



FARMWORKER JUSTICE

Rep. Ross's "Legal Agricultural Workforce Act": A 19th Century Policy for the 21st Century

Rep. Ross's Legal Agricultural Workforce Act, HR 242, would devastate America's farmworkers and endanger our nation's food system. Ross proposes a massive new guestworker program with no meaningful labor protections. Ross ignores the lessons of history by eliminating virtually all of the labor protections that have been recognized for decades as necessary to prevent displacement of U.S. workers, depression of U.S. workers' wage rates, and exploitation of foreign citizens.

Ross's guestworker bill would cause job loss and wage depression among hundreds of thousands of Americans who depend on farm jobs for their livelihood. His bill would provide unchecked access to vulnerable guestworkers. A large supply of vulnerable workers will depress wages and working conditions for farmworkers, who already experience inadequate labor standards. Workplace abuses, already rampant in agriculture, would increase. Most workers would be too fearful to speak out about workplace abuses or unsafe working conditions that could impact food safety.

Ross's bill ignores the roughly one million experienced agricultural workers without work authorization who currently harvest our crops. A sensible solution would include a road map to immigration status and citizenship for these productive, undocumented farmworkers. Instead this bill would bring many guestworkers into the country, pushing undocumented farmworkers further into the margins of our society where they will be exploited by unscrupulous employers.

The bill does not provide guestworkers with freedom in the labor market; it provides employers with freedom from any meaningful worker protections or government oversight. Ross's bill was first introduced last session by ex-Rep. Dan Lungren, who argued that it offered a "free market" approach to immigration policy because guestworkers could switch employers. But "W" workers could only work for agricultural employers participating in the guestworker program, who would have no need for extra workers as they would have already hired their own guestworkers. Further, these workers would likely face blacklisting if they dared seek "better" employment. The very nature of a guestworker program is anathema to a "free-market" approach. .

The bill does not limit the number of guestworkers employers could bring in. Without a cap on the number of visas, employers have an incentive to over-recruit to create an oversupply and drive down wages and benefits.

Using the Bracero program's famously failed model of withholding workers' pay, Ross's bill would deduct an amount equivalent to the applicable Social Security tax from "W" workers' checks. Workers would be forced to travel to a consulate and "demonstrate compliance of the worker with the terms and conditions of the program" to apply for the return of their earnings.

Ross designates the United States Department of Agriculture to run the new guestworker program, despite its lack of experience enforcing labor protections and despite the fact that all other guestworker programs are run by the U.S. Department of Labor.

Ross's bill eliminates protections that have been required under the H-2A agricultural guestworker program for many years and thus there would be:

- **No wage protections to protect U.S. worker wages from the adverse effects of guestworker programs:** Employers could set wage rates at the federal or state minimum wage, regardless of the prevailing wage or other market-based wages, as required in the H-2A program.
- **No meaningful recruitment or hiring protections for U.S. workers:** employers would only have to submit a description of the job to the DOL job registry, and could reject any U.S. worker who was not equally or better qualified than a nonimmigrant worker, a mysterious and subjective standard. Ross omits traditional requirements to recruit U.S. workers effectively, such as the H-2A program's longstanding "50% rule," which requires employers to hire qualified U.S. workers during the first half of the season.
- **No provision for housing,** despite the severe shortage of sanitary, uncrowded housing for farmworkers, the high cost of housing that is available, and the difficulty for U.S. and foreign migrant workers to arrange for housing from their home bases.
- **No transportation reimbursement** for the high costs of long-distance travel to jobs for either U.S. or foreign migrant workers, and no payment upon completion of the season to ensure workers' ability to return home.
- **No guarantee of a minimum amount of employment:** the absence of the three-fourths minimum work guarantee deprives workers of a promise of potential income, and encourages employers to over-recruit to create a labor oversupply that drives down workers' wages and bargaining power.
- **No oversight or enforcement mechanisms** to verify claims of worker shortages and compliance with the program's minimal requirements. However, "W" workers, unlike H-2A workers, would be covered by the Migrant and Seasonal Agricultural Worker Protection Act.

Since the election, momentum has been building in both parties in Congress and at the White House to enact comprehensive immigration reform. In the past, agribusiness has repeatedly tried and failed to pass one-sided piecemeal agricultural guestworker legislation like the Legal Agricultural Workforce Act. At a time when a compromise approach is needed, agribusiness is instead pushing for one-sided reform.

A real solution is possible. Congress should provide a roadmap to citizenship for the 11 million aspiring Americans, including farmworkers. With legal immigration status, all farmworkers, both American and newly American, will be on a level playing field. Without fear, these workers can enforce their workplace protections and bargain for better wages and working conditions, making agriculture an occupation in which they can remain while supporting their families. To the extent future workers are needed from outside the U.S., any visa program should protect U.S. workers' jobs and should ensure that there is no incentive to discriminate against U.S. workers. As important contributors to our economy, farmworkers, now and in the future, should be given true economic freedom to find agricultural jobs and an opportunity to earn immigration status and citizenship. Future farmworkers should also enjoy the same workplace protections as other workers.