

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?

ANSWER: The U.S. immigration system should be designed with one clear purpose in mind, namely, the best interest of the American people. As it now stands, our immigration system consists of a collection of disparate programs designed for the benefit of special interests, and often benefits immigrants more than it does U.S. citizens.

The immigration laws, however, are clear, and can be enforced. The problem we face is not a lack of resources but a lack of commitment from the federal government to ensure that these laws are enforced, as written by Congress. If the President, as the nation's Chief Law Enforcement Officer, were to make clear his intention to carry out his duties in enforcing current immigration law he would send a powerful message to illegal aliens residing in the country, and to the rest of the world. Instead, the Obama Administration has sued Arizona and Alabama for attempting to assist the federal government with immigration enforcement and has promised to work to grant amnesty to over ten million illegal aliens.

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.

ANSWER: The way to insure that guest worker programs are truly temporary is for the federal government to track the entry *and* exit of admitted guest workers. No such entry-exit controls currently exist and, combined with weak interior enforcement efforts, it is all too easy for guest workers to overstay their visa and remain illegally in the United States. And it is all too easy for these illegal aliens to find employment. Mandatory E-Verify would prevent many of those illegally in the United States from finding work and would compel them to return to their home countries.

The second problem is that U.S. employers who employ guest workers continually call for increases in guest worker admissions because expanding the labor pool benefits employers. The key to regulating the number of guest workers admitted is for the Department of Labor to assess reports of labor shortages, not to accept at face value the claims made by employers. The DOL must require a genuine labor test and require prevailing wage rates, such as the Adverse Effect Wage Rate. The reason many agricultural employers circumvent the H-2A program is to avoid complying with wage requirements. If employers were made to pay prevailing wage rates and were held liable for employing illegal workers, or abusing guest worker programs, there would be much less demand for these programs.

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.

ANSWER: If guest workers are in the United States contributing to the U.S. economy and paying taxes –taking for granted that these workers are legal –then it is likely that the

individual guest worker is covering his/her cost to the taxpayer. But there are other costs that are often overlooked, some of which Senator Sessions highlights in his question. What we must also consider are the costs caused by guest workers who displace American workers, or reduce the earning power of all workers in the U.S. There are hidden, but very real costs. Less foreign workers would mean fewer Americans out of work and collecting government benefits as a result.

The added cost to building and repairing infrastructure is also something that is almost always left out of a discussion about guest worker programs. Guest workers often stay in the United States for many years, and these programs are constantly adding more people to the U.S. population. Infrastructure costs, especially for public education, are outpacing our ability to pay for them.

Guest worker programs can address these issues by being designed and implemented to only bring in workers that are necessary to the country's economic needs, not to meet U.S. employers' desire to pay their workers lower wages. Employers who sponsor a guest worker should be required to provide health insurance for that employee. This would guarantee that U.S. taxpayer will not end up footing the cost of medical care for guest workers.

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?

ANSWER: It is because only 3-5% of agricultural workers are H-2A, as compared to approximately 50% who are illegal, that a legitimate labor shortage, if one indeed exists, cannot be ascertained. Further, employers cannot claim that the program has ever been extensively used since it was implemented in 1986. Interestingly, since 2006, when broad amnesty legislation failed to pass Congress, H-2A use has significantly increased. This suggests that employers will use the program if they believe they will have limited access to illegal workers.

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.

ANSWER: Decreased wages are the main reason why Americans are reluctant to take farm jobs. Since the 1970s, wages for all low-skilled workers have remained stagnant, and the pay for farm workers has remained below that of other low-skilled workers. This situation has caused workforce instability because there is a tremendous incentive to enter into another occupation at the first opportunity, no matter the status of the worker. The history of the 1986 amnesty demonstrates this, as does the economic data since then. The solution of agribusiness to this problem has been to constantly replenish its labor force with more recently arrived illegal aliens. It is now often cheaper to rely on human labor because the labor costs are so low then it is to mechanize farming operations. In this respect, the United States is far behind most other developed nations.

It is important to note that small farms have been increasing in recent years, which is notable in the face of the argument put forward by agribusiness that farming in the United States is on the verge of vanishing completely. These small farms provide a model where the labor force is relatively stable because these farms are not relying on the labor of illegal aliens, and pay higher wages to the workers they do hire. These are the true family farms that Americans most associate with our agricultural heritage.

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.

ANSWER: It is logical to think that receiving government benefits while not working is more attractive to some American workers than toiling for poverty wages. If agricultural wages were increased by eliminating agricultural employers' access to a low-wage illegal workforce, and the government incentivized Americans to work, even if they still received supplemental benefits from the federal government, more American workers would be drawn to agricultural jobs and the fiscal burden of illegal immigration would be greatly reduced.

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?

ANSWER: Any amnesty program will contain ample incentive and opportunity for fraud, and all amnesty draft bills preclude information sharing with ICE. The very nature of illegal immigration and the massive identity fraud industry that accompanies it will make any effort to verify information a massive undertaking. DHS has consistently said that it lacks resources for enforcement efforts. It is not plausible to think that DHS could administer the labor-intensive administrative processes accompanying an amnesty, such as criminal background checks, verification of employment history, etc. The way to avoid such fraud is to avoid any program that includes amnesty.

Senator Jeff Sessions Questions for the Record

Eric Ruark, Director of Research, Federation for American Immigration Reform

1. Are low wages the sole reason why Americans do not make up the majority of farm laborers?

ANSWER: Low wages are not the *sole* reason why Americans are not the majority of farm laborers, but it is the *main* reason. As evident from the testimony given at the hearing by agribusiness representatives, operators of large commercial farms take no responsibility whatsoever for the fact that wages for farm workers have remained stagnant for the past 30 years. Their argument is that having half of all farm laborers working illegally has not driven down wages and working conditions in the sector. This is simply beyond the realm of believability.

Researchers have shown that an increase in wages, even as little as one percent, leads to an increase in domestic workers. Because farm laborers are not paid a living wage, there is no incentive for Americans to take these jobs. If it is true, as it was suggested in the hearing, that Americans do not do farm work because they are lazy, obese, welfare-dependent, addicted to drugs, etc., then this is a national crisis that cannot be solved by the importation of foreign workers.

2. Will Americans fill farm jobs vacated by illegal workers? Why?

ANSWER: Some Americans will fill farm jobs vacated by illegal workers. The evidence shows that Americans are about one-third of farm laborers and that Americans are willing to take these jobs if they offer adequate pay. The Congressional Research Service found that welfare recipients were willing to work if the transportation and housing arrangements offered to H-2A workers were offered to them.

Farm jobs are usually not careers, no matter the status of the worker, yet, Americans have done farm jobs and, until very recently, were the majority of farm laborers. Traditionally, teenagers or younger workers did farm work as entry-level jobs to pay for college or as an introduction to the workforce.

The reason this has changed is due to consolidation of food production by agribusiness and operators of large commercial farms *deciding* to pursue business practices that maintain low labor costs by *choosing* to hire illegal workers. This practice had been made possible and even enabled by the federal government at great expense to the American people. The real question is how many Americans will take farm jobs if wages and conditions improve, and how much demand there will be for seasonal guest workers. That question cannot be answered until the widespread use of illegal workers is ended. What we must also consider is: Should we have jobs in the United States that “Americans won’t do?”; Do we as a society accept the permanent exploitation of low-wage foreign workers?

3. How do you answer those who claim that legalization of illegal alien farm workers would be the most effective and practical solution to creating a stable agricultural workforce?

ANSWER: The history of the 1986 amnesty is the best answer to the argument that legalization would provide a stable agricultural workforce. As mentioned above, there is a great deal of turnover among farm laborers. When better opportunities are available farm workers take them. The lack of a stable workforce characterized the agricultural industry long before its opposition to recent increases in immigration enforcement efforts. Legalization is not the solution; providing jobs that pay a living wage is the answer.

Furthermore, the willingness of employers to hire illegal workers and to rigorously defend the practice when challenged is unlikely to change as long as the opportunity to hire illegal workers continues to exist, no matter what program is in place to provide them with legal workers. If agricultural employers were required to use E-Verify, and those who broke the law were held accountable, a much more stable *legal* workforce would materialize. It may not happen overnight, but the current situation did not arise overnight, either. If not enough U.S. workers return right away to agricultural work, the H-2A program can fill the gap.

4. To what extent is interior immigration enforcement a key component of making any guest worker program function properly?

- a. Is not enforcement a key component of keeping all employers, including agricultural employers, on a level playing field?

ANSWER: Interior enforcement is *the* key to any guest worker program. Illegal immigration would be substantially reduced if the job magnet were taken away. That can only be accomplished if laws against illegal hiring are vigorously enforced and penalties for employers consistently applied. Agricultural employers seem to believe that they have a special exemption from complying with the law.

- b. If we do not have interior enforcement won't all employers, including agricultural employers, be tempted to increase their profits by using illegal labor, which is always cheaper?

ANSWER: The temptation is there right now, and some employers who would prefer to follow the law are pushed to hire illegal workers. If there is little chance of facing punishment for breaking the law, it is a rational economic decision for an employer to hire illegal workers in order not to allow a competitor employing illegal workers from gaining an advantage. But some employers do not hire illegal workers because they understand the harm this does to the United States. Employers who do the right thing should not be put at a disadvantage. Those who follow the law should have confidence that the government which has put those laws in place will do its best to uphold them.

5. Do you agree that it is fairer and better public policy to pay a little extra for fruits and vegetables than to subsidize illegal immigration, where the profits are realized only by employers and the soaring costs of health care, education, and welfare are borne by the American taxpayers?

ANSWER: It is without a doubt better to pay a little more, and the emphasis here should be a "little more," for fruits and vegetables in order to ensure a legal workforce. More and more Americans are getting better informed about where the foods that they eat come from, but sometimes we pay more attention to how farm animals are treated than we do about how farm workers are treated. We have created a system where millions of Americans are out of work and farm work cannot provide them with a means to support a family because employers have made a business decision to drive down wages by employing and exploiting illegal workers. A system has been created where large commercial farms are enjoying huge profits while American taxpayers are left to pay the costs of illegal immigration.

There was testimony that unless the demands of the agriculture industry were met, food prices would rise precipitously or food production would be "off-shored." There is no evidence that supports this contention, and, as my research, and the work of Philip Martin, a professor of agricultural economics at UC-Davis, has demonstrated, higher wages paid to workers would have little impact on consumer food prices.

6. You testified that unemployment rates are higher than average for farm workers and that wages for farm workers are lower than average. Can you elaborate on this statement, and explain why this is?

ANSWER: The unemployment rate is higher than average for a number of reasons. There is a high turnover rate for farm workers due to the physical demands and the seasonal nature of the work, coupled with low pay. The use of illegal workers has had a profound effect on wages and on conditions for hired farm workers. Illegal immigration creates disincentives for legal workers to take these jobs, but also gives an incentive for employers to hire illegal workers, relegating legal workers to the unemployment roll. The Congressional Research Service found that even during the economic prosperity of the 1990s, the unemployment rate for farm workers consistently remained about twice the national average.

Such high unemployment rates indicate no existing labor shortage in the United States, apart from localized and temporary ones. Because of an oversupply of labor,

wages have been depressed, and because the highest concentration of illegal workers is in this sector, wages have been kept even lower than in other low-skill occupations. Between 1994 and 2008, the average wage for farm workers was half that of workers with comparable skill levels. The most obvious sign of an *oversupply* of labor is when unemployment rates remain relatively high and wages relatively low.