Justicia for Migrant Workers & Migrant Farmworker Clinic - Windsor Law
JOINT SUBMISSION TO THE CITIZENSHIP AND IMMIGRATION COMMITTEE

RE: Closed Work Permits and Temporary Foreign Workers
December 15, 2023

Introduction

We are writing as a collective of current and former migrant workers, students, community organizers, academics, lawyers, and allies who organize and advocate with migrant agricultural workers (Justicia for Migrant Workers). We also write as a legal clinic funded to support the law and organizing work of migrant agricultural workers in the Windsor-Essex area and surrounding areas (Migrant Farmworker Clinic - Windsor Law).

Justicia for Migrant Workers (J4MW) has been advocating for the the rights of migrant farm workers participating in agricultural streams of the Temporary Foreign Worker Program (TFWP), including the Seasonal Agricultural Worker Program (SAWP), and farm workers without formal immigration status since 2002. J4MW is motivated by experiences shared and lessons learned from migrant farm workers over the course of over 20 years of community outreach in rural Ontario.

The Migrant Farmworker Clinic (MFW Clinic) is a collaboration between J4MW and University of Windsor Faculty of Law with funding from the Law Foundation of Ontario. It is the first Clinic in Canada to offer a law and organizing space for migrant farm workers in Southern Ontario, and where a breadth of issues from immigration to employment to racism to housing can be addressed through multi-pronged, intersectional legal approaches. To date, the Clinic has provided legal advice and/or representation to approximately 250 migrant workers.

Today, December 15, 2023, is the date that many temporary foreign workers' (hereafter referred to as "migrant workers") work permits will expire. For the past eight months at least, they have left their families behind to toil in Canadian farms, as they have been doing for numerous years. As they leave, they have no idea if they will return next year, or for the next contract. They have to rely on the policy of "naming" (selected by employers to return to Canada next year) for continued employment. In the meantime, they lose their immigration status, income, access to benefits, and importantly, access to Employment Insurance where Canadian resident workers would have the ability to apply for this benefit.

This regime is not new; as other submissions to this Committee have noted, the SAWP was implemented in 1966 with Jamaican workers. Minister Marc Miller's comments on the program, which downplay the rampant and systemic abuse and the role of the federal government in facilitating these conditions, are also not new.

We have, for more than twenty years, seen Ministers of Citizenship and Immigration and of Employment refuse to take the necessary steps to devise a program that values the dignity, equality, and fairness of migrant workers. Our work focuses on the experiences of migrant agricultural workers; however our vision is for all migrant workers to enjoy secure employment, family life, access to benefits and housing, and permanent status.

Our submissions will focus on the context of the Temporary Foreign Worker Program and the neocolonial racism embedded within it, which has been explicitly set out in Parliamentary history. It will then detail how migrant workers in the agricultural industry are excluded from basic rights and how the tied and sector-specific work permits serve to create conditions of exploitation and oppression. Finally, we will issue a series of recommendations which this Committee should take seriously if it seeks improvements to the TFWP and for migrant agricultural workers in this country.

I. Canada's Temporary Foreign Worker Program (TFWP) for agricultural workers and the tied work permit system, in general, is the perpetuation of neo-colonialism and racial discrimination

Canada's TFWP for agricultural workers consists of the 57-year old Seasonal Agricultural Work Program (SAWP), where workers from the Caribbean and Mexico work in Canada on 8-month long closed work permits, and the relatively more recent Ag-Stream Program with 2-year closed work permits. Both these programs are structured to produce racialized unfree labour for the agricultural industry and have a direct lineage to slavery and indentured labour. The tied work permit system forms the essential instrument of control over vulnerable Black and Brown agricultural workers primarily from Global South countries with whom Canada has a historical and continuing imperialist extractive relationship, such as the Caribbean countries, Mexico, and Guatemala.

A plethora of scholarship and reports have pointed out to the racially discriminatory and neocolonial characteristic of the tied work permit system within the TFWPs, especially in agriculture, that the Canadian government has studiously ignored over the years. In fact, a 2021 IRCC report notes the "neocolonial relations of power," the legacy of racial discrimination, and the historical connection to slavery and indentureship in Canada's temporary labour migration system.[1] At the time the SAWP was implemented for Caribbean workers in 1966, the Minister of Manpower and Immigration, Hon. Jean Marchand opposed

[1] *Racism, Discrimination and Migrant Workers in Canada: Evidence from the Literature*, by Nalinie Mooten & Immigration, Refugees and Citizenship Canada (IRCC, 2022) https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/research/racism-discrimination-migrant-workers-canada-evidence-literature.html

it for European workers on the basis that it is congruent to "slave labour"[2] but then implemented it exclusively for Caribbean and later Mexican workers. The TFWP exposes the Canadian state's hypocrisies and discriminations. Canada espouses the language of openness and equality in immigration but blatantly upholds a racially tiered immigration system.

Mexico, Guatemala and Jamaica are the top three countries of nationality for agricultural TFWs.[3] For Caribbean, Mexican, and Central American workers, the TFWP remains the only way to access Canada, even as their agricultural production is decimated by trade agreements with Canada and by subsidies given to Canadian farmers. In 2022, 4,245 Jamaicans, 5,220 Mexicans and 310 Guatemalans received permanent residence.[4] The same year saw 9,362 Jamaicans, 29,797 Mexicans, and 18,948 Guatemalans work in Canada as temporary foreign farm workers.[5]

The SAWP and the 2 year Ag-Stream program are based on the racist notion that workers from certain countries are less than human; as such they should never have access to Canadian membership and are only deserving of a substandard regime of rights and tied work permits, one to which no preferred immigrant nor Canadian, will be subject.

II. Structural oppression is deeply embedded within this system of racial discrimination

Even under a racist assumption that certain racialized non-citizen workers should not have the same rights as Canadians or other preferred immigrants, there is not even a semblance of "balancing of profit" interests of the agricultural industry with the rights of workers. Migrant agricultural workers function under a regime of agricultural exceptionalism where they face severely shrunk rights - the rights made available to workers in other industries do not exist for agricultural workers. Even the basic rights within the employment standards are made inaccessible for agricultural workers, ensuring that foreign workers *will* form the bulk of the labour in the industry, which in turn allows for even further diminution of basic labour and human rights, creating a vicious cycle of exploitation.

For example, SAWP and the 2 year Ag-Stream workers have:

- Fewer rights under basic employment standards legislation (no right to overtime pay, no limitation on hours in Ontario);
- No or limited access to collective bargaining and organizing rights under labour relations regulations;
- No health and safety protocols specific to their industry, while such protocols exist for other industries such as construction, at least in Ontario;

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[2] *House of Commons Debates,* 27-1, No 6 (3 June 1966) at 5972 (Hon Jean Marchand) online: <https://parl.canadiana.ca/view/oop.debates_HOC2701_06/440>

[3] *Statscan,* Countries of citizenship for temporary foreign workers in the agricultural sector (2023), https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210022101

[4] *IRCC,* Canada- Permanent Residents by Country of Citizenship and Immigration Category (2023), https://open.canada.ca/data/en/dataset/f7e5498e-0ad8-4417-85c9-9b8aff9b9eda

[5] *Statscan,* Countries of citizenship for temporary foreign workers in the agricultural sector (2023), https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210022101

- No right to participate in the bilateral agreement and negotiate the terms of the SAWP or the standard 2-year Ag stream contracts;
- No access to employment insurance even though they have paid billions of dollars into it over the years;
- No right to inquests or meaningful health and safety inspections when they are working in one of the most hazardous sectors in the world (labeled 3D by the International Labour Organisation - dirty, dangerous, and demeaning)[6];
- Mandatory and substandard housing on the employer's property (for SAWP workers) with no right to even beds without bedbugs or laundry facilities to remove the pesticides seeping into their bodies; and
- No right to family life - SAWP workers spend more than *70% of every year for decades* on end in Canada separated away from their family, **which has an intergenerational impact on their families.**

III. Unmitigated power to exploit has been given to the agricultural industry, which even has delegated right to *privatized* deportation or *repatriation* of workers

Even these diminished rights are denied in practice because migrant agricultural workers cannot avail of their rights, as the tied work permit system ensures their captive suffering under their employer. Any attempt at seeing justice is faced with immediate loss of employment and "repatriation."

Repatriation is the euphemistic term used for the privatized deportation system that inheres in the tied work permit system. Employment can be discontinued at the will of employers and the workers are bundled into a flight back, sometimes within 24 hours, at the flimsiest of excuses - if the harvest season has been slow, or if they are injured, or for any other reason.

State-controlled deportation at least provides *nominal* procedural fairness in the form of detention and judicial reviews and the possibility of interlocutory stay orders. Repatriation is a deeply dehumanizing process that allows for employers to engage in the grossest violation of a worker's right to liberty, security and fundamental justice with impunity and with the Canadian government's approval.

Over the past 22 years, J4MW has worked with hundreds of workers who have or would have organized for systemic changes in their workplaces and beyond, if not for their repatriation. We frequently hear of cases where workers are frustrated and angry about their conditions, but are afraid to speak up because they or others have been disciplined, terminated and/or repatriated. They lose their spot in the program and are not "named" (called back the next year, for SAWP workers) if they prove to be "troublemakers."

This year, a group of workers from Brantford made headlines when they recorded and shared the conditions of their bunkhouse, which included wastewater flooding and bedbugs. They also shared a video of their employer berating them after the workers staged a one-day strike

[6] International Labour Organization, "Hazardous Work" https://www.ilo.org/global/topics/safety-and-health-at-work/areasofwork/hazardous-work/lang--en/index.htm

when the employer refused to heed their concerns about their bunkhouse.[7] Shortly after, six of the workers involved in the strike were terminated under the alleged pretext of a 'work shortage,' even while the workers reported that several new workers were being brought to work at the farm and that it was the harvesting season - the busiest time of year. This situation is by no means unique.

It is often claimed that workers have consented to these conditions of unfree labour and that the TFWP works to their benefit. Such a formulation of consent is deeply racist, neocolonial and problematic. It ignores the extraordinarily unequal power between the racialised, marginalized poor of the Global South and the Canadian industry and state. The Human Rights Tribunal of Ontario, in its 2022 decision on *Logan v Ontario,* ruled that even "informed consent" is elusive in the conditions that the TFWP workers endure:

> [S]ystemic factors in the [SAWP] (closed work permit, onsite living, naming, and others) make it very difficult for a worker to have "free" consent and individual barriers (lower levels of education, lack of access to information before coming and while in Canada) that make it very difficult for a worker to have "informed consent.[8]

It is frequently raised that migrant workers who have concerns about abuse or exploitation in their workplace can submit an application for an Open Work Permit for Vulnerable Workers (OWP-VW). At the Clinic, this is one of our most requested services and every year, we continue to have workers return to our Clinic because they have been unable to find an LMIA to continue working in Canada, even if they are successful in getting the Open Work Permit. To date, the Clinic has submitted almost 50 applications to visa offices across Canada, from Edmonton to Halifax.

The OWP-VW has several issues, many of which are identified by workers:

- They are time-limited (approximately one year) and non-renewable. Occasionally a four-year permit will be issued with no explanation as to the reason, and in cases where multiple workers have similar experiences. This demonstrates how wide-ranging the "discretion" provided to visa officers can be;
- Workers who complain about their workplaces (a condition of the work permit application) have no assurances that their identity will be kept confidential. Even if IRCC promises anonymity, the application itself states that a condition of submitting the application is that the contents may be shared with other federal agencies, such as ESDC and more specifically Service Canada;
- Workers have had their new work permits sent to their current employer (who has engaged in the abuse) - even when it was explicitly requested that the work permit *not* be sent to their employer;

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[7] 'Treated Like Machines': Open Letter Reveals Inhumane Conditions For Migrant Farm Workers In Brantford, Ontario https://byblacks.com/news/item/3608-treated-like-machines-open-letter-reveals-inhumane-conditions-for-migrant-farm-workers-in-brantford-ontario

[8] *Logan v. Ontario (Solicitor General),* 2022 HRTO 1004 at Para 163

- Other farm employers are not willing to hire workers with OWP-VWs because it is well-known that these types of permits are obtained by complaining about a former employer;
- New employers who are willing to hire workers on the OWP-VW refuse to obtain further LMIAs for them when the permit comes to an end, making workers unemployed and more desperate;
- Many applications are refused because of a "lack of evidence" despite IRCC recognizing the myriad of issues with obtaining evidence (some outlined below):
    - Workers are not allowed to bring their phones to work to record workplace issues;
    - Workers are afraid to speak up and refuse to write letters of support for their coworkers; and
    - Many abuse allegations cannot have "proof" e.g. they are verbal threats or acts of racism;
- Visa officers have stated in reasons for refusal that workers can "simply change housing" if they have concerns about employer-provided housing, or that their accusations of abuse are not considered abuse even when they meet the definitions in the corporate manual;
- Visa officers refuse applications for reasons not permitted by the corporate manual, causing significant delay for workers who must request reconsideration or consider judicial review applications, in addition to fresh applications; and
- Workers still cannot bring their families to Canada.

In summary, the OWP-VW is fraught with severe problems of high discretion, limited protection, and minimal time-limited respite. It simply cannot be used as a pretext to deny workers permanent residence or unconditional open work permits with family reunification.

Similarly, sectoral permits provide no actual support to migrant workers. There is no guaranteed employment, salary, nor rights that are enjoyed by Canadian workers. Agricultural workers still have no right to organize, nor negotiate their contract or workplace and housing. They are not permitted to bring their families to Canada, even as they spend years in Canada - a grave violation of a basic human right under the Universal Declaration of Human Rights.

ESDC's compliance mechanisms are also weak, and so repeated references to the compliance rate of agricultural employers mean very little. As with OWP-VWs, workers are not protected from reprisals if they report concerns about their employers. Service Canada inspectors do not do anything to ensure that workers were not being coached and threatened. A scathing report by the Auditor General of Canada showed the inefficiency of ESDC's compliance mechanisms[9] - while ESDC was claiming 99-100% employer compliance. In any case, increased inspections and compliance *do not compensate* for the closed work permit system's

[9] "Report 13: Health and Safety of Agricultural Temporary Foreign Workers in Canada During the COVID-19 Pandemic" (December 2021) Reports of the Auditor General of Canada to the Parliament of Canada <https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202112_02_e.pdf>.

violation of temporary foreign workers' right to non-discrimination and family life, and their right to organize and avail of their rights without fear of repatriation.

The sectoral permit, like the current closed permit system, bolsters the power of agro-business, which will continue to make workers vulnerable to abuse. Importantly, both closed permit and sectoral permit systems rely on the LMIA process which benefits employers. The number of agricultural migrant workers has been steadily increasing. Canada continues to expand the National Commodity List - the list of agricultural commodities that can use temporary foreign workers - subjecting more and more workers to the same restrictions and exploitation each year. This appeasement of the agro-business at the expense of vulnerable workers, is realized in a context where, over the past fifty years, the number of farms in Canada has decreased by half, the average farm size has doubled, and farm value per acre has almost quadrupled with a small number of large farms earning the majority of revenues, largely from exports.[10]

The realized net income in agriculture during the pandemic year *rose* by 84.4 per cent to $9.4 billion in 2020.[11] The Government of Canada, on the other hand, has collected billions of dollars in EI premiums from workers, when TFWP workers are denied EI benefits. Both the Government of Canada and agro-business have ensured a system where they can unjustly enrich themselves off the backs of racialized workers, while undertaking no social welfare responsibility towards the workers. They are able to do so by tying these essential workers to a precarious immigration status founded on a closed work permit and no right to remain.

In summary, the closed work permit program is the perfection of the colonial plantation labour system by creating the ultimate "precarious unfree labour" for Canadian agriculture. Its exploitations are invisibilized in a nefarious system that provides for (some) rights and worker consent on paper but in practice, is blatantly discriminatory and fundamentally founded on exploitation and racialized worker unfreedom.

Demands

All SAWP and TFWP workers should be given permanent residence on arrival. However, permanent resident status alone is insufficient to address the systemic discrimination and exploitation and continuance of plantation practices in the agriculture industry and immigration law in general.

First, the right to permanent residence should not be used to close the borders of Canada to Caribbean, Mexican, and Central American workers and workers from "undesirable" countries and classes. The much touted Agri-Food Pilot which provided pathway to permanent residence to some TFWPs was availed by only 10 Caribbean workers (10

[10] Statistics Canada, "COVID-19 Disruptions and Agriculture: Temporary Foreign Workers", (April 2020), online: <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00002-eng.htm>.
[11] Statistics Canada, "Farm income, 2020 (revised data)", (November 2021), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/211124/dq211124a-eng.htm?indid=3687-4&indgeo=0>.

Jamaican), 10 Mexican workers, and no Central American workers in 2023.[12] The bulk of the agri-food pilot PRs has been given to nationals of the Philippines, India, and Ukraine. The Pilot explicitly excludes the tens of thousands of seasonal agricultural workers who come to Canada each year. Similarly, the "Temporary to Permanent" pathway to permanent residence offered to essential workers during the pandemic proved to be of no use to the bulk of the migrant agricultural workers, even as they were in the frontline of the pandemic providing service for the Canadian food industry.

Second, permanent residence should not lead to creating a subclass of workers with only a right to stay while exploitative structures remain. Both parliamentarians and agricultural producers echo the concern that agricultural workers will simply move elsewhere if they have permanent status. This is correct - the agricultural industry is one of the most dangerous, underpaid areas of work. This can only be remedied if reforms come from a spirit of reparation of colonial and racist practices and for global justice.

We therefore demand, beginning immediately:

- The removal of closed and sectorally-tied permits;
- The immediate cancellation of unilateral employer-led repatriations;
- An immediate right to family unification and status and visas to families of TFWP workers;
- Assured employment and guaranteed basic annual income for all agricultural migrant workers under the SAWP and the 2 year Ag Stream. Workers' basic income should not be subject to the vagaries of harvest and the whims of employers. Workers should have access to employment insurance (EI) irrespective of status, residence, and present location;
- In general, all rights and entitlements should be made portable if workers return to their countries. This is not unusual (e.g. Canada has an agreement with the United States with respect to Employment Insurance);
- Resources should be allocated for migrant workers to organize into collectives and unions. Any legal hurdle such as in Ontario's *Agricultural Employee Protection Act* should be removed;
- Workers and their advocates must have the right to negotiate bilateral agreements and the terms of standard contracts;
- Compensation should be given to all repatriated workers and families through the history of the SAWP program with access to return to Canada with permanent residence; and
- The removal of all exceptions and subsidies to the agricultural industry across all provinces.

[12] *IRCC,* Canada- Permanent Residents by Country of Citizenship and Immigration Category (2023), https://open.canada.ca/data/en/dataset/f7e5498e-0ad8-4417-85c9-9b8aff9b9eda

Description of the organizations:

Justicia/Justice for Migrant Workers (J4MW) is a volunteer-run migrant justice collective that organizes and advocates migrant agricultural workers in Ontario and across Canada. The Migrant Farmworker Clinic - Windsor Law is a project of J4MW and the University of Windsor Faculty of Law, funded through the Law Foundation of Ontario. The Clinic utilizes a law and organizing framework to support J4MW's advocacy through summary legal advice, representation, outreach, public legal education, and community organizing.