



ACLU of Massachusetts  
211 Congress Street, Suite 301  
Boston, MA 02110  
617-482-3170  
www.aclum.org

November 10, 2021

Joint Committee on Labor and Workplace Development  
Senator Patricia Jehlen and Representative Josh S. Cutler, Chairs

**SUPPORT for S.1205 & H.1979**  
**Fairness for Farmworkers**

Dear Representative Cutler, Senator Jehlen, and Members of the Committee:

The American Civil Liberties Union of Massachusetts strongly supports the Fairness for Farmworkers Act, also known as *An Act establishing fairness for agricultural workers* – S.1205 and H.1979.

Our work on behalf of equality of opportunity, working conditions, and of constitutional protections for farmworkers is longstanding and 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). The ACLU is a member of the Fairness for Farmworkers Coalition that has been advocating in support of this legislation.

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

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 (addressed in this 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.

*Consolidated Cigar* upheld regulations that allowed farmworkers living on the farms to be visited by family, friends and labor organizers, but that case has little effect for farmworkers today because few farmworkers live on the farms.

And the *Arias-Villano* decision specifically does not address the pay scale or overtime protections for farmworkers, that is, workers who are engaged in “planting, raising and harvesting crops.” Rather, *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. 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 affected – or covered – by minimum wage or overtime laws as they now stand.

In sum, what these decisions demonstrate is that the state's existing labor law protections simply do not cover the state's 13,000 farmworkers. Their lesson is that a legislative remedy is necessary and that it is past time for the Commonwealth to erase the racist legacy of the Jim Crow era that gave rise to the exclusion of farmworkers from equal protection guarantees in state labor laws.

The pandemic has led to a new 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.

For farmworkers to be excluded from basic labor law protections is inconsistent with our state constitutional guarantees of due process and equal protection. The ACLU believes it is time for Massachusetts to join California, New York and Washington state among others, in ensuring that basic labor law protections cover these essential workers. We urge the Committee to favorably report S.1205 and H.1979, and thank the Committee for its consideration of our views in support of this important legislation.

Sincerely,



William C. Newman  
Western MA Regional Office Director