

Who Will Pick Your Fruit Next Year?

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Thank you (Chairman) Don (Bartlett)

It seems like, whenever I get to talk, I always get these non-controversial subjects like labor and immigration. This morning, in the few minutes we have, I'm going to try to quickly run through some of the basic provisions of the new immigration law, particularly those that most directly affect the availability of labor, and to offer a few suggestions, a few strategies that you may want to employ in your planning over the next couple of years.

I think it's fair to say that we're in a time of change. A few weeks ago, my wife and I enrolled our eldest daughter in college. I remember getting her situated in the dorm, buying her books and so forth, and then getting back into the car and leaving. It leaves a kind of bittersweet, funny little feeling in the pit of your stomach when you get in that car and drive home. On the way we were reminiscing about the changes in Kelly's life and the changes we'd gone through during our marriage. I recalled an instance— part of this is actually true, though the analogy isn't completely accurate— when we were young parents and Kelly must have been three or four. I remember one evening we had dinner, and it was time for her to go to bed. We listened to her prayers and told her a bedtime story and put her down and went back into the living room. We were visiting or enjoying a cocktail or something—it had been about a half hour or perhaps forty-five minutes, all of a sudden we heard this thump. If you've ever been through this as a parent, you know the feeling, your heart jumps into your mouth, we ran into the bedroom, we made sure Kelly was okay, we got her calmed down, we got ourselves calmed down; and I said, "Now, Kelly, what happened? Why did you fall out of bed?" She said, "Well, Daddy, I'm not sure. I guess I just stayed too close to where I got in."

Well, you know, immigration law and how we respond to it is very similar to this. The trick to immigration reform and living with it, is in not staying too close to where we are now — not trying to stay too close to where we got in! We're going to have to change; and like all change, this is going to be painful in some situations, hopefully in other situations it will be fairly straightforward.

So with that, I'm going to run through a few things kind of quickly. I hope to have a moment or two before I finish to handle any questions. Also, a lot of what I'm touching on, in an expanded form, you will find in the back of the room in a several-page handout. Some of you have gotten a copy of this handout before at various other presentations we've given. This is the most recent revision.

I think that which in immigration reform grabs our attention, that with which we're most concerned, is how to operate under this law without going to jail or without being

severely sanctioned in the form of monetary penalties.

Perhaps, ignoring a full discussion of sanctions and employment verification, the most *immediately* important provision of the law to agriculture is called the "SAWs" program, or alternatively the "Special Agricultural Worker" program or "Seasonal Agricultural Worker" program. The provision applies to field workers in "perishable" crops. Citrus, avocados, peaches, plums, grapes, and so forth. For example, Ted Todd's Christmas trees are considered perishable. Therefore, to the extent that you're involved with a perishable commodity, there's a special provision of the act, in place now, which expires in November, 1988 that's important to you. It provides a method whereby your workers can legalize themselves. They must have worked at least 90 man-days, doing field work, in one of the perishable commodities as defined in the regulations. Harvesting for example would be field work, so would pruning, picking, irrigating, driving a tractor, spraying, and so forth. The 90 man-days must be between May 1985 and May 1986. Additionally, one of the pluses to the SAWs program is that sanctions are deferred until the end of the program; that is, the end of November 1988. Employers using such workers doing such work in such commodities cannot be penalized during that period for continuing to employ these workers even though they may be illegal aliens. Also, starting in 1989—actually October of 1989—a program called the "RAWs" program (Replenishment Agricultural Workers) comes on line. Starting in 1989, for fiscal year 1990, upon a joint determination of need — of a shortage — by the Secretaries of Labor and Agriculture, additional alien workers may be allowed entry into this country. The number admitted is tagged to the number of "SAWs" initially legalized, which is why it is so important that we get all, or as many as possible, of those eligible as "SAWs" legalized.

Additionally, there is a general legalization program which can be used by those working in shoe factories, garment factories, and perhaps in some of our packinghouses to legalize their status.

To be eligible, the alien must have been in the country illegally and continuously since before January 1, 1982.

In addition to the "SAWs" program, the general legalization, and the "RAWs" programs, there's a program that's been in place for approximately thirty years called the "H-2" program. This particular section of the law was revised as a part of immigration reform. This program allows—upon petition by an employer to the Secretary of Labor, and his (the Secretary's) certification of need—the importation of alien labor under contract. It's a highly structured program. There are a lot of hoops one has to jump through to get involved in it. It's not inexpensive, and it is certainly substantially more expensive than what is generally being done now; but if all goes to "hell in a hand basket," it is a fallback that can be utilized.

To regress momentarily, there is another approach, which I refer to as the "wink and blink." Currently, the employment verification documentation required under the law (that which an employer must see to prove that he has not knowingly hired an illegal alien) is easily obtainable from "questionable" sources. Nearly anyone can get a driver's license and a social security card. Until recently, you didn't have to prove you were even in the country legally to get either one. Now you do to obtain a social security card, but

the driver's license is still kind of "iffy." Nevertheless, there are a lot of fraudulent documents being churned out by the "printing presses" right now.

As an employer, all you are required to do to comply with the law is to see certain specified documents. One, to establish identity; the other, to establish employment authorization: as a layman, to look at them, and to say, "Yeah, that looks like a valid driver's license to me," or "That looks like a valid social security card," or "That looks like a valid birth certificate," or whatever. That's fine, that buys a little time; but about the second or third time you're rehiring the same person, using the same fraudulent documents, the border patrol may begin to question you. At any rate, that may buy another year or two or so, until the Congress finally comes to the realization they're going to have to deal with this politically sensitive issue. At that point, we're probably going to see some sort of movement toward a more secure, less likely to be counterfeited, social security card. It'll probably have a picture on it or some sort of physical description. It may have a thumb print or finger print. It may have — like a credit card — a magnetic strip across the back. *Very controversial. Very politically sensitive. Very likely to happen.*

Until December of next year, basically nothing changes. After that, we may have a couple of years perhaps — though it's going to begin to tighten down — the Border Patrol's going to begin to tighten it down. We'll see more raids, there's going to be more enforcement at the border, it's going to be tougher on people to get across. With individual exceptions, again, we may have two or three years — assuming the "RAWs" program kicks in. However, "RAWs" only have to work in agriculture 90 days a year. So the other 270 or so, they can work somewhere else. After three years (90 days a year), they then can do whatever else they wish. They're legalized, and away they can go.

What happens then? What's the fallback? What happens after next November — November 1988? That's the one we better start thinking about.

The "SAWs" and the "RAWs" programs, and our ability to operate under their provisions, depend upon our ability to obtain and retain a legalized work force. That may be totally domestic, it may be partially or totally composed of the newly legalized workers. Either way, it's going to require that we do some things we haven't generally done in the past. Some are going to be financial, some are going to be structural. This may involve releasing our direct control over the work force — particularly the harvesting; going together with others to collectively provide for longer periods of employment, better wages, benefits, etc. There are a number of pros and cons to this, we just don't have the time to get into fully this morning; but there are tradeoffs that need to be considered. We'll be happy to talk to you individually and collectively over the next year and explain these in greater detail.

There is the "H-2" program. However, as I hope I've stressed, you just don't jump into the "H-2" program willy-nilly, unless you've got a lot of money, unless you're a larger operator, with 200 or so employees; you're just not going to be able to deal with it by yourself. You're going to have to go into some sort of cooperative arrangement with other growers or other employers. This program requires you to provide (at your expense) housing. It requires a sophisticated program of domestic recruitment. It requires a wage rate referred to as the adverse effect wage rate (AEWR) which today,

in California, would be a minimum of \$5.17. On a piece rate basis, the piece rate has to generate that wage — not as an average, but as a minimum. The program requires the employer to transport the workers from their place of origin to the place of employment and return them at the end of the contract period. It requires payment for three-quarters of the contract period — even if not worked — unless there is an intervening "act of God" outside of the control of the employer preventing fulfillment of the terms of the contract.

This is a program that "rewards" advance planning and punishes a lack thereof. The only major commodity groups on the west coast in recent years to utilize it have been the western sheep industry and the citrus industry in parts of Arizona. However, as in all things, there are some offsetting considerations to the "H-2" program, such as increased productivity; and on the "H-2" workers — that is the aliens — neither unemployment insurance nor social security taxes are paid.

Another approach worthy of discussion would be to return to the Congress and ask for legislative changes. Anybody here got several million dollars they'd like to offer? The obstacle we must overcome, however, is unlike the last time when we were part of the overall consideration and revision of the immigration act; this time if we go back, we're going to be going back as agriculture, by ourselves, and that changes the dynamics. I don't wish to leave the impression that nothing can be done; I think some things can be accomplished and probably will be done. But, if one is seeking major revision to the law, dig deep because it's going to be expensive and it's going to take time.

Irrespective of where we go, or where we're headed, it takes two things. One, we've got to get it in our minds that things are going to change. Let me repeat myself, things are going to change. Those who will be in business three or four or five years from now will be those who manage to plan for that change and accommodate it.

So, with that I think I'm going to stop. I thank you for allowing me to come to speak to you today; if you have any questions I'll try as best as I may to respond to them.

AUDIENCE PARTICIPATION

Q. SAW permits now are for a short term. How long, and how often can they renew them?

A. The adjustment to a legalized status under the SAWs program is a multi-step process. First, the applicant must complete and submit to the local INS legalization office, an application with appropriate supporting documents showing a minimum 90 man-days of work between May 1985 and May 1986. Assuming the application is accepted, a fee receipt (for the \$185.00 application fee) authorizing the applicant to work until his interview date — which will be noted on the receipt — will be issued by mail. Secondly, the applicant must appear at the local legalization office (LLO) for the interview. Assuming that all goes well, he'll be issued an I-688A (Temporary Resident Alien Card) — valid for approximately 6 months. During this period, the application is subject to a further review at the Regional Processing Facility (RPF). Assuming nothing is discovered that would disqualify the individual during this process, the applicant is notified by mail (before the end of the 6 months) to go to the LLO, surrender his I-688A, and receive a 1-688, which is a "permanent" Temporary Resident Alien Card valid for

up to 18 months. Third, at the end of this period, the alien will be adjusted (or must apply to be adjusted, it is unclear which) to a Permanent Resident Alien (green card) status. The alien *cannot permanently* remain in a temporary status.

Q. What's involved in that applying for permanent status?

A. That's one of those things they haven't bothered to tell us yet. I will speculate with you — and please underline "speculate", because it's subject to change — it looks like what probably will be required is to file an application and *possibly* appear before an INS office for some sort of a minimal interview. This is fairly similar to the system for general legalization applicants; it will probably be much more streamlined for SAWs — it may all be done by mail the next time around.

Q. Is there anything that keeps the SAW from going to general type work; and if not, why not?

A. The answer to the first part of your question is "no". Once they receive a legalized status, they have no obligation to work in agriculture; they can work anywhere. But that's the gamble with the SAWs program; you've got to figure out what it's going to take to keep them, and that's not always going to be easy.

Q. (*Link Leavens*) We've got about 50,000 SAWs registered in California. What's the best estimate of how many we need to keep the California industry going?

A. That's been one of those \$90,000 questions. I'll tell you how I back up to it, Link, because it's not an easy question. No one really knows. In citrus, we've researched that question. In avocados, it's a little tougher. In citrus, we estimate between 10- and 15,000 are needed for harvest. Assuming 90% are currently illegal, then 9-13,000—plus or minus.

Statewide, all commodities probably need between 100- and 150,000 additional at peak (over and above an equal number employed year 'round) — we're talking about that big bulge in the summer or early fall. It's hard to come up with any really firm figures because we know we've got so many people working three and four and five and six jobs, over the course of a year, that it's hard to break it back down into man years, man weeks — and work it out that way. But that's about the best I can give you. Incidentally, the 56,000 plus is the Western Region; that's just not California, that's all up and down the west coast.

Q. (*Leavens*) We've got 51,000 in California as of last week? A. I don't know; I haven't talked to the guys at ALFA recently. However, that sounds about right, because we had more here probably than any other place else. In the ALFA program about two, three weeks ago, we had 17,000 - 18,000. We've obviously got a long way to go. Part of what's happening, too, is we're finding that a lot of the people we thought might qualify weren't here during the qualifying period. One of the things that's come out of this thing is, we're finding that people come in cycles. Some of them come up here and stay; but there are large numbers that come up, work for three or four months, and then go back and don't come back for maybe two years or three years, until they need more money. We're also seeing large numbers of first timers.

A lot of the people up in Washington, I'm informed, are of the "new wave" that aren't going to qualify. That's why I'm only "fairly" optimistic about the next year or so. Once

we get past that, it starts getting a whole lot cloudier.

Q. Russ, do you see a policy of reciprocity on this? A lot of us have sent Future Farmers to other countries, or exchange students to other countries. Some of us like to travel. Wouldn't it be nice to go to Mexico and get paid for harvesting their crops, and come back a couple of months later?

A. Well, there are those who would suggest to you that in a few years, if things continue as they are, we may be all going to Mexico and harvesting their fruit, or the fruit that we're growing in Mexico. That was meant as a semi-serious joke. Yes, it would be nice to have reciprocity. The closest we come to that is the "H-2" program, where we bring workers up under contract; and at least we have that "guaranteed" work force for a period of time.

Q. Isn't there a situation now where there's a contractor in New York that's trying to set that up for the Japanese right now?

A. It's for Chinese, yes. Matter of fact, I've got the article right here. It's someone none of us who worked in this area, even on the east coast, know anything about. It's apparently some sort of relatively new group who want to bring in Chinese. I haven't had a chance to talk to them; I hope to do that on my next trip to the east coast.

Q. I'm just going through this (SAWs legalization) with one of my employees right now. We just went to one of the groups that was established; and they were telling my man that he could only qualify if he had harvested, not done any other field work, but only harvested avocados during that time. They said, make sure when you go to your INS interview that you tell them that every day for 90 days that you harvested avocados...

A. Let me read something to you. Just give me a moment to find it.

Q. ...They said, no tractor driving, nor irrigation...

A. I understand, however, the law requires the alien to have performed "seasonal agricultural services" in a perishable commodity. Avocados or citrus or whatever — vegetables — are perishable commodities. Let me read the definition of "seasonal agricultural services." "Seasonal agricultural services" means "the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables," etc. So: planting, that's not harvesting; cultural practices, that would be pruning and irrigating; cultivating; growing; and harvesting. Harvesting is only one of them. Somebody's misled your man.

Q. Well, the same thing that they told us garbanzos didn't qualify as a perishable item — not that we're growing garbanzos, but he had worked for a garbanzo grower previously. And this is coming out of a group out of Santa Maria.

A. Is that one of the ... which one of the groups is it? Do you know who they're tied to?

Q. Western Growers recommended that I go to them. It's a vegetable grower/packer/shipper, or whatever that organization is in Guadalupe, and they've handled something like 5- or 600 applicants. I go down there with my man to keep this straight, and these gals that are working with the people in the office say, no, you have to have harvested for 90 days. They even got after me because my payroll — time cards — did not say "harvesting" on them...

A. That's incorrect.

Q. ...and this is what's going around, though.

A. Yes, unfortunately there's a lot of misinformation going around. To some extent, we have been our own worst enemies. However, that is incorrect, that's all I can tell you; and if they won't do it for you, you'd better find some place else you can take the man, because he can qualify.

(Discussion of this issue continued briefly, but extraneous noise made the recording of it unintelligible.)

I think that (the chairman) wants me to stop now. I will be around all day and into this evening. Look me up outside, and I'll try to answer any further questions you may have. Thanks very much for your attention.