

**Testimony of Joe Bailey
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**Before the
Education and Workforce Subcommittee on Workforce Protection
Hearing on
“Workforce Challenges Facing the Agriculture Industry”
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Chairman Walberg, Ranking Member Woolsey, distinguished members of the subcommittee, and guests, thank you for this opportunity to testify on the H-2A temporary and seasonal agricultural worker program, and the implications of mandatory E-Verify on the specialty crop agricultural industry. Bailey Nurseries is a fourth-generation family-owned nursery started in 1905. We are widely recognized as one of the United States' largest wholesale nurseries, with products distributed by more than 4000 garden centers, landscapers, growers and re-wholesalers throughout the U.S. and Canada. Our main offices and growing fields are located in Newport, Minnesota, (just outside the Twin Cities of Minneapolis and St. Paul) and we also operate nurseries in Yamhill and Sauvie Island, Oregon; Sunnyside, Washington; Onarga, Illinois; and Charles City, Iowa.

My testimony today is also offered on behalf of the American Nursery & Landscape Association (ANLA). ANLA is the national trade organization representing my industry. ANLA's 15,000 members and grassroots participants are mostly small and family-based businesses who grow, sell, and install landscape plants as well as much of the planting stock for America's orchards, vineyards, Christmas tree and berry farms, and even managed forests.

Bailey Nurseries employs over 500 year-round employees and another 900 seasonal employees during our peak spring shipping and planting season. We grow and offer thousands of different nursery and greenhouse products that include deciduous trees and shrubs, evergreens, fruits, perennials, annuals and roses. Our plants are offered from seedlings and rooted cuttings to finished bareroot and container-grown stock, often taking 3 to 5 years to grow. The attention our plants receive throughout their growth results in some of the finest plants available.

Bailey Nurseries, Inc. has relied on seasonal workers since our humble beginnings. During the early years of the nursery the seasonal workers were primarily young men off of local farms. During World War II many of these young men went overseas to fight the war and, as was the case with growers elsewhere, we relied on Mexican immigrants to assist with the seasonal work. As grandma Bailey put it many times “we never would have made it without the men who came up from Mexico”. We are proud of our long standing relationship with the people from Mexico and immigrants from many other countries as well. The respect for the hard working people that make up the majority of the seasonal agricultural workers in this country is shared by everyone I have ever met in the nursery and landscape industry.

During the 1990's our seasonal workforce became predominantly Hispanic. We became reliant on this demographic as the local unemployment rate dipped below 3% and the local applicant pool all but dried up.

In 1996 the INS audited our Form I-9's and discovered a number of our employees lacked proper work authorization. We were shocked as the applicants had presented us with documents that appeared genuine. The INS raided our farms during the middle of our fall harvest and we lost 137 experienced workers. Many of the employees had been with us for over 10 years and had close personal ties to their co-workers and the community.

We have struggled every year since to find enough people to help fill our seasonal positions. As we have learned first-hand, few Americans who are seriously seeking work will apply for, accept, and remain in seasonal and intermittent employment, especially in the agricultural sector. Many who are hired do not last long as they find the work too physically demanding or repetitive, are not willing to work in unfavorable weather conditions, or find the work schedule too demanding.

In 2008 we began using the H-2A program, bringing in about one-third of our seasonal workers on the program. We spent hundreds of thousands of dollars in expense to utilize the H2A program each year, but we believed it was worth it to have a somewhat stabilized and trained seasonal work force. Between 2008 and 2010 the H2A program regulations changed three times. Due to the finalized H2A regulation changes and the size and sophistication of our business we were forced out of the program at the end of the 2010. Essentially we went through the same exercise as we did in the 1996 INS raid; we had a trained and productive work force that we lost in one day due to the government (this time a regulation change instead of a publicized raid).

By some measures, the H2A program worked very well for us. It allowed us to bring back the same workers each year. As returning workers they were already trained on skilled work (identification of hundreds of plant varieties, order pulling, pruning, etc.) and productive from day one. 100% of the H2A workers went back to their homeland after our season was finished. Our experience was that all of the H2A workers played by the rules, were happy for a seasonal job opportunity with an employer who valued their skills and work ethic, and were happy to go back to their homeland for the winter to be with their families.

Our experience with the H2A program was that it was a gamble whether you would get the workers that you needed on time for the busiest time of the year, April and May. The program is a bureaucratic nightmare with multiple hoops to jump through. Getting our seasonal workers late does not offer a valid excuse to our customers who are wondering why their shipment of plant material is late. The nursery business is very seasonal and time sensitive for shipping, planting, and tending the plants. It is impossible to imagine the entire agricultural seasonal workforce coming in on the current H2A program when less than 5% currently does. The size of government and its budget would certainly need to grow in order to administer increased use of H2A.

In 2008 we began using the E-Verify program at our headquarters in Minnesota which has screened out a substantial portion of our applicant pool who were using fraudulent documents. As of today we continue to use the E-Verify program. The upside is that we believe we know who we have on our staff (even though E-Verify may be prone to failure in detecting use of false documents that contain a legitimate name and number combination). The downside is that we are drastically short on help during the spring rush, even in the down economy.

In 2011 we have withstood tremendous difficulty with our seasonal work force. We spent more time, effort, and money than we ever have on recruitment. We advertised our positions in the newspaper and on the radio, held job fairs, recruited from local unemployment offices, recruited other ethnic groups through their social services networks (Hmong, Burmese, and Vietnamese refugees), recruited at local seasonal businesses that were laying off staff, started a referral program, and sent letters to previous employees asking for them to return. Unfortunately, we were not able to attract enough people to work in our shipping facilities, greenhouses and fields. This led to being understaffed and a lot of frustration by our supervisors and customers.

We had hundreds of applicants, but many were not willing to do the work after hearing about it, did not show up to be hired after we made the job offer, preferred to stay on unemployment, only wanted summer work, lacked basic requirements, could not work the demanding schedule which can be 6 or 7 days a week and 9-14 hour days during the spring rush, or did not pass E-Verify or the criminal background screening we run on all new hires.

We needed to fill 500 seasonal positions in Minnesota, yet were only able to hire 350 people that came through our front doors. Of the 350 seasonal workers we hired this year, as of September 1, over 50% have voluntarily quit and the balance are still with us. With the increase in turnover throughout the season, we were short over 100 people to do our time sensitive work. Many of the local workers that we hired this year have left us for companies that can offer year-round work, i.e. meat packing, or gone back to school.

We continue to wonder what else we can do to attract seasonal workers other than raise our wages. We operate in the real world: how do we raise wages when we have had a wage freeze on our fulltime staff for three years now due to the current economic conditions? How do we raise wages when we are operating in an increasingly competitive global economy? Nurseries in Canada, for instance, can grow the same crops we grow. The difference is that Canada has a seasonal agricultural worker program that actually works. The Canadian government facilitates use of the program and the success of its growers. This is a vastly different reality than that facing our company and our peers across the U.S., where government is a hostile impediment rather than a help.

Of all the problems our industry and our company face, seasonal labor is the biggest. We do 60% of our business in 60 days in April and May. If we do not have qualified seasonal staff on a timely basis at our peak we are in a very, very difficult position. A shortage of qualified workers leads frustrated supervisors, lost sales, and lost customers.

We are trying to do everything the right way, but we remain very cautious and uncertain about the future because we do not know what kind of seasonal labor force we will have from one year to the next. The 500 seasonal workers we employ in MN directly support over 500 year-round positions within our company. Without an adequate supply of seasonal workers we will be forced to cut year round jobs, drastically downsize our business, or worse, affecting our customers and suppliers as well. Many Americans could lose their jobs in production, sales and marketing, logistics and transportation, and management if we don't have an adequate seasonal labor pool.

In many ways, we would support mandatory E-Verify to level the playing field with all employers. But the proponents of mandatory E-Verify are wrong when they say it will create U.S. jobs. At least in the agricultural and seasonal settings, mandatory E-Verify constrains the seasonal labor supply and in turn threatens U.S. jobs. With mandatory E-Verify the agricultural economy in particular will suffer without a safety valve to find enough seasonal workers on a timely basis and without the Soviet-like bureaucracy which companies now face when they try to use the H2A program. In our own company, 500 year-round American jobs on our farms are at risk if we can't access enough seasonal workers. But the impact is even broader, as we purchase goods and services needed to farm. And, our payroll of \$28 million each year is largely spent in the local economies where we operate.

If we can't find enough local Americans to do seasonal work with the current high unemployment rate, what will happen when the rate goes down and everyone is using E-Verify? Even though we are next to a major metropolitan area, our experience has shown that there simply is not an adequate supply of seasonal workers. Our peers from California to Connecticut to the Carolinas report the same experience.

I would like to make a few comments regarding solutions. Congress needs to set the politics aside and roll up its sleeves and get to work to solve the problem. Here is the outline of a balanced approach:

- Establish a new agricultural worker visa. Allow experienced workers who are here as well as future workers to participate in such a visa program. Ideally, the visas should be valid for at least a year or two, and be renewable so long as terms and conditions are followed. A shorter visa term means more interactions with government, which means the need to build up more capacity for the program to work.
- Scrap the H-2A model, where the contract tie limits flexibility for both the employer and the worker and leads to calls for layers of added worker protections. Instead, allow agricultural workers to move among registered employers. Bad employers will have to clean up their act to be able to retain their seasonal workforce.
- Establish better incentives for workers to return home when the work is done. Withholding the equivalent of the employee's Social Security contribution in escrow, only to be accessed when one returns home in compliance with their visa, would provide such an incentive.
- The greatest need for such visas is for seasonal workers, though we are sensitive to the fact that some year-round farm production jobs are difficult to fill and should be eligible to participate in a new program.
- Limit the intrusive hand of government in the program. Too much bureaucracy is why H2A is failing to do the job. Design a new program with an eye toward how the market works, and how seasonal workers move among employers and among crops.

In closing, I would like to make three points. First, if a company like ours, one of the largest and most sophisticated in our industry, cannot make H2A work, something is very wrong. Agriculture needs a legal labor safety net that actually works. We need a new program structure.

Secondly, we are open to E-Verify being applied uniformly across the agricultural industry, but only after a workable program is implemented. To put the cart before the horse will kill American jobs and companies in industries like mine, export jobs and economic activity to other countries, and import more food and agricultural products.

Thirdly, the lack of a workable program jeopardizes the viability of our 106 year old family business and the livelihood of hundreds of year-round jobs. With all the attention on creating jobs let's not forget to protect the existing jobs.

Thank you.

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