

Senator Jeff Sessions
Questions for the Record
Gary W. Black

1. Do you believe that any immigration system we devise should be one that is clear and can be and is enforced?

Commissioner Black: I unequivocally agree.

2. Do you believe there is any way to ensure that guest workers will actually be temporary and able to be reduced when their labor is no longer needed by the market? Please explain your answer.

Commissioner Black: I believe the adoption of a guest worker program that uses biometrically secure work visas (as explained in question 7), would solve these issues. It is important that these biometrically secure work visas authorize the employee location, period of work, and place of work. It is also vital that a program contains strict employer enforcement and accountability.

3. Do you agree that one of the largest unforeseen side effects of guest worker programs is the cost of the foreign worker to the taxpayer in the form of education, healthcare, and increased government-wide infrastructure? How would a proposed guest worker program address those issues? Would employers be required to provide health insurance, for example? Please explain your answers.

Commissioner Black: I have answered these questions in the body of question number seven.

4. If only a fraction of agricultural employers use the H-2A program how can we determine whether it is really meeting the needs of agricultural employers?

Commissioner Black: I have no doubt that it is not meeting the needs of farmers. Producers have tried to use H-2A, and the feedback has consistently been that it is cumbersome and costly. A few of the reasons farmers do not use H-2A include the use of individual contracts, the 50 percent rule, and eligibility requirements. These are the reasons farmers choose not use H-2A, and these are the very reasons why H-2A is not working.

5. Do you agree that depressed wages are the main reason that Americans are reluctant to take farm jobs? Do you agree that these depressed wages increase the instability of the agricultural workforce? Do you agree that current wage levels will result in the current immigrant, legal and illegal, agricultural workforce moving into other sectors of the economy, such as construction, for example? Please explain your answers.

Commissioner Black: Question 5a) No. Our data indicates that wages paid by farmers (with proper deductions for income tax and FICA) are almost exclusively based on

quality and productivity. That is the way it must work in a market-based economy. Question 5b) No. If your proposition is that depressed wages contribute to labor shortages or "instability," I do not share this view for reasons mentioned in the previous answer. Question 5c) No. If the genesis of this question is to somehow link the migration of workers into other trades because of depressed farm wages, it is unfounded in my view. One could try to establish a similar link by faulting American families for not paying 15% of their disposable income for food, rather than the current level of 9.68% and be just as far off base. Wages are not the culprit. The work is difficult, perhaps too difficult when "easier" jobs or simply filing for unemployment are options.

6. Do you agree that the availability and extension of unemployment benefits to citizens who are not working contributes to the lack of American workers who will take agricultural jobs? Please explain your answer.

Commissioner Black: Georgia farmers tell me that they are often visited from unemployed citizens inquiring about job openings, only to have the unemployed ask the farmer to "just sign the paper" so he or she may continue to receive their benefits. In my testimony before the committee I highlighted one recent experience of a vegetable farmer in middle Georgia who employed a local worker for two half-days. The worker earned \$119.00 and left the job site to file unemployment though plenty of work was available. The worker received an unemployment settlement of \$263.00 per week. The farmer successfully fought the claim having it rescinded, but he really lost twice. He lost the worker, and then assumed the opportunity cost of having to fight a false claim.

It may be inconceivable to some, but agricultural jobs require various skill sets. That is why I believe we all should consider the tone of phrases like "who will take agricultural jobs." Picking up trash and sweeping floors in a packing shed is a basic minimum wage worthy job. Harvesting fresh fruits and vegetables demands a completely different set of physical and mental talents, and the production unit pay systems utilized by the producers I know reflect this value. Migrant Vidalia onion harvest crewmembers will easily reach wage levels ranging from \$13-\$18/hour. Producers can readily document that local crews cannot meet these wage and productivity standards.

I wish that every field worker in Georgia was a Georgian who needed a job and was willing to invest his or her life permanently or part time in agriculture and perform their duties at a high standard. Every dairyman in Georgia would be delighted to exclusively employ local, reliable, drug-free, sober citizens from the community to harvest milk 24/7/365 from our domestic herd of 80,000 dairy cows.

We have created an entitlement society that will not allow this to happen today. Change occurred over generations. It will take at least a generation to repair. During this period, all our constituents expect bell peppers, cucumbers, peaches and blueberries to be available at retail. My constituents remind me with ever increasing voracity that they want products produced closer to home. Small producers will not be able to satisfy the market, yet major retailers will not have empty shelves in the produce section. This leads

us to an interesting proposition. Without labor, we have no local products. Stores will offer produce year-round, so where will it come from? Thousands of miles from here produced under environmental and labor conditions we have no control over whatsoever. This is not in the best interest of the nation. Nor is another program based upon amnesty and pathways to citizenship. Hopefully, the details covered in answers to question seven will stimulate thoughts regarding an alternative.

7. In 1986, Congress granted amnesty to Seasonal Agricultural Workers (SAW) under the Immigration Reform and Control Act. This program was wrought with fraud, and many illegal immigrants who did not qualify for amnesty were able to become citizens under the program. Do you believe that a new temporary worker program that provides amnesty for the current illegal workforce would also be susceptible to such fraud? How could it be avoided?

Commissioner Black: I believe that we can learn something from the 1986 decision by Congress. Amnesty is not the answer. Here we are twenty-five years later, and we still need workers in agriculture. Congress considered legislation in the past decade that would have in effect granted "amnesty" from agricultural work after a certain period of good service. I am delighted this legislation failed. Any plan to convert or grant work authorization to current illegal agricultural workers must require that the workers remain in agriculture. If they are allowed to migrate to a traditional green card status, we will rapidly be in the same situation again. This is where I believe labor competition, particularly in some skilled trade areas, is real and must be eliminated.

I believe the following provisions of a new agricultural guest worker program must 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.*
- C) *Workers must be covered by workers compensation and health insurance.*

Being a citizen of this country is a privilege and opportunities are endless. In order to solve this problem without having this same discussion in twenty-five years, we need to create a guest worker program that meets the needs of 21st century agriculture. This type of guest worker program would provide a stable workforce for producers as well as create a database of potential workers. The potential workers would have to have a

background check, insurance, and pay a fee for the opportunity to work in the agricultural industry. If the worker is not accounted for by the producer or database monitoring authority, he or she would be considered here illegally and deported without an opportunity to return.