

## Social Security Doesn't Come To All Who Paid



Retired farmworker Antonio Zubia Hernandez sleeps on a platform in an El Paso shelter for migrant workers. (Joseph Sorrentino)

Farmworkers find their employers pocketed their Social Security payments—rendering them ineligible for benefits.

You don't need to be a U.S. citizen to qualify for Social Security; you just need to have worked in the country legally for enough time. Since undocumented immigrants received amnesty in 1986, that applies to most older farmworkers.

Israel Morales, 44, is one of the thousands of migrant farmworkers hired to harvest New Mexico's famous chiles. For the past five years, Morales, who asked that his real name not be used, has earned between \$4,000 and \$7,000 a year stooping to pick chiles in the hot fields. Much of that he sends back to Chihuahua, Mexico, to support his wife and two children, ages 16 and 22, both in school. His earnings are fairly typical for chile workers, according to the Border Agricultural Workers Project. But only a fraction of his earnings were ever reported to the IRS or the Social Security Administration (SSA).

Not that Morales hasn't tried. For 2012, he filed a tax return listing his total income as \$6,791. He worked for two contractors, or *contratistas*, that year, but they never sent him W2s. Yet the receipts showed that they deducted almost \$200 in Social Security payments from his take-home pay. "Clearly, the contractors wrote down that deduction

on a pay stub and never paid [it] because they never reported him as an employee,” says Sarah Rich, an attorney who worked for two years at Texas RioGrande Legal Aid (TRLA) in El Paso. Morales’s situation isn’t unusual. Tess Wilkes, a Santa Fe attorney who represents farmworkers, says contratistas underreporting workers’ incomes, or failing to report income at all, “is very widespread.”

Such fraud cheats not only the Social Security system, but also the workers themselves. Social Security benefits are based on lifetime earnings. When a contratista fails to report or underreports a worker’s income to the SSA, such fraud will reduce the Social Security benefits the worker ultimately receives—or render him ineligible entirely.

You don’t need to be a U.S. citizen to qualify for Social Security; you just need to have worked in the country legally for enough time. Since undocumented immigrants received amnesty in 1986, that applies to most older farmworkers. Even if they came to the United States without papers decades ago, they have been working legally for many years and are entitled to benefits in their old age.

To qualify, however, a worker must have worked 40 quarters over his or her lifetime and earned a certain minimum each quarter. In 2012, that minimum was \$1,130 per quarter, or \$4,520 per year. (Today it’s \$1,200 per quarter, or \$4,800 per year.) For low-wage farmworkers, who often barely meet those thresholds, failure to report even a fraction of their earnings can rob them of Social Security benefits entirely. If Morales hadn’t saved his receipts in 2012, he would only have been able to claim \$2,463 in earnings and could only have been credited with two quarters worked, rather than a full year.

Getting credit for unreported earnings is difficult, according to Rebecca Vallas, a poverty policy director at the Center for American Progress and former legal aide attorney in Philadelphia. “Correcting your Social Security earnings record can be a painstaking and incredibly hard-to-navigate process,” she says. “Many people need help from a lawyer, particularly if they don’t have paperwork documenting their earnings.”

To make a strong case to the SSA, migrant workers must retain documentation of their earnings—typically pay receipts—and match them up against their W2s. But farmworkers say they often don’t receive either.

When farmworkers do get pay receipts, they are typically small slips of paper that are easily ruined or lost. Morales is one of those rare farmworkers who has been diligent about saving them. For years, he’s been collecting his pay stubs, carefully stowing them in a plastic bag in his backpack, then depositing them in his only storage space, a small metal locker at Sin Fronteras, the shelter in El Paso, Texas, he calls home. Sarah Rich, who represented Morales when she was an attorney at TRLA, calls him “the most organized farmworker I’ve ever met.”

“He is worried about not making enough Social Security quarters,” she says of Morales. In theory, the 45-year-old has plenty of time to make the cutoff, but if contratistas continue to fail to report his earnings, he may have reason to worry

Losing Social Security eligibility is just the beginning. Unreported or underreported income leads to a host of other problems for low-income farmworkers. Because agricultural work is sporadic, many farmworkers rely on unemployment benefits and tax refunds to get them through the lean winter and spring periods, when work is hard to come by.

Requirements for unemployment benefits vary from state to state, but [states typically require](#) someone to have worked for at least two quarters of the previous 12 months, and benefits are calculated based on a worker’s total earnings over that period. Workers also must have earned above a set minimum, says Sovereign Hager, an attorney at the New Mexico Center on Law and Poverty. “If your wages are underreported, you may not be eligible.”

When Morales applied for unemployment benefits in 2013, he was dismayed to be deemed ineligible. He tells the story in his soft voice, with quick, clipped sentences, his words often swallowed by his generous moustache. “When I went for unemployment, there was nothing,” he says. “The contratistas reported nothing.”

Because the two contratistas he worked for did not report his earnings, he received a letter stating that he lacked

sufficient income to qualify. He was denied unemployment benefits in 2012 for the same reason.

The problems don't stop there. According to Ray Vigil, a public affairs and wage reporting specialist in the El Paso SSA office, underreported income can reduce the amount a person receives if they're disabled by a workrelated accident, and when they die, it can reduce the amount their family receives as survivors' benefits. And while Medicare isn't based on income, it is based on quarters worked; anyone who doesn't accumulate 40 quarters isn't eligible for free Medicare Part A, which covers hospital care.

## No paper trail

Farmwork is an extremely informal system. Growers rarely hire their own workforce, outsourcing hiring and payroll to *contratistas* instead. Pay is almost always in cash. "The more informal your sector, the fewer documents you receive, and the harder it is to present a coherent record of your yearly income to the government," says Sarah Rich, the former TRLA attorney.

This informality is a recipe for tax evasion and fraud. According to the IRS, paying in cash is one of the most common methods employers use to avoid properly reporting earnings and thus evade income and employment taxes. These practices appear to be extremely common in America's agricultural fields.

According to Ray Vigil, from the El Paso SSA office, the IRS requires contractors to issue a W2 to any worker who earns at least \$150 per year, or to all their workers if total yearly labor costs exceed \$2,500. Even the smallest-scale *contratistas* usually meet that threshold. Yet when *In These Times* asked 10 El Paso-based field workers whether they had trouble obtaining correct W2s, nine said they typically don't get all of their W2s or receive W2s that report less income than they actually earned. The lone worker who said he'd never had a W2 problem works for *contratistas* who are personal friends.

While most growers in the Southwest and across the country rely on *contratistas* to provide labor for their farms, the farm in southern New Mexico where Roberto Gonzalez serves as a supervisor is the rare exception. The farm used *contratistas* for many years until, he says, "we saw that the system wasn't working." He agreed to talk in detail about *contratistas* only if his real name wasn't used; he was concerned about getting *contratistas* or other growers into trouble.

Gonzalez says that when he did use *contratistas*, they simply told him how many workers were in the crew and Gonzalez would hand over a check to cover wages, Social Security, any other costs and the *contratistas*' fee. The *contratistas* cashed the check and paid the farmworkers in cash. He never checked that they were giving out receipts. "You can't get into it," he says. "It's their business." He'd periodically check in on the crews, however, and that was how he discovered that one *contratista* was charging him for "ghosts"—workers who weren't there. But he continued to use *contratistas* until the farm received an IRS letter stating that his workers' Social Security and taxes hadn't been paid. The money he'd included to cover those payments, he guessed, "just kind of goes into the contractor's pocket." The farm had to pay the Social Security taxes again, and that's when he switched to hiring workers directly. When asked if he knew of any reputable *contratistas*, he says, "I couldn't tell you one."

Juan Lopez, another New Mexico farmworker, has hard evidence that *contratistas* have been stealing his Social Security payments. Lopez, 40, who asked that his real name not be used, kept all of his pay receipts from 2013, and they show that one *contratista* paid him \$713 and withheld \$55 for Social Security and Medicare. That *contratista* did send him a W2—but it reported only \$464 in earnings and only \$35 in payments to the SSA. "The logical inference being that the employer was pocketing the difference," says María Martínez Sánchez, an Albuquerque attorney who has represented farmworkers for many years. A second *contratista* withheld \$30 in Social Security deductions from Lopez's pay but never sent him a W2. Over the course of a season, a *contratista* might hire dozens of workers, so these small thefts could add up to a sizable sum. Lopez notes on his 2013 tax return that he asked the *contratistas* for

W2s but never received most of them.

The Earned Income Tax Credit, which provides subsidized tax refunds for the working poor, is pegged to earnings up to a set cap; the less reported income, the smaller the tax refund. Lopez's total 2012 earnings should have garnered him a \$475 refund, but his reported earnings produced a refund of only \$189. "That's for the house," Lopez says. "For my kids." In years when his refund is smaller than he's due, he says, "There's less money for everything."

## A working retirement

Twice a week, Antonio Zubia Hernandez, 65, walks across the Santa Fe Bridge from El Paso, Texas, to Ciudad Juárez, Mexico, where he can purchase cigarettes for as little as \$3.25 a pack. A U.S. legal resident, he worked for 29 years in the agricultural fields of the American Southwest. Now, he spends his nights in the Sin Fronteras shelter and his days sitting in front, selling loose cigarettes, or *suelto*s, to other farmworkers to supplement his \$338 monthly Social Security check.

Most years, he averaged six months of full-time work in the fields; sometimes he also found off-season work. He can recall only two *contratistas* who gave him accurate W2s. A review of his Social Security earnings record shows that his wages appear to have been underreported in at least 19 of his working years—sometimes by a few hundred dollars, sometimes by more than \$3,000. Like other farmworkers interviewed for this story, Zubia Hernandez never complained. "I know workers who did," he said, "and they were out of a job."

Yet Vigil says the SSA can't initiate investigations unless an individual files a complaint. Even in those cases, the chances of getting relief are slim. "We're not a policing agency," Vigil says. If there's evidence that an employer isn't properly reporting Social Security withholdings, SSA will contact the employer to question them. "A lot of times we're unsuccessful," he says. "We cannot force them to submit that information."

In the rare cases where fraud is evident, they turn the case over to the IRS. It's unclear what proportion of these referrals are pursued. Bill Brunson, in IRS media relations, declined to answer questions, referring instead to an IRS website that shows that, in fiscal year 2013, the agency completed [140 investigations](#) into employment tax evasion across the country, resulting in [78 indictments](#). None involved agricultural enterprises or *contratistas*.

An analysis by Marc Goldwein, senior policy director at the Committee for a Responsible Federal Budget, found that if Zubia Hernandez had been credited for at least six months of full-time minimum wage work each year, his Social Security benefits would be nearly \$440 a month—or roughly \$1,200 a year more than he currently receives. In his particular case, as with many seasonal, lowwage workers, the shortfall is made up for by SSI, a taxpayer-funded subsidy for the poor. (Zubia Hernandez currently receives \$172 a month in SSI; if his Social Security benefits rose by \$100, his SSI supplement would drop accordingly.)

However, SSI tightly restricts the eligibility of noncitizens, explains Kathy Ruffing, a Social Security expert at the Center for Budget and Policy Priorities, so that safety net isn't available to all farmworkers who work in the U.S. legally. And some farmworkers earn enough to merit Social Security benefits well above the \$721 threshold for SSI supplementation—those who take on off-season work, for example, and average more than \$10,000 a year in today's dollars. Zubia Hernandez earned \$12,500 one year and \$22,000 another; if he'd earned that much throughout his working life, his employers' chronic failure to report his income could have meant a significant shortfall in benefits in his old age.

Margarita Ortiz, 62, was a farmworker in New Mexico for 35 years, working 40-hour weeks during the height of harvest season. She says she never received W2s; her Social Security benefits total only \$200 a month. Money is tight. Her high blood pressure prevents her from continuing to work in the fields. With no other options, Ortiz has turned to collecting cans.

Every day, when workers are due back from the fields, Ortiz walks to the Sin Fronteras shelter to meet the arriving buses and vans. Some workers save their cans for her; others toss theirs on the sidewalk or in the streets. With the help of her grandchildren, she picks these up and then roots through trash barrels, searching for more. She cashes in the cans once a week. Her latest receipt showed she'd brought in 30 pounds and received \$16 in exchange. "It's not enough," she says sadly, "but what can you do?"

José Martínez Barranco has spent decades doing farmwork in Colorado and, more recently, in the chile fields of New Mexico. For the most part, he didn't receive receipts or W2s. Now 62, he receives only \$240 a month in Social Security benefits. He believes his payments would have been much higher if his income had been properly reported. "I cannot rest," he says. "I have two children to take care of, so I have to work." So during the chile harvest, he still spends eight to 10 hours a day on his knees under a hot sun. If he's lucky, he'll net \$30 to \$40 a day.

For these victims of fraud and tax evasion, it's work until you drop. "Unless they have children to support them," says Rich, the former TRLA attorney, "that's their life plan."

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## **Joseph Sorrentino**

Joseph Sorrentino is a writer and photographer. He has been documenting the lives of agricultural workers on both sides of the U.S./Mexico border for 12 years.