

# A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan



Michigan Civil Rights Commission  
March, 2010

## MDCR Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan

### EXECUTIVE SUMMARY

“The seasonal labor system is fraught with problems for the migrant, the farmer and the local citizen. Farmers, who, because of the low prices received for their products...are reluctant to give the workers a high rate of pay. Housing, which may be used only a few months of the year, is an expense to farmers, though often the only kind of home a migrant has...Many of the problems associated with the seasonal labor force are inherent in the migrant movement of people and in the seasonal nature of agricultural employment.”<sup>1</sup>

This quote is from *A Report on Migrant Labor in Michigan* prepared for the House and Senate Labor and Agricultural Committees in September of 1965. 45 years have passed since its release. In 2010, agriculture remains a very important part of Michigan’s economy.

Unfortunately the challenges faced by Michigan’s seasonal labor force remain as well.

Following its business meeting on June 22, 2009, the Michigan Civil Rights Commission held a public forum in Kalamazoo focusing on the rights of migrant and seasonal farmworkers. The Commission heard presentations from groups that work with, and advocate for, migrant farmworkers, as well as from farmworkers

*“The Commission was disturbed to hear that some Michigan farmworkers and their families were being subjected to conditions that, if true, could neither be ignored nor tolerated. We set out to determine whether those describing such offensive conditions could both substantiate the allegations and establish that they were not unique isolated instances. This report describes what we discovered.”*

themselves. The Commission was moved by what it heard, and particularly concerned that people could be living in housing that was as bad as was described. Commissioners immediately determined that they not only wanted to hear more on the subject, they wanted to visit the migrant labor camps that were being described and see conditions for themselves.

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<sup>1</sup> State of Michigan Legislative Service Bureau. *A Report on Migrant Labor in Michigan*. September, 1965, p. 2.

The Commission unanimously voted to investigate the allegations about conditions being faced by Michigan's migrant and seasonal farmworkers, and to report on what they discovered. The Commission did not set out to assess the overall conditions under which all of Michigan's migrant workforce labors, and this report should not be read as such. The Commission was disturbed to hear that some Michigan farmworkers and their families were being subjected to conditions that, if true, could neither be ignored nor tolerated. We set out to determine whether those describing such offensive conditions could both substantiate the allegations and establish that they were not unique isolated instances. This report describes what we discovered.

The reasons for undertaking this work were many. Simply put: Michigan must never idly tolerate discrimination against anyone. Nor can Michigan be known as a bad state to work in when we depend on so many hands to help us harvest our goods and support our economy. Migrant farmworkers are in demand by growers throughout the Midwest during the short harvest season. The workers know and learn which states and which growers provide safe and healthy accommodations and in which communities they are welcome. The best workers seek employment in those states and communities. In our current economic environment, Michigan cannot risk having crops rot in the fields due to a shortage of experienced farmworkers.

To gain a clear understanding of the concerns and challenges faced by migrant and seasonal farmworkers, the Commissioners felt it was essential to hear directly from farmworkers. To facilitate this, five public forums were scheduled in areas with high concentrations of migrant and seasonal farmworkers. The public was also able to submit comment and testimony directly to the department by email or mail. A Record of Concern form was created and then translated into Spanish (from English).

During this investigation, a number of problems were uncovered. First, families were often living in housing that was extremely substandard, including structural defects, lack of

clean running water, exposed wires, overcrowding, close proximity to fields (and thus pesticides) and poor sanitation. Because camps are typically inspected pre-occupancy, the most hazardous violations are often not apparent, or may not yet exist, when the inspector is present.

Second, the Commission heard testimony from many farmworkers describing discrimination that they had endured. Farmworkers related incidents of sex-based discrimination against women, sexual harassment, national origin discrimination and racial discrimination. The Commission received several reports of employers refusing jobs to U.S. citizens or to English-speakers, preferring instead to hire farmworkers who do not speak English and are thus believed to be less likely to know they have the right to be treated fairly or to complain about low wages or poor working conditions.

Third, the working conditions faced by migrant and seasonal farmworkers were often the topic of their testimony during the forums. Problems described included the lack of drinking water, portable toilets and handwashing facilities available in fields where the hand-harvesting various types of agricultural products is taking place. Some workers said they did not have access to water in the fields at all, while others stated their employer charged them for water. Some stated there were no bathrooms and no breaks offered. Other testimony during the forums described outright wage theft and established that the accepted industry practice of growers paying piece rates to workers often results in workers being paid less than the required minimum hourly wage.

Fourth, for many of Michigan's migrant farmworkers, language barriers present a substantial obstacle to accessing services. Although all organizations that receive federal funding are required to provide equal services for their Limited English Proficient (LEP) clients, many do not. The testimony outlined difficulties encountered when attempting to obtain drivers'

and marriage licenses at some Secretary of State's offices, in interaction with health care providers, county clerks' offices, the police, and with local hospitals.

Problems with state and local law enforcement were discussed by several individuals. Allegations included officers overreaching into the area of federal immigration law and stopping people without cause based on their appearance, a form of discrimination often termed racial profiling.

Child farmworkers not only have limited legal protections, they also face extremely hazardous working conditions. Several people testified that these conditions have had severe negative impacts on children and their future. Coupled with this, others spoke about the inability to procure childcare while working in the fields for long hours each day.

Finally, racism and other forms of mistreatment directed at farmworkers by people in the community were alleged. While some might discount some of this animosity as the result of a bad economy, this can not excuse the mistreatment of migrant and seasonal farmworkers who are contributing to Michigan's agricultural economy.

During the public forums and site visits we also met a substantial number of wonderful people who are committed to helping Michigan's migrant farmworkers and their families. We also met with growers who have developed deep relationships with two or three generations from the same families of workers who return season after season. Even these growers expressed deep concern about the future of hand-picked crops as the ability to guarantee the availability of workers for each subsequent season becomes more difficult and the market price for hand-picked crops either has no growth or in some cases is declining.

This executive summary presents only a brief synopsis of the Commission's efforts, its observations and findings. We encourage you to refer to the full report for greater detail.



STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
EXECUTIVE

JENNIFER M. GRANHOLM  
GOVERNOR

DANIEL H. KRICHBAUM  
INTERIM DIRECTOR

April 12, 2010

Dear Reader,

During 2009, the Michigan Civil Rights Commission conducted an investigation into the conditions faced by migrant and seasonal farmworkers in Michigan. A number of service providers and farmworkers themselves stepped forward to offer testimony and information for this investigation and the report that follows. Many people took time away from harvesting crops, thus they sacrificed pay in order to participate in this process. We acknowledge and thank them for doing so.

The process of looking into these conditions was sobering. The substandard living and working conditions that exist for many in the migrant farmworker community in Michigan have not significantly changed in 45 years. This can no longer be ignored.

Since the report's adoption by the Commission on March 22, 2010, the Michigan Department of Civil Rights has begun to work closely with leaders from several state departments and the Interagency Migrant Service Committee to achieve the objectives listed as 'Next Steps' in this document.

On behalf of the Michigan Civil Rights Commission and Michigan Department of Civil Rights, we wish to thank everyone who participated in the community forums and site visits, as well as those who provided insight and information for inclusion in this report.

Sincerely,

*Matthew Wesaw*

Matthew Wesaw  
Commission Chair

A handwritten signature in cursive script that reads 'Daniel H. Krichbaum'.

Daniel H. Krichbaum  
Department Director

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## **Introduction**

This report is based on Michigan Department of Civil Rights and Michigan Civil Rights Commission observations, public comment, written testimony and Records of Concern submitted to the Michigan Department of Civil Rights during 2009. A number of people contributed to this report, primary among them farmworkers, service providers and farmworker advocates. Information was also sought from growers; see the Appendix for additional information.

## **Background - Demographics of Migrant and Seasonal Farmworkers in Michigan**

A seasonal farmworker is an individual whose principal employment in the last 24 months has been in agriculture. A migrant farmworker meets the same criteria but establishes for the purposes of such employment a temporary abode.<sup>1</sup> During the harvest season, migrant and seasonal farmworkers move from farm to farm to remain employed.

Due to the mobility of farmworkers, it is difficult for researchers to determine the exact number of farmworkers in the country. The National Center for Farmworker Health, Inc., estimates that there are more than three million migrant and seasonal farmworkers in the United States.<sup>2</sup> Michigan's migrant and seasonal farmworkers were last enumerated in 2006. In that initiative, the estimated total of migrant and seasonal farmworkers and nonworking family members was 90,716. This includes 35,148 migrant farmworkers, 10,652 seasonal farmworkers, 33,671 nonfarm workers in migrant households and 11,245 nonfarmworkers in seasonal worker households<sup>3</sup>. 41,038 individuals in Michigan's migrant and seasonal farmworker families were under the age of 20, nearly 70% of whom were under the age of 13.<sup>4</sup>

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<sup>1</sup> US Code, Public Health Services Act, 'Migrant Health'. This report does not include migrant or seasonal farmworkers in either the dairy industry or in meat production (turkeys, pigs, and cows).

<sup>2</sup> National Center for Farmworker Health, Inc., 2009. Migrant and Seasonal Farmworker Demographics (access at [www.ncfh.org](http://www.ncfh.org)).

<sup>3</sup> Larson, Alice C., **Migrant and Seasonal Farmworker Enumeration Profiles Study**, September 2006. Publication of the Michigan Interagency Migrant Services Committee.

<sup>4</sup> NCFH, p. 1.

The average age of a farmworker in the US is 33; 50% are younger than 31, and only 20% are between the ages of 35-44.<sup>5</sup> Most workers are male (79%).<sup>6</sup> According to the National Center for Farmworker Health, 81% of farmworkers speak Spanish; 24% reported speaking English 'well' and 26% reported speaking 'a little' English.<sup>7</sup> The average family includes five people and their income ranges from \$12,244 to \$16,773, well below the federal poverty level.

Farms that employ migrants are mostly situated along the west coast of Michigan's mitten, with a few inland counties making a belt across the middle of the state. In eastern and southern Michigan, farms in Arenac, Tuscola, Genesee, Lapeer, Macomb, Washtenaw, Lenawee and Monroe counties also employ migrant/seasonal farmworkers.

West Michigan is often referred to as the fruit belt. Northern Michigan's crops include Christmas trees and grapes. In the eastern part of the state, beans, cabbage, cauliflower, mushrooms, peppers, tomatoes, sugar beets, sod and soybeans are the common crops.

Tasks include picking, pruning, cleaning, hoeing, weeding, training, thinning, harvesting and loading various crops. Many producers sell their crops to a second or third party, so processing and packaging can also be tasks. Thirty-eight of Michigan's agricultural crops are dependent on labor intensive hand-harvesting or processing.<sup>8</sup> Because crops are so perishable, they must be picked at precise times to prevent deterioration and overgrowth.

The total economic value generated by Michigan's farm sector and its related industries was \$6.69 billion in 2006; crops that use migrant labor account for almost 58% of the total economic activity.<sup>9</sup> Researchers found that in Michigan, between 50 and 75 percent of migrant

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<sup>5</sup> Telamon MMHS Community Assessment, 2007, p. 20.

<sup>6</sup> NCFH, p. 2.

<sup>7</sup> Ibid, p. 2.

<sup>8</sup> Michigan Department of Agriculture, personal communication, 2/19/2010.

<sup>9</sup> Knudson, William A. The Impact of Migrant Farmworkers on Michigan Agriculture. MSU Product Center for Agriculture and Natural Resources, 7/2006, p. 4.

laborer wages are spent in local businesses.<sup>10</sup> State, federal and Social Security taxes paid by documented workers also add to the tax base. In 2000, the state's economy gained \$34 million in federal government transfer payments for programs to serve the migrant and seasonal population in the state.<sup>11</sup> The Federal Census of Agriculture, conducted every fifth year, showed a 53% increase from 2002 to 2007 in the value of crops and livestock coming from Michigan farms.<sup>12</sup> Michigan's climate, rich soil, and new emphasis on urban farming and agri-tourism combine to support an industry that is actually succeeding in our state—agriculture—while other sectors struggle.

Many workers find jobs simply by returning to the same growers year after year. Others may be recruited by labor contractors, crewleaders (or mayordomos), through word-of-mouth by growers or friends and relatives of other workers. Some work for a grower in one state (Florida for example) and they also work for the same grower in Michigan during different months of the year. A study conducted by Michigan State University found that three-quarters of growers reported having verbal agreements with past workers to return the following year.<sup>13</sup>

Migrants reported '...fair, respectful treatment by employers is an additional criterion when they are seeking employment. Word-of-mouth advice helps workers to avoid farms where their definition of fair treatment is not met. Justified or not, a grower labeled unfair or unkind may continue to have a hard time attracting workers even when providing above average wages.'<sup>14</sup>

In previous years, farmers reported difficulty in recruiting workers. Racism and fear of immigration, deportation and animosity toward people perceived as taking jobs away from

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<sup>10</sup> Knudson, p. 5.

<sup>11</sup> Rosenbaum, Rene Perez. Migrant and Seasonal Farmworkers in Michigan: From Dialogue to Action. MSU Julian Samora Research Institute, 2002, p. a (Executive Summary).

<sup>12</sup> "Allegan County leads surge in Michigan's farm economy," from the Grand Rapids Press, 3/28/2009.

<sup>13</sup> Miklavcic, Bitsch and Bernsten. Growers' Perspective on Attracting Migrant Labor and Migrants' Workplace Choice in Michigan. MSU Department of Agricultural Economics, 2005, p. 6.

<sup>14</sup> Ibid, p. 12.

Americans compromise Michigan's ability to recruit and retain farmworkers. Some workers leave farm labor for higher paying jobs, benefits, more hours and more predictable employment. Without migrant farmworkers, labor costs for production of fruit and vegetables would certainly increase.

### **Investigative Method**

On June 22, 2009, the Michigan Civil Rights Commission held its regular bimonthly meeting in Kalamazoo. A public forum held in conjunction with this meeting focused on the rights of Migrant and Seasonal Farmworkers. This was the second such public forum in recent years with this focus, as a similar public forum had been held in August, 2005. The following presentations were made at the June 2009 event:

- Thomas K. Thornburg, Co-Managing Attorney at Farmworker Legal Services (FLS)<sup>15</sup>, presented Demographics and an Overview of the Issues
- Megan A. Reynolds, Attorney with FLS, discussed Familial Status Discrimination in Farmworker Housing
- Stephanie L. Little, a Law Graduate with FLS, presented on Migrant Housing Licensing
- Rachel M. Udow, Pesticide Action Campaign Coordinator, spoke on Environmental Justice and Michigan's Migrant and Seasonal Farmworkers
- B. Daniel Inquilla, Co-Managing Attorney at FLS, presented information on Access to Vital Documents

After considering these presentations and public comment, it was the opinion of the Commission and several of those in attendance that the Michigan Department of Civil Rights (MDCR) needed to conduct a more in-depth investigation of the issues raised. Conditions did not seem to have improved in the four years between the two forums and in some cases, they appear to have worsened. At the end of the public forum, the Commission voted unanimously to conduct an extensive investigation into the status of Michigan's migrant and seasonal farmworkers.

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<sup>15</sup> Farmworker Legal Services is a non-profit, public interest legal aid office that provides free civil legal services to indigent migrant and seasonal farmworkers and their dependents throughout Michigan.

To formulate a clear understanding of the concerns and challenges faced by migrant and seasonal farmworkers, the Commissioners determined that it was essential to hear directly from farmworkers. To facilitate this, five forums were scheduled in areas with high concentrations of migrant and seasonal farmworkers. These Farmworker Forums were held on July 16 in Hart, July 30 in Blissfield, August 5 in Bear Lake, August 13 in Watervliet and August 18 in Omer. Staff from the Department of Civil Rights also attended a soccer league event in Sparta on August 16, where they gathered testimony from a number of migrant families who were in attendance. Public comment could also be provided at the August 24 Civil Rights Commission meeting in Allendale, or by contacting Department staff directly. The Commission accepted the invitation of Farmworker Legal Services (FLS) to help facilitate the forums and to provide tours of migrant camps.<sup>16</sup>

Media advisories and press releases were provided to Civil Rights partners, placed on the MDCR website and sent to media groups in geographic proximity (about a 100-mile radius) of the five forum locations, statewide media organizations and Spanish-language media.

In planning the public forums, publicizing them and overseeing forum logistics, MDCR was assisted by FLS, Telamon Migrant Head Start and the Michigan State University Cooperative Extension Service. Prior to each public forum, visits were made to local migrant housing camps to tell residents these forums would take place that evening and to encourage them to attend if they had questions or wanted to offer testimony.

To collect testimony, a Record of Concern was created and then translated into Spanish (from English). Both versions of this form were placed on the Michigan Department of Civil Rights website. Data was collected using this form at all five public forums. Forms could also be

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<sup>16</sup> It should be noted that the Commission did not intend this process to yield a statistically representative picture of all Michigan farms or farmworkers, nor do we now contend that it does. We set out to determine whether there is a problem that needs addressing, and we discovered there is. The conditions we observed may or may not be “typical”, but they are certainly prevalent enough to demand action.

completed independently and mailed to the Department of Civil Rights. Copies of the Record of Concern were also provided to human service agencies.

In addition to providing written testimony, individuals could give public or private verbal testimony. During the public forums, people could opt to be videotaped, audiotaped or to have someone transcribe their testimony for them (in English) through an interpreter.

The Record of Concern included:

- A place for the person to report their name and permanent contact information if they chose to do so;
- Type of discrimination;
- Name of other individual, employer, government office, business or service provider involved;
- A place to report previous attempts at resolving the complaint; and
- Statement of complaint or other problem.

Space was provided for the contact information of interviewers, translators or third parties who completed the form on behalf of others.

In addition to the testimony taken and the Records of Concern collected, prior to each public forum, various Commissioners and Department staff visited several agricultural labor camps in that area to view the migrant and seasonal farmworkers' living conditions first-hand. The Commission and staff saw both poorly maintained camps and camps that were well run. Commissioners and staff also saw workers harvesting crops with proper field sanitation in place, and others where no water or portable toilets were present. The Commission had its own experts present during the tours and therefore can conclude that they saw a wide spectrum of living and working conditions.

### **Enforcing Laws and Regulations Relevant to Farmworkers**

The *Michigan Occupational, Safety and Health Administration* (MIOSHA) is housed in the *Department of Energy, Labor and Economic Growth* (DELEG). MIOSHA is responsible for enforcing MIOSHA Part 500, Field Sanitation and Part 511, Temporary Labor Camps, which are

applicable to migrant, agricultural employees and comparable to the same federal OSHA Standards.

The *Wage and Hour Division* of DELEG administers the Michigan Minimum Wage Law (currently \$7.40/hour<sup>17</sup>) and the Michigan Payment of Wages and Fringe Benefits Law. When Michigan's minimum wage first exceeded the federal minimum wage (currently \$7.20/hour)<sup>18</sup> in 2006, Michigan Wage and Hour worked to ensure that the higher state minimum wage applied to agricultural workers. Even though farmworkers are often paid on a 'piece rate' system, state and federal law mandate that they receive minimum wage for all hours worked, regardless of the number of pounds, bushels or pieces picked.

DELEG is the branch of state government where *Agricultural Outreach Specialists* are housed. This unit is in the *Bureau of Workforce Transformation* (BWT); these employees place agricultural workers with employers among other duties. Michigan's *State Monitor Advocate* is also employed with DELEG.

Within the *Michigan Department of Agriculture*, the *Migrant Labor Housing Program* (MLHP) is responsible for inspecting and licensing certain migrant labor housing units in a timely manner. Statutory language can be found in part 124 of the Public Health Code of 1978 (at MDL 333.12401 et seq.) The scope of MDA's Migrant Labor Housing Program is limited to locations where housing is provided to five or more workers engaged in agricultural operations. As such, the program addresses housing conditions for nearly 25 percent of Michigan's migrant workers and their families.<sup>19</sup>

### **Other State Partners Serving Migrants**

The Michigan Department of Human Services (DHS), through its *Office of Migrant Affairs*, is the state's lead agency responsible for accessing, developing and coordinating

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<sup>17</sup>From <http://www.dol.gov/whd/minwage/america/htm>.

<sup>18</sup>From <http://www.michigan.gov/dleg> "Wage and Hour Division".

<sup>19</sup>Michigan Department of Agriculture, personal communication, February 19, 2010.

services for farmworkers and their dependents. A network of 63 seasonal and full-time bilingual workers serve families through advocacy, direct service and collaboration with other providers.

Migrants face challenges in accessing services due to lack of transportation, providers' hours of operation, geographic distance and/or lack of bilingual staff. Outreach to workers on the part of service providers is time-consuming and costly. The DHS Office of Migrant Affairs helps to address these barriers in several ways.

DHS convened and chairs the *Interagency Migrant Service Committee* (IMSC), comprised of federal, state and local agencies who meet monthly to discuss ways to better address migrant services. DHS also coordinates nine regional *Migrant Resource Councils* (MRCs) across the state, in which DHS and DELEG migrant services staff are key members. Each council produces a brochure containing contact information for agencies in the area as well as services they provide to workers. Social services, health, employment, education, legal assistance, labor camp licensing and complaint resources are included. MRC members include local representatives from public and private service agencies, growers, farmworkers, church groups and concerned residents who meet regularly to exchange program information, coordinate services and identify unmet needs.

Before each season begins, the MRCs develop or update a local Agency Resource Guide and the service providers collaborate on a referral system whereby migrants in need receive swift attention by the agencies best positioned to serve them. A *Migrant Child Task Force* is also housed in DHS. This group works to improve cross referrals between Migrant Head Start and Migrant Education; joint recruitment and outreach across agencies; better use and leveraging of funding; caregiver education, development and support, and improved dialogue with public policy officials.

This DHS structure provides a unique opportunity through which problems involving migrant workers can be collaboratively addressed by the many agencies and organizations with interest in this population.

Other agencies interacting with migrant and seasonal farmworkers include the Secretary of State and the State Police.

External to state government, a key partner in serving migrant families is Telamon Head Start. Please see the “Migrant Children” section for more information.

## **I. HOUSING**

### **A. Conditions in Michigan’s Migrant Labor Camps**

Agricultural employers commonly offer free or reduced cost employee housing to attract migrant farmworkers for the harvest season. Alternative housing is typically not available to migrant farmworkers, as their poverty, the rural location of their work sites and the short duration of their stay in a given area make traditional housing impractical or unattainable.

Migrant farmworkers and their families are often forced to endure substandard housing conditions including structural defects, overcrowding, close proximity to pesticides and poor sanitation.<sup>20</sup> A survey published in 2001 by the Housing Assistance Council (HAC) found that 61% of migrant farmworker housing surveyed in Michigan was overcrowded.<sup>21</sup> The Commission received several testimonies on overcrowding in migrant camps, with reports of as many as 20 people housed in one small unit.<sup>22</sup> The HAC survey further noted that 30% of the units examined were “severely substandard” and an additional 15% were “moderately

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<sup>20</sup> William Kandel, *Profile of Hired Farmworkers, A 2008 Update*, Economic Research Report No. 60, U.S. Department of Agriculture, Economic Research Service, p. 28 (2008).

<sup>21</sup> Housing Assistance Council, *No Refuge from the Fields: Findings from a Survey of Farmworker Housing Conditions in the United States*, p. 44 (2001).

<sup>22</sup> Muñoz, Bear Lake Testimony, 8/5/09; Tabares, Watervliet 8/13/09; E. Lopez, Watervliet, 8/13/09; A. Sanchez, Watervliet, 8/13/09; Anonymous Speaker 1, Watervliet, 8/13/09; Anonymous Speaker 8, Watervliet, 8/13/09; Anonymous, Sparta, 8/16/09; Two Anonymous at large, 8/20/09.

substandard."<sup>23</sup> Of these units, 27.1% lacked at least one working appliance, such as a working toilet, tub, shower, stove or refrigerator.<sup>24</sup> The Commission received Records of Concern about the lack of clean running water, broken toilets and exposed wires.<sup>25</sup> HAC further reported that over 50% of the units surveyed were adjacent to pesticide-treated fields, and 79.4% of these units housed children.<sup>26</sup>

Extreme overcrowding leads to significant acceleration in the spread of communicable disease. Such overcrowding proved particularly dangerous in the summer of 2009, due to a rapid spread of the H1N1 virus through Michigan migrant camps.<sup>27</sup> Several outbreaks of the virus occurred among farmworker families living in overcrowded blueberry camps in Southwestern Michigan.<sup>28</sup> As an outreach worker for the Intercare Migrant Health Clinic explained at the Watervliet Forum, "Diseases are bred in the terrible and overcrowded camps. The sickness spreads quickly from family to family, and from families to strangers."<sup>29</sup>

The presence of pesticides in camps, often the result of a camp's close proximity to the field, can be detrimental to the health of its inhabitants, and is particularly harmful to children.<sup>30</sup> Faulty electrical wiring and gas leaks resulting in fires and explosions are other examples of the dangers of poorly maintained camps. State laws aimed at ensuring safe and sanitary housing conditions for migrant farmworkers have been enacted, but the rules promulgated to implement these laws have not been amended since 1989.<sup>31</sup>

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<sup>23</sup> Housing Assistance Council, *supra* note 3 at 46.

<sup>24</sup> *Id.* at 52.

<sup>25</sup> Muñoz, Bear Lake Testimony, 8/5/09; Anonymous Testimonies (2), Sparta, 8/16/09; M. Garcia, Watervliet Testimony, 8/13/09.

<sup>26</sup> Housing Assistance Council, *supra* note 3 at 52.

<sup>27</sup> Michigan Department of Agriculture, *Talking Points – H1N1 and Blueberries* (July 22, 2009).

<sup>28</sup> Meeting between Judy Fitzgerald, Intercare Migrant Health Clinic, and Tom Thornburg, Farmworker Legal Services (7/16/09).

<sup>29</sup> Alicia Sanchez, Intercare Migrant Health Clinic, Watervliet Testimony, 8/13/09.

<sup>30</sup> William Kandel, *supra* note 2 at 28.

<sup>31</sup> James Johnson, *supra* note 1.

When Commissioners and staff visited labor camps in a sampling of locations, a variety of issues were noted. As examples, there were 16 people living in one unit with one refrigerator<sup>32</sup>. There were two units populated by 16 people with one shared bathroom<sup>33</sup>. In several other locations, bugs were a problem, as were animals and vermin in living units<sup>34</sup>.

Elsewhere, a two-bedroom unit housed two couples, two children and two unrelated single men<sup>35</sup>. In a unit of 16 people with one bathroom, there were a husband, his wife and five unrelated men in addition to nine other people<sup>36</sup>.

At a different camp, a unit of 20 people included single men mixed in with families<sup>37</sup>. A unit of 19 people housed 10 adults, three children and six single people in three rooms<sup>38</sup>.

One young woman (age not disclosed) was housed with her father and eight unrelated men<sup>39</sup>. During testimony, a worker stated that three unrelated men were placed in a housing unit with a woman and her family. Because of the woman's daughters, she left the camp and returned to her home state<sup>40</sup>. Yet another camp had three showers for 35 women and children to share<sup>41</sup>. There was also a group toilet and shower facility at a camp near Watervliet with no curtains or other means of privacy.

Unrelated people being housed together raises obvious safety concerns. But other generally poor conditions were revealed during these visits: One worker said the camp was unlivable, so they pay rent to live elsewhere, even though his wages were based on having housing provided. The paint was chipping, the water had to be boiled in order to drink or cook

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<sup>32</sup> At large testimony, 7/31/09.

<sup>33</sup> Watervliet, 8/13/09.

<sup>34</sup> At large testimony, 7/31/09.

<sup>35</sup> At large testimony, 8/20/09.

<sup>36</sup> Ibid.

<sup>37</sup> At large testimony, 8/20/09.

<sup>38</sup> Ibid, 8/20.

<sup>39</sup> Anonymous testimony, Watervliet, 8/13/09.

<sup>40</sup> Ibid.

<sup>41</sup> At large testimony, 8/20/09.

with it (in the camp). This individual asked whether occupancy standards should be posted in the living units.<sup>42</sup>

During testimony, one parent described living with four children in a single unit that is dirty and without a working toilet. "There are no screens, no heat or air conditioner and wires are exposed. Two trailers down, dirt comes out of the faucet with the water. It is infested with rats."<sup>43</sup> Previously, an inspector approved this camp, but after a complaint was made to an attorney, another inspector came and the camp was subsequently shut down. The person added that she still does not have access to clean water in the camp where she is living now. "We need the work. If we complain, the camps will be shut down and people will have no housing at all."<sup>44</sup>

Another mother stated, "There is no running water, I have to go somewhere else to get it. I used all my work money to buy water. There are mattresses on the floor, too many people. I live with men I don't even know. There isn't even a door on the room and I am afraid to sleep because I don't know who will come in."<sup>45</sup>

"The housing is overcrowded. There is no bathroom and nowhere to complain."<sup>46</sup>

"My unit is a trailer with nine adults, three children and a young baby. We share one bathroom. It is hard to do with so many others. I have lived in Florida and South Carolina. Michigan is the only place where I have to live with so many other people."<sup>47</sup>

A man said, "Couples will live with a lot of single guys, leaving one or two women to share a space with a lot of men. The workers are told how many hours they have to work which

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<sup>42</sup> Anonymous testimony, Blissfield, 7/30/09.

<sup>43</sup> Anonymous testimony, Watervliet, 8/13/09.

<sup>44</sup> Ibid, 8/13/09.

<sup>45</sup> Anonymous testimony, Watervliet, 8/13/09.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

is generally 12 hours a day. Then they don't have time to cook or shower by the time they get home because they have to share facilities with so many others.<sup>48</sup>"

Many of the comments provided to the Commission involved the conduct of a "crewleader" or "mayordomo." These individuals most often are (or were) migrant farmworkers themselves. They are often given supervisory authority by a farm's owner and the Commission heard of many instances where this power is abused. It should be noted that the Commission does not in this report attempt to distinguish, and is in fact unaware, of whether in individual instances the farm's owner is aware of these abuses or not, or of whether the owner is supportive of, indifferent to, or opposed to the actions being taken in their name.

One person reported being told to remove clothes and shoes from the housing unit so the inspector would not see them. Another was told to clean and paint her unit so it would pass inspection.<sup>49</sup> "I wanted the inspector to see my living conditions," added a third person, "but when he did come to camp, the mayordomo made us work in the fields so we couldn't talk to him. We want a chance to talk to the inspector too so he's not just getting the mayordomo's or the owner's opinion."<sup>50</sup>

In two situations, workers indicated that they told the employer their housing was generally poor and that they had also reported this to a state agency, but they still have not received any relief. Five people filed Records of Concern indicating that they did not have access to housing inspectors.

There were instances reported where a crewleader tried to overcharge workers for staying in the camps. In one case, a crewleader asked for \$100 up front—from five people who had not even started working in the fields yet<sup>51</sup>. Another crewleader requested \$200 from one

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<sup>48</sup> Ibid.

<sup>49</sup> Anonymous testimonies (2), Blissfield, 7/30/09.

<sup>50</sup> At large testimony, 8/20/09.

<sup>51</sup> Anonymous testimony, Sparta, 8/16/09.

individual. Elsewhere, there were eight other reports of attempted overcharging. Four of those individuals simply left the camp and sought work elsewhere. One crewleader demanded \$100 and told the worker they would be fired if they did not pay, yet he charged others on the crew 15% of their wages<sup>52</sup>.

A person at the Watervliet forum stated, "The housing is inhumane and insufficient. The workers are being used and their dignity is sacrificed for economic productivity. And, the government allows it."<sup>53</sup>

Two Records of Concern were submitted about prostitution in the camps. Workers said, "People are not educated about sexually transmitted diseases. Children are seeing the prostitution take place."<sup>54</sup>

Other potential hazards observed by Commissioners and Department staff during the visits to camps included: A knife planted into the ground, litter and rusted shelving outside, broken windows, a rope hanging in a tree, a swing placed too close to a picnic table, clotheslines hanging at a child's neck level, a refrigerator abandoned outdoors with the door still attached (not propped open or sealed shut), a dumpster overflowing with trash, expired fire extinguishers and stairs that were near collapse going into a unit. And because licenses were seldom posted in the housing units, it was impossible to tell whether the camps were licensed, and whether occupancy limits were complied with in most of the camps visited.

## **B. Health and Safety Standards, Inspections and Licensing**

### **1. A History of the Migrant Labor Housing Program**

Michigan's Legislature has made several efforts to promote safe and sanitary migrant labor housing by creating mechanisms for inspection, licensing, and enforcement of public health regulations. In 1966, the Michigan Legislature created a system for licensing camps to

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<sup>52</sup> Anonymous testimony, Sparta, 8/16/09.

<sup>53</sup> Tavares, Watervliet Testimony, 8/13/09.

<sup>54</sup> Anonymous Testimony, Blissfield (1) and Watervliet (1), 7/30 and 8/13/09 respectively.

ensure an adequate supply of agricultural workers in the state, maintain the safety of the food supply, and protect the health and safety of migrant laborers and the general public.<sup>55</sup> This legislation created the Migrant Labor Housing Program (MLHP) to carry out pre-licensing inspections of migrant labor camps. This Act was replaced by Public Act 368 of 1978, which mandates annual inspection and licensing of labor camps housing five or more migrant farmworkers. The Act requires that a state inspector issue a license to an agricultural labor camp only after an inspection establishes that the camp meets minimum health and safety requirements. Under the Act, migrant housing facilities must be equipped with an approved water supply, appropriate toilet and washing facilities, adequate cooking facilities and sanitary garbage and human waste disposal systems.

## **2. Funding and Staffing of the Migrant Labor Housing Program (MLHP)**

The past three decades have marked a decline in the staffing and funding of Michigan's migrant housing inspection program. Between 1970 and 2001, the number of sanitarians conducting housing inspections in the MLHP was reduced from twelve to eight.<sup>56</sup> By 2002, three sanitarians had retired, leaving just five licensed sanitarians who are responsible for inspecting over 800 migrant camps each year.<sup>57</sup>

MLHP inspections are supported by General Fund dollars. Executive Order 22-09 markedly reduced funding to the MLHP program. The Michigan Department of Agriculture received a \$62,000 interdepartmental grant from DELEG to help offset the \$150,000 cut in

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<sup>55</sup> P.A. 289 (1965). This Act would later be replaced by P.A. 368 of 1978 which mandates annual inspection and licensing of labor camps housing five or more migrant farmworkers. The Act requires that a state inspector issue a license to an agricultural labor camp only after an inspection establishes that the camp meets minimum requirements of health and safety. Under the Act, migrant housing facilities must be equipped with an approved water supply, appropriate toilet and washing facilities, adequate cooking facilities and sanitary garbage and human waste disposal systems.

<sup>56</sup> Governor's Task Force on Migrant Labor, *Final Report*, p. 13 (Oct. 9, 1969).

<sup>57</sup> Michigan Department of Agriculture, 2008 Licensed Migrant Labor Housing Sites.

program revenue, thus the MLHP staff were able to complete the required inspections during the licensing year.<sup>58</sup>

Testimony submitted by the Farm Bureau lamented the budget issue as follows,

"The challenges remain as the Michigan Department of Agriculture budget for 2009 contains roughly half the General Fund support needed to complete inspections in the 2009-2010 fiscal year, with an additional fee to be assessed to farmers that will still leave the program well short of full funding. So farmers will again face the dilemma of desiring to provide free or significantly subsidized housing to their employees only to find they must close and evict or not even open their housing due to the state's unwillingness to fulfill their statutory requirements.

For operations that choose to open the housing without a license, the US Department of Labor stands ready to file actions against these farms. Will they support farms seeking to improve their housing? We doubt it...Examples of the bias that exists against growers seeking to employ and improve housing for workers are many. One case involved a farm operation in central Michigan that sought to replace existing housing consisting of aging mobile homes with an apartment-style housing unit funded in part through a federal loan program. The farmer attempted to build the facility but was stopped by the local government as it did not meet the agricultural zoning code *which was silent with regard to agricultural housing...*" (emphasis in original).<sup>59</sup>

At the August 24 Civil Rights Commission meeting, a presentation was made by Migrant Labor Housing staff. The following points were noted:

Current law and regulation prohibits new camps being constructed less than fifty feet from a field where pesticides will potentially be applied.

MDA MLHP rules have not been updated since 1989, whereas other MDA rules (e.g., Right to Farm) are updated annually.

MLHP has jurisdiction when five or more workers are housed in a camp. In some situations, camps have been subdivided into four or fewer employee segments/parcels to ensure the state will not have jurisdiction to license the camp.<sup>60</sup>

Migrant workers are not informed of licensed occupancy limits. MHLHP does not use occupancy stickers or license information placards.

Farms are required to post their licenses.

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<sup>58</sup> Michigan Department of Agriculture, personal communication, 2/19/2010.

<sup>59</sup> Letter from Robert S. Anderson, Legislative Counsel, MI Farm Bureau, November 2, 2009.

<sup>60</sup> Agricultural employers with temporary labor camps housing at least one employee must still comply with all MIOSHA regulations for temporary labor camps. An employer with fewer than five employees can be cited and may be issued penalties for all violations of MIOSHA regulations if they do not comply.

Commissioners and Department staff saw licenses posted in fewer than twenty percent of the camps we visited, and we acknowledge that MHLP does not have jurisdiction over **all** camps.

### **3. The Role of the Federal Government in Migrant Labor Housing Inspections and Licensing**

In addition to state law, federal law sets national standards for migrant labor camps. Two statutes enforced by two agencies within the United States Department of Labor (USDOL) affect migrant labor housing. The Agricultural Worker Protection Act (AWPA) is enforced by the federal Wage and Hour Division (WHD)<sup>61</sup> and the Wagner-Peyser Act is enforced by the Employment and Training Administration (ETA).<sup>62</sup>

The AWPA requires any person who “owns or controls” housing for migrant workers to have an appropriate federal, state or local agency certify that the facility complies with federal and state health safety standards before allowing any workers to occupy the housing.<sup>63</sup> The Occupational Safety and Health Act sets forth basic standards of health and safety in migrant labor camps, and is incorporated, by reference, under the Wagner-Peyser and AWPA regulations.<sup>64</sup> Finally, Wagner-Peyser regulations make employer access to the recruitment and referral services of the ETA and its partner state workforce agencies contingent upon proof that the employer's housing meets the applicable minimum standard.<sup>65</sup> The Wagner-Peyser Act established the United States Employment Service (USES), which works along with affiliate state employment service agencies [DELEG's Bureau of Workforce Transformation (BWT) in Michigan] to place workers with employers. An employer posting a job order is required to

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<sup>61</sup> Formerly the Employment Standards Administration.

<sup>62</sup> 29 USC §§ 49 et seq.; 29 CFR §§ 1901 et seq.; 42 CFR §§ 85, 85q; 29 USC §§ 651 et seq.; 29 CFR §§ 1901 et seq.; 42 CFR §§ 85, 85a; 29 USC §1801 et seq.; 29 CFR § 500.1 et seq.

<sup>63</sup> 29 USC § 1823 (b)(1); 29 CFR § 500.135.

<sup>64</sup> 20 CFR § 654.400 et seq.; 29 CFR §1910.142; 20; 29 USC § 1823; 29 CFR § 500.132.

<sup>65</sup> Farmworker Legal Services, Allendale, 8/24/09.

assure that all employee housing has been inspected and certified to meet the federal temporary labor camp regulations.<sup>66</sup>

The federal agencies charged with enforcing these statutes may conduct inspections themselves, or delegate this responsibility to a state agency.<sup>67</sup> The ETA delegated the responsibility for enforcing federal housing standards to state employment service agencies (ESA).<sup>68</sup> In regards to Intra/Inter/H2A Clearance Orders (ICO) only, an ESA is prohibited from recruiting or referring workers to an employer unless the employer has signed an assurance of compliance for all migrant housing, a pre-occupancy inspection has been conducted, and ESA staff have ascertained that the specific housing units meet applicable federal standards for temporary migrant housing.<sup>69</sup> The MDA provides DELEG/BWT with a monthly list of labor housing inspected.<sup>70</sup>

In Michigan, no federal entity conducts pre-occupancy inspections pursuant to AWPA, as pre-occupancy inspections and licensing have been performed since the late 1960s by the MLHP.<sup>71</sup>

#### **4. Enforcement of Health and Safety Standards**

Agricultural labor camp licensing currently requires just one pre-occupancy inspection with no scheduled in-season inspection, and time constraints typically prevent inspectors from making additional in-season inspections. Many of the most hazardous violations, such as overcrowding, gas leaks, inadequate waste disposal and problems with water and toilet facilities are not apparent until the camps are occupied. Then, added to these dangers is anything that breaks or wears out after one year's inspection but does not get repaired until immediately prior

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<sup>66</sup> 20 CFR § 653.501(d)(6).

<sup>67</sup> 29 USC § 1823(a).

<sup>68</sup> 20 CFR 654.400(a).

<sup>69</sup> 20 CFR 654.400(b).

<sup>70</sup> Personal communication, DELEG/BWT, 3/10/10.

<sup>71</sup> James Johnson, *supra* note 1.

to the next. As a result, serious violations of health and safety regulations are often present, even in a licensed camp.

When inspectors conduct pre-season inspections, they have three options: they may recommend a license, recommend a license with a list of repairs, or recommend that the premises not be licensed.<sup>72</sup> It is rare for an inspector to recommend a license without a list of repairs. Inspectors also rarely recommend denial of a license, even when poor conditions are present, because they will not be able to return to the camp if and when the camp operator completes repairs and applies for a license. Thus, in most instances an inspector makes a recommendation for a license with a list of required repairs. Because there is little likelihood of follow-up, it is not uncommon for inspectors to return the next year only to issue yet another recommendation for a license with the exact same list of repairs.

In 2006, the USDOL conducted a year-long investigation under the authority of AWPAs. Federal inspectors found numerous violations of migrant labor housing provisions including gas leaks, electrical hazards, vermin infestations, lack of clean water, and discharge of sewage directly onto the ground.<sup>73</sup> Such conditions not only constitute violations of the federal AWPAs, but also of state law. Regardless, a majority of the camps cited for these violations were licensed under the MLHP.<sup>74</sup>

Although a current license does not ensure that a migrant camp complies with minimal standards for migrant labor housing, the existing licensing process is crucial because it necessitates a pre-season inspection by a trained, licensed sanitarian. Without annual inspections, most camps would never be observed by any government official. Outreach workers and occupants may in some instances make complaints about conditions of migrant

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<sup>72</sup> See footnote 24, Interview with Thomas Barnes.

<sup>73</sup> News Release No. 06-2022-chi, U.S. Department of Labor, Office of Public Affairs, Chicago Ill., *Dangerous Conditions for Michigan Migrant Agricultural Workers Found by U.S. Labor Department* (Dec. 6, 2006).

<sup>74</sup> Michael Eliasohn, *Farms Fined For Migrant Labor Housing Violations Some Growers Say Mistakes Were Unavoidable or Not Deliberate*, St. Joseph MI Herald-Palladium, 12/9/06.

camps directly to the MDA or MIOSHA, but even with adequate resources, a solely complaint-driven enforcement process is not an adequate substitute for annual inspections.

Migrant farmworkers themselves rarely file complaints about their housing conditions. They tend to be reluctant to file complaints due to fear of retaliation from their employer. In addition, some migrant farmworkers opt not to file complaints due to concerns about their or a family member's immigration status.<sup>75</sup> In 2008 the MDA received twelve complaints of alleged housing violations.<sup>76</sup> Many farmworkers do not make complaints because they do not know there is a complaint process or because they believe that inspectors are too friendly with the grower to take any action.<sup>77</sup>

The inspectors' burdensome workload generally prevents them from making discretionary investigations into reports of unlawfully unlicensed camps. In 2005, the Michigan Legislature created a protocol to censure unlicensed operators of migrant labor camps housing five or more workers. A fine of \$1,000 per day can be levied against operators who operate without a license, not to exceed \$10,000.<sup>78</sup> The stated purpose of this protocol was to aid in enforcement by providing a deterrent to noncompliance.<sup>79</sup> Only \$16,000 has been collected through this enforcement mechanism to date.<sup>80</sup>

Michigan law does not encompass camps housing fewer than five workers. This is problematic for several reasons. First, some employers design their migrant labor camps specifically to evade licensing.<sup>81</sup> For example, a family may divide a single farm into multiple parcels (each held in a different family member's name) so that only four workers live on each

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<sup>75</sup> Maria Garcia, Watervliet Testimony, 8/13/09.

<sup>76</sup> Email from Arthur Hulkoff, Former Manager of the Migrant Labor Housing Program, 2008 MLH Complaints and Referrals Summary, 1/1/09 and E. Clapp, MIOSHA News, V. 13, No. 3, Summer 2009.

<sup>77</sup> Anonymous, Watervliet Testimony, 8/13/09.

<sup>78</sup> MCL 333.12411(4).

<sup>79</sup> Laleah Fernandez, *Senate to Consider New Migrant Labor Camp Penalties*, Capital News Service, 5/13/05.

<sup>80</sup> Barnes Interview, *supra* note 14.

<sup>81</sup> Darryl Busfield, *supra* note 58.

separate parcel of land, or “camp.”<sup>82</sup> Second, there is no exact definition of a “worker.”<sup>83</sup> Children as young as twelve may work in the fields with their parents but might not be counted as workers for licensing purposes (see page 80 for youth employment standards). Similarly, a person caring for children during the day is not a ‘farmworker’ and may not be counted, even if they sleep in the same housing. Finally, it is difficult to monitor for this type of licensing violation. In addition to those unlicensed camps of which MLHP is never made aware, it is likely that some camps are never inspected, based upon the owner’s representation that they house four or fewer laborers.

There has been a steady decline in the number of growers who apply for licenses. Between 2001 and 2008, the number of licensed camps in Michigan decreased by over 11% from 905 to 807.<sup>84</sup> In 2008, the MDA licensed 807 camps with a legal capacity totaling 22,358.<sup>85</sup> Overcrowding in licensed agricultural labor camps may account for some numerical disparity. Mechanization of some tasks previously performed by migrant workers may also explain some of this disparity.<sup>86</sup>

Concerns about Michigan’s inadequate licensing and complaint process were addressed in earlier litigation. In 1971, United Migrants for Opportunity, Inc. (UMOI), an organization which provided services to migrant and seasonal farmworkers, filed a lawsuit against the Director of the Michigan Department of Public Health (MDPH) and the Chief of the Agricultural Labor Camp Unit of the MDPH.<sup>87</sup> The suit alleged inconsistent or improper enforcement of the licensing rules for licensed agricultural labor camps. As a result of the suit and negotiations, MDPH agreed to a consent judgment which provided that:

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Michigan Department of Agriculture, 2008 Licensed Migrant Labor Housing Sites.

<sup>86</sup> Michigan Department of Agriculture, personal communication, 2/19/2010.

<sup>87</sup> United Migrants for Opportunity, Inc. v. Director of the Michigan Department of Public Health and Chief of the Agricultural Labor Camp Unit, Complaint for Mandamus (June 22, 1971 Docket No. 11409).

- MDPH would conduct a second inspection on all licensed agricultural labor camps during occupancy;
- MDPH would post in a conspicuous place in each licensed camp a statement of operators' and occupants' responsibilities;
- MDPH would place in each licensed camp an adequate number of complaint forms in English and Spanish and make available to UMOI and similar organizations an adequate number of these complaint forms for distribution;
- MDPH would promulgate amendments to its Agricultural Labor Camp Licensing Procedural Manual for Sanitarians which would be implemented in 1972 and applied thereafter by all inspectors and sanitarians charged with inspecting agricultural labor camps.<sup>88</sup>

The promised in-season inspections continued as a protocol only until 2002 when they were suspended due to staff reductions from early retirement. The required notices and complaint forms were not observed to be present at most of the camps visited by members of the Commission and MDCR staff during site visits conducted while preparing this report.

### **C. Access to Camps**

For over thirty-five years, Michigan law has prohibited migrant labor camp operators from denying camp access to service agency outreach workers. The Attorney General of Michigan first addressed the issue of access to migrant camps in a 1971 opinion stating that entry onto and departure from agricultural labor camps is open to the public and that the "freedoms of religion, speech, press and assembly guaranteed by the First and Fourteenth Amendments to the United States Constitution are operative".<sup>89</sup> Shortly after this opinion was issued, the United States District Court for the Western District of Michigan ruled that it is unlawful for migrant labor camp owners to bar access to visitors or representatives of assistance groups seeking admittance to the camp.<sup>90</sup> Such denial of access violates the constitutional and statutory rights of both service providers and migrant farmworkers.<sup>91</sup> In *Folgueras v. Hassle* the court held that the owners of migrant labor camps "may not

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<sup>88</sup> *Ibid.*

<sup>89</sup> Michigan Attorney General Opinion No. 4727, p. 12 (April 13, 1971).

<sup>90</sup> *Folgueras v. Hassle*, 331 F. Supp. 615, 621 (W.D. Mich. 1971).

<sup>91</sup> *Id.* at 625.

constitutionally deprive the migrant laborers living in [their] camps, or members of assistance organizations, or mere visitors of reasonable access to [their] camps.”<sup>92</sup> It is unreasonable for camp owners to deny persons working for “any governmental or private agency whose primary objective is the health, welfare or dignity of the migrant workers as human beings” access to migrant labor camps.<sup>93</sup> Migrants living in labor camps, their guests, and representatives of assistance organizations are entitled to “full rights of ingress and egress to and from their dwellings.”<sup>94</sup>

Despite this legal precedent recognizing the right of service providers to enter migrant labor camps, outreach workers report difficulties in accessing camps in Michigan.<sup>95</sup> One individual testified that when he arrived at a camp to provide health services, the owner, who lives next door, immediately came out and told him to leave. The owner got increasingly aggressive until the provider ultimately left without providing services. A week later, a second provider went to the camp and although the owner again kept rudely telling the provider to leave, the worker continued to provide care. The testimony continued, “We want to take the medical bus out there but we’re afraid. They’re always causing us trouble and we’re afraid we might get shot or something.”<sup>96</sup>

A Human Resources Manager for a major agricultural employer believed that service providers could only enter a camp to visit existing clients and requested that the service provider seek permission to conduct general outreach to camp occupants.<sup>97</sup> Other growers claim that under the Good Agricultural Practices (GAP) Guidelines, they can require that persons entering and exiting the camps “check in (showing proof of identity)” and defer admittance until

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<sup>92</sup> *Id.* at 623.

<sup>93</sup> *Id.* at 624. “[T]he property rights of the camp owner do not include the right to deny access to his camps to guests or persons working for any governmental or private agency whose primary objective is the health, welfare or dignity of the migrant workers as human beings.”

<sup>94</sup> *Id.*

<sup>95</sup> Southwest Michigan Migrant Resource Council, Meeting Minutes, 8/14/09.

<sup>96</sup> Pablo Garcia, 8/20/09.

<sup>97</sup> Farmworker Legal Services, Allendale, 8/24/09.

the “purpose of visitation to the site is verified.”<sup>98</sup> The GAP, however, only applies to the agricultural workplace. Even if it did apply to camps, a GAP Guideline would not override the law as expressed in *Folgueras*. GAP is only a guideline and “does not create or confer any rights for or on any person.”<sup>99</sup>

The mistaken belief that service providers must receive permission from growers before conducting outreach in camps prevents migrants from receiving needed services or from lodging complaints. Outreach workers are also among the first to have knowledge of outbreaks of illness, wage and hour violations, mistreatment, discrimination and harassment. Access to camps is “critically important to helping the migrant out of his poverty and isolation” and to assisting migrant farmworkers in exercising their rights.<sup>100</sup>

#### **D. Discrimination Based on Familial Status**

Many migrant farmworkers come to Michigan in family groups accompanied by their non-working spouses, parents and/or children. An estimated 76.5% of migrants and 84.3% of seasonal workers in Michigan are accompanied by non-working family members.<sup>101</sup>

Both the federal Fair Housing Act (FHA) and the Elliott-Larsen Civil Rights Act prohibit discrimination in housing on the basis of familial status.<sup>102</sup> These statutes make it unlawful to refuse to rent, or otherwise make unavailable, a dwelling to any person because of familial status. They also prohibit statements with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status.<sup>103</sup> According to

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<sup>98</sup> USDA Good Agricultural Practices and Good Handling Practices Audit Verification Checklist, p. 25, *also available at* <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5050869>.

<sup>99</sup> Guidance for Industry, Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables, U.S. Food and Drug Admin. (Oct. 1998).

<sup>100</sup> *Folgueras*, 331 F. Supp at 620.

<sup>101</sup> Alice Larson, *supra* note 78 at 19.

<sup>102</sup> 42 USC § 3605 (805) et seq.; MCL 37.2502 (1) & (2).

<sup>103</sup> 42 USC § 3605 (805) et seq.; MCL 37.2502 (1) & (2).

federal precedent, the FHA is applicable to temporary farm labor camps because the camp units are considered "dwellings" under the FHA.<sup>104</sup>

The Commission received testimony from farmworkers who experienced familial status discrimination. During one visit to a farm community, a worker registered a Record of Concern indicating she had been told to move because she had her family with her. In another complaint, the worker stated the farmer would not hire her because she is a woman (sex discrimination) and he would not take her employment application when she said she wanted to live with her husband and children. He told this individual, as well as another person who testified, that the housing was for men only.<sup>105</sup>

A woman, Priscilla Obregón, testified at the same forum about many instances of being turned away from jobs because she and her husband Juan migrate together with their two small children.<sup>106</sup>

Another person stated, "The State Workforce official told me that I could not apply for the job because I am a woman and the housing was for men only. This kind of discrimination happens all the time. I have tried to apply to many farm jobs listed on job boards in lots of states, including Michigan, and as soon as I say I want to live with my husband and kids, they won't take my application. I have also been fired from farm jobs because the grower tried to force my family to share a small unit with four or five single men. When we refused we were fired. This type of discrimination against families is getting worse in the past two years. The growers only want single men with no families and the H-2A<sup>107</sup> jobs make it worse."<sup>108</sup>

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<sup>104</sup> See, e.g. *Lauer Farms v. Waushara County*, 986 F. Supp. 544, 559 (E.D. Wis. 1997).

<sup>105</sup> Anonymous Speaker No. 8, Watervliet, 8/13/09.

<sup>106</sup> Priscilla Obregón, Watervliet Testimony, 8/13/09.

<sup>107</sup> The H-2A visa program allows a foreign national entry into the US for temporary or seasonal agricultural work, if the employer first demonstrates an inability to find workers otherwise. The employer must provide free housing that meets all local and state health and safety standards to H-2A workers. Rental housing may be used. H-2A workers are not accompanied by family members. Additional information may be found at <http://www.dol.gov/Compliance/Guide/taw.htm>, or other US Government websites.

<sup>108</sup> Private testimony, Stevensville, MI #1, 8/20/09.

An outreach worker from the Intercare Migrant Health Clinic in Bangor testified that she observed this year that camp operators were increasingly assigning migrant families to shared housing with unrelated male coworkers.<sup>109</sup> She reported that employers either refuse to hire workers with families or that they tell the worker that their non-working family members do not count toward the maximum occupancy of the unit. Elsa Renteria reported that her family recently received \$1,300 after the USDOL substantiated her complaint that a Michigan grower fired her husband when he refused to share the family's assigned unit with five unrelated male workers.<sup>110</sup>

Speaking at the Hart Forum, another migrant stated that he and his family lived in employer-provided housing throughout the asparagus season. At the close of the season, his employer told the family that they must vacate the camp. The employer explained that additional workers were needed for the cherry harvest, and he preferred that multiple workers occupy each unit (as opposed to one worker and several non-working children). As the farmworker earned minimum wage, it was extremely difficult for him to pay rent for a local apartment, provide the basic necessities for his family, and still have enough money to send to his two children who had remained in Guatemala.<sup>111</sup> Another family's Record of Concern stated they returned to the same farm where they'd worked for years. They were told no housing was available. The crewleader later stated that the employer really denied work because he does not like to hire mothers, stating "they are not reliable workers"<sup>112</sup>.

Increasingly, Michigan growers use temporary guest workers to harvest their crops. The H-2A guest worker program's housing provisions prohibit giving preferential treatment to

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<sup>109</sup> Alicia Sanchez, Watervliet Testimony, 8/13/09.

<sup>110</sup> Elsa and Rolando Renteria, 8/20/09.

<sup>111</sup> Record of Concern, Hart Farmworker Forum (July 16, 2009).

<sup>112</sup> At large testimony, 7/14/09.

foreign workers.<sup>113</sup> The program's stated purpose is to "ensure that working conditions of domestic employees are not adversely affected when foreign workers are brought in, and to prohibit discrimination against U.S. workers in favor of foreign workers."<sup>114</sup> Prior to securing H-2A workers, an employer must first try to fill the available positions with U.S. workers by publically posting job orders. Employers are strictly required to provide H-2A workers with licensed housing. Because H-2A workers' families cannot accompany them to the United States on their individual visa, growers do not need to provide family housing for their H-2A workers. However, the law requires that family housing be provided to U.S. workers who apply for these jobs where it is the "prevailing practice" in the industry to provide housing to migrant farmworkers.<sup>115</sup> Thus, if it is prevailing practice for growers of a particular crop to offer housing to non-H-2A workers, a grower cannot legally deny housing to a prospective U.S. employee based on familial status.

One Record of Concern stated, "I have faced discrimination because I have a green card and am not willing to tolerate the injustices that undocumented or foreign guest workers will tolerate without complaint." He added that he has been turned away by Michigan growers because he wants to live with his family and the growers insisted that they live with numerous unrelated people.<sup>116</sup>

## **II. EMPLOYMENT COMPLAINTS AND DISCRIMINATION**

### **A. Employment Discrimination in Farm Work**

The Commission received testimony suggesting sex discrimination against women, sexual harassment, national origin discrimination and racial discrimination.

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<sup>113</sup> 20 CFR § 655.102(b)(1)(vi); 20 CFR § 655.202(b)(1).

<sup>114</sup> Alfred L. Snapp and Sons, Inc. v. Puerto Rico, 458 US 592, 596 (1982).

<sup>115</sup> 20 CFR § 655.202(b)(1).

<sup>116</sup> Private testimony, Stevensville, #2, 8/20/09.

The Commission received several reports of employers refusing jobs to U.S. citizens or to English-speakers, preferring instead to hire farmworkers who do not speak English or who are unfamiliar with local agencies and thus would be less likely to complain about low wages or poor working conditions. Such practices may constitute national origin discrimination under the Elliott-Larsen Civil Rights Act, Titles VI and VII of the federal Civil Rights Act of 1964. These actions may also violate the anti-discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA) which prohibit unfair immigration-related employment practices, such as citizenship discrimination.

The latter type of discrimination may occur where an agricultural employer hires or retains foreign nationals while refusing to hire work-authorized U.S. citizens (USCs) or Lawful Permanent Residents (LPRs). While this practice occurs in some traditional “front gate” hiring, it was also reported in situations where foreign labor is recruited, particularly via the foreign temporary agricultural labor visa system known as the H-2A Program (H-2A). In public testimony at the Watervliet forum, it was alleged that eliminating U.S. workers from an H-2A agricultural work force results in working conditions and abuses of farmworkers that “amount to slavery.”<sup>117</sup> “There are workers who have their keys to their vehicles taken away at the end of the day. They can’t leave for recreation or church or anything, except work.”<sup>118</sup>

Another alleged trend in traditional farm work is the growing preference of single male workers over female workers and work crews with accompanying family members.<sup>119</sup> Despite government surveys substantiating that the prevailing practice of employers in southwest Michigan’s cucumber industry is to provide housing for migrant families, there were allegations of growing discrimination against hiring migrant farmworkers with families in Michigan.<sup>120</sup>

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<sup>117</sup> Watervliet Testimony, (Obregon, Tabares), 8/13/09.

<sup>118</sup> Tabares, Watervliet, 8/13/09.

<sup>119</sup> Watervliet (Obregon); at large (Renteria), (Cruz), 8/13/09.

<sup>120</sup> See Discrimination in Housing, *supra*.

Yet another avenue for discrimination against legal residents and naturalized immigrant farmworkers is presented by the E-Verify system, a process by which employers verify a worker's immigration status through federal databases. This voluntary program is meant to enhance the mandatory I-9 Employment Verification Process, in which employers must request documents within three days of hiring a worker to show that they have not knowingly employed an unauthorized alien. Unfortunately, the E-Verify program has been hindered by inaccurate information, causing more than 10% of naturalized U.S. citizens who were actually work-authorized to initially be misidentified as not authorized, and therefore subject to discrimination based on national origin.<sup>121</sup> In Michigan, there have been reports of agricultural employers making erroneous hiring and firing decisions based on misuse of the E-Verify process.<sup>122</sup> Recently, legislation has been introduced in Michigan mandating use of the flawed E-Verify system for certain Michigan employers.<sup>123</sup>

One individual testified, "We were promised a lot of work and came from Mexico to do the work but were not given enough work. I feel we are being discriminated against because we are from Mexico but those from other parts of the U.S. are given more, or better, work."<sup>124</sup>

About the H-2A laws, one person stated: "This law is too minimal. The people are treated like animals, but they need recreation, both spiritually and socially. Camps are like prisons and the workers are like slaves."<sup>125</sup> Two others stated that they had experienced discrimination because H-2A workers were hired instead of those with citizenship. "The employer prefers to hire single, male, H-2A workers," a woman said<sup>126</sup>.

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<sup>121</sup> See *Immigration Enforcement: Weaknesses Hinder Employer Verification and Worksite Enforcement Efforts* (Government Accountability Office, August 2005).

<sup>122</sup> See Southwestern Michigan Migrant Resource Council Meeting Minutes, 8/19/09.

<sup>123</sup> See e.g., House Bill No. 4969 (introduced May 19, 2009).

<sup>124</sup> E. Calderon, Holland MI, 8/4/09.

<sup>125</sup> Tavares Testimony, Watervliet, 8/13/09.

<sup>126</sup> Anonymous Testimony, Watervliet, 8/13/09.

Records of Concern were also received about mistreatment of workers by employers. "I was working with my sister in the factory (working with cherries) and the owner was there. He got after my sister when she took her gloves off, but then wouldn't leave her alone once she put them back on. He stayed there and watched us like he wanted to scare us while we were working and he kept bothering my sister and yelling at her like she wasn't working enough, even though we were all working the same. He wouldn't leave my sister alone so I told him he couldn't treat her like that, but he got right in my face and started screaming at me. He said he could treat us any way he wanted because he pays the bills. He kept saying that over and over. I quit that job and found work in the fields somewhere else. Most of the other workers live in his housing so they are afraid to stand up to him because they might lose their job and their place to live...."<sup>127</sup>

Nor is the employer the only party in a position to abuse power. A young male worker in Watervliet shared that, "My mom, stepdad and I came from Florida. The crewleader said he needed four workers. So my brother-in-law and sister were going to come, too. There were problems with rats and gas in our housing. The crewleader said to me, 'Why the F--- (expletive deleted) did you call the inspectors?' Then we didn't get rows in the field; the crewleader gave them to his own family. We had a little fight. The crewleader then told us there was no work and to get out in two days. My brother-in-law arrived and he was told there was no work when there really was. There was some aggression and gunshots were fired from the crewleader's trailer. I want to leave but I have no where to go. How many people have gone through this? Why doesn't the farmer fire the crewleader? Workers are often harassed in many ways but they will say nothing and just take it because they need the work. Workers don't have a voice or an office to file their complaints against employers."<sup>128</sup>

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<sup>127</sup> At large testimony, 8/19/09.

<sup>128</sup> Anonymous Testimony, Watervliet, 8/13/09.

Sex discrimination also exists in the hiring process. “Women are held to a different standard than men when we are looking for work. I was told I had to be able to go up and down stairs with a heavy load. None of the men were told this.”<sup>129</sup> Three Records of Concern were filed by women who had also complained to DELEG, the EEOC and the U.S. Department of Labor. One woman was told she had to be able to climb a ladder even when that is not part of the job—the employer would then not hire her<sup>130</sup>. Another woman testified, “A farmer told me I could not work because I was afraid of using the ladder. She said she had always done this work and had not needed a ladder. The farmer then told jokes and told the woman she could not work. He told her if she didn’t like it, she could leave.”<sup>131</sup>

### **B. Discrimination in the Agricultural Recruitment System**

Discriminatory practices may occur during recruitment or referral of agricultural workers. A national agricultural recruitment system is administered by the United States Department of Labor (USDOL) and implemented in all fifty states and the territories pursuant to the federal Wagner-Peyser Act.<sup>132</sup>

The Act and its regulations are intended to protect farmworkers recruited either interstate or intra-state through the national employment system. USDOL’s detailed regulations provide the legal framework for the federally-mandated outreach, monitoring and advocacy services to Michigan’s migrant and seasonal agricultural workforce by the state employment service agency, the Bureau of Workforce Transformation (BWT) within the Department of Energy, Labor and Economic Growth (DELEG).<sup>133</sup> Tens of thousands of Michigan farmworkers

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<sup>129</sup> Anonymous Testimony, Hart, 7/16/09.

<sup>130</sup> Ibid.

<sup>131</sup> Anonymous Testimony, Hart, 7/16/09.

<sup>132</sup> 29 USC secs. 49-49I.

<sup>133</sup> 20 CFR 653, Subpart B.

annually secure jobs through the federal employment system created and funded by Wagner-Peyser.<sup>134</sup>

During the 1970s, in response to evidence of discrimination and inequities in the provision of job services to agricultural workers, a federal class action lawsuit was filed on behalf of the nation's predominantly minority farmworkers. In 1973, the US District Court for the District of Columbia ordered USDOL officials to "end any present participation in or perpetuation of discrimination and other unlawful practices against migratory and seasonal farmworkers."<sup>135</sup> The court held that the Department of Labor had violated the Fifth Amendment to the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and the Wagner-Peyser Act, by funding state employment agencies which denied farmworkers the full range of services and by failing to enforce protective legislation. Often referred to by its author's name, the "Judge Richey Court Order" mandated the USDOL and the state employment service agencies (ESAs) to insure that migrant and seasonal farmworkers receive basic amenities—such as decent, safe and sanitary housing—from the employers to whom they are referred.<sup>136</sup>

This ruling was implemented by a consent decree intended to reform all farmworker services of the U.S. Employment Service. Pursuant to this consent decree, USDOL established a national, comprehensive system of monitoring and advocacy on behalf of farmworkers within the states.<sup>137</sup> This system is codified in the current federal regulations prescribing standards for services and outreach by ESAs to migrant and seasonal farmworkers.<sup>138</sup>

To ensure that outreach workers are able to function effectively in their unique role within the ESAs, the regulations also establish an independent State Monitor Advocate (SMA)

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<sup>134</sup> Comments of B. Ledezma, DELEG/BWT, Allendale, 8/24/09.

<sup>135</sup> *NAACP v. Brennan*, 360 F.Supp. 1006; 1973 U.S. Dist. LEXIS 13406.

<sup>136</sup> *Id.*, cf. 20 CFR 654.400(b).

<sup>137</sup> *NAACP v. Brennan*, 1974 U.S. Dist. LEXIS 7168. See also, Altman, *Implementing a Civil Rights Injunction: a Case Study of NAACP v. Brennan*, 78 Columbia L. Rev. 793 (1978).

<sup>138</sup> 20 CFR Part 653, Subpart B.

whose explicit duty is “without delay [to] advise the State agency and local offices of (i) problems, deficiencies, or improper practices in the delivery of services and protections afforded [to MSFWs].”<sup>139</sup>

In Michigan, this agricultural employment system consists of 17 outreach workers – Agricultural Employment Specialists (AES)<sup>140</sup> – who, together with the State Monitor Advocate, are responsible for monitoring employment conditions and ensuring that farmworkers are treated fairly in the employment system. These specialists are envisioned to be the voice of migrant and seasonal farmworkers inside State government.<sup>141</sup> Sufficient state funding, training, staffing, and support for the State Monitor Advocate and AES function is the linchpin upon which protecting Michigan’s migrant farmworkers depends.

### **C. Wage Theft of Farmworkers’ Earnings**

The *New York Times* recently reported the release of a landmark study concluding that “Low-wage workers are routinely denied proper overtime pay and often paid less than the minimum wage.”<sup>142</sup> Following the release of this study, *USA Today* published another report noting an increase in “Allegations rang[ing] from underpayment to not getting paid at all.” Citing USDOL statistics, as well as workers’ centers throughout the Midwest, the newspaper concluded that, “Wage theft is most common among low-wage earners and day laborers...It affects non-immigrants and immigrants, legal and illegal.”<sup>143</sup>

Several Records of Concern were received about wage theft. During testimony, one person stated, “There are people in the field who have not even filled out an application. The

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<sup>139</sup> 20 CFR 653.108 (g)(1).

<sup>140</sup> B. Ledezma, Allendale, 8/24/09.

<sup>142</sup> NYT, 9/2/09, “Low-Wage Workers Are Often Cheated,” reporting on Bernhardt, et al., *Broken Laws, Unprotected Workers*, 2009.

<sup>143</sup> USA Today, 9/7/09, “Bad Economy Sparks More Complaints of Wage Theft,” cf. Bernhardt, et al., *Confronting the Gloves-Off Economy*, July 2009.

farmer would not give the form to any of them because he didn't want people to know how little he paid."<sup>144</sup>

At the Watervliet forum, the Commission heard from one farmworker who said, "The crewleader does whatever he wants. People would only get paid half and they couldn't complain because they aren't documented."<sup>145</sup>

At the Hart forum, the following concerns were raised: Four people said they had not been paid at all, four people reported the owner taking rent from their wages (\$70 each), four additional workers said they were underpaid for the number of hours they worked and the fruit they had picked had been taken away from their total. Two additional people reported they had not been paid the minimum wage.<sup>146</sup> One worker said that the grower would adjust the piece rate so that a fast picker would never make over minimum wage. "If you pick too little to make the piece rate, you are fired. If you pick too much, the owner will just lower the piece rate."<sup>147</sup>

Testimony during each of the forums described the accepted industry practice of growers paying piece rates to workers who harvest certain agricultural commodities (e.g., cucumbers, blueberries) instead of paying harvest workers by the hour.<sup>148</sup> The prevalence of this payment system was confirmed by John Finn, Administrator, Michigan Wage and Hour Division, DELEG. Finn noted that this practice often results in unlawful underpayment because the farmworker's weekly pay, when divided by the number of hours worked, falls below the minimum hourly wage (\$7.40 per hour in Michigan).<sup>149</sup> Wage and Hour and the Farm Bureau both advise what piece rate equates to the minimum wage.

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<sup>144</sup> Anonymous Testimony, Hart, 7/16/09.

<sup>145</sup> Garcia Testimony, Watervliet, 8/13/09.

<sup>146</sup> Anonymous Testimonials, Hart, 7/16/09.

<sup>147</sup> Ibid.

<sup>148</sup> Testimony of G. Crespo, Blissfield (7/30); E. Lopez, Watervliet (8/13/09). Also, cucumber grower Dan Ratajck testified at Omer that he asked pickle processor Vlastic, Inc. to raise the contract piece rates so that he could attract more local workers. He noted further that he has had only one local worker in the past 25 years, who recently quit due to the low wages paid under the piece rate payment system.

<sup>149</sup> Testimony of J. Finn, Blissfield and Allendale, 7/30 and 8/24/09.

An example can be seen in Michigan's blueberry industry where piece rates have not increased in several years, despite annual increases in the state's minimum wage rate since 2006. Comparison data suggests that piece rates paid to blueberry harvesters have actually decreased during the past ten years. A 1998 state employment service crop report lists blueberry harvesting jobs offering a piece rate of 50 cents per pound.<sup>150</sup> However, during the 2009 season, blueberry piece rates were reported as low as 32 cents per pound in western Michigan due to a "bumper crop" of blueberries and an oversupply of workers.<sup>151</sup> Mark Longstroth, of Michigan State University stated "...the picking rate at the big farms is about .50 per pound, so someone would need to pick 15 pounds an hour just to make minimum wage."<sup>152</sup> Thus in 1998 a worker needed to pick just over 10 pounds at .50/lb. to receive minimum wage which was then \$5.15/hr. At the .32/lb. rate paid by some in 2009, the same worker would need to pick 21 pounds each hour to reach the \$7.40 minimum wage. In an eight-hour day, to stay even with the minimum wage, a worker would need to go from picking 82 pounds, to picking 185.

A Record of Concern entered on this matter stated, "I have spoken to dozens of people at different camps and workers are not being paid minimum wage at blueberry farm camps. People are working nine hours a day for \$30 or \$40 [minimum wage would be \$66.60]. I met a family of three who made \$46 for nine hours of work. People won't speak out because they are scared of losing their jobs."<sup>153</sup>

The resulting underpayment constitutes the wage theft from low-income workers that has been reported in the national media. Such historically low piece rates also put added

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<sup>150</sup> Michigan Jobs Commission, "1998 Harvest Season Weekly Report Ending August 28, 1998."

<sup>151</sup> Letter to USDOL Wage and Hour Division from FLS with attached news articles, 8/13/09.

<sup>152</sup> Personal communication with M. Longstroth, 12/09.

<sup>153</sup> G. Crespo, Blissfield Forum, 7/30/09.

pressures on farmworkers to work too fast, delay needed work breaks, and even allow unauthorized family members (e.g., children under age 12) to assist in harvesting blueberries.

John Finn testified that although piece rate payments in all commodities must legally be equivalent to the current minimum wage, some growers continue to ignore the Minimum Wage Law and pay piece rates which result in sub-minimum wages.<sup>154</sup> Michigan Minimum Wage Law states, "Such piece rate scale shall be equivalent to the minimum hourly wage in that when the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she shall receive an amount not less than the hourly minimum wage."<sup>155</sup> The Michigan Payment of Wages Act only allows investigation based on the signed complaint of a worker.

The Wage and Hour Division (WHD) of the USDOL enforces the federal minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA). Because agricultural employers are exempt from the overtime requirements of FLSA, the WHD only enforces wage violations of agricultural employers who fail to pay the federal minimum wage (currently \$7.25 per hour). Although random investigations of agricultural employers are performed by WHD annually, the federal agency relies on complaints, filed by or on behalf of groups of workers, in determining its enforcement targets.<sup>156</sup> Most recently, USDOL used the "hot goods" authority provision of the FLSA to seize produce worked on by farmworkers who were owed almost \$40,000 in back wages by a defaulting Michigan cherry processor.<sup>157</sup> Nevertheless, a recent nationwide investigation by the U.S. Government Accountability Office concluded that "WHD frequently responded inadequately to complaints, leaving low wage workers vulnerable to wage theft."<sup>158</sup>

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<sup>154</sup> Testimony of E. Lopez (Watervliet), 8/13/09.

<sup>155</sup> MCL 408.394

<sup>156</sup> Michigan Farm News, "Random Labor Inspections Underway," October 15, 1995; USDOL News Release, "Dangerous Conditions for Michigan Migrant Agricultural Workers Found by U.S. Labor Department," 12/6/06.

<sup>157</sup> Traverse City Record Eagle, "Ruling 'a relief' to Cherry Blossom workers," 9/17/09.

<sup>158</sup> *Department of Labor: Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft*, GAO-09-458T (March 25, 2009).

This failing enforcement grade for the federal wage and hour enforcement agency underscores the importance of robust, responsive and proactive enforcement of farmworkers' employment rights by the state agencies charged with protecting Michigan's migrant and seasonal farmworkers. On October 28, 2009, The Associated Press reported that the U.S. Department of Labor found "...a check of 35 randomly selected farms in Michigan has led to eight of them being fined more than \$36,000 for migrant housing and child labor law violations."<sup>159</sup>

#### **D. Michigan Occupational Safety and Health Administration (MIOSHA)**

##### **Regulations**

The Michigan Occupational Safety and Health Administration (MIOSHA) is responsible for enforcing state regulations governing agricultural field sanitation.<sup>160</sup> The MIOSHA Field Sanitation Standard requires adequate numbers of sanitary and accessible toilets, hand washing and drinking water facilities in the fields where migrants perform hand-labor. MIOSHA also investigates alleged violations of the MIOSHA Temporary Labor Camp Standard.<sup>161</sup>

The MIOSHA Field Sanitation Standard is applicable to agriculture operations where there are 11 or more employees at any time during the year. This standard has requirements related to the provision of toilets, potable drinking water, and handwashing facilities to hand laborers in the field. MIOSHA also enforces Section 14(n) of Michigan Occupational Safety Act (Act 154 of 1974 as amended), which lists requirements to provide potable drinking water, handwashing facilities, and toilets for agricultural workers where the employer has fewer than 11 employees. The MIOSHA Temporary Labor Camp Standard is applicable to all temporary labor camps in Michigan, regardless of size, and has requirements specific to migrant housing buildings and associated facilities such as toilets, potable drinking water, washing and/or

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<sup>159</sup> Michigan Farms fined for labor, housing violations at

[http://www.mlive.com/news/index.ssf/2009/10/michigan\\_farms\\_fined\\_for\\_labor.html](http://www.mlive.com/news/index.ssf/2009/10/michigan_farms_fined_for_labor.html)

<sup>160</sup> 29 CFR 1928.110; Section 14n of P.A. 154 of 1974, as amended by P.A. 105 in 1991

<sup>161</sup> Rule 4301.

showering facilities, kitchen and cooking facilities, sleeping quarters, surrounding ground areas, and associated maintenance or sanitation requirements for these facilities.

MIOSHA investigations are always conducted when workers are working in the field and/or occupying migrant housing facilities. They may result in citations being issued to agricultural employers for violations of the three regulations described above. The citations require the employer to correct the violations; normally MIOSHA is able to obtain employer corrections the day the investigation is initiated or soon thereafter. Citations also may include monetary penalties in accordance with policies described in the MIOSHA Field Operations Manual. The monetary penalties do not fund MIOSHA operations. Penalties paid by employers for MIOSHA violations are directed to the general fund of the state of Michigan.

MIOSHA investigates complaints from workers and worker representatives, of potential hazards or violations related to the Field Sanitation and Temporary Labor Camp Standards and Section 14(n) of Act 154. MIOSHA also conducts investigations related to the aforementioned regulations in response to referrals from any federal, state or local government agency.

Elaine Clapp, Safety and Health Manager, General Industry Safety and Health Division, Michigan Occupational Safety and Health Administration (MIOSHA), stated that MIOSHA does not normally conduct programmed enforcement of either the Field Sanitation Standard or the Temporary Labor Camp rules.<sup>162</sup> Clapp noted that, in 2008, MIOSHA received 12 complaints regarding the lack of field sanitation facilities, and conducted eight on-site agricultural inspections.<sup>163</sup>

Clapp also said, "MIOSHA accepts phone, faxed or written employee complaints from migrant workers or employee representatives. Telephoning the Grand Rapids District Supervisor is the quickest way to contact MIOSHA (616-456-4950). The Lansing MIOSHA Office can also be

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<sup>162</sup> Testimony of E. Clapp, MIOSHA; see also MIOSHA Division Instruction, April 28, 2008.

<sup>163</sup> Clapp, "Field Sanitation Facilities for Migrant Farmworkers," *MIOSHA News*, Vol. 13, No. 3 (Summer 2009).

contacted at (517) 322-1851. If employees or their representatives are hesitant to contact a government agency or have language difficulties, they can also contact Farmworker Legal Services to have them assist in filing a complaint with MIOSHA. We have developed special provisions to do this for these types of complaints.”<sup>164</sup>

In 2008, MIOSHA instituted a special program for processing complaints and conducting inspections related to field sanitation hazards. This program is intended to create an easier way for employees to file complaints with MIOSHA and enable MIOSHA to respond more rapidly and effectively to field sanitation complaints. This program specifies procedures to allow others to file complaints on behalf of employees. In addition to accepting written or faxed complaints, the procedures include an expedited phone process to ensure immediate MIOSHA responses to complaints about drinking water, handwashing facilities, or toilet facilities for workers working in a farm field. Finally, it includes policies for applying penalties to employers as well as conducting follow-up onsite inspections where necessary.

In 2008 and 2009, MIOSHA sent informational letters to more than 1400 growers throughout the state. These letters described the requirements of the Field Sanitation Standard and Section 14(n) of Act 154 and MIOSHA’s plans for a rapid response to complaints or referrals. The 2009 letter listed the number of inspections and a description of the violations cited the previous year. An offer to provide MIOSHA consultative advice to employers was included in both letters.

While some individual MIOSHA complaints are filed by farmworkers, the total number of annual complaints filed with MIOSHA may under-represent the scope and nature of actual hazards for migrant workers. Witnesses at the forums consistently reported the lack of drinking

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<sup>164</sup> Testimony of E. Clapp, Blissfield forum, 7/30/09.

water, portable toilets and handwashing facilities in fields while hand-harvesting various types of agricultural commodities all across the state.<sup>165</sup>

In two Records of Concern, farmworkers complained of being charged by the employer for water<sup>166</sup>. In six other Records of Concern, workers stated they did not have access to water in the field at all<sup>167</sup>. Three workers reported there were no bathrooms in the field, and no bathroom breaks were offered according to three other workers<sup>168</sup>.

At the Watervliet forum, three other workers described working under generally bad conditions. One said, "We don't get any water in the field. We have to work long days, can't leave early. Workers carry their own water because they're not given any and they don't have time to go back and forth to get water."<sup>169</sup>

A second worker stated, "It depends on who is working. If the U.S. citizens are working, they work eight hour days and get lunches and breaks. If just migrants are there, we work more hours with few or no breaks."<sup>170</sup>

This testimony was given at the Allendale Civil Rights Commission meeting. "In Michigan, migrants have no place to use the bathroom in the fields or for handwashing. This spreads E-coli and other diseases. They are housed in medieval conditions and kept in 'illegal status' as slaves. In the camps, they are stacked two bunks high in overcrowded rooms with 'toilets' that lead to septic systems that empty a few yards away from housing on the ground. Every farm owner hires 'illegal aliens'. Stop governmental subsidies for pesticide and fertilizer and use the money to improve conditions."<sup>171</sup>

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<sup>165</sup> Farmworker testimony: Hart, Blissfield, Watervliet, Sparta, Allendale (Calderon).

<sup>166</sup> Anonymous testimonies (2), Blissfield, 7/30/09.

<sup>167</sup> Anonymous farmworker testimonials, Hart, Watervliet and Sparta.

<sup>168</sup> Anonymous testimony, Sparta (8/16) and Watervliet (8/13).

<sup>169</sup> Anonymous, Watervliet, 8/13/09.

<sup>170</sup> Ibid.

<sup>171</sup> Calderon Testimony, Allendale, 8/24/09.

MDCR staff, during a camp outreach tour preceding the Watervliet forum, observed a field where dozens of workers were harvesting pickles. Many of the workers were accompanied by children of various ages. One group of four young children was observed crossing a busy road to relieve themselves in a cornfield. When asked where the portable toilets were located, one of the children stated they were “down the road”. Driving around the area, no portable toilets were observed anywhere in or adjacent to the field where these workers were harvesting.<sup>172</sup> However, upon passing the same field about an hour later, it was observed that portable toilets had just been set up next to the field.<sup>173</sup> Word of this impromptu visit apparently reached the farm owner or crew boss who immediately ordered installation of the required portable toilets. This illustrates how even minimal monitoring visits can have an immediate and dramatic effect.

### **III. HEALTH**

#### **A. Health Conditions of Migrant and Seasonal Farmworkers**

The arduous working conditions, substandard living conditions and extreme poverty experienced by farmworkers result in many health concerns among migrant and seasonal farmworkers and their families. During the course of their work, migrants are exposed to harsh elements, working long hours in the sun, rain, and at times, cold. Their repetitive work includes stooping, twisting, operating heavy machinery, using sharp tools, climbing on ladders and carrying heavy loads. They are exposed to dust, dirt, fungi, plants, animals, insects and pesticides. Nearly every aspect of their work carries health risks ranging from cuts and sprains, to chronic life-endangering conditions.

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<sup>172</sup> Observations of MDCR staff, Watervliet, 8/13/09.

<sup>173</sup> Id.

Agriculture is among the most hazardous industries in the United States, and farmworkers are at a high risk for fatal and nonfatal injuries.<sup>174</sup> In 2007, the occupational fatality rate for agricultural workers in the U.S. was 23.5 deaths per 100,000 workers.<sup>175</sup> During the same year, the average occupational fatality rate for all industries in the U.S. was 3.8 deaths for every 100,000 workers.<sup>176</sup> In 2006, the rate of occupational injuries and illnesses resulting in lost days of work in the agricultural industry was second only to that of the construction industry.<sup>177</sup> Agriculture has been classified as the most dangerous industry for young workers in the United States.<sup>178</sup> Between 1992 and 2000, the agriculture industry accounted for 42% of all work-related fatalities of young workers.<sup>179</sup> Half of these deaths were among children age 15 and younger.<sup>180</sup>

Like industrial workers, many agricultural workers commonly encounter hazards related to strenuous physical labor and working with heavy machinery. Farmworkers also encounter hazards unique to the agricultural industry, such as heat stress and skin cancer. Because of the laborious, fast-paced and repetitive nature of their work, farmworkers often experience musculoskeletal injuries.

The nature of farm work also results in increased incidences of respiratory illnesses, skin disorders and eye injuries. Farmworkers are commonly exposed to respiratory irritants such as dust, chemicals and mold, all of which have been associated with asthma and chronic bronchitis.<sup>181</sup> In addition to working with objects such as tools and branches that can damage

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<sup>174</sup> National Institute for Occupational Safety and Health, *Agricultural Safety*, <http://www.cdc.gov/niosh/topics/aginjury/>.

<sup>175</sup> *Id.*

<sup>176</sup> Bureau of Labor Statistics, U.S. Department of Labor, <http://www.bls.gov/iif/oshwc/foi/cfch0006.pdf>.

<sup>177</sup> William Kandel, U. S. Department of Agriculture, *A Profile of Hired Farmworkers, a 2008 Update*, p. 32 (July 2008).

<sup>178</sup> National Institute for Occupational Safety and Health, *Preventing Deaths, Injuries and Illnesses of Young Workers (2003)* available at <http://www.cdc.gov/niosh/docs/2003-128/2003-128.htm>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See Pamela Rao and Shelly Davis, Farmworker Justice, *Topics in Respiratory Health of Farmworkers* (2008).

the eyes, farmworkers encounter numerous eye irritants, such as dust, sun and pesticides. Repeated exposure to these irritants can result in infections, allergic reactions, cataracts and loss of vision.<sup>182</sup> Agricultural workers in the United States experience eye injuries and illness at more than twice the rate of U.S. workers generally.<sup>183</sup>

Farm work is unique in that entire families are at risk because they often share the work and live in close proximity to the workplace.<sup>184</sup> Between 1995 and 2002, an average of 113 youth less than 20 years of age died each year from farm-related injuries.<sup>185</sup> In 2006, an estimated 23,100 children and adolescents were injured on farms, and 5,800 of these injuries were due to farm work.<sup>186</sup>

Overcrowded housing in migrant labor camps increases exposure to communicable diseases.<sup>187</sup> Research has found that farmworkers are six times more likely than workers in other industries to test positive for tuberculosis.<sup>188</sup> As mentioned earlier, the summer of 2009 was marked by a rapid spread of H1N1 virus through several blueberry camps. Although more than 250 doses of Tamiflu were administered, the outbreak was not effectively contained for nearly three weeks.<sup>189</sup>

Overcrowded housing reduces access to bathing and laundry facilities. Washing is essential not only to achieving basic sanitation, but also to minimizing hazards related to pesticide exposure. An inability to readily shower or wash one's clothes immediately after

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<sup>182</sup> Thomas A. Arcury and Sara A. Quandt, eds., *Latino Farmworkers in the Eastern United States: Health, Safety and Justice*, p. 83-85 (Springer 2009).

<sup>183</sup> Bureau of Labor Statistics, U.S. Department of Labor, <http://www.bls.gov/iif/oshwc/osh/case/ostbl1662.pdf>.

<sup>184</sup> National Institute for Occupational Safety and Health, *supra* note 1.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Christopher Holden, Migrant Health Issues, Monograph Series, Housing, Monograph No. 8 (2001).

<sup>188</sup> Center for Disease Control, "Prevention and Control of Tuberculosis in Migrant Farmworkers Recommendations of the Advisory Council for the Elimination of Tuberculosis." *MMWR Weekly*, RR10 (6 June 1992) available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00032773.htm>.

<sup>189</sup> Inter-Agency Migrant Resource Council, Meeting Minutes, Report by Alicia Sanchez and Carlos Sanchez, 10/6/09.

working in the fields can result in illness from prolonged exposure to pesticides and increase the risk of pesticide transfer from clothes and skin to the home and family.

## **B. Access to Health Care**

Despite many health risks associated with the working and living conditions of migrants, this population reports a relatively low use of health care services. In a 2000 study conducted by the U.S. Department of Labor, only 20% of migrant and seasonal farmworkers surveyed reported using a healthcare service in the preceding two years.<sup>190</sup> Another study found that nearly 60% of women in farmworker families do not seek early prenatal care.<sup>191</sup> According to the Department of Labor survey, farmworkers identify cost and language as the two greatest obstacles to accessing healthcare, with 64% citing health care costs and 29% citing language barriers.<sup>192</sup> Mobility increases the likelihood that migrant farmworkers and their families will receive only limited healthcare, as services may not be universally available and workers often leave an area before medical treatment is complete.<sup>193</sup> Additional barriers include lack of transportation, lack of knowledge of available medical resources, and an inability to take time off work during the business hours of doctors' offices and health clinics.<sup>194</sup> Providers lacking the ability to effectively communicate with their patients, whether through translation or the use of language lines, cannot fully assess the patients' needs or properly instruct them on future care.

Records of Concern were received at the public forums on the following issues:

- A person was injured on the job. The crewleader told him to hide his hands rather than seeking medical attention for him.
- A woman with high blood pressure also has no access to transportation, so her access to healthy food is very limited.

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<sup>190</sup> U.S. Department of Labor, *National Agricultural Workers Survey* (2000).

<sup>191</sup> Sara Rosenbaum and Peter Shin, Kaiser Commission on Medicaid and the Uninsured, *Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care*, p. 2 (April 2005).

<sup>192</sup> U.S. Department of Labor, *supra* note 18.

<sup>193</sup> Kaiser Commission on Medicaid and the Uninsured, *Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care*, p. 13 (April 2005).

<sup>194</sup> *Kandel, supra* note 4 at 34.

- A person needs a kidney transplant or he will die. He does not have a Social Security Number. He is not eligible for emergency Medicaid because a transplant is not an emergency.
- This family reported driving one hour each way to a clinic, even though there was one much closer. The more convenient clinic would not serve their son with asthma.
- A crewleader told women waiting to see the doctor (who comes to the camp to serve them) to get back to work. One woman waited and he told her to get back to work or he'd fire her, even if she was sick.

## 1. Health Clinics

Community health centers are essential to facilitating access to health care for migrant and seasonal farmworkers. In 2008, the nation's community health centers and migrant health clinics served over 800,000 migrant and seasonal farmworkers and their families.<sup>195</sup> Michigan currently has 32 community health centers located in 160 sites throughout the state.<sup>196</sup> Of these, six centers are designated as migrant health centers.<sup>197</sup>

Migrant clinics and community health centers focus on providing health care services to medically underserved and vulnerable communities. Services are offered on a sliding fee scale and are often available during evening and weekend hours.<sup>198</sup> Many centers are staffed with bilingual and culturally-competent care providers.<sup>199</sup> Some centers provide transportation or offer mobile health services.<sup>200</sup> In addition, these centers conduct community outreach and education and assist patients with applications for Medicaid and other social services.<sup>201</sup> In general, community health centers and migrant clinics are successful in overcoming many of the barriers to health care commonly encountered by migrant and seasonal farmworkers.

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<sup>195</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, <http://bphc.hrsa.gov/about/specialpopulations.htm>.

<sup>196</sup> Michigan Primary Care Association, <http://www.mpca.net/facts.html>.

<sup>197</sup> <http://webcast.hrsa.gov/archives/mchb/emsc/march182009/dcafhmarch182009slides.pdf>.

<sup>198</sup> Michael O. Leavitt, Secretary of Health and Human Services, Report to Congress, *Study Regarding Barriers to Participation of Farmworkers in Health Programs* p. 6 (2006).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

Unfortunately, constraints on time, funding and resources prevent these health centers from providing care to all migrant and seasonal farmworkers and their families.

In 2007, Michigan's migrant health centers served 15,092 migrant and seasonal farmworkers and their family members. In addition, 5,137 migrant and seasonal farmworkers received health care from other community health care centers throughout the state.<sup>202</sup> Given the approximately 90,000 migrant and seasonal farmworkers and family members present in Michigan each year, over three-fourths of these individuals received no health services through Michigan's migrant clinics and community health centers.

## 2. Medicaid

A Department of Labor study found that 85% of migrant and seasonal farmworkers are without health insurance.<sup>203</sup> In comparison, 37% of all low-income adults are uninsured.<sup>204</sup> Even more striking, the Department of Labor also found that 90% of children of migrant and seasonal farmworkers are uninsured<sup>205</sup> while the figure is 22% for all low-income children.<sup>206</sup> Medicaid is the most common form of health insurance for migrant and seasonal farmworker children, but Medicaid coverage among these children is comparatively low.<sup>207</sup> The high rate of uninsured farmworkers is the result of numerous factors, including an inability to afford private insurance, lack of employer-provided insurance, and inability to obtain Medicaid coverage.

Migrant and seasonal farmworkers face difficulties in obtaining Medicaid coverage for several reasons. Many are simply not eligible. Medicaid is typically only available to individuals

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<sup>202</sup> Michigan Primary Care Association, *Farmworker Health the Focus of National Health Center Week Today* (Aug. 13, 2009) <http://michiganpca.wordpress.com/2009/08/13/farmworker-health-the-focus-of-national-health-center-week-today/>

<sup>203</sup> U.S. Department of Labor, *supra* note 18.

<sup>204</sup> Kaiser Commission on Medicaid and the Uninsured, *Health Insurance Coverage in America: 2000 Data Update* (Feb. 2002).

<sup>205</sup> U.S. Department of Labor, *supra* note 18.

<sup>206</sup> Kaiser Commission on Medicaid and the Uninsured, *supra* note 21 at 12.

<sup>207</sup> *Id.*

who fall into certain eligibility categories, such as low-income families with minor children, pregnant women, children, elderly and disabled individuals.

Even farmworkers who are otherwise eligible for Medicaid often face barriers in obtaining coverage. They have difficulties enrolling in Medicaid due to a limited understanding of English, general confusion surrounding the application process and inaccessible site locations.<sup>208</sup> Legal Permanent Residents may be reluctant to apply for Medicaid due to the common but mistaken belief that the use of public services might render them a public charge and jeopardize their immigration status.<sup>209</sup> Undocumented parents of qualified children may choose not to enroll their eligible children in Medicaid due to fears of arousing unwanted attention from government agencies.<sup>210</sup>

Medicaid is federally funded, but state administered.<sup>211</sup> State-based Medicaid programs provide limited coverage to individuals traveling outside their states. Individuals cannot simultaneously be covered by Medicaid programs in multiple states. To retain full coverage, beneficiaries must apply for Medicaid each time they change their state of residence.<sup>212</sup>

Two models have emerged to help address this Medicaid portability problem. Under the Interstate Provider Network model, health care providers in receiving states bill the state in which the beneficiary was previously enrolled.<sup>213</sup> Under the Multi-State Medicaid Card model, a beneficiary of a sending state is treated as a beneficiary of a receiving state, even though the individual was originally screened for eligibility and enrolled in the sending state's Medicaid program.<sup>214</sup> Thus, a health care provider would bill the provider's own state, who reimburses the provider directly. With this model, the receiving state would either use its own state

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<sup>208</sup> Kaiser Commission on Medicaid and the Uninsured, *supra* note 21 at 3.

<sup>209</sup> Immigration and Nationality Act §§ 212(a)(4), 237(a)(5).

<sup>210</sup> Leavitt, *supra* note 28 at 6.

<sup>211</sup> Kaiser Commission on Medicaid and the Uninsured, *supra* note 21 at 3.

<sup>212</sup> *Id.* at 4.

<sup>213</sup> Interagency Migrant Service Council, Meeting Minutes, Presentation by Lynda Meade, 1/6/09.

<sup>214</sup> *Id.*

Medicaid funds to reimburse the provider, or it would request reimbursement from the sending state.<sup>215</sup>

Several states have tried to facilitate portable Medicaid coverage for farmworkers. Wisconsin developed a system similar to the Multi-State model, which automatically extends coverage to families covered under an out-of-state Medicaid program.<sup>216</sup> One difficulty confronted was the varying coverage and eligibility between Wisconsin and sending states.<sup>217</sup> Texas developed a pilot program based on the Interstate Provider Model, under which migrant children are assured customary (as opposed to emergency only) Medicaid coverage when accompanying their families to another state for agricultural purposes.<sup>218</sup> Under this program, out-of-state physicians, hospitals and health clinics can enroll in the Texas Medicaid Network and be reimbursed for services provided to migrant children covered under the program. Once again, however, problems arise due to differences in coverage and eligibility between the Texas Medicaid Program and that of receiving states.<sup>219</sup> Texas and Michigan are collaborating to increase participation among Michigan health care providers and to raise awareness about participating health care providers among Michigan farmworkers.<sup>220</sup>

### **C. Pesticide Exposure**

As noted earlier, agriculture involves countless environmental hazards that affect the industry's workforce.<sup>221</sup> Chief among these is pesticide exposure. Farmworkers are exposed to pesticides through direct contact with the chemicals and contact with residue on crops or

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<sup>215</sup> *Id.*

<sup>216</sup> Kaiser Commission on Medicaid and the Uninsured, *supra* note 21 at 22.

<sup>217</sup> *Id.* at 23

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 22.

<sup>220</sup> Maternal and Child Health Bureau/Emergency Medical Services Corporation, *Medicaid Portability: Eliminating the Gaps in Health Care, Optimizing Oral Health for Migrant children and Their Families*, presentation by Lynda Meade, 3/18/09, available at <http://webcast.hrsa.gov/archives/mchb/emsc/march182009/dcafhmarch182009slides.pdf>.

<sup>221</sup> Lisa J. Gold, "Pesticide laws and Michigan's Migrant Farmworkers: Are They protected? (1996) available at <http://www.jsri.msu.edu/RandS/researchirr/rr12abs.html>.

equipment.<sup>222</sup> Even non-working family members are often exposed through drift of pesticides from treated fields to untreated areas such as migrant housing camps, and through residue on working family members' clothing and skin.<sup>223</sup> Exposure to these toxic chemicals can lead to both short- and long-term health effects, ranging in severity from mild nausea or eye irritation to cancer, Parkinson's disease or miscarriage.<sup>224</sup>

A set of federal safety laws called the Worker Protection Standard (WPS) is intended to protect farmworkers from pesticide-related illnesses and injuries. One requirement of the WPS is that all farmworkers be trained in pesticide safety "no more than five days after their initial employment has commenced."<sup>225</sup> The training must provide basic information about how pesticides enter and affect the body, what to do in an emergency, and how to protect oneself from pesticide exposure. Because there is no requirement that the training include information about how a worker can make a complaint, even farmworkers who understand the danger may not know how to assert their rights with respect to agricultural pesticides.

In Michigan, enforcement of the WPS is the responsibility of the MDA. Inspectors are charged with responding to pesticide-related complaints and complainants are notified of the findings of the inspection. If the complainant needs more details or a copy of the case file, they can request such information under the Freedom of Information Act (FOIA).<sup>226</sup>

#### **D. Workers' Disability Compensation**

Workers' Disability Compensation is a state system that requires most employers to pay employees who suffer work-related injuries. Thirty-three states require workers' compensation

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<sup>222</sup> Larkin Strong, et al., *Factors Associated with Pesticide Safety Practices in Farmworkers*, American Journal of Industrial Medicine, 51, p. 69-81, (2008).

<sup>223</sup> *Id.*

<sup>224</sup> Pesticide Action Network of North America, <http://www.panna.org/drift/health>.

<sup>225</sup> Environmental Protection Agency, <http://www.epa.gov/opp00001/health/worker.htm>.

<sup>226</sup> Personal conversation with A. Escobar, 12/21/09.

for farmworkers, although some limit coverage or exempt small farms.<sup>227</sup> Michigan agricultural workers, however, are often excluded from coverage by state law.<sup>228</sup>

The state Workers' Disability Compensation Act (the Act) requires all public employers, and all private employers who regularly employ three or more workers, to provide workers' compensation benefits. However, there is a blanket exemption to the Act's coverage for agricultural employers. Michigan agricultural employers need only cover regularly employed workers—not those paid on a piecework basis—and even then, only if they employ three or more regular workers for a statutorily-determined period during the preceding year.<sup>229</sup>

The workers' compensation program requires covered employers to provide weekly benefits and medical care to covered workers who are disabled by a work-related personal injury or occupational disease. Where a work-related injury or occupational disease results in the death of an employee, benefits may also be payable to the worker's family. The primary responsibility for the administration of the program lies with the Bureau of Worker's Compensation, within the Michigan Department of Energy, Labor and Economic Growth (DELEG). The Bureau is required to ensure that every covered employer has worker's compensation insurance or sufficient reserves to be self-insured.

In 1984, the Michigan Supreme Court held that due to the "economic uniqueness of agriculture," denying workers' compensation to a substantial segment of the farmworker labor force was not a violation of the right of equal protection of the law. The Court reversed a prior decision in which it had held that exemption of agricultural labor from coverage by the Act was unconstitutional, as a violation of equal protection of the laws.<sup>230</sup>

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<sup>227</sup> *Id.*

<sup>228</sup> MCL 418.115(d).

<sup>229</sup> MCL 418.115.

<sup>230</sup> *Eastway v. Eisenga*, 420 Mich. 410, 422; 362 N.W.2d 684 (1984); overruling *Gallegos v. Glaser Crandell Co.*, 388 Mich. 654; 202 N.W.2d 786 (1972), which held that the special treatment accorded to agricultural employers under the Act, not accorded any other private or public employer, was impermissible as being discriminatory.

Despite being exempted from the mandatory protections of the Act, farm employers may voluntarily cover their farm laborers with workers' compensation insurance. Others are required to cover only medical and hospital bills for injured farmworkers.<sup>231</sup> In the absence of universally mandated workers' compensation coverage under the Act, it is difficult to determine how many Michigan farmworkers are injured every year, as there is no consistent mechanism for reporting such injuries.

The Commission heard from farmworkers who reported being injured in the past, but were unable to access workers' compensation to pay their medical bills or lost wages while they recuperated. At the Blissfield forum, a third-generation migrant worker told about her father who had been injured on the job ten years before and, because he had never received appropriate medical care for his injury at the time, is now fully crippled and cannot work.<sup>232</sup>

A man was injured helping his employer with a roof repair. The ladder became imbalanced and the worker's arm was broken. After the incident, the employer kept the worker in the basement for four hours without medical attention. The employer did not want the worker to go to the hospital and got him a massage instead. At 8 pm, the worker went to the hospital in pain and found that his arm was broken. The employer said the worker could take two weeks off and then come back, "between the two of them, the bills would get paid." In mediation, the employer said this worker had never worked for him and that he had fallen. The employer said he started paying the medical bills out of the kindness of his heart. Because the worker has no income, he cannot find an attorney to represent him, and he cannot get physical therapy to help the arm heal due to his outstanding medical bills. Without his arm being healed, finding work is a real challenge.<sup>233</sup>

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<sup>231</sup> MCL 418.115(e).

<sup>232</sup> Sandoval, Blissfield Testimony, 7/30/09.

<sup>233</sup> Letter submitted by Brannigan Reaser, 8/3/09.

It was recently reported that, “Michigan’s net farm income in 2008 rose 67% from the previous year to a record high \$2.03 billion.”<sup>234</sup> Michigan’s agricultural economy has expanded “at a rate more than five times faster than the growth rate of the general economy—11.9 percent versus two percent—between 2006 and 2007, making it the second largest industry in Michigan.”<sup>235</sup> When the 1984 Michigan Supreme Court justified the special treatment accorded to agricultural employers under the Act based on “the economic uniqueness of Michigan’s agricultural employers,” it was not faced with such an economic success story.<sup>236</sup> Twenty-five years later, the law needs to catch up with the state’s growing agricultural industry.

#### **IV. IMMIGRANT RIGHTS**

##### **A. Introduction**

Of the approximately 90,700 migrant and seasonal farmworkers and household present in Michigan each year, 49% are of Mexican heritage, 48% come from Puerto Rico and other U.S. states and two percent are from other countries.<sup>237</sup> Spanish is the primary language of 54% of these individuals, while English is the primary language of another 45%. One percent report another primary language.<sup>238</sup>

In Michigan, 99.6% report they are Hispanic or Latino, with .4% reporting they are white and .4% stating they are biracial.<sup>239</sup> Approximately 50% of the migrant farmworkers who work in Michigan are U.S. citizens, 19% are lawful permanent residents, and two percent possess some other form of work authorization.<sup>240</sup> Less than 30% of Michigan’s migrant workforce lacks current legal status.

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<sup>234</sup> Muskegon Chronicle, “Back to Nature: Unemployed Finding Work on Oceana Farms” (9/21/09) citing source: [www.nass.usda.gov](http://www.nass.usda.gov).

<sup>235</sup> *Id.*

<sup>236</sup> See *Eastway* 420 Mich. 410 at 422.

<sup>237</sup> Western Migrant Stream Conference PPT for Midwest (US destinations page).

<sup>238</sup> *Ibid.*, (Language page).

<sup>239</sup> Telamon MMHS Community Assessment, 2007, p. 2.

<sup>240</sup> Western Migrant Stream Conference ... (Migration Patterns page).

About 85% of all immigrant families in the U.S. are “mixed-status,” meaning that all members of the family do not share the same immigration or citizenship status. Nearly two million families in the United States have at least one undocumented parent and children who are U.S. citizens.<sup>241</sup> In most mixed-status families, the children are U.S. citizens while the parents are not, but many mixed-status families include various combinations of U.S. citizens, LPRs and undocumented immigrants.<sup>242</sup> Because issues related to immigration affect so many, immigrant rights are a central concern to many of Michigan’s migrant and seasonal farmworkers.

## **B. Limited English Proficiency**

For many of Michigan’s migrant farmworkers, language barriers present a substantial obstacle to accessing essential services. People who are limited English proficient (LEP) cannot speak, read, write or understand English at a level that permits them to interact effectively with social service agencies.<sup>243</sup> To comply with the 1964 Civil Rights Act, federal agencies and state agencies that receive federal funds must take reasonable steps to ensure that LEP persons have meaningful access to their services.<sup>244</sup> Failure to do so constitutes national origin discrimination.

Titles IV and VI of the Civil Rights Act prohibits agencies that receive federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>245</sup>

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<sup>241</sup> Kari Lyderson, “Mixed-Status’ Families Look to Obama,” *The Washington Post*, November 16, 2008.

<sup>242</sup> Michael Fix and Wendy Zimmerman, *All Under One Roof: Mixed Status Families in an Era of Reform*, Washington, DC: The Urban Institute (1999).

<sup>243</sup> Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency, *65 Fed. Reg. 52762, 52 763 (Aug. 20, 2000)* [hereinafter HHS Policy Guidance 2000].

<sup>244</sup> 42 U.S.C. § 2000d, *et seq.*

<sup>245</sup> 42 U.S.C. § 2000d.

“Program or activity” is broadly interpreted to include any entity which is extended federal financial assistance.<sup>246</sup> In *Lau v. Nichols*, the U.S. Supreme Court interpreted these provisions to require that federal financial recipients ensure that language barriers did not exclude LEP persons from the benefits and services provided.<sup>247</sup> Although *Lau* involved access to education, “[c]ourts have applied the doctrine enunciated in *Lau* . . . in contexts as varied as what languages driver’s license tests must be given in, or whether material relating to unemployment benefits must be given in a language other than English.”<sup>248</sup>

In August of 2000, President Clinton issued Executive Order 13166 to clarify the requirements of Title IV.<sup>249</sup> The Order maintains the requirement that “recipients of Federal financial assistance provide meaningful access to LEP applicants and beneficiaries.”<sup>250</sup> The Department of Justice, in addressing this issue, “has consistently adhered to the view that the significant discriminatory effect that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.”<sup>251</sup>

Considerations include “...the number or proportion of LEP persons in the eligible service population, the frequency in which LEP individuals come in contact with the program, the importance of the service provided by the program, and the number of resources available to the recipient.”<sup>252</sup> Recipients that serve many LEP individuals each day must provide professional translators. All recipients must work to find an appropriate mix of written and oral

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<sup>246</sup> 42 U.S.C. §200d-4a.

<sup>247</sup> *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>248</sup> HHS Policy Guidance 2000.

<sup>249</sup> Exec. Order No. 13,166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121 (Aug. 11, 2000).

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

language assistance.<sup>253</sup> It is important to note that “a recipient’s obligation to provide meaningful opportunity is *not limited* to written translations.”<sup>254</sup>

In Michigan, many recipients of federal funding do not take reasonable steps to assure that LEP individuals can access essential services. The problem is particularly distressing in providers who serve areas that predictably and consistently receive large numbers of Spanish-speaking migrant farmworkers during the harvest months.

The Commission received numerous Records of Concern about LEP individuals being unable to access services. Farmworker Beatrice Herminez reported that her husband had an extremely difficult time obtaining a driver’s license due to his LEP status. When he arrived at the Secretary of State, he was asked if he would like to complete the test in English or Spanish. He chose Spanish, but this presented problems during the vision test. The clerk assisting him did not speak Spanish, and did not understand him when, in Spanish, he listed the letters he saw on the eye chart. His application was denied because the clerk stated he performed poorly on the vision test. He obtained his license when, after approximately five trips to the Secretary of State, he was finally assisted by a Spanish-speaking clerk.<sup>255</sup> Seven other people reported making multiple trips to the Secretary of State’s office in order to get a driver’s license; the lack of Spanish-speaking staff or available translation services were repeatedly cited as barriers.

Navigating the Unemployment Insurance system has also proven to be difficult for LEP individuals.<sup>256</sup> Although the Unemployment Insurance Agency (UIA) employs Spanish-speaking representatives in its call centers and allows individuals to apply for benefits in Spanish, written correspondence from the UIA is in English. Thus, many LEP individuals do not understand the letters they receive from the UIA, which may contain important requests or directions with strict

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<sup>253</sup> *Id.* at 50125.

<sup>254</sup> *Id.* (emphasis added).

<sup>255</sup> Beatrice Herminez, Watervliet Testimony, 8/13/09.

<sup>256</sup> Stephanie Little, Farmworker Legal Services, at large, 8/24/09.

time constraints. Failure to respond or an improper response to correspondence often jeopardizes the beneficiary's eligibility for benefits.

Records of Concern received about LEP issues in the health care setting include:

- Two people who are Limited English Proficient were denied access to a Spanish-speaking interpreter at a hospital.
- In another location, there was a long wait for an interpreter to arrive.
- In a mental health setting, a migrant farmworker was asked to interpret and she didn't feel she had the skills to handle such sensitive information appropriately. Staff were angry about her reticence to participate in the interpretation.
- In at least two instances, the hospital asked a patient's child to interpret for her. This hospital does not call the interpreter for 'small' procedures like an x-ray. Some of the attendees at this forum noted that Ukrainian people in the area have also lacked access to an interpreter.

At the Hart forum, a male who assisted in a delivery testified about a woman who was in labor at the hospital. The hospital staff made her leave "because she was Mexican and they were afraid of her." He said the woman did not speak English and although she was in active labor, she went home and subsequently delivered her baby. He added that there also may have been some fear about the H1N1 virus on the part of hospital staff.<sup>257</sup>

Gladys Muñoz, language specialist at Northwest Michigan Health Services Inc., testified that many patients do not know that they can request a professional medical interpreter when receiving health care. Ms. Muñoz further reported that a hospital in Manistee employs only one Spanish interpreter. Hospital staff consistently claim that there is no need for additional Spanish interpreters, despite the large influx of Spanish-speaking farmworkers during harvest season. With only one Spanish interpreter, patients face lengthy waits before the translator is available. The interpreter is not called when the patient speaks 'some' English.<sup>258</sup> Thus, many Spanish-speaking patients at this hospital are effectively denied their right to an interpreter and are often unable to adequately communicate with their physicians, comprehend medical advice, and give informed consent to medical treatment.

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<sup>257</sup> Anonymous Testimony, Hart, 7/16/09.

<sup>258</sup> Gladys Muñoz, Bear Lake Testimony, 8/5/09.

An article in the Muskegon Chronicle sums up one family's experience. A non-Spanish speaking practitioner "...told the parents 'she's gone' after they arrived at the hospital. Although the family does not understand English, they could tell from the tone of the hospital employee's voice that their daughter had died." Without a full understanding of what occurred, and "[a]lthough the death was initially ruled as pneumonia and not tied to any infectious viruses, the Garcias have found themselves the target of endless community speculation about what caused Elaine's death. Those rumors have intensified, become even more cruel and even physically confrontational during the last week when news that the swine flu virus, believed to have originated from Mexico, had spread to the U.S.....The Garcias hear the accusations in church, at the grocery store, the Laundromat and in the fields. Several strangers have even visited their home and accused them of bringing the virus to West Michigan, the family said."<sup>259</sup>

There is also a shortage of translators among Michigan's social service providers. In some Department of Human Services (DHS) offices, if a Spanish-speaking applicant comes in on a day when Spanish-speaking staff are not working, the applicant is told to return on a different day.<sup>260</sup> In addition to the inconvenience and potential wages lost, the person loses a day of benefits by being told to return at another time. These applicants are already destitute in many cases and may be without independent means of returning to the office.

One Record of Concern noted there is a sign in the local DHS office stating people must provide their own interpreters. This is in violation of DHS' own policy, as well as federal FEP guidelines.<sup>261</sup> The DHS "Limited English Proficiency Policy" reads:

The Department of Human Services...shall provide at no cost accurate and timely language assistance and effective communication to a person with limited English proficiency. These language services will be provided to customers and other interested persons to ensure equal access to all programs administered by the department.

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<sup>259</sup> Muskegon Chronicle, "Hurtful Gossip accompanies Shelby girl's death," 4/30/09.

<sup>260</sup> Anonymous Testimony, Watervliet Forum, 8/13/09.

<sup>261</sup> Anonymous Testimony, Watervliet, 8/13/09.

The DHS will also provide written translation in Spanish or other language that is deemed necessary. The local DHS office must make arrangements with a contractual provider of services, volunteer interpreter, or with a language access line contractor to ensure effective communication.

When agencies don't follow state or federal policy, LEP individuals are often forced to use friends and family members, including young children, as interpreters. One individual testified to witnessing children as young as age five interpret for their migrant farmworker parents.<sup>262</sup> A recipient of federal funding "should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities" and "may not require an LEP person to use a family member or friend as an interpreter."<sup>263</sup> Further, an LEP person should be notified that "he or she has the option of having the recipient provide an interpreter for him/her without charge."<sup>264</sup>

Although a friend or family member may be bilingual, that does not ensure sufficient command of English or a working knowledge of the technical terminology required to adequately interpret, particularly in a critical medical situation. Many individuals may be reluctant to reveal sensitive or private information, such as that of a sexual, financial or health-related nature, to a friend or family member. Obligating an LEP individual to provide his or her own interpreter inhibits the individual's access to services, and constitutes a violation of Titles IV and VI of the Civil Rights Acts of 1964.

### **C. Withholding of Vital Documents**

Farmworkers face barriers when they attempt to access documents such as birth certificates for their U.S. citizen children, marriage licenses and driver's licenses. A farmworker's inability to obtain vital documents negatively impacts his or her ability to effectively and lawfully

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<sup>262</sup> Anonymous Testimony, Watervliet, 8/13/09.

<sup>263</sup> Guidance to Federal Financial Assistance recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons, 68 *Fed. Reg.* 47311, 47319 (Aug. 4, 2003) [hereinafter HHS Policy Guidance 2003].

<sup>264</sup> *Id.*

engage in basic activities. Denying farmworkers essential documents to which they are legally entitled is discriminatory, as well as detrimental to the interests of lawful residents who depend on these workers.

### **1. Marriage Certificates**

Michigan statutes require that marriage license applicants provide their Social Security Number (SSN), if they have one, to prove their identity in compliance with federal law.<sup>265</sup> The federal law in question is section 466 of the Social Security Act, amended in 1997.<sup>266</sup> According to the federal agency charged with enforcement, the Act “does not require that an individual have a Social Security number as a condition of receiving a license, etc.”<sup>267</sup> The agency advised states “to require persons who wish to apply for a license who do not have Social Security numbers to submit a sworn affidavit” certifying the lack of a Social Security number.<sup>268</sup>

In implementing the marriage license application process, the Kent County Clerk created an “Affidavit for Not Providing Social Security Number on Marriage Certificate.” At least one other county (Ottawa) requires a similar document. However, this affidavit fails to specify appropriate, accurate reasons why an applicant might not have a SSN.

On March 19, 2008, the Michigan Attorney General issued an opinion on the validity of denying a marriage license to an applicant without a SSN. The Attorney General noted that federal law does not require that county clerks deny marriage licenses to applicants who do not have SSNs.<sup>269</sup> If an applicant for a marriage license does not have a SSN, the applicant must merely state that he or she does not have a SSN on the marriage license application (if using the official “Affidavit for License to Marry”) or on a separate sworn statement.<sup>270</sup> The Attorney

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<sup>265</sup> MCL 333.2813(2)(c); MCL 551.102(1) and (3)

<sup>266</sup> 42 U.S.C. § 666(a)(13)

<sup>267</sup> Policy Interpretation Question 99-05, at <http://www.acf.hhs.gov/programs/cse/pol/PIQ/1999/piq-9905.htm>

<sup>268</sup> *Id.*

<sup>269</sup> OAG 7212, 3/19/2008, at <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10288.htm>

<sup>270</sup> OAG 7212, 3/19/2008, at <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10288.htm>

General also noted that, as a county clerk's duties under the Marriage License Act are ministerial, Michigan law does not authorize a county clerk to investigate the reasons why a marriage license applicant does not have a Social Security number.<sup>271</sup> The actions of the Kent and Ottawa County clerks, mentioned above, appear to contradict the Attorney General's opinion.

Numerous categories of non-citizens who legally reside in the U.S. are either not eligible for SSNs or may not possess them due to recent acquisition of status or other valid reasons. Such categories include but are not limited to Asylee, Refugee, Temporary Protected Status, Humanitarian Parole, Battered Immigrant/Deferred Action and Pending Asylum Application.

## **2. Driver's Licenses**

Recent changes in the interpretation of state law have prevented many farmworkers from obtaining or renewing their driver's licenses and state IDs. Prior to 2008, qualification for a Michigan driver's license or state ID card was not based on citizenship or immigration status. Applicants were merely required to submit documents sufficient to prove their identity and Michigan residency. "Resident" was defined by the Motor Vehicle Code as follows: "Every person who resides in a settled or permanent home or domicile with the intention of remaining in this state. A person who obtains employment in this state is presumed to have the intention of remaining in this state."<sup>272</sup> Under current law, applicants for a driver's license must not only provide proof of identity and Michigan residency, but also proof of legal presence in the United States.<sup>273</sup>

Two Michigan Attorney General Opinions were instrumental in shaping the requirements of the Michigan driver's license statute. In 1995, then Michigan Attorney General Kelley held

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<sup>271</sup> *Id.*

<sup>272</sup> MCL 257.51.

<sup>273</sup> MCL 257.303; MCL 257.307.

that an illegal alien could not be denied a driver's license based on immigration status because the statute had no immigration status requirement and because federal immigration law does not preclude an illegal alien from being a resident of a state.<sup>274</sup> Thus, before 2008, undocumented immigrants could obtain a Michigan driver's license. On December 27, 2007, current Michigan Attorney General Cox issued Opinion 7210, which revisited this decision.<sup>275</sup> The Attorney General decided that, for purposes of determining eligibility for a driver's license, an undocumented immigrant could not be considered a Michigan resident, regardless of the immigrant's intent to remain permanently in Michigan.<sup>276</sup> The 2007 opinion reversed the 1995 opinion by emphasizing the absence of language or history in the Michigan driver's license statute to indicate that the Michigan legislature intended to include undocumented immigrants in the definition of "state resident."<sup>277</sup>

Michigan Attorney General Opinions are legally binding on state agencies and officers unless reversed by the courts.<sup>278</sup> On January 21, 2008, the Michigan Secretary of State announced that, in response to Opinion 7210, changes in application procedures for Michigan driver's licenses would take effect the following day.<sup>279</sup> The Secretary of State interpreted Opinion 7210 to require that only U.S. citizens and immigrants with Legal Permanent Resident status (LPRs) were eligible for Michigan driver's licenses. The Secretary of State also applied this restricted policy to state ID cards, although Opinion 7210 did not address state ID cards. Under the Secretary of State's new policy, driver's license applicants needed to provide proof of identity and Michigan residency, and also proof of U.S. citizenship or a Permanent Resident

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<sup>274</sup> OAG No 6883, *available at* <http://www.ag.state.mi.us/opinion/datafiles/1990s/op06883.htm>.

<sup>275</sup> OAG No 7210, *available at* <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10286.htm>.

<sup>276</sup> OAG No 7210, *available at* <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10286.htm>.

<sup>277</sup> OAG No 7210, *available at* <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10286.htm>.

<sup>278</sup> *Michigan Beer and Wine Wholesalers Ass'n v. Attorney General*, 142 Mich. App. 294, 300-302 (1985).

<sup>279</sup> Tim Martin, *Michigan Denies Illegal Immigrants License*, Associated Press, (Jan. 21, 2008).

Card (Green Card), as well as proof of a valid SSN. These new requirements prevented many lawfully present farmworkers from obtaining or renewing their Michigan driving licenses.

In the months following the Secretary of State's announcement of its new policy, the Michigan legislature passed two bills changing the statutory requirements for driver's license and state ID eligibility.<sup>280</sup> Both were designed to remedy changes in the Secretary of State's new policy by extending eligibility to all legal immigrants, rather than only to LPRs. Both statutes still require "legal presence" in the United States, which is defined as:

A person legally present in the United States includes, but is not limited to, a person authorized by the United States government for employment in the United States, a person with nonimmigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or an approved labor certification.<sup>281</sup>

The legislature also required the Secretary of State to promulgate regulations so that the public would have a better understanding of the eligible immigrant categories.<sup>282</sup>

On March 14, 2008, the Secretary of State issued Form SOS-428, which purports to list the acceptable documents that an applicant must submit to be eligible for a license. The Secretary of State did not promulgate any regulations clarifying the eligible immigrant categories, as required by the newly passed legislation. The Secretary of State subsequently indicated it did not promulgate the required rules based upon guidance from the U.S. Department of Homeland Security.<sup>283</sup>

According to Form SOS-428, "legal presence" must be demonstrated by providing one of ten listed documents. This list is incomplete, in that it excludes documentation that would prove the status of several categories of lawfully present immigrants. Such immigrants include, but are not limited to, LPRs with Permanent Resident Cards issued before December of 1997,

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<sup>280</sup> MCL 257.307; MCL 28.291.

<sup>281</sup> MCL 28.291, MCL 257.307.

<sup>282</sup> MCL 257.307(1)(b); MCL 28.291(3).

<sup>283</sup> Michigan Department of State, Responses to Questions Posed by the Commission on Spanish Speaking Affairs (March 2009).

immigrants seeking humanitarian relief who have been granted Deferred Action status while awaiting adjudication of their visa requests, refugees and asylees, and beneficiaries of approved immigration visa petitions.

Although Michigan law states that “a beneficiary of an approved immigrant visa petition” is legally present in the United States, Michigan’s Secretary of State does not permit such an individual to obtain or renew a driver’s license or state ID card. Beneficiaries of approved visa petitions typically do not have work authorization or SSNs. Pursuant to Form SOS-428, if an applicant does not have a valid SSN, he or she must provide a letter of ineligibility from the Social Security Administration. Many farmworker beneficiaries of approved visa petitions have obtained such letters of ineligibility from the Social Security Administration, only to have their driver’s license applications denied by the Secretary of State. During the farmworker forums, eleven Records of Concern addressed the individuals’ license having expired and their inability to get a new one. Three people were erroneously advised to go to the Social Security Administration office.

“People must drive...to get to the store, the school, anywhere. Therefore we are driving without a license and might be pulled over and face multiple charges. This is happening to many people.”<sup>284</sup>

“Driver’s licenses are needed. In the past, we had them but now they’re taking them away from us. It’s causing a lot of problems, not just to the person but to the state in general. I and many others are driving with expired licenses, because one has to drive to go to work, shop and other things. This law was passed without thinking about the harm it would do to the working person.”<sup>285</sup>

Access to identification was raised by many individuals. One mother commented that she needs a license to take her children to school and to the doctor<sup>286</sup>. Three Records of Concern were submitted stating that without a driver’s license, the individuals are gouged when

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<sup>284</sup> J. Gomez, Bear Lake Testimony, 8/5/09.

<sup>285</sup> Anonymous Testimony, Sparta, 8/16/09.

<sup>286</sup> Anonymous Testimony, Blissfield, 7/31/09.

cashing checks. They must either spend 30% of the check in the store or they are charged a “fee” of 30%<sup>287</sup>—taken from people who can least afford it.

Grower Jerry Brandel offered the following testimony, “This is new in the last two years (that people have trouble getting licenses)...If you don’t have a birth certificate or green card, they won’t give you a license. My son who lives in Mexico six to eight months a year walks in and gets a license right away. Because he’s white—he presents his old license and they don’t care. The other guys present their licenses and they’re Mexicans, they can’t get a license. I had 30-40 people in a camp get denied because they can’t have the same address (which is a labor camp). Someone from the Secretary of State came to my farm and then understood that everyone had the same address, so this part of the problem was resolved. At the same time, they were denying people without permanent residences driver’s licenses. What about people who are living somewhere else half the year, like Florida or Arizona, and then they come back to Michigan? They are not treated the same. Civil rights are being violated by people, officials doing this. There are people now whose license expires and they can’t get another one.”<sup>288</sup>

The Secretary of State’s implementation of Michigan’s application requirements puts an extreme burden on Michigan’s farmworker population. Migrants’ mobility is key to their livelihood. They travel hundreds of miles to Michigan, and must continue to travel to various locations throughout the state to harvest different crops.

There is no evidence that denying driver’s licenses to undocumented immigrants actually deters individuals from entering the United States without authorization or that it induces undocumented immigrants to return to their home countries. Michigan’s driver’s license procedure does, however, result in an increased number of unlicensed and uninsured drivers on Michigan roads. According to a study conducted by the Insurance Resource Council, more than

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<sup>287</sup> Anonymous Testimony, Sparta, 8/16/09.

<sup>288</sup> Personal conversation with J. Brandel, 11/24/09.

14% of the nation's drivers are uninsured.<sup>289</sup> Accidents caused by uninsured drivers result in \$4.1 billion in insurance losses each year.<sup>290</sup> It is estimated that accidents caused by unlicensed and uninsured drivers increase the cost of the average annual auto insurance policy by \$116.90.<sup>291</sup>

Allowing undocumented immigrants to obtain driver's licenses significantly reduces the rate of uninsured drivers. For example, New Mexico enacted a law that allowed undocumented immigrants to obtain driver's licenses in 2003. That state's percentage of uninsured drivers dropped from 33% in 2002 to 10.6% in 2007.<sup>292</sup> After Utah passed a similar law, the rate of uninsured drivers dropped from 10% in 1998 to 5.1% in 2007.<sup>293</sup> Michigan's driver's license restrictions do little to impact the influx of undocumented immigrants, but pose a severe hardship on Michigan's agricultural industry and create added risks for all drivers.

### **3. Birth Certificates and Affidavits of Parentage**

As a consequence of farmworkers' limited access to Michigan driver's licenses or state ID cards, some new parents have been prevented from obtaining birth certificates for their Michigan-born, U.S. citizen children. Birth certificates are needed throughout an individual's life for a variety of reasons. A Record of Concern submitted in Blissfield reported one hospital that refuses to notarize the needed Affidavit of Parentage for newborn babies if one or both parents do not have a current picture ID, such as a driver's license, passport, or state ID card. This individual also reported that, in the same county, immigrant parents are having trouble

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<sup>289</sup> Insurance Research Council News Release, *IRC Estimates More Than 14 Percent of Drivers are Uninsured* (June 28, 2006) available at [www.ircweb.org/news/20060628.pdf](http://www.ircweb.org/news/20060628.pdf).

<sup>290</sup> *Id.*

<sup>291</sup> Illinois Coalition for Immigrant and Refugee Rights, *Safety and Savings: How Driver's Certificates Would Lower Insurance Premiums and Make Our Roads Safer*, p. 10 (May 9, 2007) available at [www.icirr.org/iir/learn/insurancereport.pdf](http://www.icirr.org/iir/learn/insurancereport.pdf).

<sup>292</sup> Ken Ortiz, *New Driver's Licenses Don't Have "Loophole,"* Albuquerque Journal (Dec. 29, 2007).

<sup>293</sup> Utah Driver License Division, *Number of Uninsured Registered Vehicles: Insure-rite Uninsured Motorist Database* (Dec. 2007).

obtaining certified birth certificates from the County Clerk, due to not having current photo ID.<sup>294</sup>

The Affidavit of Parentage is required to establish paternity when a baby is born out of wedlock.<sup>295</sup> The Affidavit is typically completed shortly after the baby is born and then submitted to either the local registrar (usually the County Clerk) or the Vital Records Office of the Michigan Department of Community Health. The father's name then appears on the official birth certificate. Without the Affidavit of Parentage, only the mother's name will appear on the birth certificate and the father's paternity will not be legally recognized.<sup>296</sup>

To file an Affidavit of Parentage, both parents' signatures must be notarized.<sup>297</sup> The aforementioned hospital reportedly has a policy under which its employees are prohibited from notarizing a parent's signature if the parent does not have a current photo ID. The hospital also refuses to allow the parents to bring their own notary public to the hospital to notarize the Affidavit. Thus, parents without a current photo ID would be forced to file the Affidavit of Parentage on a later date, at a cost of \$40.<sup>298</sup>

The Michigan Notary Public Act contains the following language:

- (6) A notary public has satisfactory evidence that a person is the person whose signature is on a record if that person is any of the following:
- (a) Personally known to the notary public.
  - (b) Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the person.
  - (c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the person's photograph and signature.

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<sup>294</sup> Anonymous Testimony, Blissfield, 7/31/09,

<sup>295</sup> MCL 333.21532.

<sup>296</sup> For children born into wedlock, there is no need for an Affidavit of Parentage, since the mother's husband is legally presumed to be the father.

<sup>297</sup> Michigan Department of Community Health, *Instructions for Completion of Affidavit of Parentage* (April 16, 2008) available at [http://www.michigan.gov/documents/Parentage\\_17062\\_7.PDF](http://www.michigan.gov/documents/Parentage_17062_7.PDF).

<sup>298</sup> Michigan Department of Community Health, *Instructions for Completion of Affidavit of Parentage* (April 16, 2008) available at [http://www.michigan.gov/documents/Parentage\\_17062\\_7.PDF](http://www.michigan.gov/documents/Parentage_17062_7.PDF).

Because Michigan law currently prevents undocumented immigrants from obtaining the driver's licenses or birth certificates that would fulfill the requirement of Provision 6(c), and because while Provision 6(b) indicates that a third party who is "personally known" to both the notary public and the parent can verify the parent's identity, it is unlikely that a migrant parent would have an acquaintance that is also personally known by the notary public. Provision 6(a) would appear to be the best option for an undocumented parent, except that the hospital at issue does not allow outside notaries to notarize documents within the hospital. There appears to be no statutory or regulatory authority for this exclusionary policy. Hospitals that insist that their own notaries cannot notarize an undocumented parent's signature should, at the very least, explain the "outside notary" option to immigrant parents, rather than hindering them in obtaining a birth certificate for their U.S. citizen child.

Undocumented farmworkers without a current photo ID face other barriers in obtaining birth certificates for their U.S. citizen children. To support a request for a certified birth certificate, state requirements accept a license or state ID if it has expired within the past year.<sup>299</sup> Otherwise, it is acceptable to present a "Michigan driver's license which is expired for more than one year, if it is accompanied by a motor vehicle registration or title, a Bridge card, MI-Health card, inmate probation or discharge documents, a veteran's DD-214, or an original copy of an Affidavit of Parentage." There does not appear to be a statutory requirement that a parent have a specific type of ID to request a child's birth certificate.<sup>300</sup> MCL 333.2891 merely provides that the "state registrar or a local registrar may require an applicant who requests a certified copy, an administrative use copy, or a statistical use copy of a vital record to provide verification of his or her identity before releasing the vital record if eligibility for the vital record is restricted pursuant to section 2882." It appears, again, that state and county authorities

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<sup>299</sup> Michigan Department of Community Health, *Application for a Certified Copy of a Michigan Birth Record*, available at [http://www.michigan.gov/documents/birthapp\\_6360\\_7.PDF](http://www.michigan.gov/documents/birthapp_6360_7.PDF).

<sup>300</sup> MCL 333.2882.

arbitrarily create policies that deny even Michigan-born, U.S. citizen children the right to a government certificate documenting the circumstance of their birth.

#### **D. State and Local Law Enforcement and Immigration Laws**

Nationwide, state and local law enforcement are playing a larger role in the enforcement of immigration law. While the impact of enforcement of immigration laws by state and local police agencies is not directed solely at farmworker communities, this increased role of enforcement of immigration laws has resulted in an increase in contacts between police and migrant farmworkers. Undocumented immigrants are often charged with minor crimes, such as traffic violations, and then turned over to immigration and placed in removal proceedings. The high number of complaints raised at the public forums about this matter establishes that this issue must be addressed. The enforcement of immigration laws by state and local law enforcement agencies carries with it a pronounced risk of racial profiling, civil rights abuses and alienation of immigrant communities.

The Michigan State Police (MSP) stated its policy on this matter in an Official Order issued in 2006.<sup>301</sup> This policy states that MSP officers are only permitted to arrest and detain individuals for certain criminal immigration violations. If ICE confirms that a suspect is unlawfully present in the U.S., and the suspect has “previously been convicted of a felony in the United States and deported or left the United States after such a conviction,” MSP officers are authorized to arrest and detain the suspect.<sup>302</sup> The suspect may only be detained for “such a period of time as may be required” for ICE to take the individual into custody.<sup>303</sup>

Racial profiling occurs when a law enforcement officer engages in a stop, interrogation, arrest or other investigation because of a person’s perceived race or ethnic appearance.

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<sup>301</sup> Michigan State Police, *Official Order re: Foreign Diplomats and Consular Officials, Procedures after Arrest, Detention, or Death of Foreign National Lawfully Present in the United States, Procedures for Handling Persons Illegally in the United States*, Order No. 36, p. 4 (May 26, 2006).

<sup>302</sup> *Id.* at 4-5.

<sup>303</sup> *Id.* at 5.

Uncertainty as to authority and obligations to enforce immigration law may result in increased instances of racial profiling among state and local law enforcement officers.

Farmworker Legal Services (FLS) told MDCR staff of a recent telephone survey they conducted in which several police officers cited a lack of a driver's license as a primary indication that an individual is unlawfully present.<sup>304</sup> Some officers cited a person's inability to speak English and/or Hispanic appearance as factors in an officer's decision to contact ICE or ask for immigration documents. One officer summed it up this way: "If you have a carload of people who don't fit into society up here, that indicates that they may be illegal."<sup>305</sup>

Another officer explained, "there are times an officer stops a car and won't talk to anybody. Sometimes an officer will talk to everybody, even the people in the back seat. The police use a 'sixth sense' in making these decisions." Another officer explained that determining whether to question passengers depends on the totality of the circumstances and whether it "looks like the person speaks English" or if they "appear to be a naturalized citizen."<sup>306</sup>

FLS stated that officers reported 'red flags' relevant in determining whether to ask an individual for immigration documents, such as not having a driver's license or a permanent address, an inability to speak English, or "if it looks like the suspects don't belong." Officers also spoke about questioning passengers about their immigration status. As one explained, "If the driver doesn't have documents, the others probably don't either, so we'd dig further."<sup>307</sup>

The Commission received allegations of racial profiling by Michigan state and local law enforcement officers. Several witnesses testified to state and local law enforcement pulling over Latino drivers who had not committed any traffic offense. Other witnesses testified that state

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<sup>304</sup> Farmworker Legal Services (FLS) indicated that in September 2009 they made telephone calls to several local State Police Posts and police departments and asked questions about whether and how they enforce immigration laws.

<sup>305</sup> Id.

<sup>306</sup> Id.

<sup>307</sup> FLS indicated that in September of 2009 they made telephone calls to Sheriff and police departments and asked questions about whether and how they enforced immigration laws.

and local law enforcement were commonly pulling over Latino drivers to check immigration status. Multiple Latinos were stopped for having items hanging from their rearview mirrors and told it was illegal, even though Caucasians have not been pulled over for having things hanging from their mirrors.<sup>308</sup> There were also reports of minor traffic stops that led to the detention and eventual deportation of passengers.

A letter was submitted by Raul Ramos in regard to Andres Nunez, MSU College Assistance Migrant Program student. "Andres was driving to MSU from Detroit on I-96. He was stopped and pulled over by [law enforcement officers] near Howell and asked where he was going. He replied that he had an appointment with an MSU Advisor. They asked him if he couldn't have handled his MSU business over email. Andres replied again that he had an appointment...After agreeing to have his vehicle searched, Andres was asked where he worked. The officer remarked that he was driving a pretty nice truck for the salary of landscaping. Andres told him he got a good deal on it and told the [officer] what he paid for it. He was eventually allowed to leave but Andres does not know why he was stopped in the first place. He was never told."<sup>309</sup>

One person reported being stopped by the police and when he asked why, he was told he was going 80 miles an hour. The person reported in the Record of Concern that was not possible, because he was turning<sup>310</sup>. Four people stated they were stopped for no apparent reason; one testified his vehicle was searched for no stated reason. One was stopped only because the officer wanted to see their license<sup>311</sup>. Another was stopped and searched, then told

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<sup>308</sup> Anonymous, Sparta, 8/16/2009; Father Wayne Dziekan, Bear Lake Testimony, 8/5/09.

<sup>309</sup> Paul Ramos letter, 7/28/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>310</sup> Bear Lake Testimony, 8/5/09.

<sup>311</sup> Ibid.

by the plainclothes officer that '...he was searching her for drugs'.<sup>312</sup> Three people reported having racial slurs used against them by the officer stopping them<sup>313</sup>.

A farmworker testified that the local "police department stands outside the 'Mexican Store' . . . and pulls over 'Mexicans' on traffic-related pretenses to check IDs of drivers. On August 22, I was stopped with the excuse that the middle brake light was out. The police officer refused to accept my valid, unexpired driver's license issued by my home state of Guerrero, Mexico. He took a 'cash bond' from me and gave me a ticket for driving while not licensed. I feel that officers are routinely harassing other Mexican nationals such as myself, who have valid identification documents and foreign driver's licenses."<sup>314</sup>

Another testified "...I had a little toy hanging from my mirror and was pulled over for it. I was asked where I was from and how I came to this country. [I was] Told it is illegal to have something hanging from the rearview mirror so I took it down. [The] Police are tough. People get pulled over a lot. I went home and talked to my buddies and they all had gotten pulled over recently too. I don't talk to many Americans so maybe they get pulled over a lot too, so I don't want to complain. I let a friend drive my car and he got pulled over. Police asked him a lot of questions, asking for his SS number and stuff like where he's from. They took him to jail because he was driving without a Michigan license, but he had one from another state. Still, they made him pay \$1,000. I'm not trying to break the law. I don't like to cause problems but it's hard. How am I going to pay child support if I can't drive to work? I used to be married and

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<sup>312</sup> Anonymous, Blissfield Testimony, 7/30/09.

<sup>313</sup> Anonymous Testimonies, Blissfield (7/30) and Hart (7/16).

<sup>314</sup> Anonymous testimony, at large, 8/26/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

we have a son. I have to take care of them but how can I if I can't drive to get food, go to work? You have to respect the law, but what if I have to drive for an emergency?"<sup>315</sup>

Another individual testified, "[The] Police detained people in [town]. Less than a year ago, several Hispanic men were driving a company truck from one camp to another on back country roads. They were stopped for not wearing seat belts. Detentions were involved in that case."<sup>316</sup>

A person stated, "In December of 2008, I was pulled over by a . . . Police officer and told to take the children out of the car in a very cold temperature. I said, 'You are not an agent of ICE, I don't have to give them to you.' The officer never asked for a driver's license. I was handcuffed and put in the police car. Then, the officer insulted me. I said, 'You are a racist,' and the officer then repeated three times, "Yes, I am a racist". Border Patrol finally came and released the individual. Another person represented on this Record of Concern stated she has received complaints about this officer from four other people. All four were arrested and put in the county jail."<sup>317</sup>

"We have had repeated situations in [town] where police officers went to the homes of Hispanic families and demanded identification—sometimes in the middle of the night,"<sup>318</sup> an individual stated.

Others testified that "The . . . Police stop women immediately. We do not feel safe." And, "In [our] County, a person was ticketed and then given a short time to pay. They were

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<sup>315</sup> Anonymous Testimony, Sparta, 8/16/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>316</sup> Father Wayne Dziekan, Bear Lake Testimony, 8/5/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>317</sup> A. Guitierrez/L. Sanders, Blissfield Testimony, 7/30/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>318</sup> Dziekan, 8/5/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

then picked up by ICE and deported. . . . Police would not accept the Mexican driver's license presented." <sup>319</sup>

A grower shared this testimony, "The problem you have with law enforcement is that they're overzealous. An example: . . . I have 24-year-old grandson who was pulled over by the same officer four times. 'Your muffler is loud....you have a seatbelt violation, she tells him, and tickets him for the seatbelt, agrees with the young man that his muffler is not loud. Does the same thing to him, and the following week, the same. In the fourth week, she stops him again. He is not speeding, no tail lights or headlights are out. He has his seatbelt on and removes it to the proof of insurance and registration – she tickets him for no seat belt when he removes his belt to reach into the glove box. She is vindictive against this area as an outsider...In rural communities, there are violations all the time. These violations occur under the guise of the law and they are getting away with it. If you question them, it will either make them do things correctly or they won't do them at all." <sup>320</sup>

"At another camp, a woman came here and was living with another family. ICE came to look for the other couple but they had left the area. The woman's husband didn't have papers, so ICE took him instead. She is now supporting five children with her husband gone." <sup>321</sup>

Several witnesses testified about police officers pulling individuals over solely for the purpose of checking immigration documents. <sup>322</sup> According to this testimony, officers have pulled individuals over without giving a reason for the stop, and without asking for a driver's license.

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<sup>319</sup> Anonymous, Hart Testimony, 7/16/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>320</sup> J. Brandel, personal conversation, 11/24/09. Information indentifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>321</sup> Anonymous, Watervliet Testimony, 8/13/09.

<sup>322</sup> Albino Gutierrez, reported by Laura Sanders, Blissfield Testimony, 7/30/09; Laura Sanders, Blissfield Testimony, 7/30/09; Anonymous, Bear Lake Testimony, 8/5/09.

There have also been reports of police officers going to the homes of Latino families late at night and demanding identification.<sup>323</sup>

"I came home and my friends in the house where I rented a room told me Immigration had been there and they were looking for me. I told them that couldn't be right, that I was legal not illegal. I am a legal permanent resident. Later I was watching tv and heard footsteps...Immigration had come back. They didn't ask me if I was legal, they just put me in handcuffs. I told them I was legal, but they wouldn't listen. They said they would not talk to me about that until we got to the police station. When we got there they put my information in the computer and said I was going to be going to jail for some time. I spent 17 days and nights in jail. On the 17<sup>th</sup> day, I went in front of the Immigration Judge and he said he had good news and bad news. He said I wasn't going to be deported because they had found out I was legal. But I did have to go back to Texas to pay some money I owed. I told him someone had stolen my papers and was using my identity in Texas. They checked my fingerprints and determined the name and photo of the man who stole my identity. They said I was free to go. I was in jail for 17 days for no reason."<sup>324</sup>

Two witnesses testified about yet another instance of overreaching and discriminatory treatment by local law enforcement. Officers detained several migrant farmworkers fishing in the Manistee area. The witnesses stated that these men were the only Hispanics fishing at the lake and the officers did not approach any of the Caucasian individuals fishing at the lake. The officers asked to see the men's identification and, when they were not able to produce identification, the officers escorted them back to the labor camp where they resided. One man had a driver's license and was ticketed for fishing without a license. Four men who did not have

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<sup>323</sup> Dziekan, Bear Lake Testimony, 8/5/09.

<sup>324</sup> B. Oregon, Allendale, 8/24/09.

driver's licenses were arrested for fishing without a license and at least three of these men were eventually deported.<sup>325</sup>

Once local police become involved in immigration enforcement, victims and witnesses of crimes may be reluctant to contact police because they fear deportation. Immigrants' fears of reporting crimes to police are not unfounded. Several state and local law enforcement agencies have reported checking the immigration status of certain individuals who come to the station to report crimes.<sup>326</sup> As one officer explained, "if they're reporting a crime, we ask for some kind of ID. If it were to jump out, or they said, 'I don't have one,' they might be checked."<sup>327</sup> Another said that crime victims would not be asked for immigration documents unless they did not speak English. An individual who did speak English would just be asked to show some form of identification.<sup>328</sup> Another officer stated that, "if a person is coming in to make a complaint, it's not too often that we start drilling them. But if it is an illegal alien, we're going to ask them."<sup>329</sup> When this officer was asked how he would know that the victim was illegal, the officer responded, "by looking at them, where they are from."<sup>330</sup>

The Commission received numerous reports about the extreme isolation and fear in migrant farmworker communities resulting from state and local law enforcement's targeting of Latinos. In some instances, law enforcement has had a negative impact on Michigan's migrant farmworkers.

In contrast, grower Mike DuRussel stated that the police who patrol the community around his farm have been patrolling the area for some time. They know the farmers and they do not harass the migrant workers, most of whom return year after year. He mentioned an

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<sup>325</sup> Dziekan, Bear Lake Testimony, 8/5/09, Muñoz, Bear Lake Testimony, 8/5/09. Information identifying the department involved is removed as the Department of Civil Rights has not independently investigated the matter. Its inclusion is intended to accurately reflect testimony and not as verification of its content.

<sup>326</sup> See notes 304 & 307, page 69.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

incident where a migrant worker was pulled over for having an expired license plate. When the worker asked if he was going to be arrested, the police officer said they were looking for drunk drivers and released him with a warning.<sup>331</sup>

## **V. MIGRANT CHILDREN**

### **A. Child Labor**

An estimated 41,000 children of migrant and seasonal farmworkers accompany their parents to Michigan each year.<sup>332</sup> Many children work alongside their parents in Michigan's fields and orchards. Nationwide, an estimated 400,000 children work in agriculture.<sup>333</sup> Migrant families may depend on the additional income provided by the child laborers. Because most migrant families cannot afford day care, migrant parents are often forced to bring their non-working aged children to the fields, rather than leave them unsupervised at home. Children in the fields face the same difficulties and dangers as adult farmworkers.

Pursuant to the Fair Labor Standards Act (FLSA), child agricultural workers have been excluded from many of the protections afforded to other child laborers.<sup>334</sup> Under federal law, children as young as 12 may work in agriculture without hourly restrictions, except that they are not permitted to work during the hours that school is in session.<sup>335</sup> All other children cannot begin work until at least age 14 and have restrictions on the hours they may work, both when school is and is not in session<sup>336</sup> (see Figure 1).

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<sup>331</sup> M. DuRussel, personal interview, 10/14/09.

<sup>332</sup> Alice C. Larson, *Migrant and Seasonal Farmworker Enumeration Profile Study Michigan*, (2006).

<sup>333</sup> The Association of Farmworker Opportunity Programs (AFOP) bases this estimate on data from of the National Institute of Occupational Safety and Health (NIOSH) stating that in 2006 there were 307,000 youth officially employed in farm work. During field visits from 2003 to 2009, AFOP observed children under 12 working in the fields. In addition, many children also work off the books along side their parents, suggesting that the total of child farmworkers may be closer to 400,000. National Children's Center for Rural Agricultural Health and Safety, *2009 Fact Sheet: Childhood Agricultural Injuries* (2009).

<sup>334</sup> 29 USC 212.

<sup>335</sup> 29 USC 212(c)(1).

<sup>336</sup> 29 USC 212(c)(1)(C).

State law also provides limited protection to Michigan's child agricultural laborers. Michigan's law raises the minimum age for unlimited hours in agricultural work to 13 from the federal minimum age of 12.<sup>337</sup> Under state law, however, farm work is exempt from adult supervision requirements and work permit requirements that are in place for youth working in other industries.<sup>338</sup>

Child farmworkers not only endure limited legal protections, but also extremely hazardous working conditions. Pesticide exposure results in greater health risks to children than adults because children are in a rapid stage of development and have a higher skin to bodyweight ratio.<sup>339</sup> The incidence of acute occupational illness related to pesticides among children has been determined to be 1.17 times that of working adults.<sup>340</sup>

Musculoskeletal injuries caused by bending over for long periods, stooping, twisting or lifting heavy bags and buckets are common among children who work in the fields.<sup>341</sup> Children use tools designed for adults, causing cramping and blisters, and experience a higher risk of cuts by sharp scissors or hoes.<sup>342</sup> Working in extreme heat and weather conditions is also dangerous for children's developing bodies, often causing heat exhaustion.<sup>343</sup> Long work hours have a substantial and well-documented negative impact on teenagers' health, social development, and education.<sup>344</sup>

During the summer of 2009, an ABC News investigation resulted in a number of media stories about child labor. A number of farms were fined for violations of both housing laws and

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<sup>337</sup> MCL 409.103(c).

<sup>338</sup> MCL 409.103(c); MCL 409.104(3).

<sup>339</sup> Natural Resources Defense Council, *Trouble on the Farm: Growing Up with Pesticides in Agricultural Communities*, p. viii (Oct. 1998)

<sup>340</sup> U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health, *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*, p. 93 (2002) available at <http://www.cdc.gov/niosh/docs/nioshrecsdolhaz/pdfs/dol-recomm.pdf>.

<sup>341</sup> AFOP, *supra* note 8 at 14.

<sup>342</sup> *Id.*

<sup>343</sup> *Id. at 11.*

<sup>344</sup> Human Rights Watch. *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, p. 48 (2000).

child labor laws as a result of a US Department of Labor investigation. (Please refer to the appendix for more information).

Current legal protections afforded child agricultural laborers is not sufficient. Michigan must set a precedent by ensuring the protection of migrant and seasonal farmworker children within its borders. Increased wages for adult farmworkers would often alleviate the need for youth to assist with family sustainability altogether.

**Figure 1.**  
Youth Employment in Agricultural Occupations vs. Non-Agricultural Occupations  
according to the Fair Labor Standards Act of 1938<sup>345</sup>

Age	AGRICULTURAL OCCUPATIONS			NON-AGRICULTURAL OCCUPATIONS (a)		
	Allowable Occupations	Allowable Hours	Other Conditions	Allowable Occupations	Allowable Hours	Other Conditions
<b>16-17</b>	All	All	None	Non-hazardous (b)	All	None
<b>14-15</b>	Non-hazardous (c)	Unlimited hours outside of school	None	Non-hazardous explicitly permitted by DOL (d)	Up to 40 hours in non-school week; up to 8 on non-school day; up to 3 on school day; between 7 a.m. and 7 p.m. (9 p.m. summer)	None
<b>12-13</b>	Non-hazardous (c)	Unlimited hours outside of school	Written consent of parent or work on farm where parent employed	None	None	N/A
<b>Under 12</b>	Non-hazardous (c)	Unlimited hours outside of school	On small farm with written consent of parent (e)	None	None	N/A
<b>10-11</b>	Hand harvest short season crops (non-hazardous)	Up to 5 hours a day and 30 hours a week outside of school	Under forms of waiver issued by DOL, which includes various protections including parental consent	None	None	N/A

<sup>a</sup> Does not include the following occupations that have statutory exemptions allowing children to work regardless of age: newspaper deliverers, actors, and makers of certain live wreaths.

<sup>b</sup> Occupations not declared particularly hazardous or detrimental to health or well-being by the Secretary of Labor under 29 C.F.R. 570.50 et seq. for children between 16 and 18 years old.

<sup>c</sup> Agricultural occupations not declared particularly hazardous under 29 C.F.R. 570.70 et seq. for children under 16 years old.

<sup>d</sup> Non-manufacturing and non-mining occupations declared permissible under 29 C.F.R. 570.31 et seq.

<sup>e</sup> A small farm is an agricultural employer who did not use, during any calendar quarter in the preceding year, more than 500 days of agricultural labor.

<sup>345</sup> Adapted from: General Accounting Office. *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities*, GAO-HEHS-98-193, p. 31 (1998).

## **B. Day Care for Migrant Children**

Adequate and affordable childcare is essential to ensuring the health and safety of the children of Michigan's migrant and seasonal farmworkers. The most fortunate children are those under age five in areas where farmworkers have access to the services offered by Michigan Migrant Head Start (MMHS), which provides free childcare for migrant and seasonal farmworkers' children between two weeks and five years of age.

In 1992, Telamon Corporation acquired the MMHS grant. In 17 years of service, the MMHS program has grown from 9 to 17 centers (two are delegate agencies) and two satellite locations. Children can attend if they qualify based on income guidelines. The primary source of family income must come from qualifying agricultural activities, and the family must have relocated to engage in agricultural work in the last 24 months. The children are provided hands-on activities that are developmentally and culturally appropriate. Parents are key partners in their children's experience at Telamon. Each center has a Parent Council where staff collaborate with parents to ensure that the children receive an enriching experience and the parents have a voice about their children's care as well as the challenges they face as migrants.

MMHS sponsors Reading is Fundamental, a statewide initiative to ensure literacy among migrant and seasonal farmworker children and to emphasize reading as an enjoyable pastime. Local donations and federal support enable the children to receive and keep free books. The Michigan Department of Community Health helps to fund health evaluations and immunizations for children. Nutritional support is provided by the U.S. Department of Agriculture. In some cases, children receive breakfast, lunch, a snack, and sometimes, evening meals while parents work each day.

MMHS' service area is defined as the entire state. However, there are many areas in Michigan where eligible families need MMHS services but cannot get them. MMHS lacks the

capacity to provide services to an estimated 7,845 or more potentially eligible children. In 2009, the MMHS program exceeded its funded enrollment for the third year in a row. Although the program is funded to serve 1,435 children, services were provided to 1,478 children as of October 7, 2009, families were still enrolling and centers had waiting lists.<sup>346</sup> To increase capacity and expand services, MMHS applied for funding through Early Head Start. In 2010, MMHS hopes to better meet the needs of farmworker families by offering services through Early Head Start to an additional 114 migrant infants, toddlers, and pregnant women.

MMHS centers are currently open Monday through Friday. Many families reported needing services on Saturdays, and sometimes Sundays during the peak season. Several years ago, the MMHS program accommodated these service needs. With budget cuts in the past few years, this has not been possible. In 2009, the centers offered services for 10 hours per day, a reduction from the 12 hours per day that services were provided in past years. Often during peak season, families work well over 12 hours per day, and need extended hours of care. Licensing restricts the MMHS program to a maximum of 12 service hours per day.

MMHS centers operate from as few as eight weeks, to as many as 22 weeks per season, beginning in May and ending in October. Operational dates vary by center and are set with input from staff and families in each area served. Most centers report a need for either opening a week or two prior to their scheduled opening date, or extending services at the end of the season. In the past, when the budget has allowed, MMHS has extended center closing dates to better meet families' needs.<sup>347</sup>

Reductions in funding combined with increased costs to provide services have greatly stretched the MMHS budget. Over the past several years MMHS has minimized the amounts spent on technology, transportation, classroom supplies, and facilities. Increases in the

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<sup>346</sup> Personal Conversation with Patricia Raymond, Director of MMHS, 2009.

<sup>347</sup> Ibid.

minimum wage and teacher salaries, higher energy and maintenance costs for facilities and busses, an aging bus fleet, aging technology, and higher priced food, fuel and health screening costs have prompted MMHS to cut service days, hours, and weeks to stay within its current budget.<sup>348</sup>

It is likely that each center will be open one week less in 2010.<sup>349</sup> This will best utilize Telamon's available funding but families will be even more pressed to find care for their children while they are working to harvest crops.

At one of the forums, a grower stated that it would benefit his business if the Head Start Center near his farm could be open even for a few hours on Saturday. He also noted that a program for older children in a nearby town (Pinconning) had been shut down and that it is a real hardship for the workers to try and hire sitters.<sup>350</sup>

Despite the valuable and very necessary service and support Telamon provides, when the Watervliet Migrant Head Start center was being constructed, local residents filed a lawsuit citing noise, smells and traffic as their objections. Many contend that these objections were pretexts to discrimination since there is a horse farm next to the Watervliet site. After a lengthy process, Telamon was ultimately allowed to build their center although it had to be built behind trees so residents couldn't see it. Staff continue to endure a negative response from their community.

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<sup>348</sup> The MMHS program has sought outside support including budget specialists from the Academy for Educational Development to review its budget and offer suggestions on how to tighten expenses without reducing services. The specialists found that the MMHS program is already functioning on an extremely tight budget and relying heavily on outside support. In addition to current budget constraints, MMHS must relocate the Adrian Migrant Head Start modular facility. MMHS lacks the estimated \$500,000 in funding that it will cost to relocate this facility.

<sup>349</sup> Pat Raymond, Telamon Director, personal conversation, 10/23/09.

<sup>350</sup> Craig Ratajczak, Omer Testimony, 8/18/09.

## C. Education

### 1. Immigration and Education

Education is essential to advancement. Unfortunately, many farmworkers reported difficulties in enrolling their children in school – due either to their own immigration status or that of their children. All school-aged children residing in Michigan are entitled to a free public education, regardless of their immigration status or that of their parents.<sup>351</sup>

In 1982, the U.S. Supreme Court ruled that a state may not deny enrollment in public schools to undocumented school-aged children.<sup>352</sup> In *Plyler v. Doe*, the Supreme Court overturned a Texas statute that denied state aid to school districts that enrolled children who were not legally admitted into the country.<sup>353</sup> The Supreme Court reasoned that the denial of education violates the Equal Protection Clause of the U.S. Constitution.<sup>354</sup> The Michigan Department of Education (MDE) has further interpreted *Plyler* as prohibiting Michigan public schools from denying admission to students on the basis of immigration status, treating students differently to determine residency, requiring students or parents to disclose their immigration status and making inquiries of students or parents that may expose their undocumented status.<sup>355</sup>

Some undocumented parents are concerned about enrolling their children in school because of a fear that school officials will report them to immigration officials, even though federal law prohibits such an action by school officials. The privacy of students' and parents'

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<sup>351</sup> Michigan Department of Education, Bureau of School Finance and School Law, *Foreign Students Enrolled in Public School Districts* (March 17, 2006) available at [http://michigan.gov/documents/mde/foreign\\_students\\_3-06\\_193217\\_7.pdf](http://michigan.gov/documents/mde/foreign_students_3-06_193217_7.pdf).

<sup>352</sup> *Plyler v. Doe*, 457 U.S. 202.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.* at 221.

<sup>355</sup> Michigan Department of Education *supra* note 22 at 1.

personal information (including immigration status) is protected under the Family Education Rights and Privacy Act (FERPA).<sup>356</sup>

## 2. The Migrant Education Program

The children of migrant agricultural workers are among the most educationally disadvantaged children in the United States. They face many obstacles that prevent them from reaching educational success, from the migratory lifestyle itself, which leads to discontinuity in the educational process, to poor health conditions and the great weight of poverty outside of the classroom. The United States and Michigan in particular have made positive steps over recent decades to bringing migrant children into the classroom and providing a high quality education, but much work remains to ensure that children of migrant farmworkers have equal access and opportunity to a quality education.

In 2001, the U.S. Government pledged to “leave no child behind” in education.<sup>357</sup> Parts of the No Child Left Behind Act have provided a successful working model to bring migrant children into classrooms. Federal funding underwrites nearly all the costs of migrant education programs.<sup>358</sup>

Migrant education programs are not new to Michigan. This Commission’s 1968 Report on the Status of Migratory Farm Labor in Michigan described a federally-funded program for migrant children administered by the MDE.<sup>359</sup> At the time, migrant children were recruited to attend local schools, but funding was limited and participation was low.<sup>360</sup> Michigan has made progress since then by establishing a separate entity inside the MDE, the Migrant Education Program (MEP). The MEP is “designed to support high-quality comprehensive educational

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<sup>356</sup> 20 USC § 1232(g).

<sup>357</sup> No Child Left Behind Act of 2001, 20 U.S.C. §§ 6391-99 (2006).

<sup>358</sup> 20 U.S.C. § 6393.

<sup>359</sup> State of Michigan Civil Rights Commission, *Report and Recommendations on the Status of Migratory Farm Labor in Michigan*, 15M2-69, pg. 11 (1968).

<sup>360</sup> *Id.*

programs for migratory children and help reduce the educational disruptions and other problems that result from repeated moves."<sup>361</sup>

Because Michigan's MEP works in tandem with the federal program, the state is reimbursed through the federal act for every child recruited to participate in the program.<sup>362</sup> For each migrant child recruited and enrolled in school through the MEP, the MEP is reimbursed 40% of the average per-pupil expenditure in the state.<sup>363</sup> Thus, the more students recruited, the more the MEP will be able to afford recruitment to bring in more students. Despite this opportunity, participation in education has declined in recent years, which in turn has reduced the opportunities to recruit and enroll students.

In 2006, it was estimated that 30,764 children of migrant farmworkers were annually present in Michigan.<sup>364</sup> According to the U.S. Department of Education, during the 2005-2006 school year the number of MEP-eligible migrant children enrolled in school was only 10,946.<sup>365</sup> Thus, only about one-third of eligible migrant children under the age of 19 were enrolled in the MEP.

The number of students enrolled has declined in recent years. In 1996, a study was conducted on the state of migrant education in Michigan from the late 1980s through the mid-1990s.<sup>366</sup> The report compared the state's profile with the nation's for the number of children served and funded by the MEP. In 1996, Michigan received "grants from the federal government to deploy about 60 local migrant education programs in areas with significant

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<sup>361</sup> [http://www.michigan.gov/mde/0,1607,7-140-6530\\_30334\\_38824---,00.html](http://www.michigan.gov/mde/0,1607,7-140-6530_30334_38824---,00.html).

<sup>362</sup> 20 U.S.C. § 6391.

<sup>363</sup> *Id.*

<sup>364</sup> Larson, *supra* note 1 at 20.

<sup>365</sup> US Department of Education, Migrant Education Program Student Data Report (2005-2006), *available at* <http://www.ed.gov/programs/mep/documents/2005-2006.xls>.

<sup>366</sup> Mazin A. Henderson, Ph.D. and Edgar R. Leon, Ph.D., *Patterns and Trends in Michigan Migrant Education*, JSRI Statistical Brief No. 8, (1996)

concentrations of migratory children.<sup>367</sup> Today, the number of these programs has been reduced to 34.<sup>368</sup>

From 1989 through 1996, national funding for Migrant Education totaled approximately three hundred million dollars.<sup>369</sup> During that period, Michigan's share averaged just shy of 11 million dollars, for an average of 3.8% of the national allocation.<sup>370</sup> In 1993, Michigan taught 19,167 migrant students, accounting for 3.5% of all migrant students nationwide.<sup>371</sup> In comparison, Oregon taught 3.4% of all migrant students, totaling 18,494.<sup>372</sup> In the years since, however, Oregon's MEP has greatly surpassed Michigan's in terms of enrolled students. In the 2005-2006 school year, Michigan's MEP identified and enrolled a total of 10,946 migrant students while Oregon enrolled 22,751.<sup>373</sup>

In the 2002-2003 school year, Michigan's MEP counted and taught 13,752 qualifying migrant students.<sup>374</sup> In 2003-2004, that number declined to 12,295<sup>375</sup>. The following year, the number dropped to 9,624,<sup>376</sup> before slightly rebounding in 2005-2006 to 10,946.<sup>377</sup> In that same period of time, the number of MEP-funded full-time recruiters during the school year fell from 37 to 32.<sup>378</sup> MEP-funded recruiters in Oregon totaled 63, which might explain much of the difference in enrollment figures.<sup>379</sup>

The presence of children of migrant workers is related to the state's economic well-being. Providing an education to those children, especially when federal funding is available not

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<sup>367</sup> *Id.* at 4.

<sup>368</sup> US Department of Education, *supra* note 44.

<sup>369</sup> *Patterns and Trends in Michigan Migrant Education, JSRI Statistical Brief No. 8* at 11.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* at 12.

<sup>372</sup> *Id.*

<sup>373</sup> US Department of Education, *supra* note 44.

<sup>374</sup> US Department of Education, Migrant Education Program Student Data Report (2002-2003), *available at* <http://www.ed.gov/programs/mep/documents/2002-2003.xls>.

<sup>375</sup> *Id.*

<sup>376</sup> US Department of Education, *supra* note 44.

<sup>377</sup> US Department of Education, Migrant Education Program Student Data Report (2005-2006).

<sup>378</sup> US Department of Education, *supra* note 56; US Department of Education, *supra* note 44.

<sup>379</sup> U.S. Department of Education, *supra* note 44.

only makes good economic sense, it also fulfills the promise to “leave no child behind.” Michigan’s migrant students would be more effectively served if Michigan’s MEP were strengthened. This could be accomplished by hiring more full-time recruiters through MEP. The MEP is extremely important to many migrant children as it assists them in overcoming educational disruption and social isolation caused by cultural and language barriers, thereby helping to ensure that migrant children have an equal opportunity to excel in school.

## **VI. MISCELLANEOUS FORMS OF MISTREATMENT**

Records of Concern were submitted by migrant farmworkers who believed they were preyed upon by others in numerous and various ways. Two Records of Concern were submitted that people were being charged \$110 per hour for translation services.<sup>380</sup> Two others stated they were approached by a person claiming to be an attorney, who was likely a notary public that promised to get them legal papers; this took place in southeastern Michigan near the Ohio border. “They prey on vulnerable people—giving out business cards and con them into giving them money and immigration papers.”<sup>381</sup> Another Record of Concern stated migrant people were being charged for things that were free to others; in this case, it was implanted contraception at a health clinic.<sup>382</sup> Ironically, one Record of Concern stated that the respondent had been mistreated by the Mexican Consulate<sup>383</sup>.

Records also reflected that unreasonable lengths of time waiting to get documents often caused great hardship. “I have been here since 1999 from Mexico. My parents are legal permanent residents. I waited five years to come in legally, then finally came in illegally and

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<sup>380</sup> Blissfield Testimony, 7/30/09.

<sup>381</sup> E. Mollo, Blissfield Testimony, 7/30/09.

<sup>382</sup> Blissfield Testimony, 7/30/09.

<sup>383</sup> Anonymous Testimony, Bear Lake, 8/5/09.

was deported. It seems senseless that the wait for documents is so long. The wait is about 15 years.”<sup>384</sup> Another Record of Concern reported that an individual waited eight years.

Of particular concern to many who came to the forums is the perceived failure of the immigration system to value families and the resulting separation of children from their families due to deportation. “Children who are U.S. citizens may be left here while the family is split apart because one or both parents are deported.”<sup>385</sup> An immigration panel case was discussed at the Bear Lake Hearing. “While the children were in school, there was an immigration raid and the mother was deported. The children were placed in foster care. There was no power of attorney and no passports. The panel is trying to encourage more use of power of attorney and getting children U.S. passports.”<sup>386</sup> Another Record of Concern stated, “When you have no license you are put in jail. The kids go to a foster home, so they lose time with their parents and they lose time in school. Deportation is not a huge deal for the parents but it is a huge trauma for kids. I want this testimony to make sure someone sees how important a piece of paper is to a family.”<sup>387</sup>

#### **A. Racism and Other Local Mistreatment**

Several individuals testified to having experienced various forms of mistreatment and discrimination. “No matter how much we complain or say anything, NOTHING ever gets done over here. Besides, Mexicans/Hispanics have a BAD rap, especially in Leelanau County. The government officials, police departments and probation personnel and even some court judges are very good at giving out the harsher punishments to Mexicans and Hispanics. Everyone is in

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<sup>384</sup> R. Martinez, Blissfield Testimony, 7/30/09.

<sup>385</sup> Dziekan, 8/5/09.

<sup>386</sup> G. Munoz, Bear Lake Testimony, 8/5/09.

<sup>387</sup> Anonymous, Bear Lake Testimony, 8/5/09.

kind of a mindset that ALL tan people are illegal. Mexicans—could be or they have resident alien cards. Hispanics—could be U.S. citizens—but they don't get treated that way in some cases."<sup>388</sup>

At another forum, several Records of Concern described mistreatment by local community members and businesses. "The local grocery store said they would not take Migrant WIC<sup>389</sup>, yet the same store did take WIC cards from other customers." Another person provided greater detail indicating, "They discriminate against migrant workers, they try to make us look bad. We have had other problems with that market. Some of our families actually go to Bay City because they don't want to step foot in there, the way they treat them. I had a family today state that they went there to get their WIC food, they have WIC coupons for their children. They had everything in the cart and went up to pay. The gentleman said, 'we don't accept that here' and he made the family take everything out of the cart and put it back. Our Center Director called and asked if they take WIC there and whoever answered the phone said they do. The statement went on to note that "it is hard for [a family] to go after working all day and then being treated that way in the store. The people this happened to speak both Spanish and English, so it was not a matter of them not being able to read the sign if they were in the wrong checkout aisle."<sup>390</sup>

Three people stated that they use Western Union to send money. "They give us a hard time but they will usually let us send the money."<sup>391</sup> Others stated that convenience stores do not want to sell to Latinos. "In many of the retail stores, they whisper and complain about us.

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<sup>388</sup> Loreda Testimony, At large, 7/31/09.

<sup>389</sup> WIC provides Federal grants to States for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. From <http://www.fns.usda.gov/wic/>.

<sup>390</sup> Painter, et al., Omer Testimony, 8/18/09.

<sup>391</sup> Anonymous Testimony, Omer, 8/18/09.

They are friendly to other customers but practically yelling at me, saying ‘WHAT DO YOU WANT?’ and things like that. At another place, migrants were just ignored altogether.<sup>392</sup>”

Migrant Head Start staff even stated that some of the stores refused to sell products to them, which constitutes illegal discrimination. One individual testified that an employee of a daycare center in Omer said she thought the Mexican kids were dirty and they should just be taken to the fields. Others stated that the retail stores charge them more, or they threaten to call Immigration.<sup>393</sup>

## **VII. A FARMER’S PERSPECTIVE**

The public forums were attended primarily by farmworkers and persons advocating on their behalf. From the outset, however, Commissioners and Michigan Department of Civil Rights wanted to take testimony from those who have the most contact with and impact on Michigan’s migrant and seasonal farmworkers—the growers. In the course of conducting this investigation, MDCR staff attempted to get input from farmers on a number of occasions. The Chair of the Michigan Agriculture Commission was invited to participate—and did—in the weekly planning committee meetings held in planning the forums. Other agricultural representatives who participated in planning included MSU Cooperative Extension, DELEG and the Michigan Department of Agriculture.

The Michigan Farm Bureau, the industry’s largest grower organization, published a proposed agenda and forum schedule, seeking input from its members in its June-July RCAP newsletter. The Farm Bureau also submitted comments and recommendations in a November 2009 letter to the Michigan Department of Civil Rights. It is fully understood that this project took place during the harvest season, but this is the time all the interested parties are available and testimony could be provided in many ways (including in writing) without attending a public

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<sup>392</sup> Ibid.

<sup>393</sup> Garcia et al., Omer Testimony, 8/18/09.

event. Still, despite the many outreach efforts, the testimony provided by growers is disappointing at best (see Appendices for “Attempts to Reach Farmers”, Letter From Muskegon Chronicle (7/09) and Letter from Farm Bureau (11/09)).

During October, some MDCR staff visited Mike DuRussel at his farm in Manchester. This family’s farm has operated for 130 years and they grow a variety of hand-harvest crops. The DuRussel farm is an excellent example of how everyone benefits when the various parties involved all work together.

Families working on the farm arrive May 1 and leave on November 1. Farm residents include 60-64 children who attend Manchester Schools. Mike stated, “The teachers, bus drivers and custodians have been invited to and visited the farms so they better understand what the families face. The School Board has also visited DuRussel Farm. The community is more tolerant than it used to be because of these visits.”<sup>394</sup> He also noted, “Children 12 and under can’t be in the fields or working. Kids have to be in school. For those who want to work, they can go to the PASS program and still graduate.”

Manchester Schools runs a summer school for six weeks and they have an education trailer on the farm for night classes and for use as a community center. Migrant Health uses this trailer for Infórmate (a program for teens). This program hires and educates four teens on health issues who then mentor other teens in the camps. Other programs in the education trailer are a library, catechism and Spanish Mass, including first communion, baptism and confirmations.

Once a month, Food Gatherers provides food assistance to the farmworker families. Diane DuRussel, the farm’s Office Manager and Bookkeeper, helps to coordinate this<sup>395</sup>. She is also on the Migrant Council for Lenawee, Washtenaw, and Monroe Counties. Mike was Vice-

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<sup>394</sup> M. DuRussel, 10/14/09, personal interview.

<sup>395</sup> Diane DuRussel, 10/14/09, personal interview.

Chair of SEMCOG and a County Commissioner for ten years. He goes to Texas twice a year as a Migrant Health Promotion member. Because of his community experience, "...I found there were rules and laws and I want to comply with them. We want to follow the regulations but also have a living. I want my workers to be happy and healthy, and I support things like the health clinic that comes to the camps."

His farm has four different housing camps, licensed for up to 215 people. Two workers take care of maintenance problems but if it's a bigger job, they hire a plumber or electrician, whatever is needed. "I would advise others if you're going to provide housing, do it well."

When discussing wages, he said, "We pay piece rate but they (the workers) have to make minimum." He added, "It is important to complete I-9s and to do the best job possible to make sure the workers are documented. Farmers are trying to ensure that people are legal—but there should be some negotiation possible versus being levied a large fine if someone is determined illegal."

Diane explained that when families arrive, they receive a welcome packet. The left side of this binder includes employment documents (federal and state W-4s, an I-9, a W-9 (request for taxpayer ID number and certification), Migrant and Seasonal Agricultural Worker Employment Information Disclosure, Work Rules, Housing Rules, a list of housing occupants, a Paycheck Signature Register and an emergency contact card). The right side of the binder includes information on protection against pesticides (in English and Spanish), a newsletter (noting that people must stop in the office to watch a health and safety video each year); information about the WIC clinic, church services, time cards, food donations and when children should be in school; proper hand washing techniques (in English and Spanish); Migrant Ministry information; proper toilet paper handling technique (in English and Spanish), and the Farmworker Legal Services calendar.

There is a mentoring and diversity program with German exchange students in the Manchester school system that comes to the camp. Diane walks the workers through applying for unemployment, and they have a Final Fiesta. Workers are paid a bonus and she tries to keep in touch with them in the off season with things like Christmas cards. "They are as much family as we are family," she said.

She also said the school has been audited. "Education among our workers' families is really helping. It helps our students understand how they fit into the circle of life and what their role is. Some of our students have gone on to MSU."

The DuRussel Farm is certified in GAP (Good Agricultural Practices) and verified in MAEAP (Michigan Agriculture Environmental Assurance Program). They have also been deemed good stewards of the environment. The farm has been successfully audited by the USDA, the state prison system, and the federal government. As a result of their practices, the DuRussel farm has workers who want to be invited back year after year, and work hard every day to ensure they will be.

When asked about recommendations he would make, Mike stated that Memphis is a point of dispatch for workers. "The Carolinas are getting a bad reputation for migrant workers. Michigan and Indiana need a place where people can stay for a day or two, coming and going, like Hope, Arkansas is. Also, dairy migrant workers are treated differently than others and they have no advocate."

"Overall, Michigan has a good reputation, at least in the vegetable industry. We do face more demands from the federal government. Minimum wage went up, prices went down but regulations were increased. With these regulations, it is tougher and tougher to stay in the black. As an example, we are paid \$1.25 to \$1.50 for a ten-pound bag of potatoes. We grow,

pack and ship them. They are actually sold in the store for \$4 to \$5. It would at least help if minimum wage was frozen for a while," Mr. DuRussel concluded.

At the Omer public forum, farmer Craig Ratajczak noted that he has grown cucumbers for years. "I am not sure I will plant them in 2010 because I can't find enough dependable help. When the crop is ready, it must be picked right away or the cucumbers get too big for pickles. I believe families provide a better work force and only if the two main families that have worked for my farm for three generations will return will I plant a hand-crop. I could plant corn or soybeans with a lot less hassle."<sup>396</sup>

#### **VIII. OTHER MISCELLANEOUS FINDINGS**

During the labor camp visits, in some locations, there was no way to tell whether a unit was occupied. A sticker per unit (in a labor camp) could be a remedy.

It was suggested at one forum that Michigan collaborate with other states in issuing a temporary driver's license for intrastate travel.

A DHS worker submitted this anonymous testimony: "In my experience working with the migrant program at the MDHS, the migrant and seasonal policy in manual item PEM 610 needs to be updated. It needs to have wording to include the Medicaid and day care program in using the same policy procedure (sic) when processing income for eligibility. Given the migrant employment circumstance, including short season time frames for some families, more exceptions are needed in terms of income and change reporting rules so that income is not an issue on penalties due to an overpayment of benefits, whether being a client or agency error. The policy and procedures need to be more friendly in the Bridges computer system for the migrant program...Families come in the office to apply at the same time frame as all (?) which makes this very difficult for workers to provide good customer service in opening their case

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<sup>396</sup> Craig Ratajczak, Omer Testimony, 8/18/09.

right away. I believe that migrant farmworkers deserve better service from one of the first agencies they visit when they arrive to Michigan for assistance.”

In the MRC meeting minutes of 8/12/09, it was reported, “Employers are overestimating employees’ future wages, which gives them lower benefits from DHS. Clients can, however, document their actual (and usually lower) income to DHS, and amended benefits can/will be applied within a month of the corrected documentation. Clients being paid in cash is a problem, and a violation on the part of the employer without documentation of the payment.”<sup>397</sup>

Migrants and other farmworkers often fear retaliation, such as losing their jobs or being referred to ICE if they are lacking documents <sup>398</sup>. Therefore, many valid complaints about wages, working conditions, living conditions and discrimination are never made to appropriate agency staff. Anti-retaliation remedies should be strengthened.

## **IX. CONCLUSION AND NEXT STEPS**

The Michigan Civil Rights Commission (MCRC) recognizes that this report is being released during a very difficult economic time. State government faces the necessity of greatly scaling back its expenses, even when it results in the elimination of important services.

Agricultural growers, who are a vital part of Michigan’s economy, also face serious economic challenges that, in some cases, threaten the ongoing viability of multi-generational family farms.

MCRC appreciates Michigan growers who employ seasonal migrant farmworkers in a humane and responsible way, and we are impressed by those who do even more to ensure the people who

harvest Michigan’s agricultural bounty feel welcome in our great state. We respect, admire and

***“This report is not the end of a process, it is a beginning. It is not intended as an indictment, but as an assessment of need. Most importantly, we hope that it will serve as a call to action.”***

<sup>397</sup> Northwest Michigan Migrant Resource Council, 8/12/09, p. 3.

<sup>398</sup> Farmworkers testified that they had been subject to retaliation by their employers for exercising their rights; e.g., for filing unemployment insurance claim (Hart 7/16), for complaining about wages (Watervliet 8/13), for taking bathroom breaks (8/13), for asking for water (Watervliet and Blissfield, 8/13 and 7/30), for not speaking English (Hart 7/16); for consulting a medical provider (Watervliet 8/13).

thank the many advocates and service providers who tirelessly assist seasonal migrant workers in ways too numerous to mention. We are no less appreciative of the considerable work being done by many State employees, even in the face of dwindling resources.

The Commission hopes that nothing in our report is misconstrued as an attack on the efforts or compassion of those who are doing their best to ensure the rights of migrant farmworkers and their families are protected and respected.

To be sure, the Commission does hope that our report sends a strong and clear message about the deplorable working and living conditions of migrant workers in Michigan. This must change. This report is a first and necessary step.

In spite of the many fine programs we learned about, and the many good people we encountered, we also observed living conditions that were unacceptable and heard of abuses that are intolerable. During our on-site visits, Commissioners personally witnessed appalling living conditions in labor camp after labor camp. We heard testimony that should shock the conscience of all Michiganders.

In addition to being unconscionable in its own right, such abuses also hurt Michigan in economic ways. Mistreatment of today's migrant workers makes it more difficult to recruit needed workers in the future. Michigan must be seen as hospitable to migrant laborers or they will go elsewhere and crops will rot in the fields. Additionally, responsible growers are competitively disadvantaged when even a small number of growers are able to cut expenses by exploiting their workforce.

Therefore, while MCRC recognizes that the budgetary restrictions faced by all State agencies make increasing the protections and support provided our seasonal migrant workforce difficult, we assert that it must be done. All of the State agencies involved must work more

collaboratively, and they must work with federal and non-governmental organizations wherever possible, to ensure Michigan's migrant workforce is treated fairly in all respects.

This report is not the end of a process, it is a beginning. It is not intended as an indictment, but as an assessment of need. Most importantly, we hope that it will serve as a call to action.

**The Michigan Civil Rights Commission therefore directs that the Michigan Department of Civil Rights** work intensely with the DHS Interagency Migrant Service Committee, other State departments and agencies, and appropriate non-governmental entities to:

- 1) Identify ways to improve migrant labor housing inspections. This includes both ensuring that present inspection levels are maintained and finding ways to inspect housing after occupancy to ensure that it is not allowed to fall below minimum legal requirements while in use, ensuring enforcement of maximum occupancy limits for individual units, preventing minors from living in a unit with unrelated adults, or any other changes that can be identified to better protect the occupants of such housing. The percentage of total seasonal migrant labor housing that is inspected must be maintained, or even better, increased.
- 2) Ensure swift, certain, systemic and sufficient fines for housing, health and/or other violations as a deterrent to bad conduct.
- 3) Ensure migrant seasonal farmworkers are not paid less than the required minimum wage due to insufficient 'piece rates' or other reasons.
- 4) Build upon the efforts of the Interagency Migrant Service Committee to coordinate the actions of State agencies who deal with migrant farmworker programs, growers, migrant support service providers and other community leaders with the continuing goal of improving services to all parties, avoiding duplication of effort, and improving the living and working conditions of migrant farmworkers and their families.
- 5) Work with the Interagency Migrant Service Committee to determine whether the goal of improving the living and working conditions of migrant farmworkers and their families could be better met by reassigning specific functions from one department/agency to another.
- 6) Identify how, and where necessary implement, cross-training of State employees working on site with growers and/or farmworkers in one area of expertise, to also function as additional observers on behalf of other departments and agencies.

- 7) Ensure workers, growers and crewleaders are regularly informed about the legal rights of farmworkers including, but not limited to, the right to drinking water, handwashing facilities and bathrooms in the fields.
- 8) Work with Michigan State Police to clarify, and to inform both the public and law enforcement agencies about, the laws and regulations effecting the enforcement of immigration laws by police officers.
- 9) Identify specific amendments to Michigan law that could be made to address concerns raised in the report.
- 10) Find funding for and conduct an Enumeration Study to update the 2006 information.
- 11) Work with the Secretary of State to clarify the documentation and status requirements for both drivers' and marriage licenses and ensure uniform enforcement by all county clerks.
- 12) Eliminate any illegal use of child labor in agriculture.
- 13) Increase the number of State employees working with seasonal migrant farmworkers who speak Spanish and provide tools to facilitate communication between non-Spanish speaking State employees and non-English speaking workers.
- 14) Solicit recommendations from organizations with expertise on farmworker issues for ways these next steps may be accomplished, and provide submitted suggestions to the Commission, and the Interagency Migrant Service Committee.
- 15) Designate an employee of the Department as the Commission's liaison on protecting migrant seasonal farmworkers, and assign this person with the duty of coordinating the above efforts with the Interagency Migrant Service Committee and reporting back to this Commission on progress.

## Appendices

Record of Concern (English)

Press Release Announcing Forums (July 14, July 22)

Press Release Announcing Commission Meetings/Public Forums (June and August)

Newsletter article from Rural Community Assistance Partnership (June-July 2009) announcing forums, instructions for submitting testimony

Program Presented by Farmworker Legal Services to MDCR dated 6/22/09

Letter from H. Core seeking grower input dated 10/6

Letter from Robert S. Anderson, Legislative Counsel, Farm Bureau dated 11/2

Letter from Muskegon Chronicle by Greg Crespo dated 7/24

[http://www.mlive.com/opinion/muskegon/index.ssf/2009/07/letters\\_migrant\\_workers\\_fill\\_i.html](http://www.mlive.com/opinion/muskegon/index.ssf/2009/07/letters_migrant_workers_fill_i.html)

## Blueberry Farm Media Clips

<http://abcnews.go.com/images/Blotter/Document.pdf>

[http://www.mlive.com/business/west-michigan/index.ssf/2009/10/meijer\\_walmart\\_kroger\\_drop\\_sou.html](http://www.mlive.com/business/west-michigan/index.ssf/2009/10/meijer_walmart_kroger_drop_sou.html)

<http://bit.ly/28PtjH>

[http://www.heraldpalladium.com/articles/2009/10/31/local\\_news/944482.txt](http://www.heraldpalladium.com/articles/2009/10/31/local_news/944482.txt)

[http://www.mlive.com/business/west-michigan/index.ssf/2009/10/michigan\\_blueberry\\_farms\\_fined.html](http://www.mlive.com/business/west-michigan/index.ssf/2009/10/michigan_blueberry_farms_fined.html)

From the Grand Rapids Press/MLive "Michigan fruit, vegetable farms fined for child labor and working condition violations" (see attachment) and see comment by the reporter, Posted by [Julia Bauer | The Grand Rapids Press](#), October 28, 2009, 5:29PM

We have an update on this story, that shows how much each farmer got fined. Of 35 farmers investigated in eight counties, just over half had violations and nine of those had to pay fines. The highest fine, nearly \$17,000, was on Scherer Fruit Farms in Bloomingdale...

<http://www.omaha.com/article/20091030/AP05/310309811>

## Blueberry Farming Giant Found to use Child Labor at Michigan Fields

From Democracy Now! 11/4/09

[http://www.democracynow.org/2009/11/4/blueberry\\_farming\\_giant\\_found\\_to\\_use](http://www.democracynow.org/2009/11/4/blueberry_farming_giant_found_to_use)

## Attempts to reach growers

On an interagency working group conference call on July 9, it was suggested that we speak with representatives of commodity groups (e.g., apples, grapes, others). A person on the call stated he was meeting with these groups on July 13 and the migrant farmworker report was on the agenda for discussion. He also stated he would speak with the Executive Director representing a number of food processors' groups. It was also agreed that the Department of Agriculture would assist with outreach to growers and it was confirmed that Farm Bureau had been contacted. They subsequently publicized the forums in a newsletter (see Appendix).

Another individual on the call stated that talking to processors was important because "It's more than fruit and vegetable production and harvest. We are having real trouble attracting a sufficient labor force. Dairy and turf grass production, care of athletic facilities, and parklands are also using migrant workers as well."<sup>399</sup> He added that the notifications about these hearings should go out very quickly if we wanted farmers or industry to show up at any of the meetings. He opined that the draft flyer (produced by FLS, see Appendices) could not go out. "This flyer is not as inviting as it could be" (to farmers).<sup>400</sup>

On July 20, another interagency workgroup conference call took place. There had been an article in the Muskegon Chronicle on July 18 about the Hart forum. In response, the Executive Director of the Asparagus Growers responded, "I am writing to provide a more complete picture of the migrant workers housing situation in Michigan than was represented in the Chronicle's July 18 article. I feel the article skewed the perspective of how most asparagus growers, and most farmers, treat their hired help."<sup>401</sup> We were also advised that we need to publically involve DELEG and people representing some of the producers (apples, cherries, asparagus as examples).

On July 28, discussion ensued by email about trying to get on the agenda of the Agriculture Commission meeting on August 18. We were told the meeting would be in Battle Creek at the Kellogg Biological Station, "and we have a pretty full day. We don't usually attract many farmers to our meetings". There was a forum scheduled for Omer/Standish the same evening. A staff person from the Department of Agriculture further advised, "I have been to a lot of these meetings and they don't attract farmers regardless of the location. You would still be asking for farmers to go out of their way to come to a meeting, which makes this no different from any of the other regularly scheduled meetings."<sup>402</sup> It was then suggested by and MDCR staff that we send one MDCR representative to be placed on the Commission's agenda. "We could take three minutes to explain what we're doing. The Representative would take testimonial forms and the Commission itself or individual members would have the opportunity to contribute."<sup>403</sup> The response, "We could of course put an individual on the agenda, either formally or under public comment, but again, we do not usually have farmers attending these meetings."<sup>404</sup> It was then decided to try and reach growers through their associations.

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<sup>399</sup> J. Byrum, 7/9/09 personal conversation.

<sup>400</sup> Ibid.

<sup>401</sup> John Bakker, "Farmers Treat Migrant Workers Well," Muskegon Chronicle, 7/20/09.

<sup>402</sup> J. Johnson via email, 7/28.

<sup>403</sup> D. Levy, by email, 7/28.

<sup>404</sup> J. Byrum, by email, 7/28.

On July 30 by email, MDCR was advised, "I am unsure of what it is they want to accomplish. It would be fruitless for them to try and reach out to fruit and vegetable growers this time of year as all are too busy to participate. The best time to reach a wide audience of specialty crop producers is at the GL expo in early December."<sup>405</sup> The Executive Director of the Apple Committee agreed, "Plain old US mail direct to their homes is still the best route....we have email addresses for only a couple hundred growers...."<sup>406</sup>

She also contacted MDCR on September 2 when it became known that MDCR had visited migrant labor camps as part of this initiative, "We appreciate your efforts to incorporate the farm tours. I have board members who very much want the state involved in migrant housing inspections and want full enforcement of the laws on the books for folks who aren't treating their workers properly. My board (appointed by the Governor) believes the vast majority of growers/farmers are doing a good job, or their workers wouldn't come back next year for one thing, and wants to make sure we keep telling their side of the story...thanks for working to get agriculture's involvement on this issue."<sup>407</sup>

In short, press releases were posted on the MDCR website and shared with media partners prior to each of the five public forums and the Commission meeting which took place in Allendale on August 24. Multiple attempts were made to reach and include growers, for the most part to no avail. The letter published in the Muskegon Chronicle on July 20 represents the only written response to this initiative by a farmer. At the Standish/Omer forum in August, one farmer attended and provided testimony. A site visit was conducted by two MDCR staff on October 14 to meet with Mike DuRussel, a farmer in Manchester. Another grower, Jerry Brandel, since provided testimony by phone.

October 7 marked the last date that outreach to farmers was conducted (see letter in Appendices). This letter requested feedback by November 2.

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<sup>405</sup> J. Bakker, by email, 7/30.

<sup>406</sup> D. Donohue, by email, 7/30.

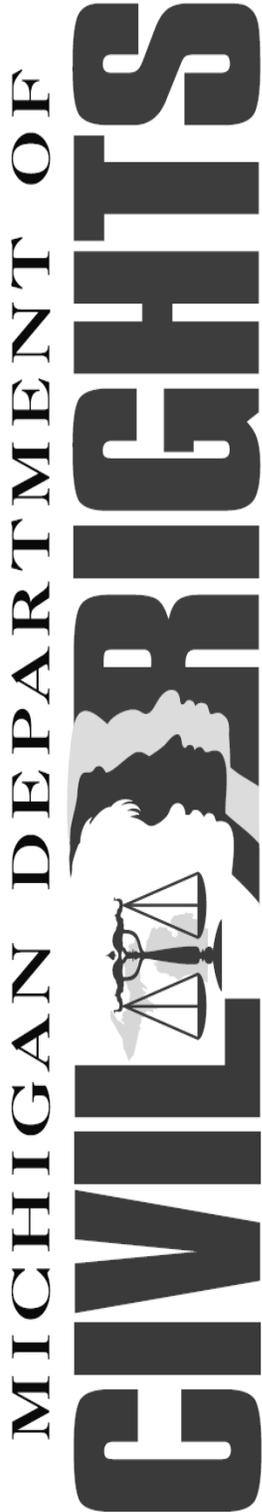
<sup>407</sup> Donohue, by email, 9/2.

## List of Acronyms Used

AES – Agricultural Employment Specialists (work for DELEG in Michigan)  
AWPA – Agricultural Worker Protection Act (federal)  
DHS – Department of Human Services (Michigan-based agency)  
DHS – Department of Homeland Security (Federal agency)  
DELEG – Department of Energy, Labor and Economy Growth  
DOJ – Department of Justice (Federal agency)  
ESA – Employment Service Agency (state)  
ETA - Employment and Training Act (federal)  
FHA – Fair Housing Act (federal)  
FLSA – Fair Labor Standards Act (federal)  
FLS – Farmworker Legal Services  
ICE – US Immigration and Customs Enforcement  
IRCA – Immigration Reform and Control Act (federal)  
LPR – Lawfully Permanent Resident  
MDA – Michigan Department of Agriculture  
MDCR – Michigan Department of Civil Rights  
MCRC – Michigan Civil Rights Commission  
MIOSHA – Michigan Occupational Safety and Health Administration  
MLHP – Migrant Labor Housing Program  
MOU – Memorandum of Understanding  
MSU – Michigan State University  
OSHA – Occupational Safety and Health Act, Occupational Safety and Health Administration (federal agency)  
ROC – Record of Concern  
SOS – Secretary of State of Michigan  
SSN – Social Security Number  
UIA – Unemployment Insurance Agency  
USDOL – US Department of Labor (Federal agency)  
USES – United States Employment Service  
WHD – Wage and Hour Division  
WPS – Worker Protection Standard (federal)

Appendices

Record of Concern (English)



Note: Identification information is requested, but need not be supplied.

<p>Name :</p> <p>Permanent contact information (address, city, state, zip, phone if available):</p>
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Issue of Concern:

Name of farm, business, agency or service provider involved:  
(Examples – Xxxx Family Farm, Xxxx Inc., Michigan Department of Xxxx, Xxxx Police Department)

If there have been previous complaints about this matter, who were they made to?  
(Please include person's name if known).

Testimony (Explanation of Issue):

(If testimony is continued on reverse or additional pages, the total number of pages is \_\_\_\_\_)

Form filled out by: \_\_\_ interviewer; \_\_\_ interpreter. Date: \_\_\_\_\_ Forum: \_\_\_\_\_

Contact information: (Please include at least name, phone and either address or email)

Testimony recorded: \_\_\_CD; \_\_\_audio; \_\_\_video; \_\_\_not.  
Witness # \_\_\_\_\_



STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
EXECUTIVE

JENNIFER M. GRANHOLM  
GOVERNOR

KELVIN W. SCOTT  
DIRECTOR

For Release: July 22, 2009

**Contacts:**

**Harold Core, Director of Public Affairs**  
**Lansing: 517/241-3986**

**Jacki Miller, Public Information Officer**  
**Lansing: 517/241-4926; Detroit 313/456-4694**

**Civil Rights Commission Visits Communities, Collecting Testimony  
on the State of Migrant and Seasonal Farmworkers**

**Lansing, MI** – On July 15, 2009, the Michigan Civil Rights Commission started accepting testimony on the state of migrant and seasonal farmworkers in Michigan. A series of visits will take place to speak with migrant and seasonal farmworkers and others in the agricultural industry. Testimony may be submitted at any of the announced local forums, a Commission meeting scheduled for August 24<sup>th</sup> in Sparta, or in writing to the Department. All testimony, which will result in a Commission report to be released later this year, must be received by the August 24<sup>th</sup> Commission meeting.

The scheduled visits are as follows:

July 30 – St. Peter the Apostle Church, 309 S. Lane St., Blissfield, MI 49228  
August 5 – Bear Lake Migrant Head Start, 10101 Nurnberger Road, Bear Lake, MI 49614  
August 13 – Watervliet Migrant Head Start, 745 North M-140, Watervliet, MI 49098  
August 18 – Bay/Arenac Migrant Head Start, 2801 Sterling Road, Omer, MI 48749

Testimony can be submitted to Commission and Department staff at these locations between 6:00 and 8:00 pm on each date. Anonymous testimony will be accepted. Spanish language translation and child care services will be available for those wishing to testify. In addition to representatives from all

aspects of the agricultural industry, the Commission is also accepting testimony from representatives of government and social service agencies.

Written testimony should be submitted between now and August 24, 2009. Please submit to: Harold Core, Director of Public Affairs, MI Department of Civil Rights, 110 W. Michigan Avenue, Suite 900, Lansing, MI 48933.

This effort is a collaboration between several entities, including the Department of Civil Rights, Farmworker Legal Services, Telemon Migrant Head Start and the Michigan State University Cooperative Extension Service. The purpose of the effort is to ensure that Michigan can continue to attract migrant and seasonal farmworkers, who are critical to the agricultural industry. The agriculture industry is the second largest industry in Michigan, and critical to the state's economy.

For more information on the Michigan Civil Rights Commission, visit <http://www.michigan.gov/mdcr>. For more information on Farmworker Legal Services, visit [www.farmworkerlaw.org](http://www.farmworkerlaw.org).

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STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
EXECUTIVE

JENNIFER M. GRANHOLM  
GOVERNOR

KELVIN W. SCOTT  
DIRECTOR

For Release: August 14, 2009

**Contacts:**

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**Jacki Miller, Public Information Officer**  
**Lansing: 517/241-4926, Detroit: 313/456-4694**

**Civil Rights Commission to Host Meeting, Public Forum in Allendale**

**Lansing, MI** – On August 24, 2009, the Michigan Civil Rights Commission will hold a formal meeting and public forum. This will take place in the Auditorium of the Cook-Dewitt Building on the campus of Grand Valley State University in Allendale.

The formal business meeting will begin at 3:00 pm. The public forum will follow at 4:30 pm in the same location. The public forum will address the issues of migrant farmworkers. This represents the last opportunity for people to provide public testimony on concerns faced by those in the agricultural industry. The Michigan Civil Rights Commission and several partner organizations have engaged in a process of local visits to gather information during July and August. These visits and public testimony gathered will culminate in a report to be released later this fall by the Commission. Both the meeting and public forum are open to the public with opportunities for public comment.

If you require an accommodation to attend this meeting, please contact Harold Core at 517/241-3986.

For more information on the Michigan Civil Rights Commission, visit <http://www.michigan.gov/mdcr>.

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**FROM E-VERIFY PAGE 1**

*The E-Verify contractor rule and the No-Match rules were released late in the Bush Administration. The E-Verify rule would require most major federal contractors to use E-Verify in order to qualify for their contracts. However, most food items were later removed from the requirement. The No-Match rule provided a "due diligence" process where employers received letters from the Social Security Administration notifying them that employees social security numbers do not match their names. The rule outlined specific procedures for employers to follow after receiving such letters and the penalty for not following the procedures is a potential finding of knowingly hiring unauthorized workers.*

*Agricultural employers had already been following most of the procedures in the rule but the "safe harbor" provisions instituted a 90 day window for the process to be completed with protections for employers who terminated employees for not providing acceptable documents within that period of time.*

*Both rules have been blocked from implementation due to litigation. The Obama Administration needed to determine whether it wished to fight for either or both rules and the July 8th press release from Secretary of Homeland Security Janet Napolitano made clear that the Administration will only fight for the contractor rule.*

*A key sticking point in the litigation has been whether the rule's application of E-Verify to existing employees of a contractor should be permitted or whether only new employees should be put through the system. Under the rule the contractor would be required to E-Verify all new employees during the contract period and also verify existing employees who are assigned to the contracted work. Initially, all employees of the contractor would have been verified through E-Verify.*

*While farm employers may not be directly impacted by the requirement their buyers could have a significant impact. As revised rules are published, the food qualifications may also be revised and could be a major impact to agriculture.*

## Michigan Civil Rights Commission to Investigate Violations of Migrant Workers' Rights

The Michigan Civil Rights Commission began accepting testimony regarding the state of migrant and seasonal farmworkers in Michigan at a Wednesday, July 15 program in Hart. The Commission will host the series of visits to local communities to speak with migrant and seasonal farmworkers and others in the agricultural industry. Testimony may be submitted at any of the announced local forums, at a Commission meeting scheduled for August 24th in Sparta, or in writing to the Department. All testimony, which will result in a Commission report to be released later this year, must be received by the August 24th Commission meeting.

Written testimony should be submitted between July 15 and August 24, 2009. Please submit to: Harold Core, Director of Public Affairs, MI Department of Civil Rights, 110 W. Michigan Avenue, Suite 900, Lansing, MI 48933.

Anonymous testimony will be accepted. Spanish language translation and child care services will be available for those wishing to testify. In addition to representatives from all aspects of the agricultural industry, the Commission is also accepting testimony from representatives of government and social service agencies.

In a press release from Farmworker Legal Services this series of fact finding events over the next couple of months will seek comments from migrant workers, employers and interested parties related to possible civil rights abuses.

Employers should consider presenting difficulties they have encountered regarding such issues as farmworker housing establishment and expansion, payroll check cashing issues and local harassment of employers of migratory labor along with the harassment of the workers.

The Michigan Civil Rights Commission has the power to expose and fight civil rights abuses. If you have faced discrimination by employers or government officials come tell the commission your story and help STOP THE ABUSE!

### **Have you or someone you know been...**

- Racially profiled by police or other officials?
- Denied access to federal services because you could not speak or read English?
- Required to provide additional proof of work eligibility or immigration status because you are

Latino?

- Denied housing because you have a family or been told that housing was only available for single workers?
- Denied marriage or birth certificates because of your immigration status?
- Denied an interpreter in court proceedings or at the hospital?
- Exposed to pesticides and not received needed medical treatment or an opportunity to report the exposure to authorities?
- Been denied food stamps for your U.S. citizen children or faced difficulties in obtaining food stamps because you do not speak English?
- Told your children could not attend school because of language or immigration issues?
- Discriminated against because of your race or national origin by employers or government officials?

### **The Proposed Site Visit Dates & Locations:**

- Thursday, 7/15 -- Hart Migrant Head Start Covering Oceana/Mason/Newaygo Cos.
- Thursday, 7/30 -- Adrian Migrant H.S. Lenawee/Monroe/Washtenaw Cos.
- Thursday, 8/5 -- Bear Lake H.S. Manistee/Benzie/Grand Traverse/Leelanau
- Thursday, 8/13 -- Watervliet H.S. Van Buren/Berrien/Cass
- Tuesday, 8/18 -- Omer/Standish H.S. Bay/Arenac
- Monday 8/24 -- Sparta Migrant H.S. [MCRC Commission Hearing]

### **Typical Schedule for Site Visits:**

- 3:00 – 5:00pm – Outreach Visits to area labor camps & facilities
- 5:30 – 6:00pm – Buffet Dinner with Head Start parents and migrant service agency reps
- 6:00 – 6:30pm – Large Group (25 – 40) presentation of MCRC investigation, Q & A, etc.
- 6:30 – 8:00pm – Small Group and individual live testimony (affidavit, audio, video)



# Civil Rights Issues Affecting Migrant and Seasonal Farmworkers in Michigan



PROGRAM PRESENTED BY FARMWORKER LEGAL SERVICES  
TO MICHIGAN CIVIL RIGHTS COMMISSION ON JUNE 22, 2009

## Farmworker Demographics and Overview of Issues

**Speaker:** Thomas K. Thornburg, Co-Managing Attorney

For several generations, migrant and seasonal farmworkers have helped sustain and harvest over 40 labor intensive crops throughout Michigan. A 2006 study estimated that migrant and seasonal farmworkers and their children number over 90,000 in Michigan annually. Although the total annual field value of Michigan's hand-harvested crops is over \$2 billion, the annual income for a farmworker family of five remains well below the federal poverty level. Michigan's farm labor force is 99% Hispanic or Latino and is comprised of a significant foreign-born population, mainly of Mexican origin. It is estimated that the majority of farmworkers in Michigan (57%) speak Spanish as their primary language. Contrary to popular opinion, the great majority of farmworkers in the upper Midwest (over 70%) are "lawfully present" and authorized to work in the United States. Family-based migration (primarily from Texas and Florida) is a unique factor in Michigan's migrant workforce, with the number of children and teens accompanying farmworkers estimated at over 40,000 annually.

## Familial Status Discrimination in Farmworker Housing

**Speaker:** Megan A. Reynolds, Attorney

Many migrant farmworkers travel to Michigan with non-working spouses and children. Both the federal Fair Housing Act (FHA) and the Michigan Elliott-Larsen Civil Rights Act prohibit discrimination in housing on the basis of familial status. These statutes make it unlawful to refuse to rent or otherwise make unavailable or deny, a dwelling to any person because of familial status. They also prohibit statements with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status. Under federal precedent, the FHA is applicable to temporary farm labor camps because the camp units are "dwellings" of the workers for the duration of their employment. Nevertheless, some Michigan growers have openly announced their intention to discriminate on the basis of familial status in job orders posted with Michigan Works! and in other public forums.

## **The Migrant Housing Licensing Crisis**

**Speaker: Stephanie L. Little, Law Graduate**

Numerous migrant farmworkers throughout the state of Michigan are forced to live in deplorable conditions. Although state and federal law mandates certain minimum standards for migrant housing camps, these laws have not been rigorously enforced. The Michigan Department of Agriculture (MDA) is responsible for inspecting and licensing all camps in the state where five or more migratory agricultural workers are housed, but this agency has not been adequately staffed for nearly a decade. Recent budget cuts have resulted in additional reductions in the Michigan Migrant Labor Housing Inspection staff, and the MDA has announced that over 100 camps throughout the state will not be inspected or licensed this year. It is estimated that this decision will result in extreme underenforcement of conditions-based housing violations and a severe reduction in the availability of safe and sanitary housing for thousands of Michigan's migrant farmworkers.

## **Environmental Justice and Michigan's Migrant and Seasonal Farmworkers**

**Speaker: Rachel M. Udow, Pesticide Action Campaign Coordinator**

The Environmental Protection Agency defines "environmental justice" as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies." Michigan's farmworkers and their family members, the majority of whom are Hispanic or Latino and reside in low-income households, are subjected to a disproportionately high number of environmental and health hazards. This elevated risk is due not only to the hazardous nature of farm work, but also to the inadequate and unequal protection of farmworkers under federal and state health and safety regulations. Such systemic failures to provide equal protection for Michigan's farmworker families result in many preventable workplace illnesses and injuries and constitute a breach of environmental justice.

## **Access to Vital Documents**

**Speaker: B. Daniel Inquilla, Co-Managing Attorney**

Immigrant farmworkers often face barriers on a state and local level when they try to access basic documents such as driver's licenses and marriage licenses. State and local officials make determinations of ineligibility that are contrary to law. In addition, officials often interpret laws against the interests of immigrants. The inability to obtain vital documents negatively impact immigrants in various ways and leave them extremely vulnerable to abuses by private and governmental actors.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
EXECUTIVE

KELVIN W. SCOTT  
DIRECTOR

October 6, 2009

To Michigan Growers and other Agricultural Organizations:

You may know that in June of this year the Michigan Civil Rights Commission began looking into the conditions of migrant and seasonal farmworkers, in part to make sure the state could continue to attract this valuable workforce. As part of this effort the Commission and Department of Civil Rights did a tour of migrant camps around the state, and began collecting testimony on the state of farmworkers in Michigan.

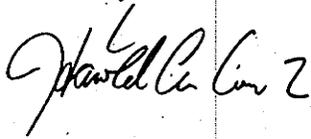
As a stakeholder of the agricultural industry, you are aware that migrant farmworkers are in demand by growers throughout the Midwest during the short harvest season. As with any mobile laborer, migrant farmworkers will seek employment in those communities offering the best conditions. Past attempts to recruit and use a Michigan-based workforce for harvesting our bounty have not been successful. According to a 2006 report, there are an estimated 45,800 migrant and seasonal farmworkers in Michigan. It is very simple: Michigan's economy needs agriculture, and agricultural businesses need migratory farmworkers.

Please contact the Department if you would like to offer testimony or make policy suggestions designed to improve the state's ability to attract and retain migrant and seasonal farmworkers. The Commission will use this feedback, along with feedback from the farmworkers and service agencies, to issue a report including recommendations for improving the working and living conditions of migrant workers in Michigan. Hopefully, through this report we can maintain this valuable labor force and continue to utilize their efforts to boost the industry.

Please send all written testimony to Harold Core, MI Department of Civil Rights, 110 W. Michigan Ave, Suite 900, Lansing, Michigan 48933. Testimony can also be emailed to Harold at [coreh@michigan.gov](mailto:coreh@michigan.gov) or faxed to 517-335-6513. All testimony must be received by 5:00PM, November 2, 2009.

In our current economic environment, Michigan can ill afford the risk of having a crop rot in the field due to a shortage of experienced farmworkers. Therefore, the Michigan Civil Rights Commission and the Michigan Department of Civil Rights are talking and working with farmworkers, farm owners, growers, agricultural experts, public safety officers and other interested and involved organizations in an effort to sustain and improve the economic impact of agriculture in Michigan.

Sincerely

A handwritten signature in black ink, appearing to read "Harold Core". The signature is written in a cursive style with a large initial "H".

Harold Core  
Director of Public Affairs



7373 W. Saginaw Hwy. • PO Box 30960 • Lansing, MI • 48909

November 2, 2009

Harold Core  
Director of Public Affairs  
Michigan Department of Civil Rights  
110 W. Michigan Ave.  
Suite 900  
Lansing, Michigan 48933

Dear Mr. Core,

In response to your invitation to provide comment, please accept the following as Michigan Farm Bureau's written testimony regarding the recent hearings held by the Michigan Civil Rights Commission on the issue of migrant and seasonal farmworker conditions. Michigan Farm Bureau is the state's largest general farm organization, representing over 47,000 farmers and farm families.

Many sectors of the agriculture industry rely on migrant and seasonal workers. Many farmers in Michigan have determined that they are able to attract and maintain skilled workers by providing on-farm housing. Most of these farmers must have their employer provided housing inspected prior to occupancy each year to verify it meets the standards for safety and sanitation, and also to establish the maximum number of persons allowed to occupy each housing unit. Michigan farmers who provide on-farm worker housing were dealt a blow in early 2009 when Governor Granholm, by Executive Order, eliminated the remaining funding for the Michigan Department of Agriculture to perform migrant labor housing inspections. This action left approximately 400 of 800 facilities unable to obtain a preoccupancy inspection, and thus unable to house their workers. This Executive Order clearly targeted a protected class as persons of Hispanic decent were to be disproportionately impacted by the government's actions. This action could have placed as many as 12,000-15,000 people on the streets. The elimination of the program could have put as many as 22,000 people on the street.

Fortunately through funding shifts within MDA and additional funding through interdepartmental grants, MDA was able to complete the inspections for 2009. However the challenges remain as the Michigan Department of Agriculture budget for 2009 contains roughly half of the General Fund support needed to complete inspections in the 2009-2010 fiscal year, with an additional fee to be assessed to farmers that will still leave the program well short of full funding. So farmers will again face the dilemma of desiring to provide free or significantly subsidized housing to their employees only to find they must close and evict or not even open their housing due to the state's unwillingness to fulfill their statutory requirements. For operations that choose to open the housing without a license, the U.S. Department of Labor stands ready to file actions against these farms. Will they support farms seeking to improve their housing? We doubt it.

Examples of the bias that exists against growers seeking to employ and improve housing for workers are many. One case involved a farm operation in central Michigan that sought to replace existing housing consisting of aging mobile homes with an apartment style housing unit funded in part through a federal loan program. The federal loan program required facilities to meet many construction and occupancy requirements. The farmer attempted to build the facility but was stopped by the local government as it

did not meet the agricultural zoning code *which was silent with regard to agricultural housing*. Even though Part 124 of the public health code prohibits local regulations that prevent agricultural worker housing, this local government not only sought to prohibit the housing construction but also sanctioned the housing of workers, who happen to be Hispanic, in declining housing.

In another case, a west central grower also sought to replace existing and aging housing with new housing of similar occupancy size. This case went to the Court of Appeals which sustained a local ruling that prohibited the housing's replacement. The workers, primarily Hispanic, continue to live in the older but licensed housing.

Agriculture has a long history of providing employment to workers who "no one else wants." Many agricultural employers treat their workers as family members with a deep respect and dignity that few other industries see where employees are simply a number and are expendable. For many agricultural employers they develop a long standing friendship with workers that last long after the worker has moved on to other industries.

The Michigan Civil Rights Commission has indicated it is "looking into the conditions of migrant and seasonal farmworkers." To undertake a review of the industry that employs and houses migrant and seasonal farmworkers under the notion of "civil rights," while ignoring the discriminatory barriers from local units of government and local residents is, in our opinion, misguided.

We agree with your statement that in our current economic environment, Michigan can ill afford the risk of having crops rot in the fields due to shortages of experienced farmworkers, and that we must engage in efforts that will sustain and improve the economic impact of agriculture in Michigan. We appreciate the opportunity to provide these comments, and hope that overall perspective is maintained in this discussion.

Sincerely,

A handwritten signature in cursive script that reads "Robert S. Anderson". The signature is written in black ink and is positioned above the typed name and title.

Robert S. Anderson  
Legislative Counsel



## Letters: Migrant workers fill important role

By Muskegon Chronicle

July 24, 2009, 6:55AM

On July 18, The Muskegon Chronicle published a story about how state civil rights officials are examining migrant worker housing and employment conditions. Some comments posted to the online edition of the story revealed and perpetuated misconceptions about the Michigan migrant worker population. It is worth examining who migrant workers are and what role they play in the state's economy before passing judgment on the work of the Department of Civil Rights or the population of workers.

First, the discussion about migrant farm worker rights is separate from concerns about foreign labor taking U.S. jobs. "Migrant" seems often confused with "immigrant" or "foreign," but "migrant" simply means that the workers have traveled a significant distance from their homes to work in another place. Most of Michigan's migrant workers come from other states, not from other countries. The great majority of Michigan's migrant farm labor arrives from Florida and Texas and not from Mexico.

Additionally, the discussion about migrant farm worker rights is also separate from the debate about immigration. A common misconception is that most of Michigan's migrant workers are in the United States illegally. In fact, the opposite is true. According to Department of Labor officials, 71 percent of migrant agricultural workers in the Midwest are legally documented aliens or U.S. citizens, and a full 48 percent of migrant farm workers in the Midwest were born in the U.S. and its territories. This is considerably different from the situation on the East and West coasts where migrant farm labor populations are approximately 50 percent undocumented workers. Since a super majority of Michigan's migrant farm workers are here lawfully, and almost half are U.S. born workers, it would be unwise to allow concerns about workers' civil rights to become side tracked by a debate about immigration.

The discussion about Michigan migrant workers needs to focus on the violations of workers' rights -- workers who pick a hand harvested crop that according to the Michigan Department of Agriculture is worth over \$2 billion of the state's \$5.7 billion agriculture industry. Michigan needs its migrant farm workers to keep crops from rotting in the fields and to keep the state's economy from getting worse than it already is. Michigan's unemployment is over 15 percent and it appears that far more workers are leaving Michigan rather than filling open farm labor positions. If we dismiss the problems that the Civil Rights Commission is investigating, the conditions for migrant workers will continue to deteriorate and migrants will stop returning to Michigan. Michigan cannot afford to lose an industry and its workers because it fails to protect their basic rights.

We should all support the Commission in its efforts to confront unlawful housing and employment conditions. By doing so we support an important industry and revenue source for Michigan, and we also support employers who respect workers' rights and have to compete with those who do not.

Crespo is a law student and former naval officer, and is currently in Michigan working with migrant farm workers.

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