Statement of Dr. James S. Holt
Before the
Committee on Education and Labor

Hearing on

Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor

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Mr. Chairman, thank you for the opportunity to participate in this hearing. I am an agricultural labor economist, and have spent more than 30 years in research and consulting on agricultural labor and employment issues and the H-2A temporary agricultural worker program with government agencies, universities and private organizations. I have been a consultant to many of the grower associations who use the H-2A program as well as to national agricultural employer organizations who have an interest in immigration legislation. However, I am not representing any specific organization here today. I have also had the privilege of serving on two Dunlop Commissions, named for the late former Labor Secretary John Dunlop, overseeing and mediating a collective bargaining agreement between the Farm Labor Organizing Committee, under the leadership of my colleague on this panel, Baldemar Valazquez, including an agreement between FLOC and the H-2A growers in North Carolina. I have also had experience with the H-2B non-agricultural temporary worker program and the H-1B high tech worker program, but I want to focus primarily on lessons learned from the H-2A program this morning.

The H-2 temporary worker programs were enacted 55 years ago as a part of the Immigration and Nationality Act of 1952. From 1970 through the late 1990's the number of H-2A certified agricultural job opportunities fluctuated from about 15,000 to 25,000 annually. In the past decade usage has increased, with 59,112 seasonal agricultural job opportunities certified in FY 2006. Many H-2A workers fill two or more certified job opportunities within the same season, so only about half as many H-2A aliens are actually admitted each year as the number of job opportunities certified.

Use of the H-2A program is miniscule in comparison with U.S. agricultural employment. There are about 3 million agricultural job opportunities in U.S. agriculture annually, and an estimated 2.5 million persons in the U.S. hired farm work force who fill one or more of these job opportunities. H-2A workers constitute only about 1 percent of the U.S. agricultural work force.

The most recent U.S. Department of Labor's National Agricultural Worker Survey (NAWS) illustrate the heavy dependence of U.S. agriculture on alien labor. Seventy-eight percent of hired crop workers in the U.S. are foreign born, and 75% were born in Mexico. One of every six was a foreign born newcomers working their first

season in the U.S. Fifty-three percent of all hired crop workers, and 99 percent of newcomers reported that they were not authorized to work in the U.S. Experience on the ground suggests that closer to 75 percent of U.S. farm workers are not legally entitled to work in the U.S.

We currently have two agricultural guest worker programs operating in the U.S. The legal guest worker program fills a miniscule 1 percent of the jobs. The illegal guest worker program fills at least half, and likely more than three quarters of U.S. agricultural jobs. This situation exists as a result of a cascade of failures – failure of our border control system, failure of our system for interior enforcement, failure of the work authorization documentation procedures, failure of our immigration laws to address realistic labor force needs, and the Labor Department's antagonistic administration of the H-2A program.

A legal, workable agricultural guest worker program benefits farmers, alien farm workers, domestic farm workers, and the nation.

It benefits farmers by providing assurance of an adequate supply of seasonal workers at known terms and conditions of employment. In an industry where more than 80 percent of jobs are seasonal, and a work force must be reassembled every year, it provides assurance that when farmers and their families invest millions in farm production assets, there will be a labor force to perform the work. It also promotes continuity, stability and productivity in agriculture. While there are no official statistics, anecdotal evidence is that three-quarters or more of the H-2A work force are returning workers, and H-2A employers almost universally find that this stable, experienced work force is more productive, and can get by with fewer workers, than where they are recruiting a new, inexperienced work force every year.

A workable guest worker program benefits alien workers by providing a legal, regulated way for aliens to work in the United States in jobs where their services are needed. It may surprise members of the Committee to learn that the pressure on employers to participate in the H-2A program often comes from their illegal workers, who pay exorbitant costs to be smuggled into the U.S., often under life threatening conditions, and face fear and abuse while they are here. As H-2A guest workers they enter legally and work with rights and guarantees. Not withstanding the allegations of opponents of the program, H-2A aliens value their jobs, are careful to comply with program requirements, and return as legal workers year after year. In the words of one former illegal alien whose employer got into the H-2A program, "I thank God every day for the H-2A program".

The program also benefits domestic farm workers. It assures open recruitment for and access to H-2A certified job opportunities for local and non-local domestic workers who want such work. It provides labor standards and employment guarantees that are above the norms for most agricultural jobs. Equally importantly, the H-2A program assures the viability of the jobs of U.S. workers in the upstream and downstream jobs that are dependent on agricultural production in the U.S. Every on-farm production job in the

U.S. supports approximately 3.5 additional off-farm jobs that are dependent on U.S. agricultural production, *which would not exist if our agricultural products were imported*. These are long term seasonal and year round jobs at good wages and benefits which U.S. workers want.

An adequate supply of legal labor also benefits the nation. Food and fiber are basic commodities. It is not in our national interest to be significantly dependent on foreign sources for such commodities. However, it is also clearly not in our national interest to have such a basic industry as food and fiber production almost entirely dependent on a work force which has entered the U.S. and is living and working here illegally and without control. In a mature economy like that of the U.S., where the native born work force is growing at a substantially lower rate than job growth, our *only* policy options are a workable agricultural guest worker program or dependence on foreign producers for our food and fiber.

That is what works about guest worker programs. What often doesn't work are the cumbersome, bureaucratic procedures of the program. Not withstanding statutory performance deadlines, certifications are often issued late. The problem is compounded by processing delays in approving petitions at the Department of Homeland Security and issuance of visas at the U.S. consulates. In the 2007 season, the arrival of many H-2A workers has been seriously delayed, imposing substantial costs on employers. This has been disastrous to producers of perishable agricultural commodities.

The H-2A certification process is also unnecessarily complicated. Even though 97.5 percent of H-2A labor certification applications, and 92 percent of the job opportunities on those applications, were certified in FY 2006, it nevertheless required an extremely labor intensive, paper intensive process for individually processing, recruiting on and adjudicating every single one of the 6,717 H-2A applications. This process is repeated annually, not withstanding the fact that approval rates have not changed significantly in decades, and the availability of legal U.S. workers as a percentage of the need has been in single digits.

In 2001 agricultural employers and farm worker advocates and unions achieved an historic milestone in negotiating an H-2A reform legislation package known as the Agricultural Job Opportunities and Benefits Act, or AgJOBS. AgJOBS has broad bipartisan support in Congress as well as among ethnic groups, religious groups, and farm worker and agricultural organizations that have historically battled over agricultural guest worker policy and procedures. It is intended to address many of the economic, justice and administrative problems with the current H-2A program. It is impossible to overstate the significance of the broad support AgJOBS has among historic adversaries.

Critics of guest worker programs have characterized these programs as "involuntary servitude" because workers are admitted to work in a specific job opportunity, and can not change jobs without authorization. "Involuntary servitude" is a bumper sticker slogan, and is inaccurate.

All guest worker programs admit workers for specific job opportunities. None allow workers to enter the U.S. and simply roam around taking jobs at will. Control of the employment of guest workers, and assurance that they will work in the jobs for which they are needed and not compete with U.S. workers in other jobs, is a fundamental principle of guest worker programs. This does not mean that the foreign workers are enslaved. Workers are free to choose to take available guest worker jobs or not to do so. There is no legal impediment to their leaving a job, with or without the employer's permission, provided they legally transfer to another guest worker job or depart the U.S. The fact that season-on-season return rates of H-2A workers is extremely high, and that illegal workers seek the protection of the program, belies the "slavery" charge.

Ironically, the same employer's who are accused of "enslaving" their workers are often accused of exploiting the desire of alien workers for these jobs. With respect both to enslavement charges and recruiting abuses, it is useful to bear in mind that only a tiny fraction of alien farm workers come into the U.S. through legal programs. The overwhelming majority immigrate illegally. It is not necessary for an alien to subject himself to enslavement or extortive recruitment to secure an agricultural job in the U.S. If such practices occurred with any degree of frequency, they would be self defeating.

Proposals to impose strict liability on U.S. farmers for alleged violations of recruitment practices of alien workers in foreign countries are unreasonable and unworkable. It is a violation of Mexican law, for example, for a foreign employer to recruit workers for employment outside the country. Such recruitment can only be done by Mexican nationals credentialed by the Mexican government. Neither U.S. employers nor U.S. labor unions nor any other U.S. entity, no matter how well intended, has the ability to control the actions of foreign recruiters in a foreign country. This must be done by the foreign governments. Making U.S. employers of foreign guest workers strictly liable for the actions of foreign recruiters in foreign countries can only have the effect of making the liability incurred in employing guest workers so high that employers will be afraid to do so.

In conclusion, it is clear that the status quo – a U.S. agricultural industry almost completely dependent on unauthorized workers who have entered the U.S. illegally, is untenable. It is equally clear that ceding U.S. production of food and fiber to foreign producers is untenable. The bipartisan AgJOBS legislation is the appropriate way to protect U.S. agriculture, U.S. and alien farm workers, and U.S. security.