



# H.R. 5038 – The Farm Workforce Modernization Act

Bill Summary by Preston Huennekens | November 12, 2019

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The Farm Workforce Modernization Act (H.R. 5038) is an effort to amnesty over 1.5 million illegal alien farmworkers, expand the H-2A program, add 40,000 green cards to the EB-3 category, and mandate E-Verify across the agriculture sector. Despite the catchy title, the bill does nothing to actually modernize America's agricultural workforce.

## Farmworker Amnesty

- **Creates a Pathway to Citizenship for Over 1.5 Million Illegal Alien Farmworkers.** Anywhere from 1.5 to 2.1 million illegal aliens working in agriculture will become eligible for a new immigration status called Certified Agricultural Worker (CAW). The bill shields CAW and even CAW-eligible aliens from deportation.
- **Second-Class Status for Certified Agricultural Workers.** CAW aliens can eventually apply for green cards through an archaic system that resembles indentured servitude. Aliens who worked in agriculture for at least 10 year before the bill's enactment must work under CAW status for at least 4 additional years before applying for a green card. Alternatively, aliens who worked for less than 10 years before enactment must work at least 8 more years under CAW status. It is unclear how aliens would prove their length of employment and presents the opportunity for widespread fraud.
- **Encourages Further Illegal Immigration.** Like all amnesties, this bill would encourage further illegal immigration into the United States. Further, it does not address agricultural labor needs in the future. A better bill would focus on expanding agriculture's access to labor-saving technology. An amnesty

today does not solve the labor needs of tomorrow, and we will face this same predicament down the road.

## Minor Changes to H-2A

- **Adds Two Pilot Programs.**

First, the bill allocates 20,000 capped H-2A visas for use year-round, half of which must go to dairy farmers, a group currently excluded from accessing H-2A workers because it is not seasonal work. After 10 years, Congress could choose to eliminate the cap for year-round, making the H-2A visa a *de facto* year-round program. Second, the bill also allows 10,000 “portable” H-2A workers available for open employment among H-2A certified businesses. The program currently matches individual visa-holders to one employer.

- **Maintains the Status Quo.**

The H-2A program is an uncapped visa that permits American farmers to hire available seasonal workers. The program has a number of flaws, but still gives the agriculture industry an unlimited supply of guest workers. Big agriculture ignores the program because it is still cheaper and easier to hire illegal aliens instead of enrolling in the H-2A program. Without aggressive and punitive sanctions on noncompliant employers, expanding interior immigration enforcement, and simplifying the use of the H-2A, this will remain the status quo.

## Expansion of EB-3 Green Cards

- **40,000 New Green Cards.**

The bill adds 40,000 additional EB-3 green cards, allowing H-2A workers to apply for legal permanent residency after 10 years of H-2A status. Generally, H-2A workers cannot adjust their status and apply for legal permanent residency, but with these visas, the H-2A program could become a new pipeline for unskilled migrants to become American citizens. Activist groups will try to expand the number of visas well beyond 40,000 annually in the future.

## E-Verify for Agriculture

- **E-Verify Limited to Agriculture.**

The bill claims that it will implement E-Verify (or a permanent, but different, electronic verification system) across the agricultural sector. However, use of the program will be phased in over a period of time and only applies to the agriculture industry.

- **Undercuts Universal E-Verify.**

Instead of restricting its use to one industry, Congress must make E-Verify (or a permanent, but different, electronic verification system) mandatory for all private and public employers, with a phase-in period for agriculture.

## FAIR's Position on the Farm Workforce Modernization Act (H.R. 5038)

The Farm Workforce Modernization Act is a naked attempt at mass amnesty. The bill would amnesty over 1 million illegal aliens and encourage further illegal immigration. Further, it would place the amnestied aliens in a strange limbo period, tying them to agriculture for years using a restricted work permit and promising a path to citizenship. As FAIR's government relations team has noted in the press and informed lawmakers in Capitol Hill, this is indentured servitude.

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*“The bill would solidify an entire industry’s reliance on cheap foreign labor,”* said RJ Hauman, head of Government Relations for the Federation for American Immigration Reform. He added that its requirement that immigrants continue working in agriculture before qualifying for green cards *“essentially forces illegal aliens into indentured servitude.”*

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The bill also does not go far enough in promising meaningful enforcement or policy changes. A minor mandatory E-Verify provision limited to only the agriculture industry is not a fair or realistic compromise for an amnesty of this size.

Lastly, nothing in the bill “modernizes” America’s agricultural workforce. That would require automating many of these jobs using advanced technology and programs designed to give farmers access to those innovations. Further, the framework for improving legal farm labor already exists – fix problems with the current H-2A program. This, and encouraging the adoption of labor- and cost-saving automated harvesting technologies, represents true modernization. Another senseless amnesty does not.

**FAIR urges a **NO** vote and will include it in our 116<sup>th</sup> Congress Voting Report.**