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## WHY FLORIDA DOESN'T NEED A NEW AGRICULTURAL GUESTWORKER PROGRAM

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**Why Florida Doesn't Need A New Agricultural  
Guestworker Program**

# Introduction

Agribusiness lobbyists are once again attempting to have enacted a proposal to create a new, ill-advised agricultural "guestworker" program. During the 105<sup>th</sup> Congress, this proposal was attached to the Senate version of H.R. 4276, the Fiscal Year 1999 Commerce, Justice, State Appropriations Bill, but did not survive the negotiations over the final Conference Report for this bill. The growers are planning to introduce similar legislation in the 106<sup>th</sup> Congress. They offer two justifications for their bill which would strip out all the protections for both foreign and domestic workers from the existing H-2A guestworker program and allow the growers unlimited access to cheap and exploitable foreign labor. First, they claim that there is an agricultural labor shortage, and second, they maintain that the current H-2A program is unworkable. In fact, there is no shortage; unemployment remains high in the Florida citrus belt; and the H-2A program is rapidly expanding in the Southeast.

## There is No Agricultural Labor Shortage in the United States

In 1997, Congress directed the General Accounting Office to report on the likelihood of a widespread agricultural labor shortage. After an exhaustive study, the General Accounting Office concluded that *no* national agricultural labor shortage appears to exist:

"Most farm labor experts, government officials, and grower and labor advocates we interviewed agreed with our conclusion that agricultural employers in most of the United States have had adequate supplies of labor for many years and continue to do so. Our analysis is based on (1) the large number of illegal immigrant farmworkers granted amnesty in the 1980s, (2) persistently high unemployment rates in key agricultural areas, (3) state and federal designations of agricultural areas as labor surplus areas, (4) stagnant or declining wage rates as adjusted for inflation, and (5) continued investments by growers in agricultural production."<sup>1</sup>

In reaching this conclusion, the GAO specifically looked at the 20 counties which

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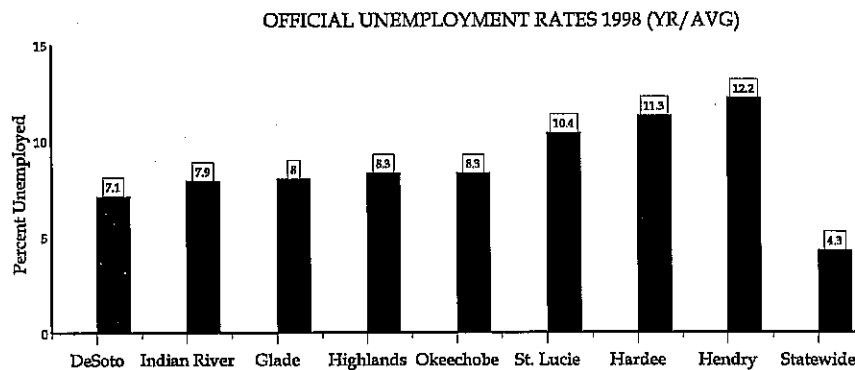
<sup>1</sup>U.S. General Accounting Office, H-2A Agricultural Guestworker Program, No. GAO/HEHS-98-20, December 31, 1997, p. 26.

accounted for about one half of the national value of production in fruits, tree nuts, and vegetables in 1992. Five of these counties (Collier, Dade, Hendry, Palm Beach and St. Lucie) are located in Florida. Of these 20 counties, 13 maintained annual double digit unemployment rates throughout the period 1994 through 1996. As of June 1997, 11 counties exhibited monthly unemployment rates double the national average of 5.2 percent and 15 of the 20 counties displayed rates at least 2 percentage points higher than the national rate. Only two of the counties had unemployment rates below the June 1997 national average.

Not only did GAO find that there was a surplus of agricultural labor, it also concluded that INS enforcement efforts are not likely to significantly reduce the availability of agricultural labor in the future. Few INS enforcement resources are directed toward agricultural employers and few unauthorized agricultural workers are apprehended by the Border Patrol.

## Unemployment Remains High in the Florida Citrus Belt

Nothing has changed since GAO issued its report in December, 1997 to alter its conclusions. Despite a strong overall economy, pockets of high unemployment remain in the very areas where the growers are seeking to introduce a new workforce. Unemployment rates in the rural counties which make up the heart of Florida's citrus belt are more than twice the statewide rate:



Source: Florida Bureau of Labor Market and Performance Information

As of October 1, 1998, the eight leading citrus producing counties in Florida were all classified by the United States Department of Labor as labor surplus areas:

### COUNTIES CLASSIFIED AS LABOR SURPLUS AREAS\*

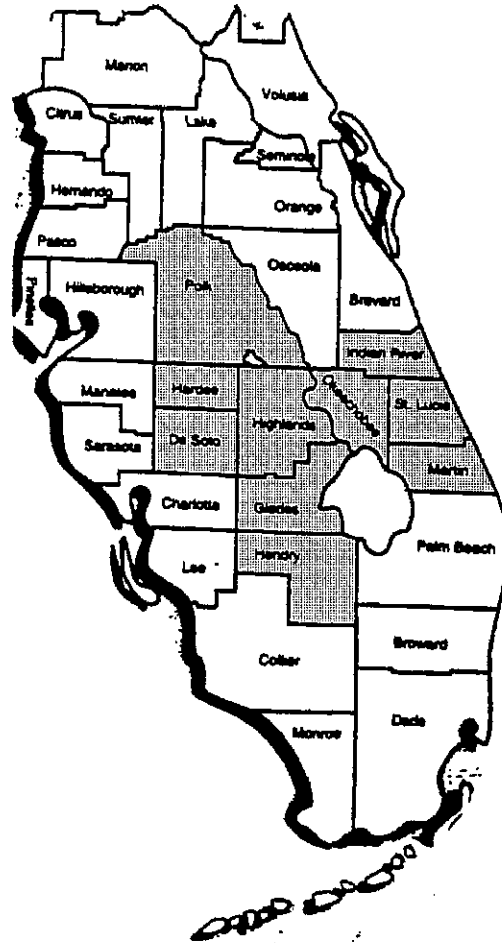
OCTOBER 1, 1998

#### Citrus Production by County

1997-98

#### Thousand Boxes

Polk	40,350
St. Lucie	31,646
Hendry	31,633
Highlands	31,605
DeSoto	29,877
Hardee	23,681
Indian River	20,437
Martin	14,271

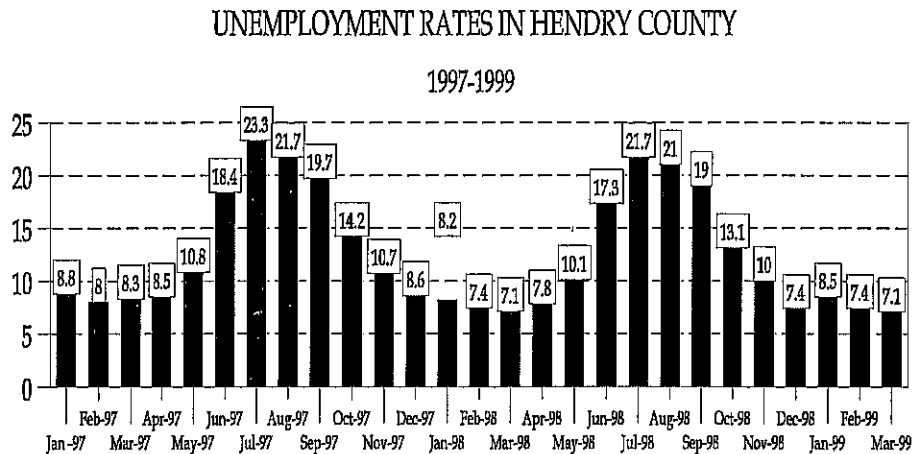


Source: 63 FR 56510 (Oct. 21, 1998).

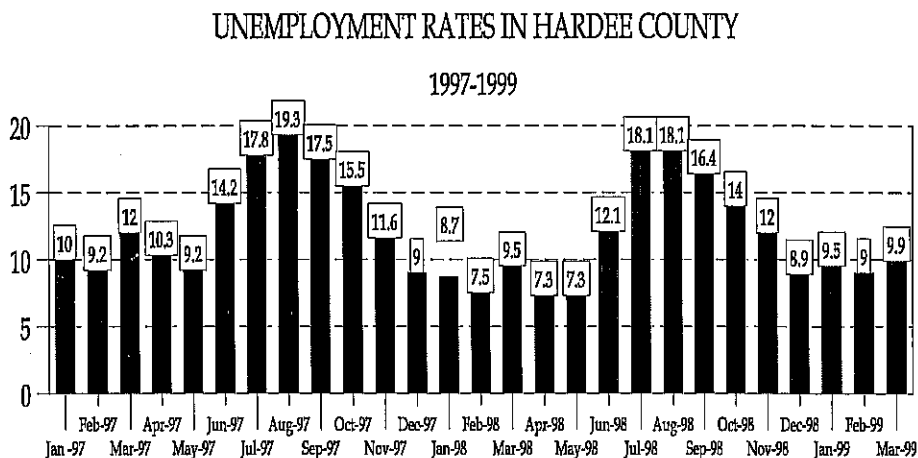
\*The Polk County Labor Surplus Area does not include the cities of Lakeland and Winter Haven

The highest unemployment rates in Florida are in Hendry and Hardee Counties. Hendry County is the number two citrus producer in Florida and the leading producer of sugarcane. Other important crops are sweet corn, cucumbers, eggplant, peppers, potatoes, squash and tomatoes.

The 1990 census showed that 22.3% of the population was Hispanic and 20% was nonwhite. Since January 1997, unemployment in the county has never been under 7% and has been as high as 23%:



Hardee County was 23.4% Hispanic, according to the 1990 Census. As in Hendry County, the greatest number of persons are employed in agriculture. Wachula has been referred to as the cucumber capital of the world. Other leading crops are citrus, eggplant, peppers and tomatoes. Unemployment during the past two years has ranged from 7% to 19%:

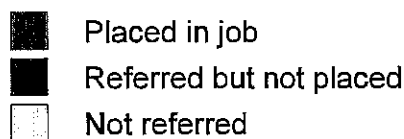
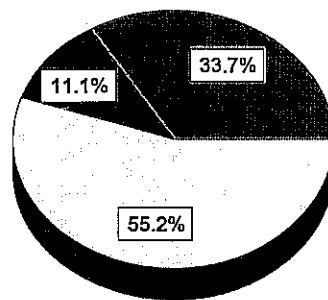


# Many U.S. Farmworkers Continue to Register with the Job Service Even Though Most Farmworker Applicants Are Not Referred to a Job

The statistics of the U.S. Employment Service on its services to migrant and seasonal farmworkers provides further evidence of the difficulties that many farmworkers continue to face in finding employment. In the year ending June 30, 1998, over 188,000 migrant and seasonal farmworkers registered with Job Service offices nationwide. This represents an 11% increase over the 1993 program year when 170,008 were registered. Although U.S. farmworkers continue to register with the Job Service, only about 34% are actually placed in a job:

## MSFW APPLICANTS

1997-98 Program Year



Source: U.S. Department of Labor, Employment and Training Administration  
ETA 9002 Data PY 1997

There were over 125,000 legal farmworkers registered with the Job Service last year who were not placed in a job. Significantly, more than half of all farmworkers who registered with the Job

Service were not even referred to a job. In other words, last year, over 100,000 farmworkers registered with the Job Service but were not referred to a job:

**TABLE 1**

**Number of Farmworker Applicants Registered with the Job Service in PY 97-98  
Who Were Not Referred to Any Job**

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<b>California</b>	<b>25,312</b>
<b>Texas</b>	<b>21,795</b>
<b>Michigan</b>	<b>11,343</b>
<b>Washington</b>	<b>9,641</b>
<b>Florida</b>	<b>7,315</b>
<b>Arizona</b>	<b>5,261</b>
<b>Puerto Rico</b>	<b>4,604</b>
<b>Oregon</b>	<b>3,037</b>
<b>North Carolina</b>	<b>2,179</b>
<b>New Mexico</b>	<b>2,108</b>
<b>Minnesota</b>	<b>1,387</b>
<b>Idaho</b>	<b>1,119</b>
<b>Remaining states</b>	<b><u>8,984</u></b>
<b>Total</b>	<b>104,085</b>

Source: U.S. Department of Labor, Employment and Training Administration  
ETA 9002 Data PY 1997

## **Growers Who have Applied for Workers Under the Existing H-2A Program Are Routinely Certified by the U.S. Department of Labor**

Contrary to claims that the present program is unworkable, when growers do apply for H-2A workers under the H-2A program, the Department of Labor generally approves their applications and certifies them eligible for H-2A workers. According to the GAO, the H-2A program has approved 99% of employers' applications for agricultural guestworkers. The H-2A program is growing rapidly, particular in Region IV (the Southeast, including Florida). In the current program year (through April, 1999) the Atlanta Regional Office of the Department of

Labor has certified the need for over 14,000 H-2A workers in Region IV, despite the fact that the growers have made almost no effort to recruit U.S. workers:

**TABLE 2**

**REGION IV FY99 H-2A LABOR CERTIFICATIONS (through 4/99)**

<b><u>State</u></b>	<b><u>Crop</u></b>	<b><u>Jobs Certified</u></b>
<b>ALABAMA</b>	vegetables	5
	horticulture	80
	peaches/fruit	113
	sheep	5
<b>FLORIDA</b>	fruit	144
	tomatoes	25
<b>GEORGIA</b>	vegetables	2239
	onions	746
	fruit	748
	cucumbers	60
	tobacco	56
	peaches	115
	hay	4
	sod	15
<b>KENTUCKY</b>	tobacco	1104
	horticulture	44
	grain	25
	vegetables	50
	fruit	7
	tomatoes	20
	sod	7
<b>MISSISSIPPI</b>	horticulture	91
	vegetables	74
	fish	49
	sod	6
<b>N. CAROLINA</b>	tobacco/vegetables	6677
	horticulture	42
	Christmas trees	186
	vegetables	94
	fruit	6



	tobacco/fruit	15
<b>S. CAROLINA</b>	peaches/fruit	551
	vegetables	180
	horticulture	120
<b>TENNESSEE</b>	tobacco	458
	horticulture	221
	tomatoes	150
	grain	16
	sod	40
	fruit	15
<b>Total H-2A Certifications</b>		<b>14603</b>

Given the fact that hundreds of employers are currently using the existing H-2A program in a wide range of crops throughout the South, there is no credible basis for arguing that the program is "unworkable."

## Despite Claims of a Labor Shortage, Few Growers Utilize the Job Service to Recruit Farmworkers

If growers were finding it difficult to find workers, one might expect them to place job orders seeking migrant and seasonal farmworkers with the Job Service. The basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals and employers who are seeking workers. However, for the most part, the only agricultural employers who use the Job Service are employers who are required to use the Job Service as part of the H-2A certification process. *Thus far in program year 1999, not a single grower in Florida has placed an intrastate or interstate job order for agricultural workers with the Job Service which was not related to a request for H-2A foreign workers.*<sup>2</sup>

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<sup>2</sup>Services to Migrant and Seasonal Farmworkers Report for Quarter Ending March 31, 1999, ETA 5148, Florida Department of Labor and Employment Security.

# Since the Passage of IRCA in 1986, Growers Have Made Little Effort to Improve Wages and Working Conditions in Order to Attract and Retain U.S. Farmworkers

The Immigration Reform and Control Act of 1986 ("IRCA") was supposed to be a measure to control illegal immigration through a system of penalties against employers who hired unauthorized workers. However, there has never been any effective enforcement of IRCA's employer sanction provisions in agriculture. IRCA also contained provisions which gave agriculture additional time to adjust to a fully legal work force. These provisions included a program to legalize a large portion of the existing agricultural workforce, the Special Agricultural Worker ("SAW") program. No other industry was allowed to legalize its undocumented workforce. Nationwide, over 1,200,000 individuals were legalized under the SAW program. Thus, the growers were given access to a large, legal workforce; but, as everyone recognized at the time, if the SAWs were to continue to work in agriculture there would have to be improvements in wages and working conditions in order to make the jobs more competitive with nonagricultural employment.

The Commission on Agricultural Workers was established by Congress as part of IRCA for the specific purpose of studying the effects of the Act on the agricultural industry, with special emphasis on the perishable crop production. The Commission's findings released in 1993 were unequivocal:

Since the mid-1980s, the living and working conditions of hired farmworkers have changed, but seldom improved. Nominal wages have increased, partially as a result of mandated changes in the federal, and in some cases state, minimum wage, but these increases have seldom kept pace with inflation, causing real wages to fall.... In most areas, an increasing number of newly arriving, unauthorized workers compete for available jobs, reducing the number of work hours available to all harvest workers and contributing to lower annual earnings....

Rather than a stabilization of the labor supply, there is a general oversupply of farm labor nationwide... With fraudulent documents easily available, employer sanctions have been largely ineffective. As such, IRCA has not provided an economic impetus for the changes in the personnel practices of agricultural employers that could lead to improvements in

the lives of seasonal farmworkers. After a slight improvement in 1985, the decline in real wages and annual earnings for farmworkers that began in 1978 has continued.

The Commission concluded that "to assure its long-term competitive position, agriculture must improve its labor management practices:"

The response of the United States to competition from countries that pay even lower wages should be the development of a more structured and stable domestic agricultural labor market with increasingly productive workers. Industries must modernize to remain successful in the increasingly competitive international market place. Agriculture is no exception.

The Commission made many suggestions as to ways to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment. Among other things, the Commission recommended that licensing requirements for farm labor contractors be strengthened, that agricultural workers be protected under unemployment insurance and workers' compensation to the same extent as other workers in the United States, that farmworkers should be afforded the right to organize and bargain collectively, and that there should be more effective enforcement of worker protective statutes. Five years later, the Commission's recommendations remain ignored and largely forgotten.

Now, having squandered the opportunity to move toward a legal workforce afforded them under IRCA by failing for more than a decade to do anything to improve wages and working conditions for their employees, the growers are seeking to further destabilize the agricultural labor market with a new "Bracero" program which will only lead to even greater illegal migration in the future. This new program will remove the last few incentives for agricultural employers to improve their wages and working conditions, as the U.S. workers and the current undocumented workforce compete for the remaining jobs. Rather than seeking a stable workforce with better working conditions as the Commission recommended, the growers' guestworker proposal is part of an overall assault on farmworker labor standards which also includes weakening the Migrant and Seasonal Agricultural Worker Protection Act. The growers even oppose any effort to further restrict the employment of child labor in agriculture.

# What Should Be Done

Congress needs to focus on the real problem. Today, two-thirds of Florida's farmworkers live at or below the poverty line.<sup>3</sup> The median personal income for Florida farmworkers surveyed by the Department of Labor between 1988 and 1997 was between \$5,000 and \$7,500 per year, and the median family income was between \$7,500 and \$9,999 per year.<sup>4</sup> Three-quarters of Florida farmworkers had family incomes that were below \$12,500 per year.<sup>5</sup> Only 6% have employer-provided health insurance and only 28% reported that their employers would pay for medical treatment of a work-related injury.<sup>6</sup> Nation-wide, one-third of migrant farmworkers lack adequate drinking water, water for washing, and/or toilets at the work site.<sup>7</sup> Thirty-two percent of migrants who use equipment in their jobs must buy it themselves.<sup>8</sup>

Despite their hard work, the best efforts of Florida's farmworkers to achieve a stable lifestyle usually end in failure. That failure can be measured in the farmworkers' inability to achieve and maintain adequate earnings, their lack of employer and social benefits, and the poor working conditions under which they labor. It is reflected in the dilapidated, slum housing in which many of Florida's farmworkers live and in their children's lack of success in school. They are the victims of a labor system which perpetuates a chronic labor surplus, provides primarily short-term employment, and uses labor contractors to exert downward pressure on farm labor conditions. The workers directly or indirectly pay for much of the travel, housing, health care,

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<sup>3</sup>Arrieta M, Walker F, Mason, T. A Profile of Demographic, Occupational, and Health Related Characteristics of the Migrant and Settled (Seasonal) Hired Farmworker Population of Florida, 1998, p. 44.

<sup>4</sup>Mines R, Farmworkers in Florida: A Subset of the NAWS.

<sup>5</sup>Id.

<sup>6</sup>Arrieta, Walker, Mason, p. 44.

<sup>7</sup>Gabbard S, Mines R, Boccalandro B. Migrant Farmworkers: Pursuing Security in an Unstable Labor Market. Washington, DC, U.S. Department of Labor, 1994, p. 32.

<sup>8</sup>Id.

child care, periods of unemployment, training and equipment required to manage a system based on migrant and seasonal labor. The labor market, in effect, transfers most of its inherent instability to the workers themselves.

Real reform of the agricultural labor market requires diverting the costs of instability from the farmworkers back to the employers, taxpayers, and consumers who benefit from their labor. As a starting point, Congress should enact the following measures:

*Agricultural employees should be provided with federal/state unemployment insurance coverage that provides them with protection against unemployment comparable to that of other workers in the United States.* Continuing labor surpluses have contributed to even lower average annual earnings. It is thus essential that farmworkers be placed under the full protection of unemployment insurance programs as both the Commission on Agricultural Workers and the Advisory Council on Unemployment Compensation have recommended.

*Congress should encourage all states to provide Workers' Compensation Insurance coverage to agricultural employees comparable to that of other workers in the United States.* Agricultural employment remains one of the most hazardous occupations in the country, yet thirteen states do not require any coverage for farmworkers .

*Congress should extend the minimum wage provisions of the Fair Labor Standards Act to all farmworkers by eliminating the statutory exemptions in Section 13(a)(6) for employers who use less than 500 man-days of agricultural labor and employees engaged in the range production of livestock.*

*Congress should provide overtime protection to farmworkers under the Fair Labor Standards Act.* In 1938, the FLSA was enacted, providing most workers with an overtime premium after 44 hours in a workweek (during the next two years this was phased down to 40 hours). At the time, agriculture was exempted from the minimum wage but the overtime exemption was maintained and has remained in FLSA ever since.

*Congress should amend the child labor provisions of the Fair Labor Standards Act so that farmworker children are given the same protection as other children.* Current law permits children to work at younger ages and at more hazardous tasks than in other, less dangerous occupations. Farmworker children deserve the same protection as other children.

*Congress should amend the Migrant and Seasonal Agricultural Worker Protection Act to give all farmworkers the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and*

*to engage in other concerted activities for mutual aid and protection.* Agricultural workers remain excluded from the federal National Labor Relations Act. They are thus denied a basic right which all other employees enjoy.

These long-overdue reforms are a matter of "simple justice." They would give farmworkers some of the basic rights and protections that other workers in our society have had for decades. They are a necessary first step toward the development of a more structured and stable domestic agricultural labor market and slowing the influx of new entrants.

Congress also needs to resist the growers' current efforts to weaken the Migrant and Seasonal Agricultural Worker Protection Act, and in particular, the joint employer principle which places the responsibility for compliance on the farm owner, and not just the crewleader or labor contractor. This is essential if stricter labor standards are to be enforced in agriculture.

It should not be cheaper to hire a guestworker than to hire a U.S. worker. Currently, H-2A employers are not required to pay FICA and FUTA taxes on their H-2A workforce. The Advisory Council on Unemployment Compensation recommended in 1994 that the wages of H-2A workers should be subject to FUTA taxes. H-2A workers should also be covered under the Migrant and Seasonal Agricultural Worker Protection Act.

Finally, Congress needs to address the situation of the undocumented farmworkers already here by legalizing their status as was done under the SAW program. However, in order to avoid a repetition of the post-IRCA decline in wages, it is essential that legalization be accompanied by the reforms described above. Moreover, legalization must be linked to a commitment on the part of the growers to utilize a legal workforce in the future. It is not enough to merely exhort the agribusiness community to be better employers. Congress must act to place agribusiness and its workforce on a level playing field with non-agricultural employers and employees.