



FARMWORKER JUSTICE

The “AGRI Act” Would Worsen the H-2A Program’s Exploitative Conditions

On March 19, 2021, Rep. Crawford (R-AR) introduced the “Agricultural Guest Worker Reform Initiative,” or “AGRI Act of 2021,” H.R. 2086. The bill includes several problematic provisions from previous guestworker proposals. It would displace U.S. workers while opening the potential for more abuse in the H-2A guestworker visa program. Moreover, it 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. Crawford’s bill would inject more unfairness and dysfunction into our immigration system. Specifically, the bill would:

Lower worker wages. Employers would only be required to pay the highest of the federal, state, or local minimum wage. Currently, H-2A employers must pay the highest of three market-rate wage rates: the state or federal minimum wage, the “Adverse Effect Wage Rate” (AEWR), or the local prevailing wage. 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 are likely to accept substandard wage rates. Guestworker programs must contain protections against wage depression, such as the AEWR, in order to protect workers from displacement and exploitation.

Withhold workers’ wages. The bill would further lower farmworkers’ already meager wages by withholding a portion of their pay to go into a “trust fund.” Workers would not be able to access that money until they return to their home country’s consulate. The mid-20th century Bracero program had a similar provision, and some workers are still trying to recoup the money withheld from them. This provision would likely result in similar abuse.

Expand the H-2A program. The legislation expands the scope of the current H-2A guestworker program from one limited to temporary and seasonal jobs to one that encompasses unlimited year-round jobs in the dairy and ranch industries. These changes undermine worker rights in all of these industries 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.

Eliminate recruitment requirements. 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. It is the principal mechanism granting U.S. farmworkers preference for these jobs. Without this rule, many current farmworkers—including U.S. citizens and lawful permanent resident immigrants—could be easily displaced by their employers.

Minimize government oversight. The AGRI Act would allow employers to go through an expedited process to “import” a new employee to replace a worker who has absconded. Violations of workers’ rights are rampant in the H-2A program and more oversight is needed, not less, particularly when a worker has decided to leave—which is most often due to abuse by the employer. This provision would only worsen the potential for employer retaliation.

Limit access to judicial relief and legal assistance. The bill would minimize workers’ ability to protect their rights. It would bar legal aid programs from representing H-2A guestworkers unless they are present in the U.S. and have gone through alternative dispute resolution. H-2A workers’ visas are tied to their employers, so if there is a dispute and the worker is no longer employed, they must return to their home country – and would thus not qualify for legal services. Moreover, many workers would be unable to file a lawsuit because employers could require them to submit to mandatory arbitration. The bill would also restrict legal services employees’ ability to enter employer property to conduct outreach to workers.

Weaken housing protections. Employers would no longer be required to provide workers with housing and could instead just give them a housing voucher. Workers would then face the difficult task of finding sanitary, affordable housing in rural communities with limited or no access to capital, credit, language skills, or transportation. Additionally, the bill explicitly allows discrimination against U.S. workers (and some guestworkers) by stating that employers need not provide housing (or a housing voucher) for workers who can return to their residence the same day, whether within or outside the U.S.

Move program oversight from the Department of Labor (DOL) to the Department of Agriculture (USDA). The USDA has no experience in worker issues and rights. In fact, the agency views agricultural employers as their sole stakeholders. The H-2A program already experiences many abusive and exploitive behaviors. Moving the program out of the DOL will only increase these abuses.

In addition to its attacks on workers’ labor rights, **Rep. Crawford’s bill provides no path to immigration status for current undocumented farmworkers.** Instead, it requires workers to return to their country of origin with only the possibility of continuing to be subjugated contract laborers under the H-2A program. Rep. Crawford’s guestworker “reforms” 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 would further expand a labor system that treats workers as commodities, with substandard working conditions and limited access to justice. This bill seems to represent the anti-immigrant, anti-worker alternative to legislative proposals that would grant undocumented farmworkers immigration status, including the Citizenship for Essential Workers Act (S.747/H.R.1909), the U.S. Citizenship Act (S.348/H.R.1177), and the Farm Workforce Modernization Act (H.R.1603).