

*Chair ruled
non-genuine*

AMENDMENT TO H.R. 2885
OFFERED BY MR. DANIEL E. LUNGREN OF
CALIFORNIA

Page 1, after line 4, insert the following:

1 **TITLE I—ELECTRONIC EMPLOY-**
2 **MENT ELIGIBILITY**
3 **VERIFICATION SYSTEM**

Redesignate sections 2 through 11 as sections 101 through 110, respectively.

Page 21, line 2, strike “Act.” and insert “Act, or the date that is 6 months after the implementation of the amendments made by section 201 of such Act, whichever occurs later.”.

Page 25, line 17, strike “Act.” and insert “Act, or the date that is 6 months after the implementation of the amendments made by section 201 of such Act, whichever occurs later.”.

Page 64, after line 10, insert the following:

1 **TITLE II—NONIMMIGRANT AGRI-**
2 **CULTURAL WORKER PRO-**
3 **GRAM**

4 **SEC. 201. NONIMMIGRANT AGRICULTURAL PROGRAM.**

5 (a) NEW “W” NONIMMIGRANT CLASSIFICATION FOR
6 NONIMMIGRANT AGRICULTURAL WORKERS.—Section
7 101(a)(15) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)(15)) is amended—

9 (1) by striking “or” at the end of the subpara-
10 graph (U);

11 (2) by striking the period at the end of sub-
12 paragraph (V) and inserting “; or”; and

13 (3) by adding at the end the following:

14 “(W) an alien having a residence in a for-
15 eign country which the alien has no intention of
16 abandoning who is coming to the United States
17 for a temporary period (as defined in section
18 220(o)) to perform services or labor in agricul-
19 tural employment, as defined in section 3 of the
20 Migrant and Seasonal Agricultural Worker Pro-
21 tection Act (29 U.S.C. 1802), who meets the
22 requirements specified in section 220, and with
23 respect to whom the Secretary of Agriculture
24 has notified the Secretary of Homeland Secu-
25 rity and the Secretary of State that the intend-

1 ing employer has accepted the terms and condi-
2 tions of such employment through successful
3 enrollment in the nonimmigrant agricultural
4 worker program pursuant to section 220(c).”.

5 (b) ESTABLISHMENT OF NONIMMIGRANT AGRICUL-
6 TURAL WORKER PROGRAM.—

7 (1) IN GENERAL.—Chapter 2 of title II of such
8 Act is amended by adding at the end the following:

9 “SEC. 220. NONIMMIGRANT AGRICULTURAL WORKER PRO-
10 GRAM.

11 “(a) ESTABLISHMENT OF PROGRAM.—

12 “(1) IN GENERAL.—The Secretary of Agri-
13 culture, in consultation with the Secretary of Home-
14 land Security, shall establish a nonimmigrant agri-
15 cultural worker program (in this section referred to
16 as the ‘program’) for the admission into the United
17 States of nonimmigrants described in section
18 101(a)(15)(W) (in this section referred to as a ‘non-
19 immigrant agricultural workers’) and issue all rel-
20 evant regulations implementing the program.

21 “(2) COMPONENTS OF PROGRAM.—The pro-
22 gram shall include the following components:

23 “(A) A process developed by the Secretary
24 of Agriculture for the submission of data and
25 information by agricultural employers that will

1 allow such Secretary to determine the number
2 of nonimmigrant agricultural workers required
3 by month and annually for a 10-month period.

4 “(B) A process developed by the Secretary
5 of Agriculture for the enrollment of qualified
6 agricultural employers in the program that re-
7 quires enrolled employers to abide by the obli-
8 gations described in subsection (f).

9 “(C) A process developed by the Depart-
10 ment of Homeland Security, based upon the de-
11 termination made under subsection (d) by the
12 Secretary of Agriculture, on the need for non-
13 immigrant agricultural workers, for imposition
14 of monthly and annual numerical limitations,
15 established under such subsection, on the
16 issuance of nonimmigrant visas for non-
17 immigrant agricultural employment. These visas
18 shall be made available subject to such limita-
19 tions on such workers in accordance with the
20 preference system established under subsection
21 (g).

22 “(D) A process developed by the Secretary
23 of Homeland Security, in consultation with the
24 Secretary of Agriculture, by which such Secre-
25 taries can determine that persons employing

1 nonimmigrant agricultural workers are enrolled
2 in the program and that the nonimmigrant ag-
3 ricultural workers so employed possess a valid
4 visa pursuant to section 101(a)(15)(W).

5 “(E) A nonimmigrant visa issued pursuant
6 to subsection (g) shall not limit the geo-
7 graphical area within which an alien may be
8 employed or limit the type of agricultural em-
9 ployment the alien may perform, except that
10 the employment shall only be with a qualified
11 agricultural employer enrolled in the program.

12 “(b) PRE-ENROLLMENT REQUIREMENTS.—

13 “(1) RECRUITMENT OF UNITED STATES WORK-
14 ERS.—Not later than 30 days before filing a request
15 to enroll in the nonimmigrant agricultural worker
16 program pursuant to subsection (c), each person fil-
17 ing such a request shall list with the Department of
18 Labor’s Employment and Training Administration’s
19 Electronic Job Registry a description of the antici-
20 pated period for which workers will be needed ex-
21 pected beginning and ending dates) , as well as a de-
22 scription of the wages and other terms and condi-
23 tions of agricultural employment that satisfy the dis-
24 closure requirements of sections 201 and 301 of the
25 Migrant and Seasonal Agricultural Worker Protec-

1 tion Act (29 U.S.C. 1821; 1831), except that noth-
2 ing in this paragraph shall cause such listing to be
3 treated as an interstate job order under section 653
4 of title 20, Code of Federal Regulations.

5 “(2) RECORD OF UNITED STATES WORKERS.—

6 A person or entity shall keep a record of all eligible
7 able, willing, and qualified United States workers
8 applying for employment with the person in response
9 to its filing on the Electronic Job Registry and pro-
10 vide such record in its request to enroll filed under
11 subsection (c).

12 “(c) ENROLLMENT IN THE NONIMMIGRANT AGRI-
13 CULTURAL WORKER PROGRAM.—

14 “(1) IN GENERAL.—A person who employs indi-
15 viduals to perform agricultural employment (includ-
16 ing an association of such persons and a person who
17 contracts for the performance of agricultural em-
18 ployment) with respect to agricultural commodities
19 may submit to the Secretary of Agriculture, at such
20 time and in such manner as the Secretary specifies,
21 a request for enrollment in the nonimmigrant agri-
22 cultural worker program.

23 “(2) INFORMATION REQUIRED.—The request
24 must specify for each month concerned—

1 “(A) the total number and qualifications of
2 nonimmigrant agricultural workers required in
3 agricultural employment in each month;

4 “(B) the type of agricultural work required
5 to be performed by these workers;

6 “(C) the anticipated period (expected be-
7 ginning and ending dates) for which workers
8 will be needed;

9 “(D) a copy of the information submitted
10 to the Electronic Job Registry pursuant to sub-
11 section (b)(1); and

12 “(E) the record of United States workers
13 described in subsection (b)(2) at the time of the
14 request.

15 “(3) OPTIONAL INFORMATION ON ALIENS PRE-
16 ferred.—The person may also include a statement
17 indicating a preference as to country of nationality
18 of aliens (or names of particular aliens) desired to
19 perform agricultural services in any such month.

20 “(d) DETERMINATION OF NUMERICAL LIMITATIONS
21 ON NONIMMIGRANT AGRICULTURAL VISAS BY MONTH
22 AND ANNUALLY.—Based upon requests for enrollment de-
23 scribed in subsection (c), and taking into consideration the
24 historical employment needs of agricultural employers and
25 the reports of United States workers applying for agricul-

1 tural employment listed on requests for enrollment, the
2 Secretary of Agriculture shall advise the Secretary of
3 Homeland Security of a numerical limitation on the
4 issuance of nonimmigrant visas to nonimmigrant agricul-
5 tural workers sufficient to meet the labor needs of agricul-
6 tural employers by month and annually.

7 “(e) STANDARDS FOR APPROVAL OF REQUESTS FOR
8 ENROLLMENT.—

9 “(1) IN GENERAL.—The Secretary of Agri-
10 culture shall approve a request for enrollment sub-
11 mitted under subsection (c)(1) if—

12 “(A) the person is an agricultural employer
13 and the worker is to be employed in agricultural
14 work;

15 “(B) the request complies with the provi-
16 sions of subsection (c) and the request sets
17 forth the need for such workers;

18 “(C) the person has not employed or peti-
19 tioned for a nonimmigrant described in section
20 101(a)(15)(H)(ii)(a) at the time when a request
21 on behalf of the person is pending or granted
22 under this subsection, or during any previous
23 period during which the employer had a request
24 granted under this section; and

1 “(D) the person is not disqualified under
2 subsection (f)(6).

3 “(2) REVIEW OF CERTAIN DENIALS.—Except as
4 provided under subsection (f), a person who is deter-
5 mined not to be eligible under paragraph (1) (other
6 than because of subparagraph (D) thereof) is enti-
7 tled to an expedited review of the determination by
8 the Secretary of Agriculture.

9 “(f) OBLIGATIONS UNDER PROGRAM.—Any person
10 whose request to enroll in the nonimmigrant agricultural
11 worker program has been granted shall ensure as follows:

12 “(1) NO DISPLACEMENT OF THE UNITED
13 STATES WORKERS.—The employer did not displace
14 and will not displace a United States worker em-
15 ployed by the employer, other than for good cause,
16 during the period of employment and for a period of
17 30 days preceding the period of employment in the
18 occupation at the place of employment for which the
19 employer seeks to employ nonimmigrant agricultural
20 workers.

21 “(2) OFFERS TO UNITED STATES WORKERS.—
22 The employer shall offer the job to any eligible
23 United States worker who applies and is equally or
24 better qualified for the job for which the non-
25 immigrant is sought, and will be available at the

1 time and place of need. The employer shall post all
2 such job openings on the Electronic Job Registry ad-
3 ministered by the Employment and Training Admin-
4 istration of the Department of Labor.

5 “(3) WORKERS’ COMPENSATION.—If the job op-
6 portunity is not covered by the State workers’ com-
7 pensation law, the employer will provide, at no cost
8 to United States and nonimmigrant agricultural
9 workers, insurance covering injury and disease aris-
10 ing out of, and in the course of, the worker’s em-
11 ployment which will provide benefits at least equal to
12 those provided under the State’s workers’ compensa-
13 tion law for comparable employment.

14 “(4) LABOR DISPUTE.—The person shall not
15 employ a nonimmigrant agricultural worker for a
16 specific job opportunity for which the employer is re-
17 questing a nonimmigrant agricultural worker be-
18 cause the former occupant of the job is on strike or
19 being locked out in the course of a labor dispute.

20 “(5) NOT USED FOR NONAGRICULTURAL SERV-
21 ICES.—The person shall not employ a nonimmigrant
22 agricultural worker for services other than agricul-
23 tural services.

24 “(6) VIOLATION OF PROGRAM REQUIRE-
25 MENTS.—If the Secretary of Agriculture determines,

1 after an opportunity for a hearing, that an enrolled
2 employer has violated this subsection the Secretary
3 may impose penalties, including fines and, in cases
4 of serious violations, the disqualification of the em-
5 ployer from future enrollment in the program for a
6 period of up to three years.

7 “(g) ALLOCATION OF VISAS.—

8 “(1) PREFERENCE SYSTEM.—Nonimmigrant
9 agricultural workers who are subject to the numer-
10 ical limitations specified in subsection (d) shall be al-
11 lotted nonimmigrant visas and work authority as fol-
12 lows:

13 “(A) IDENTIFIED WORKERS.—Visas shall
14 first be made available to qualified non-
15 immigrant agricultural workers specifically
16 identified pursuant to subsection (c)(3).

17 “(B) PREVIOUSLY EMPLOYED WORKERS.—
18 Visas shall next be made available to qualified
19 nonimmigrant agricultural workers who have
20 previously been employed in agricultural em-
21 ployment in the United States, providing pri-
22 ority in consideration among such workers in
23 the order of the length of time in which they
24 were employed.

1 “(C) ORDER IN WHICH APPLIED.—The re-
2 remaining visas shall be made available to other
3 qualified nonimmigrant agricultural workers
4 strictly in the chronological order in which they
5 apply. Waiting lists of applicants shall be main-
6 tained in accordance with regulations prescribed
7 by the Secretary of State.

8 “(2) TREATMENT OF SPOUSES AND CHIL-
9 DREN.—A spouse or child of such a worker is not
10 entitled to visa or such status by virtue of such rela-
11 tionship, but may be provided the same status as
12 such a worker if the spouse or child also is a quali-
13 fied nonimmigrant agricultural worker to perform
14 agricultural employment.

15 “(3) CRIMINAL BACKGROUND CHECK.—In the
16 addition to any other examination required under
17 this Act, no visa or other documentation may be
18 issued to an alien under section 101(a)(15)(W) until
19 the alien has obtained successful clearance of the se-
20 curity and criminal background checks specified by
21 the Secretary of Homeland Security for purposes of
22 this section.

23 “(h) APPLICATION FOR AN INCREASE WHERE EX-
24 TRAORDINARY AND UNUSUAL CIRCUMSTANCES.—

1 “(1) IN GENERAL.—If an agricultural employer
2 (or association or representative thereof) establishes
3 that extraordinary and unusual circumstances have
4 resulted in a significant change in the employer’s
5 need for nonimmigrant agricultural workers speci-
6 fied in the application, or in the availability of do-
7 mestic workers who are able, willing, and qualified
8 to perform agricultural employment, the employer
9 may apply to the Secretary of Agriculture (in such
10 form and manner as the Secretary shall provide) for
11 an increase in the numerical limitations otherwise
12 established under subsection (d) to accommodate
13 such emergency need. If approved, the Secretary
14 shall forward the application to the Secretary of
15 Homeland Security with a recommendation on the
16 additional number of nonimmigrant agricultural
17 worker visas found necessary.

18 “(2) TIMELY DETERMINATION ON APPLICA-
19 TION.—The Secretary of Agriculture shall make a
20 determination on an application under subparagraph
21 (A) and forward its recommendations to the Sec-
22 retary of Homeland Security within 72 hours of the
23 date the application is completed.

24 “(3) INCREASE IN LIMITATION.—To the extent
25 the application is approved, the Secretary of Home-

1 land Security shall provide for an appropriate in-
2 crease in the appropriate numerical limitation within
3 72 hours.

4 “(i) ENTRY OF WORKERS.—

5 “(1) IN GENERAL.—An alien may not be admit-
6 ted to the United States as a nonimmigrant agricul-
7 tural worker during the three-year period beginning
8 on the most recent date (if any) on which the alien
9 violated a material term or condition of a previous
10 admission as a nonimmigrant agricultural worker.

11 “(2) DISQUALIFICATION FOR COMMISSION OF
12 CRIME.—An alien who commits a crime while in the
13 United States as a nonimmigrant agricultural work-
14 er shall be ineligible to retain such status and shall
15 be required to depart from the United States.

16 “(3) CONTINUOUS EMPLOYMENT.—Non-
17 immigrant agricultural workers admitted under this
18 program shall be continuously employed or actively
19 seeking employment in agricultural employment
20 throughout the term of their admission.

21 “(4) DIRECTION OF NONIMMIGRANT AGRICUL-
22 TURAL WORKERS TO EMPLOYMENT OPPORTUNI-
23 TIES.—The Secretary of State and Secretary of Ag-
24 riculture, in consultation with the Secretary of
25 Labor, shall establish a system for providing infor-

1 mation on available agricultural employment oppor-
2 tunities to individuals whose applications for non-
3 immigrant agricultural visas have been approved if
4 those individuals are not named by an employer or
5 do not have a letter of employment opportunity pro-
6 vided by a person enrolled in the program.

7 “(j) APPLICABILITY OF EMPLOYMENT LAWS.—All
8 Federal, State, and local employment related laws applica-
9 ble to United States agricultural workers shall apply to
10 nonimmigrant agricultural workers admitted pursuant to
11 this program.

12 “(k) BIOMETRIC IDENTIFICATION CARD.—The Sec-
13 retary of Homeland Security shall provide each non-
14 immigrant agricultural worker with an identification card
15 that contains—

16 “(1) an encrypted , machine-readable; electronic
17 identification strip that is unique to the alien to
18 whom the card is issued;

19 “(2) biometric identifiers, including fingerprints
20 and a digital photograph; and

21 “(3) physical security features designed to pre-
22 vent tampering, counterfeiting, or duplication of the
23 card for fraudulent purposes.

24 “(l) TRUST FUND.—

1 “(1) ESTABLISHMENT.—The Secretary of Agri-
2 culture shall establish by regulation a trust fund the
3 purpose of which is to provide, without further ap-
4 propriation, funds for the administration and the en-
5 forcement of the program under this section, for the
6 cost of the cards issued under subsection (k), for a
7 monetary incentive for nonimmigrant agricultural
8 workers to return to their country of origin upon ex-
9 piration of their visas under the program, and for
10 payment with respect to emergency medical services
11 furnished to nonimmigrant agricultural workers. The
12 Secretary of Agriculture in consultation with the
13 Secretary of the Treasury shall promulgate such
14 other regulations as may be necessary to carry out
15 this subsection.

16 “(2) PAYMENT OF FICA AND FUTA AMOUNTS
17 INTO TRUST FUND.—In the case of employment of
18 a nonimmigrant agricultural worker—

19 “(A) the employer shall provide for pay-
20 ment into the trust fund established under
21 paragraph (1) of the sum of—

22 “(i) an amount equivalent to the
23 amount of excise taxes which the employer
24 would pay under the chapter 21 of the In-
25 ternal Revenue Code of 1986 with respect

1 to such employment if it were considered
2 employment for the purpose of such Act;
3 and

4 “(ii) an amount equivalent to (and in
5 lieu of) the amount of excise taxes which
6 the employer would otherwise pay under
7 chapter 23 of such Code with respect to
8 such employment: and

9 “(B) there shall be deducted from the
10 wages of the worker and paid into such trust
11 fund an amount equivalent to the amount of ex-
12 cise taxes that the employee would pay under
13 such chapter 21 with respect to such employ-
14 ment if it were considered employment for the
15 purposes of such Act.

16 “(3) EXPENDITURES FROM TRUST FUND.—

17 “(A) USE OF EMPLOYER CONTRIBUTIONS
18 FOR ADMINISTRATION.—Amounts described in
19 paragraph (2)(A) paid into the trust fund shall
20 be used for the purpose of administering and
21 enforcing the program under this section and
22 for the cost of the cards issued under sub-
23 section (k).

24 “(B) USE OF EMPLOYEE CONTRIBUTIONS
25 FOR REPAYMENT OF EMPLOYEE CONTRIBU-

1 TIONS UPON RETURN TO COUNTRY OF ORI-
2 GIN.—Except as provided in subparagraph (C),
3 amounts described in paragraph (2)(B) paid
4 into the trust fund with respect to a non-
5 immigrant agricultural worker shall, upon ap-
6 plication by the worker at the United States
7 consulate nearest the worker's residence in the
8 country of origin, be paid to the worker if the
9 worker demonstrates the compliance of the
10 worker with the terms and conditions of the
11 program.

12 “(C) USE OF EMPLOYEE CONTRIBUTIONS
13 ATTRIBUTABLE TO HI TAXES FOR EMERGENCY
14 MEDICAL SERVICES FOR NONIMMIGRANT AGRI-
15 CULTURAL WORKERS.—

16 “(i) IN GENERAL.—Amounts de-
17 scribed in paragraph (2)(B) paid into the
18 trust fund which relate to excise tax in sec-
19 tion 3101(b) of the Internal Revenue Code
20 of 1986 shall be used to provide payment
21 with respect to emergency medical services
22 (as defined in clause (iii)) for non-
23 immigrant agricultural workers.

24 “(ii) ADMINISTRATION.—The Sec-
25 retary of Agriculture shall establish rules,

1 in consultation with the Secretary of
2 Health and Human Services, with respect
3 to the payments under this subparagraph,
4 including methods for determining quali-
5 fications for payment and the amount of
6 payment to be made with respect to emer-
7 gency medical services.

8 “(iii) EMERGENCY MEDICAL SERVICES
9 DEFINED.—In this subparagraph, the term
10 ‘emergency medical services’ means those
11 items and services required to be provided
12 under section 1867 of the Social Security
13 Act (42 U.S.C. 1395dd) with respect to an
14 individual who is a nonimmigrant agricul-
15 tural worker and does not include items
16 and services for which coverage under
17 workers’ compensation is required under
18 subsection (f)(3) with respect to the work-
19 er.

20 “(m) SEMIANNUAL REPORTS TO CONGRESS.—The
21 Secretary of Agriculture shall report to Congress semi-
22 annually regarding the program under this section. Each
23 such report shall include a statement of the number of
24 nonimmigrant visas issued under the program, an evalua-
25 tion of the effectiveness of the program, a description of

1 any problems related to the enforcement of the program,
2 and any recommendations for legislation relating to the
3 program.

4 “(n) MISCELLANEOUS PROVISIONS.—

5 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
6 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
7 ANCE.—An alien admitted as a nonimmigrant agri-
8 cultural worker is not eligible for any program of fi-
9 nancial assistance under Federal law (whether
10 through grant, loan, guarantee, or otherwise) on the
11 basis of financial need, as such programs are identi-
12 fied by the Secretary of Agriculture in consultation
13 with other appropriate heads of the various depart-
14 ments and agencies of Government.

15 “(2) EXPANSION OF CONSULATES.—The Sec-
16 retary of State is authorized to take such steps as
17 may be necessary in order to expand and establish
18 consulates in foreign countries in which aliens are
19 likely to apply to become nonimmigrant agricultural
20 workers under the program to the extent such ex-
21 pansion is fully covered by the funds obtained in
22 subsection (1)(3)(A).

23 “(3) PREEMPTION.—The provisions of this sec-
24 tion preempt any State or local law on the same sub-
25 ject.

1 “(o) DEFINITIONS.—For purposes of this section and
2 section 101(a)(15)(W):

3 “(1) AGRICULTURAL EMPLOYMENT.—The term
4 ‘agricultural employment’ has the meaning given
5 such term in section 3 of the Migrant and Seasonal
6 Agricultural Worker Protection Act (29 U.S.C.
7 1802), without regard to whether the specific service
8 or activity is temporary or seasonal.

9 “(2) TEMPORARY PERIOD.—The term ‘tem-
10 porary period’ means that period during which a
11 nonimmigrant agricultural worker may remain in
12 the United States to perform agricultural employ-
13 ment, not to exceed 10 months in any 12 month pe-
14 riod.”.

15 “(2) CLERICAL AMENDMENT.—The table of con-
16 tents of such Act is amended by inserting after the
17 item relation to section 219 the following new item:

“Sec. 220. Nonimmigrant agricultural worker program.”

