Weeding out abuses

Recommendations for a law-abiding farm labor system

A report by Farmworker Justice and Oxfam America

FARMWORKER JUSTICE

Oxfam America

Executive summary

Every day, farmworkers awake at the crack of dawn and head out to the fields to harvest the fruits and vegetables that feed our nation. It's a grueling, backbreaking, seasonal job, one of the most dangerous occupations in the country, and it exacts a heavy toll on the health of farmworkers and their families. For this, farmworkers receive low wages, rarely receive benefits, in many states are denied workers' compensation when injured on the job, and—as this report will show—are all too often taken advantage of by employers.

Increasingly, growers are using farm labor contractors, or crew leaders, to recruit, transport, and supervise workers. If a crew leader underreports a worker's hours, undercounts the number of boxes packed, or sexually harasses a farmworker, many growers feign ignorance and deny responsibility.

To exacerbate these abuses, attorneys for farmworkers are scarce, and federally funded legal aid programs are not permitted to represent undocumented workers (more than half the US farm labor force). Even when lawyers are available, they must confront the reality that farmworkers are excluded from major labor-law protections.

The poor conditions for farmworkers in this country exist, in part, because of the fundamental lack of enforcement of basic labor standards. Employers that do not feel threatened by labor law enforcement often take the risk of paying less than the minimum wage to save money. Businesses that wish to comply with the law but compete against such labor law violators feel pressure to violate the law as well or to pay the bare minimum. This spiraling down of labor standards must be thwarted. Strategic, high-profile enforcement efforts can achieve widespread impact on employers and workers.

Congress assigned the US Department of Labor (DOL) responsibility for preventing precisely the abusive system of exploitation that exists in America's farm fields today. According to a 2008 study by the Government Accountability Office, DOL *could* improve the lives of low-wage workers and weed out employer abuses by increasing labor law enforcement;[1] in no industry is this more crucial than American agriculture.

Farmworkers are a unique group of workers. Often lacking legal status, knowledge of their rights, and English language capabilities, they rarely speak out for themselves, as Guillermo Cruz's story on page 10 illustrates. Therefore, it is especially important that DOL fulfill its responsibility to empower these workers to protect themselves and to enforce labor laws on their behalf.

This report provides an overarching view of the many abuses farmworkers face every day and summarizes the employment laws governing farmworkers and the lack of enforcement of those laws. Because the human faces behind these abuses often are lost in the statistics of violations, the report includes personal stories of the men and women who pick our fruits and vegetables and have experienced some of the abuses. These accounts are not just anecdotes but are representative of a larger problem, as the report documents.

Fortunately, the situation is not hopeless. DOL can help to end rampant violations of the limited labor law protections that farmworkers currently retain by adopting the following recommendations. DOL should:

- Ensure that its investigators and attorneys offer farmworkers the opportunity to come forward confidentially and anonymously to file complaints. In addition, reduce farmworkers' risk of discipline and/or discharge for challenging illegal employer conduct.
- Focus special attention on the many agricultural employers who violate the employment laws with respect to undocumented workers.
- Exercise its jurisdiction over the recruitment process in Mexico and other countries under the H-2A and H-2B guestworker programs, where serious abuses are occurring.
- Attack abuses associated with growers' use of farm labor contractors.
- Work with farmworkers and their representatives to use the "hot-goods" injunction to bring a prompt and effective remedy for wage violations.
- Improve compliance with labor laws by increased communication and cooperation with farmworkers and organizations in farmworker communities.
- Seek remedies for workers and fines on employers in amounts large enough to deter employers from violating the law.
- Reinvigorate its National Farm Labor Coordinated Enforcement Committee.

Leniency in an industry rife with abuse

The life of a farmworker is difficult. Not only is the work physical and in many cases dangerous, but farmworkers, a marginalized population without a voice, are often abused and exploited in the agriculture system. As Arturo Rodriguez, president of the United Farm Workers, stated, "The failure to enforce labor laws in the fields has devastating effects on farmworkers and their families, from non-payment of wages, to exposure to toxic pesticides, to dying in the fields for lack of drinking water. This lawlessness must end."

The system can be reformed in several ways to improve the lives of farmworkers. Although this report documents many of the hardships that farmworkers face, the focus of the report is on labor law violations and the importance of enforcement by the Department of Labor (DOL). While DOL has jurisdiction over only some of the abuses suffered by farmworkers, its actions can help bring about a new atmosphere of compliance with labor laws in agriculture.

Several studies have documented the surge of labor law violations in the US workplace in recent years, particularly for low-wage workers.[2] One study, for example, found that nearly a quarter of low-wage workers were paid less than minimum wage and three-quarters were denied overtime pay.[3] Another, a recent study by the Southern Poverty Law Center, reported that 41 percent of low-income Latinos surveyed in the South had experienced "wage theft."[4] Among low-wage workers, farmworkers are especially vulnerable to these types of abuse.

A 2009 *New York Times* article reported that four of seven sheepherders interviewed had not been paid, despite being on the job for eight months. None of the sheepherders had complained, out of fear of losing their jobs and because they did not know where to address complaints other than to their bosses.[5] DOL did file a lawsuit against a Colorado rancher in 2000 for beating, starving, and exploiting sheepherders for 10 years, but the rancher was only required to pay back wages and a $3,000 fine.[6]

Since 1997, there have been seven cases of slavery prosecutions in Florida, six as a result of investigations by the Coalition of Immokalee Workers.[7] The prosecution of these cases has resulted in the freedom of more than 1,000 people working in the vegetable fields and citrus groves of Florida, Georgia, and the Carolinas under slavery conditions. In the most recent case, the employers were charged with beating tomato pickers, holding them in debt, and chaining and locking them inside U-Haul trucks for punishment over a period of two years.[8]

In April 2009, a federal judge in Denver awarded $7.8 million to five farmworkers who were kept in virtual indentured servitude by their contractors, Moises and Maria Rodriguez.[9] The farmworkers worked at Grant Family Farms, an organic farm that supplies the high-end supermarket chain Whole Foods. The unprecedented judgment came after the contractors were found guilty of deducting smuggling fees, rent, and cleaning charges from the workers' paychecks, leaving them with a mere $2 out of the $7 per hour they earned. The contractors used threats of violence and carried guns on the farm to ensure that the men complied. (See the experience of Francisco Duarte on page 10 for other types of wage violations.)

Preliminary 2008 data from the Bureau of Labor Statistics showed an 11 percent increase in fatalities in the agriculture, forestry, fishing, and hunting industry sectors over 2007. In particular, fatalities to workers in crop production led the increase, rising 18 percent.[10] Take the case of Maria Isabel Vásquez Jiménez, a 17-year-old woman who died in May 2008 of heatstroke as she worked in a vineyard in triple-digit temperatures after the California occupational safety agency issued a heat warning to all employers. She was two months pregnant at the time of her death. An investigation found that the farm's owners failed to provide adequate shade and water to her and other workers.[11]

Such incidents are made more likely by the piece-rate system under which exploited workers are forced to operate. To take breaks for drinking water or other health reasons, workers stop work and thus earn less money. Between July 2004 and July 2008, 15 farmworkers suffered heat-related deaths while working in the fields in California. A National Agriculture Workers Survey in 2002 found that 20 percent of farmworkers reported that their employers did not provide drinking water and cups while at work.[12]

Other types of abuses by employers occur in the system as well. In 2007 a judge found Ag-Mart, a tomato grower, had intentionally violated federal laws that guarantee clean, safe, and licensed housing for 2,000 of its migrant farmworkers in North Florida. According to the judge's finding, Ag-Mart, through its crew leaders, failed to obtain housing permits, crammed workers into rooms that should have been limited to four workers (requiring some workers to sleep on the floor), and had inadequate or no laundry or cooking facilities.[13]

Female farmworkers are particularly vulnerable to discrimination. In 2008, the grape grower Kovacevich 5 Farms agreed to settle a federal lawsuit for refusing to hire women. An Equal Employment Opportunity Commission investigation found that the grower had not hired a single woman between 1998 and 2002, despite hiring 300 seasonal workers per year.[14] Sexual harassment of female farmworkers by male supervisors who have control over their employment is also common, as Teresa's story on page 11 reveals. A 2005 *Ms.* magazine article described these abuses and relayed that many female farmworkers in Salinas, CA, referred to where they worked as the "field of panties" because of the number of rapes that had taken place by supervisors.[15]

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> Arturo Rodriguez, president of the United Farm Workers

An H-2A guestworker leans against an outhouse at a camp for migrant laborers in North Carolina.
Barbara Howe / Farmworker Justice

Pesticide poisoning among agricultural workers as a result of safety violations is rampant as well. According to a report by the Pesticide Action Network, the California Department of Pesticide Regulations staff observed 572 pesticide-related field operations in 20 counties and reported that more than one-third violated one or more safety regulations. Common violations included failure to provide usable protective equipment, failure to offer washing or decontamination facilities, and failure to make pesticide use information available to fieldworkers. Of these violations, the department found that 88 percent were the result of employer negligence.[16] The department found that violations of worker safety contributed to the illnesses in 41 percent of all reported cases of pesticide poisonings (in California overall) from 1997 to 2000.[17]

Although DOL does not have jurisdiction to protect farmworkers against all of these dangers or abuses, it can do more to protect against illegal employment practices. The DOL record of labor law enforcement is very poor. In fiscal year 2002, DOL conducted 38,537 investigations of overall labor violations under the Fair Labor Standards Act (FLSA), with only 229 investigations involving agricultural employers; by fiscal year 2008, these numbers had dropped to 21,375 total FLSA investigations, with a mere 110 investigations in agriculture. Under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA),[18] investigations fell 19 percent from 2002 to 2008, declining from 1,849 investigations to 1,499 (a full 60 percent drop from 3,706 investigations in 1986).[19] During the 2002 to 2008 time period, the percentage of employers found to be violating the law remained a steady 60 percent. A severe shortage of investigators for the number of US farmworkers explains, at least in part, the plummeting number of labor violation investigations. The total time spent

Figure 1. Investigations of overall labor violations under the FLSA and the AWPA, 2002–2008

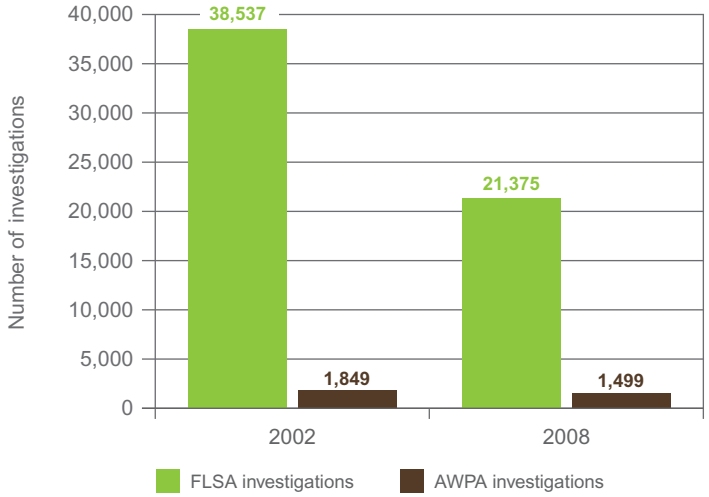
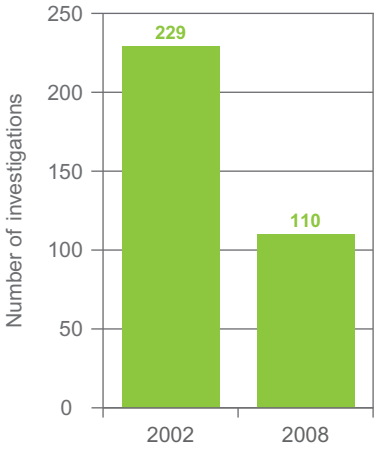


Figure 2. FLSA investigations involving agricultural employers, 2002–2008



by DOL on AWPA investigations, for example, was the equivalent of only about 22 full-time investigators. With an estimated 2.5 million hired farmworkers in the United States, this amounts to one investigator for every 114,000 farmworkers.

DOL also has failed to impose remedies strong enough to spur compliance with the law, although it has the authority to do so. AWPA authorizes DOL to obtain back pay when workers are cheated out of wages. While back pay is, of course, valuable to farmworkers, their wages are so low that many employers are not deterred by the threat of having to make up this amount and willingly take the risk of getting caught. Partly for this reason, AWPA also authorizes DOL to assess a penalty of up to $1,000 for each violation. In addition, under FLSA, DOL may require payment of lost wages and an additional equal amount (called "liquidated damages") and may impose a penalty of up to $1,100 for willful or repeated violations.[20]

Despite the authority of DOL to assess penalties, from 2000 to 2008 the average monetary penalty for a violation of AWPA was only $342, about a third of the maximum penalty that can be imposed. Moreover, historically, violators pay only about 75 percent of fines because of compromises and the failure of DOL to aggressively pursue employers who do not pay.

It's important to note that DOL violations statistics do not reflect the number of workers victimized by those violations. DOL typically assesses only a single penalty to an employer per violation, regardless of the number of workers affected by that violation.[21] During 2008, for example, DOL found a total of 2,500 AWPA violations in 925 of the cases it investigated. While the average employer had 2.7 violations, most farms hire more than just 2 or 3 workers, so those 2,500 violations likely affected the lives of far more than 2,500 workers.

The Government Accountability Office reported in 2008 that DOL is not keeping track of how often it finds repeat or willful violations or whether or not penalties were imposed for such violations. According to the report, "A study commissioned by Wage and Hour Division of DOL showed that when employers are assessed penalties, they are more likely to comply in the future [,] and other employers in the same region—regardless of industry—are also more likely to comply."[22] DOL has been failing to use these and other tools that the law provides to obtain compliance with employment laws.

Employment law for farmworkers

The Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) are the two most important laws enforced by the Department of Labor (DOL) that apply to farmworkers. FLSA establishes a federal minimum wage, although it does not apply to small farms. Also, the FLSA overtime pay requirement does not apply to farmworkers. However, employers must pay workers for all their time at work, including the time they are required to spend sharpening their tools or waiting until the farm owner allows them to enter the field.

The AWPA—enacted by Congress in 1982 after an earlier law failed to prevent many abuses—is the principal federal employment law for farmworkers (who are excluded from the National Labor Relations Act, which protects union organizing and collective bargaining). The AWPA protects farmworkers' pay and working conditions and regulates farm labor contractors. AWPA requires that agricultural employers do the following:

- Disclose wage rates and other job terms to farmworkers and abide by these conditions.
- Keep detailed records of wages and hours worked and provide workers with itemized pay statements.
- Meet local and federal housing safety and health standards if providing housing.
- Insure vehicles and make sure that they meet basic federal safety standards if providing transportation.

Labor contractors also are required to be licensed by DOL.[23] With regard to working conditions, the Occupational Safety and Health Administration Field Sanitation Standard requires most employers to provide portable toilets and hand-washing water in the fields.

Congress recognized that labor contracting can be used to undermine the protections in FLSA and AWPA. As discussed later in this report, many businesses have evaded wage-hour obligations by claiming that they don't "employ" any workers and that a labor contractor is the sole employer and is solely responsible for paying the minimum wage and other obligations. These laws contain a broad definition of who is an "employer"; in most cases both the grower and the labor contractor are "employers" and thus are jointly responsible. The US Supreme Court and lower courts (in some agricultural-worker cases) have recognized the breadth of this definition. A 1997 regulation by DOL contains a helpful explanation of the joint-employer concept.[24]

Unfortunately, many farmworkers are often not in a position to join a union, file a complaint with DOL, bring a lawsuit, or take other action to remedy abuses. Many farmworkers lack legal immigration status and worry about being deported, while others aren't familiar with US labor laws or are afraid to speak up for fear of being blacklisted and denied work.[25] DOL administrators know they should not wait for complaints from farmworkers and should proactively investigate potential wage and hour violations in agriculture, but in recent years they have conducted fewer and fewer wage and hour investigations.[26] To the detriment of farmworkers, little evidence exists that DOL has had much of an impact on promoting compliance with worker-protection laws.

Baldemar Velasquez, president of the Farm Labor Organizing Committee, meets with workers at a camp in North Carolina to discuss their rights. *Steve Liss / Oxfam America*

H-2A guestworker program

The Department of Labor's H-2A agricultural guestworker program allows employers to bring in foreign workers on temporary work visas for seasonal jobs in agriculture. A guestworker can only work for the employer who obtained the visa and must leave the United States when the job ends. The employer—or another employer—must request another visa for the guestworker to return.

> "The system of international contracting labor practices has resulted in farmworkers suffering egregious infringements of human rights."
>
> Baldemar Velasquez, president of the Farm Labor Organizing Committee, AFL-CIO

The vulnerability of temporary foreign workers under the H-2A program has led to decades of illegal employment practices that have been difficult to remedy or stop. On paper, the H-2A program contains protections. Employers must recruit US workers and offer certain minimum wages and benefits to both the US and foreign workers. Housing must be provided at no cost to workers. The costs of long distance travel to the place of employment must be reimbursed after the half-season point, and the costs to travel home must be paid upon completion of the season.

While many US workers know that the promise of such benefits often goes unfulfilled, for economically desperate workers from Mexico and other poor countries, these jobs are good enough that they will borrow money and pay for the privilege to obtain them. According to Roman Ramos, a paralegal with Texas RioGrande Legal Aid who has worked with US workers and H-2A guestworkers for more than 30 years, "Workers in Mexico can expect to pay between 6,000–7,000 pesos [$400–600] to get to the United States on a guestworker visa."[27] That cost includes transportation, accommodations, and fees paid to recruiters and paperwork processors, in addition to the $231 for the visa.[28] The H-2A program prohibits recruiters in other countries from charging workers fees for the guestworker visa, but the practice is not uncommon. In fact, according to Ramos, it's practically inevitable.

Given these financial obstacles, guestworkers often are heavily in debt when they arrive in the United States, which makes them extremely vulnerable to abuse, as in the case of Manuel, described on page 13. Farmworkers who find their employer to be less than honest may be too desperate for the income to challenge unfair conduct or practices, so they stay in a bad situation or in some cases leave to take a job in an undocumented status. Their families back home are depending on them; they often feel they cannot afford to complain. They cannot take the risk.

Workers near the headquarters for the United Farm Workers in Delano, CA, pack a special order of red globe grapes. *Barbara Howe / Farmworker Justice*

For many growers, the benefits of having such a compliant, controllable, and legal workforce are enormous, so they create artificial labor shortages for themselves by not recruiting US workers, offering low wages and poor working conditions to deter US workers from applying for jobs, forcing US workers to quit their jobs, and sometimes even firing them. Such conduct is illegal but widespread. "The system of international contracting labor practices has resulted in farmworkers suffering egregious infringements of human rights," according to Baldemar Velasquez, president of the Farm Labor Organizing Committee, AFL-CIO.

Guillermo Cruz

Farmworkers are reluctant to complain about workplace violations

Guillermo Cruz has worked in US agriculture for 22 years and has harvested all the major food crops in California's Central Valley. "When the grapes are over, there's tangerines. Then there's the chili harvest, all the fruit crops—apples, carrots, cotton, peaches, nectarines. There's a lot of work here but also a lot of abuse."

He said it's common for employers to cut corners and skimp on necessities, such as bathrooms and water out in the fields. "There were many of us who never said anything because we were afraid of losing our jobs. It was just something you had to put up with."

"When we got to the job, there were no boxes [for packing the fruit]. They had to get them from [another town], about an hour and a half, two hours away. The [crew leader] said she would pay us for that time but she didn't. She said to me, 'Guillermo, what do you prefer, to lose the two hours or lose the whole job?' It was $16 for two hours of work. And she didn't pay us. We didn't complain because we feared losing the job, not just the two hours."

"Times are bad here because they take your job away and give it to someone who will work for less, and what happens is the people are afraid that they won't get work. If you complain, you're not going to get work with them because they know you defend your rights."

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Francisco Duarte

Employers sometimes fail to compensate farmworkers for all the hours they work

Francisco Duarte has lived for 40 years in San Luis Rio Colorado, a small city in the state of Sonora, Mexico, on the US-Mexico border. Legally permitted to work in both countries, he often crosses the border to work in Arizona agriculture, mostly picking citrus. He is married and has three children; everyone except the youngest child, who is still in school, works in agriculture. Francisco and his family have work about six months a year, during the citrus season; the rest of the year they are unemployed.

From 2003 to 2006, Francisco and his family worked on various farms with a labor contractor called SAMCO. The conditions were not great and the work "left much to be desired," but they tolerated it.

Francisco's employers shorted him on hours worked, however. "We'd work eight hours, they'd write down we worked five or six," he said. There was also a problem of unpaid waiting time for the workers. Lemons must "sweat" before they are harvested and will bruise if harvested too early in the day. But rather than having workers report to work when the fruit was ready, SAMCO instead forced them to arrive early to a bus parking lot where they would wait, sometimes for hours, until the fruit was ready to pick. "It was a significant chunk of time waiting," Francisco says. After waiting, the workers would board the buses and then travel an hour or more to get to the fields. They were not clocked in until they started picking.

"We'd work eight hours, they'd write down we worked five or six."

Teresa*

Female farmworkers are often subjected to sexual harassment

Besides the usual problems common to all farmworkers, female farmworkers face additional risks. Working in isolated, rural areas creates an environment where sexual harassment can occur all too easily and rarely has consequences for the abuser.[29]

Teresa and her husband were working on a farm in North Carolina, living in a trailer that the farm owner provided for his workers. “One day,” she said, “the labor contractor’s younger son came out when we were cutting sweet potatoes and told us that we were no longer going to work.” He told them to get their things and move out because other workers were coming in. They were to collect their pay that afternoon. When Teresa’s husband asked why they were being dismissed, that they were just doing their jobs, the contractor replied, “The problem, you know, isn’t with you; it’s your wife.”

That’s when Teresa told her husband what had happened with the contractor’s younger son.

“My husband and I always worked together,” she explained. “But one day [the contractor’s son] put me to work alone in another part of the field. [There] he said he really liked me and wanted me to go to Mexico with him.” He offered her money and a cell phone, but Teresa refused. “I said I couldn’t leave, I didn’t want to leave, but he insisted and insisted. This happened three times. I didn’t tell my husband because I didn’t know how he would react.”

Teresa heard an ad on the radio for the North Carolina Justice Center, a nonprofit organization that does legal work for low-income residents, and, through the center, filed a sexual harassment complaint with the Equal Employment Opportunity Commission, but ultimately decided not to pursue the case. She is in the US on a visitor’s visa and is trying to get her immigration status upgraded so she can work legally. She feared that pursuing a sexual harassment case and going to court would negatively affect her application.

“The truth is they don’t pay much attention to what happens out here.”

** She asked to remain anonymous.*

“The truth is they don’t pay much attention to what happens out here.”

Patricia*

Farmworkers are susceptible to being in forced labor situations

> “There was no heat, no hot water, and roaches! My God, all the days of my life I’ve never seen that many roaches and mice. You’d open the door and they’d fall down on you!”

Patricia remembers the exact date that she escaped the most hellish period of her life: October 31, 2008.

That was the night she and another farmworker fled a North Carolina labor camp at 4 o’clock in the morning with little more than a backpack filled with clothes. It was the end of a five-year nightmare of hard manual labor, working for abusive labor contractors who kept their workers isolated and indebted in squalid labor camps in North Carolina and Florida.[30]

Patricia had been recruited in a local soup kitchen. A man offered her a job picking tobacco. She accepted. Any work was good work. The labor contractor, Ronald Evans, had been fined multiple times for labor violations and was known for seeking out vulnerable people from homeless shelters and soup kitchens to work North Carolina and Florida farms, housing them in squalid labor camps, charging them outrageous interest rates for loans and cash advances, and paying them in drugs and alcohol. Patricia was unaware of all this. “I just needed a job. They told us they’d give us room and board for $50 a week. It sounded pretty good, and I fell for it.”

Evans’s labor camps were raided by federal agents in 2005,[31] and he’s now serving a 30-year sentence in a federal prison.[32] “I was there when they raided [the camp],” Patricia said. The story of the “slave camps,” as they were called, made national news headlines and elicited much outrage, but it did not end the practice.[33] Other contractors came by to recruit the workers from Evans’s camp for other farms, where conditions were much the same, and sometimes worse. Patricia was among them; she accepted a job with another contractor.

> “Those years doing that kind of work. I used to be a real strong person. I’m not any more. It just took everything from me. I’ve had a long road to haul, but I’m still here and I’m 57 years old.”

“[The new contractor] had this house. They put up partitions of plywood and divided up the rooms so they could fit more people in. There was one bathroom, and you had to go through someone’s room to get to it, and at night they locked their door so everybody just kept a bucket in their room. There was no heat, no hot water, and roaches! My God, all the days of my life I’ve never seen that many roaches and mice. You’d open the door and they’d fall down on you! And it was so hot! The windows were painted shut. A couple you could open. There were no screens but you had to have some air. You roasted in there.”

When interviewed in June 2009, Patricia was homeless and living in Florida, but she said she was much better off than she had been when she was in the labor camp.

“Those years doing that kind of work. I used to be a real strong person. I’m not any more. It just took everything from me. I’ve had a long road to haul, but I’m still here and I’m 57 years old.”

** She asked to remain anonymous.*

Manuel*

Abuses common in the H-2A guestworker program

There is no average day for Manuel and the other H-2A guestworkers on one tobacco farm in rural North Carolina. “Sometimes we only work one or two hours a day, other times we work up to 11. It depends on the weather and the kind of work we are doing. You sleep whenever you can.”

About 13 workers live in a single-story, three-bedroom, clapboard house with no heat or air-conditioning. One room has six beds. Sheets hung from the ceiling partition the space for more sleeping spaces. The box fans that occupy nearly every window succeed in doing little more than pushing the late afternoon heat around. “It gets worse,” explained one of the workers, “during midday. It’s like an oven in here.” Above each worker’s bed hangs a clothesline loaded with clothes.

There is no bathroom inside the house. Instead, just outside the backdoor is a small concrete block building with three urinals and one toilet, one shower room with three shower heads, a rust-stained bathtub, and an old washing machine. “Back in Mexico,” Manuel commented, “we have bathrooms inside the house. We come to the United States and we have to go outside.”

> “Back in Mexico, we have bathrooms inside the house. We come to the United States and we have to go outside.”

Not long ago the workers were assaulted and robbed, and one was shot in the leg during a break-in. Now an improvised security device (wood pieces on the doorjamb that can be rotated to prevent the door from opening) and a two-by-four jammed against the doorknob help protect the workers.

Most of Manuel’s crew come from Puebla, Mexico. Back home some are farmers, while others work as painters and do general maintenance, but they are all on the North Carolina tobacco farm for one reason: in Puebla, *no hay trabajo*—there is no work. Coming to work in the United States on a guestworker visa is neither easy nor cheap, however. Manuel and the workers in his crew each paid about $626 total to get to the job location.

A look at the breakdown of the expenses of Manuel and the other farmworkers provides a glimpse of how difficult it will be for these workers to pay off their debts. Out of an average paycheck of $280 per week, they must pay $60 for meals they eat at a kitchen Monday through Saturday. (“We pay on Monday for the week, whether we eat the meals or not,” commented one worker.) In addition, they spend about $30 a week on bottled water to take with them to the fields and another $30 per week for general expenses, including phone cards to call home. “I’d say most of us send between $180 and $150 per week back home,” said Manuel.

Is it worth it to work so hard in such poor conditions for so little money? Apparently the alternatives are far worse, a reality that many growers seem all too willing to exploit.

** He asked to remain anonymous.*

Faye Noles

Outsourcing to guestworkers undercuts other farmworkers

In Florida, the citrus season starts in November and goes through June as oranges, tangerines, and grapefruit ripen and get sweet.

Fayeline "Faye" Noles has been working the citrus harvest for 40 years. She supervises mostly immigrant farmworkers—reliable, hard workers who, for the most part, return year after year, arriving in the fall and staying until the season is over. Based on the practices of growers during recent seasons, Faye has become alarmed that the legal immigrant farmworkers on her crew are being shunned by employers that prefer vulnerable guestworkers.

In 2006, Faye, her son James, and her employee John noticed an increase in guestworkers hired under the H-2A program. "They only brought in about 20 that year," said John. "That didn't mess us up too bad. But in 2007 they brought in more. Then 2008. …" He shook his head. That was the year that nearly put Faye and her crew out of business. "Even the storms [the series of five hurricanes that hit Florida in 2004] didn't mess us up as much because there was clean-up work. By the time the trees recovered [which takes at least a couple of years], that's when they started bringing in the guestworkers. We had workers waiting [to go to work] and thought it'd get back to normal, but it didn't."

"To get the guestworkers," Faye explained, "the growers are supposed to prove that they've lost fruit because they couldn't get workers here. We've worked there for 22 years and they never lost fruit for lack of workers. Never. They fired 120 people [US workers] and brought in 90 [guestworkers]."

To Faye, the guestworker program is unnecessary. There are US workers available who are supposed to be given jobs by H-2A employers but are displaced by H-2A guestworkers. The workers who have worked on her crew for years are still here, "They're just not working now," she said. "They're still part of the community. Their kids go to school here, but their parents are now unemployed."

> "The growers are supposed to prove that they've lost fruit because they couldn't get workers here. We've worked there for 22 years and they never lost fruit for lack of workers. Never."

Recommendations for a law-abiding farm labor system

Increase enforcement by the Department of Labor

The Department of Labor (DOL) needs to increase the quantity and improve the quality of its enforcement efforts. The secretary of labor's announcement of the hiring of more wage-hour investigators in 2009 was a welcomed first step. DOL also must be strategic in the use of its limited resources and address systemic problems that affect large numbers of farmworkers.

The huge decline in enforcement activities under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) and the Fair Labor Standards Act (FLSA)—about a 50 percent reduction from 20 years ago—has invited abuses. To give employers the realistic impression that they are likely to be investigated and punished for violations of employment laws, DOL must send the message that violations will be costly. When the law is violated, DOL should fulfill its authority by demanding full back pay, civil monetary penalties, and liquidated damages (an additional amount equivalent to the back pay). In addition, DOL's attorneys must press the cases aggressively when the employers who violate the law file court appeals of DOL's administrative actions.

To improve compliance with employment laws in agriculture, DOL must:

Ensure that its investigators and attorneys offer farmworkers the opportunity to come forward confidentially and anonymously to file complaints. In addition, reduce farmworkers' risk of discipline and/or discharge for challenging illegal employer conduct. The agency should also inform workers that they may file complaints on behalf of groups of workers who, though victimized, do not wish to step forward for fear of retaliation.

Focus special attention on the many agricultural employers who violate the employment laws with respect to undocumented workers. DOL must also make it possible for such workers to report illegal employer conduct without fear of deportation, so that the government can eliminate the economic benefit that employers enjoy from exploiting the vulnerability of undocumented workers. DOL should make use of special visas to protect undocumented workers who suffer illegal employment practices and assist in investigations and prosecutions.

Ivan Alfonso Tapia-Rojas works with his father, Jose Antonio Tapia-Rodriguez, on a cooperative, organic farm in Salinas, CA. Tapia-Rodriguez says that his dream is one day to own a small plot of land with his sons that they will farm together. *Liliana Rodriguez / Oxfam America*

Exercise its jurisdiction over the recruitment process in Mexico and other countries under the H-2A and H-2B guestworker programs, where serious abuses are occurring. DOL has known about corruption and other abuses in the recruitment and transportation system for guestworkers for decades and should finally take effective action.

Attack abuses associated with growers' use of farm labor contractors. DOL must inform the agribusiness community that the joint-employer concept, which is central to the AWPA's regulation of labor contractors, will be used widely in prosecuting labor violations. If DOL started enforcing it, a clear message would be sent to employers: To avoid liability, make sure your labor contractors are complying with the law; better yet, use your own supervisors and employees to manage the labor force. The result will be that many employers will ensure that workers receive the wages and benefits required by law.

Work with farmworkers and their representatives to use the "hot-goods" injunction to bring a prompt and effective remedy for wage violations. FLSA enables DOL to bring a lawsuit against not only an employer who fails to pay proper wages but also any other person or company with possession of goods that have been produced by improperly paid workers. In such a situation a court can issue an emergency order barring all persons or companies with possession of the "hot goods" from shipping or selling them until the workers are properly paid.[34]

Improve compliance with labor laws by increased communication and cooperation with farmworkers and organizations in farmworker communities. Labor unions, legal assistance programs, worker advocacy groups, and other community-based organizations can help DOL improve its enforcement of employment laws on behalf of farmworkers. Farmworker groups can help DOL communicate and build trust with farmworkers and overcome barriers that impede enforcement, such as the fear of job loss or deportation for reporting illegal labor practices. Local organizations can assist DOL investigators and attorneys who may not speak the native language or may not be familiar with the culture of farmworkers who are being victimized. Also, local advocacy groups can help locate farmworkers who are living in isolated labor camps, makeshift shelters, and other nontraditional housing. DOL must reverse the reputation it has in some areas for not being responsive when workers or their advocates file complaints or seek case status information.[35]

Examples of cooperative action

- In early 2009, the New York Department of Labor initiated a pilot project called "Wage Watch" in which the agency works with community-based groups to learn about and remedy violations of employment laws.
- In South Florida, the Coalition of Immokalee Workers has worked with the Department of Justice to bring prosecutions for enslavement of farmworkers.
- In California, the Agricultural Worker Health Project partners with the California Division of Occupational Safety and Health (Cal/OSHA) to monitor the health and safety of farmworkers. Sponsored by California Rural Legal Assistance (CRLA) and the CRLA Foundation, the project leverages CRLA's on-the-ground knowledge of conditions in the fields with Cal/OSHA's ability to enforce state health and safety regulations to decrease health and safety violations.[36]

Seek remedies for workers and fines on employers in amounts large enough to deter employers from violating the law. Some employers take the risk of violating labor laws because they know that even if they are caught, they need only pay the wages that should have been paid in the first place. To deter employers from taking that risk, the law allows DOL to obtain back pay for lost wages, an additional, equal amount in "liquidated damages," and a fine. DOL must use these tools frequently and warn employers of the consequences of not complying with labor laws. When employers appeal a DOL decision, often hoping to tie up the agency in costly litigation and settle for a small amount, DOL's solicitor of labor must pursue the case diligently and obtain a complete remedy. If DOL sends a strong message that employers will pay heavily for violating the law, many employers will begin complying with the law.

Reinvigorate its National Farm Labor Coordinated Enforcement Committee. The committee was originally established with four key objectives: 1) to ensure effective, coordinated enforcement efforts under the labor-protective laws that apply to farmworkers, 2) monitor enforcement efforts and their results to evaluate progress, 3) develop new policies, and 4) involve farmworker organizations to join in enforcement efforts. The regulations[37] creating the national committee also require regional committees. The committee has not been active recently, but it should be reconvened to help ensure that DOL's commitment to farmworkers is fulfilled.

Additional recommendations for effective law enforcement

Farm labor abuses are rampant. Farmworkers enjoy few of the protections afforded to other low-wage workers, and the laws that apply to farmworkers should be reformed to ensure that farmworkers receive the same protections. But legal protections are of no use if they are not enforced. DOL and state agencies cannot solve these problems alone. Farmworker Justice and Oxfam America recommend that:

- Congress end the restriction that prevents publicly funded legal aid programs from representing undocumented farmworkers and end the ban on legal aid providing clients with the same legal tools (such as class actions) available to other attorneys.
- Congress reform labor laws to provide greater support for union organizing and collective bargaining so farmworkers can negotiate decent job terms, reform the labor contracting system, and resolve disputes with their employers through grievance-arbitration procedures, rather than litigation.
- Congress pass the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS), which would give eligible undocumented farmworkers the chance to earn legal immigration status, granting them the economic and democratic freedoms that most Americans enjoy and allowing them to play a critical role in reducing the abuses in agriculture. Immigration enforcement should be designed to reinforce labor law protections; special sanctions should apply to employers that exploit undocumented workers.
- State agencies, DOL, and nongovernmental organizations educate farmworkers about their rights, resources, and remedies, with sensitivity to the language, education level, gender issues, and culture of the diverse farmworker population.
- Corporations in the food industry at all levels of the supply chain—growers, wholesalers, food-service companies, supermarkets, and restaurant chains—as well as consumers, take responsibility for decent treatment of farmworkers in the field.
- The Department of Justice continue and enhance its efforts to train federal, state, and local law enforcement to increase awareness of human trafficking and law enforcement's capacity to respond.

The degree of lawlessness in the agricultural workplace is unacceptable. Agricultural employers are exempt from the National Labor Relations Act, overtime pay, certain child labor limitations, and other federal labor protections that most workers take for granted. As highlighted in this report, the modest protections for farmworkers that do exist should be enforced to benefit the workers.

The DOL, the principal government agency for enforcement of employment laws covering agricultural workers, has a duty to protect the nation's farmworkers. DOL must use its authority effectively to ensure that widespread labor violations in the agriculture system are reduced to a minimum.

Notes

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2 See, for example, Catherine Singley, *Fractures in the Foundation: The Latino Worker's Experience in an Era of Declining Job Quality* (National Council of La Raza, September 2009), *Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them*, eds. Annette Bernhardt and others (UCLA Institute for Research on Labor and Employment, Center for American Progress, Center on Wisconsin Strategy, and National Employment Law Project, July 2009), and Kim Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid—and What We Can Do About It* (New Press, 2009).

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5 Dan Frosch, "In Loneliness, Immigrants Tend the Flock," *New York Times*, February 22, 2009.

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8 Pat Gillespie, "Sixth Immokalee Slavery Case Suspect Arrested—Group Accused of Keeping[,] Beating, Stealing from Immokalee Laborers," News-Press (Fort Myers, FL) January 18, 2008.

9 Felisa Cardona and Kevin Vaughan, "Fields of Fear for Colorado Illegal Farm Laborers," *Denver Post*, April 17, 2009.

10 Department of Labor, Bureau of Labor Statistics, *National Census of Fatal Occupational Injuries in 2008*, USDL 09-0979 (August 20, 2009), www.bls.gov/news.release/pdf/cfoi.pdf (accessed April 1, 2010).

11 Kevin Martinez, "California: Charges Brought in Death of Teenage Farm Worker," World Socialist Web Site, May 8, 2009, www.wsws.org/articles/2009/may2009/farm-m08.shtml (accessed April 2, 2010). While California requires shade for employees under dangerously hot conditions, the federal law does not require shade.

12 US Department of Labor, "Worksite Availability of Water and Toilets," in Chapter 5, "Farm Job Characteristics," in *Findings from the National Agricultural Workers Survey (NAWS) 2001–2002: A Demographic and Employment Profile of United States Farm Workers*, Report 9, March 2005, http://www.doleta.gov/agworker/report9/chapter5.cfm#water (accessed April 2, 2010).

13 Christine Stapleton, "Grower's Housing for Migrant Workers Illegal, Judge Rules" *Palm Beach Post*, May 18, 2007, http://findarticles.com/p/news-articles/palm-beach-post/mi_8163/is_20070518/growers-housing-migrant-workers-illegal/ai_n51954384/ (accessed April 2, 2010).

14 United Farm Workers, "Female Workers Speak About $1.68 Million Settlement Reached in One of Largest Sex Discrimination Cases Against San Joaquin Valley Grape Grower," news release, December 9, 2008, www.ufw.org/_board.php?mode=view&b_code=news_press&b_no=4826&page=2&field=&key=&n=550 (accessed April 2, 2010).

15 Rebecca Claren, "The Green Motel," *Ms.* magazine, summer 2005, www.msmagazine.com/summer2005/greenmotel/asp (accessed April 2, 2010).

16 See Margaret Reeves and Kristin Schafer (Pesticide Action Network North America), Anne Katten (California Rural Legal Assistance Foundation), and Martha Guzmán (United Farm Workers), *Fields of Poison 2002: California Farmworkers and Pesticides* (Californians for Pesticide Reform, September 18, 2002), www.panna.org/docsWorkers/CPRreportexsum.pdf (accessed April 2, 2010).

17 Margaret Reeves and Kristin Schafer, "Greater Risks, Fewer Rights: US Farmworkers and Pesticides," *International Journal of Occupational and Environmental Health* 9, no. 1 (2003), 30–39, www.ijoeh.com/index.php/ijoeh/article/view/26/23 (accessed April 2, 2010).

18 Also referenced as MSPA on the DOL website.

19 These statistics come from data supplied by DOL in response to a Freedom of Information Act request.

20 FLSA limits penalties to investigations in which willful, repeat, or child labor violations are found.

21 For example, if 50 migrant farmworkers are given false information about their wages at the time of recruitment, the penalty for the employer would be $1,000 (or less) rather than $50,000. This is not the case for transportation safety violations, however, where DOL does sometimes impose per-worker penalties.

22 GAO, Fair Labor Standards Act.

23 The obligation to disclose job terms at the time of recruitment applies only to migrant workers, not to nonmigrant seasonal farmworkers, although employers must provide job terms at the time of recruitment for seasonal workers if they request the information. Both groups must be given this information at the time of employment.

24 Section 500.20(h)(4)-(5) of the Department of Labor's regulations in Title 29 of the Code of Federal Regulations (2009).

25 Eighty percent of respondents in a recent survey by the Southern Poverty Law Center (Mary Bauer) did not know how to contact government enforcement agencies to file complaints about workplace abuses (SPLC, "Under Siege").

26 Although 72 percent of all wage and hour investigations by DOL are initiated by worker complaints, in agriculture the vast majority of investigations (82 percent) are initiated by the DOL Wage and Hour Division. (GAO, *Fair Labor Standards Act*.)

27 Additional information on the DOL's handling of the H-2A program can be found in the DOL, Office of Inspector General, *Evaluation of the North Carolina Growers Association*, 04-04-008-03-325 (March 31, 2004).

28 The visa costs $131, plus a $100 reciprocity fee for Mexican nationals traveling to the United States.

29 Editorial, "Female Farmworkers at Risk," *Los Angeles Times*, May 20, 2008. The Los Angeles Times has asserted in this article that, "The sexual harassment of female farmworkers has long been a dirty secret of migrant labor."

30 For more on the history of forced labor camps in the southeastern US, see Ronnie Green, "Fields of Despair," *Miami Herald*, August 31, 2003; John Bowe, *Nobodies: Modern American Slave Labor and the Dark Side of the New Global Economy* (Random House, 2008); and Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* (University of California Press, 2009).

31 "US Pursues Possible Case of Forced Labor at Florida Farm," *New York Times*, June 11, 2005.

32 Office of the US Attorney for the Middle District of Florida, "Florida Labor Camp Owner Sentenced on Federal Charges," news release, January 26, 2007.

33 Recently, an organic farm in Colorado was sued for similar conditions, in which immigrant workers were held in debt bondage. A federal judge awarded them $7.8 million. See Cardona and Vaughn, "Fields of Fear for Colorado Illegal Farm Laborers."

34 One of the few lawsuits brought by DOL in recent years illustrates how a "hot goods" lawsuit can rapidly remedy wage violations. Acting on a tip from local farmworker advocates, DOL verified wage violations by a Washington state cherry farmer and brought a hot goods lawsuit against the grower, a packing and storage company, and a produce broker, all of whom had actually received, or were likely to receive, the cherries picked by the underpaid workers. The federal court recognized that if it barred any further shipment of the cherries until the workers received proper wages, the cherries might rot and become worthless; in light of this risk, within a couple days the court issued an emergency order that authorized one of the defendants to arrange for the marketing, shipment, and sales of the cherries, but required that a percentage of the proceeds of the sale be deposited with the court. Eleven days after the lawsuit was filed, the court had $183,000 from the sale of about 450 tons of cherries; by the time all harvesting and sales were completed, more than 600 farmworkers had received nearly $374,000 in back wages.

35 The DOL Wage and Hour Division has a partnership program that, according to a 2008 GAO report, is being underutilized. The GAO recommended that the secretary of labor "establish a process to help ensure that input from external stakeholders, such as employer associations and worker advocacy groups, is obtained and incorporated as appropriate" and that it identify ways to leverage existing tools by improving services provided through such partnerships. (GAO, "Fair Labor Standards Act.")

36 Groups like CRLA have no power to issue citations or fines when they encounter violations, but they can report violations to the appropriate state agency, which then may send out its own inspectors to investigate and possibly cite the grower. Most— but not all— employers respond positively to the informal visits by CRLA community workers and appreciate being given the chance to correct a problem before the state gets involved and possibly issues fines.

37 Labor, *Code of Federal Regulations*, title 29, part 42, 2009.

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COVER: Organic farmworker Maria Luz Reyes works a three-acre plot of rented land on the campus of the Agriculture and Land-Based Training Association in Salinas, CA. She raises herbs and vegetables. *Liliana Rodriguez / Oxfam America*

FRONT INSIDE COVER: *Liliana Rodriguez / Oxfam America*

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