

## **H.R. 5038, The Farm Workforce Modernization Act of 2019**

It is ironic that the sponsors of this bill put the word “modernization” in the title, since the legislation actually proposes variations on two tried, and demonstrably failed, policies of the past: amnesty and indentured servitude.

The purpose of this bill, ostensibly, is to insure a stable and legal agricultural workforce. Naturally, the first step would be to reform the H-2A guest worker program that allows employers to import an unlimited number of workers each year for temporary, seasonal agricultural work. The current H-2A program, while used successfully by many growers to obtain agricultural workers each year, is bureaucratic and cumbersome.

But, no, unfortunately, that is not the primary focus of H.R. 5038. Rather than simply streamlining the H-2A program, Title I of the bill is all about amnesty.

### **Amnesty**

H.R. 5038 would give amnesty—including work permits, green cards, and a path to citizenship—to illegal aliens who have been unlawfully employed in agriculture at least part time during the past two years. In fact, illegal aliens who spent just most weekends working in agriculture over two years would qualify, since only 1,035 hours or 180 workdays are required.

However, Congress knows that giving amnesty to illegal agricultural workers will fail to produce a stable, legal workforce, because they’ve tried it before.

Congress passed an agricultural amnesty in 1986, as part of the Immigration Reform and Control Act (IRCA). That law was sold to the American people as a one-time amnesty, in exchange for border security and a prohibition on hiring illegal aliens in the future, that would provide a stable and legal agricultural workforce. We ended up giving amnesty to almost 1.1 million “Special Agricultural Workers” (as they were called in IRCA), plus their spouses and minor children. But there was a catch: most of the Special Agricultural Workers left agriculture for better-paying jobs as soon as they got their work permits.

### **Indentured Servitude**

The sponsors of the Farm Workforce *Modernization* Act decided to address this problem by regressing to the 17th Century practice of indenturing these newly amnestied agricultural workers for various durations.

Under H.R. 5038, if an alien worked unlawfully in agriculture for at least 10 years prior to the date of enactment, that alien will be granted Certified Agricultural Worker (CAW) status for 5½ years with an employment authorization document that allows him or her to work for any employer in the United States, in agriculture or not. After four years in CAW status, the alien

can apply for a green card and the path to citizenship, if the alien worked in agriculture for at least 575 hours or 100 workdays in each of those four years. So these longtime illegal workers are “only” indentured for four years.

However, if an alien worked unlawfully in agriculture for fewer than 10 years prior to enactment, that alien also will be granted CAW status, but will be required to work in agriculture for the next eight years. Aliens in this category cannot apply for a green card and the path to citizenship until they have had CAW status for eight years and can show that they worked in agriculture for at least 575 hours or 100 workdays in *each* of the past eight years.

So these aliens who worked unlawfully for less time will be indentured to agriculture for eight years before they can completely abandon farm work. Like the first category, though, they will still have an employment authorization document that is not limited to agriculture, so they can get a part-time, or even most-time, job in another industry while they are completing the term of indenture.

The bottom line, though, is that this is only a short-term—and despicable—solution for keeping workers on the farm.

### **H-2A Expansion**

Rather than providing incentives for mechanization to reduce the need for manual labor, or even just streamlining the existing H-2A program, the sponsors of H.R. 5038 decided that it is time to complete the hollowing out of several other industries, in addition to seasonal farm work. They kept the numerically unlimited H-2A category for seasonal work, but created a new, non-seasonal, year-round category so that at least 20,000 (and potentially many more) low-paid foreign workers can be imported each year to work at dairies, meat-packing plants, fish canneries, nurseries, and more. But rest assured, after three years of this new program, the government will study its impact on the wages and working conditions of the (by then) few remaining Americans and legal immigrants in these occupations!

### **Importing Poverty—Permanently**

Because the sponsors of H.R. 5038 clearly believe we have an unquenchable—and permanent—need for low-skill, low-wage foreign labor, the bill also creates a brand new pot of 40,000 green cards each year for aliens who worked in the H-2A program for 10 years or who are capable of working in non-seasonal agricultural jobs. Of course, they won't be limited to working in agriculture, because once you get a green card, you can work in any job you can find.

### **No Worries: Mandatory E-Verify**

In what appears to be an effort to placate folks who remember the results of the 1986 IRCA amnesty, the sponsors of H.R. 5038 threw in mandatory use of E-Verify to insure that new hires

are authorized to work in the United States—but ONLY for agricultural employers! The bill includes no provisions to reduce the flow of illegal immigration into the United States, but it does insure that they won't be employed in agriculture. Instead, they will be competing with Americans and legal immigrants for jobs with unscrupulous employers in other industries where E-Verify use is not required.