



## FARMWORKER JUSTICE

### **Rep. Smith's Job Killing Bill: the "American Specialty Agriculture Act," Would Lead to Job Loss and Wage Cuts for American Farmworkers**

Representative Lamar Smith, Chairman of the House Judiciary Committee, has proposed legislation that would create a massive new agricultural guestworker system with up to 500,000 H-2C visas.

**Through sharp cuts in wage rates and worker protections, Smith's H-2C program encourages employers to hire guestworkers instead of their current workforce, which includes hundreds of thousands of US workers. Up to 500,000 US workers could lose their jobs under Smith's proposal.** Those US farmworkers fortunate enough to keep their jobs are likely to face lower wages and poorer working conditions due to the downward wage pressure and elimination of worker protections in Smith's bill.

**While bringing in hundreds of thousands of new guestworkers, Smith's bill would do nothing to address the status of the many undocumented workers already here productively harvesting our crops.** Smith may believe undocumented workers will simply return to their home countries; however, the reality is that these workers will simply be pushed further underground and exploited. Chairman Smith's mandatory employment verification legislation, the Legal Workforce Act, encourages this hidden world of exploitation through various loopholes for agricultural employers.

Workplace abuses, already rampant in the H-2A program and in agriculture generally, would increase with Smith's proposal to decrease government oversight and limit workers' access to attorneys and the courts, and due to workers' fear of retaliatory discharge. **Chairman Smith's hypocritical claim to promote American jobs is laid bare with his guestworker proposal that would deprive US workers of jobs and lower their wages and other job standards.**

Rather than adopt this disastrous approach, Congress should provide undocumented farmworkers with the opportunity to earn legal immigration status with a path to citizenship. Congress should also strengthen worker protections and enforcement in the H-2A program while removing employer incentives to prefer guestworkers over US workers.

Some of the primary changes in labor protections that the American Specialty Agriculture Act would make:

- Chairman Smith's new H-2C program would go into effect 2 years after enactment. Before that time, the H-2A program would be changed based on the harsh wage cuts and elimination of labor protections that the Bush-Chao Administration imposed and that the Obama-Solis Administration reversed. The Bush H-2A regulations were devastating for US and foreign workers.
- **Slashing farmworker wage rates:** Smith's bill would cut wages by requiring employers to pay only the higher of the minimum wage or a misleading "prevailing wage" (the average

wage received by the lowest-paid one-third of farmworkers in a geographic area, i.e., the 16th percentile). A similar definition under the Bush Administration resulted in wage cuts of \$1 to \$2 per hour depending on location.

- **Eliminating job protections for US workers.** Smith would eliminate the longstanding “50% rule,” which requires employers to hire qualified U.S. workers who apply for work during the first half of the season. The Smith bill also would limit the ability of US workers to learn about job opportunities by reducing requirements for job postings and limiting the role of state workforce agencies.
- **Removing government oversight and deterrence of abuses.** Smith’s bill would change the H-2A program from a labor certification to a labor attestation program, meaning employers simply promise to comply with required job terms and other requirements, with limited government oversight. Smith also would move the application process and enforcement of the worker protections from DOL to USDA, despite USDA’s lack of experience enforcing labor protections.
- **Expanding eligible jobs by not requiring that H-2C jobs be temporary or seasonal:** The H-2C bill would change the nature of the H-2A guestworker program by expanding the program to include year-round jobs in agriculture, despite the higher annual incomes such jobs yield.
- **Eliminating guaranteed housing for workers:** Instead of providing housing, employers could provide workers a housing allowance (unless the state’s Governor has certified that there is inadequate farmworker housing available in that area) and workers would be forced to find their own housing despite the dire shortage of affordable, safe, healthy housing for farmworkers. Employers would not need to provide housing to workers on the border. While a few Mexican workers may live close enough to commute from home to work daily, the reality is that many of these cross-border workers are interior migrants from distant towns in Mexico and have no homes to return to at night.
- **Reducing the transportation reimbursement for these low-wage workers** by requiring only that employers pay for travel costs to and from the place from which the worker was approved to enter the U.S., not from the place from which their travel originated. Employers would not reimburse transportation costs to workers on the border.
- **Reducing the promise of a minimum amount of work:** Smith would cut the long-standing three-quarters minimum-work guarantee to a meaningless 50% guarantee. The  $\frac{3}{4}$  guarantee is the principal protection against over-recruitment and provides some assurance that workers who commit themselves to the H-2A program will have the opportunity to earn close to the amount they were promised.
- **Limiting worker access to judicial relief and legal assistance, leaving U.S. and foreign workers without extremely limited means to protect their rights.** The bill would only allow Legal Services Corporation’s legal aid programs to represent H-2C guestworkers in the country at the time of legal assistance and would not allow legal services lawyers to enter employer property (where many workers may be housed) unless they have a pre-arranged appointment with a specific H-2C worker, the goal being to limit worker access to representation as most workers will be too fearful to set up such appointments. Further limiting workers’ access to justice, employers may impose mandatory arbitration and mediation requirements on H-2C workers and any worker participating in such arbitration or mediation would be responsible for half of the costs.