

MD Labor Briefing to Economic Matters Committee:

Federal Migrant & Seasonal Farmworker and Foreign Labor Certification Programs



Agenda



MD Labor's Federal
Obligations

MSFW Program

Foreign Labor
Certification Program

Worker Protections

MD Labor's Federal Obligations

- **MD Labor is federally required to administer the Migrant and Seasonal Farmworker (MSFW) and the Foreign Labor Certification (FLC) programs**
- **Both programs are *exclusively* funded through the United States Department of Labor (USDOL)**
- **All Program staff are federally-funded and prohibited from working on State-created activities**

Migrant and Seasonal Farmworker Population



Who Are Migrant and Seasonal Farmworkers?

- Per federal definitions, MSFWs are **work-authorized, seasonal agricultural workers** who are unable to reasonably return to their permanent residence on the same day due to the distance from the job site (Workforce Innovation and Opportunity Act)
- MSFWs are not tied to any particular immigration status and often represent a domestic workforce
- Agricultural employers are required to provide housing for these workers

MD Labor Outreach to MSFWs

On-the-Ground Engagement

- Full-time outreach workers meet with MSFWs in person during peak growing seasons

Seasonal Timing

- Peak seasons vary by crop type (fruits, vegetables, grains) and local agricultural practices

Appropriate Access

- Visits to the work site or housing are coordinated with employers to avoid disrupting work while ensuring worker rights
- Common outreach times include lunch breaks and after hours

State Monitor Advocate Role

MD Labor is federally required to have a full-time State Monitor Advocate (SMA) that focuses on:

- Professional development for MD Labor outreach staff
- Federal reporting and documentation
- Partner coordination efforts
- Monitoring the performance of the complaint system

Foreign Labor Certification (FLC) Program

The Foreign Labor Certification program permits U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy when a domestic workforce is not available

Key Responsibilities

- Review and enter agricultural job orders
- Inspect worker housing
- Conduct outreach to H-2A workers

FY 2025 Highlights

- 2,194 workers requested by agricultural employers
- 140 housing inspections conducted by FLC staff

Outreach to H-2A Visa Workers

Purpose: In coordination with employers, outreach workers meet in person with H-2A workers during breaks or off-duty hours to share information.

Key Focus Areas



Confirm working conditions and pay align with the **worker's contract**



Educate workers about the **complaint system**. The SMA oversees the complaint system



Provide a safe opportunity to **raise concerns**

Important Note: H-2A workers cannot change employers without a formal and extensive process.

Worker Protections within MD Labor's Scope

How Complaints Are Handled for the Programs at MD Labor

- MSFW or FLC participants may file complaints related to working or housing conditions
- Complaints are immediately referred to the relevant entity

Escalation When Needed

- Unresolved complaints are referred by the SMA to the appropriate entity
- Urgent cases are routed immediately for prompt action
- Complaints are actively followed until resolved



Thank you!



MARYLAND LEGAL AID
FARMWORKER PRESENTATION TO
THE MARYLAND GENERAL
ASSEMBLY
ECONOMIC MATTERS COMMITTEE
January 20, 2026



**MARYLAND LEGAL AID FARMWORKER
PRESENTATION TO GENERAL ASSEMBLY
ECONOMIC MATTERS COMMITTEE
January 20, 2026**

Table of Contents

- 1. MLA Law Sheet**
- 2. Testimony of Nohora Rivero, Law Graduate**
- 3. Testimony of Cornelia Bright Gordon, Esq.**



PRESENTATION TO ECONOMIC MATTERS COMMITTEE MARYLAND LEGAL AID LAW SHEET

I. Housing and Access Discussion

A. Housing

i. Applicable Law

Migrant and Seasonal Agricultural Worker Protection Act (29 USC §1801 et seq.)

MSPA Regulations (29 CFR §500)

OSHA Housing Standards (29 CFR §1910.142)

DOL Housing Standards (20 CFR §654.404)

ii. Summary

- Annual pre-occupancy (p/o) inspection, safe, clean water supply accessible, structurally sound, finished flooring, 60 sq. ft /occupant, adequate personal storage, screened window, habitable, electricity, lavatory, bathing, handwashing laundry, food preparation areas including refrigeration, lighting, table, chair, sink with hot/cold water, durable fly-tight garbage containers, refuse collection, free of vermin, beds, separate access for escape, first aid.
- State must have written assurance from the grower that the p/o inspection conducted and housing meets the full set of standards. (DOL Regulations)

B. LEGAL AID OUTREACH - Access to Visit, Provide Educational Materials, Inspect Housing

i. Applicable Law

First Amendment, U.S. Constitution

(Freedom of speech is protected)

Article 40, Maryland Constitution

- (Every citizen of the State is allowed to speak – freedom of speech)

Maryland Attorney General Official Opinion (67 Md. Op. Atty. Gen. 4) “

- [We have concluded that] “migrant workers have the legal right to receive guests in their living quarters and to be visited there [by] clergy, medical and other service personnel, lawyers, and the press--subject only to such reasonable and necessary rules established by the camp owners as are designed to protect the owners' legitimate business and security interests and not deny or seriously infringe upon the legal rights of migrants.”

Nohora Rivero and Legal Aid Bureau, Inc., v Montgomery County Md. 259 F. Supp.3rd. 334 (2017)

- Both Farmworkers and Outreach workers like MLA Staff have a First Amendment Right to communicate with each other.

[W]hen when it comes to speech, it takes two to communicate. Migrant farmworkers' right to receive information, which the County Defendants acknowledge, would have little force if it did not also implicitly ... protect providers' right to contact the workers.

- [S]ervice providers such as Legal Aid have a First Amendment right to engage in door-to-door outreach until they are legitimately turned away by the property owners or residents and that Maryland law prohibits farm owners from turning away individuals attempting to speak with farmworkers housed on their property.

C. New Federal Regulation – DOL Interim Final Rule on Adverse Effect Wage Rate Methodology. 20 CFR 655.120 (Eff. 10/2/2025)

- i. Applicable Law - 20 CFR § 655.120 (Eff. 10/2/2025)
 - The DOL estimates that the new rule will cut farmworker wages by an average of \$2.46 billion per year over the next 10 years, totaling \$17.29 billion. This rule drastically reduces farmworker wages and transfers some housing costs to H-2A workers.

- ii. Summary

Adverse Effect Wage Rate Overview

- When the H-2A temporary agricultural work visa was created, Congress created safeguards to ensure the program would “not adversely affect the wages and working conditions of workers in the United States similarly employed.” The Adverse Effect Wage Rate (AEWR) is the minimum hourly wage paid to people working under the H-2A temporary agricultural visa program (H-2A workers) as well as any U.S. workers in corresponding employment. This wage is designed so that U.S. agricultural workers are not undercut by foreign competition and that employers hire available domestic

workers. Employers are required to pay the highest of the AEWR, the state and federal minimum wage, the agreed-upon collective bargaining agreement rate, or an applicable prevailing wage.

https://api.farmworkerjustice.org/uploads/AEWR_Rule_Fact_Sheet_2025_12_01_4d6cf18afc.pdf.

- Changes Made in the Revised 2025 Adverse Effect Wage Rate Methodology
- The AEWR will now be calculated using the DOL's Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) survey. The OEWS uses the government's Standard Occupational Classification (SOC) system to classify jobs based on the required duties. Each SOC code that applies to H-2A workers has its own AEWR according to OEWS data. The 2025 AEWR Rule creates two skill levels, and therefore two different wages, for each AEWR. Additionally, the 2025 AEWR Rule newly allows for a 1 Admission of temporary H-2A workers, 8 U.S.C. §1188(a)(1). [D]ownward housing adjustment, wherein the cost of housing can be deducted from the hourly AEWR rate for H-2A workers. Starting in 2026, the AEWR will only be published once a year, around July 1. *Farmworker Justice Fact Sheet | November 2025* | www.farmworkerjustice.org; https://api.farmworkerjustice.org/uploads/AEWR_Rule_Fact_Sheet_2025_12_01_4d6cf18afc.pdf.

The Underlying Data: Farm Labor Survey vs Occupational Employment and Wage The Underlying Data: Farm Labor Survey vs Occupational Employment and Wage Statistics Survey.

- Before the 2025 AEWR Rule, the AEWR was calculated using data from the USDA's Farm Labor Survey (FLS). The FLS collected data from roughly 16,000 farms and ranches each year on multiple subjects, including the number of hired farmworkers, the gross wages paid to workers, and the total number of hours worked. The survey, which had been used for decades, was abruptly discontinued in August 2025. Going forward, the DOL plans to use the OEWS survey for the field and livestock occupations previously measured by the FLS. The OEWS compiles broad wage information from a wide variety of industries. Under the 2023 AEWR Rule (which was vacated by a court in August 2025), the OEWS also set the AEWR for non-range H-2A workers for whom the FLS did not provide a wage. The OEWS, however, does not currently cover most agricultural industries. Rather, it covers farm labor and agricultural support service jobs that are generally not performed on farms, such as farm equipment mechanics. Currently, most OEWS agricultural wage data is from farm labor contractors, who tend to pay lower wages, skewing the averages lower than what other people in similar roles are paid. The 2025 AEWR Rule requires the OEWS to add farm employers to the survey pool in 2026, but that mandate will face significant obstacles because many farms are exempt from unemployment insurance, and the OEWS survey pool is drawn from businesses that participate in state unemployment programs.
- [T]he DOL failed to address the adverse effect on U.S. workers employed in non-H-2A jobs. The Department's methodology change will also negatively impact other

workers working in non-H-2A agricultural jobs, the majority of whom are documented. Many states, including Texas, California, Michigan, Oregon, Washington, Arizona, have thousands of domestic agricultural workers who often work year-round in seasonal and permanent employment. NAWS data shows that there are many U.S. workers who are currently working in agricultural jobs and are citizens or are non-citizens with work authorization. As mentioned above, NAWS found that the majority (58%) of agricultural workers in the U.S. are authorized to work.
https://api.farmworkerjustice.org/uploads/AEWR_Rule_Fact_Sheet_2025_12_01_4d6cf18afc.pdf

- This change in Adverse Effect Wage Rate methodology will unlawfully directly adversely impact the wages and working conditions of these workers. The drastic decrease in the cost of participating in the H-2A program due to the tremendous wage decrease will cause more employers to start using the H-2A program.
https://api.farmworkerjustice.org/uploads/AEWR_Rule_Fact_Sheet_2025_12_01_4d6cf18afc.pdf

In Maryland, if the farmworkers are paying a portion of their wages for housing, the new rule might transform farmworkers into tenants, with all the rights and protections available in landlord tenant law.

In addition, the new rule might cause a negative effect on non-visa, U.S. workers, due to the anticipated downward impact on pay rates.



Opening Statement

Good afternoon, Chair and Members of the Committee.

My name is Nohora Rivero, and I work with Maryland Legal Aid serving farmworkers for 33 years across the entire state. Over the last five years, we have visited 1,154 camps and talked to approximately 1,500 farmworkers. I am here today to share concerns regarding **housing conditions provided to H-2A and seasonal farmworkers**, conditions that fall short of **federal and state legal requirements** and directly impact on workers' health, safety, and dignity.

When I began this work, my first visit was to Westover in Somerset County, where I met farmworkers returning “home” after long days working under the sun. Their housing was one extremely small space that served as both a bedroom and a kitchen. That experience stayed with me and continues to shape my advocacy.

While improvements have occurred, housing for farmworkers—who remain invisible despite their essential role in Maryland’s agricultural economy—continues to fall short of basic legal and humane standards.

Farmworkers are essential to Maryland’s agricultural economy. Federal law recognizes this by requiring that employers provide **safe, sanitary, and properly maintained housing**. Unfortunately, the conditions we continue to observe demonstrate a troubling pattern of **insufficient maintenance, overcrowding, and restricted living conditions**.

Insufficient Maintenance and Structural Hazard

During recent visits, we observed housing units with **serious maintenance deficiencies**. In one residence, a **substantial portion of the ceiling was missing**, exposing the interior and covered only with **black plastic**. This condition is inconsistent with federal law requiring housing to be **structurally sound, weather-tight, and maintained in good repair**, as required under 8

U.S.C. § 1188(c)(4), 20 CFR § 654.404, and 29 CFR § 1910.142. Maryland regulations similarly require housing to be maintained free of hazardous conditions under **COMAR 09.12.54**.

Such conditions expose workers to moisture, mold, pests, and temperature extremes, creating clear health and safety risks.

Trip Hazards and Unsafe Flooring

We also documented **loose and uneven carpeting and creaking floors**, creating clear **trip and fall hazards**. OSHA standards require floors in labor housing to be **smooth, durable, and maintained in safe condition** under **29 CFR § 1910.142(b)(1)**. These hazards are particularly concerning given that workers return to these homes exhausted after long workdays, increasing the risk of injury.

Overcrowding and Lack of Privacy

Approximately **35 percent of the housing units visited were overcrowded**. We observed workers sleeping in **living rooms and hallways**, and dining rooms divided by **curtains** to create makeshift sleeping areas. This severely limits space for sitting and relaxing. The living and sleeping areas provide less than 50 square feet per person.

Federal regulations under **29 CFR § 1910.142** and **29 CFR Part 500, Subpart D**, as well as **COMAR 09.12.54**, establish **minimum space and occupancy standards** that are not being met.

These overcrowded conditions also result in a **lack of privacy**, undermining basic dignity and rest, which are essential to workers' health and productivity.

Inadequate Insulation, Temperature Control, and Drafts

In at least one mobile home, we observed **inadequate insulation**, making the dining and living areas **unbearably hot during the day and uncomfortably**

cold at night. We felt drafts through **thin glass windows and poorly sealed doors.** OSHA's Temporary Labor Camp standards require **adequate heating, insulation, and ventilation** under **29 CFR § 1910.142(b)(8)**, and H-2A regulations require housing to be safe and in good repair under **20 CFR Part 655.**

These conditions increase humidity, limit ventilation, and contribute to respiratory and other health risks.

Insufficient Storage for Food and Personal Belongings

We also found **insufficient storage space** for food and personal items. Farmworkers store the groceries on the floor, on the counters, and on the dining table, eliminating space for dining. They also keep bottles of water in the living room, which limits the available kitchen space and affects safe cooking. Regarding personal items, farmworkers keep their belongings in the suitcase.

It is difficult for workers to **store groceries safely and maintain sanitary conditions.** Federal H-2A regulations require adequate food storage and housing maintenance under **20 CFR §§ 655.122(h) and 655.135(f)**. These housing sites do not meet these standards.

Restricted Outdoor Access and Freedom of Movement

In one hotel used to house farmworkers, residents are **not allowed to remain outside their rooms or near the building.** If they wish to get fresh air, they are required to **leave the premises entirely and walk away from the property.** This restriction limits workers' **freedom of movement and access to safe outdoor space**, raising concerns under the **Migrant and Seasonal Agricultural Worker Protection Act (MSPA)** and federal housing standards that require safe access and humane living conditions.

Barriers to Outreach and Oversight

Finally, in some housing areas, **“No Trespassing” signs** and restricted access prevent outreach workers from visiting farmworkers and verifying whether housing meets legal standards. These barriers undermine **monitoring, enforcement, and workers’ ability to receive information about their rights**, contrary to the intent of **MSPA and federal housing inspection requirements**.

Closing and Recommendations

These conditions are **not isolated incidents**. They reflect systemic gaps in **oversight, enforcement, and accountability**. Farmworkers who sustain Maryland’s agricultural economy should not be forced to live in unsafe or degrading conditions.

We respectfully urge the Committee to:

1. Strengthen **enforcement of existing federal and state housing standards**.
2. Ensure **regular, meaningful inspections** of farmworker housing.
3. Protect **access for outreach and legal service providers**.
4. Support measures that promote **safe, dignified housing** for all farmworkers.

Thank you for the opportunity to share this testimony and for your commitment to protecting the workers who feed our state.



TESTIMONY OF CORNELIA BRIGHT GORDON

HOUSING

- Annual pre-occupancy (p/o) inspection, safe, clean water supply accessible, structurally sound, finished flooring, 60 sq. ft /occupant, adequate personal storage, screened window, habitable, electricity, lavatory, bathing, handwashing laundry, food preparation areas including refrigeration, lighting, table, chair, sink with hot/cold water, durable fly-tight garbage containers, refuse collection, free of vermin, beds, separate access for escape, first aid.
- State must have written assurance from the grower that the p/o inspection conducted and housing meets the full set of standards. (DOL Regulations)

ACCESS

- **ACCESS TO VISIT, PROVIDE EDUCATIONAL MATERIALS, INSPECT HOUSING**

Applicable Law

First Amendment, U.S. Constitution
(Freedom of speech is protected)
Article 40, Maryland Constitution

- migrant workers have the legal right to receive guests in their living quarters and to be visited there [by] clergy, medical and other service personnel, lawyers, and the press.

- Both Farmworkers and Outreach workers like MLA Staff have a First Amendment Right to communicate with each other.
- [W]hen when it comes to speech, it takes two to communicate. Migrant farmworkers' right to receive information, which the County Defendants acknowledge, would have little force if it did not also implicitly ... protect providers' right to contact the workers.
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CDM's Defense Committee members

Housing for Migrant Workers in Maryland



Our work

Founded in 2005, **Centro de los Derechos del Migrante** (CDM) works across borders in Mexico and the U.S. to ensure migrant workers have the information, tools, and power to improve their working conditions.

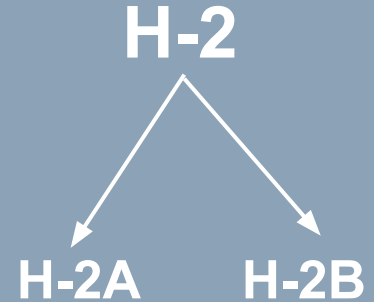
We collaborate with migrant workers to build worker power, advocate for fair labor migration policies, and ensure that borders do not stand in the way of justice.



KYR community session in Hidalgo, Mexico, 2022.

H-2 or guest worker programs:

Temporary visa programs let employers hire people from other countries for a short time to do specific jobs, like agricultural work, when workers are needed. After the job is done, workers return to their home country.



H-2 programs:

H-2A — agricultural

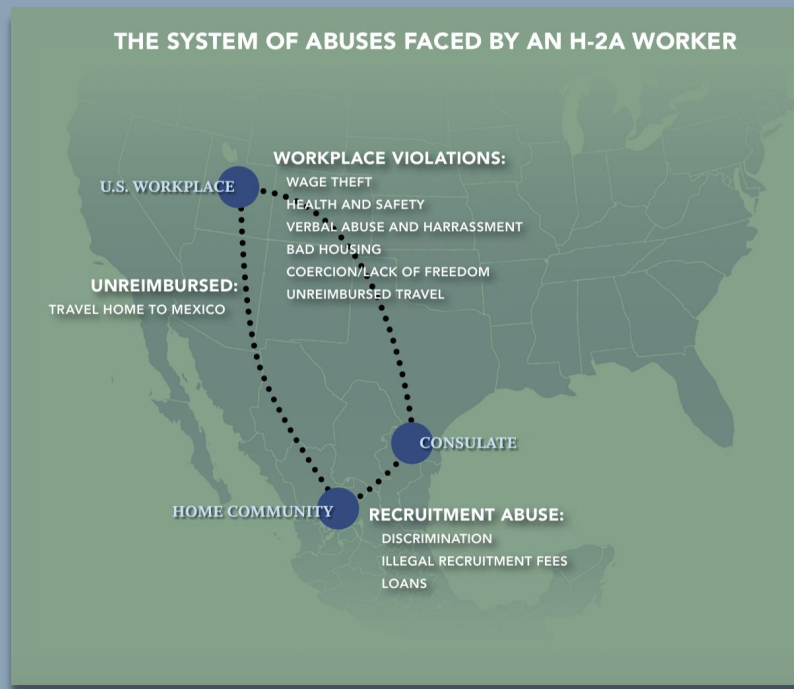
- Uncapped - unlimited number of visas
- Workers' rights include disclosure, wages, transportation, **free housing**
- Access to Legal Services Corporation-funded legal aid

- **H-2B — non-agricultural** (seafood, landscaping, carnival/fair, hotel, etc.)
 - Capped — limited number of visas issued annually
 - Workers' rights include disclosure, wages, transportation.
 - Workers have to pay for housing.
 - Excluded from LSC-funded legal support.



H-2 programs: fundamentally flawed

- Employer-controlled
- Employer-driven debt (fees, pagarés - promissory notes-)
- Labor trafficking
- No right to return or path to permanence
- Wage theft and health and safety issues



Economic Incentives and AEWR

Impact

Limiting production applies only to H-2A workers, not local “corresponding” workers.

- Employers incentivized to hire H-2A workers, undermining wage protections intended by the AEWR.
- Impact:
 - Increased demand for H-2A workers may exacerbate housing shortages.
 - Without adequate inspections, living conditions worsen.



Housing Deduction Violations

H-2A rules require free housing for workers.

- Some employers charge workers, violating program rules.
- The new AEWR rule housing deduction undermines workers' ability to relocate and integrate into the community.

Impact: Strips workers of a codified right, creating financial and personal hardship.

Restrictions on worker mobility:

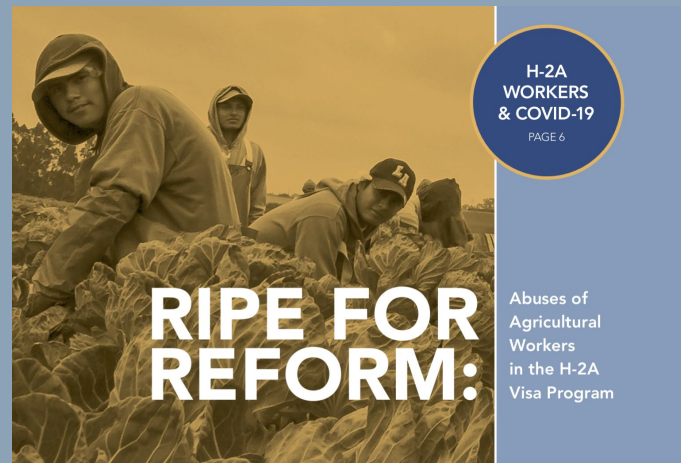
- Most workers live in employer-provided, often isolated housing.

Employers control: housing rules, visitors, and movement.



Conditions in Employer-Provided Housing

- Problems reported:
 - Severe overcrowding: 45% lived in overcrowded and/or unsanitary housing conditions.
 - Workers forced to sleep on floors or share beds.
 - Poor facilities: non-working kitchens/bathrooms, rats, bedbugs, poor ventilation, extreme heat.
- Inspections Are Rare

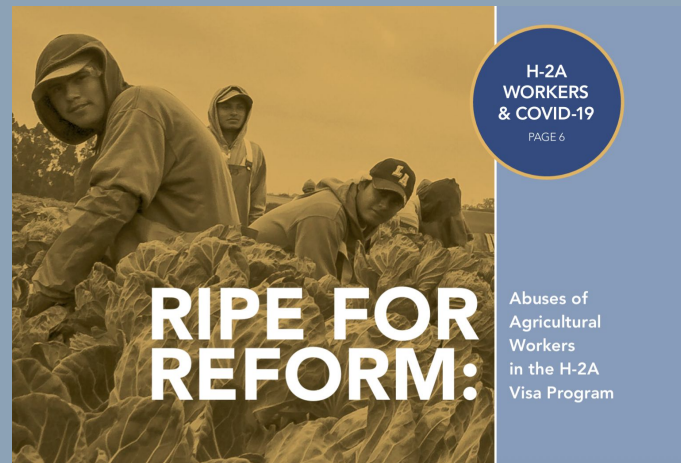


Available [here](#).

Conditions in Employer-Provided Housing

H-2A housing inspections

- State Workforce Agency (“SWA”) in charge of inspecting before approving H-2A job certification
- SWA in charge of ensuring the H-2A housing meets applicable standards under H-2A regulations
- H-2A workers can contact MDOL for housing complaints.



Available [here](#).

Crab pickers (H-2B) on the Eastern Shore of Maryland

Housing conditions

- Overcrowded (ex: 21 workers being housed in a 3-bedroom house); limited access to single restroom and shared kitchen
- Poor conditions

Housing deductions for rent

- H-2B workers are subject to deductions for housing costs - even when they aren't working many hours
- Some workers report collectively paying upwards of **\$4,320** in monthly rent for a 3-bedroom house

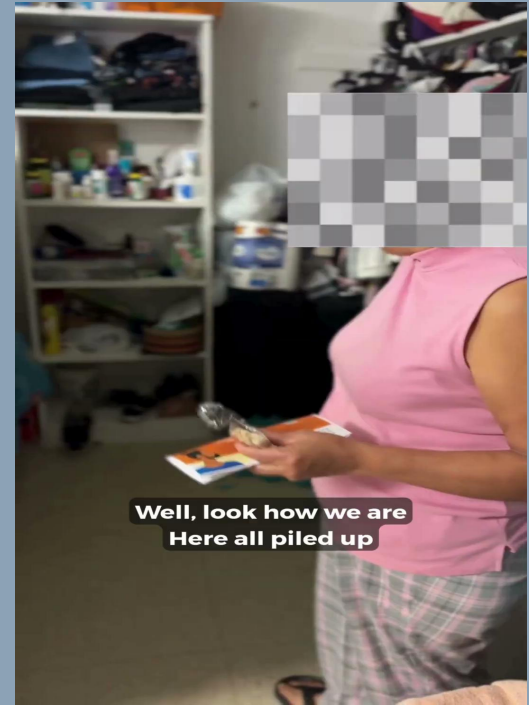


Eastern Shore crab workers, 2021.

Crab pickers on the Eastern Shore of Maryland

Retaliation concerns

- Because of the nature of the H-2B program, workers are reluctant to speak up. If their employer fires them, workers are often evicted immediately and must leave the country within 60 days.



Well, look how we are
Here all piled up

H-2B worker in Maryland demonstrates living conditions in her single bedroom, where she and 7 coworkers sleep.



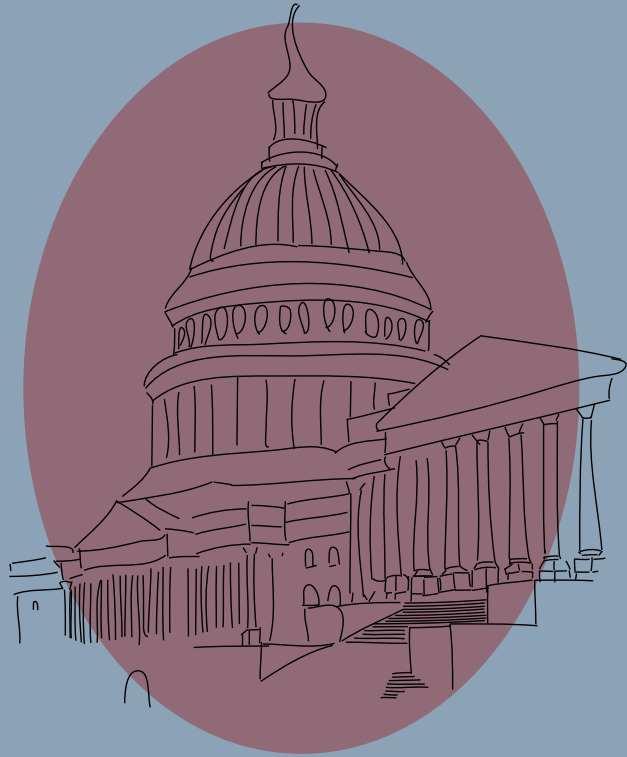
Breaking the Shell

Report that examines the conditions migrant worker women face in the H-2B program as crab pickers in Maryland's eastern shore

Available [here](#).

BREAKING THE SHELL:
HOW MARYLAND'S MIGRANT CRAB PICKERS
CONTINUE TO BE "PICKED APART"

Congress



Bipartisan legislative efforts to expand programs:

- Expand H-2A to year-round (open to other industries)
- Create H-2B loopholes for certain industries, including seafood
- Little to no focus on worker protections

Overcrowding and overall conditions in migrant worker housing are likely to worsen if programs are allowed to expand exponentially.

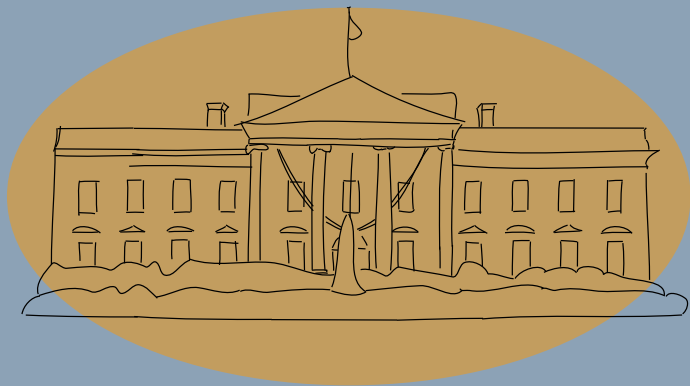
Administration

Regulatory actions:

Push to expand, uncap, deregulate H-2 programs, privatizing labor migration

Rescission of protections that would have strengthened workers' right to guests in employer-provided housing – this is one of the few ways that workers can access legal and health services

Changes that lower H-2A wages, undermine free housing for H-2A workers.



Thank you!

Ricardo Ortiz
ricardo@cdmigrante.org



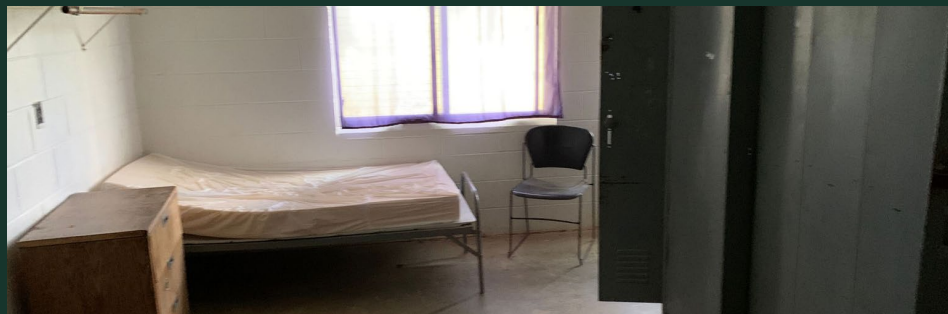


Photo credit: RESPIRAR Project

RESPIRAR Project

Research Employing Environmental Systems and Occupational Health Policy Analyses to Interrupt the Impact of Social and Structural Relationships on Agricultural Workers and Their Respiratory Health

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University of Michigan School of Public Health*

*Briefing for House Economic Matters Committee
Maryland General Assembly
January 20, 2026
Annapolis, MD*



National Institute of Environmental Health Sciences
Your Environment. Your Health.



RESPIRAR
SUPPORTING FARMWORKERS

Disclosures

The opinions, findings, and conclusions expressed in this material are those of the author(s) and do not necessarily reflect the views of our funders.

We have no financial conflicts of interest to report.

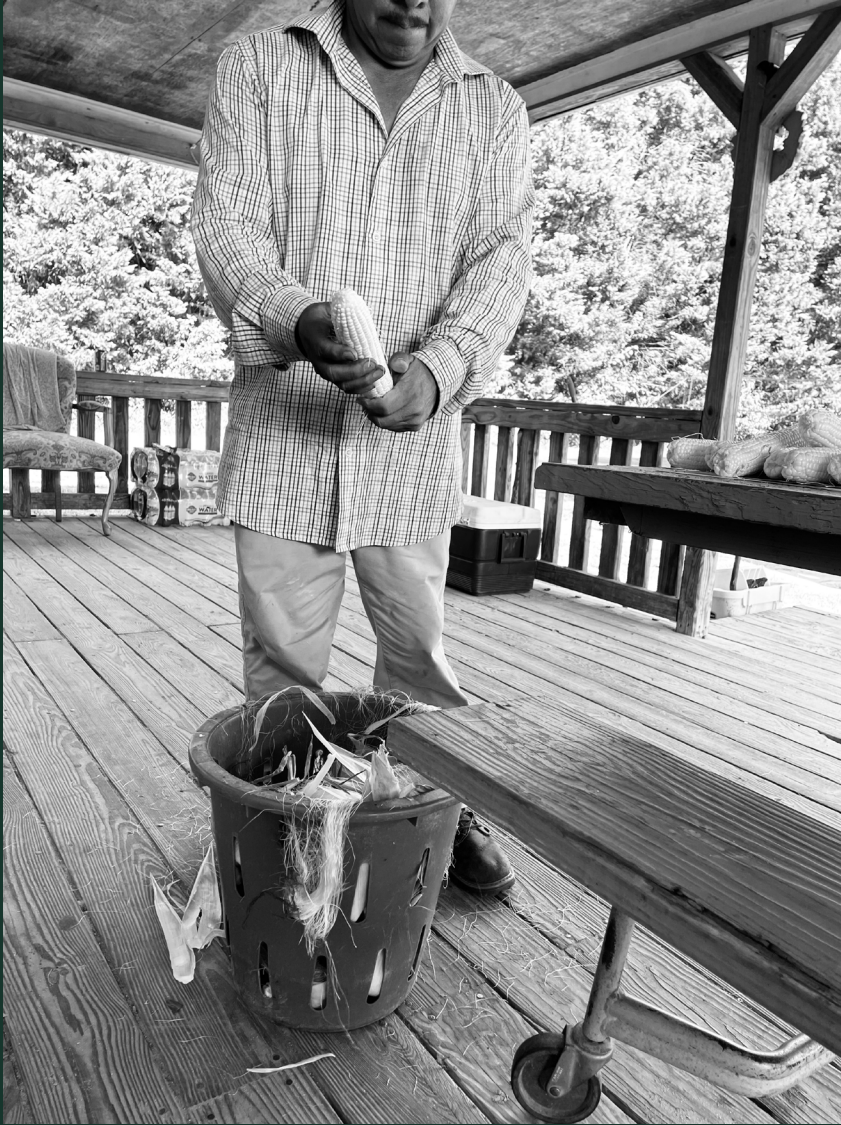
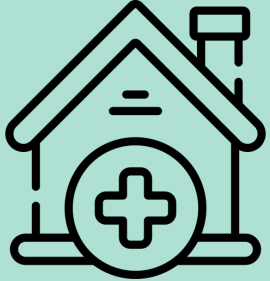


Photo credit: T. Levell-Young

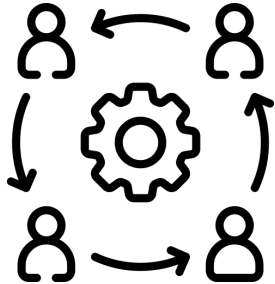
- Background
- Preliminary Results
 - RESPIRAR Field Study
 - Analysis of MD DOL housing inspections
- Discussion

RESPIRAR Project Aims



Aim 1

Evaluate the impact of MSFW housing characteristics and indoor air quality on detection of respiratory viruses and respiratory health among farmworker populations on the Eastern Shore, MD.



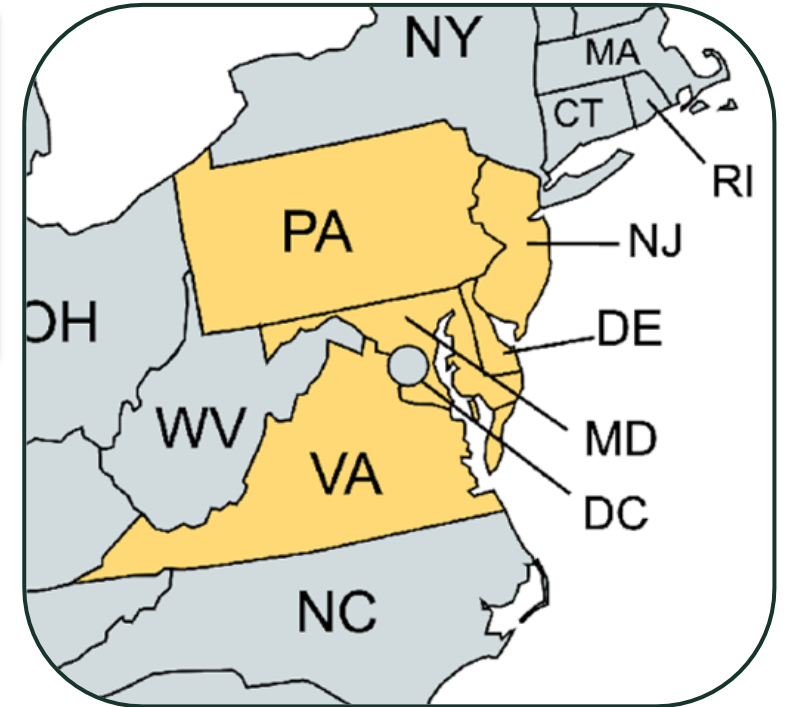
Aim 2

Characterize how diverse stakeholders in the Mid-Atlantic states perceive and experience labor and occupational health and safety regulatory responses to infectious respiratory disease risk among farmworkers using a community-based system dynamics approach.



Aim 3

Evaluate the influence of state laws and policies for farmworker health protections against respiratory health risk across selected agricultural states nation wide.



Location: Maryland, Delaware, New Jersey, Pennsylvania and Virginia

ABOUT THE PARTICIPANTS

Farmworkers throughout Maryland's Eastern Shore participated in our project between May and October 2023 and 2024



135

PARTICIPANTS

completed surveys and nasal swab collections.



82%

MARRIED

Ninety-one farmworkers were married.



48%

VETERAN SEASONAL FARMWORKER

28 farmworkers have been returning for seasonal work in Maryland for 8+ years.



10%

WOMEN

Thirteen participants were women.



90%

MEN

one hundred twenty-two participants were men.



44

YEARS-OLD

was the average age of participants.



82%

MEXICAN

One hundred ten workers came from Mexico.



16%

HAITIAN

Twenty-one workers came from Haiti.



14

FARMWORKER HOUSING LOCATIONS

in Maryland's Eastern Shore participated.

Wage and Work Characteristics



- 67% of study participants were paid \$16/hr or more
- 1.5% reported being paid well below Maryland's \$15/hr minimum wage at \$7.25 - \$7.99/hr
- 47.4% study participants worked on nursery and landscape plantings
- 28.1% worked with watermelon crops

Housing Characteristics

- 67% lived in labor camps
- 24% lived in single-family houses
- 4.4% lived in trailers/mobile homes
- 3.7% lived in motels
- 96% of housing was owned, controlled and provided by the employer
- 3.7% reported that they pay for housing

Unpublished results. Please don't cite or quote.



Photo credit: D. Payne-Sturges

Housing Amenities

- 95% of participants had hot and cold water, toilets, shower/tub and refrigerators
- 25% had a stove
- 68% reported having a hot-plate
- 30% had central air conditioning
- 56% had AC window units
- 56% had fans
- 67% reported having laundry washing machine
- 51% had dryer

Unpublished results. Please don't cite or quote.

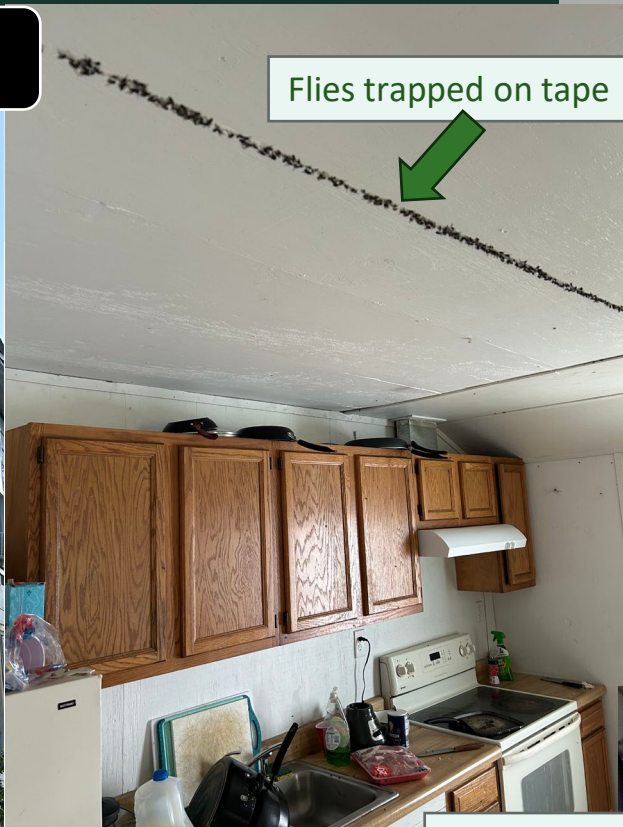


Photo credit: D. Payne-Sturges

Housing Quality



Photo credit: D. Payne-Sturges and S. Hernandez



Flies trapped on tape



Do Not Drink The Water

No Tomas el Agua

pa bwè dlo a



Extensive mold



Analysis of MD DOL H-2A Housing Inspections

Approach

- PIA request
- 188 inspection reports, 2018 - 2025
- 73 unique H-2A farmworker housing locations
- 10 farm operations

General Trends

- 78% of reports receive approval by DOL despite 38% had items that did not meet ETA criteria
- Violation letters often cited **basic facilities** (e.g. laundry, bedding, kitchens) and **site structure** (e.g. rooms, foundation).
- The most unmet criteria from inspection records were “**pending drinking water testing documents**”, **site** issues, and broken window screens

“The 3rd toilet is broken... **allowing the toilet to leak** and damage the underlying floor.” (MD DOL2023)

Example of cleanliness deficiency/mold presence:
Violates OSHA.142(a)(3)
and ETA654.404;
OSHA.142(f)(6) and
ETA654.412;
OSHA.142(f)(2)
Health risk: respiratory
illness and allergen
exposure to mold.

“**Excessive amount of rodent excreta** on top of mattresses... and employees’ personal belongings.” (MD DOL 2021)

Analysis of MD DOL H-2A Housing Inspections

Quality of Inspection Reports

- **54%** inspections were handwritten, making information difficult to read.
- **Inspection completeness** with thorough inspector comments, pictures, and all required documents **varied by year, site, and inspector.**
 - 65% of reports did not list age of housing
 - ETS or OSHA standard used not indicated
 - 1 out of 7 inspectors routinely issued official warning letters
 - signature of authorized official approval often missing

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
EMPLOYER FURNISHED HOUSING AND FACILITIES

1. EMPLOYER'S NAME AND ADDRESS
[Redacted] E
HURLOCK MARYLAND 21643

2. HOUSING LOCATION
Hurlock MD 21643

3. HOUSING DESCRIPTION
One story, bunk house

4. SLEEP ROOMS (No. & Measure)

	a. Dormitory Type				b. Family Type			
	1	2	3	4	1	2	3	4
Length	23'							
Width	23'							
Ceiling Height	8'							
Square Feet	535							
No. of Rooms	1							
No. of Beds, Single	11							
No. of Beds, Bunks, Double								

5. CAPACITY (Adults)

6. REGULATIONS COMPLIANCE ("X" in proper box)

	Yes	No
Water	X	
Electricity	X	
Site	X	
Screening	X	
Heating	X	

7. FACILITIES (Number of each)

	Flash Toilets	Potty	Urinals	Lavatory or Washbasin	Showerheads
Bathrooms					
Movable Bathrooms					
Laundry Machines					
Fixed Laundry Tubs					
Movable Laundry Tubs					
Cook Stoves					
Refrigerators					
Garbage Containers					
First Aid Kits					
Fire Extinguishers (No. & Type)					

8. COMMENTS
minor pest Control Employer will provide Remediation

9. EMPLOYER'S CERTIFICATION:
I CERTIFY THAT I have reviewed the housing regulations of the U.S. Department of Labor, ☒ OSHA ☒ ETA, and that the housing described herein ☒ meets ☐ does not meet such standards. I hereby authorize representatives of the State Employment Service office and/or Employment and Training Administration regional office to inspect the above housing any reasonable time.

Employer's Signature: [Redacted] Typed Name and Title: Owner Date: 3-8-21

10. HOUSING INSPECTED BY:
Signature of Authorized Official: [Redacted] Typed Name and Title: Carlos Turcios Job Service Specialist Date: March 8, 2002

11. APPROVAL: Housing approved for occupancy by workers recruited Interstate
Signature of Authorized Official: [Redacted] Typed Name and Title: [Redacted] Date: [Redacted]

ETA 33

Discussion



- MSFWs on the Eastern Shore are forced to live in poor quality housing
- Content, quality and impact of DOL H-2A housing inspections could improve
- Drinking water quality seems to be an underappreciated farmworker health issue by state regulators and employers
- Housing requirements for migrant farmworkers are governed by a complex set of federal, state and local regulations, including the MSPA and the INA



RESPIRAR
SUPPORTING FARMWORKERS

RESPIRAR Team



Devon Payne-Sturges



Stephanie Hernandez



Raul Cruz-Cano



Jessica Culley



Jean-Frandy Philogene



Leila Borrero



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Maryland Farmworker Housing Regulation:
Disorder, Complexity, Unenforceability, and Elevated Health Risks*
By Marley S. Weiss**#

Introduction

Migrant farmworkers, many of them lawfully present in the U.S. under the H-2A visa program¹ are often crammed into woefully substandard housing while planting, tending, and harvesting crops, to maintain our food supply.² This is documented fact here in Maryland, as well as elsewhere.³ The legal rules governing the housing their employers provide to them entails multiple levels and agencies of governments – federal, Maryland, and local. The complexity of these overlapping and intersecting bodies of regulation makes them impenetrable for most, if not all the stakeholders in the agricultural field. Shockingly, for example, neither the federal

* A previous draft of this document was produced under the auspices of the project entitled "Research Employing Environmental Systems and Occupational Health Policy Analyses to Interrupt the Impact of Structural Racism on Agricultural Workers and Their Respiratory Health (RESPIRAR)," supported by the National Institute of Environmental Health Sciences (award R01ES034303), of which the author was co-Principal Investigator. Her relationship with the project terminated in 2024. The content of this presentation is solely the responsibility of the author and does not necessarily represent the official views of the funding agencies.

** Professor of Law, University of Maryland Francis King Carey School of Law.

This testimony is submitted on behalf of the Marylanders for Food & Farm Worker Protection (MFFWP) Coalition, a coalition of nonprofit organizations and worker and environmental advocacy organizations, as well as on Professor Weiss' own individual behalf. Her university affiliation is presented for informational purposes only; the testimony in no way is intended to reflect any position taken by the University of Maryland Carey School of Law.

¹ Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

² See, e.g., American Public Health Association, Policy No. 20118 (Nov. 1, 2011), Improving Housing for Farmworkers in the United States Is a Public Health Imperative, *available at* <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/09/10/32/improving-housing-for-farmworkers-in-the-united-states-is-a-public-health-imperative>; Wenson Fung, et al., (JBS International, under contract for the US Dept. of Labor), Findings from the National Agricultural Workers Survey (NAWS) 2021-2022: A Demographic and Employment Profile of United States Farmworkers 23-24 (2024) (in 2021-2022, 29% of migrant farm workers and 35 % of unauthorized workers lived during agricultural season in overcrowded housing); Amanda Gold, et al., (JBS International, under contract for the US Dept. of Labor), Findings from the National Agricultural Workers Survey (NAWS) 2019-2020: A Demographic and Employment Profile of United States Farmworkers 20-21 (2022) (in 2019-2020, 39% of migrant farm workers and 41 % of unauthorized workers lived during agricultural season in overcrowded housing), *available at* https://www.dol.gov/sites/dolgov/files/ETA/publications/ETAOP2022-16_NAWS_Research_Report_16_508c.pdf; Sarah A. Quandt, et al., *Farmworker Housing in the United States and Its Impact on Health*, 25 New Solutions: A Journal of Environmental and Occupational Health Policy, No. 3 (2015).

³ See the testimony of other panel members at this briefing.

government nor Maryland has issued regulations requiring improved ventilation, prior to, during or after the COVID pandemic,⁴ the most obvious area requiring improvement to protect the health of these “essential” workers.

Migrant farm workers are legally entitled to employer-provided housing, although the details differ depending on the legal source of the obligation and certain employer choices about the type of housing they provide.⁵ These rules are crucial in providing a measure of occupational health protection in the face of the well-documented, elevated levels of exposure and infection of agricultural employees by Covid-19, influenza, and other infectious, respiratory diseases. Yet, with few exceptions, government agencies have left the criteria for farm worker housing unchanged as the pandemic disease rampaged through the country; mandates pertaining to adequacy of ventilation, in particular, have remained unaddressed. Even the handful of states that have addressed unique aspects of farm worker exposure to influenza and Covid-19 -- with few exceptions – have failed to modify housing requirements to protect the health of a population overwhelmingly dependent on employer-provided housing.

The situation would not be so dire, were the existing set of housing rules comprehensive and comprehensible. Instead, these rules have been, and remain to this day, a quagmire of

⁴ The federal government did little to address the effects on worker health throughout most of the Covid pandemic. *See generally* Emily A. Spieler, *Protecting Essential Frontline Workers in the U.S. during the Coronavirus Pandemic - OSHA, State Regulation and Implications of Federalism*, 56 SUFFOLK U.L. REV. 369 (2023).

⁵ Some nevertheless choose to live in their own housing or housing they have obtained outside of the employer's auspices. *See* Wenson Fung, et al., (JBS International, under contract for the US Dept. of Labor), Findings from the National Agricultural Workers Survey (NAWS) 2021-2022: A Demographic and Employment Profile of United States Farmworkers 23-24 (2024) (in 2021-2022, 29% of migrant farm workers and 35 % of unauthorized workers lived during agricultural season in overcrowded housing); Amanda Gold, et al., (JBS International, under contract for the US Dept. of Labor), Findings from the National Agricultural Workers Survey (NAWS) 2019-2020: A Demographic and Employment Profile of United States Farmworkers at 18-21 (2022) (in 2019-2020, 39% of migrant farm workers and 41 % of unauthorized workers lived during agricultural season in overcrowded housing), *available at* https://www.dol.gov/sites/dolgov/files/ETA/publications/ETAOP2022-16_NAWS_Research_Report_16_508c.pdf.

inordinately complicated, overlapping, and inadequate regulation that takes no account whatsoever of the need to protect farm workers' health by minimizing their exposure to infectious disease⁶ and other housing-related health ailments. Worse still, their enforcement has been all but non-existent. This testimony will outline the present state of affairs, and present suggestions for ameliorating the situation.

The current legal morass is especially unfortunate when both employers and employees in this economic sector are among the least capable of coping with such legal complexity and uncertainty. Many agricultural employers are too small to retain sophisticated legal counsel to guide them through the legal thicket to ensure compliance.⁷ Other obligors, providers of commercial public accommodations or rental housing, used by employers to meet their farm worker housing obligations, similarly often fall below the size threshold where sound legal advice is readily affordable.

The plight of the farm workers is even more extreme. This is a population of exceptionally vulnerable workers, composed largely of workers of color, mostly foreign-born, with native languages other than English, uncertain English-language fluency, and limited literacy.⁸ The first language for many is not Spanish but an indigenous language, or Haitian Creole, greatly

⁶ *See infra*. The standards pertaining to ventilation and air filtration are especially important regarding airborne infectious disease transmission.

⁷ *See, e.g.*, National Agricultural Statistics Service (NASS), US Dep't of Agriculture Farm Labor Survey 20 (May 22, 2024) (ISSN: 1949-0909) (between January 2023 and May 2024, the percentage of agricultural employers employing 50 or more farm workers ranged from 29%-39%; the highest percentage of farms employing 21 or more farm workers throughout this period was 57% percent; thus at all times throughout the period at least 43% of farms employed 20 or fewer farm workers). *See also* USDA Farm Size Data - 2022 - table03November2023 (as of 2022, 76% of all farms had gross sales less than \$50,000, and another 13.5% had sales between \$50,000 and \$250,000).

⁸ JBS International, Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers (September 2023), Research Report No. 17 [hereinafter “Findings from the NAWS”].

complicating efforts by NGOs and governments to provide adequate services.⁹ The composition of this labor force as well as many of the lacuna from the unusual legal labor protections pertaining to it are themselves derived as a legacy of Reconstruction, post-Reconstruction, the Jim Crow era, and the World War II era Bracero program. Many farm workers are undocumented;¹⁰ others are lawfully present in the U.S. on temporary, seasonal worker H-2A visas, which depend on maintaining their job with their agricultural employer. If the workers are fired, they risk being removed by immigration authorities to their home country. This impedes their ability and willingness to report violations to housing and/or labor authorities.

Besides the linguistic impenetrability of information about their legal rights, the question of which agency to turn to for enforcement when substandard housing places their health and comfort at risk is a nearly impenetrable thicket. Among the several agencies and levels of government which may have enforcement authority, there is confusion and finger pointing at each other when it comes to failures to inspect housing and take enforcement measures. The highly vulnerable farm worker population is unlikely to be capable of initiating law enforcement activities in this complicated and confusing situation.

One would expect the regulatory system under these circumstances to be as simple as possible, as intelligible as possible for the ordinary worker. Instead, the regulatory "scheme" – I use that term extremely loosely -- is as complex as possible. It challenges the ability of lawyers and legal academicians to decipher. It leads to confusion among the staff of regulatory agencies

⁹ *Id.* at 16-17. However, many of the Haitian farm workers previously had temporary protected status (TPS), which permitted them to work legally in the U.S. The current administration has rescinded that status, effective February 3, 2026. See <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>.

¹⁰ One recent study found that 58% of farm workers were legally authorized to work in the U.S. *Findings from the NAWs*, *supra* note 8, at 11. In light of recent immigration raids and deportations, however, as well as elimination of temporary protected status and other forms of non-citizen work authorization, the composition of the farm labor force in future years may change significantly.

charged with implementing and enforcing some of its provisions. Moreover, in addition to the substantive incomprehensibility of this body of law, provisions for implementation and enforcement are so opaque as to thoroughly stymie efforts to induce compliance.

This testimony will outline the housing provisions applicable to migrant farmworkers under federal, state and local law, focusing primarily on our state, Maryland, and some of its local governments. It will focus on necessary conditions for prevention and reduction of incidence of respiratory infections through improving housing, a key probable vectors of transmission of airborne viruses, as well as something often regarded internationally as a human right, subject to minimum living standards.

I. Applicability of Housing Requirements for Farmworkers:
 MSAWPA and H-2A Rules

The law regarding employer-provided housing obligations as to farmworkers has the appearance of an extremely complicated, law school issue-spotting, final exam question. Legal regulation varies, depending on whether these workers live more or less permanently in the U.S. or are temporary, foreign-based, seasonal agricultural workers who lawfully work in the U.S. on H-2A visas. The farmer or farm labor contractor may fulfill their legal requirements about housing in either of two ways: (1) by directly providing housing that they own or control, which the law labels “temporary labor camps;” or (2) they may rent regular rental housing or commercial, public accommodations, such as motel rooms. There are legal standards for both types of housing, which overlap as to some elements but differ in other ways. Many of these standards are the same as to

both H-2A temporary seasonal farmworkers workers¹¹ and migrant farm workers residing in the U.S.¹² As to temporary labor camps, details vary, depending upon when the housing was built.¹³

A. Coverage, Exemptions and Exclusions

Some U.S.-resident farm workers permanently reside close enough to their agricultural employment to commute to work from home.¹⁴ The proportion of the farm labor force who live that close to work varies greatly among the states. These farm workers are labelled “seasonal”¹⁵ and deemed to be non-migrant. Although they are mostly covered by the Migrant and Seasonal Agricultural Workers Protection Act (MSPA),¹⁶ there is no employer obligation to provide them with any housing.¹⁷ Family members of the farm owner who work on the farm also are exempt from the housing rules as well as all other MSPA protections.¹⁸ In addition, very small farms are

¹¹ H-2A farm workers are labelled “nonimmigrant” workers because a condition of their visa allowing them to enter the U.S. is that they do not intend to remain permanently; they must enter for a limited time and a limited purpose; in the H-2A worker case, they must enter the U.S. to perform agricultural labor of a temporary or seasonal nature. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)Ia(2023); 29 C.F.R. § 655.103(b). Their admission to the U.S. is controlled by the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 - 1537 (2023), specifically, by Section 218 of the INA, 8 U.S.C. § 1188. Whether lawfully in the U.S. or not, whether authorized to work in the U.S. or not, farm workers residing in the U.S. are farm employees subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. § 1801-1872 (2024). *See id.* § 1802(8)(A) (defining covered “migrant agricultural workers”); *id.* § 1802(10) (defining “seasonal agricultural workers”). H-2A nonimmigrant seasonal farm workers are exempted from coverage under the MSPA. *Id.* § 1802(8)(B)(ii); § 1802(10)(B)(i).

¹² These two categories are mutually exclusive. MSPA defines covered agricultural employees to expressly exclude “any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101(a)(15)(H)(ii)(a) and 1184 of title 8,” (INA Section 101(a)(15)(H)(iii)(a) and INA Section 214). MSPA, 29 U.S.C. § 1802(8)(B). The MSPA regulations use virtually identical language. *See* 29 C.F.R. § 500.20(p).

¹³ *See infra*, comparing provisions under the OSHA regulations and the ETA regulations.

¹⁴ *See, e.g., Findings from the NAWs, supra* note 8, at 11-12.

¹⁵ MSPA, 29 U.S.C. § 1802(10); 29 C.F.R. § 500.20(r) (“seasonal”); 29 U.S.C. § 1802(8), 29 C.F.R. § 500.20(p) (“migrant”).

¹⁶ MSPA, 29 U.S.C. §§ 1801-1872 (2023).

¹⁷ MSPA, 29 U.S.C. § 1802.

¹⁸ MSPA, 29 U.S.C. § 1803(1); 29 C.F.R. § 500.3(a).

entirely exempt from the MSPA, provided they employ no more than 500 “man hours” of farm labor per year; this means their farm worker employees are excluded from coverage of the law, whether they are commuting "seasonal" workers or "migrants."¹⁹ In addition, if the workers are directly employed by a farm labor contractor, and that contractor permanently resides within 25 miles of the location where the farm on which the workers perform work, and within the same state, the contractor is exempt, provided that the contractor works for no more than 13 weeks per year, hence the contractor's farm worker employees are excluded from the MSPA rules.²⁰

Excluding those exemptions, federal law requires agricultural employers to provide housing for their farmworkers, so long as the workers live too far away to be reasonably expected to return to their home on the same day. This requirement applies, regardless of whether the workers reside in the U.S., hence are "migrants" subject to regulations under the MSPA,²¹ or are present as temporary seasonal agricultural workers lawfully employed under the Immigration and Naturalization Act (INA) on an H-2A visa obtained by their employer or labor contractor.²²

No exemptions whatsoever apply to H-2A workers. Provision of housing to the H-2A worker by their employer, labor contractor or farm association is a condition imposed upon the visa-holder in order to obtain the H-2A visa. The Trump administration, however, is considering amending the H-2B regulations to permit the employer to charge the employee the reasonable costs

¹⁹ MSPA, 29 U.S.C. § 1803(2), incorporating by reference Fair Labor Standards Act (FLSA) § 13(a)(6)(A), 29 U.S.C. § 213(a)(6)(A) (2023). *See also* 29 C.F.R. § 500.3(b). A “man-day” is defined as “any day during which an employee performs any agricultural labor for not less than one hour. 29 U.S.C. § 203(u). However, if a farm employer employs any H-2A workers, they will be subject to the H-2A housing rules for those workers. These rules will then also apply for similarly situated American workers.

²⁰ MSPA, 29 U.S.C. § 1803(3)(D); 29 C.F.R. § 500.3(f).

²¹ These workers are covered by the MSPA.

²² INA § 218, 8 U.S.C. § 1188(c)(4).

of the housing provided, unlike the present regulation, which requires the employer to shoulder the housing costs.

B. Who Is Legally Obligated To Provide Legally Compliant Housing?

Whoever obtains the visa under which H-2A temporary workers are permitted to enter and work in the U.S. is legally required to meet the H-2A requirements as to their housing, although as noted, the present administration is considering modifying this obligation.²³ The situation is more complicated, however, under the MSPA. As to migrant workers covered by the MSPA, if the housing meets the definition of "temporary labor camp," the economic actor who owns or controls the labor camp property or facility being used to house the migrant workers is primarily responsible for complying with the housing obligations discussed below. However, the employer and the farm labor contractor, if any, remain liable for ensuring that these obligations are met even when they rent temporary labor camp housing from others.²⁴

The MSPA states that any person who "owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing."²⁵ One might read this language as imposing MSPA compliance obligations even on commercial property owners so long as they are aware that they are renting to farm workers, so long as the property is deemed to be a "labor camp."

²³ Those benefiting from the work performed by H-2A workers, such as farm owner/operators when the labor is supplied by a farm labor contractor or an agricultural employers association, may be deemed to be "joint employers" and secondarily liable.

²⁴ MSPA § 203, 29 U.S.C. § 1823; 29 C.F.R. §§ 500.1(d), 500.70(a), 500.70(d); 500.132.

²⁵ MSPA, § 203, 29 U.S.C. § 1823.

However, if the housing provided is not owned by an agricultural employer, association, or farm labor contractor, and is provided on a *commercial* basis as part of the owner's ordinary business, then that statute also states that the labor camp housing standards do NOT apply. Impliedly, neither the agricultural employer, association, nor farm labor contractor is liable under the statute if the housing provided through the employer is substandard, although no authoritative caselaw establishes this.

Only the minimum health and safety standards applicable to housing for the general public apply to commercial housing. These standards are normally set by local, or failing that, by state law. The minimum federal standards do not apply as to any aspect of the housing for which there exists local or state regulation. However, insofar as both local and state laws setting minimum standards for general public housing are absent, the federal rules for temporary labor camps apply by default.

The commercial housing/public accommodations exclusion is applicable only so long as the housing provided to the migrant agricultural worker is of the same character and provided on the same or comparable terms as that provided to the general public.²⁶ This important qualification appears to restore applicability of the temporary labor camp standards in many instances, although, in practice, it may be very difficult to police.²⁷ Many instances have been encountered of "motel" owners who were housing farm workers in severely cramped conditions and under virtual house arrest, circumstances that appeared to clearly violate the applicable housing standards (as well as

²⁶ 29 C.F.R. § 500.131.

²⁷ A complainant would have to be able to prove that the premises were not being offered to the general public on substantially similar terms (or at all). For migrant workers who are only present in the area for several weeks or months, this requires information about the market offering of their housing during the periods when they are elsewhere.

the federal Trafficking Victims Protection Act²⁸ prohibition against passport confiscation as a means of compelling labor). In the instance encountered by the RESPIRAR project, all indications were that the facilities were never actually rented to or even offered for rent to the general public; they were furnished for occupancy by four farm workers per unit.

C. Who Must Pay for Legally Required Housing?

H-2A workers must be provided their housing free-of-charge by the employer, farm labor contractor, or local farm association, whichever actor holds the visa, although that regulation may be changed in the foreseeable future.²⁹ Non-H-2A, migrant farm workers, *i.e.*, those who live too far away to commute to work, and who work alongside H-2A workers are labelled under the MSPA regulations as "engaged in corresponding employment," and must be provided with similar housing, free of charge.³⁰ However, migrant farm workers who do not work at a farm which also employs H-2A temporary, seasonal farm workers may be required by the employer to pay a reasonable rate for their temporary housing,³¹ not to exceed the employer's actual costs.³² The housing expense may in those cases be offset against the farm worker's paycheck.³³

II. Minimum Standards for Housing, MSAWPA and H-2A Alike: OSHA v. ETA Rules; Local and State Rules for Commercially-Available Housing: The Onset of Hyper-Complexity

²⁸ Trafficking Victims Prevention and Protection Reauthorization Act of 2022, 22 U.S.C. § 7101 *et seq.* In addition, a separate provision, 18 U.S.C. § 1597(a), makes it "unlawful for any person to knowingly destroy, conceal, remove, confiscate, or possess, an actual or purported passport or other immigration document of another individual . . . (3) in order to, without lawful authority, maintain, prevent, or restrict the labor of services of the individual."

²⁹ 8 U.S.C. § 1188(c)(4); 20 U.S.C. § 655.122(d).

³⁰ MSPA, 29 U.S.C. §§ 1821(a)(5); 29 C.F.R. § 500.75(f); INA, 8 U.S.C. § 1188(c)(4); 20 C.F.R. § 655.122(d)(1). U.S. residents working in similar job categories and workplaces with H-2A workers are categorized by the US Department of Labor as "workers ... engaged in corresponding employment."

³¹ MSPA, § 1821(a)(5); 29 C.F.R. § 500.75(f). This is because their employer is only subject to the MSPA, and not to the INA requirements of equal treatment as between H-2A workers and American workers.

³² 29 C.F.R. § 500.1(d).

³³ *Id.*

The federal rules about the minimum health and safety standards for housing are the same for all workers, whether MPSA or H-2A, who are housed in a “temporary labor camp.” The great majority of workers will be placed in housing that was built on or after April 3, 1980, and whose construction was contracted for after March 4, 1980.³⁴ As to that housing, the federal Occupational Safety and Health Act (OSHA) standards³⁵ will apply regarding a series of six “essential” elements.³⁶ Workers placed in labor camps built before the cut-off dates in 1980 are subject to the grandfathered standards of the Employment Training Administration (ETA), a different arm of the U.S. Department of Labor,³⁷ unless the employer opts to be covered instead by the more modern OSHA standards. The older and newer sets of standards are fairly similar, although the OSHA standards are more specific and cover a wider range of housing criteria.

However, commercially available housing or public accommodations have their own standards. Federal regulations incorporate by reference local and state standards for such housing, with federal labor camp standards applying by way of back-up, where neither local law nor state law sets a standard. Examples of the criteria set by the localities on the Maryland Eastern shore, or at the Maryland state level are presented here.

³⁴ These cut-off dates are specified in 20 C.F.R. § 654.401. Facilities constructed before April 3, 1980 or, even if not fully built, whose construction was contracted for by March 4, 1980, receive the benefit of the grandfathered ETA rules unless the owner opts out, in favor of applying the newer, OSHA regulations.

³⁵ 29 C.F.R. 1910 Subpart J.

³⁶ In this testimony, these elements have been re-ordered from the numbering in the regulations, placed in order of decreasing relevance to the spread of airborne, infectious diseases such as Covid-19 and influenza.

³⁷ 20 CFR Part 654, Subpart E (§§ 654.400-654.417).

Maryland’s state standards are set forth in the state’s Minimum Livability Code.³⁸ Most Maryland counties have their own standards, usually labelled the county Minimum Livability Code. This means as to housing other than “labor camps,” under federal law, the law of Maryland and its localities apply. Employer-provided farm worker housing is required to comply with local standards, and where those are lacking, with Maryland state standards.

Maryland county codes qualify as “local” standards for purposes of federal law governing migrant farm worker housing. In a few Maryland counties, there is even more local law, set by cities, towns or other smaller governmental bodies within the particular county. Thus, it is immediately apparent that the legal rules about farmworker housing are highly complex: if the housing provided constitutes a “labor camp,” the federal regulations apply; if there is no county or locality law regulating housing, the Maryland statute applies; if there is county law, it will apply, unless there are more local city or town standards, in which case, they will apply. To the extent that neither Maryland state nor local law provides a housing standard, we return to the federal labor camp standards as a default. Compliance with the local and/or state minimum livability criteria, or where they are lacking, with federal labor camp criteria, is a federal legal obligation, imposed on the employer, but their enforcement is largely left to the state and local governments.

It should be noted that, with few exceptions, neither Maryland state liveability law nor county or local government law is framed with a focus on farmworkers or other migrant worker housing. Rather, these housing criteria mostly are aimed at the regular, general rental housing market and more short term, at the hotel and motel room rental market. Since it is usually employers who identify and provide housing for their temporary farm worker employees, rather than the employees themselves, the situation presents a classic market failure situation. It often is

³⁸ MD Public Safety Code § 12-203 (2024), and regulation issued pursuant thereto.

difficult or impossible for temporary migrant workers to protest squalid, unsanitary, overcrowded housing conditions by refusing to pay the rent or relocating to a different motel or rental unit. State and local regulation of farm worker housing should be differentiated from the more typical commercial rental situations with both substantive standards and enforcement measures designed to address their unique housing needs.

Livability standards vary from county to county. A few local counties have specific requirements for migrant farmworker housing, but most simply use their generally applicable housing liveability standards. There are variations and intricacies as to, for example, density standards (maximum occupancy requirements), as well as enforcement measures, including penalties for violations, and obligations as to abatement of violations and housing repairs. However, when it comes to ventilation and window standards, the language in each Maryland county code is fairly similar.

The next section of this document will review the federal farm worker housing criteria as to the six essential elements, focusing primarily on those aspects most pertinent to the spread of airborne, infectious diseases such as influenza and Covid-19. Because the OSHA standards cover far more housing than do the ETA standards, they will be addressed as to each element first, followed by the rule for housing still subject to the parallel ETA standard, if any. As to each element, the rules applicable to non-labor camp housing, commercially available to the general public, will then be addressed, using counties on the Eastern Shore of Maryland to illustrate local law. This testimony will then present some comparisons between the federal standards and Maryland state and local law. Finally, it will make recommendations for improving the present legal scheme.

A. OSHA and ETA Rules for Temporary Labor Camps; Maryland Parallel Rules

The OSHA housing elements include:

- (1) Minimum space rules and other rules about configuration of housing;
- (2) adequate and sanitary toilet, laundry, handwashing and bathing facilities;
- (3) garbage containers and refuse disposal;
- (4) cooking and kitchen facilities unless the employer provides three proper meals per day;
- (5) heating, cooking and water heating equipment; and
- (6) sufficient lighting.

This testimony discusses these provisions in order of significance regarding farm worker exposure to Covid, influenza and other infectious disease, grouping these categories more functionally than do the texts of the applicable regulations, and focusing on the most important details.³⁹ In particular, recent scientific studies strongly suggest the significance of square footage per occupant and ventilation in preventing the spread of respiratory infectious disease. This element of the OSHA and ETA regulations, therefore, is prioritized here as posing the gravest and most widespread health hazard to workers.

(1) Minimum space and ventilation rules

The housing configuration provisions address housing features of the greatest significance to infectious disease prevention, as well as some less important requirements. Minimum space per occupant (or maximum density) as well as ventilation rules are particularly important. The housing configuration standards also include requirements about the site and structure, proximity to livestock, material composition of exterior and interior.

³⁹ All details may be found in the regulations cited *supra*. A simplified summary may be found in Wage and Hour Division, U.S. Department of Labor, Fact Sheet # 26G: H-2A Housing Standards for Rental and Public Accommodations, pp. 2-3. In the remainder of this section, parallel provisions of the ETA standards are cited for each requirement following citation to the pertinent OSHA regulation. Where absent, the lack of such requirement in the ETA standard is noted. Where the ETA standards differ from those of OSHA, that is separately noted in text.

(a) Minimum Space and Maximum Occupancy

In any sleeping area, the OSHA regulations impose a minimum square footage requirement: at least 50 square feet of space per person, ceilings at least 7 feet high, and beds at least 36 inches apart on all sides, and at least 12 inches off the floor. If double-deck bunk beds are provided, they must be at least 48 inches apart in all directions and the upper and lower bunks must be at least 27 inches apart.

The ETA rules are less stringent: if the facility is a "family unit," beds must be single beds and each occupant must have at least 50 square feet of floor space; if the facility is a "dormitory," double bunk beds may be used, in which case each occupant must have at least 40 square feet of floor space. At least half the floor area must have ceilings at least 7 feet or higher.⁴⁰

In addition, the OSHA standards state that if the workers cook, live and sleep in the same single room, then each occupant must be provided with at least 100 square feet of space; if the ETA standards apply, then there must be at least 60 square feet of space per occupant. Both the OSHA and the ETA regulations also require that workers be provided with wall lockers or other adequate storage facilities for hanging clothes and other storing personal items.⁴¹

In Maryland, several counties have no density rule at all in their local liveability standards: Caroline, Cecil, Dorchester, Kent, Talbot and Wicomico. The Maryland State Liveability Code⁴² contains no provisions setting a minimum space or maximum occupancy standard for housing. Because neither the county nor the state law contains any provision regarding this element, the federal OSHA or ETA standard applies in those localities to set a minimum standard.

⁴⁰ The ETA regulations also require separate sleeping accommodations for each sex or for each separate family.

⁴¹ OSHA Rules: 29 C.F.R. §§ 1910.142(b)(2); 1910.142(b)(3), 1910.142(b)(9).

⁴² Md. Public Safety Code § 12-203 (2024).

Other local governments have enacted provisions regarding density. Queen Anne's County requires either a minimum of 100 square feet of total habitable space per individual or, for single occupancy, at least 150 square feet of total habitable area. Somerset County does not set density minima but defers to the rules of townships within the county. Crisfield Township follows guidelines of the International Property Maintenance Code, which require that every living room have at least 120 square feet of space, and every bedroom must be at least 70 square feet; if there are multiple occupants for a single bedroom, then there must be at least 50 square feet of floor space per occupant. Princess Anne's Township sets different requirements: there must be at least 100 square feet of floor space for the first occupant, at least 75 square feet of additional floor space for each additional occupant of the unit. These requirements do not include bathrooms, hallways, and other common space. Bedrooms must contain at least 70 square feet for the first occupant and at least 40 square feet per occupant if there are multiple occupants in the dwelling.⁴³

(b) Ventilation and Air Exchange

The federal ventilation rules require that “all living quarters . . . be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.”⁴⁴ Moreover,

⁴³ Princess Anne's Township also imposes additional requirements: Access to a dwelling unit may not require passage through a habitable room or another dwelling unit. Ceilings in at least ½ the floor area of each habitable room must be at least 7 ½ feet. Floor area where ceiling height is less than 5 ft. do not count toward minimum floor area requirement.

⁴⁴ 29 C.F.R. § 1910.142(b)(7).

“[a]ll exterior openings shall be effectively screened with 16-mesh material.”⁴⁵ All screen doors must “be equipped with self-closing devices.”⁴⁶

There are separate requirements for heating during cold weather, although this is less frequently relevant for farm workers. Nothing, however, in the federal regulations specifies air conditioning or other methods of preventing heat stroke or similar illness as summer temperatures continue to rise during the growing season, when farm workers are regularly employed. Heat-related safety protections for outdoor workers, as of this writing, are under active consideration; however, it appears that they will not address temporary worker housing.

Again, as to commercially available housing units, the situation among counties and localities is more complex, varying substantially depending on the county.

2. Sanitation, Water and Refuse Disposal

The rules about sanitation, water and refuse disposal also are important for worker health, especially when confronted with rampant infectious disease. Both federal OSHA and ETA regulations require that the toilet facilities be adequate in relation to the capacity of the housing, including a sufficient supply of toilet paper; the bathrooms must be kept in sanitary condition and cleaned at least once daily; laundry, handwashing and bathing facilities must be provided with at least a clothes dryer or other means to dry clothes; there must be one shower head per ten persons, and one laundry facility per 30 persons. Sufficient hot and cold running water must be available for bathing and laundry. There must be an adequate and convenient water supply for drinking

⁴⁵ *Id.* § 1910.142(b)(8).

⁴⁶ *Id.*

cooking, bathing, and laundry. Garbage containers must be clean and sufficient in quantity and be emptied at least twice a week, and pest infestation of the containers must be prevented.

By comparison, the Maryland local requirements, applicable when the employer provides public accommodation/commercial housing, are less stringent, and wildly uneven.

3. Heating, Cooking and Water Heating Equipment

Under federal OSHA and ETA rules, during cold weather, each building must have heating able to maintain a temperature of at least 70 degrees Fahrenheit. However, there is no federal standard for heating, cooking, and water heating equipment. Instead, the federal laws incorporate state and local laws to set specific standards, simply requiring that such equipment be installed and meet all State and local laws.

Thus, for example, as to Maryland's Eastern shore counties, these federal standards incorporate by reference the Maryland county (and in one county, city or town level ordinances) as to livability standards. Where there is no county or local level provision, the Maryland state livability statutory provision becomes applicable.

B. Complexity and Inordinate Flexibility As To Local Housing Standards

It is noteworthy that the federal standards in most respects do not function as minimum housing standards regarding non-labor camp farmworker housing. In addition, the Maryland liveability standards in general do not function as minimum standards for county and local housing laws. Although a few counties specify that localities may set standards of equal or higher quality in particular respect, others do not.

C. Implementation and Enforcement

Implementation of farm worker housing requirements is roughly as complex as the substantive requirements. The main implementation mechanism is a pre-occupancy inspection

required of the premises the employer is providing for farmworkers, both for MSPA workers,⁴⁷ and for H-2A workers. The inspecting agency then issues a certification which the employer is required to post at the premises. It should be noted that many Maryland employers have been honoring the posting obligation in the breach. This undermines worker enforcement ability, as well as decreasing the likelihood that an pre-season inspection has occurred at all.

Nothing in the federal regulations requires or facilitates further government inspections thereafter for the season. Moreover, if the body charged with conducting the inspection is unavailable during the pre-occupancy period, the employer may "self-certify." As to commercial housing, in Maryland, the county regulations do not require follow-up inspections after the initial, pre-season visit to the site. This provides less scrupulous housing providers with unfettered opportunities to fall below minimum legal housing standards once the growing season has begun.

During the height of Covid, in Maryland, reportedly *no* inspections were conducted by the governmental authorities in many counties; employers were allowed to submit photographs by e-mailing them to the county health authorities in place of any independent inspection.

Inspection and enforcement authority for housing is a "Bermuda triangle," where even flagrant violations easily disappear. When asked which agency has authority to enforce livability standards, many of these agencies point the finger at each other, or honestly reply that they don't know. The state OSH agency points to the state or county public health authorities, and the county authorities point to the state health or OSH administrations, or both. At the county level, regulations regarding enforcement are frequently completely missing. The complex admixture

⁴⁷ MSPA, 29 U.S.C. § 1823(b)(1).

of federal, state and local substantive requirements are too complex for easy ascertainment by local authorities, nor do they have the requisite inspection and enforcement budgets to permit routine, targeted inspections which might motivate housing-provider compliance. Penalties for violations are in any event minimal in most cases.

The reluctance of farm workers to jeopardize their present and future livelihoods means that enforcement driven by complaints to the authorities by employees who are victimized by employer violations is a road to nearly complete non-enforcement. The Biden administration had recognized this obstacle to enforcement of H-2A worker rights.⁴⁸ It responded by changing the regulations to enhance protection and remedies in the event of retaliation by employers; amendments to the US Department of Labor H-2A regulations had aimed to beef up protections for workers against retaliation which could deter the workers from reporting violations, not only as to housing and transportation but as to all visa-holder obligations.⁴⁹ However, the Trump administration is rescinding those regulations.⁵⁰

Few, if any, reported cases have been docketed in Maryland, involving violations of law regarding farm worker housing.

III. Recommendations and Conclusions

A. The Racial Background

As we this week have celebrated Martin Luther King's birthday, we should not fail to reflect upon the race-related history of agricultural labor and the law in the United States. The

⁴⁸ 89 Fed. Reg. 31234, 33898 (April 29, 2024).

⁴⁹ See the final rule, 89 Fed. Reg. 33898 (April 29, 2024).

⁵⁰ As of June 20, 2025, the federal government suspended enforcement of the Biden regulations enhancing protection of H-2A farm workers. See U.S. Dep't of Labor Wage and Hour Division, Field Assistance Bulletin No. 2025-2, <https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-2.pdf>. On July 2, 2025, the federal government issued a proposed rescission of the Biden administration rules, published at 90 Fed. Reg. 28919.

composition of the farm labor force, as well as the highly distinct history of regulation of their wages, hours, and working conditions, cannot be separated from the structural racism embedded in its historical development. Every aspect of the law regarding agriculture, labor and employment treats this workforce uniquely, and usually, disadvantageously. In the face of the Covid-19 virus and prospects for future pandemics involving airborne infectious disease, the need to protect these truly "essential workers" is compelling, both for their own sakes, and to ensure preservation of the nation's food supply.

Even when agricultural employers and farm workers are covered by worker protection laws, the ability of farm workers to exercise labor rights may be compromised by their vulnerable situation, because of economic dependency, lack of work authorization, threats of retaliation in employment, or threats of violence aimed at family members in the workers' original home country. It is no coincidence that the incidence of the ultimate form of labor exploitation, forced labor, is well-known to be rife in agriculture.⁵¹ Moreover, the extreme level of substantive complexity stemming from the intertwining of federal, state and local housing standards makes ascertainment of the applicable standard for any farm, its employees and housing, a challenging test for lawyers, much less unrepresented farm owners and farm workers whose literacy levels may be limited, and for whom English is not their first, and for many, not even their second language.

B. Simplification of Substantive Law

The most obvious approach to reducing the extreme complexity of farm worker housing law would be to federalize it, thereby making it uniform. However, this is manifestly not within

⁵¹ For perspective on this problem globally, see U.S. Dep't of Labor, 2024 List of Goods Produced by Child Labor or Forced Labor, *available at* https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2023/2024-tvpra-list-of-goods.pdf.

the competence of the State of Maryland. Our focus here must be on possibilities for simplification and improvement at the state and local levels, within the framework of the existing, partially federal structure.

Federal statute delegates to the state and local government levels standard-setting as to public accommodations and commercial housing provided by their employers to farm workers, even though these criteria may be lower than, or structured differently than federal farm worker housing camp rules. However, displacing local law by federal law would fly in the face of the customary reservation of control over land use and housing law to states and localities; political sensitivities would likely pose an obstacle. Moreover, it might substantially reduce the availability of housing apart from temporary labor camps, and would be likely to significantly increase the costs of employing either H-2A or MSPA migrant farm workers. This complexity-creating situation is therefore unlikely to change at the federal level in the foreseeable future.

Maryland could take one step to reduce complexity and improve housing standards. As to substantive housing standards, the state could design Maryland livability standards as minimum standards, so that county and local standards would have to be as or more protective of tenant/renter/dweller welfare compared to the state rule, and so that county standards similarly set a minimum standard baseline for local governments. Were the legislature to find this unpalatable as a general set of housing rules, an alternative would be to single out farm worker or temporary, migrant labor housing in the Maryland liveability code, but otherwise to follow the minimum standards approach as to county and local government levels. It would further be helpful if Maryland incorporated the standards categories of the federal labor camp regulations, in setting its own minimum standards, or if the state explicitly set standards above particular

federal standards, perhaps including additional, separate criteria not present under the federal labor camp regulations.

This approach would reduce, but not eliminate the deviation from the usual rule of local and state control over housing and land use matters. The increased expense and perhaps lack of availability of compliant rental housing or motel rooms for agricultural growing seasons could still pose problems to implementation of this approach. And the amount of substantive complexity would be decreased but not eliminated.

On the other hand, if the goal is both to protect the health and availability of farm workers in Maryland and to ensure the food supply in the face of potential illnesses and any future pandemics, the additional investment in farm worker housing would be well worthwhile.

Alternatively, the state could simply set separate, stronger migrant labor housing standards, either legislatively or by delegation to MOSH, and displace county and local government regulatory authority or migrant labor housing. This approach would reduce substantive complexity for the benefit of farm workers and farmers alike; however, it would complicate compliance for those rental and commercial housing providers operating in both the migrant labor and the general housing (or hotel and motel) markets.

A still more critical aspect of complexity and failure regarding migrant housing is the multiple layers of potential enforcement, and the likelihood that actual responsibility for implementation and enforcement falls between the several stools.

C. Simplification of Enforcement Pathways

Simplification of criss-crossing state and local enforcement so that a single state agency becomes primarily responsible for inspection and enforcement of all aspects of farm worker wages, hours and working conditions is imperative. Equipping the relevant agency with funding

to support government-driven, targeted enforcement as the main means of inducing compliance, rather than relying of worker complaints as the primary mechanism is essential. Enhanced notice and information to the workers, along with protection against retaliation is also necessary. To facilitate the effectiveness of such worker information, workers should also expressly be legally entitled to visitation on their housing premises, regardless of ownership, by worker advocacy organizations, labor unions or other collective interest representation groups, as well as by legal, health and other advisors of the workers' choosing.

Government cannot rely primarily on worker-driven enforcement as to migrant labor housing obligations. One problems is that H-2A workers who wish to return in subsequent years, or to work for other farms as H-2As in future years, are typically well-aware that the current employer will be unlikely to recruit them for future seasons, and may pass along to other farm owners the information that the particular worker is a "troublemaker." Such retaliation would have been expressly forbidden under the Biden administration H-2A regulations, but unlike immediate firing by the employer, would have been much harder for the worker to complain about and prove, and of course, those regulations are now defunct.⁵²

An additional problem inheres in the recruitment system for migrant and seasonal workers, which is the likelihood that the recruiter, rather than the employer, will engage in the retaliation. The recruiter is often located entirely in the H-2A worker's home country, raising questions about the extraterritorial applicability of regulatory prohibitions against retaliation, as well as questions of agency liability by the farm owner/operator for whom the recruitment has been conducted. A still more intractable problem is that recruiters or others in the home country may threaten the farm worker with violence directed either against the worker upon their return

⁵² See *supra* notes 48-50.

home, or against family members who remain in the home country. Such threats are not limited to H-2A workers, but may also be directed against farm workers residing in the U.S., whether or not documented, who have immediate family members remaining in the home country.

For all of these reasons, farm owners'/operators' and housing landlord compliance requires a targeted enforcement scheme. The appropriate units within the US Department of Labor have in the past utilized targeted enforcement measures to bolster compliance with the Fair Labor Standards Act (FLSA), which provides federal minimum wage and overtime requirements, as well as with most health and safety standards under OSHA. Farm worker housing, however, because of the complex and divided allocation of both standard-setting and enforcement authority, has not been subject to a similar, federal targeted inspection scheme. Moreover, even if it were, in states such as Maryland with state OSHA plans, it would be up to the state health and safety agency, rather than federal OSHA to develop and implement such an enforcement scheme. In Maryland, perhaps the best option would be to task the Maryland Occupational Safety and Health (MOSH) agency with implementation of a targeted enforcement scheme for farmworker housing as part of any package of laws and regulations the General Assembly initiates. MOSH already has primary authority over worker health and safety throughout the state, and this approach would be consistent with unifying employers' housing health and safety obligations to workers with their other health and safety duties to their employees. However, handing the task to MOSH without ensuring substantial, ear-marked appropriations to support increased inspection and enforcement activity would undermine the agency's ability to fulfil such a mandate, thus some method would have to be devised to ensure specific funding for this role.

The extreme overcomplexity in farm worker housing requirements leads to a gaping hole in enforceable requirements regarding occupancy levels, air ventilation and filtration in enclosed spaces in which Covid-19, influenza and other infectious respiratory viruses can circulate. This failure is an evident result of the default conceptualization by both federal OSHA and Maryland MOSH of worker occupational health and safety as limited to "work space." This erroneous regulatory viewpoint is prevalent even though a large number of farm workers, as well as employees in certain other, smaller industries, such as logging, live in employer-provided housing as a condition of employment.

For these employers and workers, the health and safety requirements regarding work spaces ought to expressly apply to their housing. Exclusions in the law derived from romantic notions of family farming, including those based on the small or medium size of the employer relying on numbers of employees, as well as coverage thresholds based on minimum yearly, monthly or weekly hours of work, which often operate to exclude seasonal workers such as farm workers, are a product of this racialized history. This could be rectified by including an amendment to the Maryland Occupational Safety and Health Act clarifying that the general duty clause, as well as express housing standards or MOSH regulations, apply to migrant labor housing provided by the employer, *mutatis mutandis*.

For migrant farm workers who are willing to take the risk of litigation, it would also be beneficial to expressly establish a private right of action for violations of employer housing obligations, including tort-type damages as well as costs and attorneys' fees. The federal MSPA is ambiguous about a private cause of action; privately initiated H-2A litigation has largely proceeded on the theory that employer violations of H-2A visa obligations constitute a breach of contract between employer and employee. Moreover, current anti-retaliation law under the

MOSH Act in all probability applies only to employers, rather than separate providers of employment-related housing.

The remedies for housing violations, even against employers, for violations of minimum housing livability standards, are inadequate to motivate compliance as well as to compensate workers. Tort- type remedies are the traditional solution. Amendments to the law to accomplish these changes should also clarify that workers' compensation is not the exclusive remedy as to housing-related violations and their effects upon workers' health and safety.

The content of posted notices regarding housing inspections also could be amended to include identification of the relevant state and/or local agency to whom complaints about housing violations should be submitted, as well as of workers' legal protection against retaliation.

I would be happy to respond to any questions you may have. I may be reached at mweiss@law.umaryland.edu; (410) 706-7236.