Statement of Bert Lemkes
Before the
United States House of Representatives
Judiciary Subcommittee on Immigration Policy and Enforcement
Wednesday, April 18th, 2012

Chairman Gallegly, Ranking Member Lofgren, Committee members and guests, my name is Bert Lemkes. I am co-owner of Van Wingerden International. Our company owns and operates 37 acres of commercial greenhouses in Mills River, NC. We employ about 350 people in the peak season. We are part of the specialty crop agricultural industry, which also includes fruit, vegetable, nursery, and Christmas tree farms. These sectors are high-value crops, representing roughly half of the total value of all crop production in America. They are a major part of the economy in our local area, and in many places from coast to coast.

Operations like ours cannot exist without workers who have the skilled hands and the stamina needed to plant, space, pinch, harvest and ship the plants. The critical work performed by year-round and seasonal laborers supports the jobs of our American employees which include growers, supervisors, merchandisers and managers. These good American jobs are at risk if we cannot keep or find skilled and talented production workers. This is the same all through our Agriculture. Simply replacing and retraining experienced labor which has done a dedicated job for many years is impossible. If Agriculture is forced to do this, it will be a disaster in proportions enough to fulfill one of the Hollywood "end time" movie scenarios.

The subjects of this hearing are identity theft and E-Verify. To do the right things now, and avoid the things that lead to unintended consequences, you must consider how we got where we are.

In 1986, Congress passed the Immigration Reform and Control Act. History has shown that there were two big flaws to this bill. One, it failed to anticipate future labor needs in our economy, and to put into place a legal system to accommodate those needs. Secondly, the law for the first time put the responsibility on employers to determine whether new hires were legally authorized to work. It established the I-9 form and process to accomplish this goal.

From that point on, employers had to walk a very fine line. On one hand, they could not employ workers who could not provide acceptable documents to establish their identity and work authorization. On the other hand, they had to avoid discriminatory practices when hiring.

Hindsight is 20/20, and we now know that the paper-based I-9 process led to the widespread use of false documents that appeared genuine. I'm not an expert on the specifics, but I believe that these false documents may have included fake Social Security or other numbers, but they did not usually or necessarily involve stolen identities.

Now the debate is about E-Verify, and whether it will help prevent identity theft, or lead to more of it. I expect the answer will rest in how you proceed. I have a few things to say about how it works, then a few thoughts on implications for the future.

My company is using E-Verify. We chose to about two years ago after we and several other local employers were the subject of rumors that our business employed too many people that do not look or sound like locals. The implication, of course, is that they must be *illegal aliens*. We have learned through experience that E-Verify poses many challenges for seasonal agricultural employers. We must hire large numbers of workers in short timeframes. There is often high employee turnover. Few farms have dedicated personnel offices staffed with human resources professionals. Many don't have high-speed internet. So the program is not well-suited for many farm employers.

We have also found that E-Verify confirms the real problem with our current outdated and failed immigration laws. This spring, amidst signs that the economy is slowly rebounding, found us experiencing terrible problems finding help for our busiest shipping season. When I get the question "how does E-Verify work for you" my answer is: "Those that are willing to do the work often fail the system, but many of those that pass the system, fail to do the work."

Just over the past four weeks, of the 40 seasonal positions we needed to fill, we were only able to get 21 new hires to pass e-Verify. Of these 21 new hires, only eight have made it past the two- week mark! We had to use temporary labor agencies to fill the remaining positions and meet short term labor needs. The temp agency that used E-Verify had a 55% "fail rate" of

workers quitting the job within the first week. In other words, workers who express interest in our jobs and pass E-Verify do not perform them for more than a few days before quitting.

My question to you is this: how can we sustain high-value agriculture in this great country in the aftermath of mandatory E-Verify, if it actually works? We know from government statistics and other evidence that more than half, and probably more like three out of four of the farm workers in this country have papers that look legitimate but that are not when checked against government records. If E-Verify works, what happens next? As I see it, there are three possibilities:

Workers get better fake IDs. It's no secret that a fake Social Security card using a real name and number can clear E-Verify. I read that a recent independent study by the Westat Corp., commissioned for the Homeland Security department, found that *fake documents with real names and numbers were cleared by E-Verify as much as 54% of the time!*[1] Think of the new incentive for massive criminal identity theft and new-generation fake documents if this problem persists! I suppose some will say you have ideas to fix this. My advice to you: test those ideas in a real-world pilot program before taking a chance across the whole economy!

Legitimate businesses fail, while the underground economy swells. Without production labor, our farm business would shrink or close. For others, if it comes down to the question of whether your farm or business survives or not, desperate employers might take workers off the books. *This will mean lost federal and state tax revenue, and less money for the Social Security and Medicare systems*. Our laws should not force employers to decide between compliance with the law and survival. Congress should enact laws that make both possible.

America exports her high-value agriculture, and the U.S. jobs it sustains. Maybe you think that this is just an idle threat. Ladies and gentlemen, it is happening as we speak. In my own industry, the production of unrooted cuttings, which are the start of our wide assortment of plants, is now mostly done in Central America and even Africa, where labor is more available. Maybe you don't mind the cuttings for your Christmas poinsettias coming from Guatemala or your geraniums starting their life in Ethiopia, but please stop to think of the jobs and economic

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[1] See Westat report at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

activity we will export out of the U.S. if we export more of our other high value agriculture. Will we really be more secure as a nation as we import more and more of our food?

For too long, our "political" solutions on immigration have failed us, and led to unintended and maybe even irreversible consequences. The stigma associated with undocumented workers in agriculture isn't justified when the farm workforce is paying taxes and withholdings, and doing the jobs that fail to attract many Americans or that Americans will not do for more than a few days. Employers and employees are being held hostage by the failure of our government to address immigration reform. Unintended consequences of just ratcheting down the enforcement will transition us from lots of identity fraud to more identity theft. We will export jobs, we will import more food.

Agriculture needs a legal workforce with a visa system that is market driven, flexible to deal with crop cycles and weather, and portable to allow the workforce to move among registered agricultural employers. This will sustain a normal competitive labor market, rewarding employers that take care of their workers. While government has role in such a program, it should be limited because too much bureaucracy kills all good intentions. Make the program relate to the market, seasons and crops.

In closing I would like to make these most important points:

First, the Agriculture industry is willing to embrace an improved E-Verify system, but only if it is combined with a viable agricultural worker program that ensures a legal labor force now, and in the future. They are a cart and a horse. The cart can't move without the horse, and they need to be in the right sequence.

A fix that works will ensure timely access to legal workers. It will also facilitate the work authorization of current and experienced workers who may not have proper immigration status. These workers are most of the experienced talent pool on America's farms, and it is unthinkable that they can somehow be replaced.

Finally, we need to protect our country and its borders, and that includes sustaining our food and agriculture production inside those borders. Thank you.