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A Vision for the Future of Public Policy on Migrant Farmworkers

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America's treatment of its migrant and seasonal farmworkers has long been our national disgrace. Daniel Rothenberg's fine book about farmworkers, *With These Hands: The Hidden World of Migrant Farmworkers Today* (1998), concludes: "The key components of the farm labor system have been a steady oversupply of workers and the use of a series of techniques to consistently disempower farmworkers." As we enter the 21st century, how could Government empower farmworkers to improve their wages and working and living conditions?

The slogan of fruit, vegetable and tobacco growers during their recent legislative lobbying has been that "the status quo is unacceptable." Yet, their vision of policy in the 21st century would perpetuate farmworkers' lack of economic and political power: several hundred thousand "guestworkers" would displace U.S. farmworkers and work under wages and working conditions worse than those allowed by the current H-2A guestworker law and even worse than the old *bracero* program. These non-immigrant guestworkers would not possess the right to switch jobs to avoid illegal or unfair job terms; would not feel secure enough to join labor unions or demand higher wages; would lack political representation in Congress; would not be entitled to live in America with their family members; and would not become immigrants or citizens. These indentured servants would also be subjected to new, harsh labor law provisions.

The employers' vision should shock the conscience of this nation. Certainly, the impact of such a system, once in place, would result in international condemnation. If employers desire more migrant farmworkers (despite high unemployment and underemployment), at a minimum, they must be offered full status as *immigrants*, not as guestworkers. But if we submit to growers' demands for more authorized workers, then we must also improve workers' wages and conditions. We must reduce poverty and modernize labor practices to attract and retain workers.

What could Government do to modernize and improve agricultural labor conditions? Specific policy suggestions are listed on the following pages. To summarize:

- (1) **end discrimination against farmworkers in labor laws** so that farmworkers enjoy rights on the job that other occupations enjoy,
- (2) **enforce labor laws more effectively and improve access to the justice system** to implement farmworkers' rights and to protect law-abiding employers against unfair competition by labor-law violators,

(3) **promote better wages, working conditions and housing** to attract and stabilize the agricultural labor force, increase productivity, continue growth of exports, and reduce poverty and its consequences.

I. **End the Discriminatory Treatment of Farmworkers in America's Employment Laws.** Congress should stop denying farmworkers the same legal rights on the job as other workers receive. Some of the many examples include:

- A. **Overtime pay**, under federal law, does not apply to farmworkers. They deserve time-and-one-half pay after 40 hours per week, like everyone else. California farmworkers receive overtime after 10 hours per day or 6 days in a week.
- B. Federal **child labor law** permits children to work at younger ages and at more hazardous tasks in agriculture than in other, less dangerous occupations. Farmworker children deserve at least the same protection as other children.
- C. **Access to sanitary facilities at work** – toilets, handwashing facilities and drinking water – should occur at all farms. The ability to wash one's hands with soap and water is one of the great health advances, limiting the spread of disease. Access to toilets during work is not only a serious health issue, but also a question of human dignity. Yet an annual rider on OSHA's appropriations severely restricts the "field sanitation standard" to farms with 11 or more employees.
- D. **Unemployment insurance compensation** is denied to many seasonal farmworkers despite their need for such coverage. The Unemployment Advisory Council appropriately recommended that Congress eliminate the Federal Unemployment Tax Act's exceptions for agricultural employers, including those which pay less than \$20,000 in payroll in a calendar quarter, or use farm labor contractors (growers could use crewleaders but should be jointly liable).
- E. **Workers' compensation** is unavailable to many injured farmworkers due to state laws that exclude or discriminate against farm work, even though farmworkers cannot afford health care and suffer higher injury rates than most occupations.
- F. **Many farmworkers are excluded from the minimum wage** of \$5.15 per hour and other labor protections through various special exemptions for agriculture that should be ended. For example, the wage-hour laws exclude agricultural employers who did not, in a single calendar quarter during a year, use more than 500 man-days of farm labor (e.g., about 6 full-time workers during a 3-month season).
- G. **Federal law does not protect agricultural workers from retaliation against labor organizing and union membership.** At a minimum, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) should prohibit employers from retaliating or discriminating against workers for their union membership, labor organizing or similar activities to protect workers' interests.

- H. **Attorneys fees** are available to most successful litigants workers under the Fair Labor Standards Act and civil rights law, but not to farmworkers under AWP. Attorneys fees awards should be available to attract private attorneys to farmworker cases.

Guestworkers under the H-2A program are excluded from AWP, the principal federal labor law for farmworkers. Consequently, H-2A workers are not entitled to disclosures of job terms during recruitment, transportation safety requirements, or access to federal courts. Such discrimination is an incentive for employers to replace U.S. workers with guestworkers, and violates NAFTA's labor side agreement, the North American Agreement on Labor Cooperation, which prohibits discrimination in labor laws against "migrant workers."

II **Enforce Labor Laws in the Agricultural Industry and Grant Farmworkers Meaningful Access to the Justice System**

- A. **Violations of the few rights that farmworkers do possess are rampant:** minimum wage violations; illegal wage deductions; piece-rate wage scams; child labor; lack of field sanitation; dangerous use of pesticides; discrimination against women in hiring; sexual harassment; failure to report earnings and pay into Social Security. Worker protections under the H-2A guestworker law are routinely ignored. Increasingly, growers have hired "farm labor contractors" or "crewleaders" to shield themselves from liability for labor law violations. Law enforcement is so rare and penalties are so mild that many employers do not fear the consequences of violating the law. By several measures, federal wage-hour enforcement on farms is about one-half of its levels during the Reagan Administration. Farmworkers' inadequate access to the justice system minimizes private vindication of labor law violations. By hiring undocumented workers, often through crewleaders, growers obtain employees who are too vulnerable to challenge illegal or unfair labor practices.

B. **Policies to improve law enforcement to benefit farmworkers include:**

- 1 **End farm labor contracting abuses.** Stop the sham of businesses claiming that they don't "employ" any farmworkers. Growers must be held responsible for the sweatshop conditions they perpetuate with labor contractors, through amendments to the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) and the Fair Labor Standards Act (FLSA). Several reforms of AWP's provisions are needed to address abuses in recruitment, wage deductions, and other aspects.
- 2 **Enhance farmworkers' access to justice.** The laws must be strengthened to eliminate unfair barriers against farmworkers who wish to enforce their rights in the courts. Undocumented workers who are victimized by illegal employment practices should receive work permits while they prosecute their cases. Access to legal services must be expanded. Congress could increase funding for the Legal Services Corporation to provide more desperately-needed legal assistance; remove LSC restrictions against representing undocumented workers to reduce employers'

incentives to hire and exploit them; end the ban against LSC class action lawsuits so that farmworkers have effective judicial remedies.

3. Clarify that workers have **the right to sue under AWPAs for violations of employment-related laws and retaliation for exercise of rights under such laws.** Workers' implied right to sue under AWPAs for violations of these expected terms of employment should be made explicit. These terms include: pesticide safety under the EPA Worker Protection Standard (under the federal pesticide law, FIFRA); access to toilets, handwashing water and drinking water during work under OSHA's Field Sanitation Standard; and violations of record-keeping and payroll requirements under the Social Security Act (FICA).
4. **Substantially increase law enforcement funding** devoted to farmworkers in the Department of Labor's Wage and Hour Division and Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, the Environmental Protection Agency and the Justice Department.

III. **Adopt Policies that Reduce Farmworker Poverty and Promote Decent Wages, Safe Working Conditions and Sanitary Housing.** Government must stop following policies that help keep farmworkers in perpetual poverty.

- A. **Agricultural labor practices are often rooted in the 19th century**, yet in other aspects of their businesses, many fruit and vegetable growers are increasing productivity through state-of-the-art technology, including sophisticated computers, controlled-atmosphere storage, high-tech chemicals, and complex marketing systems to sell their crops on the international level. **Most farmworkers do not earn a living wage.** Their wages have declined in real terms during the last 20 years. Unemployment and underemployment remains very high. **Unsafe worksites and living areas pervade agriculture.** Farmworkers and their children suffer from unacceptable exposures to toxic pesticides in the fields and where they live. There is a **critical lack of affordable, decent housing**, partly because many farmworkers' wages are too low to stimulate housing development. These conditions also induce high employee turnover, suppress productivity and impose major costs on society. Yet Government has helped fruit and vegetable growers dramatically increase the value of their products recently, especially through exports.

B. **Policy suggestions to modernize agricultural employment include:**

Raise the minimum wage. Many farmworkers' hourly and piece-rate wages are based on the minimum wage level, which is too low to lift hard-working families out of poverty. Adults' low wages contribute to child labor and are especially punishing to the majority of farmworkers who cannot find work every week of the year. A living wage for farmworkers would help stabilize the work force, stimulate rural economic growth, with minor impact on the price of food here and in foreign markets.

2. **Improve housing opportunities.** Provide increased funding for housing development for farmworkers and their family members. Massively increase USDA's

appropriation for section 514/516 housing to leverage 10,000 units per year and strengthen community-based nonprofit groups' capacity. Strengthen standards for housing provided to farmworkers: require roofs, flush toilets, electricity, hot water, etc. Strengthen the Fair Housing Act: clarify that its provisions against anti-family discrimination apply to U.S. farmworkers at employers who use H-2A guestworkers (rejecting an incorrect court decision).

3. **Improve toxic pesticide monitoring and safety:** Government should establish programs for reporting and monitoring (a) biological and environmental impact of use of pesticides on farmworker families and communities, (b) long-term effects of pesticides, including cancer, reproductive harm and neurological damage, and (c) incidents, injuries and illnesses potentially related to pesticide use. The law should guarantee farmworkers the "right to know" the specific pesticides used in their workplace and other safety information in language the workers understand. Protections against premature re-entry into sprayed fields should be strengthened. The Government should ban any pesticide known or suspected to cause cancer, birth defects, reproductive harm, neurological damage, or that is in the highest acute toxicity category, and promote transition from toxic pesticides to sustainable pest control methods.
4. **Reinvent the Employment Service ("ES"):** Some agricultural employers claim that they cannot find U.S. citizens or legal immigrants to apply for jobs. But decent wages, working conditions and modern employment practices would attract qualified workers and reduce employee turnover. The ES is a free job registry or labor exchange that is rarely used as a recruitment method by employers, primarily because they have no economic reason to do so: they find sufficient numbers of workers through informal recruitment networks or labor contractors, avoiding government oversight. Although H-2A employers must use the ES as a condition of securing guestworkers, they often are motivated to make the system fail to "prove" that U.S. workers are not available. To reinvigorate the ES, the Department of Labor could collaborate with state agencies, employers, unions, workers, and others on innovative "pilot programs" in several states. For example, using financial incentives that benefit employers to encourage their participation (e.g., by using public funds to pay workers' cost of transportation to the place of employment), ES could study whether employers improve their recruitment and labor stability by offering enhanced job terms, such as premium wage rates, health insurance, a promise of a job the following season, or a referral to other seasonal employers.

These suggestions do not directly deal with such major issues as health care, education and training, or other important policy matters. Nor do these suggestions necessarily reflect the priorities that all farmworkers or their advocates would select. They are, however, an indication of where this country needs to look if its vision for the next century includes a brighter future for the nation's farmworkers.

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