

# Ending Injustice in Our Fields and Dairies: New York State Should Extend Basic Labor Protections to Farmworkers

*In 1937, New York State lawmakers passed fundamental labor protections for the state's workers. But just as Congress had done in the landmark federal labor law enacted two years earlier, New York lawmakers excluded farmwork and other industries disproportionately employing workers of color from these protections. In the eight decades since, farmworkers have been paid low wages for onerous work, suffered poor living conditions, and been exposed to wage theft, physical injury, trafficking, and harassment. Since the 1990s, lawmakers in Albany have promised to address this shortcoming, and yet these unfair exclusions from basic legal protections persist. Often working in rural isolation, for employers who control virtually every aspect of their lives, the men and women who produce our sustenance cannot depend upon basic labor laws, and yet they are also constrained from banding together to improve their conditions. We are past due to end the discrimination in New York's fields and dairies, and to extend collective bargaining rights and other baseline labor protections to farmworkers.*

## To Farmworkers, Promises Made and Promises Broken

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Time and time again, agricultural workers laboring in one of the lowest-paid and most dangerous occupations in the United States have been told by policymakers that they don't matter. As a result of legislative compromises in the drafting of the National Labor Relations Act (NLRA) in 1935 and the Fair Labor Standards Act (FLSA) in 1938, farmworkers were among the groups excluded from workplace protections.<sup>1</sup> As historians have noted, Southern legislators in the 1930s were "intensely concerned" with preserving a status for black agricultural labor that "often came close to resembling nineteenth-century conditions under slavery."<sup>2</sup> And in the years before the civil rights movement, these workers were no one's constituents; they had no way of participating in civic democracy to demand and win workplace democracy.

While New York State lawmakers have often noted this disparity and have even vowed to address it, there has been little movement in recognizing the rights of farmworkers. The New York State Labor Relations Act (SLRA) was passed in 1937 without including farmworkers. Numerous other occupations disproportionately staffed by women and people of color were similarly carved out, including personal service occupations, building service jobs, caregiving occupations, and retail jobs.<sup>3</sup> In 1991, a state task force concluded that "ending the legal

discrimination [against farmworkers] would mean the full realization of a prerogative rooted in . . . Article I, Section 17 of the New York State Constitution”<sup>4</sup>: the right of all workers to bargain collectively. And yet, the law did not change. In 2016, a group of New York farmworkers sued the state after suffering drastic retaliation for trying to organize, asserting that “the reality for New York’s farmworkers remains bleak because of the State’s indifference to their plight.”<sup>5</sup> Workers questioned the constitutionality of excluding farmworkers from laws that would protect them from this kind of retaliation, and Governor Andrew Cuomo agreed with them.<sup>6</sup> Three years later, the matter remains in the courts. Although numerous revisions and expansions redressed minimum wage exclusions for many of the other occupation years ago, it is only now that workers on some New York State farms will start receiving the state’s minimum wage.<sup>7</sup>

Workers cannot depend on regulatory agencies to protect them from exploitative conditions in the industry. While the National Institute for Occupational Health and Safety (NIOSH) has a program addressing health and safety among farmworkers, a 1976 measure exempted roughly 93 percent of all U.S. farms with outside employees from regulatory oversight.<sup>8</sup> An Occupational Safety and Health Administration (OSHA) program designed specifically to address the appalling death rate among New York’s dairy workers covered only farms with 11 or more workers, with the result that 88 percent of fatal accidents on dairy farms between 2007 and 2012 were not inspected.<sup>9</sup> Research has found frequent wage theft in the agricultural industry, with some studies calculating that nearly one-fifth of all farmworkers have experienced some kind of wage violation.<sup>10</sup> Sexual harassment and trafficking are also rampant in the industry.<sup>11</sup>

Clearly, if farmworkers are going to be protected from bodily harm and illegal employment practices, they need stronger legal protections, but they also need the ability to advocate for themselves. Farmworkers need full protection of their right to organize, as an effective counterweight to almost a century of neglect and to help improve conditions in one of the most dangerous, difficult, and important occupations in the nation.

To be clear, the language of the NLRA does not *forbid* farmworkers from organizing in order to redress these problems. These workers are not protected by the Act, but nor are they prohibited from the basic right to withhold their services or engage in other collective activity.<sup>12</sup> States can make the decision to do right by these workers and extend collective bargaining rights without fear of preempting federal law. Indeed, 10 states have already done so, while four have extended overtime pay regulations to agricultural workers.<sup>13</sup> In this brief, we explain why New York State should make good on the longstanding promises made in the New York SLRA, and grant workplace democracy and the right to organize to its farmworkers.

## **Who Are New York’s Farmworkers?**

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One side effect of excluding farmworkers from the regulatory purview of the federal government is a longstanding dearth of information about this critical workforce. The seasonal nature of agricultural work, coupled with the practice of moving workers and crews from one farm to another in order to plant and harvest sequential crops, makes conducting the kind of sample surveys on which the government depends complicated. The fact that so

many farmworkers are contingent workers presents an additional challenge in collecting data.<sup>14</sup>

According to the New York State Department of Labor, there are 40,000 to 80,000 farmworkers who labor in the state every year.<sup>15</sup> The U.S. Department of Agriculture's (USDA's) most recent Census of Agriculture, the National Agricultural Workers Survey (NAWS) conducted in 2017, estimated 8,963 farms in New York employing 55,636 hired farmworkers. (They also counted more than 40,000 "unpaid workers" providing labor on twice as many farms.<sup>16</sup>) Advocates have estimated the numbers to be higher, with perhaps as many as 100,000 workers in the state.<sup>17</sup>

Although imperfect, worker surveys do provide some insight into the nation's farmworkers. Of those surveyed for the NAWS, 83 percent reported they were Hispanic, with 51 percent reporting they were U.S. citizens, legal permanent residents, or working through a visa program. A smaller survey of New York dairy farmworkers found nearly two-thirds of workers reporting that Latino immigrant workers were given worse assignments and earned less pay than other workers.<sup>18</sup> Farmworkers who experience abusive conditions, wage theft, or unsafe practices that threaten worker and consumer safety may be fearful of speaking up,<sup>19</sup> while those on H-2A visas are tied to just one employer and cannot leave to work in less abusive conditions.<sup>20</sup> This workforce's position in an increasingly anti-immigrant context exacerbates the potential for poor working conditions, wage theft, and safety hazards and argues even more compellingly for state protections of their right to organize.<sup>21</sup>

## **The majority of New York farmworkers labor on large farms and have long tenure with their employers**

**While small farms constitute 70 percent of those reporting using hired labor, they employ only 16 percent of New York farmworkers. Most farmworkers are concentrated on farms with 10 or more hired workers or large dairy farms.**

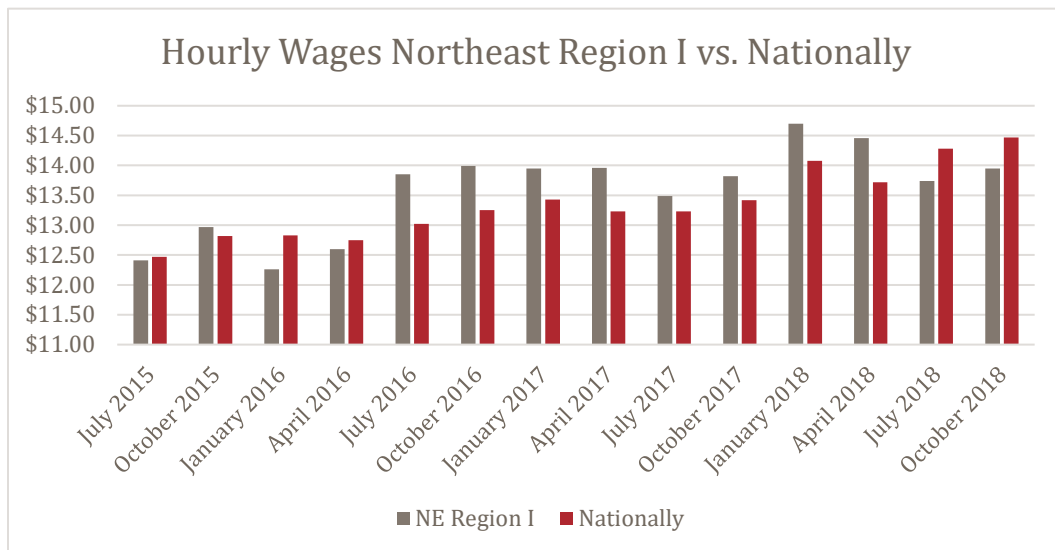
The USDA data further breaks down the type of establishment farmworkers labor for, though the agency uses various different benchmarks to determine the size of a farming establishment. Just over one quarter of all farms in the state use hired labor. While small farms, consisting of four or fewer workers, constitute 70 percent of the farms reporting hired labor, they employ only 16 percent of all farmworkers. Nearly 78 percent of farmworkers labor on farms with five or more workers, with more than 60 percent on farms listing 10 or more workers.<sup>22</sup> In other words, most New York farmworkers are concentrated on larger farms. A smaller study, based on face-to-face interviews with dozens of New York State immigrant dairy farmworkers, found that roughly 80 percent of them worked on large (500-1,000 cows) or very large (more than 1,000 cows) farms.<sup>23</sup>

Despite the image of a highly transitory workforce, only 19 percent of farmworkers in the United States are what the USDA calls "migrant" workers (those who travel 75 miles or more from their home base location to work, or who follow crops working at multiple locations). Additionally, many workers report long tenures on the job: 42 percent of those surveyed said they'd been with the same employer for more than five years, and 20 percent reported more than 10 years with one

employer.<sup>24</sup> Given that the median number of years U.S. workers have been with their current employers in the economy overall is 4.2 years, the longevity of farmworkers is impressive.<sup>25</sup> Most have been doing farmwork for a long time: more than half report more than a decade of experience in the industry.

## Farmworkers Face Low Wages and Dangerous Working Conditions

Despite an ongoing labor shortage, New York’s farmworkers are paid low wages. Wages are low even for those with experience, and even after accounting for modest pay increases in recent years. Those increases were roughly in line with those paid nationally, according to regional wage data compiled by the USDA.<sup>26</sup> Data from the New York State Department of Labor would put the state’s farmworkers squarely within the average for the region, though reported entry-level wages are nearly one-third lower.<sup>27</sup>



(Source: USDA, National Agricultural Statistics Service, Annual Farm Labor Surveys dated November 15, 2018; November 16, 2017; November 17, 2016; and November 19, 2015)

**Even at the high end of the range of median wages, New York farmworkers’ pay cannot lift a family of two above the federal poverty line.**

According to the NAWS, fully one in three farmworkers nationally had incomes that placed their families below the poverty line.<sup>28</sup> Even at the high end of the range of median wages reported by the state, New York farmworkers’ pay cannot lift a family of two above the federal poverty line. Many of the counties with the greatest agricultural activity also have higher-than-average food insecurity rates; no doubt among those struggling for adequate nutrition are farmworkers and their families.<sup>29</sup>

Yet these workers play an important role in New York’s economy. According to the Cornell Farmworker Program, the typical dairy farmworker in New York spends roughly 20 percent of his wages on food from supermarkets.<sup>30</sup> And many make large purchases, including automobiles (nearly two-thirds of farmworkers nationally reported owning or

trying to buy a vehicle) and houses (18 percent reported owning a home).<sup>31</sup> Some New York agricultural communities have been pulled from the brink of obscurity by immigrant newcomers who keep farms afloat, act as consumers for local businesses, support an aging local population, go on to establish businesses, and revive shrinking school systems.<sup>32</sup> In some rural counties across the United States, growth in immigrant populations drawn there by agricultural work was the only demographic growth that slowed the decline of the community.<sup>33</sup>

## **Farm owners already pay for long working hours in the form of lost productivity and increased injuries**

Low hourly wages are exacerbated by the fact that these workers are exempt from overtime pay laws while being asked to perform arduous physical labor for many hours a week, and thus increase their risks of bodily harm.<sup>34</sup> Farmworkers are paid no more for the 41<sup>st</sup> or the 51<sup>st</sup> hour of work in a week than they are for their first hour, and yet base pay is so low that the choice between pushing through long weeks and taking time to rest is an impossible one.

Farm owners already pay for long working hours in the form of lost productivity and increased injury levels. According to the Centers for Disease Control and Prevention, every day 100 farmworkers across the country suffer a lost-work-time injury, and the industry suffers a fatality rate of 21.4 deaths per 100,000 workers.<sup>35</sup> Significant numbers of farmworkers suffer chronic musculoskeletal pain from repeated tasks like pruning, harvesting, and machine operation.<sup>36</sup> Workers are stuck between bad choices when they are compelled to work excessive hours without additional pay, because to say no to more work means significantly lower paychecks. But increased risk for injury or even death may mean that, in subsequent weeks, they might have to go without pay at all.

Establishing precisely how many hours of labor workers actually perform is a tricky task. The USDA's regional calculations find that the Northeast Region has average hours ranging from 39 to 45 over the course of the last three years. According to the Cornell College of Agriculture and Life Sciences, an online survey found that the average farm employee in New York and neighboring states worked 56 hours per week, though respondents included middle managers and some farm owners. Some respondents reported a much longer workweek, which the authors noted "is not supportive of good health and quality work."<sup>37</sup> A 2011 study found that 35 percent of workers on New York State fruit and vegetable farms worked less than 40 hours per week, with just 10 percent of fruit workers and 8 percent of vegetable workers putting in more than 70 hours in the same period.<sup>38</sup> Another study of workers on dairy farms found that the vast majority worked a six-day week, with just over half putting in 12-hour shifts, though it claims that this schedule has been instituted on many farms "at the request of workers."<sup>39</sup> A government study of Minnesota farmworkers' hours and overtime pay found that less than half of agricultural employers had hourly workers putting in more than 48 hours per week, representing just over one-third of all agricultural employees in the state (some of whom were salaried at a rate high enough to exempt them from state overtime provisions).<sup>40</sup>

Other studies reveal significant differences even within one type of farm. While dairy workers on large farms most often reported working a shift of 12 consecutive hours, those on smaller farms might put in several eight-hour shifts with breaks in between that are too

short for meaningful rest.<sup>41</sup> Many of the workers in this study also reported being surveilled and instances of work being sped up if they took a rest—retaliatory measures that should give pause to assertions that farmers are assigning long hours at workers’ request. As one worker asked, “Why are we as workers not deserving of overtime? If it is raining and farmer wants production, he makes us work in the rain. If the temperature surpasses 90 degrees, we’re there working. I see in other industries there are workers in lighter jobs that are not exposed to the conditions we are exposed to and yet they’re entitled to overtime and we are not.”<sup>42</sup>

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Furthermore, the context is changing in a way that may put workers’ livelihoods at risk. With climate change, ever increasing heat can put workers’ very lives in peril.<sup>43</sup> According to the New York Climate Change Science Clearinghouse, the state can expect delayed spring planting due to flooding, increased heat-stress days (days with temperatures over 90 degrees), and more dangerously strong storms,<sup>44</sup> placing farmworkers in ever more precarious positions. Nonetheless, because many farmworkers are paid low wages calculated by the piece, there is a perverse incentive to skip shade or water breaks or ignore safety warnings in order to earn enough to get by.<sup>45</sup> If both farms and farmworkers are to survive the decades to come, they must be able to work as equals at the bargaining table to create new employment practices that reflect the new reality.

## The Benefits of Workplace Democracy and Collective Bargaining

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No one disputes that farming is hard physical work, and decades of research make it clear that it’s too often dangerous work and that unscrupulous employers engage in a variety of illegal practices that leave workers with short paychecks or in physical peril far from law enforcement or advocates. Many farmworkers are out-of-state residents or non-citizens, giving them less leverage with policymakers who don’t see them as constituents. Because of immigration status issues, or in response to the generalized anti-immigrant sentiment that has become a constant threat to immigrant communities, these workers may be disinclined to report abusive treatment or poor working conditions even when they present a dire threat to workers or consumers. Thus, being able to organize and collectively bargain is extraordinarily important in order to improve conditions on New York’s farms. The state’s own employment relations act was specifically designed to redress exclusions in federal labor protections, and it established the only official labor relations board authorized to ensure workers’ rights to organize are respected. But farmworkers do not have recourse to this board.

Some farmers claim that having to adhere to the same laws governing other workplaces will irreparably harm their business model. It’s a circular argument—that employment practices shaped by longstanding unjust exclusionary policies now cannot survive without those exclusions, so therefore they need the exclusions. Lobbyists for farm interests argue that a contract with their workers would simply be too difficult, “Whether it’s the weather, whether it’s commodity prices . . . whether it’s a tractor that breaks down. There’s so much that happens on a farm that [a collective bargaining contract] can just make it that much

more difficult.”<sup>46</sup> But complexity is not a legitimate argument against equal protection under the law. Farm operators in several other states manage to work within this legal framework, and many other businesses in New York that similarly once enjoyed exclusions from basic workplace protections have adapted and prospered without those exemptions.

**When the right to organize is protected, workers can become frontline allies for consumer protection; this is as true for farmworkers as it is for flight attendants, power plant operators, truck drivers, and bank tellers.**

When workers have a union, it improves wages and conditions not only for workers covered by that agreement, but also for unorganized workers in the same industry. A collectively bargained agreement can lessen pay gaps based on systemic racial and gender bias, and historically have been especially beneficial to Black and Hispanic workers.<sup>47</sup> This is true for farmworkers, as well. For example, in Washington State, when farmworkers organized in 2013, they won a minimum hourly rate of \$15 per hour and paid work breaks for those earning a piece rate.<sup>48</sup> In California, the United Farm Workers won a state supreme court decision mandating fair employment contracts even in the absence of a current collective bargaining agreement, thus ensuring that even when employers refuse to bargain in good faith with organized labor, they must guarantee fair pay and hours and improving working conditions industry-wide.<sup>49</sup> And women farmworkers seeking to organize in Florida came together with counterparts from all over the globe to discuss sexual harassment in agriculture and how best to protect women farmworkers from exploitation.<sup>50</sup>

A collective bargaining agreement is also critical to protecting workers against disparate treatment by employers, or harsh retaliatory measures if they speak out against poor or dangerous working conditions. According to one farmworker advocate, if a worker reports an eye injury or a fall off a ladder, she may not be the only one to suffer the consequences. The network of friends or the crew leader who brought her to the farm may also lose their jobs.<sup>51</sup> Farmworkers with a collective bargaining agreement can appeal to an established grievance procedure to redress problems at the workplace, including instances of retaliation, whereas those without an agreement are left with filing a private-action lawsuit as their only option<sup>52</sup>—one fraught with danger and expense for low-paid immigrant workers in today’s judicial and political culture.

Furthermore, smooth labor relations between farm owners and farmworkers can mitigate labor unrest and improve predictability and security for both parties. The California State Legislature passed the groundbreaking California Agricultural Labor Relations Act explicitly “to ensure peace in the fields . . . by guaranteeing justice for all agricultural workers and stability in agricultural labor relations.”<sup>53</sup>

Consumers, too, can benefit, as when farmworkers expose the use of dangerous chemicals in fields or unhygienic working conditions that may lead to public health hazards. The U.S. Food and Drug Administration specifically lists adequate training and hygiene for workers handling agricultural products as part of its mandated public safety measures,<sup>54</sup> but if workers do not also feel empowered to speak up when they see poor practices or fear losing their income, housing, and even work status if they do, these are mandates missing a critical piece of their enforcement mechanism. When the right to organize is protected in any

industry, workers can become frontline allies for consumer protection; this is as true for farmworkers as it is for flight attendants, power plant operators, truck drivers, and bank tellers.

## **It's Time to Protect Farmworkers' Right to Organize**

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The fear of retaliation and the possible repercussions for speaking out exacerbate the potential for exploitative conditions for New York State's farmworkers. Despite their role in providing sustenance to communities and food commodities to processors, for too long, the message from federal and state lawmakers has been that they don't matter. Excluding farmworkers from basic employment and labor rights puts these workers at risk and sends an implicit message that exploiting them is permissible. The ongoing exemption of this population from labor law protections continues a longstanding bias against workers of color.

The physical isolation of these workers, coupled with vulnerability that comes with language differences and non-resident status, often leaves them outside the systems of civic democracy, and the lack of explicit protections of the right to organize similarly cuts off avenues of workplace democracy. There have been countless cases of trafficking in the industry, including instances of infringement of movement (where workers are physically prevented from leaving a farm through physical restraint, confiscation of passports, and sometimes by gunpoint<sup>55</sup>) or debt bondage (overcharging for housing or transportation).<sup>56</sup> If farmworkers are able to organize, they can depend on one another for education about their legal rights, support in addressing grievances, and as a group can be an effective counterweight to the control of farm owners and labor contractors over their wages, working conditions, and wellbeing.

Finally redressing these discriminatory exclusions more than 80 years after they were codified will improve the lives of tens of thousands of New York farmworkers today, empower those in the future, and honor the generations who have been left to fend for themselves in the interim. Extending collective bargaining provisions now means that as the New York State agricultural industry has to alter its practices to adapt to a changing climate, workers with decades of experience and commitment to the industry could be equal partners in implementing the new policies needed in a new climate context.



## Endnotes

- <sup>1</sup> 79 Cong. Rec. 9720, 9720-21 (1935), cited in Jonathan Fox Harris, “Worker Unity and the Law: A Comparative Analysis of the National Labor Relations Act and the Fair Labor Standards Act, and the Hope for the NLRA’s Future,” 13 N.Y.C. L. Rev. 107 (Winter 2009).
- <sup>2</sup> Ira Katznelson, “When Affirmative Action was White,” quoted in Juan F. Perea, “The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act,” 72 Ohio St. L.J. 95(2011).
- <sup>3</sup> Isador Lubin and Charles Pearce, “New York’s Minimum Wage Law: the First Twenty Years.” *Industrial and Labor Relations Review* 11, no. 2 (1958): 203-19.
- <sup>4</sup> Quoted in Complaint, *Hernandez v. the State of New York*, 2016.  
[https://www.nyclu.org/sites/default/files/field\\_documents/hernandez\\_complaint.pdf](https://www.nyclu.org/sites/default/files/field_documents/hernandez_complaint.pdf)
- <sup>5</sup> *Id.*
- <sup>6</sup> “Statement from Governor Andrew M. Cuomo Regarding Rights of Farm Workers,” May 10, 2016,  
<https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-regarding-rights-farm-workers>
- <sup>7</sup> Starting in 2019, non-family member workers on farms where cash remuneration for labor exceeded \$3,000 in the previous calendar year will be paid the minimum wage, though employers are permitted to make deductions for meals and some housing provisions. See New York State Department of Labor, “Farm Labor” overview page,  
[https://www.labor.ny.gov/workerprotection/laborstandards/farm\\_labor.shtm](https://www.labor.ny.gov/workerprotection/laborstandards/farm_labor.shtm) (viewed April 3, 2019). Note that workers in canneries, grading houses, and processing plants that handle farm products from more than one farm qualify for time-and-one-half pay per hour over 40 hours in a week.
- <sup>8</sup> Occupational Safety and Health Administration, “Enforcement Exemptions and Limitations under the Appropriations Act, CPL 02-00-051,” <https://www.osha.gov/enforcement/directives/cpl-02-00-051>, and Eli Wolfe, “Death on a Small Farm,” *The Atlantic*, November 28, 2018, <https://www.theatlantic.com/politics/archive/2018/11/congress-exempts-small-farm-deaths-osha-inspection/576010/>
- <sup>9</sup> Margaret Gray, “Dairy and Death in New York State,” *Adelphi University Magazine*, Spring 2016. [https://political-science.adelphi.edu/au\\_news/dairy-death-in-new-york-state/](https://political-science.adelphi.edu/au_news/dairy-death-in-new-york-state/)
- <sup>10</sup> Erin Robinson, et. al. “Wages, Wage Violations, and Pesticide Safety Experienced by Migrant Farmworkers in North Carolina,” *News Solutions*, 2011, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291018/>
- <sup>11</sup> Ariel Ramchandani, “There’s a Sexual Harassment Epidemic on America’s Farms,” *The Atlantic*, January 29, 2018, <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/>; “The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States,” *The Polaris Project*, March 2017, <https://polarisproject.org/sites/default/files/Polaris-Typology-of-Modern-Slavery.pdf>
- <sup>12</sup> See Arthur Read, “Let the flower bloom and protect the workers too—a strategic approach toward addressing the marginalization of agricultural workers,” 6 U. Pa. J. Lab. & Emp. L 525 (Spring 2004)
- <sup>13</sup> Arizona, California, Hawaii, Kansas, Louisiana, Massachusetts, Nebraska, New Jersey, Oregon, and Wisconsin all allow collective bargaining for farmworkers, and California, Hawaii, Maryland, and Minnesota call for overtime pay for agricultural workers and the Massachusetts Supreme Court just this month narrowed the agricultural exemptions in its overtime law. In North Carolina, a federal judge recently blocked efforts to limit labor organizing among farmworkers. See “Judge blocks law that stops farmworker union activities,” *AP News*, September 20, 2018, <https://www.apnews.com/12718b0bfec149949830f930e701086d> Idaho and Maine withdrew protections for farm workers to organize. Further, California also passed a bill in 2013 protecting workers from immigration retaliation for reporting unsafe working conditions, recognizing that it is in the state’s interest to know about dangerous practices that could harm workers and consumers alike.
- <sup>14</sup> The recently restarted Contingent Worker Survey by the Department of Labor estimated that nationwide agriculture and related industries employed between 3.2 percent and 4.5 percent of all contingent workers in the industry, but only 1.6 percent of non-contingent workers. See U.S. Department of Labor, Bureau of Labor Statistics, “Contingent and Alternative Employment Arrangements – May 2017,” *News Release*, June 7, 2018. <https://www.bls.gov/news.release/pdf/conemp.pdf>
- <sup>15</sup> New York State Department of Labor, Division of Immigrant Policies and Affairs, “Who are Migrant and Seasonal Farmworkers?” web page, accessed March 6, 2019. <https://labor.ny.gov/immigrants/state-monitor-advocate.shtm>
- <sup>16</sup> USDA, National Agricultural Statistics Service, 2017 Census of Agriculture, Table 7 “Hired Farm Labor – Workers and Payroll: 2017,” page 315,  
[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_State\\_Level/New\\_York/nyv1.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_State_Level/New_York/nyv1.pdf)
- <sup>17</sup> The New York Civil Liberties Union puts the estimate at 80,000 (<https://www.nyclu.org/en/issues/immigrants-rights/farmworker-rights>)
- <sup>18</sup> Carly Fox, Rebecca Fuentes, Fabiola Ortiz Valdez, Gretchen Purser, and Kathleen Sexsmith, “Milked: Immigrant Dairy Farmworkers in New York State,” A report by the Workers Center of Central New York and the Worker Justice Center of New York, May 2017, p. 10, [https://milkedny.files.wordpress.com/2017/05/milked\\_053017.pdf](https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf)
- <sup>19</sup> Kati Griffith, “The Power of a Presumption: California as a Laboratory for Unauthorized Immigrant Workers’ Rights,” 50 U.S.C. Davis L. Review 1279 (February 2017); Kathleen Kim, “Beyond Coercion,” 62 UCLA L. Rev. 1558, (2015); Charlotte S. Alexander, “Anticipatory Retaliation, Threats, and the Silencing of the Brown Collar Workforce,” 50 Am. Bus. L.J. 779 (2013), Sherrie A. Kossoudji and Deborah A. Cogg-Clark, “Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population,” *Journal of Labor Economics*, 2002. Farmowners, too, recognize the dangers of depending on workers with such precarious status. “We are seeing that the immigration enforcement is having a tremendous enforcement impact on farm workers, on farms,” the director of the Cornell Farmworker Program told the *New York Times*. See Christina Goldbaum, “Trump Crackdown Unnerves Immigrants, and the Farmers Who Rely on Them,” *New York Times*, March 18, 2019,  
<https://www.nytimes.com/2019/03/18/nyregion/ny-farmers-undocumented-workers-trump-immigration.html>
- <sup>20</sup> Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States,” February 2013,  
[https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/Close\\_to\\_Slavery.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/Close_to_Slavery.pdf). Further, workers on H-2A visas are exempted from the protections of 1983 Migrant and Seasonal Agricultural Worker Protection Act.
- <sup>21</sup> In November of 2018, Migrant Justice filed a lawsuit against Immigration and Customs Enforcement alleging that more than 40 immigrant community members of their organization had been surveilled, harassed, detained, and arrested in retaliation for their public stance on human rights. For more details, see Migrant Justice, “Migrant Justice v. ICE,” <https://migrantjustice.net/MJ-v-ICE>, and “Immigration activists file lawsuit saying they were targeted by US government,” *The Guardian*, November 14, 2018,  
<https://www.theguardian.com/us-news/2018/nov/14/vermont-migrant-justice-immigration-activists-lawsuit-dhs-ice>
- <sup>22</sup> “Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A demographic and Employment Profile of US Farmworkers,” *Research Report No 13*, JBS International for the U.S. Department of Labor, Employment, and Training Administration, Office of Policy Development and Research, p. 315.  
[https://www.doleta.gov/naws/pages/research/docs/NAWS\\_Research\\_Report\\_13.pdf](https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_13.pdf)
- <sup>23</sup> *Milked*, p. 7.
- <sup>24</sup> *NAWS*, p. 27.

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- <sup>25</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Employee Tenure Summary," News Release, September 20, 2018. <https://www.bls.gov/news.release/tenure.nr0.htm>
- <sup>26</sup> This data was collected before the new New York State minimum wage went into effect, which calls for gradual increases in the minimum wage on a sliding scale based on region.
- <sup>27</sup> According to the New York State Department of Labor, farmworkers have a median income of between \$28,810 and \$30,060 depending on the nature of the agricultural work performed. Reported entry level wages are as low as \$21,632. Reporting wages on an annual basis for these workers may not accurately reflect the reality of their working year, but extrapolating the regional wage of approximately \$14 an hour over a standard full-time work year yields an annual wage of \$29,120, in line with this state estimate. New York State Department of Labor, 2018 Occupational Wages, <https://labor.ny.gov/stats/lswage2.asp#45-0000>
- <sup>28</sup> NAWS, p. iii.
- <sup>29</sup> For more on food insecurity among the workers who grow and pick our food, see "California farmworkers face high rates of food insecurity, obesity," Fern News, April 15, 2016, [https://thefern.org/ag\\_insider/new-ca-reports-show-farmworkers-food-insecure/](https://thefern.org/ag_insider/new-ca-reports-show-farmworkers-food-insecure/); Sara Quandt, Julie Early, Thomas Arcury, and Janeth Tapia, "Household food security among Latino Farmworkers in North Carolina," Public Health Reports 119(6), November 2004; and Teresa M. Mares, *Life on the Other Border: Farmworkers and Food Justice in Vermont*, University of California Press: Oakland, CA, 2019.
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