



## **Rep. Yoho's Guestworker Bill Would Significantly Reduce H-2A Program Protections and Create an Additional Exploitative Program**

In March 2020, Rep. Yoho (R-FL) introduced the “Labor Certainty for Food Security Act of 2020,” H.R. 6083. It would modify the current H-2A agricultural guestworker visa program, create a new H-2C guestworker visa program for year-round work, and impose mandatory electronic work verification program (E-Verify) for all agricultural employers. The bill includes several problematic provisions from previous anti-worker proposals. The bill also fails to provide an opportunity for our nation’s many skilled undocumented agricultural workers to put themselves, and their families, on a path to citizenship. Instead, Rep. Yoho’s bill would inject even more unfairness and dysfunction into our immigration system, and ensure unfair treatment of the essential workers who labor on our farms and ranches.

Specifically, the bill would:

### **1) Weaken current protections in the H-2A agricultural guestworker program, including:**

- Moving program administration oversight from the Department of Labor (DOL) to the United States Department of Agriculture (USDA).
- Allowing employer applications with staggered start dates for workers, which can be used to deter U.S. workers from applying for jobs with the goal of hiring vulnerable guestworkers who have little bargaining power.
- Requiring H-2A workers to have a biometric identification card and submitting data re: fingerprints, retinal scans, etc.
- Eliminating the AEWR (Adverse Effect Wage Rate) and instead requiring just the highest of state minimum wage, 115% of federal minimum wage or actual wages paid. This would result in significant [wage cuts](#) for workers, as described in a separate Farmworker Justice report. Currently, H-2A employers must pay the highest of four wage rates: the state or federal minimum wage, the “Adverse Effect Wage Rate” (AEWR), the applicable union contract wage, or the local prevailing wage. The AEWR, which is a measure of the regional prevailing wage for farmworkers, is often the highest. Wage protections are necessary in guestworker programs because without them, employers can post positions 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 will accept substandard wage rates, which lowers U.S. labor

standards. Guestworker programs must contain protections against wage depression, such as the AEW, in order to protect workers from displacement and exploitation.

## 2) Create a new guestworker program - the H-2C visa.

Rep. Yoho's bill creates a new visa program for year-round agricultural labor; the H-2C visa. The bill also expands the definition of agriculture significantly to allow industries that cannot currently use the H-2A program to participate in the H-2C program, including activities for processing or manufacturing an agriculture product, seafood packaging, forestry and equine training and care.

The current H-2A program is limited to temporary or seasonal jobs, because it is premised on the idea that it may be difficult to hire workers for seasonal jobs with low annual incomes. Employers with year-round jobs should compete for workers in the labor market in the U.S., not be granted access to exploitable workers on temporary visas. In addition, if more workers are needed for year-round jobs, the workers should be offered the opportunity for a true immigration status and path to citizenship, not a mere multi-year temporary work permit.

The H-2C program, like the H-2A program, would have no cap on the number of foreign workers that can be brought in. The visa length would be for 3 years and could be renewed. At the end of their contract, H-2C visa holders may switch to a different H-2C qualified employer. Additionally, the H-2C program would:

- **Weaken recruitment of U.S. workers.** Employers will have no requirement to hire U.S. workers after the first date of need or work for H-2C workers. Under the current H-2A program, employers must hire eligible U.S. workers through 50% of the contract period.
- **Create an invasive process for program inclusion.** Participants in the H-2C program must go through a background check, and then, after acceptance, applicants must submit biological information, including facial recognition, finger prints, retinal scans, DNA, and blood type. H-2C workers will be given electronic identification cards and be required to regularly check in through an electronic card reader either at their employer or at a local U.S. post office.
- **Low wages.** Employers would only be required to pay either the highest of the state or local minimum wage, 115% of the federal minimum wage, or the wage paid to other employees doing similar work. As described above, this would result in displacement of U.S. workers, lower labor standards and exploitation of vulnerable foreign workers. Additionally, the bill would allow employers to withhold pay to workers if they "abandon" their post no matter the reason.
- **Limit access to judicial relief and legal assistance.** This bill would limit workers' access to justice. It could restrict workers' access to the court system as employers can

subject workers to mandatory arbitration agreements. This bill also requires that the costs for this process be split between the employer and H-2C employee.

- **Eliminate housing and transportation requirements currently required in the H-2A program.** Employers under the H-2C program would not be required to provide workers with housing. Workers would face the difficult task of finding sanitary, affordable housing in rural communities with limited or no access to capital, credit, language skills, or transportation. If the employer does charge them a fee, that would take away from their already low wages. Similarly, employers would no longer be required to reimburse transportation costs as is required under current law, and like housing, the employer would be able to charge a fee for transportation.
- **Require workers to obtain health insurance.** The bill requires H-2C workers to have health insurance while enrolled in the H-2C program, but does not require employers to provide or pay for it. The participants will not be treated as citizens or lawful residents, which is a change from current law where H-2A employees are eligible for Affordable Care Act subsidies for health insurance coverage. This change means that the healthcare available to H-2C employees will be more expensive with less coverage.
- **Program oversight would be through the Department of Agriculture (USDA).** Unlike the Department of Labor (DOL), the USDA has no experience in worker issues and rights. In fact, the agency views agricultural employers as their sole stakeholders.

**3) Mandate use of the E-Verify System.** The bill will require employers to utilize the E-Verify system.

In addition to its attacks on workers' wages and working conditions, Rep. Yoho's bill provides no path to permanent immigration status for current undocumented farmworkers. Under the bill, currently undocumented workers and their family members residing in the same household would only be allowed to enter the H-2C program. Even then, they would first have to pass a rigorous background check within one year of passage of the legislation and pay a high fine of \$2,500, which is out of the reach of most farmworkers.

Rep. Yoho's guestworker "reforms" fail to help the hundreds of thousands of undocumented agricultural workers, and instead, further expands a labor system that treats workers as commodities, with substandard working conditions and limited access to justice. Instead of one-sided, anti-worker proposals, Congress should focus its legislative efforts on providing farmworkers and their families with the opportunity to earn legal immigration status.

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