult farm work.
2. The high rate of unemployment nationally does not indicate a surplus of individuals ready to take seasonal farm jobs in a specific local area any more than it indicates a surplus of workers for any other particular job.
3. U.S. unemployment would increase due to the combination of lost markets and mechanization. This is precisely what happened with the cessation of the Bracero program.

#### **Future Farm Labor Policy Options and Impacts**

Up to this point in the analysis, the emphasis has been to explain how the agriculture and farm sectors are structured and how they interact in economic terms with the farm labor market. The flaws contained in Ruark's analysis have been pointed out in terms of inaccuracies and deviations from the reality of how these sectors interact. Throughout this analysis, it has been assumed that there are no changes in government farm labor policies and programs from those that exist. These policies include relatively open borders for unauthorized workers to enter the farm labor workforce in terms of either being hired directly by farmers or being employed as contract labor.

<sup>75</sup> Phillip Martin. 1998. "Factors that Influence Migration Guest Workers: Past and Present." *Mexico-United States Binational Migration Study, United States Binational Study: Volume I, Thematic Chapters*. Mexico City, Federal District: Mexican Ministry of Foreign Affairs and Washington, D.C.: U.S. Commission on Immigration Reform, pp. 877-95.

<sup>76</sup> Calvin and Martin, p. 5.

In this section it is assumed that there are farm policy changes, including some of the specific proposals that appear to have been made by Ruark.

***Restricting the Supply or Utilization of Unauthorized Farm Labor***

Ruark assesses the impact of a 22 percent increase in the farm wage rate for “newly employed” legal workers.<sup>77</sup> While he contends that these workers could come from the unemployed U.S. workers, the authors’ experience and that of leading farm labor economists indicate that this will not happen.<sup>78</sup> A more likely alternative is that the “newly employed labor” would need to come from foreign labor requested by farmers to be certified in the H-2A guest worker program. Ruark also assumes a “...20 percent and a 30 percent general increase in wages for all categories of workers, regardless of legal status....” which would come from reduced profit margins of the employers.<sup>79</sup> Presumably this would be from all farmers and contractors who employ farm labor.

Ruark never explains exactly how any of these wage increases would be accomplished. There are only three policy options for implementing the Ruark policy preferences, none of which he chose to articulate: (1) An increase in the minimum wage. (2) The imposition of effective border/immigration controls to reduce the supply of unauthorized labor. (3) Enforcing the current federal law prohibiting employers from hiring illegal immigrants. Each of these options warrants further analysis.

***Minimum wage increase.***

Increase in the minimum wage would require an administrative/regulatory mandate authorized by the U.S. Congress. Its implementation would create reverberations and displacements of workers throughout the economy. Higher costs would reduce production, increase prices, increase imports, reduce exports, and increase unemployment. All of these effects would be throughout the economy. These effects are indisputable; their magnitude is subject to debate but would be substantial.

<sup>77</sup> Ruark, p. 12.

<sup>78</sup> See supra pp. 18. Both of the authors grew up and worked on farms as laborers. Fisher had direct experience in working as a university extension educator and as a consultant with farm labor and with hired farm labor employers and contractors.

<sup>79</sup> Ruark, p. 12.

***Border/immigration controls.***

The second alternative policy change to increase farm labor wages by 20 to 30 percent would involve reducing the supply of unauthorized farm workers through effective border/immigration controls. The implications of this policy option are well documented in terms of economic theory<sup>80</sup> and in practice.<sup>81</sup> The effects are both short run and long run. The short-run effects would be to reduce the supply of farm labor, which would cause labor shortages and raise wage rates for all farm labor. Due to shortages of farm labor, crops would go unpicked at harvest, thus reducing supplies available in markets and raising consumer prices.

In the long run, higher wage rates would increase costs of production and reduce the profitability of all farms employing farm labor. Farmers would react by reducing production. This could be accomplished by four means: (1) The higher wage rate and labor shortages, would render some farm operations to no longer be economically sustainable and force them out of business. Recall from Table 3, that those farms that are most vulnerable are the large and very large family farms. These are farms that employ substantial hired and contract labor. (2) Farmers may switch to alternative enterprises because labor was no longer available at crucial, high-labor-utilization times such as harvest. (3) Farmers may decide to shift their farm operations to other countries where lower cost labor exists and export their production back to the United States and to other importing countries. (4) Farmers may adopt higher levels of mechanization. This option can only happen over time and requires substantial investment, particularly for fresh picked crops. Martin, explains the adjustment process as follows:

*Most of the adjustments to fewer and more expensive workers in agriculture occur on the DEMAND, not the supply side, of*

<sup>80</sup> Philip Martin. November 2007. "Farm Labor Shortages: How Real? What Response." *Backgrounder*, Center for Immigration Studies, Washington, D.C. Available at: [http://www.cis.org/no\\_farm\\_labor\\_shortages.html](http://www.cis.org/no_farm_labor_shortages.html) (accessed June 21, 2011). Philip Martin and Linda Calvin. 2010. "Immigration Reform: What Does It Mean for Agriculture and Rural America?" *Applied Economic Perspectives and Policy* 32, 2, 232–253. Linda Levine. December 28, 2009. *The Effects on U.S. Farm Workers of an Agricultural Guest Worker Program*. Congressional Research Service, 95-712, Washington, D.C. Available at: <http://nationalaglawcenter.org/assets/crs/95-712.pdf> (accessed June 21, 2011).

<sup>81</sup> Phillip Martin. 1998. The recent case studies by Calvin and Martin update these 1998 findings in equally profound terms.

*the labor market. In other words, in the face of immigration reforms, lasting adjustments are more likely to be found by accelerating labor-saving mechanization, or changing the way farm work is done, or letting production of the commodity shift overseas, not in launching new efforts to recruit U.S. workers, to build housing for migrant workers, or to provide government services to farm workers that raise their effective incomes.*

*The notion that most adjustments to fewer and more expensive farm workers reduce the demand for farm labor, not increase the supply, reflects experience in the U.S. and elsewhere.<sup>82</sup>*

In the context of the Ruark Report, these findings by Martin are profound. They indicate that the response to fewer and more expensive workers is to mechanize and shift operations overseas, not to hire more U.S. workers! It is important to note that only 4 percent of unauthorized workers are employed in agriculture and 96 percent in other sectors of the U.S. economy. While the effects of Ruark's proposed 20 to 30 percent increase in farm wages on the agricultural sector would be substantial, other nonagricultural sectors would be impacted as well. Martin's findings also contradict the very foundation of Ruark's notion that farmers would simply absorb increased labor costs from profits. Capitalism does not operate in this manner.

***Enforcing the Current Restrictions on Hiring Illegal Immigrants.***

The current federal laws prohibit the employers from hiring illegal immigrants with substantial penalties for violations. This is the policy being pursued by the state of Georgia, which is said to have resulted in an estimated 11,000 farm labor employee labor shortfall.<sup>83</sup> If pursued by the federal government, this strategy would raise the wage rate by reducing the supply of both farm and nonfarm labor. The result would not only be a

<sup>82</sup> Martin (1998), p. 893.

<sup>83</sup> Bookman. See also Suzy Khimm, Jun. 24, 2011. "If Georgia Drives Away Immigrant Workers, Will Its Economy Suffer." Available at: <http://motherjones.com/mojo/2011/06/if-georgia-drives-away-immigrant-workers-will-its-economy-suffer> (accessed July 20, 2011).



higher U.S. farm labor wage but, and as in Georgia, it would also result in shortages of farm labor, unharvested crops, and waste of resources. Additional consequences would be a higher cost food supply, reduced exports, and increased imports.

#### **Alternatives to Ruark's Policies**

The intended and unintended consequences of the higher farm wage rate policy proposed by Ruark are unacceptable. Options that are likely to be more acceptable include: (1) a modernization and streamlining of the H-2A program and (2) continuing the current policies.

#### ***Streamlining H-2A.***

The H-2A immigration process of enforcement and certification is described as being highly bureaucratic and lacking in adequate protection for workers.<sup>84</sup> The fact that it is used by farm operators to hire only 86,000 farm workers out of 2.6 million speaks for itself, as discussed previously.<sup>85</sup> Yet, the reality is that if controls are to be placed on the employment of illegal immigrants by border controls or by enforcement of the current federal immigration law, there must be means by which farmers employ farm labor while avoiding labor shortages. This would require a streamlined H-2A program.

If H-2A or a successor measure is to survive as a means of reducing illegal immigration by farm workers, it must be made more employer friendly and less bureaucratic. There have been two similar proposals for accomplishing this objective. One was the Comprehensive Immigration Reform Act of 2007 (CIRA 2007), and the other is the Agricultural Job Opportunity Benefits and Security Act (AgJOBS). AgJOBS was first introduced in 2003 and was subsequently reintroduced in every Congress through the 111<sup>th</sup> Congress. It has not yet been introduced in the 112<sup>th</sup> Congress. While CIRA 2007 contained important H-2A streamlining provisions, it would

<sup>84</sup> Martin and Calvin, p. 246.

<sup>85</sup> United States Department of Labor. 2010. *The Foreign Labor Certification Report: 2009 Data, Trends and Highlights Across Programs and States*. Washington DC.: Employment and Training Administration, Office of Foreign Labor Certification. Available at: [www.foreignlaborcert.doleta.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.doleta.gov/pdf/2009_Annual_Report.pdf) (accessed June 27, 2011).

have been tougher on illegal immigration and became highly controversial.<sup>86</sup> AgJOBS would avoid some of the controversial CIRA 2007 issues by concentrating solely on the agricultural worker issues.

AgJOBS would make two major employer-friendly changes to the H-2A program.<sup>87</sup> (1) Employers avoid the USDOL bureaucracy by being allowed to “attest” that they face a labor shortage; that they are paying at least the minimum or prevailing wage; and that they will comply with other H-2A requirements. This would avoid waiting for USDOL to “certify” that foreign workers are needed. This would shift control of entering workers from the USDOL to employers. USDOL would then review the employer job offers for completeness and approve the offer within seven days. The foreign H-2A workers would then be allowed to arrive and go to work. (2) Rather than providing free housing to H-2A and out-of-area U.S. workers, AgJOBS would allow farm employers to pay a housing allowance. These provisions have the potential for effectively streamlining the H-2A program, although provisions for increasing protection against worker abused may be needed to attract the support of interest groups that are concerned about the welfare of workers.

#### ***Maintaining Current Policies***

The current policies, while not perfect, continued to generate an ample farm labor supply with relatively few instances of labor shortage, and a reasonable level on competitiveness in domestic and international markets. It has adjusted to changes in immigration policy changes, albeit with several bumps in the road, such as those following the discontinuation of the Bracero program in 1964. If the H2A program cannot be effectively streamlined, maintaining current policies may be judged to be an acceptable alternative and certainly better than the Ruark options.

#### ***Gearing up for Increasing Specialty Crop Demand and Production***

As a result of increasing concern about increased rates of obesity, diabetes, and related health problems, a major new dietary initiative has been taken to

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<sup>86</sup> Philip Martin. 2007. "Farm Labor Shortages: How Real, What Response?" *Agricultural and Resource Economics Update* 10, 5, 8-11.

<sup>87</sup> Martin and Calvin, pp. 246-7.

encourage increased fruit and vegetable consumption. This is not a new nutrition education message. However, this one is different because, it is a message that is jointly issued by both the USDA and the U.S. Department of Health and Human Services (USHHS).<sup>88</sup> A key message in these new dietary guidelines is to increase fruit and vegetable consumption.

Dietary goals are set for the recommended level of fruit and vegetable consumption. Currently, Americans are consuming 59 percent of the goal for vegetables and 42 percent for fruit.<sup>89</sup> Therefore, consumers would need to approximately double fruit and vegetable consumption to reach the MyPlate goal for healthy eating.<sup>90</sup>

It has been found and verified in this report that immigration policy regarding farm labor will have a major impact on whether the fruit and vegetables used to improve the health of Americans will be produced in the United States or in foreign countries. The initiatives proposed in Ruark's report will assure that an increased share of fruit and vegetable production, as well as of other agricultural products, is produced overseas—outsourced.

Avoiding farm labor shortages, while maintaining the competitiveness of U.S. agriculture in international markets, requires either a streamlining of the H-2A program to create a regular and ample flow of guests farm workers or continuing the current set of policies. Any other option will assure higher food costs, increased imports, reduced exports, and periodic farm labor shortages with consequent supply interruptions.

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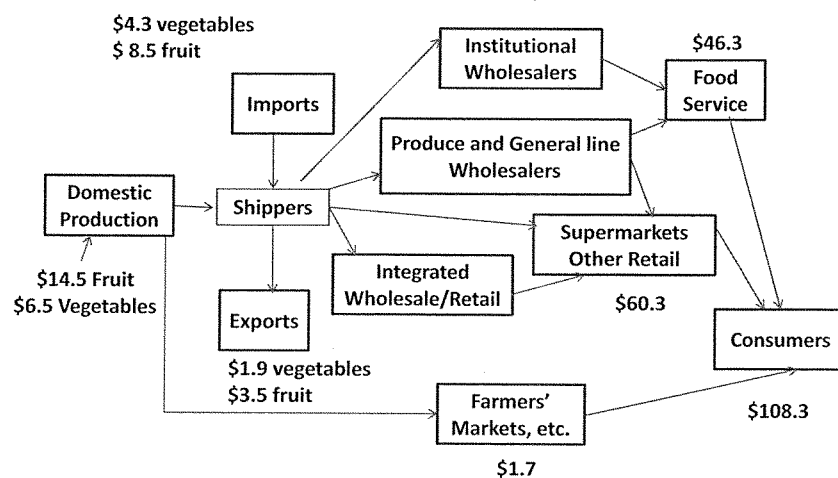
<sup>88</sup> USDA and USDHHS. January 31, 2011. *Dietary Guidelines for Americans 2010*. Washington, D.C.: U.S. Department of Agriculture and U.S. Department of Health and Human Services. Available at: [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov) (accessed June 27, 2011).

<sup>89</sup> USDA and USDHHS, p. 46.

<sup>90</sup> USDA, 2011. "MyPlate." *Dietary Guidelines*. Washington, D.C.: U.S. Department of Agriculture. Available at: [ChooseMyPlate.gov](http://ChooseMyPlate.gov) (accessed June 27, 2011).

## Figures and Tables

Figure 1. U.S. Fresh Fruit and Vegetable Value Chain 2009  
(Estimates in Billion \$)



Source: *Vegetables and Melons Yearbook Data/#89011* /May 20, 2010 Economic Research Service, USDA ;Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics. Product Group : BICO-HS10; Mechel S. Paggi, CSU, Fresno; Schematic based on original by Dr. Roberta Cook , UC-Davis

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Table 1. Farms, Hired Farm Labor, and Organizational Structure by Farm Typology, 2007

ITEM	All Farms	Farm Typology							Nonfamily Farms
		Limited Resource Farms	Retirement Farms	Residential Lifestyle Farms	Occupation Farming Lower Sales	Occupation Farming Higher Sales	Large Family Farms	Very Large Family Farms	
Sales and Income Categories		Sales less than \$100,000 and Income Less than \$20,000	Sales less than \$250,000	Sales less than \$250,000	Sales less than \$100,000	Sales Between \$100,000 and \$249,000	Sales Between \$250,000 and \$499,999	Sales \$500,000 or More	
Number of Farms									
Farms	2,204,792	308,837	456,093	801,844	258,899	100,126	86,551	101,265	91,177
Percent	100%	14.0%	20.7%	36.4%	11.7%	4.5%	3.9%	4.6%	4.1%
Hired Farm Labor									
Hired farm labor (farms)	482,186	35,319	71,645	110,412	57,448	44,742	49,897	74,357	38,366
Percent	100%	7%	15%	23%	12%	9%	10%	15%	8%
Hired farm labor (workers)	2,636,509	93,239	200,705	307,203	181,016	162,666	222,698	898,893	570,089
Percent	100%	4%	8%	12%	7%	6%	8%	34%	22%
Hired Farm Labor Expense (\$1,000,000)	\$ 21,878	\$ 175	\$ 423	\$ 677	\$ 464	\$ 717	\$ 1,433	\$ 10,733	\$ 7,255
Percent	100%	1%	2%	3%	2%	3%	7%	49%	33%
Expense per Farm	\$ 45,372	\$ 4,951	\$ 5,903	\$ 6,134	\$ 8,081	\$ 16,028	\$ 28,719	\$ 144,345	\$ 189,103
Worked 150 days or more (workers)	911,439	14,298	27,468	44,569	34,584	42,893	72,927	401,706	272,994
Percent	100%	2%	3%	5%	4%	5%	8%	44%	30%
Worked Less than 150 days (workers)	1,725,070	78,941	173,237	262,634	146,432	119,773	149,771	497,187	297,095
Percent	100%	5%	10%	15%	8%	7%	9%	29%	17%
Farms Using Migrant farm labor (farms)	38,784	2,125	4,861	5,866	4,056	3,785	4,455	9,104	4,532
Percent	100%	5%	13%	15%	10%	10%	11%	23%	12%
Organizational Structure									
Family or individual farms	1,906,335	280,742	412,954	736,536	231,427	85,158	66,806	63,178	29,534
Percent	100%	14.7%	21.7%	38.6%	12.1%	4.5%	3.5%	3.3%	1.5%
Partnership	174,247	22,278	33,803	48,273	19,057	9,217	11,537	21,540	8,542
Percent	100%	12.8%	19.4%	27.7%	10.9%	5.3%	6.6%	12.4%	4.9%
Partnership Registered under state law	89,739	8,457	14,369	22,853	9,339	5,207	7,296	15,897	6,321
Percent	100%	9.4%	16.0%	25.5%	10.4%	5.8%	8.1%	17.7%	7.0%
Corporation	96,074	5,817	9,336	17,035	8,415	5,751	8,208	16,547	24,965
Percent	100%	6.1%	9.7%	17.7%	8.8%	6.0%	8.5%	17.2%	26.0%
Corporation Family held	85,837	5,817	9,336	17,035	8,415	5,751	8,208	16,547	14,728
Percent	100%	6.8%	10.9%	19.8%	9.8%	6.7%	9.6%	19.3%	17.2%
Percent	100%	6.5%	11.1%	14.1%	7.2%	3.2%	5.5%	16.0%	36.4%
Corporation Other than family held	10,237	-	-	-	-	-	-	-	10,237
Other-cooperative, estate or trust, institutional, etc	28,136	-	-	-	-	-	-	-	28,136

Source: United States. Dept. of Agriculture. Economic Research Service. (2000). ERS farm typology for a diverse ag sector. [Washington, D.C.]. USDA, Economic Research Service. Available at: [www.ers.usda.gov/publications/aib759/aib759.pdf](http://www.ers.usda.gov/publications/aib759/aib759.pdf) (accessed June 19, 2011).

Source: NASS/USDA. February 2009. 2007 Census of Agriculture-U.S. Summary and State Data. Available at: [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/usv1.pdf](http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf) (accessed June 19, 2011).

Table 2. Comparison of the Number of Farms by Farm Typology, 2004 and 2007

ITEM	All Farms	Farm Typology							Nonfamily Farms
		Small Family Farms					Large Family Farms	Very Large Family Farms	
		Limited Resource Farms	Retirement Farms	Residential Lifestyle Farms	Occupation Farming				
Sales and Income Categories					Lower Sales	Higher Sales			
	Sales less than \$100,000 and Income Less than \$20,000	Sales less than \$250,000	Sales less than \$250,000	Sales less than \$100,000	Sales Between \$100,000 and \$249,000	Sales Between \$250,000 and \$499,999	Sales \$500,000 or More		
Number of Farms 2004	2,107,925	197,734	338,671	837,542	395,781	133,299	86,087	71,708	47,103
Number of Farms 2007	2,204,792	308,837	456,093	801,844	258,899	100,126	86,551	101,265	91,177
Percent of Farms 2004	100%	9%	16%	40%	19%	6%	4%	3%	2%
Percent of Farms 2007	100%	14%	21%	36%	12%	5%	4%	5%	4%
Percent of Sales 2004	100%	1%	2%	5%	6%	11%	15%	45%	15%
Percent of Sales 2007	100%	1%	2%	4%	2%	6%	11%	52%	22%

Source: United States. Dept. of Agriculture. Economic Research Service. (2000). ERS farm typology for a diverse ag sector. [Washington, D.C.]. USDA, Economic Research Service. Available at: [www.ers.usda.gov/publications/aib759/aib759.pdf](http://www.ers.usda.gov/publications/aib759/aib759.pdf) (accessed June 19, 2011).

Source: NASS/USDA. February 2009. 2007 Census of Agriculture:U.S. Summary and State Data. Available at: [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/usv1.pdf](http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf) (accessed June 19, 2011).

Source: Hoppe, Robert A., Penni Korb, Erik J. O'Donoghue, and David E. Banker. June 2007. *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition*. EIB-24, Washington, D.C.: ERS/USDA. Available at: <http://www.ers.usda.gov/publications/eib24/eib24.pdf> (accessed June 18, 2011).

Table 3. Selected Performance Measures by Farm Typology, 2004

ITEM	All Farms	Farm Typology							Nonfamily Farms
		Small Family Farms					Large Family Farms	Very Large Family Farms	
		Limited Resource Farms	Retirement Farms	Residential Lifestyle Farms	Occupation Farming				
Sales and Income Categories		Sales less than \$100,000 and Income Less than \$20,000	Sales less than \$250,000	Sales less than \$250,000	Sales less than \$100,000	Sales Between \$100,000 and \$249,000	Sales Between \$250,000 and \$499,999	Sales \$500,000 or More	
		Farms, Sales and Net Farm Income							
Number of farms	2,107,925	197,734	338,671	837,542	395,781	133,299	86,087	71,708	47,103
Percent of farms	100%	9.4%	16.1%	39.7%	18.8%	6.3%	4.1%	3.4%	2.2%
Percent of sales	100%	1.0%	2.0%	5.3%	5.5%	10.8%	14.8%	45.4%	15.2%
Average net farm income	\$ 25,003	**\$1,812	\$ 9,655	\$ 4,544	\$ 9,098	\$ 39,084	\$ 87,499	\$ 287,921	\$ 175,795
Financial Performance									
Percent return on assets <sup>1</sup>	0.5%	-4.0%	*-1.5%	-2.0%	-2.7%	*-0.4%	2.5%	6.8%	7.1%
Percent return on equity <sup>2</sup>	-0.1%	-4.4%	-1.7%	-2.8%	-3.2%	**1.3%	*1.8%	6.7%	7.1%
Percent of farms with positive net farm income									
	69.6%	66.7%	79.5%	62.8%	68.7%	76.9%	82.2%	83.8%	72.2%
Percent of principal operator households with negative farm earnings									
	52.8%	72.1%	50.8%	64.4%	44.4%	24.6%	16.8%	16.3%	52.8%
Percent favorable financial position <sup>3</sup>									
	66.7%	65.9%	79.1%	60.0%	67.0%	71.6%	71.8%	69.2%	69.4%
Percent marginal income	27.6%	32.3%	19.4%	33.1%	28.9%	19.8%	15.3%	11.3%	26.1%
Percent marginally solvent	2.9%	d	d	*2.8%	*1.7%	5.3%	10.4%	14.6%	*2.8%
Percent vulnerable	2.8%	d	d	4.0%	*2.4%	*3.3%	2.5%	4.9%	*1.7%

Source: United States. Dept. of Agriculture. Economic Research Service. (2000). ERS farm typology for a diverse ag sector. [Washington, D.C.], USDA, Economic Research Service. Available at: [www.ers.usda.gov/publications/aib759/aib759.pdf](http://www.ers.usda.gov/publications/aib759/aib759.pdf) (accessed June 19, 2011).

Source: NASS/USDA. February 2009. 2007 Census of Agriculture: U.S. Summary and State Data. Available at: [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/usv1.pdf](http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf) (accessed June 19, 2011).

Source: Hoppe, Robert A., Penni Korb, Erik J. O'Donoghue, and David E. Banker. June 2007. *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition*. EIB-24, Washington, D.C.: ERS/USDA. Available at: <http://www.ers.usda.gov/publications/eib24/eib24.pdf> (accessed June 18, 2011).

d = Data suppressed due to insufficient observations.

\* = Standard error is between 25 percent and 50 percent of the estimate.

\*\* = Standard error is between 51 percent and 75 percent of the estimate.

# = Standard error is greater than 75 percent of the estimate.

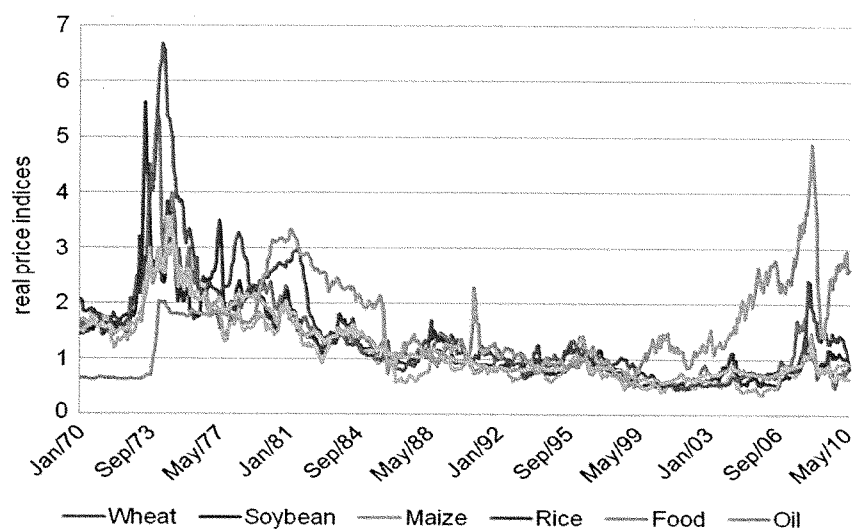
<sup>1</sup>Return on assets = 100% X (net farm income + interest paid - charge for unpaid operators' labor and management) / total assets.

<sup>2</sup>Return on equity = 100% X (net farm income - charge for unpaid operators' labor and management) / net worth.

<sup>3</sup>Financial performance classification based on farm income and debt/asset ratio:

- Favorable: positive net farm income and debt/asset ratio no more than 40 percent.
- Marginal-income: negative net farm income and debt/asset ratio no more than 40 percent
- Marginal-solvency: positive net farm income and debt/asset ratio greater than 40 percent.
- Vulnerable: negative net farm income and debt/asset ratio greater than 40 percent.

Figure 2. Long Run Movements of Prices, Normalized Commodity Price Indexes  
Deflated by the U.S. CPI

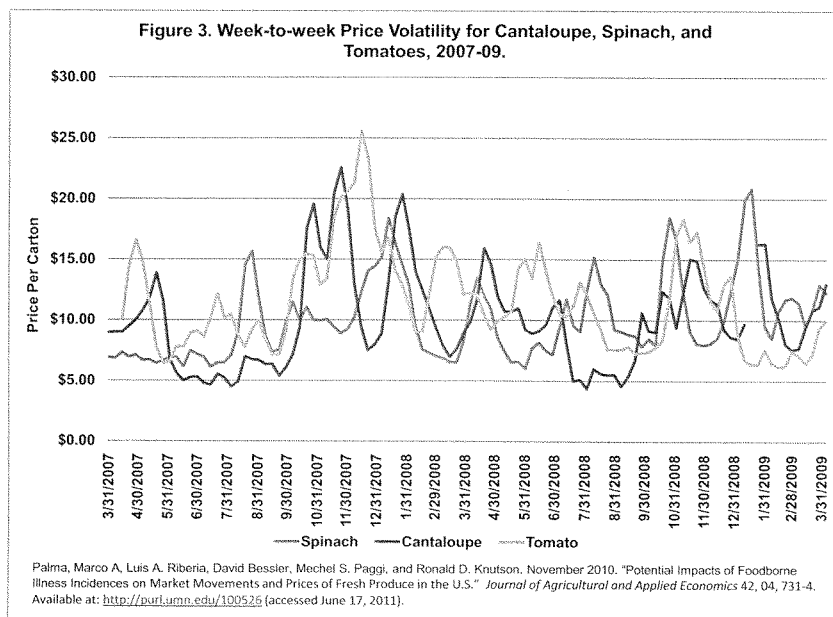


Brian D. Wright. 2011. "The Economics of Grain Price Volatility." *Applied Economic Perspectives and Policy*. 33,1, 32-58.

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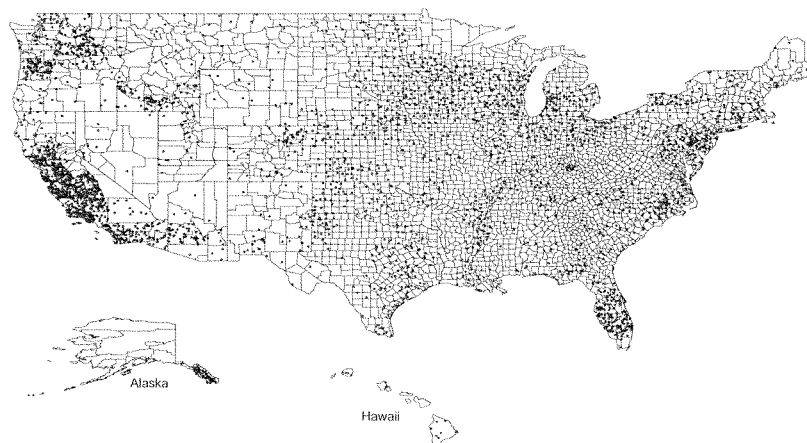




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Figure 4. Hired Farm Labor Expenses by County, 2009  
(Each dot equals \$10,000)

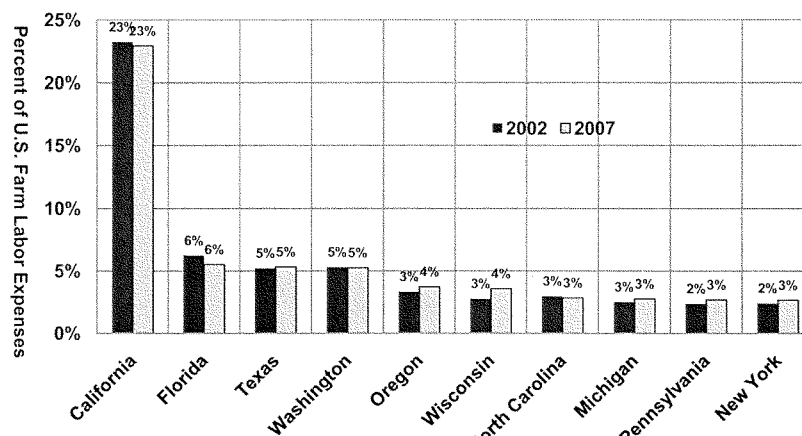


Source: Bureau of Economic Analysis, U.S. Department of Commerce, Farm Income and Expenses, CA45, 2009  
<http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=5>.

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**Figure 5 - Share of US Farm Labor Expenses for the Top Ten States, 2002 and 2007**



Source: Census of Agriculture, 2007, U.S. Department of Agriculture, National Agricultural Statistical Service (NASS), <http://www.agcensus.usda.gov/index.asp>.

Seasonality<sup>1,2,3</sup>

Fig. 6. U.S. Agricultural Service Workers by Quarter - 2007-2010

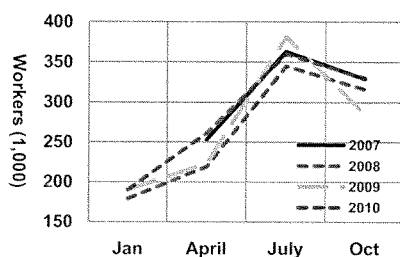


Fig. 7. U.S. Hired Farm Labor by Quarter - 2007-2010

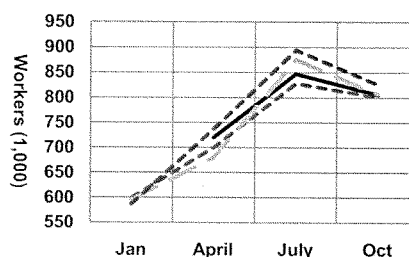


Fig. 8. California Agricultural Service Workers by Quarter - 2007-2010

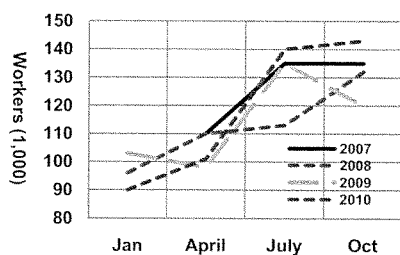


Fig. 9. California Hired Farm Labor by Quarter - 2007-2010

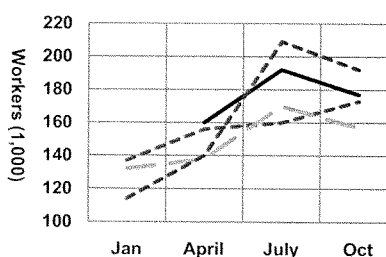


Fig. 10. Florida Agricultural Service Workers by Quarter - 2007-2010

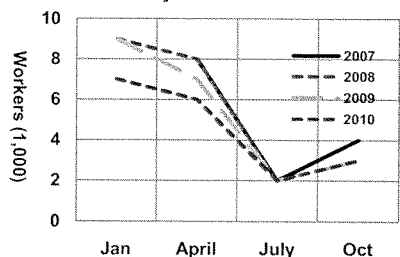
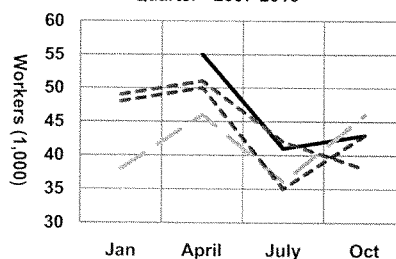


Fig. 11. Florida Hired Farm Labor by Quarter - 2007-2010

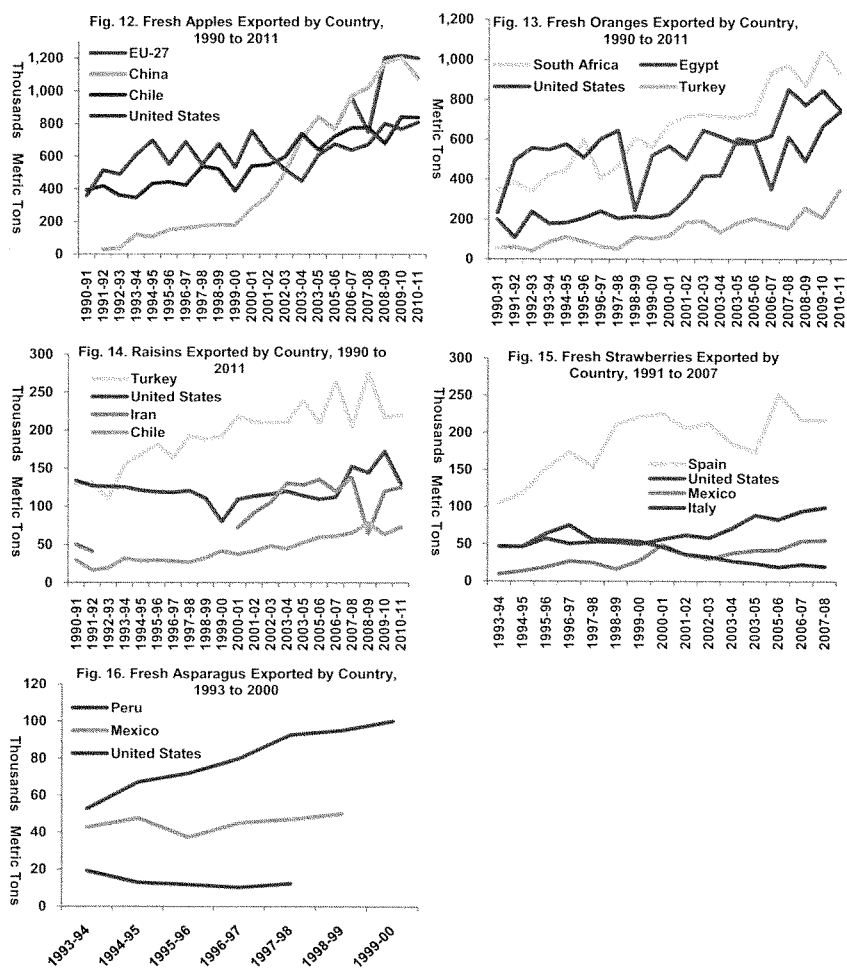


<sup>1</sup> Source: *Farm Labor*, National Agricultural Statistical Service, Agricultural Statistical Board, U.S. Department of Agriculture, various issues.

<sup>2</sup> Agricultural Service Workers are workers supplied primarily by labor Contractors.

<sup>3</sup> Hired farm workers are those individuals employed directly by farmers.

### Selected Fruits and Vegetables Going Into Export Markets<sup>1</sup>



<sup>1</sup> Source: Foreign Agricultural Service, Official U.S.D.A. Estimates, [www.fasusda.gov/psdonline](http://www.fasusda.gov/psdonline) (accessed July 26, 2011).

Table 4. U.S. Imports of Selected Commodities from Top Five Countries, 1990 to 2010

Top Five Countries	Annual Average Metric Tons			Percentage Distribution			Percentage Change	
	1990-1992	1999-2001	2008-2010	1990-1992	1999-2001	2008-2010	1990-1992 to 1999-2001	1999-2001 to 2008-2010
Apples, Fresh								
Chile	24,472	48,121	101,168	21%	30%	59%	97%	110%
New Zealand	25,504	60,400	39,631	22%	37%	23%	137%	-34%
Canada	56,662	39,922	26,019	49%	25%	15%	-30%	-35%
Argentina	5,283	2,664	3,278	5%	2%	2%	-50%	23%
Brazil	126	273	578	0%	0%	0%	117%	112%
Other Partners	3,394	10,348	205	3%	6%	0%	205%	-98%
Asparagus, Fresh								
Peru	2,835	28,546	84,391	12%	41%	54%	907%	196%
Mexico	17,751	36,266	69,308	76%	52%	45%	104%	91%
Canada	1	8	1,285	0%	0%	1%	672%	15504%
Ecuador	52	81	293	0%	0%	0%	55%	260%
Argentina	174	348	130	1%	1%	0%	100%	-63%
Other Partners	2,460	4,074	243	11%	6%	0%	66%	-94%
Oranges								
South Africa	-	9,194	31,505	0%	13%	35%		243%
Chile	-	-	17,902	0%	0%	20%		
Australia	844	20,784	20,117	3%	30%	22%	2363%	-3%
Mexico	10,555	24,737	17,414	35%	36%	19%	134%	-30%
Dominican Republic	3,692	1,586	1,623	12%	2%	2%	-57%	2%
Other Partners	14,777	12,450	2,527	49%	18%	3%	-16%	-80%
Head Lettuce								
Mexico	5,401	7,458	74,754	60%	46%	83%	38%	902%
Canada	3,572	8,267	15,180	40%	51%	17%	131%	84%
Peru	-	194	63	0%	1%	0%		-68%
Israel	-	17	20	0%	0%	0%		20%
Spain	-	-	0	0%	0%	0%		
Other Partners	16	180	1	0%	1%	0%	1002%	-100%
Strawberries, Fresh								
Mexico	11,627	35,535	79,444	88%	97%	99%	206%	124%
Canada	44	302	230	0%	1%	0%	588%	-24%
Peru	-	2	92	0%	0%	0%		4503%
Argentina	1	34	1	0%	0%	0%	2879%	-98%
Australia	13	110	-	0%	0%	0%	722%	-100%
Other Partners	1,535	570	138	12%	2%	0%	-63%	-76%
Leaf Lettuce								
Mexico	2,961	4,365	27,554	74%	30%	65%	47%	531%
Canada	958	9,901	14,441	24%	68%	34%	933%	46%
Peru	51	143	434	1%	1%	1%	183%	203%
Israel	-	18	132	0%	0%	0%		633%
Italy	3	0	2	0%	0%	0%	-83%	431%
Other Partners	8	52	5	0%	0%	0%	523%	-90%
Raisins, Made From Dried Seedless Grapes								
Chile	4,527	5,424	10,737	51%	32%	53%	20%	98%
South Africa	-	1,287	4,183	0%	8%	21%		225%
Mexico	3,566	5,120	2,667	40%	30%	13%	44%	-48%
China	6	12	438	0%	0%	2%	93%	3474%
Argentina	150	2,393	1,543	2%	14%	8%	1499%	-36%
Other Partners	668	2,567	573	7%	15%	3%	285%	-78%

Data Source: Department of Commerce, U.S. Census Bureau. Foreign Trade Statistics, Product Group: Harmonized.

Data generated on Sunday, July 24, 2011 at 11:26:21 PM EST.

Table 5. U.S. Exports of Selected Commodities to Top Five Countries, 1990 to 2010

Top Five Countries	Annual Average Metric Tons			Percentage Distribution			Percentage Change	
	1990-1992	1999-2001	2008-2010	1990-1992	1999-2001	2008-2010	1990-1992 to 1999-2001	1999-2001 to 2008-2010
Apples, Fresh								
Mexico	35,958	175,357	211,901	8%	27%	27%	388%	21%
Canada	77,123	90,800	131,504	17%	14%	17%	18%	45%
Hong Kong	43,660	37,546	40,718	10%	6%	5%	-14%	8%
Indonesia	5,554	35,416	42,244	1%	5%	5%	538%	19%
Taiwan	84,444	93,985	50,037	19%	14%	6%	11%	-47%
Other Partners	188,569	212,275	286,576	42%	33%	37%	13%	35%
Oranges								
Canada	153,068	136,575	161,454	36%	30%	26%	-11%	18%
Korea, South	1,115	54,910	98,457	0%	12%	16%	4825%	79%
Japan	128,017	90,110	81,194	30%	20%	13%	-30%	-10%
Hong Kong	87,221	68,421	73,757	21%	15%	12%	-22%	8%
Australia	4,143	7,117	19,398	1%	2%	3%	72%	173%
Other Partners	42,861	83,452	153,134	10%	18%	25%	95%	83%
Leaf Lettuce, Fresh								
Canada	63,197	145,779	185,757	85%	91%	92%	131%	27%
Taiwan	49	1,276	6,634	0%	1%	3%	2487%	420%
Mexico	2,752	4,738	5,064	4%	3%	3%	72%	7%
Korea, South	3	60	885	0%	0%	0%	2007%	1366%
Japan	817	2,994	514	1%	2%	0%	267%	-83%
Other Partners	5,877	5,275	2,383	8%	3%	1%	-10%	-55%
Raisins								
United Kingdom	27,266	19,402	29,985	18%	18%	17%	-29%	55%
Japan	23,129	24,635	18,931	16%	23%	11%	7%	-23%
Canada	10,955	11,129	13,581	7%	10%	8%	2%	22%
Germany	14,301	5,142	16,262	10%	5%	9%	-64%	216%
Denmark	6,403	3,615	5,670	4%	3%	3%	-44%	57%
Other Partners	45,760	34,817	71,098	31%	32%	40%	-24%	104%
Head Lettuce, Fresh								
Canada	173,545	128,786	106,339	83%	74%	78%	-26%	-17%
Taiwan	1,941	4,222	8,896	1%	2%	7%	117%	111%
Mexico	12,635	21,250	10,862	6%	12%	8%	68%	-49%
Singapore	1,089	4,051	3,634	1%	2%	3%	272%	-10%
Japan	1,836	3,447	1,488	1%	2%	1%	88%	-57%
Other Partners	16,971	11,071	4,856	8%	6%	4%	-35%	-56%
Strawberries, Fresh								
Canada	35,107	45,739	104,400	80%	77%	83%	30%	128%
Japan	3,636	5,213	4,983	8%	9%	4%	43%	-4%
Mexico	928	6,584	9,602	2%	11%	8%	610%	46%
France	177	267	635	0%	0%	1%	51%	138%
Hong Kong	77	23	1,117	0%	0%	1%	-70%	4769%
Other Partners	3,025	1,003	3,360	7%	2%	3%	-67%	235%
Asparagus, Fresh								
Canada	8,853	7,128	4,436	43%	39%	46%	-19%	-38%
Japan	5,314	6,681	2,552	26%	37%	26%	26%	-62%
Switzerland	1,739	1,471	790	8%	8%	8%	-15%	-46%
Australia	80	65	103	0%	0%	1%	-19%	58%
Netherlands	26	7	174	0%	0%	2%	-74%	2437%
Other Partners	1,977	1,174	599	10%	6%	6%	-41%	-49%

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, Product Group : Harmonized  
Data generated on Monday, July 25, 2011 at 10:39:24 AM EST.

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**Table 6. U.S. Supply, Utilization, and Trade in Selected Fruits and Vegetables, 1990-93 and 2005-07**

Fruits/ Vegetables		Units	Annual Average		Percent Change
			1990/91- 1992/93	2005/06- 2007/08	
Fresh Apples	Production	Million	5,576	6,183	11%
	Consumption		4,830	5,109	6%
	Imports		264	386	46%
	Exports	Pounds	1,011	1,460	44%
	Imports as Percent of Consumption		5%	8%	38%
	Exports as Percent of Production		18%	24%	30%
		Percent			
Fresh Strawberries	Production	Million	944	1,916	103%
	Consumption		879	1,835	109%
	Imports		29	145	396%
	Exports	Pounds	94	226	139%
	Imports as Percent of Consumption		3%	8%	137%
	Exports as Percent of Production		10%	12%	18%
		Percent			
Raisins	Production	Million	705	664	-6%
	Consumption		440	442	0%
	Imports		19	53	182%
	Exports	Pounds	284	275	-3%
	Imports as Percent of Consumption		4%	12%	181%
	Exports as Percent of Production		40%	41%	3%
		Percent			
Fresh Oranges	Production	Million	3,917	3,743	-4%
	Consumption		3,037	2,828	-7%
	Imports		65	188	190%
	Exports	Pounds	944	1,103	17%
	Imports as Percent of Consumption		2%	7%	212%
	Exports as Percent of Production		24%	29%	22%
		Percent			

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**Table 6. U.S. Supply, Utilization, and Trade in Selected Fruits and Vegetables, 1990-93 and 2005-07 (continued)**

Fruits/ Vegetables		Units	Annual Average		Percent Change
			1990/91- 1992/93	2005/06- 2007/08	
Fresh Head Lettuce	Production	Million Pounds	7,160	6,395	-11%
	Consumption		6,723	6,135	-9%
	Imports		19.83	128	547%
	Exports	Percent	457	388	-15%
	Imports as Percent of Total Supply		0%	2%	609%
	Exports as Percent of Total Supply		6%	6%	-5%
Leaf and Romaine Lettuce	Production	Million Pounds	1,203	4,473	272%
	Consumption		1,052	4,069	287%
	Imports		9	63	613%
	Exports	Percent	159	467	193%
	Imports as Percent of Consumption		1%	2%	84%
	Exports as Percent of Production		13%	10%	-21%
Asparagus	Production	Million Pounds	139	99	-29%
	Consumption		151	338	125%
	Imports		51	258	402%
	Exports	Percent	40	18	-53%
	Imports as Percent of Consumption		34%	76%	124%
	Exports as Percent of Production		29%	19%	-35%

**Vegetables and Melons Situation and Outlook Yearbook.** Market and Trade  
Economics Division, Economic Research Service, U.S. Department of Agriculture,  
May 15, 2008, VGS-2008.  
<http://www.ers.usda.gov/publications/vqs/2008/05May/VGS2008.pdf>.

**Fruit and Tree Nuts Situation and Outlook Yearbook.** Market and Trade  
Economics Division, Economic Research Service, U.S. Department of Agriculture,  
October 2008.  
<http://www.ers.usda.gov/publications/fts/yearbook08/FTS2008.pdf>.

## References

Calvin, Linda, and Philip Martin. November 2010. *The U.S. Produce Industry and Labor: Facing the Future in a Global Economy*, Washington, D.C.: Economic Research Service, USDA, ERR-106. Available at: <http://www.ers.usda.gov/Publications/ERR106/ERR106.pdf> (accessed June 21, 2011).

Calvin, Linda and Philip Martin. December 2010. "Reduction in the supply of workers that could make agricultural labor more expensive for the U.S. fruit and vegetable." *AmberWaves*. Washington D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/AmberWaves/December10/Features/LaborIntensive.htm>. (accessed June 21, 2010).

Economic Research Service. March 29, 2011. "Farm Structure: Glossary." *Briefing Room*. Washington D.C.: ERS, USDA. Available at: <http://www.ers.usda.gov/briefing/farmstructure/glossary.htm#familyfa> (accessed June 28, 2011).

Economic Research Service. May 15, 2008. *Vegetables and Melons Situation and Outlook Yearbook*. ERS Market and Trade Economics Division, VGS-2008, USDA. Available at: <http://www.ers.usda.gov/publications/vgs/2008/05May/VGS2008.pdf> (accessed July 20, 2011).

Economic Research Service. October 2008. *Fruit and Tree Nuts Situation and Outlook Yearbook*. ERA Market and Trade Economics Division, FTS-2008, USDA. Available at: <http://www.ers.usda.gov/publications/fts/yearbook08/FTS2008.pdf> (accessed July 21, 2011).

Folz, William E.. 1967. "The Food Marketing Commission and Market Structure and Performance." *Journal of Farm Economics* 49, 2.

Food and Agriculture Organization. 2009. FAOSTAT. Rome, Italy: United Nations. Available at: <http://fao.org/site/291/default.aspx> (accessed June 25, 2011).

Hertz, Tom. "Farm Labor." June 25, 2011. *Briefing Room, Rural Labor and Education*. Washington D.C.: Economic Research Service, USDA. <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm> (accessed June 25, 2011)

Holt, James S. 2008. "Farm Labor Shortages and the Economic Evidence of the Declining Competitiveness of U.S. Fruit and Vegetable Producers: A White Paper." Washington, D.C.: James S. Holt & Co. Available at: [http://web17.streamhoster.com/ddc/ACIR/20080429/James\\_S\\_HoltPhD.pdf](http://web17.streamhoster.com/ddc/ACIR/20080429/James_S_HoltPhD.pdf) (accessed June 21, 2011).

Hoppe, Robert A. September 2010. "U.S. Farm Structure: Declining—But Persistent—Small Commercial Farms." *Amber Waves*. Washington, D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/AmberWaves/September10/Features/USFarm.htm> (accessed June 29, 2011).

Hoppe, Robert A. and David E. Banker, *Structure and Finances of U.S. Farms: Family Farm Report, 2010 Edition*. Washington D.C.: Economic Research Service EIB-66, USDA. Available at: <http://www.ers.usda.gov/publications/eib66/eib66.pdf> (accessed July 20, 2011).

Hoppe, Robert A., James M. MacDonald, and Penni Korb. February 2010. *Farms in the United States: Persistence Under Pressure*. Washington, D.C.: Economic Research Service, USDA, EIB 63. Available at: <http://www.ers.usda.gov/Publications/EIB63/EIB63.pdf> (accessed June 29, 2011).

Hoppe, Robert A., Penni Korb, Erik J. O'Donoghue, and David E. Banker. June 2007. *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition.*, Washington, D.C.: Economic Research Service, USDA, EIB-24. Available at: <http://www.ers.usda.gov/publications/eib24/eib24.pdf> (accessed June 18, 2011).

Huang, Sophia Wu. June 2004, *Global Trade Patterns in Fruits and Vegetables*. Washington, D.C.: Economic Research Service, USDA, WRS-

04-06. Available at:

<http://www.ers.usda.gov/publications/WRS0406/WRS0406.pdf> (accessed June 21, 2011).

Huang, Sophia Wu and Fred Gale. April 2006. "China's Rising Profile in the Global Market for Fruits and Vegetables." *Amber Waves*. Washington, D.C.: Economic Research Service, USDA. Available at:

<http://www.ers.usda.gov/AmberWaves/April06/DataFeature/> (accessed June 21, 2011).

Huffman, Wallace. June 26, 2007. "Demand for Farm Labor in the Coastal Fruit and Salad Bowl States Relative to Midland States: Four Decades of Experience." Ames, Iowa: Iowa State University, ISU Economics Working Paper #07013. Available at:

[www.econ.iastate.edu/research/webpapers/paper\\_12827\\_07013.pdf](http://www.econ.iastate.edu/research/webpapers/paper_12827_07013.pdf) (accessed June 21, 2011).

Hayami, Yujiro, and Vernon Ruttan. 1985. *Agricultural Development*, Baltimore: Johns Hopkins University Press.

William Kandel. 2008. *Profile of Hired Farmworkers, An 2008 Update*.

Washington, D.C.: Economic Research Service ERP 60, USDA. Available at: <http://www.ers.usda.gov/Publications/ERR60/> (accessed July 28, 2011).

Krissoff, Barry and John Wainio. May 2007. "U.S. Fruit and Vegetable Imports Outpace Exports." Washington, D.C.: Economic Research Service, USDA. Available at:

<http://www.ers.usda.gov/AmberWaves/May07SpecialIssue/PDF/Fruit.pdf> (accessed June 21, 2011).

Levine, Linda. December 28, 2009. *The Effects on U.S. Farm Workers of an Agricultural Guest Worker Program*. Washington, D.C.: Congressional Research Service, 95-712. Available at:

<http://nationalaglawcenter.org/assets/crs/95-712.pdf> (accessed June 21, 2011).

Levine, Linda. November 9, 2009. *Farm Labor Shortages and Immigration Policy*. Washington, D.C.: Congressional Research Service, RL30395. Available at: <http://nationalaglawcenter.org/assets/crs/RL30395.pdf> (accessed June 21, 2011).

Lucier, Gary and Lewrene Glaser. 2011. "Vegetables and Melons: Tomatoes." *Briefing Room*. Washington, D.C.: Economic Research Service, USDA. Available at: <http://www.ers.usda.gov/Briefing/Vegetables/tomatoes.htm> (accessed June 21, 2011).

Martin, Philip, 2009. "Immigration Reform: What Does It Mean for Agriculture?" *Agricultural and Resource Economics Update*, Oakland, CA: Giannini Foundation of Agricultural Economics, University of California, Vol. 13, No.1.

Martin, Philip. November 2007. *Farm Labor Shortages: How Real? What Response. Background*. Washington, D.C.: Center for Immigration Studies. Available at: [http://www.cis.org/no\\_farm\\_labor\\_shortages.html](http://www.cis.org/no_farm_labor_shortages.html) (accessed June 21, 2011).

Martin, Phillip. 1998. "Factors that Influence Migration Guest Workers: Past and Present." *Mexico-United States Binational Migration Study: Volume I*. Mexico City, Federal District: Mexican Ministry of Foreign Affairs and Washington, D.C.: U.S. Commission on Immigration Reform, pp. 877-95.

Martin, Philip and Linda Calvin. 2010. "Immigration Reform: What Does It Mean for Agriculture and Rural America?" *Applied Economic Perspectives and Policy* 32, 2, 232-53.

Martin, P.I., W. Huffman, R. Emerson, J.E. Taylor and R.I. Rochin. 1995. *Immigration Reform and U.S. Agriculture*. Oakland, CA: University of California, Division of Agricultural and Natural Resources, Publ. 3358.

Meyers, Deborah Waller. January 2006. "Temporary Worker Programs: A Patchwork Policy Response." *Insight*. Washington, D.C.: Migration Policy Institute, Independent Task Force on Immigration and America's Future, No. 12. Available at: [http://www.migrationpolicy.org/ITFIAF/TFI\\_12\\_Meyers.pdf](http://www.migrationpolicy.org/ITFIAF/TFI_12_Meyers.pdf) (accessed June 22, 2011).

National Agricultural Statistics Service. February 2009. *2007 Census of Agriculture: U.S. Summary and State Data*. Washington, D.C.: NASS/USDA. Available at: [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/usv1.pdf](http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf) (accessed June 19, 2011).

National Commission on Food Marketing, Food from Farmer to Consumer, June 1966, Washington, 1966.

*NC Enterprise Budgets*. 2011. Raleigh, NC: North Carolina Market Ready Plants for Human Health Institute, North Carolina State University. Available at: <http://plantsforhumanhealth.ncsu.edu/extension/programs-resources/enterprise-budgets/fruits/> (accessed June 25, 2011).

Palma, Marco A, Luis A. Riberia, David Bessler, Mechel S. Paggi, and Ronald D. Knutson. November 2010. "Potential Impacts of Foodborne Illness Incidences on Market Movements and Prices of Fresh Produce in the U.S." *Journal of Agricultural and Applied Economics* 42, 04, 731-4. Available at: <http://purl.umn.edu/100526> (accessed June 17, 2011).

O'Rourke, Alexandra Villarreal. Spring 2006, "Embracing Reality: The Guest Worker Program Revisited." *Harvard Latino Law Review*, 9, 179-94.

Ruark, Eric A. April 2011. *Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce*. Washington, D.C.: Federation for American Immigration Reform (FAIR). Available at: [http://www.fairus.org/site/DocServer/agribusiness\\_rev.pdf?docID=5541](http://www.fairus.org/site/DocServer/agribusiness_rev.pdf?docID=5541) (accessed June 16, 2011).

Tyner, Wallace, Phillip Abbot, and Christopher Hurt, 2008. "What's Driving Food Prices?" Oak Brook. IL: Farm Foundation Issue Report. Available at: <http://www.farmfoundation.org/news/articlefiles/404-FINAL%20WDFP%20REPORT%207-28-08.pdf> (accessed July 20, 2011).

USDA, 2011. "MyPlate." Dietary Guidelines. Washington, D.C.: U.S. Department of Agriculture. Available at: [ChooseMyPlate.gov](http://ChooseMyPlate.gov) (accessed June 27, 2011).

USDA and USDHHS. January 31, 2011. Dietary Guidelines for Americans 2010. Washington, D.C.: U.S. Department of Agriculture and U.S. Department of Health and Human Services. Available at: [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov) (accessed June 27, 2011).

United States Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification. 2010. *The Foreign Labor Certification Report: 2009 Data, Trends and Highlights Across Programs and States*. Washington D.C. Available at: [www.foreignlaborcert.doleta.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.doleta.gov/pdf/2009_Annual_Report.pdf) (accessed June 27, 2011).

U.S. Department of Labor, Employment and Training Administration. February 18, 2010. "Temporary Agricultural Employment of H-2A Workers in the United States: 2010 Adverse Effect Wage Rates, Allowable Charges for Agricultural Workers' Meals, and Maximum Travel Subsistence Reimbursement." Federal Register 75, 32, 7293-94. Available at: <http://edocket.access.gpo.gov/2010/2010-3078.htm> (accessed July 20, 2011).

U.S. Department of Labor, Office of Program Economics. March 2005. *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002 : A Demographic and Employment Profile of United States Farmworkers*. Washington, D.C.: Office of the Assistant Secretary for Policy, Office of Programmic Policy. Available at: <http://www.doleta.gov/agworker/naws.cfm> (accessed June 16, 2011).

Walters, Lurleen M., Orachos Napisintuwong, Nobuyuki Iwai, Robert D. Emerson. 2006. "The U.S. Farm Labor Market Post-IRCA: An Assessment

of Employment Patterns, Farm Worker Earnings and Legal Status.” Orlando, FL: SAEA Selected Paper. Available at: <http://purl.umn.edu/35449> (accessed June 23, 2011).

Wasem, Ruth Ellen. February 2, 2010. *Immigration Reform Issues in the 111th Congress*. Washington, D.C.: Congressional Research Service, RL30395. Available at: <http://nationalaglawcenter.org/assets/crs/RL30395.pdf> (accessed June 21, 2011).

Wright, Brian D. 2011. “The Economics of Grain Price Volatility.” *Applied Economic Perspectives and Policy*. 33,1, 32-58.



### Glossary of Terms Used in the Report

**Agribusiness:** All firms that supply farm inputs and that handle, process, and distribute/market farm products. Agribusiness firms may be directly involved in farm production but more often contract for farm production with contract-growers referred to as farmers.

**Agricultural products:** Products produced on farms including grains, rice, fruits, vegetables, nuts, herbs and spices, fiber, livestock, poultry, milk, fish, nursery, or landscape products.

**Agriculture sector:** All functions related to food, fiber, and specialty crop production from input resources used in production through final sale to consumers, including exports and imports.

**Authorized labor:** Authorized labor includes workers who are citizens of the United States, have green cards, or have temporary work visas and related documentation.

**Commercial farm:** Produces agricultural products for distribution to for domestic and international agricultural product markets.

**Contract grower:** A type of farmers who contracts with agribusiness firms for production. The agribusiness firms may supply a portion of the inputs and practices used in production but, typically, do not supply the labor used in production.

**Family farm:** A family farm is one in which a portion of the ownership, labor, and management of the farm business is held by a family of individuals who are related by blood, marriage, or adoption. Family farms generally depend on income from the farm for an important share of their economic livelihood.

**Farm:** A unit of production that produces agricultural products. The U.S. government defines a farm as one that annually sells \$1,000 or more of agricultural products.

**Farmer:** An individuals who provides resources, such as land, buildings, machinery, and/or management, used in the production of agricultural products regardless of the legal form of business organization.

**Farming:** The practices used in producing agricultural products.

**Farm labor:** Labor used to produce agricultural products. Farm labor may be hired by farmers, provided to farmers as part of an agricultural service worker contract, or provided by a farmer or his family.

**Farm sector:** The farm sector is composed of made up of farms produces agricultural products. The farms are operated by farmers who provide resources, such as land, buildings, machinery, labor, capital, and/or management, used in the production of agricultural products regardless of the legal form of business organization. Many of the inputs used in production are acquired from the input sector.

**Green Card:** A U.S. Permanent Resident Card. This identification card attests to the permanent resident status of an alien in the United States and among other things authorizes employment.

**Grower:** A term used synonymous with contract grower, meaning a type of farmer who contracts with agribusiness firms for production.

**Input sector:** Those who supply the inputs (hired labor, seeds, genetics, fertilizer, pesticides, machinery, energy products, buildings, credit, etc.) used in production.

**Labor Shortage:** A situation where there are not sufficient farm workers who are able, willing, qualified and available to perform work at the place and time needed. Timing is critical. When a crop is ready to harvest, the labor supply must be available or the product will not be marketable.

**Limited-resource:** Any small farm with gross sales less than \$100,000, total farm assets less than \$150,000, and total operator household income less than \$20,000. Limited-resource farmers may report farming, a nonfarm occupation, or retirement as their major occupation.

**Migrant farm worker:** A farm worker whose employment required travel that prevented the worker from returning to his/her permanent place of residence the same day.

**Packing plant labor:** workers hired to perform post-harvest functions that prepare products for marketing through the value chain from the farm to the consumer. Packing plant workers may perform processing functions, such as sorting, washing, and consumer-ready packaging to get products ready to market into the food, fiber, or specialty crop value chain.

**Produce:** Fruits, vegetable, nuts, or herbs.

**Producer:** A term used synonymous with a farmer or a grower.

**Residential/lifestyle:** Small farms whose operators report a major occupation other than farming (excludes limited-resource farms with operators reporting a nonfarm major occupation).

**Retirement farm:** Small farms whose operators report they are retired (excludes limited-resource farms operated by retired farmers).

**Seasonal farm workers:** Farm workers employed for part of the year to perform seasonal tasks - pruning fruit trees, training vines, planting, or harvesting that occurs one or more times during the year.

**Supply chain:** All functions involved in converting farm products from resources used in farming to the ultimate consumer.

**Unauthorized labor:** Unauthorized labor includes workers who are not citizens of the United States, do not have green cards, or have temporary work visas and related documentation.

**Value chain:** Steps of stages for production, handling, processing, and transporting, food service, through retailing that add value to products.

**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On "America's Agricultural Labor Crisis:  
Enacting A Practical Solution"  
October 4, 2011**

I thank Senator Schumer for holding this important hearing. I am pleased that the subcommittee on Immigration, Refugees, and Border Security will focus on the needs of America's farmers and the important role that foreign workers play on our Nation's farms. For many years, American farmers have been urging Congress to act to reform our immigration laws. Unfortunately, the difficult politics of this issue have stood in the way. I hope today's hearing will help to refocus the Senate's attention on the reforms that will support and strengthen our national agricultural community.

Our current system fails to provide farmers with an adequate, legal workforce—due to regulatory hurdles and, for some, lack of access to the program. From Vermont to Georgia to California, farmers have long relied on the assistance of hardworking men and women who travel to the United States to work.

As a Senator from a state that prides itself on its dairy products and a long tradition of family farming, it is unacceptable to me that dairy farmers are still being denied access to the H-2A agricultural visa program, which was designed to authorize immigrants to work in agricultural jobs. Other year-round agricultural activities, such as sheepherding, logging, and pine straw gathering are explicitly authorized by regulation to use the H-2A program. I have repeatedly argued to Republican and Democratic administrations alike that this policy is unfair and inconsistent, but my arguments have fallen on deaf ears. There is no rational defense to denying dairy access to H-2A.

Like many other sectors of agriculture, dairy farmers have consistently had difficulty attracting domestic employees. Current regulations put dairy farmers in a position of choosing between their livelihoods and taking risks with a potential employee's immigration status. This must change.

I have introduced targeted, bipartisan legislation to provide dairy farmers with access to the H-2A program, which also includes additional provisions tailored to the needs of dairy. My legislation would not only provide dairy farmers with a lawful avenue to obtain foreign employees for realistic periods of employment, but would also codify existing regulatory practice that allows other sectors, like sheepherding, to use the H-2A visa program.

Some oppose any expansion of the H-2A program, arguing that the H-2A system is imperfect, and permitting additional agricultural sectors to access it would only compound a bad situation. We all recognize that the H-2A program is imperfect. I hear concerns regularly from Vermont nurseries, apple growers, and others about the terrible inefficiencies and obstacles they face while trying to navigate a bureaucracy that is supposed to be helping them. But I believe that

basic access to the H-2A program is a better option than what dairy farmers now have, which is no access at all and a status quo that drives workers into the shadows.

We need real solutions for farmers and farm workers. I continue to be a strong advocate of the long pending AgJOBS bill, which would solve not only the challenges that dairy farmers face, but would provide broad relief to farmers and farm workers across the country. Unfortunately, despite the fact that the AgJOBS bill is a carefully negotiated, fair approach that takes the needs of all stakeholders into consideration, some have chosen to put ideology over the legitimate needs of the men and women who work so hard to put food on our tables.

Regrettably, in the House of Representatives, the most prominent proposal is one to make the Federal E-Verify work authorization program mandatory for every single employer in the United States. Proponents of this approach are well aware that imposing this government mandate on all Americans, without additional broad reforms to the immigration system, will cause severe harm, especially to small businesses and farmers. This year in Georgia, for example, the state legislature passed a mandatory E-Verify requirement. As a result, farmers were unable to find workers; in some cases as much as 50 percent of their normal workforce did not return. Despite active efforts to find local workers, these farmers were unable to do so.

American farmers need policies that will help them flourish, not more bureaucratic hurdles. While I have no objection to E-Verify as a voluntary program, I cannot support any proposal to turn the current program into a broad Federal mandate. I look forward to hearing the perspective of today's witnesses who are in a position to know first-hand the consequences of such a policy.

We need to act now to support our Nation's agriculture system with a fair and workable immigration system—one which supports employers, protects workers, and preserves opportunities for any American wishing to work in agriculture. American farmers deserve a Federal policy that will support and help grow their businesses. I am confident that Congress can act to create such a system, and I look forward to today's testimony.

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U.S. Senate

Testimony Before the Committee on Judiciary, Subcommittee on Immigration, Refugees  
and Border Security

Hearing on America's Agricultural Labor Crisis: Enacting a Practical Solution

Tom Nassif

President and CEO of Western Growers



Tuesday, October 4, 2011

10:00am

Good Morning. Chairman Schumer, Ranking Member Cornyn and members of the committee, thank you for the opportunity to appear before you today. I am Tom Nassif, President and CEO of the Western Growers Association which is an agricultural trade association headquartered in Irvine, California. Western Growers members are small, medium and large-sized businesses that produce, pack and ship almost 90 percent of fresh fruits, nuts and vegetables grown in California and approximately 75 percent of the fresh fruits, nuts and vegetables grown in Arizona. In total, our members account for nearly half of the annual fresh produce grown in the United States, providing American consumers with healthy, nutritious food.

#### **Agriculture is Critical to the Health of the U.S. Economy**

Studies conducted by the University of California Davis, demonstrate that every California agricultural job creates two non-farms jobs in our economy, and every farm dollar generates an additional \$1.27 for the California economy. Nationwide, the Department of Labor reported that 24 million jobs, a full 14 percent of all people employed in the United States, are supported by the U.S. food and fiber industry.

Not only is agriculture's role in maintaining a safe and secure food supply vital to our economic recovery, it is critical to the strength of rural America. Western Growers members and their employees are members of the very communities in which they grow, pack, and sell products. In 2009, when the California water crisis forced us to fallow 500,000 acres in the Central Valley, thousands of farms jobs were lost, and rural non-farm businesses supported by these jobs suffered. Some communities realized unemployment levels of 40 percent.

Today, I'm here to talk about another crisis, our labor crisis. This is not a new challenge for agriculture. We've been working to secure a legal workforce for more than 15 years. But in the face of no immigration reform, a diminishing labor supply, threats due to I-9 audits and ICE raids, and now E-Verify legislation emerging at the state and the federal levels, it is clear that U.S. agriculture will be decimated without a workable mechanism

to hire the labor we need.

### **Demographics of U.S. Agricultural Work Force**

There are about 1.8 million people who perform hired farm work in the United States. Approximately 1.2 million or more of these people are not authorized to work here. Studies demonstrate that for a variety of reasons including the seasonal nature of the work, the difficulty of the work, and the skill level required for many agricultural jobs, unemployed Americans are unwilling to work in the labor intensive agriculture sectors—produce, dairy, nursery, livestock. The labor force in each of these sectors is overwhelmingly made up of foreign born employees.

In the late 1990's, at the insistence of Senator Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran 9 to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other factors impacting employment levels. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies stated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work because it suffered from such a low success rate, and that seasonal agriculture was "not a fit" for these individuals.

In 2006, in Washington State, a tight labor supply for the cherry harvest was a warning sign of a looming labor shortage for the much larger apple harvest. Again, state and local agencies teamed up with grower associations to conduct an advertising blitz and provide special training on how to safely pick apples without harming their market value or damaging the trees' future productivity. In that program, over 1700 workers were sought; roughly 40 were successfully placed.



In 2007, the North Carolina Farm Bureau Federation set up a statewide hotline for job seekers, and advertised it in print and on radio. North Carolina needs roughly 60,000 crop and livestock workers each season. Two calls were received; one was from a grandmother who felt that farm work would do her grandson good.

In 2010, the United Farm Workers Union launched the "Take Our Jobs" program. A media blitz included national coverage. As of mid October, which generally marked the end of the growing season and the campaign, 10,021 people had inquired about jobs in the fields, yet only nine people had taken jobs in the fields. Most of them quit after a few days.

Some might be tempted to consider wage rates as an additional factor that might discourage unemployed American workers from seeking agricultural jobs, but the facts do not bear this out. According to a July 2011 USDA farm labor analysis, wages for field and livestock workers averaged \$10.25 per hour. American workers do not seek nor stay in farm jobs, even today with unemployment hovering at 9.1 percent. The fact is the majority of farm jobs in this country will be filled by foreign workers.

#### **Challenges to a Secure, Stable Workforce**

Even before the challenge of E-Verify, legislation, the need for a workable agriculture labor program could not have been more clear.

In California, a state with no E-Verify legislation pending, and across the country, agricultural employers are facing an increasingly difficult time finding a sufficient, stable workforce due to the existing federal enforcement-only work authorization laws.

As you know, the Immigration Control and Reform Act (IRCA) mandates procedures for employers to verify the employment eligibility of their workforce. Failure to comply with IRCA can lead to substantial civil penalties and, in some cases, criminal charges. However, employers are prohibited from questioning the documents the employee

presents if they appear to be valid. When the Department of Labor conducts workplace audits the employees' work authorization is scrutinized and run through DHS databases, often times with severe consequences for agricultural employers.

The Obama Administration has made enforcement of IRCA a priority. This year alone, the federal government has initiated 2,338 employer audits, up dramatically from past years, made more than 150 criminal arrests and levied more than \$7 million in fines on employers.

Agriculture and food processing are among a select group of industries that are receiving the most attention.

In March of this year, 85 percent of a California wholesale nursery's year round workforce—more than 70 employees—had to be terminated at the peak of their Mother's Day floral season when DHS determined their work documents were "suspect."

### **The Impact of E-Verify**

#### **State**

The existing challenges we face in securing a stable workforce will pale in comparison to the devastating impact of E-Verify legislation in the absence of a workable labor program.

State E-Verify laws are being enacted or considered across the country. The state of Georgia offers a glimpse into the future for the nation if E-Verify were to be imposed without a farm worker program. There, passage of a state law including E-Verify has led to farm labor shortages as high as 30 to 50%. Field workers are simply avoiding the state and Georgia growers and producers may lose \$300 million. And as described above, the economic misery resulting from lost production and lost payroll is also being felt in the community-based businesses that serve farms and farm workers.

The trends in California, which I noted does not have E-Verify legislation in place, are already startling. Our members, and other specialty crop producers across the country, are looking to foreign countries as they make plans to expand their businesses and create additional jobs there, not here. I have members who have moved portions of their operations out of the United States, not because the cost of getting product to market is less in other countries, but because of the uncertainty surrounding the labor supply in the United States. In foreign countries there are local populations able and willing to work in the fields. We are moving production to where the labor force is located and where the regulatory burdens allow us to continue in business, competing with global producers.

In the absence of a workable ag labor program, E-Verify not only promotes the movement off shore of what was once U.S. production, it is a jobs killer for rural America. When the incomes and taxes generated by farmers and employees leave a community, seed and fertilizer companies and distributors are impacted. Tractor and other equipment dealerships suffer. The decreased demand for packing and processing is injurious to the suppliers of packaging and processing equipment and their employees. Banks and storefronts close, and communities are imperiled.

Right now, the only program we have available to us to secure with certainty legal workers is the H-2A or temporary agricultural guest-worker visa program. As has been well-documented, it is utterly failing the agricultural industry including Western Growers members.

For example, H-2A is used to address only 2-3 percent of U.S. agriculture's labor needs. And even then, the just released nationwide study of H-2A users commissioned by the National Council of Agricultural Employers that was presented to the House Subcommittee on Workforce Protections last month, reports that 72 percent of workers arrived late, on average, 22 days after the date of need. In 2010, employers in the H-2A program reported \$320M in losses due to their inability to get the workers they needed or to get workers when they were needed.

The Department of Labor appears, at best, indifferent to agriculture's needs. The Western Growers members who farm in Yuma, Arizona hire Mexican H-2A workers who live in Mexico and commute to work. Many of these H-2A employees prefer to return home after each work day. These employees decline to use the approved housing that is required to be provided to them by the growers under H-2A regulations. Despite repeated requests for an adjustment to the requirements, the Department of Labor has taken the position that employers must make the housing available for the H-2A commuters *prior* to obtaining employer H-2A certification, regardless of whether the H-2A workers intend to use it. This imposes a significant cost on the growers without affording any benefit to the intended H-2A worker beneficiaries.

H-2A is administratively burdensome, implemented ineffectively, and is too unresponsive and inflexible to meet the labor needs of U.S. agriculture.

It is also unduly punitive. DOL seeks damages in the hundreds of thousands of dollars for minor technical violations of the program, including payment of  $\frac{1}{4}$  of the wages workers would have earned if they had worked an entire season. This requirement applies even if the workers voluntarily quit the first few days of the season, but the grower notifies DHS of the workers' departure more than two work days after they have left the job site.

The Department of Labor also appears to target growers who use H-2A (with wage and hour investigations). 8 percent of H-2A employers report that they were audited before they participated in the program, but 35 percent report being audited since entering the program.

As noted earlier, the H-2A program is used by a small percentage of agricultural employers. We are talking about the need for a program that will work for the remaining 96 percent of us and the greater than one million people we need to hire each year.

At the markup of E-Verify in the House Judiciary Committee last month, Congressman Dan Lungren, stated that even though he created the H-2A program in 1986, he recognizes it is irreparably broken.

### **Federal**

At the federal level, mandatory E-Verify legislation, H.R. 2885, was passed out of the House Judiciary Committee on September 21.

Similar to the state E-Verify laws, in the absence of an agriculture worker program, H.R. 2885 will deprive farms across America of a majority of their existing skilled workforce, as well as new employees willing to fill these jobs.

In H.R. 2885, agricultural employment is singled out for unique treatment with respect to the hiring process. The positive aspect of this provision is that it recognizes the special challenges agriculture faces. Unfortunately, the bill does not provide the needed solution to this challenge—a workable labor program.

Agriculture is provided with an extended period before employers are required to E-Verify their employees. This 36-month extension does little to provide us with relief, however. As soon as the IRS sends an employer a notification of non-matching wage and earning statements or the Social Security Administration or Department of Homeland Security sends a No-Match letter, the employer arguably has constructive knowledge that the employee is not work-authorized. If the no-match cannot be resolved, the employee must arguably be terminated. We are left without certainty about our work force.

Moreover, with DHS conducting an unprecedented number of audits of employer I-9 records, which, as noted above, often result in the termination of a large number of key employees, agriculture could be singled out for such audits during the 36 month deferral period. Other businesses will have already had to comply with E-Verify. Again, we are left without certainty about our work force.

Pending E-Verify legislation introduced in the Senate, S. 1196, is even worse for agriculture than the House proposal. There is no recognition of the challenges for agriculture imposed by E-Verify legislation. Under the Senate plan, all employers would be mandated to use E-Verify one year after enactment and it would eliminate a provision retained in the House bill, the agricultural commercial-off-the-shelf (COTS) exemption for agricultural products under current federal procurement regulations. Elimination of this exemption would make it nearly impossible to source U.S.-produced meat, milk, fruit, and vegetables for the school lunch program and U.S. military.

#### **Steps Toward A Solution**

In order to move us closer to a solution to meet our labor needs, we must consider a new approach to an employee visa program: one that resembles the current labor market. The number of visas would be determined by the number of employer requests for workers on a monthly and annual basis and would vary year-to-year based on market conditions.

It would eliminate the contractual tie of the current H-2A program, benefitting employees and employers. A workable program would also provide farm workers with the same protections, no more, no less, than U.S. workers with respect to all employment related laws and employment taxes. Thus there would be no reason for an employer to prefer a temporary foreign worker over a U.S. worker. The perception of such preference is often a criticism levied at temporary worker visa programs. In reality, employers generally prefer to hire local workers first rather than rely on long distance migrants.

it is also imperative for this program to address, not only the need for future employees, but also the need to retain our experienced employees, the people who are already here. They must be eligible for the visa program.

### **Conclusion**

The labor emergency affecting American agriculture threatens not only farmers and rural communities' livelihoods; it puts at risk our stable and reliable food supply. If there are indeed 1.2 million or more falsely documented workers in agriculture and they were no longer able to work, then the 2 nonfarm jobs that they create will also be lost. That is a loss of 3.6 million jobs.

The workforce willing to grow and harvest crops exists, but it exists in other countries. Ensuring a stable and legally authorized farm workforce is about growing jobs in the United States, promoting economic activity in both rural and urban communities. It's also about avoiding a dependency on foreign food supplies. With less domestic production, more food will have to be imported, compromising the safety and security of our food supply since only 1-2% of imported food is inspected.

There is not a person in our country that is not connected to this problem. If you eat fresh produce, drink milk, grill steaks or purchase plants for your yard, you are benefiting from the hard work of a foreign agricultural worker. And do not forget that 90% of those working in this country illegally are employed in other industries, not agriculture.

Based on the experiences of ad hoc state implementation of E-Verify laws, we know that enforcement at the federal level, without a workable labor program for agriculture, would be devastating to farmers throughout the United States and the entire U.S. economy, as jobs are permanently lost.

I urge the Members of this Committee who are concerned about the survival of agriculture in your states to work together and reach out to your colleagues to craft a workable bipartisan solution to this important economic issue.

Foreign workers will harvest the produce Americans eat. The question is whether they will do so in the United States or abroad. E-Verify legislation in the absence of a workable agricultural labor program will answer this question, and it will not be in the best interest of America.

On behalf of Western Growers, I am appreciative of this Committee's willingness to examine the labor crisis facing U.S. agriculture. The impact of the labor market uncertainty has resulted in the competitive disadvantage for U.S. specialty crop production. We look forward to working with you to do something about it.



**Statement of Carol House  
On behalf of the  
National Council of Agricultural Employers  
  
House Education and the Workforce Committee  
Subcommittee on Workforce Protections  
Hearing on  
"Workforce Challenges Facing the Agriculture Industry"  
  
September 13, 2011**

My name is Carol House. I am a consultant specializing in agricultural statistics. I retired from the U S Department of Agriculture in 2010 after 34 years of experience at the National Agricultural Statistics Service (NASS). When I retired, I was Chairperson of the Agricultural Statistics Board and the Deputy Administrator for Programs and Products. In these dual positions I was responsible for the formulation and execution of all programs and product delivery, and had direct responsibility for 500 annual statistical releases of NASS plus the Census of Agriculture. I was responsible for the quality of the estimates and the security under which these estimates were developed. I was the primary senior contact for users of NASS statistical data, and met regularly with producers, agricultural associations, agricultural business leaders, senior USDA leadership, and others to understand emerging data needs and issues. I am an elected Fellow of the American Statistical Association and an invited member of the International Statistical Institute. I currently hold a part time position (Senior Program Officer) with the National Academies of Science, Committee on National Statistics, where I direct studies to improve Federal statistics. My testimony here is unrelated to my position at the National Academies.

In February, 2011, I was approached by the National Council of Agricultural Employers (NCAE) for assistance. Its members had expressed concerns that the H-2A program was not adequately meeting the needs of U.S. agricultural producers as they struggle to obtain a legal, timely workforce. I spoke initially with Frank Gasperini, Executive Vice President of NCAE. Mr. Gasperini indicated that NCAE had many members throughout the United States that have participated in the H-2A program for a number of years. He indicated that while his members had always found the program challenging to use, in the past several years, during which the rules had changed two times, his members have found the program unworkable. Mr. Gasperini indicated that NCAE was interested in determining on a national basis the experience of current H-2A program participants beyond NCAE's membership. He further indicated that if NCAE were to seek an alternative to the H-2A program, it needed more than anecdotal stories from its membership. Mr. Gasperini asked whether I would provide assistance in developing a national statistically based survey of H-2A program participants to measure the effectiveness of the program as a source of legally authorized alien workers from the viewpoint of those participants. I agreed to design and oversee this project.

I spoke at some length with Mr. Gasperini and NCAE members participating in the H-2A program to understand the application and certification processes, the program concerns expressed by other H-2A participants, and the types of information that would be helpful in discussions to improve the program. I also read background documents to further familiarize myself with the H-2A procedures and issues. Based on my reading and the discussions with NCAE, I developed a draft questionnaire for the survey. I took special care to ensure that all questions were worded objectively. I vetted this draft questionnaire with Mr. Gasperini and members of the NCAE executive committee to make sure that it covered the areas in which they wanted information. Mr. Gasperini and I subsequently tested the questionnaire on several producers to see if the wording was understandable and that these producers were able to supply the requested information. We made several changes based on those tests and finalized the questionnaire. A copy is provided with this statement.

The sampling frame for the survey was obtained from the Department of Labor's Foreign Labor Certification Data Center, website <http://www.flcdatcenter.com/CaseData.aspx>. This website contains files, by year, of H-2A applications that were received and entered into the Department of Labor (DOL) tracking system. I used the file for 2010, the most recent available at that time. The file contained application level information, including the name and address of the applicant (employer), the number of workers requested, the timeframe that work was required and a description of the type of work that would be performed. The file also included information supplied by DOL on its decision, including the date the application was received, the date DOL made a final decision, and the result of that decision. I have attached the DOL description of the 2010 file to this testimony.

The 2010 file contained 7424 records, each a separate H-2A application. Three of these records erroneously had the "alien work state" as a Canadian province. I eliminated those 3 records from the sampling frame. I stratified the remaining 7421 records into 12 sampling strata, sorted the records within each stratum by region and "number of workers requested", and selected a systematic sample of size 1444.

It was not uncommon for a grower to file more than one H-2A application in 2010, which resulted in the situation that some producers were selected for the survey more than once. I did not want a producer to receive more than one questionnaire, so I examined the 1444 sampled applications for duplicate producers. When I found a duplicate, I kept one application in the sample, eliminated the other application from the sample, and selected a replacement application from the file which was in the same strata, same state, and which had requested approximately the same number of workers.

I suggested that we approach a survey center at a Land Grant University to conduct the survey. Such a center would have experience in conducting surveys related to agriculture, and would bring overall credibility to the process. NCAE agreed. I approached the Social & Economic Science Research Center at Washington State University (WSU). It is the largest university-based survey research center in the

Pacific Northwest and has over 35 years of professional experience in survey research. NCAE subsequently signed a contract with that organization.

WSU staff formatted the questionnaire for a mail-out / mail-back survey and they also developed an online web version of the questionnaire. WSU included with the questionnaire packet, a letter endorsed by 18 producers' organizations explaining the importance of the survey. WSU also included its own cover letter soliciting response. WSU mailed the survey packet to the producers in the sample that I provided. They sent a post card reminder and mailed subsequent questionnaire packets to producers who did not respond to the initial mailing. During that time period NCAE and other endorsing organizations used their connections with producers to encourage participation in the survey. Following multiple mailings, WSU began the telephone non-response phase of the overall survey, attempting contacts with producers who had not responded to the mailed questionnaire. Overall 493 questionnaires were returned on the H-2A survey, a response rate of 34%. The resulting sample size is sufficient at the national level for estimating the types of items that are in this survey questionnaire, as long as there is a reasonable distribution of the sample across the country.

I examined the distribution of responses across geographic areas and commodity groupings. The purpose of this analysis was to investigate whether there were adequate responses geographically and from different commodity groupings to ensure that the tabulated responses were in fact representative of the nation. There was, in fact, a good distribution of responses across the U.S. Geographically, the response rates were over 40% in half of the geographic regions. The region with the smallest response rate (21%) still contributed 82 survey responses. Fruit and vegetable growers and nursery/greenhouse operations responded at the highest rates (over 40%), with the response from field crop and livestock operations at 31%. The "Other" commodity group, mostly tobacco growers from Virginia, North Carolina, Tennessee and Kentucky, had the lowest response at 20%. All of the survey responses were statistically weighted with their sampling weights, adjusted for non-response at the strata level.

I conclude that the summarized data from this survey is a statistically valid representation of H-2A participants across the U.S. and of their concerns with the program. WSU prepared a preliminary summary of results and is in the process of preparing a more extensive summary that will be available in October.

I have spent 30+ years serving U.S. agriculture by providing statistical information that will support a safe, sustainable, and affordable food supply. In that light, I find the following preliminary findings from this survey most compelling.

Agricultural producers do not think that the H-2A program, as currently administered, meets their needs.

- 47% of producers were "not at all satisfied" or only "slightly satisfied" with the H-2A program. Only 14% of employers were "very satisfied" or "completely satisfied" with the program. (Question 67 of questionnaire.)
- 54% of those producers were concerned enough that they have contacted their Senators or Representatives for help. (Question 65 of questionnaire.)

The H-2A procedures, as currently administered, have made it harder to get legal foreign workers without helping to find domestic workers who are willing to take these agricultural jobs.

- More H-2A applications are being denied. The percent of H-2A applications that were denied in the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009 doubled by the same quarters in 2010. (Source: Department of Labor's Foreign Labor Certification Data Center)
- Appeals of these decisions have increased 800% since 2008. (Source: Office of the Administrative Law Judges)
- Producers indicate that it is harder to get agricultural workers through the H-2A program since June 1010. In fact, 68.7% of producers said that it is "substantially harder to get certified" or "somewhat harder to get certified" under the newer regulations. Only 2.4% of producers said that it was "substantially easier to get certified" or "somewhat easier to get certified." (Question 60 of questionnaire.)
- Producers indicated that the newer regulations haven't helped find qualified domestic workers. 72.5% of producers indicated that their ability to find qualified domestic workers is "about the same." Less than 1% (0.8%) of producers thought the newer regulations made it "substantially easier to find qualified domestic workers" or "somewhat easier to find qualified domestic workers." (Question 61 of questionnaire.)
- Producers reported that of the qualified domestic workers they found through the state workforce agencies, 68% did not accept the offered job, 7% accepted the job but didn't start work, 20% started work but did not work through the entire contract period, and only 5% actually worked through the entire contract period. (Questions 30- 37 of questionnaire.)

The slow and uncertain nature of the H-2A certification process has created uncertainty and economic loss when producers cannot get the workers that they need when they are needed. Many of these are small farmers who may not have the financial resources to sustain losses.

- 16.1% of the H-2A participants meet the USDA definition of a small farm ( $\leq$  \$250,000 gross value of sales). (Question 69 of questionnaire.)

- 32% of H-2A participating producers suffered economic loss because they were unable to get the certified workers that they needed. The survey measured this loss at \$150,400,000 in 2010. (Question 48 of questionnaire.)
- Producers, on average, had only 23.6 days, following a decision by the DOL's Office of Foreign Labor Certification, to arrange for workers, get them through the immigration process and transported to the worksite. In contrast, OFLC took an average of 38 days to process the paperwork and make a decision. (Questions 18-28 of questionnaire.)
- Because of this 72% of producers indicate that their H-2A workers did not arrive at the worksite by the "start date of need". In the cases where the workers arrived late, on average they arrived 22 day late. (Questions 18-28 of questionnaire.)
- 37.6% of H-2A participating producers suffered economic loss because their H-2A workers arrived late. The survey measured this loss at \$169,700,000. (Question 49 of questionnaire.)
- The survey measured total loss at approximately \$320,000,000. This calculates to over \$2600 of loss per legal foreign worker employed through the program. If the H-2A program expands significantly in the future (perhaps due to a mandatory e-verify regulation) without fixing the problems that led to these losses, one could speculate that these losses would climb to the billions of dollars.

In conclusion, it is my professional opinion that the results for the 2010 H-2A Participants Survey, sponsored by the NCAE, provides new, important statistically based information about the performance of the H-2A program from the viewpoint of the program participants. This information should be very useful in considering future improvements to the program.

**Testimony of Elizabeth (Libby) Whitley**  
**On Behalf of the**  
**National Council of Agricultural Employers**  
**Before the**  
**House Education and the Workforce Committee**  
**Subcommittee on Workforce Protections**  
**Hearing on**  
**“Workforce Challenges Facing the Agriculture Industry”**  
**September 13, 2011**

Good morning, Chairman Walberg, Ranking Member Woolsey, and Members of the Committee. My name is Libby Whitley, and I am the Chair of the H-2A Committee for the National Council of Agricultural Employers (NCAE). NCAE represents agricultural employers and their associations throughout the U.S. on labor and immigration issues, including many H-2A program users. NCAE's H-2A users range from the West Coast to New England and include the nation's oldest program users. I am also the President of Mid-Atlantic Solutions, Inc. (MASLabor) of Lovingson, Virginia, the leading for-profit service provider of H2 guestworkers in the United States. MASLabor serves more than 600 diversified agricultural, green industry, and other seasonal employers in more than 30 states. I am testifying today on behalf of NCAE and its members are grateful for the opportunity to address the Subcommittee today and share our views of the dysfunctional H-2A program.

The H-2A program is the only way for many farmers to hire enough legal workers to grow and harvest their crops. Congress created the program with two purposes: (1) to require the U.S. Department of Labor (DOL) to admit in a timely manner temporary and seasonal alien agricultural workers if there are insufficient able, willing, and qualified U.S. workers to meet

workforce needs and (2) to ensure that the admission of alien workers does not adversely affect U.S. workers. Unfortunately, DOL singularly focuses on administrative requirements intended to ensure employment of U.S. workers. As a recent survey conducted under NCAE's auspices shows, DOL delivers few U.S. workers who want farm jobs, in spite of the extreme costs and burdens it imposes on farmers for this purpose.

DOL does not attempt to meet its other statutory requirement—the timely admission of legal workers. This results in serious delays in the admission of needed H-2A workers without providing any benefit to U.S. workers. To the contrary, DOL's program administration threatens the jobs of year round U.S. workers and other businesses that rely upon farmers producing labor intensive crops. As currently administered, the H-2A program fails to meet its purposes and, as a result, the safety net on which these farmers rely for a legal workforce is fundamentally broken.

For many years farmers have expressed their frustration with the H-2A program and this has increased dramatically in the past two years. We hear egregious examples of administrative mistakes and arbitrary action taken by DOL on the weekly calls of NCAE's H-2A users committee. From all over the country, farmers tell the same story: regulatory burdens and arbitrary treatment that make the system unworkable and drive farmers out of the program, imposing hundreds of millions of dollars of losses due to delays in DOL's processing of growers' applications, and arbitrary and frivolous denials of applications that result in unnecessary appeals to the Office of Administrative Law Judges. Rather than rely upon anecdotal stories, NCAE decided this past spring to commission a national statistical survey of employers using the H-2A program in 2010 to demonstrate to Congress that the H-2A program

needs to be replaced with a new program that will ensure the survival of labor intensive agriculture.

#### **NCAE's National Survey of H-2A Program Users**

I have referred in my testimony to information from a survey conducted by Carol House, who designed a nationwide survey of all users of the H-2A program in 2010 on behalf of NCAE. Ms. House is an agricultural statistical expert, recently retired from the U.S. Department of Agriculture, where she was responsible for 500 annual statistical releases of the National Agricultural Statistics Service (NASS) and the Census of Agriculture. The survey was implemented by Washington State University. I will be making reference to the preliminary findings of the survey throughout my testimony in order to provide members of the Subcommittee some context for my statements. The following comments are based on the survey, publicly accessible statistics and examples of H-2A program problems provided by NCAE members based on their experience that illustrate the conclusions drawn from the statistics.

#### **E-Verify & H-2A**

The timing of this hearing is critical, as the House Judiciary Committee is expected to report out in the coming weeks a mandatory E-Verify program that would exclude an estimated 70 percent of the seasonal agricultural workforce from employment. In June of this year,



Representative Lamar Smith, Chairman of the Judiciary Committee, introduced H.R.2164, the “Legal Workforce Act.” This would make E-Verify mandatory for all employers. Although the language of the bill contains provisions that implicitly recognize the undocumented nature of the agricultural workforce and would delay its mandatory application to farmers for three years, it does not provide a long-term solution to agriculture’s need for a workable program. This creates the imminent threat of losing the majority of America’s seasonal agricultural workforce, as well as year round dairy and livestock workers who do not have access to any legal worker program.

We have seen the dramatic effect of the passage of a mandatory E-Verify law in Georgia this summer as farm workers have not sought jobs in that state, leaving farmers to watch their crops rot in the field for lack of workers to harvest them—causing millions of dollars in damage. This demonstrates why there is such a critical need for a workable program that will meet the needs of labor intensive agriculture. Whether Congress passes mandatory E-Verify or not, the states are passing E-Verify laws at a rapid rate and the U.S. Supreme Court this year upheld such laws. The current dysfunctional program leaves growers without a safety net and without access to a legal workforce.

#### **The H-2A Program: The Growers’ Perspective**

Why are farmers who utilize the H-2A program frustrated? They are frustrated by regulations that changed twice between 2008 and 2010, after having previously been without change for the prior 21 years; they are frustrated by being second-guessed by officials at DOL with no agricultural background telling them how to operate their farms; they are frustrated by

being disproportionately targeted for Wage and Hour Division audits; and they are frustrated by a Department of Labor that seems more interested in creating paperwork and looking for mistakes than in administering a program that ensures the employers have access to a legal workforce sufficient to sustain the labor-intensive agriculture industry in the U.S.

### **Highlights of Survey Findings**

**Nearly 50% of Those Who Quit Using the H-2A Program Do So Because of Administrative Burdens and Costs.** Of those choosing not to participate in the program in 2012, 42% give the reason that it is “too administratively burdensome or costly,” as supported by their accounts of delayed or denied applications and huge economic losses. Administrative and litigation expenses continue to pile up. Nearly half of the employers surveyed state that they are “not at all satisfied” or only “slightly satisfied” with the H-2A program; only 14% were “very satisfied” or “completely satisfied.” More than half of the employers say that they became so frustrated that they complained about the program to their Senator or Representative. Of those choosing to remain in the program, nearly 40% cite as reasons for their continued participation that they are “dissatisfied with the program, but have no legal alternative” or “anticipate that an electronic employment authorization verification program will become mandatory.”

**The Imposition of Large Regulatory Burdens and Costs Does Not Result in U.S. Workers Taking Farm Jobs.** Employers reported that of the qualified domestic workers found through state work force agencies, 68% did not accept the offered job, 7% accepted the job but did not

start and 20% started work but did not work through the entire job contract period. Only 5% actually worked through the entire contract period.

**DOL Statistics, Consistent with the Survey, Show that It Historically and Currently Fails to Meet Statutory Deadlines for Acting Upon H-2A Applications. Applications Denials Have Increased Significantly.** Historically, DOL missed its statutory deadlines and workers arrived late; however, nearly all employers eventually received approval of their applications. Under the new rules, the application approval rate has dropped dramatically. The GAO issued a report to Congress in December 1997, *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers*, noting that during FY 1996 and the first 9 months of FY 1997, DOL approved 99% of all H-2A applications.<sup>1</sup> The approval rate remained near that level until FY 2010, when it fell to 89%, and has since fallen again to less than 78% of the applications processed in the first three quarters of FY 2011.<sup>2</sup>

While growers using H-2A and DOL may disagree over the specific decisions by CNPC for these applications, they would both agree that the decisions are not being made in a timely manner in many cases. By law, DOL must make a certification on an H-2A application within 15 days of receipt and at least 30 days prior to the employer's stated date of need. From 1997 to the present, DOL met its statutory deadlines for handling H-2A applications only 40 to 60 percent of the time. Moreover, DOL does not appear concerned with this consistent failure to meet its legal obligations.

<sup>1</sup> <http://www.gao.gov/archive/1998/he98020.pdf>.

<sup>2</sup> <http://www.foreignlaborcert.doleta.gov/quarterlydata.cfm>.

In annual documents submitted to Congress in support of its budget requests, DOL sets forth targets for compliance with these H-2A deadlines. The first year that DOL set compliance targets in its CBJ was FY 2006.<sup>3</sup> For both FY 2006 and FY 2007, the target was set at 95% -- that is, the Department would try to issue timely decisions on 95% of the H-2A applications received during those years; the actual compliance rates for those years were 57% and 55%.<sup>4</sup> The Department's solution to this problem was to lower expectations. The compliance targets for FY 2008, 2009, and 2010 were lowered to 60%, 61% and 62%, respectively.<sup>5</sup> Even these modest goals proved to be overly ambitious, as the actual compliance rates for handling H-2A applications in a timely manner were 56%, 46% and 58%.<sup>6</sup> The targets set forth in the 2012 CBJ have been lowered again, to 57% for 2011 and 2012.<sup>7</sup>

**DOL Now Rejects Applications that It Accepted in the Past.** Employers are reporting that applications for temporary labor certifications filed with DOL's Chicago National Processing Center (CNPC) that had been routinely granted in years past are now being denied without explanation. Many growers had used the same workers year after year, doing the same specific work on their farms with the experience developed over that period. Now, DOL tells them that everything must change. In the NCAE survey, 68.7% of growers said that it is "substantially harder to get certified" or "somewhat harder to get certified" under the latest regulations, compared to 2.4% who believed that it was "somewhat easier to get certified." Even more than

<sup>3</sup>See FY 2010 Congressional Budget Justification -- Employment and Training Administration, State Unemployment Insurance and Employment Service Operations, at 58.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* as to 2008 compliance rate; 2009 and 2010 rates are from the FY 2011 and FY 2012 Congressional Budget Justification documents, at pages 12 and 65, respectively.

<sup>7</sup> FY 2012 CBJ at 65.

other industries, agriculture depends on consistent practices and predictability. The current regulatory culture deprives growers of that consistency.

Examples of typical arbitrary and unreasonable deficiencies and denials follow:

*Application Denials and Deficiency Notices Based on Small Errors or Inconsistencies in Paperwork—"White Out" and Zip Codes.* Even where growers adjust to the new requirements of the most recent set of regulations, they see their applications denied for small errors or inconsistencies in submitting the paperwork. As shown in the nationwide survey, where growers receive a "deficiency notice" from DOL on their application, a handful of these notices actually relate to the wage rate or other substantive conditions of the proposed work, but 58%, by far the greatest portion, arise from small errors and inconsistencies in the application.<sup>8</sup>

Applications have been held up because the grower could not fit the detailed information requested into the small boxes on Form ETA 790, even though the employers wrote "see Attachment 1" and provided the required information on separate sheets of paper. In the past, CNPC had consistently accepted such applications for certification, including applications earlier in the very same growing season, but suddenly began issuing Notices of Deficiency based on this, stating that the employer should instead answer within the limited space. If an employer uses too few words in that space, he or she risks having the application denied for not providing enough information for DOL to consider the application.

Applications were rejected by DOL because the employer needed to correct the form and used correction fluid or "white-out" when completing the form. Employers have had

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<sup>8</sup>See attached survey results, at p.3.

applications denied for transposing digits in a zip code on Form ETA 790. These application forms are not easy to complete, 89% of H-2A users reported using an agent to help them complete the forms, and they still spent more than 185,000 hours on this paperwork in 2010.

*Rejection of Applications for Word Choice.* Growers have had their applications turned away by DOL for hyper-technical issues of word choice. For example, as set forth in the H-2A regulations, employers must pay the wage rate required at the time the contract begins. If that rate increases during the contract period, the employer must pay a higher wage, but if the wage decreases, may pay the lowered wage. In past years, applications were approved where the advertising for the job set forth the wage to be paid but indicated that it may change. Recently, DOL has rejected language that stated “the required wage *may be higher or lower than* it is at the time of filing this job offer,” and required that the order state “the required wage *may be different than* it is at the time of filing this job offer.” DOL never explained how these two wordings are actually different or would provide any extra information to applicants, but the delay cost the grower weeks of work while the wording was changed to meet DOL’s new preference.

*Denials or Deficiency Notices Because DOL Officials Dictate When and How Farmers Should Conduct Their Farming Operations.* Beyond the challenges of simply completing the forms required by DOL, DOL officials at CNPC have been denying applications from growers based on second-guessing matters of farm operations. For example, CNPC denied several applications from growers for including an earlier or later starting or ending date in their application than in the prior year’s application. The CNPC denied an application from an employer in Massachusetts because the season shown on the application began in February and

the Certifying Officer processing the form in Chicago decided that nothing could be grown there in February. When the employer explained that it was using greenhouses and needed workers to begin planting in the greenhouses so that the crops would be ready by summer, DOL eventually granted the certification, but only after weeks of work had been lost.

In another case, DOL denied the application of a Connecticut apple orchard, telling them that the orchard had the incorrect season for growing apples. The employer's 2009 application was approved for April through December 2009. In 2010, facing financial limitations, the employer could only afford to use workers for June through October, and his application for that period was also approved. When filing the paperwork for the 2011 season, the employer was again able to apply for workers from April to November. DOL denied the application, telling the employer, a family-owned orchard, that the correct season for doing this work was June through November and not April through December, even challenging whether the work was "seasonal or temporary" at all. The orchard owner had to explain that workers prune the trees and maintain farm equipment in the spring, and that the growing cycle may vary with the weather in a given year. After weeks of unnecessary delay, the application was approved.

In the past, DOL had regional offices and personnel with agricultural expertise who could address what the "normal and accepted experience qualifications," e.g. "experience"—should be for a given candidate for an agricultural job. Today, those decisions are made in Chicago, with CNPC personnel dictating what experience or other qualifications are appropriate for particular agricultural work. Although "prevailing practices" surveys used sometimes used to shed light on this issue, these are often unreliable and often not statistically defensible. CNPC now routinely

challenges experience requirements, issuing deficiency notices until the grower accepts DOL's requirement or appeals. Several examples illustrate the arbitrary decisions DOL has made this past year that has resulted in an unprecedented number of appeals.

DOL refused to accept a Georgia farmer's 30 day experience requirement for pruning a fruit orchard, notwithstanding the fact that it was supported by an agricultural extension agent from the University of Georgia who indicated that an inexperienced worker could cause the loss of a crop and damage trees. The grower had to appeal. A Texas farmer who required a commercial driver's license (CDL) to operate trucks to haul farm products and livestock had its application rejected. When it changed its application to eliminate the CDL requirement it again had its application rejected because DOL changed its mind and wanted a CDL requirement.

**Arbitrary DOL Deficiency Notices and Application Denials Require Farmers to Take Costly Legal Appeals.** While the CNPC will sometimes relent when the grower responds and explains the issues in the application, more often, these denials result in fully-litigated appeals to the DOL Office of Administrative Law Judges (OALJ). The recent flood of denial letters has led to a corresponding spike in the number of OALJ cases filed. For the 15 years from 1995 through 2009, the average number of OALJ appeals filed each fiscal year was 18.4.<sup>9</sup> To date in FY 2011, there have been 442 OALJ appeals filed, a total that before now took decades to reach. 37% of employers forced to file appeals had to retain lawyers. In the vast majority of these cases, an initial denial by the CNPC resulted in an appeal to the OALJ, at which time the DOL Solicitor's Office concluded that CNPC's position is indefensible and agrees to remand the application to

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<sup>9</sup> All docket information for OALJ appeals is from [www.oalj.dol.gov/LIBINA.HTM](http://www.oalj.dol.gov/LIBINA.HTM).



the CNPC for approval, weeks after the original determination, and often after the date on which the workers were needed.

All of this unnecessary delay and administrative proceedings costs taxpayer dollars and imposes significant burdens on growers, even if the OALJ agrees with the employer and directs the CNPC to approve the application. In some cases, there appears to be no justification but delay. In one case, an Arizona grower applied in August 2010 for 500 H-2A workers to pick cantaloupes during a very brief harvest season of October 5 to November 19, 2010. CNPC denied the application, the grower had to appeal to the OALJ, and DOL finally agreed to certify the application for 499 workers instead of 500 on October 25, 2010—after a third of harvest season had passed. A California lettuce grower had to appeal from a CNPC denial, only to have DOL approve the application for 138 instead of 140 workers, but 5 days after the date that the workers were needed to begin work. DOL finally conceded that it should have granted a Montana cattle rancher's application after an ALJ appeal, but did so in March 2011 for workers needed from December 1, 2010 to April 30, 2011.

Even the Administrative Law Judges hearing these appeals have grown frustrated with the Department's handling of H-2A applications. In a recent case, CNPC denied the grower's application because the employer did not file a recruitment report on the Sunday prior to the Monday on which the employer was notified that the recruitment report was due, forcing the grower to file and litigate an appeal to the OALJ. The Judge chastised the Certifying Officer, stating that, "it is a patently inefficient and unnecessarily expensive way to proceed. I implore the Office of Foreign Labor Certification to review this policy of the CNPC and consider the

costs it imposes on employers, the administrative review process, and the public coffers.”<sup>10</sup> In the end, the Judge attributed the CO’s decision to force the employer to file an appeal to “a breakdown in common sense.”

**DOL’s Delays and Arbitrary Denials of Applications Results in \$320 Million Dollars in Economic Loss to Farmers. 72% of Growers Report Workers Arrived on Average 22 Days Late.** These processing delays result in delays in recruiting workers and bringing them to the farm (all at grower expense) for crops that are inherently time-sensitive. The NCAE survey showed that 72% of growers reported that workers arrived on average 22 days after the “date of need” for them to begin work. These delays resulted in more than \$320 million in economic losses for these farmers. The harm that results from an arbitrary denial is illustrated by a New York farmer who had to take 1,000 acres of onions out of production and plant mechanically harvested corn instead, as a result of an unjustified denial of an application. This resulted in the farmer’s payroll going from \$2.5 million to \$70,000. Local businesses suffered from the decline in spending from the seasonal workforce that otherwise would have benefitted them.

It is estimated that 70% of the seasonal agricultural workforce is comprised of workers providing documents that appear legitimate but are not. Less than 4% of the seasonal agricultural workforce is represented by H-2A workers. If E-Verify is mandated and works as intended, 66% of the workforce would have to be replaced with H-2A workers. Given the H-2A program’s current inability to provide a timely legal workforce at current levels, enactment of mandatory E-Verify legislation without congressional enactment of an alternative workable

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<sup>10</sup>*Virginia Agricultural Growers Association*, 2011-TLC-00273.

program, the \$320 million in current losses could easily rise into the billions of dollars every year.

**Wage and Hour Enforcement.** Growers able to get applications accepted by CNPC face further challenges from DOL. Only 8% of H-2A employers report being audited by DOL's Wage and Hour Division before participating in the program, compared to 35% once they started participating. This incredibly high level of auditing would perhaps be justified if Wage and Hour investigators were finding frequent or large violations among H-2A employers, but they simply are not. Of the 64,978 compliance actions by WHD from 2008 to 2010 in WHD's "Wage and Hour Investigative Support and Report Database" (WHISARD), only 301 involved H-2A violations.<sup>11</sup> Even for those cases, where actual violations were found, the average amount of back wages and civil money penalties per employee were \$1,323 for H-2A cases.<sup>12</sup> By contrast, cases involving H-1B violations involved \$13,818 per employee and Davis-Bacon Act cases involved \$3,244 per employee.<sup>13</sup> From 1998 to 2008, 2.6% of all WHD cases involved agricultural employers, even though only 1.4% of American workers were employed in that sector.<sup>14</sup> The DOL's disproportionate focus on agriculture, in general, and H-2A users, in particular, speaks to DOL's hostility to the program rather than to any actual measure of compliance.

The Wage and Hour Division under the new H-2A regulations is seeking severe penalties and back pay for minor technical violations that do not harm workers or deprive them of their

<sup>11</sup> [http://ogesdw.dol.gov/raw\\_data\\_catalog.php](http://ogesdw.dol.gov/raw_data_catalog.php)

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> <http://www.dol.gov/whd/resources/strategicEnforcement.pdf> at pp. 8, 20 (WHD study of enforcement efforts).

legal rights. DOL has been seeking astronomical fines in the hundreds of thousands and millions of dollars from growers who gave late notice to DOL that workers had voluntarily quit their jobs or were fired for just cause. In addition to seeking up to \$1,000 in civil money penalties for each worker for whom notice was untimely, DOL is demanding that the growers pay the workers three quarters of the wages they would have been paid for the entire contract period had they not quit, even though the workers voluntarily quit and did not complain about any mistreatment. By contrast, the Department of Homeland Security has an identical notice requirement with regard to H-2A workers who quit their jobs. DHS imposes a \$10 fine for failure to provide timely notice. That's it.

DOL's punitive regulatory approach is counterproductive to its mission to protect jobs for U.S. workers. To the contrary, it is crippling businesses and their year round U.S. workers. It is also forcing employers to suffer the expense and disruption of litigation in defending themselves from overreaching charges.

### **Conclusion**

The threat of enactment of mandatory E-Verify this Congress looms over any discussion of H-2A. Agriculture is an extremely labor-intensive business. American growers need to have access to workers to plant, tend, and harvest their crops. Enacting E-Verify will take away hundreds of thousands of these workers, forcing growers to turn to H-2A for legal workers. The current dysfunctional system has proven to be dramatically insufficient to meet even the current

needs of these growers. Legislation that would drastically increase the demand on an already broken system would prove disastrous.

NCAE strongly urges this Subcommittee and the Congress to enact a seasonal farm worker program that is not based on the H-2A structure. History has shown that it simply does not work. The current statute has been interpreted in completely opposite ways by the last two Administrations, demonstrating that a new statute is required. NCAE strongly believes that a new farm worker program must be enacted as part of the E-Verify legislation. We cannot gamble that Congress will address this important issue at a later time—when it is too late.

Thank you for the opportunity to testify on behalf of NCAE.



## National Milk Producers Federation

2101 Wilson Blvd., Suite 400, Arlington, VA 22201  
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*"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"*

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Honorable Charles Schumer

Chairman

United States Senate Judiciary Committee

Subcommittee on Immigration, Refugees and Border Security

224 Dirksen Senate Office Building

Washington, DC 20510

Honorable John Cornyn

Ranking Member

United States Senate Judiciary Committee

Subcommittee on Immigration, Refugees and Border Security

224 Dirksen Senate Office Building

Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn:

Thank you for the opportunity to express the views of the dairy industry on the urgent situation regarding foreign agricultural labor and the unique labor issues facing the dairy industry. We greatly appreciate your efforts in bringing these issues to the forefront of the legislative process. With the possibility of the E-Verify program becoming mandatory for the agricultural sector, it has become more important than ever for our immigration system to provide a legal, reliable and accessible foreign workforce to the dairy industry through a rational and efficient guestworker program. We agree that proposals to simply legalize the undocumented workforce will not work and will not provide a lasting solution to agriculture's labor needs.

The National Milk Producers Federation (NMPF), based in Arlington, VA, develops and carries out policies that advance the well being of our nation's dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives, representing over 40,000 farms, produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

Our industry is one of the largest and most robust of the U.S. agricultural sector. Nearly 55,000 commercial dairy farmers produced 192.8 billion pounds of milk in 2010, worth \$ 31.4 billion. This had a conservative economy-wide impact just between milk production and milk processing of nearly \$800 million in economic activity and 1.15 million jobs.

Preserving a vibrant dairy producer community in America is essential to maintaining the economic health of rural communities across the country, and is critical to ensuring the continued availability of wholesome, fresh, safe, American-produced foods for the American people. Reliable and timely access to legal foreign labor when there are insufficient U.S. workers available to a specific sector of the economy like dairy is a critical element in pursuit of this goal.

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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**There is a Persistent Shortage of U.S. Workers in the Dairy Industry**

It is generally acknowledged that shortages of domestic labor in all agricultural sectors have increased over the last two decades. The importance of immigrant workers in the United States agricultural sector, and the dairy industry in particular, cannot be overstated. Independent estimates indicate that at least fifty percent of the U.S. dairy farm workforce is comprised of foreign-born workers from Mexico and Central America. Because of the U.S. Department of Labor's refusal to include dairy workers in the H-2A temporary agricultural worker program and due to the general unavailability of permanent work authorization for foreign workers, many dairy operations around the country likely, but unknowingly employ workers who are not properly authorized to work.

The dairy industry today simply cannot operate without immigrant workers. As our economy has become more service-oriented, our producers have found it harder and harder to hire Americans to work on their farms. Even in this time of high unemployment, our dairy farmers universally report an inability to find enough American workers to fill dairy worker jobs even if they offer better pay than other jobs. Dairies all around this country consistently seek American workers from their local communities, at highly competitive wages, but sufficient numbers of local workers are simply not available or not interested in working on dairy farms. The challenge of hiring workers in 2011 is no different than in 2008, when NMPF conducted a survey to quantify the workforce hiring practices of dairy farms. That survey found that U.S. dairies employed 138,000 full-time equivalent workers, of which an estimated 57,000, or 41%, were foreigners. That survey is available here: [www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf](http://www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf)

The same is true for virtually all of agricultural labor. There is abundant and conclusive evidence that most Americans these days are just not willing to engage in agricultural work. Such evidence is frequently dismissed by those whose arguments reside in outdated notions of a rural American of days gone by. The persistent shortage of domestic labor has left many farmers unable to expand their operations, which would enable them to compete more aggressively with foreign competitors.

**The Dairy Industry is Excluded from the H-2A Program**

The dairy industry has some unique qualities that set it apart from other sectors of the agricultural industry. Dairy production is typically a seven-day-a-week, year-round endeavor. Our cows require constant, daily care and handling. Unlike most other agricultural production, there is no "season" in dairy production. Unfortunately, this nation's single agricultural visa program, the H-2A program, focuses on a seasonal or temporary need for workers, and generally excludes dairy farms from participation. See 8 U.S.C. 1101(a)(15)(H)(ii)(a) (performing agricultural labor or services "of a temporary or seasonal nature"). Although the Department of Labor has made exceptions to this seasonal requirement for others in agriculture, such as sheepherders, the Department refuses to provide a similar accommodation for dairy.

Therefore, the dairy industry is facing the same shortage of domestic workers that is faced by the rest of agriculture, but with one glaring difference: we are unable to utilize the H-2A agricultural worker visa program to hire legal foreign workers. While we believe the current H-2A program is deeply flawed, our exclusion from the only option for hiring legal foreign workers, brings heightened business and legal risks for our member farms. The fact that an agency of the U.S. Government consciously treats one sector of agriculture differently is simply and fundamentally unfair. America's dairy farmers need and deserve the same access to legal foreign workers as other sectors of the agricultural industry.

Unfortunately, it appears that this injustice is not fully remedied in several of the agricultural guestworker visa bills currently under consideration in Congress. Several of these bills (S.1384; H.R. 2847; H.R. 2895) specifically state that dairy work would be eligible for the agricultural guest worker program, but they fail to allow for full-year employment. Only S.852; H.R. 1720; and H.R. 3024 would permit full-year dairy employment through a guest worker program, which is essential for American

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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dairy farms to succeed and effectively compete in the global marketplace. NMPF strongly believes that when Congress considers establishing or reforming an agricultural guestworker visa program, that program must enable year-round work for dairy workers. NMPF cannot support any visa program that treats dairy in the same manner that it treats a seasonal agricultural industry.

**E-Verify without an Effective Agricultural Guestworker Program will Decimate the Agricultural Sector**

The agricultural sector, and the dairy industry in particular, faces unique challenges in meeting its workforce needs. In addition to the general unwillingness of American workers to engage in farm labor, we deal with a highly perishable product that must be quickly processed and sold or it is worthless. These challenges are inherent to all of agricultural production, but are especially critical to dairy, and must be accommodated through an effective guestworker program in order for America's farmers to continue to lead the world in agricultural production.

Simply stated, the majority of our agricultural workers are already foreign-born. Even in these times of elevated unemployment, there still is a shortage of domestic workers willing to work in agriculture.

The dairy industry would have fewer concerns with mandatory E-Verify and increased worksite enforcement if the Congress would also provided us with an effective guestworker program to meet our labor needs, including a path to provide current undocumented workers with a possibility to apply for any new work program. Without an effective guestworker program, the stability of the entire agricultural sector is at risk and we could experience a severe disruption in our domestic food supply at a time of dramatically rising food prices worldwide.

A disruption in domestic production will likely result in a significant amount of agricultural production being shifted abroad, where there is an abundant and stable work force. Our nation will grow increasingly dependent on imported food, thousands of American farms will fail due to misguided U.S. policy, and a failure to provide a guestworker program that meets our labor needs. In addition, many farm-dependent jobs will be lost, severely damaging rural communities throughout the United States. Reliable sources estimate that for every agricultural job lost, four farm-dependent jobs primarily filled by US-born workers will be lost as well.

There is a simple alternative to rising food prices, a loss of domestic production, a loss of farm income, a loss of on-farm and farm-dependent jobs, diminished economic activity, and increasing reliance on foreign nations to feed the American people. Congress needs to address the persistent labor shortages faced by agriculture. If Congress is going to enact a nationwide E-Verify requirement, then it also needs to provide agriculture with a workable guestworker program to meet our future needs and a means to allow those who are currently working in undocumented status to be eligible for that guestworker program. The failure to do so risks severely damaging the economic vitality of the nation's entire agriculture sector.

**NMPF Recommendations for Agricultural Worker Immigration**

NMPF appreciates the opportunity to present the Subcommittee with a set of principles that our immigration taskforce has formulated over the past several years.

**Current Undocumented Workers:** Fairness and economic reality dictate that there should be a meaningful waiver of inadmissibility for current undocumented agriculture employees. NMPF recommends that these individuals be permitted to change their status inside the United States and be able to participate in any future agricultural guestworker visa program. Our workers possess skills and training that make them essential to the proper functioning of our dairy farms. There is simply no replacement workforce available to dairy farms, and the loss of the majority of our current workforce would decimate our industry.

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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



**Future Flow of Workers/Elements of an Agricultural Guestworker Program:**

In order to avoid in the future a repeat of the workforce situation we now face, the future flow of workers must be addressed through a rational agricultural guest worker program. NMPF believes that the current H-2A program is deeply flawed, and must be reformed or replaced. We believe any agricultural guestworker program should adopt the following principles:

- **Seasonality:** Dairy producers must be included without regard to the seasonal or temporary nature of employment. Legislation must explicitly provide that dairy farms are eligible without having to show a need for workers to engage in jobs that are "temporary or seasonal in nature."
- **Duration:** The initial term of admission of any agricultural guestworker visa for dairy workers should be for at least three years with unlimited renewals of three years. As previously stated, dairy farms require a stable, year-round workforce. Forcing our employees to leave for two months each year will greatly disrupt operations and make any visa program virtually useless to dairy farms.
- **Labor Attestation instead of Labor Certification:** We advocate a simpler attestation-based application process like that proposed in the prior AgJobs legislation and in the short-lived 2008 Bush administration H-2A regulations, rather than the currently onerous labor certification process. The current Department of Labor application, recruitment and certification process is overly cumbersome and produces few in any measurable benefits. These needless and time consuming bureaucratic obstacles should be eliminated.
- **No 50% Rule:** We support eliminating the current burdensome H-2A requirement that forces employers to hire any worker who applies during the first half of the contract period even after the employer has paid to bring guest workers to the farm. This counterproductive rule forces employers to fire highly productive and experienced foreign workers to make room on the payroll for a new hire, who often quits the job after a few days.
- **No "Touch Back" Requirement:** Once a guest worker receives a visa, the employee should not be required to leave the U.S. for a period of time before he/she is eligible to return and work. Currently, a worker with an H-2A visa can theoretically remain in the U.S. continuously for three years by working at a series of different jobs, but the worker must then return home for six months before being eligible for another H-2A visa.
- **Replace the Current Adverse Effect Wage Rate (AEWR):** Any required wage in the program should be an actual market-based wage. For example, the program could require a local prevailing wage or some modest premium above the state or federal minimum wage. AEWR wage rates are usually significantly higher than actual local prevailing wages and can significantly increase from year to year.
- **No 3/4 rule:** We do not believe that the employer should have to guarantee a right to work for ¾ of the contract period. Dairies need to be able to reassess workforce needs based on market conditions.

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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

- **No Housing Requirement:** Employers should not be required to provide housing for workers. No other visa program requires housing to be supplied by the employer.
- **Association Filings to Minimize Farmers Paperwork:** Any guest worker program should specifically prescribe that agricultural organizations or associations will have the right to file all of the paperwork required by the Government agencies necessary to obtain foreign labor for their member farms. Additionally, the association or organization should have the right to file for multi-state, multiple unnamed workers in a single application.
- **Transportation Fee:** Any employer should only be required to pay transportation fees if the employee's position is terminated prior to completion of the agreed contract. This is in congruence with the H-1B program.
- **Process for Additional Rules:** Any additional rules regarding an agricultural foreign worker program should be promulgated through a federal rule-making process that addresses the concerns of the agricultural workers.
- **Family Relationship Status:** A guest worker should have the opportunity to bring his/her immediate family on the same timeline as the guest worker visa. Immediate family should relate only to their spouse and all children under the age of 21.
- **Guest Worker Job Flexibility:** If an employee is terminated prior to the end of his/her visa, that employee should have the opportunity to apply to work with another dairy farm -upon notice to the Government.

#### Conclusion

In conclusion, NMPF recognizes that the situation regarding foreign agricultural labor is at a critical juncture. An enforcement-only regime, without a rational guest worker program and a process that allows the undocumented to participate in that guest worker program, will devastate the dairy industry, the agriculture sector and rural America.

We appreciate the efforts of the Subcommittee in its recognition of these problems and the potential catastrophic effects on agriculture if a solution is not formulated. While these problems are quite urgent and complex, NMPF is confident that working together we can solve these long-standing issues.

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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



Northeast Dairy Producers Association, Inc.

*Progressive business managers focused to the future.*

1051 Bailey Rd., Fabius, NY 13063, (315) 683-9268

### FACT SHEET

#### NEDPA Mission Statement:

The Northeast Dairy Producers Association, Inc., formed in 1993, is a group of forward-looking dairy producers committed to an efficient, profitable, environmentally responsible and consumer conscious dairy industry in the Northeast.

#### This mission is accomplished by:

- the free exchange of ideas among dairy producers through producer meetings, tours, and publications,
- providing a leadership role and financial support for solving industry issues,
- developing and supporting programs that encourage young people to establish careers in the dairy industry,
- using a unified voice to take assertive stands on sensitive issues as we work with government to formulate policy and ensure the best business climate in the Northeast.

#### Membership Demographics:

NEDPA has 145 producer members on 104 farms representing 107,000 cows or approximately 20% of the cows in New York. Farm sizes range from 120 cows to 4,000 cows. Producer and heifer grower members are in 7 states: Maine, Maryland, Massachusetts, New Hampshire, New York, Ohio and Vermont with the majority located in New York.

NEDPA has 120 associate industry (non-voting) members additionally located in: Connecticut, Iowa, Kentucky, Pennsylvania, Wisconsin and Canada.



Northeast Dairy Producers Association, Inc.  
*Progressive business managers focused to the future.*  
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October 6th, 2011

The Honorable Charles Schumer  
 Chairman  
 Subcommittee on Immigration, Refugees and Border Security  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

Re: Senate Judiciary Hearing on Immigration and Agriculture

Dear Chairman Schumer:

The Northeast Dairy Producers Association opposes any "enforcement only" type of legislation such as mandating e-verify for dairy farms without a viable option for retaining the current workers. Dairy is not a seasonal business, thus programs, like H2A, that may work for other agricultural industries do not work for dairy. We depend on immigrant labor for critical jobs such as milking of cows and care of calves; jobs that, even in today's economy, we find most Americans are not willing to do. Without a provision for our current workers, our farms will not be able to function effectively, putting the health of our cattle and the success of our farms at risk. The state of Alabama is the most recent example of what will happen in an enforcement only type of environment. The day after the legislation was passed thousands of workers did not show up to harvest crops and school children did not show up for classes in their schools.

We recognize the need to deal with the current state of affairs with our immigrant workforce, but we plead for a solution that will take into account the reality of the present situation in production agriculture. A practical program providing for our current workers and a visa that is simple to use while also allowing the hiring of foreign workers with relative ease is what is needed. Without such an option, dairy and other agriculture dependent upon these workers will be devastated triggering a ripple effect throughout the nation, hurting thousands of jobs and businesses.

Thank you for your consideration.

Respectfully,

Caroline H. Potter  
 Executive Director  
 Northeast Dairy Producers Association

October 18, 2011

The Honorable Charles Schumer, Chair,  
Judiciary Subcommittee on Immigration, Refugees and Border Security  
United States Senate  
Washington, DC 20510

The Honorable John Cornyn, Ranking Member,  
Judiciary Subcommittee on Immigration, Refugees and Border Security  
United States Senate  
Washington, DC 20510

**Hearing on “America’s Agricultural Labor Crisis  
Enacting a Practical Solution”**

**Statement of Tom Tracy  
Legislative Affairs Officer  
Northwest Farm Credit Services**

Northwest Farm Credit Services appreciates the opportunity to comment on the need to create a practical solution to address agricultural labor availability issues. Northwest Farm Credit Services (NWFCS) serves farmers in the states of Washington, Oregon, Idaho, Montana and Alaska. We serve approximately 12,500 customers in our five-state region.

The availability of a reliable source of farm labor is critical issue facing farmers throughout the country. Agriculture is a major industry in the Northwest and is responsible for employment of hundreds of thousands of individuals in this part of the country. Farm businesses are increasingly concerned about maintaining a stable agricultural labor force necessary for labor intensive operations that produce fruit, vegetable, nursery and dairy products. Our ability to be competitive in a global economy depends on access to a stable labor supply.

Over the years many Northwest farm businesses have found it nearly impossible to hire local workers that will stay on the farm and have come to rely on foreign workers. In hiring workers, farmers have appropriately required the necessary identity and work authorization documents. There is a significant concern that these documents are in many cases improper.

The current H-2A temporary and seasonal farm worker program has been ineffective. The H-2A program is viewed by many of our customers as burdensome and costly and creates uncertainty as to whether or not the farm will have the necessary labor force to successfully plant or harvest. Further, the program is not available for most dairy farm workers who work in year-round positions. Most farms simply do not have the necessary personnel and human resource staff necessary to navigate the H-2A program.

Northwest farmers desire to have a legal workforce that they can rely on and that will provide the necessary long-term stability in enable the farm to invest in the future. The current situation in which farms face various immigration enforcement actions and the potential for mandatory E-Verify is undermining labor-intensive farm operations that create economic activity in communities and are responsible for farm and off-farm employment opportunities.

Northwest Farm Credit Services strongly urges the Senate to develop a workable guest worker program that will include all agricultural commodities and reduces the burdens and uncertainties that farm employers face in using foreign labor. An effective guest worker program will help to grow American agriculture and expand economic opportunities for American citizens.

Tom Tracy  
Legislative Affairs Officer  
Northwest Farm Credit Services  
1700 S Assembly Street, Suite 305  
Spokane, WA 99224

Phone: 509-340-5409  
tom.tracy@farm-credit.com

## Critics of tough Alabama immigration law appeal

(Reuters) - A coalition of civil rights and immigrant advocacy groups filed an appeal on Thursday of a federal judge's ruling that let stand much of Alabama's tough new immigration law.

The groups, along with President Barack Obama's administration and church leaders, have sought to block what is widely seen as the toughest state crackdown on illegal immigration.

Chief U.S. District Judge Sharon Lovelace Blackburn ruled on Wednesday that Alabama could begin requiring public schools to determine the legal residency of children.

She also gave the green light for police to detain people suspected of being in the United States illegally if they cannot produce proper documentation when stopped for any reason.

Alabama Governor Robert Bentley and fellow Republican lawmakers hailed the judge's decision as a major win in their efforts to curb illegal immigration in their state. Federal judges have previously blocked key parts of other immigration laws passed in Georgia, Arizona, Utah and Indiana.

The Obama administration argues that the U.S. Constitution bars states from adopting immigration measures that conflict with federal laws.

But conservatives complain that the federal government has failed to sufficiently stop the flow of illegal immigrants into the country, forcing states to take action to protect their borders and jobs.

The plaintiffs group in the appeal, led by the Hispanic Interest Coalition of Alabama, also filed an emergency motion on Thursday seeking to keep some disputed parts of the law from taking effect pending a review by the 11th U.S. Circuit Court of Appeals.

### LEGAL FIGHT CONTINUES

The latest legal challenge comes as no surprise. Supporters of the law also have vowed to continue the court fight, with the aim of getting the entire law in effect.

Blackburn temporarily barred the state from making it a crime to knowingly transport or harbor an illegal immigrant or prohibiting illegal immigrants from attending its public colleges.

"The overwhelming majority of people in this state are supportive of this law," said Republican state Representative Jim McClendon, a co-sponsor of the measure.

"The opponents lost hands-down in the legislative process, so now, they're turning to the court system to see if they can find somebody who sympathizes with their position."

University of Alabama constitutional law professor Bryan Fair said he thinks opponents have a shot at getting some of the more controversial provisions of the law overturned by a higher court, specifically those involving schools and police.

"I think those provisions invite racial profiling, and I think racial profiling violates the equal protection clause of the 14th amendment," Fair told Reuters.

Educators and law enforcement officials in the state were among those waiting for guidance on how to proceed as the court battle plays out.

"At this point we do not know if that will involve a stay of the law from going into effect before the appeal is heard," said Randy Christian, chief deputy of the Jefferson County Sheriff Department.

"We also have to get some answers on how we actually enforce it and how we can do so without involving racial profiling."

Alabama Agriculture Commissioner John McMillan said a statewide web seminar series would be held on October 14 to help instruct farmers on how to comply with the new law.

The measure already has had an impact on the state's agribusiness, with McMillan and others telling of crops rotting in fields as a result of day laborers leaving the state ahead of the law taking effect.

"This law contains many provisions with stiff fines and penalties," McMillan said in a statement. "It is critical for farmers and agribusinesses to understand fully how this law applies to them."

(Writing by Colleen Jenkins; Editing by Greg McCune)

<http://www.reuters.com/article/2011/09/29/us-immigration-alabama-idUSTRE78S5J820110929>



## Statement of

**Arturo S. Rodriguez**  
**President of United Farm Workers of America**

**Before the Senate Committee on the Judiciary's Subcommittee on  
Immigration, Refugees, and Border Security**

**'America's Agricultural Labor Crisis:  
Enacting a Practical Solution'**

**October 4, 2011**

I would like to thank Chairman Schumer, Ranking Member Cornyn and all the members of the committee for holding this hearing and for inviting me. My name is Arturo Rodriguez. I am the President of the United Farm Workers.

Today, across America the harvest season is just finishing. At its peak, more than a million men, women, and children were toiling in our nation's fields producing our fruits and vegetables and caring for our livestock. Soon, hundreds of thousands of farm workers will get ready to harvest fruits and vegetables for the winter. Most Americans have the luxury to operate in ignorance or denial about how the food we eat gets on our tables. We don't stop and think about how this rich bounty comes to supermarkets. We don't reflect on why Americans pay less for their food than people in other countries. And most Americans probably can't comprehend the immigration struggles of the farm workers.

Agriculture in the United States is dependent on a hard working, dedicated, tax-paying immigrant work force. The United Farm Workers union was born out of the struggle for these immigrant workers to have a voice in their treatment in the fields. The UFW strives to represent the interests of both immigrant workers and the U.S. workers who harvest our crops. Though about three-quarters of all farm workers are born outside this country, it is important to recognize that one-quarter of all farm workers are born here in the United States. Based on government statistics, there are somewhere between 600,000 and 800,000 farm workers who are either U.S. citizens or legal residents.

Since the late 1990s, according to government statistics, at least 50% of farm laborers are foreigners who are not authorized to work legally in the United States. In California and Florida, the percentage of workers who are unauthorized is at least 65%. Our union's experience is also that the great majority of farm workers are undocumented.

**Statement of Arturo S. Rodriguez, President of United Farm Workers of America (cont.)**

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If two-thirds of the estimated 1.4 million workers employed on crop farms sometime during the year are unauthorized and a third of the estimated 429,000 livestock workers are unauthorized (and those are conservative estimates), American agriculture employs about 1.1 million unauthorized workers.

And those workers have families. There are over 500,000 children in the United States who have a parent who is an unauthorized farm worker; 70% of these children are U.S. citizens.

These are facts. It is time for Congress to look beyond the harsh rhetoric of the anti-immigrant lobby and their talk show bullies and recognize what everyone knows is true:

- America needs these workers. Everyone in this room is directly sustained by farm laborers every day.
- If you had a glass of Florida orange juice with your breakfast this morning, it is almost certain the oranges that went into that juice were picked by unauthorized workers.
- If you had milk with your cereal, it is likely that the workers who milked the cows didn't have the right papers.
- When we sit down every day to give thanks for our many blessings, most of the food on our table has been harvested and cared for by unauthorized workers.

There is another indisputable fact: The life of a U.S. farm worker in 2011 is not an easy one. Most farm workers live in poverty, endure poor working conditions and receive no government assistance. The simple reason that the agriculture industry depends so heavily on immigrants is because undocumented farm workers take jobs many American workers won't do, for pay other American workers won't accept, and under conditions other American workers won't tolerate. Who is to blame?

- It is not the farm workers' fault that 15 states do not even provide them the basic protection of workers' compensation if they are injured at work.
- It is not the farm workers' fault that more than 70 years after Congress passed the National Labor Relations Act, farm workers still do not have the right to join a union to improve their wages and working conditions, except in California.
- It is not the farm workers' fault that year after year, farm labor contractors violate the laws with impunity while the growers who employ the contractors avoid any responsibility for the workers who are abused on their farms.
- It is not the farm workers' fault that Congress never acted on the recommendations of the Commission on Agricultural Workers authorized as part of the Immigration Reform and Control Act of 1986 - recommendations aimed at providing a stable, legal workforce for American agriculture.

**Statement of Arturo S. Rodriguez, President of United Farm Workers of America (cont.)**

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Our society places all the risks and costs associated with a seasonal industry - featuring millions of short-term jobs - on the backs of the workers. For example, if there is a freeze, as occurred recently in Florida, and thousands of workers are left without work, there is no unemployment assistance even though emergency aid is promptly extended to agricultural employers.

Furthermore, if a worker is injured on the job or stiffed on payday, too often there is no real recourse. Is it any wonder that most Americans don't want these jobs?

In an era of high unemployment, undocumented workers are convenient scapegoats for our nation's economic woes. Many associate high unemployment with foreigners taking away jobs from U.S. citizens. There are movements afoot to remove undocumented workers from the country.

Last year the United Farm Workers initiated the "Take Our Jobs" campaign. We invited citizens and legal residents to apply for jobs on farms across the country to supply our homes, restaurants, and workplace cafeterias (including those in our nation's capitol) with the food that fuels the people of this great nation.

We received over 10,000 inquiries for information through our web site ([www.takeourjobs.org](http://www.takeourjobs.org)). In the end, only seven people accepted jobs and trained for agriculture positions. Unfortunately, seven new farm workers are not enough to make our food supply stable, reliable, and of high quality.

We understand other efforts might have had slightly more success in bringing legal residents and US citizens to farm work- but still fall far short of the 1,000,000 new farm workers the country would need if we did not have the current professional workforce.

It is simply not possible to replace 1,000,000 professional farm workers who live and work here today without legal status with 1,000,000 untrained legal workers with no experience in agriculture were the E-Verify legislation to become law. The sponsor of the E-Verify bill in the House, Congressman Smith, basically admits that this is true; his answer is yet another guest worker program which would bring in another 500,000 workers at a wage rate far lower than the average wage paid to farm workers in this country. While Americans are not going to replace the unauthorized workers, it is all too easy to replace the hundreds of thousands of U.S. workers who currently work in agriculture with guest workers. And that is exactly what will happen if the Smith bill or a similar proposal becomes law.

We cannot allow employers to bring in hundreds of thousands of new workers at a substantially lower wage than other farm workers. If Congress lowers the wage that an employer pays a guest worker, Congress will create a powerful economic incentive to replace U.S. workers with guest workers. For months we have heard that the E-Verify bill is a "jobs bill" for American workers, but for the poorest workers in America it will turn out to be just another jobs give-away.

For over ten years the UFW has sought a bi-partisan solution to this dilemma. We have worked closely with Senator Feinstein to pass the Agricultural Job Opportunities, Benefits and Security

**Statement of Arturo S. Rodriguez, President of United Farm Workers of America (cont.)**

Act, or "AgJOBS" bill. We also have worked with a large national coalition to advocate for legalization.

Because our current farm labor force is comprised of professional farm workers with essential skills needed to sustain the viability of the agricultural industry, AgJOBS would give undocumented farm workers presently here the right to earn legal status by continuing to work in agriculture. We have had to make many hard compromises to come up with a bill that is supported by both farm workers and agricultural employers.

We also support the Agricultural Labor Market Reform Act that Congressman Berman has introduced in the House. However, we remain open to consider any other proposal, so long as it recognizes the need to address the situation of the current workforce. What we cannot accept is compounding the problem by adding yet another exploitive guest worker program that does not provide a path to legal status for workers already here. It is totally un-American to allow an industry to build near complete reliance on "guests" with no path for them to be full partners in the future of America. The Bracero program discredited this idea and it should remain a lesson from the past.

Both employers and workers, and we hope policy makers, will acknowledge the need to move past blame, acknowledge past wrongs, and create a new paradigm. In agriculture, it is not possible to enforce your way to a legal workforce. That goal will only be realized by improving the ability of farm workers to earn a living wage and by offering experienced immigrant workers a permanent place in this industry.

We hope that this hearing will lead Congress to see the urgency of this issue and the need for compromise. Now is the time for Congress to acknowledge its role in creating the current farm labor crisis and to offer a real and lasting solution. It is time to acknowledge the dignity of the current farm labor workforce and ensure the safety and abundance of America's food supply by legalizing the workforce here. A failure to do so would be both a human and economic tragedy.

Thank you.

Testimony of Eric A. Ruark, Director of Research for the Federation for  
American Immigration Reform (FAIR) Senate Subcommittee on Immigration,  
Citizenship, Refugees, and Border Security

October 4, 2011

Mr. Chairman, and members of the subcommittee, thank you all very much for the opportunity to testify here today. I am Eric Ruark, Director of Research for the Federation for American Immigration Reform (FAIR). FAIR is a national, non-profit public interest organization representing more than 200,000 members and activists nationwide. We have been working for more than 30 years to promote policies that will end illegal immigration, restore moderate legal immigration, and to reform our immigration laws to bring them into accord with the national interest.

**Farm Laborers and the United States**

The crop farm sector contains the highest concentration of illegal alien workers of any U.S. industry.<sup>1</sup> Securing the U.S. border, enforcing immigration law in the interior, and requiring all employers to hire only authorized workers would have a profound effect on farming operations in this country, but not a negative effect as some have argued. While representatives of the agricultural industry contend that compliance with current immigration law would force farmers out of business, result in crops being left to rot in the fields, and lead to exorbitant food prices, the best available evidence reveals a much different scenario.

The National Agricultural Workers Survey (NAWS), published by the U.S. Department of Labor, the Agricultural Resource Management Survey (ARMS), collected annually by the U.S. Department of Agriculture, and other research by government and academic sources indicate that raising agricultural wages would attract a legal workforce, including Americans, who currently comprise roughly 30 percent of farm workers in the United States. My research estimates that large commercial farms, which are the predominant employers of illegal farm workers, could raise wages by as much as 30 percent and still remain highly profitable, even without passing any of the increased costs onto customers in higher food prices.<sup>2</sup> This finding corresponds to a 2006 study by Philip Martin, a professor at the University of California, Davis, who found that a 40 percent increase in wages for farm workers would result in an average increase in household expenditures on food of \$9.00 per year (in 2005 dollars) if all additional labor costs were passed on to consumers.

**Description of Farming Operations in the United States**

**Farm size:** The farming sector is extremely diverse in terms of size and profitability, and is classified depending on whether a farm is operated solely for profit or also is the primary residence of the owner/operator. When discussing the use of illegal farm labor, the focus must be on large-scale commercial farms (generating profits of \$250,000 or more) that produce 84 percent of the total agricultural output in the United States. Small commercial farms, those generating annual sales of \$100,000 or less, are not likely to hire

illegal workers because these farms hire, on average, only two workers over the entire year and many do not hire any additional labor at all. Non-commercial farms largely consist of residential farms that rely on non-farm income as their main source of income and whose operators consider farming to be a lifestyle choice. Non-commercial farms also generally do not employ seasonal help and, therefore, are not reliant on illegal alien labor.

**Farm Type:** In our study, FAIR examined farms producing: (i) corn, (ii) soybeans, (iii) fruits, nuts, and vegetables, (iv) general cash grains, and (v) other field crops as classified in the Farm Business and Household Survey, a component of ARMS. Within each category, we examined practices on both rural residence farms and commercial farms between the years 1996-2008. All conclusions about the impact of higher labor costs on farming operation are based on the farm business performance over this period.

**Workforce and Wages:** Approximately half of all farm jobs in the United States since 2000 have been held by illegal aliens, and wages for these workers have been lower than for legal workers across all farm types. Data compiled by the Congressional Research Service (CRS) shows that from 1994 to 2008, the unemployment rate for farm workers was consistently higher than for any other occupation, indicating that there is no labor shortage in this area. Likewise, CRS found that the average hourly wage paid to field workers was half that paid to non-farm workers of comparable skill levels.<sup>3</sup>

### **Assessing the Impact of Higher Labor Costs on Farming Operations**

Using data from NAWS and ARMS, we examined the impact of higher labor costs on profitability of commercial farms engaged in crop farming. The degree of impact of higher labor costs on net farm incomes (NFI) for both commercial and rural-residence farms was examined and a Replacement Cost Model developed using the difference in wages and annual working hours of authorized and unauthorized workers. Our model estimates the labor cost increase under a scenario where all illegal workers were replaced by legal workers employed at the higher wage earned by legal workers.

### **Major Findings**

(a) During the time period we analyzed unauthorized workers consistently accounted for half of all hired farm workers. However, this proportion varies between types of commodity farms. On average, 55 percent of all workers in fruits, nuts, and vegetables farming were unauthorized with the percentage of illegal workers gradually increasing over time. Field crop worker composition displays a contrasting pattern where the average proportion of unauthorized workers has declined sharply from 60 percent in 1996 to around 20 percent in 2006.

(b) For all commodity farms and skill levels surveyed, authorized workers consistently earned significantly higher wages than unauthorized workers and, on average, this difference has increased. In 2006, the mean hourly wage rate of legal workers in field crop farming was 22 percent higher than that of illegal workers. The difference was 18 percent in fruits, nuts, and vegetable farming.

(c) Total hours of farm work reported by crop farm laborers have gradually increased. The average authorized farm worker worked 700 hours more in 2006 than he did in 1990, and authorized workers have consistently worked more hours annually than their unauthorized counterparts, although this ratio has declined over the years.

(d) All field crop categories experienced insignificant decline in net farm incomes. Within field crops, corn is impacted the least, likely because of the high level of mechanization in this category. Rural residence farms experienced a smaller decline compared to commercial farms across all commodity farms and over all the years studied. This is due to the lower use of hired labor in these farms compared to commercial farms.

Estimated Percentage decrease in Net Farm Income after Imputing Cost of Converting to a Legal Workforce —1996 to 2006				
	Commercial		Rural Residence	
	Average	Worst Year	Average	Worst Year
Corn	1.23%	2.01%	0.43%	0.87%
Fruits, nuts, and vegetables	12.3%	15.5%	5.63%	7.72%
General cash grains	1.64%	2.19%	0.46%	0.55%
Other field crop	5.03%	7.17%	0.85%	0.96%
Soybean	1.00%	1.31%	NA	NA

### Limitations

The calculated labor cost increases did not take into account benefits workers may receive above and beyond their reported wages. However, since farm workers generally do not receive significant extra-wage benefits, the impact on our model is minimal. Also, possible transition costs like administrative fees for hiring new workers and costs of possible loss of productivity resulting from training interruptions have not been included. However, compliance with existing laws cannot be reasonably be considered an operating cost unless one assumes that choosing to break the law is a legitimate way to reduce labor costs. To the extent transition costs exist, we estimate them to be minimal. First, a changeover to a legal workforce change will not occur overnight and will realistically be implemented in phases, reducing the impact on the employer. Also, the skill level required of hired farm laborers does not require significant training.

### Higher Food Costs

Because paying higher wages to workers will reduce a company's profits, it is likely that a profit maximizing firm will react to a cost increase by passing it on, at least partially, to its customers. While this study has estimated the effect on profits if farms absorbed the full burden of the wage increase, it would be misleading to assert that this would actually be the case. The conclusion here is that commercial farms can absorb substantial labor cost increases, not that they will. Farm workers presently receive only 5 to 6 cents of every dollar spent on agricultural produce. After the 30 percent wage increase, this will increase to 6 ½ to 8 cents. An alternative assessment of the impact of any increase in wages assumes that farms will pass on a part of this cost as higher prices and absorb the remainder as reduced profits. The relative share of the burden of higher costs borne by consumers and producers is determined by the price elasticity of demand of the

commodity. It has been demonstrated that the impact of higher labor costs on net farm incomes is quite small and, when shared between consumer and producer, becomes almost negligible. However, for a farm worker this change could result in a substantial escalation of annual wages (from \$14,000 to \$18,200, 2006 dollars).

### **H-2A Visas**

In a market economy, most producers will not willingly offer higher wages if an abundant supply of cheaper labor is available. As illustrated by our findings, the number of illegal workers has been increasing over the years, which has suppressed wages for farm laborers. Stagnant wages in the agricultural sector over a long period of time have made it difficult to assess whether there is in fact a shortage of legal workers.

The H-2A program provides for the issuance of temporary visas to an unlimited number of temporary foreign workers in the agriculture sector. Workers hired under this program must be paid established prevailing wage rates and have access to affordable housing, food, and transportation. These requirements make the H-2A visa program a less attractive prospect for potential employers who have access to an extensive pool of illegal workers willing to work for low wages. This fact explains the low utilization of the H-2A program. In 2007, only about 5 percent of farm workers had a H2-A visa whereas approximately 50 percent were illegally employed.<sup>4</sup>

In order to design a viable guest worker program it is important to first determine that there is an actual shortage of workers. One must therefore identify and locate any actual labor shortage and the prevailing wage by making sure that only authorized workers participate in the labor market. The underground supply of labor distorts both these market signals making it impossible to judge the feasibility of the H-2A program under the existing circumstances. Those farm operators who are using the highest number of unauthorized workers are also enjoying the highest profit margins, while opposing increased enforcement that would tighten the labor market and increase wages for agricultural workers. They argue that if laws against hiring unauthorized workers were enforced, an acute labor shortage would arise resulting in crops rotting in the field. Government and academics researchers point to stagnant wages and the increasing reliance on labor intensive operations as evidence that there is, at present, no shortage of farm laborers in the United States.

This debate cannot be resolved unless the unabated flow of illegal labor is ended. The market economy is supposed to ensure that jobs are designed for people instead of the other way around and so, if the argument is that the market should decide, then we should allow the market to deal with the necessary structural changes that will occur in the agriculture industry as a result of the implementation of laws that have long been on the books.

### **Recommendations**

The success or failure of a guest worker program, or the willingness of Americans to take farm jobs, cannot be assessed under current conditions that allow a constant supply of illegal workers. Not until the federal government takes seriously its responsibility to secure America's borders and to enforce immigration law will an effective change be possible. Congress must demand that the Executive Branch enforce federal immigration and employment laws, and should provide the resources



necessary for that to happen. Border security and interior enforcement have too long been politicized, much to the detriment of the American people. If national security and national sovereignty cannot transcend partisanship, then there is little hope that any genuine solution can be reached.

However, a solution is not hard to come by if Congress and the federal government are willing to take action. Below are recommendations for achieving a legal agricultural workforce.

- **Secure American's borders and enforce immigration laws on the interior.** The failure to accomplish either of these things has been the result of a lack of political will at the federal level. Holding employers who knowingly hire illegal aliens criminally responsible will go a long way toward minimizing illegal immigration and will greatly facilitate border security. In addition, the ban on open field searches by federal immigration authorities should be ended, bringing the agricultural industry up to the same standard as all other sectors.
- **Make E-Verify mandatory for all U.S. employers.** E-verify is efficient, effective, and extremely accurate. It is not a radically new approach. It is, in effect, an improvement on the current I-9 requirement established in 1986 under IRCA. There is no compelling reason why employers are not already utilizing a web-based program that accesses Social Security and Department of Homeland Security information to determine the work authorization status of employees.
- **Require agricultural employers who hire seasonal workers to comply with the conditions of the H-2A program.** Critics of the H-2A program who point to its low utilization rate are ignoring the fact that the federal government has allowed agricultural employers to circumvent the program by importing illegal workers for the past 25 years. The H-2A program cannot be adequately accessed, and necessary improvements implemented, unless and until employers are required to participate. When Congress passed the H-2A program in 1986, its purpose was to foster the transition to an agricultural workforce made up of American workers. That objective cannot be met if employers resort to illegally hiring foreign workers who drive down wages and conditions for farm workers.
- **Request the Department of Agriculture to report to Congress on wage and working conditions on farms.** A detailed study of the industry, by crop sector, size of operation, and profitability that focuses on the composition of the labor force and the employers who are using foreign labor will give Congress much needed information on the current situation. Relying solely on industry sources for recommendations on farm labor policy is unlikely to provide a reliable or accurate representation of the current situation.

- **Request the Department of Labor to produce a report on the employment practices of the agricultural industry.** The responsibility of the DOL is to protect the interests of all workers in the United States, but its first responsibility is to American workers. The DOL should investigate illegal wage and employment practices in the agricultural sector, and report on the authorization status of foreign national employed on commercial farms. These findings should be presented to Congress.

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#### ENDNOTES

<sup>1</sup> Jeffrey S. Passel, "Size and Characteristics of the Unauthorized Migrant Population in the U.S.," The Pew Hispanic Center, March 7, 2006 (<http://pewhispanic.org/files/reports/61.pdf>); Steven A. Camarota and Karen Jensenius, "Jobs Americans Won't do?: A detailed Look at Immigrant Employment by Occupation," *Memorandum*, Center for Immigration Studies, August 2009 (<http://www.cis.org/articles/2009/occupations.pdf>).

<sup>2</sup> Research findings presented here are found in Eric A. Ruark and Anika Moinuddin, "Illegal Immigration and Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce," Federation for American Immigration Reform (Washington, D.C.: FAIR Horizon Press, 2010). ([http://www.fairus.org/site/DocServer/agribusiness\\_rev.pdf?docID=5541](http://www.fairus.org/site/DocServer/agribusiness_rev.pdf?docID=5541)).

<sup>3</sup> Linda Levine, "Farm Labor Shortages and Immigration Policy," Congressional Research Service, RL30395, November 9, 2009, p. 11 (<http://www.nationalaglawcenter.org/assets/crs/RL30395.pdf>).

<sup>4</sup> For H-2A visa numbers see, *The Foreign Labor Certification Report: 2009 Data, Trends and Highlights Across Programs and States*, U. S. Department of Labor (Washington DC.: Employment and Training Administration, Office of Foreign Labor Certification), p. 30 ([www.foreignlaborcert.dola.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.dola.gov/pdf/2009_Annual_Report.pdf)).

**Senator Charles E. Schumer**  
**Senate Subcommittee on Immigration, Refugees and Border Security**  
**October 4, 2011**

Good morning everyone. Today's hearing is on the current American agricultural labor crisis, and the existential threat American agriculture faces by efforts in the House to pass mandatory e-verify laws without addressing the immigration status of the current agricultural labor force.

Agriculture is an important industry not just for America, but for New York State—where over 35,000 farms account for total sales of nearly \$5 billion, and use nearly one-quarter of New York's total land area. Given the amount of jobs and economic activity that are at stake, we must do everything we can to give our producers the tools they need to succeed.

But whether it is apple farmers in Western New York, strawberry growers in the Mohawk Valley, tomato farmers in the Hudson Valley, dairy producers in Northern New York, or nurseries in Long Island—everywhere I go, folks tell me that the long-term viability of their farms is threatened because they can't find the workers they need to remain competitive in the global market.

Some might ask, in these times of double-digit unemployment, why can't farms hire American workers?

Well, virtually every family farmer I have met in my travels across New York has aggressively tried to hire Americans to work in their nurseries, farms, and vineyards.

My friends in the Long Island Farm Bureau can tell you that more than half of their members pay more than \$12-\$15 per hour per worker, and actively seek to hire American workers. Many arrange for buses to pick-up and drop-off their employees.

But what these family farmers are finding is that—even in this difficult economy, even if they offer Americans twice or sometime three times the minimum wage and provide benefits—American workers simply won't stay in these jobs for more than a few days.

This is not an indictment of the agricultural industry or the American worker. It is simply a statement of fact that the average American will not engage in seasonal agricultural work that requires them to move several times a year throughout the country and work seven-days per week in extreme heat and cold.

So who is stepping in to take many of these difficult seasonal agricultural jobs? Immigrants who need these jobs to support the families they left behind in their native country.

Unfortunately, many of these immigrants working in agriculture are in illegal status. That means family farmers are often confronted with the Hobson's choice between hiring workers in illegal status or going out of business.

This conundrum is about to reach a dangerous boiling point, as mandatory E-Verify laws like those already passed in Alabama, Arizona and Georgia—as well as those proposed in the House and the Senate—now pose an existential threat to American agriculture.

At this point I would like to introduce two articles into the record:

- A September 30, 2011 article from the Dothan Eagle in Alabama where John McMillan—the Republican elected Commissioner of Agriculture—indicated that the Alabama immigration law (which includes mandatory e-verify among other enforcement measures) would “have an adverse impact on the farm economy in the state of Alabama.”
- A September 29, 2011 article from Reuters where Commissioner McMillan reported “crops rotting in fields as a result of day laborers leaving the state ahead of the law taking effect” in Alabama.

As the witnesses will tell us today, if Congress passes mandatory e-verify laws without providing growers a way to keep their current workforce, it will be issuing a death sentence to farmers across America, and to the Americans in agricultural-related jobs who depend on a strong agricultural sector.

Let me just give you a few statistics one of our witnesses, Bob Smith, will tell us about today, that are particularly staggering.

- In the Northeast, mandatory e-verify threatens the existence of over 1,700 family farms.
- Nearly 50,000 agricultural jobs in the northeast alone would be eliminated if mandatory e-verify is passed.
- If those northeast agricultural jobs are lost, over 55,311 off-farm jobs in agriculturally related businesses could also be lost. These are positions held by Americans in agricultural marketing and processing businesses, farm suppliers and farm service businesses.

It is time for Congress to pass a practical solution to this problem, and to stop the ideological rhetoric that does not match the reality on the ground. We need a solution that severely penalizes farmers who hire illegal immigrants and exploit their workers. But we also need to provide farmers with the ability to transform their current workforce into a tax-paying, English-speaking, legal workforce.

The current situation is simply untenable. Every day, American farms are closing and America has to import more and more food from abroad because it is far cheaper to buy foreign food than it is to produce food here. Failing to act is both a food security threat and an economic security hazard.

I am confident that our distinguished panelists today will help us better understand the problems and guide us toward the best solution for reforming our agricultural immigration system.

I now recognize the distinguished ranking member, Senator Cornyn, for an opening statement.

St. Albans Cooperative Creamery, Inc.  
140 Federal Street  
St. Albans, Vermont 05478



Tele: 802-524-6581  
800-559-0343  
Fax: 802-527-1769  
E-mail: stalbanscoop@stalbanscooperative.com

October 5, 2011

Est. 1919

Honorable Charles Schumer  
Chairman  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Honorable John Cornyn  
Ranking Member  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn,

On behalf of the St. Albans Cooperative we would like to thank you for the opportunity to provide input on the dairy industry's current situation regarding foreign agricultural labor and the unique issues facing the dairy industry.

The St. Albans Cooperative Creamery, Inc. is a member governed dairy cooperative serving Vermont, New York and New Hampshire dairy farmers. Our membership comprises of approximately 450 members, producing in the range of 1.3 billion pounds of milk on an annualized basis. St. Albans Cooperative members along with other dairy farmers and agribusinesses throughout the United States play vital roles in our State's economies. Our member farms work extremely hard and are proud to help promote and maintain America's important agricultural heritage.

Dairy farmers need a reliable labor workforce 365 days a year to operate their dairy farms. Over the past decade it has become increasingly difficult to hire local employees to work on dairy farms in our region and throughout the United States. A limited supply of local employees has led to dairy farmers hiring immigrant workers. Recent discussions around mandating the E-Verify program for the agricultural sector has brought the issue of having an immigration system that provides legal, reliable and accessible immigrant workers to the forefront.

St. Albans Cooperative supports the comments and testimony of the National Milk Producers Federation.

Thank you for bringing this important issue to the forefront and we look forward to working with you in creating a program that can be effectively utilized by the dairy industry.

Sincerely,

*Leon Berthiaume*  
Leon Berthiaume  
General Manager

Certified to ISO 9001-2000



**Testimony  
Robert A. Smith  
Farm Credit East**

**To the  
Senate Judiciary Subcommittee on  
Immigration, Border Security and Refugees  
Regarding  
“America’s Agricultural Labor Crisis: Enacting a Practical Solution”  
October 4, 2011**

Mr. Chairman and members of the committee, thank you for the opportunity to testify on matters relating to availability of a legal agricultural workforce. My name is Robert A. Smith; I am Senior Vice President with Farm Credit East. Farm Credit East serves approximately 12,000 farm businesses in a six-state Northeast region.

Farm Credit East works with its farmer members in various ways to address their farm risk factors including input and price risk, weather risk and risk associated with changing interest rates. Increasingly the concern with maintaining a stable labor supply is the risk factor with which agricultural producers are most concerned.

The concern over farm labor availability is already influencing farm investment and management decisions. Many successful, progressive operations that have positioned themselves for growth opportunities that could create more American jobs are holding back over concern with I-9 audits, ICE activities, burdens associated with use of the H-2A temporary and seasonal farm worker program and the possibility of mandatory E-Verify.

The reality is that over the past two decades, farmers have come to rely on immigrant workers who present the necessary identity and work authorization documents and are then employed under the same Federal and state terms as other workers. This includes deducting and remitting the appropriate fiduciary payroll obligations on behalf of these workers.

We believe this is a jobs and food security issue. If as a country we fail to find a workable solution to enable labor-intensive agriculture to maintain the necessary workforce, we will see another part of our economy (dairy, fruit, vegetable and other specialty crops) move off-shore where barriers to entry for new agricultural enterprises are minimal. To some degree we need to ask ourselves – do we prefer to have our food produced domestically with the use of some foreign labor or in other countries with foreign labor for all of the jobs.

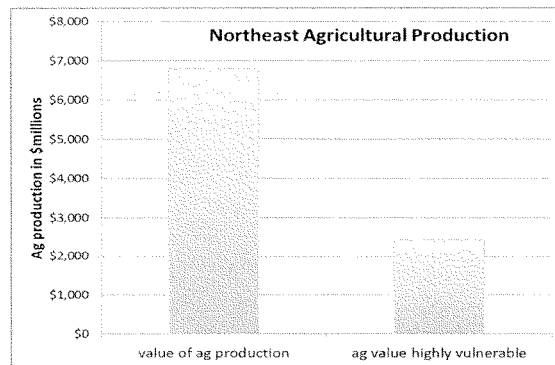
*Farm Credit East, ACA serves approximately 12,000 customers in the states of New Jersey, Connecticut, Massachusetts, Rhode Island and major parts of New York and New Hampshire. Part of the nationwide Farm Credit System, Farm Credit East is a customer-owned lender dedicated to serving farmers, commercial fishermen and the forest products sector. Farm Credit East is committed to providing economic information constructive to the advancement of Northeast agriculture.*

Speaking with farmers over the past year, it has become clear that even with 9 percent unemployment U.S. workers do not seek, nor do they stay in farm jobs.

To understand the potential impact to farms from immigration enforcement, we prepared a vulnerability assessment to estimate the economic impact of the loss of alien workers on farms in our six state area, based upon the assumption that an estimated 70% or more of them provide work authorization documents that appear to be but are not legitimate. The Northeast region includes many labor intensive agricultural sectors including dairy, vegetable, fruit and greenhouse-nursery. A lack of a stable labor supply will cause farms to go out of business, shrink in size or shift to low-labor, but a less profitable commodity.

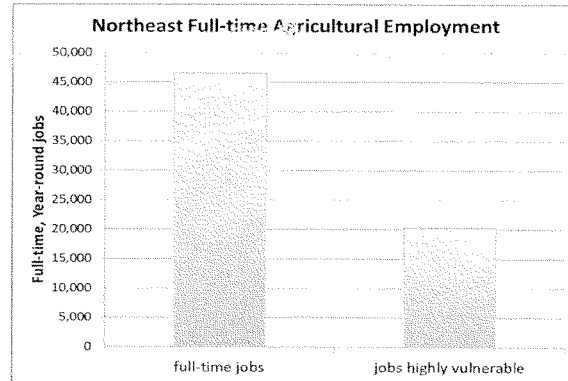
Our analysis indicates that a pro-longed severe shortage in labor availability as a result of effective immigration enforcement actions, including mandatory E-Verify legislation currently being considered in the House of Representatives, without significantly improved agricultural worker programs would have the following impact:

- Approximately 1,732 Northeast farms\* are highly vulnerable\*\* to going out of business or being forced to severely cut back their operations due to a labor shortage caused by an effective enforcement-only immigration policy.
- These highly vulnerable farms are some of the most productive in the region; their total sales of farm product are estimated to exceed \$2.4 billion. This is approximately 36% of the value of the region's agricultural output.



- 20,212 full-time, year-round positions and 29,894 seasonal positions on farms would be eliminated if these highly vulnerable farms go out of business. The reduction in the farm payrolls is estimated to be \$528 million. This means significantly less spending and economic activity in local communities as funds generated do not churn through the economy as they currently do. Ultimately this means less employment in local businesses.





- The highly vulnerable farms operate over 1.1 million acres of cropland. If these farms were to cease or reduce operations, some of this acreage might switch into less intensive agriculture, but thousands of acres would potentially be converted to non-agricultural uses.
- The economic impact of the loss of over 1,700 farms, goes beyond the farm gate, and would undermine the region's agri-business sector. We estimate that 55,311 off-farm jobs in agriculturally related businesses in the Northeast could be impacted. Many, if not most, of these positions are full-time jobs held by local citizens. These are positions with agricultural marketing and processing businesses, farm suppliers and farm service businesses. In addition a farm labor shortage will be further felt in the upstream and downstream non-agriculture industries that benefit from overall agricultural economic activity.
- The loss of labor intensive agriculture operations will mean increased imports from foreign countries. We will import more food and other farm products and the jobs and related income associated with food processing and farm services will be generated in other countries.
- As noted in our analysis, some of the farms that we consider highly vulnerable will survive in agriculture, but shift to less labor intensive farm operations. Clearly one of the great attributes of American agriculture is our production diversity. With this shift away from labor-intensive crops will come significantly reduced employment and payroll. Census data analysis indicates that the labor expense to grow 1,000 acres of grain is \$31,980, the labor cost for 1,000 acres of vegetables is \$355,000; and the labor cost for 1,000 acres of fruit is \$922,000. These are payrolls that impact on local economic activity.

An enhanced enforcement-only approach without an effective alien worker program to provide a legal workforce for agriculture is counterproductive to efforts to reduce unemployment –it will mean that American citizens involved in the food chain will be unemployed and more consumer dollars will flow out of the United States to purchase products that could have been grown in the United States.

We support efforts to secure our nation's borders and control entry of alien workers on America's terms. A critical part of that solution is a workable program for agriculture that meets those objectives while providing America's farms with a reliable source of farm labor.

\*This analysis covers the states of NY, NJ, CT, MA, RI and NH.

\*\*This analysis defines "highly vulnerable" farms as those that could be forced to close or reduce operations by two-thirds or more, after a two year period in which no undocumented farm workers were available and no new guest worker provisions were offered.

## Farm Labor and Immigration Enforcement – Vulnerability Analysis Background Information and Analysis

### Notes about methodology:

Raw data for this analysis was obtained from the USDA 2007 Census of Agriculture. Farm Credit East (FCE) broke down the data by number of workers (those with a greater number were considered more vulnerable), farm types (some types are more labor-intensive than others), as well as the value and land area of their production. Each category was given a subjective assessment of vulnerability determined by a survey of FCE staff based upon their knowledge of Northeast agriculture. Responses were averaged and multiplied against total number of farms. Upstream and downstream impact was estimated by taking data from the U.S. Bureau of Census, County Business Pattern, and multiplying it by a percentage reduction in agricultural output. Farm products other than fruit, vegetable, milk, greenhouse and nursery were considered only for Connecticut.

### Profile of Six Northeastern States

Total Farms All Sizes	64,671
Farms with sales > \$10,000	44,545
Farms with Sales > \$50,000	13,375
Farms with Hired Workers	15,948
Value of Agricultural Production	\$ 6,793,432,000
Total Acreage in Cropland	5,308,138
Number of Farm Workers	116,829

### Farm Labor Shortages Farms Considered Highly Vulnerable

#### By Farm Type

Farm Type	Number of Farms	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Total	1,732	2,420,504,000	1,109,448	50,103	29,894	20,212
Dairy	528	1,076,496,000	732,664	8,679	3,071	5,609
Fruit	407	309,975,000	101,624	15,345	11,987	3,017
Nursery/GH	429	627,008,000	68,043	13,970	6,523	6,585
Vegetable	332	281,607,000	201,685	9,909	7,113	4,455
Other Crops	36	51,577,000	5,401	2,201	1,654	547

**Farm Considered Highly Vulnerable****By State**

State	Number of Farms	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Connecticut	164	273,090,000	45,487	6,558	3,973	2,585
Massachusetts	100	109,914,000	18,431	2,954	1,756	1,198
New Hampshire	40	55,136,000	18,425	1,322	843	479
New Jersey	350	461,235,000	103,852	13,481	8,319	5,162
New York	1,049	1,508,996,000	919,241	25,247	14,737	10,510
Rhode Island	31	12,133,000	4,012	544	266	278

**Percentage Considered Highly Vulnerable****By Farm Type**

Farm Type	Value of Sales \$50,000 or more	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Total	13%	36%	21%	43%	42%	43%
Dairy	10%	39%	39%	54%	54%	54%
Fruit	27%	48%	48%	54%	54%	52%
Nursery/GH	23%	45%	42%	47%	48%	47%
Vegetable	23%	43%	56%	67%	64%	72%
Other Crops	68%	88%	88%	84%	84%	84%

**By State**

State	Value of Sales \$50,000 or more	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Connecticut	22%	49%	71%	50%	53%	46%
Massachusetts	8%	22%	10%	23%	26%	28%
New Hampshire	9%	27%	14%	26%	26%	28%
New Jersey	22%	46%	21%	55%	57%	53%
New York	11%	34%	21%	42%	41%	44%
Rhode Island	17%	18%	16%	33%	31%	35%

### Labor Cost Component of Total Agricultural Sales by State

As a percentage of overall agriculture some states are far more labor intensive than others with a high percentage of fruits, vegetables, nursery, greenhouse and dairy production.

Ranking	Year	State	Sales of Ag Products - \$	Total Labor	Total Labor as % of Sales	# of Farms with Sales	# of Farms with Contract Labor	# of Farms with Hired Labor
1	2007	Hawaii	513,626,000	192,736,000	37.52%	7,521	1,005	1,783
2	2007	Alaska	57,019,000	18,301,000	32.10%	686	57	220
3	2007	Connecticut	551,553,000	150,104,000	27.21%	4,916	274	1,140
4	2007	Massachusetts	489,820,000	131,113,000	26.77%	7,691	801	1,972
5	2007	New Jersey	986,885,000	260,780,000	26.42%	10,327	570	2,415
6	2007	Rhode Island	65,908,000	17,277,000	26.21%	1,219	97	324
7	2007	Florida	7,785,228,000	1,754,647,000	22.54%	47,463	6,865	10,081
8	2007	California	33,885,064,000	7,281,028,000	21.49%	81,033	22,586	29,661
9	2007	Oregon	4,386,143,000	907,960,000	20.70%	38,553	4,741	10,300
10	2007	New Hampshire	199,051,000	38,967,000	19.58%	4,166	268	860
11	2007	Washington	6,792,856,000	1,209,825,000	17.81%	39,284	3,293	11,063
12	2007	Maine	617,190,000	100,586,000	16.30%	8,136	718	1,886
13	2007	Arizona	3,234,552,000	457,136,000	14.13%	15,637	964	3,200
14	2007	New York	4,418,634,000	610,492,000	13.82%	36,352	2,222	9,273
15	2007	Nevada	513,269,000	70,672,000	13.77%	3,131	339	827
16	2007	New Mexico	2,175,080,000	249,679,000	11.48%	20,930	2,085	4,773
17	2007	Vermont	673,713,000	77,314,000	11.48%	6,984	562	1,884
18	2007	Utah	1,415,678,000	159,907,000	11.30%	16,700	1,410	4,271
19	2007	Michigan	5,753,219,000	649,304,000	11.29%	56,014	3,234	11,315
20	2007	Pennsylvania	5,808,803,000	653,832,000	11.26%	63,163	2,532	11,722
21	2007	Virginia	2,906,188,000	323,479,000	11.13%	47,383	3,043	10,571
22	2007	Tennessee	2,617,394,000	261,897,000	10.01%	79,280	5,020	14,575
23	2007	Idaho	5,688,765,000	541,174,000	9.51%	25,349	2,584	6,588
24	2007	Wyoming	1,157,535,000	109,022,000	9.42%	11,069	1,400	2,716
25	2007	Wisconsin	8,967,358,000	814,758,000	9.09%	78,463	3,381	17,889
26	2007	Maryland	1,835,090,000	163,363,000	8.90%	12,834	876	3,058
27	2007	Louisiana	2,617,981,000	220,282,000	8.41%	30,106	2,225	6,278
28	2007	South Carolina	2,352,681,000	195,068,000	8.29%	25,867	1,320	4,310
29	2007	Kentucky	4,824,561,000	378,979,000	7.86%	85,260	7,370	18,846
30	2007	North Carolina	10,313,628,000	738,476,000	7.16%	52,913	4,683	12,284
31	2007	Colorado	6,061,134,000	433,460,000	7.15%	37,054	3,793	7,393
32	2007	Montana	2,803,062,000	184,826,000	6.59%	29,524	2,708	6,492
33	2007	Texas	21,001,074,000	1,377,034,000	6.56%	247,437	28,743	45,081
34	2007	West Virginia	591,665,000	37,899,000	6.41%	23,618	894	3,251
35	2007	Ohio	7,070,212,000	450,132,000	6.37%	75,861	3,743	14,057
36	2007	Georgia	7,112,866,000	425,976,000	5.99%	47,846	3,949	10,225
37	2007	Alabama	4,415,550,000	232,396,000	5.26%	48,753	3,557	9,541
38	2007	Oklahoma	5,806,061,000	304,348,000	5.24%	86,565	7,816	16,826
39	2007	Mississippi	4,876,781,000	249,339,000	5.11%	41,959	2,722	8,441
40	2007	Missouri	7,512,926,000	358,082,000	4.77%	107,825	6,225	18,263
41	2007	Minnesota	13,180,466,000	563,523,000	4.28%	80,992	3,848	19,337
42	2007	Indiana	8,271,291,000	352,461,000	4.26%	60,938	2,665	11,240
43	2007	Arkansas	7,508,806,000	304,962,000	4.06%	49,346	4,133	10,265
44	2007	Illinois	13,329,107,000	504,092,000	3.78%	76,860	3,043	16,369
45	2007	Delaware	1,083,035,000	40,029,000	3.70%	2,546	178	647
46	2007	Kansas	14,413,182,000	454,788,000	3.16%	65,531	4,906	14,437
47	2007	North Dakota	6,084,218,000	184,437,000	3.03%	31,970	1,681	7,881
48	2007	South Dakota	6,570,450,000	196,534,000	2.99%	31,169	2,132	8,465
49	2007	Nebraska	15,506,035,000	456,436,000	2.94%	47,712	4,435	14,603
50	2007	Iowa	20,418,096,000	542,919,000	2.66%	92,856	5,005	23,287

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For more information:

Robert A. Smith

Farm Credit East

2668 State Route 7, Suite 21

Cobleskill, NY 12043

518.296.8188

[robert.smith@farmcrediteast.com](mailto:robert.smith@farmcrediteast.com)

**Robert A. Smith**  
**2668 State Route 7, Suite 21**  
**Cobleskill, New York 12043**  
**518.296.8188**

Employment

Senior Vice President, Public Affairs and Knowledge Exchange  
Farm Credit East, ACA  
Cobleskill, New York

December 2006 to current

Vice President, Governmental Relations  
CoBank, ACB  
Washington, DC

February 1995 to December 2006

Director of Support Services  
Office of General Services, New York State  
Albany, New York

October 1992 to January 1995

Assistant Secretary to the Governor  
Office of Governor Mario Cuomo  
Albany, New York

October 1989 to October 1992

Deputy Commissioner, Executive Assistant and Policy Analyst  
Department of Agriculture and Markets  
Albany, New York

May 1984 to October 1989

Director of Governmental Relations and Information Services  
Other staff positions  
New York Farm Bureau

May 1976 to May 1984

Education

Moravia Central School, Moravia, New York, 1972  
Bachelor of Science, Cornell University, College of Agriculture and Life Sciences, 1976

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

EQUAL EMPLOYMENT	:	
OPPORTUNITY COMMISSION,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	
v.	:	
	:	JURY TRIAL DEMANDED
HAMILTON GROWERS, INC. d/b/a	:	
SOUTHERN VALLEY FRUIT AND	:	
VEGETABLE, INC.,	:	
	:	
Defendant.	:	

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**COMPLAINT**

This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin and/or race and to provide appropriate relief to Johnny Blackwell, Latoya Blackwell, Michael Blakely, Michael Collins, Kimble Daniels, Fiona Dawson, Rickey Forrest, Terrick Grant, Willie Harmon, Richard Jones, Joanna Lee, Johnny Moore, Sammy Myricks, Jimmy Pasley, Courtney Ranger, Ronnie Severson, Quincy Thornton, Zandrea Wade and Alicia Ware, and other aggrieved individuals ("class members") who



worked for Hamilton Growers, Inc. d/b/a Southern Valley Fruit and Vegetable, Inc. (the "Defendant") in Norman Park, Georgia from January 2009 to present and who were adversely affected by such practices. The Plaintiff alleges that Defendant engaged in a pattern or practice of unlawful discrimination by terminating and/or constructively discharging Americans based on national origin. The Plaintiff further alleges that Defendant intentionally and unlawfully terminated African Americans based on race and/or national origin. The Plaintiff further alleges that Defendant engaged in a pattern or practice of unlawful discrimination by placing individuals who were born in the United States and of American national origin in less desirable job assignments and providing fewer work opportunities on the basis of their national origin, resulting in such persons earning less than their non-American comparators. Plaintiff also alleges that Americans were subjected to different terms and conditions of employment based on their national origin.

#### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and 2000e-6 ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of Georgia, Waycross Division.

#### **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) and Section 707(a) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and 2000e-6(a).

4. At all relevant times, Defendant Employer has continuously been a corporation doing business in the state of Georgia and the city of Norman Park, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).

#### **STATEMENT OF CLAIMS**

6. More than thirty days prior to the institution of this lawsuit, Johnny Blackwell, Latoya Blackwell, Michael Blakely, Michael Collins, Kimble Daniels, Fiona Dawson, Rickey Forrest, Terrick Grant, Willie Harmon, Richard Jones, Joanna Lee, Johnny Moore, Sammy Myricks, Jimmy Pasley, Courtney Ranger,

Ronnie Severson, Quincy Thornton, Zandrea Wade and Alicia Ware ("Charging Parties") filed charges of discrimination with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

**Termination Based on National Origin**

7. Since at least January 2009, Defendant Employer has engaged in unlawful employment practices at its Norman Park location, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by unlawfully subjecting a class of American employees to a pattern or practice of discriminatory treatment by disproportionately terminating them based on their national origin.

8. Defendant hired approximately 114 American workers and 370 workers from Mexico ("Mexican workers") for the agricultural growing season in 2009.

9. By June 2009, at least 58 American workers were terminated or constructively discharged, and on information and belief, the overwhelming majority of American workers were terminated or constructively discharged prior to the close of the 2009 growing season.

10. Few to none of the Mexican workers were involuntarily terminated or constructively discharged during the 2009 growing season.

11. Defendant hired approximately 233 American workers and 518 Mexican workers for the agricultural growing season in 2010.

12. Approximately 80 Americans were fired on May 21, 2010. The Human Resources representative told them "All you Americans are fired."

13. By June 2010, at least 220 American workers were terminated or constructively discharged.

14. Few to none of the 518 Mexican workers were involuntarily terminated or constructively discharged during the 2010 growing season.

15. The termination of American workers in 2009 and 2010 was based on their national origin.

**Termination Based on Race and /or National Origin**

16. Since at least June 2009, Defendant Employer engaged in unlawful employment practices at its Norman Park location, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by intentionally and unlawfully terminating a group of African American (black) employees on the basis of their race.

17. On June 1, 2009 at least sixteen African American workers were summarily terminated, including Johnny Blackwell, Michael Blakely, Michael Collins, Rickey Forrest, Terrick Grant, Willie Harmon, Richard Jones, Johnny Moore, Sammy Myricks, Jimmy Pasley, Quincy Thornton, Earl Davis, Jerry Davis, Timothy McNealy, Gary Sims and Michael Tuff.

18. At the time the decision to discharge these individuals was made, the terminating official said "All you black American people, f\*#k you all...[J]ust go to the office and pick up your check."

19. Willie Harmon, African American, who was not working on the day of the June 1, 2009 mass firing, learned upon his return to work shortly thereafter that he, too, had been terminated. He was told by one of Defendant's supervisors that all of the African Americans had been fired.

20. When Willie Harmon asked why he was terminated, he was told "no specific reason" by the Human Resources representative.

21. Richard Jones, African American, who was not present during the termination arrived shortly thereafter and observed his African American co-workers standing in line to receive their final checks. He too was terminated and given his final check.

22. The termination of these sixteen individuals was based race and/or national origin.

23. On May 9, 2009, Defendant terminated at least seven African American (black) workers, including Fiona Dawson, Zandrea Wade, Alicia Ware, Victoria Bigelow, Maxine Harris, Kayla McCloud and Trina Scott for the express reason that Defendant had been required to pay them over \$40.00 in make-up pay.

24. Make-up pay is required when an employee performs piece-work labor, but does not gather enough pieces to earn the equivalent of minimum wage during the pay period. In that event, the Defendant was required to pay “make-up pay”, the difference between the amount earned and the prevailing minimum wage.

25. Although at least fifty workers from Mexico were paid over \$40.00 in make-up pay for a pay period, none of these workers were terminated.

26. The Defendant’s articulated reason for terminating the African American workers identified in Paragraph 23 is pretextual because not all persons who had received more than \$40.00 in make-up pay were terminated, i.e., the rule was not applied to foreign workers.

27. The African Americans identified in Paragraph 23 were terminated based on their race and/or national origin.

#### **Disparate Terms and Conditions of Employment**

28. Since at least March 2009, Defendant Employer engaged in unlawful employment practices at its Norman Park location, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by intentionally and unlawfully subjecting Americans to disparate terms and conditions of employment based on their national origin and/or race (black).

29. During the 2009 and 2010 growing and harvesting seasons, Defendant gave American workers discriminatory job assignments which resulted in them

earning less pay than workers from Mexico. This was done by systemically assigning American workers to pick vegetables on a piece-work basis from rows which had less desirable produce or already been picked by workers from Mexico.

30. During the 2009 and 2010 growing and harvesting seasons, Defendant engaged in a pattern and practice of giving American workers less job opportunities than workers from Mexico. Defendant accomplished this by habitually delaying work start times, sending American workers home and denying them the opportunity to work at all, or ending their workday while allowing Mexican workers to continue to work.

31. The practices complained of in Paragraph 30 resulted in American workers receiving less work hours and less pay than their counterparts from Mexico.

32. During the 2009 and 2010 growing and harvesting seasons, the Defendant engaged in a pattern or practice of assigning Mexican workers to more favorable job assignments in the packing shed and/or those paid on an hourly basis while assigning American workers to field jobs paid by the piece.

33. The unlawful employment practices complained of in paragraphs 7 through 32 above were done with malice or with reckless indifference to the federally protected rights of the Charging Parties and the American and African American (black) class members.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in a pattern or practice of terminating American and African American persons based on national origin and race in its Georgia facilities and work sites, and engaging in any other employment practice which discriminates on the basis of national origin or race.

B. Grant a permanent injunction enjoining Defendant Employer, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in a pattern or practice of assigning persons to jobs based on national origin or race in its Georgia facilities and work sites.

C. Grant a permanent injunction enjoining Defendant Employer, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from subjecting American and African-American employees to disparate terms and conditions of employment based on national origin and/or race.

D. Order Defendant Employer, to institute and carry out policies, practices, and programs which provide equal employment opportunities for all



American and African-American employees, and which eradicate the effects of its past and present unlawful employment practices.

E. Order Defendant Employer to make whole the Charging Parties and the class members, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

F. Order Defendant Employer to make whole the Charging Parties and the class members, by providing compensation for past and future pecuniary losses resulting from the unlawful practices described in paragraphs 7 through 32 above, including job search expenses, in amounts to be determined at trial.

G. Order Defendant Employer to make whole the Charging Parties and the class members, by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices complained of in paragraphs 7 through 32 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

H. Order Defendant Employer to pay to the Charging Parties and the class members punitive damages for its malicious and/or reckless conduct described in paragraphs 7 through 32 above, in amounts to be determined at trial.

I. Grant such further relief as the Court deems necessary and proper in the public interest.

J. Award the Commission its costs in this action.

**JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

P. DAVID LOPEZ  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REEMS  
Associate General Counsel

9/29/2011  
Date

s/ Robert K. Dawkins  
ROBERT K. DAWKINS  
Regional Attorney  
Georgia Bar No. 076206

OTTRELL FERRELL EDWARDS  
Supervisory Trial Attorney  
Georgia Bar No. 141979

JAMES L. CERWINSKI  
Trial Attorney  
Georgia Bar No. 277846

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Atlanta District Office

100 Alabama Street, SW, Suite 4R30  
Atlanta, Georgia 30303  
Telephone: (404) 562-6818  
Facsimile: (404) 562-6905

**Upstate Niagara Cooperative, Inc.**

25 Anderson Road, Buffalo, NY 14225 | 716.892.3156 | Fax: 716.892.3157 | upstateniagara.com

October 3, 2011

Honorable Charles Schumer  
 Chairman  
 United States Senate Judiciary Committee  
 Subcommittee on Immigration, Refugees and Border Security  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

Honorable John Cornyn  
 Ranking Member  
 United States Senate Judiciary Committee  
 Subcommittee on Immigration, Refugees and Border Security  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn:

I am submitting these comments on behalf of Upstate Niagara Cooperative, Inc. ("Upstate Niagara"), regarding the urgent need to enable the dairy industry to obtain sufficient foreign-born workers who have legal documents authorizing them to work in the United States. Thank you for this opportunity.

Upstate Niagara is a dairy cooperative with about 360 dairy farm family members who are located in Western New York. Upstate Niagara markets about 1.8 billion pounds of milk annually through its dairy businesses that are owned and operated on behalf of its dairy farm family members. These operations include fluid and cultured products plants that employ about 1,000 people off the farm, showing that helping dairy farm families also helps to employ those who do not work on farms.

Upstate Niagara is a member of National Milk Producers Federation ("NMPF") and we support the positions that they are submitting in their letter to you. In this submission, we will emphasize several of the views that they express. Similarly, Upstate Niagara is a member of Northeast Dairy Farmers Cooperatives ("NDFC") and we support the views expressed in the submission to this Subcommittee from that organization.

**There is a Persistent Shortage of U.S. Workers in the Dairy Industry**

As NMPF notes, "[i]t is generally acknowledged that shortages of domestic labor in all agricultural sectors have increased over the last two decades" and "[t]he dairy industry today simply cannot operate without immigrant workers." Despite the current high levels of unemployment and underemployment in the United States, "[t]here is abundant and conclusive evidence that most Americans these days are just not willing to engage in agricultural work."

Therefore, in order to maintain and expand the dairy industry in the United States, a reliable, legal workforce of foreign-born workers must be permitted by Federal and state governments.

**The Dairy Industry is Excluded from the H-2A Program**

The H-2A Program is designed for the types of agriculture that use seasonal workers for planting and harvesting. In contrast, dairy farms need workers throughout all 12 months of the year. Furthermore, it takes a number of months, if not years, to train a worker well enough so that they can safely and efficiently operate the complicated equipment that is used on modern dairy farms. The workers also need time and training to master the techniques used to manage a dairy herd successfully, such as feeding the cows properly, spotting a cow's health problem, abiding by sustainable environmental practices, and caring for the cows in a humane way.

Therefore, as set forth in detail by National Milk's submission, the H-2A Program needs to be modified through legislative and regulatory changes so that it meets the urgent needs of the dairy industry.

In particular, the workers must be permitted to stay on the same farm for the full year, as authorized by S. 852; H.R. 1720; and H.R. 3024. Upstate shares the strong belief of NMPF "that when Congress considers establishing or reforming an agricultural guestworker visa program, that program must enable year-round work for dairy workers." Upstate Niagara "cannot support any visa program that treats dairy in the same manner that [it] treats a seasonal agricultural industry."

**E-Verify without an Effective Agricultural Guestworker Program will Decimate the Agricultural Sector**

If Federal and state governments are going to implement stricter enforcement of immigration laws, such as establishment of E-Verify, then it becomes even more essential to provide feasible ways for all of agriculture, including dairy farmers, to obtain foreign born workers who can work on our farms legally.

As NMPF noted, "[i]f Congress is going to enact a nationwide E-Verify requirement, then it also needs to provide agriculture with a workable guestworker program to meet our future needs and a means to allow those who are currently working in undocumented status to be eligible for the guestworker program. A failure to do so risks severely damaging the economic vitality of the nation's entire agricultural sector."

**NMPF Recommendations for Agricultural Worker Immigration**

NMPF's submission lists a number of principles that its immigration task force has formulated over the past several years. Upstate Niagara supports these principles as a well thought out approach to this difficult, complex problem.

In particular, we want to emphasize the importance of enabling currently undocumented workers to continue working in the United States. As NMPF noted, these undocumented workers “possess skills and training that make them essential to the proper functioning of our dairy farms. There is simply no replacement workforce available to dairy farms, and the loss of the majority of our current workforce would decimate our industry.”

If it is felt that undocumented workers need to be forced to return to their home country and then re-admitted with a valid visa, please make sure that procedures and resources are available to enable them to obtain such a visa as soon as possible, i.e., within a few days.

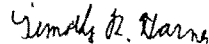
Similarly, once a worker is authorized to work in the U.S. dairy industry, we need to keep that skilled, expert worker here as long as possible, at least for a 3-year period with the ability to renew for additional 3-year periods.

#### **Conclusion**

As National Milk concludes in their submission, “[a]n enforcement-only regime, without a rational guestworker program and a process that allows the undocumented to participate in that guestworker program, will devastate the dairy industry, the agriculture sector and rural America.”

Thank you again for giving Upstate Niagara a chance to share its thoughts with the Subcommittee.

Respectfully submitted,



Timothy R. Harner  
General Counsel

MAPLE LAWN FARMS INC.  
7868 ALLOWAY ROAD  
LYONS, NEW YORK 14489  
315-946-6993

October 3, 2011

Honorable Charles Schumer  
Chairman  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Honorable John Cornyn  
Ranking Member  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn:

Thank you for the opportunity to express my views about the unique challenges facing American dairy farmers as we struggle to find enough workers to operate our dairy farms.

Our family operates a family dairy farmer in Western New York. We (my wife, two sons, and myself) milk about 450 cows and operate about 1,150 acres in Lyons, New York. To help us, we employ about 4 full-time workers and 5 part-time workers.

I serve as President of the Board of Directors of Upstate Niagara Cooperative, Inc., a dairy cooperative with 360 members and five dairy plants. We market almost 2 billion pounds of Western New York milk annually.

Upstate Niagara is a member of National Milk Producers Federation and we support the positions that they are submitting in their letter to you. I want to emphasize the importance of several points that they make.

**There is a Persistent Shortage of U.S. Workers in the Dairy Industry**

I know from first hand experience, and from the experiences of fellow dairy farmers in Western New York, that it is impossible to find enough American born workers to keep our farms running. Even thru this period of high unemployment, it is still nearly impossible to find farm workers.

On our farm, we have somewhat reduced this problem by using robots. In recent years, we purchased seven robots to milk our cows 24 hours a day, 365 days a year. Our use of robots has reduced our dependence on foreign-born workers. However, even with the increasing use of robots by our farm and others in Western New York, there are not nearly enough Americans willing to work on our dairy farms to meet our current needs, much less our future needs as the Northeastern dairy industry needs to expand to meet the increased demand for dairy products, most notably yogurt.

**The Dairy Industry is Excluded from the H-2A Program**

The H-2A Program is designed for the types of agriculture that use seasonal workers for planting and harvesting. In contrast, dairy farms, including ours, need workers throughout all 12 months of the year. Furthermore, it takes a number of months, if not years, to train a worker well enough so that we can entrust them with the complicated equipment and complex regimen needed to manage a dairy herd successfully. Many of our farm jobs today are skilled jobs, some requiring supervision of other employees.

Therefore, as set forth in detail by National Milk's submission, the H-2A Program needs to be modified through legislative and regulatory changes so that it meets the urgent needs of the dairy industry.

**E-Verify without an Effective Agricultural Guestworker Program will Decimate the Agricultural Sector**

If Federal and state governments are going to implement stricter enforcement of immigration laws, such as establishment of E-Verify, then it becomes even more essential to provide a feasible ways for all of agriculture, especially dairy farmers, to obtain foreign born workers who can work on our farms legally.

**NMPF Recommendations for Agricultural Worker Immigration**

NMPF's submission lists a number of principles that its immigration task force has formulated over the past several years. As a member of that task force, I am pleased to support them as a well thought out approach to this difficult, complex problem.

In particular, I want to emphasize the importance of enabling responsible currently undocumented employed workers to continue working in the United States. As I said above, we need the skills and expertise of our existing workers. If it is felt that undocumented workers need to be forced to return to their home country and then re-admitted with a valid visa, please make sure that procedures and resources are available to enable them to obtain such a visa as soon as possible, i.e., within a few days

Similarly, once a worker is authorized to work in the U.S. dairy industry, we need to keep that skilled, expert worker here as long as possible, at least for a 3-year period with the ability to renew for additional 3-year periods.

