

Statement of Farmworker Justice
House Judiciary Subcommittee on Immigration and Citizenship

“Securing the Future of American Agriculture”

April 3, 2019

Thank you for the opportunity to submit a statement for the record about the need to reform our broken immigration system to ensure a fairly-treated and productive farm labor force. We appreciate this hearing and the opportunity it provides to address serious questions about immigration policy and the future of the farm labor force.

For almost 40 years, Farmworker Justice has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Farmworker Justice works closely with farmworker unions and farmworker-serving organizations across the country. Our board includes representatives from each of the three major farmworker unions, the UFW, FLOC and PCUN. Our work includes collaborating closely with the legal services community representing farmworkers and through this work we follow closely the abuses and legal challenges farmworkers are facing on the ground. We share community education materials with organizations such as migrant and seasonal head start programs and migrant health centers to help ensure that programs serving farmworker children and families are aware of policy developments and their implications for the communities they serve, and inform us about how those developments are impacting farmworkers and their families. We also engage in community education training projects with farmworker groups on the ground, such as the work we are currently doing with Lideres Campesinas to produce an educational video for farmworker women about sexual harassment.

Farmworkers perform difficult, dangerous and essential work on our nation’s farms and ranches to feed us all. The large majority of agricultural workers are immigrants.¹ Reform of our broken immigration system is a necessary stepping stone toward modernizing agricultural labor practices and treating farmworkers with the respect and legal protections they too often are lacking but deserve.

Immigration is a critically important issue for farmworkers, their families, rural communities and our entire food system. Today’s agricultural labor system is in a state of crisis due to our broken immigration system and a stalemate in Congress regarding solutions. Approximately half of agricultural workers are undocumented immigrants.² Public statements and executive orders issued by President Trump calling for large scale deportations of unauthorized immigrants and the rise of anti-immigrant rhetoric have instilled fear among farmworker families and the owners of businesses that employ them. Interwoven with the fate of our nation’s farmworkers is the viability of the agricultural sector, consumers’ access to safe, healthy food, and our nation’s food security. There is

¹ “Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers,” Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/news/pages/research/docs/NAWS_Research_Report_13.pdf.

² Id.

much at stake in the immigration policy debate regarding farmworkers, including the civil, democratic, labor and human rights of the people who labor on our farms and ranches. The lessons we have learned from our service to farmworkers and our policy analysis compel the conclusion that farmworkers deserve to be full members of the country that they feed, including the opportunity to become citizens. In addition, any agricultural guestworker program must contain robust protections, oversight and enforcement because the restricted non-immigrant status of guestworkers inherently causes them to be vulnerable and limited in their ability to challenge unfair or illegal employment practices.

Many agricultural employers agree with farmworker organizations on the need for Congress to pass legislation that provides a path to lawful permanent residency and citizenship for current undocumented farmworkers and family members. They recognize the devastating consequences of losing their experienced workforce and the harms that living in fear of deportation imposes on farmworkers and their family members. We commend Chairwoman Lofgren and Senator Feinstein for their leadership in introducing the Agricultural Worker Program Act. It would provide a realistic and practical path forward for our farm labor force to earn lawful immigration status. We should respect the valuable role of farmworkers in our agriculture and food system and ensure that they enjoy the democratic and economic freedoms of this nation.

I. Farmworkers and Our Nation's Immigration System

Approximately 2.4 million farmworkers labor on our nation's farms and ranches, cultivating and harvesting crops, and raising and tending to livestock.³ The Department of Labor's National Agricultural Worker Survey ("NAWS") estimates that approximately 49% of farmworkers lack work authorization,⁴ with some sources estimating that as much as 70% or more of the workforce is undocumented.⁵ Given these estimates, there are at least 1.2 million undocumented farmworkers, many of whom are accompanied by a family member, including many U.S. citizen children. According to the NAWS, at least 75% of undocumented farmworkers have been living in the United States for 10 years or more.⁶ These hard-working individuals are vital members of the rural communities that they help to feed and support through their work, their spending and their other contributions.

The failure to fix the immigration system and the current focus on indiscriminate immigration enforcement has resulted in serious negative effects on farmworkers and their families. Undocumented workers' fear of deportation and job loss deprives them of bargaining power with their employers and inhibits them from challenging illegal employment practices. The

³ Philip Martin, "California Ag Employment: 2014" (lecture slides, University of California at Davis) <http://migrationfiles.ucdavis.edu/uploads/cf/files/2014/04/22/martin-california-ag-employment-2014.pdf>.

⁴ "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

⁵ Alfonso Serrano, "Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws," *Time*, September 21, 2012, <http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/>.

⁶ "Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf.

undocumented status of the majority of farmworkers is widely recognized as a major contributing factor to the low wages, poor conditions and extensive illegal practices in agriculture.⁷

Unscrupulous employers take advantage of their undocumented workers in many ways, including by paying them less than the required wage, harming not only the workers, but also law-abiding employers, who are placed at a competitive disadvantage. The vulnerability of undocumented workers depresses wages and working conditions for all farmworkers, including the roughly 750,000 to 1.2 million United States citizens and lawful immigrants currently working in agriculture. U.S. farmworkers recognize that they can easily be fired and replaced by more exploitable workers if they speak up for their rights. An analysis of DOL's enforcement statistics shows that violations of the labor laws protecting farmworkers were found in a majority of the agency's investigations across the country, with an average rate of non-compliance of about 70% in all investigations in agriculture.⁸

Undocumented farmworkers are also fearful of participating fully in their communities, meaning they may only seek medical assistance when urgently needed, be reluctant to join community events and school activities, and otherwise limit their interaction with local businesses and opportunities. This impacts not only those without immigration status, but also their U.S. citizen children and fellow community members. A vibrant rural community can only be sustained by the participation of all community members.

II. Farmworkers and our Nation's Discriminatory Labor Protections

Farmworkers are excluded from many of the basic labor protections that cover other workers. For example, farmworkers are excluded from the National Labor Relations Act. This exclusion means that unless a state extends protections to farmworkers, farmworkers can be fired for the simple act of organizing to advocate for better wages or stronger workplace protections. California is the only state with a labor relations law that protects the right to organize and creates a structure to implement collective bargaining. .

Farmworkers are also excluded from many of the protections provided by the Fair Labor Standards Act (FLSA), exclusions that are rooted in racism and political expediency that have persisted to this day. Despite the physically challenging work and long hours many farmworkers endure, they are not covered by the FLSA overtime protection. California is the only state that has passed legislation to provide farmworkers with the same right to overtime pay as other workers, with the recently passed law currently being phased in. On certain small farms, farmworkers are not even provided the protections of a federal minimum wage.

⁷ Irma Morales Waugh, "Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women." *Violence Against Women* 16, no. 3 (2010): 237 – 261; available at:

<http://journals.sagepub.com/doi/abs/10.1177/1077801209360857?legid=spvaw%3B16%2F3%2F237&patientinform-links=yes&>; "Human Rights Alert: New Mexico's Invisible and Downtrodden Workers." New Mexico Center on Law and Poverty, <http://nmpoertylaw.org/wp-content/uploads/2015/04/Report-FINAL-2013-07-23.pdf>; "Report of Wage Survey of Willamette Valley Farmworkers Engaged in Piece-Rate Harvest of Selected Agricultural Products during 2009," Northwest Tree Planters and Farmworkers United (PCUN), 2009, available upon request.

⁸ "U.S. Department of Labor Enforcement in Agriculture: More Must Be Done to Protect Farmworkers Despite Recent Improvements," Farmworker Justice, accessed March 26, 2019,

<https://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeDOLenforcementReport2015%20%281%29.pdf>

In addition, the child labor protections of the FLSA offer less protection to agricultural workers than to all other workers. Under the law, for tasks designated by DOL as “hazardous,” there is a minimum age of 18 for all industries except agriculture, which has a minimum age of 16 for such tasks, even though agriculture is one of the most dangerous occupations, with routine exposure to dangerous pesticides, arduous labor and extreme heat. In other ways, the child-labor protections in agriculture are lower than in other industries. For example, for most jobs the normal minimum age is 16 (with few exceptions), but in agriculture it is 14 (with many exceptions).⁹ Moreover, there are fewer restrictions in agriculture on the number of hours that children are permitted to work. There are no restrictions on agricultural work being done by children as young as 12 years old early in the morning or late into the night.¹⁰ Nor does the FLSA contain any restrictions on the number of hours worked per day or per week by young farmworkers (except that no work can be done during school hours). The law’s protections against the hazards of students working in shopping malls are stronger than the protections against children working in agriculture, where toxic pesticides and other hazards threaten their future.

Female farmworkers, who represent approximately 32% of the farm labor force, face unique challenges in terms of sexual harassment and discrimination and unsanitary and unsafe workplace conditions.¹¹ Sexual assault and harassment in the fields is rampant, with one California study finding that 80% of Mexican farmworker women surveyed had experienced sexual harassment.¹²

The OSHA safety standards also discriminate against farmworkers, with the majority of OSHA’s standard not applying to farmworkers. Among the many OSHA standards that exempt agriculture are protections against electrocution and unguarded machinery, requirements for ladder safety, and whistle-blower protections.¹³ One of the greatest hazards for the health of both farmworkers and their families is exposure to pesticides. Farmworkers have one of the highest rates of chemical exposures among U.S. workers. However, OSHA’s rules regarding hazardous workplace chemicals exclude the regulation of pesticides. Even though OSHA is the government agency tasked with ensuring safe working conditions for most workers, the authority to regulate pesticides is under the U.S. Environmental Protection Agency (EPA).

At the same time, only 12 states as well as the District of Columbia, the Virgin Islands and Puerto Rico require full workers’ compensation coverage for agricultural workers. In all other states, coverage is either optional or limited. Workers’ compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. In addition to the benefits to the worker or their family, the goals of workers’ compensation are to return workers to the job, help mitigate hazards and assist with injury surveillance.

⁹ Compare 29 USC § 213(c)(1)(C) with 29 USC § 203(l).

¹⁰ Id. § 213(c)(1)(A).

¹¹ Human Rights Watch, “Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment (2012), accessed April 2, 2019, available at <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>.

¹² Irma Morales Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” 16 *Violence Against Women* 237, 241, 2010; see also *The Atlantic*, “There’s a Sexual-Harassment Epidemic on America’s Farms,” Ariel Ramchandani, JAN 29, 2018, available at <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/>.

¹³ See 29 C.F.R. 1928.21 (noting general exemption of OSHA standards for agriculture and pointing to few standards which are applicable in agriculture).

Such discriminatory laws and the resultant poor working conditions serve to keep many farmworkers in a cycle of poverty. Farmworkers' incomes are very low. Poverty among farmworkers is more than double that of the U.S. population¹⁴ and their mean and median income in 2015-2016 was in the range of \$17,500 to \$19,999.¹⁵ One-third of farmworkers had family incomes below poverty (33%). Many workers earn little more than the minimum wage. On top of their low wages, few farmworkers receive any fringe benefits, such as paid sick leave or health insurance. Substandard housing is all too common due to overcrowding, poor sanitation, poor housing quality, proximity to pesticides, and lax inspection and enforcement of housing regulations.

All of these factors result in high employee turnover in agriculture. Such instability in the workforce reduces productivity for businesses and harms the ability of farmworkers to improve working conditions, support their families and contribute to their communities.

III. The H-2A Agricultural Guestworker Program

A major development over the past decade has been the substantial increase in employers' use of the H-2A agricultural guestworker program. The H-2A program offers an unlimited number of temporary work visas to agricultural employers to bring in foreign workers to perform temporary or seasonal agricultural work. Agricultural employers must demonstrate they have tried and are unable to find U.S. workers to meet their labor needs and that bringing in guestworkers will not adversely impact the wages and working conditions of U.S. farmworkers. The H-2A program is limited to temporary or seasonal jobs based on the claimed difficulty of attracting U.S. workers to jobs that last less than one year and therefore yield less annual income than year-round jobs.

Since its inception, Farmworker Justice has monitored the H-2A program throughout the country and analyzed proposals for policy changes. Specifically, with respect to the H-2A temporary foreign agricultural worker program, Farmworker Justice seeks to ensure that 1) the operation of the H-2A program serves the statutory purpose of ensuring that U.S. workers are not displaced and do not suffer adverse effects in their wages or working conditions due to the hiring of temporary foreign workers under the H-2A program; and 2) the H-2A program provides basic labor protections for both H-2A workers and U.S. workers in corresponding employment, and that those labor protections are enforced for both U.S. and foreign workers.

The H-2A program has almost tripled in size during the last decade: from about 82,000 positions certified in FY 2008 to over 240,000 positions certified in FY 2018. The vast majority of applications— 96% in FY 2018—are approved; timeliness for that approval was 92%. From FY 2017 to FY 2018, several states saw significantly large increases in program usage, including an increase of 38% in Georgia, 34% in Washington, 30% in Michigan, 24% in Arizona and California, and 20% in Florida. This growth is expected to continue. Despite the H-2A program's exponential growth, the Department of Labor (DOL), which is the agency charged with oversight and enforcement of the program, has not seen any increase in its resources to carry out this crucial role.

¹⁴ "What are poverty rates among working adults?" Center for Poverty Research, University of California at Davis, accessed March 6, 2017, <http://poverty.ucdavis.edu/faq/what-are-poverty-rates-among-working-adults>.

¹⁵ Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers," Research report #13, Department of Labor, accessed March 25, 2019, https://www.doleta.gov/news/pages/research/docs/NAWS_Research_Report_13.pdf.

The H-2A program's unprecedented growth is problematic for several reasons. First of all, growth in the H-2A program does nothing to address the need to legalize current undocumented farmworkers and their families. There is no valid justification for using the H-2A program to bring in additional farmworkers on a large scale when there are more than one million productive, experienced farmworkers already here who should be granted a path to citizenship and are currently living in fear.

In addition, the H-2A program for decades has demonstrated that it is inherently flawed, resulting in workers vulnerable to abuse and exploitation, as revealed in numerous exposés and the Farmworker Justice report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*.¹⁶ The H-2A program includes modest protections that are intended to ensure that the jobs, wages and working conditions of the domestic workforce are protected and that temporary foreign workers are not exploited. Unfortunately, these protections, while important, are inadequate to protect U.S. and foreign workers from abuse. The H-2A program's structural flaws create a system in which guestworkers are vulnerable to abuse and many employers prefer guestworkers over U.S. workers.

One fundamental flaw in the H-2A program is the worker's tie to a single employer – H-2A workers can only work for the employer that obtained their visa. The workers do not have a right to seek a job at another employer if they are dissatisfied with or mistreated by that employer. If the worker leaves the job, or is fired, the worker must return to his home country. In addition, it is the employer who decides whether the worker will be offered the opportunity to obtain a visa in the next year. Under these constraints, most guestworkers are extremely reluctant to complain about their treatment on the job and are very vulnerable to exploitation. In addition, the employers can extract very high levels of productivity from these vulnerable guestworkers without paying them higher wages or offering special incentives. Often employers prefer guestworkers over U.S. workers because of their dependence on their employer for their ability to work and remain in the United States and the fact that they are unable to seek out better wages or working conditions.

Further compounding this vulnerability, many guestworkers arrive deeply in debt, having paid significant recruiters' fees for the opportunity to work in the United States, often under very misleading descriptions. Depending on their country of origin, workers pay anywhere from hundreds of dollars to thousands of dollars in recruitment fees. In addition, workers are sometimes required to leave collateral, such as a property deed, with recruiters to ensure that workers will complete their contract. False promises of potential earnings, misleading or undisclosed contract terms, excessive recruitment fees and increasingly, the involvement of organized crime found in countries of origin often lead to cases of debt bondage and human trafficking in the United States. The anti-trafficking organization Polaris recently released a report covering human trafficking in temporary work visa programs during the period 2015-2017, which showed that the category with the most reported trafficking cases—over 300—was the H-2A program.¹⁷

¹⁶ "No Way to Treat a Guest," Farmworker Justice, accessed March 6, 2017, <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>.

¹⁷ Polaris, "Human Trafficking on Temporary Work Visas – A Data Analysis 2015-2017, last accessed April 2, 2019, [https://polarisproject.org/sites/default/files/Human Trafficking on Temporary Work Visas A Data Analysis 2015-2017.pdf](https://polarisproject.org/sites/default/files/Human%20Trafficking%20on%20Temporary%20Work%20Visas%20A%20Data%20Analysis%202015-2017.pdf).

Upon arrival in the U.S., these indebted workers are too fearful of losing their jobs and being deported to challenge unfair or illegal conduct. Although the H-2A regulations prohibit recruitment fees, workers have little incentive to come forward to report violations as they will likely lose their chance of obtaining a visa if they do so, limiting any ability to repay the debt they have accrued. In these circumstances, U.S. workers are often viewed as insufficiently compliant and undesirable. Responsible, law-abiding employers should not suffer unfair competition from businesses that benefit from abusive international labor recruiting.

Another incentive to hire H-2A workers is that while recruiting in foreign countries, employers can and do select workers based on ethnicity, age, gender, and race, which is far more difficult to do inside the United States. Discrimination based on national origin, race, age, disability and gender is “deeply entrenched” in the H-2 guestworker system.¹⁸ Almost uniformly, H-2A workers are single young men who are not accompanied by their families. Women, who once worked side-by-side with male counterparts, are largely absent from the H-2A workforce, even though they make up about a third of the national farmworker population. In addition to not having any daily family responsibilities to distract them from performing their H-2A jobs, H-2A workers have no ties to the local community outside of work and return at the end of the day to a barracks or trailer shared by other male workers, often in isolated locations and without access to transportation. *As one grower stated, “[H-2A workers] are here with one thing on their mind -- to work. They don't have vehicles. It's perfect.”*¹⁹

The vulnerability of H-2A workers makes them attractive to many agricultural employers in comparison to immigrants and U.S. citizens, but H-2A employers also have financial incentives to hire foreign guestworkers rather than U.S. workers. Once in the H-2A program, employers often prefer foreign workers for the substantial tax benefits. Under the H-2A program, employers do not pay Social Security (FICA) or unemployment (FUTA) taxes on their H-2A employees' wages. This means that an H-2A employer saves more than 10% in taxes by hiring a foreign worker instead of a legal U.S. resident.²⁰

The H-2A workers' restricted, “non-immigrant” status not only deprives them of economic bargaining power but also prevents them from acquiring political power. No matter how many years an H-2A worker returns for agricultural work, he is not entitled to earn immigration status. Guestworkers never obtain the right to remain in the U.S., become citizens, or exercise the right to vote. The political powerlessness of the temporary foreign workers in comparison to their employers contributes to worker vulnerability and an inability to persuade government officials to protect them from abuse. Government officials represent the interests of citizens, not guestworkers. Thus far, few H-2A workers have been able to join unions. The H-2A program's restrictions are not consistent with our nation's commitment to economic and political freedom. Ours is a nation of immigrants, not a nation of guestworkers.

At the same time, these and other incentives in the H-2A program have led to tremendous obstacles for U.S. workers who seek jobs at H-2A employers. While roughly half of the agricultural workforce is undocumented and in need of an earned legalization program, another half of the

¹⁸ Southern Poverty Law Center, “Close to Slavery,” (2007), p. 34.

¹⁹ *The Atlanta Journal Constitution*, “Debate Over Illegals Roils Onion Country,” Apr. 6, 2006.

²⁰ See Stephen Wagner, “Contract Vineyard Labor Issues,” June 15, 2018, Wine and Craft Beverage News, available at <https://wineandcraftbeveragenews.com/contract-vineyard-labor-issues/>.

workforce are immigrants and citizens who seek employment in agriculture. Unfortunately, employers routinely turn away U.S. workers, discourage them from applying for H-2A jobs, or subject them to such unfair and illegal working conditions and production standards that workers either vote with their feet or are fired.²¹

Even where workers find the courage to come forward regarding their treatment, they face many obstacles pursuing justice. H-2A workers are excluded from the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), one of the primary laws protecting farmworkers. AWPA gives U.S. workers protection against abusive labor contractors, unsafe transportation, assurances that their employers' promises are enforceable, and the right to file a lawsuit in federal court to enforce these rights. AWPA's exclusion of H-2A workers deprives them of these substantive protections and denies them the ability to go to federal court to enforce the promises made to them. Another barrier to H-2A guestworkers seeking redress for illegal actions and worker abuses is their difficulty, and often inability, to obtain visas to return to the United States to testify at their trials or to provide deposition testimony.

Despite their shortcomings, the current H-2A program protections are integral to the protection of U.S. workers—both to safeguard their access to jobs and to ensure there are no adverse effects on their wages and working conditions. The program protections are also needed to help protect vulnerable H-2A workers from exploitation. These protections must be maintained and strengthened, and greater resources must be afforded to DOL to ensure adequate oversight for the application process and enforcement. These protections include:

- Minimum wage protections. Under the H-2A program, employers must pay the higher of the state or federal minimum wage rate, the local prevailing wage, the agreed-upon collective bargaining wage rate, or the adverse effect wage rate (the average wage of nonsupervisory field and livestock workers as determined by a USDA survey). Wage protections are necessary for several reasons. First, without them U.S. workers would be competing against job applicants who would be willing to work for much lower wages than U.S. workers due to the lower costs of living and lower earnings in their home countries. Second, because H-2A workers are tied to their employers by their visas, they lack economic freedom to switch employers and are unable to bargain for higher wages. Third, under the H-2A program, the employer need not offer more than the minimum wage required by the H-2A program even when there are U.S. workers available to accept the job if the wage rates were higher. A worker who asks for a higher wage rate can be deemed to be “unavailable for work” and the available job can be filled with a guest worker at the minimum required wage. For these reasons, it is necessary to require H-2A employers to offer and pay a market-based wage.
- Job preference for U.S. workers. The longstanding “50% rule” is the principal mechanism to give U.S. workers a meaningful opportunity to obtain jobs with employers who claim they need guestworkers to fill labor shortages. The 50% rule requires employers to hire qualified U.S. workers who apply for work until the first half of the season has elapsed. Due to hiring patterns and the nature of agricultural production, which often involves varying start times and a gradual development leading up to the peak season, it makes perfect sense to ensure that qualified job applicants are hired even after the first “official” day of work.

²¹ See Jessica Garrison, Ken Bensinger, Jeremy Singer-Vine, BuzzFeed News, “All You Americans Are Fired,” Dec. 1, 2015, available at <https://www.buzzfeednews.com/article/jessicagarrison/all-you-americans-are-fired>.

- **Minimum work guarantee.** The “three-fourths guarantee” requires the employer to identify the planned contract period and then provide working hours for at least ¾ of that period, or pay wages for any shortfall. This protection discourages employers from recruiting an over-supply of workers and provides some reasonable minimum earnings assurances for foreign and domestic migrant workers who spend the time and resources to travel long distances to accept employment.
- **Prohibition against workers paying for jobs.** The H-2A program rules prohibit employers or their recruiters from requiring workers to pay recruitment fees to obtain employment. Frequently, H-2A guestworkers pay for the opportunity to be hired and enter the U.S. in debt and desperate to retain their jobs under any circumstances.
- **Housing:** Employers must provide housing that meets safety standards at no cost to the worker. Long-distance migrant workers, especially those from other nations, have little ability to arrange for housing, ensure that housing is safe, or to afford the cost of housing in the U.S.
- **Transportation:** Workers who complete one-half the season are entitled to reimbursement of their in-bound travel costs; workers who complete the season are entitled to their outbound costs. Transportation expenses are a large burden for low-paid farmworkers working for a few weeks or months. This payment also helps ensure that workers can afford to return home.
- **Workers’ Compensation:** Employers soliciting H-2A workers must provide workers’ compensation insurance for occupational injuries (but not health insurance coverage).

IV. The Path Forward to Fix the Broken Immigration System for Agriculture and Stabilize our Farm Labor Force

a. Path to immigration status for the current, experienced workforce

As history and H-2A experiences demonstrate, the H-2A program should not and cannot be the principal mechanism in our free market economy for hiring farmworkers. We need to stabilize the workforce and keep agriculture productive by allowing the current agricultural workforce who lack immigration status to obtain lawful permanent residency with a path to citizenship. We also must improve wages and working conditions to attract and retain farmworkers, which requires both improvement in employer practices and reforms in employment laws and regulations.

The Agricultural Worker Program Act, introduced by Rep. Lofgren (H.R. 641) and Sen. Feinstein (S. 175) , is a positive and workable solution in Congress that will meet the needs of workers, agricultural employers, and our food system. The Agricultural Worker Program Act would provide a path to lawful permanent residency and citizenship for experienced agricultural workers and their family members. The bill is important for farmworkers because it would take away the constant fear of deportation and allow families to stay together. The bill also includes a future work requirement that addresses employer concerns about workforce stability. Finally, by enabling farmworkers to do their jobs without fear, the bill would help ensure compliance with labor, pesticide and food safety laws, improving the security of our entire food system. The conditions for farmworkers in this country are not what they should be and Congress should address discriminatory immigration, labor, occupational safety, health and other policies that impede farmworkers’ efforts from achieving the American dream for themselves, their families and their communities.

b. The Farmworkers of the Future: Principles for Guestworker Reform

Anticipating that any future compromise may include a guestworker program, we seek to identify fundamental principles to ensure basic fairness and human dignity as well as economic freedom and democratic rights.

The Basic Premise: Businesses that claim to have a labor shortage and seek to hire workers from abroad should be required to recruit effectively inside the United States and offer competitive wages and working conditions. Thus, at a minimum, per longstanding legislative language, a temporary foreign worker program should not “adversely affect” the wages and working conditions or job opportunities of U.S. farmworkers. Employers should not be allowed to create artificial labor shortages by offering below-market job terms that only individuals from poorer countries could accept. Foreign workers should not be subjected to family separation, discrimination, debt peonage, human trafficking, wage theft or other exploitation of their vulnerability. Government policy also should prevent distortion of labor markets that results from high concentrations of guestworkers whose limited bargaining power tends to allow employers to depress wages and other job terms. Domestic and foreign workers must be supported in winning improvements in wages, fringe benefits and working conditions.

Any efforts to address a future worker program must include the following elements to ensure that farmworkers are treated with the dignity and respect they deserve:

A roadmap to citizenship: Any visa worker program should provide participating workers with an opportunity to earn lawful permanent resident immigration status and U.S. citizenship. While some foreign workers may choose to migrate for work only seasonally or for a temporary period, and not apply for permanent status in the United States, *that choice should be theirs*. The requirements to adjust to lawful permanent resident status should be reasonable. Eligible family members—spouse/partner and children—should be able to adjust their status along with the visa holder.

Family Unity: Guestworkers should be permitted to be accompanied by their immediate family members (spouse/partner and minor children). The immigration policy of the United States should support family cohesiveness.

True economic freedom and opportunity- Like any other industry, growers should have to compete in the marketplace to attract and retain workers by paying competitive wages and providing desirable working conditions. Any visa should provide workers with true portability so they can freely bargain for better jobs and leave abusive employers.

Equality of treatment - Temporary farmworkers should have the same labor protections and rights, including access to the courts, that cover other farmworkers. Because temporary foreign workers hold a restricted status that limits their ability to bargain for better labor standards, strong protections are needed to prevent exploitation of foreign workers.

Fairness – Farmworkers need to be paid more not less. Strong protections must preserve U.S. workers’ job opportunities and prevent depression in wage rates and other job terms.

No discrimination – There should be no incentives to discriminate against U.S. workers (including newly legalized workers). The law must ensure it cannot be cheaper or more advantageous to hire temporary workers than U.S. workers.

Prohibit trafficking and recruitment exploitation and discrimination: To prevent recruitment abuses, any program must clearly prohibit fraud and any recruitment fees or costs for visa workers as well as require transparency in any recruitment process, including public identification of all actors in any chain of recruitment.²² Further, the program must have strong enforcement mechanisms to ensure that there is no discrimination on the basis of any protected categories, such as gender or age, during the recruitment for workers.

V. Conclusion

We must move forward to pass immigration reform that empowers farmworkers to improve their inadequate wages and working conditions. For today's and tomorrow's farmworkers, a roadmap to immigration status and citizenship, combined with strong labor protections and economic freedom, are essential to these goals. It is long past the time that our nation's farmworkers were treated with the respect they deserve.

Thank you for your consideration of this statement.

²² "The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse," International Labor Recruitment Working Group, February 2013, available at: <https://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf>.