

PROTECTING AMERICA'S HARVEST

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, REFUGEES, BORDER SECURITY,
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
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PROTECTING AMERICA'S HARVEST

FRIDAY, SEPTEMBER 24, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:38 a.m., in room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren, (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Conyers, Berman, Jackson Lee, Waters, Sánchez, Gonzalez, Chu, King, Smith, Lungren, and Poe.

Staff Present: (Majority) Ur Mendoza Jaddou, Subcommittee Chief Counsel; David Shahoulian, Counsel; Tom Jawetz, Counsel; Traci Hong, Counsel; Reuben Goetzl, Clerk; and (Minority) Blaine Merritt, Counsel.

Ms. LOFGREN. This hearing of the Subcommittee on Immigration, Citizenship, Refugee, Border Security, and International Law will come to order.

We realize that there is great interest in the plight of migrant farm workers in America, but we will ask that the press actually pull back from the table so that we can observe all four of our witnesses. If the press cannot do so, they will be asked to leave the room.

I would like to welcome our witnesses, Members of the Immigration Subcommittee and others who have joined us today for the Subcommittee's hearing on protecting America's harvest.

The American agricultural sector has long suffered from a lack of available U.S. Workers to grow and pick America's fruits and vegetables. Even in today's tough economic climate, whether we like it or not, an insufficient and continually decreasing number of U.S. workers are willing to fill manual agricultural jobs. America's farms are dependent on a reliable workforce to produce our domestic food supply, and today's farms are struggling to stay in business as a result of current labor challenges.

Today's hearing will explore the labor needs of our Nation's agricultural sector, its attempt to recruit U.S. workers for agricultural labor, the problems with our current visa program for agricultural workers, and potential solutions.

One explanation for why American workers may now be unwilling to engage in manual farm labor when they were willing to do so decades ago may lie in our improving educational system. In the

1940's and 50's, a full half of the native-born workforce did not have a high school diploma. Last year, that number was 5.7 percent.

In any event, the difficulty in recruiting native-born workers to work on farms has been highlighted by the United Farm Workers Take Our Jobs, Please Campaign. The Campaign invites unemployed Americans to use the UFW's assistance to obtain employment as farm workers. Yet according to the UFW, even in the period of high unemployment across all educational and socioeconomic sectors of our society, only seven U.S. workers have agreed to actually work in the fields as of today.

I have been a long time advocate for farm workers and growers. When I was on the Santa Clara board of supervisors in the 1980's, I worked closely with the United Farm Workers and the Farm Bureau. I spent time on many farms.

Just recently at the invitation of the UFW, I spent the day picking strawberries at a farm near my district. The UFW also invited me to spend the day picking vegetables at a farm in New York with Stephen Colbert. I want to thank UFW's President Arturo Rodriguez for bringing us together on this important issue.

I would like to admonish the audience before I continue my statement that we need to maintain order and decorum throughout these proceedings, and to that end, I would like to remind all of the visitors in the audience that they should refrain from any manifestation of approval or disapproval of these proceedings or any other disruptive actions.

If necessary, the Capitol Police are here to remove anyone who disrupts the hearing, but we certainly hope that won't be necessary.

Part of what I have learned over the years is that without a sufficient U.S. labor force, U.S. farmers have increasingly relied on undocumented workers. According to the Department of Labor, over 50 percent of all seasonal agricultural workers are undocumented. Experts believe that due to underreporting, that number may actually be closer to 75 percent.

Critics argue that the shortage of U.S. agricultural workers could be solved by simply increasing wages and working conditions. As a long time and ardent supporter of farm workers, I would like nothing better. But we must also face the reality that the Nation's growers compete with farmers from around the world in this increasingly globalized world.

Increasing wages and benefits necessary in an amount necessary to attract millions of educated U.S. workers to the field would mean increased production costs that could render U.S. food products uncompetitive with imported products. American farms would then close, in turn, resulting in the mass offshoring of tens of millions of agriculture and related jobs.

Indeed, this is already happening. Between 2007 and 2008, 1.56 million acres of U.S. farmland were shut down. Many of these farms simply moved to Mexico where agricultural labor is more available. And when farms close, our country suffers. Not only do we lose the jobs filled by those who work in the fields, but we lose the millions of so-called upstream and downstream jobs connected to those jobs. Whether it is processing, packaging, transportation,

seed production, manufacturing, accounting, advertising, these jobs are overwhelmingly filled by U.S. workers. Yet these jobs disappear too when farms are closed. Economists believe that for every farm job lost, the U.S. loses another 3.1 complimentary jobs.

Aside from the loss of millions of jobs, the closure of American farms endangers the Nation's economy and national security. The truth is that our national security depends on our ability to produce a stable domestic food supply. Like oil, the more we rely on other countries for our food supply, the more we fall victim to an increased trade deficit, scarcity in times of drought, fluctuating external market prices, and political pressure. We would also increase the possibility of food-borne illness also and terrorist attacks through our Nation's food supply.

The plain truth is that food security is national security. America cannot afford to stop producing its own food supply, and we need the labor force to do so.

Today we will hear from our panel of witnesses to better understand this complex and very important issue for Americans, American jobs, our economy, and our national security.

People in the media spotlight have a special ability to focus public opinion on an issue, whether it is Bono talking about Third World poverty or Angelina Jolie advocating for protecting children against human trafficking, the power of media figures to use their celebrity to focus attention on essential public issues is well-known and well-regarded.

I am happy that Stephen Colbert of the Colbert Report has joined that group of celebrities who will use their media position to benefit others. As you can see from Mr. Colbert's written testimony, he has taken the time to walk in the shoes of migrant farm workers, and he urges reform of our immigration laws.

I am happy that the United Farm Workers helped introduce me to Mr. Colbert, who I had not met before, so we could spend a day on a farm together. His actions are a good example of how using both levity and fame, a media figure can bring attention to a critically important issue for the good of the Nation.

I appreciate all of our witnesses' efforts to be with us today and their leadership in this area, and I hope that together we can find solutions to these pressing problems.

I would now recognize our distinguished Ranking Member, Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chair. I appreciate being recognized.

The thought that comes to mind as I listened to your opening statement is I wonder how the Eskimos got along all those centuries without fresh fruit and vegetables if it is a national security issue.

However, before we start the testimony from the panel, I would like to focus my remarks on protecting American workers.

Illegal immigration, the lack of enforcement of our immigration laws and today's jobs depression have formed a perfect storm for hurting Americans. The most important duty of this Subcommittee is that we ensure our Nation's immigration policy lifts up Americans, not holds them down.

I find it hard to understand why some people carelessly claim that Americans won't do hard work. I find this claim insulting, as I am sure most hard-working Americans do. It is most insulting to those brave American soldiers who voluntarily risk their lives to defend our freedom and way of life every day, the men and women who take on terrorists in Iraq and Afghanistan, who trek for miles across the desert with 70 or more pounds of gear in 100-plus degree temperatures for about \$8.09 an hour, and that includes the Marines.

Make we should be spending less time watching Comedy Central and more time considering all the real jobs that are out there, ones that require real hard labor and don't involve sifting behind a desk. If we did, we would realize that every day, American workers perform the dirtiest, most difficult, most dangerous jobs that can be thrown at them, from crab fishermen who venture out into some of the most roughest and most dangerous waters in the world, to the Joe the Plumbers of the world who many days would prefer the aroma of fresh dirt to that of the sewage from American elitists who disparage them even as they flush. These are real Americans doing real jobs, tasks that simply must get done.

When American workers are treated with respect and paid for the labor, they will do any job and they will outwork anyone on earth. America's spirit is hard-working, and so are the people that comprise this great Nation.

Let's move on to agricultural. I represent a rural district made up mostly of farmers and farm communities, and the people of Iowa know what it takes to manage and effectively run a farm. One issue with attracting more American workers to seasonal agricultural labor is that most migrant workers are consigned to perpetual poverty. I wish that the United Farm Workers Union today understood, as Cesar Chavez clearly did, the devastating impact that illegal immigration has on American farm workers.

Of course, it is argued by Tom Vilsack, President Obama's Secretary of Agriculture, that food prices would be three, four or five times more if it were not for illegal immigrant workers. This is blatantly false and can't be supported by any data, and he doesn't even bother to defend himself.

Data from the Secretary's own Department of Agriculture and the Bureau of Labor Statistics show that labor costs only represent 6 percent of the price consumers pay for fresh fruits and vegetables. You could double the pay of workers and see only a 6 percent increase in consumer prices.

Highly respected agriculture economist Phillip Martin of the University of California notes that if there was a 40 percent increase in farm wages, the average household would spend only \$8 more a year on fruits and vegetables, less than the price of a movie ticket. I am sure that most Americans would gladly pay \$8 more a year in order to ensure a legal workforce.

Cheap labor is just not worth illegal immigration's cost to Americans as workers or as taxpayers. The reality is employers hire desperate aliens who will work for much less than Americans, driving wages down and making it impossible for American workers to compete.

As Ranking Member Smith has pointed out many times in the past, there are 8 million illegal immigrants in the workforce competing against the 15.4 million Americans who are officially counted as unemployed, which includes the 80 million who are simply not in the work force because they have dropped out and are no longer looking for jobs, and they are of working age.

Americans have given up looking for those jobs because wages have been depressed and job opportunities eliminated by low skilled and very mobile immigration. The percent of teenagers who work has never been lower. Professor Carol Swain will testify today about the toll mass immigration has taken on minority communities.

What is important to point out is that all of this started happening well before the recession. Professor George Borjas, now at Harvard University, did groundbreaking research on the impact of immigration in the 1980's and 1990's on low skilled American workers.

Professors Andrew Sum and Paul Harrington and other researchers at the Center for Labor Market Studies at Northeastern University found in 2005 that, "Given large job losses among the Nation's teens, 20 to 24 year olds with no 4-year degree, Black males and poorly educated native-born men, it is clear that native-born workers have been displaced in recent years because of immigration."

It is amazing to me that amnesty advocates simply ignore the 80 million labor pool. We can either feed, clothe and house them, or put them to work to feed and clothe the world.

The current economic crisis only magnifies the impact on American workers and families, but unless our immigration policies are changed, American workers and families will continue to be undermined even after the economy turns the corner.

The Heritage Foundation found that the average household headed by an immigrant household without a high school degree receives over \$19,000 in total government benefits more than they pay in taxes from Federal, State and local.

Cheap labor. You know, I think about the day that I had to swim out into a sewer lagoon and dive into 9 feet of fluid to retrieve a pump. And when I think about the day that it was 20 below and I am in the water fixing a waterline, and the warmest place there was in the water. The work I have done in my life in the construction business and the work that we have put our workers through in and the pride with which they take means that it is an insult to me to hear that Americans won't do this work.

I can't think of a job that I have not been willing to do, and I can't think of a employee that I have had in over 28 years that refused to do the work that was necessary. Americans will do that work, but they wanted to be paid a respectable wage for it.

I look forward to the testimony, Madam Chair, and I yield back the balance of my time.

Ms. LOFGREN. The gentleman yields back.

With the agreement of the minority, we are recognizing the author of the AgJOBS bill, Mr. Berman, for his statement, and then Mr. Smith and Mr. Conyers will give their opening statements.

Mr. Berman.

Mr. BERMAN. Well, thank you very much, Madam Chair, and thank you very much for holding a hearing which perhaps like few others will highlight the conditions of migrant farm workers in this country and turn attention to this critical issue.

I thank both the Chair and Ranking Member of the full Committee for allowing me to go. This is an issue that I have been focused on for 40 years. In the last 10 years of each session, I have introduced bipartisan legislation to try and deal with this issue known as AgJOBS.

Unfortunately, because I Chair another Committee, I have a hearing at 10 o'clock, and so I appreciate the courtesies extended to let me jump in line here. I am going to forego my prepared opening statement, but I simply must respond to the comments of the Ranking Member, my friend, the Ranking Member, on this particular issue.

There is nothing that the Chair said, there is nothing implicit in the Take Our Jobs Campaign, explicit or implicit, that said Americans aren't doing hard work. And if the gentleman from Iowa were deeply concerned about the conditions on the farms and the wages, I would have noticed more activity to ensure that a number of the laws that apply to all other workers in America apply with equal force to the people who pick our fruits and vegetables in this country. I would see an effort to push greater appropriations and greater funding for people to monitor the working conditions on our farms. I would see an effort to try and get the rights that all other workers have to collective bargaining extended to farm workers, who are excluded from our national collective bargaining legislation.

The fact is that while Americans over and over again have shown both their courage and their willingness to undertake terribly difficult jobs, jobs that I would dare to say that people on this podium, including myself, would be very reluctant to take, study after study, including studies at the time of welfare reform where huge numbers of people were going to be forced off of the welfare rolls and in counties where unemployment was two or three times the average of the country generally, people would rather have no income and no welfare than take the back-breaking jobs that the migrant farm worker has to do every single day.

There is a problem here. You can try and cheap-seat it all you want, but we know that were it not for immigrant farm workers in this country, there would be no seasonal fresh fruit and vegetable industry.

I join the gentleman in wanting better wages and better working conditions, and we should do everything we can to try and improve that. But the facts are the facts. Study after study has demonstrated that these jobs are not taken by U.S. workers, even when unemployed, even when having no other significant means of support, and no rhetorical flourishes can hide that fact.

I commend the gentlelady for holding this hearing. I want to pay a special recognition to my dear friend for a number of years, the president of the United Farm Workers union, Arturo Rodriguez, and the other witnesses as well, and I apologize for not being to stay. I hope to come back when my hearing is over, but apologize for not being here for the entire hearing.

I yield back.

Ms. LOFGREN. Thank you, Mr. Berman.

We would now recognize the Ranking Member of the full Committee, Mr. Smith, for his opening statement. He will be followed by Mr. Conyers and then just to keep it even, we will invite Mr. Lungren to have an opening statement and other Members will be invited to submit opening statements for the record.

Mr. Smith.

Mr. SMITH. Thank you, Madam Chair. American workers face tough economic times. With unemployment almost 10 percent for the first time in a generation, jobs have become scarce and millions of families are hurting.

The Pew Hispanic Center estimates there are more than 7 million illegal workers in the United States. Alexander Aleinikoff, Clinton administration INS official and now U.N. Deputy High Commissioner For Refugees calls it a myth that there is little or no competition between undocumented workers and American workers.

This competition has had devastating effects on the most vulnerable of Americans. Over 32 percent of native-born workers without a high school degree are either unemployed, forced to work part-time, or too discouraged to even look for work. For native-born Hispanics without a high school degree, the rate is 35 percent. For native-born African Americans without a high school degree, the rate is 43 percent.

We could make millions of jobs available to American citizens and legal immigrants if the Federal Government simply enforced our immigration laws. About half of agricultural workers are illegal immigrants, so that means that a substantial number of legal workers labor in the fields, perhaps as many as half. Certainly even more would take these jobs if the wages and working conditions were better.

The most effective means we have to save jobs for Americans are U.S. Immigration and Customs enforcement work site enforcement actions. Each time they detain and deport an illegal worker, they create a job opportunity for an American worker. Each time the Department of Justice sanctions an employer, it sends a clear message that the employment of illegal workers will not be tolerated.

Unfortunately, this Administration is turning its back on American workers. Work site administrative arrests have fallen 79 percent since 2008. Criminal arrests have fallen 62 percent. It is hard to conceive of a worse time to cut work site enforcement efforts by more than half, and yet that is what the Obama administration has done.

The Department of Homeland Security will tell you that they have increased the number of work site audits of employers. Employers consider the small fines just the cost of doing business. And what happens to the illegal workers? They walk down the street and take another job that could have gone to an American worker.

Citizens and legal immigrants should not be forced to compete with illegal immigrants for scarce jobs. The Obama administration should put the interests of American workers first.

Let me point out that one witness, Stephen Colbert, has shed some light on the issue of jobs Americans supposedly won't do. A

few years ago when debating himself on his show, he asked, "Don't we want to have cheap labor for all the jobs we don't want to do?" He responded, "Yeah, unless you are an American landscaper or an American construction worker." Then he added, "But I am an American TV host. My job is safe."

Millions of Americans wish they didn't have to compete with cheap foreign labor and had such a safe job. Unfortunately, 17 million American workers are out of job or have given up looking for work. It is no laughing matter to pretend that Americans don't want jobs. Pay them more if needed, but don't insult American workers by telling them that the government cares more about illegal workers than U.S. citizens.

Thank you, Madam Chair. I yield back.

Ms. LOFGREN. The gentleman yields back.

Mr. Conyers will be recognized for any opening statement he may wish to give at this time.

Mr. CONYERS. Thank you, Madam Chairman.

This is so important here. I would like to propose to my good friend the Ranking Member Steve King that we form this Committee so that we can get everybody to work very quickly. Between you and I we could probably recruit hundreds of thousands of people and solve this problem, even though the farm workers couldn't do it, and Senator Feinstein wasn't too successful. You say it is pretty easy. So I would like to work with you on this. What do you say?

Mr. KING. Mr. Chairman, I appreciate your yielding to me. I actually recruited farm workers and hired them and paid them. So what I had to do was raise the wages and benefits in order to attract people. I know that people are migrant. The Okies went to California for jobs. So if you offer the wages and the market and demand will provide the value, then the workers will show up. The legal workers will show up.

Mr. CONYERS. So the answer is yes?

Mr. KING. I would be happy to do that. Hopefully we can consider that labor is a commodity, like corn or beans or tomatoes, and that the supply and demand establishes its value in the marketplace.

Mr. CONYERS. And you wouldn't have any objection to them being organized, members of a union?

Mr. KING. I think here in America, if you want to market your skills and you are a legal worker, you do it the way you best can market your skills.

Mr. CONYERS. Well, fine. Thanks a lot. I will see you after the hearing and we will get started.

Mr. KING. I look forward to that, Mr. Chairman.

Mr. CONYERS. And now to Stephen Colbert, who I enjoy and have for many years, I am so happy that you helped us fill the room. I haven't seen this many cameras since when, Madam Chair? It has been awhile.

Mrs. LOFGREN. Maybe it was impeachment. It has been a long time since we have had this kind of coverage.

Mr. CONYERS. That is a haunting remembrance.

Now, here is what I suggest so that our Republican colleagues can—we can get to the bottom of this. Mr. Colbert has presented

us with a fine statement. It will be entered into the record. He has got a huge march coming on October 30, Saturday, here in Washington, which many people are going to be at I know. I have got a very good feeling about that. I will be busy working in Michigan trying to turn out the vote. We have been having a very low voter turnout, so that is the only reason I won't be with you in the march.

But I would like to recommend that now that we have got all this attention, that you excuse yourself and that you let us get on with the three witnesses and all the other Members there. We are sure it will be shown on the show to night, and maybe Monday, I don't know. You run your show, we run the Committee. But what do you say to that, Stephen?

Mr. COLBERT. I am sorry, what was the question?

Mr. CONYERS. You didn't hear the question?

Mr. COLBERT. I don't understand the question.

Mr. CONYERS. You don't understand the question. The question was—

Mr. COLBERT. You are asking me not to talk?

Mr. CONYERS. No, I am not asking you not to talk. I am asking you to leave the Committee room completely and submit your statement instead.

Ms. LOFGREN. Mr. Chairman, I am wondering, Mr. Colbert's microphone isn't on and he can't be heard, but whether, having posed the question, we could listen to Mr. Lungren, and Mr. Colbert can ponder what you have said. I think many are eager to hear his comments.

Mr. CONYERS. That is fair enough.

Mr. COLBERT. Madam Chair, I am here at the invitation of the Chairwoman, and if she would like me to remove myself from the hearing room, I am happy to do so. I am only here at her invitation.

Ms. LOFGREN. That is correct.

Mr. CONYERS. Thank you very much. That is fair enough.

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

We will now hear from Mr. Lungren, who will make an opening statement, and then in the interests of proceeding to our witnesses, we will invite other Members to submit their statements for the record.

Mr. Lungren.

Mr. LUNGREN. Thank you very much, Madam Chair.

I have been working on this issue for some 30 years. I confess that I was the Republican floor manager for the Simpson-Mazzoli bill. I thought at that time we had presented a reasonable solution to the problem of illegal immigration in this country. Unfortunately, while the legalization program, which was supposed to be a one-time only program was successful, there was a total failure with respect to enforcement. We also included in that law the SA-RAW program, Seasonal Agricultural Program and Replenishment Agricultural Worker program, both of which were riddled with fraud, which some of us suggested would happen when we opposed that section of the bill.

Since that time and because of the lack of enforcement by the Federal Government, we have seen a continuation of the flow of il-

legal immigration in this country so that it is of a larger dimension than it was back in the 1980's. At the same time, we have the highest rate of unemployment, I believe in my adult lifetime, and in my district we have a higher unemployment rate than the State of California, which has a higher unemployment rate than all but two States. It is a severe problem.

I have agriculture in my district and I have urban areas in my district. It seems to me that we ought to put all the facts on the table and understand that there are different segments of our economy, most of which, in my opinion, can successfully attract American workers.

I see no reason right now for the presumed or the assumed lack of opportunity for African American young males in the construction trades. I see no evidence whatsoever that in the area of construction or landscaping there is a need for foreign workers. I think the intelligent thing for us to do is to establish laws which would allow us to look economic sector by economic sector and make a determination through our government as to whether or not there is a need for foreign workers.

Now, I have never worked in the fields. I have worked on ranches, I have worked in construction, I have worked in shipyards. That is all tough work. I doubt it is as tough as the work I have seen the individuals in the farm fields do. It is really tough work.

Being from California, I happen to believe there is evidence that we cannot attract sufficient Americans for agriculture purposes, and therefore I have always suggested we have to establish a program that works and that the American people determine through their elected officials the contours of, and then on an annual basis we make a determination as to how many people are needed in this country.

But I am sorry my friend Mr. Berman has left, because one of the problems with his AgJOBS bill is that it grants people the path to citizenship who have been in this country illegally as a major tenet of this program. I don't think that is necessary.

The reason I say this is this: There is an essential notion in our society, I believe from the time we were on school yards and even before that, that cutting in line is unfair. And I have to ask the number of people from the sending countries who followed the law and did not come into this country illegally but wish to come to this country, what does it say to them that they get put behind those that were not following the law?

So all I would say is this: I think we can reach a satisfactory conclusion to this if we recognize that enforcement in the past was not there and therefore encouraged continuing illegal immigration; a failure to have a workable temporary worker program has caused some of the problem that we have; and I think thirdly, that you do not have to have an amnesty component in a program. There are other ways we can treat people humanely and deal with this problem without that. Because I fear, Madam Chair, that if we have that as a component of any legislation we have, the American people will not support it and we will fail to deal with a real challenge that we have confronting us today.

Among all the issues that we have, we always see that we also have the backdrop of the threat of terrorism today. And I am not and never have suggested that most people who are here illegal are terrorists or there are a large number of them. All I say something the longer you have a porous border, the greater opportunity you have for terrorists to take advantage of that, and that is something we did not have to deal with, as we do today, we did not have to deal with in 1984-86 when we were dealing with the Simpson-Mazoli legislation.

Madam Chair, I thank you. I actually want to thank Mr. Colbert for bringing the attention to the question of workers in the field workers in the field. It is always tough to say anything to him because you are not sure what is going to happen in return or what will appear on TV, and I know he would never take anything out of context. So I guess I might as well quit while I am ahead.

Ms. LOFGREN. Thank you, and your time has expired.

I would like to introduce the panel of witnesses before us, and I will start by introducing Dr. Carol M. Swain. Professor Swain is currently a professor of political science and professor of law at Vanderbilt University and a member of the James Madison Society of Princeton University. She received her bachelor's degree from Roanoke College and her masters from Virginia Polytechnic Institute and State University. She holds a Ph.D. from the University of North Carolina at Chapel Hill and in 2000 she was awarded an MLS from Yale Law School.

She specializes in race relations and immigration and is the author of several books, including her most recent, *Debating Immigration*, a collection of essays by Professor Swain and other scholars on contemporary immigration.

Next I would like to introduce Phil Glaize. Mr. Glaze is a third generation fruit grower and former chairman of the U.S. Apple Association, a nonprofit membership association serving the interests of the entire American apple industry, and an active member of the Agriculture Coalition For Immigration Reform.

U.S. Apple represents a \$2 billion industry with over 7,500 commercial growers nationwide. Mr. Glaize's family business grows, packs and ships apples for the fresh and processed markets and has been producing apples in Shenandoah and Frederick Counties in Virginia since the 1920's.

It is my pleasure to introduce our third witness, Arturo Rodriguez. Since 1993, Mr. Rodriguez has served as the president of the United Farm Workers, the largest farm workers union in the United States, founded by Cesar Chavez. A veteran farm labor organizer, he became active with the UFW's grape boycott as a student in 1969. He holds a master's degree in social work from the University of Michigan and has worked for the UFW since 1973.

Mr. Rodriguez has over 35 years of experience organizing farm workers, negotiating union contracts and leading farm workers across the country for fair wages and working conditions.

Finally, it is my pleasure to introduce Stephen Colbert. Mr. Colbert is the host and executive producer of the Emmy award and Peabody award winning series on Comedy Central, *The Colbert Report*. The series won the Peabody Award for Excellence in Broadcasting in 2008 and has garnered a total of 15 Emmy nominations.

Mr. Colbert and his writing team have won two Emmys for outstanding writing for a variety, music or comedy program.

He recently traveled to an upstate New York vegetable farm to experience the life of a farm worker through the United Farm Workers Take Our Job Initiative, and he has also worked with the farm workers to try and publicize their Take Our Jobs, Please Campaign in the effort to highlight the shortage that we face.

Now, each of you has prepared a written statement and that statement, those written statements, will be made part of our official record. At this point, we would like you to summarize your statement in about 5 minutes.

There are little machines on the table. You can see right now they are green. When 4 minutes is up, they will turn yellow, and when 5 minutes is up, it will be red. At that point, we would like you to conclude, not mid-sentence, but sum up so that all of the witnesses can be heard and also so that Members of the Committee will have an opportunity to ask their questions.

First we will go to you, Dr. Swain, for your testimony.

**TESTIMONY OF CAROL M. SWAIN, Ph.D.,
PROFESSOR, VANDERBILT UNIVERSITY**

Ms. SWAIN. Good morning. Thank you for allowing me to testify on this important issue. I speak today on behalf of millions of Americans who would like to see immigration laws vigorously enforced.

I contend that America does not have a shortage of agricultural workers. Instead, we have a manufactured crisis by some who would like to ensure a steady supply of cheap labor, and in some cases, labor that bypasses also the H-2A and H-2B visa program. The H-2A program is for agricultural workers. The H-2B program is for non-agricultural, mostly low-skilled workers.

Labor economist Phillip Martin, who has conducted extensive studies of farm labor in the areas of fruit and vegetable production, has found rising production in crops and stagnant wages for the workers. Meanwhile, the cost of household expenditures on fresh fruits and vegetables has remained constant.

If there were labor shortages for agricultural workers, one would expect to find rising wages and more attractive working conditions. One would not expect to find unemployment rates of 10.8 percent in May and 7.9 percent in August. These unemployment figures indicate that there are native workers actively seeking employment in the sector that includes agricultural workers, forestry, fishing and hunting.

The majority of agricultural workers have less than a high school education. They work under the most strenuous conditions. Consequently, there is a high turnover rate among these workers. Agricultural workers often leave the farms for other low wage-low skill occupations. There they compete directly with low-skilled Americans for a dwindling supply of low wage jobs.

The UFW's humorous Take Our Jobs Initiative entirely or perhaps deliberately misses the point. America cannot continue to bring in low-skilled guest workers to compete with the most disadvantaged Americans, the poor Whites, the Blacks, the legal His-

panics and other people that are here legally. Nor can it continue to turn a blind eye to illegal immigration.

Often surplus labor that starts in the field migrates into other industries. Without surplus labor, employers would be forced to pay higher wages and many would be forced to improve substandard working conditions. Instead of paying \$8 or \$9 per hour, employers might be forced to pay \$12 or \$13. Phil Martin shows that an increase in the wages of farm workers would not substantially increase the average family's food bill. He estimated that the average family's food bill would rise about \$8 a year.

The Take Our Jobs Initiative misses the fact that in some parts of the country, native workers have respectfully worked alongside immigrants. Yesterday, I had a conversation with a businessman from Nashville who ran a 1-year experiment in Helena, Arkansas, involving sweet potato planting and harvesting.

Mr. Don Kerr of Kerr Industries invested over a quarter million dollars of his own money to help unemployed Americans get jobs in the fields in an area of the country where unemployment is around 40 percent for African Americans. His experiment involved H-2A workers, the agricultural workers that here on visas, and native-born Blacks, who were picked up from a central location. They were transported to the job site. They were provided with bathroom and lunchroom facilities and a decent wage.

Mr. Kerr saw no differences in the quality of the work provided by the native-born Black American workers, and he concluded that American workers will do farm work if they had transportation and decent working conditions. Even though he had a program that was providing jobs for unemployed Americans, he could not get State or Federal agencies to make an investment in the program.

He would like to see an independent farm service company created to stand between the workers and the growers. The agency would hire the workers, provide transportation in air conditioned buses, bathroom and lunch facilities, and would serve as a buffer between the agricultural workers and the growers.

The UFW's Take Our Jobs Initiative, in my opinion, has not made a serious effort to recruit American workers. This is a publicity stunt.

We need to reform immigration. The rapid influx of cheap labor from foreign countries creates an oversupply of labor that works against the interests of native workers. It depresses our wages, it reduces our opportunities, and it deters employers from investing in native human capital.

Compounding these problems, native-born Blacks and Hispanics suffer more than any other group. You can just look at their unemployment rates, and it is in my testimony. It is off the charts. This is a disgrace.

Congress needs to do something about reforming immigration, and they need to protect the most disadvantaged Americans.

Thank you.

Ms. LOFGREN. Thank you very much, Dr. Swain.

[The prepared statement of Ms. Swain follows.]

PREPARED STATEMENT OF CAROL M. SWAIN

Dr. Carol M. Swain

Testimony for the

**House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees,
Border Security and International Law**

September 24, 2010

9:30 am.

Rayburn Room 2237

America does not have a shortage of agricultural workers. Instead, we have a manufactured crisis. According to the Bureau of Labor statistics, the unemployment rate for agricultural workers in August 2010 was 7.9 percent. Unemployment for them had dropped from a high of 10.8 percent in May.¹

Labor economist Philip Martin who has conducted extensive studies of farm labor in the areas of fruit and vegetable production has found rising production in crops and stagnant wages for farm workers. Meanwhile, the cost of household expenditures on fresh fruits and vegetables has remained constant.²

If there were truly labor shortages, one would expect rising wages and more attractive working conditions than what one finds. One would not expect to find unemployment rates of 10.8 percent in May and 7.9 percent in August. These unemployment figures indicate that there are native workers actively seeking employment in the sector that includes agricultural workers, forestry, fishing, and hunting.

The majority of agricultural workers have less than a high school education. They work under the most strenuous conditions. Consequently, there is a high turnover rate among them. Agricultural workers often leave the fields and farms for other low-wage, low-skill occupations. There they are more likely to compete directly with low-skilled Americans for a dwindling supply of low-wage jobs.

The humorous "Take Our Jobs Initiative" entirely or perhaps deliberately misses the point. America cannot continue to bring in low-skilled guest workers to compete with its most vulnerable citizens: poor whites, blacks, and legal Hispanics. Often surplus labor that starts in the fields, migrates into other industries. Without this surplus labor, employers would be forced to pay higher wages and many would be forced to improve substandard working conditions. Instead of paying \$8.00 or \$9.00 dollars per hour, employers would be forced to pay \$12.00 or \$13.00. Phil Martin shows that an increase in the wages of farm workers would not substantially increase the average family's grocery bill.

We should have compassion for our native workers who are suffering from unemployment, job displacement, and stagnant or declining wages. No group suffers more than native-born blacks and Hispanics who have a high school education or less.

In the second quarter of 2010, the overall unemployment rate for Americans was at 9.6 percent. However, the Bureau of Labor Statistics' broader measure of employment, a measure called the U-6, revealed a gloomier picture for all Americans.

The U-6 includes unemployed people who would like to have a job but have not looked recently, and those who hold part-time positions but who would like to work full-time. Using U-6 as our measure, we find that the overall unemployment rate for native-workers is a whopping 16.5 percent.³

Low-skilled native-born workers with less than high school education have an overall unemployment rate of 20.8 percent and a U-6 rate of 32.4 percent. Those with only a high school education have an unemployment rate of 20 percent and a U-6 rate of 36 percent.

When we turn to racial and ethnic minorities, the picture gets uglier. Native-born blacks with less than a high school education have an unemployment rate of 29 percent and a U-6 measure of 43 percent. That means almost half of the people who would like to work can't find jobs that will hire them. Those with a high school diploma fare only slightly better. They have an unemployment rate of 27.4 percent and a U-6 rate of 40.7 percent.

When we look at the unemployment rates for Hispanics, the picture improves only slightly. Native-born Hispanics with less than a high school education have an unemployment rate of 22.9 percent and a U-6 rate of 35 percent. Surprisingly, those with a high school diploma have a slightly higher unemployment rate than the high school dropouts. Their unemployment rate is 23.3 percent with a U-6 rate of 36 percent.

The influx of low-skilled guest workers hurt native-born blacks, Hispanics, and poor whites.

We do not need additional guest workers until the unemployment rate of native workers approaches zero percent. What we do need is for Democrats and Republicans to join forces in pressing for the enforcement of existing immigration laws. Existing immigration laws make it a crime for employers to hire unauthorized workers knowingly.

By enforcing existing laws and regulations, we can provide new opportunities for our native-born workers without waiting forever for immigration reform to make its way through Congress. What we need is a multi-faceted approach to provide incentives for compliance and tougher penalties for breaking the law.

We also need to go one-step further. We need to demand that state, federal, and local authorities take aggressive steps to ensure that all businesses, public and private, participate in the federal E-Verify Program.

The E-Verify is a highly effective program for identifying whether workers are eligible to hold a job in the United States. If we expand and make E-Verify and make the program mandatory, we will make it possible for more native-born workers to achieve the American Dream for themselves and their offspring. Unfortunately, the Obama Administration has done little to help native workers. The Administration has essentially ended workplace enforcement and they have cancelled the rule that would have required employers to act on the “no-match” letters from the Social Security Administration. These letters would have helped employers identify fraudulent social security numbers.

Our nation is in trouble. Ultimately, our success or failure will depend on how much we value and fight to preserve the Rule of Law, the sovereignty of our nation, and the hope that our nation continues to offer to its own citizens as well as the millions of people around the world who would like to live here.

¹ Bureau of Labor Statistics. “Agriculture, Forestry, Fishing and Hunting: NAICS 11.” <http://www.bls.gov/iag/tgs/iag11.htm> [Accessed September 24, 2010].

² Philip Martin, “Farm Labor Shortages: How Real? What Response,” The Center for Immigration Studies, Background Report, November 2007.

³ The data for the U-6 calculations came from Stephen Camarota’s “From Bad to Worse: Unemployment Among Less Educated U.S. Born Workers, 2007-2010.” Center for Immigration Studies, Background Report, August 2010.

Ms. LOFGREN. We will turn now to Mr. Glaize for your testimony.

**TESTIMONY OF PHIL GLAIZE, CHAIRMAN,
UNITED STATES APPLE ASSOCIATION**

Mr. GLAIZE. Thank you, Chairwoman Lofgren, Ranking Member King, and distinguished Members of the Committee.

I am honored to testify today on behalf of the U.S. Apple Association and the Agriculture Coalition For Immigration Reform.

My name is Phil Glaize. I am a third generation fruit farmer with operations in Shenandoah and Frederick Counties in Virginia. Depending upon the time of year, we employ from 30 to 155 workers.

The fact that I appear before you today as a farmer with Arturo Rodriguez, the president of the UFW, should send a very powerful message: American farmers and the farm workers have a common problem.

Despite continued attempts at automation, apples still need to be manually pruned and handpicked. The work is physically demanding and a certain amount of skill is necessary. Apples bruise easily, and improper picking will greatly reduce the value of our crop.

We need a reliable, skilled and legal workforce. Today, farmers are choosing between a reliable, skilled and illegal workforce or a bureaucratic unreliable H-2A program. Without a thoughtful Federal legislative solution, farms will fail. We will export U.S. jobs. We will import our food.

Who is doing the work on America's farms? Government statistics tell us that hired farm workers are over 80 percent foreign born and over half of those are unauthorized. Private estimates say that has many as 75 percent are unauthorized. Only 2 percent of America's farm workers are coming in through the existing H-2A program.

Many believe that native-born workers will harvest America's specialty crops. However, the UFW's Take Our Jobs Campaign is only the latest in a series of unsuccessful efforts in good and bad times in Michigan, in Washington, in California and elsewhere to recruit Americans into farm jobs. Those of us that are struggling to harvest our crops are not surprised that Take Our Jobs is only producing a handful of workers. It isn't about hourly wages.

Farm workers can earn more per hour picking apples than flipping burgers or stocking shelves in a big box store. The average picker on my farm earns \$93 for a 9 hour day. The better ones earn more. But like so many agricultural jobs, picking apples is highly seasonal. It is out in the weather, it is demanding.

I do have a picking bucket full of apples here. I invite every Committee Member, please, come down, put it on, understand what it is like to fill that thing 150 times a day. You go up and down a ladder.

Most in this room would probably argue that our immigration system is broken. Some growers are trying to use the H-2A guest worker program, but face huge administrative obstacles and uncertainty. Just last month, apple growers in the Northeast had a near disaster when decisions by the State Department and the U.S. citizenship and immigration services put applications of hundreds of Jamaican workers in jeopardy just days before the grower needed them to start harvest. Members of Congress intervened, and the workers arrived at the last moment. A few more days of inaction could have meant losses estimated at \$95 million for the affected growers.

From a user standpoint, the H-2A program is a mess. The choice between using the dysfunctional H-2A program or hiring workers

whose documents look good but may not be is untenable. In the U.S., we have a short window of a couple months to get about 200 million bushels of apples off the trees. As the apples ripen, there is about a 5-day window to pick them at the proper maturity. Different varieties and strains allows us to manage the harvest timing over the course of 8 to 10 weeks. A delay in arrival of workers has a domino effect that leads to overripe fruit, fruit on the ground and financial loss.

What is most worrisome to me as a grower is the reality that we could lose a large portion or even a whole crop if willing and able pickers are not available. At harvest time, all but the picking costs have been invested. Our lines of credit are fully utilized. We have a leveraged investment that must be converted to cash. If we lose apples to the ground due to a lack of pickers, we could easily be forced to liquidate part of the farm to pay our lenders. This can happen to me quickly and without warning. One year is all it will take.

The threat of losing farms and all the jobs dependent upon them is real and worsening in the face of congressional inaction. At least 80,000 acres of high value vegetable production have left Arizona and California for Mexico. Seventy-seven percent of Texas vegetable producers report scaling back due to labor shortfalls. Florida tomatoes and oranges are moving to Mexico and Brazil.

China has requested access to our market for fresh apples, and they already produce over one-half the world's apples. If the U.S. apple industry is starved for labor, the Chinese are ready to step in and supply our apples.

In the face of a crisis retrieving lost production will not happen quickly.

Specialty crop production is extremely risky. Average profitability doesn't really give a proper return, given the risk that we take. For most of us, the reasons we stay in it are not economical. A major life goal for me is to provide jobs for as many people as possible. I am compelled to be able to pass on our farm to someone who will take it. Labor shortages are not going to find me a willing buyer.

It is a serious economic problem that Congress has not addressed for far too long. Now is the time. I am extremely supportive of AgJOBS legislation. Comprehensive reform may be too politically charged right now. Please focus on AgJOBS and get it passed.

Thank you.

[The prepared statement of Mr. Glaize follows:]

PREPARED STATEMENT OF PHIL GLAIZE



Testimony of

Phil Glaize
Glaize Orchards
Winchester, Virginia

Protecting America's Harvest

Committee on Judiciary
Subcommittee on Immigration, Refugees, and Border Security
U.S. House of Representatives

Washington, DC
September 24, 2010

Good Morning Chairwoman Lofgren, Ranking Member King, and distinguished members of the Committee. Thank you for the opportunity to testify today on behalf of the U.S. Apple Association and the Agriculture Coalition for Immigration Reform (ACIR). My name is Phil Glaize and I am a third generation fruit farmer with operations in Shenandoah and Frederick Counties Virginia.

Today, Glaize Orchards operates 650 acres of orchard, along with a packing house and cold storage. We are a medium sized operation for our industry. We have 15 full time employees and employ anywhere from 15 to 80 seasonal employees depending upon the time of year. In addition, we must add 95 harvest workers to this workforce for the months of September and October.

When my grandfather founded the business in 1921 things looked a lot different in Winchester. There were more farms, fewer people, and no pressure from developers. Over the years, the invention of dwarf trees, bulk bins, and packing house automation have allowed us to work more efficiently, but nothing has changed the fundamental fact that apples still need to be manually pruned, and hand-picked. The work is physically demanding and it is temporary, but it is also highly skilled. If you don't pick each apple correctly, the fruit can become bruised, damaged and less marketable. You can also harm the tree's productivity for the following season, and beyond.

What is most worrisome to me as a grower is the reality that we could lose a large portion or even a whole crop if willing and able pickers are not available. This cannot be equated to freezing out in the spring because we can minimize our inputs going forward from the freeze date. At harvest time, all but the picking costs have been invested. Our lines of credit are fully utilized. We have a leveraged investment that must be converted to cash. If we lose apples to the ground due to a lack of pickers, we could easily be forced to liquidate part of the farm to pay our lenders.

As the apples ripen, there is about a 5 day window to pick them at the proper maturity. Different varieties and different strains of each variety allow us to manage harvest timing over the course of 8 to 10 weeks. We recruit the proper number of pickers so harvest doesn't progress too fast or

too slow. A slow down due to lack of productivity, shortage of required workers, or delay in arrival of workers has a domino effect that leads to overripe fruit or fruit on the ground for the rest of the season. The value of the crop can be significantly reduced if time constraints governed by weather are not met.

The bottom line is that for the apple industry and other industries ranging from strawberries to vegetables to dairy to survive, in Virginia and nationwide, we need a legal, reliable, stable and skilled workforce. Farms will convert to low-value grain crops or fail altogether. We will export jobs, we will import food. As this happens, it will likely happen just slowly enough that it won't receive the same attention as an automotive plant moving to Mexico or a factory going to China, but the impact will be the same – loss of jobs, loss of payroll and taxes, loss of dollars spent in our communities on equipment, supplies, and services.

This hearing in part considers whether America needs foreign-born farm workers. The facts speak for themselves. The UFW's "Take Our Jobs" campaign is only the latest effort to try to recruit and place Americans into farm jobs. The results so far are no surprise. In the late 1990's, after Congress passed welfare reform, Senator Dianne Feinstein insisted on establishment of a program to try to place the unemployed into farm jobs in California's Central Valley. State and county workforce agencies and grower associations worked together to map out when and where the labor was needed. Much like today, unemployment was double-digit regionally, and over 20% in some communities. **Yet, fewer than five workers were successfully placed.**

In 2006, the Washington State apple industry acted to avert a looming harvest worker shortage. Again, state and county agencies and grower groups set up an advertising, recruitment, and training program. Roughly 1700 workers were sought. About 40 were successfully placed. The program was documented in a 2007 letter sent by Washington State agriculture director Valoria Loveland to the Senate Judiciary Committee.

I am not suggesting that Americans are lazy. I am suggesting that our U.S.-born population has changed dramatically over the years. We are growing older, we are better educated, we have chosen to live in cities and suburbs. People think our food comes from Kroger or Safeway. Many farm kids themselves pursue a lifestyle off the farm. We have lost much of our culture of agriculture. It isn't about hourly wages. Our harvest workers earn an average of \$93 for a 9 hour day. The better pickers earn more. Farm workers can earn more per hour picking apples

than flipping burgers or stocking shelves in a big-box retail store. But like so many agricultural jobs, picking apples is highly seasonal. It is out in the weather, and it is demanding.

Who is doing the work on the farm? Government statistics tell us that the workforce is over 80% foreign-born, and over half of farm workers are unauthorized. Private estimates run higher. Only two percent come in through the existing H-2A program. While most employers meet their legal obligations when hiring, the realities I describe are well-documented. The late Dr. James S. Holt, a deeply respected expert in farm labor economics, provided extensive testimony on the agricultural labor crisis before the House Committee on Agriculture in October, 2007. I have attached a copy of this important testimony to my own for the hearing record.

So what does this all mean for U.S. jobs and rural communities? Statistically, we know that every harvest worker supports at least three full time jobs. Some are on the farm. More are off the farm, in ancillary industries from equipment sales to box makers to food processing to truckers to port workers handling exports of high-value crops. Rural communities and rural economies depend upon these jobs! But the jobs are tied to U.S. farm production, and if production moves to other nations, so too will these jobs. Their loss will be devastating and irreversible.

The threat is not hypothetical, it is real, and worsening in the face of Congressional inaction. In the 1950's, colleagues tell me there was a thriving greenhouse vegetable industry southwest of Toledo, Ohio. It is gone, largely to Canada. Colleagues in the West report that at least 80,000 acres of high-value vegetable production has left southern Arizona and California for Mexico. Florida tomatoes and citrus are leaving for Mexico and Brazil. In 2008, Texas A&M University noted that 77% of Texas vegetable producers surveyed had reduced the size or scope of their business due to lack of employees. One quarter reported moving some of their operations out of the U.S. Another third were considering such a move. China has requested access to our market for fresh apples and they are the world's largest producer. If the U.S. apple industry were to go out of business, the Chinese are ready to step in and supply our apples.

Ladies and gentlemen, the challenge we face is fundamentally about our food security as a nation. A 2007 examination of USDA import and export data showed alarming trends that should have spurred Congressional action. From 1990 to 2006, U.S. producers' share of the U.S. market for fresh fruits and vegetables declined substantially. Nearly a third of fresh fruit and a

fifth of fresh vegetables consumed in the U.S. are now imported, double to and in some cases triple the proportions in 1990. U.S. producers are steadily losing market share to imports of virtually all fruits and vegetables grown in the U.S., including fresh production, but especially frozen and canned production and juices.

We are talking about our ability to produce our own food. Without a stable labor force we will soon see a day where we rely on foreign countries to feed us, much as we do for oil. Is that what we as a country want? I believe that is the legacy we give our children if Congress and the President continue to ignore this critical problem.

Specialty crop production is extremely risky. Average profitability doesn't really give a proper return given the risk we take. For most of us, the reasons we stay in it are not economical. A major life goal for me is to continue to provide jobs for as many people as possible. While only 5% of family businesses make it to the fourth generation, I am compelled to pass on or sell an organization that can sustain itself. Aside from weather risk, which we can't control, there are two issues that will stop the next farmer from growing apples: low prices due to world supply and demand, and the tenuous nature of our current labor supply.

Many say the immigration system is "broken" but what does that actually mean in the real world? I will describe what it means specifically for apples. Apples are grown commercially in over 30 states. We are a \$2 billion industry, with over 7,500 commercial growers nationwide, most of whom are multi-generational family operations. Harvest season is now underway across the country and the crop is strong. Total crop projection for this year is 200 million bushels or about 90 apples for every man, woman and child in the U.S.

To get all of those apples off the trees in the next couple of months it will take over 75,000 harvest workers. Harvest is the culmination of a full-year's work, from pruning the trees in the winter to pollinating in the spring and maintaining the growing crop during the summer. Harvest season is short and worker shortages can mean the difference between making money and losing money as even a few extra days on the tree can greatly reduce the value of the crop.

Apple growers must be able to count on a legal, reliable, stable, and skilled workforce. Like other labor-intensive crops, few U.S. born "domestic" workers seek these jobs. Growers are forced to choose between using the broken H-2A guest-worker program which is bureaucratic,

inefficient and downright unreliable, or hire migrant workers who present documents that appear to be “good” but who may or may not be in this country legally. This is not about wages. These workers – whether legally authorized or not – are on the books, paying taxes and contributing to society.

The “enforcement only” approach currently being employed to immigration policy in many parts of the country has resulted in even more chaos and uncertainty. In the summer of 2009, there were widespread reports of workers fleeing western New York just before harvest started as a result of overzealous enforcement practices. Practices by the Border Patrol and local law enforcement, such as pulling drivers over and asking for immigration papers instead of license and registration, and staking out health clinics and Catholic Church parking lots during the Spanish mass. These practices began under the Bush Administration and have continued under the Obama Administration.

The consequences of immediate 100% enforcement only would drastically limit supply of fruits and vegetables the first year, causing food shortages and skyrocketing prices. The following year, producing acreage would be so limited that imports would fill our shelves. In a short span of time, the safety of our food supply would be dependent on other countries’ good agriculture and good handling practices, and frankly, good will.

I-9 audits in many states have resulted in agricultural employers having to dismiss long-term, valued employees. One Washington state fruit grower was subject to such an audit last year and as a result is now one of the largest H-2A users in the industry, employing 1,250 workers from Jamaica and Mexico this year alone. But the H-2A program comes with massive administrative challenges impacting nearly every grower who utilizes the program.

Growers using the H-2A program are required to aggressively recruit U.S. workers, and to file detailed recruitment reports. State workforce agencies routinely refer workers to H-2A employers during the first half of the employer’s H-2A contract. Many referred workers never show up for an interview. Of those that do, few actually report to work. And far fewer stay more than a week or two. Employers who routinely perform pre-employment drug testing are being told they cannot drug test worker referrals.

Users of the program are required to advertise for jobs not later than 75 days prior to the date of need; the practical effect of this is to advance the minimum start date of the H-2A process to more than 80 days. This is so far in advance that many growers have not yet made crop decisions for the year. For apple growers, it is very difficult to predict the number of workers needed as well as the start and stop dates accurately that far in advance. Weather conditions throughout the year play a major role in the size of the crop as well as the start and stop dates for pruning, pest management, harvest and other activities.

A few years ago a neighbor of mine here in Virginia who uses the program realized that due to weather conditions he would need his fall workers to stay several weeks longer than initially anticipated. He filed the necessary paperwork and asked for an extension. By the time he heard back it was nearly Easter the next year, the crop and the workers were long gone. He had to leave apples on the trees.

Just last month, apple growers in the Northeast had a near-disaster when the State Department made a last minute ruling putting the application of hundreds of Jamaican workers in jeopardy just days before the harvest was to begin. Members of Congress intervened and the workers arrived on time (or nearly on time) but just a few more days of inaction could have meant losses estimated at \$95 million for affected growers.

Many of these problems pre-date the Obama Administration. During the Bush Administration, one long-time user had his application *rejected* because – when he could not fit the entire answer to a question on the form in the space provided he wrote "see attachment." The H-2A administrators at the Department of Labor (DOL) told him that he should have fit as much of the answer as possible in the box and then said "see attachment." Another apple industry leader had questions about his applications and had a staff person from his operation spend literally an entire day hitting the redial button on the telephone before she finally got an answer at the DOL office in Chicago. Close to home, the Frederick County Fruit Growers Association, on behalf of five growers, sent five identical H-2A job orders at the same time to DOL's Chicago Processing Center. Three orders were accepted, two were sent back for changes and the changes demanded were different for each of those two.

So what is the answer? Congress and the President must address this problem *NOW* – for the future of Glaze Orchards and other businesses like mine. A common sense approach is needed

both to reform the H-2A program and find a way to retain long-term valued employees. We must stop politicizing this issue and instead keep in mind that farms and businesses, jobs, rural economies, and our national food security are on the line. That is why I strongly support the AgJOBS legislation.

The AgJOBS bill has been available to Congress for consideration and action since at least the year 2000. And yet, no action has been taken. Some refuse to consider any measure that provides a realistic solution for the experienced and hard working souls whose labor feeds us all. Some refuse to take up worthy individual measures as if every problem with our immigration system can or must be fixed at once. Yet, the costs of inaction are accumulating.

Save our farms, save U.S. jobs, save our rural communities and economies, save our American food supply. Compelling reasons to act. I sincerely hope you will.

Ms. LOFGREN. The gentleman's time has expired.
We will turn now to Mr. Rodriguez.

**TESTIMONY OF ARTURO S. RODRIGUEZ, PRESIDENT,
UNITED FARM WORKERS OF AMERICA**

Mr. RODRIGUEZ. Good morning. I would like to thank Chairwoman Lofgren, Chairman Conyers, Ranking Member King, and all the Members of the Committee for holding this hearing and for inviting us. My name is Arturo Rodriguez, and I am president of the United Farm Workers of America.

And joining with me today are five farm workers that I would like to ask them to stand up and then raise their hands when I mention their names.

Isabel Rojas has 40 years working in the fields. She started at age 12. Rogelio Luna started at age 16, has 46 years working in the fields. Amparo Flores, started at 14, 33 years working in the fields. Teresa Serrano, started at 14, working 43 years in the fields. Alfredo Zamora, 17 started working, and has 34 years working in the fields.

Very proud to be with all of them here today.

Today, across America, the harvest season is reaching its peak. More than a million men, women, and children are toiling in our Nation's fields, producing our fruits and vegetables and caring for our livestock.

Most Americans have the luxury to operate in ignorance or denial about how the food we eat gets on our tables. Agriculture in the United States is dependent on a hardworking, dedicated, tax-paying, immigrant workforce. Three-quarters of all farm workers are born outside the country today. These are the facts.

America needs these workers. Everyone in this room is directly sustained by their labors every day. If you had a glass of Florida orange juice with your breakfast this morning, it is almost certain the oranges that went into that juice were picked but unauthorized workers. If you had milk on your cereal, it is likely that the workers who milked the cows didn't have the right papers. When we sit down every day to give thanks for our many blessings, most of the food on your table has been harvested and cared for by unauthorized workers.

There is another indisputable fact: The life of a U.S. farm worker in 2010 is not an easy one. Most farm workers live in poverty, endure poor working conditions, and receive no government assistance. Undocumented farm workers take jobs other Americans won't do, for pay other American workers won't accept, and under conditions other Americans won't tolerate.

Who is to blame? It is not the farm workers' fault that 15 States do not even provide the basic protection of workers' compensation if they are injured at work. It is not the farm workers' fault that, more than 70 years after Congress passed the National Labor Relations Act, farm workers still do not have a right to organize. It is not the farm workers' fault that, year after year, farm labor contractors violate the laws with impunity while the growers who employ the contractors avoid the responsibility for those workers.

Our society places all the risk and cost associated with the seasonal industry, featuring millions of short-term jobs, on the backs

of the worker. For example, if there is a freeze, as occurred many times recently in Florida, thousands of workers are left without work. There is no unemployment assistance for those workers during that particular period. Furthermore, if a worker is injured, oftentimes there is no real recourse, there is no access to worker compensation.

So we, the United Farm Workers, initiated the Take Our Jobs campaign, and we did invite citizens and legal residents to apply for jobs on farms across the country to supply our homes, restaurants, and workplace cafeterias, including those in our Nation's capital, with the food that fuels the people of this great Nation.

Since June the 24th, we received 8,600 inquiries through our Web site, takeourjobs.org, but only seven people have accepted those jobs on a full-time basis and continue to work in agriculture.

Indeed, if we deported all undocumented farm workers here now, the government estimates U.S. agriculture would need to hire at least 1 million citizens or legal residents to replace the immigrant laborers. A mass deportation of agriculture workers would cause the collapse of the agricultural industry as we know it. And we feel that would have a severe impact on maintaining a very much-needed industry in our society today, as well as providing American consumers with safe food.

We continue our work. We urge that AgJOBS be passed here by the Congress, that you seriously look at that and giving legal status to those farm workers that are here today. The growers, the employers, the agricultural industry is asking for a secure farm labor force. We think it is the obligation of this Committee, as well as this Congress, to take action immediately on that issue.

Now is the time for Congress to acknowledge its role in creating what exists today as our current farm labor crisis and to offer a real and lasting solution. It is time to acknowledge the dignity of the current farm labor workforce and ensure the safety and abundance of America's food supply by passing the AgJOBS bill. A failure to do so would be both a human and economic tragedy.

Thank you very much.

[The prepared statement of Mr. Rodriguez follows:]

PREPARED STATEMENT OF ARTURO S. RODRIGUEZ

Statement of

Arturo S. Rodriguez
President of United Farm Workers of America

Before the House Judiciary Committee's Subcommittee on Immigration,
Citizenship, Refugees, Border Security and International Law

'Protecting America's Harvest'

September 24, 2010

I would like to thank Chairwoman Lofgren, Chairman Conyers, Ranking Member King and all the members of the committee for holding this hearing and for inviting me. My name is Arturo Rodriguez. I am the president of the United Farm Workers of America.

Today, across America the harvest season is reaching its peak. More than a million men, women and children are toiling in our nation's fields producing our fruits and vegetables, and caring for our livestock. Most Americans have the luxury to operate in ignorance or denial about how the food we eat gets on our tables. We don't stop and think about how this rich bounty comes to supermarkets. We don't reflect on why Americans pay less for their food than people in other countries. And most Americans probably can't comprehend the immigration struggles of the farm workers.

Agriculture in the United States is dependent on a hard working, dedicated, tax-paying immigrant work force. Three-quarters of all farm workers are born outside this country. Since the late 1990s, according to government statistics, at least 50 percent of farm laborers are foreigners who are not authorized to work legally in the United States. Our union's experience is also that the great majority are undocumented.

These are facts. It is time for Congress to look beyond the harsh rhetoric of the anti-immigrant lobby and their talk show bullies and recognize what everyone knows is true:

America needs these workers. Everyone in this room is directly sustained by farm laborers every day.

- If you had a glass of Florida orange juice with your breakfast this morning, it is almost certain the oranges that went into that juice were picked by unauthorized workers.
- If you had milk on your cereal, it is likely that the workers who milked the cows didn't have the right papers.

- When we sit down every day to give thanks for our many blessings, most of the food on your table has been harvested and cared for by unauthorized workers.

There is another indisputable fact: The life of a U.S. farm worker in 2010 is not an easy one. Most farm workers live in poverty, endure poor working conditions and receive no government assistance. Undocumented farm workers take jobs other American workers won't do, for pay other American workers won't accept, and under conditions other American workers won't tolerate.

Who is to blame?

- It is not the farm workers' fault that 15 states do not even provide the basic protection of workers compensation if they are injured at work.
- It is not the farm workers' fault that more than 70 years after Congress passed the National Labor Relations Act, farm workers still do not have the right to join a union to improve their wages and working conditions, except in California.
- It is not the farm workers' fault that year after year, farm labor contractors violate the laws with impunity while the growers who employ the contractors avoid any responsibility for the workers who are abused on their farms.
- It is not the farm workers' fault that Congress never acted on the recommendations of the Commission on Agricultural Workers authorized as part of the Immigration Reform and Control Act of 1986—recommendations aimed at providing a stable, legal workforce for American agriculture.

Our society places all the risks and costs associated with a seasonal industry--featuring millions of short-term jobs--on the backs of the workers. For example, if there is a freeze, as occurred last year in Florida and thousands of workers are left without work, there is no unemployment assistance even though emergency aid is promptly extended to agricultural employers. Furthermore, if a worker is injured on the job or stiffed on payday, too often there is no real recourse. Is it any wonder that Americans don't want these jobs?

In an era of high unemployment, undocumented workers are convenient scapegoats for our nation's economic woes. Many associate high unemployment with foreigners taking away jobs from U.S. citizens. There are movements afoot to remove undocumented workers from the country.

Thus, the United Farm Workers initiated the "Take Our Jobs" campaign. We invite citizens and legal residents to apply for jobs on farms across the country to supply our homes, restaurants and workplace cafeterias (including those in our nation's capitol) with the food that fuels the people of this great nation.

Since June 24, we received 8,600 inquiries for information through our web site (www.takeourjobs.org) but only seven people have accepted jobs or have been trained for

agriculture positions. Unfortunately, seven new farm workers are not enough to make our food supply stable, reliable and of high quality.

Indeed, if we deported all undocumented farm workers here now, the government estimates U.S. agriculture would need to hire at least one million citizens or legal residents to replace the immigrant laborers. A mass deportation of agricultural workers would cause the collapse of the agricultural industry as we know it.

The UFW has proposed a bi-partisan solution to this dilemma: The Agricultural Job Opportunities, Benefits and Security Act, or "AgJOBS" bill. The bill is supported by agricultural employers, who have worked on this legislation with the UFW for a decade. Both employers and workers see this bill as a way for those who care about the industry and workers to move past blame, acknowledge past wrongs and create a new paradigm.

Because our current farm labor force is comprised of professional farm workers with essential skills needed to sustain the viability of the agricultural industry, AgJOBS would give undocumented farm workers presently here the right to earn legal status by continuing to work in agriculture. Representatives Adam Putnam and Howard Berman and Senators Diane Feinstein and Richard Lugar are the principal authors of the legislation.

Now is the time for Congress to acknowledge its role in creating the current farm labor crisis and to offer a real and lasting solution. It is time to acknowledge the dignity of the current farm labor workforce and ensure the safety and abundance of America's food supply by passing the AgJOBS bill. A failure to do so would be both a human and economic tragedy

Thank you.

Ms. LOFGREN. Now we will turn to our—

Mr. CONYERS. Madam Chairman, could I just say that, after listening to Dr. Carol Swain, I withdraw my previous request that I had made to Stephen Colbert.

Ms. LOFGREN. Thank you Mr. Chairman.

And we will turn now to Mr. Colbert for his 5 minutes of testimony.

**TESTIMONY OF STEPHEN COLBERT, HOST,
THE COLBERT REPORT, COMEDY CENTRAL STUDIOS**

Mr. COLBERT. Good morning. My name is Stephen Colbert, and I am an American citizen. It is an honor and a privilege to be here today.

Congresswoman Lofgren asked me to share my vast experience spending 1 day as a migrant farm worker. I am happy to use my celebrity to draw attention to this important, complicated issue. And I certainly hope that my star power can bump this hearing all the way up to C-SPAN1.

As we have heard this morning, America's farms are presently far too dependent on immigrant labor to pick our fruits and vegetables. Now, the obvious answer is for all of us to stop eating fruits and vegetables. And if you look at the recent obesity statistics, you will see that many Americans have already started.

Unfortunately, my gastroenterologist, Dr. Eichler, has informed me in no uncertain terms that they are a necessary source of roughage. As evidence, I would like to submit a video of my colonoscopy into the congressional record.

Now, we all know there is a long tradition of great nations importing foreign workers to do their farm work. After all, it was the ancient Israelites who built the first food pyramids. But this is America. I don't want a tomato picked by a Mexican. I want it picked by an American—then sliced by a Guatemalan and served by a Venezuelan in a spa where a Chilean gives me a Brazilian.

Because my great-grandfather did not travel across 4,000 miles of the Atlantic Ocean to see this country overrun by immigrants. He did it because he killed a man back in Ireland. That is the rumor. I don't know if that is true. I would like to have that stricken from the record.

So, we do not want immigrants doing this labor. And I agree with Congressman King, we must secure our borders. Of course, I am sure Arturo Rodriguez is saying, "Who, then, would pick our crops, Stephen?" First of all, Arturo, don't interrupt me when I am talking; that is rude. Second, I reject this idea that farm work is among the semi-mythical jobs that Americans won't do. Really? No Americans?

I did, as part of my ongoing series "Steven Colbert's Fall-Back Position," where I try other jobs and realize that mine is way better. I participated in the UFW's Take Our Jobs campaign, one of only 16 people in America to take up the challenge. Though, that number may increase in the near future, as I understand many Democrats may be looking for work come November.

Now, I will admit, I started my workday with preconceived notions of migrant labor. But after working with these men and women, picking beans, packing corn for hours on end, side by side, in the unforgiving sun, I have to say—and do I mean this sincerely—please don't make me do this again. It is really, really hard.

For one thing, when you are picking beans you have to spend all day bending over. It turns out—and I did not know this—most soil is at ground level. If we can put a man on the moon, why can't we make the Earth waist-high? Come on, where is the funding?

This brief experience gave me some small understanding of why so few Americans are clamoring to begin an exciting career as a seasonal migrant fieldworker. So, what is the answer? Now, I am a free-market guy. Normally, I would leave this to the invisible hand of the market. But the invisible hand of the market has already moved over 84,000 acres of production and over 22,000 farm jobs to Mexico and shut down over a million acres of U.S. farm land due to lack of available labor, because, apparently, even the invisible hand doesn't want to pick beans.

Now, I am not a fan of the government doing anything. But I have to ask, why isn't the government doing anything? Maybe this AgJOBS bill would help. I don't know. Like most Members of Congress, I haven't read it. But maybe we could offer more visas to the immigrants, who, let's face it, will probably be doing these jobs anyway.

And this improved legal status might allow immigrants recourse if they are abused. And it just stands to reason to me that, if your coworker can't be exploited, then you are less likely to be exploited yourself. And that, itself, might improve pay and working conditions on these farms, and eventually Americans may consider taking these jobs again.

Or maybe that is crazy. Maybe the easier answer is just to have scientists develop vegetables that pick themselves. The genetic engineers over at Fruit of the Loom have made great strides in human-fruit hybrids.

The point is we have to do something, because I am not going back out there. At this point, I break into a cold sweat at the sight of a salad bar.

I thank you for your time. Again, it is an honor, a privilege, and a responsibility to be here. I trust that, following my testimony, both sides will work together on this issue in the best interest of the American people, as you always do.

I am now prepared to take your questions and/or pose for pictures for the grandchildren. I yield the balance of my time. USA—number one!

[The prepared statement of Mr. Colbert follows:]

PREPARED STATEMENT OF STEPHEN COLBERT

Statement of

Stephen Colbert

The Colbert Report

New York City, NY

Protecting America's Harvest

Committee on Judiciary

Subcommittee on Immigration, Refugees, and Border Security

U.S. House of Representatives

Washington, DC

September 24, 2010

Good morning. My name is Stephen Colbert, television personality, comedian, and resident of New York. I would like to thank the Committee and its members for their time today and their open minds as I present my statement for the record.

In July of 2010--in the midst of Arizona's immigration firestorm--I welcomed Arturo Rodriguez, President of United Farm Workers of America, as a guest on my television show to discuss the impact on harvests in California's Central Valley. During our interview and subsequent conversation, I learned of his *Take Our Jobs Campaign*; offering unemployed Americans farm work, providing necessary training, and addressing the chronic and endemic shortage of agriculture laborers across the country. While an enthusiastic endeavor, the project recruited a mere three participants. As a comedian and satirist, the temptation of subjecting my character to manual labor proved impossible to resist. I offered to be the fourth.

Joined by Congresswoman Zoe Lofgren—longtime advocate for farm workers' rights—I traveled to upstate New York where I spent ten hours picking beans, packing corn, and learning about the stark reality facing American farms and farmers. I learned that many farms are closing, growers are planting less or switching to other crops, and the production of fresh foods and vegetables is moving abroad. I learned that American farmers have moved at least 84,155 acres of production and 22,285 jobs to Mexico, and that between 2007 and 2008, 1.56 million acres of US farmland were shut down. 1.56 million acres is about twice the size of Delaware.

entertainer turned migrant worker, and to shed light on what it means to truly take one of the millions of jobs filled by immigrant labor.

They say that you truly know a man after you've walked a mile in his shoes, and while I have nowhere near the hardships of these struggling immigrants, I have been granted a sliver of insight.

Thank you very much for the opportunity to share my testimony.

Ms. LOFGREN. Thank you very much.
Thanks to all of the witnesses for their testimony.
We will now begin questions of any of our witnesses. And we will begin—if Mr. Conyers is ready at this time, I will recognize Mr. Conyers for his questions for 5 minutes.
Mr. CONYERS. Thank you, Madam Chairwoman.

I appreciate all the testimony of all the witnesses.

I have to observe that Mr. Colbert's submitted statement was considerably different from the one that he presented, but that is a small detail.

Dr. Carol Swain, you have written and studied about this subject quite a bit. And what I am interested in knowing is—you spoke of a conversation you had with a grower who had a program to provide jobs to African Americans. But, in your written testimony, you state that he closed the program because he couldn't get Federal or State agencies to invest money.

Now, what it sounds like to me is that the grower couldn't make it profitable without government investment, right?

Ms. SWAIN. He invested a quarter of a million dollars of his own money. And he has worked with Blanche Lincoln and other Members of Congress on these agriculture issues. He is very much—this is a White man. He is very much involved—

Mr. CONYERS. Yeah, but he couldn't get enough money.

Ms. SWAIN. He is very much involved in issues affecting people that are disadvantaged—

Mr. CONYERS. I know he is a good guy, but he couldn't get enough money, right?

Ms. SWAIN. He could not get—

Mr. CONYERS. Is that right or wrong?

Ms. SWAIN.—State, local, or Federal officials to invest in a program that was providing employment—

Mr. CONYERS. Right.

Ms. SWAIN [continuing]. For Americans.

Mr. CONYERS. He couldn't get enough money, right?

Ms. SWAIN. I don't understand your point.

Mr. CONYERS. You don't have to understand the point. Is it right or wrong?

Ms. SWAIN. It is the responsibility—

Mr. CONYERS. He didn't get enough money, and that is why he went out of business, even though he invested a lot of his money, he was a good guy—

Ms. SWAIN. He didn't go out of business. Kerr Industries is a very well-known, profitable company. He didn't go out of business. He is a Nashville businessman.

Mr. CONYERS. But he closed the program.

Ms. SWAIN. He closed the program or he—

Mr. CONYERS. Why?

Ms. SWAIN [continuing]. Sold the program in Arkansas.

Mr. CONYERS. Why did he close it?

Ms. SWAIN. Because he could not get Members of Congress and State and local officials to be interested in the plight of disadvantaged Americans. And so he spends his energies in other places.

Mr. CONYERS. Do you really know that? I mean, I don't know anybody on this Committee and not too many in the Congress that aren't—

Ms. SWAIN. Mr. Conyers, you should read my book—

Mr. CONYERS. Just a moment, please.

Ms. SWAIN [continuing]. Especially the chapter on the Black Caucus and how they are not representing African-American interests on this particular issue.

Mr. CONYERS. Well, I am glad Maxine Waters isn't here today. Boy, oh, boy.

Well, the point that really this discussion comes down to is that Dan Lungren, my dear friend from California, former attorney general, he doesn't like the Berman bill, but he doesn't have a bill. Steve King and I are forming a committee afterward to make sure that—

Mr. LUNGREN. If the gentleman would yield, I do have a bill.

Mr. CONYERS. Oh, you do have a bill? Oh, thank you. What is the number? Well, we will find it. If you say you have one, your word is your bond.

But Steve King and I are forming a committee to recruit people.

And, Dr. Swain, now, you are from Vanderbilt. You must know that only 4 percent of the people doing this kind of stoop labor are African Americans, right?

Ms. SWAIN. If Americans are—

Mr. CONYERS. Right or wrong?

Ms. SWAIN [continuing]. Not doing these jobs, it is because they are not paying that much. The American workers are being undercut by the surplus of cheap labor. And there are people that prefer the cheap labor to paying a decent wage to American workers.

Mr. CONYERS. I presume you are saying "yes."

Ms. SWAIN. I am not in a court of law, so I don't have to say "yes" or "no."

Mr. CONYERS. Oh, okay. And you are not under oath either. Well—

Ms. SWAIN. But I do hope that you all would look at Mr. Kerr's suggestions. He has been a grower, you know, probably for 30 or 40 years, and he has the industry, and he has made some suggestions that I think that—

Mr. CONYERS. Well, have you looked at Mr. Rodriguez's suggestions?

Ms. SWAIN. I have read everyone's testimony.

Mr. CONYERS. Well, what do you think of his? He is representing all those fine people with the red shirts that are sitting in back of you. What do you think of his position?

Ms. SWAIN. I would like nothing better than to see farm workers well-paid and have decent working conditions.

Mr. CONYERS. Of course not—of course you do. But what do you think of Rodriguez's position? Are you in agreement with him?

Ms. SWAIN. As long as there are unemployment figures, right now for August, 7.9 percent unemployment in the agricultural sector, I cannot agree that there is a shortage of workers. I do believe that—

Mr. CONYERS. Okay. I am going to close, Madam Chair.

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

Mr. CONYERS. But could I invite you to join me and Mr. King on this committee since it is—

Ms. SWAIN. I would love to work on these immigration issues—

Mr. CONYERS. Would you join our committee after the hearing?

Ms. SWAIN [continuing]. Because I represent the American people. I am not a Member of Congress, but I represent the American people. I would love to work with you all.

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

Mr. CONYERS. Thank you very much.

Ms. LOFGREN. And the Ranking Member has asked that we go next to Mr. Smith, who will be recognized for 5 minutes.

Mr. SMITH. Thank you, Madam Chair.

Dr. Swain, thank you for your excellent testimony. And thank you for trying to answer all the questions that you have been asked.

I have a couple of more questions, and the first is this: Why aren't the interests of the American people being better represented?

Ms. SWAIN. Well, I think it is because the American people are not organized in lobbies. And most of them are trying to make a living, and so they are not in the pressure groups that seem to have the most influence over Members of Congress.

Mr. SMITH. Okay. And you mentioned or referred in your testimony to the danger of, sort of, what we might call "chain guest workers." And if they come in and are allowed to stay, they are going to probably take another job at a higher pay as soon as they can. What are the consequences of that?

Ms. SWAIN. Well, I mean, it is pretty clear that, in some areas of the country, African Americans, they work in hotels, they work in restaurants, they do yard work, they do that. There is a displacement of American workers. And whenever there is a crack-down, all of those jobs that we are told that Americans will not take, you see thousands of Americans—hundreds of them lining up to take those jobs.

And so, there are employers that would prefer immigrant labor because it is easier to exploit that labor.

Mr. SMITH. Okay. Thank you, Dr. Swain.

Mr. Colbert, I would like to ask you a couple of questions, if I could.

First of all, let me say that I think you made some good points, particularly about Democrats in November and particularly about the need for Members of Congress to read bills. I hope our Democratic congressional leadership was listening to you.

It so happens that I am going to take that as an endorsement of the Republicans' pledge to Americans, because we have a provision in there that requires the leadership to give 72 hours of notice of any bill that we have before we vote on it on the House floor.

Let me give you a second opportunity to be a little bit more serious, because I know you do take this subject seriously. And I would like to ask you about your experience when you worked for 1 day in the field in upstate New York.

How many other workers were there with you that day?

Mr. COLBERT. I didn't take a count. I am not good with math. I would say 50.

How many people were out in the field?

About 100 people were out there on the field.

Mr. SMITH. How many of those individuals were illegal, and how many were legal?

Mr. COLBERT. I didn't ask them for their papers, though I had a strong urge to.

Mr. SMITH. Okay. We assume that, if you don't know they were illegal, there might well have been legal workers there. Is that correct?

Mr. COLBERT. I don't know. I have no idea.

Mr. SMITH. Well, if you don't know, then it is hard to say that they were all illegal workers. My point being that if some of them were legal—and I presume they were—that does show that Americans are willing to do those jobs.

Do you know how much those workers were paid?

Mr. COLBERT. I don't know—even if they were legal, I don't know if they were American citizens.

Mr. SMITH. You don't know what?

Mr. COLBERT. Even if they were legal, I don't know if they were American citizens.

Mr. SMITH. Okay. Well, my question was, do you know how much they were paid by the hour?

Mr. COLBERT. I don't know. I don't know. I didn't do a good enough job to get paid, so I can't compare my salary to anyone.

Mr. SMITH. Ah, right.

Mr. COLBERT. I was actually asked to leave.

Mr. SMITH. Gosh. Well, to me, how much they get paid is a pretty serious subject. And if they need to get paid more for us to attract American workers, we should, I think, do so.

I know you are an expert comedian. I know you are an expert entertainer. I know you have a great sense of humor. But would you call yourself an expert witness when it comes to farm labor issues or not?

Mr. COLBERT. I believe I was invited here today by the congresswoman because I was one of the 16 people who took the United Farm Workers up on the experience—

Mr. SMITH. Right.

Mr. COLBERT [continuing]. Of having migrant farm work for a single day.

Mr. SMITH. Does that—

Mr. COLBERT. And if there are other Members of the Committee who did that, then there is no purpose of me being here.

Mr. SMITH. Right. Does 1 day in the field—

Mr. COLBERT. But if there isn't, then I might be able to give you some insight.

Mr. SMITH. Does 1 day working in the field make you an expert witness?

Mr. COLBERT. I am sorry? I can't hear you.

Mr. SMITH. Does 1 day working in the field make you an expert witness, do you think?

Mr. COLBERT. I believe 1 day of me studying anything makes me an expert at something.

Mr. SMITH. Is that to say, it is more work than you have ever done before, right?

Mr. COLBERT. Excuse me?

Mr. SMITH. It is more work than you have ever done before—

Mr. COLBERT. It is certainly harder work than this.

Mr. SMITH. Yeah. Is it harder work than the comedy show?

Mr. COLBERT. Excuse me?

Mr. SMITH. Is it harder work than the comedy show?

Mr. COLBERT. Absolutely harder than punditry.

Mr. SMITH. And you don't want to return to it. Okay.

Mr. COLBERT. I will never—I don't even want to watch "Green Acres" anymore.

Mr. SMITH. Okay. Well, like I say, I am happy you are here.

Mr. COLBERT. Thank you.

Mr. SMITH. I do think you have made some good points. But—

Mr. COLBERT. By the way, I do endorse your policies. I do endorse Republicans. You asked me if I endorse Republican policies, and I do endorse all Republican policies without question.

Mr. SMITH. Okay. Including the requirement that Members have 72 hours before we vote on it?

Mr. COLBERT. Absolutely.

Mr. SMITH. Thank you for your endorsement of the "Pledge to America."

And, Madam Chair, I will yield back. Thank you.

Ms. LOFGREN. The gentleman yields back.

I would turn now to the gentlelady from Texas, Ms. Sheila Jackson Lee, for her 5 minutes of questions.

Ms. JACKSON LEE. Thank you very much, Madam Chair. This is a crucial hearing because I think it involves constitutional principles of the equality and justice that we demand in this Nation. And I thank the witnesses for their presence here today.

I want to say to Dr. Swain—and I don't disagree with you—that this Nation should not turn a blind eye to illegal immigration. In fact, we should engage. And, frankly, for almost a decade, in my tenure in this Congress, we have tried to fairly engage in the question of illegal immigration by putting forward a plan of comprehensive immigration reform that addresses the question of a process, if you will, of access to citizenship.

Lamar Smith and I, over the years, have talked about the importance of providing a widespread view of Americans and creating jobs and ensuring that there is an investment in the skills of Americans. And so we probably don't disagree on that.

We find ourselves, however, in the political climate where, if right was right and truth was truth, we could not find on this Committee a bipartisan pathway to be able to effectively deal with fixing the immigration system, doing some of the things that you have said, which means that we could, in fact—Members of this side of the aisle have agreed that we could take some of those fees and invest in training, for example. We did that, training nurses, training farm workers maybe, training others that happen to be, as you have declared, people here in the United States.

So we wish we could take up your challenge, because that would be the right thing to do. But we find ourselves in a dilemma where we can't get anyone that is on the other side of the aisle to look reasonably at the crisis that we face.

To Mr. Colbert, let me say to you, your last sentence in your testimony you submitted is something I agree with: "They say that you truly know a man after you have walked a mile in his shoes, and while I have nowhere near the hardships of these struggling immigrants, I have been granted a sliver of insight."

So I want to pose these series of questions, and start first with Mr. Rodriguez.

Mr. Rodriguez, how do you rebut the comment that Dr. Swain made, that your effort was a bogus effort to try and find American workers to work in the farms of America?

Mr. RODRIGUEZ. Let me just first respond, thank you very much, Congresswoman Lee.

We came up with this idea and this concept actually sitting down and meeting with some of the farm workers that I just introduced to you. We were trying to discuss how do we help sensitize and inform the American public about this particular issue in a way that everyone could hopefully better understand.

And so, as a result of that, the workers came up with the suggestion, well, let's invite legal citizens, let's invite politicians, let's invite policymakers to come and work in the fields so they can understand that farm workers are not here and immigrant workers are not here to take away American jobs.

So, as a result of that, after discussion, we came up with the idea of the Take Our Jobs campaign. And, consequently, we received a very interesting response from people, upon doing that. And when Mr. Colbert decided to also invite us to come on the show and talk about that, it further gave more visibility to that particular issue.

Ms. JACKSON LEE. But the question is, she said that you were not serious.

Mr. RODRIGUEZ. We are very serious. We wanted to prove a point.

Ms. JACKSON LEE. And so, you refute quickly that you were not serious. You worked hard, and continue to work hard? Is the program still in place?

Mr. RODRIGUEZ. We work very hard. We have people dedicated every day to listening to individuals that call into us, checking our Web sites, trying to assist—

Ms. JACKSON LEE. So you are serious about it—

Mr. RODRIGUEZ. We are extremely serious.

Ms. JACKSON LEE [continuing]. And you welcome workers.

Mr. Colbert, when I spoke about the landscape of immigration reform, I take it that you have had enough experience that—are you speaking only to farm workers? Or do you see the value in America answering the call and concern of Dr. Swain and not turning a blind eye to immigration and looking at immigration comprehensively?

Do you think it is long overdue for this Nation to pass a comprehensive immigration reform plan that looks at all aspects of those who are undocumented who are seeking an opportunity, particularly young people who have come here and are undocumented and need to access our colleges and schools?

Mr. COLBERT. I think there are way too many undocumented Mexican workers here in the United States doing jobs. And I think that we have ignored this issue for too long, and it is time to roll up our sleeves and face this issue, *mano a*—whatever the Spanish word for “*mano*” is.

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

Ms. JACKSON LEE. Well, Madam Chair, let me just conclude by saying I appreciate Mr. Colbert, but I hope that this hearing will lead to the foundation for comprehensive immigration reform,

which I truly believe is the underpinnings of what America is all about.

Mr. Rodriguez, no job should be diminished—no job. And the workers that are behind you, their job is not diminished. And I think we can work alongside of each other and tell America that we are better working together.

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

Ms. JACKSON LEE. I yield back. Thank you, Madam Chair.

Ms. LOFGREN. Before recognizing Mr. Poe, I just would want to note for the Ranking Member that the Democratic rule is that all bills must be posted 72 hours in advance on the Internet.

And I would yield now to Mr. Poe for his 5 minutes of questions.

Mr. POE. Thank you, Madam Chair.

Since I have no life, I actually do read the bills, including the health care bill. And I also read the Arizona law, unlike some people in the Administration.

But I want to thank you all for being here. It is always good to see a fellow Texan, Mr. Rodriguez, for being here, as well.

There are several issues that I see: one, legal immigration versus illegal immigration, legal workers versus illegal workers. I think that the problem is the illegal workers. If the country needs more legal immigrants to work, that is an issue that needs to be solved. And the answer is not to just allow more illegals in the country. The answer is to solve the legal process to come here to work as a migrant worker. That seems to be the problem, I think, should be solved.

The other issue I see is wages. Based on what your testimony, your written testimony is, a person that works as a worker in the field can make up to \$300 or probably \$360 a week. That varies from farm to farm. A person can draw unemployment in the United States as a citizen of up to about \$390 a week. So, if Americans are unemployed and receiving unemployment and the wages are so low in the farm industry, they lose the motivation to work because people in the farm industry are underpaid, whether they are legal worker or illegal workers.

And, as far as jobs that Americans won't do, I represent southeast Texas. I represent people that work offshore. And you talk about hard jobs, that is working offshore. Those hard jobs are a lot of jobs that are very tough for Americans to do. But they do that because they get compensated for the work that they do.

So, low wages seems to be the issue here, not whether or not we should allow people to stay in the country or be in the country illegally. Low wages; fix the process to let people come in if we need those workers, but deal with the 14 million unemployed Americans, 4.5 million of which are drawing up to \$390 a week unemployment for up to 99 weeks.

Now, Dr. Swain, I want to go back to some of your testimony and ask you to, kind of, rectify and resolve these issues that I have just mentioned and see how—because I represent a great number of minorities in Port Arthur, Texas. Fourteen percent of them are unemployed in Port Arthur, Texas.

And how would you see a system to create fair wages, compensated wages, wages where everybody is paying taxes, not just some people paying taxes? How would you see Congress moving in

a direction regarding legal immigrants to work and also getting more Americans working?

Ms. SWAIN. Well, the first thing I think that we need to do is, as I said before, enforce the existing laws and to put—the E-Verify program that the Federal Government already has—and many people are voluntarily signing up for that program—that program, if it was mandatory across the country, it would create opportunities for American workers. Because there are millions of illegal immigrants that are working, on the payrolls, that should not have jobs. These are jobs that should go to American workers.

And so I think that we need to enforce the laws that are on the books and then see how much surplus labor we may need. If we have a labor shortage after we enforce our laws, then we need to look at the guest-worker programs and see how they need to be changed.

I think it should be easier for people to come to the United States legally and that we should reward those that do it the right way, that come here legally, and not allow their interests, you know, to somehow be treated less importantly than the interests of people who come here illegally, they seem to get the worst end of the deal. I have friends that are immigrants that are trying to do it the right way, and many of them feel like that they would get a better deal if they were to fall out of status and become illegal, rather than to try to do it a way that is legal.

And I would like to respond to the comment about the Take Our Jobs initiative. The very fact that they named it “Take Our Jobs” is a deterrence, because it assumes—the name, itself, implies that the jobs belong to someone else. And so the immigrants are saying, “Take our jobs.” I don’t know many people that would want to take a job that belonged to someone else.

Mr. POE. Mr. Rodriguez, let me ask you a generic question. In the farm working industry, approximately how many people working in the industry that are foreign nationals are legally here, illegally here? Can you give me a percentage?

Mr. RODRIGUEZ. Sure. Thank you very much, Mr. Congressman. The estimate is, by the Federal Government, Department of Labor, about 53 percent. Based on my own experience, after being out there all the time, probably more like 70 to possibly 75 percent are unauthorized workers that are working in the agriculture workforce today.

Mr. POE. All right.

Just one last comment. I agree with Dr. Swain that we need to fix the legal immigration system. It is too complicated; it takes too long.

And, with that, I will yield back.

Ms. LOFGREN. The gentleman yields back. Thank you very much.

And I will turn now to the gentlelady from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Madam Chairwoman. I find this hearing to be most interesting.

And the question of whether or not immigrant workers are taking jobs from Americans and African Americans has been mentioned an awful lot here today. And I am so pleased to hear that so many people are interested in African Americans getting jobs.

I am also interested in the fact that, all of a sudden, we are hearing discussion about increased wages, when one of the biggest struggles we have had in this Congress is increasing the minimum wage. And so, this is very enlightening to me, as I listened to some of the interest, particularly of some of my colleagues on the opposite side of the aisle.

Let me just say this, that of course there are Americans and African Americans who would work on some of these jobs. But let me just assure you, for the people in my district, this is not a high priority for the kind of job they would like to have. I imagine very desperate ones would take some of these jobs for a limited period of time, you know, if it concerned their survival. But if I had to support subsidizing corporations to hire workers, I would not put my emphasis on farm labor. I would put my emphasis on construction jobs.

For example, in my district, a lot of young people who are not well-educated ask for and seek out the opportunity to work on construction jobs. We had one program that was laying fiberoptics that many of the young people who did not have skills learned to do this kind of work.

So, whether we are talking about in construction or communications industry, where training is available and possible, I would subsidize employers to increase those kinds of jobs.

I would also subsidize employers to bring jobs from offshore back into the United States, where they would be in the inner cities and in the urban areas. Because this business of talking about transportation from urban areas to rural areas is just unreal. It just—it is not something that is workable.

So I would like to focus a little bit on comprehensive immigration reform, because I think that is really what we should be talking about. And I would like to ask my friend, Mr. Rodriguez, who I have known for many years—and I am proud to say that I was in the California legislature when Howard Berman led the way on all of the reforms that we did for immigrant workers, working with Cesar Chavez. And I think he was one of the most profound organizers of our time.

Let me ask you, in immigration reform, if we talk about allowing citizenship to be made available to farm workers, how would you frame that? Would you say that, if you have been here working without papers for 4 years, 5 years, 2 years, 3 years, 10 years, you should be afforded citizenship? How would you do that?

Mr. RODRIGUEZ. Well, thank you very much, Congresswoman Waters.

In fact, we do have a solution. And what the legislation that Mr. Berman and the other Member of the Congress, Adam Putnam, have put together and fashioned to deal with the agricultural industry specifically is that a worker that worked 150 days in agriculture in the previous 2 years would be allowed to become part of the AgJOBS program, as we call the legislation.

But farm workers would not get automatic legalization, as we talked about before. They would be put into a program of earned legalization, whereby they would have to continue working in agriculture for the next 3 to 5 years. In addition, they would be paying

upwards of \$500 million, overall within the entire group, of fines for being here and coming into the country undocumented. And—

Ms. WATERS. Let me just ask you quickly, because I want to get this in on comprehensive immigration reform.

Mr. RODRIGUEZ. Sure.

Ms. WATERS. Would you support significant fines for employers who break the law?

Mr. RODRIGUEZ. Once we get this settled and once we deal with this particular issue, yes, I think there should be an enforcement policy put into place to make sure that we don't have continued immigrants coming in that would violate those laws.

Ms. WATERS. Do you think there are some immigrants who should be deported for some reason, whether they are criminals or some other kinds of reasons?

Mr. RODRIGUEZ. If an immigrant has committed and violated serious laws here within our country, yes, that is a reason for their deportation at this time.

Ms. WATERS. And would you support in comprehensive immigration reform some way of keeping families together, where you have undocumented immigrants who have been here for a period of time, children were born here, they are legal, and at some point in time the mother or father may be faced with deportation? How would you deal with that?

Ms. LOFGREN. The gentlelady's time has expired, so we will ask him to answer.

Ms. WATERS. Thank you.

Mr. RODRIGUEZ. I would support any immigration reform, whether it is comprehensive or AgJOBS or the DREAM Act, that worked to keep families together. That is the basis of our society, to have families together. Immigrant families want to be together just like any other American family.

Ms. WATERS. Thank you, Madam Chair.

Ms. LOFGREN. Thank you.

And we turn now to Mr. Lungren for his 5 minutes.

Mr. LUNGREN. Thank you very much, Madam Chair.

I just might respond, when you said that there is a Democratic caucus rule of a 72-hour notice, perhaps you ought to inform your leadership, since just 3 weeks ago I received no notice of a bill that contained part of a bill I had introduced to get rid of the 1099 requirement on small business that is in the health care bill. Our leadership was given 10 seconds' notice—10 seconds' notice.

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN. Happy, if you can give me more than 10 seconds.

Ms. LOFGREN. It is not a Democratic caucus rule. It is a House rule. And the measure that the gentleman is discussing was actually on the suspension calendar, which has a different—

Mr. LUNGREN. Ah. Okay. So there is an exception to the 72-hour rule—

Ms. LOFGREN. On the suspension calendar.

Mr. LUNGREN [continuing]. So long as you are in command.

Ms. LOFGREN. Which requires a two-thirds votes, as you know.

Mr. LUNGREN. I understand that. But let's just make it clear: Ten seconds is not 72 hours. And perhaps you ought to inform your leadership of that, rather than the caucus.

I would like to ask Mr. Rodriguez this. If you estimate that 75 percent of those working in the fields are here illegally, 25 percent, I presume, are here legally. How are we able to attract that 25 percent? Since, presumably, they are subjected to the same price structure and working conditions as the others.

Mr. RODRIGUEZ. Well, thank you very much, Congressman.

As I introduced the individuals that are here, there are a lot—there are tens of thousands of farm workers that are here legally, working here legally, that have been in agriculture for a long time, as the ones that I just introduced to you.

And they have been here—they have worked hard. They work with the employers that they enjoy working with. They enjoy the work that they do, and they continue to do so. They have good wages where they work at. They have good benefits, medical plan, pension plan, vacations, paid holidays, like any other American worker here in this country. And so—

Mr. LUNGREN. So are you telling us that the 25 percent that are successfully recruited to the agricultural fields are recruited successfully because they get appropriate wages and they get appropriate working conditions?

Mr. RODRIGUEZ. I think that is one factor. In addition to that, the employers that have unauthorized workers working with them also oftentimes want to see those employees continue working with them. They treasure those workers; they value those workers.

Mr. LUNGREN. I realize that, but that is not my question. My question is—I am trying to work this thing out and I am trying to figure out, if your premise is that we don't have people going into the fields because Americans won't take those jobs, you then tell me that 25 percent of those people in the fields are Americans. And so my question is, how were we able to successfully attract them? And is it different than the conditions and wages available to the other 75? And if that be so, could we attract a larger number of Americans replicating what we do for that 25 percent that are Americans working in the field?

Mr. RODRIGUEZ. I think our solution is realistic right now and practical. The agricultural industry needs these workers now. They have a workforce that they have worked with now for many years. All we are asking is to give them the opportunity to have legal status in this country.

Mr. LUNGREN. I understand that, but that is not my question.

Mr. RODRIGUEZ. And then, as a result of that, conditions will improve, wages will improve. The likelihood of American consumers having a good, safe food supply will also be secure.

Mr. LUNGREN. Okay. Thank you, Mr. Rodriguez.

And I would like to ask you both you and Mr. Glaize, is it an absolute essential to the AgJOBS bill that the people who would benefit from it on the workers' side are allowed to be on the path to citizenship and, thereby, be put in the front of the line of others who followed the law?

Mr. RODRIGUEZ. They are not going to be put in front of the line. Farm workers that would be included under AgJOBS would have to work in agriculture for the next—minimally, for the next 3 to 5 years in order to be qualified to even get a green card. They would not get a green card until after they have been able to dem-

onstrate that they have continued to work in agriculture for a minimal—for a certain period of time. And then they will be able to get a green card, which does not put them in front of the line. It just gives them an opportunity then to go and file for—

Mr. LUNGREN. Okay. Well, let me ask this question. One of the major sending countries is Mexico. How long does one have to wait in Mexico if one wants to get in line to get legal entry into the United States and work toward a green card?

Mr. RODRIGUEZ. I have no idea. I don't have any idea because the workers that I work with, unfortunately, come in a different way.

Mr. LUNGREN. Well, but, see, that is the question of whether they are in the front the line or not. If people have to wait longer than 3 years or 5 years or 8 years or 10 years to get in line legally and you are saying that these folks qualify automatically, they are being put in the front of the line.

Mr. GLAIZE, is it—

Mr. RODRIGUEZ. Well, I mean—

Mr. LUNGREN [continuing]. Essential to your program—

Mr. RODRIGUEZ. Could I just clarify that one point?

Mr. LUNGREN. Well, let me just ask Mr. Glaize, it is essential to your program, Mr. Glaize, that they be put on the path toward citizenship, as opposed to another type of legal status?

Ms. LOFGREN. The gentleman's time has expired, so we will ask Mr. Glaize to respond.

Mr. GLAIZE. Congressman Lungren, let me say thank you very much for your efforts to actually fix this problem.

It is essential that the workers that are here now be allowed to have work authorization for a period of X number of years. The AgJOBS contemplates a fixing of the H2A program, which we have had lots of testimony here stating that—let's figure out to legally bring workers to pick these crops. That is of the utmost important.

In the meantime, I cannot afford to lose a crop 1 year. Now, the status down the road, I think that is a part of our American willingness to accept immigrants in this country. And putting them at the front of the line, I agree with Mr. Rodriguez, no, they don't go to the front of the line. They will have work authorization for a period of years, and then they can seek their citizenship at that time.

Mr. LUNGREN. Okay. Thank you, Madam Chair.

Ms. LOFGREN. Thank you. The gentleman's time has expired.

I recognize the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you, Madam Chairwoman.

And thank you to all of the panelists who are here today.

I have heard so many interesting and somewhat, I think, outrageous claims today, I kind of don't even know where to begin with some of the questioning. But I just want to start by making an observation.

If, as some members of the panel have suggested, these immigrant workers are taking jobs that Americans want, then I would expect that there would be zero unemployment in the agricultural sector, and I would expect that many, many Americans would be rushing during this tough economic time to take these jobs.

And yet, Mr. Rodriguez, how many people did you say actually inquired about going out to take a job in the fields?

Mr. RODRIGUEZ. We had about 3 million hits on our Web site since June 24th. Of that group, 8,600—8,600—were serious about trying to apply for it. And, of that group, we have documented seven people that are actually working out in the fields right now.

Ms. SÁNCHEZ. And did those seven remain in that job?

Mr. RODRIGUEZ. As far as we know right now, they are still working there, yes.

Ms. SÁNCHEZ. Okay. But there was a huge drop-off between the inquiries and the actual people who signed up and went out and did that work; is that not correct?

Mr. RODRIGUEZ. An incredible drop-off.

Ms. SÁNCHEZ. Okay.

And forgive me, but I am just going to add my 2 cents here. I think that the Take Our Jobs campaign, I have a hard time believing that if you just called it “Take a Job” campaign that those 8,000 people would all be working in the field today. But that is just my personal opinion. I don’t think the semantics of what you call the campaign—as I think once people probably figured out what the work actually entailed, that is where the big drop-off came.

Would you say that that is maybe an accurate assessment, Mr. Rodriguez?

Mr. RODRIGUEZ. Yes. And we were not trying to—we didn’t go to any experts to try to design this campaign. As I mentioned earlier today in my testimony, it was farm workers who really suggested to invite people to come and work in the fields, because they were tired of hearing all the criticism that they, as farm workers, as immigrants, were taking away American jobs. So—

Ms. SÁNCHEZ. Thank you, Mr. Rodriguez. And I am not trying to cut you off, but I am trying to get through some of these questions.

Now, the next point that I find incredibly interesting is that I am hearing from colleagues on the other side of the aisle and some of the panelists that, well, the reason why Americans don’t take these jobs is because, gosh, the pay isn’t high enough and, you know, the working conditions are bad.

And I think it is interesting because—correct me if I am wrong—most agriculture workers in this country aren’t covered by things like workers’ compensation law, minimum wage law, overtime law, right to organize. Am I correct in stating that, Mr. Rodriguez?

Mr. RODRIGUEZ. Yes, you are.

Ms. SÁNCHEZ. So it seems to me that if you really want the wages to go up in this industry, as you say you do, so that American workers would want this job, that my colleagues on the other side of the aisle and some of the panelists would really be advocates for labor reform, particularly in the agricultural sector.

And yet, I have in front of me some information regarding some votes that we have taken here in Congress on specific things that would help raise wages for workers, like H.R. 2, the minimum wage increase, increasing the Federal minimum wage by \$2.10 over 2 years, from \$5.15. And I note that Mr. King, Mr. Gallegly, and Mr. Lungren all voted “no” on that particular bill. And I just find it, sort of, contradictory that they would be saying the wages need to be higher, and yet, when we try to raise the wages for workers across this country, they are voting “no.”

I want to get on to Mr. Glaize—

Mr. LUNGREN. Will the gentlelady yield?

Ms. SÁNCHEZ. I will not. I have some questions that I want to ask.

Mr. Glaize, you spoke of the number of farms, including many in my home State of California, who have moved or are considering moving their operations overseas. And I would like for you to talk in a little bit greater detail about why a farm would move operations to another country, and what that does to our local economies in this country when those farms relocate, and how can we reduce the incentive for those farms to relocate in other countries.

Mr. GLAIZE. Thank you, Congresswoman.

Well, essentially, I am a small-business person, and I need to make a profit. I operate by supply and demand, world supply. And, essentially, if a farm is going to not be able to grow, harvest, pack, and sell its crop at a profit, then that farmer is going to go out of business.

The foods that that farmer was producing will come from somewhere else. Our apples compete with Chilean apples right now. The price of our Galas are low right now, probably by about \$2 a box, because of the Chilean apples that are in the market.

If I cannot continue to grow and produce apples and sell them at a profit, I will go out of business. I won't have anything to pass on to the kid that was holding up the picking bucket.

Ms. SÁNCHEZ. And everybody who is supported by that business here in the United States would lose their jobs, as well. Is that correct?

Mr. GLAIZE. Oh, certainly. By the time our—we invest \$1.6 million just to get our crop ready on the trees. That is spread out locally in our community.

Ms. SÁNCHEZ. Thank you.

And final question, and I know I am short on time. Mr. Colbert, after your experience of working in the fields, what they would have to pay you to do that as a career day-in and day-out, 365 days of the year?

Mr. COLBERT. Whatever the SAG minimum wage is.

Ms. SÁNCHEZ. Thank you. And I yield back.

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

We turn now to the Ranking Member, Mr. King, for his 5 minutes.

Mr. KING. Well, thank you, Madam Chair.

As I listened to the testimony here, I have accumulated a whole list of things that that need to be rebutted, not the least of which is the minimum wage position.

It is pretty interesting to me to hear the testimony of Mr. Glaize, that he pays his workers \$93 a day for 9 hours' work. Now, that works out to be \$10.33 an hour. And to hear Ms. Sánchez say that there are not laws that apply to ag workers—and it is true, to some degree—and we need to just increase the minimum wage so that we can increase the wages to farm workers and be accused of being, let me say, inconsistent with the rationale. But I think the evidence is right here before us. If Mr. Glaize is paying what he says—and I absolutely believe him—and the minimum wage in the United States is currently \$7.25 an hour, there must be a reason

Mr. Glaize pays more than the minimum wage. And that is called supply and demand, as I have heard some of the witnesses reference. And I am sure Dr. Swain would address that within that context.

I have said labor is a commodity. I have spent a lot of time as labor. I have spent more time as labor than anybody else on this panel. And it has always been supply and demand. And I have looked at the people that competed against me for those jobs, and I have known that I had to do a better job and show up on time and produce more work per hour or somebody was going to be looking over my shoulder to take that job. And I started on the pipeline in the construction business with those workers that dug ditch by hand, and if they got tired and couldn't dig and they had to stop and rest on the shovel, somebody was sitting on the dirt pile to come down and take the shovel out of their hands. These were Americans lined up to take jobs.

The back-of-the-line piece of this, Mr. Rodriguez's testimony that they would go to the back of the line—and I think it is important that we understand where that line is. If you look at the lines in each of the countries where people have lined up to legally apply to come to America—and I have great respect for those who want to achieve the American dream—but that line is about 50 million long, if you add up the accumulated visas out there in the various varieties that we have. And the waiting period of time from Mexico, I don't know that I can speak to that factually, but we know that is several years, and it might be 7 or 8 or 9 years. And it is about that period of time even to bring in a family member from, let's say, a foreign country.

So the back of the line—if we are going to talk about the back of the line, it is behind the 50 million. It is not in front of the 50 million.

And then I often hear the statement that they would—within the context of the broader version of comprehensive immigration reform, that they would learn English and pay a fine. And the fine started out at \$500 and went to \$750 and then perhaps \$1,500. Learning English is not a penalty. It is a good thing. Wherever in the world you have English, you can go anywhere in the world and get a job. So I would say that is a benefit to do that.

The 72-hour rule, yes, it exists, but think about—this subject is—not specifically addressed here in this testimony, this subject that we are talking about is the rule of law. And the 72-hour rule says Mr. Lungren has 10 seconds to know that a bill is coming up because the rule is waived or ignored or not respected. When we don't respect the rule of law, that is the product that we get. And so, I will say the central argument is an essential pillar of American exceptionalism, the rule of law. And we are trying to figure out how to reconcile it after it has been ignored for so long.

And I look back at—perhaps Dwight Eisenhower was the last President to advance an Administration that strictly enforced immigration law. And it has diminished under each Administration since that period of time. And we had a good program in the Bracero Program. But the 1986 amnesty act said, this will be the last amnesty ever—the last amnesty ever. And I remember Ronald Reagan at least was honest when he said, "I am signing the am-

nesty bill, but we are going to enforce immigration law.” And I believed him. And I still have those records that I kept with the applicants that came in on their I-9 forms, but nobody ever showed up to look at those documents.

And the enforcement diminished Administration after Administration. And now, there has been bred a contempt for the rule of law. And we are here with a debate before this panel that seems to argue that we should just simply disregard all the lawbreaking that is going on because we haven’t enforced the law. And now the argument that I have heard is we can’t enforce the law.

Well, we can, we must. We must reestablish the rule of law. And I don’t suggest that we go out and chase people down and round them up and put them in train cars to go back to their home country. I suggest that we enforce the law at the local level, with cooperation of local law enforcement officials, in the spirit of the 287(g) program.

I suggest that we look to each other, our neighbors, and understand that, if there is someone standing on the line, on the clock, being paid, and they are unlawfully working in the United States, then they are taking a job that a legal worker can do, whether they are a legal immigrant or whether they are an illegal immigrant.

And this country has an oversupply of underskilled labor. That is why the people that grew up around me that decided they didn’t want to go on and get a higher education can no longer punch the clock and make the same money that an educated high school teacher does. It is half the money, in my neighborhood.

And I would just conclude, as I watch the gavel start to move here. Rather than ask a question, I will just make this point.

I watched Mr. Colbert—I did finally watch you. I saw the video. I watched you picking beans, and I believe you did. And I also watched you, you said, packing corn. But I was watching you unpack corn. And I know you don’t do that out there on the cornfield. It gets packed into the crate and gets shipped out here. So I am just going to presume they ran the film backwards; you were making productive work.

And I would conclude my statement and yield back the balance of my time.

Ms. LOFGREN. The gentleman’s time has expired.

Mr. CONYERS. Madam Chair, could Mr. Colbert be given a minute or 2 to respond?

Mr. KING. Mr. Chairman, I didn’t actually ask a question, so—and I don’t think I disparaged him. I think I actually complimented him.

Ms. LOFGREN. Well, perhaps Mr. Gonzalez will give the witness a minute of his time.

Mr. Gonzalez is now recognized for 5 minutes.

Mr. GONZALEZ. Mr. Colbert, do you wish to respond to Mr. King?

Mr. COLBERT. I didn’t really understand the statement. It is confusing.

Were you implying that I was not actually doing the work that I was depicted as doing?

Mr. KING. Would the gentleman yield, Mr. Gonzalez? Would the gentleman yield?

Mr. GONZALEZ. Let's suspend all those rules, just since we are dealing with Mr. Colbert. He is just trying to respond to some sort of an opening statement or statement. You all can just talk to each other.

Ms. LOFGREN. So the gentleman will yield here.

Mr. COLBERT. That would be nice.

Mr. GONZALEZ. Sure.

Mr. KING. Thank you, Mr. Gonzalez, for yielding.

I only made the point that, in watching the film on YouTube of the event of you and Chair Lofgren working there on the farm, that as I watched you handling corn—in Iowa, we know corn, and that is what we do.

Mr. COLBERT. I know.

Mr. KING. And I know that actually there is corn that gets brought into Iowa, sweet corn, in wooden crates, like you were working with, that are wired together once they are full. And I thought it was curious that on the farm where you harvest the corn I was watching you actually unload a crate, rather than load the crate. So it was curious to me that it looked like the corn was going the wrong direction, and I only presumed they must have run the film backwards. That was my point.

Ms. LOFGREN. Well, I think that the question has now been cleared.

Mr. KING. And I yield back to the gentleman, Mr. Gonzalez.

Ms. LOFGREN. Mr. Gonzalez has the time.

Mr. GONZALEZ. So, Mr. Colbert, which direction was the corn going?

Mr. COLBERT. Well, I want to make sure that if I get this answer wrong I can't be held for perjury.

I was packing corn. I was a corn packer. And I packed it, I put it in the trucks, and I iced it down to keep it at 38 degrees so it wouldn't go through the process where the sugar turns into starch. And we got that corn out that day.

I actually was a corn packer. And I know that term is offensive to some people because "corn packer" is a derogatory term for a gay Iowan. And I hope I didn't offend anybody.

Ms. LOFGREN. Mr. Gonzalez?

Mr. GONZALEZ. Oh, I definitely will reclaim my time, at this point.

Dr. Swain, because of your background, your studies, your accomplishments, which are incredible, you have an idea about legal principles. And we are up here and we espouse them all the time. Most of us here are lawyers on this particular Committee. And you will hear the "rule of law," "nation of laws, not men." There is another one; it is "equal justice under the law." And I think we are familiar with that.

What you are going to be hearing from my colleagues on the other side, some of which are from the same State of Texas where I was born and raised, even the same city, is that the only solution for anyone here that doesn't have legal status, that is an "illegal," is deportation.

Do you agree with that, that one size should fit all, one punishment for all, and that is, you are not here legally, you shall be deported?

Ms. SWAIN. It is my understanding that the cases are heard individually by an administrative judge, and that judge has the discretion to look at particular circumstances. I know that there are people who accidentally fall into illegal status, and I think those—

Mr. GONZALEZ. Oh, no, no. We are talking about a farm worker that came here in violation of our laws to pick our fruits and vegetables. It wasn't a mistake.

Ms. SWAIN. I think that if a person came here, deliberately breaking the law, and they get caught, they should expect to bear the punishment. And if the judge says that punishment is deportation—

Mr. GONZALEZ. No, no. The judge really doesn't—I am just telling you from my experience, because I come from a city that has many, many immigration cases. I have been told that if you came here illegally, misrepresenting your status, came here in any way, you are barred from remaining in this country. So let's just assume I am right and that a judge has no discretion. Do you believe that that judge should have any other discretion other than deportation?

Ms. SWAIN. I think that we should enforce the laws on the book or we should change them if we are uncomfortable with enforcing them.

Mr. GONZALEZ. I agree with you. And that is what we are—

Ms. SWAIN. As long as there are laws are on the books, we have to enforce them.

Mr. GONZALEZ [continuing]. Trying to do with comprehensive immigration reform—

Ms. SWAIN. Well, the problem—

Mr. GONZALEZ [continuing]. That would stay true to our principle of equal justice under the law. Sometimes the laws don't work anymore; they are not applicable.

Ms. SWAIN. I agree.

Mr. GONZALEZ. They don't serve a social or human purpose. That is what we are trying to address.

But if you are of like mind with my colleagues on the other side of the aisle, then let me ask you this—

Ms. SWAIN. Could I say something?

Mr. GONZALEZ. Let me just finish, because Mr. Colbert and Mr. King used most of my time.

Ms. SWAIN. I am sorry.

Mr. GONZALEZ. If you have a death penalty, what I call the death penalty—and that is the ultimate punishment, and that is: You are here illegally, you get deported. But there are two parties to this action.

Why don't we close the business that is employing these individuals? We slap them on the wrist. We give them a small fine, place them on some sort of probation. But, truly, if you treat the employee in the absolute, why wouldn't you do that to the employer? Why do we have a range of punishment for the employer, but we don't have a range of punishment for the employee?

Because you are telling me who is being exploited and who is being victimized in a lot of instances in this country—and you seem to agree on that principle, that wages are somehow depressed,

working conditions can be deplorable. And, until they improve, we are not going to have a domestic labor market.

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

Ms. SWAIN. If it were up to me, I would throw the employers in jail. I think that they do get slapped on the wrist and that they are part of the problem and that that has to be addressed.

And the problem that I have with the way the Democrats seem to be defining comprehensive immigration reform is that it seems to be—it doesn't include what I would consider comprehensive, that you would look at all the different aspects of what feeds illegal immigration. It just seems to be about amnesty. To me, "comprehensive" means you look at all aspects of the problem.

Ms. LOFGREN. The gentleman's time has expired. And I would turn now to—

Mr. GONZALEZ. Yeah, Madam Chair, I appreciate it, but that word of "amnesty," especially coming from Dr. Swain, she knows better than using the word "amnesty." But she is clear that she wants to put the employers in jail, and I appreciate that.

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

We turn to the gentlelady from California, Congresswoman Chu.

Ms. CHU. Well, Ranking Member Smith questioned Mr. Colbert's expertise as a witness. However, I would like to point out that, in the past, Republicans have had witnesses such as Loretta Swit, who played "Hot Lips" Houlihan from MASH, to testify on crush videos; and that Republicans invited Clint Eastwood to testify before Congress about ADA lawsuits; and Republicans also invited Elmo to talk about music education at the House Appropriations Subcommittee on Labor/Health and Human Services.

Well, on another note, Mr. Colbert, thank you for attending this hearing and highlighting the plight of farm workers. The situation is, indeed, dire.

And I know from my State of California, I heard about the case of Mr. Asuncion Valdivia, who came from Mexico for a better life and took a job that few Americans wanted to do. Every day in the hot summer months, he picked grapes for 10 hours straight in 105-degree temperatures. And then one day he fell ill. He fell ill and could not stand up. And Giumarra Vineyards, rather than calling the ambulance, told his son to drive Mr. Asuncion home. On the way home, Mr. Asuncion died of heat stroke, and his son had to watch his father die of a preventable heat stroke at the age of 53.

And, in fact, this is only one of many stories like this. There have been 23 reported deaths since 2001. And those are only the reported deaths. But this was the last straw, and that is why I worked with Mr. Rodriguez and the UFW in carrying legislation to require water, shade, and rest periods on every farm so that outdoor workers could be protected.

So, I am wondering, Mr. Colbert, did any of the farm workers that you picked with talk about working conditions having to do with heat, with water, shade, rest periods, any of those kinds of things?

Mr. COLBERT. No, we didn't talk—thank you very much for asking me the question, first of all. But, no, we didn't really talk that much. I tried to engage them in conversation, but I don't speak Spanish very well, and they seemed very busy with the beans and

with the corn. And I tried to get them to sing field songs and that sort of thing, and they didn't seem to have any.

And so I never really found out about what their working conditions were like, in terms of what medical services were available to them or what health care was available to them or what kind of breaks were available to them. They seemed to be working the entire time.

Ms. CHU. Did you experience any of these issues pertaining to heat?

Mr. COLBERT. It was very hot. Yes, it was hotter than I like to be.

Ms. CHU. And considering the conditions, why would any American worker want to work on jobs like this?

Mr. COLBERT. I don't know if Americans would or would not want to work on jobs like this. I believe that Americans are tough. I agree with the congressman, that Americans are tough and they do tough jobs.

It is not a job I want to do, and not a lot of people took Mr. Rodriguez up on his offer. And it seems, from the statistics that my researchers found, that there is a lack of labor in parts of the United States, and that seems to say that Americans don't want to take these jobs. But I don't want to say definitively that they won't.

Ms. CHU. Mr. Colbert, you could work on so many issues. Why are you interested in this issue?

Mr. COLBERT. I like talking about people who don't have any power. And it seems like one of the least powerful people in the United States are migrant workers who come and do our work but don't have any rights as a result. And, yet, we still invite them to come here and, at the same time, ask them to leave. And that is an interesting contradiction to me.

And, you know, whatsoever you do for the least of my brothers. And these seem like the least of our brothers right now. A lot of people are least brothers right now because the economy is so hard, and I don't want to take anyone's hardship away from them or diminish it or anything like that. But migrant workers suffer and have no rights.

Ms. CHU. Well, thank you for that.

And, in response to Ms. Swain, I would say that, according to the most recent data, in 2007, 8.8 million Californians worked for minimum wage, many of them in undesirable jobs. According to your analysis, if we only paid Americans more, they would be willing to work in the fields, but 8.8 million are already taking that lower paycheck. We still don't see Americans flocking to work in the fields. And that, I think, says a lot.

And, with that, I yield back.

Ms. LOFGREN. The gentlelady yields back.

I will now recognize myself for 5 minutes.

And I think this has been a very helpful hearing. You know, as I have listened to my colleagues, I have heard really a plea that we upgrade the conditions of migrant farm workers.

And I have been thinking, as I was listening to Ms. Sánchez, that I might introduce a bill that provides for the rights of farm workers to organize as a labor union under national law. We have that in California. That we would make sure that farm workers,

migrant farm workers, are covered by workers' compensation, the minimum wage laws, that they also are covered by the overtime laws.

And I am hoping that when I do, that those who have spoken so passionately about the need to upgrade the conditions for farm workers will be among the first to ask to cosponsor that bill. And I will be working with Ms. Sánchez to do that.

You know, in my career prior to being in Congress, I actually was an immigration lawyer at one time and I taught immigration law part-time. And I am very mindful that the laws are important but the Congress makes the laws.

And, currently, for those individuals who wish to immigrate to the United States who do not have a college degree, we allocate 5,000 visas a year. So when people say you ought to do it the legal way, I think those individuals probably don't know that there are only 5,000 visas a year and we have 2 million farm workers.

Now, I do think it is important that we make available first all jobs to the people who are here. But as the campaign of the Farm Workers has shown, there are some jobs that are not a good fit for people who are unemployed. And part of the problem here is that these are seasonal migrant jobs.

And I was very pleased to go to New York and look, with Mr. Colbert, at the farm there. But I am mindful of my trip earlier this year to the strawberry farm outside of my district, where, luckily, the farm workers are represented by the United Farm Workers. Those migrants farm workers earn \$18,000 to \$19,000 a year. They have health care benefits. They have a pension plan. They are provided housing. And, in talking to their employer, they have been unable to get Americans to come take these jobs, because they are killer jobs. I mean, it is—I was out there picking those strawberries, and that is just a fact. We could say that is a good idea or a bad idea. That is the reality.

In reading Mr. Glaize's testimony and understanding in California the number of farms that have simply folded and gone off farm, this has implications for the entire American workforce, upstream, downstream. We have three to four jobs that Americans are doing for every migrant farm worker who is here. And so, if those farms close and go offshore, it is not just the farm workers who are displaced; it is the four Americans who are dependent on those farm workers who are displaced. So this is a very serious issue.

I would just like to thank each one of our witnesses for being here. A lot of people don't realize that the witnesses who come before Congress are volunteers. They come, I mean, just as volunteers to help make a better country, to help the Congress understand an issue better.

And so, each one of you, as a volunteer, has done that today. I thank you for doing so.

I thank the Members for their participation.

I would note that the record will remain open for 5 legislative days so that Members may submit material.

And, further, that Members may have additional questions for the witnesses that will also be submitted within 5 days. And if that

should occur, we would request respectfully that the response be forthcoming.

With that, I would thank all of the witnesses and Members for their participation and would adjourn this Committee.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

