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?

The UFW agrees that our immigration system should be clear and capable of enforcement. We believe that in order for our currently broken immigration system to be clear and capable of enforcement, it must be reformed in a comprehensive manner which offers the current undocumented an opportunity to earn legal immigration status and stabilizes the farm labor market. We believe that our immigration policy should be fair and consistent with American values.

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.

Our current guest worker programs are seriously flawed in that they tie the guest worker to a particular employer thus destroying a free labor market capable of balancing supply and demand. This leads employers who use the guest worker programs to become dependent on guest workers resulting in a temporary program becoming permanent.

The sheep industry in our western states provides a good example of how dependence on guest workers becomes permanent. The sheep industry has used foreign sheep herders for over five decades. During that time there has been little or no improvement in the wages and working conditions offered by the industry. Today livestock workers in the western states other than sheep herders are paid $10 to $12 per hour. H-2A sheep herders who are expected to be on call 24 hours per day, 7 days per week are paid only $750 per month. Even if the sheep herders only worked 40 hours per week, that works out to less than $5 per hour. As long as the sheep industry is guaranteed workers at less than $5 per hour, there will always be a "need" for these guest workers.

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.

The current H-2A guest worker program in agriculture does not impose significant education, healthcare, and increased government-wide infrastructure costs on taxpayers, at least as far as the H-2A workers themselves are concerned.

Agricultural employers, including those who employ guest workers, should be responsible for providing health care for their workers to the same extent as other employers.

How any new guest worker would address these issues depends on the specifics of the legislation.

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?

Our current guest worker programs including the H-2A program attempt to balance the needs of employers for workers against the desire to protect the wages and working conditions of American workers. Clearly, American workers would be better off if there were no guest worker programs. Conversely the needs of employers would best be met through a program that admitted an unlimited number of workers without any labor protections.

Only a fraction of agricultural employers utilize the H-2A program because it is generally cheaper to employ unauthorized workers than to employ H-2A workers or legal American workers. If the goal is simply to maximize the number of H-2A workers employed, that could be done by eliminating the labor protections so that the cost of employing guest workers was less than the cost of employing unauthorized workers; however, that would not protect the wages and working conditions of the 600,000 to 800,000 American workers who still work in the agricultural sector.

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.

Depressed wages certainly are one factor. Another reason is that our laws often treat agricultural workers differently than other workers. For example, 15 states still exclude farm workers from coverage under their workers' compensation laws despite the fact that agriculture is one of the more dangerous occupations. American workers rightly associate farm work with substandard wages and working conditions.

The poor living and working conditions of farm workers 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 farm labor contractors 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, farm workers, their families and communities, rather than producers, tax-payers and consumers bear the high costs of agriculture's labor market instability.

If we are serious about slowing the influx of new entrants and stabilizing the farm labor market, we need to focus on diverting the costs of instability from the farm workers back to the employers, taxpayers, and consumers who benefit from their labor.

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.

I do not believe that the availability of unemployment benefits to workers who are unemployed through no fault of heir own contributes to the lack of American workers willing to take agricultural jobs. Actually, it is just the reverse, it is the unavailability of unemployment benefits to agricultural workers which makes these jobs less desirable to Americans. Although unemployment benefits were extended to farm workers in 1978, only a few states provide full coverage. Many states exclude seasonal employees and farm workers' employment patterns often make it difficult for them to qualify for benefits. Seasonal agricultural workers are, by definition, employed for less than a full year. As a result, significant unemployment and underemployment among farm workers is common – particularly within the fruit, vegetable, and horticultural specialty sector. If we want Americans to take these jobs it is essential that farm workers receive the full protection of unemployment insurance programs and the differential coverage of farm workers across the unemployment insurance programs of various states be eliminated.

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?

Unfortunately, all immigration programs including guest worker programs such as the H-2A program and H-2C proposal are susceptible to fraud. For example, the Orlando Sentinel reported just yesterday that 145 workers were fraudulently lured to South Florida to do farm work on temporary work visas. See attached story, "Feds: Margate Company Lured Haitians to U.S. with False Promises"). The blue card legalization program contained in AgJOBS is designed to combat the type of fraud we saw in the SAW program. The prospective work requirement would discourage applicants who did not really have prior experience working in agriculture. Another significant measure to prevent fraud is the limitation on the ability of the so-called "notario publicos" and for-profit immigration agencies to participate in the legalization program.

Senator Jeff Sessions
Questions for the Record
Arturo S. Rodriguez, President, United Farm Workers

1. **You testified that the passage of H.R. 2847, the "American Specialty Agriculture Act" sponsored by House Judiciary Chairman Lamar Smith would cause displacement of**

American workers and characterized it as "un-American." However, H.R. 2847 would require employers to take certain steps to recruit American workers.

a. Please explain why you believe that H.R. 2847 is un-American.

I believe that H.R. 2847 will not protect the wages and working conditions of American workers and would, if enacted, lead to massive displacement of the 600,000 to 800,000 Americans who still work in the agricultural sector. The centerpiece of the bill is a wage methodology which will significantly lower wages for farm workers in the United States, both legal and unauthorized workers. Up to 500,000 workers or one quarter of the entire farm labor workforce would be admitted to the US for short-term employment at wages below those currently paid US workers.

Under H.R. 2847 the prevailing wage is defined as the "first level" in a four level wage system. The first level is actually the median wage for the lowest third of workers in an occupation while the level four wage is the median for the top two-thirds of the wage distribution. The mean wage or the average wage for workers in the occupation is actually the level three wage. In practice, 80 to 85% of the workers surveyed are paid more than the first level wage– it is by definition a substandard wage. In many areas of the country, the level one wage is a dollar or more less than the average wage paid crop workers. If large numbers of workers are admitted to the United States at this wage rate, the average wages paid agricultural workers will fall to even lower levels than they are today, hastening the exodus from agriculture of the remaining US workers.

In fact, the incentive to displace US workers, as opposed to unauthorized workers, is greater precisely because US are generally paid more than unauthorized workers. The incentives to replace US workers with new H-2C workers are further enhanced when one considers that the employer will not have to pay FICA or FUTA taxes on the H-2C workers' wages. This makes it roughly 10% cheaper to employ an H-2C worker than to employ an American worker, even without the considerable wage differential established by the new wage methodology.

A concrete example will show just how large the economic incentive to discriminate against US workers would be under the proposed legislation.. The most recent information available from DOL's Online Wage Library for Foreign Labor Certification shows that livestock workers in Ventura County, California are paid an average of $12.00 per hour. For a year-round employee that adds up to an annual income of $24,960. Under the Smith bill, an employer seeking to hire a livestock worker under the H-2C program would only have to advertise the job at $8.93 per hour. US workers would either have to accept a rate more than three dollars under the going rate or see the job go to a guest worker. For the employer hiring an H-2C worker instead of an American will save $6,386 per year in wages. However, that is not the only saving; the employer doesn't have to pay employment taxes on the wages of the H-2C worker resulting in an additional saving of about $2500 per year. The total saving to the employer is nearly $9,000 per year.

The short-term impact of the Smith bill in reinstating the level one wage under the H-2A program would be to transfer approximately $150 million per year from US workers and guest workers to the current H-2A employers. The long-term impact should the program expand to the 500,000 worker cap would be to reduce the earnings of the poorest group of workers in America by at least a billion dollars per year.

In addition to the lower wage standard, the Smith bill drastically reduces employer responsibilities to inform US workers about job opportunities and eliminates or weakens labor protections which have been in effect for decades:

– Protections for US workers in the recruitment process have been weakened. The proposed H-2C program would limit the ability of US workers to learn about job opportunities by reducing requirements for job postings and limiting the role of state workforce agencies. Also, instead of requiring the employer to petition DOL for certification of a labor shortage, the proposed H-2C program would only ask an employer seeking H-2C workers to include labor attestations in his application to the Department of Agriculture. An unscrupulous employer can claim that no American workers are available (or at least none willing to work for a wage lower than the wage paid 80% of the workers in comparable employment) whether or not any efforts were made to recruit workers.

– The most important protection for US workers– the 50% rule has been eliminated. The 50% rule requires that the employer hire US workers who apply for the first 50% of the contract period. The 50% rule is virtually the only way an American worker can be hired under the existing program since American workers very rarely find out about the job opportunities before the work actually starts.

– Instead of providing workers with free housing that has been inspected and meets federal standards as the current law requires, the employer can provide a voucher unless the Governor certifies there is not adequate housing available; workers who live on the border do not have to provided with any housing;

– The guarantee of employment for three-fourths of the hours worked in the contract is reduced to an almost meaningless guarantee of 50% of hours offered; the guarantee is the principle protection against over-recruitment;

– The transportation reimbursement is no longer from the place from which the worker traveled to come to the employer's job site but only from place where the worker was approved to enter the U.S. i.e. a consulate which could be hundreds of miles from the worker's home.

– The bill also contains language which would eviscerate worker protections under the holding of Eleventh Circuit Court of Appeals in *Arriaga v. Florida-Pacific Farms* and thereby allow their employers to reduce their wages below the minimum by imposing on the worker the obligation to absorb visa, transportation and other costs relating to their entry into the US. This harkens back to practices long outlawed for US workers.

– The bill contains a number of provisions relating to legal services, access to labor camps, compulsory arbitration and mediation which are transparently designed to make it as difficult as possible for the guest workers to enforce their contract rights against their employers.

The elimination of the 50% rule, the substitution of an attestation procedure for labor certification, and the transfer of program responsibilities from the Department of Labor to the Department of Agriculture all send a clear signal that guaranteeing employers access to cheap foreign labor is more important than protecting the wages and working conditions of U.S. workers.

b. Do you agree that any temporary guest worker program must ensure that American workers are not displaced and encourages the hiring of American workers?

I certainly agree that any guest worker program must ensure that American workers are not displaced and encourage the hiring of US workers. However, Congress must do more than merely exhort employers to do the right thing. Congress needs to remove the economic incentives in the current program which make it cheaper to hire an H-2A worker than to hire an American. In contrast to the other H-visa programs, under the H-2A program, agricultural employers do not have to pay FICA and FUTA taxes on the wages of the H-2A workers making it about 10% cheaper to hire H-2As than to hire Americans. In addition, H-2A workers are excluded from coverage under the Migrant and Seasonal Agricultural Worker Protection Act providing employers with another reason to prefer H-2As to Americans. If Congress wants to protect US workers from being displaced, they need to level the playing field. by eliminating these exemptions and exclusions. Further, Congress must increase funding to DOL so that it has adequate resources to review H-2A applications under the certification process and ensure that US workers are not be displaced or adversely affected by the hiring of temporary foreign workers.

2. **You testified that those who do not have experience working on a farm are less productive than those who do have that experience. I am sure this is true in every industry. However, other industries have invested their time and money in training a legal workforce. Isn't it true that there would be a larger legal workforce in the agricultural industry if the farmers had invested in training those who are in this country legally?**

We can all agree that there are many things the agricultural industry could have done and should have done to attract and retain a legal work force. Today, the agricultural sector is in danger of losing the services of a million experienced workers. The costs of replacing this workforce with new guest workers is enormous and counterproductive. I am convinced that providing legal status to these workers remains the best solution to a difficult problem for employers, workers and the national interest.

In addition to legalizing our current experienced workforce, agricultural employers should be encouraged to engage in the same strategies as other employers to attract and retain a lawful workforce by offering higher wages, improved working conditions, training, and opportunities for advancement.