

THE FAIR FOOD PROGRAM:  
COMPREHENSIVE, VERIFIABLE AND SUSTAINABLE CHANGE FOR FARMWORKERS

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INTRODUCTION

Recently, debates concerning the central role of immigrant workers in U.S. agriculture have taken on a new tone of realism in the wake of the cautionary tales arising from heavy-handed enforcement policies enacted in Georgia and Alabama. In 2011, both states passed disastrously short-sighted immigration laws—Georgia’s Illegal Immigration Reform and Enforcement Act of 2011 (better known as HB 87) and Alabama’s Beason-Hammon Alabama Taxpayer and Citizen Protection Act (better known as HB 56)<sup>1</sup>—which were modeled after Arizona’s infamous crackdown legislation, SB 1070.<sup>2</sup> Under these laws, “employers [are] required to use the federal E-Verify system . . . to determine their employees’ legal status.”<sup>3</sup> In Georgia, for example, “any worker who uses false documents to get a job could face up to fifteen years in prison and \$250,000 in fines[, and b]usinesses that do not comply risk losing their licenses.”<sup>4</sup> These laws also broadened police’s power to investigate people’s immigration status during routine stops.<sup>5</sup>

Even before these provisions went into effect and through the end of the states’ first growing season post-enactment, the impact on Georgia and Alabama agriculture was swift and severe. Many experienced farmworkers steered clear of those states’ sizable tomato, watermelon and blackberry harvests altogether, and massive amounts of fresh fruit and vegetables simply rotted on the vine as inexperienced local workers were unwilling to do the work for minimum wage.<sup>6</sup> An October 2011 study by researchers at the University of Georgia estimated yearly statewide direct and indirect losses of 391 million dollars due to the sudden collapse of labor supply and labor shortages that existed in Spring 2011.<sup>7</sup> It is likely that these losses in the Georgia agriculture market are the result of the restrictive new enforcement measures set forth in SB 1070.

As was the case in Arizona, the laws in Georgia and Alabama were sharply criticized and challenged by a coalition of labor, civil rights and civil liberties groups.<sup>8</sup> At the same time, grow-

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<sup>1</sup> For Georgia’s law, see 2011 Ga. Laws 252, and for Alabama’s law, see ALA. CODE §§ 31-13-1 to 35 (2011).

<sup>2</sup> ARIZ. REV. STAT. ANN. § 11-1051 (2010); see also Greg Asbed & Sean Sellers, *Self-Inflicted Wounds: How Georgia Learned the Hard Way About the Real Value of Immigrant Farm Labor*, THE NATION, Oct. 31, 2011, at 24.

<sup>3</sup> See ALA. CODE § 31-13-15(B) (2011); 2011 Ga. Laws 252; Asbed & Sellers, *supra* note 2, at 24.

<sup>4</sup> Asbed & Sellers, *supra* note 2, at 24; see also 2011 Ga. Laws 252.

<sup>5</sup> Asbed & Sellers, *supra* note 2, at 24.

<sup>6</sup> See, e.g., *id.* at 24-25.

<sup>7</sup> JOHN C. MCKISSICK & SHARON P. KANE, UNIV. OF GA. CTR. FOR AGRIBUSINESS & ECON. DEV., AN EVALUATION OF DIRECT AND INDIRECT ECONOMIC LOSSES INCURRED BY GEORGIA FRUIT AND VEGETABLE PRODUCERS IN SPRING 2011 8 (2011), available at <http://www.caes.uga.edu/center/caed/pubs/2011/documents/CR-11-01.pdf>.

<sup>8</sup> See, e.g., *Anti-Immigrant Arizona Copycat Laws*, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org>

ers used the opportunity provided by the “farm labor crisis” to lobby Congress (so far unsuccessfully) for an expanded guestworker program which would be a modified version of today’s H-2A program,<sup>9</sup> but with less oversight from the Department of Labor and lower guaranteed wages for foreign workers. While “compromise” proposals include a pathway to residency for some workers with temporary visas, there is little chance that any of the policies being seriously considered would address the sub-standard wages and working conditions for the overwhelmingly immigrant agricultural workforce in the United States.

As these public debates reveal, conventional wisdom about U.S. agriculture and its immigrant workers contains an unspoken maxim: agriculture is, and will remain, an exploitative, low-wage industry, able to recruit and retain only the most vulnerable and desperate workers. That reality is reinforced in a classic vicious cycle, where the sub-poverty wages and brutal working conditions in the fields give rise to unrivaled levels of turnover, pushing even new immigrants out of the fields as quickly as they can secure employment elsewhere—and so driving the agricultural industry’s insatiable need for ever-more vulnerable, and immigrant, workers.

The dilemma of farm labor exploitation is not necessarily eternal, however. An exciting new undertaking in Florida provides a path forward that can bring one of the “pull” factors drawing undocumented immigrants to U.S. fields—the unending revolving door of farm employment—under control. This would allow for a more stable farm labor force, which lends itself to sustainable solutions for many of the immigration issues facing the country today.

It is critical to not view the crisis that immigrant farmworkers face only in terms of their documentation status, as doing so obscures a larger analysis of the structural forces that shape these workers’ lives once they are living and working in the U.S., *with or without papers*. Such a perspective ignores the history of abusive practices in agriculture and risks limiting the process of social change to purely legislative and judicial domains.

This article will therefore focus on a unique, worker-driven, market-based solution to the most fundamental crisis faced by today’s immigrant farmworkers: the crisis of wages and working conditions. As will be seen, this crisis is not new, nor has it always been limited to immigrant workers. But, the solution that we discuss here is new, and comprehensive enough to embrace all workers, whatever their immigration status.

## I. HARVEST OF SHAME

The labor-intensive industry of Atlantic Coast truck farming has always relied on desperate and vulnerable workers.<sup>10</sup> The very first migrant farmworkers along the East Coast were mostly displaced sharecroppers from Georgia who found work in the newly-drained vegetable fields of southern Florida in the 1920s and 1930s.<sup>11</sup> They helped form the migrant stream which would be chronicled just a few decades later in Edward R. Murrow’s searing 1960 television doc-

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/arizonas-sb-1070-and-copycat-laws (last visited Jan. 7, 2013); Press Release, Am. Civil Liberties Union, Federal Court Blocks Key Parts of Georgia and Alabama’s Anti-Immigrant Laws (Aug. 21, 2012), available at <http://www.aclu.org/immigrants-rights/federal-court-blocks-key-parts-georgia-and-alabamas-anti-immigrant-laws>.

<sup>9</sup> See David Bennett, *How Would ‘Ag Card’ Labor Proposal Work in Florida?*, SOUTHEAST FARM PRESS (Nov. 15, 2012), available at <http://southeastfarmpress.com/vegetables/how-would-ag-card-labor-proposal-work-florida>.

<sup>10</sup> See generally CINDY HAHAMOVITCH, *THE FRUITS OF THEIR LABOR: ATLANTIC COAST FARMWORKERS AND THE MAKING OF MIGRANT POVERTY, 1870-1945* (1997) (chronicling the stories of farmworkers of various ethnic groups and their gradually diminished bargaining power through history).

<sup>11</sup> See *id.* at 114.

umentary, *Harvest of Shame*, an exposé that the legendary journalist hoped would “shock the consciousness of the nation” and spur much-needed agricultural reforms.<sup>12</sup> However, change came slowly to East Coast agriculture, when it came at all.

Beginning in the early 1970s, African American migratory farmworkers exited the fields en masse, either for more stationary farm work in their own communities or to pursue non-agricultural occupational opportunities in the cities,<sup>13</sup> perhaps now available in part because of the Civil Rights Movement, including the enactment of Civil Rights Act of 1964. At roughly the same time, substantial numbers of immigrants from Mexico, and later Haiti and Guatemala, often fleeing poverty and violence, began to arrive in the United States.<sup>14</sup> These immigrants sought work in agriculture, an industry that was always hiring due to the astronomically high turnover rates. In East Coast agriculture, Latinos have outnumbered African Americans working on rural farms since 1987.<sup>15</sup> While many of these workers are legally authorized to work, many are not.<sup>16</sup>

The problems that farmworkers face in the fields—whether U.S.- or foreign-born, authorized to work or undocumented—are chronic and well known. First off, the codification of Jim Crow-era racial hierarchies meant that farmworkers were excluded from nearly all of the New Deal labor protections, including the right to bargain collectively to improve wages and working conditions and the right to receive overtime pay for time worked in excess of forty hours per week.<sup>17</sup> These exclusions helped ensure farmworkers’ poverty and powerlessness for decades to come.

Scant legal protections combined with anemic enforcement make agricultural jobs some of the lowest-paid, least-protected positions this country has to offer. The U.S. Department of Labor (DOL) has described farmworkers as “a labor force in significant economic distress[,]” noting that farmworkers are subjected to “[l]ow wages, sub-poverty annual earnings, [and] significant periods of un- and underemployment[.]”<sup>18</sup> The DOL also notes that while “[p]roduction of fruits and vegetables has increased[,] . . . agricultural worker earnings and working conditions are either stagnant or in decline.”<sup>19</sup> More recently, the U.S. Department of Agriculture reaffirmed that farmworkers “remain among the most economically disadvantaged working groups in the United States.”<sup>20</sup> Wage theft is also an endemic aspect of farmworker life, resulting in “rampant

<sup>12</sup> Byron Pitts, “*Harvest of Shame*” 50 years Later, CBS NEWS (Nov. 25, 2010, 12:56 AM), [http://www.cbsnews.com/8301-18563\\_162-7087361.html](http://www.cbsnews.com/8301-18563_162-7087361.html).

<sup>13</sup> See Alejandra Okie Holt & Evelyn Mattern, *Making Home: Culture, Ethnicity, and Religion among Farmworkers in the Southeastern United States*, in *THE HUMAN COST OF FOOD: FARMWORKERS’ LIVES, LABOR, AND ADVOCACY* 22-23 (Charles D. Thompson, Jr. & Melinda F. Wiggins eds., 2002).

<sup>14</sup> See *id.* at 25, 29.

<sup>15</sup> See *id.* at 28.

<sup>16</sup> See U.S. DEP’T OF LABOR, U.S. DEP’T OF LABOR REPORT TO CONGRESS: THE AGRICULTURAL LABOR MARKET – STATUS AND RECOMMENDATIONS (2000), available at [http://migration.ucdavis.edu/rmm/word-etc/dec\\_2000\\_labor.htm](http://migration.ucdavis.edu/rmm/word-etc/dec_2000_labor.htm) (“Today, only about half of the agricultural labor force is authorized to work in the U.S.”).

<sup>17</sup> See, e.g., Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1335 (1986-87); Editorial, *Farm Workers’ Rights, 70 Years Overdue*, N.Y. TIMES, Apr. 6, 2009, at A24.

<sup>18</sup> U.S. DEP’T OF LABOR REPORT TO CONGRESS, *supra* note 16.

<sup>19</sup> *Id.*

<sup>20</sup> WILLIAM KANDEL, ECON. RES. SERV., U.S. DEP’T OF AGRIC., PROFILE OF HIRED FARMWORKERS, A 2008 UPDATE 1 (2008), available at <http://www.ers.usda.gov/publications/err-economic-research-report/err60.aspx>.

violations” of minimum wage laws and other labor protections.<sup>21</sup>

The environment on many farms is one of near total impunity for farm supervisors and crew leaders. Workers who speak up about conditions or report abuses routinely experience retaliation, up to and including termination.<sup>22</sup> Sub-poverty wages make farmworkers doubly vulnerable to retaliation for whistleblowing—therefore making whistleblowing significantly less likely than in other occupations, even though the abuses are often significantly more egregious in the fields than elsewhere. Agriculture ranks among the nation’s most hazardous industries, and occupational health and safety violations are widespread, including accidents involving heavy machinery and exposure to chemicals, lightning, and extreme heat.<sup>23</sup> Women, who comprised approximately twenty percent of the agricultural workforce in the late 1990s,<sup>24</sup> face the additional burden of near constant sexual harassment—ranging from inappropriate comments to groping to rape.<sup>25</sup>

The combination of farmworker poverty and powerlessness has created fertile soil for extreme forms of labor abuse, including violence towards workers and even modern-day slavery. In the past fifteen years, the U.S. Department of Justice (DOJ) has brought successful cases against defendants in seven farm labor servitude operations in Florida agriculture; involving more than 1,200 workers and fifteen supervisors.<sup>26</sup> The most recent prosecution was of farm labor supervisors who, according to the indictment, “beat, threatened, restrained and locked workers in trucks to force them to work for them as agricultural laborers. The defendants underpaid the workers and imposed escalating debts on them, threatening physical harm if workers left their employment before their debts had been repaid.”<sup>27</sup> The defendants were convicted of enslavement and are currently serving twelve-year sentences in federal prison.<sup>28</sup>

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<sup>21</sup> See FARMWORKER JUSTICE & OXFAM AMERICA, WEEDING OUT ABUSES: RECOMMENDATIONS FOR A LAW-ABIDING FARM LABOR SYSTEM 1-2 (2010), available at <http://www.oxfamamerica.org/publications/weeding-out-abuses>.

<sup>22</sup> See *id.* at 15.

<sup>23</sup> See Occupational Safety & Health Admin., OSHA FACT SHEET (Sept. 2005), available at [http://www.osha.gov/OshDoc/data\\_General\\_Facts/FarmFactS2.pdf](http://www.osha.gov/OshDoc/data_General_Facts/FarmFactS2.pdf); Nat’l Inst. for Occupational Safety & Health, *Agricultural Safety*, CTRS. FOR DISEASE CONTROL & PREVENTION (July 13, 2012), <http://www.cdc.gov/niosh/topics/aginjury/>.

<sup>24</sup> OFFICE OF PROGRAM ECON., U.S. DEP’T OF LABOR, A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS: FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 1997-1998, at 10 (2000), available at [http://www.doleta.gov/agworker/report\\_8.pdf](http://www.doleta.gov/agworker/report_8.pdf).

<sup>25</sup> See generally HUMAN RIGHTS WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE US TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT (2012), available at [http://www.hrw.org/sites/default/files/reports/us0512ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf) (documenting the experiences of farmworkers with sexual violence and sexual harassment); SOUTHERN POVERTY LAW CTR., INJUSTICE ON OUR PLATES: IMMIGRANT WOMEN IN THE U.S. FOOD INDUSTRY 41-52 (2010), available at <http://www.splcenter.org/get-informed/publications/injustice-on-our-plates> (chronicling female farmworkers’ experiences with sexual abuse).

<sup>26</sup> See, e.g., Press Release, U.S. Dep’t of Justice, Four Defendants Sentenced for Roles in Scheme to Enslave Farmworkers in Florida (Dec. 19, 2008), available at <http://www.justice.gov/opa/pr/2008/December/08-crt-1134.html>; *U.S. v. Ramos*, 130 F. App’x 415 (11th Cir. 2005); *U.S. v. Flores*, No. 98-4178, 1999 WL 982041, at \*1 (4th Cir. Oct. 29, 1999); *EEOC v. Global Horizons, Inc.*, 860 F. Supp. 2d 1172 (D. Haw. 2012); *U.S. v. Evans*, 276 F. App’x 926 (11th Cir. 2008). See generally *CIW Anti-Slavery Campaign*, COALITION OF IMMOKALEE WORKERS, <http://ciw-online.org/slavery.html> (last visited Jan. 8, 2013) (describing the recent forced servitude cases brought against Florida agricultural employers).

<sup>27</sup> Press Release, U.S. Dep’t of Justice, Immokalee, Florida, Family Charged with Forcing Immigrants into Farm Labor (Jan. 17, 2008), available at [http://www.justice.gov/opa/pr/2008/January/08\\_crt\\_034.html](http://www.justice.gov/opa/pr/2008/January/08_crt_034.html).

<sup>28</sup> See Press Release, U.S. Dep’t of Justice, Four Defendants Sentenced for Roles in Scheme to Enslave Farmworkers in Florida, *supra* note 26.

## II. ASKING THE RIGHT QUESTIONS

In the early 1990s, a group of migrant farmworkers from Mexico, Haiti, and Guatemala began what would become an extended conversation in a borrowed room at a church in Immokalee, Florida—the winter hub of East Coast agriculture.<sup>29</sup> The theme of this dialogue was straightforward and grounded in the everyday reality of exploitation in the fields: How could these agricultural workers organize to improve their lives and community? The multi-ethnic group of workers, many of whom had cut their teeth in social and political movements in their home countries, formed a new organization founded in liberation theology-influenced principles of popular education, leadership development, and collective action.

For its first several years, the Coalition of Immokalee Workers (CIW) organized community-wide strikes and work stoppages to pressure Florida growers to increase the tomato harvesting piece rates, which had remained stagnant since the late 1970s.<sup>30</sup> The group also focused its energies on eliminating prevalent crew leader violence, and, gradually and without prior design, its efforts evolved to include uncovering and investigating modern-day slavery operations.<sup>31</sup> For example, the CIW worked closely with the DOJ on six of the seven Florida farm labor forced servitude cases mentioned above.<sup>32</sup> While the burst of activity brought new visibility to Florida's farmworkers, and even succeeded in eliminating proposed wage cuts and the most egregious abuses in the fields, the CIW was unable to significantly raise wages across the board or to even compel growers to join its members at the negotiating table.<sup>33</sup>

Sensing diminishing returns in a strategy of direct conflict with the growers, the CIW began to ask a new set of questions in about 1999.<sup>34</sup> If the previous line of inquiry had been the typical organizer's question of: "how do we get the growers to the table?," then the new, evolving questions were squarely from the point from an economist's point of view, asking: "why are farmworkers poor?," and "what are the economic forces, the market mechanics, acting to impoverish the lives of farmworkers?" The answers to these questions would shape the CIW's program for the next decade, taking the farmworker group beyond the farm gate and bringing it face-to-face with consumers in classrooms, places of worship, and community centers across the country.<sup>35</sup>

The CIW determined that the vast and unprecedented consolidation of money and power at the top of the food industry that had evolved over the past several decades—with the emergence of national, multi-billion dollar chains like McDonald's, Sodexo, and Walmart—created a

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<sup>29</sup> See *About CIW*, COALITION OF IMMOKALEE WORKERS, <http://ciw-online.org/about.html> (last visited Jan. 15, 2013); see also JOHN BOWE, NOBODIES: MODERN AMERICAN SLAVE LABOR AND THE DARK SIDE OF THE NEW GLOBAL ECONOMY 23-25 (2007) (discussing the CIW organization and how it was founded).

<sup>30</sup> *About CIW*, *supra* note 29.

<sup>31</sup> See *CIW Anti-Slavery Campaign*, *supra* note 26; see also Hillary Rodham Clinton et al., Remarks on the Release of the 10th Annual Trafficking in Persons Report (June 14, 2010), available at <http://www.state.gov/secretary/rm/2010/06/143113.htm> (recognizing CIW's contribution to combating modern-day slavery).

<sup>32</sup> See *CIW Anti-Slavery Campaign*, *supra* note 26.

<sup>33</sup> See Randall Sean Sellers, "Del pueblo, para el pueblo": The Coalition of Immokalee Workers and the Fight for Fair Food 60-61 (2009) (M.A. thesis, The University of Texas at Austin), available at [www.sfalliance.org/resources/Sellers2009.pdf](http://www.sfalliance.org/resources/Sellers2009.pdf).

<sup>34</sup> See generally *About CIW*, *supra* note 29 (discussing CIW's history and strategy development).

<sup>35</sup> See generally *id.* (discussing CIW's history and strategy development).

tremendous downward pressure on supplier prices.<sup>36</sup> CIW members saw this pressure translated directly into a downward pressure on wages and working conditions in the fields.<sup>37</sup> “Squeezed by buyers of their produce, growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ.”<sup>38</sup> The CIW analysis was not a moral critique, but simply a clear-eyed diagnosis of market forces acting on farmworkers’ lives—forces that transfer economic value up the supply chain. If the power to negotiate prices is a function of size, then applying that economic presumption to the supply chain explains the reality of falling farmworker wages. In other words, farmworker poverty is not an intentional outcome of volume purchasing, but it is an outcome nonetheless. Or, as the CIW has framed it, “[W]hen the elephants fight, the grass suffers.”<sup>39</sup>

However, the CIW realized that the same mechanisms of market power exercised through volume purchasing could be made to yield *positive* outcomes, if the proper incentives were brought to bear.<sup>40</sup> Following this logic, the CIW launched the Campaign for Fair Food in 2001.<sup>41</sup> At its most fundamental level, the Campaign was the CIW’s attempt to put the proper incentives in place at the top of the food market supply chain in order to change the outcomes for those at the bottom.<sup>42</sup> Since its launch, the Campaign has made remarkable headway through an alliance of farmworkers and consumers who together have engaged in cross-country speaking tours, protests, fasts, and an array of grassroots activities in order to hold retailers accountable for the labor conditions in their tomato supply chains.<sup>43</sup>

One measure of the Campaign for Fair Food’s success is the agreements the CIW has signed with leading food retailers. As of November 2012, this list included fast-food companies Yum Brands (Taco Bell’s parent company), McDonald’s, Burger King, Subway, and Chipotle Mexican Grill; institutional food service providers Compass Group, Aramark, and Sodexo; and grocers Whole Foods Market and Trader Joe’s.<sup>44</sup> The Campaign is currently focused on leading supermarkets such as Publix, Giant, Stop & Shop, and Kroger.<sup>45</sup>

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<sup>36</sup> See OXFAM AMERICA, LIKE MACHINES IN THE FIELDS: WORKERS WITHOUT RIGHTS IN AMERICAN AGRICULTURE 2 (2004), available at <http://www.oxfamamerica.org/files/like-machines-in-the-fields.pdf>; *About CIW*, *supra* note 29.

<sup>37</sup> See OXFAM AMERICA, LIKE MACHINES IN THE FIELDS, *supra* note 36, at 2.

<sup>38</sup> *Id.* at 36.

<sup>39</sup> See, e.g., Greg Asbed & Lucas Benitez, *Field Notes on Food Justice: Why Your Local Grocery Store Makes Farmworkers Poor*, HUFFINGTON POST (May 22, 2012, 3:39 PM), [http://www.huffingtonpost.com/greg-asbed/field-notes-on-food-justi\\_1\\_b\\_1537106.html](http://www.huffingtonpost.com/greg-asbed/field-notes-on-food-justi_1_b_1537106.html) (incorporating this proverb into a discussion of the work done by CIW and the problems arising from competition between food industry giants).

<sup>40</sup> See *CIW at the 2011 Future of Food Conference*, COALITION OF IMMOKALEE WORKERS, [http://www.ciw-online.org/CIW\\_at\\_future\\_of\\_food.html](http://www.ciw-online.org/CIW_at_future_of_food.html) (last visited Jan. 15, 2013).

<sup>41</sup> *The Campaign for Fair Food*, COALITION OF IMMOKALEE WORKERS, <http://www.ciw-online.org/101.htm#cff> (last visited Jan. 15, 2013).

<sup>42</sup> See *id.*

<sup>43</sup> See Kristofer Rios, *After Long Fight, Farmworkers in Florida Win an Increase in Pay*, N.Y. TIMES, Jan. 19, 2011, at A11.

<sup>44</sup> See *Participating Buyers*, FAIR FOOD STANDARDS COUNCIL, [http://www.fairfoodstandards.org/participating\\_buyers.html](http://www.fairfoodstandards.org/participating_buyers.html) (last visited Jan. 15, 2013); see also Sue Sturgis, *Chipotle Fair-Food Agreement is the Latest Win for Florida Farmworkers*, INSTITUTE FOR SOUTHERN STUDIES (Oct. 8, 2012, 11:12 AM), <http://www.southernstudies.org/2012/10/chipotle-fair-food-agreement-is-the-latest-win-for-florida-farmworkers.html>.

<sup>45</sup> See *Take Action for Fair Food!*, COALITION OF IMMOKALEE WORKERS, <http://ciw-online.org/action.html>

Retailers who have signed Fair Food agreements with the CIW have committed to paying a price premium for more fairly produced tomatoes (the “penny per pound”) and to conditioning their Florida tomato purchases on a grower’s compliance with the Fair Food Code of Conduct.<sup>46</sup> It was the success of the Campaign for Fair Food that directly led to this watershed agreement between the CIW and the Florida Tomato Growers Exchange in November 2010,<sup>47</sup> which in turn set the stage for the statewide implementation of the Fair Food Program (FFP) during the 2011-2012 growing season.<sup>48</sup> In the Opinion Pages of the *New York Times*, food writer Mark Bittman called this development “possibly the most successful labor action in the United States in 20 years.”<sup>49</sup> Barry Estabrook, bestselling author of *Tomatoland*,<sup>50</sup> explained that “[w]ith a few pen strokes, the Florida tomato industry went from being one of the most repressive employers in the country . . . to being on the road to becoming [one of] the most progressive groups in the fruit and vegetable industry.”<sup>51</sup> Additionally, an editorial in the *Washington Post* recently described the Fair Food Program as “a brilliant model” and “one of the great human rights success stories of our day.”<sup>52</sup>

### III. COMPREHENSIVE, VERIFIABLE AND SUSTAINABLE CHANGE

So what, then, is the Fair Food Program? The FFP is the only industry-wide social responsibility program in U.S. agriculture today. In its third season, it will cover over ninety percent of the Florida tomato industry and directly affect the lives of over 30,000 workers—almost all of them immigrants.<sup>53</sup> The Program draws on the strengths of every major level of the food industry and employs every device in the social responsibility toolkit. The Fair Food Code of Conduct, which uses farmworkers’ legal rights as a baseline and then establishes crucial additional protections, reflects that reality.<sup>54</sup>

The Fair Food Code of Conduct was born in discussions among workers in Immokalee, shared with consumers in churches and schools across the country, shaped in negotiations with participating retailers, and honed into the working document it is today in an intense loop of implementation, feedback, and modification in partnership with Florida tomato growers.<sup>55</sup> After

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(last visited Jan. 15, 2013).

<sup>46</sup> See *Fair Food Code of Conduct & Selected Guidance*, FAIR FOOD STANDARDS COUNCIL, <http://www.fairfoodstandards.org/code.html> (last visited Jan. 15, 2013).

<sup>47</sup> Press Release, Florida Tomato Growers Exch. & Coalition of Immokalee Workers, Historic Breakthrough in Florida’s Tomato Fields (Nov. 16, 2010), available at [http://ciw-online.org/FTGE\\_CIW\\_joint\\_release.html](http://ciw-online.org/FTGE_CIW_joint_release.html).

<sup>48</sup> *About CIW*, supra note 29; *Fair Food Program: Frequently Asked Questions*, COALITION OF IMMOKALEE WORKERS, [http://www.ciw-online.org/FFP\\_FAQ.html](http://www.ciw-online.org/FFP_FAQ.html) (last visited Jan. 15, 2013).

<sup>49</sup> Editorial, Mark Bittman, *Immokalee, America’s Tomato Capital*, N.Y. TIMES (May 12, 2011, 4:14 PM), <http://bittman.blogs.nytimes.com/2011/05/12/immokalee-americas-tomato-capital>.

<sup>50</sup> BARRY ESTABROOK, *TOMATOLAND: HOW MODERN INDUSTRIAL AGRICULTURE DESTROYED OUR MOST ALLURING FRUIT* (2012).

<sup>51</sup> Barry Estabrook, *Tomato School: Undoing the Evils of the Fields*, THE ATLANTIC (Apr. 20, 2011, 10:27 AM), <http://www.theatlantic.com/health/archive/2011/04/tomato-school-undoing-the-evils-of-the-fields/237593/>.

<sup>52</sup> Holly Burkhalter, Editorial, *Freeing the Tomato Fields*, WASH. POST, Sept. 3, 2012, at A17.

<sup>53</sup> *Fair Food Program: Frequently Asked Questions*, supra note 48.

<sup>54</sup> See *Fair Food Code of Conduct & Selected Guidance*, supra note 46.

<sup>55</sup> See *Fair Food Program: Frequently Asked Questions*, supra note 48.

many years of development, the Code is today the heart of the Fair Food Program and the basis for real—and realistic—agricultural reform.

### A. *Comprehensive*

The Fair Food Program combines four essential tools of social responsibility, all of which are necessary and none of which is sufficient on its own, into one comprehensive program for ensuring the transparency of labor conditions in the fields and compliance with the Fair Food Code of Conduct.

- *Worker-to-Worker Education* – The CIW is responsible for a program of worker-to-worker education that takes place on the farm, on the clock, and that informs workers of their rights and responsibilities under the Code. This empowers workers to help identify abusive farm bosses and potentially dangerous practices, and it allows growers to address those risks before they become tomorrow’s headlines. In other words, the Fair Food Program harnesses the power of 30,000 trained, motivated monitors on the ground every day.
- *24-hour Complaint Line and Complaint Investigation and Resolution Process* – Open lines of communication between workers in the fields and growers overseeing vast operations from the office are essential to the FFP. When workers encounter a potential Code violation, the FFP provides them access—protected access, with strict consequences for retaliation—to a fast, effective and proven complaint process. The complaint procedure is essential to managing risks before they become bigger problems, and the growers who have truly embraced the Fair Food Program understand the benefit of this.<sup>56</sup>
- *Audits* – Because workers may not be aware of every possible problem or, for that matter, may not always be willing to trust the system, audits are a necessary complement to the complaint process. With access to wage and hour records at the farm office level and access to the fields to oversee harvesting operations and talk to workers first-hand, auditors from the Fair Food Standards Council (FFSC) are able to achieve still greater transparency into participating growers’ operations to ensure that they have the systems in place to make compliance possible.
- *Enforcement through Market Consequences* – The Fair Food Program is an enforcement-focused approach to social accountability, and enforcement ultimately needs teeth to work. Growers who fail to comply with the Code lose business. Those market consequence—built into the FFP through the CIW’s agreements with retailers—are the teeth of the Fair Food Program.

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<sup>56</sup> Through worker-to-worker education and the complaint process, the CIW has now entered the prevention phase of its battle against modern-day slavery in U.S. agriculture. While the CIW has spent the past twenty years helping to uncover, investigate, and prosecute forced labor operations, prevention is the gold standard. Through its combination of market incentives and thorough oversight, the FFP can realistically expect to achieve that standard in the not-too-distant future.

### B. Verifiable

The Fair Food Program's investment of time and resources into the monitoring of the Fair Food Code of Conduct is second to none, and the clearest reflection of that investment is the development of the Fair Food Standards Council. The FFSC is the only indigenous, dedicated monitoring organization of its kind in U.S. agriculture today; its sole task being to oversee compliance with the Fair Food Program.<sup>57</sup> With a team of auditors, field investigators, and accountants, the Fair Food Standards Council's existence sets a new standard for accountability in the field of social responsibility.

### C. Sustainable

The Fair Food Program (FFP) is a model based on the notion that social responsibility—if it is to be sustainable—is a job that simply cannot be kicked down the supply chain but rather must be shared, from retailers at the top to workers at the bottom. As such, the FFP is built to draw on the unique strengths and resources of every level of the supply chain without creating an unreasonable burden on any single level.

- *Retailers* – The FFP draws on retailers' volume purchasing power to create real and compelling incentives for compliance by growers, and on their resources, through the small but powerful Fair Food Premium, to help alleviate the economic hardship faced by farmworkers for decades. Social accountability cannot coexist with sub-poverty wages, as workers will simply be too vulnerable to be useful partners in rooting out abuse.
- *Growers* – The FFP draws on participants' power and resources to eliminate bad actors and dangerous practices from their operations and on their interest in keeping pace with an ever more competitive marketplace, but it does not demand that retailers bear the entire cost of change.
- *Workers* – The FFP draws on workers' knowledge of the day-to-day reality in the fields and their desire for a more modern, more humane workplace.
- *Consumers* – The FFP harnesses consumers' growing demand for the highest ethical standards and employs that demand as the engine that ultimately drives the entire program.

## IV. CONCLUSION

The immigration debate in this country is enriched to the extent that it takes into account all the factors that play a role in shaping the contours of immigrant life. Social, political, and economic factors all come into play in determining the causes and consequences of the growth of what is today an enormous community of undocumented immigrants in towns and cities across

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<sup>57</sup> See *What We Do*, FAIR FOOD STANDARDS COUNCIL, <http://fairfoodstandards.org/> (last visited Jan. 15, 2013).

the country.

The context of human rights provides a uniquely valuable framework for analyzing and addressing issues that combine social, economic and political factors. It does not compartmentalize those particular facets of life, but rather ties them together in a unified set of basic standards that inhere in being a person, whether a citizen or an immigrant, and that enjoy wide acceptance both nationally and internationally. This acceptance of human rights as a frame works for the benefit of the CIW's Fair Food Program. Despite the fact that the vast majority of its beneficiaries are immigrant workers otherwise legally marginalized and politically demonized, the program has gained widespread support from both retailers and growers. The FFP is changing the lives of tens of thousands of immigrant workers in Florida's agricultural fields today, and its success promises to have an impact on forces that are driving at least one important sector of undocumented immigration—agricultural labor.

To the degree that the Fair Food Program improves farmworkers' wages and working conditions, it will predictably stabilize the farm labor force along the East Coast from Florida to Maine and diminish one of the principal "pull" factors on immigrants today, the agricultural industry's seemingly bottomless need for new, economically vulnerable workers to replace those vast numbers who leave the fields every day for better-paying, safer, and more humane jobs. Just as youth unemployment in immigrant-sending countries is an economic rights issue that has a real and significant impact on emigration, the easy availability of employment in receiving countries encourages immigration and has its roots in the widespread and systematic violation of farmworkers' economic and social rights in the fields.<sup>58</sup> The Fair Food Program protects and advances those fundamental human rights and so addresses a key aspect of the immigration issue that is most often overlooked in the overheated rhetoric that criminalizes undocumented immigrants and dominates the debate today. For that very same reason, we must be wary of agricultural guest worker programs that would lock in low wages and sub-standard working conditions for everyone as the *quid pro quo* for a pathway to citizenship for some.

Ultimately, of course, both legislative and market-based reforms like the Fair Food Program will be necessary to adequately address the country's immigration question. One without the other will prove insufficient if we wish to confront the causes of the problem and not just its symptoms. But by understanding, and then expanding, the worker-driven, market-based approach developed by the CIW, we will lay the foundation of common interest that is the hallmark of, and necessary for, successful legislation.

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<sup>58</sup> See Econ. Research Serv., *Farm Labor: Background*, U.S. DEPARTMENT OF AGRICULTURE (July 23, 2012), <http://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx>.