



FARMWORKER JUSTICE NEWS

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Farmworker Justice Fund, Inc.

Summer 2002

UPDATE ON LEGALIZATION/ GUESTWORKER DEVELOPMENTS

By Bruce Goldstein

At press time, the prospects seem dim for a legislative compromise on a new legalization program for undocumented farmworkers and revisions to the H-2A temporary foreign agricultural worker program. Although concerns about homeland security after the disastrous attacks of September 11, 2001 have limited debate on immigration reform efforts, the primary reason for this pessimistic view is the unconscionable demands of agricultural employers for one-sided labor law changes.

In December 2000, the United Farm Workers of America, AFL-CIO (UFW) and a coalition of the major agricultural and landscape employers,

working with several members of Congress, reached a compromise. Bipartisan efforts to enact the compromise at that time were thwarted, primarily by Sen. Phil Gramm. That compromise would have (1) created a legalization program to extend legal immigration status to undocumented farm workers who have been working in the US and continue to work in agriculture for a period of time; and (2) made major reforms in the existing agricultural guest worker program, the H-2A program. In addition, H-2A guestworkers would be covered by the Migrant and Seasonal Agricultural Worker Protection Act of 1983 ("AWPA"), the principal federal employment law for farmworkers.

At the beginning of 2001, after President George Bush took office, the growers reneged on the compromise agreement. Sen. Craig introduced his guestworker bill that is anathema to farmworker, labor, civil rights, Latino and immigration advocates. Sen. Miller and Rep. Cannon introduced grower-supported legislation to lower the H-2A program wage rates (S.1442/H.R. 2457). The Bush Administration delayed issuing the 2001 and 2002 H-2A program wage rates, depriving thousand of US and foreign farmworkers of wage increases required by law. A lawsuit filed by FJF for the UFW and the Farm Labor Organizing Committee, AFL-CIO, helped prompt DOL to issue those

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EPA REDUCES AGRICULTURAL USES OF TOXIC PESTICIDE AT A SLOW PACE

By Shelley Davis

The pesticides which cause the most reported farmworker poisonings have been the target of EPA scrutiny over the past few years. This group, known as organophosphate insecticides (OPs), was derived from nerve gas during World War II. It includes well-known products such as parathion, malathion and diazinon. Overexposure to these insecticides can cause injury to the brain and nervous system and result in symp-

toms ranging from nausea, dizziness, and headaches to coma, convulsions and death. Following the mandate of the Food Quality Protection Act of 1996 (FQPA), the EPA has been conducting new risk assessments of the 39 active ingredients in this group. These reviews have led the EPA to eliminate or phase out use of the most toxic OP products for home and garden purposes. By contrast, only a modest reduction in agricultural uses

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LIDERES CAMPESINOS POR LA SALUD BRING AN AIDS PREVENTION MESSAGE TO FARMWORKER FAMILIES

By Myrtelina González

In 1997, FJF launched its Lideres Campesinos Por la Salud Project to train farmworkers to serve as Promotores de Salud, bringing an HIV/AIDS prevention message to their peers. This project has grown from partnerships with two community based organizations to seven, and from 50 Promotores de Salud to 132. While initially, almost all of the Promotores were women, now many are men and 20 are youth. Altogether they have educated over 45,000 farmworkers and their family members, reaching 18,000 people in the last year alone.

The Promotores have also taken on a variety of new roles. By becoming active members of their Community

Planning Councils, the Promotores have been able to bring up the needs of migrant workers when HIV prevention funding decisions are being made.

Some of our Promotores have recently been trained as HIV counselors and testers. With these new skills, the Promotores expand the reach of their local health departments or clinics. The Promotores provide counseling and testing to migrants and their families in a culturally and linguistically appropriate manner, often in the privacy of the farmworker's own home.

Our local partners have contributed much to the project's success. They include the Arizona-Mexico Border Health Foundation/Juntos Unidos, Campesinos Sin Fronteras, Community Health Inc. of South

Dade County, the Guatemala Maya Cultural Center, Las Americas Immigration & Advocacy Center, Organización en California de Lideres Campesinas, and the Valley AIDS Council.

Our project has also benefited from active collaboration with other groups. These supportive organizations include: the American Red Cross, Migrant Health Promotion, the National Council of La Raza, the Office of Minority Health Resource Center, Planned Parenthood, the U.S.-Mexico Border Health Association, and the Yuma County Health Department.

FJF and its Promotores de Salud are committed to continuing the fight against HIV/AIDS until this epidemic no longer threatens the lives and well-being of migrants and their families. ♦

Visit our website at
www.fwjjustice.org

FARMWORKER JUSTICE AWARD HONORS DOLORES HUERTA

By Bruce Goldstein

On May 21, 2002, the Farmworker Justice Fund issued its third annual Farmworker Justice Award. The FJF Board of Directors had chosen Dolores Huerta for the 2002 award. The reception in her honor, held in Washington, D.C., offered an opportunity for over one hundred people to see and hear Dolores and be among friends of the farmworker movement.

Dolores Huerta, who recently retired from the United Farm Workers, is one of the most successful, dedicated, and staunchest farmworker advocates who has ever lived. She has been an inspiration to the Farmworker Justice Fund for many years, as well as to many, many others. FJF was honored to be able to present her with the award.

It was fitting that Rep. Howard Berman of California presented the award on FJF's behalf, as Ms. Huerta kindly presented this award to her friend and collaborator of many years, Mr. Berman, in the year 2000. Rep. Berman has been a leader in the Congress on behalf of

farmworkers' interests, and, as a state legislator co-authored the Agricultural Labor Relations Act of 1975. Another member of Congress who views Dolores Huerta as her mentor, Rep. Hilda Solis of California, also was gracious enough to attend and speak at the reception.

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mid-nineteen fifties decided, "I could do more by organizing farm workers than by trying to teach their hungry children." In 1962, Dolores joined forces with Cesar Chavez to form the National Farm Workers Association, which later became the United Farm Workers of America, AFL-CIO. Dolores was the union's main negotiator, and in 1966, she negotiated a union contract with the Schenley



Rep. Howard Berman, Bruce Goldstein, Rep. Hilda Solis, and Dolores Huerta

Wine Company. This was the first time in the history of the United States that a negotiating committee comprised of farmworkers negotiated a collective bargaining agreement with an agricultural corporation.

Together, Dolores Huerta and Cesar Chavez, who passed away in 1993, also founded the Robert F. Kennedy Medical Plan, the Juan De La Cruz Farm Worker Pension Fund, and the Farm Workers Credit Union, which were the first medical and pension plan and credit union for farm workers. They also formed the National Farm Workers Service Center, Inc., which builds community-based affordable housing and operates Spanish language radio stations.

As a union leader, Dolores worked tirelessly to administer contracts, develop creative methods of organizing farmworkers, lead strikes and consumer boycotts to improve farmworker wages and working conditions, and lobby against the "Bracero" guest worker program. Her efforts in Congress and the California state legislature resulted in unprecedented



Shelley Davis, Dolores Huerta and Bruce Goldstein

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FJF COLLABORATES ON REDUCING CONTINGENT-WORK ABUSES

By Bruce Goldstein

The Farmworker Justice Fund and the National Employment Law Project recently released a report entitled "From Orchards to the Internet: Confronting Contingent Work Abuse." It is a product of the Subcontracted Worker Initiative ("SWI"), a joint project of FJF and NELP. The Directors of the SWI and the authors of the report were FJF's Bruce Goldstein and NELP's Litigation Director, Catherine Ruckelshaus.

The report brings together the information that was developed by the SWI and two SWI Strategy Forums we sponsored for labor unions and other worker advocates. One of the conferences occurred in Washington, D.C. and the other in Berkeley, California.

The report informs workers, organizers, and advocates about strategies for combating abuses associated with labor contracting, temp agencies,

labor leasing, day-labor operations and outsourcing. From Orchards to the Internet examines similarities and differences in employment practices and economic structures of various industries, such as agriculture, garment, poultry, home health care, janitorial services, and high-tech. The report describes the variety of strategies that labor unions and worker

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centers have applied: legislation, regulation, organizing, media campaigns, living wage ordinances and others. The report pays particular attention to low-wage immigrant workers and the needs and strategies of their labor organizers.

One of the interesting aspects of the SWI project was the degree to which the efforts of farmworker advocates

regarding labor contracting were seen as relevant and useful by people in other occupations. The legal analyses provided by Bruce and Cathy also were welcomed by a wide variety of worker advocates.

To review the report or any of the papers that were prepared for the strategy forums, please visit <http://www.nelp.org/swi>. Readers may find useful the fact sheets in Appendix C, which provide a breakdown of employer structures and contingent-worker strategies by industry.

The SWI was made possible by generous grants from the Ford Foundation and the Rosenberg Foundation. The co-directors greatly appreciate that support as well as the contributions to the conferences and report made by the many labor advocates who participated. ♦

FARMWORKER JUSTICE AWARD

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labor and immigration protections for farmworkers. Dolores also has been recognized for her success in building the political power of farmworkers and the Latino community, and her leadership on women's issues.

Dolores Huerta, the mother of eleven children, inspires farmworkers and their advocates not only because of her successes, but also because of the great personal sacrifices she has made. Her personal strength to overcome adversity is evidenced by her

recuperation from an extremely serious illness last year.

We are grateful for her extraordinary efforts on behalf of farmworkers, as are many others, as evidenced by her numerous awards, honorary degrees, organizational affiliations, and public adulation. We also appreciate the members of the award committee, which included many labor leaders and immigration rights advocates, as well as the financial supporters of the

reception, who are too numerous to name.

And because we know that Dolores has an immense amount of energy and creativity, we were not surprised when Dolores, during her acceptance speech, led us in the traditional "vivas" and urged us to take immediate action on several pieces of legislation at the state and federal levels. It was a memorable experience. ♦

UNIONS AND EMPLOYERS JOIN FORCES TO PROMOTE WORKPLACE SAFETY

By Shelley Davis

With U.S. workers suffering nearly 6,000 fatal workplace injuries and 5.7 million non-fatal job-related illnesses and injuries in 2000, an unlikely group of employers, unions, nonprofits and academic institutions have joined forces to take action. Calling its collaboration, the Workplace Safety Initiative, major U.S. corporations and unions are calling for fundamental changes in the nation's culture to substantially reduce the job-related illnesses and injuries.

In April 2002, the second Workplace Safety Summit was held at Georgetown University. The keynote speaker was Margaret Seminario, Health and Safety Director for the AFL-CIO. Also featured were John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, and Arturo Rodriguez, President of the United Farm Workers. In his remarks, Arturo Rodriguez highlighted the recent study showing that members of the UFW suffer from elevated rates of leukemia and brain cancer, both of which are associated with pesticide

exposure, and called for major improvements in health and safety for agricultural workers. Representatives of the Dupont Corporation and the Ford Motor Co. played major roles in organizing and promoting the conference.

The Initiative is being coordinated by Prof. John Mayo, director of the newly established Center for Business and Public Policy at the McDonough School of Business at Georgetown University.

Participants in the Initiative have drafted a Workplace Safety Declaration. They are asking corporations and other organizations to sign on to the Declaration and commit themselves to creating a corporate and societal culture which prioritizes workplace health and safety, to set high standards, to undertake innovative efforts to improve safety, to develop methods to measure the improvement, and to publicly promote health and safety.

Current signers of the Declaration include the United Farm Workers of America, AFL-CIO; American Association of Occupational Health Nurses; American Industrial Hygiene

Association; Center for Business and Public Policy, Georgetown University; D.C. Employment Justice Center; the Dupont Corporation; Electrical Safety Foundation International; Farmworker Justice Fund, Inc.; Farm Safety 4 Just Kids; the FIGHT Project; the Ford Motor Company; Laborers Health and Safety Fund of North America; Laborers International Union of North America; Network of Employers for Traffic Safety; National Institute for Occupational Safety and Health; and the United Auto Workers-Ford National Joint Committee on Health and Safety.

FJF's Co-Executive Directors Bruce Goldstein and Shelley Davis are playing an active role in the Initiative to enlist the Initiative's partners in efforts to improve farmworkers' health and safety. Shelley and Bruce also have been meeting with other worker advocates to help ensure that the Workplace Safety Summit results in meaningful improvements for workers. This group includes the United Farm Workers, the Alliance for Workers Rights in Nevada, D.C. Employment Justice Center, the Workers Rights Consortium and Farm Safety 4 Just Kids. ♦

COMMUNITY FORUM PROVIDES VENUE FOR BUILDING SKILLS AND NETWORKING

By Rossana Cardoso

On March 23, 2002, FJF held a day-long community forum to enable peer educators to learn new skills and share experiences. The Foro Comunitario 2002: Educadores Comunitarios Unidos Por la Prevención del VIH (Community Forum 2002: Community Educators United for HIV Prevention), was held in El Convento at Loretto Conference and Retreat Center in El Paso, TX. It drew 71 promotores de salud (lay health educators) from all

parts of the Paseo del Norte region. Workshops focused on adult learning techniques, behavior change theories, increasing self-esteem, youth sexuality, sexually transmitted diseases, advanced HIV/AIDS, and other issues.

The goal of this event was to bring together promotores de salud, working in the same region, so they could gain skills and make contacts that would enhance their work in HIV/AIDS prevention. Time was set aside for networking and sharing experiences. The Promotores also had an opportuni-

ty to talk about the challenges they face and share advice on ways to overcome them. At the opening plenary session, speakers from around the region provided information on local programs and resources.

In organizing the forum, FJF received invaluable assistance from the U.S.-Mexico Border Health Association, Las Americas Immigration and Refugee Center/El Poder de la Mujer, and others. All who attended the Forum found it to be a great success. ♦

GUESTWORKER RIGHTS EDUCATION PROJECT TAKES OFF

By Virginia Ruiz

FJF is conducting labor rights education for citizens of Mexico who travel to the U.S. on temporary visas under the H-2A temporary foreign agricultural worker program. The project, coordinated by Bruce Goldstein and Virginia Ruiz, seeks to educate workers in their home communities, away from the worksites in the United States where many of the guestworkers justifiably fear that speaking with lawyers and paralegals will result in retaliation by their employers.

During the outreach sessions, FJF provides the workers with information about their rights under their employment contracts and U.S. law, and gives them contact information about Mexican consulates, attorneys and other offices that they can call for information and/or assistance while they are in the United States. With the cooperation and support of the Mexican Ministry of Foreign Relations and local municipal government officials, we have made presentations to about 2,000 workers in the states of Durango, Guanajuato, Hidalgo, Jalisco, Michoacán, Nayarit, Querétaro, San Luis Potosí and Zacatecas.

Those who attended have worked under H-2A contracts in the states of Arkansas, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, Oregon, South Carolina, Tennessee, Texas, and Virginia.

Workers have raised a variety of questions and concerns about their experiences in the H-2A program. The most common problems they have experienced involve the following issues: blacklisting by employers; problems with recruiters; injuries and workers'



Participants at Guestworkers Outreach Session in Mexico.

compensation claims; and reimbursement for transportation costs.

There is a tremendous need to inform H-2A workers of their rights and responsibilities under the H-2A contracts, and where they can turn for help in the U.S. Many who attended our outreach sessions told us that they

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were unaware of any protections they were entitled to under the contracts or U.S. law, and now recognize that their employers did not comply with most of their obligations. Many also expressed their frustration in enforcing their rights, since their employers actively discourage them from seeking assistance from legal services programs and deny future employment to anyone who complains or merely tries to access benefits guaranteed to them under the contract.

We've found that speaking with workers in Mexico is effective, since they are free to ask questions without fear of reprisals from employers. Since many workers were not currently employed, they had more time to listen and ask questions, and they were not physically exhausted. In some cases, family members of workers who could not attend the sessions asked questions for them and took home informational materials for them.

The challenges for the future include educating more of the 45,000 workers who are employed under the H-2A program and in effectively responding to the requests for assistance made by the newly-educated workers. FJF is working with local legal advocates and other organizations in the U.S. to help enforce H-2A workers' rights and will continue to engage in advocacy at the national level to promote implementation and enforcement of H-2A program protections for workers. ♦

GUESTWORKER DEVELOPMENTS

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wage rates. That case is still pending to prevent delays in future years.

Sen. Kennedy and Rep. Berman introduced legislation (S.1313/H.R. 2736) to create a legalization program and revise the H-2A program, based partly on the prior compromise. None of these bills has advanced, but the growers have lobbied strenuously, particularly for the Cannon/Miller H-2A wage-cut bill.

Negotiations began again in 2002 but have not gotten very far. Rep. Berman and the UFW, hoping to reach a new compromise with the agribusiness representatives, agreed to make additional concessions, most notably on the H-2A program's "adverse effect wage rate" (which DOL annually issues for each state to prevent the use of guestworkers from undermining domestic farmworkers' wage rates). The concessions on H-2A wage rates are worth tens of millions of dollars to H-2A growers, but the growers seek still more.

The growers reneged on their agreement to amend AWPA to cover H-2A guestworkers. AWPA is the main federal employment law protecting farm workers. (The Department of Labor uses the acronym "MSPA"). It

requires employers to disclose job terms to workers at the time of recruitment and comply with those job terms, and allows farmworkers to sue in federal court to enforce them. It also requires growers to use only licensed farm labor contractors and, when providing housing or transportation, to comply with safety stan-

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dards. The December 2000 compromise would have streamlined the H-2A program by reducing employers' paperwork requirements and government oversight designed to protect both domestic and foreign workers. The removal of those worker protections from the H-2A program ended any basis for an argument that the H-2A program provides H-2A workers with similar protections that U.S. workers have under AWPA.

Rep. Berman, Sen. Kennedy, and the UFW have attempted to accommodate the growers' contention that some provisions of AWPA do not take into account the special circumstances of H-2A workers. However,

it became clear that the employers were seeking labor law provisions that would deprive H-2A workers of the minimal rights that U.S. farmworkers possess. In the guise of offering new rights and remedies, the growers' proposal would have denied the foreign guestworkers of any meaningful labor protections and, indeed, would have withdrawn protections that currently exist under state and federal labor laws.

The growers and their lobbyists seem to argue that farmworkers should accept disastrous labor law provisions in return for a program that extends legal immigration status to undocumented workers. However, the mere fact that a worker holds a legal status does not mean that the conditions on the job or the legal protections are reasonable. The fact that slavery was a legal status in this country certainly did not make the slaves' working conditions fair. Undocumented farmworkers deserve a legal status and all farmworkers deserve better working conditions and meaningful legal protections. The growers' demands are unreasonable because they would doom farmworkers to a 19th century-style labor market as we move through the 21st century.

We hope that Congress will reach a reasonable compromise. ♦

NEW BOOK ON LABOR STANDARDS

Readers may be interested in a new book, "The Autocratically Flexible Workplace: A History of Overtime Regulation in the United States" by Marc Linder Professor of Law at University of Iowa. Employers' demands for "flexibility" on hours of work and increasing mandatory overtime make this book particularly relevant. Prof. Linder always has insightful things to say and is a remarkably thorough researcher. The new book complements his earlier book, " 'Moments Are The Elements of Profit': Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act" (2000). His other books include "Void Where Prohibited: Rest Breaks and the Right to Urinate on Company Time"; "Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States"; and "The Employment Relationship in Anglo-American Law." The new book, published by Fanpihuà Press, can be ordered from Prairie Lights Books: 800- 295-BOOK/info@prairielights.com; Iowa Book: 319-337-4188/iowabook@iowabook.com; and Northside Book Market: bookmark@inav.net.

TOXIC PESTICIDES

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has been ordered, leaving many highly toxic uses in place.

In 1996, Congress passed the FQPA, which requires the EPA to ensure that there is "a reasonable certainty of no harm" to adults and children from consuming pesticide residues on food. In making this determination, the Agency must consider three critical factors: First, the Agency must look at the public's aggregate exposure to each individual chemical from all non-occupational sources, such as food, water and home and garden use. Second, the Agency must add, in its risk assessment, an extra tenfold margin of safety, if needed, to protect infants, children and other vulnerable populations. Third, the Agency must ensure that no harm could be expected from the public's cumulative exposure to all pesticides in a group which cause harm through the same biological mechanism (e.g., organophosphates which cause injury by inhibiting the enzyme acetylcholinesterase). The EPA's cumulative risk assessment of organophosphates is the first the Agency has ever conducted.

By contrast, occupational risks from pesticides are governed by the far weaker standards of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Under this statute, the EPA can only ban a pesticide use if it determines that the use causes an unreasonable risk of adverse effects and that the harm caused by that use would outweigh the benefits. Only a handful of pesticides have been banned under FIFRA since the 1970s.

The very different impacts of these two statutes can be seen by compar-

ing the EPA's recent decisions on some of the most toxic OP insecticides. With regard to diazinon and chlorpyrifos, for example, in light of the FQPA standards, the Agency was able to reach an agreement with the pesticide manufacturers to ban or phase out virtually all home and garden uses. By contrast, applying FIFRA standards, the Agency has allowed many agricultural uses of these chemicals to continue, even though a number of them pose unacceptable risks to workers. In one of its most egregious FIFRA decisions, the EPA has

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recently granted a four-year renewable registration for the insecticide guthion (also known as azinphosmethyl) for use on apples, pears and a half dozen other crops, even though the risks to workers from this highly dangerous chemical could not be eliminated. The guthion decision is one of the rare instances in which the EPA has explicitly found that the use of an extremely hazardous product could continue on the grounds that the benefits of its use outweigh the risks. The EPA's decision in this instance is highly questionable because many alternative methods exist to replace the use of guthion on apples and pears. One such alternative is the use of pheromone mating disruption which is not at all toxic to people.

Advocates have tried to convince the EPA to designate farmworker children as a vulnerable population, in order to gain some of the benefit of the FQPA standards for the farmworker commu-

nity. However, a petition requesting that designation has languished. Nor has the EPA been willing to consider drift from treated fields onto nearby homes when aggregating the public's non-occupational exposures for FQPA purposes.

In other steps, the EPA is currently reevaluating the effectiveness of the Worker Protection Standard (WPS), which is the regulation governing work practices with pesticides on farms and in greenhouses, nurseries and forests. As part of this review, the EPA is planning to launch a pilot project to test ways to provide farmworkers with information about the health hazards they face from the specific pesticides used in their workplace. Farmworkers are the only group of American workers who are not already granted

this kind of "right to know" protection. Other efforts are focused on improving the general safety training field workers receive and upgrading the training and certification requirements for all pesticide handlers (i.e., those who mix, load or apply pesticides). Although right to know protection is more than a decade overdue, farmworkers around the country still have years to wait before a federal right to know regulation is issued by EPA. ♦



HELP FJF EXPAND IN ITS 21ST YEAR

Please support the work of the Farmworker Justice Fund by making a generous, tax-deductible donation. (FJF is a 501(c)(3) nonprofit corporation.) Help us make 2002, our twenty-first anniversary — our most effective year of advocacy ever.

FJF plays a leadership role in advocacy for migrant farmworkers in the nation's capital. We have creatively used all available tools to further the cause of farmworkers. Litigation. Administrative and Legislative Advocacy. Training and technical assistance for lawyers, paralegals, government personnel, health care providers, and farmworkers. Media work and other public education. Building coalitions of farmworker organizations, Latino organizations, civil rights groups, immigrants rights advocates, labor unions, religious institutions, environmentalists, and many others. These activities and more have made a difference in the lives of thousands of farmworkers. Labor law. Immigration policy. Occupational Safety and Health. Access to the Justice System. Women's Issues. All of these have been advanced by FJF's work. In each of these areas, FJF has helped to defend farmworkers' interests against attacks and rollbacks.

Despite our important work and the efforts of many others, the wages, working conditions and living conditions of most of America's migrant farmworkers remain unacceptable. Please help the Farmworker Justice Fund, Inc. continue and expand its work by making a financial contribution to our work. Thank you very much.

Mail to:
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1010 Vermont Avenue, NW, Suite 915
Washington, DC 20005



I would like to support the Farmworker Justice Fund, Inc. in its twenty-first year of helping migrant and seasonal farmworkers.

Enclosed is my tax-deductible donation of \$_____. Please place me on your mailing list.

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