Testimony of Mike Brown
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On Behalf of the Food Manufacturers Immigration Coalition
Before the
House Judiciary Committee Subcommittee on Immigration and Border Security

Hearing on Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program

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2141 Rayburn House Office Building

Thank you Chairman Gowdy and Ms. Lofgren. I appreciate this opportunity to testify today on the need for comprehensive immigration reform.

I am Mike Brown, President of the Nation al Chicken Council. NCC's members produce and process more than 95 percent of the chicken consumed in the United States. Collectively, the chicken industry is directly responsible for 260,000 U.S. jobs and through supplier and ancillary industries, helps support almost 800,000 more.

I am testifying today on behalf of a broader Food Manufacturers Immigration Coalition that is advocating some of the most progressive and far reaching immigration reform concepts proposed to date. The Coalition is comprised of the National Chicken Council, North American Meat Association, U.S. Poultry & Egg Association, National Turkey Federation, Virginia Poultry Federation, Georgia Poultry Federation, The Poultry Federation (representing Arkansas, Oklahoma and Missouri), California Poultry Federation and American Meat Institute.

Collectively, the meat and poultry industry contributes about $832 billion in total to the U.S. economy and, through its production and distribution linkages, impacts firms in all 509 sectors of the U.S. economy. In total, there are approximately 1.3 million employees whose jobs depend on the sale of meat and poultry products to the public.

We are focused on five major themes: border security; a very simple improvement to the E-verify system as an alternative to a national identity card; clarity in anti-discrimination laws; an occupational visa category that our industry can use that could be tied to local or regional employment; and, options to effectively address the 11 million undocumented workers in the shadows of our economy.

To date much of the discussion has focused on the need to retain highly skilled workers such as scientists and engineers, and the need for additional temporary agricultural workers. These are important objectives, but they do not meet the needs of our industry sector. Our workers are neither highly skilled nor temporary. We are manufacturers, wanting a stable and permanent workforce that can help sustain the rural communities where we do business.

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Some think there is an economic incentive for manufacturing employers to hire illegal immigrants at below-market wages. Nothing could be further from the truth. Our industry needs a stable workforce. We seek workers who will stay on the job long enough to become skilled and efficient, helping us to keep our food products and employees safe. This takes investment – up to thousands of dollars spent on training and equipment for each employee. In order to retain talent, we offer good wages, family health care, 401(k) plans, and language training.

Immigrant workers bring many benefits to the communities where we have plants – often communities with declining populations. These workers and their families pay taxes and put down roots. They help prevent shrinking school enrollment. They use health benefits to support local health services. And they help keep local businesses open.

Our principles:

Enforcement
While border security has improved significantly over the past decade, improvements can be made to further lower the number of successful illegal border crossings and address visa overstays. Congress must provide additional resources (technology, infrastructure, personnel) for reasonable enforcement of immigration laws (at the borders and in the interior). One example is to provide "exit" or expiration data to E-Verify to aid the government in its efforts to track visas and prevent overstays.

Strengthen Employment Verification & Prevent Identity Fraud
U.S. employers who hire unauthorized workers currently face stiff fines and criminal penalties. The criminal prohibitions in current law are extensive, and there is no need to expand them. Unfortunately, the government does not provide employers with a reliable verification method to prevent identity fraud and confirm whether new hires are legally authorized to work in the United States. E-Verify is a step in the right direction but does not work adequately in its current form.   If strengthened, this program will serve as an effective and efficient "virtual border."

Over the past decade, the government has discovered thousands of undocumented immigrants working for employers who made good faith efforts to verify the status of their employees including processing all new hires through E-verify. Only 1.7% of employees run through the E-Verify system come back as non-confirmed. 98.3% of employees clear E-verify in less than 24 hours. The system however does not account for our most common issue, identity fraud—a valid SSN# that does not relate to the person presenting it. Currently, multiple people can earn wages on the same Social Security Number (SSN) or use the SSN of a deceased individual. The tools currently available to employers do not indicate if the SSN presented is a duplicate or belongs to a deceased individual. The Social Security Administration (SSA) provides little cooperation to employers trying to combat identity fraud.

The solution: in addition to documents such as a driver's license or social security card which are easily falsified, we believe employers should be allowed to require an E-Verify Self Check. The system is already in existence and relies on information that would prevent identity fraud.

E-Verify Self Check is an online service that allows U.S. employees to check their employment eligibility in the United States before beginning a new job. E-Verify Self Check was designed to provide confidence that E-Verify results are accurate prior to applying for employment. The Self Check "entry portal" (to prove identity before moving to the employment verification step) helps prevent identity fraud by melding E-Verify with an automated "Connect the Dots" program that pulls data from publicly available records and requires employees to take a test based on that publicly available data . Under the current interpretation of the Office of Special Counsel for Unfair Immigration-Related Employment Practices, employers may not require anyone to use Self Check in the employment process and may not even ask about Self Check.

Of course not all applicants will be able to successfully complete the self check. They may have inadequate information in public data bases. When this is the case, programs must be in place to ensure eligible employees are able to appeal the results or address the issue with the appropriate government agency in a timely fashion. The Department of Homeland Security (DHS) should provide employers with an automatic referral process for these employees. Having this system in place will ensure that only legal applicants even apply, and that they should have no fear in working with the DHS to get their accurate information into the system.

The Social Security Administration (SSA) must be required to verify that SSNs are not being used in duplicate locations or are not matched to deceased individuals. The Social Security Number Verification System (SSNVS) can verify via Internet that employee SSN information matches Social Security's records; however, they can currently only be used for tax and wage reporting (Form W-2) purposes. It is also limited to matching information that is easily acquired by an individual committing identity fraud (Name, SSN, DOB, Gender). Providing employers with the additional information of duplicate or deceased SSNs can help stop identity fraud by unauthorized workers and also alert authorized employees that they may be the victim of identity theft. Employers who discover employees with duplicate or deceased SSN should use the same DHS automatic referral process previously described.

In return for participating in these aggressive screening programs, a safe harbor should be provided for employers that utilize the E-Verify Self Check and follow the automatic referral process. This safe harbor should insulate an employer from liability unless the government can show beyond a reasonable doubt that the employer failed to use these tools in good faith. This trade-off is only fair. An employer that does everything possible to avoid hiring unauthorized aliens should not be exposed to further liability. At the end of the day, it is the obligation of the government – not U.S. employers -- to provide a secure worker verification system.

Anti-Discrimination
Employers can often be caught in the middle, between employee verification obligations and non-discrimination enforcement. For example, the Department of Justice's Office of Special

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Counsel (OSC) has cited employers for allegedly acting too aggressively in verifying work authorization status of new hires. Simultaneously, that same business is often targeted for worksite enforcement action for not being vigilant enough. Statistics-based discrimination penalties have even been imposed on employers who recruit outside the local community or work with the State Department to hire workers with refugee status when our economy is creating jobs and qualified Americans are unavailable or unwilling to fill those jobs. This situation discourages voluntary compliance and is simply unfair.

Immigration reform legislation should require that DHS, DOJ, DOL and any other enforcement or antidiscrimination agency consult internally and then publish "rules of the road" for this two-way street. If an employer follows these rules, there should be no liability for its actions – from either the immigration enforcement or the antidiscrimination perspective.

<u>Access to Labor Pool (General Labor Skilled Visa Program)</u>
An effective occupational visa system may be the most important barrier to illegal immigration. The right visa system with the right screening tools will in effect be a second "virtual border." It will prevent future waves of illegal immigration by preserving the available jobs for qualified US workers or legal immigrants. The majority of general labor skilled illegal entrants to the United States come seeking employment, yet there is currently no clear legal immigration avenue. There are very limited permanent visas for general labor skilled workers. The existing temporary programs for general labor skilled workers are for seasonal labor only, which does not help manufacturers, whose occupational needs are year-round and ongoing. AgJobs legislation, as important as it is, does not benefit food manufacturers.

Training and experience investments, cost of relocation, and finding housing, make any work authorization of less than three years not feasible. During times of full employment, when our economy is creating jobs and qualified Americans are unavailable or unwilling to fill those jobs, employers need access to a pool of legal, general labor skilled immigrant workers. This challenge can be particularly acute for employers in rural areas where unemployment rates may be lower than the national average.

Congress must create a general labor skilled immigrant visa for the manufacturing industry to recognize that employer needs in industry are permanent in nature, not temporary. Employers should have the ability to recruit outside of the U.S. and sponsor workers for a defined period of time. The process would be much less complex and cumbersome than the professional visa process and be created to meet high quantity labor needs.

A manufacturing visa program should include flexible annual goals or targets for immigration that emphasize economic migration, predominantly employment-based migration. These goals or targets should be flexible and adjustable, to reflect changing market conditions. The number of available permits could be dependent upon local and industry-wide employment data (Local Area Unemployment Statistics of the Bureau of Labor Statistics.)

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An employer would register/petition the USCIS for a designated number of workers in this visa status. Qualified individuals should then apply for visas abroad (or for a change of status if in the US) based upon the approved petition, and would be counted against the allotted number of visas. Visas should be mobile to allow employees to work for any registered employer within the designated industry and employment areas.

Given the costs associated with relocation, training and housing, and the constant and permanent need for labor in the industry, the proposed lower-skilled immigrant visa should provide work authority for no less than three years. An individual may apply for an extension of his or her stay in this visa class. A path to permanency should exist for workers successfully performing in their jobs and community. An application to continue employment should not count towards the annual cap for this visa class. The Immigration and Nationality Act (INA) already allows for "dual intent" for certain individuals admitted to the US in nonimmigrant status, and that approach should be applied to this category as well. As a result, an individual can be admitted as a nonimmigrant but still apply for permanent status without becoming inadmissible.

<u>Earned legalization</u>
Our coalition supports an earned legalization program. Our broken immigration system has resulted in up to 11 million undocumented immigrants living in the shadows. Congress must provide a fair and practical roadmap to address the status of unauthorized immigrants in the United States.

Again Mr. Chairman and member of the committee, I appreciate the opportunity to testify on behalf of food manufacturers who offer some of the most progressive immigration reform concepts under discussion.