



NORTH CAROLINA GROWERS  
ASSOCIATION INC.

**Hearing before the House Committee on the Judiciary  
Subcommittee on Immigration Policy and Enforcement**

*“The H-2A Visa Program: Meeting the Growing Needs of American Agriculture?”*

2141 Rayburn House Office Building  
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**Testimony of H. Lee Wicker**

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Good morning Mr. Chairman and Committee members I'm Lee Wicker, Deputy Director of the North Carolina Growers Association. Thank you for holding this hearing on a critical issue for labor intensive Agriculture.

As the largest H- 2A Program user in the nation, NCGA currently has 600 grower/members that will employ nearly 6000 H-2A workers and many thousand more U.S. workers this season. I am extremely proud of the growers I represent because they are the most compliant farmers in the nation when it comes to the various state and federal immigration, labor, housing, field sanitation, pesticide, and wage and hour laws.

Without farm workers, crops will rot in the fields, farmers will lose their farms and grocery store shelves across America will be void of fresh local produce. It is that simple. We must never take farmers, farmworkers or our food supply for granted – but if farmers don't have Farmworkers, then our food supply is in jeopardy.

Farmers need a legal, available, affordable workforce and the H-2A Temporary Agricultural Visa program has the potential to fill that need. Presently, the H-2A program is the ONLY option for farmers if they want to ensure they employ a legal workforce. Unfortunately, the H-2A process is not working well. For years, farmers have had to deal with participating in a costly, time-consuming, and flawed program. Employers have to complete a lengthy labor certification process that is slow, bureaucratic, and frustrating. In addition, they are forced to pay an artificially inflated wage rate called the Adverse Effect Wage Rate. Many producers

simply have no confidence they can successfully navigate, afford or comply with the onerous H-2A Program requirements.

The H-2A rules that were written in 1987 were in desperate need of reform because the program had become too expensive and bureaucratic for farmers to use. In 2008, new H-2A rules were written under Secretary of Labor Elaine Chao. These Chao regulations were a mixed bag - both good and bad – but, on balance, the 2008 Chao regulations made real improvements to important areas and more new growers signed up to use the program. But in 2010, the H-2A rules were re-written by current Secretary of Labor Hilda Solis, who took the worst from the 1987 rules, combined with the bad from the 2008 rules, maintained harsh penalties, added unnecessary barriers and unwarranted burdens – and created the current regulations, which are completely horrendous for farmers – making the program harder than ever to use.

Currently H-2A is too litigious, too expensive, and too much of a bureaucratic morass at the three Federal agencies that oversee the program. And not surprising to us, since the Solis regulations took effect, the number of farmers using the program has declined. Those farmers haven't stopped farming – they've merely switched to using illegal workers – which the current administration hopes will build pressure and increase the chances of success for amnesty bills like AgJobs.

**Farmers need workers, not amnesty, to grow crops.** To ensure that growers have an adequate and legal labor force, the solution is not amnesty bills like AgJobs but rather

permanent statutory reform of the broken H-2A Program so that growers can and will use it. Farmers want to comply with the law – but to do so, the program must be viable, sustainable, and predictable.

Having endured the regulatory exercise twice in 24 months – a process which included expensive (not to mention ongoing) litigation demonstrates clearly that improvements to the H-2A program must be put into statute to avoid the regulatory whipsawing of the regulated community where farmers lose confidence in the program, when administrations, agendas, and priorities change.

In order to fix H-2A so that it is workable for farmers, there are four crucial areas of the program that must be corrected in statute.

- 1. Reform the wage rate; link it to the statutory minimum wage** – State or federal, whichever is higher in each state, an H2A wage rate of 110% of minimum wage is a fair wage rate (for both farmers and workers) that will prevent an adverse effect on US Farmworkers. Farmers would still use “piece-rates” to create incentive, the 110% would be the absolute minimum wage. It is important to remember, unlike American citizens who earn only a wage, H2A workers get free housing, free utilities, and free transportation each day to the job, all of which is provided by the farmers. If you add the additional acquisition costs to obtain H-2A workers through NCGA using the economic model developed in 2006 by Phillips and Brown, Ag Economists at NC State, the expense equals, on average, an additional \$2.06 per hour.

**2. Mandate binding mediation and arbitration.** Growers and workers should be required to resolve legal issues through mediation and arbitration. Growers sign contracts all the time that contain mandatory mediation agreements. If it is okay for farmers, then it should be okay for farm workers. Since 1989, the growers of NCGA have been sued over 30 times and have paid over \$5 million in attorneys' fees and settlement costs. This is a common experience among H-2A Program users around the country. I believe that you can protect farm workers without being sued by an attorney with a political and social agenda.

**3: Visa cost and transportation reimbursement.** Cost associated with the worker applying for the visa should be borne by the worker. Inbound transportation should be reimbursed to the worker upon completion of 50 percent of the contract. If the money is reimbursed upon arrival, the financial incentive for the worker to remain on the farm is reduced - and workers who quit leave the farmer short-handed.

**4: Streamline and simplify the H-2A process.** There are many delays with the U.S. Departments of Labor, Homeland Security, and most problematic has been the issue of getting enough appointments from the State Department contractor for the one-on-one interviews and background checks. The entire system needs to be streamlined and simplified, eliminating redundant needless rubber stamping by bureaucrats. We would like to see statutory language that describes in detail the labor market test/certification criteria to avoid regulatory whipsawing with executive branch changes. We've learned the hard way that when the statutory language is ambiguous, administrators and courts with an agenda can interpret legislation in ways that never match the intent of Congress. We would also like to see the definition of agriculture

expanded to allow greater participation from farmers – with an 11 month standard visa and a 3 year special visa, which will allow certain sectors of Agriculture and year-round farms to continue to thrive.

In summary, without these four changes, the H-2A Program is simply too expensive, too litigious and too onerous for most growers to use. Most farmers prefer to employ illegals because it is cheaper, and they remain off the Federal and legal radar screens – even high profile farmers can use illegal workers with impunity because they have been told by ICE agents they will not be investigated. But on the flip side, if you employ legal H-2A workers, you can expect to have investigations by the U.S. Departments of Labor, Homeland Security, Justice, State, the OIG, the GAO, the FBI, the IRS, multiple state regulators, reporters, attorneys, and farm worker advocates.

As members of the House Judiciary, Immigration, Policy and Enforcement Subcommittee, you have the forum and the ability to articulate the problem and offer policy solutions that will ensure American agriculture has an adequate and legal labor force. The H-2A program is not about immigration. H-2A reform should be decoupled from the CIR debate. Please remember our growers need a workable H-2A Program, not amnesty. Amnesty did not work in 1986, and so-called comprehensive immigration reform bills like AgJOBS, with its amnesty provisions, will not work today. It will only make matters worse.

Thank you for your attention and I look forward to answering any questions you have.