

QUESTIONS FOR MS. TORRES

Importance of Families to Food Supply

Family unity and economic success are the same thing for many immigrants. Their families provide support, help in finding jobs, and even directly support many farm workers, as caretakers provide unpaid work to allow the immigrant to work long hours in the fields.

If we are looking to strengthen and reform our farm worker visa system, farm workers' families must be included in the conversation.

QUESTION:

1. Ms. Torres, in your statement you included testimony from several workers who talked about how important a pathway to citizenship would be for them and their families. Can you talk more about how important family members are to many farm workers and how the farm workers rely on their families?

There are an estimated 2.4 million farm workers in the United States. According to the most recent National Agricultural Workers Survey conducted by the U.S. Department of Labor, more than half of surveyed workers were married and half were parents.

The average farm worker family has 1 to 2 children under the age of 18 and the average annual income for farm worker families is between \$25,000 to \$29,999. An estimated 20% of farm workers have family incomes below the federal poverty level.¹ Due to a lack of affordable or accessible care, family members are often relied on to provide child care or care for disabled or elderly individuals in the household.

Furthermore, farm workers may rely on their family members to provide translations when accessing health care and other services. More than half of farm workers are limited English proficient.² A growing number of farm workers are from indigenous communities in Mexico and Guatemala and are not proficient in Spanish. Workers often rely on English proficient family members, often children, to provide translations, especially in indigenous languages where there are even fewer interpreters available.

Farm worker women, in particular, are relied upon in the fields and at home. Thirty-four percent of farm workers are women. In addition to their work in the fields and their contribution to the household income, they cook meals for their families, provide care for their children and other family members, and manage the household.

It is also important to note, the growth of the H-2A program has destabilized farm worker family in numerous ways. Unlike the domestic work force that is made up of thirty-four percent of farm worker women, over 95% of H-2A workers that are recruited to work as seasonal-temporary worker are men. In addition, an H-2A worker's spouse and unmarried children under the age of twenty-one may seek an H-4 visa but these visa requests on behalf of H-2A workers are

¹ 2019-2020 National Agricultural Workers Survey

² *IBID*

extremely rare, resulting in family separation for several months at a time. As a result, immigrant farm workers miss out on many family milestones, celebrations, funerals, and key moments in their family life as a result of trying to provide a better life for their families.

In many communities, H-2A workers have displaced local workers. Despite the regulatory protections in place, discrimination against U.S. workers is rampant. One common form of discrimination is the inclusion of restrictive experience requirements, lifting requirements, and productivity standards in job orders.³ These restrictions most often discriminate against farm working women. A recent example of the displacement of female workers for H-2A workers occurred at Ostrom Mushroom Farm in Sunnyside, WA. An investigation and lawsuit by the Attorney General's office found that in 2022, the farm fired its largely local female workforce and replaced them with male H-2A workers. The workers were replaced with 65 H-2A workers, 63 of whom were male, and employed only 50 local workers, reducing the female workforce by over 60%.⁴ The displacement of local workers by H-2A workers has a rippling effect in their homes and communities. It reduces the income of already low-wage farm worker families, particularly farm working women. Displaced farm workers may leave farm work entirely or may migrate to other areas of the country where there may be more opportunities.

³ The requirements can be simultaneously specific and broad. We have seen requirements such as: lifting ability of 75 pounds or more, the ability to operate agricultural equipment “with or without direction,” understanding and operating GPS systems, the ability to work on holidays, and the ability to work in 100+ degree temperatures “with or without reasonable accommodations.”

⁴ WA State Office of Attorney General, Press Release – Sunnyside mushroom farm will pay \$3.4 million for violating civil rights of its workers, May 17, 2023, <https://www.atg.wa.gov/news/news-releases/sunnyside-mushroom-farm-will-pay-34-million-violating-civil-rights-its-workers>.

Questions for the Record from Senator Tillis

for Diana Tellefson Torres

Senate Committee on the Judiciary Hearing

“From Farm to Table: Immigrant Workers Get the Job Done”

1. On June 10, 2022, the U.S. Department of Agriculture (USDA) announced¹ a pilot program to “Invest up to \$65 Million to Strengthen Food Supply Chain, Reduce Irregular Migration, and Improve Working Conditions for Farmworkers.” In that announcement, it was stated that USDA will “partner with the United Farm Workers of America (UFW) through a technical assistance cooperative agreement to inform USDA of the challenges faced by agricultural workers and to inform development of the pilot program.”
 - What involvement have you, or your employer the UFW Foundation, had in the development and implementation of this program?

Neither the UFW Foundation nor I have any involvement in the implementation of this program. A representative of the UFW Foundation spent an hour providing information about UFW Foundation perspectives to the UFW as part of the UFW’s work for USDA to interview dozens of agricultural employers and organizations that expressed an interest in sharing input about the pilot program.

- Will UFW or the UFW Foundation receive funding from the federal government for its technical assistance efforts and what percentage will UFW or the UFW Foundation be able to retain for salaries and expenses?

The UFW Foundation has not received nor will the UFW Foundation receive any funding from the Federal government for this pilot program. The United Farm Workers will receive less than three tenths of 1 percent of the total anticipated USDA pilot grant. The amount the UFW receives will cover expenses and salaries incurred by the UFW in service of technical assistance for this pilot program.

2. On October 4, 2022, USDA announced² that the UFW Foundation was awarded \$97,836,293 to administer the Fiscal Year 2023 Farm and Food Workers Relief Grant Program.
 - What percentage of this funding will the UFW Foundation be able to retain for salaries and expenses?

As defined by the grant program guidelines, all of the non-profit organizations that have been awarded a grant to implement the Farm and Food Workers Relief (FFWR) Program by the US Department of Agriculture must disseminate at least 80% of the funds in disaster relief payments to farm and/or food workers. In order to disseminate FFWR relief payments to farm workers in

¹ <https://www.usda.gov/media/press-releases/2022/06/10/us-department-agriculture-invest-65-million-pilot-program>

² https://www.ams.usda.gov/sites/default/files/media/2023_FFWR_DescriptionOfFundedProjects.pdf

50 states and 3 US territories and remain in compliance with the grant, the UFW Foundation can use up to 20% of the funds to cover salaries and expenses incurred by the UFW Foundation and its nine subrecipient nonprofit organizations to execute the grant.

- To date, how much of the \$97,836,293 that the UFW Foundation was awarded by USDA has been distributed to farm and food workers?

As of the week of June 19, 2023, the UFW Foundation has distributed \$22,415,400 to farm workers.

3. What legal protections and employment standards are guaranteed under the H-2A visa program that are not guaranteed under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)?

The H-2A program and the Migrant Agricultural Seasonal Worker Protection Act (MSPA) both protect the rights of agricultural workers in the United States. However, there are some key differences in the legal protections afforded to farmworkers under the laws.

***The H-2A visa program has no numerical cap on the number of visas.** The lack of a numerical cap on the H-2A visa program means employers can hire an unlimited number of workers on the H-2A visa program as long as employers meet the program requirements. Because there is no numerical cap on the H-2A visa program, Congress sought to protect the jobs, wages, and working conditions of U.S. farmworkers by implementing regulations to ensure that there is no "adverse effect" on domestic workers. The protections guaranteed for workers in the H-2A visa program that are not guaranteed under the Migrant and Seasonal Protection Act are set forth below. It is important to recognize that none of these protections can be enforced by the workers themselves:*

- **Wage protections:** *H-2A employers must provide certain wage protections. For example, H-2A workers must be paid at least the highest of the following: the adverse effect wage rate (AEWR); the prevailing wage; the collective bargaining rate; or federal or state minimum wage. The Adverse Effect Wage Rate specific to each region of the country is determined by a survey conducted by USDA of agricultural employers within each region of the pay the employers are providing at the time of the survey. Thus, the AEWR for any given year is derived from the average wage paid in the region the previous year.*
- **Housing protections:** *H-2A employers are required to provide housing that is free of charge and meets certain standards.*
- **Transportation protections:** *H-2A employers are required to provide transportation for their H-2A workers to and from the country of origin and the worksite.*
- **Meal Requirements:** *H-2A employers are required to provide H-2A workers with three meals a day or provide free and convenient cooking facilities.*
- **Tool Requirements:** *H-2A employers are required to provide tools and other equipment to H-2A guest workers at no cost.*

- **3/4 Guarantee:** H-2A employers must guarantee that H-2A guest workers will receive employment (or the equivalent in pay) for at least a total number of hours equal to at least 75% of the workdays in the contract period.
- **Workers' Compensation Insurance Requirement:** Employers must provide workers compensation insurance at no charge to H-2A guest workers.
- **Fifty percent (50%) Rule:** In addition, employers who employ H-2A workers are required to provide employment to any qualified, eligible U.S. worker who applies for the job opportunity until 50% of the period of the work contract has elapsed.
- **Domestic workers in corresponding employment** are entitled to all of the same protections, although the transportation and housing requirements are limited to US workers who are not within normal commuting distance.

Legal status tied to employment at single employer- Importantly, the legal status of H-2A workers is tied to their employment with the petitioning employer, which means they cannot seek work elsewhere or transfer to another employer during the duration of their visa. This creates a power imbalance in the employment relationship, as H-2A workers may be afraid to speak out against or object to oppressive or unlawful working conditions for fear of retaliation, such as being fired or deported and put on a "banned list" from future employment.

Financial incentives from government for employers of H-2A visa program – In addition, H-2A employers also receive a tax benefit for hiring H-2A workers. The Tax Cuts and Jobs Act of 2017 included a provision that allows employers who hire H-2A workers to claim a credit against their payroll taxes. The credit is equal to 35% of the wages paid to H-2A workers, up to a maximum of \$1,000 per worker per year.

Laws on the books are not the laws in the fields -Unfortunately, current legal protections are inadequate to protect either domestic or H-2A workers. The Department of Labor (DOL) lacks the resources to enforce the regulations, there is no Federally protected right to join a union or to engage in concerted activity, and there is no private right of action, so farmworkers face difficulty seeking legal compliance. United States law cannot enforce the payment of illegal recruitment fees outside the United States – creating debt for workers in the H-2A visa program when they arrive in the United States and keeping U.S. employers from knowing which labor recruiters are ethical. Additionally, the high number of farm labor contractors, recruiters and other labor intermediaries make it difficult for farmworkers to know who is responsible for enforcing their rights – and difficult for government enforcement to be effective. Finally, the poverty and financial instability of many farmworkers, as well as the vulnerable immigration status of both H-2A workers and many domestic farmworkers, make them reluctant to challenge employers who violate their rights.

4. With the exception of a private right of action against employers, what protections are guaranteed under MSPA that are not guaranteed under the H-2A program?

In addition to a private right of action against employers that all other workers in the United States have, there are some legal protections that are available under the MSPA that are not available under the H-2A program, such as:

- **Whistleblower protections:** *MSPA workers who report violations of the law to the government are protected from retaliation.*
- **Working arrangements:** *Employers and farm labor contractors who hire migrant and seasonal agricultural workers under the MSPA must provide workers with a written contract that accurately reflects the terms of employment, safe and sanitary housing, transportation to and from the worksite, the opportunity to earn at least the prevailing wage, and the opportunity to file a complaint with the Department of Labor if their rights are violated. Employers and farm labor contractors who violate these requirements may be subject to civil penalties or criminal prosecution.*
- **Definition of Joint employer:** *The definition of joint employer under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is the same as the definition under the Fair Labor Standards Act (FLSA) that outlines labor protections for non-agricultural workers.*
- **Transportation requirements:** *Employers and farm labor contractors who hire migrant and seasonal agricultural workers under the MSPA must ensure that workers are transported safely and in a humane manner. This includes ensuring that vehicles are in good condition, drivers have a valid driver's license, workers are seated in a safe and comfortable manner, and workers are provided with adequate ventilation and temperature control. Employers and farm labor contractors who fail to comply with these requirements may be subject to civil penalties or criminal prosecution.*