



William C. Newman, Esq.  
Western MA Regional  
Law Office  
(413) 584-7331 x15  
bnewman@aclum.org

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Representative Mark Cusack  
House Chair, Joint Committee on Revenue  
State House, Room 34  
Boston, MA 02133  
[JointCommittee.Revenue@malegislature.gov](mailto:JointCommittee.Revenue@malegislature.gov)

Senator Susan Moran  
Senate Chair, Joint Committee on Revenue  
State House, Room 312-D  
Boston, MA 02133

**Support for H.2812 and S.1837  
An Act Establishing Fairness for Agricultural Laborers**

Dear Representative Cusack, Senator Moran, and Members of the Committee:

The American Civil Liberties Union of Massachusetts submits this letter in support of *An Act Establishing Fairness for Agricultural Workers* – House 2812 and Senate 1837.

We appreciate the written and oral testimony provided to the Committee that demonstrates how the subminimum wage, denial of overtime, and lack of a day of rest (issues addressed in the proposed legislation) adversely affect farmworkers and their families. Because this information is already before the Committee, we will not repeat it here but rather will take this opportunity to comment on the lessons learned from our experience in litigating cases that have impacted the lives of farmworkers and address a question raised at the hearing.

The work of the ACLU of Massachusetts on behalf of equality of opportunity, working conditions, and constitutional protections for farmworkers is longstanding. It includes our representation of seasonal farmworkers in *Consolidated Cigar Corporation v. Department of Public Health*, 372 Mass. 844 (1977) and as counsel for the amici in *Arias-Villano v. Chang and Son Enterprises*, 481 Mass. 625 (2019).

Both of these Supreme Judicial Court cases were successful in the sense that they upheld the rights of farmworkers. What is most significant about these cases, however, is that they teach that fairness and equality in the workplace for farmworkers is not possible within the existing statutory framework.

*Consolidated Cigar* held that farmworkers living on the farms had a right to be visited by family, friends and labor organizers, but that case has minimal impact on the lives of domestic farmworkers in Massachusetts today because the overwhelming majority of domestic farmworkers do not live on the farms. They live in the community.

The exception is a very small number of dairy farmworkers, who by the nature of their work must be available to milk the cows at various hours throughout the day. This issue, the number of farmworkers living on farms and receiving free housing as part of their compensation, is one that Representative Paulino raised during the hearing of October 24, 2023.

The Representative is correct that there indeed are many seasonal farmworkers who live on the farms. Those are, with very few exceptions, H-2A workers. Pursuant to federal regulations, farmworkers who

work in Massachusetts farms on H-2A visas (about 1/3 of Massachusetts farmworkers) must have housing provided to them, at no cost to the worker. These workers already earn more than domestic farmworkers. H-2A workers in Massachusetts in 2023 earn \$16.95/hr. whereas, the minimum wage for domestic seasonal agricultural workers is \$8.00/hr. In addition, domestic workers who do live on farms often have value of their housing deducted from their pay. Housing is not provided free of cost, as the H-2A program requires.

The *Arias-Villano* decision, although directly addressing the eligibility for overtime of workers at Chang Farm, ironically does not address the pay scale or overtime protections for farmworkers. Farmworkers are defined as workers who are engaged in “planting, raising and harvesting crops,” and *Arias-Villano* rests on the fact that the employees whose overtime was at issue are not farmworkers under the state law definition because they are not engaged in primary agriculture, that is, the planting, raising and harvesting of crops. Indeed, it is only because the plaintiffs in the case under the applicable state law definition were not considered farmworkers, but more like assembly-line workers, that the plaintiffs in *Arias-Villano* succeeded. The Supreme Judicial Court opinion is clear that farmworkers engaged in primary agriculture are not covered by our state’s minimum wage or overtime laws as they now stand.

In sum, what these decisions demonstrate is that the state’s existing labor law protections do not cover the state’s 13,000 farmworkers. Their lesson is that a legislative remedy is required if their lack of legal protections and status is to change.

The pandemic has led to a renewed appreciation of farmworkers – an appreciation for those who harvest the vegetables, pick the apples, feed, clean and milk the dairy cows, and tend the cranberry bogs. We all have a heightened awareness of these essential workers and their hard, skilled and dangerous work.

The ACLU believes it is time for Massachusetts to join California, New York, Washington state, Oregon and Colorado among others, in ensuring that basic labor law protections cover these essential workers. We urge that it is past time for the Commonwealth to erase the legacy of the Jim Crow era that gave rise to the exclusion of farmworkers from equal protection guarantees in state labor laws.

We urge the Committee to favorably report House 2812 and Senate 1837 and thank the Committee for its consideration of our views in support of this important legislation.

Sincerely,

William C. Newman