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S. HRG. 106–1058

THE AGRICULTURAL JOB OPPORTUNITY BENEFITS AND SECURITY ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MAY 4, 2000

Serial No. J–106–81

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
74–730 WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (202) 512–1800 Fax: (202) 512–2250
Mail: Stop SSOP, Washington, DC 20402–0001

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THE AGRICULTURAL JOB OPPORTUNITY BENEFITS AND SECURITY ACT OF 1999

THURSDAY, MAY 4, 2000

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:18 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Spencer Abraham, (chairman of the committee) presiding.

OPENING STATEMENT OF HON. SPENCER ABRAHAM, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator ABRAHAM. We call this hearing to order. And I want to welcome everybody to today's hearing on the Agricultural Job Opportunity Benefits and Security Act of 1999.

I am going to make some brief opening comments, and I wish to apologize for being a few minutes late. Although I have not been officially asked to, I will also, on behalf of the Ranking Member, Senator Kennedy, express his concerns, too, about our day. Both of us have been on the floor in a pair of amendments. I have offered a first-degree amendment, Senator Kennedy has offered a second-degree amendment to my first-degree amendment. So we have spent much of the day together, just not here. And I am not sure where the current status of things is, but I apologize for my delay and hopefully he will be able to join us, as well as other members of the subcommittee.

I actually am going to be fairly brief. We have had several hearings already over the last couple of years on these issues that pertain to the workforce situation with respect to American agriculture. In June 1998, we held a hearing entitled, "The H–2A Program: Is it working?" The feeling that emerged, I felt, from that hearing is that the current system does not work very well, for a variety of reasons, for all of the different participants, whether it is the farmers or the potential workers or American agriculture in general.

One of the goals of that hearing and the process that hearing helped us to move forward was to bring together individuals on a bipartisan basis to try to engage in a more serious discussion of these issues. And then last May we held a hearing on meeting the workforce needs of American agriculture, farmworkers and the U.S. Academy, and I think at that hearing we also made it very clear that some of the problems associated with the H–2A system had

grown worse and that neither employers nor workers were being very well-served by the status quo.

I also think last year's hearing was very helpful in the sense that we really had more of a dialogue than a hearing in the conventional sense, and I think people on both sides got a chance to hear some of the concerns expressed by people with rivaling views in a way that maybe doesn't happen typically in a hearing, and I appreciated that.

At that time, or at least when we conducted that hearing, no legislation had actually been introduced on the subject at hand, and it was hoped that the hearing might be helpful in providing information on all sides of the issue in order to aid in the drafting of legislation. Since then, we have seen a bipartisan bill introduced by Senators Gordon Smith, Bob Graham, Larry Craig, Max Cleland, Mitch McConnell, Paul Coverdale, Jim Bunning and others. And it is that bill which is the focus of today's hearing.

Now, I realize as I think everybody does that there is still not unanimity of opinion on the legislation which will be discussed here today. Although policy disagreements are often what receive the most attention, as I note in the previous hearing, there remains an agreement on a large number of facts regarding farmworkers and agriculture.

First, we as Americans would like to see our farmers competitive in global markets and believe it is important to have agricultural products produced in this country.

Second, migrant farmworkers have hard lives, and we can all admire them for the very difficult, but important jobs which they perform on a daily basis.

Third, it is far safer for farmworkers born in other countries to enter America legally rather than to be faced with unscrupulous smugglers, who show little concern for their safety.

And finally, a farmworker who enters the United States to work legally will have a greater legal recourse than an individual who is an illegal immigrant.

I made these points last time, and I make them again in the spirit of hoping that we can forge more common ground. In my home State of Michigan, many farmers have related to me the difficulty of finding agricultural workers, particularly on a timely basis. Today, there are over 45,000 farms in Michigan. Each year, the food and agricultural industry contribute more than $40 billion to the Michigan economy. And today we will hear from a representative of Michigan's Farm Bureau, who will give us his views and the views of that organization with respect to the current conditions which confront farmers in my State.

In Washington, reflecting the views of their constituents, Senators of both parties have been working together and have sought this hearing today as a venue to advance the issue. There are also efforts taking place on the other side of Capitol Hill in the House of Representatives. Our two previous hearings, I believe, were successful in helping to forge a good degree of bipartisanship, though not uniform consensus. So I hope that today's hearing can help us find additional common ground that can benefit the Nation, and hopefully ultimately allow us to pass legislation that is a positive piece of legislation for all concerned.

So I just would say that I think the witnesses we have assembled today working with Senator Kennedy share that interest, and I look forward to hearing their testimony.

We will begin with our panel of Senate witnesses. Senator Gordon Smith, who is the lead sponsor of the legislation we are going to be discussing today, Senator Bob Graham, Senator Larry Craig. I will call on you in that order, unless there is a time problem, which I would be happy to honor. But if not, we will proceed first with you, Senator Smith.

PANEL CONSISTING OF HON. GORDON SMITH, A U.S. SENATOR FROM THE STATE OF OREGON; HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA; AND HON. LARRY CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

STATEMENT OF HON. GORDON SMITH

Senator SMITH. Thank you, Mr. Chairman, for your leadership and holding this hearing on S. 1814, the Agricultural Jobs Opportunity Benefits and Security Act. I would also like to thank you for holding hearings over the past years on the important issues surrounding the workforce needs of American agriculture, farmers, farmworkers and the U.S. economy. The outcome of those hearings, along with the years of negotiations, are reflected in this bipartisan bill that is brought to the committee today by Senator Graham, Senator Craig and myself.

I would also like to take the liberty of introducing two Oregonians that are here: Pastor Police officer Garcia from the House of Zion Ministries in Woodburn, OR, who will be testifying in a later panel today and his wife Marta. They are right behind me here. They are representative of many people who really want to improve the current circumstance. It is a shameful situation that we are in today.

And, Mr. Chairman, frankly, in all of my legislative career, I have never found an issue that quickly moves off its merits and onto name calling, as does the issue of immigration. And I suspect you understand what I am talking about. I have never had good-faith effort and people called into question so quickly in my life. And what I am doing here is a bipartisan effort, a good-faith effort to make a terrible situation to end and to make a better situation. Our country needs to get off this illegal system and onto a legal system so farmers are no longer fugitive or felons and farmworkers no longer need to conduct themselves as fugitives living in the shadows of our society.

Frankly, what motivates me to do this are the weekly reports. We all see, but frankly, we do not see much any more, even though they happen. It is becoming very common place in our society, where migrant workers are dying regularly in the deserts of this country trying to make their way to jobs. These are people who are raped, they are robbed, they are bribed, they are pillaged in ways that are unthinkable and unimaginable or should be unimaginable in American society. They have no worker protections or minimum-wage guarantees. They live outside the law. Now, how many people are we talking about? There are estimates between 1 million illegal

workers in agriculture, and perhaps as many as 6 million illegal workers throughout this country in various industries.

Now, if I can direct your attention to what we are trying to fix, these charts right up here. On the left, you see the current H–2A process. The thing speaks for itself. It is so cumbersome, so expensive to pursue that frankly it is rarely used. What my colleagues and I are proposing is a process on the right, which brings workers and employers together in a registry. No one is brought in until all domestic workers have a shot at existing jobs, and only then does H–2A kick in.

We need to get there, sooner than later. In addition to that, we found a way to give the workers who are already here working American crops legal status and worker protections. We want to give these agricultural workers who have tirelessly helped to put food on your table and mine the benefits of legal status. We do not want them to remain fugitives in our country any more.

I suppose the most attractive feature of our new bill is this process to legality. It is not an outright amnesty, but frankly it is a way in which they can immediately be here legally. And I am open to suggestions on the part of some farmworkers that we expand this to be more family friendly, and I hope that we can work on that as well. But our three main components of the bill are to provide legal status to undocumented workers immediately. And all they have to do is work 150 days in agriculture prior to this bill's introduction, and they can earn the right to just permanent resident status by working then for 180 days in 5 of the next 7 years. But their legality is immediate.

Second, we create this registry, as you see above.

Third, we enhance worker protections, benefits and labor standards by providing a premium wage up to 5 percent of our prevailing wage. We provide housing or a housing allowance. We provide transportation reimbursement, better labor law protections. And I would just conclude, Mr. Chairman, by indicating this is long overdue, as evidenced by two townhalls I recently had: one in Woodburn, Oregon. It was an Army National Guard building. There was standing room only—2,000 people at least there with overflow speakers to the outside. They were primarily illegals that were there, and they desperately would like us to do something. This is just some of the letters we have received from Hispanic workers who are asking us to do something differently to get some legal way for them to be here.

And finally, I would conclude by reading two quotes; one from The Washington Post in a recent article: "Congress has responded sympathetically to the pleas of the high-tech industry to hire more skilled workers from abroad, but it has yet to do anything for employers of those at the bottom end of the labor market, the end where U.S. citizens do not want to work. Now, with a record number of illegal immigrants living in the United States, an estimated 6 million, with most of them working, some even paying taxes and joining unions. It is time to bring our immigration policies in line with what is actually happening in the labor market. It is time to recognize that we need the immigrants as much as they need us."

Alan Greenspan has said a similar thing. I will include that in the record, Mr. Chairman. And, again, I thank you for holding this

hearing. This bill, in an amended form, is long overdue, and the time has never been better for the administration and this Congress to strike a deal that really benefits the victims, farmers and farmworkers.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF SENATOR GORDON H. SMITH

Thank you Mr. Chairman and fellow colleagues of the Immigration Committee for your leadership in holding a hearing on S. 1814, the Agricultural Jobs Opportunity Benefits and Security act, also known as AgJOBS.

Mr. Chairman, I would also like to thank you for holding hearings over the past few years on the important issues surrounding the workforce needs of American agriculture, farmworkers, and the U.S. economy. The outcome of those hearings, along with the years of negotiations, are reflected in this bipartisan bill cosponsored by myself, Senators Graham, Craig, Cleland, McConnell, Coverdell, Mack, Cochran, Helms, Grams, Crapo, Bunning, Voinovich, Gregg, and Frist.

I would also like to introduce Pastor Polo Garcia—from the House of Zion Ministries in Woodurn, Oregon—who will be testifying in a later panel today. I commend both Polo, and his wife Marta, for their service to the farmworkers. They are representative of many people who really want to improve the current shameful situation we are in today.

Mr. Chairman, in all of my legislative career, I have never found an issue that as quickly moves off the merits and onto name-calling than the issue of immigration. I was amazed and astounded at the things that were said to me and my colleagues as we pursued this issue with the very best of motives last Congress. Those things are said still. But I challenge anyone who wants to see a better life, I challenge them to defend the current system we have in this country for agricultural workers and farmers. We take for granted when we to go the grocery store all the abundance there that greets us, but we seldom take the time to think of those who helped produce it and bring it to the market.

There is a shameful story to be told in this country when it comes to agricultural workers. What I am offering with all of my colleagues—a bipartisan group of my colleagues—is a good-faith effort to make a bad situation much better and to get this country off an illegal system and onto a legal system so farmers no longer need be felons and farmworkers no longer need to live in our shadows as fugitives.

What motivates me to do this are the almost weekly reports of migrant workers dying in the American deserts of the Southwest, trying to make their way to jobs. These are people who are victimized by human coyotes. They are raped. They are robbed. They are bribed. They are pillaged in ways that are unthinkable, and ought to be unthinkable, in this country. It happens because they have no safe and legal way to come here and to go home, to work a job, to earn their way, and to share the American dream, which is really just a human dream. That was the motive upon which I tackled this issue.

How many people are we talking about? By some estimates, there are over 1 million illegal workers in agriculture in this country. There are estimates of 6 million illegal aliens in the United States.

Let me tell you why our current guest workers system doesn't work.

First of all, it is economically beyond the pale of most of those in the farm communities who would like to hire them. To illustrate, this is the Department of Labor's 325-page handbook which attempts to guide employers through the H–2A program's confusing application process to hire one worker. The GAO itself found that this handbook is outdated, incomplete, and very confusing to the user. Conversely, when I applied for a job in the Senate, I had to fill out a two-page document.

Even the December 1977 GAO report illustrated the burdensome H–2A process with which employers must comply in order to bring in legal, foreign workers. A grower must apply to multiple agencies to obtain just one H–2A worker. This process is further complicated by the multiple levels of government, redundant levels of oversight and conflicting administrative procedures and regulations. Also, as reported by the recent Department of Labor Inspector General, the H–2A program does not meet the interests of domestic workers because it does a poor job of placing domestic workers in agricultural jobs.

In the meantime, I have gone forward with Senators Graham and Craig to fix our farm guest worker program in the hopes of getting something through in this Congress that could win the support of the administration and begin to relieve a problem we have now seen in a very human way.

First, we provide an opportunity for workers already in the U.S. to earn legal status. To reduce the need for temporary guest workers and immediately address the illegal worker crisis, workers who meet specific employment requirements are eligible for immediate, legal "adjustment of status." The workers who qualify for "adjustment of status" can earn permanent residency status in the U.S. if they continue to meet specific employment requirements for five of the next seven years. Their change of status from illegal to legal actually occurs immediately.

It was my experience as a person in business that those who got amnesty immediately got a voice. As soon as they had a legal right to be here, their conditions began to improve. The people who will argue against this bill somehow benefit—even profit—by keeping these people illegal and by being their voice. I don't think that serves their interests based on what I saw in the private sector in the middle 1980s.

What we are proposing is not amnesty. Some have said this is indentured servitude. The indentured servitude is the status quo. The indentured servitude are those who simply say keep them illegal, keep them down, make sure they don't have the benefits that other workers in America do, and we will somehow suggest we are on their side. The way out of indentured servitude is to give them a legal path to follow. That is what Senator Graham, Senator Craig and I are doing.

The second part of our bill is to actually improve and streamline the current H–2A guest worker program by creating a national registry for matching workers with jobs. To make the H–2A program more efficient for workers and employers, the bill creates a computerized registry system that ensures legal, domestic workers will be hired first for all agricultural jobs. Only after the Department of Labor (DOL) determines that a shortage of domestic workers exists could adjusted workers be recruited. If the DOL further determines that a shortage of adjusted workers exists, H–2A workers could then be recruited. H–2A workers can only be admitted after it is determined that a shortage of US workers exists. This ensures that employers hire workers already in the US before recruiting temporary, foreign guest workers.

What Senator Graham, Senator Craig and I are proposing to do is to create a national registry that does not even kick in until all domestic workers have right of first refusal. What it does is connect workplaces and employers with employees who want to work on farms. It will provide an opportunity even for organized labor to go to one place, find out who wants to be there, who wants the job, and even assist them in organizing if they choose to do so.

I am not here to oppose organized labor. I am trying to help them, to say there is a legal way to do this that will better serve the interests of real people, and not the imaginary, hoped-for things that some are claiming are possible, which are not possible.

Third, Senator Graham, Senator Craig and I are providing enhanced worker protections. This bill improves the inhumane working and recruiting practices that victimize current undocumented workers in the US. It gives all adjusted farmworkers the standard protections under US labor law that they lack as undocumented workers. The bill also provides H–2A workers with enhanced worker protections, including better wages, housing and transportation benefits, and coverage under the Migrant Seasonal Agricultural Worker Protection Act. Under the new legislation, all labor protections included in the current H–2A program are preserved.

All of this is done because we are here to help. We reach out to all who are in this disadvantaged situation who want to be legal, who want a future, who want to pursue the American dream, and who want to do farm work.

Some have suggested we are trying to flood this country with more illegal problems. I say to you today in this hearing, I'm not asking for additional workers; I want those who are already here to have a legal way to be here. This isn't as if they are coming; they are already here. It is a shameful situation when we can do nothing for them under law.

I would like to briefly tell you about some meetings I had during the February recess this year. I had scheduled two meetings, one in Woodburn, Oregon, and the other in Gresham, Oregon. The subject was farm labor. I invited people to come and talk about my bill. I was overwhelmed by what occurred. We met first in an armory in Woodburn. When I arrived, it was already filled to capacity. There were 1,200 people, most of them illegal, in the armory waiting for me to come. They had been there, I was told, for an hour or more ahead of time, hoping to get a seat to hear what was going to be shared. There were so many people in the armory, they had to put a speaker on the outside grounds so that those who could not get in could hear. Some in the media estimated there were 2,000 people in total.

I looked into their faces and saw those who live in our society, those who live in the shadows of our society, those who fill jobs in our society, those who keep our

shelves full at home and in our grocery stores, but those who are victimized in the most inhumane way because we have an unworkable law.

Mr. Chairman, over the past few months, I have received hundreds of letters from famworkers working in Oregon and throughout the country who dislike the current farm labor system as much as their boss does. In their letters to me, most of which are written in Spanish, they say the program is "unfair" and "does not allow enough people to qualify for employment." The letters go on to say, "Please work for a new law that assists (farmworkers) who wish to work and come to this country to fill the shortage of farm laborers." I would guess that many of the workers in your state feel the same way these workers from Oregon feel.

I heard all kinds of opinions about my bill. I granted to them that it probably wasn't a perfect bill, but at least I was trying—one of the few who are—to resolve this situation. I thank Senators Graham and Craig for their willingness to step into this issue. One gets lots of arrows in the back when they try to tackle an immigration issue.

What made my meetings, frankly, more productive and very helpful was a press release from the AFL–CIO, in which they called not for help to farmers and farmworkers alone, they called for a general amnesty of all illegal aliens in this country. A general amnesty is something we have done in this country periodically; every few decades we seem to do this. The question now is whether it is appropriate to do that now.

There have been lots of editorial comments about this recently in the Washington Post. There was a very interesting article on this whole issue of farm labor and illegality. The Post said:

> Congress has responded sympathetically to the pleas of the high-tech industry to hire more skilled workers from abroad, but it has yet to do anything for employers of those at the bottom end of the labor market—the end where U.S. citizens don't want to work. Now, with a record number of illegal immigrants living in the United States, an estimated 6 million, with most of them working, some even paying taxes and joining unions, it is time to bring our immigration policies in line with what is actually happening in the labor market. It is time to recognize that we need the immigrants as much as they need us.

See, I know in Congress there are a lot of people who make an academic argument that we don't want to reward illegal behavior with a legal document. I understand that, but it doesn't fix the problem. It doesn't deal with reality. These people aren't coming; they are here and they live among us. They live in our shadows and they are victimized on a daily basis in a whole range of ways—bureaucratically, even criminally. It is a shame upon this country that we don't resolve this—short-term and long-term.

I was pleased that in the recent testimony of Federal Reserve Chairman Alan Greenspan he gave support to what I am talking about. Said the Chairman:

> It's clear that under existing circumstances, not only in the high-tech and in the farm area, but indeed throughout the country, aggregate demand is putting very significant pressures on an ever-decreasing available supply of unemployed labor. The one obvious means that one can use to offset that is expanding the number of people we allow in, either generally or in specifically focused areas. And I do not think that an appraisal of our immigration policies in this regard is really clearly on the table.

I think we need to put it clearly on the table as a priority of this Congress to do something about it. It need not be partisan. Regarding the position the AFL–CIO has just taken, I hope they will let me help them. I would like to help them to get a general amnesty. But I think that we also need to fix our broken farm labor system.

For those who say we should not do anything, I don't know what their motive is. I fear too often, though, that it is just anti-immigrant. We rightfully, criticize, for example, Joerg Haider, of Austria for his anti-immigrant statement, which recalls a bygone era and a great tragedy. But what is the difference when we have politicians among us who make comments not unlike that about even legal immigration? They don't want anymore of it.

We have the Chairman of the Federal Reserve saying we need workers because we have good employment, but it is predicated on an illegal system. We need these jobs to be filled and we need crops harvested. Right now, we are victimizing farm workers and farmers because farmworkers have to live like fugitives among us, and farmers are made out to be felons. We owe the United States something better. But, more, we owe the people at the bottom rung something better. They contribute to

our society and they are victimized too often by our society when they make a significant contribution to the abundance that we enjoy as Americans.

So I call on our congressioinal leadership to bring us together to help us fix our farm labor problem. Together, we can find a solution and we can treat these people more fairly, like human beings, with the dignity of law and the protection of law and a process that is safe and humane.

Thank you Mr. Chairman for allowing me to testify before the subcommittee today.

S. 1814.—THE AGRICULTURAL JOB OPPORTUNITY BENEFITS AND SECURITY ACT (AGJOBS)

PROVIDING LEGAL STATUS TO UNDOCUMENTED FARMWORKERS

• To reduce the number of H–24 workers needed after enactment, utilize the skills of the existing agricultural workforce and maintain immigration control, farmworkers who can prove that they worked 150 days in agricultural work in the U.S. during the 12-month period prior to introduction of the bill may adjust their status to temporary nonimmigrants and eventually earn the right to become legal permanent residents.

• Eligible workers would have to meet standards of proof to qualify.

• Eligible workers who choose to participate could only work in agricultural employment during the qualifying period. They would be in nonimmigrant status during the qualifying period.

• Eligible workers could be present in the U.S. and work no more than 10 months annually in the U.S. during the qualifying period, with the exception of those with U.S. born children.

• Workers eligible for adjustment are free to select their employer and work anywhere in the U.S. in agricultural employment.

• Eligible workers could earn the right to adjust to permanent residency by working in agriculture a minimum of 180 days annually in 5 of 7 years following their initial adjustment of status.

MAKING THE H—2A PROGRAM WORK FOR FARMERS AND FARMWORKERS

Innovation and technology to the Agricultural Worker Registry

• The labor certification process that is used to ascertain whether domestic workers are available to work in agriculture prior to the admission of foreign workers is antiquated and inefficient. Its use in the H–2A Program is over 50 years old. The Department of Labor has existing computer technology as part of America's Talent and Job Banks that can simplify and substantially improve upon the existing process. Under the bill, this technology would be modified to replace the old system with an Agricultural Worker Registry.

• Any U.S. worker interested in agricultural employment would be able to call or walk into a local job service office and get listed on the registry by indicating the area, crop, and length of time they would like to work in agriculture.

• Any agricultural employer seeking workers could use the registry to list jobs available in specific crops, locations, and terms and conditions of employment. The registry would match workers and employers with comparable requirements.

• Employers seeking H–2A workers would have to use the registry and hire all qualified and available U.S. workers before they could get permission from the Department of Labor to bring in temporary alien H–2A workers. H–2A workers would only be admitted if there were a shortage of U.S. workers.

• Workers adjusted under the bill would have the choice of being listed on the registry. If they were listed on the registry, employers seeking H–2A workers would have to hire U.S. workers, and if an insufficient number of U.S. workers were available, then hire adjusted workers in the area, before any H–2A workers would be admitted.

• Workers hired off the registry by H–2A employers would receive the same premium wages and working conditions as H–2A workers.

• Employers and the government would have to advertise the availability of the registry.

• Employers would have to independently advertise for U.S. workers and recruit former U.S. workers regarding employment opportunities.

• Foreign farm workers could not be used if the job for which they were sought was involved in a labor dispute. Foreign farm workers could join unions.

Better wages

• Premium wage rate. U.S. and H–2A workers would have to paid the prevailing wage rate plus a premium of up to 5% on prevailing wages that are less than the prior year's average hourly earnings of field and livestock workers for the state. In no case could a worker receive less than the federal, state, or local minimum wage level.

Better housing and transportation

• Housing or limited housing allowance. U.S. and H–2A workers would have to be provided housing or a housing allowance. A housing allowance set by the U.S. Department of Housing and Urban Development could be provided in lieu of housing during the 3-year period after enactment, during which the regulations and adjustment procedures would be implemented. Thereafter, an allowance in lieu of housing would be permissible only if the Governor of a particular state indicated that sufficient housing were available in the area of employment.

• U.S. and Foreign farmworkers get transportation costs reimbursed. Inbound transportation is reimbursed if workers complete 50% of the contract work period, and outbound transportation reimbursed if they complete the entire period of employment.

Better labor law protections

• Eligible workers would be covered by all U.S. labor law protections, such as child labor laws, occupational health and safety regulations, and wage and hour rules.

• For the first time, H–2A workers would be covered under the terms of the Migrant and Seasonal Workers Agricultural Protection Act.

• A commission would study the complicated problem of farm labor housing and make recommendations for long-term changes and improvements.

• Studies of existing agricultural labor standards and enforcement would be conducted, including:

  • The relationship between childcare and child labor violations.
  • Field sanitation standards.
  • Coordinated and targeted labor standard enforcement.

Senator ABRAHAM. Senator Smith, thank you, and we will include in the record those documents which you wish to add.

[The information of Senator Smith was not available at presstime.]

Senator ABRAHAM. Senator Graham.

Senator GRAHAM. Mr. Chairman, my colleague, Senator Craig, is going to be chairing a committee meeting, which starts at 2:30 p.m. Since we Democrats do not do that any more, I would defer to Senator Craig.

Senator ABRAHAM. Senator Craig, we appreciate the conflict of time. Please begin.

STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Mr. Chairman, thank you. The Senator from Florida now knows that I owe him. [Laughter.]

I apologize for my voice. It is an allergy situation, Mr. Chairman, but it will also make me brief, very brief.

My colleague from Oregon has done an excellent job of defining the issue and describing a new product that is in front of you, Mr. Chairman. And I would hope that with your knowledge of this issue, you would examine 1814 as a new product. Following past hearings and past efforts, we tasked the communities involved in this issue to work with us to build a product that we could all agree on and that we hoped a Congress could collectively agree on. We believe we are much closer to the issue.

Your leadership in H–1B is laudable, and we appreciate it. Now we seek your help in leading in the H–1A program. And let me put

it this way, Mr. Chairman, and I think that my colleague from Oregon broached it slightly. We were quick to respond to H–1B because it was an economic issue in our country. I would hope that we would be quick to respond to this issue because it is not only economic, it is a humanitarian issue. H–1B was not. These folks were not being mistreated and many of them were white collar. That is not true here.

While these people languish in the shadows and are mistreated, we sit here in Congress and argue. Your leadership, along with ours, is desperately needed to resolve this problem. We have an obligation to do it. My colleague from Oregon is right, it is not always popular, and it does create conflict, sometimes with our base, that is for sure. You know that as well as I.

At the same time, the tragedies that occur in this situation deserve to be dealt with. And a Congress that continually turns its back on this issue, for whatever reason, is, in my opinion, an irresponsible Congress. Whether it is the Ag jobs registry, whether it is the reform concepts in this program or whether it is a one-time creation of an adjusted workers program that we believe offers the opportunity to earn, to earn, a status in this country. We do think we have a new work product in front of you that deserves your examination and the full committee's, and we thank you for this hearing.

And I will ask unanimous consent that my whole statement be a part of the record.

Senator ABRAHAM. Without objection, it will be included.

Senator CRAIG. Thank you.

Senator ABRAHAM. Thank you, Senator Craig.

Senator Graham.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman. I would also request that my full statement be part of the record. Much of what I have included has been spoken eloquently by Senator Smith and Senator Craig, and I do not wish to be redundant.

Mr. Chairman, I want to join in thanking you for holding this latest hearing on this important subject, and I hope that we are at the point that not too many future hearings will be required because we actually will legislate on this subject. Doing so, legislating on this difficult subject of agricultural labor, would be a strong signal of a spirit of bipartisanship and a feeling of good will not only among the various interests who are affected by this legislation, but also here in Congress.

The legislation which we have introduced, as my two colleagues have already said, focuses on three major concerns: The first is that the United States today is the home of a large number, a growing number, of undocumented agricultural workers. A recent survey by the National Agricultural Workers Survey, which is conducted by the United States Departments of Agriculture and Labor, indicated that in 1999 approximately 50 percent, 50 percent, of the nearly 1.6 million agricultural workers in the United States were self-identified as being illegal. Two years earlier, 37 percent were self-identi-

fied as illegal—an indication of how rapidly this problem is festering.

This large number of illegal workers in agriculture poses problems for both farmers and farmworkers. Farmers are placed in the position of having frequently to decide whether they are going to allow their crops to rot in the field or break the law. Farmers do not like to be placed in that kind of an economic and legal position. Farmworkers live in the darkest shadows of our society. If I could cite one personal illustration of this, in August 1992, a very serious hurricane, Hurricane Andrew, hit the Southern part of our State, an area in which there are a large number of farmworkers. Immediately after the hurricane, there was great concern about communicable diseases, and therefore the desire to get people, particularly children, immunized against very serious threats, such as cholera. What was found that it was extremely difficult to get farmworkers to allow their children to come forward and be vaccinated because of the fear that that would lead to the deportation of the parents.

That is illustrative of the level of anxiety under which today some 800,000 souls live in the United States. They are afforded the fewest rights. And even those rights which are provided have no real protection. As a result, this large population is among the most vulnerable in our society.

The second issue is that the current H–2A Program is administratively burdensome, as Senator Smith's charts indicate. It is subjective in its search requirements and unreliable in the time that is needed to process an application. If a farmer cannot find sufficient American workers and needs temporary or foreign help, he or she must navigate a maze of complex regulations so complex that there is a 300-page guidebook to explain the process. The process to apply for a single foreign worker can run 15 to 20 pages. The search requirements for U.S. workers is subjective. It varies from region to regions. Farmers have little assurance that even after they successfully complete the long forms and the complex bureaucracy, that the Department of Labor will approve their request. Indeed, in 1997, a General Accounting Office study of the H–2A Program indicated that the Department of Labor does not, in some cases, meet its own deadlines to process H–2A petitions for workers.

Mr. Chairman, we clearly need a better way to connect farmworkers with farm jobs and growers with potential employees. We suggest that the registry that is included in S. 1814 is an important step in that direction.

I want to take this occasion to commend the United States Department of Labor for its efforts to develop such a registry and to try, on a pilot basis, what is referred to as Agnet, a new computerized database. This could be an important first step in utilizing modern technology to build bridges between farmworkers and farmers.

The third issue is that it provides unprecedented enhancement in U.S. farmworker wages and benefits. The 800,000 people who are here illegally, of course have no access to whatever the law might provide in terms of their wages and benefits. Current law mandates that growers provide housing to H–2A temporary farm-

workers, no such requirement for the large undocumented workforce.

Our legislation would require that all legal domestic workers, including those who would become legalized because they would receive a temporary work permit, who are hired from the registry by an employer seeking H–2A workers, would be provided with housing or a housing allowance. There also are increases in provisions for transportation and wages.

Mr. Chairman, I do not believe Senators Smith, Craig or myself pretend that this legislation was given to us as Moses received the tablets on the top of the mountain. These are our best efforts to analyze the problem and suggest solutions. I will say this, as if it were imprinted on tablets of stone, these problems are not going to go away because we decline to face them and deal with them. I believe that now is the time to move forward; that people of good will on all sides of this issue are coming together trying to understand each other's positions and to arrive at a position that will best serve the interests of all of the groups involved and the national interests of the United States.

So, Mr. Chairman, I again thank you for holding this hearing, and I hope that we can move forward in this Congress to face this difficult issue and give to America a resolution.

Senator ABRAHAM. Senator Graham, thank you. Thank you, Senator Smith. I will now call up the second panel, and if either of the Senators would like to join me for the balance of this hearing, we would be glad to have you hear with us.

Our second panel is made up of representatives from the House. We have both Representative Howard Berman and Representative Sanford Bishop with us. We welcome you back.

Congressman Berman, I am happy to have you here today. I was mentioning to you beforehand that, first of all, you win our subcommittee award for the most appearances by any member of the House of Representatives before the subcommittee. It also occurred to me that you also may have been more frequently than certain unnamed members of the subcommittee themselves have been here. [Laughter.]

And so for both of those reasons, I am happy that you are with us again today and appreciate your participation here.

And Representative Bishop, we welcome you back as well. Thank you both for being here. We will start with you, Congressman Berman.

Mr. BERMAN. Thank you very much, Senator. You should know that I find myself in this subcommittee more than I find myself in my own Immigration Subcommittee on the House side. [Laughter.]

Now, my sense is that the organization fair probably finds itself more on the House subcommittee side than they find on this side. But I just want to say that I have a tremendous respect for and a real feeling of affinity for your perspectives on the immigration issues. So it is an honor to be here.

Congressman Bishop has an Intelligence Committee issue, and so I would like, if that is all right with you, I would like to defer to him.

Senator ABRAHAM. Fine. That is no problem at all.

Congressman Bishop, we appreciate your being here. As I said, again, in deference to your other commitment, we will start with you.

STATEMENT OF HON. SANFORD BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Representative BISHOP. Thank you very much, Mr. Chairman. And certainly thank you, Mr. Berman, for your courtesy, and Senator Graham, Senator Smith, Senator Abraham. I appreciate the opportunity to come before the committee once again on this which I believe is a very, very important issue, particularly to the American farm community.

I have been working on reforming the H–2A program almost from the day I came to Congress. I have pushed legislation, proposed rule changes, held countless meetings and negotiated with the Labor Department and others in Congress at great length. Just about everyone acknowledges that changes are justified in our H–2A guestworker program. In my district in Southwest Georgia, farmers and farmworkers have heard the roar of helicopters hovering over fields to enforce the current system. The threat of raids permeates the country air. America's fields should produce a bounteous wonder, not clouds of fear.

That is why I have introduced in the House of Representatives H.R. 4056. which is a companion bill to S. 1814, which is before this committee. H.R. 4056 would improve the U.S. Labor Department's rarely used guestworker program over the new system that is designed to achieve two goals: to make foreign farm labor temporarily more accessible to America's farmers when U.S. workers are not available, and to guarantee that domestic and foreign farmworkers receive prevailing wage rates, decent housing, transportation and working conditions.

I have concluded that we can make the program available to farm employers, while making sure that U.S. workers are not displaced, that we can get control of illegal immigration by making sure that legal workers are available to take farm jobs instead of illegals and that it makes no sense whatsoever to allow crops to perish in the field or never get planted when there is a waiting labor supply that can do the job.

The bill that we have introduced in the House of Representatives, the companion bill in the Senate, would modify the overly restrictive rules, including those modifications that must be made through legislation and those that can be done administratively. It would also establish a farmworker registry. From this registry, U.S. farm employers would hire workers based on three priorities: Agriculture jobs would be guaranteed first to U.S. workers; second, illegal foreign workers who could document that they have previously worked on U.S. farms would have the second choice of jobs, an opportunity that is aimed at bringing them off the black market and enabling them to earn legal working status after at least 5 years of U.S. farm work experience over a 7-year period.

Third, if no workers were available in these two categories, farmers could temporarily hire workers from outside the country under a simplified and streamlined guest worker program.

The fact is, this would be a win-win situation for farmers, for farm workers, and for immigration control. Farmers would gain the stability of a legal workforce and the certainty that crops would be planted and harvested on time. U.S. workers would be protected by a system that can bring illegal immigration under control and make sure that they have the first choice of U.S. farm jobs. And foreign agricultural workers would benefit from a law that would ensure that they had safe working conditions, and equitable pay, and the chance to earn the right to legal status.

The U.S. Labor Department's regulation-ridden guest worker program which is supposed to allow farmers to temporarily employ foreign farmworkers when there are shortages of U.S. workers is too cumbersome and costly for most farmers to use. Many farmers have no choice but to rely on foreign farmworkers who have illegally entered the country to get their crops planted or harvested. More than 600,000 illegal aliens are now in the country and illegal farm employment is so widespread that working standards and immigration laws cannot be effectively enforced.

Extremely burdensome regulations imposed by Congress and the bureaucracy go beyond anything that's needed to protect U.S. workers, and have rendered the guest worker program useless for most producers, leaving many with the choice of going broke or turning to illegal farmworkers already in the United States. This is the catch-22 that creates instability and turmoil within the farm labor system.

However, the proposal is drawing fire from forces opposing any measure that would enable illegal foreign workers to earn legal working status and from other forces who believe that the bill does not make it easy enough for illegal workers to gain legal status. I'm proposing a thorough overhaul of the badly broken farm labor system that would be good for producers, good for foreign and domestic workers, and good for immigration control; a win-win situation for everyone.

The Agricultural Job Opportunity Benefits and Security Act of 2000 reforms the current program, provides farmers with a stable, legal workforce, and grants legal status to hundreds of thousands of farmworkers already working in the U.S. This legislation is realistic and socially responsible. It is the product of farmers, workers, and immigration officials coming together to address one of the most important issues facing American agriculture in the 21st Century. Who will bring in the harvest?

We thank the members of the committee and the chairman for allowing us to testify and to Mr. Berman for his courtesy, I urge you to please consider and help us reform this badly working system of guest worker regulations. It is broken. It needs fixing, and let us join together to do that.

Thank you very kindly.

Senator ABRAHAM. Congressman, thank you very much. Appreciate your being with us.

Congressman Berman.

STATEMENT OF HON. HOWARD L. BERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BERMAN. Thank you very much, Senator Abraham, and Senators Graham and Smith as well for all your courtesies.

The reason I am here is that since I have been in elected office, first in the State legislature and now here, an issue that has always been quite important to me is doing what I can to try to improve the circumstances of farmworkers. These are the most impoverished working people in the United States. I am convinced that proposals that make it easier for agricultural employers to bring in foreign guest workers have the impact of accomplishing the opposite, which is depriving farmworkers in America of job opportunities that they badly want, and exacerbating the oversupply of farm labor. The result of that, I feel, is to inevitably drive down further farmworker wages and working conditions.

I want to make it very clear though that I agree with what has been said by the previous panel, that there is an unacceptable and growing percentage of agricultural labor workforce which is undocumented. Having lamented that fact, the question is now, what do we do about it? I do not think that guest workers are the answer, whether our concern is the well-being of farmworkers or combatting illegal immigration. I remind you again, the U.S. Commission on Immigration Reform concluded that creating a new agricultural guest worker program would be a grievous mistake and that it would only serve to increase illegal migration instead of replacing an illegal workforce.

There were references, and they are absolutely accurate, to the fact that S. 1814 is a bipartisan bill. I also think, and I guess this could be used as an admission or an acknowledgement that could be used against me if we are not able to make further changes, that S. 1814 is at least conceptually an effort to try and deal with some of the issues that have been raised at previous hearings here, and in that sense is a meaningful step forward.

But while it is a bipartisan bill, it still is not a bill that reflects the active participation of farmworkers, their representatives, and their advocates, and I would like to make some suggestions for things that I think could move that forward.

I also have to say that while I have strong feelings on issues, I know that the final resolution of this—if there is to be one this year—it is not going to be in a bill that is exactly what I would want. There would have to be substantial compromises on both sides. But in our earlier hearings here we talked about alternatives to guest worker programs, of dealing with the presence of the undocumented and finding a way to adjust their status.

The previous bill, I do not know if that was ever introduced. I am trying to remember. Yes, it was. It was passed onto the Senate appropriations bill and passed the Senate, that Senator Smith and Senator Wyden were involved with, and had a slight, bare hint of a potential for an adjustment program. S. 1814 goes significantly further in that regard.

But what I proposed at our last hearing was a program not exactly like the SAW program of the 1986 bill, which legalized workers based on their past work history, but a program more like the replenishment agricultural workers, RAW program, which passed

in the same legislation but which was never implemented because there was never a finding of a farmworker shortage.

We put that program on the books in the event that after SAW occurred there would still be a shortage of workers. What the RAW program offered prospectively to farmworkers was permanent resident status upon completion of 90 days of work in perishable agriculture for three successive years.

I can support the implementation of a RAW-like program with labor protections necessitated by the tie of workers to agriculture. I do not like the notion of tying workers to any particular industry, but I recognize that there is a belief and probably a reality behind the assertion of agricultural employers that many of the seasonal agricultural workers, the SAW workers that were legalized under the 1986 law have left agriculture.

We can debate whether that happened substantially because agricultural employers declined to respond to the free market imperative of improving wages and working conditions in order to retain the workers or whether it occurred for other reasons. But let us put that debate aside because that does not move us forward I do not think.

The point remains that while I do not like the concept in principle of tying people to a particular industry, I can support a reasonable tie.

What I cannot support is the adjustment program in its present form in Title I of S. 1814 because in my view it is a very far cry from a real legalization program, and because it would have some harsh and unfair consequences for farmworkers, in many cases the same kinds of negative consequences I think some of the H–2A reform proposals in Title III of the bill have. Let me be real specific on a few of them. I know some of the witnesses will be talking about this as well in the next panel.

Title I is not really a legalization program at this point. The sponsors claim to be adjusting farmworker status but to leave them consigned to a second class, continually exploitable status of nonimmigrants is not a boon to farmworkers. A serious legalization program I believe would convey immigrant status immediately. That is why I view the proposal in S. 1814 and S. 1815 as an alternative kind of guest worker program which allows the farmworker in the vulnerable status of undocumented worker nothing more than the possibility of adjusting some time in the future to the still vulnerable status of guest worker.

I object and do not like the limitation on the type of labor the adjusted worker could perform in the United States. Granted that the worker will be permitted to perform agricultural employment anywhere in the United States and is not tied to a particular employer, and that is a significant improvement. But the worker is not allowed to perform any other kinds of work during this period.

About one-quarter of all farmworkers in the United States now survive by combining farm work with non-farm work. Anyone in a seasonal area understands that there are seasons where far fewer farmworkers are employed than other seasons. Almost by definition large numbers of farmworkers have to work in other areas in order to survive. The prohibition against performing other work consigns many of these workers to abject poverty.

Adding to that concern is the requirement that in order to maintain the adjusted status and not be terminated or removed from the country the farmworker must demonstrate to the INS that he or she worked in agriculture 180 days per calendar year in each of 5 years. But this could very well be impossible to achieve for the majority of farmworkers. The average farmworker now works in agriculture about 29 weeks per year, probably fewer than 145 days, since the work is not necessarily available every day of a week. This means that most farmworkers will be terminated from the program prior to eligibility for applying for a green card because they simply cannot get the number of days of work, assuming they are ready, willing and able, that are required by the program in its current form.

This, in turn, underscores my concern about why I still call this program exploitative, the suggested status that we have created. Workers trying to put together a series of jobs to secure 180 days year worth of agricultural employment will be forced into dependence on employers to cooperate with one another to arrange several jobs amounting to 180 days. Fear of imperiling the cooperation of employers in order to maintain their eligibility will mean that these nonimmigrants will predictably be too fearful to enforce what labor rights they might have or any ability or inclination to press for higher wages. That is why I believe this bill still leaves these workers who are in this status very exploitable because the last thing they can do is jeopardize anything which enables them to try to meet the 180-day qualification.

The provision barring the adjusted farmworker from spending more than 300 days inside the United States in any 1 year, there is no sound public policy basis behind that. I think I understand a little bit the reasoning of the authors in putting that in, in the hopes of a little bit trying to call a tail a leg as we package this thing and try to sell a program to our colleagues. But it flies in the face of the family values to which we all subscribe. Many of these undocumented workers are here. Arbitrarily forcing them to leave and then using the failure to have left for 60 days a year as a basis for disqualifying them, I do not know what we are accomplishing. I think it is just another potential pitfall in the way the program is designed. The only way a farmworker can exceed this limit is if he or she has and lives with a minor child born in the U.S., but then only if he or she can secure at least 240 days, rather than the already too high 180 days of agricultural employment for that year.

The adjusted nonimmigrants under this program are restricted in their mobility and in their access to job referrals from the bill's job registry. And because the bill would allow employers to deny jobs to anyone not referred by the job registry, their restricted access to the job registry will deny to these farmworkers the very jobs they need to maintain their status. More specifically, a worker of any type may only apply to be included in the registry for the State in which the individual resides and the registry may not refer an adjustment worker to an employer that is not within the registry's State or a contiguous State.

There are other things I could say, but I really have gone on a long time here. It is all in my prepared testimony. I think these are things we could deal with, but I guess what I am saying is S.

1814 is not, in this particular form, a proposal that I think reflects farmworker interest. I listened to Senator Graham and all of you in talking about this. And I believe and I accept that you understand the plight of farmworkers and want this to be a vehicle that not only helps make agricultural exports a continued valuable commodity for trade and for the growers' their own economic situation, but you also want it to be a way to improve the status of farmworkers. I just think we have got some substantial work to do to actually put this bill into that position.

I think I will stop at this particular point and indicate my interest in working this out. I do not think we solve any of the problems by not doing anything this year. I would like to see something accomplished. I am willing to put my time into trying to make that happen. But I do think we have to go through—I mean, part of the problem is, since it has not been a collaborative process yet between farmworkers and growers, some of these points people reasonably do not hear the other side of as they are putting together the legislation, and it is very understandable that the bill contains some provisions which, in reality, will work against the interests of farmworkers. I would like to see if we can cure some of those problems.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF U.S. REPRESENTATIVE HOWARD L. BERMAN

Thank you for the opportunity to testify today. For as long as I have served as an elected official, I have made it my business to try to improve the circumstances of farmworkers, the most impoverished working people in the United States. I am convinced that proposals to make it easier for agricultural employers to bring in foreign guestworkers would accomplish exactly the opposite, depriving farmworkers in America of job opportunities they badly want, and exacerbating the problem of an oversupply of farm labor. The result can only be to further drive down farmworker wages and working conditions.

I do want to make one point very clear, however. I do not deny the fact that an unacceptable and growing percentage of the agricultural labor workforce is undocumented nor do I condone it. But having lamented that fact, the question is what to do about it. Guestworkers are *not* the answer, whether our concern is the well-being of farmworkers *or* combatting illegal immigration. The U.S. Commission on Immigration Reform (or Jordan Commission) in 1997 concluded that creating a new agricultural guestworker program would be a "grievous mistake", and that it would only serve to *increase* illegal migration instead of replacing an illegal workforce.

I believe that we are on the *right* track when we talk instead about creating a program to legalize, within certain well-defined parameters, the present undocumented workforce. I suggested just that in my last appearance before this subcommittee, almost exactly one year ago. I proposed then a program not like the SAW program of the Immigration Reform and Control Act of 1986, which legalized workers based on their past work history, but rather like the "replenishment agricultural workers" or RAW program which we legislated in IRCA but never implemented. We put that program on the books *should* a shortage of workers ensue subsequent to the SAW legalization program. What the RAW program offered *prospectively* to farmworkers was permanent resident status upon the completion of 90 days of work in perishable agricultural for three successive years.

I can support the implementation of a RAW-like program with labor protections necessitated by the "tie" of workers to agriculture. I don't like the notion of tying a worker to any particular industry, but I recognize that there is a perception among agricultural employers that many of the Special Agricultural Workers (SAWs) legalized under IRCA left agriculture. We can debate whether that happened substantially because agricultural employers declined to respond to the free market imperative of improving wages and working conditions in order to retain workers. But the point remains that while I don't like it in principle, I *can* support a reasonable tie. What I *cannot* support is the adjustment program in Title I of S. 1814 because in my view it is a very far cry from a real legalization program, and

because it would be as harsh and unfair in its consequences for farmworkers as the H–2A reform provisions of Title II of the bill.

Let me lay out some of my main objections to Title I. First and foremost, Title I is NOT a legalization program. To claim to be adjusting farmworkers' status, but to leave them consigned to the second class, infinitely exploitable status of non-immigrants is no boon whatsoever to farmworkers. A serious legalization proposal would convey immigrant status. That is why I view the proposal in S. 1814 and S. 1815 as an alternative guestworker program, allowing a farmworker in the vulnerable status of undocumented worker nothing more than the possibility of adjusting to the still vulnerable status of guestworker.

I also object to the limitation on the type of labor the adjusted worker could perform in the U.S. Granted that the worker will be permitted to perform "agricultural employment anywhere in the United States" and is not tied to a particular employer, *but* the worker will not be allowed to perform *other* kinds of work. About one-quarter of all farmworkers in the U.S. survive by combining farm work with non-farm work. The prohibition against performing other work will consign many of these workers to abject poverty.

Dovetailing with this concern is the requirement that in order to maintain the adjusted status and not be terminated or removed, the farmworker must demonstrate to the INS that he or she worked agriculture 180 days per calendar year in each of 5 years. But this may be impossible to achieve for the majority of farmworkers. The average farmworker now works in agriculture about 29 weeks per year, probably fewer than 145 days since work is not necessarily available every day of a week. This means that most farmworkers will be terminated from the program prior to eligibility for applying for a green card.

This in turn underscores my concern about the exploitable nature of this so-called adjusted status. Workers trying to put together a series of jobs to secure 180 days per year worth of agricultural employment will be forced into dependence on employers to cooperate with one another to arrange several jobs amounting to 180 days. Fear of imperiling the cooperation of employers in order to maintain their eligibility will mean that these non-immigrants will predictably be too fearful to enforce what labor rights they may have or to press for higher wages. This is why I believe that the bill indentures the workers to agricultural employers.

The provision barring the adjusted farmworker from spending more than 300 days inside the U.S. in any one year has no sound public policy basis and in fact flies in the face of the family values to which we all subscribe. I say this because the only way the farmworker can exceed this limit is if he or she has and lives with a minor child born in the U.S., but then only if he or she can secure at least 240 days, rather than the already excessive 180 days, of agricultural employment for that year.

The adjusted non-immigrants under this program are restricted in their mobility and in their access to job referrals from the bill's job registry, and because the bill would allow employers to deny jobs to anyone not referred by the job registry, their restricted access to the job registry will deny to these farmworkers the very jobs they need to maintain their status. More specifically, a worker of any type may only apply to be included in the registry for the state in which the individual resides, and the registry may not refer an adjustment worker to an employer that is not within the registry's state or in a contiguous state.

I am also concerned about the unreasonableness of the standards for acquiring this adjusted non-immigrant status in the first place, namely, proof of having performed agricultural work in the U.S. for 150 work days during the 12 month period ending in late October, 1999. Many farmworkers do not work 150 days per year and even fewer can provide proof of even that amount of work because they worked "off the book" due to their undocumented status. These circumstances simply must be taken into account in drafting any program that is intended to provide any meaningful opportunity to these workers.

One more criticism I must make about Title I is the complete absence of labor protections for these workers, despite the fact that the requirement that they work in agriculture to maintain their status means that they will have no real ability to say "no" to unreasonable or illegal wages and working conditions. Proponents of the bill have claimed that it improves upon the status quo for farmworkers because it would extend H–2A labor protections to these now undocumented farmworkers. That is simply not correct. The only way an adjustment nonimmigrant would be eligible for such protection would be if he or she happened to be hired by an H–2A grower, a highly unlikely outcome because the bill allows agricultural employers to refuse to accept referrals of farmworkers from registries that are not in or contiguous to the H–2A grower's state; employers can refuse to hire someone who has not been cleared through the registry, and not least of all, H–2A employers will doubt-

less prefer H–2A guestworkers because they will be even more tied to the individual employer than adjustment workers would be.

I have dwelled upon what's wrong with Title I because, having suggested a legalization program, I am compelled to say that this is a far cry from what I had in mind.

But I want to conclude by coming back to a central point that I have found myself having to make time and again for as long as I have worked on this issue. We have to ask ourselves whether the perceived potential for expanded opportunities to bring in foreign guestworkers, and the widespread availability of undocumented workers, have kept agricultural employers from engaging in increased and more effective recruitment efforts, from modernizing their labor-management practices, and from improving wages and working conditions as employers in other industries must do in order to attract and retain an adequate supply of work-authorized labor. And let us not forget that this is an industry whose workers do not enjoy most of the minimum labor standards enacted over the course of the past century because time and again agricultural employers have succeeded in winning exemptions for farmworkers from federal and state labor protection laws.

There are reforms I can accept in order to eliminate red tape and take into account the circumstances faced by agricultural employers. But I cannot and will not accept anything that worsens wages and working conditions for farmworkers in this country. They have suffered enough. Let's not make it worse.

Senator ABRAHAM. Congressman, thank you. I would add also that one maybe perspective that we have not included today on this panel, either of the panels so far, is the perspective that would argue that we should not allow anybody to come in to the country for any purposes or on very limited terms for employment-related stays. And so I know that part of the struggle that is also going on in the drafting here, and I am not one of the drafters, but I know in talking to them has been to try to find legislation that would at least prevent attacks on the bill from that perspective either.

And so I do not know if either Senator Smith or Senator Graham would want to comment about the experiences that they have undertaken so far. But I would just say that I appreciate, as was the case last time, your expression of interest in trying to work on this. And I think your comment about trying to do something sooner rather than later is a very important signal, which I hope everybody appreciates and will follow up on.

Mr. BERMAN. Can I just move on to one thing you said there? And that is you are going to hear in a little while from the general counsel of the United Farmworkers Union, an affiliated union of the AFL–CIO. The AFL–CIO was an organization that 14 years ago, for its reasons, and they truly were sincere about that expression, believed anybody coming into this country, that that was a threat. They have had a significant change in their perspective in those periods of time. I think other people have, too. I am seeing it in the atmosphere and the climate of the way people are looking at this. I just saw a criticism of the H-1B legislation on the ground that we should not be letting H-1B immigrants in. We should be allowing them to come in as full-fledged legal immigrants and that that's the best way to do it. When the debate starts moving in that direction, I think we can take advantage of it. I think if we could have a coalition of people concerned, of agriculture, farmworkers, labor, management working together, we can accomplish a lot in this Congress.

Senator ABRAHAM. I think that it has certainly been the position of this chairman and I think most of the members that employment related immigration is not meant to be a zero sum game. Obviously

we strive in the context of this legislation, but also in the H–1B legislation to try to find ways to make sure that we protect workers already in this country from having in any way their position exploited by changes in the law. I do believe it is feasible and I think there is ample evidence available that in fact done the right way employment related immigration creates more job opportunities, and improves America's economy, rather than hurting it.

But, again, I appreciate your comments. I do not know if either Senators would like to comment themselves, but I will open it up to either of you for comments.

Senator Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Congressman, I appreciate your being here very much. I would like to say on the record how grateful I am to the AFL–CIO that they have, frankly, changed their position a lot with respect to immigration. It is very helpful, I believe, to a constructive dialogue that they have come out in favor of a general amnesty. And so I salute them for that. I thank them for that. It has changed the environment in which we are working here today.

I would say that nothing you said in your testimony causes me any difficulty. The difficulty we have in drafting something is you have to make decisions and draw lines. And if we have drawn them imperfectly, I think I acknowledged that in my testimony. They are not done with malice, they are done as a starting point. And so the notion of working so many days in agriculture and other employment, I have no problem with that. But I need you to tell us what number of days is fair, what number of days does work because I, for one, am open to that.

And I particularly like what you said with respect to families. I think the proposal we have made can be made better with better accommodation for dependent children and spouses of these workers. I think we ought to change that.

Where I find myself caught is, on the one hand, between those who just want nothing because they like the status quo, maybe even benefit from the status quo. I don't think they can defend that publicly, but there are some that, frankly, want nothing done. On the other side, there are those who just are against immigration. And Senator Wyden and I last year, Senator Graham and I this year, find ourselves whipsawed between these two groups, which do have spokespeople in Congress and on the political scene. And they seem to be the ones winning, and the people trying to work it out seem to be the ones with bullseyes on their backs.

And so I thank you for being here. I do not think we are that far apart.

Representative BERMAN. I say let us make a coalition of growers and farmworkers and advocates of farmworkers and advocates of growers and all of the folks that they are affiliated with, that could be a strong coalition. Where you are in your most difficult position is where you are trying to move a little bit—I mean, when you get it from both sides, that may be the worst political position to be in.

And I suggest anybody who says here that the present situation is okay, and we should let that continue, and who claims to be caring about farmworkers does not.

Mr. SMITH. They do not.

Representative BERMAN. Because we know what being an undocumented worker in this country means. Forget every other aspect of it. Just think of for the benefits of that worker and his family, and we know how much of the agricultural workforce is undocumented. Now the question is how can we accomplish what the growers need to accomplish for their interests and in a way that is good for farmworkers.

Senator ABRAHAM. Senator Graham.

Senator GRAHAM. Mr. Chairman, I share the position that you and Senator Smith just expressed. I believe that what Congressman Berman has shared with us is very constructive and helps advance our appreciation of the complexity of this issue. As Senator Smith said, when you are in the position of trying to draft the first edition of anything, you have to make a series of decisions, often with less background, less experience, less insight than you wish you had. But you do it with the understanding that the very legislative process through which it is about to be subjected is going to cause people who are experienced and insightful to come forward and suggest the kind of modification that you have just done.

So I think the spirit here is one of let us get something done in 2000. Let us do it in a collaborative way because all of the interests here are being ill-served by the status quo. There are some interests who I do not think chose to come into this room today who may be benefitting by the way things are, but not the responsible representatives of either the farmworkers or the farmers or those that they represent.

So I look forward to continuing this process just as long as we all are committed to let us get something done in 2000. To use the expression that President Reagan used to use, "If not now, when? And if not us, who is going to do this job?"

Senator ABRAHAM. Congressman, thank you very much for being with us again. And we will let you know the rest of our hearing schedule for the balance of the year any time you want to come by. [Laughter.]

Appreciate your insights. Thank you.

I will now ask our third panel to please join us, and we will introduce them in the order in which we will ask them to speak.

We have Mr. Joshua Wunsch, who is representing the Michigan Farm Bureau and the American Farm Bureau, from Traverse City, MI; we have the Reverend Polo Garcia, who is pastor for the Casa de Zion, a Lutheran ministry for farmworkers in Woodburn, OR, who was mentioned earlier by Senator Smith; we have Ms. Cecilia Muñoz of the National Council of La Raza here in Washington, DC; Dr. James Holt, a senior economist representing the National Council of Agricultural Employers also here in Washington; and finally, Mr. Marcos Camacho with the United Farmworkers of America in Keene, California, who I believe Congressman Berman referenced earlier.

Several of the panelists have been with us for previous hearings, for at least one of the previous hearings, and so we welcome you back. And to our new panelists, we appreciate your being here as well. It is my understanding that Reverend Garcia is going to have his wife be with him to help interpret, perhaps, some of his com-

ments here today, and we welcome you as well. Thank you for participating.

We will begin with you, Mr. Wunsch. Thank you for being back again. We appreciate your participation and welcome you to the hearing.

STATEMENT OF JOSHUA WUNSCH, FARMER AND BOARD MEMBER, MICHIGAN FARM BUREAU, ON BEHALF OF AMERICAN FARM BUREAU, TRAVERSE CITY, MI; POLO GARCIA, PASTOR, CASA DE ZION, LUTHERAN MINISTRY TO FARMWORKERS, WOODBURN, OR; CECILIA MUÑOZ, VICE PRESIDENT, OFFICE OF RESEARCH, ADVOCACY AND LEGISLATION, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC; JAMES S. HOLT, PH.D., SENIOR ECONOMIST, McGUINESS & WILLIAMS ON BEHALF OF NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS, WASHINGTON, DC; AND MARCOS CAMACHO, GENERAL COUNSEL, UNITED FARMWORKERS OF AMERICA, AFL–CIO, KEENE, CA

STATEMENT OF JOSHUA WUNSCH

Mr. WUNSCH. Thank you for having me back, Senator. I am Joshua Wunsch, member of the Board of Directors of the Michigan Farm Bureau and a farmer and partner in Wunsch Farms located on the Old Mission Peninsula in the Grand Traverse area of Michigan.

For the last 5 years, Farm Bureau has worked to demonstrate to Congress and the administration the critical need for reform of the H–2A Program. These reforms are contained in S. 1814, the Agricultural Jobs Opportunity Benefits and Security Act, also known as AgJOBS, introduced last year by Senators Gordon Smith, Bob Graham and Larry Craig. And I am here today to explain to you how S. 1814 will help resolve some of the difficult problems faced by farmers and workers.

Farm Bureau and the coalition we have worked with on H–2A reform has proposed several key reforms to the H–2A Program that we believe will alleviate a number of the program's problems. We proposed to replace the current unproductive and expensive recruitment requirements with an entirely new method of testing the local labor market to ensure that U.S. workers are not displaced.

Rather than using the combination of job orders and interstate clearance orders, we propose that the Department of Labor and the State job service agencies create agricultural worker registries in States or regions that correspond to natural farm labor markets. These registries would be repositories of employment information provided by farmers and farmworkers seeking to find one another. Only legally documented workers could be placed on the registry. Any willing and eligible U.S. workers will have first access to available U.S. farm jobs, and farmers are not left in the position of being unable to fill critical seasonal jobs.

Mr. Chairman, the Michigan Department of Career Development operates a website designed expressly for farmworkers and employers. This website offers information on job openings, specific information on farm employers, as well as information on services available to farmworkers like migrant Head Start, migrant health Care

and other services. I suggest that if Michigan can do this and make such a service available to people who want to work, we can do as well or better at the national level.

Agjobs recognizes that a very large portion of the present agricultural workforce present fraudulent documents when they seek employment. In a recent U.S. Government survey, 52 percent of workers surveyed admitted they were not legally documented to work in the United States. About 1.8 million people work in U.S. agriculture every year. That means the industry has a potential need for as many as 800,000 legally documented workers. Compare that to the 34,000 workers legally admitted under the H–2A Program annually. Obviously, the program is not up to the job.

Senate bill 1814 will offer the current fraudulently documented workforce an opportunity to gain legal status to allow them to work in agriculture immediately if they can demonstrate a history of working in the industry. After that, if these workers continue to work in agriculture, Agjobs will provide them an opportunity to eventually apply for resident alien status. We hope that AgJOBS provisions in this regard will serve as a starting point for an honest and forthright discussion with all affected parties on how to deal with the illegal status of the current workforce.

We have worked with the administration and opponents of H–2A reform to see if we can reach a mutually agreeable solution to this problem. The Farm Bureau looks forward to working with interested members of Congress to ensure that 2000 is the year when meaningful H–2A reform takes place. I thank you for the opportunity to appear here today, and I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Wunsch follows:]

PREPARED STATEMENT OF JOSH WUNSCH ON BEHALF OF THE MICHIGAN FARM BUREAU AND THE AMERICAN FARM BUREAU FEDERATION

Members of the Subcommittee, thank you for the opportunity to appear today on behalf of the Michigan Farm Bureau and the American Farm Bureau to discuss the need for reform of the H–2a temporary foreign agricultural worker program.

I am Josh Wunsch, a member of the Board of Directors of the Michigan Farm Bureau. I am a farmer and partner in Wunsch Farms, located on the Old Mission Peninsula in the Grand Traverse area of Michigan. We grow red tart cherries, sweet cherries and apples on our farm. I employ 50 workers and have been a user of migrant and seasonal labor for three generations. I currently serve on the American Farm Bureau Horticulture Advisory Committee.

For the last six years, Farm Bureau has worked to demonstrate to Congress and the Administration the critical need for reform of the H–2a program. Farm Bureau is Michigan's largest and the nation's largest membership organization for farmers and ranchers. Many of these farmers grow fruits, vegetables, and livestock that require or depend on the efforts of hired labor for their successful cultivation and harvest. Agriculture today is far more capital-intensive than it has been in the past, but for some crops the trends that have brought us fewer farmers, farming more acres, have created the need to employ more people than just a farmer, his family members and neighbors and friends.

Farmers in Michigan and across the United States have experienced similar problems with tight labor supplies and lost crops in recent years. At Farm Bureau we believe this labor supply problem stems from two distinct developments that have worked together to reduce the available supply of labor for farmers. First, there has been a developing consensus among public policy makers that the federal government, working with state and local governments, should work more effectively than in the past to enforce U.S. laws to discourage illegal immigration. Though it has been illegal for non-authorized persons to seek employment in the United States, and for U.S. employers to employ non-authorized persons since 1986, relatively few resources were devoted to enforcement of this prohibition. The Immigration and

Naturalization Service (INS) and the Border Patrol have in the last few years employed greater resources for border interdiction, interior enforcement, and workplace enforcement.

More recently, the Social Security Administration (SSA) has begun to more vigorously implement its Enumeration Verification System, which is designed to weed name-and-number mismatches out of the SSA database. It is our understanding that as much as $34 billion dollars in the Social Security Trust Fund may be credited to names and Social Security numbers that may be false. When SSA detects a name and number mismatch, the agency sends a letter to the farm employer advising of the mismatch and telling the employer that correct information must be furnished, while threatening fines and Internal Revenue Service action if correct information is not forthcoming. Of course, when filing to pay the employer's share of Social Security taxes, the employer furnishes the information provided to him by the employee in question. In the case of farmers, when they ask farmworkers to furnish correct information for SSA, those employees often do not return to work the following day.

All of these stepped-up enforcement activities have diminished the labor supply for farm employers. It is important to emphasize that this is not because farm employers seek to employ undocumented workers. Rather, we believe farm employers probably have a greater propensity to be in compliance with pre-employment verification requirements than some other types of employers. However, it is very easy for persons in the United States to illegally obtain fraudulent identification documents that appear to be genuine. And when these documents are presented to an employer, they must be accepted as genuine unless they are clearly fraudulent. Farm employers are obligated to accept documents that appear on their face to be genuine because, under federal law, failure to do so could result in document discrimination charges. Farmers are in a Catch-22 situation. As citizens they wish to uphold the law and would thus prefer to avoid hiring illegal aliens. As business people, they realize they must hire an adequate workforce to plant, cultivate, and harvest the crops they depend on for their livelihood. And, if they are too quick to decline to hire someone they suspect is fraudulently documented, they may run afoul of the law.

Additionally, the thriving U.S. economy has put farm employers in competition for a limited pool of labor with employers in other industries who can offer longer-term, often year-round employment and better compensation and benefits. In Utah, tree fruit farmers in the Front Range of the Wasatch Mountains are finding themselves bidding against food processing companies in and around Salt Lake City for workers. In Mississippi and Tennessee, cantaloupe and tobacco producers must compete with casino operators along the Mississippi River at Natchez for the same workforce. In Florida, citrus and winter vegetable producers often find that construction contractors and the resort industry can offer higher pay and year-round work.

But even where changing public policy and economic conditions have not contributed to new shortages of workers, chronic shortages prevail and are unlikely to dissipate. In the Lake Champlain valley in upstate New York, it continues to be difficult to find enough people to harvest hundreds or thousands of acres of apple orchards in counties that have only a few thousand residents. Where irrigation is available, onion production in the Nevada desert can be a viable agricultural enterprise, but there is very little labor available in the area.

Many of the prime apple growing counties in Washington state are very rural and sparsely populated, as are many of the prime Christmas tree growing counties in the mountains of western North Carolina. Growers in these areas have found that the H–2a program, with its many flaws, is the only workable source of an adequate labor supply to harvest their crops.

Michigan is very dependent on a steady supply of labor to hand harvest a number of specialty crops. Workers pick specialty crops including apples, peaches, pears, strawberries, blueberries, cantaloupes and sweet cherries, as well as vegetables including pickles, cucumbers, tomatoes, peppers, asparagus and onions. Often these workers are lost to other states in the migration stream from Texas to Michigan.

The situation is real and growing worse in Michigan. In recent years, the labor shortage has led to the following problems in my state:

- A Monroe County apple grower and packer operation was unsuccessful in getting enough labor. He lost his juice apple harvest altogether; the quality of his fresh harvested apples also suffered.
- A large greenhouse in eastern Michigan has provided employee benefit packages including 401(k) and medical coverage. Four years ago they began recruiting migrant workers because of a shortage of local workers. As a result, the producer was unable to ship and deliver products that had already been purchased, because there was not enough labor to load the trucks. The greenhouse owner has received

notices from the Social Security Administration notifying him that a number of his workers have presented names and taxpayer identification which do not match correctly in the SSA database. These mismatches are causing him to question if he can rehire these workers.

• A raspberry grower in Ingham County needed 12 workers but could find only three workers; this caused him to lose 75 percent of his raspberry crop. He closed his second business location in 1998 due to a complete lack of labor.

• The owner of a cider and retail farm market in Clinton County had to take harvest workers out of the field to staff his retail market. This caused the loss of the crops those workers had been harvesting, requiring him to purchase commodities from other farms. In 1998, he did not have enough workers to plant, stake, and hoe more than 50 percent of the crop he would normally plant, causing him to cut production.

• A Kent County fruit grower was informed in 1998 by the Social Security Administration that 78 of the names and taxpayer identification numbers provided by workers applying to work that spring matched and 115 did not. The majority of these workers had been recruited through the Michigan Employment Security Agency. In effect the government referred workers to this grower who were ineligible to work.

Michigan is known to have some of the best farm labor housing in the country. There is, however, a fundamental problem with Section 514 of the USDA Rural Development Housing program. In the eligibility of occupants, H–2A workers are precluded from using the housing. So we have an additional example of a government program prohibiting the effectiveness of another.

For the last two years, the industry has felt the effects of the efforts of Congress to control persons who work illegally in the United States. We cannot provide you with enforcement statistics—perhaps INS can give you that data. We cannot quantify exactly how many workers have been apprehended, nor can we tell you the total dollar value of crops lost as a result of this enforcement activity. We measure the seriousness of a problem just like members of Congress do—by the number of phone calls and letters we receive. I can tell you the level of concern and interest in H–2a reform has been very high for the past two years.

For the last five years, Farm Bureau has been engaged in an effort with state Farm Bureaus and other state and regional farmers' associations to develop reforms of the H–2a program and work to secure legislation to accomplish those reforms. Our goal has been to unify agriculture from the East, the West, and all points in between, and to unify H–2a program users and non-users to support a reform package that will help everyone. At the outset, it was clear to us that the cost of a lack of unity would be high. In the 1980s, agriculture fragmented into factions seeking different reforms. The resulting Seasonal Agricultural Worker program legalized a great many "farm workers" who ultimately sought employment in other industries. Concurrent reforms of the H–2a program proved ineffective. And, the unintended consequence of the 1986 requirement to obtain documentation from workers encouraged a market in fraudulent employment documents that still thrives today. By our disunity, we allowed Congress to pass a "solution" to our labor supply problem that didn't really solve the problem.

For years now, farmers have been struggling with a simple fact of life: agriculture is hard work, the seasons are short, and people who work in the industry are sometimes forced to move from place to place to find work. Farmers are price-takers, taking what the marketplace offers for what we grow, and it is difficult for us to pass increased costs along to our customers, who can buy from producers overseas who have much lower business costs than U.S. growers. These two facts taken together have made it extremely difficult for farmers to recruit an adequate, legal workforce. When we can find enough workers, very often many or most of them are not legally documented to work in the U.S., as I have discussed before. The 1997–1998 National Agricultural Workers Survey, conducted by the U.S. Department of Labor, indicated that 52 percent of farm workers surveyed told an identified representative of the U.S. government they did not have legal status to work in the U.S. Based on anecdotal evidence, it seems likely that if that high a percentage self-identified as working illegally, in fact a higher percentage of the farm workforce is in fact illegal.

We have struggled with a way of resolving this immediate problem, that a large percentage of our workforce is illegal. It is our belief that the best way to minimize disruption in our current workforce, disruption in the lives of our workers, and to illegally documented workers are not exploited by anyone is to confer on them a legal status that will allow them to continue to work in agriculture. To add value to this benefit from a worker's standpoint, we've proposed to allow these workers to earn the right to apply for a green card it they continue to work in agriculture

for five years after they gain the right to work legally. We think this is a reasonable compromise between those with concerns about immigration control, and those who believe current workers should be offered a blanket amnesty. I urge all of you to give this issue serious thought and give us the benefit of your wisdom as to how we can resolve this difficult issue.

It is worthwhile to consider just how useful the H–2a program is to farm employers now, and how we might go about reforming it. Both farmers who have successfully used the program, as well as farmers who have considered and rejected the idea of using the program have told us that a number of reforms could be made that would make the program less burdensome and less expensive for growers to use. Farmers have, in particular, complained about the labor certification procedure they are required to complete to demonstrate that no domestic workers will be displaced by the admission of foreign workers, as well as the excessively high Adverse Effect Wage Rate standard.

In terms of program usage, the H–2a program today is not a major source of workers for farm employers. USDA surveys indicate that about 1.6 million people work seasonally in agriculture, excluding raising livestock, every year. Only about 30,000 workers were admitted under the H–2a program in 1998. Compare that to the total potential need of 820,000 workers. Only one farm in Michigan has been able to effectively use the program. While program usage has been growing in recent years, only a few years ago the H–2a program admitted only about 15,000 workers annually. We think program usage is this low because the vast majority of growers feel they cannot navigate the bureaucratic process associated with labor certification, and even if they could, they could not afford to meet the adverse effect wage standards mandated by the program.

The market test requirements of the labor certification process has been particularly burdensome to growers because of their ineffectiveness. Farmers are required to file job orders with the Job Service agency in their state, which in turn files interstate clearance orders with the Job Services in other states where workers might be available to fill farm jobs. Often, workers referred to farmers by these activities are in fact illegally documented "domestic" workers to whom a farmer must offer work before being allowed to bring in legal foreign labor. This places a farmer in the absurd position of being forced by the United States government to employ a worker who is illegal in favor of a worker legally admitted under the H–2a program.

In other instances, farm employers have been forced to advertise in metro-area newspapers for farmworkers, or to advertise on Spanish-language radio stations in areas where migrant farmworkers have traditionally resided during the winter months. These efforts have usually proven to be futile and expensive.

H–2a program wage standards have also been problematic. Under the current H–2a program, a participating grower must pay all H–2a workers (and any domestic workers they employ in the same occupation) the greater of the Adverse Effect Wage Rate (AEWR), the prevailing wage in the area of intended employment (as determined by Department of Labor farm employer surveys), or the statutory minimum wage. Under current regulations, the AEWR is set at the average wage paid to field and livestock workers in a given state. Obviously, application of the AEWR will have an undesirable inflationary impact for about half of all farm employers in a given state, causing unnecessary inflation of the wages they must pay simply to ensure an adequate labor supply. For almost all farm employment, the AEWR set wage standard is uneconomic in a globally competitive labor market. In all cases we are aware of, both the prevailing wage and the AEWR exceed the statutory minimum wage in every state. For Michigan, the Adverse Effect Wage Rate in 1999 is $7.34 per hour. This is the fourth-highest AEWR in the nation, after Hawaii ($8.97 per hour) and Indiana, Illinois and Ohio ($7.53 per hour). It is important for you to remember that the H–2a minimum wage standard is paid to workers over and above other expenses not incurred by non-H–2a employers, like inbound and outbound transportation, housing and program administration expenses.

Farm Bureau, and the coalition we have worked with on H–2a reform, has proposed several key reforms to the H–2a program that we believe will alleviate a number of the program's problems. First, we have proposed to replace the current unproductive and expensive positive recruitment requirements with an entirely new method of testing the local labor market to ensure that U.S. workers are not displaced. Rather than using the combination of job orders and interstate clearance orders and ineffective employer recruitment required by the current program, we have proposed to use information technology to create a more effective conduit of labor market information for farmers and farmworkers. We have proposed that the Department of Labor and the state Job Service agencies should create Agricultural Worker Registries in states or regions that correspond to natural farm labor markets. These registries would be repositories of employment information provided by

farmers and farmworkers seeking to find one another. In order to participate in the registry, a worker would have to demonstrate that he or she is legally eligible to work in the United States. The Job Service could not place a worker in the registry who has not provided documentation that can be verified by the INS or Social Security Administration.

Farm workers wishing to seek work on farms in a given state would provide necessary information, like name and current address to the registry. When a farmer is seeking workers, either domestic workers or seeking to access the H–2a program, that farmer's first step is to query the Agricultural Worker Registry. If the farmer needs 20 workers on August 1, and the registry indicates there are 10 workers who might be available on that date and might be willing to perform the needed work, the U.S. Department of Labor contacts these workers and secures a commitment to work; the farmer then files for 10 H–2a visas. If seven of the 10 workers available on the registry accept the offer to work for the farmer in question, the farmer then files for three additional H–2a visas. Thus, any willing and eligible U.S. workers have first access to available U.S. farm jobs, but farmers are not left in the position of being unable to fill critical seasonal jobs.

Another key reform needed is with the operation of the AEWR. We propose that the national standard minimum wage for H–2a program participants, (both H–2a visa workers and domestic workers who work alongside them), should be the prevailing wage for workers in a particular area, in a particular occupation. This eliminates the major flaw of the AEWR now, the grouping together of unlike occupations in dissimilar labor markets to create an AEWR that doesn't reflect the local labor market.

In 1998, we came very close to success in our efforts to reform the H–2a program. The Senate passed a proposal to accomplish the reforms I have discussed in a bipartisan 68–31 vote in July of last year. That legislation was later combined with a number of other measures to create the omnibus appropriations bill that funded the operations of the federal government for fiscal year 1999. In that process. our H–2a reform was dropped in favor of other provisions. The Farm Bureau looks forward to working with interested members of Congress to ensure that 2000 is the year when meaningful H–2a reform takes place.

Thank you for the opportunity to appear today. I'd be happy to answer any questions you may have.

Senator ABRAHAM. Thank you very much.

Reverend Garcia.

STATEMENT OF POLO GARCIA

Reverend GARCIA. Before anything I would like to just excuse myself if there is any mistakes that I make in reading my prepared document.

Mr. Chairman, thank you for allowing me to be present with you. S. 1814 will benefit farmers and also farmworkers by this bill. Also I thank Senator Gordon Smith of Oregon for inviting me to testify and for his hard work to try to solve the problems faced by farmers and farmworkers in Oregon.

I am a Lutheran minister in Woodburn, Oregon, House of Zion Ministries, Incorporated, including a church, and a shelter, and a learning center. Case de Zion is a Lutheran church of approximately 140 Hispanic farmworkers. Our shelter provide places to stay and cooked meals to migrants traveling in the area during the season, and provide beds and meals for about 20 farmworkers and families a night. Our learning center provides an opportunity to farmworkers to learn skills such as auto mechanics, plumbing, and carpentry. Right now we have 12 to 14 farmworkers learning computer skills.

I was born in Mexico. My mother was a migrant farmworker who bring me to the United States when I was little. I traveled with her and worked in Texas and Idaho, and Oregon, Washington, and California. When I met my wife Marta, both were farmworkers,

married and decided to live in Idaho. We continued working as migrant farmworkers. Around 1975 I decided to get into ministry and we moved to Oregon. After I become a pastor I dedicated my life to helping the other farmworkers, and Marta and I started the House of Zion.

Over the years more and more people work in the fields and not have legal papers. It is hard to get across the border. Most of the farmworkers who come to the United States without papers use the coyotes. They pay the coyotes $1,000, $1,500, or even more to get across. The trip is very dangerous. People are robbed and raped and all. People try to walk across the border in remote areas to save money, and get lost and freeze to death or even die of thirst.

Usually farmworkers first come without families. It is expensive and dangerous to go back and forth. They stay longer and try to bring in the family later. It is especially true in Oregon where agricultural work is available most of the year. It costs about $2,000, $3,000 to get a family across.

Farmworkers without legal papers have a very difficult time. Farm work is difficult but the situation is more difficult if they always have to hide or to feel someone is hunting for them. They never know how long they can work before immigration finds them or finds their employer and their employer confronts them. Workers often move from job to job, change their IDs to avoid being caught.

Senator Smith held some public meetings for farmworkers in Oregon to explain his bill and hear their comments. Farmworkers are real interested in Senator Smith's bill, and hope the Congress will finally do something about this problem. They want to work in the United States and come and go legally.

Naturally, we want as liberal a program as possible, but they are willing to accept the conditions in the Smith bill. Many farmworkers in the Willamette Valley work nearly year-round, all year, and could qualify for the program under the 150-day criteria and meet the 180-day agricultural work requirement. Even those who will not benefit directly are glad to see that something is being done.

Many farmworkers work illegally in Oregon and have their families with them, but they also have families in Mexico. They have someplace to go during the two months they are required to be outside the U.S. However, I believe it is important to let those who have children here in school to stay year round.

On behalf of the farmworkers in Oregon and all farmworkers illegally working in the United States, I hope Congress acts soon to help them. These are decent, hardworking people. They are the only people willing to work in the fields. The farmers need them. It is not right that they are constantly afraid of being found, or constantly looking over their shoulders, constantly moving, afraid to return to visit the family in Mexico.

Thank you for having me here today.

Senator ABRAHAM. Reverend Garcia, thank you very much. We appreciate your being with us.

Ms. Muñoz, welcome back. We appreciate your participation again here with us, and we will turn it over to you. Thanks.

STATEMENT OF CECILIA MUÑOZ

Ms. MUÑOZ. Thank you very much. I also have a written statement that I would ask to submit for the record.

Senator ABRAHAM. Without objection, it will be entered in its entirety.

Ms. MUÑOZ. Thank you. Senator Smith, I am glad you are here. I have been asked to present to you some petitions that were signed by farmworkers in the State of Oregon expressing their concerns about the legislation. And I want to start with the statement that you made earlier in your conversation with Congressman Berman that there are some groups who would prefer that nothing happened with respect to farmworkers, and I would like to start by making it clear that my organization is not one of those.

We have, for many, many years, been concerned particularly about the conditions in which farmworkers live and work. And I would hope that as this committee considers legislation related to farmworkers, that it would start with legislation that would aim to bring their working conditions and living conditions out of the 19th Century, where they have been stuck for far too long.

We are also very concerned and have been again for decades with the situation of undocumented immigrants in this country. And undocumented immigrants working in agriculture are obviously a very big part of that set of concerns. So I am glad to hear those concerns being raised so eloquently today.

I am sorry to say that the legislation that the committee is considering today goes in the wrong direction in terms of the goal of improving the working conditions and living conditions of farmworkers. And we greatly fear that this situation, which is already abysmal, would get worse if this legislation were enacted, and I would like to explain a little bit why.

First, though, I would like to challenge one of the principal rationales for the legislation that the committee is considering today, and that is this notion that there is a labor shortage in agriculture. My organization tends to take the position supported by research coming out of the Government and private sector that suggests that there is not a shortage of work-authorized farmworkers. And the evidence that is cited is the sort of standard economic evidence. In a situation where there is a labor shortage, you would expect wages and working conditions to improve and demand for workers' time to increase. And the data that we cite in our testimony demonstrates that farmworkers' wages are stagnant, that their annual earnings continue to hover well below the poverty line. But the average, the median income of an individual farmworker in this country is about $7,500 per year, and the income of a farmworker family is about $10,000 per year.

Unemployment and underemployment is rampant in farmworker communities. Even during hiring peaks only about just over half of the Nation's total farm labor workforce holds agricultural jobs, and the number of days in which agricultural workers actually work in the course of a given year has been decreasing steadily over the last decade.

In California, in particular, the unemployment rates in 18 agricultural counties continue to be nearly double the statewide average, and that includes even during the peak harvest months. So for

these reasons, we question the principal rationale for this legislation. In addition to that, our assessment of the impact of these bills makes it clear that both of them, unfortunately, would make conditions for farmworkers worse.

My written statement outlines a variety of concerns with the way the current H–2A program is structured. We are concerned about it as well, and I know that is part of the motivation behind the legislation. Studies by the General Accounting Office and the Department of Labor indicate that the protections for workers, which are built into the program, are not successfully protecting either the domestic farm labor workforce or the guestworkers themselves. And those are well-documented in my written statement.

S. 1815 would revise the H–2A Program in a way which would lower wage rates, eliminate housing opportunities, reduce recruitment inside the United States, decrease Government oversight, and in other ways lower the labor standards of U.S. farmworkers and allow exploitation of vulnerable foreign workers. That is a step very, very much in the wrong direction.

The bill would also authorize wage systems like group piece rates and other practices that have been used to circumvent the law and prevent farmworkers from improving their circumstances.

My organization also has serious concerns about the adjustment proposal that we have already talked about today in the hearing. But I want to be clear that we very much support the notion of legalizing farmworkers. In fact, we are very glad that it has been introduced into this debate. But the way this particular proposal is structured is extremely harmful, and we cannot support it. And I would add that the network of farmworker organizations that we work with also opposed this, though it very much supports the notion of legalizing workers, and we have attached to our testimony a letter with more than 180 organizations on it who share our views.

Among our principal concerns with the way the adjustment program is structured is that it ties workers who wish to legalize to farm labor for at least 5 years, and during that period they would be at the mercy of their employers, who would have extraordinary control over the workers' economic status and immigration status. Workers would need their employers to verify that they worked the 180 days that they would be required to work each year, and many of them will be too afraid of being fired or other employer reprisals to demand higher wages or better conditions or to seek to otherwise enforce the law if there are abuses. And we know that abuses occur in this industry.

The adjustment proposal contains none of the wage housing or other minimum labor standards that have been part of the H–2A Program and the old Bracero programs in the last 55 years. We are not convinced that the protections against undercutting current wage rates or against exploitation are sufficient. And the program, we think, is going to make it very difficult for farmworkers to actually legalize. The pool of workers who would have the hope of legalizing and would attempt, we believe, would have a very difficult time in fulfilling those requirements and that data that we have been studying demonstrate that already the average number of days worked by farmworkers in this country is less than 180. So

we think that the pool of workers who would ultimately benefit would be very small.

And even for those few who make it through the process, the way the adjustment proposal works is not as generous as it sounds. There would be waiting lists of up to 5 years to receive immigration status. Therefore, some eligible workers would not receive their green cards for as many as 10 to 12 years, and they could not begin to petition for their spouses or their children until after that process had finished. So we are talking about extraordinary long periods of time before family members ultimately would be able to reunite.

While we welcome the fact that the agricultural industry has introduced the notion of adjusting the status of the workforce into this debate, even if the adjustment proposal were structured differently, even if this were an immediate legalization program, I have to say that for us it is not enough simply to legalize workers in this industry if we do not make an effort to change the working conditions that farmworkers have lived and worked under for so long. Legalization, even a perfect program by our standards, would not be sufficient. Ultimately, this debate has to include the equalization of labor standards. We are not talking about adding labor rights to farmworkers that other American workers do not have, but we are talking about leveling the playing field so that they are ultimately working under the same set of labor protections as everybody else.

Ultimately, if the real concern here is a steady permanent source of farm labor, we believe this industry must begin to make the changes that many other industries began making almost a century ago. We believe, ultimately, that the way this is structured, the way that adjustment is structured, is designed to keep workers in agriculture longer than they would otherwise want to. And ultimately, we think the best solution to keeping a steady, permanent workforce is both legalizing workers and creating the kinds of working conditions that will inspire people to stay, rather than forcing them to stay.

The history of these issues, Mr. Chairman, is really very shameful, and it is time to begin to take major steps to change them. And unfortunately, this legislation does not do that.

[The prepared statement of Ms. Muñoz follows:]

PREPARED STATEMENT OF CECILIA MUÑOZ

I. INTRODUCTION

My name is Cecilia Muñoz. I am the vice-president for the Office of Research, Advocacy and Legislation of the National Council of La Raza (NCLR). NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country through our network of 230 affiliate community-based groups and regional offices. NCLR has supported fair and effective immigration and farmworkers policies for over two decades, and has ensured a fact-based Latino perspective on the issue of immigration. NCLR approaches this issue as a civil rights organization, with an interest in protecting the rights of our constituency and promoting the values and principles of the nation as a whole.

I appreciate the opportunity to submit this statement before the Subcommittee today, especially when it concerns an issue that ultimately will affect the lives of perhaps the single most disadvantaged of all groups in the United States: the nation's farmworkers. These hard-working Americans toil in the fields for meager

earnings and few benefits; they sustain multi-billion dollar industries, and literally put food on our tables. Yet, they remain largely invisible to the rest of the country. Under a century-old system of labor, farmworkers continue to be inadequately protected by federal laws and regulations, including worker protection standards that all other workers take for granted.

We have heard today from representatives of the agricultural industry which is again attempting to orchestrate the establishment of additional special privileges for itself, proclaiming the same unsubstantiated argument employed continuously since the mid-1800s: that there are labor shortages.

NCLR continues to side with the experts in government and in the private sector who have studied and found that there is still no shortage of work-authorized farmworkers, but a shortage of decent jobs and decent pay. Second, the status quo is indeed untenable, not because of over-regulation of labor standards in agriculture but because of a complete lack of enforcement of the few labor standards that actually apply to farm work.

Therefore, NCLR strongly opposes S. 1814 the Agricultural Jobs, Opportunities and Benefits Act, and S. 1815, the Farmworker Adjustment Act, primarily because they would not improve conditions for America's farm workers. In fact, we believe that this legislation would give unscrupulous employers an unreasonable level of control over farmworkers' lives. Such comprehensive control could only lead to further exploitation of the nation's most vulnerable workers.

II. THE FACE OF AMERICA'S FARM LABOR FORCE

The history of farm labor in the United States coincides with the political awakening of the American Latino community. Since the beginning of the last century, Mexicans and other Latinos have been an integral part of the nation's farm labor force, and farmworkers have been integral to the growth of Hispanic Americans' political consciousness.

For this reason, NCLR, like most Latino advocacy organizations, is concerned about current proposals to "reform" or expand current guestworker programs. In fact, the majority of farmworkers in the United States are Latino. In 1997 and 1998, 81 percent of farmworkers are foreign-born; 95 percent of these are from Mexico. As many as 52 percent of farmworkers are undocumented; 58 percent of farm workers, however, consider the United States their permanent home.[1]

Further, the plight of farmworkers in the United States has gotten worse over the last decade. Government studies[2] show that:

- Farmworker wages are stagnant: since 1989, the average hourly wage has risen only 18 percent, compared to 32 percent for non-agricultural workers.
- Annual earnings remain below the poverty line: for the past decade, the median income of individual farmworkers has been $7,500 while for farmworker families it has remained less than $10,000.
- Despite their poverty, farmworker use of public benefits remains low and has declined.
- Farmworker assets are decreasing: in 1994–5, one-third of all farmworkers were homeowners, by 1997–8 only 14 percent were homeowners.
- More workers now rely on their employers, contractors and co-workers for transportation to work: in 1994–5 49 percent of workers owned a vehicle; in 1997–8, the figure dropped to only 44 percent.
- Unemployment and underemployment is rampant: even during the hiring peak, just over half of the nation's total farm labor workforce held agricultural jobs.
- The number of days crop workers actually were employed on farms has diminished over time: from 1989–91, the typical foreign-born worker was employed in farming for 213 days; this figure fell to 193 in 1992–1994, and to 176 in 1995–1997. U.S. born workers are also seeing less time in the fields, from 183, to 155, to 129 over the same period. This indicates that the number of jobs available to all farm workers is shrinking.

In California, the unemployment rates in eighteen agricultural counties continue to be nearly double the statewide average even during peak harvest months.[3] The California Rural Legal Assistance Foundation (CRLAF) has conducted surveys in the last three years of farm workers in certain raisin and grape producing counties during harvest. These surveys have consistently found that there are available farmworkers who are not being recruited by employers. In fact, employers are doing

[1] U.S. Department of Labor, Findings from the National Agricultural Workers Survey: 1997–1998.

[2] Ibid. See also Linda Levine, "Farm Labor Shortages and Immigration Policy," a Congressional Research Service Report for Congress. December 20, 1999.

[3] State of California, Employment Development Department, Report 400C, 1989–1999.

a poor job of making their work opportunities known. CRLAF's most recent report is attached to this testimony as Appendix A.

These findings are very disturbing to us. More importantly, they indicate that there is truly no shortage of farm labor in the United States. Were there actually a shortage, wages would be going up, just as they have in other sectors experiencing difficulty in recruiting and retaining workers. In fact, these figures indicate a national oversupply of labor. For this reason, NCLR opposes employer efforts to enact policy that would guarantee for themselves a continued oversupply of workers.

Whether it was Chinese immigrants in the nineteenth century, the 4.5 million braceros brought in to toil in the fields between 1942 and 1964, or "guestworkers" under the current H–2A program, the agricultural industry has been dependent on foreign-labor and has been relentless in maintaining this dependency. They have spent the last decade soliciting Congressional support for a massive expansion of the H–2A program.

III. PROBLEMS WITH THE H–2A AGRICULTURAL GUESTWORKER PROGRAM

NCLR believes that the existing temporary foreign worker program, known as "H–2A", is overly generous to the agricultural industry and insufficiently protective of the rights of both U.S. and foreign workers. Industry proposals to further "deregulate" the H–2A program will inevitably and inexorably undermine wages and working conditions for all of America's farmworkers. There is considerable evidence that the H–2A program—which brings in early 30,000 mostly Mexican and Jamaican temporary workers each year—has been fraught with abuses.

In its December 1997 study, the GAO found that workers who enter under the H–2A program are not receiving all of the protections required by the H–2A law. The "special requirements" of the H–2A program, which the growers decry, are there for a reason. These protections are intended to ensure that nonimmigrant guestworkers are hired only to fill actual labor shortages, that U.S. farmworkers' wages and working conditions are not affected adversely, and that foreign workers are not mistreated.

In 1998, the Department of Labor's Office of Inspector General reported that the program fails to protect U.S. farmworkers. it found that employers and the State Employment Service Agencies were doing a poor job of advertising available jobs to U.S. farmworkers, and that the Department of Labor's Employment Training Administration was approving H–2A certifications without sufficient scrutiny.

Nevertheless, the Department of Labor is acceding to growers' demands by offering, for instance, administrative reform and quicker processing that further undermine the program's protections. The current program has resulted in lower wages for farmworkers in America. That is why the USDA's National Commission on Small Farms urged the repeal of the H–2A program after hearing testimony that "large farm operators and agribusiness have unfair advantages 'because employer costs have been reduced by partial or total exclusion of agricultural workers from coverage under key labor laws.' In addition, 'the authorized importation of foreign workers for agricultural work (H–2A program), by adding workers to the pool of available labor, has helped keep wages for agricultural workers * * * below what they would have been without such interventions.'"[4]

The current H–2A program approves 99 percent of the applications filed by agricultural employers despite the labor surplus. The H–2A program was streamlined for employers in 1986 and has operated to their advantage. The program is growing rapidly and spreading to new crops and new states. In Georgia, for example, the Department of Labor approved applications for more than 2,200 jobs in 1999, even in cases where the grower failed to file the application on time.[5] During the previous year, Georgia received fewer than 200 H–2A workers.

Still not satisfied, growers are demanding that Congress "reform" the guestworker program to lower wages, reduce recruitment of U.S. workers, eliminate the current program's housing obligations, authorize wage and other employment practices that are currently illegal, and reduce enforcement of labor standards. Guestworkers are desirable because they lack the right to switch jobs or to remain in the country once their job ends. Guestworkers also lack economic or political power to improve their conditions.

The vulnerability of H–2A workers forces them to live with unbearable working conditions that no other American would ever tolerate. In a series of articles, the

[4] U.S. Department of Agriculture, *A Time to Act,* National Commission on Small Farms, Washington, D.C.: January 1998.

[5] Letter from Secretary Alexis Herman, U.S. Department of Labor, to Senator Paul Coverdell, April 16, 1999.

Charlotte Observer recently shed light on the H–2A program in North Carolina, where employers import as many as 10,000 H–2A workers every year. These articles are also attached to this testimony as Appendix B. I'd like to highlight one particularly poignant story in the first of these articles. It is the story of Carmelo Fuentes, an H–2A worker who suffered heat stroke while picking tomatoes in 105-degree heat.

According to his employer, Mr. Fuentes, who was 36 years old, said he just wanted a short break after showing signs of heat stress, which state investigators said were "dangerously ignored" by his supervisor. His employer said "that boy said he was fine, and just needed to rest." As he rested, heat stroke shut down his internal organs and led to Mr. Fuentes to suffer from severe brain damage. According to the Charlotte Observer story,

> Nobody can know exactly what Carmelo Fuentes said about how he felt that July day in 1998. But as a veteran working his third N.C. harvest, he likely understood what some say are the unwritten rules of the government program that brought him to an N.C. farm 2,000 miles from home.
>
> Work fast, or lose your job to somebody who is faster. Complain about your living or working conditions, and you're sent back to Mexico. Get sick or injured, and you're off the list of workers invited back next season.

These are the rules that many guestworkers have come to understand as determining whether they will continue to be able to work in the United States. That is why the H–2A program reminds so many Mexican Americans of the universally denounced Bracero program that existed between 1942 and 1964. As in the H–2A program, Bracero workers were so controlled by their employers that, according to Ernesto Galarza, one of NCLR's founders, undocumented workers actually used to consider themselves "libre" or "free workers" since they could leave an employer if conditions were intolerable.[6] The same can still be said about the current program.

NCLR opposes the current H–2A program, and calls for its repeal. Any attempts to reduce the protections it provides for farmworkers, both those already in the U.S. and those entering through the program, should be rejected.

IV. PROBLEMS WITH S. 1814 AND S. 1815

The Agricultural Jobs, Benefits and Opportunities Act and the Farmworker Adjustment Act fall far short of what is needed to improve the H–2A program and to make better the lives of America's farmworkers. These bills would subject farmworkers to even poorer wages and working conditions and inequitable economic and political status for many years to come.

This legislation would create two new temporary foreign agricultural worker programs by modifying the current H–2A program and by establishing an "adjustment" program for currently undocumented farmworkers. Neither proposal is satisfactory, and should be rejected.

As mentioned above, the current H–2A program inadequately ensures that U.S. farmworkers have access to available farm jobs, and that individuals entering as H–2A workers are not exploited. S. 1814 would revise H–2A program to lower wage rates, eliminate housing opportunities, reduce recruitment inside the United States, decrease government oversight, and in other ways lower labor standards of U.S. farmworkers and allow exploitation of vulnerable foreign workers. No valid reason justifies it. The bill would also authorize wage systems ("group piece rates") and other practices that have been used to circumvent the law and prevent farmworkers from improving their circumstances.

The "adjustment" guestworker proposal in S. 1814 and S. 1815 would guarantee employers a pliable workforce of individuals who are too desperate to meet its requirements to help realize the few labor rights they have as farmworkers. The bills' proponents contend that this new "adjustment" guestworker program would benefit currently undocumented farmworkers because (1) those who qualified could work legally on a temporary non-immigrant visas as seasonal agricultural workers and (2) upon satisfying a 5-year agricultural work requirement, later they would be permitted to apply for immigration status. These workers (upon showing 150 days of agricultural work for 1998–1999) would be obligated to find and prove 180 days of agricultural work each year for five more years. They could perform only agricultural work, and would be required to leave the country for at least 65 days per year.

The lack of available work shown by recent survey means that many "adjustment" guestworkers would never acquire enough work in each of 5 years to qualify to

[6] Galarza, Ernesto. *Merchants of Labor: The Mexican Bracero Story.* McNally & Loftin (Charlotte, 1964).

apply for immigration status. The proposal would give employers extraordinary control over workers' economic status and immigration status. Workers would be desperate to comply with the difficult tasks of securing and proving 180 days of farmwork each year to remain in the program. Consequently, many will be too afraid of being fired and other employer reprisals to demand higher wages or better working conditions, or seek to enforce the law.

The "adjustment" guestworker proposal contains none of the wage, housing or other minimum labor standards that have been part of the H–2A and the old *bracero* programs in the last 55 years. There are no protections against undercutting current wage rates or against exploitation of the vulnerable guestworkers. As "nonimmigrants," guestworkers will be ineligible for federally funded legal services and for public benefits.

Due to certain immigration-law restrictions, many guestworkers who complete the 5-year requirement may still not qualify for immigration status. Because the bills would create a waiting list of up to 5 years for receiving immigration status, some eligible workers would not receive a green card for 10 to 12 years. During that time, spouses and children would *not* be entitled to enter the US or gain immigration status.

The "adjustment" program does represent a fair compromise between workers' needs and employers' wants. It further shifts the balance of power into the hands of the unscrupulous employers, contractors and crewleaders.

V. RECOMMENDATIONS

NCLR believes there should be a change in farm labor policy, but S. 1814 and S. 1815 is not the right policy prescription. Instead, Congress should seek to improve opportunities for farmworkers, both foreign-born and U.S. born, by enacting the following recommendations:

• Effectively Enforce Existing Protections and Labor Laws: The Department of Labor (DOL) must prevent persisting employer abuses of the H–2A program, by enforcing existing protections in the program, including the "fifty percent rule," which gives U.S. farmworkers preference over an H–2A workers. Growers must also not be allowed to exploit foreign workers by underpaying them or denying them crucial benefits. DOL also must increase its vigilance over the H–2A program and resist attempts to reduce alleged administrative burdens.

• Provide Adequate Resources for Enforcement of Labor Laws: The Administration should request, and Congress should provide, sufficient funding to DOL's Wage and Hour Division and OSHA, among others, to assure effective monitoring and enforcement of labor standards for U.S. farmworkers and H–2A workers. Congress should also revisit the budget restrictions and limitations on the Legal Services Corporation grantees that have traditionally served farmworkers.

• Improve Existing Recruitment Methods: The agricultural industry must improve its current recruitment methods to attract available, work-authorized U.S. workers. Surveys along the East Coast, where more growers are using the H–2A program, have shown that U.S. farmworkers are indeed available for work but need advanced assistance with transportation; which is *rarely* provided to U.S. farmworkers. Growers also must assure that their written job advertisements are placed in locations where U.S. farmworkers will hear or see them. In addition, the Department of Labor's U.S. Employment Service must improve its outreach efforts to match U.S. farmworkers with available agricultural jobs, primarily since less than five percent of all U.S. farmworkers use this system to secure work. Employers and DOL should improve coordination with labor unions and community-based organizations that are ready and willing to promote recruitment of U.S. farmworkers to meet the employers' needs.

• Make Growers Who Use Farm Labor Contractors (FLCs) Responsible for Treatment of Their Workers: Congress and enforcement agencies must assure that growers do not circumvent existing labor laws by increasingly relying on FLCs for workers. Since the enactment of the Immigration Reform and Control Act of 1986 (IRCA), growers have come to depend more heavily upon FLCs to produce a workforce. Essentially, contractors have become the "risk buffers" between growers and their immigrant workers, and now perform the regulatory duty imposed by IRCA on all employers. Furthermore, evidence has shown that workers hired by FLCs are more susceptible to exploitation in the form of lower wages, reduced benefits, lower retention rates, and inferior working conditions.

• Enact a New Legalization Program: While we believe there is an oversupply of available work-authorized farm workers, the currently high proportion of undocumented workers in the arm labor force is troubling. NCLR believes that the use of farm labor contractors competing to provide growers with the cheapest available

workers has led to an overrepresentation of undocumented workers. These workers are not as able to defend themselves from exploitative practices as are legal workers. Congress should allow workers who have already contributed to the U.S. economy through their sweat and labor an opportunity to become legal residents, without any conditions that would further subject workers to more exploitation.

• Enact Pro-Immigrant Legislation This Year: Many farmworkers would benefit from passage of pro-immigrant legislation that has already been introduced. Namely, NCLR strongly supports and calls on Congress to enact:

• S. 2407, the Date of Registry Act, which would update a long-standing provision of the Immigration Act called "registry" and allow long-time residents, deeply-rooted immigrants who are contributing to our economy to remain here lawfully. This bill would change the registry cutoff date from 1972 to 1986. NCLR would prefer a change in the date to 1994.

• S. 1592. the Central American and Haitian Adjustment Act, which would correct for past unequal treatment among different groups of similarly-situated Central American and Caribbean Refugees.

• H.R. 1841, to restore Section 245(i) of the Immigration and Nationality Act, which would allow immigrants who are eligible to adjust their status to lawful permanent residency to do so while remaining in the country instead of traveling to their home country to complete the process. By passing this provision, Congress could ensure that immigrants are not separated from their families and employers for as many as ten years.

• Legislation, not yet proposed, to decrease the immigration backlogs by increasing the number of available visas so that immediate relatives of U.S. citizens and permanent residents may join their families and cease having to wait in interminable backlogs for lawful admission to the United States. All of these proposals will help reduce the number of undocumented workers in the labor force, not just in agriculture, but in other sectors that are genuinely experiencing trouble finding work-authorized workers.

VI. CONCLUSION

I respectfully urge you to consider these recommendations, as they represent a consenus among many different immigrant and farmworkers advocates about immigration policies that Congress should enact in the short-term. Immigration is but one of the many complicated issues concerning farm labor that need to be addressed, and I appreciate the attention the Subcommittee is paying to the issue today. However, before the Subcommittee considers acting on this legislation, I ask that you take a closer look at the need for comprehensive reform of our farm labor system.

Finally, I would like to call your attention to a letter that was sent to the entire Senate and its leadership last February. It is also attached as Appendix C. It calls on the Senate to reject S. 1814 and S. 1815, and is signed by 185 organizations made up of farmworkers, and individuals that work day-to-day with farmworkers. Please take their voices into account as you consider this legislation.

Once again, I thank the committee for allowing NCLR to present this testimony.

APPENDIX A

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The Availability Of Farm Workers In The 1999 Central Valley Raisin & Grape Harvests

A SURVEY OF 847 FARM WORKERS CONCERNING EMPLOYMENT OPPORTUNITIES IN FRESNO, MADERA, KERN AND TULARE COUNTIES BETWEEN LATE AUGUST AND EARLY OCTOBER 1999

M. Schacht
E. Ramirez
H. Rosales
K. Rowe
S. Ventura

January 2000

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I. Introduction & Overview

Throughout 1998 and 1999, Fresno area raisin and grape growers have continued to claim that their harvests were being adversely affected by serious farm labor shortages that threaten them now and in the future.

To assess the accuracy of these allegations, CRLAF surveyed 350 farm workers in the 4-county Fresno region in 1998 and found that 29% were available for work during the period of claimed labor shortages, and that two-thirds of these workers knew of specific other individuals who were also available for work.[1]

In 1999, CRLAF decided to significantly expand its investigation into the availability of farm workers in two major ways. First, we planned to greatly increase both the number of farm workers interviewed and the number of survey sites; and second, we structured the survey so that extensive numbers of interviews would be conducted throughout the five to six week harvest period in the entire four county Fresno region.

Between the end of August 1999, and the first week of October 1999, CRLAF interviewed 847 farm workers in more than 150 locations in nearly four dozen Central Valley communities. This report provides specific details of the results of those interviews, but, in general, shows 1) that very high underemployment and unemployment of farm workers were occurring even at the height of the harvests, and 2) that the employers' media-based recruitment efforts aimed at farm workers in this region were deeply flawed (and probably completely ineffective).

A. Methodology

Survey Instrument. The survey questionnaire was developed by CRLAF, and pretested during the 2nd week of August 1999. Final refinements were made to the questionnaire before training of interviewers began. ***Training of Interviewers.*** Bilingual/bicultural members of the farm worker community with a knowledge of the four county grape and raisin harvest were hired and trained during the 3rd week of August 1999. ***Survey Interview Sites.*** Interviewers were urged to seek out active farm workers at labor camps, pick-up sites, work locations, and other places where farm workers gather. ***Survey Interviews.*** While a few

[1] M. Schacht, I. Aizpuru, A. Juarez, K. Rowe, and A. Santiago, "The 1998 Central Valley Raisin Harvest: A Case Study of the Availability of Farm Workers During the Alleged Labor Shortage in the Four County Fresno Area," CRLA Foundation (April 1999), Sacramento, California. A copy of this report is available on the Web at http://www.crlaf.org/raisin98.htm.

A. Methodology, *cont.*

of the survey questions related to overall farm labor conditions, the main focus of each farm worker interview was in three specific areas:

> ***1. For each week (between 8/29/99 and 10/2/99), was he/she working less than full time (i.e., less than 40 hours per week), <u>and</u> was he/she available to work at least 20 hours a week in either the grape or raisin harvests?***
>
> ***2. Did he/she know of other specific individual workers who were working less than full-time during this period, and who were also known to be available for work of at least 20 hours per week?***
>
> ***3. Did he/she read, hear on the radio, or see on television any job advertisements, in English, Spanish or Hmong, for work in these harvests during this time period that contained all of the following information:***
>
> ***i. The name of the grower/labor contractor who was offering the job, along with the job location;***
> ***ii. The date(s) of employment;***
> ***iii. The wage rate(s) to be paid; and***
> ***iv. A telephone contact number.***

B. Survey Site Information

Surveyors were instructed to interview no more than five farmworkers at random at each site. They were advised not to visit state or federal government offices (e.g., unemployment, welfare, etc.), but instead to concentrate on selecting locations which they knew to have high numbers of active farm workers seeking work from growers, labor contractors, raiteros or mayordomos. Interviews were often conducted in early mornings, on weekends, and at job sites after harvest work terminated. No individual was interviewed more than once, even though surveyors sometimes returned to the same site during a different week.

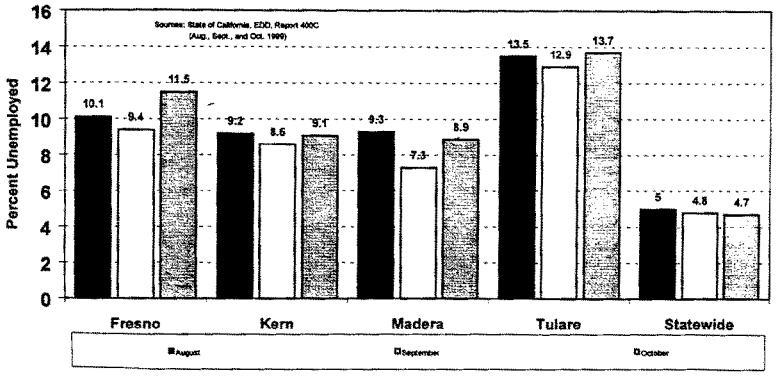
Interviews were conducted at the following 43 cities and towns (in Fresno, Tulare, Kern and Madera counties): Farmersville, Easton, Selma, Strathmore, Caruthers, Palmview, Dinuba, Sultana, La Vina, Orange Cove, Delano, Cutler, Yettem, Reedley, Misizuki, Orosi, Traver, Ivanhoe, Portersville, Exeter, Rolinda, Biola, Kerman, Fowler, Springfield, Chowchilla, Visalia, Huron, Five Points, Fresno, Mendota, Raisin City, Riverdale, Easton, Firebaugh, Sanger, Del Rey, Parlier, Reedley, Madera, Tranquility, Coalinga, and San Joaquin.

III. Survey Results

A. Availability of Farm Workers

In August, September and October 1999, Fresno and surrounding counties continued to experience the same high levels of unemployment that have plagued the Central Valley for at least two decades. Indeed, as the chart below demonstrates, the four counties' unemployment rates during the grape and raisin harvests were often more than *twice* the state average, and during the height of the harvest (in September) more than 87,000 unemployed individuals were looking for work there.

Unemployment During The 1999 Raisin and Grape Harvests In The Four-County Region



It is in the context of this persistent, disproportionately high unemployment in the region that the survey results regarding farm worker availablity should be viewed. These data are a persuasive reminder that no genuine labor shortage exists now (or is likely to exist in these counties for many years to come).

In the 5 charts below, we display the survey results regarding farm workers' availability –i.e., those workers who were working less than 40 hours in a particular week included in the survey, and who were also available to work at least 20 hours that week.

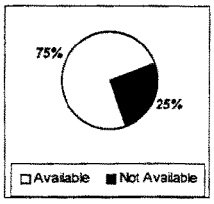
A. Availability of Farm Workers, *cont.*

How the "Availability" Question was Presented to Farm Workers

Surveyors presented each farm worker with a calendar that showed all of the days in each of the five weeks covered in the survey. Workers were asked (for the particular week they were interviewed) whether they were "available" as defined. Then, they were asked the same questions for each prior week (if any).

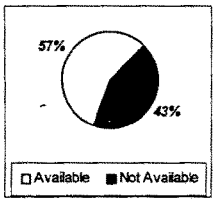
Surveyors then recorded the responses for each week on the survey instrument. Later, we tabulated the number of responses, by week; that number is shown below each week's chart.

WEEK OF 8/29 - 9/4



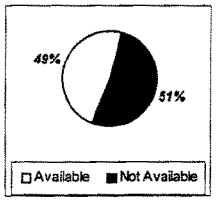
Number of farm worker responses for this week: 843

WEEK OF 9/5 - 9/11



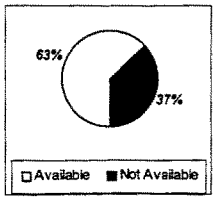
Number of farm worker responses for this week: 703

WEEK OF 9/12 - 9/18



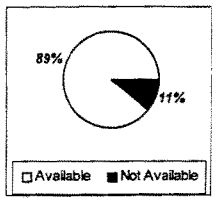
Number of farm worker responses for this week: 590

WEEK OF 9/19 - 9/25



Number of farm worker responses for this week: 388

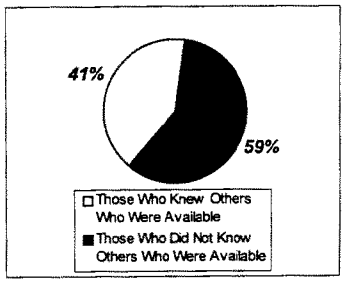
WEEK OF 9/26 - 10/2



Number of farm worker responses for this week: 262

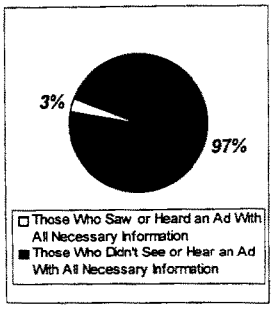
A. Availability of Farm Workers, *cont.*

Farm worker respondents were also asked whether they could specifically identify other individual workers whom they positively knew to be available (--i.e, for at least 20 hours work per week) for harvest week in grapes or raisins. These results (below), and those on the preceding page, clearly demonstrate that there were very significant numbers of available farm workers in the areas of purported need.



B. Employer Recruitment Efforts

Why employers aren't "finding" available workers was explored in a specific question about their media-based recruitment efforts. Farm workers were asked whether they read, saw (on television or billboards) or heard (on the radio) any advertisements in English, Spanish or Hmong, that contained all of the following information: 1) the name of the grower/labor contractor who was offering the job, along with the job location; 2) the date(s) of employment; 3) the wage rate(s) to be paid; and 4) a telephone contact number. The results are below.



III. Conclusions

A. There Were Large Numbers of Farm Workers Who Were Unemployed or Underemployed During the 1999 Raisin And Grape Harvests

In general, the survey showed that during the five weeks of the harvest very significant numbers of farm workers were available to do meaningful amounts of work harvesting raisins and grapes.

Indeed, even during the two most intensive weeks of the raisin harvest (i.e., just prior to the mid-September crop insurance deadline), between 49% and 57% of farm workers indicated they were available for work of at least 20 hours per week.

While a bare majority of farm workers did not know other workers who were available during this time period, it is significant that 41% did.

B. Grower/FLC/Raitero/Mayordomo Media-Based Recruitment Efforts Appear Ineffectual at Reaching Available Farm Workers Even in Nearby Cities and Towns

In recent years, growers have increasingly relied on various intermediaries to supply their farm labor. Farm labor contractors, "raiteros" (transporters) and "mayordomos" (field supervisors) are the intermediaries of choice for approximately two-thirds of all growers in raisins, for example. When these intermediaries are unable to supply workers, growers have said that they use paid advertisements to recruit workers in times of claimed labor tightness or shortage.

CRLA Foundation asked farm workers themselves what kind of job information was needed for them to effectively pursue an employment opportunity that they heard of or saw. Their responses formed the basis for the survey question in this area.

That only a few percent of workers saw or heard ads that provided a sufficient amount of information for an interested party to follow up on a job opportunity certainly suggests that these type of recruitment efforts by agricultural sector employers/recruiters can not have been an effective avenue for securing additional harvest labor.

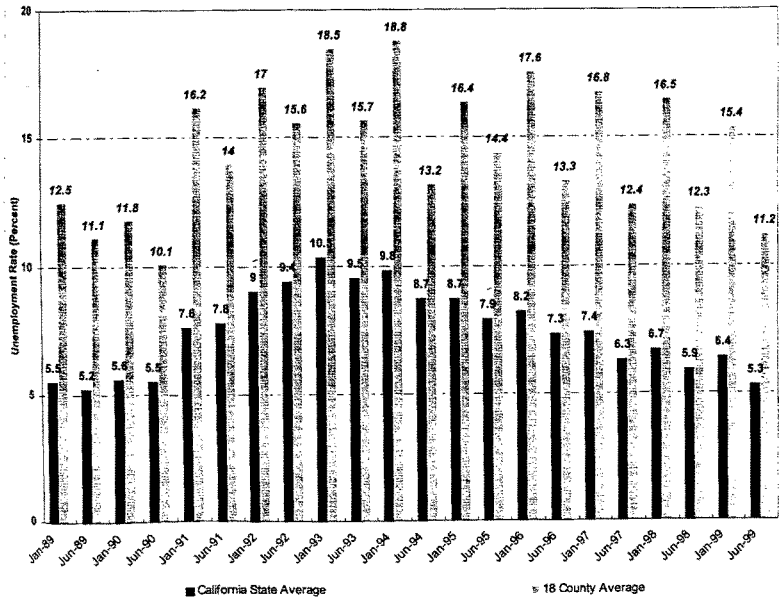
C. The Survey Results Are Consistent With Other Labor Market Evidence and Prior Surveys

The Appendix contains information regarding labor surpluses, and unemployment rates, in California's 18 key crop production counties in recent years.

IV. Appendix

A. Unemployment Rates in Key Agricultural Counties

AVERAGE UNEMPLOYMENT RATES 1989 - 1999: COMPARISON OF CALIFORNIA AND 18 AGRICULTURAL COUNTIES, PEAK AND OFF-PEAK HARVEST MONTHS*



Source: State of California, Employment Development Department, Report 400C, 1989 to 1999

* NOTE: The 18 counties reflected in this chart's data include the four county Fresno region, as well as other key crop production counties throughout the state. Because California's agricultural off-peak and peak employment periods vary considerably (both by region and by the more than 200 crops grown here), we have chosen January and June, respectively, to serve as the off-peak and peak employment months for purposes of comparing the 18 counties' average unemployment rates with the average statewide rate. (For example, see EDD's Report 882-A, which states that California's peak agricultural months are: for the North Coast counties: September; for the Sacramento Valley counties: October; for the Central Valley counties: September; for the Central Coast counties: July; for the South Coast counties: May; and for the Desert counties: June.)

B. U.S. Government Labor Surplus Area Designations

Table III.2: Food Stamp Waiver and Labor Surplus Area Designations for 20 Counties With Significant Production in Fruits, Tree Nuts, and Vegetables, 1997

County[a]	Scope of food stamp eligibility waiver[b]	Reason for USDA waiver[c]	Scope of labor surplus area designation,[d] fiscal year 1997
Fresno County, Calif.		Over 10 percent unemployment rate	Entire county
Imperial, County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Kern, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Madera County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Merced County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Monterey County, Calif.	Entire county	Over 10 percent unemployment rate	Excludes cities of Monterey and Salinas
Riverside County, Calif.	Entire county	Insufficient jobs	Excludes city of Palm Desert
San Diego County, Calif.	Cities of Chula Vista, El Cajon, Imperial Beach, Lemon Grove, National City, Oceanside, and Vista	Insufficient jobs	Not designated as labor surplus area
San Joaquin County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Santa Barbara County, Calif.	Lompoc City, Santa Maria	Insufficient jobs	Not designated as labor surplus area
Stanislaus County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Tulare County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Ventura County, Calif.	Entire county	Insufficient jobs	Excludes cities of Camarillo, Moorpark, Simi Valley, Thousand Oaks, and Ventura
Collier County, Fla.	Entire county	Insufficient jobs	Entire county

(continued)

B. U.S. Government Labor Surplus Area Designations, *cont.*

County[a]	Scope of food stamp eligibility waiver[b]	Reason for USDA waiver[c]	Scope of labor surplus area designation,[d] fiscal year 1997
		Insufficient jobs	Excludes entire county except for cities of North Miami, Hialeah, Homestead, Miami Beach, and Miami
Hendry County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Palm Beach County, Fla.	Entire county	Insufficient jobs	Excludes cities of Boca Raton, Jupiter, and Palm Beach Gardens
St. Lucie County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Yuma County, Ariz.	Entire county	Over 10 percent unemployment rate	Entire county
Yakima County, Wash.	Entire county	Over 10 percent unemployment rate	Entire county

[a]These 20 counties accounted for about half of the total national value of production in fruits, tree nuts, and vegetables in 1992, the latest year for which data were available.

[b]Section 6(o) of the Food Stamp Act, as amended by section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, provides that, among other criteria, a person is ineligible for the program if he or she previously received benefits but did not work at least 20 hours per week for at least a 3-month period. However, the provisions also say that, on the request of a state agency, the Secretary of Agriculture may waive these provisions for specified persons in the state. USDA issued most of the waivers to the designated counties during early 1997.

[c]The Secretary of Agriculture may waive current food stamp eligibility provisions if he determines that the area in which the persons reside has an unemployment rate of over 10 percent or has an insufficient number of jobs to provide employment for program participants. Among other evidence, designation of an area by Labor as a labor surplus area can be considered by the Secretary that an insufficient number of jobs are available.

[d]Labor classifies a civil jurisdiction as a labor surplus area when that jurisdiction's average unemployment rate is at least 20 percent above the average national unemployment rates during the previous 2 calendar years. During periods of high unemployment, an area can be classified as a labor surplus area if it has unemployment rates of 10 percent or more during the previous 2 calendar years. Labor may also designate areas if an area had unemployment rates of at least 7.1 percent for each of the 3 most recent months or projected unemployment of at least 7.1 percent for each of the next 12 months or has documentation that this has already occurred. Labor designates labor surplus areas on a fiscal-year basis. Designated labor surplus areas are eligible for preference in bidding on federal procurement contracts.

Sources: USDA and Department of Labor.

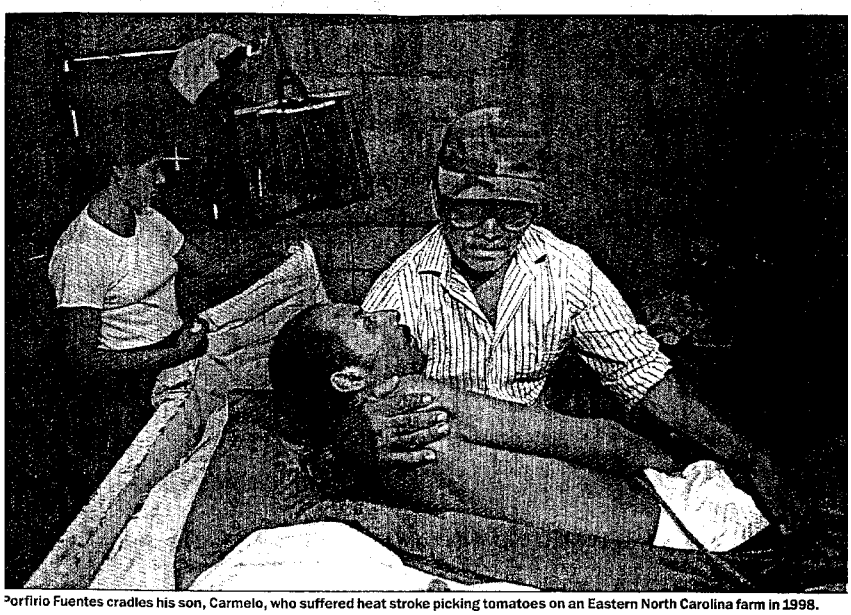
APPENDIX B

The Charlotte Observer

www.charlotte.com SUNDAY, OCTOBER 31, 1999 METRO EDITION

DESPERATE HARVEST

N.C. growers' trade in foreign farm workers draws scrutiny



Porfirio Fuentes cradles his son, Carmelo, who suffered heat stroke picking tomatoes on an Eastern North Carolina farm in 1998.

By LEAH BETH WARD | Photos by GAYLE SHOMER | OBSERVER STAFF

A three-part series about North Carolina's imported "guestworkers"

The temperature had climbed to 95 degrees, but humidity made it feel like 105 the day Carmelo Fuentes fell in an Eastern North Carolina tomato field.

Fuentes, then 36, had been picking most of the day. Though weak and dehydrated, he said he only wanted a short break, according to his employer. "That boy said he was fine and just needed to rest," said Brent Jackson, owner of the Sampson County farm.

But state investigators found a supervisor dangerously ignored the first signs of heat stress. Heat stroke soon shut down Fuentes' internal organs, causing severe brain damage.

Today – 14 months later – Carmelo Fuentes lies mute and motionless on a rusted bed at home in central Mexico. He breathes through a tube in his neck. Doctors say his chances of recovering normal brain function are poor.

"I begged him to be careful of the heat," said Porfirio Fuentes, his father.

Nobody can know exactly what Carmelo Fuentes said about how he felt that July day in 1998. But as a veteran working his third N.C. harvest, he likely understood what some say are the unwritten rules of the government program that brought him to an N.C. farm 2,000 miles from home.

Work fast, or lose your job to somebody who is faster. Complain about your living or working conditions, and you're sent back to Mexico. Get sick or injured, and you're off the list of workers invited back next season.

An estimated 10,000 foreign farm workers – most from Mexico and all, like Fuentes, legal immigrants – will work in N.C. fields this year in the federal H-2A program. North Carolina has become the largest user of H-2A "guestworkers" under a 1986 immigration law that allows U.S. growers to import temporary farm labor when U.S. workers are in short supply.

Fuentes' injury and the deaths in North Carolina of at least two H-2A workers since 1995 have intensified debate about the program. Farm worker advocates say H-2A workers, with fewer rights than U.S. workers and even other migrant workers, live and work under conditions that recall a similar farm worker program outlawed 35 years ago. Critics also say H-2A growers use blacklists and other tactics to

Please see **GROWER** / *page* **12A**

At David Sherrill's farm in Ellerbe, in Richmond County between Pinehurst and Rockingham, Eufrocio Montilongo (left) and Jesus Patino Rojas (right) start their season in North Carolina picking strawberries. Sherrill calls Rojas, 53, "a machine in the fields."

THE N.C. GROWERS ASSOCIATION HAS BEEN PAINTED "AS THE BIG BAD GROWER, BUT WE HAVE THRIVED BECAUSE WE ARE A PROGRESSIVE EMPLOYER." – STAN EURY, FOUNDER

UNSEAL THE TRUTH

FARM WORKER PROGRAM DRAWS SCRUTINY

GROWER *from 1A*

keep workers silent and productive.

They cite reports from two federal watchdog agencies that conclude the H-2A program leaves workers vulnerable to health and safety risks and exploitation.

Growers' supporters in Congress are pressing a proposal that would expand the use of legal foreign farm workers. Its impact on H-2A is unclear.

In this battle, no one has more at stake than Stan Eury and the N.C. Growers Association. Eury founded it in 1989 and has built a multimillion-dollar business that supplies foreign labor to 1,050 N.C. growers, as well as those in 16 other states, aided in part, say two federal investigations, by weak government oversight.

Eury said opponents of the H-2A program try to paint the association "as the big bad grower. But we have thrived because we are a progressive employer. This is the best thing that ever happened to farm workers," he said.

Eury

From headquarters in Vass – halfway between Sanford and Pinehurst – Eury's association and an affiliated company now control half the 30,000 H-2A workers imported each year.

In North Carolina, the association has expanded H-2A hiring to 10,500 last year from 168 in 1989. S.C. growers began using H-2A workers this year for the first time, ordering 800 from a for-profit company Eury runs called International Labor Management.

"We're serving a need," said Eury, who says that growers can't find enough U.S. workers willing to do bend-and-stoop field work.

He said H-2A workers fare better than undocumented foreign workers or U.S. migrant workers because they have workers' compensation, earn more than the minimum wage and are provided with housing and transportation.

Growers like David Sherrill of David's Produce in Ellerbe pay the association $498 per worker plus a $200 annual membership fee. Sherrill's crew members say they like working for him; more than a few H-2A workers ask to return to the same farm each year.

Sherrill once hired only U.S. workers. "You'd look out on the fields and they'd be leaning on their hoes.

"But Jessie," he said, referring to 53-year-old Jesus Patino Rojas, "Jessie is a machine in the fields."

But Rojas' government is concerned about North Carolina's H-2A workers. In June, the Mexican Embassy in Washington sent two investigators to the state to look into alleged abuses.

"We have had good experiences in Georgia and Virginia and very ill experiences with North Carolina," said Gustavo Mohar, director of political and congressional affairs for the embassy.

"In North Carolina, private interests have built an infrastructure that was not really the intention of the legislation."

In many ways, federal investigators and some immigration experts say, H-2A bears troubling resemblance to an earlier program with Mexico, set up in 1942 to ease a wartime labor shortage.

Congress shut down the bracero program in 1964 after Edward R. Murrow's legendary "Harvest of Shame" television documentary exposed squalid living conditions and abuse in Florida.

"H-2A absolutely echoes bracero," said Joel Najar, an immigration expert for the National Council of La Raza, a Washington organization that provides legal advice for and advocates on behalf of Hispanics.

Najar said bracero – which means "arm man" in Spanish – protected workers on paper but not in reality.

"It was killed (by Congress) because it was so inhumane. H-2A is the same."

Eury said there is no comparison. He said H-2A employees are not intimidated or coerced, and that federal regulations are stronger now than in the days of bracero.

"We have to have these guys as employees. We don't want them to be disgruntled workers. We do warn them verbally and in writing of our rules. But we don't just terminate at will," he said.

There's no reason for growers to worry about getting enough H-2A workers. Economic desperation in Mexico keeps the pipeline full.

Workers pay up to $500 to a recruiter for the chance to earn up to $330 a week in North Carolina, far more than they could earn at home.

In Tamazunchale, 192 miles southeast of Fuentes' home of Ciudad del Maiz, so many men leave for N.C. farms the city is called "el segundo Carolina del Norte" – the second North Carolina.

Workers arrive expecting a guaranteed wage set by the government – $6.54 an hour this year – and payment for at least three-quarters of their contract period. Workers can earn more by accepting a piece rate, and most do.

The longest contracts run from April through November. If they stay until the end, workers can earn $9,600, although advocates say most workers earn far less because work is not consistently available and many don't finish the contract.

Filomeno Carreon, a friend of the Fuentes family, said he has no choice but to try for an H-2A job. "My family can't live here on 200 pesos a week (about $20)," he said, leaning against a storefront in Ciudad del Maiz, awaiting a local recruiter's call.

North Carolina's demand for foreign workers is not expected to diminish, despite setbacks from hurricane-related flooding. And many growers, facing lower tobacco subsidies, already are switching to other crops such as sweet potatoes.

The power of 'el patron'

East of Raleigh, where Spanish billboard slogans tout Mexican beer, most Latino farm workers are migrants – U.S. workers who follow the harvest from state-to-state. H-2A guestworkers, though, are the fastest-growing segment of Latino farm workers. While the N.C. migrant labor force dropped 1 percent in 1998, the H-2A work force shot up 49 percent.

In exchange for work on an H-2A farm, workers give up considerable control over their lives.

Most don't see their contracts until they arrive in North Carolina. Unlike migrant workers, H-2As can't choose their employer – they are assigned by the Growers Association. H-2A rules don't let them negotiate wages and hours.

Unlike migrant workers, H-2As are not protected under N.C. laws governing landlord-tenant contracts. It took a legal challenge this year to win N.C. H-2A workers the right to invite guests to their quarters after hours.

And unlike migrant workers, they are not covered by the federal Migrant Seasonal Worker Protection Act. That could change under new legislation introduced last week, which would extend the migrant protection

law to cover H-2A workers.

The Migrant Protection act requires substantially more documentation from growers than the H-2A program, such as hours to be worked, crops to be picked and place of employment. Growers who violate the act are subject to civil and criminal penalties.

H-2A workers must depend on their employer – "el patron" – for transportation to the store and church, and loans when they are short of cash.

In the field, they can be fired for taking an unauthorized break, according to association rules.

"We don't control them, we protect them," said Eury.

The power of "el patron" makes H-2A workers especially vulnerable to mistreatment, two independent federal investigations found.

"H-2A guestworkers may be less aware of U.S. laws and protections than domestic workers, and they are unlikely to complain about worker protection violations ... fearing they will lose their jobs or will not be hired in the future," the General Accounting Office, Congress' investigative arm, concluded in a December 1997 report.

A 1998 report by the Office of the Inspector General for the U.S. Labor Department described H-2A workers as "malleable and less likely to voice complaints about wages and working conditions."

N.C. Labor Commissioner Harry Payne also said H-2A workers are reluctant to complain. "Plus, they come here and are willing to work 24 hours a day, which puts them at risk."

Ten- to 12-hour days are the norm, and 14-hour days are not uncommon when crops hit peak harvest.

Housing can be crude. At one Nash County farm, workers live in a converted chicken coop with tiny screened slats for windows and a tin roof that on hot days turns it into an oven.

Last year at a farm in Wilson, state inspectors found 30 workers in quarters meant for 24. The men were exposed to live electrical wires; smoke detectors didn't work and there was one toilet and sink.

The minimum is one toilet and sink for 20 workers.

Eury says the H-2A program treats farm workers better than migrants who work for crew leaders whom he says can be exploitive. He also says the H-2A program is better because growers provide free housing.

Fear of the blacklist

Guestworkers learn quickly that job security depends on silence and obedience.

Workers at a Nash County farm, for example, received information pamphlets from farm worker lawyers at the U.S.-Mexico border at Laredo, Texas. When they arrived in Vass, they said the association told them they would be sent back to Mexico if they kept the pamphlets. Workers said association employees watched as they threw them into trash cans. Eury said the workers threw the pamphlets out voluntarily.

The pamphlets are dedicated to Carmelo Fuentes and tell his story. They show workers how to figure their wages and make sure growers live up to a guarantee that they will be paid for at least three-quarters of their contract period if they stay until the end.

The growers' message – don't complain, don't seek legal help – is hammered home when workers arrive for orientation inside the association's warehouse in Vass in Moore County. From a balcony above the recruits, association employee Jay Hill forbids them from associating with Legal Services of North Carolina, whose farm worker unit provides free legal advice.

The price of disobedience: "He's telling us we will be sent back to Mexico," said Luis, 33, an H-2A worker who speaks some English.

Eury says workers don't need legal advice. In Georgia, H-2A recruiter Dan Bremer said he regularly invites lawyers to orientations to tell workers their rights.

Recently at the Nash County farm – far from the eyes of the grower – workers welcomed lawyers from Legal Services.

They told the lawyers they had to drink from a pipe attached to a water tank, each putting his mouth to the source. "One guy has a cold, but he needs water, too," said a worker, who asked not to be identified. Growers are required to provide individual cups.

The workers said they were afraid to ask for cups, fearing the grower would not invite them back. One lawyer, Alice Tejada, persuaded them to complain anonymously to the N.C. Labor Department.

To date, no H-2A farm worker in North Carolina has personally filed a complaint with government regulators, records show. The state and federal governments receive complaints about growers, but they originate with farm worker advocates or church groups.

The code of silence follows workers back to Mexico.

Two workers who spoke to an N.C. investigator in Carmelo Fuentes' case are from Naranjo, Mexico, not far from his home.

Porfirio Fuentes, Carmelo's father, tried without success to talk to the men about what happened to his son. "They were told to say nothing or they could never come back," Porfirio said.

Luis Torres, who has interviewed 700 guestworkers for a Ford Foundation study in Mexico, said blacklists are used to punish workers. He said he saw one blacklist on a visit to central Mexico last year.

Torres said a recruiter in Mexico showed him a blacklist that represented about 8 percent of the workers that had been sent to the United States under H-2A. "The explanation from the recruiter was that these workers had jumped the contract," Torres said.

Workers' fears of ending up on such lists are widespread.

In a 1995 case, N.C. farm worker lawyers represented an H-2A worker who said he was blacklisted because he had been injured on the job and requested medical attention. He was not rehired the next season and sued the Growers Association under the N.C. Retaliatory Employment Discrimination Act.

The judge entered a default judgment against the association for failing to comply with a discovery order. Just before a jury trial on damages, the association settled.

Eury denies blacklists exist, though he says growers can ask for "preferred workers." He said the association keeps track of "ineligibles," those with substance-abuse problems or poor work habits.

Official report on collapse

Carmelo Fuentes had hoped to earn enough so his sister Yolanda could have cataract surgery.

The circumstances of his collapse late that afternoon on July 10, 1998 – six days shy of his 37th birthday – are described in an N.C. Labor Department report.

A few men carried Fuentes to the end of a row after he fell; then they returned to their work, the report said. About 15 minutes later, the field supervisor told them to carry him back to his quarters.

Sometime later – the report doesn't state exactly when – a truck driver for Jackson's Farming found Fuentes semi-conscious. Brent Jackson dialed 911 at about 6:10 p.m. The report is based on interviews with the Jacksons and Fuentes' coworkers.

Debbie Jackson, named as the field supervisor in the report, said she didn't act immediately.

"Mrs. Debbie Jackson stated immediate cooling procedures and other first aid procedures were not initiated until the arrival of the Sampson County E.M.S. sixty minutes after initial symptoms were reported to supervisor Mrs. Debbie Jackson," the report states.

Fuentes was flown to University of North Carolina

Continued from 12A

Hospitals in Chapel Hill where doctors diagnosed a severe neurological disorder.

Brent Jackson, in a recent interview, said he expects to prevail in a pending workers' compensation case filed on behalf of Fuentes.

The state assessed Jackson a fine of $875 under N.C. Labor Department laws. The maximum fine is $7,000. Other violations found in the investigation were dropped from the settlement – including a finding that the men had to share a single water cup.

"Everything in that state report is a lie," Jackson said. He said he paid the fine to avoid a long legal fight.

Those who maintain that a pattern of subtle coercion underpins the H-2A program don't doubt Fuentes insisted he just needed to rest. Mary Lee Hall, a veteran farm worker lawyer, said workers who complain about sickness risk not being invited back next season.

Betsy Richards, a nurse practitioner at the Harvest Family Health Center in Wilson, was alone one night at the clinic when 27 tobacco workers showed up with nicotine poisoning. She said some men – all H-2A workers – said they had symptoms early in the week but told her they were afraid to complain until it was too late.

Nicotine poisoning occurs when green, wet leaves transfer nicotine onto the skin. Victims become dizzy, develop cramps and headaches and vomit.

"It was wretched. They were throwing up all over the lobby," Richards said.

Although the program allows "el patron" almost absolute control over H-2A workers, federal officials say it's virtually impossible to keep abusive employers out.

"(U.S. Labor Department) field officials expressed concern about the difficulties of ensuring that abusive employers do not participate in the H-2A program, where they believe the chance for abuse is much greater," investigators wrote in the 1997 GAO report.

Mexican recruiters in Tamazunchale, (pronounced TAH-mah-soon-CHA-lay), acknowledge as much. "There are good patrons and bad ones," recruiter Isidro "Cholo" Rios said.

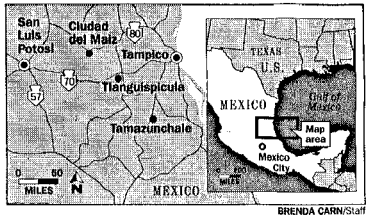
To U.S. farm worker advocates who say Mexican recruiters should take responsibility for sending workers to abusive growers, Rios says: "You take care of your troubles on your end and I'll take care of mine."

Investigating complaints

Investigators from the GAO and the Labor Department's watchdog – the Office of the Inspector General – say the government has a poor record of policing the H-2A program. U.S. Labor Department records show only a handful of H-2A complaints were investigated in the last two years, resulting in either no action or marginal fines.

Until two months ago, the Labor Department had never denied any N.C. grower an order for H-2A workers – a significant club it can wield to weed out abusive employers.

A July 1998 incident, now well-known in Eastern North Carolina's Latino community, illustrates a type of problem with the H-2A program and the vulnerability of workers, according to federal investigators and critics.



BRENDA CARN/Staff

At the Pink Hill farm of Anthony Smith, 15 H-2A workers left during the night and went to a Kinston church.

At the time, Lee Albritton was the manager of the Kinston office of the Employment Security Commission, which tries to place U.S. workers in farm jobs. The church minister called Albritton, knowing he spoke Spanish.

Albritton, now a recruiter for Bojangles', said the workers told him they suspected they weren't getting paid properly.

Instead of receiving the customary tokens for each bucket of cucumbers picked, the workers said a supervisor kept track of their productivity by making them wear caps with numbers and recording them as they dumped buckets into a truck.

Without tokens, the men wouldn't have any leverage when it came time to figure their pay, Albritton said. "Basically, they didn't trust the supervisor to count right."

Albritton also said that workers told him their crew supervisor threw cucumbers at them if they were not working fast enough.

Sonia Smith, Anthony Smith's wife, said union organizers incited the workers, causing them to leave. She said the workers did get tokens and denied that the cucumber incident took place. "That's all untrue," she said.

Albritton said he called his supervisor, Bubba Grant, to report the incident. In a few days, Grant, U.S. Labor official Carl Miller and Albritton met. Albritton said he wanted to complete an investigation of the incident and file a report but that Miller told him he was outside his jurisdiction.

Miller said he notified U.S. wage and hour investigators of the incident. But by the time they looked into it, they could not find the workers, said Carolyn Riddle of the U.S. Labor Department in Atlanta.

Eury said the probe is an example of how state and federal investigators harass growers. "They investigated Anthony Smith for six months and couldn't come up with a thing on that."

Records show the farm did pay a state fine last year for not having a portable toilet in the fields. Smith said it was a minor infraction. "We thought they were close enough to (the toilets in the camps.) Besides, they don't use them anyway," she said.

To Albritton, the case shows the vulnerability of H-2A workers. By leaving the farm, the workers broke their contract, making them undocumented workers subject to deportation. Under the contract they also forfeited their bus fare home and certain pay guarantees.

Eury has given varying accounts of how the association disciplines its members in different interviews. When first asked last spring, Eury said no one had ever been kicked out of the Growers Association. Later, he said "three or four" growers had been denied membership. Most recently, he upped the number to 12. He wouldn't explain the discrepancy or identify growers who are no longer members.

Eury said he doesn't always know what's going on among the association's 1,000-plus growers. State labor officials don't keep a watch list of growers with records of violations, which might help the Growers Association improve its own monitoring.

For example, Eury said he didn't know that the state Department of Agriculture last year investigated Pilot Mountain tobacco grower Jimmy Pike for pesticide violations, following up on worker complaints passed on by farm worker lawyers.

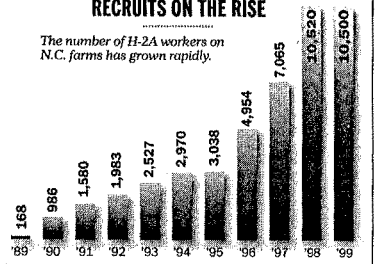
Pike settled the case earlier this year, agreeing to pay a fine of $500 – the maximum pesticide fine under state law. The pesticide

WHAT IS H-2A?

- H-2A is a "guestworker" program established by the federal government to let farmers with a labor shortage hire foreign workers on a temporary basis. North Carolina uses more H-2A guestworkers than any other state.
- It's called H-2A for a section describing these workers under the 1986 Immigration Reform and Control Act.
- Growers apply for foreign workers to the U.S. Department of Labor.
- Before foreign workers are certified, growers demonstrate they have tried to recruit U.S. workers. The state employment commission is supposed to refer qualified U.S. workers to growers.
- If growers can still prove they cannot find enough U.S. workers, foreign workers are certified and approved by the Immigration and Naturalization Service.
- U.S. consulates in Monterrey or Hermasillo, Mexico, issue H-2A visas to approved workers.
- Growers must pay a wage set by the federal government. This year it's $6.54 an hour. Growers must also: provide free, approved housing; either three meals a day or furnish cooking and kitchen facilities.
- Growers are also required to reimburse workers for bus trips to and from their native country if workers complete a specified portion of their contract.

RECRUITS ON THE RISE

The number of H-2A workers on N.C. farms has grown rapidly.



Note: The 1999 figure is an estimate.
SOURCES: Rural manpower services, Employment Security Commission.

board, which grants pesticide licenses, denied Pike his applicator license and suspended his wife's license for one year.

Separately last year, the state Labor Department fined Pike $250 for not providing toilet or hand-washing facilities for men working in the fields longer than five hours. The department also said Pike violated regulations by failing to provide transportation to such facilities.

Pike, who continues to use workers supplied by the Growers Association, declined comment.

A father cares for his son

The day his son fell, Carmelo Fuentes' father got the news from the local recruiter in Ciudad del Maiz. Porfirio Fuentes decided he had to go to Chapel Hill, where Carmelo was hospitalized.

Nurses at the hospital taught Porfirio how to bathe his son in bed. Back home in October 1998, Porfirio showed his family.

A year later, the daily ritual is familiar. The family team massages Carmelo's lifeless limbs and washes his skin under the light of a single bulb hanging from the ceiling. An old shoebox serves as a makeshift lampshade.

After the bath, Yolanda covers him with a clean sheet donated by friends in North Carolina.

Sometimes, Carmelo's eyes seem to catch the dance of light and shadow as family members move around him. Porfirio insists it's a good sign: "My son, my son," he repeats from the end of the bed, wiggling his fingers to coax recognition from Carmelo.

At dusk, Porfirio places a Bible under each corner of Carmelo's mattress and begins the nightly reading, this time from the Old Testament's Song of Solomon.

Nightfall cools the concrete-block hut. As he does every night, Porfirio drags an old mattress from a corner of the room so he can sleep next to his son. He wants to be here in case Carmelo's condition changes.

Porfirio hopes his son will recover but succumbs to sadness in the dark.

"I cry every night. Every night."

THEY DON'T WANT THEIR MEN COMING TO N.C. ANYMORE

Bernadina Hernandez (right) joins other women in the central Mexico village of Tianguispicula to earn money washing the local church. She is the widow of Raymundo Hernandez, who died in North Carolina under a program that brings Mexican farm workers to the United States.

By LEAH BETH WARD
Staff Writer

TIANGUISPICULA, Mexico — The story of Raymundo Hernandez still haunts farm workers from this dusty region of central Mexico all the way to Eastern North Carolina.

In the afternoon of July 21, 1995, Hernandez was topping – or cutting off – the flowery heads of tobacco plants on a Sampson County farm. It helps the leaves absorb moisture.

Suddenly, Hernandez, 39, started to vomit.

A state report tells what happened next: The farmer, Jart Hudson, put him in his truck and left for the nearest clinic. But on the way, Hudson stopped to go speak to another farmer. When he returned, Hernandez was gone.

Several months later, someone found his skull under a pecan tree. Other human bones were not far away.

Hudson said he is weary of discussing the incident, which he said was unfortunate. "That's over now," he said. He was investigated for possible pesticide violations but no violations were found in connection with the death of Hernandez.

Hernandez was recruited to work under contract for the N.C. Growers Association under the controversial H-2A program.

Since his death, the leaders of Tianguispicula (pronounced tee-an-gwee-SPEAK-oo-la) have asked the men not to work in North Carolina.

"After Raymundo, they don't want our men going," said Marta Hernandez, sister-in-law of Bernadina Hernandez, Raymundo's widow.

The worker's cremated remains had sat in the state medical examiner's office in Raleigh since October 1995. They likely would have remained there without the intervention of Baldemar Velasquez, president of the Farm Labor Organizing Committee.

Velasquez contacted U.S. Labor Department Secretary Alexis Herman who, in turn, enlisted help from the Mexican Embassy in Washington. The remains have since been claimed and returned to the widow.

Bernadina Hernandez doesn't understand how her husband died, and no expert can explain it to her. The cause of death was found to be "indeterminable."

Investigators found no evidence of pesticides on Hernandez's clothing or in his remains. Pesticide poisoning is difficult if not impossible to detect after 24 hours.

The case did prompt state safety officials to adopt a new rule. They now investigate all reports of possible poisoning within 24 hours.

A lawyer won a $10,000 workers' compensation settlement for the family, and the money has been invested for the benefit of the five Hernandez children. Bernadina Hernandez continues to live in a tiny hut and works with the rest of the village women cleaning public buildings once a week.

For the widow, who does not speak Spanish and is illiterate, the job provides a meager income – about $11 a month – and an opportunity for some camaraderie.

Nine months ago, Marta said, a farm worker recruiter from Tamazunchale, 12 miles away, demanded repayment of the $500 fee Raymundo borrowed to get an H-2A visa.

When Bernadina said she could not pay him, the recruiter filled up his truck with oranges from the Hernandez grove.

It was only partial payment. "Raymundo still owes him money," Marta said.

The Charlotte Observer

www.charlotte.com MONDAY, NOVEMBER 1, 1999 CAROLINAS EDITION

DESPERATE HARVEST

LAX REGULATIONS TROUBLE CRITICS OF LABOR PIPELINE

Advocates say farm workers lack protection

By LEAH BETH WARD Photos by GAYLE SHOMER OBSERVER STAFF

Second in a three-part series about North Carolina's imported "guestworkers"

VASS – Early on an April morning, 500 Latino farm workers clamber off buses, bleary-eyed after a 40-hour ride from Mexico.

They are part of a wave of some 10,000 "guestworkers" who have come to North Carolina this year under a federal program that lets foreign workers enter the United States for temporary jobs harvesting crops.

At the headquarters of their new employer, the N.C. Growers Association, each worker is assigned to a farm. "I need it to support my sister and parents," said Luis, 33, at the growers' processing center. "Everything in Mexico is too expensive."

These workers are not just strong backs and sun-leathered hands. For the Growers Association – a taxable nonprofit organization – and related for-profit companies, they are a multimillion-dollar, multistate business that makes money on each worker it brings across the border.

North Carolina is using more and more workers from the program, called H-2A after a section of the 1986 immigration law. But as this profitable pipeline has grown, so have concerns voiced by federal investigators, worker advocates and Congress.

These critics worry that government oversight is lax and worker protections weak. They also question the need for a program that brings so many foreign workers – 30,000 nationwide this year – to the United States.

Last week, senators from two large agricultural states introduced bipartisan legislation that would expand the use of legal foreign farm workers but its impact on H-2A workers is unclear. The senators called H-2A a "troubled" program. The N.C. Growers Association parts company with two national growers' groups and does not support the legislation, saying it doesn't do enough to increase the supply of farm workers.

Two federal reports highly critical of nearly all of H-2A

Please see **PIPELINE / *page* 10A**

At headquarters of the N.C. Growers Association in Vass, workers who arrived earlier this year sign contracts to work on one or more of some 1,050 association member farms. Most would pick cucumbers and tobacco.

CRITICS: REGULATIONS MAKE WORKERS VULNERABLE

have no trouble finding an ample supply of U.S. workers either in the Carolinas or from the migrant stream that follows the harvest up from Florida.

Emmrich's agency in the past has been successful placing many. In 1996, the GAO said, the commission placed 15,601 workers with N.C. growers. But this year, the number was 9,505, a 39 percent drop that state officials relate directly to the growth of the N.C. Growers Association and its aggressive expansion of H-2A hiring.

The employment commission has almost given up referring workers to the Growers Association. This year, 54 were referred; 13 went to work.

The notion of a labor surplus might seem at odds with North Carolina's lower-than-average unemployment rate and the nation's eight-year economic boom.

But workers are available, manpower recruiters here and in other states say. In the past, state officials relied on an interstate recruiting system, drawing labor from states such as Texas and California, both of which still have large pockets of rural unemployment.

But N.C. officials – and the GAO – say growers' preference for foreign workers has crippled the interstate system. Only 70 workers came to North Carolina this year as a result of the state's use of the interstate system. None worked for the Growers Association.

Emmrich, the director of state employment services, disputes that his agency has been remiss in its efforts to place U.S. workers. "I'm not sure we've ceded control to the growers. Our primary responsibility is to test the labor market and there seems to be a demand for these H-2A workers."

Barriers to U.S. workers

In no small measure, Stan Eury's success as a trafficker in foreign brawn rests on his ability to out-bureaucrat the bureaucrats.

Bubba Grant, who manages a group of field recruiters around the state for the N.C. employment commission, said the Growers Association throws up procedural barriers to discourage referrals of U.S. workers.

He said association employees often set up interviews at times when workers aren't likely to be available. A back-and-forth faxing process for applications and a Growers Association requirement that applicants read 35 pages of work rules are also time-consuming, he said.

Grant also said applicants are sent to Jay Hill, a field supervisor for the Growers Association, who is rarely in the office from 8 a.m. to 5 p.m.

But Eury called the application process "simple. It takes five minutes to do an interview."

He said Grant's employees aren't doing their job and gave this example: "After the hurricane, I put out a call for 400 workers and not one person applied."

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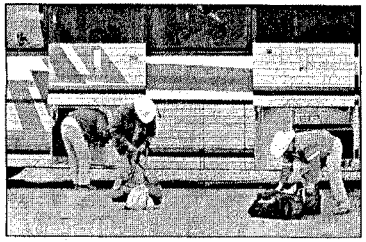
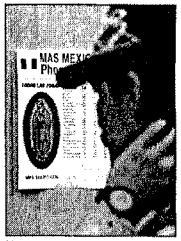


Workers gather the few belongings they are permitted to bring from Mexico from buses that arrived in April at the N.C. Growers Association processing center in Vass. They would wait several hours before learning where they would start their season as farm workers.



Here, a worker at the growers' Vass processing center reads a phone card advertisement listing rates to various places in Mexico.

in North Carolina since 1995, according to an examination of N.C. workplace fatalities by The Observer; a Canadian guestworker program with almost as many workers as North Carolina's H-2A work force has reported no deaths since its inception 15 years ago, nor have Virginia, Maryland or New York.

The N.C. Employment Security Commission is supposed to refer U.S. workers to N.C. growers who need labor; only after growers show they can't find U.S. workers can they turn to the H-2A program.

But the Growers Association has dramatically expanded the H-2A program despite what many say is a surplus of domestic farm workers. The General Accounting Office, Congress' investigative arm, found no evidence of a farm labor shortage in a December 1997 study. Neither does it expect one.

"A sudden widespread farm labor shortage requiring the importation of large numbers of foreign workers is unlikely to occur in the near future," the GAO said.

Lise Levie, who worked on the study, said in a recent interview the agency stands by its conclusion. Two years later, she said, there is still no shortage.

If there was a shortage of farm labor, wages would be inching upward, said Rick Mines, a former Labor Department policy analyst, now a Fulbright Fellow studying farm workers in Mexico. But U.S. Department of Agriculture economists say wages have declined or stagnated in real terms in recent years.

State employment officials, too, acknowledge a surplus.

"We've seen pockets of a surplus (of U.S. workers) all season long," said Bubba Grant, director of rural manpower services for the N.C. employment commission.

Eury says the idea of a labor surplus is "contrary to what I know." He says the state rarely sends the Growers Association qualified workers, and chastised the N.C. employment commission in a letter last spring: "You send us liars, misfits, the chronically unemployed, drug addicts, alcoholics, prisoners, parolees and the homeless."

The commission dismisses Eury's description.

"Stan doesn't represent the majority of growers in this state," said Manfred Emmrich, director of employment services for the commission. Despite the recent growth, H-2A workers account for only 8 percent of the state's seasonal and migrant farm labor.

Indeed, most N.C. growers

PIPELINE *from 1A*

found the program leaves guestworkers vulnerable to abuse and exploitation. The 1997 and 1998 reports focused on North Carolina, Virginia and New York and included interviews with workers, their advocates, state regulators and growers.

In North Carolina, farm worker lawyers and advocates say the Growers Association uses threats of "blacklists" to keep workers silent and productive, a charge the association's president, Stan Eury, vigorously denies.

Workers who pay recruiters in Mexico up to $500 for H-2A visas rarely complain to the government or growers about living or working conditions because they fear losing their jobs.

Federal investigators also have concluded that agencies with jurisdiction over H-2A do not exercise the degree of control called for in program regulations. Immigration experts agree that many problems with the program exist because of weak oversight.

"H-2A is not a bad program. I'd just like to see the regulations applied," said Luis Torres, an immigration expert who is studying Mexican farm workers under a Ford Foundation grant. "But when you see the satisfaction of the workers who bring money home to their families, you see the difference it makes for them to work under an H-2A contract vs. being undocumented."

Some examples of lax control:

■The N.C. Employment Security Commission, which under H-2A law is required to ensure that U.S. workers get a shot at farm jobs before growers hire foreign labor, has virtually abandoned its job, federal investigators say. Growers' preference for foreign workers is so strong, according to a report by the Labor Department's inspector general, that state employment agencies "are reluctant to refer U.S. workers to H-2A employers because they will not hire them."

■The Labor Department, which is charged with administering and enforcing H-2A, has been lax in regulating the program, federal investigators found, because of confusion over who is in charge of enforcing worker protections.

■The Immigration and Naturalization Service, which is supposed to know when H-2A workers return to Mexico, admits it doesn't know how many remain illegally in the United States, making the already tough task of counting undocumented workers even more difficult, critics contend. For example, hundreds of H-2A workers abandoned their contracts early this year because of Hurricane Floyd and its aftermath, but the INS doesn't know how many returned home.

■ No federal regulator can say with certainty how many foreign workers in the H-2A program have been killed or seriously injured. But at least two H-2A workers have died

Others criticize the state, too. Lee Albritton managed the state's employment office in Kinston, the heart of heavily agricultural Eastern North Carolina, before quitting in 1998. In a May 1998 memo to Grant, he called the state's recruiting efforts "half-hearted" and "negligent."

"The unwritten rule in local (state employment commission) offices was to discourage referrals because of the incredibly cumbersome procedure" through which the Growers Association would put potential U.S. job candidates, he wrote.

"Why are we allowing this single employer to dictate the rules rather than applying standard N.C. ESC (Employment Security Commission) and U.S. DOL (Department of Labor) procedure? It's a shame we are a party to such an apparent sham," Albritton continued in his e-mail to Grant, the supervisor of rural manpower services.

Eury obtained a copy of Albritton's memo and complained to his bosses about what he called Albritton's "bias" against the Growers Association. Eury demanded an investigation, but Albritton's bosses backed him.

State officials said they weren't surprised Eury learned of the Albritton memo. "Stan has a tremendous network and there is nothing he doesn't know," Grant said.

Eury acknowledges as much. "We are connected to the agricultural market. I guess you could say we do sort of know what's going on."

Though they pay $498 for every H-2A worker, Growers Association members like the program. "The H-2A does cost a fair penny," said James Albert Lee, a tobacco farmer in Fairmont in Robes County. "But you make up the difference because these people really work."

Agency employee Billy Green, who monitors the H-2A program, said in a memo to Emmrich that several fellow employees in recent years have expressed fear of retaliation from individual growers and the Growers Association for referring U.S. workers too aggressively.

Eury said neither he nor any Growers Association members have ever done anything that would cause state employees to fear retaliation.

Emmrich said he was aware employees were fearful and decided to address the issue. He said he told his employees they should not feel intimidated about doing their jobs.

Contracts hard to enforce

State officials have little authority over the H-2A program beyond their role of trying to refer U.S. workers. When they see problems, there is little they can do but file a report with federal officials.

North Carolina falls under the jurisdiction of the U.S. Department of Labor's regional office in Atlanta, which certifies H-2A job orders.

This year, Grant complained to the federal Labor Department about H-2A workers showing up weeks before there was any work, which is not supposed to happen under H-2A regulations, he said.

For example, workers interviewed at a Nash County farm said they had gone 10 days without work and were worried about how they would buy food.

Cynthia Ryan, an immigration lawyer in New York City, said she's troubled that H-2A workers experience downtime they're not warned about in their contracts. For example, typically there is a three-week slow period in late summer between the end of tobacco season and the start of sweet potatoes when little or no work is available.

"That's a practice called 'benching' and it's not supposed to happen under the law," said Ryan, a partner in the firm of Siskind, Susser & Haas, which specializes in international and immigration law. "The Labor Department should take note of that."

"That does bother me," said John Fraser, deputy administrator of the Labor Department's Wage and Hour Division. "Even 10 days without work shouldn't be happening."

Eury said he relies upon growers to accurately assess when they need workers, but because crop and weather conditions vary, downtime is a "fact of life" in farm labor.

But federal investigators found that employers groups such as the Growers Association, have begun writing contracts for longer periods, which virtually guarantees ensures workers will be idled.

Since workers aren't paid when they don't work, downtime is one reason so many abandon their jobs before their contracts are up. In its 1997 study, the GAO estimated that 40 percent of H-2A workers didn't stay through the end of their contract.

Eury says the figure in North Carolina is closer to 15 percent, but also says abandonments have been much higher this year because of the summer's extreme heat and the flooding that washed out many Eastern N.C. fields. About 850 workers had abandoned their contracts by the end of August. Eury estimates another 500 left during Hurricane Floyd, and says abandonments will likely exceed 15 percent this year.

While it's a hassle to hire replacement workers, there is an upside for the Growers Association when workers abandon their contracts: Growers don't have to pay the worker's bus fare back to Mexico, and they are likewise relieved of the obligation to pay workers the "three-quarter guarantee" in all H-2A contracts.

This provision requires growers to offer each worker employment for at least three-fourths of the work days in the contract period. If the grower provides less work, he must pay what the worker would have earned had he actually worked the guaranteed number of days.

The worker has to stay for the entire contract period to get the guarantee.

But the provision is difficult to enforce because many workers are unable to stay to the end of their contracts.

Job orders not scrutinized

The Labor Department provides little scrutiny of requests for workers. According to the GAO's December 1997 report, the Labor Department approves 99 percent of the H-2A job orders it reviews nationwide. In North Carolina, no job order from the Growers Association had been turned down until two months ago, when the Labor Department rejected two requests, citing insufficient documentation.

Toussaint Hayes, regional administrator for the Labor Department, said growers usually get what they want because his office has a narrow responsibility over H-2A job orders. "We don't have a basis for challenging the number of workers needed," he said.

The Labor Department can sanction employers that misrepresent job orders. It has done so in some states but never in North Carolina, Hayes said. The GAO report also noted that sanctions are rarely, if ever, used to enforce program regulations.

Labor's Atlanta office also allows the Growers Association more leeway in writing contracts than other regions of the Labor Department.

For example, Eury's organizations required workers to report to Vass at the end of their contracts for an exit interview. "It's to get feedback and to find out their successes and their problems," said Eury.

Officials in the Labor Department's Atlanta office allowed the contract provision to stand. But when the department's Philadelphia office saw the same language, it told Eury to strike it. Philadelphia certifies foreign workers in Virginia, where another company Eury runs – the for-profit International Labor Management Corp. – provides farm workers. Eury will not say what percentage of the company he owns or identify other investors.

Edwin Strong, in charge of the Philadelphia office, called the exit interviews "unreasonable and uncommon." He said the policy "could be construed" as a way to discourage workers from claiming reimbursement for their travel home. If an H-2A worker in Virginia had to travel to Vass for an exit interview and then return to his employer to collect a bus ticket home, he probably wouldn't bother, Strong reasoned.

Eury subsequently dropped the requirement from the Virginia contracts.

New conduit for illegals?

Some H-2A experts see an immigration control problem developing with the high numbers of workers abandoning their contracts.

Federal law requires growers to certify their H-2A workers return to their home countries.

If the growers cannot prove the worker has returned, the INS is supposed to fine them $200. Eury and Torres, the immigration expert who has interviewed workers in Mexico, say 97 percent of H-2A workers return home.

But a spokesman for the consulate division of the U.S. Department of State said the government has not studied how many workers return to Mexico.

Others, including H-2A program monitors in North Carolina and Virginia, suspect many workers have discovered H-2A visas are a relatively cheap way to enter the country legally – and once here, quit the farm for better jobs and living conditions.

Although a "coyote" – the Spanish term for people who bring over undocumented workers – might charge $2,000 to cross the border illegally, the H-2A cost, workers report, is from $400 to $500.

Despite the absence of records to document whether workers return to their homes, growers want to increase the number of foreign workers available for farm work. Proposed legislation would gradually give permanent residency to undocumented workers while cutting back on the H-2A program.

The Charlotte Observer

www.charlotte.com | TUESDAY, NOVEMBER 2, 1999 | METRO EDITION | 50¢

DESPERATE HARVEST

LEGISLATION TARGETS FARM LABOR DILEMMA

Answers prove elusive in debate over importing workers for U.S. fields

By LEAH BETH WARD | Photos by GAYLE SHOMER | OBSERVER STAFF

As a solution to what growers say is a crisis in farm labor, two U.S. senators want to create a new guestworker program that would expand the number of foreign agricultural workers allowed into the United States.

Legislation introduced last week by Sens. Robert Graham, D-Fla., and Gordon Smith, R-Ore., would create a new class of guestworkers by legalizing a pool of undocumented farm workers that federal officials estimate at 600,000. The legislation would grant them permanent residency after five to seven years if they meet certain requirements.

The senators say their plan will reform what they call the "troubled" H-2A program.

H-2A, named after a section of the 1986 immigration law, is heavily used by growers in North Carolina, Virginia and New York. North Carolina is the largest importer of H-2A guestworkers, with some 10,000 working in the fields so far this year.

Last in a three-part series about North Carolina's imported "guestworkers"

But the Graham-Smith legislation is not the only proposed remedy to the country's farm worker dilemma.

Some experts say growers could make better use of a U.S. recruiting system that is supposed to tap into high-unemployment rural areas. Labor activists say unions are the answer because they would bring higher wages and attract more workers.

Some immigration experts say H-2A would work better if its worker safety regulations and contract guarantees were better enforced by the U.S. Department of Labor. Other experts want Mexican recruiters, who charge high fees for workers to enter the United States, eliminated from the process.

Still others hold up Canada's foreign farm worker program as a model, in part because Canada

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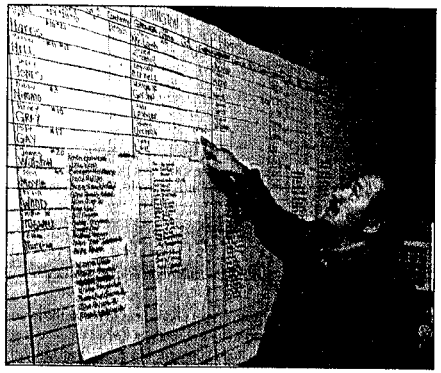

Ramiro Sarabia is an organizer for the Farm Labor Organizing Committee, AFL-CIO. The Toledo, Ohio-based union has successfully negotiated farm worker contracts in Ohio and Michigan and is trying to mount a similar effort from an N.C. base in Faison. Union supporters say negotiated contracts between H-2A farm workers and growers are the only solution to the controversial H-2A program.

and Mexico work together to monitor worker health and safety.

The Graham-Smith proposal is seen by some as a better solution than expanding H-2A. Reports by two federal watchdog agencies since 1997 say control of the program has largely been ceded to private employer groups, such as the N.C. Growers Association, and that lax state and federal oversight make it difficult to ensure that worker protections and contracts are enforced.

"Our bill will reform the agricultural labor market and restore dignity to the lives of thousands of farm workers who have helped make the U.S. economy the powerhouse that it is today," says Graham.

A history of controversy

The debate over foreign farm workers is not new. Throughout the 20th century, Congress has allowed farmers to use temporary foreign workers when they couldn't find enough U.S. workers. Conceived as a short-term solution when farmers' sons were called to World War I, these programs never really disappeared.

The most notorious, the bracero program, was created in 1942 – again, as a solution to a wartime labor shortage – but killed in 1964 after worker abuses were exposed by television journalist Edward R. Murrow in his "Harvest of Shame" documentary.

Guestworker programs have continued to be controversial.

Former Sen. Alan Simpson, R-Wyoming, in 1985 criticized a grower-led proposal – which would become the H-2A program – as "exploitation deluxe." Democrats in the House labeled it a "de facto slave-labor program."

In 1992, the Commission on Agricultural Workers found that "such programs expand rural poverty (in the U.S.) and are incompatible with the values of democratic societies worldwide."

The U.S. Commission on Immigration Reform in 1997 concluded that importing more farm workers would be "a grievous mistake."

But the number of H-2A workers imported has doubled from 15,235 in 1996 to 30,000 this year.

Confusion over enforcement

North Carolina, which has led the growth, has yet to come under widespread public or government scrutiny, said Rick Mines, a former policy analyst for the U.S. Labor Department and expert on Mexican farm workers. North Carolina is regulated by the Atlanta office of the U.S. Labor Department, which has conducted only a handful of investigations.

But Stan Eury, president of the N.C. Growers Association, which has 1,050 members, said scrutiny from the state Department of Labor and Agriculture Department's pesticide board is constant and costly. "They fine us for things like not having a lid on a garbage can," he said.

The Office of the Inspector General for the U.S. Labor Department said in a 1998 report the department could do a better job of enforcing H-2A regulations, which are now confusingly split between two divisions.

The OIG also said labor investigators who enforce wage and some health and safety standards should also be able to sanction repeat offenders by denying them H-2A certification.

Confusion over enforcement is not simply a bureaucratic problem.

"We identified an instance in which confusion over responsibilities may have prevented action from being pursued against an employer abuse," Robert Wallace, regional inspector general wrote in his report.

Jesus Reyes-Heroles, Mexico's ambassador to the United States, believes U.S. regulators "aren't doing their job.

"We are offering our help to enforce H-2A the right way because our first concern is the welfare of our people. On this we will be very firm."

Canada sets example

Reyes-Heroles points to Canada as a model for a program that is more progressive and humane than H-2A. "We've had a joint program with Canada for more than 15 years and it has worked very well."

Canadian growers employ about 8,000 Mexican workers under the Mexican Seasonal Agricultural Workers Program.

In contrast to the United States, Monica Mora, coordinator for the Mexican consulate in Toronto, said contracts are explained to Mexican workers before they reach Canada, and they know which grower they will work for ahead of time. Unlike H-2A workers, Mexican workers in Canada are covered by the same worker protection laws as Canadian farm workers: All harvest workers get severance pay, termination notices, holidays, vacation pay and regular paychecks.

The Canadian government provides health care. "We consider this very important because the work is dangerous," Mora said.

Canada actively runs the program with Mexico. This is a sharp contrast with the U.S. program, which is largely controlled by Mexican recruiters and private grower groups such as the N.C. Growers Association. In 15 years of the Canadian program, no worker has died on the job or as a result of his work, Mora said. At least two H-2A workers in North Carolina have died since 1995.

In cooperating with Canada, Mexico has not given up leverage to protect its citizens, Mora said. "We have the right to kick an abusive employer out of the program."

Ventura Gutierrez runs the Farmworker Network for Economic and Environmental Justice in California. He said the United States and Mexico could easily develop a similar bilateral program.

The current system of recruiting by individuals or employer associations costs workers money and creates an environment ripe for corruption on both sides of the border, Gutierrez said. Ambassador Reyes-Heroles said men in Mexico pay too much to get on lists for U.S. farm jobs. He said such lists are illegal but the government rarely polices the recruiters.

At issue: Workers' rights

Farm worker advocates are not unanimous in their ideas about reform. To some, a guestworker program is acceptable under certain conditions; others want to abolish the concept.

But all agree that if a guestworker program is to continue, it must offer more rights to workers – at a minimum the same rights afforded U.S. migrant workers.

Luis Torres, who is studying immigration and labor issues for the Ford Foundation, said a guestworker program could work only if it corrects "the level of control over workers exerted by employers and recruiters in the current H-2A program."

Eury said H-2A is a "Cadillac" program in need of only minor changes. For example, he said farmers need quicker access to foreign workers but are often tied up by the federal bureaucracy as they await their recruits.

Torres' Ford Foundation study recommends an experimental program with increased worker protections and stronger monitor-

ing. Workers also need the freedom to join unions, seek legal representation and change employers without punishment, Torres said.

The Farm Labor Organizing Committee, or FLOC, a Toledo, Ohio-based union, said Mexican H-2A workers should be able to join a union. FLOC has an office in Faison in Duplin County.

"H-2A workers will continue to be indentured servants to growers without control over their lives unless they are afforded the rights guaranteed under a union contract," said Baldemar Velasquez, president of FLOC.

Growers' lobbyists say unions will only raise the cost of labor and food. Eury says workers enjoy more protections under H-2A than they would as union members.

But many growers believe change is necessary, though they don't agree on how much.

Legislation uncertain

Congressional debate over the Graham-Smith proposal could focus on whether a guestworker program is needed at all. The GAO has concluded there is no lack of U.S. workers to fill jobs, nor does the agency expect shortages in the near future.

Supporters of a new guestworker program say U.S. workers don't want to work on farms, though they agree any program should not hurt those who want to do so.

For now, the Graham-Smith proposal is the only legislative solution on the table. It's detailed and complex; few claim to understand what its full impact would be if enacted. And for now, the legislation has put farm worker advocates in the odd position of siding with the N.C. Growers Association in opposing it, though for different reasons.

Bruce Goldstein, who runs the Farmworker Justice Fund in Washington, D.C., said his analysis of the legislation shows it would lower workers' wages while diluting workplace protections.

Eury, president of the Growers Association, said the proposal falls short because, "It doesn't do anything about supply. It doesn't add any workers to the workforce."

Sen. John Edwards, D-N.C., is not a co-sponsor of the legislation. His spokesman Michael Briggs said "he has a lot more questions and wants to find a balanced solution."

A representative from the office of Sen. Jesse Helms, R-N.C., did not return phone calls requesting comment.

Lobbyists on both sides give the legislation – called the Agricultural Job Opportunity Benefits and Security Act – slim chances of passing before Congress adjourns. But they expect the farm worker legislation will turn up again after Jan. 1.

Last year, growers' lobbyists successfully pushed senators to pass the AgJobs bill – similar to the latest legislation – but it failed to survive a Clinton veto.

Most Hispanic groups and farm worker advocacy groups have come out against the Graham-Smith legislation.

Joel Najar, immigration expert for the National Council of La Raza in Washington, doesn't trust the growers' lobby. La Raza is a Hispanic advocacy group with immigration, legal and public policy experts who study and lobby on issues of concern to its constituency. "They want a spigot of foreign workers that they can turn on and off at will," he said.

Brian Little, a lobbyist for the American Farm Bureau Federation, said growers will try harder to compromise with advocates over legislation. "We are trying to get everybody to meet in the middle, which will not be easy."

APPENDIX C

Help America's Farmworkers Oppose S. 1814 / S. 1815 Agricultural Guestworker Legislation

February 15, 2000

The Honorable Trent Lott
Majority Leader
S-230 The Capitol
United States Senate
Washington, D.C. 20510

Dear Mr. Majority Leader:

The organizations listed below join in this letter out of their deep concern for the plight of migrant farmworkers. We include farmworker, labor, civil rights, Hispanic, Asian American, religious, environmental, and other organizations. **We strongly oppose and we urge you to strongly oppose the proposals in S. 1814 and S. 1815 to create a new temporary foreign agricultural worker program and to revise the current "H-2A" guestworker program.**

The proponents of these bills argue that they are necessary to address an alleged agricultural "labor shortage" and that the existing H-2A guestworker program must be changed.

There is no valid justification for a new temporary foreign agricultural worker program.

- Studies have been unanimous in finding that there is *no farm labor shortage*. Seasonal farmworkers have been experiencing *high unemployment and underemployment*. The General Accounting Office's (GAO) 1997 report documented labor surpluses in most major agricultural production counties in the nation. A Congressional Research Report (CRS) on farm labor issued on December 20, 1999 concurs, finding that (1) hired farmworkers from 1994-1998 experienced 11% to 13% unemployment "or at least twice the average unemployment rate in the nation," and (2) the number of days of farmworkers' employment each year has consistently fallen.
- Consistent with an oversupply of labor, *farmworkers' wages have decreased* in real terms during the past dozen years, said CRS and others. Very few farmworkers receive benefits such as health insurance, vacation pay, pensions, overtime pay, or sick leave. A 1997 Department of Labor survey found that 3 out of 5 farmworkers live below the poverty line.
- *The current H-2A temporary foreign agricultural worker program already issues temporary visas to employers*. GAO found that the Department of Labor approves 99% of employers' applications under this program. It has doubled in size and spread to new states and crops during this decade. Legislation enacted in 1999 has substantially quickened the H-2A program to answer the employers' demands for streamlining. The harsh treatment of workers under the H-2A program has not been ameliorated, as indicated in the GAO report

and in a series of articles in the Charlotte Observer ("Desperate Harvest, Oct. 31-Nov. 2, 1999). H-2A wages and working conditions remain inadequate, as does enforcement.

These bills would subject farmworkers to poor wages and working conditions and inequitable economic and political status for many years to come.

- *S. 1814 and S. 1815 would create a new temporary foreign agricultural worker program.* The bills' proponents contend that this new "adjustment" guestworker program would benefit currently undocumented farmworkers because (1) those who qualified could work legally on temporary non-immigrant visas as seasonal agricultural workers and (2) upon satisfying a 5-year agricultural work requirement, later they would be permitted to apply for immigration status. These workers (upon showing 150 days of agricultural work in 1998-1999) would be *obligated to find and prove 180 days of agricultural work each year for five more years*. They could perform *only agricultural work*, and would be required to leave the country for at least 65 days per year.
  - The lack of available work means that *many "adjustment" guestworkers would never acquire enough work in each of 5 years to qualify to apply for immigration status.*
  - *The proposal would give employers extraordinary control over workers' economic status and immigration status.* Workers would be desperate to comply with the difficult tasks of securing and proving 180 days of farmwork each year to remain in the program. Consequently, many will be too afraid of being fired and other employer reprisals to demand higher wages or better working conditions, or seek to enforce the law.
  - *The "adjustment" guestworker proposal contains none of the wage, housing or other minimum labor standards that have been part of the H-2A and the old "bracero" programs in the last 55 years. There are no protections against undercutting current wage rates or against exploitation of the vulnerable guestworkers.* As "non-immigrants," guestworkers will be ineligible for federally funded legal services and for public benefits.
  - Due to certain immigration-law restrictions, many guestworkers who complete the 5-year requirement may still not qualify for immigration status.
  - Because the bills would create a waiting list of up to 5 years for receiving immigration status, some eligible workers would not receive a green card for 10 to 12 years. During that time, spouses and children would *not* be entitled to enter the US or gain immigration status.
- *In addition to creating a new guestworker program, S. 1815 would revise the H-2A program* to lower wage rates, eliminate housing opportunities, reduce recruitment inside the United States, decrease government oversight, and in other ways lower labor standards of U.S. farmworkers and allow exploitation of vulnerable foreign workers. No valid reason justifies it. The bill would also authorize wage systems ("group piece rates") and other practices that have been used to circumvent the law and prevent farmworkers from improving their conditions.

The legislation does nothing to improve wages and working conditions of farmworkers.

- *Agricultural employers who fear a shortage of authorized farmworkers should attract and retain workers by improving wages and working conditions.* The value of labor-intensive agricultural products and the value of exports of these products have dramatically increased during the last decade, but farmworkers have not shared in the benefits of global trade. Numerous governmental commissions have recommended that agricultural employers "stabilize" its workforce by modernizing its labor practices. Fruit and vegetable growers, however, have not begun to compete to attract and retain their workers.
- *If Government is concerned about the potential for a shortage of authorized workers, then it should remove discrimination in laws that makes farmwork less desirable than other occupations.* Many federal and state laws exclude farmworkers from coverage or subject them to special exceptions. Examples include: overtime pay, occupational safety and health protections, unemployment compensation, collective bargaining rights, child labor protections.
- *Many workers are suffering violations of labor laws, such as minimum wage, because the laws are not being enforced.* Farmworkers often lack adequate access to the justice system or fear that they will be fired for exercising their rights. We must enforce the law to protect workers as well as to *protect law-abiding employers from unfair competition.*
- Employers who rely on undocumented workers and do not wish to use the H-2A program should ask their legislators to grant real *immigration status* to experienced farmworkers. Employers have benefited economically from their ever-increasing hiring of undocumented workers, who are so vulnerable. Such farmworkers should not be forced to accept the guestworker status that would be imposed by this legislation, which has been rightly described as a form of indentured servitude.

Please vigorously oppose S. 1814 and S. 1815 and work for a brighter future for farmworkers.

Sincerely,

NATIONAL ORGANIZATIONS

American Federation of State, County and Municipal Employees, AFL-CIO
American Federation of Teachers, AFL-CIO
American Friends Service Committee
Americans for Democratic Action
Asian Pacific American Labor Alliance, AFL-CIO
Association of Farmworker Opportunity Programs
Campaign for Labor Rights
Central Conference of American Rabbis
Farm Labor Organizing Committee, AFL-CIO
Farmworker Justice Fund
Institute for Agriculture and Trade Policy
League of United Latin American Citizens
Mennonite Central Committee U.S.

Mexican American Legal Defense and Education Fund
Mexico Solidarity Network
Migrant Legal Action Program
National Association for Bilingual Education
National Association of Community Health Centers
National Center for Farmworker Health
National Consumers League
National Council of La Raza
National Employment Law Project
National Farm Worker Ministry
National Immigration Project of the National Lawyers Guild
National Latino Arts, Education and Media Institute
National Network for Immigrant and Refugee Rights
Service Employees International Union, AFL-CIO
Student Action with Farmworkers
Union of Needletrades, Industrial and Textile Employees, AFL-CIO
United Farm Workers, AFL-CIO
United Methodist Church, General Board of Church and Society

STATE AND LOCAL ORGANIZATIONS

Adult Learning Resource Center, IL
Arc-en-Ciel, OR
Asian American Institute, IL
Asian Human Services, IL
Asian Law Alliance, CA
Asociacion Pro-Servicios Sociales, Centro Aztlan, Inc., TX
BOCES GENESEO Migrant Center, NY
Bridge Academy, CT
Cabrillo Economic Development, CA
Calexico Community Action Council, CA
California Association for Bilingual Education, CA
California Rural Legal Assistance Foundation, Inc., CA
Carlos Rosario International Charter School, DC
Casa Guadalupe of Catholic Social Services, NC
CASA of Maryland, Inc., MD
Catholic Charities, Diocese of Fresno, CA
Catholic Charities, Immigration Counseling Services, TX
Catholic Charities, Immigration Legal Services, Gilroy, CA
Catholic Charities, Immigration Services of Oregon, OR
Catholic Charities, San Jose Mission, FL
Catholic Migrant Farmworker Network, Inc., ID
CAUSA, OR
Center for a Changing Workforce, WA
Center on Race, Poverty and the Environment, CA
Central American Resource Center, DC
Central Florida Health Care, Inc., FL
Centro de la Comunidad, MD
Centro Hispano de Hawaii, HI
Centro Hispano of Dave County, WI
Centro Independiente de Trabajadores Agricolas, NY
Chicano Awareness Center, IL
Church Women United in Illinois, IL
Clinicas de Salud del Pueblo, Inc., CA
Coalition for Humane Immigrant Rights of Los Angeles, CA

Coalition of Florida Farmworker Organizations, Inc., FL
Coalition of Immokalee Workers, FL
Colorado Rural Housing, CO
Comite de Apoyo a Los Trabajadores Agricolas, NJ
Committee for Farmworker Justice, NY
Concilio for the Spanish Speaking, WA
Council for the Spanish Speaking, CA
Council for the Spanish Speaking, Inc., WI
Council of Latino Agencies, DC
Counseling Center of Lakeview, IL
Darin M. Camarena Health Center, Inc., CA
Diocese of West Missouri Hispanic Ministries, MO
Eighteenth Street Development Corporation, IL
El Centro de la Raza, WA
El Concilio del Condado de Ventura, CT
El Proyecto del Barrio, CA
Episcopal Diocese of West Missouri, MI
Episcopal Mission of St. Louis Valley, CO
Erie Neighborhood House, IL
Everglades Community Association, FL
Farmworker Association of Florida, FL
Farmworker Coordinating Council of Palm Beach County, Inc., FL
Florida Advisory Group of National Farm Worker Ministry, FL
Florida Association of Community Health Centers, FL
Florida Coalition for Peace & Justice, FL
Florida Council of Churches, FL
Florida Impact, FL
Florida Legal Services, FL
Franciscan Sisters of Little Falls, MN
Greater Dallas Foundation, TX
Guadalupe Social Services, FL
Gulf Coast Council of La Raza, TX
Hands Across Cultures, NM
Harvest America Corporation, KS
Hawaii Hispanic News, HI
Hispanic American Council, MI
Hispanic Coalition, FL
Home Education Livelihood Program, Inc., NM
Houston Community Services, TX
Human Rights Action Service, MO
Human Rights Advocates, CA
Humboldt Park Economic Development Corporation, IL
Illinois Coalition for Immigrant and Refugee Rights, IL
Immigrant Legal Resource Center, CA
Immigrant Workers Human Rights Project, PA
Immigration Assistance Project, MI
InDios, FL
Instituto del Progress Latino, IL
Instituto Sanchez-Mendoza for Community, CA
Justice for Farmworkers, NY
La Causa, Inc., WI
La Clinica de La Raza, CA
La Raza Centro Legal, Inc., CA
Labor Party, Roque Organizing Committee, OR
Latin American Research and Service Agency, OR
Latino Civil Rights Center, DC
Latino Community Development Agency, OK
League of United Latin American Citizens, PMB 273, ME
Maine Rural Workers Coalition, ME
Mary's Center for Maternal and Child Care, DC
Maui Economic Opportunity, Inc., HI
Mexican American Commission, NE
Mexican American Council, FL
Mexican American Unity Council, Inc., TX
Mexicanyotl Academy, AZ

Micah Intentional Group-Servants of Mary, WI
Migrant Health Promotion, MI
NAF Multicultural Human Development Corp., NE
NAF Multicultural Human Development Corp., NE
National Council of La Raza Regional Offices, TX, IL, CA, AZ
National Lawyers Guild, San Diego Chapter, CA
New York Immigration Coalition, NY
North Carolina Council of Churches, NC
Northwest Immigrant Rights Project, WA
Northwest Treeplanters and Farmworkers United (Pineros y Campesinos Unidos del Noroeste), OR
Orange County Interfaith Committee to Aid Farm Workers, CA
Oregon Farmworker Ministry, OR
Oregon Law Center, OR
Our Lady of Victory Missionary Sisters, IL
Our Redeemer Lutheran Church, CA
People of Faith Network, NY
Public Justice Center, MD
Resource Center of the Americas, MN
Roque Valley Oregon Action, OR
Rural Opportunities, Inc., NY
San Diego County SER/Jobs for Progress Inc., Carlsbad Hiring Center, CA
School Sisters of Notre Dame, Baltimore Province, Office for Justice and Peace, MD
School Sisters of Notre Dame, Dallas Province, Office for Justice and Peace, TX
School Sisters of Notre Dame, Makato Province, Office for Justice, Peace and Integrity of Creation, MN
Sea Mar Community Health Centers, WA
Servicios de La Raza, Inc., CO
Siete del Norte, NM
SIN FRONTERAS, I.A.P, Mexico
Social Justice Network Sisters of Charity, BVM, IL
South Texas Civil Rights Project, TX
Spanish Speaking Citizens, CA
Spanish Speaking Information Center, MI
St. Louis Catholic Worker House, MO
St. Louis Inter-Faith Committee on Latin American, MO
Student Organization of Latino/a University of Michigan School of Social Work, MI
Texas Appleseed Advocacy Fund, TX
Texas Immigrant and Refugee Coalition, TX
Houston Immigrant and Refugee Coalition, TX
The Episcopal Migrant Ministry Committee Episcopal Church Center, NY
The Political Ecology Group, CA
Tidewater Labor Support Coalition, VA
Transnational Information Exchange of North America, IL
Triangle Friends of the United Farm Workers, NC
Unete Al Movimiento de Conciencia Popular, OR
United Farm Workers (AFL-CIO) of Washington, WA
United Farm Workers (AFL-CIO) of Texas, TX
United Migrant Opportunity Services, WI
United Network for Immigrant and Refugee Rights, IL
Ventura County Mexican-American Bar Association, CA
Virginia Justice Center for Farm & Immigrant Workers, VA
Washington Alliance for Immigrant and Refugee Justice, WA
Watts/Century Latino Organization, CA
World Relief, Chicago, IL
World Relief, DuPage, IL

Senator ABRAHAM. Ms. Muñoz, thank you for your views.

We will turn to Mr. Holt for his. Thank you for being here today.

STATEMENT OF JAMES S. HOLT

Mr. HOLT. Thank you, Mr. Chairman. I, too, have a lengthy statement which I am submitting for the record.

Senator ABRAHAM. We will include it in the record. Thank you.

Mr. HOLT. I appreciate the opportunity to testify on S. 1814, the AgJOBS bill on behalf of the National Council of Agricultural Employers or NCAE. NCAE represents growers and agricultural organizations on agricultural labor and employment issues at the Federal level. NCAE's membership includes agricultural employers in all 50 States who employ approximately 75 percent of the Nation's hired farm labor.

I, myself, am an agricultural labor economist and a technical consultant on labor and immigration matters to NCAE. The NCAE strongly supports S. 1814. Senators Gordon Smith and Bob Graham, with the assistance of Larry Craig and others, have crafted a carefully balanced bill that provides what the NCAE believes will be a workable, temporary alien worker program that will provide labor to responsible law-abiding agricultural employers under terms and conditions that will permit U.S. agriculture to be competitive in the global marketplace. It will protect access to agricultural jobs under fair terms and conditions of employment for all legal U.S. workers who want to work in agriculture and for the alien workers who are needed to supplement the U.S. workforce.

The creation of a balanced workable legislation has been no mean fete. And NCAE congratulates the bill's authors and cosponsors for accomplishing a very difficult task. I can assure you this bill is not the agricultural employers' dream bill. And as we have already heard and knew I guess before we came into the room, it is not the farmworkers' dream bill either. What it is is a set of carefully crafted compromises that has resulted from literally thousands of hours of meetings, consultations, hearings, congressional debates over a period of more than 5 years. The bill has been changed substantially from that bill which passed the Senate by an overwhelming bipartisan vote in 1998, and these changes have been a further attempt I think to address legitimate issues and problems raised by critics of the bill.

S. 1814 addresses both the short-term and the long-term agricultural labor problem in the United States by, number one, providing adjustment of status to those workers who have a significant commitment to the U.S. agricultural workforce and are currently working in U.S. agriculture illegally; and, two, by reforming the H–2 Temporary Alien Worker Program so that agricultural employers have a practical and workable way to secure sufficient legal labor in the future.

We cannot emphasize too strongly that both of these components are necessary to a program that will address the problem now and in the future. NCAE believes the provision for adjustment of status for fraudulently documented aliens with a substantial commitment to the U.S. agricultural industry and a one-time waiver of the bar on immigration benefits for persons who have been illegally present in the United States are absolutely essential elements of a work-

able and humane solution to the current agricultural labor problem.

Without these provisions, a substantial portion of the current workforce would be unable to continue working in agriculture. Employers would be forced to seek a new and inexperienced alien workforce, while their experienced former workers would be unemployable. Such an outcome would make no sense at all either for workers or employers. Adjustment of status is also necessary because some key workers in jobs are not eligible for the H–2A Program either in its current form or as reformed by S. 1814.

This bill has its critics. As was alluded to in the dialogue of the last panel, there are people who believe that no foreign workers should be permitted in the United States and who would oppose any legislation that provides for that objective. Some espouse this view directly and some espouse it by advocating conditions for admission of foreign workers that assure that they could never be used.

We believe that any objective look at the history of the U.S. economy and labor force renders the closed-border view absurd. Every major U.S. industry was built on foreign labor, and most, spanning the gamut from agriculture to high tech, still sustain themselves on foreign workers. On the other hand, some people argue for what, as a practical matter, would be uncontrolled admission of foreign workers with no effective labor standards. The NCAE believes this, too, would be wrong. It would, in effect, make U.S. farmworkers compete directly with foreign labor standards. We acknowledge that any program for the admission and employment of foreign workers must include procedures that assure that U.S. workers who want agricultural work have meaningful access to such employment and preference to foreign workers, and that wages and other conditions of employment are protected from unfair competition.

While the NCAE believes the authors have done a yeoman's job of achieving a workable yet balanced bill, we do not believe anyone has yet claimed perfection. As the legislative process proceeds, additional, reasonable and useful modifications may be suggested. But we do strongly believe that the time has come to finalize the debate and to enact legislation that ends a status quo that no one can or is defending and which has gone on far too long.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Holt follows:]

PREPARED STATEMENT OF DR. JAMES S. HOLT ON BEHALF OF THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

I appreciate the opportunity to present this testimony on S. 1814, the "Agricultural Job Opportunity Benefits and Security Act of 1999" on behalf of the National Council of Agricultural Employers.

The National Council of Agricultural Employers (NCAE) is a Washington, D.C. based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in all fifty states who employ approximately 75 percent of the nation's hired farm labor. Its members are growers, farm cooperatives, packers, processors and agricultural associations. NCAE was actively involved in the legislative process that resulted in the enactment of the Immigration Reform and Control Act (IRCA) of 1986, and for the past five years has been actively advocating for legislation to address the current shortage of qualified legal labor for U.S. agriculture and the problems faced by the illegal alien workers upon whom the U.S. agricultural in-

dustry now heavily depends. NCAE's representation of agricultural employers and its long history of involvement with national immigration policy for farmworkers and legal alien worker programs gives it the background and experience to provide meaningful comments and insights into the current U.S. farm labor system, the problems with the current H–2A program, and how S. 1814 will affect agricultural employers and farm workers.

My name is James S. Holt. I am Senior Economist with the management labor law firm of McGuiness, Norris & Williams and the Employment Policy Foundation in Washington D.C. I serve as a consultant on labor and immigration matters to the NCAE. I am an agricultural economist, and have spent my entire professional career of more than 35 years dealing with labor, human resource and immigration issues, primarily with respect to agriculture. I served 16 years on the agricultural economics faculty of The Pennsylvania State University, and for the past 20 years have been a consultant in Washington D.C. I serve as the technical consultant to most of the current users of the H–2A program, and to employers and associations who are attempting to access the program. I was the principal H–2 technical consultant to the H–2A employer community during congressional consideration of the Immigration Reform and Control Act of 1986, and I have played a similar role for the NCAE for the nearly 5 years that Congress has again been considering legislation to deal with the shortage of legal farm labor.

The NCAE supports S. 1814 and urgently requests that the Congress pass this legislation this year. Senators Gordon Smith and Bob Graham, with the assistance of Senators Larry Craig, Max Cleland and others have crafted a carefully balanced bill that provides what the NCAE believes will be a workable temporary alien worker program that will provide labor to responsible, law abiding agricultural employers under terms and conditions that will permit U.S. agriculture to be competitive in the global market place, while protecting access to U.S. agricultural jobs under fair terms and conditions of employment for all legal U.S. workers who want to work in agriculture and for the alien workers who are needed to supplement the domestic work force.

The creation of balanced, workable legislation has been no mean feat, and the NCAE congratulates the bill's authors and sponsors for accomplishing a difficult task. This bill is certainly not the agricultural employers' dream bill. It is certainly not the farm workers' dream bill. It is a carefully crafted set of compromises that has resulted from literally thousands of hours of meetings, consultations, legislative hearings and congressional debates over a period of more than 5 years. It has gone through myriad redrafts. The bill has even changed substantially from that which was passed by an overwhelming bipartisan vote by the Senate in 1998. The changes made since then have been a further attempt to address legitimate issues and problems raised by critics of the bill. In few, if any, pieces of legislation presented to this body have the authors made the extensive and time consuming efforts made by the authors of S. 1814 to reach out to all affected constituencies and to create a balanced bill that nevertheless effectively addresses the problem at hand.

This bill, still has its critics, and I am sure you will hear some of them here today. Some people believe that no foreign workers should be permitted to work in the United States, and oppose any legislation that provides for that objective. Some espouse this view directly, and some do so indirectly by advocating for conditions on the admission of foreign workers that assure that they can never be used. We believe that any objective look at the history of the U.S. economy and labor force renders the closed-border view absurd. It is frequently noted that the United States is a nation of immigrants, and remains so to this day. The United States has had provision for the admission of foreign workers, including farm workers, as long as it has had an immigration law. Every major U.S. industry was built on foreign labor, and most, spanning the gamut from agriculture to high tech, still sustain themselves on foreign workers.

On the other hand, some people, including some agricultural employers, argue for what, as a practical matter, would be uncontrolled admission of foreign workers with no labor standards. The NCAE believes this would be wrong too. It would, in effect, make the U.S. farmworkers, who, while declining in numbers, are still with us, compete directly with foreign labor standards. We acknowledge that any program for the admission and employment of foreign workers must include procedures that assure that U.S. workers who want agricultural work have meaningful access to such employment in preference to foreign workers, and that wages and other conditions of employment must be protected from unfair competition. The five year struggle to achieve this objective, while still having a program that meets the practicalities of farming and that provide workers on a timely basis, is the story of S. 1814. While the NCAE believes the authors have done a yeoman job of achieving a workable yet balanced bill, we don't believe anyone is yet claiming perfection. As

the legislative process proceeds, additional reasonable and useful modifications may be suggested, even by agricultural employers. But we strongly believe that the time has come to finalize the debate and to enact legislation that ends a status quo that no one can defend or is defending, and which has gone on far too long.

THE CURRENT STATUS OF AGRICULTURAL LABOR IN THE UNITED STATES

While the United States agricultural industry is overwhelmingly an industry of family farms and small businesses, it is also heavily dependent on hired labor. Labor is an essential input in farming, and essentially all commercial farms rely to a greater or lesser degree on hiring labor to perform certain essential tasks. The 1997 Census of Agriculture reported more than 650 thousand farms hiring labor directly, and reported 3.4 million hires by farmers. More than 225 thousand farms also hired contract labor. Total expenditures for hired and contract labor in 1997 were $17.8 billion. This was 12 percent of total farm production expenses, or $1 of every $8 spent by farmers. Farmers spent more for hired labor in 1997 than they spent for seed, fertilizer, agricultural chemicals, petroleum products, interest or property taxes. In fact, after purchases for livestock and feed, hired labor accounted for greater farm production expenses than any other category of expenses reported in the Census of Agriculture. In the labor intensive fruit, vegetable and horticultural sectors, hired labor costs average 25 to 35 percent of total production costs, and in some individual commodities the percentage is much higher.

Aliens have always been a significant source of agricultural labor in the United States. In particular, labor from Mexico has supported the development of irrigated agriculture in the western states from the inception of the industry. As the U.S. economy has expanded, generating millions of new job opportunities, and as domestic farm workers have been freed from the necessity to migrate by the extension of unemployment insurance to agricultural workers in 1976, and the federal government has spent billions of dollars to settle domestic migratory farm workers out of the migrant stream and train them for permanent jobs in their home communities, domestic farm workers have moved out of the hired agricultural work force, especially the migrant work force. These domestic workers have been replaced by alien workers, largely from Mexico, Central America and the Caribbean.

As a result, the U.S. agricultural work force has become increasingly alien and increasingly undocumented. The U.S. Department of Labor's National Agricultural Worker Survey (NAWS) reported in its 1998–99 survey that 52 percent of seasonal agricultural workers working in the United States self-identified as not authorized to work in the United States. This was an increase from 37 percent in the previous survey only 3 years earlier, and from only about 12 percent a decade earlier. More than 70 percent of the new seasonal agricultural labor force entrants in the NAWS survey self identified as not authorized to work. Most experts agree that the statistics based on self identification in the NAWS survey are likely very conservative. Evidence based on INS enforcement actions and verification of Social Security cards by the Social Security Administration often results in 60 to 80 percent or more of workers' documents being determined to be invalid or not pertaining to the person who presented them.

In testimony presented to this Subcommittee May 12, 1999, I detailed the effect that increased INS enforcement activity and the verification programs of the Social Security Administration are having on the agricultural industry and work force. Increased border enforcement, increased interior enforcement and increased SSA verification activity have led to reductions in labor availability and destabilization of the agricultural work force. These trends will continue. The increase in border enforcement personnel authorized by IRRIRA will not be complete until FY 2002. The SSA plans to continue lowering its threshold for rejection of employer tax returns due to name/number mismatches. These factors, coupled with the extraordinarily high levels of nonagricultural employment, have resulted in increasing frequency of farm labor shortages and crop losses. The problem is rapidly reaching crisis proportions, and could easily do so during the coming growing season.

THE NEED FOR CONGRESSIONAL ACTION TO ADDRESS THESE PROBLEMS

Some opponents of an alien agricultural worker program argue that a program is not needed because employer sanctions cannot be effectively enforced no matter what the government tries to do. The implication of this argument is that employers should endure the uncertainties and potential economic catastrophe of losing a workforce, and workers should continue to endure the uncertainties of being chased from job to job on a moment's notice. We find such reasoning unacceptable. It is an argument for the status quo, which all agree is unacceptable. Furthermore, it is unacceptable to refuse to address one public policy problem on the grounds that an-

other accepted and enacted public policy will be ineffective. We must honestly face the issues that our policy of immigration control and employer sanctions confronts us with. We believe that calls for a workable alien agricultural worker program.

A SUMMARY OF THE PROVISIONS OF S. 1814

We believe S. 1814 offers such a program. S. 1814 addresses both the short term and long term agricultural labor problem in the United States. The bill provides (1) for adjustment of status for those workers who have a significant commitment to the U.S. agricultural workforce and are currently working in U.S. agriculture illegally, and (2) for reform of the H–2A temporary alien worker program so that agricultural employers have a practical and workable way to secure sufficient legal labor in the future. We cannot emphasize too strongly that both of these components are absolutely necessary to a program that will address this problem now and to the future.

ADJUSTMENT OF STATUS—TITLE I

Title I provides a process whereby persons currently working in agriculture in the United States who have made a significant commitment to the U.S. agricultural work force are provided the opportunity to undertake a process that will enable them to continue to work legally in agriculture in the United States, and, if they meet certain conditions, become legal permanent residents. This "Adjustment of Status" provision is essential to deal with the current reality that a very substantial portion of the United States hired farm work force consists of persons who are not legally entitled to work in the United States and who are working with fraudulent documents. The U.S. Department of Labor's recently published survey of the 1997–98 seasonal agricultural work force reports that 52 percent of seasonal agricultural workers in the United States self-identified in this government-sponsored survey that they were not legally entitled to work in the United States. Anecdotal evidence based on INS audits of I–9 forms and Social Security Administration (SSA) comparison of employers' payroll reports and SSA records suggest that the actual percentage of seasonal agricultral workers who are working with fraudulent identities may be closer to 70 percent or higher in many cases.

S. 1814 provides that farm workers who can demonstrate with employment records that they have worked in agriculture a minimum of 150 work days, or 880 work hours, whichever is less, during the year preceding introduction of the legislation, can adjust to temporary resident status and undertake a process to become permanent resident aliens. These temporary resident aliens would be permitted to work in agricultural employment in the United States for up to 10 months in each of 5 of the 7 years following their application for temporary resience. They would be required to remain outside the United States for a minimum of 2 months a year. An exception to the 10 month maximum stay is provided for temporary residents with a U.S. born child, who would be permitted to remain in the United States year round.

Persons granted temporary residence under this program would only be permitted to work in agricultural employment, but could do so for any employer anywhere in the United States. They would be protected by all U.S. labor laws on the same basis as domestic farmworkers. No special obligations would attach to employing them, except that their employers would be required to provide records of their employment both to the workers and to the government. The aliens would be required to enter the United States legally, and report their departure. They would be provided with special counterfeit resistant identification that would be used to record entry and exit, and would provide evidence of employment authorization.

To maintain their status, the adjusted temporary resident alien farmworkers would be required to work a minimum of 180 workdays, or 1040 work hours, in agricultural employment for 5 of the 7 years following application for adjustment of status. Aliens with a U.S. born child who elected to remain in the United States for the full year would be required to work a minimum of 240 work days in that year. Temporary resident aliens who met the bill's 5-year agricultural work requirement, were law abiding, and were otherwise admissible under current law, would be eligible to apply for permanent resident alien status. Upon qualifying and applying for permanent resident status, the aliens would be permitted to remain in the United States year 'round if they chose, and would be permitted to work in any employment on the same basis as any other permanent resident alien. Temporary resident aliens who did not meet the minimum work requirement during the qualifying period, or who did not apply for permanent resident alien status within 6 months of meeting the qualifications, would loose their temporary resident aliens status, and would not be permitted to legally remain and work in the United States.

Aliens who do not qualify for adjustment to temporary resident status, or who do not choose to participate in the adjustment program, would be provided a one-time waiver of the bar on admission to the United States by reason of illegal presence in the United States enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IRRIRA) to become an H–2A worker. However, if subsequent to this one-time waiver the alien again accumulated sufficient illegal presence in the United States to be barred from admission under IRRIRA, the alien would not be admissible during the period of debarment. Thus, all aliens currently or previously employed illegally in agriculture in the United States would have one opportunity to begin engaging in such employment legally, either through the adjustment of status program in S. 1814 or as an H–2A worker.

NCAE believes that provision for adjustment of status for fraudulently documented aliens with a substantial commitment to the U.S. agricultural industry, and a one-time waiver of the bar on immigration benefits for persons who have been illegally present in the United States, are absolutely essential elements of a workable and humane solution to the current agricultural labor problem in the United States. Without these provisions, a substantial portion of the current agricultural work force would be disenfranchised and unable to continue working in agriculture. Employers would be forced to seek a new and inexperienced alien work force while the experienced former workers would be unemployable. Such an outcome would make no sense at all; either for workers or employers. Adjustment of status is also necessary because some key workers and/or their jobs would not be eligible for the H–2A program, either in its current form or as reformed by S. 1814 retains the requirement of the current H–2A program that jobs be temporary or seasonal with a maximum duration of 12 months.

It is worth noting that even now, the INS rarely removes illegal workers when they conduct an I–9 audit and identify workers with fraudulent documents. The INS merely requires the employer to dismiss the workers. The result is that workers whom the employer knows and has trained are sent down the road to work for a competing employer. This is a system that makes absolutely no sense. No one proposes, nor would the Nation tolerate, an attempt to round up and remove the millions of illegal aliens presently working in the United States. The only logical thing to do is to provide them with an opportunity to earn legal status, while putting in place a program that will prevent recurrence of the same problem in the future.

We estimate based on a variety of government data sources that the number of non-casual workers in the U.S. hired farm work force (person who do 25 days or more of hired farm work per year) is about 1.6 million persons. Of that number, about half work 150 days or more per year in hired farm work. The most recent U.S. Department of Labor surveys report that about half of seasonal farmworkers admit they are not legally entitled to work in the United States. While we believe that the actual number of farmworkers who are not legally entitled to work is probably larger than those who admit this in a government-sponsored survey, not all aliens who are eligible will avail themselves of the adjustment program. Assuming about half of those persons working 150 days or more will apply, we estimate that the number of workers who will adjust under the provisions of S. 1814 will be about 400,000.

REFORM OF THE H–2A TEMPORARY ALIEN WORKER PROGRAM—TITLES II AND III

S. 1814 addressed both of the current obstacles to the use of the H–2A temporary alien worker program. It reforms and streamlines the administrative procedures for gaining access to the H–2A program, and it rationalizes the terms and conditions for employment of H–2A workers.

THE AGRICULTURAL WORKER REGISTRIES

S. 1814 replaces the archaic, labor intensive and time consuming labor certification process currently used to determine the availability of U.S. workers with a computer-based agricultural worker registry administered by the Secretary of Labor. Workers legally entitled to work in the United States who are interested in undertaking seasonal agricultural work could register with the registry. They would indicate the kinds of agricultural work experience they had and the kinds of jobs they were interested in as well as the geographic areas they were willing to consider, the time of year they wanted work and any other specific requirements. The Secretary of Labor would determine that the applicant was eligible to work in the United States and put the worker's information in a computerized data bank. Employers seeking seasonal agricultural workers would list the specifications of their jobs with the registry. All agricultural employers would be entitled to list their job opportunities with the registry. However, employers seeking permission to employ H–2A

aliens if sufficient U.S. workers could not be found would be required to list their jobs with the registry, and the jobs would be required to meet the specific terms and conditions of employment required for H–2A occupations by S. 1814.

When an employer's job was accepted by the registry, the data bank would be searched to identify registered workers who meet the specifications of the job. The registry would contact registered workers who met the specifications of the job and inform the registrant of the specific job opportunity. The registrant would, of course, be free to accept or decline the job opportunity. The employer would be provided with the names, social security numbers and contact information of the workers who accepted the employer's job opportunity, and the workers would be provided with the information about when and where to report for the job.

If an employer seeking workers from the registry indicates on the application that the employer desires to employ H–2A aliens in job opportunities that could not be filled with U.S. workers, and the employer's job opportunities meet the terms of the H–2A program required by S. 1814, then if sufficient qualified workers can not be found on the registry who accept the employer's job offer, the registry will issue a "shortage report" which authorizes the employer to employ up to the number of H–2A aliens for which sufficient U.S. workers could not be found. Based on the shortage report, the employer could either seek admission of H–2A workers from outside the United States, or employ H–2A workers already in the United States who had completed their work contracts and were eligible to undertake additional employment. H–2A aliens would be limited to a maximum of 10 months of employment in the United States in any 12 month period.

The registry mechanism offers significant improvements over the current labor certification system. One of the most important of these is timeliness. Currently, employers seeking H–2A workers are required to file a labor certification application a minimum of 45 days in advance of the date workers are needed. After the application is reviewed and approved a cumbersome process of sending job orders containing the employer's job offer to job service offices throughout the state, and then to other states, is set in motion. The employer is also required to place lengthy and complex employment advertisements that look more like legal notices than help wanted ads, and often appear a month or more before the actual job opportunity is available. As a result, typically neither the circulation of job orders nor the advertising produces many, if any, qualified applicants. The Labor Department is currently required by statute to issue the labor certification 30 days in advance of the date workers are needed, but this rarely occurs. Even when certification was required only 20 days before the date of need, a GAO study showed that the DOL was late issuing certifications at least 40 percent of the time.

The registry mechanism is based on searching a computerized data bank of workers who have already indicate their interest in agricultural employment. S. 1814 requires the Secretary of Labor to advertise the availability of the registry widely to prospective agricultural workers to maximize the number of registrants. Employers are required to list their job opportunities with the registry only 28 days before the date workers are needed. The shortage report must be issued a minimum of 7 days before the workers are needed; and is transmitted directly to the consulate where the employer's workers will apply for their visas if the employer is seeking newly admitted aliens. S. 1814 also provides for emergency applications after the 28-day application deadline in cases of unforeseen need, and authority for the admission of aliens if the DOL fails to act on an application within the statutory time frames.

The registry also assures that the workers referred to the employer are, in fact, legally entitled to work in the United States. One of the ironies of the current H–2A program is that employers have no assurance that the "U.S." workers referred by the Department of Labor are legally entitled to work in the United States, and experience has shown that a high proportion of them are fraudulently documented. Thus the current program provides no assurance of legal workers even after the employer has met all of the H–2A program requirements. Since the employment eligibility of all workers referred through the registry would be assured, the employer is guaranteed a legal work force by using the registry.

TERMS AND CONDITIONS FOR THE EMPLOYMENT OF H–2A ALIENS

S. 1814 requires terms and conditions of employment that substantially exceed those required of non-H–2A employers and substantially exceed the terms and conditions of employment required by all other alien employment programs, whether for temporary or permanent employment. These terms and conditions of employment also substantially exceed those actually provided to most domestic and alien farmworkers at the present time. Furthermore, the required terms and conditions of employment apply to all workers in the occupation for which the employer applies

to employ H–2A aliens, and apply even if all the employers' job opportunities are filled with U.S. workers. Thus, if improvements for farmworkers generally, not just for H–2A farmworkers.

To quality to employ H–2A workers, S. 1814 requires that the employer offer the higher of the prevailing wage for the occupation and area of intended employment, or the applicable federal, state or local statutory minimum wage, in any occupation for which H–2A workers are sought. This is the same wage standard used in the H–1B and H–2B programs as well as for employment-based permanent immigrants. It is also the wage standard used in the Davis-Bacon Act and the Service contract Act. S. 1814 also includes a provision that goes beyond the prevailing wage standards in other legislation, and assures that prevailing wages do not stagnate. The bill provides that if the prevailing wage in an agricultural occupation is below the average wage for all field and livestock workers in the state or groups of states, the wage offered must be at least 5 percent above the prevailing wage, or such lesser amount as would make the wage equal to the average field and livestock worker wage rate for the state or group of states.

Critics of the H–2A program are fond of dismissing agricultural work as minimum wage work, though they almost never cite actual wage rates. That is because agricultural work is not minimum wage work. The average hourly cash wages of nonsupervisory field and livestock workers in 1999 were $7.22 per hour, and for all hired farm workers were $7.77 per hour. This is higher than the wages for many unskilled and low skill occupations in the same labor markets. Critics also charge that agricultural wages have declined in recent years in real terms. This is also a very misleading criticism. The fact is that agricultural wages have risen more rapidly than non-agricultural wages. Using the current CPI wage deflators, now widely conceded by economists to overstate inflation, all wages have declined in real terms in recent years. However, agricultural wages have risen more in dollar terms, and declined less in real terms, than non-agricultural wages.

Critics of S. 1814 also claim that the bill would result in a reduction in wages. This is patently untrue. If the prevailing wage in any given year becomes the minimum wage for the next year, wages cannot possibly decline, and will always rise. Furthermore, since the prevailing wage is defined in S. 1814 as the 51st percentile of wages in the occupation in the area of intended employment, this means that wages at the bottom end of the wage distribution will always be above the previous year's prevailing wage for those occupations, and the average wage will always rise. To the extent that there is a legitimate concern about this wage standard, it is that it is inflationary, not that it would result in wage declines. While agricultural employers are concerned about the potentially inflationary impact of S. 1814's wage standard, the NCAE is willing to accept this wage standard if employer's can be assured an adequate supply of legal labor at a total employment cost that is acceptable. We think the provisions of S. 1814, taken as a whole, meet this criterion.

Current law merely provides that the wages and working conditions offered by applicants for H–2A workers may not "adversely affect" United States workers similarly employed. The current "adverse effect wage rate" (AEWR) requirements of the H–2A program are a regulatory construct of the Department of Labor, not a statutory requirement. As with so many of the existing H–2A regulations, the adverse effect wage rate regulations prevent workers from obtaining real wage protections rather than providing such protections.

The current AEWR regulation set the average wage for all agricultural occupations in a state or region as the minimum wage for all H–2A employment. If the prevailing wage in the occupation and area of employment is higher than this average wage, then the prevailing wage in the occupation and area of employment becomes the minimum. Thus, in occupations where the prevailing wage in the occupation is above the average wage for all occupations (roughly half of all agricultural employment), the current AEWR has no effect at all, and the prevailing wage is the minimum wage for H–2A employment. But in occupations in which the prevailing wage is below the average wage for all agricultural workers (again, by definition, roughly half of all agricultural employment), the current AEWR sets a wage standard that can make use of the H–2A program uneconomical and preclude employers from using it in that occupation.

That is what has happened in the current H–2A program. The AEWR regulations offer purely cosmetic "protection", because where the AEWR sets a wage standard appreciable above the prevailing competitive wage employers cannot afford to use the program. Currently there are between 30 and 40 thousand H–2A certified job opportunities, yet the U.S. Census of Agriculture shows that there are well over 3 million "hires" by agricultural employers in the United States each year. About 2.5 million people are employed at some time during the year in hired agricultural employment. The more than 98 percent of agricultural workers working outside the H–

2A program are protected only by the statutory minimum wage. Virtually all of the miniscule amount of agricultural employment current in the H–2A program and covered by the AEWR standard is in occupations where the prevailing wage is near, at, or above the average wage, and therefore the AEWR has no effect on such employment. By creating a program that, in its totality, creates an administrative structure and terms and conditions of employment that employers can actually use, S. 1814 creates wage and other protections that are real rather than cosmetic, and that will actually protect workers.

The housing provisions of S. 1814 also represent a significant reform of the current H–2A regulations that have been mischaracterized by critics of the bill. S. 1814 requires that workers recruited from outside the local area be provided with housing or, under controlled, circumstances, a monetary housing allowance. If the employer provides housing, it must meet applicable federal farmworker labor camp standards or, if it is public accommodation housing such as a hotel, motel or apartment, the applicable standards for such public accommodation housing. In order for the monetary housing allowance to be an option (after a 3-year initial transition period), the state must certify that there is sufficient in-season housing available in the area of intended employment. The amount of the monetary allowance is set on a state-by-state basis based on the allowances for non-metropolitan counties in the Department of Housing and Urban Development's section 8 housing voucher program.

At present most farmworkers are not provided with housing by their employers and must find their own housing. The requirement to provide housing imposes substantial costs and management burdens on employers. It also takes time to obtain the necessary approvals, financing and undertake the construction. Although the public seems to favor employers providing housing for their migrant workers, when specific projects are proposed the "not-in-my-backyard" scenario is frequently triggered. Agricultural employers are reluctant to confront the formidable expenses and other obstacles to employer-provided housing without reasonable assurance that there is an adequate source of legal workers available through a reformed H–2A program. In an attempt to end this "chicken-egg" standoff, S. 1814 provides a 3-year transition period during which employers can provide a monetary housing allowance in lieu of housing in H–2A occupations. We believe this is a reasonable provision that will ultimately result in more and better housing for farmworkers.

Critics of S. 1814 have claimed that the bill eliminates the requirement to provide housing. The bill, of course, does no such thing. What S. 1814 does is provide the flexibility to utilize housing in the community when an independent determination is made that sufficient housing exists in the community. Many farmworkers prefer to live in the community rather than in employer-provided housing. Under other circumstances farmworker advocates claim that they prefer that option too. The current H–2A requirement that the employer provide housing for each certified job opportunity, whether the worker opts to live in it or not, leads to the absurd outcome that some workers, at their own expense, live in the community while the employer-provided housing sits vacant to satisfy a regulatory requirement.

S. 1814 requires that employers reimburse the in-bound transportation of migrant workers who complete at least half of the period of employment of the job opportunity, and provide or pay for return transportation of workers who complete the period of employment. This requirement applies to all trips of more than 100 miles. They must also be reimbursed for subsistence costs enroute. This requirement is similar to the current H–2A regulations.

Job opportunities for which an employer applies to employ H–2A workers must also be covered by workers' compensation.

S. 1814 also provides other important protections for U.S. and alien workers employed in occupations approved for H–2A employment. No qualified U.S. worker may be refused employment for other than a lawful job-related reason, and no worker may be terminated prior to the end of the job except for lawful job-related reason. An H–2A alien may not be employed in a job opportunity which is vacant because the previous occupant of the job is on strike or involved in a labor dispute. Employers must comply with all employment-related laws, and the provisions of the federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA) are extended to H–2A aliens who are provided only limited coverage under current law. To effectuate the preference for U.S. workers, employers must advertise the job opportunities available through the registry and must inform workers and prospective workers of the availability of the registry. The employer must also make reasonable efforts to contact workers employed in the occupation in the previous season and make them aware of the availability of the job opportunities. The bill also provides for enhanced worker protections and labor standards enforcement, including back wages, civil money penalties, and program disqualification for repeated violators. Fi-

nally, both the registry and the H–2A admission program are funded by employer-paid user fees.

CONCLUSION

S. 1814 will assure that domestic farmworkers will have first access to all agricultural jobs before they are filled by legal alien labor. It will assure that this access is real, by assuring that there is widespread and easy assess to information about the available jobs. It will protect the wages in jobs approved for the employment of aliens by making the prevailing wage the minimum wage. It will assure housing or a housing allowance and transportation benefits to migrant farmworkers who have no such assurance at present. In short, it will raise the standards for domestic farmworkers in all H–2A-approved occupations. Moreover these benefits will be real benefits—not the cosmetic benefit offered by the current program—because employers will be able to use the H–2A program.

S. 1814 will also provide benefits for currently illegal farmworkers, the majority of the seasonal agricultural work force who do not work in H–2A occupations. It will free them from the fear, indignity and economic costs of apprehension and removal, or of being thrown out of work on a moment's notice. It will also free them from dependence on "coyotes" and the costs and physical dangers of illegal entry.

For domestic workers in the upstream and downstream jobs that are created and sustained by U.S. agricultural production, it will assure the continuation and growth in these employment opportunities.

For agricultural employers, it will assure them an adequate, legal work force if they are willing and able to meet the requirements of the program. It will give employers the certainty that will enable them to plan their businesses and make investments more effectively.

We strongly urge this subcommittee and the full Judiciary Committee to quickly approve S. 1814 and send it to the full Senate.

Thank you.

Senator ABRAHAM. Mr. Holt, thank you very much.

Mr. Camacho, welcome.

STATEMENT OF MARCOS CAMACHO

Mr. CAMACHO. Thank you. I also have a lengthy statement we would like to submit.

Senator ABRAHAM. It will be entered into the record.

Mr. CAMACHO. I, first, would like to thank you for letting us appear before the committee, and I also would like to thank Senator Smith and Senator Graham. And I would also like to voice that our organization is an organization that is very interested in this issue, and we are willing to meet with you and try to look at possible ways of resolving this issue.

I know it is a very critical issue, I know it is a hard issue. But I would like to point to the fact that I think the issue here is not whether there is a shortage of workers in this country. The issue here is how do we eliminate the poverty that exists among these farmworkers. That is the United Farmworkers' goal: how do we eliminate this poverty that exists with these workers? If we focus on that issue, I think that is how we begin to structure some type of legislation that deals with it.

We have examined the bill, and again we would oppose the bill, and we do not feel the bill addresses those issues in the sense. And specifically, in terms of one of the things that the bill does, it takes out the what we refer to as the prevailing wage. And to remove that section of the bill, what it, in fact, would mean would be that the prevailing wage would become the existing wage in those areas, where the wage is already depressed by the fact that undocumented workers have set that wage. And you are also creating it so that that prevailing wage will be frozen forever. So you are not

improving anything. In fact, workers will be losing money by removing that protection that exists presently in the H–2A bill.

The bill also takes away a lot of the housing protections. It provides for a voucher. For example, in Washington, we have farmworkers that come in for the apple harvest, and they literally live next to a river in cardboard huts out there because there is no housing. Offering $50 to these workers to find housing is no solution. All it does is simply take the responsibility away from the employer for trying to solve the issue. And I think we have to deal with those type of issues up front and not simply try to figure out how do we take responsibility from one party and give it to somebody else. I mean, these workers do need housing. How do we go in there and provide housing for them? I think some of the other panelists have, especially Ms. Muñoz, talked about some of the things that the bill takes away.

I would like to focus my talk on what we think should be some of the things that this panel and this committee should be looking at. We strongly oppose any attempt to change the H–2A program. And we think, in fact, that there are certain things that should be done to improve it. But most importantly, what we believe is that a regular legal immigration is better than uregulated illegal immigration. And for that reason, we support a generous farmworker adjustment program similar to the one that was enacted in Congress in 1986.

And we also support immigration reform this year that would address the following priorities: We are asking that Salvadorans, Guatemalans, Hondurans, Haitians to apply for adjustment of status in the same terms as already allowed for Cubans and the Nicaraguans in 1997, to allow adjustment of status for all persons of good character who have resided in the United States since 1994; to restore the provision permitting those who are out of status or otherwise ineligible for permanent residence, to be able to adjust the status in the United States; reunite families by establishing a program that provides additional visas for family members of citizens and permanent residents so to reduce the unacceptable backlogs and help stabilize workforce. These measures, although they are not farmworker-specific, would allow farmworkers to obtain legal residency.

As was alluded to earlier, we need the strength and the protections that are presently found in the H–2A Program to protect both H–2A workers and U.S. workers. We think, first, there should not be an incentive to employers to hire H–2A workers simply because they are cheaper. Presently, employers do not pay FICA or FUTA taxes on H–2A employees, and therefore U.S. workers have an automatic disadvantage because they are at a 13.8-percent less cost than H–2A workers. We think this should be eliminated.

We also think that H–2A workers should be given complete protection under all U.S. laws. And that includes protection under the Migrant Seasonal Agricultural Protection Act, which they are presently excluded from.

Thirdly, we think that there should be incentives for employers to improve working conditions and wages. It has been the UFW's experience that where farmworkers have been able to organize, there has developed a stable, structured, productive workforce, and

we see this as a long-term solution to the agricultural labor problems in the United States. We want to break the cycle of an unstable labor market, which constantly needs to be replenished with new foreign workers, which should encourage the emergence of a stable labor market through organizing and collective bargaining.

The UFW has been actively involved in trying to develop such a model. In December 1994, a company by the name of Bear Creek, their workers voted for the UFW to be their collective bargaining representative. This company, instead of taking the traditional anti-union approach to us, decided that they would honor the election victory and sit down and bargain with us for a collective bargaining agreement. We got a collective bargaining agreement with the company and began to form a partnership with the company where some of the issues that the company started looking at, along with workers and the union, were the growth and difficulties inherent in the agricultural industry, the physical demands that seasonal work places on farmworkers, the virtual absence of standard employee benefits for farmworkers, the overall reliance of inexpensive labor rather than development of a skilled workforce.

And working together with the company and trying to resolve these issues, for the first time, in 1998, after the union had begun this partnership, the company recorded a profit, where, in prior years, prior to the union coming in, they had been simply breaking even. But most importantly, we were able in this partnership to do, we were able to reduce the hourly labor costs in terms of percentage to total overall spending by 3 percent in 1996 and by 2 percent in 1998, while at the same time we were able to increase the wages and benefits of farmworkers.

So there is another way to do it. It is not simply stripping away at worker rights and figuring out how we reduce that wage lower, and lower and lower. We think that there are other models out there that can be beneficial to all of the parties.

I would like to thank the committee for letting me share my views with you.

[The prepared statement of Mr. Camacho follows:]

PREPARED STATEMENT OF MARCOS CAMACHO ON BEHALF OF THE UNITED FARM WORKERS OF AMERICA, AFL–CIO

My name is Marcos Camacho. I am General Counsel of the United Farm Workers of America, AFL–CIO. Cesar Chavez founded the United Farm Workers of America, AFL–CIO in 1962. Since its inception the UFW has been strongly involved in the immigration policies that affect farm workers in this country. The UFW was actively involved in the legislative process that resulted in the enactment of the Immigration Reform and Control Act of 1986 (IRCA). The UFW represents and organizes farm workers in several states, including California, Washington, Arizona, Texas, and Florida. The Farm Workers that our organization works with include workers that work in wine grapes, table grapes, raisin grapes, citrus, row crops such as broccoli, lettuce, celery, tomato and other vegetables, mushroom plants, nurseries, tree fruit, and roses. The UFW representation of and day-to-day work with farm workers in various states and in various crops for the last 38 years gives it a unique background and experience to provide meaningful comments and insight into the issues concerning immigration policy and how it affects farm workers in this country.

Mr. Chairman, thank you for the opportunity to appear before the Subcommittee today.

The UFW has examined Senate Bill 1814 and concluded that if enacted, it will have a devastating impact on the two million farm workers who work in America's fields and groves. This legislation would allow employers to bring in hundreds of thousands of foreign workers as non-immigrant guestworkers tied to agricultural

jobs under a system that would guarantee their economic poverty and political powerlessness. Furthermore, neither Senate Bill 1814 nor the current H–2A program address the underlying problems which have created an unstable agricultural labor market.

THE REAL PROBLEM IS FARM WORKER POVERTY NOT LABOR SHORTAGES

What are the economic realities facing America's farm workers at the beginning of the 21st Century?

The most recent and reliable information we have from the National Agricultural Workers Survey shows that the situation of farm workers has continued to decline: wages have stagnated, annual earnings remain beneath the poverty level, and farm workers face chronic unemployment.

In 1997–98, most farm workers held only one farm job per year and were employed in agriculture for less than half a year.

Even in July, when demand for farm labor peaks in many parts of the country, just over half of the total farm workforce held agricultural jobs.

Since 1990–1992, the average work year in agriculture has decreased from 26 to 24 weeks while the number of weeks in nonagricultural employment has fallen from eight to five. Another month of unemployment has been added to the farm worker misery index.

At the same time despite a strong economy and record prosperity, farm worker wages have lost ground relative to those of workers in the private, nonfarm sector. Adjusted for inflation, the average real hourly wage of farm workers has dropped from $6.89 to $6.18. Consequently, farm workers have lost 11 percent of their purchasing power over the last decade.

The result is that farm workers are increasingly disadvantaged. Today fewer farm workers own a vehicle. More workers now rely on contractors and raiteros for transportation to work often in unsafe and uninsured vehicles. Another large change is in home ownership. In 1994–95, one third of all farm workers owned or were buying a home. By 1997–98, only half as many farm workers were buying their home.

All of these facts—low wages, underemployment, and low annual wages—point to a national oversupply of labor. It is the continued low income of farm workers which has destablized the agricultural labor market by causing farm workers to seek jobs paying higher wages and offering more hours of work.

This is the economic reality that Agricultural Employers do not want to discuss in this hearing. For them, the only problem is how to secure access to another pool of low-wage workers, not what to do about the desperate plight of the two million farm workers already here.

We believe that the current labor practices in U.S. agriculture are unsustainable in the long term and, unless fundamentally changed, will continue the socially destructive economic hardships faced each day by the farm workers throughout this country while at the same time doing severe damage to U.S. agriculture's global competitiveness.

Unfortunately, Senate Bill 1814 is not a step forward into the 21st century, but a step backward to an era of indentured servitude.

WHY THE UFW OPPOSES THE GRAHAM BILL

The Graham bill actually contains two programs of indentured servitude. First, it holds out a false hope of legalization to the many farm workers who are working in this country without proper authorization. Unauthorized workers who could prove that they did at least 150 days of farm work in the previous year could apply for a new probationary non-immigrant status. Many farm workers will not be able to prove that they have met this threshold requirement. Those workers who do, will have to work 180 days of farm work each year for five of the next seven years before they can begin to apply for residency and reunite their families. During this time, they will be non-immigrants and will have to leave the United States for 65 days each year. In other words, the unauthorized workers will be converted into guestworkers without any safeguards for them or the current legal workforce.

The future work requirements imposed on these workers are likely to lead to both exploitation and fraud. Workers desperate to satisfy the five-year work requirement to avoid deportation are unlikely to complain about workplace violations, risk firing and to an even lesser extent seek out their right to organize. At the same time, we can expect that farm labor contractors will develop a lucrative business selling real and false letters of employment to their workers.

Second, the Graham bill would greatly expand the current H–2A program which ties the worker to a particular employer by eliminating many of the protections for workers contained in the current law. It is no exaggeration to say that the Graham

bill offers fewer protections for workers than the Bracero program. (A copy of the official Bracero Agreement is attached to my testimony).

Senator Graham and his supporters have repeatedly made the claim that his bill ensures better wages, housing, and transportation for domestic workers. This is simply not true. There are no enhanced worker protections for domestic workers or adjusted workers. Under the Graham bill, H–2A employers must offer to provide U.S. workers the same benefits and protections which are to be provided to the H–2A workers. This has been a longstanding requirement of the current program; however, very few U.S. workers benefit, because H–2A employers generally do not employ U.S. workers in the jobs for which they have H–2A certification. Moreover, contrary to what the Senator has said, under his legislation all labor protections included in the current program are not preserved.

Under the current program, before H–2A workers may be employed, the Secretary of Labor must certify that "the employment of the alien in such service or labor will not adversely affect the wages and working conditions of workers in the United States similarly employed." In order to protect U.S. workers from adverse effect, the Secretary has promulgated regulations containing the minimum benefit, wage and working conditions that must be contained in the employer's job office. These are the labor protections that Agricultural Employers wants eliminated.

Under the Graham bill, the Secretary of Labor would no longer have to certify that the use of H–2A workers would not adversely affect U.S. workers; the Secretary's role is limited to approving the employer's application. If the employer's application contains the employment requirements as found at Section 304 of the Graham bill, the Secretary must approve the application; she has no authority to require that other labor protections be provided.

Section 304 sets forth employment requirements with respect to wages, housing, and transportation. In each instance, they provide workers with less protection than under the current law:

Wages

Under current law, H–2A employers are required to pay their workers the so-called adverse effect wage rate ("AEWR"). The AEWR is the annual average hourly wage rate for field and livestock workers in the state where the H–2A workers are employed. The current AEWR for California is $7.27 per hour; the AEWR for Florida is $7.25 per hour.

Under the Graham bill, the current AEWR requirement would be eliminated. H–2A employs would only have to pay the prevailing wage in a particular area and crop; often this will be a prevailing piece rate rather than an hourly rate. Where wages have been depressed by the use of undocumented aliens, this method "locks in" the depressed wage rate forever. Under the Graham bill, a 5% "premium" would be added to the required wage only if the prevailing rate resulted in average earnings below the average hourly wage for field and livestock workers in the state.

To better understand what the Graham bill would mean, consider the raisin growers in Fresno. Today, they would have to pay their workers at least $7.27 per hour if they wanted to use the H–2A program. The prevailing piece rate for raisins is 20¢ per tray and many workers are barely able to earn the minimum wage. Under the Graham bill, all they would have to do is pay 21¢ per tray, no matter what the workers were able to earn. Moreover, once the use of H–2A workers became established in the raisin industry, there would never be any need to raise wages or make any other improvements in working conditions.

The Bracero Agreement required that wages to be paid the worker shall be the same as those paid for similar work to other agricultural laborers under the same conditions within the same area, in respective regions of destination.

Housing

Under current law, H–2A employers are required to provide housing "without charge to the worker" to those workers who are not reasonably able to return to their residence within the same day. If provided by the employer, the housing must comply fully with federal standards. Employers cannot charge workers for security deposits.

Under the Graham bill, employers could substitute a housing voucher ($40–$50 per week) for free housing whether or not housing was actually available to workers in the area of the job. Growers who failed to provide their workers with the required housing would only be liable for the cost of the housing. For example, if a worker died from exposure from sleeping under a bridge, under the Graham bill, his family could sue for $50. The housing would no longer have to meet federal standards. Employers would be able to charge workers for security deposits, maintenance, and utilities.

The Bracero Agreement provided that the Mexican workers will be furnished without cost to them with hygienic lodgings, adequate to the physical conditions of the region of a type used by a common laborer of the region and the medical and sanitary services enjoyed also without cost to them will be identical with those furnished to other agricultural workers in the regions where they may lend their services.

Transportation

Current law requires employers to advance transportation expenses to U.S. workers if it is a prevailing practice among area employers to do so, or if transportation is being provided or advanced to the H–2A workers. After the worker has completed 50% of the contract period, the employer is required to reimburse transportation from "the place from which the worker has come to work for the employer to the place of employment". DOL has taken the position that workers must be reimbursed for travel from the actual place where the worker was recruited, not a location that the employer "deems" to be the place of recruitment.

Under the Graham bill, there is no obligation for the employer ever to advance transportation. Thus, an H–2A employer will be free to provide transportation to H–2A workers without having to offer the same benefit to U.S. workers. Reimbursement of transportation is limited to distances greater than 100 miles and is only available to individuals living in grower provided housing or housing provided through vouchers. The place where the alien is issued the H–2A visa is deemed to be the alien's place of residence.

Under the Graham bill, a worker can be recruited in his home in southern Mexico, told to report to the U.S. consulate in Calexico to be issued his visa and then travel to the Imperial Valley, a journey of hundreds of miles and not receive any transportation reimbursement (the Imperial Valley is less than 100 miles from Calexico). Moreover, there is nothing in the Graham bill that prevents the employer from actually charging the worker for this transportation.

The Bracero Agreement required that transportation and subsistence expenses for the worker, and his family, if such is the case, and all other expenses which originate from point of origin to border points and compliance of immigration requirements, or for any other similar concept, shall be paid exclusively by the employer or the contractual parties.

While the Graham bill weakens existing wage, housing, and transportation protections, it totally eliminates many other worker protections found in the DOL regulations. These protections exist because under current law, the Secretary of Labor must certify that the employment of the H–2A workers will not adversely affect the wages and working conditions of U.S. workers similarly employed, Among the protections that would be eliminated are the following:

No preferential treatment of H–2A workers

Under current law, the employer's job offer to U.S workers must offer the U.S. workers no less than the same benefits, wages and working conditions which the employer offers H–2A workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

This critical protection for U.S. workers is nowhere to be found in the Graham bill.

Guarantee of employment

Current regulations require that the employer guarantee to offer the worker employment for at least three-fourths of the workdays of the total periods during which the work contract and all extensions thereof are in effect.

Under the Graham bill, the three-quarter guarantee is eliminated.

The Bracero Agreement provided that for such time as they are unemployed under a period equal to 75% of the period (exclusive of Sundays) for which the workers have been contracted they shall receive a subsistence allowance at the rate of $3.00 per day.

Limitations on productivity requirements

Given that an H–2A worker has no choice but to work for the employer who was issued his visa. H–2A employers are in a position to speed up production requirements to the limit of human endurance. Current regulations provide that employers cannot require minimum productivity standards higher than those normally required by other employers for the activity in the area of intended employment, unless DOL approves a higher minimum.

The Bracero Agreement provided that piece rates shall be so set as to enable the worker of average ability to earn the prevailing wage.

Provision for contract impossibility

The current regulations provide that an employer may terminate the worker's contract because a hurricane or other Act of God makes the workers services unnecessary. However, the employer is required to either transfer the worker to other comparable employment or return the worker to his home at the employer's expense and reimburse the worker for the cost of transportation to the job site.

The Graham bill provides no such protection; the worker bears all the risk.

Written contract required

Under the current regulations, workers must be provided with a copy of the work contract, no later than on the day the work commences.

Under the Graham bill, there is no requirement that a worker be provided with a contract of employment.

The Bracero Agreement provided that contracts will be made between the employer and the worker under the supervision of the Mexican Government (contracts were required to be written in Spanish).

In short, the Graham bill offers workers fewer protections than Mexican workers were given under the 1942 Bracero program.

The Graham bill would also create a new bureaucracy dedicated more to "proving" there is a labor shortage than to actually helping farm workers find employment. Each state employment service would be required to create a farm worker "registry." H–2A employers would not be obligated to hire any U.S. worker who was not registered and would not be expected to undertake any real efforts to recruit U.S. workers before turning to the H–2A program. The registry concept has already been piloted in Senator Graham's own state where it was an abysmal failure.

What would be the impact of the NCAE-Graham bill on farm workers?

For the one million legal farm workers and their family members, the Graham bill would push them even deeper into poverty. Currently able to find work only about 135 days per year, they would now find themselves in a desperate competition for jobs with hundreds of thousands of newly legalized farm workers required under the Graham bill to work at least 180 days per year or face deportation.

Both the current legal workers and the newly legalized workers would soon face even more competition in the labor market as growers sought to take advantage of the revised H–2A program. Without the protections of the current H–2A program, growers would find the prospect of not having to pay employment taxes on their H–2A workers irresistible. U.S. workers would face not only competition for jobs but for scarce housing. Further declines in wages would be inevitable as one crop after another became dominated by H–2A workers.

For the current H–2A workers, the Graham bill is simply a pay cut as growers switch from the AEWR to the lower prevailing wage. They will also lose their transportation reimbursement from their homes to the border. They will lose their guarantee of employment. Their employers who provide housing will now be able to charge them for security deposits, maintenance, and utilities. Their employer may decide not to provide housing at all, and they will have to try to find someplace to live in a strange country with only a $40 or $50 voucher. If they are successful, they will probably have to pay a contractor or raitero $3 to $5 per day to take them to work since the Graham bill eliminates the current requirement that the employer provide free transportation from the employee's living quarters and the worksite. Workers may also find themselves subjected to excessive meal charges and charges for tools and equipment.

For the currently illegal workforce, many will be unable to demonstrate that they worked 150 days in the prior year and will therefore not qualify for the adjustment program. Those that do qualify will have legal status for a time, but many will never be able to obtain permanent resident status in the United States. These workers will remain trapped in the underground economy where they will surely be joined by new unauthorized workers for there is nothing in the Graham bill directed at halting the activities of the farm labor contractors and coyotes who profit from illegal migration.

WHAT SHOULD BE DONE

The UFW strongly opposes any attempt to expand the current H–2A program by reducing the protections for U.S. workers or the H–2A workers as the Graham bill does. Furthermore, the UFW opposes any further changes to the H–2A program's current labor certification process. Replacing the existing certification process with a labor attestation process would weaken the minimal protections worker protections found in the current program, and would essentially remove DOL from having to certify that the employment of the foreign workers will not adversely affect the

wages and working conditions of the hundreds of thousands of farm workers who are legal residents of the United States.

Rather than allowing agriculture to revert to a 20th century "Harvest of Shame" past, we need to push it toward a sustainable 21st century future where there is a real partnership between agribusiness and its workforce.

We believe that regulated legal immigration is better than unregulated illegal immigration. For that reason, we support a generous farm worker adjustment program similar to the one enacted by Congress in 1986. We also support immigration reform this year which would address the following priorities:

Allow Salvadoreans, Guatemalans, Hondurans and Haitians to apply for adjustment of status on the same terms as already provided to Cubans and Nicaraguans in 1997;

Allow adjustment of status to all persons of good character who have resided in the United States prior to 1994;

Restore the provision permitting those who are out of status but otherwise eligible for permanent residence to adjust their status in the United States;

Reunite families by establishing a program to provide additional visas for family members of citizens and permanent residents so as to reduce unacceptable backlogs and help stabilize the workforce.

These measures, while not farm worker specific, would allow thousands of farm workers to obtain legal residency.

We also support new approaches to reducing undocumented immigration and employer abuse including the enactment of whistleblower protections for undocumented workers who report violations of workers protection laws or cooperate with federal agencies during investigations of employment, labor and discrimination violations. Such workers should be given protected immigration status and accorded full remedies, including reinstatement and backpay. Furthermore, undocumented workers who exercise their rights to organize and bargain collectively should also be provided protected immigration status.

With respect to the existing H–2A program, we believe that labor and business should work together to design cooperative mechanisms that allow law-abiding employers to satisfy legitimate needs for new workers in a timely manner without compromising the rights of and opportunities of workers already here. It is critical that immigrant workers should have full workplace rights in order to protect their own interests as well as the labor rights of all American workers. The current program does not meet this standard.

We need to strengthen the protections under the current H–2A program to better protect both H–2A and U.S. workers. In doing so, we believe that the Committee needs to focus on three broad principles which we believe both side of this debate should be able to agree upon.

First, it should not be cheaper to hire an H–2A worker than to hire a U.S. worker. Currently, employers of H–2A workers are not required to pay FICA and FUTA taxes on their H–2A employees. This means that an H–2A employer saves 13.85% by hiring a foreign worker instead of a legal U.S. resident. Congress needs to remove this economic incentive to discriminate against U.S. citizens and legal residents. In 1995, the National Council of Agricultural Employers proposed that H–2A employers be required to pay an amount comparable to what they pay for FICA and FUTA taxes on domestic workers into a trust fund to be used to fund the administrative costs of the program. We think trust fund is a good idea; however, we propose that the funds be used for the purpose of improving labor management practices in agriculture by stabilizing the labor force, improving productivity, and increasing earnings for farm workers through longer periods of employment.

The second principle is really a corollary of the first principle:

All temporary guestworkers should be afforded the same workplace protections available to U.S. workers.

Otherwise, unscrupulous employers gain an advantage by employing foreign workers. Furthermore, we are committed to this principle with respect to foreign workers from Mexico by the NAFTA Labor Side Accords in the United States agreed to "providing migrant workers in a Party's territory with the same legal protection as the Party's nations in respect of working conditions." The most important federal statutory protection for farm workers in the United States is the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq. ("AWPA"). However, H–2A workers are specifically excluded from the protections of the Act. They need to be covered by AWPA.

Third, employers must have a continued incentive to improve wages and working conditions.

In 1993, the National Commission on Agricultural Workers concluded its report to Congress by noting that—"The response of the United States to competition from

countries that pay even lower wages should be the development of a more structured and stable domestic labor market with increasingly productive workers. Industries must modernize to remain successful in the increasingly competitive international market place. Agriculture is no exception. * * * To assure its long-term competitive position, agriculture must improve its labor management practices."

In reaching its conclusions,the Commission specifically noted that farm workers face special problems if they attempt to organize and bargain collectively in order to improve their working conditions: "effective organizing is made more difficult by the fact that farmworkers are essentially powerless, both in objective terms and relative to the agricultural employer who oppose organizing." However, it has been the UFW's experience that where farm workers have been able to organize, there has developed the more structured, stable and productive work force which the Commission recommended as the long-term solution to the agricultural labor problem in the United States. If we want to break the cycle of an unstable labor market which constantly needs to be replenished with new foreign workers, we should encourage the emergence of a stable labor market through organization and collective bargaining.

The UFW is actively working on such a model today. On December 17, 1994, Bear Creek workers voted to have the UFW be their collective bargaining representative. Bear Creek chose to not fight the UFW's election victory and instead chose to sit down and bargain a contract. In three months a model contract was signed between the UFW and Bear Creek. A new partnership was established that was based on six principles: (1) Commitment by both leadership levels to making the partnership work. (2) the development of continuous learning and skill building, (3) the open sharing of technical and financial information, (4) the joint development of the partnership plan, (5) the continuous integration of leading-edge technology, and (6) recognizing the continual need for trust and open communications. The workers, Bear Creek and the UFW decided that the major issues that the partnership should address, were (1) the growth of the difficulties inherent in the agricultural industry, (2) the physical demands and seasonality of the work, (3) the virtual absence of standard employee benefits, and (4) over-reliance on inexpensive labor rather than development of a skilled workforce. With this new partnership Bear Creek in 1998 set record profits and prior to that had only been breaking even. But most notable, however is the fact that hourly labor costs, as a percentage of total overall spending, was reduced by 3% since 1996 and reduced by 2% since 1998, while at the same time wages have been increased and benefits improved.

It is only through these type of models that we will address the real issue of poverty that confronts farm workers today and upon which we can create a stable market that benefits all interested parties.

We thank the Subcommittee for its consideration of our views.

The Official Bracero Agreement

Braceros being recruited in El Paso, Texas.

Agreement of August 4, 1942

For the Temporary Migration of Mexican Agricultural Workers to the United States as Revised on April 26, 1943, by an Exchange of Notes – Between the American Embassy at Mexico City and the Mexican Ministry for Foreign Affairs

General Provisions

1) It is understood that Mexicans contracting to work in the United States shall not be engaged in any military service.

2) Mexicans entering the United States as result of this understanding shall not suffer discriminatory acts of any kind in accordance with the Executive Order No. 8802 issued at the White House June 25, 1941.

3) Mexicans entering the United States under this understanding shall enjoy the guarantees of transportation, living expenses and repatriation established in Article 29 of the Mexican Federal Labor Law as follows:

Article 29.- All contracts entered into by Mexican workers for lending their services outside their country shall be made in writing, legalized by the municipal authorities of the locality where entered into and vised by the Consul of the country where their services are being used. Furthermore, such contract shall contain, as a requisite of validity of same, the following stipulations, without which the contract is invalid.

I. Transportation and subsistence expenses for the worker, and his family, if such is the case, and all other expenses which originate from point of origin to border points and compliance of immigration requirements, or for any other similar concept, shall be paid exclusively by the employer or the contractual parties.

II. The worker shall be paid in full the salary agreed upon, from which no deduction shall be made in any amount for any of the concepts mentioned in the above sub-paragraph.

III. The employer or contractor shall issue a bond or constitute a deposit in cash in the Bank

of Workers, or in the absence of same, in the Bank of Mexico, to the entire satisfaction of the respective labor authorities, for a sum equal to repatriation costs of the worker and his family, and those originated by transportation to point of origin.

IV. Once the employer established proof of having covered such expenses or the refusal of the worker to return to his country, and that he does not owe the worker any sum covering salary or indemnization to which he might have a right, the labor authorities shall authorize the return of the deposit or the cancellation of the bond issued.

It is specifically understood that the provisions of Section III of Article 29 above-mentioned shall not apply to the Government of the United States notwithstanding the inclusion of this section in the agreement, in view of the obligations assumed by the United States government under Transportation(a) and (c) of this agreement.

4) Mexicans entering the United States under this understanding shall not be employed to displace other workers, or for the purpose of reducing rates of pay previously established.

In order to implement the application of the general Principles mentioned above the following specific clauses are established:

(When the word "employer" is used hereinafter it shall be understood to mean the Farm Security Administration of the Department of Agriculture of the United States of America; the word "sub-employer" shall mean the owner or operator of the farm or farms in the United States on which the Mexican will be employed; the word "worker" hereinafter used shall refer to the Mexican Farm laborer entering the United States under this understanding.)

Contracts

a) Contracts will be made between the employer and the worker under the supervision of the Mexican Government. (Contracts must be written in Spanish.)

b) The employer shall enter into a contract with the sub- employer, with a view to proper observance of the principles embodied in this understanding.

Admission

a. The Mexican health authorities will, at the place whence the worker comes, see that he meets the necessary physical conditions.

Transportation

a. All transportation and living expenses from the place of origin to destination, and return, as well as expenses incurred in the fulfillment of any requirements of a migratory nature shall be met by the Employer.

b. Personal belongings of the workers up to a maximum of 35 kilos per person shall be transported at the expense of the Employer.

c. In accord with the intent of Article 29 of Mexican Federal Labor Law, quoted under General Provisions (3) above, it is expected that the employer will collect all or part of the cost accuring under (a) and (b) of Transportation from the sub- employer.
Wages and Employment

a. (1)Wages to be paid the worker shall be the same as those paid for similar work to other agricultural laborers under the same conditions within the same area, in the respective regions of destination. Piece rates shall be so set as to enable the worker of average ability to earn the prevailing wage. In any case wages for piece work or hourly work will not be

less than 30 cents per hour.

b. (2)On the basis of prior authorization from the Mexican Government salaries lower than those established in the previous clause may be paid those emigrants admitted into the United States as members of the family of the worker under contract and who, when they are in the field, are able also to become agricultural laborers but who, by their condition of age or sex, cannot carry out the average amount of ordinary work.

c. The worker shall be exclusively employed as an agricultural laborer for which he has been engaged ; any change from such type of employment or any change of locality shall be made with the express approval of the worker and with the authority of the Mexican Government.

d. There shall be considered illegal any collection by reason of commission or for any other concept demanded of the worker.

e. Work of minors under 14 years shall be strictly prohibit, and they shall have the same schooling opportunities as those enjoyed by children of other agricultural laborers.

f. Workers domiciled in the migratory labor camps or at any other place of employment under this understanding shall be free to obtain articles for their personal consumption, or that of their families, wherever it is most convenient for them.

g. *The Mexican workers will be furnished without cost to them with hygienic lodgings, adequate to the physical conditions of the region of a type used by a common laborer of the region and the medical and sanitary services enjoyed also without cost to them will be identical with those furnished to the other agricultural workers in the regions where they may lend their services.*

h. Workers admitted under this understanding shall enjoy as regards occupational diseases and accidents the same guarantees enjoyed by other agricultural workers under United States legislation.

i. Groups of workers admitted under this understanding shall elect their own representatives to deal with the Employer, but it is understood that all such representatives shall be working members of the group.

The Mexican Consuls, assisted the Mexican Labor Inspectors, recognized as such by the Employer will take all possible measures of protection in the interest of the Mexican workers in all questions affecting them, within their corresponding jurisdiction, and will have free access to the places of work of the Mexican workers, The Employer will observe that the sub- employer grants all facilities to the Mexican Government for the compliance of all the clauses in this contract.

j. For such time as they are unemployed under a period equal to 75% of the period (exclusive of Sundays) for which the workers have been contracted they shall receive a subsistence allowance at the rate of $3.00 per day.

Should the cost of living rise this will be a matter for reconsideration.

The master contracts for workers submitted to the Mexican government shall contain definite provisions for computation of subsistence and payments under the understanding.

k. The term of the contract shall be made in accordance with the authorities of the respective countries.

l. At the expiration of the contract under this understanding, and if the same is not renewed,

the authorities of the United States shall consider illegal, from an immigration point of view, the continued stay of the worker in the territory of the United States, exception made of cases of physical impossibility.

Savings Fund

a. The respective agencies of the Government of the United States shall be responsible for the safekeeping of the sums contributed by the Mexican workers toward the formation of their Rural Savings Fund, until such sums are transferred to *the Wells Fargo Bank and Union Trust Company of San Francisco for the account of the Bank of Mexico, S.A., which will transfer such amounts to the Mexican Agricultural Credit Bank. This last shall assume responsibility for the deposit, for the safekeeping and for the application, or in the absence of these, for the return of such amounts.*

b. The Mexican Government through the Banco de Crédito Agrícola will take care of the security of the savings of the workers to be used for payment of the agricultural implements, which may be made available to the Banco de Crédito Agrícola in accordance with exportation permits for shipment to Mexico with the understanding that the Farm Security Administration will recommend priority treatment for such implements.

Numbers

As it is impossible to determine at this time the number of workers who may be needed in the United States for agricultural labor employment, the employer shall advise the Mexican Government from time to time as to the number needed. The Government of Mexico shall determine in each case the number of workers who may leave the country without detriment to its national economy.

General Considerations

It is understood that, with reference to the departure from Mexico of Mexican workers, who are not farm laborers, there shall govern in understandings reached by agencies to the respective Governments the same fundamentals principles which have been applied here to the departure of farm labor.

It is understood that the employers will cooperate with such other agencies of the Government of the United States in carrying this understanding into effect whose authority under the laws of the United States are such as to contribute to the effectuation of the understandings.

Either Government shall have the right to renounce this understanding, given appropriate notification to the other Government 90 days in advance.

This understanding may be formalized by an exchange of notes between the Ministry of Foreign Affairs of the Republic of Mexico and the Embassy of the United States of America in Mexico.

NOTE: The original agreement was formalized the 23th of July of 1942. Months later, the agreement was modified. This is the final version, released on April 26, 1943. The revised clauses are italicized. The original agreement was signed by representatives from both countries. From México, Ernesto Hidalgo, representative of the Foreign Affairs Ministry and Abraham J. Navas, Esq., representative of the Ministry of Labor. From United States: Joseph F. McGurk, Counsel of the American Embassy in México, John Walker, Deputy Administrator of the Farm Security Administration, United States Department of Agriculture (USDA), and David Mecker, Deputy Director of

War Farming Operations also from the USDA.

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Senator ABRAHAM. Thank you for being here. We appreciate the participation of your organization. In that I do have an amendment on the floor, I am not going to ask a lot of questions of this panel. I want to just get a couple of quick ones though.

This issue of whether or not there is a shortage, Ms. Muñoz argues that the wage issues argue that there may not be a shortage. Mr. Holt, Mr. Wunsch, you certainly would argue presumably on the other side. If anybody would like to expand on their earlier remarks, I would like to hear them.

Mr. Camacho, you said that we should not be debating or that this issue of shortages was not——

Mr. CAMACHO. Not the real issue.

Senator ABRAHAM. Not the real issue. Does that imply that you agree that there are shortages or that there are not?

Mr. CAMACHO. No, I do not think there is a shortage. I think that the issue is if agriculture employers are willing to pay wages that are a living wage to farm workers, then you are going to have a lot of people working in those areas.

What is happening now is that they are not willing to do that, so like anybody else, workers are finding other jobs that pay better.

Senator ABRAHAM. Mr. Holt?

Mr. HOLT. Mr. Chairman, I think we need to sort of hit over the head this notion that the wages in agriculture are stagnated. That statement is based on—well, usually the way it is articulated is that real wages in agriculture are stagnated, that they in fact have declined. And that is true as far as it goes. The fact of the matter is, that real wages in the economy in general have stagnated, have declined based on the current CPI wage deflator that the Bureau of Labor Statistics is still using, but what they and the entire community has pretty much determined is out of date.

If you look at agricultural wages compared to non-agricultural wages, they have risen more in money term—agricultural wages have risen more in money terms and have declined less in real terms than non-agricultural wages. So, you know, I think you would have to argue—if you are going to argue that there is a surplus of labor in agriculture, that there is an even greater surplus of labor outside of agriculture, and I think we know that that is not the case.

If you have a labor force in which 52 percent of the world force self-identifies as being illegal, it seems to me that is prima facie evidence that there is a shortage of legal workers in agriculture. Now, we might debate how big that shortage is, but I do not think we can debate its existence.

Senator ABRAHAM. Ms. Muñoz.

Ms. MUÑOZ. I would just refer you to page 2 of my written statement. There are two studies which are cited which demonstrate. The hourly wage for agricultural workers has risen only about half the rate as for non-agricultural workers, and in real terms that is a stagnant wage. This study that we cited from, the Department of Labor, as well as the Congressional Research Service, which did a report for Congress.

Senator ABRAHAM. Mr. Wunsch, did you want to comment?

Mr. WUNSCH. Well, responding to the question from the Chair on the shortage, if I relate that to personal experience, I am short of

workers when I have more work than I have available workers. When the job is done, I have a surplus of workers.

In response to the wage question, I can honestly say I have told my workers I will never be able to pay them what they deserve to make, whether they are seasonal workers, year-round workers, Anglos, Hispanics, insufficiently documents, valid green cards, old, young, because the value of my activity as an agricultural producer does not generate the revenues necessary to make such wages available. So we do the best we can.

Now, I know there are certainly situations where wage abuse may occur. I do not think there is any argument there. But what I see between the agricultural employer and the agricultural employee is a situation where we have a shortage, not so much of workers, but of legal workers, and a great weariness on the part of all living with this criminal status as employers who are subject to fines for employing folks that are not sufficiently documented, but most particularly, the workers and the worker families, who for years have been subject to the life of fugitives on the run, who now have kids that are getting ready to graduate from high school that were born in the U.S.

So we have got a worker shortage. We have got an economic situation that some consider intolerable as far as the wage and living conditions, but most particularly we have an incredible paradoxical situation as far as the legal situation we have inadvertently created for ourselves, and an opportunity to fix it.

Ms. MUÑOZ. And that is the place where in broad principle there is agreement. I do not think there is disagreement on the panel that legalizing the existing work force which is undocumented, would be a useful thing for all concerned. The question is how to do it.

Senator ABRAHAM. I am just going to ask both of my colleagues from the Senate if they want to comment on this issue as well.

Senator SMITH. Just briefly, Mr. Chairman. I would like to stipulate it is my opinion, for the record, there is no agricultural labor shortage as long as you are willing to accept an illegal system. That is what the GAO said. There is no problem, because we have all of these illegal workers here, and that is the problem.

Housing, Mr. Camacho, in my state it is illegal to build housing on farmland, so I am trying to figure—my motive in the way we structure this is to create some capital to create some housing someplace where it is legal. Every state has different land use laws. Mine are very restricted.

The bill I am looking at has the prevailing wage plus 5 percent. You made the comment that we get rid of the prevailing wage. Are we reading the same bill? I just do not understand that.

The Agricultural Worker Protection Act. We specifically include that, and there has been testimony today that said that we have not. We are really, really trying to include everything we can to provide financially to correct the problems and to provide the safety that the workers deserve, and to provide the legality, believing legality will result in a living wage, but as long as they are kept illegal, they are going to be kept victims, and that is what I am trying to fix. I am so frustrated that we cannot seem to read the same words on the same piece of paper.

Senator ABRAHAM. Mr. Camacho, do you want to comment on those two provisions?

Mr. CAMACHO. Yes. The housing issue, I mean I think there is a lot of ways to look at it. Do you give workers in the states where there is available housing? Maybe a voucher concept would work. In states where there is no housing for farm workers, a voucher concept is not going to work. So you have to figure out—you have to provide housing for those workers.

In terms of the prevailing wage, maybe I did not explain it correctly, but right now the prevailing wage is based on not the industry, not the particular industry they are working, but what state average workers make.

Senator SMITH. It is Davis-Bacon.

Mr. CAMACHO. No, it is not. The prevailing wage in the bill would be, for example, if raising growers are paying 20 cents a tray, then that would become the prevailing wage. And all you are going to do is 5 percent above 20 cents. It comes up to 21 cents. So all they are raising it is 1 penny on that tray. It is not the prevailing wage for the state, as it is now on the H–2A program.

Senator SMITH. Jim, can you comment on that?

Mr. HOLT. Yes. I think there is a little bit of terminology confusion here between "prevailing wage" and "adverse effect wage rate." I think with all due respect, what you were meaning when you said "prevailing wage" was "adverse effect wage rate."

Mr. CAMACHO. That is correct.

Senator ABRAHAM. Senator Graham, would you like to comment?

Senator GRAHAM. Well, I would like to just put some numbers on the table and see if there is agreement or disagreement, because I think they go to the question of is there a shortage of a legal work force? According to the survey that was done in 1999 by the U.S. Department of Agriculture and the U.S. Department of Labor, there are 1.6 million persons who worked in American field agriculture, of which 50 percent were undocumented. They self-described themselves as undocumented.

In 1999 the Department of labor issued 41,000 certificates for H–2A workers, which was almost double the number of certificates they had issued two years earlier, which I think has some commentary on the domestic labor market.

If you accept all of those numbers, that would indicate that the total work force in field labor broke down into 800,000 undocumented aliens, 759,000 legal domestic workers, and 41,000 H–2A workers, assuming all of the certificates that were issued were in fact utilized.

Now, is there any strong disagreement with those numbers as to what is the current status and distribution of American field farm workers?

Ms. MUÑOZ. We do know that the H–2A program has been expanding. It is being applied to new crops and it is being used in new parts of the country. There is some language in my written statement about the State of Georgia, for example, which did not tend to use H–2A workers, and now there has been a dramatic expansion in the H–2A program in that state.

We also know that among domestic farm workers there are very—and I spoke about it earlier—there is high rates of unem-

ployment, but we have specific evidence with respect to California in a study done by the California Rural Legal Assistance Foundation, which is attached to my testimony, which found even during peak harvest months there were domestic, legally-authorized-to-work farm workers who were not being recruited by employers. And Mr. Camacho's statement, I think, illustrates that the way the H–2A program is structured, the domestic work force becomes less desirable, and that I think is reflected in the number of days people are working, as well as the unemployment rates in various sectors of the economy where these workers are located.

So, clearly the numbers can be used to prove a variety of points of view. I think ultimately the broader point here is that nobody accepts and is comfortable with the proportion of undocumented workers in this work force. I think that is a place where there is agreement. I would hope that nobody is comfortable with the wages and the working conditions that we see in this industry. Ultimately, the broad point that we are trying to make is whether or not legislation can be advanced which makes substantial improvements towards both of those ends.

Senator GRAHAM. In terms of the circumstances of legal domestic workers, how much of those conditions are a function, in your opinion, of the 800,000 undocumented? That is, how much does that 800,000 work force contribute to depression of wages and working conditions for the legal domestic workers?

Ms. MUÑOZ. We think there is a relationship. We do believe there is a relationship. Again, that is why ultimately we have taken the position for a long time, and the AFL–CIO has recently taken the position, that it is ultimately in the best interest of all workers for the domestic work force, not just in agriculture but across the country, to be legalized. We do not dispute that question at all. The question is whether or not tying people to agriculture and creating a set of steps that are going to be difficult for folks to climb is the best way to achieve that goal.

Senator GRAHAM. I would like to ask, if I could, a follow-up question, but if Mr. Holt or Mr. Camacho or any other members of the panel would like to comment on what is the relationship between the 800,000 undocumented agricultural field workers and the working conditions of the 759,000 legal domestic workers?

Mr. HOLT. Well, I would like to say—I would like to disagree with my colleague here on the panel. I think the evidence—I do not think there is evidence to support that agricultural wages are depressed. And I think the fact that—notwithstanding the substantial proportion of the agricultural work force which is undocumented, the fact that agricultural wage rates are increasing more rapidly than non-agricultural wage rates is indicative of this, and the figure that I am working from at least are the Department of Agriculture's figures that go into the national income accounts and into the BLS national income accounting figures. These are the standard agricultural hourly wage statistics.

Now, there is a difference between hourly wage rates and workers' earnings, workers' average earnings. This is, after all, a seasonal industry, and in particular, the NAWS data, the National Agricultural Worker Survey that Ms. Muñoz is citing from, is a survey of the seasonal agricultural work force. It excludes everybody

who is not seasonal. So annual earnings are a function of how many weeks a person works, and I would say in a highly—in a work force highly populated with illegal aliens, where there is the kind of rapid changes in identity that, for example, Polo Garcia referred to, talking about trying to deduce statistics on average annual earnings of individuals is, frankly, a fruitless undertaking. But the hourly earnings in agriculture are in fact increasing at a more rapid rate than non-agriculture. You know, there is probably nobody in this room that could cite what the average hourly earnings of agricultural workers are. We would probably all guess something close to the minimum wage. The fact of the matter is that in 1999 it was $7.77, which is a higher hourly rate than many unskilled and low-skilled non-agricultural occupations generate in rural areas. The problem is, it is a seasonal industry. That is why workers' earnings are low, their annual earnings are low, and it is why workers move out of that industry into year-round work when it become available. And that has been happening for the last century, and it is going to happen for the next century.

Mr. CAMACHO. I think Mr. Holt sort of supports the—his statement supports that in fact the 800 do suppress wages, because if you have two people waiting for one job, then that automatically is going to suppress wages. And the fact that wages have been increasing so rapidly has been because they were so low to begin with. So, yes, they are going to increase. And in California the reason wages increased was because minimum wage was increased. It was a legislative act that created that race. So, again, my feeling is that, yes, there is a depression of wages.

Senator ABRAHAM. Mr. Wunsch, you want to comment?

Mr. WUNSCH. Yes, I do. I think there is a fundamental fallacy here that needs clarification. At the level of the agricultural employer, the undocumented worker is virtually indistinguishable from the properly documented worker. In other words, of that 759,000 workers, you have within that some subgroups. You have the ones that came through in the 1985 Amnesty Program. You have the blue-eyed, blond-haired Norwegian farm boy from next door that comes over and does the milking. You have got a very diverse group that are included in that. But let us just say that we are going to specify migrant-Hispanic-alien-registration-card-bearing workers.

From the standpoint of the employer, you are looking at a card, whether it is fraudulent or genuine, it is virtually identical. You do not know who is illegal and who is legal. You are going to afford to each one of those individuals the same protections under the law that you as an employer are obligated to provide. You cannot make a distinction between legal or illegal. You cannot knowingly infringe upon somebody's rights or exploit them, knowing that one person is not legally documented and the other one is. From the standpoint of being a legal employer, everyone must be treated the same. From the standpoint of worker protection, wages, insurance, there are no glowing signs on their foreheads that say "I am legal", "I am illegal." They all have, from what appears to us as non-professional document experts, the same criteria for working. Actually, we know in our heart of hearts that those great-looking fraudulent documents are provided for us and only for us as employers to pro-

tect us from the $10,000 fine that we are subject to if we knowingly employ an undocumented worker.

So there is no really clear way to distinguish one subset from another. We have to treat them equally.

Senator ABRAHAM. Well, I appreciate this panel's, in several cases repeat appearances, but all of your appearances here today. We do not always envision these hearings producing a consensus. Today has not produced consensus. It has maybe opened a few more opportunities for dialogue in the deliberations on this legislation.

I would only say that I am hopeful that we can address this issue this year. I hope that the various sides can do more deliberating and try to make some progress.

At the same time, I would just say that from the perspective of our Michigan agriculture community, it is an ever more significant problem, and I think that we do have regional differences here that should not go overlooked in these panels. One of the reasons that I asked Mr. Wunsch to be here again was because we don't have quite the same labor situation that you might have in Florida or Oregon or certainly in California. But I hope that we can try to address it together, and we will even consider additional hearings in the future if that is of any further benefit, although hopefully now we ventilated a lot of these issues enough, and can move forward.

I will just leave the record open for the other Subcommittee members who are not here if they wish to include statements or to submit questions to you within the next day or so. And as I mentioned, all of you who had longer statements, that we will include those in their entirety in the record.

We thank you all for being here. Thank you very much. The hearing is adjourned.

[Whereupon, at 4:07 p.m. the subcommittee was adjourned.]

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