**Headline:** The Farm Workforce Modernization Act Does Not Solve the Farm Labor Dilemma

**Teaser:** America’s farmworkers deserve better.

By Elizabeth Henderson

**Author Bio:** Elizabeth Henderson farmed at Peacework Farm in Wayne County, New York, for more than 30 years. Peacework CSA was one of the [first community-supported agriculture farms](https://www.oeffa.org/news/) in New York State. She has been a long time member of the Board the Northeast Organic Farming Association (NOFA) of New York, and represents the NOFA Interstate Council on the Board of the Agricultural Justice Project. Elizabeth is the lead author of [*Sharing the Harvest: A Citizen’s Guide to Community Supported Agriculture*](https://smile.amazon.com/Sharing-Harvest-Community-Supported-Agriculture/dp/193339210X/ref=sr_1_1?keywords=Sharing+the+Harvest%3A+A+Citizen%E2%80%99s+Guide+to+Community+Supported+Agriculture&qid=1561933054&s=books&sr=1-1) (Chelsea Green, 2007), with a Spanish language e-book edition in 2017. She maintains the blog [*The Prying Mantis*](https://thepryingmantis.wordpress.com/).

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**[Article Body:]**

Farmworkers, farmers and their organizations around the country have been singing the same tune for years on the urgent need for immigration reform. That harmony turns to discord as soon as you get down to details on how to get it done, what to include and what compromises you are willing to make. Case in point: the [Farm Workforce Modernization Act](https://www.congress.gov/bill/116th-congress/house-bill/5038) (H.R. 5038), which passed in the House of Representatives on December 11, 2019, by a vote of 260-165. The Senate received the bill the next day and referred it to the Committee on the Judiciary, where it remains. Two hundred and fifty agriculture and labor groups signed on to the United Farm Workers’ [(UFW) call for support for H.R. 5038.](https://ufw.org/fwmaintro/) UFW President Arturo Rodriguez rejoiced:

“Today is a milestone because this bill will help bring stability to the agricultural industry…Agricultural workers will have stability for themselves and their families. No longer will children worry whether their moms and dads are coming home from work. The bill addresses the pervasive fear faced every day by the immigrant farmworkers who perform one of the toughest jobs in America.”

Smaller farmworker organizations, however—Familias Unidas por la Justicia, Community to Community Development, CATA, Farmworker Association of Florida and UFCW, who unite in the Food Chain Workers Alliance—[vigorously oppose H.R. 5038](https://foodchainworkers.org/2020/02/fcwa-stands-with-farmworker-members-in-opposing-the-farm-workforce-modernization-act-of-2019/). Why the split, and what does it mean for this bill and future steps toward comprehensive immigration reform?

[With bipartisan sponsorship](https://www.congress.gov/bill/116th-congress/house-bill/5038), the bill has three titles that address a pathway to legal status for some farmworkers, expansion of the H-2A program—which allows farmers to import seasonal farm labor for up to 10 months if they can show that there is a shortage of resident workers—to year-round work on farms along with many adjustments to make it easier and cheaper for farmers to apply, and a mandatory requirement of e-verify for all agricultural employers. The UFW acknowledges that the bill is a [compromise](https://ufw.org/fwmaintro/), “crafted with help from a group of Democratic and Republican lawmakers…the result of months of difficult negotiations between Members of Congress from both parties, the United Farm Workers, UFW Foundation, Farmworker Justice and most of the nation’s major grower associations.”

Let’s examine the three sections to see how big those compromises are and who is hurt or benefits from them.

[Title One of H.R. 5038](https://www.congress.gov/bill/116th-congress/house-bill/5038) lays out what farmworkers must do to qualify for temporary and then more permanent legal status. If they have records to prove at least 180 days of employment in agriculture over the previous two years and no criminal record, they can apply for five-year renewable Certified Agricultural Worker (CAW) status, which will protect them from deportation, but not allow them to receive any public or tax benefits or health care subsidies. Listing by a Farm Labor Contractor qualifies a worker for CAW. The Secretary of Agriculture “may” (not “shall”) grant approval with similar limitations for a spouse and minor children. To retain CAW status, they must work at least 100 days a year in agriculture. Unlike the earlier [Ag Jobs Bill (2009)](https://www.govtrack.us/congress/bills/111/hr2414), H.R. 5038 does not allow flexibility for periods of illness or injury. CAW status does allow farmworkers to travel outside the U.S. as long as that travel does not interfere with the required 100 days a year of farm work.

To gain Permanent Resident Status (PRS), H.R. 5038 requires a total of *14 years of farm work*: 10 years before the passage of the bill and then four more years before applying for PRS. If a person has done farm work for less than 10 years, they have to work and wait eight more years before applying for PRS. Nothing in H.R. 5038 shelters a worker who has been injured and is unable to work the full 100 days per year required to gain citizenship from being disqualified and deported. The 14-year process to gain permanent legal status with no social safety net and no room for even a single misdemeanor seems like a mixed blessing even for the fortunate farmworkers who can meet these requirements that are much more stringent than the [1986 Immigrant Reform and Control Act](https://www.washingtonpost.com/news/wonk/wp/2013/01/30/in-1986-congress-tried-to-solve-immigration-why-didnt-it-work/) (IRCA).

CATA, the Farmworker Support Committee, a small organization with 40 years of history helping to organize and defend farmworkers and other low-income immigrants, convened a discussion of H.R. 5038 among its members. [They rejected the proposal for failing to provide a short, clear path to legal status](https://cata-farmworkers.org/cata-statement-on-the-proposed-farm-workforce-modernization-act-h-r-5038/) for all undocumented agricultural workers.

**Changes to H-2A**

From the farmer perspective, Title Two of H.R. 5038 improves the [H-2A program](https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers). Instead of sequential filings via snail mail with three different government agencies, it consolidates the application process into one online filing, allows farmers to stagger labor requests and post their workers wanted listings in a single electronic registry. ([See my blog for a detailed description of how H-2A functions.](https://thepryingmantis.wordpress.com/2017/04/28/time-to-replace-h2a-the-us-guestworker-program/)) Title Two changes the formula for calculating H-2A pay in a way estimated to reduce wages slightly while allowing more flexibility for differentiating among different work assignments, freezes the rate for a year and then caps the percentage increase per year, and allows alternatives to inspected on-farm housing. It sets up a limited number of three-year visas for year-round workers, thus opening the program to dairies and other livestock farms and a pilot program for 10,000 workers who will be allowed to change employers.

On balance for H-2A workers, H.R. 5038 does extend coverage by the [Migrant and Seasonal Workers Protection Act to H-2A workers](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa). This act regulates labor contractors, requires full disclosure of wages, hours and work assignments, and provides workers with some protection from retaliation for raising grievances. Section 505(a) of MSPA states that it is a violation for any person to “intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this Act, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.” While section 505(a) sounds good, it is hard to see how the timing of the grievance process could work for short-term seasonal workers who would probably have to return home before the wheels of justice start turning.

From the perspective of both H-2A and undocumented workers, most of the changes to H-2A do not look like improvements. Except for those in the pilot program, H-2A workers are still locked in to the employer who invited them and cannot switch jobs unless the employer is a multi-farm association, and they are left without the legal right to organize. [According to USDA statistics,](https://www.ers.usda.gov/topics/farm-economy/farm-labor/#h2a) the number of H-2A positions has increased “from just over 48,000 positions certified in fiscal 2005 to nearly 243,000 in fiscal 2018.” By making it easier for farmers to hire “guestworkers,” the bill threatens the job security of farmworkers already working on U.S. farms.

The members of [CATA denounce the H-2A program](https://cata-farmworkers.org/cata-statement-on-the-proposed-farm-workforce-modernization-act-h-r-5038/) for leaving all the power in the hands of the employer. In CATA’s words: “If a worker loses their job, they lose their visa and must return immediately to their home country. We have documented extensive lack of compliance with the workers’ rights regulations included in the current H-2A program. Despite this, workers in the program are extremely reluctant to report issues with their job orders and problems in the workplace because their status and their ability to return through the program depends on their employers.”

**Mandatory E-Verify**

The final title makes electronic verification of employment eligibility, known as “e-verify,” mandatory for the entire agricultural sector. No other industry sectors are saddled in this way. The goal is to close all pathways to farm work for undocumented people and to provide due process for authorized workers who are unfairly rejected by the system. However, despite the bill’s assurances of fairness and accuracy, so far, the [e-verify system has not reached that high bar](https://www.aclu.org/other/prove-yourself-work-10-big-problems-e-verify?redirect=technology-and-liberty/prove-yourself-work-10-big-problems-e-verify), and in its current form makes many misidentifications thus disqualifying qualified workers and the reverse. [Contested cases take days to straighten out](https://www.cato.org/blog/serious-problems-e-verify), threatening new hires. A large farm would have office staff assigned to sort this out, but for small farms, appealing a mistaken finding can turn into a lengthy and expensive legal tangle. According to USDA, close to [50 percent](https://www.ers.usda.gov/topics/farm-economy/farm-labor/#h2a) of all farmworkers are still undocumented.

I have combed UFW public statements for an explanation for the compromises in H.R. 5038, but I have not been able to find a UFW analysis of the details of the bill, and none of the UFW staffers I have reached out to have responded to my queries. Their press releases crow about a victory and urge supporters to contact the Senate to pass the same bill. By contrast, the Food Chain Workers Alliance, which includes all the smaller farmworker organizations, urges calls and letters to the Senate in [opposition to H.R. 5038](https://actionnetwork.org/letters/oppose-hr-5038-the-farm-workforce-modernization-act-of-2019): “[As an Alliance,](https://tinyurl.com/yxy8k6h9) we believe that regardless of immigration status, all farmworkers deserve dignity, respect, and full protection on the job and in the communities in which their families reside. It is our belief that our movement should be guided by this vision of expanding access to rights and protection for all workers, especially the right to organize…we should oppose *any* legislation that does not provide stronger rights on the job for farmworkers and guestworkers and oversight over their conditions.”

A close reading of H.R. 5038 leads me to the same conclusion. If we want to end this country’s dependence on desperate people who are willing to do hard physical labor at machine speeds for poverty wages, we need to transform farm work into a respected vocation with living wages, the right to organize, full benefits, health coverage and a pension plan. When we replace giant farms with integrated, biodiverse family-scale organic and [agroecological farms](https://tinyurl.com/vhoq22o), no one will need to work like a machine.

**Take action**: [Urge your senators to oppose H.R. 5038 — The Farm Workforce Modernization Act of 2019](https://actionnetwork.org/letters/oppose-hr-5038-the-farm-workforce-modernization-act-of-2019).