

Written Statement of John Young
Before the
House Education and Labor Committee
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Chairman Miller, Ranking Member McKeon, Distinguished Members of the Committee:

I appreciate the opportunity to testify today. I am a fourth generation apple farmer and have farmed in NH for the last 46 years. I am testifying today on behalf of the New England Apple Council, for which I have been Treasurer and Executive Director. I have used H2 or H2A labor for all of the 46 years that I have been in business. In fact there have been H2 or H2A workers employed by Apple Council members every year since 1943. As Executive Director of the Apple Council I have been responsible for filing the paper work at USDOL and USCIS, and the recruiting, and hiring more than 2000 workers annually in both H2A and H2B jobs, for the Apple Council's 200 members. My son and I also have a consulting business, HELP, and we consult for both H2A and H2B employers in areas outside of New England -- VA, NY, MO, MI, OK, to name a few.

I am a past president of the National Council of Agricultural Employers and serve as co-chair of the Agriculture Coalition for Immigration Reform. I was chairman of NCAE H2A and Immigration committee whose members include the largest associations and employers using H2A workers. In that respect, I have for years interacted with H-2A users across the country. The New England experiences I will describe in detail are similar to the experiences others share.

I also was involved from the beginning in the negotiations with the farm worker advocates which resulted in the AgJOBS legislation. It is a pleasure to be working together with Congressman Berman, and Mr. Goldstein and farmworker advocates to pass AgJOBS. A comprehensive approach to immigration reform is necessary to achieve a program that works for all of us, employers and workers. It was only after careful examination of the current H2A program that the AgJOBS legislation was drafted. AgJOBS would improve the existing H2A program, allow an orderly transition of the present workforce into legal status, and enable greater long-term reliance on H2A. Enforcement alone, without reliable guest worker programs won't work. The reason the 1986 immigration reform failed was the lack of reliable legal channels, including guest worker programs. Without passage of immigration reform legislation in the near future the safety, quantity, and quality of domestically produced food will be at risk.

Current Domestic Worker Recruitment Efforts Are Substantial

My experience in New England and other areas of the country demonstrates that there are very few unemployed who will accept agricultural work or seasonal H2B work. Despite advertising, contacts with any former employees, placing a job offer in local as well as interstate recruitment and now also electronic placement, few and usually no workers are interested in employment. Our job offers are cleared to Puerto Rico and even from there, a traditional "supply state" for agricultural labor, few people are interested. Those who are interested often do not show and many leave before the end of the season.

New England Apple Council members try their very best to recruit US workers. The first reason is to meet their obligations under the H2A regulations, but also because U.S. workers are less costly than foreign workers. The costs of transportation and housing add at least \$2.00 per hour to the employer's costs, and for short term jobs the number can be in the neighborhood of \$4.00 per hour. In an industry with very close profit margins employers do not bring in foreign workers unless they absolutely need to.

Some examples of experiences encountered in recruitment areas follows. Over the last three years NEAC has averaged 233 H2A referrals from Puerto Rico, through the interstate recruitment service, about half of them are not really interested in the work but have been encouraged by the employment service to apply. Less than 25% of the referrals start work, and of those who do start less than (12.5%) complete the season. One of our larger Connecticut growers has over the last four years had 103 referrals from Puerto Rico; 16 (16%) started work and 11 (11%) finished the season. More than 60% of this employer's seasonal workforce is made up of local workers. Nationally it must be noted that less than 2% of the agricultural workforce are H2A workers, the overwhelming proportion, 98% are domestic workers (whether legally authorized to work or in reality falsely documented).

A recent personal example of local recruitment: last year a young fellow from Manchester NH applied for work at my farm, at the beginning of the season. He was a newly arrived immigrant who had some farm experience in his home country. He was hired, he came daily as agreed, and was a good worker, but after two weeks, on Friday, stated that the work was too hard and he wouldn't be back on Monday. I had put an H2A worker on hold and was short handed for the week it took for him to arrive.

In both of the above cases the employers are trying to meet their obligations under the law but also to save money. In these examples, employers can save more than \$1500 per worker when using local US workers. Some of the recruitment efforts beyond those required by law taken by our members over the years have included:

- actually going to Florida and visiting local employment services offices;
- doing a pilot program with youth from inner cities;
- employing prison inmates;
- recruiting SAW workers (who legalized under IRCA) from Texas;
- employing foreign J visa workers.

None of these recruitment efforts turned out to be successful or sustainable.

We currently contact all former workers, file job orders and cooperate with the employment service in local and interstate recruitment, place local advertising, and many employers place posters in their retail operations and other local locations.

Two recent examples of exceptional recruitment efforts in both California and Washington State produced results similar to those that we have had in the northeast. One was undertaken in 1998 in California's Central Valley at the urging of Senator Dianne Feinstein, after Congressional passage of landmark welfare reform legislation. Sen. Feinstein was concerned about high

unemployment in the region. Growers and grower associations cooperated with county welfare and employment agencies to identify employment needs and to plan training and outreach efforts. Of roughly 140,000 individuals identified and targeted for placement in the workforce, only 503 applied for available positions, and only three were successfully placed. The study showed that welfare agencies were training the unemployed for year-round jobs, not seasonal jobs in agriculture and many of the unemployed were single women with children, for whom child care was a problem. A number were physically unable to perform farm jobs.

In 2006, Washington State apple growers and their associations partnered with the administration of Gov. Christine Gregoire and county agencies to conduct an intense advertising and training program that sought to attract domestic workers for the apple harvest. Roughly 1700 positions needed to be filled. About 40 workers were successfully recruited. Washington State agriculture director Valoria Loveland documented the effort in a letter last year sent to the Senate Judiciary Committee.

Are Changes to the Recruitment Process Needed and Justified?

In order to meaningfully answer this question, one must consider the demographics and employment dynamics in agricultural and seasonal employment. The data are richest in agriculture, due to the initiation of the National Agricultural Worker Survey, or NAWS, shortly after the passage of the Immigration Reform and Control Act in the fall of 1986.

The first NAWS asked seasonal agricultural workers whether they were authorized to work in the United States. In the FY 1989 survey 7% of U.S. seasonal agricultural workers said they were unauthorized. By the FY 1990-91 survey the figure was 16%. By FY 1992-93 it was 28%. By FY 1994-95 it was 37%. By the FY 1997-98 survey it was 52%. A straight line extrapolation to 2005 of the statistics from 1989 through 1998 suggests the percentage of U.S. farm workers who are unauthorized to work in 2005 was 76%. Most observers believe that percentage is about right.

More astonishing still is the legal status of new agricultural labor force entrants -- seasonal agricultural workers who had newly entered U.S. agriculture in the year of the survey. By the FY 1994-95 survey, 70 % of new entrants into the U.S. agricultural work force were unauthorized to work. The USDOL did not publish these figures for the 1997-98 survey, but a special tabulation for the eastern half of the U.S. by Dr. Dan Carroll of the USDOL, who then directed the survey, revealed that an astounding 99% of new labor force entrants into the agricultural work force in the eastern states were unauthorized to work in the United States.

The late Dr. James Holt, a former professor of agricultural economics at Penn State University and later an agricultural labor and H-2 program expert for the balance of his career, said the following in a 2005 speech to the California Board of Food and Agriculture:

“Some commentators suggest that U.S. agriculture is at “fault” for not retaining its U.S. work force. I believe that is misplaced blame. The decade of the 1990’s was a period of unprecedented economic growth and job creation in the U.S. But it was also a decade when the rate of growth in the native-born U.S. work force

continued to slow, and the number of legally admitted foreign workers was far below the rate of new job creation. At the beginning of the decade of the 1990's 31 % of the U.S. seasonal agricultural work force was still U.S. born. By the end of the decade, only 19 % was U.S. born. During the decade of the 1990's the real hourly wage rate in agriculture increased at a more rapid rate than for the non-agricultural work force. But the lure of year round work, easier jobs and more pleasant working conditions in most non-agricultural employment was obviously enough to attract many U.S. workers out of agriculture even into jobs in which the nominal hourly wage was lower than in agriculture.”

By the FY1997-98 NAWS survey, 81% of U.S. seasonal agricultural workers were foreign born and 77% were born in Mexico. More than one-third were under the age of 25, and two-thirds were under the age of 35, reflecting the fact that many agricultural jobs are relatively entry level, and arduous. Meanwhile, *USA Today* just published a report based on U.S. Census data showing that the number of Americans aged 25 to 44 has dropped 1.5% since 2000, thus shrinking the pool of young workers. The starkest decline in young workers occurred in the Northeast and New England, frankly in the same states in which we operate: Vermont saw a 10.4% decline in younger workers. Connecticut saw a 9.9% decline; Massachusetts, a 9.6% decline; Rhode Island, an 8.8% decline; Maine, an 8.7% decline, New Hampshire, a 7.5% decline.

As I discuss, the existing H-2 programs hold users accountable to positive actions to recruit any and all available and interested domestic workers. And, as it stands, these programs fill a tiny fraction of jobs in the affected industries. In the case of H-2A, DOL certified about 60,000 job opportunities in 2006. That represents literally 1.9% of the roughly 3 million job opportunities available annually in American agriculture. I can attest, as an H-2A user myself and through my work with the New England Apple Council, that the program's bureaucracy, unresponsiveness, and cost are major deterrents to wider usage.

In the case of H-2B, DOL certified almost 255,000 job opportunities in 2007. Employers had requested over 360,000 workers, so DOL certified the positions for only slightly over two-thirds of seasonal workers requested. Certainly the DOL, in overseeing the labor certification process and in rejecting a third of applications, is not rubber-stamping employers' requests. Further the time and costs associated with applying for H-2B workers and the uncertainty associated with whether or not the employer will actually be able to receive workers before the arbitrarily low cap of 33,000 for each half of the fiscal year is reached, makes the program truly an option of last resort when no American workers can be found. If American workers could be found, employers would gladly hire them.

The realities I just described, especially the shrinking younger workforce which would be the same workforce most likely to seek agricultural and seasonal jobs, beg the question: ***just who would we be protecting if new recruitment burdens were layered on top of existing H-2 program requirements, when faced with a dwindling pool of American workers, for whom agricultural jobs and seasonal jobs are generally going to be the least attractive, the jobs of last resort?***

While in our experience recruitment by state workforce agencies has not resulted in many referrals, those who are referred are, in a number of instances, unauthorized to work in the U.S. At a time when the Department of Homeland Security's Immigration and Customs Enforcement bureau is increasing worksite enforcement, it is concerning that we could lose our workforce after an audit. This could be very disruptive of a workforce through loss of workers during key harvest times. We commend the Department of Labor for its recently issued Training and Employment Guidance Letter (TEGL) that strongly encourages state workforce agencies to verify the work authorization of workers they refer.

It has been suggested that a longer recruitment period would produce more workers. It is my experience that in both H2A and H2B jobs the closer to the date of need that you recruit, the more applicants the recruitment produces. Most people who fill these jobs do not look for work 120 or even 45 days in advance. They look when their current employment ends, and they won't sit and wait for a job to start 45-120 days in the future.

Additional advertising would not produce more workers. The effectiveness of advertising has proven to be very unproductive. Ads seldom produce any applicants, and the use of expensive-to-purchase papers, such as Sunday major dailies, is simply an additional price employers pay which produces no results. The most productive tool for recruiting workers is contacting former employees. Even if they are not available the word gets out through the underground. The National Agricultural Worker Survey has confirmed this.

It is no secret that the H-2A program has significantly greater recruitment and other program obligations. At a recent hearing held by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, at least one Member suggested that perhaps some of the additional requirements associated with H-2A should be considered for the H-2B program. Practically speaking, H-2A supplies only 1.9% of the workforce precisely because the program is so burdensome and unresponsive. H-2A needs major reform, and should not be looked to as a model.

Changing Workforce Underscores Need for H2A, H2B

As stated earlier, the population of 25-44 year old males in the New England states has declined by anywhere from 7.5 to 10.5% since 2000. According to the USDA research report Demographic and Employment Profile of US Farm Workers this is the age bracket that most agricultural workers come from. The decline in younger workers despite an increase in the country's overall population leaves a smaller and smaller pool of workers to draw from. Of course seasonal and agricultural jobs are the first to go unfilled.

Why does the effort to recruit end up finding so few workers? I believe most who want farm work go back to the same employer year after year. As stated above the pool of workers available is aging and the quality committed farm workers have employment, leaving a very small pool to draw from. While some people would say anyone can do farm work, in reality the work is strenuous, the weather is often uncomfortable and at peak times of the year the hours long.

In my experience with the use of H2B workers, the same reasons that sufficient workers can not be recruited to fill needs apply. A shrinking younger workforce leaves a smaller pool to draw from. In the Northeast any job that is not year-round is very difficult to fill. The shortage in visas for H2B workers combined with enhanced immigration enforcement will cause severe economic damage to many Northeast industries. Recreation, hotels, restaurants, landscapers, and processors, to name a few will be forced to severely cut back. Some will go out of business. This will have a serious effect on the economy and the future in the affected States.

Similar to agriculture, seasonal industries like tourism are already at a significant risk of seeing domestic and international visitors avoid traveling to or vacationing within the United States, effectively diminishing our national tourism industry. An example of why it is difficult to find sufficient local workers can be found in Branson, MO. A town with a population of 6,000, they expect to see 7,000,000 tourists this year in the 10 month tourist season. There are 23,000 motel rooms in Branson that need cleaning daily at peak times, there just are not enough people residing in the Branson area to fill the employers' needs.

Without the nearly 500 certified H-2B job opportunities in the Branson, MO area during the FY2007 fiscal year, there is little chance that the expected 7 million visitors to Branson would be eager to return given either a diminished level of service, or inflated costs resulting from desperate employers bidding up wages in a zero-sum effort to steal employees from others. The Missouri Division of Tourism reported that in FY2007, Taney County, in which Branson is located, generated nearly \$500 million in tourism-related revenue, producing \$9.4 million in local tax revenue, while supporting over 10,000 tourism-related jobs in the county. The failure to extend the H-2B returning guest worker exemption, or the detrimental effects of applying ill-conceived recruitment policies to the program, would have a significant negative impact on Branson and Taney County, as it would in tourist destinations across the country.

Jobs and Economy at Risk without Stable, Legal Agricultural and Seasonal Workforce

As one considers the impact of these programs, one must consider the economic sectors at risk, the positive ripple effects of the agricultural and seasonal workforce, and the role of the H-2A and H-2B programs now and into the future. I have attached to my testimony three studies done by First Pioneer Farm Credit in NY, NJ, and NH. The three studies show what the economic impact will be of a farm labor shortage resulting from significantly enhanced immigration enforcement actions without new guest worker provisions. In NH as much as 40% of the agricultural production worth \$58 million annually will be lost and 22,000 acres of land will likely leave agricultural production. In NJ at risk is annual agricultural production worth \$475 million and NY could lose production valued at \$700 million annually. In total the loss in agricultural production in only these three northeast States could reach \$1,233,000,000.

In agriculture, economists who have studied the relationship between production and jobs in the surrounding economy conclude that at least three jobs in the general economy exist for each farmworker job. These upstream and downstream jobs in packing, processing, equipment, supplies and inputs, and so forth are vulnerable to moving to wherever the production takes place. So if through an enforcement-only approach to immigration enforcement our government hastens the off-shoring of labor-intensive agricultural sectors, literally hundreds of thousands or

even millions of American jobs will move too. Here is the projected job loss in terms of on-farm jobs, and off-farm jobs supported because the production is here, that would result from an enforcement-only approach including a failure to improve the existing but meager legal channels for seasonal workers:

NEW YORK

On-farm jobs at risk: 6984

Off-farm jobs at risk: 15,833

NEW JERSEY

On-farm jobs at risk: 6198

Off-farm jobs at risk: 19,438

NEW HAMPSHIRE

On-farm jobs at risk: 632

Off-farm jobs at risk: 4385

Again, in order to fully frame the choices before us relating to agricultural labor, I quote from labor expert Dr. Holt's earlier-referenced speech:

“Some suggest that agricultural employers should be *left to complete in the labor market just like other employers have to do*. Under this scenario, there would be strict workplace enforcement and no guest workers. To secure legal workers and remain in business, agricultural employers would have to attract sufficient workers away from competing non-agricultural employers by raising wages and benefits. Those who were unwilling or unable to do so would have to go out of business or move their production outside the United States. Meanwhile, according to this scenario, the domestic workers remaining in farm work would enjoy higher wages and improved working conditions.”

Holt continued:

“No informed person seriously contends that wages, benefits and working conditions in seasonal agricultural jobs can be raised sufficiently to attract workers away from their permanent nonagricultural jobs in the numbers needed to replace the illegal alien agricultural work force and maintain the economic competitiveness of U.S. producers. U.S. growers are in competition with actual and potential growers around the globe. Hired labor constitutes approximately 35 percent of total production costs of labor intensive agricultural commodities, and 1 in 8 dollars of production costs for agricultural commodities generally.

Substantial increases in wage and/or benefit costs will have a substantial impact on growers' over-all production costs. U.S. growers are economically competitive with foreign producers at approximately current production costs. If U.S. producers' production costs are forced up by, for example, restricting the supply of labor, U.S. production will become uncompetitive in foreign and domestic markets in which foreign producers compete. U.S. producers will be forced out of business until the competition for domestic farm workers has

diminished to the point where the remaining U.S. producers' production costs are approximately at current global equilibrium levels.

The end result of this process will be that domestic farm worker wages and working conditions (and the production costs of surviving producers) will be at approximately current levels, while the volume of domestic production has declined sufficiently that there is no longer upward pressure on domestic worker wages. Given the large proportion of illegal workers in the current farm labor market, that reduction in domestic production is likely to have to be very substantial. Consumers, however, will feel little impact, because the market share abandoned by domestic producers will be quickly filled by foreign production.”

Regarding seasonal employment and H-2B, a look at just one economic sector reliant on H-2B is revealing. Many landscaping-related jobs are inherently seasonal. In 2007, DOL certified just under 65,000 landscape-related job opportunities for H-2B. Of course, in FY08, only a fraction of these positions could be filled by H-2B workers because of the failure of Congress to renew the cap exemption which allows experience and law-abiding workers to return to their cyclical employment opportunities. Congress urgently needs to extend the H-2B returning worker exemption that expired at the end of fiscal 2007 to allow seasonal employers access to the workers they so desperately need. These employers have already undertaken extensive recruitment efforts and cannot find legal domestic workers to fill these jobs. Further, the stability of employers' year round American workforce is dependent on access to seasonal workers during their busiest times of the year.

Total employment in the landscape sector, according to DOL's Bureau of Labor Statistics, was 681,000 in 2006. This means that less than 10% of total job opportunities in a highly seasonal economic sector were certified for H-2B. Yet a look at the American employment supported by these workers shows that over 15,000 Americans were employed in landscape-related management occupations, with a mean annual salary of \$82,150. Over 5000 were employed in business and financial support functions, with a mean annual salary of about \$50,000. Over 55,000 first-line supervisors are employed in the sector, with a mean annual salary of about \$40,000. Over 14,000 sales-related positions exist, with mean annual salary over \$40,000. These and many other categories in the sector provide Americans good jobs. All are at risk if seasonal, labor-intensive production jobs go unfilled.

In conclusion, what is the solution to any concerns about domestic recruitment? I believe it is AgJOBS, H.R.371 and cosponsored by many others of both parties including Members of this committee, as well as its companion, S.340, sponsored by Senator Feinstein. My colleague Bruce Goldstein and his associates in the farmworker advocacy community support this legislation. It is the result of years of discussion between farm worker and grower representatives which we believe has balanced protections for workers as well as improvements to the H2A program, including in the area of recruitment. AgJOBS must be enacted this year!!

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