AN INFINITE DISTANCE?: AGRICULTURAL EXCEPTIONALISM AND AGRICULTURAL LABOR

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The declining standing of labor unionization efforts and the power relationship between employers and employees is drawing much needed concern over worker empowerment, workplace democracy, and social change issues.¹ Rethinking the twenty-first century workplace and equality for workers cannot take place without considering the nation’s farm worker population. Although instrumental in facilitating food production in the country, Chicanas/Chicanos,² Latinas/Latinos, and African-American fieldworkers fall outside the realm of protective collective bargaining legislation.³

Promoting an agricultural agenda that disallows workers’ collective action and forms of mutual aid perpetuates the impoverished working conditions of farm workers.⁴ Long-established principles stemming from

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1. See, e.g., Wendy L. Wilbanks, Union Power, Soul Power: Intersections of Race, Gender and Law, 26 GOLDEN GATE U. L. REV. 437, 437 (1996) (“During the past thirty years, American intellectuals have become increasingly disillusioned with the labor union as an instrument of social change.”). For an example of the nature of established unions excluding farm workers, see DENNIS NODÍN VALDÉS, AL NORTE: AGRICULTURAL WORKERS IN THE GREAT LAKES REGION, 1917-1970 (1991).

2. In this article, the term “Chicana/Chicano” refers to individuals of Mexican descent residing in the United States. “Mexican nationals” identify citizens of Mexico. “Latina/Latino” includes Puerto Ricans, Cubans, and those from Central and South America. The terms are used interchangeably with an “emphasis on self-designations.” GENERO M. PADILLA, MY HISTORY NOT YOURS: THE FORMATION OF MEXICAN AMERICAN AUTOBIOGRAPHY xi (1993).


the agricultural agenda, moreover, define working conditions and workers’ relations with their employers. Accordingly, agricultural law structurally bars racial and gender equality for the country’s farm workers. Notwithstanding the nature of power relations in food production and its workforce, farm workers remain primarily excluded as a focus of study in scholarly investigations. In turn, this exclusion reinforces and promotes their standing as outsiders within mainstream agricultural law and policy.

Ultimately, to the detriment of workers, two principal benefits resulting from farm worker exclusion aid the agricultural sector. First, agriculture benefits from the failure to examine the nature of employer/employee relations in the sector. The lack of study thereby disallows accountability and promotes the exclusion of workers. Second, the isolation of workers remains entrenched without opportunity for beneficial change in farm worker communities. Reversing the outsider standing of farm workers therefore requires examining agricultural law and policy from a race-based perspective.

Including farm workers within this important Symposium exposes sector bears a direct relationship to an extensive network of public law supporting the sector. In 1992, the farm sector’s share of the nation’s gross domestic product (“GDP”) totaled $85.6 billion. See U.S. GEN. ACCOUNTING OFFICE, STATUS OF THE FARM SECTOR, FACT SHEET FOR CONGRESSIONAL COMMITTEES 7 (1995). Agriculture’s contribution to the GDP, including its effects on other sectors of the economy, exceeds $1 trillion. See id.


8. This reference is to the University of Pennsylvania Journal of Labor and
particular features of federal law harmful to workers in the agricultural sector. This Symposium thereby represents a critical first step towards reversing legal norms harmful to the working conditions of farm laborers.

Part I of this Article, therefore, examines agricultural exceptionalism and its relationship to the working conditions of farm workers. Altering an agricultural workplace, however, cannot take place without studying their history. Part II consequently, provides a brief framework of Chicana/Chicano history in addition to a description of the results of agricultural exceptionalism on the daily lives of farm workers. Finally, Part III offers a counter story. It examines the nature of agricultural exceptionalism in the El Paso, Texas region. A significant number of agricultural laws and principles affect the region with widespread impact on the nation’s farm worker population. Creating new systems of decision making and accountability for the forthcoming twenty-first century demands the examination of the privileges granted agriculture.

I. THE DOCTRINE OF AGRICULTURAL EXCEPTIONALISM

Agricultural legislation and the working conditions of farm laborers are both creatures of the doctrine of agricultural exceptionalism. The exemption of agriculture from social, labor, health, and safety legislation has reinforced agriculture's unique status in law and society. The farm sector "has been and remains the nation's most significant industry with special needs and with its own set of interest groups." Long ago, rural scholar Carey McWilliams identified the unique treatment extended the sector as agricultural exceptionalism, which promotes the unequal and disparate treatment of farm laborers.

Agriculture summons romantic images of rural lifestyles, is closely linked to the national consciousness, and accordingly benefits from a

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10. Exemptions from federal legislation provided to the agricultural sector comprise the doctrine of agricultural exceptionalism. See, e.g., ERNESTO GALARZA, MERCHANTS OF LABOR, THE MEXICAN BRACERO STORY 106 (1964); Linder, supra note 3, at 1335.

11. See DON PAARLBERG, FARM AND FOOD POLICY: ISSUES OF THE 1980s 7 (1980) (commenting that American farm policy enabled agriculture to become more productive and efficient in the United States than in any other country).


13. See GALARZA, supra note 10, at 106 (referring to Carey McWilliams's "Great Exception" model in which McWilliams describes the exception of agribusiness from "the basic tenets of free enterprise").
unique status.\textsuperscript{14}

The farm sector's economic, social, political, and cultural primacy is self-evident. This belief in farm life as a bellwether for the rest of society has endured throughout American history and has transcended numerous social barriers. Benjamin Franklin extolled agriculture as "the only honest way" for "a nation to acquire wealth," in stark contrast with the alternatives of war ("plunder[ing]) and commerce ("generally cheating").\textsuperscript{15}

From the earliest period of American legal history, consequently, significant financial benefits and legal protection assist the sector. "[A]gricultural welfare is synonymous with national well-being... a healthy and prosperous agriculture generates action, income and wealth for farmers and nonfarmers alike."\textsuperscript{16} Consequently, a wide realm of public entitlements promotes the sector's economic standing.\textsuperscript{17} To the detriment of farm workers, agriculture is exempted from labor laws and other health and safety legislation that is instrumental to the well-being of workers.

Justifying agriculture's special treatment are several factors. One is that agriculture provides consumers an "adequate and steady supply of... commodities at fair prices."\textsuperscript{18} Ensuring agriculture a steady supply of labor, moreover, comprises yet another goal beneficial to the sector.\textsuperscript{19}

Whatever the underlying motivation for privileging the sector, federal farm policy structurally disallows farm workers' self-determination and precludes transformation of their workplace conditions. Scholar Elizabeth Iglesias invokes the concept of violence to "examine how legal interpretation constructs institutional power and how the organization of institutional power obstructs" liberation from the relations of oppression.\textsuperscript{20} Similarly, the network of exceptions afforded agriculture socially construct categories of race while promoting agricultural institutional power. In turn, public law violates the "common principles of social legislation"\textsuperscript{21} in perpetuating harmful circumstances for farm workers. Agricultural

\textsuperscript{14} For a discussion of the fundamentalism supporting the "agricultural creed," see \textit{Paarlberg, supra} note 11, at 5-7 (1980). See Chen, \textit{supra} note 3, for an interpretation of the country's earliest agricultural legislation.


\textsuperscript{16} \textit{Id}.

\textsuperscript{17} \textit{See id}.


\textsuperscript{19} See Wayne A. Grove, \textit{The Mexican Farm Labor Program, 1942-1964: Government-Administered Labor Market Insurance for Farmers}, 70 \textit{AGRIC. HIST. SOC.} 302, 302 (1996) ("[G]rowers have used their political, economic, and social powers to reduce the cost of production most amenable to their influence: labor.").


\textsuperscript{21} \textit{Galarza, supra} note 10, at 106.
exceptionalism ultimately yields institutional arrangements that violate public policy, forbid workplace democracy, and promote negative social realities for agricultural workers.

For workers, conceptualizing a positive working environment requires stepping outside traditional parameters of existing academic inquiry. Susan Sturm asserts that progress requires discussions of racial/gender inclusion, economic/institutional reorganization, and democracy/citizenship. In a society that values farming and food production as beneficial enterprises, the discussion must also include a reconsideration of agricultural exceptionalism and its relationship to privilege.

A. Agricultural Exceptionalism and Privilege Within the Agricultural Agenda

Addressing the wide realm of agricultural legislation was beyond the scope of the Symposium. Several major components of agricultural exceptionalism, nonetheless, highlight the role of law in transferring wealth to the sector. Specifically, agricultural law and policy promote the collective activities of agricultural enterprises while disallowing collective action for farm workers.

Public law, for example, authorizes collective and mutual aid of select agricultural enterprises: "[f]armers, planters, ranchmen, dairymen, nut or fruit growers may form associations, corporate or otherwise with or without capital stock to collectively process, prepare for market, handle, and market in interstate and foreign commerce." The transfer of wealth to agricultural enterprises that also employ farm workers makes evident the sector's special treatment.

22. See Susan Sturm, Remarks at Symposium, supra note 8.
23. Every five years Congress promulgates a new farm bill that defines the agricultural agenda for the forthcoming five-year period. For the most recent farm bill/agenda, see Federal Agricultural Improvement and Reform Act of 1996, H.R. Conf. Rep. No. 104-2854 (1996).
26. See, e.g., 15 U.S.C. § 17 (1998) (The antitrust laws are not applicable to agricultural organizations: "[t]he labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help."); National Broiler Mktg. Ass'n v. United States, 436 U.S. 816, 830 (1978) (Brennan, J., concurring) (The Clayton Act "linked industrial labor and farmers as the kind of economic units of individuals for whom it was thought necessary to permit cooperation ... in order to survive against the economically dominant manufacturing, supplier, and purchasing interests with which they had to interrelate."); The American Ideology, supra note 15.
The legislation, moreover, is difficult to reconcile with the circumstances of field workers who are prohibited from similar forms of mutual aid activity. Additional federal statutory law, nonetheless, further privileges agricultural producers. For example, producers are authorized to join cooperative organizations to protect their marketing and bargaining positions.\textsuperscript{27} Within the text of this statute, Congress broadly declared that the “efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation.”\textsuperscript{28} Interfering with the right of farmers to join in cooperative organizations, furthermore, “is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.”\textsuperscript{29} This form of legalized mutual aid directly protects the economic standing of agricultural enterprises and demands rethinking for the twenty-first century.

By comparison, the income-producing protection granted owner-operators permits a benefit to agriculture garnered from excluding farm workers from protective bargaining activity. A key determinant sustaining this privilege is the National Labor Relations Act (“NLRA”). Since the New Deal, the NLRA has protected agricultural employers by providing that “[t]he term ‘employee’ shall include any employee... but shall not include any individual employed as an agricultural laborer.”\textsuperscript{30} Without the protection of the NLRA, farm worker unionization efforts are vulnerable to legal actions that thwart farm worker bargaining attempts.\textsuperscript{31}

Yet another feature of the unique status afforded agriculture is the wide network of public law that secures the institutional and structural framework of the sector. A few examples include farm credits, improved technology, and subsidized commodity prices that form essential aspects of income transfer to the sector. The historical use of land grants and the agricultural extension service also provide the industry immeasurable assistance.\textsuperscript{32} Also sustaining the wealth of the sector are federal agencies and programs including:

\footnotesize{27. See, e.g., 7 U.S.C. §§ 2301-05 (1998). Promoting collective activity for farmers and ranchers has stimulated the growth of larger cooperative agricultural interests that also benefit from exceptions to the country’s antitrust laws.}  
\footnotesize{28. 7 U.S.C. § 2301 (1998).}  
\footnotesize{29. Id.}  
\footnotesize{30. 29 U.S.C. § 152 (1998).}  
\footnotesize{31. See discussion infra Part III.B (describing attacks against unionization through injunctions and other legal methods).}  
\footnotesize{32. Compare these benefits with \textit{California Agrarian Action Project, Inc. v. Regents of the University of California}, 258 Cal. Rptr. 769 (Cal. Ct. App. 1989), in which a project aimed at assisting small family farmers and farm workers brought an action against the University of California alleging violations of state and federal law for the school’s failure to limit Hatch Act funds to larger corporate enterprises within agriculture.}
Outside of this direct regulatory structure, a significant number of federal agencies promote the sector. The Food and Drug Administration ("FDA"), the Department of Labor ("DOL"), the Environmental Protection Agency ("EPA"), the Immigration and Naturalization Service ("INS"), and the Occupational Safety and Health Administration ("OSHA") perform key functions that sustain agriculture. The dual functions of the agencies are proving harmful to the farm worker population. The INS, for example, enforces the nation’s immigration laws that control entry into the United States. The agency’s jurisdiction also ensures the labor demands of the farm sector are met. It is not an unknown factor that many American employees refuse to work for the wages offered by the sector. In accommodating this tension, immigration law exempts the sector from restrictive laws for the purpose of increasing the supply of farm labor. The long history of exemptions extended agriculture is difficult to reconcile with the stated goals of overly restrictive immigration law and policy.

The Immigration Reform Control Act of 1986 ("IRCA"), reflecting anti-immigrant backlash and rhetoric, also illustrates the INS’s competing functions that are harmful to farm workers. The legislation requires all

potential employees to provide proof of work eligibility in the United States to prospective employers. Congress, nonetheless, authorized agriculture an exemption to facilitate its labor needs. PUNITIVE AND HARSH immigration law and policy are recognized, moreover, as extending beyond this construct and adversely affecting Chicana/Chicano and Latina/Latino communities outside of the rural economy.

1. Labor Contractors, Agricultural Exceptionalism, and Farm Workers

Yet another harmful aspect deriving from the IRCA and injurious to the working conditions of farm workers is the labor contractor system. Responding to agriculture's labor demands at the expense of workers is an additional consequence of the IRCA. The IRCA is creating a "notable increase in farm labor contractor... usage." Labor contractors recruit labor for agricultural enterprises, determine farm worker salaries, and manage employers' payrolls. One example of the use of labor contractors is the hybrid corn seed industry, in which crew leaders recruit and supervise farm workers in "detasseling corn for companies producing hybrid corn seed." Producing hybrid seed corn remains "extraordinarily profitable" to the oligopoly of six to eight multinational pharmaceutical and chemical companies that control the hybrid seed corn industry. During a three-week per year period, companies employ a significant migrant population of approximately 70,000 to 140,000 migrant workers recruited from Texas, California, Arizona, and Florida. Detasseling corn is "at the best strenuous and at the worst one of the most disagreeable kinds of work."
Commentators contend that labor contractors are “more a symptom than a basic cause of the difficulty. The basic cause is the conjunction of substandard labor supply with irregular labor demand.”

If stable and direct employment relations had developed in harvest work, as they have in manufacturing industry, there would be no place for the contractor. If harvest laborers in general were managed and allocated by inclusive employer associations, as are the legally imported laborers, the services of the contract could be dispensed with. Or if they were organized and deployed by labor unions, as are the workers in the equally casual longshore and construction industries, again the contract would be unnecessary. The combination of irregular labor demand, casual labor supply, and general lack of inclusive organization on either side of the market creates a context in which the contract . . . is well nigh indispensable.

Accordingly, agricultural enterprises benefit from this arrangement at the expense of farm workers because with “virtually nothing but labor costs, the [labor] contractor can obviously maximize his income by minimizing his payments to the workers.” At the extreme, a labor contractor can “abscond with the payroll.” This arrangement insulates employers from their workforce and protects them from workers’ claims arising from injuries and lost wages. Essentially, the labor contractor system transfers the “risks of agricultural employment to the workers,” and is contrary to the “sound principle of industrial relations that the various economic risks incident to employment ought to be distributed fairly or else insured against.”

2. The Migrant and Seasonal Workers Protection Act

Farm worker exclusion from protective legislation leaves farm workers limited relief in the form of the Migrant and Seasonal Agricultural Workers Protection Act (“MSWPA”). The MSWPA provides migrant workers with a venue to pursue claims for lost wages and overtime pay—practices not uncommon in agriculture. The Act, nonetheless, exempts

46. Id. at 217.
47. Id. at 216 (citation omitted).
48. Id.
49. Id.
50. See id.
51. Id.
certain family farms from its scope and purpose.\textsuperscript{54} This exclusion further assists smaller enterprises by permitting them to identify heads of households as independent contractors.\textsuperscript{55}

Under the MSWPA, workers’ complaints center on employers’ failure to pay wages promptly and failure to pay minimum wage rates. Workers, moreover, assert that employers deduct from their wages costs associated with transportation to fields, housing, food, and other miscellaneous items.\textsuperscript{56} Other complaints focus on employers’ failure to adequately describe working conditions,\textsuperscript{57} which prevents workers from leaving after they arrive in the fields because of their lack of financial resources.

To assist recovery under the MSWPA, workers in the past have turned to Legal Services. Upset with farm workers’ legal actions, growers lobbied their congressional representatives to scrutinize the Legal Services Corporation and its representation of migrant and seasonal farm workers.\textsuperscript{58} In contrast to the complaints of growers upset with Legal Services, the report substantiated worker complaints. The report described repeated violations by growers including failure to do the following: pay wages for all hours worked, pay wages promptly, pay minimum wage rates, accurately describe working conditions, and meet minimum housing standards.\textsuperscript{59} Notwithstanding the evidence of growers violating the few rights held by workers, Congress succeeded in curtailing Legal Services’ assistance to the farm worker population in recovering lost wages and in

\v Lauritzen, 649 F. Supp. 16 (E.D. Wis. 1986), rev’d sub nom. Secretary of Labor v. Lauritzen, 835 F.2d 1529 (7th Cir. 1987).
\textsuperscript{55} Regarding independent contractors and worker relations, see infra Part II.B. See also Cavazos v. Foster, 822 F. Supp. 438 (W.D. Mich. 1993), for a case in which cucumber workers brought a lawsuit contesting their employer’s labeling them independent contractors.
\textsuperscript{56} See generally Calderon v. Witvoet, 764 F. Supp. 536 (C.D. Ill. 1991), aff’d in part, vacated in part, 999 F.2d 1101 (7th Cir. 1993). In this case, an Illinois employer withheld funds during the workers’ employment, yet did not designate the funds as required under the Fair Labor Standards Act. See id. at 543. The employees also charged the employer with various violations of federal and state law. See id. at 538. For example, the employees argued that the employer qualified for neither the foreign-worker exemption nor the family-farm exemption, and that the employer violated the Worker Protection Act. See id. at 538-39.
\textsuperscript{57} See generally Aviles v. Kunkle, 765 F. Supp. 358 (S.D. Tex. 1991), vacated, 978 F.2d 201 (5th Cir. 1992). Aviles provides an example of an employer failing to fulfill its wage and hour reporting obligations. The employees in Aviles charged their employer with failure to provide notification disclosing terms and conditions of employment and failure to conspicuously post workers’ rights and protections. See id. at 365.
\textsuperscript{58} The U.S. General Accounting Office responded to the query of representatives Beverly Byron, George Gekas, Bill McCollum, French Slaughter, Jr., Charles W. Stenholm, and Harley O. Staggers, Jr. See U.S. GEN. ACCOUNTING OFFICE, GRANTEE ATTORNEYS’ HANDLING OF MIGRANT FARMWORKER DISPUTES WITH GROWERS 5 (1990).
\textsuperscript{59} See id.
remedying other rights violations.

Opposing farm workers within the agricultural agenda hinders civil rights efforts, stymies unionization attempts, and prevents racial and gender equality in farm employment. Public law establishes a culture that permits questioning the rights of field workers to pursue relief from alleged abusive practices. It further limits legal relief to remedial legislation in instances induced by the sector's exceptionalism.

The nature of agricultural exceptionalism adversely affects the working relationship between farm workers and their employers. It has no place in the twenty-first century. This article examines agricultural exceptionalism and its direct impact on workers after a brief historical construct.

II. BRIEF HISTORICAL FRAMEWORK FOR CHICANA/CHICANO FARM WORKERS

Prior to the United States' annexation of the former Mexican provinces, Mexican settlers owned and operated rural enterprises of differing sizes. The conquest disenfranchised these landowners from their property interests, and state-directed violence created harmful circumstances. The country's earliest Chicanas/Chicanos confronted lynchings and other forms of intimidation that displaced them as owner-operators of their rural property. Ultimately, Chicanas/Chicanos were forced into farm work to perform labor intensive tasks in agricultural enterprises. This historical legacy ensures that the labor needs of the sector are met while farm workers' working conditions are sacrificed.

A. "Agricultural Underdogs": Farm Workers and Public Law

Public law constructs the relationship between employers and workers in several instrumental and meaningful ways. For example, federal statutes define a migrant or agricultural worker as "an individual employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence."61 This is distinguished from a seasonal worker who is defined as "an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence."62

The nation's farm worker labor force includes men, women, and

60. See generally JUAN GÓMEZ-QUIÑONES, ROOTS OF CHICANO POLITICS 1600-1940 (1994).
children, with Mexican-Americans comprising the largest group within the population. An estimated three million employees work in the fields. Precise counting of the farm worker population remains difficult because of lax reporting, workers' mobility, and the employment of undocumented workers. In Texas, the farm worker population ranges between 50,000 and 700,000. In El Paso, farm workers residing within urban areas comprise one percent of the city's population.

More than one-fourth of the migrant and seasonal farm workers are women who perform almost every kind of farm labor on all sorts of farms and agricultural enterprises. Women, along with men, move irrigation pipes and apply pesticides. Some women complain that they are subjected to sexual harassment by supervisors.

Children comprise another group of farm workers because public law provides that lower age groups may work in agriculture. Estimates of farm worker children in agricultural fields range between 800,000 and 1.5 million. Agriculture's exemption from child welfare legislation permits ten and eleven-year-olds to work in hand-harvested commodities. In some instances, young children pick cucumbers and tomatoes. Other children prune grapes, harvest strawberries, lettuce, asparagus, citrus

63. See W.K. Barger & Ernesto M. Reza, The Farm Labor Movement in the Midwest: Social Change and Adaptation Among Migrant Farmworkers 21 (1994). Across the country, Hispanic persons, as identified by the U.S. Census, are more likely to be employed in farming, forestry, and fishing than non-Hispanic persons (5.0% versus 2.2%). See U.S. Bureau of the Census, 1990 Census of Population and Housing, Persons of Hispanic Origin in the United States (1990).

64. See BARGER & REZA, supra note 63, at 20. A precise count remains difficult because of lax reporting, the erratic timing of the census, workers' mobility, and the employment of undocumented workers. See Janis B. Kupersmidt & Sandra L. Martin, Mental Health Problems of Children of Migrant and Seasonal Farm Workers: A Pilot Study, 36 J. Am. Acad. Child & Adolescent Psychiatry 224, 224 (1997).

65. See BARGER & REZA, supra note 63.

66. Within the rural economy, farm worker females remain primarily excluded as a focus of study. See generally Margaret Rose, Traditional and Nontraditional Patterns of Female Activism in the United Farm Workers of America, 1962 to 1980, 11 Frontiers 26 (1990).


69. See id.

70. See id.

71. See id.; see also Jeanne M. Glader, A Harvest of Shame: The Imposition of Independent Contractor Status on Migrant Farmworkers and Its Ramifications for Migrant Children, 42 Hastings L.J. 1455, 1455 (1991) (reporting on eleven-year-old Alejandra Sanchez picking cucumbers, and her eight-year-old brother, Fidel, wearing rubber gloves to protect his hands from the prickly cucumbers).

72. See Alex Pulaski, Dawn to Dusk, Father and Daughters Toil, Neither Birthdays Nor
fruits, and pistachios. Children are in the fields because the lack of childcare facilities requires them to accompany their parents or because they are needed to supplement family incomes. Without supervision, children are injured in machinery-related accidents causing the loss of limbs, and some die from drowning in agricultural ditches.

Children suffer from multiple forms of chronic stress resulting from their migratory lifestyle. Migrating into other states to work, or accompanying their parents in the fields, plagues the childhood of farm children by leaving them little experience with a permanent home or with owning possessions. Farm worker children are in high health risk categories for child maltreatment, immunization difficulties, inadequate dietary intake, iron deficiencies, tuberculosis, and parasitic diseases. Researchers report farm worker children are ostracized from other school children and experience low self-esteem, academic, and self-concept problems. Inadequate medical and social services prevent improved health for farm worker children.

B. Conditions of Farm Employment

"We farmworkers, we are the ones that work hard to feed the nation." Farm workers are employed in labor-intensive fruit and vegetable production including working in orchards, vineyards, nurseries, greenhouses, and muck farms. Food production involves planting and cultivating, hoeing, thinning, weeding, and pruning crops. Farm workers harvest crops, and sort, grade, wrap, and pack fruits and vegetables. Farm workers also harvest ornamental grasses, pot and tend the plants, dip them in pesticide baths, and wrap them for shipment. The public's growing need for fruits and vegetables ensures the need for their labor long into the twenty-first century.


74. See Nixon, supra note 68, at 30.
75. See Kupersmidt & Martin, supra note 64, at 225.
76. See id.
77. See id.
78. See id.
79. See id.; see also Colleen LaMay, Outreach Health Program Is Cut Short for Migrant Workers, IDAHO STATESMAN, Feb. 25, 1997, available in 1997 WL 5427497.
80. FARMWORKER JUSTICE FUND, INC., FARMWORKER WOMEN SPEAK OUT i (1994) (quoting farm worker Marta Salinas).
Agriculture benefits from exemptions from legislation required of employers outside agriculture. In a number of instances, agricultural employers do not deduct social security and Federal Insurance Contribution Act ("FICA") taxes from their employees' salaries. This results in part from employers labeling field workers and their families as independent contractors. At times, employers require workers to pay exorbitant prices for food, housing, and other items provided by them and labor recruiters. Once fieldworkers are hired, they cannot leave because of the lack financial and material resources.

Other legislation impacting farm working conditions includes the realm of agricultural exceptions from health and safety welfare legislation. Federal law, for example, exempts agricultural employers with less than ten employees from reporting workplace injuries. Although allowing an exemption for certain groups of enterprises may appear to be a limited exemption, the statute harbors a loophole. Specifically, employers labeling the head of a family as an independent contractor permits them to neglect to count other family members also employed in the enterprise. An employer with ten "independent contractors," therefore, might retain in his employment about sixty individuals. The lack of inspections of smaller agricultural enterprises increases the abuse of this loophole. Insulating the sector from reporting obligations perpetuates unaccountability for workplace injuries in one of the nation's most dangerous industries.

Other health hazards result from the lack of regulation of field sanitation and drinking water in fields in which farm workers are employed. The lack of field sanitation for smaller operations exposes


82. See Glader, supra note 71, at 1455-56.

83. See, e.g., Egg Farm's Conditions "Atrocious," U.S. Fines Firm $3.6 Million, THE ARIZ. REPUBLIC, July 29, 1996, at A6. The Occupational Safety and Health Administration inspected the DeCoster Egg Farm 14 times since 1976, but was "unable to conduct a wall-to-wall inspection until the farm had joined a federal program aimed at helping companies with the highest incidence of workplace accidents." Id. DeCoster, with facilities in a number of states, was fined $3.6 million for safety violations. See id. Several workers, moreover, complained of working overtime without compensation. See id. One DeCoster worker lost parts of three fingers from a machine accident. See id. Only after paying a federal fine did DeCoster agree to place a safety guard on the machine. See id.

84. See U.S. DEP'T OF LABOR, SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES 1 (1992). Even in larger enterprises, however, worker safety is a significant issue.

85. See Job Safety, Migrant Workers Lack Protection of Federal Safety Programs, GAO Says, Daily Rep. for Executives (BNA) No. 38, at A-4 (Feb. 26, 1992) (noting that a Labor Department study of farm workers in 1991 revealed that 31% of those surveyed worked in fields without basic sanitation). Representative Edward Roybal (D-Cal.) commented that federal laws do not guarantee "access to hand washing or toilet facilities in the fields." Id.
workers to kidney and bladder infections and further causes farm workers to sacrifice their dignity when forced to use the fields as an alternative facility. 87

Another aspect of federal law impacting farm workers is the inadequate regulation of pesticides, 88 which imperils the health and safety of workers. 89 The Worker Protection Standard ("WPS") seeks to protect agricultural workers in their work with pesticides. Not unlike other health and safety legislation instrumental to farm labor, the WPS was modified five times during its first five months in force. Valerie Wilk, a spokesperson for the Farm Worker Justice Fund, asserts the changes are "blatantly anti-worker" and are "dismantling the WPS." 90

Field workers also claim that the regulatory framework, including the Worker Protection Act, which provides training and notice about the dangers of pesticides, is inconsistently enforced. Furthermore, the monitoring of pesticide exposure is limited in comprehensiveness and quality. 91 Currently, a reliable estimate on the extent of pesticide-related illnesses resulting from occupational exposure to pesticides on farms is unavailable. 92

Farm workers, confronting poorly regulated working conditions, endure, in a number of circumstances, harmful exposure to pesticides. Yet,

86. See 29 C.F.R. § 1928.110 (1998) (exempting farms with fewer than eleven employees from field sanitation regulations). Without access to water, workers must rely on agricultural ditches.


88. See Deborah Vanpelt, Farmworker Protection Compromised, Advocates Say, TAMPA TRIB., Apr. 29, 1995, at 4; see also Randy Lee Loftis, State Faulted on Pesticide Enforcement, DALLAS MORNING NEWS, Apr. 26, 1994, at A33 (reporting that Texas' Agricultural Commissioner has been under attack for slashing pesticide enforcement). Environmentalists have claimed that the Commissioner has cut civil enforcement, failed to penalize violators, neglected workers' complaints, and "abandoned [his] role of protecting the health of farm workers." Id.

89. Exposure to pesticides plagues agricultural employment. See generally U.S. GEN. ACCOUNTING OFFICE, PESTICIDES ON FARMS: LIMITED CAPABILITY EXISTS TO MONITOR OCCUPATIONAL ILLNESS AND INJURIES, REPORT TO THE CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, U.S. SENATE 7 (1993) [hereinafter PESTICIDES ON FARMS]; Associated Press, supra note 87, at A5 ("[M]any pesticides are applied by the irrigation system, and some farm workers thought the water was safe and drank it and got very sick."); Paul M. Lantz et al., Peer Discussions of Cancer Among Hispanic Migrant Farmworkers, PUB. HEALTH REP., July 1, 1994, at 512; C. Sagarser et al., Occupational Pesticide Poisoning in Apple Orchards—Washington, 1993, Epidemiological Notes and Reports, MORBIDITY AND MORTALITY WEEKLY REP., Jan. 7, 1994, at 993 ("[D]ata have identified a high proportion of Hispanics among cases of Agriculturally related pesticide poisoning.").


91. See PESTICIDES ON FARMS, supra note 89, at 7.

92. See id.
even when dangerous incidents take place, their use is not terminated. In 1989, for example, 112 field workers were exposed to Phosdrin, a pesticide used to control worms.\footnote{See Marlene Sokol, Still a Bitter Harvest, St. Petersburg Times, June 25, 1995, at B1.} Within hours of exposure, Phosdrin caused workers to sway, vomit, and suffer from headaches.\footnote{See id.} The workers were taken to a hospital but only after a clinic stripped them naked and hosed them down.\footnote{See id.} Media reports of the incident led to meetings, videos produced by public health specialists, and Congressional testimony as to the harmful effects of Phosdrin.\footnote{See id.} Nonetheless, operators continued using Phosdrin for several years while workers waited for stronger regulations and “stiff sanctions” against any unsafe use of the pesticide.\footnote{See id.}

Yet another problematic aspect of pesticide use is causation standards. In contrast to regulatory data, animal studies are a “primary source of scientific evidence of the carcinogenic and teratogenic properties of pesticides.”\footnote{Mary Cabrera, Legal Remedies for Victims of Pesticide Exposure, 1 Kan. J.L. & Pub. Pol'y 113, 113-14 (1991).} These experiments “indicate that pesticides can induce malignant tumors, reproductive disorders, and chronic allergic dermatitis. Long-term exposure not only damages the lungs, liver, and kidneys, but also may interfere with the body’s immune system.”\footnote{Id. at 114.} Despite the known toxic effects of pesticides, an operator’s reliance on them extends to fields in which farm workers are employed.\footnote{See Maria Alicia Gaura, Environmental Group Finds High Pesticide Level, S.F. Chron., Nov. 18, 1997, at A22.} Agricultural employers, moreover, seek changes in regulations governing reentry periods in fields sprayed with pesticides.

Suspicious cancer clusters, consequently, are surfacing in several California farm worker communities. For example, twenty-one children in McFarland, California, have developed cancer since 1975, more than three times the number expected for a community its size.\footnote{See Mark Arax, Cancer Mystery Still Plagues Town Health: “Cluster” in McFarland Was Never Explained, L.A. Times, Aug. 14, 1997, at A1.} Some experts claimed that pesticides in this small farm town had contaminated the drinking water.\footnote{See id.} Between 1981 and 1984, children in Fowler, California, were diagnosed with leukemia at an incidence thirty-five times the anticipated rate for a city its size. From 1975 to 1984, children in Rosamond, California, developed cancer at a rate four times the norm. In 1989, in Earlimart, California, yet another cluster of childhood cancers arose when families of
Chicana/Chicano farm workers developed cancer at twelve times the expected incidence for a town of its size.

Extended latency periods before cancer develops prohibit assigning liability to agricultural employers who expose workers to pesticides. High standards of legal causation preclude remedies for damage to fieldworkers’ lungs, livers, kidneys, and immune systems resulting from the long-term effects of pesticide exposure. Birth defects, infertility, menstrual dysfunction, other chronic symptoms, and in several instances death, are several aspects of the farm labor experience. Not unlike undocumented workers fearing deportation if they report abuses, the pesticide regulatory process protects the sector.

Closely related to health concerns and exposing the reality of farm laborers and agricultural exceptionalism are farm workers’ poor housing conditions. The lack of suitable and adequate housing requires, in some instances, farm workers to rely on nongovernmental organizations or individuals. Outside of nongovernmental assistance, fieldworkers are sometimes forced to use as housing tents and trailers in the middle of agricultural fields sometimes contaminated with raw sewage. Farm worker labor camps are sparsely furnished, unclean, and unsafe with rotten boards.


104. See id. at 148.

105. See Sanchez v. Overmyer, 891 F. Supp. 1253, 1258 (N.D. Ohio 1995) (finding that the owner of an agricultural labor camp failed to comply with federal and state safety and health standards regarding the quality of migrant housing units); see also Farmer v. Employment Sec. Comm’n, 4 F.3d 1274, 1275-76 (4th Cir. 1993) (discussing the conflict between an immigration law requiring housing for workers and federal fair housing legislation under which workers could not pursue their housing discrimination claim); De Bruyn Produce Co. v. Romero, 508 N.W.2d 150, 154-56 (Mich. Ct. App. 1993) (denying motion by Michigan farm workers seeking a declaration defining the legal relationship between them and their employer as a landlord-tenant relationship, which would have permitted the application of state housing laws to farm worker housing); Sherylle Gordon, Note, Michigan Housing Laws Should Apply to Migrant Farm Workers, 41 Wayne L. Rev. 1849 (1995).

Poor housing exists in part because of the lack of rural, affordable housing for workers. Another factor is the lack of sanctions against growers who allow workers to reside in tents, trailers, and other inferior housing. See generally Guadalupe Gamboa & Ricardo Sanchez, Putting a Roof over Our Farmworkers, Seattle Times, Nov. 20, 1997, at B7; Jenny Labalme, Advocates for Migrant Farm Workers Call State Living Conditions Inadequate, Indianapolis Star, Sep. 13, 1997, at B1; Lise Olsen, Incentives Help Workers’ Camps but Shantytowns Remain a Fixture, Seattle Post-Intelligencer, July 23, 1998, at A4 (reporting that 1,100 licensed camps were insufficient to house California’s estimated 700,000 farm worker population).

on porches and lacking screens on windows. Without window screens, flies and other insects invade farm worker housing structures.

Other farm worker housing lacks indoor plumbing and air conditioning. Peeling paint chips from ceilings, walls, or window ledges further imperil worker health. Health hazards also surface from the communal use of bathroom facilities with moldy and clogged stalls and fly-infested outhouses. In one example, a massive egg farm facility labor camp included tape-covered rat holes that were located near babies’ cribs, roaches, raw sewage in trailers, plastic covers on empty window frames, and faulty plumbing facilities.

Poor housing exists in part because of the lack of affordable housing alternatives for farm workers. Other factors include the lack of meaningful sanctions against growers who house the workers in inferior housing. The infrequent inspections by government officials also preclude the enforcement of the few sanctions levied against deficient and unsafe housing.

Rethinking the workplace for the forthcoming century demands rejecting traditional models of study. Transforming the human condition of agricultural labor compels us to step beyond traditional and limited legal constructs. It mandates site-specific investigations and includes reaching outside the realm of traditional mainstream legal study.

III. A COUNTER-STORY: EL PASO AND AGRICULTURAL LAW AND POLICY

The El Paso, Texas, region promotes rethinking an area of law adversely impacting a class of workers. The region’s essential characteristics highlight agricultural exceptionalism, its process and nature, and represent a rich confluence of factors critical to the agricultural agenda.

El Paso is the home of urban and rural migrant and seasonal workers consisting of Chicanas/Chicanos, resident aliens, and undocumented Mexicans. While they are not defined as migrant workers, some employees follow the “chicken trail” to work in agro-maquilas (beef and poultry slaughter houses throughout the United States). A significant portion of agricultural law and policies critical to United States food production collapse in the region.

Internationally, the region is one of the world’s largest ports of entry and a key location of increased agricultural activity in supplying global markets. Notwithstanding its role in the global agricultural agenda, the region is one of the poorest in the country.

A. Federal Law and Agricultural Fundamentalism

El Paso’s agricultural history shows a series of international
agreements that directly involve farm workers. It essentially illustrates the nature of the region's importance to the agricultural agenda. One major federal law benefiting agriculture, for example, included the Bracero Program, a World War II program designed to meet the sector's labor demands throughout the border region and the United States. A contractual arrangement between the United States and Mexico, the Bracero Program allowed agriculture an exemption from restrictive immigration laws. While initially limited to the duration of World War II, the Program prevailed long beyond the designated period and into the 1960s.

The experience of laborers during this period renders the Bracero Program a notorious incident in Chicana/Chicano history. Throughout the duration of the Bracero Program, employees charged their employers

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First adopted in 1942, the Bracero Treaty permitted the entry of Mexican agricultural workers into the United States. See Cleveland, supra, at 1579 n.52 (discussing Agreement Between the United States of America and Mexico Respecting the Temporary Migration of Mexican Agricultural Workers, Aug. 4, 1942, U.S.-Mex., 56 Stat. 1759). The Bracero Program legislation provided “authorization and financing for the recruitment, transportation, and placement” of temporary agricultural workers from Mexico. Murray, supra, at 520 (citing Pub. L. No. 45, § 5(g), 57 Stat. 70, 73 (1943)). This legislation remained in effect until 1964. See id. at 520 n.79.

108. Recently, the agricultural sector has lobbied for a return to a similar program. See Bill Maxwell, The Farm Worker Rip-Off Act of 1998, St. Petersburg Times, July 26, 1998, at D1 (describing the efforts of senators from major agricultural states in “introducing a bill designed to let farmers hire tens of thousands of temporary foreign workers to cultivate and harvest crops—despite government evidence showing that such workers are unnecessary”); see also William Branigin, Making Room for More Foreign Workers; GOP Agrees to Raise Ceiling on Visa Category Allowing “Temporary” Immigration, Wash. Post, July 25, 1998, at A14.

The bill’s sponsors include Bob Graham, D-Fla.; Dale Bumpers, D-Ark.; Slade Gorton, R-Wash.; Larry Craig, R-Ind.; Gordon Smith, R-Or.; and Ron Wyden, D-Or. See Maxwell, supra, at D1. The proposed Agricultural Job Opportunity Benefits and Security Act would “replace the agricultural H-2A guestworker program.” Id. Greg Schell, managing attorney of the Migrant Farmworker Justice Project in Belle Glade, Florida, asserts that the bill “represents an enormous step backwards for America’s workers . . . Florida farmers would be guaranteed a limitless supply of cheap foreign labor at bargain basement prices. If this bill is adopted, all competitive incentives will be removed for Florida growers to improve wages and benefits for farm workers.” Id. The proposed guestworker legislation is unconscionable in light of strong evidence showing that the legislation would cause the “loss of jobs among tens of thousands of U.S. farm workers.” Id. GAO officials “argue that the proposal perpetuates the agricultural industry’s lie about the nation not having enough laborers. Americans will not do backbreaking seasonal work, farmers claim.” Id. Maxwell compares the difficult nature of farm work with the difficult nature of construction and other manual labor performed by well-paid American employees. See id.
with breaching their farm labor contracts. Bracero workers asserted that employers did not compensate them for work performed and that they were, at times, compelled to endure slavery-type conditions.\textsuperscript{109} When workers objected through collective action or by pursuing legal forms of relief, employers intimidated them through violence and arrests. In several instances, employers notified immigration officials to seek deportation of their employees, a practice that continues in the present.\textsuperscript{110} Heated criticism from worker advocates ultimately ended the Bracero Program, but Congress nonetheless initiated yet another international program involving both Mexican and Chicana/Chicano workers.

The Border Industrialization Project ("BIP") initiated the entry of "maquilas" (twin assembly plants) in the region.\textsuperscript{111} The program permits American industries and other countries to forward raw materials or component parts to maquilas on an essentially duty-free basis. After processing in the maquila, the products are returned to the United States for final assembly.

Working conditions in the plants draw criticism that maquilas are duplicating conditions in the fields and are extending into the agricultural workplace. For example, the maquila concept is extending into meat and poultry packing houses as agro-maquilas.\textsuperscript{112} Agro-maquilas have working conditions similar to those found in maquilas including low wage levels, the absence of safety mechanisms, and the lack of worker training in handling the country's food supply.

Finally, another international agreement affecting the region is the North American Free Trade Agreement ("NAFTA"). Its impact on the world's largest agricultural marketplace—the El Paso region—exposes several important links between agricultural law and policy in the El Paso region. While NAFTA provides substantial trade protections and incentives favoring agricultural growers and producers, only "guiding

\textsuperscript{109} See VALDÉS, supra note 1, at 94, for an account of Braceros and their working conditions in the Midwest and violations by farmers of their agreements with Mexico. Professor Valdés also reports on farmers purposefully undercounting acreage and thus denying workers their full wages. See id. at 20. "Crescencia Rangel bitterly recalled an incident fifty years earlier in Minnesota: 'I was working with my daughters. The farmer cheated us of 7 acres.'" Id. (citation omitted).


\textsuperscript{112} For an account of the nature of maquilas in border cities, see WOMEN ON THE U.S.-MEXICO BORDER: RESPONSES TO CHANGE (Vicki L. Ruiz & Susan Tiano eds., 1987).

The maquila concept is extending into agriculture throughout the United States and is eliminating independent owner-operators who are being absorbed and replaced with larger commercial agricultural interests. See Hamilton, supra note 5, at 615-36 (discussing the displacement of independent owner-operators by integration of agriculture).
principles” define the working relationship between employers and employees. These principles lack the regulatory structure necessary to initiate long-term beneficial changes for workers.

El Paso workers, moreover, assert that NAFTA is generating unemployment. Several critics, furthermore, contend NAFTA particularly has additional negative consequences for women workers. It is well-established that women experience the consequences of restrictive measures differently than men, and the NAFTA experience in El Paso supports the observations. Before maquilas, the garment industry employed women in large numbers. The international agreements, nonetheless, have reduced the apparel industry significantly and are ensuring new policies and practices in maquilas that expose women to decreasing wage levels and unsafe and unclean working conditions.

B. Additional Factors Benefiting Agriculture in El Paso and the Surrounding Region

Examining the role of public law in chilling worker organizing and collective action is critical to understanding the nature of employer/employee relations involving Chicana/Chicano workers in the El Paso region. Although Texas has a long history of farm workers pursuing collective action, the agriculture industry’s use of law as a weapon creates opposition to labor organizing. Laws facilitating employers’ resistance to improving conditions has long stymied workers seeking viable and sustainable labor alternatives. For example, workers’ experiences with physical abuse and terrorist-like tactics on the part of public law enforcement officials thwarted the workers’ efforts.

Medrano v. Allee illustrates one aspect of employers’ resistance to the unionization attempts of area workers. In this case, the district court reported on the use of law enforcement officials in frustrating collective action. The United Farm Workers Organizing Committee sought to unionize farm laborers in the lower Rio Grande Valley and commenced a

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strike to achieve that objective. Local and state authorities were employed as managerial employees for the company the strikers were targeting. During the strike, the state employees/company managers arrested and initiated the prosecution of workers under various state laws.

The district court also described the selective use of law enforcement. The court, for example, reported on the use of Texas Rangers in intimidating the strikers, detaining strikers without filing charges, seizing their posters, dispersing demonstrators, threatening further prosecutions if pro-union activities did not cease, and abusing the bonding process. The court found the above tactics to be a "pattern of action by local authorities designed to halt the strike and to discourage attempts to engage in constitutionally protected conduct in support of the strike." In one instance, the court reported that a deputy sheriff pointed a gun at the union president's forehead for shouting support of the union while in the county's courthouse. Although the farm workers succeeded in the case, the terrorist-like tactics used against them succeeded in obstructing unionization for several years.

El Paso, in sum, represents the nature of agricultural exceptionalism and its relationship to workers employed in the sector. Without looking beyond traditional legal boundaries, agricultural exceptionalism forecloses alternatives for the country's agricultural laborers.

IV. CONCLUSION

The present regulatory structure and skewed legal interpretations continue to violate democratic ideals and prevent racial and gender justice for farm workers. The current institutional structure, moreover, prohibits democratic principles from entering the realm of farm work. Rethinking the workplace for the twenty-first century requires rejecting traditional forms of study and adopting alternative legal theories such as LatCrit and Critical Race Theory. Turning to race-based interpretations would assist immeasurably in analyzing the relationship between the sector and farm workers. Incorporating alternative legal theories also promotes exposing the hegemony of mainstream law and its links with the subordination and

116. See id. at 612.
117. See id. at 611-12.
118. See id. at 612-17.
119. See id. at 618.
120. See id.
121. Id. at 618.
122. See id. at 613.
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races of agricultural workers. Site-based investigations, such as analysis of the El Paso region, further expose the connection between agricultural law and the poor workplace conditions of farm workers.

Increasing consumer demand for fruits and vegetables and concerns for food safety further compel rethinking the conditions of fieldworkers. Anticipated demand for fruits and vegetables, moreover, will require an adequate labor supply for agriculture. The agriculture industry, anticipating projected growth, is lobbying for a return to the Bracero Program and other guest worker legislation. The experience of Chicana/Chicano fieldworkers with past international agreements reveals that, if permitted, the wide access to an isolated labor force would lead to the further mistreatment of farm workers.

Analysis of the El Paso region highlights regulatory models that ensure the continued well-being of the sector but adversely impact laborers. Moreover, the realm of public laws facilitating food production demonstrates the direct connection between agricultural exceptionalism and farm worker poverty. Agricultural exceptionalism is a regulatory structure having no place in the present, much less in the twenty-first century workplace. It fails to reflect democratic conceptions of the workplace and thwarts widespread participation of workers within the rural economy.

Transforming the twenty-first century workplace requires reaching beyond traditional union activity, including forming links with other collective efforts on both the domestic and international levels. For

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123. See, e.g., Luna, supra note 5, at 9 (citing Lothrop Stoddard, Re-Forging America: The Story of Our Nationhood 214 (1927) ("Mexican 'peon' (Indian or mixed-breed) is a poverty-stricken, ignorant, primitive creature, with strong muscles and with just enough brains to obey orders and produce profits under competent direction.")).


[F]ruits, vegetables and horticultural specialties accounted for more than $23 billion of agricultural sales in 1992, a 32 percent increase from that reported in the previous agricultural census five years prior.” Id. at 44 (statement of Bruce Goldstein, Executive Director, Farmworker Justice Fund) (citation omitted).

125. See id. at 44-45.


For other “outsider” union groups, consider the Asian Immigrant Women Advocates (“AIWA”) who organized designer garment workers. La Mujer Obrera in El Paso has long employed direct forms of confrontation. When an employer failed to pay the female employees, and their complaints to the Department of Labor failed to protect the women, the women tied themselves to the sewing machines of their employer. Similarly, when Levi
example, UTAF in El Paso is forging relationships between Mexican and African-American farmers. The Union believes that the forces that are driving farmers off the land in the United States are the same forces that will speed the departure of about three million Mexican families from the land they fought and died for.

The value system sustaining agricultural exceptionalism is no longer acceptable. Agricultural history illustrates that New Deal programs "had only one aim: to raise farm prices" and intentionally excluded a class of workers largely comprised of Chicana/Chicano laborers. The broad array of public law that gave birth to the wealth of agriculture is contrary to the place afforded farming in American history. Including all workers in the rural economy requires identifying and eliminating legal structures adversely affecting workers. In sum, it will effectively transform farm worker conditions that have persisted long beyond the imaginable.

Strauss laid off over 1100 workers in San Antonio, the largely female workforce organized Fuerza Unida. The women are linking with groups in Mexico, where many garment employers are relocating. In Boston, a union network is assisting an Immigrant Worker Resource Center that offers English classes and legal assistance while disseminating labor news in Spanish and Haitian Creole. In New York City, the Chinese Staff and Workers Association has promoted independent unionization in the garment, construction, and restaurant industries.

In addition, the Justice for Janitors campaign organized the Service Employees International Union ("SEIU") by combining workplace-based mobilization and confrontational tactics. This is particularly critical where employers are shielded by labor contractor law and insulated by legal theory. These various forms of union activity employ direct actions that contrast with the lawsuits and strikes used by the traditional labor workforce. Justice for Janitors, for example, employs "in-your-face" tactics to disrupt business activity, to raise public awareness, and to pressure corporations. The union has blocked freeways and bridges, performed guerrilla theater in front of corporate offices, disrupted shareholders and city hall meetings, and picketed the homes of corporate executives. By their nature, alliances formed with local communities to engage in direct action protests in large measure resemble social movements. They constitute, in essence, "collective rebellions" and studying their causes or pre-conditions for mass mobilization is required to effectuate much needed changes.