



FARMWORKER JUSTICE

Rep. Goodlatte’s “AG and Legal Workforce Act” Would Condemn Millions of Workers to Exploitative Working Conditions

Rep. Goodlatte (R-VA) has made it his mission to create a massive new guestworker program of millions of captive workers who have even fewer labor rights than the current workers they would replace. His H-2C guestworker program would convert entire industries, from the farms and ranches to the packing houses and processing plants, from lettuce and grapes to dairy, seafood, meat and poultry, into a labor force of captive, exploitable temporary guestworkers with virtually no workplace protections and with no opportunity to join the communities they are helping to feed.

Rep. Goodlatte has presented multiple versions of the same flawed and abusive agricultural guestworker proposal over the last year. Rep. Goodlatte’s “Agricultural Guestworker Act” (AGA), HR 4092, passed by a narrow vote of 17-16 in the House Judiciary Committee in October 2017. The AGA was later included in Rep. Goodlatte’s broader anti-immigrant bill, the “Securing America’s Future Act of 2018,” (SAFA), HR 4760, which failed by a vote of 193-231 on the full House floor on June 21, 2018. Yet another version of the AGA was filed as an amendment to the “Border Security and Immigration Reform Act of 2018,” (BSIRA), HR 6136, but was ultimately not included in the broader bill. Shortly thereafter, on July 18, 2018, Rep. Goodlatte introduced the “AG and Legal Workforce Act,” HR 6417, a bill which contains both the AGA and mandatory E-verify.

In an attempt to garner support for his proposal from agribusiness, Rep. Goodlatte has made multiple changes to the AGA provisions. None of these changes, however, have reformed the AGA’s fundamentally anti-worker, anti-immigrant and anti-family provisions, explained in more detail below, or answered concerns regarding the program’s likelihood to result in the displacement of U.S workers and abuse and exploitation in the guestworker program. Moreover, the H-2C program continues to fail to ensure a realistic opportunity for our nation’s many skilled undocumented agricultural workers to put themselves, and their families, on a path to citizenship. Instead, the AGA would ensure the separation of immigrant farmworker family members. 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, with the potential for millions of captive workers.** 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 technically has a cap, the cap is extremely high—450,000 visas per year—and illusory as to its impact. During the first two years of the program, the bill allows for the possibility that the Secretary of Agriculture may increase the cap to “a number determined appropriate by the Secretary,” meaning that essentially there is **no real cap**. Furthermore, the program’s visa term is 36 months. Because of several factors—the visas are three-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 surpass 2 million, assuming that the cap is not lifted even further by the Secretary of Agriculture, in which case there is no limit to the number of workers who could be included in the program at the Secretary’s discretion.

- **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.” The wage determination for meat and poultry processing workers would also include the prevailing wage, although a prevailing wage requirement would not be required for any other workers in the program. 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 authorizes employers to pay workers below the FLSA minimum wage by imposing multiple deductions and charges on the workers. 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.** The AGA would further lower farmworkers’ already meager wages by withholding 10% of their pay. Workers would not be able to access their money until they met a number of requirements, including applying to the Secretary of Homeland Security and travelling to a U.S. embassy or consulate, among others. Additionally, the U.S. government will not return the money withheld from workers if they do not meet the program’s health insurance requirements (detailed below).

- **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, workers would face the difficult task of arranging for temporary housing in rural communities with limited or no access to capital, credit, language

skills, or transportation. Some farmworkers would likely end up homeless and many would be living in squalid conditions. Additionally, the bill explicitly allows discrimination against U.S. workers by stating that employers who choose to offer housing to their guestworkers need not offer housing to U.S. workers.

- **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 while at the same time denying them access to ACA subsidies, resulting in a significant cost for many workers.** The AGA would require workers to obtain general health insurance coverage, if required by state law, or at a minimum, catastrophic health insurance, if available in the state. At the same time, the AGA would make workers ineligible for ACA subsidies. Workers would lose their 10% withheld earnings for the period that they do not obtain and maintain coverage. The patchwork of laws in different states would make it extremely difficult for workers to understand their obligations, not to mention 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.

Importantly, Rep. Goodlatte's H-2C program does not ensure that the current skilled undocumented farmworkers and their family members are provided with a path to immigration status and citizenship. Instead, it requires workers to return to their country of origin within a year after the issuance of final rules to implement the AGA. The only possibility of return would be as subjugated contract laborers under the proposed, abusive H-2C program and only if they already have an offer of employment and an approved H-2C petition. As H-2C workers, these workers would simply be trading one form of second class status for another: they are not ensured a realistic 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. Recent changes made to the AGA provisions establish that a lucky few formerly undocumented H-2C workers may be eligible to adjust status to permanent residency, i.e. become green card holders, if they have an existing path to Legal Permanent Residence (LPR), satisfy a past work requirement, and participate in the H-2C program. However, the hundreds of thousands of current workers with deep roots in their communities but no ability to adjust to lawful permanent residency would have no ability to become citizens of the country they help to feed, no matter how many years they labored in the U.S. The bill explicitly prohibits visa workers' spouses and children from obtaining visas (unless they are guestworkers themselves), leaving farmworkers with the choice

of risking deportation of loved ones who do not have immigration status or living apart from their loved ones.

Conclusion: America wants Congress to reform our broken immigration system in balanced ways. Rep. Goodlatte's H-2C program 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, HR 2690, does this and should be supported.

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