

# **SESSION ONE:**

# **The Business of Agricultural Labor**

**Round Table Meeting January 2024**

**Please remember to follow Chatham House Rule.**

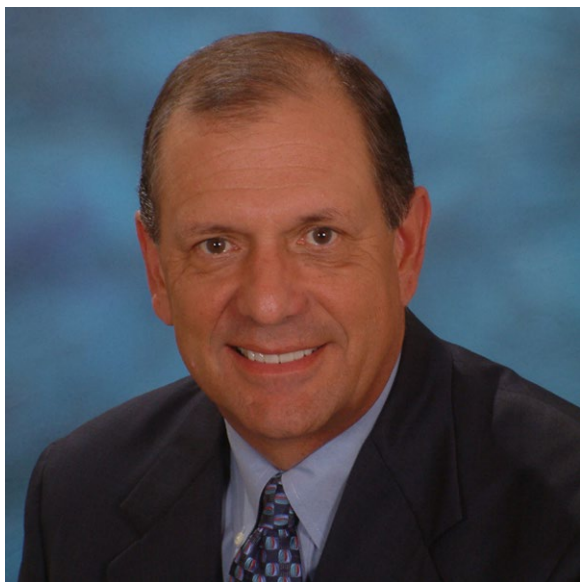




# Martha King

**Vice President, Programs and Projects**  
**Farm Foundation**





# Moderator Daniel Dooley

Principal  
New Current Water and Land, LLC



**Chauncy Monden**  
Owner  
Kula Country Farms



**Michael Marsh**  
President and CEO  
National Council of  
Agricultural Employers



**Stephanie McBath**  
Director of Public Policy  
(NASDA)

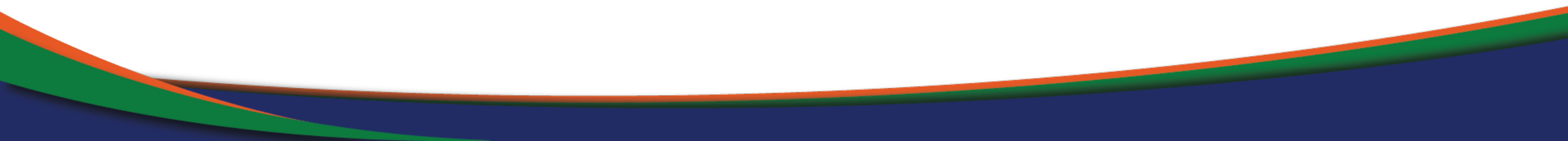


**Scott Prince**  
CEO & Co-Founder  
Croft



# Chauncy Monden

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# Michael Marsh

**President and CEO  
National Council of Agricultural  
Employers**





# The Business of Agricultural Labor

January 18, 2024

Michael Marsh, President and CEO

National Council of Agricultural Employers

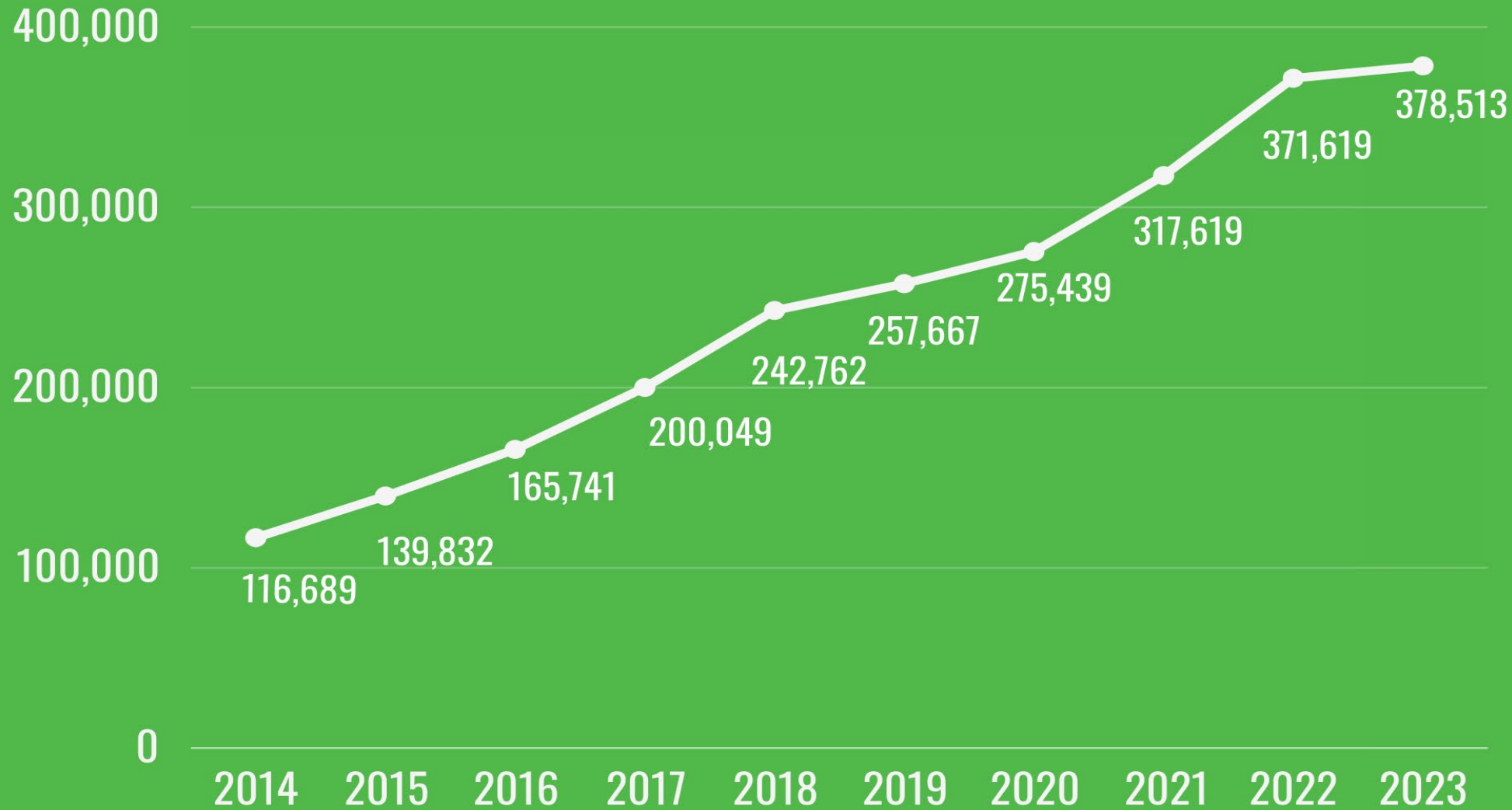




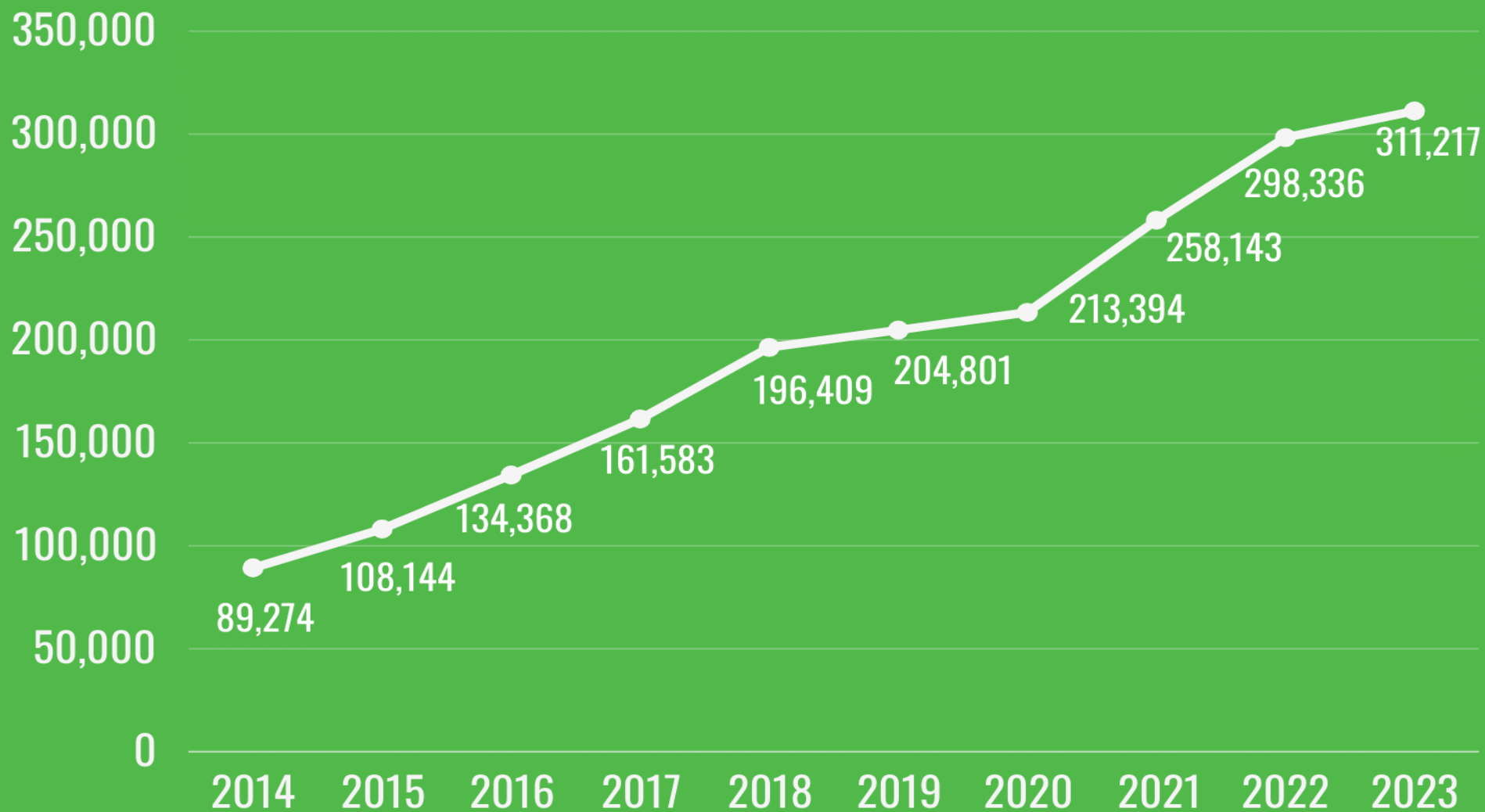
# A look at the numbers

- 2.4 million hired ag
- About 200,000 H-2As
- ~ 50% of domestic ag workers are unauthorized
- Martin-UC Davis
- Policy

# TOTAL H-2A POSITIONS CERTIFIED BY FISCAL YEAR



# TOTAL H-2A VISAS ISSUED BY FISCAL YEAR



FY 2022 Certs  
378,513

Increase of 54,000  
17% FY22 v. FY21

Increase of 6,894  
1.85% FY23 v. FY22

Applications up  
10.5% in FY 2023

Reg driven - bolsters  
legal arguments

## Why an AEWR?

- ▶ The requirement to pay the higher of wage rate is to avoid any adverse effect on the domestic workforce due to the employment of H-2A workers.



# AEWR

- AEWRs generated by FLS disconnected from ag labor markets
- Federal minimum wage \$7.25/hr
- Average 2022 FLS \$16.62/hr
- Average FY 2023 AEWR \$17.55/hr (\$14.53 - \$19.75)
  - > 2.42x Federal Minimum



# Disaggregated Wages

<u>Year</u>	<u>Occupation Code</u>	<u>Occupation</u>	Georgia <u>AEWR</u>	<u>OES Wage</u>
2022	53-3032	Heavy and Tractor-Trailer Truck Drivers	\$14.68	\$25.29

# ADVERSE EFFECT WAGE RATE



■ U.S.      ■ Foreign Competition






# Legislative Update

- No path forward for a big ag bill – Johnson/Jordan
- Congressional Review Act
- Ossoff (D-GA)/Tillis (R-NC)
- FWMA Reintroduced
- Dignity Act - Salazar (R-FL)/Escobar (D-TX)
- HIRE Act – Gonzales (R-TX)
- Ag labor task force
- Overtime – Padilla/Grijalva
- Appropriations/Freeze





Overtime impacts on workers -  
\$29.63 ( $\$19.75 * 1.5$ )

➡ 60 hrs. \*  $\$19.75 = \$1,185$

➡ 40 hrs. \*  $\$19.75 = \$790$

➡ UFW Talking Point

# Other “Stuff”

- Department of State effort to increase visa fees \$15
- USCIS effort to increase fees by >237% - OIRA
- OSHA Heat Rule NPRM coming in 2024
- USDA \$65 million “grant” program
- OSHA “Walkaround” Rule
- Independent Contractor Rule



## Other “Stuff”





- DOL NPRM on “Worker Protections”
  - *Cedar Point v. Hassid* (2021)
  - Pejorative
- DHS NPRM on “Worker Protections”
- Government shutdown?

# Unions Allowed to “Take Access”

- The Fifth Amendment states in part that, “...nor shall private property be taken for public use, without just compensation.”
- This NPRM would create an access regulation that, as Chief Justice Roberts explained in *Cedar Point*, “appropriates a right to invade the growers’ property and therefore constitutes a *per se* physical taking. Rather than restraining the growers’ use of their own property, the regulation appropriates for the enjoyment of third parties (here union organizers) the owners’ right to exclude”.

# Unions Allowed to “Take Access”

- The Chief Justice continued that because the “...regulation appropriates a right to physically invade the growers’ property-to literally ‘take access’-it constitutes a *per se* physical taking under the Court’s precedents.”
- Pointedly, the *Cedar Point* Court declined, “...to adopt the theory that the access regulation merely regulates, and does not appropriate, the growers’ right to exclude. The right to exclude is not an empty formality that can be modified at the government’s pleasure.”



“Does anyone have any questions for my answers?”

- Henry Kissinger



Thank you!

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# Stephanie McBath

**Director of Public Policy  
National Association of State  
Departments of Agriculture (NASDA)**



# Labor Reform

Stephanie McBath  
Director of Public Policy



# Who is NASDA?



# Policy Priorities

- Respect for and recognition of the importance of our current experienced workforce to the sustainability of U.S.-based agricultural production and food security
- A mechanism for workers to earn legal status based on agricultural work experience.
- Flexibility for guest workers to access and work in all types of agriculture, not just those occupations limited to seasonality.
- A market-based approach to wages
- Ability to meet expanding labor needs without arbitrary limits
- Amending the H-2A and H-2B programs to include year-round workers for all agricultural and forestry industries



## **State Overtime Laws for Agricultural Workers**

- California
- Colorado
- Hawaii – 48 Hours Per Week
- Minnesota
- New York – 60 Hours Per Week
- Washington – 40 Hours Per Week

## **Agricultural Workers Included in State Minimum Wage**

- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Florida
- Hawaii
- Idaho
- Iowa
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Montana
- Nevada
- New Jersey
- New Mexico
- New York
- North Dakota
- Ohio
- Oregon
- South Dakota
- Texas
- Utah
- Washington
- Wisconsin

# Improving Protections for Workers in Temporary Agricultural Employment in the United States

A Proposed Rule by the [Employment and Training Administration](#) and the [Wage and Hour Division](#) on [09/15/2023](#)



## Modernizing H-2 Program Requirements, Oversight, and Worker Protections

A Proposed Rule by the [Homeland Security Department](#) on [09/20/2023](#)

## USDA Launches Program to Support Agricultural Employers and Farmworkers, Aiming to Increase Economic and Supply Chain Resilience as Part of President Biden's Investing in America Agenda

**WASHINGTON, D.C., September 22, 2023** – The Biden-Harris Administration today announced that agricultural employers can begin to apply for a pilot program designed to improve the resiliency of the food and agricultural supply chain by addressing workforce challenges farmers and ranchers face. The U.S. Department of Agriculture (USDA), in coordination with other federal agencies, is announcing up to \$65 million in grants available for the Farm Labor Stabilization and Protection Pilot Program (FLSP Program).







# Scott Prince

**CEO & Co-Founder  
Croft**





# CROFT

The Agribusiness Workforce Platform

**Scott Prince, CEO**

**[info@withcroft.com](mailto:info@withcroft.com)**



# Croft backed by Purdue University, Grit Road Partners, Ag Startup Engine, Ag Ventures, Elevate Ventures



# Runaway labor costs make farm profits & affordable food difficult for 250,000 labor-intensive farms: 15,000 forced to use H-2A

## Costs for Specialty Crop Farms

% of Total Operating Expenses

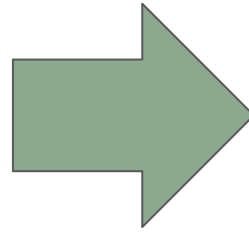




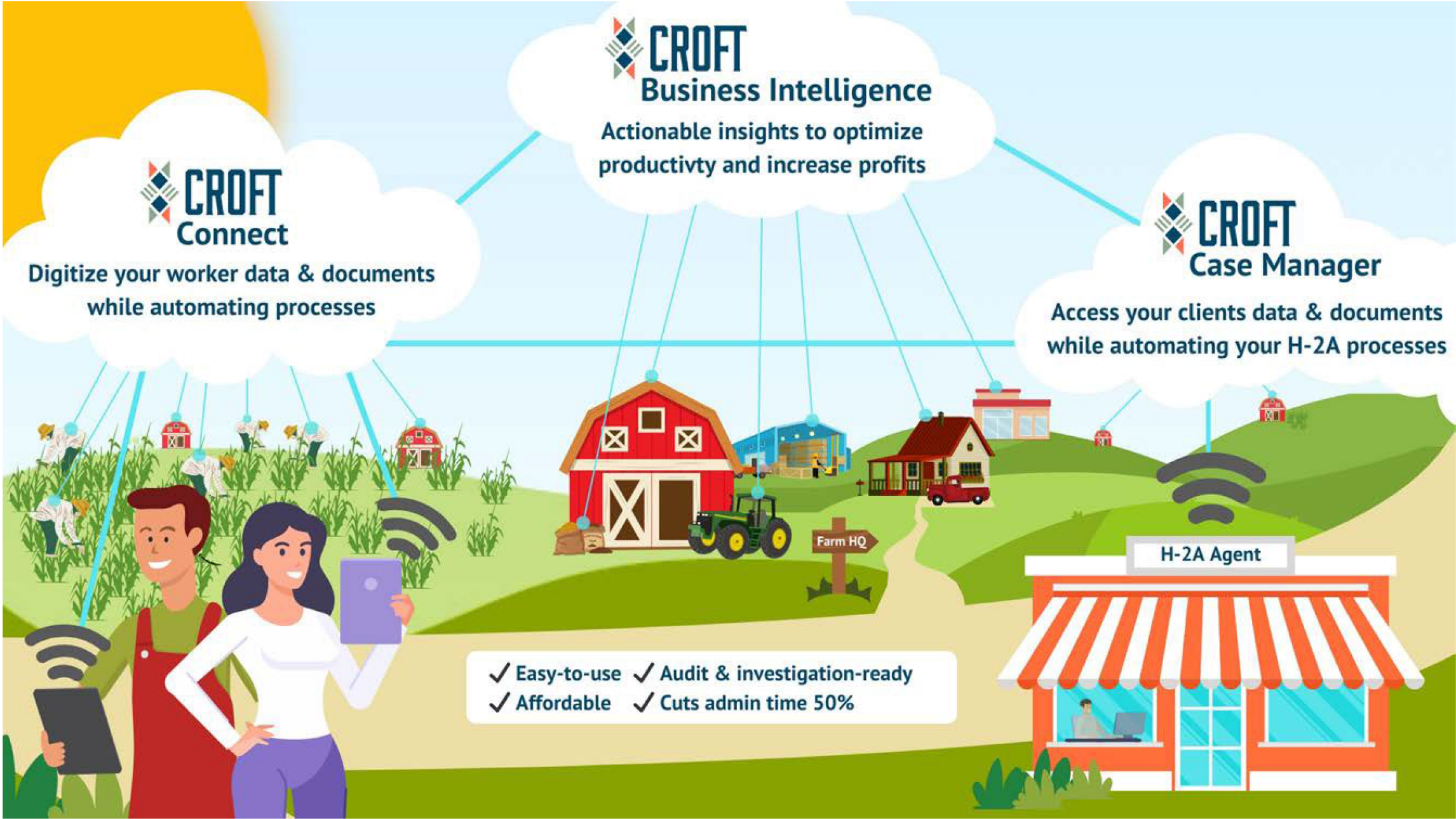
## The H-2A Seasonal Agricultural Program is complicated, paper-based, manual, slow, error-prone, & expensive

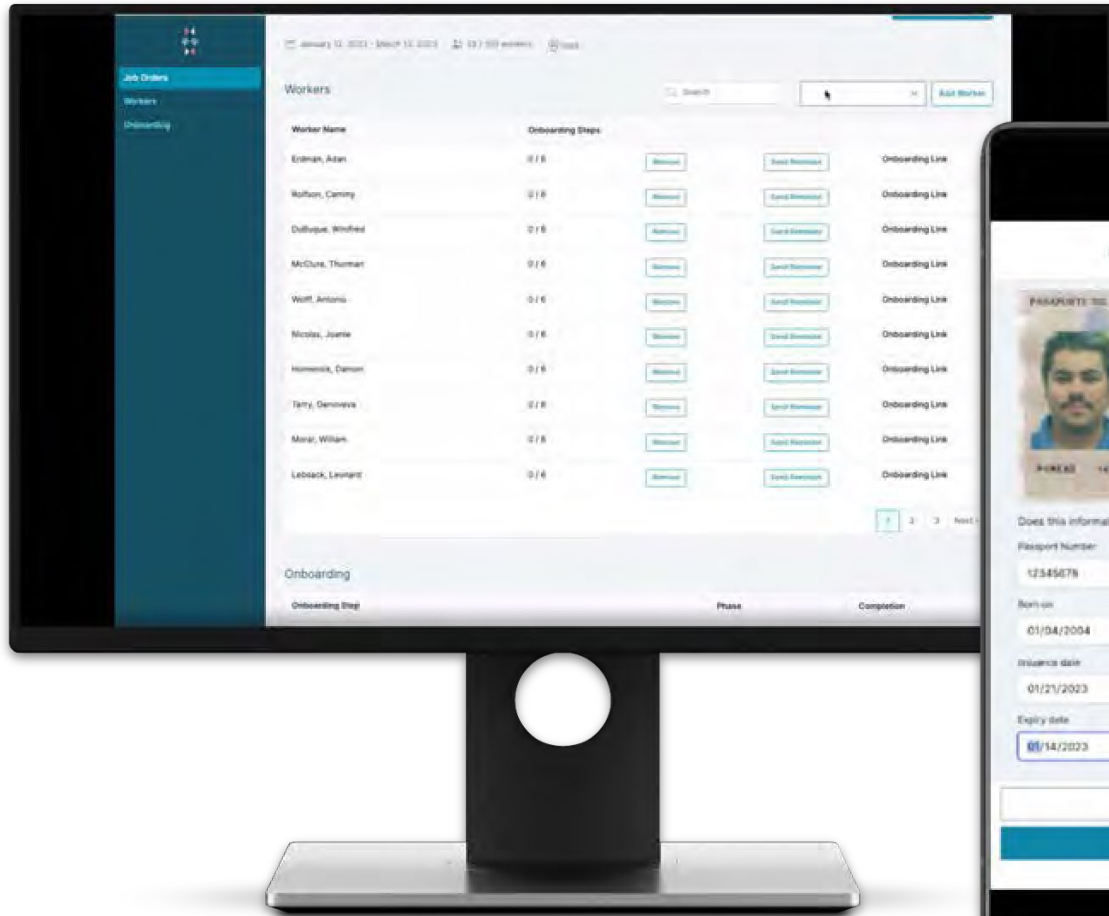
- **Tough to navigate:** 200+ rules and bureaucratic complex
- **Price is high:** H-2A minimum wages > state minimum by 57%
- **Alternative to H-2A isn't working:** Domestic job offers, most later quit

turn labor &  
workforce  
management from  
frustrating &  
**expensive fixed costs**



into digitally  
transformed  
efficient, compliant,  
controllable, &  
**affordable variable  
costs**







## Croft Connect™ for Growers/Employers

- H-2A & domestic farmworker data & document platform
- Collaboration between growers/employers, agents, & farmworkers on a single platform
- Mobile phone, tablet, & direct data & document collection
- Unlimited & encrypted data & document storage
- Sign-in once for Multi-FEIN & Multi-Farm Management
- Searchable and exportable Farmworker database
- Unlimited job orders, extensions, transfers, & abridgements
- Automated to-do's & reminders across all job order activities
- H-2A compliant workflows
- 30+ onboarding & full-season steps (I-9, pesticide training, end-of-job order payout, etc.)
- Accurate collection of farmworker documents (passports, social security cards, visas, I-94s, etc.)
- Compliant e-signatures (I-9s, federal & state tax forms)
- E-signing of employment forms (heat stress training, pesticide training, meal plans, etc.)
- Additional custom digital documents
- Easy access & export of all farmworker documents
- Automated I-9 audits & compliant corrections
- Additional internal documentation audits & corrections

*Housing Management*

*Recruitment Management*

## Croft Case Manager™ for Agents

### **Includes all Croft Connect™ features**

- Secure real-time access to your clients' Croft Connect™ accounts on a single platform
- Job order creation with your clients
- Collaborative job order management with your clients
- Access & add farmworkers to your clients' job orders
- Access to all of your clients' job order data & documents
- Create employment workflows to keep your clients H-2A compliant
- Event-driven tasks & audit-readiness for you and your clients
- Easy transfers, extensions, & abridgements with your clients
- Collaborative petition creation with your clients*
- Integration with DOL FLAG system*
- Automated DS-160 preparation*

## Croft Connect + Business Intelligence™ for Growers/Employers

### **Includes all Croft Connect™ features**

- Integration with farm labor management software (PET-Tiger, etc.)
- Labor force analytics dashboards per farmworker & farm crew
- Real-time insights & recommendations for optimal farm labor productivity*
- Actionable modeling of strategic farm financial & business goals (profitability, ESG, etc.)*



**Location:** GA hq, TN, Yucatan, Mexico

**About:** One of the largest vegetable producers on the East Coast, 20+ years H-2A experience, >850 H-2A workers, Aldi's "Freshire Farms" brand

**Crops:** Peppers, cucumbers, zucchini, squash, eggplants, corn, green beans, cabbage

**Croft users:** +500 March, +200 April, +150 June 2023



T. BELL DETASSELING, L.L.C.

**Location:** IA hq, NE, AR, ID, IL, IN

**About:** Farm Labor Contractor with 20+ years H-2A experience, >1200 annual H-2A workers

**Crops:** Seed corn detasseling for Beck's, Syngenta, Pioneer, etc.

**Croft users:** +20 February, +10 April, +1000 June 2023



# Croft is easy for workers, employers, & agents

**Workers “So easy to do it ourselves in Croft”**

**Admins “No paperwork needed”**

**Owners “Croft is the future”**

**Admins “Yesterday saved me 4 weeks”**





# CROFT

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Thank you & let's connect  
for your free trial at  
[info@withcroft.com](mailto:info@withcroft.com)





# QUESTION AND ANSWER

*Please submit your questions on the meeting app or use one of the microphones.*

- **Go to app** 
- **Go to Your Agenda**
- **Find The Session**
- **Q&A Tab**



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