

Statement of Giev Kashkooli  
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Before the House Judiciary Committee's Subcommittee on  
Immigration and Border Security  
"Agricultural Guestworkers: Meeting the Growing Needs of American Agriculture"  
July 19, 2017

Chairman Labrador, Ranking Member Lofgren, and members of the subcommittee, thank you for the opportunity to testify today. My name is Giev Kashkooli. I am a Vice-President of the United Farm Workers of America. The UFW is the nation's first successful and largest farm workers union. We are honored to speak with you today to share some of the issues that confront American agriculture and to speak to today's subcommittee topic of "Agricultural Guestworkers."

A growing problem in American agriculture is the difficulty in matching willing workers in the US with agricultural employers trying to hire people so that we can continue to feed the United States.

Fortunately, there is a positive and workable solution in Congress that is a great first step to meet the needs of America's food and agricultural system: the Agricultural Worker Program Act (H.R. 1036), that your colleague Representative Gutierrez has introduced. The Agricultural Worker Program Act would allow experienced farm workers employed on American farms to apply for "Blue Card" status giving them the legal right to stay and continue working in agriculture without importing substantial numbers of additional guest workers from outside the country. The Agricultural Worker Program Act recognizes that the people who feed our nation should be given the chance to be here legally. The Agricultural Worker Program Act acknowledges that the people we trust to feed us every day, to work through seasons of extreme heat and bitter cold, to sacrifice their very bodies to the brutal nature of agricultural work are the people we want as our neighbors and countrymen.

The Agricultural Worker Program Act would also guarantee growers the legal and stable workforce they say they need to produce America's bounty. The Agricultural Worker Program Act recognizes that we are a nation of laws, and so all those who qualify under the Agricultural Worker Program Act of 2017 would have to demonstrate they have consistently been employed on U.S. farms over the past two years, pass thorough background checks and pay a fine. Those individuals who continue to work in agriculture over a three to five year period would have the ability to apply for permanent legal status.

America's farms and ranches produce an incredible bounty that is the envy of the world. The farmers and farm workers that make up our nation's agricultural industry are truly

heroic in their willingness to work hard and take on risk as they plant and harvest the food all of us eat every day.

I know many in this room believe that a new guestworker program should be the first step. We firmly believe a new guest worker program should not be the first step to solve the problem of agriculture's chronic labor market instability and could, in fact, only make matters worse.

Despite the success of our agricultural industry, there are serious problems in its underpinnings. Our broken immigration system is causing a dire situation for our country's agricultural system. We must face the reality that at least one-half of the nation's hard-working farm workers are undocumented immigrants. The increased deportations and other immigration enforcement have exacerbated what is already a tough situation in American agriculture. Much of the agricultural economy would be in jeopardy if agricultural employers were required to participate in the E-Verify program because they could lose large numbers of the workers who have the skill and experience to produce America's food.

When considering what changes we need, Congress should keep in mind that agricultural work is extremely difficult, underpaid, and dangerous and that labor laws are discriminatory against farm workers. Yet despite the challenges of agricultural work, and the fact that farmers have shared they are having difficulty recruiting a stable workforce, today's farm workers receive little respect or support for their contributions to American economy and quite literally everyone's life. The professional farm workers in the US today are the people most equipped to meet the needs of the agricultural industry. The criminalization of the people who feed us has made it difficult to match willing workers in the US with employers trying to hire people so that we can continue to feed the US. Allowing professional farm workers to earn legal status is the best and fastest way to match willing workers to willing employers.

### ***Agricultural Work is Difficult, Underpaid, Dangerous, and Discriminatory***

Every day, across America, about two million women, men, and children labor on our nation's farms and ranches, producing our fruits and vegetables and caring for our livestock.<sup>1</sup> About half of these hard-working men and women are U.S. citizens or permanent legal residents. Our migrant and seasonal farm workers are rarely recognized for bringing this rich bounty to supermarkets and our dinner tables. And most Americans cannot comprehend the difficult struggles of their fellow Americans who work as farm workers. Increasingly, however, America's consumers are asking government and the food industry for assurances that their food is safe, healthy and produced under fair conditions.

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<sup>1</sup> Philip Martin, Farm Labor and H-2A (April 15, 2014) (unpublished document available upon request). See also, Philip Martin, California Ag Employment: 2014, <https://migrationfiles.ucdavis.edu/uploads/cf/files/2014/04/22/martin-california-ag-employment-2014.pdf>

The life of a farm worker in 2017 is not an easy one. Federal and state laws exclude farm workers from many labor protections other workers enjoy, such as the right to join a union without being fired for it, overtime pay, many of the OSHA safety standards, protections from known cancer-causing pesticides, and even workers' compensation in some states. Farm worker exclusion from these basic federal Laws written in the 1930s is one of the sadder chapters of our history. Farm workers would benefit from the same labor protections that other American workers receive.

Most farm workers earn very low wages and often face wage theft and other violations.<sup>2</sup> Housing in farm worker communities is often poor and overcrowded. Agricultural work is among the most dangerous in the US: One recent analysis by the *Idaho Statesman* of OSHA records indicates that more than 5,000 agricultural workers in the U.S. have died on the job between 2003 and 2011, a death rate seven times higher than average.

The dairy industry, one of the few agricultural jobs that is available year-round and therefore could become more appealing to US citizens and legal permanent residents, is particularly dangerous.

From the *Idaho Statesman*:

It was still dark the morning Ruperto Vazquez-Carrera began his shift at Sunrise Organic Dairy.

It was mid-February 2016. A winter heat wave had melted snow and ice overnight, flooding part of the rural Jerome County farm. A foot of standing water made it hard to tell where the feeding area ended and the deep pond that held the farm's manure began.

Vazquez-Carrera got into a feed truck to deliver the cows their morning meal. About 5:30 a.m., he called his brother, who also worked at the farm, to warn him about the conditions.

By sunrise, Vazquez-Carrera, a 37-year-old husband and father of six, was dead. Vazquez-Carrera had mistakenly driven the truck into the manure pond. He managed to get free and he tried to swim back to solid ground. But he was disoriented and swam in the wrong direction, according to the county sheriff. Divers found his body 70 yards from the truck.

It was a kind of death no one wants to happen. Yet it happened again, in Idaho, just seven months later.

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<sup>2</sup> [U.S. Department of Labor Enforcement in Agriculture: More Must Be Done to Protect Farmworkers.](#) Farmworker Justice, 2015.; Despite Recent Improvements: *Slate*, August 2, 2016, Gabriel Thompson. "Good Crop, Bad Crop."

[http://www.slate.com/articles/business/the\\_grind/2016/08/the\\_hot\\_goods\\_provision\\_allows\\_the\\_labor\\_department\\_to\\_stop\\_wage\\_theft\\_it.html?wpsrc=sh\\_all\\_dt\\_fb\\_bot](http://www.slate.com/articles/business/the_grind/2016/08/the_hot_goods_provision_allows_the_labor_department_to_stop_wage_theft_it.html?wpsrc=sh_all_dt_fb_bot)

A dairy worker in Shelley, south of Idaho Falls, suffocated after driving into a manure pond more than 5 feet deep and being pinned for 30 minutes under the tractor he was driving.

The U.S. Occupational Safety and Health Administration sent inspectors to investigate each incident. The agency cited each dairy for failing to provide a safe workplace and fined each \$5,000.

The ponds are common at dairies as a way to store manure to prevent it from polluting waterways. The waste can later be used as fertilizer on crops. Neither dairy had fences or barricades to keep workers from driving the wrong way and into the manure pond in the dark, OSHA found. No signs warned employees they were nearing a deep pit of manure.

“Drowning in manure ponds is widely known in the dairy industry,” the inspection reports noted.<sup>3</sup>

The same *Idaho Statesman* article notes that the regional OSHA director has seen a sharp uptick in agricultural fatalities in 2013.

Such poor conditions and discriminatory laws have resulted in substantial employee turnover in agriculture and a workforce where many farm workers are undocumented. Still, there are at least 600,000 to 1,000,000 legally authorized U.S. workers in the agricultural labor force.<sup>4</sup> Stabilizing the farm labor market through passage of the Agricultural Worker Program Act could help improve wages and working conditions for all farm workers. Increasing farm workers’ legal protections and implementing the other recommendations made by the Commission on Agricultural Workers would further maintain labor market stability by helping to attract and retain U.S. workers in the farm labor force.<sup>5</sup>

### **The current visa program needs stronger worker protections and vigorous enforcement**

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<sup>3</sup> *Idaho Statesman*, July 16, 2017, Audrey Dutton. “Manure pond deaths raise concerns about farmworker safety.” <http://www.idahostatesman.com/news/business/article161672103.html>

<sup>4</sup> Estimates of the number of farmworkers vary depending on the methodology, ranging from 1.8 million to 2.4 million. We assume 2.0 million farmworkers. Even if only 30% of farmworkers are citizens or authorized immigrants, then there are 600,000 U.S. farmworkers. Official government statistics indicate a rate closer to 50%, amounting to roughly 1 million authorized workers and 1 million documented farmworkers. See Kandel, at App. 2, p. 56. Martin, P., “Hired Farmworkers,” *Choices Magazine*, 2d Qtr. 2012, <http://www.choicesmagazine.org/choices-magazine/theme-articles/immigration-and-agriculture/hired-farm-workers>

<sup>5</sup> *Report of the Commission on Agricultural Workers*, Washington D.C. November, 1992. See also the testimony of Robert A. Williams, Director of Florida Legal Services’ Migrant Farmworker Justice Project, before the House Judiciary Committee, subcommittee of Immigration Policy and Enforcement, Hearing on H.R. 2847, the “American Specialty Agriculture Act,” September 8, 2011 (incorporated herein by reference). Available at <http://judiciary.house.gov/hearings/pdf/Williams%2009082011.pdf>.

The United States currently has an unlimited agricultural guestworker program available to agricultural employers, the H-2A program. While there have been complaints from some employers about the H-2A program, the program has almost doubled in the last 4 years and almost tripled in size during the last decade: from about 60,000 worker positions certified in FY 2006 to about 165,000 worker positions certified in FY 2016 with the vast majority of petitions filed approved.<sup>6</sup> FY 2017 Department of Labor statistics for the H-2A program show that approximately 97,000 positions have been certified so far this year, an increase of approximately 30% over the same period last year, with a timely approval rate of 98%.<sup>7</sup>

Yet as the H-2A program grows unchecked, there are real concerns about worker abuses. The H-2A program ties workers to their employers and so these workers are dependent on their employers for continued and future employment and for their very presence in the United States. Workers often begin their H-2A experience with a recruitment process replete with fraud, discrimination and illegal fees. Because of their guestworker status, debt and desperate need to earn money, guestworkers are vulnerable to exploitation in the workplace. Even with law-abiding employers, H-2A employees work to the limits of human endurance to keep their employers happy, often resulting in an employer preference for H-2A workers over U.S. workers. For these and other reasons, U.S. workers are at a competitive disadvantage and often find themselves turned away from jobs or set up to fail at H-2A workplaces. This model, and certainly any guestworker model with fewer worker protections, cannot serve as the basis for our immigration system or our farm labor system.

Given the constraints on a guestworker's ability to enforce his/her own protections, DOL's role becomes even more important.

Two recent instances of enforcement of H-2A rules are worth sharing with this committee so that wise policy is made about changes to the agricultural guestworker program.

1. DOL itself recently recognized the problem of fraud and abuse in the program and noted the impact these violations have on both H-2A and U.S. workers. In calling for more aggressive actions against fraud, DOL pointed to an Arizona farm employing workers in the H-2A program, where workers were housed in converted school buses and semi-truck trailers with beds stacked end to end and inadequate ventilation in Arizona's 100 degree plus heat. As Secretary of Labor Alexander Acosta stated, "What G Farms is accused of doing is simply inhumane. No worker deserves to be treated this way. And honest employers cannot compete against those who break the law by underpaying and mistreating their workers." Unfortunately, DOL has been provided no additional resources for administration of the program's certification process or enforcement of key

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<sup>6</sup> See [Annual Report Performance Data](https://www.foreignlaborcert.doleta.gov/performancece), Department of Labor, Office of Foreign Labor Certification. <https://www.foreignlaborcert.doleta.gov/performancece>

<sup>7</sup> Department of Labor, Office of Foreign Labor Certification, [H-2A Temporary Agricultural Labor Certification Program – Selected Statistics, FY 2017TD](https://www.foreignlaborcert.doleta.gov/performancece), available at <https://www.foreignlaborcert.doleta.gov/performancece>

protections. The certification process is key to ensuring that domestic workers are being recruited and the program's modest but fundamental protections are being followed. Instead, DOL's key role has been under attack by those who would like to see a program providing employers ready access to foreign workers.

2. At Fernandez Farms, Inc., a California-based strawberry farm, the farm and its president Gonzalo Fernandez, were fined \$2.4 million by an Administrative Law Judge for violations of the H-2A program rules.<sup>8</sup> The order included roughly \$1.1 million in payment to the workers for unlawful kickbacks, failure to provide free housing, multiple wage violations, threatening and coercing H-2A workers, and discriminating against US workers, among other violations; and a civil money penalty of almost \$1.3 million for the H-2A violations. In addition, Fernandez Farms and its president were barred from participation in the H-2A program for the maximum period of three years.

We also need to ensure that there are consequences for those employers who abuse TN visas within NAFTA. A federal lawsuit alleges a wide-ranging "criminal conspiracy" under which Mexican veterinarians were "lured" to a dairy in rural Idaho under visas illegally obtained under NAFTA to work as animal scientists and instead were forced to toil as low-wage general laborers under "arduous" "grueling," and unsanitary conditions. Among abuses alleged in the lawsuit, several of the veterinarians "sustained serious injuries" at the dairy with one having part of her index finger, injured while milking cows, amputated because the dairy didn't ensure she received the best possible medical treatment. According to the complaint, one veterinarian was made to live in the basement of a home with "rats, spiders and insects, with no lighting or heating, and without furniture." It was "uninhabitable" without heating during Idaho's freezing winter. The dairy conducted home surveillance and used keys to "perform unannounced inspections without plaintiffs' consent or permission. The dairy failed to provide promised travel costs to and from Idaho; one veterinarian had the roughly \$600 in travel expenses from Mexico deducted from his pay. Rather than resolve the veterinarians' "complaints about repeated violations of the work agreement," the workers allege the dairy threatened "to have them deported to Mexico if they displeased" management.<sup>9</sup>

### **Improving conditions for domestic workers has strong results for many of the employers who have made efforts to improve conditions.**

Common sense dictates that an employer needing to attract workers should improve wages and working conditions. A recent example from a garlic farm just south of Silicon Valley, where there are some of the highest housing prices in the nation, is telling and provides a clear model for attracting workers. Christopher Ranch, the country's largest fresh garlic producer, decided to increase wages in order to attract workers.<sup>10</sup> While the

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<sup>8</sup> LA Times, August 30, 2016, Goeffrey Mohan, Strawberry grower fined \$2.4 million, demanded kickbacks from Mexican workers <http://www.latimes.com/business/la-fi-farm-worker-fine-20160830-snap-story.html>

<sup>9</sup> Associated Press, January 5, 2017, Rebecca Boone, Mexican Veterinarians sue Idaho dairy for human trafficking <https://apnews.com/581da288fc034ffebcd633bf2554ed02/mexican-veterinarians-sue-idaho-dairy-human-trafficking>; See the filing: [http://unitedfarm.3cdn.net/6e553509d93ba7d8c8\\_26m611vc0.pdf](http://unitedfarm.3cdn.net/6e553509d93ba7d8c8_26m611vc0.pdf)

<sup>10</sup> LA Times, Natalie Kitroeff, Feb. 9, 2016, "How this garlic farm went from a labor shortage to over 150 people on its applicant waitlist." <http://www.latimes.com/business/la-fi-garlic-labor-shortage-20170207->

California state minimum wage is set to rise to \$15 per hour in 2022, the grower is looking to get there by 2018, and has already bumped pay from \$11 to \$13 per hour this year. As a result, they report a wait list of 150 workers. While we recognize that some regions or growers may be experiencing bona fide labor shortages, more often than not these growers are not offering sufficient pay and working conditions in order to attract a stable workforce.

Immigration policy reform can play a role in achieving the aims of numerous federal commissions that have addressed the labor needs of agriculture. Let me highlight one of these reports for you today. President Ronald Reagan and Congress created the Commission on Agricultural Workers. The Commission had 4 members appointed by President Reagan; 4 by the Senate President Pro Tempore, at the time Senator Strom Thurmond; and 3 by the Speaker of the House. Their report – the “Report of the Commission on Agricultural Workers” in 1992 – made recommendations for the “development of a more structured and stable domestic agricultural labor market” that would “address the needs of seasonal farm workers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply.”<sup>11</sup> We believe, as the mostly Republican authors of the report suggested, that improving wages and working conditions and increasing farm workers’ legal protections would help attract and retain current workers in the farm labor force and end chronic employee turnover. Sadly, very few of the recommendations have become law.

We also want to have serious discussions about the future of the work force upon which American agriculture and American consumers depend. First and foremost, we seek an end to the status quo of poverty and abuse; we should not continue to treat farm workers as second-class workers. Our number one priority is immigration reform that includes a workable legalization program with a path first to permanent resident status, and then to citizenship, that includes the one million or more farm workers who are currently working in the fields and their immediate family members. We believe that farm workers who harvest our food and feed us deserve at the very least the right to apply for legal status.

To the extent a new path is needed to bring professional farm workers from abroad to this country, these workers should be accorded equality, job mobility, strong labor and wage protections, and an opportunity to earn immigration status leading to citizenship. We have seen Europe’s failed experiment of second class legal status. We believe that America is exceptional – our agricultural system is just one more example— and we should honor the new Americans who continue to build our agricultural system as the heroes that they are for our country.

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<sup>11</sup>*Report of the Commission on Agricultural Workers*, Executive Summary, p. xxiv, Washington D.C. November, 1992.

We ask this subcommittee support the Agricultural Worker Program Act as a good first step. And in the future, to support a new, comprehensive immigration process that ensures that future workers who come to the United States in the future come here in a manner that elevates farm work. By having such a system, we can ensure that we continue to have an agricultural industry that is the envy of the world – and honor all of the women and men who have built such an exceptional domestic food supply.