



FARMWORKER JUSTICE

Rep. Goodlatte’s “Agricultural Guestworker Act” Would Condemn Agricultural Workers to Exploitative Working Conditions

On October 25, 2017, the House Judiciary Committee passed Chairman Goodlatte’s (R-VA) “Agricultural Guestworker Act” (AGA), HR 4092, by a vote of 17-16. On January 24, 2018, the AGA was included in a broader anti-immigrant bill introduced by Rep. Goodlatte, the “Securing America’s Future Act of 2018,” HR 4760. The AGA would create an extremely abusive new guestworker program, converting an entire industry, from the farms and ranches to the packing houses and processing plants, from lettuce and grapes to dairy cows and poultry, into a labor force of exploitable temporary guestworkers with virtually no workplace protections and with no opportunity to join the communities they are helping to feed.

Rep. Goodlatte’s broad anti-immigrant bill, which includes the AGA, has not yet been brought to the floor of the House for a vote. However, in an attempt to garner more support for the bill from agricultural employers, Rep. Goodlatte recently made some changes to the AGA and increased the length of time agricultural employers would have to comply with E-verify. None of these changes, however, address the AGA’s failure to provide any opportunity for our nation’s many skilled undocumented agricultural workers to put themselves on a path to citizenship. The AGA, consistent with the broader bill’s attack on family-based immigration, would ensure the separation of immigrant farmworker family members. Additionally, no changes were made to the bill’s terribly anti-worker provisions, explained in more detail below. Despite widespread recognition of the need for immigration reform legislation that would stabilize our agricultural labor system through a path to immigration status and citizenship, Rep. Goodlatte’s bill would inject more unfairness and dysfunction into our immigration system.

Rep. Goodlatte’s bill would replace the H-2A agricultural guestworker program with a new guestworker program -- the H-2C program -- and eliminate many long-standing worker protections. His one-sided bill would deprive hundreds of thousands of U.S. citizens and lawful permanent residents of job opportunities, lower farmworkers’ already poor wages, and allow exploitative conditions for hundreds of thousands of guestworkers. Specifically, the bill would:

- **Create a massive new guestworker program reaching into industries far beyond traditional agriculture.** The legislation not only expands the scope of the current guestworker program from one limited to temporary and seasonal jobs to one that encompasses year-round jobs, but also adds in many new industries such as meat processing and food manufacturing. These changes undermine worker rights in all of these jobs and

would lead to job loss for U.S. workers as well as poor working conditions and low wages for workers in all impacted industries. While the program has a cap, the cap is extremely high—450,000 visas per year—and illusory as to its impact. Furthermore, the program’s visa term for temporary or seasonal jobs was recently extended from 18 months to 24 months, which by Goodlatte’s own admission would increase the number of agricultural workers who could be in the U.S. under the cap to 900,000 workers after the first year of the program, with the potential to keep growing exponentially each year. Because of several factors—the visas are multi-year visas, the cap can grow by up to 10% per year, and there are exclusions from the cap for current undocumented farmworkers and H-2 workers—the number of visas issued in year 2 could actually surpass 2 million.

- **Deprive U.S. farmworkers of jobs by minimizing recruitment obligations and lowering wages.** Among the many protections removed, the bill would eliminate the 50% percent rule, which requires employers to hire qualified U.S. workers who apply for work during the first half of the season. Many current, productive, hard-working farmworkers – including U.S. citizens and lawful permanent resident immigrants -- would be easily displaced by their employers with new guestworkers willing to accept the substandard job terms this bill would allow. Those U.S. workers who remained in agriculture at H-2C employers would be forced to accept the low wages and poor conditions this bill would permit employers to impose.
- **Slash wage rates.** The H-2C program would require only that employers pay the higher of 115% of the federal minimum wage (150% for meat or poultry processing workers), the applicable state or local minimum wage, or the “actual wage.” Because of an amendment during markup, the wage determination for meat and poultry processing workers would also include the prevailing wage. These proposed wage provisions are deeply inadequate and provide no real wage floor. The actual wage requirement is unlikely to be realized. On their own, actual wages are difficult to determine and enforce, but in this legislation, the actual wage would be even less likely to apply as it would only be required for jobs involving essentially the same responsibilities, held by workers with substantially equivalent qualifications and experience, and located in the same place(s) of employment. Moreover, the bill waives the FLSA in several sections, allowing deductions and charges that could bring workers’ wages below the minimum wage. Wage protections are necessary in guestworker programs because without them, employers can recruit workers from abroad at such low wage levels that U.S. workers would not apply for the jobs, allowing employers to create artificial “labor shortages.” U.S. workers can be turned away if they seek higher wages; meanwhile, many foreign citizens in poorer nations are likely to accept such substandard wage rates. Guestworker programs, therefore, must contain protections against wage depression in order to protect workers from displacement and exploitation.
- **Withhold 10% of workers’ wages.** Goodlatte’s bill would further lower farmworkers’ already meager wages by withholding 10% of their pay. In apparent anticipation that this might cause problems with the minimum wage, the legislation waives FLSA and state/local laws. Workers would not be able to access their money until they met a number of

requirements, including applying to the Secretary of Homeland Security, demonstrating compliance with the terms and conditions of the program, and travelling to a U.S. embassy or consulate, among others.

- **Minimize government oversight of employers' claims of labor shortages, job terms and working conditions.** The Goodlatte bill would change from the H-2A program's labor certification process to a labor attestation process, meaning employers simply promise to comply with required job terms and other requirements, with limited government oversight. Violations of farmworkers' rights are rampant; more oversight is needed, not less. Moreover, the application process would move from the Department of Labor to the Department of Homeland Security, with enforcement of worker protections to be carried out by USDA, despite their lack of experience enforcing labor protections.
- **Limit worker access to judicial relief and legal assistance.** In addition to reducing government oversight, the bill would minimize workers' ability to protect their few rights. The bill would bar federal legal aid programs from representing H-2C guestworkers. Before filing a lawsuit, workers (who find an attorney) would have to use mediation services. Moreover, many workers would never have the right to file a lawsuit as employers could require victimized workers to submit legal disputes to mandatory arbitration, with workers paying half of the costs. Finally, workers would not be covered by the Migrant and Seasonal Agricultural Worker Protection Act, one of the primary laws protecting farmworkers.
- **Reduce guestworkers' minimum-work guarantee.** The H-2C program would only require employers to provide their workers with half of the total hours of the contract period that they are promised in the job offer, instead of the current H-2A 3/4 requirement. The 3/4 guarantee is the principal protection against over-recruitment and provides some assurance that workers who commit to the job will be able to earn close to the amount they were promised.
- **Eliminate the requirement that employers provide housing for guestworkers and U.S. workers who travel to the worksite.** Despite the severe shortage of sanitary, uncrowded, affordable housing for farmworkers, foreign migrant workers would face the difficult task of arranging for temporary housing in rural communities with limited or no access to capital, credit, language skills, and transportation. Some farmworkers would likely end up homeless and many would be living in squalid conditions.
- **Eliminate travel-expense reimbursement to which workers are entitled.** H-2A program employers must reimburse workers for their transportation costs after one-half of the season has elapsed and then pay for their travel home if they complete the season. The AGA eliminates this requirement despite workers' low incomes and the incentive it would create for employers to over-recruit. Workers would arrive indebted from recruitment and transportation costs, making them even more vulnerable to exploitation. The bill includes no protections from abuses that take place during recruitment, such as recruitment fees.
- **Require that workers obtain health insurance coverage or lose their status, resulting in a significant cost for many workers.** The AGA would require workers to obtain and maintain health insurance or lose their visa status, while at the same time barring any access

to tax credits or subsidies. Currently, although H-2A workers may be subject to a tax penalty for not having health insurance, lack of health insurance does not affect their immigration status. There are many reasons why workers may choose to not enroll in health insurance, such as cost, length of stay in the U.S., or preference to seek medical care in their home country. Additionally, many agricultural employers do not offer health insurance benefits and for those that do, the worker's contribution can still be very high. Requiring workers to obtain health insurance to keep their status puts an undue burden on the worker.

The bill does not provide a roadmap to citizenship for the current experienced undocumented agricultural workers or their family members. Instead, the bill requires the roughly one million undocumented workers to self-deport. Recently, Goodlatte extended the time period for self-deportation from 180 days to one year after the issuance of final rules to implement the AGA. Workers' only opportunity to return to the U.S. would be as H-2C guestworkers and only if they have an offer of employment. Goodlatte also recently added a section permitting employers to "pre-certify" workers to receive H-2C visas. As H-2C workers, these workers would simply be trading one form of second class status for another: they would have no opportunity to become permanent members of the society they feed and would have to return home periodically, each time relying on an employer to invite them to return. The bill explicitly prohibits visa workers' spouses and children from obtaining visas, leaving farmworkers with the choice of risking deportation of loved ones who do not have immigration status or living apart from their loved ones. Given these circumstances, many undocumented farmworkers would not come forward for H-2C status.

Conclusion: America wants Congress to reform our broken immigration system in balanced ways. Rep. Goodlatte's bill would harm the hundreds of thousands of U.S. workers employed in agriculture, fails to take steps to stabilize our nation's experienced agricultural workforce, and instead creates a labor system that treats workers as commodities, with a revolving door of temporary exploitable workers. There is no valid justification for eliminating the modest protections for U.S. and foreign workers in the H-2A guestworker program. The reasonable solution is to provide undocumented farmworkers and their family members an opportunity to earn legal immigration status and citizenship. The Agricultural Worker Program Act, H.R. 2690, does this and should be supported.