



FARMWORKER JUSTICE

Senators Graham & Manchin Introduce Anti-Worker, Anti-Immigrant Bill to Radically Expand the Flawed and Exploitative H-2A Program

On July 22, 2021, Senators Lindsey Graham (R-SC) and Joe Manchin (D-WV) introduced a bill, S.2443, that would radically expand the flawed H-2A temporary agricultural worker visa program, causing harm to countless U.S. and foreign workers in agriculture and other sectors. The bill would end the requirement that H-2A jobs be “temporary or seasonal” and expand the definition of agricultural labor in the H-2A program to new industries such as wild seafood processing, fish farming, care of horses, and potentially landscaping. The dangers of the Graham-Manchin proposal are clear: A massive influx of captive temporary visa workers in these sectors would place downward pressure on wages and working conditions for U.S. workers and guestworkers alike. The bill fails to address the most urgently needed immigration reform: a path to immigration status and citizenship for undocumented workers in these sectors.

The H-2A Program Should Not Be the Employment Model in the U.S.

The fundamental flaws of the H-2A visa program enable exploitation of foreign workers and harm to U.S. workers, and it should not be expanded. H-2A visa workers frequently arrive indebted after [paying significant sums to recruiters](#) to obtain jobs, visas, and transportation to the United States. Yet when they arrive here, many find [lower-than-advertised wages, substandard housing, and dangerous working conditions](#). Because H-2A workers may only work for a single employer and must leave the country when the job ends, they face the difficult decision between remaining with an abusive employer or returning home to insurmountable debt and lost opportunities. And because the employer determines whether a worker will obtain a visa in a future season, guestworkers often are too fearful of future rejection to challenge unfair or unlawful practices.

The extraordinary control that the H-2A program allows employers to exert over guestworkers results in high productivity at relatively low wages. The benefits of hiring vulnerable guestworkers incentivize discrimination in hiring against experienced farmworkers already living in the United States, including U.S. citizens, permanent residents, and undocumented workers. In just the past few years, the Department of Justice Civil Rights Division has had to [take action](#) against unscrupulous [employers](#) across the country who turned down willing, qualified U.S. job-seekers in favor of more vulnerable temporary visa workers. In addition, because guestworkers rarely can improve their wages beyond the minimums required by law, U.S. workers’ bargaining power is weakened, resulting in stagnating wage rates.

Proposed Elimination of H-2A Temporary or Seasonal Requirement

S.2443 would open up the H-2A program to year-round agricultural jobs, which would include sectors like dairy, mushrooms, and range herding. The H-2A program is premised on the idea that it may be difficult to find U.S. workers for seasonal or temporary farm jobs because they yield lower annual incomes than year-round jobs. That same logic does not apply to year-round employment. Agricultural employers in these industries should do what any other employer must do to attract and retain workers: improve wages and working conditions.

The dairy industry provides an example of why conditions must be improved rather than bringing in new vulnerable workers. Dairy workers face long hours, low pay, [debilitating stress](#), and dangerous working conditions (multiple workers have [drowned in manure pits](#)). Allowing employers to bring in unlimited numbers of captive H-2A workers for these positions would undermine efforts to improve safety standards and wages, and would do nothing to regularize the status of the many undocumented farmworkers on dairy farms.

Expansion of the H-2A Definition of Agricultural Labor

S.2443 would change the H-2A definition of agricultural labor in two main ways. First, it would incorporate “any relevant occupational code” from the [Standard Occupational Classification \(SOC\) Manual](#) issued by the Office of Management and Budget. It is unclear whether “relevant” SOCs would be limited to the sub-category of “Agricultural Workers” or would encompass the broader category of “Farming, Fishing, and Forestry Occupations.” The latter would represent a massive expansion of the existing H-2A definition. Second, the bill would add three new categories of agricultural labor under the H-2A statute:

- “labor related to aquaculture, fish trimming, or wild seafood processing;”
- “labor related to the cultivation, installation, establishment and maintenance of horticultural commodities without regard to commodity source or location;” and
- “labor related to the breeding, care and feeding of equines.”

Horticultural commodities include fruits, vegetables, and ornamental plants. While landscaping—a sector that employs nearly 1 million workers—is not explicitly named, the “installation, establishment and maintenance of horticultural commodities” would likely extend to many landscaping positions. Wild seafood processing includes jobs on seagoing vessels as well as land-based operations.

Some employers in these sectors employ temporary visa workers under the smaller H-2B program, which is subject to an annual numerical cap. Foreign and U.S. workers at H-2B employers have faced the same sort of abuse rampant in the H-2A program. Seafood processing workers have been [subjected to forced labor](#), and landscaping workers have [endured wage theft and serious occupational safety and health violations](#). Similarly, U.S. workers seeking to be hired in these industries have faced [discrimination from employers](#) who preferred temporary visa workers. Shifting these industries from the capped H-2B program to the uncapped H-2A program will only increase the number of workers harmed by temporary work visas.

The model of temporary work visas is fundamentally inconsistent with our nation’s commitment to economic and political freedom. When this nation requires the labor of foreign citizens, those workers should be provided with the opportunity to become immigrants, rather than be forced into the restrictive, nonimmigrant status of guestworker programs. **Farmworker Justice strongly opposes the anti-worker S.2443 and calls on Congress to instead pass legislation that would grant current undocumented agricultural workers permanent legal status and provide future foreign workers with a path to immigrant status.**