

Senator Charles E. Grassley

Questions for the Record

Eric A. Ruark

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?

ANSWER: The paperwork for the certification process has been criticized by employers as being too complicated, and the turnaround time not fast enough to meet employers' time sensitive needs. These complaints should be addressed, but improvement on these fronts is certainly attainable. The Department of Labor should be able to anticipate when and where seasonal labor is needed and quickly accommodate legitimate requests for seasonal workers. One of the problems with the non-utilization of the H-2A program is that it has not allowed the program to adapt itself to genuine labor market needs, nor to the needs of employers who wish to participate. If few employers use the program, and some only sporadically, it is not a true test of its functionality.

- 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.

ANSWER: The certification process is not fatally flawed the way an attestation process, as I understand it, would be. A change to attestation would allow employers to make claims of labor shortages without having to prove them to be true. This would be, to borrow a phrase, like allowing the fox to guard the henhouse. An apt comparison would be with the current wage and displacement attestation process in the H-1B program, which the evidence shows has not prevented abuses. Similar abuses would likely characterize an H-2A program that depended on employer attestation.

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?

ANSWER: FAIR recognizes and very much appreciates Senator Grassley's work on E-Verify. We support the program, which is extremely efficient, accurate, and conducive to use by businesses of all sizes and types. Those are the very reasons that employers who hire illegal workers oppose it. That does not mean that there are not things Congress can do to make E-Verify work even better. The first is to make E-Verify mandatory for all U.S. employers, including agricultural employers. An employer who willingly hires illegal workers is never going to volunteer to use the program, and the current I-9 requirement makes it easy to get away with breaking the law.

Requiring the Social Security Administration to notify the Department of Homeland Security when a Social Security number is being used in a way that indicates identity theft would close a loophole that currently exists. As it stands now, the Social Security Administration has a firewall that prevents it from alerting DHS that a SSN is being used fraudulently to receive work confirmation through E-Verify.

Another crucial component is to ensure that federal legislation making E-Verify mandatory does not preempt individual States from working in tandem with federal authorities to make sure that employers are complying with the law, and to allow States the ability to hold employers who violate the law accountable. No law passed by Congress is effective if it is not enforced, and immigration law illustrates that point well. If there is not an active partnership between Federal, State, and Local governments, or if State and Local governments are prohibited from enforcing federal immigration law, the effectiveness of E-Verify will be greatly diminished.

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?

ANSWER: FAIR would not support a “blue card” as proposed by Senator Feinstein, whether it included a biometric component or not. The plan as outlined by Senator Feinstein rewards illegal immigration and the employers who profited from hiring them. What is described above is a form of amnesty that is accompanied by a sort of indentured servitude for the workers who qualify. It is also unlikely that there would be a system put in place that would ensure that qualifying workers would exit the United States upon the expiration of their visa. There is a legal way to bring agricultural workers into the United States. FAIR would like to see Congressional efforts focused on making adjustments to improve the H-2A program.

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?

ANSWER: If any “blue card” program were to be implemented by Congress, despite strong public opposition, it would be an amnesty and employers who wished to participate should bear the full costs of instituting that program. A majority of the American people rightly oppose amnesty because it rewards illegal immigration, but employers should not profit from their illegal behavior, either.

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?

ANSWER: Amnesty for those working illegally in the United States in agriculture would facilitate the movement of these workers into other occupations. The history of the 1986 amnesty demonstrates just that. However, that movement takes place, even without an amnesty program. There is no shortage of farm workers in the United States; instead there is a shortage of workers who are willing to take these jobs at the wages and conditions that are being offered by the operators of large commercial farms. That is why those employers rely upon a constant supply of illegal alien workers.

If Congress legalized those currently working illegally in agriculture, the previous pattern would be repeated. Those workers would soon move into other occupations, leaving a void to be filled with a new cohort of illegal, low-wage workers. In fact, the Department of Labor operates training programs precisely in order to train agricultural workers to move into higher paying jobs. Employers who now hire illegal workers will be unlikely to end the practice as long as the opportunity exists to do so with little to no consequence. Right now, large growers have little incentive to hire legal workers.