



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

On October 2, 2017, House Judiciary Committee Chairman Goodlatte (R-Va.) introduced the “Agricultural Guestworker Act.” The bill 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

The bill fails to provide an opportunity for our nation’s many skilled undocumented agricultural workers to put themselves on a path to citizenship. Moreover, the terms of the new agricultural guestworker program 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. Despite widespread recognition of the need for immigration reform legislation that would stabilize our agricultural labor system through an earned legalization program, Rep. Goodlatte instead seeks to create even more unfairness and dysfunction in 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 allow exploitation of foreign citizens of poor countries and cause job loss and lower wages for U.S. farmworkers. Specifically, this bill would:

- **Create massive new guestworker program reaching into industries far beyond traditional agriculture.** The legislation not only expands the scope of the current guestworker programs 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 will 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—500,000 visas per year—and illusory as to its impact. Because the visas are multi-year visas and because the cap excludes the current agricultural workforce (undocumented and H-2) from the cap, the number of visas issued by year 2 could surpass 2 million.
- **Deprive U.S. farmworkers of jobs by minimizing recruitment obligations and lowering wages.** Among the many protections removed, the bill would also 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 and withhold 10% of workers' wages.** The H-2C program would require only that employers pay the higher of 115% of the federal minimum wage or the state or local minimum wage. Currently, H-2A employers are required to pay at least the average farmworker wage, as measured by a USDA survey. 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 if they want to protect workers from displacement and exploitation. Goodlatte's bill would further lower farmworkers' already meager wages by withholding 10% of their pay their paychecks. Workers would not be able to access their money until they establish that they have met a number of requirements, including applying to the Secretary of Agriculture, 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. Moreover, the application process and enforcement of the worker protections would move from the Department of Labor to the Department of Agriculture, despite its 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 arbitration 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 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. Goodlatte eliminates this requirement despite the 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 does not provide a roadmap to citizenship for the current experienced undocumented agricultural workers or their family members. Instead, Goodlatte's bill would expect undocumented farmworkers to convert to H-2C status if an employer were willing to sponsor them. These workers would simply be trading one form of third-class status for another. 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 farmworkers would not come forward for H-2C status. Also, although Goodlatte's bill contains a provision that would allow employers to sponsor workers for green cards, the number of visas that could be issued under this provision are very limited and the workers would be wholly dependent on their sponsoring employer for this opportunity.

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 reliable workforce or recognize their valued contributions, 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 House of Representatives should embrace H.R. 2690, the Agriculture Worker Program Act, as the solution for agriculture. The Agriculture Worker Program Act provides an earned legalization program for agricultural workers. That bill includes both an opportunity to earn legal immigration status and citizenship for undocumented farmworkers and their family members.