

## **Introduction**

The COVID-19 pandemic exposed various flaws in the U.S. food supply chain. One of the most egregious flaws has been the treatment of migrant farmworkers during the pandemic. Migrant farmworkers, the majority of which are from Mexico, account for 73% of agriculture workers and 70% of those migrant workers are undocumented.<sup>i</sup> The COVID-19 pandemic converted migrant farmworkers into "essential workers". The Department of Homeland Security declared farmworkers to be, "critical to the food supply chain." This is the same organization that views undocumented immigrants as disposable, deportable illegal aliens.<sup>ii</sup> Words that strip these workers of their humanity and dignity. An ex-migrant worker describes the role of farmworkers as, "essential links in a supply chain that kept America fed, but always a step away from derision, detention and deportation."<sup>iii</sup> As of November 29, an estimated 241,840 agriculture workers have contracted COVID-19.<sup>iv</sup> A recent study published by the University of California, Berkeley, found that migrant farmworkers have been infected by COVID-19 at almost three times the rate of other California residents.<sup>v</sup> Thirteen percent of the farmworkers tested had tests come back positive, while 5% of Californians who have been tested, tested positive.<sup>vi</sup> Farmworkers are disproportionately affected by COVID-19 due to differing factors that include working conditions, living conditions, access to healthcare services and language access. It is imperative that a farmworker policy incorporate fair and equal treatment, have a high impact by reaching a large population, safely administer COVID-19 guidelines and precautions, and be politically feasible in order to change the status quo and rectify injustices.

## **Working Conditions**

National COVID-19 guidelines were released by the Center for Disease Control (CDC) at the beginning of the pandemic and outlined how to protect yourself and others from the virus. Personal protective equipment (PPE) was in short supply during the first few months of the pandemic. Governors around the U.S. mandated the use of face coverings and PPE. Agriculture employers, local governments and community-based organizations banded together to provide PPE to farmworkers.<sup>vii</sup> Oregon officials handed out 900,000 face masks in June, before the start of harvest season.<sup>viii</sup> However, studies of farmworkers in Oregon and California provide a different perspective on access to PPE. California farmworkers reported that only 54% of farms provided face masks, while Oregon farmworkers reported that 77% received an employer-provided face

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mask.<sup>ixx</sup> Twenty-two percent of Oregon farmworkers reported no change to bathroom and handwashing conditions on-site, despite a temporary administrative rule regarding public health safety measures for agricultural operations.<sup>xi</sup>

Farmworkers also reported having difficulty maintaining six feet of distance for certain tasks, including during meetings or working on an assembly line. Thirty-one percent of Oregon farmworkers reported being required to work in close proximity to other employees without PPE.<sup>xii</sup> Providing adequate personal protective equipment, physical distancing requirements and hygienic working conditions during a global pandemic is the absolute bare minimum that should be extended to essential workers who risk their lives to supply the nation's food.

### **Living Conditions**

The living conditions of migrant farmworkers causes them to be more vulnerable to COVID-19. Due to the temporary nature of the work, employers are expected to provide housing to migrant farmworkers during the harvest season. Housing can be provided in a congregate living setting, also called labor camps. Up to six people may share a room with three bunk beds; alternatively, twenty-five people have been found living in the same house.<sup>xiii</sup> These shared living conditions allow the virus to spread like wildfire. Workers may be able to take precautions at work, but at home they are unable to physically distance and are more susceptible to contracting the virus from fellow roommates. At Lipman tomato farm in Virginia, employers tried to stop the spread of COVID-19 by enforcing a strict lockdown on migrant farmworkers.<sup>xiv</sup> Farmworkers were restricted to the labor camps or the fields, becoming prisoners to their employers. This abuse of power is uniquely possible in the agriculture sector, because the employer provides workers with a visa, housing and wages. Farmworkers are beholden to their employer and face losing these opportunities if they speak out against labor abuse.

### **Access to Healthcare Services**

COVID-19 has exacerbated the injustices farmworkers face, including their lack of access to health insurance coverage. The National Agricultural Workers Survey administered by the U.S. Department of Labor found that less than half of farmworkers have health insurance, and only 29% had employer provided health insurance.<sup>xv</sup> Fifty-four percent of California farmworkers and fifty percent of Oregon farmworkers reported costs, lack of insurance and lack of sick leave as barriers

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that prevented them from seeking medical attention.<sup>xvixvii</sup> Twenty-four percent of California farmworkers reported fear as being an impediment to accessing healthcare services, especially fear and distrust of government agencies and the healthcare system.<sup>xviii</sup> These fears are heightened for undocumented workers who risk the loss of their livelihood and deportation. Without equal access to healthcare, migrant farmworkers cannot receive adequate treatment for COVID-19.

Apart from not receiving health insurance coverage, migrant farmworkers lack basic worker protections such as paid sick leave, overtime pay and payment of the federal minimum wage.<sup>xix</sup> Undocumented workers are even more vulnerable, because they are unable to receive unemployment benefits, stimulus payments or legal protections. Due to the desperate situation, some undocumented migrant farmworkers have refused to take a COVID-19 test or have hidden a positive result out of fear that they may lose their job or their wages. A positive test could force them to quarantine without paid sick leave, adding more economic burden. Some workers go to the extreme of entering death pacts with fellow co-workers; where if one tests positive, they keep it a secret in order to prevent the whole labor camp from shutting down.<sup>xx</sup> Reyna Lopez, the director of a farmworkers union, explains "Not only is there no paid leave [if you can't work], but no job. That tells farmworkers they don't have an incentive to tell people that they are feeling sick. The biggest fear is not necessarily the virus itself; it's not being able to provide for family."<sup>xxi</sup> Access to healthcare services should be a basic human right extended to everyone, especially during a pandemic.

### **Language Access**

Unequal access to healthcare services is further aggravated by barriers to language access. A study conducted in Oregon found that 24% of the farmworkers surveyed identified as Indigenous and spoke twenty-two different Indigenous languages. Workers expressed concern that their fellow co-workers predominantly spoke Indigenous languages and their unfamiliarity of Spanish may be creating information gaps in regards to COVID-19 guidelines and information. This was confirmed by the University of California, Berkeley study. The study discovered that farmworkers who only spoke an Indigenous language had higher positivity rates than Spanish or English speakers.<sup>xxii</sup> In Oxnard, California, Radio Indígena was created to transmit information in Indigenous languages about COVID-19.<sup>xxiii</sup> The organization, Listos California, launched a farmworkers initiative community project with digital audio files sharing COVID-19 information

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and disaster preparedness in various Indigenous languages, Spanish, Hmong and Punjabi.<sup>xxiv</sup> These are just two examples of individual citizens or non-profit organizations who stepped up to fill the COVID-19 language access gap.<sup>xxv</sup> However, mixed messages and an uncoordinated response from local and national governments has created uncertainty and confusion even in English. The lack of information in numerous languages on preventing the transmission of the virus is especially worrisome and further endangers farmworkers.

### **Current Policies**

#### *CARES Act, FFCRA and FARM Act*

The Coronavirus Aid, Relief and Economic Security (CARES) Act extended \$23.5 billion of economic relief to agricultural producers, however none of those relief funds were required to reach farmworkers.<sup>xxvi</sup> Following the CARES Act, the Families First Coronavirus Response Act (FFCRA) was passed by U.S. Congress and granted free COVID-19 testing to uninsured individuals; but undocumented immigrants, H-2A workers and Temporary Protected Status holders were excluded from the policy.<sup>xxvii</sup> FFCRA also provided employees with paid sick leave and expanded family and medical leave due to COVID-19.<sup>xxviii</sup> Unfortunately, the FFCRA included a clause stating that small businesses with fewer than fifty employees may be exempt from the requirement to provide leave if it threatens the viability of the business.<sup>xxix</sup> 96.6% of farmworkers work on a farm with fewer than fifty employees, which denies them access to paid leave under FFCRA.<sup>xxx</sup> In response to this injustice, Oregon Senator Jeff Merkley introduced the Frontline At-Risk Manual (FARM) Laborers Protection Act to the Senate. Under the FARM Act, farmworkers would be assured ten days of paid sick relief, receive pandemic hazard pay of an additional \$13 an hour, restrict layoffs and implement CDC physical distancing and sanitation recommendations.<sup>xxxi</sup> While the act was introduced to the Senate in June, it has not been passed into law.

#### *Local government policies*

The federal government never enacted enforceable rules to protect farmworkers from COVID-19 or to advise employers on what to do if their workers contracted the virus. Local and state governments were forced to adopt individual responses to COVID-19 in the agricultural sector. Eleven states (California, Colorado, Michigan, New Mexico, New York, Oregon, Pennsylvania,

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Rhode Island, Virginia, Washington and Wisconsin) have implemented mandatory guidelines and protections for farmworkers.<sup>xxxii</sup> These protections include: issuing additional PPE, enforcing physical distancing guidelines, disinfecting and maintaining a hygienic workplace and offering free COVID-19 testing to workers. Voluntary, non-enforceable guidance was issued in twenty states, and nineteen states, including Texas and Florida, have issued no guidelines for protecting farmworkers.<sup>xxxiii</sup> A handful of state governments including Oregon, Washington and California used federal CARES Act money to create relief funds specifically for immigrants, including farmworkers and undocumented immigrants.<sup>xxxivxxxv</sup>

### *Quarantine Housing Program*

The Grower-Shipper Association of Central California began a farmworker quarantine housing program in April.<sup>xxxvi</sup> This program provided temporary housing to farmworkers who had tested positive for COVID-19, were asymptomatic or had been exposed to the virus. Farmworkers who participated in the program also received daily food deliveries and regular health check-ups organized through Salinas Valley Memorial Hospital.<sup>xxxvii</sup> The quarantine housing program was so successful that California Governor, Gavin Newsom, used it as a model for his Housing for the Harvest program.<sup>xxxviii</sup> The Housing for the Harvest program is initially available in the Central Valley, Central Coast and Imperial Valley regions, due to their high concentration of farmworkers.<sup>xxxix</sup> However, other counties and regions are able to opt-in to the program. In order to become eligible for the program, farmworkers must provide evidence to the state that they have tested positive for COVID-19 or have been exposed to the virus.<sup>xl</sup> A hotel room is provided by the state, as well as: three meal deliveries daily, transportation, wellness checks and financial assistance.<sup>xli</sup> Everything is offered at no cost to the eligible farmworkers. The state received Federal Emergency Management Agency (FEMA) approval in order to cover a portion of the funding for the program.<sup>xlii</sup>

### *California COVID-19 Farmworker Relief Package*

The California COVID-19 Farmworker Relief Package was recently passed on September 30, and provides farmworkers with the most comprehensive pandemic assistance.<sup>xliii</sup> The package prioritizes workplace health and safety: it funds a bilingual educational outreach campaign, ensures paid sick leave and worker compensation benefits, and calls on Cal/OSHA to enforce COVID-19 guidelines and track workplace violations. The Housing for the Harvest program is included in

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the relief package, in order to provide temporary housing to farmworkers who have tested positive for COVID-19. The package expands telehealth services to reach rural, hard to access communities, and will ensure that testing for COVID-19 targets rural communities. Finally, PPE access will expand to reach more farmworkers.<sup>xliv</sup>

### **Modifications**

The California COVID-19 Farmworker Relief Package adequately addresses paid sick leave and worker compensation benefits. However, the bilingual outreach campaign should be expanded to include the multitude of other languages farmworkers speak besides just English and Spanish.<sup>xlv</sup> Language access services should not only inform workers about COVID-19 guidelines and ways to access job benefits, they should also provide translation assistance in order to remove language barriers when farmworkers seek medical care. The policy should include a threshold amount that farmworkers have to be paid. This is to ensure all farmworkers receive a decent minimum wage. It also acknowledges the risks farmworkers take to ensure the U.S. food supply chain does not break during the pandemic.

The role of Cal/OSHA in enforcing COVID-19 guidelines and tracking workplace violations is ill-suited to the demographic. Many farmworkers are undocumented and do not feel comfortable reporting workplace violations to government agencies. A community-based organization would be better prepared to carry out this role because they can act as a trustworthy confidant and ally to farmworkers.<sup>xlvi</sup> The community-based organization could act as an intermediary and receive the reported violations on behalf of the farmworkers, then report them to Cal/OSHA. The housing portion of the policy should be expanded to include additional housing for farmworkers. Under the current policy, hotel and motel rooms are provided to farmworkers who can demonstrate to the state that they have tested positive for COVID-19 or have been exposed to the virus. Although this addresses the immediate problem of exposure, it does not consider the crowded housing conditions many farmworkers face. Additional housing should be provided to farmworkers who have not tested positive for COVID-19, in order to alleviate crowded conditions during a pandemic that sees viruses spread quickly in tight quarters. A thorough housing program must be included in the policy to promote equal and fair treatment of farmworkers.

## **Recommendation**

The California COVID-19 Farmworker Relief Package attempts to recognize the various inequities farmworkers face. Therefore, the California COVID-19 Farmworker Relief Package, with the suggested modifications, should be extended to become national legislation. The incoming Biden/Harris administration is poised to enhance immigration policies and center their initial efforts on aiding minority communities that continue to face injustices.<sup>xlvii</sup> However, if Democrats do not gain a Senate majority, more liberal policies will be blocked by Republicans. Taking this into consideration, the policy has fair political feasibility. The policy will have a high impact, addressing the needs of all migrant farmworkers nationwide. Migrant farmworkers account for 73% of agricultural workers, yet they are unjustly excluded from the basic essential benefits they require.<sup>xlviii</sup> This policy would reach a significant portion of the farmworker population. The modified California COVID-19 Farmworker Relief Package demonstrates safe administration because farmworkers would have CDC guidelines enforced, receive proper PPE, and have access to COVID-19 testing and healthcare services. Finally, the adoption of this policy would ensure safe and equal treatment for all farmworkers. The most overlooked and undervalued subset of the population would at last receive basic rights protecting their working conditions and living conditions.

The COVID-19 pandemic functions as an opportunity to break away from the status quo. As Arundhati Roy eloquently writes: "It is a portal, a gateway between one world and the next."<sup>xlix</sup> Instead of returning to normal, a new world must be envisioned that emerges from the darkness. This policy suggestion is just one part of a pathway towards formulating policies that protect the lives and livelihoods of migrant farmworkers during and after COVID-19. Farmworker labor rights, working conditions and access to healthcare are immensely intricate topics. One single policy solution is unable to capture and address all of the needs. The modified California COVID-19 Farmworker Relief Package is simply one solution to a complex problem. It is an attempt to leave racism, discrimination and injustice behind in order to create a brighter, more just world.

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