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**THE ROLE OF THE STATE IN LOW-WAGE LABOR SUPPLY:  
A CASE STUDY OF FARMWORKERS IN NEW YORK STATE**

by

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Written under the direction of

Hal Salzman

And approved by:

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## **ABSTRACT OF THE DISSERTATION**

### **The Role of the State in Low-Wage Labor Supply:**

### **A Case Study of Farmworkers in New York State**

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News stories often report on farm labor shortages and the calls of growers for federal government action to bolster supply through immigration policy change. Such intervention is not unusual, but it raises questions about the overall nature of the state's role in labor supply and how supply, demand, and policy influence one another as they evolve. A mixed-method study addressed these questions by describing the agriculture industry and its workforce, examining the history of policy and politics that shape the structure of farm labor markets, and tracing the presence of policy in labor market processes.

An analysis of national survey data and government records identified characteristics of labor-intensive harvesting work that are associated with nonstandard and segmented secondary-tier jobs, the increasing concentration and wage disadvantage of undocumented workers, and the sharp increase in hiring temporary agricultural workers holding H-2A visas. The labor market is structured by agriculture industry-specific policies and exemptions in labor standards, social programs, and immigration policy. Interest groups have long sought to reshape these policies and thus the state's role in

supply and protection of workers, as evidenced by political conflict over labor shortages in Congressional hearings.

Qualitative interviews with employers, workers, non-profit agencies, and government in two New York regions indicate that through implementation of standards and social programs, immigration enforcement, and the H-2A program, the state takes on unexpected or contradictory roles such that markets are partially constructed by the state. In short, the state (directly or indirectly) supplies, sustains, and protects labor and serves as intermediary, with ever-changing mechanisms and results that can shape labor supply characteristics and production and employment practices as well as labor demand.

Recent developments in advocacy and policy point to ways to address the seemingly obvious, intractable issues surrounding farm labor that could move beyond a zero-sum approach to employer-employee relations. Continuing to search for ways to enhance worker agency and conditions in agriculture could benefit this industry as well as other low-wage and contingent workers given the broader implications of immigration, labor, and social policy for the quality of all jobs in rapidly changing labor markets.

### **Dedication**

To Dale Reynolds, whose positive, loving spirit  
and unfailing support made this project possible,  
and to Joanna, a constant source of joy and encouragement.

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## Chapter 1

News stories report frequently on farm labor shortages and the insistent calls of American growers for federal government action to bolster supply with temporary immigrant labor. Growers' interest groups often frame this problem as one of who will do the work they "can't get any Americans to do" (The Post-Standard, June 10, 2007). But their policy proposals call not only for more workers, but also for changes in the requirements and cost of bringing in the workers they say are so vital to assure the survival of American agriculture. Specifically, growers complain about the administration and burdens of a longstanding federal visa program that imports short-term workers (known in its current form as the H-2A program), and want government to ease access to the workers or create a new, more employer-friendly program. After negotiations with worker advocates, grower interests have also joined the call for immigration policy reform to legalize existing undocumented workers, who now comprise over half the workforce.

It may be striking to hear such a straightforward request for state intervention in the markets, but the state role such intervention implies is not unusual. Markets cannot function freely without institutions, and markets are particularly dependent on state institutions with regard to labor, despite the fact that policy discussion of labor issues may employ a free-market frame. The prominent nature of policy in farmworker supply provides an opportunity to add to understanding of this state role in labor markets, which this dissertation addresses through the following questions:

- How does the state contribute to farm labor supply?
- How do supply, demand, and policy influence one another as they evolve?

This study shows that the state is an important part of processes that occur within farm labor markets as employers and workers try out different strategies for assembling workforces or finding work in partial response to regulatory incentives (Rubery 2005). Over time, policy helps to shape employer preferences, which become incorporated into the expectations employers have of the state to provide certain kinds of workers under certain conditions – in particular workers who stay throughout the harvest season, are affordable, are skilled, and have a strong work ethic.

## **I. Study Framework**

Polanyi (2001 [1944]) highlighted the inability of markets to exist without the state with his description of markets and regulation as mutually influencing, according to which markets require regulation to ensure access to the labor, land, and money necessary to create profit. The unavoidable need for state involvement in the continued reproduction of labor stems from this interdependence and co-evolution. Polanyi famously claimed that as the state created the conditions for free markets by supporting the commodification of labor they required, a “double movement” resulted, in which the state was also forced to sustain labor. This claim draws attention to the state’s need to be receptive to calls for policy to address labor shortages and protect workers and to the likelihood that the result may privilege employers’ needs.

Other society-centered theorists also view the state as embedded in social relations and government actions as constrained by markets because the state’s interests coincide with those of capital. Lindblom (1977) stressed that business is more than an interest group influencing government, not only because business enjoys privilege in its ability to shape the way government affects their concerns but also because the survival of

governments depends on the ability of business to perform. This sometimes means that the state incorporates concerns of workers into policy on capitalist terms, as Quadagno (1984) found with regard to the Social Security Act. However, these relationships do not preclude variation in outcomes.

The functions of providing or supplying and sustaining or protecting workers correspond to the stated goals<sup>1</sup> of the H-2A program, but the H-2A program is just one part of a complex policy framework that has evolved over time to contribute to the segmentation (Gordon, Edwards & Reich 1994) of the farm labor market. Segmentation refers to different categories or tiers of jobs with similar wage-setting behavior, employment systems (Rubery 2005), or barriers that prevent movement into other labor or occupational markets (Doeringer and Piore 1971, Gordon et al 1994).

Critics of early segmentation theory noted its failure to explain the channeling of women and people of color into the worst jobs (Albelda and Tilly 1994), or gender issues generally and the way organizations and societal systems shape systems and outcomes (Rubery 2005, 2006). Adding to segmentation theory's emphasis on the demand side Rubery (2005) has focused on how labor supply is created, structured, and interacts with demand. These models contrast with neoclassical models of markets, but I retain from the latter the idea that labor supply is important in determining bargaining power, such that being in demand should increase power for a group of workers, while expansions of supply might be expected to negatively impact wages and conditions.

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<sup>1</sup> In 1987 regulations: "Under the H-2A program, as under the H-2 program before it, [t]he common purpose [of the program is] . . . to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals." 52 FR 20496-01, 1987 WL 133305 (F.R.), 14-15. The DOL wrote in commentary on the revised 2010 rule that it achieved the "proper balance" between "seasonal labor needs...and protecting rights." Federal Register, Vol. 75, No. 32, February 18, 2010, p. 6940.

The state has contributed to the segmentation of farm labor markets in three policy areas, each including policy approaches designed specifically for the agriculture industry or with exceptional provisions for this industry. Immigration policy has selectively expanded supply to favor the agriculture industry by admitting more permanent citizens and with the use of temporary foreign contract workers who come from another country for a period of a few weeks or months to work for a specific employer. The state places workers within the U.S. in jobs through employment services, and through these and other government activities has moved around, housed, or otherwise allocated farmworkers at different points in history primarily through efforts of federal and state Labor Departments, sometimes in ways that disadvantaged farmworkers. The state has also engaged in a range of ad hoc, sometimes crop- and region-specific strategies within U.S. borders in order to provide labor. Finally, New Deal-era agriculture industry exclusions led to a separate legal framework regarding collective bargaining rights, wages, and hours. Later legislative responses improved conditions, but with minor changes specific to agriculture that regulated work conditions and created social programs to alleviate poverty for the most part, rather than by inclusion in broader laws. As such the occupation still is on a different footing than others. For example farmworkers are now covered by minimum wage legislation but not overtime protections. This means that in the agriculture industry the state has had an active role in supply and a limited role in protecting workers. In the first part of this study (Chapters 2 and 3), I examine this policy history and provide background on the agriculture industry and its workers.

Formal policies on the books have the potential to result in multiple and contradictory effects. For example, standards exclusions affect the cost of migrant labor, while social programs help to sustain it by meeting basic needs. At the same time, expanding supply with foreign temporary workers can limit the ability of both domestic and temporary workers to bargain over their conditions and/or drive down the cost of labor (Hahamovitch 1997, Ness 2007). The separate social programs for migrant and seasonal farmworkers compensate for conditions rather than mandating better ones (much like EITC does for low-wage workers). The provision of social programs tied to occupation or migration corresponds to the general orientation of social policy toward encouraging work (Jessop 2003). Labor standards that allow lower wages and fewer rights for farm jobs also make farm work less attractive than other jobs so that they can have both a positive effect on employer demand and a negative effect on supply.

Dominated today by Mexican-born men and noncitizens, farm work is an example of the phenomenon of occupational segregation, or the overrepresentation of groups of workers in specific occupations (Lovell et al. 2007, Rose and Hartmann 2004). Policy can play a role in segregation processes in labor markets (Hahamovitch 1997), and policy discussion often reinforces expectations of both occupational segregation and poor work conditions and highlights relationships between policy and the succession of worker groups (Whittaker 2006). Segmentation theory, as noted, at times has neglected patterns of representation in certain jobs. Defining segmentation in terms of job quality characteristics, Hudson (2006) has examined demographic factors affecting the probability of being in a certain segment. He found that what he calls new dimensions of segmentation -- citizenship status and nonstandard work (arrangements other than full-

time wage and salary employment) -- predicted segment location. Given the segmented and segregated nature of farm work, an extension of this finding would lead to consideration of policy's role in determining citizenship status, influencing the presence of immigrants, and setting regulations for the types of contracts employers may offer.

Policy discussions of farm labor shortages elide these structural factors and focus on others seen as driving shortages. These include features of production, such as the short, intensive harvest seasons, and demographic and cultural shifts, such as the influx of undocumented Mexican workers and the distaste of "American workers" for farm jobs. Chapter 4 focuses on the politics surrounding these discussions, showing that both grower and worker interests use statements about farm labor shortages to advance their view of what the state's role in agriculture labor markets should be and to buttress arguments for policies that would expand or contract policy functions of providing and protecting labor. The state does not employ a consistent reliable method to assess shortages, but when employers claim there are crises, they increase pressure on the state to supply labor. Such crises include the possibility of increased immigration enforcement that could remove undocumented workers from the labor supply and tight labor markets or other factors that decrease supply for the farmworker occupation. The state has shaped these factors with policy and is called on to address the resulting labor market pressures such policies create.

Within this structural context of a segmented occupation, there are agriculture-specific labor market processes in which the influence of policy can take many turns. The state's role is changeable because policy interacts with factors such as job opportunities and migration patterns of prospective workers, and because state and labor market actors



who implement and react to policy behave unpredictably. As such, policies can have multiple functions and unexpected or farther-reaching effects than their stated goals imply. This dissertation examines such dynamics by tracing the presence of policy in labor market processes and the implications for labor supply and demand in Chapters 5 and 6.

One way in which policy does this at the level of labor markets is by raising or lowering the cost and burden of hiring labor in different groups, such as undocumented or H-2A workers. Policy can also have unexpected ripple effects. For example, immigration policy may influence other aspects of immigration, as when legal migration fuels illegal migration or immigration policy restructures labor relations. At the same time, the state lacks the capacity to fully achieve policy goals, to regulate hiring of undocumented workers, or to determine accurately when guestworker programs are needed.

Despite the influence of business on the state, there is still the possibility of diverse actions and outcomes among state and other actors. For example Hahamovitch (1997) drew on Skocpol's work on state autonomy<sup>2</sup> in her study of East Coast farmworkers from 1870 to 1945 in pointing out that beliefs and actions of state actors shape policy. Policy also influences labor supply through institutional, economic, and cultural factors that shape farm labor makeup, including seasonal farmworker migration (Kissam and Griffith 1995), the use of intermediaries to hire workers, and alternative opportunities for prospective workers.

For research at these two levels – of the historical structural context of the agriculture industry and its labor force and of farm labor markets where the day-to-day role of policy

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<sup>2</sup> With regard to labor and agriculture issues in particular Skocpol's work includes Finegold and Skocpol 1984, Evans, Rueschemeyer, and Skocpol 1985, Skocpol 1985.

emerges within this -- I used a mixed-method case study approach described in the next section.

## **II. Research Design**

This research studies local labor markets and the federal policy arena to examine dynamics within and connections between them. To do this, the study required data to describe policies related to farm labor; to capture public statements of employer and worker interest groups and policymakers; to understand how employers organize workforces, and to identify job and labor supply characteristics. A mixed-method case study (Stake 2005) is suited to these purposes. Key sources of data included a U.S. DOL survey of farmworkers, other government records, and qualitative interviews conducted primarily in field work in New York farm regions.

Data from multiple sources helped to describe patterns of interaction shaping labor markets in selected New York subregions with labor-intensive production of vegetables or apples and to show how the structure of federal and the policy as well as policy implementation shape these dynamics. The iterative nature of the research process, ordered in the following steps, allowed for cross-checking of findings and a clear delineation of the framework and context within which findings apply:

- Key informant interviews with researchers, extension experts, advocates, and service providers informed sampling and design of worker and employer questionnaires.
- Analysis of NAWS data constructed a portrait of workforce organization and characteristics.
- Analysis of Congressional hearings, complemented by news articles and other government and interest group records 1) identified the types of arguments employers make related to labor shortage and supply and the policy preferences of different actors 2) tracked policy changes and proposals over time.
- Fieldwork provided data on policy implementation, employer preferences, and workforce organization.
- Analysis identified linkages among shifts in policy, supply, and demand.

- Ongoing interviews with key policy actors was a final step in triangulation (and further development) of findings.

## **A. Data and Sampling**

This section describes sources of data for different domains of the study.

### **1. Descriptive profile of jobs and workers**

Secondary analysis of public use data and a compilation of other statistics provide information on trends in farm labor supply and farm jobs for all farmworkers, subsectors such as fruit and vegetables, workers who perform specific tasks, and the size of the H-2A workforce. With this I constructed a portrait of the changing structure of the farmworker occupation and workforce in Chapter 2.

#### **a. H-2A workers**

Government records provide data on the H-2A workers. U.S. Department of Labor (DOL) statistics available electronically on foreign labor certification applications include the state of work, number of workers per request, address of the requesting employer, cooperative, or agent, and status of the application. I compiled these and New York State records to show the percentage increase in workers certified for New York according to the U.S. and N.Y. DOL and the number of foreign workers employed in the peak period (September) from 1984 to 2008. State Department data report the number of H-2A visas issued, which I present from 1987-2009.

#### **b. Other farmworkers**

Many large datasets undercount farmworkers because of the seasonal nature of agricultural work and large percentage of undocumented workers among them. However, the National Agricultural Workers Survey (NAWS), begun in 1988 following IRCA as a mechanism to determine the likelihood of seasonal workers shortages in 1990-93, collects

data in three cycles annually to address the seasonal nature of farm work.<sup>3</sup> Researchers gain access through employers and interview a random sample of workers in a place of their choosing such as their home (U.S. DOL 2005).

I draw on NAWS data from 1989-2009 to provide information on wages and income, the allocation of workers' time throughout the year, the share of migrating or settled workers, and the ethnicity, race, place of birth and legal status of workers. I also look at different subgroups of workers by crop and task to learn more about sectors in which H-2A program use is more common.

## **2. Review of records**

With literature review and government records, I developed an overview of laws and regulations related to the farmworker occupation, especially labor supply (Chapter 3). A full understanding of the policy system requires examining, in addition to policies in place, the assumptions, relations, and conflicts that shape it. For this, I analyzed government and interest group records (Congressional hearings and press releases) and compiled and summarized press articles to capture arguments and proposals of interest groups seeking change in immigration policy affecting the farm labor force. Key informant interviews with policy actors helped guide selection of documents and policies. For Congressional hearings, I selected the time period of 1995-2010 because 1995 marked the first consideration of a major immigration initiative after the 1986 Immigration Reform and Control Act (IRCA), whose passage has been well-researched.

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<sup>3</sup> <http://www.doleta.gov/agworker/naws.cfm>, <http://www.doleta.gov/agworker/statmethods.cfm>. Also, according to a report on 2001-2002 data (U.S. Department of Labor 2005), the NAWS does not include H-2A workers. The NAWS sampling procedure entails identifying 80 clusters within 12 regions aggregated from 17 USDA regions, and drawing a random sample of employers based on public administration records such as on unemployment, pesticide registrations, and other agency records.

### 3. Qualitative interviews

Qualitative interviews served several purposes. Semi-structured topical interviews (Rubin and Rubin 1995) with key informants helped identify policy events, provided background on the industry and occupation; helped contextualize policy information; and provided ideas of what to look for in the field. Respondents (sample below) included staff from advocacy and research organizations, foundations, and federal and state agencies involved in policy formulation or enforcement such as the U.S. and N.Y. DOL and the U.S. Department of Homeland Security, and federal and state legislative bodies. Semi-structured in-depth interviews with workers, employers, staff of service and advocacy organizations, and a handful of other labor market intermediaries shed light on labor market processes.

Table 1.1: Sample of Interview Respondents

	Policy actors and researchers	Workers	Employers	Labor market intermediaries	Service workers and advocates*
Washington, D.C., Albany, NY	10				
New York	11	46	11	1	15
TOTAL	21	46	11	1	15

\*Interviews also included an owner of a Mexican store who is not an intermediary but has customers who often seek work.

#### a. Topical interviews

To sample policy actors in government, research, and advocacy groups, I identified policies and policy documents that concern farmworker labor shortages and through these identified relevant organizations and government bodies. Additional suggestions for interviewees came from respondents.<sup>4</sup>

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<sup>4</sup> Among the 18 respondents were 5 in policy, legal, or general advocacy, 11 government employees, and 2 researchers. In addition I interviewed 10 staff members of nonprofit organizations providing health, housing, education, training, or general services, including 4 who introduced me to workers.

Table 1.2: Sample of Policy Actors

	Employer	Worker	Federal	State	Local
Interest or advocacy group: Total 7	3	4	2	6	
Federal and state government: Total 11			3	5	3

### **b. In-depth interviews**

In-depth interviews with employers, workers, and other local experts and actors took place in two farm regions in New York, selected because it is a leading producer of several labor-intensive crops, has relatively high use of the H-2A program (Effland and Runyan 1998); experienced immigration activity along the Canadian Border and has had a population decline in large rural areas.<sup>5</sup>

New York was one of five states accounting for over half of all farmworkers in 2000 (Runyan 2003). In 1997, the state accounted for 9% of certifications of H-2A foreign guestworkers, likely due in part to employment for apple harvesting (historically of Jamaican workers). Apples and tobacco are two of the crops in which H-2A is most used (Effland and Runyan 1998, 21). In the Northeast, the makeup of the workforce may differ from that in other regions. For example, in the late 1990s there was a higher proportion of women and lower proportion of Latino workers in the Northeast as compared to other regions aside from the Midwest (Effland and Runyan 1998); in addition, there is a history of Puerto Rican workers in the labor force there. However, its labor force has followed national trends in that it is now largely Mexican. Some Guatemalan, Haitian, and Jamaican workers are still in the non-H-2A workforce as well.

New York is an unusual state in terms of both the policy environment affecting workers (Schell 2002) and the implementation of immigration policy. State legislation

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<sup>5</sup> New York is an important milk-producing state (Maloney and Grusenmeyer 2005), but this study does not focus on dairy workers in part because of the difficulty of reaching them and because livestock workers are not included in NAWS data.

enacted in 1998 extended equal minimum wage protection to farmworkers and required sanitation in the fields.<sup>6</sup> The Farmworker Fair Labor Practices Act, which would provide collective bargaining rights, overtime pay, and other improvements in working conditions for farmworkers, has passed the State Assembly several times but not been enacted.

I selected two sub-regions of New York in which grower associations and service organizations appeared to be concentrated, the Finger Lakes and Hudson Valley regions. These offer a contrast because the Finger Lakes region lies within 100 miles of the Canadian border, (where the U.S. Border Patrol has expanded authority to question those suspected of being undocumented), while the Hudson Valley does not.<sup>7</sup>

Table 1.3 shows some of the most important labor-intensive commodities in the state and the subregions of concentrated production.<sup>8</sup>

Table 1.3: Importance of Key Crops in New York State

Crop	State Rank in U.S. Production	Amount Produced in 2009	Areas of Production
Apples	2 <sup>nd</sup>	\$224 million	Southern Lake Ontario shore; Hudson Valley; upper Lake Champlain Valley
Cabbage	3 <sup>rd</sup>	\$54.5 million	Mostly south of Lake Ontario in Monroe, Genesee, Orleans, Ontario, Niagara counties
Sweet corn	5 <sup>th</sup>	\$58.3 million	Statewide; concentrated in Lower Hudson Valley and around Genesee Valley
Onions	5 <sup>th</sup>	\$67.6 million	In muck soils in Orange, Orleans, Oswego, Madison and Wayne counties

Source: USDA NASS 2010, p. 2-3

<sup>6</sup> <http://www.justiceforfarmworkers.org/pages/history.html>. Retrieved September 10, 2009.

<sup>7</sup> According to the Congressional Research Service, Border Patrol agents are given regulatory powers within 100 miles of the border to “board and search all vessels...and to have access to private land, but not buildings” (Nuñez-Neto 2008, CRS-29).

<sup>8</sup> To identify farm commodities on which to sample, I interviewed agricultural extension experts and staff of service and advocacy groups that work with farmworkers to identify labor-intensive crops for which growers have difficulty finding harvest workers and mechanizing, and in which the bulk of seasonal hired labor works. I selected cabbage, apple, and onion as the basis for sampling employers, but I also met several sweet corn workers. I conducted interviews with several informants in the southwest New York area where NAWs data are collected to determine whether to interview workers there and determined that the crop mix did not correspond to the labor-intensive vegetable and apple production that was the focus of the study.

Sampling was purposive, with intentional selection of growers and workers by crop and region, for growers by business size, and for workers by whether workers migrated. However, for workers sampling was also opportunistic (Huberman and Miles 1994) as the method of access placed limitations on the randomness of the sample within purposive categories. One sampling criterion for farm employers and workers was use of the H-2A program vs. “domestic” (including immigrant of any legal status) workers.

Sampling procedures for employers were as follows: Three employers were suggested by key informants as particularly knowledgeable about or interested in policy. For others, I drew from three types of publicly available lists: government records of foreign labor certification applications of employers seeking to hire H2-A visa workers; growers’ association lists (e.g., Leafy Greens Association, NY Apple Association); and Cornell University’s “Market Makers” database, which allows searches by commodity and county.<sup>9</sup> Based on key informant suggestions, I focused on large employers and ascertained sales amounts and number of employees with “Market Makers” and D&B profile information. I began with employers who sought certification for between 10 and 100 H-2A visa workers, and were in a selected locality; I identified matched employers who had not applied for an H2A visa for FA2008 by selecting growers in a nearby town from other lists. Growers were contacted directly without introduction in most cases. Where there was difficulty in finding willing participants or large employers who used H-2A, or where I identified growers referred by other experts, these criteria were not equally applied for all growers. As a result, three relatively smaller employers were in the sample.

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<sup>9</sup> The latter two are incomplete lists; in fact a staff person of the government extension service informed me that there are no comprehensive publicly available lists of growers.



Table 1.4: Sample of Employers\*

		H-2A employer (currently)	Not an H-2A employer (currently)	Sample totals
Finger Lakes Region: Total of 7 employers	Apple	2	2	4
	Vegetable	2	1	3
FL totals:		4	3	
Hudson Valley Region: Total of 4 employers	Apple	2		2
	Vegetable		2	2
HV totals:		2	2	
Sample totals		6	5	11

\*Sample does not include 1 large contractor

As indicated in the preceding table, the sample for growers included a balance of H-2A and non-H-2A employers running fairly large operations in the lower Hudson Valley and Finger Lakes areas. Apple growers were in two high-producing counties (Ulster and Wayne) in the two regions, and vegetable growers were in Orange County (Hudson Valley) or one of several counties in the Finger Lakes region including Genesee, Monroe, Orleans, and Wayne. Orange and some Great Lakes basin counties have black dirt or muck areas of rich former swampland ideal for vegetable growing. Orange County is a center of onion production, which despite partial mechanization requires large numbers of workers for tasks such as planting and packing.

### Workers

Accessing workers via agencies, as noted subsequently, proved to be the method posing the least risk to workers. Because my informants view workers as vulnerable to deportation and to losing their jobs, I assumed that workers might be reluctant to speak. Informants expressed skepticism that H-2A workers in particular would speak openly because they are tied to a relationship with one employer, who decides whether to invite them back each season. Another reason for vulnerability includes workers' relationship to labor contractors. To ensure worker safety, I also assured them and other research participants anonymity, made it clear that they can refuse interviews, and kept data

separately from respondent names. I conducted interviews with an interpreter. Because of cultural barriers, time limits, and variation in the means of access to workers and type of workers,<sup>10</sup> findings are to be approached with caution but are valuable for suggesting possible linkages and theories for future studies.

For worker recruitment, staff of service and advocacy groups made introductions to farmworkers according to criteria such as crop and legal and migrant status. I met most workers in housing provided by employers or farm labor contractors, but in two locations met workers in a health clinic.<sup>11</sup> Most worked on farms cultivating the focus crops mentioned, aside from a few in packing or corn production. I sought balance in the proportion of undocumented migrants, H-2A guest workers, “settled” workers, and documented or citizen workers as well as Mexicans, Jamaicans, and Guatemalans, and African-Americans. However, the categories of migrant and settled are fluid: particularly for many newcomers to the country, the future beyond the current harvest is very uncertain, and some migrants who have established patterns of employment may be in much more secure situations than “settled” workers. Interviewees participated in harvesting, pre-harvesting, and packing activities, corresponding roughly to the description of tasks in NAWS. I excluded two workers in the Hudson Valley because their packing jobs have a different status under FLSA than other farm work. In addition to non-H-2A workers detailed in the sample below, I conducted 1 individual and 3 group interviews with H-2a workers. Groups were made up of 19, 4, and 2 participants.

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<sup>10</sup> For example, one person who introduced me to workers has a disproportionate group of African-American clients due to program restrictions on serving undocumented immigrants. Workers in health clinics may be different than workers who do not come in to health clinics. Workers who are willing to speak may have different plans for the future than others, as in one location in which two workers planned to leave and two others were functionally stranded following the harvest.

<sup>11</sup> Refusals included 2 Haitian non-H-2A and 2 Jamaican H-2A workers.

Table 1.5: Sample of Workers

Region	Site	Total Non-H-2A workers	Crop		Sex		Settled/migrant		Race-ethnicity/# reporting documented status (doctd)	
			Apple	Vegetable	F	M	S	M	Mexican/Mex-American	Other
Finger Lakes Region	1	14	4	10	3	11	3	11	12 1 doctd	2 Guatemalan
	2	5	5			5		5	5	
	3	5		5		5		5	5	
	4	7	7		1	6	2	5	4 1 doctd	3 African-American
FL totals		31	16	15	4	27	5	26	27	5
Hudson Valley Region	1	13	9	5	2		4	9	10 2 doctd	2 Jamaican 1 African-American
	2	2		2		2		2	2 1 doctd	
HV totals		15	9	7*	2	2	4	11	12	3
Totals		46	25	22	6	29	9	37	38	8

\*3 in sweet corn and 2 in onions

## B. Data Analysis and Quality

Soundness of findings (Marshall and Rossman 2006) derives from the triangulation of material across methods to ensure credibility; diligent adherence to local context and the guiding theoretical framework in which they are applicable; checking findings against other sources of material and literature to draw conclusions about transferability; and careful representation of material presented by each group in order to minimize bias. While there are some limitations due to the method of worker and employer recruitment, as noted, conducting field work in different sites provided a sense of regional dynamics across a small area within a labor market. One example of triangulation occurred when I met a contractor who mentioned how a client managed the delayed arrival of H-2A workers and serendipitously met workers of the same employer.

Analysis began during data collection to inform research and occurred at each phase. Analysis steps included data reduction, data display, and conclusion drawing and verifying, supported by data management and tracking of analytic methods to assure quality and transparency (Miles and Huberman 1994).

To manage data, I taped and transcribed most interviews and stored them using AtlasTI, which facilitates analysis tasks such as compiling text from multiple sources with identifiers the researcher designates. Analysis and data reduction for interviews entailed: (1) a short summary of each interview; (2) immersion and analysis of selected portions of text based on themes from step 1; (3) the development of codes capturing broad themes; (4) review of coded text; and (5) further analysis of portions of text according to general findings. To interpret and verify findings, I triangulated conclusions as they emerged in coding within and across data sources. Data displays such as matrices or diagrams to juxtapose portions of text or information, or collection of new data in some cases helped verify conclusions.

### **III. Summary of the Dissertation**

Following this introduction, I describe in Chapter 2 the current agriculture industry and its workers and jobs, with a particular focus on seasonal, labor-intensive fruit and vegetable production. Industry trends include growth in the number and acreage of large farms that account for the great majority of agriculture output and for which labor costs are a higher share of expenses than for small farms. Changing mechanisms for selling produce, such as increased contracting directly with large retailers, may require more investment in production and the ability to fill orders quickly at low cost margins. Risks and benefits have shifted in this industry, which is already affected by vagaries of

weather and year-to-year change in prices and success of crop yields. As such, large farmers in particular seek labor that produces at a high level under tight deadlines at a cost they view as affordable.

The chapter also shows that the role of government as facilitator of foreign labor supply expanded sharply from 2006 to 2009 as the number of certifications and visas granted for the H-2A program grew and the length of H-2A contracts increased slightly. This trend has since stalled. A very rough estimate shows that H-2A workers may account for a higher percentage of the farm workforce in New York than nationally.

Chapter 2 also presents data from NAWS for the non-H-2A labor force on job and worker characteristics with a focus on job characteristics associated with poor-quality and segmented secondary-tier jobs (Kalleberg et al. 2000, Hudson 2006), including benefits and wages. Less than full-year work and work for farm labor contractors, both of which may be seen as reflecting nonstandard occupations, are slightly more common in fruit and vegetable production, in which there is also a higher share of undocumented workers. Institutional and policy factors affect in-migration of the Latino workers who comprise the majority of the labor force, pointing to an indirect state role in labor supply. The share of both Mexican and undocumented workers in the labor force grew dramatically to reach a high point in 1997-2000, when migration and employment by farm labor contractors were also at their highest level, and real wages at their lowest point. Since then this share has declined for the full sample but not harvest workers. Wages and conditions have improved since, but employer provision of housing has declined. Income and wages are higher for authorized, American-born, and male workers. Real income has risen as have farm work weeks per year and hours and days per week.

Chapter 3 describes historical changes in the regulatory framework specific to farm labor, particularly in immigration, employment services, and labor standards.

Immigration policies have often expanded supply but can also restrict it as the state attempts to expand its capacity to remove undocumented workers and as immigration law diminishes legal entry numbers. Agriculture-specific policies across these areas, notably including New Deal-era exclusions in labor standards coverage and a separate visa mechanism, create a separate policy framework for this occupation. Despite evolving since the 1960s policy still applies differently to different groups of people in farm work, including undocumented immigrants, temporary foreign workers, and “domestic” workers. State roles could potentially have a range of functions with these policies to both provide and protect labor, subsidize hiring costs or sustain workers, keep a ceiling on wages or minimize the harm of labor surplus, and create opportunity for workers or contribute to segmentation and occupational segregation of the farm workforce.

Chapter 4 further explores the potential roles of the state in farm labor and adds to the historical picture of how policy has segmented farm work by examining public statements of grower and worker interest group representatives made in congressional hearings from 1995-2010. Employers seek policy change to further expand labor supply – and the state’s role in providing it - as well as limits on state oversight. The policy levers they would use to do this include easing the H-2A certification process<sup>12</sup> to gain “quick and certain” (Senate Judiciary Committee 1985, 195) access to workers, including more

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<sup>12</sup> Efforts to provide U.S. workers access to jobs are achieved through the recruitment process the program requires as a prerequisite to certification, in which the DOL certifies that insufficient workers are available and U.S. workers will not be adversely affected by foreign workers or approval of an H-2A application. The H-2A regulations detail how employers must advertise jobs and where job orders must be posted, and the 50% rule, from which small farmers who do not belong to an association are exempt, requires that U.S. workers applying for jobs described in H-2A job orders filed with the Department of Labor continue to be referred to employers up to halfway through the contract period.

subsectors in the H-2A program, requiring a certain number of days of farm work as a prerequisite for earning a path to legalization, or expanding the allowed contract length. Employers would also freeze H-2A wage levels or change mechanisms to calculate them, diminish responsibility for providing housing to H-2A workers, and restrict workers' right of action when they have a complaint. Worker advocates have sometimes criticized the state's efficacy in matching workers to jobs to avoid the need for H-2A. In the 1990s they questioned the existence of labor shortages that are assumed when employers gain the right to use H-2A. Worker advocates have focused on legalizing workers by seeking a law to enable both domestic undocumented and H-2A workers to apply for a blue card. To gain new worker rights through legalization advocates have accepted in negotiations new restrictions on H-2A worker benefits and protections.

The types of arguments grower and worker advocates make to advance their position often incorporate concepts of free markets. Policymakers and advocates sympathetic to workers criticized government in the 1990s for interfering with market mechanisms of wage-setting by expanding labor supply. Employers have called on the state to get out of the way of the operation of its own program, at times implying that the state restricts markets by not allowing a free flow of H-2A labor. In so doing, they elided the problems of an undocumented labor force and the historical state role in structuring the present situation of farm labor markets. In describing the unwillingness of "American" workers to migrate or accept seasonal work, employers gloss over the human constraints that also exist for the workers they want the state to provide. In short, the different policy proposals made by political actors would put the state's and employers' responsibilities for supply and work conditions at different points in a wide spectrum.

Hearings indicate that another state role is to respond to demand partially created by policy: workers should be, according to growers, stable enough to last the season and possibly future seasons, affordable, and already skilled. They also say they would like workers to be legal and hate being forced to hire undocumented workers.

These features of demand also emerged as employers described their goals and priorities in building a workforce in qualitative interviews. Chapter 5 presents results of these interviews and others conducted with workers and representatives of service providing agencies and government in New York State. The chapter examines how the state's role is worked out in labor markets, via policies and actions of these individuals.

Many factors mentioned in previous chapters prove to be levers through which the state shapes labor market processes of allocation and employment relations. State and nonprofit organization representatives and employers all adopt different strategies to find or place workers, just as workers use different strategies to find jobs. Policy influences and is part of these strategies. Furthermore, there are different directions this influence can take, depending on how a policy such as immigration enforcement or the H-2A certification process is implemented. Key themes that emerged in interviews include the role policy plays in building worker skill through supply rather than training mechanisms, potential variation in whether the state becomes involved in identifying which workers employers hire through the mechanism of H-2A rules, and related to this the way policy either leaves undisturbed or supports patterns of occupational segregation.

The state can become an arbiter in the question of worker choice through the H-2A approval process, in which the N.Y. DOL may refer alternate workers such as those recruited in Puerto Rico by DOL there. Interview respondents described examples of



direct and indirect state involvement in labor markets: the state indirectly supported workers through service agencies that respond to basic material needs and help workers find jobs; provided incentives or disincentives to hire groups such as undocumented workers and teens through enforcement of immigration and child labor policy; provided labor market intermediary services; and improved conditions with state-level laws and enforcement. H-2A can take on various roles too because of the complexity of its regulations. Interviews indicated that H-2A can produce skill when the same workers return each year and take on greater responsibility or protect U.S. labor when comparable workers receive the H-2A wage as required by law. Some speculated that H-2A shuts out domestic workers. According to employers, enforcement of H-2A rules by the state or through lawsuits can be a disincentive to use the program.

This study shows that examining policy dynamics at the federal and local labor market level provides insight into the influence of the state in employment practices and labor supply. For example, policies such as foreign guestworker programs, inconsistent implementation of immigration enforcement, or laws protecting migrant workers create a patchwork of incentives for employers as they build a labor force. Policy also conditions production of different types of supply in the market (e.g., migrant, settled, and "legal" workers), and labor market actors seek to shape policy locally as it is implemented.

More specifically, empirical work in New York demonstrates contradictory and unintended effects of policies. For example, experts on farm labor markets and worker advocates, among others, have long been concerned about negative effects of the H-2A program on domestic workers, a few of which may be pushed out of the market because of the program at times, but now government regulations seek to strengthen the ability of

this program to create positive spillover for workers by emphasizing or expanding rules that extend H-2A conditions to other workers on the same farm. Also, while government policy shapes demand, other parts of government inhibit the ability of growers to act on this demand, as seen in the day-to-day tug of war over approval of H-2A applications and disputes over the government's role in determining employee eligibility to work legally. Through such dynamics, state actors, employers, and workers constantly try to push government involvement further in some areas and pull it back in others, ensuring the fluidity and uncertainty of the state's role in farm labor markets.

## **Chapter 2: The Agriculture Sector and Its Labor Force**

### **Industry changes, labor needs, and worker and job characteristics**

In order to provide context for an analysis of the role of the state in supply of farm labor both nationally and in New York, the remainder of chapter offers a survey of the agricultural industry and its labor force. Literature and public data from secondary sources, including statistics from the U.S. Department of Agriculture (USDA), show trends in the industry that influence competition and production for crops produced in New York that are the focus of this study. A descriptive analysis of data from the National Agricultural Workers Survey (NAWS) and a compilation of government records of the H-2A visa program provide information about the characteristics of labor supply and farm jobs. I also discuss trends in Mexican migration to the U.S.

Section I concerns the overall farm industry and vegetable and fruit production.<sup>1</sup> It includes data on agriculture income and expenses, productivity, and production and sales, all of which have some relationship to labor demand. Cash receipts in the vegetable and fruit/nut subsector have risen steadily in the past three decades, and production of some crops has increased in New York State. However, vegetable and fruit/nut producers receive little or no government subsidies, unlike grain and soy producers. Vegetable and fruit/nut producers also face greater risks due to price volatility resulting from perishability and unpredictable weather. For these and other reasons, profits are uncertain and variable. Section I describes these industry dynamics in greater detail.

Section II reviews factors that have affected Mexican migration to the U.S., NAWS data, and records from the state and federal Departments of Labor and the State

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<sup>1</sup> See discussion of research design in Chapter 1 regarding the study's focus on vegetable and fruit production and exclusion of other sectors.

Department on H-2A visa holders in the workforce. Worker advocates have long portrayed farmworkers both in and out of the H-2A program as exploited. A more recent concern is the situation of undocumented workers, whose presence in the labor force has grown significantly. Section II of this chapter examines trends among these different workforces, especially seasonal domestic workers captured in NAWS and H-2A workers. According to one estimate, the latter account for only 3% or less of all U.S. agriculture workers (Kandel 2008),<sup>2</sup> but their number has grown sharply since 2006.

## **I. The Agriculture Industry**

Largely composed of family enterprises that accounted for over 40% of the workforce at the beginning of the 20<sup>th</sup> century, the U.S. agriculture industry today produces most of its income on large farms dependent on extensive chemical and mechanical inputs, which in 2000 employed only 1.9% of the workforce (Dimitri, Effland, and Conklin 2005, 2). As farming moved toward more concentrated production, aided by advances in irrigation and storage (Martin 2003), the need for short-term seasonal labor became increasingly important. This is especially true for labor-intensive vegetable and fruit/nut production, for which labor costs averaged 30% and 41% of total cash expenses respectively in 2004-2006 (Economic Research Service 2008, 2009), although expenses vary a great deal by commodity and mechanization (Calvin and Martin 2010).

By many indicators the agriculture industry and its fruit and vegetable subsectors, are flourishing, as stated by the USDA chief economist in a 2007 hearing, who observed that “for several years the U.S. farm economy has been setting records for exports, for prices, for production, for total use, for income, and for net worth” (House Agriculture

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<sup>2</sup> This estimate was for 2006.

Committee 2007). Increasing exports and growing consumer demand for healthy food, high-quality fresh produce, variety, and convenience have boosted the fruit and vegetable sector. Many farmers are experimenting with new crops, such as apple varieties and specialty vegetables. Advances in productivity have occurred despite limits to the potential of mechanization and labor productivity increases.<sup>3</sup>

Farming today is a highly productive, specialized enterprise using a large amount of seasonal labor and sophisticated technology. Growth in farming has occurred at either end of the spectrum of farm size: particularly up to the 1990s, the number of farms has declined while average farm size increased (Dimitri, Effland, and Conklin 2005). In the 1980s and 90s, very small farms and large farms grew in number and while the number of midsize and small farms decreased (Key and Roberts 2007).

Three major trends have shaped the agriculture industry (Dimitri et al. 2005): technological change, shifting consumer demand, and globalization. Rapid technological change has occurred since World War II, with innovations in chemical inputs and mechanization, animal and plant breeding, and fertilizers. Productivity growth averaged 1.9% annually from 1948 to 1999 in agriculture, exceeding the rate in other industries, which implies a need for higher levels of cash income to operate successfully. Second, consumer demand has shifted to reflect preferences for convenience, healthier food, and foods associated with diverse cultures. Finally, the increasingly global nature of the industry relates to growth in exports and international competition. U.S. agriculture has been a net exporter and exports have grown, particularly to developing countries (House Agriculture Committee 2007). Despite concerns about produce from cheaper countries

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<sup>3</sup> Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009. See also Lucier, Pollack, Ali, and Perez 2006.

encroaching on domestic production, much trade covers gaps in the growing calendar in the U.S. (Cook 2002) with some exceptions such as asparagus.

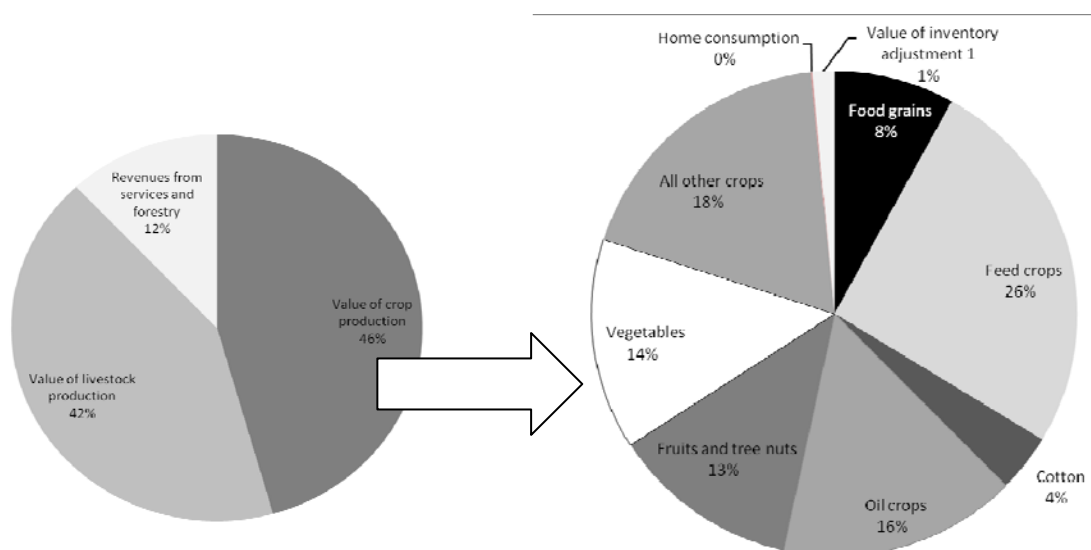
Some of the difficulties and setbacks farmers face as they try to turn a profit year after year include low profit margins, volatile prices for both farm products and inputs, labor difficulties, high levels of debt, variation in crop quality and weather, and competition. Small farms, which account for a small share of U.S. output but a large share of farms; are less profitable and their owners often rely on off-farm income (Hoppe and Banker 2010). Changes in retailing, marketing, and sales of produce have created both opportunities and challenges for farmers, as described in a subsequent section.

### **A. Industry Structure and Production Levels**

The agricultural industry comprises livestock production, crop production, and a much smaller third category of revenues from services and forestry. Crop production is the largest sector, of which vegetable and fruit/nut production together account for over a quarter (Fig. 2.1). The average annual farm value of U.S. fruit, vegetable, and tree nut crops harvested for 2005-07 was \$36.3 billion (Calvin and Martin 2010, 3).

In New York, crop production accounts for a lower share of agricultural production (36% in 2004-2008), but vegetables and fruits account for a higher share of crop production (51%) and grain and feed crops for less than in the U.S. The large dairy industry accounts for most of the state's livestock production (\$2.3 of \$2.6 billion in 2008). These differences are important because vegetables and fruits, unlike grain crops, do not receive direct agricultural subsidies and are not mechanized.

Figure 2.1: Value of U.S. Agricultural Production, 2000-2009 Average



Recent trends in the fruit and vegetable sectors include higher production levels from 2000-2008 than in previous periods; increased consumption; diminished acreage, and diversification in crops or varieties.<sup>4</sup> Vegetable and melon production in the U.S. was flat from 2000-2008, but still averaged 14% higher than in the previous decade, and “utilized fruit production” in the 1990s and early 2000s was on average 10-20% above the level of the 1980s. Steady increases over time in total factor productivity, based on measures of all inputs including labor, is one reason for the increase in production despite declining acreage.<sup>5</sup>

<sup>4</sup> This section draws from Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009, and Fruit and Tree Nuts: Background <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/background.htm>. Retrieved February 9, 2011. Updated 2011. See also Lucier, Pollack, Ali, and Perez 2006.

<sup>5</sup> Based on USDA measures of all inputs including labor. Data from <http://transcoder.usablenet.com/tt/www.ers.usda.gov/Data/AgProductivity/table01.xls>. Retrieved February 4, 2011.

Both vegetable and fruit production are roughly split between processing and fresh-market production. Processed uses of vegetable and melon production include canning, drying, and dehydrating. New York is a leading producer in terms of the amount of acreage for fresh market vegetables and of frozen vegetables and potatoes.<sup>6</sup> Juice accounts for a large share of total fruit consumed and half of apples produced for processing.<sup>7</sup> Other processed fruit uses include canned, dried, and frozen fruit.<sup>8</sup>

There has been a decline since the early 1980s in the amount of consumption and availability of “traditional” fruit and vegetable crops such as apples and an increase for “specialty” crops such as asparagus (Stewart 2006). The fruit industry has introduced new late and early season, high-yielding, and disease- or pest-resistant varieties.<sup>9</sup>

A leading producer of crops of focus for this study, New York ranks second in apple and third in cabbage production (USDA NASS 2010, p. 2-3). Fresh apple consumption in the U.S. as of 2005 had been stagnant for about three decades. In the late 1990s, a period of crisis in the apple industry resulted in declining prices and production, and the departure of some less profitable growers (Pollack and Perez 2005). One factor in this crisis was an increase in imports of lower-priced Chinese concentrate, which hurt prices for juice apples and led to exceptional subsidies for the industry.<sup>10</sup> Over-production, increasing market competition, and the Asian financial crisis also contributed. Prices and production began to rebound in 2003, but average prices growers receive for processing apples (about half of U.S. apples) have been flat since 1980, in contrast with those for

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<sup>6</sup> Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009. See also Lucier, Pollack, Ali, and Perez 2006.

<sup>7</sup> Economic Research Service, USDA, pp 22-27, section entitled Commodity Highlight: Fresh-Market Apples.

<sup>8</sup> Fruit and Tree Nuts: Background <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/background.htm>) Retrieved February 9, 2011. Updated 2011. See also Lucier, Pollack, Ali, and Perez 2006.

<sup>9</sup> <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/>. Retrieved January 19, 2011.

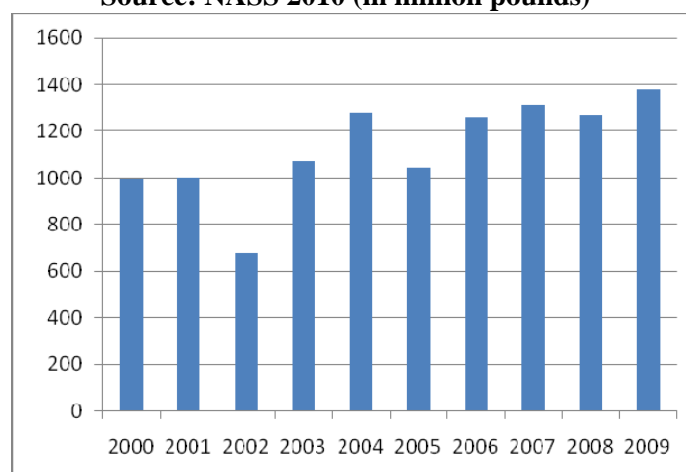
<sup>10</sup> This was reported by apple growers interviewed for this study.



fresh-market apples, which nearly tripled from 1980 to 2005 (Pollack and Perez 2009).

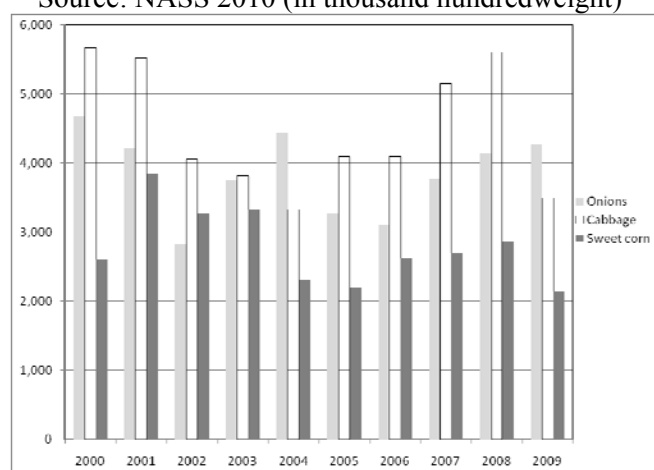
Production in New York (Fig. 2.2) rose over the last decade.

**Figure 2.2: Apple Production in New York**  
**Source: NASS 2010 (in million pounds)<sup>11</sup>**



NY produces 22% of U.S. cabbage output (Lucier and Plummer 2002, 12). U.S. cabbage consumption is up since the 1990s, and production since 1970. Production trends in New York are shown in Fig. 2.3).<sup>12</sup>

**Figure 2.3: Production of Crops for Fresh Market in New York**  
**Source: NASS 2010 (in thousand hundredweight)<sup>13</sup>**



<sup>11</sup> National Agricultural Statistics Service (2010). New York Bulletin. Table 23 (31).

<sup>12</sup> Information is included about onion and corn because some grower and worker interviews were conducted in each crop for qualitative research reported in Chapter 5.

<sup>13</sup> National Agricultural Statistics Service (2010). New York Bulletin. Tables 17 (25), 18 (27), 19 (28), 21 (29), 23 (31).

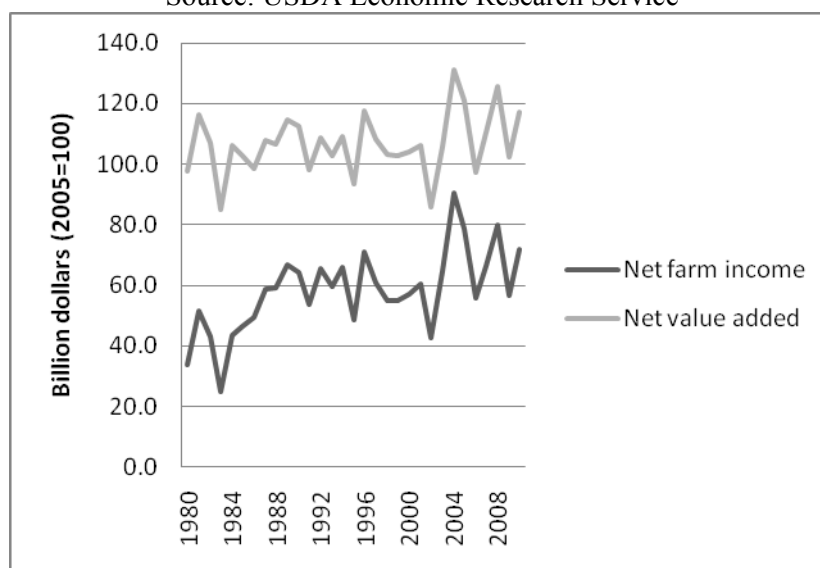
## B. Income and Expenses

Farm industry cash receipts, income, and sales have seen net increases in the past two decades, but during the same period growers have also contended with dramatic cost increases for non-labor inputs. This section reviews these indicators.

Figure 2.4 shows net farm income and net value added in constant (2005) dollars.<sup>14</sup> Income was volatile from 2000-2009, like inputs and commodity markets, but was far higher in 2009 than at its low point in 2002 (ERS 2010).<sup>15</sup> According to the USDA Economic Research Service that 2010 income bounced back from a 2009 decline.

**Figure 2.4: Farm Income and Value Added in Constant Dollars (1980-2010)**

Source: USDA Economic Research Service



Federal support is an important source of farm income, providing an average of \$9,532 in payments per farm in 2007 and \$50,023 for farms with a million dollars or more of sales and government payments combined.<sup>16</sup> Current farm policy is based

<sup>14</sup> Net value added is the sector's contribution to the national economy. Net farm income is farm operators' share of income from the sector's production activities.

<sup>15</sup> <http://www.ers.usda.gov/Briefing/FarmIncome/nationalestimates.htm>. Retrieved February 3, 2011.

<sup>16</sup> Based on USDA economic class data, which classify farms by the sum of market value of agricultural products sold and federal farm program payments USDA Census of Agriculture 2007, B-8.

primarily on direct payments to farms for a small number of crops, including grains such as corn or wheat, rather than supply controls or price supports as in the past (Dimitri, Effland, and Conklin 2005, 9). These policies cover under 25% of farm households, and vegetable and fruit/nut production has not typically benefitted from crop-specific income support<sup>17</sup> unless they also grow federally supported crops.<sup>18</sup>

Some government programs do have a smaller and more indirect impact on the fruit and vegetable industries, such as School Lunch or Food for Peace programs, export programs, and assistance such as crop or disaster insurance. Research and promotion programs support a handful of produce items not heavily produced in New York regions where this study took place.<sup>19</sup> Government efforts to increase consumption of vegetables and fruit through the USDA Food Guide Pyramid, the 5-A-Day campaign, and (since 2007) the National Fruit and Vegetable Program's "Fruit & Veggies-More Matters" initiative, as well as the Specialty Crop Competitiveness Act of 2004, all can support the industry by stimulating demand. These efforts complement the general trend toward interest in healthy eating.

Overall income figures do not reveal the unequal distribution across farms. Larger farms earn higher profits and account for a disproportionate share of agriculture sales. On average, profit margins in 2003 were negative for farms with sales below \$250,000 (MacDonald, Hoppe, and Banker 2006). As noted, a shift to large-farm production has been ongoing for over a decade. Table 2.1 compares change in farms of different

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<sup>17</sup> USDA Economic Research Service. Vegetables and Melons: Policy (2010). <http://www.ers.usda.gov/Briefing/Vegetables/policy.htm> and Fruits and Tree Nuts: Policy (2011). <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/policy.htm>. Retrieved January 19, 2011.

<sup>18</sup> This was the case for at least one large vegetable grower interviewed for this study.

<sup>19</sup> Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009, and Fruit and Tree Nuts: Background <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/background.htm>) Retrieved February 9, 2011. Updated 2011. See also Lucier, Pollack, Ali, and Perez 2006.

economic classes in the U.S. and New York, where acreage decreased from 2001-2009 for all farms except in the above \$500,000 sales class – also until 2008 the only category in which the number of farms grew.

**Table 2.1: Market Value of Agricultural Products Sold by Economic Class of Farms**

Source: Agricultural Census Data<sup>20</sup>

	2002			2007		
	Total # of farms	Average value of products sold per farm	% of value of products sold	Total # of farms	Average value of products sold per farm	% of value of products sold
All farms	2,128,982	\$94,245		2,204,792	\$134,807	
Sales of \$1,000,000 or more	29,537	\$3,252,465	47.88%	57,292	\$3,098,279	59.72%
\$5,000,000 or more	3,358	\$14,603,407	24.44%	5,584	\$14,892,440	27.98%

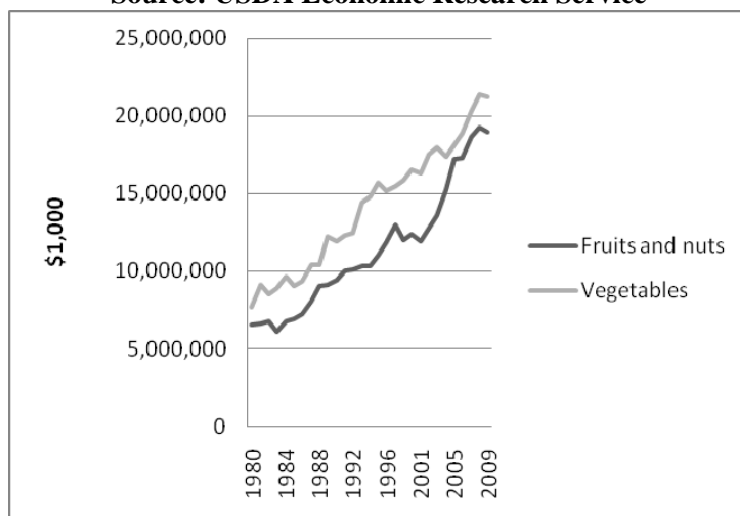
Cash receipts in the vegetable and fruit sectors account for over a quarter of all crop receipts.<sup>21</sup> Receipts have increased since 1980 (Figure 2.5), but producers have been receiving a declining portion of sales (Busch and Bain 2004). The farm share of retail prices dropped from 29.7% to 23.5% for vegetables and 30% to 26.6% for fruits between from 1997 and 2004 (Stewart 2006).<sup>22</sup>

<sup>20</sup> USDA NASS 2010, 5, Table 1

<sup>21</sup> Vegetable and melon farm receipts from 2000-2008 averaged \$17.4 billion (7% of crops and livestock receipts and 14% of crops). Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009. Fruit and tree nut cash receipts in the 2000s were 6% of crop and livestock and 13% of crops only. Lucier, Pollack, Ali, and Perez 2006. Fruit and Tree Nuts: Background <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/background.htm>. Retrieved February 9, 2011. Updated 2011.

<sup>22</sup> Based on market baskets representative of American purchases for at-home consumption, 1999-2003, Table 7, 14. Stewart's estimate found less of a decline than previous estimates based on market baskets from earlier years.

**Figure 2.5: U.S. Cash Receipts, 1980-2009**  
**Source: USDA Economic Research Service**



Costs have risen dramatically in the past decade for inputs including seed prices (up 146% since 1999) and fertilizer and fuel (264% and 207% respectively from 2002-08). For pesticides, increased use drove up costs more than rising prices. In 2010 these costs began to decline.<sup>23</sup>

**Table 2.2: Labor's Share of Cash Expenses on Specialized Fruit/Nut and Vegetable and Melon Farms (2004-06)**

**Source: USDA Economic Research Service 2008, 2009**

	Average	Small farms	Large/very large farms
Fruit/nut	41%	29%	42-44%
Vegetable/melon	30%	9%	31%

Vegetable and fruit production is particularly labor-intensive. From 1996 to 2009, on average total hired labor costs were about 34% of total cash expenses for fruit, vegetable, and nursery farms. Table 2.2 shows that labor's share of cash expenses is higher in fruit/nut production, and for both fruit and vegetable production the share rises with farm

<sup>23</sup> Farm Income and Costs: 2010 Farm Sector Income Forecast  
<http://www.ers.usda.gov/Briefing/FarmIncome/nationalestimates.htm>. Retrieved February 4, 2011)

size because the family and operator provide more labor on small farms. Small farms account for a high proportion of farms but a low share of production -- 70% of farms for vegetable and melon and 55% for fruit/nut vs. 1% and 3% of production value respectively in 2004-2006 (Ali and Lucier 2008, 4, Perez and Ali 2009, 8).

### **C. Trends in Sales and Marketing**

Increased competition, changing consumer preferences, and evolving roles and preferences of suppliers and buyers have all been important to fresh vegetable and fruit production in the past two decades. These are linked to the emergence of new products, changes in varieties of specific fruits and vegetables consumed by the U.S. public; differences in marketing and sales channels, and the production process. The net result of these changes for farmers is not entirely clear (Dimitri 1999). On balance, some appear to aid the business of vegetable and fruit production, while others (together with factors such as rising input costs and the diminishing share of the consumer dollar farmers receive) add to pressure on farmers. Some create opportunity for farmers who can supply large quantities of produce or can afford to invest in changes and take risks. Other changes farmers are adopting, which may occur on a smaller scale, include agritourism and seeking to benefit from interest in buying locally.

Consumers' concerns about health and convenience and demands of buyers have been important in the development of specialty crops and value-added products such as bagged vegetables (Dimitri et al 2005, Cook 2002). The consumption of fresh produce relative to processed vegetables and fruit has grown, and the retail sector has begun to compete on produce quality and year-round supply more than price (Busch and Bain 2004). These factors in turn increase pressure on suppliers to consistently produce high-

quality products, and large retailers have begun to demand more services of suppliers (Cook 2002) and higher-quality produce, such as apples with very little bruising.

Busch and Bain (2004) and Cook (2002) have noted the increasing concentration of retailers.<sup>24</sup> In 2002, the top 20 retailers had an estimated 57% of food sales in the U.S. amounting to at least \$276 billion; the top 4 retailers had a share of 31% (Carman, Cook, and Sexton 2004, 93); compared with about 40% and 20% respectively from 1987 to 1997 (p. 92). The 1990s saw new entrants to the food system using different approaches, such as value-oriented chains like Wal-Mart, specialty food stores like Whole Foods and Trader Joe's, and other merchandisers that did not sell only food; this phenomenon contributed to supermarket mergers that caused concern among growers (Carman et al. 2004, Cook 2005). Larger supermarket chains have grown in importance, but they still tend to be regional in focus; small- to mid-size chains are expected to remain important players (Cook 2005, Carman et al. 2004). Other important buyers include foodservice retailers, which have introduced more salad bars and fresh salads while higher-end restaurants demand greater variety (Cook 2002). Food service channels account for half of the final value of products sold (Cook 2005).

The mechanism of sales has typically varied according to whether produce was processed or not, with processed produce more commonly sold through contracting and<sup>25</sup> fresh produce through spot marketing or daily sales. Grower-shippers may sell at or below costs partly because they are motivated to ensure the ability to meet buyer demand for products, which may result in excess supply tendencies (Cook 2002). Spot marketing

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<sup>24</sup> Per Busch and Bain, the 5-firm national supermarket concentration ratio increased in the U.S. from 26.3 in 1996 to 38 in 2000.

<sup>25</sup> Vegetables and Melons: Background. <http://www.ers.usda.gov/Briefing/Vegetables/background.htm>. Retrieved January 19, 2011. Updated 2009, and Fruit and Tree Nuts: Background <http://www.ers.usda.gov/Briefing/FruitandTreeNuts/background.htm>) Retrieved February 9, 2011. Updated 2011. See also Lucier, Pollack, Ali, and Perez 2006.

is still the "norm" (Cook 2005, 19), but contracting is increasing, along with vertical integration, changing the structure of the agriculture market (Dimitri et al 2005, Busch and Bain 2004). Contracting also increases with farm size. In 2004, while just 10.9% of all farms had contracts, 37.8% of the value of production was under contract, and 64% of very large family farms had contracts (USDA ERS 2007, 38). The increase in contracting by large buyers creates some problems for growers, especially growers of commodities rather than value-added products. Spot sale prices for produce are variable, but high prices in short markets can make up for other periods of low prices. This dynamic is lost with contracts that set prices in advance, an especially difficult problem for early- and late-season growers who typically receive higher than average prices (Cook 2005). There can be some benefits to contracting for growers, for example if retailers are able to track demand well, but in general, purchasers have increased power over prices, and their demands for other services (e.g., third-party certification or packaging requests) and fees could chip away at profits (Cook 2002).

Significant investments in technology, the development of broader product lines, and other investments may be necessary for growers to contract with large retailers shipper consolidation to meet the increasing demands of consolidated buyers has occurred albeit more slowly than among retailers (Cook 2002, 2005). Some suppliers have consolidated marketing, with separate production and packaging but possibly shared marketing or supply chains (Cook 2005).

Other new strategies to increase consumer demand or sales include, for the apple industry, introducing new varieties (Pollack and Perez 2005) and bringing consumers onto farms through U-Pick opportunities and agritourism (occurring in both New York



study regions).<sup>26</sup> However, it can take many years to reap benefits from investments in the apple industry. Vegetable growers can change crops from season to season to take advantage of consumer interest in varied, fresh, and local crops, but their profit margins may be lower.

The effect of these industry changes on the average New York farmer assembling a labor force is not clear, aside from the fact that they alter risk and reward calculations while likely building pressure on an already risky endeavor. Vegetable and fruit growers are likely to face more competition from overseas and new and larger buyers at home, often retailers who buy directly from them and demand more services, faster, at higher quality and potentially with a fixed price and lower profit margin (or at least a lower share of prices) than previously. Farm producers are polarizing to some degree in terms of growth in large and very small farms, but growth in big farms may be more apparent for grain production than produce (Key and Roberts 2007). Input costs have risen, and while labor remains a relatively stable cost, it is one of the largest, especially for large farmers most likely to do business with newer retail players. This may be one reason grower interest groups are so motivated to try to keep labor costs low through policy, especially for fruit and vegetable sectors that do not enjoy the buffer of government subsidies and generally are not mechanized.

## **II. Characteristics of Farm Workers and Farm Jobs**

The industry and cost concerns outlined in the previous section contribute to growers' ongoing preoccupation with high-performing and affordable. This exists alongside a perception that labor is unavailable, not authorized to work legally, or lack the skills or

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<sup>26</sup> <http://www.nyapplecountry.com>. List of "pick your own" farms. Retrieved 26, 2011.

disposition for farm work. This section reports on characteristics of farm jobs and workers to provide background on this situation.

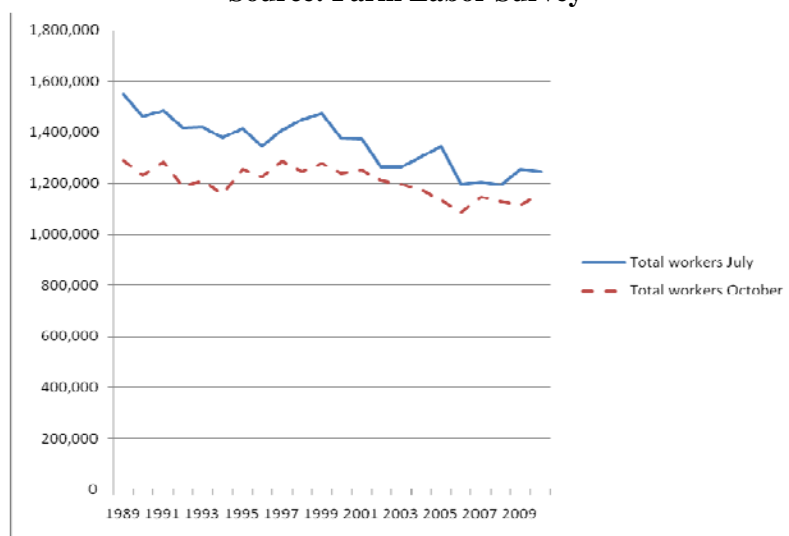
I include statistics that reflect institutionally-affected overall supply and demand levels for farmworkers and foreign labor. These include in-migration trends, Border Patrol apprehensions, statistics from the New York and U.S. Departments of Labor on the presence of foreign workers, and the size of the farmworker labor force. I also present NAWS data on characteristics of workers and farm jobs. In section B, I provide information on the use of the H-2A program in the U.S. and in New York. Although much of the policy debate on farm labor supply (reviewed in Chapter 4) concerns the H-2A program, H-2A workers comprised under 3% of all farmworkers in 2006 (Kandel 2008). For specific subsectors, especially for crops with predictable harvests, the share may be higher (Gilbert 2005). In some states tobacco, apple, peach, tomato, onion, squash, and grain growers are significant users of the program (Levine 2009). Uncertainty about the total number of farmworkers makes it more difficult to assess H-2A's importance for labor markets, but I will show that the share in New York may be much higher than 3%.

The availability of immigrant workers is a major concern of farmers. NAWS data reported in this section show that the share of Mexican and undocumented workers is relatively higher in vegetable and fruit production than other subsectors of the agriculture industry. Average real wages were stagnant as compared to their 1989 level until the early part of the last decade but have since risen about a dollar above their low point in the mid-1990s.

## A. Hired Farmworkers

The total number of farmworkers in the country is uncertain, because many surveys miss workers hired throughout the year, leave out some categories of workers, or miss undocumented workers. For example, a USDA report placed the number of hired farmworkers between 1 and 2.5 million for 2006 (Kandel 2008).<sup>27</sup> Figure 2.6 shows Farm Labor Survey (FLS) statistics on hired workers and workers in agricultural services. The FLS reported 1.2 million workers on farms in July 2007, the peak month for labor. In the same calendar year, the USDA census reported 2.3 million workers for 482,186 farms of whom 1.7 million worked under 150 days, a common measure of seasonal work. In New York, there were 59,683 hired farmworkers total including 35,690 who worked under 150 days.<sup>28</sup> Table 2.3 compares farmworker counts from different sources.

**Figure 2.6: Hired farmworkers**  
Source: Farm Labor Survey



<sup>27</sup> The Farm Labor Survey of the National Agricultural Statistics Service (NASS) is a good data source, but it is estimated that there are from 2 to 2.5 more workers than counted in FLS because it is cross-sectional and misses employment throughout the year. The Current Population Survey has a small sample and misses those whose second job is farm work. NAWs does not provide a total number of workers. It is a representative sample that has the benefit of including unauthorized workers but does not include livestock workers. See Kandel 2008, 12.

<sup>28</sup> These data are for 9,273 farms (USDA Census 2007-New York), whereas NASS reports there were 36,400 farms that year. Shorter-term seasonal workers are reported for 6,790 farms.

**Table 2.3: Farms and Workers in 2007**

	<b>Number of farms</b>	<b>Number of workers</b> <i>(Hired farm labor, USDA Agriculture Census, 2007)</i>	<b>Number of workers in July</b> <i>(Farm Labor Survey, USDA, 2007)</i>
U.S.	2,204,792 <i>(Agriculture Census)<sup>29</sup></i>	2,636,509 1,725,070 under 150 days	1,206,000
New York	36,400 <i>(NAASS)</i>	59,683 (for 9,273 farms) 35,690 under 150 days (for 6,790 farms)	54,000 <i>(in 2001)</i>

The workforce trend perhaps most noted in policy discussion has been the increasing share of Mexican and undocumented farmworkers. NAWs data show that the labor force along the East Coast has come to resemble that in the West more in terms of the presence of Mexican workers, but decades ago in the Eastern migrant stream that included New York, African American workers were the majority of the labor force (Hahamovitch 1997). For example, most of the migrant workforce in apple production in Wayne County from WWII to the mid-1980s was African American (Heppel & Amendola 1992). As late as 1998, Effland and Runyan noted that more women and fewer Latinos were in the Northeast workforce than in other regions. The change in New York occurred rapidly: Parra and Pfeffer (2004) report that from 1989 to 2000 the percentage of African American farmworkers a N.Y. nonprofit screened for job training fell from about half to below 30% while the percentage of Latinos rose from 30% to 70% of this group.

Given this change, trends in Mexican migration are an important aspect of farm labor supply. Boucher and Taylor (2007) found an increase in the migration of Mexican villagers between 1980 and 2002 to U.S. farms from 2.7% to 4% (a more modest change than for migration to non-farm jobs). In this time period, both IRCA and NAFTA

<sup>29</sup> [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/index.asp](http://www.agcensus.usda.gov/Publications/2007/Full_Report/index.asp)

temporarily interrupted a decreasing migration trend (Boucher and Taylor, 2007).<sup>30</sup>

Economic crises in Mexico in 1982 and 1994 (Audley, Papademetriou, Polaski and Vaughan 2004) also contributed to increased migration to the U.S. IRCA added to the number of authorized workers by legalizing 1.2 million Special Agricultural Workers; its long-term network effects fueled additional arrivals in later years.

Statistics on the number of people apprehended near the U.S. border are one indication of constraints on labor supply. Boucher and Taylor found change in expenditures for border control did not affect Mexican migration to farms, but deportations of workers are a big concern. Historically most border enforcement occurred in the Southwest, but an increasing share of new agents is assigned to the Northern Border. Total USBP apprehension events declined steadily from FY2005 to 2010 but rose sharply in the same period in the Buffalo sector (from 400 to 3,338 between 2005 and 2008) before declining to 2,422 in FY2010.<sup>31</sup> Northern Border apprehensions are a low share of the total (1% in FY2008 and 2009) and the Buffalo, New York sector accounted for over a third of these; about half the apprehensions in FY2009 were of Mexicans compared to over 90% on the Southwest Border.<sup>32</sup>

The number of unauthorized immigrants in the U.S. peaked in 2007 at 12 million and then declined to 11.2 million in 2010 (Passel and Cohn 2011). In the first part of the decade on average 500,000 unauthorized Mexican immigrants arrived in the U.S. annually, but inflows decreased to 150,000 on average from 2007-2009. New York was

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<sup>30</sup> The effect of NAFTA on rural Mexicans is according to some related to its effect on the agriculture industry there and employment in this sector. Papademetriou (2004) argued for a number of reasons that NAFTA had not caused the increasing migration that followed it despite concerns of its opponents about the likely effects on grain production in Mexico given that the U.S. produces maize more efficiently.

<sup>31</sup> USBP Yearbook of Immigration Statistics: 2010 data, Table 35.

<http://www.dhs.gov/files/statistics/publications/YrBk10En.shtm>. Retrieved July 3, 2011.

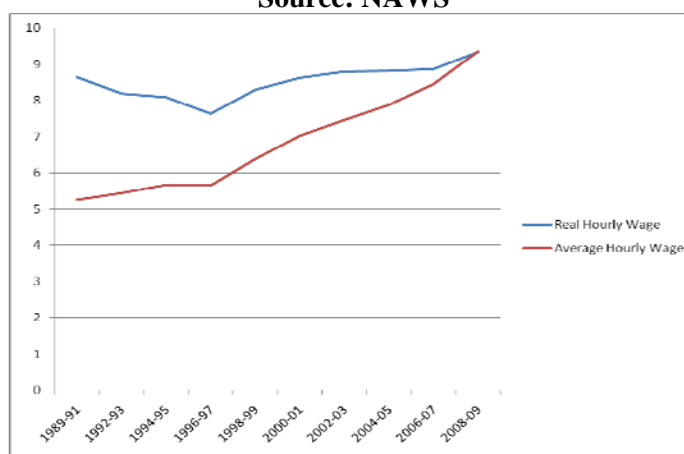
<sup>32</sup> Data provided by USBP.

historically one of six states accounting for a large share of unauthorized immigrants.<sup>33</sup> This has changed as the population has dispersed (Passel and Cohn 2009); 625,000 were in the state in 2010, down from 825,000 in 2007 (Passel and Cohn 2011, 2). Mexicans make up the majority of deportations, which more than doubled since 2001 to 393,289 in FY2009 (Office of Immigration Statistics 2010).<sup>34</sup>

## 1. Job Characteristics

Figure 2.7 shows the change in farmworkers' average hourly wage, which NAWS calculates using information about different types of pay workers report (i.e., piece rate,<sup>35</sup> salary, or hourly rate). Real wages dropped to a low of \$7.64 in 1996 and did not reach their 1989 levels until about 2000 after which they increased to \$9.36. Wage growth since 2006-07 has differed by crop. For example wages increased in field crops and were flat in horticulture. Vegetable wages grew but remained lower than for most other crops.

**Figure 2.7: Average Hourly Wages of Farmworkers**  
Nominal and Real (2009) Dollars, 1989-2009  
Source: NAWS



<sup>33</sup> These are California, Texas, Florida, New York, Illinois and New Jersey.

<sup>34</sup> Passel and Cohn 2010 report that there is no evidence that voluntary departures have increased. Mexicans accounted for over 70% of deportations in FY2009.

<sup>35</sup> Piecerate pay is productivity based (Pena, 2009), i.e., pay per output unit such as the bushel, bin, or box picked.

Real wages for U.S.-born, men, and authorized workers were significantly higher in 2008-09 (Table 2.4) than those for Mexican-born, women, and unauthorized workers. Wages for Mexican- and U.S.-born workers followed similar trends until 1999, when they began flattening for the three lower-paid groups. The wage gap between authorized and unauthorized workers has grown most.

**Table 2.4: Differences in Real Wages and Income by Group**

<b>2008-09 Real Wage (2009 dollars)</b>		
<i>Unauthorized</i> \$8.63	<i>Authorized</i> \$9.95	t=16.38 p = 0.00
<i>Mexican-born</i> \$9.06	<i>American-born</i> \$10.10	t=81.14 p = 0.00
<i>Women</i> \$9.00	<i>Men</i> \$9.45	t= -4.65 p = 0.00
<b>2008-09 Real Income (2009 dollars)</b>		
<i>Unauthorized</i> \$15,698.15	<i>Authorized</i> \$21,316.65	t=17.57 p=0.000
<i>Mexican-born</i> \$18,399.64	<i>American-born</i> \$20,985.71	t=3.16 p=0.002
<i>Women</i> \$14,841.03	<i>Men</i> \$20,437.66	t= -15.10 p=0.000

Over-time comparisons of log real wages for these groups in four-year periods<sup>36</sup> (see Appendix) shows that all experienced a drop in wages up to 1994-97 and growth afterwards. In 2006-09 the greatest wage gap was between unauthorized and authorized workers (14.5%), and this gap grew more over time than those between other groups. Wages of Mexican-born workers initially surpassed those of American-born workers by 5.8% but by 2007-09 were 10.5% lower. The gender gap pattern has been less consistent. It dropped to 2% at the point in time when wages were lowest for all groups (1994-97), reached 6.1% in 2002-05, and has begun to narrow again.

<sup>36</sup> NAWS recommends combining data into groups of four years for some estimates given the small sample size in each year.

Two regression equations (shown in the appendix) estimated the effect of unauthorized status on log wages to further examine these wage differences. The second included a series of controls reflecting characteristics of work and of workers. Table 2.5 shows coefficients for a dichotomous variable indicating whether workers were legally eligible to work, which reflect the wage advantage of legal status. The coefficient was significant in both equations for all time periods. Equation 2 shows that control variables account for some of the wage difference, but not all of it, and the gap dropped in 1994-97 and then increased again to 6.9%.

**Table 2.5: Regression Results: Wage Advantage for Authorized Workers**

	(1)	(2)
<b>1989-93</b>	0.0522 <sup>a</sup>	0.0605 <sup>a</sup>
<b>1994-97</b>	0.0673 <sup>a</sup>	0.0258 <sup>a</sup>
<b>1998-2001</b>	0.0781 <sup>a</sup>	0.0320 <sup>a</sup>
<b>2002-05</b>	0.1069 <sup>a</sup>	0.0561 <sup>a</sup>
<b>2006-09</b>	0.1453 <sup>a</sup>	0.0688 <sup>a</sup>

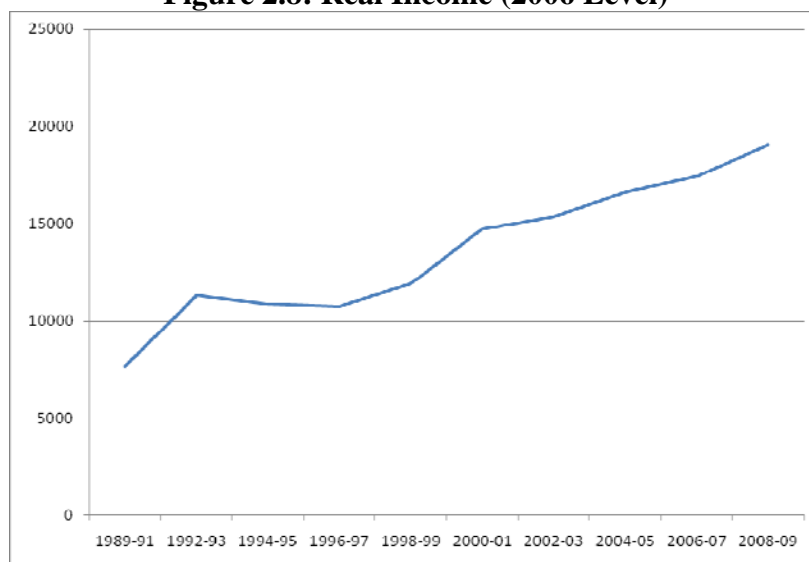
Notes: The full results are reported in the Appendix.  
An “a” denotes significance at the 1% level.

Real income (Fig. 2.8) has risen steadily, and family poverty dropped sharply from over 50% in the mid-1990s to 21% in 2008-09. One reason may be an increase in the amount of farm work (Table 2.6). Respondents had worked for more years for their current employer in 2008-09 than at the survey midpoint, a factor associated with higher wages. Increases in these variables follow earlier declines that coincided with low wages.

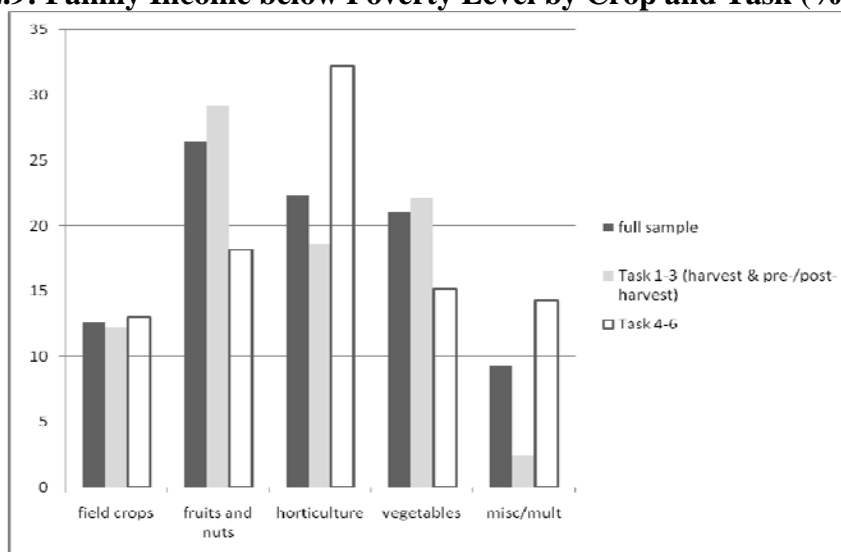
**Table 2.6: Time in Farm Work**

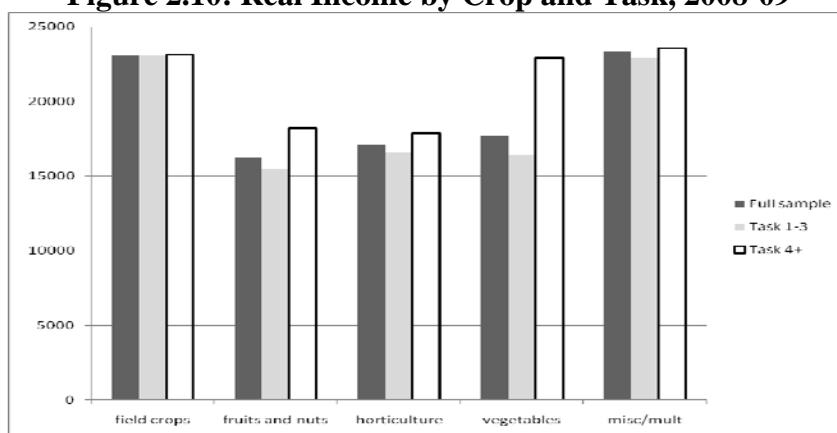
	<b>1989-91</b>	<b>1998-99</b>	<b>2008-09</b>
Farm work weeks	28.45	25.73	34.79
Nonwork weeks	9.64	8.64	8.19
Weeks abroad	5.26	11.92	4.15
Nonfarm work weeks	6.90	3.87	5.18
Hours last week, current farm job	38.86	38.97	45.04
Days per week, current farm job		5.09	5.54
Years with current employer	4.55	3.13	6.33



**Figure 2.8: Real Income (2006 Level)**

Income and poverty levels vary among different subsectors and for different work tasks, as shown by Figures 2.9 and 2.10. Fruit workers appear to fare worse than others in terms of income level and poverty, and within the fruit and vegetable sectors workers in pre-harvest, harvest, and post-harvest work earn less than others.

**Figure 2.9: Family Income below Poverty Level by Crop and Task (%), 2008-09**

**Figure 2.10: Real Income by Crop and Task, 2008-09**

Farm work, in part due to its seasonal nature, has many characteristics associated with flexible or nonstandard employment (Kalleberg et al. 2000, Rubery 2005), such as being contracted out, working part-time, and having limited or no benefits.

More harvest workers in vegetables and fruit production than other workers reported that they worked seasonally and were employed by a farm labor contractor (Table 2.7), a much smaller difference in vegetables (harvest workers also were more likely to say they did not know if they were year-round,<sup>37</sup> an answer also more common among unauthorized workers).

**Table 2.7: Nonstandard Job Characteristics  
for Fruit/Nut and Vegetable Harvest Workers (2006-2009)**

	Year-round	Don't know	Seasonal basis	Employer is FLC
Vegetable harvest	32.12	26.31	41.57	13.89
Not vegetable harvest	48.05	14.06	37.89	10.93
Fruit harvest	17.89	21.52	60.59	19.8
Not fruit harvest	52.15	13.67	34.18	9.59

Workers surveyed by NAWS were asked whether they received a range of benefits from employers or other sources (including government). A fifth reported their employers

<sup>37</sup> There was an increase in the number reporting they did not know the answer to this after 2001-02.

covered health problems that arose off the job and 78% that they did so for sickness or injury due to work, while 35% reported being insured from any source (such as employer, government or self). The provision of free housing has declined over time to just 11% in 2008-09, but this practice differs across regions: 23% in the Eastern zone received free housing vs. 15% in the Midwest and 6% in the Western zone. The proportion reporting they received worker's compensation rose over time to 64%.<sup>38</sup> Half reported unemployment insurance (UI) coverage,<sup>39</sup> and 16% that they had received UI.

Benefits also vary by crop and task. A far lower percentage of workers in the fruit/nut, vegetable, and especially the horticulture sector reported receiving free housing than in other sectors. Workers performing pre-harvest, harvest, and post-harvest tasks in these crops reported in lower percentages than other groups that they were covered by worker's compensation and that employers covered health problems unrelated to work.<sup>40</sup>

## **2. Workforce Composition**

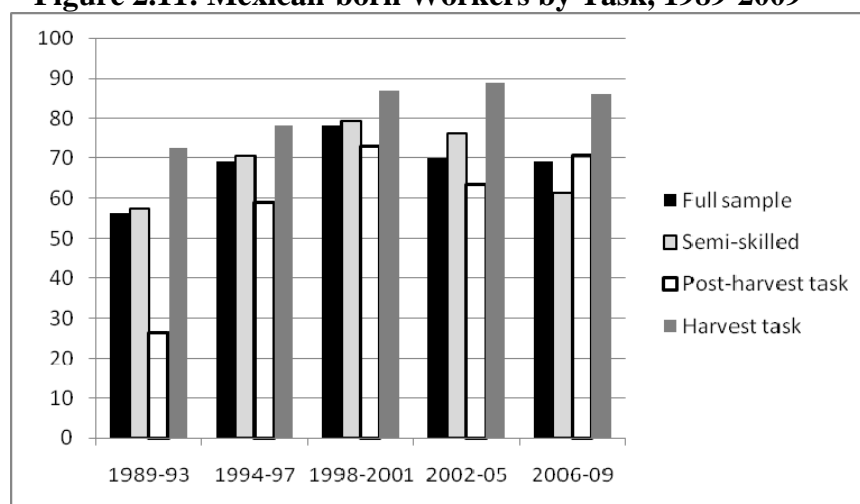
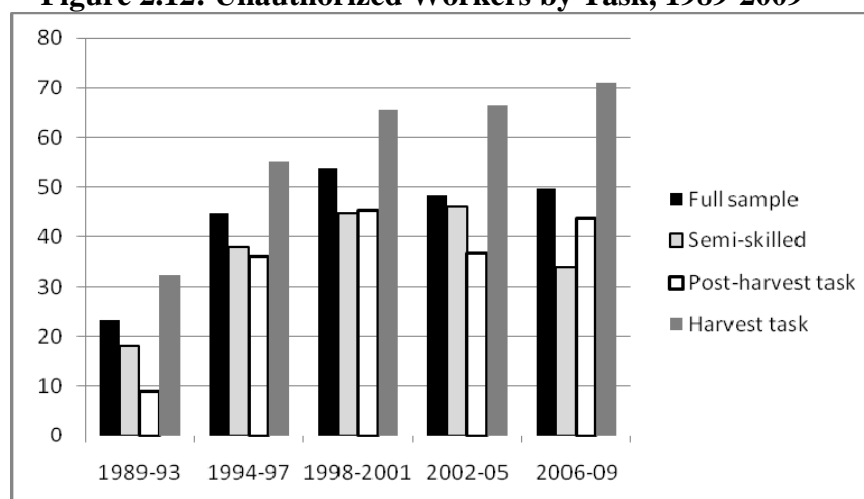
NAWS data capture the increased presence of Mexican-born and unauthorized workers in the farm workforce since 1989 and growth in the number of settled workers as opposed to migrants. Mexican workers have increased in the East and Midwest, where historically other groups have been concentrated in farm work. Figures 2.11 and 2.12 show that the share of unauthorized and Mexican-born workers in harvest work remained high while it dropped in the full sample and among semi-skilled workers particularly after 2000. Still, unauthorized workers account for over 30% of semi-skilled workers.

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<sup>38</sup> Survey question: If you are injured AT WORK or get sick as a result of your work, do you get any payment while you are recuperating (i.e., workers compensation)?

<sup>39</sup> Workers who reported they were covered by unemployment insurance if they lost their job.

<sup>40</sup> These workers answered no to the question: "If you are injured or get sick OFF THE JOB (e.g. at home), does your employer provide health insurance or provide or pay for your health care."

**Figure 2.11: Mexican-born Workers by Task, 1989-2009****Figure 2.12: Unauthorized Workers by Task, 1989-2009**

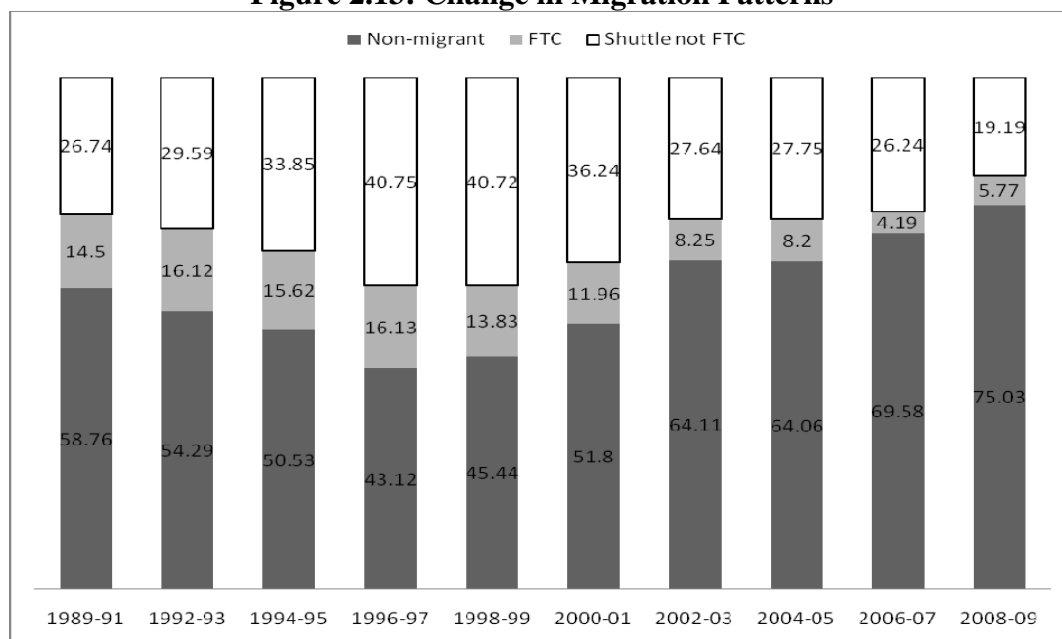
The concentration of Mexican-born and unauthorized workers is less pronounced in the Eastern zone (Table 2.8). Central American, Puerto Rican, and Caribbean workers, in that order, have been more prevalent in that region, together comprising 10% of the worker sample in 2006-09. Workers classified as Black/African-American, mostly present in East and Midwest zones, accounted for only 3.56% of workers in the U.S. in 2008-09.<sup>41</sup>

<sup>41</sup> From 2006-09, 7.94% of workers in the East zone including North Carolina, Virginia, Kentucky, Tennessee, West Virginia, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island,

**Table 2.8: Regional Differences in Worker Groups (2006-2009)**

	Eastern	Midwest	Western
Unauthorized	50.84%	20.08%	64.39%
Men	83.18%	76.49%	77.81%
Mexican-born	58.34%	32.98%	93.01%

NAWS provides information on whether workers follow the crops (FTC), are “non-migrants” or “settled,” and shuttle, or move between two locations within or outside the U.S.<sup>42</sup> The proportion of settled workers has increased over time, but workers who follow different farm seasons have never been a large share (Fig. 2.13).

**Figure 2.13: Change in Migration Patterns**

Women have been most present over time in horticulture, vegetables, and fruits/nuts in descending order, but they have declined as a share of fruit/nut and vegetable workers.

Vermont, Delaware, Maryland, New Jersey, and Pennsylvania) and 4.81% in the 12-state region including the Northeast were Black/African-American.

<sup>42</sup> Workers who follow crops move from harvest to harvest and work in multiple locations each year. International shuttlers move between the U.S. and a home country where they spend over 28 days. Workers may also shuttle between home bases within the U.S. that are 75 miles apart.

Women disproportionately report work in “post-harvest” tasks, which may include packing (DOL 2005), of which they made up a third of workers in 2006-09.

**Table 2.9: Percentage of Women by Work Type, 2006-09**

	<b>Field Work</b>	<b>Nursery</b>	<b>Packing House</b>
Percent	16.35	30.37	46.44
Frequency	955	581	231

## **B. H-2A Program**

Several indicators point to a sharp increase in the number of H-2A workers in recent years. State Department records show that the number of H-2A visas issued approximately doubled from about 30,000 to about 60,000 since FY2006.<sup>43</sup> Mexican workers accounted for almost all (55,693 of 60,112 in FY2009), but Jamaican workers are not included in the total. The only other country for which over 1,000 visas were awarded in FY09 was South Africa; Peru and Guatemala received over 800 each.<sup>44</sup>

Both the U.S. and New York State DOLs keep records of foreign workers. U.S. statistics from employer applications to be certified for the H-2A program are available publicly from FY2006 to 2009. Around 4% of workers in approved applications during these years were to work in New York (Table 2.9). State records show that 4,619 workers were certified to work in the state in FY2009 (vs. 4,427 according to U.S. records).<sup>45</sup> Typically, more workers are certified than arrive. These records indicate that the number of “foreign workers” (H-2A workers) employed at the season peak in September increased from 2100 to 2900 from FY2006 to in 2008 (Figure 2.14).

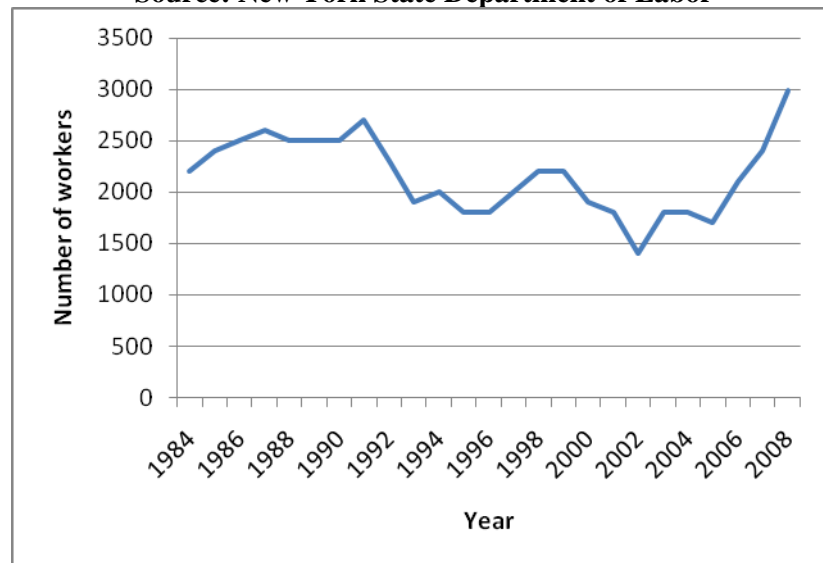
<sup>43</sup> Data available: [http://travel.state.gov/visa/frvi/statistics/statistics\\_4582.html](http://travel.state.gov/visa/frvi/statistics/statistics_4582.html). Retrieved January 26, 2010.

<sup>44</sup> Aside from those countries and the following exceptions, fewer than 100 visas were awarded in any country according to the same statistics for FY09: Haiti (296), Costa Rica (276), Romania (166), and New Zealand (171).

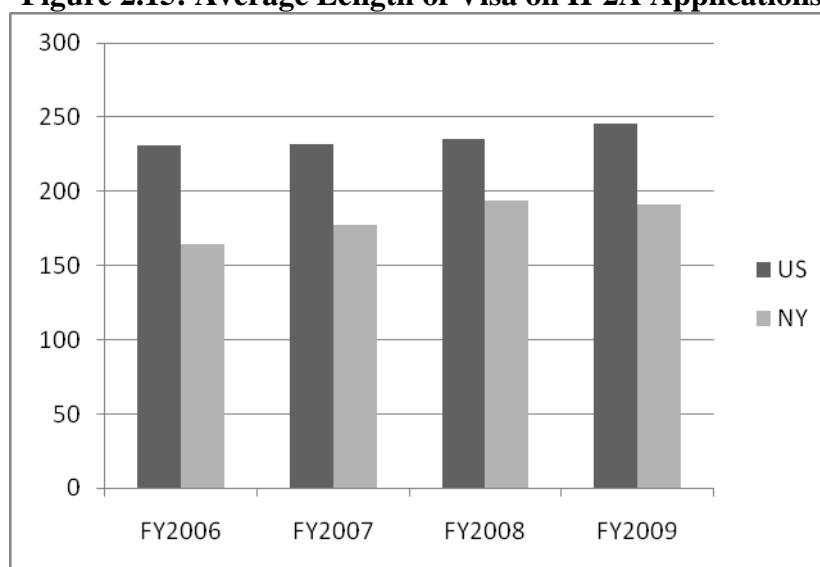
<sup>45</sup> The same employer may file several orders, and more workers may be certified than enter the U.S. to work.

**Table 2.10: H-2A Worker Presence (U.S. DOL certification statistics)**

	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10</b>
<b>Workers certified: U.S. total</b>	72,510	89,575	94,401	99,454	94,218
<i>Percent increase</i>		23.5%	5.4%	5.4%	-5.3%
<b>Employers certified in NY</b>	213	276	306	307	275
<i>Percent increase</i>		29.6%	10.9%	0.30%	-10.4%
<b>Workers certified for NY as employer state</b>	3,153	4,013	4,181	4,427	3,930
<i>Percent increase</i>		27.3%	4.2%	5.9%	-11.2
<b>NY employer state as percent of U.S.</b>	4.35%	4.48%	4.43%	4.45%	4.2%

**Figure 2.14: Foreign Workers Employed in Peak Period (September)**  
Source: New York State Department of Labor

One indicator of how H-2A is used is the possible length of stay specified on applications, shown in Figure 2.15 for FY2006-09. The shorter New York contract lengths reflect the shorter season of a cold climate, but they average over 150 days.

**Figure 2.15: Average Length of Visa on H-2A Applications**

A very rough comparison of the estimate that H-2A workers comprise under 3% of all farmworkers with DOL records indicates the percentage may be higher in New York. The USDA census reported 59,683 hired farmworkers in New York in calendar year 2007<sup>46</sup> of whom 35,690 worked under 150 days (Agriculture Census data). The number of workers certified for the state according to DOL (generally higher than the number that arrives) is 11% of the calendar-year census count of seasonal workers. New York State data indicate that H-2A workers in peak season in September account for 22% of the total number of hired seasonal agricultural workers and 27% for 2008. Among apple workers in 2008 this share was over 40%.<sup>47</sup> Yet the likelihood that state data undercount seasonal workers means this number may be higher than the reality.<sup>48</sup>

<sup>46</sup> This includes paid family members but not contract workers.

<sup>47</sup> The number of seasonal workers is based on estimates of Department of Labor staff based in farm areas.

<sup>48</sup> Heppel and Amendola noted in 1992 that the numbers of farmworkers collected by State Departments of Labor tend to be low.



### **III. Conclusion**

Section I of this chapter reviewed indicators of the status of the American agriculture industry and subsectors of vegetable and fruit/tree nut production. Experiencing growth in receipts and in some areas of production, but dealing with rapid change, this sector faces challenges related to concentration of produce buyers and sellers, an increase in contracting as a means of selling, growing expectations and demands of consumers and buyers, and the constant need to produce high-quality products rapidly and consistently despite unpredictable conditions and competitors. Smaller farms face a very different set of concerns than larger ones, often failing to make a profit, but there has been a decline in the share of prices farmers receive and, for some crops like apples for processing, a profit squeeze. The sector does not benefit from the stabilizing effects of direct federal support some grain producers enjoy, but government campaigns to promote vegetable and fruit consumption provide indirect support.

These pressures mean growers are experimenting with new ways to earn income, including new varieties, production methods, and agritourism or “U-pick” efforts that open farms to the public. The need to satisfy buyers may lead to oversupply of crops and potential losses in a given season, and losses in general are a constant threat given variation in prices and weather. Against all this is the consistently high share of labor costs. All these factors contribute to farmers’ concerns about ensuring a supply of labor that will stay through the harvest and perform reliably while preventing labor cost increases.

Section II provided data on institutional factors that affect migration and thus supply, the characteristics of jobs and workers, and trends in H-2A use. In the past three decades

the number of Mexican immigrants in the country rose dramatically, as did the share in the farm workforce. However, recently migration to the U.S. and New York has declined, and the number of unauthorized immigrants peaked in 2007, while deportations rose.

NAWS data show that wages and income have increased in recent years, but in vegetable and fruit subsectors, workers have higher poverty levels and often lower levels of benefits than other farm subsectors. Less than full-year work and work for farm labor contractors, both of which may be seen as reflecting nonstandard occupations, are slightly more common in vegetable and especially fruit production. For the full sample, these job characteristics, limited job tenure, and piece rate compensation peaked around the midpoint of the survey years toward the end of the 1990s, just after the 1996 low point in real income and real wage trends. It was also the point at which the share of migrants, undocumented workers, and workers born in Mexico were highest in the NAWS sample.

The increased income since then may be partly due to the increase in weeks, hours, and days spent in farm work. In addition, the average number of years respondents have been with a current employer rose, and more workers stay in one place all year.

However, disparities in real wages among different groups have increased, such as those between U.S.- and Mexican-born workers, men and women, and especially authorized and unauthorized workers: for all three real wages and income are higher for the former than the latter group. It is also important to note that some improved indicators of worker status have simply returned to approximately the levels of 1989.

There are a number of possibilities for why this gap may persist. As Chapter 4 will show, worker advocates often argue that undocumented workers are more likely to be exploited and thus to experience poor working conditions and low wages. Workers also

are less able to move around than in previous years due to increased immigration enforcement, and therefore may have fewer options or feel less free to turn down or complain about low wages than other workers. In addition there may be some other factors not captured in the data, such as variation within a task in duties that pay differently that may coincide with patterns of occupational segregation.

Use of the H-2A visa program increased sharply from 1995 to 2001 and 2006 to 2009. The 95-01 increase occurred amid a strong economy and tight labor markets, but the level of visas issued remained stable after strong growth ended and even after the recent recession began. The total number of workers employed in July according to FLS, and the share of workers employed by a farm labor contractor according to in the NAWS also increased a great deal in the same period (for contractors, from 13.8% in 1993-94 to 26.4% in 1999-2000), but it has declined sharply since to 13.75% in 2005-06. Subsequent chapters explore policies that are related to labor supply, employment practices, and worker conditions (Chapter 3), political debates about the H-2A program and farm labor supply (Chapter 4), and reports of New York growers (Chapters 5 and 6) and other labor market actors about how employers build farm labor forces. Together, these chapters examine how industry and workforce trends relate to the role of policy in farm labor markets and the efforts of political and labor market actors to reshape this role at the level of policymaking where employment relations take shape.

## **Chapter 3: Social Programs, Labor Standards, Employment Services, and Immigration Policy**

### **The regulatory framework for farm work**

The state accomplishes its roles in farm labor supply and work conditions through a complex and evolving set of rules and regulations specific to farm labor. In this chapter I describe historical policy changes in the areas of labor standards and social programs, worker allocation efforts, and immigration. Together, these policies have contributed to the segmentation of the occupation, and they continue to shape employment relations and the organization of production.

The H-2A visa program to provide foreign temporary agriculture workers is the most obvious and debated form of direct state involvement in the farm labor occupation. This, along with other immigration policies, has often expanded supply, but can also restrict it as the state attempts to remove undocumented workers. Other policies regulate working conditions, help match workers to jobs, and provide benefits and programs to support workers. As this and subsequent chapters will show, the directions state roles could take through these policies are more complex.

Policy changes have often been driven by claims of current or future farm labor shortages, social concerns about farmworkers, or major New Deal and immigration reform legislation that presented opportunities for farm interests promoting industry-specific solutions to their concerns.

During the New Deal, the agriculture industry was excluded from laws guaranteeing labor standards and bargaining rights in a racialized move to maintain labor control in the South. Beginning in the 1960s, concern about the plight of farm laborers led to legislative changes over the next two decades to improve worker conditions. Farmers' claims of

worker shortages during World Wars I and II created an impetus to bring in foreign workers and expand supply. Major immigration reform laws in 1965 and 1986 increased the presence of foreign workers in the farm labor force and modified government programs to bring in temporary workers. In the 1980s, the Migrant and Seasonal Workers Protection Act (MSPA) and Immigration Reform and Control Act (IRCA) changed laws governing hiring of migrants and undocumented workers. Since 1996, the state has stepped up efforts to contain the supply of undocumented immigrants, but international trade policy and economic restructuring in Mexico during the 1990s contributed to sharp increases in the migration of Mexican workers. For domestic workers, the government's very active role in allocating farm labor within U.S. borders has declined over time. Most recently, H-2A program regulations issued in 2008 under the Bush Administration eased the approval process for hiring foreign workers and diminished employer costs and burdens, but Obama Administration regulations in 2010 reversed many of these changes (see Section III).<sup>49</sup>

The regulatory environment varies as it concerns H-2A workers, migrants, and undocumented immigrants, according to subsector (dairy, seasonal crop work, sheepherding), employer size, and work task (such as packing vs. other farm work). For each there is a patchwork of eligibility, exclusions, and protection under the law (Ontiveros 2007).<sup>50</sup> This, together with the more obvious impact of immigration policy, means that the costs, risks, and burdens of hiring may vary for different worker groups as employers create a workforce.

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<sup>49</sup> They were similar aside from some expanded emphasis on protecting “corresponding” workers on farms with H-2A workers, new enforcement measures, and changes in rules for searching for U.S. workers before approval to hire foreign workers is issued.

<sup>50</sup> See Ontiveros (2007) for a discussion of labor standards and collective bargaining rights as they relate to employer size, immigration status, and sex.

In this chapter, I consider policies related to labor standards and social programs before discussing the historical involvement of government in allocating farmworkers. This provides context for a discussion in Section III of immigration policy including the H-2A program.

## **I. Labor Standards and Social Programs**

Policymakers implement labor standards and social programs to protect workers and mandate minimum conditions and to support a floor of living standards for low-income workers. Labor standards regulate conditions such as hours, pay, and the ability of workers to bargain collectively. Social programs provide support for housing, education, and income. Employers may partner with the state to provide these, e.g. for child care services for migrants in New York.

The 20<sup>th</sup> century history of social programs and labor standards with regard to farm labor is one of conflicting pressures to exclude or include workers from coverage in collective bargaining and labor standards law and bursts of federal legislation in the 1960s creating programs to address migrancy, low pay, and poor conditions. More recent federal policy changes expanded protection related to sanitation and pesticides and in New York to the minimum wage.

As mentioned, the quilt of coverage and exclusion for both social programs and labor standards for farmworkers concerns not just how the occupation is defined and protected under law, but also boundaries of legal status, whether workers migrate, and whether they are in the H-2A program. Undocumented farmworkers in particular face a double barrier if limited protection under labor law and exclusions from social assistance. For example,

the NLRA excludes agricultural workers from collective bargaining rights,<sup>51</sup> and the Supreme Court's Hoffman decision in 2002 (Ontiveros 2007) limits the ability of undocumented workers to organize.<sup>52</sup> Since 1996, Legal Services restrictions on representing undocumented workers also limit possibilities for redress.<sup>53</sup> At the same time international law provides opportunities to bring complaints.<sup>54</sup>

## **A. Labor Standards**

Major legislation enacted in the 1930s established bargaining rights for workers, child labor law protection, and wage and hour requirements but excluded farm and household workers as part of a compromise with Southern lawmakers (Domhoff, 1990). Standards applying to farmworkers were added in piecemeal fashion over the years, but are quite different than for other workers.

### **1. Federal**

Farmworkers are excluded from rights to organize and bargain collectively, rights provided other workers by the National Labor Relations Act (NLRA) of 1935 (Wiggins 2009). They were also exempted from the Social Security Act and the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements in 1938 (Wedemeyer 2007). Subsequent 1966 legislation included farmworkers in minimum wage protections at a lower rate than other workers. In 1977, the federal minimum wage was guaranteed for workers at larger farms (Schell 2002).<sup>55</sup>

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<sup>51</sup> 29 U.S.C. §152(3)

<sup>52</sup> In 2002, the Hoffman Plastics, Inc. v. National Labor Relations Board (533 U.S. 137) decision by the Supreme Court upheld illegal firing of workers who tried to form a union because of undocumented status because providing back pay would "trench on" immigration laws.

<sup>53</sup> In 1996 a legislative change restricted the use of federally-funded legal services to prevent, among other things, representation of undocumented workers. This funding can legally support H-2A workers for matters related to their contracts (Kosegi 2001).

<sup>54</sup> See Ontiveros 2007 and Garcia 2006 for examples of claims brought under the North American Agreement on Labor Cooperation (NAALC) associated with NAFTA.

<sup>55</sup> 29 USC 213(a)(6) (A), (b)(12)

Despite these expansions, many smaller farms are still exempt from a number of standards (Schell 2002). Generally, farmworkers who harvest crops still do not receive overtime pay.<sup>56</sup> Agricultural workers may be legally compensated with piece rates, but the resulting wage should not fall below the minimum wage. Child labor law in 1938 did not cover agriculture on the same basis as other industries, and under rules added in 1966 more types of child labor are allowed on farms.<sup>57</sup> A 1978 amendment to the Social Security Act included farmworkers in unemployment compensation with exemptions based on farm size and period of hire (Schell 2002).

To address concern about migrant farmworker conditions in the 1950s and 1960s, Congress first targeted contractors, often associated with abuses, with the 1963 Farm Labor Contractor Registration Act (FLCRA). In 1983, MSPA replaced this law and expanded grower responsibility by designating most workers as employees rather than independent contractors, and growers as joint employers with contractors (Wiggins 2009). MSPA required minimum standards for housing, employment, and transportation, maintained requirements in FLCRA, and required employers to verify that contractors are registered. It also established rules for work agreements or disclosure of work conditions when employers actively recruit workers. MSPA does not apply to H-2A workers.

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<sup>56</sup> Certain industry and occupation descriptions are covered by legal overtime protections such as workers who pack commodities for a business where the majority of the products handled are produced by other farms and are not considered agriculture workers (Schell 2002). These occupations also covered in H-2A but may be included in a different visa program (H-2B).

<sup>57</sup> For certain types of work outside school hours, under certain conditions (i.e., working with parents or applying for waivers) children are permitted to work at younger ages than in other industries and to perform hazardous tasks over the age of 16 (Schell 2002). The Children's Act for Responsible Employment of 2009 has been introduced to expand restrictions against hiring children in agriculture. See <http://www.thomas.gov/cgi-bin/bdquery/D?d111:1:/temp/~bdsjTg:@@D&summ2=m&/home/LegislativeData.php>. Retrieved July 8, 2010.



The Occupational Safety and Health Act of 1970 did not include standards for most agriculture jobs (Wiggins 2009). Following ten years of litigation, executive policy changes in 1987 required that employers of 11 farmworkers or more provide drinking water and toilet and hand-washing facilities, and a Field Sanitation Standard regulated pesticide exposure but exempted workers on small farms. The U.S. Environmental Protection Agency revised the Worker Protection Standard for Agricultural Pesticides in 1992.<sup>58</sup>

## 2. State

New York has legislated a higher level of farmworker protection than most states (Schell 2002). For example, compensation in the case of injury on the job is guaranteed there for most farms, but over a fifth of states still do not require workers compensation for farmworkers.<sup>59</sup> After 20 or more weeks of working legally in a prior year, farm laborers are eligible for unemployment insurance.<sup>60</sup> In 1998 state legislation extended equal minimum wage protection to farmworkers and mandated field sanitation with a stricter requirement than the federal standard (Wiggins 2009).<sup>61</sup> The Farmworker Fair Labor Practices Act to provide collective bargaining rights and overtime has passed the State Assembly many times.<sup>62</sup>

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<sup>58</sup> See <http://www.epa.gov/opp00001/health/worker.htm>. Retrieved July 8, 2010. Wiggins (2009) argues there is no system to track exposure.

<sup>59</sup> In New York, workers compensation is for farms with a payroll of \$1,200 or more in the calendar year but excludes farmers' spouses and children not under contract. <http://www.wcb.state.ny.us/content/main/onthejob/CoverageSituations/farms.jsp>. Retrieved September 10, 2009. Compensation entails "full payment of medical expenses and in many cases partial payment of lost wages." See <http://www.farmworkerlegalservices.com/Legal%20Rights%20of%20Farmworkers.pdf>. Retrieved July 8, 2010.

<sup>60</sup> <http://www.farmworkerlegalservices.com/Legal%20Rights%20of%20Farmworkers.pdf>. Retrieved July 8, 2010.

<sup>61</sup> See <http://www.justiceforfarmworkers.org/pages/history.html>. Retrieved September 10, 2009.

<sup>62</sup> See <http://assembly.state.ny.us/leg/?bn=A01867>. Retrieved October 3, 2009.

## **B. Social Programs**

Federal programs established in the 1960s exist to specifically meet needs of migrant farmworkers and their children, for which spending is at least \$1 billion (Martin 2009). In addition, considerable resources from various government agencies at the federal and state level support farmworker housing construction, renovation, inspection and licensing. Other smaller programs meet worker needs, such as federal funds granted by the Secretary of Agriculture and provided through FEMA that support nonprofit organizations or public agencies to provide services to low-income migrant and seasonal farmworkers (MSFWs) prevented by an emergency from earning income.<sup>63</sup> Finally, some farmworkers may be eligible for means-tested benefits that supplement their wages of low-wage workers with cash or services, such as the Earned Income Tax Credit (EITC), food stamps, or Medicaid, depending on immigrant status, income, and other factors.

Programs targeting MSFWs include migrant Head Start, education and training, and health programs. Federal programs generally target migrants (who have moved certain minimum distances within certain time periods), thus leaving out the growing group of settled farmworkers. Limited funds also restrict eligibility (Martin 2009). Training support such as the National Farmworker Jobs Training Program could potentially help workers gain skills needed to move out of the industry, prepare them for skilled jobs in the industry, or provide “supportive services that help farmworkers remain and stabilize

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<sup>63</sup> Grants are for agencies and organizations with experience providing “emergency services to low-income migrant and seasonal farmworkers where the Secretary determines that a local, State or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home or return home in anticipation of work shortages. Emergency services to be provided with assistance received under this section may include such types of assistance as the Secretary of Agriculture determines to be necessary and appropriate.” § 5177A. Emergency grants to assist low-income migrant and seasonal farmworkers. [http://www.fema.gov/pdf/government/grant/fmagp/fmagpbg\\_draft.pdf](http://www.fema.gov/pdf/government/grant/fmagp/fmagpbg_draft.pdf). Retrieved August 16, 2010.

their employment in agriculture.”<sup>64</sup> Department of Labor (DOL) services may also help find employment to bridge the gap between farm seasons.

New York preceded many states in developing an infrastructure to support migrant farmworker needs: it was one of just five with a migratory labor committee in place by the mid-1950s and was the first to provide public support for day care centers for migrants with both state and employer funding (U.S. DOL 1960), which today is unusual in that it serves settled workers in addition to migrants if space is available.<sup>65</sup> New York also has a farmworker health program begun in the 1980s.

Government support for housing is important for farm labor supply because it may attract workers, though employer provision of free housing has declined. Policy addresses housing with funding for construction and renovation; inspection and licensing, and regulations requiring housing for both H-2A workers and comparable workers on the same farms. MSPA sets minimum housing standards (Hamilton 2010).

More housing funding is available for documented workers and migrants; for example, a U.S. Department of Agriculture (USDA) loan and grant program supports purchase, construction, improvement or repair (Wiggins 2009) for non-H-2A workers, legally admitted residents, and citizens. Federal programs that do not specifically target farmworkers may support their housing (Vallejos, Quandt, & Arcury, 2009, Hamilton 2010).<sup>66</sup> New York’s Farmworker Housing Program (FHLP)<sup>67</sup> and low income housing

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<sup>64</sup> ETA (November 2009). National Farmworker Jobs Program Fact Sheet. Retrieved May 26, 2010, from <http://www.doleta.gov/MSFW/pdf/TwoPager-11-2009.pdf>.

<sup>65</sup> In 1958 licenses for 11 centers were given with 75% of funding from the NY State Department of Agriculture and Markets, 20% from the New York State Growers and Producers Association, and 5% from migrants, 11-12.

<sup>66</sup> These include the USDA Rural Housing Service Self-Help Technical Assistance Program (Section 523), which seeks to build homeownership with a “sweat equity” approach, and the U.S. Department of Housing and Urban Development (HUD) Rural Housing and Economic Development Program, which supports housing and economic development (Vallejos, Quandt, & Arcury, 2009). States also may use Community

tax credits could support farmworker residences. The state has less funding than some others for farmworker housing improvement (Hamilton 2010) but stronger migrant housing codes than federal OSHA requirements (Schell 2002).

Immigrant restrictions limit farmworker eligibility for federal means-tested social benefits, a concern that has affected policymaking since the enactment of IRCA (Tichenor 2002) and led to cuts in benefits access in 1996 in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Act. However, many states do provide immigrants assistance (Tichenor 2002, p. 287). Political reactions from immigrant and Latino voters helped stem further restrictions and contributed to the removal of some in 1997 and 1998.<sup>68</sup> “Nonimmigrants” under guestworker visa programs are not eligible for federal assistance aside from Medicaid emergency services (Bruno 2009).

## **II. Labor Allocation and the State**

In the first half of the 20<sup>th</sup> century, the state was active in allocating farmworkers within the United States. Several agencies implemented this role, including the U.S. DOL and USDA, corresponding state agencies, and even law enforcement officials. The state housed workers and helped them migrate, or in some cases prevented them from moving; developed plans for labor supply from the federal “Farm Labor Supply Plan” during

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Development Block Grant funds that states and cities may use for housing and community projects benefiting low and moderate-income people and HOME federal block grant funds to state and localities to support low-income housing; both benefit some counties in farm regions. Farmworkers must be part of the state’s consolidated plan for funds to target this group; these funds also must be supplemented by others. (Hamilton 2010 and <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>, retrieved July 10, 2010).

<sup>67</sup> Created in 1995, this program is administered by the New York State Division of Housing and Community Renewal. See <http://www.nysdhcr.gov/Programs/FarmWorkerHousing/QandA.htm>. Retrieved July 15, 2010.

<sup>68</sup> In 1997, Supplemental Security Income was restored to many immigrants in the country prior to 1996. In 1998, immigrants regained food stamp eligibility.

World War I to “Annual Worker Plans” later, set up or supervised hiring sites for casual labor, and identified specific groups of workers who could meet growers’ needs. This effort to allocate domestic labor parallels state involvement in foreign guestworker programs both in terms of functions government served and the political conflict that sometimes emerged about these actions. To illustrate this, I draw on Hahamovitch’s (1997) history of East Coast farmworkers, U.S. DOL reports, and other literature including Kissam and Griffith (1995).

### **A. Farmworker Employment Services from WWI to the 1970s**

Hahamovitch (1997) has shown that farmworker migration patterns on the East Coast evolved during WWI in part through the auspices of employers, contractors, government, nonprofit organizations and associations, and workers in response to changing economic and labor market conditions. Aside from importing foreign contract labor and admitting Puerto Rican workers during WWI, the state led efforts to respond with domestic labor as the war cut off European migration to the U.S. and white and black southerners migrated to the north and cities to fill expanding jobs in industry supporting the war mobilization. Multiple agencies sought to allocate labor: USDA and the DOL developed a plan to cooperate in transporting workers based on labor needs, as determined by USDA. Following bureaucratic obstacles and resistance of Southern farmers, DOL proposed centralizing allocation efforts, an idea opposed by growers and rejected by USDA (Hahamovitch 1997). DOL also created a Woman’s Land Army, and USDA encouraged passage of “work or fight” laws to compel work in agriculture (Hahamovitch 2003, 79-80).

Localized employment services existed as early as the 1890s. The Immigration Act of 1907 created a Division of Information that embarked on a short-lived endeavor to set up

employment offices to relocate immigrants. Because of WWI labor shortage concerns, this Division became the U.S. Employment Service (Guzda 1983). Unemployment and displacement during the Great Depression created an impetus for a free national service to match workers and jobs, established by the Wagner-Peyser Act of 1933. Government also became actively involved in moving and housing unemployed farmworkers during the Depression even as the groundwork was set for the bracero program that imported Mexican workers until the 1960s. For example, the Farm Security Administration established migratory labor camps to help poorer farmers. As it became vulnerable to anti-New Deal politics and organizing occurred in camps, this agency lost authority over camps but retained authority to transport workers. Workers were prohibited from moving without county authority consent, and temporary foreign workers under the Emergency Farm Labor Supply program stayed in the camps (Hahamovitch 1997).

Many other government actions to allocate domestic farm labor followed. Some addressed perceived worker shortages as reflected in the “Guides for Wartime Use of Women on Farms” issued by the DOL Women’s Bureau (1942) with suggestions for recruiting women to the “food for victory” program. The DOL’s “Annual Worker Plan” (AWP) program sought “to insure itineraries that give migratory workers as much employment as possible during the year” (DOL 1969, 14). A 1961 DOL report noted that it created schedules with regional, state, and local offices and shared this information to reconcile labor demand and availability, after which “a transfer or referral of labor supply follows” (89). For example, crew leaders (e.g., contractors) and “eastern seaboard farm labor personnel” met in “predesignated local offices” to develop work schedules for the “Florida Itinerary.” This program, said to have produced 33,140 workers, was to be

extended to the supply state of Texas. The report also mentioned 22 centers providing crop, work schedule, and job information for workers along migrant routes (90). The DOL 1969 Annual Report noted that 110,300 workers were assisted through AWP in FY1968, and the Employment Service had made 4.8 million agricultural placements.<sup>69</sup> DOL perceived the decline in foreign workers that year as evidence of the success of these activities.<sup>70</sup>

DOL also participated in day labor hiring. Jack Donnachie of the Rural Manpower Service noted in a 1973 hearing that DOL did “have some points where we supervise day [hall], as well as they can be supervised,” but “We received a lot of criticism ... for day...operations and justifiably so...so we are getting out of the day [hall] business as fast as we can get out because we cannot control it” (Whittaker 2006, CRS-26-27, from House of Representatives 1973, 23).

The DOL’s role in allocating domestic labor has since diminished dramatically. Dolores Huerta of the United Farm Workers cited a finding in a 1993 report of the Commission on Agriculture Workers that employers “rarely” place job orders with the Employment Service because they prefer farm labor contractors (House Judiciary Subcommittee on Immigration 1995 97-98). As the next section shows, some have argued that DOL’s placement services are less active because of the Monitor Advocate program and the injunction leading to it that challenged the “dual system” under which farmworkers received different job services than other workers.

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<sup>69</sup> An interview participant said that the government subsidized moving expenses for workers under this plan.

<sup>70</sup> “It was a mark of progress for American workers that the number of foreign contract workers employed in agriculture and logging in fiscal 1969 dropped by 5,450 from the preceding year” (U.S. DOL 1969, 14).

## **B. The Department of Labor's Monitor Advocate Service**

A 1974 court order led to the establishment of the U.S. DOL Monitor Advocate function, the outcome of an administrative complaint made by worker advocates primarily regarding actions in key supply states<sup>71</sup> and complaints against the Rural Manpower Service and U. S. Employment Service<sup>72</sup> that challenged a practice of steering farmworkers only to agricultural work.<sup>73</sup> Judge Richey found in NAACP v. Brennan that funding “discriminatory state employment programs” violated civil rights and issued an injunction in 1974 establishing federal regulations and a Federal Monitor Advocate System with the intent of ensuring that MSFWs received all manpower services on a non-discriminatory basis. Regulations were issued in 1980 to govern the program and spell out duties of the National, Regional, and State Monitor Advocates. These include outreach, oversight, and the collection of statistics<sup>74</sup> to ensure that states provide full job services to MSFWs.

A retired (and apparently disgruntled) DOL employee testified at a 1997 hearing that as a result of litigation that led to the “consent decree...many States simply got out of farm labor business in late 1970s. They did not see any reason to become subject to the extensive oversight that was required as a result of various court orders” (House Judiciary Subcommittee on Immigration and Claims, 59). Employers, he said, did not wish to be subjected to such oversight either and stopped placing job orders with the Employment

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<sup>71</sup> This summary is from Altman 1978 and <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=30ff960793a891b026ab87d2ca01891d;rgn=div5;view=text;node=20%3A3.0.2.1.38;idno=20;cc=ecfr#20:3.0.2.1.38.4.30.3>, accessed July 6, 2010. The most important supply states for farmworkers are Florida, Texas, and California.

<sup>72</sup> “History of MSFW Program.” Retrieved June 14, 2010, from <http://jfs.ohio.gov/Agriculture/HISTORYOFMSFWPRORAM.PDF>.

<sup>73</sup> A staff investigation in 11 states found the claims valid, and DOL began negotiating on reform with farmworker attorneys. After DOL funded State Employment Security Agencies despite the court’s findings of their discriminatory actions, a civil action was initiated in October 1972.

<sup>74</sup> Data are on the type of services provided to MSFWs, including equity ratio indicators and minimum service level indicators, and are in the Labor Exchange Agricultural Reporting System.



Service, with the result that agricultural jobs placements had peaked at 9.5 million in 1960 but were under 150,000 in 1982. Because few jobs were listed, farmworkers also did not see the Employment Service as a way to find jobs, and further, DOL no longer collected data on farm placements.<sup>75</sup>

This history demonstrates that the state has become involved in placing farm labor through various mechanisms over the last 100 years, especially since the Depression. As the agency most often pursuing these policies, DOL has been subject to pressure from different interests, which is not surprising given the difficulty of balancing its service to workers and employers and the likely impact of its placement and training activities on labor supply.

DOL's role in allocation may have diminished, but the legal framework surrounding recruitment of "domestic" farmworkers and H-2A workers has grown. MPSA requires disclosure of work terms if an employer or contractor actively recruits workers. H-2A rules discussed in the next section stipulate steps employers must take to recruit and advertise for U.S. workers and also now require employers to offer comparable U.S. workers employed in prior seasons a job for any upcoming season for which they wish to hire H2A workers.

### **III. Immigration Policy: Expanding and Limiting Supply**

Grower interest groups see immigration policy as key to maintaining labor supply and have mobilized to influence policies that provide foreign temporary workers and would adjust the status of undocumented workers. Immigration policy, including

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<sup>75</sup> The witness relayed this information to point out that the Employment Service was not up to the task of finding U.S. workers that the H-2A program is intended to prioritize, especially given that certification staff were cut. See Chapter 4.

requirements to verify the legal status of workers, interior enforcement, and control of entry at the border, can also restrict supply. Ineffective implementation may weaken the impact of restrictive policies or allow a net increase in labor supply.

The basic body of immigration law is the Immigration and Nationality Act (INA) of 1952,<sup>76</sup> which was amended by the 1965 Hart-Celler Act to abolish the national quota system created in 1921 and to establish an emphasis on family reunification and employment preferences (Center for Immigration Studies 1995). Several major laws, beginning with IRCA in 1986, emerged from a 1981 blueprint drafted by a government commission that prioritized immigration control yet recognized the value of expanding legal immigration<sup>77</sup> (Tichenor 2002). These included 1990s legislation that facilitated the participation of local law enforcement in immigration control. After September 11, 2001, policy became more restrictive, countering pressure to expand immigration in response to tight labor markets in the late 1990s. Major immigration reform that would have affected agriculture has since stalled (see Chapter 4).

In addition to U.S. immigration policy, factors such as economic and political conditions in sending countries and cross-national policy such as trade agreements have an important impact on foreign farm labor supply in the U.S (see Chapter 2). For example, both IRCA in 1986 and the North American Free Trade Agreement (NAFTA) in 1994 temporarily interrupted a decreasing trend of migration from Mexico to work on U.S. farms (Boucher and Taylor 2007), and the economic crisis

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<sup>76</sup><http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD>

<sup>77</sup> This was the Select Commission on Immigration and Refugee Policy, which issued an important report in 1981.

related to devaluation of the peso in Mexico also contributed to an increase in migration to the U.S. in the 1990s (Papademetriou 2004).

## **A. Controlling Illegal Immigration**

A number of legislative and executive policy changes have limited entry or hiring of documented workers since 1986 (e.g., border security, interior enforcement, and mechanisms for establishing that workers are legally eligible for employment). Section B provides an overview policy expanding supply.

### **1. Border Control and Interior Enforcement**

Efforts to control entry at the border have increased since 1986, when IRCA expanded farm labor supply but also made employers responsible for checking that employees were work-authorized, established employer sanctions, and authorized resources for the U.S. Border Patrol (USBP). IRCA also stopped the practice of unannounced field searches by requiring a search warrant to enter the field (Taylor and Martin 1995). Subsequent legislation in 1990 (the Immigration Act)<sup>78</sup> and in 1996 (the IIRIRA) included enforcement funding.<sup>79</sup> The 1990 legislation also strengthened employer sanctions and immigration penalties and effectively diminished options for family migration (Massey 2007).

September 11, 2001 created another impetus for increased border control.

Congressional mandates and government reports by the 9/11 Commission and the Justice Department's Office of the Inspector General directed policy attention and funding to the Northern Border, in part due to concern about terrorists entering the country through

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<sup>78</sup> This law amended the Immigration and Nationality Act to among other things set immigration levels, allocate visas for family-sponsored immigrants, provide for diversity visas, allocate some employment-based visas (with no reference to the H-2A program), create a new naturalization system, and other provisions. See <http://www.thomas.gov/cgi-bin/bdquery/z?d101:SN003558:@@D&summ2=3&>. Accessed July 8, 2010.

<sup>79</sup> IIRIRA also denied judicial review for many deportation orders and was followed by an increase in criminal deportations in FYs 1998 and 1999 (Johnson, 2003).

Canada. The PATRIOT Act of 2001<sup>80</sup> authorized tripling the number of Northern Border agents, and the Intelligence Reform and Terrorism Prevention Act<sup>81</sup> required assignment of 20% of annual staff increases to the Northern Border. The number of agents subsequently increased but did not fully meet Congressional targets (Nuñez-Neto 2008). The USBP moved to the U.S. Department of Homeland Security (DHS) in 2002 and in 2005 presented a new strategy focused on terrorism (Bruno 2009), which emphasized reducing illegal entry, smuggling and crime in border communities, and patrolling the Northern Border (Nuñez-Neto 2008). As described in Chapter 2, while the decline was steady from 2005 to 2010 in the Southwest, the USBP Buffalo sector office near the Finger Lakes farm region reported sharply rising apprehensions from 2005 to 2008. They declined in FY2009 and 2010 along both borders.<sup>82</sup>

### **3. Employee Identification**

Growers have long argued that they are not able to determine whether workers are legally work eligible, and that as a result, they are in the difficult position of being forced to hire workers they suspect are not documented or to discriminate against workers on the basis of this suspicion, which is prohibited by IRCA. Tichenor (2002) identified the failure to create an employee identification system as a factor limiting IRCA's effectiveness. Several mechanisms have been tried, but this endeavor is administratively challenging and politically difficult, in part because of discrimination and civil rights

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<sup>80</sup> The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept And Obstruct Terrorism (USA PATRIOT) Act (P.L. 107–56) was designed to control and deter terrorism. Title IV, Subtitle A, concerned the Northern Border. Retrieved July 8, 2010, from [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf).

<sup>81</sup> This act, passed in 2004 and amended in 2006, addressed intelligence and terrorism in a number of ways and included provisions related to border security. See <http://www.thomas.gov/cgi-bin/query/D?c108:1:./temp/~c108OEctQT::>

<sup>82</sup> According to data provided by the U.S. Border Patrol and [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_apprehensions\\_fs\\_2005-2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_apprehensions_fs_2005-2008.pdf)

concerns. For example, the Hispanic Caucus raised civil rights objections to identification cards (Tichenor 2002) proposed during debate on the Immigration Act of 1990.

Other means of enforcing rules on hiring unauthorized workers have included electronic verification systems and social security numbers, both of which growers in New York spoke about at length (see Chapter 5). The Bush Administration viewed social security numbers as a resource for immigration control<sup>83</sup> and stepped up use of “no-match” letters in 2002, creating confusion and apparently pre-emptive worker dismissals (Mehta, Theodore, and Hincapié 2003).<sup>84</sup> The Administration also issued regulations to clarify how employers could guarantee “safe harbor” in hiring but warning that employers who continued hiring undocumented workers could be sanctioned.<sup>85</sup> An AFL-CIO lawsuit stopped the first safe harbor rule, which drew concern from employers and worker advocates.<sup>86</sup> The Obama Administration suspended the final rule in favor of the E-Verify web-based system<sup>87</sup> created as a pilot in since 1996 (Levine 2007, Westat 2007). In May 2011, the U.S. Supreme Court upheld the ability of states to require that employers use E-Verify before hiring (Savage, May 26, 2011). DOL is creating a new farmworker registry under 2010 H-2A regulations (see Section B) to “improve U.S.

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<sup>83</sup> Federal Register, pp. 63843-63867. Retrieved May 17, 2010, from <http://edocket.access.gpo.gov/2008/pdf/E8-25544.pdf>. Also U.S. Department of Homeland Security, 8 CFR Part 274a [RIN 1653-AA501 ICE 2377-06 DHS Docket No. ICEB-2006-0004]. Safe Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Final Regulatory Flexibility Analysis. Retrieved May 8, 2010, from [http://www.dhs.gov/xlibrary/assets/ice\\_no\\_match\\_letter\\_finalrule.pdf](http://www.dhs.gov/xlibrary/assets/ice_no_match_letter_finalrule.pdf).

<sup>84</sup> In 2002, SSA began sending letters to employers with any unmatched numbers rather than the previous practice of sending them to employers with 10 such numbers accounting for over 10% of their payroll, but stopped this practice again in 2003. Mehta, Theodore, and Hincapié argued (2003) that these letters became “de facto immigration enforcement” mechanisms (p. 11) that caused far more dismissals than Immigration and Naturalization Service raids, in part because of employer confusion about the letters.

<sup>85</sup> See Department Of Homeland Security. 8 CFR Part 274a [RIN 1653-AA501 ICE 2377-06 DHS Docket No. ICEB-2006-0004 Safe Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Final Regulatory Flexibility Analysis, p 5. Retrieved July 12, 2010, from [http://www.dhs.gov/xlibrary/assets/ice\\_no\\_match\\_letter\\_finalrule.pdf](http://www.dhs.gov/xlibrary/assets/ice_no_match_letter_finalrule.pdf).

<sup>86</sup> See <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=ICEB-2006-0004>.

<sup>87</sup> E-verify is an electronic system to determine whether a prospective employee is eligible for work.

worker access to agricultural jobs and help growers find workers from across the U.S.” (ETA 2010).

## **B. Immigration Policy to Expand Farmworker Supply**

The legacy of temporary foreign worker programs and the expansions and restrictions in major immigration laws have shaped the context in which farm labor supply policy is made today. In 1986, IRCA created a separate program to legalize agricultural workers and created a separate guestworker program for farmworkers. This section reviews shifts over time in policy using these two mechanisms of legalization and temporary workers often made in response to predictions or claims of farm labor shortages.

### **1. Legalizing Farmworkers**

The supply of farm labor was a central concern shaping IRCA (Zolberg 2006, Tichenor 2002, and Martin 2009). A key provision of the law was an amnesty for individuals in the country illegally for at least five years (Martin 2009), but there was also a Special Agricultural Workers (SAW) program providing the opportunity to immigrants who could show a minimum level of agricultural employment from 1984-86 to apply for legal status;<sup>88</sup> the law also waived English-language and civics knowledge requirements only for SAW workers, not others gaining legal status under IRCA (Baker 2010). Further policy change in 1987 allowed workers without records to come to the U.S. border to explain their farm experience, allowing over 100,000 Mexicans to obtain authorization to work while preparing SAW applications (Martin 2009). In total, under SAW, 1.1 million people (750,000 Mexican men, 135,000 Mexican women, and 200,000 from other countries) became legal U.S. immigrants, many in California. In July 1989, Farm Labor Survey data showed that only 1.5 million workers were on farms.

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<sup>88</sup> Applicants were to have worked 90 days each year from 1984-86 or in the year ending in May 1986.

In response to arguments that these workers would leave farm work, Congress included a Replenishment Agricultural Worker (RAW) program in IRCA to provide for an additional supply of foreign workers if they were needed in the future. As IRCA was implemented, the press reported shortages or fears of them (Martin 2009); in general they did not emerge. RAW was therefore never triggered (Emerson 2007).<sup>89</sup>

Legislation introduced in successive Congresses for over a decade called AgJOBS has included a RAW-like program to adjust legal status since 1999 (Martin 2009). The most recent version would provide blue cards to applicants seeking legalization who perform a minimum number of days in farm work for several years – over 50% more days annually than SAW required. It would also amend the H-2A application process, wages, and housing requirements (see Chapter 4).

## **2. Guestworker Programs**

The current mechanism for bringing in foreign agriculture workers for temporary seasonal jobs is the H-2A visa program operated by the DOL Employment and Training Administration (DOL) with DHS.<sup>90</sup> Guestworker programs emerged as part of policy responses to labor supply pressures in wartime, including WWI and II and the Korean War. The role of the U.S. government in guestworker programs has varied; it assumed many tasks and costs of bringing in foreign workers in the 1940s but later left more of this to employers (Hahamovitch 1997). In addition, contract conditions negotiated with sending countries and the level of the countries' oversight changed and was often

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<sup>89</sup> The Departments of Labor and Agriculture found no worker shortage to trigger the implementation of RAW (Emerson 2007). The Commission on Agricultural Workers established by IRCA, comprising primarily growers appointed by President Reagan and Republican Senator Strom Thurman, found no serious shortages in 1992. An American Farm Bureau representative noted at a 1995 House Judiciary Immigration Subcommittee hearing: "The Commission on Agricultural Workers ...concluded that "more effective enforcement of employer sanctions would affect the supply of farm labor and could necessitate access to additional legal foreign workers" (80).

<sup>90</sup> DOL's Wage and Hour Division enforces worker protections.

inconsistent especially for Mexican vs. Jamaican workers.<sup>91</sup> An ongoing dilemma in guestworker programs has been the difficulty of balancing employer needs for labor against wages and conditions of U.S. and H-2A workers (Ngai 2004, 312).

**a. History of guestworker programs: WWI to 2008**

Immigration restrictions during WWI impacted a supply of European labor important to agriculture and in turn spurred internal migration of workers from south to north and from rural to urban areas. As noted in Section II, the state responded both by attempting to reallocate domestic workers and increasing the flow of potential foreign farmworkers (Hahamovitch 1997, 2003). For example, the U.S. granted citizenship to Puerto Ricans and provided for exceptional admission in the case of labor shortages in the Immigration Act in 1917 (Griffith 2006), and the U.S. Employment Service imported Mexican and Bahamian labor in 1918 to harvest wheat in Oklahoma (Guzda 1983). The groundwork for the next wartime program was laid well before World War II: in 1936 and 1937, Texas growers sought a government declaration of “an emergency labor situation” (Ngai 2004, 137), in part because they did not wish to hire unemployed workers in federal camps, to pay the Works Progress Administration (WPA) rate, or to hire Mexican-Americans. Despite reports from INS, Employment Service, and WPA district offices that there were no labor shortages and high unemployment among workers in government-sponsored camps and public employment programs, an interagency conference on farm labor was held in 1942. Under pressure from Southwestern Members of Congress, that May the U.S. Employment Service “certified the need to import six

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<sup>91</sup> The Jamaican contract was negotiated by the British West Indies Colonial Office, Jamaican Government and U.S. Department of State in 1943, and was similar to the Migrant Labor Agreement negotiated with Mexico, both during the wartime Emergency program (Hahamovitch 1997, Ngai 2004).



thousand workers as contract laborers” (138), and in 1943 (P. L. 45) overturned an 1885 prohibition on contract labor (Ngai 2004).

The “Emergency Labor Supply Program” marked the beginning of both the bracero program for Mexican workers and a program of the British Colonial government for West Indian workers, first Bahamians and then Jamaicans. The contract governing the Jamaican program originally prohibited sending workers south of the Mason-Dixon line, but later revisions allowed them to work in sugar cane in Florida (Hahamovitch 2001).

After a two year post-war extension of the “Emergency Labor Supply Program” ended, growers had to begin assuming the expense of bringing in Bahamians, Jamaican and (from 1944) Barbadians. Recruitment of braceros by employers continued with assistance from the Immigration Service. In 1949, authority for the program was transferred from the Farm Security Administration to the U.S. Employment Service in DOL, and the INS had responsibility for admitting and repatriating workers (Ngai 2004). Despite Truman Commission warnings in 1951 about conditions of braceros and their impact on farm wages, a legal framework for the program was again provided that year in part because of “wartime needs” caused by the Korean conflict (Calavita 1992, 43).<sup>92</sup> Federal supervision of the bracero program continued but growers gained greater control over the Jamaican program, shifted costs to workers under a new contract, and cut wages of productive workers. This led African American workers still employed by the dominant U.S. Sugar company to quit (Hahamovitch 2008).<sup>93</sup>

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<sup>92</sup> Incorporated in 1951 (P.L. 78) into Title V of the Agriculture Act of 1949. The program today derives its name of H2 from section (h)(ii) of the Immigration and Nationality Act (McCarran-Walter Act) of 1952, P.L. 82-414, which allowed temporary, non-immigrant workers to be brought in at the discretion of the Attorney General (Hahamovitch 2003, Ngai 2004, also <http://www.uscis.gov>, “Laws.”).

<sup>93</sup> The sugar cane industry has since mechanized. Today, the Jamaican program has more rules than the Mexican program, some offering worker protection and some points of contention such as a savings program.

IRCA separated H-2A for agricultural workers from H-2B (Griffith 2006), and “streamlined” the program (Heppel 1995). Yale-Loehr (1988) argued that 1987 DOL regulations following the law favored foreign workers over domestic in hiring, diminished worker protections, and hurt wages with a new wage-setting methodology, thus thwarting Congressional intent and encouraging more use of the program. They also extended an Adverse Effect Wage Rate (AEWR) from 14 states to all states but Alaska.<sup>94</sup> IRCA also provided that H-2A workers could be brought in if available workers were not “able, willing, and qualified,”<sup>95</sup> rather than just “available” as previously, which one grower advocate has argued is intended to mean legally eligible to work (House Judiciary 1997). No major changes have occurred in H-2A since aside from a law requiring that applications be processed 10 days earlier in 1999 and the creation of a system to report on the handling of applications. A GAO report recommended steps to address problems with protecting domestic workers that were not made.<sup>96</sup>

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<sup>94</sup> The AEWR reflected the previous year’s average wage in a region based on USDA quarterly wage surveys (342).

<sup>95</sup> “The U.S. Citizenship and Immigration Services of the Department of Homeland Security may not approve an employer’s petition for the admission of H-2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department, an H-2A temporary labor certification. Approved labor certifications attest that:

(1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).” Federal Register, Vol. 75, No. 32, February 18, 2010, p. 7293.

<sup>96</sup> Federal Register 2000. “Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority to Adjudicate Petitions.” [65 FR 43538] [FR 36-00]. <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-62325/0-0-0-66441/0-0-0-68873/0-0-0-68936.html>. Retrieved July 14, 2011. The 1999 legislative change required that applications be processed 30 days before the date employers need workers rather than 20. It followed a GAO recommendation that actually went in the opposite direction of suggesting approval 7 days beforehand to allow more recruitment time (House Judiciary Committee 2000, 127). Also, see “H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers.” HEHS-98-20. December 31, 1997.

### **b. H-2A program rules**

Both growers and worker advocates have contested many elements of the H-2A program in hearings and rulemaking processes, including: 1) protections and benefits offered to both H-2A and in some cases to “corresponding” workers, 2) the mechanism by which the DOL approves applications, a process that in effect attempts to determine whether there is a local shortage of workers, and 3) the scope of agricultural sectors and occupations the program covers. H-2A has no cap on the number of workers that may be brought in, unlike the H-2B program for other seasonal workers, but growers have sought to broaden it by including the dairy sector, and some occupations have special rules under the program.<sup>97</sup> This section describes policies related to the first and second of these points, drawing primarily from Bruno (2009) and regulations and commentary published in the Federal Register.

In 2008, the Bush Administration published rules revising the H-2A program.<sup>98</sup> The Obama Administration suspended them, but after a grower lawsuit, a court ordered that they remain in place for the harvest. A new rulemaking process replaced 2009 regulations with a version effective in March 2010. Both versions touched on the three aspects of conflict cited. The 2008 rules expanded enforcement but scaled back protections and facilitated the certification process. The 2010 regulations retained the enforcement mechanisms, broadened the enforcement authority of DOL’s Wage and Hour Division,

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<sup>97</sup> As described in Chapter 4, the program currently excludes non-seasonal dairy workers. The 2008 regulations reclassified logging from the H-2B to the H-2A program, a change maintained in the final 2010 regulations, although the proposed regulations would also have added other forestry-related occupations. The 2010 rules also maintain special provisions for “shepherders, custom harvesters, and other unique agricultural occupations.”

<sup>98</sup> See Federal Register, Tuesday, March 17, 2009. Vol. 74, No. 50. Proposed Rules 11408; Federal Register, Thursday, December 18, 2008, Vol. 73, No. 244. Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement; Final Rule. This rule was effective January 17, 2009

and enhanced efforts to avoid adverse effects on U.S. workers but otherwise restored many features of the 1987 rules.

### **Wages, benefits, and protections**

Worker protections in the H-2A program include the AEWR or wage rate, the three-fourths guarantee, housing requirements, and the 50% rule (discussed in the next section). These seek to protect both H-2A workers and others on the same farms doing similar work, called comparable workers.

H-2A wage-setting is an important part of the overall state role in farm labor markets because it aims to protect state-provided labor (H-2A) and domestic workers, the latter by requiring the same wage levels for comparable domestic workers (though 2008 regulations limited how this applied).<sup>99</sup> The 2008 rules changed the calculation of the AEWR required for H-2A workers, basing them on the Bureau of Labor Statistics Occupational Employment Survey rather than USDA data as it had in the past, with the goal of setting the wage at the “prevailing wage rate,” but OES data capture only a small proportion of farmworkers.<sup>100</sup> DOL’s comments on the rules in 2008 and 2010 review debate about whether wage depression occurs because of H-2A and other foreign workers in the market, a factor for which the AEWR is intended to compensate. The 2008 comments argued that evidence for this was inconclusive and the AEWR unnecessary because of the difficulty of capturing depression. In contrast, 2010 regulations noted a significant drop in wages due to the change and reinstated the AEWR with an explanation

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<sup>99</sup> Rules issued in 1979 introduced the principle that U.S. workers must receive wages, benefits, and conditions at least as good as those H-2 workers received, and 1987 rules issued following IRCA indicated that those in “corresponding employment” were entitled to this – that is other workers hired by H-2A employers for the same time period. In 2008, regulations applied this only to newly-hired and H-2A workers on the argument that ongoing workers were not worse off or negatively affected by the AEWR. On the theory that this change did not account for wage depression, the 2010 regulations reversed it.

<sup>100</sup> The OES reflects a subset of workers employed by non-farm establishments supporting farm production and does not gather data directly from farmers (see p 6987 of 2010 regulations).

that the intent was to simulate a farm labor market in which there were no H2A workers by aiming at an equilibrium wage presumed to exist in its absence.<sup>101</sup>

Employers must pay for three-fourths of work hours implied by the H-2A contract, a rule that guarantees minimum earnings when the weather or harvest do not yield enough work.<sup>102</sup> This is important because of the unpaid waiting time in farming that means workers may be available to employers many more hours than they work.

H-2A employers are required to provide housing. The initial proposed regulations under Bush created an option to provide housing vouchers instead but withdrew it following comments. Other H-2A worker protections include the 2010 requirement that employers pay the cost of transportation from a worker's place of residence in the sending country, rather than the border.

### **Certification, shortage, and hiring**

Both the 2008 and 2010 regulations referred to Departmental obligations and goals for the H-2A program in terms of ensuring supply for growers and providing American workers a chance at jobs that otherwise go to H-2A workers.<sup>103</sup> Efforts to provide this access to U.S. workers are made through the recruitment process in which DOL certifies that insufficient workers are available and U.S. workers will not be adversely affected by approval of an application. The H-2A regulations detail how employers must advertise jobs, where job orders must be posted, and the 50% rule (discussed subsequently).

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<sup>101</sup> The rules also added the collective bargaining wage to the list of acceptable wages.

<sup>102</sup> A GAO report in 1997 recommended that the DOL take certain steps to address the suspicion that employers manipulated contracts so as not to have to pay the 3/4ths rule, but these changes were not made.

<sup>103</sup> In 2008, regulations emphasized that the program must aim at making the workforce available and provide a "meaningful opportunity to apply for all open agricultural job opportunities" (77125). In 2010, regulations described the goals of the program as providing employer access to H-2A workers and also making every U.S. worker aware of the opportunity to apply for the jobs farmers applying for H-2A seek to fill, protecting U.S. employment opportunities, and seeking a "proper balance" between "seasonal labor needs...and protecting rights."

The process of “positive recruitment” is a source of contention in the policy making process and day-to-day policy implementation. Yale-Loehr (1988) argued that regulations issued after IRCA moved away from the requirement that recruitment efforts for domestic workers be at least equivalent to those for H-2A workers. Yet the process has been deemed cumbersome by growers ever since.

Changes made by 2008 regulations would have altered the state’s role in the provision of labor by diminishing DOL’s authority to assess whether there was a lack of available labor first and shifting responsibility from employers to the state for assessing the eligibility of workers who might potentially be unauthorized, two changes that 2010 regulations reversed. This was done by replacing the certification with an approach long favored by growers in which employers “attest” compliance with program requirements and submit recruitment reports. Regulations also both diminished the role of DOL’s State Workforce Agencies (SWAs) in the recruitment process and made them responsible for verifying employment eligibility. The 2010 regulations removed the requirement to verify eligibility<sup>104</sup> and put SWAs back in the application process. The regulations enhanced the DOL role but as part of this called on SWAs to help employers create job orders more likely to lead to certification.<sup>105</sup>

The 50% rule, created in 1978, requires that U.S. workers applying for jobs described in H-2A orders filed with DOL continue to be referred to employers up to halfway through the contract period. The 2008 regulations changed the requirement to 30 days,

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<sup>104</sup> The regulations stated that the requirement that SWAs verify eligibility would create a greater barrier for workers seeking H-2A jobs than others. SWAs are still not precluded from using E-Verify (6908).

<sup>105</sup> The regulations suggested employers “work with the SWAs early in the process, including on crafting the requirements of job orders, to ensure that their job orders meet all requirements, and are timely accepted for intrastate clearance” (6904).

but 2010 regulations reinstated the rule, from which small farmers who do not belong to an association are exempt.<sup>106</sup>

In 2008, a new requirement that H-2A employers contact former U.S. employees to offer them a job in the new season was instated (10). The 2010 version continued this rule, which was introduced because new regulations diminished other recruitment steps specified in 1987, such as using farm labor contractors and radio ads. These numerous shifts in requirements show the continuing struggle among the state, growers, and worker advocates over the government's role in the hiring process and approval of H-2A applications, which likely will continue as the political and economic climates change.

#### **IV. Conclusion**

The formal policy changes described in this chapter reflect attempts to achieve shifting policy goals: maintaining the low cost of farm labor, later adjusting policy to partially address this inequity, responding to poverty, expanding labor supply through legalization and contract labor to respond to shortage claims, controlling undocumented immigration, and attempting to equalize the quality of employment services provided to farmworkers. Hinted at in this description are the backdrop of conflict between policy and labor market actors, the varied directions state roles can take through these formal policy changes, and smaller changes or variations in policy implementation and administration at different levels of government. These emerge more fully in subsequent chapters. Here, I summarize this history and discuss some potential directions of the state's role in markets given this policy history.

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<sup>106</sup> DOL first continued the 50% rule as a temporary requirement under IRCA and, following a study, under a 1990 interim rule. A small 2008 study was cited in eliminating the rule in those regulations.

A particularly active area of change since 1986 is the expansion of immigration enforcement policies. Improvements in labor standards in that time occurred mostly through executive branch action related to conditions in the field, whereas legislative change to programs occurred either at the state level (improving wages and conditions in the field in New York) or to restrict immigrant access to both federal benefits and government-supported legal services that might help workers pursue claims against employers. Most federal-level legislative improvements in standards and social programs occurred prior to 1986 (with amendments to FLSA, and the passage of the FLCRA and its replacement in 1985 by the MSPA). These did not bring the occupation up to par with others in terms of standards and provided benefits primarily to migrant workers. Executive branch changes, such as OSHA and EPA regulations, improved other conditions in the field in 1986 and the mid-1990s. The role of the Department of Labor in the allocation of farmworkers, according to secondary reports, has diminished. Also (and in the view of some observers, not coincidentally), in 1974 the DOL set up a Monitor Advocate function to monitor nondiscriminatory provision of employment services to farmworkers, potentially giving them access to services that might lead to jobs and training outside of farm work.

During the expansion of H-2A that occurred from FY2006-09 described in Chapter 2, Congress required more attention to Northern Border patrol, and the Bush Administration tried to identify undocumented workers with Social Security numbers while temporarily lowering the cost and burden of the H-2A program. H-2A use declined in FY2009 with a 5% drop in worker certifications nationally and an 11% drop in New York. Its cost rose in 2010 when the Obama Administration's regulations brought the AEWR up again and



reinstated the more cumbersome certification process while potentially enhancing enforcement. The Obama Administration may have made hiring undocumented workers more difficult at the same time by emphasizing E-Verify and shifting responsibility for eligibility verification back to employers from state workforce agencies. In addition, deportations rose dramatically between 2001 and 2009 to over 390,000 (including 282,666 Mexicans), two years after the presence of unauthorized Mexican immigrants peaked at 7 million.

The directions state roles could take in farm labor markets are more complex than this review of formal policy changes might indicate. For example, benefits for seasonal migrant workers could both sustain labor in the Polanyian sense or subsidize hiring costs by making it possible for employers to pay less or workers to survive on less. When public means-tested benefits are withdrawn because of immigration status, workers may be more accepting of low wages.

Social programs also can subtly influence supply in other ways. For example, the Monitor Advocate system<sup>107</sup> and the National Farmworker Jobs Program both seek to make opportunities outside the industry available to farmworkers, but may also help them find farm work or bridge harvest seasons with other jobs. The Jobs Program may help also help workers advance in agriculture by providing training for more skilled work (and requiring a pay increase with that).

An interesting aspect emerging from the review of DOL's role in worker allocation and H-2A regulations is the relationship of the state to farm labor contractors. An early

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<sup>107</sup> There have been difficulties achieving the system's goals (Altman 1978). A farmworker advocate at a 1997 hearing said the Monitor Advocate system had "failed to prevent major abuses" and, citing an unreleased 1996 report, that DOL had "relegated the Monitor Advocates to meaningless status with no resources" (House Judiciary Subcommittee on Immigration and Claims 102-103).

effort to improve worker conditions was contained in two laws requiring that contractors register with the government and that employers ensure they are registered, and DOL documents show that state actors worked with contractors and employers to allocate labor. As noted in Chapter 1, many people believe IRCA's requirement that employers verify employment eligibility created an incentive to use contractors as protection when hiring potentially undocumented workers. There has also been contention over whether H-2A regulations should require that farmers use labor contractors to hire domestic workers as a prerequisite to certification. Thus the state serves as a labor market intermediary, regulates intermediaries, in some cases requires use of them, and has at least in the past maintained relationships with them – all is it concerns labor contractors. In addition the state provides funding to support intermediaries such as organizations providing training services.

The effect of labor standards on supply and demand is a subject of some debate, as reflected by research on whether the minimum wage dampens hiring (Card and Krueger 2000). Farmers sometimes claim that expanding labor protections would restrict the number of farm jobs because higher wages are unaffordable. Calvin and Martin (2010) contend that farmers would mechanize or find other alternatives before raising wages enough to attract U.S. labor to the agricultural workforce. On the other hand, standards that improve job quality may attract more workers. Child labor laws or restrictions on working hours may limit supply.

While immigration enforcement can remove workers, it could either help Americans by protecting their jobs, or hurt all workers by driving down wages. The H-2A program both expands foreign labor supply, which could hurt U.S. workers if it squeezes them out

of jobs, and pressures employers to preferentially hire U.S. workers. Or, through the regulations reinforced in 2010 on rehiring and extending H-2A wages to comparable workers, the H-2A program has the potential to improve wages and job opportunities for U.S. farmworkers, in which case the state would both provide supply and improve work conditions.

This raises another issue in the potential state role in farm labor markets: the way it affects various groups differently such as immigrants, H-2A workers, migrants and year-round workers. For example, public legal services funds can no longer aid undocumented immigrants but can be used for H-2A workers. A general decline in labor standards enforcement in the Bush era (Bernhardt, Boushey, Dresser, and Tilly 2008) along with the *Hoffman* decision hurt undocumented immigrants, but enforcement of H-2A standards may occur through different channels. There has also been some success in organizing H-2A workers: in North Carolina, a bargaining agreement struck between the Farm Labor Organizing Committee (FLOC) and the NC Growers Association (NCGA) covers them.<sup>108</sup> Yet H-2A workers are not covered by MSPA, and many observers point out that their desire to be invited back, and the restriction of their visa to one employer dampens their willingness to protest work conditions.

H-2A regulations issued by the Obama Administration could expand protections of both H-2A and domestic workers. Their intent is not to protect undocumented workers specifically, but if they are effective they may do so because these workers are a sizable share of the labor force.

It is not just formal policies that matter for these different workers and therefore for how the practical role of the state in farm labor markets. The way employers draw on

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<sup>108</sup> [http://www.ncgrowers.org:80/NCGA-FLOC%20CBA%20\(2.1.2008%20-%2012.31.2008\).doc](http://www.ncgrowers.org:80/NCGA-FLOC%20CBA%20(2.1.2008%20-%2012.31.2008).doc)

these policies in organizing their workforce, whether people resist them, how the state implements them, and a whole range of related variables such as the economy and production factors all mediate the state's role.

Two examples from the recent H-2A rulemaking process demonstrate that employers develop strategies for maximizing the value of policies. In the comment period for 2010 regulations, grower interest groups complained that the regulation curbed the ability of applicants to submit “master applications,” in which one applicant acts on behalf of multiple employers, by limiting these to two contiguous states. The strategy of bundling applications moves away from a government role of providing seasonal contract labor for individual farmers to one of fostering coordinated hiring across multiple states. As discussed in Chapter 5, farmer networks are one mechanism for allocating labor.

Once policies are in place they become the status quo and a bargaining chip in future policy debates: growers protested reinstatement of the 50% rule in 2010 H-2A regulations, arguing in their comments that some stricter requirements in 2008 regulations had been essentially in exchange for lifting this rule. According to DOL though, prior to this they had received few complaints on it.<sup>1</sup>

In summary, the state, with its conflicting goals of prioritizing and protecting American workers, meeting needs of employers, and controlling immigrant flow, takes on various roles in this process that could affect the number of workers, which ones employers hire, and the varying level of minimum legal protections and conditions for different worker groups. Through the complex web of policy that forms the context for the farmworker occupation, the state reproduces or imports workers, influences their work conditions, determines or ignores their legal status, allocates labor, assesses labor

shortages, prioritizes one worker group over another, or expels workers from the country. Depending on how these roles take shape, the dividing line between responsibilities of state and those of employers for sustaining labor and assuring minimum work conditions can shift in a fluid process of politics, policy formulation and implementation, and behavior of labor market actors, as the rest of this dissertation will show.

## **Chapter 4: Relations among State Actors, Farm Employers, and Workers**

### **Debates on the role of the state in Congressional hearings from 1995-2009**

The many changes that have led to the current policy framework for farm labor are a product of conflicts and compromises in the policy formulation process. Throughout this policy history, political actors put forth their contrasting views of labor problems to make their case for a particular allocation of responsibilities among employers, workers, and the state for assuring labor supply and minimum work conditions. This has occurred amid shifting political conditions and views on immigration and other issues.

In this chapter I analyze Congressional hearings in which labor shortages were discussed held from 1995-2009, a time period selected because 1995 marked the first consideration of a major immigration initiative after the 1986 Immigration Reform and Control Act (IRCA), whose passage has been well-researched. This will add to the picture in Chapter 3 of government's involvement in farm labor through formal policies by examining what the potential roles of the state could be, and the policy levers different interest groups attempt to use to push the boundaries of these roles in one direction or another.

The politics and relations behind existing policies are not all on display for public view, and public statements are not a complete record of the priorities and strategies of interest groups. However, public discussions of federal programs to bring in foreign agricultural guestworkers provide a window into these politics, because they have given rise to the most obvious debates on the state's role in farm labor supply. I also argue that the hearings created an opportunity to shape the normative understandings of the state's

role and to develop concepts that help justify reshaping this role in the provision and protection of farm labor, namely concepts of labor shortages and labor markets. I draw on Stolz's (2007) discussion of symbolic politics in human trafficking legislation, in which she notes that legislation may serve symbolic functions such as educating or communicating moral messages in addition to instrumental functions. She also argues that symbolic functions may target not just the public but policymakers and other institutional actors.

Though policy debate in these hearings largely concerns legislation that was not enacted, this debate still has served the symbolic function of communicating to policymakers the parameters that grower and worker interests will accept around the state's role in supply and worker protection, and what expectations they have of the state going forward. The dialogue here defines the concepts of labor shortages and labor markets in relation to state roles to create a context for the development of policy proposals, albeit in part through a public enacting that may reflect only partially the private working out of political relationships and policy options.

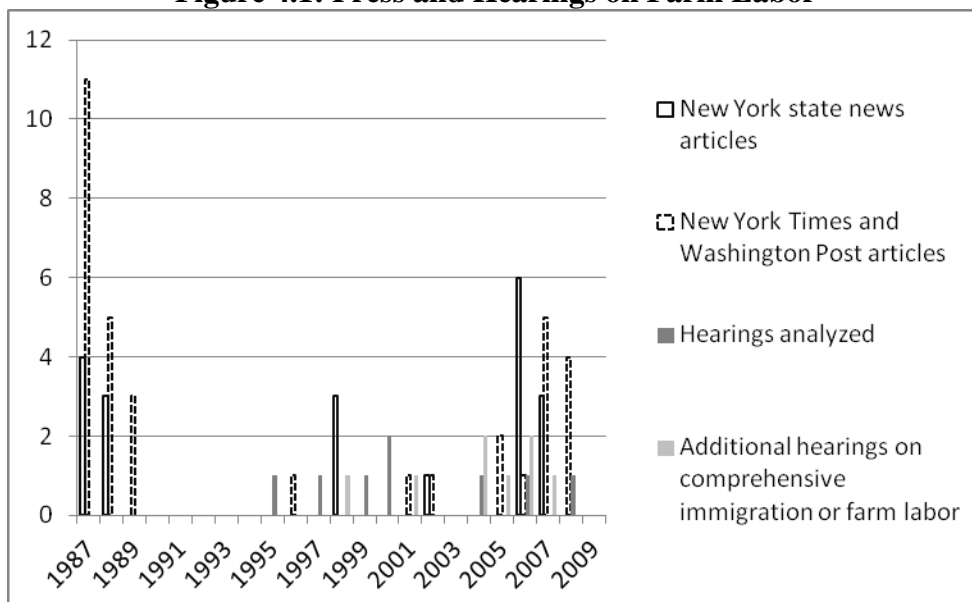
Concept definition has partially occurred as an iterative process in exchange with other contexts, such as the media, private discussions, and regulatory processes, that also takes place alongside shifting political dynamics such as the changing stance of organized labor toward immigrant workers and the ebb and flow of attention to comprehensive immigration reform. The co-evolution of press and hearing discussions, for example, is seen in Figure 4.1, which shows mentions of farm labor shortages in the press together with Congressional hearings on farm labor issues analyzed for this study.<sup>1</sup> Most press

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<sup>1</sup> This figure shows news articles in *The New York Times*, the *Washington Post*, and *The Wall Street Journal*, and local papers in New York State based on a search in World Access News for the terms farm

mentions occurred just after IRCA was enacted and during debate from 2005-2007 on comprehensive immigration legislation.

**Figure 4.1: Press and Hearings on Farm Labor**



In short then, these hearings serve to normalize the concepts of shortage, worker qualifications, and the primacy and importance of American agriculture. These concepts become tools for interests seeking policy change to increase access to workers or enhance state provision of supply and to minimize the cost and burden of workers or limit the state's action to protect workers. Chapter 5 and 6 will show that the pressure on state roles occurs within this frame, and in fact that the concepts and positions developed in the hearings are part of the moral order (Block in Krippner et al. 2004) or the normative understandings and conventions (Biggart and Beamish 2003) that are a part of the

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labor and shortages. Erickson and Mitchell (2009) similarly charted press mention of labor shortages for several sectors. News stories tend to relay farmers' concerns about farm labor shortages, crop loss due to shortage, and problems with the H-2A program and sometimes corresponding arguments of worker advocates that more workers would be available if conditions and wages were better. See Martin (2009) for a discussion of shortage arguments driving policymaking. Figure 4.1 also shows hearings analyzed for this study.



foundation for market activity and the behavior of individuals in markets. As such hearings contribute to the social construction of markets. Hearings also communicate the specific nature of employer demand and expectations for qualities of workers the state should provide, suggesting that part of the state's role is to determine who is good enough to do farm work, while also acting on a belief that farm work is too good for "American" workers.

As I will discuss in subsequent sections, hearings in the 1990s led to and followed enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In the late 1990s, they occurred when negotiations over farm labor legislation were taking place and during tight labor markets. As Members of Congress and interest groups began negotiating on a policy proposal related to farm labor around 1999 and 2000, some of the process was apparent in the hearing discussions. Finally, interest in guestworker programs has been part of comprehensive immigration reform debates beginning around the middle of the last decade.

### **A. Interest Groups and Farm Labor Policy**

Congressional hearings are often staged events in which testimony, questions and answers are known ahead of time; they may be publicity events, or opportunities to score political points, or events for fact-finding or a legislative purpose (Diermeir and Feddersen 2000). As noted I argue here, drawing on Stolz (2007), that they perform symbolic functions to maintain a sense of urgency about farm labor supply issues and to seek to shape the state's role and to shape concepts that normalize a certain type of intervention in labor markets through public communication with outside entities such as the media and among policy actors.

Typically those appearing as hearing witnesses already have gained some foothold in the political process; interest groups with more organizational resources, such as funds to hire a lobbyist or make campaign contributions, are more likely to be invited to testify because of the relationships cultivated with committee staff members (Leyden 1995). Actors appearing in these hearings included grower interests groups, worker advocacy groups, immigrant advocates, and some researchers and experts. Labor supply discussions often portray polarization between employers and employees. For example, a migration expert has characterized debate about farm labor shortages as a sort of broken record:

On the one side, grower interests manage to obtain, directly or indirectly, the labor programs they say they “must have.” On the other side, farmworker advocates use legal tools and popular guilt about and aversion to the conditions under which much farm work takes place—and indirectly, the axiomatic, if putative, relationship between such programs and unauthorized immigration and employment—as the means for ensuring that growers will use such programs sparingly.

Demetrios Papademetriou, Senate Judiciary Subcommittee on Immigration 1999, 57

Mark Schacht of the California Rural Legal Assistance Foundation had also summarized growers’ policy objectives on farm labor, arguing that they had sought in ten-year cycles to have Congress weaken or eliminate the certification process through which H-2A applications are approved, the Adverse Effect Wage Rate (AEWR) for H-2A workers,<sup>2</sup> and the obligation to provide workers housing (with an option for vouchers) (House Judiciary Committee 1995, 133-134). Discussions in hearings reviewed for this chapter are consistent with these summaries and reflected in proposed and actual policy: proposed legislation resulting from negotiations between some worker advocates and

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<sup>2</sup> This wage is intended to be set at a level so that it prevents harm to U.S. workers that might result for example from depressed farm wages or preferential hiring of H-2A workers; growers say it is artificially inflated and makes the program too expensive to use (see Chapter 3 and subsequent sections of this chapter).

grower interest groups incorporates key goals of farm interests (Martin 2009) – in fact all three that Schacht identified – but also includes legalization opportunities for workers. Regulations issued in 2008 by the Bush Administration addressed growers’ issues, until the Obama Administration in 2010 restored much of the original 1987 H-2A regulations (see Chapter 3). Along the way, grower interest groups in particular advocated a range of ideas for bringing in labor, and setting H-2A wage levels and benefits, while advocates sought to create farmworker legalization programs and improve conditions.

Others have summarized shortage debates and issues: researchers and government reports have often found no national labor shortages but acknowledge the potential for regional shortages (Levine/CRS 2007) and the likely presence of undocumented workers in the workforce (Effland and Runyan/USDA 1998). Some assert that farmworker wages, vegetable and fruit production levels, the means of organizing labor, and the share of food costs attributable to labor all indicate there are not shortages (Kandel 2008, House Judiciary Subcommittee on Immigration and Claims 1995). Growers have warned of problems additional immigration restrictions would cause and argued that the high share of unauthorized workers in the workforce indicates a shortage of legal workers (Levine 2007).

An important aspect of politics surrounding farm labor supply, particularly as the number of Mexican workers in the U.S. has grown, is how interest groups approach policy on immigrant workers. Research has portrayed growers as powerful actors in the policy process (Griffith 2006, Ngai 2005, Robertson 2000, Calavita 1992, Hahamovitch 1997, Martin 2009). The American Farm Bureau (AFB) has been among the strongest players in farm policy (Lowi 1009). In 1986, western growers were leaders in enacting a

farmworker legalization program. The American Nursery and Landscape Association (ANLA) has in recent years become a leader in worker-grower negotiations on H-2A “reform” and legalization legislation. Their position has differed from AFB’s at different points. Labor and immigrant interest groups have changed their policy goals regarding immigrant workers in the past twenty years (Gordon 2007). For example, the AFL-CIO went from advocating sanctions against employers who hire undocumented workers to an emphasis on immigrant rights and expanded legalization (Fine and Tichenor 2009) and immigrants’ rights advocates from absolute opposition to guestworker programs to thinking about how they might work better (Pastor and Alva 2004). Immigrants’ rights groups such as National Council of La Raza (NCLR) and on occasion poverty and rights advocates such as the Southern Poverty Law Center (SPLC) have testified as well.

## **B. Analysis Approach**

I analyzed public records of Congressional hearings to capture policy arguments and proposals of various interest groups in favor of or against changing the state’s role in the provision of labor supply. A search for references to farm labor shortages generated a first list of hearings for consideration. A second selection drew from additional sources as well as references by policymakers and hearing witnesses to other relevant hearings.<sup>3</sup> Transcripts of eight full hearings of the House and Senate Judiciary Subcommittees on Immigration, the House Agriculture Committee, and the House Education and Labor Committee were in the sample. I also examined parts of hearings in 1984 and 1985 leading up to IRCA and testimonies on farm labor from hearings on comprehensive immigration reform from 2005-07.

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<sup>3</sup> Sources for the first selection included the Department of Labor Wirtz Labor Library catalog, the Library of Congress, and individual committee sites; for the second I searched including committee web sites, GPO access.

Hearing topics included IRCA, IIRIRA, the H-2A program, other proposed agricultural guestworker programs, or the AgJOBS bill that would revise H-2A and provide a path to legal status for farmworkers. News articles provided additional background on historical events.

Textual analysis focused on how actors defined the problems before the hearings, the laws and regulations they sought to change or saw as a problem, arguments made in favor of policy change, assumptions about the role of the state in farm labor, explanations for why farm labor shortages do or do not exist, and how immigration enforcement, the H-2A program, and social policy affect supply and labor problems. I selected portions of text for closer reading that concerned labor supply, characterizations of labor markets, and the qualities of labor supply and demand as hearing participants portrayed them.

## **I. Claims and Proposals of Interest Group Actors**

Most discussion of shortages in this period flowed from policy events in the last century that influenced the presence of the Latino labor force. Scholars and those present in Congressional hearings both argued that the WWII-era *bracero* program and IRCA have had a significant impact on the structure of farm labor markets since and spurred migration of unauthorized workers to the U.S. Grower interest groups and worker advocates lobbied fiercely to influence IRCA, which created a separate “A” visa for agriculture within the H-2 guestworker program and the SAW program. In anticipation of IRCA’s requirement that employers verify the employment eligibility of new workers intended to control hiring of undocumented immigrants, growers argued that steps must be taken to ensure labor supply once this requirement was in place; in other words, they argued that if government took away this labor

supply, government must replace it: if government took action to remove undocumented immigrants from the pool of potential workers, it created an imperative for government to go beyond its existing contributions to labor supply to replace the workers. Growers gave notice as IRCA was formulated that the streamlined H-2A program might need meet all future needs: “....we are not prepared, to say this program, even as modified by S. 1200, will meet all domestic agricultural labor shortages in all situations” (Senate Committee on the Judiciary 1985, 195). They had made similar arguments about IRCA’s SAW program.

This chapter picks up discussion of farm labor in 1995 as Congress turned attention to what would become the next major policy vehicle to control immigration, the IIRIRA enacted in 1996. Grower interests, in 1995-96 and since, have continued asking for changes to H-2A to facilitate labor supply or for new guestworker programs, but have not achieved their policy goals.<sup>4</sup> Worker and grower interests began negotiations to move away from this stalemate in 1999 and eventually produced a bill called AgJOBS<sup>5</sup> that would revise H-2A and create a legalization process for farmworkers (Martin 2009, Senate Judiciary Subcommittee on Immigration 2000, 16). A version of the bill with a “compromise” coalition behind it was introduced in the 1999-2000 season and each Congress since, but the compromise has not included all worker and grower advocates.

Some changes in the bill that growers sought would ease the process of demonstrating need for H-2A workers, freeze wage levels and allow employers to provide vouchers

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<sup>4</sup> The opposition of worker advocates and President Clinton to a new program was an important factor in the defeat of proposals for new programs in 1996 and 1998 (see statement made on June 23 1995, presented at a House Judiciary Committee 1995, 12). The legislative history in this section is drawn from Martin 2009, Gilbert 2005, and Bruno 2009 in addition to Congressional hearings (especially House Judiciary Committee 1997), as well as articles from national papers.

<sup>5</sup> The same name was given to a more grower-friendly bill introduced by Rep. Pombo and voted down in 1998.

rather than housing. Worker advocates had sought its language providing a path to legalization contingent upon employment in agriculture through a “blue card” program allocating up to 1.35 million cards total in a period of five years for workers who could demonstrate a minimum of hours, days, or earnings in farm work and continued to work a minimum number of days annually for several years (Bruno 2009). In addition the bill would allow blue card holders to work in other industries during the legalization process and H-2A workers the ability to apply for a blue card. Members of Congress who opposed AgJOBS continued throughout the decade to introduce legislation with more restrictive immigration measures or lower H-2A wage levels. Guestworker programs for multiple industries were key aspects of discussions of comprehensive immigration reform in Congress and in President Bush’s broad proposal for reform in 2004 (Gilbert 2005, Bruno 2009).<sup>6</sup>

Proponents of these different legislative solutions implicitly argued for broadening or constricting of state roles within the familiar categories of provider but protector of labor. This section will summarize policy proposals that fall in these two areas.

### **A. Provider of Labor**

The H-2A program theoretically provides an unlimited number of visas for agriculture workers, whereas H-2B for other seasonal workers allows a limited number

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<sup>6</sup> In 2004, a witness at a Senate Judiciary Committee hearing to evaluate guestworker proposals described temporary work visas as the “centerpiece” of an immigration proposal Bush delivered in broad outlines only, with no agriculture-specific recommendations (Gilbert 2005). In the same Congress, a range of programs across occupations were proposed (Bruno 2009, Farmworker Justice Fund [AgJOBS in the 108th Congress \(2003-2004\)](http://www.farmworkerjustice.org/history-of-the-agjobs-negotiations/104-agjobs-in-the-108th-congress), <http://www.farmworkerjustice.org/history-of-the-agjobs-negotiations/104-agjobs-in-the-108th-congress>, accessed 12/23/2010), including H2-C and W visas (for seasonal workers in one case and “unlawful” workers in another), and in one bill the H-4A visa for temporary employment. Agriculture and farmworker interest groups sometimes testified at general immigration reform hearings. In 2006, the year the House passed an immigration measure viewed as stringently anti-immigrant, sparking huge demonstrations, the Senate passed a comprehensive bill with a new nonagricultural guestworker program (Bruno 2009, FJ 2010). “[Congressional Debates of AgJOBS in the 109th Congress](http://www.farmworkerjustice.org/congressional-debate-in-the-109th).” <http://www.farmworkerjustice.org/congressional-debate-in-the-109th>. Retrieved 12/23/2010.

each year. Despite this generous supply mechanism, grower interests have argued the program was unworkable and talk at times in hearings as if there were no program. To address this, growers seek to facilitate use of the H-2A program by replacing the certification process<sup>7</sup> with an attestation requirement<sup>8</sup> to make it easier to demonstrate that workers are needed. The H-2A program has other features that affect supply parameters: the jobs and agriculture sectors it includes (H-2A is for seasonal workers but has industry-specific provisions for sheepherders, and AgJOBS would expand the program to include the year-round dairy industry); the allowable length of contracts, and rules about contract extensions, which are allowed.

H-2A visas are issued for one employer, which worker advocates believe diminishes protection by tying workers to one employer and thereby limiting the ability to complain about conditions.<sup>9</sup> The “tie” to farm work in AgJOBS’ mechanism for adjusting workers’ legal status also provides options to adjust the amount of labor and was a sticking point in hearing discussion on this topic. The tie refers to the amount of time workers had to spend in farm work to be eligible for a path to legalization (proposals ranged from 150 days to six months in a year; 150 days is a measure used in surveys to distinguish seasonal from other workers). Regarding a proposal considered during a 2000 Senate Judiciary Subcommittee on Immigration hearing, Cecilia Muñoz of NCLR pointed out

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<sup>7</sup> Efforts to provide U.S. workers access to jobs are achieved through the recruitment process the program requires as a prerequisite to certification, in which the DOL certifies that insufficient workers are available and U.S. workers will not be adversely affected by foreign workers or approval of an H-2A application. The H-2A regulations detail how employers must advertise jobs and where job orders must be posted, and the 50% rule, from which small farmers who do not belong to an association are exempt, requires that U.S. workers applying for jobs described in H-2A job orders filed with the Department of Labor continue to be referred to employers up to halfway through the contract period.

<sup>8</sup> This would instead allow allowing employers to “attest” compliance with program requirements.

<sup>9</sup> See for example statement of Marcos Camacho of UFW, House Judiciary Subcommittee on Immigration 2000: “Further, without union representation, the best protection that most farmworkers have from abusive working conditions is the right to walk away from a bad employer and find work elsewhere. Guestworkers don't have that right. They are either dependent on the specific employer for work and not only during the given season but from year to year” (193).



that a requirement to work 180 days each year in farm work, which employers would need to verify for workers to be eligible for legalization, would enhance employer control over workers trying to reach this level of employment in the sector (31). However, some growers have opposed legalization proposals they said did not require enough days of farm work (House Agriculture Committee 2004).

Legalization proposals also affect how temporary or permanent labor supply is. Some AgJOBS opponents objected to “amnesty” provisions; more restrictive immigration measures regarding farm labor included a bill offering no path to legal permanent residence (Bruno 2009), a blue card program providing a two-year stay in the country but no opportunity to acquire residency (offered by Sen. Chambliss (GA) in the 2005-06 session), a bill to require undocumented workers to go home and reapply for H-2A so as not to “reward these lawbreakers” (House Agriculture Committee 2004, 47),<sup>10</sup> and another in the 2005-06 Congress, supported by Sen. Chambliss, that would have created supervisor and daily exit-entry categories under H-2A (Bruno 2009). Like other proposals, this bill also created an opportunity to keep workers on contract longer.

The concern about certifying applications and finding domestic workers points to another key role in labor supply through the matching process by which employers and workers connect – here worker advocates charge that the state does not look for workers, and growers charge that the state does not really provide supply when it refers workers within the U.S. to farmers applying to H-2A because it provides inadequate or undocumented workers. Conflict about whether and how growers look for other workers before resorting to H-2A highlights the tension over which workers growers hire – H-2A or others. In challenging claims that growers use H-2A because they cannot find domestic

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<sup>10</sup> This bill was introduced by Reps. Goodlatte and Stenholm.

labor, advocates and others questioned their means of searching, and some suggested better matching strategies by the Department of Labor (DOL). Dolores Huerta of the United Farm Workers noted that the Commission on Agriculture Workers found in its 1993 report that employers “rarely” place job orders with the Employment Service because they prefer farm labor contractors, (House Judiciary Committee 1995, 97-98). A DOL representative asked why (under proposed legislation), growers should be allowed to supplement the labor force by going to Mexico or Central America rather than supply states such as Texas or Florida (House Judiciary Committee 1995). One grower “sought relief” from a requirement to find domestic workers with farm labor contractors, (Senate Judiciary Committee 1999, 121), which advocates wanted to maintain because growers are permitted to use contractors to hire H-2A workers.<sup>11</sup>

## **B. Protector of Workers**

Policy actors disagree about the degree of protection H-2A workers have and the costs and benefits of the program. Growers have argued, sometimes to justify limiting program requirements, that H-2A workers already enjoy more benefits and protections than other workers; one grower argued that current policy prevented growers from using the H-2A or another guestworker program and that this was preventing workers from gaining protections that would benefit them. Advocates maintain both that the undocumented workers are more vulnerable and preferred by growers for their compliance and that H-2A workers are vulnerable because they are tied to one employer, as illustrated by the comment of a United Farmworker (UFW) witness that at least undocumented workers can walk away (House Judiciary Committee 2000). Growers

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<sup>11</sup> This includes advocates from the Farmworker Justice Fund (FJ) (House Judiciary Committee 1997) and the National Council of La Raza (NCLR) (House Judiciary Committee 2000, 282).

complain about unaffordable requirements such as the “inflationary” AEW, but advocates and policymakers point out advantages of the program, such as the fact that H-2A employers do not have to pay FICA or FUTA taxes. They raised objections to attempts “to dilute every single worker protection” the program offers in a grower-backed bill debated in 2000 (House Judiciary Committee 2000, 80).

Wages, conditions, and worker protections were important to shifting positions on AgJOBS; wage proposals have included eliminating the AEW for a state minimum or prevailing wage<sup>12</sup> or with the support of the American Farm Bureau (AFB) both eliminating it and making the federal minimum wage inapplicable to H-2A.<sup>13</sup> Growers also repeatedly portrayed the requirement to provide housing as a major obstacle for them. In addition, grower interests have sought to limit the ability of workers to seek redress. They complain frequently about Legal Services Corporation<sup>14</sup> lawsuits, as with this southern grower:

...many of these H2A users...believe that they were following current standards and had made every effort to comply, only to find out that they were only slightly out of compliance, yet it often cost them tens of thousands of dollars in fines, even though they had in good faith tried to comply...This [lost income, idle production and expensive equipment] is done while the Department of Labor goes about their--taking their time to complete their investigation.

House Agriculture Committee 2004, 50

H-2A workers do not have the same coverage under the MSPA as domestic farmworkers. At the 2004 hearing, some farmers expressed opposition to including H-2A workers under MSPA and thus providing a private right of action, explaining as they had done in favor of previous proposals that H-2A workers already were better protected than

<sup>12</sup> This is contained in a bill introduced by Rep. Goodlatte (Bruno 2009).

<sup>13</sup> This provision was in an amendment Sen. Chambliss offered to comprehensive immigration reform legislation in 2006, FJ 2010.

<sup>14</sup> Legal Services Corporation (LSC) funding may support H-2A representation for contract matters if the worker was present at one time in the U.S. under the contract at issue (Kosegi 2001).

domestic workers. In a written response to questions published in the hearing report, one grower argued that protections for H-2A workers are strictly enforced by DOL, so the MSPA's right to sue in federal court is a "redundant and unnecessary layer of protection" (House Agriculture Committee, 305). A right of action was included in early versions of AgJOBS but replaced with another remedy in later versions.

The Georgia Fruit and Vegetable Growers Association also wanted mediation prior to lawsuits in H-2A reform given "continuous specious litigation" supported by Legal Services funding,<sup>15</sup> in addition to changes related to wages and hiring of domestic workers during the H-2A contract period that AFB still seeks (House Agriculture Committee 2004, 88).

## **II. Themes in Hearing Discussions**

The following discussion further examines how actors view state roles in farm labor markets and seek to stretch them by focusing on three themes that emerged in hearing testimonies and questioning: farm labor shortages, the labor market for farmers, and expectations of farmers concerning *which* labor the state will provide.

### **A. Farm Labor Shortages**

The premise of guestworker programs is a shortage of labor. Growers citing farm labor shortages in hearings explain them most often by beginning with reference to government actions to enforce immigration controls that could potentially disrupt supply, including IRCA, I-9 audits to enforce rules on hiring, IIRIRA, INS (now ICE) actions, enhanced Border Patrol activity, efforts to reduce unmatched Social Security numbers, and the E-verify system pilot programs to assess work authority electronically. Leading up to IIRIRA, the concern was not current but predicted shortages:

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<sup>15</sup> New restrictions on federally-funded legal services programs enacted in 1996 forbid representation of undocumented workers.

[U.S. Rep.] Berman: I want to pin down one thing. I have not heard you say, I have not heard your representatives say in my earlier conversations, that there is now a serious, fundamental shortage of farmworkers.

Mr. VICE [California Farm Bureau]. No, I have not said that, and I will not say that...there has been time, even in this past year, where it got tight in different regions, but sometimes that's because sometimes the workers aren't where you necessarily want them on the week you want. So there's some of that. But mass shortages, no there's not. We're not concerned about that. We're concerned about what will happen if, indeed, we lose the people who are working there now.

House Judiciary Subcommittee on Immigration and Claims 1995

Growers also described the seasonality, part-time nature and difficulty of farm work, the reluctance of domestic workers to migrate and policy disincentives to do so, available workers' inappropriateness or unwillingness to take farm jobs, tight labor markets, and the aspirations, socio-economic success, or work ethic of "American" workers – including their attraction to social benefits such as unemployment presumed by growers to be a viable alternative to working. Witnesses appearing on behalf of growers also stressed low unemployment as a factor in supply problems as the economy grew stronger in the late 1990s and said farm jobs are not competitive with construction or other city jobs. Even with these references, concern often centers on removal of undocumented workers. Here, an ANLA representative first cited the economy as a cause of labor supply problems but followed quickly with references to increasing INS apprehensions, and verification of mismatched Social Security numbers, noting the imperative of state intervention:

Our concern is that when these programs screen out unauthorized workers, there must be an effective way of replacing these workers. Employers are caught between a rock and a hard place when hiring. A sudden loss of workers puts them in a difficult position to grow, maintain, and harvest crops.

Robert Dolibois, House Judiciary Subcommittee on Immigration and Claims 2000, 172<sup>16</sup>

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<sup>16</sup> The AFB noted at the same hearing: "Farm Bureau believes this labor supply problem stems from" the decision to more effectively "discourage illegal immigration" through various means (247).

Sympathetic Members of Congress and growers have often, rather than mentioning shortages specifically, simply indicated that agriculture depends or relies on foreign workers or that immigrant labor is critical in pressing for an assured supply.<sup>17</sup> On the other hand, worker and immigrant advocates,<sup>18</sup> worker-friendly Members of Congress, and occasionally DOL often argued, especially in the 1990s, that there were no shortages, citing the lack of wage increases, poor working conditions, and several studies on the topic (House Judiciary Committee 2000).<sup>19</sup> One such report (GAO 1997) found no national shortage of farmworkers and inadequate program implementation by DOL, creating an impetus for some minor changes and providing fuel to both sides arguing shortage.<sup>20</sup>

Some pointed out that shortage was not the issue; poverty, wages, and conditions were (House Judiciary Committee 1997), conditions that a representative of the National Council of La Raza (NCLR), a prominent Latino advocacy group, said in 2000 only Latinos would put up with. Worker advocates charged that standards were not enforced and maintained in the mid-1990s that there was an oversupply of workers, evidenced by declining or stagnant wages despite increases in productivity, rising use of food stamps and food banks,<sup>21</sup> and very high unemployment in farm regions. Chapter 2's presentation of NAWS data showed that this was a low point in earnings, and a high point in the presence of Mexican workers and of migration for the full sample (as opposed to for specific farm tasks). NCLR pointed to farmworker underemployment demonstrated by a

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<sup>17</sup> See remarks of Rep. Chambliss, House Judiciary Committee 1997; House Agriculture Committee 2004, 19; House Judiciary Committee 2000, 22; Sen. Gorton Smith, Senate Judiciary Committee 1999, 15.

<sup>18</sup> Such as NCLR, the Farmworker Justice Fund, and the UFW.

<sup>19</sup> A USDA report found that H-2A harmed small farmers; others included reports of the GAO (1997), the DOL inspector general, and the Commission on Agricultural Workers in 1993).

<sup>20</sup> See chapter 3 for a description of these changes, which were friendlier to growers than GAO proposed, while recommendations regarding worker protection were ignored.

<sup>21</sup> See statements of FJ, House Judiciary Subcommittee on Immigration, 1997.

declining number of days worked per year and in some cases the inability to find work even during the harvest season (1997). During this period, advocates argued that if there were shortages, the level of hiring or the way farmers organize their workforces would have changed. The recruitment process required to obtain certification in some sense is intended to demonstrate a shortage faced by an individual H-2A applicant, and the state has a role because of certification in this recruitment process that, as mentioned in an earlier section, hearing witnesses questioning shortages criticized:<sup>22</sup>

we should do what we can to help agriculture improve the work of the Employment Service, create the conditions that let people know there are opportunities here. To the extent that it is very hard work and it is difficult work, to the extent we can do things to provide, help provide training and recruitment responsibilities by the government, we ought to focus on that.

There is a market out there for these jobs. The question of why they are not getting them is both a problem of what the growers are offering and, to the extent we have government agencies in charge of matching willing workers with open jobs, the inability of the government to perform that role effectively. That is what we ought to focus on.

Rep. Berman (D-CA), House Judiciary Subcommittee on Immigration and Claims 1997, 118

Agriculture shortages also came up as Congress turned its attention to immigration reform. In 2001 (House Judiciary Subcommittee on Immigration and Claims), Members asked Cecilia Muñoz of NCLR repeatedly about farm labor shortages although the hearing concerned other industries too (she argued there were none in agriculture). In 2005, Sen. Feinstein (D-CA) claimed there was an abundance of willing workers and said guestworker programs were magnets that spurred illegal immigration. She later reversed her view to become a vocal advocate for Agjobs (Martin 2009), saying the agriculture industry was “collapsing” in California and noting the failure to recruit welfare recipients for farm work (Senate Judiciary Subcommittee on Immigration, Refugees and Border Security 2009, 6-7). Arguments about whether shortages of farmworkers really existed continued, as evidenced in an exchange between a grower representative and former

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<sup>22</sup> See chapter 3 on matching and placement activities of the state.

Labor Secretary Marshall (House Committee on Education and Labor 2007). Marshall and Jonathan P. Hiatt of the AFL-CIO both described approaches to testing the labor market before using H-2A.<sup>23</sup>

Sometimes Members of Congress sympathetic to growers or grower representatives did not cite shortages but simply argued that immigrants were a necessary part of the workforce (Senate Judiciary 2004). Proponents of temporary worker programs in other industries have implied that shortages do not need explanation when it comes to agriculture. For example, a business lobbyist referred to the need for a steady, predictable supply of workers in agriculture as a given while underscoring the separate problems of other industries. Speakers have differentiated the type of workers holding “low-skill” jobs as guestworkers from “American” workers, or everybody else, as when the Cato Institute supported guestworker programs by saying that Americans are overqualified for many jobs (Senate Judiciary Committee 2005). The dismissiveness of assumptions about whether “Americans” should work in certain sectors is illustrated by this question from the Chamber of Commerce: “Who do you think is working in these industries?” (14).

The television personality Stephen Colbert echoed the Chamber of Commerce representative in an in-character departure from a prepared statement in 2010 (House Committee on the Judiciary). His argument for AgJOBS was twofold: one clearly stated was that we should not ask people to come to work on farms without providing them legal status, which could improve pay and conditions. Another essentially was that he did not want to do this terrible work, and somebody else is willing to do it. He spoke about his experience working on a farm as part of UFW’s “Take our Jobs” campaign.

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<sup>23</sup> Hiatt submitted written testimony but was not present at the hearing; he favored a “two-test” approach.



Now, I will admit, I started my workday with preconceived notions of migrant labor. But after working with these men and women, picking beans, packing corn for hours on end, side by side, in the unforgiving sun, I have to say—and do I mean this sincerely—please don’t make me do this again. It is really, really hard.... maybe we could offer more visas to the immigrants, who, let’s face it, will probably be doing these jobs anyway (32-33).

At the same hearing, Rep. Lofgren, who in prior years had said there was not a shortage of farmworkers but a clear shortage of the high-skill workers brought in under the H-1 program she helped to expand, advocated for AgJOBS and recounted her experience working alongside Colbert on a farm. Her statement illustrates the way such conversations have changed, as worker advocates have set their sights on legalization and are less likely to contest the idea of shortages. She also adopts an argument about upstream and downstream jobs advanced by an industry lobbyist repeatedly in 1990s hearing testimonies:<sup>24</sup>

...they have been unable to get Americans to come take these jobs, because they are killer jobs. I mean, it is—I was out there picking those strawberries, and that is just a fact. We could say that is a good idea or a bad idea. That is the reality.

In reading Mr. Glaize’s testimony and understanding in California the number of farms that have simply folded and gone off farm, this has implications for the entire American workforce, upstream, downstream. We have three to four jobs that Americans are doing for every migrant farm worker who is here. And so, if those farms close and go offshore, it is not just the farm workers who are displaced; it is the four Americans who are dependent on those farm workers who are displaced. So this is a very serious issue (57).

Thus political actors acknowledge that jobs for “Americans” depend on farm jobs readily described as lesser quality in an effort to either secure labor or provide undocumented workers the right to obtain legal status.

## **B. Labor Markets as Markets**

Policy actors in hearings seem to want government to enforce their view of ideal labor markets, but some appeal to a market logic while at the same time they say the

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<sup>24</sup> This was James S. Holt, an economist with a private firm who often served as a consultant to the National Council of Agricultural Employers until his death.

industry cannot compete in the domestic labor market, as a submitted statement by Rep. Smith, then Chair of the House Agriculture Committee:

Some claim that there is an excess of labor...Others believe, that producers should follow the principles of the free market and need only raise wages to attract domestic workers. These individuals have no apparent knowledge or real interest in the free market. If they possessed this appreciation, they would realize that our wages are already far above the countries that will benefit when we lose our agriculture production. Global competition determines how high wages can be set.

House Judiciary Subcommittee on Immigration and Claims 1997, 7

In 2000, the Executive Vice President of ANLA apparently did not view H-2A as an intervention on the supply side but rather saw limits or conditions related to the programs, or the failure of government to provide unlimited supply, as interference in the labor market. Asked whether he would oppose open field searches, he said that the problem of immigration was already severe enough without open field searches, citing an example of a colleague whose workers fled after hearing a rumor that their nursery was going to be raided by the INS. However, he was willing to submit to these searches if the guestworker program were changed, or he argued that open searches would be “academic,” presumably because people would stop hiring undocumented workers:

Mr. **DOLIBOIS**. I am confident that if we had a workable guestworker program that was reasonably easy to administer, that was fair to both the employer and the employee alike, yes.

Mr. **SMITH**. Then you wouldn't need one.

Mr. **DOLIBOIS**. That the law of supply and demand would then be righted as it is not now righted. And all of these distortions would be resolved and that would be an academic question.

House Judiciary Subcommittee on Immigration and Claims 2000, 136

Worker advocates too appealed to the supply and demand model in expressing opposition to new guestworker programs and weakened wage provisions. A UFW representative explained that undocumented status prevents a market from operating:

....unless we have everybody operating at the same level of labor protections and status, you won't be able to really have a true market, where...in other industries,...if you have got a short labor supply, what happens? You increase wages, you increase working conditions, you provide health benefits, you provide pension benefits. That does not happen in agriculture, because there is always a steady supply of undocumented workers.

Maria Echaveste, House Agriculture Committee 2004, 68

Rep. Berman argued the following in a 2000 hearing:

You are taking the lowest paid workers and you are diluting the obligations of the growers to pay them that amount in a market where you yourself have testified 50 percent of the workers are undocumented. Do the laws of supply and demand apply in agriculture? Does the existence of undocumented workforce of 50 percent have a depressive effect on wages? Surely it is clear they do.

House Judiciary Subcommittee on Immigration and Claims 2000, 89

However, proponents of replacing the AEWR with a “prevailing wage” for H-2A workers argue just the opposite, as Rep. Collins wrote in a submitted statement: “We want the labor market to drive wages and not the Federal Government” (House Agriculture Committee 2004, 8). References to what the market should and should not do have persisted over time (e.g., House Education and Labor Committee 2007). Interestingly, 2010 regulations reinstated the AEWR (which had been eliminated by 2008 regulations) with an explanation that its intent was to try to simulate a farm labor market in which there were no H-2A workers by aiming at an equilibrium wage presumed to exist in its absence.

Against this idea of free markets, or perhaps acknowledging tacitly the possibility of market failure, is the description of people on all sides of the issue and in the press of H-2A as a kind of insurance against the uncertainties of the industry due to variations in crop prices, contracts with buyers that may not be set in stone, unpredictable weather and variation in production levels by competitors. For example, John Fraser of the Clinton Administration Wage and Hour Division of DOL charged at a 1995 hearing that “western growers have not utilized the existing safety valve, the H- 2A program,” (9) and

California Farm Bureau President Bob Vice used the same language in arguing for protection of the sector from negative effects of policy:

As you undergo your review of IRCA and other immigration laws and amend them to achieve a workable illegal and legal immigration policy, we believe that you must amend the temporary and seasonal alien agricultural worker provisions to provide a safety valve in the event anticipated domestic labor shortages occur as a result of the enactment of H.R. 2202 or a similar measure.

House Judiciary Subcommittee on Immigration and Claims 1995, 81

The industry-specific need for insurance was taken as given in 2005 hearing on immigration reform by a business representative who said that “steady and predictable” supply was of course needed for the agriculture sector (Senate Judiciary Committee, 7), but helping them would not address the problem of other industries. The seasonality of the work seems to drive such views, as in the case of the AFL-CIO’s separation of H-2A and H-2B from their general distaste for guestworker programs in the context of immigration reform.

Worker advocates, think tank experts, and the DOL at a 1995 hearing portrayed the government as institutionalizing old-fashioned labor practices because “The Government's acquiescence to agriculture's request for foreign workers at various junctures has had a chilling effect on other labor market mechanisms” according to an expert on the Commission of Agricultural Workers (House Judiciary Committee 1995, 37). In this view, after benefiting from “this generous legalization program” in IRCA, the industry was expected to make changes in the organization, recruitment, or conditions of labor in order to develop stable, legal workforces but had not done so (36).

In 2010, Republicans in a House Judiciary Immigration Subcommittee hearing argued for a market dynamic to raise farmworker wages, using language much like that of worker advocates in prior years, which provoked a great deal of sarcasm from

Democratic members. Rep. King of Iowa, the Ranking Subcommittee Member, wanted to lift up Americans, not hold them down, and said he wished the UFW understood as Cesar Chavez had that illegal immigration hurts American farmworkers:

When American workers are treated with respect and paid for the labor, they will do any job and they will outwork anyone on earth. America's spirit is hard-working, and so are the people that comprise this great Nation (4).

Language that couches policy preferences in terms of markets reveals preferences of different actors for the roles they want the state to assume in labor markets, but often is inconsistent with the evidence that the market for agricultural labor is far from an unfettered one. At times growers have argued that they are unable to compete for farm labor given the dynamics of the industry but their representatives also have seemed to imply that the guestworker program was a natural feature of markets and that the state interfered with markets when it placed conditions on the approval of imported labor. These statements elide the role of the state in creating the present situation – both in terms of its inability to stop illegal immigration that has traditionally supplied workers and in terms of the longtime H-2A program.

### **C. Which Workers?**

When describing both the absence and inadequacies of existing labor, hearing witnesses implicitly identify the qualities employers prefer and occasionally discuss the suitability of different categories of labor. Many advocates claimed growers prefer undocumented labor because it is exploitable (House Judiciary 1995). However, it is evident that farmers expect government help in providing high-quality workers. Growers want policy to conform to their goals of making sure workers will be experienced, stay on the job through the season and perform at a certain level. They want to find or keep people who have done agricultural work and expect the state to help. Here I discuss what

we can glean from these hearings about the ways in which the state contributes to supply, the type of supply employers want, and how these are intertwined with policy.

In some cases, growers appear to assume that experience is produced by a background that produces a predilection to farm work; one rancher said it would be hard to train someone off the street to do the work he needed done, because “it’s almost something that you’re born with, not something that you’re trained with” (207). Similarly the NCAE has pointed out that without their preferred policies, many employers would be forced to seek new and inexperienced workers (Senate Judiciary Committee 2000).

Growers were concerned about regulation of their ability to obtain productive, skilled, and experienced H-2A workers. One complained that productivity standards had to be in job orders (which are posted to give U.S. workers a chance to apply first) if an employer wished to fire someone for poor performance. Employers said they were pressured not to include requirements for experience or skill in these orders; one referenced the “arm wrestling contest” between DOL and employer that could occur over their design (House Judiciary Committee 1997, 40). On the other hand, a worker advocate complained growers were unfairly allowed to use qualifications and productivity standards as justification for not hiring or keeping U.S. workers. Another argued that employers prefer to invest in H-2A workers rather than hiring domestic workers.

The fear of losing workers is paramount, and the type of danger employers in most sectors face – that workers will find other work or leave at a crucial point of production – is something growers feel government must address, due to the peculiarity of the job and sector and the urgency of harvesting perishable food; this drives both H-2A policy and possibilities for legalizing workers. For example, Rep. Bishop (R-GA) testified at a 1999

Senate Judiciary Committee hearing that workers in Georgia are going into other industries such as poultry processing now, so agricultural employers still have a problem. A law-and-order theme often accompanies rejection of “amnesty” in discussion of immigration reform, but for growers there is another problem as this gladiola producer stated:

Although I am neither for nor against amnesty, I do not believe amnesty is the answer to preserving U.S. seasonal agriculture. We only need temporary seasonal workers for 16 weeks. Some farms only need workers for four to six weeks. This requires a workforce that is willing to be transient. Amnesty will encourage people to look for full-time, year-round jobs, where they can settle down in one location with their families. Amnesty will result in the filling of jobs the traditional U.S. worker is willing to occupy. It will not supply a needed workforce for the seasonal agricultural community.

Lorinda Ratkowski, House Agriculture Committee 2004, 51

The issue of strategies to search for domestic workers before hiring H-2A workers, noted in the last section, goes to the question of which workers are hired – “domestic” or H-2A - and how they are found (e.g., through farm labor contractors, the state, or other means). A choice between H-2A and domestic workers is theoretically not one growers face, since H-2A is supposed to respond to an absence of workers. Many argue they must use H-2A only because they are desperate since there are no workers, or no legal workers, but hearing debates still imply tension over the recruitment process, which functions effectively to determine which workers employers will hire by approving or denying applications. One portrayed domestic workers applying for H-2A-advertised jobs as pushed aside, saying employers deemed workers who ask for higher pay unavailable, discriminated against workers, and manipulated the length of the season so it does not correspond to available migrant workers’ schedule, to avoid hiring domestic workers (House Education and Labor Committee 2008). The H-2A program also offers the ability to select worker groups: former Labor Secretary Ray Marshall pointed out in 2007 that

the H-2A program allows growers to have the best of the workers – the young, strongest, most productive ones (House Education and Labor Committee).

As noted, assertions of labor surplus or shortage have been closely tied to claims about the level of undocumented workers, which growers have frequently argued is higher than statistics show. At the same time, growers say they cannot always tell who is legitimately authorized to work. Richard Estrada, a journalist and member of the U.S. Commission on Immigration Reform, charged hypocrisy in growers' simultaneous statements that workers generally are undocumented and that they do not know if their own employers are illegal:

Congress should take careful note of what this new argument is really saying. In effect, growers are claiming that while agribusiness is not knowingly hiring illegal aliens-an act that is illegal under the 1986 legislation-they are nonetheless fearful that if the law is actually enforced, agribusiness will have fewer illegal aliens to hire.

House Judiciary Subcommittee on Immigration and Claims 1995, 32<sup>25</sup>

Worker advocates sometimes respond with contradictory statements about what the presence of undocumented workers means for employment practice. They have in the past portrayed hiring undocumented workers as a choice that drives down labor standards but also sought to prioritize U.S. workers over H-2A workers without fully acknowledging that this is tantamount to encouraging hiring of undocumented workers first. As the undocumented share in the workforce has risen, the conversation has shifted away from arguing about this topic.<sup>26</sup>

Worker advocates have led the charge to obtain a path to legal status for farmworkers, and some employer groups have now joined them to support legalization. Both growers and workers pressure government to produce legal status in some ways. Sen. Gorton of

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<sup>25</sup> See also statement of Farmworker Justice in House Judiciary Committee 1997, p 13.

<sup>26</sup> Among workers in the National Agricultural Workers Survey in 2005-06, 53% were unauthorized (author's calculation of NAWS data. See also Martin 2009 on this topic.



Washington, who sought H-2A “reform,” in a written statement described the quandary in which Senators were compelled to support immigration control measures knowing that they could destroy a “vital source of trade” and then spoke of employers’ dilemma:

Agricultural employers will continue to be dependent on illegal workers, though the supply appears to be shrinking, and forced to engage as long as possible in the morally and legally suspect practice of remaining as ignorant as the law allows, because not to do so means economic ruin.

Senate Judiciary Committee 1999, 40

Similarly, W.J. Grimes of the Georgia Vidalia Onion Council testified in 1995 that he and others were totally dependent on migrant labor, and amid growing signs that they are illegal disliked being “in conflict” with law enforcement (House Judiciary Subcommittee on Immigration and Claims, 112). Rep. Smith later argued that growers could not tell who was “legal...until the INS audits employers and deprives them of their workforce. Upon finding out that individuals are illegal, employers must fire them” (House Judiciary 2000, 79). At the same hearing ANLA noted that after “the employer has invested in this worker” and the worker has advanced to supervisory levels, the employer may discover 7 or 8 years later that the employee has been working with “apparently illegitimate documentation...It comes as a shock to the employer” (214-215).

One grower indicated in 2004 that if there were 1 million undocumented farmworkers it must be impossible for the guestworker program to supply them all since only 50,000 visas were in use currently, so if there is a “viable H-2A or a viable Guest Worker Program for employers to go to..then..the employers will start self-governing” but they would not likely take a chance until then (House Agriculture Committee 2004, 60-61).

Advocates in the mid-1990s occasionally, especially when pressed on their views, complained that immigration restrictions were not enforced: in 1995, UFW indicated that employers hiring undocumented should be sanctioned, and in 1997 the Farmworker

Justice Fund<sup>27</sup> called for more enforcement. Yet they also advocated legalization programs and sought to ease the process to change legal status in shaping legislation (Senate Judiciary 2000, 137). In 1997, Rep. Berman argued that IRCA had created knowledge that fueled the presence of undocumented workers. He acknowledged their rising share in the labor force but also said this partly reflected a choice to hire more undocumented workers. A political shift underway was evident in the statement of Cecilia Muñoz of NCLR in 2000, who said that because of a relationship between the presence of undocumented workers and wage depression, her organization had for a long time supported legalization and the AFL-CIO had more recently taken this position (Senate Judiciary Subcommittee on Immigration 2000, 95).

Some had both anti-immigration sentiment and sympathy for farmers who (knowingly or not) employ undocumented immigrants and corresponding preferences that the state guarantee access to foreign labor but restrict immigration. This is illustrated by a remark from Rep. Graves advocating tools to help employers screen workers, calling for border control, and at the same time pointing to labor shortages:

Illegal aliens have already broken the laws of the United States at least once. We cannot reward illegal aliens for breaking our laws, but this goes even beyond that. We absolutely need to be able to verify who is handling our food supply. It is a national security issue without question...

I have heard from many constituents that there is a shortage of labor in many agricultural sectors. And I have also heard from these very same constituents their abhorrence to employ illegal aliens. They have rightly pointed out that fewer illegal aliens would be applying for jobs in the United States if we successfully secured the border, so accomplishing that is certainly an important part of the equation."

House Agriculture Committee 2007, 8

This reflects the awkwardness of policy debate in a context in which most assume the major alternative to H-2A workers is undocumented workers, who in 1994-97 were 45%

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<sup>27</sup> Now called Farmworker Justice, [www.fwjjustice.org](http://www.fwjjustice.org).

of farmworkers interviewed by NAWs and 55% of those performing harvest tasks, as compared to 50% and 71% in 2006-09. In the 1990s, some who challenged the shortage concept implied that the government was not capable of enforcing immigration policy more or removing all the workers, thus tacitly that there was no shortage because undocumented workers were unlikely to be removed. For example, Cindy Fagnoni of GAO said it was unlikely the INS would have significant impact on the availability of workers (House Judiciary Subcommittee on Immigration 2000). In fact, creating a mechanism for establishing work eligibility such as electronic verification, ID cards, or tracking unmatched Social Security numbers, has been a major stumbling block in fashioning policy and a key area in the shifting boundaries between employer and state responsibility dealt with in new regulations.

These discussions show that in operating to produce supply the state shapes demand, which may occur in a process of interrelated shifts in the characteristics of available supply, changes in the organization of production, and policy. These discussions also display both acceptance of extreme hierarchy in labor markets and ambivalence about the presence of undocumented labor. On one hand there is an assumption, sometimes stated and sometimes not, that the major alternative to H-2A workers is undocumented workers, but on the other hand at some points in the history of these debates advocates were in the awkward position of pressing the state to prioritize workers who likely were undocumented rather than use the H-2A program.

### **III. Conclusion**

This review has shown that claims or predictions of farmworker shortages have time and again been an entry point for attempts to renegotiate state and employer roles and

responsibilities for the provision and protection of farm labor – often to demand something in return when government removes unauthorized immigrants who have become the majority of farmworkers. While farmers claim they have no choice in the workers they hire because of shortages of legal workers – in fact they often say they only use H-2A when forced to – the hearings underscore the role the government ends up taking because of its own foreign labor program in directing employers toward different farm labor supplies.

This discussion has added a layer to the notion of a segmented farm labor occupation in that actors cited here assume segmentation in terms of job quality: those who claim shortages see the occupation and its workers as different from others. This may be partly because of the seasonal nature of jobs, something that could change as farming evolves and production extends into longer seasons (Kandel 2008). However, speakers often emphasize the hard work the jobs involve as much, or more than, seasonality, implying that farm work is not a good job, but the well-being of Americans appears to require in their view getting someone else to do the work.

Sometimes these arguments are in service to goals of worker advocates who prioritize legalization policies, as in the “Take our Jobs” campaign, which UFW said was suggested by farmworkers and seeks to demonstrate how few people want to do farm work. Advocates supporting AgJOBS have accepted the inevitability of guestworker programs and reduction in employer responsibilities for wages and conditions such as housing. Esping-Anderson’s book on different types of welfare states argued that government can take on the role of worker decommodification by providing social programs that give them greater choice about work and enhance their power vis-à-vis

employers. With AgJOBS a step is taken instead toward accomplishing decommodification with the ability for workers to move between sectors (but still perform agricultural work) under a legalization program that would allow H-2A workers to apply to legalize too, thus expanding choices for those workers with freedom of movement many hope would expand bargaining power.

The deployment of market-based language to describe farm labor allocation and wage-setting is so illogical as to draw attention to the extra-market labor processes in agriculture. The use of “market” language shows that a lot depends on where speaker want to set the boundaries around their markets. If the farm labor occupation is segmented in part because of policy as discussed in Chapter 3, then this phenomenon has bounded the occupation. Some speakers who say that policy depresses wages want the market to stop at the U.S. border and include undocumented workers already here while at times (especially in the 1990s) glossing over the fact that undocumented workers are in them. Some have argued that the supply of H-2A labor negatively impacts work conditions, and others decry the wage effects presumed to occur because of undocumented workers. In fact, as Chapter 2 suggests, it may be that labor market division occurs even within farm jobs by crop and task and for undocumented workers. In contrast are views of some growers who say the wage level they can afford (apparently for both H-2A and domestic labor) is set by international competition in the agriculture sector; because of the international agriculture product market, the growers say they cannot compete for labor at home. One seemed to view state impediments to a flow of state-provided H-2A labor as market interference.

The agriculture industry is a very risky one because of unpredictable weather and fluctuating wages, and for labor-intensive agriculture labor represents a sizeable proportion of costs, which increases with farm size. It is also a risky endeavor for farmworkers, who typically are unpaid when conditions prevent harvesting and may not be asked back to a farm year-to-year if crop damage diminishes the number of workers needed; as migrants they also may travel long distances without assurance of a job. The H-2A program attempts to correct for some of this risk by assuring a minimum proportion of an expected earnings amount during a contract period, but still this leaves a wide range of potential earnings for H-2A workers and no guarantee of earnings for other workers. Farmers seek to have the government bear their risk of potential lost crops in the event of an inability to find labor. They extend this argument to note that they cannot afford to raise wages enough to attract labor, though they doubt raising wages would help, and argue government has a responsibility to keep the industry alive within the U.S. borders by reaching beyond its borders to find labor under similar conditions.

Thus the role of the state becomes not just to commodify labor, but to guarantee it and bear the risk associated with the choices workers make to come and go, because of the special nature of the industry. However, in implementing its guestworker program the state is pushed even farther in this role to set up a framework that provides workers corresponding to specific qualities of employer demand, which are influenced by the existence of state-provided supply, including expectations that the state create skilled, experienced, and workers who do not leave jobs until the grower wishes and produce at a high level. The next chapter looks at how this plays out on the ground in New York farming areas.

## **Chapter 5: Policy on the Ground: The State's Role in Labor Markets**

Representatives of grower interests, as shown in Chapter 4, have for decades pressed the state to address perceived labor supply problems with immigration policy and have sought in the process to reduce the administrative burden and cost of the H-2A workers the state helps provide. Public discussions about labor shortages have broadened into debates about the minimum conditions workers should have, as well as how to deal with the problem of undocumented workers in the labor force. Clear in the debates I reviewed was the expectation of growers that it is incumbent upon the state to provide workers who are suitable in their eyes.

The next two chapters present data on these topics from the perspective of labor market and policy actors in specific farming areas in New York involved on a day-to-day basis in finding farmworkers or farm jobs, interacting with employers and workers, or implementing policy. In this chapter, I present information from employers and other experts on agriculture industry changes in the state, labor shortages and historical shifts in supply, the types of farm jobs research participants identified, and how these may correspond to workforce characteristics. In Chapter 6, I further examine the role of policy in labor market processes. For both I drew on qualitative interviews in two farm regions in New York with employers, workers, government staff, employees of organizations providing services or conducting advocacy on behalf of workers (henceforth “non-profit staff”), and one labor contractor (see Chapter 1). In addition to participating in interviews, non-profit employees also introduced me to workers.

In these conversations, employers described the challenges that make it difficult to turn a profit year to year, which affect labor demand, as well as the difficulties of assembling labor forces and finding workers with qualities they prefer. These conversations also pointed to the shifts in migration patterns, production processes, and demographics that with other policy and cultural factors have contributed to a shift in New York toward an increase in the share of workers who live year-round in the state, growth in H-2A use, and hiring of Mexican or other Latino workers. As shown in this and the next chapter, conversations about all these topics quickly turn to policy, a subject not far from the minds of most interviewed.

## **I. The Agriculture Industry and Its Workers**

New York is unusual for its relatively extensive policy framework protecting farmworker rights and conditions and providing services such as child care and health care. Growers also complained that New York is unusual in its level of regulation of all sorts of aspects of farming relative to other states, from pesticides to labor, which some feel puts them at a competitive disadvantage with farmers in other states. In 1991, the State Attorney General issued an opinion guaranteeing workers in farmer housing the rights of other tenants so they can receive advocate and service provider visits (Nessel and Ryan 1994). In the 1990s, state legislation improved wages and conditions, according to one respondent improving workers' situation over the last ten years:

I would say that there [are about] 25% that is not complying with the law and those are the ones that get the most publicity and ...that make others look bad but the farmer has the capacity to improve; 75% have improved. The really bad ones...are like 25% --that look...medieval.

Government9



Growers at times push back. A bill to provide collective bargaining rights and overtime pay has passed the State Assembly many times and stalled in the Senate with intense grower opposition; one informant called this a war raging for three decades.

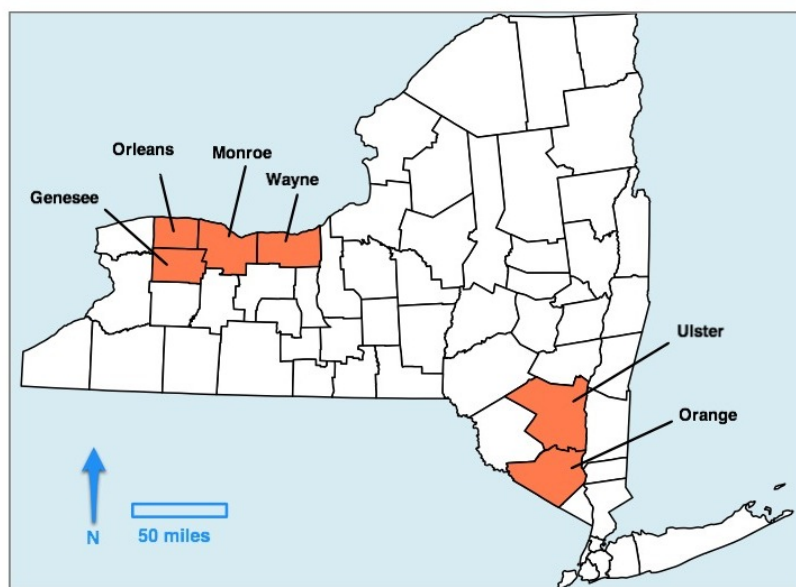
Over the last century, as shown in Chapter 2, U.S. farm production became more concentrated on larger farms producing fewer crops. In recent decades the number and share of products sold accounted for by large farms (sales over \$1 million) grew, but profit margins in 2003 were negative for farms with sales below \$250,000 (MacDonald, Hoppe, and Banker 2006). More farms sell directly to retail outlets under contract, increasing pressure on production but also potential returns. Demand has grown for fresh fruit and vegetables, which affects demand for seasonal workers, but year-round agriculture employment has also grown (Kandel 2008). Also important to labor demand is the fact that labor costs are a higher share of expenses for large farms. While the number of very small farms has grown recently, they operate mostly with family labor.

Thus there is continued need for farm labor, and a desire to minimize risk given these new challenges and longstanding issues such as vagaries of weather, year-to-year change in prices and success of crops, and the lack of subsidies for produce.

With regard to work conditions and the workforce, chapter 2 also showed that after a decline in the 1990s, real wages reached their 1989 levels around about 2000. Recently wages and income have increased, but harvest workers and vegetable and fruit workers experience higher levels of poverty and lower wages, and in some cases receive fewer benefits, than those performing other tasks and in other crops. Unauthorized and Mexican workers have become more concentrated in the workforce, especially in harvesting jobs, and are significantly more likely to receive lower wages.

New York growers I interviewed added to this picture with examples of their specific challenges. The growers lived in either an area I refer to as the Finger Lakes region, where I conducted interviews in four counties to the north (shaded in Figure 5.1), and the Hudson Valley region, where I visited Orange and Ulster counties. I chose these areas following key informant suggestions and because grower associations and service organizations were concentrated there, offering an indication of concentrated farming and providing access to respondents. In each is found one of the state's major apple production centers and black dirt or muck areas of rich former swampland ideal for vegetable growing. The Finger Lakes area falls within 100 miles of the Canadian border, where the U.S. Border Patrol has expanded authority to question those suspected of being undocumented.<sup>1</sup>

**Figure 5.1: Research Areas in New York State**



<sup>1</sup>According to the Congressional Research Service, Border Patrol agents are given regulatory powers within 100 miles of the border to “board and search all vessels...and to have access to private land, but not buildings” (Nuñez-Neto 2008, CRS-29).

The employer sample was split between apple and vegetable growers and for each group between H-2A and non-H-2A users, though all employers hired other workers and most hired additional seasonal harvest workforces of considerable size. I conducted worker interviews primarily with year-round or migrant seasonal workers and spoke to a small number of H-2A workers (see Chapter 1).

New York State is close to large urban Northeast and East Coast markets that consume a great deal of fresh produce. One respondent describing the industry emphasized this as making it more difficult to mechanize crops than if the state supplied more processed goods. In describing challenges, growers emphasized the recession less than expected, but stressed unpredictable weather and crop yields and in many cases rising input costs. Vegetable farmers mentioned profit margins relatively lower than in apple production, declining margins in the past ten years, and policy issues arising with food safety requirements related to cabbage. Competition in onions has become very difficult, pushing some growers out of farming or into diverse vegetables.

Two smaller apple farmers most emphasized the stresses of farming and the difficulty of earning an income. Apple producers spoke of competition in the processed apple market with China, a major buyer's sharp reduction in the price they paid growers for processed apples, and the growing selectiveness of retailers, which requires harvesters to avoid bruising. One said regulations for producing cider were costly. A positive factor mentioned in the Hudson Valley is growing interest in local produce and farm markets.

Farmers are making production and marketing changes. In apples, these include planting smaller apple trees or introducing higher-priced varieties. For vegetable farmers these include expanding greenhouses in one case and expanding web sites. One farmer

sold produce to a retailer who bags vegetables, an important product trend. Both vegetable and apple farmers are drawing people to the farm more with markets, one of which had space to eat prepared foods, and in other ways, such as “U-pick” farms (in both regions) where customers pick their own apples.

The challenge for growers in terms of labor is to assemble workforces when the majority of labor needs occur, during the harvest season, and to keep the workforce intact until the harvest ends. The peak fall season, a race against time and weather, lasts about two months for apples and longer for vegetables. With the short window in New York due to climate, early freezes are a danger. Cold weather also makes work unpleasant according to workers and growers, which farmers said made it hard to retain workers off-season. Workers are also drawn by opportunities from other farms and farm sectors in or out of the region.

Farmers related some industry and production changes to labor. One said the dramatic decline in his tomato prices means H-2A is unaffordable. Another pointed out that for farmers who can afford replanting, smaller apple trees diminish the need both for off-season pruners in cold weather and the often-cited danger of climbing tall ladders with heavy bags of apples. These examples show the range of considerations that are part of the calculation of labor costs.

Weather and crop quality affect earnings; harvest workers usually do not earn when weather prevents picking, and piece rate workers earn more when there is more to pick. This contributes to decision-making about staying on the job but also hiring levels: one grower proud of the farm’s reputation as a good employer and its long-time returning workers hired just 60% of the usual seasonal workforce in 2009 following bad weather.

These factors create uncertainty for employers and workers, against which H-2A workers have some protection because their contract requires a minimum amount of pay regardless of conditions (but they cannot leave to seek better jobs).

### **A. Labor Shortages**

*Where do you find [seasonal workers]?*

Yeah, isn't that the question this year? Nobody has the answer yet...a lot of people who applied for H-2A labor this year...got turned down because this country wants us to hire citizens of this country and they won't come here to do the work. This area is economically depressed, I see people sitting around here on doorsteps. [They] live in family that hasn't worked for 4 or 5 generations...[ they're] pretty content doing nothing.

...most Mexicans are pretty connected to each other. They come from large families, and cell phones are wonderful, they all know where each other are and all the job openings. That was before this latest purge that took place in the springtime. I think it's going to be a buyers' market and difficult this year. If they're not legal, if they don't have papers, why would they come to a county like mine? So we don't know what's going to happen...People who have worked in agriculture their whole life now are being told go back to Mexico and stay. None have been there with their hand out they've been working...doing labor that no one else wants to do.

Employer12

This employer hired H-2A workers years ago but does not now, is more informed than many growers about policy and is active in community-based efforts to serve farmworkers. Unusual in some respects, the employer communicates views about labor shortages that were common among growers interviewed (also echoing findings of a 2008 survey of farmers [Maloney, Smith, & Dudley 2009])<sup>2</sup> and highlights factors that come into play in the allocation of farm labor that are discussed in the rest of this chapter.

These include detentions and deportations of immigrant workers, H-2A problems, the bargaining power workers gain when their numbers are reduced, beliefs about “American” workers, networks that facilitate employer-worker matching, and the role of H-2A and immigration enforcement policy, which all shape the organization of

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<sup>2</sup> Employers surveyed reported an adequate supply, or even a surplus, of farmworkers but uncertainty about supply because of immigration enforcement. They also noted a lack of skilled workers and concerns about training the many available unemployed workers some might consider an option.

employment in combination with other forces. Section III will take up many of these topics in describing the interrelation of policy and other factors within labor market processes. First this section provides background by summarizing growers' perspective on labor shortages and describing farm workforces, jobs, and workers most likely to fill them.

Most interviews took place during the slack 2009 economy, when growers said worker shortages were less of a problem than before. According to this grower it had been more difficult to find workers in a stronger economy, and workers were more demanding:

...there were a couple of years when it was just like, wow, there are just not enough workers and the workers knew that and they put the pressure on us to pay more and you kept saying you need better, you know no bruising...[It] went in one ear and out the other because there was nobody else who was gonna do it.

Employer4

Construction, hotel jobs, or other work had attracted workers, allowing some to remain in Florida year-round rather than migrating. In contrast, that season more people were looking for farm work than in perhaps ten years. Two respondents had returned to agriculture from construction (likely only one due to the economy). A non-profit respondent reported an increase in the number of year-round residents who could not find the jobs in retail or other areas that typically tided them over at the close of the season.

As factors that drew away workers or discouraged new ones, respondents also cited seasonality, limited opportunities to advance, or for one vegetable grower, the lure of contractors who promised high earnings from apple piece rates before the vegetable

season ended (Employer11).<sup>3</sup> Employers, like non-profit staff and one worker, stressed that the jobs are wearing and workers' bodies give out:

the whole problem with agriculture is that a worker stays in this job maybe six to ten years, and then... physically, it's really difficult to do the work.

Employer3

On the other hand, several long-time workers interviewed had been in the occupation much longer than 10 years, and two government employees challenged the idea that farmworkers wish to leave the industry -- one noting that all they want is to work seven days a week. Similarly, a non-profit employee said the workers may come back to the industry because they know it, and it is easy to get a job.

Another often-mentioned group of explanations appeared to refer not to the Latino workforce, but to people who did farm work in the past or might be alternatives to H-2A workers. These concerned perceived unwillingness of potential workers to put in long hours doing labor-intensive, dirty work and the availability of government benefits.

...you cannot get American workers...put an ad in the paper for general farm work and see if you get calls from the guy next door who's unemployed. There's no incentive for him to work. Why would anybody want to work when they keep extending unemployment benefit and this benefit and that benefit? They could sit at home and probably get \$30, 35,000 in benefits with all the different things that they collect...rather than go to work on a farm... I bet the average [unemployment rate] is 10%. But you won't see white people working.

Employer11

Locally we just don't have the people with the skills to harvest, plant. They're not willing to work the hours...basically during the planting season we start at seven and work 'til eight, we plant every day. It probably goes on about a month. If it's not raining we're planting. If it rains and we start after lunch, we start after lunch...

Employer1

Most employers then did not see unemployed locals, and in a few cases, students or retired people, as a viable option because of their work ethic, general unsuitability, interest in only part-time work or a certain schedule, or because there were too few given

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<sup>3</sup> Piece rates are pay per unit of produce harvested, such as a bin of apples. Workers may earn them alone or in combination with hourly rates.

for instance that thousands of workers are needed for just eight weeks in apple season. Therefore, farmers speaking of shortage or surplus usually referred to Latino workers. Several said their employees had papers but they could not be sure all were work eligible and described the effect of immigration activities such as raids, audits, and Social Security no-match letters (see section III). One person said after hiring a core group, a farmer can easily find more, but “it’s sort of common knowledge that the majority of the Hispanics in the area are illegal” (Government5).

One person who feared losing workers on the farm nonetheless said the flow continues: “The bottom line really is that just as fast as the Mexicans are being deported, they’re coming back” (Employer3). However, enforcement is more generally seen as the most important reason for shortage and the main driver of labor problems.

My interviews with farmers showed that they value the skill of their harvest workers, who maintain high rates of productivity and quality. A vegetable grower noted the experience undocumented workers had acquired:

what’s happened [is] a lot of these illegals are experienced, they’re the herdsman they’re the plant manager, they’re the loading dock supervisor, they’re the foreman in the field they’re the spray operator and so when they get picked up and deported, you literally don’t find somebody to take their place. So that area there’s a shortage.

Employer2

The acquisition of skills and experience can refer to this on-the-job training or the long-term experience with farms growers expect Mexican workers to have, as illustrated by this remark from a growers’ association representative:

...if you apply to a farm and said...I’ve never worked on a farm before in my life and you have a Mexican worker who grew up on a farm who’s worked on farms his whole life...Who do you think that employer is going to prefer?...just because you haven’t had the opportunity to develop that skill set but it is a very definite skill set.

Interest2



One non-profit worker reported meeting a young person in the field, raised on a farm, who quit work the same day he started because he could not keep up with the production standard and said the other workers went too fast. Farmers, according to another respondent, often advertise for workers who can do many things:

...everything from tractor driving to pruning to picking...Farmers are looking to extend jobs but also [are] looking for a jack of all trades...If they want someone who can pick that's one thing but some require multiple skill sets, not something a first time worker would be eligible to do.

Government8

Another important feature of labor supply is the number of hours workers will supply. Farmworkers put in very long days and weeks and, because of FLSA exceptions for agriculture, do not earn overtime. In talking about pending state-level legislation that would provide overtime pay, many growers assume that workers prefer long days and hours (Gray undated).<sup>4</sup> Several workers I interviewed complained about not getting enough hours or changed jobs to get more hours of work, and two evaluated the quality of jobs this way. The subset who described their schedules reported working from eight to 13 hours a day and from five to seven days a week (often six). A contractor asked if any of his workers preferred days shorter than ten hours said:

These people want to make 500 dollars a week no matter how they do it. They're not scared to work for it. So whatever it takes to make 500 a week or more they'll do it. We look at things as time they look at things as money. I got dairy farmers that want them to work 40 hours, x dollars, they won't do it. They love dairy cause they can work 80 hours. You gotta convert that into what they'll do. That's what they'll do.

This apparent preference dovetails quite well for employers with production needs in concentrated harvest seasons in part because it is affordable under wage laws. Other examples in this section demonstrated how employers' concern with skill, productivity,

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<sup>4</sup> In this study with Kreyche, Gray found that the majority of workers could get a day off if they wanted and did prefer to work as many hours as they could. The author argued for guaranteed days off and overtime pay.

and experience enters into their evaluation of the state of labor supply and influences their expectations for policy that affects farm labor. These linkages emerge again in the next chapter. Now I turn to a discussion of the workforces in New York with information from qualitative interviews to provide additional background.

## **B. Workforces and Jobs**

Most farmers interviewed reported employing migrant or seasonal workers from inside the U.S. (henceforth “domestic” workers) either in addition to H-2A workers or as the entire workforce. That is, only one small farmer said harvest workers were all either year-round, family, or H-2A workers, so most employers interviewed faced the task of identifying a group of people within the U.S. who would fill farm jobs for only a few weeks or months of the year. This is important because it means that mid-size and large farmers using H-2A still must engage with the labor market in the U.S.

Most employers were sampled partially based on size, so most reported hiring from 40 to 80 seasonal workers (one had hired 40% less than usual due to weather). In this middle range (about half the sample), employers also reported hiring 10-20 full-time workers in addition to seasonal employees. Other than harvest tasks, employers referenced supervising, apple quality control, orchard management, pesticide spraying, work in markets or greenhouses, and tasks related to closing a season or preparing for one. They reported that often full-time supervisors were typically “Anglo” locals and settled Mexicans. All but one, including an apple grower who also employed Jamaican workers, reported a primarily Mexican or Mexican-American seasonal labor force.

Most workers, who were not interviewed on the same farms as employers, said they harvested crops including cucumbers, cabbage, and apples, worked on planting or other

tasks for mechanized crops (onions, potatoes, or corn), packed cabbage or apples, pruned apple trees, or drove tractors. Workers were primarily Mexican men.<sup>5</sup> In these jobs, most seasonal and migrant workers reported wages ranging from just under the federal minimum effective July 24, 2009<sup>6</sup> to around \$9 an hour, without overtime pay and not during rain that prevents work (though some employers provide other indoor work when weather is bad). Most frequently they reported earning close to minimum wage, but a few earned \$10 an hour or more and not all workers gave pay information. Also, piece work rates varied and could surpass these hourly rates. Most did not receive health insurance but appeared to be covered by workers' compensation.

Among 11 employers in the sample, six used H-2A at the time of interview. Both publicly available records of their certifications and information they provided indicated an even higher level of experience and familiarity with the program. Only two had never seriously considered the program, two not currently in it had hired H-2A workers in the past, and one had started and then stopped the application process (a remaining small vegetable farmer hired Puerto Rican workers). Growers were mostly sampled by H-2A labor force size,<sup>7</sup> so most H-2A employers in this study were certified to hire from 10 to 30 workers. In total, during the harvest season of their interviews, the growers hired 96 Mexican H-2A workers (employed by one apple and two vegetable growers) and 112 Jamaican workers (employed by apple farmers). The two Hudson Valley growers had used the program over 12 seasons, but all four Finger Lakes growers had used it fewer

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<sup>5</sup> I also interviewed two Guatemalan, two Jamaican, and four African American men.

<sup>6</sup> Several workers reported earning \$7.15 an hour, which was the minimum wage in 2009 prior to July 24.

<sup>7</sup> The exceptions were referrals and an employer selected on a purely geographic basis; one employed under 10 H-2A workers and another over 70.

than four. I also interviewed H-2A workers, including a Mexican worker who harvested apples, two Mexican groups harvesting vegetables, and four Jamaican apple workers.

## 1. “Domestic” Labor Force: Non-H-2A Workers

Discussions of labor shortages in Section A hinted at the historical shifts in the New York workforce, which over time develop into matters of local practice in terms of hiring certain groups of workers for certain jobs. In this section I describe perceptions of how these demographic changes and patterns have emerged over time. The conversations also show some exceptions to the general trend toward hiring Mexican workers that indicate hiring strategies still vary, though likely for a small percentage of the jobs available.

### a. Emergence of the Latino workforce

...when I first came to the area there were not that many Hispanics. It was just...like a booming town, gold rush, apples, and the farm owners liked the group, they had you know, a good work ethic, so more and more started coming up here ..for this particular season to work on the apples. [A]nd then 9/11 came and...heavy, heavy patrolling of the borders and deportations just started increasing so much that some started to dwindle.

Non-profit 7

As noted, when New York employers discuss labor shortages they often address the issue in terms of whether there is a shortage of Latino, and sometimes Mexican-American, workers. In New York, a non-H-2A workforce that predominantly comes from Mexico is a more recent phenomenon than in western states (Heppel & Amendola 1992, Hahamovitch 1997), and in this section I describe individual perceptions of this change.

Chapter 2 showed the growing share of Mexican-born workers in the labor force, which was much higher among those who reported harvesting crops.<sup>8</sup> The share of undocumented workers rose from 23% in 1989-1991 to 50% in 2006-09, and from 32%

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<sup>8</sup> Over 90% of workers doing “harvest” tasks were born in Mexico and nearly 80% did “post-harvest” tasks.

to 71% for harvest workers. Today there is still a higher share of workers in the NAWS category “African American/Black” in the Eastern zone than others. Employers and some non-profit and government employees stressed the near-disappearance of African American migrant workers based in the South, and no employers mentioned hiring African American workers. A long-time government worker said there might be a few Jamaican or Haitian workers left, and a non-profit employee said Jamaican or African American workers still in a Hudson Valley area were older men “just hanging on” in farm work. In fact, all six African American and Jamaican workers interviewed were long-time farmworkers who were from or had worked in Florida or southern states such as Georgia or South Carolina. One Jamaican respondent (like two of the Jamaican H-2A workers interviewed) was an H-2A sugar cane worker decades earlier in Florida. This employer described a practice in the 1970s of hiring African American workers from a nearby city:

...they would come out in station wagon cars or buses from the city, mostly it was black men adults, and they would work the day, and you would have to pay them every day or two. They were just casual day [workers]...but they would come every day and they would do the job. Those men they kept getting older and older and pretty soon there were no more men, because the younger ones didn't come along. And...you would probably assume they were on some social program in the city...

Employer1

Most respondents placed the shift away from African American crews from the 1970s onward, and several also noted the presence of Puerto Rican workers in the area in the 1950s and 60s doing apple packing, in canneries, or in farmworker camps. During an interim period as the traditional African American East Coast migrants diminished and before Mexican workers became the default labor group (a phenomenon occurring from the mid-1970s to early 1990s), there was variation in worker succession and hiring

strategies: some farmers hired Central American, Haitian,<sup>9</sup> and also Puerto Ricans workers. Some had hired students as a matter of local practice in the 1970s or 1980s. Other respondents mentioned hiring or knowing of workers from the Philippines, Bangladesh, Portugal, or Eastern Europe, and “hippies” and Pennsylvania coal miners at some point in the state.

Two worker advocates interviewed said historically such shifts occurred as workers made demands after acquiring some level of organization or empowerment, which led farmers to replace them. Two Finger Lakes farmers described shifts in the labor force as they expanded production, including one whose father had decades ago hired semi-retired coal miners from Pennsylvania but began hiring African American crews as they “got more into apples” and needed more labor. The employer said the crews became less available because of increased educational and employment opportunities, and the farm began hiring Latinos from California or Texas and occasionally Guatemalan or Honduran workers – the latter because the U.S. allowed Hondurans legal admission for a period following a hurricane. As apple production again expanded, the grower began constructing housing to attract new seasonal labor, today predominantly Mexican. Another grower said expanding production was the reason the family moved away from family labor and two “hired hands” to hire Mexican workers.

The trend of hiring Mexican workers sometimes evolved in connected communities based in part on information-sharing:

...In the mid-90s a lot of people started hiring Mexicans and word got around that this worked really well. If more people [were] needed [they] would call family members and recruiting was easy ...once you got your first few you didn’t need a recruiter anymore

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<sup>9</sup> Haitians were in the migrant stream from Florida in the 1980s following boat lifts (Heppel & Amendola 1992).

...not only that if the farmer got Jose trained and they really learn to do what the farmer wants, then Miguel and Jose do all the training for anyone else who comes.

Key Informant 1

Two nonprofit employees close to the Mexican community in the Finger Lakes area arrived in different towns when there were fewer Mexicans there, saying as the population grew there was a sense of community that had been lost.

### **b. Migration patterns**

Because of immigration enforcement people who used to go home once or twice a year have been here for six, eight, ten years .... The whole business of settled or not settled is very much upset by immigration enforcement.

Key Informant 1

There has been a sharp decline in worker migrations since the late 1990s, following an earlier increase, as indicated in Chapter 2. Workers who follow seasonal harvests from state to state (“follow the crops” or FTC workers) had dwindled to 5.8% of the NAWS survey by 2008-09. FTC workers were also a minority of interview participants.<sup>10</sup> More, especially longer-term workers, moved between one New York location and another state, often Florida, or lived year-round in the interview location. Across respondent groups, people reported that off-season, workers were in Georgia, South Carolina, Texas, Michigan, New Jersey, or Maine often working in strawberries (Florida), berries (Maine, New Jersey), watermelon and tomatoes (Georgia), or detassling corn (Michigan). Some non-profit employees reported a decline in migrant workers.

Still, a few workers described fluid migration and job change paths, reporting two or more patterns in a period of a few years in which they transitioned between FTC, shuttling, and settled status and switched to different states or migration itineraries. It may be more common for newcomers from Mexico to first migrate and later settle, but

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<sup>10</sup> The qualitative sample may have skewed toward more stable workers with longer histories in the area because they are more likely to be aware of the service organizations through which they were reached.

difficulty finding work or a new contact or opportunity can send workers on the move again. The imprecision of migrant vs. settled categories is also compounded by fears about immigration enforcement that mean workers often do not know how long they will stay in a town, state, or even in the country.

### **c. Women**

Women were about 25% of the NAWS sample in 1989-1993 and 21% in 2006-2009. Women have made up a higher share of “post-harvest” workers typically, but this share dropped in the same period from 65% to 33%. No women interviewed in qualitative research were harvesters; they reported working in packing, greenhouses, farm stands, and trimming cabbage. Nonprofit staff were more likely than growers or workers to report that women were in farm work, including harvesting. A few farmers reported employing women in markets and greenhouses, and sometimes pruning apple trees or (less commonly) picking apples in teams with men or working as checkers in the harvest. More reported employing women for packing, which two growers said suited them because it corresponds to children’s school schedule (lasting typically 9-10 months).

Packing jobs are better than harvesting jobs by some measures and not by others. Offering hourly pay, they do not give fast, skilled pickers the opportunity to earn a great deal of money during the harvest, but pay and work continue regardless of weather. Some workers expressed preference for field jobs and others for packing based on such factors or said packing was boring, and it was hard to keep up. Two Hudson Valley workers had been injured in packing. However, a grower said it was easier to find packing workers because the jobs were more attractive.

Respondents also described shifts away from hiring families (a trend that also coincides with the decline in migration) and gender hiring preferences. An advocate and



former farmworker said women had to apply in groups with men to be hired. A lack of space to accommodate families and, according to two respondents, the perceived tensions or difficulties resulting from having men and women in the same housing can contribute to a preference for hiring single men. One respondent said after shifting to young men farmers had returned to families because “all kinds of vices find their way to these young guys” (Non-Profit 11).

**d. Youths and retired workers**

...there were still local people that worked. They came to the fields, they could do the work. It would appear that parents in this society have gotten it into their head that if you are a teenager, a young adult, and haven't got a job you shouldn't rely on farm work.

Employer1

This employer had cut cabbage as a teen in the 60s and lamented the absence of a work ethic particularly among youths since about 1980. However, a year after making this comment, the employer's child and her friends had summer jobs on the farm and were working out well. Another employer described investing a great deal of time training a few young people who remained very unproductive and said that child labor law restrictions had deprived youths of needed experience. A third gave many reasons the farm did not hire teens:

...they don't have good judgment. And teenagers really need to be supervised. And there's just too many dangerous things [that can happen]. And...the child labor laws, they really began to enforce, and so when you compare a Mexican to a teenager, Mexicans are a lot more motivated. The other thing with teenagers is...They are involved in sports and all kinds of social activities, and there's no way you can really get a job done using teenagers...So part of it's cultural, part of it is the labor laws. You almost have to be like a coach, if you're going to work with teenagers.

Employer3

One employer believed local teens who occasionally work for the farm prefer to tell people they work in the market because the presence of migrants means students “do not want to....be stereotyped as farm labor” (Employer5). However, at least three

farmers mentioned an exception to the generalization that students and retired people no longer work in farming. One farmer who said retired people did not work in farming also replied when asked about one retiree that he was too valuable at other things to harvest.

## **2. H-2A Labor Force**

Chapter 2 showed that H-2A use skyrocketed from 2006 to 2009 in New York and the U.S. but dropped about 10% in FY2010. Figure 5.2 shows change in total contract days (the number of workers certified multiplied by the length of each worker's contract) by zip code.<sup>11</sup> Few farmers use H-2A in Orange County in the Hudson Valley, one of the research areas. The figure shows that use of H-2A increased in both the area where the U.S. Border Patrol is active and in the lower part of the state. However, the total number of contract days within 100 miles of the border increased 108% vs. 60% elsewhere.

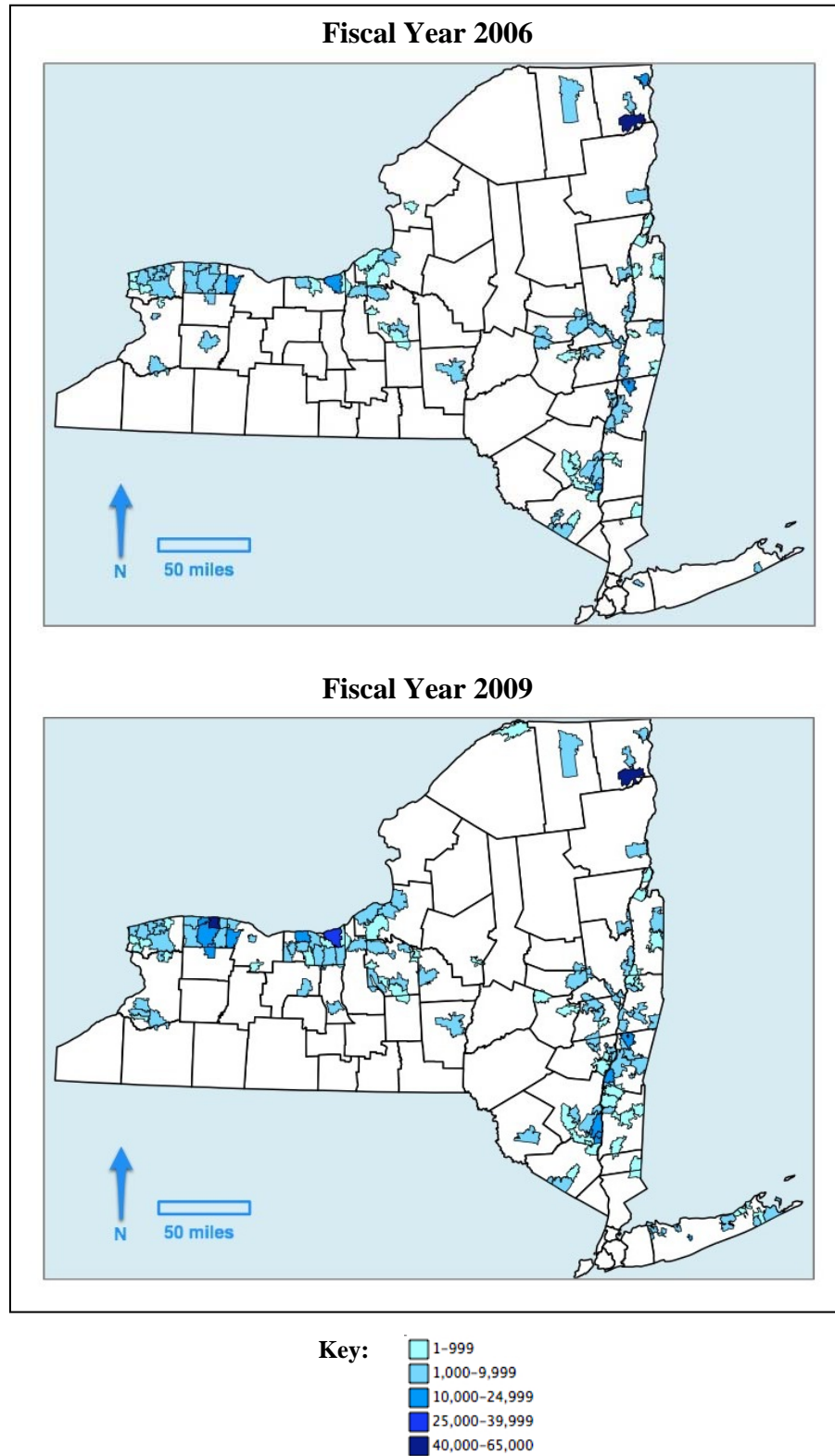
All reports of H-2A workers today, from employers, non-profit staff, and farmworkers, referenced Jamaican or Mexican workers.<sup>12</sup> No women H-2A workers were interviewed or reported by growers. Jamaican workers have long been a central part of apple production in the state (Griffith 2006, Levine 2009), but vegetable growers were typically less likely to use H-2A. In fact two employers said Jamaican workers are suited to apples, not vegetables, and Mexican workers are suited to vegetables due to physical characteristics and experience. Both tendencies appear to be changing as more vegetable farmers take up H-2A (including two respondents) and some apple growers (including one respondent) begin hiring Mexican workers.

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<sup>11</sup> The longest contract periods are often for workers in horticulture, a subsector that qualitative research did not address.

<sup>12</sup> One grower also reported workers from other countries over two decades ago.

**Figure 5.2: Change in H-2A Contract Days by Zip Code**  
(Number of workers certified multiplied by contract length. Source: DOL)



H-2A workers perform harvest tasks. Employers also give them increasing responsibility over time. There were two reports that Jamaican H-2A workers drove tractors, and one employer said a Jamaican worker was essentially the orchard manager and was needed earlier than the harvest for the pesticide spraying. In two cases farms hired both Jamaican and Mexican workers.<sup>13</sup> On one they worked on different tasks; another had begun to introduce Mexican workers into the apple harvest after hiring Jamaican workers for many years.

## **II. Conclusion**

The views and experiences of labor market actors in this chapter have captured some of the changes and challenges that shape farm labor markets in New York State. Respondent comments about hiring difficulties and change in workforces over time illustrate the many factors that contribute to the succession of different worker groups and the characteristics employers look for in workers. The ways respondents describe workforces, movement of workers, and jobs are sometimes contradictory, in part because of the small sample size, but they also help identify patterns that emerge as employers try out different strategies and workers also develop knowledge about jobs and regions. These phenomena of strategy and knowledge development are interwoven with policy, as the next chapter will show in delving more into hiring practices and the implementation of immigration enforcement, the H-2A program, and other policies.

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<sup>13</sup> DOL H-2A application records do not show the sending country for each employer's application, and Department of State records do not show the number of visas granted to Jamaicans.

## Chapter 6: Policy and Labor Market Processes

What happens is the employers can really go 1 of 3 ways of trying to attract a labor force. They can put out ads and try to hire people. The likelihood of that happening with any level of success is extremely slim to none because [it is] mainly laborious hard work and for the most part American citizens don't want to do it...[Then there are] 2 options, you can go through the H-2A program where you put in an order...with..the [Department of Labor]. They sign a contract, ...you have to make sure x number of days of work and providing with food and shelter....and...those individuals are tied to that farm...The risk to that farmer is that if the weather turns bad and they have a bad year, those folks still have to be paid...

[The second option is to] depend on what we would call the trues, the true migrants who move along the stream, and farmers would contact crew leaders ...they would then find these people and find a way to transport them...if they work they work and if weather turns bad they aren't obligated and ..folks go somewhere else... the risk is tomorrow there could be a raid and half your workforce is gone. [It's a] risk reward thing.

We've seen where at times, certain raids have caused, we've lost dozens of workers. Sometimes parents get picked up while kids are at school, then we've got to try to find out where the parents are and what we can do because kids are left unattended.

Non-Profit 11

This long-term resident of a rural community, who works on partially government-funded programs that assist migrant workers, discusses how employers in the community find employees. In doing so, the respondent touches on the interactions among labor supply, immigration policy, social policy, and the decisions and challenges of both workers and farmers I interviewed in New York. Through empirical examples gathered in qualitative interviews, this chapter takes a closer look at these linkages and processes as they relate to labor supply and the organization of farm workforces. I provide instances of the presence of different types of policy, then describe in more detail how the H-2A program is used by employers, why they choose to hire through H-2A or not, and tensions in the implementation of the program in New York State. This information suggests the many subtle and contradictory ways policy can shape both labor supply and demand.

## I. Policy Overview

It's really contradictory in that we are federally funded entity charged with [serving] any and all individuals [eligible for services]. By the same token there is a presence of law enforcement [either] local, state, Border Patrol, or ICE, whose job it is to essentially remove people. So we're kind of in a tug of war as you will in that some of the people that we're serving are the people that the other entity is trying to remove.

Non-Profit 11

In Chapter 3, I described the historical development of policy affecting farmworkers that has contributed to the current structure and segmentation of farm labor markets describing them in terms of labor standards and social programs, the state's role as intermediary, and immigration. The chapter indicated that all three types of policies may have a role in the labor supply issues growers call to the attention of policymakers and suggested that the functions of policy can go beyond their stated goals. Here I build on this information about formal policies by describing instances in which influence of policy in practice on decision-making of labor market actors, worker conditions, or workforce organization more broadly was apparent. My research showed that conflict or policy influences were evident in many of the same domains of policy conflict described in Chapter 4. I begin here with labor standards and social programs and immigration policy and discuss the state's presence as a labor market intermediary in section II.

### A. Labor Standards and Social Programs

Policy that protects and supports workers comprises very different federal and state standards and programs for farmworkers than others. In terms of standards, despite legislation that has tried to improve conditions for farmworkers since their exclusion from New Deal legislation, farmworkers still do not have the same collective bargaining rights as workers in other occupations, lack federal overtime pay protection, and are affected by a different standard for child labor. The Migrant and Seasonal Agricultural

Worker Protection Act (MSPA) requires minimum standards for housing, employment, and transportation, regulates contractors, designates employers as joint employers when they use contractors, and usually treats workers as employees rather than independent contractors. It also requires disclosure of working conditions when employers recruit actively. Some New York policies go farther. Expanded protections for farmworkers were legislated in 1998. Advocates have tried for years to enact legislation at the state level providing bargaining rights and overtime pay and have not succeeded. Farmers argue that this legislation, the Farmworker Fair Labor Practices Act, would force them out of business if passed or would be bad for workers who prefer long days, because employers would prevent them from working enough to receive overtime as required.

Growers were very aware of the standards and regulations they had to contend with and in at least one case recounted the complex rules (such as eligibility thresholds like farm or payroll size) under which different requirements applied to them. However, growers also need some help from associations or government staff keeping up with and following these rules. At least one grower, like an interest group representative I interviewed in Washington, stressed that employers would not be able to get away with breaking the rules. For example, one said most farmers pay minimum wage and not many take advantage of workers; those that do were “mostly older growers that don't know what the laws are and are out of touch with reality.” The respondent mentioned a farmer who said he paid \$7 a bin for workers to pick up juice apples:

[T]hat was really hard for me to believe, because it takes about an hour to pick up juice apples. So that's under the minimum wage. Now, probably the person was talking off the top of their head, but I can't believe anybody can get away with doing that.

Employer3

This employer felt sure such a violation would be discovered but said an undocumented worker might be afraid to report it. One employer did complain about the burden increasing minimum wages had created for farmers.

Several growers mentioned the government forms they must complete if they hire workers (one saying few others did so, and others contradicting that statement). This requirement, like some of the hiring rules under the MSPA, either depends on or seeks to impose a formality in hiring that may be consistent with network processes (as discussed in section II). A few workers who were asked indicated formalized working arrangements. Two individuals who worked closely with workers mentioned assisting workers who had not been paid, one for immigrants apprehended before a pay date and another who said at times workers did not understand they could not be paid the day they left town if it was before a pay period. Though two workers apparently unaware of the new minimum wage were paid just under minimum, those workers who were asked about violations or problems with employers generally did not report them.

Farmers asked in interviews when they encountered government representatives frequently mentioned housing inspectors, and several mentioned audits of records or workplace inspections. A small number of workers reported seeing someone in the field who asked about work conditions (sometimes without differentiating between government and non-profit service providers) but again more reported housing inspections.<sup>14</sup> H-2A housing is easily identifiable because it is listed on foreign certification applications, and according to a non-profit employee is more often inspected

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<sup>14</sup> Inspection of housing for five or more migrant employees is conducted by the New York State Department of Health (DOH) through an agreement with the federal government, but the DOH does not inspect year-round housing (Bucholz 2000). For H-2A workers, “processor housing,” and (if a violation is reported) housing for fewer than five workers, the U.S. DOL has jurisdiction over inspection prior to occupancy (Bucholz 2000 and Hamilton 2010).



than migrant housing, which they are required to register with some exceptions. In this person's view, growers may seek to avoid having housing inspected by claiming it is for year-round workers.<sup>15</sup>

Social programs include programs to assist migrant and seasonal farmworkers (MSFWs) in areas such as education and training, health, and child care. Here again, New York has historically been more generous. In terms of farmworker-specific programs, the area of housing is one in which standards, government support for workers, and government support for farmers overlap and may indirectly influence farm labor markets, because government regulates and inspects housing, provides loans for construction or renovation, and may support emergency housing.

For benefits that can support people in any occupation based on work status (unemployment insurance, worker's compensation) or on income level (EITC, Medicaid), access is restricted for immigrants. New York requires worker's compensation coverage for farms with a minimum annual payroll threshold of \$1,200, and farmworkers are eligible for unemployment after working legally for 20 weeks in a prior year (a period that is twice as long as the apple harvest). According to a key informant working at the national level and a non-profit staff person in New York, employers may be reluctant to file for worker's compensation or unemployment insurance (UI) on behalf of farmworkers. Two employers specifically asked about UI indicated their workers were above getting unemployment compensation: one reported offering to help workers file for it but said few did, perhaps considering it a handout; another said workers on the farm had too much pride to do so. However, a small number relied on unemployment to make

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<sup>15</sup> Hamilton (2010) included in a list of recommendations to improve farmworker housing in New York that inspectors treat year-round housing the same as seasonal, that county health departments visit all farms to identify unreported housing, and that housing be inspected after occupancy.

ends meet off-season.<sup>16</sup> Workers who commented on benefits often received, in the words of a permanent resident and long-time worker from Jamaica who had been year-round on the same farm for 12 years: “[o]nly workmen’s compensation if anything go wrong” (Worker 12). Two workers had received partial pay replacement following an injury, one in packing and one from a cut with a knife while harvesting cabbage. They could not say if it was the result of workers compensation, perhaps because they did not know the name of the program or source of the funds. The cabbage worker also mentioned receiving care for the injury from the employer.<sup>17</sup>

Seasonal workers may arrive in a new area and have to wait a while for a job, as reported by one government employee reluctant to refer returning workers who have arrived before their “regular” job is ready, believing they are likely to work just a few days before going to their usual employer. In such situations, support from community organizations is crucial for workers who may have no money or place to stay. Advocates or non-profit staff may mobilize considerable effort and resources to help those who arrive before seasonal work (and sometimes housing) are available or at the end of the season when work dwindles or even the underemployed in-season. This was illustrated by a respondent whose organization had helped workers find housing and another who reported that workers staying in an employer’s house but not working (reportedly having been promised work) at the end of the season had been taken food. Workers often are so cash-poor that they arrive at a new job with no money and may get loans from growers.

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<sup>16</sup> For example, one working as a supervisor reported that an employer he had known many years was aware of his reputation as a hard worker and supported him, giving him work in the winter, but when the employer did not he drew unemployment. Another long-time documented Mexican worker came each year to New York to work at the same farm and drew unemployment off-season in another state.

<sup>17</sup> This worker was taken to the doctor by his employer and remained in employer housing, afraid to leave because he needed the care and compensation.

In fact, one respondent described conflict between growers and New York State over regulations that prohibit this practice under certain circumstances.

Several respondents cited the importance of housing for attracting a workforce. Many workers said they received it free (although advocates and non-profit staff indicated that workers often must pay something toward housing). A respondent in the Hudson Valley area indicated that housing and the availability of partially government-supported child care<sup>18</sup> could be motivations for applying for a farm job; when the economy was bad in 2009 they "kind of ran out of beds." Yet farmers in that area are seeking to "get out of the housing business," preferring to pay workers more instead. One farmer had built housing as it became more difficult over the years to attract workers, and two reported having received government loans to construct or renovate farmworker housing.

This section shows that service-providing organizations, some of which administer government-funded social programs, pick up the pieces and patch holes in farmworkers' lives caused not just by the insecurity and job conditions associated with farm work but, increasingly, the impact of immigration enforcement. Government staff, growers, and other community workers too are drawn into responding particularly for migrant workers. These efforts the most part do not contribute directly to labor supply, but are a crucial part of maintaining farm labor markets because they sometimes help workers survive or stay in farm work and address the problems that agriculture work and policy – including immigration enforcement - create. In addition, they may contribute to worker allocation processes as part of community-level networks.

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<sup>18</sup> One worker reported that when his family settled, they lost eligibility for a local ABCD program for children of migrant farmworkers, for which they had to demonstrate both that they migrated and were low-income workers. A government employee familiar with the program indicated that settled workers are eligible on a space-available basis (unlike in most states), but migrant workers have priority (see Chapter 3).

## **B. Immigration Policy**

Immigration policy could affect farmworker supply in three ways: 1) granting legal status or allowing expanded entry could expand supply; 2) allowing, facilitating, or creating a framework for importing foreign contract workers (currently through the H-2A program but historically under different conditions) can increase supply; and 3) preventing entry or work by unauthorized immigrants can constrict supply. Regarding the first phenomenon, two longtime farmworkers interviewed for this study said they had gained legal status around the time the Immigration Reform and Control Act (IRCA) passed (1986), and one farmer said people were still in the workforce who obtained green cards then. Another important way legal status is granted or withheld could occur in the process of ascertaining work eligibility of immigrants, as discussed in Chapters 3 and 4 in relation to the issue of whether DOL or employers should perform this function. The third phenomenon, addressed in this section, was a much bigger topic of discussion in interviews.

In speaking about how immigration enforcement affects them, respondents mentioned a range of government activities they said disrupted supply or were cause for concern because of potential disruptions: I-9 audits to enforce rules on hiring, ICE actions, U.S. Border Patrol (USBP) activity, efforts to reduce unmatched Social Security numbers, and E-verify pilot programs that check authorization electronically, all factors cited by witnesses at hearings reviewed in Chapter 4. To this list, growers added the important role of state and local police and county sheriffs and their relationship with federal agencies implementing programs described above. If the state unevenly enforces immigration law, for example because of variation in activities of these local agencies,

the result could be in a sense to create supply where enforcement does not take place or where detained workers are released.

All employers worried about or had been directly affected by immigration enforcement actions. Two respondents pointed to 9/11 as the impetus for enhanced activity, but others said the increase was more recent (for example in the past five years). An important layer for Finger Lakes employers was the presence of the USBP, which has expanded authority<sup>19</sup> within 100 miles of the border with Canada where interviews occurred and the number of agents has increased since September 11, 2001 (see Chapter 3).<sup>20</sup> An apple farmer in the area who had lost seven workers in 2009 alluded to relations among agencies in comments describing "numerous cases:"

where Border Patrol will racially profile our Latino workers and once they're picked up, they're asked for proper identification. If they can't do that, then they're automatically shipped to Batavia which is a holding center here in NY. And then usually deported... normally, they're picked up as a traffic stop. And quite often by another police agency. And the other police agency, if they identify them as being -- in this area as being Spanish speaking, their next step is usually to call Border Patrol. Even though it may be a stop for a...missing headlight.

Grower6

Farmworkers and non-profit staff in the Finger Lakes said enforcement created fear and disrupted community life. They may assess its effects based on whether workers who usually return each year "show up." For a non-H-2A employer in the Finger Lakes area many "core people" hired from the same family for 25 years did not return in 2010. The owner had hired all new harvest workers ("local people" worked at the market).

All workers interviewed in the Finger Lakes area knew someone who had been detained or deported, or had themselves been nearly or actually detained. Moving around

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<sup>19</sup> USBP has authority near the border at different distances for different statutes but "case law has changed everything to where it's up to 100 miles" (Government1).

<sup>20</sup> USBP apprehensions in the U.S. declined steadily from 2005 to 2008 due to a sharp drop on the Southwest Border, but the pattern on the Northern Border has been less consistent: apprehensions rose sharply from 2004 to 2008 and then declined again more slowly.

from field to field for work or to run errands creates risk, as noted by a worker who said, “We go out to shop and do laundry with a lot of fear. In Florida you can walk around. Nothing will happen.” Workers often make arrangements among themselves for care of children in case a parent is detained.

One employer described how workers were trapped by immigration enforcement:

When I say there’s plenty of help right now [it’s] because you’ve got these people that have no place to go. They’re living in...the woods, under cover. I mean if I said today I needed 100 people, I’d have 150 people here tomorrow, because they don’t know where to go or what to do. I’m worried about this winter, where some of these people are gonna [go] that are just moving around.

Employer2

Immigration concerns have begun to crowd out one advocacy organization’s ability to focus on raising awareness among workers of their rights under labor standards because they are drawn into helping with immigration problems by workers, such as one group interviewed who emphasized that they had no complaints about their employer.

A key informant differentiated labor availability in the Hudson Valley and further upstate where there are "immigration issues" and described responses to immigrants that varied by local agency, as also was reported in the Finger Lakes region:

ICE was hitting hard...Down here they tend to leave us alone...if they get caught driving illegally the county sheriffs take them off to immigration... local police tend to leave it alone.

Reports of immigration activity by workers and non-profit staff in the Hudson Valley region were less common, and employers cited secondhand stories about events or experiences that had occurred in the 1990s. There was still unease. An onion worker expressed concern about getting caught and felt more secure remaining in worker housing throughout the winter despite a lack of work (he also planned to return to Mexico soon for good because he earned little more in New York). Hudson Valley growers voiced

concern. Two relayed reports of enforcement actions from another employer and a worker. One said police stopped workers more often every year, and the other said the labor market had become “very unstable” because of increased deportations and local enforcement activity from 2009 to early 2010.<sup>21</sup> Their concerns were summed up by a vegetable farmer:

We’re kind of lucky in one respect, we’ve had a group that’s been pretty reliable. It’s tough because, you know they’re afraid, and we’re afraid also. You invest virtually millions of dollars in your crop to plant your crop, and one day it could be all over because government could basically come in and take all your people. We hire people with all their paperwork and properly documented and all that but do we know for sure they’re legal, obviously not.

Employer11

Growers sometimes provide funds to have workers released temporarily. One worker reported paying \$10,000 for release after three days of being held. In addition, two farmers said apprehended workers sometimes had money and other items stolen (according to one, by law enforcement officials).

Some undocumented workers become temporarily legal in a sense after apprehension and before departure. Several people in the Finger Lakes area reported that workers released with monitoring bracelets return to work while awaiting a hearing (or planning “voluntary departure”). Three workers who showed their bracelets had been detained after immigration officials came to their employer-provided housing. They continued working and checked in with an ICE office. Two respondents indicated suspicion that workers who wore monitoring devices could put others in the same farm housing in danger because of a belief that this would draw immigration agents to the house, one reflection of the general unease of workers and growers about enforcement.

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<sup>21</sup> However, New York does not have a formal 287(g) agreement with ICE for local law enforcement collaboration on immigration control, and did not at the time of interviews participate in a Secure Communities program for a similar purpose.

These different outcomes for workers and growers leave people feeling immigration enforcement is an arbitrary and uneven process especially in the area where USBP is active, although a government employee involved in enforcement was dismissive of grower concerns, saying they exaggerate isolated incidents. It can have varying effects on supply and on the lives of workers and their communities. For example, Finger Lakes respondents said the behavior of different agencies can vary from town to town, or county to county. Respondents have different anecdotes and theories about the logic of enforcement (as with an association representative who thought enforcement concentrated on different counties year to year). They are not always able to clearly identify the agency responsible for an action. Revenue-generating arrangements of local governments to house detained immigrants for the federal government add to a feeling of concern.

Some employers try to push back on immigration enforcement activities, as in the case of a Finger Lakes employer who, with other growers, had spoken to local law enforcement about the problem, but similar efforts targeting USBP were unsuccessful. One area in which there has apparently been change concerns policy toward parents; several reported that agents had begun to release mothers of children. Some social service agencies try to help undocumented workers by bearing witness in a way – staying aware of immigration enforcement activities – and helping families deal with the fallout. Advocates in the Finger Lakes region have mounted responses to enforcement activity near the border; one has met with community members at a local level to try and address what is perceived as unfair profiling.<sup>22</sup>

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<sup>22</sup> <http://detentiontaskforce.org/>. Retrieved October 3, 2009.



## II. Worker Allocation outside the H-2A Program

...in the last 20 years it's just...the point where you don't put any effort into looking anywhere else. You have these 3 or 4 seasonal people that let it be known you're looking and then they appear.

Employer1

This employer alludes to farmworker networks, the mechanism for labor allocation of non-H-2A workers mentioned most commonly in academic literature, Congressional hearings, and interviews I conducted, which is consistent with survey findings.<sup>23</sup> In qualitative interviews more layers emerged in this picture that sometimes pointed to the state both as intermediary and as related to other intermediaries such as contractors. The trend noted in Chapter 3 and 4 toward a diminished state role in allocation over time was also evident in New York. At the same time, because of H-2A the state has an active role in recruitment as a prerequisite to certification. In addition, some growers would like government to take responsibility for ascertaining legal status. I discuss respondents' comments about finding work and workers in this section.

### A. Worker and Employer Networks

Several employers find labor with the help of people already working on the farm, sometimes a key person or family member on staff. Employers emphasized returning employees who come back of their own volition or turn up and ask for work as important to building a workforce each season. This employer described a similar phenomenon to explain the presence of a group living in one of the farm's camps:

...the one guy worked for us like 4-5 years ago, and he happened to be picking blueberries in Maine...He called and said do you need any help, and at the time I knew

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<sup>23</sup> In response to the question "How did you get/find out about this job the first time?" 65% of all workers and 73% of harvest workers in the NAWS survey, reported on in Chapter 2, said a relative, friend, or workmate had referred them.

I'm not gonna get H-2A workers so I said come on down, and before you know it they call somebody to say, "Hey this guy needs 10 guys..."

Employer4

Workers also mentioned networks, including friends and family, as a key mechanism for finding jobs. Familial ties are helpful to employers in terms of self-organization and management; their ability to easily form teams (mentioned by an apple farmer), the obligations among related co-workers (as with one apple packer who liked his supervisor but said his uncle was also someone important at his workplace), or having family supervise workers can make things go more smoothly for employers.

Employer networks also come into play. An employer who is shorthanded may "borrow" workers (Employer11), and "...farmers know to talk to another farmer who knows somebody that will get them help" finding workers (Government5).

## **B. Contractors**

Congress regulated contractors, who have long been associated with poor standards, in an attempt to improve worker conditions in the 1960s. Some researchers argue IRCA encouraged hiring through contractors to avoid responsibility for the requirement to verify worker eligibility. Chapter 2 showed a sharp decline since 2000 in worker reports of being employed by a farm labor contractor to reach 14% in 2008-09. Some employers and workers reported finding labor or jobs through them, but others were evasive about the topic perhaps because many observers view contractors negatively. I discuss how contractors are incorporated into allocation processes and employment organization here.

Contractor use may be a matter of local practice related to the presence of specific businesses. Research participants gave varied reports about whether use of contractors and crew leaders was on the rise. A respondent who conducts farmworker outreach said there were fewer crew leaders and attributed this to H-2A, but an employee of an

advocacy organization noted a rise in the presence of super crew leaders with multiple crews as opposed to one for a single farm, which was more common in the past. A super contractor may allow a farm to change crews quickly.

Contractors perform a range of services. One farmer was not “an expert on documents,” so a contractor screened workers and ensured compliance with regulations and the proper paperwork while a different crew leader conducted recruitment (Employer5). Another farm no longer hired a contractor who was stopped transporting undocumented workers, which the respondent found extremely irresponsible.

Contractors may be related to or otherwise connected to employees they recruit. For example, the “crew leader” for one farmer was a full-time Mexican worker on staff who received a bonus for recruitment and managed workers:

We have a crew leader here that -- he goes to certain areas and he kind of picks the good workers.... Well, he's got family in like 3 states, and...when he visits his family, he kind of tells the family if there's anybody that wants to work these months, give him a call.

Employer5

Several employers said they did not like using contractors. One H-2A employer who also hired non-H-2A workers through networks had not used a contractor in 15 years because there were problems and “the contractor would exploit them. We just didn’t like the way it worked” (Employer1). Another had used a large contractor outfit to hire when the labor market was tighter but generally did not like hiring crew leaders. A third said contractors were dishonest.

Workers reported finding jobs through contractors, again with ambiguity as when a worker said he worked for the farmer before his employing contractor knocked on the trailer door. Four workers had come to New York for the first time after hearing of a

contractor they hoped would find them some work. After a wait for him to find jobs, they had all begun working and were staying in a house he obtained in a residential area.

### **C. Department of Labor**

Two government employees I interviewed indicated a more active allocation role for New York some 10-20 years ago. One mentioned a DOL-run urban day hiring hall (used more for non-farm work by its closing in the early 1990s). Another said DOL employees traveled 15-20 years ago to “supply states” such as Florida to procure farm labor; armed with grower orders, they talked to crew leaders, unions, and rural organizations to find workers and helped with paperwork.

Many respondents said DOL’s role in placement now is minimal, though in the Hudson Valley there were more reports of workers going to DOL to find jobs. A DOL employee said there were fewer farmers in the area now, but also the “fantastic underground communication system” of area Latino workers meant that once farmers had a few workers their employees would find a cousin or nephew, removing DOL as “middle man.” Furthermore, “good employers...are able to attract all the labor they need” and do not need DOL (Government5).

Workers were also unlikely to mention DOL or, if asked, to say they went there to find jobs. A government employee said fewer migrant workers were coming to the area, and the arrival of large groups at DOL searching for work at the beginning of the season had slowed five or six years earlier to groups of three or four compared to 20 or 25 in the mid-1980s. Appearing to attribute this to H-2A, this respondent also noted that the police were checking for papers more. One staff person reported dealing with hundreds of farmworkers a season, some from a nearby city and some who migrate.

In one view, workers rarely go to DOL “not because they are afraid. They feel that it’s a waste of time” and people see the N.Y. DOL as “pro-employer and not pro-worker” (Government9). For two respondents this was due partly to the orientation of some staff toward growers and partly to the H-2A program in which DOL has a contradictory role, as described subsequently.

A few employers said they found non-H-2A workers through DOL. For example, one hires through “the local job service” when the farm is “short” (Employer11). For this employer answering the question “How do you find people?” the DOL role was a bit unclear:

Through the Department of Labor. Like in the pack house...All I have to do is say to my pack house manager we need two people...It’s a little network and the next day I have two more people.

Employer10

One employer stressed that the farm hires all employees through the Department (such agreements may be formal). A couple of respondents said farmers may interact with DOL in an attempt to demonstrate that their workers are not unauthorized: “I know some growers who will only hire through New York State, because then they can always say, well, the state sent me these people” (Employer3). The Bush Administration required that DOL State Workforce Agencies (SWAs) complete I-9 forms for workers they refer under a 2008 rule since overturned by the Obama Administration. Now the practice is voluntary, and one government employee noted that “NY won’t touch it” but other states perform this function. A state official stressed that government is not allowed to check farmworker documents, only to ask if they have the proper ones.

## **D. Connections among Intermediaries**

There are overlapping connections between contractors, worker and employer networks, and other intermediaries in the allocation process including the state. For example, a friend or relative may refer a worker to an intermediary such as a contractor or agency. Non-profit organizations that serve workers and may receive government funding may have a formal or informal role in placing workers. Two government employees referred to these intermediaries as advocacy groups, one describing their efforts as follows:

There are some labor brokers who know the farms who are advocates for the workers who go from farm to farm to talk to them, advocacy agencies. They help the workers in any way they can. If it requires moving them from farm to farm they do that.

Government5

In Wayne County, two workers said they could go to a store to get hired, one mentioning that contractors were there. Employers also report using different methods to find workers. An employer who had struggled to find workers one year when the economy was better had checked, himself and through others, with more than one “crew boss,” and also with some grower friends shifted workers from farm to farm as work picked up or slowed down on different farms. This employer had to rebuild the farm workforce after an I-9 audit identified a large number of undocumented employees and did so:

...with the help of the New York State Department of Labor, it was through a crew leader from the state of Florida that helped me out for quite a few years. You know they would bring me workers, find me workers, and you paid a fee for that.

Employer11

The employer here mentions both the DOL and a “crew leader” or contractor, perhaps implying that the two are related or that both helped in the process of rebuilding the workforce. According to a worker advocate outside New York, government has in the

past worked directly with crew leaders in other states to help supply domestic workers. The state also regulates contractors through MSPA, registering them each year.

These comments demonstrate that hiring strategies, like the makeup of the workforce, are a bit more complex than the simple explanation of networks might indicate. Networks appear to have evolved as a useful strategy along with the increasing presence of the Mexican workforce in a period when DOL's placement of workers has diminished, but in another sense the different repertoires of matching strategies for labor market and policy actors appear to evolve and adapt in tandem to new realities.

### **III. The H-2A Program in New York**

As shown in previous chapters, H-2A use grew dramatically from FY2006 to 2009 and at a faster pace 100 miles from the North Border where the USBP is active, then dropped in 2010. In this section I present information about reasons for this change, how employers incorporate workers into production, H-2A's implementation, and implications for the state's role in farm labor supply.

#### **A. Employer Decisions about the H-2A Program**

Employers explaining why they did or did not use H-2A generally cited program cost as a negative and immigration enforcement as an impetus. Less frequently mentioned were the inability of undocumented Mexican workers to get visas to come in legally, the quality of local workers and the likelihood of lawsuits against employers. Four of five in the non-H-2A sample had either tried or considered applying for the program.

Five of the eight employers who currently or previously used the H-2A program cited pressure on the undocumented workforce as the most important reason. Several mentioned recent immigration enforcement activities in the Finger Lakes area, including

a first-year H-2A employer who said all large vegetable growers in the region participated in the program; in fact this farm was one of the last to join in 2009:

We've had a lot of immigration raids and had our help deported so we can no longer take the risk that the walk-in help will be adequate for our needs. Last year they took 12 people and they stopped our....harvest for about a week and we never got done...that was about a \$250,000 dollar loss...I feel we have no choice to get part of our workforce secured.

Employer1

The workers were picked up at two different employer-provided houses and never returned. Their employer would have liked to get "a 30 day permit for them just to finish their job and then, well it would've benefited both of us then they'd have had money to go home with" (Employer1). The farmer said usually once or twice a year, and more in the last ten years, workers were detained during the harvest.

Incidents in the mid-1990s led two Hudson Valley growers to use H-2A, one a raid and another an I-9 audit showing that most of the farm's workers were undocumented. A government employee said people around Syracuse and Rochester had turned to H-2A in the past two to three years because of immigration pressure; they had "no choice [be]cause their crew leaders just weren't coming or they got nailed" (Government4). For others there were no specific events. Racial profiling and the nearby ICE detention center were one farmer's explanation. An apple grower hired Jamaican H-2A workers "mainly because we can't afford to lose workers in the middle of harvest."

One of four farmers in the Finger Lakes area who had recently joined the H-2A program cited extreme difficulty finding workers during the strong economy of a few years ago as the reason area farmers first used the program. The employer said the work ethic had suffered in the tight economy because there was not enough competition for the work. More generally, the farmer thought because of the USBP and the pull of non-



agricultural jobs, the usual trend of “plenty of people” seeking work had ended five or six years ago. Although labor was readily available in the season when we spoke, the farmer would probably hire H-2A workers again in future seasons:

The nice thing with the H-2A workers, is you know when they come. And when they show up the bus comes, [and] they go to your housing, and you know that they’re gonna be there. Well...the contract ends on the 9<sup>th</sup> so I have to get [the] season done by then, but you know they’re here until the time the time their contract ends. The problem you have with Mexican workers in the past, you get a day like today, 3 or 4 days in a row when the weather’s bad, they just say, you know what, been here a month and a half, month, I’m going back to Florida.

Employer4

One other grower indicated that the decision about whether to go through H-2A may be made based on who is available. The farm had submitted an application but withdrew it before it was fully processed after an employee in charge of recruiting began to receive enough calls from prospective workers.

Cost was the main reason employers gave for not using H-2A, consistent with a previous survey of New York farmers (Maloney et al. 2009). Extension and farm experts in one area said the low profit margin on some vegetable crops made it unaffordable.<sup>24</sup> A vegetable farmer in a different region said cost prevented farmers from using the program, contrasting the higher profit margin in apples where H-2A use is more common and in particular citing the declining price of tomatoes over the past 15 years.<sup>25</sup> This farmer felt pushed to start with H-2A but resisted. Employers also reported that the threat of lawsuits was a deterrent. A recent adopter claimed to have avoided H-2A until several

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<sup>24</sup> The Adverse Effect Wage Rate or AEWR for New York was \$9.70 in FY2008 and \$10.16 in 2010; the average wage was \$9.64 in FY2008. Under Bush Administration regulations were temporarily in effect from January 19, 2009 until they were replaced with regulations effective in 2010, the DOL calculated the AEWR with a different method intended to reflect a “prevailing wage rate.” DOL showed in the final 2010 regulations that for H-2A applications submitted in FY2008 and 2009, the average wage for certified employer applications dropped from \$9.72 prior to January 19<sup>th</sup> to \$9.13 after that date (Table 1, 6897). FY2010 wage from [http://www.foreignlaborcert.doleta.gov/pdf/ETA\\_OFLC\\_StateMap\\_AEWR\\_2010.pdf](http://www.foreignlaborcert.doleta.gov/pdf/ETA_OFLC_StateMap_AEWR_2010.pdf)

<sup>25</sup> Despite lower prices, the farmer had expanded greenhouse tomato production. Another farmer in Ulster County said about 10 years ago the profit margins began declining.

seasons ago because it is a lawsuit “magnet.” Another said it had been impossible to pull back from a major multi-grower lawsuit in the 1980s to settle, which the farmer said cost little in back pay but a great deal in legal fees.

Two government employees portrayed the decision as a choice between H-2A and going through a farm labor contractor. One encouraged farmers to use H-2A and assumes those who do not will employ contractors, which could create problems if contractors are involved in trafficking or otherwise violating the law. A contractor of non-H-2A labor expressed the belief that government pressures employers to use the program.

### **B. Assembling and Incorporating H-2A Workforces**

One grower who had tried H-2A in the 1990s for one year reported having no choice of workers under the program, but in practice it does provide choices that may not appear in records. Looking more closely at how this occurs, and also at examples of farmers who started and stopped using H-2A, changed their minds about applying, or have adjusted the size of the H-2A workforce they employ provides insight into interactions among factors shaping the state’s role in providing labor supply.

The farmer cited who had stopped H-2A after paying a steep legal bill in a lawsuit said the state sets the pay rates but steps back when a lawsuit takes off. Another farmer’s single experience with H-2A in the 1990s was a “debacle.” The urban Mexican workers:

...went to work for a couple of days and said I’m not going to do that type of work. The cooperative managed to get them returned and they supplied us with Jamaican workers for the remainder of that season, and actually they were O.K., but it was like putting a Band-Aid on a gaping wound.

Employer11

These two growers spoke wistfully of what they viewed as model guestworker programs. One referred to the bracero program for Mexican contract workers from the 1940s to the 1960s (see Chapter 3), and one to the Canadian guestworker program:

Theirs is a much simpler kind of thing... They don't seem to have a problem, they're a whole country away from Mexico and they have all the Spanish workers they can possibly need... They're just like some of these Middle Eastern countries. They want to build a pipeline or whatever, they bring in people to do that, but you can't do that here.

Employer11

Employers also adjust their use of H-2A from year to year. The average number of days for each contract in New York increased over 10% in FY2007 and over 5% in the two subsequent years. A long-time program user at a Hudson Valley farm said they were hiring fewer migrant workers and more H-2A workers because the latter were more mature, worker screening in Jamaica ensured no troublemakers, and training migrants who might not return in successive seasons was a waste of time and money. They had also requested an earlier visa that year for a particularly valuable employee. Another grower made plans too late to apply for a second group of Jamaican H-2A workers and hired more Mexican non-H-2A workers, more of whom had become available locally. The grower planned to lower the number of H-2A workers in the future: "probably, as long as the economy is staying where it is...it looks like there's still going to be enough Mexican people coming up" (Employer4).

Just one grower who began using H-2A after having workers deported said the lower wage (a temporary phenomenon under 2008 regulations) allowed the farm to take up the program in response to immigration pressures. A government employee indicated that more farmers applied when 2008 lowered wages, and smaller farmers dropped out the next year when new regulations reintroduced a higher AEWR. One informant believes higher wages may push growers out in the future.

Intermediaries and employer networks are important for recruitment and organization of H-2A labor. Many farmers go through a contractor or association of farmers based in or out of New York to apply, recruit workers, or help Mexican workers obtain visas, and

may work with more than one entity in this process. Farmers apparently share workers. One identified workers the first year through other farmers and traveled to another state to bring back workers. Two workers had come by choice several times to New York for the fall harvest from the state of their H-2A contract. Their wages were lower than in prior years (again likely due to 2008 regulations). With this and the expense of New York, they thought it was not worth returning.

Worker networks are part of H-2A too, as indicated by Jamaican respondents who may suggest names of workers their employer can request for the following year once the workers have already “traveled” to the U.S. on an H-2A visa and received a number. An employer said Jamaican workers can be put on a predesignated list. One group of Mexican H-2A workers had obtained their jobs through a contact in their home town.<sup>26</sup>

Employers generally choose the sending country for H-2A, and some commented on their preferences for one group or another (see Chapter 5). Another factor in the choice is the difference between Jamaica’s program and Mexico’s. The Jamaican Central Labor Organization is key to managing the H-2A process for Jamaican workers, which has a more extensive system of rules and more seamless application process. Respondents said the H-2A process is complicated at best or corrupt at worst for the Mexican program, primarily because it is difficult to get a visa and many are rejected who have been or are suspected of being in the U.S. illegally, which precludes hiring current undocumented workers. One employer reported that longtime workers on the farm went home and tried to return through H-2A but were refused a visa, and another resisted H-2A because of its cost but also because using it meant denying current workers a job. Previously, one said,

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<sup>26</sup> There were some conflicting reports about whether employers could specify workers ahead of time. One employer reported that the first year one could not request them; another indicated that one could not request Jamaicans but the organization administering the program often sent back the same workers.

people could obtain an H-2A visa in Mexico even if they had been in the country illegally before, in violation of program rules. Due to changes in the way agents deal with immigrants, now:

[It's] to the point that anybody with experience can't come back because they've been caught-- if they were caught in recent years, they've been fingerprinted and photographed. And, once you're caught, usually you're banned from coming back to the United States for like 10, 15, 20 years. So that eliminates all your experienced people.

Employer3

Employers indicate on H-2A job orders how much experience they require. A government employee noted that experience may be produced in New York, through long association with the program: “H-2A comes mostly from Jamaica, and those are the best apple pickers and I wonder where or when they have seen an apple” (Government9). One key informant said farmers may stop using H-2A if they cannot get the same workers year after year.

This and other quotes in this section illustrate that H-2A is neither solely a response to a shortage of willing people nor an institutionalized, long-term strategy used to the exclusion of all others. It is something employers draw on and adapt to ensure a stable labor force (that cannot go to another employer or return home without assuming travel expenses the employer should cover) and one of high quality that fits into the production needs of the employer. It may not be surprising that this is how employers expect the program to work, but the result of providing physically able workers chosen by place of birth and work experience does surpass the minimal program goals DOL describes, as additional examples demonstrate in the next section.

### **C. Rules and Implementation of the H-2A Program**

The twin goals of the H-2A program are to provide U.S. workers a chance to apply to farm jobs and to meet labor needs of employers. The ability of the state to accomplish its

goals is complicated by variation in policy implementation and actions and attitudes of employers and other actors. This section describes these dynamics.

Government actors responsible for the H-2A program described its time-consuming and paperwork-heavy application process and the late arrival at times of workers. Several respondents echoed this, and employers also said the government denies applications. Other H-2A features farmers cited most, aside from cost, are those that may require them to hire other workers, e.g., the certification process and related 50% rule. Growers see the government as frustrating through this their objectives in putting together a workforce. However, as this section will show, in some ways the program and state actors instead help not only respond to employer demand at the minimum level of providing workers but also to respond to specific employer preferences for worker characteristics, with the important caveat that there is great variation in the actions of state actors.

The "certification" process for approving H-2A applications requires that DOL first determine that no other workers are available by making job orders available to the public according to specific rules. A Finger Lakes employer said in 2009 that the Labor Department had started rejecting orders more frequently two years ago:

The government can really screw us up. Every year we're really concerned about whether we'll be able to...have the US Department of Labor approve our request for a work order. Because... the state...contact the office where we send our application in, and they'll recommend to give it to us or not give it to us...a lot of growers have work orders rejected...almost always, if they appeal it, they get the work order. But...the Labor Department in Albany...is really making it as difficult as they possibly can, because they don't want H2-A.

Employer3

According to U.S. DOL records the rate of application denials rose slightly from FY2006 to 2010, but the percentage is still quite low.<sup>27</sup> The data may not

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<sup>27</sup> In FY2010, records showed ten applications denied but showed approved applications as well for all but four of these growers. That year 307 applications were certified and 26 withdrawn.

show all the back-and-forth that frustrates growers. For example, one employer whose information in official records showed an application certified for the correct number of people reported that a longtime worker's visa was refused – in fact problems at the consulate in Mexico are common.

Other employers reported late workers and denials. One said a group of workers had arrived two weeks late in 2008, after which the employer cancelled the second group because it was expected to be two months late. Both application denials and obstacles in to the U.S. consulate in Mexico or the sending country (such as the delayed arrival of Jamaican workers in 2010 due to a dispute over that government's practice of withholding funds from checks)<sup>28</sup> may drive general hostility to H-2A that at times is misdirected in terms of agency responsibility.

A state employee noted that if something is incorrect on the application the process to revise and reconsider it causes delay and that the lengthy process in general means sometimes workers do not arrive on time. Farmers do not always understand what to say in an application under the rules (one reason many go through a contractor or grower cooperative, or rely on help from a DOL staff person, to apply). One such rule about job orders is the amount of experience an employer can require. A government employee reported in 2010 that at one time it was six months; then it became three, and now New York allows just one month. Job orders also include requirements for productivity levels, such as how

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<sup>28</sup> A witness testifying for growers at a 2010 hearing described this situation: "Just last month, apple growers in the Northeast had a near disaster when decisions by the State Department and the U.S. citizenship and immigration services put applications of hundreds of Jamaican workers in jeopardy just days before the grower needed them to start harvest. Members of Congress intervened, and the workers arrived at the last moment. A few more days of inaction could have meant losses estimated at \$95 million for the affected growers." (House Judiciary Subcommittee on Immigration 2010, 17)

many bins of apples a worker must pick in a specific time period, which officials processing certification may also review.

The 50% rule requires employers to consider domestic applicants up to halfway through the contract period. A respondent who works with farmers described it as a big complaint about DOL, who “will refer workers...who will be illegal or not know what the job is and quit” (Interest2). For employers, non-profit staff, and government staff, the process of advertising job orders is one of great frustration as reflected in this comment:

...there is a lack of understanding on the part of the government on the true needs of the employers...Because of the turmoil and extra burden it places on the employer, when they're willing to pay upwards of \$1000 a worker to get a workforce they want [that shows] up every day, it seems like they should kind of leave the employer alone and let them use what works...I'll almost call it harassment.

Several respondents were eager to speak about conflict over the 50% rule. One said about DOL's general stance toward H-2A:

You have a lot of people trying to come into agriculture who really aren't qualified, and you'll get stuck paying them even though they're horrible workers. And with the attitude of Labor Department that anybody can do this job, basically I think farmers are afraid they're going to end up hiring people who aren't qualified, and pay them, and their costs are really going to skyrocket, but their returns....The profit margins are so slim, I think a lot of people will just say, it's time to get out of this business.

Employer3

Another respondent said a lawsuit had been filed to try “to force DOL to make farmers hire under” the 50% rule, but said that Albany did not want to do so. A third claimed eight farms in an area encompassing several counties had been sent referrals under the rule in 2010 and of these, one employer who hired 12 Puerto Rican workers was complaining daily about problems such as slowdowns and two workers who did not turn up because their backs hurt. In this person's words, the workers were “not physically able to meet the standards.”



Worker advocates, in contrast, argue that H-2A displaces domestic workers:

...some workers who are local...have been passed over for H-2A jobs or someone in the family is passed over or getting less hours. It definitely happens to a degree. In many cases they're immigrant workers that became documented through the legalization efforts whether 1986 or whatever, people with green cards or even citizens who made their living doing farmwork and [are] finding that in a sense they're priced out or passed over the farm work that exists around them. They're not finding themselves in that work.

Interest7

This individual said growers post job orders in the H-2A certification process but may take them down when people within the U.S. call to inquire about the jobs.<sup>29</sup> Similarly, a government employee claimed employers find ways to “go around” hiring people who apply to the announced jobs, sometimes by changing or cancelling the job order, which the respondent acknowledged was the “right” of the employer to do, “but this was routine, changing and cancelling the order” (Government9). This person said people may travel from supply states for the jobs and when they arrive find the job is not there, but that is difficult to prove referred to an investigation that found corruption in the NY DOL. Two respondents indicated that some DOL staff try to help employers seeking H-2A workers ensure that they do not have to hire alternate workers. Workers had told one advocate they no longer bothered to apply for jobs at a farm that hired H-2A, and another had begun receiving calls from workers saying a certain farm wasn't hiring any more after it began using H-2A. An employer agreed H-2A had displaced some workers “which to some degree has been good for us. It means that there's more people for us to use as a migratory group, because the H-2A people are obviously coming directly from the country” (Employer6).

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<sup>29</sup> Job orders are published in supply states, and workers in those states are to have preference over H-2A workers for the jobs.

Employers and other respondents gave several secondhand reports of attempts by New York's Department of Labor to place Puerto Rican workers in jobs advertised in the certification process, apparently after the Puerto Rican government accused New York of discrimination against workers. There has been in the words of some "a real push" to hire Puerto Ricans, who are within the mandate of the H-2A program to find American workers. Job orders are sent to Puerto Rico, where the Labor Department may refer names that New York's DOL may forward to prospective H-2A employers (Government7). Growers are reluctant to hire them. For one respondent, this shows that employers prefer H-2A workers because they are exploitable:

I do not believe that they discriminate because they are Puerto Ricans or they are black, but they discriminate because being American citizens Puerto Ricans [don't] take any abuse. They complain immediately, or they leave. Other workers that might be undocumented they take whatever and keep quiet. If they are H-2A they cannot go to another employer, they have to remain with the employer that has the contract with the federal government.

Government9

Growers report that Puerto Rican workers are ill-informed about the work, unprepared to do it, and may leave soon after arriving. There is also a cost issue: hiring them incurs both H-2A costs – especially travel to the U.S. – and costs associated with hiring American workers (one employer pointed out that they do not pay FICA tax under H-2A but must for Puerto Rican workers). Several people expressed concern about paying for travel of Puerto Rican workers who would leave. One employer said workers may believe they are coming to canneries as family members did in the past. As a result growers have begun to request phone interviews with interpretation before hiring and say Puerto Rican workers turn down the job once they learn it is farm work.<sup>30</sup>

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<sup>30</sup> Employer resistance to hiring Puerto Ricans instead of H-2A workers is not a new phenomenon: A Washington Post article in 1978 reported an agreement between the Carter Administration's Labor Department, which sought to require employers in Virginia, West Virginia, Maryland, and New York to

This section demonstrates that the process of H-2A certification is contentious. Growers and others who work with them, including some state actors, perceived an increase in resistance from some sites of government to allowing them to use H-2A. Growers expect the program to produce skilled workers, as noted, which the job order rules or program conventions may help to do. Another way to minimize hiring risk and guarantee skill is to bring back the same workers each year, and an expert who works with farmers predicted that employers will stop using the program if they are not able to hire the same people through it. However, interviews show that, more in line with the real function of the program, the availability of alternative workers also may be important. Perceptions of whether these workers are available fluctuate with perceptions of immigration enforcement, but alongside this some employers appear to experiment with filling in with other worker groups such as students.

#### **IV. Conclusion: The Role of the State in New York Farm Labor Markets**

State interventions have a sometimes subtle influence on the supply and characteristics of farmworkers inside the U.S. The state also influences the organization of labor through immigration enforcement and the H-2A program. As policy implementation and labor market processes unfold and interact with other factors such as production needs, the state of the economy, and labor market intermediaries, the state in the end influences not only labor supply, but also the preferences and practices of employers creating labor forces, or labor demand.

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hire Puerto Rican instead of Jamaican workers, and a Court of Appeals. This occurred after the Labor Department appealed an order to allow more Jamaicans into orchards in Virginia (The Washington Post, September 9, 1978).

The premise of many policy debates about immigration policy concerning farm labor is the existence of shortages. Employers stressed in interviews that large numbers of workers are needed for the season, and the people, the willingness to do the job, the work ethic, and sometimes the stamina are just not there. Some said there was no shortage of undocumented workers but of legal workers, and some characterized shortage in terms of a lack of “Americans,” local people, or “white people” who are available, want to do the work, or in the rare case they are available are not good workers. As employers build workforces over time and gain experience with different groups on their farms, labor demand may become specific to race-ethnicity, sex, age, or other demographic characteristics that contribute to production. This happens partly as a function of which workers are available to the employers at different times, a factor influenced by policy. Eventually there is agreement that the present workforce is the only choice, and it is difficult to sort out whether others are excluded, are too few in number, are just not interested, or all of these things.

For immigration enforcement and H-2A, influences on these dynamics may be more obvious than for other policies, but even here policy has unexpected effects that push at supply in different directions. With so many factors at work it is difficult to assess the relative importance of different influences respondents mentioned. For example, Finger Lakes employers suggested USBP is constricting labor supply, contributing to their relatively greater uptake of H-2A than elsewhere in the state, but they acknowledged the involvement of other agencies in enforcement.

In some cases the combined influence of different policies may be at work in labor markets. For example government support is available for loans to construct or renovate

farmworker (but not H-2A) housing, thereby contributing to supply. The state also enforces housing regulations that may dissuade employers who believe their workers are undocumented from reporting housing (as required by law for over 5 workers). State actors both help place non-H-2A workers in farm jobs and steer employers toward H-2A. Enforcement of H-2A rules by the state or third-party lawsuits can influence employer hiring decisions.

For many topics covered in this chapter, the reality is complex, defying some expectations about workers and policy. Reports of worker wages, use of labor contractors, and the formality of hiring processes were contradictory. Respondents often could not say which agency was responsible for an immigration enforcement action, and workers could not always identify benefits by name or source. Workers are unsettled and, especially with economic change, drift in and out of other occupations. Some report multiple changes in migration patterns across a few years; some also string together other work off-season when they stay year-round, as is happening increasingly, or may become readily available cheap labor off-season if they remain in the farmer's housing.<sup>31</sup>

Policy shapes the nature of labor demand in a number of ways. The state's functions as intermediary, regulator, and enforcer create contradictory incentives to use H-2A or not. The H-2A program itself helps send employer demand in different directions and toward different worker groups from season to season or employer to employer. Not only immigration enforcement and the trouble and expense of the H-2A program, but also the ability to hire the same workers year after year emerged as important motivators for growers considering this program in recent years.

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<sup>31</sup> As shown in Chapter 2, a high percentage of NAWs respondents answered that they did not know the answer to some questions (e.g., year-round vs. part-time status).

A related feature of demand is skill. Farm work, especially harvesting work, is thought of as unskilled labor, but skill and the associated rate of production of individual workers are big motivators for employer decision-making. The state effectively produces skill through the H-2A program, and skill is reported to be high among undocumented workers. To some extent occupational segregation and segmentation – that is forces that keep farmworkers in farm jobs – help develop a body of experience. Job experience is a requirement on H-2A job orders, but in the mind of employers skill may be associated with the rural experience many Mexican villagers have, or the long Jamaican history in New York apple harvests.

Risk is a constant in agricultural production present both in the endeavors of assembling a labor force and producing crops amid changing markets and climate conditions, and for workers, of earning a stable income from farm work. Workers bear the risk of uncertain jobs year to year, often of traveling to new locations without assurance of a job, and of uncertain hours of work when they are on the job. The state helps growers, and to some degree workers, mitigate these risks, which people see this as part of government's responsibility. Vegetable and fruit farmers may face more risk in terms of earning a profit than in other agriculture subsectors given the lack of federal subsidies and other issues, and they are motivated to minimize the risks of shortage and underperforming workers. One employer described the end result of the farm's one-time use of H-2A as a Band-Aid effect, and some of the efforts to help workers survive with migrant programs or off-season work are similar in that they patch up what might be seen as a larger problem with the industry that creates insecurity for workers too.

Taken together, the comments of the farmers in this section show similar preferences regarding government's role to those described by their interest group representatives in Congressional hearings (Chapter 4). Employers also see the option to act on preferences for male Mexican or Jamaican workers and avoid hiring "local" workers (who may not be available in sufficient numbers for a full seasonal labor force) as natural. In both cases, growers believe the government should not interfere with their ability to hire workers of their choosing, even when the matter concerns implementation of a government program.

## Chapter 7: Conclusion

To farmworker advocates and many scholars, it is already evident that grower interests have for decades been able to bend policy in order to expand labor supply through mechanisms such as the Special Agricultural Workers legalization program and the H-2A temporary visa for agriculture contained in the 1986 Immigration Reform and Control Act. Other work has also shown that immigration policy has reduced the supply of workers, particularly Mexican workers, at different points by adjusting legal migration numbers downward and increasing deportations (Massey 2007). To many other observers and grower interest groups, it is clear that farming cannot survive without state aid obtaining foreign workers.

Curious about news stories in which growers blamed the state for labor shortages because, in their view, the state was not facilitating labor expansion quickly or efficiently enough through its unlimited H-2A program, I wanted to take a step back and out from this apparently obvious, already-told story to take a more comprehensive look at the state's involvement in labor markets. By examining the historical and political factors that structure farm labor markets and the way policy shapes supply, worker conditions, and employer preferences as labor market processes unfold, the resulting study has provided insights into the nature and changing parameters of the state's role in farm labor markets that are informative for theory and policy related to this and other low-wage occupations.

This role appears stagnant and predictable to some, but in fact is dynamic and comprises more than just immigration policy. Employers have numerous policy tools to draw on as they build a workforce, and many factors including policy implementation



incentivize them to adjust strategies and use policy levers to meet hiring and production goals. At the same time, social programs can indirectly contribute to labor supply or address basic needs of farmworkers, with different effects for different worker groups. Partly in response to pressure from employer and worker advocacy groups, the state continues modifying its strategies for supplying and protecting labor. In this process the balance of responsibilities for assuring labor and work conditions continually shifts with uncertain outcomes for labor market actors.

The notion of shortages is problematic. Studies have often found them not to exist at a national level, but there may be shortages especially of documented workers that are greater in some regions than others. These are very real to individual farmers, given the majority of undocumented immigrants in the workforce and the large numbers of seasonal workers needed for only a short time each year. However, as worker advocates interviewed for this study have noted, labor shortages should not be considered outside of the context of the conditions of work, which include long hours, uncertainty, limited benefits, varied housing conditions, and often low pay even within the bounds of the law. Shortage notions also incorporate employer preferences in hiring that are intertwined with the policy history affecting the industry. Finally, the undocumented workers who are a key part of the shortage issue face extreme insecurity because of their legal status and are paid less than others, pointing to the relevance of labor costs in the debate. Especially without an increase in prices buyers up the supply chain pay, which contribute to declining profit margins in vegetable and processed apple production, it may not be possible for all farm employers to change farm jobs sufficiently to attract labor on their

own. In fact, this research emphasizes that a labor force would not exist for any industry without some support from the state.

Behind this conundrum is a set of employment practices and industry qualities that has evolved over time. As labor practices become institutionalized, it is difficult to separate individual actions, sector-level shifts, policy, and change in labor supply. The path-dependent nature of hiring is compounded by the structure of policy and by worker and employer networks. These processes are interdependent with policy, which by shaping expectations employers have of the workforce they should be able to find under a set of labor conditions in turn influences the policy proposals employers make for increasing supply. The purpose of this research was to examine such processes in order to better understand the influence of policy in them. In this chapter I review findings from prior chapters with particular attention to how the state's role in labor markets is worked out through social programs and labor policy, immigration enforcement, and the H-2A program before discussing how the state shapes demand and areas for policy change.

## **I. Review of Findings**

Chapter 2 examined the agriculture industry, conditions of farm work and characteristics of the labor force. Farm labor shortage discussions are most salient for labor-intensive production, which characterizes the fruit and vegetable subsectors in which there has been growth in receipts and exports, and diversification of products and varieties. Large capital investments are needed in this modern industry in which input costs have risen. Farms face very different challenges and opportunities depending partly on size. Larger producers have grown in number, size, and share of agriculture output and also spend a higher share of costs on labor. While in the past worker advocates and other

observers have portrayed farmers as dinosaurs when it comes to the organization of labor (Chapter 4), the discussion of the agriculture business in Chapter 2 indicates that farmers are nimble in responding to rapid changes in marketing, sales, production, and consumer demand. The pressure and risk from these changes is compounded by a squeeze in profit margins, including a notable stagnation in the price of apples for processing, and the constant uncertainty surrounding weather and crop quality. Farmers I interviewed also indicated that just as they try different strategies for production and marketing, they may adopt and adjust a range of strategies for building a labor force as the environment changes in part due to policy.

Data from the NAWS survey show that workers in the vegetable and fruit sectors within agriculture also differ from others in that poverty rates are higher, particularly in vegetables wages are lower, seasonal work and employment through labor contractors is more common, and health insurance coverage (aside from coverage for work injuries) is more limited than in other agriculture subsectors. When farmers say worker shortages will cause loss of crops, they refer to harvest workers, a group in which undocumented workers are overrepresented as compared to other tasks (70% vs. 50% for the full sample). Even after controlling for task, crop, and other job and background characteristics such as education and years with current employer, undocumented workers earned 6.8% less in 2006-09 than their documented counterparts.

Chapter 3 examined the policy structure that shapes farm labor markets, which has emerged historically with agricultural exemptions and other industry-specific legislative provisions across policy areas that contributed to labor market segmentation. New Deal-era exclusions of agriculture workers from landmark labor standards and bargaining

rights granted workers were partially remedied or mitigated with improvements in standards and social programs enacted during a two-decade period from 1963 to 1985 in which the active DOL role in allocating farm labor with industry-specific activities also declined. The federal government has expanded supply with changes to guestworker programs primarily in wartime (WWI, WWII, and the Korean conflict). Legalization of farmworkers and further changes facilitating agricultural guestworker program use occurred in 1986. However, both before and after this a series of policies restricting hiring of immigrants resulted in increased deportations or border control, enhancing local participation in immigration control, and limited immigrant access to benefits and recourse in the event of labor violations (through restrictions on Legal Services Representation). Thus, just after a period of enacting formal policies that could improve the conditions of work or mitigate worker poverty, the regulatory constraints affecting the growing undocumented population in the workforce expanded, potentially restricting supply and limiting both the option to return home and the option to refuse work because of difficulty accessing social support, but leaving for employers the option of H-2A workers.

By setting up different costs and rules for agriculture, policy contributes to a segmented occupation with different practices. Such effects can occur as adaptations to policy, which contributes to segmentation in other ways as well. For example, Massey (2007, Phillips and Massey 1999) found that determinants of wages changed for undocumented immigrants (especially Mexican workers) after IRCA, which also may have increased use of labor contractors by creating an incentive for employers to avoid responsibility in hiring (Taylor and Martin 1995).

Chapter 3 also described regulatory changes in H-2A in 2008 that responded to many grower preferences and in 2010 that reversed some of these changes but left a more worker-friendly regulatory environment due partially to the retention of new 2008 enforcement mechanisms. Both these shifts and policies sought by growers described in Chapter 4 (especially legislation developed by some worker and employer interest groups, AgJOBS) illustrated efforts to reshape the role of the state and highlight the potential effect of policy on labor markets. The discussion in hearings serves the function of developing concepts that support efforts of interest groups to seek such changes and signals to the state the desired scope of its role. These concepts justify state intervention in labor markets and strengthen the assumption that some outside worker group must be found to do farm work for the benefit of the industry and other “Americans,” and the assumption that it is the responsibility of the state to ensure this happens in such a way as to provide workers with certain characteristics. Some assumptions normalized in this fashion include the expectation of ongoing occupational segregation and of contained labor costs.

These policy changes can be grouped according to the issues of providing access to workers, or labor supply, and the cost and effort of getting workers, or worker protection. One grower signaled as IRCA was developed that farmers need “quick and certain” access to H-2A workers (Sen. Judiciary Committee 1985, 195). The H-2A program by design ensures continuous access to workers because they can work only for a specific employer and must pay their way home if they wish to depart before their contract ends. In regulatory changes and political debates, policy levers conditioning worker access the certification process required for H-2A approval that 2008 regulations temporarily

replaced with a less formal attestation process. Another “access” sticking point in AgJOBS is the blue card legalization program and the amount of farm work required for eligibility ranging across legislative proposals from 150 days to six months in a year (150 days, a measure in surveys that identifies seasonal workers, is over 50% more than the 90 days IRCA’s Special Agricultural Worker program legalizing farmworkers required).

Limiting access are provisions in AgJOBS that would allow H-2A workers to apply for blue cards and card holders to work in other industries. In regulatory changes affecting responsibilities for determining worker eligibility, the state took on (2008) and shed again (in 2010) the role of producing legal status for workers who likely will do farm work anyway, assuming responsibility usually with employers. Regulations also diminished the DOL’s role in deciding whether it is appropriate to employ H-2A workers and then brought the agency back in.

The political back-and-forth over the cost and effort of having H-2A workers, or protections accorded both H-2A and comparable workers hired on the same farms, concerns issues such as the level and calculation of the H-2A wage rate, whether it is provided to comparable workers, transportation costs, the provision of housing, and the guarantee of 3/4ths of the wages implied in an H-2A contract regardless of weather and crop conditions. AgJOBS or other proposals for similar legislation and the H-2A regulations affected all of these areas.<sup>32</sup>

These conflicts over access or supply and cost or conditions extend in a similar framework to New York, in that conflict between state and labor market actors occurs along these same lines, and the parameters of state involvement sketched in political

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<sup>32</sup> However, a change to allow growers to provide housing vouchers rather than housing in the proposed 2008 H-2A rule was dropped in the final rule.

debate also channel action in day-to-day policy implementation and employment relations. In terms of access and provision, some evidence emerged in interviews described in Chapters 5 and 6 that access to H-2A workers and the avoidance of hiring local ones is facilitated by employer practices, state actors at times, or requirements in job orders that are partially a matter of policy. The state also intervenes by design to identify alternate workers through the certification process. However, respondents cited varied attitudes among government staff as affecting whether these things happen and emphasizing that immigration enforcement removes workers. In terms of protections and programs, the state may indirectly support workers and regulate their condition, and how this occurs (formally or informally) relates to access to labor in terms of which workers are available at what cost.

## **II. State Roles across Policy Areas**

Qualitative interviews reported on in Chapter 5 and 6 focused on how the varied and contradictory state roles already described emerge in New York through a range of policies. In this section I describe this process by focusing on evidence in three policy areas while drawing in findings from other chapters. These are social programs and labor standards, immigration enforcement, and the H-2A program. These policies work separately and in concert to shape decisions of actors, labor supply and work conditions.

### **A. Labor Standards and Social Programs**

Social programs work in different ways to attract labor, maintain workers or enable them to continue in agriculture, and mitigate poverty. This was not a study of work conditions, and it is important to stress that not all workers were asked about the topic and not all asked answered. Yet qualitative research produced some evidence, consistent

with NAWS data, that undocumented workers are disadvantaged in terms of pay and that some workers were fearful about speaking to strangers about their work. At the same time many non-H-2A workers seemed confident they could find other jobs if they did not like theirs. Exclusions for industry (labor standards), immigrant status (benefits and legal services representation), or other factors increase the relative vulnerability of these workers.

An important issue with regard to labor standards is how workers can respond when they are violated, if they know they are. Differences in the ability to address problems exist: migrant and seasonal farmworkers are covered by MSPA's right of action but, if undocumented, barred from legal services representation. H-2A workers are, according to many respondents, unlikely to complain about conditions because they wish to be invited back. They are not covered by MSPA, but do have access to government-funded legal services. Workers interviewed did not all know of rights or changes in the law, what entity provided a program or benefits, or which agency implemented standards.

There was evidence of enforcement taking place, with some workers who were asked saying they had never seen government agents in the field and some saying they had. It was widely assumed that the H-2A program is enforced with audits and inspections more than for regulations affecting other farmworkers. Employers complained about enforcement from multiple agencies and described fines, audits, or lawsuits, while one said New York state regulates labor contractors poorly.

Many community members, some working on government-funded programs or for the government, mobilize to respond to the needs of workers, and in this process may also get drawn into keeping the labor market going in addition to dealing with the poverty



and fallout from migration and insecurity. Part of this involves indirectly or directly fulfilling an intermediary role by joining a cycle of information that circulates through and about employers, contractors, places of business, and so forth. Also because of networks and by funding other agencies, government may informally or indirectly enter the allocation process even though DOL may be less formally involved.

Employers are sometimes suspicious of efforts to draw away their workers and prefer to keep government and sometimes service providers at bay when possible, though service providers and advocates are able to visit farmworker housing because of a court order allowing them tenant rights. Even when farmers want to provide for basic needs there may be a struggle with the state over control of the process.

The effects of the policies may be even more complicated when considering how they apply differentially to different workers. For example government funds may provide partial support for housing to attract some worker groups but not others and must be inspected for some and not others, slightly changing the costs and benefits of hiring different groups and the potential attraction of the occupation depending on whether workers migrate or other factors as well as potentially diminishing options particularly for immigrants. Where programs are more universal, as for example with the day care program in New York that can on space-available basis serve year-round workers rather than just migrants (unlike in most states), these effects can be mitigated. As such policy can have contradictory effects both encouraging and discouraging migration and farm work. Housing is more available for documented workers and migrants but employers are required to provide it only for H-2A workers.

Many of the social programs that Esping-Andersen argued (1990) can decommodify workers by giving them greater choice about work and enhancing their power vis-à-vis employers could instead function to keep them in the potential pool of labor. For example, for those workers who can access benefits such as unemployment or publicly-supported training programs<sup>33</sup> given their legal status, there was evidence that such programs could enable them to stay in the industry when work is slow, thus potentially adding to the labor pool. Programs that exclude undocumented or settled workers may give them fewer options. In addition it may be difficult to access benefits. In short, labor standards and social programs can function in contradictory ways protect labor, allow workers to remain in the industry, allocate workers, draw them away, make workers more available by contributing to housing, increase the relative vulnerability of workers or decommodify them, and create demand when labor costs are lowered.

### **B. Immigration Enforcement**

Immigration enforcement by different was a concern of many employers, workers, and government and nonprofit employees interviewed, and in the Finger Lakes area people were particularly upset by the activities of Border Patrol. These activities remove workers but may also prevent them from free movement, in a sense making them more available to employers and more vulnerable at the same time.

In the past decade, new arrivals of Mexicans to the U.S. have dropped dramatically, and the number of unauthorized Mexican immigrants in the U.S. peaked in 2007 and has been stable since. In the past five years, deportations have consistently been at record levels, and U.S. Border Patrol activity spiked in the Buffalo sector while declining in the

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<sup>33</sup> They may have difficulty because of their legal status, or according to two respondents because employers may not want workers to access workers compensation and unemployment.

Southwest. This all indicates pressure on the workforce that has comprised the great majority of farm labor in New York for about the past twenty to thirty years, undocumented immigrants. The trend in the localization of immigration enforcement for which federal policy first provided a legal framework in the mid-1990s may be less salient for New York, where there are no formal Section 287(g) agreements between ICE and local law enforcement, than other states. However, study interviews did indicate variation in local practices such as police or sheriffs reaching out to ICE or USBP when stopping immigrants for traffic violations.

Immigration enforcement has real and symbolic effects on labor supply and employment decisions in New York. As in political debates, it drives concerns about labor shortages and influences hiring strategies. Respondents may not know which law enforcement agency is responsible for immigration enforcement, but they perceive an increase. Some respondents also perceive the presence of detention facilities or use of local jails to house detainees as fueling a sort of demand for immigrants. Most growers upstate said they had had workers detained. Some indicated that local citizens may try to encourage law enforcement agents not to be overzealous in dealings with suspected undocumented immigrants. If growers can, though, they will continue to hire from this pool of workers, which one employer reported is readily available because so many were more or less trapped by the fear of enforcement.

This relates to the way undocumented workers may be stuck, which Douglas Massey called attention to in a recent opinion piece on border policy and foreclosures among Latinos (Massey, August 5, 2011). Undocumented Mexican workers can no longer easily return home to their country and come back again. Due to within-border activity, they

may also be stuck in their jobs or in their homes, hoping not to be caught by enforcement agents in either. Some are long-term residents with many years of connection to their local communities and families. Massey points out that this situation heightens vulnerability to ups and downs in the economy. As such, it may limit choices about work.

### **C. H-2A**

H-2A is a labor supply program, but in fact it embodies many types of state roles in labor markets. In addition to providing workers, the program protects both H-2A and non-H-2A workers through rules about housing, wage rates and other conditions, the extension of wages to comparable non-H-2A workers on the same farm, and recruitment among workers inside the U.S. prior to certification. Finally the state serves as a labor market intermediary through H-2A rules and advertising jobs. Beyond these formal elements, the state's function in labor markets through H-2A implementation can vary.

This research indicated that immigration enforcement may drive use of H-2A while the program's cost and administrative burden, and possibly lawsuits or government enforcement of rules, could deter use. Farmers also may change the way they use the program over time. Overall, findings indicate that the H-2A program is one strategy that works for some employers to build skill and maintain stability. If the program does not serve this function at a manageable cost, employers will not use it.

Employers interviewed chose to begin hiring through H-2A, not to use the program, or to adjust the number of H-2A workers upward or downward in part due to the availability of alternative workers. H-2A employers that also hire other seasonal workers (as all larger H-2A employers I interviewed did) still have to deal with the rest of the labor market and may shift among the largely undocumented Mexican workforce and H-

2A workers, or according to two government employees may shift between hiring through contractors and through H-2A. This is what one might expect if the program functions as a response to shortages. Growth in the use of H-2A in New York was higher in the area where Border Patrol is active but not confined to this area: the number of H-2A worker contract days rose 108% from FY2006 to FY2009 above the 100-mile marker as compared to 60% for other areas. One Hudson Valley respondent said growth in H-2A use there was due to labor shortages.

Speakers at a 1995 hearing quoted in Chapter 4 said H-2A should serve as a “safety valve.” Employers reported that they need H-2A to make sure they have a core of documented workers because of immigration pressures. This reassures employers but highlights the most disturbing feature of the program from a labor standards perspective: the lack of choice that foreign contract labor arrangements tying one worker to one employer imply. H-2A workers are “legal,” but they also form a core because they can only leave before the end of the work contract at their own expense. The state then through this program serves a function of mitigating risk, including the risk of insufficient labor throughout the harvest and possibly of hiring a poorly performing worker. As the nature of this role expands, the objectives of protecting workers and helping farmers begin to collide.

Hearing witnesses also argued in the 1990s that the H-2A program becomes institutionalized as a part of production. This can occur as employers develop a relationship with specific workers who acquire skill and experience, a factor related to requests for longer contract periods from 2006 to 2009 in New York and the U.S. The expansion of the program is also facilitated by employer connections and networks

among H-2A workers that, like those among non-H-2A workers, increase the likelihood for employers that they will be able to identify productive employees. The length of time employers are in the program, which surpassed 12 years for two Hudson Valley apple growers, also points to the incorporation of the program into production, as there are likely to be fluctuations in local labor market conditions not taken into account when this occurs. The history of H-2A in New York's important apple industry (especially the Hudson Valley) is well-known, and it will be interesting to see if its use in vegetable production expands as research indicated it has. If AgJOBS were passed, the program would extend to the dairy sector, where the presence of undocumented workers has increased.

Immigration enforcement compounds the insecurity and material needs of workers that necessitate social programs and that labor standards may help to mitigate. It also complicates the enforcement of housing regulations and efforts of advocates to focus on standards. One farmer's indication that workers were continually "moving around" to avoid immigration enforcement underscores the exacerbation of the already unstable situation of workers who move around to find work and between temporary farm jobs. The movement also relates to the informality of many work arrangements, echoing farmers' statements that workers do or do not show up at the beginning of the season. This informality is related to difficulty enforcing the law and from a research perspective of finding out what the conditions of farm work are.

Immigration policy overall can add to the supply of permanently legal workers, remove the legality problem temporarily, provide short-term labor, unevenly diminish supply, or in a sense trap workers. Like the effects of social policy and labor standards

then, in the implementation of policy the state's role in labor markets can take on different effects. The nature of agricultural employment, the poverty of workers before and after entering the industry, and the undocumented status of workers interact with policy with the result of important social costs and insecurity for both workers and farmers. Political conflict and stagnation may exacerbate this.

#### **D. State Roles and Employer Preferences**

Immigration enforcement, enforcement of H-2A rules, the efficiency of processing H-2A applications, H-2A regulation changes, and difficulty issuing visas for previous undocumented workers all send demand for H-2A vs. domestic workers back and forth according to my interviews. Employers value their employees, and many treat them within the bounds of the law or pay more than the law requires. However, employers have also come to expect the ability to shape their workforces with government help or lack of interference, according to their preferences in ways that may be inconsistent with discrimination law. This phenomenon can contribute to long-term demand trends. Even under better employment scenarios, workers experience a great deal of insecurity from unpaid waiting time during harvesting, uncertainty about the next job, and other factors. Also, this research indicates that there may be occupational segregation and segmentation of tasks even within the occupation, and these two phenomena may work together.

Through H-2A implementation, the state is pressed into the role of arbiter among different labor supplies, although employers stress that when they hire H-2A workers they have no choice but to do so. Chapter 3 also presented evidence that the state has been pressed to respond to concerns about different worker groups, or has formulated policy with one group in mind. Historical examples showed the interweaving of this

phenomenon with concerns about cost, work ethic, and control, as when speakers at hearings on the Farm Labor Contractor Registration Act speakers claimed that farmers hired migrant labor because no one else would take the jobs at a price they could afford (Whittaker/CRS 2006). However, one interesting aspect of the research was the presence of small groups of workers such as students, retirees, African-American migrants, and other local workers who do farm work and defy some expectations about the workforce.

In today's H-2A program as it is implemented in New York, the state essentially deals with the issue of which workers are hired through the mechanisms of certification and the 50% rule, which both require consideration of non-H-2A workers (not just "local" workers but workers in "supply states" like Florida).<sup>34</sup> Respondents variously saw DOL as alternatively nudging employers toward H-2A, helping them get around the requirement to consider domestic workers first, frustrating employers by sending other less-qualified workers, or doing anything possible to prevent use of H-2A (also a theme in Congressional hearings and qualitative interviews). Another example of how the state becomes involved in answering the question of who will do farm work was the tension over Puerto Rican workers referred for job orders in New York.

In Chapter 2, I showed that occupational segregation is increasingly common for harvest workers: growth in the percentage of undocumented and Mexican workers in these jobs surpasses growth in other farm jobs. In a segregated occupation, hiring by demographic characteristics comes to be assumed, and policy may facilitate the ability to hire according to these preferences through the structure of H-2A and the contribution of immigration enforcement to the insecurity of undocumented workers. In H-2A, although

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<sup>34</sup> Certification requires that employers advertise in the U.S. for workers before receiving approval for H-2A. The 50% rule requires consideration of others who apply for these jobs up to halfway through the contract period.



certification applications and visa records are public, selection by sex and country of origin occurs in a somewhat obscured process. This is consistent with work by the SPLC (Bauer 2007) demonstrating that discrimination is an understood and accepted part of the program.

In conclusion, through these different policy areas, the state affects farm labor markets on both the supply and demand sides through much more than immigration policy. Political actors draw on the notion of markets to try to influence policy, in the process reshaping the limits of markets to include or exclude desired state roles that suit their policy goals. But the way in which policy interacts with production changes, supply change, and employment practices in New York demonstrates that markets are partially constructed by the state.

This study supports the idea that employers have power to shape the state's role in markets, but the reality turns out to be complex. First, farmworker agency is important and often overlooked, as evidenced by workers' comments on their goals and strategies related to finding or changing work. The effect policy has on farm labor supply changes continuously so that there is not a consistent effect. Furthermore, benefits of policy accrue differentially to farmer groups, likely to the greater advantage of larger farmers. All growers encounter some policy obstacles not of their choosing, and some are better able to readjust and benefit from policy in adapting to them.

The role of the state is to supply labor, sustain and protect it, and serve as intermediary, with ever-changing mechanisms and results. In addition to affecting supply and conditions directly, or potentially indirectly, policy can operate in multiple conflicting directions, can mitigate risk and become an arbiter over which workers do

farm work, and change the nature of demand, through all this influencing future policy proposals and the organization of production. The continued pay differential for undocumented workers and the ability of H-2A employers to choose workers based on demographic characteristics indicate that immigration policy may contribute to, or leave undisturbed, processes of occupational segregation and discrimination in its role as arbiter of supply and sometimes-producer of skill.

### **III. Future Directions for Policy**

In the political debate described in Chapter 4, two important policy dilemmas come together as actors discuss farm labor supply issues: the presence of undocumented workers in the labor force and the quality of low-wage work. Policy solutions they discuss would mostly facilitate access to preferred workers through H-2A or legalization programs to address perceived labor shortages with minimal attention to the demand side of jobs -- but an important presumption by worker advocates that legalization would improve them.

This is consistent with a context of debate in which actors describe guestworkers or immigrants as people who do work Americans won't do, thereby dismissing with a wave of a hand the stratification of labor markets and differential conditions they imply. Designing policy to import workers *because* of the quality of the work is a morally slippery goal, especially if it is done without making sure that the work can provide a reasonable living under humane conditions, including the ability to move around freely and remain with family members that does not exist currently for undocumented workers. At the same time, policy should take seriously limits on the ability of some (certainly not all) farmers to raise wages and the difficulties they face when they lose labor in the

middle of a harvest season, as indicated in my comments on farm subsidies. This section reviews some of the policy areas that relate to the farm labor occupation, including enforcement of labor standards and H-2A program rules, changes in H-2A rules, and immigration enforcement or legalization programs.

### **A. Standards and Enforcement**

It is crucial to seek to improve the conditions of farm jobs themselves and other jobs often categorized as low skill rather than to assume people will eventually move out of their jobs, or that somewhere else, after the current worker group moves on, there will always be people to “do labor no one else wants to do” in the words of one grower. Remedying the exclusions of agriculture and immigrant workers in standards and broadening migrant funding to serve more settled farmworkers could help improve living and working conditions, perhaps making workers less vulnerable to exploitation, though such policy changes are extremely hard to achieve and enforce. Other eligibility limits such as farm size, the number of weeks worked in a year, and housing size all curtail the reach of different standards and enforcement policy, and changes in these could benefit those workers most likely to be on the margins of the occupation. Another important change to policy would be to provide collective bargaining rights, a change imbedded in legislation that would also provide overtime pay promoted by an active state-level coalition of worker advocates and vehemently opposed by growers in New York State. The legislation includes a different standard for overtime than exists in California, and it may be that a different approach could be enacted more easily, could be less of a burden to farmers, or could be designed to ensure that it actually has an effect.

In addition to the obstacle of enacting legislation, this study indicated that at times regulation can unintentionally result in a movement of activity or shift in employment practices to adapt to new policies that is consistent with the way employers adapt strategies for drawing on policy to build a workforce. This in effect can move the target of regulations, potentially creating new policy problems, as with the concern that IRCA may have led to increased the use of labor contractors and employers who avoid or drop H-2A because of annoyance over lawsuits or government action that enforces rules. As employers develop new strategies to maximize the value of policy, they can become future political battlegrounds, as when employers developed practices of submitting applications for several states and protested the disallowing of these “master applications” in 2010 regulations. Accusations in the 1990s that farmers may intentionally schedule contracts for longer than the period of hire so employees pay transport costs home led GAO to suggest a program change that was not made, highlighting the difficulty of channeling employer practices in ways consistent with policy goals. These examples illustrate the challenges of improving conditions with regulation. However, it is important that laws in New York may have helped improve conditions of many farmworkers, and that new H-2A rules could improve the situation of comparable workers if employers stay in the program if and when the rules are enforced.

One challenge for standards is increasing their reach to the undocumented workforce, which many see as an immigration rather than a labor standards enforcement issue. The multiple agencies involved in implementing farm labor standards and the H-2A program present another difficulty. Farmers and government staff complain that DOL’s Wage and Hour Division (WHD), the Employment and Training Administration (ETA), the New

York Departments of Health and Labor, ICE, and other agencies all audit their books or visit their farms sometimes in rapid succession and with visits from different offices of the same agency.

Farm work is just one case of what is happening in low-wage labor markets given the rise in contingent and flexible jobs involving part-time work, few benefits, and just-in-time scheduling in occupations such as retail and construction. The rise in contingency parallels expanding and changing use of guestworker or other short-term visa programs in other industries (as evidenced by recent demonstrations of students protesting conditions in the “exchange” program that brought them to a Pennsylvania factory (Preston, August 17, 2011). It is possible that other sectors are moving toward the type of insecurity farmworkers have long faced. As with farm work, there is a social cost to such jobs, which reports on the “public cost of low-wage work” have stressed (Bernhardt, Chadda and McGrath 2008; Zabin, Dube and Jacobs 2004, Dresser 2006; Theodore and Doussard 2006).

The question of what constitutes a high-quality farm job and the degree to which difficulties such as failure to pay workers are shared across such occupations merit further exploration. A key question is whether and how a contingent job can be a high-quality job. In the academic literature, definitions of quality, segmentation, nonstandard work, contingency, and flexible work overlap. Characteristics of poor-quality jobs or jobs segmented in a secondary tier include poverty-level wages and an absence of health insurance or pension benefits (Kalleberg, Reskin, and Hudson 2000, Hudson 2006). Kalleberg et al. found a relationship between poor quality jobs and nonstandard jobs, defined as on-call and day work, temporary-help agency employment, employment with

contract companies, independent contracting, other self-employment, and part-time work. Hudson (2006) has found that nonstandard work and undocumented status channel workers into bad or secondary tier jobs.

All of these dimensions are found in farm work and its labor force, regardless of whether employers comply with policy. Consideration of policy to improve job quality going forward will be inseparable from immigration policy and from the context of fear over immigration enforcement that makes it difficult to implement worker protections. Ideally policy to improve job quality should take into account the likelihood that employers will continue to structure work as contingent, flexible, and nonstandard. An example of a policy designed to address this reality is found in the state-level revisions of Unemployment Insurance rules spurred by the federal stimulus in 2009.

## **B. Guestworker Programs**

The H-2A program appears inevitable to worker advocates, if fundamentally offensive because it effectively commodifies human beings and facilitates their availability to employers with little freedom of movement or recourse. Guestworker programs will undoubtedly be a part of major immigration reform proposals going forward despite declining use of the program from FY2009 to 2010 in New York and the U.S. However, a key informant indicated in 2011 that the Obama Administration has begun rejecting job orders from New York farms that have used the program for many years (see Chapter 6 regarding low but slightly increased rejection rates for FY2010) and stepped up enforcement of H-2A through both ETA and WHD in DOL, which the informant believes is related to the politics of immigration. Members of Congress from

New York continue pressuring DOL to facilitate job order approvals as a result of this perception.<sup>35</sup>

More information is needed on the current conditions of H-2A workers in the U.S., but many experts I interviewed stressed that guestworkers are unlikely while in the U.S. to speak openly about this. Conditions in New York could be better than elsewhere (as indicated by a key informant). Organizations such as the SPLC have found abuses of the program in states other than New York (Bauer 2007), which often are associated with labor brokers. Advocates identify the reliance on one employer to continue or renew the contract as a key problem. This indicates that important reforms would be to focus on labor brokers and to allow workers to move among employers, though growers would likely stop hiring through H-2A if the risk of paying transportation for people who might leave were not offset.

Pointing out improvements that could be made to guestworker programs, such as providing collective bargaining rights, visa portability, and a path to legal citizenship while mandating and enforcing good conditions, Gordon (2007) also identifies a number of problems these would not address including the important fact of institutionalized second-class citizenship guestworker programs create. Portability and freedom of movement for workers and their families, as well as membership in transnational organizations, are aspects of the model of “transnational citizenship” Gordon proposes that would be achieved in part through negotiations among governments. Important principles behind the entire, more complex proposal are that workers should be considered as “potential labor citizens” (587) from the outset, and emphasis on the goal

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<sup>35</sup> For example, see <http://chrisgibson.house.gov/News/DocumentPrint.aspx?DocumentID=251764>. Retrieve September 13, 2011.

of connecting “worker self-organization with the enforcement power of the state in a way that crosses borders just as workers do” (565). More recently, Gordon (2011) has shown that the U.K. experience with freedom of movement for temporary workers from Eastern Europe indicates it reduces but does not eliminate disproportionate abuses of migrant workers, sometimes associated with recruitment agencies. One factor in this is the range of perspectives migrants have on their work and difficulty obtaining assistance when they do wish to pursue complaints.<sup>36</sup>

### **C. Immigration Enforcement and Legalization Programs**

Ongoing conflict over state-level policies requiring the use of E-verify to ascertain the legal status of workers, like earlier lawsuits over the “Safe Harbor” rule the Bush Administration issued after stepping up the use of unmatched Social Security numbers as an enforcement tool, illustrate the difficulty of imposing order on the problem of undocumented immigrants in the workforce. The reality of immigration enforcement points to detrimental effects on workers and their families and possibly on labor conditions for the entire workforce. In the past ten years there have been shifts as well in federal use of I-9 audits, raids, and other types of apprehensions, including changes during the Obama Administration that call attention to the highly politicized context of policy and the difficulty finding balanced and rational solutions. Recent coverage of the E-verify law in Alabama also indicated that the issue is not just one of access to workers,

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<sup>36</sup> Gordon (2011) found that workers from Eastern and Central European countries who had freedom to move from employer to employer as A8 migrants in the U.K. in were better off than other low-wage migrants workers tied to one employer, but an important subset experienced limited job mobility, long hours with low pay, illegal deductions, and “deskilling” (2) such that they were underemployed in terms of education level.



but at least for one small grower, the cost of labor.<sup>37</sup> This grower said wage pressure in anticipation of the state law led legal workers to leave for more pay elsewhere, but the farm could not afford to compete for labor by paying higher wages. While this may not be the case for large New York State growers, it is important in terms of the overall context of federal and state roles in labor markets and the cost considerations that are part of policy.

The shared limits to movement and job changes of undocumented workers fearful of immigration enforcement and H-2A workers restricted to one employer limit the choices of workers in both categories. Proposals that would allow H-2A and non-H-2A workers to apply for permanent status and to work in other industries, during a legalization process in a sense would decommodify workers through another means than social programs that enable workers to refuse jobs. In fact, a UFW representative stated in a 2010 hearing that changing legal status will result in improved work conditions not through standards change but the enhanced possibility of complaints or resistance (House Judiciary Subcommittee on Immigration 2010).

Outside of labor and immigration policy, farm policy may not help the labor situation. The subsidy of grains but the failure to subsidize produce in a context of concern about an obesity epidemic is illogical. Improving the ability of farm policy to more evenly distribute its benefits across farm size and subsectors, perhaps with subsidies, and to address risks such as disasters (including the 2011 flooding in New York that had tremendous economic costs for farmers and thus workers in the Hudson Valley) and crop failure could diminish some of the risks labor policy ends up addressing instead.

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<sup>37</sup> <http://www.npr.org/2011/08/24/139900522/ala-businesses-riled-by-states-new-immigration-law>. Retrieved September 13, 2011.

Several developments in labor organizing and policy are hopeful for farmworkers. Progress has been made in improving jobs by organizations such as the Farm Labor Organizing Committee, which successfully negotiated contracts for H-2A workers in North Carolina, and the Immakolee Coalition in Florida that has organized tomato workers outside of H-2A. Both directed worker action up the supply chain at buyers who set prices. The power of these buyers is salient in New York, where apple growers I interviewed were facing a sharp cut in processed apple prices, and vegetable growers reported contracts with large buyers. The tomato fight in Florida enlisted consumers in action, like a recent effort to evaluate organic produce on labor standards as well as production requirements.<sup>38</sup> Tapping into consumer interest in local produce and sustainable farming to expand interest in workers who produce food is a direction that shows promise.

On the policy and politics front, the increasing presence of immigrants in the workforce has already realigned coalitions in Washington, as evidenced by the changing stance of organized labor toward immigrant workers. Through guestworker programs, labor policy is made through an immigration vehicle, albeit one DOL implements, which also brings together worker and immigrant interests. The energy of immigration activism in recent years alongside the hammering of organized labor in state legislatures indicates that there could be greater impetus for immigration advocacy going forward - though here resistance to change is also fierce.

AgJOBS has not passed, but its continued existence indicates some grower interests are willing to accept additional freedoms of movement for workers between employers

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<sup>38</sup> <http://www.cata-farmworkers.org/english%20pages/laborstandardsorg.htm>. Retrieved September 14, 2011.

and industries and to support legalization under some circumstances for farmworkers. However, it also indicates that the grower industry in exchange seeks limits to the cost of the program, perhaps even more than the most recent version of the legislation would, and to find additional ways to tie workers to jobs.<sup>39</sup> Others continue pushing for easier ways for foreign workers to come and go each season or to limit DOL's authority over the H-2A program. Another potentially hopeful sign for worker conditions is that new H-2A regulations have strengthened worker protections and enforcement mechanisms. Ongoing enforcement of these regulations and changes in immigration policy and international labor standards are needed.

These signs of progress demonstrate that, despite the seemingly obvious and intractable policy problems related to farm labor, it is possible to continue searching for ways to enhance worker agency and conditions that can move beyond a zero-sum approach to employer-employee relations. It is important to do so not only for the benefit of workers and employers in this industry, but also because of the broader implications of immigration, labor, and social policy for the quality of all jobs in rapidly changing low-wage labor markets.

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<sup>39</sup> The AFB Federation has indicated publicly that it sought changes to AgJOBS 2009 before it could endorse the bill although it supported the adjusted status provisions (AFBF undated). Changes they sought include replacing the AEWR with a prevailing wage rate using the National Agricultural Statistics Survey of the USDA (the 2008 Bush regulations used a Department of Labor survey), allowing visas of up to 12 months and renewals for four more year-long periods in order to include sectors and jobs that are not seasonal, eliminating the 50% rule that requires employers to continue hiring local available labor halfway through the H-2A contract, making it easier for workers to move among certified H-2A employers, and revising the guarantee requiring that employers pay 3/4<sup>th</sup> of the total amount expected for the contract regardless of events. See AFBF Critical Changes Needed to AgJOBS 2009 (S.1038 & H.R. 2414) as part of either Comprehensive Immigration Reform or independent legislation, undated.

## Bibliography

- Agricultural Guest Worker Programs: Joint Hearing before the Subcommittee on Risk Management and Specialty Crops of the Committee on Agriculture and the Subcommittee on Immigration and Claims of the Committee on the Judiciary.* House of Representatives, One Hundred Fourth Congress, First Session (December 14, 1995).
- The Agricultural Job Opportunities, Benefits, and Security Act of 1999: Hearing before the Subcommittee on Immigration of the Committee on the Judiciary.* United States Senate, 106th Congress. Second Session (May 4, 2000).
- Albelda, R., & Tilly, C. (1994). Towards a Broader Vision: Race, Gender, and Labor Market Segmentation in the Social Structure of Accumulation Framework. In D. M. Kotz, T. McDonough & M. Reich (Eds.), *Social Structures of Accumulation: The Political Economy of Growth and Crisis*. Cambridge; New York: Cambridge University Press.
- Audley, J. Papademetriou, D., Polaski, S. and Vaughan, S. (2004). *NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere*. Carnegie Endowment for International Peace.
- Baker, B. C. (2010). *Naturalization Rates among IRCA Immigrants: A 2009 Update*. Office of Immigration Statistics, Immigration Statistics, Policy Directorate, U.S. Department of Homeland Security.
- Bauer, M. (2007). *Close to Slavery: Guestworker Programs in the United States*. Montgomery, Alabama: Southern Poverty Law Center.
- Bernhardt, A., Boushey, H., Dresser, L., & Tilly, C. (2008). *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market* (1st ed.). Champaign, IL: Labor and Employment Relations Association, University of Illinois at Urbana-Champaign.
- Bernhardt, A., Chaddha, A., & McGrath, S. (2008). *When Work Doesn't Pay: The Public Cost of Low-Wage Jobs in New York State*. New York: National Employment Law Project.
- Biggart, N. W., & Beamish, T. D. (2003). The Economic Sociology of Conventions: Habit, Custom, Practice, and Routine in Market Order. *Annual Review of Sociology*, 29(1), 443-464.
- Boucher, S. R., & Taylor, J. E. (2007). Policy Shocks and the Supply of Mexican Labor to U.S. Farms. *Choices*, 22(1), 37-42.
- Bruno, A. (2009). *Immigration: Policy Considerations Related to Guest Worker Programs*. No. RL32044). Congressional Research Service.
- Bucholz, Sue. *Housing for Farmworkers in New York: Analysis and Recommendations*. Rural Opportunities Inc. 2000.

- Busch, L., & Bain, C. (2004). New! Improved? The Transformation of the Global Agrifood System. *Rural Sociology*, 69(3), 321-346.
- Calavita, K. (1992). *Inside the State: The Bracero Program, Immigration, and the I.N.S.* New York: Routledge.
- California Growers Push Guest Worker Program - Illegal Immigrants Would Increase, Critics Say. (1995, July 2). *St. Louis Post-Dispatch/San Francisco Chronicle*.
- Calvin, L., and Martin, P. L. (2010). *The U.S. Produce Industry and Labor: Facing the Future in a Global Economy*, ERR-106. Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.
- Carman, H. F., Cook, R., & Sexton, R. Marketing California's Agricultural Production (2004). In J. Siebert (Ed.), *California Agriculture: Dimensions and Issues* (pp. 89-119). University of California: Giannini Foundation of Agricultural Economics.
- Center for Immigration Studies (September 1995). *Three Decades of Mass Immigration: The Legacy of The 1965 Immigration Act*.
- Comprehensive Immigration Reform in 2009: Can We Do It and How? Hearing before the Subcommittee on Immigration, Refugees, and Border Security of the Committee on the Judiciary*. U.S. Senate. (April 30, 2009).
- Conklin, D. B., Student author. (2010). Assuring Farmworkers Receive Their Promised Protections: Examining the Scope of AWPAs Working Arrangement. *Kansas Journal of Law & Public Policy*, 19(3), 528-549.
- Cook, R. (2005). Supermarket Challenges and Opportunities For Producers and Shippers: US Experience. *Farm Policy Journal*, 2(1).
- Cook, R. (2002). The U.S. Fresh Produce Industry: An Industry in Transition.
- Decker, S. H., Lewis, P. G., Provine, D. M., & Varsanyi, M. W. (April 2009). Immigration and Local Policing: Results From a National Survey of Law Enforcement Executives. In M. Malina (Ed.), *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*. Washington, D.C.: Police Foundation.
- Diermeier, D., & Feddersen, T. J. (2000). Information and Congressional Hearings. *American Journal of Political Science*, 44(1), pp. 51-65.
- Diamond, A. V. (2006). Transformation and Reproduction: Constructing The Organic Milk Commodity Chain in The Northeast United States. Graduate School-New Brunswick. Rutgers University).
- Dimitri, C. Effland, A. and Conklin, N. (2005). *The 20th Century Transformation of U.S. Agriculture and Farm Policy*. EIB-3. Washington, D.C.: Economic Research Service/USDA.
- Do Federal Programs Ensure U.S. Workers are Recruited First before Employers Hire from Abroad? Hearing before the Committee on Education and Labor*. House of Representatives. One Hundred Tenth Congress, Second Session. (2008).

- Doeringer, P. B., Piore, M. J., & United States Dept. of Labor Manpower Administration. (1971). *Internal Labor Markets and Manpower Analysis*. Lexington, Mass.: Heath.
- Domhoff, G. W. (1990). *The Power Elite and the State: How Policy is Made in America*. New York: Aldine de Gruyter.
- Dresser, L. *When Work Doesn't Pay: The Hidden Cost of Low-Wage Jobs in Wisconsin*. Madison: COWS.
- Economic Research Service USDA (Undated). Immigration Reform and Control Act of 1996. (30-32).
- Edwards, R., Reich, M., & Gordon, D. M. (1975). *Labor Market Segmentation*. Lexington, Mass.: D.C. Heath.
- Effland, A. B. W., & Runyan, J. (October 1998). Status report: Hired Farm Labor in U.S. Agriculture. *Agricultural Outlook*, AGO-255, 19-22.
- Emerson, R. D. (2007). Agricultural Labor Markets and Immigration. *Choices*, 22(1), 57-66.
- Erickson, C. L., & Mitchell, J. B. (2007). Monopsony as a Metaphor for the Emerging Post-Union Labour Market. *International Labour Review*, 146(3/4), 163-187.
- Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, N.J.: Princeton University Press.
- Finding Farmworkers. Editorial. (2010, February 17). *Los Angeles Times*.
- Fine, J., & Tichenor, D. J. (2009). A Movement Wrestling: American Labor's Enduring Struggle With Immigration, 1866–2007. *Studies in American Political Development*, 23, 84-113.
- Freeman, R. B. (2006). *Is a Great Labor Shortage Coming? Replacement Demand in the Global Economy*. Cambridge: National Bureau of Economic Research.
- Gatta, M., & Roos, P. (2005). Rethinking Occupational Integration. *Sociological Forum*, 20(3), 369-402.
- General Accountability Office. (2008). *Fair Labor Standards Act: Better Use of Available Resources and Consistent Reporting Could Improve Compliance*. GAO-08-962T. <http://www.gao.gov/new.items/d08962t.pdf>.
- Gibson, W. E. (1987). Plan Will Reduce Farmworker Pay - Present, Proposed Wages. *Sun-Sentinel*, pp. 16A.
- Gilbert, L. (2005). Fields of Hope, Fields of Despair: Legisprudential and Historic Perspectives On Agjobs Bill of 2003. *Harvard Journal on Legislation*, 42(2), 417-482.
- Gordon, D. M., Edwards, R., & Reich, M. (1994). The Theory of Social Structures of Accumulation. Long Swings and Stages of Capitalism. In D. M. Kotz, T. McDonough & M. Reich (Eds.). *Social Structures of Accumulation: The Political Economy of Growth and Crisis*. Cambridge: Cambridge University Press.

- Gordon, D. M., Edwards, R., & Reich, M. (1982). *Segmented Work, Divided Workers: The Historical Transformation of Labor in the United States*. Cambridge, Cambridgeshire; New York: Cambridge University Press.
- Gordon, J. (2007). Transnational Labor Citizenship. *Southern California Law Review*, 80(3), 503-588.
- Gordon, J. (2011). *Free Movement and Equal Rights for Low-Wage Workers? What the U.S. Can Learn from the New EU Migration to Britain*. The Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School.
- Gray, M. (forthcoming). When Inequalities Cross Borders: A Case Study of Hudson Valley Farmworkers. In P. Gootenberg, & L. Reygadas Robles (Eds.)
- Griffith, D. C. (2007). Guestworkers, *Enganchadores*, and Changing Labor Relations in U.S. Rural Communities. *The Journal of Latino-Latin American Studies*, 2(4), 74-86.
- Griffith, D. C. (2006). *American Guestworkers: Jamaicans and Mexicans in the U.S. Labor Market*. University Park, Pa.: Pennsylvania State University Press.
- Griffith, D. C., & Kissam, E. (1995). *Working Poor: Farmworkers in the United States*. Philadelphia: Temple University Press.
- Guest Worker Programs. Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary*. House of Representatives. One Hundred Fourth Congress, First Session (December 7, 1995).
- Guestworker Visa Programs: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary*. House of Representatives. One Hundred Seventh Congress, First Session (2001).
- Guzda, H. P. (June 1983). The U.S. Employment Service At 50: It Too Had To Wait Its Turn. *Monthly Labor Review*, 106(6), 12-19.
- The H-2A Program: Is It Working? Hearing before the Senate Committee on the Judiciary*. U.S. Senate. One Hundred Fifth Congress, Second Session (1999).
- Hahamovitch, C. (2001). "In America Life is Given Away": Jamaican Farmworkers and the Making of Agricultural Immigration Policy. In C. M. Stock, & R. D. Johnston (Eds.). *The Countryside in the Age of the Modern State: Political Histories of Rural America* (pp. 335). Ithaca, N.Y. London: Cornell University Press.
- Hahamovitch, C. (1997). *The Fruits of their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870-1945*. Chapel Hill: University of North Carolina Press.
- Hamilton, E. R. (2010). *Farmworker Housing in New York State: Obstacles and Options. Hearing To Review Structural Changes That Are Taking Place in the Agricultural Economy and Their Impacts. Hearing Before the House Committee On Agriculture. One Hundred Tenth Congress, first Session (2007)*. Washington: U.S. G.P.O.

- Heppel, M. L., & Amendola, S. L. (1992). *Immigration Reform and Perishable Crop Agriculture: Compliance or Circumvention?*. Lanham, Md.; Washington, D.C.: University Press of America; Center for Immigration Studies.
- Hiebert, D. (1999). Local Geographies of Labor Market Segmentation: Montreal, Toronto, and Vancouver, 1991. *Economic Geography*, 75(4), 339-369.
- Horrigan, M. W. (February 2004). *Employment Projections to 2012: Concepts and Context*. Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections.
- Hudson, K. (2007). The New Labor Market Segmentation: Labor Market Dualism in the New Economy. *Social Science Research*, 36(1), 286-312.
- Immigration Reform and Control Act of 1985: Hearings before the Subcommittee on Immigration and Refugee Policy of the Committee on the Judiciary*. U.S Senate (June 17, 18 and 24, 1985).
- Immigration Reform Failing - A Chance To Make Sense of the System May Not Come Again For Years (2007). *The Post-Standard* (Syracuse, NY), pp. E2.
- Kalleberg, A. L., Reskin, B. F., & Hudson, K. (2000). Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in the United States. *American Sociological Review*, 65(2), 256-278.
- Kandel, W. (2008). Hired Farmworkers a Major Input for Some U.S. Farm Sectors. *Amber Waves*, 6(2). Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.
- Key, N. and Rogers, M.J. (2007). Measures of Trends in Farm Size Tell Differing Stories. *Amber Waves*, 5(5). Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.
- Klamut, J. (2006). The Invisible Fence: De Facto Exclusion of Undocumented Workers from State Workers' Compensation Systems. *Kansas Journal of Law & Public Policy*, 16(2), 174-207.
- Krippner, G., Granovetter, M., Block, F., Biggart, N., Beamish, T., Hsing, Y., et al. (2004). Polanyi Symposium: A Conversation on Embeddedness. *Socio-Economic Review*, 2, 109-135.
- Levine, L. (2009). *The Effects on U.S. Farm Workers of an Agricultural Guest Worker Program*. No. 95-712. Congressional Research Service.
- Leyden, K. M. (1995). Interest Group Resources and Testimony at Congressional Hearings. *Legislative Studies Quarterly*, 20(3), pp. 431-439.
- Lindblom, C. E. (1977). *Politics and Markets: The World's Political Economic Systems*. New York: Basic Books.
- Local News. (2006, October 10). *The Daily News*. (Batavia, NY), pp. 3A.
- Lovell, V., Hartmann, H., & Werschkul, M. (2007). More Than Raising the Floor: The Persistence of Gender Inequalities in the Low-Wage Labor Market. In D. S. Cobble



- (Ed.), *The Sex of Class: Women Transforming American Labor* (pp. 35-57). Ithaca: ILR Press.
- Lowi, T. J. (2009). *Arenas of Power*. Boulder: Paradigm Publishers.
- Lucier, G., & Plummer, C. (August 22, 2002). *Vegetables and Melons Outlook*. (VGS-292). Washington, D.C.: Economic Research Service, USDA.
- Lucier, G., Pollack, S., Ali, M., & Perez, A. (April 2006). *Fruit and Vegetable Backgrounder*. (VGS-313-01). Washington, D.C.: Economic Research Service, USDA.
- MacDonald, J., Hoppe, R., & Banker, D. (2006). *Growing Farm Size and the Distribution of Farm Payments*. EB-6. Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.
- Maloney, T. R., Smith, M. A., & Dudley, M. J. *Labor Outlook for New York Agriculture 2009*. (pp. 8-1 - 8-10).
- Marshall, C., & Rossman, G. B. (2006). *Designing Qualitative Research* (4th ed.). Thousand Oaks, Calif.: Sage Publications.
- Martin, P. L. (2007). *Farm Labor Shortages: How Real? What Response?* Washington, D.C.: Center for Immigration Studies.
- Martin, P. L. (2003). *Managing Labor Migration: Temporary Worker Programs for the 21st Century*. International Labour Organization (International Institute for Labour Studies).
- Martin, P. L. (2009). *Importing Poverty? Immigration and the Changing Face of Rural America*. New Haven: Yale University Press.
- Martin, P. L., Fix, M., & Taylor, J. E. (2006). *The New Rural Poverty: Agriculture and Immigration in California*. Washington, D.C.: Urban Institute Press.
- Massey, D. S. (2011). Isolated, Vulnerable and Broke. *The New York Times*(NY), pp. 23.
- Massey, D. S. & Russell Sage Foundation. (2007). *Categorically Unequal: The American Stratification System*. New York: Russell Sage Foundation.
- Meeting the Workforce Needs of American Agriculture, Farm Workers, and the U.S. Economy: Hearing before the Subcommittee on Immigration of the Committee on the Judiciary*. U.S. Senate. One Hundred Sixth Congress, First Session (May 12, 1999). Washington: U.S. G.P.O.
- Mehta, C., Theodore, N., & Hincapié, M. (November 2003). *Social Security Administration's No-Match Letter Program: Implications for Immigration Enforcement and Workers' Rights*. Chicago: Center for Urban Economic Development.
- Miles, M. B., & Huberman, A. M. (1994). *Qualitative Data Analysis: An Expanded Sourcebook* (2nd ed.). Thousand Oaks: Sage Publications.

- Moss, P. I., & Tilly, C. (2001). *Stories Employers Tell: Race, Skill, and Hiring in America*. New York: Russell Sage Foundation.
- Ness, I. (2007). Forging a Migration Policy For Capital: Labor Shortages and Guest Workers. *New Political Science*, 29(4), 429-452.
- Nessel, L., & Ryan, K. (December, 1994). Migrant Farmworkers, Homeless and Runaway Youth: Challenging the Barriers to Inclusion. *Law and Inequality*, 13(99)
- Ngai, M. M. (2004). *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton, N.J.; Woodstock: Princeton University Press.
- Núñez-Neto, B. (2008). *Border Security: The Role of the U.S. Border Patrol*. (RL32562). Congressional Research Service.
- On Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy. Hearing before the Committee on Education and the Workforce*. U.S. Senate (July 19, 2006). Washington: U.S. G.P.O.
- Ontiveros, M. L. (2007). Female Immigrant Workers and the Law: Limits and Opportunities. In D. S. Cobble (Ed.), *The Sex of Class: Women Transforming American Labor* (pp. 35-57). Ithaca: ILR Press.
- Passel, Jeffrey S., Cohn, D'Vera. (2009). *Mexican Immigrants: How Many Come? How Many Leave?* Washington, DC: Pew Hispanic Center.
- Passel, J. S., & Cohn, D. (September 1, 2010). *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*. Washington, DC: Pew Hispanic Center.
- Passel, J. S., & Cohn, D. (2011). *Unauthorized Immigrant Population: National and State Trends, 2010*. Washington, DC: Pew Hispanic Center.
- Pastor, M., & Alva, S. (2004). Guest Workers and the New Transnationalism: Possibilities and Realities in an Age of Repression. *Social Justice*, 31(1-2), 92-111.
- Patrick, J. (2002, May 12). Some Farmers Fret about Labor Shortage. *The Daily Gazette (Schenectady, NY)*, pp. A-01.
- Pena, A. A. (2009). *Poverty, Legal Status, and Pay Basis in U.S. Agriculture*. Stanford Center for International Development. Working Paper 377.
- Pfeffer, M. J., & Parra, P. A. (2004). Immigrants and the Community.
- Phillips, J. A., & Massey, D. S. (1999). The New Labor Market: Immigrants and Wages after IRCA. *Demography*, 36(2), 233-246.
- Piore, M., & Safford, S. (2006). Changing Regimes of Workplace Governance, Shifting Axes of Social Mobilization, and the Challenge to Industrial Relations Theory. *Industrial Relations*, 45(3), 299-325.
- Polanyi, K. (2001 [1944]). *The Great Transformation* (2nd Beacon Paperback ed.). Boston, MA: Beacon Press.
- Pollack, S., & Perez, A. (March 31, 2005). *Fruit and Tree Nuts Outlook*. No. FTS-315. Washington, D.C.: Economic Research Service, USDA.

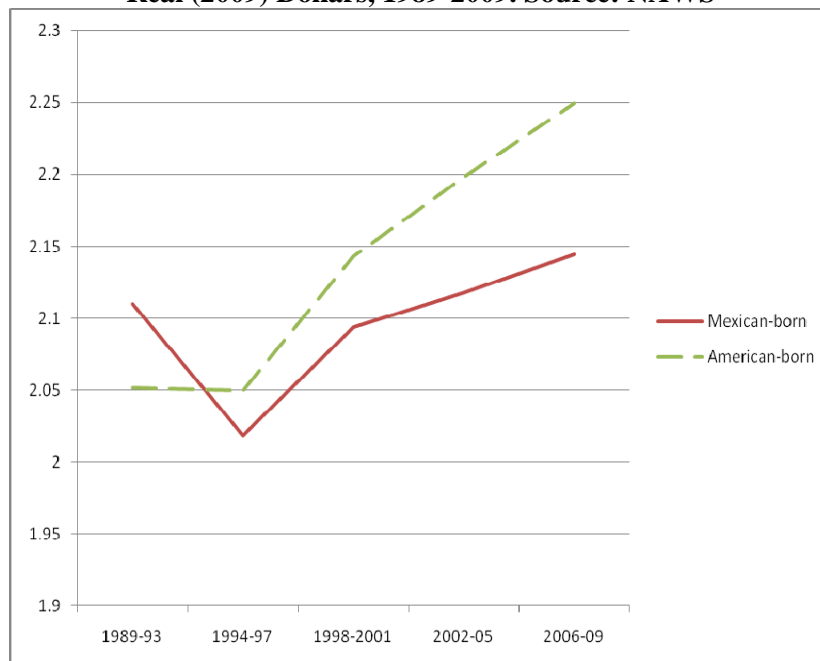
- Pollack, S., & Perez, A. (March 27, 2009). *Fruit and Tree Nuts Outlook*. No. FTS-336. Washington, D.C.: Economic Research Service, USDA.
- Preston, J. (2007, August 3). In Increments, Senate Revisits Immigrant Bill. *The New York Times (NY)*, 1.
- Preston, J. (2006, September 22). Pickers are Few, and Growers Blame Congress. *The New York Times (NY)*, 1.
- Preston, J. (2011, August 18). Foreign Students in Work Visa Program Stage Walkout at Plant. *The New York Times (NY)*, A11.
- Protecting America's Harvest. Hearing before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee on the Judiciary*. House of Representatives. One Hundred Eleventh Congress, Second Session (2010). Washington: U.S. G.P.O.
- Protecting U.S. and Guest Workers: The Recruitment and Employment of Temporary Foreign Labor. Hearing before the Committee on Education and Labor*. House of Representatives. One Hundred Tenth Congress. First Session (2007).
- Quadagno, J. S. (1984). Welfare Capitalism and the Social Security Act of 1935. *American Sociological Review*, Vol.49, Issue 5, p.632, 49(5), 632.
- Rose, S., & Hartmann, H. (2004). *Still a Man's Labor Market*. Washington, D.C.: Institute for Women's Policy Research.
- Rot in the Fields: As Farmworkers Become Scarcer, Congress Dithers. (2007, December 3). *The Washington Post*. (Washington, D.C.), p. A16.
- Rothenberg, D. (1998). *With These Hands: The Hidden World of Migrant Farmworkers Today* (1st ed.). New York: Harcourt Brace.
- Rubery, J. (2005). Labor Markets and Flexibility. In S. Ackroyd (Ed.), *The Oxford Handbook of Work and Organization* (pp. 31-51). Oxford; New York: Oxford University Press.
- Rubery, J. (2006). *Segmentation Theory Thirty Years On*. Unpublished manuscript.
- Rubin, H. J., & Rubin, I. (1995). *Qualitative Interviewing: The Art of Hearing Data*. Thousand Oaks: Sage Publications.
- Runyan, J. (2003). The Dynamics of Hired Farm Labor. *Amber Waves*, 1 (3), 11.
- Savage, D. (May 26, 2011). Supreme Court Upholds Arizona Immigration Law Targeting Employers. *Los Angeles Times*.
- Schell, G. (2002). Farmworker Exceptionalism under the Law: How the Legal System Contributes to Farmworker Poverty and Powerlessness. In J. Thompson, D. Charles, & M. F. Wiggins (Eds.). *The Human Cost of Food: Farmworkers' Lives, Labor, and Advocacy*. Austin: University of Texas Press.
- Schmitt, E. (1996). Panel Votes for Worker Visas for 250,000. *The New York Times (NY)*, pp. 14.

- Sengupta, S. (2000). The Nation: The Immigration Debate - Full Employment Opens the Door. *The New York Times* (NY), pp. 4.
- Stake, R. E. (2005). Qualitative Case Studies. In N. K. Denzin, & Y. S. Lincoln (Eds.), *The Sage Handbook of Qualitative Research* (3rd ed., pp. 443-466). Thousand Oaks: Sage Publications.
- Stolz, B.A. (2007). Interpreting the U.S. Human Trafficking Debate through the Lens of Symbolic Politics. *Law & Policy*, 29(3), 311-338.
- Taylor, J.E. and Martin, P.L. (1995). Immigration Reform and U.S. Agriculture. *Choices*. Third Quarter (25-28).
- Temporary Agricultural Work Visa Programs. Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary*. House of Representatives (September 24, 1997).
- Temporary Guest Worker Proposals in the Agriculture Sector: Hearing before the Committee on Agriculture*. House of Representatives, One Hundred Eighth Congress, Second Session (January 28, 2004). Washington: U.S. G.P.O.
- Theodore, N., & Doussard, M. (2006). *The Hidden Cost of Low-Wage Jobs in Illinois*. Chicago: Center for Urban Economic Development, University of Illinois.
- Thompson, J., Charles D., & Wiggins, M. F. (Eds.) (2002). *The Human Cost of Food: Farmworkers' Lives, Labor, and Advocacy*. Austin: University of Texas Press.
- Tichenor, D. J. (2002). *Dividing Lines: The Politics of Immigration Control in America*. Princeton University Press.
- The 21st Century Workplace: Preparing for Tomorrow's Employment Trends Today*. United States Senate, One Hundred Ninth Congress (2005).
- 2000 Agricultural Opportunities Act. Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary*. House of Representatives (2000).
- U.S. Department of Agriculture, NASS. (2010). *New York Annual Statistics Bulletin*.
- U.S. Department of Labor Annual Report, 1961. Washington, D.C.
- U.S. Department of Labor. (March 2005). *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002: A Demographic and Employment Profile of United States Farm Workers*. Research Report No. 9.
- U.S. Department of Labor. (1942). *Guides for Wartime Use of Women on Farms*. Women's Bureau, Special Bulletin No. 8. Washington, D.C.
- U.S. Department of Labor. 57<sup>th</sup> Annual Report, Fiscal Year 1969. Washington, D.C.
- Hearing to Review the Labor Needs of American Agriculture. Hearing before the Committee on Agriculture*. House of Representatives. (2009).
- Hearings on Immigration Reform and Agricultural Guestworkers. Hearing before the Subcommittee on Labor Standards of the Committee on Education and Labor*. House of Representatives. (1985). Washington: U.S. G.P.O.

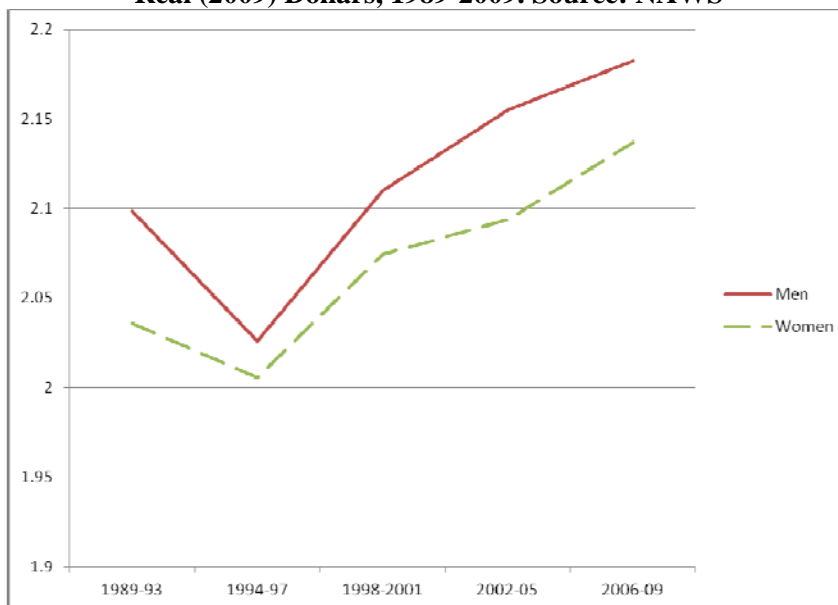
- Vallejos, Q. M., Quandt, S.A. and Arcury, T.A. The Condition of Farmworker Housing in the Eastern United States. In T. A. Arcury, & S. A. Quandt (Eds.) *Latino Farmworkers in the Eastern United States*. New York, NY: Springer.
- Varsanyi, M. (2008). Immigration Policing through the Backdoor: City Ordinances, the "Right to the City," and the Exclusion of Undocumented Day Laborers. *Urban Geography*, 29(1), 29–52.
- Vogl, V. (2008). Congress Giveth, and Congress Taketh Away: How the Arbitration and Mediation Clauses Jeopardize the Rights Granted to Immigrant Farmworkers by AgJOBS. *Hamline Journal of Public Law & Policy*, 29(2), 463-497.
- Wedemeyer, J. (2006). Of Policies, Procedures, and Packing Sheds: Agricultural Incidents of Employer Abuse of the H-2B Nonagricultural Guestworker Visa. *The Journal of Gender, Race, and Justice*, 10(1), 143-192.
- Weisman, J. (2007). Proposal for Guest Workers Survives. *The Washington Post (DC)*, A6.
- Wells, M. J. (2004). The Grassroots Reconfiguration of U.S. Immigration Policy. *International Migration Review*, 38(4), 1308-1347.
- Westat (2009). *Findings of the E-verify Program Evaluation*. Report Submitted to the U.S. Department of Homeland Security. Rockville, Maryland.
- Whittaker, W.G. (2006). *Migrant and Seasonal Agricultural Workers: Protective Statutes*. RL33372. Congressional Research Service.
- Wiggins, M. F. (2009). Farm Labor and the Struggle for Justice in the Eastern United States. In T. A. Arcury, & S. A. Quandt (Eds.) *Latino Farmworkers in the Eastern United States*. New York, NY: Springer.
- Yin, R. K. (2002). *Case Study Research: Design and Methods, Third Edition*. Sage Publications.
- Zabin, C., Dube, A., & Jacobs, K. (2004). *The Hidden Public Costs of Low-Wage Jobs in California*. Center for Labor Research and Education, UC Berkeley.
- Zolberg, A. R. (2006). *A Nation by Design: Immigration Policy in the Fashioning of America*. Cambridge: Harvard University Press.

## Appendix

**Figure A.1: Average Hourly Wages of Farmworkers by Place of Birth**  
Real (2009) Dollars, 1989-2009. Source: NAWS

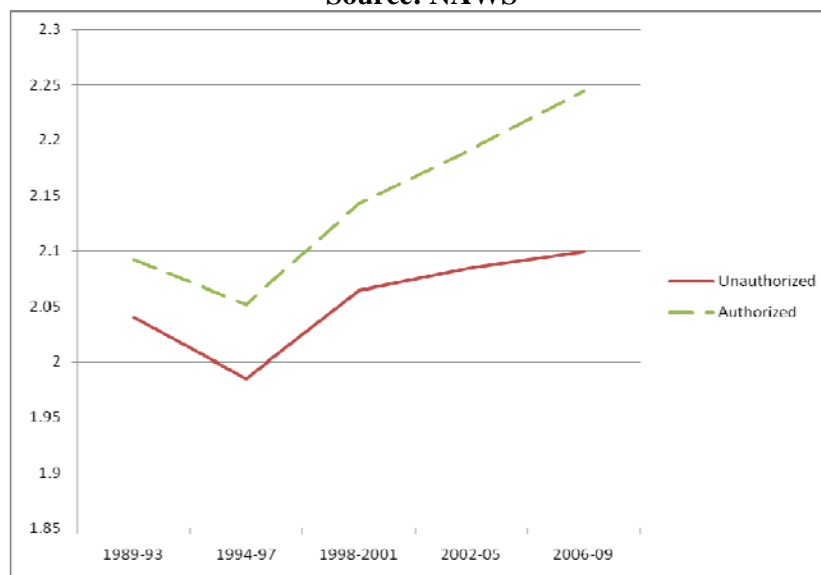


**Figure A.2: Average Hourly Log Wages of Farmworkers by Sex**  
Real (2009) Dollars, 1989-2009. Source: NAWS



**Figure A.3: Average Hourly Log Wages of Farmworkers by Legal Status**  
**Real (2009) Dollars, 1989-2009**

Source: NAWS



## Regression Equations (See Chapter 2, II)

Equation 1 tests the effect of legal status or whether an individual is authorized to work ( $A_i$ ) on the logarithm of wages  $\ln(w)$ . The matrix  $X$  contains the  $i$ th individual's information on the seasonality of their work, whether the worker is employed by a farm labor contractor, place of birth (U.S., Mexico, or other), gender, type of migration, type of crop they harvest, type of task they perform (harvest, pre-harvest, post-harvest, semi-skilled, and supervisory work), the number of years with current employer, the ability to speak English, the ability to read English, and years of schooling. The term  $\varepsilon$  denotes an error term. The model is first estimated with just the indicator of whether the individual is authorized to work. The above measures are then added. Results are below. Full results for control variables are available on request.

$$[1] \quad \ln w_i = \alpha + \beta X_i + \varepsilon_i$$

**Table A.1: Results of Regression Equation 1**  
**Effect of legal status on log wages ( $\ln w_i$ )**

	Coef.	Std.Err.	t	P>t	[95% Confidence Interval]	
1989-93	0.0522	0.0068	7.6500	0.0000	0.0388	0.0655
1994-97	0.0673	0.0058	11.6800	0.0000	0.0560	0.0786
1998-01	0.0781	0.0044	17.8100	0.0000	0.0695	0.0867
2002-05	0.1069	0.0046	23.3400	0.0000	0.0979	0.1159
2006-09	0.1453	0.0058	25.0600	0.0000	0.1339	0.1566

Notes: Data combined in four years per NAWS recommendations

**Table A.2: Results of Regression Equation 2**  
**Effect of legal status on log wages ( $\ln w_i$ ), controlling for job and worker characteristics.**

	Coef.	Std.Err.	t	P>t	[95% Confidence Interval]	
1989-93	0.0605	0.0084	7.2400	0.0000	0.0441	0.0769
1994-97	0.0258	0.0073	3.5600	0.0000	0.0116	0.0401
1998-01	0.0320	0.0092	3.4800	0.0010	0.0140	0.0500
2002-05	0.0561	0.0060	9.2900	0.0000	0.0443	0.0680
2006-09	0.0688	0.0077	8.9000	0.0000	0.0537	0.0840