



Farmworker Justice Immigration Reform and Agriculture

Immigration is a critically important issue for farmworkers and for our entire food system. The criminalization of undocumented immigrants, increased deportations and other immigration enforcement actions have exacerbated an already untenable situation for farmworkers and the agricultural labor system. Farmworkers, documented and undocumented, perform the difficult and dangerous work of cultivating and harvesting the fruits, vegetables and other foods that feed us all. Reform of our broken immigration system is a necessary stepping stone toward modernizing agricultural labor practices and treating farmworkers with the respect they deserve.

Our agricultural system needs a legalization program for farmworkers. The Agricultural Worker Program Act should be supported.

The Agricultural Worker Program Act, introduced by Sen. Feinstein (S. 175) and Rep. Lofgren (H.R. 641), is a positive and workable solution in Congress that will meet the needs of workers, agricultural employers, and our food system. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system.

The H-2A program is fundamentally flawed and exploitative of workers.

The H-2A program is a guestworker program that allows employers to bring in foreign workers for temporary or seasonal agricultural work if they cannot find domestic workers and if bringing in workers from abroad will not adversely affect the wages and working conditions of U.S. workers. It includes modest protections that are intended to ensure that the wages and working conditions of the domestic workforce are protected and that temporary foreign workers are not exploited. Unfortunately, these protections, while important, are inadequate to protect U.S. and foreign workers from abuse. The H-2A program is fundamentally flawed: workers are tied to their employers and are dependent on their employers not just for their employment but also for their very presence in the U.S. As a result, they are vulnerable to exploitation and reluctant to speak out. Moreover, H-2A workers are “nonimmigrants” with no pathway to immigration status or citizenship. Given these factors, many employers come to prefer their contractually bound H-2A workers over their local workforce.

The H-2A program is uncapped and expanding rapidly: it has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The vast majority of applications— 96% in FY 2018—are approved; timeliness for that approval is 92%. Some agribusiness groups complain that the H-2A program is too difficult to use and does not meet their needs; however, the program’s growth and the fact that many growers re-apply year after year belie those claims. The H-2A program’s unprecedented growth is problematic given the reality of worker exploitation in the program. Furthermore, in spite of the H-2A program’s exponential growth, the Department of Labor (DOL), which is the agency charged with oversight and enforcement of the program, has not seen any increase in its resources to carry out this crucial role.

Congress and government agencies must reject harmful, one-sided guestworker- proposals. Our nation's farmworkers deserve a real solution that provides a path to legalization.

Farmworker Justice opposes any changes to the H-2A program that would expand the scope of the program to year-round work or that would lower wages or reduce worker protections for H-2A workers and domestic workers in corresponding employment. Stripping worker protections and government oversight from an already flawed and exploitative program is not a solution.

Farmworker Justice is concerned about possible reductions to worker protections in the Department of Labor's pending rulemaking regarding the H-2A program. Although the proposed rule is not yet public, it will likely be published soon, and may seek to eliminate fundamental recruitment and anti-discrimination protections for U.S. workers; lower both U.S. and foreign workers' wages; transfer program costs, such as transportation, to workers; limit government oversight, and otherwise weaken existing H-2A program protections.

Additionally, each Congress, Members of Congress introduce one-sided H-2A proposals which include provisions that limit government oversight, reduce worker protections, and/or expand the scope of the flawed H-2A program to year-round jobs.

Farmworker Justice also opposes efforts to include harmful H-2A riders in the appropriations process, including an amendment to expand the uncapped H-2A program to year-round jobs. The H-2A program is limited to temporary and seasonal jobs because employers who are trying to fill year-round jobs are supposed do so by competing for workers like other employers do, by offering better wages and working conditions. This expansion would mean that year-round agribusiness could instead turn to the H-2A program for their labor needs and have a perpetual source of captive workers with very limited bargaining ability, while U.S. workers not willing to accept the minimum H-2A job terms could be turned away.

All of these proposals—whether regulatory proposals, stand-alone legislation or substantive riders on funding bills— would have the same effect: displacing U.S. workers with vulnerable, exploitable guestworkers and lowering the wages and working conditions of all farmworkers. Efforts to expand the H-2A program's scope and limit its worker protections will not solve our agricultural immigration crisis and in fact will only worsen the situation.

It makes little sense to encourage employers to hire more guestworkers without first addressing the need to legalize the current workers who are already contributing to this country and have deep ties to their communities. The first step toward a modern agricultural labor system must be to stabilize our current farm labor force through sensible immigration reform that includes a path to citizenship for farmworkers and their families. The Agricultural Worker Program Act does just that. We should respect the valuable role of farmworkers in our agriculture and food system and ensure that they enjoy the democratic and economic freedoms of this nation.