



**Testimony of
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**Before The Senate Judiciary Committee
Subcommittee on Immigration, Citizenship and Border Safety**

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Chair Padilla, Ranking Member Cornyn, and distinguished members of the subcommittee, thank you for the opportunity to testify today about farmworkers and the need for legislation that would grant immigrant essential workers the opportunity for immigration status and United States citizenship.

Farmworker Justice for forty years has engaged in policy analysis, education, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Since its inception, Farmworker Justice has played an important role in immigration policy discussions, monitored the H-2A agricultural guestworker program throughout the country and helped farmworker organizations participate in policy debates.

Farmworker Justice seeks public policies that treat the people employed on our ranches and farms with dignity and fairness. Our nation's broken immigration system unfairly subjects farmworkers and their families to serious harms that affect every aspect of their lives. Immigration policy plays an important role in determining farmworkers' wages and benefits, as well as the health and safety of farmworkers, their family members and their communities. As a result, immigration policy has been at the core of the mission of Farmworker Justice for its entire existence.

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. 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 and the Agricultural Industry

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.¹

¹ 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->

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.² 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—people who labor on our farms and ranches—were designated as essential to our nation’s security and stability, to protect and save American lives.

Strawberries cannot be harvested and cows cannot be milked over Zoom. So while many of us turned to remote work and began telecommuting, farmworkers continued showing up in person. In California, they showed up to work to pick a cornucopia of vegetables and fruit. They showed up to the cotton fields and cattle ranches in Texas, dairies in Minnesota, peach orchards in South Carolina, sweet potato farms in North Carolina and the tobacco fields of Tennessee. Farmworkers showed up to work on farms and ranches all over the country to ensure that we would have food on our tables, but many suffered serious health consequences as a result. And while some carried letters proving their essential status, they could still be arrested and deported at any moment.³

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.⁴ The broader agriculture and food industry that relies on these farms contributed over \$1 trillion, more than 5%

[a-immunocompromise](https://www.washingtonpost.com/dc-md-va/2020/03/13/coronavirus-triggers-run-grocery-stores-with-panic-buying-hoarding-some-fighting-too/); Fredrick Kunkle & Michael E. Ruane, *Coronavirus Triggers Run on Grocery Stores, with Panic-Buying, Hoarding and Some Fighting, Too*, WASHINGTON POST (March 13, 2020), <https://www.washingtonpost.com/dc-md-va/2020/03/13/coronavirus-triggers-run-grocery-stores-with-panic-buying-hoarding-some-fighting-too/>.

² 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.

³ 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>.

⁴ 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/>.

of domestic GDP.⁵ 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.⁶

Many of these farms would not be able to function without immigrant labor. A 2015 Texas A&M report found that immigrant labor on dairy farms nationwide created more than \$30 billion of value for the broader economy.⁷ In fact, we do not have to imagine what removing undocumented immigrants would do to our nation's farms and broader economy. We already know. In 2011, Alabama and Georgia passed draconian anti-immigrant legislation and quickly witnessed the disastrous effects on the states' farms and economy.⁸ Growers were unable to find sufficient labor and had to let crops rot in the fields.⁹

The broken immigration system also impedes efforts by farming operations and workers to collaborate on improvements to farm labor. Farmworker Justice works with several farming operations and retailers as part of its work on corporate responsibility. We see that some farming operations recognize the value—both moral and financial—of treating farmworkers with dignity and providing good wages and safe working conditions. Agricultural employers increasingly are acknowledging that farmworkers not only perform physically rigorous work but are expected to exercise skill and judgement in carrying out that work. Recent outbreaks of food-borne illnesses such as listeria and salmonella have motivated businesses to modernize labor relations. Employers increasingly are engaging with their farmworkers to communicate and collaborate with them on how to improve productivity. But many employers have recognized that it is difficult to modernize labor relations when a substantial number of their workers, due to our broken immigration system, live and work with the fear of arrest and deportation.

⁵ *Id.*

⁶ 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>.

⁷ Texas A&M AgriLife Research, *The Economic Impacts of Immigrant Labor on U.S. Dairy Farms* (2015), <https://www.nmpf.org/wp-content/uploads/2019/02/immigration-survey-090915-1.pdf>.

⁸ See, e.g., Martin Swant, *Alabama immigration law's price tag? Up to \$11 billion, says economist*, AL.COM (Jan. 30, 2012), https://www.al.com/businessnews/2012/01/alabama_immigration_law_harmfu.html; Benjamin Powell, *The Law of Unintended Consequences: Georgia's Immigration Law Backfires*, FORBES (May 17, 2012), <https://www.forbes.com/sites/realspin/2012/05/17/the-law-of-unintended-consequences-georgias-immigration-law-backfires> (observing that Georgia's anti-immigrant law "triggered an estimated \$140 million in agricultural losses, as crops rotted in the fields").

⁹ Ed Pilkington, *Alabama Immigration: Crops Rot as Workers Vanish to Avoid Crackdown*, THE GUARDIAN (Oct. 14, 2011), <https://www.theguardian.com/world/2011/oct/14/alabama-immigration-law-workers> (quoting one grower as calculating that HB56 cost him \$100,000 in one season).

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.¹⁰ 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. They deserve legal status in the country that they have helped to build.

The Impact of COVID-19 on Farmworkers

Understanding why COVID-19 wreaked so much havoc on the farmworker community requires understanding who labors in our nation's fields. There are an estimated 2.4 million farmworkers in the United States.¹¹ Most of them are 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.¹² 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.¹³ Federal law deprives farmworkers of the right to join a union free from retaliation and denies them overtime pay.¹⁴ Occupational safety standards that exist for most other

¹⁰ 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.").

¹¹ Philip Martin, J. Edward Taylor, *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico, and Central America* (February 2013), p. 4, <https://www.migrationpolicy.org/research/ripe-change-evolving-farm-labor-markets-united-states-mexico-and-central-america>.

¹² 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.").

¹³ 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.

¹⁴ 29 U.S.C. § 213(b)(12) (FLSA exemption); 29 U.S.C. § 152(3) (NLRA exemption).

workers are denied to many farmworkers.¹⁵ Most state laws are similarly restrictive,¹⁶ although California, the most productive agricultural state, has substantially broadened its labor protections.¹⁷

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 visa program. In recent years, more employers have applied for and received permission to hire H-2A guestworkers.¹⁸ Almost all employers who apply to the Department of Labor for H-2A labor certification are approved.¹⁹ The program has grown rapidly in recent years. In 2010, fewer than 56,000 guestworkers were issued H-2A visas.²⁰ By last year, that number had nearly quadrupled. More than 213,000 visas were issued, even as most other immigration and visa processing shut down in response to the pandemic.²¹

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.²² In spite of having worked in the U.S. and

¹⁵ 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).

¹⁶ Farmworker Justice, *Farmworkers' Rights Under State Employment Laws: An Interactive Map* (last visited May 5, 2021), <https://www.farmworkerjustice.org/general-map/>.

¹⁷ Cal. Dep't. of Industrial Relations, *Overtime for Agricultural Workers* (January 2019), <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers.html>.

¹⁸ 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; 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.

¹⁹ *Id.* (Reporting that 275,430 H-2A positions were certified out of the 286,900 that were requested in fiscal year 2020).

²⁰ U.S. Department of State, *FY2010 Nonimmigrant Visas Issued*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY10NIVDetailTable.pdf>.

²¹ 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>.

²² 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*

contributed to the economy, often for many seasons, H-2A workers currently have no opportunity for permanent legal status or a path to citizenship.

The nature of much farm work and workers' exclusion from many key legal protections means that special efforts should be made to ensure farmworkers are protected against COVID-19. They often work in close proximity to each other, have limited access to handwashing stations and supplies, and are transported to farms in shared vehicles. Their work frequently requires that they perform back-breaking labor for 80 to 90 hours a week, sometimes in extreme temperatures, surrounded by toxic pesticides, or as wildfires rage around them. Despite these long hours and the grueling labor, the average annual pay for a U.S. farmworker in 2015 and 2016 was just \$17,500.²³ A DOL survey found that one third of farmworkers report family incomes below the poverty line,²⁴ forcing many workers to live in crowded homes with shared bedrooms and kitchens.²⁵ This housing is often located in rural communities, far from necessary aid and services, including medical care. And because most farmworkers are not native English speakers and many primarily speak indigenous languages rather than Spanish,²⁶ much of the public health information shared at the start of the pandemic was inaccessible to the workers most vulnerable to exposure.

H-2A workers face an especially high risk of contracting COVID-19 due to the long-distance travel required to get to the U.S., shared housing controlled by employers, and other challenges that workers experience under the program. Many are unable to get tested for the virus upon arrival and others are also finding it difficult to access vaccines in states that require a showing of residency.

Farmworker Justice and partner organizations around the country requested an occupational safety standard to require meaningful safety protections in agricultural workplaces and for H-2A guestworkers during their transportation into the country. Unfortunately, thus far, there are only recommended, not mandatory safety protections.

In response to the COVID-19 pandemic, some growers stepped up and protected their employees—which of course also protected the viability of their businesses. But

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>.

²³ NAWS Report, *supra* note 13, at 36.

²⁴ *Id.*

²⁵ 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>.

²⁶ NAWS Report, *supra* note 13, at 10.

far too many did not. Workers were often forced to continue working, shoulder to shoulder, without proper personal protective gear or access to sufficient handwashing stations. Very few received any health insurance or sick leave benefits from their employers, and most were paid too little to afford to take a day off to access health care or deal with the side effects of a vaccine.²⁷ This left workers with no choice but to show up to work each day, even when they felt sick or feared they might have been exposed to COVID-19. For too many farmworkers and their families, the consequences have been catastrophic.²⁸ An estimated 577,000 agricultural workers have contracted COVID-19.²⁹ A recent UCSF study found that food and agriculture workers in California have experienced the highest “excess mortality” during the pandemic, with a 39% increase in mortality compared to past years. Among Latino food and agriculture workers, that mortality increase reached 59%.³⁰ Even for those who survived the initial illness, COVID-19 can cause long-term health problems that require ongoing medical care.³¹

Farmworkers’ conditions were made more dangerous and their experiences more painful by our country’s broken immigration system. The vast majority of farmworkers are Latino immigrants and about half of them are undocumented or here on precarious temporary work visas.³² 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

²⁷ *Id.* (Finding that only 47% of farmworkers reported that they had health insurance. Cost is the most common barrier to health care reported by farmworkers.)

²⁸ Richard Read, *COVID-19 Strikes Washington State Farmworkers and Swamps Rural Hospitals*, LOS ANGELES TIMES (Aug. 4, 2020), <https://www.latimes.com/world-nation/story/2020-08-04/coronavirus-northwest-farm-workers>.

²⁹ 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 577,000 agricultural worker COVID-19 cases as of May 7, 2021).

³⁰ 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>.

³¹ Tae Chung et al., *COVID ‘Long Haulers’: Long-Term Effects of COVID-19*, Johns Hopkins University (2021), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid-long-haulers-long-term-effects-of-covid19>.

³² NAWS Report, *supra* note 13, at 1 (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).

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 site³³ or that if they tested positive they could lose their jobs and would no longer be able to feed their families.³⁴ Without legal status, many farmworkers were denied the basic services they needed to survive and keep their families afloat.

As Maria, a farmworker and mother put it, “we have children to support just like everyone else.” Like thousands of other farmworkers, Maria continued going to work at the start of the pandemic even when her employer failed to provide masks or other protective equipment. One day, while harvesting tomatoes in the field, she began to feel sick, and by the time she returned home, she had a fever and chills. Two days later, she and her husband both tested positive for COVID-19. Their symptoms quickly became so serious that they considered calling an ambulance. Although they both survived, the side effects have been disastrous for their family. They still lose their breath quickly and tire easily —making them unable to keep up with the heavy work of lifting 45-pound buckets of tomatoes and running after a constantly moving truck. Without work, the family’s finances are dwindling, and they wonder how they will continue feeding their children. As Maria wrote, she is not an “animal[] to be worked and exploited.” Nor are any of the other millions of farmworkers who feed our nation.

Paths to Legalization for Farmworkers

We strongly support Congressional action to reform the broken immigration system comprehensively and provide relief for farmworkers like Maria. Many aspects of our current immigration policies affect farmworker families. I will focus my

³³ 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/5ecd7842602ff165d3e41a05/>.

³⁴ 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/>.

comments on recent proposals that would directly affect farmworkers and their families based on their occupation.

Farmworker Justice supports the Citizenship for Essential Workers Act, S.747, which would recognize the contributions of immigrant farmworkers and millions of other immigrant essential workers by giving them the opportunity to apply for a green card. We are grateful to the Chair of this Subcommittee for his leadership on this bill. It is absurd and immoral for our government to continue deporting the very men and women whom it has designated as essential to our economic security. The farmworkers who have put their health and well-being at risk to ensure the constant supply of fresh food to American consumers deserve the opportunity to come out of the margins of our economy and participate in society free of the fear of arrest and deportation.

Farmworker Justice also supports the U.S. Citizenship Act, S.348, which would establish a path to citizenship for all of America's 11 million undocumented immigrants. Among a number of other positive reforms to our immigration system, the bill allows those undocumented immigrants who have worked a requisite number of hours in agriculture in the past five years to immediately apply for a green card. We are especially pleased that the bill 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.

Farmworker Justice also supports the Farm Workforce Modernization Act, H.R.1603, which 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 Subcommittee 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 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.

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.

Thank you.