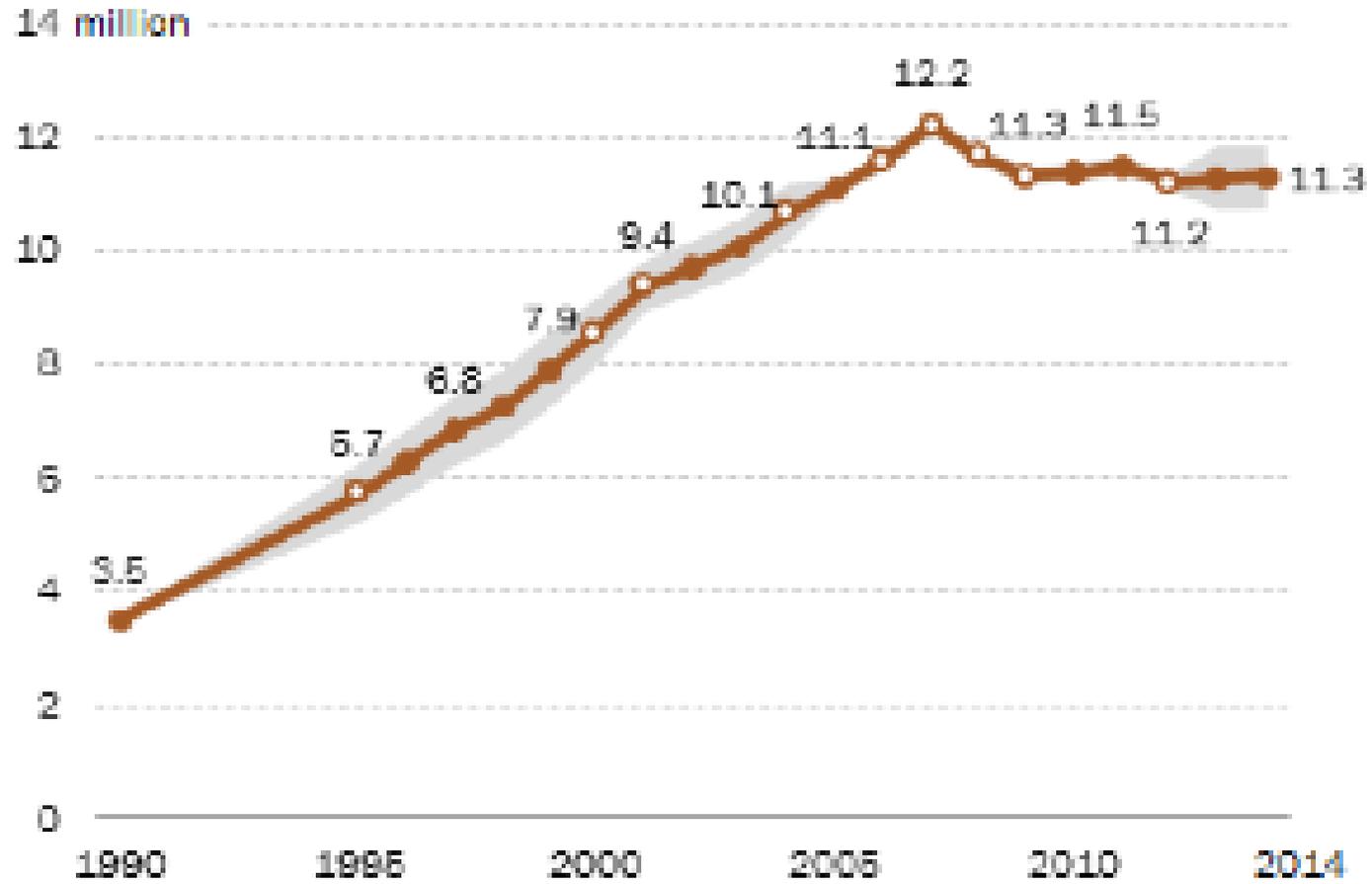




# California Labor Environment and H-2A

Presented by: Carlos Castañeda

## U.S. Unauthorized Immigrant Population Levels Off





# Where is everyone ?!!!

- ▶ Birthrate in Mexico
- ▶ Border Security. Both Sides of the Border.
- ▶ Deportations
- ▶ Aging Workforce
- ▶ Guide (Coyote) Costs
- ▶ Safety



# California finally feels the labor drought

- Many AG States East of the Mississippi have been using the H2 program since 1980
- CA farm labor pool supply is the equivalent to the bottom of the lake. The rest of the nation has seen it's farm labor force dry up years ago. This is a result from our proximity to the border and relaxed ICE enforcement

# Solutions

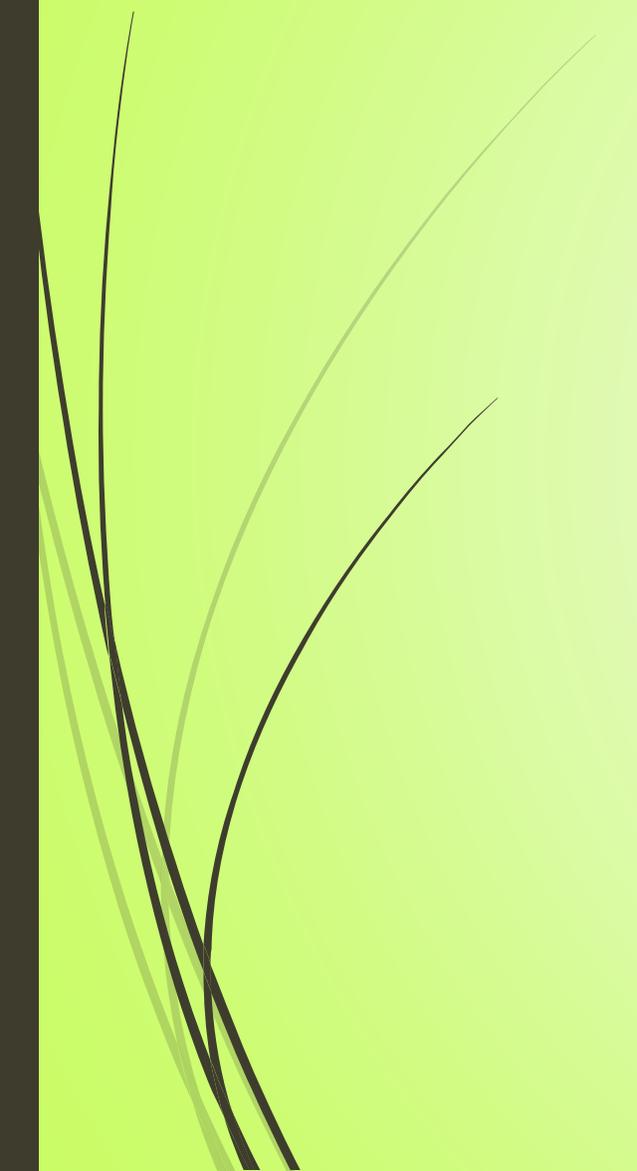


- ▶ **Mechanize:** labor-saving mechanization
- ▶ **Stretch :** Borrow, loan or DO NOT take a day off
- ▶ **Supplement:** H-2A Visa

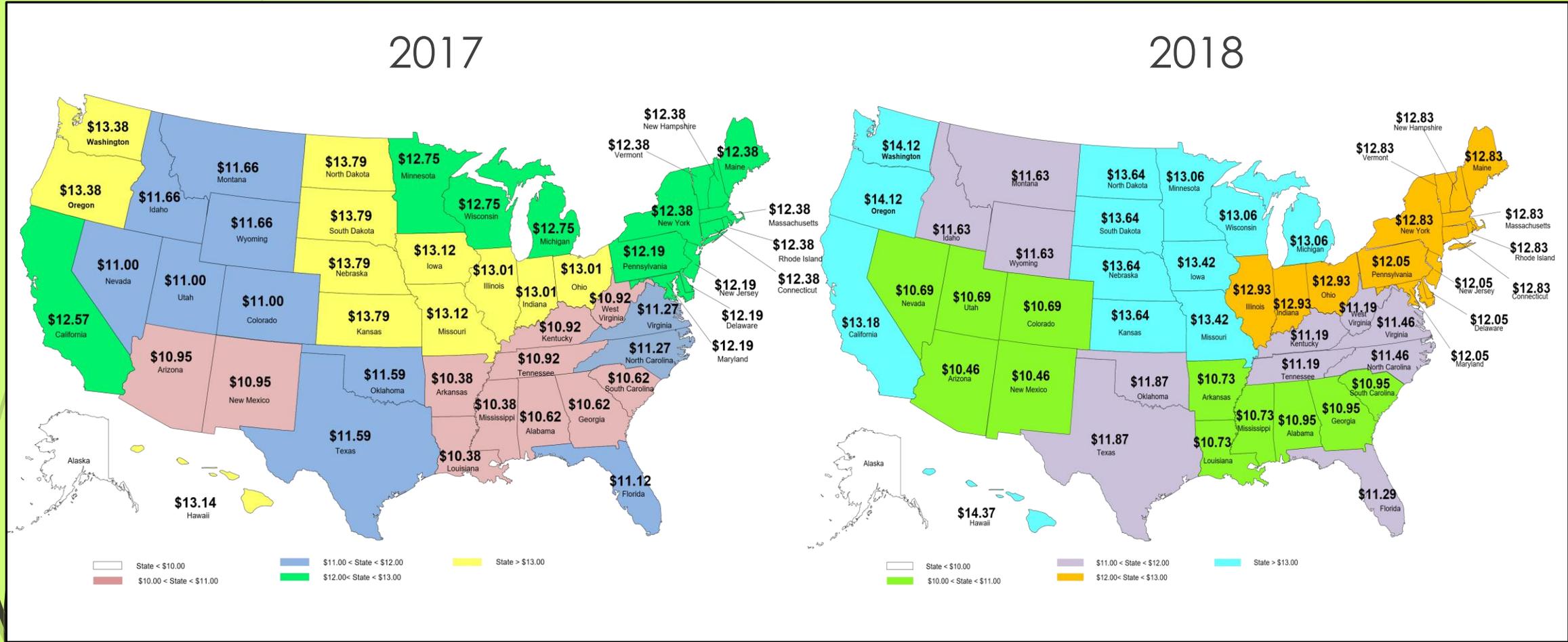


# H-2A

➤ Employers must:

- (1) try to recruit US workers
  - (2) provide housing
  - (3) provide transportation
  - (4) pay AEWR
- 

# AEWR



# Housing Requirements



## *Some of the requirements:*

- ▶ 50 sq ft of BEDROOM space per employee
- ▶ Fully stocked kitchen and common area (or provide 3 meals daily – cost shared with employee)
- ▶ Bathroom and laundry facility with Laundry tub
- ▶ Fire Extinguishers and ladders (2 story building)

# Cost Effective Housing

- Provide a kitchen vs providing food
- Use temporary mobile homes on marginal ground vs new construction or existing stick built housing



# Locals Reaction

**LOCAL**

APRIL 1, 2016 7:58 PM

## **Nipomo farmworker housing sparks neighborhood complaints**

### **HIGHLIGHTS**

Neighbors are criticizing a development that would potentially house up to 112 migrant farmworkers

Representatives say the workers are necessary to help alleviate a national farmworker shortage

The county says it can't regulate the number of people living in a residence

## Fire Destroys Homes Destined for Farmworkers



- ▶ Nipomo residents react to news that a project set to house migrant farm workers, will be abandoned.
- ▶ The announcement comes just a week after a massive fire engulfed two of the seven units at the complex.
- ▶ Fire investigators say they think that it may have been arson.
- ▶ Neighbors tell KSBY Wednesday they were mostly thrilled to hear the cul-de-sac would not become the home to more than 100 farm workers.
- ▶ Many concerns from these residents included increased traffic, decreased property value, overall safety issues, and a worry that an arsonist could return.
- ▶ It is a neighborhood filled with young families, and Wednesday night they celebrated saying the future of their community looks brighter now.

# Housing: Outside the box

- ▶ Fairgrounds being used by a large Northern CA grower
- ▶ Hotels purchased throughout Santa Maria
- ▶ Trailer Parks used in Oregon
- ▶ WAFLA housing barracks 8.00 per person per night
- ▶ Tanimura and Antle Solution: \$8 million for housing for 800 workers in Spreckles, CA (\$10,000 per bed)
- ▶ 600 Bed facility going through planning in Santa Maria

# 2017 OFLC H-2A Statistics

- In 2014 California was the 7<sup>th</sup> highest H-2A user in the nation at 6,043 positions certified.
- At the close of 2017 it has risen to the 5<sup>th</sup> spot, with 15,232 positions certified.
- Being that California produces over one-third of the nation's vegetables and two-thirds of fruits and nuts, it won't be long before it becomes the top H-2A user.

## OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2017

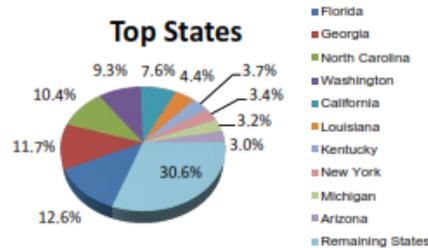
### Applications Received

FY 2017	Q1	Q2	Q3	Q4	% Change FY16
10,115	2,355	4,131	2,438	1,191	14.9%

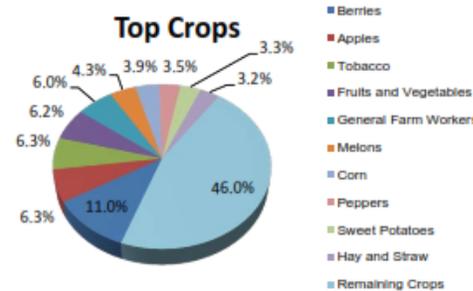
### Applications Processed

Determination	FY 2017	Q1	Q2	Q3	Q4
<b>Total Determinations</b>	10,097	1,549	4,418	2,690	1,440
- Certified	9,797	1,495	4,334	2,601	1,367
- Denied	144	28	39	45	32
- Withdrawn	156	26	45	44	41
Positions Requested <sup>1</sup>	206,156	28,964	70,409	65,405	41,378
Positions Certified	200,049	28,013	68,834	62,966	40,236
Processed Timely <sup>2</sup>	97.6%	98.7%	98.0%	97.1%	95.9%

### Top States



### Top Crops



<sup>1</sup> Positions requested derived from data not publicly disclosed.

<sup>2</sup> Percent of complete H-2A applications resolved 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for the OFLC Certifying Officer to issue a final determination 30 days before the start date of need.

Review of Positions Certified FY 2017 (% of total certified FY 2017)			
<b>Top 10 States</b>	Florida	25,303	12.6%
	Georgia	23,421	11.7%
	North Carolina	20,713	10.4%
	Washington	18,535	9.3%
	California	15,232	7.6%
	Louisiana	8,875	4.4%
	Kentucky	7,403	3.7%
	New York	6,870	3.4%
	Michigan	6,432	3.2%
	Arizona	6,060	3.0%
<b>Top 10 Employers</b>	North Carolina Growers Association, Inc.	11,947	6.0%
	WAFLA	7,134	3.6%
	Fresh Harvest, Inc.	4,623	2.3%
	Zirkle Fruit Company	2,970	1.5%
	Elkhorn Packing Co, LLC	2,653	1.3%
	Sternit Ag. Services LLC.	2,082	1.0%
	R & R Harvesting, Inc.	1,999	1.0%
	Foothill Packing, Inc.	1,854	0.9%
	Peri & Sons Farms, Inc.	1,739	0.9%
	Virginia Agricultural Growers Assoc., Inc.	1,602	0.8%
<b>Top 10 Crops/Occupations</b>	Berries <sup>3</sup>	21,946	11.0%
	Apples <sup>4</sup>	12,697	6.3%
	Tobacco <sup>5</sup>	12,534	6.3%
	Fruits and Vegetables	12,465	6.2%
	General Farm Workers	12,037	6.0%
	Melons <sup>6</sup>	8,535	4.3%
	Corn <sup>7</sup>	7,818	3.9%
	Peppers <sup>8</sup>	6,903	3.5%
	Sweet Potatoes	6,662	3.3%
	Hay and Straw <sup>9</sup>	6,411	3.2%

<sup>3</sup>Berries Category Includes Primary Crops of Berries, Blackberries, Blueberries, Cranberries, Raspberries, and Strawberries.

<sup>4</sup>Apples Category Includes Primary Crops of Apple Drops and Apples.

<sup>5</sup>Tobacco Category Includes Primary Crops of Burley, as well as Cutting, Flue-Cured, Setting, and Stripping Tobacco.

<sup>6</sup>Melons Category Includes Primary Crops of Cantaloupes, Melons, and Watermelons

<sup>7</sup>Corn Category Includes Primary Crops of Corn and Sweet Corn.

<sup>8</sup>Peppers Category Includes Primary Crops of Bell Peppers, Chili Peppers, Jalapeno Peppers, Peppers, and Sweet Peppers

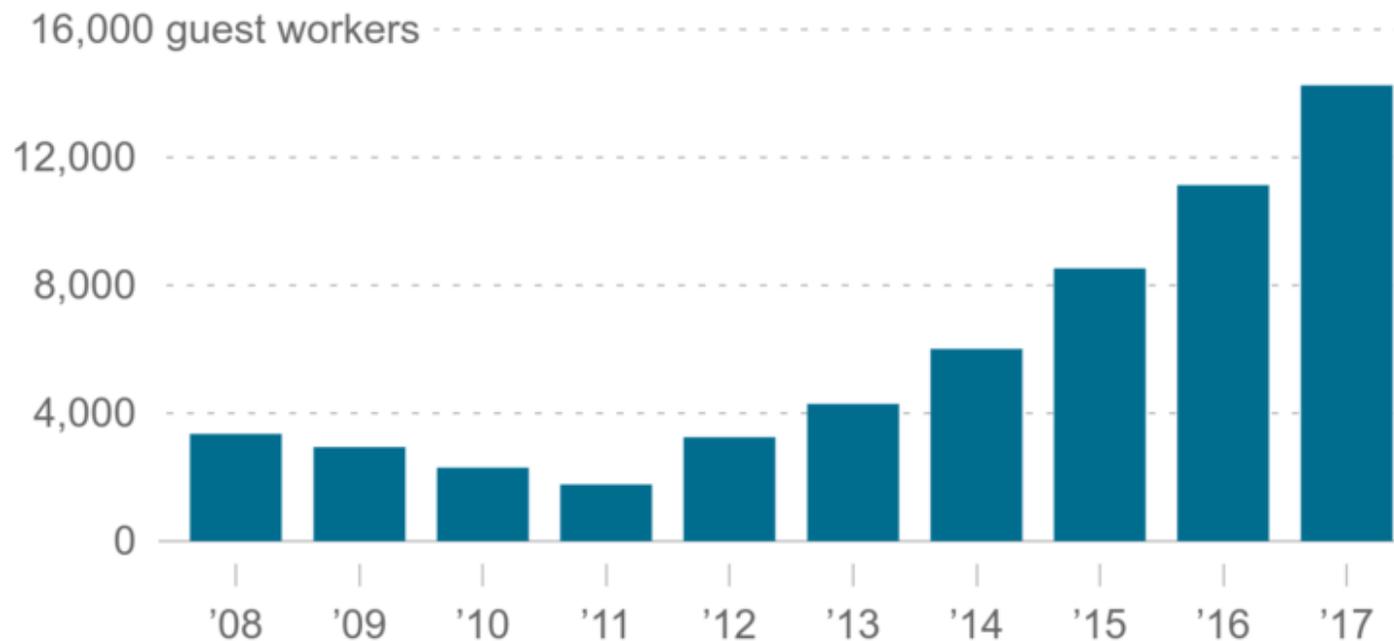
<sup>9</sup>Hay and Straw Category Includes Primary Crops of Alfalfa and Hay and Straw.

## Use of the H-2A Temporary Worker Program Rising

California's recruitment of foreign laborers, virtually all of them from Mexico, grew by 3,121 workers, a 28% increase from the previous year, and nearly three times the national growth rate, according to the data analysis.

January 9, 2018 – LA Times, Geoffrey Mohan

### H-2A visas in California



Source: Department of Labor. Data analysis by Ben Welsh

@latimesgraphics

# Employee Welfare



# Enrichment

Workers Home Before H2A



After H2A



# Recruitment



# Wild Cards

The background is a light green gradient. On the right side, there are several curved lines in shades of green, some overlapping. A thin vertical line is positioned to the right of the text.



# Trouble Ahead?

## Filled out an I-9 lately?

Enhancing Public Safety in the Interior of the United States

### EXECUTIVE ORDER

#### Sec. 5.

Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

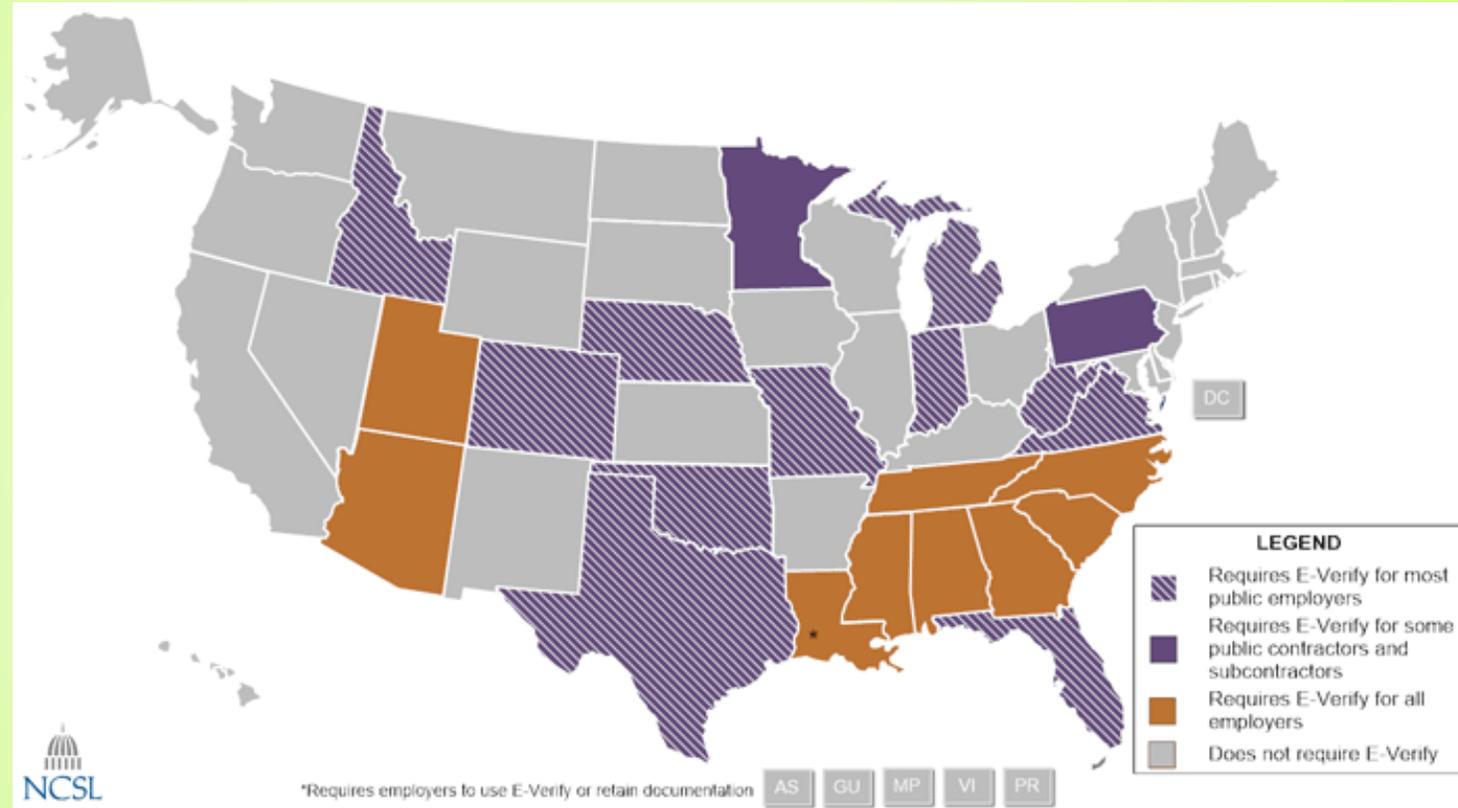
- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

# E-Verify Legislation Push

## Rep. Lamar Smith (R-Texas)

- ▶ Legal Workforce Act HR 1147 Reintroduced 2/27/15
- ▶ Failed 3 prior times in Congress – HR 2164 - 6/2011, HR 2885 - 9/2011 and HR 1772 - 4/2013
- ▶ Makes E-Verify mandatory nationally - Details of the bill:
  - Repeals I-9 System
  - Gradual Phase-In
  - Agriculture: Requires that employees performing "agricultural labor or services" are only subject to an E-Verify check within 24 months of the date of enactment.**
  - States as Partners: Preempts duplicative state laws mandating E-Verify use but retains the ability of states and localities to condition business licenses on the requirement that the employer use E-Verify in good faith under federal law.
  - Protects Against Identity Theft: The bill allows individuals to lock their Social Security number (SSN) so that it can't be used by another person to get a job. It also allows parents or legal guardians to lock the SSN of their minor child.
  - Safe Harbor: Grants employers safe harbor from prosecution if they use the E-Verify program in good faith, and through no fault of theirs, receive an incorrect eligibility confirmation.

# E-Verify



In terms of overall numbers, The Department of Labor reports that of the 2.5 million farm workers in the U.S., over half (53 percent) are illegal immigrants.



## Current ICE activity

- ▶ U.S. immigration agents on Wednesday, 1/10/18, arrested 21 people suspected of living in the country illegally in a predawn sweep targeting dozens of 7-Eleven stores across the country.
- ▶ The operation marks the expansion of an investigation into a string of New York and Virginia franchises first opened in 2013, when it was discovered several managers there used stolen identities to employ at least 100 people in the country illegally.
- ▶ Despite the arrests, the early morning raids were specifically aimed at management.
- ▶ Agents opened employment audits and interviewed workers at nearly 100 7-Eleven locations, which could lead to criminal charges and fines over the stores' hiring practices.

# Feds planning massive Northern California immigration sweep to strike against sanctuary laws

- ▶ Acting ICE Director Thomas Homan slammed Brown for signing SB54, which he said undermined public safety, and signaled he was prepared to take action.
- ▶ He said at the time that the federal government would not allow California to be “a sanctuary state for illegal aliens,” and would have no choice but to “conduct at-large arrests in local neighborhoods and at worksites, which will inevitably result in additional collateral arrests, instead of focusing on arrests at jails and prisons where transfers are safer for ICE officers and the community.”



# Temporary Protected Status Designated Country: El Salvador

**ALERT:** On Jan. 8, 2018, Secretary of Homeland Security Kirstjen M. Nielsen announced her decision to terminate the Temporary Protected Status (TPS) designation for El Salvador with a delayed effective date of 18 months to allow for an orderly transition before the designation terminates on Sept. 9, 2019.



U.S. Citizenship  
and Immigration  
Services



# Final Thoughts

- Farm workers: fewer/no new entrants & aging existing workforce
  - Farming for workers versus farming for yield
  - Change farm characteristics to make farm work easier
  - H-2A = Complex tool but the only tool we have
- 