

Judiciary Committee  
Subcommittee on Immigration Policy and Enforcement  
United States House of Representatives  
Hearing on  
“Regional Perspectives on Agriculture Guestworker Programs”  
Testimony of  
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Mr. Chairman and Ranking Member Lofgren, Members of the Subcommittee, thank you for the opportunity to appear before you today to talk about the agriculture industry’s need for a viable guestworker program.

With over a \$68 billion impact, agriculture is the leading industry in Georgia, employing one in seven Georgians. We lead the country in production of poultry, pecans, and peanuts. Cotton, peaches, fresh market vegetables, blueberries, and ornamentals are also prominent in our agricultural portfolio. Also, it is important to note that the famous Vidalia onions, a labor intensive vegetable, can only be found in our state. Needless to say, Georgia has a vested interest in making sure our agricultural employers have the manpower necessary to effectively run their operations.

During the legislative session of 2011, the Georgia General Assembly passed into law House Bill 87, the “Illegal Immigration Reform and Enforcement Act of 2011.” This legislation directed the Georgia Department of Agriculture (Department) to conduct a study of the labor needs of Georgia agriculture. The Department fulfilled this statutory requirement by facilitating town hall meetings, farm tours, and a scientific survey. Although the provided timeframe allowed for eight months of study, the results supported the need for federal reform.

The survey revealed statistics specifically addressing the need for agricultural guestworker reform. Twenty-six percent of survey respondents reported a loss of income due to the lack of available workers. Although only 26 percent reported losses, these losses estimated in the excess of \$10 million. Further analysis of this statistic suggests those in the fruit and vegetable industry experienced the greatest losses. Over fifty percent of respondents who produce blueberries, cabbage, cantaloupe, cucumbers, eggplant, peppers, squash, tobacco, and watermelon reported income losses in 2011 due to lack of workers. The survey also found that while 52 percent of the respondents did not have issues finding fulltime labor, 21percent did. Poor economy, loss of revenue, poor worker retention, and lack of workers were listed as major reasons for hiring fewer workers in 2011. Similarly, 48 percent of respondents found their part-time workforce to be about the same over the last five years while 20 percent reported their workforce was smaller.

Through qualitative and quantitative research, producers expressed both concern and frustration with the eligibility requirements of H-2A. In response to why producers do not use the H-2A program, 40.1 percent said the question was not applicable to their operation. Many respondents felt that H-2A was too expensive and too complicated. Over twenty six respondents were not familiar with the program, and almost 17 percent said they had heard negative things about the H-2A program. Survey respondents indicated that it was not difficult to retain experienced workers once hired, but it was somewhat difficult

to find experienced workers to hire. In regards to wages, all of the respondents reported paying their fulltime and part-time workers at or above the federal minimum wage. Several paid as high as \$15.00 an hour, well above minimum wage.

Shortly after the legislation was signed into law, producers began reporting labor shortages. During the month of June, the Georgia Labor Commissioner, Mark Butler, worked with various agricultural associations to place unemployed Georgians in these positions. Even with unemployment rates hovering around ten percent, this task was not as easy as it would seem. For example, one Georgia producer shared he had one employee that worked half a day one week and two half days the next week. This employee earned a total of \$119. The employee walked off the job and did not return though plenty of work was available. In addition, the employee filed an unemployment claim, and the producer received notification that the employee was eligible for \$235 weekly benefits for seventeen weeks. The producer filed a timely appeal, and it was finally determined that he was not responsible. In addition to harvesting his crops to earn a living, the producer had to take time to ensure he was not held financially responsible for the employee's irresponsibility. We have heard similar complaints from producers regarding the fifty percent rule of H-2A. I do not believe employers should bear this unnecessary burden as they try to create jobs and stimulate our economy. Producers would rather employ Americans, and this aspiration should not be overlooked. Unfortunately, the immediate reality trumps those aspirations.

Simultaneously, the Department worked with Governor Deal and the Georgia Department of Corrections (Corrections) to develop a pilot program utilizing probationers to fill Georgia's agricultural labor needs. Two producers participated in this program - one with a large farm and one with a small farm. The larger farmer was originally sent 58 probationers to help with his harvest. By combining the probationers with his existing workers, he could accurately compare their productivity. He found the probationers to be half as productive as his other workers, and he even switched to two shifts in hopes of preserving energy. The smaller farmer needed 10-20 workers a day to pick squash and cucumbers. Out of 104 probation workers, this farmer eventually found 15-20 reliable workers. There were some obvious challenges with using probation labor, and the two producers found that the probationers were unable to harvest at the same rate as the other workers. At the end of the day, both producers agreed that the program had potential to meet the niche needs for farmers desperate for workers.

Additionally, Corrections is working to establish a transitional inmate workforce program for agriculture – a program that has worked well for other industries in the past. Corrections officials believe they can offer opportunities for nonviolent offenders with skills developed by working in the prison farm system. Agricultural producers would qualify for the Work Opportunity Tax Credit (WOTC) which can be as much as \$2,400. The WOTC is 25 percent of qualified first-year wages for those employed at least 120 hours and 40 percent for those employed 400 hours or more. This program is strictly voluntary, and no one is required to participate.

The final report provided three major recommendations to Georgia's Governor, Lieutenant Governor, and Speaker of the House. First, and foremost, agricultural guestworker reform must start with the federal government. From expanding eligibility to exercising common sense in writing rules for the antiquated program, only the federal government can make this program useful for farmers. It is yet to be seen if H-

2A can be rebranded to fulfill the needs of 21<sup>st</sup> century agriculture, but reforming the archaic program must be a near term priority.

Secondly, the study indicated a need for improved and expanded education and outreach to the agricultural industry about state and federal labor recruitment programs. Over 20 percent of survey respondents were unfamiliar with this option for hiring workers. Additionally, another 16 percent had heard negative things about this program, suggesting that the program is not popular. Other comments suggested that the program is too expensive and too difficult to enter into, which could also be addressed to some extent with education and outreach efforts. This study indicates opportunities for improving relationships between the agriculture community and Georgia Department of Labor for worker recruitment issues. Again, education and outreach to this group could have a positive impact and help provide a better resource for growers.

The third and final recommendation highlighted the need for more research to thoroughly comprehend Georgia's agriculture labor needs in relation to HB87. Research should include but not be limited to tracking employment patterns, crop production cycles, labor needs by commodity and worker concerns. The benefits of additional research will provide the state with a central repository of unbiased agriculture labor data, the capability to measure impacts of labor programs, and the ability to respond to future policy needs of the state.

We commend Chairman Smith, Congressman Kingston, and other Members demonstrating courage by proposing solutions to the maligned H-2A program. Legal service reform, housing vouchers, expanded eligibility, and transferring authority to USDA are ideas that warrant immediate consideration. These proposals and others must not compete with, but should be complimented by mandatory e-verify, in my view.

Regretfully, a large number of illegal immigrants are working in agriculture today. In testimony before a Senate subcommittee last fall, I introduced a suggestion for a penalty-based work authorization permit. Following a limited sign-up period, those workers who come forward would be subjected to several stiff penalties: a \$10,000 fine payable over five years and a mandatory purchase of a biometrically secure, "agriculture only" work permit at a cost of \$500 annually. In addition, he or she would face immediate deportation for violating the requirements of the permit. Permit holders should be required to forfeit prior social security withholdings. Future social security withholdings, both employer and employee contributions, should be dedicated to a required market-based health insurance product. A program of this nature should require fierce employer sanctions immediately following the end of the sign-up period. Our country needs a legally documented workforce and a reliable management system to ensure integrity.

Finally, Departments of Agriculture at the state level maintain operational memorandums of understanding with a host of federal agencies. Under these agreements, state specialists conduct inspections for food safety, environmental protection, and other regulatory services required under federal law. Having the regulatory responsibility closer to the citizenry is more efficient and provides greater accountability. Several H-2A reform proposals currently before the Congress call for moving the H-2A program from the USDOL to the USDA. Building on successes of existing state and federal partnerships, State Departments of Agriculture should be considered as cooperating partners in the administration of a federal guest worker program.

It cannot be contested; the success of Georgia's agricultural industry rests on a legal workforce upon which producers may rely. In my view, it is not just a labor issue but also a food safety issue. We need to make sure we know who is on our nation's farms, and we need to make sure that America does not become reliant on third world countries to put food on the family tables across this country.