

TESTIMONY

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U.S. Senate Judiciary Committee

***Full Committee Hearing
From Farm to Table: Immigrant Workers Get the Job Done***

My name is Adam Lytch, and I'm the North Florida regional manager for L&M Farms in East Palatka, Florida. Our operations span several states, including Florida and Georgia, and we produce a variety of specialty crops, including potatoes, cabbage, broccoli, greens, onions, melons, tomatoes and more.

Like many farm kids, I grew up wanting to do the same thing my dad did. I grew up in the fields alongside him and other workers doing everything from chopping cotton to cropping sand lugs – it was all hard work. I remember over 30 years ago when it started to become harder for my family to find workers. Our existing workforce had begun to age out and others no longer pursued this type of work.

During this time a man from Mexico, Rubin, stopped by asking for a job. He shared with me the love he had for the place he called home and the importance of making sacrifices for your family. He simply wanted to work here in the U.S. so that his family in Mexico could have a better life. As the years went by, Rubin started to recruit more workers from Mexico. Our family operation had no other way to meet our seasonal work needs. That is how from an early age – I began to understand that American agriculture was dependent on immigrant workers to get the jobs done.

Fast forward over 30 years and not much has changed. There have been no fixes to the problem that I witnessed firsthand all those years ago and America's food system still requires seasonal workers.

As American farmers, we face a variety of challenges, most of these are things we cannot control like weather, market conditions, rapid inflation, and supply disruptions like we saw during the COVID-19 pandemic.

However, the single biggest issue we face is the unprecedented shortage of domestic labor and the restricted access to a guest workforce. The good news is this is something we can correct, but we must have the help of Congress.

Growers in the Southeast, particularly Florida and Georgia, have had to turn to the H-2A program in increasing numbers as a result of the domestic workforce crisis. Florida and Georgia are consistently two of the largest users of the H-2A program making up nearly one quarter of all positions annually. But the program is greatly flawed and made more challenging by the federal agency entrusted to administer it, with a volatile wage structure and program restrictions, such as seasonal need, which do not fit as well in this era of modern agriculture. Allow me to expand on these issue areas.

Volatile wage structure

Under the H-2A program, a self-inflating Adverse Effect Wage Rate (or AEWR) is set each year for workers, the methodology for which lacks visibility, accuracy, and stability for growers. It's important to note that the AEWR is a wage floor. Many of our H-2A workers are offered the ability to earn a higher wage, including piece rate pay.

The AEWR was originally created to protect American workers who performed the same duties as those working on H-2A contracts so they would not be adversely affected, but that is no longer the case since there are no American workers to fill our jobs. In fact, American families are the ones adversely affected, as agriculture's workforce crisis will drive food prices even higher. If nothing changes, there will most certainly be sharp decreases in production affecting not only farmers and farmworkers, but the rural communities in which we operate who depend on agriculture.

For 2023, the AEWR in Florida increased 15.5%, and we received notice of this increase just 38 days before it went into effect on January 1st. We had workers on the way from Mexico when we found out we had nearly a \$2 per hour increase coming.

At the same time, our crops were mostly all planted, giving us no time to react. When you include the costs of housing and transportation that H-2A employers are required to provide, this year's minimum wage could account to more than \$23 per hour per worker.

Our crops are grown for retail purposes, to be sold in the grocery store. Most are touched by human hands at every step of the production, harvest and packing process. Labor alone makes up between 40% and 50% of the total cost to grow and harvest many of our crops. As a result of the AEWR change for this year, my company will see a \$1.4 million dollar payroll expense increase over the prior year. Imagine trying to set a budget for your company with no certainty as to what wages might be from one year to the next.

This wage instability coupled with the low margin business of farming is simply not sustainable. In Georgia and Florida alone, the totals are staggering, with many of my fellow farmers reporting similar payroll expense increases ranging from half a million to millions of dollars.

Program restrictions

While my operation is lucky to have access to the H-2A program, there are many in the agriculture industry who do not. The program's use is limited to work performed that is "seasonal in nature." However, the Department of Labor routinely limits seasonal need to 10 months, despite their own definition of "less than one year." This subsequently eliminates the last two months, which are crucial to many Florida growers. Some of my fellow farmers are denied access to the program for a need of even 10 months and one week.

This is increasingly restrictive to Florida growers and others with longer seasons (greater than 10 months but not year-round). Additionally, the "seasonal in nature" language more broadly prohibits use of the program by year-round farmers, including several nursery and horticultural employers, dairy, and other agricultural employers.

Further, other agricultural employers, such as farm labor contractors and cooperatives, have limited use of the program due to the use of outdated statutory definitions. For example, a farm labor contractor cannot employ H-2A workers to haul produce off the farm to the packing house down the road or pack produce at a packing house in town, though I could as the farmer. Farm labor contractors serve an integral role in agricultural production and harvesting, and frequently are the service that allows smaller farms to use the H-2A program and remain in business.

Department of Labor abuses in rulemaking and bias

In late March, the Department of Labor (DOL) made effective the final rule regarding the methodology used to determine the hourly AEWRs for the H-2A program. Under this new rule, my operations and other growers will now see different wage rates for different jobs on the farm rather than the singular AEWR that we are accustomed to in the industry.

The new AEWR methodology is based on Occupational Employment and Wage Statistics (OEWS) survey data, and I understand that farmers and ranchers are not even surveyed for this data. It's unclear how this then can even be applied to farm jobs when non-farm jobs are surveyed. The labor department summarily rejected several practical suggestions that would have made the rule more workable by the industry. Their hardlined approach means more H-2A applications and increased administrative costs for growers like me, just to hire for the same jobs we've always offered.

This and other recent actions by the Department of Labor are concerning. For instance, in April, a senior DOL official made public comments deriding the H-2A visa program and growers use of it. The claims were not based in fact, and it was concerning as a grower to hear such bias on record by a DOL official. What's worse, these comments and the bias behind them seem to be commonplace in the agency, rather than just a one-off opinion.

Farmers want to work as partners to a federal agency like the USDA, who sees farmers as key stakeholders, as opposed to being viewed as abusers of the system by the Department of Labor.

Impossible to compete with imports

Additionally, these rising labor costs tied to the H-2A program, exacerbated by the new labor department wage rule mentioned above, make it nearly impossible to compete with imports produced in countries that pay a fraction of what we do for their workforce. For example, H-2A workers in Florida make more in an hour than they would in an entire day in Mexico.

You have no doubt read of the extraordinary challenges that domestic growers are experiencing amidst surging imports from Mexico, and labor costs are a contributing factor to the declining competitiveness of the U.S. seasonal produce industry.

Potential solutions to agriculture's workforce crisis

I would urge Congress and this Committee to be supportive of a bill that makes meaningful improvements to the H-2A program and affords increased access and wage stability for farmers, and provides legal status to the hundreds of thousands of skilled farmworkers who are working without authorization. Recent attempts like the Farm Workforce Modernization Act were helpful bipartisan efforts to achieve these goals, but more could have been done to ensure a stable workforce that farmers like me need.

The agricultural workforce provisions included in the bipartisan Dignity Act, which was recently re-introduced in the House of Representatives, come much closer to providing a complete solution.

The passage of a Congressional Review Act (CRA) resolution to nullify the DOL's new AEWR methodology rule would be a short-term solution. Passage of the Farm Operations Support Act, commendably introduced by Senators Jon Ossoff and Thom Tillis, is also a potential solution. However, it would only maintain the status quo and protect farmers from a 90% wage increase in some instances, and time is running out for the intended effects of these bills to be helpful.

In addition to tackling H-2A visa program challenge head on, Congress should also invest in automation and mechanization for specialty crops via the 2023 Farm Bill. Given the research and capital investment required for farmers to implement more automation, this is one of the long-term solutions that my company is already seeking to do.

Food security is National Security

It is often said that food security is national security. That could not have been clearer than during the recent COVID-19 pandemic. While millions of Americans worked from home, our farmers and farmworkers pressed on to meet the fresh produce needs of consumers. During those turbulent times, we at L&M were proud to be able to supply millions of pounds of safe, wholesome and healthy fruits and vegetables to America's food bank networks.

And so, I will close with a question for you all to consider: If we do not further support our American food system, will our foreign competitors step up and meet our food and nutrition needs the next time our supply chain is so greatly disrupted?

We need support from Congress to seed real change on this issue before it is too late. The future of American agriculture, especially the fresh fruit and vegetable industry, depends on it.

Thank you.