

# WebMemo



Published by The Heritage Foundation

No. 2513  
June 30, 2009

## Ag JOBS Amnesty: The Wrong Way to Help American Agriculture

*Jena Baker McNeill*

On Thursday, May 14, Senator Dianne Feinstein (D-CA), Representative Howard Berman (D-CA), and Representative Adam Putnam (R-FL) introduced “the Agricultural Jobs, Opportunity, Benefits and Security Act,” also known as the Ag JOBS Act of 2009. This legislation would grant citizenship to individuals who work a certain number of years in the U.S. agricultural sector. While proponents of this bill have characterized it as an attempt to help American farmers, the bill would grant amnesty to the estimated 600,000–800,000 farm industry workers living in the United States illegally.

America’s farmers are in need of assistance—but amnesty is not the answer. Instead, Congress should enforce America’s immigration laws and develop a realistic, market-oriented, temporary-worker program to allow legal flows of workers that meet the needs of employers and employees.

**Agriculture Avoids H-2A.** American agriculture is important. Senator Feinstein accurately stated that these industries need people to “plant, to prune, to fertilize, to pick, and to can. And without that, America ceases to be a major breadbasket.” The H-2A visa was designed as temporary, non-immigrant visa to allow foreign nationals to enter the U.S. and work on farms and in other seasonal jobs in order to fulfill the workforce needs of U.S. agriculture.

Currently, however, only an estimated 75,000 workers are in the H-2A program. The reason: It is simply too bureaucratic and expensive for employers to use it effectively. The current method by

which the Department of Labor calculates wages is flawed, resulting in inflated wages that are higher for H-2A workers than for American employees. Furthermore, employers must file paperwork with multiple departments, identify specific workers when filing a petition with the Department of Homeland Security (DHS), and then wait for months. This long process often means that workers are no longer available when the visas are granted.

The H-2A program’s problems reduce employers’ incentives to hire employees legally. Often employers wind up hiring illegal immigrants as employees instead—making illegal border crossings all the more attractive, because illegal immigrants know there will be work when they get to the United States.

**The Ag JOBS Amnesty.** The Ag JOBS Act would create a pilot program that would provide work visas, also known as “blue cards,” to guest workers looking to work in the agricultural sectors. Blue cards have long been used to help legal individuals work in the United States. However, under Ag JOBS, blue cards would be given to workers whether or not they were in the U.S. legally.

After working for three to five years, program participants are required to become citizens. This

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/Immigration/wm2513.cfm](http://www.heritage.org/Research/Immigration/wm2513.cfm)

Produced by the Douglas and Sarah Allison  
Center for Foreign Policy Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting  
the views of The Heritage Foundation or as an attempt to  
aid or hinder the passage of any bill before Congress.

would provide amnesty and a direct path to citizenship for the estimated 600,000–800,000 illegal agricultural workers and their family members (this number has decreased since the economic downturn; in 2007 this number was estimated at 1.3 million).

To gain blue card status, applicants would only have to demonstrate that they worked in agriculture for “863 hours or 150 work days” in 2007 and 2008. The bill would not require necessarily valid documentation; it would instead allow an alien to provide “any other reliable document” to demonstrate worked hours. This means some individuals could gain citizenship without working a day in the agricultural sector. Finally, DHS (under the bill’s confidentiality clause) would be barred from using the applicant’s information to enforce federal immigration laws.

The Ag JOBS bill would have the perverse effect of decreasing the incentives for employers to hire workers with a blue card—causing a tremendous disadvantage to those using blue cards legally. This is because the amendment protects workers with blue card status from being fired unless the employer has “just cause.” This kind of protection is not even afforded to those American workers who work on an “at will” basis in many states, where they can be fired for any reason or no reason. This could mire employers in legal proceedings if a worker feels that he has been unjustly fired and would be a large disincentive for employers to hire workers with a blue card.

**The Right Path Forward.** The right solution is to enact fair, compassionate, and practical reforms to current visa programs that get employers the employees they need. Consequently, Congress should:

- *Reject amnesty.* Not only would amnesty reward those who came to the U.S. illegally, but it would also encourage others to engage in the same behavior. Given the high price tag associated with providing public services, health care, and education for illegal immigrants, amnesty is simply the wrong solution.
- *Streamline H-2A.* Policymakers should reduce the number of departments an employer must go through and find ways to process and turn

around documentations, including visas, faster. Coupled with these reforms, and in accordance with the US-VISIT mandate requiring DHS to track the exit of visitors leaving the country, DHS should rapidly implement a *voluntary* exit system at the land borders—this will help DHS track overstays (those staying after their visa has expired). Under a voluntary exit system, if foreign visitors and workers do not exit prior to their expiration dates, they are no longer eligible for U.S. visas. Once the system is in place, employers should be required to put up a bond to ensure the H-2A workers exit the country before their visas expire.

- *Enforce immigration laws.* For many years, the government turned a blind eye to illegal immigration, only reinforcing the incentives for foreigners to enter the country illegally. The executive branch is responsible for implementing laws passed by Congress, but immigration reform is possible only if the government defends its laws. The federal government and state and local governments should continue to ensure that employers are not hiring illegal immigrants while cracking down on those living in the country illegally.
- *Secure the border.* The porous U.S. border makes illegal entry into the United States an easier and more attractive option than legal avenues. Conscious efforts should be made to give the U.S. government greater awareness along the border. The physical and technological fence is only part of the solution. More border agents are needed, more technology needs to be deployed, and federal authorities need to cooperate and collaborate more with state and local law enforcement.

**Amnesty Is Not the Answer.** Proving genuine assistance to farmers and other agricultural sectors is important. And foreign workers have always been a pillar of the American economy. Amnesty, however, is the wrong answer.

—Jena Baker McNeill is Policy Analyst for Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.