

Testimony of Connie Horner

Before the
Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security
October 4, 2011

Chairman Schumer, Ranking Member Cornyn, and distinguished members of the Committee, I need your help to continue to do the right thing. I need legal, experienced, seasonal workers to maintain my farm and harvest food that helps feed Americans. I want to hire *legal* workers. Yet, the hiring process must *be cost-effective* and—most important—*simple*. In short, I need your help to make it *easier* to do what's *right*.

I'm Connie Horner, from Homerville, Georgia. I manage a 9-year old, 8-acre, family-owned, organic blueberry farm. There are approximately 2000 U.S. farmers in 20 states growing 500 to 600 million pounds of cultivated blueberries annually, with a wholesale value of about \$1.5 billion. In Georgia, I am one of about 350 growers who produce blueberries with a total farm gate value of \$120M to \$140M annually. We are by any measure a small family farm. Yet, the challenges we face are shared by farms small and large across Georgia and the nation. As you are all aware, earlier this year farmers in Georgia found themselves in the national spotlight when a new state law quickly resulted in a farm labor disaster.

This is our story. In 2006, we hired 67 individuals who worked for varying lengths of time over the course of the year. They were pleasant, productive and efficient. Unfortunately, as months passed, we received nearly 60 Social Security mismatch letters. Translation: unknown to me at the time, more than 80% of my hires were most likely falsely documented workers.

Though this is the reality for many growers, to us it was unacceptable, so we researched options and learned of the H2A program.

In 2007, and 2008, we filed joint H2A contracts with a larger farm. We believed participating in H2A would ensure reliable, legal, experienced workers. We were disappointed. The first year, workers' wages were 60% more than minimum wage and production dropped substantially. The second year, along with a new crew, we brought back the best workers from 2007, but again, production suffered.

In 2009, due to crop damage from a 5-minute hailstorm, we only needed 5 additional workers during harvest. We had previously cancelled our H2A contract on the advice of three gentlemen from the Department of Labor (DOL) who assured us that they could supply over 500 farm jobs due to the overwhelming number of Americans out of work. I was calling 3 branches of the DOL several times a week, begging them for workers. The Americans interested in working wanted only air-conditioned positions and refused to work outside. About 80% of our fruit rotted on the bushes.

Once again, we were faced with a serious dilemma: where do we find a legal, reliable, experienced, productive workforce? There was no easy answer; so again, we were forced to go back to H2A. The larger farm refused to participate in the program, so we brought back the best employees from 2008. We spent over \$12,000 in H2A non-payroll related costs for only 7 H2A employees. The paperwork required to comply with regulatory, documentation and reporting requirements consumed 14 reams of paper—7,000 sheets. Essentially, that's 1,000 sheets of paper per needed employee! (This year we discontinued H2A and used less than one ream for the same number of needed employees.)

Besides the 7 H2A workers we brought from Mexico in 2010, we were required to send out 58 local hire letters. We received no response from 25 (43%), 18 (31%) were hired but never showed up, and of the 13 (22%) that were hired and came to work - 6 worked 3 days or less, 1 lasted longer than 2 weeks, and *none finished the season*.

Many of the DOL referrals were criminals, which we discovered only by their excuses for not coming to work. They needed to visit parole officers or have ankle bracelets removed. Fortunately, few of them came to our farm. The H2A rule requiring employers to hire everyone without question is irresponsible and potentially dangerous! It is one of the many reasons Horner Farms will no longer use this program.

In addition, we are currently involved in a lawsuit where our 2010 H2A contract is in question. Our contract, though it was approved by all the necessary Government agencies, accepted and signed by me and all my employees, is in danger of being voided. So, even though we paid the agreed upon contracted wage rate, this lawsuit may require us to pay 26% more in back wages. I'm not a lawyer, but voiding a legally constituted contract that was agreed upon by all relevant parties is unacceptable.

I'd guess none of you would choose to be a new surgeon's first patient. We all want to deal with experienced, efficient service providers. Farmers like me are no different. Our very survival as farmers in this country depends on access to experienced, efficient workers. Yet, under the H2A program, worker referrals typically had no experience with farm work. As a result, production suffered greatly and with the tremendous added paperwork requirements; my time was no longer spent in the fields where I am most effective, but in the office surrounded by mountains of paperwork.

After 2010, we knew that H2A was not the answer for us. Having survived the process for 3 out of 4 years, it was clear to us that the H2A program was a Rube Goldberg solution to the labor issue facing farmers. We hoped to phase out H2A over time with the purchase of a mechanical blueberry harvester. We planned to slowly convert our farm to all machine harvestable varieties. Because organic farming is more labor intensive, we know that we might not be able to remain organic.

We purchased our harvester in December of 2010. Our harvester was the first of its kind in the State of Georgia, and we did have better results than we initially thought possible. But, mechanization is not an answer for everyone, and even for us, it brings a whole new set of challenges. First, in blueberry production, only a few varieties are suitable for machine-harvesting. This means we will have to replace 82% of our farm with new, unproven, machine harvestable varieties, and that will take us 5 to 10 years if things go well. We will struggle each and every year to get the necessary maintenance done to ensure a good crop. We will no longer have farm labor around to perform other routine tasks like weed control, which we must do by hand to maintain our organic certification. We will no longer be able to pack our own fruit, because machine-harvested blueberries require much more sophisticated sorting, grading, and packing equipment that a farm our size cannot afford. We have also discussed downsizing our farm to make it more manageable for the five of us.

I believe H2A is a well-meaning mess. It has an admirable goal of protecting workers while supplying farms with needed labor. Yet, the H2A regulations and requirements have turned government red tape into a crimson tide. H2A is NOT the answer to the labor crisis we are facing today. As I understand the numbers, H2A provides only 2 to 4 percent of the hired farm workforce. Yet, 70% or more of experienced farm workers are thought to be unauthorized to work in the U.S. That's something like one million people. If we had to replace those one million workers through H2A, the program would

have to handle 10 or 15 times as many workers as it ever has! It would collapse, and farming would collapse along with it.

The National Council of Agricultural Employers recently commissioned a major research project into the H2A program that has documented its failings. The research project included a nationwide user survey, which was overseen by Carol House, a statistician who used to direct all of the statistical efforts of the USDA, including the Census on Agriculture. She recently provided expert testimony for a September 13 House hearing on the subject. Also testifying at the House hearing was Libby Whitley Fulton, who is an H2A employers' agent with vast experience. I am including their testimony with my own statement in the hopes that it can be made part of the record of this important hearing.

Tweaking H2A is not the answer. Growers and producers in America need a 21st century farm labor solution that is more suited to the realities of farming. A program needs to give workers the freedom to move among crops and among employers as most do now. The program must provide workers needed in the future, and it also needs to provide a worker visa that allows the existing, experienced workforce to continue to work. I don't see how you can solve the problem otherwise.

Our farm's story is a bit different than most in our area, so when the Georgia legislature passed an immigration enforcement law this past spring, we didn't feel the brunt of it. Others did. Much of the migrant farm labor supply skipped coming to Georgia out of fear of the new law. Commissioner Black is in a better position to go into the numbers on worker shortage and crop loss, but the situation was devastating, with vegetables, berries, and fruit left to rot. Farms felt the impact first, but so did community-based businesses that serve the farming and farm worker communities. It was a man-made disaster that threatens to repeat itself in more and more states unless Congress finally acts.

Let me close with this reality: American Farmers feed Americans! We are already dependent on other less reliable countries for our oil – we are becoming more aware of the enormous risks involved in that. Do we really want to regulate our farmers out of business? Do we want to be dependent on foreign countries for growing our food? That will be our children's future, unless you all finally take smart and sensible action to resolve this national crisis.