

**Statement of Luawanna Hallstrom
on behalf of Harry Singh & Sons
before the House Committee on Education and the Workforce**

July 19, 2006

Mr. Chairman and members of the Committee:

I appreciate the opportunity to testify on behalf of Harry Singh & Sons, a third generation family-owned farming operation located in Oceanside, California. I serve as General Manager of the company, as well as Business Manager for its marketing company, Oceanside Produce, Inc. We are the largest vine-ripe tomato producer in the U.S.

I also am testifying as co-chair of the Agriculture Coalition for Immigration Reform (ACIR) and officer of the National Council of Agricultural Employers (NCAE). ACIR is a coalition of over 150 state, regional and national agricultural organizations and commodity groups, representing thousands of employers that was formed six years ago for the purpose of promoting comprehensive immigration reform as it relates to agricultural employers. NCAE is a Washington, D.C.-based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in fifty states who employ a substantial portion of the nation's hired farm workforce. Its members include growers, farm cooperatives, packers, processors and agricultural associations.

I am very pleased that this Committee is addressing the critical issue of guest worker programs and their impact on American workers and immigration policy. As Congress hopefully attempts to reconcile the differences between the House and Senate immigration reform bills this year, it is imperative that a final product contain a reformed guest worker program for agriculture and a workable mechanism of addressing the large number of undocumented workers that contribute to our economy by filling jobs that Americans will not take.

My testimony focuses on the following issues that are raised by the topic of this hearing:

- 1) What is the current experience of American agriculture with a guest worker program?
- 2) What impact will a workable agricultural guest worker program have upon the American workforce?
- 3) Will an agricultural guest worker program help reduce illegal migration of workers into agricultural jobs? and,
- 4) What are the consequences of enacting immigration reform legislation that includes enforcement only or enforcement first provisions without providing a means toward a legal workforce?

1. What is the current experience of American agriculture with a guest worker program?

Our farm's experience with 9/11 illustrates what will happen to most agricultural employers once an effective electronic employment eligibility verification system similar to that proposed in H.R. 4437, the House-passed immigration reform bill, is established. Let me explain. Part of our farming operation has been on a military base, Camp Pendleton, since 1940. After the terrorist attacks on 9/11, the Department of Homeland Security (DHS) was tasked to secure our military bases. As a result, DHS established security procedures that checked on the background of all of the farm workers who worked on the Camp Pendleton property. While these workers provided us with documents that appeared genuine, DHS was able to check the documents against government databases and determined that most our workforce was not properly documented. We terminated those workers without proper work authorization. The result of eliminating most of the workforce necessary to hand harvest our tomato crop was disastrous, as we lost \$2.5 million because we were unable to harvest our crop in a timely manner.

Enactment of a mandatory electronic verification of the authenticity of employment documents would have the same effect on nearly all agricultural employers. Agriculture is the one U.S. industrial sector where the government has some reasonably good statistics on the employment of illegal aliens and they are stunning! In the U.S. Department of Labor's (DOL) most recent survey (1998-99), 52 percent of the seasonal agricultural workers surveyed indicated that they were unauthorized to work. Agricultural labor economic experts indicate that a straight-line extrapolation to 2005 of the last DOL study suggests that the percentage of U.S. farm workers who were unauthorized to work in 2005 was approximately 75 percent.

Once the current system of visual inspection of employment documents is replaced by an electronic means of quickly checking records against government databases, we anticipate that the vast majority of the agricultural workforce will be screened out of jobs. The question then becomes, how do we replace them? A guest worker program and some means of dealing with the current experienced, but undocumented workforce, become essential to the survival of labor intensive agriculture.

Agriculture has a guest worker program called the H-2A program that has been around for nearly 50 years without significant reform. It does not work. Our business has learned this the hard way. Our experience is instructive.

To survive the events after 9/11 that I have described, we were forced into the H-2A agricultural guest worker program. Our experience with this program has been almost as bad as that we encountered in losing our crop. The government bureaucracy did not move quickly enough to approve our emergency application in a timely manner. The regulatory complexity of the program has forced us to hire an army of lawyers and consultants in order to try to make it work. It is now clear to us why this dysfunctional guest worker program provides less than three percent of the temporary and seasonal agricultural workers required by labor intensive agriculture. The vast majority of family farms in this country do not have the resources required to make this program work.

There are three broad reasons why the H-2A program needs to be reformed.

First, the program is administratively cumbersome and costly. Even at its present level of admission, fewer than 50,000 workers annually, which accounts for less than three percent of the 1.6 million seasonal job opportunities nationwide, the program is nearly paralyzed. Secondly, the program sets minimum wage and benefit standards that many employers cannot afford or cannot qualify for. The vast majority of agricultural workers, legal and illegal, get little or no benefit from the H-2A “protections”.

The regulations governing the program cover 33 pages of the *Code of Federal Regulations*. *ETA Handbook No. 398*, the compendium of guidance on program operation, is more than 300 pages. Employers must apply for workers a minimum of 40 days in advance of the date workers are needed. Applications, which often run more than a dozen pages, are wordsmithed by employers, by DOL and by attorneys. Endless discussions and arguments occur over sentences, phrases and words.

Each employer applicant goes through a prescribed recruitment and advertising procedure, regardless of whether the same process has been undertaken for the same occupation by another employer only days earlier. The required advertising is strictly controlled by the regulations and looks more like a legal notice than a help wanted ad. Increasingly, DOL is requiring that advertising be placed in major metropolitan dailies, rather than the local newspapers that farm job seekers are most likely to read, if they are looking for farm work at all. The advertisements rarely result in responses, yet they are repeated over and over again, year in and year out.

Certifications are required by law to be issued not less than 20 days before the date of need, but the GAO reported in 1997 that they were issued late more than 40 percent of the time. Even after all this, the employer has no assurance that the “domestic” workers referred to it are, in fact, legal. Most state job services refuse even to request employment verification documents, much less verify that they are valid. It is the experience of H-2A employers that a substantial and increasing proportion of the

“domestic” workers referred, are in fact illegal aliens themselves. Yet, these referrals are often the basis for denial of certification to employ legal alien workers.

Finally, a high proportion of the workers referred to H-2A employers – referrals that are the basis for denial of the employer’s H-2A labor certification -- either fail to report for work or quit within a few hours or days. This forces the employer to file with DOL for a “redetermination of need”. Even though redeterminations are usually processed within a few days, the petition and admission process after redetermination means that aliens will, at best, arrive about two weeks late.

The second reason why reform is needed is that the current H-2A program requires wage and benefit standards that are unreasonably rigid or not economically feasible in many agricultural jobs, and effectively exclude those jobs from participating in the H-2A program. The most glaring example is the so-called Adverse Effect Wage Rate (AEWR). The AEWR sets an artificially high minimum wage standard that makes it uneconomical to use the H-2A program in many agricultural occupations. The current AEWR in California is \$9.00 an hour. The AEWR standard, in effect, makes the average wage in one year the minimum wage in the ensuing year. Since the AEWR is set at the average of the wages for *all* agricultural workers in the state, it will be above the actual wages paid for about half of the agricultural employment in the state, and below the actual wage for about half of all agricultural employment in the state. Since, by definition, half of all employment will always have an actual wage below the average wage, this standard will always set an uncompetitive wage for some occupations, no matter how much agricultural wages rise.

A third major problem area with the current H-2A program is that it is litigation-prone. Hostility to the program by those who oppose guest worker programs coupled with overly complex and burdensome regulatory requirements have combined to make the few users of the program litigation magnets. We are living examples of this truth. Notwithstanding the fact that we hired lawyers and experts to guide us through this complex program, we were nonetheless sued and incurred significant costs through the process. Most agricultural employers could not have withstood the costs and interference with their farming operations.

In sum, our personal experience with the current H-2A guest worker program has been a nightmare, as has that of a substantial number of other current users that are part of ACIR and NCAE. Others in agriculture closely observe the difficulties that we have experienced and are discouraged from using the program. A reformed guest worker program that is simple to use, provides legal workers in a timely manner and is affordable is essential to the survival of labor intensive agriculture.

2. What effect will a workable guest worker program have upon the American workforce?

As I have indicated above, agricultural labor economists indicate that a substantial number of agricultural jobs are filled by persons who identify themselves as falsely

documented. They are not so-called American workers or domestic workers. More importantly, however, they are not taking the jobs of Americans. No informed person seriously contends that wages, benefits and working conditions in seasonal agricultural jobs can be raised sufficiently to attract domestic 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.

Seasonal farm jobs have attributes, which make them inherently uncompetitive with nonfarm work. First and foremost is that they are seasonal. Many workers who could do seasonal farm work accept less than the average field and livestock worker earnings because they prefer the stability of a permanent job. Secondly, many seasonal farm jobs are located in rural areas away from centers of population. Furthermore, to extend the period of employment, workers must work at several such jobs in different areas. That is, they must become migrants.

It is highly unlikely that many U.S. workers would be willing to become migrant farm workers at any wage, or for that matter that, as a matter of public policy, we would want to encourage them to do so. In fact, the U.S. government has spent billions of dollars over the past several decades attempting to settle domestic workers out of the migratory stream. The success of these efforts is one of the factors that has led to the expansion in illegal alien employment. In addition to seasonality and migrancy, most farm jobs are subject to the variations of weather, both hot and cold, and require physical strength and stamina. It is highly unlikely that a significant domestic worker response would result even from substantial increases in wages and benefits for seasonal farm work.

In one of the most ambitious efforts to recruit domestic workers to fill seasonal agricultural jobs in eight rural counties comprising the San Joaquin Valley of California, California agricultural organizations in 1998 sought the assistance of the State Department of Social Services and its offices in the eight Valley counties to recruit persons to work in agriculture. This effort followed passage of the federal welfare reform legislation. The agricultural groups also sought the assistance of the Employment Development Departments in these counties in a widespread effort to recruit seasonal agricultural workers to prevent a labor shortage.

This effort was encouraged by Senator Feinstein and was overseen by State agencies, working in cooperation with the growers. The State welfare agency advertised for the agricultural jobs through bilingual radio and television, as well as traditional channels. Of the 137,000 able-bodied candidates identified by the welfare agencies in the San Joaquin Valley, only 503 applied for work and only 3 actually showed up to work. This effort substantiated what growers in all states will tell you is the case. American workers do not want to perform seasonal or even much year-round agricultural work. A workable agricultural guest worker program will not take jobs from U.S. workers. Coupled with a workable employment verification system it will fill agricultural jobs with legal guest workers who will replace the undocumented—not U.S. workers.

3. Will an agricultural guest worker program help reduce illegal migration of workers into agricultural jobs?

We strongly believe based on history and our personal experience that a workable guest worker program will substantially reduce illegal migration of workers into agricultural jobs. We work very closely with the workers on our farms. Most of my family and I have performed work in the fields and hear the stories of the workers, their families and friends. We know that the natural desire of most economic migrants is to visit their families in Mexico or wherever their homes are during the Christmas holidays. While we support a controlled border and the enforcement of our immigration laws, ironically, one of the counterproductive effects of increasing border interdiction efforts during the past decade has been to force these persons to remain permanently in the U.S. and put down roots.

The Immigration Reform and Control Act of 1986 (IRCA) has been subject to criticism, much of it justified. One of the conspicuous absences among the provisions of the IRCA was enactment of significant guest worker provisions. While it attempted to address the problem of the job magnet for undocumented workers and legalization of the undocumented, it failed to include meaningful guest worker provisions that would provide future legal channels for aliens seeking to fill jobs in the U.S. for which domestic workers were unavailable. In our opinion, without the legal channels provided by workable guest worker programs, an enforcement-only policy directed at the border will never succeed.

History supports my viewpoint. The largest guest worker program in the U.S. in recent memory involved agricultural workers. It was called the “bracero” program and was implemented in various forms between 1942 and 1964. While the bracero program had its problems, in part because many of the labor laws that exist today were not in place during its existence, it was extremely successful in controlling illegal migration of aliens into agricultural jobs. A recent study of the bracero program by Stuart Anderson of the National Foundation for American Policy on “The Impact of Agricultural Guest Worker Programs on Illegal Immigration,” concluded:

“By providing a legal path to entry for Mexican farm workers the bracero program significantly reduced illegal immigration. The end of the bracero program in 1964 (and its curtailment in 1960) saw the beginning of the increases in illegal immigration that we see up to the present day.”

(Anderson, at page 2).¹ The Anderson study quoted a Congressional Research Service report in 1980 that also concluded that “Without question the bracero program was ...

¹ Stuart Anderson is the Executive Director for the National Foundation for American Policy. He served as executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He also served previously as a staff member and Staff Director of the Senate Subcommittee on Immigration for Senators Abraham and Brownback.

instrumental in ending the illegal alien problem of the mid-1940's and 1950's." (Anderson at page 2). During period from 1964 (when the bracero program ended) to 1976, INS apprehensions of illegal aliens in agriculture increased more than 1000 percent. Anderson, page 3.

Interestingly, a commentary in the Wall Street Journal last week by leading conservative thinkers picked up on this point and concluded:

"What this history teaches us is that the only way to control immigration is with a combination package—securing the border, enforcing the law in the workplace and create legal channels for workers to enter the country."²

The article cited as examples of this point the history of the bracero program noted above.

4. What are the consequences of enacting immigration reform legislation that includes enforcement only or enforcement first provisions without providing a means toward a legal workforce?

ACIR and NCAE, representing a vast cross-section of labor-intensive agriculture throughout the U.S., have supported for many years a simple, effective and nondiscriminatory process of determining the employment eligibility of new hires. We supported such a system ten years ago as part of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as long as the process is simple, manageable and provides clear delineation of compliance responsibilities. Growers are tired of living with the uncertainty of the current legal system where we have to accept employment documents but are never certain whether they are legitimate or not and get sued if we are "too picky" in seeking employment documents.

It is imperative that a workable verification system be coupled with a workable H-2A guest worker program and means of providing earned legal status for our experienced agricultural workers. Without this comprehensive approach to the problem of illegal immigration, it is my opinion that our nation will not solve the problem of illegal immigration nor will many industries, like agriculture, be able to survive. A comprehensive approach to immigration reform is absolutely essential.

As I stated at the beginning of my statement, American agriculture is suffering under an unworkable, costly and litigious guest worker program that is almost worse than not having one at all. We know that between 50 and 75 percent of our workforce provides employment documents that we must accept under the law or face discrimination suits, but which are invalid. A workable verification system hopefully will eliminate document fraud, but it also will eliminate an estimated 75 percent of the labor intensive agricultural workforce. The workers need to be replaced with legal alien workers because few American workers will perform seasonal and physically difficult agricultural production jobs. As discussed above, the current H-2A agricultural guest

² Wall Street Journal, "A Conservative Statement for Immigration Reform," July 10, 2006, Page A11.

worker program simply is too dysfunctional to provide a legal source of labor to supplement the domestic agricultural work force.

Given the large proportion of illegal workers in the current farm labor market, the reduction in domestic production as a result of enforcement only or enforcement first approach to immigration reform likely will be substantial. A leading agricultural labor economist who has studied this issue for many years, Dr. James Holt, indicates that the loss of agricultural production resultant from labor shortages will have employment impacts well beyond farm workers and farmers. Since agricultural production is tied to the land, the labor intensive functions of the agricultural production process cannot be foreign-sourced. We cannot, for example, send the harvesting process or the thinning process overseas. Either the entire product is grown, harvested, transported and in many case initially processed in the U.S., or all of the functions are done somewhere else, even though only one or two steps in the production process may be highly labor intensive.

When the product is grown, harvested, transported, and processed somewhere else, all the jobs associated with these functions are exported, not just the seasonal field jobs. These include the so-called “upstream” and “downstream” jobs that support, and are created by, the growing of agricultural products. U.S. Department of Agriculture studies indicate that there are about 3.1 such upstream and down stream jobs for each on-farm job. Most of these upstream and downstream jobs are “good” jobs, *i.e.* permanent, average or better paying jobs held by citizens and permanent residents. Dr. Holt anticipates that we would be exporting about three times as many jobs of U.S. citizens and permanent residents as we would farm jobs filled by aliens if we restrict access to alien agricultural workers. Not only would the volume of U.S. agricultural production be reduced, but the U.S. would be substantially more dependent on foreign suppliers for food. I believe that substantial reliance on foreign countries to feed us creates a national security issue for America.

While agriculture confronts the challenges of the proposed immigration reform legislation that we have discussed today, growers in many parts of the country have faced or now face shortages of farm workers. Growers in Yuma, Arizona, central California, Oregon, Washington, Florida, New York and many other states cannot find sufficient labor to produce or harvest crops and tend livestock. We truly are facing a “perfect storm” of labor shortages. We lack a sufficient number of workers in many areas and clearly lack a sufficient legal workforce.

In conclusion, I want to thank again the Committee for allowing me to share my views. On behalf of my business and the vast number of American farmers whose views I have shared with you today, I urge Congress to pass comprehensive immigration reform this year. Agriculture has been actively encouraging Congress for the past ten years to fix the broken immigration system and provide our vital industry a means to obtain a legal workforce. We cannot wait another year. Thank you.