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AGRICULTURAL GUESTWORKER ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

H.R. 1773

MAY 16, 2013

Serial No. 113–12

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

80–975 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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AGRICULTURAL GUESTWORKER ACT

THURSDAY, MAY 16, 2013

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

The Subcommittee met, pursuant to call, at 12:30 p.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, King, Holding, Lofgren, Jackson Lee, Gutierrez, and Garcia.

Staff Present: (Majority) George Fishman, Chief Counsel; Stephanie Gadbois, Counsel; Graham Owens, Clerk; and (Minority) David Shahoulian, Minority Counsel.

Mr. GOWDY. Good afternoon. I apologize to everyone in the audience and especially my colleagues for having another vote in another Committee. But we are here because the Subcommittee on Immigration and Border Security will have a hearing on H.R. 1773, which is the "Agricultural Guestworker Act."

And the Committee will come to order.

Welcome, again, to all of our witnesses.

I will recognize myself for an opening statement and then the Ranking Member, Ms. Lofgren.

So we are now here to begin our consideration of this H.R. 1773, the "Agricultural Guestworker Act." This legislation will provide American farmers with what they have asked for, needed, and deserved for many years: a workable and fair guestworker program to help them grow and harvest our food. Of course, this benefits each of us.

I congratulate Chairman Goodlatte for introducing this legislation. I thank my colleagues on both sides of the aisle who have informed and instructed my understanding of these issues. And I especially thank the farmers and others in the agricultural industry for helping me understand the challenges they face in meeting this issue of national significance.

We would all do well to place ourselves in the shoes of farmers, because we sometimes lose track of what it takes for growers to actually put this bounty on the world's tables. We lose track of what it takes for them to give us the safest, most efficient, most reliable agricultural system in the world.

For those crops that are labor-intensive, especially at harvest time, hard labor is critical. At our February hearing on agricultural

guestworker programs, I asked why H-2A program was so underutilized. I noted that, in the eyes of many farmers, the program seems designed to fail. It is cumbersome and full of red tape. Growers have to pay wages far above the locally prevailing wage, putting them at a competitive disadvantage against growers who use unlawful labor.

Growers are subject to onerous rules, such as the 50 percent rule, which requires them to hire any domestic workers who show up even after they have unsuccessfully recruited for U.S. workers and their H-2A workers have started working. Under the H-2A program, growers can't get workers in time to meet needs dictated by the weather. And then the final indignity: Growers are constantly subjected to litigation by those who don't think the H-2A program should even exist.

Growers need a fair, workable guestworker program that gives them access to the workers they need when they need them at a fair wage and with reasonable conditions. They need a partner in the Federal Government, not an adversary. Such a program will benefit not only farmers but also American farmworkers. If growers can't use a program because it is too cumbersome, none of its workers' protections will benefit any actual workers.

H.R. 1773, the Agricultural Guestworker Act, jettisons the dysfunctional features of the H-2A program and creates a new H-2C agricultural guestworker program that successfully meets the needs laid out.

This bill contains a streamlined petition process based on the H-1B program and allows growers to hire guestworkers at will once E-Verify has been made mandatory. The bill puts the Department of Agriculture in charge of H-2C. The bill requires growers pay guestworkers the local prevailing market-based wage. It does not require growers to additionally provide free housing or international travel reimbursements to guestworkers.

In order to discourage vexatious, frivolous, and abusive litigation against growers, the bill allows growers and guestworkers to agree to binding arbitration and mediation of grievances. It also provides H-2C workers are not eligible for taxpayer-funded lawyers under the Legal Services Corporation Act.

In order to prevent a labor force shock, the bill allows illegal immigrants to participate in the H-2C program, just as can any other foreign national, so long as they abide by the terms and conditions of the program.

I look forward to hearing today's witnesses and learning how H.R. 1773 would benefit them.

I now recognize the gentlelady from California, the Ranking Member, Ms. Lofgren.

[The bill, H.R. 1773, follows:]

I

113TH CONGRESS
1ST SESSION

H. R. 1773

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, Mr. GOWDY, Mr. FARENTHOLD, Mr. WESTMORELAND, Mr. POE of Texas, Mr. HOLDING, Mr. PETERSON, and Mr. HURT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as—

(1) the "Agricultural Guestworker Act"; or

(2) the "AG Act".

SEC. 2. H–2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

(a) IN GENERAL.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking "; or (iii)" and inserting ", or (c) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services; or (iii)".

(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(53) The term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities.".

SEC. 3. ADMISSION OF TEMPORARY H–2C WORKERS.

(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"SEC. 218A. ADMISSION OF TEMPORARY H–2C WORKERS.

"(a) DEFINITIONS.—In this section and section 218B:

"(1) AREA OF EMPLOYMENT.—The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H–2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

"(2) DISPLACE.—The term 'displace' means to lay off a worker from a job that is essentially equivalent to the job for which an H–2C worker is sought. A job shall not be considered to be 'essentially equivalent' to another job unless the job—

"(A) involves essentially the same responsibilities as such other job;

"(B) was held by a United States worker with substantially equivalent qualifications and experience; and

"(C) is located in the same area of employment as the other job.

"(3) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.

"(4) EMPLOYER.—The term 'employer' means an employer who hires workers to perform agricultural employment.

"(5) H–2C WORKER.—The term 'H–2C worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(6) LAY OFF.—

"(A) IN GENERAL.—The term 'lay off'—

"(i) means to cause a worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) of subsection (b)); and

"(ii) does not include any situation in which the worker is offered, as an alter-

1 native to such loss of employment, a simi-
2 lar employment opportunity with the same
3 employer (or, in the case of a placement of
4 a worker with another employer under sub-
5 section (b)(7), with either employer de-
6 scribed in such subsection) at equivalent or
7 higher compensation and benefits than the
8 position from which the employee was dis-
9 charged, regardless of whether or not the
10 employee accepts the offer.
11 "(B) CONSTRUCTION.—Nothing in this
12 paragraph is intended to limit an employee's
13 rights under a collective bargaining agreement
14 or other employment contract.
15 "(7) PREVAILING WAGE.—The term 'prevailing
16 wage' means the wage rate paid to workers in the
17 same occupation in the area of employment as com-
18 puted pursuant to section 212(p).
19 "(8) UNITED STATES WORKER.—The term
20 'United States worker' means any worker who is—
21 "(A) a citizen or national of the United
22 States; or
23 "(B) an alien who is lawfully admitted for
24 permanent residence, is admitted as a refugee
25 under section 207, is granted asylum under sec-

tion 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

"(b) PETITION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2C worker shall file with the Secretary of Agriculture a petition attesting to the following:

"(1) TEMPORARY WORK OR SERVICES.—

"(A) IN GENERAL.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate.

"(B) DEFINITION.—For purposes of this paragraph, a worker is employed on a temporary basis if the employer intends to employ the worker for no longer than 18 months (except for sheepherders) during any contract period.

"(2) BENEFITS, WAGES, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (k) to all workers employed in the jobs for which the H–2C worker is sought and to all

other temporary workers in the same occupation at the place of employment.

"(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment of the H–2C worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2C workers.

"(4) RECRUITMENT.—

"(A) IN GENERAL.—The employer—

"(i) conducted adequate recruitment in the area of intended employment before filing the attestation; and

"(ii) was unsuccessful in locating a qualified United States worker for the job opportunity for which the H–2C worker is sought.

"(B) OTHER REQUIREMENTS.—The recruitment requirement under subparagraph (A) is satisfied if the employer places a local job order with the State workforce agency serving the local area where the work will be performed, except that nothing in this subparagraph shall

1 require the employer to file an interstate job
2 order under section 653 of title 20, Code of
3 Federal Regulations. The State workforce agen-
4 cy shall post the job order on its official agency
5 website for a minimum of 30 days and not later
6 than 3 days after receipt using the employment
7 statistics system authorized under section 15 of
8 the Wagner-Peyser Act (29 U.S.C. 49l–2). The
9 Secretary of Labor shall include links to the of-
10 ficial Web sites of all State workforce agencies
11 on a single webpage of the official Web site of
12 the Department of Labor.
13 "(C) END OF RECRUITMENT REQUIRE-
14 MENT.—The requirement to recruit United
15 States workers shall terminate on the first day
16 that work begins for the H–2C worker.
17 "(5) OFFERS TO UNITED STATES WORKERS.—
18 The employer has offered or will offer the job for
19 which the H–2C worker is sought to any eligible
20 United States worker who—
21 "(A) applies;
22 "(B) is qualified for the job; and
23 "(C) will be available at the time and place
24 of need.

1 This requirement shall not apply to a United States
2 worker who applies for the job on or after the first
3 day that work begins for the H–2C worker.

4 "(6) PROVISION OF INSURANCE.—If the job for
5 which the H–2C worker is sought is not covered by
6 State workers' compensation law, the employer will
7 provide, at no cost to the worker unless State law
8 provides otherwise, insurance covering injury and
9 disease arising out of, and in the course of, the
10 worker's employment, which will provide benefits at
11 least equal to those provided under the State work-
12 ers compensation law for comparable employment.

13 "(7) REQUIREMENTS FOR PLACEMENT OF H–2C
14 WORKERS WITH OTHER EMPLOYERS.—A non-
15 immigrant who is admitted into the United States as
16 an H–2C worker may be transferred to another em-
17 ployer that has filed a petition under this subsection
18 and is in compliance with this section.

19 "(8) STRIKE OR LOCKOUT.—There is not a
20 strike or lockout in the course of a labor dispute
21 which, under regulations promulgated by the Sec-
22 retary of Agriculture, precludes the hiring of H–2C
23 workers.

24 "(9) PREVIOUS VIOLATIONS.—The employer
25 has not, during the previous two-year period, em-

1 ployed H–2C workers and knowingly violated a ma-
2 terial term or condition of approval with respect to
3 the employment of domestic or nonimmigrant work-
4 ers, as determined by the Secretary of Agriculture
5 after notice and opportunity for a hearing.
6 "(c) PUBLIC EXAMINATION.—Not later than 1 work-
7 ing day after the date on which a petition under this sec-
8 tion is filed, the employer shall make a copy of each such
9 petition available for public examination, at the employer's
10 principal place of business or worksite.
11 "(d) LIST.—
12 "(1) IN GENERAL.—The Secretary of Agri-
13 culture shall maintain a list of the petitions filed
14 under subsection (b), which shall—
15 "(A) be sorted by employer; and
16 "(B) include the number of H–2C workers
17 sought, the wage rate, the period of intended
18 employment, and the date of need for each
19 alien.
20 "(2) AVAILABILITY.—The Secretary of Agri-
21 culture shall make the list available for public exam-
22 ination.
23 "(e) PETITIONING FOR ADMISSION.—
24 "(1) CONSIDERATION OF PETITIONS.—For peti-
25 tions filed and considered under subsection (b)—

"(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H–2C worker;

"(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

"(C) if the Secretary determines that the petition is incomplete or obviously inaccurate, the Secretary shall—

"(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

"(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

1 "(2) PETITION AGREEMENTS.—By filing an H–
2 2C petition, a petitioner and each employer consents
3 to allow access to the site where the labor is being
4 performed to the Department of Agriculture and the
5 Department of Homeland Security for the purpose
6 of investigations to determine compliance with H–2C
7 requirements and the immigration laws. Notwith-
8 standing any other provision of law, the Depart-
9 ments of Agriculture and Homeland Security cannot
10 delegate their compliance functions to other agencies
11 or Departments.
12 "(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—
13 "(1) PERMITTING FILING BY AGRICULTURAL
14 ASSOCIATIONS.—A petition under subsection (b) to
15 hire an alien as a temporary agricultural worker
16 may be filed by an association of agricultural em-
17 ployers which use agricultural services.
18 "(2) TREATMENT OF ASSOCIATIONS ACTING AS
19 EMPLOYERS.—If an association is a joint employer
20 of temporary agricultural workers, such workers may
21 be transferred among its members to perform agri-
22 cultural services of a temporary nature for which the
23 petition was approved.
24 "(3) TREATMENT OF VIOLATIONS.—

1 "(A) INDIVIDUAL MEMBER.—If an indi-
2 vidual member of a joint employer association
3 violates any condition for approval with respect
4 to the member's petition, the Secretary of Agri-
5 culture shall consider as an employer for pur-
6 poses of subsection (b)(9) and invoke penalties
7 pursuant to subsection (i) against only that
8 member of the association unless the Secretary
9 of Agriculture determines that the association
10 or other member participated in, had knowledge
11 of, or had reason to know of the violation.
12 "(B) ASSOCIATION OF AGRICULTURAL EM-
13 PLOYERS.—If an association representing agri-
14 cultural employers as a joint employer violates
15 any condition for approval with respect to the
16 association's petition, the Secretary of Agri-
17 culture shall consider as an employer for pur-
18 poses of subsection (b)(9) and invoke penalties
19 pursuant to subsection (i) against only the as-
20 sociation and not any individual member of the
21 association, unless the Secretary determines
22 that the member participated in, had knowledge
23 of, or had reason to know of the violation.

"(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Agriculture shall promulgate regulations to provide for an expedited procedure—

"(1) for the review of a denial of a petition under this section by the Secretary; or

"(2) at the petitioner's request, for a de novo administrative hearing at which new evidence may be introduced.

"(h) MISCELLANEOUS PROVISIONS.—

"(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of H–2C workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(2) FEES.—

"(A) IN GENERAL.—The Secretary of Agriculture shall require, as a condition of approving the petition, the payment of a fee, in accordance with subparagraph (B), to recover the reasonable cost of processing petitions filed by employers or associations of employers seeking H–2C workers for jobs of a temporary or seasonal nature, but may not require the payment of such fees to recover the costs of processing

1 petitions filed by employers or associations of
2 employers seeking H–2C workers for jobs not of
3 a temporary or seasonal nature.
4 "(B) FEE BY TYPE OF EMPLOYEE.—
5 "(i) SINGLE EMPLOYER.—An em-
6 ployer whose petition for temporary alien
7 agricultural workers is approved shall, for
8 each approved petition, pay a fee that—
9 "(I) subject to subclause (II), is
10 equal to $100 plus $10 for each ap-
11 proved H–2C worker; and
12 "(II) does not exceed $1,000.
13 "(ii) ASSOCIATION.—Each employer-
14 member of a joint employer association
15 whose petition for H–2C workers is ap-
16 proved shall, for each such approved peti-
17 tion, pay a fee that—
18 "(I) subject to subclause (II), is
19 equal to $100 plus $10 for each ap-
20 proved H–2C worker; and
21 "(II) does not exceed $1,000.
22 "(iii) LIMITATION ON ASSOCIATION
23 FEES.—A joint employer association under
24 clause (ii) shall not be charged a separate
25 fee.

"(C) METHOD OF PAYMENT.—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H–2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H–2C workers under the petition may be paid by 1 check or money order.

"(i) ENFORCEMENT.—

"(1) INVESTIGATIONS AND AUDITS.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of the H–2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and auditing power.

"(2) FAILURE TO MEET CONDITIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

"(B) may disqualify the employer from the employment of H–2C workers for a period of 1 year.

"(3) PENALTIES FOR WILLFUL FAILURE.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b), or a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 2 years;

"(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H–2C workers.

"(4) PENALTIES FOR DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment of the H–2C worker or during the 30-day period preceding such period of employment, the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(C) may, for a second violation, permanently disqualify the employer from the employment of H–2C workers.

"(j) FAILURE TO PAY WAGES OR REQUIRED BENEFITS.—

"(1) ASSESSMENT.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to provide the benefits, wages, and working conditions attested by the employer under subsection (b), the Secretary shall assess payment of back wages, or such other required benefits, due any United States worker or H–2C worker employed by the employer in the specific employment in question.

"(2) AMOUNT.—The back wages or other required benefits described in paragraph (1)—

"(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

"(B) shall be distributed to the worker to whom such wages or benefits are due.

"(k) MINIMUM WAGES, BENEFITS, AND WORKING CONDITIONS.—

"(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

"(A) IN GENERAL.—Each employer seeking to hire United States workers shall offer

1 such workers not less than the same benefits,
2 wages, and working conditions that the em-
3 ployer is offering, intends to offer, or will pro-
4 vide to H–2C workers. No job offer may impose
5 on United States workers any restrictions or
6 obligations which will not be imposed on the
7 employer's H–2C workers.

8 "(B) INTERPRETATION.—Every interpreta-
9 tion and determination made under this section
10 or under any other law, regulation, or interpre-
11 tative provision regarding the nature, scope,
12 and timing of the provision of these and any
13 other benefits, wages, and other terms and con-
14 ditions of employment shall be made so that—

15 "(i) the services of workers to their
16 employers and the employment opportuni-
17 ties afforded to workers by the employers,
18 including those employment opportunities
19 that require United States workers or H–
20 2C workers to travel or relocate in order to
21 accept or perform employment—

22 "(I) mutually benefit such work-
23 ers, as well as their families, and em-
24 ployers; and

1 "(II) principally benefit neither
2 employer nor employee; and
3 "(ii) employment opportunities within
4 the United States benefit the United
5 States economy.
6 "(2) REQUIRED WAGES.—
7 "(A) IN GENERAL.—Each employer peti-
8 tioning for workers under subsection (b) shall
9 pay not less than the greater of—
10 "(i) the prevailing wage level for the
11 occupational classification in the area of
12 employment; or
13 "(ii) the applicable Federal, State, or
14 local minimum wage, whichever is greatest.
15 "(B) SPECIAL RULE.—An employer can
16 utilize a piece rate or other alternative wage
17 payment system as long as the employer guar-
18 antees each worker a wage rate that equals or
19 exceeds the amount required under subpara-
20 graph (A).
21 "(3) EMPLOYMENT GUARANTEE.—
22 "(A) IN GENERAL.—
23 "(i) REQUIREMENT.—Each employer
24 petitioning for workers under subsection
25 (b) shall guarantee to offer the worker em-

1 ployment for the hourly equivalent of not
2 less than 50 percent of the work hours
3 during the total anticipated period of em-
4 ployment, beginning with the first work
5 day after the arrival of the worker at the
6 place of employment and ending on the ex-
7 piration date specified in the job offer.
8 "(ii) FAILURE TO MEET GUAR-
9 ANTEE.—If the employer affords the
10 United States worker or the H–2C worker
11 less employment than that required under
12 this subparagraph, the employer shall pay
13 such worker the amount which the worker
14 would have earned if the worker had
15 worked for the guaranteed number of
16 hours.
17 "(iii) PERIOD OF EMPLOYMENT.—For
18 purposes of this subparagraph, the term
19 'period of employment' means the total
20 number of anticipated work hours and
21 workdays described in the job offer and
22 shall exclude the worker's Sabbath and
23 Federal holidays.
24 "(B) CALCULATION OF HOURS.—Any
25 hours which the worker fails to work, up to a

1 maximum of the number of hours specified in
2 the job offer for a work day, when the worker
3 has been offered an opportunity to do so, and
4 all hours of work actually performed (including
5 voluntary work in excess of the number of
6 hours specified in the job offer in a work day,
7 on the worker's Sabbath, or on Federal holi-
8 days) may be counted by the employer in calcu-
9 lating whether the period of guaranteed employ-
10 ment has been met.

11 "(C) LIMITATION.—If the worker volun-
12 tarily abandons employment before the end of
13 the contract period, or is terminated for cause,
14 the worker is not entitled to the 50 percent
15 guarantee described in subparagraph (A).

16 "(D) TERMINATION OF EMPLOYMENT.—

17 "(i) IN GENERAL.—If, before the expi-
18 ration of the period of employment speci-
19 fied in the job offer, the services of the
20 worker are no longer required due to any
21 form of natural disaster, including flood,
22 hurricane, freeze, earthquake, fire,
23 drought, plant or animal disease, pest in-
24 festation, regulatory action, or any other
25 reason beyond the control of the employer

1 before the employment guarantee in sub-
2 paragraph (A) is fulfilled, the employer
3 may terminate the worker's employment.
4 "(ii) REQUIREMENTS.—If a worker's
5 employment is terminated under clause (i),
6 the employer shall—
7 "(I) fulfill the employment guar-
8 antee in subparagraph (A) for the
9 work days that have elapsed during
10 the period beginning on the first work
11 day after the arrival of the worker
12 and ending on the date on which such
13 employment is terminated;
14 "(II) make efforts to transfer the
15 United States worker to other com-
16 parable employment acceptable to the
17 worker; and
18 "(III) not later than 24 hours
19 after termination, notify (or have an
20 association acting as an agent for the
21 employer notify) the Secretary of
22 Homeland Security of such termi-
23 nation.
24 "(l) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—An H–2C worker shall be admitted for a period of employment, not to exceed 18 months (or 36 months as provided in subsection (o)(3)(A) for a worker employed in a job that is not of a temporary or seasonal nature), and except for sheepherders, that includes—

"(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

"(B) a period of not more than 14 days following the period of employment for the purpose of departure or a period of not more than 30 days following the period of employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment pursuant to section 218B during such time as that section is in effect). An H–2C worker who does not depart within these periods will be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section

212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent offer of employment where the alien has not found at-will employment with a registered agricultural employer pursuant to section 218B or employment pursuant to this section.

"(2) EMPLOYMENT LIMITATION.—An alien may not be employed during the 14-day period described in paragraph (1)(B) except in the employment for which the alien is otherwise authorized.

"(m) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—

"(A) shall have failed to maintain nonimmigrant status as an H–2C worker;

"(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i); and

"(C) shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the date of the abandonment of employment.

"(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H–2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.

"(3) REMOVAL.—The Secretary of Homeland Security shall promptly remove from the United States any H–2C worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien's employment if the alien promptly departs the United States upon termination of such employment. An alien who voluntarily terminates the alien's employment and who does not depart within 14 days shall be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section

1 237(a)(1)(C)(i). Such alien shall be considered to be
2 inadmissible pursuant to section 212(a)(9)(B)(i) for
3 having been unlawfully present, with the alien con-
4 sidered to have been unlawfully present for 180 days
5 as of the 15th day following the voluntary termi-
6 nation of employment.

7 "(n) REPLACEMENT OF ALIEN.—An employer may
8 designate an eligible alien to replace an H–2C worker who
9 abandons employment notwithstanding the numerical limi-
10 tation found in section 214(g)(1)(C).

11 "(o) EXTENSION OF STAY OF H–2C WORKERS IN
12 THE UNITED STATES.—

13 "(1) EXTENSION OF STAY.—If an employer
14 seeks approval to employ an H–2C worker who is
15 lawfully present in the United States, the petition
16 filed by the employer or an association pursuant to
17 subsection (b) shall request an extension of the
18 alien's stay and, if applicable, a change in the alien's
19 employment.

20 "(2) WORK AUTHORIZATION UPON FILING PE-
21 TITION FOR EXTENSION OF STAY.—

22 "(A) IN GENERAL.—An alien who is law-
23 fully present in the United States on the date
24 of the filing of a petition to extend the stay of
25 the alien may commence or continue the em-

1 ployment described in a petition under para-
2 graph (1) until and unless the petition is de-
3 nied. The employer shall provide a copy of the
4 employer's petition for extension of stay to the
5 alien. The alien shall keep the petition with the
6 alien's identification and employment eligibility
7 document, as evidence that the petition has
8 been filed and that the alien is authorized to
9 work in the United States.

10 "(B) EMPLOYMENT ELIGIBILITY DOCU-
11 MENT.—Upon approval of a petition for an ex-
12 tension of stay or change in the alien's author-
13 ized employment, the Secretary of Homeland
14 Security shall provide a new or updated employ-
15 ment eligibility document to the alien indicating
16 the new validity date, after which the alien is
17 not required to retain a copy of the petition.

18 "(C) FILE DEFINED.—In this paragraph,
19 the term 'file' means sending the petition by
20 certified mail via the United States Postal Serv-
21 ice, return receipt requested, or delivering by
22 guaranteed commercial delivery which will pro-
23 vide the employer with a documented acknowl-
24 edgment of the date of receipt of the petition
25 for an extension of stay.

"(3) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 18 months for a worker employed in a job that is of a temporary or seasonal nature. For an H–2C worker employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months. There is no maximum continuous period of authorized status for a sheepherder.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an alien outside the United States who was employed in a job of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least ⅙ the duration of

1 the alien's previous period of authorized status
2 as an H–2C worker. For an alien outside the
3 United States who was employed in a job not
4 of a temporary or seasonal nature pursuant to
5 section 101(a)(15)(H)(ii)(c) whose period of au-
6 thorized status as an H–2C worker (including
7 any extensions) has expired, the alien may not
8 again be admitted to the United States as an
9 H–2C worker unless the alien has remained
10 outside the United States for a continuous pe-
11 riod equal to at least the lesser of ⅙ the dura-
12 tion of the alien's previous period of authorized
13 status as an H–2C worker or 3 months. There
14 is no requirement to remain outside the United
15 States for sheepherders.

16 "(p) ADJUSTMENT OF STATUS.—Notwithstanding
17 any other provision of law, an alien who is unlawfully
18 present in the United States on April 25, 2013, is eligible
19 to adjust status to that of an H–2C worker.

20 "(q) TRUST FUND TO ASSURE WORKER RETURN.—

21 "(1) ESTABLISHMENT.—There is established in
22 the Treasury of the United States a trust fund (in
23 this section referred to as the 'Trust Fund') for the
24 purpose of providing a monetary incentive for H–2C

1 workers to return to their country of origin upon ex-
2 piration of their visas.
3 "(2) WITHHOLDING OF WAGES; PAYMENT INTO
4 THE TRUST FUND.—
5 "(A) IN GENERAL.—Notwithstanding the
6 Fair Labor Standards Act of 1938 (29 U.S.C.
7 201 et seq.), all employers of H–2C workers
8 shall withhold from the wages of the workers an
9 amount equivalent to 10 percent of the wages
10 of each worker and pay such withheld amount
11 into the Trust Fund.
12 "(B) JOBS THAT ARE NOT OF A TEM-
13 PORARY OR SEASONAL NATURE.—Employers of
14 H–2C workers employed in jobs that are not of
15 a temporary or seasonal nature shall pay into
16 the Trust Fund an amount equivalent to the
17 Federal tax on the wages paid to H–2C workers
18 that the employer would be obligated to pay
19 under chapters 21 and 23 of the Internal Rev-
20 enue Code of 1986 had the H–2C workers been
21 subject to such chapters.
22 Amounts withheld under this paragraph shall be
23 maintained in such interest bearing account with
24 such a financial institution as the Secretary of Agri-
25 culture shall specify.

1 "(3) DISTRIBUTION OF FUNDS.—Amounts paid
2 into the Trust Fund on behalf of an H–2C worker,
3 and held pursuant to paragraph (2)(A) and interest
4 earned thereon, shall be paid by the Secretary of
5 State to the worker if—
6 "(A) the worker applies to the Secretary of
7 State (or the designee of such Secretary) for
8 payment within 30 days of the expiration of the
9 alien's last authorized stay in the United States
10 as an H–2C worker at a United States embassy
11 or consulate in the worker's home country;
12 "(B) in such application the worker estab-
13 lishes that the worker has complied with the
14 terms and conditions of the H–2C program;
15 and
16 "(C) in connection with the application,
17 the H–2C worker confirms their identity.
18 "(4) ADMINISTRATIVE EXPENSES.—The
19 amounts paid into the Trust Fund and held pursu-
20 ant to paragraph (2)(B), and interest earned there-
21 on, shall be paid to the Secretary of State, the Sec-
22 retary of Agriculture, and the Secretary of Home-
23 land Security in amounts equivalent to the expenses
24 incurred by such officials in the administration of

1 the H–2C program not reimbursed pursuant to sub-
2 section (h)(2) or section 218B(b).
3 "(r) INVESTMENT OF TRUST FUND.—
4 "(1) IN GENERAL.—It shall be the duty of the
5 Secretary of the Treasury to invest such portion of
6 the Trust Fund as is not, in the Secretary's judg-
7 ment, required to meet current withdrawals. Such
8 investments may be made only in interest-bearing
9 obligations of the United States or in obligations
10 guaranteed as to both principal and interest by the
11 United States. For such purpose, such obligations
12 may be acquired—
13 "(A) on original issue at the price; or
14 "(B) by purchase of outstanding obliga-
15 tions at the market price.
16 The purposes for which obligations of the United
17 States may be issued under chapter 31 of title 31,
18 United States Code, are hereby extended to author-
19 ize the issuance at par of special obligations exclu-
20 sively to the Trust Fund. Such special obligations
21 shall bear interest at a rate equal to the average
22 rate of interest, computed as to the end of the cal-
23 endar month next preceding the date of such issue,
24 borne by all marketable interest-bearing obligations
25 of the United States then forming a part of the pub-

lic debt, except that where such average rate is not a multiple of ⅛ of 1 percent, the rate of interest of such special obligations shall be the multiple of ⅛ of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

"(3) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each

year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.".

(b) AT-WILL EMPLOYMENT.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218A (as inserted by subsection (a)) the following:

"SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H–2C WORKERS.

"(a) AT-WILL EMPLOYMENT.—

"(1) IN GENERAL.—An H–2C worker may perform agricultural labor or services for any employer that is designated as a 'registered agricultural employer' pursuant to subsection (b). However, an H–2C worker may only perform labor or services pursuant to this section if the worker is already lawfully present in the United States as an H–2C worker, having been admitted or otherwise provided nonimmigrant status pursuant to section 218A, and has completed the period of employment specified in the job offer the worker accepted pursuant to section

1 218A or the employer has terminated the worker's
2 employment pursuant to section 218A(k)(3)(D)(i).
3 An H–2C worker who abandons the employment
4 which was the basis for admission or status pursu-
5 ant to section 218A may not perform labor or serv-
6 ices pursuant to this section until the worker has re-
7 turned to their home country, been readmitted as an
8 H–2C worker pursuant to section 218A and has
9 completed the period of employment specified in the
10 job offer the worker accepted pursuant to section
11 218A or the employer has terminated the worker's
12 employment pursuant to section 218A(k)(3)(D)(i).
13 "(2) PERIOD OF STAY.—An H–2C worker per-
14 forming such labor or services for a registered agri-
15 cultural employer is subject to the period of admis-
16 sion, limitation of stay in status, and requirement to
17 remain outside the United States contained in sub-
18 sections (l) and (o)(3) of section 218A.
19 "(3) TERMINATION OF EMPLOYMENT.—At the
20 conclusion of at-will employment with a registered
21 agricultural employer or the conclusion of employ-
22 ment pursuant to section 218A qualifying an H–2C
23 worker to perform at-will work pursuant to this sec-
24 tion, an H–2C worker shall find at-will employment
25 with a registered agricultural employer or employ-

1 ment pursuant to section 218A within 30 days or
2 will be considered to have failed to maintain non-
3 immigrant status as an H–2C worker and shall de-
4 part from the United States or be subject to removal
5 under section 237(a)(1)(C)(i). An H–2C worker who
6 does not so depart shall be considered to be inadmis-
7 sible pursuant to section 212(a)(9)(B)(i) for having
8 been unlawfully present, with the alien considered to
9 have been unlawfully present for 180 days as of the
10 31st day after conclusion of employment where the
11 alien has not found at-will employment with a reg-
12 istered agricultural employer or employment pursu-
13 ant to section 218A. However, an alien may volun-
14 tarily terminate the alien's employment if the alien
15 promptly departs the United States upon termi-
16 nation of such employment. Either a registered agri-
17 cultural employer or an H–2C worker may volun-
18 tarily terminate the worker's at-will employment at
19 any time. The H–2C worker then shall find addi-
20 tional at-will employment with a registered agricul-
21 tural employer or employment pursuant to section
22 218A within 30 days or will be considered to have
23 failed to maintain nonimmigrant status as an H–2C
24 worker and shall depart from the United States or
25 be subject to removal under section 237(a)(1)(C)(i).

1 An H–2C worker who does not so depart shall be
2 considered to be inadmissible pursuant to section
3 212(a)(9)(B)(i) for having been unlawfully present,
4 with the alien considered to have been unlawfully
5 present for 180 days as of the 31st day after conclu-
6 sion of employment where the alien has not found
7 at-will employment with a registered agricultural
8 employer or employment pursuant to section 218A.
9 "(b) REGISTERED AGRICULTURAL EMPLOYERS.—
10 The Secretary of Agriculture shall establish a process to
11 accept and adjudicate applications by employers to be des-
12 ignated as registered agricultural employers. The Sec-
13 retary shall require, as a condition of approving the peti-
14 tion, the payment of a fee to recover the reasonable cost
15 of processing the application. The Secretary shall des-
16 ignate an employer as a registered agricultural employer
17 if the Secretary determines that the employer—
18 "(1) employs individuals who perform agricul-
19 tural labor or services;
20 "(2) has not been subject to debarment from
21 receiving future temporary agricultural labor certifi-
22 cations pursuant to section 101(a)(15)(H)(ii)(a)
23 within the last five years;

"(3) has not been subject to disqualification from the employment of H–2C workers within the last five years,

"(4) agrees to, if employing an H–2C worker pursuant to this section, abide by the terms of the attestations contained in section 218A(b) and the obligations contained in subsections (k) (excluding paragraph (3) of such subsection) and (q) of section 218A as if it had submitted a petition making those attestations and accepting those obligations, and

"(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs an H–2C worker pursuant to this section within 24 hours of the commencement of employment and each time an H–2C worker ceases employment within 24 hours of the cessation of employment.

"(c) LENGTH OF DESIGNATION.—An employer's designation as a registered agricultural employer shall be valid for 3 years, and the designation can be extended upon reapplication for additional 3-year terms. The Secretary shall revoke a designation before the expiration of its three year term if the employer is subject to disqualification from the employment of H–2C workers subse-

1 quent to being designated as a registered agricultural em-
2 ployer.

3 "(d) ENFORCEMENT.—The Secretary of Agriculture
4 shall be responsible for conducting investigations and ran-
5 dom audits of employers to ensure compliance with the
6 requirements of this section. All monetary fines levied
7 against violating employers shall be paid to the Depart-
8 ment of Agriculture and used to enhance the Department
9 of Agriculture's investigatory and audit power. The Sec-
10 retary of Agriculture's enforcement powers and an em-
11 ployer's liability described in subsections (i) through (j)
12 of section 218A are applicable to employers employing H–
13 2C workers pursuant to this section.

14 "(e) REMOVAL OF H–2C WORKER.—The Secretary
15 of Homeland Security shall promptly remove from the
16 United States any II–2C worker who is or had been em-
17 ployed pursuant to this section on an at-will basis who
18 is who violates any term or condition of the worker's non-
19 immigrant status.".

20 (c) PROHIBITION ON FAMILY MEMBERS.—Section
21 101(a)(15)(H) of the Immigration and Nationality Act (8
22 U.S.C. 1101(a)(15)(H)) is amended by striking "him;" at
23 the end and inserting "him, except that no spouse or child
24 may be admitted under clause (ii)(c);".

1 (d) NUMERICAL CAP.—Section 214(g)(1) of the Im-
2 migration and Nationality Act (8 U.S.C. 1184(g)(1)) is
3 amended—
4 (1) in subparagraph (A), by striking ''or'' at
5 the end;
6 (2) in subparagraph (B), by striking the period
7 at the end and inserting ''; or''; and
8 (3) by adding at the end the following:
9 ''(C) under section 101(a)(15)(H)(ii)(c)
10 may not exceed 500,000, except that—
11 ''(i) the Secretary of Agriculture may
12 increase or decrease such number based
13 on—
14 ''(I) a shortage or surplus of
15 workers performing agricultural labor
16 or services;
17 ''(II) growth or contraction in
18 the United States agricultural indus-
19 try that has increased or decreased
20 the demand for workers to perform
21 agricultural labor or services;
22 ''(III) the level of unemployment
23 and underemployment of United
24 States workers (as defined in section

1 218A(a)(8)) in agricultural labor or
2 services;
3 "(IV) the number of non-
4 immigrant workers employers sought
5 during the preceding fiscal year pur-
6 suant to clause (a) or (c) of section
7 101(a)(15)(H)(ii);
8 "(V) the number of H–2C work-
9 ers (as defined in section 218A(a)(5))
10 who in the preceding fiscal year had
11 to depart from the United States or
12 be subject to removal under section
13 237(a)(1)(C)(i) because they could
14 not find additional at-will employment
15 within 30 days pursuant to section
16 218B;
17 "(VI) the estimated number of
18 United States workers (as defined in
19 section 218A(a)(8)) who worked in
20 agriculture during the preceding fiscal
21 year pursuant to clause (a) or (c) of
22 section 101(a)(15)(H)(ii); and
23 "(VII) the number of non-
24 immigrant agricultural workers issued
25 a visa or otherwise provided non-

1 immigrant status pursuant to clause
2 (a) or (c) of section 101(a)(15)(H)(ii)
3 during preceding fiscal years who re-
4 main in the United States out of com-
5 pliance with the terms of their status;
6 "(ii) during any fiscal year, the Sec-
7 retary of Agriculture may increase such
8 number on an emergency basis for severe
9 shortages of agricultural labor or services;
10 and
11 "(iii) this numerical limitation shall
12 not apply to any alien who performed agri-
13 cultural labor or services for not fewer
14 than 575 hours or 100 days in which the
15 alien was employed 5.75 or more hours
16 performing agricultural labor or services
17 pursuant to section 7 of the AG Act during
18 the 2-year period beginning on the date of
19 the enactment of such Act and ending on
20 the date that is 2 years after such date.".
21 (e) WAIVER OF BARS TO ADMISSIBILITY.—Section
22 212(a)(9)(B)(v) of the Immigration and Nationality Act
23 (8 U.S.C. 1182(a)(9)(B)(v)) is amended—
24 (1) by striking "The Attorney General" and in-
25 serting the following:

"(I) IN GENERAL.—The Secretary of Homeland Security".

(2) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(3) by adding at the end the following:

"(II) H–2C WORKERS.—The Secretary of Homeland Security shall waive clause (i) solely if necessary to allow an alien to come temporarily to the United States to perform agricultural labor or services as provided in section 101(a)(15)(H)(ii)(c), except to the extent that the alien's unlawful presence followed after the alien's having the status of a nonimmigrant under such section.".

(f) PREVAILING WAGE.—Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended—

(1) in paragraph (1), by adding "and section 218A" after "of this section"; and

(2) in paragraph (3), by adding "and section 218A" after "of this section".

1 (g) CLERICAL AMENDMENT.—The table of contents
2 for the Immigration and Nationality Act (8 U.S.C. 1101
3 et seq.) is amended by inserting after the item relating
4 to section 218 the following:

"Sec. 218A. Admission of temporary H–2C workers.
"Sec. 218B. At-will employment of temporary H–2C workers.".

5 **SEC. 4. MEDIATION.**

6 A nonimmigrant having status under section
7 101(a)(15)(H)(ii)(c) of the Immigration and Nationality
8 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring a civil
9 action for damages against the nonimmigrant's employer,
10 nor may any other attorney or individual bring a civil ac-
11 tion for damages on behalf of such a nonimmigrant
12 against the nonimmigrant's employer, unless at least 90
13 days prior to bringing the action a request has been made
14 to the Federal Mediation and Conciliation Service to assist
15 the parties in reaching a satisfactory resolution of all
16 issues involving all parties to the dispute and mediation
17 has been attempted.

18 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**
19 **PROTECTION.**

20 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-
21 cultural Worker Protection Act (29 U.S.C.
22 1802(8)(B)(ii)) is amended by striking "under sections
23 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and
24 Nationality Act." and inserting "under subclauses (a) and

1 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the
2 Immigration and Nationality Act.''.

3 **SEC. 6. BINDING ARBITRATION.**

4 (a) APPLICABILITY.—Any H–2C worker may, as a
5 condition of employment with an employer, be subject to
6 mandatory binding arbitration and mediation of any griev-
7 ance relating to the employment relationship. An employer
8 shall provide any such worker with notice of such condi-
9 tion of employment at the time the job offer is made.

10 (b) ALLOCATION OF COSTS.—Any cost associated
11 with such arbitration and mediation process shall be
12 equally divided between the employer and the H–2C work-
13 er, except that each party shall be responsible for the cost
14 of its own counsel, if any.

15 (c) DEFINITIONS.—As used in this section:

16 (1) The term ''condition of employment'' means
17 a term, condition, obligation, or requirement that is
18 part of the job offer, such as the term of employ-
19 ment, the job responsibilities, the employee conduct
20 standards, and the grievance resolution process, and
21 to which an applicant or prospective H–2C worker
22 must consent or accept in order to be hired for the
23 position.

24 (2) The term ''H–2C worker'' means a non-
25 immigrant described in section 101(a)(15)(H)(ii)(c)

of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(ii)(c)).

SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR SERVICES BY ALIENS WHO ARE UNLAWFULLY PRESENT.

The Secretary of Homeland Security shall waive the grounds of inadmissibility contained in paragraphs (5), (6), (7), and (9)(B) of section 212(a), and the grounds of deportability contained in subparagraphs (A) through (D) of paragraph (1), and paragraph (3), of section 237(a), of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) in the case of an alien physically present in the United States as of April 25, 2013, solely as may be necessary in order to allow the alien to perform agricultural labor or services. Such alien shall not be considered an unauthorized alien for purposes of section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or to be unlawfully present as long as the alien performs such labor or services.

SEC. 8. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND REFUNDABLE TAX CREDITS.

(a) FEDERAL PUBLIC BENEFITS.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act)

and aliens performing agricultural labor or services pursuant to section 7 of this Act—

(1) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986;

(2) shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section; and

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

(b) REFUNDABLE TAX CREDITS.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act) and aliens performing agricultural labor or services pursuant to section 7 of this Act shall not be allowed any credit under section 24 or 32 of the Internal Revenue Code of 1986. In the case of a joint return, no credit shall be allowed under either such section if both spouses are such a worker or alien.

SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by sections 2 and 4 through 6, and subsections (a) and

1 (c) through (f) of section 3, of this Act shall take
2 effect on the date that is 2 years after the date of
3 the enactment of this Act, and the Secretary of Ag-
4 riculture shall accept petitions to import an alien
5 under sections 101(a)(15)(H)(ii)(c) and 218A of the
6 Immigration and Nationality Act, as inserted by this
7 Act, beginning on such date.

8 (2) AT-WILL EMPLOYMENT.—The amendment
9 made by section 3(b) of this Act shall take effect on
10 the date that it becomes unlawful for any person or
11 other entity to hire, or to recruit or refer for a fee,
12 for employment in the United States an individual
13 (as provided in section 274A(a)(1) of the Immigra-
14 tion and Nationality Act) (8 U.S.C. 1324a(a)(1))
15 without participating in the E-Verify Program de-
16 scribed in section 403(a) of the Illegal Immigration
17 Reform and Immigrant Responsibility Act of 1996
18 (8 U.S.C. 1324a note) or an employment eligibility
19 verification system patterned on such program's
20 verification system, and only if at that time the E-
21 Verify Program (or another program patterned after
22 the E-Verify Program) responds to inquiries made
23 by such persons or entities by providing confirma-
24 tion, tentative nonconfirmation, and final noncon-
25 firmation of an individual's identity and employment

1 eligibility in such a way that indicates whether the
2 individual is eligible to be employed in all occupa-
3 tions or only to perform agricultural labor or serv-
4 ices pursuant to section 101(a)(15)(H)(ii)(c) of the
5 Immigration and Nationality Act (as inserted by this
6 Act), and if the latter, whether the nonimmigrant
7 would be in compliance with their maximum contin-
8 uous period of authorized status and requirement to
9 remain outside the United States pursuant to sec-
10 tions 218A and 218B of such Act (as so added) and
11 on what date the alien would cease to be in compli-
12 ance with their maximum continuous period of au-
13 thorized status.

14 (3) AGRICULTURAL LABOR OR SERVICES BY
15 ALIENS UNLAWFULLY PRESENT.—Section 7 of this
16 Act shall take effect on the date of the enactment
17 of this Act and shall cease to be in effect on the date
18 that is 2 years after such date.

19 (b) OPERATION AND SUNSET OF THE H–2A PRO-
20 GRAM.—

21 (1) APPLICATION OF EXISTING REGULA-
22 TIONS.—The Department of Labor H–2A program
23 regulations published at 73 Federal Register 77110
24 et seq. (2008) shall be in force for all petitions ap-
25 proved under sections 101(a)(15)(H)(ii)(c) and

1 218A of the Immigration and Nationality Act, as in-
2 serted by this Act, beginning on the date of the en-
3 actment of this Act.
4 (2) ADJUSTMENT OF STATUS.—Notwith-
5 standing any other provision of law, an alien who is
6 unlawfully present in the United States on the date
7 of the enactment of this Act is eligible to adjust sta-
8 tus to that of an alien described in section
9 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning
11 on the date of the enactment of this Act and ending
12 on the date that is 2 years after the date of the en-
13 actment of this Act.
14 (3) SUNSET.—Beginning on the date that is 2
15 years after the date of the enactment of this Act, no
16 new petition to import an alien under sections
17 101(a)(15)(H)(ii)(a) and 218 of the Immigration
18 and Nationality Act (8 U.S.C.
19 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-
20 cepted.
21 (c) REGULATIONS.—Not later than 18 months after
22 the date of the enactment of this Act, the Secretary of
23 Agriculture shall promulgate regulations, in accordance
24 with the notice and comment provisions of section 553 of

1 title 5, United States Code, to implement the Secretary's
2 duties under this Act.

○

Ms. LOFGREN. Thank you, Mr. Chairman and also Chairman Goodlatte, for holding this hearing on Mr. Goodlatte's Agricultural Guestworker Act.

As with the hearing we just had on Mr. Smith's Legal Workforce Act, I understand this hearing is another in a series of hearings meant to examine what is broken in our current immigration system.

Nowhere is this evidence of brokenness more evident than in our agricultural sector. We know from the countless hearings we have held on this topic that as much as 75 percent of the on-the-farm workforce is undocumented, and that is an incredible figure. This situation is untenable for both farmers and farmworkers, who together provide an invaluable service to our citizens, our economy, our country. They deserve a system that works. We all do.

That is why it is so significant that, just last month, farmers and agricultural trade associations from all over the country and in every sector of the agricultural industry, from apples, beekeeping, sheep herders, tobacco, citrus, Christmas trees, berries, blueberries, onions, peaches, potatoes, vegetables, eggs, the Wine Institute, and everybody in between, everybody agreed with the United Farm Workers to reach an historic agreement to reform our agricultural labor system.

The agreement that everybody signed on to, which came after many months of negotiations, is designed to provide a system that works for both growers and farmworkers. In doing so, it will help to support the millions of jobs that depend upon the agricultural industry and will prevent us from becoming increasingly dependent on food produced overseas.

The agreement includes both an earned legalization program for the current undocumented agricultural workforce and a new visa program to address future farm labor needs. It is a sensible solution, and I applaud all of the people who worked hard to make it a reality.

Let me pause briefly to note that, for years, we talked about the former ag jobs compromise that our former and, I would say, beloved colleague, Howard Berman, played such a critical role in forging. After the ag jobs compromise fell apart, it was unclear how the parties would be able to come together once more to find a mutually agreeable solution. Significantly, the proposal that the parties recently reached has even more support than the ag jobs compromise.

Today's agreement is supported by organizations representing large farming, small farmers, fruits and vegetables, dairy, sheep herders, beekeepers, landscaping, farm bureaus around the country. Over 70 different agricultural employer organizations support the agreement, including the American Farm Bureau, the National Council of Agricultural Employers, the National Council of Farmer Cooperatives, USA Farmers—which I understand Lee Wicker, our witness, is treasurer of that association—the Western Growers Association, the National Milk Producers Federation, the Western United Dairymen, farm bureaus across the country, including Georgia, Florida, and Louisiana, and even the Idaho Dairymen's Association.

All of these organizations agree, the current immigration system is hurting our agricultural sector. That is an opinion I share, and it is an opinion that I know is shared by Chairman Goodlatte. His bill, I know, is a sincere effort to address the dysfunction. And I appreciate this hearing as a way of studying the proposal while considering ways to fix the broken system.

As this Committee prepares to enter the national discussion about reforming our immigration system, we will need to fully understand each aspect of a top-to-bottom reform of our system just as much as we will need to understand how each aspect is interrelated.

I must admit, however, that I hope this hearing will help convince the Chairman and other Members on his side of the aisle to accept and support the agreement that has been reached between the diverse coalition of grower interests and the UFW. Considering the support for that agreement all across the farming community, I am not sure why we would craft something completely new that is opposed by important members of that community.

I must also note at least two elements of that deal that will prevent it from ever becoming law.

First, 1773 provides an opportunity for undocumented farmworkers to apply for a new temporary worker visa created in the bill. But those visas would only allow workers to remain here for a period of 18 months even if they have been here for decades and have spouses and children in the United States. The reality is, this program, this proposal in this bill won't work. By asking such people to come out of the shadows, register, and obtain a temporary visa, we are essentially asking them to report to deport. People will not come out of the shadows, and farmers will not have access to the stable supply of authorized workers that they need going forward.

Second, H.R. 1773 would dramatically reduce wages and other protection for farmworkers, who are already the least-paid and -protected workers in the United States. Indeed, H.R. 1773 would create a program with lower wages and fewer protections than the Bracero Program that is widely recognized as a black eye in our Nation's history.

The country needs us to find a solution to the agricultural labor problem, but I believe the superior solution is the landmark agreement between farmers and farmworkers. I am grateful the United Farm Workers, the American Farm Bureau, and all of the other agricultural employers and associations are putting us on what I believe will be the right track.

And I yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady from California.

The Chair will now recognize the gentleman from Virginia, the Chairman of the full Committee, for any opening statement he might think appropriate.

Mr. GOODLATTE. Well, thank you, Chairman Gowdy. And thank you and Ranking Member Lofgren for holding this doubleheader of hearings on our step-by-step approach to addressing all of the issues related to immigration reform that are so badly needed in our country.

As we seek to reform our immigration system as a whole, we must take the time to look at each of the individual issues within this system to ensure that we get immigration reform right. For this reason, I thank the Subcommittee Chairman for holding this important hearing.

H.R. 1773 is a bill that will replace our outdated and unworkable agricultural guestworker program and bring us one step closer to solving the larger immigration puzzle. As past hearings on the H-2A program have revealed, farmers avoid using the existing agricultural guestworker program because it burdens them with excessive regulations and exposes them to frivolous litigation.

The new guestworker program created under the Ag Act, known as the H-2C program, remedies this problem by streamlining access to reliable workforce and protecting farmers from abusive lawsuits. It also allows dairy farms and food processors to participate in the program.

The new H-2C program will be market-driven and adaptable. It will reduce bureaucratic red tape by adopting an attestation-based petition process and by allowing H-2C employers in good standing who agree to abide by additional terms and conditions the opportunity to be designated as registered agricultural employers, further expediting the hiring process. Moreover, subject to certain conditions, H-2C workers can be employed under contract or at will, making it easier for workers to move freely throughout the agricultural marketplace to meet demand.

We must also learn from the mistakes of the past. As a result, the following pitfalls of the H-2A program will not be repeated in the new H-2C program: The Ag Act will not require growers to hire and train unneeded workers after the work period begins. The Ag Act will not require employers to provide free housing and transportation for their workers, and farmers will pay guestworkers the typical wage paid to agricultural employees in their locality, not an adverse-effect wage dreamed up by Labor Department bureaucrats.

However, the new H-2C program will be at its core a guestworker program. Unlike the agricultural worker provisions in the Senate immigration bill, the Ag Act does not create any special pathway to citizenship for unlawful immigrants. The bill simply allows unlawful immigrants to participate in the new H-2C guestworker program, just as other foreign nationals can, provided a job is available. They are required to abide by the same exact conditions as foreign agricultural workers currently working legally in the United States, including the requirement to leave the U.S. periodically and the prohibition on family members accompanying the worker.

Under the Ag Act, H-2C workers can be admitted for up to 18 months to work in a job that is temporary or seasonal. For work that is not temporary, H-2C workers can be admitted initially for up to 36 months and up to 18 months on subsequent H-2C visas. At the end of the authorized work period, an H-2C worker must remain outside the United States for a continuous period that is equal to at least one-sixth of the duration of the worker's previous stay as an H-2C worker or 3 months, whichever is less. These requirements will be strictly enforced.

To encourage guestworkers to abide by these rules, a small portion of guestworkers' wages will be held in escrow until they return home to collect the wages in their home countries. And if a guestworker abandons his or her job, an employer will be required to notify the Department of Homeland Security within 24 hours. Workers who do not leave the U.S. when required will be barred from re-entry into the U.S. for from 3 to 10 years.

As a general rule, the program will be limited to 500,000 visas per year, although individuals working in the U.S. unlawfully who transition into the H-2C program will not count against this cap.

Finally, the H-2C program is fiscally responsible. H-2C guestworkers will not be eligible for Obamacare subsidies or for other Federal public benefits. They are also not eligible for Federal refundable tax credits, the Earned Income Tax Credit, or the Child Tax Credit.

It is essential that we examine solutions to our broken immigration system methodically, for if we fail do so, we risk repeating some of the same mistakes of the past.

I am pleased to welcome all of our witnesses here today. I would say to them and to all the Members of this Committee and others in the Congress that we look forward to working with them on this issue. And this hearing on the specific legislative language of this bill is a good starting point to talk about the issues related to agricultural immigration reform, and we will benefit from the testimony of these witnesses today.

I look forward to their valuable testimony, and I thank the Chairman.

Mr. GOWDY. I thank Chairman Goodlatte.

Without objection, other Members' opening statements will be made part of the record.

On behalf of all of us, we welcome our distinguished panel of witnesses.

I will begin by swearing you in, so if you would all please rise and lift your right hands.

[Witnesses sworn.]

Mr. GOWDY. May the record reflect all the witnesses answered in the affirmative.

I will introduce you en bloc and then recognize you individually for your 5-minute opening statement.

Just to be clear, your entire statement is already part of the record. So to the extent it may be more than 5 minutes, if we could get you to edit it. The lighting system means what it normally means: green, go; yellow, you have about a minute left; and red, go ahead and, if you can, wrap up that thought.

I am pleased to first introduce Mr. Lee Wicker. He is the deputy director of the North Carolina Growers Association, the largest H-2A program user in the Nation. Prior to holding this position, he worked for the North Carolina Employment Security Commission as the technical supervisor for farm employment programs and the statewide administrator for the H-2A program. Mr. Wicker has been growing flue-cured tobacco with his family in Lee County, North Carolina, since 1978. He graduated from the University of North Carolina at Chapel Hill.

Mr. Christopher Gaddis is the head of human resources for JBS USA Holdings, Inc. With 140 production facilities worldwide, JBS is the largest animal protein processor in the world. Prior to his current role, he served as the general counsel for JBS, USA, where he oversaw litigation mergers, acquisitions, and corporate compliance. Mr. Gaddis received both his J.D. And B.A. In political science from the University of Colorado.

Mr. John Graham III is the fourth-generation president and owner of Graham and Rollins in Hampton, Virginia, a crab-processing plant that has operated as a family-owned business since 1942. He also runs Hampton Seafood Market, which offers retail seafood and dining about a mile away from the plant. We would also like to welcome Mr. Graham's father, John Graham, Jr., who is in attendance and is the third-generation operator of Graham and Rollins. Mr. Graham attended Randolph-Macon College in Ashland, Virginia.

And, lastly, we would like to welcome Mr. Arturo Rodriguez. He is the president of the United Farm Workers, which is a position he has held since 1993. He began serving full-time with UFW in 1973. And Mr. Rodriguez has more than 35 years' experience organizing farmworkers and negotiating UFW contracts. Mr. Rodriguez earned an M.A. In social work at the University of Michigan in 1971.

Welcome, each and all of you.

And, with that, we will start with you, Mr. Wicker, and recognize you for your 5-minute opening statement.

TESTIMONY OF H. LEE WICKER, DEPUTY DIRECTOR, NORTH CAROLINA GROWERS ASSOCIATION

Mr. WICKER. Good afternoon, Chairman Gowdy, Ranking Member Lofgren, and the Committee Members. I am Lee Wicker, deputy director of the North Carolina Growers Association. I am also a member of USA Farmers, the Nation's largest ag guestworker employer group.

NCGA and USA Farmers support Chairman Goodlatte in his effort to provide ag with a new program that provides reliable access to labor. Thank you for holding this hearing on a critical issue for labor-intensive agriculture.

NCGA has been the largest H-2A user in the Nation for more than 15 years, and our 750 farmers will employ more than 7,500 H-2A workers and thousands more U.S. Workers this season.

In previous hearings, I have highlighted the chronic problems of H-2A. It is expensive, overly bureaucratic, unnecessarily litigious, and excludes some farms and activities. The measured reforms in H.R. 1773 solve most of the flaws with our current system, creating a new program that all ag producers can use. This proposal is evidence that the U.S. can have a workable farmworker program that treats workers well and carefully balances the critical elements of worker protections while promoting economic viability on our farms.

This bill offers significant reforms to the prohibitive costs farmers currently face and makes improvements in other important areas. It provides for a market-based prevailing wage floor that surpasses the Federal minimum, authorizes piece-rate pay systems

to promote higher earnings, and offers structured portability to enable worker movements from employer to employer.

The bill makes farm and worker obligations clear and understandable and creates a streamlined legal dispute resolution system to solve farmworker complaints quickly and efficiently. These improvements will provide a viable alternative to employing illegal aliens.

The bill maintains valuable employee benefits and critical worker protections for domestic and foreign workers, like continuation of the minimum hours worked guarantee, mandatory workman's comp insurance, a hiring preference for U.S. workers, and enables undocumented workers to come out of the shadows to work legally.

The bill allows farms that currently provide housing to continue but doesn't prohibit farms without housing from participating.

The proposal imposes a robust enforcement regime and a strong penalty structure for violations. All the economic benefits and worker protections in this bill will provide workers who accept these jobs assurance: They will enjoy a higher wage and benefit package, a safer work environment, and quicker resolution of their grievances than if they work on U.S. farms illegally.

It is clear. There is bipartisan, bicameral consensus. Our Nation needs a modern and flexible future flow ag guestworker program. In fact, this bill encompasses many elements of the Senate Gang of Eight ag proposal, such as: a simplified application process under USDA; elimination of the unnecessary 50 percent rule and worthless newspaper ads; savings on acquisition fees; open to all ag sectors, including some food processing; authorizes longer visas to respond to evolving farm production practices; enables undocumented workers to obtain legal status and keep working; provides at-will and contract employment to allow workers and growers flexibility to decide for themselves what works best; and provides portability so workers can seek additional and/or alternative opportunities in the farm marketplace.

Although the 750 farmers of NCGA and others are strongly opposed to an arbitrary cap and a new program, we acknowledge the 500,000-per-year cap in the H-2C program is far more reasonable than the woefully inadequate annual cap in the Senate bill. Farmers need the program to be uncapped to avoid devastating economic losses that will force unprecedented farm bankruptcies when crops are lost because partisan, political systems and administrative processes will never react quickly enough as crops ripen, then rot. Market opportunities are lost, contracts with customers go unfilled and are lost, and consumers are forced to pay higher prices for a smaller supply of fresh fruits and vegetables.

While not perfect, NCGA's board voted unanimously to support H.R. 1773 because it provides growers with a program that is substantially more predictable and user-friendly. It is a win for farmers, a win for farmworkers, and a win for America. It will create jobs and save jobs in the United States.

And I would like to enter into the record a comprehensive study completed by economist Michael Clemens that has just been published by the Center for Global Development and the Partnership for a New American Economy that shows clearly and demonstrably

that legal guestworkers save and create jobs for Americans on and off the farm.

[The information referred to follows:]

The effect of foreign labor on native employment: A job-specific approach and application to North Carolina farms

Michael A. Clemens*

May 14, 2013

Abstract

Economists have measured the effects of immigration on native employment primarily with exogenous shifts in the foreign labor supply curve. I suggest an alternative, occupation-specific approach: directly describe, for one job, the *native* labor supply curve. I apply the method to seasonal farm work in North Carolina, and use two natural experiments to estimate native labor supply. The first natural experiment uses a legal requirement for farmers to demand native workers as perfect substitutes for foreign workers; this describes the level of native labor supply. The second natural experiment uses the spike in U.S. unemployment during the 2007–8 economic crisis; this describes the local slope of native labor supply. The level and slope of native labor supply to this job, at both extensive and intensive margins, are nearly zero. This identifies two effects of foreign labor supply on native employment: a direct effect (close to zero) and and indirect effect (positive) via consequent increases in sectoral output and its multiplier effects. I estimate that one U.S. job across all sectors of the North Carolina economy is created by each 1.5–2.3 foreign seasonal farm workers in the short run (Leontieff production), and by each 3.0–4.6 foreign seasonal farm workers in the long run (Cobb-Douglas production).

JEL Classification Numbers: F22, J61, O15

*Center for Global Development and NYU Financial Access Initiative. For data provision I thank the North Carolina Growers Association, the Division of Employment Security at the North Carolina Department of Commerce, and the Bureau of Economic Analysis at the U.S. Department of Commerce. I thank Tejaswi Velayudhan and Marla Spivack for excellent research assistance. I received generous support from the John D. and Catherine T. MacArthur Foundation, the William and Flora Hewlett Foundation, and the Partnership for a New American Economy. I received help and ideas from Ann Bagchi, Gary Bullen, Stan Eury, Conor Hartman, Thomas Hertz, Jay Hill, David Nagel, Ben Powell, Lant Pritchett, Justin Sandefur, Peter Timmer, and Lee Wicker, plus seminar participants at the U.S. Dept. of Labor, SMU, and Australian National University. I am solely responsible for any errors. Views expressed here are the author's only; they do not necessarily represent the views of the Center for Global Development, its board, or its funders.

1. Introduction

The literature uses two common methods to measure the effect of foreign labor on native employment, methods often called the "area" approach and the "factor proportions" approach. Both of these use shifts in the supply of foreign labor to measure subsequent changes in native unemployment. The "area" approach seeks exogenous changes of foreign labor supply within labor market segments delimited by geographic space, and measures changes in native employment in those spaces. The "factor proportions" approach seeks exogenous changes of foreign labor supply within labor market segments delimited by personal characteristics—especially age and education—and measures changes in native employment in those statistical cells, over larger geographic areas.

These approaches have been fruitful but have limitations. First, they face challenges in clarifying the mechanism of any employment effect: Is the degree of native-immigrant substitution within each labor submarket determined by labor demand (substitutability of native and foreign labor in the production function) or by labor supply (relative willingness of natives to accept certain jobs)? Second, in both approaches, adversely-affected native workers may go undetected if they self-select out of the submarket under examination—by moving out of immigration-intensive places, or investing in human capital to leave immigration-intensive statistical cells. Finally, both approaches rely on exogenous shifts in foreign labor supply, which is somewhat distant from real immigration policy. Much immigration policy regulates not just the supply of foreign labor but also the demand for foreign labor (not just *how many* foreign workers may enter, but *which* foreign workers employers may hire under what conditions).

In this paper, I propose a different, occupation-specific approach that has relative advantages and disadvantages. I build a simple model of the relationship between native labor supply for a job and effect of foreign labor supply to that job on native employment. I use two natural experiments affecting one occupation—seasonal farm work in the United States—to directly approximate the level and slope of native labor supply in that occupation. I apply the approach to a large group of farms in North Carolina.

This provides information about both the degree and the mechanism of foreign-native labor substitution in employment for this occupation.

The first of these natural experiments uses a provision of U.S. law that allows an unlimited supply of foreign seasonal farm labor but tightly restricts demand for that labor: Employers must hire native workers as if they were perfect substitutes for foreign workers, at fixed and equal wages. I use that provision to estimate the level of native labor supply for seasonal farm work at current terms of contract. I describe the universe of U.S. applicants to tens of thousands of seasonal farm jobs over a 15-year period (extensive margin labor supply) and describe how long they lasted before leaving the job (intensive margin labor supply).

The second experiment is a sudden, large, unexpected change in the demand for native labor in *other* occupations during the Great Recession. I use this to approximate the local slope of the native labor supply curve for seasonal farm work. I describe how unemployment shocks affect U.S. workers' applications to seasonal farm work (extensive margin) and their duration on the job (intensive margin). Theory and the labor literature suggest that a negative shock to expected reservation earnings should affect labor supply for a job analogously to a positive shock to that job's wage. This evidence suggests that both the level and the local elasticity of native labor supply to seasonal farm work are close to zero, which in turn suggests that the direct effect of foreign seasonal farm work on native employment is likewise close to zero.

This approach has advantages and disadvantages relative to other approaches. An advantage is that it elucidates the mechanism determining native-foreign employment substitution in this setting. Normally, imperfect substitution between native and foreign labor in the production function could give rise to different labor demand for native and foreign workers. But since employers are obliged to hire native workers as if they were perfect substitutes for foreign workers, any observed imperfect substitution must arise from differences in native and foreign labor supply. Another contribution is that the approach is a more direct measure of substitution, less prone to biases that can arise from other approaches when natives self-select out of immigration-intensive

geographic areas or skill groups. The first natural experiment used here requires each job to be first offered to all unemployed U.S. workers in the state and the relevant skill group. A third advantage is that this approach is more relevant to policy in some settings: the consequences of common restrictions on demand for foreign labor are not well-identified by natural experiments that shift only the supply of foreign labor. The occupation-specificity of the approach has advantages or disadvantages depending on the research question: It is less informative than typical research designs about the unemployment effects of regulations on the overall supply of foreign labor, but more informative about the effects of regulations on labor demand for particular types of foreign labor. Findings in the setting of seasonal farm work are certainly not externally valid to other settings, but the approach can be used in other settings.

The analysis finds that the level and local elasticity of native labor supply for seasonal, manual farm work in North Carolina—at both extensive and intensive margins—is well approximated by zero at current terms of contract. This suggests a near-zero direct effect of foreign labor supply to this occupation on native employment. This matches numerous findings in the literature across broader ranges of occupations. It furthermore offers evidence against a number of reasons for that near-zero effect. It is not because employers have a different demand for foreign workers, since they are required to demand native workers as perfect substitutes. It is not because native workers lack information about the jobs, since intensive-margin labor supply (among native workers aware of and experienced in this job) is likewise near zero. It is not because employers refuse modest increases in the wage; the local elasticity of native labor supply is barely distinguishable from zero across a substantial range.

Aside from these direct effects, this analysis implies an indirect effect of foreign seasonal farm labor on native employment—within and beyond the agriculture sector. If native labor supply to essential manual agricultural work is close to zero, foreign workers in agriculture heavily influence the output of the sector as well as its multiplier effects on other sectors' output. This effect is conditional on current technology, and would be altered by the full mechanization of the subsectors where most seasonal agricultural labor works. The multiplier effect generates native employment across all sec-

tors of the state economy. A conservative estimate is that, in the short run and without any adjustment by farmers, each 1.5–2.3 foreign seasonal farm workers create one native job in North Carolina. In the long run, following the greatest plausible adjustment by farmers, each 3.0–4.6 foreign seasonal farm workers create one native job in North Carolina.[1]

I begin by discussing previous related research and the predictions of a simple theory of immigration regulation via regulation on the demand for foreign labor. I then discuss details of the two natural experiments on which the analysis rests: legal restrictions on U.S. employers' demand for foreign seasonal farm work, and sharp changes in generalized U.S. demand for native workers in the Great Recession. Thereafter I discuss the empirical setting: a group of farms in North Carolina that is the largest user of the U.S. seasonal farm-work visa. I use those data to explore native labor supply for seasonal farm work at the extensive and intensive margins. I then sketch the effects of foreign seasonal farm labor supply on native employment across all sectors of the North Carolina economy, under assumptions about the agricultural production function and regional economic multipliers.

2. A new empirical approach

For over a century, the effect of foreign workers on native employment has shaped the economic research agenda (e.g. Hall 1913) and immigration policy (e.g. Goldin 1994) in the United States. The recent empirical literature takes two general approaches—the "area" approach and the "factor proportions" approach (Borjas et al. 1996).[2] The area

[1] These figures refer to the effects on the total stock of all jobs available to all North Carolinians seeking work. They do not refer to "displacement" effects on jobs held currently by North Carolinians, which could be replaced if lost. In other words, they do not mean that a decrease in the supply of seasonal farm labor would require currently employed North Carolinians to seek alternative jobs among an undiminished total number of jobs; rather, they imply that there would be a decline in the total number of jobs that could be sought by anyone.

[2] Rodvarsson and Van den Berg (2009, p. 133) call these two approaches the "spatial correlation method" and the "skill cell method", respectively. They also identify a third "production function method", starting with Grossman (1982), that first estimates demand elasticities for immigrant and native labor in production functions and uses those elasticities to compute the labor-market effects of immigrant supply. Because this subliterature estimates the production function using immigrant flows into delimited geographic areas, I follow Borjas et al. (1996) and include it within the "area" approach.

approach tests whether locals' unemployment rises after inflows of immigrants to limited geographic areas.[3] The factor proportions approach tests whether locals' unemployment rises after increases in immigrant share within age, experience, and/or occupation cells across a broader labor market.[4] Most of the studies using both approaches find that immigrants have quite small effects on overall unemployment among native workers.

The reason the effects are not larger is an area of active research with no consensus (Freeman 2006). Leading explanations for modest employment effects in geographic area studies include out-migration by local jobseekers (Borjas et al. 1997; Card 2001; Hatton and Tani 2005) and stimulation of local labor demand by immigrants' consumption (Bodvarsson et al. 2008). Leading explanations for modest effects in age/experience/occupation cell studies include capital adjustment and technological change (surveyed in Longhi et al. 2005).[5]

This study takes a new approach. It uses a natural experiment in which a large number of immigrant jobs were exogenously offered to native workers on identical terms. It measures native labor supply to those jobs initially and—in a second natural experiment—measures how native labor supply to those jobs changed following a large exogenous shock to native workers' alternative employment options. One advantage of this approach over the alternatives is that it allows identification of whether native-foreign labor substitution—in this setting only—is determined by the relative shapes of employers' demand functions for the two types of labor, or by the relative shapes of native and foreign workers' labor supply functions.

[3]These include Grossman (1982); Card (1990); Altonji and Card (1991); Hunt (1992); Carrington and de Lima (1996); Pischke and Velling (1997); Angrist and Kugler (2003); Dustmann et al. (2005); Cohen-Goldner and Paserman (2011); Jean and Jimenez (2011); González and Ortega (2011); Glitz (2012); Smith (2012). I omit studies that test effects on wages only and not employment.

[4]These include Borjas et al. (1997); Winter-Ebmer and Zweimüller (1999); Friedberg (2001); Borjas (2003); Carrasco et al. (2008); Ottaviano and Peri (2012); Facchini et al. (2013). Again I omit studies that test effects on wages only and not employment.

[5]A few studies find more substantial effects of immigration on native unemployment: Glitz (2012) finds that immigration cause substantial increases in unemployment in Germany and Angrist and Kugler (2003) find such displacement across the EU, to a lesser degree in countries with more flexible labor market institutions; Altonji and Card (1991) find that immigration causes substantial *declines* in unemployment in the United States.

A few prior studies have investigated the degree of native-immigrant substitution within occupations (including Card 2001; Peri and Sparber 2009). These research designs face challenges in specifying the mechanism that determines the degree of substitution. It could be determined by the labor demand function: Employers may get a different marginal revenue product from foreign labor, or employers have greater market power in hiring foreign workers and can pay them less—particularly on the black market. Alternatively, it could be determined by native workers' labor supply: Employers may have the same demand for both types of workers, but foreign labor supply may exceed native labor supply at given terms of contract. These questions are important to understanding and regulating the labor market impacts of particular types of immigration, and the answers are likely to vary greatly by occupation.

A second advantage of this approach is that the "area" approach and the "factor proportions" approach are vulnerable to native self-selection out of the labor market segment under investigation. Unemployment effects on natives within immigration-intensive geographic areas can be unobserved if natives move away from those areas (e.g. Hatton and Tani 2005). Likewise, unemployment effects on natives within statistical cells can be mitigated if natives self-select out of those cells. For instance, native high-school dropouts can mitigate the employment effects of immigration into high-school dropout skill cells by staying in high school or completing a General Equivalency Diploma (e.g. Hunt 2012). The alternative approach in this paper directly measures the willingness of native workers to take foreign workers' jobs, prior to the foreign workers' arrival. It therefore does not miss any impacts on natives caused by self-selection out of the sample resulting from the foreign workers' arrival.

A final advantage of this approach is that it tests the effects of immigration regulation via regulation of demand for foreign labor instead of via regulation of the supply of foreign labor. Much existing research, though it is motivated in part by an interest in immigration policy, tests only the effects of greater or lesser supply of immigrant labor. This is somewhat removed from policy, for two reasons.

First, most important migrant destination countries regulate not simply the number

of foreign workers who can enter, but also extensively regulate *which* foreign workers employers may hire, under what terms (see subsection 4.1.). The effects of labor supply regulations are not fully informative about the effects of labor demand regulations, for the same reason that an international trade literature about the effects of overall import flows on a country is not fully informative about the effects of trade barriers like local-content restrictions and local licensing requirements. Second, with large movements of unauthorized labor across some important borders, the ability of governments to regulate foreign labor supply has limits (e.g. Hanson and Spilimbergo 1999; Hanson et al. 2002). That is, studies of the effects of foreign labor supply are not even fully informative about the effects of supply-side restrictions because flows of labor across borders are only partly determined by those restrictions. The labor demand restrictions analyzed in this paper, in the setting examined, do not suffer from a large degree of extralegal activity; there is no evidence that substantial numbers of U.S. workers have been illegally turned away from the jobs examined here.

3. Native labor supply and the effects of foreign labor

I argue that there are advantages to a research design that allows separation of the effects of labor demand and labor supply on native-foreign labor substitution. Here I discuss these advantages in a simple model. Following LaLonde and Topel (1991) and Card (2001) as extended by Angrist and Kugler (2003), let the output y of a firm employing native and immigrant workers in some occupation be

$$\begin{aligned} y &= f\big(\theta g(N, M)\big), \\ \text{where} \quad g &= \big(N^{\rho} + \gamma M^{\rho}\big)^{\frac{1}{\rho}}, \end{aligned} \tag{1}$$

N and M are the demands for native and migrant labor in the occupation in question; θ is an exogenous shifter; $0 < \rho \leqslant 1$ determines the elasticity of substitution between native and migrant labor $\left(\frac{1}{1-\rho}\right)$; $\gamma > 0$ sets the relative marginal revenue product of native and migrant labor; and f is the production function such that $f'(\cdot) > 0$; and $f''(\cdot) < 0$. Normalizing the output price to unity, the employer sets demand to maximize profit $\Pi \equiv f(\theta g) - w^N N - w^M M$, where w^N and w^M are native and migrant wages. Here and

throughout, a subscript denotes the partial derivative. Demand for native labor N^d is set by the first-order condition

$$\ln f' + \ln g_N = \ln w^N - \ln \theta. \tag{2}$$

Now let natives have a different labor supply for the occupation than migrants, following Peri and Sparber (2009) and D'Amuri and Peri (2011). For a manual, routine occupation, this might be because natives dislike manual or routine work itself, because they dislike circumstances of the work (dirt, stench, exposure to the elements), or because they incur a social stigma for performing such work. Migrant labor supply M^s is fixed and inelastic, while native labor supply (shifted by a constant ξ) is

$$N^s = \xi \left(w^N\right)^{\varepsilon}, \tag{3}$$

where ε is the wage elasticity. To get the response of native labor to an increase in migrant labor, impose $N = N^d = N^s$ and $M = M^d = M^s$ by substituting (3) into (2), and totally differentiate with respect to M. Then,

$$N_M = \phi(\varepsilon, \cdot)\left(\frac{\theta f''}{f'} g_M + \frac{g_{NM}}{g_M}\right). \tag{4}$$

The first term in parentheses $\frac{\theta f''}{f'} g_M < 0$ represents the simple reduction in firms' use of native labor as the availability of migrant labor rises, provided that native and migrant labor are perfect substitutes.[6] If native and migrant labor are *imperfect* substitutes ($\rho < 1$), the term $\frac{g_{NM}}{g_M} > 0$ represents the countervailing increase in demand for native labor as the firm's production rises with greater use of migrant labor.[7] The overall effect of migrant labor on native labor is scaled by $\phi(\varepsilon, N, M, \rho, \theta) \equiv (1/N\varepsilon - g_{NN}/g_N - (\theta f''/f')g_N)^{-1} > 0$, where $\phi_\varepsilon > 0$.[8]

I highlight two implications of the effect of migrant labor on native labor (4). First, the effect has ambiguous sign, and the magnitude of any effect depends on three key

[6] The inequality holds because $g_M = \gamma\left(\frac{M}{y}\right)^{\rho-1} > 0$.

[7] The inequality holds because $\rho < 1 \iff \frac{g_{NM}}{g_M} = \gamma\frac{1-\rho}{M}\left(\frac{M}{y}\right)^{\rho} > 0$.

[8] Assuming imperfect substitution then $\phi > 0$, since $\frac{g_{NM}}{g_N} = N^{-1}(1-\rho)\left(\left(\frac{N}{y}\right)^{\rho}\frac{\rho}{N} - 1\right) \leq 0$.

forces. 1) It depends on the shape of f and thus the magnitude of $\theta f''/f'$. In different industries, therefore, the effect could differ. 2) It depends on the elasticity of substitution between native and migrant labor, $\frac{1}{1-\rho}$. The more imperfectly migrants substitute for natives in production, the smaller is any displacement effect. 3) The less willing native workers are to supply labor to this occupation (smaller ε), the smaller is any displacement effect.

Note that the effect of migrant labor depends both on the form of labor demand (via ρ) and, separately, on the form of labor supply (via ε). The most common approach in the literature is to estimate reduced-form equations capturing the overall effect N_M (Pischke and Velling 1997). These suit some purposes but do not allow separation of effects conditioned by firms' labor demand from effects conditioned by native and migrant labor supply. Such estimates also do not allow prediction of displacement by any given type of worker in a given industry.

Second, suppose a policymaker seeks to protect native employment, minimizing the average effect of migrant labor occasioned by the marginal effect. Equation (4) suggests two ways to accomplish this via migration policy: 1) The policymaker can regulate immigration by quotas, exogenously setting M^* to some low number, without changing the marginal effect N_M. 2) The policymaker can regulate a reduction in the marginal effect N_M: either the policymaker can regulate a lower bound on wages in immigrant-heavy industries (that is, force firms to behave as if $\frac{\theta f''}{f'} g_M$ were less negative), or can require firms to hire any native willing to do the work (that is, force firms to behave as if natives and migrants were perfect substitutes in production, thus $\rho = 1$ and $\frac{g_{NM}}{g_M} = 0$).

We observe governments doing each of these in different combinations: Governments sometimes regulate migration by quotas without wage/hiring restrictions (e.g. U.S. family-reunification residency visas); sometimes by wage/hiring restrictions without quotas (e.g. U.S. H-2A visa and Canada Seasonal Agricultural Workers Program); and sometimes have both quotas and wage/hiring restrictions (e.g. U.S. H-2B visa). A partial, explicit goal of all of these policies is to protect native employment. The effect of these interventions will be smaller to the extent that natives and migrants are im-

perfect substitutes in labor demand, and to the extent that labor supply to different occupations differs between natives and migrants.

Equation (4) is the key to interpreting the empirical results in this paper. It suggests that we can learn about the effect of foreign labor on native employment (N_M) by pinning down two parameters on the right-hand side: the degree to which foreign and native workers are complements in production (reflected by the term $\frac{g_{NM}}{g_M}$), and the elasticity of native labor supply (ε). Each of these, respectively, uses one of the two natural experiments described in the next section.

4. Two natural experiments

This paper uses two natural experiments to learn about the immigrant-native employment substitution relationship (4) in the setting of North Carolina seasonal farm labor. The first experiment is a legal restriction to hiring foreign seasonal farm workers that obliges employers to set demand for native labor as if native and foreign labor were perfect substitutes ($\rho = 1$, and thus $\frac{g_{NM}}{g_M} = 0$).

The second experiment uses an exogenous unexpected shock to the reserve employment options of natives, which is informative about the local slope of the native labor supply curve (ε). The lower this slope, the lower the effect of foreign labor demand restrictions on the displacement of native labor by foreign labor (since $\lim_{\varepsilon \to 0} N_M = \lim_{\varepsilon \to 0} \phi = 0$). Together, these two experiments imply that if ε is close to zero, then the effect of foreign labor on native employment N_M is negative but likewise close to zero.

4.1. First experiment: Native labor demand requirements for the H-2A visa

The first natural experiment used here is a legal restriction on the hiring of foreign labor under one major employment-based visa. This "H-2A" visa allows entry for low-skill, seasonal agricultural labor. The United States limits U.S. employers' foreign labor demand under the H-2A visa. But there is no numerical limit on foreign workers' labor

supply, no cap on the number of H-2A visas that can be given. Employers needing additional seasonal agricultural labor can sponsor foreign workers to enter the U.S. and remain for up to 10 months per year. In fiscal year 2011, the U.S. issued 55,384 H-2A visas. Of these, 51,927 (93.8%) went to workers of Mexican nationality.

Labor demand restrictions are common in immigration policy. Many countries regulate both the supply of and the demand for immigrant labor under employment-based visas. For example, the United States restricts labor supply through most employment-based resident visas via tightly-binding quotas. But it also regulates demand for workers through the same visas—such as by requiring employers to actively recruit any able and willing American worker before hiring a foreign worker.[9] Similar restrictions on labor demand apply to the U.S.'s largest temporary ("nonimmigrant") employment-based visas: H-1B for skilled immigrants with "specialized knowledge" and H-2A/B for low-skill seasonal workers. The United States is not exceptional in this regard. Most principal migrant destination countries, in addition to restricting the supply of migrant labor, likewise regulate demand for foreign workers.[10]

Prospective employers of H-2A workers must first receive a Foreign Labor Certification from the U.S. Dept. of Labor. To receive certification, employers must work with the State Workforce Agency to prepare a job order for intrastate and interstate recruitment of U.S. workers, advertise the positions in two local daily newspapers (and, in some

[9] The two largest categories of employment-based resident visas to the United States are the E2 category ("Professionals Holding Advanced Degrees and Persons of Exceptional Ability") and E3 category ("Skilled Workers, Professionals, and [Non-Seasonal] Unskilled Workers"). There are numerous limits on demand for immigrant labor through these visas. Employers may not sponsor a worker for these visas until the U.S. Dept. of Labor has certified that "there are not sufficient workers who are able, willing, qualified ... and available at the time of application ... and at the place where the alien is to perform such skilled or unskilled labor, and the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed" (U.S. Immigration and Nationality Act, Section 212(a)(5)(A)). Employers must furthermore prove to the U.S. Dept. of Homeland Security that E2 workers have at least 10 years of work experience, that unskilled E3 workers are performing labor that is demanded in every month of the year, that skilled E3 workers have at least two years of work experience, and numerous other requirements. There are also limits on the supply of immigrant labor through these two visas: with minor exceptions, the number of entrants under each visa is currently restricted to a worldwide total of 40,040 per year, of which no more than 2,802 can go to nationals of any one country. (The number of workers is much smaller because spouses and children count against the quota.) These are tightly binding; the waiting list for most countries at the time of writing is 3 years for E2 and 6 years for E3. It is even longer for China and India.

[10] Examples from other migrant-destination countries are reviewed in Appendix section C.

states, on local radio stations), contact former U.S. workers to advise them of the opening, and prove to the Dept. of Labor National Processing Center (NPC) that they have done all of the above. This must occur at least 45 days before the job's start-date. Finally, "employers must submit a 'recruitment report' to the NPC at least 30 days before the start date that lays out the recruitment efforts made, identifies U.S. workers who applied for jobs, and explains 'lawful job-related reason(s)' for not hiring each U.S. worker who applied but was not hired; the number of jobs certified to be filled by H-2A workers is reduced for each U.S. worker wrongly rejected by the employer" (Martin 2008, p. 18). The requirement to hire any able and willing U.S. worker extends from the time of certification up to 50% of the way through the contract period.

Both native and foreign workers must be paid the same fixed wage set for each state called the Adverse Effect Wage Rate (AEWR), or the state or federal minimum wage if it is higher. Employers must also provide identical housing, laundry, and sanitation facilities for both types of workers, and international transportation for foreign workers.

The program is unpopular with U.S. farmers. Most foreign labor hired for seasonal farm work in the U.S. is hired on the unauthorized labor market rather than through the H-2A program (Carroll et al. 2005; Martin 2008). Less than five percent of all hired farmworkers are hired through the program, even though about three quarters of crop farmworkers have Mexican nationality (Kandel 2008, p. 14). Farmers complain that the H-2A program is "costly, unpredictable, and administratively flawed" (Wicker 2012), including the bureaucratic burden of advertising to, hiring, keeping records of, training, and replacing U.S. workers who show limited and short-lived interest in the positions (Martin and Taylor 2013).[11]

Employers hiring H-2A workers are required to make hiring decisions as if native and foreign workers were perfect substitutes. For this reason, any imperfect substitution in employment between these two groups is reliably attributable to the relative shape of

[11] I am not aware of scholarship on the effects of these burdens on use of the U.S. agricultural seasonal work visa program. Studying Australia, Gibson and McKenzie (2011) and Hay and Howes (2012) find that excessive red tape and bureaucratic requirements—including the requirement to prove that no Australian worker is interested in every position—prevented most employers from using Australia's Pacific Seasonal Worker Pilot Scheme.

the labor supply curves for native and foreign labor, at current terms of contract.

4.2. Second experiment: Unemployment in the Great Recession

The second experiment uses the sharp, exogenous, unexpected rise in U.S. unemployment in 2008 to provide information about the local slope of the native supply curve for seasonal farm work—away from current terms of contract. Figure 2 shows the large and sudden change in unemployment during the period under examination. The empirical problem is to measure the elasticity of labor supply by unemployed native workers for manual farm jobs. An ideal natural experiment would create exogenous changes of wage in job offers, or exogenous shifts in the labor demand curve, allowing the labor supply curve to be traced. An alternative method is to use exogenous shocks to labor demand in the unemployed worker's prospective alternatives.

How much labor will an unemployed native worker supply to a manual farm job? We now replace the assumed form of labor supply (3) with the richer, canonical model of labor supply in Cahuc and Zylberberg (2004, p. 33). Suppose an unemployed worker chooses labor supply to farm-work by solving $\max_{C,L} U = C^{1-\beta}L^{\beta}$ subject to $C + wL = w\bar{L} + R$, where C and L are consumption and leisure, w is the wage, β is the Cobb-Douglas elasticity, $\bar{L}$ is the total endowment of time available to be allocated between work and leisure, and R represents expected future income from prospective future wages outside of farmwork plus current nonwage income. For example, R could include prospective future income from white-collar employment (borrowed against), and current unemployment insurance payments.[12] Native labor supply N^s aggregates labor supply $n^{s,i}$ by each individual i:

$$N^s = \sum_i n^{s,i} \quad \text{where} \quad n^{s,i} = \begin{cases} 0 & \text{if } \frac{w}{R} < \frac{\beta}{1-\beta}\frac{1}{\bar{L}}; \\ (1-\beta)\bar{L} - \beta \cdot \frac{R}{w} & \text{if } \frac{w}{R} \geqslant \frac{\beta}{1-\beta}\frac{1}{\bar{L}}. \end{cases} \tag{5}$$

The first line shows labor supply at the extensive margin, the second line at the inten-

[12] The reservation wage $\bar{w}$ is the marginal rate of substitution between leisure and working at the farm job, evaluated at the point of maximum leisure $\bar{L}$: $\bar{w} = \frac{U_C}{U_L}\big|_{R,\bar{L}} = \frac{\beta}{1-\beta}\frac{R}{\bar{L}}$. The participation constraint $w \geqslant \bar{w}$ is therefore $\frac{w}{R} \geqslant \frac{\beta}{1-\beta}\frac{1}{\bar{L}}$.

sive margin.

In this simple model, two shocks have inverse and symmetric effects: an increase in the wage w, and a decrease in prospective alternative income R. This symmetry holds at the extensive margin of accepting any manual farm work, and at the intensive margin of choosing how many hours to work. Labor supply is elastic to a large negative shock in R if and only if it is elastic to a large positive shock in w.

This symmetry motivates the natural experiment used here. The Great Recession of 2007–2008 caused a large negative shock to prospective income from alternative jobs for unemployed workers in the short- to medium-term. A longstanding empirical labor literature provides support for the model in (5), showing that labor supply at a given wage rate responds positively to the duration of unemployment, corresponding to a reduction in expected R.[13] If the effect of a large shock to the unemployment rate on labor supply to any given occupation is very small, this suggests that β for this occupation is very small—which in turn suggests a near-vertical labor supply curve.

This does not mean that the response of native labor-supply to changes in the unemployment rate can offer straightforward numerical estimates of the labor supply slope β. The percentage change in perceived R for the average unemployed person could differ from the percentage-point change in the overall unemployment rate. This approach may nevertheless provide information about β. Assuming that changes in overall unemployment are well correlated with changes in R, any very large shock to the overall unemployment rate must cause a substantial percentage change in expected income from other employment options. If such shocks are not associated with substantial changes in labor supply, this is suggestive (but not conclusive) evidence that β is small.

I use both of these natural experiments to study labor market outcomes at a large network of farms in North Carolina that hires foreign seasonal manual agricultural labor exclusively through the H-2A program. North Carolina was subject to the large unem-

[13] This includes Kasper (1967); Barnes (1975); Kiefer and Neumann (1979); Fishe (1982); Lancaster and Chesher (1983); Feldstein and Poterba (1984); Addison and Portugal (1989). The average duration of unemployment and the expected probability of finding a new job within a give time are clearly correlated with the unemployment rate. The observed Beveridge curve in the U.S. is further evidence of this pattern.

ployment shock in 2008 experienced by the rest of the country.

Figure 1 sketches how these natural experiments provide new, occupation-specific information about mechanisms. The traditional "area" and "factor proportions" approaches (Figure 1a) trace the effects of a shift in foreign labor supply S_{foreign}, where L is quantity of labor and w/R is the ratio of wage to reserve option in equation (5). The effect on native employment and wages (point a) depends on both the shape of native labor supply S_{US} and the degree to which native and foreign labor are substitutes in the production function (the relationship between labor demand curves D_{US} and D_{foreign}). These approaches make it difficult to attribute observed effects to supply or demand. In this paper (Figure 1b), two natural experiments assist with isolating mechanisms. First, hiring restrictions force employers to have the same, infinitely elastic demand curve for both native and foreign labor (D). Second, natural shocks to the reserve option R exogeously shift D up and down in $\{L, \frac{w}{R}\}$ space. Observed native employment outcomes thus trace the local level and slope of S_{US}. This informs the mechanism for effects of foreign labor on native employment in this occupation.

5. Empirical setting: the North Carolina Growers Association

The data for this study come from the North Carolina Growers Association (NCGA), a network of approximately 700 farms across the state of North Carolina. In recent years the NCGA has hired about 6,500–7,000 foreign seasonal farm workers per year on H-2A visas (Table 1), making it the largest single user of the H-2A visa program. Its members grow cucumbers, sweet potatoes, tobacco, and Christmas trees, as well as smaller quantities of other crops including peppers, hay straw, beans, corn, and horticulture plants. Unlike most of the otherwise similar farms in the United States, the NCGA comprises farms whose sole source of foreign manual seasonal labor is the H-2A program.

The NCGA was founded in 1989 as a nonprofit business association to exploit group returns to scale in H-2A recruitment and regulatory compliance. It secures Foreign Labor Certifications for its member farms, processes foreign and domestic applicants for

H-2A jobs, trains and orients new workers, mediates in disputes between farmers and workers, and serves as the link between farmers and state and federal regulators. The NCGA hires the Mexican firm CSI Labor Services S.A. de C.V. of Monterrey, Nuevo León to recruit seasonal workers throughout Mexico. Most of these workers come from interior states of Mexico, not border states; the top five states of origin for NCGA workers in 2012 were, in decreasing order: Durango, Nayarit, San Luis Potosí, Guanajuato, and Hidalgo. Recruits are processed at the U.S. consulates in Monterrey and Nuevo Laredo, and brought by chartered bus to its headquarters at Vass, North Carolina before assignment to worksites across the state.

As described above, the NCGA is required to recruit unemployed U.S. workers for every H-2A job through the state workforce agency, the Division of Employment Security (DES) at the North Carolina Department of Commerce. Announcements of these jobs are mailed to any registered unemployed person who has expressed an interest in farm work, they are recommended by DES counselors monitoring unemployment benefits recipients, and they are listed at jobs terminals in DES offices statewide that are open to any member of the public. Upon request any DES office will refer an interested U.S. worker to the NCGA. The NCGA is furthermore required to purchase newspaper advertisements, in four newspapers across three states, for U.S. workers to fill every H-2A job.

Extremely few unemployed North Carolina residents processed by the DES show initial interest in NCGA jobs, and much fewer are willing to report for work and complete a harvest season. Table 2 summarizes these DES referrals to NCGA seasonal jobs over the last several years. The first three columns show the calendar year, the state unemployment rate in each year, and the annual average number of unemployed workers in the state. The next three columns show the number of new applications for jobs received by all DES offices statewide, and the number of referrals made to any employer in the state for non-agricultural and agricultural employment. The next column shows the number of these referrals that were sent to the NCGA. Almost all of these were hired by the NCGA, as shown in the next column. The following column shows how many of these reported for the first day of work. The penultimate column shows how many

of these worked until the end of the contract, without quitting or being fired. The final column shows the number of missing observations—workers whose outcome was not recorded.[14]

Why are so few unemployed workers willing to consider, accept, or complete these jobs? The pattern cannot be easily explained by geographic separation between NCGA jobs and DES offices, shown in Figure 3. While it is true that U.S. workers are less likely to show interest in NCGA jobs far from their residences, very large numbers of unemployed North Carolinians live close to NCGA worksites. Figure 3a shows the locations of NCGA H-2A jobs. Figure 3b shows the counties-of-residence of U.S. workers referred to the NCGA, and the locations of DES local offices. Figure 3c shows unemployment by county in 2011. The first two maps show that unemployed U.S. workers living close to NCGA worksites are more likely to show interest in the jobs.[15] But the unemployment map shows that every county that contains NCGA worksites either is or adjoins a county where unemployment was over 10% in 2011. Furthermore, access to DES offices is unlikely to be a major factor limiting native labor supply; in Figure 3b there is little correlation between U.S. referrals' residences and the presence of a nearby DES office.

6. Results

What is it, then, that so severely curtails native employment in these jobs? We can rule out one candidate explanation: There is no evidence that the North Carolina Growers Association is substantially out of compliance with the regulation to hire native workers as if they were perfect substitutes for foreign workers. The NCGA is closely watched by state and federal regulators; its members receive scores of inspections from the Dept. of Labor each year. Neither regulators nor advocacy groups currently allege that the NCGA systematically and illegally turns away substantial numbers of native workers willing and able to perform seasonal manual work.

[14] Due to a data fault, NCGA records on U.S. referrals for calendar year 2007 were not preserved.

[15] H-2A employers are required to provide basic, dormitory-style, state-inspected housing for workers who do not live nearby, so this pattern plausibly reflects a preference by U.S. workers to live at home during the work season and avoid employer-provided housing.

The analysis to follow explores alternative explanations. It could be that there is a special characteristic of the places with NCGA jobs that creates a spatial mismatch between unemployed U.S. workers and NCGA jobs. For example, the state workforce agency (Division of Employment Security) offices in places with NCGA jobs might not be the offices where large numbers of the unemployed go to seek work. It could be that unemployed U.S. workers, despite legal obligations for the NCGA to advertise through the DES and through local newspapers, do not learn of the jobs' existence. It could be that U.S. workers' access to unemployment insurance gives them a better option than manual farm labor. It could be that the NCGA pays too little to attract U.S. workers, but with modest increases in wages, native labor supply would rise. I test each of these in turn.

The interpretation of these results rests on equations (4) and (5). In this setting, employers are obliged to treat native and foreign workers as perfect substitutes ($g_{NM}/g_M = 0$), thus $N_M < 0$. But the magnitude of N_M depends on native labor supply elasticity ε, approximated by exogenous changes in R via equation (5), and $\varepsilon \approx 0 \Longrightarrow N_M \approx 0$.

6.1. The elasticity of native labor supply: Extensive margin

The first step is to explore the effect of local unemployment on DES referrals to the NCGA and the outcomes of those referrals.[16] This analysis is conducted by DES office and month. Descriptive statistics are in Table 3.

Table 4 shows panel fixed-effects regressions with DES referrals and their outcomes as the dependent variable, local unemployment and office-level job-applications as the regressors, and DES office fixed effects. The first four columns show the relationship between the regressors and all referrals by each DES office to all jobs in the state, first non-agricultural jobs and then agricultural jobs. The final four columns show the same relationship for referrals by each DES office to the NCGA, and the outcomes of those referrals. To make all eight columns comparable, the NCGA referral data are restricted to the same months and years for which overal DES referral data are available: February

[16] 'Local unemployment' means the unemployment rate at each DES office. This is calculated as the average unemployment rate in the counties served by that office, weighted by county labor force.

2005–May 2011.

Two features of Table 4 are notable. First, there is a positive association between local unemployment and referrals to the NCGA, as well as hiring by the NCGA—controlling for how many applications the DES office has received in the current month and in each of the preceding 10 months (columns 5 and 6). This relationship is significant at the 1% level. There is a much weaker, but still statistically significant positive relationship between unemployment and the number of those referrals who arrive to begin work at the NCGA (column 7). There is no detectable relationship between local unemployment and the number of U.S. referrals who complete their contracts with the NCGA (column 8).

Figure 4 represents these coefficients graphically as margins plots. The vertical axes are multiplied by the number of DES offices in the sample and the number of months in a year, so that they represent the expected number of total U.S. workers statewide per year. The horizontal axes show local unemployment. Those plots reveal that the magnitude of these relationships is extremely small. A 10 percentage-point rise in unemployment is associated with roughly 100 additional referrals to the NCGA each year, controlling for all time-invariant traits of the DES office in question as well as the number of applications it has received in the preceding 10 months. The same shock to unemployment is associated with about 50 additional U.S. workers statewide per year who actually arrive to begin work, and has no significant association at all with the number who complete work.

A second notable feature of Table 4 is that NCGA referrals are negatively correlated with lagged numbers of overall job applications at each DES office for the first five months of lags, but positively correlated for lags 6–10. One explanation for this pattern is the fact that, under the Employment Security Law of North Carolina, the maximum duration of state unemployment insurance benefits is 26 weeks. The coefficients are compatible with, but not conclusive evidence of, an effect of unemployment benefits that deters application to NCGA jobs: those who became unemployed during the coverage period are less likely to express interest in NCGA jobs (the negative coefficients in lags 0–5),

and those whose coverage expires are more likely to show interest.[17]

Any such deterrence effect from unemployment insurance is controlled away in the last column of Table 4, but the coefficient on unemployment is indistinguishable from zero. This suggests that unemployment insurance is not a substantial reason that we observe no relationship between local unemployment and native-worker completion of NCGA jobs.

6.2. The elasticity of native labor supply: Intensive margin

The analysis now shifts to the level of individual employment episodes. I start by measuring the attrition of U.S. referrals between the referral date and the first day of the work contract, and exploring the relationship between this attrition and local unemployment.

Figure 5a shows that for every two weeks that pass between an unemployed U.S. workers' referral to the NCGA and the start date of work, roughly an additional half of the referred workers fail to begin work. The figure displays a Kaplan-Meier survival curve for all workers referred to the NCGA between 1998 and 2012, from the date of referral until the date the work contract begins, with a 95% confidence interval around the curve. Censoring is defined as reporting for work as scheduled. Workers drop out if they either contact the NCGA to cancel the job, or simply do not appear for work. The solid vertical line shows the sample mean time from referral to start date, with dotted lines showing a 95% confidence interval for the mean.

Figure 5b shows that this survival curve has the property predicted by theory in (5). It shows the results of a Cox proportional hazards model where the regressor is local unemployment in the U.S. worker's county of residence in the month of referral. When unemployment is high, referred workers are substantially more likely to begin

[17] This pattern reflects a common finding in the labor literature: Close to the maximum duration of unemployment benefits, there are sharp declines in the reservation wage for labor supply (e.g. Fishe 1982) and sharp increases in escape rates from unemployment (e.g. Katz and Meyer 1990; Hunt 1995; Rogerson and Zhang 2003).

work. Table 5 shows the underlying semiparametric Cox regression, along with alternative parametric specifications. The hazard rate is roughly 9% lower for each additional percentage point of local unemployment. But Figure 5b shows that this effect is quite small; even a very large shock to unemployment tends to delay this attrition by around two weeks.

Similar patterns are seen in survival curves examining attrition from the start of work to the completion date of the work contract. Figure 6a shows these Kaplan-Meier survival curves for U.S. workers (solid black) and Mexican H-2A workers (dashed red), with 95% confidence intervals. Here, censoring is defined as completing the work contract. Workers drop out if they quit or are fired. The hazard rate for U.S. workers is roughly 35 times the rate for Mexican workers in the same jobs (Table 6).

There are two dimensions of missing data in the NCGA records, shown in Table 7. For some workers the outcome is unknown (for U.S. referrals, 111/1658 = 6.7%). In this case, I note that almost half of these missing values occur in a single year (2008, see Table 2), and the results are not materially sensitive to the omission of that year (results available on request). For other workers, the outcome is known but the duration is unknown (for U.S. referrals, 108/1658 = 6.5%). For these I impute survival times with a simple model.[18] The results of imputing U.S. worker survival times for observations with known outcome are shown with the dotted green line in Figure 6a and in the lower panel of Table 6. There is little change in the survival curve, and the U.S. worker day-to-day attrition rate from quitting or being fired remains above 32 times the Mexican rate.

Figure 6b shows the relationship between the U.S. worker survival curve (complete cases only) from start-of-work to contract completion, and local unemployment. Again it shows the result of a Cox proportional hazards model with local unemployment as the

[18] The imputation model assumes that unobserved survival times for U.S. workers are equal to the observed survival times of U.S. workers who are referred at the same local unemployment rate, who start after the same delay between referral and start-of-work, who finish work with the same outcome, in the same year and month. That is, survival time is predicted by an OLS regression of survival time on local unemployment in the month of referral, months between referral and start, a set of dummies for each outcome (completed, quit, fired), and a full set of interacted dummies for the year and month of application.

regressor. Table 5 shows the underlying Cox regression and fully parametric alternatives. Again the relationship corroborates the prediction about intensive-margin labor supply in (5): when unemployment is higher in a referred worker's county of residence, the worker lasts longer on the job. But the magnitude of this relationship is small, and only reaches conventional levels of statistical significance in the exponential survival model. These estimates suggest that with each additional percentage point of unemployment, U.S. workers' hazard rate following the start of work is around 3% lower, but this effect cannot be definitively distinguished from zero. A 10 percentage-point increase in unemployment makes U.S. workers stay roughly two weeks longer on jobs whose typical contract length is 4.5–5.5 months.

Together, these estimates suggest that the slope of the native labor supply curve in the neighborhood of the current wage is positive but very close to zero. Native labor supply at the intensive margin—willingness to begin work, and willingness to complete work once begun—is extremely low. It is affected by the reserve options available to these workers, but with an extremely small magnitude.

6.3. Indirect effects of foreign seasonal farm workers on native employment

The preceding results test and reject some alternative explanations for low labor supply by U.S. workers. Low labor supply is not likely to arise from spatial variation across DES offices; the analysis in Table 4 and Figure 4 includes DES office fixed-effects. It is unlikely to arise because U.S. workers do not know about the jobs: intensive-margin labor supply among U.S. workers referred for these jobs is similarly low to extensive-margin labor supply by all unemployed U.S. workers. It is unlikely to arise from deterrence by unemployment insurance; Table 4 captures and controls for at least some of any such deterrence. Finally, it is unlikely to arise from an unwillingness or inability of farmers to modestly raise wages; the evidence is compatible with near-zero local slopes for the extensive-margin and intensive-margin labor supply curves.

This suggests that there is close to zero employment substitution between native and foreign labor in these seasonal farm jobs, and that the mechanism for this lack of sub-

stitution is almost exclusively on the labor-supply side. This has a further implication for the effect of foreign seasonal farm work on native employment outside the farm sector. Conditional on North Carolina's continued production of crops that require manual harvest to be profitable, this implies that foreign seasonal laborers in North Carolina cause an increment to the economic product of the state. The following analysis conducts a rough estimate of that statewide economic effect and its consequences for native jobs in all sectors of the state economy.

Table 8a reports estimates of the marginal revenue product (MRP) of manual seasonal harvest and planting workers in North Carolina, for three of the principal crops produced by NCGA farms. They are based primarily on crop budgets produced by researchers at North Carolina State University and are specific to the state. The short-run estimates of workers' MRP assume a Leontieff production function, so that the MRP/hour/acre is simply equal to the MRP/acre/season divided by the hours of manual harvest and planting labor required per season. This clearly overestimates MRP, since farmers could be expected to adjust other inputs in response to a loss of manual labor. The long-run estimates assume a Cobb-Douglas production function, assuming that the production elasticity of manual labor equals its cost share.[19] This clearly underestimates MRP, since farmers of crops whose harvest has not been mechanized cannot infinitely substitute other inputs for manual labor at constant (unit) elasticity. Details of the method and data sources are given in Appendix subsection A.2.

These estimates suggest that the short-run MRP of seasonal manual labor in NCGA jobs is somewhere around 4–6 times the wage paid to manual seasonal workers, and the long-run MRP is somewhere around 2–3 times the wage.[20] The short-run MRP is conservatively less than 6, and the long-run MRP cannot go below 2—a value that would

[19] A basic implication of Cobb-Douglas production is that the output elasticity of an input is well approximated by its cost share. In the simplest version of the dual problem, $\min_{K,L} (wL + rK)$ s.t. $AK^{1-\alpha}L^{\alpha} = \bar{Q} \xrightarrow{FOC} \alpha = \frac{wL}{wL+rK}$. It is standard in the industrial organization literature to approximate firm-level output elasticities with industry-level input cost shares (e.g. Griliches 1963; Baily et al. 1992; Syverson 2004; Foster et al. 2008).

[20] These figures are corroborated by the only corresponding estimate of which I am aware in the agricultural economics literature. Assuming Cobb-Douglas production, Huffman (1976, Table 5) finds that for representative farms in North Carolina, the marginal revenue product of hired labor is 1.75 times the wage. The corresponding figures in Table 8a are 1.44–1.99 times the wage.

assume farmers can almost continuously substitute for any deficit in manual labor by adjusting other inputs.

Table 8b draws out the implications of these figures for the impact of foreign seasonal H-2A farmworkers for economic product and jobs in all sectors of the entire state of North Carolina. Details and sources for this calculation are given in Appendix subsection A.3. The MRP of 7000 foreign seasonal agricultural workers per year is between about $300 and 450 million in the short run and about $150 and 225 million in the long run. The U.S. Bureau of Economic Analysis RIMS II regional economic model predicts that an increment of this magnitude in the agricultural economy of North Carolina generates roughly 2800–4300 jobs in all sectors of the state economy in the short run, and roughly 1400–2100 jobs in the long run. In other words, each 1.5-2.3 foreign H-2A workers create one U.S. job in North Carolina in the short run, and each 3.0–4.6 foreign H-2A workers create one U.S. job in North Carolina in the long run. The RIMS II output multiplier furthermore suggests that if the labor of the 7000 H-2A workers employed by the NCGA were lost, the total economic output of North Carolina would decline by roughly $500–750 million in the short run (without any adjustment by farmers) and by at least $250–370 million in the long run (after the greatest plausible degree of adjustment by farmers).

These estimated impacts on U.S. workers' jobs do not represent the effect of H-2A workers on the current jobs of working North Carolinians, most of which could be replaced if lost. That is, they are not the common estimates of a "displacement" effect on U.S. workers' jobs if H-2A workers were lost. Rather, they reflect an increment to the total number of jobs that could be sought by any unemployed U.S. worker in North Carolina.

These estimates are conservative for four reasons. First, the particular RIMS II jobs multiplier used here is the 'Type I' multiplier, which omits all effects of local expenditure by workers. While H-2A workers at the NCGA remit to Mexico the majority of their earnings, they do spend roughly 10–15% of earnings in North Carolina. Second, the 'Type I' multiplier ignores the effects of spending by non-seasonal hired workers on the same farms, most of whom are U.S. workers who live and spend in the area. Third, it

ignores all effects of an expansion in the North Carolina economy on the economies of neighboring states and job creation in those states. Fourth, it ignores all effects on the U.S. economy from any eventual spending of dollars remitted to Mexico on U.S. exports.

7. Conclusion

These results suggest that the effect of foreign manual farm labor on U.S. native employment is almost zero in North Carolina. The reason is almost exclusively the shape of the native labor supply curve for these jobs—supply is close to zero at current terms of contract and at a range of nearby terms. I test and substantially rule out a range of possible explanations for low native labor supply, including geographic mismatch, illegal discriminatory hiring practices, asymmetric information, and moral hazard from unemployment insurance. It appears that almost all U.S. workers prefer almost any labor-market outcome—including long periods of unemployment—to carrying out manual harvest and planting labor. This remains true across a wide range of reserve options, suggesting that it remains true across a wide range of compensation as well.

This method has advantages over previous approaches in this setting. First, it identifies the mechanism: lack of native-foreign substitutability arises not from differences in employer demand for native and foreign labor but from differences in labor supply by native and foreign labor. Second, is it less prone to bias by native self-selection out of the labor market segment under examination; all of the jobs in question were first offered to natives within the relevant labor market segment before foreign hiring could occur. Third, this finding is more relevant to policy controls on foreign labor demand than other studies that use shifts in foreign labor supply. Such demand controls are frequently occupation-specific, and sometimes occur in the absence of supply constraints, as with the H-2A visa. The shape of native labor supply directly informs the effects of occupation-specific restrictions on foreign labor demand.

These results imply that if Americans continue to consume the crops in question at any-

where near current prices, only three outcomes are plausible. Either seasonal foreign labor will allow continued domestic production, domestic production will be replaced by imports, or technological change will reduce or eliminate the need for manual labor in production. Conditional on current technology, then, foreign seasonal labor causes an increase in GDP. This analysis suggests that if the roughly 7,000 Mexican seasonal workers employed by the North Carolina Growers Association in 2012 had not entered the country, in the short run the North Carolina economy would lose 2800–4300 jobs across all sectors and would shrink by $500–750 million. In the long run, after the greatest plausible degree of adjustment by farmers, this loss would be roughly 1400–2100 jobs and $250–370 million. In other words, each 1.5-2.3 foreign H-2A workers create one U.S. job in North Carolina in the short run, and each 3.0–4.6 foreign H-2A workers create one U.S. job in North Carolina in the long run.

Labor demand regulations in this industry have remarkable consequences. Regulators require the NCGA to advertise all of its H-2A jobs in four newspapers in three states. It spent $54,440 on these advertisements in 2011, and $35,906 in 2012, for a two-year total newspaper advertising expenditure of $90,346. During that two-year period, a total of five U.S. workers hired by the NCGA reported that they had first learned of the job through a newspaper advertisement (Table 9). Of those five, only one was willing to start the job, stay past the first few weeks, and complete the growing season—earning roughly $8,000 in four months. The newspaper advertising requirement appears equivalent to a large tax on farmers and subsidy for newspaper owners, with essentially no benefit to U.S. farm workers.

Beyond this, the NCGA reports that it spends roughly $46,000 per year in staff time exclusively related to required cooperation with the DES on recruiting, hiring, and tracking U.S. referrals. Combined with newspaper advertising costs, this means that the NCGA spent about $182,000 over the two-year period 2011–2012 to recruit U.S. workers. This exclusively comprises administrative costs at the NCGA headquarters office and does not include time spent by farmers to train or replace U.S. workers who leave. It also does not include government expenditures in the effort to recruit U.S. workers—the time of employees of DES, the U.S. Dept. of Labor, or the North Carolina Dept.

of Labor that was spent enforcing U.S. worker recruitment requirements. During that two-year period, 17 hired U.S. workers were willing to complete the season (Table 2). Each worked on average 5 months and earned about $9,700, for total earnings of about $165,000 across all 17 willing U.S. workers. This is less than the direct cost that the NCGA headquarters incurred to recruit the same workers. Given that this recruitment cost omits any costs to the farms themselves or to state or local government, this suggests that regulations on demand for foreign seasonal manual farm labor are a net destroyer of economic value in North Carolina.

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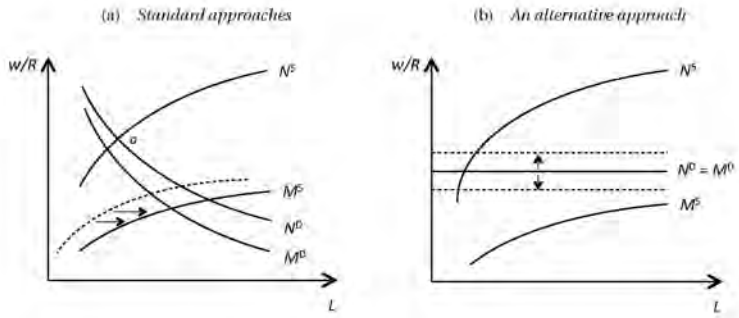
Figure 1: **How an alternative approach is informative about causal mechanism**



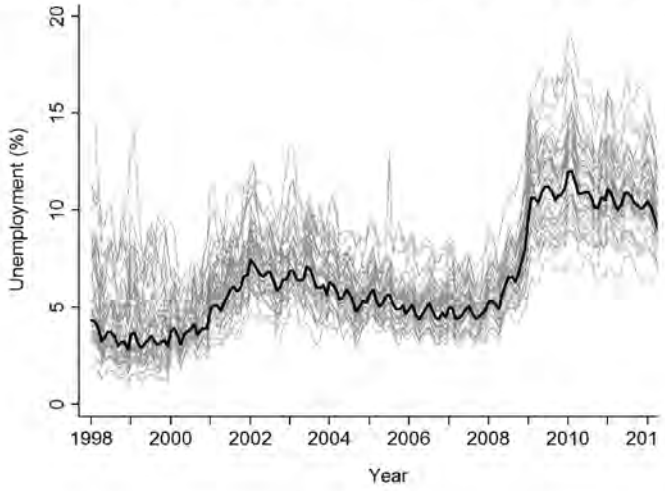
N and M represent native and migrant workers, respectively. Superscripts S and D represent supply and demand, respectively. L is the quantity of labor utilized, and $\frac{w}{R}$ is the ratio of wage to reserve option in equation (5).

Table 1: **Overview of Mexican H-2A Workers at NCGA**

Year	Number	Months/worker
2004	6799	4.454
2005	5602	4.527
2006	4786	4.571
2007	5410	4.797
2008	5969	5.233
2009	6237	5.084
2010	6201	5.613
2011	6474	5.496
2012	7008	5.506
Mean	6054	5.054

Number of workers shows number of unique individuals starting one or more H-2A employment events in each calendar year. Months/worker shows average months of work by each individual. 'Mean' row covers 2004–2012.

Figure 2: **North Carolina unemployment, at each DES office and statewide**



Black: North Carolina statewide average monthly unemployment rate (%). Gray: unemployment rate at each DES office—calculated as average unemployment rate in the counties served by that office, weighted by county labor force.

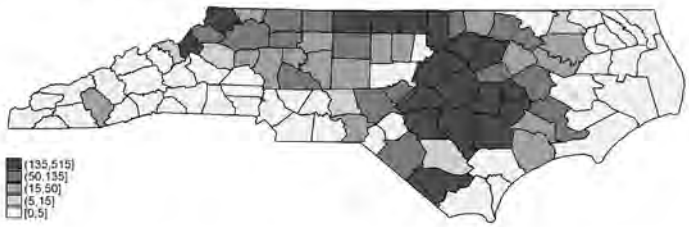
Table 2: **Overview of DES office referrals to all employers and to NCGA**

	Unemp.		DES to all employers			DES to NCGA				
	Rate	*N*	New	Referred		Referred	Hired	Started	Complete	Unknown
Year	(%)		apps	Non-ag.	Ag.					
1998	3.53	140782	–	–	–	112	98	14	0	25
1999	3.27	132707	–	–	–	41	39	6	0	3
2000	3.75	154577	–	–	–	35	34	4	0	1
2001	5.64	234934	–	–	–	46	44	13	0	0
2002	6.63	279281	–	–	–	99	91	43	2	2
2003	6.45	274193	–	–	–	244	242	83	3	0
2004	5.54	236328	–	–	–	134	134	37	2	3
2005	5.26	229030	–	–	–	57	57	22	6	2
2006	4.74	212099	236011	1642996	40880	88	88	22	10	15
2007	4.71	213276	238386	1586462	40924	–	–	–	–	–
2008	6.19	283048	256865	1498566	32958	170	167	58	11	50
2009	10.76	490010	276978	1396083	27168	108	105	48	6	0
2010	10.94	504885	267076	1604416	32245	74	73	30	10	10
2011	10.51	489095	–	–	–	268	245	163	7	0
2012	9.52	446469	–	–	–	253	213	143	10	0

U.S. worker data for 2007 were not preserved by the NCGA. Unemployment (%) is average unemployment rate in the counties served by each DES office, weighted by size of labor force; Unemployed (*N*) is total number in those counties. The 2005 and 2011 DES totals are omitted from this table because published numbers only cover part of those two years: Feb.–Dec. 2005 and Jan.–May 2011.

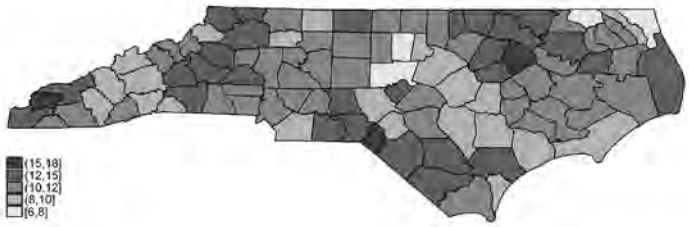
Figure 3: **Locations of NCGA jobs, referred U.S. workers, and high unemployment**

(a) *Average number of NCGA H-2A employment events per year (worksite)*



(b) *Average number of U.S. workers referred per year (residence), and DES offices (circles)*

(c) *Average unemployment rate in 2011 (%)*



All maps are divided into the 100 counties of North Carolina. In Figure 3b, shade of each county shows the average number of U.S. workers residing in that county referred by the DES to the NCGA each year, while yellow circles show locations of DES 'local' offices, excluding 'branch' offices (it omits the Warrenton local office because DES did not publish application/referral data for that office 2005–2011). North Carolina measures about 560 miles (901 km) from east to west; the average width of one county is 23.2 miles (37.3 km).

Table 3: **Descriptive statistics**

	N	Mean	S.D.	Min.	Max.
Data by DES office and month, Jan. 1998 to Dec. 2012					
Year	11086	2005.01	4.32	1998	2012
Month	11086	6.49	3.45	1	12
Unemployment (%)	10980	7.03	3.10	0.97	23.75
Unemployed (N)	10980	4722.09	5996.88	65	59994
Referrals to NCGA	11086	0.16	0.93	0	31
Hired by NCGA	11086	0.15	0.86	0	31
Began work at NCGA	11086	0.06	0.51	0	24
Completed work at NCGA	11086	0.01	0.09	0	4
Data by DES office and month, Feb. 2005 to May 2011					
Year	4484	2007.76	1.85	2005	2011
New job applications	4484	349.46	284.98	57	2411
Total non-agr. referrals	4484	2171.71	1352.99	0	13756
Total non-agr. placements	4484	87.27	73.09	0	751
Total agr. referrals	4482	46.28	115.39	0	2102
Total agr. placements	4484	24.15	92.11	0	1922
Data by employment episode: U.S. workers, Jan. 1998 to Dec. 2012					
Year of job start	1594	2006.35	4.41	1998	2012
Month of job start	1594	4.69	1.92	1	12
Unemployment (%)	1526	7.75	2.88	1.37	16.48
Time before work start (mo.)	1595	0.38	0.41	0.00	5.06
Time after work start (mo.)	586	1.06	1.46	0.00	8.54
Completed job, if referred?	1658	0.04	0.20	0	1
Completed job, if started?	805	0.08	0.28	0	1
Data by employment episode: Mexican workers, Jan. 2004 to Dec. 2012					
Year of job start	61439	2008.35	2.62	2004	2012
Month of job start	61439	5.40	1.92	1	12
Time after work start (mo.)	61254	4.50	2.28	0.00	11.27
Completed job, if started?	61255	0.92	0.27	0	1

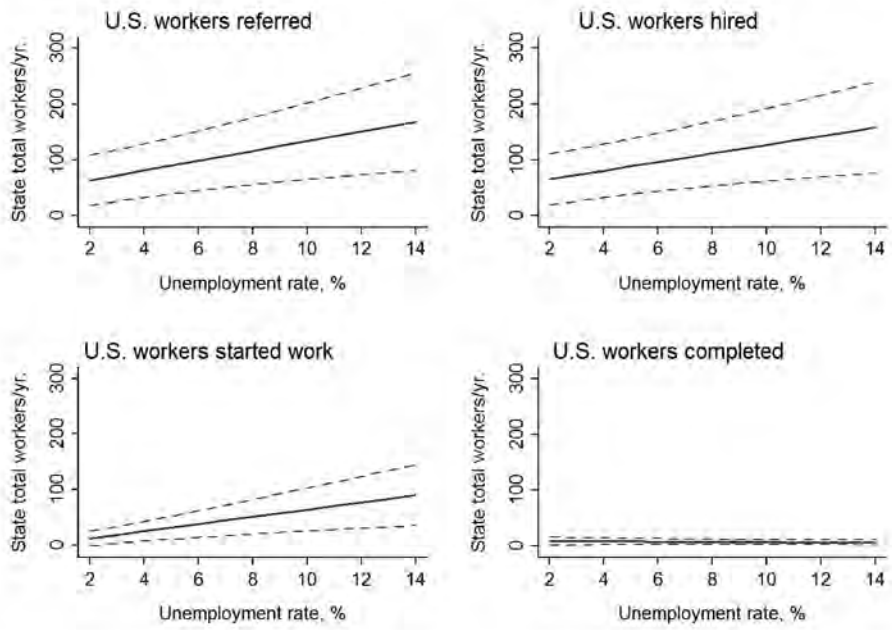
U.S. worker data for 2007 were not preserved by the NCGA. Unemployment (%) is average unemployment rate in the counties served by each DES office, weighted by size of labor force. Unemployed (N) is total number in those counties. All variables are shown unscaled; a scaled version of "new applications" (in thousands) is used in Table 4.

Table 4: **Effects of the recession on job referrals (Panel regressions with DES office fixed-effects), Feb. 2005–May 2011**

		All non-ag. jobs		All ag. jobs		NCGA jobs			
		Referred	Placed	Referred	Placed	Referred	Hired	Started	Completed
Unemployment (%)		−45.29***	−8,328***	−2.398*	−0.417	0.0122**	0.0108**	0.00909*	−0.000281
		(9.940)	(0.793)	(1.019)	(0.519)	(0.00410)	(0.00381)	(0.00289)	(0.000465)
New applications (000s), t		2092.0***	62.12***	345.7*	258.0	−0.260	−0.240	−0.208	−0.00985
		(441.0)	(11.90)	(168.3)	(146.1)	(0.168)	(0.155)	(0.120)	(0.0144)
"	$t-1$	58.67	3.631	45.26	76.21	−0.343*	−0.323*	−0.189**	−0.0258
		(148.8)	(11.92)	(29.50)	(45.29)	(0.145)	(0.142)	(0.0731)	(0.0207)
"	$t-2$	45.26	5.188	−33.14	−36.53	−0.376*	−0.349*	−0.173	−0.0251
		(85.31)	(13.74)	(30.14)	(27.29)	(0.176)	(0.172)	(0.0955)	(0.0195)
"	$t-3$	−69.74	−25.04	−29.22	−53.81	−0.548**	−0.547**	−0.309**	−0.0298*
		(92.16)	(15.80)	(19.56)	(32.93)	(0.176)	(0.168)	(0.113)	(0.0146)
"	$t-4$	−561.9***	36.18**	−29.11*	−26.57	−0.333*	−0.296*	−0.136*	−0.00699
		(97.15)	(13.61)	(12.89)	(15.20)	(0.133)	(0.127)	(0.0545)	(0.0167)
"	$t-5$	−177.2	−16.81	−55.91**	−49.36*	−0.390*	−0.396*	−0.156	−0.0394*
		(95.69)	(15.68)	(21.43)	(20.50)	(0.169)	(0.167)	(0.0831)	(0.0185)
"	$t-6$	−253.5	−25.67	−57.18**	−45.91**	0.375*	0.384*	0.161**	0.00613
		(159.0)	(13.54)	(19.32)	(16.93)	(0.171)	(0.171)	(0.0542)	(0.00929)
"	$t-7$	227.8*	16.56	−50.86*	−52.23*	0.459	0.455	0.277*	0.108
		(109.3)	(23.75)	(23.17)	(22.66)	(0.266)	(0.271)	(0.137)	(0.0664)
"	$t-8$	466.0***	7.336	−28.65	−48.62	0.769*	0.731*	0.492	0.0212*
		(135.3)	(11.43)	(15.82)	(25.34)	(0.326)	(0.321)	(0.253)	(0.0103)
"	$t-9$	117.5	2.982	1.086	14.74	0.219	0.189	0.0361	−0.0340
		(94.49)	(9.190)	(12.44)	(10.51)	(0.288)	(0.266)	(0.234)	(0.0404)
"	$t-10$	139.4	−27.88	−49.35	−22.89	0.385*	0.362*	0.163*	0.0296
		(96.84)	(15.07)	(43.45)	(35.70)	(0.161)	(0.150)	(0.0808)	(0.0327)
Constant		1772.3***	135.5***	41.86***	20.26**	0.0779	0.0781	0.0117	0.0141*
		(312.4)	(14.57)	(11.36)	(7.005)	(0.0412)	(0.0403)	(0.0168)	(0.00688)
N		3828	3828	3828	3828	3828	3828	3828	3828

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. Observations are by DES office and month. All regressions use panel estimator with DES office fixed-effects. Standard errors in parentheses are clustered by DES office, given that $T > G$ ($T = 66$, $G = 58$). Data on NCGA referrals restricted to same period as the available data for DES referrals to all employers (Feb. 2005–May 2011). For this table only, new applications are measured in units of thousands (to make the coefficient estimates more compact). All dependent variables are in the original unscaled units: number of workers. NCGA jobs are linked by referral date: For example, "Completed" denotes the number of workers who completed an NCGA job for which they were referred in the month in question.

Figure 4: **Marginal effects of unemployment rate on U.S. labor supply to NCGA (state total/year)**



These figures represent the coefficients on the unemployment rate in columns 5–8 of Table 4. Those coefficients are in units of workers per office per month; so for this figure they are converted to statewide totals per year by multiplying by 720 (= 60 offices × 12 months). Dashed lines show 95% confidence interval.

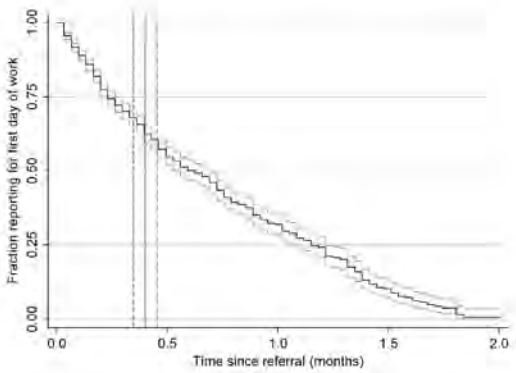
Table 5: **U.S. workers, by unemployment**

		Parametric survival estimation		
	Cox	*Exponential*	*Gompertz*	*Weibull*
From referral to start date:				
Unemployment (%)	0.913***	0.912***	0.912***	0.911***
	(0.0125)	(0.0125)	(0.0125)	(0.0125)
N	1384	1384	1384	1384
From start date to quitting/termination (Complete cases only):				
Unemployment (%)	0.972	0.946**	0.972	0.964
	(0.0184)	(0.0180)	(0.0183)	(0.0182)
N	503	503	503	503

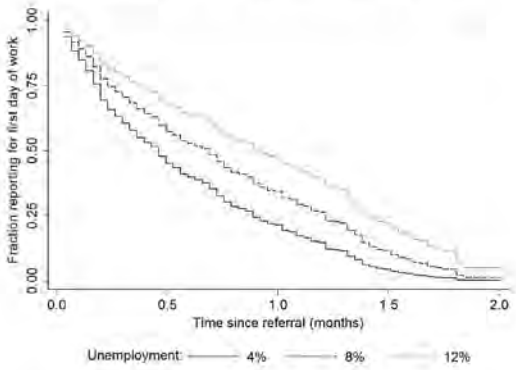
Exponentiated coefficients (log relative hazard form). Standard errors in parentheses. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. "Cox" is the semiparametric Cox proportional hazards model.

Figure 5: **U.S. workers, from referral to start date**

(a) *Kaplan-Meier survival curve*



(b) *Association with unemployment at referring office*



In Figure 5a, lines above and below survival curve show 95% confidence interval. Vertical orange line shows average duration to planned start date (with 95% confidence interval).

Table 6: **All workers, from start date to quitting/termination, by nationality**

		Parametric survival estimation		
	Cox	*Exponential*	*Gompertz*	*Weibull*
Complete cases				
U.S. worker	34.28***	42.22***	35.57***	35.49***
	(1.730)	(2.081)	(1.780)	(1.790)
N	61691	61691	61691	61691
Missing survival times imputed				
U.S. worker	31.89***	38.51***	32.60***	32.95***
	(1.393)	(1.639)	(1.416)	(1.437)
N	61865	61865	61865	61865

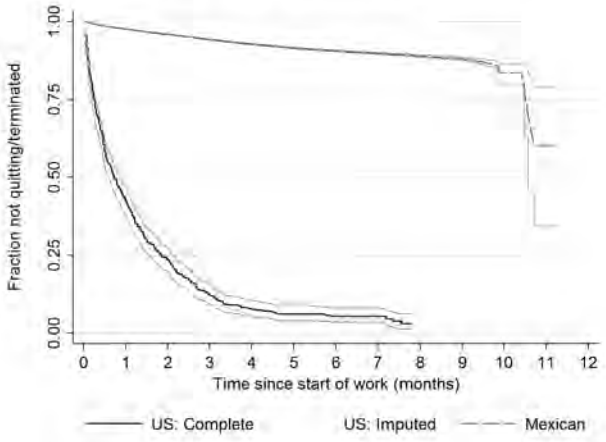
Base group is Mexican workers. Exponentiated coefficients (log relative hazard form). Standard errors in parentheses. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. "Cox" is the semiparametric Cox proportional hazards model. "Complete cases" are observations without missing survival time. "Imputed" means missing survival times modeled as a linear function of how the employment episode ended (completed, quit, fired); time from referral to start; unemployment rate at the referring DES office; and dummies for year, month, and year × month (for nonmissing survival times, model $R^2 = 0.4989$). "Extreme upper bound" means that each *U.S.* worker with a missing survival time is assigned the survival time of the average *Mexican* worker with the same job outcome (completed, quit, fired) who started work in the same month of the same year.

Table 7: **Missing observations on outcome and duration of work**

	U.S. worker duration		Mexican worker duration	
	Not missing	*Missing*	*Not missing*	*Missing*
Outcome:				
Completed	67	1	56505	0
Quit	488	100	2285	0
Fired	31	7	2464	1
Unknown	0	111	0	126

Figure 6: **U.S. & Mexican workers, from start of work to quitting/termination**

(a) *Kaplan-Meier survival curves*



(b) *Association with unemployment at referring office (U.S. complete cases)*

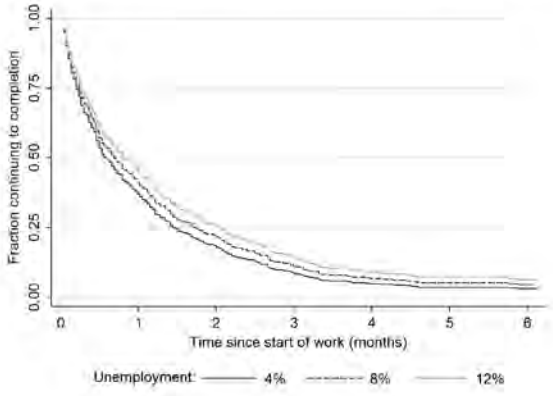


Table 8a: **Rough estimates of the marginal revenue product (MRP) of manual labor**

Crop	Cucumber		Sweet potato		Tobacco
Year	2002	2013	2002	2012	2009
Revenue/acre ($)	2040.00	2325.00	2637.50	3375.00	4050.00
Non-labor cost/acre ($)	806.17	1168.20	1485.82	1696.56	2627.95
Hours/acre	80	80	50	50	60
Revenue/acre/hr ($)	25.50	29.06	52.75	67.50	67.50
Non-labor cost/acre/hr ($)	10.08	14.60	29.72	33.93	43.80
Labor cost/acre/hr ($)	10.54	13.58	10.54	13.58	13.08
Cost fraction	0.51	0.48	0.26	0.29	0.23
NCGA wage/hour ($)	7.53	9.70	7.53	9.70	9.34
Short run, zero substitution (Leontief)					
MRP/hr/acre ($)	25.50	29.06	52.75	67.50	67.50
Multiple of wage	3.39	3.00	7.01	6.96	7.23
Long run, unit elasticity of substitution (Cobb-Douglas)					
MRP/hr/acre ($)	13.04	14.00	13.81	19.29	15.52
Multiple of wage	1.73	1.44	1.83	1.99	1.66

Seasonal crop budgets are representative for North Carolina; detailed method and sources given in Appendix subsection A.2. These crops are the most common on NCGA farms, often grown on the same farm. Numbers for cucumbers and tobacco are for pickling cucumbers and manual-harvest tobacco, respectively. 'Labor' here refers exclusively to unskilled manual labor for harvest and some planting, but not to packing or more skilled work such as machinery operation or supervision.

Table 8b: **Rough estimates of statewide US job creation by 7,000 H-2A workers**

	Short run		Long run	
	low	*high*	*low*	*high*
MRP multiplier	4	6	2	3
Total wage bill ($m)	74.7	74.7	74.7	74.7
Revenue product ($m)	298.8	448.1	149.4	224.1
Jobs multiplier	9.527	9.527	9.527	9.527
US jobs created in NC	2846	4269	1423	2135
H-2A workers per US job	2.3	1.5	4.6	3.0
Output multiplier	1.657	1.657	1.657	1.657
Effect on NC economic output ($m)	$495	$743	$248	$371

Figures are for 7,000 H-2A workers per year. Total wage bill for all NCGA H-2A workers assumes 5.5 months work for average H-2A worker, at approximately 50 hrs/wk: Thus $9.70/hr × 1100 hrs/yr × 7,000 workers = $74.7m. Statewide US jobs and output multipliers from US Bureau of Economic Analysis RIMS II model ('Type I', ignoring workers' expenditures); details in Appendix subsection A.3.

Table 9: **How U.S. applicants learned about job**

	Year		
	2011	2012	Total
Division of Employment Security	156	227	383
Friends or Family	24	40	64
Newspaper	4	1	5
Dept. of Social Services	0	4	4
Disaster Relief Fund	0	1	1
Division of Veterans Affairs	0	1	1
Employer	0	1	1
No answer	2	1	3
Total	186	276	462

In 2011 the survey comprises those workers who were initially hired and did not drop out of the hiring process before the survey was administered (245 were initially offered the job, 163 started work). In 2012 the survey covers all who were hired plus a number who were offered the job but did not accept (213 were hired, 143 started work).

Appendix: Data Sources and Background

A. U.S. job creation in North Carolina by value-added arising from H-2A manual farm labor

A.1. Production functions

In the estimates of Table 8a I use two different assumptions on the form of farms' production function. For the fixed-proportions production function, $MRP_{\text{Leontieff}} = Y$, where Y is revenue/hour/acre. For the constant (unit) elasticity of substitution production function, $MRP_{\text{Cobb-Douglas}} = \kappa Y$, where κ is the cost fraction of manual harvest labor.

A.2. Marginal revenue product (MRP) of North Carolina manual farm labor

Cucumbers (pickling): Data on revenue/season/acre and costs/season/acre (without manual harvesting & planting labor) for 2002 come from E. Estes, J. Schultheis, and H. Sampson (2002), "Cucumbers, Pickling: Est. Revenue, Operating Exp., Annual Ownership Exp., and Net Revenue Per Acre", Dept. of Agricultural and Resource Economics, North Carolina State Univ. (ARE/NCSU); and for 2013 come from G. Bullen and A. Thornton (2013), "Spring Cucumber for Pickles—Irrigated: Estimated costs per acre, 2013", ARE and Dept. of Horticultural Sciences, NCSU. Approximate worker-hours/season/acre for low-skill manual harvest labor is from Prof. David H. Nagel, Extension Professor in the Dept. of Plant and Soil Sciences, Mississippi State University, personal communication January 15, 2013. He is the author of D.H. Nagel (2000), *Commercial Production of Cucumbers in Mississippi*, Starkville, MS: Mississippi State University Extension Service.

Sweet potatoes: Data on revenue/season/acre and costs/season/acre (without manual harvesting & planting labor) for 2002 come from E. Estes, J. Schultheis, and H. Sampson (2002), "Sweetpotatoes: Estimated Rev., Operating Expenses, Annual Ownership Expenses, and Net Return Per Acre", ARE/NCSU; and for 2012 from G. Bullen (2012), Sweet Potato—2012: Estimated Costs per Acre, 2012, ARE/NCSU. Estimated worker-hours/season/acre for low-skill manual harvest and planting labor is from W. Ferreira, (2011), Sweet Potatoes—for fresh market, irrigated: Estimated Costs and Returns per Acre, Kingstree, SC: Clemson University Cooperative Extension Service; and from D. Parvin, C. Walden, and B. Graves (2000), *Estimated Costs and Returns for Sweetpotatoes in Mississippi*, Starkville, MS: Office of Agricultural Communications, Mississippi State Univ. Division of Agriculture, Forestry, and Veterinary Medicine.

Tobacco: To estimate typical revenue/season/acre I first take average yield/acre in North Carolina for the years 2009 (2,346 lb/acre) and 2010 (2,123 lb/acre), i.e. roughly 2,250 lb/acre (A.B. Brown et al. [2011], *Flue-Cured Tobacco Guide 2011*, Raleigh, NC: North Carolina State University, p. 7), and multiply by the average price received for all stalk positions (approximately \$1.80/lb in 2009, *ibid.* p. 8) to get approximate revenue/season/acre of \$4,050. Estimated costs/season/acre (without manual harvesting & planting labor) are from G. Bullen and L. Fisher (2012), "Flue-Cured Tobacco—Hand Harvest Piedmont 2012: Estimated Costs per Acre, 2012, ARE/NCSU. (Note that NCSU also publishes tobacco budgets for 2009 but they are for machine-harvested tobacco; the only current, recently published hand-harvest tobacco budget from NCSU is from 2012.)

Wages and manual labor costs: The 2012 and 2013 NCGA wage of \$9.70/hr is from the NCGA and

public records at the U.S. Dept. of Labor Foreign Labor Certification Center. The 2002 and 2009 wages are the North Carolina-specific "Adverse Effect Wage Rate" fixed for each year by the U.S. Dept. of Labor's Office of Foreign Labor Certification and published in the *Federal Register*. The employer's full cost of manual H-2A workers' labor is estimated at 1.4 × wage, in accordance with NCGA estimates. The additional costs are primarily for housing, transporting, equipping, and training workers.

A.3. U.S. jobs multiplier

The Bureau of Economic Analysis at the U.S. Dept. of Commerce built the Regional Input-Output Modeling System (RIMS II) to create estimates of how local demand shocks affect gross output, value added, earnings, and employment in regions of the United States. RIMS II estimates two types of employment multipliers for economic shocks in the "Crop and Animal Production" subsector of the "Agriculture, forestry, fishing, and hunting" sector. Type I multipliers omit the effects of household spending by all workers; Type II multipliers include these effects. With the relevant region limited to the state of North Carolina, the Type I multiplier for shocks to this subsector is 9.527 and the Type II multiplier is 13.815. This multiplier "represents the total change in number of jobs that occurs in all industries within the state for each additional million dollars of output delivered to final demand by the selected industry."

The jobs effect estimated in this way is very different from popular estimates of the number of jobs "supported by" manual laborers, which do not typically take into account the ability of workers to find other jobs if their current jobs were to be eliminated. Instead, the RIMS II jobs multiplier estimates the number of jobs in all sectors of the entire state that are caused to exist by a given change in the economic activity happening within one sector, *including* the ability of workers who lose their jobs to find other jobs. It estimates the effect of economic change on the total pool of all jobs available to any individuals, not the effect on the current jobs of particular individuals.

The RIMS II Type I multiplier for state output used in Table 8b is 1.657, and the corresponding Type II multiplier is 2.134. The output multiplier "represents the total dollar change in output that occurs in all industries within the state for each additional dollar of output delivered to final demand by the selected industry".

B. Other data sources

All data on U.S. workers referred to and hired by the North Carolina Growers Association (NCGA), and on Mexican workers hired by the NCGA, were provided by the NCGA.[21] Data on DES offices[22] were disseminated in the monthly editions of *Employment Services and Unemployment Insurance Operations* published by the Employment Security Commission of North Carolina, Labor Market Information Division, Employment Services and Unemployment In-

[21] 6 growers in the data are listed as being located in "Ashe/Allegheny" country. They are assigned to Ashe county, since the data contain far more growers that are only in Ashe than only in Allegheny. 64 U.S. workers in the original data were referred by an agency outside North Carolina; most of these (45) are from Puerto Rico. They are ignored in this analysis.

[22] The Division of Employment Security (DES) at the North Carolina Dept. of Commerce was known as the Employment Security Commission (ESC) until November 2011, and is still commonly referred to by this name.

surance Reporting Unit, from February 2005 to May 2011.[23] Estimates of the size of the labor force and number of unemployed persons in each North Carolina county are from the Local Area Unemployment Statistics (LAUS) database at the DES, which creates its estimates based on two sources of data from the U.S. Dept. of Labor Bureau of Labor Statistics: the Current Employment Statistics (CES) and the Quarterly Census of Employment and Wages (QCEW). Their method for creating county-level unemployment estimates is described in Bureau of Labor Statistics (2009), Local Area Unemployment Statistics: Estimation Methodology, U.S. Dept. of Labor, accessed Jan. 24, 2013.

For each month, county-level data were resolved to DES office-level data as follows.[24] First, only one county (Guilford) has more than one DES office (Greensboro and High Point). These two offices were treated as a single office, comprising the total applications, referrals, and placements for the two offices in each month. Second, 14 offices each serve more than one county.[25] In these cases, county-level data on number of people in the labor force and number of people unemployed were totaled across counties served by each DES office, then divided to achieve the office-level unemployment rate. Finally, the Warrenton DES office is ignored because the DES did not publish application, referral, and placement statistics for that office between February 2005 and May 2011.

C. Regulation of demand for immigrant labor in other countries

Canada's temporary work visas require a "labor market opinion" from Human Resources and Social Development Canada that "there is no Canadian or permanent resident available", while skilled-worker permanent visas are only allowed in certain occupations. **United Kingdom** employers recruiting foreign workers for some skilled occupations—those not on a list deemed in "shortage" by the government—must first actively recruit and hire any available UK workers under the Resident Labour Market Test requirement. **France** has a similar system: Unless a skilled occupation is in shortage (*"en tension"*), employers must first prove that they have been unable to recruit French workers, while in **Germany** various work visas require a similar test (*Vorrangprüfung*). In **Australia**, prospective employers of both skilled and seasonal unskilled foreign workers must offer the government "evidence of the efforts made to recruit from the local labour market".

[23] At the time of writing, no earlier or later editions were posted by the DES at www.ncesc.com.

[24] Here a DES "office" refers to a local office, not a branch office. DES publishes application, referral, and placement data by local office only, where the data for each local office include data for any branch office that may be linked to that local office.

[25] Asheville office serves Buncombe, Madison; Edenton office serves Chowan, Gates, Perquimans, Tyrrell, Washington; Elizabeth City office serves Camden, Currituck, Pasquotank; Forest City office serves Polk, Rutherford; Hendersonville office serves Henderson, Transylvania; Kinston office serves Greene, Lenoir; Murphy office serves Cherokee, Clay, Graham; New Bern office serves Craven, Jones, Pamlico; Reidsville office serves Caswell, Rockingham; Roanoke Rapids office serves Halifax, Northampton; Rocky Mount office serves Edgecombe, Nash; Washington office serves Beaufort, Hyde; Williamston office serves Bertie, Martin; Winston-Salem office serves Forsyth, Stokes.

Mr. WICKER. It is critical to get this public policy right. Our U.S. Farmers cannot afford and many will not survive another policy failure like 1986.

The H-2C program will provide a fair, predictable, efficient, and affordable process for employing workers in agricultural jobs. Farmers and farmworkers want to comply with labor and immigration laws. Congress should pass the Agricultural Guestworker Act so they can.

Thank you, and I look forward to your questions.

Mr. GOWDY. Thank you, Mr. Wicker.

[The prepared statement of Mr. Wicker follows:]

Hearing before the House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

H.R. 1773, the "Agricultural Guestworker Act"

2141 Rayburn House Office Building
Thursday, May 16, 2013
10:00 AM

Testimony of H. Lee Wicker

North Carolina Growers Association
Vass, North Carolina

Good afternoon Chairman Gowdy, Ranking Member Lofgren and Committee members, I'm Lee Wicker, Deputy Director of the North Carolina Growers Association. In addition to my position with NCGA, I am also a member of the Board of USA Farmers, the nation's largest organization representing agricultural guest worker employers. NCGA and the USA Farmers Board support Chairman Goodlatte and the cosponsors of this legislation in their

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efforts to provide agriculture with a guest worker program that provides reliable access to much needed farm labor. Their ideas for reform offer a balanced approach to address the many problems that plague the H-2A program and farmers, including too much paperwork, too much bureaucracy, too many regulations and too much frivolous litigation. Thank you for holding this hearing on a critical issue for labor intensive Agriculture.

As the largest H–2A Program user in the nation, NCGA currently has 750 farmer/members that will employ more than 7500 H-2A workers and many thousands more U.S. workers this season. With more than 10% of the total agricultural guestworkers employed nationally, NCGA has been the largest program user for more than 15 consecutive years. I am proud of the growers I work for because they strive to be the most compliant farmers in the nation when it comes to the various state and federal labor, employment, worker protection and immigration laws.

In previous hearings on this topic I've highlighted the chronic problems of the current H-2A program that undermine farmer confidence and make hiring illegal workers a better option: H-2A is expensive, overly bureaucratic, unnecessarily litigious, and excludes some farms and activities.

The measured reforms in H.R. 1773 go a long way towards solving the most onerous flaws in H-2A and creating a guestworker program that all agricultural producers can utilize. This proposal is evidence the U.S. can have a workable farmworker program that treats workers well and carefully balances the critical elements of worker protections while promoting economic viability.

This bill makes significant reforms to the prohibitive program costs associated with H-2A and the new H-2C program makes additional improvements in other important areas. The bill provides for a realistic market based prevailing wage as a floor that surpasses the Federal minimum wage. It also authorizes piece rate pay systems on top of the super minimum wage to promote higher earnings as a financial reward for increased worker productivity. The new program allows farmers and farm workers who benefit from working together

in the program to share in the program costs and it offers a structured portability process enabling workers to move from employer to employer.

Importantly, the bill creates a streamlined legal dispute resolution system to solve any farm worker complaints quickly and efficiently, and makes farmer and worker obligations clear and understandable. These improvements will provide a viable alternative to employing illegal aliens and will give farmers and workers confidence they can participate in the H-2C program successfully.

This legislation maintains the long standing protection of giving American workers preferential consideration in obtaining farm jobs by requiring farmers to solicit and hire U.S. workers through the local employment service for 30 days before the jobs begin - prior to any foreign worker being employed. In addition, this bill enables farm workers currently employed on farms without proper legal status to come out of the shadows and continue their employment legally by waiving the 3/10 bar under current law.

The bill maintains valuable employee benefits and critical worker protections for domestic and foreign workers like: continuation of a minimum hours work guarantee, mandatory workers compensation insurance coverage, or state law equivalent, for workplace injuries, and promotes the employment of US workers by requiring non-seasonal ag employers to pay an additional users fee for administration of the new program.

The bill allows farms that currently provide housing to continue offering it as a worker benefit but doesn't prohibit farms without housing from participating in the program. It requires comprehensive recordkeeping and reporting obligations similar to current law. On average, I estimate the wage and benefit package associated with this bill will cost NC farmers, $10-$12 per hour. If that is the total cost of the program and those total costs remain predictable and reasonable, then this is a viable alternative to the current program and I think most farmers across the country could use it.

It should be noted that the proposal imposes a robust enforcement regime and maintains a strong penalty structure for violations and severe penalties for

gross material violations with oversight and enforcement authority explicitly provided to USDA. All the economic benefits and worker protections in this bill will provide workers who accept these jobs assurance they will enjoy a higher wage and benefit package, a safer work environment, and quicker resolution of their grievances than if they work on U.S. farms illegally.

It is clear there is bi-partisan bi-cameral consensus that our nation needs a modern and flexible future flow ag guestworker program. This H-2C proposal encompasses many elements of the Senate Gang of Eight ag proposal such as:

- streamlining the attestation based application and having the program administered by USDA
- elimination of the unnecessary and disruptive "50% rule" from the H-2A program
- elimination of the expensive and virtually worthless prescriptive newspaper advertisements required by H-2A
- reduction in the prohibitive overhead costs of the current program through savings on transportation, subsistence and visa fees
- opening the program to all sectors of agriculture, including some food processing
- authorizing longer term visas, when needed, to respond to evolving ag production practices and newly covered sectors
- enabling current undocumented workers a means to obtain legal status and keep working in agriculture
- provides for both at will and contract style agreements under the new program to allow workers and growers flexibility to decide for themselves what works best in certain sectors in different parts of the country
- provides portability so that workers have the ability to seek additional and/or alternative ag work opportunities in the farm work marketplace

Although the 750 farmers of NCGA are strongly opposed to an arbitrary cap in a new agricultural worker program, we acknowledge that the 500,000 per year worker cap in the H-2C program is far more reasonable than the woefully

inadequate 112,333 annual cap currently in the Senate bill. Farmers prefer the program be uncapped to avoid devastating economic losses that will generate unprecedented farm bankruptcies when crops are lost because partisan political systems and administrative processes will never react quickly enough as crops ripen then rot, market opportunities are missed, contracts with customers go unfilled and are subsequently lost, and consumers are forced to pay higher prices while their plates have fewer healthy fresh fruits and vegetables.

While H.R. 1773 is not perfect, the NCGA Board of Directors, all farmers using the current program, voted unanimously to support this proposal and hopes to see some improvements and minor adjustments made as the bill makes its way through the legislative process. It offers great employment opportunities and provides growers with a program that is substantially more predictable and user friendly than H-2A. The delicate balance in this bill between program improvements for farmers and worker benefits and protections, represents a win for farmers, a win for farm workers and secures a safe food supply for Americans into the future.

Passage of H.R.1773 will save and help create more jobs for Americans on the farm and off.

I applaud Chairman Goodlatte and this Committee's leadership on this issue. There is no time to waste; the House should pass this legislation as quickly as possible and send it to the U.S. Senate for passage.

As our nation's long term food production and supply hang in the balance, Congress has a historic opportunity, indeed an obligation, to provide a future flow program for agriculture. It is critical to get this public policy right. Most U.S. farmers cannot afford and many will not survive another 1986 type policy failure.

The H-2C program will provide a fair, predictable, efficient and affordable process for employing workers in agricultural jobs. Farmers and farm workers' want to comply with labor and immigration laws. Congress should pass the Agricultural Guestworker Act so they can.

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Mr. GOWDY. Mr. Gaddis?

TESTIMONY OF CHRISTOPHER GADDIS, CHIEF HUMAN RESOURCES OFFICER, JBS USA HOLDINGS, INC.

Mr. GADDIS. Mr. Chairman, Members of the Committee, thank you for this opportunity to testify on H.R. 1773.

My name is Chris Gaddis, and I am the human resources chief officer for JBS USA. JBS, USA has approximately 60,000 employees in the U.S., and I did a straw poll; I believe we have facilities in all but 5 of your States.

My remarks today are on behalf of JBS USA, but they are also on behalf of the Food Manufacturers Immigration Coalition, a broad coalition of the leading meat and poultry processors and trade associations, including the North American Meat Association, the American Meat Institute, the National Chicken Council, the National Turkey Federation, the National Cattlemen's Beef Association, and the National Pork Producers Council.

We thank the Chairman and his cosponsors for the introduction of H.R. 1773 and for its constructive attention to an essential component of immigration reform, addressing the labor needs of U.S. employers and also the sources of such labor. As we see it, for reform to be meaningful, we must reckon with the needs of U.S. employers for less-skilled labor to work jobs that, due to various circumstances, go unfilled by U.S. workers, and we must address document fraud and identity theft.

To begin, we support the definition of, quote, "agricultural labor or services," unquote, contained in this bill. We believe it important that the legislation recognizes that all activities required for the, quote, "preparation, processing, or manufacturing of a product of agriculture for further distribution," unquote, are an essential ingredient in the agricultural labor equation. These activities, which include the preparation and processing of animal protein products for further distribution in the food chain, are a critical second step in the food supply chain by which our companies feed the United States and the world.

We also support the bill's provision of 36 months of uninterrupted stay for H-2C workers who obtain positions in agricultural manufacturing. The positions we offer are permanent, full-time, nonseasonal jobs. After an initial probationary period, our employees receive full benefits, including 401(k). The 36-month stay period is the minimum necessary for our companies to invest in the training of a new employee and then to reap some benefit prior to the employee needing to leave the country.

And we note that the legislation only provides for maximum subsequent periods of stay of 18 months and does not allow H-2C workers to bring spouses or minor children with them. We encourage the Committee to reconsider these restrictions when comes to agricultural manufacturing and look forward to working with the Committee further on this topic.

Next, we commend the bill's sponsors for taking a practical approach to dealing with labor that is presently here in unauthorized status. By granting eligibility for H-2C work to any person physically present in the United States on the date of the bill's introduction, the bill recognizes the unlikelihood that this population will be removed involuntarily, it maximizes the pool of persons who would qualify for H-2C status, and it avoids encouraging unauthorized migration by people who may read the bill from afar.

We also note that the bill contains various requirements that protect rights of U.S. workers vis-á-vis H-2C workers and the rights of H-2C workers vis-á-vis prospective employers. This was covered in greater detail by Mr. Wicker. The companies in our coalition want to be very clear: We do not want to be associated with a program that would facilitate or allow improper treatment of do-

mestic or foreign workers, and we therefore commend your direct confrontation of those issues.

Last, there is an essential ingredient to immigration reform—Julie Myers Wood was here earlier. I have often heard that politics makes for strange bedfellows. JBS USA, in 2007, acquired Swift and Company, which in December of 2006 was the subject of the then-largest worksite enforcement action in the history of the Department of Homeland Security. At that point in time, Julie Myers Wood was the director of ICE. Over the last 3 years, Ms. Wood has done an incredible job on behalf of JBS as a private consultant, bringing us from where we were into the IMAGE program. JBS has the benefit of the size and scope to bring someone like Ms. Wood in. So I commend this group's addressing not just E-Verify but also trying to get their arms around identity theft in greater detail.

In conclusion, the Food Manufacturers Immigration Coalition thanks Chairman Goodlatte and this Committee for taking an important step forward in the immigration reform process in the introduction of H.R. 1773 and its consideration of Congressman Smith's employment verification legislation. We understand that the road to effective immigration is not a straight line, but we believe in and appreciate the important steps taken by this legislation.

Thank you.

Mr. GOWDY. Thank you, Mr. Gaddis.

[The prepared statement of Mr. Gaddis follows:]

House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
Hearing on H.R. 1773
Testimony of Christopher Gaddis, Chief Human Resources Officer
JBS USA

May 16, 2013

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify today on H.R. 1773, the Agricultural Guestworker Act of 2013. My name is Chris Gaddis, and I am the Chief Human Resources Officer for JBS USA. JBS USA employs approximately 60,000 people in the United States and is a division of JBS S.A., the largest animal protein processor in the world, with over 120,000 employees globally. My remarks today are on behalf of JBS USA, and also on behalf of the Food Manufacturers Immigration Coalition, a broad coalition of the leading meat and poultry processing companies and a variety of trade associations including: the North American Meat Association, the American Meat Institute, the National Chicken Council, the National Turkey Federation, the National Cattlemen's Beef Association, and the National Pork Producers Council. We thank the Chairman and his cosponsors for the introduction of H.R. 1773 and for its constructive attention to an essential component of immigration reform – addressing the labor needs of many U.S. employers and the current sources of such labor. There is no question that immigration reform will not be successful unless we reckon with: (i) the needs of U.S. employers for less-skilled labor to take positions that often go unfulfilled by U.S. workers; and (ii) those persons who are present in the United States in an unlawful status who attempt to fill these positions by engaging in document fraud or identity theft.

We believe this legislation contains a number of positive features, and we wish to comment on specific provisions of interest to the animal protein industry.

Definition of Agriculture

We support the definition of "agricultural labor or services" contained in this bill. We believe it important that the legislation recognizes that "all activities required for the preparation, processing or manufacturing of a product of agriculture . . . for further distribution" are an essential ingredient in the agricultural labor equation. These activities, which include the immediate packing or processing of raw agricultural commodities, and the preparation and processing of animal protein products for further distribution in the food chain, are a critical second step in the manner by which our companies feed the country and feed the world today. By recognizing this fact, the legislation updates legal definitions that were last revised in the 1930s or 1950s. Much has changed in our industry in the intervening decades, and much has changed globally: the US and global population has increased exponentially. The resulting food supply chain has developed and evolved in a parallel manner. This definition recognizes the realities of 21st century agricultural labor and services, and the drafters are to be commended for that advance.

36-Month Stay.

We also support the bill's provision of 36-months of uninterrupted stay for H-2C workers who obtain positions in the preparation, processing or manufacturing of an agricultural product for further distribution. The positions we offer are permanent, full-time, non-seasonal jobs. After an initial probationary period, our new employees are eligible for full benefits , including a 401(k) program. Many of our beef, pork, and poultry plants are unionized, and we have a constructive relationship with organized labor, including the United Food and Commercial Workers Union (the UFCW). Our companies expend, on average, between $12,000 and $15,000 to train a new employee to become productive, and the training period usually takes between four and eight months. The 36-month period of stay is the minimum necessary for our companies to invest in the training of a new employee, and then to receive some return on our investment before this person would be required to leave the country for six months. The initial 36-month period of stay is critical.

We note that the legislation only provides for maximum subsequent periods of stay of 18 months, and does not allow H-2C workers to bring spouses or minor children with them. The touch-back requirement also raises logistical issues for our member companies. We would appreciate your reconsidering these issues, including whether the touch-back period could be shortened for second and subsequent employment terms with an agricultural manufacturing employer. We think the characteristics of this flow of labor are different from the classically transient, temporary guestworker. Because the U.S. agricultural economy has evolved over the decades -- as I described earlier in my testimony -- so has the nature of the migratory flow of labor that has provided some of the required labor. As a result, longer subsequent periods of stay, and some prospect for unification of immediate family members, should be provided, for H-2C workers fulfilling the positions that are more permanent in nature. We look forward to working with the Committee on this topic as the bill is further considered.

Date of Enactment Eligibility.

We commend the bill's sponsors for taking a practical approach to dealing with the labor that is presently here in an unauthorized status. By granting eligibility for H-2C status to any person physically present in the United States as of the bill's introduction -- April 25, 2013 – the bill: (i) recognizes the unlikelihood that this population will be removed involuntarily, (ii) maximizes the pool of persons who could qualify for the agricultural labor or services definition, and (iii) avoids creating an incentive for increased unauthorized migration by people reading the bill in a foreign country. We think this approach strikes a reasonable balance between enforcement priorities and labor-force requirements. The Senate legislation is already being criticized for setting its legalization cut-off date at December 31, 2011. This bill wisely avoids some of those issues.

U.S. Workers and Wages and Working Conditions

We would like to comment on the complex topic of wages, working conditions, U.S. worker recruitment, and related issues. The legislation contains requirements to:

- Recruit for U.S. workers before seeking H-2C workers;
- Prevent displacement of U.S. workers by H-2C workers;

- Provide equivalent wages, benefits and working conditions to U.S. workers and H-2C workers;
- Provide prevailing wages to H-2C workers;
- Guarantee that at least 50% of the work offered in an H-2C contract is provided, notwithstanding other economic factors; and
- Allow H-2C workers to change U.S. employers that offer positions within the definition of "agricultural labor or services."

These topics, taken together, address the major topics on which previous guestworker programs have been criticized. The companies in our coalition do not want to be associated with a program that could facilitate or allow improper treatment of foreign or domestic workers. At JBS and our affiliate, Pilgrim's Pride, wages and working conditions are critical topics that we fully and thoroughly negotiate with our constituent unions. Our coalition has been working with the UFCW on immigration reform topics, and we do not want this legislation to become a vehicle for discord on the issues that we have been able to resolve at the bargaining table to date. We commend the bill's drafters for ensuring that these important issues are fully considered in the H-2C process. Reasonable people can disagree on the proper wage or benefit result, but there are private sector and public sector processes in place to resolve these questions. We imagine there will be significant comment on these topics as the Committee further considers H.R. 1773, but we note that the issues are resolvable, and we pledge to play a constructive role in contributing to their resolution in the legislative process.

Concerns about Worker Verification.

Employment verification is an essential ingredient to immigration reform – particularly because identity theft defeats the current electronic systems in place. This issue is addressed in companion legislation, H.R. 1772, on which we are submitting detailed testimony, and I encourage the Committee to review it.

Conclusion.

The Food Manufacturers Immigration Coalition thanks Chairman Goodlatte and this Committee for taking an important step forward in the immigration reform process through the introduction of the H-2C legislation, and through its concurrent consideration of Congressman Smith's employment verification legislation. The Coalition supports effective and meaningful immigration reform, and we understand that the road to such reform is probably not a straight path down a four-lane road. We appreciate the important steps forward taken by the legislation under consideration today.

ATTACHMENT

STATEMENT OF UNITED FOOD & COMMERCIAL WORKERS UNION AND FOOD MANUFACTURERS IMMIGRATION COALITION ON IMMIGRATION REFORM LEGISLATION

We join Americans across the country and call for congressional action on U.S. immigration policy. We join those committed to work toward a comprehensive approach that serves our country's interest by promoting fairness and the rule of law and contributes effectively to our economic well-being and recovery. We support reform that recognizes the US economy's current and future need for permanent workers to support growth. America has always been a nation of immigrants. Now is the time to create a modern, 21st century legal immigration system that reflects our national interests and values.

We support a comprehensive immigration reform that:

- Ensures smart and effective enforcement that protects our borders, fosters commerce, and promotes the safe and legitimate movement of people and goods at our ports of entry.

- Establishes a workable employment verification system that defines rights, responsibilities and protections for workers and employers on which hoth can rely. Provides for enhancement of the current verification program to ensure that employment verification can be applied uniformly and effectively, such as the E-Verify Self Check. Compliance with employment and antidiscrimination laws should be transparent, not a guessing game. Employment verification should not be restricted to a biometric process.

- Renews our commitment to earned citizenship that fully integrates undocumented immigrants into our way of life, affirming our shared rights, protections and responsibilities by providing a pathway to citizenship.

- Protects the sanctity of family by reducing the family backlogs and keeping spouses, parents and children together.

- Creates a process for determining and addressing the need and allocation of employment based visas to provide safe and legal avenues for foreign workers to fill future workforce needs. Establishes an independent government office to ensure that migration meets the needs of employers and the American economy. Creates a new occupational visa for non-seasonal, non-agricultural permanent positions not covered by other visa programs. Requires the new office to provide real-time empirical data on labor markets and wages so that employers can recruit effectively and policy makers can legislate based on relevant evidence and avoid ideological arguments.

- The purpose of the new occupational visa is to enhance the productivity of U.S. companies that utilize permanent non-seasonal non-agricultural labor, to the benefit of U.S. workers and U.S. employers alike. Any new independent government office should focus on analyzing the availahility of able, willing and qualified U.S. workers, in conjunction with employer recruitment efforts. If such U.S. workers cannot be found by employers in a reasonable period of time, the government office

should facilitate the entry of foreign workers to fill the vacant positions -- consistent with the purpose of the new visa category.

We support comprehensive immigration reform that reflects both our interest and our values as Americans and is consistent with our nation's commitment to opportunity, fairness and equality. It is time to move forward, time for us to join together to enact immigration reform.

Mr. GOWDY. Mr. Graham?

TESTIMONY OF JOHN B. GRAHAM, III, PRESIDENT, GRAHAM AND ROLLINS, INC., HAMPTON, VA

Mr. GRAHAM. Good afternoon, Chairman Goodlatte and Committee Members. Thank you for inviting me——

Mr. GOWDY. Would you make sure your microphone is on or pull it closer to you?

Mr. GRAHAM. Okay?

Mr. GOWDY. That is perfect.

Mr. GRAHAM. Thank you for inviting me to testify here today.

Not only am I the president of Graham and Rollins, but I am also a member of the Coalition to Save America's Seafood Industry, which fights to keep us free to compete in the global marketplace.

America's $31 billion seafood industry supports more than 1 million U.S. jobs, including almost 184,000 in seafood preparation and packaging and many others within our supplier and customer networks.

America's seafood processing industry has struggled over the last 20 years as the local labor force has moved on to less strenuous full-time jobs and we are forced to find alternative labor. We currently use the H-2B program for essential work and to augment our full-time American workforce. A most recent survey conveyed an average of 2.1 American jobs was created from a single H-2B worker within the seafood industry.

Most coalition members have used the H-2B program for over a decade, but it is a constant struggle to make the program work. Instead of focusing on growing my small business, I spent an inordinate amount of time on H-2B issues. These include the Labor Department's tedious paperwork requirements that are inconsistent year after year. We have to continually worry about not getting visas because the national cap hasn't been met or, more recently, worrying that new and more complex DOL rules will put me out of business.

In addition to these requirements, most seafood processes are dependent upon a resource that is supplied by Mother Nature. We have no control over the availability of blue crabs. We also have harvest restrictions as to how many, where, and when our seafood may be harvested. Our members are deeply frustrated that DOL does not understand the unique nature of the seafood industry, from foreign competition to Mother Nature, and yet they continue to put regulatory pressures on us.

For example, most seafood processors are in remote coastal communities. Our local workforce is tiny and shrinking. Yet DOL falsely insists that we simply choose to use the H-2B program rather than hire locally. Year after year, we have to prove at our expense through advertising and training programs that ultimately are unsuccessful that Americans do not want these jobs.

The current rules reflect this misunderstanding, making the H-2B program very difficult. And so it is vital that Congress take a broad look at the H-2B program and its regulation by any government agency as part of this immigration reform effort.

Chairman Goodlatte, I applaud your creative thinking with the H-2C program and inclusion of seafood in this agricultural workforce bill.

First and foremost, I am glad that you have included our seafood industry alongside the agricultural industry. These two industries are alike in many fashions. Both are production-oriented, whereas workers' wages are calculated not by just the amount of time in fields or within the processing plants but also based on individual performance in the form of piece wages. We are alike in that we are not providing a service, we are providing and manufacturing products from nature's resources.

Secondly, because we are at the mercy of Mother Nature, our industry is faced with frequent weather events which can abruptly change production schedules. It is for this reason I am supportive of the provision of guaranteed employment for 50 percent of the work hours promised. This is much more flexible than DOL's proposed 75 percent guarantee presented in 2011.

Lastly, I understand the motive behind establishing a trust fund, thus creating an incentive for the workers to return home. I believe that it was very creative and one which I think will prove to be worthwhile and beneficial to the H-2C program.

I understand the House and Senate are considering several sets of guestworker programs. As you work through the process, I think I can speak for the entire industry in saying we are looking for a program that is dependable and consistent and one that allows us to stay in business and keep Americans working.

H-2C offers a workable solution to obtain a reliable temporary workforce without the current problems we face within the H-2B program. Our need is that simple and that basic to our survival. Unfortunately, we are at a critical point where a change has to be made now or another American industry and American jobs will be lost.

I thank you for this opportunity and look forward to answering any questions you may have.

Mr. GOWDY. Thank you, Mr. Graham.

[The prepared statement of Mr. Graham follows:]

Thursday, May 16th 2013

H.R. 1773,the Agricultural Guestworkers Act

John B. Graham, III

President, Graham & Rollins, Inc.

Chairman Goodlatte, Committee members – thank you for inviting me to testify today. My name is Johnny Graham and I am the President of Graham & Rollins. We are a 4th generation family owned and operated company founded in 1942, located in Hampton, Virginia on the waterfront at the mouth of the Chesapeake Bay. We are processors of Blue Crab Meat.

I am also a member of the Coalition to Save America's Seafood Industry, which fights to keep us free to compete in the global marketplace. America's $31 billion seafood industry supports more than one million U.S. jobs – including almost 184,000 in seafood preparation and packaging, and many others within our supplier and customer networks.

America's seafood processing industry has struggled over the past 20 years as the local labor workforce moved on to less-strenuous, full-time jobs and we were forced to find alternative labor. We currently use the H-2B program, for essential seasonal work and augment our full time American workers. A most recent survey conveyed an average of 2.1 American jobs was created from a single H-2B worker. Most Coalition members have used the H-2B program for over a decade – but it is a constant struggle to make the program work.

Instead of focusing on growing my small business, I spend an inordinate amount of my time on H-2B issues. These include the Labor Department's tedious paperwork requirements that are inconsistent year after year. We have to continually worry about not getting visas because the national cap has been met or – more recently – worrying that new and more complex DOL rules will put me out of business.

In addition to these requirements, most seafood processors are dependent upon a resource that is supplied by mother-nature. We have no control of the availability of the blue crabs. We also have harvest restrictions as to how many, where and when our seafood may be harvested.

Our members are deeply frustrated that DOL does not understand the unique nature of the seafood industry, from foreign competition to Mother Nature, and yet they continue to put regulatory pressures on us.

For example, most seafood processors are in remote coastal communities; our local workforce is tiny, and shrinking. Yet, DOL falsely insists that we simply choose to use the H-2B program rather than higher locally. Year after year we have to prove, at our expense, through advertising and training programs; that are ultimately unsuccessful, that Americans do not want these jobs.

The current rules reflect this misunderstanding, making the H-2B program very difficult. *And so it is vital that Congress take a broad look at the H-2B program and its regulation, by any government agency, as part of this immigration reform effort.*

Chairman Goodlatte, I applaud your creative thinking with the H-2C program and inclusion of seafood in this agricultural workforce bill. First and foremost, I am glad that you have included our seafood industry alongside the Agriculture Industry. These two industries are alike in many fashions. Both are production oriented whereas workers' wages are calculated not just by the amount of hours in the fields or within processing plants but also by individual performance, in the form of piece wages. Were alike in that we are not providing a service; we are providing and manufacturing products from nature's resources.

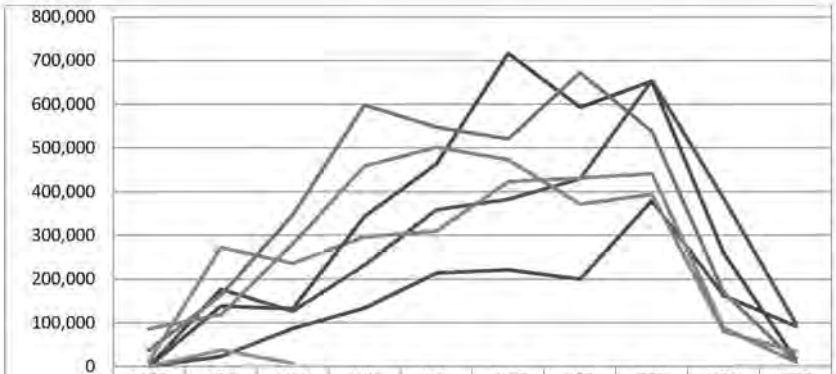
Secondly, because we are at the mercy of Mother Nature our industry is faced with frequent weather events which can abruptly change production schedules. It is for this reason I am supportive of the provision of guaranteed employment for 50% of work hours promised. This is much more flexible than DOL's proposed 75% guarantee presented in 2011.

Lastly, I understand the motive behind establishing a trust fund, thus creating an incentive for the workers to return home. I believe it was very creative and one which I think will prove to be worthwhile and beneficial to the H-2C program.

I understand the House and Senate are considering several sets of guest worker programs. *As you work through the process, I think I can speak for the entire industry in saying we are looking for a program that is dependable and consistent – one that allows us to stay in business and keep Americans working.*

Our need is that simple – and that basic to our survival. Unfortunately, we are at a critical point where a change has to be made now or another American industry and American jobs will be lost.

I thank you for this opportunity and look forward to answering any questions you may have.



	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2007	130	176,707	126,358	232,013	358,554	382,841	429,496	653,876	384,354	99,169
2008	0	23,030	87,046	133,532	214,088	220,930	200,071	379,260	162,186	92,381
2009	12,483	272,092	235,985	296,799	309,560	422,628	431,511	441,225	87,546	10,464
2010	0	138,044	132,111	343,352	462,822	716,452	592,781	652,879	259,036	17,001
2011	36,974	163,673	346,461	598,348	547,763	520,273	672,258	538,320	169,345	12,279
2012	86,610	118,762	280,667	458,614	501,569	473,256	371,342	393,918	79,876	33,860
2013	0	37,385	7,449							

Pounds of Crabs Purchased by Graham & Rollins, Inc. from 2007 – 2013

The Chart above (illustrates Graham and Rollins Inc. crab purchases over the past 7 years, and demonstrates the role mother nature plays in the industry. This is one example of the unique nature of the seafood businesses who use the H-2B program. The current program clearly does not meet the needs of a consistent, workable program. We are hopeful the H-2C program will solve some of these issues.

Mr. GOWDY. Mr. Rodriguez?

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

Mr. RODRIGUEZ. Thank you very much, Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee. Thank you for the opportunity to testify today. My name is Arturo Rodriguez, president of the United Farm Workers, and I have the honor of serving farmworkers in our Nation. We very much appreciate the chance to speak today on behalf of farmworkers throughout the United States.

Our broken immigration system threatens our Nation's food supply. Today, we have farmworkers forced to work in the shadows of society in difficult working conditions, and farms around the country have great challenges hiring a legal workforce. We are in a unique moment in our Nation's history, a moment in which members of both political parties are coming together to confront the question of how to fix our broken immigration system. The urgency of the moment requires a straightforward analysis of the options before us.

In that vein, H.R. 1773 falls far short of the challenge that faces American agriculture and our Nation's food supply. In fact, H.R. 1773 bears a much closer resemblance to the horrific Bracero Program of the 1940's-1960's than it does to the immigration reform changes we need for the 21st century.

H.R. 1773 would replace the existing H-2A agriculture temporary worker program with the new H-2C program. The H-2C program would deprive U.S. farmworkers of jobs by minimizing the recruitment obligations of employers, slashing wages, and withholding 10 percent of a worker's wage. It would also minimize the government oversight, limit workers' access to judicial relief and legal assistance, and reduce temporary workers' minimum work guarantee.

Further, it would eliminate the requirement that employers provide housing for temporary workers and U.S. workers who travel to the worksite and eliminate travel expense reimbursement for temporary workers. As a result, H.R. 1773 would have the practical effect of dramatically cutting wages for the hundreds of thousands of farmworkers who are U.S. citizens and permanent legal residents.

All of these changes reverse 50 years of agriculture labor law precedent established in response from both political parties to the terrible abuses of the Bracero Program of the '40's through the '60's.

In addition, the H.R. 1773 proposal would not provide a roadmap to citizenship for the current farmworker labor force and would only allow them to apply for temporary worker visas.

Those of us who work in agriculture know the policies we need. We can elevate farmworkers by making changes to immigration policy that do the following:

One, retain as much of the existing workforce in agriculture. We can keep people in agriculture by honoring farmworkers with the ability to earn permanent legal status. We need to have the ability for the existing farmworkers to earn permanent legal status to en-

courage people to stay in agriculture and to honor our American values.

Two, include basic worker protections that ensure that U.S. worker wages do not decrease and that stabilize the agricultural workforce. The agreement we came to with the Nation's agricultural employers does not include many of the wage and labor protections we wanted. Our agreement with grower associations is a compromise. But the agreement does have the basic wage and working protections we need to ensure that farmworker wages that are already low do not decrease further.

We appreciate the Chairman's view on immigration comes from a place of his own study of the issue and a desire to address the labor needs of agriculture, but we respectfully suggest there is a better approach. We want to elevate farm work so that neither farmworkers without legal status nor guestworkers are the norm in American agriculture.

We ask this Subcommittee to support a new comprehensive immigration process that grants current farmworkers and their family members a reasonable and prompt opportunity to earn legal immigration status and citizenship and ensures that future workers are brought here in a manner that elevates farm work in our Nation. By having such a system, we can ensure that we continue to have an agricultural industry that is the envy of the world and honor all of the women and men who have built such an exceptional domestic food supply.

Thank you very much, Mr. Chairman, and I look forward to your questions.

Mr. GOWDY. Thank you, Mr. Rodriguez.

[The prepared statement of Mr. Rodriguez follows:]

Statement of Arturo S. Rodriguez
President of United Farm Workers of America
Before the House Judiciary Committee's
Subcommittee on Immigration and Border Security
H.R. 1773, the "Agricultural Guestworker Act"
May 16, 2013

Chairman Gowdy, Ranking Member Lofgren, and members of the subcommittee, thank you for the opportunity to testify today. My name is Arturo Rodriguez, and I have the honor of being President of the United Farm Workers of America. We very much appreciate the chance to speak today on behalf of farm workers throughout the country.

America's farms and ranches produce an incredible bounty that is the envy of the world. The farmers and farm workers that make up our nation's agricultural industry are truly heroic in their willingness to work hard and take on risk as they plant and harvest the food all of us eat every day.

But our broken immigration system threatens our nation's food supply. Today, we have farm workers forced to work in the shadows of society in difficult working conditions and farms around the country have great challenges hiring a legal workforce. We are in a unique moment in our nation's history – a moment in which members of both political parties are coming together to confront the question of how to fix our broken immigration system.

The urgency of the moment requires a straightforward analysis of the options before us. In that vain – HR 1773 falls far short of the challenge that faces American agriculture and our nation's food supply. In fact, HR 1773 bears a much closer resemblance to the horrific *bracero* program of the 1940s-1960s than it does to the immigration program changes we need for the 21st Century.

HR 1773 would replace the existing H-2A agricultural temporary worker program with a new H-2C program. The H-2C program would deprive U.S. farm workers of jobs by minimizing the recruitment obligations of employers, slashing wages and withholding 10 percent of a worker's wages. It would also minimize government oversight, limit workers access to judicial relief and legal assistance, and reduce temporary workers' minimum-work guarantee. Further, it would eliminate the requirement that employers provide housing for temporary workers and U.S. workers who travel to the worksite and eliminate travel-expense reimbursement for temporary workers. As a result, HR 1773 would have the practical effect of slashing wages for the hundreds of thousands of farm workers who are US citizens and permanent legal residents. All of these changes reverse 50 years of agricultural labor law precedent established in response from both political parties to the terrible abuses of the *bracero* program of the 1940s-1960s.

In addition, the HR 1773 proposal would not provide a roadmap to citizenship for the current farm worker labor force and would only allow them to apply for temporary worker visas.

Many UFW members are US citizens and permanent legal residents. I want to address those who have proposed that only wealthy and highly educated immigrants should be able to become US citizens. That is profoundly disrespectful to the people who have worked so hard to feed us every day. Let me speak a little about my own family. Neither of my parents were born with any money. My father who passed away recently worked his whole life. My parents maintained a small farm of 200 acres where they raised cattle. After sending my siblings and me to school, my mother enrolled in college when she was in her 40s. When she completed college, she went on to teach immigrants and their children how to speak English so they could participate more fully in American society. I share this story not just to highlight my parents – as special as they are to me – but to lift up the fact that there are hundreds of thousands among those people who work in the fields and other low wage jobs in America today who share those values of hard work and contribute to all of our American dreams.

We face a choice as a country going forward – do we want to be like Europe which legally segregates people into multiple classes? Or do we want to honor the best parts of our American history where we both welcome and challenge people around the world who come to our country to commit themselves to our powerful American ideals? With rights, come responsibilities. The overwhelming number of people working in the fields report to duty for an extraordinary responsibility – feeding the nation. The work the women and men in fields do every day is extremely difficult. On days with brutal sun that sometimes kills people– farm workers continue to harvest. During icy cold mornings in the winter months when the sun has yet to rise, farm workers are skillfully picking fruits and vegetables by hand for other Americans' consumption. The work is so physically demanding that farm workers live in physical pain well beyond their years working in the fields. Most agricultural work requires a skill, precision, and discipline that few who do not do the work can grasp.

We believe that the new Americans who harvest our food and feed us every day deserve a way to earn a temporary legal status with a meaningful and real opportunity to earnpermanent legal status with the real hopes of earning such legal status. In poll after poll, American voters agree and have expressed overwhelming support for a roadmap to citizenship for new Americans – like farm workers – who contribute to our country.

We believe that America is exceptional. Our agricultural system is just one more example of how America is exceptional, so we should honor the new Americans who continue to build our agricultural system as the heroes that they are for our country.

To the extent a new path is needed to bring more professional farm workers from abroad to this country, we should look forward and not backward to the *bracero* program. HR 1773 is a step backward. Future agricultural workers who we invite to our country to

work should be accorded equality, job mobility, strong labor and wage protections, and an opportunity to earn immigration status leading to citizenship.

For the last 20 years, Congress has tried and failed to reform our agricultural labor system. There have been a host of Congressional commissions, recommended policies, and different pieces of legislation. Many of you on this committee have also worked at making these changes for a long time. Now is the time to come together and make the changes we need.

Both farmers and farm workers from diverse regions of the nation have worked together over the last 5 months with the support of members of Congress from both political parties with the interest of improving our nation's agricultural industry and securing our nation's food supply. While farmer and farm worker groups historically have been at odds with each other and agricultural interests from different parts of the country often compete, we are now united for the first time… farmers and farm workers… big agribusiness and small farmers… farm workers who have worked in the industry for decades and those who have only come to the fields in recent years… across region… across crops… We are united.

We have come to an agreement on policy that we hope that you as members of Congress will consider as an alternative to the approach found in HR 1773.

Those of us who work in agriculture know the policies we want – but more importantly we understand the policies we need. Let me make the distinctions between what we want and what we need.

No industry will benefit more from immigration reform than the agricultural industry. The issue is having enough people who are both willing and able to do difficult agricultural work. What we need in order to ensure that we have enough people who are both willing and able to work in agriculture is
to elevate farm work so that guest workers or farm workers without legal status do not need to be the norm in agriculture.

We can elevate farm workers by making changes to immigration policy that do the following:

1. ***Retain as much of the existing workforce in agriculture.*** We can keep people in agriculture by honoring farm workers with the ability to earn permanent legal status. What we *wanted* in new immigration policy- higher wages and better protections. But we did not get those changes in the agreement between grower associations and the UFW. What we *need* to have -- the ability for the existing farm workers to earn permanent legal status to encourage people to stay in agriculture and to honor our American values.

2. ***Include basic worker protections that ensure that US worker wages do not decrease and that stabilize the agricultural workforce*** – In this area, there are many things we want. The United Farm Workers and our nations farm worker organizations and advocates want an end to the more than 70 years of discriminatory labor legislation that excludes farm workers from basic protections like the right to organize, to act collectively, and to join a union. A Congressional commission set up to determine new immigration policies and made up principally of appointees of President Ronald Reagan and Chairman Gowdy's former Senator Strom Thurmond agreed – Federal law should allow farm workers to organize and should make it illegal for an employer to fire a farm worker who acts collectively. Their report – the "Report of the Commission on Agricultural Workers" in 1992 made recommendations for the "development of a more structured and stable domestic agricultural labor market" that would "address the needs of seasonal farmworkers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply."[1] One such recommendation was that "[f]armworkers should be afforded the right to organize and bargain collectively . . ." The agreement we came to with the nation's employers does not include a right for farm workers to organize. Our agreement with grower associations is a compromise. But the agreement does have the basic wage and working protections we *need* to ensure that farm worker wages that are already low do not decrease.

There are many more examples – I am sure that the nation's major growers and grower associations can also produce a long list.

Indeed, the United Farm Workers and our nation's agricultural employers have often been at odds on many policy issues. But we are together in agreeing to a proposal that will fix our nation's immigration system with respect to agriculture. We have worked so hard to come together in the agricultural industry and we ask you as members of this committee to come together to support our joint proposal because America's farms and ranches produce an incredible bounty that is the envy of the world. The farmers and farm workers that make up our nation's agricultural industry are truly heroic in their willingness to work hard and take on risk as they plant and harvest the food all of us eat every day.

We appreciate the Chairman's view on immigration comes from a place of his own study of the issue and a desire to address the labor needs of agriculture. But we respectfully suggest there is a better approach.

We want to elevate farm work so that neither farm workers without legal status nor guest workers are the norm in American agriculture.

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[1] *Report of the Commission on Agricultural Workers*, Executive Summary, p. xxiv, Washington D.C. November, 1992.

We ask this subcommittee to support a new, comprehensive immigration process that grants current farm workers and their family members a reasonable and prompt opportunity to earn legal immigration status and citizenship, and ensures that future workers are brought here in a manner that elevates farm work. By having such a system, we can ensure that we continue to have an agricultural industry that is the envy of the world – and honor all of the women and men who have built such an exceptional domestic food supply.

Mr. GOWDY. The Chair would now recognize the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate you and the Ranking Member's forbearance on letting me ask questions first. I do have to get somewhere else soon.

But I was pleased to be able to hear the testimony of all four of you. You are all making a great contribution to our effort to solve this problem of having an agricultural guestworker program that works for America and that contributes to avoiding a problem that occurred after the 1986 law went into effect.

So, Mr. Rodriguez, let me direct my first question to you, along those lines. In your testimony, you state that, "We need to have the ability for the existing farmworkers to earn permanent legal status to encourage people to stay in agriculture." However, your statement is at complete odds with the lessons learned from the legalization of illegal immigrant farmworkers in 1986. Once they received permanent residence, many left the fields for jobs in the cities.

In fact, Philip Martin, professor of agricultural economics at the University of California-Davis, found that by 1997-'98, less than 12 years later, the percentage of crop workers who had been granted permanent residence through the 1986 act had fallen to only 16 percent.

Isn't it the case that if Congress were to again grant a special pathway to citizenship to illegal immigrant farmworkers, that growers would soon be left without a labor force? Or, if you looked at it differently, if we were to have a legal status as a part of the overall solution to immigration reform, that we would then have a new demand for workers? Because, like 1986, many, when they can work anywhere they want to, will go and work elsewhere, creating a shortfall in agriculture that we need to replace with a workable guestworker program, which is where I think my legislation is headed.

And when we do that, we are not going to be able to have a steady flow of people filling what is a very large demand—some people estimate half a million to a million people short—a steady demand of people if we constantly grant them lawful permanent resident status after they have been a guestworker for X number of years.

Mr. RODRIGUEZ. You know, my understanding is—and I know a lot of farmworkers that came through the 1986 program and still are working in agriculture today. The estimate today is about 15 percent, from my understanding, 20-something years later.

The realities are that, first of all, the legislation that we currently have proposed calls for both, taking into account folks that have spent a lot of time and demonstrated their skills, their professional capacities to work in agriculture, that they would be provided legal status and a path toward permanent residency and eventually a path toward citizenship. We are saying that that 800,000 to 1.1 million, whatever that number is, that they have that opportunity to do so.

But, simultaneously, the agricultural industry, the agricultural employers, they have fought very hard and debated—we debated a

lot about the need for the future flow, and there were two new visa programs that were designed for that particular purpose.

So I am very confident that there is going to be an opportunity and then, when the need arises within the ag industry for future workers, that there will be that opportunity to get some.

And the other reality is, sir, is that, you know, I have been doing this, as well, for several decades, and the actual wages and benefits in this particular industry hasn't really escalated to the point where it is an attractive industry for people to want to stay, to have a career, to build their—to raise their families, and to gain the opportunities——

Mr. GOODLATTE. But part of that may be because such a large percentage of those folks who are not here lawfully are not able to use the kind of leverage they would have if they had a legal status. And, therefore, it seems to me that when you legalize this and you look at a real market-based wage, that that market-based wage is likely to rise, whereas the current bureaucratic government-sets-the-wage approach is likely to miss the target, miss the right amount, and encourages, rather than discourages, the use of unlawful immigrant labor.

So I think we can solve this problem. I think we agree with some of what you are saying. We are just saying that, in the future, we are not going to be able to have a steady flow of 800,000 to 1.1 million people flowing through the system, able to get a green card, able to leave the workforce, as has happened when they were legalized in the past. And we have to have a real guestworker program that is just that, a guestworker program.

Let me ask you one more question. You say in your testimony that the H-2C program will deprive U.S. farmworkers of jobs by minimizing the recruiting requirements. Is it your opinion that farmers face a shortage of farmworkers because they don't do enough recruiting?

Mr. RODRIGUEZ. The requirements that I was making reference to are in regards to the protections for farmworkers when they are being recruited here in the United States, sir.

Mr. GOODLATTE. Thank you.

My time has expired, Mr. Chairman, and I do have some other questions. Perhaps they could be submitted in writing or you may ask them.

Mr. GOWDY. Or I would be thrilled to yield my time to you, Mr. Chairman, if you would like it.

Mr. GOODLATTE. No, I think it is fine.

Mr. GOWDY. Okay. I thank the gentleman from Virginia.

I would at this point recognize the gentlelady from California, the Ranking Member, Ms. Lofgren.

Ms. LOFGREN. Well, thank you, Mr. Chairman.

Before asking my questions, I would like to ask unanimous consent to include in the record of this hearing the list of the 71 farm organizations that have signed off on the agreement with the farmworkers' union on the agricultural program that I referenced earlier.

And I would also like to ask unanimous consent to include in the record a letter or a statement from the Agriculture Workforce Coalition that is not in support of H.R. 1773.

And if I could get unanimous consent for those two inclusions.

Mr. GOWDY. Without objection.

[The information referred to follows:]

Members of the Agricultural Workforce Coalition that Brokered an Agreement with the United Farm Workers

1. American Farm Bureau Federation
2. American Nursery & Landscape Association
3. Florida Fruit & Vegetable Association
4. National Council of Agricultural Employers
5. National Council of Farmer Cooperatives
6. National Milk Producers Federation
7. USA Farmers
8. U.S. Apple Association
9. United Fresh Produce Association
10. Western Growers Association
11. Western United Dairymen
12. Agriculture Coalition for Immigration Reform
13. Agricultural Council of California
14. American AgriWomen
15. American Beekeeping Federation(ABF)
16. American Frozen Food Institute
17. American Mushroom Institute
18. American Sheep Industry Association
19. California Association of Winegrape Growers
20. California Avocado Commission
21. California Citrus Mutual
22. California Giant Berry Farms
23. California Grape and Tree Fruit League
24. California Women for Agriculture
25. Certified Greenhouse Farmers
26. Colorado Nursery & Greenhouse Association
27. CoBank
28. Cooperative Network
29. Council for Burley Tobacco
30. Farm Credit East
31. Florida Citrus Mutual
32. Florida Farm Bureau
33. Florida Nursery, Growers & Landscape Association (FNGLA)
34. Georgia Farm Bureau Federation
35. Georgia Fruit and Vegetable Growers Association
36. Georgia Green Industry Association
37. Hispanic American Growers Association
38. Idaho Dairymen's Association
39. Illinois Farm Bureau
40. Louisiana Farm Bureau Federation
41. MBG Marketing/The Blueberry People
42. National Christmas Tree Association
43. National Farmers Union
44. National Grange
45. National Onion Association
46. National Peach Council
47. National Potato Council
48. Northeast States Association for Agricultural Stewardship (NAAS)
49. Northwest Farm Credit Services
50. OFA, An Association of Horticulture Professionals
51. Oregon Association of Nurseries
52. Produce Marketing Association
53. Red Gold, Inc

54. Society of American Florists
55. South East Dairy Farmers Association
56. Southeast Milk, Inc.
57. State Agriculture and Rural Leaders (SARL)
58. Sweet Potato Council of California
59. Texas Citrus Mutual
60. Texas International Produce Association
61. Texas Vegetable Association
62. U.S. Custom Harvesters, Inc.
63. United Ag
64. United Dairymen of Arizona
65. Utah Dairy Producers
66. United Egg Producers
67. Village Farms International, Inc.
68. Wine America
69. Wine Institute
70. Yankee Farm Credit
71. Yuma Fresh Vegetable Association

AGRICULTURE WORKFORCE COALITION
STATEMENT SUBMITTED TO THE
JUDICIARY SUBCOMMITTEE ON IMMIGRATION & BORDER SECURITY
U.S. HOUSE OF REPRESENTATIVES
May 16, 2013

Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee, thank you for the opportunity to submit a statement for the record and thank you for holding this hearing on the *Agricultural Guestworker "AG" Act* (H.R. 1773). H.R. 1773 properly recognizes that America's farmers and ranchers need Congressional action to ensure a legal and stable workforce. This legislation represents an important first step in the House of Representatives in addressing immigration reform.

The Agriculture Workforce Coalition (AWC) brings together nearly 70 organizations representing the diverse needs of agricultural employers across the country. AWC serves as the unified voice of agriculture in the effort to ensure that America's farmers, ranchers and growers have access to a stable and secure workforce. The AWC came together out of the realization that, while America's farms and ranches are among the most productive in the world, they have struggled in recent years to find enough workers to pick crops or care for animals. The great success story that is American agriculture is threatened by this situation, and the AWC has been working to develop an equitable, market-based solution to the problem.

While the labor situation in agriculture has been a concern for many years, it has now reached a breaking point. Today, large segments of American agriculture face a critical lack of workers, a shortage that makes our farms and ranches less competitive and that threatens the abundant, safe and affordable food supply American consumers enjoy.

There are numerous reports from all over the U.S. of crops left to rot in the fields because growers lack sufficient workers to bring in the harvest. It is estimated that in California alone, some 80,000 acres of fresh fruit and vegetable production has moved overseas because of the labor shortage.

Repeated evidence over the past decades has shown that there are some jobs in agriculture that Americans simply do not choose to do. Although many of these jobs offer wages competitive with similar non-agricultural occupations, they are physically demanding, conducted in all seasons and are often seasonal or transitory. It is for these reasons that farmers have grown to rely on foreign workers, of which approximately 70 percent are in questionable legal status.

This labor crisis is exacerbated by the fact that farmers' and ranchers' only option to legally find the workers they need is the H-2A program, a program that has not worked for many agricultural employers.

The H-2A program's basic framework is overly restrictive and difficult for an employer to navigate. Furthermore, the H-2A program is only accessible for producers with seasonal needs; excluding the year-round needs of many producers such as dairy, livestock, mushrooms, and other crops. In recent years it has become even more unworkable and costly to use. The program has become so burdensome, in fact, that producers use it only when they absolutely need to, and the H-2A program provides only about five percent of agriculture's total workforce.

In an effort to achieve a lasting solution for the current and future agricultural labor in the U.S., the AWC came together with the United Farm Workers (UFW) to negotiate a legislative solution that we believe can garner the required political support. The landmark agreement between the AWC and UFW has two components. It includes both an earned adjustment of status for current experienced and essential but unauthorized agricultural workers, and a new, more flexible program to provide access to a legal workforce into the future.

In the short-term, to preserve agriculture's workforce and maintain stability in the sector, unauthorized farm workers would have the opportunity to earn legal status if they meet several conditions and continue to work substantially in agriculture over several years.

For long-term stability, an agricultural worker visa program would be established that will provide farmers and ranchers access to a legal and reliable workforce into the future and the flexibility to meet the needs of all producers. This program offers both employer and employee choice and flexibility through two different work options: an "At-Will" visa and a Contract visa. These three-year visas would be valid for employment with agriculture employers registered through the USDA and the program is distinct from the low-skilled visas for the general business community.

- "At-Will" Visa employees have the freedom to move from registered employer to employer without any contractual commitment, replicating the way market forces allocate the labor force now.
- Contract Visa employees would also have the freedom to move from employer to employer upon completion of any contractual commitment, giving both parties increased stability where it is mutually preferred.

The principles of the AWC/UFW agreement will continue to guide our efforts as work on the immigration issue begins in Congress. We appreciate that H.R. 1773 is reflective of some of the principles contained in the agreement, including a new two-pronged guest worker visa program that allows employers to hire foreign workers based on a contract or at-will; coverage of year round agricultural jobs, such as dairy and livestock; a longer visa than currently allowed in the H-2A; transfer of program administration to the USDA; and a more streamlined application and recruitment process.

We would also like offer some general comments on key provisions of the bill that we believe could be modified to better meet the needs of agriculture. In particular, we would respectfully suggest that workers be eligible to be admitted to the country with a work offer, rather than a work contract, prior to implementation of E-verify. Requiring initial contractual employment could artificially limit the ability of workers to enter the country if enough employers do not choose contract employment.

Also, the AWC has consistently advocated for a separate legal status for experienced agricultural workers that are currently working in the US and have been for a period of time. We do not believe the bill's approach of funneling them into the temporary H2C nonimmigrant program adequately addresses the needs of the industry. Additionally, the bill requires workers to return to their home country at least 1/6 the duration of their visa length. Touchback provisions are extremely disruptive to business practices. This is especially burdensome for year-round employers who would lose experienced and trained employees for three months at a time. Even with detailed business planning, providing for complicated rotating workforces, losing experienced employees for an extended period is impractical.

Lastly, the AWC has concerns about the operation of the at-will program. The program as included in H.R. 1773 is structurally unacceptable as written. Farmers seek simplicity in this process and require short-term employment relationships; therefore, the requirement that all initial employers must enter into contracts is concerning. We advocate that acceptance of a job offer, whether under contract or at-will, provides the assurances that the visa workers have valid grounds to enter the United States, but is not overly burdensome to those employers requiring more flexibility. We will continue to work as a resource in order to improve these elements and others that may arise through the legislative process.

We commend Chairman Bob Goodlatte on his forceful advocacy over the years for action that would ensure a secure, legal workforce in agriculture today and in the future. As the process unfolds in the House, the AWC will continue to work with Chairman Goodlatte and other members to ensure that any legislation achieves a workable, flexible and market-based solution that addresses the labor needs of agricultural employers both in the short and long terms.

We also note the Subcommittee heard from witnesses on the *Legal Workforce Act* (H.R. 1772). This legislation deals with an enforcement mechanism, E-verify, that would greatly impact the agriculture industry. Immigration enforcement without a workable program to address the labor needs of fruit, vegetable, dairy and nursery farms and ranches, will result in many U.S. farmers and their farm employees losing their livelihoods and decreased US agricultural production.

The effect would go far beyond the farm gate. If there is no one to pick the crop, industry sectors that operate upstream and downstream of farm production and harvest will be adversely impacted as well. Studies have shown that each of the nearly two million hired farm employees who work in labor intensive agriculture supports 2 to 3 fulltime American jobs in the food processing, transportation, farm equipment, marketing, retail and other sectors. Mandatory E-Verify without workable labor solutions for agriculture puts these American jobs, and the economies of communities across the country, in jeopardy.

The AWC supports a phase-in approach to E-verify for agriculture due to agriculture's unique hiring circumstances. A rushed approach could hurt agriculture even with a fix for our current and future workforce. Agriculture's unusual hiring situations often occur in remote rural areas with limited access to high-speed internet, actually including field-side hiring sites. Hiring has very pronounced seasonal peaks and there is often high turnover. Few farms have the luxury of dedicated human resources staff. Such factors justify allowing additional time for the necessary adjustments to be made to the program before the industry is required to comply with E-verify.

Thank you again for holding these hearings and we forward to working with the Committee and other members to ensure that the labor needs of agriculture both now and in the future are addressed in immigration reform legislation.

AWC
AGRICULTURE
WORKFORCE COALITION

Founding Association Members of AWC:
American Farm Bureau Federation
American Nursery & Landscape Association
Florida Fruit & Vegetable Association
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Milk Producers Federation
USA Farmers
U.S. Apple Association
United Fresh Produce Association
Western Growers Association
Western United Dairymen

Coalition Partners:
Agriculture Coalition for Immigration Reform

AWC Supporters:
Agricultural Council of California
American AgriWomen
American Beekeeping Federation(ABF)
American Frozen Food Institute
American Mushroom Institute
American Sheep Industry Association
California Association of Winegrape Growers
California Avocado Commission
California Citrus Mutual
California Giant Berry Farms
California Grape and Tree Fruit League
California Women for Agriculture
Certified Greenhouse Farmers
Colorado Nursery & Greenhouse Association
CoBank
Cooperative Network
Council for Burley Tobacco
Farm Credit East
Florida Citrus Mutual
Florida Farm Bureau

Georgia Farm Bureau Federation
Georgia Fruit and Vegetable Growers Association
Georgia Green Industry Association
Hispanic American Growers Association
Idaho Dairymen's Association
Illinois Farm Bureau
Louisiana Farm Bureau Federation
MBG Marketing/The Blueberry People
National Christmas Tree Association
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National Peach Council
National Potato Council
Northeast States Association for Agricultural Stewardship (NAAS)
Northwest Farm Credit Services
OFA, An Association of Horticulture Professionals
Oregon Association of Nurseries
Produce Marketing Association
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South East Dairy Farmers Association
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Sweet Potato Council of California
Texas Citrus Mutual
Texas International Produce Association
Texas Vegetable Association
U.S. Custom Harvesters, Inc.
United Ag
United Dairymen of Arizona
Utah Dairy Producers
United Egg Producers
Village Farms International, Inc.
Wine America
Wine Institute
Yankee Farm Credit
Yuma Fresh Vegetable Association

Ms. LOFGREN. You know, I just want to take two statements out of this Ag Workforce Coalition, which is signed by practically every agricultural employer group in the United States. It says, "The AWC has consistently advocated for a separate legal status for experienced agricultural workers that are currently working in the U.S. and have been for a period of time. We do not believe the bill's approach of funneling them into temporary H-2C nonimmigrant

programs adequately addresses the needs of the industry." They further say, as to the at-will program that the program, as included in the bill, is structurally unacceptable.

I certainly believe that the author of the bill, Chairman Goodlatte, has every intent to make a workable program. I do not at all disbelieve his good intentions. But I do not think this is a workable plan.

Listening to you, Mr. Graham, about the H-2B program, I have heard those complaints about the Department of Labor from my own constituents. I think there are issues relative to the administration of the program. But I would note that the bill has 500,000 visas, a cap. Within that cap would have to be the entire current unauthorized workforce, estimated at somewhere like 1.8 million people, plus all the new people—there wouldn't be any room for new, additional workers—plus the H-2B people that are not currently in that program. So if you are worried about the cap on H-2B now, you wouldn't get a single visa out of this bill because of that cap.

I do think that the—you know, I am not suggesting that the W visa program that was the result of the business community and the labor community's negotiations is a perfect plan, but it does have huge numbers of visas, certainly considerably more than are included in the bill that we are considering today.

So I think that is worth thinking about as we move forward, because we want to make sure that we have adequate protections in place so that American workers are not disadvantaged by prospective future workers.

At the same time, we know—I mean, I was thinking, listening to Mr. Goodlatte about people who left agriculture, and I think some people did. I mean, it is a hard job. On the other hand, you know, 1986 was 31 years ago. I mean, if you were 40 years old in 1986, you would be 71 years old today. I mean, you are not going to be out in the fields. It is an aging workforce.

So we have a need for immigrants in some parts of our economy to meet our needs. And I think to have those needs met in a legal way and in an orderly way with an adequate number of visas available is very advantageous for the United States and certainly fair, also, to American workers as well as immigrants who would be coming in. Because we are not the kind of country that really thinks it is right or fair to mistreat people who are coming to our country to work. That is not what America is all about, and I know that is not what any one of you are about.

I would just ask, you know, Mr. Rodriguez, the—well, let me ask you, Mr. Graham. How many workers do you need in your—in terms of immigrant workers, how many H-2B workers do you have, and how many would you need to have if you didn't have all the rigmarole and caps that you deal with?

Mr. GRAHAM. I would estimate our needs for the seafood industry are probably less than 15,000.

Ms. LOFGREN. Okay. And when you get into the meatpacking—and, as you know, there is a special allocation in the Senate bill for meatpacking—what do you think, and can you speak for the whole industry, what the need is for immigrant labor in meat and chicken?

Mr. GADDIS. I can't speak with specificity about the industry. I can tell you, we hire somewhere between 100 and 300 a week.

Ms. LOFGREN. Okay. So, clearly, a 500,000 cap for all existing farmworkers, all additional farmworkers, plus new industries that are not currently in the program would be eaten up just in a snap.

I see my time has expired. I will yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady from California.

I am going to recognize myself and then recognize the gentleman from North Carolina and the gentleman from Illinois.

Mr. Graham, to those who think that you would be able to find more domestic workers if only you recruited harder and more, what do you say?

Mr. GRAHAM. Can you repeat that question again, please?

Mr. GOWDY. To those who think that you would be able to hire more domestic workers if only you recruited more or harder, what do you say?

Mr. GRAHAM. Well, being in the program now for 14 years and having to go through the rigmarole of the recruitment process and offer 2-week training and having numerous people come and apply, to walk out 2 or 3 days into the whole process, you know, there is not much more that I can offer for training and recruitment. We have done our due diligence, and we are just not finding the people out there.

Mr. GOWDY. Your testimony is eerily reminiscent of what we have heard from—what I hear from peach farmers in my own district. The effort is there, the recruitment is there. And even if domestic workers come, they may not stay past lunch.

So, Mr. Gaddis, do you have similar experiences or different experiences with respect to recruiting domestic workers?

Mr. GADDIS. Very similar. The scale is a bit different.

But, in 2007, at a beef plant in Greeley, we decided to start a second shift, and we strategized as a company as to how best to do that and literally barnstormed the country to areas where individuals with meatpacking expertise or experience or a propensity to even accept a job meatpacking were located. And I can tell you, after 3 months of virtually door-to-door recruitment efforts and some more sophisticated efforts, we didn't have enough people. And we turned to, at the time, refugee labor.

So I think it is a very—in a healthy industry like ours and like Mr. Graham's, it is a reality, regardless of the circumstance, that there just are not enough U.S. workers to fill the jobs.

Mr. GOWDY. All right.

Staying with you, how will having the Secretary of Agriculture involved in the administration of the H-2C program be beneficial, if it will be beneficial, to your industry?

Mr. GADDIS. Could you repeat the question? I am sorry.

Mr. GOWDY. How would having the Secretary of Agriculture be involved in the new H-2C program be beneficial, if it would be beneficial, to your industry?

Mr. GADDIS. I go back and forth on that. As somebody who administers human resources for our company, we do not rely on—or we would not rely on H-2C workers as a primary source of labor. But I would tell you, to have access to someone or to a department

that is sympathetic to our plight, our situation, outlined by Mr. Graham and I, that is always helpful.

Mr. GOWDY. Mr. Wicker, you, I believe, are able to speak to the litigious nature of some with respect to the current visa program. In fact, I think you noted that the North Carolina Growers Association has been sued over 30 times and paid over $5 million in attorneys' fees.

Can you speak to the litigation reforms in Chairman Goodlatte's bill?

Mr. WICKER. Yeah. What we should strive for is to try to solve farmworkers' problems, legal problems, grievances, et cetera, quickly and efficiently. And the best way to do that is not with attorneys and lawsuits that are very expensive.

And so North Carolina Growers Association started in 1990. We signed a collective bargaining agreement with the Farm Labor Organizing Committee—it is an affiliate of the AFL-CIO—in 2004. So we have a grievance procedure in place on all of our farms with our workers now.

And so it can work. You can provide a system so that farmworkers and farmers can solve their problems without having to go to court.

Mr. GOWDY. Sticking with you, why should you be required to provide housing and transportation when other industries do not?

Mr. WICKER. Well, you know, that is a great question. The farmers that I work for have been providing housing for a long time. It is a magnet. It is a benefit that draws workers to our farms and has them be—creates the desire for them to want to stay there. So even though this proposal doesn't mandate that housing be provided, I suspect that going forward our farmers would continue to provide housing.

But it is a burden, especially in Representative Lofgren's home State of California. I have friends in California that farm, and housing is a huge issue. And so it is something that has to be fixed.

Mr. GOWDY. Thank you.

I will now recognize the gentleman from Illinois, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you very much.

First of all, I want to thank Chairman Gowdy for calling this hearing.

I want to join the Ranking Member, Zoe Lofgren, in expressing our desire to work with the other side of the aisle in a bipartisan manner. One of the things that immigration has been able to do here in Washington, D.C., is kind of—here is Benghazi and the A.P. And, you know, everything else that is going on in Washington, D.C. And we are going to vote to repeal Obamacare one more time today. I think it will be the 36th, 37th time. And so Democrats defend it and Republicans attack it. But we have not allowed any of that to come down and to poison the well in our immigration discussions with Republicans and Democrats. We have kept that all outside. And I think that that speaks, I believe, to the desire of the American people and for us to be responsive to the desire of the American people.

I wanted to say—so I wanted to thank all of you for your testimony and for your work and for everything that you do, because I think it is important that we hear from all quarters.

But I also want to echo something that Congresswoman Zoe Lofgren mentioned. It seems to me that, if out here—that is, the private sector, the business community—has reached an agreement with those that represent the labor community, that we shouldn't meddle. I mean, it seems to me that there is no reason, when there is an agreement that has already been reached between those who represent the farmworkers and those that represent so many other diverse industries. Why we don't simply accept that men and women of good faith have bargained and reached an agreement and why we can't embrace that is something I think we need to ask ourselves as we move forward.

I would like to say that, for me, this is a very important part of what will be comprehensive immigration reform, a somewhat unique part of what will be comprehensive immigration reform, because of the relationship that the farm-work community has to a movement for justice, for a movement embodied in Cesar Chavez, for a movement embodied in what I believe is making America a better, greater place for social justice and what that spirit entails.

And it really is in the support that across America farmworkers have, that special place that we not only have for farmworkers every night when we sit down for dinner to eat the crops that they have harvested for us, to do that backbreaking, dirty, filthy work—which we all know we have trouble, let's face it.

We have had testimony here before because Chairman Gowdy has brought people here who have taught us that we are going to have to fundamentally make a decision: Are we going to eat food that is grown in foreign countries by foreign hands, or are we going to have food that is grown here protected by us, by foreign hands? Because let's face it, nobody here on this panel is sending their kids to school to become a farmworker. And the population doesn't exist out on your farm or rural areas because that population isn't there. We are going to need people to continue to come to America to do that work.

And I just want to say, if it is backbreaking work, when we discuss here comprehensive immigration reform, I think we have to get away from this notion and we have to stand up for farmworkers, we have to stand up for those who provide us our food, because, you know, that is an essential ingredient to our safety. Watch the future. Food is going to become a condition of your survival as a Nation, and who picks that food is going to become a condition.

I would like to ask Arturo: Arturo, the issue of citizenship has been brought up. Tell me from your perspective, why is it important that farmworkers become citizens of the United States—be allowed the opportunity to become citizens of the United States?

Mr. RODRIGUEZ. Thank you very much, Congressman Gutierrez.

I mean, first of all, farmworkers have been here now for, in some cases, since 1986, since the last immigration bill, working in agriculture. They have demonstrated here to our Nation, as has been mentioned by many of the Members already, it is difficult work, it is hard work, but it requires a lot of skills and profession.

And I think the farmworkers that are here today have come here because they want to make a contribution to America. They want

to make a contribution to our economy. And they are willing to do what many have chosen not to do any longer here in this Nation.

And so it is a way of honoring those individuals, and it is a way of ensuring that they do stay in the agricultural industry to continue to meet further requirements that are necessary in order to gain a path to legal permanent residency and eventually to citizenship.

So that I believe, in terms of ensuring that we are going have a secure labor force, that we take the estimated 800,000 to 1.1 million unauthorized farmworkers currently working in agriculture today, we give them that opportunity to work and to gain the legal permanent residency, to earn that, as everyone else would, under comprehensive immigration reform and to eventually be on that path to citizenship so that they can enjoy the fruits of America just like anyone else can here in this Nation.

So we welcome that opportunity, and we hope that as we continue the process that that becomes the decision that is made by Members of Congress as well as in the Senate to move forward.

Mr. GUTIERREZ. I just want to end by saying I thank the Chairman for his indulgence in allowing Mr. Rodriguez to finish his answer.

And I just want—as we move forward, you will see the bill. And when it comes to the STEM industry, the high-tech industry, I assure you, they are going to say bring tens of thousands of workers to America, but they are going to give them green cards and they are going to allow them to bring their families. I am just saying, fight for your own people in your own industry the same way Google and Apple and others fight for high-tech. Somebody has to do the backbreaking work.

Thank you so much. And I appreciate the Chairman's indulgence.

Mr. HOLDING. [presiding.] Thank you.

I am going to recognize Mr. Garcia from Florida, and then I will recognize myself and be the final questioner.

Mr. GARCIA. Thank you, Mr. Chairman.

You know, the other day, someone who doesn't agree with immigration reform said to me, "You know, Joe, if somebody walked into your house and you didn't invite them, just walked around and then left, you would want them prosecuted." And my response was, if somebody walked into my house, filled my refrigerator with fresh fruit, painted my walls, cleaned my house, put my grandmother to bed, then went outside and mowed the lawn, I think I would owe them money, not want to prosecute them.

The folks that come to this country come for the very best that our Nation has to offer, which is opportunity and freedom. And, clearly, they pay a grave price for it.

I want to talk about something that, Artie, you have been working on for a very long time, which is, for years, the negotiated agreement between your folks and the Chamber of Commerce—which, in truth, is what we should be talking about here, right? An agreement that you in good faith negotiated. I think Mr. Wicker was part of the group who singed off on that agreement.

I want to you tell me about the time you put into that. And did you think you were just negotiating with the Chamber or did you

think you were negotiating in good faith to put a bill together that would be accepted by Members of the other side?

Mr. RODRIGUEZ. We actually became engaged—thank you very much, Congressman Garcia.

We became engaged initially in this process to bring about immigration reform for the agricultural workers and the industry as a whole with agricultural employers dating back to the year 2000, about 13 years ago. And, you know, at that particular time, we met with the heads, the CEOs, the presidents of a number of different agriculture associations throughout the United States. And we initially fashioned AgJOBS, which was a legislation that was being utilized and being discussed and debated for many, many years now.

About 6 months ago, we were approached by many of the same agriculture employers and different associations to look at and discuss a new immigration reform package for the agricultural industry that would impact both on the employers as well as on farmworkers. And we began that particular process and, as a result of that, fashioned an agreement that we felt was a compromise but yet something that all the parties could agree to.

And we met with 12 different associations that ranged from the American Farm Bureau to the Western Growers Association to nurserymen, sheep herders, dairies, apples, all the various citrus associations from Florida. All the various major agricultural associations throughout the United States came to the table, and our voices are all heard and debated and discussed. And we finally reached an agreement the day that the comprehensive bill on the Senate side was being submitted.

Mr. GARCIA. Thank you for your work, and hopefully it won't be ignored over here.

Mr. Wicker, I believe you were part of the group that signed off on this. Am I correct?

Mr. WICKER. I am here today to testify for North Carolina Growers, and I am treasurer of the USA Farmers Group. And USA Farmers was part of—is part of the agricultural workforce coalition that negotiated the compromise that resulted in the Senate bill.

Mr. GARCIA. How did you feel about that compromise?

Mr. WICKER. I think it is fine; I don't think it will pass the House. So we need to get a bill that will pass the House and go to conference and get something to the President's desk.

Mr. GARCIA. Well, you let us take care of the politics of it, but——

Mr. WICKER. Sure.

Mr. GARCIA [continuing]. You—I want to get an understanding. I mean, Mr. Rodriguez described his working through it. Could you give me your sense as someone who was on the other side working through this bill, the compromise required, the struggle? Maybe give us a sense from your perspective.

Mr. WICKER. I was not directly involved in the negotiations.

Mr. GARCIA. I am sure they were checking off with you through it, right?

Mr. WICKER. Pardon?

Mr. GARCIA. That you were part of discussions as the negotiations were going on.

Mr. WICKER. Sure. And we think at USA Farmers that they got as good a bill as they could possibly get——

Mr. GARCIA. Good.

Mr. WICKER [continuing]. Out of the Senate compromise.

Mr. GARCIA. Thank you.

You know, Mr. Rodriguez, you have been in the fields, and you know how hard it is to work. Today someone from the other side alleged that these are jobs that American workers are willing to do and anxious to do. In your years and with all your folks out there, do you find that to be true, that, you know, U.S. Workers are willing to do the work that the American farmworkers are doing today, and, in particular, those without documentation?

Mr. RODRIGUEZ. Well, actually, yes, Mr. Garcia, we estimate there are approximately 600,000 U.S. farmworkers, U.S. either citizens or legal permanent residents that are currently working in agriculture today. And we very much believe that that number would grow significantly when this legislation passes and gets implemented and gives farmworkers a right to gain legal status in working in the agricultural industry.

So there is a sizable number of folks that continue to work in agriculture, and we hope that, through this process, as well, we continue to elevate farm work as an honorable work, as a career that all of us can pursue here in the United States.

Mr. GARCIA. Thank you.

I want to thank all the witnesses.

Mr. Chairman, thank you. And I yield back the balance of my time.

Mr. HOLDING. Thank you, Mr. Garcia.

I will recognize myself for 5 minutes.

I want to thank all of our witnesses here today. I want to particularly thank Mr. Wicker, who has been an informed, intelligent, and reliable voice on these issues in North Carolina for a long time. And I have known him beyond this capacity in this job but even when I was a staffer here on Capitol Hill.

And so, welcome.

I want to turn specifically to North Carolina. Mr. Wicker, you were talking about the 500,000-worker cap on this bill and how it really should be uncapped. I want to talk about specifically what is happening in North Carolina now. How many guestworkers are we using in North Carolina at the moment?

Mr. WICKER. NCGA is not the only user of guestworkers in North Carolina. This year, it will be 10,000 maybe, out of a national total of 70,000 possibly.

Mr. HOLDING. Well, those 10,000 workers, what percentage does that represent of the total amount of workers that we need in North Carolina to handle these agricultural jobs?

Mr. WICKER. I think that represents in the range of 10 to 15 percent.

Mr. HOLDING. Wow. And the folks who are making up the difference, the workers who are making up the difference, where are they coming from? What are they composed of?

Mr. WICKER. I think that group is largely composed of undocumented workers. I mean, everybody is in agreement across the board that the overwhelming majority, somewhere between 50 and

70 percent, of migrant seasonal agricultural workers are undocumented workers.

Mr. HOLDING. So if the program is capped at 500,000, we in North Carolina would need—you are saying 100,000 of those would have to come to North Carolina?

Mr. WICKER. I think that is correct.

Mr. HOLDING. And the rest of the States would just have to divvy up what is left, right?

Mr. WICKER. Yes.

Mr. HOLDING. Okay.

A few other questions for you, Mr. Wicker. The concept of at-will temporary guestworkers enjoys broad support. What would be some of the advantages of hiring at-will guestworkers?

Mr. WICKER. I think at-will, the concept here is largely borne out of west coast agriculture. And so the at-will provisions contemplate having a workforce that can move more freely from short-term agricultural job to short-term agricultural job.

In North Carolina, we have an extremely diverse ag portfolio, and so we have been able to string a lot of different short-term jobs together, like tobacco, cucumbers, sweet potatoes. So our growers overwhelmingly prefer the contract provisions, because the margins are so tight on the farm, we want to know if we are going to the bank to borrow a million dollars in operating money and push our equity into the center of the table and plant these crops, that we want to know that we have workers who want to stay until the end of the harvest season.

Mr. HOLDING. And you bring up a valid point, in that you might bring in a guestworker to work on a tobacco crop, but then that merges over into a sweet potato crop, and then before too long they have been here for a period of time that takes them out of the classification of being a seasonal worker, because they are working multiple crops.

what are some of the complications there?

Mr. WICKER. Well, the current program is capped at—in statute at a year, but in reg 10 months. Our growers have figured out a way to live inside the parameters of this program, so the longest workers that we have in North Carolina are 10 months.

But agriculture is changing; it is consolidating. We are moving to year-round productions, especially in the Sun Belt States. And so we are going to have to move to a longer-term visa in the future.

Mr. HOLDING. Are there any problems—I think under Obamacare seasonal workers are exempted from being covered by Obamacare, correct?

Mr. WICKER. I was hoping you weren't going to ask me a technical question about Obamacare. But, yes, as I understand, the two tests that you have to complete to decide if have you coverage, you have to have more than 50 permanent employees. So, you know, when you get into that longer visa——

Mr. HOLDING. They may very well be covered by it.

Mr. WICKER [continuing]. They very well could be covered.

Mr. HOLDING. That would add a significant cost to our farmers per worker.

Mr. WICKER. That is absolutely true.

Mr. HOLDING. Well, I see my time is expiring. I am going to confer with my distinguished Ranking Member—ah.

I will recognize the distinguished lady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I want to thank the members for their patience, that we were on the floor debating on a matter that caused me to have to run from the floor. And thank you for your courtesies.

And I did not want to miss the opportunity, first of all, to thank the witnesses for being here, to acknowledge the legislation that is before us.

I think, over the years, we have had, Mr. Chair, Congressman Lofgren work tirelessly on this with one of our former Members, Mr. Berman. And I think my good friend, Mr. Rodriguez, knows that we have been on a long journey.

I cannot start any line of questioning without saying that the real commitment to the Nation is comprehensive immigration reform. And what I remember in terms of our work, with the years gone past, we worked on issues such as poor housing for farmworkers, poor health conditions, poor working conditions. We were just at the bare minimum of trying to create a decent way of life.

And I am also reminded of the friendship of Cesar Chavez and Martin Luther King. It has been a long, long journey.

And I, frankly, believe that if we look at this issue and do not provide a component that deals with the rights of workers, then we may be going in the same cycle again.

So I just want to ask, Mr. Rodriguez—and I may have time for someone else—to be able to share with me your thoughts about whether there is a framework of protecting workers.

And I want to ask sort of a pointed question, that farmworkers are everybody. If 500 American workers wanted to come and do that work, everybody is embraced as a farmworker. Is that not right, Mr. Rodriguez?

If we fill up the whole needs of farmworkers with people who here in the United States—no one is making a decision to weed them out or not let them come or not let the farming industry recruit them. So let's put that on the line, that the farm industry—we started as farmers. Obviously, people have moved to cities and moved into different capacities. But I don't want it to be said that we either couldn't find or we wouldn't recruit individuals who are here in the United States.

And so you might want to comment on that, but then the framework of the underlying legislation in terms of protecting workers.

Mr. RODRIGUEZ. Thank you very much, Congresswoman Jackson Lee.

You know, one of the reasons why we don't feel that H.R. 1773 really is the type of legislation that we are looking for here and why we have spent so much time sitting down with employer associations over the course of the last few years and months was to really design a program that ensured that the jobs of U.S. workers were protected, first of all, that it was very important to maintain their jobs, that they have an opportunity to maintain their jobs and the wage levels that they had, and that we would not utilize and

bring in guestworkers for the purpose of lowering those wages or deteriorating those working conditions.

And what we find with H.R. 1773, that they take away a lot of those protections. My understanding is, via the legislation, there would be no paid transportation, inbound transportation, for workers that are brought in from a country to work here in the crops. And, as a result, it is very difficult for them to pay that money up front. They come from countries and from, more than likely, situations where they haven't been working prior to that in terms of coming here.

Somebody talked about housing a little bit earlier. It is important. I mean, here are the lowest-paid workers in our country, and where are they going to get money to pay rent, to find housing, especially in rural communities that already have a difficult time in terms of achieving that? So that without providing some type of housing or housing allowance, there is not going to be the opportunity for people to—we are going to go back to the camps that we found during the Bracero days and those types of things and reverting back forward.

The enforcement mechanism is an issue of real importance to us, to make sure that there is someone that is going to be watching and observing and ensuring that all the parties are doing what they should be doing in relationship to that.

And the wages is of utmost importance and ensuring that, again, we have a wage level that is set that is going to, again, provide those workers with what they deserve, what they should be paid to be able to work here, and that they are not utilized in a way to undercut what U.S. workers and what American workers are making at the particular farm where they are at.

Ms. JACKSON LEE. Just to follow up with one quick question, Mr. Gaddis. I am sorry I had a coughing spell here. I didn't want to be unfair to the growers. And just this quick question.

One of the things—I think what Mr. Rodriguez has indicated are issues that we need to work on together. One of things that will help you, of course, if our colleagues will allow the Affordable Care Act to stay in place, you will have some form of health insurance, depending on how we formulate the comprehensive immigration reform.

But the question is—we respect the industry. It is an important industry for both the United States, the food industry, growers, farmers, and the world. Would you welcome some of the fixes that Mr. Rodriguez has talked about, housing and certain rights, so that you have a healthy and committed and dedicated workforce that is there for you when you need them?

Mr. Gaddis?

Mr. GADDIS. There are some distinctions to be drawn between the workforce that Mr. Rodriguez is involved with and ours in the meatpacking industry. I can tell you that ours are good jobs, good-paying jobs that provide employees without a lot of education to become upwardly mobile. That is why meatpacking has historically been a first-generation job.

We are, first of all, supportive of the initial 36-month length of stay. For us in the meatpacking industry and the coalition, the critical issue on that front relates to the subsequent stays of 18

months. It takes us somewhere between 4 and 8 months to teach someone a trade, teach someone a meaningful trade. And so, in order to get a return on that investment, we would need them to stay longer.

And then the other thing that we would ask for is unification of family, spouse's dependents, the opportunity for unification of spouse's dependents.

Ms. JACKSON LEE. But you wouldn't mind if—all of the witnesses wouldn't mind if we improve this legislation or in comprehensive immigration reform put in some of the features that Mr. Rodriguez has spoken of.

Mr. WICKER. I am sorry. I didn't hear your question.

Ms. JACKSON LEE. That you wouldn't mind fixing the legislation to put in some of the features that Mr. Rodriguez is speaking of to make it more palatable for the worker.

Mr. WICKER. Let's get together and talk about it. It is all about a balanced package. We have to take care of the workers.

Ms. JACKSON LEE. Mr. Graham, before I am gaveled down?

Mr. HOLDING. The gentlelady's time has expired.

Ms. JACKSON LEE. But Mr. Graham can say yes or no?

Mr. GRAHAM. Coming from the H-2B program, some of the things that we are talking about we were doing. So we have no problem with some of those provisions.

Ms. JACKSON LEE. I thank the Chair and Ranking Member for their indulgence. My time has expired.

Mr. HOLDING. I thank the gentlelady from Texas.

This concludes today's hearing. Thanks to all of our witnesses for attending.

And, without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing is adjourned.

[Whereupon, at 1:51 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of Chairman Trey Gowdy
Subcommittee on Immigration and Border Security
Hearing on H.R. 1773, the Agricultural Guestworker Act
Thursday, May 16, 2013

We will now begin the Subcommittee's hearing on H.R. 1773, the Agricultural Guestworker Act. This legislation will provide American farmers with what they have asked for, needed and deserved for many years – a workable and fair guest worker program to help them grow and harvest our food. Of course, this benefits each of us. I congratulate Chairman Goodlatte for introducing this legislation. I thank my colleagues on both side of the aisle who have informed and instructed my understanding of the issues. And I thank farmers and others in the agricultural industry for helping me understand the challenges they face in meeting this issue of national interest.

We would do well to place ourselves in the shoes of farmers because we sometimes lose track of what it takes for growers to actually put this bounty on the world's tables. We

lose track of what it takes for them to give us the safest, most efficient and most reliable agricultural system in the world.

For those crops that are labor-intensive, especially at harvest time, hired labor is critical. At our February hearing on agricultural guest worker programs, I asked why the H-2A program was so underutilized. I noted that in the eyes of many farmers, the program seems designed to fail. It is cumbersome and full of red tape. Growers have to pay wages far above the locally prevailing wage, putting them at a competitive disadvantage against growers who use illegal labor. Growers are subject to onerous rules such as the "50% rule", which requires them to hire any domestic workers who show up even after they have unsuccessfully recruited for U.S. workers and their H-2A workers have started working. Under the H-2A program, growers can't get workers in time to meet needs dictated by the weather. And in the final indignity, growers are constantly subject to

litigation by those who don't think the H-2A program should even exist.

Growers need a fair and workable guest-worker program that gives them access to the workers they need when they need them, at a fair wage, and with reasonable conditions. And they need a partner in the federal government, not an adversary. Such a program will benefit not only for farmers but also American and foreign workers. If growers can't use a program because it is too cumbersome, none of its worker protections will benefit any actual workers.

H.R. 1773, the Agricultural Guest worker Act, jettisons the dysfunctional features of the H-2A program and creates a new H-2C agricultural guest worker program that successfully meets the tests I laid out:

- The bill contains a streamlined petition process based on the H-1B program and allows growers to hire guestworkers "at will" once E-Verify has been made mandatory.

- The bill puts the Department of Agriculture in charge of the H-2C program.
- The bill requires that growers pay guest workers the local prevailing market-based wage. It does not require growers to additionally provide free housing or international travel reimbursements to guest workers.
- In order to discourage frivolous and abusive litigation against growers, the bill allows growers and guestworkers to agree to binding arbitration and mediation of grievances. It also provides that H-2C workers are not eligible for taxpayer-funded lawyers under the Legal Services Corporation Act.
- In order to prevent a labor force shock, the bill allows illegal immigrants to participate in the H-2C program just as can any other foreign nationals as long as they abide by the terms and conditions of the program.

I look forward to hearing today's witnesses and learning how H.R. 1773 would benefit them. I now recognize the gentlewoman from California, the Ranking Member, Ms. Lofgren.

Statement of Ranking Member Zoe Lofgren

Hearing on: H.R. 1773, the "Agricultural Guestworker Act"

May 16, 2013

I thank Chairman Goodlatte and Chairman Gowdy for holding this hearing on H.R. 1773—Chairman Goodlatte's "Agricultural Guestworker Act." As with the hearing we just had on Mr. Smith's "Legal Workforce Act," I understand this hearing is another in a series of hearings meant to examine what is broken in our current immigration system.

Nowhere is evidence of that brokenness more evident than in our agricultural sector. We know from the countless hearings we have held on this topic that as much as 75% of the on-the-farm workforce is undocumented.

That's an incredible figure.

This situation is untenable for both farmers and farmworkers, who together provide an invaluable service to our citizens, our economy, and our country. They deserve a system that works.

That is why it is so significant that just last month, farmers and agricultural trade associations from across the country and in every sector of the agricultural industry joined with the United Farm Workers to reach an historic agreement to reform our agricultural labor system.

The agreement they signed onto, which came after months of negotiations, is designed to provide a system that works for both growers and farmworkers. In doing so, it will help to support the millions of jobs that depend upon the agricultural industry and will prevent us from becoming increasingly dependent on food produced overseas.

The agreement includes both an earned legalization program for the current undocumented agricultural workforce and a new visa program to address future farm labor needs. It is a sensible solution and I applaud all of the people who worked hard to make it a reality.

Let me pause briefly to note that for years we talked about the former AgJOBS compromise that our former and beloved colleague, Howard Berman, played such a critical role in forging. After the AgJOBS compromise fell apart, it was unclear how the parties would be able to come together once more to find a mutually agreeable solution.

Significantly, the proposal that the parties recently reached has even more support than the AGJOBS compromise. Today's agreement is supported by organizations representing larger farmers and small farmers, fruit and vegetable producers, dairy farmers, sheepherders, beekeepers, landscaping, and farm bureaus throughout the country.

Over 70 different agricultural employer organizations support the agreement, including the American Farm Bureau, the National Council of Agricultural Employers, the National Council of Farmer Cooperatives,

USA Farmers (of which witness Lee Wicker is the Treasurer), the Western Growers Association, the National Milk Producers Federation, the Western United Dairymen, farm bureaus across the country (including Georgia, Florida, and Louisiana), and even the Idaho Dairymen's Association.

All of these organizations agree the current immigration system is hurting our agricultural sector. This is an opinion I share, and it's an opinion that I know is shared by the Chairman Goodlatte. His bill, I know, is a sincere effort to address that dysfunction.

And I appreciate this hearing as a way of studying that proposal, while considering ways to fix our broken system. As this Committee prepares to enter the national discussion about reforming our immigration system, we will need to fully understand each aspect of a top-to-bottom reform of our system just as much as we will need to understand how each aspect is interrelated.

I must admit, however, that I hope this hearing will help convince the Chairman and the other Members on his side of the aisle to accept and support the agreement that has been reached between the diverse coalition of grower interests and the UFW. Considering the support for that agreement across all sides of the farming community, I'm not sure why we would craft something completely new and that is opposed by important members of that community.

I must also note at least two elements of that deal that will prevent it from ever becoming law. First, H.R. 1773 provides an opportunity for undocumented farmworkers to apply for the new temporary worker visas created in the bill, but those visas would only allow workers to remain here for a period of 18 months, even if they have been here for decades and have spouses and children in the country.

The reality is that this proposal simply will not work. By asking such people to come out of the shadows, register, and obtain a temporary visa, we are essentially asking them to "report to deport." People will not come out of the shadows, and farmers will not have access to the stable supply of authorized workers that they need going forward.

Second, H.R. 1773 would dramatically reduce wages and other protection for farmworkers, who are already the least-paid and protected workers in the country. Indeed, H.R. 1773 would create a program with lower wages and fewer protections than the Bracero program that is widely recognized as a black eye in our nation's history.

The country needs us to find a solution to the agricultural labor problem. But I believe the superior solution is the landmark agreement between farmers and farmworkers. I am grateful to the United Farm Workers, the American Farm Bureau, and all of the other agricultural employers and associations for putting us on what I believe will be the right track.

Opening Statement of Rep. Bob Goodlatte
Chairman, House Committee on the Judiciary
Hearing on H.R. 1773, the Agricultural Guestworker Act
Subcommittee on Immigration and Border Security
May 16, 2013

THANK YOU, CHAIRMAN GOWDY.

AS WE SEEK TO REFORM OUR IMMIGRATION SYSTEM AS A WHOLE, WE MUST TAKE THE TIME TO LOOK AT EACH OF THE INDIVIDUAL ISSUES WITHIN THIS SYSTEM TO ENSURE THAT WE GET IMMIGRATION REFORM RIGHT. FOR THIS REASON, I THANK THE SUBCOMMITTEE CHAIRMAN FOR HOLDING THIS IMPORTANT HEARING. H.R. 1773 IS A BILL THAT WILL REPLACE OUR OUTDATED AND UNWORKABLE AGRICULTURAL GUESTWORKER PROGRAM AND BRING US ONE STEP CLOSER TO SOLVING THE LARGER IMMIGRATION PUZZLE.

AS PAST HEARINGS ON THE H-2A PROGRAM HAVE REVEALED, FARMERS AVOID USING THE EXISTING AGRICULTURAL GUESTWORKER PROGRAM BECAUSE IT BURDENS THEM WITH EXCESSIVE REGULATIONS AND EXPOSES THEM TO FRIVOLOUS LITIGATION. THE NEW GUESTWORKER PROGRAM CREATED UNDER THE AG ACT, KNOWN AS THE H-2C PROGRAM, REMEDIES THIS PROBLEM BY STREAMLINING ACCESS TO A RELIABLE WORKFORCE AND PROTECTING FARMERS FROM ABUSIVE LAWSUITS. IT ALSO ALLOWS DAIRY FARMS AND FOOD PROCESSORS TO PARTICIPATE IN THE PROGRAM.

THE NEW H-2C PROGRAM WILL BE MARKET-DRIVEN AND ADAPTABLE. IT WILL REDUCE BUREAUCRATIC RED TAPE BY ADOPTING AN ATTESTATION-BASED PETITION PROCESS AND BY ALLOWING H-2C EMPLOYERS IN GOOD STANDING WHO AGREE TO ABIDE BY ADDITIONAL TERMS AND CONDITIONS THE OPPORTUNITY TO BE DESIGNATED AS "REGISTERED AGRICULTURAL EMPLOYERS," FURTHER EXPEDITING THE HIRING PROCESS. MOREOVER, SUBJECT TO CERTAIN CONDITIONS, H-2C WORKERS CAN BE EMPLOYED UNDER CONTRACT OR AT WILL, MAKING IT EASIER FOR WORKERS TO MOVE FREELY THROUGHOUT THE AGRICULTURAL MARKETPLACE TO MEET DEMANDS.

WE MUST ALSO LEARN FROM THE MISTAKES OF THE PAST. AS A RESULT, THE FOLLOWING PITFALLS OF THE H-2A PROGRAM WILL NOT BE REPEATED IN THE NEW H-2C PROGRAM:

- **THE AG ACT WILL NOT REQUIRE GROWERS TO HIRE AND TRAIN UNNEEDED WORKERS AFTER THE WORK PERIOD BEGINS;**
- **THE AG ACT WILL NOT REQUIRE EMPLOYERS TO PROVIDE FREE HOUSING AND TRANSPORTATION FOR THEIR WORKERS; AND**
- **FARMERS WILL PAY GUESTWORKERS THE TYPICAL WAGE PAID TO AGRICULTURAL EMPLOYEES IN THEIR LOCALITY, NOT AN**

"ADVERSE EFFECT" WAGE DREAMED UP BY LABOR DEPARTMENT BUREAUCRATS.

HOWEVER, THE NEW H-2C PROGRAM WILL BE AT ITS CORE A *GUEST*WORKER PROGRAM. UNLIKE THE AGRICULTURAL WORKER PROVISIONS IN THE SENATE IMMIGRATION BILL, THE AG ACT DOES NOT CREATE ANY SPECIAL PATHWAY TO CITIZENSHIP FOR UNLAWFUL IMMIGRANTS. THE BILL SIMPLY ALLOWS UNLAWFUL IMMIGRANTS TO PARTICIPATE IN THE NEW H-2C GUESTWORKER PROGRAM JUST AS OTHER FOREIGN NATIONALS CAN, PROVIDED A JOB IS AVAILABLE. THEY ARE REQUIRED TO ABIDE BY THE EXACT SAME CONDITIONS AS FOREIGN AGRICULTURAL WORKERS CURRENTLY WORKING LEGALLY IN

THE UNITED STATES, INCLUDING THE REQUIREMENT TO LEAVE THE U.S. PERIODICALLY AND THE PROHIBITION ON FAMILY MEMBERS ACCOMPANYING THE WORKER.

UNDER THE AG ACT, H-2C WORKERS CAN BE ADMITTED FOR UP TO 18 MONTHS TO WORK IN A JOB THAT IS TEMPORARY OR SEASONAL. FOR WORK THAT IS NOT TEMPORARY, H-2C WORKERS CAN BE ADMITTED INITIALLY FOR UP TO 36 MONTHS AND UP TO 18 MONTHS ON SUBSEQUENT H-2C VISAS. AT THE END OF THE AUTHORIZED WORK PERIOD, AN H-2C WORKER MUST REMAIN OUTSIDE THE U.S. FOR A CONTINUOUS PERIOD THAT IS EQUAL TO AT LEAST 1/6 OF THE DURATION

OF THE WORKER'S PREVIOUS STAY AS AN H-2C WORKER OR 3 MONTHS, WHICHEVER IS LESS.

THESE REQUIREMENTS WILL BE STRICTLY ENFORCED. TO ENCOURAGE GUESTWORKERS TO ABIDE BY THESE RULES, A SMALL PORTION OF GUESTWORKERS' WAGES WILL BE HELD IN ESCROW UNTIL THEY RETURN HOME TO COLLECT THE WAGES IN THEIR HOME COUNTRIES. AND IF A GUESTWORKER ABANDONS HIS OR HER JOB, AN EMPLOYER WILL BE REQUIRED TO NOTIFY THE DEPARTMENT OF HOMELAND SECURITY WITHIN 24 HOURS. WORKERS WHO DO NOT LEAVE THE U.S. WHEN REQUIRED WILL BE BARRED FROM REENTRY INTO THE U.S. FOR FROM THREE TO TEN YEARS.

AS A GENERAL RULE, THE PROGRAM WILL BE LIMITED TO 500,000 VISAS PER YEAR, ALTHOUGH INDIVIDUALS WORKING IN THE U.S. UNLAWFULLY WHO TRANSITION INTO THE H-2C PROGRAM WILL NOT COUNT AGAINST THIS CAP.

FINALLY, THE H-2C PROGRAM IS FISCALLY RESPONSIBLE. H-2C GUESTWORKERS WILL NOT BE ELIGIBLE FOR OBAMACARE SUBSIDIES OR FOR MOST OTHER FEDERAL PUBLIC BENEFITS. THEY ARE ALSO NOT ELIGIBLE FOR FEDERAL REFUNDABLE TAX CREDITS – THE EARNED INCOME TAX CREDIT OR THE CHILD TAX CREDIT.

IT IS ESSENTIAL THAT WE EXAMINE SOLUTIONS TO OUR BROKEN IMMIGRATION SYSTEM METHODICALLY, FOR IF WE FAIL TO DO SO, WE RISK REPEATING SOME OF THE SAME MISTAKES OF THE PAST. I AM PLEASED TO WELCOME ALL OF OUR WITNESSES HERE TODAY, AND I LOOK FORWARD HEARING THEIR VALUABLE TESTIMONY.

Testimony from Congressman Doc Hastings
H.R. 1773, the Agricultural Guestworker Act
Subcommittee on Immigration and Border Security
May 16, 2013

I would like to thank Chairman Goodlatte for introducing H.R. 1773, the Agricultural Guestworker Act, as well as Chairman Gowdy and Ranking Member Lofgren for holding today's hearing on this important bill.

Agriculture, and in particular labor-intensive specialty crops, is the backbone of the economy in Central Washington and plays an important role in our nation's food supply. Without Pacific Northwest growers, the United States would lose more than half of its apple and cherry production, more than 70 percent of its pear production, and more than 77 percent of its hops production. In addition to providing high quality products to Americans, many of these products are exported and contribute significantly to our agricultural trade surplus.

I think that we all can agree that the H2-A program, which is currently the only option available to growers to bring in willing workers to complete these jobs, is completely unworkable. Time and time again, I have heard that the burdensome administrative process and the costs associated with it that have made the program too expensive and bureaucratic for the vast majority of growers to access. From the handful of larger growers in my district that do attempt to use the program, I have heard firsthand accounts of the costly challenges caused by ever-changing interpretations and enforcement by the Department of Labor (DOL) and the failure of growers to receive the number of workers they need, when they need them. I have also heard accounts that using the H2-A program has also made some growers targets for frivolous lawsuits – often funded at the taxpayers' expense through the Legal Services Corporation.

The subject of today's hearing, the "Agricultural Guestworker Act," creates a new guestworker program that addresses many of the problems with the current H2-A program. It moves the administration of the program from DOL to the Department of Agriculture (USDA) – an agency that actually understands the labor needs of farmers and nature of agriculture. It simplifies the requirements for employers to recruit U.S. workers and provides a deadline for the agency to respond to a grower's application, giving them certainty that they will receive the workers they need by the date they need them. It seeks to address the high wage concerns that has made the H2-A program uneconomical for so many, and eliminates the significant costs and bureaucratic headaches of the housing and transportation requirements in the current program.

The bill provides legal protections for growers while maintaining the rights of workers by allowing employers to require as a condition of employment, that both parties agree to binding arbitration and mediation for any grievances. It discourages frivolous lawsuits, that target

employers who utilize the program by prohibiting taxpayer dollars from being used to bring lawsuits against growers.

Unlike the H2-A program, the program created by the "Agricultural Guestworker Act" allows workers to move from employer to employer under the terms of the visa. This portability option, when properly enforced to ensure that the workers are tracked and remain working only in agriculture, would provide critical flexibility to small and medium sized growers whose labor needs vary significantly from season to season.

The "Agricultural Guestworker Act" also recognizes an important reality – it will take several years for a new program to be implemented, and during that time, growers must not lose access to their existing workforce or they will go out of business. Current workers will be able to continue to work in agriculture for two years until the new program takes effect, and then are permitted to participate once it is up and running.

Unlike the Senate proposal, the legislation before you today includes a much more realistic cap of 500,000 workers. I am also pleased the bill provides discretion to USDA to increase the cap if there is verifiable need. Washington state's apple harvest is one of the latest of any crop nationwide, and is therefore especially sensitive to a cap that is set too low.

There is much that I like in this bill. However, I do believe that there are ways that it can be improved. While I understand that Chairman Goodlatte intends for the wage section in the bill to be more market-based than the adverse effect wage used in the H2-A program, I encourage the Committee to consider providing further clarification to ensure that the wage calculations are fair and that our growers do not fall victim to unintended consequences. I also encourage the Committee to consider whether the initial contract requirement to bring in foreign workers is workable for small growers.

In conclusion, I cannot comment on this legislation without talking about the overall issue of immigration reform. I have long believed that our immigration system is broken and that we need complete reform to secure our borders, end illegal immigration and create a workable guestworker program for agriculture. In fact, I voted against the border security-only bill that passed the House of Representatives in 2005 because it did not achieve all of these goals.

The bill before you today makes critical improvements to our immigration system to provide our growers with the legal and willing workforce they need. However, even within the realm of agriculture, important questions like when the E-Verify Program would be made mandatory and trigger the portability visa option, and how to create an incentive for the current workers to remain employed in agriculture, are left unanswered under the assumption that they will be dealt with in separate legislation. This shows how interrelated the various issues within immigration reform are.

I fully recognize the value of reviewing the complex issue of immigration reform in smaller pieces so that they can be properly vetted. It is vital to our nation's security and economy that we consider this issue in a thoughtful manner – and that we get this right, unlike reforms made in 1986, which have led us to the situation we are in today.

However, when it comes time to pass legislation on the floor, I encourage you to move forward in a way that allows for a more complete bill to be sent to the Senate. In addition to creating a workable guestworker program for agriculture, we must act to secure our borders, improve enforcement of immigration laws on the books, and reform our laws so that our nation is never again faced with millions of illegal immigrants. Sending immigration reform legislation to the Senate in pieces gives them the ability to move forward on some bills while leaving others behind – which would undermine efforts to fully address the many flaws in our immigration system that are negatively impacting national security and our economy. I firmly believe that there is a way to consider immigration reform in a thoughtful way that allows maximum input by members throughout the process while still sending complete immigration reform legislation to the Senate, and I would respectfully request that you work toward this goal.

Once again, I would like to thank Chairman Goodlatte for introducing this important legislation, and Chairman Gowdy and Ranking Member Lofgren for holding today's hearing. The lack of a workable guestworker program for agriculture has caused serious repercussions for my constituents, and your attention to this matter is greatly appreciated.

Statement of the American Farm Bureau Federation

SUMITTED FOR THE RECORD
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION & BORDER SECURITY
U.S. HOUSE OF REPRESENTATIVES

HEARING RE: H.R. 1773, THE "AGRICULTURAL GUESTWORKER ACT"

May 16, 2013

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The American Farm Bureau Federation appreciates this opportunity to submit a statement for the record on the *Agricultural Guestworker "AG" Act* (H.R. 1773). H.R. 1773 properly recognizes that America's farmers and ranchers need congressional action to ensure a legal and stable workforce and this legislation represents an important first step in the House of Representatives in addressing this issue.

The labor shortage situation in agriculture has been a growing concern for many years and is moving toward a breaking point. Today, large segments of American agriculture face a critical lack of workers that undermines the competitiveness of our farms and ranches and threatens the abundant, safe and affordable food supply American consumers enjoy today. To ensure consistent delivery of high-quality food products, farmers and ranchers must have access to a stable, legal work force that is available when needed. More than one million workers are required to ensure that perishable, fragile crops, such as fruits and vegetables, are harvested and our cows are milked on time.

Agriculture has long experienced difficulty in hiring sufficient numbers of domestic workers who are willing and able to work on farms and in fields. Jobs in agriculture are physically demanding, conducted during all seasons and are often transitory, conditions many U.S. residents seeking employment do not find attractive. As repeatedly evidenced over the past few decades, there are some jobs in agriculture that most Americans simply do not want to do even though many of these jobs offer wages competitive with similar, non-agricultural occupations.

It is for this fundamental reason that farmers have grown to rely on foreign workers, many of whom are of undocumented status; while some put the figure at more than 50 percent or even higher, in fact, the exact number is unknown. Farmers have done their best in the last two decades to work within the system Congress established in 1986. A few have been able to navigate the difficulties and expense of the H-2A program. Others have relied upon work authorization documents that in too many instances prove to be fraudulent. Unfortunately, while farmers and ranchers strive to ensure the workers they hire are legal and documented, federal law strictly bars them from questioning those documents. This combination of factors – a limited H-2A program that is poorly run; demographic shifts; an aging workforce; and the likelihood of heightened enforcement – has forced agriculture producers to rely on a system that is near collapse and in dire need of reform.

There are numerous reports from all over the U.S. of crops left to rot in the fields because growers lacked sufficient workers to bring in the harvest. It is estimated that in California alone, some 80,000 acres of fresh fruit and vegetable production has moved overseas because of the labor shortage.

In an effort to achieve a lasting solution for current and future agricultural labor in the U.S., AFBF, as a member of the Agriculture Workforce Coalition (AWC), came together with the United Farm Workers (UWF) to negotiate a solution suitable for both agricultural employers and

farm workers. This agreement between the AWC and UFW has two components: it includes an adjustment for current, experienced, unauthorized agricultural workers and creates a new program to provide access to a legal workforce into the future.

In the short-term, to preserve agriculture's workforce and maintain stability in the sector, undocumented farm workers would have the opportunity to obtain earned legal status by continuing to work in agriculture for several years. After this obligation is fulfilled, these employees could obtain permanent legal status and the right to work in whichever industry they choose, including agriculture.

To build long-term stability to meet future needs, a flexible agricultural worker visa program would be established to provide farmers and ranchers access to a documented legal and reliable workforce that meets the needs of all producers. This program would offer both employer and employee choice and flexibility through two different work options: an "At-Will" visa and a "Contract" visa.

- "At-Will" visa employees have the freedom to move from employer to employer without any contractual commitment, replicating the way market forces allocate the labor force now.
- "Contract" visa employees would commit to work for an employer for a fixed period of time, giving both parties increased stability where it is mutually preferred.

These three-year visas would be valid for employment with agricultural employers registered through the United State Department of Agriculture and are separate from the low-skilled worker visas available for the general business community's needs.

"The AWC remains committed to the agreement on agricultural immigration reform reached with the UFW. The principles of the AWC/UFW agreement will continue to guide our efforts as work on the immigration issue progresses in Congress.

H.R. 1773 is the initial action taken to advance the immigration discussion in the House, reflecting an understanding of the issues facing the agricultural industry and taking positive steps toward ensuring agricultural producers have access to a legal, stable workforce. . We appreciate that H.R. 1773 is reflective of some of the principles contained in the agreement, including a new two-pronged guest worker visa program that allows employers to hire foreign workers based on a contract or at-will; coverage of year round agricultural jobs, such as dairy and livestock; a longer visa than currently allowed in the H-2A; transfer of program administration to the USDA; and a more streamlined application and recruitment process. These steps are in agreement with AFBF policy set by our grassroots members and with the guiding principles set by our leadership, as well as with elements of the AWC/UFW agreement.

However, there are provisions in H.R. 1773 that AFBF believes could be improved to better meet the needs of agriculture. First, AFBF has consistently advocated for a separate work authorization for experienced agricultural workers that are in undocumented status. Funneling these workers into the proposed H-2C program would allow those workers to continue to work in agriculture, but would require growers to comply with all terms and conditions of the program, including heightened standards that do not currently apply to this workforce.

Second, the bill requires workers to return to their home country at least one-sixth the duration of their visa length. Touchback provisions are extremely disruptive to normal farm and ranch business practices and are especially burdensome for year-round employers who would be required to do without experienced and trained employees for three months at a time. Even with detailed business planning that incorporates complicated rotations of employees, losing experienced workers for an extended period is disruptive and impractical.

Third, AFBF has concerns about the design of the proposed at-will program. Farmers crave simplicity in procedures to secure short-term, seasonal employment. Requiring all employers to initially enter into contracts is concerning. We advocate that acceptance of a job offer, whether under contract or at-will, provides the assurances that the visa workers have valid grounds to enter the United States, but isn't overly burden to those employers requiring more flexibility. We will continue to work as a resource in order to improve these elements and others that may arise through the legislative process.

We commend Committee Chairman Bob Goodlatte (R-Va.) on his forceful advocacy over the years to help agriculture ensure a secure, legal workforce. As the process unfolds in the House, the AWC will continue to work with Chairman Goodlatte and other members to ensure that any legislation achieves a workable, flexible and market-based solution that addresses the labor needs of agricultural employers both in the short and long terms.

We also note the subcommittee has heard from witnesses on the *Legal Workforce Act* (H.R. 1772). This legislation deals with an enforcement mechanism, E-verify, that would greatly impact the agriculture industry. As we have indicated in the past, AFBF opposes immigration enforcement that does not include a worker program for U.S. agriculture.

The effects of mandatory E-verify will go far beyond the farm gate as industry sectors upstream and downstream from the farm cope with tight supplies and increased costs when farmers have no one to harvest their crops. Each of the 1.6 million hired farm employees who work in labor-intensive agriculture supports two to three fulltime American jobs in the food processing, transportation, farm equipment, marketing, retail and sectors. Mandatory E-Verify without workable labor solutions for agriculture puts these American jobs and the economies of communities across the country in jeopardy.

AFBF supports a phase-in approach to E-verify for agriculture due to our industry sector's unique hiring circumstances, which often occur in remote rural areas. A rushed approach to

implement and enforce E-verify could hurt agriculture, even with a short-term fix to meet our current needs and long-term solution for future workforce needs. We urge you to consider providing for a delay in requiring industry compliance with E-verify until Congress is able to make the necessary adjustments and enhancements to the program.

Thank you again for holding these hearings and for your leadership as the committee moves forward. We stand ready to work with you and other members to ensure that the labor needs of agriculture both now and in the future are addressed in immigration reform legislation.