

TESTIMONY OF BILL BRIM
before the
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Hearing
Securing the Future of American Agriculture
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Good Morning Chairwoman Lofgren, Ranking Member Collins and members of the Committee. Thank you for the invitation to be here today to discuss the labor crisis facing agriculture. My name is Bill Brim and I am the co-owner of Lewis Taylor Farms, Inc., in Tifton, Georgia. We are a diversified specialty crop operation, farming nearly 6,500 acres. Our crops include bell pepper, cantaloupes, greens and broccoli, squash, cucumbers, tomatoes, and other vegetables, as well as cotton and peanuts. We also produce 350 million vegetable seedlings and 75 million pine tree seedlings in our 900,000 square foot greenhouse operations. We have been using the H-2A agricultural visa program for our harvest and packing operations to supplement our dwindling domestic workforce for more than 22 years.

I am a member of several agricultural trade associations and over the years I have held various leadership positions, including serving on the board and as the President of the Georgia Fruit and Vegetable Growers Association, the board of directors of the United Fresh Produce Association and the board of directors of USA Farmers, a national trade association of H-2A employers. I am here today to testify in my personal capacity as a farmer who every day has to take care of my foreign and domestic employees, operate my farm, and produce a high-quality product, while trying to navigate endless government bureaucracy and adapt my operations to outdated federal policies. Unfortunately, my experience is not unique and if you are farmer in the H-2A program, it seems that most days the government is working against you, rather than with you.

We have a serious crisis that is endangering the future of labor-intensive agriculture and our domestic food supply. This crisis is the direct result of misguided and outdated federal policy that Congress refuses to address. For decades farmers have been pleading with Congress to fix this labor problem – a problem that Congress created – yet year after year nothing is solved.

So just like any problem that is ignored, the problem does not just magically get better – it gets worse. As a result, labor intensive agriculture in the United States is on its way to becoming an endangered species because bad government policy makes it nearly impossible for us to compete in the international marketplace. And so each year more and more farmers quit growing fruits and vegetables or move their operations outside the United States. As a result, each year, more and more Americans eat imported fruits and vegetables.

America now imports more than half of the fruits and vegetables that we consume. That is a disgrace. In the 1970s, the U.S. was a net exporter of fruits and vegetables. Today we

import three times more fruits and vegetables than we export. This problem has multiple causes, but the two biggest are the nation's outdated guestworker and trade policies.

I realize that trade policy is not within the jurisdiction of this committee, but I would be remiss if I did not mention the catastrophic impact that unfair trade policies have on our domestic fruit and vegetable markets. The recent renegotiation of NAFTA to produce the USMCA has failed to provide any protection for our southeastern fruit and vegetable farmers from unfair dumping of imported produce at prices below the cost of production.

We are blessed in the country to have an abundance of resources. We have plenty of land, we have plenty of water, and we have plenty of sunshine – all critical ingredients for growing crops. But what we do not have plenty of, is labor. And without a sufficient labor force, our other resources are of little use.

As our country has grown and prospered, the educational and employment opportunities have increased for our younger generations. Just like all developed nations, each year fewer and fewer of our citizens seek to make a living doing manual labor on a farm. For nearly as long as anyone can remember there has been a shortage of U.S. workers in agriculture. But decades of lax immigration policy enabled scores of foreign workers to find their way to the U.S. to work, often without proper work authorization. Many of those workers would come and go each year over a fairly porous southern border and they largely filled the labor needs of American agriculture, particularly on the west coast.

But many other farmers, particularly those in the southeast, and those who often had shorter crop seasons, instead began to rely on the H-2A guestworker program. As you know, the H-2A program was created in 1986 but from the beginning has been plagued by excessive bureaucracy, costs, delays, and inconsistent administration by the U.S. Department of Labor.

Simply put, federal government policy makes it much easier for a farmer to hire a worker who presents legitimate looking paperwork than to hire a legal worker through the H-2A program and endure all the bureaucratic aggravation, costs and delays. So, the H-2A program is often seen as an option of last resort for farmers.

The porous southern border that once enabled workers to relatively easily cross into the U.S. began changing after 2001. Since that time, border security has dramatically increased. Worksite enforcement has dramatically increased. And many states, including most of the southeastern U.S., have established mandatory E-verify for employers. In my own state of Georgia, all prospective employees must pass E-verify in order to be employed. When this policy was first implemented in Georgia it had a catastrophic effect on the agriculture workforce, resulting in an estimated \$300 million in lost crops that could not be harvested. This put Georgia producers at a severe disadvantage to producers in other states that did not utilize E-verify.

In recent years, tighter security at the border, tighter security in the interior of the country, and tighter security at the worksite has led to a tighter labor market for agriculture. As the nation emerged from the 2008-2009 recession and the overall employment situation improved around the country, the labor shortages in agriculture became more pronounced. As a

result, without access to what used to be a steady stream of workers, more and more farmers began turning to the H-2A program – not because they wanted to, but because they had to. It was (and still is), despite the bureaucracy, costs, and uncertainty, the only viable option to hire farmworkers who are legally authorized to work in the U.S.

It should not be news to anyone, but Americans are generally not lining up to perform agricultural labor. Certainly not in quantities sufficient to meet our needs. This is important work. It is necessary work. And it is respectable work. But it is not easy work. Working on a farm involves difficult manual labor performed outdoors in all sorts of weather conditions. In many parts of the country the work is seasonal and can be unpredictable. The amount of work available can vary day to day and week to week. And in some cases, particularly for those who work for labor contractors, instead of being directly employed by a farm, the work can involve frequent travel.

All of these factors, and more, discourage most U.S. workers from seeking out farm work. They would instead rather obtain year-round employment inside a climate-controlled office or store. How many people in this room are encouraging their children, or their nieces and nephews to take up farm work as an occupation? Current farmworkers also frequently encourage their children to pursue other occupations. Many of my H-2A workers tell me that they use the money they make working in the U.S. to put their children through college in Mexico so that they can become teachers and engineers, rather than farmworkers.

That in no way should be taken as a criticism. It is simply human nature for a parent to want their children to move up the economic ladder. But the fact remains that there is still farm work to be accomplished and we need legal workers to perform those jobs. There simply are not enough U.S. workers who are willing and able to do this work. The hiring statistics from our farm illustrates the story very well. Last year, we had nearly 900 positions certified as eligible to be filled by H-2A workers. Just ten U.S. workers responded to fill those positions and they were hired, but eight of them did not finish the season. Thus, out of a need for nearly 900 farmworkers for the season, we had just two U.S. workers. Unfortunately, that is a common outcome. In the past five years, the highest number of U.S. workers we had finish a season was eight.

Facing a shortage of U.S. workers, the only option for a farm to obtain legal workers in the last 30 years, has been the H-2A program. But the overly bureaucratic and restrictive nature of the program has prevented its wider use. The recent significant increase in use of the program is not a testament to the program's success, rather it demonstrates just how dire the situation has become for American farmers. Farmers are so desperate for labor that they will participate in a program that dramatically increases their costs, their liabilities and their uncertainty.

For the past several years, the program has been growing about 20% a year. Over the last 10 years, the number of H-2A visas issued by the State Department has increased by more than 200% to almost 200,000 in 2018. In Georgia, the growth has been even more dramatic. Our use of the H-2A program has increased more than 200% in just the last five years. In 2018, my state had more than 30,000 positions certified by the U.S. Department of Labor as eligible to be filled

by H-2A workers – the highest number in the country and more than 13% of the total H-2A positions certified nationwide.

American agriculture's ongoing labor problem is adversely affecting our production and our ability to compete against low-cost imported food. Our labor problem consists of two parts – and the problem cannot be solved unless both parts of this problem are addressed.

The first part of the labor problem is the current H-2A guestworker program. Although it is supposed to provide relief to farmers when there is a shortage of U.S. workers, the program does not meet the needs of American agriculture. We need a modernized program that responds to the reality of agricultural production in the 21st century.

The federal government currently provides virtually no help to farmers seeking agricultural labor. Although the Department of Labor and the Department of Homeland Security operate the H-2A program, the complexity, cost, delays, shifting interpretations, and overly-bureaucratic nature of the program lead to the inescapable conclusion that the government really does not want us to utilize it to hire a legal workforce.

The most dramatic illustration of misguided government policy towards farmers facing a labor shortage is evident at the Department of Labor. One office in the Department of Labor administers the H-2A program, which is supposed to enable farmers to hire foreign labor when there is a shortage of U.S. workers. But another office in the Department of Labor simultaneously works against farmers by spending \$80 million a year in taxpayer money to train farmworkers to do something else and thereby further decreasing the available pool of U.S. farmworkers. I do not think anyone would object to legal U.S. farmworkers, just like other legal U.S. workers, being provided job training assistance. What we also need, however, is a corresponding government effort to help ensure farmers actually receive meaningful assistance in obtaining needed labor.

I will note that it does appear that after 35 years of the H-2A program being in existence, the government may finally be taking a modest first step to at least provide farmers with some information about how to navigate the H-2A program. Thanks to the leadership of our current Secretary of Agriculture, Sonny Perdue, I understand that USDA is working to provide an online portal with instructions to help farmers understand the H-2A program and complete the required mountains of paperwork. And I also understand that USDA and the Department of Labor are preparing to formally propose an overhaul of the current H-2A regulations. We look forward to reviewing that regulatory proposal, but there remain some fundamental problems with the H-2A program that require statutory changes to improve. We welcome the recent developments by USDA and the Department of Labor that may provide some relief, but they will certainly not equate to the extraordinary efforts the Department of Labor undertakes each year to train farmworkers for other jobs.

The second part of the problem concerns the existing agricultural workforce that lacks work authorization. There is a sizeable population of farm workers without legal status in the U.S. Many of these farmworkers have been with their employer for years, or even decades, and many work full-time and year-round to provide critical support to the farming operation.

Recently released Department of Labor data from personal interviews with farmworkers around the country shows that 80% of them had just one employer in the prior 12 months.

Pinning down the exact number of farmworkers in the U.S. is difficult. The latest estimate from the Bureau of Labor Statistics puts the number at about 850,000. Incidentally, BLS projects that over the next ten years there will be virtually no change in the number of farm jobs available in the U.S. USDA tells us through their annual Farm Labor Surveys that the number of hired farmworkers in the U.S. is more like 1.2 million. Whatever the number of workers is, the Department of Labor survey data shows that at least 50% of farmworkers admit that they lack work authorization. Although, various advocacy groups have said over the years that farmworkers without legal status constitute more like 75% of the agricultural workforce. These workers are present in all sectors of agriculture and all areas of the country and because California has the largest population of farmworkers, they presumably have the largest population of farmworkers without legal status.

Farmers want to comply with the law, and we want to employ legal workers, but federal policy has failed us. The employment of workers who lack legal work authorization is the direct result of government policy that requires a worker to only present documentation that indicates the individual is work authorized. If the document appears valid, that is the end of it. Employers are not permitted to question a worker's documents or to ask for additional proof of employment eligibility. In fact, doing so can result in the federal government prosecuting you for discrimination, which the Department of Justice often does.

There are any number of possible solutions to resolve the two-parts of this labor problem. Over the decades, solutions big and small, modest and bold, have been proposed. There have been any number of bills introduced in the House and the Senate over the years to address various shortcomings in the H-2A program, but they have not passed. And there have been proposals to scrap the H-2A program altogether and start over with a new ag guestworker program, but those proposals also have failed. Similarly, there have been various legislative proposals to legalize farmworkers, or other workers lacking legal status. But none of those bills have passed.

The method by which undocumented workers are provided legal status, and the extent of that legal status is important. It is vital for our industry to be able to retain its experienced workforce as we develop a more robust guestworker program to respond to our current and future labor needs. I understand the Chair of this Subcommittee has proposed a program to legalize farmworkers who lack legal work status and that would address one part of the problem.

Legalizing illegal workers will resolve only part of this problem, and arguably the smaller part because very soon all of the workers who receive legal status will begin moving out of agriculture to take other jobs in the economy. We have seen this before. When the last amnesty was provided in 1986, it took only a few years before all those workers with newly minted legal status left the fields, and then once again farmers were left searching for workers to replace them. In our farming operation we had about 100 employees who obtained legal work status through

the 1986 amnesty and within five years all of them had left our farm for higher paying jobs outside of agriculture.

Of course, the lax border policies and the ineffectual employment verification standards created by Congress in 1986 along with the amnesty just created another wave of workers crossing the southern border to replace the former farm workers who moved on to take other jobs. Thus, regardless of what shape the next legalization program for current farmworkers takes, that will not solve America's need for farmworkers. We must have a reliable and workable guestworker program in the future.

I also want to note that increased mechanization is mentioned by some as the solution to our labor problem. Recent stories in the press have described ongoing efforts to develop robots that can harvest fruit and vegetables. But this technology is not the answer to our labor shortage, at least not in the foreseeable future. In addition, this technology is extremely expensive and it remains to be seen how increasing our production costs will improve U.S. agriculture's competitiveness against imported fruits and vegetables harvested abroad at dramatically lower costs. Thus, increased mechanization could just exacerbate the current fruit and vegetable trade imbalance.

Because I utilize the H-2A program, I want to discuss what is needed to resolve the other part of the problem – the improvements that we need in a guestworker program to ensure the viability of U.S. agriculture for years to come.

The demand for agricultural labor exceeds the domestic supply and decades of evidence shows that H-2A workers do not take jobs from American workers. In fact, the employment of H-2A workers actually creates employment for U.S. workers through the downstream jobs that are created by agricultural production. The Department of Labor's own data demonstrates that the existing limited supply of legal U.S. farmworkers has little interest in the positions that are ultimately filled by H-2A workers. Even though U.S. workers are entitled to claim these H-2A positions if they want them, U.S. workers have claimed less than three-tenths of one percent (0.03) of the available H-2A positions on average in recent years. And this is true even though mandated H-2A wages are consistently higher than local market wages and continue to climb.

So, while we want to be sure that a reformed guestworker program gives U.S. workers the first shot at these farm jobs, we do not want the program design to be so rigid and overbearing that it essentially prevents the hiring of guestworkers and causes farmers to quit or to move their operations abroad. The following elements must be part of a reformed agricultural guestworker program to meet our labor needs:

- Access to all sectors of agriculture

One of the major shortcomings of the H-2A program is that it unnecessarily excludes important agricultural sectors that have labor needs lasting more than 10-months. The Department of Labor will not permit most dairies to use the H-2A program because their need is too long. This must be remedied. In addition, the high costs associated with farming today have led many producers to try to improve cash flow by adding additional crops and making use of

longer seasons where weather permits. But the 10-month limit of the H-2A program does not fit with this reality of modern agriculture. A revised guestworker program must be open to all sectors of agriculture, including dairy farms, farms that operate year-round, as well as growers that harvest, process and pack their product on the farm.

- No visa cap

One redeeming market-based feature of the H-2A program that has worked well over the years is the absence of a visa cap. Congress got this element right in 1986 and decades of experience have shown it was – and remains – the best way to design an agricultural visa program. The labor market test in the H-2A program requires that the government first determine U.S. farmworkers are unavailable. That serves as the check on the possibility that someone could avoid first attempting to hire U.S. workers for the available positions. A visa cap in an agricultural worker program makes no sense. After all, if we are not going to cap our population growth, or the cap the amount of food that we consume, why would we cap the program that ensures our farmers have the labor needed to feed us?

- Flexibility for employers and workers

The application process in the H-2A program takes too long and is too rigid. A reformed guestworker program must permit farmers to apply closer to their date of need and permit them to amend their applications in response to market demands after the application has been submitted. A reformed program should also make it easier for workers to transfer among employers and seek out additional work if they choose, after completing their prior work obligation. Workers who have participated in the program for a number of years should also be provided expedited visa approval through a “pre-check” type system that would avoid long lines and extra work year after year at the consulate.

- Litigation Reform

The complexity of the H-2A program is too often used as a trap by lawyers looking to score a quick buck for themselves. Opponents of guestworker programs also seek to harass growers and try to drive them away from the H-2A program through oppressive litigation over relatively trivial issues, like torn window screens on housing. A reformed guestworker program must provide an efficient way for workplace issues to be resolved. Farmworkers should have a venue to have their concerns addressed and resolved quickly without time-consuming and expensive litigation.

- Wage Methodology

The flawed H-2A wage methodology has long been one of the most serious shortcomings of the program. The process for producing the so-called Adverse Effect Wage Rate (AWER) is neither transparent, nor predictable, and as a result, farmers are unable to realistically plan from one year to the next for their largest production expense. The national average of regional AWERs for 2019 is nearly \$13.00 per hour. That is a 6.2% increase from last year. In some areas of the country, this year’s wage is more than \$15.00 per hour and in other areas, the wage

increased 23% over last year's AEW rates. To make matters worse, the Department of Labor typically surprises farmers by announcing these wage rates just days before they take effect.

These wages are not reflective of actual local market conditions and conflict with mountains of other data we have on the state of the U.S. economy and wages. Nowhere in the U.S. economy did wages increase 23% last year – other than in the H-2A program. Recently released National Agricultural Worker Survey data from the Department of Labor shows that in 2016 the average wage of non-H-2A farmworkers was \$10.60 per hour. Yet in 2016, the national average of the Department of Labor-mandated AEW rate was \$11.69 per hour.

For 2019, one office in the Department of Labor said the AEW rates needed to increase an average of 6.2% to reflect a supposed increase in farmworker wages in 2018. But the Bureau of Labor Statistics (BLS) – another agency within the Department of Labor – says in its Employment Cost Index that in 2018, overall private industry salaries and wages increased by just 3.1%. And in the subcategory that includes farming, the increase in wages was just 2.5%! Yet, despite this data from BLS, the Department of Labor has, once again, imposed drastically higher wages on farmers in the H-2A program. This same situation has played out year after year resulting in an ever-increasing burden on H-2A growers.

AEW rates are, on average, up nearly 30% in the past 10 years and up more than 50% in the last 15 years. Costs for fertilizer, insurance, land, fuel, seed, etc. are also up over the past 15 years. But the price I get for my crops has only modestly increased and it has certainly not increased by 50%. This is unsustainable and federal government policy is driving farmers out of business. USDA data indicates that for all types of farms nationwide, the cost of hired labor accounts for just 12% of production costs, on average. But for labor-intensive farms, the cost of labor is typically the single biggest expense for the farm. And if you are in the H-2A program, labor is an ever-increasing portion of your budget. In recent years, our annual labor costs have accounted for 45 to 50% of our production costs.

A reformed guestworker program must have a wage methodology that makes sense for growers and workers, and that is transparent and predictable so that farmers can plan and properly budget from one year to the next.

- Housing

The inflexible housing requirements of the H-2A program are another feature that prevents farmers from using the program. Building costs for housing are expensive and local building ordinances in communities around the country frequently prevent farmers from even constructing farmworker housing. Because of the overly prescriptive housing standards, other general publicly available rental housing is often not a feasible alternative. This is a significant barrier to using the H-2A program. Department of Labor data shows that just 11% of non-H-2A farmworkers utilize no-cost employer-provided housing. Given how rare it is for non-H-2A growers to provide free housing to workers, it is not clear why free housing is a required benefit in the H-2A program. A future guestworker program must take a new approach to housing and provide more flexibility for growers and workers. This could be accomplished by enabling

workers to locate their own housing or permitting farmers to charge a modest amount for housing accommodations.

In conclusion, I want to thank you for the opportunity to testify today. I do hope that Congress will finally solve this labor problem that has plagued agriculture for too long. Congress needs to provide legal work status to the hundreds of thousands of current farmworkers who are critical to the operation of this nation's farms. And Congress must reform the current H-2A guestworker program to provide a modern program responsive to the needs of 21st century agriculture. We need a guestworker program that encourages use by farmers, rather than a program that discourages it. There are simply not enough domestic farmworkers to meet our labor needs and our food imports are increasing each year. This is a national security issue. A country that cannot feed itself cannot defend itself. It is clear that our food is going to continue to be harvested by foreign workers. The only question is whether that food will be grown and harvested in the U.S. – or in a foreign country.