

January 13, 2021

Rejoinder of the Coalition of Immokalee Workers:

We take note of Wendy's recent letter to the BHRRC explaining the Company's continued failure to join all of its major fast-food competitors (including McDonald's, Burger King, Subway, Yum Brands, and Chipotle) as a Participating Buyer in the Fair Food Program (FFP). Wendy's response only serves to underscore its lack of commitment to protecting the human rights of workers in its food supply chain.

Before we address in detail the many shortcomings in Wendy's letter, some background on the unique structure and function of the FFP, and its multiple monitoring and enforcement mechanisms, is necessary to Wendy's refusal to participate in the Presidential Medal-winning FFP in the proper context. The FFP requires participating farms to meet human rights standards set forth in the CIW's Fair Food Code of Conduct, foremost among which is a zero-tolerance policy for forced labor, child labor, and sexual assault. These standards are enforced through market consequences established in the CIW's legally-binding Fair Food Agreements, in which Participating Buyers—large food retailers ranging from McDonald's to Wal-Mart to Whole Foods—commit to buy from growers in good standing with the FFP, and to cease purchases from growers who lose their good status.

Under the FFP, the Fair Food Standards Council (FFSC), an independent third-party monitor created to ensure compliance with the FFP Code of Conduct, conducts regular audits and carries out ongoing investigation and resolution of workers' complaints of violations of the Code. Those complaints are made by workers to a hotline that is staffed 24/7 by human rights experts who speak the languages farmworkers speak. And, to ensure that this complaint system truly transforms the workplace, the CIW conducts worker-to-worker education sessions, held on-the-farm and on-the-clock, focused on workers' rights under the Code, empowering workers to serve as the frontline monitors of their own human rights. Participating buyers also pay a small Fair Food Premium, which generates a line-item bonus on farmworkers' regular paychecks; to date, nearly \$35 million in Fair Food premiums have been paid into the Program, significantly ameliorating the economic insecurity on which American farm labor has been based for all of American history.

In sum, the FFP's multiple avenues for worker voice, meaningful market consequences for violations, and economic impact have achieved unprecedented advances for farmworkers under the program's protections. The FFP's proven impact has prompted human rights observers from the [Obama White House](#) to the [United Nations](#) to recognize, in the words of the MacArthur Foundation, the model as "[a visionary strategy... with potential to transform workplaces across the global supply chain.](#)"

Thus, when Wendy's deflects by saying that it "considers the Fair Food Program to be an acceptable certification" among many others it accepts from its suppliers, that statement not only denies the exceptional success of the FFP, but ignores its essential nature, which is rooted in its legally-binding agreements with participating brands. The power of the FFP comes from the *commitment* of large retailer *buyers* of produce—including, it cannot be emphasized enough, all

of Wendy's major competitors—to buy from FFP farms, enforce FFP market consequences, and pay the FFP premium. Wendy's does none of those, and instead has chosen to allow its suppliers to pick-and-choose among conventional third-party social auditors, an approach Fordham law professor and widely-respected labor expert Jim Brudney has characterized as “[little more than a sham](#).”

The fallacy of this approach to supply chain responsibility is as obvious as it is galling: Given the choice between a worker-driven, market-enforced social responsibility program that demands real compliance, and a menu of voluntary options that employ none of the FFP's unique mechanisms for monitoring and enforcement, produce suppliers will choose the latter every single time, to the detriment of workers, and investors, alike. Time and again, we have seen that typical voluntary social auditing is not effective at protecting workers. For example, the [SA8000 certification listed by Wendy's on its website as “commonly used today”](#) was [held by a Pakistani textile factory in which 262 workers were killed in a fire](#).

The COVID-19 pandemic has highlighted the inadequacy of Wendy's approach, as its food suppliers have had widely-publicized failures to protect worker safety. [Wendy's beef supply was disrupted due to spread of COVID-19](#) among workers in its supply chain. Wendy's supplier Cargill had a plant that experienced the largest COVID-19 outbreak linked to a single facility in North America: [1,560 cases](#). Lack of protections at Tyson, another Wendy's supplier, resulted in [more than 12,000 Tyson employees contracting COVID-19](#), and a [recent wrongful death lawsuit](#) alleges that managers laid bets on how many workers would get infected.

Inside the FFP, in contrast, the Program's unique monitoring mechanisms and enforcement protocols have addressed farmworkers' COVID-related health and safety concerns with unparalleled success, just as they have been [uniquely effective in combatting sexual violence](#) and [modern slavery](#). In the words of a [farmworker quoted in the New York Times last week](#):

We were working long days, but they put a lot of protections in place. Lipman Family Farms were a part of the Fair Food program, and followed the procedures.

We would clean all of the tables with Clorox or bleach and make sure that everyone was washing their hands well. Thank God no one I know got sick. I wasn't too afraid of the pandemic because of the precautions that the company was taking. They hired people specifically to clean the buses every day.

This is because, since the early days of the pandemic, the CIW has worked tirelessly to enforce worker health and safety protections on participating farms—including drafting and implementing enforceable COVID-19 safety protocols in partnership with participating growers. To our knowledge, **the FFP stands alone among social certification programs in achieving enforceable COVID-19 protections for farmworkers.**

The stark contrast between the FFP farms and the rest of American agriculture with respect to COVID-19 is just one of many examples of how there is simply no comparison between the effectiveness of the binding and enforceable FFP on the one hand, and Wendy's self-created, voluntary corporate social responsibility program on the other. Indeed, [a recent independent](#)

[study of 40 leading initiatives](#) concluded that the “grand experiment” of “voluntary codes of conduct and oversight mechanisms” has “failed its goal of providing effective protection against abuse.” It also found that the FFP “is the only existing model with the proven potential to afford protection for the most vulnerable and lowest-wage workers in global supply chains.” The FFP is the “gold standard,” the report concludes, because of two “fundamental distinctions”: 1) it “is structurally designed to center rights holders in the monitoring and implementation of standards; and 2) it creates legally binding standards that workers can enforce outside of the initiatives.”

In addition to hiding behind its Supplier Code of Conduct, Wendy’s letter further defends its failure to join the FFP by claiming that the Company is “not aware of the Fair Food Program operating in the hydroponic greenhouse industry,” from which Wendy’s says it solely sources its tomatoes. But a simple visit to the [Fair Food Program website](#) lists [Farmhouse Tomatoes](#), a grower of hydroponic greenhouse tomatoes, as an FFP Participating Grower. The FFP also includes a hydroponic cut flower greenhouse—[the largest on the East Coast](#)—among its participating farms, further confirming that the FFP does, indeed, operate in the hydroponic greenhouse industry.

In addition, contrary to Wendy’s suggestion that greenhouses’ “indoor work environment” is somehow inherently better for farmworkers, the COVID-19 pandemic confirms that the FFP is just as necessary in greenhouses as in the fields. In New York State, a greenhouse tomato grower, Green Empire Farms, was the locus of a major COVID-19 outbreak, with [more than half of the workforce testing positive for COVID-19](#), and [at least one associated death](#). And while [Wendy’s says it has not purchased from Green Empire Farms directly](#), it is notable that Green Empire is owned by Mastronardi Produce, the largest producer and distributor of greenhouse-grown produce in North America ([with a history of worker safety violations](#)) and a [known supplier of Wendy’s](#). It is also significant that, at Green Empire Farms, [Mastronardi used a third-party farm labor contractor \(FLC\) to supply part of the workforce](#)—a practice banned in the Fair Food Program because it facilitates worker abuse, and increases vulnerability to forced labor, by distancing the employer from its workforce. A [recent study of US Department of Labor-ordered back wages and civil money penalties](#) shows that FLCs are disproportionately responsible for farm labor violations.

More fundamentally, to the extent Wendy’s wishes to address the fact that none of its current “covered suppliers use the Fair Food Program,” all it needs to do is agree to condition its tomato purchases on FFP participation. It was the commitment by current FFP Participating Buyers to only buy Florida tomatoes from growers in compliance with the Fair Food Code of Conduct that eventually ended a multi-year boycott of the program by the Florida Tomato Growers Exchange and ultimately resulted in 90% of all Florida tomato growers joining the program in 2010. That is also how [Wal-Mart helped expand the Fair Food Program to new states in 2014](#), and how the FFP continues to expand into new crops and new states today.

In sum, there is no good reason — other than its own intransigence — stopping Wendy’s from joining the FFP and thereby becoming part of the only proven method of preventing human rights abuses in the U.S. agricultural industry.