



## IMMIGRATION UPDATE: PREPARING FOR DEFERRED ACTION IMPLEMENTATION

Farmworker Justice is helping to ensure that farmworkers can take advantage of the deferred action programs announced by President Obama on November 20, 2014. The programs, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA), will provide temporary work authorization and protection from deportation to eligible individuals. While the programs fall short of the needed comprehensive immigration reform, they will help many farmworkers and their family members by eliminating the fear of deportation, thus empowering them to contribute more fully to their communities and to improve their workplaces. Estimates indicate that at least 700,000 undocumented farmworkers and their spouses are eligible for the deferred action programs.

Farmworker Justice is focused on building the capacity of organizations to enable eligible farmworkers and their family members to apply for and obtain status under the new programs. We are assisting the UFW Foundation and other farmworker organizations through the Si Se Puede network, which will coordinate efficient dissemination of information and services. We collaborate closely with other immigration, labor, and religious advocacy organizations through the Committee for Immigration Reform Implementation (CIRI). We have been sharing information about the deferred action programs through e-mail and conference presentations and through advocating with the Administration to ensure the programs' responsiveness to farmworkers. We continue to explore collaborations with community-based organizations to maximize efficient use of limited resources and the number of eligible farmworkers who apply for and obtain deferred action.

Unfortunately, the DAPA and expanded DACA programs have been put on hold by a federal judge. Twenty-six states led by the State of Texas filed a lawsuit against the Obama Administration arguing that the deferred action programs violate the law on several grounds. On February 16th, a federal judge issued a preliminary injunction in *Texas v. United States*, temporarily preventing the Federal Government from implementing programs based on its finding that the government's actions are likely to have violated a law that requires the government to



follow certain procedures in making rules. The judge has yet to rule on other issues such as the constitutionality of the programs.

The Obama Administration and numerous constitutional experts have expressed their confidence that deferred action programs are constitutional. The Administration appealed the injunction to the Fifth Circuit Court of Appeals and requested a prompt decision. As this newsletter was being written, it was unclear how long the appeal would take.

Farmworker Justice joined an amicus curiae ("friend of the court") brief along with other immigration, civil rights, and labor groups requesting that the appellate court overturn the injunction. Fourteen states and the District of Columbia filed a brief in support of the Federal Government. These states, led by Washington and California, argue that that rather than harm their economies, as the states that have sued are claiming, the deferred action programs will bring economic benefits to their states.



## IMMIGRATION UPDATE (continued from page 1)

It is important to note that the lawsuit does not affect other parts of President Obama's executive actions on immigration, such as the government's instructions on enforcement priorities that define which immigrants are deportation priorities. The original 2012 DACA program is also still running and accepting new DACA applications and renewal applications.

Farmworker Justice encourages farmworkers and family members who may be eligible for DAPA and expanded DACA to continue preparing for the program by saving the \$465 application fee and collecting the necessary paperwork. For DAPA, applicants will need to show proof of identity, proof that they have a child who is a U.S. citizen or lawful permanent resident, and documentation that they have been in the United States since January 1, 2010. Residence in the United States should be provable using a variety of documents, such as employment records, utility bills, health records, and official mail.

While we plan to make deferred action a success, we continue to advocate in Congress for the comprehensive immigration solution so desperately needed for farmworkers and many others. Unfortunately, many legislators prefer to attack President Obama's executive actions. Some are pressing for more immigration enforcement and deportations, paired with a new guestworker program. Under such a scenario, the current experienced undocumented workforce would be further marginalized, while foreign citizens would be brought in as exploited guestworkers who displace U.S. citizens and lawful immigrants currently in the farm labor force. Farmworkers, growers, and our nation's food security and safety will benefit from comprehensive immigration reform that provides a path to lawful permanent residency and eventual citizenship for the 11 million affected, including farmworkers and their families.

For more information on administrative relief, visit [www.farmworkerjustice.org](http://www.farmworkerjustice.org) and [sisepuede.org](http://sisepuede.org).



## ALIADOS: PROMOTING AWARENESS AND REDUCING STIGMA SURROUNDING HIV AND AIDS

Farmworker Justice is a proud partner of the Act Against AIDS Leadership Initiative (AAALI) and is working to raise HIV knowledge, awareness, and action in farmworker and Latino communities.

### NATIONAL HIV TESTING DAY IS JUNE 27!

National HIV Testing Day focuses on the importance of knowing your HIV status and encouraging others to get tested. So, why is this important to farmworker organizations and supporters? The truth is, it is much more difficult for farmworkers and other rural or mobile populations to find a testing location, get to the testing location, receive an HIV test in their native languages, be able to access HIV medication, and be able to take their medication consistently for the rest of their life. There are a lot of barriers, and not every farmworker will encounter all of them, but as organizations interested in the lives of farmworkers and their families, we want to assist farmworkers in overcoming the barriers to finding out their statuses and remaining healthy if they test positive.

Many farmworkers are not even able to get to that first step – getting tested and knowing their HIV status. However, just like many others in this country, many farmworkers are at risk for HIV. And if they do test positive, they have a much harder time getting linked to care, staying in care, getting HIV drug therapies, and maintaining a low HIV virus level in their body.

There is a lot of things we, as farmworker organizations and supporters, can do to help farmworkers overcome some of these challenges. We know that many farmworkers do not go to health centers or health departments regularly, and when they do, the first thing on their mind is most likely not an HIV test. However, they often interact with other social service organizations through attending ESL classes, getting involved in their children's schools, and talking to lawyers about work issues. If we could use these avenues to encourage and organize HIV testing and education (through job fairs, school fairs, referrals, medical-legal partnerships, etc.), we could make great strides in helping farmworkers to know their HIV statuses.

Aliados is coming to Kansas City, MO for the National Council of La Raza's National Latino Family Expo July 11 to July 13 at the Kansas City Convention Center. We are pleased to announce that we will be partnering with Guadalupe Centers, Inc. to offer free HIV testing.

Visit the Farmworker Justice booth located in the Health/Tu Salud Pavilion.





# LITIGATION UPDATE

Jimenez, et al. v.  
GLK Foods LLC and  
Ryan Downs



We are currently litigating this case in the Eastern District of Wisconsin along with local co-counsel from the Chicago-based Hughes, Socol, Piers, Resnick, & Dym. The plaintiffs in this case are a class of H-2B workers hired to trim cabbage in a sauerkraut processing plant in Wisconsin. After being sent home in the middle of their job order for two years, they sued their employer to recover their pre-employment expenses, the remainder of the value of their contract under the H-2B job order, and statutory damages under AWPA and state law for recruiting and disclosure violations. In March of this year, the Court ruled on Motions for Summary Judgment filed by both sides and issued an order that was dispositive on several of the plaintiffs' claims. This order concerns only summary judgment on the pre-employment expenses under FLSA.

The plaintiffs in this case were recruited after the cannery's president asked an employee to return to his small hometown in Mexico to find more workers to work alongside him as H-2Bs. After recruitment, the plaintiffs fronted a number of costs to get the job, including recruiting fees, bus fares from their hometown to the consulate, food and lodging for the week-long stay near the consulate as their visas were processed, licenciado fees to assist with paperwork processing, visa fees, passport fees, bus fare from the consulate to the border, and a border-crossing fee.

The court granted the summary judgment on all of the plaintiffs' pre-employment expenses except for pre-border food and lodging expenses (which it held were ordinary living expenses, properly deductible under the FLSA, and thus not subject to reimbursement) and recruitment fees. The court did not reach a decision on recruitment fees, finding that a fact issue remains as to the extent to which the fees were authorized by the employer. The court also found joint employer liability for the president of the employer company, who personally attended recruiting sessions in some years and signed forms with a recruiting agency acknowledging his responsibility to pay for pre-employment expenses.



## Keeping the Pressure on the EPA to Protect Farmworkers from Pesticides

Working with coalitions of farmworker, environmental, public health, and organized labor advocates, we continue to push the U.S. EPA to implement stronger policies and workplace protections for farmworkers and their families from pesticide exposure. The EPA is working to finalize revisions to the Worker Protection Standard (WPS), the regulations established to protect farmworkers and pesticide handlers from the adverse effects of pesticide exposure. On March 31st, Cesar Chavez Day, we delivered a petition with over 21,000 signatures to the EPA, urging it to finalize the regulations and implement stronger measures to prevent further injury to workers from pesticides.

The EPA is also set to publish proposed revisions to the regulations governing the safety of pesticide applicators, the companion regulations to the WPS. Like the WPS, the Certification of Pesticide Applicator regulations have not been updated for many years. Pesticides used for agricultural purposes must be applied only by, or under the supervision of, certified pesticide applicators. Current safeguards are weak, and should be strengthened to protect the workers who are most vulnerable to pesticide injury – those working “under the supervision” of certified applicators. Farmworker Justice will submit comprehensive comments on the proposed revisions, and will provide information to members of the public who wish to submit their own comments on this important regulation.

Finally, the EPA also published a revised human health risk assessment for the neurotoxin chlorpyrifos earlier this year. Chlorpyrifos is a widely used pesticide that was initially created as a nerve agent in World War II. It is now used on many crops such as vegetables, wheat, alfalfa, and corn. Every year, chlorpyrifos is identified as one of the top pesticides that cause pesticide poisoning across the United States. Scientific studies show that farmworkers exposed to chlorpyrifos suffer from acute pesticide poisoning and that farmworker children suffer from neurodevelopmental impairments due to secondary exposure. Required personal protective equipment is often-times insufficient to protect farmworkers from being exposed to chlorpyrifos, and it may actually increase farmworkers' risk of heat stress. It is noteworthy that the EPA banned the use of the pesticide for household use, while its use is still permitted in agriculture.

Farmworker Justice believes that chlorpyrifos should be banned from agricultural use, as it is for residential use. We are currently collaborating with other organizations to submit comments on the EPA's risk assessment.



# CONEXIONES IN ACTION

## A CASE STUDY IN PROMOTOR TRAINING

It's early morning on a Saturday and the community room in a small town in the Central Valley of California is already bustling with activity. Voices rise in happy greeting as participants enter. The aroma of coffee wafts out of a large urn placed alongside fresh panecitos from the bakery next door, and the songs of Los Tigres del Norte pipe through an old radio placed carefully on the table. The room begins to fill with promotores de salud (community health outreach workers), gathering to take part in a two-day-long training event, which will ultimately prepare them to conduct outreach on the Marketplace, Medicaid, and the Children's Health Insurance Program (CHIP) in their communities. This training is part of a two-year project called Conexiones, facilitated by Farmworker Justice and funded through the Centers of Medicaid and Medicare Services (CMS). This initiative seeks to connect rural Latinos and their families to health insurance, empowering them to overcome barriers to accessing affordable health care.

The following two days will be rigorous and an enormous amount of learning will take place—and yet there is such a sense of anticipation and camaraderie in the room that this process seems somehow less daunting. The promotores will spend much of the training working in small groups, interacting with the material through a series of creative means, and ideally leaving the training feeling both inspired and well equipped to share the valuable information they learn with members of their home communities.

Following is an example of one of the training activities extrapolated from Farmworker Justice's Conexiones curriculum for California. This particular activity is comprised of a series of case studies that serve to highlight the differences in eligibility requirements between Medicaid (Medi-Cal) and the Health Insurance Marketplace (Covered California). The intent is to foster conversation among participants regarding the challenges community members may face when applying for health insurance and how the intricacies of each person's story may influence his or her quest for access to affordable and quality health care.

Participants work together in small groups, taking time to reflect on the questions posed to them in regards to their specific cases. After discussing their case stories, they present them back to the large group, gathering additional thoughts and questions through this process. This process affords participants an opportunity to learn the training material in an interesting, interactive, and informative manner. Rather than sit in a lecture-style room, they work in small circles, providing everyone the chance to participate and to engage fully with the material.

When Rosa, one of the promotores, finished her first two-day training event she reflected, "I thought these two days were going to feel slow and over my head. I was scared that I wouldn't be able to learn all of this information so quickly. But it didn't feel like it at all—this was fun."

**In the face of the ongoing health care overhaul, it is encouraging and inspiring to think that it doesn't always have to be so overwhelming to talk about health, after all.**



## CASE STUDY: Luis, Claudia, and Eva\*

Luis was born and raised in Mexico City until he was 15 years old. At this point Luis's parents thought it best for him and his younger siblings if they moved to the United States, where they could secure work through relatives who owned a landscaping company in Los Angeles, CA. Luis excelled in school and with his rapidly improving English was able to assist his parents in completing the proper documentation to begin the process for citizenship through naturalization. Luis successfully completed the naturalization process himself and became a citizen two years ago.

Claudia and Luis met as first year students at UCLA six years ago. The couple married shortly after their graduation, and once Luis became a citizen, he helped to procure a green card for Claudia, who had been in the United States until that point under a student visa. Claudia has been a lawfully permanent resident for one and a half years.

The couple welcomed their first child, Eva, six months ago. Eva is a U.S. citizen, and Claudia and Luis are in the process of obtaining a social security number for her. Claudia has not yet returned to work since her pregnancy, so the family subsists on the income Luis earns, which is approximately \$35,000 per year. Luis and Claudia would like to purchase health insurance for themselves and Eva, but are unsure whether or not they can afford coverage and whether Claudia will be eligible due to her legal status.

\*All case stories are fictional.

## CASE STUDY ONE: DISCUSSION QUESTIONS

Based upon the provided information, do you feel that Luis meets the eligibility requirements to obtain health insurance in California either through Covered California or Medi-Cal?

Why or why not?

As a Lawfully Permanent Resident, is Claudia eligible for health insurance through Medi-Cal? Do you feel she would qualify for insurance offered through Covered California?

Do you feel Eva will qualify for health coverage under Medi-Cal? Why or why not?

If you were to encounter this family while conducting your outreach, how would you advise them on the available health insurance options and their best options for receiving care?

Have you heard of similar concerns from families in your community? What other fears or myths have you encountered?



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**SHELLEY DAVIS MEMORIAL AWARD:  
MS. ANDREA LARUE,  
MANAGING PARTNER NVG**

**FARMWORKER JUSTICE LABOR  
AWARD:  
U.S. SECRETARY OF LABOR TOM PEREZ**



# AFFORDABLE CARE ACT UPDATE: WORKING HARD TO INCREASE FARMWORKER ENGAGEMENT

It's been almost two years since open enrollment began in the health insurance marketplaces and farmworkers continue to encounter barriers to health insurance enrollment. Despite these barriers, advocates on the ground, including community-based organizations, legal services providers, and health centers, are educating and enrolling as many farmworkers and their families as they can. From California and Washington to North Carolina and Maine, farmworkers are learning about their options to enroll – perhaps for the first time – in comprehensive health insurance.

The hard work of these advocates cannot be understated. Farmworkers may have little interaction with the U.S. health-care system, and may not understand their rights and obligations under the Affordable Care Act. Because few farmworkers have credit histories, most farmworkers must apply for marketplace health insurance by phone, a process that can take anywhere from 30 minutes to two hours. The work of in-person assisters to help navigate the complicated application and enrollment process is crucial to success.

In addition to education around health insurance, for the first time this year advocates had to help workers understand the tax implications of the Affordable Care Act. Many farmworkers likely had to fill out additional tax forms to report and reconcile their premium tax credits (if they enrolled in marketplace health insurance) or to apply for an exemption from the penalty. H-2A workers, for example, who were not able to enroll in health insurance last year may be subject to a tax penalty, unless they qualify for an exemption. It's difficult to know how many farmworkers may pay the ACA tax penalty for 2014 and how many may qualify for an exemption.

Farmworker Justice is recognized at the national and local level as an expert on the ACA and farmworkers. We continue to provide resources and trainings to support outreach and enrollment efforts through presentations, fact sheets, webinars, and individual assistance. We are working with advocates in DC and across the country to address issues related to insurance portability, incorrect eligibility determinations, and the ACA's employer mandate. We are also monitoring legislation in Congress that attempts to place further limits on the obligations of large employers to offer health insurance to seasonal and H-2A workers.

We have learned a lot over the past two years, but more needs to be done. Farmworker Justice, with our partners in DC and across the country, will continue to strive for full farmworker engagement with the Affordable Care Act.



## NEW LEADERSHIP TRAINING: CONNECTING FARMWORKERS AND MIGRANT HEALTH CENTERS

Did you know that community health centers are required to have patient majorities on their boards of directors? At migrant health centers, health centers that receive funding to provide healthcare to migrant and seasonal farmworkers and their families, the patient majority must be made up of farmworkers or farmworker family members. This governance model ensures that the services provided by the health center are responsive to the needs of the community. For example, the board of directors sets the health center's sliding fee discount schedule, which is a schedule for payment of clinic services based on a patient's income. Farmworkers tend not to have health insurance and they are unlikely to be able to afford out-of-pocket expenses. Farmworker input is crucial to ensure that the health center's sliding fee discount is cost-effective for both the patient and the health center.

However, migrant health centers often struggle to recruit and retain farmworker board members and may become underutilized as a result. Part of the reason health centers struggle to recruit farmworker board members is because



farmworkers may not feel that they have the skills or knowledge to contribute successfully. To help raise the voices of farmworkers at migrant and community health centers, Farmworker Justice developed a leadership training for promotores de salud (lay health workers). The leadership training not only reinforces the leadership skills possessed by promotores de salud, but also illustrates how they can apply their leadership skills at the health center. Promotores de salud, who are from the community and are often patients of the health center, can link farmworkers to the health center and can advocate for better policies on behalf of farmworker community members. The training not only connects promotores to volunteer opportunities at the health center, but also elevates those promotores to positions on the health center board of directors.

Community organizations are encouraged to develop partnerships with the health center to increase community knowledge and utilization of health center services. If you know any farmworker leaders in your community, encourage them to explore the possibility of applying to be part of the local health center's board of directors. Even if there are no current open positions on the board of directors, there are likely other opportunities within the health center.

Migrant health centers are crucial providers of healthcare to migrant and seasonal farmworkers in the United States. But the effectiveness of these services depends on the input of farmworker patients. Farmworker Justice's role connecting farmworker leaders to migrant health centers ensures that farmworkers have access to healthcare that truly meets the needs of their communities.



## FROM THE FIELD: FARMWORKER JUSTICE FELLOW RECEIVES FULBRIGHT FELLOWSHIP

*Renato Rocha served as the Farmworker Justice Fellow from 2011 to 2013. He was awarded a Fulbright Fellowship (2013-2014) to research U.S. and Mexican Labor & Immigration Policy regarding guestworkers.*

My Fulbright Fellowship to Mexico really started with my fellowship at Farmworker Justice. During my first year as a fellow, I helped to investigate potential labor violations within a group of Mexican H-2 guestworkers who were terminated early, despite their employment contract. Throughout the course of this investigation, I spoke with guestworkers who were charged recruitment fees and took out high-interest loans in order to pay these expenses. Unfortunately, with poor employment opportunities at home, these guestworkers returned to Mexico heavily indebted with little prospect of being able to pay their loans. Shocked by the lack of regulatory enforcement of guestworker protections, I realized that the systemic problems within the H-2 visa program's international labor recruitment process would require a binational approach to comprehend and solve fully. As a result of this experience and with the support of Farmworker Justice, I applied for and was awarded a Fulbright Fellowship to study the international labor recruitment process within the H-2 visa temporary worker program in Mexico.

The international labor recruitment process significantly influences the working and living conditions of guestworkers. With limited paths to U.S. citizenship, Mexican nationals are particularly vulnerable to exploitation from recruitment agencies during the unregulated pre-departure process of the H-2 visa program. In order to secure the H-2 visa, these workers, most of whom live in poverty, routinely obtain high-interest loans to pay transportation, visa, processing, and recruitment fees to these agencies. In

addition, recruiters may even require guestworkers to leave collateral, such as the deeds to their houses or other assets.

During the Fulbright Fellowship, I collaborated with Centro de los Derechos del Migrante's (CDM) Justice in Recruitment Project. At CDM, I helped to update their survey tool and collected guestworkers' demographic and economic information. I conducted interviews with CDM's Comité de Defensa del Migrante, a group of community-based leaders of current and former guestworkers and migrants, to understand the recruitment process better. In Mexico, I had the rare opportunity to engage with guestworkers and their families in their home communities and to learn how H-2 visa policies truly affect their lives. On a personal note, my Fulbright experience was incredibly powerful, as I reflected on my family's history in the Bracero Program. Both of my grandfathers were Braceros. I came to realize that my grandfathers' experiences as Braceros were not too different than that of today's guestworkers in the H-2 visa program.

After the Fulbright Fellowship, I started graduate studies in public policy at Princeton University. As a graduate student, I am acquiring some of the tools needed to help address the flaws within the H-2 visa program and its international labor recruitment process. Once I graduate, I hope to continue learning about this topic and contributing to efforts to end the exploitation of guestworkers.



# FARMWORKER JUSTICE

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LATEST NEWS  
FROM FARMWORKER JUSTICE

- Immigration Update: Preparing for Deferred Action Implementation
- Keeping Up the Pressure to Protect Farmworkers from Pesticides
- Connecting Farmworker Leaders & Migrant Health Centers
- Increasing Farmworker Engagement with the Affordable Care Act

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U.S. DEPARTMENT OF LABOR  
ENFORCEMENT IN  
AGRICULTURE: More must be  
done to protect farmworkers



Our new report reviews enforcement data under the two principle employment laws in agriculture. The data reveal high rates of violations of workers' rights found in the agency's investigations. From our analysis, Farmworker Justice concludes that there has been improvement in some areas of DOL's enforcement activities in agriculture over the past few years, but that the DOL should continue to strive for greater quantitative and qualitative improvement.

We recommend further increases in the numbers of investigations and improvements in the quality of enforcement. Such improvements would provide hard-working, low-wage farmworkers with remedies for violations of minimum standards required by law and deter more employers from committing wage-hour violations.