



Protecting Farmworkers From Coronavirus and Securing the Food Supply

By Caius Z. Willingham and Silva Mathema April 22, 2020

With millions of workers staying at home to aid public health efforts to stop the spread of COVID-19, the security of America's food supply and its supply chains has rarely been more important. At this moment, to the extent that there is a challenge in ensuring America's grocery stores have enough healthy food on the shelves, it comes not from insufficient natural bounty but instead from the extraordinary burdens that COVID-19 has placed on the many low-wage workers who play such central roles in the functioning of food supply chains.

Indeed, during these trying times, farmworkers' contributions in particular are more critical than ever. They cannot shelter at home to remain safe from COVID-19; instead, they must go to work—along with meatpacker employees, truckers, and grocery store workers—to ensure that the nation's food supply is maintained. Farmworkers are particularly vulnerable to illness because of high rates of respiratory disease being an occupational hazard, low rates of health insurance coverage, and often substandard living and working conditions.¹ Despite these risk factors, agricultural workers—the majority of whom are immigrants and about half of whom are undocumented—lack many of the legal protections enjoyed by most workers, which endangers their own and their families' health and well-being.²

The pandemic's disruption of normal economic activity is clearly illustrating how crucial farmworkers are to national security and food access around the world. The European Union is already feeling the effect of tightened borders on the supply of farm labor. Farmers in the United Kingdom and Germany are reporting labor shortages, and the agricultural minister of France recently urged professionals in the industries that have been locked down to seek out work on farms.³ Yet farmers worry that the new workers they do recruit domestically will lack the skills necessary to efficiently harvest crops without damaging them.

Travel and immigration bans enacted in the United States and around the world have put stress on a preexisting shortage of farm labor.⁴ To supplement the domestic labor supply, many farms in the United States often rely upon the H-2A program to hire seasonal agricultural workers from other countries.⁵ In 2019, the

United States issued more than 200,000 H-2A visas—accounting for about 10 percent of the agricultural workforce.⁶ Overall, including the significant share of undocumented immigrants who have for decades been the backbone of this nation’s agricultural labor force, 53 percent of farmworkers were born outside the country, according to the U.S. Department of Agriculture (USDA).⁷

Last month, the U.S. Department of State announced that it would stop processing visas in Mexico, much to the alarm of growers who rely heavily on immigrant labor to meet seasonal needs.⁸ Subsequently, the State Department announced that H-2A visa processing will resume, while in-person visa interviews will be waived for anyone who interviewed the previous year. In the end, as the fear of labor and food shortages grew, the State Department decided to waive the in-person visa interview requirement for all H-2A applicants, both new and returning workers, as well as seasonal nonagricultural workers seeking entry through the H-2B program.⁹

Furthermore, President Trump recently announced plans to sign an executive order temporarily banning people from immigrating permanently into the United States, but the anticipated announcement reportedly will not affect the entry of seasonal agricultural workers into the United States or provide any additional safeguards for the health and safety of those workers or people with whom they may come into contact.¹⁰

The administration’s efforts to facilitate the entry of farmworkers into the United States even as it bans countless other immigrants, refugees, and asylum seekers speaks, in part, to the important role that such farmworkers play in supporting the American economy and the country’s food security. It is reasonable for the State Department to make it easier for more farmworkers to come in order to prevent an impending food shortage. But bringing in still more workers without taking extra precautions to protect their health and safety—as well as the health and safety of all farmworkers and people with whom they interact—would be shortsighted. If nothing is done to ensure that proper protections are put in place for these farmworkers and other vulnerable food chain workers, these workers are not the only ones jeopardized; the workers that they will be living and working alongside are also at risk. Not only that, but broader efforts in the community to tamp down the disease through social distancing and sanitation efforts will also be undermined. Moreover, if farmworkers begin to contract the coronavirus, farm labor supply will decrease—with a potentially devastating effect on food production. More must be done to safeguard these important workers as they perform essential tasks.

Protecting farmworkers is essential to the nation’s food supply chain. An outbreak among farmworkers can potentially shutter entire farm operations at a time when the supply chain is already experiencing unprecedented disruption. Earlier this month, after three farmworkers tested positive for COVID-19 in Cayuga County, New York, and one of them died, farm owners became even more aware of the spread

of the disease.¹¹ Swift action to prevent the spread of the coronavirus must be taken. This is even more urgent in light of the shuttering of several meatpacking plants due to widespread infection among workers.¹² Essential workers are not disposable.

Farmworkers are essential to the food supply

Many growers have long been pushing to ease requirements and expand the scope of H-2A workers in the United States to meet farm labor needs. But particularly during the novel coronavirus pandemic, it is essential that employers and the federal government also ensure the safety and security of participants—as well as that of current farmworkers and other food system workers such as meatpackers—to strengthen the security of the U.S. food supply.

The experiences of guest farmworkers pose several risks of infection. For example, migrant farmworkers journeying long distances to the United States travel on crowded buses chartered by their employers. Once in the country, they reside in employer-provided housing, which is often crowded and inadequate.¹³ These facts of daily life make it difficult, even impossible, for farmworkers to maintain social distancing and proper sanitation.¹⁴ If measures are not taken to ensure the health and safety of farmworkers, COVID-19 may spread rapidly among the agricultural workforce—with possibly dramatic negative implications for the national food supply.

Measures must be taken to safely meet the demand for agricultural workers. However, workers must be adequately screened before being permitted entry and must be guaranteed safe transportation, housing, and working conditions to ensure their safety and the safety of people around them. This is necessary not only to protect workers but also the supply chain itself. If one worker is forced to work while ill or is unable to access testing or care, employers risk infecting their entire workforce, which could completely shut down their operations.

Farmworkers' basic needs must be met

Because farmworkers are essential workers on the front lines of the pandemic, lawmakers must address these workers' safety. Unfortunately, employers do not always prioritize the safety of farmworkers, and federal law exempts farmworkers from some of the rights most other workers enjoy.

As a result of their occupation, farmworkers face increased risk of exposure and serious illness due to the coronavirus. Farmworkers commonly suffer from respiratory illnesses due to occupational hazards such as the application of pesticides—conditions that may make people more vulnerable to dangerous complications from the virus.¹⁵ Farmworkers who require masks and respiratory protection to safely apply pesticides or perform other tasks may soon find it difficult to procure the equipment they need due to the stress the pandemic has put on the personal

protective equipment (PPE) supply chain.¹⁶ Moreover, farmworkers often work in fields with limited access to bathrooms or basic sanitation, making it difficult to implement many of the preventive measures recommended by the Centers for Disease Control and Prevention (CDC).

If farmworkers do get sick, they likely do not have access to paid leave to take time away from work to access medical care, and they face enormous barriers to receiving the testing and care that they need to recover and keep their communities safe. According to the U.S. Department of Labor, less than half of all farmworkers, and only 24 percent of undocumented farmworkers, have health insurance.¹⁷ Though Congress made free COVID-19 testing available to uninsured people through the Families First Coronavirus Response Act, this measure excluded many categories of immigrants, including undocumented immigrants, recipients of Deferred Action for Childhood Arrivals, H-2A workers, and Temporary Protected Status holders. Moreover, rural health systems, which hospital closures have put under strain, may not be able to provide the needed care.¹⁸

Despite the hazards that farmworkers face, they receive far fewer legal protections than most other workers.¹⁹ For example, farmworkers are not entitled to overtime pay, and farms with fewer than seven workers in a given quarter may not have to pay even the federal minimum wage. Moreover, federal law does not protect farmworkers' right to organize unions, making it difficult for them to band together to bargain for better pay and working conditions. Some states have expanded labor rights to farmworkers. A recent New York law extends to agricultural workers overtime pay for hours worked in excess of 60 hours per week and the right to unionize.²⁰ However, the state-by-state patchwork still leaves many of these essential workers unprotected.

The lack of federal legal protections for farmworkers is particularly dangerous for undocumented workers and workers with H-2A visas, whose status is dependent on petitions filed by their employer. The monopsony power gives employers leverage over workers, making it difficult for farmworkers to bargain with employers for better wages or working conditions because they cannot leave for another job without jeopardizing their immigration status.²¹

In addition to gaps in coverage under federal labor laws, undocumented workers, who make up about half of the entire crop farmworker labor force, are reluctant to report labor law violations because of their immigration status.²² The fear of deportation looms large, and undocumented workers do not qualify for unemployment insurance and other social safety nets that they may need if they become sick. Though the House of Representatives passed the Farm Workforce Modernization Act in fall 2019 with a strong, bipartisan vote, the Senate has yet to take up the bill.²³ This legislation would provide a pathway for eligible undocumented farmworkers to gain permanent residence. Yet even in the absence of legislative reform, much more can and should be done to protect workers who are currently undocumented.

Recommendations

Lawmakers must take immediate action to safeguard the farmworkers on the front lines of the pandemic. The United States cannot afford to leave farmworkers vulnerable, nor should farms be permitted to recruit migrant workers without proper safety measures in place. Farmworker employers must be required to adopt necessary measures, and operations that acquire labor through contracting companies must be held accountable as joint employers. Congress must take action to expand farmworker protections at the federal level.

Health protections

For the safety of rural communities and the security of the food supply, all farmworkers need access to free testing and treatment for COVID-19, regardless of immigration status. Rural health care access must be expanded, with particular attention to farm communities. This includes significantly increasing funding to community health centers that serve immigrant and farmworker populations in rural areas and expanding broadband access. With government support, recently closed rural hospitals could temporarily be reopened, field hospitals could be set up in areas that anticipate care shortages, and multilingual telehealth options could be made available to all—insured or not.

In addition to ensuring access to health care, lawmakers must ensure that workers' health is protected on the job. First, farms must be required to provide their employees with timely and accurate information about COVID-19 transmission and prevention. Awareness is key to preventing the spread of the virus among farmworkers, who may live and work in close quarters. However, awareness is not enough if workers are not provided with the ability to follow the guidelines. Future legislative responses to the pandemic must enact stricter workplace safety standards, much like the stricter standards imposed in hospitals to protect health care workers. For instance, employers should make sure that their workers have sufficient handwashing stations and restrooms in workplaces and in employer-provided housing. Employers must also be required to implement modified working arrangements that allow for social distancing, such as putting fewer workers at conveyor belts at the same time.

Through the Families First Coronavirus Response Act, employees are entitled to 80 hours of emergency paid sick leave and 12 weeks of emergency child care leave—with 10 of the 12 weeks paid. This includes farmworkers who are employees, or H-2A visa holders, for employers with between 50 and 500 employees. However, improvements to the federal emergency paid leave protections must cover employees of all farming operations, regardless of size.²⁴

Beyond requiring farm employers to take commonsense health measures, Congress and the Trump administration should deploy resources to provide much-needed aid to workers. The Trump administration should use the Defense Production Act to procure PPE during the pandemic, and once a sufficient supply is established, some of the equipment procured should be set aside to ensure that farmworkers and other essential workers can perform their jobs safely. The USDA's Rural Housing Service must receive emergency funding to erect temporary housing for farmworkers who are ill or in a high-risk category and to build supplemental housing where accommodations exceed capacity and do not allow for social distancing. Finally, Congress must appropriate additional funds to migrant and seasonal Head Start programs to supply critical child care. These measures will equip these essential workers with the resources they need to stay healthy.

Hazard pay and economic security

Farmworkers are essential workers on the front lines of this pandemic, risking their health to feed the country. Federal law must require all farms to pay the minimum wage—regardless of the size of the operation—and guarantee the right of farmworkers to organize a union and bargain collectively. Currently, less than 1 percent of farmworkers are unionized, which severely hampers workers' abilities to bargain for fair wages and better working conditions, not to mention enforce labor law.²⁵ Unfortunately, rather than raising wages for these essential workers, the White House is exploring ways to lower wage standards for H-2A workers, according to NPR reporting.²⁶

Moreover, unemployment insurance must be expanded to cover all farmworkers. While farmworkers are recognized under federal law as eligible for unemployment insurance, smaller farms are not covered unless specified in state statutes.²⁷

Many farms are expecting emergency payments as a result of the third COVID-19 relief bill recently passed by Congress, which raised the borrowing limit of the USDA's Commodity Credit Corporation, making an additional \$14 billion available for emergency payments.²⁸ Congress must require that farms that receive this assistance pay their workers hazard pay equal to twice their usual wage, as well as overtime on top of that. To ensure enforcement of all worker protections, Congress should embed in every USDA office a Department of Labor detailee to serve as a farmworker advocate responsible for directing outreach to farmworkers to inform them of their rights and provide legal aid. To provide additional support, future coronavirus relief packages should also provide increased funding for community organizations that serve farmworkers, particularly those that help enforce labor rights.

Immigration

The Department of Homeland Security (DHS) recently issued guidance identifying farmworkers and people involved in food processing and packaging as essential critical infrastructure workers.²⁹ For this reason and others, just as DHS should issue a clear formal statement prohibiting immigration enforcement actions at or near health care facilities, it should refrain from routine immigration enforcement activities on farms and in processing plants.³⁰ In general, civil immigration enforcement actions should be curtailed during the COVID-19 pandemic, unless there is a significant public safety concern that outweighs the dangers of crowded detention facilities.³¹ The Congressional Hispanic Caucus made a similar ask of the Trump administration recently, noting that preserving the nation's food supply by protecting farmworkers is a national security imperative.³² Undocumented farmworkers should not live in fear of deportation, nor should they be forced to refrain from accessing vital medical care if they need it. Moreover, these critical workers should not fear retaliation from employers if they miss work due to feeling unwell. While U.S. Immigration and Customs Enforcement initially announced plans to modify its enforcement practices during the pandemic, tweets from the account of Ken Cuccinelli, the acting deputy secretary of U.S. Citizenship and Immigration Services, suggest that policy was quickly reversed by higher-ups within DHS and even President Trump himself.³³

In addition to modifying immigration enforcement practices, the government needs to do more to protect current and new immigrant farmworkers. For workers who are already here on H-2A visas, the State Department should allow for automatic extensions and make it easier for visas to be transferred to a new employer.

Going forward, the federal government should require H-2A employers to take specific measures to protect their workers from the coronavirus. H-2A employers must demonstrate that they have taken the steps outlined in this brief to maintain a clean and safe workplace. Additionally, since many migrant workers live in employer-provided group housing, employers must guarantee that housing is properly ventilated, compliant with capacity limits, and thoroughly disinfected in compliance with CDC guidance. Employers must also guarantee transportation that is regularly sanitized and allows workers to comply with social distancing guidelines. Congress should ensure that farming operations are reimbursed for any extra costs that they incur as a result of taking preventive measures to protect their workers during the pandemic. These conditions must be certified and enforced by U.S. Citizenship and Immigration Services, the federal agency under DHS tasked with approving all visa applications; the Department of Labor; and the USDA. To ensure that permanent reforms are implemented to protect one of the most essential segments of the U.S. workforce, Congress should work toward a successful passage of the Farm Workforce Modernization Act.

Conclusion

Even before the coronavirus pandemic, farmworkers were the backbone of the nation's food security, providing sustenance for hundreds of millions of Americans every day. But during the current public health crisis, their work is more important than ever, as farmworkers continue to go to work—at great personal risk to themselves—to keep food in stores and on plates. Failing to protect these essential workers risks the security of the nation's food supply. Therefore, the United States must ensure that these workers are provided with ample means to protect themselves from the virus and that they have safe and clean workplaces, economic security, and an ability to take paid leave if needed. These measures need to be in place for all farmworkers, regardless of immigration status, to make sure that they are given the opportunity to work safely to put food on American tables.

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