



A new path for undocumented farmworkers

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Hundreds of thousands of undocumented farmworkers could see a new path to legalization under the Farm Workforce Modernization Act, a bipartisan bill presented in the House Judiciary Committee this week.

Proponents of the bill say the legislation will help address a severe worker shortage in agriculture, while granting more stability and security to those working in the fields.

Twenty-four Democrats and 20 Republicans co-sponsored the bill, which would provide qualified applicants—those with at least 180 days of agricultural employment over the last two years—with renewable Certified Agriculture Worker visas and expand the H2-A temporary worker program.

Congressman Jimmy Panetta, D-Monterey, who helped to lead negotiations and introduce the bill, called the legislation “the product of months of bipartisanship,” adding, “We have a long way to go in this marathon, but that’s what it takes to get a bill passed in Congress. It’s not easy, it takes a lot of work, even on something that has bipartisan support like the Farm Workforce Modernization Act.”

Panetta stresses the importance of this legislation for his district, where immigrant farm workers represent a major part of the agricultural industry. “We’ve had a tradition of people coming to work here and be a part not only of our economy but be a part of our community and our culture,” he said.

In Santa Cruz’s Pajaro Valley and Monterey’s Salinas Valley alone, there are more than 90,000 agricultural workers employed, with an estimated half of them lacking authorization to work legally within the United States. Estimates from UC Davis put the number of undocumented farm workers in California as high as 60 percent.

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According to statements David Bier, a policy analyst at the libertarian Cato Institute, made to Vox, participating Republicans were able to reach a compromise on the bill under the recognition that legalizing the “shadow” workforce is essential in ending uncertainty for

agricultural employers. “From the Republicans’ perspective, the only way to get back to certainty and legality is to clean the slate, start fresh, and move forward with a legal workforce,” he said.

The bill would also create a path for those with more than 10 years of agricultural experience in the United States to apply for Legal Permanent Residency (LPR)—after paying a \$1,000 fine and working for another four years once the bill took effect. Those with less than 10 years of agricultural experience would need to work for an additional eight years before applying for LPR status.

California produces two-thirds of the nation’s fruits and nuts, and accounts for more than one-third of total vegetable production, according to data from the California Department of Food and Agriculture.

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According to the Center for Farmworker Families, a nonprofit that advocates for locally for farmworker rights, Central Coast crop workers are often exposed to substandard working conditions including exposure to harmful pesticides, inadequate access to water or proper hygiene facilities and sexual harassment or abuse.

“The longer they’re here in the United States, the sicker they get. That’s because of a life of overwork,” said Dr. Ann Lopez, the executive director of the Center for Farmworker Families. “There is no eight-hour day for a farmworker, it’s when the grower says you can go home. They live in squalor and poverty.” Lopez also notes that based on some estimations, the average life expectancy of a crop worker is just 49 years.

Delegation of farm workers in Washington DC on their way to meetings on the hill to advocate for the Farm Workforce Modernization Act | Photo courtesy UFW Foundation

Leydy Rangel, a communications specialist with the United Farm Workers—a labor union for farm workers that participated in negotiations for the bill—says that lacking legal status and protection is the No. 1 driver of the issues and vulnerabilities farmworkers face.

“Every single time we ask our members, ‘What do you need? How can we support you more?’ the answer is always the same. They always ask us to continue the advocacy for a pathway to citizenship. With this bill, we finally crafted that,” said Rangel, adding, “We know that in order to make this meaningful change, and to preserve that change, we have to compromise.”

Part of this compromise dealt with the E-Verify system. “What the Republicans wanted, what their non-negotiables were in order to sit down with us was E-Verify. In exchange, what we wanted was legalization,” said Rangel.

E-Verify is an online system that cross-references information from an employee’s I-9 forms with government data from the Social Security Administration and the Department of Homeland Security to determine their legal work eligibility.

After a structured phase in, Title III of the Farm Workforce Modernization Act would establish a nationwide, mandatory E-Verify system for all agricultural employment. Lopez expressed deep concerns over this piece of the legislation, noting, “I think everybody’s shuttering over that. I don’t think that will ever happen or work.”

If the legislation passes, the E-Verify system would kick in only after the farmworkers are given the opportunity to begin the legalization process, with smaller companies being given more time to implement the system. Rangel says the UFW believes “almost all” of the estimated 1.2 million undocumented farmworkers in the U.S. would meet the requirements for legalization.

Still, there are questions about what percentage of farmworkers would actually legalize if the legislation passed. While Lopez calls the bill, “better than nothing,” she said, “It creates such a difficult journey to become legalized,” which she fears may lead people to give up on the process all together.

Title II of the legislation focuses on changes to the H2-A program. The H2-A program allows employers to hire foreign workers for temporary agricultural jobs, but only after they meet certain requirements—including proving there are not enough U.S. workers able or willing to do the job at hand.

Under the updated program, employers would be granted more flexibility, including filing a single petition for all of their labor needs. Currently, farmers must file separate petitions for each job they’re looking to fill, making the process complicated for farmers with a variety of positions available—like those hiring harvesters, tillers and planters.

The bill would also make H2-A program available for farmers with year-round employment needs. This change is especially important for the dairy industry, which was previously unable to utilize the program and has been facing a severe worker shortage in recent years, according to information from the United Fresh Produce Association. Title II would make 60,000 year-round visas available over the first three years, with half of those guaranteed to the dairy industry.

“Employers are relying more and more on guest workers,” says Rangel, adding, “If we’re going to bring in more workers from outside of the U.S. they have to be protected.” Expanded protections under Title II include heat protection plans for workers and sexual harassment protection in dairy. The male-dominated dairy industry is “a workplace where sexual harassment is very likely to happen,” said Rangel.

Another key piece of Title II is wage reform, which would limit wage decreases between 2021-2029 to 1.5%, and in most cases, limit wage increases to 3.25%. Wages for 2020 would be frozen at 2019 rates. By contrast, if Congress did nothing to reform the current wage system, some estimates show that 2020 wages could go up as much as 7%, according to United Fresh.

Lopez criticized the proposal as being too vague, noting that without more specific guidelines for dollar amount increases or decreases, growers have the potential to “do whatever they want.”

While Rangel notes that the bill represents a compromise, she said, “I am the daughter of farmworkers. I also worked in the fields to pay for my college career. So I wouldn’t be

advocating for something that wouldn't be beneficial for us. I am very happy for this opportunity to be my parent's voice in the halls of Congress."

Despite months of negotiations and progress, Congressman Panetta notes that the work is nowhere near finished. If the bill passes through the House, it still must clear the Senate and the White House before it could go into effect.

"This is just the beginning but it's a race well worth running, especially if you understand the importance of immigration reform and immigration to our number one industry on the Central Coast. That's why I've been involved in it. That's why I'm going to continue to be involved in it. That's why we're going to continue to push forward to the finish line," he said. "It's an important step for immigration reform in our country. I really believe that."