

Senator Charles E. Grassley

Questions for the Record

Arturo Rodriguez

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?**

The certification process is integral to protecting the rights of US workers, but requires active oversight by DOL of the employer's recruitment and hiring of US workers and the details of the job offer if it is to be effective. Unfortunately, DOL does not have adequate resources to fulfill its obligations under the certification process. As a result, the current certification process can be easily manipulated by growers seeking to hire H-2A workers. It does not prove that US workers are not available; it simply proves that the U.S. Department of Labor does not have the resources or is otherwise incapable of recruiting thousands of qualified US workers at wages which are unattractive even to US workers who are currently doing farm work.

For example, livestock workers in the western states currently earn \$10 to \$12 per hour according to surveys conducted by the United States Department of Agriculture. Is it surprising that the Department of Labor is unable to recruit several thousand sheep herders when the sheep ranchers only pay \$750 per month or less than \$5 per hour (the sheep herders are required to be on call 24 hours per day seven days per week)?

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.

The UFW opposes replacing the current certification process with an attestation process. If the objective is to protect the jobs of US workers, and in particular, the 600,000 to 800,000 US workers who currently work in agriculture, the certification process needs to be strengthened, not weakened. It is critical that the 50% rule which requires US workers to be hired for the first 50% of the contract period be retained as this is the only meaningful protection for US workers at present. In addition, Congress should consider eliminating the economic incentives which lead employers to prefer H-2A workers over Americans. Currently, agricultural employers are exempt from paying employment taxes on their H-2A workers, unlike the other H visa programs which require the payment of these taxes, giving H-2A workers a 10% cost advantage over Americans. If Congress is serious about protecting US jobs it needs to level the playing field by eliminating these exemptions and the exclusion of H-2A workers from the protections of the Migrant and Seasonal Agricultural Worker Protection Act.

The current certification process requires active oversight to evaluate offered job terms and claims of labor shortages; however, an attestation process typically requires only that the employer sign a brief form promising to comply with whatever obligations it has. This change may satisfy employers’ demands for ease in application but ignores the irreparable damage that would be caused by false attestations and lack of DOL supervision of the recruitment process. An attestation process could lead to the widespread displacement of US workers.

- 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?**

We believe that E-Verify or a similar system may have a place as part of a comprehensive solution that deals with the current unauthorized workforce. However, we believe that the most likely response to making E-Verify mandatory for agricultural employers will be to transfer the hiring function to farm labor contractors, making enforcement more difficult. Congress should consider making agricultural employers jointly liable with their contractors for complying with the E-Verify requirements, and at the very least, amend the Migrant and Seasonal Agricultural Worker Protection Act to make it a violation for farm labor contractors to hire unauthorized workers.

- 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?**

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?

We wholeheartedly support Senator Feinstein’s efforts to create a workable “blue card” program for undocumented workers in the agricultural sector. If biometric cards are required, the employer will have to bear the cost of the biometric reader just as the employer will have to bear some of the costs associated with the E-Verify program. However, it may be possible to make readers available to small employers either through the employment service system, grower associations, or independent companies which would provide verification services for a fee.

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?

The underlying problem is that the US has an unstable agricultural labor market that requires constant replenishment with new workers from abroad. The reasons for this chronic labor market instability were accurately described in a 1994 study by the United States

Department of Labor:

The constant outflow of workers is a consequence of the difficulties of making a living from U.S. farm work. Most migrant farmworkers live a marginal existence, even after they stop migrating and settle in one location. The majority of migrants and former migrants live in poverty endure poor working conditions, and receive no government

assistance. Thus, only those migrants with few alternatives stay in farm work. This leads to a maturing labor force composed mostly of workers with low levels of education and lacking English skills, whose improvements in working standards are continually undermined by new workers willing to work for less.

The poor living and working conditions of migrant and formerly migrant farmworkers are the result of labor practices that shift production costs to workers. In particular, the farm labor system relies heavily on temporary jobs, often uses the highly competitive subcontracting market for labor management, and frequently recruits workers in a way that results in a chronic oversupply of labor. Each of these practices reduces employee costs at the expense of worker earnings. As a result, migrant workers, their families and communities, rather than producers, tax-payers and consumers bear the high costs of agriculture's endemic labor market instability.

*The high outflow of farmworkers to non-farm work in the United States and the constant replenishment from abroad means the agricultural labor market serves as an entry point for low-wage, low-skilled immigrants for the entire U.S. economy. To slow this influx of new entrants and stabilize the farm labor market requires diverting the costs of instability from the migrants back to the employers, taxpayers, and consumers who benefit from their labor. (Emphasis added)*¹

This analysis is not new. Twenty years ago, the last blue-ribbon commission established by Congress to study the question reached the same conclusion. We find ourselves in the current situation because unfortunately the recommendations of that commission were never implemented.

In 1986 when Congress passed the Immigration Reform and Control Act ("IRCA") it authorized a Commission on Agricultural Workers to study the effects of the Act on the agricultural industry and make recommendations for the future. The Commission could not be accused of being a bunch of liberals or labor activists; eight out of the eleven Commissioners were appointed by Ronald Reagan or Strom Thurmond. Only two of the Commissioners, Dolores Huerta and Cardinal Mahoney, could be described as representing the interests of the

¹*Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, Research Report No.5, U.S. Department of Labor Office of Program Economics, May 1994.

farmworkers. Its recommendations therefore should be taken seriously by Republicans as well as Democrats.

The Commission noted that while IRCA was successful in legalizing large numbers of agricultural workers, “ineffective enforcement of employer sanctions and inadequate border controls have curbed neither illegal immigration nor the employment of unauthorized workers in agriculture.” What agriculture needed most was a more stable labor market— “ the goal of controlling illegal immigration would be best served by the development of a more structured and stable domestic agricultural labor market with increasingly productive workers:

Such a system would be characterized by more effective recruiting and job matching, reduced worker turnover and higher retention rates, a more dependable labor supply, institutionalized opportunities for training and advancement, and a better balance between labor supply and demand. Such a system would further address the needs of seasonal farmworkers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply. Market mechanisms would provide the incentives that would ultimately lead to and maintain this stabilization.

A stable and reliable workforce is critical to the long-term health of the industry and would thus provide clear benefits to both workers and employers.

However, none of the Commissions’s specific recommendations to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment were ever implemented:

Recommendation: “Illegal immigration must be curtailed.” **Not done**

Recommendation: “The Department of Labor’s U.S. Employment Service should develop a new and/or alternative system for recruiting qualified farm labor to meet agriculture’s constantly changing labor needs.” **Not done**

Recommendation: “The U.S. Department of Agriculture’s Extension Service, the U.S. Department of Labor’s Employment Service, and state agencies and universities should undertake a major effort to educate growers, packing house operators, farm labor contractors, workers, and worker organizations in the need for and benefits of improving labor management

farmworkers. Its recommendations therefore should be taken seriously by Republicans as well as Democrats.

The Commission noted that while IRCA was successful in legalizing large numbers of agricultural workers, “ineffective enforcement of employer sanctions and inadequate border controls have curbed neither illegal immigration nor the employment of unauthorized workers in agriculture.” What agriculture needed most was “a more stable labor market” – the goal of controlling illegal immigration would be best served by the development of a more structured and stable domestic agricultural labor market with increasingly productive workers:

Such a system would be characterized by more effective recruiting and job matching, reduced worker turnover and higher retention rates, a more dependable labor supply, institutionalized opportunities for training and advancement, and a better balance between labor supply and demand. Such a system would further address the needs of seasonal farmworkers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply. Market mechanisms would provide the incentives that would ultimately lead to and maintain this stabilization.

A stable and reliable workforce is critical to the long-term health of the industry and would thus provide clear benefits to both workers and employers.

However, none of the Commissions’s specific recommendations to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment were ever implemented:

Recommendation: “Illegal immigration must be curtailed.” **Not done**

Recommendation: “The Department of Labor’s U.S. Employment Service should develop a new and/or alternative system for recruiting qualified farm labor to meet agriculture’s constantly changing labor needs.” **Not done**

Recommendation: “The U.S. Department of Agriculture’s Extension Service, the U.S. Department of Labor’s Employment Service, and state agencies and universities should undertake a major effort to educate growers, packing house operators, farm labor contractors, workers, and worker organizations in the need for and benefits of improving labor management

practices in agriculture.” **Not done**

Recommendation: “Agricultural employees should be provided with federal/state unemployment insurance coverage that provides them with protection against unemployment comparable to that of other workers in the United States.” **Not done**

Recommendation “Congress should encourage all states to provide Workers’ Compensation Insurance coverage comparable to that of other workers in the United States.” **Not done**

Recommendation “Farmworkers should be afforded the right to organize and bargain collectively, with appropriate protections provided to all parties.” **Not done**

Recommendation “The enforcement of protective statutes for farmworkers should be made more effective..All laws relating to farm labor should be uniformly enforced by the agencies concerned so that employers not in compliance do not gain an unfair competitive advantage over those employers in full compliance with the various laws and regulations.” **Not done**

The Commission concluded that “to the extent that job opportunities are secured by legal workers in a more stable labor market, the pull factor for illegal immigration is reduced.” That is just as true now as it was twenty years ago. We need a stable, legal workforce for agriculture. Simply enacting mandatory E-verify with or without an expanded guest worker program will not address the underlying problem. Only a comprehensive approach addressing the above factors and offering undocumented workers an opportunity to earn lawful immigration status will work.

Feds: Margate Company Lured Haitians to U.S. with False Promises

From OrlandoSentinel.com, "Jon Burstein, Sun-Sentinel, 25 Oct 2011.

FORT LAUDERDALE— The operator of a now-defunct Margate company promised steady-paying jobs to Haitian workers, but left them in the U.S. desperately fending for themselves or living in trailers without electricity, according to federal prosecutors.

Marie Nicole Dorval, the president of Manidor Financial Group Inc., was criminally charged on Monday with a single count of conspiracy to commit visa fraud. She is accused of using a network of recruiters in Haiti to lure 145 people to South Florida in April 2009 on temporary work visas.

The workers paid Dorval and her recruiters, thinking they would be getting jobs in construction or on a farm with the chance of eventually getting green cards to stay, according to the U.S. Department of Justice's Civil Rights Division.

Once the workers arrived in South Florida, there was no work or housing, according to court records. Some were eventually transported to Gainesville-area farms where they lived in trailers with floors covered in filth and no beds, federal prosecutors said.

Dorval, 41, could face up to five years in prison on the single charge filed in Fort Lauderdale federal court. Prosecutors wrote in court documents that they believe the trial will last "0 days," a clear indication they think the criminal case will end in a plea deal.

Six of the workers had attempted to sue Dorval in 2009, saying they had each paid in excess of \$3,500 to come to the United States. They alleged they were stranded in Florida and told not to complain or else immigration officials would be called, according to the Broward Circuit Court lawsuit.

That case was dismissed. The workers' attorney, Barry Silver, said his clients "pretty much disappeared into the woodwork" after the lawsuit was brought.

"We're still trying to track them down and if we can, we will refile the case," Silver said. "[Manidor] seemed like an exceptionally shady operation."

Court documents did not list a criminal defense attorney for Dorval. An attorney who represented her in the civil lawsuit against Manidor did not return a phone call.

The case marks the second time in two years that a South Florida company has been accused of luring Haitians to the United States with the false promise of steady wages under a temporary worker program.

The owners of two North Miami Beach companies are facing federal charges in Gainesville. They are accused of luring about 50 workers to the United States, then taking their passports and

forcing them to live in substandard conditions on an Alachua County farm.

Several workers suffered permanent scars when they were forced to pick beans in a field that had just been sprayed with chemicals, according to court records.

Carline Ceneus, owner of Carline Hot Pickers, and Willy Paul Edouard, owner of Puroul Picking, could go on trial as early as January.

jburstein@tribune.com or 954-356-4491

Source: OrlandoSentinel.com, "Feds: Margate company lured Haitians to U.S. with false promises" by Jon Burstein, Sun-Sentinel, 25 Oct 2011.