

Testimony of Diana Tellefson Torres, UFW Foundation CEO

U.S. Senate Judiciary Hearing “From Farm to Table: Immigrant Workers Get the Job Done” on Immigrant Workers, Agriculture and the Need for Immigration Reform

May 31, 2023

Chairman Durbin, Ranking Member Grassley, and distinguished members of the Committee, thank you for the opportunity to testify today about the important contributions that farm workers make to our nation and to address needed solutions to challenges that impede the progress of farm workers and the agricultural sector.

My name is Diana Tellefson Torres, and I am the Chief Executive Officer of the UFW Foundation and the granddaughter of a Bracero guest worker. I have advocated for the rights and well being of our nation’s farm workers for almost two decades. The UFW Foundation, founded in 2006, is a 501(c)(3) charitable organization based in California and serving farm worker families around the country. Whether it’s through our pandemic relief assistance, food distribution programs, vaccination events, house meetings, outreach and education efforts, or immigration legal services, the UFW Foundation has a simple mission: to help farm workers find resources and the means so that they and their children may thrive. We also tirelessly support immigration reform that provides a path to citizenship for undocumented farm workers and their families, as well as an end to discriminatory employment laws so that farm workers may access equal rights they so richly deserve. We work towards a future in which farm workers are treated with dignity and respect.

To feed the nation, approximately 2.4 million farm workers plant, tend and harvest fruits and vegetables, work with dairy cows for milk production, tend livestock for our meat, and do many other tasks that uphold our nation’s agricultural and food system. In fact, farm workers were designated as “essential workers” during the COVID-19 pandemic. According to the federal government, about half of farm workers are either citizens or lawful permanent residents^[1].

Despite the challenging and dangerous nature of the work, agricultural workers often live in poverty and struggle to feed their own families. 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 \$24,999.¹ The cruel irony is that despite their central role in ensuring that American families have food on our tables, farm workers in certain parts of the country

¹ 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.

experience food insecurity and some rely on emergency food programs for their own families.^[2] The economic insecurities farm workers face are often the driving factor behind child labor in the fields. Some children of farm workers work alongside their parents to help contribute to the household income and due to lack of affordable childcare. Because of their low incomes, many farm workers live in substandard housing with crowded conditions. Many farm workers experienced even greater economic insecurity in the face of the COVID pandemic and the many recent wildfires and floods in California.²

And yet farm work is a career, and farm workers across the country are proud of the decades they have worked in agriculture. Take Esther from California, for example. Esther has worked as a farm worker and lived in this country for more than 25 years picking grapes, vegetables, mandarin, oranges, and other produce. She says, “I wish to tell our lawmakers in Congress to please pass legalization for farm workers so we may see our families without fear, that we may work without fear, and that we may contribute to this country without fear.”

Today, the U.S. has a choice. We can recognize the incredible value of farm workers and work towards a day when the industry is characterized by workers who work and live without fear because they have a way to earn citizenship and enjoy equal labor rights. This choice will enable farmworkers to stay in agriculture and help the industry and our rural communities thrive. This entire vision starts with legalization of the undocumented workers here in the US today.

We should not continue to ignore the fact that too many farm workers suffer because they must work without legal authorization. Nor should we ignore the fact that the H-2A visa program has become the worst source of human trafficking among U.S. visa programs, deprives farm workers of basic freedoms, and subjects US and foreign workers to widespread violations of their rights.

The failure of Congress to pass bipartisan agricultural immigration reform that respects the women and men who feed us is an active choice to support a system that thrives on abuse of the very workers who feed our nation and harms the ability of law-abiding employers to compete in the marketplace.

Lack of legal status and a shameful history of excluding the industry from basic labor laws – such as overtime pay or the right to join a union – make farm workers vulnerable to a range of abuses. The threat of immigration enforcement is a form of coercion that employers can use against undocumented workers. Under the H-2A program, workers

² 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>

know that if they are fired, they lose their housing, their job and their right to stay in the country, and probably the opportunity for future H-2A visas.

U.S. citizens and work-authorized colleagues also often work in fear, as they know that they can easily be replaced by more vulnerable workers. In fact, a 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.³

It is frankly hard to tell the stories that I am about to share. Everyday, I talk to farm workers who are resilient, faithful and proud. These women and men literally give me purpose, but I want you to understand the realities when approximately 50% of the people that work in agriculture either don't have status or are here on an H-2A visa.

Wage theft

In many instances, modern agriculture has broken the tie between farmer and worker. Workers are often hired by labor contractors, often with the goal of shielding employers from direct wage and workplace violations. And even these labor contractors often put another layer between themselves and workers.

Recently, we were asked to help workers in Georgia who were paid in cash by the people who drove them to the worksite in the morning – people who took a cut of their wages.

These farm workers shared that foremen do not pay the farm workers directly but instead pay the people who give farm workers a ride to and from work; this driver then pays the workers in cash. The farm workers I spoke with knew that they should not be paid in cash and they were dismayed that they often were not paid the wages that they were owed. Although the farm workers were well-aware of the wage theft, they expressed that they were scared to say anything due to their undocumented status. They also could not afford vehicles of their own, so they did not want to anger the person who provided them rides. Additionally, the farm workers were concerned that they were not provided paycheck stubs as they had no proof of working in agriculture—how would they be able to qualify for a future immigration reform program without this proof?

When I asked whether this type of agreement between the intermediary was made with just one foreman, the workers said, “No, almost all of the foremen do that and there are many people who provide rides who are the ones who pay the workers—that’s the way it works here.”

³ 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>

This structure leads to extreme worker vulnerability, as the workers rarely know the name of the company or the full name of the foreman. Sometimes the brand of the fruit or vegetable is on the boxes into which they pack the product, but that is not always the name of their employer. Some of the workers also did not know how to read or write in Spanish or English, as their first language was an indigenous language from Mexico. How can a farm worker, who overcomes the fear of retaliation, file a complaint with an enforcement agency, if they do not know the name of their employer?

Sexual Harassment

Of the over 2 million farm workers in the US, at least 700,000 are women. The #MeToo movement shed light on the rampant sexual harassment and sexual violence these women endure. When women have been interviewed, as many as 8 out of 10 farmworker women have experienced harassment.⁴ Sadly, these women, for the most part, do not speak out because a lack of immigration status or financial insecurity leaves them in fear of retaliation and job loss.

To give you an idea, a 17-year old farm worker girl who worked harvesting and packing grapes for a large grape company in Kern County, California, was sexually harassed repeatedly by her supervisor. The harassment included statements by her supervisor of “having a large penis, telling her he wanted to have sex with her and stating that once he was able to grab her body, she would want to have sex with him too.”⁵

The farm worker girl repeatedly told the supervisor to stop. Finally she could not take it any longer and shared what was happening with her mother. The girl and her family members reported harassment. Instead of addressing the harassment the company fired the farm worker and told them they needed to vacate the employer’s housing.

Heat deaths, bathrooms and pesticide exposure.

While farm workers ensure our nation’s food supply through their strenuous work in fields, dairies, and ranches, they often toil under extreme temperatures, wildfires, pesticides, and other dangerous conditions. Occupational death and injury rates in agriculture are disproportionately high while the wage rates for these critically important jobs are often very low.

Let me share the story of Maria Isabel Vasquez Jimenez, a 17 year old pregnant farmworker who collapsed after laboring more than 9 hours without accessible shade or water. She fell to the ground due to the heat, the foreman left her on the ground then put her in the back of a hot flatbed truck. The foreman never called 911 and asked Maria

⁴ <https://www.aclu.org/news/womens-rights/female-domestic-and-agricultural-workers-confront>

⁵ Confidential Report to UFW and UFW Foundation

Isabel's fiancé to lie about the events. The foreman had planned to take Maria Isabel to her home but her fiancé finally convinced the foreman to let him take her to a nearby clinic instead, but it was too late. She died the next day with her body temperature reaching over 100 degrees. Her story galvanized a change in California where there is now a workplace standard to improve safety when there is extreme heat.

For most farm workers there remains no requirement that farmworkers have access to water, shade or periodic breaks to bring their body temperature down in extreme conditions, as California is one of only 5 states with a heat standard. The lack of a standard, when combined with tenuous immigration status, leads workers to work past the body's physical limits. Take Miguel Angel Guzman Chavez, an H-2A guest worker, who died in 2018 only a few days after arriving in Georgia from Mexico – he was 24 years old. The day he died picking tomatoes, the heat index was 103 degrees. A UFW Foundation employee in Georgia, trying to ensure other workers weren't in danger, found where Miguel had been living. He saw barrack style housing where 5-6 workers slept in a room without any air conditioning that could help their bodies recuperate from the long hours they spent working in the direct heat. Miguel's co-workers looked jaundiced and thin, they were eating Cup O'Noodles soup and drinking Pedialyte, not much to nourish them after the 16 hour days they'd worked; mind you, their work contract said they'd be working 10 hour days. Some of the solutions are simple – where this is the law in California, you see portable tents for shades and water stations in the fields. Congress should pass a heat stress standard so that more people will not die.

In addition to the dangerous threats of heat, too often workers don't have access to basic field sanitation as required by OSHA. Early last year, I took a tour of the state of Georgia, one of the states in which the UFW Foundation has a presence. During my trip, I met with women farm workers who shared their many hardships and lack of resources, including the fact that there are often no accessible toilets in the field. As a result, these women and other workers are forced to relieve themselves in the open air, where they try to find a tree or more privacy. The women expressed that men could easily urinate anywhere, even in the fields. This clearly creates both human rights and food safety dilemmas. Although OSHA's field sanitation standard requires employers to provide toilets within a quarter-mile walk for workers, our conversations revealed that even this minimal requirement is violated, with little consequence for employers due to the lack of oversight and enforcement. In addition to the sanitary condition of the fields, the impact of not providing toilets has severe health consequences for women: they expressed that they try to drink less water to avoid having to relieve themselves, resulting in greater vulnerability to heat stress and urinary tract infections from not going to the restroom.

Another major occupational safety challenge in farm workers' lives is the constant threat of pesticide exposure. In 2017, Vicenta Rivera began to feel pesticide drift that had been sprayed on a nearby citrus field. She and 48 farm workers, predominantly women, were in a field in Central Valley when she smelled a strong odor, a taste in the back of her throat, numb lips, itchy skin and watery eyes. Some workers continued picking and packing while trying not to breathe, workers were terrified of the repercussions of walking away.⁶ These low wage workers often accept the risks of exposure. Indeed, it was not until 2015, after considerable pressure on policy makers and farm worker advocates, that there was a requirement that pesticide applicators be 18 years old. Vigilance in this area is particularly important because we hear from families that it is routine for children as young as 12 to work alongside their parents in the fields. Pesticides can cause a range of illnesses and even death, and are harmful to children's development. We must care about pesticide exposure because we are literally harming the development of children when these rules are ignored.

The H-2A Agricultural Guestworker Program

I have just shared with you stories of the conditions endured by farmworkers that I hear over and over again. What I fear is that these conditions will be amplified as we increase our reliance on the H-2A program in its current form.

The number of H-2A jobs approved by the Department of Labor has increased rapidly in recent years. The U.S. Department of Labor (DOL) certified 79,000 positions in 2010. By 2017, the number of H-2A visas more than doubled as DOL certified 200,049 H-2A jobs. The program accelerated growth and almost doubled again 5 years later, with DOL approving over 371,619 H2A jobs nationwide in FY 2022.⁷

In order to qualify to bring a worker into the US through the H-2A guestworker program, employers must show that there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and that the employment of a foreign worker will not adversely affect the wages and working conditions of similarly employed workers in the United States.

⁶ Branch, J. and Lipton, E. (2018) 'Dismissing Science', *New York Times*, 27 December. <https://www.nytimes.com/interactive/2018/12/26/us/politics/donald-trump-environmental-regulation.html>

⁷ See <https://www.ers.usda.gov/amber-waves/2021/september/use-of-h-2a-guest-farm-worker-program-more-than-triples-in-past-decade/> and Department of Labor. (22 September 2022). *Office Of Foreign Labor Certification H-2A Temporary Agricultural Program – Selected Statistics, FY 2022* https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2022_O4.pdf Department of Labor. (22 September 2022). *Office Of Foreign Labor Certification H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, Fy 2017* https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected%20Statistics_FY2017_O4.pdf

One of the principal ways the Department ensures that US workers are not adversely affected by foreign workers is to ensure that the wages paid by H-2A employers to U.S. and foreign workers are not depressionary by setting a wage floor through the use of the Adverse Effect Wage Rate or AEWR. The AEWR is set annually for each state based on surveys of agricultural employers' wage rates. In addition, H-2A workers are provided transportation to their work site and housing. These modest protections for H-2A and U.S. workers, however, are only as good as federal enforcement efforts.

Unfortunately, federal law excludes H-2A workers from one of the few Federal labor protections farm workers have – the Migrant and Seasonal Agricultural Worker Protection Act (AWPA or MSPA).⁸ The exclusion of H-2A workers from AWPA deprives workers of labor protections, remedies, and the ability to enforce their rights on their own in federal courts.

While I know there are farms that treat their foreign workers well, there are all too many instances of abuse, and the stories I am sharing are not isolated. What we hear and see from H-2A workers is disturbing and should shock the conscience of this country.

Illegal Recruitment Fees

H-2A workers too often begin their journey to the US after paying a recruiter a fee in order to be chosen for a visa.⁹ Once in the US, the H-2A workers are often so fearful of losing their jobs and being able to pay back the debt that they will not challenge unfair or illegal employment practices. The Department of Labor tells employers and their recruiters that recruitment fees are illegal but does virtually nothing about this practice in the foreign country. The DOL should impose responsibility and liability on the employers and their recruiters throughout the labor supply chain for illegal recruitment fees.¹⁰ In an infamous case in Georgia, the U.S. District Court for the Middle District of Florida found that three defendants had charged workers between \$1,000 to \$2,000 before workers arrived in the United States. The defendants used the debt to coerce workers to continue working in unlawful conditions and confiscated workers' passports to discourage workers from fleeing.¹¹

Because H-2A workers come to this country largely indentured, are completely dependent on one employer for their immigration status, and will only be chosen to come back to the US in future years if they don't complain—they are very vulnerable to abuse. That is not an appropriate model for employment in a freedom-loving nation

⁸ 29 U.S.C § 1801-1872

⁹ See <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf#page=7>

¹⁰ See <https://prismreports.org/2023/04/14/h2a-visa-wage-theft-exploitation/>

¹¹ See

<https://www.justice.gov/opa/pr/three-defendants-sentenced-multi-state-racketeering-conspiracy-involving-forced-lab-or-mexican>

and the abuses that arise from it must be addressed through enforcement and policy change.

Human trafficking

The Polaris Project has found that workers on the H-2A visa program are disproportionately represented in reports of labor trafficking. Their report on human trafficking in the H-2A program highlights that 61 percent of the victims reported receiving threats to be reported to immigration officials as a form of coercion.¹²

Modern-day human trafficking involving H-2A agricultural guest workers was uncovered in South Georgia. Operation Blooming Onion was a wake-up call to the abuses and corruption that the H-2A program can exacerbate.¹³ The conspirators required workers to pay unlawful fees for transportation, food, and housing while illegally withholding their travel and identification documents, and subjected the workers to perform physically demanding work for little or no pay, housing them in crowded, unsanitary, and degrading living conditions, and threatening them with deportation and violence. Exploitation of the workers included being required to dig onions with their bare hands, paid 20 cents for each bucket harvested, and threatened with guns and violence to keep them in line. The workers were held in cramped, unsanitary quarters and fenced work camps with little or no food, limited plumbing and without safe water.

The charges brought by U.S. Attorney's office in the Operation Blooming Onion case also included allegations of rape, kidnapping and threatening or attempting to kill some of the workers or their families. The charges include allegations that some of the employer defendants sold or traded the workers to other conspirators. At least two of the workers died as a result of workplace conditions.

Violations of Housing and Sanitation Requirements

As an outgrowth of abuses found in the infamous Bracero program¹⁴, such as workers living in encampments with no sanitation, employers are required to provide housing to H-2A workers, many of whom are brought here during peak harvesting season.

¹² 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

¹³ U.S. Attorney's Office, Southern District of Georgia. (2021, November 22) *Human smuggling, forced labor among allegations in south Georgia federal indictment* [Press Release]. <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>

¹⁴ <https://www.farmworkerjustice.org/resource/bracero-program/>

An H-2A worker from NY shared that when he first arrived to work, he lived in a garage. There was a designated place to prepare their food but they did not have a sink to wash their food or utensils. There was only a portable toilet outside of the facilities. They had no showers in the garage. In order to bathe, they had to go to the house that was next to the garage where eleven workers lived. Workers had nowhere to wash their clothes so they had to wash their items in buckets. As for the condition of the garage, there were often many ants, cockroaches, and rats.

In Arizona, during the Trump Administration, the Department of Labor was able to get a preliminary injunction against an employer accused of providing illegal and life-threatening living conditions to its employees. The employer forced its workers to sleep in converted school buses and semi-truck trailers in violation of numerous safety, sanitation and fire code regulations. The buses and trailers were dangerously overcrowded, with beds stacked end-to-end, and had inadequate ventilation systems, which allowed daytime temperatures to exceed 100 degrees Fahrenheit.

We worry that as this program expands, the enforcement resources of DOL will be so stretched that violations like these will increase.

Discrimination

There are two kinds of discrimination that are growing in the agricultural sector because of the H-2A program – discrimination against US workers and discrimination against women.

More and more, we find employers replacing available career farmworkers for H-2A workers – workers who are often preferred because employers can handpick their ideal demographic workforce of young men and exercise control over these captive workers.

In Mississippi, 11 employers were part of a U.S. Department of Labor investigation dealing with allegations of wage theft and illegal displacement of African American U.S. workers. Many of these U.S. workers trained H-2A workers from South Africa who ended up replacing them.¹⁵

In Washington, the Attorney General investigated a mushroom farm in Sunnyside which fired its largely female and Washington-based workforce and replaced them with male foreign guest workers hired through the H-2A Program, in violation of the Washington Law Against Discrimination.¹⁶

¹⁵ <https://www.dol.gov/newsroom/releases/whd/whd20221121>

¹⁶

<https://www.atg.wa.gov/news/news-releases/sunnyside-mushroom-farm-will-pay-34-million-violating-civil-rights-its-workers>

Georgia is also one of the states where there is substantial documentation of discrimination against farm workers who were U.S. citizens, as the two largest H-2A users in Georgia have both been sued for their discrimination against domestic workers in favor of a more captive H-2A workforce.¹⁷

The discrimination against women is also deeply troubling. Because workers are recruited abroad – where our government does not enforce anti-discrimination laws – the industry is able to select a workforce almost exclusively of young men.

Employers come to prefer H-2A workers who are here without families or other outside obligations and can work as demanded by the employer.

Employer complaints

Agricultural employers claim that the H-2A program is not responsive to their needs but the rapid growth of the program and the DOL's approval of almost all employer applications shows that these complaints are unjustified. Some growers bitterly complain about the H-2A program wage rates but they are merely set at market rates to comply with law. While employers complain about government oversight of their H-2A participation – we see a lack of enforcement of the rules that leads to deadly consequences. Some farm operators with year-round jobs, particularly at dairies, have pressed to expand the H-2A program to year-found jobs, which we have opposed because the program was based on the difficulty of finding sufficient workers for jobs that are only seasonal.

We have however, during every legislative negotiation aimed at garnering legalization for undocumented workers, found areas of compromise, including on H-2A program issues. We have agreed to legislation that would change the H-2A program by:

- Expanding the program to include a CAPPED number of year- round agricultural jobs.
- Allowing most farmers to file a single application for staggered seasonal needs.
- Reducing costs of visa processing by allowing H-2A workers to obtain 3 year visas.
- Eliminating mid-year/mid-contract wage fluctuations for most jobs.
- Providing employer financial incentives for improving and expanding farmworker housing.

¹⁷ See

<https://www.eeoc.gov/newsroom/hamilton-growers-pay-500000-settle-eeoc-race-national-origin-discrimination-laws-uit>; see also settlement agreement in *Leach v Bland Farms* (“Respondent admits liability for intentional violations of the Complainants’ civil rights under 8 U.S.C. 1324b”).

We have also agreed to E-verify for all workers in the agricultural sector so long as current workers have the opportunity to obtain lawful immigration status and eventual citizenship.

We have only agreed to these compromises as part of a comprehensive reform that includes a path to citizenship for our nation's undocumented farm workers and provisions to address the international recruitment process and actual improvements in the H-2A program. For instance, we have insisted that H-2A workers be afforded equal rights with other farm workers and at our insistence recent legislative compromises would grant H-2A workers coverage under the Migrant and Seasonal Agricultural Worker Protection Act. And we have insisted on expanded pathways for H-2A workers who have worked in US agriculture for multiple years to obtain green cards and become citizens.

Congress Should Choose a Path that Promotes Dignity for Farm Workers

By not passing bipartisan agricultural immigration reform that honors the women and men who feed us, Congress is making an active choice to support a deeply flawed system, harming both workers and law abiding employers.

We cannot turn away from the workers that feed us.

In the words of Leticia, a Washington farm worker who has worked for more than 15 years in agriculture in apple, cherry, grape, blueberry, pear, asparagus, and hops, “We have to work in extreme climates, for example, in high temperatures. The temperature can reach up to 115 degrees. During these times we have to pick the fruit in the dark due to the extreme heat. Our days start as early as 2 in the morning picking fruit with headlamps. We are asked to work in extreme conditions. We have no choice but to work to feed our families. We deserve dignified treatment, with respect, and equality. A path to citizenship would mean a lot to my family and me, it would mean that I can express my opinions and fight for my rights without fear of being deported. Personally, my life would improve in many ways. I shouldn't have to feel like I'm living in the shadows or in constant fear. My family and I could have a better quality of life and more opportunities, and my children could continue their education freely. We would have a real shot at achieving the American Dream.”

That is why we have worked for decades to craft bipartisan solutions to enable career farm workers to gain legal status and to reform the H-2A program. The farmworker movement, led by the United Farm Workers, has come to an agreement with most of the nation's major grower associations to move forward bipartisan agricultural immigration bills that have won majority votes in the House or Senate during the administrations of Presidents Bush, Obama, Trump and Biden. Indeed, many of you here today have been

part of those efforts. We have come so frustratingly close in passing agricultural immigration bills. We remain ready to partner again.

Thank you for the opportunity to speak to you about the important work that farm workers do.