

Congress Should Reject Amnesty for Illegal Agricultural Workers

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KEY TAKEAWAYS

The Farm Workforce Modernization Act, H.R. 5038, is first and foremost an illegal immigration bill and a clear-cut example of amnesty.

The legislation would grant amnesty to millions of illegal workers—and that does not even include their spouses and children.

Congress should not support immigration policies that condone and reward ignoring the very immigration laws that it has enacted.

On November 20, 2019, the House Judiciary Committee passed the Farm Workforce Modernization Act (H.R. 5038)¹ along party lines, with 18 Democrats supporting the bill and 12 Republicans opposing it.² The House is expected to take up the bill as soon as the week of December 9, 2019. Agricultural producers have long expressed concern about labor shortages and have sought changes to the H-2A temporary agricultural worker program.³

This new proposed legislation, however, is first and foremost an illegal immigration bill. Instead of simply reforming the legal immigration system to address agricultural labor, the bill allows existing illegal immigrants working in agriculture to get legal status and a pathway to citizenship. As such, the bill is a clear-cut example of *amnesty*.

While there are numerous issues covered in the legislation, this *Issue Brief* is focused solely on the amnesty aspect of the bill.

This paper, in its entirety, can be found at <http://report.heritage.org/ib5017>

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Overview of Certified Agricultural Worker Status

Right from the outset, the legislative text establishes the amnesty process for illegal immigrants working in agriculture, creating something called “certified agricultural worker status.”⁴

Eligibility. This program is specifically designed for illegal agricultural workers. In fact, aliens are only eligible if they are “inadmissible or deportable from the United States” on the day the legislation was introduced (November 12, 2019). There are two very narrow exceptions to this requirement: aliens whose removal has been deferred under what is called deferred enforced departure (this currently only applies to nationals from Liberia) and nationals of a small number of countries who have temporary protected status because of harmful conditions in their countries.⁵ Unless aliens can meet these requirements, they are not eligible for certified agricultural worker status—including farmworkers *legally* in the United States under the H-2A program or those seeking to come into the country through the H-2A program.

In addition, the aliens must also have worked at least 1,035 hours (or 180 work days⁶) in agriculture during the two-year period preceding introduction of the bill⁷ and have been continuously present in the United States from the date of the bill’s introduction until granted certified agricultural worker status. An alien otherwise meeting these requirements could be ineligible for some limited reasons, such as felony offenses.⁸

The legislation would not merely cover the workers themselves. The spouses and children of aliens granted certified agricultural worker status could be granted what is called “certified agricultural dependent status.”⁹

Length of Status and Extensions. Certified agricultural workers and their spouses and children can stay in the country for five and one-half years. They can also receive indefinite extensions for additional five-and-one-half-year periods. In order to be granted an extension, the certified agricultural worker is required to have worked in agricultural labor or services for at least 575 hours (or 100 work days) in each of the five preceding years.¹⁰

Pathway to Citizenship. The legislation creates a means for certified agricultural workers (and their spouses and children) to become lawful permanent residents. Under existing law, a lawful permanent resident is an individual who has secured a “green card” to live permanently in the United States and can generally become a citizen after five years.¹¹

To become a lawful permanent resident, the alien must have performed agricultural work for at least 575 hours (or 100 work days) each year for at least 10 years prior to enactment of the law and for at least four years as a

certified agricultural worker. Alternatively, if aliens do not meet the 10-year requirement, they would need to work for at least eight years as a certified agricultural worker.¹² The four-year and eight-year work requirements are in addition to any previous agricultural work prior to enactment of the law.

Problems with the New Certified Agricultural Worker Status

The new certified agricultural worker status would reward individuals who have come into the country illegally to work in agriculture—and also reward those agricultural producers who have employed these illegal workers. The legislation is a clear signal that there is little reason to follow the law or work within the legal immigration system. It incentivizes aliens *and* farmers to ignore the legal immigration system in the future if it best serves their needs.

This amnesty provision is so extreme that it does not simply allow the illegal immigrants to become part of the current H-2A program like legal immigrants working in agriculture. It goes even further by giving them a new status and path to citizenship that agricultural workers legally in the country would not be afforded.¹³ *Quite simply, current agricultural workers who want to live and work in the United States would be better off if they are illegal immigrants as opposed to legal immigrants.*

There is also nothing that could do more harm to legal immigration than this amnesty that threatens the legal immigration system's legitimacy and reason for existing. Future legal immigration reforms would be far less effective than they otherwise would be since aliens and employers would know that end-runs around the law would not just be ignored—they might even be rewarded.

The sheer scope of this proposed amnesty would be massive. According to the latest National Agricultural Worker Survey data (fiscal years 2015–2016), an astonishing 49 percent of farmworkers are illegally in the United States.¹⁴ Some estimates are as high as 70 percent.¹⁵ The total number of illegal immigrants working in agriculture is not clear, but it is likely at least 1.5 million people—and possibly much higher.¹⁶ For example, Farmworker Justice states that there are approximately 2.5 million illegal agricultural workers.¹⁷

The legislation would therefore be granting amnesty to millions of workers, and that does not even include their spouses and children. Also, as many of these agricultural workers move to lawful permanent resident status and then to citizenship, there is no reason to think they would simply continue

to work as farmworkers. This amnesty plan, which allegedly exists in part to help farmers with their labor needs, would likely have only a limited short-term benefit to farmers as existing workers move off the farm. This movement away from the farm is precisely what happened when the United States granted amnesty to over 1 million agricultural workers in 1986.¹⁸

Recommendations

Congress should not support immigration policies that condone ignoring the very immigration laws that it has enacted. The U.S. would be sending a message that the nation's immigration laws should be no obstacle to those who want to come to the U.S. illegally and those who want to employ these individuals.

The Heritage Foundation's "An Agenda for Immigration Reform," published earlier this year argued that "the government should pursue a measured set of approaches to a wide variety of immigration issues, but in all events, it should exclude amnesty for aliens unlawfully in the United States."¹⁹ Congress should follow this important advice.

Conclusion

There should be a thoughtful discussion and debate about *legal* immigration reform, including labor issues within the agricultural sector. The agricultural sector already has the H-2A temporary worker program to fill positions of a temporary or seasonal nature. This program, which places no limit on the number of visas that can be issued, is just a new iteration in long-standing U.S. policy to create temporary worker programs to help meet agricultural labor needs.²⁰

There may be problems with this program, but those problems along with many other immigration questions should be discussed within the context of reforming the *legal* pathways for aliens to enter the United States. The solution is to solve the problems with our laws, not to pass an amnesty law that would bless the actions of aliens and agricultural employers who have ignored the law altogether.

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Endnotes

1. Farm Workforce Modernization Act of 2019, H.R. 5038, 116th Congress, 1st Sess., <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR5038-RCP116-42.pdf> (accessed December 9, 2019).
2. “Roll Call: Final Passage on HR 5038,” Committee on the Judiciary, U.S. House of Representatives, November 21, 2019, <https://docs.house.gov/meetings/JU/JU00/20191120/110259/CRPT-116-JU00-Vote007-20191120-U1.pdf> (accessed December 9, 2019).
3. U.S. Citizenship and Immigration Services, “H-2A Temporary Agricultural Workers,” January 24, 2019, <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers> (accessed December 9, 2019).
4. Farm Workforce Modernization Act of 2019.
5. *Ibid.* These two exceptions also apply to the date of the introduction of the legislation. For the date of introduction and provisions regarding deferred enforced departure and temporary protected status, see, e.g., U.S. House of Representatives, “Report 116–328,” December 2019, <https://docs.house.gov/bills/thisweek/20191209/CRPT-116-HR5038-U2.pdf> (accessed December 9, 2019), and American Immigration Council, “Temporary Protected Status: An Overview,” *Fact Sheet* (May 21, 2019), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview> (accessed December 9, 2019).
6. “Work day” is defined as 5.75 hours in the bill.
7. The bill’s language appears to require *either* at least 1,035 hours or 180 work days. Even though 180 work days (one work day being defined as 5.75 hours) equals 1,035 hours, this does not mean that 1,035 hours and 180 work days are synonymous. They are two *different* ways for an alien to meet the work requirement. It is possible, for example, for an alien to easily cover the 1,035 hours in less than 180 work days (working eight hours a day would translate to about 129 days of work). This point is brought up because the Committee report and the bill sponsor’s fact sheet assert that the legislation requires “at least 180 days in agriculture” without reference to the 1,035 hour means of meeting the work requirement. See U.S. House of Representatives, “Report 116–328,” and Zoe Lofgren, “Farm Workforce Modernization Act,” <https://lofgren.house.gov/sites/lofgren.house.gov/files/Farm%20Workforce%20Modernization.pdf> (accessed December 9, 2019).
8. Farm Workforce Modernization Act of 2019.
9. *Ibid.*
10. *Ibid.* Like the point made about the work requirement for eligibility to become a certified agricultural worker, the bill appears to allow for the requirement to be met by *either* at least 575 hours or 100 work days. The Committee report and the bill sponsor’s fact sheet simply discuss the minimum 100-work-day requirement without reference to the 575-hours means of meeting the requirement. While 100 work days does equal 575 hours, an alien could work 575 hours in far less than 100 days. See U.S. House of Representatives, “Report 116–328,” and Lofgren, “Farm Workforce Modernization Act.”
11. Department of Homeland Security, “Lawful Permanent Residents (LPR),” June 5, 2019, <https://www.dhs.gov/immigration-statistics/lawful-permanent-residents> (accessed December 9, 2019), and Citizen Path, “U.S. Citizenship Requirements for 5-Year Permanent Resident,” <https://citizenpath.com/citizenship-requirements-5-year-permanent-resident/> (accessed December 9, 2019).
12. Farm Workforce Modernization Act of 2019. Regarding the 10-year requirement, the language as drafted does not appear to require the 10 years to have been continuous. In other words, the alien could have accumulated most of those required 10 years off and on over a longer period of time.
13. This is in no way a suggestion that existing H-2A legal workers should be granted an immediate pathway to citizenship.
14. U.S. Department of Labor, “National Agricultural Workers Survey,” Employment and Training Administration, <https://www.doleta.gov/naws/research/data-tables/> (accessed December 9, 2019).
15. Tamar Haspel, “Illegal Immigrants Help Fuel U.S. Farms. Does Affordable Produce Depend on Them?” *The Washington Post*, March 17, 2017, https://www.washingtonpost.com/lifestyle/food/in-an-immigration-crackdown-who-will-pick-our-produce/2017/03/17/cc1c6df4-0a5d-11e7-93dc-00f9bdd74ed1_story.html (accessed December 9, 2019), and Alfonso Serrano, “Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws,” *Time*, September 21, 2012, <http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/> (accessed December 9, 2019).
16. News release, “Collins Statement on H.R. 5038,” Office of Doug Collins, November 20, 2019, <https://republicans-judiciary.house.gov/press-release/collins-statement-on-h-r-5038/> (accessed December 9, 2019), and Haspel, “Illegal Immigrants Help Fuel U.S. Farms.”
17. “Immigration Reform and Farmworkers,” [Farmworkerjustice.org](https://www.farmworkerjustice.org/advocacy-and-programs/agjobs), <https://www.farmworkerjustice.org/advocacy-and-programs/agjobs> (accessed December 9, 2019).
18. See, e.g., Marita Hernandez, “Fraud Rife in Farm Worker Amnesty Papers, INS Says,” *Los Angeles Times*, November 30, 1988, <https://www.latimes.com/archives/la-xpm-1988-11-30-mn-644-story.html> (accessed December 9, 2019); “U.S. Amnesty Ends For Farm Workers,” *The New York Times*, December 1, 1988, <https://www.nytimes.com/1988/12/01/us/us-amnesty-ends-for-farm-workers.html> (accessed December 9, 2019); Philip Martin, “AgJOBS: New Solution or New Problem?” *The International Migration Review*, Vol. 37, No. 4 (2003), pp. 1282–1291, www.jstor.org/stable/30037794 (accessed December 9, 2019); and “Many Immigrant Farmworkers Legalized in 1986 Went on to Prosper,” CBS News, May 26, 2013, <https://www.cbsnews.com/news/many-immigrant-farmworkers-legalized-in-1986-went-on-to-prosper/> (accessed December 9, 2019).

19. Kay James, James Carafano, John Malcolm, and Jack Spencer, "An Agenda for American Immigration Reform," Heritage Foundation *Special Report* No. 210, February 20, 2019, <https://www.heritage.org/immigration/report/agenda-american-immigration-reform>.
20. Gülcan Önel and Derek Farnsworth, "Guest Workers: Past, Present and the Future," UF/IFAS Citrus Research and Education Center, May 2016, https://crec.ifas.ufl.edu/media/crecifasufledu/extension/extension-publications/2016/2016_May_guest.pdf (accessed December 9, 2019).