

Judiciary Committee
Subcommittee on Immigration, Refugees and Border Security
United States Senate
Hearing on
“America’s Agricultural Labor Crisis: Enacting a Practical Solution”
Testimony of
Gary W. Black
October 4, 2011

Thank you Mr. Chairman, Ranking Member Cornyn, and members of the subcommittee, thank you for the opportunity to appear before you today to talk about the labor needs of Georgia’s agricultural industry.

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.

This past spring, Georgia producers began calling my office to report labor shortages. In May of this year, Governor Deal asked the Georgia Department of Agriculture (Department) to evaluate the labor situation in the agricultural sector. My department created an informal survey and worked with various agricultural associations for dissemination to their members – the twelve Georgia Commodity Commissions, Georgia Fruit and Vegetable Growers Association, Georgia Farm Bureau, Georgia Agribusiness Council, Georgia Urban Ag Council, and others. The survey accepted responses for fifteen days, and we heard from roughly 230 producers representing Georgia’s diverse agricultural economy. Our brief, unscientific snapshot suggested a degree of unmet labor needs during the 2011 spring harvest season.

The survey revealed significant concerns among blueberry and fresh market vegetable producers. Additional variables for this past growing season included unusually high heat and lack of rain causing an unexpected rush in harvest. Bottom-line, the pool of respondents reported on June 10, the unmet availability of 11,080 jobs.

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, last Thursday one Georgia producer shared his story with us. 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, we worked with Governor Deal and the Georgia Department of 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, the Georgia Department of 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% of qualified first-year wages for those employed at least 120 hours and 40% for those employed 400 hours or more. This program is strictly voluntary, and no one is required to participate.

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." We do not yet know the total economic impact of this legislation on the agriculture industry in Georgia. In addition to an E-verify mandate, the law instructs the Department to conduct a study on the legislation's impact, and the results are due by January 1, 2012 to the Governor, President of the Senate, and Speaker of the Georgia House. The legislation also charged the Department with exploring a state guest worker program. We continue to explore and hear from Georgians what their needs are for labor.

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.

Looking at current legislation, I think the HARVEST Act introduced by my home-state senator, Saxby Chambliss, has potential to address some of the labor needs of agriculture. Moving the administration of H-2A program from the United States Department of Labor to the United States Department of Agriculture places the program in an agency familiar with the intricacies of the type of work and labor needed. By expanding eligibility, those producers needing year-round labor who currently have no guest worker program to rely on, may participate. It remains to be seen if H-2A can be revised and sanity restored to the bureaucratic process, or if we should take the workable aspects of the

program and rebrand it. Either way, something must be done. With a new brand or not, the goal must be a program that works for all farmers.

Regretfully, a large number of illegal immigrants are working in agriculture today. A penalty-based work authorization permit should be considered for offenders. Such a measure could require substantial monetary fines, an annually renewed biometric permit supported by fees that is restricted for agriculture and strict employer enforcement after implementation.

I also think it is not beyond the realm of possibility for the federal government to create a guest worker program and then delegate to states through an MOU the day to day responsibilities of administering the program. This relationship already exists and works well with states implementing environmental and food safety regulations set forth by the federal government.

A robust agricultural guest worker program, properly designed, will not displace American workers. As my testimony shows, in Georgia, even with current high unemployment rates, it is difficult for farmers to fill their labor needs. I encourage you all to work together to develop a guest worker program that is fair to the American employer, fair to the American worker, and fair to the temporary guest worker.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.