

U.S. House of Representatives
Committee on Judiciary, Subcommittee on Immigration and Citizenship
“Securing the Future of American Agriculture”

Prepared Remarks of
Tom Nassif
President and CEO of Western Growers



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Chairwoman Lofgren, Ranking Member Buck, and distinguished Members of the subcommittee, thank you for the opportunity to testify this morning. Thank you for choosing to shine a light on the labor needs of U.S. agriculture and for your tireless work to provide much needed solutions.

My name is Tom Nassif, and I am the President and CEO of the Western Growers Association. Western Growers members are small, medium, and large agricultural businesses that produce, pack, and ship roughly half of the annual fresh fruit, produce and three-quarters of all tree nuts in the entire United States. Although the fruits of our membership extend throughout the entire United States and beyond, our members are headquartered in California, Arizona, Colorado, and New Mexico.

The chairwoman and ranking member know all too well the important impact that agriculture has on a local economy. Santa Clara County in California, for instance, has bustling nursery crop, mushroom, and lettuce operations—and is of course world famous for its garlic production. And the Eastern Plains of Colorado has an incredible farming heritage including melons, corn, wheat, as well as large dairy operations and hog farms. Agriculture production is naturally woven into many facets of our economy and directly impacts trade, transportation, water, manufacturing and many other industries, not to mention the overall population health and nutrition with an adequate access to fresh farming produce and other products. I am sure each Member of Congress can share the direct economic benefits agriculture has on the district they represent, but I would like to address a broader perspective today, one that encompasses almost all of U.S. agriculture and threatens to cripple large chunks of our agricultural sector because acute labor shortages hit us all. It is my hope that this hearing will spur negotiations toward meaningful legislation to address the crippling lack of farm workers in U.S. agriculture.

The State of Agricultural Labor Today

Let me share with you some basic facts: First, the average age of farmworkers is now over 40, and it should come as no surprise that many experienced farmworkers are aging out.¹ Now, one might assume that new, younger workers would take their places, but this is just not the case.² Why is that? Well despite agriculture's best efforts, domestic workers very rarely respond to advertisements for this kind of work. The work is seasonal and temporary, often outdoors in the elements, and physically demanding. Most native born Americans and U.S. residents seeking employment do not find these conditions attractive, and they just don't want to do this kind of work. A survey conducted in 2010 by the National Council of Agricultural Employers, found that 68 percent of unemployed people who were referred to farm worker jobs rejected those jobs. Of those who took the jobs, only 5 percent worked through the contract period.³

In California, we have strawberry workers who during harvest are now making over \$20 an hour yet even strawberry harvest crews are increasingly undermanned resulting in fruit being left in the fields to rot. Despite wages well north of a Starbucks barista's average wage, native-born Americans are just not inclined to perform strenuous field and farm work. I should also hasten to add that over half of the more than 1.3 million hired farmworkers in the United States admitted to being undocumented in order to obtain work, many of whom have worked alongside American farmers for decades.⁴

¹ USDA, Economic Research Service using data from U.S. Census Bureau, 2006-16 American Community Survey.

² Population Estimates, Department of Homeland Security, December 2015. Accessed at https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf

³ ALRP Survey, National Council of Agricultural Employers, 2010, Accessed at ncaonline.org/alrp/

⁴ USDA, Economic Research Service and National Agricultural Statistics Service, Agricultural Resource Management Surveys. 2016. Accessed at: <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>

With recent increases in interior immigration enforcement, and a tightened border since 9/11, we have seen the workforce age with no replacement workers to take their place. A 2012 survey found that 71 percent of tree fruit growers, and nearly 80 percent of raisin and berry growers, were unable to find an adequate number of employees to prune trees or vines or pick the crop.⁵ A 2017 survey conducted by the California Farm Bureau found similar numbers – nearly 70 percent of farmers who employ a seasonal workforce said they were experiencing labor shortages⁶.

This uncertainty and unpredictability in labor markets is causing many American farmers to shift production away from labor intensive crops, which include many fruits and vegetables. In fact, Texas A&M reported that 77 percent of vegetable farmers reported scaling back operations and more than 80,000 acres of fresh produce that used to be grown in California have moved to other countries. The simple fact is this: fruits and vegetables that are eaten in the United States will be harvested by foreign hands. The simple question for you, as members of Congress, is do you want those foreign hands harvesting your fruits and vegetables to be on farms here in the United States or do you want to see production continue to shift to farms in foreign countries?

As the historical migration patterns for agricultural labor have been disrupted, growers across the U.S. have increasingly participated in the H-2A program. Under that program, the Department of Labor must first certify that no U.S. workers are available to fill seasonal agricultural jobs. In 2018, DOL certified that there were over 242,000 ag jobs for which no U.S. workers were available – these were filled through the H-2A visa program. That number represents a tripling in

⁵ “Walking the Tightrope: California Farmers Struggle with Employee Shortages,” California Farm Bureau Federation Agricultural Employment Survey Results, November 2012.

⁶ “California Farmers Continue to Struggle with Employee Shortages,” California Farm Bureau, October 2017.

the size of enrollment and in some areas of the country H-2A is now a dominant employment source for farm labor even though the total farm worker population is much larger than 242,000.

For those of us who are able to participate in the H-2A program, we have experienced its long history of flaws, expense and burden. It falls short of meeting the demands of the labor intensive and skill-driven agriculture industry. The H-2A program is complicated as it involves three federal government agencies – the Departments of Labor, Homeland Security, and State – as well as various state government agencies who have roles in its execution. Given all the red tape, the timing on approval for H-2A workers can be unpredictable and often causes workers to arrive late to the farm, resulting in millions of dollars in lost crops. H-2A is an expensive program, costing much more than if domestic workers could fill the need. While we have not taken issue with the steps required to prevent overlooking American workers from having first option for these agricultural jobs, we do have concerns with the current H-2A adverse effect wage rate (AEWR). The AEWR methodology was intended to ensure that domestic worker wages are not undercut but it uses an untenable approach and has increased required wages for farmworkers in some parts of the country by nearly 23% this year alone, while U.S. Bureau of Labor Statistics reports that hourly earnings were up only 1.9% over the past year.⁷ Many farmers have declared that the 2019 AEWR increase threatens the sustainability and continued longevity of their farms. The H-2A program is so complex and expensive that farmers often pay for legal assistance and transportation for the workers to eventually arrive on the job, then they are required to pay for housing and an arbitrary wage that is above what would be required for a domestic worker. In

⁷ Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Real average hourly earnings up 1.9 percent over the year ending in February 2019 on the Internet at <https://www.bls.gov/opub/ted/2019/real-average-hourly-earnings-up-1-point-9-percent-over-the-year-ending-in-february-2019.htm> (visited March 28, 2019).

fact, an entire industry exists solely for helping farmers navigate the H-2A process. For many small farmers, accessing these legal and logistical services is financially out of reach, leaving them with very limited options for hiring workers.

Some may be aware that the Administration is working through regulatory reform to improve the program and we applaud those efforts, but it is quite limited in what it can do and we desperately need legislative reform to rebuild a structure that lacks capacity and is not designed for the future.

For those who are skeptical of the value of farmworkers to our country, I wanted to remind everyone that every farmworker engaged in high-value, labor-intensive crop and livestock production sustains two to three off-farm, but farm dependent, jobs. The activities that occur on domestic farms support not only farmworkers, but also an entire supply chain of transportation providers, input suppliers, processors, and consumer retail functions. Indeed, in 2014 a farm labor study was conducted by the American Farm Bureau Federation, which showed that the impact of an enforcement-only approach to immigration that causes agriculture to lose access to its workforce would result in agricultural output falling by an estimated \$30 billion to \$60 billion!⁸

Finally, I wanted to also share a special word about our colleagues in the dairy sector. As you all may know, the dairy industry, like the fresh produce industry, has been hit particularly hard with labor issues. Due to definitions in the existing H-2A visa program, dairy farmers are not able to participate. Specifically, since dairy farming is considered a year-round activity, dairies are

⁸ O'Brien, Patrick, Kruse, John, Druse, Darlene. "Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability," Prepared by WAEES, Commissioned by American Farm Bureau Federation. February 2014.

unable to qualify under the seasonality provisions in the H-2A program. As labor markets have tightened, dairies have increasingly been adversely impacted. For many dairies across the country – small, medium and large – labor problems are endemic with many on the verge of collapse.

What is the Future for Agricultural Labor?

Keep in mind, the fresh produce industry is not standing idly by waiting for a Congressional solution to our labor shortages. Many of our members are already spending millions of dollars on solutions to their discrete automation needs.

Western Growers is also investing significant resources on behalf of the industry. Several years ago, we founded the Center for Innovation and Technology, in part, to help accelerate mechanization in agriculture, thereby reducing our collective reliance on labor. Through the Center, we are putting start-up technology companies and farmers in the same room, asking them to collaborate on solutions that will change the way we farm in the future.

However, the developments in automation the fresh produce industry requires are still many years away, and will not come soon enough to save us, absent fundamental and immediate changes in America's immigration policies. While I don't have time during my testimony to go through all of the details of necessary improvements to the guest worker program and a solution for our existing workers, I would like to offer some recommendations to any bipartisan legislation that would stand a significant chance of passing the House.

First, we must respect and recognize the importance of our current, experienced workforce to sustain U.S.-based agriculture production and food security. We need to provide a mechanism for qualifying farmworkers to earn a legal status for themselves- and importantly, their

immediate family members - to continue working in agriculture and reside in the United States.

It is certainly true for my member farmers, and many more around the country, that without their existing workforce they wouldn't be farming produce. We owe our food security to these farmworkers and we have a responsibility to treat them and their families with respect and dignity. Doing so also helps secure our immediate workforce needs by bringing these workers out of the shadows and provides them, and their employers, welcome certainty. This workforce has been our backbone, will become the supervisors and foreman on our farms going forward, and given the opportunity some may themselves become farm owners and employers.

Next we should recognize the critical need for access to a workforce for the longer term sustainability of U.S.-based agriculture production by providing a more flexible and efficient agricultural worker visa program than we have now. This program must be made available to all agricultural producers without regard to a specific seasonal nature of the job. It needs to be comprised of a fair and predictable market-based approach to wages and benefits that would not unduly impede upon U.S. competitiveness. It should provide for flexibility in the duration of visa terms and mobility to address all agriculture sectors. And critically, it also needs to maintain uncapped capacity to continue to address all industry needs, without an arbitrary limit.

Finally, let me mention E-verify. E-verify implementation can and should be done in a timely manner, but only after the current workforce has had time to have a successful transition to their new status and the aforementioned improvements to the guest worker program are complete.

Only then will agriculture be on solid footing and fully prepared for the road ahead.

Conclusion

I think everyone in this room knows that immigration can be among the most divisive and difficult issues to resolve in Washington, but this issue is different, it's above the fray and it is really about the food security of this nation.

We have come very close to passing reform on ag labor several times – recall we have passed bills reforming agriculture labor in 2006 and in 2013 in the Senate to do just that. We have only been unsuccessful because we have been divided in our goals and needs. Only by pledging allegiance to the collective needs of agriculture can we rise above internal divisions and proffer legislation that truly meets the needs of the whole. What we are asking from Congress is to pave the way for the economic viability of U.S. agriculture. There are also strong humanitarian interests at stake as well, and this is in no part political.

To succeed in resolving a decades-long effort to correct the immigration mistakes of the past and present, we need a bipartisan bill that would have a reasonable chance of being signed by the President. Such a task will take statesmen and women of the highest order to find a way to compromise. It will take the same reasonableness on the production side as well, knowing that we must be willing to accept compromise less than a perfect resolution to get beyond the political dynamics of this difficult issue.

On behalf of Western Growers, and really all of United States agriculture, thank you again for the opportunity to share my perspective on this important issue. The agriculture industry truly appreciates your time and attention to one of our most pressing needs. We are prepared to work with all of the due diligence needed to reach these important objectives. There is no path to reform unless our solution is bipartisan, approaching this difficult task with a heart at peace and not a heart at war. I look forward to your questions.

