



FARMWORKER JUSTICE

Rep. Lungren's Legal Agricultural Workforce Act: A 19th Century Policy Prescription for the 21st Century Workforce

Rep. Lungren's Legal Agricultural Workforce Act proposes a massive new uncapped guestworker program with no meaningful labor protections or enforcement for workers.

Apparently employers could have their choice of the "W" program or the H-2A program, which would continue to exist. **Lungren's guestworker bill will cause wide-scale job loss for American farmworkers.** Lungren ignores the lessons of history by eliminating all of the labor protections that have been recognized for decades as necessary to prevent displacement of US workers, depression of U.S. workers' wage rates, and exploitation of foreign citizens. Even the notoriously abusive Bracero program (1942-64) included more protections than Lungren's program would.

For those US workers fortunate enough to keep their jobs, Lungren's bill would cause wage loss and deteriorated working conditions. His bill would add hundreds of thousands of vulnerable guestworkers to a farm labor force where U.S. citizens, lawful permanent residents, and undocumented workers already experience inadequate labor standards. Workplace abuses, already rampant in the H-2A program and in agriculture generally, would increase.

Lungren's bill ignores the roughly one million experienced agricultural workers without work authorization who currently harvest our crops. With increased immigration enforcement and employer access to exploitable guestworkers, undocumented workers will be pushed further underground and exploited by the most unscrupulous employers.

Lungren showcases his bill's "market-based," "flexible" approach and implies that guestworkers in his program will have market freedom to seek the best employment opportunities. However, "W" workers could only work for agricultural employers already participating in the guestworker program, who of course would have no need for extra workers as they would have already hired their own guestworkers. Further, these workers would face likely blacklisting if they dared seek "better" employment. The very nature of a guestworker program is anathema to a "free-market" approach. The principal freedom in the bill is the employers' freedom from any meaningful government oversight.

Using the Bracero program's famously failed model of withholding workers' pay, Lungren's bill would deduct an amount equivalent to the Social Security tax amount from "W" workers' checks. Workers would be forced to travel to a consulate and "demonstrate compliance of the worker with the terms and conditions of the program" in order to apply for the return of their earnings. This same money would be used to pay for emergency medical services for injured or ill workers. While the bill does require workers compensation coverage, it includes no language providing workers with health care or health insurance.

Rep. Lungren designates the United States Department of Agriculture to run the huge new guestworker program, despite its lack of experience enforcing labor protections and despite the fact that all other guestworker programs are run by the US Department of Labor.

- **Lungren’s bill eliminates protections** that have been required under the H-2A agricultural guestworker program for many years and thus there would be:
 - **No wage protections to protect US worker wages from the adverse effects of guestworker programs:** Employers could set minimum wage rates at the federal or state minimum wage, regardless of the prevailing wage or other market-based wages as required in the H-2A program. Employers will be free to create false labor shortages by offering only the minimum wage, even where the average area wage rate is much higher
 - **No meaningful job protections for US workers:** employers would only have to submit a description of the job to the DOL job registry, but could reject any US workers who was not equally or better qualified than a nonimmigrant worker, a mysterious and subjective standard. Lungren omits traditional requirements to recruit U.S. workers effectively; he does not include the H-2A program’s longstanding “50% rule,” which requires employers to hire qualified U.S. workers who apply for work during the first half of the season.
 - **No provision for housing,** despite the severe shortage of sanitary, uncrowded housing for farmworkers, the high cost of housing that is available, and the difficulty for U.S. and foreign migrant workers arranging for housing from their home bases.
 - **No transportation reimbursement** for the high costs of long-distance travel to jobs for either U.S. or foreign migrant workers, and no payment upon completion of the season to pay workers’ expensive costs of getting home.
 - **No guarantee of a minimum amount of employment:** the absence of the three-fourths minimum work guarantee deprives workers of a promise of potential income, and encourages employers to over-recruit to create a labor oversupply that drives down workers’ bargaining power.
 - **No oversight or enforcement mechanisms** to verify claims of worker shortages and compliance with the program’s minimal requirements. However, “W” workers, unlike H-2A workers, would be covered by the Migrant and Seasonal Agricultural Worker Act.

America wants Congress to help produce good jobs for American workers. At a time of record unemployment, the creation of an additional uncapped guestworker program would be disastrous. Lungren’s bill would harm the hundreds of thousands of U.S. workers in agriculture, do nothing to address the presence of roughly one million undocumented workers already here, and would provide agricultural employers with access to hundreds of thousands of additional foreign workers at low wages with minimal government oversight.

Rep. Lungren argued for such policies in the 1980’s and agribusiness lobbied for such programs in the 1990’s. Rather than waste time discussing failed proposals of the past, Congress should move forward on a sensible compromise. Congress should provide undocumented farmworkers with the opportunity to earn legal immigration status with a path to citizenship, and strengthen worker protections in the H-2A program while removing employer incentives to rely on guestworkers instead of hiring US workers.