



August 12, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
Washington DC 20510

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, Leader Schumer:

On behalf of the nation's essential farmworkers, we write to urge you to oppose any efforts to shield companies, including grower associations and corporate farms, from legal responsibility for workers who contract COVID-19 on the job.

Farmworkers are uniquely vulnerable to COVID-19. Many of the recommendations to mitigate the spread of the virus are at odds with the reality of the transportation, living, and working conditions of both the U.S.-based and the H-2A guest-worker population.ⁱ Moreover, farmworkers face extreme economic hardship, and, due to discriminatory exclusions, lack the social security net and access to justice available to many other workers. Most farmworkers do not have health insurance and many face difficulty accessing health care. Due to poverty and a severe shortage of affordable and safe housing in rural communities, farmworkers generally live in very crowded conditions, from motels and mobile home parks to apartment buildings or barrack style housing. For many migrant and H-2A workers, employers may provide housing where multiple unrelated workers may be required to share rooms, and even beds at times. Farmworkers also face crowded conditions in their transportation to work. This is particularly true for migrating workers, who are often bussed long distances in crowded busses to the workplace. Conditions in the workplace also make social distancing difficult, as workers may be working in close proximity to each other.

Across the country, we have seen high rates of COVID-19 infections in agricultural workplaces and communities— from Wenatchee in Washington to Oneida County in New York.ⁱⁱ While it is challenging to know exactly how many farm workers have been infected with COVID-19, particularly given their unique vulnerabilities, Purdue University estimates that approximately 94,000 agricultural workers will contract COVID-19, as of August 11, 2020.ⁱⁱⁱ

As critical essential infrastructure workers, the nation is relying on farmworkers to safeguard the nation's food security. Every day that they go into work, farmworkers and ALL essential workers face the risk of unknowingly contracting COVID-19 and of inadvertently spreading the virus to their colleagues and their loved ones when they return home. Unless employers take measures to inform and safeguard workers from the hazards posed by the virus, including by providing sick pay, workers

will face the agonizing choice of choosing between feeding their family and braving the illness. To mitigate the spread of COVID-19 in the agricultural sector and rural communities and to ensure worker health, farmworkers must have guaranteed access to paid sick leave in addition to job security, personal protective equipment and worksites that are complying with CDC recommendations.

In the food and agricultural sector, these concerns are not hypothetical. In Wasco, California, Primex employees began to show symptoms of COVID-19 in late May through early June 2020. Primex Farms, LLC is a company that employs approximately 400 packing shed workers as well as employees who work in silos. Instead of taking precautions to protect workers, the company's initial response was to deny that any employees had tested positive for the virus. COVID-19 positive workers were asked to keep their test results confidential while employees that demanded transparency from the company were told that news of infected employees are simply rumors. During May 2020, rather than provide workers with face masks, workers reported that the company office was selling them for \$8 each.

By June 10, 2020, Primex had fired Jesse Salazar, a worker who the company blamed for infecting the other workers at the plant. On the same day, Maria Hortencia Lopez and other employees stopped working after showing symptoms. As COVID-19 spread among the workers, so did fear, and employees requested leaves of absence. Instead of reassurance, however, workers were told by the company that they could resign or take time off, with no guarantees of job security. In this environment of fear, some workers who tested positive continued working. Remigio Ramirez shared with us, "I started feeling sick like three days before [the diagnosis] and I asked my supervisor to let me go home and he said there was a lot of work and not enough employees...Now, most of us are infected, my wife, my daughter... What are we going to do?" Ramirez, a maintenance worker at the company for 13 years, says management told him that his absence would cause the company to shut down.

In reaction to unsafe working conditions, on June 25, 2020, Primex employees walked out on the job, demanding transparency from the company, safety measures including social distancing, provision of personal protective equipment (PPE), and paid sick leave for infected or exposed employees. In the aftermath of engaging in these protected activities, some employees began to experience retaliation and job loss.

By the end of July, Eustodia Oropeza, a 55-year-old Primex worker who tested positive for the virus, had been removed from life support and sent home to receive palliative care. Maria Hortencia Lopez died from the virus. Primex has acknowledged that 150 of its packinghouse workers have tested positive, and the UFW census of Primex workers indicates that at least 49 adult family members and 34 children also tested positive for coronavirus.

In response to this egregious situation, the United Farm Workers has worked with the Primex employees to hold the company accountable for both the dangerous conditions the employees face and for unlawful retaliation.^{iv} This suit would be wiped out under the Senate Republican immunity proposal. The reality faced by Primex workers underscores that farmworkers need greater workplace protections from COVID-19, not efforts to insulate their employers from liability in the workplace.

The attack by corporations and other employers on access to the courts is a long-standing and persistent battle. Corporations, including grower associations and corporate farms, have sought to limit workers' access to the courts through mandatory arbitration requirements. Agricultural

companies and associations have long attempted to limit their employer liability by hiding behind labor contractors and other intermediaries.

Farmworkers already face significant challenges accessing justice in the workplace. Because roughly half of farmworkers are undocumented, many farmworkers are reluctant to assert their rights in the workplace. Moreover, a history of discriminatory exclusions denies farmworkers many of the federal workplace protections that other workers enjoy, such as overtime pay, paid breaks, NLRA protections, many OSHA standards, and even unemployment insurance benefits and the minimum wage at certain smaller employers. Further, the primary federal employment law protecting farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), excludes H-2A workers from its protections.^v In FY 2019, over 250,000 H-2A workers were certified by DOL.^{vi}

Instead of taking steps to ensure the safety of essential workers from COVID-19, the Trump Administration has prioritized employer access to workers without regard for worker safety.^{vii} In fact, in the midst of this pandemic, the Trump Administration has taken multiple steps to facilitate employer access to H-2A workers, but has taken no action to require protection from COVID-19 for these very vulnerable workers who will be living, working, and traveling in close proximity to one another. If the Administration's utter failure to protect workers is combined with legislative action to insulate companies from workplace liability, employers will have carte blanche to operate based on their bottom line, rather than the well-being of their employees and communities.

For the sake of our nation's farm and food chain workers and our food security, we urge you to reject employer efforts to escape responsibility for their workplaces and ensure that farmworkers and ALL essential workers are guaranteed access to paid sick leave.

Respectfully,



Teresa Romero
President
United Farm Workers (UFW)



Diana Tellefson Torres
Executive Director
UFW Foundation

ⁱ Center for American Progress Report, Zoe Willingham and Silva Mathema, “Protecting Farmworkers from Coronavirus and Securing the Food Supply,” April 23, 2020, available at <https://www.americanprogress.org/issues/economy/reports/2020/04/23/483488/protecting-farmworkers-coronavirus-securing-food-supply/>; EPI report, Daniel Costa and Phil Martin, “Coronavirus and farmworkers: Farm employment, safety issues, and the H-2A guestworker program,” March 24, 2020, available at <https://www.epi.org/publication/coronavirus-and-farmworkers-h-2a/>.

ⁱⁱ UFW Foundation. (2020). COVID-19 Outbreaks in Agriculture. <https://ufwfoundation.egnyte.com/dl/8HVFGsQJIE>

ⁱⁱⁱ Purdue Food and Agriculture Vulnerability Index. (2020). *Purdue University*. https://ag.purdue.edu/agecon/Pages/FoodandAgVulnerabilityIndex.aspx?_ga=2.86672920.1449366005.1596735226-1907652028.1596735226

^{iv} Luiz, J. (2020, July 28). UFW files charges against Primex Farms for allegedly firing employees who said company wasn’t protecting them from COVID-19. *KGET*. <https://www.kget.com/health/coronavirus/ufw-files-charges-against-primex-farms-for-allegedly-firing-employees-who-said-company-wasnt-protecting-them-from-covid-19/>

^v H-2A workers are dependent on their employer for their ability to work in the United States and are concerned that complaining may lead to job loss or blacklisting from future work opportunities. Even when workers are willing to bring a legal challenge, they often have difficulty finding an attorney. Attorneys with the Legal Services Corporation, which provides free legal assistance to qualifying low-income individuals, are not permitted to represent undocumented workers. Private attorneys are often reluctant to represent farmworkers given the limited attorney’s fees available to them.

^{vi} Employment and Training Administration (ETA). (2019). H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019. *U.S. Department of Labor (DOL)*. https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2019_Q4.pdf

^{vii} Khimm, S. & Silva, D. (2020, July 29). Lured to America — then trapped: Visas for farmworkers have surged under Trump. But the program has subjected some workers to horrific abuse. *NBC News*. <https://www.nbcnews.com/specials/h2a-visa-program-for-farmworkers-surg-ing-under-trump-and-labor-violations/>