



working environment. As will be discussed below, agribusiness regularly circumvents the health and safety regulations on farm work – with disastrous consequences for farmworkers.

As farmworkers suffer, Cargill, Monsanto, Novartis/ADM, and the eight other agribusiness companies that account for over 60 percent of the retail purchases of food in the U.S.,<sup>12</sup> are reaping huge profits. But they are not the only ones contributing to the exploitation of farmworkers. The average consumer unknowingly perpetuates this system every time she buys a sandwich at fast-food chains like Subway.

Anyone who has ever been to a fast-food chain has probably eaten Florida-grown tomatoes. These have lately been the focus of the most-publicized recent case of farmworker abuse. National fast-food chains like Sub-Way buy the majority of their tomatoes from Immokalee, Florida.<sup>13</sup> These food chains make hundreds of millions of dollars in profit, but the farmworkers who pick the tomatoes are paid sweatshop wage: only 40 to 45 cents for every 32-pound bucket of tomatoes that they pick. At this “piece rate” a farm worker must pick over two tons of tomatoes to make \$50 in a day.<sup>14</sup> Corporate food chains are directly involved in setting these low wage rates. These chains are able to use their buying power to demand ever-lower prices from their tomato suppliers, which in turn puts downward pressure on farmworker wages.

Some farmworkers have organized to fight for improved wage and working conditions. One of the most ambitious of the farmworkers’ campaigns is led by the Coalition of Immokalee Workers (CIW), based in Florida. CIW has organized nationwide consumer boycotts to pressure food chains into adopting codes of conduct that mandate respect for farmworkers’ rights. These boycotts have successfully led Taco Bell, McDonalds, and most recently Burger King, to adopt such corporate codes.<sup>15</sup>

Similar struggles have occurred all over the country. In North Carolina, the Farm Labor Organizing Committee (FLOC) waged a boycott against Mt. Olive Pickle Company from 1998 to 2004, resulting in a labor agreement covering 8,000 farmworkers on 1,050 farms in North Carolina and guaranteeing farmworkers’ right to negotiate their working conditions with farmers.<sup>16</sup> Ineem195( )-170(un)ep95( )-170(7(n)r)-7(e)4(e.158(n) )-90(r)-7.

Farming has been taken over by a small number of huge corporations, displacing millions of small farmers. As small farmers have left the fields, farmworkers have entered them. The demand for farmworkers is the result of the modernization of agriculture, and the supply of farmworkers is the result of globalization.

According to Census Bureau estimates from households questioned in the Current Population Survey (CPS), there were 1.01 million farmworkers in the U.S. in 2006.<sup>20</sup> However, counting farmworkers is difficult due to the seasonal nature of the work and the high turn-over rate.<sup>21</sup> A more realistic estimate is given by employer records collected by the Census of Agriculture. This counted 3,036,470 farmworkers in the U.S. in 2002.<sup>22</sup> Small farms relied primarily on family members or residents of the local community, but as farms industrialized and become large-scale commercial enterprises, the need for laborers consequently increased. Therefore, the “pressing need for large numbers of temporary laborers is a function of the industrialization of agricultural production.”<sup>23</sup>

Over 80 percent of these workers are migrants, and many of them came from small Mexican farms.<sup>24</sup> According to the 2007 Hudson Valley study, 99 percent of New York’s farmworkers are foreign-born and 63 percent are from Mexico.<sup>25</sup> Small farmers in Mexico, like small farmers in America, have been displaced by big agribusiness. However, their displacement was also facilitated by trade policies under the North American Free Trade Agreement (NAFTA). Since 1994, when NAFTA opened the Mexican grain market to U.S. imports, Mexico has become the third-largest recipient of U.S. agricultural exports.<sup>26</sup> Between 1999 and 2004, “over 1.3 million small farmers in Mexico were pushed into bankruptcy by cheap American grain imports.”<sup>27</sup> Most of these imports were produced by large farms subsidized by the U.S. government.<sup>28</sup> Unable to compete with highly subsidized U.S. imports, many campesinos have left agriculture and migrated north. In this context, farmworkers can be seen “as refugees from small farms in other parts of the same global system.”<sup>29</sup>

Three-fifths of these farm workers are very poor, earning less than \$10,000 annually.<sup>30</sup> According to the 2007 Hudson Valley study, the average hourly wage of farmworkers in New York is \$6.92, and they often work 10 to 12 hours with no overtime pay, no health insurance, no sick days and no benefits whatsoever.<sup>31</sup> These facts were confirmed in a 2001 report by the U.S. Department of Labor that described farm workers as “a labor force in significant economic distress.”<sup>32</sup> In the most extreme cases, farm workers are held against their will and forced to work for little or no pay. Since 1997, Federal Civil Rights officials have prosecuted several cases of modern-day slavery in several states involving thousands of farm workers.

The consolidation, concentration and globalization of agriculture has distanced food production from food consumption. Most U.S. consumers today are far removed from the reality of modern agribusiness since finding fresh fruits and vegetables is as easy as going to the grocery store – even if food inflation has made it tougher to afford the food on display there. This abundance also “makes it all too easy to forget that our food is cultivated, harvested, and packaged by farm workers who labor for less pay, fewer benefits, and under more dangerous conditions than workers in almost any other sector of the U.S. economy.”<sup>33</sup>

The exploitation of farmworkers is made possible partly by the lack of sufficient legal protection. This lack of protection is a legacy of the early twentieth century, when all agricultural workers were excluded from the federal labor laws created under the New Deal. State law, like federal law, has excluded farmworkers. For example, New York’s laws deny farmworkers workers’ compensation coverage, the right to a day off each week and the right to time-and-a-half overtime pay for every hour worked above 40 hours.<sup>34</sup>

## **A History of Exclusion**

Throughout American history, farmworkers have been excluded from the growing legal protections given to other workers. According to longtime Migrant Legal Services attorney Greg Schell:



on farmworkers because of the brutality of their workin

that laborer during the previous year – automatically excluding new hires from any coverage – or he paid a total of less than \$12,000 to all laborers employed during the prior year.<sup>57</sup> The New York Assembly has repeatedly passed a bill that would equalize workers' compensation coverage between agricultural laborers and most other workers, but it has always died in the New York Senate.<sup>58</sup> The question is: why are so many politicians steadfastly opposed to extending any legal protections to farmworkers?

### **Reasons for Exclusion**

It is unclear exactly why Congress decided to “exempt” farmworkers from the labor laws of the New Deal. Very little attention was given to the matter during Congressional debates. Some scholars have argued that these agricultural exemptions were prompted by racial concerns.<sup>59</sup> During the 1930s and 1940s, most farmworkers in the rural South were African American. Fearing that such legislation would disrupt Jim Crow laws, most Southerners in Congress opposed any legislation on behalf of farmworkers, and FDR had to exclude farmworkers to get the needed votes for his New Deal initiatives.

Racism certainly played a role in the exclusion, but the more fundamental motive was *classism*. As W.E.B. Du Bois concluded, racism serves an economic function – maintaining a constant supply of low-wage labor.<sup>60</sup> Martin Luther King Jr. agreed with Du Bois. “Depressed living standards for Negroes,” King wrote in 1966, “are a structural part of the economic system ... Certain industries ... are based upon a supply of low-paid, under skilled and immobile nonwhite labor.”<sup>61</sup> That statement is perhaps nowhere more true than with southern agriculture, which relied on black slavery and, after the slaves were freed, on black sharecroppers and tenant farmers. Today, virtually the entire agricultural labor force is non-white. However, as both Du Bois and King recognized, racial identities obscure people's true interests, which are based on class. White folks often



political power of the farm lobby.

*Whenever there is an investigation or the suggestion of a substantial penalty, growers contact their congressman, senator or governor, who then leans on the [DOL] ... The [DOL], like all federal*



to include farmworkers will just apply this flawed system to agriculture.

Second, any attempt to protect farmworkers' rights will require changes in immigration law, as well as labor law. According to NAWS, 53 percent of farmworkers nationwide are undocumented immigrants, and in New York, about 71 percent are undocumented.<sup>83</sup> Although the NLRA covers workers' defined as "employees" regardless of their immigration status,<sup>84</sup> the U.S. Supreme Court ruled in *Hoffman Plastics v. NLRB* that undocumented workers cannot receive the remedy of back pay for NLRA violations.<sup>85</sup> Other remedies, such as "cease and desist" orders, are still available to undocumented workers. But, since *Hoffman*, employers have made claims that undocumented workers are unprotected by any labor laws.<sup>86</sup> Thus, immigrant workers have been deterred from filing unfair labor practice charges by fears that their immigration status will be challenged.

Immigration status is a problem for farmers as well as farmworkers. According to Peter Gregg, a spokesperson for the New York Apple Association, which represents over 670 apple growers in the state, Immigration and Customs Enforcement (ICE) raids have devastated many farms. "A lot of growers lost numerous workers at the peak of the harvest. They had to scramble to try to find someone else," Gregg said. "In a lot of cases, there were apples left hanging on the trees."<sup>87</sup> Thus, immigration reform is in the best interest of both farmers and farmworkers. However, there has not been any major reform relating to immigrant farmworkers since 1986 when the federal government passed the Immigration Reform and Control Act (IRCA). Under IRCA's "Special Agricultural Worker" (SAW) program, any immigrant who worked 90 days in agriculture during the previous year could receive legal residence. Of the 2.8 million immigrants granted amnesty by IRCA, over 1 million were undocumented

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farmland – in effect creating a “food bubble.” However,



<sup>29</sup> Thompson, Charles D. "Layers of Loss: Migrants, Small Farmers, and Agribusiness." In Charles Thompson and Melinda Wiggins, eds., *The*

States, 1980-1995.” Retrieved July 25, 2008. <http://www.cdc.gov/niosh/docs/2001-129/2001129.html#Methods>. Thus, NIOSH data may overestimate the true number of workplace fatalities. Windau and Meyers, on the other hand, rely not on the NIOSH, but on the Census of Fatal Occupational Injuries (CFOI). The CFOI is a multiple record-based census of occupational fatalities and therefore may exclude alleged “non-work-related” deaths. See David Hard, Ph.D., John Myers, M.S.F., Karl Snyder, Ph.D., Virgil Casini, B.S., Linda Morton, M.S., Rosemary Cianfrocco and Judy Fields, “Young Workers at Risk When Working in Agricultural Production,” *American Journal of Industrial Medicine*, vol. 36 (Oct. 1999): 31-33.

<sup>52</sup> Ahn, Christine. “Migrant Farmworkers: America’s New Plantation Workers.” *Food First Backgrounder*, vol. 10 (Spring 2004): p. 1.

<sup>53</sup> Rothenberg, p. 51-54.

<sup>54</sup> *ibid*, p. 52.

<sup>55</sup> Schell, p. 153.

<sup>56</sup> *ibid*, p. 214.

<sup>57</sup> See N.Y. Workers’ Comp. Law, Sect. 3, Group 14-b. (“Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more.”)

<sup>58</sup> The Farmworkers Fair Labor Protection Act (A 7528/ S 3884) was passed by the New York Assembly in 2003, 2004, 2005 and 2006, but it has never passed in the State Senate. A summary of the bill is available here: <http://assembly.state.ny.us/leg/?bn=A07528>.

<sup>59</sup> For example, see Linder, Marc. *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the U.S.* (Boulder, Colo.: Westview Press, 1992).

<sup>60</sup> Du Bois, W.E.B. *Black Reconstruction in America: An Essay toward a history of the part which black folk played in the attempt to reconstruct democracy in America, 1860 – 1880*



<sup>95</sup> “Fair Trade is an organized social movement designed to promote equitable standards of labor, environmental sustainability and social justice and create in a market in which poor farmers in developing countries can sell their agricultural products or artisan handicrafts directly to distributors and earn living wages.” Joleen Ong, “Fair Trade Cooperative Brews Up Support for their Coffee,” *The College of New Jer*