



Farmworkers and the Food System Will Suffer Under Smith's Mandatory Employment Verification

In June 2011, House Judiciary Committee Chairman Lamar Smith (R-Texas) introduced the “Legal Workforce Act.” The legislation would require employers, as well as those recruiting and referring job applicants, to check applicants’ immigration status with a government database. Instead of engaging in a good-faith effort to enact comprehensive reform of our broken immigration system, Rep. Smith has addressed only one piece of the enforcement puzzle, and has put forward a “solution” that creates more problems.

Rep. Smith’s mandatory e-verify bill and its special carve-outs for agriculture would harm farmworkers. The Legal Workforce Act would wreak havoc on our economy by causing a huge disruption in agriculture, where more than one-half the labor force is undocumented. Many farm operators would lose access to highly productive workers because they are undocumented, threatening their businesses’ viability and the jobs of U.S. workers as well. The bill contains no constructive response to the harm it would cause to farmworkers, to American agriculture, or to the nation. In fact, Chairman Smith and other immigration restrictionists oppose the meaningful solutions to fixing our broken immigration system that have been developed by farmworkers, agribusiness groups and members of Congress in both parties. The Legal Workforce Act’s special exemptions and rules for agriculture, the industry most known for its widespread dependence on undocumented workers, reveal the bill’s inherent hypocrisy. Despite Rep. Smith’s claim that his bill is a jobs bill for US workers, it would harm U.S. citizens and permanent resident immigrants who currently harvest our fruits and vegetables and would exacerbate the problems all farmworkers face in the following ways:

- **First**, the bill would delay application of E-Verify to agricultural employers for three years. In essence, Smith condones the hiring of undocumented workers in agriculture but does nothing to legalize the workforce. Those workers would still be at risk of immigration enforcement, including possible deportation, and would be driven further into the margins of society.
- **Second**, even after three years, agricultural employers would not be required to electronically verify seasonal agricultural employees who had worked for them in the past. Consequently, undocumented farmworkers would feel huge pressure to continue working for the same employer to avoid e-verify requirements. Employers would benefit from “captive” workers who would be reluctant to challenge illegal or unfair conduct for fear of losing their jobs and their ability to work. Tying workers to their employers in this manner would compound all the difficulties undocumented workers generally face when trying to assert their rights. And farmworkers frequently experience many violations of their limited workplace rights, including wage theft, exposure to pesticides, and sexual harassment and assault.
- **Third**, this bill would allow – indeed, encourage – agricultural employers to evade any e-verify obligations that do apply by using farm labor contractors to hire workers. While farmworkers

would still be growing and harvesting the growers' crops, growers would claim they don't employ any farmworkers. Previous immigration reform efforts, including the 1986 Immigration Reform and Control Act (IRCA), have shown that farm labor contractors enable growers to shield themselves from liability under immigration and wage and hour laws, rendering ineffective any employer sanctions. Additionally, labor contractors are notorious for violating immigration and labor laws. The expansion of the farm labor contracting system will harm the wages and working conditions of all farmworkers, including U.S. workers.

H-2A “reform” is not the answer. Because of the Legal Workforce Act's recognized impact on agriculture, some agricultural employers, with Rep. Smith's encouragement, are seeking other avenues of cheap labor in the form of modifications to the H-2A temporary agricultural guestworker program to make it cheaper and easier for employers to bring in temporary foreign workers. The H-2A program currently includes modest worker protections designed to protect both U.S. and foreign workers against exploitation and against the depressing effect that the importation of foreign workers can have on wages and working conditions. Many of the current regulations can be traced back to measures put in place to protect workers in the notoriously abusive Bracero program. Proposed changes to the H-2A program that can be expected, such as amendments to lower wages, weaken worker protections, minimize recruitment of U.S. workers, and “streamline” the program by removing government oversight, would lead to even more worker abuses. The H-2A program is fundamentally flawed and rife with abuse; more protections for U.S. and foreign workers are needed, not fewer.

Employers in the H-2A program already have several powerful incentives to discriminate against U.S. workers; for example, H-2A workers are more than 10% cheaper to hire than US workers because the employer does not have to pay Social Security or unemployment taxes on guestworkers, and employers can choose a demographically ideal workforce. Fewer worker protections will lead to increased discrimination against US workers. By weakening labor protections, H-2A “reform” would create increased incentives to hire guestworkers and additional obstacles for U.S. workers who wish to obtain jobs at H-2A employers. It would facilitate the importation of a new massive disposable foreign workforce at substandard wages.

Incentivizing the hiring of cheap, disposable guestworkers harms all workers, does not solve our broken immigration system, and exacerbates the problems farmworkers and agricultural employers currently face. A massive importation of exploitable guestworkers does not adequately address the broken farm labor system and is not an appropriate model for the working people of this country.

The Legal Workforce Act's loophole-ridden, misguided expansion of mandatory employment verification will wreak havoc on farmworkers and farmers throughout the country. Rather than protect U.S. workers in agriculture, it will further marginalize them and will create momentum for passing “reforms” to expand the hiring of foreign guestworkers under substandard conditions. Any new work-authorization enforcement measures should be coupled with a reasonable plan to legalize the hard-working undocumented workers who currently harvest our nation's fresh fruits and vegetables. This nation also should be seeking ways to empower farmworkers to improve their wages, working conditions, health, and communities. Instead of pursuing harsh immigration enforcement tactics, Congress should pass the bipartisan AgJOBS bill, negotiated by the United Farm Workers and major agricultural employers' organizations, which would assure a prosperous agricultural sector while imposing the rule of law on all parties.