

Statement of Teresa Romero, President, UFW
House Education and Labor Committee's Subcommittee on Health, Employment, Labor, and
Pensions Subcommittee
From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers,
and Tipped Workers from the Fair Labor Standards Act
May 3, 2021

Chairwoman Adams, Ranking Member Keller, Chairman Scott, Ranking Member Foxx and distinguished members of the Subcommittee, thank you for the opportunity to testify today.

My name is Teresa Romero and I am the president of the United Farm Workers (UFW). Today I am testifying on behalf of the UFW and the UFW Foundation. The UFW is the nation's first successful and largest farm workers union. Our mission is to help protect the rights and interests of farm workers by creating a safe and just food supply. The UFW Foundation is a sister organization of the UFW that provides critical services and resources to farmworker and immigrant communities. Additionally, it is part of a network of farm worker organizations in the 10 largest agricultural producing states.

There are roughly 2.4 million farm workers who work day in and day out to plant and harvest the crops and care for the livestock we all rely on for our food security.¹ The COVID pandemic has highlighted the critically important work that farm workers do. Farm work has been deemed essential work during the pandemic, and farm workers have continued to work despite the threat to their health and their increased economic vulnerability. The pandemic also has highlighted the vulnerability of farm workers due to the discriminatory exclusion of farm workers from many key protections other workers enjoy, such as overtime pay.

The 1938 Fair Labor Standards Act (FLSA) set minimum wage, overtime and other basic protections. This legislation, along with other New Deal legislation of the time, included a grand compromise that excluded farm and domestic work—work that was traditionally associated with the labor of Black workers—from the protections being afforded to other workers. Members of Congress at the time were explicit that they did not believe Black people deserved the same wage protections as white people. That was wrong then, when most farm workers were Black, and it is wrong now, when most farm workers are Latino. It is past time to end the exclusion of farm workers from overtime protections.

Exclusion of Farm workers from Overtime: History of Discrimination

The history of agriculture in the United States is a history of racism. During the “New Deal” period of labor reforms in the 1930s, President Roosevelt and his allies entered into a “grand compromise” with southern congressmen to obtain their support for legislation. This grand

¹ See Philip Martin, *Immigration and Farm Labor: Policy Options and Consequences*, 95 AM. J. AGRIC. ECON. 470 (2013).

compromise included exclusions of farm workers and domestic workers from the law's protections.²

The exclusion of farmworkers and domestic workers was widely understood to be a mechanism for excluding Black workers from the laws' protections and preserving the southern plantation style economic system. The representation of Black workers in agriculture in the South leaves little doubt as to the true motive behind the exclusion of farmworkers from FLSA and the other New Deal protections. The majority of the country's agricultural workers at the time were in the South; a majority of the agricultural workers working for wages in the South were Black, as were the majority of sharecroppers; and the majority of Black workers were employed in agriculture or domestic work.³ And on the large, plantation style farms that hired the majority of farmworkers—the employers that would have been subject to the minimum wage as it was enacted in 1938—“virtually all” farm workers in the “cotton belt” southern states were Black.⁴

The exclusion of agricultural workers and domestic workers was certainly not because of a lack of need among farmworkers. In 1937, the year before the passage of FLSA, the average income in the South was \$314, as compared to \$604 in other states. Sharecroppers on cotton farms, however, earned just \$73 per person, with a range of \$38-\$87 per person.⁵ The national daily wage on farms in 1937 was \$1.74; however, in the South, the regional average daily wage was only around \$1.00.⁶ At an hourly rate, these wages were below 10 cents an hour, much lower than the FLSA required minimum wage of 25 cents. Black farm workers would likely have earned even less \$1.00.⁷ Farmworkers outside of the South, however, already earned more than the minimum wage.⁸ Thus, the significance of the minimum wage protections for farmworkers was clear—Black agricultural workers in the South would have greatly benefitted from this boost in wages, yet they were intentionally excluded.

The Congressional record clearly demonstrates some of the racist sentiment at the time. As stated by Rep. Wilcox,

² 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).

³ 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. See also [Migrant workers and minimum wages: regulating the exploitation of agricultural labor in the United States](#), Linder, Marc. Boulder: Westview Press, 1992, available at <https://ir.uiowa.edu/cgi/viewcontent.cgi?article=1013&context=books>, p. 174. ("At the congressional hearings in 1935, the NAACP put Congress on notice that the Social Security bill would exclude 3.5 million of 5.5 million black workers because they were employed as farm workers or domestics...." citing 7 Economic Security Act: Hearings Before the Senate Comm. on Finance, 74th Cong., 1st Sess. 644, 640-41 (1935) (statement of Charles Houston)).

⁴ Marc Linder, "Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal," *Texas Law Review*, vol. 65 (1987), pp. 1335 – 1393 , 1377(citing A. MORIN, *THE ORGANIZABILITY OF FARM LABOR IN THE UNITED STATES* 97-98 (1952))

⁵ Farhang and Katznelson, p. 15.

⁶ Marc Linder, "Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal," *Texas Law Review*, vol. 65 (1987), pp. 1335 – 1393 , 1379.

⁷ Id.

⁸ Id., 1380.

[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. So long as Florida people are permitted to handle the matter, the delicate and perplexing problem can be adjusted; but the Federal government knows no color line and of necessity it cannot make any distinction between the races. We may rest assured, therefore, that when we turn over to a Federal bureau of board the power to fix wages, it will prescribe the same wage for the Negro that it prescribes for the white man. Now, such a plan might work in some sections of the United States but those of us who know the true situation know that it just will not work in the South. You cannot put the Negro and the white man on the same basis and get away with it.⁹

Presidential interest in extending FLSA minimum wage coverage began in 1944, with President Truman's interest in providing minimum wage protections to "industrialized agriculture;" however, it took decades before Congress amended FLSA to include farmworkers.¹⁰ Presidents Kennedy and Johnson continued to seek expansions of FLSA coverage, including for farmworkers, which they characterized as part of the "War on Poverty."¹¹ The 1965 grape boycott led by Cesar Chavez and the UFW helped focus attention on the challenges faced by farmworkers and coalesce "labor-liberal" support.¹² In 1966, Congress finally amended FLSA to include some agricultural employers in a minimum wage requirement, although it was still only a sub-minimum wage requirement.¹³ When Congress again amended FLSA in 1977, it eliminated the sub-minimum wage and extended coverage to a greater number of agricultural employers.¹⁴ Over 80 years later, FLSA continues to exclude some smaller agricultural employers from the minimum wage requirements, and farmworkers remain excluded from the overtime protections.¹⁵

The large majority of agricultural workers are now Latino.¹⁶ Today, our nation is painfully aware of our country's entrenched racism and discrimination, and the impact it exerts on people of color. We hope that today's Congress can heed the higher call for morality and take one step

⁹ Farhang and Katznelson, p. 14 (citing Congressional Record, 75th Congress, 2nd session, 1937, 82:1404. Also noting that "Representative Martin Dies, a Texas Democrat, articulated the same concern, stating that a "racial question" was implicated by the FLSA because under its minimum wage provisions "what is prescribed for one race must be prescribed for the others, and you cannot prescribe the same wages for the black man as for the white man."").

¹⁰ Phyllis Palmer, "Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act," *Journal of Policy History*, vol. 7, no. 4 (1995), pp. 416 – 440, 421

¹¹ *Id.* at 425.

¹² *Id.* at 426.

¹³ See "History of Changes to the Minimum Wage Law," Department of Labor Wage and Hour available at <https://www.dol.gov/agencies/whd/minimum-wage/history>.

¹⁴ *Id.*

¹⁵ See *id.*; see also Daniel P. Gitterman, "Making the New Deal Stick? The Minimum Wage and American Political History," *The Journal of the Historical Society*, vol. XII, no. 1 (March 2012), pp. 83-84.

¹⁶ Today's agricultural work force is largely an immigrant work force. Approximately 76% of farm workers were born outside of the United States, with the majority born in Mexico (69%). Eighty-three percent of farm workers surveyed in the NAWS survey identified as "Hispanic." Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers. Research Report No. 13, page 1. January 2018, available at https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf

towards addressing systemic racism by ending the longstanding Jim Crow era racism that still endures in the FLSA.

Benefits of eliminating longstanding discrimination in FLSA and Providing Overtime Protections to Farm Workers

One of the purposes in enacting FLSA was the elimination of “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”¹⁷ The exclusion of farm workers from the overtime protection flies in the face of that purpose. Farm workers work long hours for low pay and in dangerous conditions, conditions which are exacerbated by long hours. The hazards of agricultural work and the poverty experienced by farmworkers have become increasingly apparent during the COVID pandemic. The end of the overtime exemption for farm workers is urgently needed and will lead to significant improvements in farm worker economic well-being and health.

Despite their arduous work ensuring food security for the nation, many farm workers experience food and economic insecurity. Even before COVID, farm workers faced extreme economic hardship and, due to long-standing discriminatory exclusions, did not have the safety net available to many other workers. According to the DOL’s National Agricultural Worker Survey, farm workers’ mean and median personal incomes during the 2015-2016 time period was 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 in the previous year.¹⁸ Ironically, despite their central role in ensuring that food is on the table for American families, farmworkers in some areas are food insecure and often rely on emergency food programs for their own families.¹⁹ 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.²⁰

Agricultural workplaces are already dangerous, but have become even more hazardous during the COVID pandemic. The close proximity of many farm workers as they work, combined with the lack of measures to ensure adequate sanitation contributes to a greater exposure of agricultural workers to COVID-19 in the workplace. In addition, many farm workers lack access to health insurance and health care, which is exacerbated by the under-resourced and overwhelmed health care systems in rural communities. Because of these living and working conditions, farm workers have experienced a high infection and death rate from COVID-19. According to the Department of Agricultural Economics at Purdue University, there have been over 570,000 COVID-19 cases.²¹

¹⁷ 29 USC 202(a).

¹⁸ NAWS Report No. 13, p. 36.

¹⁹ See “Hunger Amidst Plenty: Food Assistance in Farmworker Communities,” Farmworker Justice blog, available at <https://www.farmworkerjustice.org/blog-post/hunger-amidst-plenty-food-assistance-in-farm-worker-communities/>.

²⁰ See e.g., LA Times, “Many California farm workers fear a winter of hunger and homelessness amid the pandemic,” Anita Chabria, Oct. 26, 2020.

²¹ Purdue Food and Agricultural Vulnerability Index, available at https://ag.purdue.edu:443/agecon/Pages/FoodandAgVulnerabilityIndex.aspx?_ga=2.49471334.1159720487.1600111458-250602208.1598985334 (last accessed April 29, 2021). See also New York Times, “Thousands of Farm

Even beyond COVID, agricultural work is among the most dangerous work in the country. Farm workers are disproportionately likely to be harassed, poisoned, seriously injured or killed on the job. Farm work involves exposure to pesticides and extreme weather, the danger of which has been exacerbated by climate change. Farm work is also 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. The fatality injury rate for the agricultural sector is the highest rate for all sectors at 23.1 per 100,000, and exceeds the rate in other dangerous industries such as construction, mining and transportation.²²

Because of our nation's racism and history of discrimination against farm workers, agricultural work has long been perceived as undesirable work. As a result, many of the country's most vulnerable individuals work as farm workers. Roughly half of the nation's 2.4 million farm workers are undocumented²³ and approximately 10% of the workforce are H-2A workers, nonimmigrants whose ability to work and remain in the country is dependent on the employer that petitioned for them.²⁴ The lack of immigration status and citizenship means farmworkers are often too fearful of retaliation and immigration enforcement to draw attention to themselves by complaining about workplace violations or seeking improved conditions. In this way, our nation's racist exclusion of farm workers from key labor protections has perpetuated the vulnerability of agricultural workers, including by depriving them of the political power needed to improve their circumstances.

Agricultural work is honorable work and should not be treated as inherently undesirable. Many of our members enjoy their work and recognize the valuable contribution they are providing to our nation. Agricultural workers ask only that they be treated with respect, be paid a decent wage and be provided with the protections offered to other workers.

In learning his state would recognize overtime protections for farmworkers, Jorge Maldonado, a UFW member in Washington shared, "[w]inning overtime pay is a victory of equality, overturning hundreds of years of injustice. It is a historic moment, and I am happy to have been a part of it. We cannot progress if we are building on the foundation of injustice. Overtime pay is a step among other protections that is needed to protect agricultural workers."

By ending the racist exclusion of farm workers from overtime pay for hours worked above 40, overtime pay can help to relieve some of the poverty that farm workers experience. According to recent data, farm workers worked an average of 45 hours per week, with many workers

workers Are Prioritized for the Coronavirus Vaccine," Miriam Jorden, March 1, 2021, available at <https://www.nytimes.com/2021/03/01/us/coronavirus-vaccine-farm-workers-california.html>.

²² 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>

²³ NAWS Report No. 13, p. 21.

²⁴ In FY 2020, over 275,000 positions were certified by the DOL, representing over 10% of the roughly 2.4 million farm workers. See https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020.pdf.

working more hours at different times of the season.²⁵ At a minimum, therefore, overtime pay could mean almost \$20 additional dollars per week and more during the harvest season.

Relief from poverty impacts not only economic well-being, but also helps to provide security in other ways. For example, farm workers with greater economic security will feel more confident leaving abusive employers. Agriculture has extraordinarily high rates of sexual harassment and assault. One recent study on farm worker women and sexual harassment found that 80% of the farm worker women surveyed reported experiencing sexual harassment.²⁶ The study identifies the role that economic vulnerability plays in heightening the risk of sexual harassment. "... [A]s U.S. fieldworkers, women remained in deep poverty. Low pay, in addition to the seasonal nature of fieldwork, left workers unsure as to whether they would have another agricultural job after the harvest. Regardless of whether a woman was the sole wage earner or contributed to the family's income with her partner, she remained below the poverty threshold. Staying employed was crucial to her family's survival and a factor women seriously considered when contemplating how they would respond to sexual harassment."²⁷ For farm workers, the ability to be paid overtime would increase economic security and could help empower women facing sexual harassment. Greater economic security would also help farm workers access safer housing and health insurance, both of which would improve farm worker lives.

Maria Alica Rojo Rocha, a farm worker in Idaho told us, "[i]f I was able to receive overtime pay ... I would use that money to go to the doctor to get a check up. As farmworkers we have to prioritize paying our necessities and we put off seeking medical care because we cannot afford to go to the doctor. I want to ensure that I can continue being healthy so I can contribute to my family."

In addition, farm workers' increased income from overtime pay would bring positive benefits to rural communities. Latinos in rural communities have provided significant economic contributions to their communities and increased income will only help their contributions grow.²⁸

Finally, ending the discrimination against farm workers as to overtime pay would help improve farm worker health, which is one of the primary purposes of FLSA. Farm workers face numerous hazards in their work and should be compensated with overtime pay for their overtime hours. Long working hours have been connected with increased injuries in the workplace.²⁹ As one of our California members, Gonzalo P. Lopez, shares "I have worked in the fields for more than 22 years and this work is very hard because I have worked in decades of high heat, during

²⁵ NAWS Report No. 13, at pp. 21-22.

²⁶ "Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women," Irma Morales Waugh, January 2010, available at <https://journals.sagepub.com/doi/abs/10.1177/1077801209360857>.

²⁷ Id at 245-246.

²⁸ "Part 2: Immigrants and Latinos Bring Economic Growth To Rural Communities," Center For Rural Affairs, June 24, 2016, available at <https://www.cfra.org/blog/part-2-immigrants-and-latinos-bring-economic-growth-rural-communities>.

²⁹ "The Effect of Long Working Hours and Overtime on Occupational Health: A Meta-Analysis of Evidence from 1998 to 2018," Kapo Wong, Alan H. S. Chan, and S. C. Ngan, *Int J Environ Res Public Health*. June 2019, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6617405/>.

the rain and during very cold winters. For these reasons I ... support the legislation that would give us overtime pay to all the workers in the field

The time is now to end the racist exclusion of farm workers from overtime pay.

Eliminating longstanding discrimination in FLSA and Providing Overtime Protections to Farm workers is Economically Feasible and Will Put All Employers on the Same Footing

Agricultural employers often claim that requiring overtime pay for farm workers will result in dire scenarios. Growers seek to depict the farming industry as the quintessential family farm that cannot succeed if required to comply with FLSA requirements. Moreover, many growers reinforce the paternalistic and racist notion of the farmworker as lazy and dependent on the farmer for his care. The same was true when Congress sought to amend FLSA to require the minimum wage for some agricultural workers.³⁰ Yet the minimum wage requirement was implemented for farm workers and agriculture in the United States has continued to thrive. The same will hold true when Congress ends the discriminatory exclusion of farm workers from the overtime pay provisions of FLSA. In fact, overtime pay after 40 hours is already being phased in in California and will soon be required in Washington. California and Washington are two of the biggest agricultural states in the United States.

The UFW worked with the California state legislature in 2016 to end the race-based exclusion of farm workers from overtime pay in California. This was a small step to address one of many unfair and racist exclusions that farm workers face in America. Overtime pay in California is being phased in over a period of 4 years. California is now requiring overtime pay at 45 hours in a week; next year overtime pay will be required after a work week of 40 hours. At small farms with fewer than 25 employees, the phase-in is slower, with overtime currently being required after 55 hours.

The economics of overtime pay for California agriculture have had a positive impact. Farm workers are able to get more pay. More pay for farm worker families is important.

California, the largest agricultural state in the US, remains the largest producer for most fruits, vegetables, and dairy in the United States. Over a third of the country's vegetables and two-thirds of the country's fruits and nuts are grown in California. California is the leading U.S. state in cash farm receipts with combined commodities representing nearly 13 percent of the U.S. total. Indeed, in 2019, California's farms and ranches received over \$50 billion for their agricultural output, which represents an increase over the previous year.³¹

³⁰ See Phyllis Palmer, "Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act," *Journal of Policy History*, vol. 7, no. 4 (1995), pp. 416 – 440, p. 421-23. See also Congressional Record, House, May 25, 1966 p. 11361, Ms. May of Washington. "The inevitable effect of the provision of the bill covering agricultural workers and requiring additional overtime for agricultural processing employees would be higher consumer prices for fruits and vegetables and other food products. This would result from passing along some of the increased costs and more importantly from the fact that many marginal producers would be forced out of business, resulting in a reduction in the supply of food and consequent higher prices to the consumer." available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1966-pt9/pdf/GPO-CRECB-1966-pt9-4-1.pdf>

³¹ California Agricultural Production Statistics, available at <https://www.cdfa.ca.gov/Statistics/>

More recently, in Washington in November of 2020, the Washington State Supreme Court found that the exemption of dairy workers from overtime was unconstitutional. This is yet another advancement in attaining equality for the men, women and children keeping our domestic food supply intact. In April, the Washington legislature passed a law that phases in an overtime requirement for agricultural workers over three years, beginning in 2022. The Governor of Washington is expected to sign the farm worker overtime pay bill into law. Washington state, one of the top five agricultural states in terms of number of farm workers, is a leading agricultural state with agricultural production in the billions of dollars.

Recognizing this inequity in our labor laws, other states are also taking steps to correct this unfair and longstanding discrimination against farm workers.³²

As to any concern about the impact on consumers, the likely impact of the increase in wages from overtime pay on consumers is minimal. A recent study found that increasing wages to farm workers by about 40% would only increase consumers' household grocery bills by \$25 for the entire year.³³ According to the study, farm workers' wages are only a fraction of the price that consumers pay for groceries; therefore, increases in their wages would be unlikely to have a significant impact on grocery prices. Only a percentage of the price of groceries goes to farmers and farmers then pay only a percentage – about one-third—to workers. Given these estimates, it seems clear that the additional overtime pay would similarly have a minimal impact on consumers' wages but represent a significant income increase to farm workers. Moreover, many of today's consumers are conscious about the treatment of workers in their food supply chain and would enjoy the satisfaction of knowing that the products they're purchasing did not come at the cost of exacerbating poverty or economic insecurity for the people that feed us.

In conclusion, now is the time to right wrongs that can no longer be justified or tolerated in a society where equal rights and equal justice are supposed to be more than academic theories or political rhetoric. In a world that is ever more conscious of the structural racism underpinning our society, we must end the racist exclusion of farm workers from FLSA's overtime protection.

We call on Congress to enact legislation such as Rep. Grijalva's and now Vice President Harris's Fairness for Farm Workers Act. The Fairness for Farm Workers Act would end the discriminatory treatment of agricultural workers regarding overtime pay and minimum wage in the Fair Labor Standards Act. The legislation would phase in overtime pay over a period of 4 years and would give smaller employers additional time to adjust to these changes.

³² See, e.g. Colorado SB21-087, Oregon HB 2358

³³ "How much would it cost consumers to give farm workers a significant raise?" Daniel Costa and Phil Martin, EPI Working Economics Blog, October 15, 2020, available at <https://www.epi.org/blog/how-much-would-it-cost-consumers-to-give-farmworkers-a-significant-raise-a-40-increase-in-pay-would-cost-just-25-per-household/>.