

## Migrant Farm Workers Under The New Regime

by Candace Beck

The stories are clear. With the passage of the 1996 Immigration Reform and Immigrant Responsibility Act (Immigration Reform Act), the 1996 Personal Responsibility & Work Opportunity Reconciliation Act (Welfare Reform Legislation), and the possible changes to the Agricultural Worker Protection Act (AWPA), migrant workers who build their lives around harvesting Americans' food are rapidly losing the minimally secure lives they once had. These legislative changes are in sharp contrast to changing international human rights standards, which advocate

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the right to decent working and living conditions for the migrant worker.

To migrant workers, the Immigration and Naturalization Service (INS) is a mythical dragon that swoops in during the day or night to take away friends, relatives and children. *The Washington Post* reported in September 1997 that there have been 75,743 deportations so far this year. From April to June 1997, there has been a nearly 50% increase in the number of immigrants deported, compared with the same three month period last year.

Two sections of the Immigration Reform Act affect farm workers the most. First, the law imposes several new requirements on family members who sponsor relatives in an application for legal permanent residence (LPR) status. Family members are now required to sign an "affidavit of support" in which the family sponsor promises to support the family member at an income of 125% of the official U.S. poverty level. Currently, the U.S. poverty level is \$18,000 for a family of four. Thus, a sponsor of a family of four must make at

least \$22,500 annually to sponsor a family member. The median household income for U.S. farm workers is between \$7,500 and \$10,000.

Second, there are many migrant workers and their families in the United States waiting for their LPR status to be reviewed. These migrants are in the United States illegally. The new immi-

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gration law terminates the ability of such migrants to adjust their status in the United States to LPR. Additionally, there are now three and ten year penalties to immigrants' re-entry if they have been in the United States illegally for 180 days and 360 days consecutively. Therefore, many of the migrant farm workers are either returning home, living in the United States in constant fear of being deported, or not being able to adjust their status to LPR while waiting for their priority dates to become current.

With the new welfare reform initiatives, Congress is denying migrant farm workers the rights to the very food they reap. Food stamps, American Families with Dependent Children (AFDC), and Supplemental Security Income (SSI) are denied to both undocumented (workers in the United States illegally) and qualified legal immigrants (including LPRs, asylees, refugees, persons granted withholding of deportation, persons paroled, and certain battered spouses and children of LPRs or U.S. citizens) who arrived after the passage of

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the Welfare Reform Law (August 22, 1996). Those who arrived before the law's enactment must have been working legally in the United States for approximately ten years (or 40 quarters) in order to qualify for benefits. Thus, those who have relied on those benefits now find themselves in desperate situations.

Agricultural work is dependent on weather fluctuations such as rain, hail, or drought. When weather conditions are bad, many workers do not get paid. Under the new law, the thousands of workers who do not meet the new requirements now lack the benefits which previously sustained them through hard times. Unless the new requirements are met, affected immigrants will no longer receive food stamps and will be solely reliant on available community food banks such as the Salvation Army and other non-governmental agencies. Meanwhile, community food banks are being rapidly depleted.

Currently, Congress is under pressure from the powerful Agri-business lobby, to push through reforms on the

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current labor protections available for migrant farm workers in the AWPA, introduced by Representative Charles T. Canady (R-Fla.) on June 25, 1997. The current AWPA regulations provide that migrant and seasonal agricultural workers are given advance disclosure of work terms and conditions, that employers keep complete and accurate records and pay statements, provide transportation safety, adhere to housing health and safety standards, and comply with their work agreements with migrant farm workers. The legislation would remove "employer" status from many employers of farm workers. By doing this, the current federal labor laws would no longer apply to many farmers, effectively eliminating minimum standards for vehicles which transport farm work-

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ers, removing farm worker housing from adherence to federal safety standards, and restricting the ability of government officials to investigate the exploitation of farm workers. Congressional reasoning purports that with the current AWPA, farmers are strapped with too many regulations and too little control. Thus, the new AWPA reforms would render the minimal protections, which are currently weak and rarely enforced, null and void. Repealing the protections will prove disastrous for migrant workers.

### Case Study

The following case study is taken from interviews completed in July 1997 in Southeastern Colorado. It exemplifies some of the devastating results of the 1996 Immigration Reform Act and the Welfare Reform Legislation, and the ineffectiveness of current AWPA standards. The names have been changed to protect the workers' identities.

Different states have different harvest seasons. Thus, most migrant farm workers travel from one region to another, depending on the harvest period. It is common for the male worker of the household to have LPR status, which he probably obtained in the late 1980's through the Special Agricultural Worker Program (SAW) and General Amnesty program. This program allowed a certain number of agricultural workers to adjust to LPR status. Typically, their spouses either have not filed for a "green card," or LPR status, or are waiting for a priority date. The priority date is the date assigned an immediate relative immigrant once the relative's application for immigration has been approved. Due to the extensive "waiting list" of applicants to become LPRs, the priority dates for immigrants can be up to ten years away. When the priority date becomes current, the INS allows the relative to adjust his or her status and become an LPR. While many migrant workers' children are U.S. citizens, there are still a large number of children who wait for priority dates to become current or who have failed to file altogether.

The Garcia family is one case in particular that demonstrates the effects of the new immigration reform on migrant families. The father, Jose, is a migrant worker from Chihuahua, Mexico. He received his "green card" in 1988 through the SAW program. Throughout his marriage to Elvira, his family main-

tained a residence in Mexico. Three years ago, however, Jose brought his family to the United States to live in the farm worker housing provided by the farmer for whom he, his daughter, and his daughter's husband work year-round. His wife does not work in the fields and his sons travel from place to place for work after the harvest in Colorado. Jose has yet to file immigration papers for his wife, daughter, and two sons. He has

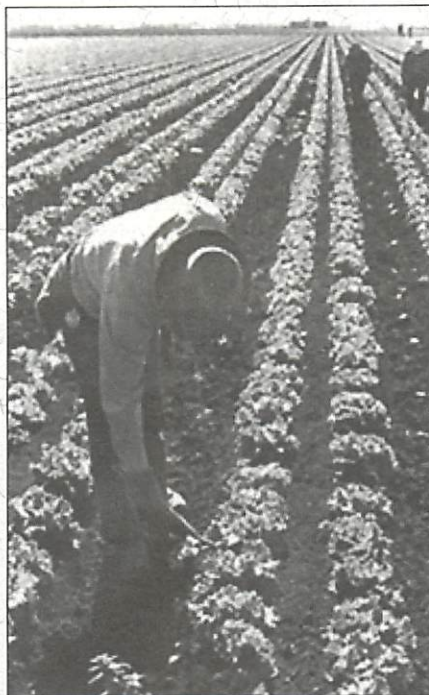


Photo courtesy of Rick Tejeda-Flores

Workers harvest lettuce in California's Central Valley

five years of legal permanent residency, affording him the possibility of obtaining U.S. citizenship, but his English is not good enough to pass the required English competence exam.

The effects of the new Immigration and Welfare Reform laws on the Garcia family are enormous. Many in his family are currently undocumented, and Jose is also dealing with the potential punitive effects of the new laws. Every day Jose's wife, children, and grandchildren live with the fear of being deported by the INS because they are undocumented. When field workers see an odd vehicle passing along the highway; the rumor is always that *la migra*

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(immigration) is there looking for undocumented workers. Working in the fields requires physical stamina. Jose wakes up around four a.m. and does not get home from the fields until seven or eight p.m. This past summer, Jose scalded himself with pesticide chemicals and received no medical attention. Migrant farm workers constantly work without protection from pesticides which cause extreme irritation to the skin. Jose's contractor dissuaded him from seeking medical attention, and Jose feared speaking up when it meant risking his job. With an oversupply of workers, Jose can be easily replaced.

Jose refused to take on a workers' compensation suit against his employer because, "He is good to me and he lets my family stay here and work without papers." Jose is 56 years old and in poor health. Jose has worked in the fields for 18 years and the wear and tear on his body is substantial. When it comes time for him to retire, or if he succumbs to a disability, he will be ineligible for SSI or any other type of disability benefits unless he has been working legally in the United States for at least ten years or 40 qualifying quarters.

### Analysis: New Laws, Pending Legislation and Social and Economic Rights

Migrant farm workers are an essential part of the U.S. economy. Eighty-five percent of the fruit and vegetable crops in the United States are hand-picked. Mexico supplies 65% of the farm workers in the United States. While the majority of U.S. farm workers are U.S. citizens (32%), or LPRs (25%), undocumented workers are still the single largest group of U.S. agricultural workers. This percentage has increased from 7% to 37% over a five-year period.

The lack of medical care for undocumented workers is an urgent issue, due to the poor working and living conditions of farm workers in the United States. Fewer than 20% of farm workers are served by accessible health care centers. A new report, issued in April 1997 by the U.S. Department of Labor (DOL), found that over 300,000 workers a year are poisoned by pesticides. The need for health care is prevalent due to poverty, frequent mobility, and unsanitary work and housing conditions. The DOL also states that the poverty rate for farm workers has increased from 47% to 61% in just a few years.

Pat Medige, the managing attorney of Colorado Rural Legal Services, Inc., Migrant Farm Worker Division, states that since the 1996 Immigration and Welfare Reform laws were passed, she has witnessed both tangible and intangible effects of the laws.

The tangible effects include the separation of families. Parents send their undocumented children back to Mexico before the season's end in order to complete the harvest without the risk that their children will be deported. "People are really leaving," Medige stated, "and this is going against all the family values rhetoric we have heard from Congress."

Medige describes the intangible effects as stemming from the "migrants' feelings of being under siege and feeling as if they are criminal when they are not criminal." In fact, they are playing a vital role in the U.S. economy. The migrants seek work for fair pay, but are frequently discriminated against because they lack organization and education. Being taken advantage of through unfair wages is not unusual to them. Under the new laws, it becomes an employer's right to abuse employees because they are easily dispensable.

This trend in the United States is inconsistent with international progress toward the protection of human rights. In its 95th session, the Inter-American Commission on Human Rights

appointed a Special Rapporteur for investigating human rights abuses against migrant workers in the hemisphere. Next year, the Special Rapporteur will release a report which will include a study of U.S. farm workers. Additionally, the Helsinki Accord, which the United States joined with 51 other nations, states that "human rights and fundamental freedoms are universal, that they are also enjoyed by *migrant workers* wherever they live. . . ." [emphasis added]

In 1992, the Conference on Security and Cooperation in Europe (CSCE) conducted an on-site study of migrant farm workers in the U.S. The study found that agricultural laws were inadequate or ineffective in ensuring equal treatment of migrant farm workers. It reported that the human rights of U.S. farm workers were not being addressed by the U.S. government.

In addition, the International Covenant on the Elimination of All Forms of Racial Discrimination, to which the United States is a party, purports in Part I, Article 5, ". . . to guarantee the right of everyone. . . to work, . . . to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, . . . the right to housing, the right to public health, medical care, social security and social services . . ." Although the U.S. is not a signatory to the UN International Covenant on Economic, Social & Cultural Rights (ICESCR), the Covenant states in Part III, Article 7, ". . . Parties to

the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work . . ." The Covenant is evidence of a widely accepted norm of international law. To that end, all workers are entitled to "safe and healthy working conditions, fair wages, a decent living for themselves and their families, and rest, [and] leisure . . ." In addition, Article 10 of the ICE-SCR provides that all Parties must afford the "widest possible protection to the family as the fundamental group unit of society."

The backlash against the migrant farm worker is growing in Congress. With the changes to the Immigration and Welfare Reform Laws in 1996, and the potential changes in the AWPAs, the U.S. farm worker is facing severe insecurity and extreme impoverishment.

The above stories demonstrate two things. First, both documented and undocumented migrant farm workers have few protections even though AWPAs ensure they exist and are to be enforced. Second, the backlash found in the new Immigration and Welfare Reform Laws are tearing families apart and driving workers into a hopeless state. The agricultural worker is an essential part of the U.S. economy; yet, the United States refuses to recognize current violations of fundamental human rights by which it has promised to abide. ☹

hood of such scenarios. A member of the prosecutor's office from the International Criminal Tribunal for the Former Yugoslavia noted that the credibility of an "on-site" investigation could only be guaranteed in the absence of supervision from state officials where the evidence was being collected. Several states also insisted on including in the statute a provision protecting politically sensitive information from public disclosure (based on reasons of national security) and a procedural

States were also divided on the issue of how much power should be given to both the prosecutor and the court during investigations, and the degree of state "involvement" in such investigations.

mechanism allowing states to apply for court orders securing such information.

The NGOs working on victims rights and gender issues were successful in their efforts to remind states of the importance of protecting victims and witnesses and acknowledging their rights to reparations and to participate in the proceedings. A redrafted version of Article 43 includes the creation of a victims' and witnesses' protection unit, allowance for victim's views and concerns to be presented at appropriate stages of the proceedings, and specific reference to victims of sexual and gender based violence (as beneficiaries of measures ensuring safety, integrity, and privacy).

With only two preparatory sessions planned before the diplomatic conference in June 1998, there is still much to achieve. Fortunately, the number of states working in favor of a truly effective and independent court is increasing at each stage of the process. Growing attention to this process from all sectors of society, and in particular from the media, could prove to be the key to successful negotiations. Procedural

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questions will remain a significant issue at the next preparatory meeting this December, as Part VII of the statute on judicial cooperation between the ICC and states will be heavily discussed. At this session, States will also revisit the definition of crimes, principles of criminal law, and the remaining articles of procedure. ☹

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