



FARMWORKER JUSTICE

New Agricultural Guestworker Legislation: Job Loss and Wage Cuts for American Farmworkers and Exploitation of Foreign Citizens

On June 1, 2015, Rep. Allen, along with 9 co-sponsors, introduced the “Better Agricultural Resources Now Act” (BARN). This bill would amend the H-2A program to remove important government oversight and slash labor protections. The proposed changes would deprive U.S. citizens and lawful permanent residents of job opportunities, lower farmworkers’ already poor wages, and enable exploitative conditions for hundreds of thousands of new guestworkers.

The bill lacks the solution that is needed: an opportunity for the hundreds of thousands of current, experienced farmworkers who lack authorized immigration status to earn a green card and citizenship. Rep. Allen may believe undocumented workers will simply return to their home countries; however, the reality is that these workers will simply be pushed further underground and exploited.

The BARN Act’s changes in H-2A labor protections include:

- **Eliminating job opportunities for US workers.** One way in which the BARN Act would harm US workers is by eliminating recruitment protections, including the longstanding “50% rule.” The 50% rule requires employers to hire qualified US workers who apply for work during the first half of the season.
- **Slashing farmworker wage rates:** The BARN Act would allow H-2A employers to pay an arbitrary 115% of the applicable minimum wage even if the local prevailing wage rate for that job is higher. Currently, H-2A employers must pay the highest of three wage rates: the state or federal minimum wage, the “Adverse Effect Wage Rate” (AEWR), or the local prevailing wage. The AEWR is the regional average hourly wage rate for field and livestock workers, as measured by the Department of Agriculture’s annual Farm Labor Survey. The AEWR was created in response to depression in local prevailing wages under guestworker programs. The bill would impose tremendous pay cuts, and transfer of wealth from farmworkers to their employers.
 - For example, in Georgia, a big H-2A program user, the DOL’s current H-2A minimum wage rate is \$10 per hour. Under this bill, the required wage would be lowered to at least \$8.33 per hour (15% more than the minimum wage). There were 10,387 H-2A jobs certified in Georgia in 2014. If the average job lasted 10 weeks at 40 hours per week, those workers would suffer a collective pay cut of \$6.94 million.
 - In California, the H-2A program is just starting to be used in significant numbers. Last year there were 6,000 H-2A jobs approved. The state minimum

wage is \$9.00 per hour. The current H-2A wage is \$11.33. Under this bill, it would be reduced by \$1.02 per hour to \$10.35 an hour. That 9% pay cut would cost farmworkers \$816 over a 5 month-season (@40 hours/week x 4 weeks/month), amounting to a \$4.9 million collective pay cut.

- **Limiting worker access to judicial relief and legal assistance, leaving U.S. and foreign workers with extremely limited means to vindicate violations of their rights.** The bill would only allow Legal Services Corporation (LSC) programs to represent H-2A guestworkers while they were in the country. It would also restrict legal services employees' ability to enter employer property, where many workers may be housed.
- **Removing DOL oversight and deterrence of abuses.** The BARN Act would move oversight of the application process from the Department of Labor to the Department of Agriculture, despite USDA's lack of experience overseeing guestworker programs. Further, The BARN Act reduces the timeframes for filing and completing the applications, leaving USDA little time to review applications and providing for automatic approval if the short time frame is not met.
- **Expanding eligible jobs by not requiring that H-2A jobs be temporary or seasonal:** The H-2A bill would change the nature of the H-2A guestworker program by expanding the current H-2A definition of agriculture and by including year-round jobs in agriculture, despite the higher annual incomes such jobs yield for U.S. workers.
- **Eliminating guaranteed housing for workers:** Instead of providing housing, employers could provide workers a housing allowance (if the state's governor has certified that there is adequate farmworker housing available in that area). Workers would be forced to find their own housing despite the dire shortage of affordable, safe, healthy housing for farmworkers, and the obstacles foreign workers face. This would likely result in workers paying additional costs when rent is higher than the housing allowance as well as transportation costs to and from work.

Conclusion: America wants Congress to reform our broken immigration system in balanced ways. Rep. Allen's bill would harm the hundreds of thousands of U.S. workers employed in agriculture, provide no solution for the roughly one million undocumented workers already here, and result in a deeply flawed and troubling guestworker program that provides agricultural employers with access to hundreds of thousands of new workers at low wages with minimal government oversight. Rather than adopt this disastrous approach, Congress should enact legislation that reforms our broken immigration system and creates a road map to citizenship for the 11 million aspiring Americans, including farmworkers and their families. Proposals for anachronistic guestworker programs should be rejected as inconsistent with America's economic and democratic freedoms. Any needed future workers from abroad must be afforded the same legal rights as U.S. workers and should be given the opportunity to earn citizenship. Immigration reform should be a stepping stone toward modernizing agricultural labor practices and treating farmworkers with the respect they deserve.