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HEARING TO REVIEW THE LABOR NEEDS OF AMERICAN AGRICULTURE

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

THURSDAY, OCTOBER 4, 2007

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HEARING TO REVIEW THE LABOR NEEDS OF AMERICAN AGRICULTURE

THURSDAY, OCTOBER 4, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 11:02 a.m., in Room 1300 of the Longworth House Office Building, Hon. Collin C. Peterson [Chairman of the Committee] presiding.

Members present: Representatives Peterson, Holden, McIntyre, Etheridge, Boswell, Baca, Cardoza, Scott, Herseth Sandlin, Cuellar, Costa, Salazar, Ellsworth, Boyda, Pomeroy, Kagen, Mahoney, Donnelly, Goodlatte, Lucas, Moran, King, Musgrave, Neugebauer, Foxx, Fortenberry, Conaway, Walberg, and Smith.

Staff present: Alejandra Gonzalez-Arias, Tony Jackson, Tyler Jameson, Keith Jones, Rob Larew, John Riley, Sharon Rusnak, Lisa Shelton, April Slayton, Kristin Sosanie, Patricia Barr, Alise Kowalski, Stephanie Myers, and Jamie Weyer.

OPENING STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

The CHAIRMAN. The Committee will come to order. I want to start by welcoming everyone to this hearing of the House Agriculture Committee. As we have traveled across the country, we have experienced firsthand the great diversity of agriculture in this country. While some issues change depending on the region, in every part of the country we have traveled, the topic of labor always come up, and it is usually followed by the word "crisis." This is a major problem for producers, and sooner or later, we must find a way to address it.

I want to thank Congressman Mahoney for his leadership in requesting that we hold this hearing on this topic, and I know that this is an important issue for the citrus growers and other producers in his district that have experienced this labor crisis firsthand.

Although the Judiciary Committee has an important role in this matter, I think that it is important for this Committee to review the significant impact that the situation has on the agriculture industry. For better or for worse, agriculture has been on the front line of this issue and has focused attention on the serious consequence of labor shortage this country continues to experience.

I believe that before we can find a meaningful solution, Congress must understand the scope and the depth of the problem across many industries, agriculture included. So this hearing today will

focus on improving our understanding of the labor shortage and its impact on agriculture. This is not a hearing to review specific legislation or proposals. We are here to document the problem so that we can move forward as a Committee to work with other committees that have jurisdiction on these issues to be sure that the needs of agriculture are addressed in whatever that final solution to this serious problem will be.

I again want to thank the witnesses who have joined us today to provide an honest and complete picture of the labor situation in American agriculture. I recognize that these are controversial issues that are not easy to address, and I appreciate the information that you will be providing to the Committee today. So again, I thank the witnesses for being here, and I am pleased to recognize my good friend, the Ranking Member from Virginia, Mr. Goodlatte.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

I want to start by welcoming everyone to this hearing of the House Agriculture Committee.

I've traveled across the country and have experienced first hand the great diversity of agriculture in this country. While some issues change, depending on the region, in every part of the country where I've traveled, the topic of labor always comes up, and it is usually followed by the word "crisis." This is a major problem for producers, and sooner or later, we must find a way to address it.

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I believe that before we can find a meaningful solution, Congress must understand the scope and depth of the problem across many industries, agriculture included. So, this hearing today will focus on improving our understanding of the labor shortage and its impact on agriculture. This is not a hearing to review specific legislation or proposals—we are here to document the problem so that we can move forward as a Committee to work with the other Committees with jurisdiction on these issues to be sure that the needs of agriculture are addressed in whatever the final solution to this serious problem will be.

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OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM VIRGINIA

Mr. GOODLATTE. Well, thank you, Mr. Chairman, and thank you for holding this hearing on this very important issue. Throughout the past 2 years as this Committee traveled the country and heard from farmers all over the nation regarding the farm bill we are working on right now, one of the common concerns shared by many farmers was the availability of reliable farm labor.

What I have seen and heard leads me and many of my colleagues to conclude that the H–2A Temporary Agricultural Visa process is not working. I have talked face-to-face with producers who have had to deal with participating in a costly, time-consuming, and

flawed program. Employers have to comply with a lengthy labor certification process that is slow, bureaucratic, and frustrating.

In addition, they are forced to pay an artificially inflated wage rate. Many producers simply cannot afford the time and cost of complying with the H–2A Program. However, in order to find and retain the legal workers these employers depend on for the viability of their operations, they have no alternatives.

In addition, as a long-time Member of the Judiciary Committee, I am aware of the illegal immigration crisis our country currently faces. It is estimated that there are 11 million illegal aliens currently living in the United Stated with over one million working in agriculture. Instead of encouraging more illegal immigration, successful guest worker reform should deter illegal immigration and help secure our borders.

It is possible to simultaneously streamline the guest worker program, reduce illegal immigration, and protect our borders. That is why, as the Ranking Member of the House Agriculture Committee, and a Member of the Judiciary Committee, I introduced H.R. 1792, the Temporary Agricultural Labor Reform Act, a bipartisan bill that will reform the H–2A Guest Worker Program and create a more streamlined and fair process for everyone involved in the agriculture industry.

I do not believe in rewarding those who have broken our nation's immigration laws by granting them blanket amnesty. And H.R. 1792 would do no such thing. Instead my bill would encourage the large population of illegal farm workers to come out of hiding and participate legally in the guest worker program.

Potential workers would be required to return to their home countries and apply for the program legally from there. This would provide a legal temporary workforce that employers can call on when insufficient American labor cannot be found and help ensure that those temporary workers entering the country are not threats to our national security.

We also need to address the troublesome wage issue. Employers are currently required to pay an inflated wage called the Adverse Effect Wage Rate, or AEWR. The AEWR was originally designed to protect similarly situated domestic workers from being adversely affected by guest workers coming into the country on a seasonal basis and being paid lower wages.

However, the shortage of domestic workers in the farm workforce forces employers to hire foreign workers and thus is also forcing them to pay artificially inflated wages. My bill abolishes this unfair wage rate and creates a prevailing wage standard under which all workers are paid the same wage as workers doing similar work in that region.

The facts are simple. The agriculture industry needs reliable farm labor. Workers need access to stable, legal, temporary employment. It is in our nation's interest to create a sensible way for workers to come in on a temporary basis, fill empty jobs, and go back to their home countries.

At this time, I would like to thank a member of our second panel, Mr. Keith Atkinson, for participating today. Mr. Atkinson is a tobacco grower from Virginia, and I appreciate the fact that he has

taken time out from a busy harvest period on his farm to be here today to represent Virginia's agriculture industry.

Mr. Chairman, I look forward to hearing from our witnesses today and appreciate your efforts to bring this important issue before the Committee for review.

The CHAIRMAN. I thank the gentleman for his statement, and all Members will be allowed to put in a statement for the record. I, however, told Mr. Mahoney that because of his leadership and his interest, I want to tell the folks in Florida that you have somebody who is really focused on this and working hard. So I am going to allow Mr. Mahoney to make an opening statement, and I guess if other Members feel the need, we can deal with that as we go here. But Mr. Mahoney, we appreciate your leadership, and it was because of him bugging me that we got this hearing going. So, we are pleased to recognize you for a statement.

OPENING STATEMENT OF HON. TIM MAHONEY, A REPRESENTATIVE IN CONGRESS FROM FLORIDA

Mr. MAHONEY. Thank you, Mr. Chairman. There has been a great debate in this country concerning the fact that middle and working class families are struggling. Average family income has declined while taxes, gasoline, homeowners and health insurance costs have skyrocketed. There has also been a great debate over the estimated 12 million illegal workers who are in this country and the urgent need to secure our borders.

I am thankful to Chairman Peterson and Ranking Member Goodlatte for holding this important hearing today. It is critical that, as we debate what Washington needs to do to help American families prosper, we hear from the American farmer, rancher, and grower. We need to give voice to American agriculture's needs for labor, as there is much at stake for our nation, should we not understand the reality of rural America.

We must not allow partisan politics, that is more interested in political power than in the safety and security of the American people, to foster unwise legislation that prevents our crops from getting picked, thereby creating an economic and national security crisis.

We have seen that a safe and secure food supply is vital to protecting America in the war on terror. For too long, this nation has taken its ranchers, farmers, and growers for granted, entering into reckless international trade agreements that give preference to foreign agriculture. For too long, we have ignored the threats of pest and disease that threaten our food supply.

Now, the President, after he has failed to lead his party and this nation in developing a comprehensive immigration policy that secures our borders; enforces our laws; ensures that those whose labor we rely on that are here illegally pay their fair share; he wants to precipitate a crisis with a change in policy that could jeopardize our ability to harvest our crops, thereby increasing the cost of food, ruining the livelihoods of those who feed us, and making America less secure by becoming more dependent on foreign producers.

I am proud to represent a district in the great State of Florida, which is a powerhouse of American agriculture. Florida produces

nearly 80 percent of the orange juice consumed in the United States. Our agriculture industry creates 648,000 jobs and contributes $97 billion to our economy annually. We are proud to be able to put dinner on the table for millions of Americans and be a reliable source of good, safe, and affordable food.

Without enough workers, the crops will rot in our fields, and the United States will be forced to import potentially unsafe food from other countries. America could become a net importer of food, just like we are with oil. This is a dangerous prospect. It would put our farmers and the American people at risk. It is time to put rhetoric aside and let the American people understand the problem facing American farmers.

Let me be clear. I am not suggesting that illegal aliens should be granted amnesty. We are here today to get a firsthand assessment of the labor needs of our agriculture industry. Before we talk about solutions, we need to understand the problem. Our farmers are facing a growing threat, not just from labor shortages, but also from piecemeal governmental policies more interested in scoring political points than addressing the problem.

This hearing today came about in part due to the Social Security Administration and Department of Homeland Security's decision to change their policy, and issue and enforce No-Match letters to employers. This plan relies on inaccurate information contained in Social Security databases that could potentially jeopardize the jobs of American citizens.

It is unfair to punish our farmers in a political effort to give the perception of getting tough on immigration without actually doing so. We need policies that do get tough on immigration by securing our borders, finding out who is here illegally, and making them pay their fair share, while punishing those who knowingly hire cheap, illegal labor. We need to develop solutions that work for our farmers instead of turning a blind eye on the broken system and forcing them to have to choose between feeding their families and breaking the law.

I hope we all listen carefully today and understand it is time to stop playing politics and start looking for real practical solutions. This room and the Members of this Committee are committed to the American farmer. This is one of the very few places where partisan politics gets put away, and Members representing farmers, ranchers, and growers from around this great country come together to fight for agriculture.

I want to thank the witnesses for coming forward and giving voice to this problem, and I look forward to working with my fellow Members on solutions that make America safe and all Americans prosper. Thank you, Mr. Chairman, I yield back my time.

The CHAIRMAN. Thank you, Mr. Mahoney, and thank you for your leadership and your statement. Any other Members feel the need to make a statement? Otherwise, your statements will be made part of the record. You will be brief, Mr. King.

OPENING STATEMENT OF HON. STEVE KING, A REPRESENTATIVE IN CONGRESS FROM IOWA

Mr. KING. I thank you, Mr. Chairman, and I didn't intend to offer a statement. I just think that it is appropriate for me to just

say a few words. And I would just ask that we keep this discussion within the context of not the "piecemeal," as the gentleman said, but the broader perspective here that we have with the immigration policy across the whole United States and all the industries that we have. We will recognize that industries compete against industries for labor; and we all want to uphold the rule of law, and most of us are opposed to amnesty.

If we can meet some of those standards, talk about the impact of agriculture, maybe talk about how we could improve some recruitment lines coming from the unemployed, unskilled areas of the country over to the places where we need the labor, it would be appropriate for us to try to raise the overall average individual productivity of all of our workers in America. And within that context, I am interested in this testimony, and I thank the Chairman for yielding to me.

The CHAIRMAN. I thank the gentleman for that statement. All other Members, your full statements will be made part of the record.

[The prepared statements of Messers. Baca, Cuellar, Lampson, Graves, Kuhl, Smith, and Walberg follow:]

PREPARED STATEMENT OF HON. JOE BACA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

I want to thank Chairman Peterson and Ranking Member Goodlatte for holding this important hearing today.

I also want to thank each of our many witnesses for taking the time out of their schedules to come here today.

I hope that you will be able to help us in Congress better understand the consequences of the current labor shortage in agriculture.

I also look forward to hearing your views on what the Federal Government must do to help solve this problem.

As Chairman of the Nutrition Subcommittee, Chairman of the Congressional Hispanic Caucus AND as a Member from California, farm labor is an issue I have worked on for many years.

It's no secret that I am a firm believer in comprehensive immigration reform that reflects American values such as family, compassion, equal opportunity and security.

The current system is broken. People continue to live in fear, and America continues to face a huge economic and humanitarian crisis.

Yet Congress has STILL failed to pass this urgently needed reform, at the expense of American families.

And nowhere has this crisis been more apparent than in agriculture.

Make no mistake—a labor shortage in agriculture does exist.

One farmer from California said to me, "I am at a point where I am planting a seed in the ground and not knowing if I will be able to harvest it."

This problem not only affects our farmers, but our families as well. In the farm bill the Committee passed this summer, we invested significant resources into nutrition programs and fresh fruits and vegetables.

But how much good can these programs do when California lost 30% of its pear crop last year because there weren't enough workers to pick them?

All of this is leading to higher food prices for working families and increased dependence on foreign imports, potentially putting Americans in danger.

Just this past summer the Agriculture Committee held hearings to address contamination in imported food products from China.

This is unfortunate, because unlike many other issues we face, this is a problem we CAN solve.

Our farmers NEED this workforce and we already HAVE people who want to fill these jobs. We simply need to create a fair process that will provide security for both employers and employees.

Failure to address this situation will hurt all of us—whether it's the farmer, the worker or the consumer—because farm labor quite literally puts food on our tables.

I look forward to working within and without the Committee, using all my abilities and whatever resources available to solve this crisis.

Again, I want to thank Chairman Peterson and Ranking Member Goodlatte for addressing this important issue.

I would also like to thank our witnesses for coming today and I look forward to hearing from all of you.

Thank you.

PREPARED STATEMENT OF HON. HENRY CUELLAR, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Mr. Chairman, thank you for holding this hearing. And I thank the witnesses for taking the time to come and testify here today.

I want to extend a special welcome to J Allen Carnes, a south Texas vegetable producer who is here to testify today. J Allen is Vice President of Carnes Farms, Inc., President of the Texas Vegetable Association, Director of the Texas Produce Association, and Director of the South Texas Onion Committee.

The labor needs of U.S. agriculture must be addressed by Congress. Immigration policy for agriculture needs to be brought up to date taking into account issues of homeland security, food safety, and food availability.

Labor shortages are one of the most pressing issues facing U.S. agriculture today. According to the Congressional Research Service, more than half the seasonal workers working in agriculture are not authorized to hold jobs in the United States.

South Texas and other border areas have unique problems and opportunities with regard to the availability of agriculture workers from Mexico. In addition, a long history of cross-border labor and current homeland security border issues in general give south Texas a unique perspective on this issue.

Some sectors of agriculture are dependent on non-American labor sources to a greater extent than others.

In my district horticultural crops have seasonal labor needs, generally peaking in June or July when fruits and vegetables are harvested.

Ranchers also face seasonal demand for labor during periods when cattle are moved and shipped. Recent infestations of cattle fever ticks have dramatically increased labor needs for ranchers, even during what were formerly slow periods.

It is difficult to meet seasonal demands with locally available labor. Local labor gravitates towards full-time, year-round employment. To facilitate the use of temporary, legal labor from other countries, the procedures for H–2A and other programs need to be streamlined and simplified.

We all have heard stories about growers who have cut back acreage due to a lack of labor.

We have recently heard stories of producers taking production to the worker by renting land in Mexico and shipping produce to the U.S.

Within the context of national security, guaranteeing employment opportunities for American citizens, and providing a safe, dependable, and efficient source of food; new policies must be developed to allow agriculture to continue to serve the American people.

The H–2A program is complicated, unresponsive, expensive, and litigation-plagued. It supplies only 2 percent of the agriculture labor force. It cannot meet the needs of American growers and producers unless it is substantially overhauled.

I look forward to the testimony from today's panels.

PREPARED STATEMENT OF HON. NICK LAMPSON, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Chairman Peterson and fellow colleagues, I am glad we are here today to discuss the labor needs of American agriculture, and I thank all of our panelists for coming here today to discuss this critical issue with us. While this Congress has struggled the past few years to address a broken immigration system and the need to secure our borders, the needs of small business owners and farmers have been overlooked. While we all agree that securing our borders, enforcing our laws, and reforming immigration are immediate necessities, we must also realize what our inability to put aside partisan rhetoric in order to solve this problem is hurting our farmers, small business owners, their American employees, and the seasonal workers who want to come to this country to earn an honest living. And eventually, in the next few weeks or months, ordinary American consumers will start to feel the affects of our inaction.

I am greatly dismayed by the state of affairs and the paralyzing affects our partisanship and lack of action are having on our nation's agricultural producers. This issue was brought directly to my attention 2 days ago when an oyster farmer from my district called me frantically. Because Congress failed to extend the waiver allowing returning H–2B visa workers to be excluded from the cap, he will not be able to get the 300 temporary employees he depends on to keep his business open this season. He filled out all of the paperwork, got approval from the Department of Labor, and waited his turn to file his paperwork with USCIS. But on Monday he got the news that despite following the law and going through the proper procedures, he would be denied his temporary workers. Seasonal businesses throughout the country encountered the same problem this week when they were notified that as of September 27th the cap for H–2B visas had been reached for the first half of FY 2008. Unfortunately, the oyster season begins and ends within the first half the fiscal year and my constituent most likely will have to shut down his operation for the first time. Not only will this affect him and those temporary workers, but many other constituents of mine that he employs, his distributors, and the restaurants and consumers that buy oysters.

The economy of southeast Texas not only depends on the fish and seafood harvested from the Gulf, but the rice, cotton, and sorghum harvested in our fields. Although farmers use a specific agriculture visa—H–2A—this affects all businesses that depend on seasonal workers to keep our economy going. These seasonal workers also depend on this income—which dwarves what they earn in their home countries—to get their families through the year. So not only do they help our economy, but their own by bringing home American dollars.

For the sake of our farmers, their employees, consumers, and all of our constituents, we must put aside partisanship and rhetoric to reform our broken system. Otherwise we risk putting people out of business, losing jobs, and forcing higher prices for our food.

PREPARED STATEMENT OF HON. SAM GRAVES, A REPRESENTATIVE IN CONGRESS FROM MISSOURI

Thank you, Chairman Peterson and Ranking Member Goodlatte for holding this important hearing. I look forward to hearing from today's distinguished witnesses.

Agriculture is the economic engine of Missouri; it is the state's top industry and it depends on labor. I believe we must work to fulfill agriculture's labor needs, while always remaining vigilant against the employment of illegal aliens.

The employment of illegal aliens is a threat to the security of our food supply. Illegal aliens have already broken the laws of the United States at least once. We cannot reward illegal aliens for breaking our laws, but this goes even beyond that. We absolutely need to be able to verify who is handling our food supply. It is a national security issue without question. If we cannot do this, the potential for abuse and damage is tremendous.

I strongly support efforts to give employers more tools to screen potential employees. Employers should not have to be looking over their shoulder for a discrimination lawsuit when they are just being diligent in pursuing and verifying the information of their potential employees. It is their duty and obligation to ask the tough questions, and they should not be penalized for ensuring that job applications are legal.

Employers must have access to a system whereby they can immediately verify a job applicant's legal status and whether or not a Social Security Number is already in use by somebody else through the Department of Homeland Security and Social Security Administration. We must also enforce strict standards for what documents can be used and accepted for employment purposes.

I have heard from many constituents that there is a shortage of labor in many agricultural sectors. And I have also heard from these very same constituents their abhorrence to employ illegal aliens. They have rightly pointed out that fewer illegal aliens would be applying for jobs in the United States if we successfully secured the border, so accomplishing that is certainly an important part of the equation.

My only question to our witnesses today is what should we be doing in Congress to make sure workers in the agricultural sector are verifiable, eligible, and legal?

Thanks again for holding this timely hearing, and I look forward to working with the Committee, the Executive Branch, and today's witnesses to develop a program to do just that.

PREPARED STATEMENT OF HON. JOHN R. "RANDY" KUHL, JR., A REPRESENTATIVE IN CONGRESS FROM NEW YORK

Mr. Chairman—I would like to offer an opening statement. Thank you Mr. Chairman.

I rise today to address a serious issue that has steadily escalated in our Congressional districts over the last few months: the debate over immigration reform. While I recognize the importance of border security, and am a supporter of border security bills, we cannot sacrifice the needs of our farm community. At this time, it is imperative that we establish reasonable and effective farm worker programs in order to sustain our agricultural vitality.

In an agriculture and tourism rich district, such as the 29th Congressional District in New York, many businesses depend on temporary migrant workers. There are over: 6,000 farms in my district alone, covering over 1.2 million acres and employing thousands of workers. New York State ranks third in the nation in dairy production, wine, and juice grape production. New York State also produces a variety of specialty crops, livestock, fruits and vegetables, as well as traditional row crops including hay, soybeans, corn, oats and wheat. Without workers, our farm community will close its doors, which we cannot allow to happen.

The Farm Credit Associations of New York, the largest lenders to New York State agriculture, recently released a statement describing how the unprecedented and aggressive enforcement of U.S. immigration laws is hurting farmers in New York State. In the statement, the lenders said, "Over the past months, the Immigration and Customs Enforcement agency raids attempting to identify illegal immigrants have been conducted on a number of New York farms. In some cases, farmers have been unable to harvest or market crops as a result of these disruptions." The lenders further state, "If this continues, we conservatively estimate that New York State will lose in excess of 900 farms, $195 million in value of agricultural production and over 200,000 acres in production in agriculture over the next 24 months."

I have spoken to many farmers in my district over the past months on immigration, and rest assured, I know the critical importance of this issue to agriculture industry. I have worked for my entire career in public life to do all that I can to support the agricultural industry in New York, and I will absolutely support legislation that allows an available agricultural workforce while ensuring that our national security is also improved through appropriate controls. We must put everything on the table and move forward in a manner that does not harm the strength of the farm community. It is time that we, as Members of Congress, work together to find a real solution to the problem of illegal immigration.

As a strong proponent of meaningful border security measures, I believe a non-amnesty agricultural guest worker program should be discussed, debated, and enacted. Such a proposal should reasonably address immigration reform in a way that protects our citizens while acknowledging the important economic contribution of these temporary workers.

I look forward to working with the Committee as this process continues, and believe that we can establish an available agricultural workforce without compromising our national security.

I would also like to submit into the Committee record a document prepared by the New York Farm Bureau entitled "Farm Labor Crisis: A New York State Perspective,"* which demonstrates the importance of immigration reform in New York.

Thank you, Mr. Chairman; I yield back the balance of my time.

PREPARED STATEMENT OF HON. ADRIAN SMITH, A REPRESENTATIVE IN CONGRESS FROM NEBRASKA

Good morning. I would like to thank Chairman Peterson for holding today's hearing on an issue of great concern in my district.

This hearing provides us the opportunity to address some of the challenges agriculture producers face in meeting their workforce needs.

Our goal in this Committee today is to address employers' concerns in obtaining and maintaining a legal workforce. Agriculture producers, as with other employers, must have a stable and reliable workforce in order to produce safe products and be competitive in global markets. It is both untenable and irresponsible for Congress to abdicate its duties and instead make employers and business owners the sole source of enforcement of our immigration laws.

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*The information referred to is at the end of the hearing on p. 119.

I have long called for a comprehensive immigration plan which targets this problem at its source—the border—rather than in our fields and factories.

Therefore, as this Congress addresses the issues of immigration reform and workforce needs, we must work to enforce our borders and address the H–2A visa program to remove future uncertainties for employers.

Mr. Chairman, I thank you for your leadership in holding this hearing and I look forward to hearing from the witnesses.

PREPARED STATEMENT OF HON. TIM WALBERG, A REPRESENTATIVE IN CONGRESS FROM MICHIGAN

While it looks like the once red-hot immigration debate may have cooled in Congress, immigration issues continue to affect most Americans, especially in the agriculture community, every day.

This is especially true for the farmers of south-central Michigan. Earlier this year I conducted a seven county, 2 day listening tour with members of the agriculture community in south-central Michigan, and I heard from multiple folks about how the immigration issue affects them each day.

As we consider the issue of immigration and how it relates to agriculture policy, it is important to first look to our past.

The United States is a nation of immigrants and was founded on ideals that honor this tradition. For generations, freedom-loving people from around the world have come to America to make a better life for themselves and their families.

Immigrants wanting to join our citizenry should be encouraged and assisted in doing so the same way millions of immigrants have legally done so for generations.

Though the tenacity of individuals who immigrate to our nation is admirable, the government has a duty to secure our borders and ensure that those coming to our country do so legally. The U.S. Immigration and Customs Enforcement agency estimates that around 500,000 illegal immigrants enter the United States every year.

Illegal immigration poses an unacceptable threat to our national security and must not be allowed to continue. It is my belief that any and all attempts to enact immigration reform must not include amnesty for illegal immigrants.

However, merely opposing amnesty for illegal immigrants is not sufficient, especially if we want many of our local farms to survive. Throughout Capitol Hill debates on immigration and the farm bill this year, I have consistently stated that our country needs a work permit program that meets the evolving needs of today's agriculture industry.

One of biggest problems in today's immigration system is bureaucratic red-tape for agriculture employees. The current H–2A program does not assist the average apple, dairy or corn farmer.

The H–2A program is also not fair in comparison to the H–2B program. Although these two programs are very similar, the H–2A program requires more funding and paperwork, adversely impacting employers who rely upon this program.

Agriculture has traditionally been in the forefront of this debate, but we must not forget that landscaping, construction, tourism and other industries employing temporary workers have also been impacted by the bureaucratic red-tape plaguing these programs.

While we all agree there is a major need for immigration reform in the United States, this reform needs to ensure the security and economy of our nation is protected.

If we can deny amnesty to illegal immigrants and eliminate the massive amount of inefficient bureaucracy in today's immigration system, we can successfully establish a work permit program that meets the evolving needs of today's agriculture industry.

The CHAIRMAN. We are pleased to welcome the first panel, Dr. James Holt from Washington, D.C.; Mr. Bob Stallman, President of the American Farm Bureau Federation; Mr. Lee Wicker, Deputy Director, North Carolina Growers Association; Mr. Scott Herring, Executive Vice President and CEO of Farm Credit of Western New York; Mr. Bruce Goldstein, Executive Director, Farmworker Justice; and Mr. Mike Brown, Senior Vice President for Legislative Affairs, AMI.

We have votes coming up. Five of them are 5 minute votes, so I guess we are talking about a little over a half hour or 45 minutes.

So I would recognize the first witness, and then we will probably have to take a break, and we will resume as soon as the votes are completed. So, Mr. Holt, welcome to the Committee.

STATEMENT OF JAMES S. HOLT, PH.D., PRESIDENT AND PRINCIPAL, JAMES S. HOLT & CO., LLC; AGRICULTURAL LABOR ECONOMIST, WASHINGTON, D.C.

Dr. HOLT. Thank you, Mr. Chairman, for the invitation to provide testimony for this hearing on the labor needs of U.S. agriculture, and, yes, I am going to follow the word "labor" with "crisis."

The U.S. agricultural industry is in the midst of a labor crisis, and let me cite just a few statistics to illustrate it. More than 55,000 U.S. farmers hire labor and pay an estimated payroll of $21 billion. The cost of hired labor accounts for $1 of every $8 of farm production expenses on average and significantly more in the labor intensive fruit, vegetable, and horticultural sectors.

The more than three million agricultural jobs each year are filled by an estimated 2.5 million hired farm workers. Seventy-eight percent of the U.S. seasonal agricultural workforce are foreign born. The U.S. Department of Labor documents that at least 53 percent of U.S. seasonal agricultural workers are not legally entitled to work in the United States. The actual percentage is much higher.

One of every six seasonal agricultural workers is new to the U.S. hired agricultural workforce each year, and an astonishing 99 percent of those workers report they are not legally entitled to work in the United States. Forty percent of the U.S. seasonal agricultural workforce are international migrants who reenter the country each year to perform agricultural work.

This system is no longer tenable. The reason for the U.S. agricultural labor crisis is that for more than 2 decades, economic growth and job creation in the U.S. have outpaced the expansion of the U.S. labor force through natural birth and legal immigration. There are now literally millions more jobs in our economy than there are American workers, natural born or legally admitted, to fill them.

Not surprisingly, the legal workers have gravitated to the more attractive, easier, more permanent, more skilled jobs close to their urban home and environment. Seasonal jobs, manual jobs, rural jobs have suffered. In no industry has the impact been greater than in agriculture, which is largely seasonal, manual, and rural.

The proportion of seasonal agricultural workers who are illegal has grown steadily for the past 2 decades, in spite of the fact that wage rates in agriculture have grown more rapidly than in non-agricultural wages. The average hourly wage for U.S. field and livestock workers in the United States is now $9.44 an hour.

No informed person seriously contends that wages, benefits, and working conditions in seasonal agricultural work can be raised sufficiently to attract workers away from their permanent, non-agricultural jobs, and the numbers needed to replace the illegal alien agricultural workforce and maintain the economic competitiveness of producers. U.S. growers are in economic competition with foreign growers in both U.S. domestic and global agricultural markets.

If there is upward pressure on U.S. producers' production costs from, for example, a shortage of labor, some domestic production

will become uncompetitive, and farmers will be forced out of business. This adjustment will continue until the competition for the remaining supply of labor has diminished to the point where there is no longer upward pressure on farm production costs.

Given the huge proportion of illegal workers in the current farm workforce, the downward adjustment in domestic agricultural production that would have to take place to clear the market of alien workers in agriculture is immense. Consumers will likely feel little impact from this adjustment because farm producers will quickly feel the void left by domestic producers.

However, domestic workers in the upstream and downstream jobs will be heavily impacted, as will farmers. There are about 3.1 such upstream and downstream non-agricultural jobs that are dependent on U.S. agricultural production. And many of these will disappear.

Of even greater concern is that the U.S. will be substantially more dependent on foreign suppliers for our food and fiber. The only current program for legally employing foreign workers in the United States is the H–2A Temporary Agricultural Worker Program. Even though the H–2A Program has grown substantially in the past few years, it still accounts for a miniscule proportion of agricultural employment. Fewer than 2 percent of U.S. agricultural job opportunities and barely 1 percent of U.S. farmers are H–2A certified.

In short, we currently have two agricultural guest worker programs operating in this country. A legal guest worker program that fills a miniscule 2 percent of agricultural jobs and an illegal guest worker program that fills at least half and likely more than ¾ of U.S. agricultural jobs.

The nation's agricultural labor policy is in desperate need of reform. Reforms are needed in both the administration of the H–2A Program, the H–2A regulations, and the nation's basic agricultural immigration statutes. Congress has had before it for more than 6 years the Agricultural Job Opportunities and Benefits Act. AgJOBS represents an historic milestone in that it has brought together agricultural organizations, farm worker advocacy organizations, farm worker unions, ethnic groups, religious organizations that have historically battled over agricultural labor and guest worker policies.

AgJOBS is a serious, well thought-out, well balanced response to the nation's agricultural labor crisis and has the support of the overwhelming majority of the agricultural organizations nationwide.

The Administration also has before it an agenda of proposals for administrative and procedural streamlining of the H–2A Program offered in response to the promulgation of the Society Security mismatch regulations. These administrative reforms are urgently needed. They are not a substitute for legislative action. It is clear that the *status quo* , a U.S. agricultural industry almost completely dependent on unauthorized workers who have entered the U.S. illegally is untenable.

It is equally clear the ceding U.S. production of food and fiber to foreign producers is untenable. Congress and the Administration have ignored this problem for far too long. The time to act is now. Thank you, Mr. Chairman.

[The prepared statement of Dr. Holt follows:]

PREPARED STATEMENT OF JAMES S. HOLT, PH.D., PRESIDENT AND PRINCIPAL, JAMES S. HOLT & CO., LLC; AGRICULTURAL LABOR ECONOMIST, WASHINGTON, D.C.

Mr. Chairman, thank you for the invitation to provide testimony for this hearing.

I am an agricultural labor economist. I was a Professor of Agricultural Economics and Farm Management at The Pennsylvania State University for 16 years. For the past 30 years I have conducted research, consulted and lectured on agricultural labor and human resource management, immigration and employment issues, and the H–2A temporary agricultural worker program for government agencies, universities and private organizations. I have been a consultant to many grower associations, individual farming operations and other employers throughout the United States using the H–2A program, and to national agricultural organizations, including the National Council of Agricultural Employers (NCAE). However, I am not representing any specific organization here today.

I do not speak lightly, nor engage in hyperbole, when I testify today that the U.S. agricultural industry is in the midst of a labor crises, the resolution of which will determine whether U.S. producers of fruits, vegetables, and horticultural and other specialty commodities are more than marginal participants in U.S. and global markets for the commodities they produce in future decades. The current agricultural labor crisis will also have a profound impact on the U.S. dairy and sheep industries, U.S. grain producers, the agricultural processing sector, and many other agricultural operations. It will also largely determine the future of the domestic upstream and downstream businesses that service these sectors.

The labor intensive fruit, vegetable and horticultural sectors are already overwhelmingly dependent on foreign workers, the majority of whom are working in the U.S. illegally. The U.S. dairy, meat packing, and food processing sectors are significantly dependent on a foreign, and preponderantly illegal, workforce and becoming more so every year. U.S. custom combine operators who harvest the great plains grain crops, and sheep producers in the western states, are heavily dependent on foreign workers obtained through the nearly dysfunctional H–2A program. The labor problems of U.S. agriculture have been ignored and swept under the rug for decades, only to become more problematical with each passing year. At a minimum, several hundred thousand new farm workers have illegally entered the United States to work on U.S. farms, and fill the jobs vacated several hundred thousand illegally present farm workers who have moved into the non-farm workforce since the Members of this Committee were last elected or re-elected. The public is now insisting, and our national security demands, that our government and the Congress squarely face and resolve this problem. How you resolve it will determine the future of important sectors of U.S. agriculture.

Hired Farm Employment and the U.S. Hired Farm Work Force

Hired labor is an essential input in U.S. agriculture. More than 550,000 U.S. farmers hire workers to fill more than three million agricultural jobs each year. The farms that hire labor are the backbone of American agriculture, accounting for the overwhelming majority of U.S. agricultural production.

Farmers pay an annual payroll estimated at $21 billion. Expenses for hired and contract labor account, on average, for $1 of every $8 of farm production expenses, and up to $1 of every $3 or more of farm production expenses on farms in the labor intensive fruit, vegetable and horticultural sectors.

Because a high proportion of U.S. agricultural jobs are seasonal, the three million U.S. agricultural jobs each year are filled by a hired farm workforce of about 2.5 million persons. About 1.6 million of these are non-casual hired farm workers who perform more than 25 days of hired farm work a year. Approximately 1.2 million of the non-casual hired farm workforce are likely not authorized to work in the U.S.

The fact that the U.S. hired farm workforce is overwhelmingly illegal is not speculative, it is well documented. Ironically, agriculture is the one sector of the U.S. workforce for which the Federal Government actually produces official statistics on illegal alien employment. These come from the National Agricultural Worker Survey (NAWS), a survey program begun after the enactment of the Immigration Reform and Control Act of 1986, and conducted biannually by the U.S. Department of Labor Among other questions, the survey asks seasonal agricultural workers whether they are authorized to work in the United States. In the first survey, conducted in FY 1989, 7% of U.S. seasonal agricultural workers said they were unauthorized. By FY 1990–1991 the figure was 16%. By FY 1992–1993 it was 28%. By FY 1994–1995 it was 37%. In the most recently published NAWS survey, *53 percent of all seasonal agricultural workers admitted they were not authorized to work in the U.S.* Experi-

ence on the ground, based on work place audits and other evidence, suggests that closer to 75 percent of U.S. farm workers are not legally entitled to work in the U.S.

Even more significant for the future is that ⅙ of seasonal agricultural workers are "newcomers", working their first season in U.S. agriculture. An astonishing 99 percent of these newcomers self-identify that they are not authorized to work in the U.S. This means that for all practical purposes every new worker entering the U.S. hired crop workforce is illegal. The NAWS does not survey livestock workers, and the percentage of illegal workers and replacements may be somewhat lower than in the crop sector. However, it would be a huge mistake to assume that illegal workers are not a large and rapidly growing proportion of the hired workforce in the livestock sector as well. Dairying, in particular, is heavily dependent on foreign born, and likely preponderantly illegal, workers.

Social Security Administration No-Match statistics also document the high level of illegal alien employment in agriculture. Agriculture, which accounts for only 1.2 percent of U.S. employment, accounts for 17 percent of all Social Security no-matches, more than any other sector of the U.S. labor force.

Some commentators blame U.S. agriculture for not attracting and retaining a legal U.S. workforce. I believe that is misplaced blame. The decade of the 1990's was a period of unprecedented economic growth and job creation in the U.S. But it was also a decade when the rate of growth in the native-born U.S. workforce continued to slow, and the number of new labor force entrants from the native born population and legally admitted foreign workers was far below the rate of new job creation. At the beginning of the decade, 31% of the U.S. seasonal agricultural workforce was still U.S. born. By the end of the decade, only 19% was U.S. born. During the decade of the 1990's the real hourly wage rate in agriculture increased at a more rapid rate than for the non-agricultural workforce. But the lure of year round work, easier jobs and more pleasant working conditions in most non-agricultural employment was obviously enough to attract many U.S. workers out of agriculture, even into jobs in which the nominal hourly wage was lower than in agriculture. By the FY 1997–1998 NAWS survey, 81% of U.S. seasonal agricultural workers were foreign born and 77% were born in Mexico. One-third had immigrated to the U.S. within the last 2 years. More than ⅓ were under the age of 25, and ⅔ were under the age of 35.

The U.S. seasonal agricultural workforce is a very diverse workforce in many respects. One of the respects in which it is diverse is in its international migratory status. About 40% of U.S. seasonal agricultural workers are international migrants whose permanent residence is outside the United States and who come into the U.S. temporarily to perform agricultural work. This workforce is preponderantly young, single and illegal. The other 60% of the seasonal agricultural workforce are permanent residents of the U.S. This group includes most U.S. born farm workers, *but is also majority foreign born and majority illegal.* Over-all, only ½ of the U.S. seasonal agricultural workforce are married, and only ¼ have children with whom they reside in the U.S.

Agricultural migrancy *within the* U.S. is the exception rather than the rule. Almost ⅔ of U.S. seasonal agricultural workers hold only one farm job in the U.S. during the year, and more than 90% hold three or fewer jobs per year. Only 1% hold as many as six different agricultural jobs during the year. Only 17% are what are traditional "follow-the-crop" migrants, who hold two or more agricultural jobs during the year which are more than 75 miles apart and are more than 75 miles from their residence.

The Impact of Immigration Policy on Agriculture

Now let us relate this to immigration policy.

Economic growth in the United States (or any other country in the world) is determined by two factors, growth in the labor force—the number of persons who are engaged in producing goods and services—and growth in productivity—the quantity of goods and services each worker produces each hour and each day they work. The story of how the United States has become the economic engine of the world is largely the story of an expanding labor force coupled with phenomenal improvements in worker productivity. Although often overlooked or taken for granted in this story, the phenomenal growth in U.S. agricultural productivity has been a critical contributor to U.S. economic growth. It has enabled an ever larger proportion of the U.S. labor force to engage in the production of other goods and services rather than food and fiber, to the point where less than 2 percent of the U.S. labor force is now engaged in agriculture.

Immigration has also been an important historical factor in the nation's economic growth. It has enabled the expansion of the U.S. labor force far more rapidly than would have occurred through normal reproduction by the native born population. Imagine, for example, that we had stopped immigration in 1776 and relied only on

natural birth after that, or that we had closed our borders in 1812, or 1865, or 1910, or even 1950.

Immigration is even more important to sustaining U.S. economic growth today than it was in any of those past periods. That is because, like Japan and Western Europe before us, and increasingly even Mexico, China, India, and second world countries, the birth rate of native born Americans is declining. In some developed countries birth rates have declined to the point where they are not even replacing, much less expanding, the labor force. It is important that we understand that even in the U.S. we long ago passed the point where we were producing enough native born workers to fill all the new jobs being created in the U.S. economy. In fact, we long ago passed the point where we were producing enough native born workers AND legally admitting enough aliens, to fill all of the jobs we were creating in the U.S.

When I hear people say illegal aliens only take the jobs Americans won't do, I say that is a result, not a cause. *Illegal aliens take the jobs there aren't enough American workers to fill.* There are literally millions more JOBS in our economy than there are American workers to fill them, even if we include in the term "American worker" every person who is legally entitled to work in the United States, whether they were born here or not. Given this huge imbalance between jobs and workers, it is not surprising that American workers gravitate to the more attractive jobs, leaving the less attractive ones to be filled by illegal immigrants.

The reality is that the U.S. is dependent on illegal immigration for economic growth, and growing more so by the year. The rate of growth in the native born labor force continues to decline, and could become negative as it already has in some developed economies. The only way we can sustain our current level of economic activity, much less expand it, is through in-migration of alien workers. That is why Alan Greenspan was so concerned about immigration policy while he was Chairman of the Federal Reserve. Job creation is one of the most important engines of economic growth. But job creation can not occur if there are not workers to fill the jobs. The economic slow down after 9/11 provided a window on the importance of immigration to the national economy. One of the most important contributors to that slow down was a temporary reduction in both legal and illegal immigration, coupled with a small exodus of foreign workers already here, because some foreign workers were afraid to be in the United States.

Imagine, therefore, what the economic impact of really effective border control that stopped illegal immigration would be. And then imagine, if you dare, what the economic impact would be of removing from the workforce, through effective work place enforcement or otherwise, the illegal workers who are already here.

Some suggest that such a scenario would be a good thing. According to this view, agricultural employers should be left to "compete in the labor market just like other employers have to do." Under this scenario, there would be strict workplace enforcement and no guest workers. To secure legal workers and remain in business, agricultural employers would have to attract sufficient workers away from competing non-agricultural employers by raising wages and benefits. Those who were unwilling or unable to do so would have to go out of business or move their production outside the United States. Meanwhile, according to this scenario, the domestic workers remaining in farm work would enjoy higher wages and improved working conditions.

No informed person seriously contends that wages, benefits and working conditions in seasonal agricultural work can be raised sufficiently to attract workers away from their permanent nonagricultural jobs in the numbers needed to replace the illegal alien agricultural workforce and maintain the economic competitiveness of U.S. producers. With hired labor accounting, on average, for 12 percent of all farm production costs, a substantial increase in wage and/or benefit costs will have a substantial impact on growers' over-all production costs. U.S. growers are economically competitive with foreign producers at approximately current production costs. If U.S. producers' production costs are forced up by, for example, restricting the supply of labor, some U.S. production will become uncompetitive in the foreign and domestic markets in which U.S. and foreign producers compete. U.S. producers will be forced out of business until the competition for domestic farm workers has diminished to the point where the remaining U.S. producers' production costs are again at global equilibrium levels. *The end result of this process will be that domestic farm worker wages and working conditions (and the production costs of surviving producers) will be at approximately current levels, while the volume of domestic production will have declined sufficiently that there is no longer upward pressure on domestic farm worker wages.* Given the large proportion of illegal workers in the current farm labor market, the reduction in domestic production is likely to have to be very substantial to clear the labor force of illegal workers. Consumers will likely

feel little impact, because the market share abandoned by U.S. producers will be quickly filled by foreign production.

The domestic employment impacts of this adjustment will not be limited to alien farm workers and U.S. farmers. Since agricultural production is tied to the land, the labor intensive functions of the agricultural production process cannot be foreign-sourced without foreign-sourcing the entire production process. We cannot, for example, send the harvesting process or the thinning process overseas. Either the product is entirely grown, harvested, transported and in many cases initially processed in the United States, or *all* of these functions are done somewhere else, even though only one or two steps in the production process may be highly labor intensive. When the product is grown, harvested, transported and processed somewhere else, *all* the jobs associated with these functions are exported, not just the seasonal field jobs. These include the so-called "upstream" and "downstream" jobs that support, and are created by, the growing of agricultural products. U.S. Department of Agriculture studies indicate that there are about 3.1 such upstream and downstream jobs for every on-farm job. Most of these upstream and downstream jobs are "good" jobs, i.e. permanent, average or better paying jobs held by citizens and permanent residents. Thus, we would be exporting about three times as many jobs of U.S. citizens and permanent residents as we would farm jobs filled by aliens if we restrict access to alien agricultural workers.

The U.S. farm workers and workers in upstream and downstream jobs that would be displaced by the elimination of the alien farm labor supply would presumably be absorbed into the non-agricultural economy, which would be hungry for domestic workers to replace the foreign workers to whom they no longer had access. But the total volume of U.S. economic activity (and GDP) would have been reduced. And the U.S. would be substantially more dependent on foreign suppliers for food.

Background on the H–2A Temporary Agricultural Worker Program

The only current program for legally employing foreign agricultural workers in the United States is the H–2A temporary agricultural worker program. This program was enacted 55 years ago as a part of the Immigration and Nationality Act of 1952. From 1952 until 1986, there was no statutory distinction between temporary agricultural and non-agricultural workers—both entered under the "H–2" program. However, almost from the outset the Department of Labor promulgated separate regulations governing the requirements for H–2 agricultural and non-agricultural programs, and this distinction was recognized statutorily in the division of the H–2 admission category into H–2A and H–2B in the Immigration Reform and Control Act of 1986.

From 1970 through the late 1990's the number of H–2 and H–2A agricultural job opportunities certified fluctuated from about 15,000 to 25,000 annually. In the past decade usage has increased substantially, with 59,112 H–2A agricultural job opportunities certified in FY 2006. Many alien workers fill two or more H–2A certified job opportunities within the same season, so only about half as many individual H–2A aliens are admitted each year as the number of job opportunities which are H–2A certified.

Despite its recent dramatic growth, use of the H–2A program is miniscule in comparison with U.S. agricultural employment. Fewer than 2 percent of the three million U.S. agricultural job opportunities are H–2A certified, and only about 1 percent of the hired farm workforce are H–2A aliens.

The above statistics underscore that we currently have two agricultural guest worker programs operating in this country—a *legal* guest worker program that fills a miniscule 2 percent of U.S. agricultural jobs, and an *illegal* guest worker program that fills at least half, and likely more than ¾, of U.S. agricultural jobs. This situation exists as a result of a cascade of failures—failure of our border control system, failure of our system for interior enforcement, failure of our work authorization documentation procedures, failure of our immigration laws to address realistic labor force needs, and the Labor Department's antagonistic administration of the H–2A program.

Benefits and Problems of the H–2A Program

A legal, workable agricultural guest worker program benefits farmers, alien farm workers, domestic farm workers, and the nation.

It benefits farmers by providing assurance of an adequate supply of seasonal workers at known terms and conditions of employment. In an industry where more than 80 percent of jobs are seasonal, and a workforce must be reassembled at the beginning of every season, it provides assurance that when farmers and their families invest millions in farm production assets, there will be a labor force to perform the work. It also promotes continuity, stability and productivity in agriculture.

While there are no official statistics, anecdotal evidence is that ¾ or more of the H–2A workforce in any given year are returning workers, and H–2A employers almost universally find that this stable, experienced workforce is more productive, and employers can get by with fewer workers than when they are recruiting a new, inexperienced workforce every year.

A workable guest worker program benefits alien workers by providing a legal, regulated way for aliens to work in the United States in jobs where their services are needed. It may surprise Members of the Committee to learn that the pressure on employers to participate in the H–2A program often comes from their illegal workers, who pay exorbitant costs to be smuggled into the U.S., often under life threatening conditions, and face fear and abuse while they are here. As H–2A guest workers, they enter legally and work with rights and guarantees. Not withstanding the allegations of opponents of the program, H–2A aliens value their jobs, are careful to comply with program requirements, and return as legal workers year after year. In the words of one former illegal alien whose employer got into the H–2A program, "I thank God every day for the H–2A program".

The program also benefits domestic farm workers. It assures open recruitment for and access to H–2A certified job opportunities for local and non-local domestic workers who want such work. It assures that U.S. workers have preference in these jobs, even if they are already filled by aliens. It provides labor standards and employment guarantees that are above the norms for most agricultural jobs and for many rural non-agricultural jobs. Equally important, the H–2A program assures the viability of the jobs of U.S. workers in the upstream and downstream jobs that are dependent on agricultural production in the U.S.

An adequate supply of legal labor also benefits the nation. Food and fiber are basic commodities. It is not in our national interest to be significantly dependent on foreign sources for such commodities. However, it is also clearly not in our national interest to have such a basic industry as food and fiber production almost entirely dependent on a workforce which has entered the U.S. and is living and working here illegally and without control. In a mature economy like that of the U.S., where the native born workforce is growing at a substantially lower rate than job growth, our only policy options are a workable agricultural guest worker program or dependence on foreign producers for our food and fiber.

That is what works about the H–2A program. What often doesn't work are the cumbersome, bureaucratic procedures of the program. Farmers seeking to use the program must first apply for a labor certification from the U.S. Department of Labor and attempt to recruit qualified U.S. workers. If the employer's application meets the requirements of the Department of Labor and sufficient U.S. workers cannot be found, a labor certification is issued. The employer then files a petition with the U.S. Citizenship and Immigration Service (USCIS) for the admission of H–2A aliens. Meanwhile, a supply of alien workers must be recruited. If the employer's petition is granted, it is transmitted to the U.S. consulate where the aliens will apply for visas. The aliens complete visa applications and are interviewed. They must meet the same criteria as any other applicant for a non-immigrant visa. The aliens who are granted visas then travel to the port of entry and apply for admission to the U.S. Those who are admitted travel to the employer's farm. In order for workers to arrive at the by the employer's date of need, this entire process must take place in 45 days. Once the workers arrive, H–2A employers face a barrage of compliance monitoring and enforcement officers, outreach workers, social service agencies and legal service activists. Nowhere else are so few monitored by so many. Lawsuits are commonplace.

Many employers are daunted by the imposing H–2A administrative processes, and simply never try to use the program. Those who do use it must navigate a gauntlet of obstacles. Not withstanding statutory performance deadlines, H–2A labor certifications are often issued late and after interminable haggling over the wording of application documents. The problem of late labor certifications is compounded by processing delays in approving petitions at the Department of Homeland Security and in securing appointments for visa applicants at U.S. consulates. During the 2007 season, the arrival of many H–2A workers was seriously delayed, imposing substantial costs and potential losses on employers who are paying a premium to do things right and comply with the law. Even brief delays in the arrival of workers can be disastrous to producers of perishable agricultural commodities.

The H–2A certification process is also unnecessarily complicated. Even though 97.5 percent of H–2A labor certification applications, and 92 percent of the job opportunities on those applications, were certified in FY 2006, it nevertheless required an extremely labor intensive, paper intensive process for individually processing, recruiting on and adjudicating every single one of the 6,717 H–2A applications certified. This process is repeated annually, not withstanding the fact that approval

rates have been in the 90 percent range for decades, and the availability of legal U.S. workers as a percentage of the need has been in single digits. This repetitious and labor intensive process for demonstrating annually that there are not sufficient able, willing and qualified eligible (i.e. legal) workers to take the jobs offered for each and every application, even when the same labor market is tested multiple times a week and month for identical job opportunities, and when the USDOL's own statistics show that more than half of the domestic agricultural workforce is illegal, is government bureaucracy at its worst.

The Need for Reform

The nation's agricultural labor policy is in desperate need of reform. Reforms are needed in the administration of the H–2A program, the H–2A regulations, and the nation's basic agricultural immigration statutes.

In August of this year the Administration announced its intent to incorporate Social Security No-Match information into its strategy for immigration enforcement, and the rules employers would be expected to follow upon receipt of No-Match notifications in order to protect themselves from charges of knowing hiring or continued employment of illegal workers. In recognition of the impact the No-Match regulation was likely to have on agriculture, the Administration also promised to make every effort to reform the H–2A administrative procedures and regulations in order to make it as useable an option as possible for agricultural employers to meet their needs for adequate legal labor.

The National Council of Agricultural Employers has presented the Administration with a list of more than three dozen administrative and regulatory actions that need to be taken to remove obstacles and bottlenecks in the H–2A program and make it reasonably cost competitive for potential users. I understand that the NCAE is filing these letters with the Committee in a written statement for the record, and I will not reiterate them here. Suffice it to say here that the labor certification process, in particular, is predicated on woefully outdated assumptions with respect to the demographics of the U.S. agricultural workforce and labor supply and U.S. agricultural labor markets. This is compounded by a culture of hostility toward the program and program users within the Department of Labor. The H–2A petition adjudication and visa issuance processes are bogged down by the shear volume of other work these agencies are mandated to perform.

Unless the No-Match regulation is blocked by the courts, it will begin having an immediate impact on agriculture in the southern growing areas this winter, and its effects will quickly march northward with the 2008 growing season. It is imperative that the Administration make a good faith effort to quickly implement the administrative reforms, and immediately begin work on regulatory reform. *However, it is also imperative that Congress realize that administrative and regulatory reform of the H–2A program is not enough.* Many of the most important long term reforms of our broken agricultural labor system can only be made statutorily. The responsibility for these statutory reforms lies squarely with the Congress.

The Agricultural Job Opportunities and Benefits Act (AgJOBS)

In 2001 agricultural employers and farm worker advocates and unions achieved an historic milestone in negotiating an H–2A reform legislation package known as the Agricultural Job Opportunities and Benefits Act, or AgJOBS. AgJOBS has broad bipartisan support in Congress as well as among ethnic groups, religious groups, and farm worker and agricultural organizations that have historically battled over agricultural guest worker policy and procedures. It is intended to address many of the economic, justice and administrative problems with the current H–2A program.

AgJOBS reforms the administrative structure of the H–2A program to make it more efficient and more reliable as a source of timely legal labor. It also reforms the conditions for use of the program, making it more economically accessible to agricultural employers. It does this in a way that protects U.S. farm workers and assures access to agricultural jobs for those who want them. It also protects alien farm workers. Finally, it addresses the heavy reliance of U.S. agriculture on a currently illegal workforce by providing a pathway to adjustment of status for illegal farm workers that is humane, and which will not cause chaos and disruption in the U.S. agricultural economy.

It is impossible to overstate the significance of the broad support AgJOBS has among historic adversaries. AgJOBS has the support of the two major U.S. farm worker unions, the United Farm Workers and the Farm Labor Organizing Committee, hundreds of other immigrant advocacy and labor advocacy groups, religious organizations, and the overwhelming majority of agricultural employer organizations.

Conclusion

The United States faces a serious economic, labor market and security challenge. The demographics of the U.S. population are such that we are barely replacing the existing workforce through native born workers. We are not coming close to producing enough native born workers to meet the requirements of our growing economy. This has been true for more than a decade. Yet our legal immigration policies have been largely blind to the labor force needs of the economy. As a consequence, we now have millions of persons living and working in the U.S. illegally. And a good thing for us that this is so. Our economic growth over the past decade has been sustained and nourished by our failed immigration policies.

Agriculture has been particularly affected by the shortage of legal native born and immigrant workers, for reasons that are obvious on their face. With more available jobs than legal workers, the legal workers have migrated to the more skilled, year round, more pleasant, urban, higher paying jobs. This is not an indictment of U.S. agricultural jobs. It is a reflection of the reality that when there are more jobs than workers, the less attractive jobs are more likely to go unfilled. If these jobs were not critical to our national economy and security, this would not necessarily pose a problem. But when they are in an industry as critical as the food and fiber sector, it poses a serious problem.

It is clear that the *status quo*—a U.S. agricultural industry almost completely dependent on unauthorized workers who have entered the U.S. illegally, is untenable. It is equally clear that ceding U.S. production of food and fiber to foreign producers is untenable. Congress and the administration have ignored this problem far too long.

Mr. HOLDEN [presiding.] Thank you, Dr. Holt. And on consultation with the Ranking Member, we believe we better adjourn now for the votes and return in about 45 minutes. The Committee stands adjourned.

[Recess]

The CHAIRMAN. The Committee will come back to order. Now we are pleased to recognize a good friend and somebody who has been a real leader on this issue, bringing this forward all over the country. Mr. Bob Stallman, the President of the American Farm Bureau Federation. Thank you, Bob.

STATEMENT OF BOB STALLMAN, PRESIDENT, AMERICAN FARM BUREAU FEDERATION; RICE AND CATTLE PRODUCER, COLUMBUS, TX

Mr. STALLMAN. Mr. Chairman, Members of the Committee, I am a rice and cattle producer from Columbus, Texas and President of the American Farm Bureau Federation. And thank you for the invitation to testify. This hearing could not come at a more crucial time. As I travel around the country, I am constantly asked by farmers when is Congress going to fix our labor problem. Of course, I can't answer that question, only you can.

But I am here today to ask you to find an answer and find it quickly. Why is that? Today, agriculture hires about one million hired workers. It is the highest proportion in our history, and it has been that way for nearly 2 decades, but the stability of that labor force is now in doubt.

The U.S. Department of Labor estimates that at least half our workers lack authorization. Some people put that figure much higher. Demand for workers is tight and growing tighter. A significant disruption in the supply of workers will increase farmers' costs, put more foreign-grown produce in our supermarkets, strengthen our international competitors, weaken our nation's food security, and put many farmers out of business as they lose their workers or the costs of labor get beyond their reach.

We shouldn't let that happen, and I hope you won't. To those who say if you only paid more, we wouldn't have this problem, I say look at the facts. We are paying workers more today than we ever have. The average hired farm worker wage in 2005 was $9.50 an hour. With a benefits package, the average cost per worker was in the $11 to $12 an hour range. For farmers who use the H–2A Program, labor costs are even higher. And there are ten million people working in our economy today who work for lower wages than they could get working in the fields.

To those who say we turn a blind eye to the law, I say look again and see what the law makes us do. Go to the U.S. Department of Agriculture website today, and you can read for yourself what advice they are giving farmers. To quote from the U.S. Government, "employers with four or more employees are prohibited from document abuse. Document abuse occurs when an employer requests an employee or applicant to produce a specific document or more or different documents than are required to establish employment eligibility or rejects valid documents that reasonably appear genuine on their face. Applicants should not be asked where they were born or whether they're legally entitled to work in the United States."

Some people say the No-Match rule issued by the Department of Homeland Security will fix this. In fact, it won't. The rule raises significant concerns. The DHS rule tells an employer what he must do if he wants to avoid having DHS charge him with knowingly employing an illegal worker. If he follows the DHS steps but keeps the employee, the DHS says it may charge him with breaking the law. But if he follows those same steps and discharges the employee, he can be sued by the employee. And DHS says it won't even shield employers from such a result. And this type of legal jeopardy is in addition to the threat constantly posed by legal services attorneys who dislike the H–2A Program and are only too ready to take farmers to court.

We all know the law needs to be changed. Farmers know that. We support it. Our nation must secure its borders. We must assure that those who are working here are entitled to do so, but don't cripple agriculture in the process. Last year, the American Farm Bureau Federation released a report, a copy of which is attached to our submission, detailing the impact to our sector, if we were to lose our current supply of labor.

Let me highlight just two figures for you. Without a stable, legal supply of labor to replace the presence of currently unauthorized workers, the fresh fruit and vegetable sector could see U.S. production decline by up to $9 billion a year. Similarly, an abrupt loss of our labor supply would cause net farm income to drop by up to $5 billion annually. We cannot let this problem continue.

Let me outline five suggestions that should frame your approach. One, don't make matters worse. The No-Match rule issued by DHS has the potential to put farmers in legal jeopardy even when they follow the regulation. That is wrong. It should not happen.

Two, do what you can now. The Administration is attempting to reform the H–2A Program through regulation to make it more efficient, more responsive, and more readily usable by growers while protecting the rights of workers. We urge all Members of Congress to support this effort.

Three, face reality. U.S. agriculture depends on migrant labor. We all know that. Don't make farmers check boxes and jump through meaningless hoops only to get their workers weeks after they need them. Expedite the visa process for guest workers by using creative solutions. For instance, we have suggested an expedited process whereby an appropriate entity in a state could certify at the start of the year that an agricultural labor deficit exists in that state. Such a certification could trigger expedited handling and processing of guest workers up to a certain limit.

Four, take up legislation without delay. We all recognize the difficult issues that arise in the immigration debate. Ignoring them will not solve them. Any legislation solution for agriculture must be a fair, balanced approach that does provide an opportunity for current workers in agriculture to legalize their status while laying the foundation for a long-term solution. Above all, we do not want a Band-Aid fix that means we will have to revisit this issue in a few years.

And five, don't let state and local governments fill the void. Immigration is a national issue. Policy should be set in Washington, D.C. The longer the issue is left unresolved, the more likely it is that we will see states and localities step in to fill that void. We need a national policy with national guidelines. Only Congress can give us that.

Mr. Chairman, Members of the Committee, thank you for allowing me to be here today, and I look forward to answering questions.

[The prepared statement of Mr. Stallman follows:]

PREPARED STATEMENT OF BOB STALLMAN, PRESIDENT, AMERICAN FARM BUREAU FEDERATION; RICE AND CATTLE PRODUCER, COLUMBUS, TX

My name is Bob Stallman. I am a rice and cattle producer from Columbus, Texas and I am president of the American Farm Bureau Federation. On behalf of Farm Bureau, the nation's largest general farm organization, I want to express my appreciation for the invitation to testify this morning on a topic that is on the minds of farmers and ranchers across the country—the critical need in agriculture for a legal, stable supply of labor.

This hearing could not come at a more crucial time. I make frequent trips around the country, meeting with producers from every facet of the agricultural community—dairy producers, fruit and vegetable growers, poultry and hog farmers, row croppers, nurserymen and others. Because of the nature of agriculture, our labor situation is closely linked with the issue of immigration reform. I do not think there is any question I get asked more frequently than: When is Congress going to fix our labor issues?

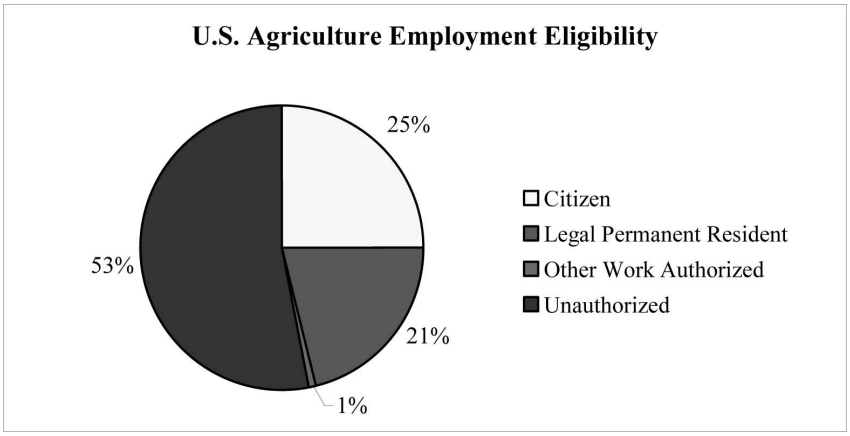
Of course, I can not answer that question. It is one that only the Members of this Committee and your colleagues in the House and Senate can answer. But I am here today to ask you—to urge you—to find an answer. We know it is tough. We respect the fact that Members from both sides of the aisle, from all over the country look at the problem differently. But all of us need to come together, to work through our differences, to appreciate one another's perspective and to find a solution that works for our country, for our cities and communities, and for our national security and for our economy.

Nowhere is the problem more acute than in agriculture. In many ways, we are on the front lines of this debate. Let me take a moment to share with you a few facts—to give you an idea of the reality farmers and ranchers face today.

Periodically, the U.S. Department of Labor conducts a survey—known as the National Agricultural Worker Survey, or NAWS—that gives a profile of labor in the agricultural sector. In the NAWS report, the department stated that in 2001 and 2002, 53 percent of the hired crop labor force lacked work authorization. (**See Figure 1.**) Economists at Farm Bureau believe this is probably a lower-bound estimate because the figure is based on a response volunteered by individuals to government-authorized questioners. In other words, it seems reasonable that at least *some* indi-

viduals would not, and did not, volunteer the fact that they were not legally authorized to work.

Figure 1



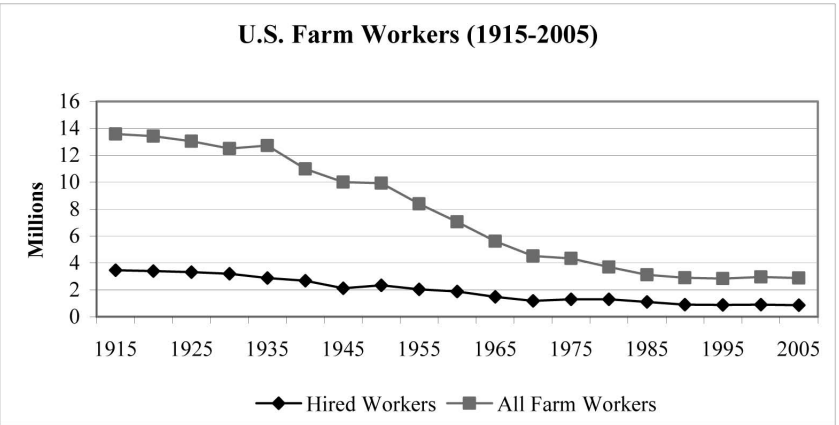
Data Source: DOL.

Looking at another government survey, this one from the National Agricultural Statistics Service or NASS, which is a part of the U.S. Department of Agriculture (USDA), you will get a fuller picture of the employment situation in agriculture.

After almost a century of shedding excess labor to the rest of the economy, agricultural labor demand stabilized over the last 20 years at about three million workers. (**See Figure 2.**) This is due to multiple factors, such as increased mechanization, the aging of the farm operator pool, decreasing farm family size, economic opportunities elsewhere in the economy and the continued movement of people off the farm. Of the three million workers required to operate the sector, approximately two million are drawn from farm families. About one million are hired from non-family sources. Thus, pairing NASS labor figures and DOL's statistic indicating that at least 50 percent of hired workers in agriculture are unauthorized, Farm Bureau estimates there are at least 500,000 agricultural workers who lack proper authorization.

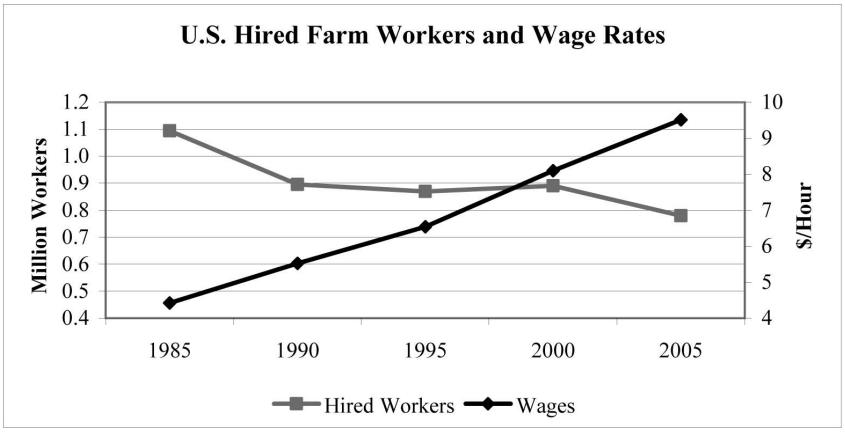
This change in the balance between farm labor supply and demand is reflected in increased hired worker wages (**See Figure 3.**) USDA's National Agricultural Labor Survey indicates the average hired farm worker wage in 1985 was $4.50 per hour. By 2005, the wage had increased to $9.50 per hour and included an improved benefits package that pushed the average cost up to $11 to $12 an hour. (Please note that wages and benefits for H–2A workers are higher.) Compare this with a 2005 minimum wage of $5.15 per hour and DOL survey results showing starkly different wages in jobs with similar skill requirements, ranging from $6.65 per hour for food preparation, $11 per hour for janitorial workers and $14.35 per hour for construction labor.

Figure 2



Data Source: USDA–NASS.

Figure 3



Data Source: USDA–NASS.

Overall worker numbers and wages do not tell the whole story. Recent quarterly labor trends published by NASS paint a more disturbing picture. When considering the third quarter—the quarter in which farmers require the most labor—data indicate there has been progressive tightening in the supply of agriculture labor. (**See Figure 4.**) The quarter-to-quarter difference from 2005 to 2006 shows a decline of 60,000 hired workers. For farmers in need of additional labor, that fact is the story behind this hearing today. It demonstrates quite clearly the difficult situation farmers face as they scramble for additional labor in an economy with a relatively low unemployment rate and a lack of individuals willing to work in the agriculture industry.

Figure 4. Number of Hired Workers in Agriculture by Quarter

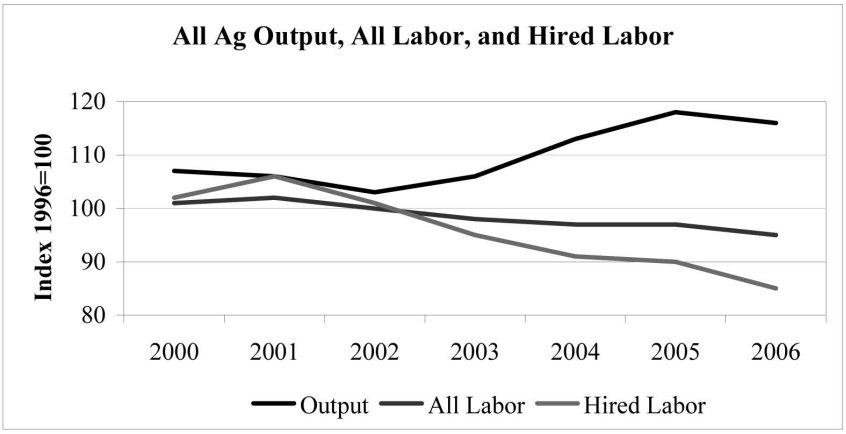
Year	1st Quarter	2nd Quarter	**3rd Quarter**	4th Quarter	Average
			Thousands		
2001	691	804	**1,039**	991	881
2002	707	890	**1,006**	940	886
2003	729	781	**943**	891	836
2004	662	827	**961**	851	825
2005	589	753	**936**	842	780
2006	614	720	**876**	797	752
Change 2005 to 2006	25	-33	**-60**	-45	-28

Data Source: USDA–NASS.

That trend should be put in perspective by mentioning agricultural production, because labor is one of the major inputs for the sector. In recent years, the agriculture sector has realized significant gains in productivity, while enduring a decline in the overall agriculture labor force. (**See Figure 5.**) Productivity gains may be attributed to a number of factors such as better management practices, better technology, and the residual effects of mechanization in previous decades.

These productivity gains have allowed the United States to meet the strong demand for agricultural products in both domestic and international markets. However, sustaining our current level of productivity is contingent on a stable, reliable and legal workforce. America's farmers have proven time and again they can grow two blades of grass where there was only one before—but this requires workers. The bottom line is this: a significant disruption in the supply of agricultural workers will increase farmers' costs, put more foreign-grown produce in our supermarkets, strengthen our international competitors, weaken our nation's food security and put many farmers out of business as they lose their workers or the costs of labor get beyond their reach.

Figure 5



Data Source: USDA–NASS/ERS.

As you can see, production is up. We are now producing almost 20 percent more than we did a decade ago. Demand for our products is high. Labor is tight. Wages are rising.

Some might look at that picture and say, "What are you complaining about? It shows a healthy, robust agricultural sector." But you must put these numbers together with those we discussed earlier from the NAWS survey.

Remember, the lower-bound estimate for our labor force shows that a significant proportion, probably more than half, is not authorized to work. Over the last few years, and particularly since 9/11, we have seen a significant change in the nation's response to terrorist threats. That response includes—quite appropriately—tightening our borders to prevent illegal entry. Farm Bureau supports this national ef-

fort. First and foremost, we want our nation to be secure. We do not want our laws to be ignored. We also want to make sure that the workers we hire are legal. We want to be a part of the solution to this problem, because it affects us more than most.

How we make these adjustments is critical. Twenty years ago, Congress substantially revised our immigration laws. They laid down the ground rules that employers follow today. We all recognize that those ground rules must change.

But let me refresh the Members' recollections about exactly what the current law requires. I want to do this for a simple reason. There are some misconceptions that have developed into conventional wisdom, but like a lot of conventional wisdom, it is wrong. For instance, you often hear the statement that "if farmers would just pay more, we would not have that problem." The statistics I cited earlier clearly show that is not the case. Right now, in our economy, there are ten million workers—over 7 percent of the entire nation's workforce—who work for *lower* wages than they could make in agriculture. They have made a conscious decision *not* to work in the fields. That is their choice. People should not lose sight of the fact that in America today, low wages are not keeping people out of agriculture.

I want to put another big misconception to rest. Many people believe farmers know exactly what they are doing when they hire illegal workers, that they simply do not care about the law and that they know perfectly well the individuals they hire are here illegally.

Let me also draw your attention to another government document, this one from USDA. It is a website hosted by USDA's chief economist. I have attached a copy of a page from the website to my testimony (**Attachment #1**), but you and your staff can access it easily (at *http://www.usda.gov/oce/labor.ina.htm*). This page offers advice to farmers on what they must do to comply with the 1986 Immigration Reform and Control Act (IRCA). Despite what many people think, farmers simply cannot turn away potential workers if they suspect those workers are here illegally.

To quote the U.S. Government:

> *Employers with four or more employees are prohibited from committing document abuse. Document abuse occurs when an employer requests an employee or applicant to produce a specific document, or more or different documents than are required, to establish employment eligibility or rejects valid documents that reasonably appear genuine on their face. Employers must accept any of the documents or combination of documents listed on the back of the INS Form I–9 to establish identity and employment eligibility. Examples of document abuse include requiring immigrants to present a specific document, such as a "green card" or any INS–ISSUED document, upon hire to establish employment eligibility, and refusing to accept tendered documents that appear reasonable on their face and that relate to the individual.*
>
> * * * * *
>
> *Applicants should not be asked where they were born or whether they are legally entitled to work in the United States.*

Mr. Chairman and Members of the Committee, this is the United States Department of Agriculture advising farmers how to act. Farmers naturally view this as authoritative. Moreover, remember that the farmers we are talking about are not Fortune 500 companies. They do not have in-house legal counsel and a human resources department advising them about what to do. The average fruit and vegetable grower has a *gross* income that does not even equal the Members Representational Allowance (MRA) each Member of Congress is provided to run their D.C. and district offices. Yet, they face these employment situations constantly. The fact is a farmer cannot turn away an applicant because the worker does not speak English or does not present a green card or appears to lack proper authorization. If he does, the farmer can be—and is—sued by legal activists. Farmers and ranchers do not ask to be in this situation. But we are in it. It is based on the law Congress passed 21 years ago. It is up to you to help us get out of it.

Some people say all this will be fixed by the proposed No-Match rule published by DHS. Let me caution you about this regulation. In one fell swoop, the Federal Government seems to be making a 180 degree turn on employers. From providing farmers with no tools whatsoever to check for legal authorization, they are practically deputizing them as unofficial document checkers for the Immigration and Customs Enforcement agency.

The reality is that we may be in a worse situation *after* the rule than before it. Let me explain.

Under the DHS rule, employers' obligations under the law are not changed at all. The rule merely provides employers a 'safe harbor' from prosecution, provided they

follow a series of steps laid out by the department. In others words, if they receive from the Social Security Administration a notice that a name and Social Security Number do not match, they have 30 days to identify the cause (for instance, transposition of a letter or number). If the cause is identified, the matter is resolved. If not, the employer must approach the employee to ask that the employee rectify the matter with SSA. If, after 90 days, the employee maintains that the documentation he has provided is correct, then the employer has 3 days in which to re-verify that employee with new documentation. If the employee is indeed unauthorized and the employer does not follow these steps and discharge the employee, DHS says it may impute to the employer 'constructive knowledge' that he has knowingly employed an illegal worker.

What should an employer do? If he follows those steps and retains the employee, he runs the risk of prosecution by DHS. But if he discharges the employee out of fear he will be charged by DHS with a crime, the employee may file a lawsuit against the employer for discrimination based on a separate statute. Of course, DHS has said it will not shield employers from such a consequence if they take the step of discharging the employee, yet DHS's rules tell them to do so anyway.

This is a Hobson's choice for farmers. Last year, when DHS proposed this rule, AFBF filed comments with the agency on the problems the rule poses for farmers. These problems are real, and they are not yet resolved. I have attached to my statement (**Attachment #2**) a copy of the comments we submitted to the agency last year in connection with this rule. I urge the Members to familiarize themselves with these comments because they will affect farmers, and you will be hearing from your constituents about it.

This type of legal jeopardy is in addition to the threat constantly posed by legal services attorneys who dislike the H–2A program and are only too ready to take farmers to court. Congress needs to reaffirm support for this program and not see it killed by a thousand cuts from activists who are pursuing their own agendas.

There is no question the law must be changed. We must secure our borders. We must assure that those who are working here are entitled to do so. But nothing is more critical than how we go about this transition.

Early last year, AFBF released a report prepared by our economists on the impacts to our sector if we were to lose our current supply of labor. A copy of that report is included with this testimony as an attachment (**Attachment #3**). Let me highlight just a couple of points because I think they are sobering:

- ➢ Without a stable, legal supply of labor to replace the presence of currently unauthorized workers, the fresh fruit and vegetable sector could see U.S. production decline by up to $9 billion a year.
- ➢ Similarly, an abrupt loss of our labor supply would cause net farm income to drop by up to $5 billion annually.

Mr. Chairman, these are direct effects on agriculture—in other words, workers directly involved in production agriculture. But indirect effects are also substantial. For instance, if the processing plant that is supposed to receive your hogs is raided by ICE the day you are supposed to get those hogs to market, this can have a devastating impact on your operations.

The longer you delay, the more likely it is that states and localities will take matters into their own hands. We are already seeing that across the country. It makes it more difficult for farmers to do their business and it strains relations within our communities. The only reason we are seeing these initiatives is because Congress has not acted and people feel the need to fill the vacuum. That's not how we're going to solve this problem.

Farmers need to plan their futures. We have reports that some apricot growers have decided not to replant their orchards because they fear the labor will not be there. One blueberry farmer in Mississippi has gotten out of the fresh fruit business—even though it is more profitable—because she doesn't want to deal with labor issues. One cooperative has decided that next year it will plant 30 percent fewer acres of pickling cucumbers because they simply won't be able to harvest when the time comes. Most disturbingly, *The New York Times* recently ran a story about a farmer who has leased land in Mexico because he is not sure he will be able to harvest his crop in the U.S.

Clearly, agriculture today is desperately in need of a solution to this problem. Let me outline a few suggestions that, in our view, can help us through these problems.

1. *Do not make matters worse.* The No-Match rule issued by DHS has the potential to tighten labor markets further or, even worse, put farmers in legal jeopardy as they follow the law. That is wrong. It should not be allowed to happen.

2. *Some things can be done now. DO THEM!* The existing H–2A program is broken. The Administration recently announced it would attempt to reform the program through regulation to make it more efficient, more responsive and more readily usable by growers while protecting the rights of workers. We agree with and support this initiative. We are in the process of preparing an exhaustive list of recommendations to submit to the administration for its consideration. We urge all Members of Congress to support this effort as well.

3. *Face reality.* U.S. agriculture depends on migrant labor. We all know that. Do not make farmers jump through meaningless hoops to prove something that we all recognize. Expedite the visa process for H–2A workers by using creative solutions. For instance, we have suggested an expedited process whereby an appropriate entity in a state—a Governor, a State Secretary of Agriculture or labor, or a combination of the three—could certify at the start of the year that an agricultural labor deficit exists in that state. Such a certification could trigger expedited handling and processing of guest workers up to a certain limit. By placing such a certification in the hands of a public official, you would build in a fail-safe mechanism whereby a state could limit the number of guest workers that receive expedited processing (for instance, when there is a slowdown in the state's economy).

4. *Take up legislation without delay.* We recognize the difficult issues that arise in the context of the immigration debate. Ignoring them, however, will not solve them. We urge *all* Members, from both sides of the aisle and from around the country, to put aside partisan or ideological biases with the goal of doing what is right for the country. U.S. agriculture simply cannot wait any longer for a solution. Any legislative solution for agriculture must be a fair, balanced approach that provides an opportunity for current workers in agriculture to legalize their status and provides a framework for a long-term solution, such as a revamped H–2A program, that assures we will not have to revisit this issue in the future.

5. *Don't let state and local governments fill the void.* Immigration is a national issue; policy should be set in Washington, D.C. The longer the issue is left unresolved, the more likely it is we will see states and localities step in to fill the void. For example, we should not have a situation under which some states require employers to use E-verify while other states prohibit it. We need a national policy with national guidelines. Only Congress can give us that.

Mr. Chairman and Members of the Committee, thank you for providing me this opportunity to testify this morning. I will be pleased to answer any questions the Members may have.

ATTACHMENT #1

IRCA Anti-descrimination Provisions

Summary

The Immigration Reform and Control Act of 1986 (IRCA) was enacted to control unauthorized immigration to the United States. Under IRCA, employers may be sanctioned by the Immigration and Naturalization Service (INS) for knowingly hiring non-U.S. citizens who are not authorized to work in the United States. To address the fear that employers would overreact to the threat of sanctions and discriminate against individuals who sounded or appeared "foreign," Congress also passed IRCA's anti-discrimination provisions.

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice, enforces the anti-discrimination provisions. The OSC investigates and prosecutes employers charged with national origin and citizenship status discrimination with respect to hiring, firing and recruitment or referral for a fee, unfair documentary practices concerning the hiring process (document abuse), and retaliation under the anti-discrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. The OSC may be reached by telephone at 202–616–5594 and 1–800–255–7688.

Employers with four or more employees are prohibited from discriminating on the basis of citizenship status, which occurs when adverse employment decisions are made based upon an individual's real or perceived citizenship or immigration status. Examples of citizenship status discrimination include employers who hire only U.S. citizens or U.S. citizens and green card holders, employers who refuse to hire asylees or refugees because their employment authorization documents contain expiration dates, and employers who prefer to employ unauthorized workers or tem-

porary visa holders rather than U.S. citizens and other workers with employment authorization.

Employers with four or more employees are prohibited from committing document abuse. Document abuse occurs when an employer requests an employee or applicant to produce a specific document, or more or different documents than are required, to establish employment eligibility or rejects valid documents that reasonably appear genuine on their face. Employers must accept any of the documents or combination of documents listed on the back of the INS Form I–9 to establish identity and employment eligibility. Examples of document abuse include requiring immigrants to present a specific document, such as a "green card" or any INS–ISSUED document, upon hire to establish employment eligibility, and refusing to accept tendered documents that appear reasonable on their face and that relate to the individual. U.S. citizens and all immigrants with employment authorization are protected from document abuse.

The anti-discrimination provisions also prohibit small employers (e.g., those with four to fourteen employees) from committing national origin discrimination against any U.S. citizen or individual with employment authorization. Larger employers are already covered by Title VII of the Civil Rights Act of 1964, which is enforced by the Equal Employment Opportunity Commission. In addition, employers may not retaliate against workers who file a complaint, cooperate in an investigation or testify at a hearing.

Requirements

IRCA requires all farm employers to complete and retain an I–9 form for each new hire. Employees are required to complete the first section of the form and provide a document or documents that establish identity and employment eligibility. Acceptable documents are listed on the back of the I–9 form.

Employers are required to complete the second section of the I–9 form and must accept the proffered documents if they "reasonably appear to be genuine on their face" and relate to the individual. Remember, it is unlawful for an employer to practice "document abuse" by requiring prospective employees to present specific employment documents.

For purposes of completing tax documentation, employers may ask new employees for their social security cards. To avoid allegations of document abuse, the employer should do this separate and apart from the I–9 process.

To avoid potential charges of discrimination, it is recommended that employers not initiate the I–9 process until after the decision to hire has been made and communicated to the employee. Applicants should not be asked where they were born or whether they are legally entitled to work in the United States.

Subsequent to employment, an employer who has reason to believe that a fraudulent document has been presented, perhaps as a result of an INS investigation, should not terminate the employee without first discussing the allegations with him or her. Depending upon the circumstances, the employee can be given an opportunity to provide other documents or additional information for employment verification purposes.

If the I–9 form is a photocopy of an original, be sure to copy both sides of the form to provide to newly hired employees and the separate instruction page. It is good practice to retain copies of employees' eligibility documents. But if this is done, copies should be made of the documents of all employees in order to avoid charges of discrimination.

Enforcement

The Office of Special Counsel for Immigration Related Unfair Employment Practices enforces the statute prohibiting employment discrimination under IRCA, and has the responsibility for handling complaints against all employers alleging citizenship status discrimination, document abuse, retaliation and, if the employer has four to 14 employees, national origin discrimination. The Equal Employment Opportunity Commission handles national origin discrimination complaints against employers with fifteen or more employees.

Penalties

Back pay (for lost wages), instatement or reinstatement, etc., may be awarded to victims of unlawful discrimination.

Penalties for discrimination range between $275 and $2,200 for each victim for the first offense, $2,200 to $5,500 for the second offense, and $3,300 to $11,000 for the third offense. Fines for document abuse range from $110 to $1,100 for each victim.

U.S. citizens and work authorized immigrants who are victims of workplace discrimination based upon immigration status, national origin discrimination or docu-

ment abuse may file complaints with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at the U.S. Department of Justice. The OSC has multilingual personnel, produces educational materials in up to seven different languages, and provides language services and information in more than 100 languages via the AT&T Language Line. The OSC may be reached by telephone at 202–616–5594 and 1–800–255–7688 (toll free) or contacting the U.S. Department of Justice, Office of Special Counsel.

Last Modified: 05/16/2006.
http://www.usda.gov/oce/labor/ina.htm.

ATTACHMENT #2

August 14, 2006

Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.
DHS Docket No. ICEB–2006–0004
Department of Homeland Security,
111 Massachusetts Avenue, NW, 2nd Floor,
Washington, D.C. 20529

Subject: Proposed Rule; Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 71 Fed. Reg. 34281 (June 14, 2006)

To Whom It May Concern:

The American Farm Bureau Federation (AFBF) appreciates the opportunity to offer the following comments on the above referenced proposed rule.

Under current law, it is illegal for a U.S. employer *knowingly* to hire or continue to employ a person who is not authorized to work in the United States (8 U.S.C. § 1324a). "Knowing" is a term defined in current regulations that goes beyond actual knowledge to include that "which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through exercise of reasonable care, to know about a certain condition" or, in other words, to have "constructive knowledge" (8 C.F.R. 274a.1(l)). The proposed rule would further define this second category or "constructive knowledge" to provide that employers would become subject to a finding upon failing to take reasonable steps after receiving written notice from either the Social Security Administration (SSA) or the Department of Homeland Security (DHS) that a wage report or document does not match agency records. The rule also describes a set of "reasonable steps" employer may take to avoid a finding of constructive (but not actual) knowledge; employers following the outlined steps would obtain a "safe harbor" from prosecution over a finding of "constructive knowledge."

AFBF commends DHS for proposing a safe harbor for employers who do not knowingly employ unauthorized workers. For more than a decade, the SSA No-Match notice has raised questions about an employer's obligations under the employment authorization provisions of immigration law after that employer has taken all appropriate steps to verify employment eligibility. U.S. agriculture has repeatedly requested guidance on whether and how an employer is to respond to such a notice without putting the employer in legal jeopardy due to the employer's obligation under anti-discrimination provisions of the same law (8 U.S.C. § 1324b). In part, this proposed rule represents an attempt to address those concerns and provide employers with guidelines in hiring and firing decisions. We appreciate DHS efforts. Unfortunately, there are a number of situations—many of which are unique to the agricultural sector—that may not have been fully considered during development of the safe harbor provisions. With these comments, we identify such situations and strongly urge that the final regulation incorporate our recommended changes to ensure that the safe harbor provisions are equally available to all employers and all parts of agriculture.

Apply the Safe Harbor to Seasonal Employers

The proposed rule states that employers would be deemed not to have constructive knowledge and thus obtain a safe harbor from prosecution if the employers take the following steps in response to a No-Match notice. Upon receiving notice, employers would have 14 days to check records and report to SSA or DHS regarding any necessary corrections or, if records cannot be corrected, to instruct the worker to go to the local SSA or DHS office to fix the problem. A Social Security mismatch would not be resolved until the employer has first verified the new information with SSA. If the employee does not return with new or corrected information within 60 days of the employer's receipt of the mismatch letter, the employer then has 3 days to

complete a new Form I–9. When completing a new form, the employer would not be allowed to use documents containing the Social Security or alien identification number that was subject to the earlier No-Match notice. At the same time, no document without a photograph could be used to establish identity or identity and employment authorization. (71 *Fed. Reg.* 34285.)

Our reading of the proposed regulation is that each step would need to be followed as spelled out in the rule in order for the employer to become eligible for the safe harbor. This is important because while DHS acknowledges that there may be other reasonable steps that could lead to a safe harbor, the employer, in following procedures other than the ones outlined in the rule, could "face the risk that DHS may not agree" (71 *Fed. Reg.* 34283). The practical effect of this approach could have a significant detrimental effect on seasonal employers and effectively vitiate the protections of the safe harbor for a large segment of agriculture. *One set of employers should not be given the certainty of a prescribed safe harbor while another is forced to define one on a case-by-case basis with DHS approval; seasonal employers should not be denied the benefit of safe harbor provisions just because their business is seasonal in nature.*

There are several situations, in which an agricultural employer may not be able to take all of the required steps to obtain the safe harbor, including:

1. *Single season workers.* While timing will vary with crop, season, and other criteria, seasonal farmers (in the Midwest, for example) generally submit wage reports to the IRS (Forms W–2) in February for employees who were employed during the previous harvest season and, in most instances, are no longer employed. Should a report on such an employee generate an SSA No-Match notice, such a notice in all likelihood would not be sent to an employer until late winter or the following spring—well over a year since the individual was employed. In many instances, such employees do not return to the original place of employment. For those who do, depending on crop and nature of work, such employees would not be re-hired until 14, 60, or 63 days after the employer has received the notice. Further, many farm workers may "follow the crops" by migrating from state to state, and these workers may not permanently reside locally. Few such workers leave forwarding information since the prevailing practice is to terminate, not layoff, the worker between seasons. While the employer could meet the safe harbor requirement to check his or her records, the employer would not be able to meet the other requirements. The employer would not be able to reach employees despite making every reasonable effort. We strongly believe that these employers should not be denied the safe harbor for reasons that are beyond employer control. *Recommendation: We urge DHS to clarify in the final rule that the safe harbor extends to employers who, in addition to meeting the requirement to check records, can document attempts to reach a former employee who is the subject of a No-Match notice.*

2. *Off-season workers.* As stated in 1. above, some workers listed on a previous No-Match notice may not be re-hired until 14, 60, or 63 days after the employer has received the notice. Few farm workers leave forwarding information and therefore may not be reachable off-season. *Recommendation: If an employee who is subject to a previous No-Match notice returns in a following season, we would recommend that the clock start ticking on the first day of re-hire after receipt of the notice. For off-season workers who fail to return in a subsequent season, we would offer the same recommendation as stated in 1. above.*

3. *Short season workers.* The duration of a season may vary widely across the United States depending on crop and location. For example, in the State of Washington, approximately 75,000 migrant and seasonal workers are employed each year on small family-owned farms; many of these workers are employed for periods as short as 2 weeks. Under these circumstances, an employer may be able to check records, ask the employee to confirm those records and in the event there are no errors, instruct the employee to follow up with SSA or DHS all within 14 days. But, if the employee migrates from crop to crop, there may not be an opportunity for the employee to resolve the issue with SSA or DHS within the 60 days prescribed by the rule. Once the employee has moved on, there would not be an opportunity for the employer to take the next step, which is to complete a new Form I–9. *Recommendation: The 14, 60, and 63 day periods should toll only while the employee is employed with the employer. For example, if the employee moved on to the next crop on day 15, the clock would stop. Upon re-hire in the next season, the clock would re-start and the employee would have 45 days (for a total of 60 days) in which to follow up with DHS or SSA and report any corrections to the employer. Again, for short season workers who*

fail to return in a subsequent season, we would offer the same recommendation as stated in 1. above.

All of the above examples pertain to situations in which an employer is not able to follow every one of the necessary steps to obtain the safe harbor. The reverse situation could also occur: The employer follows every step outlined in the regulation but the No-Match issue is not resolved.

1. *Wage Report Mismatch.* For I–9 Form purposes, an employee may provide documents that do not contain a Social Security or alien identification number—a birth certificate and driver's license with a photograph, for example. But because the employer has submitted a Form W–2, the employer may receive a No-Match notice from the SSA if there are sufficient numbers of mismatches. It is not clear from the proposed rule whether the employer could simply re-use the same documents on the new Form I–9 in this instance. It is also not clear whether the employer would be held liable if the employee writes in Section 1 of the new form a Social Security Number that is the subject of a notice but does not provide a Social Security card. *Recommendation: DHS should clarify whether an employer would be deemed to have constructive knowledge under these circumstances; if so, DHS should specify the employer's legal obligations under immigration law including the anti-discrimination provisions (8 U.S.C.* § 1324b).

2. *Multiple Season Mismatches.* An employer may take every step outlined in the proposed rule, up to and including completing a new I–9 Form, yet receive a No-Match notice next season. During a 2 week harvest when producers are working nearly round the clock to harvest a perishable crop in a short timeframe when every day is precious, it may be difficult for larger seasonal employers (e.g., 500–750 employees) to keep track of every one of the returning employees. Even if the employer recognizes and can keep track of every single worker, the rule does not appear to preclude the employer from obtaining the safe harbor if the employee keeps responding with new information to each document request. For example, an employee might provide one Social Security card the first year which triggers a No-Match notice the following year, provide another Social Security card in the second year in response to the original notice which cannot be verified with SSA in 60 days and then provide yet a third Social Security card for the new I–9 Form between day 61 and day 63. *Recommendation: DHS should clarify whether an employer under these circumstances could still obtain the safe harbor from a constructive knowledge finding. If so, DHS should clarify whether it would deem such employer as having actual knowledge of the worker's unauthorized status.*

Many farmers hire and pay an independent contractor to provide workers during the season, with the understanding that the contractor will be the employer for all purposes, including employment eligibility verification. Yet the Department of Labor could determine that both the farmer and the contractor are "joint employers" under the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) or the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 et seq.). However, it is not clear from the rule whether the farmer or the contractor would have to obtain the safe harbor to avoid prosecution. *Recommendation: DHS should clarify the employer's obligations under immigration law relative to the agricultural joint employment standards.*

Some seasonal agricultural employers hire non-immigrants with a temporary work authorization (e.g., under the H–2A program) or immigrants with permanent work authorization. The proposed rule expressly identifies a "labor certification or application for prospective employer" as information that could prompt a constructive knowledge finding. But while the rule would describe the steps for an employer to take upon receipt of written notice from SSA or DHS over a wage report or document, it does not include any steps for a labor certification. An employer should not be denied the certainty of a prescribed safe harbor just because the employer hires a worker requiring a labor certification. *Recommendation: DHS should specify a safe harbor for employers of workers requiring a permanent or temporary labor certification.*

Apply the Safe Harbor to Hiring Decisions

In the notice of proposed rulemaking, DHS expressly states that following the safe harbor requirements "will eliminate the possibility that DHS . . . will allege, based on the totality of relevant circumstances, that an employer had constructive knowledge that it was employing an alien not authorized to work in the Unites States"

(71 *Fed. Reg.* 34282). However, it is not clear whether the safe harbor would also apply to hiring decisions.

As outlined above, there are several reasons why an employer would be prevented from meeting all of the steps necessary to obtain the safe harbor. A good example is when the worker quits: some employees, when confronted with the No-Match notice, will quit without offering a reason. The employer would have checked his or her records and found no errors, meeting the first step. He or she may be asking the employee to confirm records or instructing the employee to follow up with SSA or DHS, which is the second step. Nevertheless, the employee would fail to respond within 60 days (the third requirement), and the employer would not be able to comply with the final requirement to fill out a new I–9 Form within 63 days.

While we are confident that DHS would not prosecute this employer for *continuing to employ* the worker (after all, the employee quit in this instance), there is still a question as to whether the employer's receipt of the No-Match letter would still be grounds for a finding that the employer had constructive knowledge of *hiring* an unauthorized worker. A reasonable person might infer from the worker quitting that the worker is avoiding detection as an unauthorized worker.

However, we do not believe a constructive knowledge finding can or should be imputed to an employer merely based on the fact that the employer has received a No-Match notice. Because the worker did not offer a reason for quitting, the employer could not have actual knowledge that the worker quit to avoid detection. And if the employer had properly completed the Form I–9, the employer would not have reason to suspect that the employee was not employment eligible.

Recommendation: We recommend that DHS clarify that the safe harbor would apply to previous hiring decisions under these circumstances.

Extend the 14 and 60 Day Deadlines

Under the proposed rule, upon receiving notice employers would have 14 days to check records and report back to SSA or DHS or instruct the worker to follow up directly with SSA or DHS. If the employee does not return with corrected information within 60 days, the employer would then have 3 days to complete a new Form I–9. (71 *Fed. Reg.* 34285.)

In the agricultural sector, more than 90 percent of operations are family owned and operated. The size of the operation may vary from a single hired worker up to 500 or more workers. Some operate year round while others plant, cultivate or harvest during seasons that may range from as few as 2 weeks to as many as 48 weeks a year. For example, in Washington, where there are approximately 75,000 seasonal and migrant workers employed each year on small family farms, many are employed for periods as short as 2 weeks. At a typical operation, one office person will hire more than 100 workers at one time.

On the farm, the grower's spouse often constitutes the "Human Resources Department" and the spouse may not work full time. Access to a computer or to a local branch of SSA or DHS may be limited in more remote areas of the country. Mail may not be processed at a frequency greater than once a week or the notice might arrive when the grower is off-season, on vacation or at a trade conference. While employers with a dedicated H.R. department and staff may be able to check and correct records or notify the employee within 14 days, not every agricultural employer would be able to do so. *Recommendation: We recommend extending the timeframe for the first deadline (in which an employer must check, correct or inform) to at least 30 days.*

Similarly, 60 days may be too short a time period for farm workers to comply with the second requirement (to respond with new or corrected information). On a grape farm in New York State, for instance, the workers are working nearly round-the-clock for about 2 months in the spring and about 3 months solid in the fall between harvest, crushing, fermenting, and subsequent "cellaring." Asking them to take a long time out to drive to the nearest SSA office may not be completely practical. *Recommendation: DHS should extend the second deadline to at least 90 days.*

Address Discrimination Issues

The current regulatory definition of "knowingly" includes the following provision:

> "Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under [8 U.S.C. § 1324a(b)] or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual." 8 C.F.R. 274a.1(l)(2).

In the proposed rule, DHS adds a clause to this provision to exclude documents that are subject to a No-Match notice: ", except a document about which the employer has received a notice described in paragraph (l)(1)(iii) of this section and with

respect to which the employer has received no verification as described in paragraph (l)(2)(i)(B) or (l)(2)(ii)(B)." The proposed rule would not address the anti-discrimination provisions under Title VII of the 1964 Civil Rights Act ("Title VII") (42 U.S.C. § 2000e–2).

AFBF applauds DHS for attempting to provide employers with some certainty in their hiring and firing decisions, beyond the limited protection afforded by completing an I–9 Form. Under current law, an employer who is not sufficiently aggressive in examining documents would run the risk of violating the employment authorization provisions of immigration law (8 U.S.C. § 1324a). But, by being too aggressive, the same employer would run the risk of violating the anti-discrimination provisions in the same law, and there have been more growers charged with discrimination under the immigration law than with employer sanctions. Excluding No-Match documents from anti-discrimination provisions would make it much easier for employers to meet the employer authorization provisions.

However, AFBF strongly urges DHS to make whatever changes to the proposed rule necessary to ensure the rule will not lead to additional discrimination lawsuits under Title VII. For decades, agriculture has been plagued with nuisance suits, the purpose of which has been not necessarily to win on the merits but to outspend the grower so as to make an example for the wider agricultural community. If the legal and social costs are high enough, farmers will settle instead. The questionable tactics of these lawyers have been well documented in Rael Jean Isaac's *Harvest of Injustice* (please see *http://www.nlpc.org/harvest.asp*). For a more recent example, please see *Malacara* v. *Garber* (5th Cir. December 9, 2003) (LSC-funded lawyers sued a 70-year-old Ohio vegetable farmer under a Federal law that did not even apply to small family farmers; the farmer won in lower court and at appeal but it cost him more than $100,000 of his hard-earned money to prove the complaint lacked merit.). **If history is any indication, we would expect activist attorneys to test the boundaries of the proposed rule in court, and agricultural employers are the most likely test subjects; agriculture should not have to pay additional legal expenses because the proposed rule fails to address considerable legal issues.**

There also may be legal arguments against the rule in its proposed form.

For example, the Tenth Circuit Court of Appeals in *Zamora* v. *Elite Logistics, Inc.* (10th Cir. June 6, 2006) recently reversed a lower court decision for the employer and let a Title VII national-origin claim go to a jury. The employer was acting on a tip he could have received from DHS (i.e., an employee was using a Social Security Number for I–9 Form purposes that another had used multiple times in another state). He responded by taking precisely the step required to qualify for the safe harbor (i.e., the employer requested another document). The safe harbor would not protect employers from Title VII. And all some lawyers need is an argument, not even a strong one, to compel growers to settle. If DHS does not adequately address these issues, it will defeat the purpose of the proposed rule, which is to facilitate compliance with 8 U.S.C. § 1324a.

Clarify Whether Name Or Number Trigger Constructive Knowledge Finding

Employers would be subject to a constructive knowledge finding if failing to take reasonable steps upon receiving written notice from SSA that the "combination" of name and Social Security Number does not match agency records. But SSA has sent several forms of the No-Match letter in the past; one takes the form of a simple list of numbers with no corresponding identifying names. If the employer receives this form of the letter, one could not conclude that the name also mismatches agency records. It appears that both the name and the number must not match to become subject to the rule. *Recommendation: DHS should clarify precisely what is meant by a "combination" mismatch.*

Apply the Final Rule Prospectively

The proposed rule does not stipulate when the regulation would apply to employers. Given the many resource and other issues that are unique to agriculture, we would not support applying the rule on a retroactive basis. *Recommendation: DHS should apply the rule prospectively from its effective date.*

Delay the Final Rule Pending Congressional Efforts

Both the U.S. Senate and House of Representatives have approved separate legislation (S. 2611 and H.R. 4437) that would address many of the same issues addressed in this proposed rule and reform of this part of the law is a high priority for the Administration. Thus, it is possible that there may be new law respecting exactly these matters before the end of the year. Farmers do not want to be in position of having to change their operating procedures twice—once to accommodate this proposed rule and once again to accommodate a subsequent rule prompted by a new

immigration law. Employers require certainty in Federal regulations in order to continue to grow and thrive.

While we recognize that employers need not use the safe harbor, if employees are not able to present documents consistent with the proposed rule, employers will be compelled to terminate those workers or risk a constructive knowledge finding and prosecution. AFBF has conducted an extensive economic study of the immigration impacts on agriculture. The study shows that of all the sectors of the U.S. economy, domestic agricultural production could be most severely and disproportionately affected on the order of $5 to $9 billion annually if labor restrictions take effect before growers have access to an adequate legal workforce. Federal surveys suggest that between a high percentage of agriculture's hired workforce may lack proper documentation, and we have already mechanized to a large extent. We would somehow have to replace those workers at a time when few Americans have shown a willing to take farm jobs. The impact of this proposed rule could be devastating, prompting many farmers to raise their prices at a time when the United States is opening its produce markets to significant foreign competition under North and Central American Free Trade Agreements.

Recommendation: We strongly urge DHS to postpone further action on a final regulation until Congress acts on this issue.

Conclusion

AFBF appreciates the opportunity to comment on this proposed rule and would be happy to assist you in any way we can. Please feel free to contact me or Austin Perez at 202–406–3669 (*austinp@fb.org*) if you have any questions or require additional information.

Sincerely,

MARK MASLYN,
Executive Director,
Public Policy.

ATTACHMENT #3

Impact of Migrant Labor Restrictions on the Agricultural Sector

American Farm Bureau Federation—Economic Analysis Team

February 2006

Preface

This report assesses the impact on U.S. agriculture of eliminating access to migrant farm labor.[1] The report concludes that the agricultural sector would suffer significant economic losses if the law that governs the hiring of migrant labor were changed without providing for a viable guest worker program and a reasonable transition into such a program.

I. Introduction/Summary

Of all the major sectors of the U.S. economy, agriculture is the most dependent on migrant labor. After almost a century of transferring excess labor to the rest of the economy, agriculture's demand for labor has stabilized at approximately three million workers. Of these three million workers required to operate the sector, approximately two million are drawn from farm families and about one million are hired from non-family sources. An estimated 500,000 or more of this one million would be affected by restrictions on the hiring of migrant labor.

This report concludes that if agriculture's access to migrant labor were cut off, as much as $5–$9 billion in annual production of primarily import-sensitive commodities most dependent on migrant labor would be lost in the short term. Over the longer term, this annual loss would increase to $6.5–$12 billion as the shock worked its way through the sector. This compares to an annual production average for the entire agricultural sector of $208 billion over the last decade.

Production of fresh fruits, vegetables, and nursery products would be hit hardest as 10–20 percent of output would shift to other countries, and increasing the U.S. trade deficit on virtually a dollar-for-dollar basis. A fifth to a third of production for the fastest growing fresh component of the fruit and vegetable market would be lost.

[1] The term "migrant labor" as used in this report refers to foreign-born workers who travel to the U.S. for employment in the agricultural sector. The report does not consider migrant labor working in agriculture-related industries such as the livestock slaughter and packing industry. This definition is consistent with the definition used in USDA survey activities but differs from the definition of migrant labor (any and all workers who routinely move to different work sites) used in the Department of Labor survey activities and reporting.

An adequate labor force is critical to the economic health of our fruit and vegetable industry. Fruit and vegetable production is labor intensive and producers are already confronted with competitiveness issues due to low cost labor available in competing markets.

Costs would rise and production would fall in the other field crop and livestock sectors which are not as sensitive to imports or as dependent on migrant labor. With higher costs, these farm operators would produce a smaller volume of products ranging from grains, oilseeds and cotton to meat and milk. However, with labor accounting for a smaller share of costs, the drop in production would be more limited than in the fruit and vegetable sector. In addition, with the U.S. a major exporter rather than importer of most of these products, import displacement would be minimal. Hence, most of the impact on field crop and livestock operations would be concentrated in higher costs on remaining production.

The impact of this combination of lower production and higher costs on the farm sector as a whole would be a $1.5–$5 billion loss in farm income in the short term and a $2.5–$8 billion loss in the longer term (Table 1). The drop in production would reduce market receipts and net farm income. With farmers being price-takers rather than price-makers, much of the increase in production costs would also have to be paid for out of farm income. Aside from the specialty crop sector, this combined farm income impact would be most pronounced in livestock operations (such as dairy) where structural changes have increased dependence on hired labor. In dairy and many other livestock categories, the typical farm family workforce has simply become too small to operate enterprises large enough to capture economies of scale. These losses compare to a sector income average of $56 billion per year over the last decade.

Table 1. Losses in Farm Production and Income With the Elimination of Migrant Labor

Loss Type	$Billion
Production Loss	
Short Term	5.0 - 9.0
Long Term	6.5 - 12.0
Cost Increase on Remaining Production	
Short Term	2.5 - 7.0
Long Term	3.0 - 9.0
Income Loss from Reduced Production and Cost Increase	
Short Term	1.5 -5.0
Long Term	2.5 - 8.0

Adjustments would have to be made in all of the states (Table 2). However, adjustments would be largest in California, Florida, Washington, Oregon, Texas, North Carolina, Michigan, Idaho, Arizona, and New York. States with extensive fruit, vegetable, and nursery operations and large industrialized livestock operations would be the most severely impacted. But the majority of commercial field crop operations has grown large enough to need hired labor and would also face considerable adjustment challenges.

The reason for these losses is simple. There is no readily available pool of excess labor in the farm sector, the rural economy, or the general economy to draw upon to replace 500,000 or more migrant workers. The sector has already exhausted most on-the-shelf mechanization alternatives and next-generation robotics are decades away. Hired farm worker wages would have to increase significantly above and beyond the increases necessary over the last 2 decades to attract and hold workers in an increasingly tight labor market. This effort to replace lost migrant farm workers would be complicated by the demanding and often seasonal nature of many hired jobs in agriculture. It would be further complicated by similar efforts by employers in other sectors of the economy affected by migrant worker restrictions to attract and hold their own replacement workers. At a minimum, hired farm worker wages would have to increase from the current $9.50 average to possibly $11 to $14 per hour or more in order to attract and hold labor currently employed in other jobs requiring comparable skills.

The analysis reported here draws on farm labor data developed by USDA and the Department of Labor (DOL) and basic labor supply and demand relationships to estimate the wage impact of replacing lost migrant labor.[2] The analysis then uses farm income accounts developed by USDA as part of the income reporting program as well as Census of Agriculture data on the distribution of farm income to estimate sector vulnerability to higher labor costs.[3] The relationships built into the agricultural sector model developed at the University of Missouri's Food and Agricultural Policy Research Institute (FAPRI) were then used to estimate farm economy impacts.

The main body of this report looks first at the changing supply and demand for hired farm labor. The second section looks at several of the factors driving farm labor demand. The third section looks at the impact of bidding for hired farm labor, and the fourth section looks at mechanization as a possible answer to labor shortages. The report then looks at the key components of a viable guest worker program from an agricultural economic perspective. The report closes with a methodology section.

[2] The two most important sources of data are the National Agricultural Labor Survey (NALS) conducted by USDA's National Agricultural Statistics Service and the National Agricultural Workers Survey (NAWS) conducted by the Department of Labor.

[3] USDA's farm income information is available at *www.ers.usda.gov/data/FarmIncome* and *www.usda.gov/data/ARMS* while the Census of Agriculture data is available at *www.nass.usda.gov/census.*

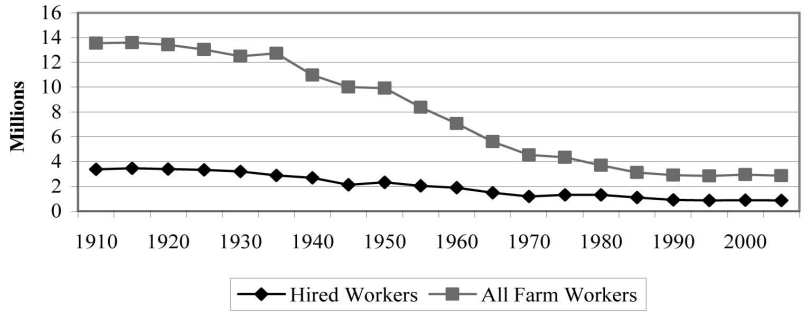
Table 2. State Impacts of Migrant Labor Reduction

	Short Term				Long Term			
	Production Loss		Income Loss		Production Loss		Income Loss	
	Low	High	Low	High	Low	High	Low	High
State	$Million							
United States	5,000.0	9,000.0	1,500.0	5,000.0	6,500.0	12,000.0	2,500.0	8,000.0
Alabama	34.8	62.6	10.4	34.8	45.2	83.5	17.4	55.6
Alaska	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Arizona	114.1	205.3	34.2	114.1	148.3	273.8	57.0	182.5
Arkansas	7.9	14.2	2.4	7.9	10.2	18.9	3.9	12.6
California	1,733.1	3,119.6	519.9	1,733.1	2,253.0	4,159.5	866.6	2,773.0
Colorado	59.9	107.8	18.0	59.9	77.8	143.7	29.9	95.8
Connecticut	26.9	48.4	8.1	26.9	35.0	64.5	13.4	43.0
Delaware	10.7	19.2	3.2	10.7	13.9	25.6	5.3	17.1
Florida	560.4	1,008.7	168.1	560.4	728.5	1,344.9	280.2	896.6
Georgia	100.5	180.8	30.1	100.5	130.6	241.1	50.2	160.7
Hawaii	50.6	91.0	15.2	50.6	65.7	121.3	25.3	80.9
Idaho	147.1	264.9	44.1	147.1	191.3	353.2	73.6	235.4
Illinois	46.5	83.7	13.9	46.5	60.4	111.6	23.2	74.4
Indiana	29.0	52.2	8.7	29.0	37.7	69.6	14.5	46.4
Iowa	10.4	18.8	3.1	10.4	13.6	25.1	5.2	16.7
Kansas	7.6	13.7	2.3	7.6	9.9	18.3	3.8	12.2
Kentucky	14.1	25.4	4.2	14.1	18.3	33.8	7.1	22.6
Louisiana	47.4	85.3	14.2	47.4	61.6	113.8	23.7	75.8
Maine	23.2	41.8	7.0	23.2	30.2	55.7	11.6	37.2
Maryland	41.5	74.7	12.5	41.5	54.0	99.6	20.8	66.4
Massachusetts	39.3	70.8	11.8	39.3	51.1	94.4	19.7	63.0
Michigan	151.0	271.8	45.3	151.0	196.3	362.4	75.5	241.6
Minnesota	83.1	149.6	24.9	83.1	108.0	199.5	41.6	133.0
Mississippi	11.8	21.2	3.5	11.8	15.3	28.3	5.9	18.8
Missouri	18.0	32.4	5.4	18.0	23.4	43.2	9.0	28.8
Montana	12.5	22.6	3.8	12.5	16.3	30.1	6.3	20.0
Nebraska	25.8	46.5	7.8	25.8	33.6	62.0	12.9	41.4
Nevada	6.1	11.1	1.8	6.1	8.0	14.7	3.1	9.8
New Hampshire	10.4	18.7	3.1	10.4	13.5	24.9	5.2	16.6
New Jersey	64.5	116.1	19.4	64.5	83.9	154.8	32.3	103.2
New Mexico	32.1	57.8	9.6	32.1	41.8	77.1	16.1	51.4
New York	99.2	178.6	29.8	99.2	129.0	238.2	49.6	158.8
North Carolina	158.7	285.7	47.6	158.7	206.3	380.9	79.4	254.0
North Dakota	52.4	94.4	15.7	52.4	68.2	125.9	26.2	83.9
Ohio	88.7	159.7	26.6	88.7	115.3	212.9	44.4	141.9
Oklahoma	44.9	80.9	13.5	44.9	58.4	107.8	22.5	71.9
Oregon	188.1	338.5	56.4	188.1	244.5	451.4	94.0	300.9
Pennsylvania	97.2	175.0	29.2	97.2	126.4	233.3	48.6	155.5
Rhode Island	8.5	15.4	2.6	8.5	11.1	20.5	4.3	13.7
South Carolina	36.6	65.8	11.0	36.6	47.5	87.7	18.3	58.5
South Dakota	8.3	15.0	2.5	8.3	10.8	20.0	4.2	13.3
Tennessee	33.4	60.2	10.0	33.4	43.5	80.2	16.7	53.5
Texas	180.1	324.2	54.0	180.1	234.1	432.2	90.0	288.2
Utah	9.4	17.0	2.8	9.4	12.3	22.6	4.7	15.1
Vermont	9.9	17.8	3.0	9.9	12.8	23.7	4.9	15.8
Virginia	37.6	67.7	11.3	37.6	48.9	90.3	18.8	60.2
Washington	327.8	590.0	98.3	327.8	426.1	786.7	163.9	524.5
West Virginia	5.9	10.7	1.8	5.9	7.7	14.3	3.0	9.5
Wisconsin	84.1	151.4	25.2	84.1	109.3	201.8	42.0	134.5
Wyoming	8.6	15.5	2.6	8.6	11.2	20.7	4.3	13.8

II. Changing Supply and Demand for Hired Farm Labor

In the mid-l980s, after almost a century of transferring surplus labor to the rest of the economy, the farm labor market shifted into balance, with the supply of readily available labor roughly equal to the labor needed to operate the sector. Figure 1 makes this point drawing on USDA data collected as part of its agricultural labor survey activities. As recently as the l960s and l970s, the farm workforce declined by 100,000–200,000 workers per year. From l985 forward, however, the sector has operated with a more or less steady workforce of just under three million. About two million of these workers come from within the farm sector and include farm operators and their family members. About one million are hired from non-family sources.

Figure 1. U.S. Farm Workers (l910-2005)



The current two million farm family workers is an all-time low and reflects several demographic factors including the size and aging of the farm operator pool, decreasing farm family size, and the continued movement of people off the farm. As recently as 1960, the farm family workforce was over five million. Since then, however, Census of Agriculture data indicate that the farm operator pool has steadily decreased in size and has aged as fewer beginning farmers have entered the pool and the proportion of farmers at or past retirement age has hit successive all-time highs.

The Census Bureau's population estimates indicate that average farm family size has also decreased sharply over this same period, reflecting both a general trend in the overall population and the fact that older farmers generally have fewer family members to draw on in operating the farm. In addition, the Census Bureau's population estimates show that the farm population continued to shift to jobs elsewhere in the rural economy or the urban sector. Combined, these factors translate into the smallest family farm labor pool on record.

In absolute terms, the labor force hired to augment farm family labor has also declined over time. As many as two million hired workers (less than a fourth of the total) were drawn from the rural economy as recently as the l960s. Since 1985, the number has stabilized at the current level of one million. Measured as a share of the total farm workforce (⅓), this figure is at an all-time high.

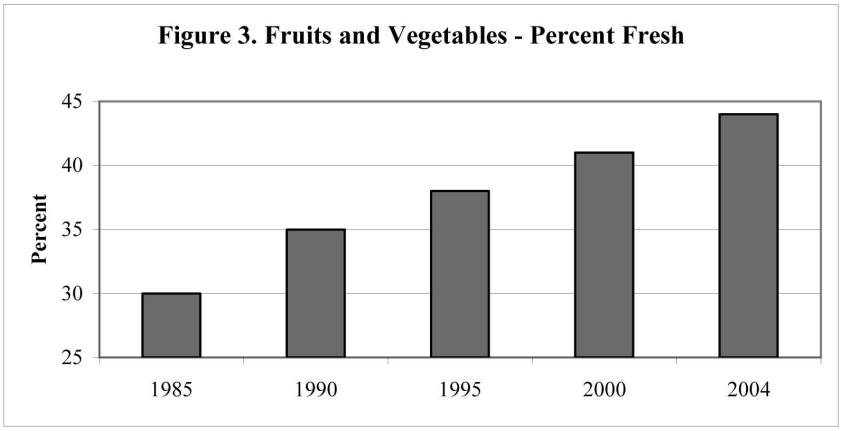
This change in the balance between farm labor supply and demand has been reflected in increased hired worker wages (Figure 2). USDA's National Agricultural Labor Survey indicates that the average hired farm worker wage in l985 was $4.50 per hour. This was close to the minimum wage in effect for the general economy and included a very limited benefits package. By 2005, the wage had increased to $9.50 per hour and included an improved benefits package that pushed the average cost up to $11–$12 an hour. This compares with a 2005 minimum wage of $5.15 per hour and DOL survey results showing wages in representative jobs with similar skill requirements ranging from $6.65 per hour for food preparation to $11 for janitorial workers and $14.34 for construction labor, according to DOL surveys.

III. Factors Driving Farm Labor Demand

This farm sector demand for three million workers reflects several factors. The long-standing substitution of capital for labor reduced the demand for labor. Sustained increases in labor productivity allowed farmers to operate with less labor. Offsetting this, however, were changes in consumer demand, farm structure, and farm size that worked in reverse to increase demand for labor.

For example, consumer demand for farm products has changed dramatically since l985. The change has been especially pronounced in the fruit and vegetable sector, where demand for fresh products has increased from 30–45 percent of an expanding produce consumption total (Figure 3). Where possible, growers have met this demand using existing resources—particularly machinery resources. However, the fresh market puts a premium on top quality, peak ripeness and visual appeal. This limits the extent to which functions such as picking and packing can be mechanized. Existing mechanization technology often cannot meet added technical concerns such as lack of uniform maturity, incomplete fruit removal, and differences in readiness criteria common in the specialty sector. Simply stated, human dexterity and judgment are necessary in the fresh produce sector.

This dependence on labor is reflected in produce costs and prices. Fresh fruits and vegetables meeting stringent consumer expectations can receive a 50–100 percent premium over produce used for processing. However, hired labor costs for operations specializing in production for the fresh market also range from ⅓ to over half of the total cost of production. This compares to an agricultural sector labor cost average of 14 percent.



Structural changes in the livestock and field crop sectors have also reinforced dependence on hired labor. These changes—the so-called "industrialization" of agri-

culture—have brought technological advances that have meant new ways to produce and market farm products. Increasingly, farms using the latest technology in the livestock sector simply require more labor than a farm operator family can generally provide.

For example, the typical dairy farm identified in the Agricultural Resource Management Survey conducted by USDA's Economic Research Service (ERS) reported spending $21,000 on hired labor as recently as l995 (Figure 4). However, the same operation spent $40,000 in 2004 as machinery operation and livestock management jobs grew more demanding. While relatively slower, growth in dependence on hired labor in the field crop sector has been significant as more mechanized operations require more labor to run high-cost machinery than most operators can provide.

Looking more broadly across the entire agricultural sectors, growth in the average size of farm enterprises indicates that commercial production has simply outgrown family labor. The typical commercial enterprise (i.e., farms selling more than $100,000 in products per year) increased from sales of about $335,000 per year to over $480,000 over the last decade. Supplementing this USDA survey data with Census of Agriculture data suggests size in the mid-l980s was below $275,000. These farms produce about 85 percent of the sector's output and account for an equally large share of labor. In a growing number of cases, even after adjusting for inflation, these operations are simply too large to operate with family labor alone (Figure 5).

Figure 4. Hired Labor Costs in Hog and Dairy Operations

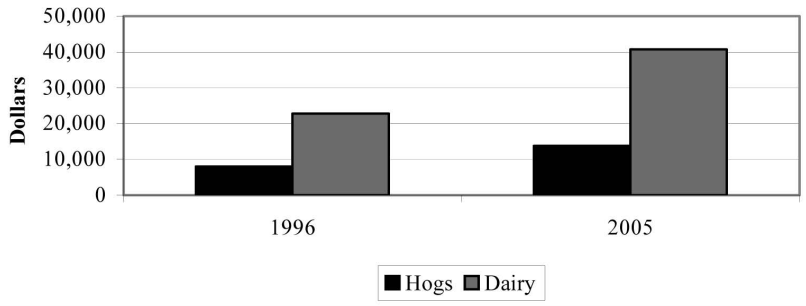
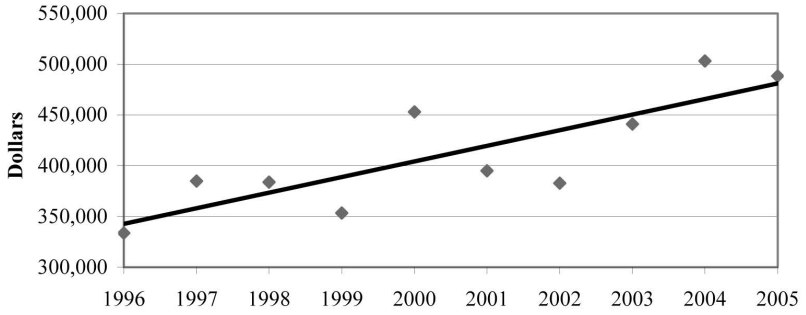


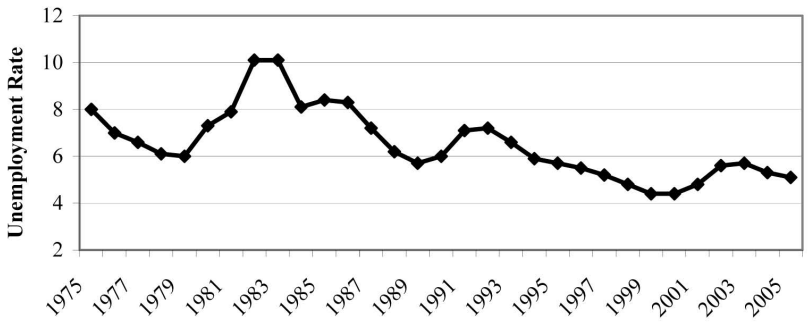
Figure 5. Commercial Farm Revenues



Meeting this hired labor need has become an increasingly demanding part of farm management. Reference has already been made to the declining farm family workforce. Changing demographics have also made it difficult to attract and hold a hired farm workforce. As Figure 6 indicates, unemployment in the broader rural economy has been low and is currently near what is commonly viewed as a 5 percent struc-

tural minimum. Rural unemployment has been lower than the current rate (5.3 percent) in only 4 of the past thirty years. There are fewer rural workers available for farm work today than there have been in nearly all of the last 3 decades.

Figure 6. Non-Metropolitan Unemployment Rate



The potential for drawing on urban workers is also limited. The urban unemployment rate is comparable to the rural rate and is also near structural minimums. Moreover, farm employment is typically located too far from cities where the number of individuals unemployed is high, even if unemployment rates are roughly comparable. The Census Bureau's population data on employment indicate that urban workers have historically been hesitant to relocate to rural areas. Even farm operators located closer to urban areas report difficulty in drawing the urban unemployed to farm jobs. Hence, there is no easy way to fill farm jobs with the urban unemployed.

Perhaps even more telling, however, is the fact that farm jobs are difficult to fill with either the rural or urban unemployed given the nature of the work involved. This is particularly true in the fruit, vegetable and nursery sector where approximately half of hired workers are employed and where the work requires difficult manual labor. Nor is it a "job" in the conventional sense that some take it to be. The work at any one location can be temporary, and sustained employment often requires the willingness and ability to move from site to site over a broad area and work for more than one employer, coinciding with the crop-harvesting calendar. But even site-specific jobs in the livestock and field crop sectors are difficult to fill despite the significantly lower wages that the DOL reports for jobs elsewhere in the economy with comparable skill requirements.

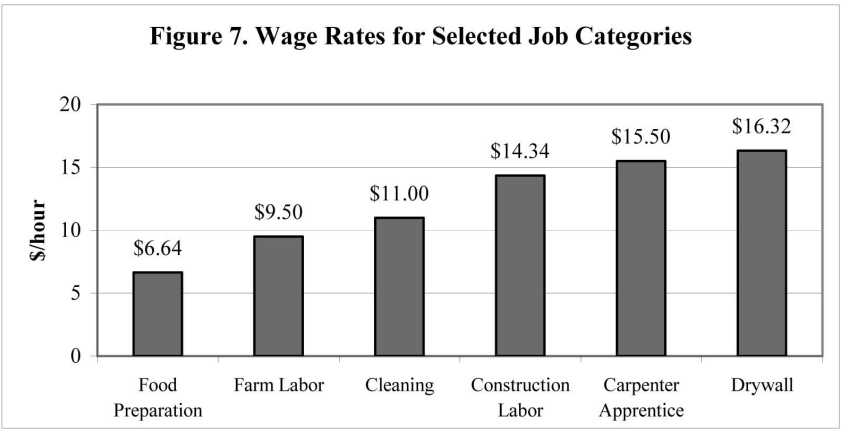
IV. Bidding for Hired Labor

In this setting of balanced farm labor supply and demand, a change in Federal law that effectively cuts off farmers' access to migrant labor would necessarily force the agricultural sector to bid in the general economy for replacement workers. While there is no precise count of the migrant workers that would be affected, DOL's National Agricultural Worker Survey suggests that 500,000—50 percent of agriculture's hired workforce—would be affected. Other, less formal, counts put the number affected significantly higher.

How high agriculture would have to bid to replace this large a share of its workforce would depend on labor supply and wages in the general economy for jobs with similar skill requirements. DOL surveys of wages and employment identify large pools of workers and the average wages for these pools. Figure 7 shows *representative* pools and wages for a range of jobs with skills comparable to those typically required of hired farm workers.

The DOL surveys indicate that the number of workers now employed in food preparation at wages averaging $6.65 per hour far exceed the number that would be needed in agriculture. As already noted, farm wages average $9.50 per hour. Food preparation workers could raise their earnings today by switching to farm employment, yet very few do. Agricultural employers have not been able to enlist these workers in farm employment, and that fact is buttressed by widespread, anecdotal reports from farm operators about recruitment difficulties. In short, the perception of farm jobs is such that a large segment of the native worker population apparently

prefers to take lower paying food preparation jobs rather than higher paying farm jobs.



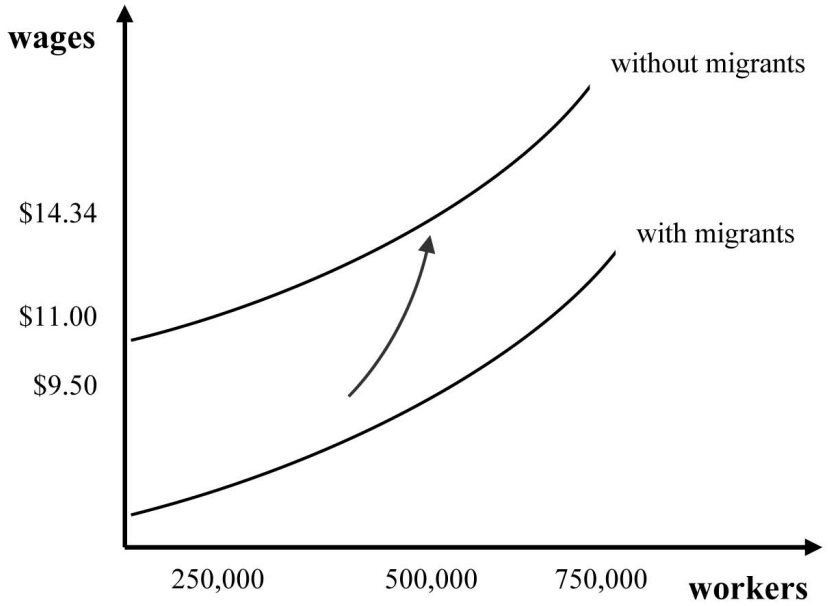
DOL surveys indicate that there are two other representative pools of workers that are large enough and the skill requirements comparable enough that they could supply agriculture's replacement needs: a janitorial classification with wages averaging $11 per hour and a construction laborer classification with wages averaging $14.35 per hour. With workers in lower paying jobs such as the food preparation classification choosing not to work in agriculture, farm operators would have to bid for workers in these higher-paid categories to replace migrant workers. This would entail raising wages from the current average of $9.50 to possibly $11–$14 per hour.

While there are more than enough workers in the janitorial category with $11 per hour wages to fill agriculture's replacement needs, several considerations suggest that replacement wages would have to tend toward the upper end of this $11–$14 range. First, the number of replacement workers needed would be large compared to the number of workers in this pool. Many workers in this pool would likely choose to stay in their current jobs. This suggests that agriculture would have to be prepared to tap the higher paid construction worker pool. This replacement effort would be complicated by the fact that, as already noted, farm work is often perceived as less desirable work.

Second, employers in these higher wage pools would likely respond to any significant loss of labor to agriculture with wage increases of their own to maintain their workforce. Equally important, these other sectors also employ migrant workers and would be affected by hiring restrictions. Hence, they would face the same replacement pressure—*albeit* less acutely than agriculture given the smaller proportion of migrant labor in their overall workforces—as farm operators.

As Figure 8 indicates, this broader pressure to find replacement workers would tend to drive up wages generally. Theoretically, the labor supply curve describing the number of workers available at specific wages would shift up and to the right. This means that, all other factors constant, the cost of the same number of workers providing the same services would be higher even before a specific sector such as agriculture moved to attract workers from elsewhere in the economy.

Figure 8. Migrant Farm Labor Supply Curve



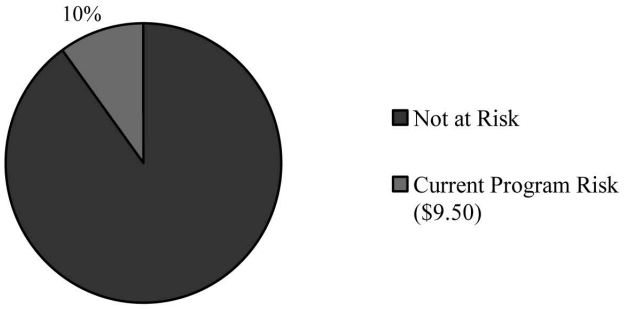
The impact of increasing the average hired wage from $9.50 into this $11–$14.35 per hour range on the sector would vary depending on producers' use of migrant labor. As already noted, half of this replacement labor would be demanded by fruit, vegetable and nursery producers, particularly for fresh produce operations. This dependence on migrant labor combined with their exposure to imports suggests that the greatest impact would be in this sector.

USDA's Agricultural Resources Management Survey provides a snapshot of the financial health of these fruit, vegetable, and nursery producers and an indication of the impact a significant increase in labor costs would have. Surveys from 2003 indicate that, on average, about 10 percent of producers in the specialty crop category are financially vulnerable (Figure 9). That is, these producers report negative farm incomes and debt-to-asset ratios over 40 percent. They are currently generating too little revenue to pay all of their bills and have essentially borrowed what most banks will lend on farm assets.

USDA's farm income records and farm financial analysis indicate that, historically, operations in this category are most dependent on continuation of the *status quo*—in this case continuation of a $9.50 wage. However, while operating at the margin, these producers supply a significant share of sector production. And with year-to-year developments in weather and local marketing circumstances, producers can shift in and out of this category over time.

With migrant labor eliminated and replacement labor costs up 16–51 percent, the situation would worsen significantly for these vulnerable producers. Fresh fruit and vegetable producers most dependent on hired migrant labor would be the most severely affected. However, the rest of the specialty crop sector would also face sharp cost increases. We expect that the 11 percent of fruit, vegetable and nursery producers who fall into this "vulnerable" category would ultimately fail with the replacement of $9.50 per hour labor with $11–$14 per hour labor (Figure 9).

Figure 9. Vulnerable Speciality Crop Producers with Current Labor Costs



A significant increase in labor costs would also pull some share of producers who are not vulnerable with $9.50 per hour labor into the vulnerable category with $11–$14 labor. USDA research on farm financial vulnerability and Census of Agriculture data on the distribution of farm income suggest that raising wages to $11 per hour would move an additional 2 to 3 percent of fruit, vegetable and nursery producers into this vulnerable category (Figure 10). The same data indicate that raising wages to $14.35 would likely put another 10 percent of these producers in this vulnerable category (Figure 11).

It is important to note that this 10–20 percent loss would be for the fruit and vegetable sector as a whole. A fifth to a third of the fastest growing fresh fruit and vegetable component would be affected as production shifted abroad.

Figure 10. Vulnerable Specialty Crop Producers with Minumum Increase in Labor Costs

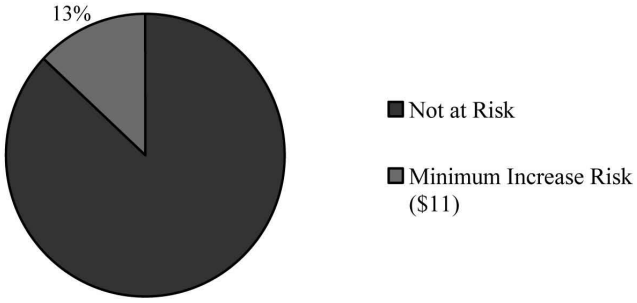
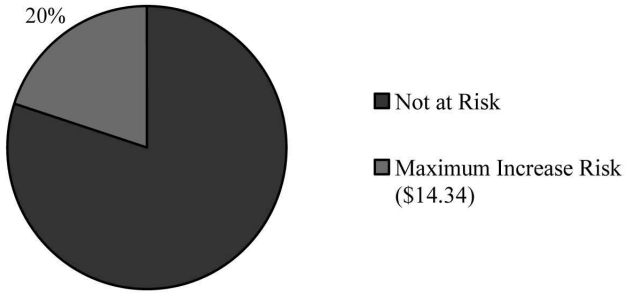


Figure 11. Vulnerable Specialty crop Producers with Maximum Increase in Labor Costs

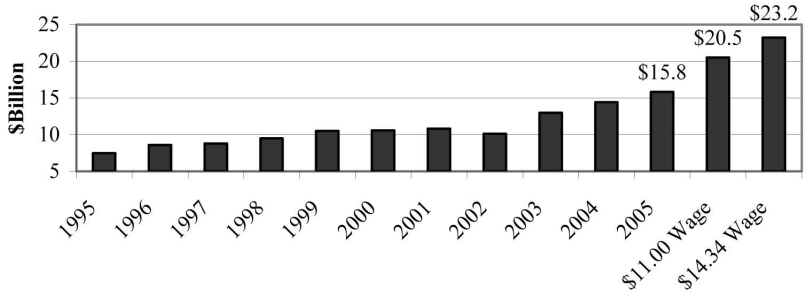


Since the loss of migrant labor would be permanent, these newly vulnerable producers would eventually go out of business as their losses accumulate and their borrowing options are exhausted. In short, while they would likely continue operating with a reasonably open labor market setting wages at $9.50 per hour, they would not be able to continue operating with a closed labor market generating $11–$14 wages.

The loss in U.S. production would be roughly comparable with the loss of producers. USDA vulnerability research suggests that smaller producers make up a larger share of at-risk farmers. In this case, however, the challenge of finding replacement labor would tend to favor small producers. Small producers could, in theory, improvise by using overtime family labor, part time laborers or local replacement workers to a greater extent than larger operators faced with a much larger labor deficit. Hence, migrant labor restrictions would pull larger producers into the vulnerable category and keep the drop in production and producers roughly comparable.

The resulting loss of $5–$9 billion in fruit and vegetable production reflects not only wage increases but also the availability of large replacement supplies of fruits and vegetables from outside the U.S. The rapid growth in imports over the last decade indicates the readily available supply of foreign fruit and vegetables with U.S. farm wages at the current $9.50 per hour (Figure 12).

Figure 12. Historical Fruit and Vegetable Imports and Effects of Potential Wage Increases



Restricting migrant workers could well enhance foreign competitiveness even more than the increase in U.S. costs and expand the share of producers in the vulnerable category more than estimated here. Mexico, the chief U.S. supplier of specialty products, could well see its costs of production decrease as several million migrant workers were locked out of the U.S. and had to find employment at home. Surveys of Mexican fruit and vegetable production costs suggests that labor is the

single largest expense and that access to a significantly larger labor pool would allow producers to market the same or larger volume at lower costs. A drop in Mexican prices of 10 percent, for example, would put significantly more U.S. producers at risk of failure.

With a significant share of U.S. specialty crop production essentially out-sourced, the affected farm resources would be available for alternative uses. Normally, at least some of the resources of displaced producers are bought up by generally larger, more profitable operators. This works to reduce the net drop in production. Given USDA survey indications of the value of the resources (such as land and water) in question, the resources affected would generally have to continue to be used in high return activities such as specialty cropping. However, this potential for offsetting resource shifts would be limited in the migrant worker case since other operators normally looking to expand would themselves be under pressure due to higher labor costs.

The much smaller role played by hired labor and the more limited potential for imports would translate into a different adjustment in the rest of the agricultural sector. Loss of migrant labor would translate into higher production costs and the loss of a small proportion of field crop and livestock producers, most of whose resources would likely be bid away by more profitable operators. The agricultural sector models used at FAPRI and USDA to develop agricultural baseline projections suggest that the responsiveness of field crop and livestock sectors to increases in cost is approximately 0.2 (i.e., a 10 percent increase in costs is associated with a 2 percent decrease in production). Consequently, the drop in production would be small.

However, the vast majority of field crop and livestock producers who remained in business would face higher costs for their ongoing production activities. Given the farm sector's historical role as a price-taker rather than a price-maker, most of the cost increase associated with $11–$14 per hour labor could not be passed on in the form of higher prices. Historically, half or more of cost increases come out of farm income.

In conclusion, overall agricultural production would fall $5–$9 billion in the short term and $6.5–$12 billion in the longer term as the shock of a labor shortage and wages increases worked through the sector. This would be due to large losses in the fresh fruit and vegetable sector and smaller losses in the rest of the fruit and vegetable sector and in the field crop and livestock sectors (Table 1). Producers who remained in production would face a sector-wide increase in costs of $2.5–$7 billion in the short term and $3–$9 billion in the longer term.

These two impacts can be converted into a farm income loss using USDA's farm accounts to estimate the share of production dollars that normally accrue to farmers as income and the share of production expenses that typically come out of farm income. The farm accounts data suggest that 20–30 percent of production receipts accrue to farmers as income. The same accounts and the agricultural sectors models used here suggest that 50–66 percent of an increase in production expenses normally is paid out of income. These parameters change with the size of the change in production and expenses considered. Using them as guidelines, the production losses and cost increases estimated here translate into a $1.5–$5 billion income loss in the short term and $2.5–$8 billion loss in the longer term (Table 1).[4] These estimates compare to an annual farm income average of $56 billion over the last decade.

[4] Note: For example, the $1.5–$5 billion in short term income loss assumes that $4 billion out of the $5–$9 billion in lost production would have generated no income and that the income loss on the remaining $1–$5 billion ($5–$9 billion minus $4 billion) would be $250 million to $1.25 billion. The $2.5–$7 billion in higher costs translate into $1.25–$3.5 billion in income loss, assuming farmers can only pass along half of their cost increase. This puts the total short term loss, after rounding to the nearest $500 million, at $1.5–$5 billion. Over the longer term, the $2.5–$8 billion in income loss assumes that $4 billion out of the $6.5–$12 billion in lost production would have generated no income and that the income generated on the remaining $2.5–$8 billion ($6.5–$12 billion minus $4 billion) would be $625 million to $2 billion. The $3–$9 billion in higher costs translates into $2–$6 billion in income loss using a .66 long term ratio *versus* a .5 short term ratio for cost increases absorbed by farmers. Rounding to the nearest $500 million puts the total income loss for the long term at $2.5–$8 billion per year.

Table 1. Losses in Farm Production and Income With the Elimination of Migrant Labor

Loss Type	$Billion
Production Loss	
Short Term	5.0 - 9.0
Long Term	6.5 - 12.0
Cost Increase on Remaining Production	
Short Term	2.5 - 7.0
Long Term	3.0 - 9.0
Income Loss from Reduced Production and Cost Increase	
Short Term	1.5 -5.0
Long Term	2.5 - 8.0

Note: See footnote 4.

Given the limited experience agriculture and the broader economy has had with labor disruptions even approaching the magnitude involve in restricting migrant labor, these production and income estimates could prove conservative. Several factors could work to raise them substantially. For example, underlying the analysis is the assumption that labor moves freely and immediately between jobs in the U.S. economy. In other words, agriculture would pay more to bid labor away from the general economy while the majority of operators continue to function with higher costs but without interruption. Vulnerable producers leave the sector. In actual fact, labor markets are far more rigid and the adjustments more complicated. Moving 500,000 replacement workers between sectors would require considerable time and involve significant disruption.

This is a particularly important assumption in the agricultural sector, given production cycles that make many producers sensitive to short term disruptions. This potential for disruption is most marked in the fruit and vegetable sectors—i.e. the sector with the most perishable product and greatest dependence on migrant workers. However, vulnerability to labor disruption extends to livestock operations, such as dairy, and field crop operations faced with harvest-time labor needs. As a result, an analysis based solely on wage rates may seriously understates farm impacts. How restrictions on migrant labor were implemented would also be of critical importance. The estimates outlined here assume implicitly that restrictions were implemented with enough lead-time for the sector to adjust. Without this lead-time, the impact would be significantly greater than estimated here.

In addition, the analysis makes no provision for the upward pressure on wages above the $14.35 per hour level that eliminating migrant workers could have. While there is no precise count of the total number of migrant workers currently in the U.S., even the 10–11 million estimates at the low end of the range would be large enough to spark an economy-wide increase in wages. In this setting, agriculture would have to match the new wages in effect rather than the old $11–$14 per hour wages. This could also increase farm sector adjustment costs significantly.

Other factors could potentially work to lower adjustment costs. For example, the estimates describe here also make no provision for the sector's capacity to make structural changes that minimize the need to hire replacement labor. This would work to lower adjustment costs. While limited in the short term, the sector has adjusted to input cost increases in the past by modifying production technologies and changing the mix of inputs used in the production process. The adjustment that comes to mind immediately is falling back on the substitution of machinery for labor. As the following discussion suggests, however, the potential in the short term of 1 to 5 years is limited at best.

V. Mechanization

One alternative to the adjustments identified in this report often cited by supporters of restricting migrant workers is increased mechanization. However, a closer look at the supply of mechanization technology on the shelf, the long lead-time involved in developing new technology and the changing nature of hired labor demand suggests that mechanization would have a very limited role to play in the short and intermediate term.

Farmers have historically favored development and adoption of mechanization technology as a means of controlling costs, boosting incomes and minimizing the difficulties involved in hiring and retaining non-family labor. Consequently, most of the ready stock of mechanization technology has already been adopted. Decreased public and private investment in research and development over the last 2 decades has also worked to limit new technology in the pipeline. Given the farm sector's past experience with mechanization, the lead-times in question could be 10–15 years.

Mechanization of processing tomatoes, for example, took 10–15 years from the late 1940s through the early l960s. There were none of the challenges associated with fresh fruits and vegetables where quality and appearance are at a premium. The process involved a concerted effort by several universities' agricultural engineering departments, USDA support and strong grower interest. Once available, the technology was quickly adopted and proved to be a major factor in making the U.S. one of the most competitive producers of processing tomatoes in the world. But the quick adoption once there was a prototype may be the exception, not the rule.

Mechanization in other commodity markets has made sense only at scales large enough to rule out adoption for all but a minority of operators. The livestock sector, such as dairy, is a good example. Advances have been made in mechanical milking with the use of robotics but the technology generally requires 1,000 or more milk cows to reach the minimum scale necessary to justify the investment. Robotic milkers were introduced several years ago, yet costs are still so high that such a chance is prohibitive for 95 percent of all dairy operators.

While there is certainly potential for some added mechanization over the long term, the potential for many commodities is very limited or non-existent, regardless of the time frame. The fresh fruit and vegetable market is a good example. As already noted, human dexterity and judgment is needed in the picking and packing of produce to meet consumer demand and to address concerns about the lack of uniform maturity, incomplete mechanical fruit removal, mechanical bruising, and differences in readiness criteria. Next generation technology that addresses these needs is not even on a drawing board at this time.

Hence, advanced mechanization alternatives would require a revival of public-private investment in public-private research and development and a long-term Congressional funding commitment. Even then, the contribution would likely be limited to some products and not others, concentrated in the longer term, and economically viable only at large enough scale to further restrict its impact.

VI. Designing a Viable Guest Worker Program

One approach to meeting U.S. homeland security concerns while accommodating agriculture's need for labor is to develop a viable guest worker program as an integral part of any legislation affecting migrant labor. The economic considerations identified earlier in this report suggest that such a program would have to have several critical components.

First, a viable guest worker program would have to accommodate a large number of workers efficiently. Providing just the agricultural sector with an uninterrupted supply of guest workers would require a program capable of handling 500,000 workers each year. The current H–2A program accommodates about 30,000. Handling the much larger volumes needed in agriculture would require streamlining the application and review process in both the U.S. and the country of origin in order to protect homeland security and facilitate worker flow.

Second, a viable guest worker program would allow the open market to determine wages and benefits. The existing program's "adverse effect" provisions have led DOL to issue arbitrary guidelines to protect the American worker from an influx of low-cost foreign labor that would bid down wage rates. Such has not been the case. As noted earlier, agricultural wages are well above the minimum wage and wages in other industries such as food preparation. The DOL provisions in question do, however, work to raise wages and benefits for foreign farm workers above market-clearing levels without leading to any increase in Americans seeking farm jobs. Migrant farm labor hired through the program often costs $14–$17 per hour compared to the $9.50 average for the sector. The increase in hired farm worker wages shown in Figure 2, combined with farm operator difficulties in securing American workers even at the higher wages paid over the last decade, indicate that any adverse impact on American workers is minimal at best. Market forces would prevent any widespread abuse in the future as Americans vote with their feet for jobs elsewhere in the economy even at substantially lower wages. Access to administrative remedies would be sufficient to address any isolated cases of abuse.

Third, a viable program would include provisions designed to meet agriculture's unique labor needs. For example, farmers generally need to lock in labor well in advance as part of their farm management plans. However, fluctuations in weather

could move up or push back the dates labor is actually needed. Given the perishable nature of agricultural production, many farmers in question would not be able to "wait in line" behind other employers with non-perishable products. Many farmers' labor needs are also concentrated in short periods of time centered around harvest. Hence, a viable program would allow for worker movement between employers to provide a guest worker with long enough employment to make the program worthwhile. Many other farmers need year round labor that would not "fit" into a seasonal worker program.

Fourth, the NAWS survey indicates that migrant workers typically have an established work history with specific employers. The NAWS survey indicates that the average migrant worker has worked for the same employer/employers for more than 4 years and has been doing farm work in the U.S. for up to 10 years. A viable guest program would provide for continuing these established employer-employee links.

Note on Methodology

This analysis is subject to several limitations relating to data and methodology. On balance, these limitations suggest that the impact ranges cited in the text are best interpreted as orders of magnitude rather than precise estimates.

Regarding data, there are several sources with often conflicting observations. While the data tend to paint the same general picture, they can differ on specifics in any 1 year. For the purposes of this report, the National Agricultural Labor Survey conducted by USDA and the National Agricultural Workers Survey done by the Department of Labor were treated as definitive. Hence, for example, the report assumes than 53 percent of agriculture's hired workforce would be affected by restrictions on migrant labor despite indications from other largely anecdotal sources that the number affected would be higher and the impact of restrictions consequently greater.

Regarding methodology, there has been relatively little research on farm labor markets done by USDA or the land grant universities. Hence, the econometric basis for doing impact analysis does not exist. The same is true for the broader labor market, particularly for the range of jobs relevant for this analysis. The analysis here is based on the assumption that farmers would have to bid in the open market for labor to replace lost migrant workers. This makes understanding how labor markets operate and how the agricultural sector adjusts to across-the-board increases in labor costs critical.

Regarding operation of labor markets, this analysis assumes that the Department of Labor's surveys of wages and employment can be used to develop a rough approximation of the labor supply curve for the range of jobs relevant for a farm labor analysis. There are undoubtedly many other job categories with wages that fall between Figure 7's benchmarks, but not with sufficient numbers likely to shift to fill agriculture's job vacancies. In addition, the wages shown are averages, with distributions including significantly higher and lower wages. However, it was assumed that Figure 7's benchmarks could be used to sketch out a rudimentary schedule of the higher wages agriculture could expect to pay to attract and hold replacement workers.

As already noted, the analysis also assumes that labor moves freely between categories, and that labor movement between categories is based solely on relative wages as opposed to a combination of wages and job characteristics. And as already noted, the analysis makes no provision for the generalized upward pressure on wages above the $14.35 per hour level that eliminating migrant workers across the economy could have. All of these labor assumptions work to reduce and "smooth out" the labor adjustment in agriculture.

These are particularly important assumptions for the agricultural sector, given production cycles that make producers sensitive to short term disruptions. This potential for disruption is most marked in the fruit and vegetable sectors—i.e. the sector with the most perishable product and greatest dependence on migrant workers. However, vulnerability to labor disruption extends to livestock operations faced with day-to-day operational needs and field crop operations faced with harvest-time labor needs. This suggests that an analysis based solely on replacement wage rates understates farm impacts. It also suggests that how restrictions on migrant labor are implemented is also of critical importance. The estimates outlined here assume implicitly that restrictions were implemented with enough lead-time for the sector to adjust—to find replacement workers. Without this lead-time, the impact would be significantly greater than estimated here.

Regarding operation of the agricultural economy, this analysis assumes that farmers have little flexibility in substituting other inputs for hired labor. The analysis also assumes that the farm sector would have difficulty passing higher labor costs on to consumers. The elasticities for the short and long term were .50–.66, indi-

cating that half or more of the impact of a labor cost increase would take the form of an added production expense and income deduction. The analysis also assumes that the long term relationship between production receipts and income holds—that is, farmers loose $.25 in income for every dollar in production displaced. These assumptions are consistent with the relationships at work in the Food and Agricultural Policy Institute's agricultural sector model and the USDA analysis underpinning the Department's Baseline. While these assumptions about the labor market and the agricultural economy suggest that this report's estimates of the costs of restricting migrant labor could be low, several factors suggest that they could be high. For example, the estimates describe here make no provision for the sector's capacity to make structural changes that would minimize the need to hire replacement labor. While limited in the short term, the sector has adjusted to input cost increases in the past by modifying production technologies and changing the mix of inputs used in the production process. The materials presented here suggest, however, that the potential in the short term of 1 to 5 years is limited at best.

The analysis also provides for a distinction between short and long term impacts. The short term impacts are defined as 1–2 year impacts and do not provide for the full effect of a sustained across-the-board labor cost increase. The longer term impacts—3 years or more—provide for the full impact of higher wages as agriculture moves up toward the top end of the $11–$14.35 range discussed in the text. The longer term impacts also incorporate the full impact of cost increases working through the vulnerability analysis to reduce production and raise costs.

These assumptions can be varied to establish a range around the income estimates described here. A lower bound on the income loss estimate can be established by assuming labor replacement costs would be lower, that farmers can pass along more of a cost increase to consumers, and that less production will exit the sector. This would lower the $1.5–$5 billion estimate to $1–$3.5 billion in the short term and the $2.5–$8 billion estimate for the long term to $1.5–$5 billion. Alternatively, assuming replacement wages are higher, that farmers are less able to pass along cost increases to consumers, and that more producers are forced to exit, the short term income loss would be $2–$6.5 billion and $4–$9.5 billion in the longer term.

In short, the impact of restricting agriculture's access to migrant labor is significant even with alternative more favorable assumptions for key parameters.

ATTACHMENT #4

Legal, Stable Workforce Critical for Agriculture

Washington, D.C., October 4, 2007—Agriculture is on the front lines of the immigration debate in America and farmers, ranchers and growers desperately need a solution to the labor challenges they face, the American Farm Bureau Federation told Congress today.

"Sustaining our current level of productivity is contingent on a stable, reliable and legal workforce. Nowhere is the problem more acute than in agriculture," AFBF President Bob Stallman testified at a House Agriculture Committee hearing on the labor needs of American agriculture. "The labor situation on America's farms and ranches is closely linked with the issue of immigration reform."

To illustrate the severity of the problem, Stallman cited Labor Department surveys indicating that in 2001 and 2005, 53 percent of the hired crop labor force was not authorized to work in the U.S.

"We believe this is probably a low estimate because it is based on responses volunteered by individuals to government-authorized interviewers," Stallman said. "It seems reasonable that at least some individuals surveyed did not volunteer that they were not legally authorized to work."

Using National Agricultural Statistics Service figures that peg the number of nonfamily farm workers at one million, Farm Bureau estimates at least 500,000 agricultural workers in the U.S. lack proper authorization.

Analysis of additional NASS data reveals a progressive tightening in the supply of agricultural labor, according to AFBF. Farmers normally require the most labor for their operations during the third quarter of each year. But a comparison of the third quarter of 2005 to the third quarter 1 year later indicates there were 60,000 fewer farm workers during this critical time period in 2006.

The change in the balance between farm labor supply and demand is reflected in higher average wages for hired farm workers compared to other types ofworkers. According to the Labor Department, in 2005, hired farm workers earned an average of $11 to $12 per hour, compared to workers earning $6.65 per hour for food preparation, $11 per hour for janitorial jobs and $14.65 for construction labor. In fact, there are currently 10 million workers—more than 7 percent of the total U.S. workforce—who work for lower wages than they could earn in agriculture.

"Clearly, farmers are facing a difficult situation as they scramble for additional labor in an economy with a relatively low unemployment rate and a lack of individuals willing to work in agriculture," Stallman said.

"Without a stable, legal supply of labor to replace currently unauthorized workers, the fresh fruit and vegetable sector could see U.S. production decline by up to $9 billion a year," Stallman said. "Similarly, an abrupt loss of our labor supply could cause net farm income to drop by up to $5 billion annually."

AFBF continues to urge Members of Congress to set aside their partisan and ideological differences and do what is right for agriculture, and the U.S. as a whole, by approving national immigration legislation reform legislation without delay.

The CHAIRMAN. Thank you very much, Mr. Stallman, for that testimony. We now will recognize Mr. Lee Wicker, the Deputy Director of North Carolina Growers Association. Welcome to the Committee.

STATEMENT OF H. LEE WICKER, DEPUTY DIRECTOR, NORTH CAROLINA GROWERS ASSOCIATION, VASS, NC

Mr. WICKER. Mr. Chairman, thank you for the opportunity to participate in this important hearing. I am Lee Wicker, Deputy Director of the North Carolina Growers Association, the largest H–2A Program user in the nation.

North Carolina growers has 725 members this year and will employ nearly 7,500 workers. I represent the best, most compliant farmers in the nation, and I am extremely proud of them. I am the only person on this distinguished panel of experts who is a former government bureaucrat, a consultant, an advocate, a farm worker, a farmer, and an H–2A Program user. I am uniquely qualified to talk about this issue from a clinical and practical perspective.

Unfortunately the issue of farm labor has become hyper politicized, due in part to the amnesty provisions contained in the AgJOBS bill. Farmers need workers to grow food, not amnesty. To ensure that growers have an adequate and legal labor force, the solution is not amnesty but rather repair of the broken H–2A Program so that growers will use it.

Currently H–2A is too litigious, too expensive, and too much of a bureaucratic morass at the three Federal agencies that oversee the program. In order to fix H–2A so that it is workable for farmers, there are four crucial areas of the program that must be corrected.

Number one, change the wage rate to prevailing. Every other visa program pays prevailing wage. Why should agriculture with its entry-level, low skill jobs be treated differently? The current H–2A minimum wage in North Carolina is $9.02 per hour. In the last 16 years, the wage is North Carolina has gone up a staggering 76 percent. Farmers cannot afford to pay that much, especially on top of the free housing, utilities, and transportation required by law.

Number two, require binding mediation and arbitration. Growers and workers should be required to resolve legal issues through mediation and arbitration. Growers sign contracts all the time that contain mandatory mediation agreements. If it is okay for farmers, then it should be okay for farm workers. Since 1989, the growers of NCGA have been sued over 30 times and have paid over $5 million in attorneys' fees and settlement costs.

This is a common experience among H–2A Program users around the country. I believe that you can protect farm workers without being sued by an attorney with a political and social agenda, and

I am deeply troubled that growers who are making a good faith effort to do things legally and responsibly are being attacked.

Number three, visa cost and transportation reimbursement. Cost associated with the worker applying for the visa should be paid for by the worker. Inbound transportation should be reimbursed to the worker upon completion of 50 percent of the contract. If the money is reimbursed upon arrival, the financial incentive for the worker to remain on the farm is removed. And guess where the workers will be. Gone.

Number four, streamline and simplify the H–2A process. There are many delays with the U.S. Departments of Labor, Homeland Security, and most problematic has been the issue of getting enough appointments from the State Department for the one-on-one interviews and background checks. The system needs to be streamlined and simplified, eliminating redundant needless rubber stamping by bureaucrats.

Most experts agree that if the number of H–2A workers were to double, the program would collapse under its own bureaucratic weight. The infrastructure is not in place for significant expansion.

In summary, without these four changes, the H–2A Program is simply too expensive and too litigious for most growers to use. Most farmers prefer to employ illegals because it is cheaper, and they remain off the Federal and legal radar screens. If you employ H–2A workers, you can expect to have investigations by the U.S. Departments of Labor, Homeland Security, Justice, State, the FBI, the IRS, reporters, attorneys, and farm worker advocates.

As Agriculture Committee Members, you have the forum and the ability to articulate the problem and offer policy solutions that will ensure American agriculture has an adequate and legal labor force. Please remember our growers need a workable H–2A Program, not amnesty. Amnesty did not work in 1986, and AgJOBS, with its amnesty provisions, will not work today. It will only make matters worse.

The North Carolina Growers Association supports H.R. 1792, the Temporary Agricultural Labor Reform Act of 2007. I thank you for your attention.

[The prepared statement of Mr. Wicker follows:]

PREPARED STATEMENT OF H. LEE WICKER, DEPUTY DIRECTOR, NORTH CAROLINA GROWERS ASSOCIATION, VASS, NC

Mr. Chairman, thank you for the opportunity to participate in this important hearing. I'm Lee Wicker, Deputy Director for the North Carolina Growers Association, the largest H–2A program user in the nation. The NC Growers Association has 725 members and will employ nearly 7,500 H–2A farmworkers in 2007. I represent the best most compliant farmers in the nation and I am extremely proud of them. I am the only person on this distinguished panel of experts who is a former government bureaucrat, a consultant, an advocate, a farmworker, a farmer and an H–2A program user. I am uniquely qualified to talk about this issue from a clinical and practical perspective.

Unfortunately, the issue of farm labor has become hyper politicized—due, in part, to the amnesty provisions contained in the AgJOBS bill. Farmers need workers to grow food, not amnesty.

To ensure that growers have an adequate and legal labor force, the solution is not amnesty, but rather repair of the broken H–2A program so that growers will use it. Currently, H–2A is too litigious, too expensive and too much of a bureaucratic morass at three Federal agencies that oversee the program.

In order to fix H–2A so that it is workable for farmers, there are four crucial aspects of the program that must be corrected:

1. *Change the wage rate to prevailing.* Every other visa program pays prevailing wage. Why should Agriculture, with its entry level, low skill jobs, be treated differently? The current H–2A minimum wage rate in NC is $9.02 per hour. In the last 16 years the wage in NC has gone up a staggering 76%. Farmers cannot afford to pay that much, especially on top of the free housing, utilities, and transportation required by law.

2. *Require Binding Mediation and Arbitration.* Growers and workers should be required to resolve legal issues through mediation and arbitration. Growers sign contracts all the time that contain mandatory mediation arbitration agreements. If it is okay for farmers, then it should be okay for farmworkers. Since 1989, the growers' of NCGA have been sued over 30 times and have paid over $5 million in attorneys fees and settlement costs. This is a common experience among H–2A program users around the country. I believe that you can protect farm workers without being sued by an attorney with a political and social agenda. I am deeply troubled that growers who are making a good faith effort to do things legally and responsibly are being attacked.

3. *Visa Costs and Transportation Reimbursement.* Costs associated with the worker applying for the visa should be paid for by the worker. Inbound transportation should be reimbursed to the worker upon completion of 50% of the contract. If the money is reimbursed upon arrival, the financial incentive for the worker to remain on the farm is removed—and guess where the workers will be . . . gone.

4. *Streamline and Simplify the H–2A Process.* There are many delays with U.S. DOL, Homeland Security and most problematic has been the issue of getting enough appointments from the State Department for the one-on-one interviews and background checks. The system needs to be streamlined and simplified, eliminating redundant and needless rubber-stamping by bureaucrats. Most experts agree that if the number of H–2A workers were to double, the program would collapse under its own bureaucratic weight. The infrastructure is not in place for significant expansion.

In summary, without these four changes, the H–2A program is simply too expensive and too litigious for most growers to use. Most farmers prefer to employ illegals because it is cheaper and they remain off the Federal and legal radars. If you employ H–2A workers you can expect to have investigations by the U.S. Departments of Labor, Homeland Security, Justice, State, the FBI, the IRS, reporters, attorneys, and farmworker advocates.

As Agriculture Committee Members you have the forum and the ability to articulate the problem and offer policy solutions that will ensure that American Agriculture has an adequate and legal labor force. Please remember, our growers need a workable H–2A program, not amnesty. Amnesty did not work in 1986 and AgJOBS, with its amnesty provisions, will not work today, it will only make matters worse.

Thank you for your attention.

The CHAIRMAN. I thank the gentleman. I am now pleased to recognize—if I can get organized here—Mr. Scott Herring, the Executive Vice President and CEO of Farm Credit of Western New York. Welcome to the Committee.

STATEMENT OF C. SCOTT HERRING, EXECUTIVE VICE PRESIDENT AND COO, FARM CREDIT OF WESTERN NEW YORK, ACA, BATAVIA, NY

Mr. HERRING. Mr. Chairman, Members of the Committee, thank you for the opportunity to testify on the labor needs of American agriculture. My name is Scott Herring, and I am the Chief Operating Officer for Farm Credit of Western New York, and we extend credit and other financial services to over 3,500 customer members.

The current farm labor situation is of great concern to our farmer members and to our organization. During the past decade, farm businesses have had difficulty hiring local workers to meet their

needs and, as a result, have employed growing numbers of immigrant labor.

Over the past few years, there have been more labor disruptions in western New York as a result of actions by ICE, local police, or simply because farm workers believe that the farm that they worked on would be targeted for enforcement actions.

In light of the concern of farm labor availability, the New York Farm Credit Associations have estimated the economic impact of the loss of immigrant labor on New York farms. New York agriculture includes significant production in dairy, vegetables, fruit, and the greenhouse nursery sector. These sectors can be the most vulnerable to shortages in labor. The fact is that labor disruptions can quickly result in severe financial problems on many farms. Most farms simply do not have the financial resources to survive if they cannot fully harvest their products.

With the increasing consumer demand for quality products, a delay in harvesting can also have a dramatic negative impact. While farmers must deal with natural disasters and with wide farm price fluctuations, a labor shortage causes farms to go out of business, shrink in size, and if possible move to more mechanization.

Our analysis indicates that a prolonged severe disruption in labor availability as a result of enforcement actions without enhanced worker programs would have the following impact: We estimate that about 800 New York farms are highly vulnerable to going out of business or will be forced into part-time farms with severe labor shortages.

The primary impact would be on dairy farms, with fruit, vegetable, and greenhouse nurseries also severely impacted. These farms have total sales estimated to be in excess of $700 million, and realistically as many as 7,000 full-time equivalent positions would be impacted. These farms operate approximately 750,000 acres of cropland, and if these farm's businesses were to cease operating, some of this acreage would switch into less intensive agriculture, but hundreds of thousands of acres would be vulnerable to being discontinued from crop production and be converted to nonfarm uses.

The economic impact goes beyond the farm gate and could undermine in part the state's ag infrastructure that all farms depend on. In addition to the loss of farm employment, jobs would decline in the farm service input processing and marketing sectors. From a farmer or a lender perspective, not having a stable and reliable labor supply to harvest production, milk dairy cows, or undertake other necessary production and marketing tasks could be a catastrophic situation.

Farms can deal with low prices and poor production for at least 1 and sometimes 2 years. The same could be said of a severe labor shortage that reduces harvest for a year or 2. But after a year or 2, the farm's cash reserves are exhausted, the line of credit is used up, and the farmer is likely eroding their equity.

When this happens, the business is looking seriously at its options. The farm simply cannot risk making future investments if they don't feel that they can be successful in the harvest and in other areas of bringing production to market. As a lender, we are

concerned, and we know that many other lenders share that concern. Farm businesses have significant capital investment and limited financial resources to deal with labor shortages. They must also compete in a highly competitive world market.

It is critical to New York, the American farmers, and ultimately for the American consumer that agriculture immigration reform be adopted. We support the need to secure our nation's border and control the entry of immigrants on America's terms. A critical part of that solution is a workable program for agriculture that meets those objectives while providing America's farms with a reliable source of farm labor.

Any reform solution must deal with certain realities. First, it must provide means for seasonal workers to enter, work, and then return to their homeland in an efficient and timely manner. Second, it must provide a means to hire workers, many who have years of service and have advanced into key positions yet lack proper legal status. Providing these year-round, experienced workers a way to earn legal status is essential. We believe the urgency is real. The uncertainty surrounding it makes it very difficult for farmers to plan for the future. And we thank you for your consideration.

[The prepared statement of Mr. Herring follows:]

PREPARED STATEMENT OF C. SCOTT HERRING, EXECUTIVE VICE PRESIDENT AND COO, FARM CREDIT OF WESTERN NEW YORK, ACA, BATAVIA, NY

Thank you for the opportunity to testify on the labor needs of American agriculture. My name is Scott Herring, I am the Executive Vice President and Chief Operating Officer for Farm Credit of Western New York. Farm Credit of Western New York extends credit and other financial services to over 3,500 customer-members in a 16 county area in western New York.

The current farm labor situation is of great concern to our farmer-members and to our organization. We are the largest lender to agriculture in western New York. During the past decade, farm businesses in New York have had increasing difficulty hiring local workers to meet their needs and as a result have employed growing numbers of immigrant labor.

Over the past few years there have been more labor disruptions in western New York as a result of actions by Immigration and Customs Enforcement, local police departments or because farm workers believed that the farm that they worked on would be targeted for enforcement actions. In light of the concern with farm labor availability, Farm Credit of Western New York and the other New York Farm Credit associations estimated the economic impact of the loss of immigrant labor on New York farms last year. We recently modified our estimates as we have received more input from farmers and our farm business consultants. Attempting to establish impact numbers requires making a number of assumptions and should be viewed as estimates only.

New York agriculture is very diverse and includes significant production in dairy, vegetable, fruit and the greenhouse-nursery sectors. These sectors can be most vulnerable to shortages of labor. The fact is that labor disruptions can quickly result in severe financial problems on many farms. Most farms simply do not have the financial resources to survive if they can not fully harvest their products. With the increasing consumer demand on quality production, a delay in harvesting can also have a dramatic negative impact. While farmers must deal with natural disasters and with wide farm price fluctuations, a labor shortage causes farms to go out of business, shrink in size or if possible move more to mechanization.

Farm Credit of Western New York is part of the nationwide Farm Credit System. This analysis on farm labor and the potential impact of labor shortages was done by Farm Credit of Western New York, First Pioneer Farm Credit and Yankee Farm Credit. The analysis is based on data from the New York State 2002 Census of Agriculture and covers the entire state. As customer-owned cooperatives, Farm Credit institutions are owned and governed by farmers. In New York State, these Farm Credit institutions serve 8,500 members with in excess $1 billion in loans and have a market share of institutional farm debt of approximately 60%.

Our analysis, which is based on New York State agricultural Census data, indicates that a pro-longed severe disruption in labor availability as a result of enforcement actions without enhanced guest worker initiatives would have the following impact:

- We estimate that about 800 New York farms are highly vulnerable to going out of business or forced to part-time farms from a severe labor shortage. The primary impact would be on dairy farms with fruit, vegetable and greenhouse-nursery operations also severely impacted. Larger farms would feel the impact of this first, but many mid-sized farms could also be severely affected and have to change or cease operations.
- These farms have total sales estimated to be in excess of $700 million.
- Thousands of on-farm jobs would be lost if these farms go out of business. Realistically, as many as 7,000 FTE positions (Full Time Equivalents) could be impacted.
- The economic impact of this situation goes well beyond the farm-gate and could undermine, in part, the state's agricultural infrastructure that all farms depend on. In addition to the potential loss of farm employment, jobs would decline in the farm service, input, processing and marketing sectors. Some economists estimate that three to four jobs in the upstream and downstream economy are created by the production associated with each farm worker job.
- The vulnerable farms operate approximately 750,000 acres of cropland. If these farm businesses were to cease operating, some of this acreage would switch into less intensive agriculture, but hundreds of thousands of acres would be vulnerable to being discontinued from crop production and converted to non-farm uses.

New York State Highly Vulnerable Farms

Farm Type	Number of Farms
Vegetable	184
Fruit	163
Dairy	445
Green / Nursery	40
Total Farms	**832**

Final Comments

From a farmer or lender perspective, not having a stable and reliable labor supply to harvest production, milk dairy cows or undertake other necessary production and marketing tasks could be a catastrophic situation. Farms can deal with low prices and poor production for at least 1 year and sometimes 2 years. The same could be said of a severe labor shortage that reduces harvest for a year or 2. But after a year or 2, the farm businesses' cash reserves are exhausted, the line of credit is used up and the farmer is eroding their farm equity. When this happens, the farm business is looking seriously at their options. The farm simply can not risk making future investments if they don't feel that they can be successful in the harvest and in other areas of bringing production to market.

As a lender we are concerned and we know that many other lenders share that concern. Farm businesses have significant capital investment and limited financial resources to deal with a severe labor shortage situation. They also must compete in a highly competitive world market. It is critical to New York State and American farmers and ultimately for the American consumer that agricultural immigration reform with appropriate farm worker provisions be adopted.

We support the need to secure our nation's borders and control entry of immigrants on America's terms. A critical part of that solution is a workable program for agriculture that meets those objectives while providing America's farms with a reliable source of farm labor. Any reform solution must deal with several realities. First, it must provide means for seasonal and migrant workers to enter, work, and return to their homeland in an efficient and timely manner. Secondly it must provide means to hire workers, many who have years of service and have advanced into key positions, yet lack proper legal status. Providing these workers a way to earn legal status is essential.

Thank you for your consideration of our views.

C. SCOTT HERRING,
Executive Vice President and Chief Operating Officer,
Farm Credit of Western New York, ACA.

The CHAIRMAN. Thank you very much. I will recognize Mr. Bruce—is it Goldstein?

Mr. GOLDSTEIN. Goldstein.

The CHAIRMAN. Goldstein, I'm sorry. Executive Director of the Farmworker Justice from Washington, D.C. Welcome to the Committee.

STATEMENT OF BRUCE GOLDSTEIN, EXECUTIVE DIRECTOR, FARMWORKER JUSTICE, WASHINGTON, D.C.

Mr. GOLDSTEIN. Thank you very much for the opportunity to testify today on the labor needs of American agriculture. Farmworker Justice is a 26-year-old national advocacy group that seeks to empower migrant and seasonal farm workers to improve their labor rights, immigration policy, and occupational safety and health. Over 100 farm workers are on Capitol Hill this week visiting Members of Congress to discuss the issues in this hearing today.

Congress needs to address the farm labor problem in this country now. A conflict over policy has been festering since 1995. A remarkable compromise endorsed by farm worker unions, agricultural employers, and a wide array of other constituencies has won substantial support from Republicans and Democrats across the ideological spectrum. It deserves to be enacted.

The majority of farm workers in the United States today are undocumented. Out of about 2.5 million agricultural workers in the United States, probably 60 percent or 1.5 million, possibly more, are immigrants who are not authorized to work.

The presence of so many undocumented workers in an occupation translates into weak bargaining power for all farm workers. Farm workers' income is very low, usually less than $13,000 a year. Housing is scarce and often decrepit. Very few farm workers receive even basic fringe benefits such as paid sick leave or holidays. Agriculture is ranked among the three most dangerous jobs in the United States. Without legal immigration status, farm workers find it difficult to win better job terms or government policy.

Employers who hire farm workers now face a greater threat of immigration rates, border control, and other immigration enforcement that can deprive them of an adequate labor force. Of course, agricultural employers should improve wages and working conditions to attract job applicants and retain them. Congress should end the discrimination in overtime pay, safety and health regulations, and other laws that deprive farm workers of needed labor protections that other employees enjoy. The government also needs to substantially improve its labor law enforcement efforts.

The reality, however, is that if we deported a substantial number of undocumented farm workers, there would be a tremendous labor shortage. Robots and other machines are not yet available to replace human beings in harvesting many of the fruits and vegetables we consume. America needs its farm workers. We are eating healthier and are buying more fruits and vegetables. In fact, the USDA has good news for us on trade. We are exporting more and

more fruits and vegetables to consume in other nations. The people who create this bounty and place the food on the world's dining tables should be treated with dignity.

A responsible solution to this farm labor problem would also allow our law enforcement agencies to focus on finding criminals and terrorists, rather than on deporting poor immigrants simply seeking to support their families by producing Americans' food.

For years, there has been a stalemate in Congress that had three main warring positions. First, farm worker advocates wanted a legalization program like the 1986 law that permitted 1.1 million undocumented workers to become permanent immigrants. We were not able to pass that.

Second, many agribusiness groups lobbied for changes to the H–2A Program. We view the H–2A Program as abusive and overly skewed towards employers' interests and against the workers' interests. These proposals would have drastically reduced wage rates, minimized workers' opportunities for jobs if they are U.S. citizens, weakened housing requirements, and they would prevent guest workers from obtaining legal aid.

H–2A workers lack the economic freedom and democratic rights that this country prides itself on. The grower groups that sought these reforms failed to pass their bill, and most of them eventually began to discuss a compromise.

Third, there is a group that seeks to do nothing except perhaps allow the problem to worsen as immigration enforcement expands and both farm workers and employers suffer the consequences. Doing nothing, in our view, is irresponsible, end the stalemate.

There is a reasonable solution that has widespread support. AgJOBS is the nickname for the bill. The united farm workers played the leading role in negotiating on behalf of farm workers with major agribusiness groups to resolve years of harsh conflict.

A bipartisan group of legislators in both Houses spent many, many hours ironing out the settlement of hard-fought positions among organizations that have traditionally refused to negotiate with one another.

The compromise is a win-win solution. Farm workers who earn immigration status would increase their bargaining power with employers to be treated fairly. Businesses would obtain a legal, stable labor supply of experienced farm workers. And if labor shortages were to occur in the future, the H–2A Program would be available.

This is a practical, reasonable solution. The opponents would preserve the unacceptable *status quo*. AgJOBS may not be perfect, but it is a responsible, balanced approach to meet the labor needs of American agriculture. Thank you.

[The prepared statement of Mr. Goldstein follows:]

PREPARED STATEMENT OF BRUCE GOLDSTEIN, EXECUTIVE DIRECTOR, FARMWORKER JUSTICE, WASHINGTON, D.C.

Mr. Chairman and Members of the Agriculture Committee, thank you for the opportunity to testify today on the labor needs of American agriculture. My organization, Farmworker Justice, is a 26-year old national advocacy group that seeks to empower migrant and seasonal farmworkers to improve labor rights, immigration policy, and occupational safety and health. We have numerous publications on the issues the Committee is considering; I invite Members to visit our website, *www.farmworkerjustice.org*, to take advantage of these resources.

Congress needs to address the farm labor problem in this country now. A conflict over policy has been festering since 1995. A remarkable compromise endorsed by farmworker unions, agricultural employers, and a wide array of other constituencies has won substantial support from Republicans and Democrats across the ideological spectrum. The majority of responsible legislators should assert themselves and end the stalemate.

The principal farm labor problem is that the majority of farm workers in the United States are undocumented. Out of about 2.5 million agricultural employees in the U.S., probably 60% or 1.5 million, possibly more, are immigrants who are not authorized to work.

The presence of so many undocumented workers in an occupation translates into weak bargaining power for all farmworkers. Most are too fearful of deportation to challenge unfair or illegal conduct or join a labor union. Even the citizens and authorized immigrants are reluctant to make demands on their employers if they won't have the support of their exploitable co-workers. The consequences of this untenable situation are serious. Farmworkers' incomes are very low, usually less than $13,000 a year. Housing is scarce and often decrepit. Very few farmworkers receive even basic fringe benefits, such as paid sick leave or holidays. Health care is rarely offered to farmworkers by their employers, and the undocumented and even new authorized immigrants to the U.S. are not eligible for Medicaid or other public benefits. Agriculture is ranked among the three most dangerous jobs in the United States. Without a legal immigration status, farmworkers find it difficult to win better job terms or government policy.

Employers who hire farmworkers now face a greater threat of immigration raids, border control and other immigration enforcement that can deprive them of an adequate labor force. Many growers have sought to evade immigration law sanctions by using farm labor contractors to recruit and supervise workers in the fields. Some growers frivolously claim that they are not the "employer" of the farmworkers in their fields and that only the labor contractor is liable for violations of immigration and labor laws.

Of course, agricultural employers should end labor contracting abuses and improve wages and working conditions to attract job applicants and retain them. Congress should end the discrimination in overtime pay, safety and health regulations, and other laws that deprive of farmworkers of needed labor protections that other employees enjoy. The government also needs to increase its labor law enforcement efforts drastically.

The reality is, however, that if we deported a substantial number of undocumented farmworkers there would be a tremendous labor shortage. Robots and other machines are not yet available to replace human beings in harvesting many of the fresh fruits and vegetables we consume.

America needs its farmworkers. We are eating healthier and are buying more fruits and vegetables. In fact, the U.S. Department of Agriculture has good news for us on trade: we are exporting more and more fruits and vegetables to consumers in other nations. The people who create this bounty and place the food on the world's dining tables should be treated with dignity.

We as a nation are concerned about security. We should want to know who is living and working in this country, but we don't really know who is performing more than half the farm work in this country. A responsible solution to this farm labor problem would allow our law enforcement agencies to focus on finding criminals and terrorists, rather than on deporting poor immigrants simply seeking to support their families by producing America's food.

For years, there had been a stalemate in Congress that had three main warring positions. First, we farmworker advocates wanted Congress to follow the precedent of the 1986 immigration law that permitted undocumented farmworkers, after proving their recent agricultural work in the U.S. and complying with other immigration law obligations, to obtain a temporary immigration status and later a permanent status with a path to citizenship. Our argument being that if we need workers in America to perform jobs, we should invite people in as immigrants, rather than as exploitable indentured servants. This country experimented with the massive Bracero guest worker program for 22 years, ending in 1964. Despite significant labor protections in the Bracero program, it was widely recognized as abusive and a national embarrassment. We farmworker advocates had not been successful in our legislative advocacy for a replay of the 1986 legalization program.

Second, many agribusiness groups lobbied heavily in the 1990's for changes to the H–2A agricultural guest worker program. They sought to make it easier for employers to hire guest workers on temporary work visas with no path to immigration status (or citizenship), lower the program's wage rates dramatically, minimize U.S. workers' opportunities to obtain jobs, weaken housing requirements, prevent guest

workers from obtaining legal aid, and reduce government oversight. The growers sought to transform the farm labor system into a system of exploitable guest workers and set their wages and other job terms at unconscionably low levels. H–2A workers have little bargaining power: they may not switch employers; they must leave the country when their job ends; if they wish to return the following season they must hope that their employer will apply for a visa for them. Thus, guest workers lack the economic freedoms and democratic rights that this country prides itself on. The grower groups failed to pass their bill and most eventually began to discuss a compromise. However, some legislators, egged on by some employer organizations and others, have continued efforts to pass similar legislation that also have failed.

Third, there is a group that seeks to do nothing except perhaps allow the problem to worsen as immigration enforcement expands and both farmworkers and employers suffer the consequences.

Doing nothing, in our view, is extraordinarily irresponsible. Congress should end its stalemate. A vocal minority of opponents should not be permitted to perpetuate this absurd *status quo.* There is a reasonable solution that has widespread support. AgJOBS is the nickname for the Agricultural Job Opportunity, Benefits and Security Act. The United Farm Workers played the leading role in negotiating on behalf of farmworkers with major agribusiness groups to resolve years of harsh conflict. A bipartisan group of legislators in the House and the Senate spent many, many hours ironing out the settlement of hard-fought positions among organizations that had traditionally refused to negotiate with one another.

The bill contains two parts. First, it would create an "earned legalization" program. Applicants could obtain a temporary immigration status by proving that they been employed in U.S. agriculture in the past 2 years, either as a legal guest worker or as an undocumented worker. If the temporary resident then performs a specified amount of agricultural work, during a 3 to 5 year period, he or she could convert to lawful permanent resident status and receive a "green card." Security checks would prevent terrorists, criminals and other unwanted individuals from using the program. During the 3 to 5 years of the future work requirement, the participants would be permitted to work for any employer and in any occupation as long as the agricultural work was performed. The farmworker's spouse and minor children also would eventually become eligible to be immigrants. Several hundred thousand current farmworkers would be eligible for this program.

Second, AgJOBS would revise the existing H–2A agricultural guest worker program, which allows employers to hire foreign citizens on temporary, nonimmigrant work visas. The H–2A program's history of abuses made negotiations by farmworker advocates with employers difficult. The reforms would benefit employers by making the program easier and quicker to use and lowering the wage rates. The compromise would retain important wage protections that employers had sought to eliminate. AgJOBS also retains or expands other important labor standards to prevent job losses and wage cuts among U.S. workers (including the participants in the new earned legalization program) and protect foreign workers from exploitation. Regrettably, the compromise would not permit H–2A workers to earn a path to citizenship.

The compromise is win-win-win solution even though (or, perhaps, because) it required painful concessions all around. Farmworkers who earn immigration status would increase their bargaining power with employers. Businesses would obtain a legal, stable labor supply of experienced farmworkers. If labor shortages were to occur in the future, the H–2A program would be available. Moreover, the U.S. government would know who resides within our borders and would be better able to enforce immigration and labor laws in agriculture.

Some object to AgJOBS saying that it's not a good enough deal for agricultural employers; they want the H–2A wage rates lowered even further, the housing requirement stripped out, the elimination of the job preference for U.S. workers, and other changes. These selfish demands were made in earlier legislation and failed. Congress needs to move forward.

Some opponents argue that people who crossed our borders illegally should not be rewarded with an "amnesty." AgJOBS is not an "amnesty." It contains tough, multi-year work requirements, financial costs, and other obstacles to earn immigration status.

The opponents would preserve the current unacceptable situation. They have no reasonable solution. They certainly have no legislation that could pass Congress. In the meantime, farmworkers face terrible choices, employers risk losing their businesses and this nation continues to allow a situation in which a majority of the employees of an entire economic sector lack authorized immigration status.

We need solutions, not hollow rhetoric or more ideological stalemate. AgJOBS is not perfect but it is a responsible, balanced approach to meet the needs of American agriculture.

Thank you for the opportunity to present testimony on behalf of farmworkers.

The CHAIRMAN. Thank you very much, Mr. Goldstein. And now our last panelist on this panel is Mr. Mike Brown, the Senior Vice President for Legislative Affairs of the American Meat Institute. Welcome to the Committee.

STATEMENT OF MICHAEL J. BROWN, SENIOR VICE PRESIDENT, LEGISLATIVE AFFAIRS, AMERICAN MEAT INSTITUTE, WASHINGTON, D.C.

Mr. BROWN. Mr. Chairman, thank you very much, and Members of the Committee. I appreciate the honor and privilege to appear here before you today. I will abbreviate my remarks but hope that my full testimony, written testimony, will be in the record. I would also like to thank my son, Dan, who has joined me today to offer support and to watch this Committee do its work. Thank you, Dan.

And just to elaborate on Mr. Goldstein's testimony, I want to point out to the Committee that we are also producing, consuming and exporting more meat today than we ever have before.

AMI would like to express its appreciation to the Committee for holding this hearing on the critical issue of agricultural labor. This is one of the most important issues facing AMI members in our nation. It is clear that the employment and immigration laws that govern the hiring and employment process in this country are dysfunctional and in urgent need of reform.

In the mid 1990s, AMI members in the Midwest had their meat packing operations disrupted when they were audited by the Immigration and Naturalization Service and informed that many of their experienced employees, who were vital to their operations, had provided fraudulent documents at the time of hire.

Given these circumstances, many AMI members sought to more carefully scrutinize employment authorization documents, and, ironically, faced discrimination charges at the same time for being too vigilant in seeking to employ authorized workers.

Employers are required to walk an impossible legal tightrope, due to the failures in the immigration laws to provide bright lines for compliance. AMI and its members took the initiative to address this problem by successfully urging Congress in 1999 to extend the scope of the basic pilot program beyond the original five states that were approved, to include the State of Nebraska, where many AMI members are located.

This tool enabled a number of meat packing companies to enter into agreements with INS to participate in the basic pilot program. Nearly 5 years ago, AMI members lobbied to have the program expanded to all 50 states, allowing all industries and all meat and poultry companies the opportunity to use the program.

The experience of AMI members participating in the basic pilot program has been mixed. While the electronic verification mechanisms of the program have screened out a number of unauthorized workers at the point of hire, the mere fact that the company is participating in the program deters many individuals from even applying for work.

The program nonetheless is only partially effective. It does not solve the problem of identity theft. In addition, there are delays by DHS in updating its databases to include the most recent change

in status of aliens. These delays can result in an employer receiving false information regarding the legal work status of an individual.

Moreover, the basic pilot program does not have the ability to determine when an individual's name and Social Security Number are being reported by several employers at the same time. Unfortunately the problem of identity theft is widespread, and, notwithstanding the extensive use of the basic pilot program by meat and poultry companies, it has resulted in continued disruption of AMI member companies.

There have been a number of highly publicized raids of well-known meat packing companies that are participating in the program, that have worked closely with DHS in attempting to comply with the law. The raids of these companies have been devastating, resulting in significant disruptions of their operations and in some cases, losses in the tens of millions of dollars.

Unfortunately, the basic pilot program will continue as an inadequate system until Congress takes the steps to correct its deficiencies.

Mr. Chairman, AMI believes it is imperative that Congress undertake the effort to improve the program now, as it is set to expire in September of 2008. We have less than a year to work on this problem. Extension and improvement of the basic pilot program, consistent with the following four principles, is among the American Meat Institute's highest legislative priorities.

One, individuals engaged in identity theft must be detected at the time of hire. It is essential that a biometric technology be included on documents to determine whether the person presenting a work authorization and identity document is in fact the person to whom the document relates.

Two, the number of documents that an employer must accept for purposes of determining whether a person is authorized must be reduced. Currently, we have to accept one of any 29 document combinations.

Three, DHS and the Social Security Administration must be given the resources to ensure that individual's status changes are current so that verification checks will have real time accuracy.

Four, employers that comply with the electronic eligibility verification requirements under the basic pilot program must be provided adequate protection from both the Department of Homeland Security enforcement actions as well as discrimination lawsuits. AMI urges the introduction of legislation this year which will achieve the above described objectives.

Mr. Chairman and Members of the Committee, AMI and its members look forward to working with you to find an immediate legislative solution to the critical challenges that our broken immigration system poses to the meat and poultry processing sector.

I will be happy to answer any questions that the Members of the Committee may have as time allows. Thank you very much.

[The prepared statement of Mr. Brown follows:]

PREPARED STATEMENT OF MICHAEL J. BROWN, SENIOR VICE PRESIDENT, LEGISLATIVE AFFAIRS, AMERICAN MEAT INSTITUTE, WASHINGTON, D.C.

Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to appear before this Committee. My name is Mike Brown and I am Senior Vice President for Legislative Affairs of the American Meat Institute (AMI). AMI has provided service for more than 100 years to America's meat and poultry industry—an industry that employs more than 500,000 individuals and provides more than $100 billion dollars in sales to the nation's economy.

AMI's members include America's most well-known meat and poultry manufacturers. Collectively, they produce more than ninety percent of the beef, veal, pork and lamb food products and seventy-five percent of the turkey food products in the U.S. Among AMI's member companies, over sixty percent are small family-owned businesses employing fewer than a hundred individuals and some are publicly traded and employ tens of thousands. These companies operate, compete, sometimes struggle and mostly thrive in one of the toughest, most competitive and certainly the most scrutinized sectors of our economy—meat and poultry packing and processing.

AMI would like to express its appreciation to the Committee for holding this hearing on the critical issue of agricultural labor. This is one of the most important issues facing AMI members. AMI has actively supported comprehensive immigration reform during the past several Congresses. The employment and immigration laws that govern the hiring and employment process are dysfunctional and in urgent need of reform. The lack of viable legal channels for workers to enter the U.S. to work in industries that have demonstrable shortages of U.S. workers contributes to the illegal immigration problem facing this country and restricts the growth of our economy.

For employers in the nation's meat and poultry industry, the Federal Government's failure to enact legislation solving this problem is especially frustrating. AMI's members have been in the forefront of the efforts to bring integrity to employment authorization verification process enacted by Congress in the Immigration Reform and Control Act (IRCA) in 1986. After it became apparent that the paper-based employment authorization process was woefully inadequate to screen out fraudulent employment documents, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, establishing the Basic Pilot telephonic and electronic employment verification program. This program was voluntary and was intended to screen out fraudulent Social Security Numbers and alien work authorization documents provided by job applicants to employers at the time of hire.

In the mid-1990's, AMI members in the Midwest had their meatpacking operations disrupted when they were audited by the Immigration and Naturalization Service (INS) and informed that many of their experienced employees who were vital to their operations had provided fraudulent documents. These employers, in compliance with the paper-based employment verification procedures enforced by INS, were unable to screen out those who provided invalid work authorization documents. While AMI members typically were not cited by INS for violating the immigration laws, they had to terminate large numbers of employees in whom they had invested substantial training costs, they also suffered economic losses due to worker shortages.

Given these enforcement efforts, many AMI members took steps to more carefully scrutinize employment authorization documents and, ironically, faced discrimination charges under the unfair immigration-related employment practice provisions of IRCA for being too vigilant in seeking to employ legally authorized workers. Needless to say, AMI members were and continue to be frustrated by the vice in which they find themselves in trying to comply with IRCA's inherently contradictory provisions. Employers are required to walk an impossible legal tightrope due to the law's failure to provide "bright lines" for compliance.

AMI and its members took the initiative to address this problem by successfully urging Congress in 1999 to extend the scope of the Basic Pilot program beyond the original five pilot states to include the State of Nebraska, where many AMI members are located. This enabled a number of meatpacking companies to enter into agreements with INS to participate in the Basic Pilot program.

Let me briefly describe how the voluntary Basic Pilot program works. The Basic Pilot recently has been renamed as E-Verify by the Department of Homeland Security (DHS), which now is responsible for administering it as the successor agency to INS. Participants are required to complete I–9 Forms for all newly hired workers. Upon receipt of identity and work authorization documents, employers seek confirmation of the documents through the pilot program's automated system by entering employee information, such as a Social Security Number or alien registration document number, into the pilot website within 3 days of the employee's hire. The

program electronically matches that information against information in the Social Security Administration (SSA) database, and if an alien document is used, a match is attempted against DHS databases, to determine if the employee is authorized to work. The Basic Pilot then notifies the employer whether the employee is authorized to work. If the employee's information cannot be confirmed, the employee is given several days to contact SSA or DHS to resolve any inaccuracies in his/her records and to contest the non-confirmation. Employers are required to terminate employees who do not contest or cannot successfully resolve their non-confirmation status.

The experience of AMI members participating in the Basic Pilot program has been mixed. The electronic verification mechanisms of the Basic Pilot have screened out a number of unauthorized workers at the point of hire and the mere fact that a company is participating in the program deters many individuals from even applying for work. The program, nonetheless, is only partially effective. It does not effectively solve the problem of identity theft, through which individuals who have stolen the name and Social Security or alien document numbers from their rightful owners who are authorized to work use the stolen information to gain employment. The system cannot determine whether the person presenting the name and document number is the person to whom they relate.

In addition, there are delays by DHS in updating its databases to include the most recent change in status of aliens. These delays can result in an employer receiving false information regarding whether an individual is or is not authorized to work. "Real time" updating of alien status information is critical to the effective functioning of the Basic Pilot program. It is costly and administratively burdensome for employers to hire and train an individual whom it believes is authorized to work, only to be later informed that a mistake was made and to have to terminate the individual.

Moreover, the Basic Pilot program does not have the ability to determine through its access to the Social Security Administration's (SSA) database when an individual's name and Social Security Number are being reported by several employers at the same time, especially when the employers are not located in close proximity to each other. Such information should be more effectively acquired and used to target individuals seeking employment who are engaged in identity fraud.

Unfortunately, the problem of identity theft is widespread and, notwithstanding the extensive use of the Basic Pilot program by meat and poultry processing companies, it has resulted in the continued disruption of AMI member companies. There have been a number of highly publicized raids of well-known meat packing companies, including AMI member companies, that are participating in the Basic Pilot program and that have worked closely with DHS in attempting to comply with the law. DHS apparently targeted these companies upon receipt of information that a number of employees had engaged in identity theft. The raids of these companies have been devastating, resulting in significant disruptions of their operations and losses in the millions of dollars. The use of the Basic Pilot program by law-abiding companies that went the extra mile to seek a legal workforce has not served them well. It will continue as an inadequate system until Congress takes steps to correct its deficiencies.

Mr. Chairman, AMI is committed to improving the Basic Pilot program under which its members operate. We seek the support of the Members of this Committee in our efforts to extend and improve the Basic Pilot program so that it will better serve its intended purpose of screening out fraudulent documents and imposters using stolen identity and work authorization documents. It is imperative that Congress undertake this effort now, as the Basic Pilot expires in a year (September 2008) and the problems associated with its failures are accelerating as DHS increases its worksite enforcement activities.

Extension and improvement of the Basic Pilot program consistent with the following four principles is among AMI's highest legislative priorities:

1. Individuals engaged in identity theft must be detected at the time of hire. The program must be improved to detect when there are duplicate active records in the SSA database evidencing that an employee's name and Social Security Number are being used in multiple places at the same time. In addition to the current Basic Pilot program, employers should be allowed to participate on a voluntary basis in a separate verification program that uses a biometric technology to determine whether the person presenting a work authorization and identity document is in fact the person to whom the document relates. The technology exists and should be used in a pilot program targeted at identity fraud.

2. The number of documents that an employer must accept for purposes of determining whether a person is authorized to work and their identity must be reduced to avoid confusion and identity fraud.

3. DHS and SSA must be given the resources to ensure that individual status changes are current so that verification checks will have "real time" accuracy and avoid the delays and administrative burdens that accompany non-confirmation or incorrect confirmation of worker eligibility.

4. Employers that comply with electronic eligibility verification requirements under the Basic Pilot program must be provided adequate protection from both DHS enforcement actions, as well as discrimination lawsuits that may result if employees are terminated after employers have properly complied with program requirements.

AMI urges the introduction of legislation this year that will achieve the above-described objectives by extending the Basic Pilot program for an additional 5 years beyond its current expiration date. As in past extensions of the Basic Pilot program, we anticipate that the legislation will enjoy broad bipartisan support. AMI believes that an improved program must remain voluntary until such time as Congress enacts broad comprehensive immigration reform that allows adequate legal channels for foreign workers when there are shortages of U.S. workers and effectively addresses the undocumented worker population already working in this country.

As with the current Basic Pilot program, we believe that new legislation should apply to only the persons who are newly hired after the program is enacted. Consistent with the principles that we have outlined, we also feel that it is imperative that the Basic Pilot program provide, in addition to its current verification model, an option that employers may elect that has a biometric component. Through biometric technology, fingerprint, retina and other comparisons can be made at the time of hire that will enable employers to ascertain the identity of persons presenting documents to ensure that they are who they say they are. To the extent there are concerns about the government's capacity to administer such a system on a universal level, a voluntary system based on biometrics would provide an opportunity to test and perfect such a system on a more limited basis in anticipation of broader application in the future.

Mr. Chairman and Members of the Committee, we appreciate very much the opportunity to testify this afternoon. We look forward to working with you to find an immediate legislative solution to the critical challenges that our broken immigration system poses to the meat and poultry processing industry. While we recognize that immigration reform is inherently controversial and politically challenging, we believe that your support of the extension and improvement of the Basic Pilot program so that it more effectively solves the problem of illegal immigration in the work place is sound public policy. It also is the fair thing to do for those employers that have gone the extra mile to comply with our laws by using the Basic Pilot program, as well as consistent with the will of the American people who want our laws effectively enforced.

The CHAIRMAN. Thank you very much, and I want to thank the panel for that excellent testimony. And we will move to questions, and I am going to yield my time to the gentleman from Florida, Mr. Mahoney.

Mr. MAHONEY. Thank you, Mr. Chairman. And thank you, panelists, for being here today discussing this important issue.

You know we have some very interesting statistics that Dr. Holt provided us at the very beginning in terms of the magnitude of the problem, the number of illegals that are working on our farms and in our processing plants, and the dependency of the whole industry on an illegal workforce.

I guess my first question is that, about a month ago, Social Security Administration and Department of Homeland Security decided that they were going to change their policy and start to enforce the No-Match letters. In my district, this created quite an uproar on the part of my citrus growers and my specialty crop folks. That was the impetus for this hearing today because of the anger that my growers and farmers felt about this change in policy.

And I would be interested to hear from each of you what your view would be if the Administration moves forward on this decision of change in policy. Dr. Holt?

Dr. HOLT. Congressman, clearly the mismatch regulation will have a tremendous impact because the statistics speak for themselves. And unless there is an option for employers to obtain legal workers, then enforcing the law with respect to illegal workers simply leaves them with no alternative.

And so it is kind of as simple as that in my view. It might be interesting. The latest statistics I have seen are that 17 percent of all of the mismatches in the United States are attributable to agricultural employers. You compare that with the fact that 1.2 percent of the workforce is in agriculture, and it gives you an idea of the magnitude of the problem.

Mr. MAHONEY. Thank you, Dr. Holt. Mr. Stallman?

Mr. STALLMAN. Well, I will certainly concur with what Dr. Holt said. In our submission, we provided a letter that we sent to DHS about the middle of August, detailing all of the problems with that including some suggestions for some changes to make the rule work better but——

Mr. MAHONEY. Will this be an immediate problem?

Mr. STALLMAN. Yes, as soon as it is fully implemented, it will be an immediate problem.

Mr. MAHONEY. Okay, and the result of which would be what? A lack of——

Mr. STALLMAN. Well, everything from a lack of workers to legal prosecution. I mean the range of things that will occur for producers are all in the negative category.

Mr. MAHONEY. Mr. Wicker?

Mr. WICKER. It would have zero impact on our growers. Our growers are in the H–2A Program. Their workers are legal.

Mr. MAHONEY. And so all of your growers fall into the 2 percent of the American——

Mr. WICKER. Correct.

Mr. MAHONEY. And the H–2A Program works perfectly fine for your growers?

Mr. WICKER. No, I would not say that it works perfectly fine.

Mr. MAHONEY. I have to tell you. I don't know too many people that have participated in the H–2A Program in my district who think that it is a very good program.

Mr. WICKER. It is a very expensive and painful program, and the growers are afraid to use it because it is too expensive. And they are afraid they are going to get sued.

Mr. MAHONEY. Okay, Mr. Herring?

Mr. HERRING. It would probably be one of the things that starts the disruption. I mean people will have difficulty having the labor on the farms and in the processing and market aspects of their business. And they will begin to make decisions on what to do next.

Mr. MAHONEY. Mr. Goldstein?

Mr. GOLDSTEIN. In addition to what has been said already, it is going to exacerbate some developments. More and more employers are probably going to resort to hiring farm labor contractors to hire their farm workers in an effort to say the labor contractors are re-

sponsible for dealing with immigration; "I don't employ any of those farm workers on my fields."

Mr. MAHONEY. Right, so they are going to move the liability to somebody else who is willing to take on the legal risk?

Mr. GOLDSTEIN. Right. I mean while the workers go more and more underground and live in fear, and families get broken up, and the farmers lose their workforce.

Mr. MAHONEY. Mr. Brown?

Mr. BROWN. Mr. Mahoney, it would have zero impact on our plants, but I think it just highlights the fact that this 21-year-old immigration law is broken and needs fixing.

Mr. MAHONEY. Now, one of the questions—we are running out of time here. But one of the other questions is that there are a lot of people that are excited about doing AgJOBS, and if we are serious about securing the country's borders, wouldn't AgJOBS actually be just another highway for people to come into this country initially legally: like they are doing through JFK Airport right now on tourist visas and end up, when they have the opportunity to get a better job in the construction trades or the housing industry to make more money. It would just be an opportunity for them to opt out of the program, so to speak, and go work some place else illegally? Mr. Stallman?

Mr. STALLMAN. We view the AgJOBS bill as being a partial solution to some of the issues we are facing. Short term, you are right in the characterization that over the longer term from 3 to 5 years, those workers which would get blue cards would transition into green cards, and then move into other employment sectors. That was the result that we experienced with the 1986 law, so we would expect the same thing to happen. So it is sort of a short-term solution, but we need a guest worker program for the long term once we get through that initial period. And that is why we think the H–2A Program, if significantly reformed, could play that role.

Mr. MAHONEY. So what you are saying is if we do AgJOBS, the only way that you could see that it would work is that there would have to be a clear path to citizenship going from the AgJOBS to a green card situation in order to prevent people from——

Mr. STALLMAN. Well, I am not sure about the citizenship part of it. I don't know that that would solve the problem.

Mr. MAHONEY. And the green card.

Mr. STALLMAN. The issue is that the blue card workers would be required to remain in agriculture, unless they move into green card, they can go into other industries. And we have no further avenue for workers to come after that.

Mr. MAHONEY. Okay, Mr. Wicker, one quick question for you. I mean one of the concerns that I have about what I see going on in the Administration as a result of a lot of these policies regarding homeland security is a tax, a hidden tax on business. Do you think it is the responsibility of your growers in North Carolina to have to be responsible for immigration and naturalization in your industry in terms of being able to monitor and manage these problems?

Mr. WICKER. No, I don't, but that is not an issue for us because all of our growers come on H–2A visas and are legal.

Mr. MAHONEY. And how much does that cost your growers to participate in H–2A?

Mr. WICKER. It varies from farm to farm, but I think the range is going to go from $11 to $14, $15 an hour when you factor in the wage rate, the housing, the transportation, the visa cost. It goes on.

Mr. MAHONEY. And do you think that the cost that you are bearing to participate in the program is something that your growers should be responsible for?

Mr. WICKER. Well, I think we have to pay workers for working, but I think that the wage and benefit package is so expensive that our growers are going to quit using the program. And they are either going to turn back to illegal workers, or they are going to quit production all together. And I think both those——

Mr. MAHONEY. So what you are saying is that given the options today, that it is the best option. But in a perfect world, do you think that you your growers should be responsible for the immigration policies of the United States?

Mr. WICKER. No.

Mr. MAHONEY. How about you, Mr. Herring? What do you think, being from New York State?

Mr. HERRING. Well, being from New York State, but not being the labor expert that the others are, here on the panel, I don't have a real good answer for what the solution is. I do know that when it comes to what happens on the farm from a financial standpoint, and what they have to deal with in that market, this will be a disruption. And it will be very difficult for them to get through if there was a labor shortage, and it happened immediately.

Mr. MAHONEY. Yeah, just before I turn it back over, I would just like to say I appreciate you taking these questions. And I just want you to know that there are different kinds of taxes, and this immigration issue has become a hidden tax on agriculture.

And when I take a look at the profitability of the agriculture industry, and I take a look at the risks of the people that are participating in it, I think it is unreasonable for the Federal Government to ask the industry to bear that burden. And with that, Mr. Chairman, I will turn back my time to you.

The CHAIRMAN. I thank the gentleman. I am pleased to recognize the Ranking Member, Mr. Goodlatte, from Virginia.

Mr. GOODLATTE. Thank you, Mr. Chairman. Back when the last amnesty bill was passed by the Congress in 1986, I was an immigration lawyer, and at the time, I was pretty appalled and concerned by the results that occurred, which I think we are still paying for today. In fact, what Mr. Stallman just indicated was indeed the case for many farmers. What they found was that if they had an individual who was working on that farm, sometimes for many years, and they suddenly were able to get a green card, even though they had entered the country illegally, they were off to find employment in sectors of our economy where the work is not as hard and is not as difficult as farm work is.

And yet, we also know that this is a tremendous opportunity for foreign workers. I don't think there is anybody in this room, with maybe one or two exceptions, who doesn't acknowledge that it is very, very hard to find sufficient American workers to do what needs to be done on our farms. This is tough, hard, backbreaking work, and Americans often choose many, many other options.

So I have never been a fan of the Adverse Effect Wage Rate that is in the H–2A Program because that program really sets an artificial barrier to its usage, and I am very proud of the fact Mr. Wicker and a number of other people do use it. But they constitute only about 2 percent of farm workers in the country.

And so it seems to me to address this problem is to have a guest worker program that works, not one that provides what has been referred to as a pathway to citizenship. The foreign worker benefits tremendously because the wages that are paid under any wage rate that will competitively draw them to work, in my legislation, is the prevailing wage that I think makes the most sense. But no matter what that wage rate is, it is far superior to what most of these individuals are getting in the country from which they have come.

And if you had a program that worked where they could come into the country for the better part of a year, maybe even extend that so 2 years could be linked together, but then return to their own country for 20 or 25 percent of the time and then come back again, many would like to avail themselves of that. Their native language and culture and customs, the cost of living, their extended family are all back home.

But under the current situation with an unworkable H–2A Program and the tremendous need that we have in this country for agricultural workers, they come across the border illegally, or they may come legally and then overstay their visa. I suspect most of the agricultural workers have come across the border illegally.

And then they are not going back again. In fact, they are going to bring their family with them because they are not planning on ever trying to do that again. It is very risky. It is expensive to hire the coyotes that bring them into the country. They risk dying of thirst in the desert or suffocating in the back of a tractor trailer, and they are not going to do it again.

We have developed this underclass in our society that has become a security risk. It is not advantageous to them, but it is also not a good thing for our society. So it seems to me that the best way to solve this problem is to correct the deficiencies in the current H–2A Program and not to reinvent it.

So, Mr. Goldstein, if I might ask: The H–2A provisions the AgJOBS bill would maintain nearly all of the current requirements with which the H–2A employers must comply, such as paying mandatory guaranteed wages far above those prevailing in the area, providing free housing to workers, and guaranteeing payment for 75 percent of the work hours promised at the time of hire, to mention a few.

H–2A workers are not particularly different from other farm workers, except that they came here legally. But under the proposal you support, a million legalized farm workers would be afforded none of those benefits, which you deem to be in need of protection because the law would still require that only H–2A employers provide such things.

It seems that if undocumented workers have been exploited for years by low wages and a lack of safe housing and other protections, you would want to ensure that inferior pay and working conditions would be addressed before they are legally available to the same growers you contend exploit them. So why does the proposal

you support require only H–2A employers to provide such additional protections? And would you oppose a plan that would convert illegal workers into H–2A workers instead of permanent residents? And if so, why?

Mr. GOLDSTEIN. Thank you for the opportunity to answer a series of very good questions that require some complex answers, but the bottom line is this. First of all, we could have a country in which we decide that a lot of low-wage industries really don't attract many Americans anymore, and we could have a long list of occupations that could add up to several million people doing those jobs.

We in America need to ask ourselves—let us say it is five million for all those occupations including agriculture, but could be building service workers, whatever. It could be ten million people. Do you want——

Mr. GOODLATTE. But let me note a difference between building service workers and agricultural workers. Building service workers are not affected by international competition that American farmers and ranchers have to compete in an international environment. And therefore, you could make a much stronger argument that the pay scale that is offered in industries that are not affected by this can be treated very differently under the law than in industries like agriculture where it is clear that almost any amount you pay, you can't get the workers for this very hard, difficult, back-breaking work.

Mr. GOLDSTEIN. Okay, my question is this. Do we want millions of people in this country who may only work for the one employer that got them the visa for that job and can only stay in that job and have to go home at the end of that job? Because that is the way the H–2A Program works. You have no ability to switch employers, and you are dependent upon the employer to give you that visa in the following year.

Mr. GOODLATTE. Well, let me make——

Mr. GOLDSTEIN. And as a result of being so dependent upon the employer to get that visa, you are really not capable of asking for more money in wages. And you never get the right to vote because under H–2A right now, there is no path to permanent immigration status or to citizenship. Do we want millions of people in this country to have a non-immigrant guest worker status where they never get the right to vote?

And as far as the Adverse Effect Wage Rate, the Adverse Effect Wage Rate under the H–2A Program, the phrase comes from the statute. The law says you shall not bring in guest workers under wages and working conditions that will adversely affect similarly employed U.S. workers. Between 20 percent and 40 percent of farm workers in this country are legal immigrants or U.S. citizens.

Mr. GOODLATTE. Let me——

Mr. GOLDSTEIN. They make a certain amount of money.

Mr. GOODLATTE. Let me cut you off right there.

Mr. GOLDSTEIN. Two more sentences.

Mr. GOODLATTE. Mr. Goldstein, now let me——

Mr. GOLDSTEIN. Two more sentences.

Mr. GOODLATTE. No, my time has already expired. I am, by the good graces of the Chairman, going to make this point. The situation you described is the situation that we have right now because

98 percent of the workers are working here illegally in the conditions that you describe. Improvements to the guest worker program will assure them that they are getting prevailing wages, will assure them that they are treated fairly in the process. And what you have described does not address the concern that Mr. Stallman just raised, which is that if you put all of these people who are working right now on a pathway to citizenship, you are then going to be very shortly confronted with the problem of replacing all of them.

Mr. GOLDSTEIN. Every commission that has looked at this issue——

Mr. GOODLATTE. This is my time, not the gentleman's.

Mr. GOLDSTEIN. Every commission and government study and——

Mr. GOODLATTE. Mr. Chairman.

Mr. GOLDSTEIN.—academic study has concluded for the last 70 years that the way to stop the flow outside of agriculture is to improve wages and working conditions to stabilize the workforce. We are a capitalist country. If you are afraid that the workers will go to other industries, then that means that employers in agriculture need to compete for those workers by improving wages and working conditions.

Mr. GOODLATTE. We are allowing people into our country in what is a great opportunity for them to earn far more than they earn in their own country, and they are happy to take those jobs. And they would be happier still if they had the ability to transit across our border with a secure identification system and not be faced with the current environment that they are in and our economy is in.

Mr. Goldstein, your time is finished, and I am going to finish up my time so the Chairman can go on to recognize another individual. But the situation that you describe is an unworkable one because it will increase the flow of individuals coming into this country. It will not decrease it because you will transit people out of this work area.

Now, the law is the same for everybody. If you come into this country and you are a college student, and you then subsequently gain a new job skill or you marry a United States citizen or you have a family member that can petition for you, you can then transit out of that. But we do not create a special category that says if you have been working here for a limited period of time, you can then suddenly avail yourselves of things that other people, who have lawfully entered this country and sometimes wait in line for decades to accomplish, simply by virtue of the fact that you originally came here illegally and now you want to transit out.

We need to address this problem from the standpoint of our farmers and ranchers. We need to address it from the standpoint of the workers being treated fairly under a legal, workable system. And we need to address it from the standpoint of what is in the best national and security interest of the country. And I don't think your approach does it. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. And I am pleased to recognize one of our Subcommittee Chairmen, Mr. Etheridge, from North Carolina.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Mr. Chairman, I would ask unanimous consent that the document from Ms. Herseth Sandlin be entered into the record.

The CHAIRMAN. Without objection, so ordered.

[The document referred to is at the end of the hearing on p. 136.]

Mr. ETHERIDGE. Thank you, Mr. Chairman. Let me thank you for holding this hearing and for our panelists for being here. This is critically important certainly to this whole country, and very much so to my district and my state.

Mr. Stallman, I appreciate you highlighting the problems our producers are facing in making and planning a decision because of a need of labor. I have probably one of the most diverse agriculture districts in America. Sweet potatoes, poultry, pork, watermelons, you name the products, we have them to include all the things that you are here with, tobacco, *et cetera*.

My question is this though. I talked with a fellow that grows a lot of cucumbers. We do a lot of pickling right outside the district. Is it fair to say that what we do about immigration and labor reform, whatever you call that, really presents a choice as to whether we want to grow food here in the United States or allowing imports as we do with oil? Would you elaborate on that point please, sir?

Mr. STALLMAN. Well, specifically with respect to pickling cucumbers, it is my understanding that plants are having to import——

Mr. ETHERIDGE. That is correct.

Mr. STALLMAN.—cucumbers from India at this point.

Mr. ETHERIDGE. That is correct.

Mr. STALLMAN. I was discussing that subject 2 weeks ago, and that is what we are facing if we don't provide adequate labor for our farms and ranches. Our own study shows that we will have that production moving outside the borders of this country, and we will be sourcing product from outside the borders of this country. And I am not sure the American citizens are really ready for that to happen.

Mr. ETHERIDGE. Well, I wanted to get that on the record because I am not sure people understand what is at stake. Mr. Wicker, since you are from my district and I think you indicated that we have one of the highest state-to-labor numbers in the country.

My question is as one of the highest users of it, you testified earlier that your association facilitated the employment of about 7,500 legal H–2A workers for the seasonal employment of 2007. How does this number compare with previous years?

Mr. WICKER. It has dropped from about 1,100 growers, 10,000 workers in 2001, and the problem is that every time the wage rate goes up or we provide more benefits, more growers quit. They quit production, or they move back to illegal workers to source their labor.

Mr. ETHERIDGE. Let me follow up very quickly because I have one more question, Mr. Stallman. And you would understand this better than anybody sitting at the table. Some of those deal with tobacco, and a lot of that has gone to mechanization. Now, I know a lot of the other—because a farmer may have sweet potatoes; he may have tobacco; he may have cucumbers; he may have a variety of things. Would that have had any impact because the mechanization in one area or not? Do you know that, Mr. Wicker?

Mr. WICKER. I am sorry. I did not understand your question.

Mr. ETHERIDGE. Well, if you are a farmer, a lot of our farmers in North Carolina and certainly in our district may have cucumbers——

Mr. WICKER. Yes.

Mr. ETHERIDGE.—tobacco, sweet potatoes, peanuts, a host of those where they would use the same laborers. Has the fact that a lot of that has gone to mechanization had any impact on the H–2A numbers?

Mr. WICKER. I would say that it obviously has to have some impact, but not significantly.

Mr. ETHERIDGE. Okay, thank you. Mr. Stallman, you touched on something that I heard recently from a number of our folks at home, and when I talk about the farm, please understand I am talking about that whole stream all the way to the packing operation because it is a continuous stream.

Regarding the No-Match letters that they have heard of from producers getting. They are not so clear about what they are supposed to do when they receive one of them, and it has them quite alarmed. Could you elaborate on this a little further? You touched on it earlier. Do you have any specific examples of this occurring across the country? Because you would be in the unique position to share that with this Committee.

Mr. STALLMAN. Well, with regard specifically to the proposed DHS No-Match letters, right now, that is in litigation, and so we haven't had to face the situation in the country under the new regime where employers will be expected, in essence, to become enforcement agents to a certain extent on the immigration issue when they receive these No-Match letters.

The thing that really concerns us is the liability that exists for not following the DHS procedures when they receive the No-Match letter. It puts them in jeopardy because if they follow them and discharge an employee on the basis of that No-Match letter after they go through a series of steps, then they are subject to being sued by employment attorneys on the basis of a wrongful discharge. And so I mean it is catch-22. You can't win, and that is what we are concerned about.

The full impact hasn't hit yet. It won't until we actually get into that after the litigation is settled. But when it hits, I suspect it is going to have a broad reaching impact that will be negative for producers.

Mr. ETHERIDGE. I know my time has expired, but with the Chairman's indulgence, I want to ask Dr. Holt one question because I think it gets to the heart of some of this.

You touched in your testimony, and in your written testimony, about no matter what we do here, we still have a number of jobs out there that we don't have people to fill in agricultural, in that whole vast agricultural area. Would you, for the record, expand on that just a little bit more, please, sir?

Dr. HOLT. Well, I might point out that this is an economy-wide problem, not just an agricultural problem.

Mr. ETHERIDGE. I understand that, but if you——

Dr. HOLT. We are simply not—the other places it will be exacerbated in——

Mr. ETHERIDGE. Agriculture.

Mr. HOLT.—the rate of job creation in this country. We are creating jobs in this country more rapidly than we are, if you will, creating workers to fill the jobs through natural birth and through legal immigration. And, in fact, that has gone on long enough now that we have probably somewhere in the magnitude of ten million more jobs in this economy than we have native-born and legally admitted workers to fill them.

And every year, that continues. Secretary Gutiérrez the other day pointed out that the growth in the labor force currently is something like 0.2 percent a year. Our average rate of job creation is 1.2 percent a year. Now, it is first grade arithmetic to subtract 0.2 from 1.2, and you have a shortfall. And that 1 percent shortfall amounts to over a million jobs a year, so we are creating more than a million jobs a year more than the people that we have to fill them.

I haven't heard anybody in Congress advocate negative economic growth as the solution to the immigration problem. Therefore, the only other way—there are only two places these workers can come from—natural birth and immigration. We are simply going to have to have realistic immigration policies to allow people to fill these jobs.

Mr. ETHERIDGE. Thank you, Dr. Holt. I appreciate it. I yield back, Mr. Chairman. Thank you.

The CHAIRMAN. I recognize the lady from North Carolina, Ms. Foxx.

Ms. FOXX. Thank you, Mr. Chairman, I appreciate it, and I appreciate very much particularly Mr. Wicker being here from North Carolina to help us understand this problem better.

I want to get a clarification from you because so much of what we have heard is that the H–2A Program is a good program. It works, but there are problems with it administratively, and I want to get something clear from you.

You said that—my understanding is in the H–2A regulations, transportation reimbursement is already stipulated as being due to the worker upon completion of 50 percent of their contract. But in your point number three, you said a crucial change for the H–2A Program that inbound transportation should be reimbursed upon the completion of 50 percent of the contract.

Since the regulations already stipulate that it is due upon completion of 50 percent of the contract, what exactly are you saying that needs to be changed in the way it is being administered?

Mr. WICKER. We were sued by lawyers several years ago under the Fair Labor Standards Act, and their legal argument is that we are required to reimburse these costs to the worker during the first week to make sure that it doesn't cut in to their minimum wage. And so activist lawyers pursue changes through litigation, and while the regulations clearly state that transportation reimbursement is due at 50 percent of the contract period, the courts have held that growers have to reimburse it in the first week. And that is not consistent with the Department of Labor's enforcement posture over the last 20 years. We have been investigated since 1989 every year by wage and hour auditors, and we have never been cited for failure to pay the wages under this legal theory.

And we have been asking for an opinion letter from the U.S. Department of Labor since 1994. We initially asked for that through Congressman Lancaster's office, and so the courts have held something different than the Department of Labor. And it has increased our growers cost by about $200—well, $350 per worker.

Ms. FOXX. Mr. Chairman, one more quick comment. Having learned a lot about the H–2A Program, having used the H–2A Program a long time ago in my own family business and being familiar with Mr. Yates and other people who—Mr. Yates is going to testify shortly about the program. Would it be fair to say that we could help solve a lot of the problems that we are having with matching willing workers to willing employers if we would simplify this program and make it a lot easier for employers to use. Could you see us bringing many of these people who are here illegally now into the program as Ranking Member Goodlatte has recommended? Do you see that helping us fill that tremendous gap? And having a program that protects workers. I want a program that protects the people who come here to work. I want to treat them fairly and give them an opportunity for this. Do you think we can make it happen?

Mr. WICKER. Yes, Congressman, we can. I agree. I want to protect workers too. Our workers are legal so they are not afraid to talk to lawyers or to union representatives or to worker advocates. Illegal workers are afraid to talk, but growers are afraid. Growers are afraid to use this program because they don't want to get sued. And they don't want to go to court, and so, yes, the answer to your question is if we make improvements, growers and workers will benefit from a better program.

Ms. FOXX. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentlelady. The gentleman from California, Mr. Baca.

Mr. BACA. Thank you very much, and thank you, Mr. Chairman, for having this hearing today, which I feel is very important to a lot of us as we look at the needs of our agriculture in reference to jobs. I think I have everything that is going on. Excuse me a second.

The CHAIRMAN. Well, we are short of time here, and we have to go, folks.

Mr. BACA. Yes, let me ask this quick question of the panelists that are here right now. And one of the questions that I want to ask—and I know because of the bullying, the fear that has been going on in the creation of the immigration issue by a lot of the Republicans.

And they have been creating fear amongst many individuals, and it has been a bully syndrome that they have done. If we didn't have the immigration crisis that they have created right now or the problems, and we would just allow human beings wanting jobs to come out and apply for jobs, would we still have—if we didn't have all of this, would we still have the labor crisis? I would like to start with Dr. Holt. If we just allowed farmers and others to hire individuals without any of these other kinds of regulations in meeting the demands of our labor needs, would we be able to do that?

Dr. HOLT. Essentially that is what is happening now with 98 percent of the workforce. Only 2 percent of it is coming through the regulated program. But we have to recognize that there are——

Mr. BACA. I am saying the law is in place. You know, we don't have to worry about whether you are legal, illegal. We are just talking about having bodies, people, to harvest our crops. Would we be able to have the labor force that is necessary if we didn't have all of these bully syndromes that are still there right now?

Dr. HOLT. We would not be able to have that labor force without workers coming from outside the United States, and that raises the security issues that require a structure for these workers to come into the United States legally so that we know who they are.

Mr. BACA. Okay, thank you. Let me ask this quick question if I can of Mr. Goldstein. We are hearing a lot of complaints today about the H–2A Program. What do farm worker advocate's think about the way that H–2A is being administered, the program?

Mr. GOLDSTEIN. Well, we have a lot of concerns about the way the H–2A Program operates. In our view, the Department of Labor consistently approves H–2A applications for employers when U.S. workers have applied for those jobs, that is legal immigrants or U.S. citizens have applied for those jobs, and the employers turn them away because they prefer guest workers. And the Department of Labor still certifies them and allows them to bring in guest workers. We have concerns that the Department of Labor routinely approves job offers that violate the requirements of the H–2A Program by not offering the wages and working conditions required.

We think there needs to be a lot more oversight and enforcement of the H–2A Program. Our view is that the wages are not too high. In fact, they are too low. H–2A wage rate, all it is is you have to pay last year's average hourly wage rate paid to field and livestock workers combined, non-supervisory farm workers. It is just the average. By definition, an average means some employers are paying more, and some are paying less.

If you claim that you can't find any U.S. workers to work for you, shouldn't you be competing with some other employers that are paying more before you are allowed to bring in foreign workers based on a labor shortage?

The bottom line is this: AgJOBS contains a compromise that we can live with. It is very hard fought. There is a lot of controversy to it. There are a lot of concessions, that both we made and employers made. And some people want more. They just say, "It is not good enough for the employers. We want the wages even lower. We want less protections."

AgJOBS is a balance we can live with and so can most of the grower groups. That is what we should do.

Mr. BACA. Mr. Stallman, one quick question. Can machines replace human beings in doing the job?

Mr. STALLMAN. Well, I am a believer in technology, and I believe in the long term that could be the case. There is a question of cost. And frankly that is what the industry will be driven to if we are going to maintain an industry here if we don't have an adequate guest worker program. But right now, that is not the case.

Mr. BACA. Would it be cost effective if we went in that direction? Would we be able to harvest and pick the crops *versus* a human being that notices it, picks it up, *versus* a machine that may destroy it?

Mr. STALLMAN. Maybe over the long term it could be cost effective but not anywhere in the near term.

The CHAIRMAN. Gentlemen, I have to go vote, or we are going to miss it. So I thank the gentlemen. Panel I, I am going to have to ask you to stay because there are some Members that want to ask questions if that works for you. We only have two votes, so we should be back shortly.

[Recess.]

The CHAIRMAN. The Committee will come back to order. I recognize the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. I guess it pays to be a good student and get back to class early after you have missed the first part of it. I apologize if, due to the fact of missing preceding section here, that some of these questions may have been addressed. But these were concerns that we have taken from constituents on this issue and would like to address them as well.

The first question I would ask, and let me ask that to Dr. Holt. Mechanization on farm operations has improved greatly all that goes on in agricultural life. For the record, why is hand labor still of such great importance in the general agriculture community?

Dr. HOLT. Well, you are right. Mechanization in particular, and various labor productivity enhancing technologies, in general, have been adopted at a very rapid rate in agriculture. Labor productivity in agriculture, even in the current environment, has been increasing at a rate equivalent to, and in many cases in excess of, labor productivity in the nonagricultural industry.

But there are many jobs involved with growing plants and very perishable commodities that still require the careful attention of the human hand, I guess is about the best way to describe it. And while there are technologies that are being worked on even for those activities, for a lot of tree fruit harvesting activities, strawberries, asparagus, and so forth, we are simply not there yet and may never get there in terms of mechanizing those kind of activities.

I would also point out, however, that even if we do mechanize, that doesn't necessarily solve the problem. There is nothing more mechanized than the combining of grain, and yet the entire grain crop in the Great Plains States, all the custom combine crew workers are alien workers coming into the United States under the H–2A Program. That is one of the bigger users of H–2A. So even when you do mechanize, that doesn't necessarily solve the problem.

Mr. WALBERG. Okay, thank you. Second question: Let me address this to Mr. Stallman. In the State of Michigan, many of, let us say my district in Michigan, which is probably arguably the most diverse agricultural area of the State of Michigan. Many of the producers there are frustrated significantly, to say the least, with the H–2A Program. What core provisions within the program need to be addressed in order to make the program work; and in fact, even more than just work? A program that would give incentive to agriculture and farmers and agricultural producers using the H–2A Program?

Mr. STALLMAN. Well, that list is long, but we do believe that H–2A could be a viable program for the long term if we made significant changes. The first is reverting to a Prevailing Wage as op-

posed to the Adverse Effect Wage Rate. We need to expand the coverage, and particularly dairy doesn't qualify in some states as seasonal work. And there is a lot of need for labor on dairy farms. Just less bureaucracy, all the steps that a producer has to go through, and the timelines, make it very difficult to get the labor when they need it under the H–2A Program.

And greater flexibility, and just one example of that would be using a housing voucher instead of mandated housing. You know, solve the problem but provide some flexibility to do it, and those are just some things.

One of the real issues for border states, which perhaps doesn't affect Michigan as much in this regard though, is the commuter program where workers come across the border on a daily basis to work and go back, such as in Arizona. That flexibility to allow that kind of work needs to occur also.

Mr. WALBERG. Okay, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from Colorado, Mr. Salazar.

Mr. SALAZAR. Thank you, Mr. Chairman. I don't know if some of these questions were asked. I had to step out for a little bit. But, Mr. Wicker, in your testimony, you stated that you were fine with some of the provisions of AgJOBS, however you were concerned about amnesty. Could you define "amnesty" or your definition of "amnesty" to me?

Mr. WICKER. I really don't support any of the provisions of AgJOBS. We would like to see the prevailing wage, less litigation, and less bureaucracy.

Mr. SALAZAR. Could you define "amnesty?" You mentioned that amnesty is something that you couldn't support?

Mr. WICKER. Well, I am not prepared to define "amnesty." That is a big part of the public debate, but I can tell you that amnesty doesn't put workers on the farm to harvest crops that we can feed our country.

Mr. SALAZAR. Well amnesty to me, and when you look at the definition in the dictionary, it means total forgiveness for a wrongdoing of some kind and—I know that in the STRIVE Act, for example, there are issues there that talk about heavy fines for those who have broken the law, meaning that they would go back to the back of the line if there is a path to citizenship. To me, that is not amnesty, but that is where the big debate comes in is how you define amnesty.

Mr. Goldstein, could you comment on my question, please?

Mr. GOLDSTEIN. Yes, thanks. We obviously think that "amnesty" is not a word that applies to AgJOBS. Under AgJOBS is the earned legalization program. Farm workers who have been working here in the United States would have to come forward and report themselves as having been undocumented and prove that they have been working in American agriculture during the last 2 years, 150 days, in agriculture.

Then they would get a temporary status. In a temporary status, they would have to continue to work in American agriculture for 3 to 5 years, a certain number of days per year depending. And they would have to pay fees. They would have to pass security checks and meet other obstacles. It is a very arduous process of

earning legal immigration status. We don't see how that should be called amnesty.

Mr. SALAZAR. I appreciate your comments, Mr. Goldstein. Mr. Brown, I am sure you are aware of the almost bankruptcy of Swift & Co. meatpacking plant in Greeley, Colorado in Mrs. Musgrave's district when the raid occurred last year.

That plant was sold to an Argentinean family because of the heavy fines imposed in Colorado. I understand what is going on, and the labor force is not there. You talked about a biometric ID system, which I tend to agree with you on. I believe that that is the only way that you can ever enforce any kind of immigration law, but if that happens, it has to be some kind of a National ID System. Would you be willing to carry one of these biometric IDs with you as well? Because otherwise, you wouldn't be able to apply for a job?

Mr. BROWN. If the question is would I personally be willing to carry one, yes, I would.

Mr. SALAZAR. And do you agree with me that that is the only way to really be able to enforce immigration law, if you have some kind of tamper-proof ID system in place? Anyone can comment on that.

Mr. BROWN. In my view, the only way to deal with true identity theft, whether that has to do with immigration law or any of our domestic laws, the only way to deal with that is to have a biometric and to have the Federal agencies, the various Federal agencies be able to communicate with each other.

For instance, we used a basic pilot program. We submit the name of the employee, the new employee, and their Social Security to DHS. The Department of Homeland Security will then get back to Swift or any other number of employers that use the program, and they will verify yes, John Smith's Social Security is X. What it does not verify is if there is a number of other people using the name John Smith and the same Social Security Number. That problem does not present itself until the end of the year when employers are paying Social Security taxes on employees, and you file your W–2 forms. Then you find out that there are a number of John Smiths using the same number.

That is why if we had up-front biometric as well as the Department of Homeland Security and the Social Security Administration sharing information, we could reduce that problem and, in essence, develop a border within a border and allow employers to comply with the laws and to prevent raids such as we had at Swift.

Mr. SALAZAR. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I appreciate you holding this hearing and the gathering of testimony that we have received here. I hear the discussion about the definition of "amnesty," and we have discussed that considerably over in the Judiciary Committee and in the Immigration Subcommittee. And the definition that I have consistently used, and one that many of my colleagues consistently use, is this: that to grant amnesty is to pardon immigration lawbreakers and reward them with the objective of their crime.

I think that definition upholds against the rational criticism that might come, unless one wanted to advocate for amnesty, and in that case one might try to change that definition. But we have laws, and if we enforce those laws, that is my stand.

If you give someone legal status after having broken the law, then you have granted them an amnesty for the law that they have broken. So, I wanted to make that point.

And then I think maybe the subject matter that needs to be explored in significant depth here is that each of us can advocate for more access to higher quality and cheaper labor. I have been an employer for 28 years, met payroll over 1,400 and some consecutive weeks. So, I have always wanted more and better employees that would actually work for an even cheaper rate. But certainly I don't want to pay more than what they are worth in the marketplace.

So it is a natural thing in business to be advocating for that, and I understand that. We have a broader issue here, and that is that this is a sovereign nation, and the borders of this nation define the nation itself. And, of course, we must defend those borders. But from a macroeconomic perspective, the issues boil down to this for me. We have a workforce, according the U.S. Department of Labor, of about 142 million workers. And out of that 142 million workers, then we have an illegal workforce in America—now, some of these statistics come from different organizations, none from my calculations beyond the math itself—that 4.7 percent of our workforce is the illegal labor that we have. That 4.7 represents 6.9 million illegal workers in America.

Now, if we have 12 million illegals—and I think it is actually 20 million or more, but I am working with the 12—7 of the 12 million from round figures are those that are working. At any rate, you get a 58 percent employment rate out of those numbers that come into the United States illegally: 6.9 million workers out of a workforce of 142 million, representing 4.7 percent of the workforce, but being low skilled, only produce 2.2 percent of the actual GDP.

If they are doing 2.2 percent of the work, production, and you came into the factory in the morning and you found out that 2.2 percent of your production workforce wasn't going to clock in that morning, that amounts to, if you are going to do all the work in America in an 8 hour day 7 days every week, that would be 11 minutes out of each 8 hour day.

So, we have 69 million Americans of working age who are not in the workforce. All we would have to do is hire one out of every ten of those to replace those that are illegally working in the United States, and we will have solved this labor shortage problem.

Now, I understand you have to set up recruitment lines and do different training and people want to do different things, and there are industries that are far more dependent and far more critical than others. But if we never had this universe of employees to go to across our borders of that labor, we would have found other solutions. We have evolved into a dependency.

So, I would ask Dr. Holt to comment on those macro numbers and tell me if it is in your estimation that it would be wise for us to want to improve the average productivity of each American who is lawfully present in the United States as a priority. I would leave that question to you, Dr. Holt.

Dr. HOLT. Well, if your question is improving productivity of American workers, I think you need to look at the statistics, the record of how the productivity of American workers has increased. We have been increasing the productivity of American workers. We have been increasing the productivity both in agriculture and non-agriculture.

Mr. KING. Excuse me. We agree on that then, and so, yes, we agree on that point. But what are your comments with regard to that macro equation that I have given about hiring one in ten non-working Americans to replace those who are unlawfully present in the United State or not legal to work.

Dr. HOLT. Well, you ran through those statistics rather quickly, and that was a complicated analysis. And I am not sure I agree with all of those statistics. I am not prepared to debate them at the moment until I would analyze them. With respect to the agricultural situation, which is what we are here discussing today, the question is do we have 800,000 to a million persons in the United States who are not currently working who are willing to become migrant workers, to leave their places of residence, to go to the farms of the United States, and to perform manual agricultural labor: I think the answer to that question is clearly no, and in the——

Mr. KING. I think, Dr. Holt, the question of 800,000 is still a question. And the question of recruitment from other professions is a subject matter that should be before this Committee as well. But I recognize that I have run out of time, and I appreciate your response and your testimony. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much. I think we are going to go now to Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman. I want to thank the panel. I have found this to be an extremely informative hearing, even though many of the issues are not of immediate and significant impact in my district as they are others, given the nature of agriculture up in the Great Plains. But obviously it is a topic of urgent national importance.

Dr. Holt, I was quite astounded by some of the statistics you quote in your testimony. What percentage of farm labor in the U.S. do you believe is here on an undocumented basis?

Dr. HOLT. Well, Congressman, interestingly enough, agriculture is the one sector of our economy in which the U.S. Government actually produces official statistics on illegal alien employment. The Labor Department conducts something called the National Agricultural Worker Survey on a biannual basis where they go out, and our own government asks a large sample of seasonal agricultural workers, among other things, whether they are legally entitled to work in the United States. The most recently published survey, 53 percent of the respondents to that survey said they were not legally entitled to work in the United States.

Out of the newcomers in any given year—and agriculture is seasonal work—it is work in which workers move up and out into better jobs. So ⅙ of the agricultural workforce each year are newcomers working their first year in agricultural work in the United States. In the most recent survey, 99 percent of those newcomers responded that they were not legally entitled to work in the United

States. These figures are not speculative. These are official figures produced by the U.S. Department of Labor.

Mr. POMEROY. Your testimony notes that often the amount of migrant labor involved in farming, those from other countries, that would go through the H–2A visa process, would represent 2 percent of the labor actually required to produce today's product.

Dr. HOLT. We have approximately 3.1 million job opportunities in agriculture for hired agricultural workers each year. Last year, which was the peak year for H–2A employment, 59,000 of those jobs opportunities were H–2A certified. That is 1.9 percent of all of the agricultural job opportunities in the U.S. were H–2A certified.

Mr. POMEROY. 1.9 percent. So the thing that we have that deals with farm labor, other than a citizenship route, is clearly not even making a token contribution to the overall workforce need.

Now, you note in your testimony the imminent impact of the immigration enforcement authorities, Social Security match issue. Would you care to expand on that?

Dr. HOLT. Well, what the Social Security mismatch regulation will require is for employers who receive mismatch notices to confront the employees in question and ask them "to correct the data." Well, of course, with very few exceptions, the problem is not incorrect data. It is the fact that the individual is not legally entitled to work in the United States. They don't have a Social Security Number. The number is either fraudulent, or it has been appropriated from someone else. And so if the individual is unable to correct that information within 90 days, the employer is required to terminate them.

Mr. POMEROY. Now, the Administration is announcing this significant crackdown, which will have a potentially dramatic impact on the identification of farm workers, working without documentation, has said, "Well, they are going to run this program that presently deals with 1.9 percent of folks coming in from outside the country in farm labor." Do you believe there is any way they can ramp up the H–2A process sufficiently to deal with the number of workers that will potentially be identified and sent home under the enforcement crackdown?

Dr. HOLT. Well, bear in mind that the mismatch regulations aren't necessarily an enforcement crackdown. I mean the irony is the employer will have to terminate workers who are unable to correct their information, but nobody is going to go out and pick these workers up and do anything with them.

What it is going to do is to churn the agricultural workforce. The worker that I have to terminate is going to go down the road and apply to work for Bob Stallman, and it is going to have a document that appears on its face to be genuine. So Bob is going to have to hire him. The worker that Bob terminates is going to come down the road and apply to work for me. And because he is going to have a document that appears on its face to be genuine, I am going to have to hire him.

And then next year, there will be another round of mismatch letters, and Bob will get the names I sent down the road to him. And I will get the names that he sent down the road to me, and we will churn it all over again. And we will send them down to Lee Wicker and so forth and so on.

Mr. POMEROY. Right.

Dr. HOLT. We will just pass them up and down the table. Nobody is actually going to go and pick these workers up and remove them. So the mismatch regulation in and of itself doesn't solve anything.

Mr. POMEROY. It compounds the farce that we all have.

Dr. HOLT. Exactly.

Mr. POMEROY. I know my time is up, but I would like to ask one more question. Mr. Goldstein, in the back and forth with the Ranking Member, it appeared to me you had thoughts to further express, but I would like you to speak specifically to this. A concern that many of us have about guest workers is that essentially these people never have status that is going to get them out from under really a potentially exploitive labor circumstance. Would you address that and talk about how AgJOBS changes that?

Mr. GOLDSTEIN. Right, some of the proposals are just to transform the entire agricultural workforce into a guest worker system that is where the workers only hold a nonimmigrant status, and they can only work for the one employer that got them the visa. The minimum standards that are required by the H–2A Program, as long as they are offered, have to be accepted. Under H–2A, the employer has to offer these minimums, but if the U.S. worker or foreign worker says I will work for 10¢ more an hour, legally the employer can say no, I am not going to do that and can go get another guest worker because that is just the way that the system works.

So, under these programs, the workers really don't have any bargaining power. They don't have a path to immigration status or citizenship. They will never have the right to vote, and it creates a real imbalance in the political representation because the growers, their employers reside in those local areas, and they vote. Their workers have interests too, but they don't vote.

AgJOBS would allow currently undocumented farm workers in the United States to, over a multiyear arduous process, to earn legal immigration status, and at the same time, provide employers with a stable workforce that they could then choose to—in our private marketplace—they are supposed to compete for the workers by improving wages and working conditions.

So that is the first part of AgJOBS. The second part would reform the H–2A Program. It would make it easier to use. It would reduce red tape. It would lower the wage rates by over a dollar an hour and freeze them for 3 years while two studies are done for Congress by the GAO and a special commission to tell Congress about H–2A wage rates and let Congress then decide how to approach the wage rates. There are a number of other reforms to the H–2A Program. That would really be the future program for the United States——

Mr. POMEROY. Thank you.

Mr. GOLDSTEIN.—to bring in new agricultural workers.

The CHAIRMAN. The chair recognizes Mr. Fortenberry, 5 minutes.

Mr. FORTENBERRY. Thank you, Mr. Chairman. Thank you, panelists, for the engaging discussion particularly some of the insights of the inherent problems from Mr. Wicker and Mr. Goldstein both have pointed out in the H–2A Program.

At the outset, I would recommend, as a part of having a responsible policy discussion about the appropriate needs of the agricultural labor supply, that we take off the table a blanket accommodation of illegal behavior or the hint of it as a policy option. We must uphold the rule of law. We must promote responsible citizenship and orderly immigration.

Now, to that end, we have heard a lot of the complexities today, and I do appreciate your insights. My colleague from North Dakota anticipated some of my questions regarding the statistics. But I would like to further unpack some of those statistics. Dr. Holt, you pointed out that approximately 53 percent of seasonal workers have illegal status here. But overall agricultural workers, what is the division between citizens and non-citizen? Then I want to ask the question, and perhaps it is better asked sector by sector, as to whether or not real wages have fallen or risen.

Dr. HOLT. Well, the first question first. First of all, let me mention that the 53 percent illegal is the number of people who were responding in the survey that they were illegal. I don't think anybody believes that the number is really that low. These are simply the people that were willing to admit it.

Mr. FORTENBERRY. What is the extrapolated figure through probability?

Dr. HOLT. When workplace audits are conducted on the ground and the authenticity of documents are examined, the typical experience is that more like 75 percent or so.

Mr. FORTENBERRY. Okay.

Dr. HOLT. I have seen figures in some instances in places that you would not imagine are hotbeds of illegal immigration like the upper Midwest as high as 90 percent. So ¾ is probably—78 percent of the seasonal agricultural workforce are foreign born. Now, some of those individuals may have become citizens since—may have legally immigrated to the United States and become citizens and are engaged in farm work. I suspect the proportion of that 78 percent that that would describe is probably quite low.

So 78 percent of our agricultural workforce in this country came here from outside the United States originally.

Mr. FORTENBERRY. Seasonal agricultural workforce.

Dr. HOLT. This is the seasonal agricultural workforce. That's correct. Your second question, and I am sorry now, I have forgotten what it was.

Mr. FORTENBERRY. Well, first of all, backing up. In terms of overall agricultural labor, what is the percent of American citizens *versus* non-citizens in the total workforce?

Dr. HOLT. Well, the 23 percent that were born here obviously are citizens.

Mr. FORTENBERRY. Getting away from the seasonal parameters.

Dr. HOLT. Well, more than 80 percent of the agricultural workforce is seasonal. We know that a substantial number of the year round workers in agriculture are also illegal. That is one of the concerns about simply saying that reforming the H–2A Program solves the problem. It doesn't solve the problem because a small but key component of our agricultural workforce are workers that are no longer temporary or seasonal, are not eligible for the H–2A Program, no matter how streamlined it becomes.

H–2A only permits, under current law, the admission of workers into temporary or seasonal occupations. And one of the reforms that is needed is to broaden that into, for example, the livestock sector. But the——

Mr. FORTENBERRY. Real wages. We have to get that before we run out of time.

Dr. HOLT. Real wages, right. Real wages in agriculture have increased. They have increased—I can't right off the top of my head cite the statistics. Nominal wages, money wages, the rate of increase in the hourly rate for field and livestock workers compared to non-supervisory, non-agricultural workers—over the past 20 years, agricultural wages have actually increased at a more rapid rate. My recollection is roughly 39 percent more rapidly.

Now, the actual wage in agriculture is still below the non-agriculture wage because the skill range of workers in agriculture is much narrower than the skill range of nonagricultural workers.

Mr. FORTENBERRY. Okay, but with any statistical discussion, you have to continue to unpack to understand clearly the parameters, but it would be good to see what that trend is *versus* non-skilled agricultural workers.

Dr. HOLT. And I would be happy to try to provide——

Mr. FORTENBERRY. The point is to try to get to what was intimated earlier in some of the earlier testimony about how the impact of additional supply of agricultural labor, whether it is legal or in our regulated programs, is impacting wage growth. Because we do not, cannot advocate policies that would simply increase the supply of labor in order to bring down wages and pushing, of course, added social cost onto the rest of society.

Dr. HOLT. Well, I understand that, Congressman, but it is hard to argue that the presence of foreign workers in agriculture is having that impact, given the fact that the agricultural workforce is overwhelmingly foreign and illegal, and yet the nominal wage rate is rising, and the real wage rate is rising more rapidly in agriculture than it is in non-agriculture, which is less impacted overall by the employment of illegal aliens.

Mr. FORTENBERRY. Indulge me for 15 more seconds. Let us find out what the differential is that you are not able to recall off the top of your head.

Dr. HOLT. I will.

Mr. FORTENBERRY. I think that would be helpful statistic as well.

Dr. HOLT. I will do that. My recollection, as I say, is that over the 20 year period that I recently looked at these statistics for, the relative rate of increase was about 39 percent higher in agriculture than in non-agriculture. I will provide you with those.

Mr. FORTENBERRY. Thank you.

Mr. MAHONEY [presiding.] Thank you very much. The chair recognizes Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. To follow up, Mr. Holt, and I thought all the testimony provides a basis for more information for the Committee and the Congress to try to address this issue. I have told some of my colleagues on the floor when previous solutions were being offered that it reminds me of denial, and denial is not a river in Egypt. Denial is ignoring the numbers, Dr. Holt, that you have explained in great detail.

When 1.5 percent of the total workforce is able to take advantage of H–2A nationwide—and in California, I believe, the number is 0.4—clearly this program doesn't address the needs of the totality of the issue.

When you look at the total workforce here that is here illegally today, it is also, I think it is important to note that less than 20 percent is engaged in agriculture. So your statistics stipulating that, in fact, we have more jobs today in the economy and we are creating more jobs than we have workers, I think we need to take note of.

Whether or not we support some version of guest worker program or not, not to address it is to be in denial in some legally fashionable way that protects employers and protects employees and is fair. So why do you believe—and I am going to make a point here—Dr. Holt, that the H–2A Program just doesn't work?

Dr. HOLT. The question is why do I believe it doesn't work?

Mr. COSTA. Right.

Dr. HOLT. Well, clearly it does work for a very small percentage of——

Mr. COSTA. One and a half percent.

Dr. HOLT.—employers.

Mr. COSTA. I would stipulate that that is not solving a problem.

Dr. HOLT. The detailed answer to that would be complicated, but in general, the terms and conditions that it imposes on many job opportunities simply are not competitive. So employers can't afford to use it. Number two, the administrative procedures of the program are too complicated to permit employers to work with. And number three, at the present time, the litigation and enforcement risks entailed with the program are so high that many employers——

Mr. COSTA. So notwithstanding the good idea, it just doesn't work.

Dr. HOLT. It is a mechanism that could work.

Mr. COSTA. Well——

Dr. HOLT. It doesn't work.

Mr. COSTA. But it would need significant changes to work.

Dr. HOLT. It would need significant changes——

Mr. COSTA. All right.

Dr. HOLT.—including statutory changes.

Mr. COSTA. Right, absolutely. I don't want to belabor the issue of comprehensive reform, which I support, that has three legs of the stool to stand on. Which is first, border security, meaning increased border security, which we are doing some of now today. But the second part is the status of those that are presently here illegally today. And the third element of that leg of the stool is a legitimate, fair, guest worker program that I think is replicated in the AgJOBS proposal.

For those who argue that what we really need to do is to correct the deficiencies in H–2A, I would stipulate that is what the AgJOBS Program is. I think people need to understand. First, it is a pilot project. The first step is that it requires 150 days within the previous 2 years before you could receive a blue card.

Second step would require that the 150 days per year for 3 years be substantiated before you would be eligible to apply after 5 years for a green card.

Third, it would require an employer to verify that all of these statements, pay stubs, W–2 forms are legitimized to prove the previous work.

Fourth, it would be capped at 1½ million workers. I mean that is a pilot project. That is an attempt to address the issue within agriculture.

It would also, because of the seasonal nature of agriculture, allow people after 100 to 150 workdays in each year to then work another type of work that is non-seasonable for that period of time.

It would also allow for those workers to travel within the United States and to go back to their countries. It would require a fine. It wouldn't be for free. It would require a $500 fine for those that apply for it, and that you would have to pay any previous taxes that were owed. And then it would require, something very important, a biometric type identification that Homeland Security would develop because part of the issue is security, as we all agree upon. And this would become very real.

This is an attempt to take the H–2A Program, in my view, and make real modifications to it to make it work. I mean we are calling it AgJOBS, but you could call it a modification of the H–2A Program if you contain these elements in it. Do you think those would go along the way, Dr. Holt, of working, Mr. Stallman? Both of you, please.

Dr. HOLT. Well, yes, I do. There are two critical components to AgJOBS, and those two critical components both have to be addressed for legislation to be effective. One is to reform the mechanics of the requirements of the H–2A Program, and probably 65 pages of the 104 pages of AgJOBS is focused on those kind of reforms.

And the other is we have to address the resident illegal agricultural workforce that is here that we frankly cannot do without. That is the part of AgJOBS you have just described. The adjustment of status does that in a humane way that does require workers to pay a price if you will. What I like to compare it to is sort of work release. That is a well-honored tradition within our law enforcement system. Workers work off, if you will, their having been here, having come into this country in illegal status. And that is why you don't think you could call this an amnesty.

Mr. COSTA. You know the numbers with the employment development departments in California and those that have sought agricultural work?

Dr. HOLT. Well, there was a—before Senator Feinstein really became hands-on active in AgJOBS, she really put the test to California farmers. She said I want you to go out. I want you to work with EDD and really mount a serious effort to try to recruit domestic workers. EDD offices up and down the valley participated in this. There was all kinds of recruitment efforts and so forth made. At the end of the day, that whole effort produced three workers. And that is what caused Senator Feinstein to say we need to do something statutorily about this program.

Mr. STALLMAN. Very briefly, I suppose, AgJOBS does help with the short-term problem. What AgJOBS does not do is provide that longer-term guest worker program.

Mr. COSTA. Well, that is why I am supportive of the comprehensive effort clearly.

Mr. STALLMAN. But concerning the Senate bill, we had some real problems with the H–2A section in there because it actually—well, the wage issue was one——

Mr. COSTA. No, I understand.

Mr. STALLMAN. And, until we have an adequate guest worker program, the temporary solution is fine, but we are going to be right back dealing with the same issue.

Mr. COSTA. My time has expired, Mr. Chairman. I have some other questions I will submit, but if you bear with me for a moment, I would like to recognize, and I will submit a written statement in a memorial and Congressional record reflecting, for those of us from California, Mr. Roy Gabriel who, for 35 years, worked for the California Farm Bureau on labor relations issues. He would have probably been here in the audience today. Came here 2 days ago and suddenly passed away, but he was a passionate advocate on behalf of not just California agriculture but solving these labor issues and worked closely with not just farmers but farm workers. And we will miss Roy Gabriel, and we will submit an appropriate statement.

Mr. MAHONEY. Thank you, Mr. Costa. The chair recognizes the gentlewoman from Kansas.

Mrs. BOYDA. Thank you, Mr. Chairman. Thank you for being here. I represent the eastern part of Kansas, which is different than the western part of Kansas. I represent 26 counties that go from Nebraska down to Oklahoma. Clearly, Mr. Moran, I get to serve on the Committee with him, and the issues in western Kansas are just flat out a little different than the ones in eastern Kansas.

What I would like to do is just to give you—you all have been in my office and talking about some things. The one thing that keeps us from moving forward, and you spoke about it, Mike, and that was how do we decide who has been here legally. We are talking about it, and I have heard it talked about. How do we enforce any law that we put together?

So in the Second District, I don't mind saying the words comprehensive immigration reform. I like throwing fuel on the fire. I got into an elevator last week with the postman and said what is on people's minds. Want to guess what it was? Illegal immigration.

It is almost to the point where on a given day, it is becoming quite uncomfortable. It has gone from a fairly rational discussion into something that on a given day can be not very—I don't know what words I want to have in the record, so I just won't go any further than that. But it is getting worse, not better.

And what their main message is that I would like to share again with you is we are not interested in putting all kinds of penalties on people, whether they are the employers or the people that are working here, until you can show me how you can enforce this. Just show me how you can enforce it. Show me how you intend to

enforce it. Give me some idea that you might enforce it. That is where the sticking point is.

So I would just offer with you to see if there is any way that we can help come together. You all have, especially the Farm Bureau, within the State of Kansas and in my district, you have a great deal of trust, a great deal of respect. You have a network all put together of people who will listen. So we have to come back down off of this ledge.

But what they are going to be listening for is just show me that you have some intention of enforcing it. Show me. Don't tell me. I have had a good conversation with somebody when we were talking about comprehensive immigration reform. So I came back to just the issues that you were talking about and how do we enforce it. And they said, "Well, that is the problem. The devil is in the details." Until we have those details worked out, comprehensive immigration reform—the CBO judge said that it wasn't going to do anything to substantially change illegal immigration, less than 20 percent of it because the people in Kansas' Second District didn't need any CBO report to tell them that.

People in my district are people who are good people. They are also part of why things aren't moving forward and part of why we aren't stuck because they have ground in and said, "Until you can let me have some sense of faith that you are going to enforce this, we are going to dig our heels in even stronger."

So I don't know whether you have any comments on that, but my office would be more than willing to work with you in helping to get out a message and shape a message and shape those kinds of real solutions. We all talk about some kind of biometrics, knowing that it is that issue that is holding a bunch of things up.

Well, we have to get it off of the dime and move it forward and have what could be a very complicated and maybe even uncomfortable conversation. But it has to be moved forward, and I would just offer our support from the office to do anything we can to help you all move that forward. And I will take any comments on that. Yes, Dr. Holt.

Dr. HOLT. Congresswoman, may I suggest that this is perhaps not as complicated as we think it is. We clearly can't have effective enforcement without a labor supply, a guest worker program along with it. We clearly don't want to have a guest worker program without effective enforcement, and the thing we seem to be stuck on is the advocates of enforcement before guest worker and maybe the advocates of guest worker before enforcement. I think that is where the comprehensive is so critical.

Mrs. BOYDA. Yes.

Dr. HOLT. Is that both of these comments have to be done together, and when we do that, then, as the gentleman at the end of the table testified earlier, biometrics has to be part of it. We need to know that when somebody presents a document, that that document can be verified as being authentic and that it belongs to the person presenting it.

The technology, DHS has the technology for doing that. It exists. It is a matter of the will to implement it.

Mrs. BOYDA. I couldn't agree with you more. Yes?

Mr. GOLDSTEIN. And just from a non-technical point of view, I mean we farm worker advocates, the farm worker organizations have the goal of ensuring that the farm labor force is legally here.

Mrs. BOYDA. Yes, it is good for everybody.

Mr. GOLDSTEIN. Exactly, and we believe that AgJOBS would accomplish that goal. We are convinced that the percentage of undocumented workers would go down to close to zero initially and that would stay very low into the future.

By the same token, however, we don't want to just transform the farm workers into a system of guest workers because frankly if you start weighing who is better off, a guest worker with kind of no labor protections *versus* an undocumented worker, that is not a debate we want to be involved in because under neither situation is a farm worker going to be treated fairly. And that is our goal here.

Mrs. BOYDA. I would just say again in the district that I represent, no one believes that there is a decision on how to implement all of those. I know I represent somebody who is going to stand and dig in the heels with the people of the Second District of Kansas. So showing them what a system looks like would be a good thing. Thank you so much.

Mr. MAHONEY. Thank you very much. That concludes our first panel. I want to thank the panel very much for being here. It was very informative, and your testimony is very important in establishing a baseline for what the situation is in agriculture. So thank you very much. If we could bring the second panel on, we have votes coming up here very quickly, and I would like to get through the initial opening statements before the votes happen. Thank you very much. Will the panel take their seats please so we can get started? Any private conversations, please take them outside the Committee room.

I would like to welcome our second panel. The first panel we had sort of the industry experts talking a little bit about the impact of the labor situation, and now we are going to be honored to listen to the gentlemen who actually has the responsibility for actually farming and having to deal with the problem. And I would like to turn over to Mr. Cuellar the opportunity to introduce one of the panel members.

Mr. CUELLAR. Thank you very much, Mr. Chairman. I also have a statement that I will go ahead and introduce for the record. But it is my pleasure to welcome somebody from Texas. A special welcome to J Allen Carnes, a south Texas vegetable producer who is here to testify. J Allen is Vice President of Carnes Farms Inc., President of the Texas Vegetable Association, Director of the Texas Produce Association, Director of the South Texas Onion Committee. He has a lot of experience, being from the border, and I was listening to the conversation on immigration.

Being from right along the border, it is a topic that we can go on and on. But certainly it is an issue that we need to look at, and certainly need to look at H–2A and how we can make that more efficient and more effective. Thank you, Mr. Chairman.

Mr. MAHONEY. Thank you, Mr. Cuellar. I would like to introduce somebody from my home district, Mr. Mason Smoak, born and raised in Lake Placid, Florida, a little piece of heaven right in cen-

tral Florida. And he is a third generation citrus grower from Highlands and Hardy County.

Mason is active in managing over 3,000 acres, and that includes citrus care taking and harvesting and hauling operations. Mason and his family also manage 13,500 acres where they run 2,300 head of cows—that is about 2,290 more than me—in a commercial cow-calf operation. Mason is an active member of Florida Citrus Mutual, Florida Farm Bureau, Federal and Highlands County Citrus Growers Association. I am glad to have you here, Mason.

I would like to also introduce Mr. Harry B. Yates, Board Member of the National Christmas Tree Association and Christmas Tree Producer, Boon County, Boon, North Carolina. I would like to also introduce Mr. Randy Mouw from the Misty Morning Dairy from Ontario, California. Mr. Keith Atkinson, tobacco producer from Java, Virginia.

And I have another gentleman that is not quite in my district, but we like him just the same. It is Mr. Rick Roth who is a third generation farmer from Bell Glade, Florida and is President and Principal Owner of Roth Farms, which is the most diversified farming operation in the Everglades agricultural area. The Roth family owns over 4,000 acres and leases another 1,000 acres. They grow lettuce and leafy vegetables, radishes, sugar cane, sod, sweet corn, green beans, field grown palm trees, and rice, just about everything that grows in Florida. Rick currently serves on the Board of Directors of the Florida Farm Bureau and Florida Fruit and Vegetable Association, Sugar Cane Growers Cooperative of Florida. It is nice to have you here, Rick. With that, let us start——

Ms. FOXX. Mr. Chairman.

Mr. MAHONEY. I am sorry. I didn't see you there.

Ms. FOXX. That is okay. Just one quick correction for the record. Harry Yates is from the Fifth District of North Carolina, my district.

Mr. MAHONEY. Did you want to introduce him?

Ms. FOXX. Well, if I could just say that it is Watonga County and the town of Boon. Harry has been a leader in agriculture, and particularly in the growing of Christmas trees, and a good friend for a long time. He is very well versed in the issues that he is going to be presenting. He is a former high school teacher, and I am just thrilled that he has been able to come up today to be with us. Thank you.

Mr. MAHONEY. Yeah, I am sorry I didn't see you down there. My contacts don't go that far up here. I am usually a lot closer to the action, being the most junior Member of the Committee. With that, let us start with the testimony if Mr. Carnes could go ahead and start.

STATEMENT OF J ALLEN CARNES, PRESIDENT, WINTER GARDEN PRODUCE; CHAIRMAN, TEXAS VEGETABLE ASSOCIATION; DIRECTOR, SOUTH TEXAS ONION COMMITTEE, TEXAS PRODUCE ASSOCIATION; VICE PRESIDENT, CARNES FARMS, INC., UVALDE, TX

Mr. CARNES. Yes, thank you Members of the Committee, and thank you for the opportunity to testify before you and express my

perspectives on the labor shortage as it relates to my business and as it relates to Texas vegetable industry as a whole.

Sitting here and listening to some of the debate going back and forth, I hope that this Committee will truly take the perspectives of this panel because we are the on-the-ground people. We have experienced this problem firsthand, and whatever the political realities of fixing this problem, we have a problem. And we need to fix it fast, or we are going to sufficiently damage the oldest institution in the United States of agriculture. And agriculture in Texas and the U.S. as we know it will no longer exist.

Once again, my name is J Allen Carnes. I am the President of Winter Garden Produce, the Vice President of our family farming operation, and the current Chair and President of the Texas Vegetable Association. We currently farm over 3,000 acres in the south Texas area and ship over 2,000 acres of fresh fruits and vegetables, amounting to 1.2 million packages.

I am going to go straight into my experiences with the problem, and then I will expound on our workforce and how it relates to Texas and where the shortages are coming from.

In 2004 and 2005, we began to see a major problem. Crews became short, and those 2 years by themselves, we ended up getting the crops harvested. It took a lot of doing and a lot of jockeying back and forth amongst sheds, offering more money here, more money there, but at the end of the day, it got harvested.

Now, we came to 2006, and we saw a major labor shortage. We saw, to my knowledge, the first direct, out-of-the-pocket expense to Winter Garden Produce based on that year. We had direct losses of $75,000 based on solely shelf life and arrival value of our produce. We also had to abandon 35 acres of cabbage that we left unpicked, unharvested almost completely because we didn't have the crews to do it. And the sales value on that field alone was $150,000.

Now, sitting and seeing my family and my father particular faced with the daily problem of not having a crew to harvest our crops and seeing our crops affected by this. If you know many farmers, sometimes watching a crop for 4 or 5 months grow and come to fruition, they look on that crop and have as much adoration for that crop as sometimes their firstborn child. So it was a real heartbreaking experience to see my family deal with the loss of a crop that we couldn't get harvested solely because of labor.

We came to 2007, and every indication pointed towards a much larger problem than we had in 2006. According to a study at Texas A&M, the overall numbers in the spring onion harvesting crews alone were down 21 percent from the last year. So we expected to have a real storm.

Beginning in some of the harvest in May of 2007, we were running already 4 and 5 days behind, and unfortunately then we hit a major weather event. And some of the shortages were unknown to us. We did lose a field of onions that, because we were running 4 and 5 days behind, and then we hit so much rain and so much weather, that we were unable to harvest. And the sales value on that field alone was over $250,000.

We have a problem with not only a local labor force—and that is kind of strange in itself that we are basically 50 miles from the border of Mexico, and we have a labor problem.

Right now, the unemployment in Texas has fallen to 4.2 percent. Texas employers are adding—they have added so far this year 230,000 jobs. The economy in Texas and especially along the border is growing at a substantial rate. In our county, we saw these numbers dip to 5.2 percent. These are some of the lowest numbers we have ever experienced.

The workforce numbers in Uvalde County of 18 years and older that are authorized to work are at just over 10,000. The job opportunities in Uvalde County are approaching 12,000. So we have a huge imbalance, and being in agriculture and just the nature of agriculture, it is hard to compete against that. Being less attractive, it is very hard for an employer to compete against those numbers.

So because of that, we have always relied somewhat on Mexico and Mexican labor that cross using legal channels, and I hopefully will have a later chance to expound on that.

But to finish my testimony, I would like to give you some of the effects that this country and Congress has had over not solving the immigration and the workforce shortage problem that we have had since 1986. In the last 10 years, the onion acreage alone in Mexico—which we have experienced a lot of shortages on our onion harvest crews. The onion acreage in Mexico alone has risen 12,000 acres. On cabbage, broccoli, spinach, and carrots, some of my top crops and some of the top crops of Texas, it has risen 28,000 acres.

In roughly that same time period, the shipments of Texas products around the nation are down 77 million pounds. Our agriculture is going into Mexico, and the logjam that we are seeing on the Federal level on this issue is increasing how fast it is going into Mexico. The question is not whether our crops will be harvested by Mexican labor. The question is will they be harvested in the United States, or will they be harvested in Mexico?

And we all know that because of some of the concerns, food safety, bioterrorism, and so forth that we are dealing with, that we need a national food supply.

[The prepared statement of Mr. Carnes follows:]

PREPARED STATEMENT OF J ALLEN CARNES, PRESIDENT, WINTER GARDEN PRODUCE; CHAIRMAN, TEXAS VEGETABLE ASSOCIATION; DIRECTOR, SOUTH TEXAS ONION COMMITTEE, TEXAS PRODUCE ASSOCIATION; VICE PRESIDENT, CARNES FARMS, INC., UVALDE, TX

Chairman Peterson and Members of the Committee, thank you for the opportunity to testify before the House Agricultural Committee to share with you my perspectives on the labor shortage as it relates to my business and to the Texas vegetable and citrus industries as a whole.

My name is J Allen Carnes. I am the President of Winter Garden Produce, Inc., Vice President of our family farming operation, Carnes Farms Inc., and the current Chair of the Texas Vegetable Association. My family has been in the agriculture and produce industry in Texas since 1950. We currently farm over 3000 acres around the Uvalde area in south Texas. On those farms, we have grown a wide range of agricultural products, one of the most important being vegetables. My family began marketing and shipping a select group of those in 1992. My father, Eddy Carnes, along with his father and brother formed Winter Garden Produce to ship product grown on our farms. In addition, we contracted with other farms in the area to harvest sell and ship their commodities. I began working for Winter Garden Produce full time in 1997 and became President of the company in 2006. At the present time,

we harvest and ship over 2000 acres of fresh fruits and vegetables. This translates into approximately 1.2 million packages per year and over 10 million in annual gross sales.

Due to the amount of product that we ship, we require a large workforce. This workforce is very unique because of the seasonal nature and the labor requirements of growing, harvesting, and packing our various products. Our labor needs often vary widely from one day to the next. Because of these factors, we see a large fluctuation in the number of people we employ on a daily bases. Winter Garden Produce begins harvest season in late October. During this time we employ 80–120 people per day. At the peak point of harvest season, May through June, we employ 400–450 people per day.

To satisfy the large and varying workforce we utilize several channels, most of which are through contract labor. We use between four and eight different labor contractors. These contractors provide us with harvest crews ranging from 25–100 people. Our area uses a large amount of Mexican labor that commutes on a daily or weekly basis to fill a portion of these crews. To the best of our knowledge, these are legal immigrant workers. A variety of legal channels allow them to work and live in the U.S., but they choose to live in Mexico and commute into the area on a daily or weekly basis. Many "illegals" were given a legal right to work and reside under the 1986 IRCA legislation. Most workers who could prove they were living in the U.S. at that time were given identification cards. Workers who could prove they were working in agriculture and crossing the border on a regular basis were given an Agricultural ID card. During harvest season, on a given day, 15–50 people will cross out of Mexico with one of these cards to work for Winter Garden Produce. At peak harvest time, we use 50–100 people who have these documents and cross from Mexico each day. Also during peak harvest time, our company and other companies around us use migrant labor that comes up out of the Rio Grande Valley. Vans of family and friends follow the onion harvest. They start in the valley, then come and work in our area, and then move on to work in New Mexico and Colorado. These two groups of workers, along with a diminishing number of local workers, make up the vast majority of our harvesting crews.

The natural U.S. based labor force in our area has been in short supply for as long as I can remember. In the last 2 years, we have seen our labor shortage become much more severe. The Texas unemployment numbers fell to 4.2 during the month of August. One year ago, the rate was 4.9%. So far this year, employers in Texas have added 229,000 jobs, up 2%. In Uvalde County, the labor force was estimated at 11,476 with 594 unemployed. This rate is at 5.2% down .6% from where it was last month. We have an imbalance between our local population and our workforce needs. The total population of people 18 years and older in Uvalde County is only 10,094 and our civilian workforce is 11,476. We have a junior college and some of those over 18 are in school. We have more people in our workforce than are in the working age population. We have to attract people from outside our county to meet our workforce needs. Given this huge imbalance between jobs and workers, it is not surprising that "American workers" gravitate to the more attractive jobs, leaving the less attractive jobs (agriculture) to be filled by immigrant workers. Second, our industry in Texas is presently in its "off-season." Our shipping season begins in October and lasts until July of the following year. Many of my workers are employed 9 to 10 months out of the year and then collect unemployment the other two. These August 2007 unemployment numbers include a big portion of the local agricultural labor force. We see a local labor force that cannot fill all of our harvest labor force needs. We must have outside labor in order to survive.

Because of our close proximity to Mexico, our area has always been able to meet our additional labor needs during the spring onion harvest by drawing workers out of Mexico. As a result of the IRCA legislation of 1986, an estimated 1.2 million farm workers were legalized, many of which had been working in the fields around Uvalde since the 1940's and 1950's. Some of the workforce that was legalized in 1986 is still being utilized today. According to a Texas A&M University survey done in the spring of 2007, an average of 48% of all labor used to harvest spring onions is estimated to come from Mexico and is utilized by about ⅔ of the firms shipping onions. Approximately 39% of the workers coming from Mexico cross daily and 61% of those who cross weekly remain in the United States for the duration of the harvest. But as I note that IRCA provided some short term relief of worker shortages, I would be remiss if I did not tell you that IRCA did not come close to solving the long-term labor woes in the agricultural field. In the late 1980's after IRCA, as few as 5% of agricultural workers were in the country illegally, and according to the National Agricultural Worker Survey, by 2005 that number had risen to 76%. By some counts there are as many as 1.5 million illegal workers in the agricultural industry. Looking at the numbers, IRCA legislation did nothing to provide a long term legal

workforce in agriculture. Within the last few years, this supply of legal Mexican workers has been on steady decline, and companies such as ours struggle to secure a legal workforce to survive. The legal workforce out of Mexico that the agriculture industry in Texas employs is declining. These workers are becoming older and older and there is currently no viable legal way to replace them with younger workers. The workforce that still exists is having an increasingly difficult time crossing the border in a legal manner. Crossing time has tripled. Three to 4 years ago, it took half an hour to cross the border legally to work every day. Now it takes this legal workforce as much as 3 hours to cross the border.

Another portion of our workforce is made up of migrant labor. Many migrant harvesting crews are not coming to the Winter Garden area like they have in the past. There is much speculation as to why this is happening, but the most likely reason is that they have something to hide and don't want to risk being in our area. Increased border security, workplace raids, and the fear of raids are making the labor shortages in south Texas worse every day. We have had an explosion of Border Patrol agents in and around Uvalde. Apprehensions of illegal aliens are down 44% along our stretch of the border. According to local crew leaders, the amount of illegal aliens that are applying for jobs in our area has dropped to almost 0%.

The biggest issue that Texas may face with "illegal" or "undocumented workers" is Social Security No-Match. Based on data Texas Employers for Immigration Reform has compiled, there are 8.1 million employees who would face No-Match letters and potential problems. Texas is figured to shoulder much of the problem with an estimate 780,840 employees being targeted by No-Match. Winter Garden Produce does everything in its power to have a legal workforce. For all labor contractors we use, we require that they submit all I–9's and copies of all documentation to verify their I–9's. Employers just cannot be sure this is enough. For the record, the vast majority of agricultural employers ARE playing by the current rules. We are interviewing workers, reviewing documents that appear legitimate on their face, filling out the Form I–9, withholding taxes and social security, and complying with the wage laws. Yet, the simple fact is that based on national estimates, at least 70% of the agricultural labor force is working under fraudulent documents. In fact, I would speculate that Texas has lived in denial about the extent of this problem for a long time, under what might best be described as "don't ask, don't tell." So, the "70% or more farm workers are illegal" statistic is likely accurate in Texas.

Just as I have discussed that the IRCA legislation or "Amnesty" did little to solve the long-term needs of Agriculture, neither will a reformed H–2A program by itself solve the problem, for the opposite reason. At the present time H–2A fills fewer than 60,000 jobs out of a total of over 3,030,000 jobs in agriculture. This translates into less than 2% of the total job opportunities. The numbers are even less in Texas. Currently only 1500 in Texas jobs are filled by H–2A. We have a total of 166,117 agricultural job opportunities in Texas. This is less than 1%. There is no possible way in a short period of time that producers can go from less than 1% of the workforce to having a most of the it met by this or any other guest worker program. Besides this, there are many jobs in agriculture that cannot be filled by H–2A workers. Under H–2A, both the worker and the job must be temporary or seasonal (10 months or less). This precludes us from filling key positions that are year round and cannot be filled by H–2A. Many producers, ourselves included, lack the housing needed to participate on H–2A. It will take time to work through the capital investment and approvals needed to acquire housing. Also, it is imperative that we as employers have an opportunity to retain key, experienced employees that have been employed for many years with fraudulent documents that employers had no way of knowing the status of these employees.

The labor shortage problem in our area reached a climax in the spring of 2006 and shows signs of becoming worse, as a result of the increased emphasis on workplace enforcement, border security, and the lack of comprehensive immigration reform. During the spring, Winter Garden Produce may employ as many as 400–450 workers, 200 of whom harvest (clip onions) in the field. In May 2006, our harvesting crews were down to 80–100 laborers. Most, if not all, of the decrease in labor workforce includes daily crossers and migrant workers that come from the Rio Grande Valley. Because of this shortage, we were running 2 weeks behind in harvest and it was affecting shelf life and arrival value of onions at the direct cost to Winter Garden Produce of over $75,000. Winter Garden Produce also had to abandon 35 acres of cabbage because some of the cabbage harvesting workforce switched to onion clipping crews because of the shortage of workers. The sales value on that field alone was over $175,000. That field along with the onion harvest being 2 weeks behind schedule cost our company over a quarter of a million dollars in 2006.

This past season had every sign pointing toward a larger labor shortage than the year before. Early in May of 2007, Winter Garden Produce was running 4–5 days

behind on our harvest schedule and then the rains came. We completely lost an onion field that had a sales value of $250,000. In the same study mentioned above conducted by Texas A&M University, the total onion industry in Texas experienced around a 21 percent decrease, or 1051 workers, from the 2006 season. The economic impact from the labor shortage during the 2007 spring onion season in Texas was very substantial. Texas losses in business activity related to agricultural support such as field operation, harvesting and packing, pesticides and chemical manufacturing, and farm machinery and equipment were estimated at $15 million, while associated income losses are an additional $7.2 million and additional job losses were estimated to be 310.

Timing is crucial. Farmers, growers, and producers need help now, not when Congress feels like they can get to it. Texas has always relied on a legal guest worker supply from Mexico. That labor force is becoming smaller and smaller and there is currently no measurable way to replace it. Every year the shortage becomes worse and worse. If we continue down this same path the agricultural industry in Texas as we know it will no longer exist.

We have to have major immigration reform on the Federal level, or we are going to see an accelerated decline of our labor intensive agriculture including the fruit and vegetable business. Local workers simply are not available to do this work; it is not a matter of wages. We must have a legal means to secure this workforce. Because of the seasonality and perishable nature of our industry, we are at a greater risk than most sectors of the U.S. economy. Texas agriculture simply cannot endure a large scale work shortage and additional loss of our labor force. Mexican workers will harvest much of Texas produce for U.S. consumers; it is simply a question of whether they will harvest crop in U.S. or Mexico. According to the Texas Produce Association half of the fruits and vegetables being shipped in Texas are already being grown across the border. The crop which I have experienced the greatest labor shortage, onions, has increased in Mexico by 12,304 acres since 1996. Cabbage, spinach, broccoli and carrot acreage has also increased by over 26,000 acres during the sane time frame. During roughly the same time period (1999–2006) shipments from Texas decreased by 77 million pounds of the same commodities. As you can see a large potion of the Texas industry has already shifted into Mexico and it will continue to do so until we fix problems here on U.S. soil. Not only am I concerned about my own business, I am worried that all domestic agriculture will have to follow this trend of going abroad and overseas. We are already dependent on foreign oil imports and if we become reliant on food imports, we are in grave danger.

Clear, sensible workplace enforcement combined with a temporary guest worker program and a realistic way to retain our existing, experienced workers would better secure our borders since fewer people would try to come in illegally. It would restore law and order by giving employers incentives and tools to reliably verify an employee's legal status and avoid undeserved criminalization. In addition, it would make sure we avoid a disastrous labor shortage which would, in turn, jeopardize skilled jobs filled by Americans, and possibly disrupt the food supply which could lead to higher prices for American families.

A comprehensive approach, including AgJOBS which is gaining momentum in the Senate and a sensible Daily Crossing Program which Texas along with Arizona and California are exploring, is the only way to strengthen our border and increase homeland security. Continuing with the "Border security only" policy with out addressing all facets of the issue will be disastrous. A guest worker program, including a legal path for the workers that are already here, coupled with workplace screening, will provide an orderly, legal process for making sure employers and needed workers are matched. This will give our border patrol agents the ability to focus on terrorists, drug traffickers and other criminals.

J ALLEN CARNES,
President, Winter Garden Produce, Inc.;
Vice President, Carnes Farms, Inc.;
Chairman, Texas Vegetable Association;
Director, Texas Produce Association;
Director, South Texas Onion Committee.

Mr. MAHONEY. Thank you very much. Mr. Smoak, please try to—because we have another vote coming up here, let us try to get through. If you can be as precise as possible, but I want to give you your opportunity to talk since you've been so patient to wait. So let us see if we can't get through this efficiently. Mason.

STATEMENT OF MASON G. SMOAK, CITRUS PRODUCER AND CATTLE RANCHER, LAKE PLACID, FL

Mr. SMOAK. Thank you, Mr. Chairman. I sincerely appreciate the opportunity to testify in front of this esteemed Committee today on behalf of my fellow citrus growers in the great State of Florida. I want to thank Congressman Tim Mahoney who represents my hometown, Lake Placid, for his steadfast support of agriculture, specifically specialty crops such as citrus, which is a major economic engine in our rural Florida community.

Our industry generates a statewide economic impact of close to $9 billion a year and is the heart of my family's operation. In Florida, we produce almost 80 percent of all orange juice consumed in the United States. We supply a wholesome product that provides our fellow citizens with essential vitamins and nutrients.

My grandfather started our business back in 1933 with a fourth grade education and 10 acres of thrown away orange grove. Through many years of hard work and many blessings from the good Lord above, that business has grown to over 3,100 acres of citrus and 13,000 plus acres of cattle and ranchland and wildlife conservation areas.

As a third generation Florida citrus grower, the issue of ag labor is critical to my family's business. The importance of maintaining a safe, affordable and abundant domestic food supply is something many Americans care deeply about and is something I know growers care deeply about as well. Shifting food production from our shores to overseas could compromise food security and in turn homeland security.

If our citrus crop is left in the grove to rot because of labor shortages, then our nation's citrus production will eventually shift entirely to Central and South America. This is not an attempt by me to paint a doomsday scenario. It is a reality of fruit and vegetable production in this country and specifically the Florida citrus industry.

I have heard and read many criticisms directed at farmers that say the solution to our labor issue lies in either paying workers more or turning to mechanical harvesting. I am proud of the rates we pay our workers in Florida. A Florida harvester in the citrus business averages close to $10 an hour, and I think that is good.

As for mechanical harvesting, it is something we are interested in using, and I hope the industry's mechanical harvesting program continues to receive support from Congress. It sure is a lot easier to manage a few machines than it is a large harvesting crew. As growers, we have taxed ourselves and actively worked through our trade associations to lobby our State and Federal Representatives for research funds to study mechanical harvesting and abscission chemicals to make the process easier. However, these machines are multi-million dollar pieces of equipment that are not financially feasible for all growers to use at this time.

More importantly is the fact that the machines are not technologically to the point where we can harvest fruit without causing long-term tree damage as well as fruit damage. Even if we could, mechanical harvesting still requires a crew of workers to glean what fruit is left behind after the machines have passed.

Mechanical harvesting provides Florida growers with hope; however, the process still has a long way to go before it becomes an industry standard. So in the current environment, growers have two options. We either have to try to find domestic workers through traditional methods or use the costly and cumbersome H–2A Agricultural Guest Worker Program.

Please believe me when I tell you that we want legal workers. The last thing a grower wants to do is lay in bed at night and stay awake wondering if his workforce is legal. We have plenty of other things to worry about, including weather, plant pests and diseases and energy costs. We want legal workers.

In conclusion, we have worked very hard as an industry with our partners in the agricultural community to push Congress to create an efficient guest worker program that serves us better than the current H–2A Program. As an industry, we are disappointed that our best efforts toward comprehensive immigration reform failed to pass this year. We are going to continue to work hard until some kind of solution is eventually crafted.

The future sustainability of American agriculture is very important to me as a farmer raising three children with my wife Tracee. My family understands it is essential to have legal, reliable workers harvesting our crops and helping put orange juice on the breakfast tables across America. We also understand that without these legal reliable workers, Florida citrus industry will be another closed chapter in the history of U.S. agriculture.

I thank the Committee for your time and look forward to your questions.

[The prepared statement of Mr. Smoak follows:]

PREPARED STATEMENT OF MASON G. SMOAK, CITRUS PRODUCER AND CATTLE RANCHER, LAKE PLACID, FL

Thank you Mr. Chairman.

I sincerely appreciate the opportunity to testify in front of this esteemed Committee today on behalf of my fellow citrus growers in the great State of Florida.

I want to thank Congressman Tim Mahoney who represents my hometown of Lake Placid for his steadfast support of agriculture, specifically Specialty Crops such as Citrus, which is a major economic engine in rural Central Florida.

The Florida citrus industry generates a statewide economic impact of close to $9 Billion a year and is the heart of my family's business. In Florida we produce almost 80% of all orange juice consumed in the United States. We supply a wholesome product that provides our fellow citizens with essential vitamins and nutrients.

My grandfather started our family business in 1933 with a fourth grade education and 10 acres of thrown away grove. Through years of hard work along with countless blessings from the Lord, that business has grown to over 3,100 acres of citrus and 13,000 acres of cattle ranchland and wildlife conservation areas. As a 3rd generation Florida citrus grower the issue of ag labor is critical to my family's business.

The importance of maintaining a safe, affordable and abundant domestic food supply is something many Americans care deeply about and is something I know growers care deeply about also.

Shifting food production from our shores to overseas could compromise food security and in-turn homeland security.

If Florida's citrus crop is left in the grove to rot because of a labor shortage then our Nation's citrus production will eventually shift entirely to Central and South America.

This is not an attempt by me to paint a doomsday scenario, it is the reality of fruit and vegetable production in this country and specifically the Florida citrus industry.

I've heard and read many criticisms directed at farmers that say the solution to our labor issue lies in either paying workers more or turning to mechanical harvesting equipment.

But I'm here to tell you that the minimum wage rate in Florida is **$6.67** an hour which is higher than the Federal wage rate of **$5.85**. In Florida a worker harvesting citrus averages close to $10.00 an hour.

I'm proud of the salaries we pay our employees.

As for mechanical harvesting it is something we are very interested in using and I hope the industry's mechanical harvesting program continues to receive support from Congress. It sure is a lot easier to manage a few harvesting machines than a large workforce. As growers we have actively worked through our trade associations such as Florida Citrus Mutual to lobby our State and Federal Representatives for research funds to study mechanical harvesting and abscission chemicals to make the process easier.

However, these machines are multi-million dollar pieces of equipment that are not financially feasible for medium and small growers to use at this time. More importantly is the fact that the machines are not technologically to the point where we can harvest fruit without causing long term tree and fruit damage.

Even if we could, mechanical harvesting still requires a crew of workers to glean what fruit is left on the tree and ground.

Mechanical harvesting provides Florida growers with hope, however, the process still has a long way to go before it becomes an industry standard.

So in the current environment growers have two options:

We either have to try to find legal domestic workers through traditional methods or use the costly and cumbersome H–2A Agricultural guest-worker program.

Please, believe me when I tell you that we want legal workers.

The last thing that a grower wants to keeping him awake at night is wondering about the legal status of his workforce.

We have plenty of other things to worry about with weather, plant pests and diseases, and energy costs.

I'll reiterate: We want legal workers.

In conclusion we have worked very hard as an industry with our partners in the agricultural community to push Congress to create an efficient guest worker program that serves us better than the current H–2A process.

As an industry we are disappointed that our best efforts toward comprehensive immigration reform failed to pass this year.

We are going to continue to work hard so that some kind of solution is eventually crafted.

The future sustainability of American agriculture is very important to me as a farmer raising three children alongside my wife Tracee. My family understands it is essential to have legal, reliable workers harvesting our crops and helping put orange juice on breakfast tables across America. We also understand that without legal, reliable workers, Florida's citrus industry will be another closed chapter in the history of U.S. agriculture.

I thank the Committee for your time.

Mr. MAHONEY. Thank you, Mr. Smoak. We have time for one more 5 minute presentation. Mr. Yates.

STATEMENT OF HARRY B. YATES, PAST-PRESIDENT, NORTH CAROLINA CHRISTMAS TREE ASSOCIATION; MEMBER, BOARD OF DIRECTORS, NATIONAL CHRISTMAS TREE ASSOCIATION, BOONE, NC

Mr. YATES. Thank you. I am extremely honored and humbled that you have asked me to speak before this esteemed Committee. I farm and live in beautiful Boon, North Carolina. I began growing Christmas trees 32 years ago in the rugged mountains of western North Carolina. I have served the Christmas tree industry as President of the North Carolina Christmas Tree Association and on the Board of Directors of the National Christmas Tree Association.

This is my tenth year using H–2A employees. I employ seven men for 9½ months and three to six additional men for the harvest season. Christmas trees are an extremely labor intensive agricultural crop. Each tree receives eight to ten visits per year from a farm worker for the 8 to 10 year life cycle of that tree. Each activity requires physical labor and challenging geographic conditions.

These challenges, along with the seasonality of the job, mean the Christmas tree industry must have guest workers.

I made the decision 10 years ago to participate in the H–2A Program because it was impossible to find legal workers seeking agricultural employment. I also strongly believe that workers should be documented. However, when I made my decision to participate in H–2A, little did I know that I was putting myself in a serious competitive disadvantage in the Christmas tree industry.

The national real Christmas tree industry faces severe economic challenges with the Chinese-produced artificial tree. We are losing market share every year. Labor is our single largest production expense. I am one of the few Christmas tree growers who use H–2A. Most growers don't use H–2A because it is too expensive and too burdened with regulations.

Some quick examples: By using H–2A, I pay $1,000 per year per man, which covers visa fees, transportation costs, association fees, *et cetera*. By law, the U.S. Department of Labor tells me that I have to pay an Adverse Effect Wage Rate, which is $9.02 for 2007 in North Carolina. This wage rate has increased 76 percent in the last 16 years. I now know why they call it Adverse Effect Wage Rate because it is certainly adversely affecting my family farm.

By law, I am required to provide free of charge government-inspected housing, transportation, utility costs, and all other costs that go along with housing and transportation. Non-H–2A growers don't provide these benefits to their workers. They provide it for themselves, just like most Americans do. I also pay workman's compensation.

When you total these expenses, my labor cost is $14 an hour and climbing every year through H–2A. My competitors pay $7.50 to $8 an hour. It is extremely difficult to farm profitably at these costs. It is truly contrary to the American way that farmers who do things the legal and proper way are punished economically.

What should Congress do to make the H–2A Program more workable? I have three basic concepts here. Number one, entry level wages should be prevailing and should be "flexibility"-allowed so that we may reward our long-term key employees with higher rates of pay. Our wage rate now is so high that we don't have that flexibility.

Growers and workers should be required to resolve legal issues through mediation and arbitration. And number three, the bureaucratic processes at the Department of Labor, Homeland Security, and State Department must be streamlined and simplified. Given the current delays with only 50,000 H–2A workers nationally, drastic reforms must be made if we are to provide upwards of one million workers per year.

I truly appreciate the H–2A Program and the continuity and the stability it provides on my small family farm. However, I do understand why many growers are afraid to use the program. It is too expensive. It is too complicated. It is too slow, and it is too likely to land you in court.

Please fix H–2A with prevailing wage, required mediation, and streamline the process. Agriculture, our nation's food supply, and in fact the very security of our nation depends on Congress getting this one right. Thank you.

[The prepared statement of Mr. Yates follows:]

PREPARED STATEMENT OF HARRY B. YATES, PAST-PRESIDENT, NORTH CAROLINA CHRISTMAS TREE ASSOCIATION; MEMBER, BOARD OF DIRECTORS, NATIONAL CHRISTMAS TREE ASSOCIATION, BOONE, NC

I would like to thank the Committee for holding this important hearing on agricultural labor. My name is Harry Yates. I farm and live in beautiful Boone, North Carolina. I began growing trees 32 years ago in the mountains of western North Carolina. I have served the Christmas Tree industry as President of the North Carolina Christmas Tree Association, and as a Member of the National Christmas Tree Association Board of Directors.

This is my 10th year using H–2A and I employ seven workers for 9½ months and three to six additional workers for the Christmas tree harvest season.

Christmas trees are an extremely labor intensive agricultural crop. Each tree receives eight to ten visits per year from a farmworker to complete various treatments. This occurs each season during the 8 to 10 year life of the tree from planting to harvest. Each activity requires physical labor in challenging geographic and climatic conditions. These challenges, along with the seasonality of the job mean that the Christmas tree industry needs temporary, seasonal workers.

I made the decision 10 years ago to participate in the H–2A program because it was impossible to find legal workers seeking agricultural employment and I strongly believe that workers should be properly documented. However, when I made my decision to go H–2A, little did I know that I was putting myself at a serious competitive disadvantage in the industry.

The real Christmas Tree industry faces serious economic challenges with Chinese produced artificial trees. Labor is the single largest production expense. I'm one of the few growers who use the H–2A program—most don't use it because it is too expensive, too litigious and too burdened with regulations. For example:

1. By using H–2A, I have to pay almost $1,000.00 a year per man, which covers visa fees, transportation, association costs and other government fees.

2. By law, the U.S. Department of Labor tells me I have to pay an "Adverse Effect Wage Rate", which is $9.02 per hour for 2007. DOL has raised this wage rate 76% over the last 16 years. I know now why they call it the "Adverse Effect" wage rate—because it certainly is "Adversely Effecting" my family farm. Non H–2A growers pay around $7.50 per hour!

3. By law, I am required to provide (free of charge) government inspected housing (including all utilities and repair costs) and all local transportation. Non H–2A growers don't have to provide these benefits, their worker's provide it for themselves—just like American workers have to do every day!

4. By law, I have to pay for workman's compensation insurance for all employees.

When you total these expenses my labor cost is at least $14.00 per hour and climbing every year (and again my competitor pays around $7.50 per hour). It is extremely difficult to farm profitably at these costs.

It is truly contrary to the *American* way that the farmers who do things the legal and proper way are punished economically. We should be heralded, not sued.

What should Congress do to make the H–2A program more workable for ag?

1. Entry-level wages for first time workers should be prevailing wage and flexibility should be allowed so that loyal, long-term employees can be rewarded with a higher pay rate set by the farmer.

2. Growers and workers should be required to resolve legal issues through mediation and arbitration before going to court. This is nothing new—Americans sign these type of contracts every day, why can't H–2A workers.

3. The *bureaucratic* process at three Federal agencies (Labor, Homeland Security, the State Department) must be streamlined & simplified. Given the current delays with only 50,000 H–2A workers nationally, drastic structural reforms must be made if the program is to provide upwards of 1,000,000 workers per year in the future.

I appreciate the H–2A program and the continuity/stability it provides on my small family farm. But, I understand why so many growers are afraid to use this program—it is too expensive, too complicated, too slow, and too likely to land you in court. Please fix it with true prevailing wage, required mediation and a stream-

lined process. Agriculture, our nation's food supply, and in fact the very security of our nation depends on Congress getting this right.

Thank you,

HARRY B. YATES.

Mr. MAHONEY. And with that, we are going to unfortunately have to adjourn for probably—if you could, be back here in recess for how long? Two votes? If you could be back in 20 minutes, and we will try to move on quickly. Thank you very much. We are going to be in recess.

[Recess.]

Mr. MAHONEY. You want me to continue in the chair, Mr. Chair? Okay, this is putting a lot of pressure on a rookie. Okay, we have testimony of three additional people. Let us start with Mr. Mouw.

STATEMENT OF RANDALL D. MOUW, DAIRY PRODUCER; CHAIRMAN, DISTRICT 12, CALIFORNIA MILK ADVISORY BOARD, ONTARIO, CA; ON BEHALF OF WESTERN UNITED DAIRYMEN; DAIRY FARMERS OF AMERICA; AND NATIONAL MILK PRODUCERS FEDERATION

Mr. MOUW. I want to thank you for holding this hearing and looking at the labor needs of our farms and ranches. My name is Randy Mouw. My wife Rose and I milk 1,400 cows in Ontario, California with 17 employees. One of our sons started his own dairy 2 years ago, and my other son works for us as Assistant Manager.

I am here today on behalf of Western United Dairymen, which represents more than 1,100 of the 1,800 dairy families in the State of California, my cooperative, Dairy Farmers America, which markets ⅓ of the milk in the U.S. and has member producers in 48 states and National Milk Producers Federation, which represents dairy producers and the cooperatives they collectively own.

The availability of labor on this country's dairy farms is critical to those in our industry, but has far wider implications for so many other sectors of the economy. Large herds or small and in all parts of the country, dairies are family owned and operated, but additional labor is a must. Dairy farming is labor intensive, and well trained, outside labor is a necessity on most farms.

All of the organizations I mentioned earlier are part of the Ag Coalition for Immigration Reform. This broader based coalition that has been seeking a fair, sensible, and workable program to provide labor to our nation's farmers and ranchers before it becomes a crisis.

Like the Coalition, I believe this issue is about border security, food security, labor force security, and economic security. Immigration reform is a must for U.S. agriculture. I can tell you from my own experience that not one person that has worked on my dairy in the last 5 years has been born in America.

And this is not a matter of cheap labor. I would invite any Member of Congress who believes that to come and walk just a day in my shoes. The jobs on my dairy are year round, relatively high paying, and we provide a number of benefits including health care, bonuses, and opportunities for advancement. No, it is not a matter of wanting cheap labor. It is a matter of having any labor at all.

Let me add here early and emphatically that I am a strong supporter of the effective border security, as is every other dairy farm-

er I know. People should not be coming to this country illegally, but it is the responsibility of this Congress to find political, viable solutions and enact them.

The farmers I know would also like to see recognition by the Congress that this is nothing less than a food security issue for our country. The headlines of the day tell us we are too dependent on other countries for oil, and we don't want to go down that road with being food dependent as well. Sure, our food can be produced elsewhere. The question is why would we make that choice?

We also read about outsourcing and jobs leaving this country. I have already been asked to relocate to China with my business. Without sensible immigration reform, the outsourcing of our food production and processing is a very real possibility. Is that what consumers really want? By all accounts, border and port agents inspect only a very small percentage of food shipments coming into the country, while every tanker load of milk I ship is tested. Every animal I sell is inspected for safety and quality. Consumers can take a great amount of reassurance for so rigorous a system.

Farmers all across the country have supported several attempts by the Congress to enact comprehensive immigration reform. For many reasons, that has not happened. I am here today to join with other witnesses at this hearing to encourage Congress to enact what is achievable: to improve labor force security by providing a sensible, fair, and workable program for a legal immigrant agricultural workforce.

Jobs on dairies are year round. You have heard this before, but I am going to say it again. The H–2A Program does not work for dairy. Like many dairymen, I milk my cows three times a day, and that means there is a harvest on my farms three times a day, 365 days a year. The H–2A Program, on top of all the other issues raised today, requires both the worker and the job to be seasonal and temporary. We gave up seasonal dairy in this country 50 years ago, and that is part of why we are the most competitive volume milk producing country in the world.

For dairy, there are three key principles that must be included in the legislation solution. One, an affordable and efficient guest worker program that ensures the continued availability of immigrant labor for all of agriculture, including dairies. Two, a provision that allows those currently employed or with recent employment history in the U.S. to earn the right to work here legally regardless of their current legal status. Three, a provision that specifies the responsibility for ultimate verification of legal status of a worker by the government, not with employers.

I have workers at my dairy who have been with me for more than 15 years. In addition to enjoying relatively high paying, year round jobs with some benefits, many of them perform work that requires a significant amount of training and skill. The cows must be well cared for or milk quality suffers, and my culling rate goes up, both with negative effects on my bottom line.

Milk is also one of the most perishable foods produced in this country. It cannot be stored for long periods on the farm or waiting for a better price or labor to harvest it. The jobs on my dairy working with cows and equipment are not for amateurs. Well trained

workers are simply a necessity on my dairy, and nearly all other dairies in the country, every day of the year.

Farms also provide open space, and that is very important in my part of southern California. When a dairy farm goes out, houses and parking lots come in. Milk production in California is the largest industry in the state. It has a farmgate value last year of nearly $5 billion and contributes $47.4 billion and 434,000 jobs to the California economy. Average herd size in California is now about 900 cows, and our dairy farms are large because there is a large population to supply.

Farm land is expensive so economies of scale are the rule instead of the exception. Producing a lot of milk is a necessity in order to cash flow the cost of land, not to mention the cost of all that corn that California dairy farmers have to buy from the Midwest each day. That all adds up to the need for outside labor, but people who were born in this country do not seem to be interested in jobs on our dairy farms. So dairymen have turned to those who are willing to do this kind of work.

Some of my employees have been with me for many years, and it is the same for most dairymen I know. Some of those employees are like family to us. I have had employees come to me for advice on family issues, like how to deal with certain situations for their kids and where to buy a house. Like all families, we are dedicated to one thing: getting the job done for ourselves and our children.

Thank you again for the opportunity to be here today. And no one in the dairy business has set out to break the law. Dairy farmers need labor, and seeing an unmet need, workers have come here for an opportunity. What we need now is an enforceable law that provides a workable solution to this problem this year. Nothing less than the food security of this nation and the economic health of rural communities are at stake. Thank you.

[The prepared statement of Mr. Mouw follows:]

PREPARED STATEMENT OF RANDALL D. MOUW, DAIRY PRODUCER; CHAIRMAN, DISTRICT 12, CALIFORNIA MILK ADVISORY BOARD, ONTARIO, CA; ON BEHALF OF WESTERN UNITED DAIRYMEN; DAIRY FARMERS OF AMERICA; AND NATIONAL MILK PRODUCERS FEDERATION

Good afternoon Chairman Peterson, Ranking Member Goodlatte and Members of the House Agriculture Committee. I want to thank you for holding this hearing to look into the labor needs on our nation's farms and ranches. While I'm told we are not here to take an in-depth look at any specific legislation, I am happy to be here to add my voice to those calling for a Federal legislative solution to the single most difficult challenge facing food production in this country today.

My name is Randy Mouw. My wife Rose and I milk 1,400 cows in Ontario, California with 17 employees. One of our sons started his own dairy 2 years ago and another son is the assistant manager on our dairy. I am here today on behalf of Western United Dairymen, which represents more than 1,100 of the 1,800 dairy families in the State of California; my cooperative, Dairy Farmers of America, which markets ⅓ of the milk in the U.S. and has Member producers in 48 states; and National Milk Producers Federation, which represents dairy producers and the cooperatives they collectively own. NMPF member cooperatives, including DFA, market about 70% of the milk in the country.

The availability of labor on this country's dairy farms is critical to those in our industry, but it has far wider implications for so many other sectors of the economy. Large herds or small, and in all parts of the country, dairies are family owned and operated, but additional labor is a must. Dairy farming is labor intensive and well trained outside labor is a necessity on most farms.

All of the organizations I mentioned earlier are part of the Agriculture Coalition for Immigration Reform, the broader-based coalition that has been seeking a fair,

sensible and workable program to provide labor to our nation's farmers and ranchers before it becomes a crisis. Like the Coalition, I believe this issue is about border security, food security, labor force security and economic security.

Immigration reform is a must for U.S. agriculture because I can tell you from my own experience that not one person who has walked on my dairy looking for work in the past 5 years is a person who was born in this country. And based on my conversations with other dairymen, they will tell you the same story.

This is not a matter of cheap labor, either. I would invite any Member of Congress who believes that to come and walk just a day in my shoes. The jobs on my dairy are year-round, relatively high paying and we provide a number of benefits including—health care, bonuses, and opportunities for advancement. No, it's not a matter of us wanting cheap labor—it is a matter of us having any labor at all.

Let me add here early and emphatically that I am a strong supporter of more effective border security as is every other dairy farmer I know. People should not be coming to this country illegally. But the fact is people are coming to this country, sometimes legally, sometimes not, in search of an opportunity for a better life. And ordinary U.S. citizens, including small businessmen like me, cannot be put in the position of being made "la migra," or the "immigration police," responsible for sorting the real documents from the fake ones. It is the responsibility of the Congress to find politically viable solutions and enact them.

The farmers I know would also like to see recognition by the Congress that this is nothing less than a food security issue for our country. The headlines of the day tell us we're too dependent on other countries for oil; we don't want to go down the road of being food dependent as well. Sure, our food can be produced elsewhere. The question is why would we make that choice? We also read about outsourcing, and jobs leaving this country. I have already been asked to relocate to China, with my business. Without sensible immigration reform, the outsourcing of our food production and processing is a very real possibility. Is that what consumers really want?

By all accounts border and port agents inspect only a very small percentage of food shipments coming into this country while every tanker load of milk I ship is tested and every animal I sell is inspected for safety and quality. Consumers can take a great amount of reassurance from so rigorous a system.

Farmers all across the country have supported several attempts by the Congress to enact comprehensive immigration reform. For many reasons, that has not happened. I am here today to join with other witnesses at this hearing to encourage the Congress to enact what is achievable—to improve labor force security by providing a sensible, fair and workable program for a legal immigrant agricultural workforce.

Jobs on dairies are year-round. You have doubtless heard this before but I must say it again—the H–2A program does not work for dairy. Like many dairymen, I milk my cows three times per day. That means there is a harvest on my farm three times a day 365 days a year, weekends and holidays included. The H–2A program, on top of all the issues others have raised about it here today, requires both the worker and the job to be seasonal and temporary. We gave up seasonal dairying in this country 50 years ago and that is part of why we are the most competitive volume milk producing country in the world.

Something else we gave up in this country many years ago is asking job applicants certain questions because of what they look like. I don't know the residency status of my workers because our anti-discrimination laws prevent me from asking. Let's not return to those bad old days now.

For dairy, there are three key principles that must be included in a legislative solution: (1) an affordable and efficient guest worker program that ensures the continued availability of immigrant labor for all of agriculture, including dairies; (2) a provision that allows those currently employed or with recent employment history in the U.S. to earn the right to work here legally, regardless of their current legal status; and (3) a provision that specifies the responsibility for ultimate verification of the legal status of a worker lies with the government, not with employers.

I have workers at my dairy who have been with me for more than 15 years. In addition to enjoying relatively high paying year-round jobs with some benefits, many of them perform work that requires a significant amount of training and skill. The cows must be well cared for or my milk quality suffers and my culling rate goes up, both with negative effects on my bottom line. And mechanization is not an option for all jobs on dairies. Cows must be monitored at calving and young calves need specific kinds of care. Robotic milking machines may work for some operations but the technology still needs to be perfected and the cost to purchase and install them must come down significantly for them to be a viable option on a large dairy.

Milk is also one of the most perishable foods produced in this country. It cannot be stored for long periods on the farm awaiting a better price or labor to harvest

it. The jobs on my dairy, working with cows and equipment, are not for amateurs. Well-trained workers are simply a necessity on my dairy and nearly all other dairies in the country every day of the year. Farms also provide open space. That is very important in my part of southern California. When a dairy farm goes out, houses and parking lots come in.

Milk production in California is the largest sector of the largest industry in the state. It had a farmgate value last year of nearly $5 billion and contributes $47.4 billion and 434,000 jobs to the California economy. Average herd size in California is now about 900 cows. Our dairy farms are large because there is a large population to supply. And farmland is expensive so economies of scale are the rule instead of the exception. Producing a lot of milk is a necessity in order to cash flow the cost of the land, not to mention the cost of all of that corn that California dairy farmers buy from the Midwest each day. That all adds up to the need for outside labor. But people who were born in this country do not seem to be interested in jobs on dairy farms so dairymen have turned to those who are willing to do this kind of work.

Some of my employees have been with me for years. It's the same for most dairymen I know and some of those employees are like family to us. I have had employees come to me for advice on family issues like how to deal with certain situations with their kids and when and where to buy house. Like all families we're dedicated to one thing—getting the job done for ourselves and our children.

Thank you again Chairman Peterson, Ranking Member Goodlatte, my Congressman, Representative Joe Baca, and the other Members of the Agriculture Committee. No one in the dairy business has set out to break the law. Dairy farmers need labor and, seeing an unmet need, workers have come here for an opportunity. What we need now is an enforceable law that provides a workable solution to this problem this year. Nothing less than the food security of this nation and the economic health of rural communities are at stake.

Mr. MAHONEY. Thank you, Mr. Mouw. Mr. Atkinson.

STATEMENT OF KEITH ATKINSON, PRESIDENT, VIRGINIA AGRICULTURAL GROWERS ASSOCIATION; APPLE AND TOBACCO PRODUCER, JAVA, VA

Mr. ATKINSON. Good afternoon, Mr. Chairman, Ranking Member Goodlatte, and other Members of the Committee. My name is Keith Atkinson. Along with my wife and four children, two of whom are in college, two to enter college soon, I own and operate a family farm in Southside, Virginia.

Were it not for the H–2A Program, we would be unable to farm at all. However, this program has become so burdensome and costly it is threatening our ability to continue.

I am also President of the Virginia Agricultural Growers Association, an association of Southside, Virginia family farms formed nearly 30 years ago to share the expense of complying with the guest worker program. In 1998, our association has 579 farm members. Today, we only have 270 left. Many of our farmers quit farming because they were unable to meet the H–2A Program burdens, among them, the so-called Adverse Effect Wage Rate.

AEWR rates are much higher than area prevailing rates. Every year, the AEWR increases on a percentage basis. Our AEWR minimum wage went from $8.51 to $9.02 effective February 21, 2007. That is 6 percent. Incidentally, this is over ten times the wage rate these H–2A guest workers could earn in Mexico. In the future, H.R. 1792 ties H–2A wages to actual prevailing wages in similar jobs. H.R. 1792 corrects an additional obligation several courts have imposed on agriculture, particularly guest worker programs.

Under this erroneous view, when workers are paid their wages for the first week of employment after relocation to accept employment, they must be reimbursed their relocation transportation cost

from their homes to the extent those costs would otherwise cut into the worker's minimum wages for that first week, as required by the Fair Labor Standards Act of 1935. There is no principal reason, no applicable FLSA exemption, special clause to treat agriculture or the temporary worker program differently than any other employment.

Current Internet advertisements for applicants for jobs with the United States Houses of Representative plainly state, "transportation and all related travel expenses associated with interview and hiring process must be paid by the applicant. Moving and related relocation expenses are not available." I am puzzled as to why farm operations are held to different standards than our own government is.

Under the previous H–2A Programs, several courts ruled that the Department of Labor could only enforce a requirement still applicable in the H–2A Program that farmers reimburse relocation expenses once workers work 50 percent of the period they agree to work. You will see that nobody ever argued that FLSA requires first paycheck transportation reimbursement to avoid a minimum wage violation. Any adverse ruling, while not law, tends to have the same effect as law.

Growers have been attempting to obtain an opinion letter from DOL's Wage and Hour Division on the transportation reimbursement and related issues since 1992. Without fulfillment of the Administrator's responsibility to issue formal opinions, and passage of H.R. 1792, that recognizes that jobs equally benefit workers and employers; the government and many employers including growers are in jeopardy of an adverse court ruling on the relocation expense issue.

As small farmers with limited resources, we are totally defenseless against every non-meritorious lawsuit and wage hour claim, every unfairly changed legal interpretation of old rules by a DOL official.

We therefore must turn to our elected representatives for help. H.R. 1792 also contributes to good immigration policy. Seventy-five percent or more of the workers our association members employ have been coming here for 10 years or more and returning home every year in accordance with H–2A regs. They are not part of an illegal workforce.

The really hard question for this Committee and for the entire Congress is are we going to have labor-intense production agriculture that requires guest workers in America in the future? If so, the rest is easy. Congressman Goodlatte has already done it for you. If not, I feel this Committee owes us the courtesy of telling us so we can find another line of work.

Mr. Chairman, I would invite every Member of this Congress to take a trip along the area just east and west of the Allegheny Mountain chain that extends from the Northeast through the Mid Atlantic to Florida and all of middle America. Take in all those beautiful vistas that you will see. The mix of hard woods and evergreens, neatly planted and maintained crops, vineyards, and orchards growing in geometric patterns on those gently rolling hills.

I want you to take a close look, and I want you to take camera because if some serious changes are not made here in this Con-

gress, I can assure you that view and that part of the American economy will be gone forever in a very few years. Thank you for your attention.

[The prepared statement of Mr. Atkinson follows:]

PREPARED STATEMENT OF KEITH ATKINSON, PRESIDENT, VIRGINIA AGRICULTURAL GROWERS ASSOCIATION; APPLE AND TOBACCO PRODUCER, JAVA, VA

Good morning Mr. Chairman, Ranking Member Goodlatte, and other Members of the Committee:

My name is Keith Atkinson. Along with my wife and four children, two of whom are in college, two to enter college soon, I own and operate a family farm in Southside, Virginia. Were it not for the H–2A guest worker program, broken, costly, and perilously litigation-prone as it is, we would be unable to farm at all.

I also serve as President of the Virginia Agricultural Growers Association (VAGA), an association of Southside, Virginia family farmers formed nearly 30 years ago to share the expenses of completing legally required procedures to obtain temporary foreign workers. In our rural areas, we already could not locate enough U.S. workers—local workers or Americans from other areas—who were willing to work during our peak periods when we could not handle the intense labor needs of our farms with our families and a handful of year-round employees.

When George Vanderbilt decided to build the grandest home ever built in America—The Biltmore—he needed guest workers from abroad. When Franklin Roosevelt learned there were not enough able workers left in America to produce the food we needed to feed our people at home and troops during World War II, he started what has become the critically needed, but very cumbersome, very burdensome guest worker program that today is known as the H–2A Program. I doubt either could have envisioned the quagmire that American agriculture and small family farms face with the red tape required in today's H–2A Program.

We still need a guest worker program for agriculture, and I therefore urge the passage of the Temporary Agricultural Labor Reform Act of 2007, H.R. 1792, sponsored by Congressman Goodlatte and others whose efforts are much appreciated.

Once a farmer goes out of business, our experience is that our local and national economies and our agricultural production capability have lost that farm capacity forever. Compared with 1998 when our Association had 579 farm members, today we have fewer than ½—just 270 farms. One of the most frequently cited reasons our region's farmers go out of business is that they simply cannot continue under the burdens of the current H–2A Program—among them the substantially higher hourly wage rates we must pay than prevail in our rural areas, even for skilled year-round jobs. For example, in my locale, skilled, year-round welders make $10.00 an hour, whereas I must pay $9.02. (Incidentally, this amount is more than ten (10) times the wage rate these H–2A workers could earn in Mexico.) Moreover, I know one day next February or March, the Department of Labor (DOL) will publish an immediately applicable new minimum wage—what's called an Adverse Effect Wage Rate or AEWR—that may be substantially higher. My farm's AEWR minimum wage went from $8.51 to $9.02 effective February 21, 2007, whereas the Fair Labor Standards Act (FLSA) minimum wage for the rest of America went from $5.15 to $5.85 in July—that's a difference of $3.17 an hour.

I know you will understand the effect of percentage wage increases over time. The AEWR base and methodology for increases were established years ago. Over time, as the AEWR has been increased simply based on percentage increases in overall agricultural pay, the DOLLAR difference between actual prevailing wages and the AEWR has increased substantially. Just one of the important improvements H.R. 1792 makes is to tie H–2A wage rates to actual prevailing wage rates in similar jobs.

On top of these wages, we also must provide free worker housing and utilities, bedding, and kitchen equipment, free transportation to and from work every day and to the grocery store, and many other employment benefits that no other American employers are required by law to provide their employees.

Besides these terms and conditions that come from regulations adopted by the United States Department of Labor, there are additional obligations that courts have imposed that we believe are not required under the FLSA. One such requirement is that at the time workers are paid their wages for their first week of employment, they must be reimbursed their incoming transportation costs from their homes in Mexico, to the extent those costs would otherwise cut into the workers' FLSA minimum wages for the hours they worked that first week. This requirement

has been imposed even though the H–2A regulations expressly provide that such expenses are not owed unless and until workers complete ½ of the period they have agreed to work for an employer. This so-called *Arriaga* requirement, named for the case holding that such an FLSA requirement exists, has not generally been applied yet outside agriculture or even outside the temporary worker program, but there is no principled reason—no applicable exemption or special clause—to treat agriculture or the temporary worker program differently under the FLSA. I am puzzled as to why farm operations are held to different standards than our own government is held under its official personnel policies.

You may be interested to know that despite Congressional adoption of the FLSA requirements to employees of the Congress, the current Internet advertisements for applicants for jobs with the United States House of Representatives plainly state:

> "Transportation and all related travel expenses associated with the interview and hiring process must be paid by the applicant. **Moving and related relocation expenses are not available.**" See *http://www.house.gov/cao-hr/welcome.shtml* (copy attached).

Indeed, the Federal Office of Personnel Management authorizes agencies of the United States government to offer relocation payment assistance to employees *only* in limited circumstances. When such payments are authorized, they are designated as a bonus, not as part of the regular wage. These extra payments to defray relocation expenses are not owed as a right under the FLSA at the same time an employee's wages are paid for the first workweek but only after the employee has entered "into a written service agreement to complete a period of employment with the agency, not longer than 4 years." See 5 U.S.C. § 5753 (c)(1) and § 5753 generally and 5 C.F.R. Parts 572 and 575. See also, *www.usajobs.gov*.

I submit to you that these stated-written-policies of the House of Representatives are in compliance with the FLSA and with the employment policies of the vast majority of American employers who, like the House of Representatives, have no legal obligation to reimburse any relocation travel expenses.

In numerous judicial proceedings under the predecessor H–2 Program, the Courts ruled that DOL could not require farmers to advance guest H–2 workers the costs of transportation from their homes to their U.S. employers but could only enforce an existing requirement that farmers reimburse relocation expenses once workers had worked 50% of the period they had agreed to work. Growers had shown the courts data that demonstrate what we are experiencing—too many workers collect transportation reimbursement and disappear, thereby adding to the ranks of illegal workers. I will be glad to provide the case decisions, and if you study these cases, you will see that nobody ever argued that the FLSA requires first paycheck transportation reimbursement to avoid a minimum wage violation.

H.R. 1792 also corrects this *Arriaga* problem.

This matter is of critical importance to all employers. Growers have been attempting to obtain an authoritative Opinion Letter from the Administrator of DOL's Wage and Hour Division on the transportation reimbursement and related issues since 1992. We understand there have been other such requests in the last 15 years. A detailed analysis of the issues and law and a renewed request was submitted since last year. Besides favorable action on H.R. 1792, we also ask that this Committee use its good offices to encourage the Administrator to complete any necessary "clearance review" process on these issues that may include consultation with the Office of the Solicitor of Labor and issue an Opinion. Even if there are internal delays outside the Office of the Administrator, at some point the Administrator should fulfill the interpretative responsibility resident in that Office under statute and issue a formal Opinion. Without fulfillment of the Administrator's responsibility and passage of H.R. 1792, which recognizes that jobs equally benefit workers and employers, our government—including the Congress-growers, and in fact all employers are in jeopardy of a court ruling that their policies of not paying employees' relocation expenses are unlawful.

In addition to urging adoption of H.R. 1792, I respectfully urge that this Committee restate its intent to retain a key requirement of the existing H–2A program: that the Department of Labor *must* consult with the United States Department of Agriculture and the United States Attorney General before issuing regulations to implement the H–2A Program. See Section 301(e) of P.L. 99–603, as amended, P.L. 100–525, Section 2(l)(4), October 24, 1988, 102 Stat. 2612. Meaningful consultation, of course, requires more than a delivered copy of what will be published in the *Federal Register* the next day; meaningful consultation requires a willingness to explain why a provision or change is necessary or desirable and to consider alternatives, among many other points.

We also ask that this Committee express its concerns about the failure of the DOL to fulfill applicable statutory mandates. First, it must consult with the USDA and the Attorney General. Second, in accordance with the Administrative Procedure Act, it must and publish proposed new regulations and material changes in interpretations of old regulations in the *Federal Register* if it moves forward with what its representative announced to Florida farmers last week would be new requirements in a number of areas under the H–2A Program.

Just one example is that in the future, DOL will take the position that a farmer has waived his right to enforce a minimum production work standard if it allows a worker who has not met the standard, but who is trying hard and getting better, to continue working.

Another example: DOL will take the position that a friend or retiree who is willing to help out in an H–2A certified job 1 day a week or a few hours on Saturday must be treated as a full-time worker in all respects: that means that he and I would have to pretend that I had offered him work so many hours a day every day and that he had declined those hours; I would have to keep meticulous records of hours of work offered above and up to the guaranteed workday and undertake many other obligations as though he were a full-time worker OR ELSE, DOL will take the position that I owe that part-time—when he wants to or is willing to work—friend wages for ¾ of the work hours I have guaranteed H–2A and U.S. workers I have hired to work full-time for the season.

There is simply not time to explain in detail the very complex rules we already operate under that no other employers must meet. H.R. 1792 addresses some of these unnecessary rules that are unfair. Still, all of the work of the Congress can be subverted by such new interpretations and new rules as we understand were just announced last week in Florida. While those of us who had friends who were at the meeting may be able to learn what our friends heard and can tell us, that's just no way to announce public policy.

As small farmers we cannot afford lawyers to help us resist—we are virtually defenseless against—every non-meritorious lawsuit and Wage-Hour claim and every unfair, even unlawful, change in interpretation by a Department of Labor official who may not know how particular rules have been interpreted and applied—in many cases for decades. We therefore must turn to our elected representatives for help.

The question that the Committee needs to ask and the decision it needs to make is whether or not we are going to have labor intense, production agriculture in America in the future. If we are to be able to do so, we need passage of H.R. 1792 as a step in the right direction. If not, then the Committee needs to tell us so we small farmers can look for other work and hope that we will be able to afford and find safe, imported food.

There is another important part of H.R. 1792 that I believe would contribute to good immigration policy. About 75% of the workers our Association's members employ have been coming here for 10 years or more and returning home to Mexico every year. They are not part of an illegal workforce. These workers use the money they earn here to build homes in Mexico and to educate their children.

Finally, even to achieve these high objectives, if these workers weren't being treated fairly in connection with their work, no reasonable person could think they would be coming here 10 and more years. A better H–2A Program is important to all of these workers as well as to farmers like me, who need it to be able to continue farming, as well as to our communities and our nation. Thank you very much for your attention.

ATTACHMENT

House of Representatives

111th Congress, 1st Session
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You may also want to visit the Office of Personnel Management's Web site.

If you have question or comments regarding this Web site, send comments to Administrator.

Mr. MAHONEY. Thank you very much, Mr. Atkinson. Mr. Roth.

STATEMENT OF RICK ROTH, PRESIDENT AND PRINCIPAL OWNER, ROTH FARMS, INC.; VICE PRESIDENT AND MEMBER, BOARD OF DIRECTORS, FLORIDA FARM BUREAU; MEMBER, BOARD OF DIRECTORS, FLORIDA FRUIT AND VEGETABLE ASSOCIATION; MEMBER, BOARD OF DIRECTORS, SUGAR CANE GROWERS COOPERATIVE OF FLORIDA, BELLE GLADE, FL

Mr. ROTH. Yes, sir. Good afternoon. My name is Rick Roth. I am a third-generation farmer from Belle Glade, Florida. My father moved from Cleveland, Ohio in 1949. I farm the Everglades agricultural area, which is 800 square miles of some of the richest organic soils in the United States south of Lake Okeechobee.

This region of Florida is first in the production of sugar, sweet corn, and radishes. Our family, as I mentioned before, owns over

4,000 acres, leases another 1,000 acres, and we grow lettuce and leafy vegetables, radishes, sugar cane, sod, sweet corn, green beans, field-grown palm trees, and rice. We employ 55 people full time, and plus we have another 220 seasonally.

I serve on many boards, but I just really appreciate the opportunity to be here today. And I have enjoyed listening to some of the comments, but I would also like to explain why we must pass some meaningful immigration reform legislation immediately. And I ask you to please share this information that I am going to give you with your colleagues on both sides of the aisle so that we can get this done.

We do live in perilous times. We are at war with terrorism, and we must prevent illegal immigration into this country. But just as important, we must also simultaneously give employers like me the ability to use legal, foreign workers.

Why? Because domestic food protection is the other national security issue. Fruits and vegetables and other labor intensive crops make up over 50 percent of our agricultural production today. Foreign-born workers will plant, cultivate, and harvest the crops that make up most of our food supply.

So will they do it here using our food safety guidelines; or will they be in another country? So do you want to import labor to fill the jobs needed, or do you want to import just more food? We already import over 50 percent.

I live in Florida. When you say Florida, most visitors think of Mickey Mouse, but if you want to see real-world marvels, you need to come to Belle Glade. You will see hi-tech agriculture that produces crops year round using fewer new nutrients, water, and chemicals per unit of production than any other place in the United States. And I will personally give you the farm tour, and my opening statement will be, "Welcome to paradise."

One of the keys to the success of farming in the EAA is our ability to farm year round and to maximize production through crop rotation. Without an adequate legal labor force, we jeopardize that vegetable industry, which produces on 25,000 acres of sweet corn, 10,000 acres of green beans, 7,000 acres of lettuce, and 5,000 acres of radishes with an annual average net value of $150 million a year.

Our family farm is one of 50 members of Sugar Cane Growers Cooperative, one of the most successful co-ops in the United States. And for the first 30 years of our 45 year existence, we relied primarily on H–2A workers to harvest our sugar cane. Now, all the burdensome regulations of the H–2A Program, including farm worker housing and higher labor costs make this program a matter of last resort.

The most onerous part was the farm worker housing. Now, due to the current situation, capital costs, county zone and permitting requirements, and negative public opinion, it will take many years for employers to move to H–2A for their labor needs. So to use this program, we must have this meaningful reform, but it is clearly not enough.

We must provide a means for the current, experienced, agricultural workers to earn legal status, subject to conditions that will require them to work in agriculture.

Now, when we talk about jobs in Florida, we talk about the three-legged stool: tourism, agriculture, and construction. Our economy in Florida is already in a recession due to the doubling of prices of houses, and I just cannot imagine what the degree of devastation to the economy will be in Florida, but I can assure you that you can send the U.S. economy into a depression if we deny employers access to a legal workforce.

Please remember that agriculture is not the largest user of seasonal labor. We are just the most visible.

As I complete my statement, I would like to change the focus towards you. In the past, legislation with H–2A reform and earn adjustment of status provisions have enjoyed broad bipartisan support. Today this issue is very emotional and controversial.

Thank God that our founding fathers did not create a true democracy but instead a representative form of government. So it is your duty to ignore all the hype and emotion, sift through all the opposing ideas and options, and come up with a solution that will move this country forward.

In closing, I say this. I play doubles tennis. The winning strategy there also applies here. Down the middle, solve the riddle. I want to thank you for this opportunity, and I look forward to answering any questions. Thank you.

[The prepared statement of Mr. Roth follows:]

PREPARED STATEMENT OF RICK ROTH, PRESIDENT AND PRINCIPAL OWNER, ROTH FARMS, INC.; VICE PRESIDENT AND MEMBER, BOARD OF DIRECTORS, FLORIDA FARM BUREAU; MEMBER, BOARD OF DIRECTORS, FLORIDA FRUIT AND VEGETABLE ASSOCIATION; MEMBER, BOARD OF DIRECTORS, SUGAR CANE GROWERS COOPERATIVE OF FLORIDA, BELLE GLADE, FL

Good morning. My name is Rick Roth. I am a third generation farmer from Belle Glade, Florida. I have been the President and Principal Owner of Roth Farms, Inc. since 1986. I have the most diversified farming operation in the Everglades Agricultural Area, 800 square miles of rich organic soils south of Lake Okeechobee. This region of south Florida is first in the production of sugar, sweet corn, and radishes in the United States. Our family owns over 4,000 acres, and leases another 1000 acres. We grow lettuce and leafy vegetables, radishes, sugar cane, sod, sweet corn, green beans, field grown palm trees, and rice. We employ 55 people full-time, plus 220 seasonally.

I currently serve on the Board of Directors of the Florida Farm Bureau (10 years), the Florida Fruit and Vegetable Association (21 years), and Sugar Cane Growers Cooperative of Florida (13 years). I am the Vice President of Florida Farm Bureau, and this is my 7th year of service.

I appreciate the opportunity to explain why we must pass immigration reform legislation immediately and ask that you share the information that you learn at this hearing with your colleagues on both sides of the aisle . . . We live in perilous times. We are at war against terrorism. We must prevent unwanted illegal migration into our country. But, just as important, we must simultaneously give employers like me the ability to use legal foreign workers. Why? Because domestic food production is the other national security issue.

Fruits and vegetables and other labor-intensive crops make up 50% of our agricultural production today. Foreign born workers will plant, cultivate, and harvest the crops that make up most of our food supply. Will they do it here, using our food safety guidelines, or in another country? Do we want to import labor to fill unwanted farm labor jobs, or do we import more of our food supply. We already import over 50%.

I live in Florida. When you say Florida, most visitors think Mickey. If you want to see real world marvels, come to Belle Glade. You will see high tech agriculture that produces crops year-round, using fewer nutrients, water, and chemicals per unit of production than anywhere in the United States. I will personally give you the tour, and my opening statement will be, "Welcome to PARADISE".

One of our keys to success in the EAA is our ability to maximize production with fewer chemicals through crop rotation. Without an adequate legal labor force, we jeopardize our vegetable industry, which produces approximately 25,000 acres of sweet corn, 10,000 acres of green beans, 7,000 acres of lettuce, and 5,000 acres of radishes per year with an annual value of $150 million.

Our family farm is one of 50 members who own one of the most successful cooperatives in this country, Sugar Cane Growers Cooperative of Florida. For the first 30 years of our 45 year existence, we relied primarily on H–2A workers to harvest sugar cane. All the burdensome regulations of the H–2A program, including farm-worker housing, and higher labor costs make this program a matter of last resort. The most onerous part of H–2A is farm-worker housing. Due to capital costs, county zoning and permitting, and negative public opinion, it will take many years for employers to move to H–2A for their labor needs. To use this program, we must have meaningful reform. But H–2A alone is clearly not enough. We must provide a means for the current experienced agricultural workforce to earn legal status subject to conditions including a future agricultural work requirement.

Such a proposal is essential to solve both the short and long-term agricultural labor crisis. We need the earned status provisions as a bridge to greatly expanded use of the H–2A program. It will provide the much needed time to build the housing required of users of the H–2A program and will allow our government to expand its consular offices in foreign countries so that they can process foreign workers for admission in a timely manner. Currently, with less than 2% of the agricultural workforce entering under the H–2A program, growers are experiencing harmful delays in getting their workers in a timely manner to harvest highly perishable crops.

When we talk about jobs in Florida, we talk about the three-legged stool: Tourism, agriculture, and construction. Our economy in Florida is in a recession due to the dramatic increase in housing prices. *New home sales are at a standstill, and the forecast for over a year is it will take 2 years to work our way out of the over-supply. I feel the impact. Our wholesale sod sales are down 50% from a year ago.* I can not imagine the degree of devastation that will occur in Florida, but I can assure you we can send the U.S. economy into a depression if you deny employers access to a legal workforce. Agriculture is not the largest user of seasonal labor; we are just the most visible.

As I complete my statement I would like to change the focus of my remarks towards you. In the past, legislation with H–2A reform and earned adjustment of status provisions has enjoyed broad bipartisan support. Today, this issue is very emotional and controversial. Thank God that our founding fathers did not create a true democracy, but instead a representative form of government. It is your duty to ignore all the hype and emotion, sift through all the opposing ideas and options, and come up with a solution that will move this country forward.

I play doubles tennis. The winning strategy there also applies here. "Down the middle, solve the riddle". Thank you for giving me this opportunity and I would be happy to answer questions later, if time permits.

Mr. MAHONEY. All right. Thank you, Mr. Roth. And as all the Members of Congress rush to the airport, I know that there are people that are here that have flights, but I do want to ask a question or two, and we can conclude this.

You know at the beginning, we were talking about the fact that the Department of Homeland Security and the Social Security Administration are changing their policy with regards to these No-Match letters. And I would like to hear from the growers really quickly in a couple of sentences what the impact would be of this policy change to your businesses. We will start with Mr. Carnes.

Mr. CARNES. Right now, the estimates are out that Texas has over ¾ of a million employees that are going to be affected by No-Match. The fact of the matter is for us as agricultural people, we have key experienced, trained personnel that we don't know. The fact is we really don't know what their status is. We——

Mr. MAHONEY. But the question I am asking you is that if they change this policy, does it impact your ability to get access to labor right away, or is this something that is going to——

Mr. CARNES. I think it will affect our existing labor force right away. Yes, I think we will lose a lot of key personnel that we have no idea that the documents they have may not be entirely valid.

Mr. MAHONEY. Mr. Smoak?

Mr. SMOAK. The impact will be significant, and it will be immediate.

Mr. MAHONEY. Well, that was brief. He must have a flight. Mr. Yates.

Mr. YATES. I am an H–2A user, so there would be no——

Mr. MAHONEY. No issue for you? Mr. Mouw?

Mr. MOUW. Already with the letter that we get from Social Security saying they don't match already does things with the employees—I say you can't work here unless it is legal. If it matches—if it doesn't match, I can't have you. So I already do that.

Mr. MAHONEY. Yes, and Mr. Atkinson.

Mr. ATKINSON. There would be no impact. We use H–2A.

Mr. MAHONEY. H–2A, right. And, Mr. Roth?

Mr. ROTH. I have a couple of comments. The first one is——

Mr. MAHONEY. You get one comment.

Mr. ROTH. One comment, okay. The impact will be great. I do have very skilled workers in the lettuce business.

Mr. MAHONEY. But would it be immediate?

Mr. ROTH. So it would be immediate, but the thing you need to think about is that these employees will probably shift jobs, and it is very highly qualified. I can give you a perfect example back in 2005.

Mr. MAHONEY. That is okay. We don't have——

Mr. ROTH. You don't have time, okay.

Mr. MAHONEY. We don't have time. I am trying to respect their time. I have another question which is: we are looking at a couple of options. We have talked about two options today, the two things that are presented. One is the AgJOBS. Another is the H–2A Program of which we now know there is 2 percent of the labor force in agriculture participates in that program.

And yet there is yet a potential third one, which is comprehensive immigration reform that did not pass out of the Senate and didn't even get to the House, which would be a national comprehensive approach to having these people identify themselves with a system where they could be here with a legal status in this country.

If you take a look at where this legislation was going, they were talking about having a system where there would be the Department of Homeland Security responsibility to identify these workers and then have some form of biometric card that would be presented to you all for hiring.

So my question for each of you is of the three choices in front of you, national comprehensive program, AgJOBS, or H–2A, what works best for your operations? Mr. Carnes?

Mr. CARNES. I think we are here today to solely focus on agriculture, and the one reason that agriculture is still in this fight is because we have been forthright, and we have worked this issue hard. And we can't afford to quit. Right now, the best thing out there would be AgJOBS. I am not saying it is perfect, but we need a comprehensive agricultural solution.

Mr. MAHONEY. Okay, thank you.

Mr. CARNES. We have to keep the workers that we have. We have to have a future path. I am sorry. I could go on.

Mr. MAHONEY. We have heard the arguments. Mr. Smoak?

Mr. SMOAK. I believe we need the long-term fix to get us legal workers. That is what we need.

Mr. MAHONEY. Mr. Yates.

Mr. YATES. H–2A reform would be the best long-term fix.

Mr. MAHONEY. Okay, Mr. Mouw?

Mr. MOUW. I think that H–2A wouldn't work at all. AgJOBS would be a possibility, but the long-term solution is complete immigration reform.

Mr. MAHONEY. Mr. Atkinson?

Mr. ATKINSON. H–2A reform.

Mr. MAHONEY. And Mr. Roth?

Mr. ROTH. We need the AgJOBS because we need to be able to transition.

Mr. MAHONEY. Okay, do any of the Members have any questions?

The CHAIRMAN. If I could. Mr. Mouw, I was surprised to read that you had been approached to move your dairy to China. What——

Mr. MOUW. I happen to live right on the edge of LA, and there are people that the first dairy they see when they come to LA to look at the dairies are mine, and they often stop. I have had people from China, New Zealand, many other countries, just stop.

There just happened to be some people who stopped, an operator from Beijing and two mainland Chinese nationals, one who works in Chicago, one who works in Beijing, came by and spent half a day with me asking questions. They just stopped in and started talking, asking questions and said they really need producer know-how expertise out there. And they offered to move me out there because they are really looking to expand their dairy industry out there and not having very much success very quickly. But they are going to do it anyway.

The CHAIRMAN. All right, thank you.

Mr. MAHONEY. Does anybody else have any questions? Let me just conclude by just taking the privilege of being the chair of saying that one of the things I love about agriculture is that the people that represent the industry are the very best that America has to offer. Hardworking, committed, law-abiding. And I really commend all of you for working very hard to try to deal with an impossible situation.

My experience with agriculture amounts to about 40 cows, and I can tell you that talking to my neighbors what an impossible task you find yourselves having to deal with all the time. And I want you to know that you are probably the only industry that I could think of in America that would have been so willing to deal with this impossible situation; with an approach to immigration that has put you in a position of having to make tough choices between doing the right things, doing the things that are for the law, and trying to take care of your families.

And I would just hope that, as an industry, you stand up for your rights, and you let people know that agriculture is important be-

cause the message here in Congress needs to get communicated as well.

So I want to thank everybody for being here today. It was a long day, but your testimony is very critical, and it is going to be an important part of the debate as we move forward with what to do in this country with immigration.

With that, I am going to declare this hearing adjourned. Thank you very much for your time.

[Whereupon, at 3:46 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

FARM LABOR CRISIS: A NEW YORK STATE PERSPECTIVE

New York is an agriculture state. Farms encompassed 25 percent of the state's landscape and generated $3.6 billion for our economy in 2006. Currently, New York State has 7.5 million acres of farmland with 35,000 farms producing a variety of products. New York's leading commodities include milk, apples, grapes, fresh vegetables, equine, and horticulture.

New York's strong and diverse agricultural industry is dependent on a reliable workforce. According to the National Agricultural Statistics Service, in 2006 there were approximately 32,500 agricultural laborers hired in the Northeast. New York State employs a vast number of these workers.

It is estimated that a significant and growing percentage of the workers who come to our farms are illegal and utilizing fraudulent documents to secure employment. Not only is it hard to distinguish a fraudulent document from a legitimate document but an employer who takes action against an individual based on an assumption of false documents or an illegal status may, in fact, violate the law and can face charges of discrimination.

This situation puts farm businesses at an increased risk. **A raid by Immigration and Customs Enforcement can cause financial devastation in an instant.** If a labor force is not in place the entire harvest can be lost and animals' health and welfare compromised.

When conducting immigration enforcement on a farm, agents may not be aware of sensitive issues like bio-security and animal health. ICE agents may unknowingly contaminate or spread disease between farms when bio-security protocols are not followed. Also, if an animal is not regularly milked on the established schedule it can lead to serious animal health consequences including disease and severe animal discomfort. For example, a dairy farm located in western New York had a worker picked up while he was milking cows during an early morning shift. Several hours later the farmer discovered the cows, still in the parlor, with the milking equipment still running and the cows in discomfort.

There simply must be procedures put into place that provides for the notification of a farm operator if his or her workers are detained by ICE and animals are left unattended or workers disappear from the field.

Farm raids have a human toll as well. Farm employers face possible fines and jail time if they are found to have knowingly hired illegal workers. Farm workers are also affected. **Due to the fear of enforcement actions farm workers are driven into the shadows and they are afraid to access health clinics, child care, and other critical services.** Some farm workers refuse to live in worker housing and choose instead to sleep in cars hidden in farm fields because of fear.

When farm workers are picked up their children are sometimes left behind at child care centers. The ever present threat of parents being separated from their children places tremendous stress on these families. Parents leave their children in the mornings to go work in the fields and packing houses and worry every minute if they will be back together at the end of the day. Such elevated stress levels adversely impact children's overall health and development. Parents are avoiding parenting and ESL classes—the very things that can strengthen their families and communities. Children and families, documented and undocumented are suffering.

Farmers are also put at risk by disgruntled neighbors. Due to the nature of a farm businesses and encroaching urban sprawl, neighbors, who do not always understand sound agricultural practices, may become disgruntled by the sights, sounds, and smells of a farm operation. ICE will conduct raids on farms if they are given an anonymous tip as this provides reasonable suspicion that illegal workers may be employed on such farm.

This is no way for a farmer to run a business and it is simply no way for a farm worker to live.

Because of this risk and the fact that many of our migrant farm workers are unwilling to return to New York because of increased immigration enforcement within our state, many employers are turning to the H–2A Agricultural Seasonal Worker Program. **Data collected from the U.S. and N.Y. Departments of Labor shows that more and more farmers in New York are utilizing H–2A.** In 2004 there were only 120 employers certified in the program who requested about 2,200 H–2A workers, by 2006 that number had increased to over 200 employers requesting over 3,100 workers. That number is expected to increase once again this year. Over 275 employers have requested almost 4,000 workers and we are just now entering our fall harvest season. This trend is likely to continue.

The H–2A program is available to our seasonal growers but does not address the labor needs of our year round employers, e.g., dairy farms, vine-

yards, fisheries, and equine operations. Of even more concern is that fact that many of our members who do utilize H–2A have experienced extreme delays in the processing of their applications and in some instances gross negligence in the handling of their applications. One particular apple grower's application was lost twice and the farmer is concerned that his workers will not arrive in time for harvest. Many other growers have shared similar stories of workers arriving up to a month late.

The H–2A program needs major reforms in order to meet the needs of New York's agricultural industry. **Without H–2A reforms and/or a comprehensive immigration reform bill or single sector agricultural labor bill the future of farming in New York is insecure.**

A conservative estimate from the Farm Credit Associations of NY suggests that New York State will lose in excess of 900 farms, $195 million, and 200,000 acres of agricultural production over the next 2 years if current immigration policy is not changed.

Farmers desire a safe and secure homeland, but are also an integral part of the security of our nation's food supply.

All of the above examples' portray the urgency for immigration reform. This problem will only grow, and a solution must be found that recognizes the reality of the future workforce today. **We need to set the politics aside and seek a bill that is bipartisan and solves the immigration problem for agriculture immediately.**

The strength of our family farms depends on immigration reform. Our farm workers deserve a chance at a better way of living and working. And the future of our safe, healthy, and local food supply depends upon a reliable and legal workforce.

Memorandum September 6, 2007

TO: Committee on the Judiciary, Subcommittee on Immigration, Refugees, Border Security, and International Law
Attention: George Fishman

FROM: Linda Levine (202-707-7756)
Specialist in Labor Economics
Domestic Social Policy Division

SUBJECT: Is there a farm labor shortage this year?

You asked that CRS examine the validity of assertions, as exemplified by the opinion piece in the *Wall Street Journal* ("Immigration Non-Harvest," July 20, 2007), that farmers are experiencing a labor shortage in 2007. The article chiefly ascribes this year's reportedly insufficient number of workers available to take seasonal jobs on U.S. farms to "a more heavily fortified southern border and government immigration raids." Numerous other articles in the popular press have similarly asserted that anti-terrorism measures put into place in this decade are responsible for labor shortages in those parts of the agricultural industry that historically have been dependent on foreign-born, oftentimes unauthorized, workers.[1]

Homeland Security Secretary Michael Chertoff remarked during a press conference on August 10, 2007, in connection with the announcement of initiatives to improve border security and interior enforcement, that efforts already underway have produced "a noticeable downturn in the people that we are detecting crossing the border, some very good anecdotal evidence that suggests that people are beginning to give up on trying to cross the border." At the press conference, Commerce Secretary Gutierrez spoke of administrative changes to the H-2A temporary worker program to provide U.S. farmers "with a legal work force to stay in business" because they currently cannot get an adequate supply of native-born workers and authorized foreign-born workers. *The Fact Sheet: Improving Border Security and Immigration Within Existing Law*, released the same day by the Department of Homeland Security, further notes that

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[1] "In fiscal years 2001-2002, as in previous periods, the hired farm workforce was predominantly foreign-born. Just 23 percent of all hired crop farm workers were born in the United States; 75 percent were born in Mexico... In 2001-2002, 53 percent of the hired crop labor force lacked authorization to work in the United States, down from 55 percent in 1999-2000." U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002*, Research Report No. 9, March 2005, p. ix.

> No sector of the American economy requires a legal flow of foreign workers more than agriculture, which has begun to experience severe labor shortages as our Southern border has tightened.

The alleged shortfall of workers to perform seasonal farm jobs also is often attributed to the nation's low unemployment rate and the availability of better paying jobs in construction, food processing and other nonfarm industries. It is claimed that because unauthorized workers cannot as easily as in the past cross from one side of the U.S.-Mexico border to the other in response to seasonal changes in farm labor demand, they have remained in the United States and sought year-round employment. However, an article in the *New York Times* ("Housing Slump Takes a Toll on Illegal Immigrants," April 17, 2007) points out that the ongoing reversal of economic conditions in the construction industry may cause some foreign-born workers to return to the agricultural sector.

Another reason that is not often raised – but which may be having a growing impact on the availability of authorized foreign-born farm workers – is the aging of persons legalized under the 1986 Immigration Reform and Control Act (IRCA). In the FY2001-FY2002 period, according to the U.S. Department of Labor's National Agricultural Worker Survey (NAWS), fewer than one-fifth of crop workers were age 45 or older and the average age of authorized foreign-born crop workers at that time was 40. Therefore, many of the individuals who achieved legal status under IRCA's Special Agricultural Worker (SAW) program may be nearing the end of their participation in the seasonal farm labor force.

A Shortage of Seasonal Agricultural Workers in 2007?

Determining whether the supply of domestically available workers is sufficient to fulfill employer demand is difficult because there is no agreed-upon definition of "labor shortage." Economists believe that labor markets clear, with a lag, absent government policies which prevent a labor shortage or surplus from occurring.[2] Specifically, farmers whose demand for labor has increased are initially expected to raise wages to attract U.S. workers from elsewhere in the economy and thereby bring supply into balance with demand. If growers find that offering a higher wage rate becomes less effective at calling forth additional U.S. workers to match demand, they subsequently are expected to take other equilibrating labor-saving measures (e.g., mechanizing operations, switching to less labor-intensive crops, cutting back operations, producing in other countries that have an abundant supply of farm workers).

An agricultural economist at the University of California-Davis (Philip Martin, "Farm Labor Shortages: How Real, What Response?," *Agricultural and Resource Economics Update*, May/June 2007) wrote that

> The shortages reported in the press are usually instances of fewer workers employed than desired at current wages, leading to farm work not being done in a timely fashion or crops not being harvested. Many farm employers say there is a labor shortage when they have

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[2] In the case of the agricultural industry, for example, farmers can participate in the H-2A temporary worker program to hire individuals from other countries to supplement the supply of domestically available farm workers.

> a crew of 30 workers, but they prefer 40. Other farmers say there is a shortage if they want crews to work today but contractors do not bring crews until tomorrow.

Thus, in addition to the level of wages offered, the issue may be related to timing and location – that is, a lack of workers at the exact time growers in a particular community need them – than with the actual size of the labor pool. Timing and location may increasingly be a problem if the number of migrant farm workers has decreased over time. According to a data series from the U.S. Department of Agriculture's National Agricultural Statistical Service (NASS) that was discontinued in 2002, migrant workers represented 11.1% of all persons employed on farms in July 2001, down from 13.7% in July 1998.[3] Data from the NAWS similarly show a decrease in migrant farm workers: migrants accounted for 42% of crop workers in FY2001-FY2002, the latest year for which data are available, down from 47% in FY1993-FY1994.[4]

The following CRS analysis utilizes and expands upon the approach developed in CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*, to assess the current supply of workers to perform seasonal agricultural jobs relative to employer demand nationally (excluding Alaska) and in 15 regions and 3 states. Because the demand for and supply of farm labor cannot be measured directly, trends in employment and wages are examined. The analysis is based upon NASS' Farm Labor Survey (FLS), the only federal source of current statistics on farm employment and wages.[5] Data from the survey conducted in July is used because it is the most recent period for which 2007 data are available and because demand for farm workers to fill seasonal jobs typically peaks in that month.

Employment of Hired Farm Workers and Agricultural Service Workers

In the FLS, total employment is disaggregated into hired farm workers and agricultural service workers working on farms. The survey does not report data separately for native-born workers, foreign-born persons authorized to work in the United States and unauthorized foreign-born workers.

Hired farm workers are composed of field workers (e.g., persons on growers' payrolls who harvest berries), livestock workers (e.g., persons on farmers' payrolls who care for poultry), supervisors (e.g., range foremen) and other workers (e.g, bookkeepers). NASS separately tallies persons who perform agricultural services on farms under a contract or fee arrangement (e.g., veterinarian work, milk testing, sheep shearing). Agricultural service

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[3] NASS defines migrants as farm workers whose employment requires travel that prevents them from returning to their permanent residence the same day.

[4] NAWS defines migrant workers as those who travel 75 miles or longer during a 12-month period to obtain farm jobs. Unlike the NASS definition, staying away overnight from home is not required. Figures from the NAWS and NASS' Farm Labor Survey (FLS) also vary because their definition of a farm worker differs. The NAWS includes persons engaged in seasonal agricultural work whether hired directly by growers or supplied to them by farm labor contractors. In addition to these individuals, the FLS includes livestock workers (e.g., workers on dairy and poultry farms).

[5] The latest data from the Labor Department's survey of crop workers, NAWS, covers FY2001-FY2002. I spoke with department staff in August about any unpublished data from the NAWS that they thought might shed light on the shortage question. To date, I have not received any information from the Labor Department. I will forward the department's input upon its receipt.

workers also include individuals paid by labor contractors or crew leaders to prune, weed or thin fruit and vegetable crops for example.

Table 1 presents data on total farm employment (hired farm workers and agricultural service workers) in the United States and the two states (California and Florida) for which statistics on agricultural service workers are reported separately. Employment of hired farmworkers is shown in **Table 2**. Employment of agricultural service workers is shown in **Table 3**.

Total Farm Employment. After the effect of the 2001 recession on the labor market lingered into the early part of the decade, job growth resumed nationwide through 2005 at nonfarm employers and on farms if agricultural service workers are added to the workers employed directly by farmers. Demand for employees in nonfarm industries continued to grow thereafter.[6] In contrast, as shown in **Table 1**, total farm employment fell considerably (11.0%) between July 2005 and July 2006 from 1,344,000 to 1,196,000, and then rose modestly (0.8%) to 1,205,000 in July 2007. The lower job growth rate on farms (0.8%) compared to other industries (1.0%) in 2007 does not suggest that grower demand for labor exceeded the farm labor supply this July.

The hired farm worker and agricultural service worker data for the major crop-producing state of California reveal a somewhat different picture. As at the national level, California's total farm employment fell precipitously (12.9%) between July 2005 and July 2006 from 347,000 to 302,000. (See **Table 1**.) One year later, total farm employment in California rose at an above-average rate: employment of hired farm workers and agricultural service workers in the state increased 6.6% primarily due to greater use of workers supplied by farm labor contractors;[7] on a national basis, total farm employment increased just 0.8% and nonfarm employment increased just 1.0%. The state's relatively large job growth rate suggests a tighter farm labor market in California in July 2007 than earlier in the decade and than in the United States overall.

Unlike the large 2006 cutbacks in total farm employment that occurred nationally and in California, Florida growers reported an increase in demand for workers with employment on farms rising by 6.9% to 46,000. (See **Table 1**.) Florida farmers exhibited the opposite hiring pattern in 2007 than did those in California and nationwide on average. Employment of hired farm workers and agricultural service workers in Florida fell by 6.5% to 43,000 this July, which does not indicate labor scarcity.

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[6] According to the Current Population Survey, nonfarm wage and salary employment averaged 125,114,000 in 2000; 125,407,000 in 2001; 125,156,000 in 2002; 126,015,000 in 2003; 127,463,000 in 2004; 129,931,000 in 2005; 132,449,000 in 2006; and 133,759,000 in January-July 2007. The change in employment was 0.2% in 2001, -0.2% in 2002, 0.7% in 2003, 1.1% in 2004, 1.9% in 2005, 1.9% in 2006, and 1.0% in January-July 2007. (With the exception of 2007, which is ongoing, annual average data for nonfarm industries are utilized because the employment level outside agriculture generally is less variable over the course of a year.)

[7] As shown in **Table 2**, employment of hired farm workers in the state grew by 1,000 (0.5%) between July 2006 and July 2007. Employment of agricultural service workers grew by 19,000 (17.1%) as shown in **Table 3**.

Table 1. Total Farm Employment in the United States (excluding Alaska), California and Florida, July 2000 to July 2007

July	Hired Farm Workers and Agricultural Service Workers Working on Farms					
	Number (in thousands)			Percent Change		
	United States	California	Florida	United States	California	Florida
2000	1377	369	48			
2001	1374	352	50	-0.2	-4.6	4.2
2002	1262	382	47	-8.2	8.5	-6.0
2003	1263	350	48	0.1	-8.4	2.1
2004	1304	346	42	3.2	-1.1	-12.5
2005	1344	347	43	3.1	0.3	2.4
2006	1196	302	46	-11.0	-12.9	6.9
2007	1205	322	43	0.8	6.6	-6.5

Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Farm Labor* reports released in August of 2001to 2007.

Note: A hired farm worker is anyone, other than an agricultural service worker, who was paid for at least one hour of agricultural work on a farm or ranch. Hired farm workers include field workers (e.g., persons who harvest crops), livestock workers (e.g., persons who milk cows) and supervisors (e.g., range foremen) among others (e.g., bookkeepers). Agricultural service workers perform work on farms on a contract or fee basis (e.g., veterinarian services, sheep shearing). Also included are crew leaders, contractors and others who have written or oral agreements with growers to provide workers to one or more farms to prune, weed and harvest fruit for example.

Hired Farm Workers. When the 2007 statistics on hired farm workers alone are analyzed, they also do not signal a recent increase in labor scarcity. Employment of hired farm workers between July 2006 and July 2007 fluctuated much like it had previously over time in the 15 regions and 3 states into which NASS divides the United States. (See **Table 2**.) Farmers in eight regions, Florida and Hawaii reduced their demand for direct-hire farm workers in 2007. In addition, employment of hired farm workers remained the same between July 2006 and July 2007 in the Pacific region (OR, WA) and Appalachian I region (NC, VA). Thus, growers used fewer or the same number of hired farm workers this July in the majority of regions (10 out of 15) and states (2 out of 3) for which the FLS provides data.

Variable climate conditions may explain a good deal of the longstanding yearly fluctuations in farm employment. For example, drought or hurricanes could severely curtail crop production in a given region in one year which would greatly reduce labor requirements; the following year the same area could have more normal weather conditions which would produce a larger crop and hence, a greater demand for labor. A specific example involves Washington state: different weather conditions in 2006 than 2005 affected when demand peaked for harvesting cherries which in turn affected the supply of labor to other growers in the state. As a result of the delayed surge in demand for labor among cherry producers in 2006, many workers who usually would have switched to working for apple growers in August instead continued to harvest cherries. Their analysis (Washington State Employment Security Department, "Agricultural Employment and the Issue of a 2006 Seasonal Labor Shortage," *2006 Agricultural Workforce in Washington State*) led Ernst W. Stromsdorfer and John H. Wines to conclude the following:

> In sum, these dramatic year-to-year seasonal changes explain much of the concern of agricultural producers over the adequacy and timeliness of the supply of seasonal agricultural workers.

Table 2. Number of Hired Farm Workers by Area, July 2000 to July 2007

Area	Number of Hired Farm Workers Excluding Agricultural Service Workers (in thousands)							
	2000	2001	2002	2003	2004	2005	2006	2007
United States (excluding Alaska)	1084	1039	1006	943	961	936	876	847
Hawaii	8	7	7	7	7	7	7	6
California	266	242	280	225	218	206	191	192
Pacific (OR, WA)	99	97	98	110	112	109	92	92
Mountain I (ID, MT, WY)	37	34	30	31	34	29	30	22
Mountain II (CO, NV, UT)	25	24	19	24	23	26	25	18
Mountain III (AZ, NM)	20	18	17	18	24	24	25	22
Northern Plains (KS, NE, ND, SD)	41	38	39	37	39	45	41	40
Southern Plains (OK, TX)	77	85	74	61	68	63	53	58
Delta (AR, LA, MS)	44	37	37	25	31	24	30	25
Cornbelt I (IL, IN, OH)	69	69	54	53	50	54	55	53
Cornbelt II (IA, MO)	30	29	30	23	24	31	23	24
Lake (MI, MN, WI)	73	76	62	62	69	75	68	78
Florida	46	48	43	45	39	41	43	41
Southeast (AL, GA, SC)	39	32	34	35	44	44	41	31
Appalachian I (NC, VA)	56	62	60	53	51	38	40	40

Area	Number of Hired Farm Workers Excluding Agricultural Service Workers (in thousands)							
	2000	2001	2002	2003	2004	2005	2006	2007
Appalachian II (KY, TN, WV)	42	39	32	36	33	24	27	30
Northeast I (CT, ME, MA, NH, NY, RI, VT)	58	52	44	53	43	46	36	39
Northeast II (DE, MD, NJ, PA)	54	50	46	45	52	50	49	36
Area	**Number of Hired Farm Workers Excluding Agricultural Service Workers (percent change)**							
		2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
United States (excluding Alaska)		-4.2	-3.2	-6.3	1.9	-2.6	-6.4	-3.3
Hawaii		-12.5	0.0	0.0	0.0	0.0	0.0	-14.3
California		-9.0	15.7	-19.6	-3.1	-5.5	-7.3	0.5
Pacific (OR, WA)		-2.0	1.0	12.2	1.8	-2.7	-15.6	0.0
Mountain I (ID, MT, WY)		-8.1	-11.8	3.3	9.7	-14.7	3.4	-26.7
Mountain II (CO, NV, UT)		-4.0	-20.8	26.3	-4.2	13.0	-3.8	-28.0
Mountain III (AZ, NM)		-10.0	-5.6	5.9	33.3	0.0	4.2	-12.0
Northern Plains (KS, NE, ND, SD)		-7.3	2.6	-5.1	5.4	15.4	-8.9	-2.4
Southern Plains (OK, TX)		10.4	-12.9	-17.6	11.5	-7.4	-15.9	9.4
Delta (AR, LA, MS)		-15.9	0.0	-32.4	24.0	-22.6	25.0	-16.7
Cornbelt I (IL, IN, OH)		0.0	-21.7	-1.9	-5.7	8.0	1.9	-3.6
Cornbelt II (IA, MO)		-3.3	3.4	-23.3	4.3	29.2	-25.8	4.3

Area	Number of Hired Farm Workers Excluding Agricultural Service Workers (percent change)							
		2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
Lake (MI, MN, WI)		4.1	-18.4	0.0	11.3	8.7	-9.3	14.7
Florida		4.3	-10.4	4.7	-13.3	5.1	4.9	-4.7
Southeast (AL, GA, SC)		-17.9	6.3	2.9	25.7	0.0	-6.8	-24.4
Appalachian I (NC, VA)		10.7	-3.2	-11.7	-3.8	-25.5	5.3	0.0
Appalachian II (KY, TN, WV)		-7.1	-17.9	12.5	-8.3	-27.3	12.5	11.1
Northeast I (CT, ME, MA, NH, NY, RI, VT)		-10.3	-15.4	20.5	-18.9	6.9	-21.7	8.3
Northeast II (DE, MD, NJ, PA)		-7.4	-8.0	-2.2	15.6	-3.8	-2.0	-26.5

Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Farm Labor* reports released in August of 2001to 2007.

Note: A hired farm worker is anyone, other than an agricultural service worker, who was paid for at least one hour of agricultural work on a farm or ranch. Hired farm workers include field workers (e.g., persons who tend and harvest crops), livestock workers (e.g., persons who milk cows and care for poultry) and supervisors (e.g., range foremen) among others (e.g., bookkeepers and pilots).

Table 3. Number of Agricultural Service Workers in the United States (excluding Alaska), California and Florida, July 2000 to July 2007

July	Agricultural Service Workers Working on Farms					
	Number (in thousands)			Percent Change		
	United States	California	Florida	United States	California	Florida
2000	293	103	2			
2001	335	110	2	14.3	6.8	0.0
2002	256	102	4	-23.6	-7.3	100.0
2003	320	125	3	25.0	22.5	-25.0
2004	343	128	3	7.2	2.4	0.0
2005	408	141	2	18.9	10.2	-33.3
2006	320	111	3	-21.6	-21.3	50.0
2007	358	130	2	11.9	17.1	-33.3

Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Farm Labor* reports released in August of 2001to 2007.

Note: Agricultural service workers perform work on farms on a contract or fee basis (e.g., veterinarian services, sheep shearing). Also included are crew leaders, contractors and others who have written or oral agreements with growers to provide workers to one or more farms to prune, weed and harvest fruit for example.

Wage Rates of Hired Field Workers

NASS calculates the wage rates shown in **Table 4** without regard to method of payment (e.g., by the piece or the hour). Wages do not include the value of any benefits received and are not adjusted for inflation. The data cover only field workers. Although the *Wall Street Journal* article mentions the labor problems of dairy farmers in upstate New York, most articles about farm labor shortages focus on field (crop) workers rather than livestock workers.

As shown in **Table 4**, the wages of field workers in the United States increased at an accelerating rate after 2003. But farmers generally did not bid up wages to attract workers to a greater degree than employers in other industries, which implies the absence of a labor shortage.[8] The relative wages of field workers remained unchanged in the last few years at

[8] Based on data collected by the U.S. Bureau of Labor Statistics for production and nonsupervisory workers in private nonfarm industries, average hourly earnings grew by 3.7% in 2001, 2.9% in 2002, 2.7% in 2003, 2.1% in 2004, 2.8% in 2005, 3.9% in 2006, and 4.1% through July 2007. The employees had average hourly earnings of $14.02 in 2000, $14.54 in 2001, $14.97 in 2002, $15.37

(continued...)

a little over 53 cents for every dollar earned by production and nonsupervisory employees in other industries in the private sector.

Growers in three areas – California, Mountain II (Colorado, Nevada and Utah) and Mountain III (Arizona, New Mexico) – raised wages in July 2007 to a much greater extent than the U.S. average for field workers (4.3%) and for employees in private nonfarm industries (4.1%). There appear to be very different explanations for the comparatively large wage increases in these areas.

California. The wage rate of field workers in California increased by 9.9% between July 2006 and July 2007. (See **Table 4**.) The wage rate of agricultural service workers employed on the state's farms rose as well (5.4%).[9] As previously discussed and shown in **Table 2** and **Table 3**, hired farm worker employment in the state grew by 0.5% and agricultural service employment by 17.1% this July.[10] The labor market thus operated as economists posit: California growers were able to compete successfully with other employers for additional workers by greatly raising wages between July 2006 and July 2007. NASS noted in its August 2007 *Farm Labor* release of July data that

> In California, there has been continued concern about potential labor shortages due to increased border security. Therefore, farm operators paid workers more in order to compete with the higher paying construction industry.

According to a recent article in the *New York Times* ("American Farmers Cross the Border for Labor," September 4, 2007), growers also reacted to the aforementioned tightening of California's farm labor market by

> raising crops across the border where many of the workers are... Western Growers, an association representing farmers in California and Arizona, conducted an informal survey of its members in the spring. Twelve large agribusinesses that acknowledged having operations in Mexico reported a total of 11,000 workers [t]here.

This also is one of the actions that economists hypothesize employers will take to bring a scarce labor input into balance with demand (see page 2 of this memo). It is akin to the offshoring of jobs engaged in by other U.S. industries.

Arizona, Colorado, Nevada, New Mexico and Utah. As shown in **Table 4**, two other regions reported well above-average wage increases between July 2006 and July 2007: Mountain II (CO, NV and UT) and Mountain III (AZ, NM). According to my telephone conversation with the author of the NASS *Farm Labor* release, the higher wages of field workers in the two regions is related to the same factor that pushed up the average hourly

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[8] (...continued)
in 2003, $15.69 in 2004, $16.13 in 2005, $16.76 in 2006, and $17.45 in July 2007.

[9] Wage rates of individuals who perform work on farms under a contract or fee arrangement are available from the FLS for only California and Florida. In July 2006, the hourly wage rate of agricultural service workers in California was $9.49; in July 2007, $10.00.

[10] The *Farm Labor* release does not include employment data for hired field workers alone.

wage of all hired farm workers – namely, "a greater percentage of salaried workers putting in fewer hours."[11]

The lower demand for labor, evidenced by fewer hours worked, appears due to different climate conditions in July 2007 compared to a year earlier. According to NASS, the reduced employment in Mountain II this July resulted from the winter wheat harvest "being behind last year's pace," and the lower employment in Mountain III resulted from "abnormally hot and extremely dry weather" that limited activity on farms during the survey's reference week.

Concluding Remarks

Little seems to have changed since I wrote in CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*, in January 2007 that

> indicators of supply-demand conditions generally are inconsistent with the existence of a nationwide shortage of domestically available farm workers in part because the measures include both authorized and unauthorized employment.

The FLS does not distinguish between workers employed on farms by legal authorization to work in the United States or nativity. The preceding analysis therefore cannot examine directly the supply of foreign-born workers according to their authorization to work in the United States, but its results suggest that the border security and workplace enforcement measures instituted thus far this year did not reduce the number of unauthorized workers to the extent that growers in general experienced a labor shortage in July 2007. This assessment does not preclude the possibility of tight labor markets – regardless of underlying reasons – in some areas of the country at certain times of the year, such as in California this July.

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[11] NASS calculates wage rates based on total wages paid and hours worked during the survey week. Salaried workers are paid a pre-set sum per week or month, for example, that is not directly linked to their input (unlike hourly workers who are paid based on the number of hours they actually work) or their output (unlike piece-rate workers who are paid based on the amount of crops they harvest).

Table 4. Hourly Wage Rates of Hired Field Workers by Area, July 2000 to July 2007

Area	Hourly Wage of Field Workers Excluding Agricultural Service Workers (in current dollars)							
	2000	2001	2002	2003	2004	2005	2006	2007
United States (excluding Alaska)	7.37	7.70	7.90	8.17	8.34	8.61	8.93	9.31
Hawaii	9.17	9.55	9.65	9.55	9.77	10.00	10.26	10.70
California	7.46	7.97	8.18	8.43	8.41	8.76	8.92	9.80
Pacific (OR, WA)	7.74	8.41	8.32	8.03	8.88	8.60	9.50	9.64
Mountain I (ID, MT, WY)	6.70	7.08	7.12	7.27	7.91	8.39	8.41	8.36
Mountain II (CO, NV, UT)	7.21	7.36	7.23	7.86	8.63	8.62	8.33	9.25
Mountain III (AZ, NM)	6.43	7.00	7.15	7.11	7.45	7.90	7.55	8.34
Northern Plains (KS, NE, ND, SD)	7.52	7.96	8.32	7.89	8.24	8.15	8.94	9.13
Southern Plains (OK, TX)	6.56	6.58	7.06	7.62	7.59	8.07	8.53	8.14
Delta (AR, LA, MS)	6.39	6.63	6.70	7.13	7.26	7.59	8.06	8.14
Cornbelt I (IL, IN, OH)	7.79	7.65	8.08	8.44	8.80	9.20	9.46	9.22
Cornbelt II (IA, MO)	7.62	7.80	8.42	9.60	8.08	8.86	9.85	9.44
Lake (MI, MN, WI)	7.98	8.21	7.85	8.34	8.29	8.66	9.37	9.52
Florida	7.75	7.50	7.25	8.55	8.70	8.75	8.39	8.50
Southeast (AL, GA, SC)	6.38	7.19	7.11	7.55	8.19	8.39	8.21	8.57
Appalachian I (NC, VA)	6.66	7.22	7.61	7.61	8.07	8.44	9.14	8.80

Area	Hourly Wage of Hired Field Workers Excluding Agricultural Service Workers (in current dollars)							
	2000	2001	2002	2003	2004	2005	2006	2007
Appalachian II (KY, TN, WV)	6.55	6.77	7.22	7.79	7.63	8.46	8.64	8.55
Northeast I (CT, ME, MA, NH, NY, RI, VT)	8.26	8.12	8.41	8.77	9.31	8.88	9.28	9.58
Northeast II (DE, MD, NJ, PA)	7.67	7.41	7.87	8.18	7.90	8.71	9.26	9.62
Area	**Hourly Wage of Hired Field Workers Excluding Agricultural Service Workers (percent change)**							
		2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
United States (excluding Alaska)		4.5	2.6	3.4	2.1	3.2	3.7	4.3
Hawaii		4.1	1.0	-1.0	2.3	2.4	2.6	4.3
California		6.8	2.6	3.1	-0.2	4.2	1.8	9.9
Pacific (OR, WA)		8.7	-1.1	-3.5	10.6	-3.2	10.5	1.5
Mountain I (ID, MT, WY)		5.7	0.6	2.1	8.8	6.1	0.2	-0.6
Mountain II (CO, NV, UT)		2.1	-1.8	8.7	9.8	-0.1	-3.4	11.0
Mountain III (AZ, NM)		8.9	2.1	-0.6	4.8	6.0	-4.4	10.5
Northern Plains (KS, NE, ND, SD)		5.9	4.5	-5.2	4.4	-1.1	9.7	2.1
Southern Plains (OK, TX)		0.3	7.3	7.9	-0.4	6.3	5.7	-4.6
Delta (AR, LA, MS)		3.8	1.1	6.4	1.8	4.5	6.2	0.9
Cornbelt I (IL, IN, OH)		-1.8	5.6	4.5	4.3	4.5	2.8	-2.5
Cornbelt II (IA, MO)		2.4	7.9	14.0	-15.8	9.7	11.2	-4.2

Area	Hourly Wage of Hired Field Workers Excluding Agricultural Service Workers (percent change)							
		2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
Lake (MI, MN, WI)		2.9	-4.4	6.2	-0.6	4.5	8.2	1.6
Florida		-3.2	-3.3	17.9	1.8	0.6	-4.1	1.3
Southeast (AL, GA, SC)		12.7	-1.1	6.2	8.5	2.4	-2.1	4.4
Appalachian I (NC, VA)		8.4	5.4	0.0	6.0	4.6	8.3	-3.7
Appalachian II (KY, TN, WV)		3.4	6.7	7.9	-2.1	10.9	2.1	-1.0
Northeast I (CT, ME, MA, NH, NY, RI, VT)		-1.7	3.6	4.3	6.2	-4.6	4.5	3.2
Northeast II (DE, MD, NJ, PA)		-3.4	6.2	3.9	-3.4	10.3	6.3	3.9

Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Farm Labor* reports released in August of 2001to 2007.

Note: A hired field worker is anyone, other than an agricultural service worker, who was paid for at least one hour of work on a farm spent planting, tending and harvesting crops (including the operation of farm machinery on crop farms). Although expressed on an hourly basis, the figures reflect all the ways in which farm workers are paid (e.g., by the hour, by the piece). The wage rate is calculated based on total wages paid and hours worked during the survey week.

PREPARED STATEMENT OF AMBER S. BRADY, GENERAL COUNSEL/DIRECTOR OF AGRICULTURAL POLICY, SOUTH DAKOTA DEPARTMENT OF AGRICULTURE, PIERRE, SD

Dear Committee Members:

Enclosed are letters that our office has received from South Dakota agricultural producers and agricultural businesses, regarding the labor needs of American agriculture. Please consider these letters as written testimony for today's public hearing at 11 a.m. in the Longworth House Office Building, to review the labor needs of American agriculture.

Agriculture needs a consistent, stable workforce. Thank you for your attention to this issue that plagues American agriculture. Please feel free to contact our office for any further information on this issue.

Regards,

AMBER S. BRADY,
General Counsel/Director of Agricultural Policy,
South Dakota Department of Agriculture, Pierre, SD

ATTACHED LETTERS

Dear Committee Members:

I am writing to tell you how important a dependable labor force is to my agricultural business. I own a large dairy-calf raising business that was started about 4 years ago. My farm receives about 30 newborn calves per day. These calves must be bottle fed their first weeks. Currently, I employ about 15 workers in two shifts per day. This is very physical hands-on work, and it goes on 16 hours per day, 365 days of the year.

My community suffers from the lack of a workforce that is young and able to work in the livestock industry. There are few residents that are under 40 years of age. Our school had to consolidate 4 years ago due to lack of children. The majority of the people in my community are retired senior citizens.

Perhaps you think I don't pay well, or I've never advertised for help. That's not true. I've advertised with job service and word of mouth, to no avail. My employees earn $30,000 or more a year. The pay scale is not what keeps them away. They want banker's hours and no weekends, and little physical outdoor work. But baby calves need to eat twice a day on Saturday & Sunday and Christmas Day, as well as the weekdays.

Most of my workforce hold work visas and come from another country. My employees that come from other countries enjoy working with livestock. They take pride in doing their jobs well. I am proud to call anyone of them a friend and neighbor. If it were not for these people who work diligently and responsibly, I would not be in business. Yet the current H–2A visa process limits an ag employee to only 10 months employment in the United States. Then they must leave. It was developed for the fruit and vegetable growers. Not all agriculture involves growing and harvesting crops for a few months a year. Hogs, dairy, beef feedlots and livestock processing all have year-round labor needs. Many of these jobs take training and experience they gain with several months of work. I find I spend ½ of that time training them, only to have their visa expire and they need to leave. Then, I start the process over.

I have the opportunity to double the size of my calf raising business in the next few months. That means double the labor I will need to hire. My biggest obstacle is not the permitting process through the local and state agencies for a large livestock operation. My biggest nightmare is wondering if Congress will do something to allow willing, dedicated foreign workers to fill the jobs on my farm that people from my community can't or won't take. I need to be able to access these foreign workers in a timely manner. I need to be able to train these good people, and then keep them for more than 10 months. Turnover costs any employer money.

I urge you to support the AgJOBS bill or similar legislation that addresses the foreign labor force that keeps this country humming. Support legislation that lets America produce and process its own food. Someone needs to raise livestock in America. Without the legal & workable means to utilize a foreign labor force for all types of agriculture, (when American citizens can't or won't do the work required to grow, care for, and process our food) we will be dependant on other countries to feed us and millions of farmers will be out of business in the United States.

Sincerely,

JAY HILL,
Veblen, SD.

Dear Committee Members:

I am a grain and livestock farmer with a custom harvest business. My grandfather started the custom harvest business about 55 years ago. My son now takes a crew to run the wheat harvest from Oklahoma to Canada. For four generations, we have helped feed America. We also grow corn, soybeans and wheat on our own land.

For the past 5 years, we have been unable to find enough seasonal farm labor to keep our farm business going. We now have to depend on H–2A visa labor, and most of them come from South Africa. Some of our competitors are hiring H–2A labor from Europe. Not many years ago, our labor force consisted of high school and college age young people. They are no longer interested in the physical outdoors jobs we need to fill. I'm not talking about pitching bundles into the threshing machine on 110 degree days under the blazing sun. We teach our employees to operate combines, tractors, and trucks with state-of-the-art computer assisted, air conditioned, GPS equipped, air-ride seats—in machines that cost up to $250,000. I'm just asking for employees whom we will teach everything that they need to know on state-of-the-art machinery. I can't find any American workers to fill these positions.

The H–2A visa process was a workable solution for us until this spring. I requested six visas to be approved, and at the last minute, the consulate in their home country failed to approve ⅓ of the positions. My son had to leave for Oklahoma without a full crew.

I urge you to support the AgJOBS bill or similar legislation that addresses the foreign labor force that keeps this country humming. Support legislation that lets America produce and process its own food. Without the legal & workable means to utilize a foreign labor force we will be dependant on other countries to feed us and millions of farmers will be out of business in the United States. Agriculture needs this.

Sincerely,

DENNY PHERSON,
Veblen, SD.

Dear Committee Members:

The Midwest Dairy Institute is a 2,000 cow dairy farm in eastern South Dakota owned by the Milbank Community Foundation. We are charged with two missions: one is to operate this large commercial dairy farm, and the other is to provide educational services to dairy producers and dairy workers.

Both as an employer and as educators, it has become obvious that the shortage of legal farm labor has become a crisis that threatens to destroy our industry. If we cannot find a legal source of quality employees to work on our farms, this modem and efficient dairy industry will cease to exist as we know it today.

We offer good pay and benefits but U.S. workers are rarely, if ever, interested in working on a dairy farm. Our educational programs designed to train workers for dairy employment are finding no one interested in a future as a dairy employee. Every dairy producer I talk to tells me the same thing. There are few if any quality employees available from the U.S. workforce for employment on dairy farms.

The only way we can staff our farms and keep milking cows is to hire foreign workers. We hire these workers taking their documentation at face value, but we know that when ICE raids a dairy farm, many of the workers assumed to be legal are deported. Every large dairy in the U.S. lives in fear of ICE coming in and removing enough of their workers to put them out of business.

The political bickering and turmoil over comprehensive immigration reform is not even relative to the needs of the dairy industry. I, as a dairy producer, have no agenda for comprehensive immigration reform. I need to see an obsolete and unworkable agricultural guest worker program reformed to fit the needs of modern dairy farming. An H–2A temporary worker program does not work for an agricultural industry that harvests milk 24/7/365.

Failure of the U.S. Congress to do something about this critical labor shortage coupled with increased ICE enforcement will lead to the destruction of the modern dairy industry. The economic disaster that will result from that will ripple through our agricultural industries all the way to the grocery store.

HOWARD MANLOVE,
Dairy Farm Complex Manager,
Midwest Dairy Institute.

Dear Committee Members:

I'm a dairyman, hoping to invest in a large dairy in South Dakota. At the moment, we hold both a county and state permit to build a 2,100 cow dairy near Bruce, SD, in Brookings County.

According to research from the University of Minnesota, (see web link below), the economic ripple effect of a dairy cow to the local economy is $13,737 per cow per year. Therefore a dairy of this size should create an economic ripple effect of $28,847,700 per year.

My concern is that with unemployment so low in South Dakota and no reform in immigration law, I won't be able to get sufficient qualified staff for my dairy. This is especially true for veterinary staff. Last year, only 80 large animal vets graduated in the U.S. as a whole. If not enough vets are coming out of U.S. colleges we need to get them from somewhere else.

http://www.ansci.umn.edu/dairy/dinews/12-1-economic__engines.htm

Yours sincerely,

MICHAEL.

Dear Committee Members:

We are dairy farmers who moved to Lake Norden, SD in February 2006 from Co. Fermanagh, Northern Ireland. South Dakota has been recruiting dairy farmers from the United Kingdom, Ireland & Europe for a couple of years now and we decided to emigrate here in 2005 but took 6 months to complete U.S. Immigration through London (a much shorter process than any I have heard about here in the USA). We have invested millions of dollars in a brand new 1,400 cow dairy here in Hamlin County and have been milking since December 2006.

I am writing to urge you to take action on an issue I am very concerned about and that is essential to the smooth operation of my farm—immigrant labor. We currently employ 22 people, 15 of whom are Milkers and stall management operators. It is extremely difficult to find local workers willing to do the hard work required to operate a successful dairy farm. As a result, significant numbers of dairy farms of all sizes across this country rely on immigrant labor to help efficiently run their operations. I have tried to employ as many local people as possible but 8 hour milking shifts are not popular and because we milk three times a day we need three shifts of four staff to cover a 24/7 operation. Currently all our Milkers are Hispanics with Permanent Resident cards and Social Security Numbers.

The announcement by the Department of Homeland Security regarding increased enforcement actions is increasing the level of frustration and concern that I and my fellow dairy farmers feel at the government's inability to tackle this important issue in a reasonable way. Many long-standing employees that dairy farmers have employed in good faith may well have to be let go in light of these efforts. When taking on new staff they must have two forms of identification and we keep a copy of these forms, however I do not feel that I have any special knowledge or skills that allow me to screen employee's employment status. We are just so grateful to have people looking for work. We need a comprehensive solution to the challenge of immigration—not a one-sided attack focused solely on punitive enforcement policies.

That is why I strongly urge you to actively support the passage of the AgJOBS legislation. AgJOBS provides for a badly-needed temporary worker program for agriculture and an orderly transition that encourages experienced farm workers to remain working in agriculture for a period of years. Equally important for dairy farmers, such as me, it also includes a provision addressing the unique needs of dairy farmers for a stable workforce.

Please work with your fellow Members of Congress to enact AgJOBS without further delay. This carefully crafted compromise approach has been out there for some time now—it's well past time for Congress to put it into law!

Sincerely,

RODNEY & DOROTHY ELLIOTT,
Managing Partners,
Drumgoon Dairy LP.

Dear Committee Members:

We operate a 400 cow dairy and a crop farm in MN. On our dairy, we milk three times a day. We have a Spanish labor force. If we did not have them, there would

be no dairy. Our Spanish laborers are dedicated, hard-working people. They will work 7 days a week when needed. They do their job well and are on time. They like rewards just like everyone else.

In our area of MN, Spanish laborers work for other local businesses, including turkey processing, vegetable canning, landscaping, building, or construction. All of these jobs are jobs that white people don't want to do.

Immigrant laborers, and their families, should be allowed to come to the U.S. to work. They invest a lot money back to local areas, as well. They like and purchase nice things, including homes, cars, & trucks.

Sincerely,

GEORGE & CHARLENE DUBAN,
Duban Dairy.

Dear Committee Members:

My name is Amber, I am a resident of South Dakota, where agriculture has been my primary source of income for the better part of my life. During part of that time, I worked as an Assistant Herdsman for a 1,400 head dairy. At this dairy, I worked directly with both male and female immigrant workers who I found to be very pleasant and valuable employees. They worked harder than anyone else, they treated me with the utmost respect, and were always there to help me if I needed it. They were also great at working with me to break the language barrier and to develop an efficient workplace.

Immigrant workers are a valuable asset to American agriculture and they should be treated like it.

Thank you for your time and consideration,

AMBER.

Dear Committee Members:

We represent the management company for five dairies in the I–29 corridor. The dairy industry is extremely labor intensive. We cannot milk cows by computers and robots. There are a variety of tasks and jobs to be done on a dairy, and all of them are performed 365 days a year.

Someone has to harvest the feed, mix the feed, deliver the feed, attend the cows that are calving, tend to the newborn calves, watch over the very fresh cows, treat the sick, clean the pens and stalls, milk the cows, haul the cows to market, manage the workers, pay the bills, market the milk, and the list goes on. It takes approximately one person for every 100 cows.

Our company manages about 10,000 dairy cows, 3,000 dairy calves, and 5,000 dairy heifers. Those numbers require about 180 employees. While we have been able to hire employees for middle and upper management, we struggle with filling the technical positions (veterinarians & animal scientists) and of course, the people for the less technical, but very labor intensive positions.

Whenever possible, we hire veterinarians through TN visas (NAFTA) and a few laborers through H–2A visas. TN visas are renewable annually for only 3 years, and H–2A visas are only for certain positions that are not year-round—only for 10 months.

Our rural area would struggle if we only milked 500 cows. There just are not the people that are interested in working with livestock no matter what wage is paid. We have assisted people with housing, moving, schools for their children, anything that will make our area more attractive. We have few local residents that are under 40 years of age. Our schools have consolidated for lack of students, our churches have closed, main streets look like ghost towns. But in the communities where we manage dairies, the main streets are busy, the schools see an enrollment holding steady, and there is a feeling that maybe these little towns won't die. Farm managers come with their families and relocate into these rural communities.

Animal agriculture is a huge economic development engine. With a workable & fair foreign labor immigration bill that addresses year-round agriculture labor needs, we can continue to put people back into our local rural communities. If foreign labor and rural labor needs are not addressed ASAP, our food production and processing will move out of America, and we will soon import our food and lose millions of farmers.

I urge you to support the AgJOBS bill or similar legislation that addresses the foreign labor force that keeps this country humming. Support legislation that lets America produce and process its own food. Without the legal & workable means to

utilize a foreign labor force we will be dependant on other countries to feed us and millions of farmers will be out of business in the United States. Agriculture's future depends on this.

PRAIRIE RIDGE MANAGEMENT COMPANY, VEBLEN, SD

RICK MILLNER	BARB CLARK	DARLENE HANSON
KAREN HORNSETH	KURT MEYER	RONNIE LEE
LUCAS MAUCH	MIKE STAVICK	JILL MILLNER
JAMIE REIN	MISSY REIN	

Dear Committee Members:

Although I am not directly involved with the dairy industry, I understand that as production agriculturists, dairymen are tasked with running an operation that is an economic driver in rural America. They are also struggling to obtain a sufficient labor force and must turn to guest workers to keep the business running.

As a member of the community, I see guest workers as an opportunity. True, they are able to save money and send it home to their families; but, these guest workers also buy gas, groceries, clothes, etc. from the communities in which they live. It is important to have this workforce available to help keep rural America running.

Sincerely,

SAMANTHA QUINN,
Quinn & Associates,
Farm Bureau Financial Services,
Watertown, SD.

Dear Committee Members:

We are partners in several large dairy operations in northeastern South Dakota. The dairy industry is extremely labor intensive.

There are a variety of tasks and jobs to be done on a dairy, and all of them are performed 365 days a year. Operating a dairy farm requires one person per 100 cows. The work is quite physical. Someone has to harvest the feed, mix the feed, deliver the feed, attend the cows that are calving, tend to the newborn calves, watch over the very fresh cows, treat the sick, clean the pens and stalls, milk the cows, haul the cows to market, manage the workers, pay the bills, market the milk, and the list goes on.

It is a daily struggle to fill the positions for these labor intensive positions. We have a few positions that can be filled with H–2A visas, but they are designed for seasonal farm labor only and do not come close to addressing the labor needs on a dairy farm. They only allow the employee to work for us for 10 months; then, they must return home.

Our rural area would still struggle even if we only milked 500 cows. There just are not the people that are interested in working with livestock no matter what wage is paid. We have assisted people with housing, moving, schools for their children, anything that will make our area more attractive. We have few local residents that are under 40 years of age. Our schools have consolidated for lack of students, our churches have closed, main streets look like ghost towns.

Animal agriculture is desperate to find employees. They are not here in rural America. Animal agriculture can be a huge economic development engine. Our worry is that if we cannot find labor for food production and food processing in this country, these industries will move out of America, and we will soon import our food and lose millions of farmers.

We urge you to support the AgJOBS bill or similar legislation that addresses the foreign labor force that keeps this country humming. Support legislation that lets America produce and process its own food. Without the legal & workable means to utilize a foreign labor force, we will be dependent on other countries to feed us and millions of farmers will be out of business in the United States. Agriculture's future depends on this.

Sincerely,

MCC DAIRY, VEBLEN, SD & FIVE STAR DAIRY, MILNOR, ND

JORDEN HILL	RICK MILLNER
WAYNE VIESSMAN	DUAYNE BALDWIN
MICHAEL WYUM	DENNY PHERSON

Dear Committee Members:

We own a family-run dairy farm in south-central South Dakota. We currently milk 240 cows, and we raise all of our own replacement cows, making a total of around 500 head of livestock. We are in our late 30's/early 40's and have four kids—ages 10, 12, 14, 16. We farm 640 acres and have our parents on the farm with us. Dad, at age 77, still puts in 10–12 hour days.

We currently employ two full time people besides ourselves, and we employ our kids many hours each day. We have, in the past, employed high school students and a few farm wives to help cover milking shifts (a shift takes three people). However, due to the "rain, snow or shine" aspect of dairy farming, this labor structure was no longer working for us.

We have seen a significant decline in the quality of labor over the years. Everyone wants to receive as much pay as possible for the least amount of work, and they don't want to be responsible for filling out a shift if it interferes with something more important—like a basketball game that they just want to see.

Therefore, we have made a change to other labor sources. We currently have two Mexican workers. They are hard working, responsible, pay taxes, and are always looking for more work. They have a large family network, so if they need to take time off, or want to leave the position, there is always someone waiting to fill their shoes. The language barrier has been a problem, but we are working around it. We pay these laborers $10/hour (The starting rate is $8/hour in our local community businesses). We also provide housing, meat and milk.

As far as we know, our help is in the country legally. However, after the ICE raids at a dairy in North Dakota, *all dairy employers of any immigrant help are frightened.* If we are to be responsible for the legality of the papers of our employees, then the government needs to provide training for employers to recognize proper legal documentation, and we need to have a work program that does not contradict itself. The current plan of "No-Match" letters is not adequate if that is the only way that we can find out if our employees are legal. And, as the letter states, we cannot fire them if they are legal, due to discrimination laws. Most importantly, if we find out our employees are not legal, how can we as employers go about getting valuable employees legalized?! The current system is BROKEN and must be fixed!

We feel it is IMPERATIVE for some sort of AgJOBS provisions to allow for year-round farm labor. The seasonal worker program is not adequate to meet the needs of a 365 day per year profession.

Thank you for your time and your attention to this matter.

JOEL & SUSAN SYBESMA,
Dutch Made Dairy,
Platte, SD.

Dear Committee Members:

We are a family dairy in South Dakota, and we depend on people from other countries to help us produce our milk. Our herd consists of 1,200 milking cows. We have 16 full-time employees of which 12 are immigrants. They are hardworking, honest, and have restored our faith in knowing people that still want to work. In order to save our food processing industry, Congress must act quickly to ease the tightening labor crunch we face in American agriculture. Hiring immigrants is the only way of ensuring our food is produced on a daily basis. Our local labor force has been tried, but fails to have the work ethic and honesty that immigrants give to our industry. If immigrants are not given labor reform, food and food-related industries will be devastated.

A high percentage of immigrants in this country do not want citizenship. They want to be able to work legally, have a better life for themselves and families, and then return to their home, after earning enough income to better themselves.

As dairymen, we are faced with a year-round labor problem in rural South Dakota. The same is true for others involved in South Dakota's pork, beef, and meat processing industries. South Dakota also has a growing number of seasonal crop producers who need a part-time labor force. But, a worker program that only attacks the seasonal worker problem is not the answer. We need a year-round labor force. And, we need an immigration reform program that will assure us our workers are legal. The Department of Agriculture in each state could monitor the immigrant workers and issue an agricultural "work permit." Congress needs to realize the amount of labor needed in our industries and what it takes to produce our food sup-

ply. We need to identify immigrant workers, give them a "work permit" to work in one state, giving our Labor Department the ability to track them and their employer, and give them a life here that we take for granted.

This issue needs to be resolved soon and needs to be addressed in a **practical** means of keeping our food supply secure.

Dear Committee Members:

We operate a dairy in western South Dakota, and employ eight people full-time. The dairy runs 24 hours a day, so we need labor all day long. We do shift work labor, and workers rotate between working days and nights each month.

Our largest problem is that when we try to find help, we can not get anyone to apply for the position. We have put ads in the local newspaper, and the jobs are listed with a job service, and still, we do not get anyone to apply. Generally, when we do get someone to apply, they are unreliable, do not have good work ethics, and have an undesirable background. Due to this, we have had to rely upon immigrant labor.

DAN AND WANDA DUNN,
Dunn Dairy.

PREPARED STATEMENT OF LUAWANNA HALLSTROM, CRAIG J. REGELBRUGGE, AND JOHN YOUNG, ACIR CO-CHAIRS, AGRICULTURE COALITION FOR IMMIGRATION REFORM

Chairman Peterson, Ranking Member Goodlatte, and Members of the Committee:

The Agriculture Coalition for Immigration Reform (ACIR) appreciates the opportunity to submit a written statement to the U.S. House of Representatives, Committee on Agriculture. We appreciate the Committee's understanding that the agricultural labor crisis in America directly threatens the very survival, as well as the stability and growth, of the fruit and vegetable, dairy, livestock, nursery, greenhouse and Christmas tree industries.

ACIR is comprised of several hundred national, regional, and state grower and producer organizations representing all facets of labor-intensive agriculture in America. It was formed in 2001 to push for lasting immigration reforms needed to ensure a stable and legal agricultural labor force.

America Will Be More Secure With the Passage of Immigration Reform

Every American supports secure and well-managed borders. Yet, every day the Border Patrol spends enormous resources attempting to apprehend economic migrants who only seek to cling to the bottom rung of our nation's economic ladder. And America needs them. Many find work in agriculture milking cows or picking peaches, since Americans are not raising their children to be farm laborers. Providing better legal channels for farm workers to enter, work, and return home when the season is over will free up Homeland Security resources to focus on true threats to America's well-being.

Bipartisan legislation known as AgJOBS (H.R. 371) will facilitate the stabilization and proper documentation of the trained and trusted labor force here at work on America's farms and ranches. It will also facilitate an orderly transition to substantially wider use of an improved agricultural worker program, by reforming the decades-old and dysfunctional H–2A program, as capacity is built on the farm and at U.S. consulates abroad to enable wider use of the program. Presently, H–2A workers fill roughly 1.9% of the job opportunities in American agriculture. It will take at least several years to build the capacity needed for more reliance on H–2A.

Immigrant farmworkers support American jobs. Agricultural economists estimate that every farm worker job supports three to four jobs in the surrounding economy. By and large these are good jobs, filled by Americans, in packaging, processing, distribution, equipment, other inputs, lending, and insurance. Most of these jobs will move offshore if our production moves offshore.

Fruits, vegetables, and other labor-intensive specialty crops represent half the value of American crop production, and constitute much of America's food supply and a good diet. These industries, plus others like dairy, nursery and livestock, cannot survive in America without access to an adequate and affordable labor supply. Imagine a future in which America relies on sometimes hostile foreign countries for our food to the extend we do our oil today. Failure by Congress to enact timely and meaningful immigration reform will force farms to move out of the country, hastening American reliance on foreign countries to feed us.

Why Legislation like AgJOBS Is the Answer

The Agricultural Job Opportunity, Benefits, and Security Act of 2007 (AgJOBS) is equivalent to the agricultural provisions of S. 2611 that passed the U.S. Senate on May 25, 2006. AgJOBS restructures and reforms the current H–2A temporary agricultural worker program. This is accomplished by substantially streamlining the program's administrative procedures, reforming the requirements of H–2A employers, streamlining the process for admission of H–2A aliens, and allowing aliens not currently in the program to acquire H–2A status. AgJOBS also creates a means for aliens who have made a substantial commitment to agricultural work in the United States, but do not have valid documentation, to earn adjustment to legal status by meeting strict conditions including specific pre- and post-enactment agricultural work requirements. The adjustment provision will provide an opportunity for agricultural employers to retain an experienced workforce while they anticipate and prepare for future participation in a reformed H–2A program.

Proposals to solely reform H–2A, either legislatively or administratively, will not stabilize the current experienced workforce or provide essential transition time to wide reliance on H–2A. In excess of 70% of the agricultural labor force is believed to be unauthorized. The "bandwidth" does not exist for a large majority of this workforce to leave the country, be processed, and return in a seasonal context. While H–2A reform is essential as a long-term solution, it cannot stand alone.

The Farm Labor Crisis Is Immediate, and Congress Must Act Now

Time is running out for family farms and businesses who cannot plant, tend and harvest their fruit, vegetables, and animals without a stable labor force. Hanging in the balance is our abundant, secure, domestically produced food supply. Also at risk are thousands of American jobs that depend on agriculture, jobs that will follow food production to foreign countries if that is where it goes.

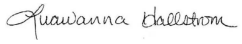
The labor force that sustains domestic agriculture was not born here. Over 80% of farmworkers are foreign-born. The lack of adequate legal ways for them to work here means that most are unauthorized under our immigration laws. Although these workers are having taxes, Social Security and Medicare withheld from their paychecks, increased enforcement of full implementation of the Department of Homeland Security's social security No-Match rule will cause employers to lose the trained, experienced, and available labor force.

Few Americans are available or willing to do this work. Farm work tends to be in rural areas. It is out in the weather, physically demanding, often seasonal or intermittent, and sometimes even migrant. Most Americans are not attracted to opportunities that are labor-intensive and seasonal by nature. Most wage earners choose opportunities with lower hourly pay than the $10.00 average for farm work for these reasons. Intense but failed domestic recruitment efforts, such as in California in the late 1990's, and last year in Washington State, demonstrate that foreign-born workers will tend and harvest America's livestock and crops. The question is, where will it be done?

American agriculture needs and wants a stable, legal labor supply. The Agriculture Coalition for Immigration Reform respectfully urges Congress to finally act, and act wisely. Doing nothing simply perpetuates the silent amnesty that exists across the country today. AgJOBS is the bipartisan product of several years of negotiations among farm employer and farm worker representatives. It will provide the near-term and long-term workforce solution for the farm sector. The agricultural sector is the most vulnerable sector of the American economy. The failure of Congress to act will require farmers to force farmers not to plant or harvest, and will require force Americans to rely on foreign countries for their food supply—with dire economic and security implications.

Thank you again for the opportunity to submit testimony to the hearing record. Please feel free to call upon the Agriculture Coalition for Immigration Reform as a partner and resource for information regarding the labor needs of American agriculture.

Respectfully,
Sincerely,



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New England Apple Council, NH.

TIME FAST RUNNING OUT FOR AMERICAN AGRICULTURE…

SENSIBLE CONGRESSIONAL ACTION NEEDED NOW TO SOLVE THE AGRICULTURAL LABOR CRISIS

Time is running out for family farms and businesses who cannot plant, tend and harvest their fruit, vegetables, and animals without a stable labor force. Hanging in the balance is our abundant, secure, domestically produced food supply. Also at risk are literally millions of American jobs that depend on agriculture, jobs that will follow food production to foreign countries if that is where it goes.

The labor force that sustains domestic agriculture was not born here. Over 80% of farmworkers are foreign-born. The lack of adequate legal ways for them to work here means that most are unauthorized under our immigration laws. Although these workers show employers documents that appear genuine, and are having taxes, Social Security and Medicare withheld from their paychecks, increased enforcement or full implementation of the Department of Homeland Security's social security no-match rule will force employers to lose trained, experienced, and available workers.

Few Americans are available or willing to do farm work, and they have other employment options. Farm work tends to be in rural areas. It is out in the weather, physically demanding, often seasonal or intermittent, and sometimes even migrant. Most Americans are not attracted to opportunities that are labor-intensive and seasonal by nature. Many even choose opportunities with lower hourly pay than the $10.00 average for farm work for these reasons. Intense but failed domestic recruitment efforts, such as in California in the late 1990's, and last year in Washington state, demonstrate the lack of a domestic workforce for agriculture. Foreign-born workers will tend and harvest America's livestock and crops. The question is, where will it be done? And at what cost in terms of American jobs, and control of the food supply?

America Will Be More Secure With the Passage of Reform Legislation

Every American supports secure and well-managed borders. Yet, every day the Border Patrol spends enormous resources attempting to apprehend economic migrants who only seek to cling to the bottom rung of our nation's economic ladder. And America needs them. Many find work in agriculture milking cows or picking peaches, since Americans are not raising their children to be farm laborers. Providing legal channels for farm workers to enter, work, and return home when the season is over will free up Homeland Security resources to focus on true threats to America.

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