

Senator Charles E. Grassley

Questions for the Record

Gary Black

1. There has been much discussion about moving the H-2A program from a certification process to an attestation process.

- a. What are the problems you face or see with the certification process?

Commissioner Black: First and foremost, I think H-2A needs more than reformation. The United States needs a guest worker program that works for all aspects of the agricultural industry. My constituents prefer to work with the Department of Labor as little as possible, so in that regard, an attestation process would be better. As with most policy changes, the details will make or break a change, but I support reducing bureaucratic red tape and making finding a workforce for farmers easier.

- b. Do you support or oppose an attestation process whereby employers who bring in foreign workers would have to “attest” that they’ve tried to find or hire an American first? Please explain.

Commissioner Black: Producers would welcome a dependable workforce of Americans; however, it is not a reality at this time. By simply documenting the attempt would be the preference, but I would also like to see some protection for producers against frivolous lawsuits in this regard.

2. There has been a great deal of support to make E-Verify a staple in every workplace. I have been a champion of the system since it was created in 1996. There are many employers in the agricultural sector that use it. It is my hope E-Verify will be made mandatory for all employers, virtually replacing the paper I-9 process. My question is about functionality. The system is web-based. It’s free. It’s easy to use. What recommendations do you have for Congress to make sure E-Verify works even better for all sectors of the economy and for all businesses, regardless of size?

Commissioner Black: Historically, Georgia producers enter into an agreement with individuals and/or crew leaders to provide labor prior to harvest. Employees present at employment an I-9 or other documents that appear to be authentic. We know the illegal document industry is vibrant, but employers have been forbidden to question the authenticity of documents. E-Verify changes these ground rules considerably. Now all or some of his workforce is flagged in the system. This, in itself, creates a conundrum with an E-Verify mandate without creating a guest worker program. Once a guest worker program exists and guest workers are recognized by the E-Verify system, an E-Verify mandate would work.

3. Senator Feinstein mentioned a proposal that would allow undocumented workers in the agricultural sector to obtain a “blue card” and stay lawfully in the United States as long as he or she continued to work in agriculture. Senator Feinstein also proposed putting biometric markers on the “blue card”.

- a. Do you support the biometric “blue card” idea proposed by Senator Feinstein?

Commissioner Black: I look forward to hearing more about her entire proposal.

From what I understand the “blue card” idea creates a mechanism for those currently here to be recognized as a guest worker in the agricultural industry, but the “blue card” holder would not be granted citizenship. I support this idea if the worker only works in agriculture. Further, in order to establish taxpayer confidence in such a program, we must consider an annual renewal of the card supported by a work authorization permit fee, perhaps in the realm of \$500.00. My proposal for penalty based work authorization is highlighted in answers to question five. Supposedly, biometric cards are fool-proof with regards to counterfeiting. Requiring an annual renewal might provide an attractive "belt and suspenders" level of protection on the cards. The annual fee should be dedicated to administering the data at the federal level and then allow the states to contract to implement the program at the local level through existing agencies, i.e. State Departments of Agriculture.

- b. If biometric “blue cards” were required of undocumented ag workers in the United States, who should be forced to incur the costs for a biometric reader that presumably be required of employers?

Commissioner Black: I do not have a preference, but someone must pay, and pay annually to underwrite the administration of the program. I think this cost could

be shared between the potential “blue card” holder and the employer. I envision a guest worker program where the prospective employer registers with USDA or the Georgia Department of Agriculture (GDA), receives a “blue card.” The cardholder then pays a cost and agrees to work in the agricultural industry. Simultaneously, the farmer could apply to USDA or GDA requesting farmworkers.

4. Many proponents argue that amnesty for those illegally here is the only viable solution to our immigration and workforce shortage problems. They claim that foreign workers are doing jobs that Americans just won’t do. On the other hand, some would argue that if you legalize the undocumented workers here now, human nature will encourage those workers to get out of agriculture and do a job that is safer, cleaner, and easier. If Congress were to legalize those working currently in agriculture, how would we deal with the future labor problems if such workers moved up the economic chain and away from agricultural work?

Commissioner Black: I think this is best learned from the 1986 decision to grant amnesty to all those in the United States. Currently, we have labor issues in the agricultural sector because no one wants to do these jobs. Therefore, I find it to be necessary to allow for workers that only work in the agricultural sector and are not citizens.

5. In your testimony you stated that a penalty based work permit, with substantial monetary fines, should be considered.
 - a. If the unauthorized workers who are already in the country were allowed legal status and work authorization, what should the penalty be?
 - b. How much in monetary fines is substantial?
 - c. Would we put a penalty on the employer or the employee, or both?

Commissioner Black: As I mentioned in question 3, the cost could be shared. I believe the following provisions of a new agricultural guest worker program must also be considered as the starting point for discussions.

- A) *Establish a six month discovery period whereby all who are here illegally working in agriculture are required to disclose their status, plead guilty to the*

crime of illegally entering the United States, accept a substantial financial penalty (\$10,000 payable over five years), and waive rights to any publically funded entitlement benefit.

- B) Conversion would also require the current illegal worker to submit to and pay \$500 for an annually renewable biometrically secure work visa which would interface with a totally new data management system, i.e. new identification number, fingerprint, retina scan, etc. This work authorization must be specifically for agriculture. No other work would be authorized. This data could be tracked via the biometric card and associated with the new guest worker employee number. Any violations would result in immediate deportation. For instance, violation of a minor law might trigger immediate deportation or at least flag record for non-renewal the following year.*
- C) Workers must be covered by workers compensation and health insurance.*

Radius of operation, touch-back processes, and other ideas must be thoroughly discussed during the process as well. I firmly believe that a program similar to the one outlined above must be considered if we are to meet the needs of 21st century agribusinesses.