

**League of Women Voters Grand Traverse Area Leelanau Unit
Committee Report on a Study of the Agricultural Migrant Worker Visa
February 1, 2012**

Guest worker visas: Where are we and where do we go?

By Marian Kromkowski, LWV Study Group Member

To study the past, current and future employment methods and work visa programs used by agricultural employers in our area.

We all benefit from fresh home grown produce. We like variety in our fruits and vegetables. We want to know where they were grown and how they were grown. We want farmers to be profitable and workers to be treated fairly, compensated at a living wage and available to work when and where needed by farmers. When any of these goals are not achieved, there is a ripple effect in the economy and our community. This paper attempts to gather the perspectives of non-governmental entities on the question on how to best insure that farmers have adequate workers for their fields, orchards and food processing plants.

Few, if any, local farmers interviewed have ever used the H-2A or any guest worker process. However, farmers responding to our study group's inquiry agree on a number of points:

- The H-2A visa process is too expensive, too time-consuming and too cumbersome;
- There is a need for agricultural workers that is not being met by local workers; and
- A new guest worker visa program is desired.

Our local farmers' current concerns are reminiscent of 1997 testimony before House Immigration Subcommittee by John R. Hancock, the Department of Labor's Chief of Agricultural Certification Unit Manager.

The [H-2A] program is indeed cumbersome and litigation-prone. Employers must wade through a regulatory maze in order to achieve some sort of basic understanding of what is required of them. ... The current program with its multiple regulations and related requirements is too complex for the average grower to comprehend and use without the aid of a good lawyer or experienced agent. The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available.

* Source: *The Impact of Agricultural Guest Worker Programs on Illegal Immigration* by Stuart Anderson of the National Foundation for American Policy
http://www.nfap.com/researchactivities/studies/Nov_study1.pdf

Our study group did not interview any current farm workers. However, several

growers expressed concerns regarding human rights and the impact of the current system on farm workers and their families. Our group was hindered by language barriers, interviews taking place during the harvest season and a degree of discomfort on our part that the workers would be comfortable sharing their honest opinions with us, total strangers. Despite the lack of local data, farm worker entities have published criticisms of H-2A and “guest worker programs”. Based on a review of published interviews with current and former H-2A workers, information from media exposés, lawsuits against H-2A employers, and the experiences of workers and advocates over the past 30 years the following pattern of concerns are found:

- Employees at H-2A employers experience wage theft and other unlawful practices with little lawful recourse;
- The H-2A recruitment system has led to documented cases of debt-peonage, human trafficking, and forced labor;
- Many guest workers must pay recruiters for H-2A jobs and enter the U.S. indebted, desperate to work, and fearful that the loss of their job will lead to financial ruin;
- Guest worker programs drive down wages and working conditions of U.S. workers and deprive foreign workers of economic bargaining power and the opportunity to gain political representation;
- Lax enforcement by the Department of Labor against abusive practices and failure to develop methods for farmworkers to come forward confidentially and anonymously to file complaints; and
- As more than one-half of the farm workers on U.S. farms and ranches lack authorized immigration status, they often live in fear, and as a consequence have little bargaining power and political influence.

* Sources: Farmworker Justice: “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers”, <http://farmworkerjustice.org/ebook.html>; National Guest Worker Alliance, <http://www.guestworkeralliance.org/about-nga/vision/>; Michael Blanding, “Silence in the Fields,” Mother Jones (Jan-Feb 2011); Southern Poverty Law Center’s “Close to Slavery” (2007); Farmworker Justice and Oxfam, “Weeding Out Abuses, Recommendations for a law abiding farm labor system” (2010)

The Michigan Civil Rights Commission 2010 Report on the Conditions of Migrant and Seasonal Farmworkers found similar concerns here in Michigan: housing problems, discrimination against women and sexual harassment, national origin and racial discrimination; forms of wage theft and piece rates resulting in below minimum hourly wages; language barriers hindered migrant farm workers accessing services; difficulties obtaining drivers’ and marriage licenses, problems with state and local law enforcement, and racism and other forms of mistreatment by people in local communities. Not surprisingly, the Michigan Farm Bureau Federation took exception to the report and emphasized the report’s footnote that “conditions we observed may or may not be ‘typical,’ but they are certainly prevalent enough to demand action.” (See full MFBF response at *Report on Migrant Housing, Working Conditions Sparks Controversy*

<http://fruitgrowersnews.com/index.php/magazine/article/Report-on-Migrant-Housing-Working-Conditions-Sparks-Controversy>)

Other Sources: Michigan Civil Rights Commission 2010 Report on the Conditions *Comparing Farm Labor Trends in Michigan and Oregon* Vera Bitsch, Department of Agricultural, Food, and Resource Economics,

Against this backdrop most farm worker and immigration reform organizations favor programs that at least insure the following:

- A path to legalization;
- Legal protections more akin those guaranteed to U.S. workers;
- Ability to enforce their employment and labor rights in U.S. courts;
- Wage rates that protect the domestic labor force from unfair competition and vulnerable foreign workers from exploitation; and
- Ability to work for more than one farmer.

Sources: United Farm Workers Union

http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf;

National Immigration Law Center www.NILC.org;

Interfaith Worker Justice <http://www.iwj.org/template/page.cfm?id=172>

Just as all farmers do not agree, not all “worker groups” embrace the concept of expanding guest worker visas. The AFL-CIO cautions that admitting large numbers of “guest workers” with limited civil and employment rights is not good policy for U.S. workers. They advocate improving the administration of current programs, but taking the decision making out of the hands of politicians who engage in “political compromise—without regard to real labor market need”, removing the verification process from employers and turning to “secure identification methodology” and beefing up enforcement regarding employers to safeguard “maximum protection for workers, [with] sufficient due process.”

Source: The Labor Movement’s Framework for Comprehensive Immigration Reform
<http://americansforimmigrationreform.com/files/labor.pdf>

Nor do all informed on the subject accept that there is a dire shortage of agricultural workers warranting an expanded guest worker program. The argument is capsulated as follows:

A little more than one-half of the [seasonal agricultural] workforce is not authorized to hold U.S. jobs. Crop growers contend that their sizable presence implies a shortage of native-born farm workers. Grower advocates argue that farmers would rather not employ unauthorized workers because doing so puts them at risk of incurring penalties. Farm worker advocates counter that crop growers prefer unauthorized workers because they are in a weak bargaining position. If the supply of unauthorized workers were curtailed, it is claimed, farmers could adjust to a smaller workforce by introducing labor-efficient technologies and management practices, and by raising wages, which, in turn, would entice more U.S. workers to accept farm jobs. Growers respond that further

mechanization would be difficult for some crops, and that much higher wages would make the U.S. industry uncompetitive in world markets without expanding the legal farm workforce. These remain untested arguments because perishable crop growers have rarely, if ever, operated without unauthorized foreign-born workers.

Source: *Farm Labor Shortages and Immigration Policy*, Linda Levine, Congressional Research Service, 2009
<http://www.nationalaglawcenter.org/assets/crs/RL30395.pdf>

Labor economist Linda Levine also found that “[t]rends in the agricultural labor market generally do not suggest the existence of a nationwide shortage of domestically available farm workers” However, she also notes that her assessment “does not preclude the possibility of labor shortages in particular geographic areas at particular times of the year.”

Phil Glaize of Glaize Orchards of Winchester, Virginia offered this differing “on the ground” perspective:

I am not suggesting that Americans are lazy. I am suggesting that our U.S.-born population has changed dramatically over the years. We are growing older, we are better educated, and we have chosen to live in cities and suburbs. People think our food comes from Kroger or Safeway. Many farm kids themselves pursue a lifestyle off the farm. We have lost much of our culture of agriculture. It isn't about hourly wages. Our harvest workers earn an average of \$93 for a 9 hour day. The better pickers earn more. Farm workers can earn more per hour picking apples than flipping burgers or stocking shelves in a big-box retail store. But like so many agricultural jobs, picking apples is highly seasonal. It is out in the weather, and it is demanding.

Protecting America's Harvest, September 24, 2010 testimony before Subcommittee on Immigration, Refugees and Border Security
<http://judiciary.house.gov/hearings/pdf/Glaize100924.pdf>

From a larger perspective the U.S. Chamber of Commerce has coordinated the Essential Worker Immigration Coalition. EWIC is comprised of an impressive list of organizations:

[American Health Care Association](#)
[American Hotel & Lodging Association](#)
[American Immigration Lawyers Association](#)
[American Meat Institute](#)
[American Nursery & Landscape Association](#)

[American Road & Transportation Builders Association](#)
[American Staffing Association](#)
[American Subcontractors Association, Inc.](#)
[Associated Builders and Contractors](#)

[Associated General Contractors Building Service Contractors Association International](#)
[California Landscape Contractors Association](#)
[California Professional Association of Specialty Contractors \(CALPASC\)](#)
[Farm Equipment](#)

[Wholesalers Association](#)
[Federation of Employers](#)
[& Workers of America](#)
[Golf Course](#)
[Superintendents](#)
[Association of America](#)
[International Association](#)
[of Amusement Parks](#)
[and Attractions](#)
[International Franchise](#)
[Association](#)
[Mason Contractors](#)
[Association of America](#)
[National Association for](#)
[Home Care](#)
[National Association of](#)
[Chain Drug Stores](#)
[National Association of](#)
[Home Builders](#)
[National Association of](#)
[RV Parks &](#)
[Campgrounds](#)

[National Chicken](#)
[Council](#)
[National Club](#)
[Association](#)
[National Council of](#)
[Chain Restaurants](#)
[National Restaurant](#)
[Association](#)
[National Retail](#)
[Federation](#)
[National Roofing](#)
[Contractors Association](#)
[National Tooling &](#)
[Machining Association](#)
[National Wooden Pallet](#)
[and Container](#)
[Association](#)
[Outdoor Amusement](#)
[Business Association](#)
[Plumbing-Heating-](#)
[Cooling Contractors -](#)
[National Association](#)

[Professional Landcare](#)
[Network](#)
[Retail Industry Leaders](#)
[Association](#)
[Small Business &](#)
[Entrepreneurship](#)
[Council](#)
[Society of American](#)
[Florists](#)
[Tree Care Industry](#)
[Association](#)
[Truckload Carriers](#)
[Association](#)
[United Fresh Produce](#)
[Association](#)
[US Chamber of](#)
[Commerce](#)

EWIC urges Congress and the President to enact comprehensive reform with the following provisions:

- Reform should be comprehensive addressing future workforce needs, the existing unauthorized worker population, and a workable employment eligibility verification system.
- Reform should create an immigration system that allows for sufficient immigrants and temporary workers to meet the economic needs of the country.
- Reform should create a program for hard working, tax paying unauthorized workers to earn permanent status after meeting strict requirements such as law enforcement screening and learning English.
- Reform should create a fair employment eligibility verification system that functions efficiently, effectively, and inexpensively for employers, workers, and government agencies.
- Reform should ensure that U.S. workers are not displaced by foreign workers.
- Reform should strengthen homeland security by providing for the screening of foreign workers and creating a disincentive for illegal immigration.
- Reform should strengthen the rule of law by establishing clear, sensible immigration laws that are efficiently and vigorously enforced.

Source:

http://www.ewic.org//index.php?option=com_content&task=view&id=15&Itemid=52

Another powerful entity, the American Farm Bureau Federation in its December 2011 Position Paper on Agricultural Labor advocates as follows:

Only reform through legislation can solve the agricultural worker problem. In seeking a meaningful legislative solution to agriculture's worker shortage, Farm Bureau believes that comprehensive immigration reform must include the following:

An effective, usable, foreign worker program

Farm Bureau strongly supports a worker program that encompasses several elements, including provisions that:

- Address agriculture's unique needs;
- Provide workers with a visa that lasts at least three years and is renewable multiple times;
- Offer an opportunity to continue working, and provide a waiver from inadmissibility, to interested agricultural workers who were unlawfully present and working in agriculture prior to introduction of legislation but are otherwise admissible under the Immigration and Nationality Act;
- Require workers with a visa to return permanently to their home country when their visa expires, but allows employers to recruit eligible workers indefinitely;
- Allow those who are currently in the U.S. illegally to be eligible to apply for a work visa. This visa would not grant a pathway to citizenship. The application period for this visa would only be for one year;
- Eliminate excessive or duplicative bureaucracy and unnecessary red tape;
- Reduce domestic recruitment costs;
- Include appropriate provisions for foreign commuter workers who return to a residence in their home country nightly or weekly;
- Include the broadest possible definition of agriculture;
- Enable agricultural employers to retain their experienced workforce while transitioning into a worker program; and
- Require a state employment agency to verify the employment eligibility of an applicant before making any referral to an employer.

A reliable employment verification system

Mandating E-Verify for agricultural employers without providing a solution to the issues of agricultural labor shortages in the U.S. could have significant negative consequences. Farm Bureau does not support making E-Verify mandatory in its current form. Any proposal to broaden the applicability of E-Verify must be accompanied by provisions that help to resolve the labor shortage in agriculture.

An adequate transition provision

Farm Bureau opposes amnesty but supports providing an opportunity for some of those who have worked in agriculture to adjust to legal status.

Source: America Farm Bureau Issues document

<http://www.fb.org/issues/docs/aglabor11.pdf>

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Despite the tensions that might exist between growers and workers the decade old Agricultural Jobs, Opportunities, Benefits, and Security Act (AgJOBS) AgJOBS is still considered a bipartisan compromise bill. According to a supporter, the American Immigration Lawyers Association (AILA) “AgJobs would provide long and short term relief through a reformed H-2A program and earned adjustment program.”

Source: AILA InfoNet Doc. No. 09051170.

<http://www.aila.org/content/default.aspx?docid=28836>

Although it was not reintroduced in Congress last year or yet this year, a comparable bill was introduced by Representative Howard Berman entitled the Agricultural Labor Markey Reform Act of 2011. The earlier AgJOBS bill and this one was may still be supported some state chapters of American Farm Bureau Federation, and enjoys the continued support of the United Farm Workers as well as the American Immigration Lawyers Association (AILA). Its two major components are as follows:

Legalization: AgJOBS would allow qualifying unauthorized farm workers who to apply for Blue Cards to work and live in the US. After paying an application fee and a \$100 fine, they would obtain Blue Cards with personal biometric data. Blue Card holders could work in any US job and travel freely within the US and enter and leave the US. Unauthorized family members of Blue Card holders in the US could obtain a “derivative” probationary legal status that would allow them to obtain work permits. Blue Card holders could earn a regular immigrant status for themselves and their families by doing additional farm work

H-2A Changes: AgJOBS would change the H-2A program in three major ways. First, attestation would replace certification, effectively shifting control of the border gate from the US Department of Labor to employers, who would make assertions (assurances) to DOL that they have vacant jobs, are paying at least the minimum or prevailing wage, and will comply with other H-2A requirements. The second change involves housing. Rather than the current requirement that employers provide free housing to H-2A and out-of-area US workers, AgJOBS would allow farm employers to pay a housing allowance of \$1 to \$2 an hour, depending on local costs to rent two-bedroom units that are assumed to house four workers. Third, the Adverse Effect Wage Rate, the minimum wage that must be paid to legal guest workers and any US workers employed alongside them, would be frozen and then adjusted on the basis of the three-year change in the

Consumer Price Index and eventually rise with the CPI by a maximum of four percent a year.

*Source: Immigration Reform: Implications for Farmers, Farm Workers, and Communities. <http://migration.ucdavis.edu/cf/files/2011-may/conference-report>

Despite “heavy hitter” support of the U.S. Chamber of Commerce, EWIC, AFBF and UFW not all endorse new guest worker legislation:

The Federation for American Immigration Reform’s (FAIR) has as its Second Principle: No Amnesty or Mass Guest-Worker Program. It decries:

“The 1986 amnesty was a failure; rather than reducing illegal immigration, it led to an increase. Any new amnesty measure will further weaken respect for our immigration law. Therefore, all amnesty measures must be defeated. Laws against illegal immigration must be enforced, if they are going to act as a deterrent. Redefining illegal aliens as “guest-workers” or anything else is just that: a redefinition that attempts to hide the fact it is an amnesty, not reform.” http://www.fairus.org/site/PageNavigator/facts/data_research3327

Nor do all guest worker proposals include a pathway to authorized immigrant status. One which does not is the “American Specialty Agriculture Act” introduced by Representatives Lamar Smith and Dan Lungren this past September. It provides in part:

- No any pathway for legal immigrant status, rather bill therefore requires workers to return home after 10 months each year;
- Puts the Agriculture Department rather than the Department of Labor in charge of the H-2C program;
- Allows for employed attestation rather than certification;
- Requires growers to pay H-2C workers and American workers the prevailing wage, which is lower than the “adverse effect” now required;
- Allows growers to provide a housing voucher instead of actual housing;
- Opens up the H-2C program to dairies and certain other agricultural year round producers;
- Allows up to half a million foreign workers a year to receive H-2C visas. According to its backers this will be more than enough to make up for a loss of illegal immigrant workers who are deported due to strict enforcement measures.

Source: Statement of Judiciary Committee Chairman Member Lamar Smith Subcommittee on Immigration Policy and Enforcement Hearing on H.R. 2847, the “American Specialty Agriculture Act”
<http://judiciary.house.gov/news/Statement%20HR%202847.html>

It is supported by USA Farmers which notes on its website:

Together we can achieve reform of the H-2A guest worker program making it affordable and workable so that you can farm and make a profit with a legal workforce. Only H-2A Employers will determine USA Farmers' policy because we use the program and we know best what will and what won't work. (<http://usa-farmers.com/>)

This past July twelve Michigan agricultural organizations sent a letter to Sen. Lamar Smith with their ideas. The signatories included:

Cherry Marketing Institute	MGB Marketing/The Blueberry People
Michigan Apple Association	Michigan Asparagus Advisory
Board	
Michigan Asparagus Growers, Inc.	Michigan Blueberry Advisory
Committee	
Michigan Cherry Committee	Michigan Farm Bureau
Michigan Processing Apple Growers	Michigan Nursery & Landscape
Association	
Michigan State Horticultural Society	Michigan Vegetable Council

In summary they advocate:

For Michigan to continue as a reliable supplier of a diverse mix of source of commodities it is extremely critical that every effort be made by Congress to establish a guest worker program that ensures farmers have access to an adequate legal work force.

We support an agricultural guest worker program that:

- Includes the broadest possible definition of agriculture.
- Addresses agriculture's unique needs, which may change suddenly with weather, global market realities, or other variables beyond the grower's control.
- Provides a waiver from inadmissibility, to experienced agricultural workers who were unlawfully present and working in agriculture prior to introduction of legislation.
- Replaces work authorization documents with tamper-resistant, machine-readable documents that include biometric identifiers.
- Requires an agricultural worker to return to his/her home country when his/her visa expires.
- Does not require agricultural employers to pay above the average wage rate prevailing in a particular crop or work activity either on an hourly or piece rate basis. Agricultural occupation and region.
- Eliminates any housing requirement other than for farmers who choose to provide housing must comply with state and federal housing standards for agricultural workers."

According to a 2009 Congressional study: "Regardless of their content, most guest

worker initiatives appear to take into account U.S. economic development, Mexican economic development, law enforcement, and worker protections—coupled with the U.S. experience with the H-2A and H-2B programs. These provide a backdrop for policy issues likely to arise in of any guest worker proposals.”

The study provides a lens through which to analyze guest worker proposals:

Comparison of Program Requirements: Should a new guest worker program cover both agricultural and nonagricultural workers and include a unified wage requirement?

Eligible Population: Should a guest worker program be limited to aliens within the country (many of whom presumably would be unauthorized aliens) or to aliens outside the country or include both groups?

Legalization of Program Participants: Should a guest worker program include a legalization or *earned adjustment* program as part of a path to authorized immigrant status?

Treatment of Family Members: Should a guest worker’s family members be allowed to accompany the worker?

Numerical Limits: Should there be a numerical cap of the number of guest workers in any given year?

Labor Market Test: What type of labor market conditions would have to exist, if any, in order for an employer to import alien workers?

Enforcement: How will the terms of a guest worker program be enforced?

Homeland Security: What and how much consideration should be given to border and homeland security, matters?

Source: *Immigration: Policy Considerations Related to Guest Worker Programs* by Andorra Bruno, Specialist in Immigration Policy July 28, 2009
<http://www.ilw.com/immigrationdaily/news/2010,0415-crs.pdf>

Conclusion

Given today’s political climate any new guest worker program will be controversial with many competing interests to be understood and acknowledged.

Andorra Bruno, the author of the above cited Congressional study leaves one with food for thought, and much room for discussion and contemplation:

“A key reason for this [controversy] is the interrelationship between the recent discussion of guest worker programs and the issue of unauthorized immigration. The size of the current resident

unauthorized alien population in the United States, along with continued unauthorized immigration and related deaths at the U.S. - Mexico border, are major factors cited in support of a new temporary worker program. At the same time, the importance of enforcing immigration law and not rewarding illegal aliens with any type of legalized status are primary reasons cited in opposition to such a program. It would seem that some bridging of this gap on the unauthorized alien question—perhaps in some of the areas analyzed above—would be a prerequisite to gaining broad support for a guest worker proposal.”

From academia to the farm, not for his support of the AgJOBS bills, but for his common wisdom, I close with the testimony of apple grower Phil Glaize:

So what is the answer? Congress and the President must address this problem *NOW* -- for the future of Glaize Orchards and other businesses like mine. A common sense approach is needed both to reform the H-2A program and find a way to retain long-term valued employees. We must stop politicizing this issue and instead keep in mind that farms and businesses, jobs, rural economies, and our national food security are on the line. That is why I strongly support the AgJOBS legislation.

The AgJOBS bill has been available to Congress for consideration and action since at least the year 2000. And yet, no action has been taken. Some refuse to consider any measure that provides a realistic solution for the experienced and hard working souls whose labor feeds us all. Some refuse to take up worthy individual measures as if every problem with our immigration system can or must be fixed at once. Yet, the costs of inaction are accumulating.

Save our farms, save U.S. jobs, save our rural communities and economies, save our American food supply. Compelling reasons to act. I sincerely hope you will.

*Protecting America's Harvest, September 24, 2010 testimony
before Subcommittee on Immigration, Refugees and Border
Security*

<http://judiciary.house.gov/hearings/pdf/Glaize100924.pdf>

Non-Governmental Views Considered

Farmworker Justice
National Guestworker Alliance
Southern Poverty Law Center
AFL-CIO
United Farm Workers
Association of Immigration Attorneys
Interfaith Worker Justice
Americans for Immigration Reform
National Immigration Center
Federation for American Immigration Reform
Cherry Marketing Institute
MGB Marketing/The Blueberry People
Michigan Apple Association
Michigan Asparagus Advisory Board
Michigan Asparagus Growers, Inc.
Michigan Blueberry Advisory Committee
Michigan Cherry Committee
Michigan Farm Bureau
Michigan Processing Apple Growers
Michigan Nursery & Landscape Association
Michigan State Horticultural Society
Michigan Vegetable Council
USA Farmers
[American Health Care Association](#)
[American Hotel & Lodging Association](#)
[American Immigration Lawyers Association](#)
[American Meat Institute](#)
[American Nursery & Landscape Association](#)
[American Road & Transportation Builders Association](#)
[American Staffing Association](#)
[American Subcontractors Association, Inc.](#)
[Associated Builders and Contractors](#)
[Associated General Contractors](#)
[Building Service Contractors Association International](#)
[California Landscape Contractors Association](#)
[California Professional Association of Specialty Contractors \(CALPASC\)](#)
[Farm Equipment Wholesalers Association](#)
[Federation of Employers & Workers of America](#)
[Golf Course Superintendents Association of America](#)
[International Association of Amusement Parks and Attractions](#)
[International Franchise Association](#)
[Mason Contractors Association of America](#)
[National Association for Home Care](#)
[National Association of Chain Drug Stores](#)
[National Association of Home Builders](#)
[National Association of RV Parks & Campgrounds](#)
[National Chicken Council](#)

National Club Association
National Council of Chain Restaurants