

**Senator Jeff Sessions
Questions for the Record
All Witnesses**

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

Western Growers has long been an advocate for immigration reform that provides clarity to agricultural producers across the country. Any effective immigration reform includes enforcement but enforcement alone is insufficient. A workable mechanism for agriculture is necessary to enable us to obtain the workforce we need to continue to farm in the United States. A workable mechanism ensures that existing workers can be employed legally and provides for future labor needs.

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.

There are ways to ensure that workers remain temporary and return to their home country when they are no longer needed by the market. Congressman Lungren (R-CA) proposed such an approach (H.R. 2895) that works in concert with the E-Verify legislation (H.R. 2885) sponsored by House Judiciary Committee Chairman Lamar Smith (R-TX) and passed by the Committee on September 21, 2011. H.R. 2895 would establish an agriculture labor program that restricts the employment of the program's visa holders to agricultural jobs and also creates a trust into which FICA withholdings from temporary workers are deposited. E-Verify plus the ag employment restriction would ensure that the only economic opportunity for temporary workers in the United States on an agriculture visa would be in agriculture. In addition to these enforcement measures, the trust provides an incentive to return home, as workers will be able to collect their withholdings only when they return home and only if they fully comply with the terms of their visas.

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.

To address any concerns in this regard, Congressman Lungren's proposed agricultural labor program provides a number of safeguarding mechanisms: 1) Agriculture workers would not qualify for federal financial assistance; 2) Administration of the program is paid for by the requesting employers through a fund comprised of employers' contributions of FICA and FUTA withholdings; and 3) Funds collected through employer user fees would be provided to hospitals for

unreimbursed emergency medical expenses accrued during the treatment of agricultural workers. We must also remember that currently, the approximately 7-12 million employees who are in the United States illegally but who have presented what appear to be bona fide documents to employers across all industry sectors have FICA withheld from their paychecks. These deductions will unlikely never be collected.

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?

The fact that an “uncapped” visa program only provides 2 to 3 percent of the intensive labor needs of America’s farms and ranches when the workforce is over 70 percent falsely documented proves that the H-2A program does not come close to meeting the needs of agricultural employers. The lack of use is due to the structural limitations and chronic problems of the H-2A program, limitations and problems which have been well documented over the years, and which have been exacerbated under the current Administration.

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.

With respect, we reject the premise of the question, that wages in agriculture are “depressed.” First, there is a common misconception that there is an adequate and willing pool of U.S. workers that would take farm jobs if farmers only paid more money. Under the H-2A program, few U.S. workers respond to rigorous recruiting efforts even though they would be paid an artificially inflated wage required under regulations that ignore the prevailing market wage rate. Moreover, even if higher wages would attract more U.S. workers -- and they will not -- growers cannot afford to pay wages that would make them even more non-competitive with farmers in countries with lower wages and without the environmental and food safety regulations with which U.S. farmers must comply. Ultimately, it is the nature of the work that makes farm work unattractive—it is in rural and remote locations far from cities; it is seasonal and migratory; and it requires arduous physical labor in varying climates outdoors.

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.

Our experience does not support the assertion that unemployment benefits contributes to the unwillingness of American workers to seek agricultural jobs.

As was mentioned in my testimony farmers have tried working with state workforce agencies to recruit unemployed workers and provide them with employment harvesting produce. In the late 1990's, at the insistence of Senator Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran 9 to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other factors impacting employment levels. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies stated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work because it suffered from such a low success rate, and that seasonal agriculture was "not a fit" for these individuals.

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?

We do not know of any new temporary farm worker program being suggested by anyone that provides for amnesty for farm workers. What is needed to support US agriculture, as you know, is a program that provides a legal supply of farm workers. This is necessary to keep the American jobs that result from agriculture and nurseries. Without this labor supply, we will lose American agriculture as we know it currently and Americans will lose their jobs. You can help prevent this. As you have seen in your state, since the passage of E-Verify, harvest labor has been unavailable and crops have been left to rot. We are certain you do not want to spread this across America. Please help us prevent this by providing a program that will permit a temporary legal workforce so American farmers do not have to move their production overseas.

**Senator Jeff Sessions
Questions for the Record
Tom Nassif, President and CEO, Western Growers Association**

1. You testified that members of the Western Growers Association believe that there is a diminishing labor supply in the agriculture industry. Yet there is no data to support this contention. In addition, the actual meaning and qualification of "labor shortage" in terms of jobs left unfilled is unclear. It is impossible to know if there is a labor shortage where the term is undefined.

- a. How do your members define “labor shortage” when reporting a diminishing labor supply?

In a recent Western Growers survey of a sample of our members, we asked our members if they “experienced challenges in securing adequate numbers of laborers this year.” 62% answered in the affirmative. These members describe the shortfall between the total farm employees needed this year and the number of farm employees hired, as a shortage of farm labor causing a significant economic impact on their farms.

- b. Did you follow up with the members that reported a diminishing labor supply? If so, what evidence did they provide you to support their claim of a diminishing labor supply?

Yes. The survey participants reported estimates of their anticipated crop losses due to labor shortages, if any. Only 7 respondents indicated they did not anticipate any losses. However, as a result of insufficient labor to harvest the crop, most respondents indicated that they anticipate losses from \$40,000 on the low end to over \$1 million, and in one case potentially millions of dollars. Other respondents cited incurring higher labor costs due to labor shortages.

- d. What percentage of your members utilize the H-2A program?

Very few members use the H-2A program. In the survey discussed above, only 3 growers indicated that they utilize the H-2A program to recruit farm employees. Western Growers also provides H-2A services for its members, however this service is used by only 2-4 employers per year.

2. In your testimony, you described your members’ efforts hire American workers.

- a. What individual efforts have your members undertaken aside from government implemented recruitment programs, like the H-2A program?
- b. In Canada, all employers that seek to hire temporary foreign workers must first recruit and offer jobs to those receiving unemployment benefits from the Canadian government. Do the members of your organization make any efforts to recruit American workers who are currently receiving unemployment benefits?

Western Growers members have and continue to seek qualified legal workers to help us harvest the food to feed America. Most rely on referrals and callbacks to secure their workforce. When our members finish callbacks and identify labor needs some work with state workforce agencies and others advertise positions through traditional news sources to secure the remaining workforce.

In the late 1990's, at the insistence of Senator Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran 9 to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other factors impacting employment levels. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies stated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work because it suffered from such a low success rate, and that seasonal agriculture was "not a fit" for these individuals.

Other regions of the country have also tried to recruit domestic employees. In 2006, in Washington State, a tight labor supply for the cherry harvest was a warning sign of a looming labor shortage for the much larger apple harvest. Again, state and local agencies teamed up with grower associations to conduct an advertising blitz and provide special training on how to safely pick apples without harming their market value or damaging the trees' future productivity. In that program, over 1700 workers were sought; roughly 40 were successfully placed. In 2007, the North Carolina Farm Bureau Federation set up a statewide hotline for job seekers, and advertised it in print and on radio. North Carolina needs roughly 60,000 crop and livestock workers each season. Two calls were received; one was from a grandmother who felt that farm work would do her grandson good.

Recently, the United Farm Workers Union documented the same conclusion. In 2010, the Union launched the "Take Our Jobs" program, including a media blitz that garnered national coverage. As of mid-October, which generally marked the end of the growing season and the campaign, 10,021 people had inquired about jobs in the fields, yet only nine people had taken jobs. The President of the Union testified at the hearing that most of them quit after a few days.

The agricultural labor program proposed by Congressman Lungren makes moot any assertion that domestic workers are willing to agricultural jobs by providing farm workers with the same protections, no more, no less, than U.S. workers with respect to all employment related laws and employment taxes. Thus there would be no reason for an employer to prefer a temporary foreign worker over a U.S. worker.

3. You testified that Arizona's E-Verify law has hurt the Arizona agricultural industry. However, Arizona Farm Bureau spokesman Joseph Sigg recently stated that "E-Verify has not been measurably disruptive to the labor supply of Arizona agriculture." ("E-Verify and Agriculture—Arizona Perspective," Bellingham Herald, Sept. 30, 2011). Are you aware of any evidence or data to support your contention? If so, please provide it to the Committee.

In light of state mandated E-Verify, H-2A is the only mechanism for producers to obtain a legal workforce. A majority of specialty crop agriculture production in

Arizona takes place in Yuma. The Western Growers members who farm in Yuma hire Mexican H-2A workers who live in Mexico and commute to work. Many of these H-2A employees prefer to return home after each work day. The Department of Labor appears, at best, indifferent to agriculture's needs in this area. These employees decline to use the approved housing that is required to be provided to them by the growers under H-2A regulations. Despite repeated requests for an adjustment to the requirements, the Department of Labor has taken the position that employers must make the housing available for the H-2A commuters *prior* to obtaining employer H-2A certification, regardless of whether the H-2A workers intend to use it. This imposes a significant cost on the growers without affording any benefit to the intended H-2A worker beneficiaries.

4. What percentage of your members hire workers who are illegally within this country and who therefore cannot be legally employed?

Our members only hire workers who present work authorization documents that appear valid on their face. However, according to the National Agricultural Worker Survey (NAWS), over 50% of the hired farm labor force is unauthorized. Experts believe that the actual percentage is much higher, as the NAWS relies on workers self-disclosing their status to an interviewer who is acting on behalf of the U.S. Government. Credible evidence resulting from employment-based immigration enforcement and other sources points to at least 70% of the farm labor force lacking proper work authorization.