

U.S. House of Representatives

Statement for the Record at the Committee on Judiciary, Subcommittee on Immigration  
Policy and Enforcement

Hearing on “Agricultural Labor: From H-2A to a Workable Agricultural Guestworker  
Program”

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Chairman Gowdy, Ranking Member Lofgren and members of the committee, thank you for the opportunity to submit the following statement for today's hearing. Western Growers Association is an agricultural trade association headquartered in Irvine, California. Western Growers members are small, medium and large-sized businesses that produce, pack and ship almost 90 percent of fresh fruits, nuts and vegetables grown in California and approximately 75 percent of the fresh fruits, nuts and vegetables grown in Arizona. Our members produce in – and directly contribute to the economies of – 29 states overall. In total, our members account for nearly half of the annual fresh produce grown in the United States, providing American consumers with healthy, nutritious food.

Agricultural producers across the country want a legal and stable workforce. My statement will lay out the importance of agriculture to the U.S. economy, unique concerns and challenges the specialty crop industry particularly in the west faces, and the opportunity and need to move forward on a solution to the current labor crisis. We are at a critical moment in our nation's immigration policy, let's pave a new path forward and not repeat mistakes of the past.

### **Agriculture is Critical to the Health of the U.S. Economy**

With 81,500 farms and ranches, California agriculture is a \$43.5 billion dollar industry that generates at least \$100 billion in related economic activity. Agriculture contributes \$10.3 billion to Arizona's economy. The United States fruit, vegetable and floral industry contributes over a half-trillion dollars annually to the nation's economy.

Not only is agriculture's role in maintaining a safe and secure food supply vital to our economic recovery, it is critical to the strength of rural America. Congress' failure to pass immigration reform, combined with a diminishing labor supply, threats due to I-9 audits by ICE, and mandatory E-Verify legislation emerging at the state and the federal levels, it is clear that U.S. agriculture will be decimated without a workable mechanism to hire and continue to employ the labor we need. The current debate regarding immigration reform provides the best opportunity in years to finally get the solution right for agriculture.

## **Demographics of U.S. Agricultural Work Force**

There are about 1.8 million people who perform hired farm work in the United States. Approximately 1.2 million or more of these people are not authorized to work here. Studies demonstrate that for a variety of reasons including the seasonal nature of the work, the difficulty of the work, and the unique skill set required for many agricultural jobs, unemployed Americans are unwilling to work in the labor intensive agriculture sectors—produce, dairy, nursery, livestock. The labor force in each of these sectors is overwhelmingly made up of foreign born employees.

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

In 2010, the United Farm Workers Union launched the "Take Our Jobs" campaign, and a media blitz which included national coverage. As of mid October, which generally marked the end of the growing season and the campaign, 10,021 people had inquired about jobs in the fields, yet only nine people had taken jobs in the fields. Most of them quit after a few days.

Some might be tempted to consider wage rates as an additional factor that might discourage unemployed American workers from seeking agricultural jobs, but the facts do not bear this out. According to a November 2012 USDA farm labor analysis, wages for

field workers averaged \$10.71 per hour. Piece rate wages in certain commodities can be significantly greater. Yet, for a variety of other factors, American workers do not seek nor stay in farm jobs, even today with unemployment hovering at 7.8 percent. The fact is the majority of farm jobs in this country must be filled by foreign workers.

### **Challenges to a Secure, Stable Workforce**

The Immigration Reform and Control Act (IRCA) mandates procedures for employers to verify the employment eligibility of their workforce. Failure to comply with IRCA can lead to substantial civil penalties and, in some cases, criminal charges. However, employers are prohibited from questioning the documents the employee presents if they appear to be valid. When U.S. Immigration and Customs Enforcement (ICE) conducts workplace audits, the employees' work authorization is scrutinized and run through DHS databases, often times with severe consequences for agricultural employers.

The Obama Administration has made worksite enforcement a priority, substantially increasing the number of ICE audits and investigations of employers' work authorization practices. In fiscal year 2011, the federal government initiated 2,496 audits of employer's I-9 records, up dramatically from past years, and 383 of them received final fine notices totaling more than \$10 million. Also, criminal charges were brought against 221 owners, managers, and supervisors. In fiscal year 2012, ICE initiated over 3,000 audits for the first time ever. With offices in all 50 states and more than 20,000 employees, there is no indication that ICE will be backing off workplace enforcement any time soon. Although egregious actors are most often said to be the intended target of these enforcement actions, innocent employers who unknowingly hire unauthorized workers are also the subject of immigration enforcement activities which are costly and disruptive.

Agriculture and food processing are among a select group of industries that are receiving the most attention.

For example, in March of 2011, 85 percent of a California wholesale nursery's year round workforce had to be terminated at the peak of their Mother's Day floral season when DHS determined their work documents were false. The status quo is not working.

### **H-2A Does Not Work**

Right now, the only program we have available to us to secure legal workers is the H-2A temporary agricultural visa program. As has been well-documented, it is utterly failing the agricultural industry including Western Growers members.

For example, H-2A is used to address only 2-3 percent of U.S. agriculture's labor needs. And even then, a 2011 nationwide study of H-2A users commissioned by the National Council of Agricultural Employers that was presented to the House Subcommittee on Workforce Protections in September 2011, reports that 72 percent of employers had late arriving employees, on average, 22 days after the date of need. In 2010, employers in the H-2A program reported \$320M in losses due to their inability to get the workers they needed or to get workers when they were needed.

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

H-2A does not afford any ability for workers to follow cropping patterns because their status is tied to a single employer. In a state like California, produce is a year-round business with lettuce being harvested in Salinas in the spring, summer, and fall; berries in Ventura county through the summer and fall; tree fruit and table grapes in the San Joaquin Valley in the summer months; citrus in the central San Joaquin Valley from late fall to early spring; and vegetables in the Imperial and Coachella Valley's during the winter months. Additionally, significant production takes place in less rural area, where constructing farm worker housing is impossible based on local zoning. H-2A was never designed for this type of market.

H-2A is administratively burdensome, implemented ineffectively, and is not responsive or flexible enough to meet the labor needs of U.S. agriculture.

The Department of Labor also appears to target growers who use H-2A with wage and hour investigations. 8 percent of H-2A employers report that they were audited before they participated in the program, but 35 percent report being audited since entering the program.

As noted earlier, the H-2A program is used by a small percentage of agricultural employers. We are talking about the need for a program that will work for the remaining 97 percent of us and the greater than one million people we need to hire each year.

### **Americans Understand the Predicament of Agriculture and Support a Solution**

Last year, Western Growers released a nationwide poll conducted by The Tarrance Group, a well known and respected national polling firm. Questions were asked of 1,000 likely voters to gauge voter attitudes towards immigration reform with a particular focus on a workable program for agriculture. For years, we have made the case that agriculture has unique labor needs and needs a solution to address those concerns. Americans, across

political lines, agree with this assertion. In fact, when asked whether they would support legislation that includes many of the components agriculture considers important, 70 percent approved of such a proposal, with 64 percent responding that they'd be more likely to vote for a candidate who supported such legislation.

While many Americans are anxious about the economy and jobs, very few consider immigrants that do farm work a cause of unemployment. It is clear that American voters aren't caught up in the harsh rhetoric claiming immigration reform should be about punishing hard working farm workers or leaving American family farmers without a work force. Americans know that we need a practical and streamlined national program that allows immigrants to come out of the shadows to work here on our farms. The fact of the matter is that Americans know farm work is and will continue to be done by foreigners, and they accept that reality.

More than 85 percent of survey respondents agree that both creating these legal channels for temporary immigrant farm workers and developing the ability to register and track them will improve the nation's security and allow for better control of the border.

Passage of immigration reform legislation with a workable solution for agriculture seems like an economic and political no-brainer, providing all employers with certainty about the legality of their workforce and at the same time providing stability and certainty to agricultural employers.

### **Steps Toward A Solution**

Western Growers is a founding member of the Agriculture Workforce Coalition (AWC), a historic and broad coalition of agriculture producers representing a diverse group of commodities and covering every region of the country. Since its launch in January, the AWC membership has continued to grow, with regional groups and particular commodity groups adding their support to this critical effort.

The AWC partners universally agree that we need a new model for our future agriculture worker program. Even among those who have used H-2A, there is agreement that this program is broken beyond repair.

In order to move us closer to a solution to meet our labor needs, we must consider a new approach to an employee visa program: one that resembles the current labor market. The number of visas would be determined in a market driven fashion.

A workable program would also provide farm workers with the same protections as U.S. workers with respect to all employment related laws and employment taxes. Thus there would be no reason for an employer to prefer a temporary foreign worker over a U.S. worker. The perception of such preference is often a criticism levied at temporary worker visa programs. In reality, employers generally prefer to hire local workers first rather than rely on long distance migrants.

The program would include incentives for workers to return home after the terms of their visa or work obligations are completed. Additionally, workers' visa status would be synced with an E-Verify system, guaranteeing that someone with a visa to work in agriculture would not be able to gain legal employment in another sector. Additionally, we would like to see this program administered by the Department of Agriculture with enforcement of labor laws handled by the Department of Labor.

It is also imperative for this program to address, not only the need for future employees, but also the need to retain our experienced employees, the people who are already here. Our farms could not function without these valuable farm employees; yet most work without proper immigration status. Any attempt to address the farm labor problem in this country needs to provide a vehicle for these skilled, hard-working and valuable immigrants to continue working in agriculture legally. This is critical to ensuring a stable agricultural labor force.



We hope that this Committee and the Congress can quickly come to an agreement on a workable solution for agriculture.

## **Conclusion**

The labor emergency affecting American agriculture threatens not only farmers and rural communities' livelihoods; it puts at risk our stable and reliable food supply. If there are indeed 1.2 million or more falsely documented workers in agriculture and they were no longer able to work, then the 2 nonfarm jobs that they create in the related economy will also be lost. That is a loss of 3.6 million jobs.

There is a workforce willing to grow and harvest crops, but it exists in other countries. Ensuring a stable and legally authorized farm workforce is about growing jobs in the United States, promoting economic activity in both rural and urban communities. It's also about avoiding a dependency on foreign food supplies. With less domestic production, more food will have to be imported, compromising the safety and security of our food supply since only 1-2% of imported food is inspected.

There is not a person in our country that is not connected to this problem. If you eat fresh produce, drink milk, grill steaks or purchase plants for your yard, you are benefiting from the hard work of a foreign agricultural worker. And do not forget that 90% of those working illegally in this country do not work in agriculture.

I urge the Members of this Committee who are concerned about the survival of agriculture in your states to work together and reach out to your colleagues to craft a workable bipartisan solution to this important economic issue.

Foreign workers will harvest the produce Americans eat. The question is whether they will do so in the United States or abroad. The absence of a workable agricultural labor program will answer this question and it will not be in the best interest of America.

In a Wall Street Journal Op-Ed from last year, I wrote about the way Congress worked in 2006 to create a new program for Major League Baseball to secure foreign-born workers. I will repeat what I said there:

*While the baseball industry can now smooth the way for its work force, American agriculture is in dire need of the same guest-worker reform. How is it that elected officials can move with speed to clear the way for one specialized group of foreign workers and not find a way to fix a broken and unworkable system for another group? Americans can survive without international guest workers who swing a bat, but we would not survive long without guest workers who hand-cut our fresh vegetables and fruit.*

*If the president and Congress can find a solution for baseball, surely they can find a solution for agriculture.*

On behalf of Western Growers, I am appreciative of this Committee's willingness to examine the need various industries have for guaranteeing a legal workforce, including U.S. agriculture. Thank you for the opportunity to submit this statement. I look forward to working with the Committee as this process moves forward, and testifying regarding some of these issues at a future hearing.