

QUESTIONS FOR MR. COSTA

Labor Protections and Wages

Hawaii has some of the strongest labor protections for farmworkers in America, including worker's compensation for agricultural workers. Hawaii agricultural workers also average higher wages, at over \$20 per hour compared to national wages of about \$18 per hour.

QUESTIONS:

1. What lessons do you think the rest of the country can learn from Hawaii's example, and does this show the benefits of stronger labor protections for all workers, whether immigrant or native-born?

RESPONSE:

The most recent available information from the USDA Farm Labor report, for April 2023¹ shows that Hawaii has about 5,000 farmworkers, 4,000 of whom worked 150 days or more in agriculture. Farmworkers in Hawaii averaged 35.9 work hours per week, the fewest of all the regions surveyed by USDA across the United States. The average wage for field and livestock workers (combined) in Hawaii was \$18.43 an hour, compared to the nationwide average of \$16.99 per hour.

It is difficult to know exactly why the wages of farmworkers in Hawaii are higher on average than those across other regions in the United States, but the fact that farmworkers are fully covered under Hawaii's workers' compensation law, with no exceptions, is likely to be a major contributing factor, and Hawaii's state law that requires overtime pay for farmworkers is also likely a very strong contributing factor – and both should be emulated by states without such laws, in order to improve labor standards for farmworkers. However, it should be noted that Hawaii's overtime law is somewhat flawed, especially compared to California's farmworker overtime law which is being phased in to cover all farmworkers after 8 hours per day and 40 hours per week.² Hawaii's law, in contrast, requires overtime pay for farmworkers after 48 hours, but a provision allows many employers to avoid paying it for much of the year; employers are allowed to select 20 weeks per year where they do not have to pay overtime.³ Nevertheless, this is a much stronger protection than in most states which have no overtime coverage for farmworkers, or a higher number of required work hours and other exemptions for employers.

Other factors may also be at play. Hawaii has a history of unionization when it comes to agricultural workers, even if it is no longer the case today. In the past, farmworkers on plantations were represented by the International Longshoremens' and Warehousemen's Union.⁴ One example of the power of Hawaii's organized farmworkers happened in 1974, when, as the NY Times reported, Hawaii's sugar and pineapple workers went on strike, cutting off

¹ <https://downloads.usda.library.cornell.edu/usda-esmis/files/x920fw89s/dj52xk49x/0r968j49d/fmla0523.pdf>

² <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers-FAQ.html>

³ See for example, this Overtime Map from Farmworker Justice, <https://www.farmworkerjustice.org/overtime-map/>, citing Haw. Rev. Stat. § 387-3(e), available at https://www.capitol.hawaii.gov/hrscurrent/vol07_ch0346-0398/hrs0387/HRS_0387-0003.htm

⁴ <https://www.degruyter.com/document/doi/10.7560/726390-005/html>

access to markets on the mainland – which showed that workers could put significant pressure on producers to improve wages and working conditions.⁵ While not all strikes by Hawaii farmworkers have been successful, the one in 1974 mostly was, resulting in having most of the union’s demands met.⁶

Data from the USCIS H-2A Employer Data Hub shows that there were just over 200 H-2A workers approved to work in Hawaii in fiscal year 2021. It is possible that the very small share of farmworkers in Hawaii who are H-2A workers – who are vulnerable and exploitable by virtue of the H-2A program’s legal framework – also insulates Hawaii’s farm labor market from the downward pressure on wages and working conditions that the H-2A program could lead to.

Although the number of H-2A farmworkers in Hawaii is relatively small, the state has not been insulated from scandals and abuses of the H-2A program. In 2011 EEOC filed its largest ever trafficking suit against Global Horizons,⁷ which brought hundreds of Thai workers to farms in Hawaii in Washington, in what was considered one of the largest human trafficking schemes in U.S. agricultural history at the time. DOJ indicted Global Horizons but later dropped the human trafficking charges in 2012.⁸ WHD obtained a judgment requiring Global Horizons to pay \$347000 in back wages and penalties, and de-barred them from using the H-2A program for three years.⁹

Labor Protections and Trafficking

Because of the broken immigration system, at least 40 percent of immigrants working in agriculture are undocumented. Further, as you highlighted in your testimony, over 70 percent of labor trafficked victims enter the United States on a lawful visa, with the most common type being an H2-A or H2-B visa.

Preying on these vulnerable individuals, traffickers use threats of deportation to coerce many immigrants into working for lower wages and continuing to work many years after their visas have expired.

Furthermore, private contractors recruit laborers with promises of good-paying jobs, causing the workers to enter illegal debt contracts that the workers have virtually no possibility of repaying. Unlike unauthorized border crossings, forced labor traffickers leverage abuse of an otherwise legal process.

QUESTIONS:

1. In light of these grave circumstances for laborers, would increased labor protections such as overtime pay and improved workplace conditions help decrease abuse of agricultural workers?
2. Would stronger labor protections for agricultural immigrant workers also improve working conditions and pay for American workers throughout the food supply chain?

⁵ <https://www.nytimes.com/1974/04/08/archives/pineapple-workers-begin-haw-all-strike.html>

⁶ <https://www.nytimes.com/1974/04/30/archives/hawaii-sugarpineapple-strike-ends-special-to-the-new-york-times.html>

⁷ <https://www.eeoc.gov/newsroom/eeoc-files-its-largest-farm-worker-strike-against-global-horizons-farms>

⁸ <https://www.civilbeat.org/2012/07/16529-feds-give-up-on-global-horizons-human-trafficking-case/>

⁹ <https://www.dol.gov/newsroom/releases/whd/whd20110519>

RESPONSE

(1) Yes, increased labor protections for farmworkers could help decrease the abuses that are occurring. One improvement that would make a large impact would be to provide farmworkers with the right to collective bargaining and freedom of association under the National Labor Relations Act (NLRA). Union organizing is always a challenge in the agricultural sector, and the reason for the exclusion of farmworkers from the NLRA is rooted in racist policy. In the 1930s, when key pieces of modern labor law were put into place, the majority of Black workers in the South were either farm laborers or domestic workers. The New Deal Era legislation that guarantees organizing rights and overtime to most private-sector workers—the NLRA and FLSA—specifically excluded domestic workers and farmworkers to appease southern Dixiecrat lawmakers intent on maintaining economic white supremacy and blocking Black-led and multiracial worker organizing.

Today, farmworkers and domestic workers are still excluded from the NLRA and FLSA, the two main laws that protect the right to join and form unions and the right to fair wage and hour standards, respectively. The vast majority of today’s farmworkers are immigrants, hailing overwhelmingly from Mexico and Central America.

The NLRA protects workplace democracy by providing employees at private-sector workplaces the fundamental right to seek better working conditions and to designate bargaining representatives without fear of retaliation. A few states, including California and New York, have enacted laws to provide farmworkers with rights similar to those that they would have under the NLRA, but those rights are only enforceable within those states.

If farmworkers had the protections of the NLRA, many would be able to join unions more easily, which would provide significant benefits, including better wages and working conditions, as numerous studies have shown. Even without NLRA protections, passing the PRO Act would also benefit farmworkers and immigrants more broadly, by making it easier to join unions.

Congress should also amend the law to provide farmworkers with the protections they are excluded from under FLSA, especially overtime pay. Some states have implemented overtime pay thresholds for farmworkers, but even many of the states that have some overtime pay coverage for farmworkers have numerous exceptions that in practice leave farmworkers earning much less than the overtime pay required for most workers, which is after 8 hours per day or 40 hours per week (as discussed above in the first question). Requiring overtime pay will also nudge farm owners onto the economic high road. By raising wages, it will reduce turnover for employers who will then save significantly on recruiting and training costs. Where farm owners have the option, it will also nudge them toward more effective use of work time and investments in equipment that increase productivity, making farms more sustainable in the long run.

In addition, most farmworkers are immigrants, and a majority of them either lack an immigration status or have a precarious and temporary immigration status that their employers control, making it nearly impossible in practice for them to assert their workplace rights or to seek out unions and worker rights organizations. As I mentioned in my testimony, the most important reform that Congress could make to help farmworkers and stabilize the farm workforce would be to pass a broad legalization for farmworkers who lack an immigration

status. This would have the effect of granting farmworkers labor rights that they can enforce in practice, and would raise wages, as studies have shown – including those looking at the impact of IRCA, the 1986 legalization that legalized farmworkers and other immigrants. To maximize the benefits, farmworkers should be able to adjust to permanent lawful resident status quickly – rather than the multi-year waits that many legislative proposals often impose. The Farm Workforce Modernization Act, for example, requires farmworkers who are eligible for temporary status and eventually green cards, to first work for four or eight years, depending on how long they have worked in the U.S. as farmworkers, and would require them to work a minimum amount of work hours per year on farms – which would have the effect of giving employers even more power over workers, who will know that farmworkers will be desperate to work enough hours to be eligible to remain on the path to a green card. (This will occur at the same time that the share of the farm workforce comprised of H-2A workers expands rapidly.) Under IRCA, where legalized workers saw wage gains, most immigrants were able to adjust to green cards within a matter of months, not years.

The other way to improve labor standards for farmworkers is to adequately fund US labor standards enforcement agencies. As I discussed in detail in my written testimony, the Labor Department’s Wage and Hour Division – which is primarily tasked with ensuring that all workers, including farmworkers, are paid appropriately and that employers obey wage and hour and other workplace laws – is woefully underfunded and understaffed. With just over 800 inspectors to police a labor market of 165 million people, WHD has an impossible task on its hands. Funding for WHD is at 2006 levels after adjusting for inflation, and funding and staffing should be tripled at least, in order to make a significant impact on protecting worker rights.

(2) Yes, strengthening labor protections for agricultural immigrant workers would also improve working conditions and pay for American workers throughout the food supply chain. Any new protections and benefits provided for agricultural workers would benefit both immigrant and American workers. In addition, improving pay and working conditions in agriculture will attract additional U.S. worker to farms, who would be more likely to view farm jobs as a viable job option if they paid fairly and offered decent and safe working conditions.

Economic Benefits of Humanitarian Programs

When we discuss the economic benefits of immigration, we should also include the economic benefits from our country’s humanitarian protections system. Helping people fleeing for their lives is not only a moral imperative, but it can also help expand the workforce and boost our economy.

Unfortunately the last administration drastically reduced the number of refugees resettled in the United States.

QUESTION:

1. Do you agree that our humanitarian protection system benefits our country’s economy, and can you elaborate on your testimony’s call for expanded humanitarian pathways?

RESPONSE:

(1) Yes, I agree strongly that our humanitarian protection system benefits America’s economy. It is true that the previous administration took numerous actions that greatly reduced the number of refugees to the United States. But perhaps more importantly, they also gutted the infrastructure that was in place to process and assist refugees, which has resulted in the Biden administration not being able to come anywhere close to its targets for refugees in any of the fiscal years since they have been in control of federal agencies. To its credit, the Biden administration raised the refugee cap significantly as compared to under the Trump administration, to 125,000 for fiscal years 2022 and 2023, but statistics show that federal agencies did not come close to processing that many green cards for refugees in 2022 and will not come close again in 2023.¹⁰

There are numerous studies that show the economic benefits of admitting refugees, and showing how they play key roles in important industries, including meat packing and transportation – both of which are key to the food supply chain¹¹ - and as both workers and business owners. Studies show that refugees see substantial wage gains once they are established in the United States, and sometimes start businesses at higher rates than U.S.-born residents.¹² A study published just this week shows that refugees pay tens of billions of dollars in taxes each year, and show a particular willingness to make long-term investments in the country through their entrepreneurial ventures.¹³

In fact, there are many examples of refugees becoming business owners, including in the food supply chain. In some areas where refugees have become farmworkers, they have also become important farm owners. In Madison, WI, for example, there are enough Hmong-owned farms for a Hmong Farm Association.¹⁴ News stories like the one of a Syrian family becoming restaurant entrepreneurs in the California Bay Area, are not uncommon.¹⁵

There is less clear research on asylum seekers and the labor market, but the impacts are likely to be similar, in part because both can be employed without restrictions (unlike visa-tied workers in the H-2 programs, who are indentured to employers and cannot easily change jobs), and asylum seekers can be on the path to a green card, which also leads to wage gains for them and other economic benefits. The main difference between refugees and asylum-seekers is that asylum seekers have a statutory six-month waiting period before they can apply for employment authorization – which in practice may take closer to a year because of bureaucratic delays and backlogs – and which delays the ability of asylum seekers to begin working and earning, impacting the economic benefits and delaying the ability of employers to hire people who are ready and willing to work. Asylum seekers also do not get the financial assistance that is provided to refugees. Although refugees do not receive significant sums of assistance, what they

¹⁰ See for example, Migration Policy Institute, “[U.S. Refugee Admissions & Refugee Resettlement Ceilings, FY 1980-2023 YTD*](#)” [data tool; accessed May 27, 2023].

¹¹ https://www.tent.org/wp-content/uploads/2021/09/TENT_FPI-Refugees-as-Employees-Report.pdf

¹² <https://www.americanprogress.org/article/refugee-integration-in-the-united-states/>

¹³ <https://www.americanimmigrationcouncil.org/research/economic-impact-refugees-america>

¹⁴ <https://www.hmongfarmers.com/>

¹⁵ <https://www.mercurynews.com/2018/11/04/from-refugees-to-entrepreneurs-how-one-family-started-over/>

do receive nevertheless assists them in their ability to quickly become established and integrate into communities and the labor market.

Health Benefits for Immigrant Workers

Immigrant workers tend to work in more dangerous occupations than native-born workers. Many work in agriculture, which is one of the most dangerous professions in the U.S. Yet despite how dangerous their work is and how much our nation's food supply chain depends on them, many immigrants, including lawfully present immigrants, cannot access certain federal benefits that protect their health.

Legislation such as my Lift the Bar Act would eliminate many restrictions preventing lawfully present immigrants from accessing benefits.

QUESTION:

1. You have written about how native-born farmworkers can protect their health by accessing programs like Medicaid. Immigrant workers cannot protect their health in this way. What impact does this have on the resiliency of the food supply chain?

RESPONSE:

(1) With the caveat that I have not written extensively or published original research on access to healthcare for farmworkers, I believe strongly that if immigrant farmworkers could better access medical care, it would improve conditions in the fields and help stabilize the food supply chain. This is truly a no-brainer: if workers are healthy, they will be more productive, leading to better earnings, but also higher profits for their employers. If farmworkers and others in the food supply chain are out because they're sick – they'll be less able to work and produce – and if they can't access medical care when they are sick, they will be unable to work for longer than would otherwise be necessary. And not getting medical care for illnesses jeopardizes the long-term health of workers and their families and the health of the communities they live in. Workers who don't have access to health care will also feel pressure to return to work, especially if they don't have access to paid sick days, which federal law does not require – and may be pressured by their bosses to return to work as soon as possible, especially in situations where there may be a time-sensitive harvest period. If workers return to their workplaces while sick, they risk their own health and well-being, and will jeopardize the safety of their co-workers, and in situations where customers are present (for example grocery stores and restaurants), the health of customers will also be jeopardized.

There are numerous surveys, studies, and reports about the importance of improving health outcomes and access to health care for farmworkers, including a few that are recent, which support these claims about the benefits of improving access to health care for farmworkers. One is a study published last year from the University of California, Merced,¹⁶ and another is from

¹⁶ https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/fwhs_report_2.2.2383.pdf

2021, the COVID-19 Farmworker Study from the California Institute of Rural Studies,¹⁷ which provides evidence that the pandemic amplified existing injustices that have long been endured by farmworkers.

Passing legislation such as the Lift the Bar Act – which would remove the current five-year statutory waiting period for accessing federal public benefits for green card holders - would greatly increase the ability of immigrants to access care and benefits, including Medicaid. Not just green card holders would benefit, but also those with Deferred Action for Childhood Arrivals (DACA), and individuals granted Special Immigrant Juvenile Status (SIJS), and others who are lawfully present.

¹⁷ <https://cirsinc.org/covid-19-farmworker-study/>