



Migrant Legal Aid’s Position on the MDHHS Executive Order and the Lawsuit in response.

On August 3, 2020 MDHHS Director Robert Gordon Issued an Emergency Order requiring farmworkers to be tested for COVID 19 or lose their jobs.¹ On August 11, 2020 several farmworkers and their employers filed suit in response.

Migrant Legal Aid supports farmworkers defending their rights in every forum, and this is especially true when they ask a Court to prevent a government action from violating their rights. These farmworkers have a right to be heard.

We understand this is an unprecedented time and we do not believe that the Michigan Department of Health and Human Services has acted with malicious intent – on the contrary, we are sure that they want to protect the farmworker population.

However, this well intended action conflicts with the rights of our clients. It singles out this particular population and threatens them with penalties that other workers do not need to worry about. Whenever a particular population that is politically disenfranchised, financially impoverished, and almost exclusively a racial minority, we have a duty to be very careful about making that population subject to unique requirements and punishments, even if we think “it’s for their own good.”

The course of the lawsuit may show that this is the most narrowly tailored solution that truly protects farmworkers. However, it seems that other, less prejudicial methods have not yet been tried. For example, no incentives have been offered to motivate farmworkers to voluntarily test. And, to our knowledge, no meaningful enforcement actions have been taken against farmworker employers who have fallen short in their duty to follow existing executive orders or CDC guidelines.

Finally, we want to be clear that we support the farmworkers in this lawsuit, but they are not the only plaintiffs. We have no opinion for or against their employers who have other concerns in complying with this latest Executive Order. Currently, the farmworkers’ civil rights interests and the employers’ economic interest are aligned. But as with any situation, our position may change in response to new developments.

¹ By not allowing them to perform in-person work