

**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.ⁱ In FY 2020, more than 213,000 agricultural workers entered the country to perform seasonal and temporary work with H-2A visas.ⁱⁱ 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.ⁱⁱⁱ 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.^{iv}

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,^v 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.^{vi}

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.^{vii} 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.^{viii} 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.^{ix}

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.^x 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.^{xi}

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.^{xii} 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.^{xiii}

The long history of agricultural exceptionalism that is rooted in racism also impacts working conditions for farmworkers.^{xiv} 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.^{xv} 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.^{xvi} 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.^{xvii}

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.

ⁱ 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.

ⁱⁱ 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>

ⁱⁱⁱ 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>.

^{iv} 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>.

^v Purdue Food and Agricultural Vulnerability Index, available at https://ag.purdue.edu:443/agecon/Pages/FoodandAgVulnerabilityIndex.aspx?_ga=2.49471334.1159720487.160011

^{vi} 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.

^{vii} Id.

^{viii} 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>

^{ix} Id.

^x 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

^{xi} 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>

^{xii} 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

^{xiii} 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>.

^{xiv} 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.

^{xv} California is one of just a few states that provide collective bargaining protections for farmworkers.

^{xvi} 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).

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