

Testimony of Iris Figueroa
Director of Economic and Environmental Justice
Farmworker Justice
House Committee on Appropriations
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies

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Chairwoman DeLauro and Members: Thank you for the opportunity to testify about health and safety protections for agricultural workers. My name is Iris Figueroa and I am the Director of Economic and Environmental Justice at Farmworker Justice. Farmworker Justice is a national advocacy organization based in Washington D.C. that collaborates with farmworker-serving organizations throughout the nation to help farmworkers improve their living and working conditions. Since its inception in 1981, Farmworker Justice has played an important role in advocating for occupational safety and health policies for farmworkers.

I am here today to request that the Subcommittee prioritize the health and safety of farmworkers and their family members. We respectfully ask the Subcommittee to provide the necessary resources to respond to the COVID-19 pandemic's disproportionate impact on farmworker communities as well as the high rates of occupational injuries, illnesses and deaths among agricultural workers. The COVID-19 crisis has laid bare what many of us already knew – farmworkers do essential work for our food security, while laboring in one of the most dangerous and lowest-paid jobs in the nation.¹

¹ BUREAU OF LABOR STATISTICS, FATAL OCCUPATIONAL INJURIES BY INDUSTRY AND EVENT OR EXPOSURE, ALL UNITED STATES, 2019 (2020), <https://www.bls.gov/iif/oshwc/cfoi/cftb0331.htm> (Reporting 221 fatal injuries in “crop production,” 189 fatal injuries in “animal production and aquaculture,” and 39 fatal injuries in “support activities for crop production,” and 11 fatal injuries in “support activities for animal production” in 2019); BUREAU OF LABOR STATISTICS, INCIDENCE RATES OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPE, 2019 (2020), https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2019.htm (Reporting 5.3 recordable cases of nonfatal occupation injuries and illnesses per 100 workers in “crop production,” 5.6 recordable cases of nonfatal occupation injuries and illnesses per 100 workers in “animal production and aquaculture,” 5.4 recordable cases of nonfatal occupation injuries and illnesses per 100 workers in “support activities for crop production,” and 3.5 recordable cases of

National data tracking projects,² as well as academic studies focused on local farmworker communities, show that the pandemic has had a devastating impact on farmworkers. One ongoing farmworker study found that agricultural workers lack sufficient resources to weather the challenges of the pandemic.³ The consequences have been dire. A Purdue University project estimates that around 500,000 agricultural workers have contracted COVID-19.⁴ A recent UCSF study found that food and agriculture workers have experienced the highest “excess mortality” during the pandemic, with a 39% increase in mortality compared to past years. Among Latino food and agriculture workers, that mortality increase reached 59%.⁵

Although the data we have, as well as multiple anecdotal accounts from workers themselves, have shown the devastating impact of the pandemic, we are still likely underestimating the pandemic’s full effect on farmworker communities. Few health departments are gathering data on COVID-19 rates by occupation. Furthermore, farmworkers have reported that they are hesitant to be tested or to disclose a positive result because they cannot afford to miss work or lose their jobs. We also are hearing about the need to counteract false information about COVID-19, including about vaccines.

The detrimental impact of COVID-19 among the farmworker community was sadly neither inevitable nor unforeseeable. It is precisely the outcome worker advocates feared and warned

nonfatal occupation injuries and illnesses per 100 workers in in “support activities for animal production.”).

² Leah Douglas, Mapping Covid-19 outbreaks in the food system, FOOD & ENVIRONMENT REPORTING NETWORK (April 22, 2020), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>; Farmworkers Are at Heightened Risk of COVID-19, ENVIRONMENTAL WORKING GROUP, <https://www.ewg.org/interactive-maps/2020-farmworkers-at-heightened-risk-of-covid-19/map/>.

³ Always Essential, Perpetually Disposable: California Farmworkers and the COVID-19 Pandemic, CALIFORNIA INSTITUTE FOR RURAL STUDIES (2020), covid19farmworkerstudy.org (reporting data from quantitative surveys and in-depth interviews with farmworkers).

⁴ Purdue Food and Agriculture Vulnerability Index, PURDUE UNIVERSITY, COLLEGE OF AGRICULTURE (May 20, 2020), <https://ag.purdue.edu/agecon/Pages/FoodandAgVulnerabilityIndex.aspx> (Reporting 496,000 agricultural worker COVID-19 cases as of February 2021).

⁵ YEA-HUNG CHEN ET AL., EXCESS MORTALITY ASSOCIATED WITH THE COVID-19 PANDEMIC AMONG CALIFORNIANS 18-65 YEARS OF AGE, BY OCCUPATIONAL SECTOR AND OCCUPATION (2021), <https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1.full.pdf>.

government agencies about at the outset of the pandemic. It is also important to note that COVID-19 itself is not the sole source of the challenges facing farmworkers; it has, however, highlighted and exacerbated the myriad underlying issues already present.

Before addressing the solutions we seek, I want to speak briefly about the people who literally feed this country. Agricultural work is among the most dangerous, and yet lowest-paid, occupations in the nation. Farmworkers often work long hours, but most have no right to overtime pay. Many live below the federal poverty line.⁶ Despite these hardships, it is often difficult for farmworkers to seek assistance or to advocate for better conditions.

The vast majority of farmworkers are Latino immigrants, many of whom are undocumented or here on precarious temporary work visas.⁷ Most are not native English speakers, and some speak only indigenous languages.⁸ And because they largely live in rural communities, farmworkers may be cut off from needed aid and services, including medical care. While the majority of farmworkers and their families are settled in specific communities, some farmworkers migrate long distances for work, including between different states.

In addition, few farmworkers receive health insurance or sick leave benefits from their employers, and their low wages mean that many do not have regular access to health care.⁹ They also face numerous challenges accessing health care, including lack of transportation and cultural

⁶ U.S. DEP'T OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, RESEARCH REPORT NO. 13, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2015-2016: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS (2018), [HTTPS://WWW.DOL.GOV/SITES/DOLGOV/FILES/ETA/NAWS/PDFS/NAWS_RESEARCH_REPORT_13.PDF](https://www.dol.gov/sites/dolgov/files/eta/naaws/pdfs/naaws_research_report_13.pdf) (Finding that mean family income for farmworkers was between \$20,000 and \$25,000 and 33% of farmworker families are below FPL.)

⁷ NAWS Report (Finding that 69% of hired farmworkers were born in Mexico, 51% of all farmworkers have work authorization, and only 4% of hired crop workers were in their first year in the United States)

⁸ NAWS Report (Finding that 77% of farmworkers report Spanish as their primary language. Only 29% of farmworkers report that they speak English “well.”)

⁹ NAWS Report (Finding that only 47% of farmworkers reported that they had health insurance. Cost is the most common barrier to health care reported by farmworkers.)

and linguistic barriers. Community health centers, the primary health care providers for many farmworker communities, often lack the necessary resources to fully address these challenges.

At the same time, farmworkers face multiple occupational health and safety threats in their daily work, including pesticide exposure, risk of heat stress, and injuries from machinery or livestock. Last summer, farmworkers in California, Oregon, and Washington were repeatedly expected to continue harvesting food as wildfires created extremely hazardous air quality conditions. Many of these occupational health and safety threats can cause or exacerbate chronic health conditions, so that there is not just the risk of farmworkers contracting COVID-19, but of possibly having more severe symptoms of the disease if they do.

Farmworkers often work in close proximity to each other, have limited access to handwashing stations and sanitation supplies, and are transported to farms in shared vehicles. Some farmworkers, including guestworkers under the H-2A program, live in employer-controlled housing. Others, due to their low-wages and a lack of affordable housing, live in crowded and substandard housing. All of these factors increase workers' risk of contracting COVID-19. And unlike for many other workers, teleworking is not an option.

Thus, for farmworkers to remain safe, adequate workplace protections must be put in place. There are several solutions that this Subcommittee can help advance, including support for federal agencies' policymaking; enforcement of safety standards; outreach to farmworker families with information and other assistance; funding for community-based organizations that are addressing the pandemic; research regarding farmworkers and their health and safety; and oversight to ensure funds are used most effectively. Our requests, detailed below, are not limited to addressing COVID-19, because much more needs to be done for farmworker health and safety, although that is the most urgent need due to the pandemic's ongoing deadly consequences.

One of the urgently needed measures we have been calling for is a federal OSHA standard for COVID-19 that includes agricultural workers. We ask this Subcommittee to ensure that OSHA has the needed resources to conduct the research, analysis and drafting of a standard and other policymaking, as well as effective implementation. For many years we have been told by OSHA officials that they lack the resources possessed by other agencies to conduct the data collection and analysis necessary for rulemaking on agricultural worker safety.

Given farmworkers' limited control over their working and living conditions, it is imperative that employers be required to implement protections to keep workers healthy and to prevent COVID-19 outbreaks. Many farmworkers continue to report that their employers do not provide them with adequate information, masks, hand-washing facilities, hygienic supplies, or the opportunity for social distancing during transportation or in the fields.

In the absence of a federal standard, several states have issued state-level COVID-19 standards that include agricultural employers.¹⁰ But the majority of states have issued either non-binding guidance or nothing at all, leaving a patchwork of protections for workers. Mere guidance, at both the federal and state level, has been insufficient. OSHA must issue a comprehensive and enforceable standard to prevent further damage to the health of farmworkers and their families. Any COVID-19 standard issued by OSHA must cover agricultural workers and must address employer-provided housing and transportation in order to be effective.

¹⁰ E.g. COVID-19 Prevention, §3205 (2020), <https://www.dir.ca.gov/title8/3205.html> (California's Emergency Temporary Standards, adopted by the California Department of Industrial Relations); Temporary Rule Addressing COVID-19 Workplace Risks, 437-001-0744 (2020), <https://osha.oregon.gov/OSHArules/div1/437-001-0744.pdf> (Oregon's rule establishing mandatory guidance for workplaces adopted by the Oregon Occupational Safety and Health Division); General Coronavirus Prevention Under Stay Safe – Stay Healthy Order (December 22, 2020), <https://lni.wa.gov/dA/36e85758be/DD170.pdf> (Washington's directive for enforcing workplace safety requirements adopted by the Department of Labor and Industries); Emergency Temporary Standard Infectious Disease Prevention, §16VAC25-220 (July 15, 2020), <https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf> (Virginia's emergency temporary standard adopted by the Safety and Health Codes Board).

At a minimum, the federal OSHA standard should include:

- sanitation and distancing protocols in workplaces, employer-provided housing, and employer-provided transportation;
- information dissemination and training about COVID-19 prevention and workplace rights in languages and formats accessible to workers;
- provision of PPE, at no cost to workers;
- COVID testing, at no cost to workers;
- availability of quarantine facilities and provision of supplies (i.e. meals and sanitation supplies) for workers in employer-provided housing; and
- protections against retaliation for workers who report violations.

The standard should also include H-2A visa workers. The H-2A program is a guestworker program where foreign workers come to the U.S. to do seasonal agricultural work. Last year, there were more than 250,000 positions certified under the program.¹¹ The program has no limit on the number of guestworkers that may be brought in annually. H-2A workers face an especially high risk of contracting COVID-19 due to the required travel to get to the U.S., shared housing, and the general lack of worker protections within the program.¹²

But a federal OSHA standard, although important, is not by itself sufficient to address the full impact of the COVID-19 pandemic on farmworkers, much less the underlying conditions that put workers in such a vulnerable position in the first place. Funding is needed for additional

¹¹ U.S. DEP'T OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FOREIGN LABOR CERTIFICATION, H-2A TEMPORARY AGRICULTURAL PROGRAM – SELECTED STATISTICS, FISCAL YEAR FY 2020 (2021), [HTTPS://WWW.DOL.GOV/SITES/DOLGOV/FILES/ETA/OFLC/PDFS/H-2A_SELECTED_STATISTICS_FY2020.PDF](https://www.dol.gov/sites/dolgov/files/ETA/OFLC/PDFS/H-2A_SELECTED_STATISTICS_FY2020.PDF) (Reporting that 275,430 H-2A positions were certified in FY 2020).

¹² Farmworker Justice, No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers (2011), <http://www.farmworkerjustice.org/wp-content/uploads/2012/05/7.2.a.6-No-Way-To-Treat-A-Guest-H-2A-Report.pdf>; Centro de los Derechos del Migrante, Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program (2020), <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

policies as well as for implementation and enforcement of current and future protections. Other priorities we urge you to adopt are described below.

Additional measures to address the COVID-19 crisis in farmworker communities:

- Funding designated specifically for COVID-19 agricultural worker protections: We have been advocating strongly since the beginning of the pandemic with various government agencies, including USDA, to make sure that there is designated funding to specifically address worker protections at agricultural worksites. As described above, farmworkers have been facing disproportionate health and safety impacts, in addition to economic losses.
- Ensuring COVID-19 testing and treatment are widely available in rural communities: COVID-19 testing and treatment must be made available to all farmworkers, regardless of their immigration or health insurance status or their geographic location. HHS should work with rural health departments, community and migrant health centers, hospitals, and farmworker organizations to fund and otherwise support testing and ensure that farmworkers in rural areas have access to treatment, regardless of insurance status. Among the efforts needed are mobile health units, improved broadband access for telehealth, and outreach that is linguistically, culturally and educationally appropriate.
- Prioritizing farmworkers for vaccine allocation and distribution: As designated essential workers, the CDC has recommended that farmworkers be prioritized for vaccine allocation, but the implementation of that prioritization requires more resources. A vaccine allocation and distribution strategy should be comprehensive and innovative and developed in partnership with community members and advocates to ensure that farmworker community access is maximized. It must address the social determinants of health of farmworker communities, ensure the provision of information in low literacy and multi-lingual formats,

and engage community members (including community-based organizations, faith-based organizations, and agricultural employers) as partners.

- Robust collection of data regarding farmworkers: There should be more research and data collection done on the impact of COVID-19 on farmworkers, including testing and vaccination rates, assessment of variants in farmworker communities, and collection of case data by occupation and industry. We should not have to rely solely on media or academic institutions to gather basic public health data.
- Funding to address long-term impacts of COVID-19 and prepare for future pandemics: Improvements need to be made to paid sick and family leave policies, including ensuring that farmworkers are included in these benefits and that all workers are covered, regardless of employer size. There should also be funding for treatment for those who suffer long-term symptoms from COVID-19. Finally, there should be long-term planning to ensure that the U.S. is ready if/when the next global health crisis hits.

Long-term measures to strengthen worker protections:

- Funding for OSHA inspections and enforcement: The number of OSHA inspectors has been steadily decreasing in the past few years.¹³ OSHA needs to take a proactive and committed role in worker safety and must not wait for worker complaints before carrying out inspections. Employers must know that they face a risk of sanctions if they violate safety standards, and that requires an increase in the number and effectiveness of inspections. This also requires funding for the DOL’s Solicitor’s Office, so that if violations are found during inspections, they are litigated in an effective and timely manner that ensures relief ultimately

¹³ National Employment Law Project, Worker Safety in Crisis: The Cost of a Weakened OSHA (2020), <https://s27147.pcdn.co/wp-content/uploads/Worker-Safety-Crisis-Cost-Weakened-OSHA.pdf> (Finding that OSHA “now has the lowest number of on-board inspectors in the last 45 years.”)

reaches the workers and conditions are remedied. Workers will not continue to come forward if the agency takes years to investigate and resolve cases.

- OSHA should be accessible to workers: Many farmworkers are unfamiliar with OSHA's mandate or how they can utilize the agency's resources. Any information provided by OSHA must be accessible to workers in a language and format that they understand, and financial resources must be directed at this outreach. OSHA should also increase its collaboration with, and funding for, community organizations serving farmworkers. There are many organizations who are already trusted partners on the ground for farmworker communities. OSHA should take advantage of their existing expertise to make sure that their outreach translates into effective contact with the farmworker community.
- Clear and forceful commitment against retaliation: We cannot underscore enough what a strong deterrent the prospect of retaliation is for farmworkers, whether in the form of job loss, immigration enforcement, or both. It has a strong chilling effect on workers' ability to speak up. Many workers tolerate unsafe and unhealthy conditions because they are afraid of what the repercussions may be for coming forward. They need to know that DOL and each of its agencies, including OSHA, the Wage and Hour Division, and the Office of the Solicitor, will stand with them and will not tolerate any efforts to silence workers who come forward. When workers are silenced, this deters other workers from seeking assistance. If workers feel that the agency does not stand with them, they will not trust it.
- Removal of appropriations rider limiting inspections and enforcement on small farms: A longstanding legacy rider in this Subcommittee's appropriations bill prohibits OSHA from inspecting or enforcing protections for workers if they are employed at a farming operation with 10 or fewer employees. This includes prohibitions against investigating a worker

fatality, as well as a safety or whistleblower complaint. This lack of inspection is detrimental to workers and limits the agency's capacity to even understand the full scope of the problems that may need to be addressed. All farmworkers deserve to be protected, regardless of the size of their employer.

- Federal OSHA heat stress standard that includes agricultural workers: We, along with our partners, have been advocating for many years for a federal OSHA standard to protect workers from heat stress. The standard should establish basic protections such as provision of water and shade, rest breaks, training on heat stress symptoms and an employer emergency response plan. Although farmworkers are not the only workers at risk of heat stress, it is a significant threat for them due to the nature of their work.

The ongoing COVID-19 crisis has had far-reaching and detrimental impacts on many aspects of our daily lives. Essential workers, including farmworkers, have borne the brunt of these impacts. However, this terrible moment should also serve as a call to action to remedy the longstanding and fundamentally unfair exclusions of agricultural workers from basic workplace protections. Farmworkers are proud of their hard work and their role in feeding this nation and the world. They should not have to choose between doing their job or losing their health, or worse, their lives. It is not hyperbole to state that the need for worker protections is a matter of life or death. We look forward to continuing to collaborate with the Subcommittee to ensure a food system that treats farmworkers with dignity and respect. Thank you.