

# IMMIGRANT FARMWORKERS ARE ESSENTIAL TO FEEDING AMERICA

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED SEVENTEENTH CONGRESS

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## **IMMIGRANT FARMWORKERS ARE ESSENTIAL TO FEEDING AMERICA**

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**WEDNESDAY, JULY 21, 2021**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:02 a.m., Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Feinstein, Klobuchar, Coons, Blumenthal, Booker, Padilla, Ossoff, Grassley, Graham, Cornyn, Cruz, Kennedy, and Tillis.

### **OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Chair DURBIN. The Senate Judiciary Committee will come to order. The Iowa caucus is going to break up for a moment, here. Mr. Secretary, thank you for being here. I'll officially welcome you here. Chuck, thank you.

Today, the Senate's holding the first hearing in a decade on the need for a path to citizenship for our Nation's immigrant farmworkers. I am happy to make this not only a Full Committee hearing but to acknowledge the Chairman of our Immigration Subcommittee, Alex Padilla, who is an integral part of this conversation and a part of this hearing.

During today's hearing, the Committee will hear from a wide variety of Americans who support legalizing immigrant farmworkers, including farmers, farmworker advocates, and our Secretary of Agriculture, Tom Vilsack. Secretary Vilsack, did you know that this is the first time the Secretary of Agriculture has testified before the Judiciary Committee in more than 20 years? I don't know what that Secretary said, but we're glad to have you here today, and thanks for your historic appearance.

I have a little video that precedes this, and I'd like to ask that it be shown. It really reflects the reality of the work our immigrant farmworkers do to keep our food on the table.

[Video is shown.]

Chair DURBIN. During this pandemic, we've all been forced to face the reality that our food supply chain depends to a great extent on the labor of immigrants. At every step of the food production process, from the moment a crop is planted to the moment our grocery bags are handed to us, there is an immigrant worker who plays a critical role in feeding our families. Their work is essential, and it's never easy.

Our nation's farms, factories, and food processing plants can also be dangerous. I know a bit about that, probably more than some Senators. Back when I was working my way through college, a few years ago, I worked for a meatpacking company in my hometown of East St. Louis, Illinois—Hunter Packing Company, now owned by John Morrell.

I was paid \$3.65 an hour, which was a pretty good rate. I stood elbow to elbow with the other workers on the assembly line as thousands of pounds of meat came marching, nonstop, down the conveyor belt. As summer help for 4 years, I came to work the worst jobs in the packing house. Under our union contract, an 8-hour workday meant processing 1,760 hogs, 220 an hour. Speeding up the overhead chain line meant building up numbers in the case of regular breakdowns. The work was hot, exhausting, dirty, and dangerous.

In my home State of Illinois, the jobs at these meat and poultry processing plants are still exhausting, dirty, and dangerous. The next time you put a pork loin on the grill or chicken tenders in your kids' hands, just remember, our foreign-born workforce had a lot to do with the fact that you have that opportunity. In the decades since I left the assembly line, food processing continues to be difficult and dangerous, especially because of COVID-19.

Over the past year, the workers who kept our grocery store shelves stocked have endured immense hardship. The pandemic has torn through our Nation's factories as well as our farms, because in these workplaces, social distancing is not an option. Whether they're packing meat or picking berries, the workers who supply our food tend to work in confined and crowded spaces. Many have been unable to protect themselves from exposure to the coronavirus. According to the Environmental Working Group, farmworkers in more than a dozen States do not have access to PPE or COVID testing, and it's not uncommon for these workers to be transported to fields in tightly packed trucks, housed in close quarters.

All of these factors have led to a devastating outcome. More than half a million ag workers have contracted COVID-19, and during the first year of the pandemic, more than 7,000 farmworkers died of COVID-19. Sadly, the coronavirus is just one of many workplace hazards these workers face. They handle dangerous machinery, they experience repetitive strain injuries, they're regularly exposed to pesticides, and now we see in our western States they face sweltering heat. In fact, farmworkers are 35 times more likely than the average worker to die from heat exposure. These workers understand the risks of working on a farm.

Many of them face another risk, one that is a direct result of our broken immigration system: the threat of deportation. About half of our Nation's two and a half million farmworkers are undocumented. These workers head out to the field every morning to pick the fruits and vegetables that feed our families, but despite this essential work, they are at risk of being separated from their families. One of these workers was on the video, Vincent Reyes. Vicente. I'm sorry.

Vicente Reyes is a DACA recipient who is currently studying robotics engineering at Bakersfield College in California. Outside of

class, he works on a farm in the Central Valley, and he's a member of the United Farm Workers. Vicente is also the son of farmworkers. His parents are undocumented. Each morning before they head to the field, there's one brief moment. They're facing a 14-hour shift, many times. The parents hug Vicente tight, because they never know if it's the last day they'll be together.

When the pandemic began, Vicente and his family were unable to shelter in place because they are designated essential, critical infrastructure workers by the previous administration. Even though they make essential contributions to our country and our economy, Vicente's parents still live every day in fear of deportation. It is an embarrassment to this great Nation that we allow this injustice to continue. We, in the Senate, can change it. We can pass legislation that will not only keep hardworking families like Vicente's together but strengthen the durability and resiliency of our food chain.

Earlier this year, the House passed the Farm Workforce Modernization Act on a bipartisan basis. This landmark legislation is the product of an historic agreement between farmers and farmworkers. It would fundamentally change the lives of hundreds of thousands of farmworkers who came to our rescue during the dark—darkest days of the pandemic, and it would allow them to continue doing their essential work without fear of deportation.

Many agriculture share—stakeholders, from dairy to specialty crops to livestock, have said they are facing serious worker shortages and that immigrant farmworkers are critical. That's why, across America, both farmworkers and farmers are calling on the Senate to pass the Farm Workforce Modernization Act. Farmworkers not only deserve a path to legal status, they are vital to our Nation's economic future.

For evidence of that, I look no further than my own State. A few years ago, a legislator from my home State said, quote, "Illinois has been a mirror of America." There is no State, I might add, that better reflects the diversified nature of America's economy. We have one of the largest metropolitan areas around Chicago and 27 million acres of farmland, and over the past couple decades, a troubling trend has emerged in our State. While the population growth rate in our urban areas has increased, it has decreased in our rural areas.

To put it simply, declining population growth means that in the years to come, our rural communities are going to have fewer consumers to shop and fewer taxpayers to fund schools and hospitals. These divergent trends in urban and rural population are not exclusive to my State. They pose a long-term risk to our Nation's health. The Senate can help turn the tide. We can enact reforms to the immigration system that encourage families to move to the rural parts of our States, not only so they can work on the farms, but so they can open businesses, restaurants, and shops and contribute to the economy as consumers and taxpayers.

Our farms and the communities surrounding them are some of our Nation's greatest assets. Let's enact—let's enact policies that help them to survive and thrive. When we debate legislation like the Farm Workforce Modernization Act, what we're really debating is the future of America and particularly rural America. Let's invest in that future with hardworking, good people.

With that, I'm going to hand off to Ranking Member Grassley for his opening statement.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. I did not have the same work experience you had, Mr. Chairman, at a packing company, but I can tell you that I can attest to the conditions that you described where you worked, because I saw them every day for 6 years at the Rath Packing Company in Waterloo, Iowa. That paid for my way through the University of Northern Iowa. I thank you, Mr. Chairman, for holding this hearing. Very important we hear about the lack of labor in agriculture, even in my State of Iowa. I thank Secretary Vilsack for being here.

I'd be remiss if I didn't start today's hearing by noting that last month U.S. Customs and Border Protection encountered 188,829 people at our southern border, a 471 percent increase from the year before. Encounters with unaccompanied children were up 802 percent from last June. Family units encountered were up 3,224 percent from last June. It's clear that we're still facing an ongoing crisis at the southern border, and it's long past time for this Committee to exercise its oversight responsibilities and seek testimony from the Secretary of Homeland Security and other administration officials regarding what they're doing or not doing to address this issue.

With respect to the issue of agriculture labor, it's an unfortunate reality that a significant portion of our agricultural workforce is made up of undocumented immigrants. It's also an unfortunate reality that the H-2A program, which was set up to secure a stable flow of legal agricultural labor into the United States, doesn't work well for many employers, including in my home State of Iowa.

I'd like to make three points regarding congressional consideration of agricultural labor reform proposals. First, the primary focus of any such proposal should be reforming the H-2A program to ensure that farmers and agriculture employers have access to a stable and legal workforce. I consistently hear from employers in my home State about the need for Congress to improve their ability to get access to labor. This will, in part, involve expanding the program to cover year-round agricultural industries such as dairy, all animal agriculture, and agriculture processing, that are currently excluded—I want to emphasize—excluded from the H-2A program. It should also involve streamlining the program, reducing red tape, and addressing a very high cost of using the program for many farmers and agricultural employers.

We'll hear from some of our witnesses today about how the Farm Workforce Modernization Act, the focus of today's hearing, falls short in addressing a number of these issues. Second, it is important that any agricultural labor reform and immigration reform, more broadly, include a robust and mandatory E-Verify component. Finally, agricultural labor reform shouldn't include mass amnesty of current undocumented immigrant farmworkers.

We should learn from the mistakes of the past, or we're doomed to repeat them. Let me repeat, what I learned from the 1986 legislation that I voted for. It was termed the Immigration Reform and

Control Act, which provided an amnesty to more than 1 million farmworkers under what was called the Special Agricultural Workers program. At the time, the American people were told that the 1986 amnesty bill would be a one-time fix. Title I of the Farm Workforce Modernization Act creates a program called the Certified Agricultural Worker Status that is, in many respects, almost identical to the Special Agricultural Workers program that Congress created in 1986. 1986 SAW, that Special Agricultural Worker program, had an amnesty part to it. It was notoriously riddled with fraud. I'm going to make some quotes, that this isn't just Chuck Grassley saying it.

The New York Times called the Special Agricultural program, quote, "One of the most extensive immigration frauds ever perpetrated against the U.S. Government," end of quote. Then Congressman, now Senator Chuck Schumer said at that time, who was—he was one of the authors of that program in the 1986 bill. He said that it was, quote, "too open." Just two words from his quote, but it's "too open" and, he implied, susceptible to fraud. In a July 2000 report, the Inspector General of the Department of Justice noted that, in 1995, management at the then Immigration and Naturalization Service estimated that 70 percent of the Special Agricultural Worker applications were fraudulent.

On top of being bad policy, a mass amnesty of current farmworkers also does absolutely nothing to address agricultural labor shortages and workforce issues. As we saw in the aftermath of the 1986 amnesty bill, many agricultural workers who received legal status ultimately left the agricultural sector. Employers then turned to a new pool of undocumented immigrant workers to replace all the ones who had left, and thus the cycle simply began once again.

I hope that Congress will ultimately be able to address agricultural labor reform in a way that breaks the cycle of dependence upon labor that illegally crosses our border and would find legal ways to bring them into the country and thus actually help farm and agricultural employers get access to the legal labor that they need. Even in the State of Iowa, I hear this. The bill we're discussing today doesn't do that, and I look forward to working with my colleagues on the legislation that does. Thank you.

Chair DURBIN. Thanks, Senator. Chairman of the Immigration Subcommittee, Senator Padilla.

**OPENING STATEMENT OF HON. ALEX PADILLA,  
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator PADILLA. Thank you, Chairman Durbin, for inviting me to Co-Chair this hearing, as well as to your Committee staff for all the work they've put into organizing today. You know, I often say that no State has more at stake in immigration reform than my home State of California, and it's especially true when it comes to the essential role of farmworkers.

California is the agricultural heart of the Nation. We know that more than a third of our country's vegetables and two-thirds of fruits and nuts come from California. In fact, farmers in California, not just in California, but especially in California, struggle every year to hire as many farmworkers as they need to pick major crops.

That's been the case since prior to the pandemic. That's why our agricultural industry has relied for decades on the labor of immigrants.

If we look back in our Nation's history—and recall that during both our major world wars, immigrants kept our country fed. We'll recall the Bracero Program, for example, which brought millions of temporary workers to California at the time. We also reflect on the 1960's, when California's immigrant farmworkers led a historic boycott to fight for safer working conditions. Today, an estimated 60, upwards to 75 percent of California's farmworkers are undocumented.

These dedicated individuals work backbreaking jobs for hours on end to give their families a better chance in life and to feed all of our families across the Nation. That's why I believe they deserve better wages, better working conditions, including overtime pay. I digress. That may be a subject of a hearing on another day.

Let's reflect on this last year, year and a half. During the COVID-19 pandemic, it wasn't just the U.S. Government. Let's be clear about this. Donald Trump's Department of Homeland Security deemed farmworkers essential workers. Think about what that means. Formal recognition by the Federal Government that farmworkers, regardless of immigration status, are critical to our Nation, critical to the food supply, critical to our economy. We can't live without them. I think that was the case long before the pandemic, but it was formalized during the COVID-19 pandemic.

It's no surprise that, despite the challenges of COVID, farmworkers continue to show up for work, despite the triple threats of the pandemic, extreme heat waves, and record-breaking wildfires. Because of their outsized presence on the front lines and the climate crisis, farmworker—farmworker communities have suffered a disproportionate number of illnesses and deaths, but they still continue to show up for work. At the same time, many of these workers faced increased risks because of their undocumented status, showing up for work despite living in fear of deportation.

Too many were denied the necessary PPE to try to mitigate the risks they were exposed to; others unable, because of ineligibility, to seek health care; too many afraid to speak out against the dangerous working conditions for fear of retaliation, including but not limited to threats of deportation by their employer. More than half a million farmworkers, more than half a million essential farmworkers, per the U.S. Government, contracted the coronavirus, and thousands of them lost their lives.

Farmworkers, and all workers who've worked on the front lines during the pandemic, deserve better. They deserve respect. They deserve our gratitude. They deserve security, and they deserve a pathway to citizenship. Let's recognize that farmworkers, most of the adults having lived here, on average, 18 years, is a very different group of workers, residents, than those that may have shown up at the southern border in the last couple of months.

Let's not conflate the two issues. Addressing the challenges at the border, reforming our amnesty system, is important, but let's not let that stand in the way of justice for farmworkers and other essential workers. That's why I support the Farm Workforce Modernization Act, and that's why I was inspired to introduce the Citi-



zenship for Essential Workers Act as my first bill in the Senate. It is fundamentally wrong for the U.S. Government to recognize workers and deem them essential, yet deny them legal protections and status at the same time.

As a proud son of immigrants, I know that immigrants have always been essential, since long before the pandemic. Passing immigration reform that respects the dignity and the worth of all immigrants is also a recognition of their contribution to our economy and our national security. I look forward to today's hearing, to hearing from the witnesses, and to making it clear what Congress can do to act to ensure farmworkers have these basic rights and protections. Thank you.

Chair DURBIN. Thanks, Chairman Padilla. The Ranking Member of the Immigration Subcommittee, Senator Cornyn.

**OPENING STATEMENT OF HON. JOHN CORNYN,  
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman, for the courtesy of allowing me to make a brief introductory statement. I strongly agree with the underlying premise of this hearing. Immigrant and nonimmigrant farmworkers are essential to agriculture and feeding the United States population. That's why it's so important to take the time to study the deficiencies in the current guest worker programs and to consider needed reforms.

Farmers and ranchers and producers face labor shortages at home. I hear it all the time from my constituents. They've turned to guest workers to fill their needs. According to statistics published by the U.S. Department of Agriculture, the number of H-2A guest worker positions requested by ag producers has grown from around 48,000 in 2005 to nearly 258,000 in 2019.

As Senator Grassley pointed out a moment ago, the H-2A program only fills some of the agriculture community's labor needs. Farmers can only rely on the program for temporary seasonal workers, which may work in some places but certainly not in others. Dairies, mushroom producers, livestock producers, others with year-round needs, are left out. Producers who have different needs at different times through the season have to submit separate petitions for each arrival date. The existing H-2A program, again, as Senator Grassley pointed out, is cumbersome and expensive for producers.

I look forward to learning from our witnesses today about the changes we can make in the program, to better tailor it to our 21st-century agricultural labor needs. However, as we consider adjustments to the H-2A program, we need to be careful that we don't unintentionally create new problems for our ag producers and ultimately increase prices for American consumers, further driving up inflation.

I'm concerned that the bill that forms the centerpiece of this hearing, the Farm Workforce Modernization Act, does not yet have unified support from the agriculture community. In particular, I've heard from the Texas Farm Bureau and the American Farm Bureau, who've expressed concerns, and they are seeking some changes in the legislation as currently drafted. Mr. Chairman, I

would ask unanimous consent that a copy of the letter they sent to you and to Senator Grassley be made part of the record.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator CORNYN. Thank you. In its current state, the Farm Workforce Modernization Act is not ripe for legislative action, and more work needs to be done to build a consensus, and I'm happy to be a part of that effort. When Congress created the Special Agricultural Worker program in 1986, many of the workers who received lawful permanent resident status through the program ultimately did not remain in agriculture.

The Congressional Research Service has attributed that departure from ag labor to their newfound eligibility for nonfarm jobs, and it makes sense. If people are here legally, and they're not required to work in ag jobs, and they have the option of working in less challenging working conditions, they're likely to move, as the Congressional Farms—congressional Research Service has said.

If Congress was merely to legalize the existing undocumented immigrant farmworker population, without addressing the underlying reasons they're unlawfully present in the country in the first place and without making the necessary changes in the guest worker programs, I fear we would repeat the mistakes of the past, as Senator Grassley pointed out, and create even more problems for our ag producers and our food supply.

Any plan to legalize a portion of the undocumented farmworker population must be coupled with a plan to replace those workers. We should not move only the legalization element of the proposal, independent of the guest worker provisions, and we still need to make some changes, as I've indicated, in the guest worker provisions.

Chairman Durbin, as you know, we've been discussing the Farm Workforce Modernization Act as part of our bipartisan immigration talks, and as I said, I don't believe the bill is currently ripe for legislative action, but we should continue our work to make changes that will allow us to build the necessary consensus. As we address the broader issue in this setting, we need to remain open to making incremental progress on issues like guest worker reform, permanent legal status for DACA recipients, and the crisis at our border.

I've heard concerning reports that some of our Democratic colleagues are considering using a partisan budget reconciliation process to create a pathway to citizenship for undocumented immigrants. It almost surely will not work, consistent with the rules of the Senate. Members of the Committee know full well that immigration law is not written through our arcane budget procedures, and I hope our Democratic colleagues will commit to moving through any immigration reforms through the normal legislative process so it can be truly bipartisan and a consensus effort.

Finally, regarding the border crisis that disproportionately affects my State, with 1,200 miles of common border with Mexico, I'm disappointed we don't have a witness here from the Department of Homeland Security who can speak directly to that issue. Last month's CBP encountered 188,000 migrants along the southwestern border. Just a few days ago, the Center for Disease Control

told us that 93,000 Americans died of drug overdoses, mainly from illicit drugs coming across the southwestern border, and many of our Border Patrol are taken off the front lines of securing the border because they're taking care of unaccompanied children and others claiming asylum.

These surges have peaked in May, but the numbers have only continued to climb. It cannot possibly help that the Biden administration is also publicly mulling over ending its authority to expel migrants under a Public Health Title 42 in the coming weeks. Indeed, the COVID-positive test rate has surged dramatically as a result of the uncontrolled movement of people across the border without appropriate public health measures being taken.

Farm and ranch families in my State and elsewhere along the border have experienced significant damage to their property, including their crops, as a result of the surge. I consider that an agricultural issue, too, and deserves attention at this hearing. Finally, Senator Sinema, Senator from Arizona, and I have introduced the Bipartisan Border Solutions Act, as you know, Mr. Chairman, which would help restore order to the border region by establishing regional processing centers in high-traffic areas and by prioritizing migrants' asylum claims in the immigration courts.

I hope the Committee will not shy away from addressing the crisis on the southwest border, which I think will be an absolutely essential element of any immigration reform that ultimately can pass Congress. I look forward to continuing to work with my colleagues to advance bipartisan immigration and border security solutions. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Cornyn. Senator Feinstein and Senator Tillis have asked for a moment, opening statements. Senator Feinstein.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN,  
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thanks very much, Mr. Chairman, and I appreciate this. This is a really important bill for California. It's estimated that we have about 280,000 people that would be affected by it. Last year, as you may know, Mr. Chairman, I did a bill that dealt with this, but it didn't go anywhere, and this year the House has passed this bill, and I really think it has merit and it'll stand the test of time. It passed the House in March, a bipartisan vote of 247 to 174.

It allows undocumented farmworkers who have worked for years in this country, who have paid their taxes, and who can pass a criminal and security background check, to legally remain in the United States and potentially earn a green card. It creates a year-round H-2A visa category that will help industries like dairy, a big industry in my State, that needs more long-term workers. It also creates a pilot program for portable visas that will help States like a big one, California, where workers need to move from region to region according to the schedule of multiple crops. It's a good-faith bill that reflects months of careful negotiations between lawmakers, growers, and labor, and all of us know that this isn't easy to do.

What I like about it is, it's comprehensive in scope, it's measured in its objectives, and it has bipartisan support. Most importantly, it gives farmers the help they need, and it protects essential farmworkers who work hard to put food on our tables. I just want to say that I'm delighted that you've scheduled this. I thank you and the Ranking Member, and I strongly support the balanced and thoughtful approach. One step is done, because it's effectively passed the House, and we might just get something done. Thank you very much.

Chair DURBIN. Thanks, Senator Feinstein. Senator Tillis.

**OPENING STATEMENT OF HON. THOM TILLIS,  
A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA**

Senator TILLIS. Thank you, Mr. Chairman. Secretary Vilsack, thank you for being here. I have got a National Defense Authorization Act markup that I have to go to, and I'll be there for late into the evening, but this is a very important subject to me. I hadn't intended to speak, but I felt like I had to come down here and weigh in on what I consider to be a very important subject.

First off, I think you should be very proud of getting an A rating in your confirmation. Ninety-two to seven is a very strong indication that both Republicans and Democrats have a lot of confidence in your ability in leading the Department. Mr. Chairman, I think that it's—I heard last night, I received an email where some pundit on the right says that our immigration negotiation discussions are dead. That's not true. I heard about a week ago some pundit on the left talking about if we did nothing more than legalize and double the salaries of those working in the fields, we would fix the problem. That's not true, either.

What we have is a working group here that's trying to put together a set of policies that will get the immigrant farmworkers over the finish line, get DACA over the finish line, take a look at those who haven't enrolled in DACA, potentially get them over the finish line, and actually work to solve a decades-old problem where we get to the one-yard line and we fumble.

We have done that for decades. We made a mistake when we did amnesty, as Senator Grassley talked about, without dealing with border security. I think that we can do it in a way that makes sense. I've had very productive discussions with Members on the other side of the aisle, that—let's make sure that we've got technology and infrastructure to interdict illicit materials, human trafficking, but get more people across the border legally, every single day. Use that same technology to have more guest workers come to this country, work, and then go home.

I really wonder, if we'd taken the time to get the guest worker programs right, if many of the people here that we're talking about today, who are illegally present, if they knew that they could come from the country of their birth, where many family members live, that they would come here and work and go back home, and come here and work and go back home again, and then some of them may want to seek a path to citizenship.

We have to recognize that an amnesty for immigrant workers is something that should be on the table for discussion, but to do it in a vacuum and not understand and recognize the need to take

care of guest worker programs, we're going to swing, and we're going to miss again. We're going to fumble on the one-yard line again. If we just simply get in a room together and recognize that border security is a problem, it's something that we should work on, and it can be done on a reasonable basis—it would be done differently, if the numbers in the Senate were wrong and the party in the White House—wrong, different—and the party in the White House was different. Let's play the hand that we're dealt. Let's figure out a way to come up with a reasonable way to take care of the needs of the farmers.

Let me tell you what's happening. One of the concerns that I have with the Farm Workforce Modernization Act is that some of those who, on its face, support it may not recognize what could happen on the back side. By the way, Mr. Chair, I've got two letters from the North Carolina Growers Association and Sweet Potatoes that I would like to enter into the record, expressing their concerns with the Workforce Modernization Act.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator TILLIS. Let me just tell the farmers out there, let's say, here's the good news. Those illegally present people are now going to have a path to citizenship, maybe along the lines of a DACA program, which probably makes sense given what Senator Padilla said about many of them having worked here for a decade or more. The farmer thinks that they've solved their labor problem, only to find out that a provision in the Modern—Modernization Act now accounts for a private right of action for your guest workers where you could be sued.

The good news is, you've got some stability with your workforce. The bad news is, now a whole cottage industry should—could be created so that that farmer is now—they've got the workers, but now they have to spend a lot of their time going and defending themselves against frivolous lawsuits.

These are the things that we need to talk about, and these are the things that I think can be worked out. I believe it needs to be done. I don't believe in Big C, because I'm a reader of history, and Big C comprehensive immigration reform has failed miserably every time it's been attempted, but I've used the term "little C." I'm prepared to look at the right and the people in the ivory towers that say, "We don't have a worker problem here." You know, "All you've got to do is just make sure you go out and get that indigenous workforce." It doesn't exist.

Get out of your ivory tower and go talk to the farmers. Go talk to us about—excuse me—a surviving spouse of a farmer who committed suicide because they couldn't make their generations-old farm work anymore.

To the left, I would say, "Go to your local Harris Teeter," like I did over the weekend. I went into the seafood section, and I saw East Coast wild-caught shrimp, \$12.99 a pound. Argentinian red shrimp, \$8.99 a pound. If you continue to heap regulatory and labor costs on these farmers—I agree that immigrant farmworkers are essential to feeding America, but I also believe that farmers are essential to feeding America, and we have to get the numbers right.

I want to make it very, very clear: I'm not going to stop talking with Members on the other side of the aisle who are serious about fixing this problem and willing to accept a compromise that can get 60 votes in the Senate and make progress for the first time since Queen was still topping the charts.

Mr. Secretary, I apologize for not being here to ask you, I've got a lot of questions, but I would like to reserve the opportunity to get with you and talk about these things, because I believe you understand these issues, and I know the people on the second panel do. Mr. Chairman, I look forward to continuing to work with you to actually come up with a solution. Senator Feinstein, thank you for all the work and the collaboration we've had. This is the Congress where we should get this done. Thank you, Mr. Chair.

Chair DURBIN. Senator Tillis, thank you, and I'm sorry you have a conflict and have to go to another Committee meeting. I would like to clarify two things. There is no new cause of action created in this farmworker modernization act. It codifies an existing cause of action that is in—on the books already.

Senator TILLIS. I was speaking specifically to the H-2A program, which is still going to be essential after we make the illegally present population farmworkers, because you're going to have some of that population leave the farms after they get citizenship, and rightly so, pursue their American dream, and if we don't have a backstop for making sure that we have a reliable H-2A and H-2B program, we're going to have a problem.

Chair DURBIN. Thank you. I might also add that in 2005, when the Senate was in Republican control, it overwhelmingly passed a bipartisan reconciliation bill that dramatically increased the number of immigrant green cards, so I hope we can find a pathway for a bipartisan effort, and I thank you so much for the work that you've put into that, but the reconciliation option was used by the other party in 2005.

I now want to welcome U.S. Secretary of Agriculture, Tom Vilsack. Thank you for coming before the Judiciary Committee. Previously served as Secretary from 2009 to 2017, under President Obama, worked to strengthen the ag economy, build rural communities, and create new markets for innovation in rural America. He was confirmed, as Senator Tillis noted, by an overwhelming margin, as part of this Biden administration in February.

We're going to have 5-minute rounds for the Secretary and then the same type of rounds for the second panel which will come before us. Let me start, officially, Secretary Vilsack, asking if you'll stand to be sworn.

[Witness is sworn in.]

Chair DURBIN. Thank you very much. Let the record reflect that the Secretary answered in the affirmative, as I expected. Mr. Secretary, the floor is yours.

**STATEMENT OF HON. THOMAS VILSACK,  
SECRETARY OF AGRICULTURE, WASHINGTON, DC**

Secretary VILSACK. Mr. Chairman, thank you very, very much, and to Senator Grassley and to the Members of the Committee, thank you for the opportunity to be here today. I think it's only

fair, since you all are going to ask me questions, that I ask you a set of questions at the outset.

What industry in the United States basically provides all of the food needs for 323 million Americans and still has enough food left over to export nearly 20 to 30 percent to the rest of the world? What industry basically provides the opportunity for American families to enjoy something that no other set of families around the world enjoys, which is spending the least amount of their disposable income on food?

The American family spends approximately 10 percent of their income on food. If you go to any other developed nation, you'll see it in the 20 to 25 percent range. In developing countries, it might be as much as 50 percent.

What industry supports, directly or indirectly, 40 million American jobs and is responsible for nearly 20 percent of the United States economy, according to a recent Dunham & Associates study? That industry is the food and agriculture industry that we're here to talk about. At the same time, that industry is served by a number of workers, and it has been pointed out today that among them are farmworkers, nearly 2.4 to 2.5 million workers who work incredibly hard and, as has been pointed out by this Committee, are now considered to be essential workers in an industry that I would articulate and argue is also an essential industry to the future of the United States.

Who are these people? They are indeed people who have been in this country for an incredibly long period of time. The average, as Senator—indicated, is roughly 18 years of longevity in this country working. Half, maybe as much as 70 percent, of these workers may well be undocumented workers. Eighty-three percent of them are Hispanic or Latino. They work long hours: 8-, 10-, 12-, 14-hour shifts, 5, 6, 7 days a week. Their income, on the average, is below—either at or well below the poverty line.

They are dedicated to family. Let me share with you one story that was shared with me in Upstate New York last week at an immigration discussion I had, an individual who's worked in this country for 20 years. I asked him what his hope and dream and aspiration was, 5 years from now or 10 years from now. He said, "Mr. Secretary," very simply, "I would like to see my family." I said, "What do you mean?" He said, "I haven't seen my family for 20 years. I'm concerned that if I leave the country, I won't be able to get back."

When we talk about family values, I think these farmworkers are folks who understand and appreciate the essential nature of family values. They come up here to make a better living and send resources back to their families, with the understanding that they may never, ever see them again.

Why is that? It's, in part, because we have an uncertain and, I think we can argue, a broken immigration system. The availability of H-2A workers is always in question, wage increases or decreases are fluctuating from year to year in an uncertain path, there is a cumbersome process involved, there are uneven worker protections, and, again, these are—separated from families.

What can we do about this? The House of Representatives decided to take matters into their hands, in March, as they did in

2019, by passing the farmworker modernization act. This is an act that simplifies and streamlines the H-2A process and, indeed, creates a year-long workforce opportunity, creates a certified ag worker classification for those who have worked in this country for at least 180 days over the last 2 years, clarifies and defines wage increases and decreases to provide long-term stability to producers, improves housing opportunities for workers without burdening the producers with additional costs, phases in a full-time E-Verify system, provides worker protections, streamlines the process for more dispute resolution and emergency appeals from producers, and, indeed, provides a pathway to legitimacy after the payment of a fine, taxes, and making sure that they can pass a criminal background check.

I'm here today simply to advocate on behalf of American agriculture and these workers, to plead with the Senate to fix this broken system, to maintain the capacity of this great food and agriculture industry to continue to provide the benefits that we all enjoy in this country and, at the same time, to provide the respect and dignity to the farmworkers who are working so hard to make this system what it is today. Thank you, Mr. Chairman.

[The prepared statement of Secretary Vilsack appears as a submission for the record.]

Chair DURBIN. Thanks, Mr. Secretary. I might just add that the Farm Workforce Modernization Act provides for workers to get a 5-year certified agriculture worker visa to work in U.S. agriculture. If they can establish with that visa that they have had 10 years of prior work in agriculture, then they can apply for a green card after waiting 4 years and then will wait 5 more years before they can possibly have naturalization. The criticism that the—during the Reagan administration that legislation gave them a status that had them leaving agriculture very quickly seems to be addressed by the timetable that I've just laid out for you here.

If you are the worker you ran into New York, even if he wanted to go through this system in order to become a legal citizen and stop worrying about crossing the border and never getting back, as I understand it, if he spent 20 years in agriculture, okay, he meets the 10-year requirement. Then he has to wait 4 more years. At the end of 4 years, he gets a green card, and then he waits 5 years to be eligible for naturalization if he chooses that route. You have at least a minimum of 9 years in agriculture, as I understand it; maybe I'm mistaken, but as I understand it, 9 years minimum working in agriculture before natural—citizenship.

Secretary VILSACK. Senator, that's correct, and I think it's reflective of the fact that this is a compromise piece of legislation where folks on both sides of this legislation gave. Workers certainly gave; producers certainly gave, in an effort to try to find common ground.

Chair DURBIN. Key point. These two groups have not historically always been on the same page. We know that, and I won't go into that history. It's well documented. In this case, they worked out an agreement between them. Certainly, the producers understood they need ag labor, so they were prepared to come up with a process leading to citizenship, naturalization, but it is over time, even for the veteran farmworkers.



Let me ask you to reflect for a moment, Mr. Secretary. Your State of Iowa next to my State of Illinois have many things in common in terms of the crops we grow and the life in our rural communities. Would you reflect for a moment on the state of agriculture in Iowa as it relates to this issue of migrant farmworkers and those who are coming in to take jobs related to food production?

I can tell you that we have a witness in the next panel, Linnea Kooistra. Thank you for being here. She's from a dairy family. I've had dairy farmers tell me that, unless you're lucky enough to have a bunch of kids who want to hang around the farm, by and large you need workers to come in to milk those cows twice a day, to keep the farm operation—dairy farm operating. Same thing true in the orchards of southern Illinois. If they don't have workers coming in to pick those crops, they will literally go out of business.

One particular owner of an orchard said, "Senator, don't tell me to hire local people. I'm trying to get a high school kid to work in the stand out by the highway where we sell the fruit. It's air conditioned, and I still can't get a worker to do it." It's an indication of the challenges they face. Have you seen the same thing in Iowa or other parts of the Midwest?

Secretary VILSACK. I have, Senator, and I was thinking of a conversation I had recently with a dairy farmer who indicated that he was the third generation, but he said, you know, "The reality is, our family wasn't large enough to be able to deal with the expansion of our operation, so we had to hire additional workers, and they became part of our family." He perceives and sees these workers, the 9 people that now work on his farm, as part of his family.

That same panel that I listened to included the president of the New York Farm Bureau, as well as a representative of the Vegetable Grower Association in New York. They basically shared the fact that they put out an advertisement for additional workers; they didn't get a single response. Not a single person responded to the ad for additional opportunities to work in this industry. It is clear that this industry is dependent on immigrant workers. It's very clear. There are numerous examples of situations where requests were made for U.S. workers to work in these difficult jobs, with very little response, if any.

Chair DURBIN. Talk meat and poultry processing industries. In areas of Illinois where we have those plants, we also have a remarkably large number of immigrant workers from Africa. When I go through a naturalization ceremony in Springfield, 200 miles south of Chicago, as you know, it's not uncommon to have two or three from Africa who work at the meat processing plant not far from Springfield. The same thing is true of Hispanics.

Secretary VILSACK. This is a reoccurring story of our history. Immigrant labor comes in and does the difficult, challenging work that the rest of us are not interested in doing. They do it well, and they have the notion of being able to supply opportunity for a better life for their family.

I mean, this is replayed every single day in those meatpacking facilities, every single day on those farm fields, Senator. These are people that care deeply about their family. They're sacrificing, working hard, to make sure their family has a better life. That's the story here. We need to figure out something that allows them

to have that connection with their family that the rest of us enjoy every single day.

Chair DURBIN. Thanks, Mr. Secretary. Senator Grassley.

Senator GRASSLEY. Thank you, Secretary Vilsack, for being here. While I'm glad to see you here, I'm kind of disappointed that Secretary Mayorkas isn't here, as well, because the H-2A program is a major guest worker program that's administered by the Department of Labor and Department of Homeland Security and not by your Department. If we're going to have a hearing about H-2A, Secretary Mayorkas should also be here to answer our questions.

If he was here, I'd ask him on—about a June 3rd letter that he and you, Secretary Vilsack, and Interior Secretary Haaland received from the American Farm Bureau Federation and all 50 State Farm Bureaus, relating to the current border crisis and increase in immigration illegally crossing our border. I would ask to put that letter in the record, at this point.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator GRASSLEY. The letter notes that farming and ranching families on the border are, quote, "bearing the brunt of this unprecedented influx and have never seen a more dire situation," end of quote. The letter went on to say that farming families have experienced damage to their crops and property, which has caused financial hardship. More importantly, the letter highlighted, quote, "the security and safety of these families are at stake, given the current circumstances," end of quote.

The letter concluded by urging the Biden administration to, quote, "recognize the crisis and take swift action." Mr. Secretary, since the letter was also addressed to you, I—I'm not going to ask you if you read it, because you get a lot of mail, but I do direct you to that letter, and I just described some of the—in that letter.

This brings me to my first question with you, and it's based on the proposition that I don't know for sure if there's any programs in the Department of Agriculture that can help these farmers, and I don't know even if these farmers ask for any help, but is the USDA currently taking any action to help farming families who have experienced damage to their crops and property as a result of the border crisis? If not, did you have any plans to do that?

Secretary VILSACK. Senator, we are asking our NRCS folks to take a look at whether or not the conservation programs that we have could potentially provide some assistance and help in terms of debris removal and repair of fences and so forth that have been damaged. I have seen the letter; I've read the letter. Certainly, I've talked also, as well, to President Duvall, who is the president of the American Farm Bureau, about this issue on a couple of occasions. We are taking a look at ways in which, from a financial perspective, we might be able to provide assistance and help to those families.

Senator GRASSLEY. Thank you very much. That's a very positive response to my question. My next question, and last one, or last subject I'll bring up, about H-2A access for year-round agricultural employers. As you know, this is a major issue for a number of ag industries in our home State of Iowa. What are your views on expanding the H-2A program to cover year-round agricultural work-

ers such as animal agriculture and agricultural processing? Because right now, it's limited to dairy and, I think, a 20,000-person cap, I believe?

Secretary VILSACK. I was pleased to see in the proposal an expansion and a creation of this opportunity. As I understand it, Senator, and I could be wrong, I believe there's a phase-in, over a period of 3 years, of 60,000 additional H-2A workers, and there's also a pilot program that focuses on year-round—or, not year-round; it focuses on the ability of workers to sort of move around the country—of 10,000.

I know that dairy is very interested in that long-term, year-round workforce. They are appreciative, and the National Milk Producers Federation is supportive of this, as are, I might add, roughly 80 ag groups who have worked collaboratively with the—the farm-worker unions to work on this bill. I think there is a process, I think there's an opportunity for us to see how that staged-in increase works and to determine at that point in time whether or not additional adjustments need to be made. There is a process, and we're certainly appreciative of that.

Senator GRASSLEY. I think maybe you just asked my last question, but I want to state it for the record, anyway, if you've got anything to add. I know that you're generally supportive of this legislation, but what is your response to employers, including Iowa-based employers on our next witness panel, who have expressed concern about how the bill addresses H-2A access to year-round employees and the bill's cap on H-2A workers for year-round employers?

Secretary VILSACK. I think the key, Senator, is to give us an opportunity to see whether or not this phased-in approach works. I would point out that there is a number of reforms and streamlining of the process, a reduction, an online registry—for example, the ability to not have to have repeat applications to get workforce from time to time during the course of the year.

I think there are a series of important improvements to the H-2A system that could be an opportunity for us to see how this works. Obviously if there are problems with the—we can always tweak and modify, but I think first and foremost, you kind of learn to—you want to learn to walk before you run, and that phased-in approach allows us to learn to walk before we run.

Chair DURBIN. Senator Feinstein.

Senator FEINSTEIN. Thanks, Mr. Chairman. Welcome, Mr. Secretary. Under current law, the wage rate for H-2A workers is usually set, as I understand it, by the adverse effect wage rate, sometimes called the super minimum wage. That rate can vary considerably between regions and fluctuate from one season to the next, creating uncertainty for both employers and workers. The Farmworkers Modernization Act, if passed, would freeze the rate for one year and then put caps on the amount it can go up or down for the next nine years. Does this act do enough to ensure that growers can anticipate the wages they will need to pay workers?

Secretary VILSACK. Senator, I think it does. I would point out that the current wage rate, on average, for those folks who are earning that wage, is roughly a little over \$13 an hour, which is significantly below the average wage of a typical American worker, also below the wage that even a worker with the lowest educational

level in our economy would earn. Again, back to the individuals I talked to in New York, it was interesting to me that they were working for \$13 an hour and hadn't had a raise in 3 years.

This does provide some stability and a range in which both producers and workers can work with, and I think it also provides and directs me and Secretary Mayorkas of the Department of Homeland Security to take a look at that calculation and that method over that 9-to-10 year period and determine whether or not there's some more permanent fix that could be put in place, but it's certainly an improvement over the current state, which creates uncertainty for everyone.

Senator FEINSTEIN. Most farmworkers are already protected by the Migrant and Seasonal Agricultural Worker Protection Act. H-2A workers are not. The Farm Workforce Modernization Act, if passed, would change that. The farmworker modernization act, if passed, would change that by expanding MSPA to include H-2A workers. Here's—here are two questions. Does the farmworkers—the Farm Workforce Modernization Act do enough to protect workers from exploitation and abuse by employers?

Secretary VILSACK. I think it provides an opportunity for consistency and clarity, in terms of those protections. I think there are additional ways in which this bill provides assistance and help. I mentioned housing in my initial comment. That's also an issue, in addition to wages and in addition to working conditions. These folks basically deserve decent housing. That's obviously a fairly—can be a fairly expensive proposition. The bill, I think, provides and directs the Department of Agriculture to invest additional resources that would be provided under this bill to expand housing opportunities.

I think on balance—and everything about this bill is on balance, because at the end of the day, this represents a very delicate compromise between producers and workers. They worked long and hard on this, and I think it deserves our vote of confidence to allow it to see what works, see what works well, what doesn't work. No—as you all know, no bill is ever perfect, but I think the fact that this is a compromise between people who historically have had a difficult time finding common ground should—we should be encouraging that kind of activity, I would think. Whether it's sufficient or not, time will tell, but I think it's certainly an improvement over where it is today.

Senator FEINSTEIN. Thank you. That's very helpful. Thanks, Mr. Chairman.

Chair DURBIN. Thanks, Senator Feinstein. Senator Cornyn.

Senator CORNYN. Mr. Secretary, thank you very much for being here today and for your testimony. I particularly appreciate your reaching out to me and other Members here to see what's possible in this space. As a practical person and somebody who's been a Governor of a State, you understand the legislative process is, perhaps by design, difficult, because you have to build consensus, and that's always particularly been a challenge in this area.

I would share the views that Senator Tillis earlier expressed, where comprehensive immigration reform certainly has never been successful in the time I've been here in the Senate, and I think the best way for us to try to do this is to take smaller pieces on an in-

cremental basis and find consensus where we can, but then use that as a confidence-building measure to then allow us to do other things.

I'm not suggesting we stop at the farm labor position, and just like—I've asked Senator Durbin to consider putting a bill in the Committee for markup on the DACA population, 640,000 or so young people who now have a great deal of uncertainty as a result of a Federal court decision last year saying the original executive memorandum issued by Secretary Napolitano during the Obama administration was not legally effective to prevent—present them a work permit and deferred action.

I wanted to just have a conversation maybe, or at least—about the best path forward. I know everybody's frustrated by our lack of progress in the immigration space. Our Democratic colleagues now apparently are going to rely on the budget process in order to try to pass immigration reform. I have a different point of view from that of the Chairman. The Senate rules are not self-executing, and the so-called precedent he points to, in 2005—there was no objection based on the Byrd rule, which is, I know, getting down in the weeds.

My personal opinion is—and I think it's shared by many people, including the former Senate parliamentarian, is it's not going to be possible for us to do immigration reform in the context of the budget, which is what apparently our Democratic colleagues have in mind.

My simple request would be for you and the administration to continue to work with us to try to do this during—using the normal legislative process. I know building bipartisan support for legislation is hard work. That's why so many people avoid it except as a last resort, but it's very important, I think, for us to provide some stability to our broken immigration system. I think you used those words. I would agree with you, but part of what's happening at the border right now is simply unacceptable and needs to be addressed.

Senator Sinema, Henry Cuellar, Democrat from Laredo, and Tony Gonzales, and I have introduced the Bipartisan Border Solutions Act in order to provide some suggestion to the administration and others about where the administration might land on that issue, rather than try to ignore it, which—which appears to be what they are doing now.

I would like to try to find a way to be constructive in this area. It's enormously frustrating, because we haven't been successful, but I for one, am committed to keep trying, and I would ask you to continue to work with us and encourage folks on both sides of the aisle, as well as the administration, to stay engaged with Congress to try to solve these problems through the normal legislative process rather than resort to this partisan budget process, which I believe will have zero percent chance of success. Thank you.

Chair DURBIN. Did you have a question, Senator? No. Thank you very much.

Senator CORNYN. I believe I can use my time to make a statement—

Chair DURBIN. Of course.

Senator CORNYN [continuing]. Or request or ask questions.

Chair DURBIN. You can put a question mark at the end of the statement. Your choice.

Senator CORNYN. It is my choice. Thank you.

Chair DURBIN. Senator Coons.

Senator COONS. Thank you, Chairman Durbin, and thank you, Senator Cornyn, for those relevant and direct comments about the urgency, the importance of our finding a bipartisan way forward. Thank you, Chairman Durbin, for your continued leadership of a bipartisan group of Senators who meet, week after week, and are trying to find a pathway forward.

Thank you, Secretary Vilsack, for presenting so concisely to us the opportunity we have in front of us with this piece of legislation, legislation hammered out by groups that do not often come to the same table: those representing farmworkers and farmers, those representing very different points of interest in the agricultural community.

As you pointed out, we owe the very food on our tables to the farmworkers who've labored during this pandemic in remarkably difficult circumstances, living through, working through extreme weather, working through the challenges of this pandemic, and to the farmers and processors who employ them.

We have a badly broken immigration system around farm labor and farm production and processing in our country, and I can think of no better way to honor the contributions of the essential workers in our farms and in our country than by showing them that their continued hard work under the sun can earn them a place in our society outside the shadows of being undocumented and disengaged from our communities and our country. I look forward to working with you, and to both Democrats and Republicans, to try and advance this promising and important piece of legislation.

This is an issue close to my heart. In Delaware, we have one of the greatest concentrations of chicken processing in the country. We grow soybeans and corn to feed those chickens. It's 42 percent of the land area of little old Delaware that's in agriculture. It generates about, I think, \$1.5 billion a year, which is tiny compared to Iowa but big for my State. We have long struggled to come up with the right balance of who's working and under what conditions and how and why, and this would help move that forward.

Delaware farms do not use a huge number of H-2A visas, but they rely on H-2A workers to get their products processed and to market. For years I've heard from farmers in Delaware and across the Delmarva Peninsula that the H-2A application process is too complex, too time consuming, too costly. In fact, some farmers have told me directly they have to hire a consultant just to get through that process. Farmers agree, across the country, it's time to modernize and reform this antiquated system so we've got a legal pathway for folks to come here.

I just spent 2 days in Guatemala with a bipartisan group of Senators, and one of the things we heard, from the president to advocates and activists, was we need a better legal pathway for folks to come to this country, to put pressure back on those who are trafficking, illegally, folks into this country. Can you speak to how this House bill would help address issues like this, make the H-2A pro-

gram more predictable and transparent, and provide legal pathways for farmworkers in this country?

Secretary VILSACK. I'd be happy to, Senator. Thanks for the question. The current process requires multiple filings in order to qualify and to obtain H-2A workers. This proposal would basically limit—instead of three filings, it would limit it to a single filing. The current process requires, if you have a growing season where you want to bring a workforce in at the beginning of the growing season and then bring them back at the end of the growing season, you've got to go through the process not once but twice. This basically would allow for one petition to cover the entire growing season, so you wouldn't have to do it more than one time.

It also provides—the current law provides classified ads and a series of steps to try to quantify that you've tried to hire people from this country. This essentially would provide an online job registry, which would make it easier to satisfy that criteria, as well. In that case, it simplifies, it reduces the paperwork and burden, and I think it reduces the cost associated with the current system.

Senator COONS. You've been the Governor of Iowa. You've been the Secretary of Agriculture. You are now again the Secretary of Agriculture. Is it your testimony to us today that this may be a once-in-a-generation opportunity to make right how immigration and our farming industry and community and society interacts in a way that provides real opportunity for us?

Secretary VILSACK. Senator, for the first time in a long, long time, I think the country, as a whole—not individual Senators who understand the importance of this industry—the country as a whole now understands and appreciates the nature of our food and agriculture industry and are appreciative of it. Having said that, there are many aspects of that system that are broken. Just to give you one statistic, 89.6 percent of American farms today do not generate the majority of income from the farming operation, for the farm family.

Senator COONS. Right.

Secretary VILSACK. We've got to begin the process of constructing a stronger foundation for this system, and part of that stronger foundation is a better ag worker system.

Senator COONS. Thank you. Let me close with this. As the co-Chair of the bipartisan Chicken Caucus, I was proud to work with my colleagues, including a fellow Member from South Carolina, to——

Senator GRAHAM. Am I on it? Am I on that caucus?

Senator COONS. Yes, you are.

Senator GRAHAM. Oh, good.

Senator COONS. To include direct payments to chicken growers for the first time. Part of the USDA's response to COVID-19 was to broaden your aperture in terms of who's eligible and who's able to work with direct payment programs, and for the very first time, contract growers for chicken are included. I just want to thank you for working with me on that and for making this critical additional support for farm families in Delaware possible. Thank you, Mr. Secretary.

Secretary VILSACK. Thank you, Senator.

Chair DURBIN. Thank you, Senator Coons, and I understand there's open enrollment for the Chicken Caucus?

Senator COONS. Yes. Yes. We're taking all comers, because there's chicken in every State.

Senator GRAHAM. Yes, Chick-fil-A by the end of the day—

Chair DURBIN. Senator Graham.

Senator GRAHAM. Okay, thank you. You are what you eat, so—so bottom line, I appreciate you coming, Mr. Secretary. Is the southern border secure?

Secretary VILSACK. I think it's fair to say, Senator, that there are ways in which we can improve—

Senator GRAHAM. No, that's not the question. Is it secure?

Secretary VILSACK. Well—

Senator GRAHAM. If you can't figure this out—

Secretary VILSACK. No, no, no.

Senator GRAHAM. Is that a hard question?

Secretary VILSACK. It can be a hard question, okay?

Senator GRAHAM. It's not today—

Secretary VILSACK. Well—

Senator GRAHAM [continuing]. Because a million people came across, all-time highs, with no end in sight. If we legalize one person under this program, which I've been historically for, how will it affect border security? Will there be a run on the border?

Secretary VILSACK. I don't believe so. In fact—

Senator GRAHAM. You don't believe so? You don't believe that if—

Secretary VILSACK. The reason—

Senator GRAHAM [continuing]. We give legal status to hundreds of thousands of people without first securing the border, there won't be a rush on the border?

Secretary VILSACK. I don't believe so.

Senator GRAHAM. Why?

Secretary VILSACK. In large part because the people we're talking about within the ag workforce are people that have been here for—

Senator GRAHAM. Do you understand magnets?

Secretary VILSACK [continuing]. A long period of time.

Senator GRAHAM. Do you understand pull factors?

Secretary VILSACK. I understand the nature of this workforce. I also understand the nature—

Senator GRAHAM. Do you—

Secretary VILSACK [continuing]. Of the work.

Senator GRAHAM [continuing]. Understand that if you give legal status to one person without first securing—

Secretary VILSACK. Senator, what—

Senator GRAHAM [continuing]. The border, you're going to have a run on the border ten times worse than—

Secretary VILSACK. No, I don't—

Senator GRAHAM [continuing]. You have today?

Secretary VILSACK [continuing]. Believe so, Senator.

Senator GRAHAM. You don't believe that?

Secretary VILSACK. No, I—and the reason I don't is because I think the primary—



Senator GRAHAM. I just think that's ludicrous. I think—I've been involved in every immigration bill there has been, and we always secured the border first because of this very reason. You don't give amnesty and hope people won't keep coming. You secure the border, then you provide legal status. We're doing it ass backward.

Mr. Chairman, you know, we've had our differences. I like you a lot. We've had two Committee hearings about legalizing people. We haven't had one hearing yet about the status of the border. If you don't believe legalization through DACA or ag workers will create a run on the border, you're not listening to the people at the border.

When I was Chairman, you asked me, the Committee did, the Democrats asked me to have hearings about the status of confinement, the way kids were being treated. We had three different hearings, for the Department of Homeland Security Acting Director to come so you could ask questions about conditions of confinement and our policies on the border. I have asked for a hearing, Senator Grassley's asked for a hearing. There is no way in hell we can legalize anybody until we first understand the effect it would have on the border and whether or not it would incentivize further illegal immigration.

Mr. Secretary, you're a fine man, I think you're very good at your job, but if you can't figure out that legalization without first securing the border doesn't create a problem, then you really don't understand this issue. Mr. Chairman, when you asked me to do things that some of my people didn't want to do, we did it. We had hearings. It is now time for this Oversight Committee to have a hearing about what the hell happened at our border.

In December 2020, we had the lowest crossings, illegal crossings, in 45 years. Now, 6 months later, we have an explosion of illegal immigration, no end in sight, because of policy changes by the Biden administration, I believe. It's imperative that this Committee do oversight of our broken border, to try to figure out what the hell happened in the last 6 months. If we did some of the things being suggested by the Secretary and by other people about legalizing any population, what effect would it have on illegal immigration? My belief is it would lead to an explosion of illegal immigration.

I'll ask you again. Tell me why, if we legalized hundreds of thousands of workers, which I'm willing to do, without first securing the border, you don't believe it would create further border security problems. Explain that to me.

Secretary VILSACK. Do you want an explanation?

Senator GRAHAM. Yes, I do.

Secretary VILSACK. Okay. I think the primary reason why people are crossing the border, Senator, is because they've got a very difficult experience economically back home. First and foremost, if you're truly interested in securing the border—

Senator GRAHAM. Well—

Secretary VILSACK. Senator—

Senator GRAHAM. I'll stop you right there. What—

Secretary VILSACK. Senator, you—

Senator GRAHAM [continuing]. Happened in the last 6 months?

Secretary VILSACK [continuing]. Asked me to respond, and I'm—

Senator GRAHAM. Well, but I'm——

Secretary VILSACK [continuing]. Going to respond.

Chair DURBIN. He asked if you——

Senator GRAHAM. Okay, good.

Chair DURBIN [continuing]. Wanted a response.

Senator GRAHAM. Go ahead and finish, and I'll follow-up.

Secretary VILSACK. Fair enough. If you're truly serious about that piece of it, then I think we have to take a look at how we can help create better opportunities south of our border.

Senator GRAHAM. You don't believe catch-and-release is having an effect on the surge in illegal immigration?

Secretary VILSACK. You asked a question about the agricultural workforce.

Senator GRAHAM. But you're——

Secretary VILSACK. Basically——

Senator GRAHAM [continuing]. Giving answers about immigration.

Secretary VILSACK. No, I'm asking—I'm here——

Senator GRAHAM. No, no.

Secretary VILSACK [continuing]. To talk——

Senator GRAHAM. You answered that the key is to give more money to the triangle countries.

Secretary VILSACK. That—no.

Senator GRAHAM. Is that the key?

Secretary VILSACK. The key is helping them build their own economies. For——

Senator GRAHAM. We have been——

Secretary VILSACK [continuing]. Example——

Senator GRAHAM [continuing]. Trying to do that for years.

Secretary VILSACK. I don't know how well we've been trying to do it, but I will tell you this——

Senator GRAHAM. Let me ask you something. You don't believe the change in policy has effected a wave of illegal immigration? You don't believe eliminating Remain in Mexico has effected a surge of people seeking asylum claims?

Secretary VILSACK. It's a complicated issue, Senator.

Senator GRAHAM. No, it's not. It's not——

Secretary VILSACK. Yes, it is.

Senator GRAHAM [continuing]. Complicated at all.

Secretary VILSACK. Senator, you——

Senator GRAHAM. Let——

Secretary VILSACK [continuing]. Know it's complicated.

Senator GRAHAM. Well——

Secretary VILSACK. You know it's complicated.

Senator GRAHAM. You're making—no, it's not. It's really simple.

Secretary VILSACK. Sure it is. Yes, no, it's not simple.

Senator GRAHAM. So——

Secretary VILSACK. It's not simple.

Senator GRAHAM [continuing]. Let me just say this.

Secretary VILSACK. It's very complicated.

Senator GRAHAM. Put on a fine point on it. What the hell has happened in the triangle countries in 6 months, where we went from the lowest illegal crossings coming from that part of the world to the highest?

Secretary VILSACK. The pandemic and food shortages.

Senator GRAHAM. That's what you believe? It's not changing the policy of Remain in Mexico, abolishing the idea that you have to wait in Mexico, you're not released into the country? You can't figure out that when the Trump—excuse me, the Biden administration canceled Remain in Mexico, they'll let you come into the country and they release you into the country and you never show up for your hearing, that that catch-and-release program—have you ever talked to the Border Patrol about this? Have you ever had a discussion about the pull factors with the Border Patrol? Have you ever had one? Yes or no?

Secretary VILSACK. Yes.

Senator GRAHAM. When?

Secretary VILSACK. My first stint.

Senator GRAHAM. When was that?

Secretary VILSACK. I don't remember the year, sir.

Senator GRAHAM. Okay. Has it been in the last 10 years?

Secretary VILSACK. It may have been.

Senator GRAHAM. Has it been in the last year?

Secretary VILSACK. No.

Senator GRAHAM. Okay. Go talk to them, and you'll find out how wrong you are, if you talk to them.

Secretary VILSACK. Well.

Senator FEINSTEIN. Time is up.

Chair DURBIN. The last oversight hearing in the Judiciary Committee, under the previous Chairman, was on—a Subcommittee hearing on January 16th, 2018, 2½ years ago. President Biden has been in office, officially, yesterday, I think, 6 months. So, in terms of oversight of the Department of Homeland Security, there is a record of a hearing 2½ years ago.

I would also add that I called this hearing with Senator Padilla because most Americans will be sitting down to dinner tonight and through the weekend and enjoying food that's being picked, to a large part, by migrant farmworkers, and we're trying to figure out a way to deal with this. If the premise is that we can't do anything on immigration until we do everything on immigration, we'll be right where we've been for 36 years: doing nothing.

Senator GRAHAM. Mr. Chairman, may I respond?

Chair DURBIN. You may.

Senator GRAHAM. On March the 6th, 2019, we held an Oversight hearing with Customs and Border Protections, responding to the smuggling of persons at the southern border. On June 2d, 2020, we had an Oversight hearing entitled "Examining Best Practices for Incarceration and Detention During COVID-19." We've had—I've called the Acting DHS Secretary twice, because you were concerned about families being separated. So was I. You cannot understand this issue until you have a hearing on the border and how legalization would affect the wave of illegal immigration.

If you don't secure your border first, Mr. Chairman, then you're going to incentivize more illegal immigration. That's why every bill you and I have worked on had border security as the first thing. To the Secretary of Agriculture, you're a fine man, I want to work with you on this program, but you need to go talk to the Border Patrol, because if you spend 15 minutes talking with them, they

will tell you that the pull factors have been created in the last 6 months, and if we legalize one person, the worst is yet to come.

Chair DURBIN. I stand by my statement. The last DHS Oversight hearing in this Committee was 2½ years ago. There have been specific issues that have been raised. I will tell you, and you know as well as I do, when we worked on the Gang of Eight to put together a bill, it included a dramatic commitment for border security, more money than any of us had ever imagined, and of course it was not approved on the House side when the other party was in control. I am just loath to accept the premise that until you solve everything, you can't discuss anything. I want to do what's right by the farmworkers and border security, and I don't think they're exclusive. I think they can be done together. At least I hope they can be.

The next question comes from Senator Klobuchar, who is joining us virtually.

Senator KLOBUCHAR. Thank you. Thank you very much, Senator Durbin. I was thinking back to all the work that you and, in the early days, Senator Graham did on immigration. In fact, I remember, as a brand-new Senator, the work that was being done when President Bush was in, to try to get immigration reform passed, and those bills were path-to-citizenship bills. As you noted, over time included a lot of security money for the border.

My—some of my earliest memories are of Secretary Gutierrez coming in and meeting with Senator Graham and Senator McCain and a number of Democrats that were involved in this effort, Senator Kennedy. I got to be there as part of history, and I vowed we would get this done. Then, when President Obama came in, again, supported by a number of Republicans and finally passed in the U.S. Senate, with Senator Grassley's support, we passed immigration reform.

The time is now, and I want to get back to what the core is, of this. For me, it comes down to, yes, there are moral issues; yes, there are humanitarian issues; but for me, in my State right now, it's economic issues. That's why I think you're here, Secretary Vilsack.

My State has a strong economy, relatively low unemployment rate. We don't have enough people for the work that needs to be done. It's really that simple. Not in our resorts and, more significantly, not in our ag areas. For certain agricultural employers, like dairies, which has been pointed out, pork producers, forestry, seasonal visas just don't meet the needs. That's why I am a fan of this year-round proposal. It's part of the immigration reform, the U.S. Citizenship Act, that I am Co-Sponsor of with Senator Menendez, but it's also the work that came out of the House.

Can you talk, Mr. Secretary, about the challenges faced by dairies and pork producers when they're trying to meet their year-round workforce needs, when they just have one of these seasonal visas? I've heard a lot. I'd like to hear it from you, from the ground.

Secretary VILSACK. Senator, they simply can't find the workers, and the result is that they either have to reduce the amount that they're producing or they have to destroy that which they've grown because they simply don't have enough people to pick and harvest. You know, this is a—an issue that goes to the heart of our food

supply, goes to the heart of our capacity to have choice in the grocery store. It goes to the ability to have affordable food for all of our country and our ability to export, which supports millions and millions of jobs.

At the end of the day, you need workforce, to be able to do that, and you need a stable and secure system so you can plan ahead, so you can determine whether or not you are able to expand, able to buy that additional farm, able to expand by buying and expanding your herd. Farmers can't do that today. They can't make those decisions because they don't have the security and the stability of a system that works.

Senator KLOBUCHAR. Do you think that's part of the reason this has been bipartisan? You know, we have Democrats and Republicans representing agricultural areas. I know in the House, the bill that passed was bipartisan, got some significant Republican support. Where is that Republican support coming from? Because if you listen to Senator Graham right now, you would think that there is no movement on immigration, and I just know the opposite from talking to my colleagues.

Secretary VILSACK. The folks who worked on this compromise, Senator, on the producer side and on the processor side and on the labor side, represent, I think, the entire political spectrum in this country: very, very conservative producers in the Southwest and in California obviously progressive folks representing the union and the workers. They came together with this as a compromise bill in an effort to move this forward, to strengthen the foundation. I think that's the reason why you saw bipartisan support in the House: because they knew there were 80 different separate agricultural groups that felt this was a good idea, that felt that this was necessary to get done now.

Senator KLOBUCHAR. As a Member of the ag Committee, in addition to this great Committee, I've heard from many constituent farmers and groups about the delays in processing of the agricultural worker visa applications that can have a devastating effect. Harvests are missed, payments are delayed, investments need to be put off, as you just pointed out. How would reducing processing delays, such as by streamlining the application process, benefit farmers and consumers?

Secretary VILSACK. It would reduce cost, it would provide for a better understanding and a timely nature of a workforce that—it's very important that it be timely, because at the end of the day, depending upon when you're harvesting, it will depend—that the quality of what you are able to sell into the market. It means real money, for farmers to be able to have that stable and secure workforce on time.

Senator KLOBUCHAR. A last question, kind of going the next step from the bill, the House bill that just passed, and that is to the larger idea of a pathway to citizenship. In a previous hearing in the Immigration Subcommittee, a Republican witness, Dr. Douglas Holtz-Eakin, testified about the economic benefits, not just to affected immigrants but to all Americans, of a pathway to citizenship. To qualify, the Farm Workforce Modernization Act requires that an immigrant pay Federal taxes. How would expanded tax

revenues, not just for the Federal Government but for State and local governments, benefit all Americans?

Secretary VILSACK. As you well know, budgets basically fund everything from education to job training to public safety to a wide variety of State and Local government responsibilities. Obviously, to the extent you've got additional resources, you can keep the tax base lower for everyone, and you can continue to have the essential services that people depend on. It makes sense, obviously, for folks to come out of the shadows to be able to pay their taxes without fear of deportation or without fear of disruption on the farm.

Chair DURBIN. Thank you, Senator—

Senator KLOBUCHAR. I think that's why—

Chair DURBIN [continuing]. Klobuchar.

Senator KLOBUCHAR. Senator Durbin, I'm—this is my last statement here. I think that's why, when you look at the incredible debt reduction you would get with comprehensive immigration reform, even though we're focused here on the year-round visas, it's one of the big benefits. It was the reason that Grover Norquist, way back, supported the immigration bill under President Obama, because of the debt reduction you'd see and the enormous benefit to taxpayers. With that, I'll turn it back to you, Senator Durbin. Thank you for allowing me to appear remotely today.

Chair DURBIN. Thanks, Senator Klobuchar. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. The Biden border crisis keeps getting worse. Every day, it is getting worse. In my home State of Texas, on the southern border, we have seen over a half million illegal crossings this year. We are on a pace to have over two million people cross the border illegally, and this is the direct result of decisions made by Joe Biden and Kamala Harris.

Three decisions made in the opening week of this administration caused this crisis. Number one, the first week in office Joe Biden immediately halted construction of the border wall. Number two, he reinstated the failed policy of catch-and-release. Number three, most indefensibly, he ended the incredibly successful Remain in Mexico International Agreement.

Remain in Mexico was an agreement President Trump negotiated with the government of Mexico that said that those people who cross into Mexico illegally would remain in Mexico while their asylum cases are pending in the United States, and it worked tremendously. Last year, we had the lowest rate of illegal immigration in 45 years. This year, we have the highest rate of illegal immigration in over 20 years.

The people of Texas—I'm hearing from people all across Texas. Go to South Texas, talk to mayors, and by the way, talk to Democratic mayors on the border that are dealing with hundreds of thousands of people coming across. Talk to farmers and ranchers who are dealing with coyotes crossing their land on a daily basis, trafficking people, trafficking drugs.

Talk to landowners like one rancher I know who had his ranch house broke into and MS-13 painted, spray-painted on the walls. The answer from the Biden administration is, they don't care. I've got to say, Mr. Chairman, it is painful to say, the answer from the Democratic Judiciary Committee is, the Democratic Judiciary Com-

mittee doesn't give a damn. We're not having a hearing about the crisis on the southern border.

This is not the first hearing we've had on amnesty. This is not the second hearing we've had on amnesty. This is the third hearing we've had on amnesty in 6 months. These hearings are part of the problem. You know what? All across the world, people are hearing Senate Democrats saying, "We're in the business of amnesty."

Little boys and little girls are getting physically assaulted by drug traffickers and human traffickers. They're being sexually assaulted by drug traffickers and human traffickers. When I led a group of 19 Senators down to the border, we saw one 11-year-old girl who had been raped by the traffickers, coming across. On the Rio Grande River, we saw the body of a man who had drowned crossing the river. The answer, tragically, from the Democrat Judiciary Committee is, they don't give a damn.

We spent 4 years listening to Democrats run to TV cameras, talking about kids in cages. There are more cages, and they are more full today. Joe Biden is running the cages that are packed with kids. At the Donna tent facility, built for 1,000 people, with COVID restrictions, its capacity is 250 people. Senator Kennedy, when we were down there, there were over 4,200 people in that facility, 1,700 percent its capacity. The Biden cages, child after child after child, packed in there. Little boys, little girls, not six feet apart, as you would want in the pandemic; not three feet apart. They weren't even three inches apart. They're next to each other.

They're sleeping on the floor, no beds, no mats, no cots, wrapped in reflective emergency blankets. The time we were there, the COVID—rate of COVID positivity was over 10 percent, and the Biden administration is releasing illegal aliens into our community who are COVID positive. It is irresponsible, it is wrong, and every Democrat who said to a TV camera, "Kids in cages. Kids in cages"—Mr. Chairman, why doesn't this Committee have a hearing on the Biden cages? Instead, we have a hearing with the Secretary of Agriculture.

Mr. Secretary, if we were having a hearing on the optimum fertilizer for growing corn, I think you might be a very good witness. Does the Department of Agriculture secure the border?

Secretary VILSACK. We're not responsible for the law enforcement aspect of this, but the secure—

Senator CRUZ. So, no. No, hold on.

Secretary VILSACK. You asked a question, sir.

Chair DURBIN. Allow the witness to answer.

Senator CRUZ. Okay. My question was, do you secure the border? The question—

Secretary VILSACK. Well, but—

Senator CRUZ. The answer is no.

Secretary VILSACK. Now—

Senator CRUZ. Hold—do you run the cages?

Secretary VILSACK. No.

Senator CRUZ. Do you prosecute the traffickers?

Secretary VILSACK. No.

Senator CRUZ. Are you the Attorney General?

Secretary VILSACK. No, sir.

Senator CRUZ. Are you the Secretary of Homeland Security?

Secretary VILSACK. No, sir.

Senator CRUZ. With all due respect, your answers on immigration were fertilizer. They were nonsense. Your answer—you said, “Why are we seeing this crisis?” Your answer was “poverty.” There are 7 billion people on planet Earth, many of whom were poor, and you know what? They were poor last year, and we had the lowest rate of illegal immigration in 45 years. They’re poor this year. What’s changed is this administration refuses to enforce the law, and Texas is paying the price for it. That’s what changed.

Your other answer was the pandemic. Mr. Secretary, last year there was a pandemic, and we had the lowest rate of illegal immigration in 45 years. Poverty didn’t magically appear on January 2021, and the pandemic didn’t appear on January 2021. What appeared was Joe Biden and Kamala Harris and policies that are inhumane, that are cruel, and that are failing.

Secretary VILSACK. Senator, was the border secure last year?

Senator CRUZ. Last year, it was the most secure it’s been in 45 years.

Secretary VILSACK. Okay. If that’s the case, why didn’t you all pass the Ag Modernization Act last year, after it passed the House? You’re telling me it’s got to secure the border before you pass this act.

Senator CRUZ. Let me be clear. I’m not Lindsay Graham. I don’t support this bill.

Secretary VILSACK. No, well——

Senator CRUZ. No, no, no. Look, I understand——

Secretary VILSACK. The Republicans——

Senator CRUZ [continuing]. That there have been Democrats and Republicans who support amnesty. I ain’t one of them.

Secretary VILSACK. Why wasn’t——

Senator CRUZ. I get that you want amnesty. I get that——

Secretary VILSACK. It’s not——

Senator CRUZ [continuing]. Your invitation is, “Come to America. Forget the legal processes, and everyone——”

Secretary VILSACK. I want a workforce——

Senator CRUZ. “—gets amnesty.”

Secretary VILSACK [continuing]. That’s going to continue to support the greatest agriculture and food industry in the world. That’s what I’d like to have, Senator.

Senator CRUZ. I’ll tell you—I thought you wanted him to respond.

Chair DURBIN. Senator, you’ve taken more time than any other Senator this morning. Will you please wrap up?

Senator CRUZ. This is a crisis. This administration caused it, and this Committee doesn’t even care to have a hearing on the suffering that is happening at the border that is caused by policies that don’t work.

Chair DURBIN. Thank you, Senator Cruz. I see Senator Padilla’s off to vote and will be back shortly, so he will preside at that point and ask questions. I thank Senator Vilsack for his patience. Let me address—oh, I’m sorry. Senator—wait, let me—I’m getting virtual information here, and I understand that Senator Booker is available in a virtual setting.



Senator BOOKER. Yes, I am. Mr. Chairman, I'm really grateful for you recognizing me. I'm also grateful for the Secretary of Agriculture. He and I haven't agreed across the board on things, but he is such a man of civility and dignity, and I know he is open to all Senators for—to engage in constructive dialog, especially on things that we agree on in this country and need to move forward. I just want to give him a tribute.

I know these hearings aren't always easy, but he has been so accessible in having substantive conversations about issues that matter to millions of Americans and worked very hard with me and others to find common ground. Today is a day that I just especially want to celebrate his dignity and civility and his willingness to roll up his sleeves and work with anybody. You know, there are about 2.4 million farmworkers in the United States. Three-quarters of them are foreign born, and half of them are undocumented. It's really undeniable that America relies very heavily on immigrants, documented and undocumented, to keep food on our tables.

From my vantage point, the issues have numerous implications. The sources of our food have humanitarian implications, economic, health, and even, as has been discussed, national security. My first question is, Secretary Vilsack, what concerns you most right now about this labor crisis in the agricultural sector? What are some of the things, I think, that are—that are sort of having you worried and concerned?

Secretary VILSACK. A couple of things, Senator. First of all, obviously, always concerned about the safety and protection of workers, to make sure that they are in safe and decent working conditions. To the extent that we don't fix this particular broken system, it compromises the ability of us to continue to have this incredibly strong food and agricultural industry, it compromises our ability to have supply, it compromises our ability to have choice, it compromises our ability to have less expensive food in the grocery store, it compromises our ability to have the jobs that are connected to these workers.

When they pick the fruit, it has to be processed, it has to be canned, it has to be transported, it has to be stored, it has to be shelved. All of those are jobs that are connected to their work, and so it has a rippling impact and effect on the economy. If we fix this system, then we have stability in that food and ag sector, which obviously provides enormous choice for consumers, less expensive food for consumers, and better jobs and better protections for workers.

Senator BOOKER. Thank you, sir. You know I have a tremendous concern about the growing corporate consolidation in our food system. It's stunning now that about 4 companies control 90 percent of the global grain market, and the top 4 beef packers in the United States now control 85 percent of the beef market. We have seen the stunning disappearance of independent family farmers being driven out of business as the market power of these large multinational corporations have transformed American agriculture in a matter of decades.

I just want you to know that this is an ongoing—I see as a crisis, and I'm wondering if you could just give, for the record, your opin-

ion on what this market consolidation—the kind of impact it's having on small family farmers.

Secretary VILSACK. Senator, I don't know if you were with us earlier when I indicated that 89.6 percent of American farms today don't produce the majority of income for the farm families that operate them, which means that these people have to work two and three jobs to continue to do what they want to do and what they love to do. I think that's one of the reasons why the President signed the executive order on competition.

It's one of the reasons why we recently announced utilizing some of the American Rescue Plan resources to expand processing capacity so that we have a more transparent, more competitive, and more open market for our producers. It's one of the reasons why the executive order also directs us to take a look at this issue of consolidation in the seed industry, which we intend to do.

All of it's designed to provide opportunities for more competitive markets for farmers so they get better prices and to make sure that the inputs that go into the production of crops and livestock are reasonably priced and are obtained in a competitive and open-market way, as well. That's—that's my concern. We've got to make sure that folks at every level—we support diversity in agriculture, the size of operations, the producers, the method of production—I think diversity is a great strength, and we want to see our systems stronger and more resilient.

Senator BOOKER. Mr. Secretary, I thank you for your time. I'm going to end with a few seconds left and turn it back over to my friend and our Chairman, Dick Durbin. Thank you.

Chair DURBIN. Thank you very much, Senator Booker. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Welcome, Mr. Secretary. Mr. Secretary, I know you want to see our farmers prosper. I want to see our farmers prosper. It appears that—and, of course, to prosper, our farmers need labor, and it appears that many of the people who are new to our country want to work as farm laborers, and that's a good thing. I know there are shortages in that respect.

It seems to me that we ought to—well, figure out a way to work together to achieve that end. The problem, as you know, is in our immigration policy. Normally I ask questions, but I just want to spend a second telling you where I'm coming from. I don't completely understand it. Our border's not secure. It's less secure today than it was in December. I think if you go down there, you'll see that.

I think we could secure it. You know, Americans have done extraordinary things. We can unravel the human genome. You know, we can take a diseased human heart and replace it with a new one and make it beat. We can send a person to the moon. I suspect we can secure the border.

It seems to me, until we do—or certainly get it more secure than it is now—that amnesty's not going to pass the U.S. Senate. Here's what perplexes me. If—many of my friends who don't support securing the border—not all of them, but many of them—say that vetting people at the border is racist. I think it's prudent, and I think most Americans think it's prudent. I could understand the

racist charge—I wouldn't agree with it, but I could understand it if we didn't have such a robust legal immigration program.

We admit about a million of our world's neighbors to America every year to become citizens, more than any other country. We make a clear distinction between legal and illegal immigration. I think most Americans think legal immigration is good and illegal immigration is bad, and it's not because they're racist.

I think most Americans see our border as sort of America's front door. Most Americans lock their own front door at night. They don't do that because they hate everybody on the outside. They do that because they love the people on the inside, and they just—they want to know who's coming into their home, and they—they don't want to just keep everybody out. They just want to know who's coming into their home.

That's the way I look at the border, and I don't understand why we can't do that. I don't—I know it's not in your purview, but I just don't understand why the Biden administration doesn't, for example, re-implement the Remain in Mexico program. Of course, Mexico, if you ask them, says, "We don't like it," but if we trade hard with them, they'll do it, and it does work. It can stem the flow.

Secretary VILSACK. Senator, can I ask you a question about what you just said?

Senator KENNEDY. Sure.

Secretary VILSACK. Several speakers have suggested that this is about amnesty, and that's—I'm puzzled by that. The reason I'm puzzled by it is this. I used to practice, and I know you're a lawyer, I think, by training? Is that right?

Senator KENNEDY. Mm-hmm.

Secretary VILSACK. I used to practice in a small town, did a little criminal work. A guy would come in, be charged with some petty crime, would go in front of the magistrate. Magistrate would say to me, "Look, here's the deal. If your guy pays a fine, pays court costs, we'll put him on probation, and we'll let him go." I don't think—I didn't perceive that to be amnesty. I perceived that to be a system that basically created some mechanism for acknowledging wrongdoing, providing something of value—in our criminal justice system, either you provide your time, by being locked away, or you pay a fine, or in some cases you do both.

Senator KENNEDY. Yes, sir.

Secretary VILSACK. When this bill provides for the payment of a fine of \$1,000, I don't quite understand why we're talking about amnesty.

Senator KENNEDY. Okay.

Secretary VILSACK. Can you help me—

Senator KENNEDY. Sure.

Secretary VILSACK [continuing]. Understand that?

Senator KENNEDY. Is that okay, Mr. Chairman?

Chair DURBIN. Briefly.

Senator KENNEDY. Because it is amnesty, and I think most Americans see it as amnesty. I see it as amnesty. They see it as, "You came into our country illegally. You didn't follow the law, as many people do, get in line, wait their turn, fill out the forms. Now, by just paying a fine, you get to jump the line."

Secretary VILSACK. No.

Senator KENNEDY. They also know what is going on at the border right now, and people are pouring across. There are a lot of reasons for it, but I know it could be slowed down, and I just think as a practical matter and also as a principled matter, I'm not going to support any—any form of amnesty—you and I may disagree on the definition—until I see a concerted effort to secure the border.

Clearly, there isn't one. I've been down there, Mr. Secretary. If you go down, you'll see. I don't know the reason for it. I don't know whether it's politics or what, but I know we could do better, because in December we were.

Secretary VILSACK. Yet, even though that was the case, there was no effort in the Senate to pass this bill before.

Senator KENNEDY. It's—it's not just as simple as saying, "Well, the border"—we had done a better job in December. The American people—this is what the American people want to see. First of all, they don't trust Washington. There's a reason that you, and I, and all of us in Washington, DC, and part of Government poll right up there with skim milk. The American people don't trust us. They want to see a border secured. They want to see a good-faith effort on both sides to make sure it's secured, for an extended period of time.

Yes, the border was more secure in December than it is now, and no fair-minded person can disagree with that. Many of my Democratic friends completely bashed, every chance they got, the Trump administration for doing that. There was no feeling among the American people that this is going to be sustained. I think if we had a bipartisan effort to really secure the border as best we can for a sustained period of time, you would see the American people very sympathetic to a discussion of amnesty and drafting an immigration policy that looks like somebody designed it on purpose.

Senator PADILLA [presiding]. Thank you.

Senator KENNEDY. Thank you for your indulgence, Mr. Chairman, and thank you for being here, Mr. Secretary, Governor—whatever I should call you.

Senator PADILLA. Thank you. It's now my turn just to preside, as Senator Durbin is off to vote. He'll return in a few minutes. It's also my opportunity to ask questions before recognizing Senator Ossoff, and then we'll proceed to the second panel.

First, a couple of points of clarification. I think some of my colleagues, due to their questioning, due to their statements, have caused a little confusion. I'm not sure if it's intentional or unintentional. Secretary Vilsack, can you clarify for everybody watching us here today, are you the Secretary of Homeland Security, or are you the Secretary of Agriculture?

Secretary VILSACK. I'm the Secretary of Agriculture, Senator.

Senator PADILLA. Thank you very much. That's what I thought, coming into this hearing, and so I will focus my questions appropriately so on issues of agriculture and agricultural industry and your portfolio of responsibility.

Second, I just feel compelled to respond to some of the comments some of my colleagues on the Republican side of the aisle have made regarding the appropriateness of considering the reconciliation process to advance the elements of the Farm Workforce Modernization Act or other elements of immigration reform; their sug-

gestion that this is best done on a bipartisan basis, through bipartisan negotiations, which, you know, if I felt they would be fruitful, I would absolutely welcome.

It's not like we haven't been trying for the last 6 months, but it's clear that while some of our colleagues suggest, "Well, I support this, I support that, I support DREAMers, I support farmworkers," they're quick to raise excuses and pretexts for why we can't do anything.

Finally, I just can't help but observe the contradiction—I believe it was—Senator Durbin described Senator Graham's comments as, "Well, it makes no sense to say we can't do anything unless we do everything," while Senator Tillis, among others, has suggested when we try to do everything we've been unsuccessful for years and years and years, so let's sort of ratchet down the scope of what we're trying to do, to more of a piecemeal approach. You can't have it both ways.

Turning to agriculture. Mr. Secretary, in 2019, California produced \$50 billion in agricultural commodities. California alone. As I mentioned earlier, the State is also a major exporter of agricultural products and makes up 16 percent of total U.S. agricultural exports, totaling \$21.7 billion. In addition, more than one-third of the country's fruits and nuts are grown in California, including 80 percent of the global supply of almonds and nearly 90 percent of U.S.-grown strawberries. Yet California and other States across the country are facing the chronic labor shortage that you've spoken to already.

The American Farm Bureau Federation estimates that, in total, U.S. agriculture needs 1.5 to 2 million hired workers each year, but farmers are struggling to fill these positions. In 2019, prior to the pandemic, 56 percent of California farmers reported being unable to find all of the workers they needed for their main crop over the last 5 years. Again, that was prior to COVID.

Mr. Secretary, about 400,000 workers represent California's agricultural workforce. More than 60, upwards of 75 percent of these workers are undocumented. Given the over-representation of undocumented immigrants in this industry, how could providing a pathway to legalization for farmworkers bolster the U.S. economy and trade relations?

Secretary VILSACK. It would provide stability to western growers, Senator, and that's one of the reasons why the western growers have been at the front of an effort to try to get this compromise formed and ultimately through the House and to the Senate. I think they recognize that they—with that stability, they can plan, they can make determinations about expansion opportunities, they can figure out ways in which they can be more productive, which creates more opportunities not only for domestic consumption but also exports and, in turn, supports all of the jobs that are essentially in the supply chain that result from the fruit that's being picked and grown in your State.

At the end—and your State is the number one agricultural State, in terms of productivity, in terms of sales, so obviously anything you all do that can benefit and expand opportunities in California will have a positive impact on agriculture generally. As I indicated, the agriculture and the food industry is roughly 20 percent of the

American economy, so at the end of the day, it would provide for more robust and stronger and more stable American economy.

Senator PADILLA. Great. I appreciate your description on the benefits of this act, should it become law. Can you shed a little bit more light, describe in slightly more detail, short of passage, what some of the challenges, operational and otherwise, in the agricultural sector, because the workforce is not currently stable?

Secretary VILSACK. Many of the farmers that we're talking about are people—the average age of the American farmer today is nearly 60 years of age, and many of these farmers are now trying to determine what they do next, in terms of the next generation. If they don't feel that they have access to additional workers, they may constrain the size of their operations, and at the end of the day, those operations may not be as profitable, they may not be able to support as many families as necessary in the family farming operation. That may result in the sale of those lands and the reduction of agricultural activity, agricultural land in the country.

We lose about 2,000 acres of land every single day, already, so that would probably potentially see an acceleration of that. Ultimately, over time, if we don't deal with this issue and don't provide stability, ultimately, over time, we will continue to see the economic challenges of agriculture continue to mount, and eventually it could compromise the security that we currently enjoy, which is the ability to essentially produce all the food that we need for our own people, as well as for exports.

Senator PADILLA. Okay. Thank you. Thank you. Next, for questions, I recognize Senator Ossoff, joining us virtually.

Senator OSSOFF. Thank you, Mr. Chairman. Thank you, Secretary Vilsack, for your service and for your testimony today. Farmworkers in Georgia and across the country make it possible to feed the American people and, indeed, for the United States to help feed the world, and yet the stories that I've heard from so many farmworkers are truly appalling: 20-hour shifts, folks who are sleeping in vans, exposed to extreme heat, exposed to pesticides and chemical fertilizers without adequate protection, making very little money, often paid less than the minimum wage, often subject to other forms of abuse and harassment.

Do you believe that these conditions do prevail, as I've heard from so many farmworkers, in too many places across our country? What policy reforms must Congress enact, in order to ensure that those who are working in the fields to feed our country are treated with the respect and dignity that every human being deserves?

Secretary VILSACK. Senator, the Farm Workforce Modernization Act does provide an opportunity for additional support for these farmworkers. It obviously provides an opportunity for them for decent housing, it creates the ability to ensure that they have adequate opportunities for protections in the event they get hurt, in workers' compensation, things of that nature. It reforms the H-2A system, which provides a series of protections, as well, so that more folks can benefit from that system, and makes it easier for farmer to utilize that system.

Nearly 50 percent of the H-2A workers we have today come from 5 States, one of which is your State of Georgia, as well as the Chair's State of California. At the end of the day, it creates a mech-

anism by which people understand what their rights are, are able to protect themselves through normal processes. There's a mediation process; there's a shortening, if you will, of the ability to raise concerns about working conditions so that people can get relief sooner.

There are a series of steps—again, this is a compromise bill, and I think it's really important to emphasize the fact that people from all political spectrums have come together and supported this bill because they understand and appreciate how central it is to better working conditions and a stronger and more stable farm economy. I would hope that what you've explained are very limited circumstances in agriculture today, and the hope would be, with— with this act, that we would see even fewer of those circumstances.

Senator OSSOFF. Thank you, Mr. Secretary. Of course, the pandemic has put tremendous strains on agricultural supply chains, as well as disrupted labor markets, but taking a step back and looking at the bigger picture, what are some of the most significant challenges that, in your view, Georgia farmers and farmers across the country face in their efforts to hire farmworkers?

Secretary VILSACK. It starts with the cumbersome process that requires multiple applications, a lot of paperwork, not the use of digital technology to make it simpler and easier. That discourages or makes it more difficult to get the workforce on a timely basis. It starts there. The result of that—I mean, the reality is, timing matters.

Timing is everything, in agriculture. If you don't plant at the right time, if you don't harvest at the right time, it impacts and affects the quality of what you produce, and that, in turn, impacts the price that you get in the market and, in turn, creates challenges for farming operations. To the extent that we have a stable and secure system that's predictable, it allows farmers and ranchers and producers to—to plan expansion opportunities, allows them to be as efficient, as profitable, as possible. It also creates the protections we talked about for workers and ensures that there's an adequate wage, decent housing, and things of that nature for our farmworkers who work incredibly hard.

I think it begins to send a message about the significance and importance of this essential workforce from a perspective of respect. I think for far too long we've taken these people and those who work in our processing facilities for granted. We've not paid as much attention to them as we need to, but, you know, when it— when it came to protecting our food supply during the midst of the pandemic, the height of the pandemic, those folks showed up, and they showed up at the risk of their own lives and did so in large part because they were motivated by making sure that they could take care of their families. That's a value system I would hope that we would continue to support in this country.

Senator OSSOFF. Well said, Mr. Secretary. We should indeed be guided by our commitment to the human rights and human dignity of each individual, and these farmworkers deserve far better.

With the Chairman's indulgence, my final question for you, Mr. Secretary—grateful for your recent trip to Georgia; your visit, in particular, to Fort Valley State University and your continued expressed commitment to Georgia farmers. Will you commit that the

next time you come to Georgia, you'll sit down with me, local agricultural leaders, as well as those who are leading Georgia's trade efforts—of course, we have the Port of Savannah, one of the fastest growing ports in the country—to discuss how we can work together to expand Georgia farmers' access to export markets around the world?

Secretary VILSACK. Senator, if you sweeten your offer with a slice of pecan pie, it's a deal.

[Laughter.]

Senator OSSOFF. Done. Looking forward to seeing you there. Thanks for your help. Take care.

Secretary VILSACK. Thank you.

Senator PADILLA. Let the record reflect the commitment that has been made here today.

[Laughter.]

Senator PADILLA. I want to thank Secretary Vilsack for joining us. We're grateful for your testimony and insights. We'll now proceed to the second panel. Senator Durbin has returned. I'll return the gavel to him, to introduce the witnesses for the second panel. Those of you who are here in person, please come forward at this time.

Chair DURBIN. Special thanks to the Secretary of Agriculture. I mentioned at the outset, I think it's been 20 years since the Secretary of Agriculture has appeared before the Judiciary Committee. Please don't wait so long to come back. You're always welcome. Thank you for your service to our country.

We have a second panel coming up, and I'll tell you who they are. Linnea Kooistra is a farmer from my home State of Illinois. She and her husband, Joel, own and operate Kooistra Farms, a grain farm in Woodstock. She and Joel were dairy farmers for 40 years, and their dairy herd was one of the highest producing farms in Illinois. Good for you. You received several awards for production and milk quality.

Second, we have Arturo Rodriguez. You're almost legendary status, Mr. Rodriguez. We are honored that you're here. President Emeritus of the United Farm Workers of America, or UFW. Spent 45 years with the UFW, the last 25 as our president, continuing to build the union that Cesar Chavez began.

We've also been joined by Shay Myers. I have a confession to make, Mr. Myers. My television appetite starts with the Bears, obviously, Chicago Bears; baseball; politics; news; and CBS Sunday Morning, which I hardly ever miss. I happened to see that show, I think it was 2 weeks ago, maybe 3. I said to my wife, "This fellow named Myers I would like to have on a panel before the Senate Judiciary Committee," because of the powerful presentation that you made. Mr. Myers is a third-generation farmer and the CEO of Owyhee Produce, based in Idaho, agribusiness.

Honorable Leon Sequeira is a—did I pronounce your name correctly? Thank you—is a witness who is brought before us by Senator Grassley, and he is not here at the moment, but I'll say this about him. Mr. Sequeira is an attorney with two decades of experience in law, politics, and public policy; provides legal and business advice to clients on many matters, including immigration. His clients include some of the Nation's largest H-2A employers. During



your career in and out of Government, you've advised House and Senate offices, Cabinet agencies, and the White House; served as Assistant Secretary of Labor for Policy at the U.S. Department of Labor under President George W. Bush; and you were legal counsel to the Senate Republican leader, Mitch McConnell.

Chair DURBIN. Oh, Okay. Then the other witness who was suggested on the Republican side, who will be with us virtually, is Ms. Jen Sorenson. Grew up on a hog farm in southeast Iowa—now I see why she was nominated—and went on to receive degrees in animal science and journalism from Iowa State. Ms. Sorenson works as director of communications for Iowa Select Farms, a farming business that markets more than 5 million hogs per year; serves as president of the National Pork Producers Council; vice president of the Iowa Pork Producers.

She worked for Iowa Select Farms for the last decade. Prior to that, she worked in the communications department of Iowa Pork Producers, Christensen Farm, and McCormick Company. Finally, she manages all activities of the Deb and Jeff Hansen Foundation, founded in 2006 to show gratitude to members of the armed forces and their family and to deal with issues of food security. Jen and her husband and daughter live in Ankeny—I hope I pronounced it correctly—Iowa.

We're going to start this panel with Linnea Kooistra. Each of you has—first, I need to swear you in, so if you'd please rise and raise your right hand. All of you, please.

[Witnesses are sworn in.]

Thank you. Let the record reflect that they answered in the affirmative. Each of you has 5 minutes, then some questions. Mrs. Kooistra.

**STATEMENT OF LINNEA KOOISTRA, FARMER,  
KOOISTRA FARMS LLC, WOODSTOCK, ILLINOIS**

Mrs. KOOISTRA. Good morning, or I guess it's maybe good afternoon, Chair Durbin, Ranking Member Grassley, and Members of the Committee. Thank you for the opportunity to testify today. My name is Linnea Kooistra. I'm a farmer in Woodstock, Illinois. My husband, Joel, and I were dairy farmers for over 40 years, and we were both raised on dairy farms.

Years ago, labor on farms was all provided by family members, but as dairy farms have increased in size, hired labor has become a critical part of the business. Our dairy herd included 300 cows and 250 young animals. We had three full-time employees. About the year 2000, we switched to an immigrant workforce. We had been having a lot of frustration with our labor pool. It was very hard to find employees willing to be at the farm at 4 in the morning to milk cows. Our day started at 4 and finished at 7 p.m., seven days a week.

After switching to an immigrant workforce, our lives became much easier. Our people were loyal, dedicated workers. They were excellent with the cattle, they were hardworking, and they were honest. They were also highly skilled and well trained. We were extremely proud of our team.

Our decision to sell our cows in 2018 was, in part, because we were worried about losing our workforce. The atmosphere regard-

ing immigrants in the workforce was hostile. We knew we could not run this business without them, and at our age, we decided to sell the cows. This was definitely not an easy decision.

I'm here to tell you how essential these workers are to all dairy farmers and critical to our Nation's food supply. Fifty-one percent of the labor on dairy farms is from immigrants. The dairy farms that employ immigrant labor produce 79 percent of the U.S. milk supply. These are not jobs that are displacing other workers. I ran my dairy farm with my husband for over 40 years, and I can decisively say that the domestic workers just aren't there, even with good pay and good benefits.

Our dairy farmer friends are telling us that the situation has gotten worse since we left the industry. They are in crisis mode today, and I say that with a capital C. The farm families and their dedicated employees are working to the point of exhaustion, which has a direct impact on the quality of the work. They are sacrificing a great deal because there are just not enough workers to serve the labor needs on farms. I'm worried about the toll on their physical and mental health.

Dairy farmers are resilient. They are creative problem solvers, but they cannot fix this problem. Only you can fix it. This labor shortage will not go away after the COVID recovery. The urgency of the workforce crisis cannot be overstated. Dairy farmers are in a difficult spot because they cannot supplement their workforce with H-2A employees. H-2A visas do not work for dairy farms because they need qualified year-round employees.

I'm here to plead with you to help the industry that I love and my friends who are dairy farmers and are up against the wall. One farmer told me he's starting to think about robotic milkers, but he says the cost is astronomical, and he does not know how he can pay for it with his 500 cows. If the U.S. dairy industry lost its foreign-born workforce, it would nearly double retail milk prices and cost the U.S. economy more than \$32 billion, according to a study by Texas A&M University.

These are the choices. Do we want our food produced in this country, where we have the safest food supply in the world? The labor crisis on our farms is an issue of national security, and it must be addressed now. This will require two critical reforms. First, we must protect our current workers. They deserve the chance to work toward citizenship. They are critical to our Nation's food supply, and they are good human beings. Second, we must reform H-2A so dairy farmers have meaningful access to a legal agricultural guest worker program.

The bipartisan bill passed by the House of Representatives would make progress toward achieving both of these goals. I just plead with you, please, come together on a bipartisan basis, as the House did. Reform our immigration policies so that today, and into the future, we can continue to feed our Nation, with a reliable workforce, and have a safe, abundant, and dependable food supply. Thank you, Mr. Chairman.

[The prepared statement of Mrs. Kooistra appears as a submission for the record.]

Chair DURBIN. Thank you, Mrs. Kooistra. Mr. Rodriguez.

**STATEMENT OF ARTURO RODRIGUEZ, PRESIDENT  
EMERITUS, UNITED FARM WORKERS OF AMERICA,  
SAN ANTONIO, TEXAS**

Mr. RODRIGUEZ. Thank you, Chairman Durbin, Ranking Member Grassley, and Members of the Committee. I sit before you as President Emeritus of the United Farm Workers union and a representative of the UFW Foundation. Thank you for the opportunity to address you today.

For nearly two decades, we have been working tirelessly to achieve farmworker legalization and to reform the H-2A visa program, efforts that could have—would not have been possible without the leadership of Senator Feinstein. The ag industry and our food security rely on approximately 2.4 million farmworkers. Roughly half are undocumented, and 10 percent are workers here on H-2A visas. In the United States, represented in this Committee alone, there are more than 1 million farmworkers.

To feed the Nation, farmworkers work to the limits of their endurance. They work with their dairy cows for milk production; tend livestock for our meat; and plant, tend, and harvest fruits and vegetables. Today, we have with us five women that join with me here today, sitting right behind me: Claudia Duran, Lopita Perales, from Michigan, Alma Young, Anayi Santiago, and Diana Rondes from Georgia. Some of them started working in agriculture as young as 5 years old.

Collectively, the five women behind me and their immediate family members have more than 220 years in agriculture. Their families make it possible for Americans to have food on their tables, and that's why we're here today, because their families have earned a path to legalization.

Lack of legal status, the isolated nature of agricultural work, and a shameful history of excluding the industry from basic labor laws makes farmworkers vulnerable to a range of abuses. The H-2A program is the visa category linked to the highest number of documented human trafficking cases, cases that occurred in every State represented in this Committee, with Georgia, California, North Carolina, Louisiana, and Texas among the top five.

Farmworkers who feed us have earned the right to live and work without fear, to be treated with respect, and to hold their children, spouses, or parents again, to visit loved ones when they are ill and attend funerals when they depart.

To achieve a farmworker legalization, we have made lots of compromises. Together with employers, we have struck three major different bipartisan deals. In 2006, and again in 2013, bills to legalize our farm workforce and reform the H-2A program were integrated into broader immigration bills that passed this chamber with overwhelming support. In 2019, during a dramatically different political environment, we spent 7 months in negotiations with ag employers, Democrats, and Republicans. We made serious concessions again in what is now the Farm Workforce Modernization Act, a bill that has passed the House twice, now, with more than 30 Republicans supporting that bill.

Some of these changes have been painful. The bill creates an earned, lengthy, and optional path for farmworkers to seek permanent legal status. Putting farmworkers on a long path to perma-

ment protections, excluding them from access to social safety net programs, and imposing a steep fine for their essential work is not the best way to honor the people who have been breaking their bodies and putting their lives at risk to feed the Nation. We agreed to these compromises.

We also agreed to provide employers with a 1-year free—freeze on wages, an annual cap on wage fluctuations, and access to the H-2A program for year-round employers. These concessions, along with a number of changes to streamline the H-2A program, give H-2A employers the ability to predict costs over the long term and will conservatively provide ag employers with more than \$2.8 billion in economic benefits over the next 10 years. It also includes E-Verify.

The time is now. We have a House of Representatives that has passed this bill twice, a Chair of the Judiciary Committee who is committed to farmworker legalization. We have a President that is ready to sign it, and now we need the Senate to use every tool in its disposal to honor the people that we rely on to feed our Nation and bring stability to the ag industry. Thank you very much.

[The prepared statement of Mr. Rodriguez appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Rodriguez. Mr. Myers.

**STATEMENT OF SHAY MYERS, CEO AND  
FARMER, OWYHEE PRODUCE, ONTARIO, OREGON**

Mr. MYERS. I'd like to start by thanking Chairman Durbin and Ranking Member Grassley and the rest of the distinguished Judiciary Committee for the opportunity to share my experience and speak on an issue that's very near and dear to my heart. This bill isn't about labor shortage and people skipping ahead of the line. This is about the American Dream, the American voter, and the viability of an America that allows the dreamers to dream and the voters to create the change that they dream of.

I grew up in a very special place called Nyssa, Oregon. It has a population of just 3,000 people, about 50 percent white and 50 percent Latino. Those Latino folks were almost exclusively from Mexico and arrived in our area, at least originally arrived, as migrant field workers.

When I was in school and my friend's name was Martha or Mario, out of an unspoken cultural love and respect, we called them Martha or Mario. With two different cultures together, we ate each other's food, tried to speak each other's Native language, and most importantly, we worked side by side in fields and on the farms. Admittedly, some of us only did this work for extra spending cash, while others did it out of necessity, to help pay rent and keep the lights on. Regardless of the reason, we understood each other better because of it.

That's why today, as a friend, and as a farmer, I'm here to add my voice to that of Latino farmworkers. These farmworkers come to the United States from Mexico for the same reason that my great-grandparents came from Germany and for the same reason that yours might have come from Ireland, Scotland, Poland, Cuba, Holland, Britain, Russia, Japan, or China. They all come to create

a better future for themselves and especially a better future for their children.

Let's be honest with ourselves. The last 36 years of policies and political failure have led us here. Now is the time to act. It's not ethical, it's not economically viable, and it's not safe to kick this can down the road yet again. It's not ethical because, for the last two and a half decades, we allowed people to cross our southern border, and the system allowed them to be employed in the United States. If you found yourself in a position where you're unable to clothe and feed your family, can you honestly answer that you would not do the same? It's also not ethical for Congress to fail to act, again.

It's not economically viable because America's farms, ranches, and dairies cannot operate their businesses without sufficient labor. This year on our asparagus farm, we lost 100 percent of the season's profits because we were unable to get domestic workers when our 36 H-2A workers were delayed at the border for 90 days beyond their date of need. Ninety days after we needed them. We lost nearly 300,000 pounds of asparagus. I had to go online and give it all away to any food pantry or family that was willing to come and harvest it.

It's not safe, because if we can't get workers here, we can't harvest the crops. If we can't harvest the crops, we can't feed you. Sure, we could switch to mechanize low-labor crops like corn, soy, barley, and wheat, but it's not the best use of our Nation's water, soil, and other resources. Besides, do we really need 10 million more acres of corn? America needs to grow and produce what's essential to her survival, and fruits and vegetables, not just corn and soy, are basic necessities for a healthy society and economy.

If you want to see the canary in the coal mine, when it comes to U.S. vegetable production, let's look at U.S. asparagus production. Acres harvested in the U.S.A. have plummeted over 85 percent since 2004. California now only has 600 acres of asparagus. As recently as 2004, they had 25,000.

Asparagus is an extremely difficult crop to harvest. It requires long hours and many hours spent over—bent over at the waist. Because it is so physically challenging and because labor is so scarce, it was the first crop to leave the United States. Since 1994, over 90 percent of all asparagus production has left this country. I still grow asparagus, but I can't for much longer if we don't have a workforce and an immigration policy that works, and I'm not alone on this.

American voters want fair wages, lower carbon emissions, and the safest food, all grown with as few pesticides as possible. Instead, our vegetable production continues to shift south of the border, where workers earn \$8 per day, versus a minimum of \$150 per day on American farms like mine. If these other countries—in these other countries, there are no enforced emission standards. If you travel south of the border, you'll see smoke and fumes that are allowed to billow from smokestacks and exhaust pipes.

Don't get me started on food safety standards or pesticide use restrictions in these other countries. While visiting farms in Mexico and Central America, I have personally witnessed raw sewage

being mixed into irrigation water and pesticides not allowed in the United States for decades being sprayed on crops and on workers.

This is going to sound like hyperbole, but I believe that if we continue on our current trajectory, and without some protections for cheap imports, virtually all vegetable production, all vegetable production in the United States, will end within a decade. I strongly urge this Committee to take action on the farmworker modernization act, which must include green cards for those that keep America fed and consistent access to labor for farmers through the H-2A visas. The Farm Workforce Modernization Act is one step. Many more are desperately needed in the direction of ethically right, economic—economically smart, and safe policy. Thank you all for your time. I look forward to questions.

[The prepared statement of Mr. Myers appears as a submission for the record.]

Chair DURBIN. Thanks, Mr. Myers. Mr. Sequeira.

**STATEMENT OF LEON SEQUEIRA, FORMER  
ASSISTANT SECRETARY OF LABOR FOR POLICY,  
ARLINGTON, VIRGINIA**

Mr. SEQUEIRA. Thank you. Good—Chairman Durbin, Ranking Member Grassley, and Members of the Committee, appreciate the opportunity to testify today about the importance of farmworkers to our economy and how to best address the shortage of workers on our Nation's farms.

I've worked on employment and immigration policy for nearly 20 years, including as a staffer in this body, as an Assistant Secretary of Labor, and advising clients in private practice. I represent employers across the country, ranging from small family farms with a few employees to complex family farming operations with thousands of employees. Let me begin by noting that I'm testifying today in my personal capacity and not on behalf of any client.

The worker shortage on our farms continues to get worse with each passing year, and it is threatening the future viability of labor-intensive agriculture in America. Farm work is honest, honorable, and necessary work, but there simply are not enough U.S. workers willing to do it. That has been true for decades, and it is true regardless of the unemployment rate.

Congress long ago recognized this and created the H-2 visa program in 1952, which was later renamed the H-2A program in 1986. That program today remains the only option for farmers to fill their seasonal labor needs. Throughout its history, the program has been plagued by complicated regulations, bureaucratic inefficiencies, high cost, processing delays, and the exclusion of some agricultural sectors altogether. Despite its numerous shortcomings, farmers simply have no other option.

The steadily worsening labor situation has produced dramatic growth in the H-2A program over the last 15 years. In 2005, the Department of Labor certified about 40,000–48,000 positions as eligible to be filled by H-2A workers. By 2020, that number was 275,000. These numbers obscure the fact that farmers are not thriving in the H-2A program. Growth and use of the program has actually slowed in recent years, as the constantly spiraling costs

put American farmers at a serious disadvantage in the marketplace.

Recently, H-2A employers in some States have seen their mandated wage rates increase by 10, 15, and even 23 percent in a single year, far exceeding general inflation and wage increases in any other part of the economy. Growers face numerous other costs associated with the program, including a requirement to provide free housing. Labor costs for a specialty crop farmer can be 40 percent or more of their total production costs. As H-2A costs rise, farmers are falling further behind.

In recent years, most farms have seen little, if any, increase in the price they receive for their crops. There is no margin to absorb rising production costs when you are competing for space on grocery store shelves with imported fruits and vegetables. Americans want cheap food, and bad Government policy is pricing U.S. farmers out of the market. Thirty years ago, the U.S. was a global net exporter of fruits and vegetables. Today, we import more than twice as much as we export.

No more—nowhere is this disparity more evident than in our trade with Mexico. In the past 15 years, imports from Mexico into the U.S. have tripled. In 2019, we imported more than \$15 billion worth of fruits and vegetables from Mexico, while exporting just over a billion dollars' worth. Much of this is explained by the costs of production in each country. In 2021, the minimum wage in Mexico is about \$7 per day. By contrast, the nationwide average wage in the H-2A program is more than \$14 per hour: 16 times higher than Mexico.

It does not take a PhD in economics to recognize that fruits and vegetables can be grown and harvested in Mexico, shipped to the U.S., and sold in grocery stores for prices far below what it costs a U.S. farmer just to grow the crop.

Recent legislation passed by the House, while it may be well intentioned, does not meaningfully address this problem. Although the House bill proposes a few limited improvements to the H-2A program, it also contains numerous provisions that would actually make the program even more expensive, more bureaucratic, and impose huge new legal liability on farmers. The House bill would also legalize undocumented farmworkers. While there may be reasons to extend legal status to these workers, doing so will not alleviate the labor shortages on American farms. In fact, as we saw in the 1986 legalization, these workers will soon leave the farm in pursuit of other opportunities in the economy, leading to further farm labor shortages.

Mr. Chairman, hopefully this Committee will have an opportunity to consider legislation that provides farmers with an H-2A program that is responsive to modern agriculture and designed to ensure that American farms can remain competitive in an international marketplace. An updated H-2A program must be simpler, more efficient, less costly, and accessible to all agricultural employers. Thank you again for the opportunity today.

[The prepared statement of Mr. Sequeira appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Sequeira. Ms. Sorenson.

**STATEMENT OF JEN SORENSON, PRESIDENT,  
NATIONAL PORK PRODUCERS COUNCIL, URBANDALE, IOWA**

Ms. SORENSON. Chairman Durbin, Ranking Member Grassley, and Members of the Committee, I appreciate the opportunity to discuss an issue of critical importance to U.S. pork producers and all of U.S. livestock agriculture. My name is Jen Sorenson. I'm the communications director for Iowa Select Farms in West Des Moines, Iowa, and president of the National Pork Producers Council, a national association representing the interests of more than 60,000 U.S. pork producers.

The U.S. pork industry supports more than 50—500,000 domestic jobs, generates more than 39 billion in gross national product, and exports an increasing volume of product which in 2020 was valued at more than \$7.7 billion. U.S. hog farmers are proud to provide an affordable and nutritious source of protein to consumers at home and around the globe. Unfortunately, the U.S. pork industry is suffering from a serious labor shortage negatively impacting our farms and our processing plants.

As any pork producer will tell you, there is no pork season. It requires a full-time, hardworking, and dedicated workforce on our farms and processing plants. There is an increasing need for employees throughout the entire pork supply chain, but there has been a steady decline in rural population growth, where most farms and harvest facilities are located. This has resulted in a labor shortage for U.S. hog farmers and harvest facility operators.

Statistics suggest pork industry wages average roughly \$14.75 an hour across the country, including many in rural areas where the local minimum wage is much lower. However, despite solid wages and benefits, according to a study by economists at Iowa State University, native-born workers and permanent residents simply cannot offset the need for foreign-born labor.

Current visa programs designed for seasonal agriculture, such as the H-2A visa program, fail to meet the workforce needs of U.S. pork producers and other year-round livestock farmers. More than ever, we need a dedicated year-round workforce. The U.S. pork industry is proud of our diversity on our farms and across the entire supply chain. For many foreign-born employees, a position in the U.S. pork industry has provided and created the opportunity to come to our country and become an integral part of our rural communities.

Last month, NPPC launched a campaign, "Year-Round Pork Needs Year-Round Labor," to highlight the vital role of foreign-born workers—foreign-born workers across our industry. One of our foreign-born employees featured in the campaign, Cristina Carmona, is a technical training manager at Prestage Farms in Oklahoma. Cristina, who was born in Mexico and grew up raising cattle, came to the United States in 2003 to obtain her master's degree in agribusiness.

She is now the lead international recruiter at Prestage Farms, hiring foreign-born employees to help with hog production. She's a stellar employee who is well respected amongst her colleagues and in 2020 won the Excellence Award from the Oklahoma Pork Council. Working in the U.S. pork industry has created opportunity for Cristina and so many others, to come to the United States and be-



come integrated in their communities. We are proud of our diversity throughout the pork supply chain and need visa reform to enable the continued production of our year-round industry.

Earlier this year, the U.S. House of Representatives passed the farmworker modernization act of 2021, which seeks to address agriculture labor reform by offering a capped number of year-round visas. While NPPC believes this bill is a step in the right direction, a cap will force different sectors of livestock agriculture to compete against one another for the same limited number of year-round visas. In that scenario—scenario, no one wins, and ultimately the consumer will be punished with reduced pork supplies and higher prices at the store.

If the labor shortage is not addressed, it could lead to farms and packing plants shutting down. As a result, pork production would be constrained, leading to higher food prices for consumers and the United States becoming an unreliable trading partner for the many countries around the world that rely on our pork.

NPPC urges Congress to address this pressing matter by opening the H-2A visa program to year-round labor without a cap. Our industry is vital to the U.S. economy and prosperity in our rural communities. Our foreign-born workforce is an essential part of our supply chain, and we need visa reform to reflect our year-round needs. We look forward to working with Members of this Committee and other lawmakers to achieve this outcome. Thank you for the opportunity to testify, and I look forward to questions.

[The prepared statement of Ms. Sorenson appears as a submission for the record.]

Chair DURBIN. Thanks, Ms. Sorenson, for your testimony. Thanks to all of you. I'm glad you were here for the earlier part of the hearing, when Members were asking Secretary Vilsack questions, because I think it puts into political perspective why we have failed for 36 years, 36 years, to pass any immigration reform bills.

You'd think this Nation of immigrants would have to modify its laws from time to time to reflect the reality of employment in America and other issues that come before us, and yet we have just been stopped in our tracks, unable to move. Some of the statements made earlier by a few of my colleagues may give you some insight into why that is the case.

I happen to disagree with the premise, and the premise seems to be that if we allow one person to receive what they call "amnesty" and become a citizen of the United States, the message is going to go out around the world, "The doors are open in the United States. You can find your way in here. All you have to do is just present yourself at the border." I think there are a million reasons, at least a million reasons, why that argument fails, because each year we allow a million people to become citizens of this country.

Naturalization ceremonies are going on today. In fact, one of our staffers has a father who's going through a naturalization ceremony today. A million newcomers to America show up regularly. That's just part of who we are. Yet that doesn't send the message to the whole world that the doors are wide open. Many people have struggled their whole lifetime to be eligible for citizenship.

Mr. Rodriguez, you know these workers better than anybody. Tell me what you think about the argument about amnesty and the fact that we're dealing with diseased, terrorist drug runners who are going to come to this country and make it weaker and worse?

Mr. RODRIGUEZ. I think the reality is that we have worked very hard with the ag industry, as well as with Republicans and Democrats, especially in these last few years, in trying to develop the Farm Workforce Modernization Act, that legislation to ensure that, in fact, those workers that are working here today in agriculture will continue working in agriculture for years to come. As a result, we felt that that is not going to bring as a result of other folks coming into the country because of the fact that we're doing that.

One, they can't even get into this legislation, they can't even be a part of the program, unless in the two previous years they worked a certain amount of time in agriculture—just to enter into the program itself and to get certified agriculture worker status. That alone prevents an onslaught of people coming into our country in order to be able to be a part of this program. That won't be allowed. In addition, for them to attain any other type of legal status in the country, they're going to have to minimally work another four years in agriculture. Minimally.

Chair DURBIN. Mr. Myers, like some of the other witnesses, you made a great sacrifice to come here today, from the Idaho-Oregon border. I'm really digging—I'm really appreciating your presentation, first on CBS and then again today. You just don't seem like the likely witness to be coming before us with your message, an Idaho-Oregon asparagus farmer who is basically telling us we've got to give these people some dignity and some opportunity. Is that a factor of growing up in the community that you described?

Mr. MYERS. Absolutely, it's a factor of that. I've been privileged to live in—lots of folks think of homogenous small towns. We have a multi-cultural and a very diverse group of people that live in my hometown, and that—growing up, that appreciation, that love that we have for one another has formed, you know, my opinion of a lot of things. I will add, the personal experiences that I've seen, with those trying to work toward DACA or with employees or with schoolmates, and the reality of the immigration system, their circumstances, and what the results were and the consequences of decisions that others made for them.

Chair DURBIN. Just—I was consulting with Senator Grassley because we have an additional roll call that we're facing. Mr. Sequeira, do you dispute the thing—the statement that has been made repeatedly that half of the farmworkers in this country are undocumented?

Mr. SEQUEIRA. I think that's what the best data available shows. The Department of Labor conducts regular surveys of farmworkers, in-person surveys, and the result of those show that at least 50 percent admit to being in the country without legal status.

Chair DURBIN. If we were to rigidly enforce the laws and they would be deported, then what you predicted, the decline of American fruits and vegetables being grown and exported, would probably be accelerated, wouldn't it?

Mr. SEQUEIRA. I think that's fair, yes.

Chair DURBIN. Yes, I think that's fair, too. I might also say that I happen to agree with Mr. Myers that I think consumers are becoming more discerning and asking more questions about what they're buying, and I've got a lot of friends who look very carefully at the origin of fruits and vegetables and lean, obviously, toward the United States, where there are higher standards. Mr. Sequeira, do you oppose the notion of a pathway to citizenship for those undocumented farmworkers?

Mr. SEQUEIRA. Personally, I don't have an opinion on that issue. I think the question is, what's the purpose for the legalization? As I noted in my testimony, I think there are many good reasons that people could put forward to legalize the current undocumented workforce. For me, the question is, what does that do for agriculture and the availability of labor? And—

Chair DURBIN. So let's—

Mr. SEQUEIRA [continuing]. While you may legalize, certainly, workers who are here in illegal status, that doesn't do anything to help the current labor shortage.

Chair DURBIN. Let's use the example Secretary Vilsack used. He ran into a farmworker who'd been there 20 years, working as a farmworker, unable to leave the country, because he's undocumented, to visit his family in Mexico. If this became the law, he wouldn't instantly become a citizen and decide to open a franchise restaurant. He has 9 years, at least, to wait before he becomes naturalized. At least 9 years to wait. The suggestion is, at least to me, he's going to continue to be a farmworker for that period of time, but he gets to visit his family. Is that such a bad thing?

Mr. SEQUEIRA. Again, Senator, that's a question for this body to decide. I look at this issue from the perspective of my clients and the agricultural workforce. These people are working currently in agriculture, performing very difficult jobs and, certainly many of them, without legal status. Providing them legal status certainly would have benefits to those workers and to their employers, but again, that doesn't help larger agricultural problem of labor shortages, and that can only be done through a reform of the visa program.

The person that you mentioned, I don't think that's an uncommon story. Many people have come across the border without authorization and have essentially become trapped in the U.S. because of a failure of the visa system. If they had an ability to obtain a visa and travel back and forth across the border, many would. From what my clients tell me, most farmworkers aren't interested in becoming U.S. citizens. They want legal status to come here and work, because they can earn 16 times more than they can earn at home.

Chair DURBIN. That was a shocking number that I heard from you, Mr. Myers. \$150 a day? That's what you pay the farmworkers, which basically—

Mr. MYERS. Correct.

Chair DURBIN. If you do the math, that's what it turns out to be, as opposed to \$8 a day, if they're working in Mexico. That's—Senator Grassley?

Senator GRASSLEY. Yes. First of all, I want to apologize and thank Senator Durbin for introducing my guests. I was supposed

to introduce Leon Sequeira and my constituent, Ms. Sorenson, but every Wednesday at noon, I always have a telephone news conference back to Iowa with my journalists in Iowa.

I'm going to start out with Ms. Sorenson. I know that the National Pork Producers Councils and others have long called for agricultural employers with year-round employment needs to have access to the H-2A program. This is an issue that I've heard at many of my county meetings, and I've had 85 of those meetings so far this year. Can you explain some of the challenges your members and similar employers face for not being able to participate in the H-2A program?

Ms. SORENSON. Absolutely. I, too, as president of the National Pork Producers Council, hear repeatedly from farmers of all shapes and sizes that there are significant labor shortages on our farms because of—our rural populations are declining and people are moving to urban centers. We continue to recruit out of high school, we continue to recruit out of college, we continue to place a heavy focus on recruiting from our local labor availability and labor sheds, but there is still a significant gap in staffing on our farms, and there is no pork season.

We are 24/7. Every single day we are out there showing the barns and taking care of our animals. Estimations show that we are 25 to 30 percent short on our farms throughout the U.S. pork industry and also in our packing plants. The H-2A program, an uncapped, year-round H-2A program, is the only type of program that matches the size of the issues our industry currently faces.

Senator GRASSLEY. You expressed in your opening testimony some concerns you have with the bill before us. Can you explain in a little more detail why you find the bill's cap on the number of H-2A workers that can go to year-round ag employees to be problematic and how it would impact the employers that you represent?

Ms. SORENSON. I think it goes back to just the significant volume of employee and worker shortages that we have on our farms. If we—we would not want to find ourselves in the situation where we are competing against our fellow livestock farmers for a specific number of workers, and that is why we ask for an uncapped H-2A program and also a year-round H-2A program. We were definitely in support of the farmworker modernization act. With those two pieces amended, it would be an excellent solution for U.S. pork producers as we look at fulfilling labor on our farms.

Senator GRASSLEY. I'm going to go to Mr. Sequeira. I know your testimony references both the extreme volatility in the H-2A wage rates, along with what in your view is a flawed methodology used to calculate this wage rate. For the benefit of the Committee, can you explain how the H-2A adverse effect wage rate is calculated and the extent to which the—it poses challenge for farmers and agricultural employees?

Mr. SEQUEIRA. I could, Senator, depending on how much time you have. It's not an easy issue to explain, but in general, the H-2A wage rate is determined based upon a labor survey administered by the Department of Agriculture. Based upon responses they obtain from farmers, they calculate average wage rates over multistate areas. That wage rate then is used by the Department

of Labor as the mandatory minimum wage to be paid in the program.

It is extremely volatile, as I noted in my testimony. It can swing virtually always upwards by 10, 15, even 20 percent or more. Over the last five years, I think on average it's been up 20 percent, but again, depending on where you live in the country, it could be much higher.

Senator GRASSLEY. This will be my last program, gives you a chance to tell us some changes to the bill. Knowing that the act fails—falls short, what are your top two or three reforms you think Congress should consider making the H-2A program in order to make it more workable for farmers?

Mr. SEQUEIRA. In addition to what's already been mentioned, I think undoubtedly the cost structure in the program, as proposed in the Farm Workforce Modernization Act, is unworkable. In fact, it's worse than the status quo. It would fundamentally change the way wage rates are administered, leading to even higher wages in the future.

Beyond that, the bill opens up an entirely—several entire new avenues for litigation against farmers, includes new private right of actions allowing workers to sue farmers, authorizes class actions with mandatory fees—mandatory awards. That would be detrimental, certainly, to all of agriculture, although it might be somewhat beneficial to lawyers. I don't think it's a good idea and good public policy.

Senator GRASSLEY. No. I thank you all for participating in this hearing and particularly thank my—or my constituent from Iowa, Ms. Sorenson. Thank you. I'll see you—and thank you, Mr. Chairman.

Senator PADILLA [presiding]. Thank you, Senator Grassley. Thank you again to all the witnesses for participating here today. A couple of questions, and unless another Member joins us, I may be the last one with questions before we adjourn.

Let me start, coming back to the urgent topic of COVID. Farmworkers were deemed essential during the pandemic, as we've discussed repeatedly here today, but as a result, farmworkers continue to work on the front lines of our food supply chains and often had few resources to protect themselves from the COVID-19 virus. Nearly 600,000 farmworkers contracted COVID, and the food and agricultural workers in California, I know, have experienced the highest excess mortality during the pandemic, with a 39 percent increase compared to previous years.

For Latinos, specifically, the mortality rate increase reached 59 percent. According to findings from the National Agricultural Workers Survey, about one-third of U.S. farmworkers live below the Federal poverty level, and fewer than half have health insurance or sufficient paid sick leave. It's not a good combination we're describing here. Many do not qualify for unemployment insurance or other social safety nets because of their undocumented status.

These are essential workers. As I mentioned in my earlier statement, I introduced the Citizenship for Essential Workers Act as my first bill, to provide a pathway to permanency for farmworkers and all essential workers. Mr. Rodriguez, can you discuss how the im-

migration status of farmworkers has impacted them during the pandemic?

Mr. RODRIGUEZ. It makes it extremely difficult. I mean, here you have a worker that doesn't have legal status in our country, and they feel, first of all, obligated because of the work that they do. That's what they're skilled at, that's what they've been doing, that's what they're knowledgeable about doing, and it has been mentioned here today, I mean, that's what—that's the way they contribute to our Nation in regards to making sure we have a secure food supply.

Because the pandemic came was not a reason for them to leave and discontinue working in agriculture. They continued working. They showed up every day. They made sure that our crops production continued here within this Nation, dairy farms, working there, and so forth. They'll continue to do so, despite the fact that they did all this at great risk.

Senator PADILLA. Let me just say the continued commitment and work, contributions to the supply chain, to the economy, despite the risks, despite the dangers, is nothing less than heroic.

My next question is for Ms. Sorenson. As I made reference again to my Citizenship for Essential Workers Act, it would cover more than 5 million immigrant workers that have continued to work in a number of sectors, not just agriculture, as essential workers making sacrifices for all Americans throughout the pandemic.

These workers and their households have paid \$47.6 billion in Federal taxes alone, an additional \$25.5 billion in State and local taxes each and every year: significant contributions to our Nation's economy. However, they don't have the pathway to permanency and live in—live and work in constant fear of deportation.

Ms. Sorenson, I heard you say earlier that you support permanent status for meatpackers. I just wanted to make sure I heard that clearly, again, for the record. Meatpackers, as you know, are not eligible for H-2A status, which you mentioned causes difficulty for pork producers to hire enough workers to carry out their operations. If enacted, this bill would—my bill would put meatpackers on that pathway to citizenship. The question is a simple yes or no. Am I correct in understanding you do support a pathway to citizenship for the workers in your industry?

Ms. SORENSON. I'm here to talk about the H-2A program, and I want to focus on the pieces that provide certainty to packers and to farmers, and—

Senator PADILLA. All right. I know that a pathway to citizenship certainly provides that certainty and fairness for workers in your industry. As time is running out, I do have one more question that I think is critical to mention, as we're facing not just drought but constant extreme heat conditions throughout the west. As temperatures continue to rise across the country, more and more farmworkers are at risk of experiencing heat illness, which can cause heat cramps, organ damage, heat exhaustion, stroke, or even death.

In fact, between 1992 and 2017, heat stress injuries killed 815 U.S. workers and seriously injured more than 70,000. A recent report published by UCLA found that the financial costs of heat-related injuries in California alone are between \$750 million and

\$1.25 billion dollars each year. The study also found that on days with high temperatures above 90 degrees Fahrenheit, very common in the Central Valley and other parts of the State, workers have a 6 to 9 percent higher risk of injuries. That's particularly alarming, given the ongoing increasing impacts of climate change.

The Asuncion Valdivia Heat Illness and Fatality Prevention Act, which I'm a proud Co-Sponsor of, directs OSHA to implement a heat safety standard nationwide. California adopted its own heat stress standards, and as a result, workplace injuries declined significantly. I was a proud supporter of those State workplace standards in my prior service in State government. Unfortunately, it's not the case for vulnerable workers across the country, and I believe we need a National standard in place.

Mr. Rodriguez, can you discuss what recourse immigrant farmworkers have if they suffer from heat-related injuries?

Mr. RODRIGUEZ. Certainly in the State of California, we do have laws and legislation. In fact, when that legislation was passed, you drive down Highway 5 now and Highway 99 through the Central Valley, you'll see farmers that have put up coverings, tents, and so forth, there for the workers to go when they actually get exposed to the heat, when the temperatures rise to be 90 degrees and up. They are provided with the water and so forth.

The unfortunate thing is that—that is one of the few States that actually have those protections for farmworkers, so that the majority of farmworkers still, in this country, are exposed to heat conditions that have caused, as you said, illnesses that have transpired time and time again, and even deaths. We recently had one in the State of Oregon that prompted State legislation, State regulations to take place there because of the fact that farmworkers were dying as a—because of the exposure to heat that they're experiencing right now.

Senator PADILLA. Thank you, Mr. Rodriguez. Having just seen with my own eyes the statistics of the impact of that State bill, but I've seen with my own eyes the impact in the fields, having toured repeatedly over the years, including this last—just this last Friday in and around Fresno. Amazing what a simple concept of a little bit of shade, little bit of fresh, cool water, and even access to a restroom in the fields can make.

It shouldn't take State law to bring about those improvements in working conditions for agricultural workers, but if it does require State law to do it, California probably has done it, and I believe essential farmworkers across the country, regardless of the State that you live and work in, deserve the same protections.

I want to thank all the witnesses for appearing before the Committee today and for your participation. On behalf of Senator Durbin, I'm going to begin to conclude this hearing today. Before I do, I want to move to enter a number of statements into the record from a variety of organizations, including the Economic Policy Institute, Farmworker Justice, and Immigration Hub.

Without objection, these statements will be included. The record will close 1 week from today.

In closing, this has been a great conversation, great discussion. As we've referenced so often, the Farm Workforce Modernization Act—the House passed a bill, this bill, that would provide a path

to citizenship for undocumented farmworkers and their families, meaning that they would be able to continue to do the work that this Federal Government has deemed essential, would continue to be able to do that work, but be able to do so without living in fear of being separated from their families.

The Farm Workforce Modernization Act illustrates the kind of reforms our broken immigration system needs to help generate long-term economic growth, establishing a more secure foundation for consumers, for workers, and for employers, while growing our tax base and securing our food supply chain.

It's our turn to act, in the U.S. Senate. On behalf of Chairman Durbin and myself, we pledge to do everything in our power—Senator Durbin as Chair, myself as a Member, Chair of the Judiciary Subcommittee on Immigration, to move forward legislation to provide a pathway to citizenship for undocumented farmworkers. Thank you all, and with that, this hearing is adjourned.

[Whereupon, at 1:02 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]



Statement of Linnea Kooistra, Farm Business Owner and Partner of Kooistra Farms

U.S. Senate Judiciary Committee

July 21, 2021

Good morning Chair Durbin, Ranking Member Grassley, and Members of the Committee.

Thank you for the opportunity to testify today.

My name is Linnea Kooistra. I am a farmer in Woodstock IL. My family roots in farming extend back over ten generations in this country. My husband Joel and I were dairy farmers for over forty years, and we were both raised on dairy farms.

Dairy farming has evolved over the years but the things that have stayed the same are the need for daily care and feeding of the animals, and the stewardship of the land. Years ago, labor was largely provided by family with maybe one hired employee. As dairy herds increased in size, hired labor became a critical part of our business.

My husband and I had about 300 cows and 250 young animals to care for and milk every day. We had three full time employees and two part time employees. Right around the year 2000, we switched to an immigrant workforce. We had been having a lot of frustration with our labor pool. It was very hard to find employees willing to be here at 4 in the morning to milk cows. Our day started at 4 and finished about 7 pm, seven days a week. Having a dedicated workforce is essential.

After switching to an immigrant workforce our lives became much easier. Our people were loyal, dedicated workers. If one person was sick, we could call another at the last minute, and they would be here, even on their day off. They were excellent with the cattle, eager to learn, hard-working, and honest. They were also highly skilled and well trained. Working on a dairy farm requires veterinary and computer skills, following protocols to ensure milk quality, animal health and well-being, and maintenance and repair of equipment. We were extremely proud of our team.

Our decision to sell the cows in 2018 was in part because we were worried about losing our workforce. The atmosphere regarding immigrants in the workforce was hostile. We knew we could not run this business without them, and at our age, we decided to sell the cows. This was a very difficult decision for us after a career doing what we loved.

I am here to tell you how essential these workers are to ALL dairy farmers, and critical to our nation's food supply. 51% of the labor on dairy farms is from immigrants. The dairy farms that employ immigrant labor produce 79% of the U.S. milk supply. These are not jobs that are displacing other workers. Again, I ran my dairy farm with my husband for over 40 years, and I can decisively say that the domestic workers just aren't there, even with good pay and benefits.

We provided good wages, paid vacation, as well as health insurance and a small life insurance policy to our employees, and still we could not get workers, until we expanded our workforce to include immigrants.

Our dairy farmer friends are telling us that the situation has gotten worse since we left the industry. They are in crisis mode today. The situation has become very dire. People are working double shifts. They have had to cancel days off. People are working to the point of exhaustion which has an impact on quality of the work. We all know that when you are tired you make more mistakes. The farm families and their dedicated employees are sacrificing a great deal because there are just not enough workers to serve the labor needs on farms. I am worried about the toll on their physical and mental health. They are desperate.

Dairy farmers are resilient. They are creative problem solvers. But they cannot fix this problem. Only you can fix it.

On a dairy farm, you cannot just close the door for a few days because you don't have help. You can't decide to slow down production because you don't have help. Cows need to be milked, at least twice a day, every day. They need to be fed and cared for every day. Farmers are responsible for their wellbeing, as well as operating a business.

This labor shortage will not go away after the Covid-19 recovery. This is an ongoing issue that continues to get worse every day. The urgency of the workforce crisis cannot be overstated. Dairy farmers are in an especially difficult spot because they cannot supplement their workforce with H-2A employees. H-2A visas do not work for dairy farms because we need qualified year-round employees. Small farms will continue to exit the industry if they cannot get help. Larger farms have even a greater need for a dependable hired labor force.

I am here to plead with you to help the industry that I love, but I know there are many segments of our agricultural economy that also rely on immigrants. I am here because I want to help my friends who are dairy farmers and are up against the wall. One farmer told me they are starting to think about robotic milkers, but he says the cost is astronomical and he does not know how he can pay for it with his 500 cows. If the U.S. Dairy industry lost its foreign born workforce, it would nearly double retail milk prices and cost the U.S. economy more than \$32 billion, according to a study by Texas A & M University.

These are the choices. Do we want our food produced in this country where we have the safest food supply in the world? The ag labor crisis on our farms is an issue of national security that must be addressed, and it must be addressed now. This requires two critical reforms.

First, we must protect our current workers. The current workers on dairy farms deserve the chance to work toward citizenship. They are critical to our nation's food supply. We cannot do this without them. They are honest, reliable, dedicated, good human beings. Many have been

working here for decades, have raised their families, and are vital members of their community. Like farmers, their income stays local, turning over several times in support of local businesses.

Second, we must reform H-2A so dairy farmers have real access to a legal agricultural guestworker program. The bipartisan Farm Workforce Modernization Act (FWMA) passed by the House of Representatives provides both current worker protections and H-2A reforms. Under the bill, our current agricultural workers would have the chance to stay and work on farms through an earned requirement, which benefits farmers *and* our current, trained labor force. FWMA would also reform H-2A in important ways, including giving dairy and other year-round producers limited access to the program. Both of these components are essential to addressing the ag labor crisis.

Please come together on a bipartisan basis as the House did and reform our immigration policies, so that today and into the future we can continue to feed our nation with a reliable workforce and have a safe, abundant, and dependable food supply.

**Testimony of Shay Myers**  
**Before the U.S. Senate Judiciary Committee**  
**“Immigrant Farmworkers are Essential to Feeding America”**  
**July 21, 2021**

I’d like to start by thanking Chairman Durbin, Ranking Member Grassley, and the rest of the distinguished Judiciary Committee for the opportunity to share my experience and speak on an issue that is very important to me. I join you today as a lifelong farmer and a constituent.

This bill isn’t about labor shortages and people skipping ahead of the line. This is about the American dream, the American voter, and the viability of an America that allows the dreamer to dream and the voter to create the change they dream of!

I grew up in a very special place called Nyssa, Oregon. It has a population of just 3000, approximately 50% white and 50% Latino. Those Latino folks were almost exclusively from Mexico and arrived in our area, at least originally arrived, as migrant field workers.

When I was in school and my friend’s name was Martha or Mario, out of an unspoken cultural love and respect, we called them Martha or Mario. With two different cultures together we ate each other’s food, tried to speak each other’s native language, and most importantly we worked side-by-side in the fields and on the farms. Admittedly, some of us only did the work for extra spending cash while others did it out of necessity to help their family pay rent and keep the lights on. Regardless of the reason, we understood each other better because of it.

That’s why today as a Friend and as a Farmer I am here to add my voice to those of Latino farm workers. These farmworkers come, to the United States from Mexico, for the same reason that my Great-Great Grandparents came from Germany. And for the same reason that yours

might've come from Ireland, Scotland, Poland, Holland, Britain, Russia, Japan, or China. They all come to create a better future for themselves, but especially a better future for their children.

Let's be honest with ourselves, the last 36 years of policies and political failures have led us here. Now is the time to act. It's not ethical, it's not economically viable, and it's not safe to kick this can down the road yet again.

It's not ethical because for at least 2.5 decades we allowed people to cross our southern border and the system allowed them to be employed in the United State. If you found yourself in a place where you were unable to feed and clothe your family would you not make the same decision? It's ALSO not ethical for Congress to fail to act again.

It's not economically viable because America's farms, ranches, and dairies cannot operate their businesses without sufficient labor. This year on our asparagus farm we lost 100% of the seasons profits because we were unable to get domestic labor when Our 36 H2A workers were delayed at the border and arrived 90 days after our date of need. 90 days!! We lost nearly 300,000 pounds of asparagus. I had to go online and give it away to any food pantry or family that was willing to come out and harvest it.

It's not safe because if we can't get workers we can't harvest the crops. If we can't harvest the crops we can't feed YOU. Sure we could switch to mechanized and low labor crops like corn, soy, barley, and wheat, but it's not the best use of our nation's water, soil, and other resources. Besides, do we really need 10 million more acres of corn? America needs to grow and produce what's essential to her survival and fruits and vegetables, not just corn and soy, are basic necessities for a healthy society and economy.

If you want to see the “Canary in the coal mine” when it comes to US vegetable production, let’s look at US asparagus. Acres harvested in the USA has plummeted over 85% in since 2004. California now only has 600 acres of asparagus, as recently as 2004 they had over 25,000. Asparagus is an extremely difficult crop to harvest that requires skill, speed, and long hours spent walking bent over at the waist. Because it is so physically challenging and because labor is so scarce it was the first crop to leave the United States. Since 1994 over 90% of all US asparagus production has left this country. I still grow asparagus, but I can't hold on for much longer if we don't have a workforce and immigration policy that works!

American voters want fair wages, lower carbon emissions (Paris Accord) and the safest food (FSMA) all grown with as few pesticides as possible. Instead, our vegetable production continues to shift South of the border where workers earn \$8 per day vs the \$150 per day on our farm.

There are no enforced emission standards, if you travel south of the border you will see the smoke and fumes that are allowed to billow from smoke stakes and exhaust pipes.

And don't get me started on food-safety standards, or pesticide use restrictions. While visiting farms in Mexico and Central America I have personally witnessed raw sewage being mixed into irrigation water and pesticides, not allowed in the US for decades, being sprayed on the crops and the people. This is going to sound like hyperbole, but I believe that if we continue on our current trajectory, virtually all vegetable production in the United States will END within a decade.

I strongly urge this committee to take action on the Farm Workforce Modernization Act, which must include Green cards for those that keep America fed and consistent access to labor for farmers through H-2A visas.

The opportunity to Permanent Residency is great. To qualify for Permanent Residency under this legislation workers in agriculture should commit to remaining in agriculture for a certain number of years before they become lawful permanent residents. The Farm Workforce Modernization Act has such a requirement.

I urge USCIS to process H-2A petitions much faster to meet the needs of farmers and I urge Congress to reform the H-2A and H-2B visas to better serve our food supply chain.

The Farm Workforce Modernization Act is one step (many more are desperately needed) in the right direction of ethically right, economically smart, and safe policy.

Thank you all for your time. I look forward to your questions.

**Testimony of Arturo S. Rodriguez  
on behalf of the United Farm Workers (UFW) and UFW Foundation**

**Before the United States Senate  
Committee on the Judiciary Hearing on  
“Immigrant Farmworkers are Essential to Feeding America”  
July 21, 2021**

Chairman Durbin, Ranking Member Grassley, and Members of Committee:

Thank you for the opportunity to address you today. I sit before you as President Emeritus of the United Farm Workers (UFW) union, a representative of the UFW Foundation, and a born and raised Texan who has dedicated his life to fighting for farmworkers.

For nearly two decades, we have been working tirelessly for farmworker legalization, and to reform the H-2A agricultural visa program; efforts that could not have been possible without the leadership of Senator Feinstein, who has fought for farm workers for more than 15 years.

**FARM WORKERS DESERVE A PATH TO LEGALIZATION**

The agricultural industry and the nation rely on approximately 2.4 million farmworkers, including the roughly 1.2 million U.S. citizens (29%) and legal permanent residents (21%), and roughly 49 percent who are undocumented.<sup>i</sup> In FY 2020, more than 213,000 agricultural workers entered the country to perform seasonal and temporary work with H-2A visas.<sup>ii</sup> In the States represented in the Judiciary Committee alone, there are more than 1.1 million farmworkers.

To feed the nation, farm workers work with dairy cows for milk production, tend livestock for our meat, and plant, tend and harvest fruits and vegetables for daily nourishment. Without them, the industry and our food security would collapse.

**Farm workers ensure our nation's food supply at the risk of their own health and safety, toiling under extreme temperatures and other dangerous conditions to perform skilled and strenuous work in fields, nurseries, greenhouses, dairies, and ranches.** Agricultural workers are disproportionately likely to be poisoned by pesticides, seriously injured or killed on the job. The fatality injury rate for the agricultural sector is the highest rate for all sectors at 23.1 per 100,000, exceeding the rate for other dangerous industries, such as construction and mining.<sup>iii</sup> Farm work is characterized by difficult, repetitive tasks, often in uncomfortable positions, resulting in musculoskeletal injuries. Other dangerous conditions include handling heavy machinery, working with large animals, and working at heights, among others. Farm work also involves exposure to pesticides and extreme weather, the dangers of which have been exacerbated by climate change. Compared to all other civilian occupations, crop workers are 20 times more likely to die due to heat-related causes, and the majority of these deaths are among immigrant workers.<sup>iv</sup>



When extreme heat, wildfires, and stay-at-home orders strike, most people seek the comfort and safety of their homes or seek safety at a distance from the fires. Farmworkers lack refuge from the elements, and continue to show up to work, under scorching temperatures, as smoke turns day into night, and during a devastating pandemic.

**Agricultural workplaces became even more hazardous during the COVID- pandemic.** To date, there have been more than 602,000 COVID cases among farmworkers and farmers,<sup>v</sup> a major concern since many farmworkers lack access to health insurance, and only 29 percent of U.S. farmworkers report receiving health coverage through their employer.<sup>vi</sup>

**Despite the challenging and dangerous nature of the work, agricultural workers often live in poverty.** National estimates indicate that farm workers' mean and median personal incomes are in the range of \$17,500 to \$19,999, with the mean and median total family income in the range of \$20,000 to \$24,999.<sup>vii</sup> The cruel irony is that despite their central role in ensuring that American families have food on our tables, farmworkers in some areas are food insecure and often rely on emergency food programs for their own families.<sup>viii</sup> Farm worker poverty also means that many farm workers live in substandard housing with crowded conditions and share transportation with multiple workers. Many farm workers have experienced even greater economic insecurity in the face of the COVID pandemic.<sup>ix</sup>

**Lack of legal status combined with the isolated nature of agricultural work, and a shameful history of excluding the industry from basic labor laws makes farmworkers vulnerable to a range of abuses.** The threat of immigration enforcement is a form of coercion that employers can use against both undocumented and H-2A workers. A Polaris report on human trafficking in the H-2A program highlights that 61 percent of the victims reported receiving threats to be reported to immigration as a form of coercion.<sup>x</sup> U.S. citizen and work authorized colleagues are also impacted by this atmosphere of fear, as they know that they can easily be replaced by more vulnerable workers. In fact, a recent report by the Economic Policy Institute (EPI) finds that most DOL investigations in agricultural workplaces find violations of basic rights, including wage theft, housing protections and more.<sup>xi</sup>

**H-2A workers are vulnerable to extortion, wage theft, human trafficking and other labor exploitation.** The H-2A program is the visa category linked to the highest number of documented human trafficking cases, as well as other forms of labor exploitation.<sup>xii</sup> Although they enter the country legally, there is an extraordinary power imbalance between H-2A workers and their employers, since they depend on them to secure an H-2A job, rely on them for their visa, transportation, housing, and the opportunity to return in the next year. To keep their employers happy and be invited back, H-2A workers will work to the limits of their endurance. Moreover, H-2A workers often arrive indebted, having paid illegal recruitment fees for the ability to work in the United States. As a result, they are desperate to work to repay their debt. Given this

desperation and captive status, many employers come to prefer H-2A workers, some even to the point that they create obstacles for U.S. workers looking for agricultural employment.<sup>xiii</sup>

**The long history of agricultural exceptionalism that is rooted in racism also impacts working conditions for farmworkers.**<sup>xiv</sup> Farmworkers in most states who seek improvements in wages or working conditions can be fired by their employers if they choose to join, organize or support a labor union.<sup>xv</sup> That is not the case for workers in most other industry sectors who can count on the federal protections provided by the National Labor Relations Act of 1935 (NLRA), which among many things, prohibits employers from firing workers for engaging in protected activities. The disparity in protections is due to a legacy of racism that specifically excludes farmworkers from the NLRA.<sup>xvi</sup> Farmworkers are also excluded from the right to overtime pay in the Fair Labor Standards Act of 1938 (FLSA), from workers' compensation in some states, and from many of the federal occupational safety and health standards.<sup>xvii</sup>

Today's predominantly Latino agricultural workforce is deeply impacted by these racist exclusions and by our broken immigration system. Yet they continue to labor, day in and day out, to ensure our nation's food security. They do so with skill and dignity and the hope that one day they will be able:

- To live and work without fear
- To be treated with respect for the work that they perform
- To hold their children, spouses or parents again
- To visit loved ones when they are ill and attend funerals when they depart

#### **WE HAVE COMPROMISED TO ACHIEVE FARMWORKER LEGALIZATION**

To address these longstanding concerns, over the years we've negotiated and reached groundbreaking compromises with agricultural employers, and worked with Democrats and Republicans to advance legislation in both the House and the Senate:

- After years of conflict, agricultural employers and farm worker groups, led by the UFW, came together to support the AgJOBS compromise that was introduced in 2003 by Senators Larry Craig (R.-Idaho), and Edward Kennedy (D.-Mass.) and Rep. Howard Berman (D.-Calif.), Rep. Chris Cannon (R.- Utah), and Rep. Ciro Rodriguez (then chair of the Congressional Hispanic Caucus). AgJOBS enjoyed widespread support and a majority of the Senate voted in support of AgJOBS in April 2005, as an amendment to a supplemental appropriations bill.
- In the 109th Congress we worked with Senator Larry Craig (R-Idaho) on S. 359, the Agricultural Job Opportunities, Benefits, and Security Act of 2005 ("AgJobs"), a bipartisan bill (co-sponsored by 33 Democrats, and 16 Republicans), that was integrated into S.2611, the Comprehensive Immigration Reform Act, and passed the Senate in 2006 but died in the House of Representatives.

- In 2013, when I testified before this committee, I was advocating for farmworker legalization and the H-2A reforms in a proposal led by Senators Feinstein (D-California), Bennet (D-Colorado), Hatch (R-Utah) and Rubio (R-Florida). That proposal became part of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act, a bill led by Senators Schumer, Durbin, Menendez, Bennet, McCain, Graham, Flake, and Rubio. S.744 passed the Senate with bipartisan support but also died in the House of Representatives.
- Since then, we've worked to build champions in the House of Representatives. In 2019, during a dramatically different political environment, we spent 7 months in negotiations with agricultural employers, Democrats and Republicans. We made serious concessions in order to get to a deal and produce what is now H.R.1603, the Farm Workforce Modernization Act ("FWMA"), a bipartisan bill that passed the House in both the 116th and the 117th Congress, and with overwhelming support (247 Yay - 174 Nay), including 30 Republicans.

#### **THE FARM WORKFORCE MODERNIZATION ACT INCLUDES SIGNIFICANT CONCESSIONS**

**Path to legalization:** To be clear, we would much prefer bills that honor farm workers by providing a path to lawful permanent residency and citizenship on Day 1, like Senator Menendez's U.S. Citizenship Act and Senator Padilla's Citizenship for Essential Workers Act. These bills also recognize the importance of dreamers, TPS holders, and essential workers to this nation.

By contrast, the FWMA creates an earned, lengthy, and optional path for farm workers to seek permanent legal status. FWMA does not guarantee a path to legal permanent residence or citizenship as it requires that farmworkers continue working in agriculture in order to renew their temporary Certified Agricultural Worker Status (CAW) or seek permanent status (LPR).

#### **For undocumented farmworkers to earn Certified Agricultural Worker (CAW), FWMA requires them to:**

- DEMONSTRATE that they've worked in agriculture at least 180 days in the two years prior to the bill's introduction (between March 8, 2019 and March 8, 2021).
- PASS a background check
- COMMIT to remaining in agriculture for at least 100 days per year in order to renew their CAW status.
- RENEW their CAW status every 5.5 years.
- BE EXCLUDED from access to social safety net programs while they are under CAW status, including support to make health care and food affordable.

**In order for farmworkers to be eligible for legal permanent residence (LPR), the length of the path to LPR depends on the amount of years they have worked in agriculture:**

- For a 4-year path to LPR eligibility, farmworkers must demonstrate that they have worked in agriculture for at least 10 years prior to the bill's date of enactment and that they've worked at least 100 days in agriculture per year during each year in the 4-year period.
- Farmworkers that have worked in agriculture for less than 10 years prior to the bill's date of enactment have an 8-year path to LPR and must work in agriculture at least 100 days per year, during each year during the 8-year period.

The FWMA also imposes a \$1,000 fine on CAWs seeking LPR status, despite the fact that a farmworker's mean and median income ranges between \$17,500 and \$19,999 per year.

Putting farmworkers on a long path to permanent protections, excluding them from access to social safety net programs and imposing such a steep fine for their essential work is not a good way to honor the people who have been breaking their bodies, and putting their lives at risk to feed the nation. Nonetheless, we support the FWMA compromise because we recognize that compromise is necessary to reach legislation that brings bipartisan support.

My colleagues in the agricultural industry would agree that the current farm workforce needs to be able to get right with the law and that the current situation is too unstable for both farmers and farmworkers. And the only way we can do that is by establishing an earned path to immigration status and citizenship.

**Title II of the Farm Workforce Modernization Act also includes difficult concessions for all sides:** As part of the compromises made in order to maintain bipartisan support, we agreed to provide employers with:

- a 1-year wage freeze
- an annual cap on wage fluctuations
- access to the H-2A program for year-round employers.

These substantial wage concessions, along with a number of policy changes that will streamline the application process for the H-2A program, give employers using the program an ability to easily predict costs over the long term, and will conservatively contribute to well over \$2.8 billion in economic benefits for agricultural employers who currently use the H-2A program over the next 10 years.

Additionally, the FWMA includes mandatory E-Verify in agriculture. House Republicans insisted on the inclusion of E-Verify and indeed E-Verify has been something many elected Republicans have promoted for several years.

In short, the FWMA is not the bill that Democrats, Republicans, agricultural employer associations, or the United Farm Workers would have written if any of us had the choice to write it ourselves. It is a compromise that addresses the major issues for each constituency and makes balanced improvements over our current system for every constituency.

#### THE TIME IS NOW

Now we have a unique political environment. We have a House of Representatives that has prioritized farmworker legalization by passing a bill in the first 100 days of this Congress. We have a Chair of the Judiciary Committee who has committed to passing legislation that allows farmworkers to earn legal status. We have a President that is prepared to sign it. Now we need the Senate to use every tool at its disposal to honor the people that we rely on to feed the nation and bring stability to the agricultural industry. The cost of inaction builds each year for all parties involved and for our country. If we're serious about addressing the issue of agricultural labor, this is our moment.

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<sup>i</sup> U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*; published January 2018. Available at

[https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf).

<sup>ii</sup> U.S. Department of State, Nonimmigrant Visa Issuances by Visa Class and by Nationality, FY 2020 NIV Detail Table, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY20NIVDetailTable.xlsx>

<sup>iii</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, Number and Rate of Fatal Work Injuries, by Industry, 2019, <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm>.

<sup>iv</sup> Centers for Disease Control and Prevention (CDC). (2006). *Heat-Related Deaths Among Crop Workers – United States, 1992-2006*, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm>.

<sup>v</sup> Purdue Food and Agricultural Vulnerability Index, available at [https://ag.purdue.edu:443/agecon/Pages/FoodandAgVulnerabilityIndex.aspx?\\_ga=2.49471334.1159720487.160011](https://ag.purdue.edu:443/agecon/Pages/FoodandAgVulnerabilityIndex.aspx?_ga=2.49471334.1159720487.160011)

<sup>vi</sup> U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*; published January 2018. Available at [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf).

<sup>vii</sup> *Id.*

<sup>viii</sup> Chabria, A. (6 October 2020). Many California farm workers fear a winter of hunger and homelessness amid the pandemic. *Los Angeles Times*, <https://www.latimes.com/california/story/2020-10-26/central-valley-farmworkers-hunger-evictions-coronavirus-covid19>

<sup>ix</sup> *Id.*

<sup>x</sup> Polaris. (2021). *Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic*, [https://polarisproject.org/wp-content/uploads/2021/06/Polaris\\_Labor\\_Exploitation\\_and\\_Trafficking\\_of\\_Agricultural\\_Workers\\_During\\_the\\_Pandemic.pdf](https://polarisproject.org/wp-content/uploads/2021/06/Polaris_Labor_Exploitation_and_Trafficking_of_Agricultural_Workers_During_the_Pandemic.pdf)

<sup>xi</sup> Costa, D., Martin, P. & Rutledge, Z. (15 December 2020). "Federal labor standards enforcement in agriculture," *Economic Policy Institute (EPI)*, available at <https://files.epi.org/pdf/213135.pdf>

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<sup>xii</sup> Polaris. (2021). *Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic*, [https://polarisproject.org/wp-content/uploads/2021/06/Polaris\\_Labor\\_Exploitation\\_and\\_Trafficking\\_of\\_Agricultural\\_Workers\\_During\\_the\\_Pandemic.pdf](https://polarisproject.org/wp-content/uploads/2021/06/Polaris_Labor_Exploitation_and_Trafficking_of_Agricultural_Workers_During_the_Pandemic.pdf)

<sup>xiii</sup> See U.S. Equal Employment Opportunity Commission (EEOC). (13 December 2012). "Hamilton Growers to Pay \$500,000 to Settle EEOC Race / National Origin Discrimination Lawsuit" [Press Release]. <https://www.eeoc.gov/newsroom/hamilton-growers-pay-500000-settle-eeoc-race-national-origin-discrimination-lawsuit> and U.S. Department of Justice (DOJ). (18 December 2017). "Justice Department Settles U.S. Worker Discrimination Claims Against Colorado Agricultural Company" [Press Release]. <https://www.justice.gov/opa/pr/justice-department-settles-us-worker-discrimination-claims-against-colorado-agricultural>.

<sup>xiv</sup> See e.g., Perea, J. F.. (2010). Echoes of slavery: Recognizing the racist origins of the agricultural and domestic worker exclusion from the National Labor Relations Act, 72 Ohio St. L.J. 95; Lindner, Marc, Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal, 65 Texas Law Review 1335 (1987) at 1336. See also Perea, J. F., Echoes of slavery: Recognizing the racist origins of the agricultural and domestic worker exclusion from the National Labor Relations Act. Ohio State Law Journal, 72(1), 95-138 (2010); Sean Farhang and Ira Katznelson, "The Southern Imposition: Congress and Labor in the New Deal and Fair Deal," Studies in American Political Development, vol. 19 (Spring 2005), p. 15.

<sup>xv</sup> California is one of just a few states that provide collective bargaining protections for farmworkers.

<sup>xvi</sup> Perea, Juan F., The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act, 72 OHIO ST. L.J. 195 (2011).

<sup>xvii</sup> Lindner, M. (1987). Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal, 65 Tex. L. Rev. 1335, 1336.

**U.S. SENATE COMMITTEE ON THE JUDICIARY****Hearing on****“Immigrant Farmworkers are Essential to Feeding America”****July 21, 2021****WRITTEN TESTIMONY OF LEON R. SEQUEIRA**

Good morning Chairman Durbin, Ranking Member Grassley, and members of the Committee. I appreciate the invitation to testify about the importance of farmworkers to our economy and how to best address the shortage of workers on our nation’s farms.

I am an attorney in private practice and a significant part of my work involves advising employers and trade associations about employment and immigration issues, including the H-2A temporary agricultural visa program. My clients range in size from small family farms with only a handful of employees to large family farms with thousands of employees. Let me begin by noting that I am testifying today in my personal capacity and not on behalf of any client.

I have worked on employment and immigration policy for nearly 20 years, including as a staffer in this body, as an Assistant Secretary of Labor in the George W. Bush administration, and for more than a decade advising clients in private practice.

The domestic labor shortage on America’s farms continues to get worse with each passing year and it is threatening the viability of labor-intensive agriculture in America. If current trends continue and America produces less and less of the food we consume, this issue soon will become a significant national security problem. Relying on foreign countries to produce our televisions, computers and phones is one thing, relying on foreign countries to grow our food is something else altogether.

There is no doubt that many aspects of our immigration and visa system need to be improved. As members of this Committee know, there are few issues that generate more heated opinions and rhetoric than a discussion of immigration policy. Immigration policy involves complex national security, economic, legal, humanitarian, and political problems, for which there are few easy solutions.

My comments today focus on just one aspect of immigration policy: how to assist American farmers in accessing needed labor while remaining competitive in an international marketplace. Addressing this problem begins with recognizing that American agriculture is not monolithic. Different regions of the country have different weather, different growing seasons, different crops and livestock, different labor needs and different amount of available labor. Some large farms encompass thousands of acres and require only a handful of employees. Other farms may have only a few hundred acres but require dozens of employees. Some farms need labor for only a few months a year, others need labor all year round.

I hope we can agree that all of America’s farmers and those toiling in the fields, barns and packing sheds are essential to feeding this country – and many others around the world. Farm

work is difficult and unlike any other job in the economy. The work is physical and usually performed outdoors in harsh and changing weather conditions. The working hours can be unpredictable and irregular. Long hours are the norm during some times of the year, such as harvest, but at other times of the year work hours may be far less, or there may be no work at all.

For these reasons and more, farmers face many challenges attempting to fill their labor needs. Most people in the U.S. who are looking for work are not looking for a job that requires physical labor, with work outdoors exposed to the elements, with an irregular work schedule, and employment that lasts only part of the year. Most job seekers are interested in predictable, full-time, year-round employment in a climate-controlled environment that does not require manual labor.

Farm work is honest and honorable work. There just are not enough U.S. workers willing to do it. That is true regardless of the unemployment rate. This is not a new phenomenon. Foreign workers have been coming to the U.S. (both with legal authorization and without) to work in agriculture for much of the last century. But the shortage of willing and available U.S. workers to fill jobs on farms is getting worse with each passing year.

Congress long ago recognized there was a persistent shortage of U.S. workers to meet agriculture's seasonal labor needs, and in response created the H-2 visa program in 1952, which was revised somewhat and renamed the H-2A program in 1986.

The H-2A program enables farms that are unable to hire sufficient numbers of U.S. workers to apply to the U.S. Department of Labor ("DOL") for approval to hire foreign farmworkers with a temporary work visa. The application process takes months to complete, is complex, and requires the approval four different state and federal agencies. The H-2A program is highly regulated and includes numerous protections for both U.S. and foreign workers. Employers are required to test the labor market for U.S. workers, pay heightened wage rates and provide additional benefits, such as free housing, to their H-2A workers (and any U.S. workers performing the same work).

Only after the federal government determines that the employment of an H-2A worker would not adversely affect U.S. workers, is an employer's application approved. An H-2A visa is a "non-immigrant" visa, meaning that H-2A visa holders are permitted to enter the U.S. and work on a temporary basis and then must return home. Each H-2A certified job can last no more than one-year, and in most cases the job must be for 10 months or less.

For the first 20 years of its existence, the H-2A program was not widely utilized and participation was largely limited to growers in the Southeastern U.S. and upstate New York. In 2005, DOL certified about 48,000 farmworker positions as eligible to be filled by an H-2A worker and the State Department issued about 32,000 H-2A visas.<sup>1</sup>

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<sup>1</sup> The difference between the number of positions certified by DOL and the number of visas issued by the State Department is largely accounted for by H-2A workers who fill more than one position per year. That is, an individual with an H-2A visa completes one certified job and then transfers to another employer to fill a second certified job.



Eight years later, by 2013, the number of positions certified by DOL had doubled to nearly 99,000 and the State Department issued about 74,000 H-2A visas. Just four years after that, in 2017, the number of positions certified by DOL had doubled again to more than 200,000 with the State Department issuing more than 161,000 H-2A visas.

The explosive growth in the H-2A program during that time period reflects the general lack of available labor. Previously, in many parts of the U.S., there had been an ample supply of workers who could relatively easily cross the southern border, obtain legitimate looking identity documents, and find work on U.S. farms (and elsewhere in the economy). But beginning the early 2000s, an increase in border security and interior enforcement measures began to change that dynamic. As fewer people were able to cross the border, as interior worksite enforcement increased, and as states began implementing E-Verify, more and more employers had difficulty finding sufficient numbers employment-authorized workers. The only viable option for farmers with a temporary or seasonal need for labor was the H-2A program.

Although H-2A usage used to be largely confined to the Southeastern U.S., today H-2A workers are dispersed throughout the country, and two of the states with the largest and fastest growing number of H-2A workers are on the West coast. According to DOL, the top 10 states for H-2A employment are: Florida, Georgia, Washington, California, North Carolina, Louisiana, Michigan, Arizona, New York, and Kentucky. In 2020, those ten states accounted for more than two-thirds of all H-2A certifications, and the top five states accounted for more than 50 percent of all H-2A certifications.

In the past couple of years, growth in the H-2A program has begun to slow. Since 2018, the number of positions certified by DOL and the number of H-2A visas issued has continued to increase, but only at about five percent per year rather than the 20 percent growth previously seen for several years in row.

The reasons for this slowdown are not entirely clear but it does correspond to several years of extreme volatility in the H-2A wage rates that are set by DOL. In the past few years, employers in some states have seen one-year wage rate increases of 10 percent, 15 percent and even 23 percent. Notwithstanding of the slowdown in growth over the past couple of years, H-2A visas issued by the State Department surpassed 275,000 in 2020. H-2A workers are a vital labor source for American farms. Indeed, in many parts of the country, labor-intensive agriculture could not survive without H-2A workers.

We will continue to need farmworkers for the foreseeable future. While mechanization and robotics may replace some farm jobs in the future, the cost of that technology will be beyond the reach of the average farmer for many years to come. In the meantime, the care and harvest of most fruits and vegetables will continue to require the knowledgeable eye and gentle hand of an experienced human farm worker.

So where will we find these future farmworkers? The federal government should be the first to recognize that America is not going to produce enough domestic farm workers to meet our needs. Farmers in the H-2A program are required to hire any qualified U.S. worker who applies for an H-2A certified position. Even though these jobs offer higher than local market wages and

benefits like free housing that employers usually do not offer, and even though U.S. workers have the right of first refusal for these jobs, almost no U.S. workers are interested in taking them. DOL data demonstrate that far less than one percent of H-2A certified positions were filled by a U.S. worker in recent years.<sup>2</sup>

Moreover, each year Congress appropriates, and DOL spends, tens of millions of dollars providing job training to the limited pool of current farmworkers, so that they can find other jobs in the economy. The President's FY2022 budget requests nearly \$100 million for the National Farmworker Jobs Program that is administered by DOL. No one can argue with a worker improving their skills and moving up the economic ladder. But if the federal government can spend \$100 million a year to help farmworkers obtain other jobs, and thereby decrease the available agricultural labor pool, surely the government can acknowledge this severe labor shortage and spend a similar amount of money helping ensure farmers have access to the labor needed to grow our food.

American agriculture cannot survive much longer with our current labor situation. Historically, the biggest variable determining a farmer's success or failure was the weather. But today, for many farmers in the U.S., the biggest variable they face is the supply and cost of labor. Too many farmers spend most of their time not knowing if they will have enough labor for the season or how much that labor will cost. Getting into the H-2A program may help alleviate some concerns about the availability of labor, but the program is not equally available to all of agriculture, and it introduces a host of uncertainties about high costs. Because of the flawed methodology used to set mandatory wage rates, farmers have no way to predict from one year to the next what their labor costs will be. And mandatory wage rates are just some of the costs associated with the H-2A program.

Labor is one of the largest line-item costs on farms growing specialty crops, and for a farmer in the H-2A program, labor can be 40 percent or more of production costs. As DOL ratchets up the H-2A wage rate year after year, farmers are unable to raise their prices to keep pace. Many farms have seen little, if any, increase in the sale price of their specialty crops in recent years. For some farms, revenues are decreasing despite increases in their production costs. Unlike other businesses, farmers do not get to set the price of their products. These rising production costs cannot simply be absorbed when U.S. farmers are competing for space on grocery store shelves with imported fruits and vegetables. Americans want cheap food, and bad government policy is pricing U.S. farmers out of the market.

Thirty years ago, the U.S. was a global net exporter of fruits and vegetables. Today, we import more than twice as many fruits and vegetables as we export.<sup>3</sup> Nowhere is this disparity more evident than in our trade with Mexico. In the past 15 years, fruit and vegetable imports from Mexico into the U.S. have tripled. In 2019, the U.S. imported \$15.6 billion worth of fruits and vegetables from Mexico, while exporting just \$1.4 billion.<sup>4</sup>

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<sup>2</sup> DOL H-2A disclosure data available at <https://www.dol.gov/agencies/eta/foreign-labor/performance>.

<sup>3</sup> See CRS In Focus IF11701, *Seasonal Fruit and Vegetable Competition in U.S.-Mexico Trade* (Dec. 11, 2020)

<sup>4</sup> *Id.*

Much of this can be attributed to the relative costs of production. The minimum wage in Mexico in 2021 is about \$7.00 *per day*. By contrast, the 2021 nationwide average mandated wage in the H-2A program is more than \$14.00 *per hour* –16 times higher than Mexico. It does not take a PhD in economics to realize that fruits and vegetables can be grown and harvested in Mexico, shipped to the U.S., and sold in grocery stores at prices far below U.S. farm production costs. And that is exactly what is happening. There are no government subsidies and no import protections for specialty crop growers in the U.S. The recently passed USMCA trade agreement did nothing to address the problem of low-cost imports displacing American grown food in the domestic marketplace. As a result, American farmers are getting crushed. Ultimately, the U.S. consumer and the entire nation will suffer when we become totally dependent on foreign countries for fresh fruit and vegetables.

Throughout its history, the H-2A program has been plagued by complicated regulations, bureaucratic inefficiencies, high costs, processing delays, and artificial limits on the types of agriculture employers who are eligible to participate. Despite its drawbacks, the H-2A program remains the only option for farms to meet their seasonal labor needs.

Going forward, we must improve the H-2A program to ensure that all of agriculture will have sufficient labor to meet its needs. In recent years, there have been various proposals considered in the House and in the Senate to change the H-2A program. Some of those proposals included minor adjustments to the current program and others envisioned wholesale replacement of H-2A with a new agricultural visa program.

Earlier this year, the House passed legislation that would make numerous changes to H-2A and that would also legalize currently undocumented workers. Although the House bill contains a few provisions that would make some limited positive changes to the H-2A program, many other provisions of the bill would make the H-2A program more unpredictable, complicated, costly, and would subject farmers to significant increased legal liability. Rather than improve the situation, the House bill would unfortunately make things worse for many farmers, including those currently participating in the H-2A program.

The House bill would also legalize undocumented farm workers. Estimates of the number of hired farmworkers in the U.S. vary widely. The quarterly USDA farm labor survey indicates there are just over 800,000 hired farmworkers during peak employment on America's farms. But other USDA data suggests hired labor exceeds 2.4 million.<sup>5</sup> Whatever the number of farmworkers, DOL data reflects that more than 50 percent of farmworkers admit to being in the country without work authorization, and worker advocacy groups have said the number is greater than 70 percent.<sup>6</sup> So, the number of undocumented farmworkers would seem to be at least 400,000 but could be far higher. Members of this body may decide that legalizing the

<sup>5</sup> See 2017 Census of Agriculture at 339. The vast disparity in USDA reports of hired labor suggests that the higher number may reflect the number of hired farm positions, rather than the number of individual workers, as many farmworkers work for multiple employers during the year and thus an individual may be represented as a hired employee by more than one employer.

<sup>6</sup> See, e.g., *Temporary Agricultural Employment of H-2A Aliens in the United States*, 73 Fed. Reg. 8538, 8540 (Feb. 13, 2008).

undocumented farm workforce is a worthy public policy. Legal work status undoubtedly would remove a great deal of anxiety and uncertainty for farmworkers and their employers. But history shows us that legalizing the current undocumented workforce will not produce more farmworkers.

The U.S. legalized more than a million undocumented farmworkers in 1986. That did not solve our agricultural labor crisis then and there is no reason to believe it would solve our labor crisis today. After the 1986 legalization, those workers began almost immediately to leave farms for other opportunities in the larger economy. Initially, newly legalized workers were estimated to constitute more than 30 percent of the farm labor force, but by the early 1990s they represented just over 10 percent.<sup>7</sup> With legal status came endless new economic opportunities and legalized farmworkers pursued those opportunities.

Data from the Immigration and Naturalization Service regarding those who received legal status in 1986 and went on to become naturalized starkly illustrates this exodus out of agriculture. Of those who indicated at the time of legalization that their occupation was farming, just four percent said farming was still their occupation by the time they were naturalized.<sup>8</sup> As a result of the 1986 legalization, agriculture was again left with a shortage of labor. Soon new waves of people crossed the border to replace those who had moved from the fields to other jobs.

Additional data demonstrates that eight of the ten states with highest number of unauthorized immigrants are the same states with the highest participation in the H-2A program, including the all top five H-2A states.<sup>9</sup> By definition, the unauthorized farm workers in those states who would be legalized under the House bill are already performing full-time farm work, yet farmers in those states are already experiencing severe labor shortages. Again, there may be public policy reasons that support legalizing those undocumented farm workers but doing so will not alleviate any labor shortage.

Congress needs to get agricultural immigration reform right this time and not repeat mistakes of the past. The 1986 reforms did not relieve our labor shortages. It has been said before, but it bears repeating: Foreign workers are going to harvest our food, the only question is whether that food will be grown and harvested here in the U.S. – or grown and harvested abroad.

Hopefully, this Committee will have an opportunity to consider legislation that provides farmers with an H-2A program designed to ensure labor-intensive agriculture can remain competitive in an international marketplace. An updated H-2A program must be simpler, more efficient, less costly, and be accessible to all agricultural employers. The availability and cost of agricultural labor should not be more unpredictable and extreme than the weather.

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<sup>7</sup> See Martin, Philip L., *Immigration Reform and Agriculture*, ARE Update 15(2):5-8 (2011), University of California Giannini Foundation of Agricultural Economics.

<sup>8</sup> See Rytina, Nancy, *IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001*, Exhibit 7 (2002).

<sup>9</sup> See *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015-January 2018*, Population Estimates, January 2021, USCIS.



**Written Testimony of National Pork  
Producers Council President Jen  
Sorenson**

**On  
“Immigrant Farmworkers are  
Essential to Feeding America”**

**Before the  
Senate Judiciary Committee**

**July 21, 2021**

### **Introduction**

Chairman Durbin, Ranking Member Grassley, and members of the committee, I appreciate the opportunity to discuss an issue of critical importance for U.S. pork producers and all of U.S. livestock agriculture. My name is Jen Sorenson. I am the communications director for Iowa Select Farms in West Des Moines, Iowa, and president of the National Pork Producers Council (NPPC), a national association representing the interests of more than 60,000 U.S. pork producers.

The U.S. pork industry supports more than 500,000 domestic jobs, generates more than \$39 billion in gross national product, and exports an increasing volume of product, which in 2020 was valued at more than \$7.7 billion.

U.S. hog farmers are proud to provide an affordable and nutritious source of protein to consumers at home and around the globe. Unfortunately, the U.S. pork industry is suffering from a serious labor shortage, negatively impacting farms and processing plants. This challenge undermines a critical economic sector that in recent years has driven employment and wage growth faster than the overall economy and is key to prosperity in rural America.

### **The Situation**

As any pork producer will tell you, there is no pork season. U.S. pork production is a seven-days-a-week, 365-days-a-year effort. It requires a hardworking and dedicated workforce on our farms and in processing plants.

There is an increasing need for employees throughout the pork supply chain, but there has been a steady decline in rural population growth, where most farms and harvest facilities are located. This has resulted in a labor shortage for U.S. hog farmers and harvest facility operators. Statistics suggest pork industry wages average approximately \$14.75/hour across the country, including many rural areas where the local minimum wage is much lower. However, despite solid wages and benefits, according to a study by economists with Iowa State University, native-born workers and permanent residents cannot offset the need for foreign-born labor. As a result, the U.S. pork industry is highly dependent on foreign-born employees who make tremendous contributions in their jobs and communities.

Current visa programs designed for seasonal agriculture—such as the H-2A visa—fail to meet the workforce needs of U.S. pork producers and other year-round livestock farmers.

The H-2A visa program, created in 1987 under the Immigration Reform and Control Act, allows a foreign national entry into the United States for temporary or seasonal agricultural work. Terms of work can be as short as one month and as long as ten months. Additionally, to be eligible for the H-2A program, employers must demonstrate a lack of U.S. workers who are able, willing and qualified for the jobs. While the H-2A visa program has helped some agricultural sectors, U.S. pork production and other livestock farming is not seasonal, and thus is ineligible to use the program. Now more than ever, we need a dedicated, year-round workforce. This isn't an isolated case affecting a handful of farms and processing plants; this is an industry-wide shortage that needs to be quickly addressed.

The U.S. pork industry is proud of the diversity on our farms and across the supply chain. For many foreign-born employees, a position in the U.S. pork industry has often created opportunity to come to our country and become an integral part of a community. Following are four stories demonstrating the vital role foreign-born workers play on our farms and in our communities:

[Cristina Carmona, Prestage Farms, Oklahoma](#)

[Juan Marroquin, LB Pork, Minnesota](#)

[Victor Martinez, Schwartz Farms, Minnesota](#)

[Yuri Rafael, Springer Family Foods, Kansas](#)

One of the foreign-born employees featured, Cristina Carmona, is the technical trainer manager at Prestage Farms in Oklahoma. Cristina, who was born in Mexico and grew up raising cattle, came to the United States in 2003 to obtain her master's degree in agribusiness. She is now the lead international recruiter at Prestage Farms, hiring foreign-born employees to help with hog production. She's a stellar employee who is well respected amongst her colleagues and in 2020, won the Excellence Award from the Oklahoma Pork Council.

As the lead international recruiter, Cristina is also all too familiar with the labor shortage throughout the U.S. pork industry, noting that "in the farms, it's day in, day out. It's not just seasonal. We need to have people on the farms taking care of the pigs....Sometimes it's difficult for us to extend the stay of those [international] employees that we have. They want to excel...and they want to contribute in their communities."

Working in the U.S. pork industry has created the opportunity for Cristina and so many others to come to the United States and become integrated in their communities. We are proud of our diversity throughout the pork supply chain and need labor visa reform to enable the continued production of our year-round industry.

If the labor shortage is not addressed, it could lead to farms and packing plants shutting down, causing serious financial harm to the communities in which they operate. As a result, pork production would be constrained, leading to higher food prices for consumers and the United States becoming an unreliable trading partner for the many countries around the world that rely on our pork.

#### **The Solution**

As outlined earlier in my testimony, hog farmers and processing plants pay wages significantly above average local wage rates, but the dwindling rural population near our facilities mean U.S. pork producers are increasingly reliant on a foreign-born workforce. Many in our industry rely on the seasonal H-2A visa program, but pork production is year-round, and we need a visa program that reflects that reality.

Earlier this year, the U.S. House of Representatives passed the "Farm Workforce Modernization Act of 2021," which seeks to address agriculture labor reform by offering a capped number of year-round visas. While NPPC believes the bill is a step in the right direction, a cap will force different sectors of livestock agriculture to compete against one another for the same limited number of year-round visas. In that scenario, no one wins and, ultimately, the consumer will be punished with reduced pork supplies and higher prices at the store.

It is also important to note that current H-2A visas do not have a cap because limiting factors are already built into the program. When an employer asks for H-2A workers, they are required to demonstrate to their State Workforce Agency they have attempted to fill the roles with domestic workers, leaving visa labor as the only viable option. There is no need for an additional cap on H-2A visas issued solely because they are non-seasonal.

NPPC urges Congress to address this pressing matter by opening the H-2A visa program to year-round labor without a cap. We look forward to working with members of this committee and other lawmakers to achieve this outcome.

**Conclusion**

U.S. pork production is a full-time, year-round job. Our industry is vital to the U.S. economy and prosperity in rural communities. Our foreign-born workforce is an essential part of our supply chain, and we need visa reform to reflect our year-round needs.

We thank you for holding this hearing today on such an important issue and we stand ready to work with you to ensure hog farmers can continue to lead the way as a vibrant American farm sector.



**Statement by  
Thomas J. Vilsack  
Secretary of Agriculture  
Before the Senate Committee on the Judiciary**

**July 21, 2021**

Thank you, Mr. Chairman, Ranking Member Grassley, and members of this Committee. Thank you for the opportunity to testify today about farmworkers and their important role in the food and agriculture industry and overall economy.

The full economic contribution of the food and agriculture industries is estimated to be nearly \$7 trillion. The industries account for nearly one-fifth of the country's economic activity, contributing \$2.7 trillion to the U.S. gross domestic product and supporting more than 40 million jobs – nearly 20 million directly and more than 20 million in supplier industries<sup>1</sup>. The key to the success of these industries are millions of farmworkers – an estimated 2.5 million, half of whom are estimated to be undocumented – and our immigration system does not work for them and, thus, does not work for our farmers. As Secretary of Agriculture I have met farmers and ranchers across the country who worry that our immigration system is broken and continually feel the consequences. They struggle with the uncertainty of the labor force from harvest to harvest, worrying they will be unable to find farmworkers to keep them in business. This kind of instability jeopardizes our farmers' ability to be competitive, puts in question the security of our food supply, and has repercussions on our overall economy.

When the COVID-19 pandemic first struck, we were given a wake-up call regarding farmworkers. They were deemed essential employees and the pandemic put a spotlight on the importance of this workforce and their contributions to our nation's food security. They worked every day in fruit orchards and dairy farms, and in the blazing heat and the freezing cold, to ensure families had food on their tables. It's not easy work – it's back-breaking work, for low wages. A Department of Labor survey shows that one third of farmworkers report family incomes below the poverty line, despite the nature of work requiring long hours in the fields and on the farms. And these workers faced an especially high risk of contracting COVID-19, with little recourse for keeping their jobs if they fell ill or were exposed. Yet, farmworkers kept showing up, day after day, risking their health and the health of their families, to secure the nation's food supply chain.

These workers are not just essential during a pandemic. They are critical contributors every day to an essential sector of our economy and we should start treating them accordingly – providing

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<sup>1</sup> *Feeding the Economy*, <https://feedingtheeconomy.com/> (last visited July 19, 2021)

them the worker protections they deserve and ending the unnecessary fear so many face day after day without legal immigration status.

I applaud grower groups and unions for coming together and acknowledging the importance of addressing these issues by reaching a compromise and supporting the bipartisan Farm Workforce Modernization Act of 2021 which passed out of the U.S. House of Representatives on March 18, 2021, with a vote of 247-174. This legislation provides farmworkers – many of whom have lived in this country for years – an opportunity to earn citizenship. With legal status and a path to citizenship, farmworkers would be able to earn higher wages and exercise their rights under our labor laws to demand better working conditions. It also includes provisions that give needed certainty to employers and includes funding for farmworker housing so that employers do not have to incur additional expenses. These are challenging issues and I applaud the collective effort and agreement of those involved in working to find a path forward.

We need Congressional action to address these challenges, and we need that action now. This past year has demonstrated what many of us already knew: the collective contributions of immigrant farmworkers are key to keeping our food supply abundant, safe and affordable – before, during and after pandemics. I urge my Congressional colleagues here today to meet this moment of bipartisanship efforts and move legislation forward this year that provides legal status and a path to citizenship for farmworkers – securing a reliable workforce for our agriculture industry – as well as legislation that provides a living wage for these essential workers along with strong labor protections. I look forward to supporting your efforts in any way I can and I welcome your questions.

Committee on the Judiciary on  
 “Immigrant Farmworkers Are Essential to Feeding America”  
 Questions for the Record  
 July 21, 2021

**QUESTIONS FROM SENATOR FEINSTEIN**

**Questions for the Hon. Tom Vilsack, Secretary of Agriculture**

1. You testified at the hearing that farmers “simply can’t . . . find the workers” for their fields from within the United States and that “the result is that they either have to reduce the amount that they’re producing or they have to destroy that which they’ve grown because they simply don’t have enough people to pick and harvest.”
  - a. **To the best of your knowledge, how many farmworkers have not been able to hire all the workers they need for their production of their main crops over the past five years? Please provide your answer both for the nation as a whole and for each state.**
  - b. **What is the estimated economic impact of this worker shortage?**
2. You pointed out at the hearing that the current average wage rate for H-2A workers is “a little over \$13 an hour, which is significantly below the average wage of the typical American worker.” Yet, the Farm Workforce Modernization Act of 2021 would freeze the Adverse Effect Wage Rate for one year and cap its increase for nine years thereafter.
  - a. **How much in prospective wage increases for H-2A workers does the Department of Agriculture believe would be lost if the Farm Workforce Modernization Act of 2021 were to become law?**
  - b. **What are the likely implications of these lost wage increases for the financial stability of farm workers, and what other provisions in the Act are necessary to counterbalance them?**
3. According to the U.S. Bureau of Labor Statistics, women make up 26.2 percent of the agricultural workforce. A 2010 study conducted by the University of California-Santa Cruz found that eighty percent of Mexican women working in the Central Valley of California experienced some form of sexual harassment. Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, VIOLENCE AGAINST WOMEN 16(3) 237, 241 (2010), available at [http://s3.amazonaws.com/migrants\\_heroku\\_production/datas/936/8716\\_original.pdf?1378313863](http://s3.amazonaws.com/migrants_heroku_production/datas/936/8716_original.pdf?1378313863). Often, this abuse goes unreported because women fear that coming forward could lead to deportation or incarceration.

- a. **Do you think passing the Farm Workforce Modernization Act of 2021 would make female farmworkers less vulnerable to sexual harassment and abuse? Please explain your answer.**
  - b. **What current efforts are the Department of Agriculture taking to address sexual harassment and abuse of farmworkers? What efforts are planned?**
- 4. A 2017 survey conducted by Morning Consult on behalf of the American Farm Bureau Federation and the National Farmers Union found that 74 percent of farmers and farmworkers are or have been directly impacted by opioid abuse and that 76 percent of farmers and workers say it is easy to obtain a large amount of prescription opioids or painkillers without a prescription. Morning Consult, *American Farm Bureau Federation Polling Presentation* at 9, 14 (Oct. 31, 2017), available at <https://1vix7b4f3jvk2x4eqv1byl1n-wpengine.netdna-ssl.com/wp-content/uploads/sites/13/2017/12/171015-AFB-Opioids-LE.pdf>.
- a. **Do you agree that the abuse of opioids and other prescribed painkillers is a particularly acute problem for the agricultural workforce?**
  - b. **What current efforts are the Department of Agriculture taking to address this problem? What efforts are planned?**

**Senate Judiciary Committee - Questions for the Record from Senator John Kennedy  
July 21, 2021**

Hearing entitled: “Immigrant Farmworkers are Essential to Feeding America”

**Questions for Secretary Vilsack, USDA**

1. The National Accuracy Clearinghouse was enacted as part of the 2018 Farm Bill with bipartisan support and a Congressional Budget Office (CBO) savings estimate of \$588 million. However, USDA has been very slow to enact the National Accuracy Clearinghouse, which would help ensure the integrity of the supplemental nutrition assistance program (SNAP), making sure individuals are not enrolled in multiple states.
2. It’s my understanding that the current administration started from scratch with implementing it, and there is no date for it to be operative — although the statute required regulations by June 20, 2020 and full operations by December 20, 2021.
3. USDA has sent billions of dollars out under the COVID stimulus program and at the same time has delayed the implementation of the National Accuracy Clearinghouse, which will help identify waste, fraud, and abuse of the SNAP program.
4. What is USDA doing to prevent individuals from receiving money from multiple states, and when will it stand-up a program like the National Accuracy Clearinghouse, which Congress enacted several years ago?

Senator Thom Tillis (R-NC)  
Questions for the Record  
Senate Judiciary Committee – Immigrant Farmworkers are Essential to Feeding America  
Hearing date: July 21, 2021

**QFRs for the Honorable Secretary Thomas J. Vilsack**

I was pleased to learn in the U.S. Department of Agriculture's (USDA's) June 15, 2021 announcement that "poultry and livestock producers left out of previous rounds of pandemic assistance," would be eligible for forthcoming assistance authorized in the *Coronavirus Response and Relief Supplemental Appropriations Act*.

1. Could you please confirm that USDA will provide assistance to all eligible contract producers, specifically contract hog producers whose impacts occurred in 2020 and losses were realized in 2021?
2. I sent a letter on April 29, 2021 urging USDA to implement the above referenced policy. Can you please provide an update on the status of this letter, and when I should expect to receive a response?

**Statement for the Record**  
**Congressional Hispanic Caucus Chair Dr. Raul Ruiz**  
**Senate Judiciary Committee**  
**Hearing on Immigrant Farmworkers are Essential to Feeding America**

“On behalf of the Congressional Hispanic Caucus (CHC), I want to thank Senate Judiciary Committee Chairman Dick Durbin (D-IL) for holding a hearing about farmworkers and their important role in the food and agriculture industry and overall economy.

The coronavirus (COVID-19) pandemic has highlighted the importance of food and nutrition to prevent illness, heal from COVID-19, and the importance of a stable workforce for our food supply chain. Farmworkers are among those at highest risk of being infected and dying from COVID-19. They are literally dying to feed you and all Americans so that we can stay healthy and beat this virus.

Farmworkers are not just essential during the COVID-19 pandemic they are always essential. Their daily work to put food on store shelves and on our tables makes them critical for the security of America's food supply. We must honor the work of high-risk essential workers like farmworkers who have served our country during a time of great need. It is important that we finally provide them with the worker protections they have earned and put an end to the uncertainty many face every day regarding their immigration status and deportation.

Earlier this year, Rep. Zoe Lofgren, in conjunction with CHC Members Rep. Jim Costa (CA-16) and Rep. Salud Carbajal (CA-24) introduced the Farm Workforce Modernization Act (H.R. 1603). The CHC endorsed and helped secure the House passage of the bill with bipartisan support.

This critical bill provides a pathway to lawful permanent residency to undocumented farmworkers and addresses discrepancies in the H-2A visa program. In addition, the legislation ensures critical protections, fair wages, and better working conditions for agricultural workers.

The Senate must act swiftly to pass legal status and a path to citizenship for farmworkers and other essential workers, whether it be through bipartisan negotiations with the Farm Workforce Modernization Act or through budget reconciliation.”

###



ph. 202.406.3600  
f. 202.406.3606  
www.fb.org

June 3, 2021

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, D.C. 20395

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250

The Honorable Deb Haaland  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretaries Mayorkas, Vilsack and Haaland,

The undersigned state Farm Bureaus write to you today to share how the increase in illegal immigration is severely impacting farm and ranch families. We respectfully request your assistance in addressing this issue.

We have been listening to the concerns of our members and hearing how their livelihoods are being affected by the surge on the border. Farm and ranch families, many of whom have owned land for generations, are bearing the brunt of this unprecedented influx and have never seen a more dire situation.

They shared how their crops and property are being damaged, which in turn has caused financial hardship. For example, these landowners are experiencing cut fences, destroyed crops, compromised water sources, vandalism, litter on their property and more. Most importantly, the security and safety of these families are at stake given the current circumstances.

Human smugglers (Coyotes) are making false promises and doing whatever it takes to get paid and get away, including jeopardizing lives and property. In their desperation to evade law enforcement, Coyotes abandon people, steal vehicles, vandalize property and threaten the safety and livelihoods of farmers and ranchers. They are often criminals who smuggle drugs and firearms into the country, frequently leaving them on farmers' and ranchers' property, causing unrest for farm and ranch families.



While illegal immigration is often perceived primarily as a Southern border issue, communities across the country are being negatively impacted. If not properly addressed, these issues will only continue to multiply and escalate.

Local and state border security resources have been exhausted, leaving little help for farmers and ranchers. We respectfully request federal authorities work promptly to provide additional resources and enforce legal immigration to secure U.S. borders.

The current situation should not be acceptable to you or to any American. People are being treated as a disposable source of income, and landowners are living in fear while Coyotes reap a windfall from leaving people destitute. You must not allow this to continue.

On behalf of farm and ranch families and our communities, we urge you to recognize the crisis and take swift action.

Sincerely,

Arizona Farm Bureau Federation  
California Farm Bureau Federation  
New Mexico Farm & Livestock Bureau  
Texas Farm Bureau

American Farm Bureau Federation  
Alaska Farm Bureau  
Alabama Farmers Federation  
Arkansas Farm Bureau Federation  
Colorado Farm Bureau Federation  
Connecticut Farm Bureau Association, Inc.  
Delaware State Farm Bureau, Inc.  
Florida Farm Bureau Federation  
Georgia Farm Bureau Federation  
Hawaii Farm Bureau Federation  
Iowa Farm Bureau Federation  
Idaho Farm Bureau Federation  
Illinois Farm Bureau  
Indiana Farm Bureau, Inc.  
Kansas Farm Bureau  
Kentucky Farm Bureau Federation  
Louisiana Farm Bureau Federation, Inc.  
Massachusetts Farm Bureau Federation, Inc.  
Maryland Farm Bureau, Inc.  
Maine Farm Bureau Association  
Michigan Farm Bureau  
Minnesota Farm Bureau Federation  
Missouri Farm Bureau Federation  
Mississippi Farm Bureau Federation  
Montana Farm Bureau Federation  
North Carolina Farm Bureau Federation, Inc.  
North Dakota Farm Bureau  
Nebraska Farm Bureau Federation  
New Hampshire Farm Bureau Federation, Inc.  
New Jersey Farm Bureau

Nevada Farm Bureau Federation  
New York Farm Bureau, Inc.  
Ohio Farm Bureau Federation, Inc.  
Oklahoma Farm Bureau  
Oregon Farm Bureau  
Pennsylvania Farm Bureau  
Puerto Rico Farm Bureau  
Rhode Island Farm Bureau Federation, Inc.  
South Carolina Farm Bureau Federation  
South Dakota Farm Bureau Federation  
Tennessee Farm Bureau Federation  
Utah Farm Bureau Federation  
Virginia Farm Bureau Federation  
Vermont Farm Bureau, Inc.  
Washington Farm Bureau  
Wisconsin Farm Bureau Federation  
West Virginia Farm Bureau, Inc.  
Wyoming Farm Bureau Federation

July 27, 2021

Chair Dick Durbin  
Senate Judiciary Committee  
Washington, DC 20515

Ranking Member Chuck Grassley  
Senate Judiciary Committee  
Washington, DC 20515

**Regarding Hearing Titled: “Immigrant Farmworkers are Essential to Feeding America”**

Dear Chair Durbin and Ranking Member Grassley:

Alianza Nacional de Campesinas (National Farmworker Women’s Alliance, “Alianza de Campesinas” herein) submits this statement for the record for the Senate Judiciary Committee hearing entitled, “*Immigrant Farmworkers are Essential to Feeding America*”, held on July 21. On behalf of farmworker and rural-serving organizations, we write to express our strong support for a pathway to citizenship for farmworker women and their families, and all 11 million undocumented immigrants in the United States, who call this country home.

Alianza de Campesinas is the first national farmworker women’s organization in the U.S. founded and led by farmworker women, and those who hail from farmworker families. A coalition of 15 grassroots, farmworker organizations across 11 states and the District of Columbia, Alianza de Campesinas advocates for the civil, constitutional, and human rights of our nation’s more than 700k farmworker women, and other women workers who form the backbone of our farm and food systems.

Despite being deemed “essential”, farmworker women and other frontline workers have not been extended essential protections and supports<sup>1</sup>, including legal status. At least half<sup>2</sup> of our country’s nearly 3 million farmworkers are undocumented and live in constant fear of being of being separated from their families and communities. These anxieties are heightened among women farmworkers experiencing domestic violence<sup>3</sup>, sexual assault<sup>4</sup>, and other abuses<sup>5</sup>, who fear immigration-related consequences for reporting their abusers, thereby undermining their access to safety and justice.

The pandemic and ongoing social and climate crises have exposed and exacerbated the systemic inequities in our farm and food systems. As our nation works to build back better, it is imperative that Congress prioritize a pathway to citizenship for farmworker women and their families.

<sup>1</sup> Alianza Nacional de Campesinas and Rural Coalition, “[Pandemic Response to Protect and Increase Resilience in the Food and Farm System](#),” August 31, 2020.

<sup>2</sup> U.S. Department of Agriculture, Economic Research Service. [Farm Labor: Legal Status and Migration Practices of Hired Crop Farmworkers](#). April 22, 2020.

<sup>3</sup> Runge, Robin R. “[Failing to Address Sexual and Domestic Violence at Work: The Case of Migrant Farmworker Women](#),” American University Journal of Gender Social Policy and Law 20, vol 20, no. 4, 2012, pp. 871-897.

<sup>4</sup> Oxfam America, [Working in Fear. Sexual Violence Against Women Farmworkers in the United States: A Literature Review](#). 2015.

<sup>5</sup> Southern Poverty Law Center, [Injustice On Our Plates](#). November 8, 2010.

Accordingly, Alianza de Campesinas supports and pushes for the following legislative proposals:

- The U.S. Citizenship Act of 2021 ([S.348/H.R. 1177](#)), which would provide a pathway to citizenship for our country's approximately 11 million undocumented immigrants, including an expedited path for farmworkers, people with Deferred Action for Childhood Arrivals (DACA), and those with Temporary Protected Status (TPS) or Deferred Enforced Departure (DED). The bill advances significant reforms to our immigration system by prioritizing family unity, promoting immigrant and refugee integration, expanding humanitarian protection channels, recognizing migrant workers as fundamental members of our communities, and strengthening protections for survivors and other vulnerable populations.
- The Citizenship for Essential Workers Act of 2021 ([S. 747/H.R.1909](#)), which would create an expedited pathway to citizenship for nearly 5 million undocumented essential workers and their families. The bill would include workers in health care, agriculture, construction, food, energy, emergency response, care-giving, and other essential critical infrastructure sectors.

We urge Congress to act swiftly to provide a pathway to citizenship for farm and food system workers, and all 11 million undocumented immigrants in the U.S., ensuring their safety and security.

Thank you for your consideration of this statement. If you have any questions, please contact Maria De Luna, National Policy and Advocacy Coordinator, at [mariadeluna@campesinasunite.org](mailto:mariadeluna@campesinasunite.org) and Mily Trevino-Sauceda, Executive Director, at [mily@campesinasunite.org](mailto:mily@campesinasunite.org).

**SENATE JUDICIARY COMMITTEE:  
Immigrant Farmworkers are Essential to Feeding America**

July 21, 2021

Statement for the Record by Daniel Costa, Director of Immigration Law and Policy Research at the Economic Policy Institute

**About EPI**

*The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals. EPI has researched, written, and commented extensively on farm labor and the U.S. employment-based system for migration—through publications, public comments, and testimony—including in particular, with respect to the wages and working conditions of farmworkers and on immigrant and nonimmigrant visa programs utilized by agricultural employers*

Dear Chairman Durbin, Ranking Member Grassley, and other members of the Senate Judiciary Committee, I thank you for the opportunity to submit this statement for the record for the hearing titled **"Immigrant Farmworkers are Essential to Feeding America."**

I am grateful to the Committee for focusing on this important topic at a key time in our nation's history—namely, during a pandemic that exposed both the importance and vulnerability of the more than two million farmworkers in the United States. The coronavirus pandemic and the ensuing economic collapse was a difficult time for many workers and families, with hundreds of thousands of deaths and widespread human suffering. While millions of workers were allowed to remain home and work remotely in order to stay safe, the vast majority of workers did not have a remote work option, either because employers did not permit it or because it was simply not feasible.<sup>1</sup> One key segment of the workforce that was expected to keep working in order to sustain the food supply chain—but at great risk to themselves and their families—were farmworkers.

Even before the pandemic, farmworkers were employed in one of the most hazardous jobs in the entire U.S. labor market,<sup>2</sup> and as EPI research has shown, they suffered very high rates of

<sup>1</sup> Elise Gould and Heidi Shierholz, "Not everybody can work from home: Black and Hispanic workers are much less likely to be able to telework," *Working Economics* blog (Economic Policy Institute), <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>.

<sup>2</sup> U.S. Bureau of Labor Statistics, "Table 1. Incidence rates of nonfatal occupational injuries and illnesses by industry and case types, 2019," in *Injuries, Illnesses, and Fatalities*, U.S. Department of Labor, [https://www.bls.gov/iif/oshwc/osh/os/summ1\\_00\\_2019.htm](https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2019.htm).

wage and hour violations.<sup>3</sup> In addition, most farmworkers in the United States either lack an immigration status or are employed via a precarious, temporary status through the H-2A visa program. The lack of an immigration status, or having only a temporary status, means that unauthorized and H-2A farmworkers are even worse off because they have limited labor rights, which increases their vulnerability to wage theft and other abuses.<sup>4</sup>

Unauthorized immigrants who speak up about unfair treatment or abuse in the workplace risk employer retaliation in the form of deportation. In the case of H-2A workers, they are not permitted to change employers and are thus practically indentured to them.<sup>5</sup> The half of farmworkers who are unauthorized plus 10% of farmworkers with H-2A visas mean that only 40% of the farm workforce are U.S. citizens and legal immigrants with full rights and agency in the labor market. Having the majority of the farm workforce employed without basic workplace rights in turn puts downward pressure on labor standards for all workers.

As EPI research has also demonstrated, farmworkers are among the lowest-paid workers in the entire U.S. workforce, even lower than other comparable low-wage workers. Farmworkers earned just \$14.62 per hour on average in 2020, which is just 60%—or three fifths—of what production and nonsupervisory *nonfarm* workers earned (\$24.67), who are the most appropriate cohort of workers outside of agriculture to compare with farmworkers.<sup>6</sup>

Farmworkers have very low levels of educational attainment, nevertheless, they still earned even less than the two groups of workers with the lowest levels of education in the United States: Nonsupervisory farmworkers at \$14.62 per hour earned 44 cents per hour less than the average wage earned by all workers without a high school diploma (\$15.06), and farmworkers earned roughly \$5 less per hour than the average wage earned by all workers with only a high school diploma (\$20.09).

Many farmworkers employed through the H-2A visas program fared even worse. The wage paid to most farmworkers with H-2A visas—known as the Adverse Effect Wage Rate (AEWR)—was even lower, with a national average of \$13.68 per hour, according to the U.S. Department of Labor. But many H-2A farmworkers earned far less in some of the biggest H-2A states. In Florida and Georgia—where a quarter of all H-2A jobs were located in 2020—H-2A workers were paid the lowest state AEWR, at \$11.71 per hour.

<sup>3</sup> Daniel Costa, Philip Martin, and Zachariah Rutledge, *Federal labor standards enforcement in agriculture: Data reveal the biggest violators and raise new questions about how to improve and target efforts to protect farmworkers*, Economic Policy Institute, December 15, 2020, <https://epi.org/213135>.

<sup>4</sup> See for example, David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, *Survey data show millions of workers are paid less than the minimum wage, at significant cost to taxpayers and state economies*, Economic Policy Institute, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>; Annette Bernhardt, Ruth Milkman, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009, <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>; Centro de los Derechos del Migrante, *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, April 2020, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

<sup>5</sup> See for example, Mary Bauer and Meredith Stewart, *Close to Slavery: Guestworker Programs in the United States*, *Southern Poverty Law Center*, February 19, 2013, <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>.

<sup>6</sup> Daniel Costa, "The farmworker wage gap continued in 2020: Farmworkers and H-2A workers earned very low wages during the pandemic, even compared with other low-wage workers," *Working Economics* blog (Economic Policy Institute), <https://epi.org/232757>. For previous years comparing farmworkers with production and nonsupervisory nonfarm workers

*These data prove that the claim which is often made and repeated by farm employers and agribusiness lobbyists and representatives—i.e., that wages are rising too quickly for farmworkers and that the AEWR for H-2A workers is too high and rising too quickly, and thus not consistent with labor market trends—is not credible and not based on any data or evidence.*

There has never been a more urgent need for the Senate to take swift action to protect farmworkers and honor their contributions to the health and well-being of all Americans. I call on this Committee and the entire U.S. Senate to propose and pass legislation that accomplishes the following goals:

1. Provides unauthorized immigrant farmworkers with an immediate or quick path to citizenship; and that path should not be one that is contingent upon future years of work completed in the agricultural industry.
2. Reforms the H-2A program so that temporary migrant workers can change employers, have protections from retaliation and access to justice, and provide H-2A workers with a quick path to citizenship that migrant workers themselves control by virtue of being able to self-petition for lawful permanent residence.
3. Reforms the H-2A program so that wages paid to H-2A farmworkers adequately reflect market rates and do not undercut labor standards. The Senate should reject legislative provisions that would lower H-2A wage rates or freeze H-2A wage rates, either temporarily or permanently; both of which would amount to a significant pay cut for migrant farmworkers.
4. Improves workplace protections for farmworkers, including legislation that would better protect them from heat illness, require that they be paid overtime, and provide them with basic labor rights on par with those enjoyed by most workers.
5. Provides adequate resources to fund staffing and enforcement at the U.S. Department of Labor's Wage and Hour Division (WHD) and directs WHD to prioritize enforcement in agriculture to better protect farmworkers.

The recommendations made above are based on research, findings, and recommendations published by EPI, which I have either authored or coauthored. Two recent examples of this research are annexed to this statement, which I request be submitted for the record.

Thank you for your consideration and best regards,



Daniel Costa, Esq.  
Director of Immigration Law and Policy Research  
Economic Policy Institute

**Attachments**

1) Daniel Costa, "The farmworker wage gap continued in 2020: Farmworkers and H-2A workers earned very low wages during the pandemic, even compared with other low-wage workers," *Working Economics* blog (Economic Policy Institute), <https://epi.org/232757>.

2) Daniel Costa, Philip Martin, and Zachariah Rutledge, *Federal labor standards enforcement in agriculture: Data reveal the biggest violators and raise new questions about how to improve and target efforts to protect farmworkers*, Economic Policy Institute, December 15, 2020, <https://epi.org/213135>.



## The farmworker wage gap continued in 2020

Farmworkers and H-2A workers earned very low wages during the pandemic, even compared with other low-wage workers

**Blog** • By [Daniel Costa](#) • July 20, 2021

**Key takeaways:**

- More than two million farmworkers were deemed “essential” amid the pandemic in order to sustain food supply chains, but the latest wage data show that farmworkers were not rewarded adequately: They earned just \$14.62 per hour on average in 2020, far less than even some of the lowest-paid workers in the U.S. labor force.
- At this wage rate, farmworkers earned just under 60% of what comparable workers outside of agriculture made in 2020—a wage gap that was virtually unchanged since the previous year. They also earned less than workers with the lowest levels of education.
- The wage paid to most farmworkers with H-2A visas—known as the Adverse Effect Wage Rate (AEWR)—was even lower, with a national average of \$13.68 per hour. (The AEWR is based on a mandated wage standard that varies by region and is intended to prevent underpayment.) But many H-2A farmworkers earned far less in some of the biggest H-2A states. In Florida and Georgia—where a quarter of all H-2A jobs were located in 2020—H-2A workers were paid the lowest state AEWR, at \$11.71 per hour.
- Farmworkers are employed in one of the most hazardous jobs in the entire U.S. labor market and suffer very high rates of wage and hour violations, and the majority of farmworkers who are unauthorized migrants or on H-2A visas are even worse off, with limited labor rights and heightened vulnerability to wage theft and other abuses due to their immigration status. Congress should take immediate action to improve labor standards for all farmworkers and provide migrant farmworkers with a path to citizenship.

Near the start of the pandemic in 2020, numerous work and travel restrictions were implemented in the United States to slow the spread of COVID-19. But for most workers, including farmworkers, options like remote work were either **not permitted or feasible**. The more than two million farmworkers who grow, harvest, and pack the crops that end up on grocery store shelves were deemed “**essential**” and expected to work to keep food supply chains up and running.

Were those farmworkers ultimately rewarded and valued for their massive contributions to society? It appears not—the latest wage data show that farmworkers continued to earn *far less* than even some of the lowest-paid workers in the U.S. labor force, which suggests their important work continues to be undervalued. This post reviews the wages that farmworkers earned in 2020 relative to other comparable sets of workers.

**Who are farmworkers?**

First, a quick note on the size of the farmworker population and their characteristics. Preliminary data from the Quarterly Census of Employment and Wages (QCEW) show that

average annual employment of workers who are employed on farms that report to state unemployment insurance agencies was 1.3 million in 2020—essentially unchanged from 2019. QCEW also **estimated** that there were an additional 400,000 “wage and salary” farmworkers not included in their data, suggesting total average employment of 1.7 million in 2020.

However, it is difficult to get an exact count of the number of farmworkers. While the QCEW reports average employment, that underestimates the number of unique farmworkers due to seasonality and turnover. The **Census of Agriculture** (COA) asks farm operators and owners how many workers they employ directly; in 2017, farmers reported hiring 2.4 million farmworkers. However, the COA does not report workers who are brought to farms by nonfarm employers such as nonfarm labor contractors, and double counts workers employed by two farms, so 2.4 million is not a count of unique farmworkers.

The U.S. Department of Labor’s (DOL) **National Agricultural Workers Survey** (NAWS) reports the characteristics of crop farmworkers, but not their number, and excludes from the survey farmworkers who are migrants employed through the H-2A temporary work visa program for agriculture (a program that allows farm employers to hire temporary migrant workers with H-2A visas if they anticipate a shortage of U.S. workers to fill temporary and seasonal jobs). According to the latest NAWS data, half of the non-H-2A crop farmworkers were unauthorized immigrants. And according to the State Department, there were more than **213,000** H-2A workers employed in the United States in 2020, who worked for an average of **six months** out of the year, representing roughly **one-tenth** of workers employed on U.S. crop farms.

Farmworkers are employed in one of the **most hazardous** jobs in the entire U.S. labor market and suffer **very high rates of wage and hour violations**. But unauthorized and H-2A farmworkers are even worse off because they have limited labor rights due to their immigration status, which increases their vulnerability to **wage theft** and **other abuses**. Unauthorized immigrants who speak up about unfair treatment or abuse in the workplace risk employer retaliation in the form of deportation. In the case of H-2A workers, they are not permitted to change employers and are thus **practically indentured** to them. The half of farmworkers who are unauthorized plus 10% of farmworkers with H-2A visas mean that only 40% of the farm workforce are U.S. citizens and legal immigrants with full rights and agency in the labor market. Having the majority of the farm workforce employed without basic workplace rights puts downward pressure on labor standards for all workers.

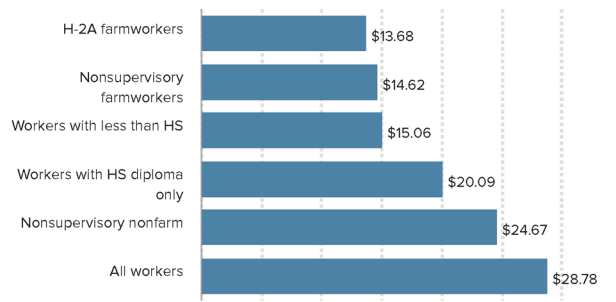
### **Farmworkers earn lower wages than comparable and low-wage workers**

The most reliable data on farmworker earnings comes from the U.S. Department of Agriculture’s (USDA) National Agricultural Statistics Service (NASS), which conducts the Farm Labor Survey (FLS) quarterly, and the results of which are published semiannually in USDA’s **Farm Labor report series**. The minimum wage that employers are required to pay to H-2A farmworkers is in most cases the **Adverse Effect Wage Rate** (AEWR), which varies

Figure A

### The farmworker wage gap in 2020: Farmworkers earn very low wages compared with other workers

Average hourly wage rate for farmworkers and H-2A workers compared with average hourly wages of other workers, 2020



**Notes:** All values are for 2020 and in 2020 dollars. HS = high school. H-2A wage is the national average Adverse Effect Wage Rate for 2020, as reported by the U.S. Department of Labor, and does not reflect the average wage paid to the H-2A workers who were ultimately employed in 2020. Nonsupervisory nonfarm workers' wage represents the average hourly earnings of production and nonsupervisory employees, total for the private sector, not seasonally adjusted. Nonsupervisory farmworkers' wage is the gross average hourly wage of field and livestock workers. Data for all workers, and for workers with a high school diploma and less than high school, can be found at the Economic Policy Institute State of Working America Data Library.

**Sources:** Author's analysis of USDA [Farm Labor Survey](#) data and nonfarm wage data from the BLS Current Employment Statistics survey; [EPI analysis](#) of CPI-ORG microdata; Office of Foreign Labor Certification [historical state AEWRs](#)

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by region and is set by DOL based on the average hourly earnings of nonsupervisory field and livestock workers, as reported by farm operators in the FLS. DOL uses the FLS data to set H-2A wages so they reflect current real-world trends in the farm labor market.

Despite some [documented](#) real increases in wages the past few years, the latest data show the wages of farmworkers are extremely low by any measure, even when compared with similarly situated nonfarm workers and workers with the lowest levels of education (see [Figure A](#)).

In 2020, the average wage of all nonsupervisory farmworkers was [\\$14.62](#) per hour, according to USDA, which was a 3.2% increase from what farmworkers [earned per hour in 2019](#), after adjusting for inflation. The farmworker wage of [\\$14.62](#) per hour is just half (51%) of the average hourly wage for all workers in 2020, which stands at [\\$28.78](#) per hour. The average wage for production and nonsupervisory *nonfarm* workers—the most appropriate cohort of nonagricultural workers to compare with farmworkers—was [\\$24.67](#).

In other words, farmworkers earned just under 60% of what production and

nonsupervisory workers outside of agriculture earned. In 2018 and 2019, USDA [referred to this wage gap](#) between farmworker and nonfarm worker wages as “slowly shrinking, but still substantial.” In 2020, the farmworker wage gap remained substantial and virtually unchanged from the previous year: 59.3% in 2020 versus 59.5% in 2019.

Farmworkers have very low levels of educational attainment. According to the NAWS, 30% completed the 10th, 11th, or 12th grade, and 10% completed some education beyond high school. But farmworkers still make less than the two groups of workers with the lowest levels of education in the United States: Nonsupervisory farmworkers at \$14.62 per hour earned 44 cents an hour less than the average wage earned by workers without a high school diploma (\$15.06), and farmworkers earned roughly \$5 less per hour than the average wage earned by workers with only a high school diploma (\$20.09).

The nationwide average hourly AEWR wage for H-2A workers was even lower than the wage for all nonsupervisory farmworkers in 2020—meaning the gap between what many H-2A farmworkers and nonagricultural workers earn is even wider.

Although the AEWR varies by region, DOL [reported](#) that the nationwide average hourly AEWR in 2020 was \$13.68 per hour. While the AEWR was higher in 19 states—the highest being in seven states where the AEWR was between \$14.77 and \$15.83 in 2020—it was lower than the national average in many states. In Florida and Georgia—the top two states for H-2A employment, and where a quarter of all [H-2A jobs](#) were located in 2020—H-2A workers were paid the lowest overall state AEWR, at \$11.71 per hour.

To reiterate, a quarter of all H-2A farmworkers in 2020 were paid the lowest permissible wage under the AEWR. They earned wages that are even lower than the H-2A national average wage—wage rates that are at or near poverty levels. These are not exorbitant salaries that can be cut without harming farmworkers, contrary to what agribusiness wants the public [and lawmakers](#) to believe.

Farmworker wages are so low, in fact, that even a nominal increase in the price that consumers pay for fruits and vegetables—\$25 per family per year—would [raise farmworker wages by 40%](#) and lift many out of poverty.

### **Farmworkers deserve better pay, more protections, and a path to citizenship**

The expectations placed on farmworkers by employers and the federal government during the pandemic have required farmworkers to take on a significant amount of risk to themselves and their families, and many have paid the price. Countless media reports have attested to the rapid spread of COVID-19 [among food-chain workers](#) and [farmworkers](#) in particular, including [in employer-provided housing](#). The Purdue Food and Agriculture Vulnerability Index [estimates](#) that nearly 600,000 workers in agriculture have tested positive for COVID-19.

Despite this grim reality, [no federal action was taken](#) to protect farmworkers, who were designated as essential but continued to be paid some of the lowest wages in the U.S.

labor market. Instead, the only government action taken was to help employers, by making it easier for them to hire H-2A farmworkers earning low wages. Swift policy action at the federal level, outlined below, is required to improve conditions for farmworkers and raise their pay—these changes are feasible and not complicated.

- Congress must act to provide undocumented farmworkers with a path to citizenship and reform the H-2A program so that temporary migrant workers have protections from retaliation and a path to citizenship, and earn wages that adequately reflect market rates and do not undercut labor standards.
- Some states have already taken steps to improve conditions for farmworkers, for example by **passing laws** or **emergency regulations** to better protect them from heat illness, **required that they be paid overtime**, and provided with basic **labor rights**. More states should follow suit, but Congress also needs to pass legislation that would set federal, nationwide standards in all of these areas.
- Congress should provide adequate resources to fund staffing and enforcement at DOL's Wage and Hour Division (WHD) and WHD leadership should prioritize enforcement in agriculture to better protect farmworkers, given that the vast majority (over 70%) of **federal labor standards investigations of farms** detect violations like wage theft, but the number of WHD investigations on farms has dropped sharply because WHD is woefully **underfunded and understaffed**.

**Economic  
Policy  
Institute**

## **Federal labor standards enforcement in agriculture**

Data reveal the biggest violators and raise new questions about how to improve and target efforts to protect farmworkers

**Report** • By [Daniel Costa](#), [Philip Martin](#), and [Zachariah Rutledge](#) • December 15, 2020

**What this report finds:** The vast majority (over 70%) of federal labor standards investigations of farms conducted by the Wage and Hour Division (WHD) of the U.S. Department of Labor detect violations—things like wage theft and inadequate housing, as well as other violations of laws designed to protect farmworkers. Farm labor contractors, the fastest-growing segment of farm employment, are the worst violators, accounting for one-fourth of all federal wage and hour violations detected in agriculture and one-half of violations detected in two of the biggest states for farm employment, California and Florida. A relative handful of “bad apples” account for a large share of all violations and the back wages owed as a result of investigations. However, there is a very low probability—1%—that any farm employer will be investigated by WHD in any given year.

**Why it matters:** Farmworkers—the low-paid workers who are essential to keeping Americans fed during the COVID-19 pandemic—are not being protected effectively by federal labor standards enforcement. Most farmworkers either lack an immigration status or have a temporary status, which makes it difficult in practice for them to complain about workplace violations. And data show that WHD is too underfunded and understaffed to adequately protect workers. This lack of enforcement capacity, combined with the fact that their immigration status makes farmworkers vulnerable to exploitation, means that the violations detected in agriculture by WHD are likely a small share of the actual violations taking place. Farm employers can violate wage and hour laws and reasonably expect that those violations will never be detected.

**What we can do about it:** Policymakers should provide adequate resources to fund wage and hour staffing and enforcement; enforcement efforts should target the biggest violators—farm labor contractors—as well as repeat violators; and officials should consider stiffer penalties that are sufficient to deter future violations.

## SECTIONS

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## Introduction, summary, and findings

Farmworkers in the United States earn some of the lowest wages in the labor market and experience an above-average rate of workplace injuries (Costa 2020; BLS 2020). No one knows the exact number of workers employed for wages on U.S. farms during the year, although there are multiple estimates. The Quarterly Census of Employment and Wages (QCEW) shows that average annual employment of farmworkers who are employed on farms that report to state unemployment insurance (UI) agencies was 1.3 million in 2019 (BLS-QCEW 2020a), but estimated that there were an additional 400,000 “wage and salary” farmworkers not included in QCEW data (BLS-QCEW 2020b), suggesting average employment of 1.7 million in 2019.

The QCEW reports average employment, which underestimates the number of unique farmworkers due to seasonality and turnover. The Census of Agriculture (COA) asks farmers (i.e. farm employers or farm owners) how many workers they employ directly; in 2017, farmers reported hiring 2.4 million farmworkers. However, the COA does not report workers who are brought to farms by nonfarm employers such as nonfarm labor contractors, and double counts workers employed by two farms, so 2.4 million is not a count of unique farm workers. The Current Population Survey included a December supplement through the 1980s, and it reported about 2.5 million farmworkers when annual average employment ranged between about 1.1 million to 1.3 million, suggesting about two unique workers per year-round equivalent job, or 2.5 million to 3.4 million workers today based on QCEW data (Rural Migration News 2020b).

The U.S. Department of Labor’s National Agricultural Workers Survey (NAWS) reports the characteristics of crop farmworkers, excluding those who are migrants employed through the H-2A temporary work visa program for agriculture (a “nonimmigrant” visa program), but not their number. H-2A is a temporary work visa program that allows farm employers to hire migrant guestworkers if they anticipate a shortage of U.S. workers to fill temporary and seasonal jobs. Half of the non-H-2A crop workers were unauthorized immigrants in 2015–2016 (U.S. DOL-ETA 2018), and there were more than 200,000 H-2A workers employed in the United States in 2019, who worked for an average of six months out of the year, representing roughly one-tenth of farmworkers employed on U.S. crop farms (Costa and Martin 2020). Both unauthorized and H-2A workers have limited labor rights and are vulnerable to wage theft and other abuses due to their immigration status (Bernhardt et al. 2009; Apgar 2015). This leaves 40% of the workforce who are U.S. citizens and legal immigrants with full rights and agency in the labor market, so most farmworkers are vulnerable to violations of their rights because of their immigration status.

The U.S. Department of Labor’s (DOL) Wage and Hour Division (WHD) is the federal agency that protects the rights of farmworkers in terms of wage and hour laws—also known as employment laws—including those that protect H-2A “guest” workers. WHD labor standards enforcement actions are intended to ensure that the rights of workers are protected, and to level the playing field for employers, so that employers who underpay workers or engage in other cost-reducing behavior in violation of employment laws do not

gain a competitive advantage over law-abiding employers. WHD aims to “promote and achieve compliance with labor standards to protect and enhance the welfare of the nation’s workforce” by enforcing 13 federal labor standards laws, including the Fair Labor Standards Act (FLSA), which requires minimum wages and overtime pay, and regulates the employment of workers who are younger than 18, as well as the Family and Medical Leave Act, and laws governing government contracts, consumer credit, and the use of polygraph testing, etc. (U.S. DOL-WHD 2020c).

WHD also enforces two laws and their implementing regulations specific to agricultural employment. One is the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the major federal law that protects U.S. farmworkers. The other is the statute that establishes the H-2A program, a temporary work visa program that allows farm employers to hire migrant guestworkers if they anticipate a shortage of U.S. workers to fill temporary and seasonal jobs.

Federal labor law exempts farmworkers from some basic protections that cover most other workers in the U.S. labor market, including from the National Labor Relations Act—the federal law that provides the right to form and join unions, and to engage in protected, concerted activities to improve workplace conditions. Farmworkers are covered by the FLSA, but not the FLSA’s overtime provisions that require most workers to be paid time and a half after working eight hours in a day or 40 hours in a week.<sup>1</sup>

The WHD in 2019 had just under 1,500 employees, including 780 investigators, and a budget of \$229 million to investigate 10.2 million U.S. establishments with 148 million employees (BLS-QCEW 2020a; U.S. DOL 2020; U.S. DOL-WHD 2020e). The number of workers that each WHD investigator is responsible for has risen dramatically. In 1978, there was one WHD investigator for every 69,000 workers; by 2018, one investigator was responsible for 175,000 workers (Hamaji et al. 2019), highlighting persistent WHD underfunding and understaffing.

WHD may order employers to pay back wages owed to underpaid employees, file suits to recover back wages and an equal amount as liquidated damages, and assess civil money penalties that aim to remove the incentive to violate employment laws. WHD also may seek injunctive relief from federal courts to mandate employer compliance and prosecute egregious violations criminally. When investigating workplace violations, WHD does not take immigration status into account, and can award back pay to farmworkers who are not authorized to be employed in the United States.

Ensuring compliance with labor standards in a low-wage sector with vulnerable and exploitable workers such as agriculture is difficult for any enforcement agency, but especially the underfunded WHD. Former WHD Administrator David Weil concluded that there “will never be sufficient resources to staff agencies to the level required to assure complete compliance with workplace laws, so there will always be a need for enforcement agencies to use their [limited] resources to achieve greatest impact.” (Weil 2018, 20). As a result, Weil introduced strategic enforcement, moving from responding to individual worker complaints to having half or more of WHD investigations be proactive or directed at firms likely to violate wage and hour laws. WHD also used such enforcement tools as

the “hot goods” provision, which allows WHD to prohibit the shipment and distribution of goods produced in violation of FLSA’s minimum wage, overtime, or child labor requirements (Weil 2014a).

The COVID-19 pandemic has exacerbated the already-extreme vulnerabilities of farmworkers, who are considered “essential” workers and who work in person rather than remotely. Federal and state workplace safety agencies, as well as employer associations and buyers of farm commodities, have developed guidelines to protect essential workers by reorganizing work, travel, and housing, and providing workers with protective personal equipment. However, following these federal guidelines is not mandatory, and there are widespread concerns that limited access to the social safety net, combined with crowded conditions at work and in housing, could encourage sick employees to work and allow COVID-19 to spread rapidly among farmworkers (Costa and Martin 2020; Botts and Cimini 2020; Bottenmiller Evich, Bustillo, and Crampton 2020). COVID-19 cases are not always reported by industry and occupation, but media reports suggest there have been numerous outbreaks among farmworkers, and food processing and meatpacking workers (Dorning and Skerritt 2020; Douglas 2020).

## **The COVID-19 pandemic makes it more important than ever that farm employers comply with labor standards and protect farmworkers**

This report analyzes federal data from WHD databases on wage and hour violations to understand labor standards enforcement efforts in the agricultural sector. The data represent only WHD investigations and violations of the law detected by WHD, but not all labor and employment law violations in agriculture. The immigration status of farmworkers, fear of retaliation and deportation, and even the perception that WHD will not take action or will fail to obtain meaningful remedies can contribute to farmworkers not reporting violations.

We analyze data on back wages and civil money penalties (CMPs) that may reflect negotiations and settlements between WHD and farm employers, which means that WHD investigators initially may have sought more back wages or higher CMPs. We also do not know whether the back wages or higher CMPs assessed eventually were paid to workers.

This report does not review health and safety issues on farms or analyze the limited enforcement data from the DOL’s Occupational Safety and Health Administration (OSHA), which enforces the Occupational Health and Safety Act.<sup>2</sup> It deals only with federal enforcement, not the enforcement of state labor and employment laws that may provide more protections for farmworkers, as in California and New York. Some state governments do very little to enforce state wage and hour laws—or nothing at all—and in these states, the federal WHD may be the only government agency enforcing employment laws on farms, which may influence where WHD focuses its efforts geographically.

The purpose of this report is to analyze enforcement data to help stakeholders better

understand the results of WHD enforcement, including where violations occurred, which laws were violated, and the penalties that were assessed over the past two decades. We hope the analysis will inform and spark a discussion about how to improve labor standards enforcement on farms, and help increase protections for farmworkers.

## Major findings

Following are seven major findings from the report:

1. **Investigations of employers that violate federal wage and hour laws designed to protect farmworkers detect millions in wage theft every year and lead to millions in civil money penalties against agricultural employers.**
  - The U.S. Department of Labor's Wage and Hour Division (WHD) conducted more than 31,000 investigations of U.S. employers in agriculture between fiscal years 2000 and 2019, an average of 1,500 per year. As a result of these investigations, employers were ordered to pay \$76 million in back wages to 154,000 farmworkers and to pay \$63 million in civil money penalties for violations (in constant 2019 dollars). In 2019, average back wages owed per worker were \$572 for violations of the Migrant and Seasonal Agricultural Worker Protection Act, \$485 for violations of the H-2A visa program, and \$813 for violations of the Fair Labor Standards Act. Violations of these laws include things like wage theft and providing inadequate housing as well as violations related to transportation, employer disclosures, and record-keeping.
  - In 2019, WHD investigators found that agricultural employers owed farmworkers a total of \$6.0 million in back wages and assessed violating employers \$6.3 million in civil money penalties. Both back wages owed and civil money penalties assessed as a result of investigations peaked in fiscal year 2013, at \$8.5 and \$8.0 million, respectively (all in constant 2019 dollars).
  - In 2019, WHD investigators found that employers owed \$1.3 million in back wages to 2,300 workers based on violations of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which is the major federal law that protects U.S. farmworkers, and these employers were assessed \$2.9 million in civil money penalties for MSPA violations (all in constant 2019 dollars). The year 2019 was the peak year for both back wages owed and civil money penalties assessed for MSPA violations detected by investigations.
  - In 2019, WHD investigators found that employers owed \$2.4 million in back wages to 5,000 workers based on violations of the H-2A visa program (nonimmigrant visas for temporary or seasonal farmworkers); employers were assessed \$2.8 million in civil money penalties for H-2A violations. In 2019, the number of violations detected in the H-2A program by WHD was a record 12,000. Both back wages owed and civil money penalties assessed for H-2A violations peaked in fiscal year 2013, at \$4.9 and \$6.6 million, respectively (all in constant 2019 dollars).
2. **Agriculture accounts for a much higher share of investigations and violations than its share of total U.S. employment.** Average farmworker employment among

employers that report to state unemployment insurance agencies was 1.3 million, about 1% of total U.S. employment in 2019. However, over the past 15 years, agriculture accounted for 7% of all federal wage and hour investigations and 3% of the 10 million violations found—three times agriculture’s share of employment.

3. **The back wages recovered for farmworkers whose rights have been violated may just be the tip of the iceberg since WHD is underfunded and understaffed.** The number of WHD investigations in U.S. agriculture fell to 1,125 in 2019, an average of less than 100 a month, and less than half of the 2,431 investigations in 2000. Given that WHD investigates roughly 1,200 agricultural employers each year out of the 107,000 farm employers that report to state unemployment insurance agencies, a farm employer’s probability of being investigated in any given year is 1.1%. Funding for WHD and the number of WHD investigators has declined in recent years, and the 780 investigators in 2019 were fewer than five decades ago, helping to explain fewer investigations.
4. **Despite the reduction in the number of investigations and staff at WHD, the vast majority of investigations of farm employers detect violations, a sign that these employers are not complying with federal wage and hour laws.** Some 70% of investigations conducted by WHD in agriculture detected violations, including 40% that detected one to four violations and 30% that detected five or more violations.
5. **Farm labor contractors—nonfarm employers acting as staffing firms for farm employers—were the most egregious violators between 2005 to 2019.** These employers represent 14% of agricultural employment nationwide but accounted for 24% of all agricultural violations from 2005 to 2019. Farm labor contractors also represented a higher share of agricultural violations than their share of employment in the two major farm labor states, California and Florida—where they accounted for approximately half of all violations over the 2005–2019 period. Farmworkers who are employed by farm labor contractors are more likely to suffer wage and hour violations than those who are hired directly by farms.
6. **Violations of federal wage and hour laws vary across areas and commodities.** The share of wage and hour violations detected by county and commodity does not necessarily correspond to the share of agricultural employment in that county or commodity. In other words, some counties with relatively lower agricultural employment nevertheless may have a disproportionately high share of violations, and vice versa.
7. **A number of “bad apple” employers make life tough for farmworkers.** Among the employers that were investigated, the 5% that committed the most violations accounted for half or more of all violations in a particular agricultural industry or commodity, including among farm labor contractors.

## Questions for further investigation

Our analysis raises several key questions that merit further investigation with respect to

better protecting farmworkers, including:

- Does the low probability of being investigated encourage violations of employment laws? Since only 1.1% of farm employers are investigated in any given year, farm employers reasonably can expect they will never be investigated.
- Without increased funding for WHD, could changes in enforcement strategy improve compliance and worker protections? What is the optimal balance between investigations in areas with more and fewer farmworkers, and between complaint-driven and strategic enforcement that targets likely violators? What are the lessons of WHD's strategic enforcement strategy during Administrator David Weil's tenure between 2014 and 2016?
- Are the penalties assessed by WHD for violations sufficient to change behavior and deter others from violating employment laws? If not, what penalties would encourage compliance and deter violations?
- What can be done to improve compliance among the bad apple employers and farm labor contractors who account for the most violations? Should public policy aim to reduce the growth of the farm labor contractor model of farm employment?
- Could more education of workers and employers improve compliance?

## Recommendations

We offer the following recommendations for enforcement agencies that could improve compliance with employment laws and better protect farmworkers:

1. FLCs and farms that use FLCs deserve increased scrutiny. Given their disproportionate share of violations, compliance could be incentivized with:
  - larger fines and more significant sanctions, and making other employers aware of them
  - adequate enforcement of the joint employment standard under the FLSA to encourage farms to ensure that the FLCs who bring workers to their farms are in compliance.
2. Among all employers and FLCs, examining whether the severity of sanctions is sufficient; increasing the value of civil money penalties should be considered in order to shift penalties from a cost of doing business to an incentive for compliance.
3. WHD should continue to assess and refine strategic enforcement strategies that aim to improve compliance among employers prone to violate employment laws.
4. Repeat violators of employment laws could be required to submit certified payroll data to WHD (as the Davis-Bacon Act requires of government contractors), and be subjected to random payroll audits.
5. Statistical analysis of labor standards enforcement data can formalize investigator rules of thumb about which employers are most likely to violate employment laws,

and help investigators more quickly detect irregularities in payroll data. For example, databases that record the average productivity of workers would be helpful to determine whether “ghost” farmworkers on employer payrolls explain extra-high hourly earnings.

6. More could be done to build on the good work done by advocates and unions to educate farmworkers about their rights and the process of reporting violations, perhaps with new and innovative methods like mobile phone apps.

## WHD funding and enforcement: Investigations in agriculture and total fines between fiscal years 2000 and 2019

The analysis in this section is based on aggregate data from the enforcement database of the U.S. Department of Labor’s (DOL) Wage and Hour Division (WHD). WHD conducted more than 31,000 investigations in U.S. agriculture between fiscal years 2000 and 2019, an average of 1,500 per year, and ordered \$76 million to be paid in back wages to 154,000 farmworkers, and assessed \$63 million in civil money penalties for violations (in constant 2019 dollars) (U.S. DOL-WHD 2020a).

**Figure A** shows a clear downward trend in the number of WHD investigations at agricultural worksites over the past two decades, from more than 2,000 a year in the early 2000s to 1,100 per year the last two fiscal years.

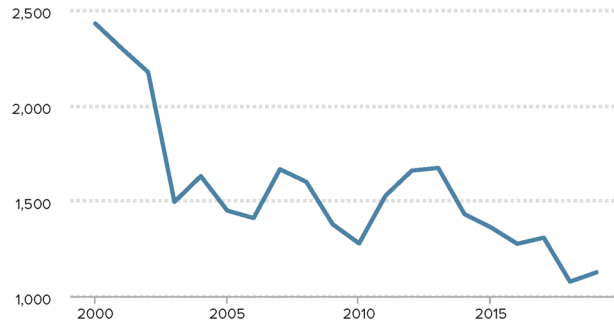
What explains fewer investigations of farm employers? While labor enforcement priorities vary by administration, funding for WHD has lagged behind the growth of the U.S. labor force. In inflation-adjusted dollars, WHD’s budget in 2020 was \$13 million less than it was in 2012.<sup>3</sup> **Figure B** shows that in 2019 there were only 780 WHD investigators enforcing federal labor standards, 32 fewer than in 1973 (U.S. DOL-WHD 2020e). Hamaji et al. (2019) note that in 1978, there was one WHD investigator for every 69,000 U.S. workers; by 2018, there was one investigator for every 175,000 U.S. workers.

Nonetheless, **Figure C** shows that the total back wages owed for all violations of federal employment laws has been on a generally upward trend, peaking at \$8.4 million in FY2013, the same year that civil money penalty assessments peaked at \$8.0 million. Annual back wages and CMPs were between \$3.8 million and \$6.7 million over the past five years.<sup>4</sup> **Figure D** shows that the number of farmworkers who were owed back wages peaked at 12,000 in FY2014, and was just under 9,000 in FY2019.

Three states with large agricultural sectors accounted for 41% of WHD agricultural investigations over the past two decades: Florida had 18%, Texas 12%, and California 11%. North Carolina and New York each had 5% of investigations, and Georgia, New Jersey, New Mexico, Pennsylvania, and Virginia each accounted for 3%.

Figure A

### Wage and Hour Division investigations of agricultural employers, fiscal years 2000–2019

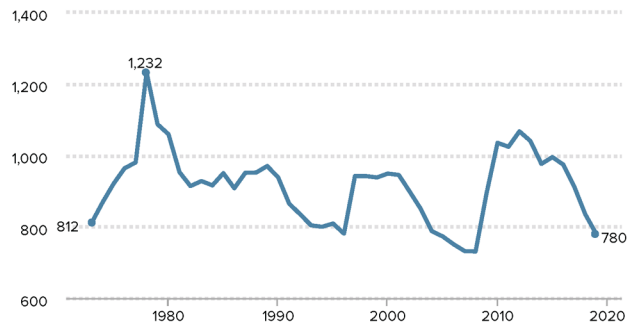


Source: Authors' analysis of U.S. Department of Labor, Wage and Hour Division, *Agriculture data table* (U.S. DOL-WHD 2020a).

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Figure B

### Number of Wage and Hour Division investigators, U.S. Department of Labor, 1973–2019



Note: Numbers represent Wage and Hour Division investigators on staff at the end of each year.

Source: Authors' analysis of Wage and Hour Division data on the number of investigators (U.S. DOL-WHD 2020e).

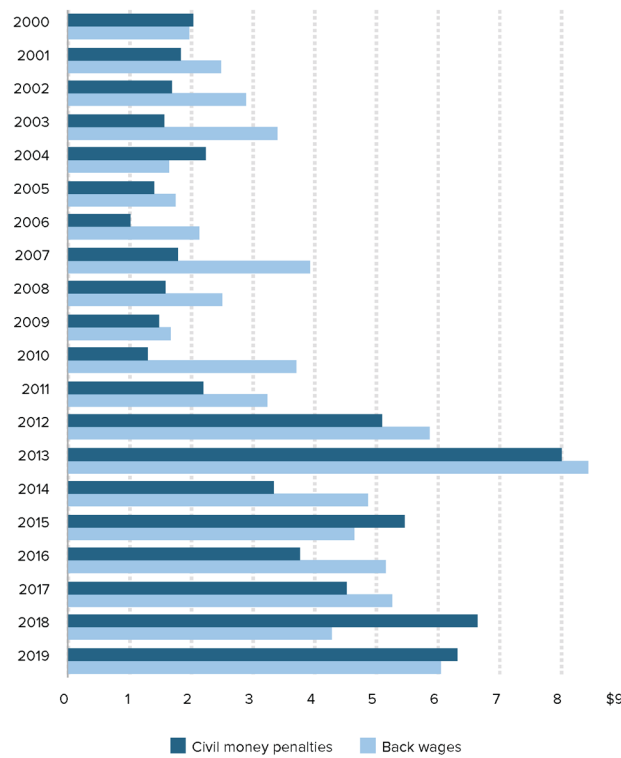
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## Violations of the Migrant and Seasonal



Figure C

**Back wages and civil money penalties assessed (in millions of dollars) against agricultural employers by the Wage and Hour Division, fiscal years 2000–2019**



**Note:** Data are inflation adjusted to 2019 dollars.

**Source:** Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

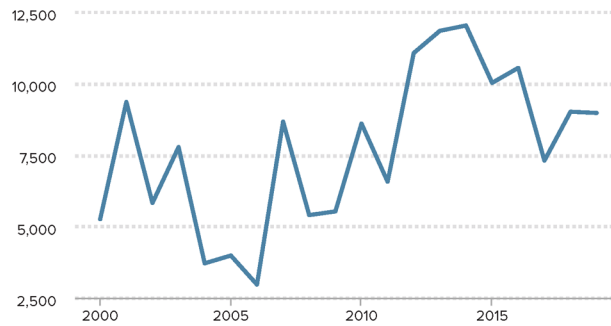
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## Agricultural Worker Protection Act

Over the past two decades, back wages owed to farmworkers and civil money penalties

Figure D

### Employees receiving back wages resulting from Wage and Hour Division investigations of agricultural employers, fiscal years 2000–2019



Source: Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

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assessed have been rising for violations of the United States' main law protecting farmworkers, and for violations of regulations governing H-2A, the main temporary work visa program for farmworkers.

About 45% of the agricultural investigations over the past two decades found violations of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the major federal law that protects U.S. farmworkers. In the peak year of FY2014, more than half of investigations revealed violations of MSPA; there were an average 14 violations on the farms with MSPA violations. Over the past 20 years, the average number of MSPA violations per farm with violations was eight.

**Table 1** presents data on MSPA investigations, violations, and penalties, and shows that back wages owed to workers for MSPA violations peaked at \$1.3 million in FY2019, when civil money penalties for MSPA violations also peaked at \$2.9 million. In FY2019, employers were ordered to provide back pay to 2,253 workers, an average of about \$570 each.

Table 1 also shows that the total back wages owed and CMPs assessed for MSPA violations have fluctuated quite a bit over the past two decades, but increased significantly in FY2019, when back wages peaked at over \$1 million for the first time. Over that time frame, WHD assessed nearly \$25 million in CMPs for MSPA violations, which exceeded the amount of back wages owed to workers for MSPA violations, \$10 million.<sup>5</sup>

Table 1 **Enforcement of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)**

Back wages and civil money penalties assessed by the Wage and Hour Division resulting from violations of MSPA, fiscal years 2000–2019

Fiscal year	Cases with violations	Total violations under MSPA	Ave violations per case	Employees receiving back wages	Back wages (\$2019)	Average back wages owed per employee (\$2019)	Civil monetary penalties assessed (\$2019)
<i>Total or average</i>	14,094	119,045	8	52,760	\$10,012,400	\$190	\$24,718,400
2000	853	4,422	5	1,114	\$156,200	\$140	\$1,295,900
2001	941	10,745	11	6,356	\$532,900	\$84	\$1,061,900
2002	948	5,994	6	1,835	\$552,500	\$301	\$1,116,400
2003	740	6,008	8	1,994	\$371,100	\$186	\$836,200
2004	794	4,295	5	1,129	\$369,800	\$328	\$1,283,700
2005	616	3,430	6	1,330	\$129,200	\$97	\$772,500
2006	615	3,105	5	1,007	\$193,600	\$192	\$776,500
2007	812	5,350	7	1,497	\$222,000	\$148	\$1,460,500
2008	747	5,275	7	2,557	\$367,700	\$144	\$909,800
2009	636	4,979	8	2,061	\$390,100	\$189	\$960,700
2010	626	4,876	8	1,883	\$379,700	\$202	\$761,900
2011	654	5,578	9	2,558	\$461,300	\$180	\$1,008,700
2012	767	7,129	9	3,688	\$841,800	\$228	\$1,156,500
2013	822	8,255	10	4,336	\$699,700	\$161	\$992,300
2014	756	10,745	14	6,213	\$802,700	\$129	\$1,028,800
2015	707	7,802	11	3,569	\$695,200	\$195	\$905,100
2016	608	7,696	13	3,792	\$724,700	\$191	\$1,031,800
2017	548	3,876	7	1,274	\$260,400	\$204	\$1,682,400
2018	492	4,905	10	2,314	\$573,000	\$248	\$2,801,500
2019	412	4,580	11	2,253	\$1,288,800	\$572	\$2,875,400

**Note:** Dollar amounts reported in this table have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data. Totals may not sum due to rounding.

**Source:** Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

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## Violations of the H-2A regulations

WHD enforces H-2A regulations that protect labor standards for migrant workers with H-2A visas and U.S. workers vis-à-vis the H-2A program. The H-2A workers' share of the total farm labor workforce has grown rapidly over the past decade. In 2019, more than 200,000 H-2A workers were employed in the United States, for an average of six months each.<sup>6</sup> Numerous reports from advocates, journalists, and government audits have revealed violations of employment laws that protect H-2A workers, who rarely complain because they lose their right to be in the United States if they lose their jobs (see, for example, Garrison, Bensinger, and Singer-Vine 2015; GAO 2017; Bauer and Stewart 2013). This means the H-2A violations detected by WHD investigators likely underreport the true extent of wage and hour violations by H-2A employers.<sup>7</sup>

About 11% of the agricultural investigations conducted over the past two decades found employer violations of H-2A regulations. The share of investigations that detect violations is rising, reaching 38% in FY2019, while there was an average of 34 violations per investigation that found at least one H-2A violation.

**Table 2** shows that back wages owed to workers based on H-2A violations (which may have been owed to H-2A workers and/or U.S. or unauthorized workers) peaked at \$4.9 million in FY2013, while CMPs for H-2A violations peaked in the same year at \$6.6 million. The number of workers receiving back wages for H-2A violations peaked at almost 5,000 in FY2019, when the average employee who received back wages for an H-2A violation was awarded \$485. The highest back wages assessed per employee was in FY2013, when an average of \$1,100 was owed to each of the 4,400 workers who were owed back pay. Over the past two decades, the total CMPs assessed by WHD amounted to more than \$31 million for H-2A violations, which exceeded total back wages of more than \$24 million.<sup>8</sup>

**Figure E** is based on the same data as Table 2 and shows the fluctuation of back wages owed based on H-2A violations between fiscal years 2000 and 2019. There is no statistically significant trend in the amount of back wages owed to workers based on H-2A violations between fiscal years 2000 and 2019.<sup>9</sup> H-2A workers are in the United States an average of six months, and they earn roughly \$2,000 to \$3,000 a month, or \$12,000 to \$18,000 during their average six months in the United States, so back wages of \$485 (the average in FY2019) equal 3% to 4% of total earnings during their term of employment.

## Violations of other employment laws

WHD enforces the Fair Labor Standards Act (FLSA) and other employment laws, and WHD investigators found more than 114,000 violations of MSPA and H-2A rules on 9,330 farm establishments over the past two decades (see **Table 3**). Farm employers were ordered to pay nearly \$42 million in back wages to 71,600 farmworkers, and they were assessed almost \$6 million in civil money penalties. Violations of the FLSA are grouped together with other violations in the data, so we cannot distinguish them from other employment law violations.

Table 2 **Enforcement of the H-2A visa program**

Back wages and civil money penalties assessed by the Wage and Hour Division resulting from H-2A violations, fiscal years 2000–2019

Fiscal year	Cases with violations	Total violations under H-2A	Average violations per case	Employees receiving back wages	Back wages (\$2019)	Average back wages per employee (\$2019)	Civil monetary penalties assessed (\$2019)
<i>Total or average</i>	3,343	113,836	34	41,869	\$24,276,900	\$580	\$31,268,700
<b>2000</b>	68	1,100	16	307	\$136,800	\$446	\$203,400
<b>2001</b>	102	9,739	95	1,185	\$675,000	\$570	\$374,300
<b>2002</b>	121	3,606	30	1,043	\$289,800	\$278	\$247,100
<b>2003</b>	76	3,440	45	937	\$502,700	\$537	\$433,400
<b>2004</b>	79	1,910	24	560	\$189,100	\$338	\$242,000
<b>2005</b>	73	2,415	33	947	\$476,400	\$503	\$375,200
<b>2006</b>	86	1,084	13	265	\$277,600	\$1,048	\$73,600
<b>2007</b>	95	3,270	34	1,826	\$544,000	\$298	\$95,700
<b>2008</b>	114	3,314	29	1,064	\$762,400	\$717	\$524,400
<b>2009</b>	117	4,152	35	1,487	\$478,700	\$322	\$369,500
<b>2010</b>	100	3,730	37	954	\$436,200	\$457	\$419,600
<b>2011</b>	170	5,987	35	1,548	\$926,600	\$599	\$889,500
<b>2012</b>	216	10,214	47	3,228	\$2,014,000	\$624	\$3,644,900
<b>2013</b>	232	11,171	48	4,440	\$4,889,800	\$1,101	\$6,565,400
<b>2014</b>	173	6,954	40	2,971	\$1,491,000	\$502	\$1,911,200
<b>2015</b>	207	7,935	38	2,496	\$1,732,400	\$694	\$4,231,600
<b>2016</b>	235	6,079	26	3,572	\$1,546,500	\$433	\$2,368,500
<b>2017</b>	330	7,314	22	3,717	\$2,480,400	\$667	\$2,343,100
<b>2018</b>	318	8,438	27	4,328	\$2,007,500	\$464	\$3,119,900
<b>2019</b>	431	11,984	28	4,994	\$2,419,800	\$485	\$2,836,600

**Note:** Dollar amounts reported in this table have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data. Totals may not sum due to rounding.

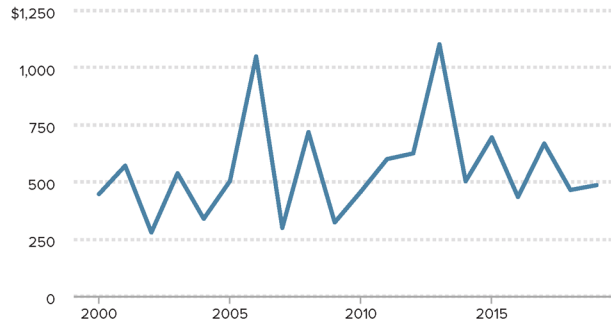
**Source:** Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

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## Two decades of aggregate WHD data on farm

Figure E

### Average back wages assessed to workers per H-2A violation, fiscal years 2000–2019



**Note:** Dollar amounts reported in this figure have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data.

**Source:** Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

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## labor enforcement reveal three major patterns

Our analysis of WHD's aggregate data on enforcement from fiscal years 2000 and 2019 revealed three notable patterns.

First, as shown in Figure A, the number of WHD investigations in U.S. agriculture has fallen below 1,200 a year—to an average of less than 100 a month—in the last two years. Nevertheless, the data show that agriculture accounts for a much higher share of investigations and violations than its share of employment. The Census of Agriculture (COA) reported more than 500,000 farm employers in the United States in 2017 (Rural Migration News 2019), and 107,000 agricultural establishments were registered with state unemployment insurance agencies in 2019, according to the Quarterly Census of Employment and Wages (QCEW) (BLS-QCEW 2020a). Average farmworker employment according to the QCEW was 1.3 million, about 1% of total U.S. employment in 2019. However, agriculture accounted for 7% of all federal wage and hour investigations and 3% of the 10 million federal wage and hour law violations found over the past 15 years—three times agriculture's share of employment (BLS-QCEW 2020a; U.S. DOL-WHD 2020a).

Using the QCEW number of establishments as a reference for the number of agricultural employers, means the probability of any single farm ever being investigated for federal employment law violations in a given year is low: 1.1%. The QCEW number of agricultural establishments includes only those required to register and pay unemployment insurance

Table 3 **Enforcement of the Fair Labor Standards Act (FLSA) and other employment laws**

Back wages and civil monetary penalties assessed by the Wage and Hour Division resulting from FLSA and other violations, fiscal years 2000–2019

Fiscal Year	Cases with violations	Total other violations (excluding OSHA)	Average violations per case	Employees receiving back wages	Back wages (\$2019)	Average back wages per employee (\$2019)	Civil monetary penalties assessed (\$2019)
<i>Total or Average</i>	9,330	114,209	12	71,574	\$41,741,836	\$583	\$5,812,536
2000	490	5,594	11	3,405	\$1,686,714	\$495	\$469,463
2001	399	4,254	11	3,023	\$1,290,809	\$427	\$252,743
2002	437	4,917	11	3,234	\$2,046,841	\$633	\$219,876
2003	386	6,320	16	5,467	\$2,523,629	\$462	\$196,580
2004	401	3,733	9	2,383	\$1,094,632	\$459	\$498,793
2005	366	2,521	7	1,810	\$1,143,251	\$632	\$184,230
2006	351	2,944	8	1,895	\$1,675,186	\$884	\$106,720
2007	426	6,422	15	5,589	\$3,173,022	\$568	\$153,886
2008	396	3,032	8	2,372	\$1,390,051	\$586	\$121,955
2009	422	3,438	8	2,133	\$808,472	\$379	\$134,786
2010	406	12,166	30	6,424	\$2,890,384	\$450	\$83,953
2011	450	4,364	10	2,958	\$1,859,571	\$629	\$146,359
2012	531	6,300	12	4,743	\$3,023,412	\$637	\$235,441
2013	641	6,685	10	3,637	\$2,860,367	\$786	\$362,770
2014	608	5,838	10	4,309	\$2,574,113	\$597	\$382,899
2015	566	8,345	15	4,855	\$2,230,751	\$459	\$264,208
2016	580	11,226	19	5,316	\$2,890,541	\$544	\$336,169
2017	561	4,322	8	2,635	\$2,523,721	\$958	\$453,201
2018	477	5,049	11	2,491	\$1,704,014	\$684	\$704,590
2019	436	6,739	15	2,895	\$2,352,358	\$813	\$503,914

**Note:** Violations of the Fair Labor Standards Act (FLSA) are grouped together with other violations in the DOL data we utilized, except for MSPA and H-2A violations, therefore we cannot distinguish FLSA violations from other employment law violations (other than MSPA and H-2A, which are presented in Tables 1 and 2). Dollar amounts reported in this table have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data. Totals may not sum due to rounding.

**Source:** Authors' analysis of U.S. Department of Labor, Wage and Hour Division, [Agriculture data table](#) (U.S. DOL-WHD 2020a).

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taxes, and is thus only a fifth of the agricultural employers in the COA. Thus, our estimate of 1.1% likely overstates the likelihood that an agricultural employer will be investigated.

Second, violations of MSPA are found on almost half of the farms inspected, and the civil money penalties assessed for MSPA violations are more than twice the amount of back wages owed to farmworkers.

Third, the share of agricultural investigations that find violations of H-2A regulations is rising sharply. Between fiscal years 2000 and 2019, H-2A violations resulted in back wages owed that average \$7,300 per farm with violations, and \$9,400 per farm in CMP assessments.<sup>10</sup> However, U.S. farmers pay about \$40 billion a year in wages to farmworkers (USDA 2017). Given that total wage bill, the \$6 million in back wages and \$6.3 million in CMPs that employers were required to pay in fiscal 2019 (see Figure C) were a miniscule share of the annual overall wage bill.

### A note about the data

Figures A, C, and E, and Tables 1–3 in the preceding section are generated from summary statistics on the WHD website that include a warning: “Wage and Hour investigations, including those in agriculture, often involved the concurrent enforcement of multiple statutes. Therefore, duplication may exist in the data” (U.S. DOL-WHD 2020a). The analysis in the following sections is based on a separate WHD enforcement database that “contains all concluded WHD compliance actions since FY 2005” (U.S. DOL-WHD 2020f). There are differences between the summary statistics data and the enforcement database, so there may be discrepancies between the summary analysis and the detailed analysis that follows.

## Fifteen years of detailed data on the outcomes of farm labor investigations

This section draws on the analysis of a WHD database that summarizes the outcomes of more than 294,000 investigations between fiscal years 2005 and 2019 in both the public and private sectors (U.S. DOL-WHD 2020f). Entries for each investigation include the employer’s contact information, NAICS industry code, and details of the investigation, such as the number of violations found, how many workers were affected, what back wages were owed, and the civil money penalties assessed on employers.



## Federal farm labor investigations between fiscal years 2005 and 2019

The 294,000 investigations over 15 years in all U.S. industries found more than 10 million violations. About 5% of all violations in the database, 530,000, were found at a single Wells Fargo Bank branch in Roseville, Minnesota, in 2012–2013.

Some 19,250 WHD investigations between fiscal years 2005 and 2019, about 6.5% of all investigations, had an agricultural NAICS industry code associated with them, from 1111 for Oilseed and Grain Farming to 115310 for Support Activities for Forestry. More than 10% of the 17,000 farming operations that were investigated were visited multiple times. These agricultural investigations detected a total of 229,000 violations of the three major federal labor standards laws or regulations that apply on farms: the FLSA (22% of all violations), MSPA (30%), and H-2A program rules (33%).

**Figure F** shows the number of MSPA, H-2A, and FLSA violations in agriculture detected by WHD from fiscal years 2005 to 2019, and finds the number of detected violations of all three laws peaked during fiscal years 2011, 2012, or 2013. The number of detected violations in all three categories reached a record low in fiscal 2019, declining as the number of investigations in agriculture declined.

**Figure G** groups the number of violations found per investigation during the FY2005–FY2019 period, from zero to more than five violations per investigation. When looked at this way, the data reveal a U-shape among the violators, with almost 30% of investigations bunched at the zero and 31% bunched at more than five violations; those two ends of the spectrum account for almost two-thirds of the violations, while 17% of investigations found one violation and 23%, nearly a quarter, found two to four violations. However, overall, the data show that 70% of all investigations detected violations, while 30% detected zero violations. In addition, it should be noted that this figure does not account for the severity of the violations or the amounts assessed. In other words, some investigations that detected one or two violations may have detected egregious violations and found employers owing large amounts of back pay, while investigations that detected with five or more violations may have resulted in smaller amounts of back wages owed.

We reviewed the average number of violations per investigation by state. **Figure H** shows that the highest number of average violations detected per investigation were not in the five states with the most farm employment. In other words, the WHD investigations that detected the most violations per investigation were not always in the states with the most farmworker employment. It stands to reason that the distribution of violations may be related to the distribution of resources among regional WHD offices, and/or it may be related to differing approaches and priorities among regional WHD offices.

Figure F

**In 2019, the number of employment law violations detected by the Wage and Hour Division (WHD) among agricultural employers dropped to the lowest point in 15 years**

Number of MSPA, H-2A, and FLSA violations detected by WHD investigations in agriculture, fiscal years 2005–2019



**Note:** MSPA stands for the Migrant and Seasonal Worker Protection Act, H-2A is the H-2A work visa program for temporary agricultural workers, and FLSA stands for the Fair Labor Standards Act.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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## Farm labor contractors between fiscal years 2005 and 2019

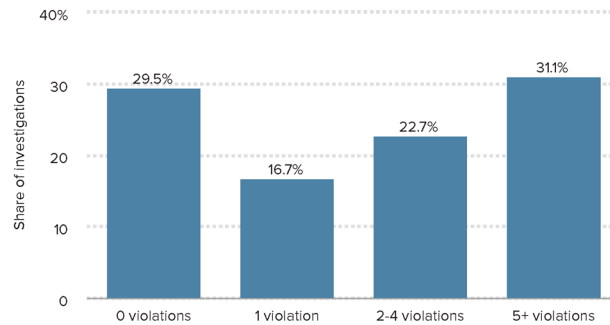
Farm labor contractors (FLCs) are nonfarm employers that act as staffing firms for farm employers. For FLCs, which correspond to NAICS code 115115, average employment was 181,000 in 2019, according to the QCEW (BLS-QCEW 2020a); FLCs are a subset of the Support Activities for Crop Production category (NAICS 1151), which had average employment of 342,000, meaning that FLCs accounted for 53% of U.S. crop support services employment.

FLCs accounted for 14% of total average employment in UI-covered agriculture of 1.3 million in 2019<sup>1</sup>—including employment in both crops and animal agriculture—but accounted for one-quarter of all employment law violations detected in agriculture (24%). Thus, the share of agricultural employment law violations committed by farm labor contractors was 10 percentage points greater than the FLC share of average annual agricultural employment. In practical terms, that means that farmworkers employed by FLCs or on farms that use FLCs are more likely to suffer wage and hour violations than

Figure G

### Over 70% of federal investigations of agricultural employers detected wage and hour violations

Violations detected during investigations of agricultural employers, by number of violations found per investigation, fiscal years 2005–2019



**Note:** Data include H-2A, MSPA, FLSA, and all other types of employment law violations in the agricultural sector.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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farmworkers who are employed by farms directly.

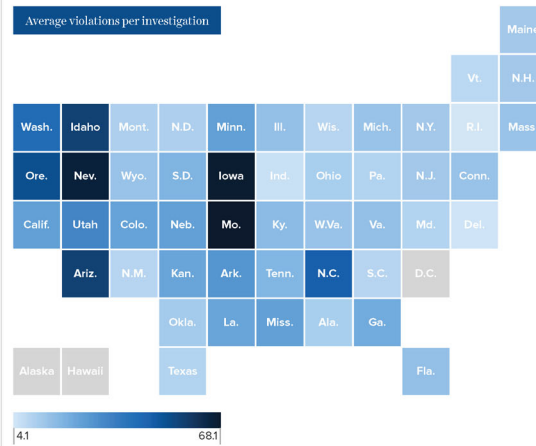
We found that 75% of all WHD investigations of FLCs detected violations, while 25% of investigations detected zero violations. We grouped the number of violations detected per investigation of FLCs, as shown in **Figure I**. The share of investigations of FLCs that found zero violations, at 25%, was significantly less than the share of investigations of FLCs that found five or more violations, 36%. Nearly two-fifths of investigations detected either one violation or two to four violations.

We reviewed the average number of violations detected by investigations of FLCs by state. **Figure J** shows that when violations committed by FLCs are found as the result of an investigation, the highest number of average violations per investigation were not in the five states with the most agricultural employment.

FLCs bring workers to farms, but we do not have data on the commodities grown on the farms where FLC employees work. We know that most FLC employees work on fruit and vegetable farms, since these commodities require the most seasonal workers that FLCs specialize in providing. For this reason, we cannot directly compare FLC violations with violations committed by crop farms, or citrus farms, because crop and citrus farms both may hire workers directly and use FLCs to obtain workers.

Figure H

**Average number of employment law violations detected by the Wage and Hour Division per investigation that discovered violations among agricultural employers, by state, fiscal years 2005–2019**



**Note:** Major farm employment states are California, Texas, Florida, Washington, and North Carolina. Data include H-2A, MSPA, FLSA, and all other types of employment law violations in the agricultural sector.  
**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020).

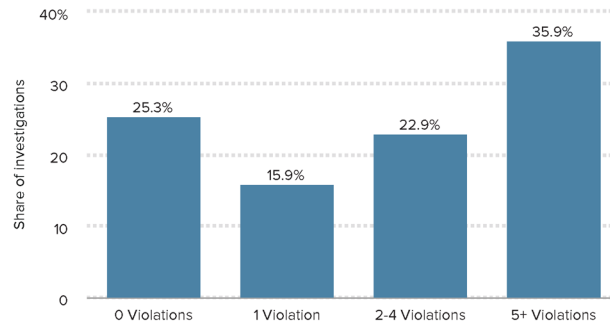
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However, if we consider FLCs as a unique NAICS code (115115) and compare the FLC code to others, then FLCs top the list when it comes to federal wage and hour violations, followed by Vegetable and Melon Farming (NAICS 1112) employers, at about 15% of all agricultural violations, and where average employment of 93,000 was 7% of the 1.3 million total UI-covered agricultural employment in 2019. Ten percent of violations were in Poultry and Egg Production (1123), almost all associated with a single employer, Perdue Foods. Four six-digit NAICS industries each accounted for 4% of all employment law violations: Berry (except Strawberry) Farming (111334); Apple Orchards (111331); All Other Miscellaneous Crop Farming (111998); and Broilers and Other Meat Type Chicken Production (11232).

Figure I

### Three-fourths of federal investigations of farm labor contractors detected wage and hour violations

Violations detected during investigations of farm labor contractors, by number of violations found per investigation, fiscal years 2005–2019



Source: Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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### Violations by state and county between fiscal years 2005 and 2019

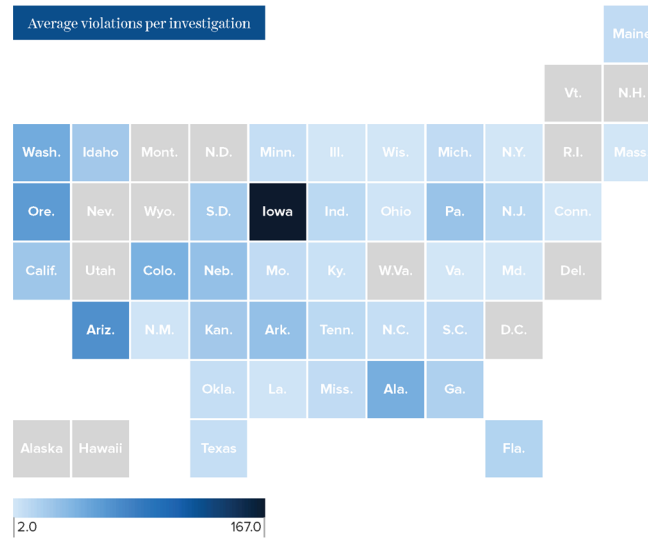
Agricultural employment is concentrated on farms that produce labor-intensive commodities in a handful of states, and in particular, counties within these states. For example, the five states with the highest agricultural employment include more than half of all farm jobs, and the five leading farm counties in California include more than half of the state's farm jobs. In this section, we examine how employment law violations in agriculture are distributed by state and by county, and take a closer look at Florida and California, and particular counties in California. We also highlight the commodities (by NAICS codes) where federal wage and hour laws are most likely to be violated.

#### California and Florida had the most violations, and the biggest violators are FLCs

California and Florida each accounted for 14% of the employment law violations detected as the result of WHD investigations nationwide, followed by North Carolina with 10% (due in large part to Perdue Farms), Texas and Washington with 5% each, and Oregon with 4%. These six states accounted for 52% of all employment law violations found in agriculture. In the two states with the highest shares of violations, FLCs accounted for the largest share of the violations detected by WHD investigators. **Figure K** shows that FLCs

Figure J

**Average number of employment law violations detected by the Wage and Hour Division per investigation that discovered violations among farm labor contractors, by state, fiscal years 2005–2019**



**Note:** Major farm employment states are California, Texas, Florida, Washington, and North Carolina.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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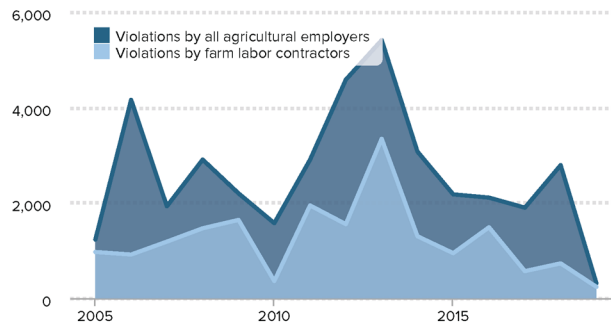
accounted for 48% of the total violations in California during fiscal years 2005 to 2019, and **Figure L** shows that FLCs accounted for 50% of the total violations detected in Florida over the same period.

**Figures M1–M3** compare each California county's share of agricultural employment and its share of employment law violations detected by WHD. Counties with a small share of agricultural employment can have a larger share of employment law violations—in other words, the correlation between the two is far from perfect. For example, Siskiyou and Lassen counties have a far higher share of the employment law violations than their shares of agricultural employment, while the major farm employment counties of Fresno, Kern, and Tulare have a smaller share of violations than their shares of agricultural employment.

Comparing each county's share of FLC violations with its share of FLC employment tells a

Figure K

**Employment law violations detected in California by the Wage and Hour Division among all agricultural employers and farm labor contractors, fiscal years 2005–2019**



**Note:** Violations by California farm labor contractor are a subset of employment law violations detected among all agricultural employers in California.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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similar story. FLC employment is concentrated in the state's major farm employment counties of Kern, Tulare, Fresno, and Monterey, and these counties also have a high share of all employment law violations committed by FLCs. However, **Figures N1–N3** show that, with the exception of Tulare County, the share of FLC violations in leading farm counties is lower than their share of FLC employment, but counties such as Los Angeles and San Bernardino, with relatively small shares of FLC employment, had higher shares of FLC violations. A handful of other counties, scattered primarily throughout the Central Valley, also had a larger share of FLC violations relative to their share of FLC employment.

Figure L

**Employment law violations detected in Florida by the Wage and Hour Division among all agricultural employers and farm labor contractors, fiscal years 2005–2019**



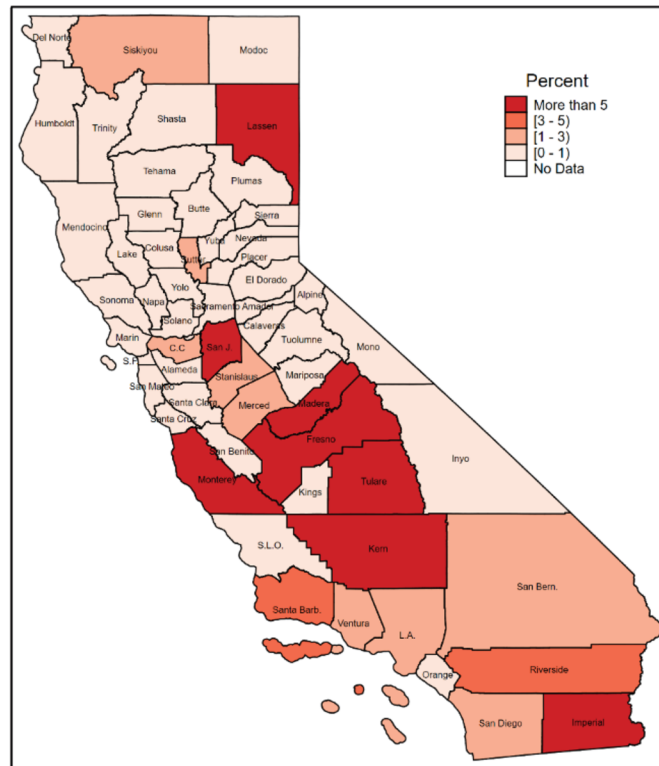
**Note:** Violations by Florida farm labor contractor are a subset of employment law violations detected among all agricultural employers in Florida.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Figure M1 **Percent of total federal employment law violations detected by the Wage and Hour Division among agricultural employers in California, by county, fiscal years 2005–2019**

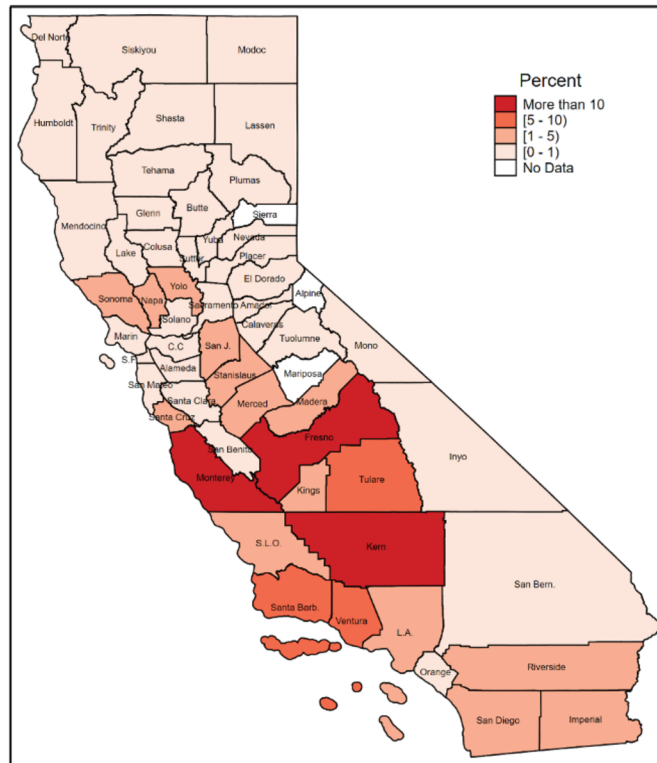


**Note:** The county-level data in this figure were constructed from data that identifies the Zip code where the employer was located. Some California Zip codes cross county boundaries and, as a result, some investigations could not be assigned to a county.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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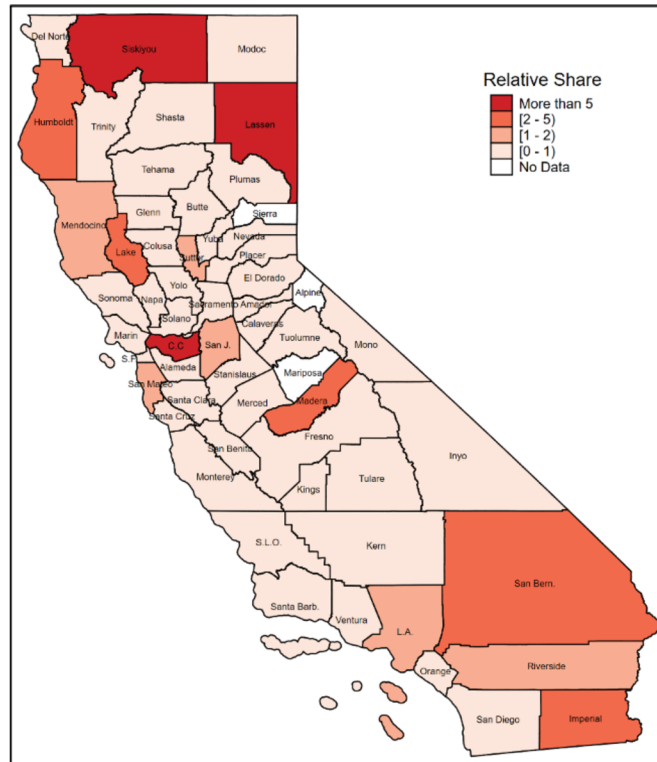
Figure M2 **Percent of total California agricultural employment by county, 2018**



**Source:** Authors' analysis of Bureau of Labor Statistics, Quarterly Census of Employment and Wages data for North American Industry Classification System code 11, agriculture, in 2018 (BLS-QCEW 2020a).

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Figure M3 **Ratio of California county share of federal employment law violations detected by the Wage and Hour Division among agricultural employers to the share of agricultural employment in the county, fiscal years 2005–2019**

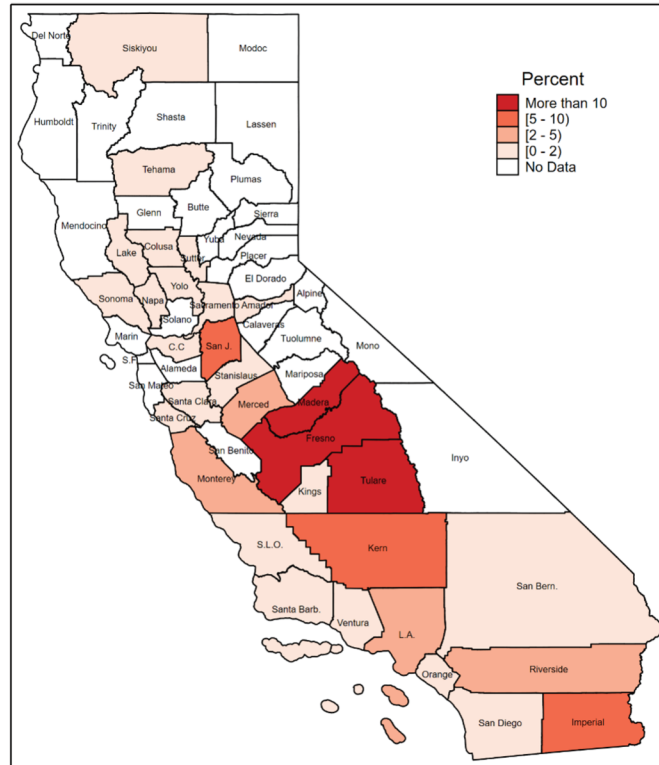


**Note:** The figure depicts the ratio of each county's share of farm labor violations that were detected between fiscal years 2005 and 2019 relative to the county's share of agricultural employment. Values less than 1 indicate that a county has a smaller share of violations compared to its share of employment. Larger values indicate that the agricultural employers who were investigated within a county were generally less compliant with employment laws.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f) and Bureau of Labor Statistics, Quarterly Census of Employment and Wages data for North American Industry Classification System code 11, agriculture, in 2018 (BLS-QCEW 2020a).

Figure M3 **Economic Policy Institute**  
(cont.)

Figure N1 **Percent of total federal employment law violations detected by the Wage and Hour Division among farm labor contractors in California, by county, fiscal years 2005–2019**



**Note:** The county-level data in this figure were constructed from data that identifies the Zip code where the employer was located. Some California Zip codes cross county boundaries and, as a result, some investigations could not be assigned to a county.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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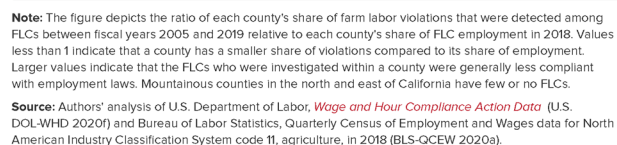


Figure N3 **Economic Policy Institute**  
(cont.)

## Probability of finding violations in California agriculture

During the Obama administration and under the leadership of WHD Administrator David Weil, the WHD developed a more strategic approach to labor standards enforcement, emphasizing investigations in industries and areas where there were likely to be employment law violations. We used the enforcement data to examine the probability that violations would be found among employers of particular commodities in California, as reflected in their NAICS codes.

**Table 4** shows the probability that a violation is detected during an investigation by commodity or NAICS category.<sup>12</sup> FLCs are not a commodity because they supply farmworkers to employers who grow many commodities, but they are included for comparison purposes. The highest probability of finding a violation is 72% for fruit and tree nut farming, followed by 64% for vegetable and melon farming investigated. More than half of greenhouse, nursery, and floriculture operations that were investigated, and more than half of animal production and aquaculture that were investigated, had one or more employment law violations.<sup>13</sup> In the case of FLCs, almost 85% of California FLCs that were investigated had at least one employment law violation, as did 72% of other crop support service employers that were investigated (excluding FLCs). In sum, most agricultural investigations find violations, and farms that utilize FLCs are where the probability of finding violations is the highest. (If the violations committed by FLCs were categorized under their corresponding commodities, an even higher share of fruit and vegetable farms would have had violations.)

We calculated the probability that an investigation would find at least one violation in the top 10 agricultural counties in California.<sup>14</sup> **Table 5** shows that more than half of all agricultural investigations in each of these California counties found violations, ranging from roughly 60% of investigations in Imperial and Ventura counties to 80% or 90% in Fresno and Tulare counties.



Table 4

**Probability that federal employment law violations will be detected during an investigation by the Wage and Hour Division in California, by commodity or type of employment, fiscal year 2005–2019**

Commodity or type of employment	Probability of finding a violation
<i>Vegetable and melon farming</i>	0.641*** (0.029)
<i>Fruit and tree nut farming</i>	0.719*** (0.018)
<i>Greenhouse, nursery, and floriculture production</i>	0.533*** (0.065)
<i>Other crops</i>	0.644*** (0.047)
<i>Animal production and aquaculture</i>	0.545*** (0.067)
<i>Support activities for crop production (non-FLC)</i>	0.718*** (0.035)
<i>Farm Labor Contractors</i>	0.845*** (0.012)
<i>Number of violations</i>	2,132

**Note:** Heteroskedastic-robust are standard errors in parentheses. \*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$ . A  $p$ -value of less than .01 indicates that there is less than a 1% chance of falsely rejecting the null hypothesis that a coefficient is equal to zero. In other words, if  $p < .01$ , it is highly unlikely that the true share of employers within a North American Industry Classification System (NAICS) code that are guilty of at least one violation is equal to zero. Commodity and type of employment reflect corresponding NAICS codes associated with violations, or a combination of codes listed here: Vegetables and melon farming (1112); Fruit, tree, and nut farming (1113); Greenhouse, nursery, and floriculture production (1114); Animal production and aquaculture (112); Support activities for crop production (non-FLC) (1151 excluding 115115); and Other crops (1119, 1131, 11199, 111999, 111940, 111991, 111998). Non-FLC crop support services include cotton ginning, soil preparation, crop harvesting by machine, other post-harvest activities, and farm management services.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Table 5

**Probability that federal employment law violations will be detected during an investigation by the Wage and Hour Division in California, by county, fiscal years 2005–2019**

California county	Probability of finding a violation
<i>Fresno</i>	0.835***
	(0.025)
<i>Imperial</i>	0.614***
	(0.049)
<i>Kern</i>	0.766***
	(0.035)
<i>Monterey</i>	0.741***
	(0.038)
<i>Riverside</i>	0.623***
	(0.041)
<i>San Diego</i>	0.705***
	(0.069)
<i>San Joaquin</i>	0.635***
	(0.036)
<i>Santa Barbara</i>	0.788***
	(0.071)
<i>Tulare</i>	0.899***
	(0.026)
<i>Ventura</i>	0.581***
	(0.053)
<i>Number of violations</i>	1,222

**Note:** Heteroskedastic-robust are standard errors in parentheses. \*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$ . A p-value of less than .01 indicates that there is less than a 1% chance of falsely rejecting the null hypothesis that a coefficient is equal to zero. In other words, if  $p < .01$ , it is highly unlikely that the true share of employers within a county that are guilty of at least one violation is equal to zero. Non-FLC crop support services include cotton ginning, soil preparation, crop harvesting by machine, other post-harvest activities, and farm management services.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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## Investigations and fines of repeat violators

One useful metric to determine whether WHD's enforcement efforts are succeeding in educating and encouraging employers to follow the law is the degree to which individual employers continue to violate the law or come into compliance after repeat investigations. The WHD data allow us to track violations and fine amounts over time for employers that were investigated multiple times.

Our analysis of these data does not find any consistent compliance patterns for individual employers in terms of back wages owed per employee after repeat investigations. For example, some farm employers were investigated multiple times and never found to owe back wages, while others owed back wages in 75% or more of investigations. However, none of the employers investigated more than five times owed back wages after each investigation.

To illustrate this lack of a pattern, we show several agricultural employers in the Rio Grande Valley of Texas that were investigated more than 50 times between fiscal years 2005 and 2019. **Figure O** shows that J&D Produce (Little Bear) was investigated nearly 120 times, with two investigations finding average back wages owed to each affected employee of \$46 and \$113. **Figure P** shows that Frontera Produce was investigated more than 50 times and was assessed back wages of \$471 per affected employee in only one investigation. **Figure Q** shows that Rio Fresh was investigated more than 60 times, and four times was found to owe back wages of \$72, \$28, \$45, and \$54 per affected employee—rather small amounts.

Figures O–Q show there was no pattern to back wages owed per affected employee for farms that were investigated multiple times. For example, J&D Produce was investigated more than 40 times before any back wages were found to be owed, and then investigated another 60 times before more back wages were found to be owed. The data do not indicate a declining pattern of back wages owed as farms came into compliance; sometimes zero back wages were owed after an investigation, punctuated by one or two subsequent investigations that found back wages owed.

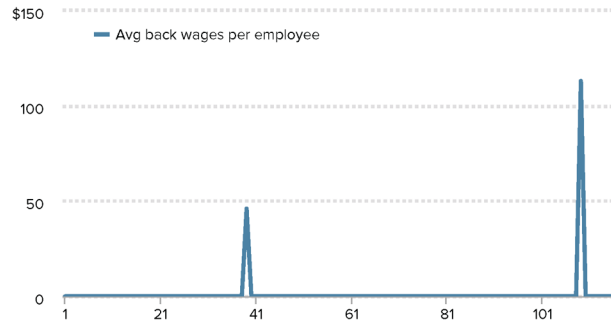
Stockton, California-based FLC Jose M. Magdaleno was the most investigated agricultural employer in the state. **Figure R** shows that the first five investigations of Magdaleno found back wages of up to \$320 per employee due, after which there were 10 investigations with no back wages assessed, followed by a more recent investigation that found back wages of \$94 owed per affected employee. While the amount of back wages associated with Magdaleno had a general downward trend, the most recent investigations still found significant amounts of back wages owed to workers. Some California farm employers, including Sun World International, Richard Bagdasarian Inc., and OM Contracting, were investigated more than five times, and no back wages were found to be owed to employees.

As noted, FLCs account for 14% of average employment in U.S. agriculture but for one-quarter of the federal employment law violations found in U.S. agriculture, and about one-

Figure O

### No consistent pattern of compliance for repeat violators

J&D Produce in Texas was investigated over 100 times during fiscal years 2005–2019



**Note:** Dollar amounts are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Number of Wage and Hour Division investigations and average back wages per employee owed for this employer between FY05 and FY19.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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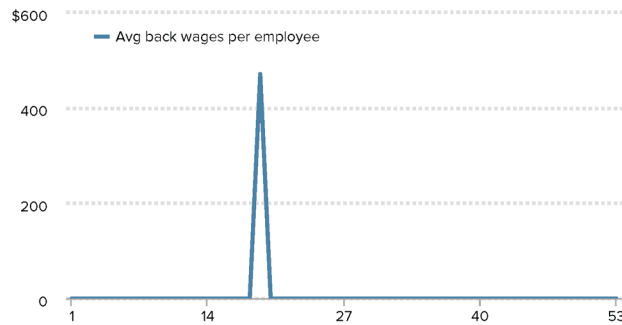
half of the violations found in California agriculture. However, most of the FLCs that were investigated more than five times between fiscal years 2005 and 2019 had zero violations. For example, the same data set used to create the figures showed that Delano-based Roberto Ramirez was investigated 15 times and had zero back wages assessed. **Figure S** shows that Jaime Ybarra owed zero back wages after the first eight investigations, but was found to owe more than \$1,600 and \$1,200 per employee during the ninth and 11th investigations, respectively.

The other questions we examined with these data relate to civil money penalties (CMP), which are monetary fines levied by WHD to deter employers from violating employment laws. There is little evidence that stiffer penalties have been associated with increased compliance with federal employment laws, but Galvin (2016) found that stiffer penalties and more robust enforcement at the state level is associated with a lower incidence of wage and hour violations. We first asked whether the amount of total CMPs assessed in an initial investigation reduced the probability of an employer being investigated again, and then, for employers found in violation of at least one employment law, whether the amount of CMPs owed in the first case with violations reduced their probability of being found in violation in a subsequent investigation. We confined the analysis to the 10 states with the most employment law violations in agriculture; they collectively account for half of the agricultural investigations in the WHD

Figure P

### No consistent pattern of compliance for repeat violators

Frontera Produce in Texas was investigated over 50 times during fiscal years 2005–2019



**Note:** Dollar amounts are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Number of Wage and Hour Division investigations and average back wages per employee owed for this employer between FY05 and FY19.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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database.<sup>15</sup>

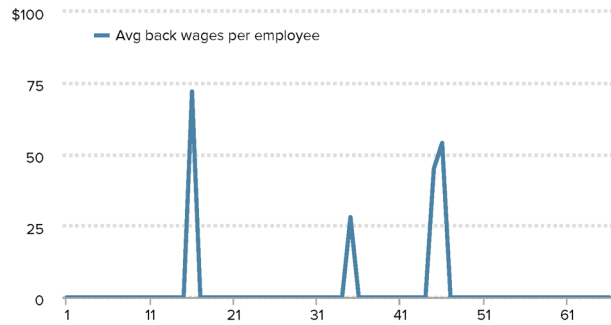
We constructed two dependent variables and two explanatory variables. The first dependent variable takes on the value of 1 if an employer was investigated more than one time and zero otherwise, while the second only includes employers found in violation of employment laws in at least one investigation, and takes on the value of 1 if the employer was found in violation of employment laws during at least two separate investigations and zero otherwise—that is, the subset of employers that were repeat offenders. The main explanatory variable used with the first dependent variable was the amount of CMPs owed by each employer (including \$0 amounts) during their first investigation, and the main explanatory variable used with the second dependent variable identifies the amount of CMPs owed by each employer (including \$0 amounts) during their first investigation with violations.

**Table 6** presents the results for the repeat investigation analysis, and **Table 7** presents the results from the repeat offender analysis. The results in column (1) in the tables are from simple regressions that do not include any control variables, while the results in column (2) are from regressions that include year fixed effects, which control for unobserved factors that are common to all employers within each year (such as changes to federal immigration policy that affect all employers). The results in column (3) are from regressions

Figure Q

### No consistent pattern of compliance for repeat violators

Rio Fresh in Texas was investigated almost 70 times during fiscal years 2005–2019



**Note:** Dollar amounts are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Number of Wage and Hour Division investigations and average back wages per employee owed for this employer between FY05 and FY19.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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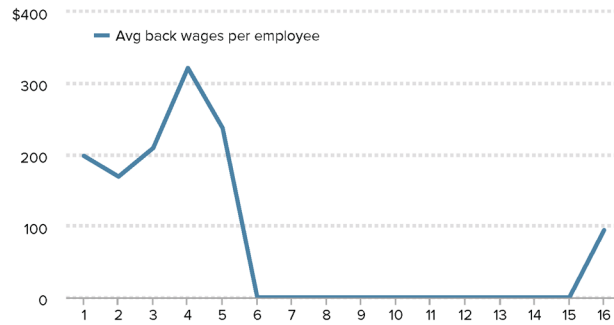
that also include state fixed effects to control for unobserved factors that are common to all employers within a state (such as the state minimum wage).

Table 6 reveals a positive correlation between the amount of CMPs owed and the probability of being investigated again, but the coefficients are very small and not statistically significant at conventional levels of confidence. Table 7 also shows that there is a positive correlation between the amount of CMPs owed and the probability of being a repeat offender, but these coefficients also are close to zero and are not statistically significant. These results suggest that the total amount of CMPs assessed is not statistically linked to a reduction in the probability of being a repeat employment law violator, perhaps because CMP amounts are set too low to deter future violations.

Figure R

### No consistent pattern of compliance for farm labor contractors who are repeat violators

Jose M. Magdaleno in California was investigated 16 times during fiscal years 2005–2019



**Note:** Dollar amounts are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Number of Wage and Hour Division investigations and average back wages per employee owed for this employer between FY05 and FY19.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Figure S

### No consistent pattern of compliance for farm labor contractors who are repeat violators

Jaime Ybarra in Texas was investigated 12 times during fiscal years 2005–2019



**Note:** Dollar amounts are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Number of Wage and Hour Division investigations and average back wages per employee owed for this employer between FY05 and FY19.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Table 6

**Correlations for repeat investigations of agricultural employers by the Wage and Hour Division, fiscal years 2005–2019**

	(1)	(2)	(3)
	Repeat investigation	Repeat investigation	Repeat investigation
<i>Civil money penalties assessed (in \$1000s)</i>	0.00006	0.00011	0.00014
	(0.00014)	(0.00016)	(0.00016)
<i>N</i>	8,833	8,833	8,833
<i>Year fixed effects</i>	No	Yes	Yes
<i>State fixed effects</i>	No	No	Yes

**Note:** Dollar amounts used in this analysis are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Heteroskedastic-robust standard errors in parentheses. \*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$ . P-values greater than .1 indicate that we are unable to reject the null hypothesis that the statistical association between the explanatory variables and the dependent variable is equal to zero at a 90% level of confidence. N represents the number of employers in the top 10 violating states that were investigated at least once by the Wage and Hour Division.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Table 7

**Correlations for repeat violations by agricultural employers that were detected by the Wage and Hour Division, fiscal years 2005–2019**

	(1)	(2)	(3)
	Repeat investigation	Repeat investigation	Repeat investigation
<i>Civil money penalties assessed (in \$1000s)</i>	0.00014	0.00016	0.00019
	(0.00017)	(0.00018)	(0.00018)
<i>N</i>	6,662	6,662	6,662
<i>Year fixed effects</i>	No	Yes	Yes
<i>State fixed effects</i>	No	No	Yes

**Note:** Dollar amounts used in this analysis are adjusted for inflation to constant 2019 dollars using the CPI-U-RS. Heteroskedastic-robust standard errors in parentheses. \*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$ . P-values greater than .1 indicate that we are unable to reject the null hypothesis that the statistical association between the explanatory variables and the dependent variable is equal to zero at a 90% level of confidence. N represents the number of employers in the top 10 violating states who were investigated at least once by the Wage and Hour Division and were also found to be in violation of at least one employment law.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Table 8

**Top 10 agricultural employers by number of employment law violations detected, fiscal years 2005–2019**

Employer	Number of investigations	Number of violations	Share of violations	Total back wages owed	Share of back wages owed	Total civil money penalties (CMP) assessed	Share of FLC CMPs assessed
<i>Perdue Foods, Inc.</i>	1	20,002	7.4%	\$0	0.0%	\$0	0.0%
<i>George's Processing, Incorporated</i>	1	3,148	1.2%	\$1,582,914	2.5%	\$0	0.0%
<i>Symms Fruit Farm, Inc.</i>	1	3,001	1.1%	\$0	0.0%	\$0	0.0%
<i>Sierra Cascade Nursery, Inc.</i>	2	2,706	1.0%	\$367,546	0.6%	\$722,414	1.4%
<i>Global Horizons Inc.</i>	9	1,778	0.7%	\$164,259	0.3%	\$0	0.0%
<i>Urenda's Farm and Forest Contractors, Inc.</i>	2	1,645	0.6%	\$0	0.0%	\$2,789	0.0%
<i>B &amp; G Ditchen, LLC</i>	1	1,625	0.6%	\$192,961	0.3%	\$14,511	0.0%
<i>Blue Mountain Farms, LLC</i>	1	1,590	0.6%	\$184,900	0.3%	\$0	0.0%
<i>Western Range Association</i>	13	1,574	0.6%	\$311,798	0.5%	\$142,775	0.3%
<i>A. Oseguera Company, Inc.</i>	7	1,554	0.6%	\$353,951	0.6%	\$860,530	1.6%
<b>Total (top 10 violators in ag)</b>	<b>38</b>	<b>38,623</b>	<b>14.4%</b>	<b>\$3,158,329</b>	<b>5.0%</b>	<b>\$1,743,019</b>	<b>3.3%</b>
<b>Total (all ag employers)</b>	<b>19,253</b>	<b>269,137</b>	<b>100.0%</b>	<b>\$62,653,976</b>	<b>100.0%</b>	<b>\$53,471,864</b>	<b>100.0%</b>

**Notes:** Dollar amounts have been adjusted for inflation to 2019 constant dollar amounts using the CPI-U-RS. These figures were generated using the statistical software program Stata. The software code and source data files are available upon request.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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## Understanding the impact of the 'bad apple' farm employers

We define a "bad apple" as a single employer with a large number of violations or a high share of all violations within a particular industry subsector NAICS code or commodity. The enforcement data show that the bad apple employers account for a disproportionate share of all employment law violations found in every NAICS code between fiscal years 2005 and 2019, including FLCs. In fact, the top 10 violators in a NAICS code, who account for far less than 1% of all investigations in that NAICS code, typically account for 10% to 30% of all violations. **Table 8** shows that the 10 farm employers with the most violations accounted for 14% of all agricultural violations found throughout U.S. agriculture, 5% of the back wages owed, and 3% of the CMPs owed.

A similar pattern emerges when looking at the data on FLC violations. Between fiscal years

Table 9

**Top 10 U.S. farm labor contractors by number of employment law violations detected, fiscal year 2005–2019**

Employer	Number of investigations	Number of violations	Share of violations	Total back wages owed	Share of back wages owed	Total civil money penalties (CMP) assessed	Share of FLC CMPs assessed
<i>Urenda's Farm and Forest Contractors, Inc.</i>	2	1645	2.5%	\$0	0.0%	\$2,789	0.0%
<i>Global Horizons Inc.</i>	6	1625	2.5%	\$164,259	2.3%	\$0	0.0%
<i>T Bell Detasseling LLC</i>	1	1413	2.2%	\$0	0.0%	\$0	0.0%
<i>Escamilla &amp; Sons, Inc.</i>	1	1140	1.8%	\$192,174	2.7%	\$47,602	0.3%
<i>Overlook Harvesting Company LLC</i>	3	807	1.2%	\$107,995	1.5%	\$116	0.0%
<i>M &amp; L Contractors, LLC</i>	2	799	1.2%	\$17,797	0.2%	\$5,002	0.0%
<i>Cal West Farm Management, Inc.</i>	2	776	1.2%	\$55,182	0.8%	\$2,934	0.0%
<i>Sunshine Agricultural Services</i>	2	674	1.0%	\$64,518	0.9%	\$1,759	0.0%
<i>EAM Harvesting Inc</i>	1	662	1.0%	\$47,096	0.7%	\$6,007	0.0%
<i>Vasquez Citrus &amp; Hauling, Inc.</i>	1	568	0.9%	\$56,476	0.8%	\$4,856	0.0%
<b>Total (top 10 FLC violators)</b>	<b>21</b>	<b>10,109</b>	<b>15.5%</b>	<b>\$705,497</b>	<b>9.9%</b>	<b>\$72,065</b>	<b>0.5%</b>
<b>Total (all FLCs)</b>	<b>4,893</b>	<b>65,135</b>	<b>100.0%</b>	<b>\$7150,330</b>	<b>100.0%</b>	<b>\$13,928,818</b>	<b>100.0%</b>

**Notes:** Dollar amounts have been adjusted for inflation to 2019 constant dollar amounts using the CPI-U-RS. These figures were generated using the statistical software program Stata. The software code and source data files are available upon request.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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2005 and 2019, there were 4,900 investigations of FLCs with six-digit 115115 NAICS codes across the United States. These investigations found 65,000 total violations, but as **Table 9** shows, just 10 FLCs accounted for 16% of all violations and 10% of the back wages owed. The top four accounted for 9% of all FLC violations: Urenda's Farm and Forest Contractors in Oregon, Global Horizons Inc. (operating in several states), T Bell Detasseling in Iowa, and Escamilla & Sons in Arizona.<sup>16</sup>

We also examined the outcomes of FLC investigations in California and found a similar pattern. There were 850 total investigations of California FLCs (115115) between fiscal years 2005 and 2019 that found a total of nearly 19,000 violations. Fifteen percent of California FLC investigations found zero violations while 85% found a violation: 9% were found to have one violation, and more than half found five or more violations (U.S. DOL-WHD 2020f). **Table 10** shows that 10 FLCs accounted for more than one-quarter of the 19,000 total violations found to have been committed by FLCs in California and 22% of the back wages owed as a result of those violations. Cal West Farm Management Inc. had the most

Table 10

**Top 10 farm labor contractors in California by number of employment law violations detected, fiscal years 2005–2019**

Employer	Number of investigations	Number of violations	Share of violations	Total back wages owed	Share of back wages owed	Total civil money penalties (CMP) assessed	Share of farm labor contractor's civil monetary penalties assessed
<i>Cal West Farm Management, Inc.</i>	2	776	4.2%	\$55,182	2.8%	\$2,934	0.1%
<i>Global Horizons Inc.</i>	3	679	3.6%	\$164,259	8.2%	\$0	0.0%
<i>Sunshine Agricultural Services</i>	2	674	3.6%	\$64,518	3.2%	\$1,759	0.0%
<i>Benito Veliz Carrillo dba: E C Labor</i>	2	550	2.9%	\$10,767	0.5%	\$3,708	0.1%
<i>Cruzberto Barajas-Angel</i>	1	540	2.9%	\$19,611	1.0%	\$2,905	0.1%
<i>Esparza Enterprises, Inc</i>	8	494	2.6%	\$45,657	2.3%	\$10,731	0.3%
<i>Juan Luis Ayala Lopez-FLC</i>	1	409	2.2%	\$23,816	1.2%	\$4,785	0.1%
<i>LLamas Ag, Inc.</i>	1	391	2.1%	\$28,052	1.4%	\$3,554	0.1%
<i>Nextcrop</i>	1	384	2.1%	\$14,635	0.7%	\$21,464	0.6%
<i>Cruz Lopez, Domingo Eustacio FLC</i>	1	327	1.7%	\$8,264	0.4%	\$1,785	0.0%
<b>Total (top 10 CA FLC violators)</b>	<b>22</b>	<b>5,224</b>	<b>27.9%</b>	<b>\$434,763</b>	<b>21.7%</b>	<b>\$53,625</b>	<b>1.4%</b>
<b>Total (all CA FLCs)</b>	<b>853</b>	<b>18,691</b>	<b>100.0%</b>	<b>\$2,006,531</b>	<b>100.0%</b>	<b>\$3,769,420</b>	<b>100.0%</b>

**Notes:** Dollar amounts have been adjusted for inflation to 2019 constant dollar amounts using the CPI-U-RS. These figures were generated using the statistical software program Stata. The software code and source data files are available upon request.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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violations, 776, while Global Horizons Inc. owed the most in back wages, \$164,000 (in \$2019).

Some employers had zero violations each time they were investigated, some were investigated many times and had violations during a few of these investigations, and some had violations almost every time they were investigated. Twenty-four percent of the investigations found violations that did not result in back wages or civil money penalties owed (see **Table 11**). Of the investigations that found at least one violation but did not result in back wages or civil money penalties owed, 64% found violations of MSPA, 35% found violations of FLSA, and 15% found violations of H-2A laws.<sup>17</sup> (These percentages add up to more than 100% because some investigations detected violations of more than one law.) We do not know enough about the cases to explain why so many violations do not result in back wages or CMPs owed.

Table 11

**Summary of investigations that detected violations but where no back wages or civil money penalties were owed**

Type of violation without BWs/CMPs owed	Number of investigations	% of all investigations	% of investigations without BWs/CMPs owed
<i>Migrant and Seasonal Agricultural Worker Protection Act</i>	2966	15%	64%
<i>Fair Labor Standards Act</i>	1644	9%	35%
<i>H-2A</i>	700	4%	15%
<b>Total</b>	<b>4631</b>	<b>24%</b>	<b>100%</b>

**Note:** BW represents back wages and CMP represents civil money penalties. Some investigations detected violations of multiple employment laws, thus percentages in the last column add up to more than 100%. The total in the last row of the table includes all investigations that found at least one violation but resulted in zero back wages or civil money penalties being owed.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

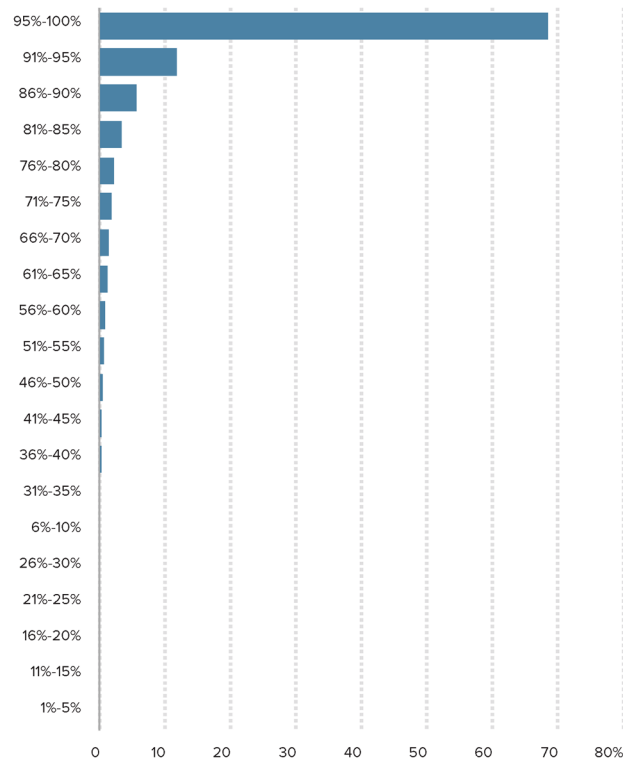
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The next two figures highlight the bad apple issue by showing that the top 5% of wage and hour violators in agriculture, as measured by the number of violations, account for half or more of all the violations found in a particular agricultural NAICS code, either a commodity or for FLCs. (The **Appendix** provides additional examples for other agricultural NAICS codes.)

**Figure T** shows that 30% of the U.S. crop farms investigated between fiscal years 2005 and 2019 had zero violations, while the 5% of U.S. crop farms with the most violations accounted for almost 70% of all violations detected on U.S. crop farms. **Figure U** shows the same pattern for FLCs, with the top 5% of FLCs measured by violations accounting for 65% of all violations among FLCs. For other individual commodities and agricultural NAICS codes, as shown in the figures in the Appendix, the top 5% of employers with the most violations accounted for 47% to 87% of all violations.

Figure T

**The 5% of U.S. crop farms with the most employment law violations detected by Wage and Hour Division investigations accounted for 70% of all violations found to have been committed on U.S. crop farms during fiscal years 2005–2019**



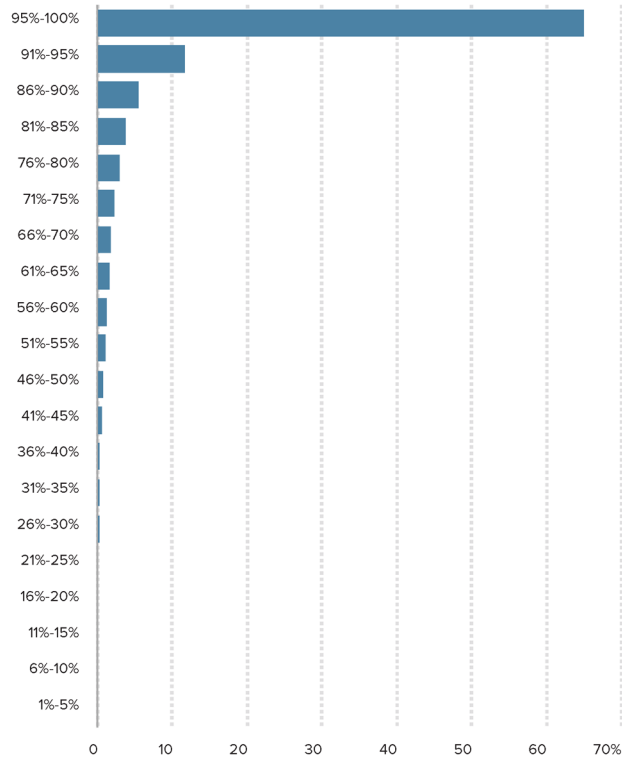
**Note:** There were 10,672 investigations of U.S. crop farms between fiscal year 2005 and fiscal year 2019, excluding those associated with farm labor contractors.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Figure U

**The 5% of U.S. farm labor contractors (FLCs) with the most employment law violations detected by Wage and Hour Division investigations accounted for 65% of all violations found to have been committed by FLCs during fiscal years 2005–2019**



**Note:** There were 4,519 investigations of U.S. FLCs between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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## Comparing shares of violations and employment by commodity

WHD investigators record the major commodity (by NAICS code) of the employer being investigated or whether the employer was an FLC. We summed violations by NAICS code between fiscal years 2005 and 2019 and compared the share of violations in each commodity with its share of average employment in 2019 from the Quarterly Census of Employment and Wages—FLCs are not a commodity, so we separated them out for comparison.<sup>18</sup> The results are in **Table 12**, and they show that some commodities that account for a very small share of farm employment, as with sheepherding and forestry, account for a high share of farm labor violations found, so that their share of violations is four to eight times their share of employment. (In Table 12, a ratio that exceeds 100% means that the commodity or NAICS category has a higher share of violations than its share of agricultural employment.)

The share of WHD violations found in NAICS 1124, Sheep and Goats, is eight times the sheep and goats' share of QCEW employment. Many sheep and goat farmers rely on H-2A workers from Peru and other countries to tend their sheep, often on public lands. Two associations, Mountain Plains Agricultural Services and the Western Range Association, handle recruitment and paperwork for their member farmers, most of whom employ fewer than five H-2A sheepherders (each of whom is usually provided with a mobile trailer to tend a flock of around 1,000 sheep).

The NAICS category with the next largest share of violations—two to four times its share of employment—was 1132, Forest Nurseries and Gathering of Forest Products, and 1153, Support Activities for Forestry. Almost all of the violations in NAICS 1123, Poultry and Egg Production, were at a single Perdue Farms facility.

The share of violations was twice the share of employment in Vegetable and Melon Farming, NAICS 1112. Other commodities with a higher share of violations compared with their share of employment include the "other crop farming" classification,<sup>19</sup> timber tract operations, and fruit and nut crops. For farm labor contractors, NAICS 115115, the share of violations was 1.7 times their share of employment. For crop support services, which include FLCs as well as custom fertilizer and combining businesses and farm management companies, the share of violations was 1.1 times their share of employment, likely reflecting FLC violations.

Commodities with very low shares of violations relative to their share of employment include cattle and dairy, hogs and pigs, and animal support services. The relatively small logging, fishing, and hunting and trapping sectors also had a smaller share of violations compared with their share of agricultural employment.

We can make the same comparisons between the share of violations and the share of employment by NAICS code for individual states, which we have done here for California and Florida. WHD detected 39,300 violations of employment laws in California agriculture

Table 12

**Share of wage and hour violations and share of employment by commodity and farm labor contractors, fiscal years 2005–2019**

North American Industry Classification System code	Violations	Share of violations	Average QCEW employment (2019)	Share of employment	Share of employment with violations
<b>1111 Grain Crops</b>	3,572	1.3%	54,657	4.3%	31%
<b>1112 Veg and Melon Crops</b>	40,046	14.9%	89,582	7.1%	210%
<b>1113 Fruit and Nut Crops</b>	54,465	20.2%	176,405	14.0%	145%
<b>1114 Nursery Crops</b>	15,094	5.6%	161,272	12.8%	44%
<b>1119 Other Crops</b>	23,713	8.8%	64,634	5.1%	172%
<b>1121 Cattle &amp; Dairy</b>	1,954	0.7%	159,234	12.6%	6%
<b>1122 Hogs and Pigs</b>	948	0.4%	31,004	2.5%	14%
<b>1123 Poultry and Eggs</b>	27,361	10.2%	45,994	3.6%	279%
<b>1124 Sheep and Goats</b>	2,540	0.9%	1,522	0.1%	784%
<b>1125 Aquaculture</b>	1,165	0.4%	7,071	0.6%	77%
<b>1129 Other Animal</b>	2,464	0.9%	20,259	1.6%	57%
<b>1131 Timber Tract</b>	1,077	0.4%	2,967	0.2%	170%
<b>1132 Forest Nursery</b>	1,870	0.7%	2,052	0.2%	428%
<b>1133 Logging</b>	2,522	0.9%	48,257	3.8%	25%
<b>1141 Fishing</b>	311	0.1%	6,665	0.5%	22%
<b>1142 Hunting and Trapping</b>	146	0.1%	1,908	0.2%	36%
<b>1151 Crop Support</b>	80,169	29.8%	342,323	27.1%	110%
<b>1152 Animal Support</b>	924	0.3%	30,622	2.4%	14%
<b>1153 Forestry Support</b>	8,796	3.3%	17,277	1.4%	239%
<b>Total</b>	<b>269,137</b>	<b>100.0%</b>	<b>1,263,705</b>	<b>100.0%</b>	<b>100%</b>
<b>115115 Farm Labor Contactors</b>	65,135	24.2%	181,322	14.3%	169%

**Note:** This table compares the share of Wage and Hour Division violations found in a 4-digit NAICS between fiscal year 2005 and 2019 with the share of average agricultural employment in that 4-digit

Table 12  
(cont.)

NAICS in 2019. A ratio that exceeds 100 percent means that the commodity or NAICS category has a higher share of violations than its share of agricultural employment. For example, the share of violations found in sheep and goats was almost eight times the sheep and goat share of employment.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f) and Bureau of Labor Statistics, Quarterly Census of Employment and Wages data for North American Industry Classification System code 11, agriculture, in 2018 (BLS-QCEW 2020a).

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between fiscal years 2005 and 2019; average QCEW agricultural employment in California agriculture was 423,935 in 2019.

In California, shares of employment law violations by commodity or by FLCs differ from shares of employment. **Table 13** shows the share of violations and the share of employment by commodity in California, as well as for FLCs. Almost half of the violations discovered by WHD in California agriculture were found to have been committed by FLCs, which accounted for 36% of QCEW employment, making the ratio of the FLC share of violations to the FLC share of employment 1.3. (However, if the violations committed by FLCs were categorized under their corresponding commodity, the violations found in those commodities would be proportionally higher.)

Table 13 shows that the highest ratio of share of violations to share of employment was in timber tract operations, where WHD found 185 violations over 15 years even though employment in timber tract operations averaged only 26 in 2019. Forest nursery and forestry support were similar: each had high shares of total violations and a very low share of average employment. Sheep and goats, other crops (which includes tobacco and cotton), and other animals (which includes horses) also had shares of total violations that were twice their share of employment. Fruit and nut crops, and vegetables and melon crops, had shares of violations that were 20% to 30% higher than their share of average employment.

**Table 14** shows the share of violations and share of employment by commodity in Florida, as well as for FLCs. Average QCEW agricultural employment in Florida agriculture in 2019 was 67,300; Table 14 shows that WHD detected 38,300 violations in Florida agriculture between fiscal years 2005 and 2019.

Half of the WHD violations in Florida agriculture were found to have been committed by FLCs, which accounted for less than 4,000 average employees or 6% of QCEW agricultural employment, making the FLC share of violations almost nine times its share of employment. However, FLC agricultural employment is artificially low in the Florida QCEW data because the state of Florida exempts employers of H-2A workers from the UI system (Rural Migration News 2020a). Florida is certified to fill about 25,000 jobs a year with H-2A workers and, if these H-2A workers are in the state for an average of six months, there would be 12,500 additional full-time equivalent (FTE) jobs showing up in the data, meaning average agricultural employment in Florida would be 12,500 higher, for a total of 80,000. If all of these 12,500 FTE-jobs for H-2A workers were positions working for FLCs, the average employment for FLCs would be 16,350 or 24% of the state's total, and the ratio of share of violations to share of employment would fall to 1.2 (or 118%).

Table 13

**Share of wage and hour violations and share of employment by commodity and farm labor contractors in California, fiscal years 2005–2019**

North American Industry Classification System code	Violations	Share of violations	Average QCEW employment (2019)	Share of employment	Share of employment with violations
<i>1111 Grain Crops</i>	13	0.03%	2,954	0.70%	5%
<i>1112 Veg and Melon Crops</i>	3,721	9.46%	30,305	7.15%	132%
<i>1113 Fruit and Nut Crops</i>	10,451	26.58%	93,178	21.98%	121%
<i>1114 Nursery Crops</i>	646	1.64%	26,954	6.36%	26%
<i>1119 Other Crops</i>	2,016	5.13%	9,511	2.24%	229%
<i>1121 Cattle/Dairy</i>	11	0.03%	22,362	5.27%	1%
<i>1122 Hogs and Pigs</i>	0	0.00%	142	0.03%	0%
<i>1123 Poultry and Eggs</i>	13	0.03%	2,561	0.60%	5%
<i>1124 Sheep and Goats</i>	83	0.21%	369	0.09%	243%
<i>1125 Aquaculture</i>	21	0.05%	484	0.11%	47%
<i>1129 Other Animal</i>	413	1.05%	2,301	0.54%	194%
<i>1131 Timber Tract</i>	185	0.47%	26	0.01%	7671%
<i>1132 Forest Nursery</i>	173	0.44%	222	0.05%	840%
<i>1133 Logging</i>	15	0.04%	1,983	0.47%	8%
<i>1141 Fishing</i>	0	0.00%	411	0.10%	0%
<i>1142 Hunting and Trapping</i>	0	0.00%	57	0.01%	0%
<i>1151 Crop Support</i>	19,797	50.35%	225,097	53.10%	95%
<i>1152 Animal Support</i>	244	0.62%	2,987	0.70%	88%
<i>1153 Forestry Support</i>	1,520	3.87%	2,031	0.48%	807%
<b>Total</b>	<b>39,322</b>	<b>100.00%</b>	<b>423,935</b>	<b>100.00%</b>	<b>100%</b>
<b>115115 Farm Labor Contactors</b>	<b>18,691</b>	<b>47.53%</b>	<b>150,648</b>	<b>35.54%</b>	<b>134%</b>

Table 13  
(cont.)

**Note:** This table compares the share of Wage and Hour Division violations found in a 4-digit NAICS between fiscal year 2005 and 2019 with the share of average agricultural employment in that 4-digit NAICS in 2019. A ratio that exceeds 100 percent means that the commodity or NAICS category has a higher share of violations than its share of agricultural employment.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f) and Bureau of Labor Statistics, Quarterly Census of Employment and Wages data for North American Industry Classification System code 11, agriculture, in 2018 (BLS-QCEW 2020a).

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Table 14

**Share of wage and hour violations and share of employment by commodity and farm labor contractors in Florida, fiscal years 2005–2019**

North American Industry Classification Code	Violations	Share of violations	Average QCEW employment (2019)	Share of employment	Ratio: violations/employment
<b>1111 Grain Crops</b>	318	0.83%	130	0.19%	429%
<b>1112 Veg and Melon Crops</b>	4,452	11.61%	10,888	16.18%	72%
<b>1113 Fruit and Nut Crops</b>	11,356	29.62%	6,223	9.25%	320%
<b>1114 Nursery Crops</b>	193	0.50%	23,715	35.25%	1%
<b>1119 Other Crops</b>	635	1.66%	3,546	5.27%	31%
<b>1121 Cattle</b>	31	0.08%	2,987	4.44%	2%
<b>1122 Hogs and Pigs</b>	0	0.00%	56	0.08%	0%
<b>1123 Poultry and Eggs</b>	16	0.04%	798	1.19%	4%
<b>1124 Sheep and Goats</b>	5	0.01%	8	0.01%	110%
<b>1125 Aquaculture</b>	60	0.16%	564	0.84%	19%
<b>1129 Other Animal</b>	27	0.07%	1,371	2.04%	3%
<b>1131 Timber Tract</b>	29	0.08%	216	0.32%	24%
<b>1132 Forest Nursery</b>	243	0.63%	264	0.39%	162%
<b>1133 Logging</b>	75	0.20%	1,831	2.72%	7%
<b>1141 Fishing</b>	11	0.03%	334	0.50%	6%
<b>1142 Hunting and Trapping</b>	0	0.00%	100	0.15%	0%
<b>1151 Crop Support</b>	20,681	53.95%	12,113	18.00%	300%
<b>1152 Animal Support</b>	25	0.07%	1,636	2.43%	3%
<b>1153 Forestry Support</b>	179	0.47%	500	0.74%	63%
<b>Total</b>	<b>38,336</b>	<b>100.00%</b>	<b>67,280</b>	<b>100.00%</b>	<b>100%</b>
<b>115115 Farm Labor Contractors</b>	19,229	50.16%	3,853	5.73%	876%
<b>115115 Farm Labor Contractors + H-2A FLC</b>	19,229	50.16%	16,353	24.30%	118%

**Note:** The last row, Farm Labor Contractors + H-2A FLCs, assumes that Florida FLCs employ an annual average of 12,500 H-2A workers (see text), and adds them to the non-H-2A FLC employment of 3,853 in the previous row.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f) and Bureau of Labor Statistics, Quarterly Census of Employment and Wages data for North American Industry Classification System code 11, agriculture, in 2018 (BLS-QCEW 2020a).

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The highest ratio of shares of violations to shares of employment was on grain crop farms, with a four-times-higher share, followed by fruit and nut crops and forest nursery activities. Vegetable and melon crops had a lower share of violations than their share of agricultural employment.

To give a brief example from a smaller farm state, Iowa, WHD found 3,000 violations of employment laws there between FY05 and FY19, while average QCEW agricultural employment in Iowa in 2019 was 21,000. Three-fourths of the Iowa wage and hour violations in agriculture were committed by FLCs, who had average annual employment of 345, or less than 2% of QCEW agricultural employment for the state, making the FLC share of violations 45 times the FLC share of agricultural employment in 2019 over 15 years (however it should be noted that Iowa also excludes H-2A employment from the QCEW, meaning that employment is likely higher and the ratio likely lower). Violations in the hogs and pigs NAICS code accounted for 15% of violations found, but a quarter of 2019 agricultural employment, followed by poultry and eggs, 4% of violations and 16% of employment, and cattle and dairy, less than 1% of violations and 15% of employment (BLS-QCEW 2020a; U.S. DOL-WHD 2020f).

## Conclusion and recommendations

These WHD enforcement data show that agriculture accounts for a higher share of labor violations than its share of U.S. employment. Average QCEW farmworker employment of 1.3 million was about 1% of total U.S. employment in 2019, and the 107,000 agricultural establishments registered with unemployment insurance (UI) authorities were 1% of the almost 10 million UI-registered establishments.<sup>20</sup>

Using this measure of employment, agriculture accounted for 7% of all federal employment law investigations and 3% of the 10 million federal employment law violations found over the past 15 years—three times agriculture's share of U.S. employment. But since the number of WHD investigations in agriculture decreased to about 100 farm employers per month, the probability that any farm employer will be investigated in a given year is only 1.1%.

The major explanation for the decline in WHD agricultural investigations is likely reduced funding for WHD, which has not kept up with the growth of the labor force and the need to investigate wage and hour violations. Our analysis of WHD enforcement data suggests that more funding for WHD could increase the number of investigations and violations detected, which would reduce the billions of dollars per year in wage theft that occurs (Cooper and Kroeger 2017) and diminish the advantages that accrue to employers who violate the law to reduce their labor costs.

Most WHD investigations in agriculture find violations—70% of all investigations—while roughly 30% of the farm employers who were investigated had zero violations. In addition, 30% of all farm employers that WHD investigated committed five or more violations.

FLCs are the most common violators of federal wage and hour laws in agriculture: they accounted for one-seventh of average agricultural employment and 24% of all federal wage and hour violations. In other words, we know that at least a quarter of employment law violations occur on farms that hire farmworkers through FLCs. FLCs accounted for a disproportionately high share of agricultural violations relative to their share of employment, both nationwide and in the two states with the most farmworker employment, California and Florida.

The FLC model of employment may increase the incidence of employment law violations by separating the main beneficiary of the labor provided by farmworkers—the farm operator or “lead” employer—from the farmworkers who perform the work. Farms that rely on FLCs are a textbook example of what Weil (2014b) called a “fissured” workplace, where the relationship between the worker and the lead employer is fissured, or broken, via the use of a temp agency or subcontractor (in this case the FLC). Fissuring often results in lower wages for workers,<sup>21</sup> in part because the subcontractor (the FLC) keeps a percentage of the wages earned by the workers, and farm operators do not provide the farmworkers who work on their farms with fringe benefits because they are employees of the FLC. Since FLCs account for a rising share of agricultural employment, fissuring should

be a major concern for policymakers.

The enforcement data show that the “bad apple” employers and repeat violators committed a large and disproportionate share of labor violations in every commodity. We also found that the share of employment law violations by county and commodity does not necessarily reflect that county’s or commodity’s share of agricultural employment. One likely explanation for why shares of violations and shares of employment diverge is because the worst violators account for a disproportionately high share of all violations, and they may not be located in the counties or states with the highest levels of agricultural employment.

Our analysis raises several key questions that merit further investigation to better protect farmworkers, including:

- Does the low probability of being investigated encourage violations of employment law? Since only 1.1% of farm employers are investigated in any given year, farm employers can reasonably expect that they will never be investigated.
- Without increased funding for WHD, could changes in enforcement strategy improve compliance and worker protections? What is the optimal balance between investigations in areas with more and fewer farmworkers, and between complaint-driven and strategic enforcement that targets likely violators? What are the lessons of WHD’s strategic enforcement strategy during Administrator David Weil’s tenure between 2014 and 2016?
- Are the penalties assessed by WHD for violations sufficient to change behavior and deter others from violating employment laws? If not, what penalties would encourage compliance and deter violations?
- What can be done to improve compliance among the bad apple employers and farm labor contractors who account for the most violations? Should public policy aim to reduce the growth of the farm labor contractor model of farm employment?
- Could more education of workers and employers improve compliance?

**The purpose of this report is to inform and spur a renewed debate about labor standards enforcement in agriculture. However, several recommendations could improve compliance with employment laws on U.S. farms**

First, since current investigations and sanctions levied do not deter violations by FLCs (and therefore on farms that use FLCs), bad apple employers, and repeat violators, it may be time for new and revised policies to deal with all three. However, since FLCs are the biggest employment law violators, there should be a special focus and increased scrutiny on FLCs and farms that use FLCs. In addition, compliance could be incentivized if there were larger fines and more significant sanctions, and an improved effort to make other employers aware of the fines and sanctions.



A key strategy in the FLC context is also increasing use of the joint employment standard to hold farms accountable for FLC violations. The Fair Labor Standards Act defines an employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee,” and allows a worker to have several “joint” employers (U.S. DOL-WHD 2020b). If farm operators are jointly liable for violations committed by the FLCs that bring workers to their farms, they have incentives to police FLCs to ensure they comply with employment laws. Competition between FLCs can lead to an erosion of FLC commissions and employment law violations, so requiring written FLC-employer contracts and posting them online could make it far easier to detect low commission rates that may encourage employment law violations.

Second, among all employers and FLCs, examining whether the severity of sanctions is sufficient and increasing the value of civil money penalties (CMPs) should be considered in order to shift penalties from a cost of doing business to an incentive for compliance. Requiring employers to pay the back wages they owe to their employees simply makes them do what they should have done in the first place. Civil money penalties aim to change behavior and deter future violations. However, U.S. farmers pay \$40 billion a year in wages,<sup>22</sup> more than \$100 million a day, while back wage assessments and CMPs on farms were about \$6 million each in 2019, or about \$16,400 a day for each, just one-tenth of 1% of daily wages. With CMPs such a low share relative to wage costs, some farm employers and FLCs may have business models that depend on violating laws and expecting not to be detected. Increasing penalties for employment law violations at the state level improves compliance (Galvin 2016), and publicizing fines via press releases for violations can help to change employer behavior (Johnson 2020).

Third, strategic enforcement aimed to move WHD from responding to individual worker complaints to having half or more of WHD investigations be directed at firms likely to violate employment laws. WHD should continue to assess and refine strategic enforcement strategies that aim to improve compliance among employers prone to violate employment laws.

Fourth, after repeat investigations find repeat violators, WHD investigators should be allowed to require offenders to submit certified payroll data, as the Davis-Bacon Act requires of government contractors, to provide early warning of more violations. Repeat offenders also could be subjected to random payroll audits so that investigators could more efficiently pressure bad apple employers into compliance.

Fifth, more and better data could improve the efficiency of enforcement. Statistical analysis of labor standards enforcement data can formalize investigator rules of thumb about which employers are most likely to violate employment laws, and help investigators more quickly detect irregularities in payroll data. For example, one perennial issue is “ghost” workers who perform work but are not on the employer’s payroll, making the workers on the payroll appear to be more productive than they actually are. Databases that record the average productivity of workers would be helpful to determine whether “ghost” farmworkers on employer payrolls explain unusually high hourly earnings. Knowing how many buckets or bins of blueberries and apples a worker typically picks per hour or day could assist investigators who are reviewing payroll records to detect likely violations.

Sixth, more could be done to build on the good work done by advocates and unions to educate farmworkers about their rights and the process of reporting violations, perhaps with new and innovative methods. For example, advocacy organizations have developed mobile phone apps and websites that allow workers to report on particular employers and recruiters;<sup>23</sup> perhaps an interactive labor standards app that explains wage and hour laws to farmworkers in appropriate languages and allows them to file anonymous reports and complaints to WHD could be an effective means of increasing reporting to aid WHD with enforcement efforts.

## Acknowledgements

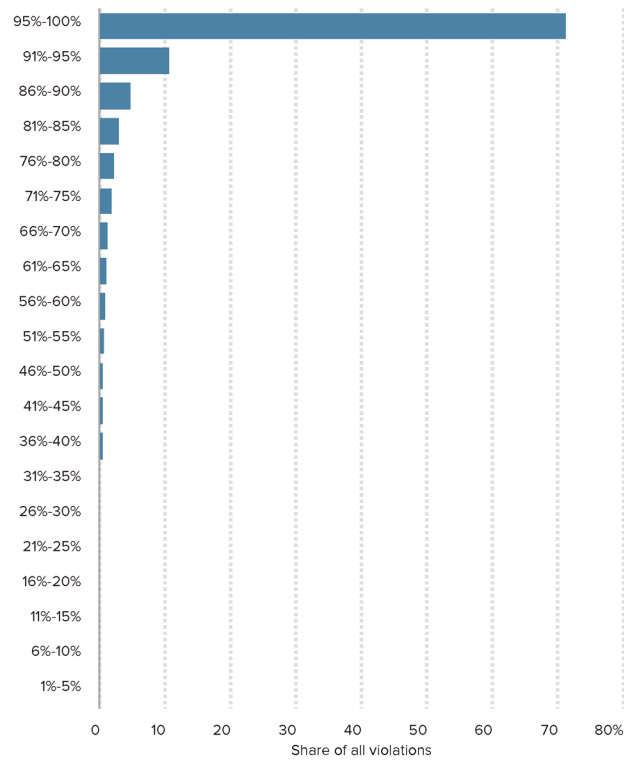
The authors are grateful to Bruce Goldstein, Janice Fine, Jennifer Gordon, Muzaffar Chishti, Ross Eisenbrey, David Kallick, Greg Asbed, and Justin Flores, for their insightful comments, observations, and suggestions provided during the drafting of this report. However, no one mentioned here is responsible for the report's content, and the authors are solely responsible for any errors or omissions.

## Appendix: Share of all violations in an NAICS code for top 5% of violators

WHD enforcement data show that a small share of violators accounts for a high share of violations. Agriculture is divided into 30+ NAICS codes, from grain crops to support services for crop and animal production. In each of the NAICS codes with significant farmworker employment, the 5% of violators with the most violations accounted for 50% to 85% of total violations found in that commodity.

Appendix  
Figure A

**The 5% of U.S. vegetable farms with the most violations accounted for 71% of all violations found on vegetable farms during fiscal years 2005–2019**



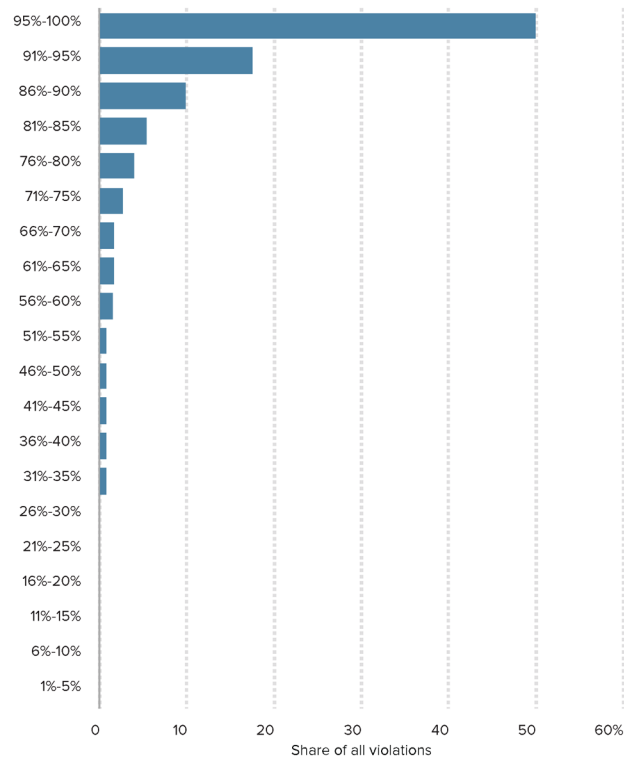
**Note:** There were 3,489 investigation of U.S vegetable farms between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure B

**The 5% of U.S. dairy farms with the most violations accounted for 50% of all violations found on dairy farms during fiscal years 2005–2019**



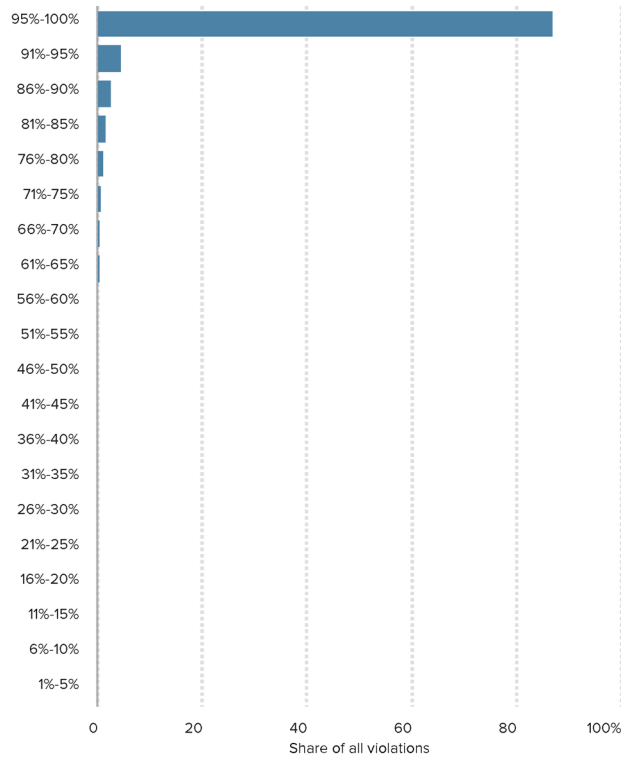
**Note:** There were 149 investigations of U.S. dairy farms between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure C

**The 5% of U.S. animal farms with the most violations accounted for 85% of all violations found on animal farms during fiscal years 2005–2019**



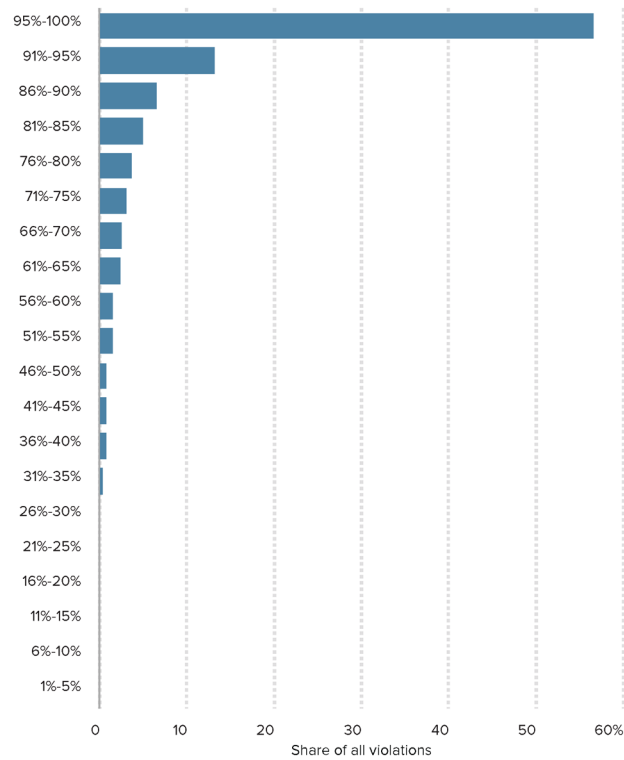
**Note:** There were 801 investigations of U.S. animal farms between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure D

**The 5% of U.S. grape farms with the most violations accounted for 55% of all violations found on grape farms during fiscal years 2005–2019**



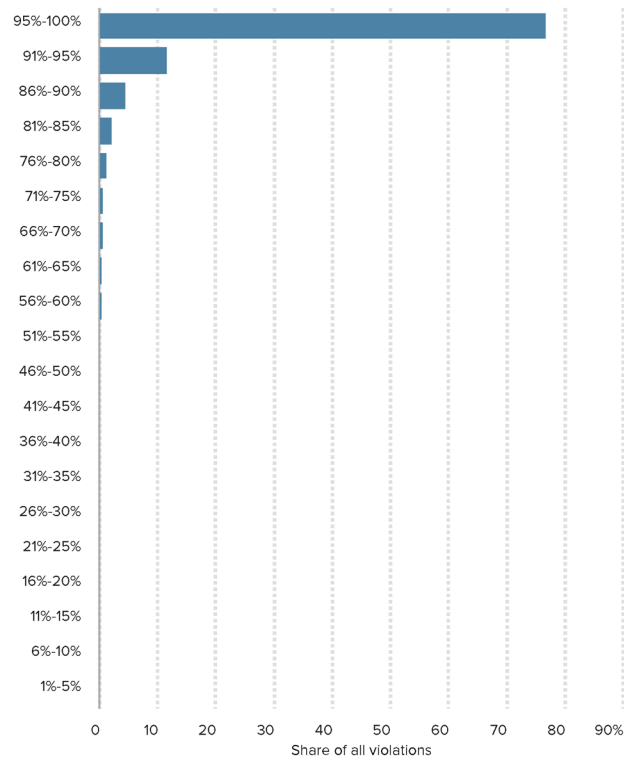
**Note:** There were 385 investigations of U.S. grape farms between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure E

**The 5% of U.S. strawberry farms with the most violations accounted for 75% of all violations found on U.S. strawberry farms during fiscal years 2005–2019**



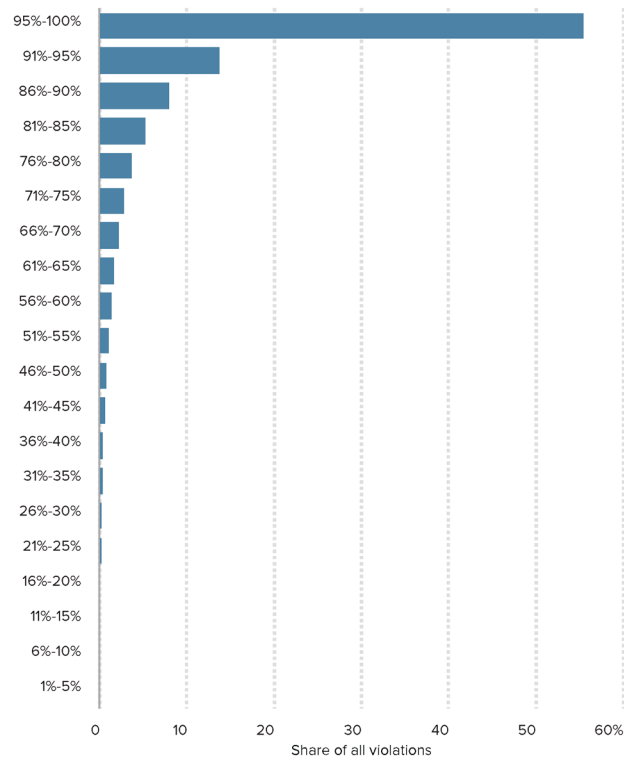
**Note:** There were 283 investigations of U.S. strawberry farms between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure F

**The 5% of U.S. agricultural employers with the most H-2A violations accounted for 55% of all H-2A violations during fiscal years 2005–2019**



**Note:** There were 2,778 violations of U.S. agricultural employers with H-2A violations between fiscal year 2005 and fiscal year 2019.

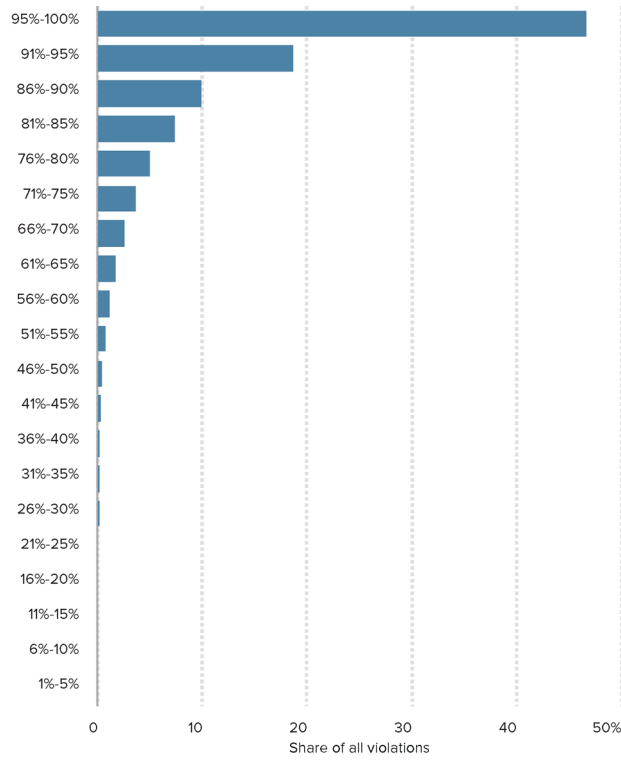
**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure G

**The 5% of U.S. farms labor contractors (FLCs) with the most H-2A violations accounted for 45% of all H-2A violations found among FLCs during fiscal years 2005–2019**



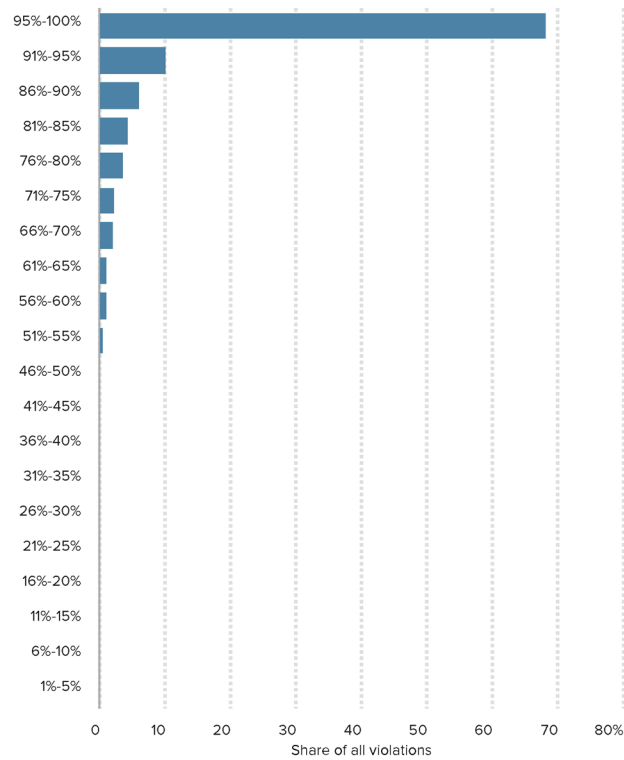
**Note:** There were 327 investigations of U.S. FLCs that found H-2A violations between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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Appendix  
Figure H

**The 5% of U.S. employers with the most violations of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) accounted for almost 70% of all MSPA violations found**



**Note:** There were 9,075 investigations of U.S. agricultural employers that had at least one MSPA violation between fiscal year 2005 and fiscal year 2019.

**Source:** Authors' analysis of U.S. Department of Labor, *Wage and Hour Compliance Action Data* (U.S. DOL-WHD 2020f).

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## Endnotes

1. There are exceptions in some states, including California and New York.
2. WHD enforces wage and hour laws, also known as employment laws, while the Occupational Safety and Health Administration (OSHA) enforces health and safety laws. However, there is one exception: In most states, enforcement authority has been delegated to WHD by OSHA with respect to field sanitation standards in covered agricultural settings (U.S. DOL-WHD 2008).
3. Authors' analysis of WHD budget data (U.S. DOL 2020). The CPI-U-RS formula for adjusting dollar figures to 2020 were not available at the time of publication. As a result, the 2012 dollar amounts were adjusted to real 2020 dollar amounts using the current unadjusted CPI for the U.S. city average for all items, which can be found at <https://www.bls.gov/data>.
4. Dollar amounts reported have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data.
5. Dollar amounts reported have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data. To determine whether there are statistically significant trends, we use two simple linear regression models where the dependent variables are (i) the total back wages owed and (ii) the total CMPs assessed, and the explanatory variable in both models is the continuous time (year) variable. Results are available upon request.
6. Authors' analysis of data from the U.S. Department of State and the U.S. Department of Labor; results published in Costa and Martin (2020).
7. A recent report by Centro de los Derechos del Migrante, an advocacy group, interviewed 100 H-2A workers and found that all "experienced at least one serious legal violation of their rights, and 94% experienced three or more" (CDM 2020).
8. Dollar amounts reported have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data.
9. To determine whether there is a statistically significant trend, we use a simple linear regression model where the dependent variable is the average back wage per employee, and the explanatory variable is the continuous time (year) variable. Results are available upon request.
10. Dollar amounts reported have been adjusted for inflation to constant 2019 dollars using the CPI-U-RS. As a result, the dollar amounts presented here may differ from the amounts reported in the source data.
11. Or roughly 11% of all agricultural employment if workers who are not covered by employers reporting to UI are included (a total of 1.7 million workers).
12. These values are generated by estimating a multivariate linear probability regression model without a constant where the outcome variable is a binary indicator that takes on the value of 0 if an investigation did not result in a violation and a value of 1 if the investigation resulted in at least one violation. The explanatory variables are NAICS code fixed effects, which are binary variables that take on a value of 1 if the employer being investigated was categorized as belonging to a

particular NAICS code, and 0 otherwise. The standard errors reported are robust to heteroskedasticity.

13. For Table 4, the commodity and type of employment reflect corresponding North American Industry Classification System (NAICS) codes associated with violations, or a combination of codes listed here: Vegetables and melon farming (NAICS 1112); Fruit and tree nut farming (1113); Greenhouse, nursery, and floriculture production (1114); Animal production and aquaculture (112); Support activities for crop production (non-FLC) (1151 excluding 115115); and Other crops (1119, 1131, 11199, 111999, 111940, 111991, 111998). Non-FLC crop support services include cotton ginning, soil preparation, crop harvesting by machine, other post-harvest activities, and farm management services.
14. These values are generated by estimating a multivariate linear probability regression model without a constant, where the outcome variable is a binary indicator that takes on a value of 0 if an investigation did not result in a violation, and a value of 1 if the investigation resulted in at least one violation. The explanatory variables are county fixed effects, which are binary variables that take on a value of 1 if the investigation was conducted in a particular county and a value of 0 otherwise. The standard errors are robust to heteroskedasticity.
15. Some employers that were investigated multiple times had names that were entered into the database with minor typographical inconsistencies. As a result, we corrected for 150 of these inconsistencies to track repeat investigations and violations of the same employer. Employer names must be identical for the statistical software program we use to identify repeat offenders. For example, the employer "A. Oseguera Company, Inc" also appears in the database as "A. Oseguera Company, Inc." and "A. Oseguera Company Inc" (note the period in the second name and the lack of a comma in the third name). There is a possibility we did not catch all of the inconsistencies.
16. There are about 3,000 FLCs. However, 10,300 individuals and corporations were registered as FLCs with WHD in June 2020 (U.S. DOL-WHD 2020d). The reason for the discrepancy is that many large FLCs have dozens of supervisors and crew leaders who must register.
17. The database does not contain information about the disposition of the investigations, so we are unable to determine why these investigations did not result in back wages or civil money penalties owed.
18. As noted previously, because FLCs work across a range of commodities that do not get counted as such in these data, the violations by crop reported here are undercounted because they are classified under FLCs.
19. NAICS 1119, Other Crop Farming, includes tobacco, which is a major industry for H-2A employment.
20. The Census of Agriculture (COA) reports more than 500,000 farm employers, including farms that make end-of-year payments to family members and relatives to shift farm income into lower tax brackets. The COA does not generate average employment data, only a count of jobs that last more and less than 150 days on the responding farm.
21. A number of studies show a wage penalty for subcontracted/outsourced workers. For example, see Dube and Kaplan 2010, Goldschmidt and Schmieder 2017, and Drenik et al. 2020.
22. The Census of Agriculture reports \$40 billion in labor costs for workers hired directly and for contract labor expenses in 2017; the QCEW reports \$45 billion in wages and salaries paid in agriculture, including forestry and fishing.

23. See for example, [Contratados.org](#), created by Centro de los Derechos del Migrante (Center for Migrant Rights), which acts as a “Yelp”-like review site for employers and labor recruiters.

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Statement for the Record of  
Bruce Goldstein  
President, Farmworker Justice

Hearing of the Senate Judiciary Committee

*"Immigrant Farmworkers are Essential to Feeding America"*

July 21, 2021



Thank you for the opportunity to submit this statement regarding the need for Senate action to address conditions of the nation's farmworker families. I am Bruce Goldstein, President of Farmworker Justice, and an attorney with more than 30 years helping farmworkers.

For forty years, Farmworker Justice has engaged in policy analysis, education, advocacy, and litigation to empower farmworkers to improve their wages and working conditions, health, occupational safety, and access to justice. Immigration status plays a central role in determining farmworkers' wages and benefits, and it impacts the health and safety of farmworkers, their family members and their communities. The vast majority of the nation's 2.4 million farmworkers are Latino immigrants and about half of them are undocumented or here on precarious temporary work visas.<sup>1</sup> Our nation's broken immigration system unfairly subjects these farmworkers and their families to serious harms that affect every aspect of their lives.

It is long past the time for Congress to pass immigration reform that grants noncitizen farmworkers and their family members the opportunity to obtain legal immigration status and a path to citizenship. Such immigration legislation would reduce the unfair challenges and harms that farmworker families face, many of which have been exacerbated by the COVID-19 crisis and climate change. Immigration status would also help stabilize the farm labor workforce for the benefit of farm owners and ensure a secure food supply for the country.

### **Farmworkers Are Essential**

The COVID-19 pandemic and the government's responses to it highlighted the ways in which the people who labor on our farms and ranches are essential to our food security. As consumers we depend on farms to provide us with safe, healthy food, and those farms depend on farmworkers to produce that food. At the beginning of the pandemic, there was widespread fear of food shortages. Grocery store shelves were bare, and people who had never before experienced difficulty purchasing food suddenly feared they wouldn't be able to feed their families.<sup>2</sup>

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<sup>1</sup> U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016* (2018), [https://www.dol.gov/sites/dolgov/files/EIA/naaws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/EIA/naaws/pdfs/NAWS_Research_Report_13.pdf) (Finding that 69% of hired farmworkers were born in Mexico, 51% of all farmworkers have work authorization, and only 4% of hired crop workers were in their first year in the United States).

<sup>2</sup> Luke Winkie, *A Grocery Store Clerk Explains What It's Like on the Front Lines of Coronavirus Panic*, VOX (March 17, 2020), <https://www.vox.com/the-goods/2020/3/17/21182155/grocery-store-coronavirus-clerk-q-a-immunocompromise>; Fredrick Kunkle & Michael E. Ruane, *Coronavirus Triggers Run on Grocery Stores, with Panic-Buying, Hoarding and Some Fighting, Too*, WASHINGTON POST (March 13, 2020),

In response, the federal government, along with several states, designated the agriculture and food system as a critical infrastructure sector to ensure our food supply.<sup>3</sup> As other businesses were shut down to protect the health and safety of their workers and communities, farms and ranches around the country were told to keep running, to keep producing food. Farmworkers showed up to work on farms and ranches all over the country to ensure that we would have food on our tables. And while some undocumented farmworkers carried letters proving their essential status, they could still be arrested and deported at any moment.<sup>4</sup> Still other farmworkers suffered job losses and reduced hours because the farms they had worked on lost business due to the shutdown of restaurants.

The “essential worker” designations of the past year only confirmed what we have long known to be true: farmworkers are vitally important members of our communities and contribute to an indispensable sector of the economy. In 2019, America’s farms contributed \$136 billion to the U.S. economy.<sup>5</sup> The broader agriculture and food industry that relies on these farms contributed over \$1 trillion, more than 5% of domestic GDP.<sup>6</sup> According to the most recent USDA Census of Agriculture, the market value of crops that depend most heavily on farmworker labor, including fruits, vegetables, and tree nuts, was nearly \$48.2 billion.<sup>7</sup> Of course, the value of a secure food supply cannot be measured only in dollars because it supports our national security and ensures human survival.

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<https://www.washingtonpost.com/dc-md-va/2020/03/13/coronavirus-triggers-run-grocery-stores-with-panic-buying-hoarding-some-fighting-too/>.

<sup>3</sup> Cybersecurity & Infrastructure Security Agency (CISA), U.S. Department of Homeland Security, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (2020), <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>; State of Florida, Office of the Governor, Executive Order 20-91, Essential Services and Activities During COVID-19 Emergency (March 1, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-91-compressed.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf).

<sup>4</sup> Miriam Jordan, *Farmworkers, Mostly Undocumented, Become ‘Essential’ During Pandemic*, NEW YORK TIMES (April 2, 2021), <https://www.nytimes.com/2020/04/02/us/coronavirus-undocumented-immigrant-farmworkers-agriculture.html>.

<sup>5</sup> Economic Research Service (ERS), U.S. Department of Agriculture, *Ag and Food Sectors and the Economy*, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/>.

<sup>6</sup> *Id.*

<sup>7</sup> Congressional Research Service, *COVID-19: Supply Chain Disruptions in U.S. Fruit and Vegetable Industry: In Brief* (2020), <https://fas.org/sgp/crs/misc/R46348.pdf>.

While mechanization and other technology have been reducing the size of the farm labor force for centuries, many of the products we consume still require the labor of human beings. Robots are not replacing a significant number of farmworkers any time soon.<sup>8</sup> The immigrant workers who will continue to power this country's agricultural sector for years to come deserve so much more than the exploitation and mistreatment that they too often face today. At a minimum, they deserve legal status in the country that they have helped to build and sustain.

### The Unique Vulnerability of Farmworkers

Despite their status as essential workers, farmworkers experience some of the highest rates of persistent poverty in the country. The hourly wages for farmworkers, including H-2A workers, remain well below those of comparable workers in other industries.<sup>9</sup> According to the DOL's National Agricultural Workers Survey, farmworkers' mean and median personal incomes during the 2015-2016 period were between \$17,500 and \$19,999, with the mean and median total family income between \$20,000 and \$24,999.<sup>10</sup> Approximately one-third of farmworkers report family incomes below the poverty line.<sup>11</sup> As a result of their poverty, many farmworkers live in substandard homes in crowded conditions.<sup>12</sup> Further, many farmworkers experience food insecurity, unable to access or afford the fruits and vegetables they harvest.<sup>13</sup> And despite living in poverty, many farmworkers' immigration status denies them access to benefits that can support their health and well-being, such as SNAP or Medicaid.

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<sup>8</sup> Francis Wilkinson, *Robots Won't Pick Tom Cotton's Strawberries*, BLOOMBERG (March 8, 2018), <https://www.bloomberg.com/opinion/articles/2018-03-08/tom-cotton-s-robots-won-t-replace-immigrant-farm-labor-soon> (quoting Zippy Duvall, President of the American Farm Bureau Federation, as saying, "Even with all the mechanization and innovation that has happened in agriculture, there are certain types of farm work, such as weeding or picking produce for the fresh market, that machines can't do as well as human hands.").

<sup>9</sup> Daniel Costa, *The farmworker wage gap continued in 2020*, ECONOMIC POLICY INSTITUTE (July 20, 2021), <https://www.epi.org/blog/the-farmworker-wage-gap-continued-in-2020-farmworkers-and-h-2a-workers-earned-very-low-wages-during-the-pandemic-even-compared-with-other-low-wage-workers/>.

<sup>10</sup> NAWS Report, *supra* note 1, at iii.

<sup>11</sup> *Id.*

<sup>12</sup> Melissa Gomez, *'We Can't Prevent It': Farmworkers Paid Low Wages Fear Coronavirus Spread in Crowded Housing*, LOS ANGELES TIMES (June 9, 2020), <https://www.latimes.com/california/story/2020-06-09/salinas-covonavirus-monterey-county>.

<sup>13</sup> Hill, Brittany G. et al., *Prevalence and Predictors of Food Insecurity in Migrant Farmworkers in Georgia*, 101 AM J PUBLIC HEALTH 831 (2011), <https://digitalcommons.unl.edu/publichealthresources/138>; Laura-Anne Minkoff-Zern, *Hunger amidst plenty: farmworker food insecurity and coping strategies in California*, 19 LOCAL ENVIRONMENT 204 (2012), <https://www.tandfonline.com/doi/pdf/10.1080/13549839.2012.729568>.

Most farmworkers are also excluded from the labor protections afforded to workers in other sectors of the economy. These exclusions resulted in large part from concessions made to Southern legislators in New Deal-era labor legislation when agricultural workers were predominantly African-Americans.<sup>14</sup> They continue today, when the vast majority of farmworkers are people of color and an estimated four out of every five farmworkers are Hispanic/Latino.<sup>15</sup> Federal law deprives farmworkers of the right to join a union free from retaliation and denies them overtime pay.<sup>16</sup> Occupational safety standards that exist for most other workers are denied to many farmworkers.<sup>17</sup> Most state laws are similarly restrictive,<sup>18</sup> although California, the most productive agricultural state, has extended most labor protections to agricultural workers.<sup>19</sup> Even when labor protections exist, there are widespread violations of farmworkers' rights.

Amid this lack of labor protections, farmworkers have faced disproportionate harms from COVID-19 and climate change. As the virus spread, workers were often forced to continue working, shoulder to shoulder, without proper personal protective gear or access to sufficient handwashing stations. Many suffered serious health consequences as a result.<sup>20</sup> There continue to be challenges reaching farmworkers with vaccines. Farmworkers are also on the frontlines of exposure to extreme temperatures and wildfires. As smoke fills the air and temperatures increasingly exceed 100 degrees

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<sup>14</sup> Sean Farhang and Ira Katznelson, "The Southern Imposition: Congress and Labor in the New Deal and Fair Deal," *Studies in American Political Development*, vol. 19 (Spring 2005), p. 14 (quoting Florida Congressman James Mark Wilcox's comments in the debate over FLSA: "[T]here is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. . . . You cannot put the Negro and the white man on the same basis and get away with it.").

<sup>15</sup> U.S. Dep't of Labor, *Research Report No. 13, Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers* (2018), p. 2, [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf).

<sup>16</sup> 29 U.S.C. § 213(b)(12) (FLSA exemption); 29 U.S.C. § 152(3) (NLRA exemption).

<sup>17</sup> See, e.g., *Walking-Working Surfaces and Personal Protective Equipment (Fall Protection System)*, 81 Fed. Reg. 82,494, at 82,504 (Nov. 18, 2016) (declining to extend walking-working surface standards to agricultural operations).

<sup>18</sup> Farmworker Justice, *Farmworkers' Rights Under State Employment Laws: An Interactive Map* (last visited May 5, 2021), <https://www.farmworkerjustice.org/general-map/>.

<sup>19</sup> Cal. Dep't. of Industrial Relations, *Overtime for Agricultural Workers* (January 2019), <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers.html>.

<sup>20</sup> Jayson L. Lusk, Ranveer Chandra, *Purdue Food and Agriculture Vulnerability Index*, Purdue University, College of Agriculture, <https://ag.purdue.edu/agecon/Pages/FoodandAgVulnerabilityIndex.aspx> (reporting 602,000 agricultural worker COVID-19 cases as of July 19, 2021); Yea-Hung Chen et al., *Excess Mortality Associated with the COVID-19 Pandemic Among Californians 18-65 Years of Age, by Occupational Sector and Occupation* (2021), <https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1.full.pdf> (finding that food and agriculture workers in California have experienced the highest "excess mortality" during the pandemic).

in the West and the Plains, calls from state and local officials to stay indoors stand in sharp contrast with the reality of farmworkers, who must continue their strenuous work in the field to earn a living.<sup>21</sup> Yet there are no national occupational safety standards requiring agricultural workplace protections against injury and death from heat or wildfires.

### **Farmworkers and the Broken Immigration System**

Farmworkers' conditions are made more dangerous and their experiences more painful by our country's broken immigration system. Without permanent legal status, workers are vulnerable to employer exploitation and abuse. Every time an undocumented worker bravely chooses to speak up about dangerous conditions or unfair treatment, she risks retaliation in the form of deportation. The ever-present threat to "call ICE" is a powerful tool to keep workers silent, even in the face of untenable circumstances. And when workers do challenge unfair practices, they generally find that they have little recourse. For the most part, federally funded legal aid programs are prohibited from representing undocumented immigrants.

But our immigration policies do more than allow employers to take advantage of workers; they also prevent workers from receiving the health care services they need. Even at the height of the pandemic, when thousands of people were dying every day, many workers were afraid to get tested. They feared that immigration enforcement might be at the testing site<sup>22</sup> or that if they tested positive they could lose their jobs and would no longer be able to feed their families.<sup>23</sup> Without legal status, many farmworkers were denied the basic services they needed to survive and keep their families safe and economically secure.

The farm workforce also includes hundreds of thousands of temporary foreign agricultural workers who are brought to the United States each year through the H-2A

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<sup>21</sup> Brian Osgood, 'What choice do we have?' US farm workers battle deadly heatwave, ALJAZEERA (July 15, 2021), <https://www.aljazeera.com/economy/2021/7/15/what-choice-do-we-have-us-farm-workers-battle-deadly-heat-wave>.

<sup>22</sup> Jacqueline Alemany, *Power Up: Policymakers Concerned That Immigrants Avoiding Coronavirus Testing and Care*, WASHINGTON POST (May 27, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/powerup/2020/05/27/powerup-policymakers-concerned-that-immigrants-avoiding-coronavirus-testing-and-care/5eccd7842602ff165d3e41a05/>.

<sup>23</sup> Arun Gupta & Michelle Fawcett, *Undocumented Farmworkers Are Refusing Covid Tests for Fear of Losing Their Jobs*, WORKDAY MINNESOTA (June 22, 2020) <https://workdayminnesota.org/undocumented-farmworkers-are-refusing-covid-tests-for-fear-of-losing-their-jobs/>.

visa program. In recent years, more employers have applied for and received permission to hire H-2A guestworkers.<sup>24</sup> Almost all employers who apply to the Department of Labor for H-2A labor certification are approved.<sup>25</sup> The program has grown rapidly. In 2010, fewer than 56,000 guestworkers were issued H-2A visas.<sup>26</sup> By last year, that number had nearly quadrupled. More than 213,000 H-2A visas were issued in 2020, even as most other immigration and visa processing shut down in response to the pandemic.<sup>27</sup>

Farmworker Justice has long criticized the H-2A program for its structure and its implementation. Because their visas are entirely dependent on their employers, H-2A workers are often reluctant to seek out information or changes in employer practices that would improve their health and safety.<sup>28</sup> In spite of having worked in the U.S. and contributed to the economy, often for many seasons, H-2A workers currently have no opportunity for permanent legal status or a path to citizenship. H-2A workers remain deprived of economic bargaining power and political influence, creating a deeply unfair power imbalance between H-2A employers and the workers.

When this nation requires the services of citizens of foreign countries to perform agricultural work, those workers should be treated as immigrants with the opportunity for citizenship. The current system in which a majority of farmworkers are either undocumented immigrants or nonimmigrant temporary foreign workers, neither of whom have a path to immigration status or citizenship, is wrong and unacceptable.

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<sup>24</sup> In 2010, the Department of Labor certified 79,110 H-2A positions. By 2020, this number had jumped to more than 275,000 H-2A positions. Office Of Foreign Labor Certification, U.S. Department of Labor, *Foreign Labor Certification Annual Report, October 1, 2009 - September 30, 2010* (2010), [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/OFLC\\_2010\\_Master\\_for\\_WebSite\\_StateFix.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/OFLC_2010_Master_for_WebSite_StateFix.pdf); Office of Foreign Labor Certification, U.S. Department Of Labor, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year FY 2020* (2021), [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A\\_Selected\\_Statistics\\_FY2020.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020.pdf).

<sup>25</sup> *Id.* (Reporting that 275,430 H-2A positions were certified out of the 286,900 that were requested in fiscal year 2020).

<sup>26</sup> U.S. Department of State, *FY2010 Nonimmigrant Visas Issued*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY10NIVDetailTable.pdf>.

<sup>27</sup> U.S. Department of State, *Worldwide NIV Workload by Visa Category FY 2020*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2020NIVWorkloadbyVisaCategory.pdf>.

<sup>28</sup> See Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers* (2011), <https://www.farmworkerjustice.org/resource/no-way-to-treat-a-guest-why-the-h-2a-agricultural-visa-program-fails-u-s-and-foreign-workers/>; Centro de los Derechos del Migrante, *Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program* (2020), <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

### **Paths to Legalization for Farmworkers**

The Senate must act quickly to reform the broken immigration system comprehensively and provide relief for farmworkers. That relief should emphasize a path to immigration status and citizenship. There are several mechanisms by which Congress could accomplish this urgently needed policy reform, including the U.S. Citizenship Act, S.348, Citizenship for Essential Workers Act, S.747, Farm Workforce Modernization Act, H.R.1603, as well as the budget reconciliation process. Farmworker Justice supports these proposals. The bill that is closest to enactment procedurally is the Farm Workforce Modernization Act (FWMA).

The FWMA passed the House on March 18, 2021 with strong bipartisan support led by Rep. Zoe Lofgren (D-CA) and Rep. Dan Newhouse (R-WA). The bill would provide an earned path to legal status and the opportunity to apply for a green card for farmworkers who are already in the U.S. and would also make significant modifications to the H-2A visa program, responding to both grower and worker concerns. The bill builds on previous efforts—including AgJobs and other proposals in previous Congresses—that had the support of members of this Committee from both parties.

Farmworker Justice was extensively involved in the difficult negotiations that resulted in the Farm Workforce Modernization Act (FWMA) during 2019. Compromise was necessary to achieve a bill that has gotten further than any agricultural immigration reform effort in more than three decades. The FWMA has passed in one chamber and has the support of the leadership of the Majority in this chamber. The President has already said he will sign it. We support this bill because, despite the difficult concessions made by farmworker advocates and Members of Congress, it is a reasonable and realistic approach that benefits both farmworkers and employers, and it has been delayed for far too long. The Senate should act quickly to send it to the President's desk.

All of these proposals would recognize the contributions of certain immigrant farmworkers by giving them the opportunity to apply for a green card and eventually citizenship. We are especially pleased that the U.S. Citizenship Act incorporates the Fairness for Farmworkers Act, which would end most of the exclusions of farmworkers from the Fair Labor Standards Act, including overtime pay and some exemptions that still exist in the minimum wage.

In conclusion, immigrant farmworkers have had substantial responsibility for ensuring the continuity of our food supply before and during the pandemic. Obstructionists in Congress should end their unconscionable refusal to take action on



immigration reform. We ask the Senate to pass legislation that grants farmworkers and their families the prompt and efficient opportunity to obtain immigration status and citizenship.

For more information, including fact sheets on pending legislation and information on farmworkers, the pandemic and immigration policy, please visit [www.farmworkerjustice.org](http://www.farmworkerjustice.org),

Thank you.





July 21, 2021

The Honorable Dick Durbin  
Chairman, Senate Judiciary Committee  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Alex Padilla  
Chairman, Subcommittee on Immigration, Citizenship, and Border Safety, Senate Judiciary Committee  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: Immigration Hub Letter of Support Ahead of Hearing on Immigrant Farmworkers

Dear Committee Chairman Durbin and Subcommittee Chairman Padilla,

We, the Immigration Hub, write in strong support of immigrant farmworkers ahead of today's hearing. We are proud to have endorsed H.R. 1603, the Farm Workforce Modernization Act, which passed with bipartisan support in the House on March 18th, and we encourage the Senate to take up similar legislation. We thank you for your leadership in organizing today's hearing and we look forward to your continuing efforts to secure permanent protections for immigrant communities, including farmworkers, this year.

Over [one million](#) undocumented farmworkers have served as essential workers throughout the COVID-19 pandemic, providing food for millions of Americans across the country despite health risks and extreme weather. The pandemic has underscored how undocumented immigrants, including farm workers, are essential members of our communities and economy. Farmworkers [pay taxes](#) and [contribute to the economy](#), but they are not protected by U.S. labor laws.

Most recently, farmworkers in the Pacific Northwest of the country continued to work in the midst of [record-breaking temperatures](#). The lack of legal status is at the heart of what makes farmworkers so vulnerable to extremely hazardous working conditions, abuse and retaliation. Farmworkers in the U.S. have historically been excluded from many of the rights and benefits that protect workers such as overtime pay and minimum wage, partly because of the lack of legal status.

These workers and their families have lived in the country for years and are deeply integrated in communities across the country. In general, the majority of undocumented immigrants have [lived in the U.S. for more than ten years](#). The average farmworker has also worked for their current farm employer for [seven years](#), and [more than 80%](#) of hired farmworkers work at a single location within 75 miles of their home.

We urge you and your colleagues in the Senate to continue to work toward securing permanent protections for farmworkers by taking up legislation similar to H.R. 1603, the Farm Workforce Modernization Act, and by including a pathway to citizenship for Dreamers, TPS holders, farm workers, and other essential workers in the Build Back Better reconciliation package. We thank



you again for holding today's hearing and look forward to continuing to work in partnership with you and your staff.

Sincerely,

The Immigration Hub



**Statement for the Record**

**U.S. Senate Committee on the Judiciary**

**Hearing on "Immigrant Farmworkers are Essential to Feeding America"**

**July 21, 2021**

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans, and business constituencies in communities across the country. Leveraging our policy, advocacy, and communications expertise, the Forum works for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

**Introduction**

The Forum appreciates the opportunity to provide its views on the essential role of immigrant farmworkers in America. Immigrant farmworkers have long served as pillars of the country's food supply chain and agricultural economic prosperity. They not only allow the United States to maintain a self-sufficient food supply,<sup>1</sup> but they also help our nation to be the largest exporter of food in the world.<sup>2</sup> In other words, immigrant farmworkers are essential to help bring food to our tables, maintain a buoyant agricultural industry, and strengthen the leading global competitiveness of the United States.

Immigrants make up as much as 78% U.S. farmworkers.<sup>3</sup> Over one million U.S. farmworkers are undocumented, which amounts to, according to one estimate, about 70% of the total farming workforce.<sup>4</sup> Most undocumented immigrant farmworkers have lived in the U.S. for over a decade, and almost two-thirds of them are parents—many with U.S. citizen children. They are members of our congregations and schools, they put food on our tables, and they help our local economies succeed outside the farm gate by shopping at our stores and paying taxes.<sup>5</sup>

<sup>1</sup> See Areidy Beltran-Peña et al., Global Food Self-Sufficiency in the 21st Century Under Sustainable Intensification of Agriculture, *Environmental Research Letters*, 2020 (Available at <https://iopscience.iop.org/article/10.1088/1748-9326/ab9388>; Accessed on July 20, 2021).

<sup>2</sup> World Bank, World Integrated Trade Solutions, Food Exports by Country, 2018 (Available at [https://wits.worldbank.org/CountryProfile/en/Country/WLD/Year/2018/TradeFlow/Export/Partner/by-country/Product/16-24\\_FoodProd](https://wits.worldbank.org/CountryProfile/en/Country/WLD/Year/2018/TradeFlow/Export/Partner/by-country/Product/16-24_FoodProd); Accessed on July 20, 2021).

<sup>3</sup> National Immigration Forum, Infographic: Who Are American Farmworkers?, March 31, 2020. (Available at <https://immigrationforum.org/article/infographic-who-are-american-farmworkers/>; Accessed on July 20, 2021)

<sup>4</sup> Farmworker Justice, Farm Workforce Modernization Act Introduced, November 13, 2019 (Available at <https://www.farmworkerjustice.org/blog-post/farmworker-justice-update-11-13-19/>; Accessed on July 20, 2021)

<sup>5</sup> *Id.*

The United States is a nation of laws, and the country's agriculture industry should not be dependent on an undocumented workforce. However, farmers have extremely limited access to legal workers, and most undocumented farmworkers have no pathway to permanent status. The H-2A agricultural guest worker program is a cumbersome, outdated, and expensive process for farmers that cuts into already slim margins for farmers, and as such it provides less than 10% of the immigrant agriculture workforce.<sup>6</sup> The program is limited to seasonal labor, meaning some crucial American farming industries, such as dairy and ranging, do not have any access to H-2A visas at all.<sup>7</sup>

For all the reasons mentioned above, the Forum urges Congress to pass immigration reforms that recognize the value of our immigrant farmworkers and provide a pathway to legal status to the millions of farmworkers who have lived and worked for years on U.S. farms. We would also support congressional action to reform the H-2A program to ensure the next generation of immigrant farmworkers will arrive with legal status. Immigrant farmworkers are playing crucial roles in the agriculture industry all across the country -- in every state, in every community. Without them, the United States would not be able to keep its population fed, its economy booming, and its predominance as a global power.

#### **Immigrant Farmworkers Help Put Food on American Tables**

Despite the Covid-19 pandemic and the record heat waves of recent weeks,<sup>8</sup> immigrant farmworkers have continued to show up day after day to carry out their essential work. Immigrant farmworkers demonstrated, once again, their critical role in feeding the nation. Their commitment to bringing fresh fruits, vegetables, and other agricultural products to the tables of American consumers allows the United States to have food self-sufficiency and social stability.<sup>9</sup>

#### **Immigrant Farmworkers Bring Economic Prosperity to the Country**

Immigrant farmworkers are essential to the economy of the United States. Thanks to their labor, the farming industry in the United States generated \$136 billion in 2020.<sup>10</sup> In addition, their hard work has allowed our country to be the largest exporter of food in the world for years. Last year, American food exports reached a record \$157 billion.<sup>11</sup> Immigrant farmworkers are the backbone of the industry, and without them, the sector's economic success would not be possible.

<sup>6</sup> National Immigration Forum, Agriculture Sector: Immigrants are Indispensable to U.S. Workforce, October 25, 2017 (Available at <https://immigrationforum.org/article/agriculture-sector-immigrants-indispensable-u-s-workforce/>; Accessed on July 20, 2021).

<sup>7</sup> USCIS, H-2A Temporary Agricultural Workers (Available at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>; Accessed on July 20, 2021).

<sup>8</sup> We Are Home, ICYMI: We Are Home's Farm Worker Week of Action, July 12, 2021 (Available at <https://www.wearehome.us/news/icymi-we-are-homes-farm-worker-week-of-action>; Accessed on July 20, 2021).

<sup>9</sup> Jennifer Clapp, Food self-sufficiency: Making sense of it, and when it makes sense, Food Policy, Volume 66, 2017 (Available at <https://www.sciencedirect.com/science/article/pii/S0306919216305851>; Accessed on July 20, 2021).

<sup>10</sup> USDA, The Outlook for U.S. Agriculture – 2021: Building on Innovation: A Pathway to Resilience; 97th annual Agricultural Outlook Forum, February 2021 (Available at <https://www.usda.gov/sites/default/files/documents/2021-meyer-speech.pdf>; Accessed on July 20, 2021).

<sup>11</sup> *Id.*

In the midst of an agricultural labor shortage,<sup>12</sup> our country needs immigrant farmworkers more than ever. Even when considering the vital contributions of the immigrant workforce, the American agriculture industry needs more workers. There simply are not enough U.S.-born workers who are willing or able to do the labor. In 2019, farms in Idaho had 1,000 open positions on offer at almost double the minimum wage. According to state workforce data, just five Americans applied for the positions. Farmworker shortages have resulted in rising food prices for consumers and as much as three billion dollars in missed GDP growth.<sup>13</sup> Without immigrant farmworkers, fruit and vegetable farmers alone could lose as much as 9 billion dollars each year.

### **Immigrant Farmworkers are the Pillars of Food Self-Sufficiency**

Immigrant farmworkers are the backbone of food self-sufficiency in the United States, and food self-sufficiency is a critical element of the overall national security.<sup>14</sup> As President George W. Bush mentioned back in 2001, "[i]t is important for our nation to be able to grow foodstuffs to feed our people. Can you imagine a country that was unable to grow enough food to feed the people? It would be a nation that would be subject to international pressure. It would be a nation at risk. And so when we're talking about American agriculture, we're really talking about a national security issue."<sup>15</sup>

### **Conclusion**

The undocumented farmworkers are considered both illegal and essential is an irony that cannot continue. As the Forum's President and CEO has noted, "if there was ever a time that we should be honoring and respecting the dignity, hard work, and commitment of farmworkers, it is now. Farmworkers are protecting the food security of the United States, they are giving back to our economy, and ultimately, they and their families are becoming American themselves."<sup>16</sup>

It is time for Congress to act. Farmworkers and growers, Democrats and Republicans, have come together to express support for needed reforms. The Forum believes that if our economy is to operate at full steam, we need new laws to reform the H-2A agricultural program and provide status and the possibility of citizenship to the essential immigrant farmworkers already living and working in the United States.

<sup>12</sup> The American Farm Bureau Federation, Another Year of Farm Labor Shortages, July 10, 2019 (Available at <https://www.fb.org/viewpoints/another-year-of-farm-labor-shortages>; Accessed on July 20, 2021).

<sup>13</sup> Stephen G. Bronars, A Vanishing Breed: How the Decline in U.S. Farm Laborers Over the Last Decade Has Hurt the U.S. Economy and Slowed Production on American Farms, Partnership for a New American Economy, July 2015, at p. 2 (Available at [http://research.newamericaneconomy.org/wp-content/uploads/2015/08/PNAE\\_FarmLabor\\_August-3-3.pdf](http://research.newamericaneconomy.org/wp-content/uploads/2015/08/PNAE_FarmLabor_August-3-3.pdf); Accessed on July 20, 2021).

<sup>14</sup> Jennifer Clapp, Food self-sufficiency: Making sense of it, and when it makes sense, Food Policy, Volume 66, 2017 (Available at <https://www.sciencedirect.com/science/article/pii/S0306919216305851>; Accessed on July 20, 2021).

<sup>15</sup> President George W. Bush, Remarks to the National Future Farmers of America Organization July 27, 2001 (Available at <https://georgewbush-whitehouse.archives.gov/news/releases/2001/07/20010727-2.html>; Accessed on July 20, 2021).

<sup>16</sup> Ali Noorani, Who Are American Farmworkers? It is National Farmworker's Awareness Week in the U.S. and We Are Honoring Farmworkers, April 3, 2020 (Available at <https://www.facebook.com/watch/?v=534381590822197>; Accessed on July 20, 2021).



**OPEN LETTER TO THE UNITED STATES SENATE**

North Carolina Grower's Association (NCGA) strongly opposes H.R. 1603 – The Farmworker Modernization Act of 2021 and urges the United States Senate to produce their own legislation that will actually solve the farm labor crisis and secure the nation's future food supply.

NCGA is a cooperative of more than 600 family farms throughout North Carolina that grow virtually every labor intensive crop that can be grown here from asparagus to zucchini. NCGA members have turned to the H-2A program as their last option to hire employees in their determined effort to continue farming and sustaining American consumers. As the largest H-2A user in the country for the last 25 years, NCGA farms will employ more than 9,000 H-2A workers in 2021 but are struggling to survive economically under the expensive wage and benefit package required under existing law.

H.R. 1603 – The Farmworker Modernization Act of 2021 passed by the House in March is woefully inadequate in addressing the needed reforms to the H-2A program. In fact, in critical areas like wages and worker protections it will make the program significantly more expensive and create new federal rights to sue generating more litigation that farmers just cannot afford. H.R. 1603 will speed up the decline of the American Agriculture, jeopardize the national food supply, result in lost American jobs in supporting industries, and hurt farmworkers.

Providing legalization and a special new expedited pathway to citizenship for undocumented persons who claim they have worked on a farm in the past without reforming the H-2A guestworker program for American agriculture would be devastating.

Farmers want a reliable program that is fair, available for more than 10 months if workers are needed and Americans unavailable, and allow the farmer to make a reasonable profit for the work and risk involved – because farmers deserve to make a living wage too!

For these reasons, and more, the farmers of NCGA encourage the United States Senate to reject H.R. 1603 entirely and develop its own legislation that will actually solve the farm labor crisis and secure our future food supply. If you have any questions, please call me at 910/245-2969.

Until then, I remain,

Respectfully yours,

James T. Hill III, Executive Director  
North Carolina Growers Association



## North Carolina SweetPotato Commission, Inc.

Supporting North Carolina sweetpotato farmers since 1961.

April 13, 2021

The Honorable Richard Burr  
217 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Thom Tillis  
185 Dirksen Senate Office Building  
Washington, D.C. 20501

Dear Senators Burr and Tillis;

On behalf of the North Carolina SweetPotato Commission (NCSPC), which represents North Carolina sweetpotato growers, packers and shippers, we write to share our concerns with the recent House of Representatives bill, HR 1603, Farm Workforce Modernization Act.

The sweetpotato industry is one of the largest economic drivers in our state. We provide sweetpotatoes to consumers, retailers, and the foodservice industry throughout the United States, and world. The agriculture industry in our state employs over 20,000 agricultural workers through the H2A visa program annually. Our specialty crop is heavily reliant on labor due to the production practices required and therefore represents a significant percentage of our annual guest workers. This specific pool of laborers is essential to supporting over 450 growers in our state. The possibility of these H2A workers becoming legal citizens would jeopardize the future of our stable and reliable workforce for agriculture in North Carolina.

North Carolina Sweetpotato Commission looks forward to working closely with you to provide the information needed to address this potentially dooming crisis for our state. We thank you for your strong leadership on this issue.

Sincerely,

Michelle Grainger  
Executive Director, North Carolina SweetPotato Commission



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**Statement for the Record**

**Allison Grossman**  
**Director of Public Policy and Strategic Advocacy**  
**Polaris**

**Senate Judiciary Committee Hearing**  
**“Immigrant Farmworkers are Essential to Feeding America”**  
**July 21, 2021**

Chairman Durbin, Ranking Member Grassley, and members of the Senate Judiciary Committee, thank you for this opportunity to submit a statement for the record for the Judiciary Committee hearing, “Immigrant Farmworkers are Essential to Feeding America.” I submit this statement on behalf of Polaris, a national non-profit organization working to prevent and combat sex and labor trafficking in the United States and the operator of the U.S. National Human Trafficking Hotline (“Trafficking Hotline”).<sup>1</sup>

We are grateful to the Judiciary Committee for discussing the critical role that migrant farmworkers play in the U.S. food supply chain and at this important time. The COVID-19 pandemic highlighted and exacerbated the vulnerabilities to labor trafficking and exploitation already faced by these essential workers, including for undocumented farmworkers and workers in the U.S. on legal, temporary H-2A agricultural work visas.

Undocumented immigrants are always extremely vulnerable to traffickers, who can unlawfully use threats of deportation and imprisonment to coerce and control. Temporary visa workers, at least in theory, enjoy key additional protections around their recruitment and working conditions that are embedded in regulations and designed to minimize risk of exploitation. However, data from the Polaris-operated National Human Trafficking Hotline has shown that temporary visa holders, including H-2A visa workers, have long been over-represented as a proportion of labor trafficking victims we learn about on the hotline.<sup>2</sup>

<sup>1</sup> The National Human Trafficking Hotline is supported by the Administration for Children and Families (ACF) of the United States (U.S.) Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$3.5 million with 71.87% percentage funded by ACF/HHS and \$1.37 million and 28.13% percentage funded by non-government source(s). The contents of this statement are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACF/HHS, or the U.S. Government. For more information, please visit the ACF website, Administrative and National Policy Requirements: <https://www.acf.hhs.gov/administrative-and-national-policy-requirements#chapter-8>.

<sup>2</sup> [Human Trafficking on Temporary Work Visas: A Data Analysis, 2015-2017](#), Polaris, June 1, 2018.





**Structural conditions embedded in temporary visa program too often and too easily result in abuse and trafficking of workers.** Abuses against workers during the recruitment process typically include substantial illegal recruitment fees, failure to reimburse visa and travel expenses incurred by workers, false promises about employment conditions, and lack of employment contracts. Once workers arrive in the United States, current rules and requirements make it impossible for legal, temporary workers to change employers. The H-2A visa only authorizes the visa holder to work for a particular employer for the length of the visa. If the migrant worker quits their job, the visa is null and void - and the worker becomes unauthorized. This system gives employers disproportionate power over workers - power that is often misused to exploit these essential workers.

Over the last year, Polaris examined data from the U.S. National Human Trafficking Hotline to determine the potential impact of the COVID-19 pandemic on human trafficking in the United States. The effort involved comparing the volume of identified likely trafficking situations in separate periods before and during the pandemic response.

In a recently released snapshot analyzing this data, we learned that **the COVID-19 pandemic appeared to exacerbate these existing systemic problems, further tipping the balance of power away from H-2A workers and making them more vulnerable to trafficking - despite the fact that these individuals were deemed “essential” during the pandemic.**<sup>3</sup> I have included this analysis as an attachment and request that it be submitted for the record.

Specifically, the data analysis showed:

- The daily **number of labor trafficking and exploitation situations reported to the Trafficking Hotline that had at least one victim on an H-2A visa doubled** for the 6-month period during the pandemic.
- **During the pandemic, more than one-third of victims on H-2A visas reported being denied medical care**, despite their classification as essential workers. Studies have found that Latinos in general and farmworkers in particular were disproportionately likely to become seriously ill or die of COVID-19 at the height of the pandemic.<sup>4</sup>

While this data should not be interpreted as an estimate of the prevalence of trafficking during the pandemic, human trafficking is notoriously underreported, meaning that the individuals whose cases were reported likely represents only a very small fraction of the number of actual victims. Regardless, even the number that we know about is unacceptable.

During the pandemic, federal, state and local governments designated agricultural workers as “essential,” underscoring our country’s dependence on migrant labor to secure our food supply. And yet, as this analysis demonstrates, the system in place to protect these workers is clearly inadequate.

<sup>3</sup> [Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic](#), Polaris, June 23, 2021.

<sup>4</sup> Jason L Lusk and Ranveer Chadra, [Farmer and farm worker illness and deaths from COVID-19 and impacts on agricultural output](#), PLoS One, April 28, 2021; 16(4):e0250621. doi: 10.1371/journal.pone.0250621. eCollection 2021.



Congress must urgently address these systemic failures to ensure the health, safety, and welfare of our nation's essential migrant farmworkers, including H-2A temporary visa holders. Polaris urges the Senate Judiciary Committee and the U.S. Congress to introduce and pass legislation that will result in necessary protections for migrant farmworkers, including:

- Reform the H-2A visa system to **allow temporary visa workers to leave exploitative working situations without fear of deportation.**
- Enact **whistleblower protections** to ensure workers who assert their labor rights and/or acknowledge having paid fees are not fired from their current job and that the acknowledgement does not prevent them from being hired for future work.
- Significantly **increase resources for Department of Labor enforcement to expand investigations** into health and safety and wage and hour violations to identify and hold accountable employers who engage in exploitative practices, and strengthen the department's mandate to conduct oversight, including random audits of employers.
- **Improve transparency and resources for workers in their home countries during the recruitment process**, including robust enforcement of the ban on recruitment fees and mandating that workers receive job offers and detailed contracts at the start of recruitment.
- **Strengthen workplace protections** to provide agricultural workers basic labor rights, and ensure that workers are provided with information about their rights in their own language before their job begins as well as safety reporting mechanisms to report abuses when needed.
- **Provide undocumented farmworkers with a path to citizenship.**

Thank you again for this opportunity and for your consideration. We would be happy to provide further information to expand upon these points.

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*Attachment: [Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic](#), Polaris, June 23, 2021.*



ph. 202.406.3600  
f. 202.406.3602  
www.fb.org

July 20, 2021

The Honorable Dick Durbin  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Senate Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Durbin and Grassley,

Farmers rely on skilled, reliable employees to produce food, fuel and fiber, and have long advocated for smart policies that provide stability for the agriculture workforce while also reforming the existing H-2A guestworker program. As the nation's largest general farm organization, the American Farm Bureau Federation (AFBF) appreciates the opportunity to share our viewpoint regarding proposals seeking to address the immigration status of farmworkers.

While AFBF recognizes that the documentation status of farmworkers is an issue facing our industry that must be resolved, we must not forget the critical need to address long-standing inadequacies in our nation's H-2A guestworker program as well. Failing to pass substantive guestworker reform could intensify our nation's ongoing agricultural workforce shortage, placing our nation's food security at risk.

Numerous U.S. farms saw a turnover in their workforce following the Immigration Reform and Control Act of 1986 (IRCA). As a result, many farmers turned to the H-2A program to meet their employment needs. While the H-2A program is a lifeline for growers who seasonally need workers but cannot find them domestically, it is an expensive and bureaucratic program that would not be used if other labor options were available. Since IRCA, agriculture's labor shortage has worsened, forcing more farmers to utilize the H-2A program. This is evident in the more than 350% growth in the number of H-2A certified positions in the last 10 years.

Considering that growth, an ag labor solution must address agriculture's most pressing problems with the guestworker program, including program access and cost concerns. Under current law, the H-2A program is not available to farmers with year-round employment needs, such as those engaged in dairy, livestock, or mushroom farming. Additionally, as technology has modernized agricultural practices, farmers have found new ways to grow crops year-round, but these operations often do not fit within the rigid, seasonal parameters of the existing H-2A program.

Costs associated with the H-2A program must also be addressed in any solution put forward by the Senate. The requirement to pay H-2A workers the adverse effect wage rate, in addition to providing free housing and transportation to H-2A employees, jeopardize the economic viability of farms throughout the United States. The adverse effect wage rate is calculated based on data gathered in the Farm Labor Survey conducted by USDA. This approach leads to volatility and uncertainty. For example, in 2019, the AEWR for Colorado, Nevada and Utah increased 23% in

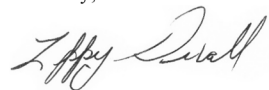
one year. The increases in the AEWR have also far outpaced the rest of the U.S. economy. Since 2010, labor costs reported by the farm labor survey have increased nearly 40%, while the wage growth across the broader U.S. economy has only increased 25% in the same time frame<sup>i</sup>.

Farmers' concerns with the AEWR are not only about predictability but also a matter of economic competitiveness. While farmers need certainty regarding the adverse effect wage rate, they also need to ensure their businesses can remain open. For many farmers who use the H-2A program, especially on small- and medium-sized farms, the program costs are already too high. AEWR increases far outpace the revenues for labor-intensive crops grown on their farms.

For example, while the AEWR has increased 20% on average over the last five years, the revenues for fruits and nuts have only increased 1%, while revenues for vegetables and melons have declined by 5%. This scenario is creating incentives for the offshoring of food production, which presents a national security concern. These production shifts are already occurring. Just last year, the production of carrots, iceberg lettuce, onions, oranges, potatoes and strawberries diminished by approximately 160 million pounds compared to 2019, while imports of those same products increased 177 million pounds, a 44% increase<sup>ii</sup>. Without reforms to address the costs to produce food using legal, H-2A labor in the United States, this production imbalance will increase, resulting in the U.S. becoming dependent on foreign countries for our food supply.

As Congress considers proposals regarding farmworkers' immigration status, we must keep H-2A guestworker reform at the forefront of these conversations. AFBF implores Congress to work in a bipartisan manner to address concerns regarding the immigration status of existing farmworkers and reforms to the H-2A guestworker program. As American farmers and ranchers already face a workforce shortage, Congress must recognize the dangers of incomplete, shortsighted agricultural labor reform initiatives.

Sincerely,



Zippy Duvall, President

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<sup>i</sup> <https://www.fb.org/market-intel/certainty-and-stability-for-aewr>

<sup>ii</sup> Chenarides, L, Richards, TJ, Rickard, B. COVID-19 impact on fruit and vegetable markets: One year later. *Can J Agr Econ* 2021; 1– 12. <https://doi.org/10.1111/cjag.12272>



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Statement for the Record  
Submitted to the U.S. Senate Committee on the Judiciary

On Hearing Titled:  
**"Immigrant Farmworkers are Essential to Feeding America"**

Submitted by:  
UnidosUS  
Raul Yzaguirre Building  
1126 16th Street NW, Suite 600  
Washington, DC 20036-4845

July 21, 2021

## Introduction

UnidosUS, formerly the National Council of La Raza, is the largest national Latino<sup>1</sup> civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for Latino families to enhance their significant contributions to the social, economic, and political tapestry of our great nation. In this capacity, UnidosUS and its Affiliate Network of nearly 300 community-based organization in 36 states, the District of Columbia, and Puerto Rico, work to provide education, health care, immigration, housing, workforce development, free tax preparation, and other services to millions of Latinos in the United States each year.

Through our Affiliate engagement, we have cultivated deep ties with on-the-ground communities across the country and serve these diverse constituents by amplifying their voice to legislators. Namely, we have documented stories and collected data that depict how workers and families of color have been systematically excluded from the U.S. social safety net since its inception. Throughout the COVID-19 pandemic, Hispanic workers—already in precarious standing due to existing, discrimination-fueled disparities—have suffered extreme economic dislocation. To develop an equitable vision for recovery and advancement for our nation, it is critical for legislators to develop a genuine understanding of these hardships.

In this statement for the record, we reassert one of the central arguments UnidosUS has made since the start of the pandemic: a pathway to legalization and citizenship for all undocumented essential workers is an integral part of a comprehensive pandemic recovery plan. We submit that there are fewer jobs more essential—during a pandemic or otherwise—than those held by farm workers. Their contributions have been, and continue to be, instrumental to the nation’s critical infrastructure and resiliency, while helping in no small part to power our recovery by keeping our population fed. We urge action on this important legislation to not only stabilize the workforce, but also ensure the equitable recovery the nation needs and demands.

## Farmworkers have been the nation’s life preserver throughout the COVID-19 pandemic

Although the pandemic drastically altered the lifestyle of many Americans—with work from home, online school, and more—one facet has remained constant: the need to sustain the critical food production infrastructure to feed the nation. For millions of people, farmworkers are at the very beginning of that supply chain, an industry whose workers are disproportionately Latino and immigrant. Indeed, according to the U.S. Department of Labor’s National Agricultural Workers Survey, 83% of the nation’s farmworkers are Latino.<sup>i</sup> And, according to the Department of Labor about half of farm workers are undocumented.<sup>ii</sup> The facts speak for themselves: Latinos, many who are immigrants, are the face of our nation’s

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<sup>1</sup> The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. This document may also refer to this population as “Latinx” to represent the diversity of gender identities and expressions that are present in the community.

agriculture industry, and farmworkers in particular have played an essential role in one of the most critical of infrastructure systems.

That is not to say that Latino and immigrant workers aren't also well represented in other sectors deemed essential by our government, including along other aspects of the farm-to-folk supply chain. The U.S. Department of Homeland Security's Cybersecurity & Infrastructure Security Agency has established a list of critical infrastructure sectors comprised of essential industries that the agency describes as "so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic, security, national public health or safety, or any combination thereof."<sup>iii</sup> On that list, along with the transportation system, water system, and energy sector are agriculture jobs. Without farm workers, many Americans would lack access to fresh, nutritious foods. Our nation's economy, one-fifth which consists of agricultural activity, would see itself dramatically impacted without these essential workers.<sup>iv</sup>

Paradoxically, even as these jobs are generally understood to be critical to the functioning of the nation, workers themselves continue to be put in precarious positions. By their nature, these jobs are high-risk and low pay: Individuals work for hours on end for close to minimum wage levels in the blistering sun without proper protective and other equipment, rest, or compensation. The most recent heat wave in the Pacific Northwest is a cautionary tale of what is to come if Latinos and other farmworkers continue to receive grossly inadequate support. Last month, 38-year-old farm worker Sebastian Francisco Perez died after working in temperatures above 115 degrees in the Willamette Valley of Oregon.<sup>v</sup>

This without the background of a pandemic. During the COVID-19 health crisis, farmworkers have especially struggled to adapt—forced to choose between their physical health and their capacity to just barely support their families financially. Public health researchers at the University of California, Berkeley surveyed 1,091 adult farmworkers in Monterey County in California and found that 42% of individuals had an active, asymptomatic infection with COVID-19.<sup>vi</sup> Moreover, 57% of participants exhibited COVID-19 symptoms and nevertheless continued to work.<sup>vii</sup> Many farmworkers, pressured by fear of deportation and financial need, attempt to endure the illness and, in the midst of crowded living and working conditions, inevitably spread the virus to other laborers.<sup>viii</sup> The fear of deportation has been a focal point of recent advocacy efforts by UnidosUS for a pathway to citizenship for essential workers. Congress should carefully consider the statements of the witness made part of this hearing who will testify to the full range of realworld challenges farmworkers have had to endure during the pandemic.

#### **Citizenship is the only way to provide safety and peace of mind to undocumented farmworkers**

Evidently, farmworkers are a vulnerable population, both before and during the COVID-19 pandemic. However, there is an added layer that many farmworkers confront that leaves them increasingly exposed to exploitation and abuse: immigration status. According to some experts,



more than one-fourth (27.3%) of foreign-born farmworkers—who already make up nearly half of our country’s agricultural workers—are undocumented.<sup>x</sup> Moreover, barely a quarter of farmworkers are U.S.-born. This is not a coincidence: The agriculture sector has long relied on Latinos, other communities of color, and undocumented immigrants, even despite well documented labor and workplace abuses and an immigration system with racially discriminatory underpinnings.<sup>x</sup>

Most farmworkers in the United States do not receive the protections and freedoms enshrined in the National Labor Relations Act of 1935 and the Fair Labor Standards Act of 1938. According to labor advocates, these exceptions are said to have been written in by politicians who were a part of the Southern plantation owning class, who pursued an agenda to undermine Black field workers.<sup>xi</sup> This signifies that in the present moment, farmworkers—the great majority of whom are Latinos—cannot receive overtime pay, except for a handful of states. For these workers, who receive an average wage of \$13.99 an hour as of 2019—approximately 60% of the average non-farm wage—to negotiate a higher wage or improved working conditions immediately puts them and their families at risk. Moreover, some employers have been known to retaliate against employees and their families by reporting them to ICE.<sup>xii</sup>

The nation surely will reflect on the many lessons of the COVID-19 era. We strongly submit that one such lesson must be that it is wholly counterproductive and self-defeating to sustain policies that threaten deportation and thereby destabilize essential workforces. In the case of essential workers like farm workers, legal status is necessary to avoid these necessary pitfalls.

#### Immigrant farmworkers need on-the-ground support as well

While we continue to push for citizenship for farmworkers, UnidosUS and its Affiliate partners are doing their part to provide support to undocumented agricultural workers on the ground. For example, the Redlands Christian Migration Association providing much needed support to many migrant farmworker families across rural Florida. They are the state’s largest provider within the Migrant and Seasonal Head Start program, a federal program that provides child care services to young migrant children to ensure that they are safe and learning while their parents and out working in the field.<sup>xiii</sup> Children of migrant and seasonal farmworkers are a particularly vulnerable population, given their isolation from necessary resources. Often residing in the property of their parents’ employers, these children do not have easy access to schools. These children live below the federal poverty line at twice the national rate, and 76% of this population is Latino.<sup>xiv</sup> This is why UnidosUS established the Healthy and Ready for the Future Program, which has provided equitable oral and behavioral health services to more than 60,000 Latino children—with a focus on those from farmworker families—in partnership with Affiliates who are local federally qualified health centers and community-based organizations with Migrant and Seasonal Head Start programs.

Moreover, as part of its pandemic response to, among other things, address both the isolation of farmworker communities and the fear of COVID-19 spread, the UnidosUS **Esperanza Hope for All** initiative also seeks to breach the pandemic recovery gap afflicting Latinos.<sup>xv</sup> One part of



this initiative is allocating more than \$2 million in grants to 35 Latino-serving community organizations, bringing information about COVID-19 vaccines directly into Hispanic neighborhoods across the country, including rural and urban communities where health resources are lacking or difficult to access. Combined with the several Affiliate partners in the UnidosUS family across the nation who are well trained in providing direct services to immigrant communities, we have helping thousands of families in need.

However, the reality is that in the face of the historic COVID-19 pandemic our collective capacity to conduct outreach is limited. A lack of immigration status, including the fear and confusion it generates, particularly among isolated communities like farmworker community, continues to be a top barriers.

### Conclusion

The pandemic has made clear how interconnected we all are, and how fragile our critical infrastructure can be in times of crisis. The contributions of farm workers along one of our most important pieces of infrastructure, our food supply chains, cannot be discounted. It is true that we are past due for immigration reforms like the legislation compromising the subject matter of this hearing, but it has become equally evident that the nation's inability to stabilize its workforce during moments for systemic shock—like a global pandemic—make America vulnerable.

The good news for the country is that a solution is within reach. It is in Congress's immediate power to modernize our farm workforce by including a pathway to citizenship to these essential workers. UnidosUS supports the passage of the "Farm Workforce Modernization Act of 2021" and urges its immediate passage.

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<sup>i</sup> Hernandez, Trish; Gabbard, Susan. "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers." JBS International: Research Report No. 13. January 2018. [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf) (accessed 21 July 2021).

<sup>ii</sup> Ibid.

<sup>iii</sup> Cybersecurity & Infrastructure Security Agency. "Critical Infrastructure Sectors." Cybersecurity & Infrastructure Security Agency. 21 October 2020. <https://www.cisa.gov/critical-infrastructure-sectors> (accessed 21 July 2021).

<sup>iv</sup> Cybersecurity & Infrastructure Security Agency. "Food and Agriculture Sector." Cybersecurity & Infrastructure Security Agency. 2021. <https://www.cisa.gov/food-and-agriculture-sector> (accessed 21 July 2021).

<sup>v</sup> Foden-Vencil, Kristian. "Series of vigils held for 38-year-old farm worker who died during the heat wave." OPB. 3 July 2021. <https://www.opb.org/article/2021/07/03/oregon-heat-wave-deaths-farm-workers-sebastian-francisco-perez-vigil/> (accessed 21 July 2021).

<sup>vi</sup> Eskenazi, Brenda, et al. "Summary Report: Prevalence and Predictors of SARS-CoV-2 Infection among Farmworkers in Monterey County, CA." University of California, Berkeley. 1 December 2020. [https://cerch.berkeley.edu/sites/default/files/ucb\\_csvs\\_two\\_pager\\_12\\_01\\_20\\_final.pdf](https://cerch.berkeley.edu/sites/default/files/ucb_csvs_two_pager_12_01_20_final.pdf) (accessed 21 July 2021).

<sup>vii</sup> Ibid.

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- <sup>viii</sup> Contreras, Daisy. "Farmworkers who face extreme heat fear retaliation or deportation if they complain, says nurse." PRI. 21 July 2021. <https://www.pri.org/stories/2021-07-21/farmworkers-who-face-extreme-heat-fear-retaliation-or-deportation-if-they> (accessed on 21 July 2021).
- <sup>ix</sup> New American Economy Research Fund. "Immigration and Agriculture." New American Economy Research Fund. 22 July 2021. <https://research.newamericaneconomy.org/report/immigration-and-agriculture/?emci=6b308dbf-f7ea-eb11-a7ad-501ac57b8fa7&emdi=b2c5a3c1-03eb-eb11-a7ad-501ac57b8fa7&ceid=8384963> (accessed on 22 July 2021).
- <sup>x</sup> Kamasaki, Charles. *Immigration Reform: The Corpse That Will Not Die*. Mandel Vilar Press. 2019 July 16.
- <sup>xi</sup> Kelkar, Kamala. "When labor laws left farm workers behind — and vulnerable to abuse." PBS NewsHour Weekend. 18 September 2016. <https://www.pbs.org/newshour/nation/labor-laws-left-farm-workers-behind-vulnerable-abuse> (accessed on 21 July 2021).
- <sup>xii</sup> Fernandes, Deepa. "Undocumented workers fight for wages under the threat of deportation." PRI: The World. 20 March 2018. <https://www.pri.org/stories/2018-03-20/undocumented-workers-fight-wages-under-threat-deportation> (accessed on 21 July 2021).
- <sup>xiii</sup> Paniego-Béjar, Beatriz. "In a time of crisis, this UnidosUS Affiliate works hard to meet the needs of their local farmworker community." UnidosUS. 8 April 2020. <https://blog.unidosus.org/2020/04/08/unidosus-affiliate-rcma-coronavirus-covid19-response/> (accessed on 21 July 2021).
- <sup>xiv</sup> UnidosUS. "Healthy and Ready for the Future." UnidosUS. 2021. <https://www.unidosus.org/campaigns/red-nose-day-usa/main> (accessed on 21 July 2021).
- <sup>xv</sup> UnidosUS Blog. "UnidosUS and its Affiliates bring vaccine information directly to our community." UnidosUS Blog. 15 April 2021. <https://blog.unidosus.org/2021/04/15/unidosus-and-its-affiliates-bring-vaccine-informationdirectly-to-our-community/> (accessed on 21 July 2021).



STATEMENT FOR THE SENATE JUDICIARY COMMITTEE

Hearing on Immigrant Farmworkers are Essential to Feeding America

July 21, 2021

NETWORK Lobby for Catholic Social Justice is a national organization of more than 90,000 social justice advocates across the United States inspired by Catholic Sisters. NETWORK educates, organizes, and lobbies for social and economic transformation through federal policies.

NETWORK is pleased to submit this statement to the Senate Judiciary Committee for the hearing – ‘Immigrant Farmworkers are Essential to Feeding America.’ We appreciate the committee conducting this important hearing.

NETWORK believes in the dignity of all people and has advocated for bold immigration reforms for the past 50 years. The principles of Catholic Social Justice affirm that all people are made in the image and likeness of God and so possess an equal and inalienable worth. Because of this essential dignity, each person has a right to what is necessary to reach their full potential as intended by God.

In conversations with workers and families in communities across the country, NETWORK has found that in regions with high agricultural activity, there is discrimination against people who do not speak English, but also a reliance on their labor. Slaughterhouses, meat processing plants, and dairy farms are heavily dependent on undocumented immigrants for labor. Workers who are exploited dare not speak out for fear of being deported. Many workers expressed their experiences of poor working conditions, meager wages, and long hours.

For undocumented immigrants, the fear of deportation touches many aspects of their daily life, including mundane tasks like getting a driver's license. During a Rural Roundtable discussion NETWORK hosted in Adrian, Michigan, a rural town near the Ohio border, community members shared that DACA recipient workers would not get their driver's licenses for fear of deportation. Those fears spill into distrust of law enforcement and the political establishment.

The Department of Labor reports that the United States has three million farmworkers and of them, 49% do not have authorization to work in the US.<sup>1</sup> Not only do whole regions rely on the economic success of agriculture-based businesses, but the rest of the country too, relies on these regions to produce food.

According to the United States Department of Agriculture, a large reduction in the number of unauthorized workers would lead to a long-run reduction in output and exports in both

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<sup>1</sup>“Findings from the National Agricultural Workers Survey (NAWS) 2015-2016” Research Report No. 13, Department of Labor, 52.

agriculture and the broader economy, relative to forecasted levels with no policy-induced change in unauthorized labor supply.<sup>2</sup>

While these numbers and findings are shocking, there is humanity that is undivorceable from the objective facts. Farmworkers are our friends, family, and neighbors. And yes, they feed us.

NETWORK urges this committee and the larger Senate to support and pass a pathway to citizenship for millions of undocumented farmworkers living in the United States so that they may pursue their God-given right to a life of dignity.

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<sup>2</sup>"The Potential Impact of Changes in Immigration Policy on U.S. Agriculture and the Market for Hired Farm Labor: A Simulation Analysis," *Economic Research Report*, United States Department of Agriculture.



July 27, 2021

*Submitted via email*

Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Statement for the Record in regards to Hearing of the Senate Judiciary Committee, “Immigrant Farmworkers are Essential to Feeding America”**

Dear Chairman Durbin, Ranking Member Grassley, and other members of the Senate Judiciary Committee,

Centro de los Derechos del Migrante, Inc. (CDM) is the first binational migrant workers’ rights organization based in Mexico and the U.S. We thank you for holding the “Immigrant Farmworkers are Essential to Feeding America” Senate Judiciary Committee hearing on July 21st, 2021. From our direct experience working with both undocumented farmworkers and migrant workers in the H-2A temporary agricultural work visa program, **we know strengthening worker protections and establishing a pathway to citizenship for both of these groups is urgently needed, especially amidst a pandemic.**

Founded in 2005, CDM has offices in both Maryland and Mexico. We support migrant workers throughout their labor migration journey—from the moment they are recruited in their home communities, to their workplace in the U.S., and upon their return home through our policy advocacy, free legal services, and outreach and organizing model. Our unique approach has enabled us to recover over \$36.3 million in earnings and damages for migrant workers<sup>1</sup> who have faced abuse and legal violations of their rights while employed in the US. Many of those workers formed or are currently part of the H-2A program. We have also represented undocumented workers in labor rights litigation.

**Abuse in agricultural work and the H-2A program**

Nationwide, agriculture is one of the most dangerous industries,<sup>2</sup> and agricultural workers are among the lowest-paid workers.<sup>3</sup> Migrant workers in the H-2A visa program and undocumented workers alike must work in strenuous conditions, are paid low wages, and face systemic and structural barriers to accessing justice.<sup>4</sup> Regardless of their immigration status, agricultural workers

<sup>1</sup>2020 Impact Report: 15 Years Advancing Justice with Migrant Workers. Report. Centro de los Derechos del Migrante, 2020. Print.

<sup>2</sup> U.S. Bureau of Labor Statistics, *Number and rate of fatal work injuries, by industry sector, 2019*,

<https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm>.

<sup>3</sup>Economic Policy Institute, “The Farmworker Wage Gap Continued in 2020: Farmworkers and H-2A Workers Earned Very Low Wages during the Pandemic, Even Compared with Other Low-wage Workers.” Economic Policy Institute. July 2021,

<https://www.epi.org/blog/the-farmworker-wage-gap-continued-in-2020-farmworkers-and-h-2a-workers-earned-very-low-wages-during-the-pandemic-even-compared-with-other-low-wage-workers/>

<sup>4</sup> *Id.*

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often suffer health and safety violations, sexual harassment, wage theft, and retaliation<sup>5</sup> in the fields. The COVID-19 pandemic has only exacerbated the precarious working conditions for agricultural workers.<sup>6</sup>

In its current form, the H-2A visa program fails to protect workers from these conditions, and instead subjects them to a system rife with abuse. The H-2A visa ties migrant workers' employment and immigration status to a single employer. Because workers fear losing their employment and immigration status, they often remain silent in abusive workplace conditions.

In 2020, we wrote *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, a report based on 100 surveys of current and recent H-2A migrant workers from all geographic areas of the country, including Texas, North Carolina, California, and Arizona. **Our report finds that systemic abuse pervades the H-2A program, with 100% interviewed workers facing at least one serious legal violation of their rights and the majority facing three or more.**<sup>7</sup> Violations included<sup>8</sup>:

- *Egregious discrimination and harassment* - 86% of those interviewed shared that women were not hired or were offered less favorable pay or less desirable jobs than men
- *Unlawful recruitment and travel fees* - More than a quarter of respondents paid recruitment fees for H-2A visas, and nearly three-quarters of respondents did not receive their full reimbursement for travel costs to and from the U.S.
- *Economic Coercion* - More than third of respondents said they experienced restrictions on their physical and geographical mobility
- *Health and Safety* - Almost half of the H-2A workers interviewed lived in overcrowded or unsanitary housing conditions
- *Wage and hour violations* - 43% of the respondents were not paid the wages promised in the contract

Our report confirms a worrisome reality: the abuse faced by H-2A workers cannot be faulted to a single "bad apple" employer or actor, but rather, it is ingrained in the very structure of a program in which employers hold an acute imbalance of power.

Despite this flawed system, the H-2A guestworker program continues to expand without stronger worker protections—a recipe for abuse. Each year, hundreds of thousands of migrant workers are recruited internationally to perform seasonal, high-risk, low-wage labor in the United States. Legislators and the industry alike continue to expand the program without expanding workers' legal rights or protections. In the decade between 2008 and 2018, the program had more than tripled in size.<sup>9</sup>

For years, agricultural employers have lobbied to expand the H-2A program and other temporary visa programs despite the well-documented abuse in their industry. These abuses affect workers across visa categories and affect H-2A workers and other visa holders alike. For instance, CDM,

<sup>5</sup> *The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*. Report. Humans Rights Watch, 2012. Print.; *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*. Report. Centro De Los Derechos Del Migrante, 2020. Print.

<sup>6</sup> *Ripe for Reform*; "The Farmworker Wage Gap."

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, 15.

alongside Texas RioGrande Legal Aid, currently represents a Mexican veterinarian with a TN visa. Her Texas dairy farm employer assigned her a single task: “open the metal gates, walk about 3,000 cows to milking zones every day and clean after them at the end.” Her “paystubs didn’t match what [she] had been promised.”<sup>10</sup> The TN visa is emitted only to applicants deemed high-skilled, yet regardless of visa type or background, workers are subject to dire working conditions.

### Recommendations

As advocates and experts on the H-2A program, we are alarmed that Congress is considering expanding the H-2A program without first addressing these serious, systemic abuses and enhancing worker protections. We urge policymakers to take several urgently needed measures to protect workers.

1. First and foremost, **Congress must act rapidly to establish a pathway to citizenship and permanent legal status for migrant workers in the H-2A program and undocumented farm workers.** Currently, migrant workers face continued separation from their families season after season when they work in the U.S. From our experience and research, it is nearly impossible for workers to migrate with their families, spouses, and children.<sup>11</sup> Workers having permanent immigration status will also help prevent abuse in the H-2A program, where workers’ immigration status is contingent on employment with a single employer.

The Farm Workforce Modernization Act creates a pathway to citizenship for a limited number of H-2A migrant workers who work in the U.S. year after year. After a certain period, H-2A migrant workers could have the opportunity to petition for permanent residency for themselves and their families, supporting family unity.

2. Additionally, the current H-2A program urgently needs reform to protect workers’ rights. Under the Farm Workforce Modernization Act, H-2A workers would finally be protected by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), a federal law that has been essential to protecting farmworker for years and gives them a private right of action. The Farm Workforce Modernization Act includes other significant provisions — recruitment transparency, fair housing and transportation, and important anti-discrimination language — that would strengthen protections for workers on H-2A visas.

### Conclusion

We continue to advocate for focused legislative efforts to deliver immigration relief to the 11 million undocumented people in the U.S. and all migrant workers. We call on the Senate to take legislative action to protect agricultural workers, including following bipartisan support in the House and pushing forward the Farm Workforce Modernization Act.

Sincerely,

Centro de los Derechos del Migrante

<sup>10</sup> Barberena, Adriana. “I Left My Home in Mexico to Work as a Farm Veterinarian in America. But It Was a Trick.” Editorial. *USA Today* June 2021. Print

<sup>11</sup> *Ripe for Reform*, 16.





**Statement for the Record by Mónica Ramírez  
on behalf of Justice for Migrant Women**

**United States Senate Committee on the Judiciary hearing on  
“Immigrant Farmworkers are Essential to Feeding America”**

**Hearing Date: July 21, 2021**

**Submitted: July 28, 2021**

Chairman Durbin, Ranking Member Grassley, and Members of the Committee:

Justice for Migrant Women protects and advances migrant women’s rights through education, public awareness and advocacy. We aim to ensure that all migrant women working in agriculture or other sectors of the economy are guaranteed human and civil rights, including the freedom of mobility, the ability to live and work with dignity, and the right to be free of threats of violence against them and their families, whether they are migrating across borders, around regions or within states.

Of the approximately 2.5 million farmworkers in the United States, almost half are undocumented, and an estimated 900,000 are female, including thousands of teenagers and girls. While the exact number is unknown, an estimated 300,000 to 500,000 farmworkers are under the age of 18.

Like most farmworkers, women and girls in agriculture perform the essential work of planting, picking, and packing the fruits and vegetables that put food on our tables. However, they are excluded from many provisions of federal labor laws, such as overtime pay and the right to organize, and they lack access to affordable health care, sick pay, workers’ compensation, and disability insurance. Many are exposed to toxic pesticides in their work. These jobs are low-paid, dangerous and isolated. According to the National Agricultural Workers Survey (NAWS) of 2015-2016, the mean and median total family incomes for farmworkers were in the range of \$20,000 to \$24,999 and one-third of all farmworker families lived in poverty.

These circumstances, in addition to the lack of personal protective equipment and worksite handwashing facilities, and the lack of social distancing practices at work and in farmworker

housing and transportation, have all combined to make farmworkers even more vulnerable to life-threatening illness during the COVID-19 pandemic.

Sadly, farmworker women and girls also suffer sexual harassment and assault by bosses, crew leaders and co-workers. The rates are alarming. One of the first studies conducted in California in the 1980s found that 90 percent of farmworker women stated that sexual harassment is a major problem. More recently, 80 percent of farmworker women surveyed in the California Central Valley in 2010 reported that they had experienced sexual harassment at work. If they refuse sexual advances, farmworker women and girls face retaliation against themselves and their families members, including the risk of being fired, continued threats of physical and sexual violence, and reporting to immigration authorities.

Existing federal anti-harassment law does not protect farmworker women and girls if they work for a farm or other agricultural employer with less than 15 workers. Isolation, limited English proficiency, poverty, and lack of immigration status make farmworker women and girls more vulnerable to violence and less likely to report abuse. Many may not know that they have any rights against their abusers.

Providing farmworkers with the ability to adjust their immigration status and get on a pathway to citizenship will be especially impactful for women and girls working in agriculture, empowering them to better confront and overcome many of the challenges described above.

For these reasons, Justice for Migrant Women supports the Farm Workforce Modernization Act and other legislation that provides a path to legalization and citizenship, including the Dream and Promise Act, Citizenship for Essential Workers Act, and U.S. Citizenship Act. Concurrently, we also support specific policies to provide protections for immigrant survivors of gender-based violence.

### **Support for Immigration Reforms**

Too often, unscrupulous employers exploit low income workers' immigration status to deny them the pay and benefits they're entitled to, or escape accountability for sexual harassment and abuse. Providing legal residency and a path to citizenship is the most effective way to curtail that exploitation.

Farm Workforce Modernization Act provides a pathway to legal residency and citizenship for the farmworkers and their families, many of whom have put their own safety at risk to maintain our food supply throughout the darkest days of the pandemic. While the bill is not perfect, we recognize that it is the result of painstaking negotiations and we thank the members of the Judiciary Committee who support it, and urge others to do the same.

The coronavirus pandemic has led to increased awareness of the work that immigrant workers perform in keeping our nation's essential services functioning. Farmworkers are among the five million undocumented immigrant essential workers, which also include those working in healthcare, home care, transportation, and construction. As Congress works on legislation to build back better, immigrants working in agriculture and other sectors must be included. In order to achieve an equitable recovery we need protections for all essential workers, including a pathway to citizenship. Justice for Migrant Women therefore strongly supports efforts to include immigration relief in recovery legislation through the reconciliation process that provides a pathway to citizenship for farmworkers, other essential workers, immigrant youth, and those with Temporary Protected Status.

### **Protecting Farmworker Women and Girls from Gender Based Violence**

Justice for Migrant Women welcomes Attorney General Merrick Garland's recent decisions to reverse the previous administration's policies that prevented migrant women from seeking asylum in the United States due to domestic abuse and other forms of gender based violence. We have also provided the Biden-Harris Administration with additional recommendations to protect the safety of survivors of gender based violence, including:

- **Making immigration pathways more accessible to survivors of gender based violence** by taking action to make immigration pathways more accessible to survivors, including by reducing the now multi-year backlog in adjudications of cases, including by hiring additional adjudicators for the specialized USCIS units that process applications for the VAWA self-petition, U visa and T visa. All new and existing adjudicators must receive evidence-based training in gender-based violence and the impact of trauma.
- **Expediting Work Authorizations for immigrant survivors by directing** United States Citizenship and Immigration Services (USCIS) to issue employment authorization to victims within 90 days of submission of VAWA self-petition, U visa and T visa applications. Efficiency for USCIS and survivors of violence can be achieved by automatically renewing work permits while applications for relief are pending.
- **Reinstating and strengthening the June 2011 Immigration and Customs Enforcement Memo on Prosecutorial Discretion for Victims and Witnesses**, which stated that survivors should not be deported/detained before their applications are adjudicated. The memo should also be expanded to include those involved in workplace/labor disputes and include steps to ensure that ICE agents at all levels are trained on its implementation.

We urge members of this Committee to lend their support to these recommendations through their oversight and legislative powers.

#### **Expand Protections for Immigrant Survivors in the Violence Against Women Act**

In addition, the Senate and members of this Committee should address the needs of immigrant survivors of gender based violence through the Violence Against Women Act by:

- **Raising the U Visa cap** so that more survivors have access to these critical protections. There are currently over 200,000 applicants waiting for U Visas and increasing the cap on the number of visas that can be distributed in one year would instantly solve this backlog.
- **Strengthening confidentiality in protections** for survivors who apply for VAWA self petitions, U visa and T visa applications by limiting information sharing about their applications particularly with their abusers. This will protect applicants from retaliation including further abuse and harassment.
- **Providing access to basic economic, health care and housing supports** for immigrant survivors and their children in order to escape and overcome abuse and exploitation. When an immigrant survivor of gender based violence has to struggle to pay for basic necessities, the survivor is less likely to leave an abusive relationship because at least they have economic stability. Economic empowerment including pay equity is also critical to stopping gender based violence.

#### **Conclusion**

Throughout our nation's history, those who work in the fields to put food on our tables have been excluded from basic labor protections due to their race, gender, immigration status and economic status. When many other sectors received worker protections in the 1930s, farmworkers and domestic workers were not included because of racist, exclusionary policymaking. As Congress considers reforming our immigration laws and also considers the contributions of essential workers before, during and after the pandemic, we must ensure that migrant women in agriculture—who play a vital role in feeding America—and other sectors are not left behind.



## Statement for the Record

from the Bipartisan Policy Center

Senate Judiciary Hearing on "Immigrant Farmworkers are Essential to Feeding America"  
July 21, 2021

### Overview of the H-2A Visa Program

The H-2A temporary agricultural visas is the largest temporary work visa program in the United States. The H-2A program, which is not subject to any visa caps, and despite challenges has proven popular with migrant farmworkers over many decades and is increasingly being used by farm owners as well. The usage of agricultural visas has continued to increase over the last several years. According to estimates by the State Department, [there were](#) just over 213,000 visas issued for fiscal year 2020. Many seasonal workers that enter on lesser-skilled temporary visas such as the H-2A program have historically come from Mexico. For example, out of approximately 442,000 total [H-2A admissions](#) to the United States in FY2019, 94% were Mexican nationals.

Guest workers under the H-2A visa program are not dual intent<sup>1</sup> and do not have provisions under which they normally can adjust status to a green card. Some who are sponsored by employers under the EB-3 employment-based visa category for non-professional or unskilled labor for year-round agricultural jobs may undergo two labor market tests to continue participating in the United States labor force. Unlike the skilled worker attestation program, sponsorship under the H-2A visa category [requires employers](#) to undergo a stringent labor certification process to demonstrate they were not able to find any U.S. worker for the job, among other requirements.

However, even when labor market tests establish there is a shortage of U.S. workers for agricultural employment, a lack of dual intent means employers cannot sponsor foreign workers on H-2A visa for a green card in order to maintain the workers' nonimmigrant status. If an employer begins the green card sponsorship process for employees on H-2A visas it could result in denial of the nonimmigrant visa or rejection of a new temporary visa. H-2A visa holders may only remain in the country up to three years, after which

<sup>1</sup> Dual intent is a provision under the Immigration Act of 1990 that allows those who have a dual intent visa, such as the H-1B, to take steps toward adjusting their status to become lawful permanent residents while still maintaining their current nonimmigrant visa. People with visas that do not fall under the dual intent category, such as the H-2A and H-2B visas, must prove that they intend to voluntarily return to their foreign residence at the end of their authorized stay; taking steps toward a green card can be used to cancel or deny their current nonimmigrant status.

they must leave the United States for 90 days before being eligible to reapply. Further, the H-2A category requires that the position be temporary in nature, so the act of sponsoring someone for permanent residence for a similar job could jeopardize the H-2A sponsorship. Even though there is increased use and demand for these temporary worker categories, employers must [conduct labor certifications](#) for the same occupation frequently, and those prior certifications bear no impact on the requirement to recruit again should an employer seek to sponsor a worker for a green card. As such, temporary workers have very limited avenues to pursue permanent residency in the U.S. even when it is proven that there are labor shortages that require workers for long term or year-round agricultural needs.

Moreover, while the use of foreign agricultural workers has remained popular in the United States, the H-2A visa program has not been free of controversy. While there have been [reports](#) of abuses by employers in the category, other research [shows](#) that the vast majority of H-2A employers are not violating provisions of the labor certification process outlined for the H-2A program. Reports by Government Accountability Office [have contended](#) that guest workers under the H-2A program are vulnerable to abuse by employers or labor recruiters who may charge workers excessive fees for recruitment and provide inaccurate information about wages paid and job information, which violate major provisions outlined in the labor certification process meant to protect workers. While these controversies demonstrate the issues with the current labor certification programs, they also highlight the competing priorities at play in the system. These priorities—protecting the domestic labor force; safeguarding labor rights of foreign workers; and ensuring access to needed skills, all converge.

Currently, Congress has a vehicle through the Farm Workforce Modernization Act of 2021 to address some of these conflicting priorities and controversies with the H-2A program. The bill [puts forth](#) a revised visa program designed to stabilize the agricultural sector and make sure it adequately meets the needs of both farmers and farmworkers.

#### **Farm Workforce Modernization Act of 2021**

Originally introduced in the House in 2019, The Farm Workforce Modernization Act of 2021 seeks to [implement](#) reforms to the preexisting H-2A visa for agricultural guest workers as well as provide a path to citizenship for many undocumented agricultural workers. The bipartisan bill, which is supported by both farmworker advocates and farm owners, has already passed the House this year. The three main components of the bill would include several reforms,<sup>2</sup> but some of the major themes include:

##### **1) *Legal Status for agricultural workers, including undocumented workers***

- The bill would provide undocumented farmworkers and their dependents a pathway to legal status and citizenship through continued employment in the agricultural sector. Applicants and their dependents would have to clear background and national security checks.
- Qualifying farmworkers who have worked at least 180 days in an agricultural occupation over the last two years would be able to apply for the temporary Certified Agricultural Worker

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<sup>2</sup> The reforms listed in this blog are not exhaustive.

(CAW) status. With a CAW, farmworkers can renew their legal status indefinitely, as long as workers continue their farm work for at least 100 days out of the year.

**2) *Flexibility for employers and protections for workers***

- The bill would protect workers by establishing staggered levels of earnings for different agricultural occupations and establish new wage levels after 10 years to reflect real-world wage increases. However, it would also provide certainty for agricultural employers by eliminating wage-fluctuations during the work contract period and authorize freezing wage fluctuations at 3.25% for nine years.
- The visa program would be flexible and adaptable based on our agricultural labor needs; increasing and decreasing the annual cap based on labor shortages.
- The reform would allow employers to sponsor a higher number of H-2A workers for permanent residency and permit workers to self-sponsor their visas after 10 years of agricultural service.

**3) *E-Verify for Agricultural Workers***

- The bill would subject employers to a nationwide mandatory E-Verify system for all agricultural work. Currently, E-Verify is a voluntary service for employers to authenticate the legal status of their workers by matching employee records against government data.
- Employers who are non-compliant and continue to violate the proper hiring and recruitment strategies will be subject to increased penalties of \$5,000 per violation and up to \$25,000 for repeat offenses.

If enacted, the bill [could legalize](#) up to 325,000 undocumented farmworkers. The bipartisan support for the bill in the House shows that there is consensus on both sides of the aisle to reform our agricultural sector and benefit an important segment of the undocumented population currently residing in the United States. Given the essential role farmworkers played during the COVID-19 pandemic, passing the Farmworkers Modernization Act of 2021 would not only have a tremendous impact on immigrants who contributed to our frontlines during the pandemic, but also their dependent children and the larger community. Many of these undocumented immigrants live in mixed-status families and are an integral part of their communities. According to some estimates, as of 2019, approximately [17.8 million](#) American children under 18 lived with at least one undocumented parent. Passing this act could help Congress demonstrate that immigration legislation does not have to be the “third rail” politics and this may pave the way for other immigration reforms in the future.

Statement for the Record

To the U.S. Senate Judiciary Committee

From the Section on Underserved Occupational Populations of the American College of Occupational and Environmental Medicine

As Chair of the Section on Underserved Occupational Populations for the American College of Occupational and Environmental Medicine, I write on behalf of physicians who provide healthcare services to the most vulnerable workers in the U.S. Our role is to prevent workers from sustaining work-related illness and injury. Our job is made enormously more difficult when undocumented workers, who have labored for decades, carrying a disproportionate burden of dangerous yet vital work and, more recently recognized as essential workers throughout the Covid-19 pandemic, are afraid to access care, including preventive care.

Farmworkers have long experienced exposures from heat, pesticides, fertilizers and other chemicals. They work with dangerous machinery, large animals, and sharp instruments. They are at risk of falls from heights, back injuries from repetitive bending and lifting, among many other musculoskeletal injuries. Throughout the pandemic they have been had high risk exposures to Covid-19 through crowded housing and transportation, limited break facilities, and exceptionally high exposures in agricultural packing processes. At the same time, their access to testing and, currently to vaccination, has been limited and further reduced by fears of deportation. Regularization of the immigration status of these workers and their families is a pre-requisite for any form of adequate preventive care. This is true not only for farmworkers, whose labor continues to put food on our tables, but also for undocumented, essential workers in construction, home care, and other industries providing needed services.

Undocumented workers and their families have suffered higher death rates for years from fatal traumatic injuries, heatstroke, and now from Covid-19 infections have all been demonstrated, with family and community transmission of infections also accounting for racial and ethnic disparities. Farmworkers and other essential workers have kept our country functioning throughout this pandemic. We owe them meaningful protections. As physicians, we urge the Senate to act to provide a path to citizenship for these workers and their families that will reduce their vulnerability and enable effective workplace protections. We support the U.S. Citizenship Act, S.348, Citizenship for Essential Workers Act, S.747, and the Farm Workforce Modernization Act, H.R.1603 as options for accomplishing this. The need is urgent.

Respectfully submitted,

Scott D. Morris, MD, MPH, FACOEM

Chair, Section for Underserved Occupational Populations,

American College of Occupational and Environmental Medicine.



**UMOS**  
*Building Better Futures*

Ben Obregón  
*Board Chair*

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Lupe Martinez  
*President &  
 Chief Executive Officer*

July 22, 2021

Dick Durbin  
 Chairperson  
 United States Senate Committee on the Judiciary  
 224 Dirken Senate Office Building  
 Washington DC 20510

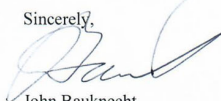
Dear Senator Durbin,

On behalf of United Migrant Opportunity Services (UMOS), I write to express UMOS' support for the multiple efforts currently underway in the Senate to achieve legalization for undocumented farmworkers, including the Farm Workforce Modernization Act and the proposed reconciliation package.

Most undocumented farmworkers have labored in the U.S. for many years and are employed in one of the most hazardous and lowest paying jobs in the entire labor market. UMOS supports all Congressional efforts to recognize the contributions of undocumented farmworkers and all legislation that grants them and their family members a path to immigration status and citizenship. With a pathway to citizenship, undocumented farmworkers could gain legal status that would remove the fear of deportation that often inhibits employers from adhering to labor laws and to the ethical treatment of this vulnerable and vital demographic.

I thank you for your consideration of this matter.

Sincerely,



John Bauknecht  
 Corporate Attorney  
 United Migrant Opportunity Services/UMOS Inc.



# A P P E N D I X

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