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SECURING THE FUTURE OF AMERICAN AGRICULTURE

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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SECURING THE FUTURE OF AMERICAN AGRICULTURE

WEDNESDAY, APRIL 3, 2019

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP

Washington, DC.

The subcommittee met, pursuant to call, at 12:08 p.m., in Room 2141, Rayburn Office Building, Hon. Zoe Lofgren [chairman of the subcommittee] presiding.

Present: Representatives Lofgren, Jayapal, Correa, Garcia, Neguse, Mucarsel-Powell, Escobar, Collins, Buck, Armstrong, and Steube.

Staff present: David Shahoulian, Chief Counsel, Subcommittee on Immigration and Citizenship; Betsy Lawrence, Counsel; Rachel Calanni, Legislative Aide; Madeline Strasser, Chief Clerk; Susan Jensen, Parliamentarian and Senior Counsel; Andrea Loving, Minority Counsel; Andrea Woodard, Minority Professional Staff Member.

Ms. LOFGREN. So the Subcommittee on Immigration and Citizenship will come to order. Without objection, the chair is authorized to declare recesses of the subcommittee at any time, and we want to welcome everyone to this morning's hearing on securing the future of American agriculture.

I will now recognize myself for an opening statement and I would like to say it is my honor to chair this first hearing of the Subcommittee on Immigration and Citizenship in the 116th Congress.

I am pleased that we are focusing on an issue of such great national importance—the growing labor challenges that are damaging the American agricultural sector.

We have held many hearings on this issue over the past two decades. We have examined the need to provide permanent residence to the undocumented agricultural workforce, the need to reform the H2–A temporary visa program, and even potential alternative solutions to meet our agricultural labor needs.

We have always agreed that a solution is necessary. But agreement on that basic principal has not been enough. My hope is that today's hearing will be the last on this issue and that we will finally find a bipartisan balanced solution to the agricultural labor challenges that have vexed us for far too long.

Finding a solution is critical. A robust domestic food supply that is stable and safe is a matter of national security. Heavy reliance

on food imports makes us vulnerable to food contamination and epidemic. It can also lead to other serious problems including an increased national debt and wildly fluctuating market prices.

From 2004 to 2014, food imports rose by nearly 60 percent and now account for nearly one-fifth of the U.S. food supply. And although the increase in imported foods can be attributed in part to changing consumer demands, systematic labor challenges are also a contributor.

As we know from past hearings, mechanized crops like corn, wheat, and soy are not the real problem. The challenge is with seasonable labor-intensive crops, largely, fruits and vegetables as well as dairy, livestock, and especially crops such as mushrooms, some of which are produced year round.

These require an experience and often flexible workforce. While farmers do their best to plan harvests, unexpected changes in humidity or temperature can change things quickly, giving growers just weeks or days to pick valuable crops.

If harvest workers cannot be quickly located, significant crop loss can occur, the cost of which ripples through our economy down to the consumer.

The number of self-employed and family farms has declined significantly over the past several decades and fewer U.S. workers are turning to agricultural work as their chosen pursuit.

Because of this, the vast majority of today's hired farm laborers are foreign born. Unfortunately, our immigration laws have not been updated to adequately fill the void and to reflect the needs of our 21st century economy.

For example, our immigration laws provide only 5,000 green cards per year to people without Bachelor's degrees. That is 5,000 green cards not just for those working in agriculture but also for those working in landscaping, forestry, hospitality, as nannies, and many others where immigrants fill workforce gaps.

And so when people say people ought to get in line, it is worth pointing out there is no line to get into. Although undocumented workers continue to comprise about half of the on-the-farm workforce, that workforce is aging and replacement workers are dwindling due to increases in border and interior enforcement and an improving Mexican economy and, as a result, more and more employers are shifting to the H2–A temporary AG worker program.

In fiscal year 2018, nearly 200,000 H2–A visas were issued, more than triple the number issued in 2012. But the H2–A program has been sharply criticized by both farmers and labor groups.

Farmers claim the program is too burdensome and expensive, and labor groups say that it fails to protect U.S. wages and prevent the abuse and exploitation of foreign workers.

Currently, the H2–A program needs our attention. But even with much-needed reforms, the program alone cannot meet our labor needs. Current farm workers remain a critical component of the total agricultural labor force.

They have been in the U.S. for an average of 18 years and have developed knowledge and skills that cannot be easily replaced without incurring significant costs.

These farm workers came here and filled critical needs. Many of our constituents are still in business because of them. No acceptable solution can fail to deal with this reality.

We have to find the courage to do what is right, to provide a seat at America's table for those who have long grown the food we serve on it.

The right solution is a balanced approach that preserves the current workforce, provides a reasonable process for employers to bring in future workers, one that is also flexible for workers and protects them from abusive situations.

On January 17th, I introduced the Agricultural Worker Program Act of 2019. This bill would provide the ability to earn a blue card and, eventually, permanent residence for long-term agricultural workers here in the United States.

It is my hope that the introduction of this bill, along with today's hearing, are the first steps towards finally finding a bipartisan and lasting solution to the labor challenges that threaten the future of American agriculture.

I am committing right now and I have been committed to working with my colleagues across the aisle to make this hope a reality, and today, I am full of hope.

With that, I would now recognize the ranking member, Mr. Buck, for his opening statement.

Mr. BUCK. Thank you, Madam Chairman.

This hearing is an important opportunity to examine America's agricultural labor needs and the role of foreign workers, an issue very important to me and the people of Colorado.

We must work toward enacting fundamental agricultural guest worker reform that will benefit American agriculture, the American consumer, and hungry people all over the world.

After all, America is the world's breadbasket and its corn bushel and its salad bowl and its potato patch and its dairy farm.

This hearing is not about how we handle certain crops.

Instead, it is about how—about year-round labor-intensive agricultural products or products that require additional help at certain times of year, such as harvest.

Colorado provides a great example of the problem we are examining today. Leprino Foods is the largest manufacturer of mozzarella cheese in the world—in the United States and a leading producer of whey protein.

They have two production facilities in the 4th Congressional District of Colorado. When I visited Leprino, I heard stories about how they had the capacity and market to increase their production. However, Leprino can't ramp up their business to meet market demand because the local dairies can't produce more milk.

I also met with those local dairy farmers. They confirmed that recruiting employees continues to be the largest challenge to their growing businesses in supplying more dairy products for this country.

This is the same story I hear as I visit farm after farm across my district. Labor is the life blood of the agriculture industry. Without the ability to find and retain a reliable workforce, our agriculture industry will continue to struggle to meet the market's needs.

When it comes to labor needs, agricultural labor is in a class by itself. There is little debate over whether there are enough Americans willing to take on the job of a migrant farm worker.

In fact, over the past several decades, our government has only encouraged Americans to abandon such labor, leaving foreign workers to fulfill our seasonal agricultural labor needs.

The Labor Department believes that workers who do have legal status appear to be leaving farm jobs because of age or opportunities for more stable and higher-paying employment outside of agriculture and are being replaced almost exclusively by unauthorized foreign-born workers.

What legal labor force options to growers have? Since 1986, the H2–A program has provided visas for temporary agricultural workers.

However, over two decades ago, the American agricultural industry told this committee that the program was characterized by extensive complex regulations that limit employers' ability to use the program and by costly litigation challenging its use when admissions of alien workers are sought.

They allege that the Department of Labor was implacably opposed to the program. For growers, the H2–A program was intended to ensure the availability of a sufficient labor for key needs like harvesting.

But for a program created to dynamically offer labor supply to those farmers and ranchers most in demand, timeliness has never been a strong suit.

Two decades later, little has changed. An apple grower told us that were it not for the H2–A guest worker program, broken, costly, and perilously litigation prone as it is, we would be unable to farm at all.

One of the most frequently cited reasons our region's farmers go out of business is that they simply cannot continue under the burdens of the current H2–A program.

The H2–A program itself is designed to fail. It is cumbersome and full of red tape. Growers have to pay wages far above the local prevailing wage, putting them at a competitive disadvantage against growers who use illegal labor.

Employers must also follow onerous regulations like the 50 percent rule which requires them to hire any domestic workers who show up even after the employer has recruited for U.S. workers and welcomed his or her H2–A workers from overseas.

In short, under H2–A, growers can't get workers when they need them. Bureaucrats decide if employers have a full workforce, not the weather or crop conditions. Moreover, employers constantly face frivolous litigation by those who don't think the H2–A program should even exist.

What growers need is a fair and functional guest worker program, one that gives them access to the workers they need when they need them at a fair wage with reasonable mandates.

Growers need a partner agency in the federal government that treats them as allies, not as adversaries.

I look forward to hearing from today's witnesses and I yield back the balance of my time.

Ms. LOFGREN. Thank you very much.

Other members are invited to submit their opening statements for the record, and before introducing our witnesses, I would like to welcome the son of Mr. Steube of Florida to our panel. It is wonderful to see the new generation sitting with his dad to listen to this.

And I also would like to note that we have our colleague, Mr. Jimmy Panetta, sitting here listening, and he is joined by two other members, I know, who are on their way who have put immense effort into this effort, and that is Congressman T.J. Cox and Congressman Josh Harder, who have been essential in terms of their support of our efforts.

I would like to introduce today our witnesses. Arturo Rodriquez has served as the president of the United Farm Workers from 1993 to 2018, succeeding the organization's esteemed founder, Cesar Chavez.

As president of the UFW, Mr. Rodriguez worked with lawmakers and agricultural organizations in pursuit of legislation to protect the rights of workers and to reform our immigration laws.

He has previously testified before the House and the Senate, including this subcommittee, to discuss the important contributions of immigrant farm workers to the American agricultural industry, and we warmly welcome him back to the subcommittee.

Tom Nassif began his tenure as president and CEO of Western Growers in 2002. Prior to this, he served under the Reagan administration in many capacities, including White House deputy and acting chief of protocol, deputy assistant secretary of state for Near East and South Asian affairs as well as ambassador to Morocco.

Mr. Nassif has testified before the Senate on labor issues in the agricultural industry and we welcome him today.

Areli Arteaga was born and raised in the United States and grew up on a dairy farm in Idaho. Ms. Arteaga comes from a family of farm workers. Her mother has worked on farms, harvesting an assortment of crops, and her father has more than 20 years of experience in dairy, and her uncle works seasonally in the H2–A temporary visa program.

She graduated from the University of Idaho in 2017 with a Bachelor of Science in economics and political science, and is an alumna of the College Assistant Migrant Program. Ms. Arteaga now works with the United Farm Workers and we are happy to warmly welcome you.

And finally, but not least, Mr. Bill Brim and his partner, Ed Walker, purchased Lewis Taylor Farms in Tifton, Georgia, in 1985 and transformed the company into a diversified transplant and vegetable farm operation.

Lewis Taylor Farms was one of several farms in Georgia to organize a farm labor association in 1988 during the farm labor shortage and is one of the first farms in Georgia to be recognized as a good agricultural practices, or GAP, certified farm.

Mr. Brim was recognized as Georgia's Sun Belt Farmer of the Year in 2009 and has previously testified before the House and the Senate on agricultural issues.

At this time, I would welcome all of our distinguished witnesses to stand and be sworn in. If you would please raise your right hand.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[A chorus of ayes.]

Ms. LOFGREN. Thank you very much. The witnesses have all said yes and we would like to thank you for being here today.

Let each of you understand that your written statements will be entered into the record into their entirety and so we would ask that you summarize your testimony in about five minutes.

And to help you stay within that time, there is a timing light. When the light switches from green to yellow that means you only have one minute left. And so we would ask you to start summarizing when that happens. When it turns red, your time has expired.

So we will begin with you, Mr. Rodriguez, and then down the line. If you could proceed.

TESTIMONIES OF ARTURO RODRIGUEZ, FORMER PRESIDENT, UNITED FARM WORKERS; TOM NASSIF, PRESIDENT AND CEO, WESTERN GROWERS; ARELI ARTEAGA FORMER FARM WORKER AND CHILD OF FARM WORKERS; BILL BRIM, PRESIDENT, LEWIS TAYLOR FARMS, INC.

TESTIMONY OF ARTURO RODRIGUEZ

Mr. RODRIGUEZ. Thank you very much.

Ms. LOFGREN. I am not sure—yes, there you go.

Mr. RODRIGUEZ. Got it. Thank you very much, Chairwoman Lofgren, Ranking Member Buck, and members of the subcommittee. Thank you for the opportunity to testify today.

I am joined today by Martha Montiel, Eugenia Gonzalez, Vicente Reyes, Adelaida Mendoza, Rogelio Lona, Sidronio Jimenez, Francisco Naranjo, Leobardo Padilla, and Miguel Vasquez.

Collectively, these women and men have more than 200 years of experience working in agriculture and they have planted, cared for, harvested and produced vegetables, mushrooms, citrus, tomatoes, nuts, wine grapes, and milk.

We feed you. We feed people throughout the country without regard to region of the country, race, gender, age, ability, or whether they are Republicans or Democrats. And so it is time—it is past time to change our immigration laws.

The women and men who are professional farm workers have earned the right to apply for legal status and the agricultural employers that farm workers partner with to feed America deserve stability and more certainty, given all the challenges we face in agriculture.

We are ready to work with members of both political parties to come up with policy that honors those who feed us and respects a nation of laws.

There is an ugly race-based history of federal law excluding farm workers from the same basic labor protections as other workers, including the Fair Labor Standards Act and worker protection regulations and pesticide registrations.

Present-day biases against farm workers and rural communities include the fact that chemicals like chlorpyrifos, which have been

shown to lower IQ in children, are banned everywhere else but continue to be permitted in agriculture.

According to the federal government, at least half of our agriculture workforce does not have legal status. The agriculture visa program—the H2–A program—has tripled in size from 82,000 positions certified in 2008 to over 240,000 positions certified in 2018. But the fees have stayed the same since the 1980s.

The difficulty of agricultural work and the uneven enforcement of laws have meant all kinds of farm workers have suffered. Miguel Vasquez, a worker on H2–A visa, died while picking tomatoes in 95-degree heat in Georgia, just one of dozens of farm workers that have died in the last 10 years because they did not have proper access to water, shade, or breaks.

Dairy workers in Washington State and Idaho have died gruesome deaths, drowning in manure ponds. In 2017, the U.S. Department of Labor found a group of farm workers in the H2–A program housed in converted school buses, roasting in the hot Arizona sun.

Last week, Maria Gonzalez from Washington State and Librada Paz from New York State shared in a congressional briefing their fight against sexual harassment and assault.

And yet, overwhelmingly when asked what farm workers most enjoy about their work you will hear over and over again a pride in feeding the rest of the country and many parts of the world.

The goal of any new immigration proposal should be improvements in farm worker wages and working conditions. These need to be—these need to be an end to the status quo of poverty and abuse.

Farm workers cannot continue to be second class workers. Unless this changes, there will always be challenges attracting a stable workforce. The employers who have led unfair treatment should not be at a competitive disadvantage by employers breaking the law.

A new immigration program should be based on a very few set of principles: fairness, equality of treatment. Temporary workers should have the right—the same rights and protections including access to the courts as U.S. workers.

Women and men should receive equal treatment, no discrimination, economic freedom and opportunity, family unity, eligible to earn lawful permanent residency. The United Farm Workers and grower associations have come together after sometimes tough negotiations on immigration policy that makes sense for the United States.

That is notable because we have opposed each other in most other legislative fights. But I am confident we will come to agreement again on immigration policy that will ensure America's food supply, improve the lives of farm workers, and ensure agriculture employers can continue to be successful.

In fact, just a few weeks ago, pesticide manufacturers, agriculture employers, farm workers, and major forces within our food supply worked with Congress on a bipartisan basis to set aside differences to come together and achieve sensible solutions that are good for workers, consumers, and American agriculture when Congress unanimously reauthorized the Pesticide Registration and Improvement Registration Act.

You can do it again. We can do it again. Let us work together, farm workers and agriculture employers, Republicans and Democrats, each region of the country, to make sure we are able to continue to feed America.

Thank you very much.

[The testimony of Mr. Rodriguez follows:]

Statement of Arturo S. Rodriguez

President Emeritus, United Farm Workers of America

Before the House Judiciary Committee's Subcommittee on
Immigration and Citizenship
"Securing the Future of American Agriculture"

April 3, 2019

Chairwoman Lofgren, Ranking Member Buck, and members of the subcommittee, thank you for the opportunity to testify today. My name is Arturo Rodriguez. I had the honor of serving as the elected President of the United Farm Workers until last year. Today, I am representing the United Farm Workers Foundation, a sister organization of the United Farm Workers, which is connected to a network of farm worker organizations like Farmworker Justice and farm workers in the 10 largest agricultural producing states.

We Feed You.

I am joined today by Martha Montiel, Eugenia Gonzalez, Vicente Reyes, Raul Esparza, Adelaida Mendoza, Rogelio Lona, Sidronio Jimenez, Leobardo Padilla, Miguel Vazquez, Valentina Dominguez, and Carlos Gonzalez. Collectively, these women and men have more than 200 years of experience working in agriculture, and they have planted, cared for, harvested, and produced vegetables, mushrooms, citrus, tomatoes, nuts, wine grapes, and milk.

We Feed You. We feed people throughout the country without regard to region of the country, race, gender, age, ability, or whether they are Republicans or Democrats. And so it's time. It's PAST time to change our immigration laws.

The women and men who are professional farm workers have earned the right to apply for legal status. And the agricultural employers that farm workers partner with to feed America deserve stability and more certainty given all of the challenges we face in agriculture.

We are ready to work with members of both political parties to come up with policy that honors those who feed us and respects a nation of laws.

Some facts:

1. There is an ugly, race based history of Federal law excluding farm workers from the same basic labor protections as other workers, including the overtime and child labor provisions of the Fair Labor Standards Act (FLSA), and even the minimum wage at some employers; many of the OSHA standards for safe work, even though agriculture is one of the most dangerous occupations; and worker protection regulations and pesticide registrations approved under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Present day biases against farm workers and rural communities include the fact

that chemicals like chlorpyrifos, which have been shown to lower IQ in children are banned everywhere else, continue to be permitted in agriculture

2. According to the Federal government, at least half of our agricultural work force does not have legal status.
3. The agricultural visa program, the H-2A program, has tripled in size from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The vast majority of applications— 96% in FY 2018—are approved. Although the Reagan era H-2A protections were restored in 2009, the fees for employers to participate in the program have stayed the same since the H-2A program's inception in the 1980s.
4. The difficulty of agricultural work, – and the uneven enforcement of laws – have meant all kinds of farm workers have suffered. Miguel Vazquez, a worker on an H-2A visa, died while picking tomatoes in 95 degree heat in Georgia – just one of dozens of farm workers that have died in the last 10 years because they did not have proper access to water, shade or breaks. Dairy workers in Washington State and Idaho have died gruesome deaths drowning in manure ponds. A sheepherder in the H-2A program in Colorado had to physically escape his employer and get support of legal services who were able to get his passport which had been held illegally by his employer; the UFW Foundation worked on a similar case with a group of dairy workers just last year. In 2017, the US Department of Labor found a group of farm workers in the H-2A program housed in converted school buses, roasting in the hot Arizona sun. Last week, Maria Gonzalez from Washington and Librada Paz from New York shared in a Congressional briefing their fight against sexual harassment and assault.

And yet, overwhelmingly, when asked what farm workers most enjoy about their work, you will hear over and over again a pride in feeding the rest of the country and many parts of the world.

While it can be hard for the 2 million some people who feed the 330 million rest of us, there are also moments of recognition. Millions of Americans have watched and shared short videos posted on UFW and UFW Foundation social media sites of farm workers like Amadeo when he shared his work harvesting radishes outside Oxnard, California.

We Feed You.

The goal of any new immigration proposal should be improvements in farm worker wages and working conditions. There needs to be an end to the status quo of poverty and abuse. Farm workers cannot continue to be second class workers. Unless this changes – there will always be challenges attracting a stable workforce. The employers who have led in fair treatment should not be put at a competitive disadvantage by employers willing to break the law.

A new immigration program should be based on a few very simple principles:

1. **Fairness** – Farmworkers need to be paid more not less. A group of 4 US citizen and legal permanent resident farm workers joined the United Farm Workers in court defending this

basic principle. The mean and median income for farmworkers in 2015-2016 was in the range of $17,500 to $19,999[1] and one-third of farmworkers had family incomes below poverty.

2. **Equality of Treatment** – Temporary workers should have the same rights and protections, including access to the courts, as the U.S. workers. Women and men should receive equal treatment.
3. **No Discrimination** – There should be no incentives to discriminate against U.S. workers (including newly legalized workers) i.e. it cannot be cheaper to hire temporary workers than U.S. workers.
4. **Economic freedom and opportunity**
5. **Family unity**
6. **Eligible to earn lawful permanent residency for the workers who form the heart of our rural communities and feed us all.**

The United Farm Workers and major grower associations have come together after sometimes tough negotiations on immigration policy that makes sense for the United States. That's notable because we have opposed each other in most other legislative fights. I expect Tom Nassif and others in this room don't agree with everything I've presented today. But I have every confidence we will come to agreement again on immigration policy that will ensure America's food supply, improve the lives of farm workers, and ensure agricultural employers can continue to be successful.

In fact, just a few weeks ago, pesticide manufacturers, agricultural employers, farm workers, and major forces within our food supply worked with Congress on a bipartisan basis to set aside differences to come together and achieve sensible solutions that are good for workers, consumers and American agriculture when Congress unanimously reauthorized the Pesticide Registration Improvement Registration Act, or "PRIA 4." PRIA 4 brought about long overdue parity that you all passed ended decades of discrimination against farm workers and their children when it came to protections from pesticides – and provided stability to the agricultural industry.

You can do it again. We can do it again. Let's work together, farm workers and agricultural employers, Republicans and Democrats, each region of the country, to make sure we are able to continue to feed America.

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[1] "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

Ms. LOFGREN. Thank you very much, Mr. Rodriguez.
Mr. Nassif, we would love to hear from you.

TESTIMONY OF TOM NASSIF

Mr. NASSIF. Thank you, Chairwoman Lofgren, Ranking Member Buck, and distinguished members of the subcommittee. Thank you for the opportunity to testify this morning.

Thank you for choosing to shine a light on the labor needs of agriculture and your tireless work to provide much-needed solutions.

My name is Tom Nassif and I am president and CEO of Western Growers. Our members are small, medium, and large agribusinesses that produce, pack, and ship, roughly, half of the annual fruit, vegetables, and three-quarters of the tree nuts in the United States, grown both conventionally and organically.

Although our membership extends throughout the entire United States and beyond, our members are headquartered in California, Arizona, Colorado, and New Mexico.

There are certain facts that I don't believe anyone should question. The first fact is that working in the fields is, obviously, physically demanding labor. There is insufficiency as far as the availability of a legal labor force.

Those taking these jobs are not displacing those here legally, since regardless of pay and other benefits they just don't want to do this kind of work, and understandably.

The majority of those falsely documented or here illegally, however you want to phrase it, pay their state and federal income taxes as well as contribute to Social Security without any hope of ever collecting it—law abiding and proud to grow food for this nation and other nations alike.

And if there is serious disagreement over any of these facts, I ask you to commission a bipartisan study to either validate or debunk the allegations I have just made.

You have come very close to passing immigration reform in agriculture several times—Senate Bill 744 in 2013 and, most recently, in 2018. We have been unsuccessful because we have been divided in our goals and in our needs.

Only by pledging allegiance to the collective needs of agriculture can we dissuade others from seizing upon these internal divisions and proffering legislation that does not meet the needs of the whole.

What we ask is based upon the economic future needs of our industry. It is in no part political. There are also strong humanitarian interests at play as well.

Some of our pressing needs would include a legal status for our long-standing reliable existing workforce and their families without the need for a touchback; an H2–A remake that is not an administrative nightmare that does not price our producers out of business; the ability to fill all of our jobs without the burden of a cap.

Since these workers are not taking work away from those legally eligible to work, there is no displacement, and there is no economic model that would justify hiring more workers than are needed.

And lastly, establish E–Verify for agriculture only after the law is implemented and operable so that we have adequate enforcement.

Now, to succeed in resolving a decades-long effort to correcting mistakes—the mistakes of the past and the present—we need a bipartisan bill that would have a reasonable chance of being signed by the president.

It will take statesmen and women of the highest order to find a pathway to compromise. It will take the same reasonableness on the production side, knowing we must be willing to accept less than an optimal resolution and try to understand the political dynamics which make difficult changes to our immigration system in any form.

We are prepared to work with all due diligence needed to reach these objectives. There is no path to immigration reform unless the solution is bipartisan, approaching this difficult task with a heart at peace and not a heart at war.

And finally, I would also to say a special word about our colleagues in the dairy industry. As you all know, the dairy industry, like the fresh produce industry, has been hit particularly hard with labor issues.

Due to definitions in the existing H2–A visa program, farmers are not able to participate—not dairy farmers. Specifically, since dairy farming is considered a year-round activity, dairies are unable to qualify under the seasonality provisions of the H2–A program.

As labor markets have tightened, dairies are increasingly being adversely impacted. For many dairies across the country, small, medium, and large, labor problems are endemic and many are on the verge of collapse.

I appreciate your allowing me the testimony and I look forward to your questions. Thank you very much.

[The testimony of Mr. Nassif follows:]

U.S. House of Representatives

Committee on Judiciary, Subcommittee on Immigration and Citizenship

"Securing the Future of American Agriculture"

Prepared Remarks of

Tom Nassif

President and CEO of Western Growers



Wednesday, April 3, 2019

12 p.m.

Chairwoman Lofgren, Ranking Member Buck, and distinguished Members of the subcommittee, thank you for the opportunity to testify this morning. Thank you for choosing to shine a light on the labor needs of U.S. agriculture and for your tireless work to provide much needed solutions.

My name is Tom Nassif, and I am the President and CEO of the Western Growers Association. Western Growers members are small, medium, and large agricultural businesses that produce, pack, and ship roughly half of the annual fresh fruit, produce and three-quarters of all tree nuts in the entire United States. Although the fruits of our membership extend throughout the entire United States and beyond, our members are headquartered in California, Arizona, Colorado, and New Mexico.

The chairwoman and ranking member know all too well the important impact that agriculture has on a local economy. Santa Clara County in California, for instance, has bustling nursery crop, mushroom, and lettuce operations—and is of course world famous for its garlic production. And the Eastern Plains of Colorado has an incredible farming heritage including melons, corn, wheat, as well as large diary operations and hog farms. Agriculture production is naturally woven into many facets of our economy and directly impacts trade, transportation, water, manufacturing and many other industries, not to mention the overall population health and nutrition with an adequate access to fresh farming produce and other products. I am sure each Member of Congress can share the direct economic benefits agriculture has on the district they represent, but I would like to address a broader perspective today, one that encompasses almost all of U.S. agriculture and threatens to cripple large chunks of our agricultural sector because acute labor shortages hit us all. It is my hope that this hearing will spur negotiations toward meaningful legislation to address the crippling lack of farm workers in U.S. agriculture.

The State of Agricultural Labor Today

Let me share with you some basic facts: First, the average age of farmworkers is now over 40, and it should come as no surprise that many experienced farmworkers are aging out.[1] Now, one might assume that new, younger workers would take their places, but this is just not the case.[2] Why is that? Well despite agriculture's best efforts, domestic workers very rarely respond to advertisements for this kind of work. The work is seasonal and temporary, often outdoors in the elements, and physically demanding. Most native born Americans and U.S. residents seeking employment do not find these conditions attractive, and they just don't want to do this kind of work. A survey conducted in 2010 by the National Council of Agricultural Employers, found that 68 percent of unemployed people who were referred to farm worker jobs rejected those jobs. Of those who took the jobs, only 5 percent worked through the contract period.[3]

In California, we have strawberry workers who during harvest are now making over $20 an hour yet even strawberry harvest crews are increasingly undermanned resulting in fruit being left in the fields to rot. Despite wages well north of a Starbucks barista's average wage, native-born Americans are just not inclined to perform strenuous field and farm work. I should also hasten to add that over half of the more than 1.3 million hired farmworkers in the United States admitted to being undocumented in order to obtain work, many of whom have worked alongside American farmers for decades.[4]

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[1] USDA, Economic Research Service using data from U.S. Census Bureau, 2006-16 American Community Survey.
[2] Population Estimates, Department of Homeland Security, December 2015. Accessed at https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf
[3] ALRP Survey, National Council of Agricultural Employers, 2010, Accessed at ncaeonline.org/alrp/
[4] USDA, Economic Research Service and National Agricultural Statistics Service, Agricultural Resource Management Surveys. 2016. Accessed at: https://www.ers.usda.gov/topics/farm-economy/farm-labor/

With recent increases in interior immigration enforcement, and a tightened border since 9/11, we have seen the workforce age with no replacement workers to take their place. A 2012 survey found that 71 percent of tree fruit growers, and nearly 80 percent of raisin and berry growers, were unable to find an adequate number of employees to prune trees or vines or pick the crop.[5] A 2017 survey conducted by the California Farm Bureau found similar numbers – nearly 70 percent of farmers who employ a seasonal workforce said they were experiencing labor shortages[6].

This uncertainty and unpredictability in labor markets is causing many American farmers to shift production away from labor intensive crops, which include many fruits and vegetables. In fact, Texas A&M reported that 77 percent of vegetable farmers reported scaling back operations and more than 80,000 acres of fresh produce that used to be grown in California have moved to other countries. The simple fact is this: fruits and vegetables that are eaten in the United States will be harvested by foreign hands. The simple question for you, as members of Congress, is do you want those foreign hands harvesting your fruits and vegetables to be on farms here in the United States or do you want to see production continue to shift to farms in foreign countries?

As the historical migration patterns for agricultural labor have been disrupted, growers across the U.S. have increasingly participated in the H-2A program. Under that program, the Department of Labor must first certify that no U.S. workers are available to fill seasonal agricultural jobs. In 2018, DOL certified that there were over 242,000 ag jobs for which no U.S. workers were available – these were filled through the H-2A visa program. That number represents a tripling in

[5] "Walking the Tightrope: California Farmers Struggle with Employee Shortages," California Farm Bureau Federation Agricultural Employment Survey Results, November 2012.
[6] "California Farmers Continue to Struggle with Employee Shortages," California Farm Bureau, October 2017.

the size of enrollment and in some areas of the country H-2A is now a dominant employment source for farm labor even though the total farm worker population is much larger than 242,000.

For those of us who are able to participate in the H-2A program, we have experienced its long history of flaws, expense and burden. It falls short of meeting the demands of the labor intensive and skill-driven agriculture industry. The H-2A program is complicated as it involves three federal government agencies – the Departments of Labor, Homeland Security, and State – as well as various state government agencies who have roles in its execution. Given all the red tape, the timing on approval for H-2A workers can be unpredictable and often causes workers to arrive late to the farm, resulting in millions of dollars in lost crops. H-2A is an expensive program, costing much more than if domestic workers could fill the need. While we have not taken issue with the steps required to prevent overlooking American workers from having first option for these agricultural jobs, we do have concerns with the current H-2A adverse effect wage rate (AEWR). The AEWR methodology was intended to ensure that domestic worker wages are not undercut but it uses an untenable approach and has increased required wages for farmworkers in some parts of the country by nearly 23% this year alone, while U.S. Bureau of Labor Statistics reports that hourly earnings were up only 1.9% over the past year.[7] Many farmers have declared that the 2019 AEWR increase threatens the sustainability and continued longevity of their farms. The H-2A program is so complex and expensive that farmers often pay for legal assistance and transportation for the workers to eventually arrive on the job, then they are required to pay for housing and an arbitrary wage that is above what would be required for a domestic worker. In

[7] Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Real average hourly earnings up 1.9 percent over the year ending in February 2019 on the Internet at https://www.bls.gov/opub/ted/2019/real-average-hourly-earnings-up-1-point-9-percent-over-the-year-ending-in-february-2019.htm (visited March 28, 2019).

fact, an entire industry exists solely for helping farmers navigate the H-2A process. For many small farmers, accessing these legal and logistical services is financially out of reach, leaving them with very limited options for hiring workers.

Some may be aware that the Administration is working through regulatory reform to improve the program and we applaud those efforts, but it is quite limited in what it can do and we desperately need legislative reform to rebuild a structure that lacks capacity and is not designed for the future.

For those who are skeptical of the value of farmworkers to our country, I wanted to remind everyone that every farmworker engaged in high-value, labor-intensive crop and livestock production sustains two to three off-farm, but farm dependent, jobs. The activities that occur on domestic farms support not only farmworkers, but also an entire supply chain of transportation providers, input suppliers, processors, and consumer retail functions. Indeed, in 2014 a farm labor study was conducted by the American Farm Bureau Federation, which showed that the impact of an enforcement-only approach to immigration that causes agriculture to lose access to its workforce would result in agricultural output falling by an estimated $30 billion to $60 billion![8]

Finally, I wanted to also share a special word about our colleagues in the dairy sector. As you all may know, the dairy industry, like the fresh produce industry, has been hit particularly hard with labor issues. Due to definitions in the existing H-2A visa program, dairy farmers are not able to participate. Specifically, since dairy farming is considered a year-round activity, dairies are

[8] O'Brien, Patrick, Kruse, John, Druse, Darlene. "Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability," Prepared by WAEES, Commissioned by American Farm Bureau Federation. February 2014.

unable to qualify under the seasonality provisions in the H-2A program. As labor markets have tightened, dairies have increasingly been adversely impacted. For many dairies across the country – small, medium and large – labor problems are endemic with many on the verge of collapse.

What is the Future for Agricultural Labor?

Keep in mind, the fresh produce industry is not standing idly by waiting for a Congressional solution to our labor shortages. Many of our members are already spending millions of dollars on solutions to their discrete automation needs.

Western Growers is also investing significant resources on behalf of the industry. Several years ago, we founded the Center for Innovation and Technology, in part, to help accelerate mechanization in agriculture, thereby reducing our collective reliance on labor. Through the Center, we are putting start-up technology companies and farmers in the same room, asking them to collaborate on solutions that will change the way we farm in the future.

However, the developments in automation the fresh produce industry requires are still many years away, and will not come soon enough to save us, absent fundamental and immediate changes in America's immigration policies. While I don't have time during my testimony to go through all of the details of necessary improvements to the guest worker program and a solution for our existing workers, I would like to offer some recommendations to any bipartisan legislation that would stand a significant chance of passing the House.

First, we must respect and recognize the importance of our current, experienced workforce to sustain U.S.-based agriculture production and food security. We need to provide a mechanism for qualifying farmworkers to earn a legal status for themselves- and importantly, their

immediate family members - to continue working in agriculture and reside in the United States. It is certainly true for my member farmers, and many more around the country, that without their existing workforce they wouldn't be farming produce. We owe our food security to these farmworkers and we have a responsibility to treat them and their families with respect and dignity. Doing so also helps secure our immediate workforce needs by bringing these workers out of the shadows and provides them, and their employers, welcome certainty. This workforce has been our backbone, will become the supervisors and foreman on our farms going forward, and given the opportunity some may themselves become farm owners and employers.

Next we should recognize the critical need for access to a workforce for the longer term sustainability of U.S.-based agriculture production by providing a more flexible and efficient agricultural worker visa program than we have now. This program must be made available to all agricultural producers without regard to a specific seasonal nature of the job. It needs to be comprised of a fair and predictable market-based approach to wages and benefits that would not unduly impede upon U.S. competitiveness. It should provide for flexibility in the duration of visa terms and mobility to address all agriculture sectors. And critically, it also needs to maintain uncapped capacity to continue to address all industry needs, without an arbitrary limit.

Finally, let me mention E-verify. E-verify implementation can and should be done in a timely manner, but only after the current workforce has had time to have a successful transition to their new status and the aforementioned improvements to the guest worker program are complete. Only then will agriculture be on solid footing and fully prepared for the road ahead.

Conclusion

I think everyone in this room knows that immigration can be among the most divisive and difficult issues to resolve in Washington, but this issue is different, it's above the fray and it is really about the food security of this nation.

We have come very close to passing reform on ag labor several times – recall we have passed bills reforming agriculture labor in 2006 and in 2013 in the Senate to do just that. We have only been unsuccessful because we have been divided in our goals and needs. Only by pledging allegiance to the collective needs of agriculture can we rise above internal divisions and proffer legislation that truly meets the needs of the whole. What we are asking from Congress is to pave the way for the economic viability of U.S. agriculture. There are also strong humanitarian interests at stake as well, and this is in no part political.

To succeed in resolving a decades-long effort to correct the immigration mistakes of the past and present, we need a bipartisan bill that would have a reasonable chance of being signed by the President. Such a task will take statesmen and women of the highest order to find a way to compromise. It will take the same reasonableness on the production side as well, knowing that we must be willing to accept compromise less than a perfect resolution to get beyond the political dynamics of this difficult issue.

On behalf of Western Growers, and really all of United States agriculture, thank you again for the opportunity to share my perspective on this important issue. The agriculture industry truly appreciates your time and attention to one of our most pressing needs. We are prepared to work with all of the due diligence needed to reach these important objectives. There is no path to reform unless our solution is bipartisan, approaching this difficult task with a heart at peace and not a heart at war. I look forward to your questions.

Ms. LOFGREN. Thank you very much.
And now we will hear from Ms. Arteaga.

TESTIMONY OF ARELI ARTEAGA

Ms. ARTEAGA. Thank you. Chairwoman Lofgren, Ranking Member Buck, members of the committee—of the subcommittee, thank you for the opportunity to testify today.

My name is Areli Arteaga and I am proud to have contributed to be a part of a family whose labor feeds this nation.

I was born and raised in Idaho. Most of my childhood and teenage years were spent on a dairy farm where my father worked. My mother works in potatoes—of course, being from Idaho—but also onions, corn, and carrots.

My first experience working in the fields was at the age of nine. I worked every summer from the age of 15 until I had the opportunity to do an internship here in Washington, D.C., this being through the Department of Education through the College Assistance Migrant Program.

My father has worked in the dairy industry for 25 years. Dairy work is difficult, dangerous, and skilled. My father's work is focused on taking care of the health and welfare of the cow. My dad typically works about 12-hour days six days a week, although when they are short-staffed I have seen him work two weeks straight.

As my father explained to me as a child, cows don't know days off. They don't know holidays. They don't know birthdays. I have seen my father wake up at 1:00, 2:00, and 3:00 in the morning from calls from the—from his job.

His duties include keeping the paths clear for the cattle, helping deliver baby calves, and keeping the cattle alive. He is responsible for diagnosing and treating ill cows.

He is able to identify 800 cows through memorizing them in each cow pen. This is extremely important, because if that cow is being treated with medication, they need to be milked separately so that the milk we drink is not contaminated.

My father is proudest when he has a sick cow and the cow reacts in a positive way. He knows he helped that animal survive.

While my father works year round, like most people in the dairy industry, my mother works seasonally. She typically works in the onions for about five months, setting, repairing, and later removing the irrigation system, as well as weeding the onions.

She does other crops, too. Potato season is about six weeks, in which they cut the seeds and later harvest. Corn season is also about six weeks. My mother and her co-workers have developed strong allergies affecting their health and welfare while corn detasseling.

At other times of the year she also works in the alfalfa fields, placing larva trays into bee houses. In a year, there are times that she will work three of five of these crops. No matter rain, wind, hail, they are out there, producing our food for us.

What I learned in the field is it is not an easy task. It takes skill. One of the memories that has resonated with me still to this day was one day when we working in the onion fields. We were given the task to remove a weed that wraps itself around the crop. We

were not allowed to use a hoe because the onion was too young and we would pull the onion out of the ground.

While I struggled to work on my knees for long hours, my mother would loop back around and teach me skills with the knife to help me catch up with the rest of the crew.

I was also surprised when comparing paychecks with my college friends that they were being time and a half for an eight-hour day when they were working in retail but I wasn't paid for overtime hours in the fields that, to be honest, is more difficult.

Don't we deserve overtime pay like other workers? My uncle has worked with an H2–A visa for the last several years in alfalfa. He comes to Idaho from Mexico for five months each year. For many years, as difficult as the work was, my father's work at the dairy brought us stability.

But after years of working at the farm where I grew up, my father felt he wasn't being treated fairly and my family was stuck. He knew it was time to leave.

I was in college but my two younger siblings were at the family home. My father knew if he left that job he was giving up this home. But he did what he thought was best and we were found without a home.

I do wonder what it would be like to be an H2–A visa hold where the employer has complete control of their job, housing, and visa. My mom and my dad are proud of me and I feel proud, having been from Idaho and graduating with a B.S. in political science and economics.

I am proud of my parents and my family because they came to this country with just the clothes on their backs. They are now contributing to their communities and one of them being by their skilled job. I asked my mother what she is most proud of and she shared being able to give an education to me and my siblings.

My family are all immigrants and the people we work alongside are all immigrants, too. Wherever I go I see the people eating the food that we have harvest and drinking the milk my father has helped produce.

It seems that the U.S. immigration doesn't make sense. I would like to see my parents treated with the same kind of respect that they taught me to show for others.

Thank you.

[The testimony of Ms. Arteaga follows:]

Statement of Areli Arteaga
Before the House Judiciary Committee's Subcommittee on
Immigration and Border Security
"Securing the Future of American Agriculture"
April 3, 2019

Chairwoman Lofgren, Ranking Member Buck, and members of the subcommittee, thank you for the opportunity to testify today. My name is Areli, and I am proud to have contributed and to be part of a family that contributes to feeding the rest of the United States and many parts of the world.

I was born and raised in Idaho. Most of my childhood and teenage years were spent on a dairy farm where my father worked. We lived in housing on the dairy farm. Dairy work is year round work and it's very hard to get any kind of break. My mother has worked as a seasonal farm worker in potatoes, of course this being Idaho, but also onions, corn, carrots. My first experience working in the fields was at the age of 9. I returned at the age of 15 and worked every summer until I had the opportunity to do an internship here in Washington, DC at the Department of Education through the College Assistance Migrant Program, also known as HEP/CAMP.

MY FATHER DAIRY
My father has worked in the dairy industry for over 25 years. Dairy work is very difficult, dangerous and requires skilled work. My father's work is focused on taking care of the health and welfare of each cow while helping provide milk and cheese to the region. My father typically works 12 hour days, six days a week although when they are short staff I have seen him work 2 weeks straight. As my father explained to me as a child, cows don't know about days off there are no holidays and no birthdays. I've seen my father wake up to emergency calls from work at 1, 2, and 3 in the morning to help care for the cattle. My father's duties include keeping the pathways clear for cattle, helping deliver baby calves, and I believe most importantly keeping the cattle alive. He is responsible for helping diagnose ill cows and then treating them. He has an extraordinary memory and attention to detail. He is able to identify cows through memorizing each cow located in different cow pins. This is extremely important because if that cow is being treated with medication they need to be milked separately so that the milk we drink is not contaminated. My father is proudest of when he has a sick cow in his work and the cow reacts in a positive way and he knows that he helped that animal survive.

MY MOTHER
While my father works year round like most people in the dairy industry, my mother works seasonally. For her the potato season is about six week in which they cut the seeds and later harvest. She then spends about six weeks corn detasseling. Something tough about the work in corn is that she and her coworkers have developed strong allergies affecting their health. She typically also works in the onions for about five months-- setting, repairing, and later removing the irrigation system and also weeding the onions. At other times in the year, working in the alfalfa fields, she will work with the bee boards by placing larva trays in bee houses after the harvest and place them in storage to use for following harvest. In a year there are times she will work in 3 to 5 of these crops, no matter rain, wind, hail they are out there producing our food for

the rest of us. She is proudest of being able to provide an education to her children through her work. Two us have now graduated college and my youngest brother is doing well in school.

MY OWN EXPERIENCE WORKING IN THE FIELDS

What I learned in the fields is, it is not an easy task, it takes skill. One of the memories that has resonated with me still to this day was one day when we were working in an onion field. We were given the task to remove a weed that wraps itself around crops. We were not allowed to use a hoe because the onion was too young, it would pull the onion out of the ground. While I struggled while working on my knees for long hours my mother would loop by around to help me and try to teach me skills with the knife to help me catch up to the rest of the crew. It was then I realized I needed to get my college degree because my parents like other immigrants sacrificed so much for us to succeed.

I also was surprised when, after seeing my friends from college get paid time and a half after an 8 hour day when they worked in retail, that I wasn't paid for overtime hours for work that to be honest I see as a lot more difficult.

MY UNCLE

My uncle works on an H-2A visa for the last several years in alfalfa including raking and bailing. He has come to Idaho from Mexico for five months each year.

SOME CHALLENGES…

For many years, as difficult as the work was, my father's work at the dairy brought stability for my family. But after years working at the farm where I grew up, my father felt he wasn't treated fairly and he knew it was time to leave-- and my family was stuck. I was in college but my (2) younger siblings were at home. My father knew that if he left the job, he also was giving up the family home. My father did what he thought was best and we found ourselves without a home. I do wonder what it would be like for a worker attached to an H-2A visa where an employer has total control of job, housing, and a visa.

IMMIGRATION REFORM

My mom and dad are proud of me and I feel pride in having graduated from the University of Idaho in 2017, with a B.S. in Economics and Political Science.

I am proud of my parents and my family because they came to this country with just the clothes on their backs, they now contribute to their community in many ways one of them being by their skilled jobs.

My family are all immigrants. And the people we work alongside are almost all immigrants. Wherever I go – I see people eating the food my family has harvested and drinking the milk my father has helped produce.

It seems the US immigration system doesn't make sense. I'd like to see my parents and family treated with some of the same respect they taught me to show to others.

Ms. LOFGREN. Thank you very much, Ms. Arteaga, and I am sure that your parents are very proud of you.

We would like to now invite Mr. Brim to offer his testimony.

Is it not working? Why don't you switch places with Ms. Arteaga?

Mr. COLLINS. I will have to say, Madam Chair, this is a good Georgia boy—if you needed to.

TESTIMONY OF BILL BRIM

Mr. BRIM. Okay. Good morning, Chairwoman Lofgren, Ranking Member Buck and Collins, and members of the committee. Thank you for the invitation to be here today and discuss the labor crisis facing agriculture.

My name is Bill Brim and I am co-owner of Lewis Taylor Farms, Incorporated, in Tifton, Georgia. We are a diversified specialty crop operation, farming nearly 6,500 acres. We have been using the H2–A agricultural visa program for our harvest and packing operations to supply our dwindling domestic worker workforce for more than 22 years.

We are blessed to have an abundance of natural resources enabling us to grow in this country. But what we do not have plenty of is labor, and without a sufficient labor force, our other resources are of little use.

Sufficient labor forces out of our resources are of little use and lack of workers is causing serious harm in labor-intensive agriculture of our domestic food supply. This crisis is a direct result of the misguided and outdated federal policies that Congress has failed to address.

So just like any problem that is ignored, the problem does not magically get better. It gets worse.

Each year, more and more farmers quit farming and move their labor-intense operations outside of the United States to be closer to the labor force. As a result, each year more and more Americans are eating imported fruits and vegetables, further harming domestic producers.

In the 1970s, the U.S. was a net exporter of fruits and vegetables. Today, we import three times more fruits and vegetables than we export.

Congress established the H2–A temporary agriculture visa program nearly 35 years ago in an effort to help farmers who met their labor needs when there was a shortage of willing and able U.S. workers to do the work.

But the H2–A program has, from the beginning, been plagued with rigid rules, excessive complexities, bureaucracy delays, and runaway cost. It is no longer a wonder that it is generally viewed as a last resort for most farmers now.

In recent years, as the labor supply has continued to tighten, the U.S. use of the H2–A program has increased. But that is not a testament to the H2–A program success. Rather, it demonstrates just how dire the labor situation has become in the United States of America.

Farmers are so desperate for labor that they are willing to participate in the program and that drastically increases their cost, their labor liabilities, and their uncertainties. H2–A program must

be reformed and modernized so that we can have a guest worker program responsive to the needs of 21st century agriculture.

First, I am sure that we will—that we can all agree that legal U.S. workers must have the opportunity to take any farm jobs before it would be filled by a guest worker. But we should also all be able to agree that there are not anywhere near enough U.S. workers to fill the farm jobs we have available each year.

We see this reality every day at our farm. For example, last year, we had nearly 900 H2–A workers positions available. We had 10 U.S. workers who applied, and were hired. Eight of them left relatively quickly and two—just two stayed with us to complete the season.

This experience aligned with the Department of Labor data that shows on an average just three out of every thousand positions certified for H2–A are filled by a U.S. worker.

This labor problem must be addressed by action in two areas. The current H2–A program must be reformed to provide a flexible program responsible to the needs of farmers and the workers.

A current farm worker who lacks worker authorization must be provided some type of legal status. In my written testimony, I mention several issues that need to be addressed in the modernized guest worker program. Let me take a moment to highlight just a few of them.

A reformed program must include all sectors of agriculture. The current H2–A program is overly restrictive in allowing participants only by growers whose need is 10 months or less.

In many areas of the country, the grower and harvest seasons last longer than 10 months and for some agricultural operations such as dairy, their need is year round. Other operations included on-farm value added processing and packing, and those activities should also be included.

A reformed program must also address the broken wage methodology of the H2–A program. This year, several states experienced H2–A wages increases of 23 percent. Nowhere in the U.S. do wages in any occupation increase 23 percent last year except in the H2–A program.

And remember, the current program also requires a farmer to pay all of the other costs of the workers including housing and transportation. This is unsustainable.

I will close with a positive note about the H2–A program. The current program has no cap on the number of visas available.

The element has worked very well over the years and enabled the program to adopt to market demands. The certification by the Department of Labor that there is a shortage of U.S. workers serves as a check to ensure guest workers are not admitted to the U.S. unless there is need. A reformed guest worker program for agriculture must not have a visa cap.

I hope that Congress will finally fix this problem. This labor shortage in agriculture is a national security issue. A country that cannot feed itself cannot defend itself.

Our food is going to continue to be harvested by foreign workers. The only question is whether that food will be harvested and grown by U.S. growers or in a foreign country.

Thanks for opportunity to testify today and I look forward to answering your questions.

[The testimony of Mr. Brim follows:]

TESTIMONY OF BILL BRIM
before the
U.S. HOUSE of REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP
Hearing
Securing the Future of American Agriculture
April 3, 2019

Good Morning Chairwoman Lofgren, Ranking Member Collins and members of the Committee. Thank you for the invitation to be here today to discuss the labor crisis facing agriculture. My name is Bill Brim and I am the co-owner of Lewis Taylor Farms, Inc., in Tifton, Georgia. We are a diversified specialty crop operation, farming nearly 6,500 acres. Our crops include bell pepper, cantaloupes, greens and broccoli, squash, cucumbers, tomatoes, and other vegetables, as well as cotton and peanuts. We also produce 350 million vegetable seedlings and 75 million pine tree seedlings in our 900,000 square foot greenhouse operations. We have been using the H-2A agricultural visa program for our harvest and packing operations to supplement our dwindling domestic workforce for more than 22 years.

I am a member of several agricultural trade associations and over the years I have held various leadership positions, including serving on the board and as the President of the Georgia Fruit and Vegetable Growers Association, the board of directors of the United Fresh Produce Association and the board of directors of USA Farmers, a national trade association of H-2A employers. I am here today to testify in my personal capacity as a farmer who every day has to take care of my foreign and domestic employees, operate my farm, and produce a high-quality product, while trying to navigate endless government bureaucracy and adapt my operations to outdated federal policies. Unfortunately, my experience is not unique and if you are farmer in the H-2A program, it seems that most days the government is working against you, rather than with you.

We have a serious crisis that is endangering the future of labor-intensive agriculture and our domestic food supply. This crisis is the direct result of misguided and outdated federal policy that Congress refuses to address. For decades farmers have been pleading with Congress to fix this labor problem – a problem that Congress created – yet year after year nothing is solved.

So just like any problem that is ignored, the problem does not just magically get better – it gets worse. As a result, labor intensive agriculture in the United States is on its way to becoming an endangered species because bad government policy makes it nearly impossible for us to compete in the international marketplace. And so each year more and more farmers quit growing fruits and vegetables or move their operations outside the United States. As a result, each year, more and more Americans eat imported fruits and vegetables.

America now imports more than half of the fruits and vegetables that we consume. That is a disgrace. In the 1970s, the U.S. was a net exporter of fruits and vegetables. Today we

import three times more fruits and vegetables than we export. This problem has multiple causes, but the two biggest are the nation's outdated guestworker and trade policies.

I realize that trade policy is not within the jurisdiction of this committee, but I would be remiss if I did not mention the catastrophic impact that unfair trade policies have on our domestic fruit and vegetable markets. The recent renegotiation of NAFTA to produce the USMCA has failed to provide any protection for our southeastern fruit and vegetable farmers from unfair dumping of imported produce at prices below the cost of production.

We are blessed in the country to have an abundance of resources. We have plenty of land, we have plenty of water, and we have plenty of sunshine – all critical ingredients for growing crops. But what we do not have plenty of, is labor. And without a sufficient labor force, our other resources are of little use.

As our country has grown and prospered, the educational and employment opportunities have increased for our younger generations. Just like all developed nations, each year fewer and fewer of our citizens seek to make a living doing manual labor on a farm. For nearly as long as anyone can remember there has been a shortage of U.S. workers in agriculture. But decades of lax immigration policy enabled scores of foreign workers to find their way to the U.S. to work, often without proper work authorization. Many of those workers would come and go each year over a fairly porous southern border and they largely filled the labor needs of American agriculture, particularly on the west coast.

But many other farmers, particularly those in the southeast, and those who often had shorter crop seasons, instead began to rely on the H-2A guestworker program. As you know, the H-2A program was created in 1986 but from the beginning has been plagued by excessive bureaucracy, costs, delays, and inconsistent administration by the U.S. Department of Labor.

Simply put, federal government policy makes it much easier for a farmer to hire a worker who presents legitimate looking paperwork than to hire a legal worker through the H-2A program and endure all the bureaucratic aggravation, costs and delays. So, the H-2A program is often seen as an option of last resort for farmers.

The porous southern border that once enabled workers to relatively easily cross into the U.S. began changing after 2001. Since that time, border security has dramatically increased. Worksite enforcement has dramatically increased. And many states, including most of the southeastern U.S., have established mandatory E-verify for employers. In my own state of Georgia, all prospective employees must pass E-verify in order to be employed. When this policy was first implemented in Georgia it had a catastrophic effect on the agriculture workforce, resulting in an estimated $300 million in lost crops that could not be harvested. This put Georgia producers at a severe disadvantage to producers in other states that did not utilize E-verify.

In recent years, tighter security at the border, tighter security in the interior of the country, and tighter security at the worksite has led to a tighter labor market for agriculture. As the nation emerged from the 2008-2009 recession and the overall employment situation improved around the country, the labor shortages in agriculture became more pronounced. As a

result, without access to what used to be a steady stream of workers, more and more farmers began turning to the H-2A program – not because they wanted to, but because they had to. It was (and still is), despite the bureaucracy, costs, and uncertainty, the only viable option to hire farmworkers who are legally authorized to work in the U.S.

It should not be news to anyone, but Americans are generally not lining up to perform agricultural labor. Certainly not in quantities sufficient to meet our needs. This is important work. It is necessary work. And it is respectable work. But it is not easy work. Working on a farm involves difficult manual labor performed outdoors in all sorts of weather conditions. In many parts of the country the work is seasonal and can be unpredictable. The amount of work available can vary day to day and week to week. And in some cases, particularly for those who work for labor contractors, instead of being directly employed by a farm, the work can involve frequent travel.

All of these factors, and more, discourage most U.S. workers from seeking out farm work. They would instead rather obtain year-round employment inside a climate-controlled office or store. How many people in this room are encouraging their children, or their nieces and nephews to take up farm work as an occupation? Current farmworkers also frequently encourage their children to pursue other occupations. Many of my H-2A workers tell me that they use the money they make working in the U.S. to put their children through college in Mexico so that they can become teachers and engineers, rather than farmworkers.

That in no way should be taken as a criticism. It is simply human nature for a parent to want their children to move up the economic ladder. But the fact remains that there is still farm work to be accomplished and we need legal workers to perform those jobs. There simply are not enough U.S. workers who are willing and able to do this work. The hiring statistics from our farm illustrates the story very well. Last year, we had nearly 900 positions certified as eligible to be filled by H-2A workers. Just ten U.S. workers responded to fill those positions and they were hired, but eight of them did not finish the season. Thus, out of a need for nearly 900 farmworkers for the season, we had just two U.S. workers. Unfortunately, that is a common outcome. In the past five years, the highest number of U.S. workers we had finish a season was eight.

Facing a shortage of U.S. workers, the only option for a farm to obtain legal workers in the last 30 years, has been the H-2A program. But the overly bureaucratic and restrictive nature of the program has prevented its wider use. The recent significant increase in use of the program is not a testament to the program's success, rather it demonstrates just how dire the situation has become for American farmers. Farmers are so desperate for labor that they will participate in a program that dramatically increases their costs, their liabilities and their uncertainty.

For the past several years, the program has been growing about 20% a year. Over the last 10 years, the number of H-2A visas issued by the State Department has increased by more than 200% to almost 200,000 in 2018. In Georgia, the growth has been even more dramatic. Our use of the H-2A program has increased more than 200% in just the last five years. In 2018, my state had more than 30,000 positions certified by the U.S. Department of Labor as eligible to be filled

by H-2A workers – the highest number in the country and more than 13% of the total H-2A positions certified nationwide.

American agriculture's ongoing labor problem is adversely affecting our production and our ability to compete against low-cost imported food. Our labor problem consists of two parts – and the problem cannot be solved unless both parts of this problem are addressed.

The first part of the labor problem is the current H-2A guestworker program. Although it is supposed to provide relief to farmers when there is a shortage of U.S. workers, the program does not meet the needs of American agriculture. We need a modernized program that responds to the reality of agricultural production in the 21st century.

The federal government currently provides virtually no help to farmers seeking agricultural labor. Although the Department of Labor and the Department of Homeland Security operate the H-2A program, the complexity, cost, delays, shifting interpretations, and overly-bureaucratic nature of the program lead to the inescapable conclusion that the government really does not want us to utilize it to hire a legal workforce.

The most dramatic illustration of misguided government policy towards farmers facing a labor shortage is evident at the Department of Labor. One office in the Department of Labor administers the H-2A program, which is supposed to enable farmers to hire foreign labor when there is a shortage of U.S. workers. But another office in the Department of Labor simultaneously works against farmers by spending $80 million a year in taxpayer money to train farmworkers to do something else and thereby further decreasing the available pool of U.S. farmworkers. I do not think anyone would object to legal U.S. farmworkers, just like other legal U.S. workers, being provided job training assistance. What we also need, however, is a corresponding government effort to help ensure farmers actually receive meaningful assistance in obtaining needed labor.

I will note that it does appear that after 35 years of the H-2A program being in existence, the government may finally be taking a modest first step to at least provide farmers with some information about how to navigate the H-2A program. Thanks to the leadership of our current Secretary of Agriculture, Sonny Perdue, I understand that USDA is working to provide an online portal with instructions to help farmers understand the H-2A program and complete the required mountains of paperwork. And I also understand that USDA and the Department of Labor are preparing to formally propose an overhaul of the current H-2A regulations. We look forward to reviewing that regulatory proposal, but there remain some fundamental problems with the H-2A program that require statutory changes to improve. We welcome the recent developments by USDA and the Department of Labor that may provide some relief, but they will certainly not equate to the extraordinary efforts the Department of Labor undertakes each year to train farmworkers for other jobs.

The second part of the problem concerns the existing agricultural workforce that lacks work authorization. There is a sizeable population of farm workers without legal status in the U.S. Many of these farmworkers have been with their employer for years, or even decades, and many work full-time and year-round to provide critical support to the farming operation.

Recently released Department of Labor data from personal interviews with farmworkers around the country shows that 80% of them had just one employer in the prior 12 months.

Pinning down the exact number of farmworkers in the U.S. is difficult. The latest estimate from the Bureau of Labor Statistics puts the number at about 850,000. Incidentally, BLS projects that over the next ten years there will be virtually no change in the number of farm jobs available in the U.S. USDA tells us through their annual Farm Labor Surveys that the number of hired farmworkers in the U.S. is more like 1.2 million. Whatever the number of workers is, the Department of Labor survey data shows that at least 50% of farmworkers admit that they lack work authorization. Although, various advocacy groups have said over the years that farmworkers without legal status constitute more like 75% of the agricultural workforce. These workers are present in all sectors of agriculture and all areas of the country and because California has the largest population of farmworkers, they presumably have the largest population of farmworkers without legal status.

Farmers want to comply with the law, and we want to employ legal workers, but federal policy has failed us. The employment of workers who lack legal work authorization is the direct result of government policy that requires a worker to only present documentation that indicates the individual is work authorized. If the document appears valid, that is the end of it. Employers are not permitted to question a worker's documents or to ask for additional proof of employment eligibility. In fact, doing so can result in the federal government prosecuting you for discrimination, which the Department of Justice often does.

There are any number of possible solutions to resolve the two-parts of this labor problem. Over the decades, solutions big and small, modest and bold, have been proposed. There have been any number of bills introduced in the House and the Senate over the years to address various shortcomings in the H-2A program, but they have not passed. And there have been proposals to scrap the H-2A program altogether and start over with a new ag guestworker program, but those proposals also have failed. Similarly, there have been various legislative proposals to legalize farmworkers, or other workers lacking legal status. But none of those bills have passed.

The method by which undocumented workers are provided legal status, and the extent of that legal status is important. It is vital for our industry to be able to retain its experienced workforce as we develop a more robust guestworker program to respond to our current and future labor needs. I understand the Chair of this Subcommittee has proposed a program to legalize farmworkers who lack legal work status and that would address one part of the problem.

Legalizing illegal workers will resolve only part of this problem, and arguably the smaller part because very soon all of the workers who receive legal status will begin moving out of agriculture to take other jobs in the economy. We have seen this before. When the last amnesty was provided in 1986, it took only a few years before all those workers with newly minted legal status left the fields, and then once again farmers were left searching for workers to replace them. In our farming operation we had about 100 employees who obtained legal work status through

the 1986 amnesty and within five years all of them had left our farm for higher paying jobs outside of agriculture.

Of course, the lax border policies and the ineffectual employment verification standards created by Congress in 1986 along with the amnesty just created another wave of workers crossing the southern border to replace the former farm workers who moved on to take other jobs. Thus, regardless of what shape the next legalization program for current farmworkers takes, that will not solve America's need for farmworkers. We must have a reliable and workable guestworker program in the future.

I also want to note that increased mechanization is mentioned by some as the solution to our labor problem. Recent stories in the press have described ongoing efforts to develop robots that can harvest fruit and vegetables. But this technology is not the answer to our labor shortage, at least not in the foreseeable future. In addition, this technology is extremely expensive and it remains to be seen how increasing our production costs will improve U.S. agriculture's competitiveness against imported fruits and vegetables harvested abroad at dramatically lower costs. Thus, increased mechanization could just exacerbate the current fruit and vegetable trade imbalance.

Because I utilize the H-2A program, I want to discuss what is needed to resolve the other part of the problem – the improvements that we need in a guestworker program to ensure the viability of U.S. agriculture for years to come.

The demand for agricultural labor exceeds the domestic supply and decades of evidence shows that H-2A workers do not take jobs from American workers. In fact, the employment of H-2A workers actually creates employment for U.S. workers through the downstream jobs that are created by agricultural production. The Department of Labor's own data demonstrates that the existing limited supply of legal U.S. farmworkers has little interest in the positions that are ultimately filled by H-2A workers. Even though U.S. workers are entitled to claim these H-2A positions if they want them, U.S. workers have claimed less than three-tenths of one percent (0.03) of the available H-2A positions on average in recent years. And this is true even though mandated H-2A wages are consistently higher than local market wages and continue to climb.

So, while we want to be sure that a reformed guestworker program gives U.S. workers the first shot at these farm jobs, we do not want the program design to be so rigid and overbearing that it essentially prevents the hiring of guestworkers and causes farmers to quit or to move their operations abroad. The following elements must be part of a reformed agricultural guestworker program to meet our labor needs:

- Access to all sectors of agriculture

One of the major shortcomings of the H-2A program is that it unnecessarily excludes important agricultural sectors that have labor needs lasting more than 10-months. The Department of Labor will not permit most dairies to use the H-2A program because their need is too long. This must be remedied. In addition, the high costs associated with farming today have led many producers to try to improve cash flow by adding additional crops and making use of

longer seasons where weather permits. But the 10-month limit of the H-2A program does not fit with this reality of modern agriculture. A revised guestworker program must be open to all sectors of agriculture, including dairy farms, farms that operate year-round, as well as growers that harvest, process and pack their product on the farm.

- No visa cap

One redeeming market-based feature of the H-2A program that has worked well over the years is the absence of a visa cap. Congress got this element right in 1986 and decades of experience have shown it was – and remains – the best way to design an agricultural visa program. The labor market test in the H-2A program requires that the government first determine U.S. farmworkers are unavailable. That serves as the check on the possibility that someone could avoid first attempting to hire U.S. workers for the available positions. A visa cap in an agricultural worker program makes no sense. After all, if we are not going to cap our population growth, or the cap the amount of food that we consume, why would we cap the program that ensures our farmers have the labor needed to feed us?

- Flexibility for employers and workers

The application process in the H-2A program takes too long and is too rigid. A reformed guestworker program must permit farmers to apply closer to their date of need and permit them to amend their applications in response to market demands after the application has been submitted. A reformed program should also make it easier for workers to transfer among employers and seek out additional work if they choose, after completing their prior work obligation. Workers who have participated in the program for a number of years should also be provided expedited visa approval through a "pre-check" type system that would avoid long lines and extra work year after year at the consulate.

- Litigation Reform

The complexity of the H-2A program is too often used as a trap by lawyers looking to score a quick buck for themselves. Opponents of guestworker programs also seek to harass growers and try to drive them away from the H-2A program through oppressive litigation over relatively trivial issues, like torn window screens on housing. A reformed guestworker program must provide an efficient way for workplace issues to be resolved. Farmworkers should have a venue to have their concerns addressed and resolved quickly without time-consuming and expensive litigation.

- Wage Methodology

The flawed H-2A wage methodology has long been one of the most serious shortcomings of the program. The process for producing the so-called Adverse Effect Wage Rate (AWER) is neither transparent, nor predictable, and as a result, farmers are unable to realistically plan from one year to the next for their largest production expense. The national average of regional AWERs for 2019 is nearly $13.00 per hour. That is a 6.2% increase from last year. In some areas of the country, this year's wage is more than $15.00 per hour and in other areas, the wage

increased 23% over last year's AEWR rates. To make matters worse, the Department of Labor typically surprises farmers by announcing these wage rates just days before they take effect.

These wages are not reflective of actual local market conditions and conflict with mountains of other data we have on the state of the U.S. economy and wages. Nowhere in the U.S. economy did wages increase 23% last year – other than in the H-2A program. Recently released National Agricultural Worker Survey data from the Department of Labor shows that in 2016 the average wage of non-H-2A farmworkers was $10.60 per hour. Yet in 2016, the national average of the Department of Labor-mandated AEWR was $11.69 per hour.

For 2019, one office in the Department of Labor said the AEWR rates needed to increase an average of 6.2% to reflect a supposed increase in farmworker wages in 2018. But the Bureau of Labor Statistics (BLS) – another agency within the Department of Labor – says in its Employment Cost Index that in 2018, overall private industry salaries and wages increased by just 3.1%. And in the subcategory that includes farming, the increase in wages was just 2.5%! Yet, despite this data from BLS, the Department of Labor has, once again, imposed drastically higher wages on farmers in the H-2A program. This same situation has played out year after year resulting in an ever-increasing burden on H-2A growers.

AEWR rates are, on average, up nearly 30% in the past 10 years and up more than 50% in the last 15 years. Costs for fertilizer, insurance, land, fuel, seed, etc. are also up over the past 15 years. But the price I get for my crops has only modestly increased and it has certainly has not increased by 50%. This is unsustainable and federal government policy is driving farmers out of business. USDA data indicates that for all types of farms nationwide, the cost of hired labor accounts for just 12% of production costs, on average. But for labor-intensive farms, the cost of labor is typically the single biggest expense for the farm. And if you are in the H-2A program, labor is an ever-increasing portion of your budget. In recent years, our annual labor costs have accounted for 45 to 50% of our production costs.

A reformed guestworker program must have a wage methodology that makes sense for growers and workers, and that is transparent and predictable so that farmers can plan and properly budget from one year to the next.

- Housing

The inflexible housing requirements of the H-2A program are another feature that prevents farmers from using the program. Building costs for housing are expensive and local building ordinances in communities around the country frequently prevent farmers from even constructing farmworker housing. Because of the overly prescriptive housing standards, other general publicly available rental housing is often not a feasible alternative. This is a significant barrier to using the H-2A program. Department of Labor data shows that just 11% of non-H-2A farmworkers utilize no-cost employer-provided housing. Given how rare it is for non-H-2A growers to provide free housing to workers, it is not clear why free housing is a required benefit in the H-2A program. A future guestworker program must take a new approach to housing and provide more flexibility for growers and workers. This could be accomplished by enabling

workers to locate their own housing or permitting farmers to charge a modest amount for housing accommodations.

In conclusion, I want to thank you for the opportunity to testify today. I do hope that Congress will finally solve this labor problem that has plagued agriculture for too long. Congress needs to provide legal work status to the hundreds of thousands of current farmworkers who are critical to the operation of this nation's farms. And Congress must reform the current H-2A guestworker program to provide a modern program responsive to the needs of 21st century agriculture. We need a guestworker program that encourages use by farmers, rather than a program that discourages it. There are simply not enough domestic farmworkers to meet our labor needs and our food imports are increasing each year. This is a national security issue. A country than cannot feed itself cannot defend itself. It is clear that our food is going to continue to be harvested by foreign workers. The only question is whether that food will be grown and harvested in the U.S. – or in a foreign country.

Ms. LOFGREN. Thank you very much, Mr. Brim.

We will have questioning by the members of the subcommittee. But before we do, we have been joined by the ranking member of the full committee, Mr. Collins, and I would like to invite him to make his opening statement, should he wish to do so.

Mr. COLLINS. Madam Chair, thank you so much for that.

Before we begin, I must note that, again, I am glad we are having this hearing. I want to continue to emphasize not only this part of illegal immigration but, as I said earlier today, it is hard for me to admit but Jeh Johnson, the former secretary, and I actually agree there is a crisis on our border—that we do need to talk about all parts of our immigration system.

And the chairlady knows this and we have had many conversations about this, so I look forward to continuing that because we cannot not take action and simply talk about it. This is something we need to do.

But we are here today to consider another important issue—the nexus of immigration and agriculture. My congressional district in northeast Georgia is home to a vast agriculture industry and hard-working farmers, ranchers, growers, and processors who contribute to America's economy and our communities every day. I am part of that.

My family and my wife's family are in the poultry industry. We have four chicken houses. We know what this is like, and we know what our part of the state is.

In fact, there is over 10,000 farm operators who grow everything from peaches to cattle, from chickens to strawberries, and I am pleased to have one of Georgia's finest here today, Bill Brim. Bill is what we say is Georgia grown and we are happy about that and it is good to have you here today.

I know firsthand also what the farmers face when they try to assemble an adequate workforce. Farmers like Drew Echols of Jaemor Farms need help harvesting crops. Georgia peaches are fickle so timing is everything.

But the H2–A system offers almost no flexibility. This means extra hands may arrive too early or too late to get the fruit off the tree and into that homemade pie.

Worker who arrive before crops have ripened aren't allowed to find work on the other farms while they wait. At the same time, family operations like Jaemor invest a lot of time and money applying for H2–A workers.

Knowing these applications aren't always processed in time to get workers onto American farms. Farmers need a more flexible and less bureaucratic system as the agricultural industry, including meat processors, strive to put food on America's table.

Right now, to secure an H2–A employee growers must start with a Labor Department certification process. By the law—by the law, the department must certify that there are not sufficient able, willing, and qualified U.S. workers to fill these jobs. Employing an H2–A worker will not adversely affect the wage or working conditions of similarly employed U.S. workers.

While I believe these requirements were well intentioned, we should revisit their implementation since they have an expensive

and time-consuming side effects, even though we all know that growers simply cannot find U.S. workers.

Most Americans would prefer to work less labor-intensive jobs, preferably with air conditioning, even in rural areas with long rich agricultural traditions. Farmers often raise their children to pursue other lines of work.

And I will say this. One, as I mentioned Drew just a moment ago, Madam Chair, Drew's grand daddy is the start of this farm and from his parents on, Jimmy and Valvoreth started that, and Drew told the story to me a few weeks ago that when you talk about these requirements he would have people who would come who are required to go look for work.

They would come to him and they would say, I would like a job. Well, Drew would say, I will hire you right now, and it was a very good, you know, wage. He is saying, we will start you today—we will go at it, and they said, no, no, no. I don't want to work out in the strawberries. I don't want to work picking peaches. I want to go work in the shed.

Well, the family works in the shed. And they said, well, we don't have a job down there, and literally they would turn around and walk off. So sometimes I think this requirement is something we need to, again, look at.

It is also cost prohibitive, the H2–A program, because many times growers must pay over thousands of dollars in fees per worker to the government and to recruiters. In many states, agriculture employers are required to pay artificially higher wages.

The adverse effect wage rate is over $11 per hour at its lowest and over $15 at its highest, depending on the state. On top of these costs, growers must provide transportation, housing to H2–A workers once they arrive in the U.S.

So the H2–A employers who are doing their best to follow the law are routinely undercut by growers who pay lower wages because they use laborers who are not authorized to work.

This, combined with the lower cost of fruits, vegetables, and other agricultural products grown in the country and shipped in the U.S. are driving American farmers out of business in their current position and, by extension, the current H2–A program is simply unsustainable.

Congress has the ability and responsibility to enact a reasonable agricultural guest worker program so growers can pay legal workers a fair wage and also make a fair living for themselves.

So what does this look like? That is why we are having this hearing today. How are we going to go about that? I commend the subcommittee chair for taking this on. I commend my ranking member, Ken Buck, for being a part of this and other members of this committee.

We have got to tackle these issues. This is something that is inherently dependent on our security and our going forward. We will not always agree on the answers but we will need to at least ask the questions. Unfortunately, both parties have refused to ask some of those questions. It now time we do so.

Whether it is the crisis on our southern border or the crisis on our farms, it is time we give the help that we need.

And with that, Madam Chair, I yield back.

Ms. LOFGREN. The gentleman yields back, and thank you.

Before turning to the vice chair of the subcommittee for her questions, I would like to ask unanimous consent to put into the record the following statements and letters in support of the Agricultural Worker Program Act of 2019: a letter from the Alianza Nacional De Campesinas, a letter from the Farmworkers Support Committee, a letter from the Center for Migrant Rights, a statement of farm worker justice, a statement of Student Action with Farm Workers, a letter from United Fresh Produce Association, and a letter from over 140 immigration and agricultural organizations.

Without objection, that is added to the record.

[The information follows:]

CHAIR LOFGREN FOR THE RECORD



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Statement of Alianza Nacional de Campesinas
Submitted to the Immigration and Citizenship Subcommittee of the U.S. House of Representatives Committee on the Judiciary
April 3, 2019 Hearing: "Securing the Future of American Agriculture

Alianza Nacional de Campesinas submits this letter to supplement the record of the April 3, 2019, House Judiciary Subcommittee on Immigration and Citizenship hearing on "Agricultural Labor."

Alianza Nacional de Campesinas, Inc. is the first national farmworker women's organization in the United States created by current and former farmworker women, along with women who hail from farmworker families. Working through a coalition of farmworkers' organizations, workers' centers, and other networks, Alianza Nacional de Campesinas advocates on behalf of hundreds of thousands of farmworker women and their families across the country to secure social, environmental, and economic justice; prevent violence; foster equality; and promote healthier workplaces, homes, and communities for farmworker women and their families. **Among our four priority areas is helping to create a less punitive and more humane and just immigration system.**

We write to express our views about immigration policy and farmworkers, which is the subject of the April 3, 2019 hearing before the House Subcommittee on Immigration and Citizenship. We welcome efforts to reform our immigration system but we wish to ensure that agricultural workers, *campesinas*, and their families are treated fairly and consistently with our nation's democratic and economic freedoms.

Approximately 700,000 farmworker women *(campesinas)* labor in agricultural fields across the United States. Many more work in packing houses and other food-related industries. More than 60 percent are undocumented and a growing number are indigenous women who are monolingual in their own languages. Despite the indispensable work of planting, picking, and packing the fruits and vegetables that people consume daily, these women toil in the shadows of society in isolated locations that are out of sight and out of the minds of most people. Although they make a huge contribution to our economy, campesinas are among the most exploited, undervalued, and least protected workers in our country. Girls, as young as 12, who work in the fields and other areas of agribusiness are also victims of exploitation and abuse. The criminalization of undocumented immigrants, increased deportations and other immigration enforcement actions have exacerbated an already untenable situation for farmworkers and the agricultural labor system.

Because many campesinas are undocumented and often the sole caretakers of their children, the constant threat of being dismissed from their jobs or of being deported if they dare to complain makes them hesitant to speak out when their rights are violated or to take legal action to stop the exploitation and violations. It is, therefore, extremely difficult to hold the perpetrators accountable or to obtain remedies for the women. Making matters worse, law enforcement often sides with the companies, and victims are sometimes wrongfully detained.

Farmworkers' poor working and living conditions are intrinsically linked to our country's broken immigration system. The exclusion of farmworkers from basic labor protections such as the right to overtime pay, which are rooted in our

nation's history of racism, are an important factor in the poor conditions facing farmworkers and the instability in our agricultural labor system. Farm work is one of the most dangerous occupations in our country, yet farmworkers are excluded from key OSHA protections and not even covered by workers compensation in many states. Sexual harassment and assault of farmworker women are pervasive in agriculture. Farmworker wages are low—with roughly one-third of farmworkers having family incomes below the poverty level. An earned legalization program would help ensure a productive farm sector and fair treatment of the people who put food on our table.

Although campesinas and advocates have, over the years, been organizing in their home states and communities to secure help, resources, and improved conditions at the local levels, much work remains to be done to alleviate these very serious and perilous forms of exploitation and abuse.

A core element of a solution for the abuse and violations faced by farmworkers must be a path to immigration status and citizenship for the current farm labor force. We commend Rep. Lofgren and Sen. Feinstein for introducing the Agricultural Worker Program Act of 2019, which is a positive and workable solution that will meet the needs of workers and their families, while also benefiting employers. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system.

"I have been working in the fields of Miami, Florida for 14 years. I think that it's important to pass the Agricultural Worker Program Act because it would be a great economic help for me and for my family above all. My two children would have a better future and a career. Having the Blue Card would help me. My sons are named Praxediz Arguello, 10, and Roman Arguello, 9." - Nohemi Cruz, Homestead Florida

"My name is Agustina Arreguin. I have been working in the fields in Florida for 22 years. I think that it is very important to pass the Agricultural Worker Program Act because it would allow me to travel to my home country and to see my son and my parents. It would also help many others like me who all work so much to contribute to this country. As a farmworker woman with aspirations to one day own my own business, this would help me a lot." - Agustina Arreguin, Homestead Florida

Another significant and growing sector of our farm labor force are H-2A workers, but this program is rife with sex and gender discrimination, systematically excluding farmworker women from the opportunity to work. Visas have been very discriminatory towards women as agricultural jobs are promoted to men and recruit men specifically. However, we know that many women, campesinas, work the land to feed the USA and the world. The data is also very disparaging--farmworkers women are disproportionately receiving less visas than men. As an organization that serves farmworker women and funded by former and current farmworker women, we can attest that there are far more farmworker women than the data suggests who use "male" identities to work because they need to feed their families, while being some of the most marginalized people. Women are hired knowingly, yet denied even identifying themselves correctly. These are part of the flaws of the H-2A program. Focusing on this "Blue Card" program is a start to addressing some of these issues.

The H-2A temporary foreign agricultural worker program provides agricultural employers with the opportunity to gain an unlimited number of visas to hire seasonal farmworkers each year. Despite its systemic flaws, the H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The H-2A program's unprecedented growth is problematic given the inherent flaws in the H-2A program which leave workers vulnerable to abuse and exploitation. Importantly, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive farmworkers already here who should be granted a path to citizenship.

The H-2A program includes modest but inadequate wage and other labor protections developed over many decades in response to lessons learned from the Bracero program and former H-2 program. These past programs and the current H-2A program have not only harmed U.S. citizens and lawful permanent residents, but have taken undue advantage of thousands of vulnerable guestworkers. Stronger protections and enforcement are needed, not less.

"Currently, H-2A workers are like "borrowed mules." We're obligated to always work with the same employer while we're in the United States. I support the Blue Card proposal because I would no longer be forced to always stay there, instead, it would give me the chance to change

employers if, for example, one offered me more hours, or better working conditions." - Anonymous H-2A worker coming in for the 2019 season

Any efforts to address a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

1. **A roadmap to immigration status and citizenship**: If future farmworkers from abroad are needed, they should have a meaningful opportunity to become immigrants and citizens. While some foreign workers may choose to work only seasonally and not remain permanently in the United States, they should have the chance to become full-fledged members of the nation that they help feed. The H-2A program should be modified to enable its participants to earn immigration status.
2. **True economic freedom and opportunity**- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.
3. **Equality of treatment** - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.
4. **Fairness** – Farmworkers need to be paid more not less. Strong protections must preserve U.S. workers' job opportunities and prevent depression in wage rates and other job terms.
5. **No discrimination** – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.
6. **Family unity**- Neither undocumented workers nor guestworkers should have to endure being separated from their families. Farmworkers deserve the right to live with their families and to be able to fully participate in their communities.
7. **Prohibit trafficking and recruitment exploitation and discrimination**. To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment. Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

Thank you for your consideration of this statement.

Sincerely,
Mily Treviño-Sauceda,
Executive Director & Co-Founder
Alianza Nacional de Campesinas, Inc.

COMITE DE APOYO A LOS TRABAJADORES AGRICOLAS
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Statement of CATA – The Farmworker Support Committee
Submitted to the Immigration and Citizenship Subcommittee of the U.S. House of Representatives Committee on the Judiciary
April 3, 2019 Hearing: "Securing the Future of American Agriculture"

CATA submits this letter to supplement the record of the April 3, 2019 House Judiciary Subcommittee on Immigration and Citizenship hearing on "Agricultural Labor." CATA is an immigrant advocacy organization that works closely with the farmworker population in New Jersey, Pennsylvania, and Maryland. CATA sees and hears first-hand from farmworkers the struggles they face including unsafe working conditions, exposure to pesticides, low wages, and the feeling of extreme vulnerability due to their lack of immigration status.

We write to express our views about immigration policy and farmworkers, which is the subject of the April 3, 2019 hearing before the House Subcommittee on Immigration and Citizenship. We welcome efforts to reform our immigration system but we wish to ensure that agricultural workers and their families are treated fairly and consistently with our nation's democratic and economic freedoms.

Roughly one-half of the farm labor force—over one million current agricultural workers—lack authorized immigration status. The criminalization of undocumented immigrants, increased deportations and other immigration enforcement actions have exacerbated an already untenable situation for farmworkers and the agricultural labor system.

Farmworkers' poor working and living conditions are intrinsically linked to our country's broken immigration system. The exclusion of farmworkers from basic labor protections such as the right to overtime pay, which are rooted in our nation's history of racism, are an important factor in the poor conditions facing farmworkers and the instability in our agricultural labor system. Farm work is one of the most dangerous occupations in our country, yet farmworkers are excluded from key OSHA protections and not even covered by workers compensation in many states. Sexual harassment and assault of farmworker women are pervasive in agriculture. Farmworker wages are low—with roughly one-third of farmworkers having family incomes below the poverty level. An earned legalization program would help ensure a productive farm sector and fair treatment of the people who put food on our table.

A core element of a solution for the broken immigration system in agriculture must be a path to immigration status and citizenship for the current farm labor force. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer

concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system.

> "This is something I have waited a long time for. This legislation would help me to realize the biggest dream that I have had as a farmworker in the United States because it would give the opportunity to finally be able to see my family and still be able to have the opportunity to return again to continue working in agriculture, something that I see as my duty and is of great importance in feeding the families of this nation. Farmworkers would have more security and trust in their jobs, and we would be able to do them with more determination and more love." - Juan Garcia, NJ Farmworkers for over 20 years.

> "This will be a good thing for us, we would feel much safer, without the fear that comes with being an undocumented farmworker. We would feel supported and valued in our work, with an opportunity to earn a more dignified wage and the ability to travel to see our families. We would finally feel like we didn't have to stay hidden and could come out of the darkness." - Cruz Marquez, NJ Farmworker for over 9 years

> "This is important to me because it is something that I have needed for a very long time. I would feel safer at work, be able to see my family again, and more comfortable in speaking to my boss on different aspects of the job. This would be an acknowledgement of the important work of farmworkers. Most of my life I have dedicated to being a farmworker. I take pride in that, knowing that I am a hard worker and do my job well." - Antelmo Ramirez, NJ Farmworker for over 15 years

Another important and growing sector of our farm labor force are H-2A workers. The H-2A temporary foreign agricultural worker program provides agricultural employers with the opportunity to gain an unlimited number of visas to hire seasonal farmworkers each year. The H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The H-2A program's unprecedented growth is problematic given the inherent flaws in the H-2A program which leave workers vulnerable to abuse and exploitation. Importantly, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive farmworkers already here who should be granted a path to citizenship.

The H-2A program includes modest but inadequate wage and other labor protections developed over many decades in response to lessons learned from the Bracero program and former H-2 program. These past programs and the current H-2A program have not only harmed U.S. citizens and lawful permanent residents but have taken undue advantage of thousands of vulnerable guestworkers. Stronger protections and enforcement are needed, not less.

Any efforts to address undocumented farmworkers and a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

1. **A roadmap to immigration status and citizenship for current and future farmworkers**: If future farmworkers from abroad are needed, they should have a meaningful opportunity to become citizens. While some foreign workers may choose to work only seasonally and not remain permanently in the United States, they should have the chance to become full-fledged members of the nation that they help feed. The H-2A program should be modified to enable its participants to earn immigration status.
2. **True economic freedom and opportunity**- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.
3. **Equality of treatment** - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.
4. **Fairness** – Farmworkers need to be paid more not less. Strong protections must preserve U.S. workers' job opportunities and prevent depression in wage rates and other job terms.
5. **No discrimination** – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.
6. **Family unity** - Neither undocumented workers nor guestworkers should have to endure being separated from their families. Farmworkers deserve the right to live with their families and to be able to fully participate in their communities.
7. **Prohibit trafficking and recruitment exploitation and discrimination**. To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment. Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

Thank you for your consideration of this statement.

Sincerely,

Jessica Culley

Jessica Culley
General Coordinator
CATA – The Farmworker Support Committee



Statement of Centro de los Derechos del Migrante, Inc.
Submitted to the Immigration and Citizenship Subcommittee of the U.S. House of Representatives Committee on the Judiciary
April 3, 2019 Hearing: "Securing the Future of American Agriculture

Centro de los Derechos del Migrante, Inc. (CDM or "Center for Migrant Rights") submits this letter to supplement the record of the April 3, 2019 House Judiciary Subcommittee on Immigration and Citizenship hearing on "Agricultural Labor." CDM founded more than a decade ago, is a not-for-profit transnational organization that is driven by its mission to improve the conditions of low-wage workers in the United States. With offices in Baltimore, Maryland, Mexico City, and Juxtlahuaca, Oaxaca, CDM has established itself as a powerful, transnational migrant workers' rights organization. Since its founding CDM has helped over 15,000 migrant workers and recovered more than 20 million dollars in unpaid wages, thus establishing important legal precedents and policies to protect migrants all along the migrant stream.

We write to express our views about immigration policy and farmworkers, which is the subject of the April 3, 2019 hearing before the House Subcommittee on Immigration and Citizenship. We welcome efforts to reform our immigration system but we wish to ensure that agricultural workers and their families are treated fairly and consistently with our nation's democratic and economic freedoms. As we move forward, we also want to ensure that the voices of farmworker women are heard throughout this process.

Roughly one-half of the farm labor force—over one million current agricultural workers—lack authorized immigration status. The criminalization of undocumented immigrants, increased deportations and other immigration enforcement actions have exacerbated an already untenable situation for farmworkers and the agricultural labor system.

Farmworkers' poor working and living conditions are intrinsically linked to our country's broken immigration system. The exclusion of farmworkers from basic labor protections such as the right to overtime pay, which are rooted in our nation's history of racism, are an important factor in the poor conditions facing farmworkers and the instability in our agricultural labor system. Farm work is one of the most dangerous occupations in our country, yet farmworkers are excluded from key OSHA protections and not even covered by workers compensation in many states. Sexual harassment and assault of farmworker women are pervasive in agriculture. Farmworker wages are low—with roughly one-third of farmworkers having family incomes below the poverty level. An earned legalization program would help ensure a productive farm sector and fair treatment of the people who put food on our table.

A core element of a solution for the broken immigration system in agriculture must be a path to immigration status and citizenship for the current farm labor force. We commend Rep. Lofgren and Sen. Feinstein for introducing the Agricultural Worker Program Act of

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2019, which is a positive and workable solution that will meet the needs of workers, agricultural employers, and our food system. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system.

Another important and growing sector of our farm labor force are H-2A workers. CDM has advocated for H-2A workers for more than a decade. The H-2A temporary foreign agricultural worker program provides agricultural employers with the opportunity to gain an unlimited number of visas to hire seasonal farmworkers each year. The H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The H-2A program's unprecedented growth is problematic given the inherent flaws in the H-2A program which leave workers vulnerable to abuse and exploitation. Importantly, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive farmworkers already here who should be granted a path to citizenship.

The H-2A program includes modest but inadequate wage and other labor protections developed over many decades in response to lessons learned from the Bracero program and former H-2 program. These past programs and the current H-2A program have not only harmed U.S. citizens and lawful permanent residents, but have taken undue advantage of thousands of vulnerable guestworkers. Stronger protections and enforcement are needed, not less.

Workers like José Ángel Lara Limon, Oscar Eumaña, and Guillermo Arnoldo Castro Lopez – all of them H-2A workers – would be able to access a pathway to stability through the Blue Card Bill. These workers have been coming to the U.S. to work in the tobacco fields from seven to 24 years. Each year these workers leave their families behind in Mexico for the work season lasting roughly eight months, and therefore miss milestones in their children's lives.

Any efforts to address a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

1. **A roadmap to immigration status and citizenship**: If future farmworkers from abroad are needed, they should have a meaningful opportunity to become immigrants and citizens. While some foreign workers may choose to work only seasonally and not remain permanently in the United States, they should have the chance to become full-fledged members of the nation that they help feed. The H-2A program should be modified to enable its participants to earn immigration status.
2. **True economic freedom and opportunity**- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.

3. **Equality of treatment** - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.
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5. **No discrimination** – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.
6. **Family unity** - Neither undocumented workers nor guestworkers should have to endure being separated from their families. Farmworkers deserve the right to live with their families and to be able to fully participate in their communities.
7. **Prohibit trafficking and recruitment exploitation and discrimination**. To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment. Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

Thank you for your consideration of this statement.

Sincerely,

/s/ Sulma Guzmán

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Statement of Farmworker Justice
House Judiciary Subcommittee on Immigration and Citizenship

"Securing the Future of American Agriculture"

April 3, 2019

Thank you for the opportunity to submit a statement for the record about the need to reform our broken immigration system to ensure a fairly-treated and productive farm labor force. We appreciate this hearing and the opportunity it provides to address serious questions about immigration policy and the future of the farm labor force.

For almost 40 years, Farmworker Justice 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. Farmworker Justice works closely with farmworker unions and farmworker-serving organizations across the country. Our board includes representatives from each of the three major farmworker unions, the UFW, FLOC and PCUN. Our work includes collaborating closely with the legal services community representing farmworkers and through this work we follow closely the abuses and legal challenges farmworkers are facing on the ground. We share community education materials with organizations such as migrant and seasonal head start programs and migrant health centers to help ensure that programs serving farmworker children and families are aware of policy developments and their implications for the communities they serve, and inform us about how those developments are impacting farmworkers and their families. We also engage in community education training projects with farmworker groups on the ground, such as the work we are currently doing with Lideres Campesinas to produce an educational video for farmworker women about sexual harassment.

Farmworkers perform difficult, dangerous and essential work on our nation's farms and ranches to feed us all. The large majority of agricultural workers are immigrants.[1] Reform of our broken immigration system is a necessary stepping stone toward modernizing agricultural labor practices and treating farmworkers with the respect and legal protections they too often are lacking but deserve.

Immigration is a critically important issue for farmworkers, their families, rural communities and our entire food system. Today's agricultural labor system is in a state of crisis due to our broken immigration system and a stalemate in Congress regarding solutions. Approximately half of agricultural workers are undocumented immigrants.[2] Public statements and executive orders issued by President Trump calling for large scale deportations of unauthorized immigrants and the rise of anti-immigrant rhetoric have instilled fear among farmworker families and the owners of businesses that employ them. Interwoven with the fate of our nation's farmworkers is the viability of the agricultural sector, consumers' access to safe, healthy food, and our nation's food security. There is

[1] "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.
[2] Id.

much at stake in the immigration policy debate regarding farmworkers, including the civil, democratic, labor and human rights of the people who labor on our farms and ranches. The lessons we have learned from our service to farmworkers and our policy analysis compel the conclusion that farmworkers deserve to be full members of the country that they feed, including the opportunity to become citizens. In addition, any agricultural guestworker program must contain robust protections, oversight and enforcement because the restricted non-immigrant status of guestworkers inherently causes them to be vulnerable and limited in their ability to challenge unfair or illegal employment practices.

Many agricultural employers agree with farmworker organizations on the need for Congress to pass legislation that provides a path to lawful permanent residency and citizenship for current undocumented farmworkers and family members. They recognize the devastating consequences of losing their experienced workforce and the harms that living in fear of deportation imposes on farmworkers and their family members. We commend Chairwoman Lofgren and Senator Feinstein for their leadership in introducing the Agricultural Worker Program Act. It would provide a realistic and practical path forward for our farm labor force to earn lawful immigration status. We should respect the valuable role of farmworkers in our agriculture and food system and ensure that they enjoy the democratic and economic freedoms of this nation.

I. Farmworkers and Our Nation's Immigration System

Approximately 2.4 million farmworkers labor on our nation's farms and ranches, cultivating and harvesting crops, and raising and tending to livestock.[3] The Department of Labor's National Agricultural Worker Survey ("NAWS") estimates that approximately 49% of farmworkers lack work authorization,[4] with some sources estimating that as much as 70% or more of the workforce is undocumented.[5] Given these estimates, there are at least 1.2 million undocumented farmworkers, many of whom are accompanied by a family member, including many U.S. citizen children. According to the NAWS, at least 75% of undocumented farmworkers have been living in the United States for 10 years or more.[6] These hard-working individuals are vital members of the rural communities that they help to feed and support through their work, their spending and their other contributions.

The failure to fix the immigration system and the current focus on indiscriminate immigration enforcement has resulted in serious negative effects on farmworkers and their families. Undocumented workers' fear of deportation and job loss deprives them of bargaining power with their employers and inhibits them from challenging illegal employment practices. The

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[3] Philip Martin, "California Ag Employment: 2014" (lecture slides, University of California at Davis) http://migrationfiles.ucdavis.edu/uploads/cf/files/2014/04/22/martin-california-ag-employment-2014.pdf .

[4] "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

[5] Alfonso Serrano, "Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws," *Time,* September 21, 2012 , http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/.

[6] "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

undocumented status of the majority of farmworkers is widely recognized as a major contributing factor to the low wages, poor conditions and extensive illegal practices in agriculture.[7]

Unscrupulous employers take advantage of their undocumented workers in many ways, including by paying them less than the required wage, harming not only the workers, but also law-abiding employers, who are placed at a competitive disadvantage. The vulnerability of undocumented workers depresses wages and working conditions for all farmworkers, including the roughly 750,000 to 1.2 million United States citizens and lawful immigrants currently working in agriculture. U.S. farmworkers recognize that they can easily be fired and replaced by more exploitable workers if they speak up for their rights. An analysis of DOL's enforcement statistics shows that violations of the labor laws protecting farmworkers were found in a majority of the agency's investigations across the country, with an average rate of non-compliance of about 70% in all investigations in agriculture.[8]

Undocumented farmworkers are also fearful of participating fully in their communities, meaning they may only seek medical assistance when urgently needed, be reluctant to join community events and school activities, and otherwise limit their interaction with local businesses and opportunities. This impacts not only those without immigration status, but also their U.S. citizen children and fellow community members. A vibrant rural community can only be sustained by the participation of all community members.

II. Farmworkers and our Nation's Discriminatory Labor Protections

Farmworkers are excluded from many of the basic labor protections that cover other workers. For example, farmworkers are excluded from the National Labor Relations Act. This exclusion means that unless a state extends protections to farmworkers, farmworkers can be fired for the simple act of organizing to advocate for better wages or stronger workplace protections. California is the only state with a labor relations law that protects the right to organize and creates a structure to implement collective bargaining. .

Farmworkers are also excluded from many of the protections provided by the Fair Labor Standards Act (FLSA), exclusions that are rooted in racism and political expediency that have persisted to this day. Despite the physically challenging work and long hours many farmworkers endure, they are not covered by the FLSA overtime protection. California is the only state that has passed legislation to provide farmworkers with the same right to overtime pay as other workers, with the recently passed law currently being phased in. On certain small farms, farmworkers are not even provided the protections of a federal minimum wage.

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[7] Irma Morales Waugh, "Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women." Violence Against Women 16, no. 3 (2010): 237 – 261; available at: http://journals.sagepub.com/doi/abs/10.1177/1077801209360857?legid=spvaw%3B16%2F3%2F237&patientinform-links=yes&; "Human Rights Alert: New Mexico's Invisible and Downtrodden Workers." New Mexico Center on Law and Poverty, http://nmpovertylaw.org/wp-content/uploads/2015/04/Report-FINAL-2013-07-23.pdf; "Report of Wage Survey of Willamette Valley Farmworkers Engaged in Piece-Rate Harvest of Selected Agricultural Products during 2009," Northwest Tree Planters and Farmworkers United (PCUN), 2009, available upon request.

8 "U.S. Department of Labor Enforcement in Agriculture: More Must Be Done to Protect Farmworkers Despite Recent Improvements," Farmworker Justice, accessed March 26, 2019, https://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeDOLenforcementReport2015%20%281%29.pd

In addition, the child labor protections of the FLSA offer less protection to agricultural workers than to all other workers. Under the law, for tasks designated by DOL as "hazardous," there is a minimum age of 18 for all industries except agriculture, which has a minimum age of 16 for such tasks, even though agriculture is one of the most dangerous occupations, with routine exposure to dangerous pesticides, arduous labor and extreme heat. In other ways, the child-labor protections in agriculture are lower than in other industries. For example, for most jobs the normal minimum age is 16 (with few exceptions), but in agriculture it is 14 (with many exceptions).[9] Moreover, there are fewer restrictions in agriculture on the number of hours that children are permitted to work. There are no restrictions on agricultural work being done by children as young as 12 years old early in the morning or late into the night.[10] Nor does the FLSA contain any restrictions on the number of hours worked per day or per week by young farmworkers (except that no work can be done during school hours).The law's protections against the hazards of students working in shopping malls are stronger than the protections against children working in agriculture, where toxic pesticides and other hazards threaten their future.

Female farmworkers, who represent approximately 32% of the farm labor force, face unique challenges in terms of sexual harassment and discrimination and unsanitary and unsafe workplace conditions.[11] Sexual assault and harassment in the fields is rampant, with one California study finding that 80% of Mexican farmworker women surveyed had experienced sexual harassment.[12]

The OSHA safety standards also discriminate against farmworkers, with the majority of OSHA's standard not applying to farmworkers. Among the many OSHA standards that exempt agriculture are protections against electrocution and unguarded machinery, requirements for ladder safety, and whistle-blower protections.[13] One of the greatest hazards for the health of both farmworkers and their families is exposure to pesticides. Farmworkers have one of the highest rates of chemical exposures among U.S. workers. However, OSHA's rules regarding hazardous workplace chemicals exclude the regulation of pesticides. Even though OSHA is the government agency tasked with ensuring safe working conditions for most workers, the authority to regulate pesticides is under the U.S. Environmental Protection Agency (EPA).

At the same time, only 12 states as well as the District of Columbia, the Virgin Islands and Puerto Rico require full workers' compensation coverage for agricultural workers. In all other states, coverage is either optional or limited. Workers' compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. In addition to the benefits to the worker or their family, the goals of workers' compensation are to return workers to the job, help mitigate hazards and assist with injury surveillance.

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[9] Compare 29 USC § 213(c)(1)(C) with 29 USC § 203(l).
[10] Id. § 213(c)(1)(A).
[11] Human Rights Watch, "Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment (2012), accessed April 2, 2019, available at https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual.
[12] Irma Morales Waugh, "Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women," 16 Violence Against Women 237, 241, 2010; see also *The Atlantic*, There's a Sexual-Harassment Epidemic on America's Farms, Ariel Ramchandani, ,JAN 29, 2018, available at https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/.
[13] See 29 C.F.R. 1928.21 (noting general exemption of OSHA standards for agriculture and pointing to few standards which are applicable in agriculture).

Such discriminatory laws and the resultant poor working conditions serve to keep many farmworkers in a cycle of poverty. Farmworkers' incomes are very low. Poverty among farmworkers is more than double that of the U.S. population[14] and their mean and median income in 2015-2016 was in the range of $17,500 to $19,999.[15] One-third of farmworkers had family incomes below poverty (33%). Many workers earn little more than the minimum wage. On top of their low wages, few farmworkers receive any fringe benefits, such as paid sick leave or health insurance. Substandard housing is all too common due to overcrowding, poor sanitation, poor housing quality, proximity to pesticides, and lax inspection and enforcement of housing regulations.

All of these factors result in high employee turnover in agriculture. Such instability in the workforce reduces productivity for businesses and harms the ability of farmworkers to improve working conditions, support their families and contribute to their communities.

III. The H-2A Agricultural Guestworker Program

A major development over the past decade has been the substantial increase in employers' use of the H-2A agricultural guestworker program. The H-2A program offers an unlimited number of temporary work visas to agricultural employers to bring in foreign workers to perform temporary or seasonal agricultural work. Agricultural employers must demonstrate they have tried and are unable to find U.S. workers to meet their labor needs and that bringing in guestworkers will not adversely impact the wages and working conditions of U.S. farmworkers. The H-2A program is limited to temporary or seasonal jobs based on the claimed difficulty of attracting U.S. workers to jobs that last less than one year and therefore yield less annual income than year-round jobs.

Since its inception, Farmworker Justice has monitored the H-2A program throughout the country and analyzed proposals for policy changes. Specifically, with respect to the H-2A temporary foreign agricultural worker program, Farmworker Justice seeks to ensure that 1) the operation of the H-2A program serves the statutory purpose of ensuring that U.S. workers are not displaced and do not suffer adverse effects in their wages or working conditions due to the hiring of temporary foreign workers under the H-2A program; and 2) the H-2A program provides basic labor protections for both H-2A workers and U.S. workers in corresponding employment, and that those labor protections are enforced for both U.S. and foreign workers.

The H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The vast majority of applications— 96% in FY 2018—are approved; timeliness for that approval was 92%. From FY 2017 to FY 2018, several states saw significantly large increases in program usage, including an increase of 38% in Georgia, 34% in Washington, 30% in Michigan, 24% in Arizona and California, and 20% in Florida. This growth is expected to continue. Despite the H-2A program's exponential growth, the Department of Labor (DOL), which is the agency charged with oversight and enforcement of the program, has not seen any increase in its resources to carry out this crucial role.

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[14] "What are poverty rates among working adults?" Center for Poverty Research, University of California at Davis, accessed March 6, 2017, http://poverty.ucdavis.edu/faq/what-are-poverty-rates-among-working-adults.
[15] Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

The H-2A program's unprecedented growth is problematic for several reasons. First of all, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive, experienced farmworkers already here who should be granted a path to citizenship and are currently living in fear.

In addition, the H-2A program for decades has demonstrated that it is inherently flawed, resulting in workers vulnerable to abuse and exploitation, as revealed in numerous exposés and the Farmworker Justice report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers.*[16] The H-2A program includes modest protections that are intended to ensure that the jobs, wages and working conditions of the domestic workforce are protected and that temporary foreign workers are not exploited. Unfortunately, these protections, while important, are inadequate to protect U.S. and foreign workers from abuse. The H-2A program's structural flaws create a system in which guestworkers are vulnerable to abuse and many employers prefer guestworkers over U.S. workers.

One fundamental flaw in the H-2A program is the worker's tie to a single employer – H-2A workers can only work for the employer that obtained their visa. The workers do not have a right to seek a job at another employer if they are dissatisfied with or mistreated by that employer. If the worker leaves the job, or is fired, the worker must return to his home country. In addition, it is the employer who decides whether the worker will be offered the opportunity to obtain a visa in the next year. Under these constraints, most guestworkers are extremely reluctant to complain about their treatment on the job and are very vulnerable to exploitation. In addition, the employers can extract very high levels of productivity from these vulnerable guestworkers without paying them higher wages or offering special incentives. Often employers prefer guestworkers over U.S. workers because of their dependence on their employer for their ability to work and remain in the United States and the fact that they are unable to seek out better wages or working conditions.

Further compounding this vulnerability, many guestworkers arrive deeply in debt, having paid significant recruiters' fees for the opportunity to work in the United States, often under very misleading descriptions. Depending on their country of origin, workers pay anywhere from hundreds of dollars to thousands of dollars in recruitment fees. In addition, workers are sometimes required to leave collateral, such as a property deed, with recruiters to ensure that workers will complete their contract. False promises of potential earnings, misleading or undisclosed contract terms, excessive recruitment fees and increasingly, the involvement of organized crime found in countries of origin often lead to cases of debt bondage and human trafficking in the United States. The anti-trafficking organization Polaris recently released a report covering human trafficking in temporary work visa programs during the period 2015-2017, which showed that the category with the most reported trafficking cases—over 300—was the H-2A program.[17]

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[16] "No Way to Treat a Guest," Farmworker Justice, accessed March 6, 2017, https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf.

[17] Polaris, "Human Trafficking on Temporary Work Visas – A Data Analysis 2015-2017, last accessed April 2, 2019, https://polarisproject.org/sites/default/files/Human Trafficking on Temporary Work Visas A Data Analysis 2015-2017.pdf.

Upon arrival in the U.S., these indebted workers are too fearful of losing their jobs and being deported to challenge unfair or illegal conduct. Although the H-2A regulations prohibit recruitment fees, workers have little incentive to come forward to report violations as they will likely lose their chance of obtaining a visa if they do so, limiting any ability to repay the debt they have accrued. In these circumstances, U.S. workers are often viewed as insufficiently compliant and undesirable. Responsible, law-abiding employers should not suffer unfair competition from businesses that benefit from abusive international labor recruiting.

Another 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. Discrimination based on national origin, race, age, disability and gender is "deeply entrenched" in the H-2 guestworker system.[18] Almost uniformly, H-2A workers are single young men who are not accompanied by their families. Women, who once worked side-by-side with male counterparts, are largely absent from the H-2A workforce, even though they make up about a third of the national farmworker population. In addition to not having any daily family responsibilities to distract them from performing their H-2A jobs, H-2A workers have no ties to the local community outside of work and return at the end of the day to a barracks or trailer shared by other male workers, often in isolated locations and without access to transportation. *As one grower stated, "[H-2A workers] are here with one thing on their mind -- to work. They don't have vehicles. It's perfect."* [19]

The vulnerability of H-2A workers makes them attractive to many agricultural employers in comparison to immigrants and U.S. citizens, but H-2A employers also have financial incentives to hire foreign guestworkers rather than U.S. workers. Once in the H-2A program, employers often prefer foreign workers for the substantial tax benefits. Under the H-2A program, employers do not pay Social Security (FICA) or unemployment (FUTA) taxes on their H-2A employees' wages. This means that an H-2A employer saves more than 10% in taxes by hiring a foreign worker instead of a legal U.S. resident.[20]

The H-2A workers' restricted, "non-immigrant" status not only deprives them of economic bargaining power but also prevents them from acquiring political power. No matter how many years an H-2A worker returns for agricultural work, he is not entitled to earn immigration status. Guestworkers never obtain the right to remain in the U.S., become citizens, or exercise the right to vote. The political powerlessness of the temporary foreign workers in comparison to their employers contributes to worker vulnerability and an inability to persuade government officials to protect them from abuse. Government officials represent the interests of citizens, not guestworkers. Thus far, few H-2A workers have been able to join unions. The H-2A program's restrictions are not consistent with our nation's commitment to economic and political freedom. Ours is a nation of immigrants, not a nation of guestworkers.

At the same time, these and other incentives in the H-2A program have led to tremendous obstacles for U.S. workers who seek jobs at H-2A employers. While roughly half of the agricultural workforce is undocumented and in need of an earned legalization program, another half of the

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[18] Southern Poverty Law Center, "Close to Slavery," (2007), p. 34.
[19] *The Atlanta Journal Constitution*, "Debate Over Illegals Roils Onion Country," Apr. 6, 2006.
[20] See Stephen Wagner, "Contract Vineyard Labor Issues," June 15, 2018, Wine and Craft Beverage News, available at https://wineandcraftbeveragenews.com/contract-vineyard-labor-issues/.

workforce are immigrants and citizens who seek employment in agriculture. Unfortunately, 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.[21]

Even where workers find the courage to come forward regarding their treatment, they face many obstacles pursuing justice. H-2A workers are excluded from the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), one of the primary law protecting farmworkers. AWPA gives U.S. workers protection against abusive labor contractors, unsafe transportation, assurances that their employers' promises are enforceable, and the right to file a lawsuit in federal court to enforce these rights. AWPA's exclusion of H-2A workers deprives them of these substantive protections and denies them the ability to go to federal court to enforce the promises made to them. Another barrier to H-2A guestworkers seeking redress for illegal actions and worker abuses is their difficulty, and often inability, to obtain visas to return to the United States to testify at their trials or to provide deposition testimony.

Despite their shortcomings, the current H-2A program protections are integral to the protection of U.S. workers—both to safeguard their access to jobs and to ensure there are no adverse effects on their wages and working conditions. The program protections are also needed to help protect vulnerable H-2A workers from exploitation. These protections must be maintained and strengthened, and greater resources must be afforded to DOL to ensure adequate oversight for the application process and enforcement. These protections include:

- Minimum wage protections. Under the H-2A program, employers must pay the higher of the state or federal minimum wage rate, the local prevailing wage, the agreed-upon collective bargaining wage rate, or the adverse effect wage rate (the average wage of nonsupervisory field and livestock workers as determined by a USDA survey). Wage protections are necessary for several reasons. First, without them U.S. workers would be competing against job applicants who would be willing to work for much lower wages than U.S. workers due to the lower costs of living and lower earnings in their home countries. Second, because H-2A workers are tied to their employers by their visas, they lack economic freedom to switch employers and are unable to bargain for higher wages. Third, under the H-2A program, the employer need not offer more than the minimum wage required by the H-2A program even when there are U.S. workers available to accept the job if the wage rates were higher. A worker who asks for a higher wage rate can be deemed to be "unavailable for work" and the available job can be filled with a guest worker at the minimum required wage. For these reasons, it is necessary to require H-2A employers to offer and pay a market-based wage.
- Job preference for U.S. workers. The longstanding "50% rule" is the principal mechanism to give U.S. workers a meaningful opportunity to obtain jobs with employers who claim they need guestworkers to fill labor shortages. The 50% rule requires employers to hire qualified U.S. workers who apply for work until the first half of the season has elapsed. Due to hiring patterns and the nature of agricultural production, which often involves varying start times and a gradual development leading up to the peak season, it makes perfect sense to ensure that qualified job applicants are hired even after the first "official" day of work.

[21] See Jessica Garrison, Ken Bensinger, Jeremy Singer-Vine, Buzzfeed News, "All You Americans Are Fired," Dec. 1, 2015, available at https://www.buzzfeednews.com/article/jessicagarrison/all-you-americans-are-fired.

- Minimum work guarantee. The "three-fourths guarantee" requires the employer to identify the planned contract period and then provide working hours for at least ¾ of that period, or pay wages for any shortfall. This protection discourages employers from recruiting an over-supply of workers and provides some reasonable minimum earnings assurances for foreign and domestic migrant workers who spend the time and resources to travel long distances to accept employment.
- Prohibition against workers paying for jobs. The H-2A program rules prohibit employers or their recruiters from requiring workers to pay recruitment fees to obtain employment. Frequently, H-2A guestworkers pay for the opportunity to be hired and enter the U.S. in debt and desperate to retain their jobs under any circumstances.
- Housing: Employers must provide housing that meets safety standards at no cost to the worker. Long-distance migrant workers, especially those from other nations, have little ability to arrange for housing, ensure that housing is safe, or to afford the cost of housing in the U.S.
- Transportation: Workers who complete one-half the season are entitled to reimbursement of their in-bound travel costs; workers who complete the season are entitled to their outbound costs. Transportation expenses are a large burden for low-paid farmworkers working for a few weeks or months. This payment also helps ensure that workers can afford to return home.
- Workers' Compensation: Employers soliciting H-2A workers must provide workers' compensation insurance for occupational injuries (but not health insurance coverage).

IV. The Path Forward to Fix the Broken Immigration System for Agriculture and Stabilize our Farm Labor Force

a. Path to immigration status for the current, experienced workforce

As history and H-2A experiences demonstrate, the H-2A program should not and cannot be the principal mechanism in our free market economy for hiring farmworkers. We need to stabilize the workforce and keep agriculture productive by allowing the current agricultural workforce who lack immigration status to obtain lawful permanent residency with a path to citizenship. We also must improve wages and working conditions to attract and retain farmworkers, which requires both improvement in employer practices and reforms in employment laws and regulations.

The Agricultural Worker Program Act, introduced by Rep. Lofgren (H.R. 641) and Sen. Feinstein (S. 175) , is a positive and workable solution in Congress that will meet the needs of workers, agricultural employers, and our food system. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system. The conditions for farmworkers in this country are not what they should be and Congress should address discriminatory immigration, labor, occupational safety, health and other policies that impede farmworkers' efforts from achieving the American dream for themselves, their families and their communities.

b. The Farmworkers of the Future: Principles for Guestworker Reform

Anticipating that any future compromise may include a guestworker program, we seek to identify fundamental principles to ensure basic fairness and human dignity as well as economic freedom and democratic rights.

The Basic Premise: Businesses that claim to have a labor shortage and seek to hire workers from abroad should be required to recruit effectively inside the United States and offer competitive wages and working conditions. Thus, at a minimum, per longstanding legislative language, a temporary foreign worker program should not "adversely affect" the wages and working conditions or job opportunities of U.S. farmworkers. Employers should not be allowed to create artificial labor shortages by offering below-market job terms that only individuals from poorer countries could accept. Foreign workers should not be subjected to family separation, discrimination, debt peonage, human trafficking, wage theft or other exploitation of their vulnerability. Government policy also should prevent distortion of labor markets that results from high concentrations of guestworkers whose limited bargaining power tends to allow employers to depress wages and other job terms. Domestic and foreign workers must be supported in winning improvements in wages, fringe benefits and working conditions.

Any efforts to address a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

A roadmap to citizenship: Any visa worker program should provide participating workers with an opportunity to earn lawful permanent resident immigration status and U.S. citizenship. While some foreign workers may choose to migrate for work only seasonally or for a temporary period, and not apply for permanent status in the United States, *that choice should be theirs*. The requirements to adjust to lawful permanent resident status should be reasonable. Eligible family members—spouse/partner and children—should be able to adjust their status along with the visa holder.

Family Unity: Guestworkers should be permitted to be accompanied by their immediate family members (spouse/partner and minor children). The immigration policy of the United States should support family cohesiveness.

True economic freedom and opportunity- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.

Equality of treatment - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.

Fairness – Farmworkers need to be paid more not less. Strong protections must preserve U.S. workers' job opportunities and prevent depression in wage rates and other job terms.

No discrimination – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.

Prohibit trafficking and recruitment exploitation and discrimination: To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment.[22] Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

V. Conclusion

We must move forward to pass immigration reform that empowers farmworkers to improve their inadequate wages and working conditions. For today's and tomorrow's farmworkers, a roadmap to immigration status and citizenship, combined with strong labor protections and economic freedom, are essential to these goals. It is long past the time that our nation's farmworkers were treated with the respect they deserve.

Thank you for your consideration of this statement.

[22] "The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse," International Labor Recruitment Working Group, February 2013, available at: https://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf.

Statement of Student Action with Farmworkers
Submitted to the Immigration and Citizenship Subcommittee of the U.S. House of Representatives Committee on the Judiciary
April 3, 2019 Hearing: "Securing the Future of American Agriculture

Student Action with Farmworkers submits this letter to supplement the record of the April 3, 2019 House Judiciary Subcommittee on Immigration and Citizenship hearing on "Agricultural Labor."

We write to express our views about immigration policy and farmworkers, which is the subject of the April 3, 2019 hearing before the House Subcommittee on Immigration and Citizenship. We welcome efforts to reform our immigration system but we wish to ensure that agricultural workers and their families are treated fairly and consistently with our nation's democratic and economic freedoms.

Roughly one-half of the farm labor force—over one million current agricultural workers—lack authorized immigration status. The criminalization of undocumented immigrants, increased deportations and other immigration enforcement actions have exacerbated an already untenable situation for farmworkers and the agricultural labor system.

Farmworkers' poor working and living conditions are intrinsically linked to our country's broken immigration system. The exclusion of farmworkers from basic labor protections such as the right to overtime pay, which are rooted in our nation's history of racism, are an important factor in the poor conditions facing farmworkers and the instability in our agricultural labor system. Farm work is one of the most dangerous occupations in our country, yet farmworkers are excluded from key OSHA protections and not even covered by workers compensation in many states. Sexual harassment and assault of farmworker women are pervasive in agriculture. Farmworker wages are low—with roughly one-third of farmworkers having family incomes below the poverty level. An earned legalization program would help ensure a productive farm sector and fair treatment of the people who put food on our table.

A core element of a solution for the broken immigration system in agriculture must be a path to immigration status and citizenship for the current farm labor force. We commend Rep. Lofgren and Sen. Feinstein for introducing the Agricultural Worker Program Act of 2019, which is a positive and workable solution that will meet the needs of workers, agricultural employers, and our food system. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system.

"It's hard to hear people not understand why we want better treatment. Their simple answer is getting another job. It's not that easy for me, especially because I am undocumented in this country. My answer to them is, it's not the only option but it is the closest to my reach and it's my hands that harvest the food you eat". - Jesus, Farmworker, Newton Grove NC, 2011

Another important and growing sector of our farm labor force are H-2A workers. The H-2A temporary foreign agricultural worker program provides agricultural employers with the opportunity to gain an unlimited number of visas to hire seasonal farmworkers each year. The H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The H-2A program's unprecedented growth is problematic given the inherent flaws in the H-2A program which leave workers vulnerable to abuse and exploitation. Importantly, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive farmworkers already here who should be granted a path to citizenship.

The H-2A program includes modest but inadequate wage and other labor protections developed over many decades in response to lessons learned from the Bracero program and former H-2 program. These past programs and the current H-2A program have not only harmed U.S. citizens and lawful permanent residents, but have taken undue advantage of thousands of vulnerable guestworkers. Stronger protections and enforcement are needed, not less.

"When you have a large family, you realize you have to look for better options. The United States has always bene an option for Mexicans trying to get ahead, right? So I had the opportunity- a friend recommended this ranch wehre I could come to work. And once I was here, I liked the work although fieldwork can be a burden. In Mexico, I didn't make enough to support us, to send my kids to school. I have the hope that one day, one of my kids will make it and finish a degree. Out of necessity, I came from Mexico to the United States for work. [...]

Definitely, it's a sacrifice, a huge endeavor, what I'm doing, what we do. It's difficult to separate from your family, to leave them in Mexico, and the work here is hard. There are times, even resting, when your back hurts, your feet hurt. I've made this sacrifice because I didn't want things to stay as they were. [...]"-Leobardo, H2A Worker 2006-2008

"There were thirty to fifty migrant farmworkers that were working at one of the very large Christmas tree farms here in Avery County...they had only been in the country two or three days, had a very different set of expectations of what would be provided to them according to the H2A policies and here they were basically being held captive and their passports had been taken. It was a very tense moment, becoming very aware of how vulnerable this population is and how often growers and the power of capitalism and the labor economy puts profits over people way too often." – Greg McClure, SAF alumni, 1995

Any efforts to address a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

1. **A roadmap to immigration status and citizenship**: If future farmworkers from abroad are needed, they should have a meaningful opportunity to become immigrants and citizens. While some foreign workers may choose to work only seasonally and not remain permanently in the United States, they should have the chance to become full-fledged members of the nation that they help feed. The H-2A program should be modified to enable its participants to earn immigration status.

2. **True economic freedom and opportunity**- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.
3. **Equality of treatment** - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.
4. **Fairness** – Farmworkers need to be paid more not less. Strong protections must preserve U.S. workers' job opportunities and prevent depression in wage rates and other job terms.
5. **No discrimination** – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.
6. **Family unity** - Neither undocumented workers nor guestworkers should have to endure being separated from their families. Farmworkers deserve the right to live with their families and to be able to fully participate in their communities.
7. **Prohibit trafficking and recruitment exploitation and discrimination**. To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment. Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

Thank you for your consideration of this statement.

Sincerely,

Student Action with Farmworkers

UNITED FRESH
PRODUCE ASSOCIATION

April 3, 2019

The Honorable Zoe Lofgren
Chairwoman, House Judiciary Subcommittee
on Immigration and Citizenship
2141 Rayburn House Office Building
Washington, DC 20515

The Honorable Ken Buck
Ranking Member, House Judiciary Subcommittee
on Immigration and Citizenship
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Lofgren and Ranking Member Buck,

The United States produce industry is in desperate need of a legislative solution to our workforce challenges. For more than a decade United Fresh Produce Association and allied agriculture partners have worked to pass legislation to reform our broken immigration system and help build a legal and reliable workforce.

The attached data tells the story of our declining workforce with limited replacements coming behind. The only solution to ensure our ability to grow and harvest fruits and vegetables in the United States is to provide a path to legal status for our current undocumented workers and to develop a modernized guest worker program that meets the foreseeable needs of growers across the country.

We believe these are the essential provisions of legislation to address the labor crisis in agriculture. For the current workforce, there must be a reasonable transition to legal status for agricultural workers who have been in the United States for several years. In addition, similar legal status must be provided to protect these workers' immediate families – parents and children.

A modernized guest worker program must include the following key elements:

- Year-round visas for workers rather than temporary or seasonal
- A wage rate that is protective of U.S. workers that is fair and predictable
- Inclusion of workers in minimal processing such as cutting fresh fruits and vegetables
- Housing and transportation allowances for foreign workers
- Stronger administrative role by USDA to support U.S. agriculture's needs
- Flexibility for workers/employers in portability with up to three-year visas
- No arbitrary cap on the number of visas; the program must reflect the actual demand for workers in the marketplace.

The United Fresh Produce Association urges you to support immediate legislation that addresses both the challenges of workers currently in the United States, as well as the need to ensure a consistent flow of future workers to harvest the fruits and vegetables in America that help feed our nation and the world.

Sincerely,

Tom Stenzel
President and CEO

Founded in 1904, the United Fresh Produce Association serves companies at the forefront of the global fresh and fresh-cut produce industry, including growers, shippers, fresh-cut processors, wholesalers, distributors, retailers, foodservice operators, industry suppliers and allied associations. From its headquarters in Washington, D.C., United Fresh and its members work year-round to make a difference for the produce industry by driving policies that increase consumption of fresh produce, shaping critical legislative and regulatory action, providing scientific and technical leadership in food safety, quality assurance, nutrition and health, and developing educational programs and business opportunities to assist member companies in growing successful businesses.

April 3, 2019

Dear Member of Congress:

The undersigned organizations join together to ask you to co-sponsor the Agricultural Worker Program Act of 2019. This bill provides a one-time opportunity for experienced agricultural workers to apply for legal status if they show consistent employment in U.S. agriculture and meet other criteria. This bill is a bridge until broader reform can be enacted and will provide desperately needed legal status for farmworkers to stabilize the agricultural economy.

The legislation reflects the farmworker legalization program found in the comprehensive immigration reform package of 2013. The legislation does not include changes to the H-2A program.

During a time when President Trump has declared open season on immigrants and the Justice Department has put its power behind the deportation machinery, we need to take bold steps to protect farmworkers. As experienced in agricultural communities across the U.S., the impact of President Trump's immigration enforcement in agriculture is dire. Farmworkers make easy enforcement targets, resulting not only in increased fear and vulnerability for farmworkers but also in disruptions to agricultural production.

This bill sends a clear signal that there are leaders in Congress ready to engage constructively on immigration and to move beyond policy by soundbite. The Agricultural Worker Program Act of 2019 would help ensure a stable, legal workforce in agriculture, to the benefit of farmworkers, employers, consumers and the national interest. We encourage you to sponsor this legislation and join this important effort to protect those who put food on our tables and without whom our agricultural system would be laid to waste.

Sincerely,

Advocates for Basic Legal Equality, Inc.
Alabama State Association of Cooperatives
Alianza Nacional de Campesinas, Inc.
Alliance of Baptists
American Federation of Government Employees Local 3354
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Asian Americans Advancing Justice (AAJC)
ASPIRA Association
Association of Farmworker Opportunity Programs (AFOP)
California Human Development
CaliforniaHealth+ Advocates
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
CASA del Llano, Inc.
CASA of Oregon

CATA - The Farmworker Support Committee/El Comite de Apoyo a los Trabajadores Agricolas
Center for Employment Training
Central Valley Opportunity Center
Centro de los Derechos del Migrante, Inc.
Church Women United--NC Chapter
Church Women United--Raleigh/Wake (NC)
Coalition for Humane Immigrant Rights - CHIRLA
Coalition of Florida Farmworker Organizations
Columbia Legal Services
Coming Clean
Community Food and Justice Coalition
Congressional Hispanic Caucus Institute
CRLA Foundaton
Cumberland Presbyterian Church
Disciples Refugee & Immigration Ministries
Earthjustice
Ecumenical Poverty Initiative
The Episcopal Church
FarmDrop.us
Farm Worker Ministry Northwest
Farmworker Advocacy Network
Farmworker Association of Florida
Farmworker Justice
Farmworker and Landscaper Advocacy Project -FLAP-
Federation of Southern Cooperatives/ Land Assistance Fund
Food Empowerment Project
Freedom Network USA
Frenchtown Heritage Hub
Friends of the Earth
Greater New York Labor Religion Coalition
GreenLatinos
HEAL Trafficking
Health Outreach Partners
Hispanic Association of Colleges and Universities (HACU)
Hispanic Federation
Human Agenda
iEat Green, LLC
Illinois Migrant Council
Immigrant Worker Project - Centro San Jose
Indivisible East Bay
Indivisible Marin
Institute for Agriculture and Trade Policy
Interfaith Center on Corporate Responsibility
Interfaith Solidarity Network San Fernando Valley
Johns Hopkins Center for a Livable Future
Justice at Work (Pennsylvania)
Justice for Migrant Women
Justice in Motion

Kentucky Equal Justice Center
Kids for College
Korean Resource Center
La Cooperativa Campesina de California
La Union del Pueblo Entero (LUPE)
LatinoJustice PRLDEF
Leadership Conference of Women Religious (LCWR)
Legal Aid Justice Center
Legal Aid Society of MFS
LiveWell Colorado
Madison Area Technical College
MAFO, Inc.
MALDEF
MANA, A National Latina Organization
Maryland Wineries Association
Michigan Immigrant Rights Center
Michigan Migrant Legal Aid
Migrant Clinicians Network
Missions Ministry Team, Cumberland Presbyterian Denomination
The Monkey Wrench Brigade
Multicultural Efforts to end Sexual Assault (MESA)
MultiCultural Outreach Program
National Association of Hispanic Federal Executives (NAHFE)
National Center for Lesbian Rights
National Council of Churches
National Farm Worker Ministry
National Korean American Service & Education Consortium (NAKASEC)
National Latino Farmers & Ranchers Trade Association
National Latinx Psychological Association
National Network for Immigrant and Refugee Rights
National Partnership for New Americans
National Sustainable Agriculture Coalition
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
North Carolina Association of Black Lawyers Land Loss Prevention Project
North Carolina Council of Churches
North Carolina Justice Center
Northeast Sustainable Agriculture Working Group
Northwest Forest Worker Center
Occupy Bergen County
Ohio Immigrant Alliance
Oklahoma Black Historical Research Project, Inc.
Operation Access
Oxfam America
Pesticide Action Network
Preble Street
Proteus Inc.
Public Justice Center

Puente de la Costa Sur
Regeneration International
Roots of Change
Rural & Migrant Ministry, Inc
Rural Advancement Fund
Rural Advancement Fund of the National Sharecroppers Fund
Rural Coalition
Rural Development Leadership Network
SER Corporation of Kansas
SER Jobs for Progress National Inc.
Service Employees International Union (SEIU)
Sisters of Charity of the Blessed Virgin Mary
Slow Food North Shore
Southern Poverty Law Center
St. Luke's Health Window
Student Action with Farmworkers
Sustainable Agriculture of Louisville
Telamon Corporation
Texas/Mexico Border Coalition
The Rinehart Clinic & Pharmacy
Toxic Free North Carolina
Transformations CDC
UnidosUS
United Farm Workers
United Farm Workers Foundation
Unitarian Universalists for Social Justice (UUSJ)
United Migrant Opportunity Services/UMOS
Verite
Wayne Action for Racial Equality
WeCount!
WholeCrops
Worker Justice Center of NY
World Farmers
Yes We Can Workers Families

Ms. LOFGREN. And Ms. Jayapal is recognized for five minutes.

Ms. JAYAPAL. Thank you, Madam Chair, and thank you for your tremendous work on this issue and so many others within the immigration sphere and for having this hearing.

We are here today to talk about some of the most important workers in our country. That is farm workers. Workers who do essential back-breaking work growing the food we eat and taking care of the livestock.

These workers are absolutely critical to making our nation function and we would be lost without them. And yet, the vast majority—some estimates are as high as 75 percent—are undocumented and vulnerable to deportation and abuse.

I come from a state—Washington State—that relies on our agricultural industry and on the workers who power that industry, and over the years, we have actually been able to find bipartisan support for reforming comprehensively the immigration system and this as a piece of that, and I hope we can get to that place again.

And so I am proud to be here today to look at what we can do to better support our farm workers, not just for the sake of the workers in our country and their families but also for everyone in our country who depends on these workers to put high quality decently-priced food on the table.

So I want to start with you, Ms. Arteaga. Thank you so much for being here and for your articulate and powerful voice on this issue.

Can you tell me briefly, because I only have five minutes, as a former farm workers and child of a dairy and farm worker, what a regular day looks like?

Ms. ARTEAGA. Thank you for the question.

Working in the field, so you have to wake up at extremely early hours of the day. Depending on if you have children, I know a lot of mothers out there who wake up at 4:00, 4:30 in the morning to make sure that their children's lunch is packed and to get out of the house.

And I just briefly want to describe my day working in the corn fields. So I would wake up, and depending on the size of the corn and depending on the humidity, I would wear a rain suit if it was humid. If it was wet it would be muddy.

When the corn is young, essentially, what you do is bend over and you detassel each corn and, mind you, you are doing this on both sides. So you have two rows next to you. During mid-day you are sweating crazy because of the rain suit that was protecting you in the morning.

By the time that you are getting later on—further along in the harvest seasons—I am 5′3″—the corn reaches to be a lot taller than 5′3″. I would have to bend the corn so that I could detassel them.

So it is extremely back-breaking work. For example, the strawberries—being on your knees 9-, 10-, 11-, 12-hour days, it is extremely hard. When parents get home from the fields and they want to run and, you know, hug their children, mind you, they have been exposed to pesticides all day long.

Luckily, my mother knew this about—this potential hazard. So she would take her clothes off before hugging us. But not everybody knows that.

Thank you.

Ms. JAYAPAL. Thank you so much. And there are some people that refer to agricultural workers as unskilled workers. In your mind, is this an unskilled job?

Ms. ARTEAGA. So I don't know if many of you know how to lay bee larva in an alfalfa field in a bee house or if maybe you have—I know that I, personally—I have a degree and you don't want me in charge of your milk. You don't. I have no idea how to place an IV on a cow.

My dad, with 25 years of experience, he is doing this work. He is getting calls at 2:00, 3:00 in the morning to give birth to baby calves. Whether they are breeched, he knows exactly what to do.

Thank you.

Ms. JAYAPAL. How about you, Mr. Brim? Do you find a difference between skilled—workers who have been coming back year after year? How would you describe this job? Do you see it as an unskilled worker job?

Mr. BRIM. Well, I think the basis of what you are talking about is what we called unskilled workers are pickers versus our tractor drivers, our other people that drive forklifts or something like that.

Ms. JAYAPAL. What about your farm workers? What about the people who are—who are directly picking the fruits and working, as Ms. Arteaga?

Mr. BRIM. Well, there is certainly a training period for anything you do no matter what you do and——

Ms. JAYAPAL. Thank you.

Mr. BRIM [continuing]. And, certainly, once we train those people then they are—we love to have them repeat visit us because we don't have to do the retraining program with them.

Ms. JAYAPAL. Absolutely. One of the things I kept hearing from my growers is, this is a skilled job and we should really be calling these workers essential workers, not unskilled workers.

I am concerned by reports that eliminating immigrant labor could cut U.S. economic output by $32 billion, resulting in over 200,000 fewer jobs nationwide, and the dairy lobby has said that immigration raids that target dairy workers could result in the price of milk—for a gallon of milk rising to $8.

So, Mr. Brim, could you tell me what the consequences of losing the immigrant workforce would be?

Mr. BRIM. It would be devastating for all of us in the farming industry. We have to have labor. They love coming up and working for us. We have—we started the H2–A program in 1997 and we have some of the same people coming back every year—probably 80 percent of them coming back every year to work for us.

Ms. JAYAPAL. Thank you. And Mr. Brim, in the past you have said if you don't have immigration you will quit eating.

Mr. Rodriguez, I know my time has expired and so I just wanted to thank you. I had some questions for you I didn't get to but I wanted to thank you for your decades of service and for raising issues that are so critical in advocating for our farm workers across the country.

Thank you.

Mr. RODRIGUEZ. Thank you very much.

Ms. LOFGREN. The gentlelady's time has expired.

I will turn now to the ranking member of the subcommittee, Mr. Buck, for his five minutes.

Mr. BUCK. So I had the pleasure of working on my aunt and uncle's ranch for 10 years—a ranch/farm operation—and it occurred—I witnessed, I suppose, when an employee received a green card, so went from an H2–A program and received a green card, they no longer stayed in the country and worked on the ranch. What they would typically do is to go into town and get a job with a landscaper or some other employer.

I will start with you, Mr. Brim, but I would like to hear from three of the witnesses about what would be the impact in terms of a permanent legal status or a green card status for—on the agriculture industry?

Mr. BRIM. It would be devastating for the farmers. Because of the illegal status of the people they come into our country and they start working, and then we take—they get legalized—the green card—they are going to work somewhere else. They are not going to work on the farm. In 1986, I believe, we had 150 workers that signed up for the bracero program and all of them left within six months.

Mr. BUCK. And my understanding is right now—and I talked the same thing. In my district we have a lot of cantaloupe and watermelon farmers and they love the program, although they have problems as everybody does, but they love the program because so many of the workers come back to their farms every year and are almost as if they are family. They leave in October. They come back in April, and they appreciate the fact that the program works in that sense.

But is it your view that changing the program would be detrimental to the farmers?

Mr. BRIM. Well, it is according to what we can do as far—doing the program. I think there is lots of fixes that we can make for the program, even the blue card provision.

Mr. BUCK. And I am talking about specifically the change to a more permanent status.

Mr. BRIM. Change to a permanent status? Yeah, I think you have got to do the fixing to both. If you don't do the fix to both, then you are going to ruin the farmers.

Mr. BUCK. And, again, I think this is actually something we are trying to figure out in a bipartisan way. This is not by any means a partisan issue. I think we really want to make sure that the workers and the farmers have a program that works for everybody.

But I want to make sure that—is there a point if someone comes through an H2–A program for 10 years then they would qualify for a green card? Is there something that we can do in the middle of where we are right now where it is either H2–A or green card? It is either someone that has an incentive to work on the farms or someone that does not have an incentive?

And I guess I will go to Mr. Nassif with this question.

Mr. NASSIF. Thank you for the question.

We have never advocated for legal status other than the H2–A visa for the workers who have been primarily engaged as guest workers.

Mr. BUCK. Okay.

Mr. NASSIF. So we don't see that as something we have ever supported in the past and, certainly, if that happened we'd lose a lot of workers. We'd have a lot of employers that would have a difficult time with that.

But we have advocated for our existing workers to work for a couple of years before they are eligible, work for another three to five years in agriculture after that, understanding that they are going to go on, as you say, and work in other industries where the work is not as arduous. But that is understandable.

Our workforce is aging and the average is about 40 years old. Farm workers are not raising their kids to be farm workers anymore. So——

Mr. BUCK. Right. I need to go to Mr. Rodriguez with the rest of this question, if I can, for a short answer.

Yes, sir?

Mr. RODRIGUEZ. I would just say that in regards to farm workers getting legal status, I mean, there is eight farm workers that are here from different states, different crops, different industries, and they all have legal status. And for them, agriculture is a profession and they are very skilled at it and they have stayed in the agricultural industry.

I think, overall, the reality is that we have to figure out a way within the AG industries how are we going to elevate the status of the workforce; how are we going to provide them with enough wages, with benefits, with other types of things that will keep them in agriculture and keep anybody who is coming in as an H2–A worker, keep them in agriculture as well regardless of whether they have legal status or not.

Mr. BUCK. Okay. And thank you. And for the last few moments that I have, I just wanted to thank my friend, Congressman Panetta, for being here.

Oftentimes, people are here when they get introduced. Congressman Panetta is here because he is interested in the subject and taking notes on it, and I really appreciate the fact that you participated today. Thank you.

I yield back.

Ms. LOFGREN. Thank you very much.

I would like to recognize Mr. Correa for his questions at this time.

Mr. CORREA. Thank you, Madam Chair Lofgren and Ranking Member, for holding this most important hearing. I want to thank the witnesses here today. I hear a lot of commonality when it comes to where we need to go. I hope we don't get caught up in the weeds and get somewhere where it actually works for everybody.

[Speaking foreign language.]

Mr. CORREA. Let me say that I want to concur with all of you in wanting to keep AG as an important industry in our country. It is one of the top industries in California.

It is one of the top industries in this nation and I want to make sure we continue to be the breadbasket to the world. I want to make sure that when there is any crisis around the world, whether political or otherwise, people can rely on America to feed the rest

of the world, and that means we have to continue to focus on AG and take care of AG.

When I was growing up I spent many summers in Central California picking oranges and plums. And Ms. Arteaga, you are absolutely right. You got to get up really early in the morning because you got to quit by the time that sun gets right up there and it is too hot to work.

So you are out there at 5:00 in the morning and you quit by 12:00 or 1:00. A lot of hard work but a lot of honest work. I have a cousin, a cousin who came from Mexico. Went to Idaho.

[Speaking foreign language.]

Mr. CORREA. Undocumented. He ended up getting a green card, and he stayed as a worker on those potato farms because that was his calling. That is where he was happy.

And today, as I close my eyes and I think about all the years of work we have done in California to protect the farm workers, to make sure they live a decent life.

And, Mr. Tom Nassif, conversations that we have had over the years on immigration reform and just listening to your discussion here today, I am asking myself what is the best way to continue to have a strong workforce in America. Our workforce, Mr. Tom Nassif, is aging very quickly.

In Orange County, where unemployment rate is 3 percent—less than 3 percent right now, a lot of the workers we have that take care of our lawns, cook our food, take care of our families, are undocumented.

And I can say, Mr. Brim, a lot of the times when they get a green card those workers don't shift from one or the other because a lot of the workers that I have just described are undocumented.

California is still a big area of factory manufacturing—a lot of undocumented—and the question I ask myself is why can't we have just one pathway to citizenship for our workers?

Because everybody that comes to America works hard to enrich this country, to make us strong, deserves to be an American someday, and if—I think if you give folks that green card and you give them the hope of being an American, they are going to work really hard because they are already proud of their work product.

And I hope all of us today and in the very near future can talk about how to get there, an immigration reform that strengthens America by bringing us the hard workers that we need and keeping them—keeping them here legally.

I am going to have a quick question because I am running out of time. It is for all of you. Why not a pathway to citizenship for all workers?

Historically, people came from Europe. Everybody had a pathway to citizenship. I don't know why this last group of workers can't have that same opportunity.

Open it up for all of you.

Mr. NASSIF. Well, as we—as you know, we have advocated for a pathway for the existing workforce that are undocumented, as they have shown allegiance to the industry. They have worked hard and, as I say, paid their taxes and they have got strong ties to the community.

They have children there, and I think we have to give them some sort of legal status and I think we have to protect their families additionally. We, obviously, have a way for everyone to become a U.S. citizen through the normal process. The question is do we make exceptions in specific instances. Sometimes you have to say yes and sometimes you have to say no.

Mr. CORREA. Yeah. When do you think we have to make exceptions?

Mr. NASSIF. I think there should be exceptions for our existing workers who obey the law, been here for a long time, worked very hard in the industry. I think they deserve a pathway.

Mr. CORREA. I think everybody that works hard and obeys the laws and pays the taxes deserves a pathway to citizenship.

I am running out of time. Love to talk to you offline some more later on.

Mr. NASSIF. I appreciate it.

Mr. CORREA. Thank you very much and I welcome all of you again.

Ms. LOFGREN. The gentleman yields back and the gentleman from North Dakota, who is sitting in now as ranking member, is recognized for his questions.

Mr. ARMSTRONG. Madam Chair, and I appreciate that debate. I think that debate gets broader than the actual workforce challenge that we sometimes face.

North Dakota is number one in the entire nation in producing barley, beans, pinto beans, canola, flax, honey, wheat, durum. We are number two in sunflowers and we are number three in sugar beets.

And if there is one issue I get more calls on my office on than anything else it is this program, and it goes to what we were saying about a program of last resort.

Just in the last several days we—well, and I want to go back to what was said earlier about temporary work status and getting up in the morning. North Dakota doesn't have large-scale production agriculture.

We actually have a ban on family—on corporate farming in our state, and so when we are talking about getting up at 4:00 a.m. and calving or going out, it is usually when we are—when we are bringing the workforce in whether they are coming from Georgia, Honduras, Mexico, or South Africa, the owner of the farms are with them at 4:00 a.m. and they are continuing in doing that producing.

But so I think—and I think we also have to get past this concept of seasonal work, because if anybody understands seasons it is people in North Dakota. But the reality is agriculture is a 24/7/365 job.

Whether you are planting in the spring, harvesting in the fall, fixing the shed in the winter or doing—or running a cattle operation whether it is dairy or a feed lot. And the restrictions that we see coming in on seasonal workers—I have a very good friend who runs a cattle operation in Leeds, North Dakota. She has had the same job advertised nationally for seven years and cannot get it filled.

So when we talk about opportunities from the American workforce and she continues to apply for H2–A visas and then gets told she is running out of her seasonal—she has to skip a season. Well,

if you are in a feed life and your season ends March 30th, your second season begins April 1st. I mean, that is the reality of how this works.

I had another friend who has a house for his temporary workforce in a community hooked up to water but in the winter he winterizes it because he only uses it for seasonal work. USDA wouldn't grant him his—wouldn't grant him his or wouldn't grant him permission to have his visa because they couldn't see running water coming out of the tap.

So there are real structural inhibitions that we do to this. But we also have 30,000 open jobs in our community and in our economy, and we have been blessed with an oil boom in western North Dakota and throughout the last 12 years we have had—we have managed to weather these processes better than anybody else.

But what we want is a workforce. We want people to come in, and I would prefer we—I think we need to get creative with these things. We should be allowed to do a temporary workforce, allow these programs to go—allow people to keep the workers they want.

If they keep them for 10 years—I mean, you are going to—you age out of this type of labor just based on the fact that it is incredibly difficult labor, and allow family farmers to sponsor people. I mean, we should be having all of these conversations and we should continue to work for it.

So I guess I will start with Mr. Nassif. I mean, if you could pick two things to streamline the H2–A process, like, the burdens that really truly hit it, what would they be?

Mr. NASSIF. Well, we have talked about the complexity of getting workers to the fields on time when the harvest is needed and not having sufficient laborers when the harvest is really there.

So an expedited process makes it less complicated, less expensive, less legalistic would, of course, be a big fix.

But I think we have to really look at this issue of a cap very closely because what is the reason for a cap? Is you want to make sure that you don't take American jobs—that you limit it to just what you need and not hire more people.

So we know that people who are here legally don't want the jobs. They are not displacing anybody. So what is the purpose of the cap? Nobody hires more workers than they need because that is not a smart economic model in any business. So those two items, I think, are both very important.

Mr. ARMSTRONG. Is H2–A capped?

Mr. NASSIF. No.

Mr. ARMSTRONG. And then so—and then I guess my question and, for me, it is, I mean, obviously, regional and territorial to some degree. How do we—I mean, how do we work for these situations where the workforce is, I mean, very different in California than it is in North Dakota.

I mean, we need AG workers in North Dakota. Have needed them for 30 years. We will take them from anyone who is willing to work and be a part of our communities. We would love to have them. But has there any—been any discussion about how we do this in a regional—in a regional manner?

Mr. NASSIF. Well, obviously, if you have—if it is uncapped then all regions are equal. If you have a capped program and you have

to allocate between regions how do you do that? California has about 400,000 to 500,000.

Are you going to give them all to California or are you going to try and spread them out to other areas that are desperately in need also?

Mr. ARMSTRONG. Well, and I think anybody who likes honey would like some of them to come to North Dakota as well.

With that, I yield.

Ms. LOFGREN. The gentleman yields back.

The gentlelady from Texas, Ms. Garcia, is recognized for her questions.

Ms. GARCIA. Thank you, Madam Chair, and thank you again for holding this hearing. This is something that I have followed for many years as someone who grew up and, Ms. Arteaga, at your age my first real job where I actually got paid—didn't get to keep the money because it went to the family kitty—was picking cotton.

So I know about getting up at 5:00 o'clock in the morning to get ready so that the—the wagons came by to get on—get out there and start working.

So it is not an easy job and I want to welcome all the other members of Mr. Rodriguez's group that are here.

[Speaking foreign language.]

Ms. GARCIA. So thank you again for all your work and I want to start with you, Ms. Arteaga, because I think—I think people don't really quite understand that even though you and I have probably a couple of generations difference in age, that even though the difficulties I saw when I worked the fields and had to pick cotton, and it wasn't for fun—it was to keep my family together, as I am sure it was your reason—that so many things just haven't changed. You know, the need for rest breaks, the need for medical care, the education.

The—you know, one of the things I hated the most was having to remember to put, you know, either a piece of old newspaper or a page from the Sears Roebuck in my pocket so when it was time to the go to the bathroom in the woods I would have something, right, to clean myself with.

I mean, some of the things still exist in some of these fields. So what—if we could do an addition to a pathway for citizenship or, you know, some of the things that we are discussing here today, what is a simple, most important thing that this Congress could do to help farm workers today?

Ms. ARTEAGA. Just one thing? Because there is pesticides, there is shade protection for workers. I know that it is established in California but there is other states like Washington, I know firsthand, that they also get, you know, temperatures over 100 degrees. Idaho as well.

So I think it is hard to say just one but——

Ms. GARCIA. But if you had to prioritize it, I mean, if you would get one wish today.

Ms. ARTEAGA. Aside from a pathway to legalization?

Ms. GARCIA. Right, because that is already kind of on our list today.

Ms. ARTEAGA. Well, that is a good question. That is—I don't know how to answer that in one single term. But I think pesticides is up there.

Ms. GARCIA. Well, I don't have a lifeline for you but—well, think about it. I will ask Mr. Rodriguez the same question.

Mr. Rodriguez, how about you, sir? I have also followed the farm worker movement since it started. I had the pleasure of meeting Cesar and he was always one of my heroes.

If there was one thing we could change in Congress today, aside from the citizenship and the visa status that we are talking about and the bill itself?

Mr. RODRIGUEZ. I think farm workers, like any other worker here in this country, I mean, they have to be able to sustain their family—themselves and their family. So the economic situation of farm work has to be elevated.

I mean, we can't expect people to go into the most difficult work that there is in our nation and to—and the conditions that they are confronted with and not pay them a decent wage like anybody else.

And so if we don't deal with that particular issue then it is going to be very difficult to—not only to attract people but to keep them there.

Ms. GARCIA. Well, I agree with you, and I was very encouraged. Mr. Nassif said in his written testimony and repeated that he was looking for legal status not just for the worker but for the entire family and that the entire family should be kept together and that there was nothing more important than the dignity of the worker and their family.

So I was really pleased to see someone representing the growers to say that, and Mr. Nassif, I just wanted to ask you a question.

Just to be clear, when you say you believe in legal status, do you mean full permanent citizen or are you just referring to the legal status of the visa itself?

Mr. NASSIF. Well, for us we are very interested in making sure that we have a legal status. We believe that that status should be determined by those people who have political interests in what that should be.

For us, this is an economic issue and a humanitarian issue.

Ms. GARCIA. Right. Well——

Mr. NASSIF. We have worked very hard for, you know, some sort of work permit for those existing workers, something that gives them the freedom to stay in this country with their families and continue to work in agriculture.

Ms. GARCIA. Well, good. I am very encouraged by that because often when I have heard this debate before it is always the focus on the worker and the work and the work, and, you know, the worker is not a machine.

They have to be seen as people. They have to be seen as, you know, the breadwinners that they are, the mothers, the fathers, the children, especially the children, and I have always—you know, I sometimes wonder how people got away with putting me to work at nine.

But I had to do it. It was part of helping my family. So that violation of the OSHA requirements and the child labor laws, all the

things together—I mean, to me, we need to go beyond just worrying about just, well, we have work to do.

Well, it is work to do but we got to think about the people involved and treat them with that dignity and respect that you are talking about.

I see my time is up, and Ms. Arteaga, I will visit with you afterwards. Maybe you will tell me what your wish is. [Laughter.]

Ms. ARTEAGA. Overtime for farm workers. That is my final answer. [Laughter.]

Ms. GARCIA. What is your final answer? Overtime?

That would have been great, wouldn't it?

Ms. ARTEAGA. Overtime would benefit my parent—my mom, specifically, who is still working actually today. Shout out to my mom.

Ms. GARCIA. Yeah.

Ms. ARTEAGA. But she is out there in the fields in Idaho today working. So overtime.

Ms. GARCIA. Yeah. They were always 12- or 14-hour days, weren't they?

Ms. ARTEAGA. Yeah.

Ms. LOFGREN. The gentlelady's time has expired.

Ms. GARCIA. Thank you.

Ms. LOFGREN. We would like to recognize the gentleman from Colorado, Mr. Neguse, for his questions.

Mr. NEGUSE. Thank you, Madam Chairwoman, and thank you for hosting this important hearing. Thank you to the witnesses for their testimony and also thank you to my colleague, Representative Buck, the ranking member from Colorado.

In my home state of Colorado, as Representative Buck mentioned, agriculture is an integral part of our economy. Generates more than $40 billion in economic activity annually. It supports more than 170,000 jobs with cattle and calves making up over 50 percent of all the receipts.

My district—I represent northern Colorado, the 2nd Congressional District. A privilege to be home. There are some amazing farms and organic dairy producers, many of which I understand are also represented by the Western Growers.

And these great farms and, by extension, great products are certainly something we should be proud of. But, fundamentally, they are only as good as their backbone, which is their employees—the farm workers who work in their fields.

Over the past few months, I have had the privilege of serving in Congress. I have certainly received troubling calls from farmers and others concerned about the shortage in agricultural workers and deficiencies in the H2–A program.

Many of my constituents are asking for a congressional solution to what is causing immense strain on the viability of farmers everywhere.

And so I appreciate the chairwoman's efforts and also the ranking member's comments with respect to trying to find a way to come up with meaningful solutions to ensure a viable and stable future for U.S. agriculture, not just the farmers and the dairy producers in my district but for the wonderful agriculture workers who are the backbone to our nation's food security.

Mr. Nassif, I want to start with you. You know, as you rightly pointed out in your testimony—I believe your written testimony—my beautiful home state of Colorado has an incredible farming heritage including a large dairy operations as has been adduced during the hearing today, and you have pointed out dairy producers have been unable to leverage the labor resources of the H2–A program.

Dairy production is a year-long process, as my colleague from North Dakota also referenced, and the Immigration Nationality Act authorizes the lawful admission to the United States of temporary non-immigrant workers to perform agriculture labor or services of a temporary seasonal nature, thus, by plain definition dairy workers cannot receive H2–A visas.

So I am curious, if you could speak to the need for a more flexible and efficient agriculture worker visa program, one that would encompass all farmers, dairy alike, and how we can best retain skilled labor within the United States.

Mr. NASSIF. Well, I think certainly for the dairy workers the simple answer is to change the definition from seasonal temporary to year-round workers.

I don't think there is anybody in agriculture that isn't supportive of that. And while it might make—obviously, there is going to be a request for more visas—H2–A visas—so that is very competitive.

But the dairy industry is so fundamental to this country that the—it doesn't make sense to say because you are year round you shouldn't have access to foreign workers on a visa basis.

Mr. NEGUSE. Thank you, Mr. Nassif, and it is——

Mr. BRIM. Sir, can I respond to that as well?

Mr. NEGUSE. Sure, Mr. Brim.

Mr. BRIM. In the southeastern United States we are really hard-working. We work long hours. I am the first one at the farm every day. The visa workers that we have they are great people. We appreciate them coming to work for us.

But the dairy people in the state of Georgia are just suffering really bad because of the targets they are getting from ICE or whoever else that comes in—wage an hour or whatever.

And our group here in the southeastern United States produce people are year-round farms. So we need to extend this. Even if you make a person temporary and the season—the job full time, we have to have them full time. We can't—we can't farm for 10 months down in our area.

Mr. NEGUSE. And I would say—thank you, Mr. Brim—you know, it is eminently frustrating that it is such a simple fix, right, that Congress—I mean, obviously, the Department of Labor, to the extent it comports with the statute that could change this——

Mr. BRIM. I would be glad to help you write it if you want me to. [Laughter.]

Mr. NEGUSE [continuing]. To change this regulatorily. Although I will also say that while I agree and I think that eliminating that restriction makes a whole lot of sense, it, I think, is part and parcel to the larger conversation that we have been having and that multiple members have referenced with respect to also finding a pathway to legal status for the individuals who are doing this work to the—because, again, I think agriculture—the industry, as I see it,

is saying that it is not seasonal in nature and that this is work that could continue and should continue year round and would apply to broader industries than perhaps the industries that it applies to today and I would think that providing a legal path—excuse me, a path to legal status for those individuals who are working so incredibly hard in our country to feed our families I would just think is something that this Congress could, I would hope, rally around.

With that, I see my time has expired and so I will yield back to the chairwoman.

Ms. LOFGREN. The gentleman yields back.

I would recognize now the gentlelady from Florida, Ms. Mucarsel-Powell, for her questions.

Ms. MUCARSEL-POWELL. Thank you, Madam Chairman—Chairwoman.

Thank you so much for the panel for being here today. I think it is a very important issue.

[Speaking foreign language.]

Ms. MUCARSEL-POWELL. Sorry for that. Is that allowed in committee——

Ms. LOFGREN. You just did it.

Ms. MUCARSEL-POWELL [continuing]. To just go off in a different language? [Laughter.]

Ms. LOFGREN. Yeah. It is fine.

Ms. MUCARSEL-POWELL. Leave it to the Ecuadorean immigrant to do that.

I represent a district where a large portion of the sector represents an agricultural sector and that industry is really fighting for its survival. I have met with agricultural owners who are in dire need for labor.

They tell me that the H2 visa program has been very difficult because they actually—we have a shortage of housing and that you must provide housing.

At the same time, our migrant workers have come to me in desperation because they are not treated fairly. They are not paid fair wages.

Some of the wages that they receive are used as a bargaining chip when they need, you know, their basic necessities and then they are selling them these necessities two or three times higher prices in the areas where they live.

And I think that it is important that we are having this conversation today because I know that many farm owners want to find a solution. You want to take care of your workers. And at the same time, we have our farm workers who are feeding us.

We produce the highest rate of green beans in the country throughout the entire year. So if you are eating green beans, that is coming from my district, from south Florida.

We are eating the food that would not be available to us if it weren't for their hard work every day. So I think that it is imperative for Congress to find a permanent solution—not temporary work, but a permanent legal solution for the thousands of farm workers that are living in this country.

So to that I would like to ask, first, Mr. Rodriguez, I know that the H2–A program has been criticized by some as not doing enough to protect the U.S. wages and prevent the exploitation of workers.

What aspects of the H2–A program do you believe should be retained, if any, and which aspects should be removed?

Mr. RODRIGUEZ. I don't think I have enough time to talk about both of those in depth. But I would just say that H2–A workers need to be treated like any other worker living in this country, have the same opportunities and the same rights and so forth.

They definitely—there definitely needs to be a issue with wages because they are trying to sustain not only themselves here when they are working in this country but also take care of the families that they left behind and dealing with.

So the economic issue is an important one. Obviously, housing is very critical. We don't want people—I mean, we all know what it used to be here in America in terms of where farm workers lived and so forth.

We don't want to relive that all over again. Transportation issues—once they are here they don't have access to transportation. They are not coming with a vehicle.

So they need to be able to have transportation to come and go from this country and taken care of that in particular way.

In regards to—and then we have to deal with the recruitment issue. Lots of H2–A workers are recruited by agencies and programs that force them to pay a fee—a recruitment fee that goes into the hundreds if not thousands of dollars.

So they come here feeling like they are in debt. They are fearful because of the fact that they can't do anything to create problems with that particular employer or that particular job, or supervisor, foremen, or whatever because they will lose that job. And then they can't deal with paying back the debts and so forth.

So, I mean, those are just some—quickly, some of the issues that concern us about the H2–A program.

Ms. MUCARSEL-POWELL. Thank you, Mr. Rodriguez.

And, quickly, Mr. Nassif, what do you think are the challenges right now, the challenges affecting the agricultural sector? Why are they different today than they were, say, back in 2006?

Mr. NASSIF. Well, they have been difficult for many years. I have been working on this issue for 18 years myself and part of that I was an agriculture labor lawyer representing the employers—the farmers and ranchers—in the negotiations. Had many of these negotiations with the United Farm Workers union.

So many of the problems are exactly the same. It is just that nobody has done anything about it for so long because that has always been such a political hot potato.

When we look at the bare facts and we look at the economics, we look at the dramatic need for these workers and the value that they provide, because, frankly, what would we be without those farm workers?

We have to give consideration to how we treat them. Very true. Now, with H2–A workers, they come here with a nonimmigrant intent. That is why they go into the H2–A program. If they had an immigrant intent they probably would just cross the border or stay illegally and go to work for someone using a false document.

So we don't see the need to change what we have got in H2–A because when you do that then you just risk more and more workers leaving all the time.

We are already going to lose people if we have some sort of legal status for our existing workforce than if you now give the guest workers the same opportunity for that then you make them—give them immigrant status, then you risk losing them along with everybody else because, as everyone says, they are not going to stay in agriculture.

Ms. LOFGREN. The gentlelady's time has expired.

Ms. MUCARSEL-POWELL. Thank you, Madam.

Ms. LOFGREN. And I would like to turn to the gentlelady from Texas, Ms. Escobar, for her questions.

Ms. ESCOBAR. Thank you so much, Madam Chair, and many thanks to the panelists and witnesses here today. I am so grateful for your wisdom and for your advocacy.

[Speaking foreign language.]

Ms. ESCOBAR. I have—Ms. Arteaga, and congratulations on your accomplishments. It is wonderful to know about them and hear about them.

You did not get an opportunity to respond to a question, and the question came as a result of something that Mr. Brim mentioned, which was that it would be devastating to give visa holders legal status, essentially, because once that legal status is attained they then move away from working in the fields and get other jobs.

I am interested in your response.

Ms. ARTEAGA. Thank you for giving me the opportunity to speak on this.

When I speak to farm workers and they have 20-plus, you know, years of experience in this job, it is—it is them. It is a part of them. Being a farm worker is them.

My mother—I don't know what else she would be doing besides being a farm worker. My father—I don't know what else he would be doing besides being a dairy worker. That is who they are.

Thank you.

Ms. ESCOBAR. Thank you for your response.

And I am going to ask the same question of Mr. Nassif and Mr. Rodriguez. And Mr. Nassif, in your testimony, you mentioned that the average age of farm workers is now over 40. What do you think the workforce will look like 10 years from now?

Mr. NASSIF. Well, I believe it is, obviously, going to be much reduced. You have got—you have got the fact that people in Mexico that have traditionally come over here to work in agriculture are doing so at a lesser rate.

They are better educated. They have more opportunities in their home country. They are actually importing farm workers into Mexico. So our work force is going to keep reducing and reducing.

So what we have tried to do is two things. One, obviously, try to get immigration reform to help resolve at least part of that problem, and the other is to try and create mechanized and innovative ways to reduce our reliance on manual labor, to make it easier to reduce our reliance on water and fertilizers.

So we created a center for innovation and technology in Salinas about three years ago and we are looking for solutions to that. But

it is an extremely expensive process. We have got some help in the Farm Bill, I think, on the innovation front.

But it is going to take a long time and only the wealthiest of the farmers are going to be able to do it by themselves. We want all farmers to participate and we want farm workers to have some place to go—better jobs, more technological, less manual labor.

Ms. ESCOBAR. Thank you, sir.

Mr. Rodriguez, same question for you. What do you think the work force will look like 10 years from now?

Mr. RODRIGUEZ. You know, I think that, one, is that, obviously, they are going to continue to age. We don't have enough young workers coming in to the workforce to do the necessary work that have the skills and have the knowledge and so forth.

And then we are going to become then reliant on other folks that are not necessarily born and raised here in the United States. So we already have an immigrant workforce—practically 99 percent immigrant, highly undocumented—and if we don't do something to change immigration reform it is going to be even more undocumented.

And there is going to be more fear and more problems attracting and keeping workers here in this country to be able to do the AG work.

Ms. ESCOBAR. And just to clarify, you believe that our workers have earned a path to citizenship. Is that correct?

Mr. RODRIGUEZ. There is no doubt in our minds that workers come here. They work hard. They come here because they want to contribute. They want to provide for their families like anybody else does in this country and they don't want to be wondering—the children don't want to be wondering if their parents are coming home at night, and vice versa, if they are, as parents, going to be coming home to their children.

Ms. ESCOBAR. I agree with you 100 percent.

One last question, Mr. Rodriguez. In your testimony, you shared a bit about the collective agricultural worker experience of your members who are here today.

How long have most non-U.S. farm workers been living and working in the United States?

Mr. RODRIGUEZ. Well, all these folks here have all been—I mean, I can talk about Rogelio Lona, who I have known now for the last 46 years.

Rogelio—he is a mushroom worker—a year-round mushroom worker and he works extremely hard. He works at a farm now where he makes over $40,000 a year and has medical benefits and so forth.

There is no problem with him staying in AG. I mean, that has been his life and he has worked there in that industry for the last 30-plus years with those kinds of benefits, and it kept him there as well as the workforce that he works with there at that particular company.

And so I think that the more we can create those kind of situations for workers, the better it is going to be to not only attract workers but to keep them there in the industry.

Ms. ESCOBAR. Thank you so much.

Ms. LOFGREN. The gentlelady's time has expired.

We have been called to vote. So I will not take my full five minutes for questions. I just have a short one.

Mr. Rodriguez, there has been some discussion about pay. What does the average farm worker make per year, both undocumented, documented, and H2–A? Do you have those—an estimate of the salaries made?

Mr. RODRIGUEZ. You know, unfortunately, undocumented farm workers are making—wherever their particular state has as minimum wage, hopefully, they are making at least that. And people get hourly rates and get piece rates and so forth.

I think the average wage, from what I have seen and heard in the statistics is around $20,000 a year.

Ms. LOFGREN. So for a farm worker family would——

Mr. RODRIGUEZ. For a farm worker. I mean for the family.

Ms. LOFGREN. A farm worker.

On the H2–A program, what are people earning a year?

Mr. RODRIGUEZ. That I don't know. I am not sure.

Ms. LOFGREN. Okay. We will try and—do you know that, Tom?

Mr. NASSIF. What was the question?

Ms. LOFGREN. What is the average wage for an H2–A worker?

Mr. NASSIF. Well, the AEWR, the adverse effective wage rate is different for every state.

Ms. LOFGREN. Right.

Mr. NASSIF. For example, Arizona is $12. California is $13.92. Colorado is $13.13.

Ms. LOFGREN. That is per hour?

Mr. NASSIF. New Mexico is $12.00 per hour. Yes.

Ms. LOFGREN. Right. Right.

So it is not a great huge salary, although if you are from a very poor area, you know, it looks good compared to what you might be earning in some parts of the country.

Mr. NASSIF. That is if you are working by the hour. If you are working on a piece rate, it is much higher.

Ms. LOFGREN. Right. Right.

Mr. NASSIF. Strawberries are $20, $30.

Ms. LOFGREN. Right.

I am going to stop now and say just this. This testimony has been very, very helpful to the subcommittee. Obviously, there are challenges that we face.

But I think we all have the goal of making sure that the people who work in agriculture can do so legally with dignity and to be successful for them and their families and for the agricultural industry.

And I have a sense of optimism that, working together with the growers and the farmers and the farm workers, that we can come to agreement on what have previously been contentious issues and that in that way it will help us to—here in the Congress, who sometimes fight about immigration issues, to instead come together in a bipartisan way to come up with solutions that will work for our country and will make our constituents proud.

So with that, thank you, Mr. Armstrong, and all the members of the committee.

This hearing is adjourned with gratitude to each of you as witnesses.

[Whereupon, at 1:42 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIALS SUBMITTED FOR THE HEARING RECORD

House Committee on the Judiciary
Subcommittee on Immigration and Citizenship
Hearing on Securing the Future of American Agriculture
Statement and Questions for the Record: Rep. W. Gregory Steube (FL-17)

Chairwoman Lofgren and Ranking Member Buck, thank you for holding this hearing today. The agriculture labor issue is critical to Florida's 17th Congressional District which spans 9 counties of central Florida with major citrus, cattle, and dairy operations. This issue is of extreme importance to my constituents in Florida's heartland and across the country. The H2A program keeps orange juice in our refrigerators year-round, however, my dairy farmers in Okeechobee County cannot utilize the H-2A program as they are considered year-round labor employers. To stand behind our farmers and growers, we have no choice but to work together to responsibly reform this program that strengthens the backbone of agriculture by filling the important jobs that keep food on our family's tables while many American workers choose other jobs to make a living. Bottom line, we must move forward to find a solution with America's national security and economic future at the forefront.

Additionally, I would like to point out a section of Mr. Rodriguez's testimony that might be misunderstood without reading the Department of Labor (DOL) report. In Mr. Rodriguez's testimony, he states fairness as important when the "mean and median annual income for farmworkers in 2015-16 was in the range of $17,500-$19,999" as cited in his testimony from the DOL report titled, "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers." However, this statistic from page iii was for an average of 33 weeks worked per year and 192 average farm days, which would be expected of a temporary seasonal agricultural worker. When reviewing the sampling universe as explained in the same report on page i under "Introduction," it is noted that the sampling universe does not include "crop workers with an H-2A visa (a temporary-employment visa for foreign agricultural workers)." While the testimony stated the income for "farmworkers," I wanted to clarify that this sample did *not* include H-2A visa workers who are paid more on average. The report states farmworkers put in an average of 45 hours per week and 33 weeks per year which equals an average hour's wage for actual hours worked of $11.78-$13.47. Current adverse effect wage rates (AEWR) for 2019 vary by state and range from $11.13-$15.03 per hour for H-2A visa workers depending on the state of employment. These wages rise each year by up to 23 percent to keep a competitive wage rate to attract U.S. workers. However, it further shrinks the margin farmers and growers are earning each year. Further, even though the AEWR rises each year, it does not attract U.S. workers. This program must be reformed by using commonsense and keeping agricultural employers' concerns in mind.

The consequences of not building a future flow of workers for the H-2A visa program are dire. According to the DOL recent report outlining H-2A program certified positions,[1] it was found that the number of H-2A visas being used have grown sharply in the last few years, more than

[1] https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2018/H-2A_Selected_Statistics_FY2018_Q3.pdf

doubling from just under 60,000 visas in FY2011 to just under 140,000 in FY2016.[2] However, in the first quarter of 2019, H-2A visa certifications data released by the DOL[3] showed that H-2A visas rose by 10 percent from 2018 as compared to 14 percent in 2018 as compared to 2017. It can be argued that the increased AEWR mentioned above is rising beyond sustainable reach for farmers and growers. In 2019, the average AEWR wage rate is $12.96[4], up six percent from 2018. In contrast, the U.S. increase in real average hourly earnings last year was 1.7 percent.[5] The H-2A visa program is the only nonimmigrant visa subject to this mandated wage rate increase. Many farmers and growers in Florida's 17th Congressional District have shared stories with my office explaining how running a business and not being able to anticipate wage rate increases affect their livelihood. Not only do wage rates increase, but the burden of providing housing, transportation and paying advertising costs has forced several small businesses to scale down operations. In turn, less agricultural production and high cost of labor forces these farms to move to other countries and force the U.S. to depend on imports to feed its citizens. Without a sustainable and financially responsible visa program for agricultural workers, we will see the U.S. fruit and vegetable imports rise. The U.S. is a net importer of fruits and vegetables with a growing trade gap each year, having risen nearly fourfold since 1999.[6]

With this in mind, it is important to note that Florida is second only to Georgia in utilizing the H-2A Agriculture Guestworker Program. The program has expanded significantly in Florida, rising from 4,500 visas dispersed in 2010 to over 30,000 in 2018. It is imperative we reform this visa program to be less cumbersome for growers and farmers to navigate in order to employ workers. However, our solution cannot be an open door to citizenship. As we saw with the 1986 employment verification standards created by Congress, amnesty for these workers will only lead to them leaving the agricultural workforce to higher paying jobs, as Mr. Brim mentioned in his testimony about his own workers during that time. We must secure our borders and bolster our agriculture industry for the sake of national security. I look forward to working with my colleagues on both sides of the aisle to come to a fruitful conclusion.

Questions for the Record

1. Mr. Brim, you referred to a government policy that requires a worker to only present documentation that indicates the individual is work authorized and that employers are not permitted to question a worker's documents or ask for additional proof of employment eligibility. How can misguided anti-discrimination policies be improved in the future to ensure employers are not at fault when they are presented faulty documents?
    a. How can we create a system that allows farmers to be proactive in ensuring workers are here legally?

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[2] https://crsreports.congress.gov/product/pdf/R/R44849
[3] https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-2A_Selected_Statistics_FY2019_Q1.pdf
[4] https://www.foreignlaborcert.doleta.gov/adverse.cfm
[5] https://www.bls.gov/opub/ted/2019/real-average-hourly-earnings-increase-1-point-7-percent-over-the-year-ending-january-2019.htm
[6] https://www.ers.usda.gov/data-products/us-food-imports/

2. Mr. Brim and Mr. Nassif: E-Verify is a critical part of any guest worker solution, but the agriculture industry is especially vulnerable if E-verify is implemented before a workable agriculture labor solution. How should E-verify be implemented to ensure employers and employees are following the law, without harming the agriculture industry and offering amnesty?

3. Mr. Rodriguez, your testimony paints a dark picture of the agriculture industry, a stark contrast from the many farms in my district. You shared a situation in which workers are forced to work in undesirable conditions on farms. With US unemployment currently at 3.8 percent and a prevalence of available jobs, why do members of your organization continue to take part in American agriculture if the conditions are as you describe?
    a. Follow-up: Do you think workers who are employed legally under guest worker programs are better protected from the situation you describe?

4. Mr. Brim, for virtually all businesses, labor is the major input cost. H-2A employers are required to pay the Adverse Effect Wage Rate (AEWR) to H-2A employees, which changes annually with only a few weeks' notice before the new rate goes into effect. In 2019, every state with the exception of 3, saw AEWR increases, with some as high as 23 percent. This places a great strain on many family farms and small businesses around the country who utilize H-2A labor. After talking with many growers in my district who share the same story, Mr. Brim, in your experience as an accomplished business owner, could you sustain your operation with labor costs increasing by up to 23 percent every year?

Statement and Questions for the Record: Rep. W. Gregory Steube (FL-17)

Mr. Rodriguez, your testimony paints a dark picture of the agriculture industry, a stark contrast from the many farms in my district. You shared a situation in which workers are forced to work in undesirable conditions on farms. With US unemployment currently at 3.8 percent and a prevalence of available jobs, why do members of your organization continue to take part in American agriculture if the conditions are as you describe?

ANSWER FROM ARTURO RODRIGUEZ:

As I shared in my testimony, most farm workers take great pride in their work in feeding the rest of the United States. Most farm workers have enormous skill in their work to feed the rest of us. With regards to why members of the UFW continue to work in agriculture, as I described in my testimony, when farm workers earn higher wages, earn health care, and receive respect for their work, they choose overwhelmingly to stay working in agriculture even when they have permanent legal status or become U.S. citizens. Members of the UFW who were present during the hearing are living examples of dedicated individuals who have chosen to remain in agriculture when they have received fair treatment. I believe that the employers in your district or any other other district who treat farm workers with respect will see large numbers of farm workers remain in agriculture even when they earn legal status. The facts indicate that after the 1986 immigration reform, the overwhelming number of farm workers who received legal status stayed in agriculture for years. *Please see "In Immigration Reform Debate, Is Agribusiness Crying Wolf?" by Rick Mines and Ed Kissam New America Media, Op-ed Posted: February 22, 2013.*

a. Follow-up question from Rep. Steube: Do you think workers who are employed legally under guest worker programs are better protected from the situation you describe?

ANSWER FROM ARTURO RODRIGUEZ:

The situations I described about some abuses currently in agriculture included examples of workers who are US citizens, workers who do not have legal status, and workers who are in the current guest worker program (H-2A). For example, I shared that aMiguel Vasquez, working with an H-2A visa, died of heat illness in Georgia last year harvesting tomatoes. The employer did not take the necessary legal and other precautions to ensure basic safety. Three more recent examples of abuse of workers in the H-2A program in the last few years: US Department of Labor found workers housed in school busses in Arizona; the Department of Labor and court proceedings brought by 3rd parties have found numerous examples of employers illegally holding onto passports and keeping people in situations of forced labor; 6 farm workers died in an accident when a Farm Labor Contractor transported them in unsafe vehicle. The Department of Labor had found previously that the farm labor contractor had violated labor laws prior to the accident.

Workers in the H-2A program, who are employed legally, do have some protections not enjoyed by workers who do not have legal status. For example, a protected wage rate, employer provided housing, and employer provided transportation and a guarantee of payment of 75% of the contract are all important protections for workers in the H-2A visa program and for those domestic workers who work alongside them.

U.S. House of Representatives

Committee on Judiciary, Subcommittee on Immigration and Citizenship

"Securing the Future of American Agriculture"

Response to Representative Stuebe's QFR by

Tom Nassif

President and CEO of Western Growers



Relative to the hearing on

Wednesday, April 3, 2019

9 a.m.

Question:

2. Mr. Nassif: E-Verify is a critical part of any guest worker solution, but the agriculture industry is especially vulnerable if E-verify is implemented before a workable agriculture labor solution. How should E-verify be implemented to ensure employers and employees are following the law, without harming the agriculture industry and offering amnesty?

Answer:

Congressman Steube, thank you for your participation in this important hearing and for providing this further question for the record.

Agriculture needs both short-term and long-term solutions for labor shortages that have plagued us for years. We need a legalization of the current workforce to provide more stability in the near term for this industry that heavily relies on their work. We also need a more sustainable and streamlined guest worker solution to provide continued labor support for future years. After both of these components of reform are fully realized, we can then implement e-verify for the agriculture sector to ensure that we do not revisit agricultural labor uncertainty again in the future.

Responses to Questions for the Record from Mr. Bill Brim, President, Lewis Taylor Farms, Inc.

Mr. Bill Brim did not respond to these questions from the Committee.

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