

**WELCOME ‘GUESTS’? MIGRANT LABOR RIGHTS IN THE
US GUESTWORKER PROGRAM**

by

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A dissertation submitted to the Faculty of the University of
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degree of Doctor of Philosophy in Political Science and
International Relations

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US GUESTWORKER PROGRAM**

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ABSTRACT

Customers enjoy low prices on supermarket shelves, yet these labels conceal the human costs found within food supply chains. While hyper-commodification and market integration significantly influence the neoliberal world food regime's competitive pricing, equally important is dependence upon cheap, "low-skilled," foreign workers to fulfill labor-intensive food production needs. Despite being staples of agro-capitalist societies, guestworkers are frequently exploited. The US is no exception. The legacy of plantation economics informs the US Guestworker Program's structural foundation, creating a legally sanctioned underclass of disenfranchised and ghettoized H-2A and H-2B guestworkers with little recourse against employer abuse. Since the 1986 creation of the H-2A and H-2B visa categories, nearly 2.4 million of these temporary foreign workers have come to the US (US Department of Labor 2016).

Using a feminist conceptual framework, this research examines the labor rights and protections of the US Guestworker Program's H-2A and H-2B workforce through a case study approach using policy analysis and fieldwork. In my policy research I examine how the discourses of political actors have explicitly shaped and given meaning to the program's labor rights and protections. The findings of this chapter demonstrate that for the past two decades (1995-2015), while most legislators propagated a politics of fear regarding immigration, systematic efforts by a small group of members of Congress focused on expanding the US Guestworker Program and decreasing "burdensome" H-2A

and H-2B labor rights, often using policy proposals submitted by agribusiness groups. Without viable protections, both H-2A and H-2B workers are left in precarious employment conditions. Yet through targeted efforts by Congress – and endorsed by agribusiness – the rights of H-2B workers have been more readily marginalized than their H-2A counterparts.

My fieldwork examines H-2A and H-2B workers lived experiences, and how stratified rights articulated within policy have translated to differences in protections on the ground.” I conducted fieldwork at two case study locations in the Mid-Atlantic region. I selected this region because it is both most representative of the nation’s distribution of H-2A and H-2B guestworkers, and also frequently overlooked. Through interviews with 28 H-2A and H-2B guestworkers, 16 community stakeholders, and 10 government employees, it was revealed that while both H-2A and H-2B workers experienced precarious working conditions, H-2B were more likely to experience abuse. Adding further nuance and complexity, through fieldwork, it was evident that a gendered division of labor separates the two visa categories. Gendered stereotypes about the migrant women pervade the US Guestworker Program, representing female guestworkers as a disposable, cheap, weak, and slow source of labor. Despite many women applying for H-2A visas in (relatively) higher-paying and better-monitored crop planting and harvesting jobs, they are assigned H-2B visas in lowly regulated food processing where contract fraud, wage theft, sexual harassment, and occupational injuries are rampant.

Overall, this research argues that agribusiness influence over US Guestworker Program legislation has diluted guestworker labor rights and protections. While both H-2A and H-2B workers must negotiate a terrain of constrained freedoms, women within the

H-2B sector sustain the most precarious working conditions at the local level. Exploitation goes largely unchecked thanks to agribusiness' concentration of political power. While there have been vocal advocates for guestworker rights in Congress, on the whole there is a lack of political will to reverse rollbacks in protections, or to institute the safeguards that all individuals – regardless of sex, race, class, and citizenship status – deserve.

Chapter 1

INTRODUCTION

Every time we sit at a table to enjoy the fruits and grain and vegetables from our good earth, remember that they come from the work of men and women and children who have been exploited for generations.

Our opponents in the agricultural industry are very powerful and farmworkers are still weak in money and influence (Cesar Chavez, Co-Founder, United Farm Workers Union).

Supermarket labels say nothing about the human costs within our food supply chains. Despite the labor rights campaigns of Cesar Chavez over a half-century ago, migrant workers of the food industry continue to face exploitation. Since at least Karl Marx's 1867 *Capital: Critique of Political Economy*, scholars have debated how concentrated corporate power influences workers' rights. For the majority of states considered industrialized, migrants serve as "a basic structural feature" of their economies (Massey et al. 1993a; Bauder 2006). Migrants are different from the legal definition of "immigrant," as they move abroad only temporarily for employment, returning to their countries of origin rather than permanently settling. From Germany to the United Arab Emirates to Japan, industrialized economies depend on migrants to fulfill labor market demands. Consequently, many countries around the world have institutionalized their migrant labor flows through official, temporary foreign worker programs, also known as guestworker programs.

The most popular industry employing guestworkers worldwide is agribusiness. Agribusiness is defined as the economic sector encompassing crop and livestock producers, poultry and egg companies, dairy farmers, tobacco companies, food processing companies, and food retail stores. Agribusiness (also interchangeably known in this research as the food industry) represents one of the more sizable constellations of concentrated corporate power. This is significant because corporations are a key actor regulating much of the neoliberal world order today. States – once considered the only actors in global politics and the primary decision-making authorities – have receded in stature (Strange 1996). Corporations have consequently become “masters” of the international political economy, often dictating national policy formation and governance mechanisms (Chomsky 1999, 20).

Worldwide, agribusiness is valued at \$7 trillion, representing approximately ten percent of the global economy (Beth Hoffman 2013, 5). To put this in perspective, the ten largest food industry firms generate over \$1 billion per day, with yearly revenue exceeding the GDP of all the world’s low income countries combined (Beth Hoffman 2013, 5). With such high economic profits at stake, agribusiness has a vested interest in ensuring their demands are met. Essential to agribusiness’ neoliberal enterprise is the commodification of human labor (Overbeek 2002, 74). Hence, a chief political concern among agribusiness firms is safeguarding a steady stream of cheap bodies to meet labor-intensive demands, such as food harvesting and processing.

Much of the labor rights literature focuses on the Global South. Indeed, since the late 1970s many corporations have re-located their centers of production for labor intensive sectors away from the Global North to countries where there is “a sheer

inexhaustible reservoir of cheap labor” (Overbeek 2002, 76). While this attention is rightfully deserved, extant literature has overlooked labor rights violations taking place in the fields and factories of the Global North. In the US, driven by consistent and focused interests, and concentrated power over the market, agribusiness firms are able to politically organize for preferred policies and governance rules relatively easily (Murphy 2006, 18). Between the mid-1990s to 2015, agribusiness spent over \$2 billion to lobby on behalf of its interest in Washington, and another \$1 billion was donated to Congressional campaigns during the same time frame (Center for Responsive Politics 2017). These actions have paid off. Systematic discourses advanced by agribusiness-friendly members of Congress have informed policies expanding the US Guestworker Program, while at the same time decreasing “burdensome” regulations governing guestworker rights and protections.

This research demonstrates that the term *guestworker* is a misnomer. While staples of agro-capitalist societies around the world, guestworkers are vulnerable to contract fraud, wage theft, sexual harassment, employer threats, and occupational injuries. The legacy of plantation economics informs the US Guestworker Program’s structural foundation, creating a legally sanctioned underclass of disenfranchised and ghettoized non-citizens with little recourse against employer abuse.

1.1 Research Overview

This research engages a feminist conceptual framework, unveiling how practices shape, and give meaning to, subjects and objects within our social world (Jackson 2011; Schwartz-Shea and Yanow 2012; J. A. Tickner 2005). Using this feminist curiosity (Enloe 2014), I examine the labor rights and protections of the US Guestworker

Program's H-2A and H-2B visa categories via a case study approach using policy analysis and fieldwork. Created in 1986 via the Immigration Reform and Control Act, nearly 2.4 million H-2A and H-2B temporary foreign workers have been employed in the US (US Department of Labor 2016). H-2A and H-2B workers are essential to fulfilling the labor-intensive food production needs of agribusiness, as they constitute a hyper-commoditized and low-cost work force. The H-2A program is designated for seasonal, agricultural labor, such as planting, cultivating, and harvesting crops. The H-2B program is generally referred to as non-agricultural labor, as it constitutes diverse industries such as landscaping and construction, in addition to agribusiness food production occupations (of interest to this research). Consequently, while H-2B jobs such as raising broiler chickens or seafood processing are designated by US Citizenship and Immigration Services (USCIS) as non-agricultural, I still categorize them as agricultural, as they fit within my overarching definition of agribusiness.

This dissertation uses a case study approach and is divided into two systematic lines of inquiry: policy research and fieldwork. In my policy research I explore how guestworker Congressional discourses have molded the program's labor rights and protections, particularly as they relate to guestworkers employed within agribusiness. My policy research asks: How have Congressional narratives and debates informed guestworker rights and protections? To what extent is agribusiness involved in the formation of guestworker policy, what powers does it bring, what strategies or tactics does it employ to get what it wants, and what does it stand to win or lose? The findings of this policy chapter demonstrate that for the past two decades (1995-2015), while most legislators propagated a politics of fear regarding immigration, systematic efforts by a

small group of Congressional members focused on expanding the US Guestworker Program while decreasing “burdensome” H-2A and H-2B labor rights. Bills drafted often used the same language as policy proposals originally submitted by agribusiness groups, or were surreptitiously placed in legislation without ever being put to vote. The result of such strategized efforts has constrained the freedoms of guestworkers, particularly H-2B workers, leaving them without viable protections against dangerous employment conditions.

My fieldwork examines H-2A and H-2B workers’ lived experiences, and how stratified rights articulated within policy have translated to differences in protections on the ground. My fieldwork questions ask: What are the lived experiences of H-2A and H-2B food production guestworkers employed in the mid-Atlantic region? What similarities and differences in labor rights and protections exist across and within these visa categories? I conducted fieldwork at two locations in the Mid-Atlantic region. I selected this region given it is most representative of the nation’s distribution of H-2A and H-2B guestworkers, yet is frequently overlooked. Through fieldwork interviews with 28 H-2A and H-2B guestworkers, 16 community stakeholders, and 10 government employees, it was revealed that while both H-2A and H-2B workers experienced exploitative working conditions, H-2B workers more readily endured abusive circumstances. Adding further nuance and complexity, it was evident that a gendered division of labor separates the two visa categories. Gendered stereotypes about the migrant women pervade the US Guestworker Program, socially constructing female guestworkers as a disposable, cheap, weak, and slow source of labor. Despite many women applying for H-2A visas in (relatively) higher-paying and better-monitored crop

planting and harvesting jobs, they are assigned H-2B visas in lowly regulated food processing where contract fraud, wage theft, sexual harassment, and occupational injuries are rampant.

Overall, this research argues agribusiness influence over US Guestworker Program legislation has diluted workers' labor rights and protections. While both H-2A and H-2B workers must negotiate a terrain of constrained freedoms, women within the H-2B sector sustain the most precarious working conditions at the local level. Exploitation generally goes unchecked thanks to agribusiness' concentration of political power. While there have been vocal advocates for guestworker rights in Congress, on-the-whole there is a lack of political will to repeal rollbacks in protections and institute the safeguards that all individuals – regardless of sex, race, class, and citizenship status – deserve.

1.2 Research Significance

This research is important from both a policy and an academic perspective. On the policy front, immigration has historically been a fiercely contested political issue, made even more so with the 2016 presidential election of Donald Trump. On the campaign trail, and after taking office, President Trump has lambasted immigrants, arguing that less immigration to the US will help “Make American Great Again.”¹ Trump's anti-immigrant narrative appears to be taken directly from the playbook of Samuel P. Huntington's article “The Hispanic Challenge” (2009). In it, Huntington argues that multiculturalism, in particular the cultural “invasion” of “lazy” Mexican immigrants into the US, threatens “white nativism” (Huntington 2009, 40). Espousing this ill-logic,

¹ Donald Trump's slogan during the 2016 Presidential campaign was “Make America Great Again.”

Trump's continued use of racially charged speech has led to an uptick in the number of race-related crimes around the country and the resurgence of neo-Nazis and the Klu Klux Klan (i.e., Charlottesville, VA) (Coates 2017). In August 2017, the United Nations Committee on the Elimination of Racial Discrimination even issued a statement proclaiming they were "[d]isturbed by the failure at the highest political level of the United States of America" to unequivocally reject and condemn racist acts and attacks (United Nations 2017). Such anti-immigrant rhetoric by a sitting US president not only normalizes overt racism and xenophobia among the general public, but it also condones acts of violence committed against immigrants and migrants. Even those who are legally documented, like US guestworkers, are likely to feel the adverse effects of such political narratives at the local level.

Trump has also further inflamed the already divisive issue of immigration policy by endorsing contradictory proposals related to the US Guestworker Program. In April 2017, pushing his "Hire American" political agenda, he signed an executive order dramatically limiting the number of H-1B visas issued (Clairmont 2017). H-1B visas are granted to those deemed as "highly skilled" through the US Guestworker Program, with many employed in the STEM fields.² By July 2017, however, Trump contradicted this stance by expanding the "low skill" H-2B program. While the H-2B visa program has been historically capped at 66,000 visas per year, the Department of Homeland Security,

² The effect of the "Hire American" stance has already led to a decline in foreign interest to work in US STEM fields through the H-1B visa, which could signal a decline in US innovation as there are not enough American workers to fill STEM job demands (Donnelly 2017). As an example, in 2015, there were only 59,581 students graduating with Computer Science degrees, but over 500,000 computer science jobs available (Donnelly 2017).

operating under Trump Administration orders, raised the cap to 81,000 (Fernandez Campbell 2017). Not only does this stand in direct opposition to his “Hire American” political narrative nationally³, but it also stands to put more H-2B workers at risk for abuse. Without resolution of the labor rights violations currently taking place within US Guestworker Program, there should be a moratorium on efforts to increase the program’s size.

From an academic perspective, the current guestworker literatures and their related scholarship, while rich in insights, are lacking in several key areas (please see Chapter 2 for a full recount of the Literature Review). For one, scholarship has either disproportionately focused on the European experience, or has taken a historical viewpoint to US programs – namely, the mid-20th century Bracero Program (discussed in the following section). In comparison, little has been written about the contemporary US Guestworker Program, especially for the H-2A and H-2B visa categories. Second, much of the guestworker literature takes a top-down perspective, investigating national influxes in guestworker migration numbers, rather than unveiling their on the ground lived experiences. While literatures have examined debates about the evolution of US guestworker policy (e.g., Trautman 2014), they focus on policy formation more generally rather than guestworker rights in particular. Third, the vast extent of guestworker studies have overlooked the female perspective. Even when female guestworker rights are assessed, they typically center on European guestworker programs (Kofman and Sales

³ While Trump’s policies on a national level contradict his “Hire American” narrative, he also contradicted his projected political leanings on a local scale as well. Three days after the new regulations to increase the H-2B visa program went into place, the Trump Organization requested 76 of these visas for his Mar-a-Lago Club in Palm Beach, Florida (Fernandez Campbell 2017).

2001; Kofman et al. 2000; Schwenken 2005) or highly-skilled guestworkers (for example, within the H-1B program) (Duncan, Kim, and Waldorf 2016). As a result, we know little about how women experience labor rights within the current US Guestworker Program. On a final note, there must be more academic literature that negates the de-humanizing falsehoods spread by academics like Huntington (2009). Such narratives not only fuel the populist agenda and racist discourses of the current president, but the latest iteration of the white supremacy movement more generally.

Guided by a feminist curiosity, this research fills extant policy and academic scholarship gaps, providing an enhanced understanding of the origin, content, and scope of labor rights and protections within the US Guestworker Program, and the H-2A and H-2B workers they affect. Through interviews with the guestworkers themselves, and the community stakeholders and government employees involved with the program, I examine how complexity exists “just below the surface” (Enloe 2014, 238). Unveiling multiple standpoints and subjectivities regarding how policy has affected guestworkers’ situated context is vital for a more nuanced understanding of the US Guestworker Program’s implementation overall. Guestworkers, particularly women, have previously been left at the margins of such conversations. Importantly, I do not intend to speak *for* guestworkers within the program, but to speak *on behalf* through sharing their lived experiences. Overall, I demonstrate how overlapping macro spheres of economic and political influence create local-level gendered systems of production and exploitation.

1.3 Historical Context of the US Guestworker Program

The US has a long history of importing foreign workers to fulfill labor demands. Intertwined in this narrative is a past of exploitation. Slavery represents the worst such conditions, but even as the 19th century saw the abolition of slavery, “suitable replacements” were needed to fill the vacuum of bodies freed from forced labor in the US food industry (Quirk 2011, 130). Indentured migrants were recruited in large numbers from Ireland, Italy, the Indian subcontinent, Africa, China, Japan, and the Pacific Islands (Quirk 2011, 130). They frequently suffered from illness, exhaustive manual labor, and poor pay and working conditions (Northrup 1995, 124). In the worst cases, when systems of indentured labor were poorly administered, “unscrupulous economic elites were able to re-create many of the worst features of historical slave systems” (Quirk 2011, 132). As a testament to this, Andrew Carnegie (1835-1919) publically referred to immigration as “a golden stream, which flows into the country each year,” pricing each migrant at \$1,500, “for in the former days an efficient slave sold for that sum” (Carnegie cited in Calavita 2010, 5).

By the early 1900s, indentured servitude was replaced by migrant labor programs. Mexican migrant workers became vital to the US economy, especially given the late 19th and early 20th century restrictions on Asian immigration (A. Zolberg 1987, 67). By the 1920s, Mexican migrants were fully integrated into the US food industry, picking 75 percent of fruits and vegetables in Western and Southwestern US states (Olivas 2000, 14). As such processes became increasingly more mechanized, “it was Anglo workers who rode the machines, consigning Mexicans to stoop-labor and hand cultivation”

(Olivas 2000, 15). It was thought this reserve labor pool could be “imported for their work, displaced when not needed, and kept in subordinate status” (Olivas 2000, 15).

In the early 1940s, powerful agribusiness interests sought to increase Mexican laborers coming to the US (Craig 1971). Starting in 1942, and extending for over 20 years, 4.5 million Mexican workers were formally recruited to work in the US through the government’s Bracero program (Cameron 2008, 66; Durand 2007, 228). The US needed these “arms” (i.e., *braceros*) to initially meet labor supply and demand needs within the food industry because of worker shortages during WWII, but the program soon became an institution (Durand 2007, 227–28; Craig 1971). The new system intended to end the former system of indentured servitude by taking hiring practices out of private hands and into “official, bilaterally determined programs” (Durand 2007, 228), through a legalization process disparagingly dubbed by the US government as “drying out wetbacks”⁴ (Castles and Miller 2009, 184).

Despite official aims at ending exploitative practices, the Bracero program was criticized by activists for human rights violations (A. Zolberg 2006, 309–11). Critics argued Mexican workers suffered employer abuses under “deplorable working and living conditions” (Calavita 2010, 2), including “mass exploitation, low wages, improper deduction, and wage theft” (Owens et al. 2014, 10). Former US Department of Labor official, Lee G. Williams, even described the Bracero program as a system of “legalized slavery” (SPLC 2013, 1). In 1964, however, the Bracero program was terminated, not because of systemic abuse, but rather, due to growing nativist and xenophobic concerns regarding Mexican migration to the US (Miller 2006, 10).

⁴ The term “wetback” is a historically racist slur.

While the Bracero Program ended in 1964, the 1952 Immigration and Nationality Act had already been importing guestworkers through the newly developed “H” program (Reubens 1986, 1041). Following WWII, American public opinion began to grow to be more positive toward immigrants and refugees (Fetzer 2000, 40). Yet, despite this, the 1952 Act restricted immigration overall, while also creating two distinct temporary foreign worker classes (Rudolph 2003, 609). These included “low-skill” H-2 visa holders, and workers noted for their “distinguished merit and ability” in the H-1 visa program (Reubens 1986, 1042). The 1952 Act established “a ceiling” of 120,000 of these labor visas, which were given to workers from Mexico, as well as individuals throughout Latin America and the Caribbean region (Papademetriou, Martin, and Miller 1983; Joppke 1998). While public opinion was favorable toward immigrants, the 1965 Immigration Act opened migration channels by eliminating the nationality quota system, which drew millions of immigrants from mostly Latin American and Asia (Fetzer 2000, 41). Chain migration from the 1965 Act increased the number of undocumented workers as well, and by 1972 “national opposition to immigrants had reappeared” (Fetzer 2000, 42).

In spite of a new surge in anti-immigration sentiment among the public, special interest groups began to lobby Congress for a more liberal immigration policy in the mid-1970s (Joppke 1999, 29–34). By the mid-1980s, client politics was ruling Congressional immigration debates (Joppke 1999, 29–34). Pressured by pro-business groups interested in importing increased numbers of cheap foreign laborers, the resulting 1986 Immigration Reform and Control Act (IRCA) disaggregated and expanded the H-2 category into the

H-2A and H-2B visa classifications (Joppke 1999, 29–34).⁵ The H-2A program was designated for seasonal, agricultural jobs and the H-2B program was designated for seasonal, non-agricultural labor. There is more variability in the H-2B program as far as industries by which a worker may be employed. The H-2B program includes industries such as manufacturing, landscaping, forestry, and tourism, in addition to those within the US food sector.

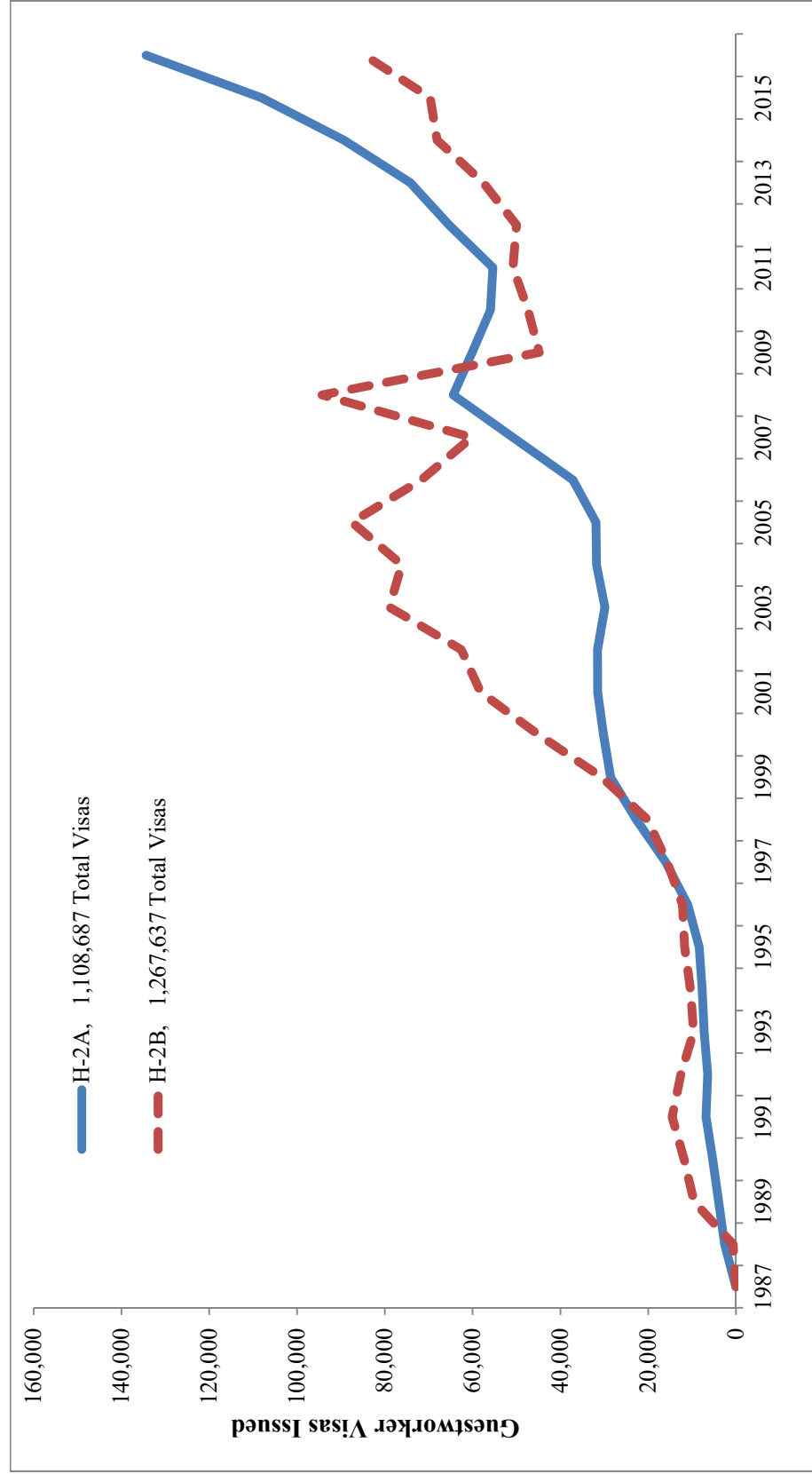
As already noted, when it comes to US food industry jobs, those designated by USCIS as “non-agricultural” are remarkably agricultural in nature. For example, those working in fruit and vegetable packaging, dairy processing, or raising cattle or sheep are designated as H-2A agricultural positions. Yet, those raising broiler chickens or packaging seafood are considered by USCIS to be non-agricultural, and subsequently labeled as H-2B positions.⁶ Because my definition of agribusiness is the sector

⁵ The creation of two distinct H-2A and H-2B visa categories was not the only provision in the 1986 IRCA. As with any contentious bill, concessions and trade-offs are made between opposing fractions. The 1986 IRCA has been hailed as a “carrot and stick” immigration plan (Nevins 2010, 36). The “carrot” came in the form of an amnesty clause for those who entered the US illegally prior to 1982, as long as they paid a fine, back taxes, and admitted guilt (Joppke 1999, 28–32; Nevins 2010, 36). This led to legal status being granted to an estimated 2.7 million undocumented workers, which not only satisfied migrants who had “already past the gate,” but immigration advocates as well (Ezquerria 2007, 128; Castles 2004, 206; Nevins 2010, 36). The “stick” came in the form of “even more formidable enforcement at the border and within” (Nevins 2010, 36). Policies such as employer verification of worker immigration status and legal sanctions against employers who hired undocumented labor appeased the anti-immigration sentiment, especially unionized labor (Ezquerria 2007, 128; Castles 2004, 206; Nevins 2010, 36). Overall, according to Zolberg (1990, 323), the Act was “an ingenious trade-off between liberals and conservatives.” Under the stipulations of the 1986 IRCA, US workers must be given priority of employment, and when foreign temporary workers are employed, their employment terms and conditions must not lower market standards (GAO 2015, 5).

⁶ In addition to food processing positions in the H-2B program, the visa category also includes landscaping, forestry, construction, and manufacturing.

encompassing crop producers, livestock producers, poultry and egg companies, dairy farmers, tobacco companies, food processing companies, and food retail stores, I consider H-2B visas within the US food industry as “agricultural” in nature.

Figure 1: H-2A and H-2B Visas Issued in US (1987-2016)



Source: US Department of State, Non-Immigrant Visa Statistics

Following the creation of the H-2A and H-2B visa categories with the 1986 IRCA, only a minimal amount of visas were granted. Beginning in the mid-to-late 1990s, however, the increase to workers in both programs was significant. This increase was largely on behalf of corporate interests. Figure 1, above, demonstrates this rise. From a regulatory perspective, there is no annual cap on new visas issued for the H-2A program, while the annual cap for the hiring of new H-2B workers is 66,000 new visas per year (GAO 2015, 5). However as demonstrated in Figure 1, the actual number of H-2B visas issued has exceeded 66,000 in several instances. This rise in H-2B visas above the 66,000 cap coincides with agribusiness-endorsed legislation passed through Congress aimed at expanding the program. Since the first year of the newly divided H-2A and H-2B visa categories in 1986, approximately 2.4 million of these visas have been allocated to foreign workers at job sites throughout the US.

1.4 Organization

This research is divided into two principal lines of inquiry, which speak to and inform one another: policy research and fieldwork. The policy research provides an overarching depiction of how national-level guestworker policies are shaped through the discourse of political actors, namely members of Congress. The fieldwork articulates how such political discourse result in adverse outcomes for guestworker labor rights and protections at the local level. The following section briefly outlines each chapter, as well as introduces each chapter's key findings.

Chapter two presents my conceptual framework, beginning with an account of the overlapping literatures related to this research: neoliberal globalization and power within the food system, labor rights in an era of hyper-commodification, the regulation of the

global movement of labor, and lastly, guestworker programs more generally. The second part of my conceptual framework explores how Feminist International Relations (IR) theory best unveils how the most marginalized and oppressed have been dismissed and overlooked within the US Guestworker Program's existing systems of power. I build upon Feminist Global Political Economy in particular, as it connects how overlapping macro spheres of economic and political influence create local-level gendered systems of production and exploitation. I conclude that a feminist line of inquiry reveals previously unquestioned assumptions, better positioning this research to make strange how differences and devaluations are assumed to be "natural" (J. Tickner 2001, 31).

Chapter three explores the reflexive methodology I employ, as well as a detailed account of the methods used, my own positionality, and challenges encountered during the research process. I use a case study approach combining narrative policy analysis with fieldwork, providing an empirical backdrop through which to assess and evaluate legislative and regulatory interventions within the US Guestworker Program. My text corpus for policy research spanned 1995 to 2015, examining US Congressional hearing transcripts, legislation (both proposed and passed), and government reports related to the US Guestworker Program. This text was coded and analyzed using discourse analysis. Fieldwork was conducted at two case study locations in the Mid-Atlantic region. In total, I conducted semi-structured interviews with 28 H-2A and H-2B guestworkers, 16 community stakeholders, and 10 government employees. The data was coded and analyzed using discourse analysis.

Chapter four is an account of the policy research into 20 years of Congressional narratives and debates (1995-2015) that have informed the US Guestworker Program.

The sources for my policy research include US Congressional hearing transcripts, legislation (both proposed and passed), and government reports related to the US Guestworker Program. The findings of this chapter demonstrate that for the past two decades, while most legislators propagated a politics of fear regarding immigration, systematic efforts by a small group of members of Congress focused on expanding the US Guestworker Program, often using policy proposals submitted by agribusiness groups. Prior research has demonstrated that political contributions flow most heavily to Congressional Committees associated with the industry seeking to be represented, all under the tested assumption that their interests will shape policy outcomes (E. Powell and Grimmer 2016). The two most sought after changes to current US Guestworker Program policy were: 1) expanding the program, and 2) decreasing “burdensome” regulations protecting workers’ rights and protections. The effects of such policy proposals have expanded the number of workers allowed into the country, while at the same rolling back vital guestworker rights and protections. Without such measures, conditions are created that are conducive to wage theft, contract fraud, discrimination, and violence. Both “low skill” H-2A and H-2B workers are left in precarious employment conditions, yet through targeted efforts, the rights of H-2B workers have been more readily marginalized than their H-2A counterparts.

Chapter five examines how the preceding policies translate into guestworker’s everyday lives. Using a feminist curiosity, I examine H-2A and H-2B guestworker rights and protections on the ground. The fieldwork revealed that while both H-2A and H-2B workers experienced precarious working conditions, H-2B workers more readily endured abusive circumstances. Patriarchal power relations pervade agribusiness on the local

level, resulting in a gendered division of labor where male guestworkers are placed within the H-2A program, while female guestworkers are siphoned into that of H-2B. Migrant women are viewed as an expendable, cheap, and docile labor source, and consequently, they hold the least visible and most vulnerable guestworker positions as H-2B workers. Contract fraud, wage theft, sexual harassment, employer threats, and occupational injuries are rampant.

Chapter six concludes that agribusiness influence over US Guestworker Program legislation has diluted labor rights and protections. While both H-2A and H-2B workers must negotiate a terrain of constrained freedoms, females within the H-2B sector sustain the most precarious working conditions at the local level. Exploitation generally goes unchecked thanks to agribusiness' concentration of political power. While there have been vocal advocates for guestworker rights in Congress, on-the-whole there is a lack of political resolve to repeal rollbacks in protections and institute the safeguards that all individuals – regardless of sex, race, class, and citizenship status – deserve.

Chapter 2

CONCEPTUAL FRAMEWORK

[There is] a lack of political will to implement existing legal provisions against forced labor, as exploitation of migrant workers keeps whole industries from collapsing (Anker and Liempt 2012, 8).

My conceptual framework is divided into two parts. First, it provides an account of the extant literatures related to this research, of which there are several overlapping themes: neoliberal globalization and power within the food system, labor rights in an era of hyper-commodification, the regulation of the global movement of labor, and lastly, guestworker programs. In exploring the aforementioned existing scholarship, unpacking and synthesizing its insights, I point out the gaps within these literatures, and provide a space for the contribution of this research. The second part of my conceptual framework explores how Feminist International Relations (IR) Theory best unveils how the most marginalized and oppressed have been dismissed and overlooked within the US Guestworker Program's existing systems of power. I build upon Feminist IR Theory's Global Political Economy genre in particular, as it connects how overlapping macro spheres of economic and political influence create local-level gendered systems of production and exploitation.

2.1 Literature Review

2.1.1 Neoliberal Globalization and Power within the Food System

At its core, globalization is effectively a “process of convergence” which has been explored intently throughout the political science sub-literatures (Soederberg, Menz, and Cerny 2005, 2). Often examined within the neoliberal scholarship is that of free-market capitalism (Hirsch 2010, 22), whereby private ownership dictates the means of production and prices are determined by supply and demand (Rosser and Rosser 2004, 7). Following the Great Depression and for the next 40 years, it was widely believed that capitalism needed to be regulated by the state in order to avoid further economic downturns (Klotz 1995, 1). By the 1970s and 1980s, however, free market economics gained increasing popularity, particularly among the administrations of Ronald Reagan, Margaret Thatcher, and Augusto Pinochet (Soederberg, Menz, and Cerny 2005, 12–13). This new logic was hailed as “neoliberalism,” a term which essentially describes “capitalism with the gloves off” (McChesney 1999, 8). As an economic theory and policy position, it argues a free market economy of unregulated capitalism “embodies the ideal of free individual choice” and produces “optimum economic performance with respect to efficiency, economic growth, [and] technical progress” (Kotz 2000, 1).

It is “neo” because neoliberal logic grew from the offset of 19th century *laissez-faire* economic liberalism, advocated in Adam Smith’s *The Wealth of Nations*, which held normative ideas about the overarching values of capitalism and freedom (Boas and Gans-Morse 2009, 144). Today, it is evidenced through policies that support economic liberalization, such as removing price controls, deregulating markets, lowering trade barriers, devaluing currency, implementing fiscal austerity measures, and macroeconomic

stabilization (Boas and Gans-Morse 2009, 143). The influence of neoliberalism on world order is pervasive (Keohane and Nye 1977; Cohen 2008, 155), creating a wake of “transnationalization” and “internationalization” politically, economically, and socially (Soederberg, Menz, and Cerny 2005, 6).

Scholars have argued the expansion of neoliberal logic directly challenges the traditional Westphalian order of the past. States – once considered the only actors in global politics and the primary decision-making authorities – have receded in stature (Strange 1996). A cursory glance at any newspaper today reveals the actors are changing in global politics, and challenging the role of the state. Since the onset of neoliberalism, the state’s role has diminished most profoundly within economic matters (Strange 1996; Cohen and Centeno 2006, 32). Consequently, neoliberal forces “are now more powerful than the states to whom ultimate political authority over society and economy is supposed to belong” (Strange 1996, 4).

A key actor regulating much of the neoliberal world order today are constellations of multinational corporations (MNCs), which have proliferated globally since the late 20th century (O’Brien 2005, 220). These “masters” of the international political economy “dominate policy formation as well as the structuring of thought and opinion” (Chomsky 1999, 20). Indeed, the rapid increase of interconnectivity within our globalized world is in large part “a process driven by the logic of corporate profitability” (Bello 2004, xii). The rise of neoliberal globalization has seen businesses becoming even more transnational, networked, and decentralized than ever before (Ruggie 2013, 2). They are now among the most powerful actors in global politics, and continue to expand in both power and scope. MNCs such as Walmart, BP, or Exxon Mobil, have global operations

that rake in yearly revenues exceeding hundreds of billions of dollars, larger than the national economies of countries such as Australia, Brazil, South Korea, or India (Forsythe 2006, 220).

A burgeoning literature tethered to critiquing the existing neoliberal structure is that of the global food system scholarship. Scholars argue the global food system has some of the most successful MNCs worldwide. Indeed, within the global governance of food, there are competing perspectives on how production “should be organized and governed and *for whom*” (Newell 2009, 253). The concept of “food regime” historicizes and problematizes the global food system, bringing a “structured perspective to the understanding of agriculture and food’s role in capital accumulation across time and space” (McMichael 2009, 140). Several iterations of food regimes have been transpiring since the time of tropical colonial food imports in the late 1800s (McMichael 2009, 141, 148). However, today’s globalized and systematized processes of production, trade, and marketing are relatively new, only taking hold within the past five decades (Clapp and Fuchs 2009, 3).

MNCs “have been central players in the global integration of the food system’s modern era,” contributing to the emergence of “corporate food regimes” under the auspices of the neoliberal world order (McMichael 2009, 141, 148; Clapp and Fuchs 2009, 4). Such corporate food regimes have developed because of the “tendencies and structures of advanced capitalism” (Lang and Heasman 2015, 182). Capitalism pushes commodification of durable products able to withstand the constraints of time and space. Such methods have created a number of modern day conveniences: processed food relieves us of the time and resources to do it ourselves (e.g., milled wheat into bread); our

food is preserved through industrialized canning and refrigeration; transportation brings us food from different climates; and processes of pasteurization kill pathogens (Lang and Heasman 2015, 176-177).

However, previous scholars have argued the corporate influence is not always benevolent. There are many implications for growing corporate authority within the food industry, including adverse effects on food security, incomes for small farms, labor rights, the environment, food safety, and consumer choice (Clapp and Fuchs 2009, 6). Precipitating these implications is corporate concentration. Corporate concentration is when a limited number of firms control a large portion of food production, distribution, marketing, and consumption (FarmAid 2016). In fact, in today's globalized world, "[a]t least one of the steps in the food chain – from production, trade, processing, and packaging to retailing – is typically overseen by a major food corporation" (Clapp and Fuchs 2009, 5).

The diagram is a comprehensive mind map of the world's top 100 food and beverage companies. At the center is the **Nestlé** logo. Radiating from this central node are lines connecting to various subsidiaries and brands, organized into several main categories:

- Beverages:**
 - Coca-Cola:** Includes brands like Diet Coke, Coke Zero, Fanta, Sprite, and Minute Tapioca.
 - PepsiCo:** Includes brands like Pepsi, Pepsi Next, and Quaker.
 - Unilever:** Includes brands like Lipton, Tropicana, and Knorr.
 - Danone:** Includes brands like Danone Water, Danone Dairy, and Danone Food.
 - MARS:** Includes brands like Mars Wrigley, Mars Food, and Mars Petcare.
 - Mondelez International (formerly Kraft Foods):** Includes brands like Mondelez Food, Mondelez Dairy, and Mondelez Confectionery.
- Confectionery:**
 - Mars:** Includes brands like Mars Wrigley, Mars Food, and Mars Petcare.
 - Mondelez:** Includes brands like Mondelez Food, Mondelez Dairy, and Mondelez Confectionery.
 - Wm. Wrigley:** Includes brands like Wm. Wrigley, Wm. Wrigley Confectionery, and Wm. Wrigley Petcare.
- Dairy:**
 - Danone:** Includes brands like Danone Water, Danone Dairy, and Danone Food.
 - Nestlé:** Includes brands like Nestlé Dairy, Nestlé Food, and Nestlé Petcare.
- Snacks:**
 - Mars:** Includes brands like Mars Wrigley, Mars Food, and Mars Petcare.
 - Mondelez:** Includes brands like Mondelez Food, Mondelez Dairy, and Mondelez Confectionery.
 - Unilever:** Includes brands like Lipton, Tropicana, and Knorr.
- Meat and Poultry:**
 - Tyson Foods:** Includes brands like Tyson Meat, Tyson Poultry, and Tyson Seafood.
 - JBS:** Includes brands like JBS Meat, JBS Poultry, and JBS Seafood.
 - Cargill:** Includes brands like Cargill Meat, Cargill Poultry, and Cargill Seafood.
- Grains and Pasta:**
 - Arto:** Includes brands like Arto Grain, Arto Pasta, and Arto Seafood.
 - Bunge:** Includes brands like Bunge Grain, Bunge Pasta, and Bunge Seafood.
 - Cargill:** Includes brands like Cargill Grain, Cargill Pasta, and Cargill Seafood.
- Oils and Fats:**
 - Cargill:** Includes brands like Cargill Grain, Cargill Pasta, and Cargill Seafood.
 - Bunge:** Includes brands like Bunge Grain, Bunge Pasta, and Bunge Seafood.
- Other:**
 - Kellogg's:** Includes brands like Kellogg's Cereal, Kellogg's Food, and Kellogg's Petcare.
 - Associated British Foods:** Includes brands like Associated British Food, Associated British Dairy, and Associated British Confectionery.
 - Mondelez:** Includes brands like Mondelez Food, Mondelez Dairy, and Mondelez Confectionery.
 - Wm. Wrigley:** Includes brands like Wm. Wrigley, Wm. Wrigley Confectionery, and Wm. Wrigley Petcare.
 - Danone:** Includes brands like Danone Water, Danone Dairy, and Danone Food.
 - MARS:** Includes brands like Mars Wrigley, Mars Food, and Mars Petcare.
 - Unilever:** Includes brands like Lipton, Tropicana, and Knorr.
 - Coca-Cola:** Includes brands like Diet Coke, Coke Zero, Fanta, Sprite, and Minute Tapioca.
 - PepsiCo:** Includes brands like Pepsi, Pepsi Next, and Quaker.
 - Nestlé:** Includes brands like Nestlé Dairy, Nestlé Food, and Nestlé Petcare.

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Behind towering companies are multitudes of smaller subsidiary brands, and “tens of thousands of small-scale producers” (Lang and Heasman 2015, 190). Above, Figure 2, illustrates the “Big 10” – the ten largest food companies in the world: Associated British Foods, Coca-Cola, Danone, General Mills, Kellogg, Mars, Mondelez International (previously Kraft Foods), Nestlé, PepsiCo, and Unilever (Beth Hoffman 2013, 5). Figure 2 also notes the significant reach the Big 10 has over smaller food conglomerates, representing a substantial degree of concentrated corporate power over the market. Together, these ten firms and their subsidiaries generate \$1.1 billion per day, and their total yearly revenue of \$450 billion is more than the combined GDP of all the world’s low income countries (Beth Hoffman 2013, 5). Being valued at \$7 trillion makes the food industry “larger than even the energy sector and representing roughly ten percent of the global economy” (Beth Hoffman 2013, 5). In fact, only 500 corporate firms control 70 percent of the food choice for the world’s 7 billion people (Beth Hoffman 2013, 5).

When food is disaggregated into sectors, the number of firms yielding significant control is concentrated even further. According to Farm Aid, only four companies control 85 percent of the beef market, 66 percent of the hog industry, 58.5 percent of the broiler chicken industry, and 50 percent of the proprietary seed market (FarmAid 2016). For genetically modified crops, Monsanto controls 85 percent of corn and 91 percent of US soybeans (FarmAid 2016).

Market power is inherently political, as companies with the greatest influence are able to set policies and laws governing the market, in addition to controlling prices (Murphy 2006, 18). Previous literature has demonstrated that since food industry companies have near entirely consistent interests, they are also easier to politically

organize into one voice than attempts on an individual-level (Murphy 2006, 18). This means MNCs are better positioned to lobby for their preferred policies and governance rules over individuals, or even small businesses.

Consistent and focused interests are not the only means extant research has demonstrated MNCs have political capital. Perhaps more significant is that of campaign contributions to elected officials. Scholarship has shown that campaign money does influence political agendas and shape public policy (L. Powell 2012). Contributions flow most heavily to Senators and members of the House who sit on Congressional Committees associated with the industry seeking to be represented (E. Powell and Grimmer 2016). MNCs also demonstrate their power through Washington's "revolving door," by which government appointments related to food policy have made their career in agribusiness and return to these careers once office terms are completed (Murphy 2006, 18). As evidence of the revolving door, many recent Secretaries of Agriculture have ties to agribusiness (Murphy 2006, 18), as well as a number of other appointees with backgrounds in "working, lobbying, or performing research for large food processing companies and trade associations" (Mattera 2004, 4). At times this may be beneficial, as appointees are intimately familiar with the industry and can tackle specialized problems (Meghani and Kuzma 2011, 576). However, the revolving door also leads to questions of objectivity and conflicts of interest (Meghani and Kuzma 2011, 576). There are "virtually no high-level appointees at the USDA with ties to family farm, labor, consumer or environmental advocacy groups," rather most employees have histories with in the corporate sector (Mattera 2004, 4). Such lopsided staffing of industry-affiliated

appointees leads to policies favoring “bottom-line interests” of agribusiness while weakening the USDA’s mission of regulation (Mattera 2004, 4).

In sum, the literature on neoliberal globalization demonstrates we live in a world where governance is influenced by the dense interconnectivity of MNCs. In certain sectors such as the food industry, MNCs wield significant power and influence over politicians and agencies, and the resulting regulations they set and enforce. While insightful for the purposes of laying a context to this research, there are gaps within this literature. When this literature takes a positivist methodology, it disproportionately uses top-down indicators such as global trade variables or foreign direct investment statics, rather than on the ground interviews or thick description aimed at understanding neoliberal policy outcomes on the individual-level. When this literature takes on a theoretical context, it is often so far removed from actual policy implications that it can be framed as elitist or only strictly academic in character.

2.1.2 Labor Rights in an Era of Hyper-Commodification

Since the earliest days of capitalism, some scholars argue we have been perpetually “thrust towards the commodification of everything,” incorporating processes of exchange, production, distribution, and investment (Wallerstein 2003, 15-16). Essential to neoliberal enterprise is the commodification of human labor (Overbeek 2002, 74). Since at least Karl Marx’s 1867 *Capital: Critique of Political Economy*, scholars have been debating how concentrated corporate power influences workers’ rights.

In an era of neoliberal globalization, states often relax labor standards for workers in order to attract foreign investment (Davies and Vadlamannati 2013, 1). In fact, some scholars argue increasing labor standards or enforcing labor laws could raise the cost of

production and lower the flow of investment and jobs (Bhagwati 2007, 178; Mah 1997, 783). These scholars typically reside in the “climb to the top” camp, viewing neoliberal globalization as a benefit to the working class rather than a harm (Bhagwati 2007, 178; Flanagan 2006; Brown, Deardorff, and Stern 2004, 322). They find foreign direct investment (Mosley and Uno 2007, 941), trade privileges (Polaski 2006, 929), or foreign ownership over Global South-based production (Brown, Deardorff, and Stern 2004, 322) improves working conditions. However, this literature often comes with caveats. For instance, variations in MNC organization and ownership structure affect labor rights differently – when MNCs own global production, labor rights are positively affected, but when production is subcontracted, labor rights are negatively affected (Mosley 2010, 7). Similarly, while labor rights maybe negatively associated with national-level economic performance, they are positively associated with individual-level human development measures (Meyer 2015, 438).

Conversely, the “race to the bottom” camp vehemently disagrees that neoliberal economic policy improves working conditions. While Western MNCs may bring investment and employment opportunities to the Global South, they may also create “the potential for serious violations of human rights” (Meyer 1998, 5). Pressure to compete may motivate firms to “sacrifice labor rights in order to cut costs” (Hassel 2008, 234). Economic and political forces often incentivize “pushing corporations into exploitative and otherwise abusive practices” (Forsythe 2006, 226). This becomes more apparent especially when markets are unregulated (Forsythe 2006, 227). Because of financial incentives to undermine organized labor’s bargaining power and depressing wages, neoliberal policy “simultaneously creates and/or reinforces the demand for various forms

of unskilled and semiskilled labor, employment under increasingly precarious conditions” (Overbeek 2002, 77). Scholars have found trade openness to correlate with “race to the bottom” findings that negatively affect workers’ rights, “forcing developing nations (and their workers) into competition with one another” (Mosley and Uno 2007, 927).

Since the late 1970s, “labor intensive production processes” have increasingly been relocated away from the Global North to countries where there is “a sheer inexhaustible reservoir of cheap labor” (Overbeek 2002, 76). In the case of Nike, by 1990, overseas sourcing factories supplied more than 6 million pairs of shoes produced by 24,000 workers primarily in Indonesia (Ruggie 2013, 3). Nike came under fierce criticism by the international community for committing human rights abuses throughout these supply chains. While Nike had paid Michael Jordan \$20 million for a contract to endorse its shoes, it was paying Indonesian workers less than \$1 per day (Ruggie 2013, 4). Essentially, the Nike brand name became “synonymous with slave wages, forced overtime, and arbitrary abuse” (Ruggie 2013, 5).⁷ More contemporary examples of abusive labor conditions within the Global South include Apple’s 2010 Foxconn worker suicides in China and the 2013 Rana Plaza building collapse in Bangladesh.

A variety of measures have been undertaken by the international community to mitigate labor abuses in the global marketplace. These conventions operate on a spectrum of specificity toward labor rights and state duties regarding business regulation and compliance. The Universal Declaration of Human Rights imposes more general obligations for states in regards to human rights protections (Ruggie 2013, 40–41). The International Labor Organization (ILO) - a tripartite organization made up of

⁷ Quote from former Nike Chairperson and CEO, Philip Knight, from 1998 (Ruggie 2013, 5).

governments, business associations, and workers organizations – is the primary international agency tasked with developing labor standards. Since its creation in 1919, the ILO has established 185 conventions and 193 recommendations on labor rights (Meyer 2015, 415). In 1998, the ILO advanced the Core Labor Standards (CLS) which advocate: 1) freedom of association and right to collective bargaining, 2) elimination of forced labor, 3) abolition of child labor, and 4) elimination of discrimination (Hassel 2008; Meyer 2015).

There are a couple of challenges regarding the enforcement of such international labor standards. First, human rights duties are only imposed on states that have ratified the conventions (Ruggie 2013, 47). Of the ILO's 175 member states less than 25 percent have ratified all ILO conventions (Meyer 2015, 415). Even with the CLS, which still commits ILO member states to comply even if they have not ratified, when violations are committed, the ILO does not impose sanctions, but rather “relies on technical assistance, peer pressure, and persuasion” (Mah 1997, 775). One of the most dismal performers of ratification is the US. Of the seven ILO conventions that promote core labor standards, the US has ratified only two, “while at the same time claiming to do a better job of respecting those rights than most other countries” (Meyer 2015, 416). Second, labor standards, for the most part, “are imposed on states, not on companies directly” (Ruggie 2013, 47).

While voluntary corporate social responsibility (CSR) initiatives are growing increasingly popular, they have serious systemic limitations and are therefore “not likely by themselves to bridge business and human rights governance gaps” (Ruggie 2013, 77). In fact, much voluntary CSR by MNCs has been discredited by human rights groups,

unions, and other observers for extremely low human rights standards (Forsythe 2006, 240). Voluntary initiatives, much like international conventions, also have problems of enforcement. For voluntary CSR by MNCs, external accountability mechanisms are often weak or do not exist at all (Ruggie 2013, 76). Even when they are present, workers of different subsidiaries of the same parent company are held to different codes of labor standards (Ruggie 2013, 76). The overlapping of different labor codes can generate “audit fatigue” that leads to falsification of records by managers and cheating during audit interviews (Ruggie 2013, 76). In this respect, MNCs can evade enforcement through misrepresenting their CSR reports.

The literature illustrates it is far too easy to find “horror stories” of neoliberal profit margins at the expense of exploited workers (Forsythe 2006, 224). It also reveals a number of significant insights. First, globalization aggregates the “powerful economic and political forces pushing corporations into exploitative and otherwise abusive practices” (Forsythe 2006, 226). Second, the sheer magnitude and transnational character of MNCs creates challenges for effective governance mechanisms in regards to labor rights. As links within disaggregated supply chains increase, so too do their vulnerabilities to human rights abuses (Ruggie 2013, 2). MNCs may operate as globally integrated bodies, but because of their transnational domain, they are not subject to any single global regulator (Ruggie 2013, xii). Third, from an economic perspective, there is always the bottom line. The increasingly interconnected marketplace we see today values hyper-commodification – especially the hyper-commodification of cheap human labor. Lastly, despite outward positioning as a leader in advocating human rights around the

world, the US has severely underperformed in ratifying the core labor standards of the ILO.

This literature also has a number of shortcomings. First, by focusing investigation and theorizing within industries of the Global South, the literature does not adequately cover how neoliberal competition has affected labor rights within the Global North – particularly for unskilled and low-skilled positions. According to the ILO, abusive working conditions such as forced labor are found across continents, regardless of a country’s socioeconomic position (ILO 2005, 1). By assessing labor rights primarily within newly industrializing countries, we discount the state of labor rights within places like the US. Second, this literature focuses heavily on workers within the garment industry, rather than other exploitative industries, such as food production. Lastly, by operating at the national level, this literature fails to disaggregate how labor rights experiences vary based on citizenship status. Foreign workers – both authorized and undocumented – face unique challenges in negotiating the labor rights environment. In using national level data that does not disaggregate based on citizenship status, these subtleties are left unconsidered. Lastly, we are also left wondering how gendered dimensions of the global political economy affect women’s labor rights differently than men’s.

2.1.3 Regulating the Movement of Global Labor

International migration is not a recent phenomenon. Throughout history, peoples have regularly moved “in search of new opportunities, or to escape poverty, conflict, or economic degradation” (Castles and Miller 2009, 2). Long-distance labor migration systems have been commonplace for hundreds of years, encompassing “a vast terrain of

interlocking social, political, and economic processes” (Moch 2003, 31; Bauder 2006, 16), serving as catalysts for development in a globalizing world (Hollifield 2004, 889).

Since the early 1600s, labor migration has played an instrumental part in promoting modernization and industrialization, and has provided fundamental aspects of nation-building (Castles and Miller 2009, 79). For instance, in the early 17th century, Germans provided brickmaking, canal construction, agriculture, and dock work in the Netherlands, while the French provided seasonal agricultural labor in Spain (Moch 2003, 29-31). Scholars have argued long-distance migration systems supplying labor such as this were “central, not marginal, to preindustrial Europe,” providing workers to the limited affluent region “in an age of widespread economic stagnation” (Moch 2003, 31).

During European expansion in the 17th and 18th centuries, large-scale resettlement from Europe was endorsed, providing labor to the colonies and dominions around the world (Koser 2007, 3). Of course, not all labor supplies were voluntary. In the Americas, much of the new labor force was built upon the backs of an estimated 15 million African slaves, and later, large-scale indentured servitude programs (Castles 2000, 272).

During the late 19th and early 20th centuries, the US rose as an industrial power, operating as a magnet for laborers coming from Northern, Southern, and Eastern Europe – places experiencing sluggish economic advancement and authoritarian political regimes (Koser 2007, 3). It is estimated that between the years 1861 and 1920, 54 million people emigrated to the US in search of better opportunities, with large population influxes also seen in Canada, Australia, France, Switzerland, and Germany (Castles and Miller 2009, 86-87).

Much of the migration scholarship frames migration as “an engine of social progress” (Goldin and Cameron 2011, 12), allowing populations to exchange languages, tools, and skill sets across communities and continents alike. This trend continues to this day, as large numbers of migrants serve as “part of a transnational revolution” transforming societies and their political orientations worldwide (Castles and Miller 2009, 9).

According to the United Nations, the number of international migrants worldwide increased from 154 million people in 1990 to 244 million people in 2015 – a rise of more than 58 percent over 25 years (UN 2013; UN 2015). This upswing in international migration has led some scholars to call this contemporary era the “age of migration” (Castles and Miller 2009). Since migration exists “across space and time,” globalization plays an influential role in population movements as advances in information technologies, communication, and travel decrease the costs of crossing borders – both financially and socially (Held 1999, 285). While globalization certainly influences the push and pull factors of migration, migration itself is also “an intrinsic part of globalization...reshaping communities and societies” (Castles and Miller 2009, 54).

Scholars argue labor migration, in particular, serves to integrate more and more individuals into the existing capitalist labor markets (Overbeek 2002, 78), which helps to fulfill “the promises of neoliberal prosperity” (Chen 2014, 35). Indeed, for the majority of states considered industrialized, skilled and unskilled migrants serve as “a basic structural feature” of their economies (Massey et al. 1993a; Bauder 2006). Sending states benefit as well, as the remittances migrants send home support local economies and serve as “an increasingly important source of foreign exchange” (Hollifield 2012, 3).

Because of the significant influence migrants have on world markets, scholars and practitioners alike have sought to understand the nexus of economic, political, and sociological factors that contribute to one's decision to move abroad. While there is no singular theory of international migration, several interrelated theories add context and meaning for particular circumstances (Massey et al. 1993, 432). These theories explore supply and demand forces as well as kinship and institutional networks, all of which "reduce the transaction costs of moving from one society to another" (Hollifield 2004, 885). Rationalist theories examine how individuals and family units strive for income maximization through migration, moving to areas with higher wages and better employment conditions (Massey et al. 1993, 432-436). Macro-level theories examine labor market demands or cultural linkages between states (Massey et al. 1993, 440-447). A number of other theories consider the utility of networks, chain migrations, as well as institutions on facilitating migration (Massey et al. 1993a, 448-50; Hollifield 2004, 889). While these theories help contextualize contributing factors precipitating migration, overall scholars have argued the most common motivator is striving for better employment and higher levels of income, which increase an individual's social well-being (Castles 2000, 272). These economic channels move high skilled and low skilled migrants to "meet temporary labor demands" (Goldin and Cameron 2011, 5). In 2014, according to the Department of Labor's Bureau of Labor Statistics, nearly 26 million foreign-born persons were in the US-labor market – about 17 percent (BLS 2015).⁸

⁸ According to the Bureau of Labor Statistics, this figure includes legally admitted immigrants, refugees, temporary residents (students and temporary workers), and undocumented immigrants.

Economic and sociological factors are “necessary” for migration, but the “sufficient conditions are legal and political” (Hollifield 2012, 2). This is why some international migration literatures focus on questions of sovereignty and citizenship. The international legal system instituted by the 1648 Peace of Westphalia put in motion Grotian principles of state recognition, whereby states “must have a territory, a population, and the capacity for self-governance” in order to be sovereign (Hollifield 2004, 887). Restrictions defining who is allowed to be a member of a political community constitute an essential factor of governance (Zolberg 1999, 1277). The state – through its various iterations – has historically articulated policies both rejecting peoples (e.g., the 15th century Spanish Inquisition) and accepting others (e.g., the 17th century Dutch government offering tax relief to incentivize French Protestants) (Moch 2003, 10). Indeed, the very notion of “international migrant” comes from processes of emigration and immigration throughout the political communities of the nation-state system (Soysal 1994, 14; Zolberg 1999, 1276).⁹

Some migration scholarship focuses on OECD states. OECD states have much to gain from influxes of labor migrants because of labor needs in their industrial and service-based economies, however, these advantages come with certain costs (Hollifield 2012, 2). Regulating immigration is a “highly politically contested policy area” within liberal democratic states around the globe (Boswell 2009, 15). There are literatures that

⁹ It was not until after the Napoleonic Wars of the early 19th century – where France pushed the construction of a national policy – that the first data sets on international migration were even collected (Soysal 1994, 14). Even the first systematic study of international migration did not occur until 1881 with Arthur Ravenstein’s census analyses of Great Britain, Scandinavia, the German Empire, France, Iberia, Central Europe, and the Balkans (Moch 2003, 18).

argue contestation arises because immigration overlaps with core societal principles of modern democracies: security, socio-economic welfare, and economic growth (Boswell 2009, 15). Sizable immigrant populations, even temporary migrants, threaten to “jeopardize the established national ways” of a nation (Zolberg 1999, 1277), resulting in “short-term social and political instability” and “fiscal burden” on liberal states (Hollifield 2012, 2). Tensions may arise as the rights and publically-funded benefits typically only conferred to a state’s citizens are granted to noncitizen populations (Soysal 1994, 119). Some scholars advance the degree to which contestation arises often correlates with cyclical economic conditions of receiving states – during expansionary phases immigration is supported and during economic downturns and rising unemployment immigrants are often “targeted as scapegoats” (Freeman 1995, 886). Mass crossings of international borders hinge on the *raison d’état* of a state’s national security (Weiner 1993) as they intersect with geopolitical interests, material production, and internal security (Rudolph 2003).

There are migration literatures that investigate how even during supposedly “open door” policy eras in liberal democracies, high restrictions have been placed based on exactly “who” is allowed within a state’s borders (Zolberg 2006). In the case of the US, these contestations over immigration policies are evidenced by the evolution of immigration law over time, where “just about every cultural attribute imaginable was found objectionable at one time or another” (Zolberg 1999, 1277). For example, throughout much of the 1800s and early 1900s, quotas based on nationality were used (Goldin and Cameron 2011, 5). Such nationality restrictions were originally aimed at the

Chinese with the Chinese Exclusion Acts, and later toward other nationalities in the 1921 and 1924 Quota Acts (Peters 2013, 29).

Today's political rhetoric similarly capitalizes on curtailing immigration for specific nationalities as well. The largest group of undocumented migrants over the last several decades is Hispanic, especially Mexican (Joppke 1999, 29). Discourse regarding the curtailing of undocumented Hispanic migration at times is overtly xenophobic. In fact, former Republican Senator Alan Simpson, Chair of the Subcommittee of Immigration and Refugee Policy (1980-1984), said "any reference to immigration reform or control turn out, unfortunately to be a code word for ethnic discrimination" (Joppke 1999, 29). This was noted in the 1986 Immigration Reform and Control Act, as what was to be highly restrictive legislation against undocumented immigration "was softened" to "avoid even the slightest connotation of ethnic discrimination" against Hispanics (Joppke 1999, 29).

While many scholars contend states are unitary actors in immigration policy, "shap[ing] and control[ing] migration for strategic gains" within the international realm (Hollifield 2012, 2), a growing camp argues the state's role is "hollowing out" (Chang and Ling 2011, 32). Surely, because of states' boundaries and sovereignty rules, they still hold the primary duty of border regulation and the granting of citizenship rights (Adamson 2006; Soysal 1994). But, literatures claiming that states act independently in designing and implementing immigration policies "can and has been contested" (Ruhs 2013, 32). These theories yield a number of weaknesses. First, they presume immigration policies serve the national interest, but do not elaborate on how those national interests are determined (Freeman and Kessler 2008, 658–59). Second, they fail to account for

why liberal democracies “adopt widely disparate immigration and citizenship policies” despite supposedly unitary interests (Freeman and Kessler 2008, 659). Third, the existence of over 11 million undocumented migrants in the US, “is at least to some extent a reflection of a limited state capacity” (Ruhs 2013, 33).

Immigration policies are not just influenced by the international state system. In our neoliberal era, dense interconnectivity between multi-leveled actors has altered both the form and content of policy-making (True and Mintrom 2001, 27). Adding more nuance to discussions of immigration policy, institutionalist perspectives “disaggregate the state,” examining how the development and implementation of regulations are influenced by bureaucracies, political parties, and relationships more generally (Freeman and Kessler 2008, 658). For instance, immigration agencies, such as the former US Immigration and Naturalization Service, have been found to play a role in policy-making (Calavita 1992, 2010). Studies have also examined how local preferences are transferred through political parties, influencing national policy (Money 1999, 47), such as right wing neo-nationalism in the new millennium (Schain, Zolberg, and Hossay 2002; Schain 2009). Path-dependent accounts have been used to examine the consequences of immigration control choices in the aftermath of WWII that continue to shape immigration programming (Hansen 2002, 278).

Surprisingly, while immigration is a “hot topic,” the literature on the political economy of immigration policy “is very thin” at best (Facchini, Mayda, and Mishra 2011, 115). To consider the political economy of immigration policy, one touches on the “liberal paradox” (Hollifield 2004, 886). This paradox argues that while the international realm and domestic forces “push states towards greater closure,” at the same time,

economic forces push them “towards greater openness” (Hollifield 2004, 886). In this way, immigration policy, while connected to domestic and international political factors, cannot be disentangled from “the dynamics of world capitalism” (Zolberg 1999, 1276).

This brings us to interest groups, which are organized groups that aim to influence public policy. The influence of interest groups over immigration reform has been depicted going as far back as the late 1800s (Tichenor and Harris 2003). As it was then it is today. Immigration policy is heavily biased by client politics, by which well-organized groups with policy preferences “develop close working relationships with those officials responsible for it” (Freeman 1995, 886). Because of the duality of the liberal paradox, politicians and agency budgets are torn over whether to demonstrate to the electorate the capacity and will to curb unwanted immigration or ensure foreign labor needs for jobs and skills shortages (Boswell 2009, 15). In determining how immigration policies lean, governments weigh the cost to the electorate against the funding and political support they receive from special interest groups (Hanson 2010, 190).

Strong empirical evidence contends “interest groups play a statistically significant and economically relevant role in shaping migration across sectors” (Facchini, Mayda, and Mishra 2011, 115). Barriers to immigration are higher where labor unions yield more power and lower where business lobbies thrive (Facchini, Mayda, and Mishra 2011, 126). Where does this leave the state? Because of the power of special interests, the “role of the nation-state is limited to that of a broker between different organized interests, without any place for national policy objectives” (Ruhs 2013, 32). This is less true in Europe where immigration came after nation-building and is “less well-entrenched,” and more true in the US where immigration contributed to nation-building and is “accordingly

well-entrenched and institutionalized” (Joppke 1999, 18). Consequently, interest group influence over US immigration policy, in particular, creates “strange bedfellow[s]” (Freeman and Kessler 2008, 672).

The aforementioned literature demonstrates the perennial nature of global labor movements over centuries, and means by which political actors have sought regulation (or de-regulation). Because of its role in granting citizenship rights and upholding the principles of sovereignty, the state traditionally held the primary role of facilitating and curtailing international labor movements. However, in our increasingly interconnected neoliberal world, the state’s role in immigration policy is receding, as a number of influential non-state actors gain prominence. Corporate interests are gaining increasing recognition as having significant roles over policy-making, particularly when it comes to the controversial area of immigration.

2.1.4 Guestworker Programs

Temporary foreign worker programs are commonly called “guestworker programs.” They are intended to provide a temporary labor force that returns to their country of origin after a given period, rather than settle in the host society. Guestworker scholarship emerged primarily in the 1970s and 1980s and initially examined temporary foreign labor recruitment following WWII. By nature of their design, these studies were historical in nature, but also discussed late-20th century policy implications. Western Europe was a case study focal point, and studies examined the effects of expansionary guestworker policies. Expansion of guestworker programs had originally been deemed innocuous, only a means to fill temporary labor shortages under the assumption that in times of recession foreign workers would return home (Reichert and Massey 1982, 3). In

the years following WWII, large-scale guestworker programs took place in Great Britain, Belgium, France, the Netherlands, Switzerland, and the German Federal Republic (Castles 1986). As a result of post-war guestworker programs, 10 percent of the labor force in Western Europe was made up of foreign workers by 1975 (Piore 1979, 1). Because of labor needs, these programs yielded significant economic benefits for host countries (P. L. Martin and Miller 1980).

However, scholars have argued that guestworker programs also came with a number of costs. Evidence suggested they promoted “social and economic ties,” leading to permanent settlement in host countries (Reichert and Massey 1982, 12). Western Europe became “structurally dependent” upon guestworkers (Rist 1979, 104). Even in the aftermath of the 1973 economic crisis, guestworkers were “integral to the functioning of the society” (Rist 1979, 104). Many supposedly “temporary” workers became permanent residents, leading to migrant discrimination because of competition for social and economic resources (Martin and Miller 1980). The rise of “latent racial and national prejudices” led to policy reversals aimed at limiting migration to host countries (Piore 1979, 2). Such policies even led to some scholars to contend we had reached the end of guestworker programs in Western Europe, as they were effectively “dead” (Castles 1986). However, these were largely ineffective, as once migration channels start they are often difficult to stop (Piore 1979, 2). As such, guestworker scholarship continues to thrive in the European context (Martin and Miller 2000; Castles 2006b; Castles 2006a; Abadan-Unat 2011; Schönwälder 2004; Constant and Massey 2002; Plewa 2007).

Guestworker programs have a long history in the US as well. The majority of this literature takes a historical perspective. By the early 1900s, Mexican migrant workers

became vital to the US economy, especially considering late 19th and early 20th century restrictions on migrant labor from countries within Asia (Zolberg 1987, 67). By the 1920s, Mexican migrants picked 50 percent of the cotton and 75 percent of fruits and vegetables in Western and Southwestern US states (Olivas 2000, 14). Starting in 1942 and extending over 20 years, 4.5 million Mexican workers were formally recruited as guestworkers through the US Government's Bracero program (Cameron 2008, 66; Durand 2007, 228). The US needed these "arms" (i.e., *braceros*) to meet labor supply and demand needs in industries such as agriculture because of worker shortages during and immediately following WWII (Reubens 1986, 1038; Durand 2007, 228). Guestworker labor needs continued through the 1950s and early 1960s because of the Korean War and due to the "massive deportation" of undocumented migrant workers under Operation Wetback in 1954 (Reubens 1986, 1038; Castles and Miller 2009, 184). Generally, scholarship on the Bracero Program focused on the program's influence of increasing Mexican immigration to the US (Durand, Massey, and Zenteno 2001; Durand, Massey, and Charvet 2000; Massey, Durand, and Malone 2002; Garcia 1980).

While the Bracero Program ended in 1964, the 1952 Immigration and Nationality Act had already been importing guestworkers through the newly developed "H" program (Reubens 1986, 1041). Following WWII, American public opinion began to wane from highly nativist sentiments, and grew to be more positive toward immigrants and refugees (Fetzer 2000, 40). Yet, despite this, the 1952 Act restricted immigration overall, while also creating two distinct temporary foreign worker classes (Rudolph 2003, 609). These included "low-skilled" H-2 visa holders and workers noted for their "distinguished merit and ability" in the H-1 visa program (Reubens 1986, 1042). The 1952 Act established "a

ceiling” of 120,000 labor visas, which were given to workers from Mexico, as well as individuals throughout Latin America and the Caribbean region (Papademetriou, Martin, and Miller 1983; Joppke 1998). The majority of scholarship examining this era focuses on public opinion toward immigration during the Cold War (Fetzer 2000). While public opinion was favorable toward immigrants, the 1965 Immigration Act opened migration channels by eliminating the nationality quota system, which drew millions of immigrants from mostly Latin American and Asia (Fetzer 2000, 41). Chain migration from the 1965 Act increased the number of undocumented workers as well, and by 1972 “national opposition to immigrants had reappeared” (Fetzer 2000, 42).

In 1986, the low-skill H-2 visa category was disaggregated into H-2A and H-2B visas through the Immigration Reform and Control Act (IRCA). The 1986 Act also made it illegal for employers to hire undocumented workers, and instituted a legalization program which led to legal status being granted to an estimated 2.7 million undocumented workers who had been in the US for a specified period of time (Ezquerra 2007, 128; Castles 2004, 206). However, the government sanctions that were supposed to be imposed against employers who hired undocumented workers were never applied, and the newly-legalized workers left agricultural jobs due to low-wages, finding employment in higher-paying industries (Castles 2004, 206). Much research has been done on how faulty employer sanctions made it “easier and cheaper” to hire undocumented workers after 1986 (Castles 2004, 206; Martin and Miller 2000; Castles and Miller 2009; Rudolph 2003; Massey et al. 1993b; Goldin and Cameron 2011; Zolberg 2006).

A number of scholars have examined the US Guestworker Program by examining labor rights. The Bracero program was heavily criticized by activists for exploitation

(Zolberg 2006, 309–311). Critics argued Mexican workers suffered employer abuses under “deplorable working and living conditions” (Calavita 2010, 2), including “mass exploitation, low wages, improper deduction, and wage theft” (Owens et al. 2014, 10). Former Department of Labor official, Lee G. Williams, even described the Bracero program as a system of “legalized slavery” (SPLC 2013, 1). Critiques of the contemporary Guestworker Program have also been examined (Hagan and Phillips 2008; Ruhs and Martin 2008; Ruhs 2013; Vivian 2005; DeLaet 2000).

While the guestworker literature is rich in insights, it lacks in many areas. For one, scholarship has either disproportionately focused on the European experience, or has taken a historical viewpoint to US programs – namely, the mid-20th century Bracero Program. In comparison, little has been written about contemporary US guestworker programs, especially for the “low-skilled” visa categories – namely H-2A and H-2B. Second, much of the guestworker literature takes a top-down perspective, investigating national influxes in guestworker migration numbers, rather than unveiling their on the ground lived experiences. Third, the vast extent of guestworker studies have overlooked the lived experiences of females. When female guestworker rights are assessed, they are typically centered on European guestworker programs (Kofman and Sales 2001; Kofman et al. 2000; Schwenken 2005) or highly-skilled guestworkers (for example, within the H-1B program) (Duncan, Kim, and Waldorf 2016). As a result, we know little about how women experience labor rights within the current US Guestworker Program, particularly low-income H-2A and H-2B migrants.

2.2 Theoretical Framework

2.1.1 A Feminist Approach

The aforementioned scholarship, while rich with insights, falls short in a number of already identified areas. Despite gradually incorporating food system perspectives, the neoliberal literature largely uses a positivist methodology rather than an interpretivist orientation, whereby data points are gathered and quests for objectivity are centralized, but understanding how knowledge practices shape and give meaning to subjects is ignored. The neoliberal literature also takes a top-down perspective, examining the interworking of states and institutions, but overlooks the actions and constitutions of individual-level actors. As a consequence, the rich, thick description – and policy recommendations – that can be gained from the inclusion of individual-level experiences is discounted. The labor rights literature provides enhanced understanding of rights and protections (and lack of) within the Global South, but it does not adequately ask how neoliberal competition has affected those rights within the Global North. We miss out on nuanced insights regarding how industries – particularly those outside of the garment industry – treat their workers in countries such as the US. Since most of these studies focus at the national and international level, individual-level intersectionalities such as gender and citizenship status remain at the margins. The migration literature, while providing a foundational backdrop to understanding global labor movements, also primarily relies on national and international-level data. While this overlooks the individual lived experience as well, it also disregards the extent to which corporate interests affect and influence immigration policy. Lastly, the guestworker literature has either focused on the European experience or situated its US scholarship historically to

the mid-20th century Bracero program. Little has been researched regarding contemporary guestworker programs in the US, especially those of the “low-skilled” H-2A and H-2B visa categories. Because of this, we do not know much regarding how these guestworkers experience labor rights and protections on a daily basis, and how such experiences have gendered divisions.

Feminist International Relations (IR) Theory provides enhanced context around each of the aforementioned literatures contributing to this dissertation, pointing out significant omissions, and filling the void with its rich insights. I use it to unpack both the guestworker policy narratives disseminating from the Congressional floor to the interviews regarding the lived experiences of guestworkers on the ground within the H-2A and H-2B visa programs in the US. International Relations is one of the last fields to incorporate feminism, as the discipline long assumed gender neutrality (Wibben 2011, 16). Despite getting a slow start, using a feminist perspective to analyze international relations has grown from seminal texts such as Enloe’s (1989) *Bananas, Beaches, and Bases*, Tickner’s (1992) *Gender in International Relations*, and Peterson’s (1992) *Gendered States* to become a prominent critical approach within the International Relations discipline (Runyan and Peterson 2014b, 17). Feminism is not monolithic, but a multidisciplinary approach, informed by a variety of ideological backgrounds (Whitworth 2008, 393; J. Tickner 2001, 11; Hutchings 2000, 111). Thus, feminism is plural, contingent, and relational, as well as highly-attuned to various iterations of power and politics inherent within gendered relationships (Ackerly, Stern, and True 2006, 6). Despite differences, overall, feminism is a claim about understanding the varied ways in which social reality is gendered.

Importantly, gender is not identical to biological sex, but rather indicates socially learned behaviors, repeated performances, and idealized expectations proscribing masculine and feminine roles (Runyan and Peterson 2014a, 2). According to Feminist IR Theory, gender acts as meta-lens – dichotomizing, stratifying, depoliticizing, and sustaining not only local political spaces (e.g., the home, the workplace, etc.), but also global power structures (Runyan and Peterson 2014b, 2). Gendered relations of patriarchy are embedded in overlapping spheres of cultural, economic, legal, and social conventions and institutions (J. Tickner 2001). Society privileges masculinist ways of identifying, thinking, and acting, believing them to be more objective, legitimate, and compelling (Runyan and Peterson 2014a, 62). A product of elevating masculinities inherently presumes the subordination of expressed femininities within a binary gender hierarchy. While masculine behavior, institutions, and practices are valued, the more a social category is feminized, the more difference and devaluation are assumed to be “explained” (Runyan and Peterson 2014a, 63). Examples of this are aplenty, such as stereotypically viewing all females as passive rather than agents of their lives, or falsely assuming all migrants are lazy or have malevolent character (i.e., Huntington 2004) (Runyan and Peterson 2014b, 63).

This research makes use of a reflexive feminist epistemological framework, seeking to engage with how practices shape, and give meaning to, subjects and objects within our social world (Jackson 2011; Schwartz-Shea and Yanow 2012; J. A. Tickner 2005). In social sciences, “truth” often relies on interpersonal, intersubjective agreement rather than neutral objectivity (Wedeen 2010, 266). Positivist methodology’s conceptual claims, causal arguments, and observations often disregard “the historical evolution of

and philosophical contention about what objectivity means...[and] the ways in which claim-making works” (Wedeen 2010, 266). Reflexive Feminist IR Theory calls into question such overlapping processes of claim-making, using interpretivism to better situate such claims in a wider context while also demonstrating how they operate, in addition to examining context-specific meanings and meaning-making practices (Wedeen 2010; Schwartz-Shea and Yanow 2012). My methodological aim of “thick description” seeks to explain not just behavior itself, but the context in which it is produced, and the meaning assigned by participants (Geertz 1973). Through this, I am better able to capture, “the meaning people have constructed...how people make sense of their world and the experiences they have in the world” (Merriam 2009, 13).

A key area of examination within feminist IR is the global political economy (GPE). Feminist GPE scholars challenge unquestioned and unexamined masculinist values deeply embedded in capitalism, and the larger purview of economic theory and practice (Barker 2005, 2189). As explained up by Jennifer Bair (2010, 203),

A key insight of feminist political economy is that social difference, including but not limited to the meanings and practices constituting the distinction between women and men, organizes the world in concrete ways. The particular ways in which difference matters—that is, the conditions under which difference operates as a form of power or a resource for resistance and the manner in which it shapes subjectivity—are variable and contingent. Indeed, feminist inquiry is largely a process of trying to understand how, in particular historical situations, difference works to shape the social, including the economic. While we are not always able to predict how difference will matter at a particular conjuncture of space and time, feminist scholars can and do look for historical and geographic patterns, which we then try to understand and explain.

Unlike traditional perspectives examining the international economy, feminists do not take a state-centric or market-centric ontology. Rather, using a gendered lens, they

unveil the lived experiences of individual-level actors who are affected by, and mutually-constitute, surrounding “gendered regimes of capitalist production and consumption” (Bedford and Rai 2010, 4). These regimes are marred by social disintegration, exclusionary and hierarchical relations, and a materialistic worldview (Tickner 2001, 75). Overall, from a global political economy perspective, the point of significance is not *that* gender matters within the capitalist order, but *how* (Bair 2010, 205)

Neoliberal globalization expands inequalities and polarizes resources within and between countries (Peterson 2005, 507). The neoliberal market has been particularly unkind to the rights of workers occupying positions of lesser power. MNCs superficially tout support for fair labor standards, while at the same time trading away these rights because of intense commercial pressures (Raworth 2004, 4). As a result, migrant workers are often employed in poorly-paid, unregulated, illicit, precarious, and hidden positions (True 2012, 54). Left unchecked, abuse is common, and MNCs are often complicit because of the capitalist incentive to exploit cheap labor (Quayson and Arhin 2014). The political realm is cognizant, if not also complicit as well, as the knowledge that cheap labor drives profit results in “a lack of political will to implement existing legal provisions against forced labor, as exploitation of migrant workers keeps whole industries from collapsing” (Anker and Liempt 2012, 9).

In using a feminist line of inquiry for this research I question the naturalized assumptions of the US food industry’s gendered institutions of capitalist production and resulting exploitations. Through processes of feminization (i.e., dehumanization) dominant groups feel warranted in instigating (or at the very least, not correcting) the poor treatment of guestworkers. Such gendered impacts result in guestworker rights and

protections being of less consequence to policymakers than the masculinized power (and money) of agribusiness interests. While this research uses a feminist lens, it does not only center on women, but includes the lived experiences of male guestworkers as well. However, because women occupy a lower societal status than men, female guestworkers are left particularly vulnerable to underlying systems of power. As a result, while I examine the lived experiences of all H-2A and H-2B guestworkers interviewed, the labor rights and protections of female guestworkers is evaluated with a more focused gendered lens.

In conclusion, a feminist line of inquiry re-thinks anew previously unquestioned assumptions. Using a feminist approach, I am better positioned to make strange how differences and devaluations are assumed to be “natural” (J. Tickner 2001, 31). Feminism provides an enhanced conceptual framework to re-focus those at the margins to the front and center of examination, allowing their voices to be heard through bottom-up, grounded inquiry. Rather than understanding relationships and power arrangements within the US food system *a priori*, feminist-informed gender analysis explores how complexity exists “just below the surface” (Enloe 2014, 238) of conventional US food sector practices and behaviors. Using Feminist IR Theory, I examine how the capitalist forays of the US food industry are riddled by gendered systems of production and division. Not only are all migrant workers relegated to positions of lesser status within the capitalist food regime, but because women occupy the lowest status, they are left particularly vulnerable to the underlying systems of power. A more comprehensive account of my methodology is provided in the following chapter.

Chapter 3

METHODOLOGY

You can't explain human behavior behind the backs of the people who are being explained. If you want to understand why someone behaves as they do, then you need to understand the way they see the world, what they imagine they're doing, what their intentions are (James Scott cited in Wedeen 2010, 259).

This chapter provides a detailed description of my methodology for the study, as well as the methods employed and challenges encountered during the research process. This study employs a case study approach using narrative policy analysis and fieldwork, providing an empirical backdrop through which to assess and evaluate legislative and regulatory interventions within the US Guestworker Program. Examining the program's formation during Congressional debate, coupled with its on the ground implementation, illustrates why and how labor protections are sparse and rarely enforced, resulting in exploitative working conditions for H-2A and H-2B guestworkers. It also unveils how the most vulnerable guestworkers are women, who have been left out of Congressional debate entirely, and are siphoned into the visa category with the most historic abuse and ill-regulated protection standards.

My methodological framework for this study is rooted in reflexivity, or understanding how knowledge practices shape, and give meaning to, subjects and objects within our social world (Jackson 2011). In social sciences, "truth" often relies on

interpersonal, intersubjective agreement rather than supposed or “so-called” neutral objectivity (Wedeen 2010, 266). Positivist methodology’s conceptual claims, causal arguments, and observations often disregard “the historical evolution of and philosophical contention about what objectivity means...[and] the ways in which claim-making works” (Wedeen 2010, 266). Using interpretivism, I can better situate truth claims in a wider context while also demonstrating how they operate, in addition to examining context-specific meanings and meaning-making practices (Wedeen 2010; Schwartz-Shea and Yanow 2012). My methodology aims at “thick description,” explaining not just the behavior itself, but the context in which it is produced, and the meaning assigned by participants (Geertz 1973). Through this, I am better able to capture, “the meaning people have constructed...how people make sense of their world and the experiences they have in the world” (Merriam 2009, 13).

Many social scientists are familiar with deductive reasoning, or processes of inference originating with generalities and resulting in “particular conclusions” (Jackson 2011, 82–83). Likewise, they are also familiar with inductive processes of reasoning, or logic arising from “particular claims to general conclusions” (Jackson 2011, 83). Much less discussed, are abductive processes of inference. Abductive inference “begins with a puzzle, a surprise, or a tension” and seeks to make this event more of a “normal” occurrence (Schwartz-Shea and Yanow 2012, 27). In order to go “beyond what we have observed in order to posit something that plausibly accounts for what we have observed” (Jackson 2011, 83), we must rely on a “puzzling-out process” that is iterative and recursive (Schwartz-Shea and Yanow 2012, 27). Because of this, rather than follow the “step-wise, linear, ‘first this, then that’ logic” classic to deduction and induction,

abduction follows a “more circular-spiral pattern, in which the puzzling requires an engagement with multiple pieces at once” (Schwartz-Shea and Yanow 2012, 28).

The research is divided into two sections: policy research and fieldwork. My policy research includes discourse analysis of Congressional narratives from 1995 to 2015, review of guestworker legislation and regulations, and review of government reports addressing migrant worker rights and protections. I conducted fieldwork at two field locations in the Mid-Atlantic region. The first field location was in southern New Jersey, where a high number of H-2A guestworkers are employed in crop planting, cultivating, and harvesting. The second field location was Maryland’s Eastern Shore, where there is a high number of H-2B guestworkers employed in crab picking for seafood processing centers.

3.1 Research Questions

Several research questions guide this study, allowing for a more nuanced perspective into how policy was developed regarding guestworkers’ labor rights as well as what the results have been at the local level.

Policy Research

- How have Congressional narratives and debates informed guestworker rights and protections?
- To what extent is agribusiness involved in the formation of guestworker policy, what powers does it bring, what strategies or tactics does it employ to get what it wants, and what does it stand to win or lose?

Fieldwork

- What are the lived experiences of H-2A and H-2B food production guestworkers employed in the mid-Atlantic region?
- What similarities and differences in labor rights and protections exist across and within these visa categories?

This study is divided into two separate sections because by linking these two means of research, I am able to conduct empirical analysis of key policy interventions. Empirical observations can shed light onto legislative and regulatory effects dictated in national political realm far better than analyzing policy alone. Similarly, detaching the fieldwork portion of this study from the narratives imbued in public policies and programs that have created the context for guestworkers' lived experiences would illustrate only one level of the issue. Through the combination of policy analysis and fieldwork, I am better able to offer the rigor needed to comprehensively understand how and why the US Guestworker Program functions as it does.

3.2 Policy Research

The policy research addresses the first two questions of my research: How have Congressional narratives and debates informed guestworker rights and protections? To what extent is agribusiness involved in the formation of guestworker policy, what powers does it bring, what strategies or tactics does it employ to get what it wants, and what does it stand to win or lose? At the heart of my policy research is understanding how narratives have shaped and given meaning to the US Guestworker Program's legislation and regulations regarding labor rights and protections. Despite a narrative framework being

used across disciplines, within the public policy arena, it “has largely remained on the sidelines” (Jones and McBeth 2010, 330). Policy narratives – “the scenarios and argumentation on which policies are based” – illustrate how stories used throughout policy debates are “often a force in themselves” (Roe 1994, 2).

Keeping this discursive perspective in mind, this portion of my research examines how the US Guestworker Program has evolved – particularly its labor rights and protections – through 20 years of Congressional dialogue. I investigate how guestworkers – and migrants more generally – have been framed and socially constructed within these debates, the narratives used by political groups to influence legislative and regulatory outcomes for the program.

3.2.1 Data Collection

While the 1986 Immigration Control and Reform Act created the H-2A and H-2B visa categories under the US Guestworker Program, heated Congressional debate regarding reforming these visa categories did not begin until the mid-1990s. My text corpus for policy research spanned 1995 to 2015, examining US Congressional hearing transcripts, legislation (both proposed and passed), and government reports related to the US Guestworker Program. My sources for this analysis are illustrated below, which span 5,145 pages of assessment. The medium for finding the data within this text corpus was the Catalogue of US Government Publications and the Library of Congress’ THOMAS online databases. These texts selected for examination were those related to guestworkers in particular.

Table 1: Summary of Policy Research Data Sources

Data	Source	Date Range	Text Corpus
Hearing Transcripts	US House and Senate Committees: <ul style="list-style-type: none"> - Committee on the Judiciary - Committee on Foreign Relations - Committee on Agriculture - Committee on Education & Labor - Committee on Oversight & Government Reform 	1995-2015	4,324 pages
Legislation and Regulations (both failed and passed)	Congressional Research Service Reports on proposed/passed legislation related to guestworkers: <ul style="list-style-type: none"> - <u>104th Congress</u>: S. 2174, S. 1668, H.R. 1018, H.R. 1915, S. 1256 - <u>105th Congress</u>: S. 2260 - <u>106th Congress</u>: S. 1814/H.R. 4056, H.R. 4548 - <u>107th Congress</u>: S. 1161 and S. 1313/H.R. 2736 - <u>108th Congress</u>: S. 1645/H.R. 3142, S. 2823, S. 2010, S. 2185, H.R. 3604, S. 2381/H.R. 4262, H.R. 3534, S. 1387, S. 1461/H.R. 2899, H.R. 3651 - <u>109th Congress</u>: S. 352/H.R. 793, S. 1033/H.R. 2330, S. 1438, H.R. 4437, S. 352/H.R. 793, S. 359/H.R. 884, S. 359/H.R. 884, H.R. 3857, S. 278, H.R. 1587, S. 1918, H.R. 3333, S. 1033/H.R. 2330, S. 1438, H.R. 4065, S. 2611 - <u>110th Congress</u>: S. 1639, S. 237/S. 340/ H.R. 371, H.R. 1645, S. 330, H.R. 1792, H.R. 2413, S. 2094 - <u>111th Congress</u>: S. 1038, H.R. 2414, S. 388, H.R. 1136, H.R. 1934 - <u>112th Congress</u>: H.R. 2847, H.R. 2895 - <u>113th Congress</u>: H.R. 1773, S. 744 - <u>114th Congress</u>: S. 2225, H.R. 3918, H.R. 1805, H.R. 2588, H.R. 2758 	1995 - 2015	123 pages
Government Reports	<ul style="list-style-type: none"> - US Government Accountability Office - Office of Foreign Labor Certification 	1997-2015	698 pages
TOTAL TEXT CORPUS: 5,145 pages			

In order to have a foundational understanding of the US Guestworker Program's legalities in regards to labor rights and protections I also relied on key legislation and regulations as interpreted by the Congressional Research Service. I also used reports published by the Government Accountability Office and Office of Foreign Labor Certification to improve my understanding of the gaps found within the program's oversight and administration. Lastly, I supplemented my data with food industry economic statistics, and campaign donations and lobbying support to Congress. I do this to illustrate the sheer economic force of the food industry, and how such a force has affected Congressional voting outcomes for key legislators, particularly those with ties to the food industry.

3.2.2 Data Analysis

To conduct my policy research into the political narratives and groups that have shaped the Guestworker Program, I used discourse analysis. Discourse analysis is “always about power and politics” as it examines possibilities for linguistic and non-linguistic practices and structures (Laffey and Weldes 2004, 29). In particular, I used Political Discourse Analysis (PDA), which is one facet of “the broader critical approach to discourse” (van Dijk 1997, 11). PDA analyzes the text, talk, actions, and situated context related to professional politicians and the recipients of political communicative events (van Dijk 1997, 12-14).

To interpret my policy research data, I used a combination of focused and open coding schemes. The coding process was completed using the qualitative analysis software program NVivo. For the focused coding schemes, I had already identified codes relevant to the research as they linked back to my research questions, namely

Congressional and agribusiness statements about guestworker policy changes. For my open coding schemes, I read through the Congressional hearing transcripts and ancillary policy documents (i.e., passed and failed legislation and regulations, government reports, food industry economic statistics, agribusiness campaign donations and lobby support to Congress) coding quotes, sentiments, and figures that continued to emerge as themes and patterns within the data. After completing the open coding, I again engaged in focused, selective coding, refining my preliminary open codes into my final coding scheme. Once the entire text corpus had been reviewed, I ran reports of all codes using NVivo. This helped me to better gain a more comprehensive perspective into how such recurring themes and patterns could be placed into standardized categories, and the interactivity of the relationships across codes.

Through this abductive “puzzling out” process (Schwartz-Shea and Yanow 2012, 27), I decided upon three main categories each made up of multiple codes. The first category, “Codes reflecting Congressional attitudes towards US Guestworker Program,” addresses my first policy research question into how Congressional narratives and debates informed guestworker rights and protections. The second category, “Codes of political group contributions to shaping and influencing the US Guestworker Program,” is related to my second policy research question regarding agribusiness’ involvement in the formation of the US Guestworker Program. While the first code within this category – “Food Industry” – directly speaks to this, the second two codes “Migrant Rights Organizations” and “American Labor Organizations” are aimed at providing additional context to best situate how other political groups influence guestworker legislation. The final category, “Codes of Congressional descriptions of migrants and immigrants,” relates

back to my first policy research question indirectly. I included this category after reading countless racially-charged and gendered descriptions of migrants, which were often preambles into Congressional statements about the US Guestworker Program. Below are the primary categories, codes, and definitions for how I conducted my discourse analysis.

Table 2: Policy Research Codes and Definitions

Category 1: Codes reflecting Congressional attitudes towards US Guestworker Program	Category 2: Codes of political group contributions to shaping and influencing the US Guestworker Program	Category 3: Codes of Congressional descriptions of migrants and immigrants.
Pro-Guestworker Expansion – Economic Logic	Food Industry	Positive Members of Community
Pro-Guestworker Expansion– Social Logic	Migrant Rights Organizations	Negative Members of Community
Anti-Guestworker Expansion– Economic Logic	American Labor Organizations	Gendered Members of Community
Anti-Guestworker Expansion– Social Logic		
Guestworker Rights – Increase		
Guestworker Rights – Status Quo		
Guestworker Rights – Decrease		

Category 1: Codes reflecting Congressional attitudes the US Guestworker Program

– Codes focus on Congressional statements both for and against the US Guestworker Program. These statements were primarily centered on arguments supporting or

condemning the program's expansion. Codes also focus on Congressional discourse related to increasing, retaining status quo, or decreasing guestworker rights and protections.

- Pro-Guestworker Expansion – Economic Logic
 - Statements supporting expansion for economic reasons, and how such expansion would benefit agribusiness companies, small business operations, or the US economy as a whole.
 - Statements declaring that additional temporary foreign labor is needed to fulfill gaps in domestic labor supply.
- Pro-Guestworker Expansion – Social Logic
 - Statements endorsing additional foreign temporary labor under the assumption that it would allow guestworkers to earn a wage higher than they would receive in their countries of origin.
- Anti-Guestworker Expansion – Economic Logic
 - Statements against expansion under the assumption it would take away jobs from US workers.
 - Statements referring to immigration securitization more generally for economic reasons.
- Anti-Guestworker Expansion – Social Logic
 - Statements against expansion because of anti-immigration sentiment, analogies such as migrants “flooding” existing welfare systems, or because of alleged criminal activities.

- Statements referring to immigration securitization more generally for social reasons.
- Statements condemning expansion for humanitarian reasons, primarily due to the high violations of labor rights and protections within the existing program as well as previous guestworker programs, such as the Bracero Program.
- Guestworker Rights – Increase
 - Statements describing how guestworker rights and protections must be increased over existing levels, or levels suggested in proposed legislation.
- Guestworker Rights – Status Quo
 - Statements not endorsing the increase or decrease of guestworker rights in current or proposed legislation.
- Guestworker Rights – Decrease
 - Statements describing how guestworker rights and protections should be decreased; bureaucratic hurdles from rights regulations “too burdensome” for small businesses and agribusiness companies.

Category 2: Codes of political group contributions to shaping and influencing the US Guestworker Program – Codes focus on how members of Congress describe the influence of political groups shaping the US Guestworker Program. “Political” in this sense means that they more generally aim to shape political outcomes.

- Food Industry
 - Statements made either by members of Congress referring to food industry/agribusiness influence over the US Guestworker Program, statements

by food industry/agribusiness witnesses during Congressional hearings, or food industry economic and campaign contribution/lobbying data.

- Migrant Rights Organizations
 - Statements made either by members of Congress referring to food industry/agribusiness influence over the US Guestworker Program, or statements made by migrant rights organization witnesses during Congressional hearings.
- American Labor Organizations
 - Statements made either by members of Congress referring to American labor organizations influence over the US Guestworker Program, or statements made by American labor organization witnesses during Congressional hearings.

Category 3: Codes of Congressional descriptions of migrants and immigrants –

Codes focus on Congressional discourse related to how members of Congress describe migrants and immigrants, positively and negatively, and how such language is usually gendered.

- Positive Members of Community
 - Statements describing migrants and immigrants as positive members of the community, including discourse related to being hard-working, honest, and a beneficial influence on neighborhoods.
- Negative Members of Community
 - Statements describing migrants and immigrants as negative members of the community, including discourse related to being criminals, drains on public

welfare systems, uneducated, or animalized; racialized and/or xenophobic discourse.

- Gendered Members of Community
 - Statements describing migrants and immigrants through gendered language; assumption of foreign workers as male; assumption female workers are “pregnant breeders” wishing to have “anchor babies.”

Importantly, while the codes above became the primary framework for analysis, to better conceptualize my findings, I also developed child codes to these parent codes. For the sake of clarity and expediency in delivering my methodology, I have not listed all of these child codes here. Additionally, it must be noted that many more parent codes and child codes were created during my initial and subsequent readings of the text corpus, however ultimately, they did not contribute to primary goals of this research. As such, their inclusion is beyond the scope of this current research, but may be expanded upon in the future.

Also of note, the codes are not always necessarily mutually exclusive, more often than not, categories and underlying codes overlapped as the subjects explored or described had relevance across several spectrums of classification. For example, one piece of text may be classified as “Pro-Guestworker Expansion – Economic Logic,” “Guestworker Rights – Decrease,” “Food Industry,” and “Gendered Members of Community.” Overlapping layers of analysis better provided a deeper contextual meaning to investigating the nuances of the text corpus.

In analyzing the coded data, I used a variety of methods to arrive at my interpretation of the findings. As a cursory overview, I created word clouds and word trees to serve as visual representations of the words and phrases most often cited during Congressional hearings related to in the US Guestworker Program. I then began making concept maps, in which I diagrammed concepts, ideas, and theories related to my research. Concept mapping served to connect themes and patterns, showing underlying linkages and overarching relationships. Lastly, drafting iterations of memos allowed me to record my thoughts, observations, and interpretations into narratives that I could reassess and confirm as I continuously went through the text corpus and codes. Memos provided an analytical tool for me to step back and grasp which themes and patterns were becoming more salient, and which concepts were diminishing in relevance. The outcome of the data analysis for the policy research portion of this dissertation is shared in the following chapter.

3.3 Fieldwork

My fieldwork was centered on the following questions: What are the lived experiences of H-2A and H-2B food production guestworkers employed in the mid-Atlantic region? What similarities and differences in labor rights and protections exist across and within these visa categories? To answer these questions, I used transcribed interviews, participant observation, and field notes, and as well as supplementary data, such as historical records, photos, current census data, and governmental reports, to triangulate my findings. Triangulation is defined as comparing and contrasting evidence from other pieces of data or information, in order to corroborate a study's findings (LeCompte 2005, 151).

In doing fieldwork, I applied the case study method. Case studies allow the researcher to “provide contextual description, develop new classifications, generate hypotheses, confirm and inform theories” (Landon 2000, 29). I examined two case study communities, each corresponding to either the H-2A or H-2B visa category. Qualitative methods are most typically used in case study research. Many of the methods employed include the use of ethnography, structured interviews, participant observation, discourse analysis of archival resources, or supplementary analysis of photos or governmental reports, among many others. Typically, to examine such qualitative data, researchers use a combination of qualitative focused and open coding schemes to examine data, exploring topics already identified as relevant to one’s research questions, as well as new enriching concepts, themes, and issues that arise through research. Coding can be done by hand, or through the use of software programs, which assist in identifying the analytic dimensions of the study. When it comes to case selection, cases “are...not plucked from thick air, but are specifically chosen for the merit in contributing to larger sets of questions in the field” (Landon 2000, 87).

Case studies have a number of advantages in the social sciences. When given modest time and resources, a political scientist can use this framework to develop nuanced data on a particular case, contributing to theory development (Lijphart 1971, 691–93). A key strength often highlighted is the use of reflexivity (which not all case study researchers use, but nevertheless is important to discuss here). Reflexive scholars argue that researchers’ positions are never neutral. Rather, in unveiling a subject, they make a political contribution – one inevitably tied to their claim in the production of knowledge (Scott 1991, 797). In this way, the evidence of experience captured in social

science research is “contextual, contested, and contingent” (Scott 1991, 796), and interactively constituted.

Case studies have also been critiqued for weaknesses. While this research design can produce hypothesis testing and theory building, as in other comparative methodologies, its systematicity for doing so and producing wider generalizations is limited (Lijphart 1971). For example, ethnography, an often used method of qualitative research in case studies, grew out of anthropology and began to be used in political science in the 1980s and 1990s. Ethnography initially disavowed generalization in favor of specificity and complexity (Wedeen 2010, 258). For example, Geertz (1986) argued that we cannot extrapolate standardized meaning from the use of thick description. To him, the value of thick description is in the “delicacy of its distinctions, not the sweep of its abstractions” (Geertz 1986, 25-26). For Geertz, we should generalize *within* cases rather than *across* them (Geertz 1986, 25-26). However, Wedeen argues, rather than return to ethnography’s past, we should aim toward its future, one that does not just capture the everyday contradictions and tensions of life, but also “maintain[s] theoretical sovereignty over those complications” (Wedeen 2010, 267). Rather than avoid abstraction, ethnographic work should ground them (Wedeen 2010, 257). In order to do this, Wedeen argues we need to balance ethnographic empirical examples with theoretically motivated discussion (Wedeen 2010, 268). In this way, such methods in political science can “unsettle taken-for-granted assumptions and provide us with a new language for tackling perennial issues” (Wedeen 2010, 268).

Overall, using the case study method in this research is fruitful in gaining in-depth information regarding the lived experiences of H-2A and H-2B guestworkers. It provides

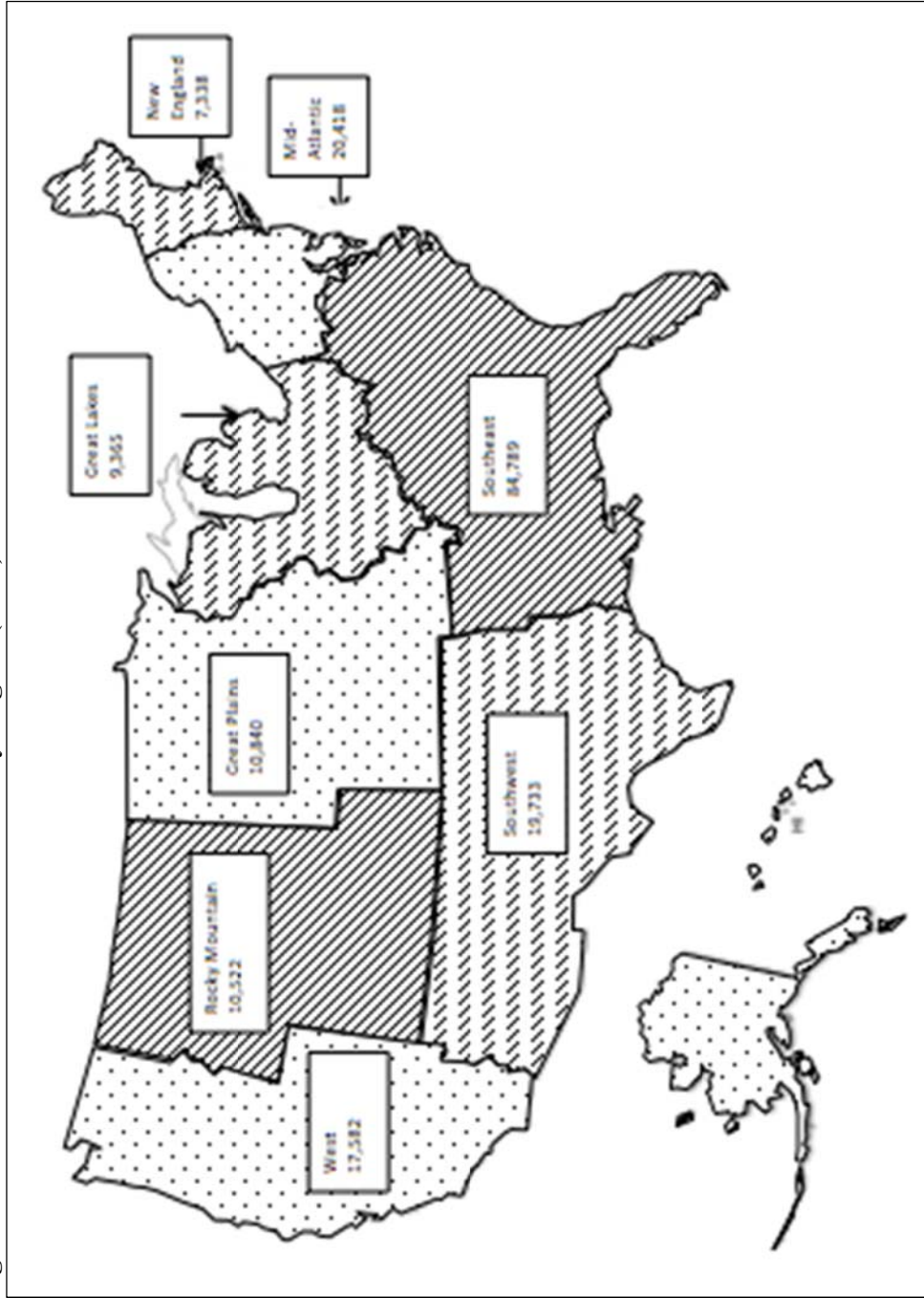
rigor and context specificity for understanding the on the ground implementation of labor rights and protections within the US Guestworker Program, more so that policy research alone or a large-*N* study, given the process of triangulating varying sources of data – interviews, fieldnotes, participant observation, historical records, photos, US Census data, and governmental reports. In this sense, case studies are valuable in answering exploratory or descriptive questions, such as those asked within this research. A major benefit of conducting a case study over that of a full ethnography for this research is that I did not have to make guestworkers vulnerable to employer suspicion by living – or spending extensive time – within the community. Throughout the course of this research, guestworker confidentiality, and thus safety, was a priority.

My fieldwork is based on two locations in the Mid-Atlantic region of the US. The Mid-Atlantic region is distinct because it has rarely been the focus of guestworker study, and yet hosts a diverse array of H-2A and H-2B positions within the food industry (please see Figure 3 below). Farms throughout the region employ 6,550 (FY 2013) H-2A workers to work in crop planting, cultivating, and harvesting, packaging crops after harvest, and dairy farming. Employers also hire a significant number of H-2B workers 13,868 (FY2013). While the H-2B visa category includes positions in industries outside of food production (e.g., landscaping, construction, etc.), the map still gives a general sense of the number of H-2B visas allotted per region to establish context.

While being representative is not the key goal of qualitative approaches, selecting the Mid-Atlantic region does allow a reasonable degree of extrapolation to other US regions given there are similarities. Figure 3 shows the US divided into eight separate regions as designated by the US Department of Commerce's Bureau of Economic

Analysis: New England, Mid-Atlantic, Great Lakes, Great Plains, Southeast, Southwest, Rocky Mountain, and the Far West. Data on the number of H-2A and H-2B guestworkers

Figure 3: H-2A and H-2B Certifications by Region (2013)



Source: Department of Labor's Bureau of Foreign Labor Certification (FY 2013)

by region was determined using statistics compiled by the Department of Labor's Bureau of Foreign Labor Certification (FY2013). Seven of the eight regions' total certified positions for H-2A and H-2B workers equal roughly five to ten percent of the total population of H-2A and H-2B certified positions (for FY2013, this is 180,584). One region – the Southeast – has an H-2A and H-2B population of nearly 50 percent of the total H-2 population in the US, making it an outlier region that is not representative of the larger US context. The Mid-Atlantic, however, has the same proportion of H-2 workers as the Southwest and the Far West, and only marginally more than the remaining four regions.

Both southern New Jersey and Maryland's Eastern Shore – areas with high percentages of the region's H-2A and H-2B food industry labor – are field locations discussed in detail in Chapter 5.

3.3.1 Access to Participants

In order to have access to H-2A and H-2B workers, I became affiliated with *El Comité de Apoyo a Los Trabajadores Agrícolas* (CATA). CATA is a non-profit organization headquartered in Glassboro, New Jersey, with field office locations in Salisbury, Maryland, New Brunswick, New Jersey, and Kennett Square, Pennsylvania. It was founded by migrant workers in food production in 1979 and continues to be governed and comprised of the same population today. Its mission is “to empower and educate farmworkers through leadership development and capacity building so that they are able to make informed decisions regarding the best course of action for their interests” (CATA 2016). Their educational programming includes awareness about

migrant labor rights, immigration, pesticide safety and exposure, public health, and ultimately aims to build local communities.

I initiated contact with CATA through an introductory email explaining the goals of my research and requesting a meeting with field organizers and the Executive Director. My first meeting at the Glassboro, New Jersey headquarters was during the summer of 2015. I first spoke with Jessica Culley, one of the field organizers, and went in depth regarding my research design, and asked for feedback regarding the feasibility of the study. Culley was receptive to the study, given the ongoing complaints of employer exploitation among the migrant population they support throughout the Mid-Atlantic region. In talking through my research design, Culley indicated that she or another field organizer should accompany me first to each labor camp to personally introduce me to the guestworkers, and establish my credibility as a researcher and not a representative of the employer. She also indicated that as a Spanish-speaking white woman in her late 20s to early 30s, who has worked within the southern New Jersey migrant community for 10 years, migrants are still reticent to share vulnerabilities with her that they more freely express to Hispanic field organizers. She said that this would be a challenge for me going forward, but they that would likely still share at least part of their stories with me, despite me also being a white women of the same background.

Following my meeting with Culley, I met with Nelson Carrasquillo, the Executive Director of CATA. He shared the history of the organization, how the community has shifted from once a largely Puerto Rican base to Mexican population since the 1970s, and the influence of the agribusiness on exploiting workers' rights. During our meeting, I had asked Carrasquillo if it would be possible for me to have a desk (or work at a common

table with my laptop) at CATA a couple of days per week to immerse myself within the organization. Carrasquillo shared that a few years prior another doctoral researcher had worked with CATA for several months while she was studying migrant advocacy organizations, and her dissertation resulted in casting the organization unfairly in a negative light. Because of this, Carrasquillo preferred that I come in for scheduled meetings once every few weeks rather than as a semi-permanent appointment.

With the approval of CATA, I accompanied Culley and other field organizers, Manuel Guzman and Leila Borrero Krouse to H-2A and H-2B labor camps in southern New Jersey and Maryland's Eastern Shore. CATA field organizers conduct outreach visits to labor camps Tuesdays through Fridays in line with the growing and food-processing season, which is typically early spring through mid-fall. CATA organizers usually do outreach at labor camps in the evening after workers have completed their workday. For H-2A workers, outreach begins around 5:30pm and will last as late as 10:30pm at times, as during peak harvest season workers may still be in the fields. For H-2B workers, outreach begins around 3:00pm and lasts until around 8:00pm. H-2B workers begin their day around 4:00am and that is why they end sooner than H-2A workers. While my research focused on authorized H-2 workers, it should be noted that CATA also visits labor camps that house undocumented workers as well.

Given that CATA is a very reputable organization within the region's migrant community, my affiliation with them better provided me with access to conduct interviews with workers. Association with them established I was not a representative of the employers, "*los patrones*," or of immigration. Between the months of August and October 2015, I went with CATA field organizers to both H-2A and H-2B labor camps.

In order to establish trust among workers, the first meeting at each camp was merely introductory. CATA field organizers, whom the workers already knew and trusted, initially brought me to the different camps.

For every labor camp I went to during the initial visits, I brought a tray of cookies. While a small gesture, my intention was to show from the very beginning that I was not going to simply “take” from them, but rather, wanted to offer something – however small – in return. Bringing cookies during these initial visits also brought all the guestworkers into the kitchen to gather round and eat them, allowing me access to who was around so that I could introduce myself. I said I was a doctoral student from the University of Delaware studying the US Guestworker Program, and wanted to learn more about their experiences working within the program. During each of these initial site visits, I also shared with guestworkers a copy of the interview questionnaire. This allowed the more skeptical workers the opportunity to review exactly what I would ask at a later interview date. This was in an effort to not catch anyone off guard or have them feel threatened in the sense that they would not be in control of the interview. I found that prior to showing the guestworkers the interview protocol, there were fewer volunteers, but after showing the protocol, nearly everyone I spoke to said that they would be interested.

I explained to potential interviewees that in exchange for an interview, they would receive a gift card from Walmart in the amount of \$10. Again, this was to ensure that their time was seen as valuable, and that I did not want to use my positionality to take additional free time from them for my own purposes without respecting their schedule. For everyone I met at the camps, I also gave a card with my name and contact information. This card was nondescript, with no link to my research, in the off chance an

employer found my card by accident. During these initial meetings, I would set up time for the following week for interview participation. Since not everyone who worked in the various camps would be present during these initial visits, I relied on snowball sampling, where interviewees who had already been identified as meeting the criteria for inclusion (i.e., being an H-2A or H-2B worker in my fieldsite locations) recommend others. Snowball sampling is “especially useful when you are trying to reach populations that are inaccessible or hard to find ” (Trochim 2014).

All interviews were done after work hours on-site at the camps. I had volunteered to drive guestworkers to off-site locations for the interviews, or to meet me at off-site locations, but all interviewees preferred to remain at the camps. They expressed that after working a long day, they were tired and hungry, and did not want to take on an additional responsibility of needing to leave the camp site during their off-hours. I understood this, and complied with their wishes.

To access community stakeholders and government employees I used expert sampling, where “a sample of persons with known or demonstrable experience and expertise” is selected (Trochim 2014). To do this, I researched organizations and legal offices that provided direct services to guestworkers. I would then email the prospective participant, explain who I was and what the study was about, and asked for an interview time. While community stakeholders, such as lawyers and advocates, were very receptive to speaking with me, government employees were more hesitant. Many government employees I reached out to did not respond to my request for an interview. Success with accessing government employees came from attending a Seasonal and Migrant Farmworker Working Group in Harrisburg, Pennsylvania in November 2015.

Several government employees who work with different aspects of the Guestworker Program were present, and I was able to speak with them, gain their trust, and request a subsequent interview.

Additional data, in the form of statistics such as the number of authorized H-2A and H-2B workers entering the country each year, were obtained via websites for the Department of Labor, Department of State, and Department of Homeland Security.

3.3.2 Data Collection

Although I had been conducting preliminary interviews with community stakeholders during the summer of 2014, I formally began data collection for my fieldwork in August 2015. I used multiple methods to gather the data I required for this phase of my research. In particular, I used transcribed interviews, participant observation, and field notes, as well as supplementary data, such as historical records, photos, current census data, and governmental reports. In using multiple methods and sources of data, I was better able to triangulate my findings, examining my research from different angles and viewpoints. The following sections describe how I used these different methods to collect my data.

3.3.2.1 Participant Observation and Fieldnotes

Participant observation is defined as “the systematic description of events, behaviors, and artifacts in the social setting chosen for study” (Marshall and Rossman 1989, 79). As this study examines the life experiences of guestworkers employed in food production, I focused my participant observation on the H-2A and H-2B guestworkers, rather than on the community stakeholders and government employees.

As Culley had indicated was her experience prior to the start of my research, the migrant participants for this study were hesitant to openly share their experiences with me, even despite my affiliation with CATA. Consequently, I conducted participant observation during the initial meeting at the labor camps as well as during the subsequent interviews, which would help to contextualize participant answers as well as have a better understanding of participants' ways of life at the labor camps. I did not want to be seen by the guestworkers' employers during the day at the work site, for fear that the workers would receive retaliation due to my presence, so I was unable to conduct a full ethnographic immersion.

My observation was limited to after work hours on the days of the initial visits to the camps and the follow up days when interviews were scheduled. Community groups including, migrant rights organizations and health clinic representatives, routinely visit the labor camps after-hours, and consequently, the guestworkers said I would not raise suspicion by coming to the camps in that time frame. At the initial visit for each camp, I would be accompanied by the CATA field organizer, and we would be invited in by the guestworkers to the central kitchen area where there was often communal seating. Some camps did not have a central area, and during these times we would sit outside in plastic chairs or on the ground, surrounded by the housing units. For H-2A camp visits, being outside was welcome, as these visits took place during the summer and the housing units did not have air conditioning. Conversely, the H-2B camp visits took place mid-autumn, and being outside in the evening was quite cold. During initial visits, typically five to seven guestworkers would be present.

The protocol for the initial visits would begin with the field organizer first checking-in with the guestworkers, informally asking them how their week was going (field organizers check in once every one to two weeks at each camp). Usually light banter would ensue about the weather, and some individuals would begin to make dinner or clean up outside while still engaging in conversation. During the 20-25 minutes of this check-in, I would participate in the light banter, while also taking jottings of the descriptions of the labor camps, locations of camps in relation to the farm or food processing centers where guestworkers were employed, the location of camps in relation to the surrounding communities, the conditions inside and outside the housing units, descriptions of workers, and lastly my personal thoughts and feelings. I was hesitant to be seen making these jottings upon my arrival, as not to cast suspicion among the guestworkers that I was an informant for the employer (despite arriving with a trusted field organizer).

After the check-in, the field organizer would introduce me, and I would share the cookies and talk about my research study. Including questions and answers from the guestworkers, this part of the visit would take about 30 minutes. We would end the initial visits with me working on the logistical details for who had volunteered to participate in the study. Overall, initial visits lasted about an hour. It would take me approximately 30-45 minutes to return home by car, and in order to not lose any descriptive information, I would turn on my voice recorder and describe everything I saw, felt, and deemed relevant to the study. Upon returning home, I would write up field notes based on my jottings and voice memos for later assessment.

I would return for the interviews approximately one week later in the evening at the scheduled time. The guestworkers would invite me in to either sit in the kitchen common area or remain outside (if there was no common area). Prior to the interviews, I would informally speak with the guestworkers present, making my descriptive jottings as inconspicuously as possible. After about 10 minutes of light banter, I would begin the interviews, with each interview lasting approximately 30 minutes. Overall, the follow-up visits would be about two hours, as I was cognizant of wanting to let the guestworkers resume their evening schedule. Following my interview visits, I would record voice memos while driving home and then write up field notes upon arriving home, similar to the procedure I followed during my initial visits. These field notes helped particularly in the weeks and months following the conclusion of the fieldwork, to help remind me of the contextual geographic nuances of the fieldwork.

3.3.3.2 Interviews

I obtained approval for the interview portion of the study through the University of Delaware's Institutional Review Board (IRB) in the summer 2015 (see Appendix A). Interviews were conducted with four different groups of people: H-2A workers, H-2B workers, community stakeholders, and government employees. Through these interviews, I was able to have a more holistic perspective regarding the lived experiences of guestworkers when comparing and contrasting rights and protections.

Table 3: Overview of Interview Participants

Interviewees	H-2A Workers New Jersey	H-2B Workers Maryland	Community Stakeholders	Government Employees	Total
Number of participants	14	14	16	10	54

3.3.3.3 H-2A and H-2B Workers

In total, I interviewed 28 H-2A and H-2B workers. Consistent with the background research for this dissertation, the H-2A workers were all male, while the H-2B workers were all female. As discussed in the previous section, I had intended to interview female H-2A workers and male H-2B workers, but the guestworkers themselves and community stakeholders informed me that the division of labor was so gendered that I would not be able to find these outlier populations. Several attempts to find female H-2A workers and male H-2B workers were unsuccessful. The highly gendered dynamic is also consistent with findings from both governmental and non-governmental organizations regarding the demographics of H-2A and H-2B workers within the US (GAO 2015, 17).

Interviews were semi-structured, as I used an interview protocol, but I was also open to allowing conversations to go where they went naturally. My interview protocol (see Appendix D) was designed to connect back to my research questions regarding guestworker labor rights and differences existing within and between H-2A and H-2B visa categories. Of the 28 guestworkers I interviewed, the majority preferred to be interviewed in small groups of about two to three people rather than individual interviews. CATA field organizers had informed me that guestworkers would likely be

more willing to speak with me if they were in small groups, as they would feel more secure having a support system in place. While I was initially hesitant to do small group interviews because I felt this would jeopardize the expression of personalized experiences, in practice I realized that these small groups opened up very fruitful discussions. As a result, allowing small group interviews was instrumental in having guestworkers agree to speak with me. Interviews were relatively short, 30-minutes long, as guestworkers were extremely tired at the end of the work-day and could not give me more time.

Each interviewee was given a written confidentiality form (in Spanish) explaining that anything they said was anonymous. Since several of the guestworkers interviewed were illiterate, I also read the confidentiality form out loud in order to obtain oral consent. I had been told ahead of time by field organizers that guestworkers had had varying degrees of schooling, and that I should not expect all to be literate. As I did not want to stigmatize anyone by directly asking guestworkers if they could read, I simply stated that for the purposes of clarity, I also wanted to read the confidentiality form out loud so that if anyone had questions, they could ask. Consistent with my Institutional Review Board (IRB) proposal, the confidentiality agreement discussed the project, potential risks and benefits, provided an estimate of how long the interview would last, and also had my contact information should anyone wish to follow up with me. Each interview was audio recorded and transcribed.

The majority of H-2A and H-2B participants I interviewed – both males and females – were between the ages of 18 and 30. All interviews were conducted in Spanish as all participants were from Mexico and spoke Spanish as their first language. A

breakdown of the H-2A and H-2B participant demographic profiles is illustrated in Table 4 below.

Table 4: Guestworker Participant Demographic Profile

Name*	Sex	State	Estimated Age	Years in Program	Visa
Alejandro	Male	Guanajuato	18	1st year	H-2A
Andrea	Female	Michoacán	33	10 th Year	H-2B
Angelica	Female	Michoacán	36	10 th Year	H-2B
Antonio	Male	Guanajuato	20	1st year	H-2A
Arturo	Male	Guanajuato	22	1st year	H-2A
Carlos	Male	Veracruz	22	2 nd Year	H-2A
Cecilia	Female	Michoacán	30	7 th Year	H-2B
Diego	Male	State of Mexico	21	2 nd Year	H-2A
Dora	Female	San Luis Potosí	30	5 th Year	H-2B
Eduardo	Male	Guanajuato	20	2 nd Year	H-2A
Gabriela	Female	San Luis Potosí	20	1 st Year	H-2B
Guadalupe	Female	San Luis Potosí	36	6 th Year	H-2B
Hector	Male	Chiapas	41	1 st Year	H-2A
Inez	Female	San Luis Potosí	22	3 rd Year	H-2B
Ivan	Male	Chiapas	45	6 th Year	H-2A
Jorge	Male	Guanajuato	20	2 nd Year	H-2A
José Luis	Male	Guanajuato	23	3 rd Year	H-2A
Julio	Male	Guanajuato	22	3 rd Year	H-2A
Liliana	Female	San Luis Potosí	30	5 th Year	H-2B
Lorena	Female	Hidalgo	20	2 nd Year	H-2B
Mariana	Female	San Luis Potosí	20	1 st Year	H-2B
Miguel	Male	Guanajuato	35	3 rd Year	H-2A
Monse	Female	San Luis Potosí	18	1 st Year	H-2B
Roberto	Male	Guanajuato	34	1 st Year	H-2A
Sergio	Male	Guanajuato	25	3 rd Year	H-2A
Silvia	Female	San Luis Potosí	18	1 st Year	H-2B
Teresa	Female	San Luis Potosí	22	1 st Year	H-2B
Veronica	Female	Hidalgo	28	6 th Year	H-2B

***Note:** All guestworker participant names have been changed to protect their identity.

General themes discussed during interviews with guestworkers centered on the following areas: country/state of origin, length of time in program, experiences of being transported to the US, job contracts and recruitment, housing conditions, wages earned, working conditions of the job, social network in the US, the best and worst aspects of participating in the program, and lastly, recommendations for improving the program. The interview protocol used is found in Appendix D.

3.3.3.4 Community Stakeholders

Community stakeholders consisted of professionals who work with migrant populations in the region, particularly H-2A and H-2B workers. This included lawyers, human rights advocates, social workers, and medical personnel who do outreach with migrant populations. Participants came from an assortment of high profile, nationally recognized organizations, as well as smaller, grassroots-led organizations. In total, I conducted 16 semi-structured interviews that lasted about an hour (depending on participants' schedules). The goal of these interviews is to provide an enhanced context for understanding the local level implementation of the guestworker program and its impact on H-2A and H-2B guestworker labor rights. Interviews were audio recorded and consent was obtained orally after I conveyed the risks and benefits of participation. All interviews were transcribed and coded for analysis. Interviews with community stakeholders were conducted between August 2015 and December 2015.

My interview questions centered on themes such as: experiences working with H-2A and H-2B guestworkers, best and worst attributes of the US Guestworker Program, guestworker working conditions and housing conditions, greatest challenges for the program going forward, knowledge of discriminatory practices or abuse, and

recommendations for improving the program. Please see Appendix E for the interview protocol used for community stakeholders.

3.3.3.5 Government Employees

Government employees consisted of a combination of individuals from local level government offices and federal government offices. All individuals interviewed work within the US Guestworker Program's mandate, either for disseminating visas, providing oversight over work and housing conditions, or enforcing regulations when there are instances of employer abuse. In total, I interviewed 10 government employees. The goal of doing these interviews is to discern how the program is administered and what differences exist between the H-2A and H-2B programs regarding guestworker labor rights. While my intention was to audio record all government interviewees, several participants asked not to be recorded and have our conversation be "off-the-record." For those that were audio recorded, they were transcribed and coded for analysis. Interview findings for those that were "off-the-record" could only be generalized into existing thematic areas rather than directly quoted. Interviews with government employees were conducted between August 2015 and December 2015.

My government employee interviews centered on the following themes: comparing and contrasting H-2A and H-2B regulations, matters of jurisdiction and coordination among federal, state, and local agencies and organizations, guestworker working and living conditions, complaints received from guestworkers, how investigations are conducted, best and worst aspects of the guestworker program, and recommendations for improvement. The general interview protocol used for government employees is found within the Appendix E.

3.3.4 Interview Data Analysis

Using discourse analysis, I analyzed all interview content. To interpret this data, I use a combination of focused and open coding schemes, exploring topics already identified as relevant to my research questions, as well as new concepts, themes, and issues that enriched my research. My interview codes, outlined below, helped to categorize and unpack the statements made, sentiments felt, and issues raised. As it was a very arduous task, to better assist my organization and dissection, I used the same discourse analysis software from my policy research – Nvivo. Having software that could create parent and child nodes of codes, as well as create data visualizations and reports, dramatically contributed to helping this project move forward at a steady pace. My entire coding scheme for the interviews, complete with operational definitions, is illustrated in Table 5 below.

Table 5: Selected Codes for Interview Discourse Analysis

Category 1: Codes reflecting discussion of guestworker labor rights and protections	Category 2: Codes describing workers and/or job categories using gendered language	Category 3: Codes describing generalities of guestworker jobs, lifestyles, and recommendations for future
Worker Transparency	Masculinized Labor	Typical Day
Transportation to/from the US	Feminized Labor	First Impressions of Job
Housing		Best Aspects of Job
Meals		Worst Aspects of Job
Wages		Recommendations for Program
Personal Safety		
Emotional Wellbeing		

Category 1: Codes reflecting discussions of guestworker labor rights and protections

– Codes focus on guestworker self-descriptions of labor rights and protections experiences, descriptions by community stakeholders, and government employees.

- Worker Transparency
 - Statements related to worker receiving or not receiving the same job, location, and pay rate as that originally promised during recruitment.
 - Statements related to worker retaining or not retaining personal identification documents.
- Transportation to/from the US
 - Statements describing whether or not the employer paid for transportation to and from the US, and whether daily subsistence (food, lodging) was also provided during journey.
- Housing
 - Statements describing whether or not living conditions are clean and hospitable.
 - Statements describing whether or not worker has access to housing at a reasonable cost.
 - Statements describing if housing is reasonably close to work site and whether transportation is provided from accommodations to work site.
- Meals
 - Statements regarding whether or not worker has meals provided by employer, and the quality of those meals.

- Statements regarding whether or not the worker has access to cooking facilities or meals at a reasonable cost.
- Statements regarding whether transportation is provided to access meals, if not provided on site.
- Wages
 - Statements regarding whether worker is paid a living wage by the hour rather than piece-rate.
 - Statement related to whether worker can save money and/or send remittances back to family/friends in country of origin.
- Physical Safety
 - Statements related to whether worker has experienced use of force or threat of physical harm, including sexual assault and harassment, against their personhood.
 - Statements related to whether worker is exposed to harmful pesticides or chemicals without proper protection.
 - Statements related to whether worker is forced/coerced to perform dangerous activities on the job.
 - Statements related to whether worker receives, or is aware of the possibility of receiving, compensation for work-related injuries.
- Emotional Well-Being
 - Statements related to whether worker is socially or geographically isolated from others, or the surrounding community.
 - Statements related to the personal time worker is allotted per week.

Category 2: Codes describing workers or job categories using gendered language –

Codes focus on masculinized or feminized descriptions of workers themselves or job categories performed by different sexes within the US Guestworker Program.

- Masculinized Labor
 - Statements relating to describing workers as male and/or describing jobs as masculinized.
- Feminized Labor
 - Statements relating to describing workers as female and/or describing jobs as feminized.

Category 3: Codes describing generalities of guestworker jobs, lifestyles, and

recommendations for future – Codes providing additional context regarding guestworkers' lived experiences in the US.

- Typical Day
 - Statements regarding what a typical day is like in the life of a guestworker; work hours; best part of job; worst part of job; three words that describe jobs and experience within the program.
- First Impressions of Job
 - Statements referring to how guestworkers feel about jobs within the first few days of arriving at the work site in the US; Statements made by community stakeholders regarding workers' initial impressions and how they changed over time.

- Best Aspects of Job
 - Statements referring to what interviewees felt are the best aspects of the US Guestworker Program.
- Worst Aspects of Job
 - Statements referring to what interviewees felt are the worst aspects of the US Guestworker Program.
- Recommendations for Program
 - Statements whereby interviewees offered their own recommendations for how the US Guestworker Program can, and should, be improved.

My process for creating codes was similar to that of my policy research. The majority of my coding was done via focused, selective coding for my interview content. When creating the interview protocol, I was judicious with the questions asked, as I knew I would have limited time to conduct the interviews. As a result, when coding the labor rights category of codes, I knew ahead of time the analytic dimensions I wanted to explore – worker transparency, transportation to/from the US, housing, meals, wages, personal safety, and emotional well-being. Through the use of these labor rights codes, I was able to have a more thorough understanding of how rights and protections are demonstrated on the ground and not just how they are reflected within the policy arena. Similarly, my codes for descriptions of generalities of the program were also focused. I knew in creating the interview protocol that I wanted to have additional context to deepen my understanding of how the program operates on a day-to-day basis, and recommendations for the program going forward.

I also engaged in open coding of the interview transcripts, highlighting patterns and themes that emerged from the data. The most pertinent of these resulted in cataloguing discourse into masculinized and feminized language, as it continued to be repeated by participants of all categories – guestworkers, community stakeholders, and government representatives. These codes helped me to better understand how gender stereotypes and gendered meanings – both about the workers themselves and the jobs performed – are felt and experienced within the US Guestworker Program.

As with the policy portion of this research, many more codes were created in the dissecting and synergizing of the interview transcriptions and field notes. However, the additional codes that were created are beyond this body of work, and will be further explored in future research endeavors.

In analyzing the coded interview data, I used discourse analysis methods similar to my policy research. Data visualizations using NVivo, such as word clouds and word trees allowed me to see the comparisons for how guestworkers, community stakeholders, and government employees described the US Guestworker Program. I then ran reports of the codes in NVivo to see to what extent the coded dialogues overlapped and synthesized with one another. Concept maps also allowed me to visualize how repeating themes formed patterns among the data. I initially created these concept maps with a notepad, sketching out how key concepts, ideas, and theories were intertwined and related. I then went line by line of the coded reports to see how each interviewee described the coded concept to better understand which statements stood in agreement and contradiction with one another. Lastly, I created memos of my thoughts, observations, and interpretations into narratives I could continuously review and update based on newer insights from the

data. As with my policy analysis, memos provided an analytical tool for me to step back and grasp which themes and patterns were becoming more salient, and which concepts were diminishing in relevance. The results of the data analysis of the fieldwork are discussed in depth in my fieldwork chapter.

3.4 Combining Policy and Fieldwork Analysis

Guided by a feminist curiosity, this research fills extant research gaps, providing an enhanced understanding of the origin, content, scope, and experience of labor rights and protections within the US Guestworker Program's H-2A and H-2B categories. The combination of policy analysis and fieldwork analysis demonstrates how stratified rights articulated within policy translate into diluted guestworker protections on the ground. Empirical observations can shed light onto legislative and regulatory effects dictated in national political realm far better than analyzing policy alone. Similarly, detaching the fieldwork portion of this study from the narratives imbued in public policies and programs that have created the context for guestworkers' lived experiences would illustrate only one level of the issue. Through the combination of policy analysis and fieldwork, I am better able to offer the rigor needed to comprehensively understand how and why the US Guestworker Program functions as it does.

Linking these separate analytical categories was completed initially using concept mapping, diagramming on paper how narratives regarding labor rights influenced policy, and how the results of policy are implicated within guestworkers' lived experiences. Once I had a better understanding of these concepts, I spoke again with some of the community stakeholders and government employees I had previously interviewed who confirmed my theories for how these categories are tethered to one another. After

receiving confirmation, I began to draft memos of the concept linkages, which eventually became the initial drafts of sections of this dissertation.

3.5 Positionality within the Research Process

I was drawn to researching experiences of migration and exploitation in the US because of my longstanding interest in understanding processes of social inclusion and exclusion in transnational communities. Having grown up in the Philadelphia area, as well as lived throughout the US and abroad, I have witnessed social exclusion based on sex, class, race/ethnicity, sexuality, religion, and political affiliation, all within a variety of political and economic contexts. I use Duffy's (1995) definition of social exclusion, defined as an "inability to participate effectively in economic, social, political, and cultural life; alienation and distance from the mainstream society" (Duffy 1995, 17). These experiences led me to pursue both professional and volunteer work centered on unveiling migrant and immigrant exploitation in Moldova, Costa Rica, and Spain, and later doctoral research in the US.

While awareness of my positionality existed within the policy research portion of this dissertation – being more engaged with some texts over others because of my frames of reference and experience – that of most significance occurred within my fieldwork research. I conducted my fieldwork from August to December 2015 in the Mid-Atlantic region of the US. This region is of particular significance to me, as it is the region where I grew up and presently live. During the preliminary research of scholarly work on the US Guestworker Program, I found a dearth of studies focused on this region, as the majority have centered on California, the Southwest, and Florida. Being that the Mid-Atlantic

region is an under-studied case with a significant H-2A and H-2B worker population, and region of which I am intimately familiar, I selected it as my area of study.

Because of my positionality as a white, middle-class, female, US citizen, and non-native Spanish speaker, I anticipated a number of challenges and opportunities for conducting this research. My positionality continuously led me to negotiate outsider and insider status among participants. When interviewing H-2A and H-2B workers, I was likely viewed as an outsider because of my nationality, professional status, and accent. Overall, male H-2A workers were reticent to share their labor experiences working in the US with me. Younger males, under the age of 25, were slightly more open, going into more detail during interviews, and often joking with me during the interview itself. Older males, above the age of 35, often avoided eye contact with me, spoke in short answers, and were frequently visibly guarded with crossed arms. This discrepancy related to age and trust could have been generated by older males having more experience with witnessing “outsiders” take advantage of their status or position. Female H-2B workers were much more open, which could possibly be related to my insider status as female. For example, female H-2B workers appeared to be more approachable and talkative with me than male H-2A workers of all age groups. However, this could have been related to socialized gender norms and the performativity of expected female behavior centered on agreeability. Overall, my “outsiderness” among H-2A and H-2B workers may also have presented opportunities. Migrant participants may have been more explicit about the information they shared with me, knowing that I am not privy to the “common knowledge” another “insider” would possess (Twine 2000, 12). As discussed in the following section, my “outsiderness” also may have limited my research, as guestworkers

may have been less likely to trust me than had I conducted extensive fieldwork among them.

When interviewing community stakeholders and government employees, I also negotiated outsider and insider status. Many of these participants shared similarities with me regarding identifiers such as class or nationality. The community stakeholders and government employees I interviewed averaged about 15 years working with migrant populations – whether as lawyers, community advocates, or government investigators, in a professional capacity. As a doctoral candidate with interest in the subject matter provided me with legitimacy, but I was seen as an outsider because I did not work for the organizations with which they were affiliated. However, as an outsider in this capacity did present advantages, as community stakeholders and government employees were very willing to explain the details of the US Guestworker Program to better assist my knowledge development on the subject matter.

The social construction of my positionality impacted the analysis process as well. In making sense of the data, my background as a politically liberal human rights advocate likely made me more attuned to hearing guestworker exploitation experiences, but less likely to assess the (admittedly few) instances where guestworkers told me they appreciated their employment. Given my positionality as a white, middle-class, US citizen, this likely left me blind to areas outside of my frame of reference, such as more in depth codes regarding the confines of negotiating non-citizenship status in the US. I was also cognizant of my position of privilege and power during analysis. During my concept mapping and iterations of memo writing, in reviewing the guestworkers' experiences of employer threats, abuse, wage theft, and unsanitary living conditions, I often felt torn

between remaining an objective academic, or using my privileged position to advocate directly on behalf of the guestworkers who participated in my study.

3.6 Research Limitations and Challenges

As with any extensive research project conducted within the confines of finite time and resources, this research has limitations. For my policy research, I primarily examined the transcripts from Congressional Committee hearings regarding the US Guestworker Program. Within Committee is where legislation is intensely discussed and debated, questions are raised, and positions are defended. However, this is not the only realm in which members of Congress engage in legislative rhetoric. A wider research project could have also examined Congressional debate regarding the US Guestworker Program in the media – contributions from members of the House and Senate in television interviews, public speeches, print editorials, or social media. This would have added a deeper layer of context and thicker description. However, it would also have required research assistants, additional time, and funding to complete the project. Future iterations of this research could examine such media and draw additional conclusions.

There are also limitations to my fieldwork. My interviews rely on purposive, non-probabilistic sampling. This means, I select my participants with a specific purpose in mind and they are not selected randomly. By virtue of this sampling technique, I may not represent the populations accurately. However, because my primary population – H-2A and H-2B guestworkers – are largely hidden and vulnerable, I felt purposive, non-probabilistic sampling was the most pragmatic approach. This type of sampling is used when there are “circumstances where it is not feasible, practical or theoretically sensible to do random sampling” (Trochim 2014).

Interviews with guestworkers were approximately 30 minutes and the majority of interviews took place in groups of two or three people. While it would have been ideal to have one-on-one interviews lasting approximately one hour, I chose shorter, small group interviews for a couple of reasons. The majority of guestworkers were more comfortable speaking in a group than being alone with me in a one-on-one setting. This was the same for women as well as men. Additionally, migrant workers often work very long hours. Hence, I considered myself fortunate and grateful that they kindly offered 30 minutes of their time to me for interviews regarding uncomfortable subject matter.

Some guestworkers were noticeably guarded during the interviews. Despite me being introduced by CATA, the migrant outreach organization, I believe some still thought I had a connection to immigration or their employer. Thus, there was a detectable hesitation from some guestworkers when they spoke to me. It could also have been because of my race as a white, non-native Spanish speaker. A CATA outreach worker of my same demographic who has worked in the community for 15 years informed me she has also had the same experience. She conveyed that outreach workers who have a Hispanic background have been able to elicit much more information regarding instances of employer abuse than she has despite her longstanding position as an outreach working in the area. Based on this, it is possible that even if I had conducted a full ethnography of working and living alongside guestworkers (which would have been impossible given their vulnerability), I may not have received much more information. However, it is also true that I would have gathered more field notes, which would have informed the questions I would later ask. Additionally, there is the possibility I would have formed

friendships which would have led to more trust among participants to share their stories with me.

Interviews with government employees were also noticeably guarded. Even scheduling the interview itself was difficult, as a number of government employees never returned my requests for an interview. For many who did volunteer to be interviewed for this study, several asked that the interview be off the record and that they remain anonymous. This is likely due to fear of going against state or federal level positions on key aspects of the US Guestworker Program.

Lastly, the secondary community-level data I use to triangulate my findings is likely not a truly accurate representation of county populations. For example, counties with high numbers of undocumented migrants may have skewed Census records on household demographics or income levels, as these populations may not have been accounted for during sampling. Also, unemployment data, which I also use in the secondary analysis, only captures those unemployed for the first six months of unemployment, skewing results. Overall, my secondary analysis is only supplementary, meant to triangulate the findings of the primary analysis, and as a result, I argue these likely misrepresentations will not invalidate the findings of this research.

3.7 Conclusion

In sum, a case study approaching combining US Guestworker policy analysis and fieldwork provided me with the rigor needed to comprehensively understand how and why the US Guestworker Program functions as it does. It also lends this research credibility, as I am able to examine how Congressional discourse informed guestworker regulations, resulting in gaps in guestworker rights and protections. If I were to have only

analyzed policy or fieldwork alone, I would not have been able to synthesize the findings for how national discourse informs and constrains guestworker lived experiences. The results of these findings are discussed in the subsequent two chapters.

Chapter 4

THE SHAPING OF US GUESTWORKER POLICY

The immigration policy of this country is very important. Certainly as we consider making changes in that policy, we want to be sure that it meets the needs of industries. And the agricultural industry is one of the most important (Representative Thomas Ewing, December 14, 1995, Joint hearing of the House Committees on Agriculture and the Judiciary).

While other literatures have examined generalized debates about the evolution of US guestworker policy (e.g., Trautman 2014), I engage a feminist curiosity to examine how the discourses of political actors have explicitly shaped and given meaning to the program's labor rights and protections. In examining US Guestworker policies and regulations, this chapter is framed by an overarching question: How have Congressional narratives and debates informed guestworker rights and protections? In order to provide additional context and direction for my investigation, I am most interested in investigating how and why groups with the most power have marginalized guestworkers through systematic political efforts, and the Congressional outcomes of such determinations. To guide this secondary line of inquiry, I ask the following supplementary question: To what extent is agribusiness involved in the formation of guestworker policy, what powers does it bring, what strategies or tactics does it employ to get what it wants, and what does it stand to win or lose? I focus on H-2A and H-2B guestworker regulations, as these visas are allotted for the most vulnerable "low-skill"

temporary non-immigrant workers across the US, largely within the food industry.¹⁰ Since the creation of the H-2A and H-2B visa categories, nearly 2.4 million of these guestworkers have come to the US (US Department of Labor 2016).

Using narratives to unpack the evolution of public policies have “largely remained on the sidelines” (Jones and McBeth 2010, 330). Policy narratives – “the scenarios and argumentation on which policies are based” – illustrate how stories used throughout policy debates are “often a force in themselves” (Roe 1994, 2). Guided by a feminist conceptual framework, I examine to what extent policymakers have been influenced by agribusiness interests with regards to such narratives. The term “agribusiness” can be an ambiguous term. Hence, for purposes of clarity, I define agribusiness as the sector encompassing crop producers, livestock producers, poultry and egg companies, dairy farmers, tobacco companies, food processing companies, and food retail stores.¹¹

Throughout this research my “philosophical-ontological wager” is firmly rooted in reflexivity (Jackson 2010) and guided by feminist critical theory. Because of this, I do

¹⁰ The H-2A and H-2B programs are deemed as the “low skill” programs within the current “alphabet soup” of temporary non-immigrant worker classifications (A. N. Read 2006). Currently 22 of these guestworker programs exist, and with the exception of the H-2A and H-2B visa categories, they are designated for “highly skilled” or “highly qualified” temporary workers. For example, the E-1, E-2, and E-2C visa categories are for treaty investors; E-3, H-1B, H-1C, O-1, and I are for “specialty occupations” for those of distinguished or outstanding merit, including executives, experts, and the press; L-1A and L-1B are for intra-company transfers; H-1B3, P-1A, and P1-B are for internationally recognized models, athletes, and entertainers; in addition to the many others, there are also corresponding work visas for dependents of these temporary non-immigrant visa categories (A. N. Read 2006).

¹¹ This definition of agribusiness is the same rubric employed by that of the Center for Responsive Politics, the organization supplying the financial data for agribusiness campaign contributions and lobbying efforts to members of Congress for this research.

not make truth claims of direct causality linking agribusiness influence and Congressional voting outcomes on the US Guestworker Program. While I do demonstrate in this chapter that significant agribusiness financial contributions have been allotted to Congress over the past twenty years, prior research has already demonstrated that a group or industry's campaign contributions influence the extent to which they have access to legislators and shape political agendas (L. Powell 2012; E. Powell and Grimmer 2016). Less explored within this area, is the situated context for how Congressional discourses have been in agreement or opposition to agribusiness interests with regards to the US Guestworker Program. Said more simply, I explore how members of Congress justify their support for the US Guestworker Program, especially when such support is influenced by the questionable labor rights recommendations offered by agribusiness.

The policy narratives and debates discussed in this chapter stem from analysis of 20 years of Congressional dialogue. I begin the analysis in 1995 because even though the H-2A and H-2B programs were created in 1986 with the Immigration Control and Reform Act, heated Congressional debate regarding the evolution of these visa categories did not begin until nearly a decade later when the hiring of H-2A and H-2B guestworkers was more readily exercised by employers.¹² The sources for my policy research include US Congressional hearing transcripts, legislation (both proposed and passed), and government reports related to the US Guestworker Program. The total text corpus for analysis spans over 5,000 pages (for a more detailed account of my methods for this

¹² In the years immediately following the creation of the H-2A and H-2B visa categories with the 1986 Immigration Reform and Control Act, employers did not readily take advantage of the program. By the early 1990s, about 20,000 H-2A and H-2B visas were being used to bring workers to the US. However, steady gains in the use of these visa categories did not begin until the mid-1990s. For a time-series depiction of H-2A and H-2B visa growth, please see Figure 1.

chapter, please see the previous methodology chapter). To triangulate this research, and offer a fuller picture, I include data regarding agribusiness lobbying efforts and campaign donations to Congress since the mid-1990s.

The findings of this chapter demonstrate that for the past two decades (1995-2015), while most legislators propagated a politics of fear regarding immigration, systematic efforts by a small group of members of Congress focused on expanding the US Guestworker Program, often using policy proposals submitted by agribusiness groups. Prior research has demonstrated that political contributions flow most heavily to Congressional Committees associated with the industry seeking to be represented, all under the tested assumption that their interests will shape policy outcomes (E. Powell and Grimmer 2016). In excerpts of the discourse that follows, it is implied that contributions particularly to the House and Senate Agriculture Committees helped to shape agribusiness policy outcomes. The two most sought after changes to current US Guestworker Program policy were: 1) expanding the program, and 2) decreasing “burdensome” regulations protecting workers’ rights and protections.

The effects of such policy proposals would (and have) expanded the number of workers allowed into the country, while at the same rolling back vital guestworker rights and protections. Without such measures, conditions are created that are conducive to wage theft, contract fraud, discrimination, and violence. Both “low skill” H-2A and H-2B workers are left in precarious employment conditions, yet through targeted efforts, the rights of H-2B workers have been more readily marginalized than their H-2A counterparts. Such abuses taking place on the ground are further discussed in Chapter 5.

4.1 Influence of Special Interests on the US Guestworker Program

First of all, I think you're still friends of the industry. I think everybody in this room has got to be friends of the industry (Israel Baez, Jr., speaking on behalf of the United Fresh Fruit and Vegetable Association at a December 14, 1995 Joint House Hearing of the Committee on the Judiciary and Committee on Agriculture, "Agricultural Guestworker Programs").

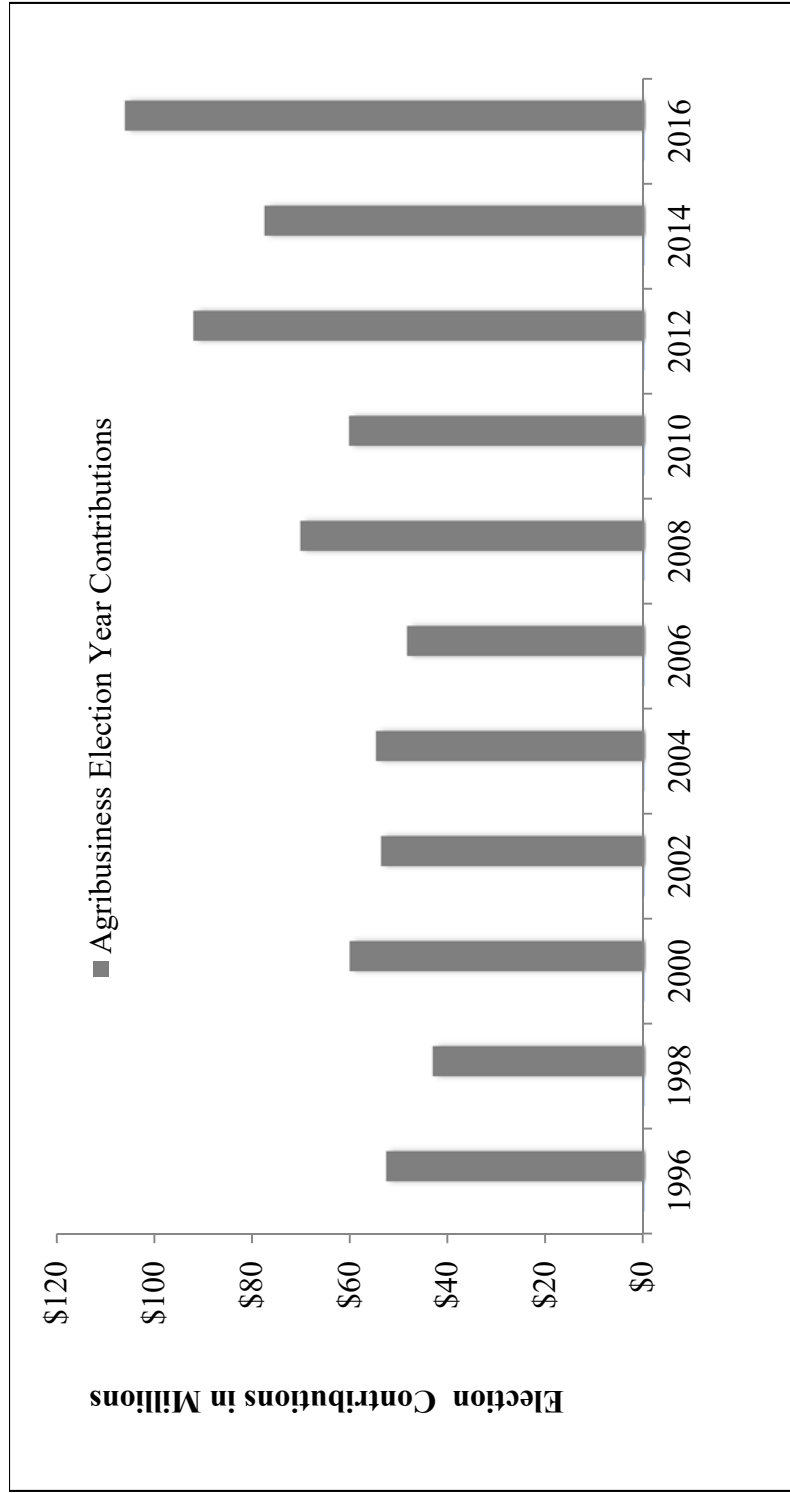
Previous research has examined how generalized immigration narratives have increasingly centered on a politics of fear, whereby "illegal aliens" represent a threat to US national security. Even before 9/11, members of Congress sought to securitize the border using walls and increased numbers of border patrol agents, criminalized undocumented migrants, and expedited deportations. However, less discussed in the academic literature are the discourses and policies that stand in contradiction. During times of the most heated positions against migrants "flooding" the country, a contingent of Congressional legislators endorsed employer-represented special interest demands. Chief among these demands were proposals to expand the number of guestworker visas per year, while at the same time easing the "regulatory burdens" of H-2A and H-2B rights and protections.

What plausible scenario would allow for politicians to include a backdoor for foreign workers while anti-immigration sentiment was on the rise throughout the mid-1990s to present-day? In short, neoliberal economics. Corporate power in the food sector is substantial. Valued at \$7 trillion, the food industry is "larger than even the energy sector and represent[s] roughly ten percent of the global economy" (Beth Hoffman 2013, 5). With such high economic profits at stake, corporate agribusiness has a vested interest

in ensuring that their interests are met on Capitol Hill. Chief among these is safeguarding a steady stream of cheap labor to meet food harvesting and processing demands.

To safeguard that agribusiness interests are represented within the legislative realm, sizeable financial investments have been made to Congress. One of those investments is through donations to Congressional campaigns. As Figure 4 demonstrates below, between the 1996 and 2016 election cycles agribusiness donated nearly \$1 billion to Congressional campaigns. These data compile contributions from individuals, political action committees (PACs), and soft/outside money (including corporate contributions) from agribusiness. According to the Center for Responsive Politics, these data do not include electioneering communications and independent expenditures, (e.g., election campaign ads made on behalf of a Congressional candidate). However, if such data were included, the total figures for campaign contributions would greatly exceed this \$1 billion mark.

Figure 4: Agribusiness Congressional Contributions (1996-2016 Election Cycles)



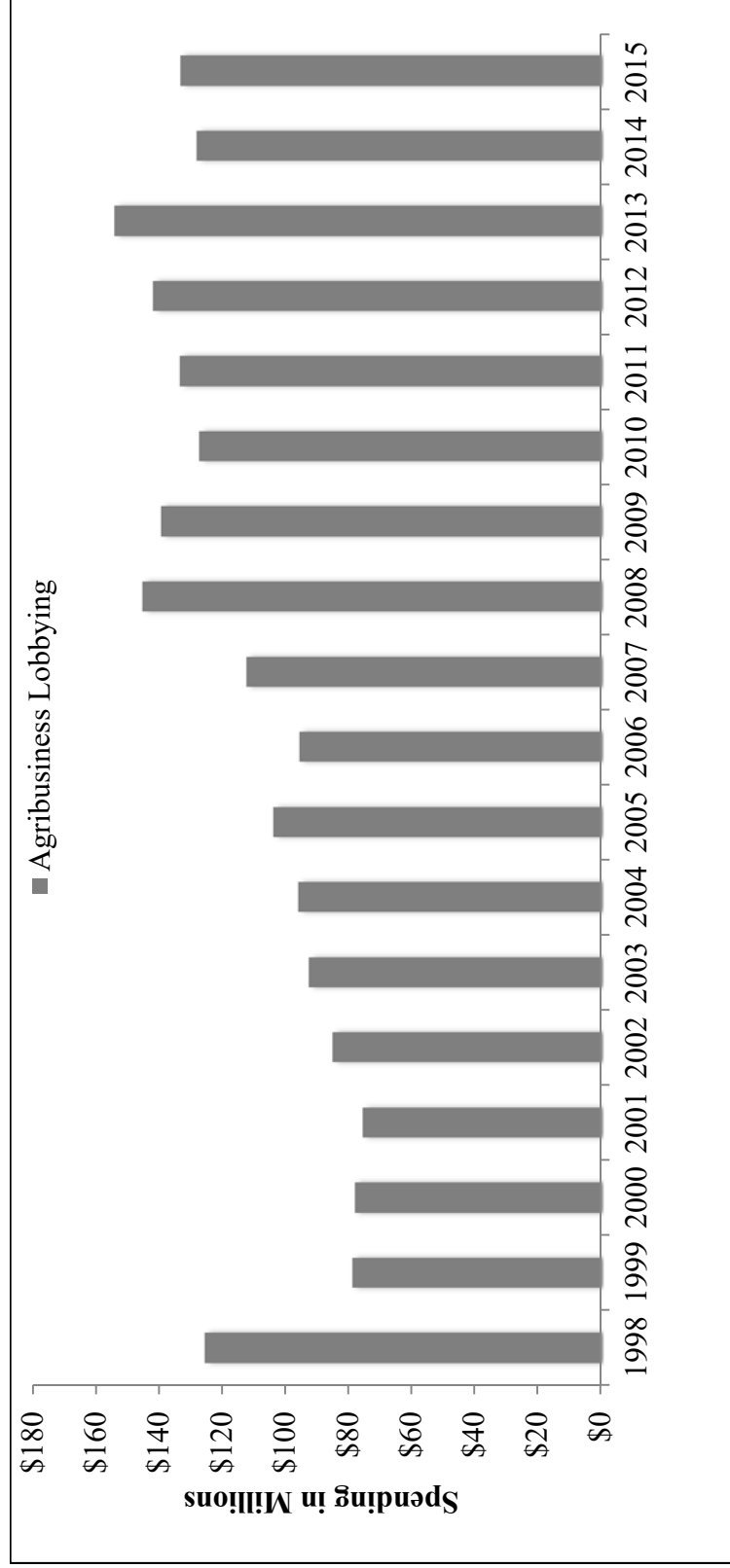
Source: Center for Responsive Politics (1996-2016)

Note: The Center for Responsive Politics aggregated election year contributions using data from individual and PAC agribusiness donors (of \$200 or more) using data from the Federal Election Commission.

Mainstream media has long stated that financial contributions to elected officials create a scourge of entrenched political corruption. Such sentiments are also supported by academic research. The extent of client groups' campaign contributions does indeed influence the extent to which they have access to legislators and shape political agendas (L. Powell 2012; E. Powell and Grimmer 2016). Contributions flow most heavily to Senators and members of the House who sit on Congressional Committees associated with the industry seeking to be represented, all under the tested assumption that their interests will shape policy outcomes (E. Powell and Grimmer 2016). In the case of this research, over the last twenty years, the majority of agribusiness campaign contributions have gone to prominent members of the Senate and House Agriculture Committees (Center for Responsive Politics 2017). As such, it can be suggested that contributions to members of the Agriculture Committees helped to shape agribusiness policy outcomes.

In addition to contributions to political campaigns, agribusiness invests a considerable sum of money into lobbying efforts. As noted in Figure 5 below, between 1998 and 2015, agribusiness spent over \$2 billion to lobby on behalf of its interests in Washington. The two sectors that received massive lobbying efforts within immigration policy during this time, were in support of H-2A and H-2B seasonal businesses (Drutman and Furnas 2013).

Figure 5: Agribusiness Congressional Lobbying (1998-2015)



Source: Center for Responsive Politics (1998-2015)

Note: The Center for Responsive Politics aggregated quarterly lobbying activity reports filed with Senate's Office of Public Records, and calculated expenditures per industry sector. Lobbyists are federally required to file income from clients to the nearest \$10,000. This figure only represents the agribusiness sector.

Lobbyists exert considerable influence on Capitol Hill via a number of ways. Many lobbyists have close personal relationships with those in Congress, as they used to work in the same or related government offices. This is called the “revolving door” whereby the same individuals move among industry, lobbying firms, and government, using their contacts and political cache to influence policy outcomes. Lobbyists are often called to give testimony during Congressional Committee hearings, arguing on behalf of the interests they are paid to represent. Through such influence, lobbyists also help to draft policy and the associated regulations.

Overall, since agribusiness is highly dependent upon hiring cheap, foreign bodies, they have a vested interest in ensuring the federal government allows H-2A and H-2B workers into the US. The financial investments of agribusiness have paid off, as even during times of high immigration securitization and fear of foreigners, the US Guestworker Program has expanded. Agribusiness has also fiercely campaigned for “burdensome” labor rights regulations to be minimized, which has been accommodated primarily by the Agriculture Committees of the House and Senate.

4.2 Congressional Discourses: Focus on H-2A (1995 through mid-2000s)

The following section begins the discourse analysis of this chapter, unpacking Congressional narratives chronologically from 1995 through the mid-2000s. Congressional discourse during this era overwhelming focused on the H-2A program over that of its H-2B counterpart. To understand how this occurred, it is necessary to first take a historical step back. Past labor exploitation conducted under the Bracero Program was a primary reason for disaggregating the H-2 predecessor via program into H-2A and H-2B categories in the first place (Trautman 2014, 65; Bruno 2006). Already discussed,

under the Bracero program, agricultural workers had suffered years of exploitation and abuse by employers. Consequently, in 1986 a leading rationale for the division was to “improve labor conditions for H-2A employees” (Mathes 2012, 1807). At the time, Congress felt that existing regulations affecting H-2 non-agricultural workers were sufficient as they had functioned “reasonably well” in the past, and so the resulting H-2B regulations remained modeled after the predecessor H-2 program (Mathes 2012; Trautman 2014).

Up until the mid-2000s, H-2B regulatory inadequacies were “virtually ignored in the legislative debate” (A. N. Read 2007, 432), as were agribusiness-led H-2B proposals. The discourse analysis of this section demonstrates that while most members of Congress were keen on reducing immigration through securitization efforts, those with agribusiness special interest ties repeatedly proposed H-2A foreign labor expansion. Members of Congress at times even proposed legislation taken nearly word for word from agribusiness policy proposals. In line with agribusiness special interests, the proposed legislation sought to dramatically reduce existing guestworker rights and protections already in place from the 1986 IRCA.

By the late 1980s and early 1990s, there was a growing wave of national anti-immigrant discourse by both the public and by members of Congress. About 3 million undocumented agricultural workers had been legalized through the 1986 IRCA, and their spouses and dependents also became qualified for US visas to remain in the country (Massey, Durand, and Malone 2002, 91). Because so many undocumented workers had been legalized, chain migration ensued, as other foreign hopefuls believed they would have an opportunity to receive amnesty in the US (Massey, Durand, and Malone 2002,

91). Most members of Congress aimed to capitalize on the public's growing distaste for immigrants, and subsequently proposed and passed the 1990 Immigration Act. The 1990 Act increased border patrol and employer sanctions, fast-tracked deportations, and amplified penalizations for immigrants who committed crimes (Massey, Durand, and Malone 2002, 91). These policies were aimed at immigrants coming from Latin America in particular, as national sentiment believed they were "flooding" public services, evading paying taxes, taking American jobs, and increasing violence on streets across the US.

Throughout the mid-1990s, similarly "draconian" immigration laws – such as Operation Hold-the-Line in 1993, Operation Safeguard in 1995, and Operation Gatekeeper in 1996 – were publically endorsed and quickly passed by Congress at the national-level. They were especially designed to curb the flow of undocumented Mexican migration into the US (Hollifield 2004, 897) by increasing border deterrence (Lahav 1998, 683). At the state-level, the strong anti-immigration sentiment that was stirring against Latinos, led Californians to pass Proposition 187 (Trautman 2014, 80). Proposition 187 took restrictive measures so far as to deny undocumented migrants the ability of receiving social services, such as public education or public healthcare (Trautman 2014, 80).

Both Democrats and Republicans in Congress took advantage of the growing sentiment against Latin American immigration by speaking of the dangers of undocumented migrants to increase their electoral cache. During a later May 2, 1995 hearing of the House Committee on the Judiciary, entitled, "Members' Forum on Immigration," Representative William Martini (R-NJ) stated,

Our immigration policies have created a cycle of dependence on the federal government. Like a magnet, the benefits that illegal immigrants know they will receive when they come to this country act as the wrong incentive to come here. Too often, newly arrived immigrants learn to take advantage of our social system and programs, instead of contributing to that system. When it becomes easier to receive Federal benefits than to work, a cycle of perpetual dependence is created, as we all know... Clearly, Mr. Chairman, with the greater than \$4 trillion national debt, we cannot in good conscience continue to provide these types of benefits to illegal immigrants. Estimates vary on the cost of social services used by illegal immigrants. However, what is clear is that illegal immigration costs U.S. taxpayers billions of dollars each year.

The sentiments of Representative Martini, and other members of Congress, were largely in response – and agreement – to what was formally called the US Commission on Immigration Reform, (also known as the Jordan Commission after Chair and Representative Barbara Jordan). Despite the Jordan Commission being formed by nine members of both pro- and anti-immigrant leanings, the recommendations put forth from 1990 to 1997 were decidedly restrictionist in character (Trautman 2014, 84). Due to the narrative of fear regarding Latin American immigration to the US during the early to mid-1990s, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. The IIRAIRA further militarized the border shared with Mexico through additional walls, fencing, and boosted border patrol agents (Trautman 2014, 80). Also under the 1996 IIRAIRA, undocumented migrants committing non-violent, misdemeanor crimes would be deported immediately, which increased deportations around the country tremendously (Warner 2005, 63). Similar to Proposition 187, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) restricted public aid like welfare, food stamps, and Social Security to undocumented immigrants (Minkoff-Zern 2012, 26–27).

Yet, while these restrictive policies were being outwardly implemented, agribusiness had key political actors on their side. For the better half of the mid-1990s through early 2000s, much of the proposed Congressional legislation to amend the US Guestworker Program's H-2A category came directly out of agribusiness policy proposals. For example, in March 1995 the Immigration Task Force, Chaired by Representative Elton Gallegly, began working groups to discuss expanding the number of H-2A guestworkers admitted into the US to 250,000. From Figure 1 illustrating guestworker visa trends (1995-2015), we know the current number of H-2A visas allotted in 1995 was roughly 8,000 nationwide, and increasing this number to 250,000 would have amounted to more than a 3,000 percent increase.

The month prior to Representative Gallegly's proposal, an agribusiness lobbying group called the National Council of Agricultural Employers (NCAE) released a suspiciously similar policy proposal, also calling for increasing the number of H-2A visas to 250,000 (P. Martin 1998, 889).¹³ The NCAE self-identifies as an association "focusing exclusively on Agricultural Labor issues from the Agricultural Employer's viewpoint" (NCAE 2017). In addition to expanding the number of guestworkers allowed into the country each year, the new program would also have been less regulated, and provided less labor rights protections to guestworkers, in line with the interests of the NCAE (Weber 2015, 183).

Given its similarity to the NCAE H-2A guestworker proposal, while Representative Gallegly was circulating his proposed legislation among Congress, there

¹³ Such an expansion of the H-2A (and more recently H-2B) continues to be among their chief priority issues which they frequently lobby for during Agricultural Committee Congressional hearings (NCAE 2017).

was dissent from a number of Representatives regarding how such a proposal was playing into the hands of agribusiness interests by eliminating the already minimal H-2A labor rights and protections. On May 24, 1995, during a House Judiciary Committee hearing entitled, “Members’ Forum on Immigration,” Representative Edward Torres (D-CA) stated the following,

This proposal does not even pretend to offer the worker protections that were included, but never really enforced under the old Bracero Program. There is no valid justification for a new guestworker program. One already exists. We know that. It’s known as the H-2A program. Unfortunately, the new proposal that is being circulated would eliminate most of the H-2A modest protections against mistreatment of foreign and domestic workers.

To counterbalance the appearance of playing into agribusiness interests, members of Congress supporting guestworker expansion began to frame their support around how “there are no American workers” able to fill food industry positions. Agribusiness employers, and the lobbyists they contract, have long claimed American workers do not want to work in food sector positions currently occupied by foreign workers, and this narrative has filtered into the Congressional realm. According to the argument, without a designated labor force, “crops would rot in the field” (White 2007, 277) and food sector businesses would not be able to survive. To what extent are these statements true?

According food industry researchers, there is no evidence to support these assertions (P. Martin 2007). Despite incessant warnings that they are on the brink of collapse, the food sector is actually thriving. From the mid-1990s until present day, agribusiness’s annual corporate profits have risen a dramatic 80 percent, more than any other major industry in the US (Ruark 2011, 1).

Examples of discourse arguing that agribusiness was on the “brink of collapse” were aplenty during the mid-1990s. On December 14, 1995 Representative Wes Cooley

(R-OR) during a joint hearing of the House Committee on Agriculture and the House Committee on the Judiciary, entitled “Agricultural Guestworker Programs,” stated,

As I continue to push for strong immigration reform, I must be sensitive to the needs of my state’s biggest industry – agriculture. The competitiveness of US agriculture depends on the continued availability of hired labor at reasonable costs. For instance, in the fruit and vegetable industry, labor costs account for 35 to 45 percent of production costs. Although farm labor pays the prevailing wage, it is this type of work that most US workers simply have no interest in. Therefore, any reduction in this job pool will lower production, not raise wages. This would likely mean higher prices at the check-stand.

In capturing a sentiment expressed by many Congressional supporters of agribusiness, Representative Cooley states that US workers “simply have no interest” in agricultural work, thus necessitating demand for foreign migrants. This concept of low to no availability of US workers was also used by Representative Pat Roberts (R-KS), Chair of the House Agriculture Committee, in his endorsement of a significant expansion of the US Guestworker Program. He stated the following on December 14, 1995 during a joint hearing of the House Committee on Agriculture and the House Committee on the Judiciary,

For many producers across this country, harvest time is not as simple as simply rolling out the combine and trucks and getting down to business. It involves weeks, months of preparation to secure the sufficient numbers of skilled workers for a specific period of time, in some cases hundreds of workers, to bring in the crop. If growers are unable to secure enough workers from domestic seasonal worker pools, then they rely on temporary and immigrant labor. My goal...is to find ways to provide our farmers effective means of hiring sufficient numbers of temporary workers, including the immigrant worker.

With the argument to expand the US Guestworker Program firmly framed as a dire need to secure much-needed labor, Representative Gallegly moved forward with his NCAE sponsored guestworker proposal to increase H-2A workers to 250,000 each year.

In March 1996, he co-sponsored the resulting H.R. 4548 with Representative Richard Pombo (R-CA), known as the “Temporary Agricultural Worker Amendment” (informally referred to as the Gallegly-Pombo Amendment). The 250,000 visa increase was proposed through 1999 by amending the Immigration and Nationality Act of 1995. In describing the Amendment during a March 8, 1996 House Agriculture Committee hearing, Representative Gallegly commented, it would “provide a less bureaucratic alternative for the admission of temporary agricultural workers.” By “less bureaucratic,” it can be inferred he meant less red tape, which agribusiness lobbying firms had been particularly critical about with regards to abiding by guestworker oversight regulations.

The Amendment had strong support from leading agricultural groups, including those representing Christmas trees, New England apples, cotton, and Vidalia onions – among others (CQ Almanac 1996). House Agriculture Committee hearings reviewing the proposed Gallegly-Pombo Amendment were saturated by witness testimony representing growers’ interests: North Carolina Grower’s Association, American Association of Nurserymen, Agricultural Producers, Washington State Farm Bureau, American Farm Bureau Federation, A. Duda and Sons, Vidalia Onion Business Council, Agricultural Labor Certification, National Cattlemen’s Association – and of course, the NCAE – the organization who had submitted the original 1995 agribusiness proposal to Congress. During these hearings, the voices of migrant rights groups were noticeably absent.

Throughout 1996, the majority of Congress opposed the Gallegly-Pombo Amendment, and the Amendment eventually failed to pass in the House. Representatives cited the rollback in H-2A rights and protections as the key reason for its failure. Critics have since charged that the Amendment was “designed primarily as a program that would

shift the power in agricultural labor relations even further towards employers by creating a massive new unregulated labor pool whose members had no rights” (Weber 2015, 183). Overall the Gallegly-Pombo Amendment serves as a testament to the influence of agribusiness in not only lobbying for, but also drafting the frameworks of key guestworker legislation in their favor.

Between 1997 and 2000, legislators with agricultural ties in both the Senate and House continued to propose legislation to expand the H-2A visa category, while at the same time decreasing bureaucratic checks and balances on workers’ rights. These bills failed largely due to opposition from migrant rights advocates, legislators such as Representative Howard Berman (D-CA), and President Clinton. For example in August 1997, Chair of the House Agriculture Committee, Representative Robert Smith (R-OR), proposed legislation that would create a separate H-2C guestworker pilot program, very similar to that of H-2A, through 1999. The legislation was nearly identical to the defeated Gallegly-Pombo Amendment. In pitching this legislation throughout the House, Representative Smith spoke of the immediate sense of urgency necessitating the proposed expansion, and framing his argument from the viewpoint of the plighted agricultural employer overwhelmed by H-2A bureaucratic pressures. During a House Judiciary Committee hearing on September 24, 1997, entitled “Temporary Agricultural Work Visa Programs,” Smith stated,

In the past several months I have been contacted by literally hundreds of agricultural producers across the country – from Maine to Georgia to California to Washington. They are under siege. Pressures are mounting around them that, if not relieved, will threaten not only their individual farm operations but also the viability of the entire agricultural industry in this country – an industry which represents a large percentage of the nation's total GNP and a significant share of total U.S. exports. The expanding role of agriculture in the economy represents millions of

ancillary upstream and downstream jobs that have been created over the past decade from the planting and harvesting of labor-intensive agricultural crops.

Rather than debate this legislation in Committee and later on the House floor, Representative Smith's H-2C legislation was surreptitiously placed in the omnibus budget proposal for 1998 (Ross 2000, 268). Placing such controversial legislation in a several thousand-page omnibus bill is a clever, yet duplicitous, means of avoiding Congressional debate or public scrutiny on a proposed policy. This tactic has been used quite a few times by legislators in an attempt to move their positions forward (subsequent acts are described later in this chapter). In the end, however, the guestworker passage was removed from the omnibus bill because of growing sentiment that President Clinton would be reticent to sign due to strong opposition from human rights groups wary of agribusiness-sponsored legislation (Ross 2000, 268).

In 1998 another guestworker proposal was introduced by Senators Gordon Smith (R-OR), Larry Craig (R-ID), and Bob Graham (D-FL) entitled S.2337, the "Agricultural Job Opportunity and Benefits and Security Act of 1998" (referred to as AgJOBS). Like other agribusiness-endorsed proposals that came before it, S.2337 would have decreased H-2A labor rights and protections. Similar to previous legislation, S.2337 failed to move forward because of opposition by migrant labor rights advocates. In 2000, Senators Gordon Smith and Bob Graham again introduced legislation to expand the guestworker program through the creation of an H-2C category, which immigration advocates charged would have been a form of indentured servitude due to the lack of labor rights regulations (UCDavis 2000).

Following the terrorist attacks on September 11, 2001, mainstream immigration discourse and policy increased its restrictionist tones. The 2001 USA Patriot Act amplified security along the northern border between the US and Canada and put into place surveillance and detention regulations aimed at identifying and prosecuting immigrants with possible ties to terrorist activities (Jenks 2001). The 2002 Enhanced Border Security and Visa Reform Act increased immigration inspectors and investigators by 3,000 individuals, heightened examination of visas from countries possibly involved with terrorism, and increased scrutiny of international student applications for universities around the country (Rudolph 2003, 616). The REAL ID Act in 2005 was focused on identify enforcement, turning driver's licenses into national identity documents, whereby the DMV would be responsible for document verification of birth certificates, immigration papers, and other official documents. The Secure Fence Act of 2006 called for 700 miles of fencing along the country's southern border to keep out unwanted undocumented immigration.

In addition to the increased securitization evidenced in legislation, in 2003, all immigration matters were moved to the newly-formed Department of Homeland Security (DHS) and the Immigration and Naturalization Service (INS) – in service since 1933 – was disbanded. DHS oversaw three new immigration agencies – US Citizenship and Immigration Services (USCIS), US Immigration and Customs Enforcement (ICE), and US Customs and Border Protection (CBP). As an example of how immigration became further securitized after 9/11, the budget for CBP dramatically increased from \$5.8 billion in FY 2003 to \$10.1 billion in FY 2008 (Golash-Boza 2009, 304). Similarly, the budget for ICE increased from \$3.2 billion to \$5 billion during the same timeframe (Golash-

Boza 2009, 304). Consequently, the quest for control of border security took on heightened dimensions – both literally and figuratively – including colossal fences, transnational policing, surveillance systems, biometric technologies, and detention facilities. All these measures aimed at ensuring that “Fortress America” remained “safe” from foreigners.

In the immediate years following 9/11, a growing tide of H-2A Congressional proposals were not *entirely* slated in favor of agribusiness, as previous proposals had been. Cognizant of the continued push for an expanded US Guestworker Program, but also aware of the importance of ensuring guestworkers had at least minimal protections, in 2003, Senators Edward Kennedy (D-MA) and Larry Craig (R-ID), and Representatives Howard Berman (D-CA), Chris Cannon (R-UT), and Ciro Rodriguez (D-TX) proposed a bi-partisan iteration of the previous AgJOBS legislation. Labeled the “Agricultural Job Opportunity, Benefits, and Security Act of 2003” (H.R. 3142 in the House and in the Senate S. 1645) it had endorsement from over 400 organizations – both farmworkers and employers alike – and was largely seen as a historic great compromise (Gilbert 2005, 419-420). The reiteration of AgJOBS allowed a path for earned legalization for an estimated 500,000 undocumented workers, provided they worked in agriculture for 2,060 hours during a six-year period. It also increased worker protections, even allowing arbitration should they be fired from a job, which was previously unheard of. It also benefited agribusiness interests as it decreased several bureaucratic “hurdles” overseen by the US Department of Labor, effectively making the hiring of an H-2A worker easier and faster.

During a March 23, 2004 Senate Foreign Relations Committee hearing, entitled “United States and Mexico: Immigration and Bilateral Relations,” Senator Larry Craig stated,

I would like to introduce for the record the names of the 400 organizations that are supporting this legislation...from the American Farm Bureau to the United Farm Workers Union. When I was standing in front of a microphone with the national presidents of those two organizations, who have for decades been arch-enemies, they see and recognize the importance of solving this problem now...What I offer is not amnesty. It is the ability to earn a legal status, and all who are coming want that opportunity. To deny those people that opportunity, to deny our economy this needed work force, to fail to treat these undocumented workers in a responsible and humane way is in my opinion un-American.

However, despite high hopes of passing the revised 2003 AgJOBS by those hoping to make a compromise between agribusiness and workers rights organizations, both H.R. 3142 and S. 1645 died in Congress. With H.R. 3142, even with 125 co-sponsors (75 Democrats and 50 Republicans), the House failed to vote before the winter recess. Afraid that S. 1645 would die in the Immigration Subcommittee, Senator Craig sought to have the bill added as an amendment to the pending Class Action bill instead (Allen 2009, 20). However, Senate Majority Leader Frist (R-TN) prohibited the amendment from going forward as it was considered unrelated to the Class Action bill, and could have potentially angered the conservative base during an election year (Allen 2009, 20; Gilbert 2005, 421).

The Bush Administration was highly in support of expanding the guestworker program, particularly if it supported agribusiness interests. Bush’s plan followed a proposal by the Essential Worker Immigration Coalition (EWIC), an association of the country’s largest corporations, including Wal-Mart, Tyson Foods, and Marriott (Bacon

2007).¹⁴ In 2004, President Bush attempted to implement the resulting Fair and Secure Immigration Reform which would have dramatically expanded the guestworker program by giving 675,000 guestworker visas to both applicants abroad and undocumented workers already within the US (Jachimowicz 2004). Following the completion of their three-year work visa (with the option to extend an additional three years), guestworkers would be required to return home (Fletcher and Fears 2005). The proposed program was widely praised by agribusiness, as it would provide a seemingly endless supply of cheap labor.

As expected, the Bush proposal had many critics. There was a large Congressional contingent opining that Bush was giving amnesty to criminals who had crossed the border illegally (Jachimowicz 2004). Despite the rhetoric, the Bush plan did not provide a pathway to legalization, such as that sought by the previous AgJOBS bill. It only provided temporary legal working rights within the US. However, to appease those on the right, Bush proposed that unauthorized migrants would first have to pay a fine (between \$1,000 and \$2,000) before being admitted into the program (Fletcher and Fears 2005). Also criticizing the Bush plan were migrant rights' groups, who charged that Bush's proposal did not provide enough protections to workers, and excluded workers from a pathway to citizenship (Jachimowicz 2004). In the end, Bush's proposal failed

¹⁴ The Bush Administration was not alone in endorsing guestworker legislation advanced by agribusiness. In 2005, Senators Edward Kennedy and John McCain authored a bi-partisan immigration reform bill to recreate a new guestworker category with an initial cap of 400,000 foreign workers (Costa 2016, 4). The basic framework of the proposed legislation looked remarkably similar to a policy paper written by the Essential Worker Immigration Coalition (EWIC) and Immigration Work USA – lobbying firms hired to represent employer groups (Costa 2016, 4).

because of these criticisms, as did his subsequent attempt to pass a modified version of the legislation in 2007.

In sum, from the mid-1990s through the early 2000s, despite immigration more generally being viewed as an ever-growing threat, expansion to the US Guestworker Program was continually proposed. The focus of such propositions was aimed at augmenting the H-2A program specifically, either the program as it stood or creating similar visa categories. Proposed legislation was often built upon the framework of agribusiness lobbying proposals. With few exceptions, most proposed policy sought to expand the number of H-2A visas available to employers, while at the same time degrading existing H-2A rights. However, virtually no H-2A proposals passed into legislation. This was largely due to opposition by human rights groups who had remained vigilant of H-2A legislation. The H-2A program was on the radar of such advocates because the widespread abuses committed under H-2A program's foundational predecessor – the Bracero Program – were still fresh in their minds. By the mid-2000s, however, Congress shifted the focus more heavily to augmenting the H-2B program, which was much more easily modified because of historically diminished oversight over H-2B visas more generally.

4.3 H-2B “Legislative Fixes” (Mid-2000s through 2015)

Since the inception of US guestworker programs – even dating back to the Bracero years following WWII, disproportionate attention had been given to reforming the H-2A program, and similar but failed, agricultural visa propositions. Even following the creation of the H-2B non-agricultural visa in the 1986 IRCA, little Congressional discourse was allotted to reviewing H-2B legislation, regulations, and implementation.

With dismal US Department of Labor oversight, H-2B employers were given carte blanche over their foreign labor, and hiring H-2B workers became increasingly more popular for the US food industry. By the mid-2000s, the regulative 66,000 H-2B visa cap became exhausted by the second quarter of each fiscal year (Mathes 2012, 1818). H-2B agribusiness employers increasingly sought political influence to ensure they would be granted an increased number of H-2B visas per year while decreasing “burdensome protections.”

Starting in 2005, members of Congress with ties to food industry interests began arguing for a returning H-2B worker exemption from the 66,000 cap. Some of the most vocal proponents of the exemption (ergo “expansion”) were members of Congress from the state of Maryland. In the spring of 2005, Senator Barbara Mikulski (D-MD) and Representative Wayne Gilchrest (R-MD) proposed “Save our Small and Seasonal Businesses Act” (S. 352/H.R. 793) to exempt returning H-2B workers from the 66,000 cap. Returners would be given H-2R visas if they had worked as an H-2B worker at any point during the previous three years (Mathes 2012, 1818).¹⁵

Unlike prior H-2A proposals, the H-2B act passed relatively quickly and came into law, significantly increasing the number of H-2B workers allowed to enter the US. Throughout the legislative process, the 2005 Act was framed as being a last resort for failing small businesses across the country, which were in dire need of uncapped H-2B foreign labor. Senator Mikulski stated before the Senate on April 19, 2005, the following,

Small and seasonal businesses all over our country are in crisis. They need seasonal workers before the summer can begin so they can survive. For years they relied on an H-2B visa program to meet their needs... But this year they can't get temporary labor. They have been facing this for the last

couple of years because they have been shut out of the program because there is a cap and the cap is reached by the wintertime... There is a crisis. Thousands of small businesses are affected by this. Hitting the cap so early had a great impact on my own State of Maryland. We had a lot of summer seasonal business, particularly over there on the Eastern Shore, working that wonderful, fabulous Chesapeake Bay... Many of our businesses used this program year after year. First they hire all the American workers they can find. Then they turn to the H-2B to find additional workers. I could give example after example, but I can tell you, if they don't get this legislation, they will have to either lay off their permanent workers or close their doors.

I know there is great urgency about this. We absolutely need it. Many of these companies have been around for 100 years working in the Chesapeake Bay. Many of them provide the livelihoods not only on the Eastern Shore, but because of our fabulous seafood processing industry, we provide jobs also in Baltimore and Bethesda, and other parts. We have to pass this legislation because if they can't start to hire within the next few weeks, we are going to close American companies and end up with an even more porous border.

In her statement before the Senate, Senator Mikulski framed the small business need for additional H-2B workers as “a great urgency” and a “crisis” affecting their livelihood. She stated that if the proposed H-2B returning worker legislation was not passed, small businesses would close and we would “end up with an even more porous border.” However, despite the framing of the Small and Seasonal Business Act of 2005, expanding the H-2B program played more toward the needs of large corporations rather than small businesses. The lobbying group, H-2B Workforce Coalition, actively sought this expansion, with members including Marriot, Hilton Hotels and Resorts, Aramark, PepsiCo, Starbucks, Walmart, Red Lobster Seafood, Florida Fruit and Vegetable Association, US Apple Association, Western Growers, and private clubs around the nation (H-2B Workforce Coalition 2017). Collectively, these multi-billion dollar organizations had the most to gain from the H-2B program’s expansion, as the passage of the 2005 Act led to a 1,000 percent increase in foreign workers (from 12,200 H-2B visas

in 1996 to 122,541 H-2B visas in 2006), the majority of which did not go to small businesses as earlier stated in the endorsement of the legislation (Mathes 2012, 1818; Seminara 2010).

By the middle of 2006, the previously disregarded H-2B labor protections were front of mind for labor rights advocates. Throughout Congressional hearings and within public discourse, advocates were protesting how the H-2B program's protections were particularly dismal in comparison to the minimal protections afforded to its H-2A counterpart. For example, while H-2A employers were legally required to disclose the work contact in a language understood by the employee and post information about workers' rights and protections at the job site, H-2B employers were not. As another example, H-2A workers had access to free legal aid and representation through the Congressionally-funded Legal Services Corporation, while H-2B workers had to pay for a private attorney if they sought to prosecute an abusive employer. Additional differences are detailed at length in Table 6 on page 129.

Arthur Read, General Counsel of the labor rights group Friends of Farmworkers, was an outspoken advocate of pointing out the influence of industry on instigating the expansion, and well as encouraging reforms for labor rights regulations. In a July 19, 2006 hearing before the House Committee on Education and the Workforce entitled "Guestworker Programs: Impact on the American Workforce and the US Immigration Policy," Read stated,

Rather than simply responding to the request of industry interests to extend the exemption for returning H-2B workers on the cap on the number of H-2B workers, Congress should couple this extension with reforms to the H-2B program to bring its protections in line with the minimal protections afforded to H-2A agricultural workers...Although much of the public and legislative debate over immigration reform has

focused on whether new “guestworker” programs should be included in a package of comprehensive immigration reform, virtually no attention has been paid to the existing H-2B temporary worker program. That program has quietly expanded to a major degree with virtually no attention to the operation of the program.

Similarly, Mary Bauer, Director of the Immigration Justice Program for the Southern Poverty Law Center stated during the same 2006 hearing,

None of the significant protections that exist at least on paper for H-2A workers have even been adopted relative to H-2B nonagricultural workers, as DOL has never promulgated substantive labor protections for those workers. There is no requirement for transportation, no requirement for free housing in the H-2B context, no requirement that the housing provided be decent, and when they are abused on the job, H-2B workers are not even eligible for legal services... Why are there so few inspections? Why are there no substantive labor protections for H-2B workers?

Given the protests over the 2005 Small and Seasonal Business Act, language expanding the H-2B program was surreptitiously placed in a piece of unrelated defense legislation, the John Warner National Defense Authorization Act. This language, personally written by Senator Mikulski, extended the H-2B expansion through the end of 2007. To keep the H-2B expansion as a more permanent fixture, in 2007, Mikulski again introduced legislation entitled S. 988, the “Save our Small and Seasonal Businesses Act of 2007.” Similar to previous bills, H-2B workers who had been employed in prior fiscal years would not be counted against the 66,000 cap, and was set to expire in 2012 so as to not appear too lenient on immigration. As in prior years, this expanded H-2B visa program was largely to the benefit of multi-billion dollar corporations, rather than small businesses, for which it was framed (Seminara 2010). As an example, President Trump’s luxury resort, Mar-a-Lago, has employed about 1,000 H-2B workers since 2006 (Rosenberg et al. 2015).

While members of Congress sympathetic to the plight of guestworkers were unsuccessful in passing legislation to bring H-2B protections up to the minimal protections offered through that of the H-2A program, the US Department of Labor took moderate steps to do so. In December 2008, the Department of Labor's Employment and Training Administration implemented the Final Rule regarding H-2B regulations.¹⁶ According to the document, H-2B employers believed language regarding charging recruitment fees, expenses, and other deductions to workers were "confusing and ambiguous" (National Archives 2008, 780,073). As a consequence, the 2008 Final Rule made the charging of administrative fees associated with recruitment and visa certification expressly the employer's responsibility (Mathes 2012, 1827). However, the Department of Labor did not go far enough in instituting H-2B workers rights, or enforcing extant rights under the program. Rather, it allowed for employers to continue to make deductions from worker's pay for transportation, house furnishing, and passport and visa fees (NationalArchives 2008, 780,039; Mathes 2012, 1827).

Since the restructuring of the H-2B program was framed as a "small business" issue, rather than a special interest of multi-billion dollar companies such as Walmart and the Ritz Carlton, legislation continued to be introduced to reform the program to the benefit of large-scale employers. In 2009, Senator Mikulski introduced S. 338, also known as "Save our Small and Seasonal Businesses Act of 2009." As she introduced S. 338 on the Senate floor on February 5, 2009, she continued her language of "family

¹⁶ The Department of Labor's 2008 Final Rule and subsequent Final Rules (and Interim Final Rules) are determinations based on court rulings following litigation directed at the US Department of Labor.

businesses,” “small businesses,” and “small communities” as the primarily benefactors of the bill. According to Mikulski,

These are family businesses and small businesses in small communities in Maryland. If the business suffers the whole community suffers. For seafood companies like J.M. Clayton, what they do is more than a business, it's a way of life... This legislative fix keeps that visa process in place. It's a short-term legislative fix to solve the immediate H-2B visa shortage... The bill gives a helping hand to businesses by allowing them to retain workers who they have already trained to do their seasonal jobs. This is a quick and simple fix.

Similar to other “legislative fixes” Senator Mikulski had offered in the past regarding the H-2B program, her proposed legislation would have waived returning H-2B workers from the 66,000 cap for three years (*Library of Congress* 2009, S1679). While this bill never made it past Committee, similar legislation was brought forth in the House by Representative William Keating (D-MA), H.R. 3686, “Save our Small and Seasonal Businesses Act of 2011.” With similar policy points about expanding the H-2B program, this bill also did not make it past committee.

In 2012, the Department of Labor’s Wage and Hour division issued the 2012 Final Rule, amending the previous 2008 Final Rule regarding the H-2B guestworker visa category. Citing the need for new regulations to be developed, the 2012 H-2B Final Rule stated a key reason being “evidence of violations of program requirements...need for better worker protections, and a lack of [employer] understanding of program obligations” (Federal Register 2012, 10038). While program oversight and workers’ rights were improved, the 2012 Final Rule was largely to the benefit of domestic US workers, increasing the amount of time job advertisements would have to be placed prior to employers requesting H-2B workers.

While the 2012 Final Rule was never implemented because of injunctions issued by courts, on April 29, 2015 the Department of Labor issued the 2015 Interim Final Rule, which was implemented. The 2015 Interim Final Rule was “virtually identical” to its failed 2012 predecessor (Francis 2015). The 2015 Interim Final Rule was supported by labor rights advocates throughout the US. Notably, these advocates highlighted that the new 2015 Rule increased federal oversight over the H-2B program, improved regulations mandating employers must first seek out domestic workers first before recruiting H-2B workers, curbed the extensive use of exploitative recruitment fees, and mandated the implementation and enforcement of increased rights for workers (A. Read 2015).

Despite the 2015 Interim Final Rule being seen as a win for labor rights advocates, shortly after it was implemented, the US Senate met it with resistance. On June 25, 2015, the Senate Appropriations Committee proposed S. 1695, the “2016 Labor, Health and Human Services, Education, and Related Appropriations Act.” This Act included “a provision providing flexibility in the H-2B program,” which was framed in the earlier Appropriations Committee’s press release as a means to “reduc[e] harmful red tape” (US House of Representatives Committee on Appropriations 2015). More specifically the press release announced it was legislation “designed to help US businesses create jobs and grow the economy by reducing or eliminating overly burdensome regulations” within the existing H-2B program, particularly as it stood with the newly implemented 2015 Final Rule (US House of Representatives Committee on Appropriations 2015).

The most significant aspect of the Act that came as an affront to guestworker rights was its allowance of the use of private wage surveys to determine wage rates for H-

2B workers (US Senate 2015). Private wage surveys in the Guestworker Program had previously been shown in federal litigation as a means employers used to systematically depress guestworker pay (Costa 2016, 3). By contrast, in the H-2A program, the wage is set by the highest of five rates: adverse effect wage rate, prevailing wage, collective bargaining wage, or federal or state minimum wage. By having the highest of five wages used to determine how H-2A workers are paid, it ensures guestworker pay does not “adversely affect” US wages for the same job, and stipulates workers are paid a fair rate based on what US workers are paid for the same job. By contrast, having H-2B employers conduct private wage surveys based on their own determined rubrics offers no point of comparison to ensure that guestworker pay rates are not artificially suppressed.

While the bill was placed on the Senate Legislative Calendar (Calendar No. 137), the Senate never formally voted upon it. Through an additional legislative fix, key provisions from the 2016 Labor, Health and Human Services, Education, and Related Appropriations Act made their way into the 2016 omnibus appropriations legislation. Additionally provisions in favor of employer rights over employee rights within the H-2B program also made it surreptitiously into the omnibus package. These included provisions from S. 1619, the Department of Homeland Security Appropriations Act, in which the number of H-2B visas issued each year were given out to H-2B employers. It also included provisions from H.R. 3128, the Department of Homeland Security Appropriations Act, allowing for a one-year exemption for returning H-2B workers from the existing 66,000 visa statutory cap to upwards of 260,000 workers.

In support of including these H-2B provisions in the 2016 omnibus spending bill, which sought to expand the H-2B program and decrease workers’ rights, several

members of Congress issued a joint letter to the ranking members of the Senate Appropriations Committee on November 9, 2015. One of these ranking members of the Senate Committee on Appropriations was Vice Chair Senator Barbara Mikulski (D-MD), who had been the most vocal supporter of decreasing “burdensome” regulations aimed at protecting H-2B worker rights. The letter favoring H-2B employers came from long-time supporters of corporations hiring H-2B workers, including Senator Benjamin Cardin (D-MD), Representative Andy Harris (R-MD), Senator Thom Tillis (R-NC), Senator Susan Collins (R-ME), among others (Tillis et al. 2015). The November 2015 letter continued to use the narrative of “small business” urgency,

Relief for seasonal businesses that use the H-2B temporary worker program is needed urgently. If H-2B provisions are not included as part of an FY 2016 conference report or omnibus spending bill, it is possible that the businesses that rely on this program will have to close their doors.

The letter’s Congressional authors endorsed the aforementioned appropriations provisions that would decrease H-2B worker rights, specifically the use of private wage surveys, “relief from burdensome [wage rate] regulations,” and nearly quadrupling the number of H-2B workers allowed into the country through a returning H-2B worker exemption (Tillis et al. 2015).

In response to this, on December 3, 2015, Senators Bernie Sanders (D-VT), Richard Durbin (D-IL), Mazie Hirono (D-HI), Richard Blumenthal (D-CT), Jeff Merkley (D-OR), issued a public letter to Senate Majority Leader Mitch McConnell (R-KY) and Minority Leader Harry Reid (D-NV). In the public letter, the Senate authors stated that measures which were currently in the 2016 omnibus spending legislation would “rollback many basic protections for US and foreign workers” found in the 2015 H-2B Interim Final Rule (Sanders et al. 2015). The December 2015 stated,

As negotiations on appropriation bills continue for Fiscal Year 2016, we respectfully request you avoid including changes to the H-2B visa program in any omnibus or appropriations measure... The appropriations process should not be used to bypass the legislative process or make substantive changes to immigration law... These substantial changes to the H-2B program are essentially piecemeal reforms that should not be obscured in the appropriations process, and instead must be considered as part of comprehensive immigration reform legislation.

Despite the best intentions of those advocating for the labor rights of H-2B workers, the resulting Consolidated Appropriations Act of 2016 (otherwise known as the omnibus spending bill), which became law on December 18, 2015 (Public Law No: 114-113) did rollback essential H-2B protections. Likely to appease members of Congress who had been advocating on behalf of seafood companies who employ H-2B workers – most notably Senator Barbara Mikulski (D-MD), these diminished labor rights were specific to “H-2B Nonimmigrants Working in the Seafood Industry” (US, Congress 2015, 129).

In sum, while the H-2B program was largely ignored through the 1990s and into the mid-2000s, by 2005 it became the center of Congressional debate. Unlike previously failed H-2A legislation, much of the proposed legislation to increase the H-2B program and decrease workers’ rights provisions was passed. However, while both visa categories received strong opposition from human rights groups and the House and Senate, most H-2B legislation was not passed via the regular legislative process of debate and voting. Rather, it was completed via a series of legislative fixes, such as surreptitiously inserting H-2B expansion and decreased rights provisions into omnibus bills. In using “behind closed doors” tactics, it was ensured that such controversial legislation avoided the public’s and Congress’ scrutiny. The most vocal proponent of amending the H-2B program was Senator Barbara Mikulski (D-MD). Despite legislation being framed as

supporting small businesses, the firms that stood to gain the most (and where the greatest number of H-2B visas went to) was for multi-billion dollar conglomerates such as Aramark, PepsiCo, Red Lobster Seafood, US Apple Association, Western Growers, and the Florida Fruit and Vegetable Association, among others. These covert changes in H-2B policy backed by agribusiness now form the bedrock of existing H-2B legislation.

4.4 H-2A and H-2B Visa Categories: Labor Rights Differences

The result of agribusiness influence on Congressional legislation has resulted in minimal rights afforded to H-2A and H-2B guestworkers. A chief disadvantage exemplified in both programs is that guestworkers' employment visas are tied to only one employer. This means that immigration status and work authorization is dependent upon retaining employment through the employer listed on their work visa. There are no options to change employers mid-season should guestworkers experience wage theft, abuse, or deplorable housing. If they do not abide by the conditions of their employment, they can be reported by their employer and deported by USCIS. "Troublesome" guestworkers can even be blacklisted from participating in the US Guestworker Program in the future. With such constraints on their freedom, most exploitative acts against guestworkers go unreported.

Despite the presence of this bottom-line for both H-2A and H-2B workers, key distinctions for guestworker rights and protections exist between these programs. As previously mentioned, past labor exploitation conducted under the Bracero Program was a primary reason for disaggregating the H-2 program into H-2A and H-2B visa categories in the first place (Trautman 2014, 65; Bruno 2006). Under the Bracero program, agricultural workers had suffered years of exploitation and abuse by employers.

Consequently, in 1986 a leading rationale for the division was to “improve labor conditions for H-2A employees” (Mathes 2012, 1807). As a result, the 1986 H-2A regulations were created with the backdrop of agricultural protection laws such as the 1938 Fair Labor Standards Act (FLSA) and the 1983 Migrant and Seasonal Agricultural Worker Protection Act (MSPA). At that time, Congress felt that existing regulations affecting H-2 non-agricultural workers were sufficient as they had functioned “reasonably well” in the past, and so H-2B regulations remained modeled after its H-2 predecessor (Mathes 2012; Trautman 2014).

Accordingly, the H-2B program began with less labor rights and protections than its H-2A counterpart from the outset. Additionally, as discussed, legislation regarding the H-2B program failed to create essential regulations to monitor and enforce workers’ safety. As a consequence, in the years that followed its creation, H-2B workers lacked foundational legal rights and protections available “at least theoretically” to H-2A workers (e.g., housing, transportation, auditing, etc.) (A. N. Read 2007, 432-433). Today, differences between these two visa categories continue. Table 6, below, outlines some of these divisions in worker provisions.

Table 6: H-2A and H-2B Labor Rights Differences (2015)

Right/ Protection	H-2A Program	H-2B Program¹⁷
Disclosure of Work Contract	When worker applies for visa, employer must provide copy of work contract in language understood by worker. Contract and workers' rights and protections must be posted in public location at work site.	No disclosure required until 2012. Now same as H-2A.
Transport to/from the US	Employer reimburses worker's transportation to US and all meals and lodging during journey upon completion of 50% of contract's time period. Employer pays transportation and lodging for return after completion of remaining 50% of contract.	Worker required to pay for transportation to/from the US (and expenses) until 2012. Now same as H-2A.
Housing	Employer must provide free housing that meets applicable standards.	Worker required to pay for housing, usually a unit the employer provides. Employer has full discretion for rent charged.
Meals	Employer provides 3 free meals a day or access to cooking facilities.	Worker must pay for meals.
Rate of pay	Employer pays worker the highest of the following wages: <ul style="list-style-type: none"> • Adverse effect wage rate • Prevailing wage (including piece rate) • Agreed-upon collective bargaining wage • Federal or state minimum wage Piece-rate worker's earnings are supplemented to a rate that equals the highest hourly rate, indicated above.	As of 2015, worker is paid a prevailing wage based on a private wage survey conducted at the discretion of the employer. Methodology for conducting this survey is secret and employers often use the survey's results as evidence to pay workers as little as possible.
Access to Legal Aid	Workers are guaranteed pro-bono representation by the Legal Services Corporation (LSC).	Workers must pay for their own private attorney to represent them.

Source: Adapted from Government Accountability Office (2015), H-2A and H-2B Programs, p. 10.

¹⁷ H-2B rights following 2015 Appropriations Act for Fiscal Year 2016.

The first difference highlighted above is that of work contract disclosure. In the H-2A program, an employer must provide a copy of the work contract to the guestworker when the worker applies for their visa to enter the US. This contract must be presented in a language readily understood by the employee. This allows for the worker to have their responsibilities and rights on paper, readily accessible for future reference. Within the H-2A program, there is also a clause stating that a copy of the contract, along with its guaranteed rights, must be placed in a public area at the work site. Up until 2012, no such work contract disclosure was required for the H-2B program. Applicants would hear through word of mouth – from returning workers or recruiters – approximately what they would be paid, the number of hours they would be required to work, the program start and end dates, and any rights they might have. However, by not being legally obligated to share a work contract with the H-2B guestworker, employers were frequently not held accountable for such provisions. Since 2012, H-2B employers are required, yet it has not been frequently implemented.

The second difference discussed is transportation. During a guestworker's journey from their country of origin to the US employment site, transportation is very important for obvious reasons. Under the H-2A and H-2B program, most workers come from the southern states of Mexico, from where it takes approximately three or four days by bus to arrive at the US job site. Workers require nightly lodging, food, and water during this timeframe. From a southern Mexican state, such as Oaxaca, this one-way journey can cost approximately \$750. While this right has always existed within the H-2A program since its inception in 1986, H-2B workers were required to pay for their own transport, lodging, and meals up until 2012.

The third difference between the rights of H-2A and H-2B visa holders is housing expenses while in the US. H-2A and H-2B workers live in accommodations provided by the employer, with housing units located near the job site. While these accommodations are usually dire rather than decent (discussed in Chapter 5), they are at least paid for when it comes to H-2A workers. For those with H-2B visas, they are charged weekly rent at the discretion of the employer. At times these rates are reasonable, but as job sites are typically in rural areas without any other rental options, employers may sometimes charge exploitatively high rental rates as H-2B workers have no other option but to accept and pay.

The fourth difference is the provision of meals. Under the H-2A program, employers are mandated to supply three meals per day, or at least provide kitchen facilities for workers to cook. Conversely, under the H-2B program, workers must purchase their own food, and since kitchen facilities are not mandated, workers may only be able to purchase already processed, ready-to-eat meals rather than cook their own wholesome home-cooked meals. An additional hurdle for H-2B workers is actually purchasing the food. Despite working in food processing centers, the rural location of the job site often means they live in “food deserts” where the nearest shopping center is up to 45 minutes away. Transportation to and from the shopping center is dependent on the employer’s (or supervisor’s) availability. This is another means through which employer power and control is exerted.

The fifth difference is wage rate. For the H-2A visa category, workers are paid the highest of five wages: adverse effect wage rate, prevailing wage, collective bargaining wage, or federal or state minimum wage. The adverse effect wage rate is a standardized

wage that ensures domestic worker wages for the same job are not adversely affected by hiring foreign workers. The prevailing wage is a wage rate determined by the US Department of Labor based on the hourly wage for a certain position within the largest city in a county. The collective bargaining wage is an agreement between employers and employees based on negotiations. Lastly, the federal or state minimum wages are minimum hourly rates that must be paid because of the Fair Labor Standard Act. As such, for an H-2A worker, there are a variety of wage rates to compare, with only the highest being mandated as the obligatory wage rate. Conversely, for H-2B workers, the worker is paid a prevailing wage rate based on a private wage survey conducted at the discretion of the employer. Methodology for conducting this survey is secret and employers often use the survey's results as evidence to pay workers as little as possible.

The final difference discussed is access to legal aid. Workers in both the H-2A and H-2B programs often endure an abusive work environment. In the worst cases, employers commit criminal acts against the employee. Should workers choose to file a complaint in order to receive restitution for the crimes committed against them, they will need to contract a lawyer. Workers in the H-2A program are guaranteed pro-bono representation through the Legal Services Corporation (LSC). The LSC is a non-profit established by the US Congress to provide free legal assistance to those who cannot afford it. The LCS is the largest legal funder of civil legal aid in the nation, granting \$375 million toward legal representation in 2015 (LSC 2016b). The LCS had been established to originally only provide free legal aid to US citizens. However, in 1996, Congress voted to allow free legal services to H-2A agricultural workers and only H-2B workers employed in forestry jobs (LSC 2016a). H-2B workers in all other industries, including

food production, are not entitled to free legal protection and counsel. This means that in order to have legal representation in a court case, H-2B workers must pay out of pocket. This becomes complicated, for regardless of whether a worker was exploited financially or not, having basic resources to hire a lawyer is likely out of reach.

Overall, while employers want to decrease regulations ensuring guestworker rights, the current standards are scattered, spotty, and in many instances are not being met. A 2015 report released by the US Government Accountability Office found the program's current structure allows employers to take advantage of H-2A and H-2B workers, making guestworkers pay excessive fees to come to the US, misleading them about wages, and in the worst circumstances, creating conditions that constitute labor trafficking under the 2000 Trafficking Victims Protection Act (GAO 2015).

4.5 Conclusion

Corporate power within agribusiness is substantial. Valued at \$7 trillion, the food industry is "larger than even the energy sector and represent[s] roughly ten percent of the global economy" (Beth Hoffman 2013, 5). With such high economic profits at stake, corporate agribusiness has a vested interest in ensuring that their demands are met on Capital Hill. Chief among these is safeguarding a steady stream of cheap labor to meet food harvesting and processing demands. To ensure agribusiness interests are represented within the legislative realm, sizeable financial investments have been made to Congress through both campaign contributions and lobbying efforts. Since the mid-1990s, these financial investments have exceeded \$3 billion directly to Congress.

Discourses of political actors have explicitly shaped and given meaning to the US Guestworker Program's labor rights and protections over the past two decades. The

findings of this chapter demonstrate that while the national-level discourses were predominantly against immigration, systematic efforts by a small group of legislators endorsed a contradictory narrative. By framing agribusiness as being on the brink of collapse without foreign labor, members of Congress sympathetic to the food industry proposed legislation to expand the US Guestworker Program and decrease “burdensome regulations” related to workers’ rights and protections. These proposals were often written using the same language as that of policy proposals submitted by agribusiness conglomerates.

While H-2A proposals largely failed, those of the H-2B program typically passed. This was largely due to opposition by human rights groups who had remained vigilant of H-2A legislation. The H-2A program was on the radar of such advocates because the widespread abuses committed under the H-2A program’s foundational predecessor – the Bracero Program – were still fresh in their minds. By the mid-2000s, however, Congress shifted the focus heavily to augmenting the H-2B program, which was much more easily modified because of historically diminished oversight over H-2B visas. However, while both visa categories received strong opposition from human rights groups, most H-2B legislation was not passed via the regular legislative process of debate and voting. When resistance to agribusiness-friendly H-2B regulations were met, legislative fixes were implemented, such as surreptitiously placing rollbacks in H-2B protections and expanding the program in unrelated bills and omnibus packages. As a result, the H-2B guestworker rights and protections are far more minimalized than their H-2A counterparts. The on the ground effects and local-level consequences of such national-level discourses and political influence are discussed in depth in the following chapter.

Chapter 5

GUESTWORKERS' LIVES ON THE GROUND

...The program lends itself to that kind of abuse because people come here, they can only work for one employer, they're isolated, they don't have connections to the community, and they need the jobs, and they don't have their own transportation. I mean, there are just so many barriers to getting any kind of help. And, they're living and working for somebody so that person has access to them 24/7 (Carol Brooke, Attorney, Workers Rights Project, 2015).

...The job isn't so hard really...it's just the treatment by the *señor*...he'll grab somebody...he'll grab them...and...there's more...nobody is going to talk about it though (Veronica¹⁸, Mexican H-2B Guestworker, 2015).

While the previous chapter demonstrated how national-level discourses have shaped and given meaning to the US Guestworker Program's labor rights, this chapter examines how such policies translate into guestworker's everyday lives. Traditional studies examining the US Guestworker Program have all too often privileged the neoliberal, top-down approach, highlighting economic statistics, foreign labor figures, or the larger corporate context more generally. The majority of these analyses take an objective stance, one of universalized truths about the invisible hand of supply and demand. But sterilized facts overlook how policies produce individualized consequences. Using a feminist curiosity, I examine how complexity exists "just below the surface" (Enloe 2014, 238), by examining how policy has affected guestworkers' daily lives,

¹⁸ All names of guestworkers are pseudonyms for their protection.

particularly their rights and protections. Unveiling multiple standpoints and subjectivities is vital for a more nuanced understanding of the US Guestworker Program's implementation overall. Guestworkers have previously been left at the margins of such conversations. As a result, their voices are rarely heard. Importantly, this chapter does not intend to speak *for* guestworkers within the program, but to speak *on behalf* through sharing their lived experiences.

As discussed in my methodology chapter, I conducted fieldwork at two case study locations in the Mid-Atlantic region. I selected this region given it is most representative of the nation's distribution of H-2A and H-2B guestworkers, yet is frequently overlooked. My fieldwork research questions address the following: What are the lived experiences of H-2A and H-2B food production guestworkers employed in the Mid-Atlantic region? What similarities and differences in labor rights and protections exist across and within these visa categories? To answer these questions, I conducted semi-structured interviews with 28 H-2A and H-2B guestworkers, 16 community stakeholders, and 10 government employees. Throughout the course of this investigation, I visited labor camps within the Mid-Atlantic region, conducted participant observation, kept field notes, and collected supplementary data, such as historical records, census data, and governmental reports. By using a variety of sources I was able to triangulate my findings, ensuring the authenticity of the narrative(s) being conveyed. In processing the vast amount of data I received, I used a combination of qualitative focused and open coding schemes, exploring topics already identified as relevant to my research questions, as well as new concepts, themes, and issues to enrich this study.

The previous chapter demonstrated that H-2A and H-2B visa rights and protections are not equal. In the H-2A program, housing and all meals are paid for, while H-2B workers must pay weekly rents and buy their own food (often without adequate transportation to a supermarket or kitchen facilities to cook). Wages are higher in the H-2A program, as workers are paid the highest of five federally and/or state-monitored wage rates. Conversely, in the H-2B program, wages are determined by a private wage survey conducted at the discretion of the employer rather than a third party entity. Without oversight, private wage surveys have been deemed to intentionally suppress wages for H-2B workers. While H-2A employers have always been mandated to disclose the work contract (in a language understood by the employee) and transportation to and from the US, these measures were only recently allotted to the H-2B program in 2012. Lastly, H-2A workers have access to free legal aid through the Congressionally sponsored Legal Services Corporation, while H-2B workers must pay for their own representation should they choose to file a claim against their employer.

In line with the policy results of the previous chapter, the fieldwork revealed that while both H-2A and H-2B workers experienced precarious working conditions, H-2B workers more readily endured abusive circumstances. Interestingly, this was not the only difference that exists between the H-2A and H-2B visa categories. Patriarchal power relations pervade agribusiness on the local level, resulting in a gendered division of labor where male guestworkers are placed within the H-2A program, while female guestworkers are siphoned into that of H-2B. Migrant women are viewed as an expendable, cheap, and docile labor source, and consequently, they hold the least visible and most vulnerable guestworker positions as H-2B workers. Contract fraud, wage theft,

sexual harassment, employer threats, and occupational injuries are rampant – and in the worst conditions, practices analogous to labor trafficking thrive.

5.1 Case Study Communities

5.1.1 Case Study Community 1: Southern New Jersey

H-2A interviews were conducted at labor camps throughout southern New Jersey. Despite the state’s nickname of “the Garden State,” New Jersey may not immediately come to mind when thinking about major agricultural producers for the nation. First, it is one of the smallest states in the US, and second, according to the 2010 US Census, it is the most densely populated state with 1,210 persons per square mile. Yet, New Jersey boasts 9,071 farms that span 715,057 acres of land, producing over 100 different types of fruits and vegetables (“NJ Farm Facts” 2016). As Table 7 demonstrates below, several New Jersey crops rank within the top 10 states nationally for production weight and value. Most agricultural activity takes place in the southern half of the state (NJDOL 2015) with planting typically beginning in April and harvest ending in early November.

Table 7: New Jersey Nationally Ranked Crops (2014)

Crop Names	US Rank	Production Weight (in Millions lbs.)	Production Value (in Millions)	Acres of Farmland	Harvest Season
Cranberries	3 rd	62.6	\$21.9	3,000	Sep. 1 – Nov. 5
Bell Peppers	3 rd	95.2	\$29.5	2,800	Jul. 5 – Nov. 5
Spinach	4 th	22.1	\$8.3	1,300	Apr. 15 – Jun. 30
Peaches	4 th	41.2	\$27.3	4,600	Jul. 5 – Sep. 15
Blueberries	5 th	66.7	\$79.5	8,800	Jun. 20 – Aug. 15
Cucumbers	5 th	57.6	\$14.9	3,100	Jun. 25 – Sep. 15
Sweet Corn	7 th	54	\$16.8	6,000	Jul. 1 – Sep. 25
Squash	7 th	35.4	\$11.6	2,700	Jun. 15 – Sep. 30
Tomatoes	8 th	62.4	\$30.1	2,900	Jul. 1 – Oct. 15
Snap Beans	8 th	8.6	\$3.3	2,500	Jun. 10 – Aug. 31
Cabbage	10 th	53.3	\$9.5	1,500	Jun. 1 – Nov. 15

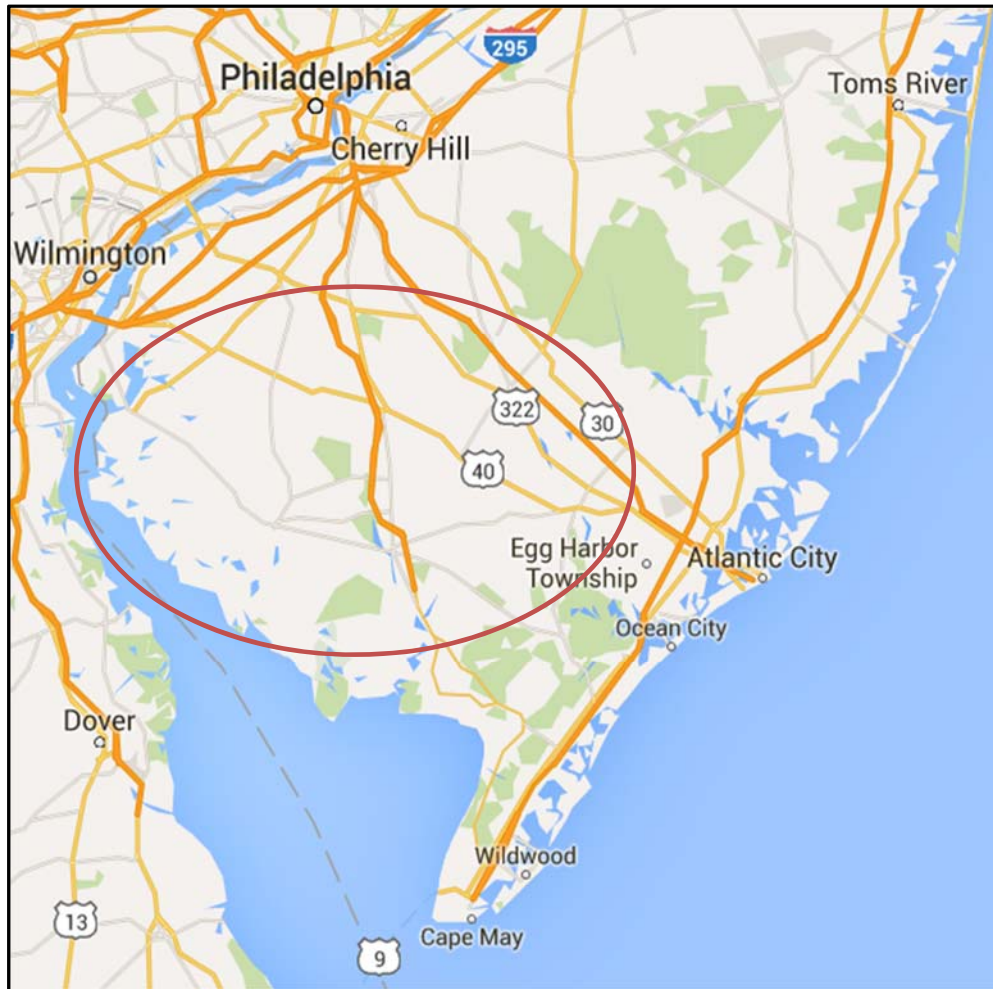
Source: 2014 Department of Agriculture, State of New Jersey

While New Jersey fruit and vegetables can be purchased throughout the US, the state exports much of its products overseas. New Jersey has five Foreign Trade Zones (FTZ) throughout the state operated by US Customs and Border Protection, two international airports, and two ports (one of which ranks third in busiest ports in North America) (State of New Jersey 2014). Agricultural yield, combined with logistic capacity to move large food shipments regionally and internationally, make New Jersey an ideal location for large food corporations. Global companies such as Campbell’s Soup, Goya Foods, LiDestri Foods, Mars Chocolate, Mondelez, Nestlé, Unilever, Parmalat, and Best

Foods are either headquartered or have significant manufacturing and distribution operations within the state. Given the agricultural output and proximity to major transportation centers, it is no wonder the state's food and agricultural sector is estimated at \$105 billion per year (Cornett 2014).

My fieldsite is denoted in Figure 6 below. For reasons of confidentiality and subject protection, the circle depicting the field location is drawn artificially wide in order to conceal the exact locations where the interviews were conducted. The fieldsite included farms and corresponding H-2A labor camps throughout this southern portion of the state. As described in my methodology chapter, these sites were picked because of CATA's relationships with H-2A workers in the region. Having the assistance of CATA's field organizers proved immensely helpful in creating access to these communities.

Figure 6: Southern New Jersey Fieldsite



The fieldsite was engulfed by miles and miles of crops, interrupted only by silos and tractors and the occasional small town. Public transportation is shoddy as best, with New Jersey Transit Buses arriving at roadside stops only about every 90 minutes. It meets the US Census Bureau’s definition of “rural” with fewer than 1,000 people per square mile, as denoted in Table 8, below. Table 8 also depicts a number of other demographic markers for the surrounding community as compared with New Jersey as a

whole.^{19 20} Aside from population density, other characteristics that make this area unique to New Jersey are the racial composition. Nearly 80 percent of residents identify as “white” compared to about half of the state’s general population. Median household incomes are about \$20,000 higher in the region when compared to New Jersey’s median as a whole. Consequently, the data illustrate the extent to which the region is predominately white, rural, and wealthy. The rural population, high proportion of whites, and high household income suggest that guestworkers may feel physically isolated and socially alienated from the surrounding community.

¹⁹ Importantly, the reader should note that these statistics may not represent an accurate depiction of the communities surveyed, as it is likely that undocumented immigrants are underrepresented in official government supplied data. Likewise, as seasonal workers such as H-2A guestworkers, are temporary personnel, they are not counted in the official statistics either. Thus, the demographic profile should be taken as a generalized overview of the areas where the farms are located, and should help the reader to conceptualize the environments in which H-2A workers have temporarily made their homes.

²⁰ To create this demographic profile, I averaged the zip code level data for each of the three farms where I interviewed H-2A guestworkers. Farms were within 15 miles of each other. Additionally, averaging the data further ensures protection of the guestworkers who were interviewed, as each zip code has a limited number of farms, and should I reveal the exact zip code(s) under examination, it would be relatively easy to deduce from which farm guestworkers participated in the study.

Table 8: New Jersey Fieldsite Demographic Profile

Demographic Data	Southern New Jersey Fieldsite	New Jersey
Population	12,317	8.938 million
Population Density (<i>people per square mile</i>)	335	1,210
Median Age	39 years	39.4 years
Sex Ratio		
Male	50.87%	48.8%
Female	49.13%	51.2%
Race		
White	79.7%	56.8%
Black	8.13%	14.8%
Hispanic	7.37%	19.3%
Asian	2.5%	9.4%
Native American	0.5%	0.6%
Other	1.8%	N/A
Median Household Income	\$93,929	\$70,165
Educational Attainment		
High School or Less	39.2%	40.3%
Some College	27.2%	23.2%
Bachelor's	21.63%	22.6%
Graduate School	11.83%	14.0%
(<i>25 years and older</i>)		
Residents Living Below Poverty Line	6.03%	11.4%

Source: US Census Bureau, City-Data (2010-2014)

As previously discussed in my Methodology chapter, being introduced at the labor camps by CATA provided me with credibility and ensured a level of trust with participants. Had I not had the support of CATA, a very reputable organization within the region's migrant community, it is doubtful I would have had the level of access that I did. I visited these labor camps during the months of August through October 2015 in the evenings after guestworkers had completed the day's labor. Being in a rural area, locations were not on maps (or even marked roads), and I had to rely on GPS pin-drops in

order to find the location again when CATA organizers were not accompanying me. Each camp was found along a dirt road, surrounded by crop fields, and within a 20 to 30 minute walk of the central farming mainframe. The housing units were long and narrow, similar to mobile homes. For each site, the number of housing units varied. For example, one site had only two housing units, but they were large enough to house approximately 15 to 20 people per unit. However, at the majority of sites there were about five or six smaller housing units of about eight people each. Since only those who qualified for the H-2A or H-2B visa were able to stay at these units, only the visa holders themselves lived there, rather than family members, such as spouses or children. Each unit was in varying degrees of disrepair, some with unhinged doors and chipped exteriors, and others with broken down school buses or tractors parked out front in the grass. Overall, in each camp I felt the startling sense of isolation from the rest of the world.

5.1.2 Case Study Community 2: Maryland's Eastern Shore

The footprint of US fisheries on the nation's economic profile is substantial. In 2012, the US fishing industry brought in approximately \$90 billion and provided just under 2 million jobs across the country (Kearney et al. 2014, 2). The Mid-Atlantic region rates among the most prosperous for US fishing, particularly the state of Maryland (Maryland Department of Natural Resources 2016). Its largest body of water is the Chesapeake Bay, which is filled with 18 trillion gallons of water that have flowed from a drainage basin spanning from New York to Virginia (Chesapeake Bay Program 2016). Because of its size and the area's temperate climate, there are over 2,700 different plants and animals making their home in and along the Chesapeake Bay, including 348 types of finfish and 173 species of shellfish (Chesapeake Bay Program 2016).

The Chesapeake Bay, and the waterways that lead to it, have been a source of food, income, and movement since the Native American tribes of the Piscataway, Powhatan, and Nanticoke (Maryland Tourism 2016; Tayac, Schupman, and Simermyer 2006). Table 9, below, illustrates the economic value of key seafood commodities, such as blue crab. Maryland is the greatest harvester of blue crab in the nation, as the Chesapeake Bay provides 50 percent of the total blue crab harvest for the US (“Maryland Seafood Production” 2015). In the last 10 years, this equates to over 300 million pounds in blue crab commercial landings (“Maryland Seafood Production” 2015).

Table 9: Maryland Seafood Production (2013)

Seafood Type	Commercial Landings	Dockside Value
Blue Crabs	24,179,216 lbs.	\$49,955,586
Striped Bass	2,018,231 lbs.	\$9,930,965
Eastern Oysters	787,889 lbs.	\$7,356,746
Clams or Bivalves	607,104 lbs.	\$359,040
Total	27,592,440 lbs.	\$67,602,337

Source: “Maryland at a Glance,” State of Maryland (2013)

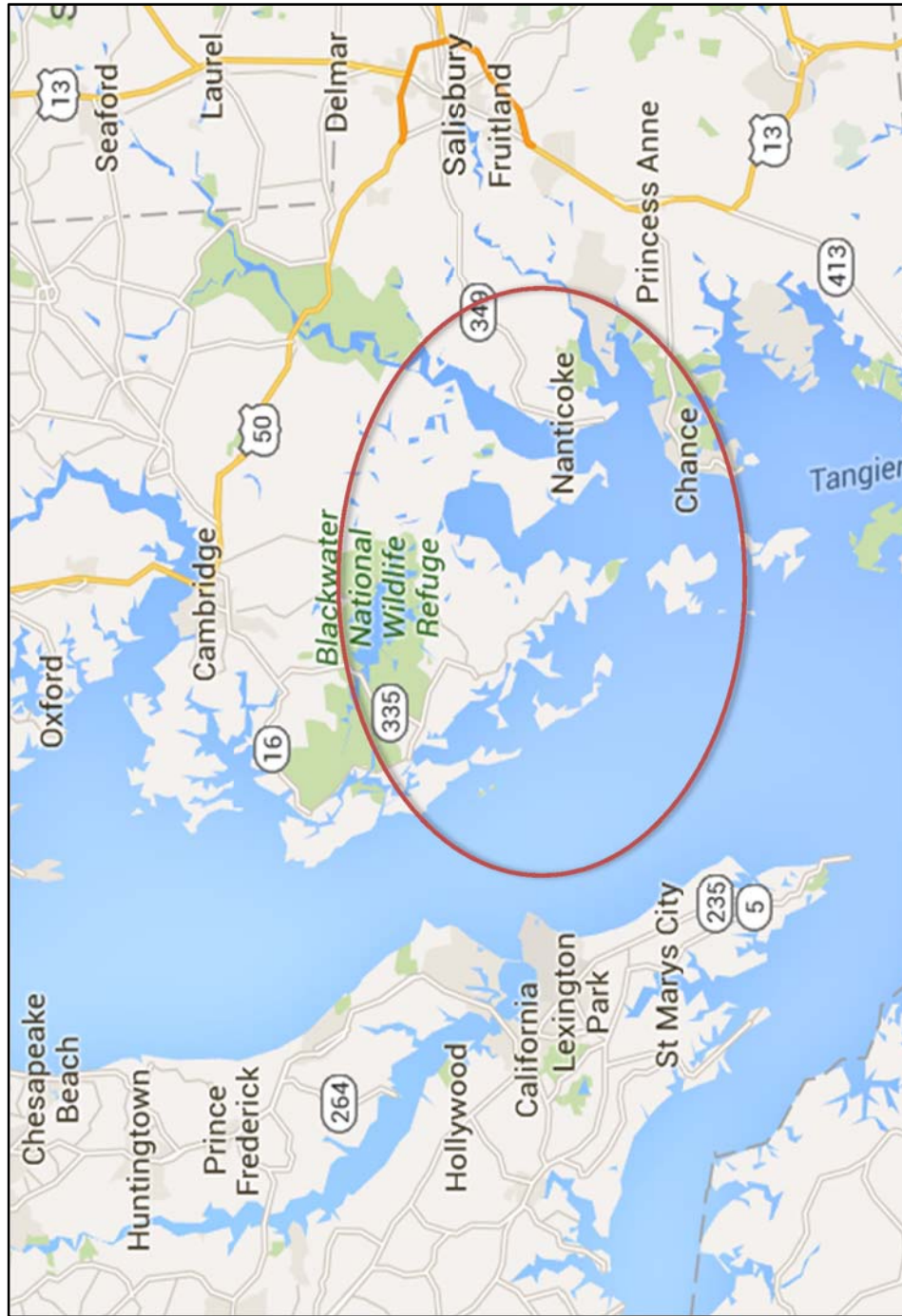
Not only is Maryland seafood advertised domestically, but internationally as well. The state boasts four Foreign Trade Zones (FTZ) for international commerce operated by US Customs and Border Protection (“Foreign-Trade Zones” 2016), and the Port of Baltimore, which ranks as 9th most lucrative port in the US (Bentley 2016, 7). Given its output and strategic location to access domestic and international markets, the economic influence of the Chesapeake Bay is tremendous. According to the research division of the

Pew Charitable Trusts, the Chesapeake Bay contributes \$33 billion in economic impact to the region each year, and supplies 34,000 jobs to the local economy (Pew 2012).

Similar to the hyper-commodification and market integration that takes place in New Jersey's food industry, Maryland also depends on cheap foreign labor to keep prices competitive within the neoliberal world order. Since the creation of the H-2B non-agricultural guestworker visa through the 1986 Immigration Reform and Control Act, the seafood industry in Maryland has heavily relied on H-2B workers. At present, about 60 percent of Maryland seafood companies use H-2B workers for crab processing, and those same companies account for 82 percent of the market share nationally (Lipton 2008, 1).

My fieldsite encompassed two labor camps on Maryland's Eastern Shore. Just as with my first fieldsite, this second location was picked because of CATA's long-standing relationship with H-2B workers there. As with interviews with H-2A workers in New Jersey, having the assistance of CATA as a means to access these communities was tremendously helpful. In the image below, the larger area where the fieldsite is located is encircled. Similar to my first fieldsite, I intentionally left the breadth of this circle relatively large, as providing even the name of the municipality would endanger the anonymity of the study's participants. Communities along the Eastern Shore of Maryland are small, isolated, and extremely rural. Only 15 seafood-processing centers control the market in the area.

Figure 7: Maryland's Eastern Shore Fieldsite



Much of the region is marshland connected by bridges that often flood when there are rainstorms, creating an even further feeling of isolation. Most residents make a living in the seafood industry (Dorchester 2016). The demographic profile for the Maryland Eastern Shore fieldsite is depicted below in Table 10. With a population density of only 87 people per square mile, the Eastern Shore fieldsite is extremely rural. It is also nearly exclusively white, at least according to official government estimates. Of course, this does not consider undocumented residents and temporary and seasonal guestworkers, which are predominately Hispanic, but it does illustrate the dearth of diversity for the Eastern Shore fieldsite more generally. Most residents only have a high school education and over 15 percent live below the poverty line. The demographic profile illustrates a community that is isolated, white, and lacks educational attainment. Classes are stratified, for while the median household income in the area is higher than that of the state of Maryland overall, more than 15 percent of the residents live below the poverty line.

Table 10: Maryland Fieldsite Demographic Profile

Demographic Data	Eastern Shore Fieldsite	Maryland
Population	305	5.976 million
Population Density (<i>people per square mile</i>)	87	618.7
Median Age	38.2 years	38.2 years
Sex Ratio		
Male	37.7%	48.5%
Female	62.3%	51.5%
Race		
White	95.0%	52.6%
Black	0.7%	30.3%
Hispanic	4.3%	9.3%
Asian	0.0%	6.4%
Native American	0.0%	0.6%
Other	0.0%	0.8%
Median Household Income	\$87,721	\$72,483
Educational Attainment		
High School or Less	77.2%	36.4%
Some College	13.5%	26.1%
Bachelor's	0.0%	20.3%
Graduate School (<i>25 years and older</i>)	9.4%	17.2%
Residents Living Below Poverty Line	15.4%	10.1%

In sum, the Mid-Atlantic region has previously been overlooked within US Guestworker Program research analysis. The fieldsite locations within the region were strategically picked given the prevalence of H-2A and H-2B hiring. Both Southern New Jersey's crop planting, cultivating, and harvesting sector and Maryland's Eastern Shore seafood processing sector heavily rely on guestworkers to fulfill labor intensive food production needs. They are also locations with significant access to domestic and international markets. Both communities are primarily rural and white, with higher than average median household incomes. These demographic profiles suggest a climate where

non-white, foreign workers may feel logistically, socially, linguistically, and economically alienated from those living within the surrounding communities.

5.2 Guestworker Lived Experiences

Throughout my interviews with 28 guestworkers, 16 community stakeholders, and 10 government employees, it was evident that there are adverse effects on guestworker rights due to the program's rapid expansion and legislative rollbacks in "burdensome" protections. Without viable protections, both H-2A and H-2B workers are left in precarious employment conditions. H-2B workers more readily endured abusive circumstances, in line with the findings of the policy research. Adding further nuance and complexity, through fieldwork, it was evident that a gendered division of labor separates the two visa categories. Gendered stereotypes about migrant women pervade the US Guestworker Program, socially constructing female guestworkers as a disposable, cheap, weak, and slow source of labor. Despite many women applying for H-2A visas in (relatively) higher-paying and better-monitored crop planting and harvesting jobs, they are assigned H-2B visas in lowly regulated food processing where contract fraud, wage theft, sexual harassment, and occupational injuries are rampant.

In the following subsections I have grouped together key themes that arose from my interviews. These areas should not be considered strict analytical categories of mutual exclusion. Rather, there are commonalities that intersect and overlap. I discuss these recurring themes from a feminist viewpoint, and how they relate to tiered systems of marginalization and oppression within the US Guestworker Program.

5.2.1 Food Production's Gendered Division of Labor

From the outset of preliminary research throughout fieldwork, it was starkly apparent that a gendered division of labor segregates food production's H-2A and H-2B visa categories. Men hold the lion share of H-2A visas, while women make-up the majority of H-2B visas in food production (most notably seafood processing).²¹ This division of labor was often not by choice. From my interviews with guestworkers, community stakeholders, and federal and state government employees, it was revealed that despite many women applying for H-2A jobs in the food sector – where they receive increased protections – the vast majority were siphoned into the lower-regulated H-2B visa category. Findings from interviews revealed that the resulting gendered division of labor was intertwined in perceptions of what is believed to be stereotypical “men’s work” verses “women’s work.”

Guestworkers within the H-2A program indicated that it was very rare to ever see a woman working in the fields in the US. José Luis, a 23-year old H-2A worker from Guanajuato, Mexico who has worked in New Jersey as a guestworker for three seasons, expressed to me that he had only seen one female H-2A worker during his entire time with the program. I asked him if her job had been different than his or was it the same. José Luis replied, “It was the same but it was a little more simple...it wasn’t the same workload as ours, I guess...but she had to harvest... everything... just like us.” The sentiment captured by José Luis illustrates that the position of the female who works

²¹ Unfortunately, the US Department of Labor does not keep disaggregated records by visa category, industry, and gender. This is a problem because, as previously noted, the H-2B category includes several industries besides those designated for the food industry (construction, landscaping, etc.). I contacted state-level agencies for more nuanced statistical data, and they unfortunately do not keep these records either. This could be a topic of exploration for future research.

alongside males is categorized as “simple” and yet he also stressed that she performed all the same duties as the males.

Other male guestworkers expressed similar sentiments as José Luis. For example, when I asked Julio, another 22-year old male H-2A worker from Guanajuato, about experiences working with women in agriculture in New Jersey, he replied, “Well, there aren’t any women, we’re here alone [laughs]. Since the job is outside, well, it’s a little tough. The women, they work in processing, they’re better at it.” Julio also captured the sentiment that since the job is “tough” women are best suited for positions in food processing, presumably a more feminine task.

Ironically, when asked about the types of jobs women perform in Mexico, male guestworkers did not hesitate to admit that females worked in the fields alongside men. The following interview excerpt was a dialogue exchange between myself and Ivan, a 45-year old H-2A worker from Chiapas who has been in the program six years, and Miguel, a 35-year old H-2A worker from Guanajuato with three years in the program.

Interviewer: How many women work with you?

Ivan: Women?

Miguel: None.

Ivan: None. Only in processing.

Interviewer: Why?

Miguel: Because working in the field is really tough for women.
A woman can’t do this job.

Interviewer: No?

Miguel: No.

- Ivan: Well, yes, they can do it. It's just that...they do it a little more slowly. Well...sometimes someone, the *patron* or someone like that, comes to the job and sees the woman hasn't made much progress.
- Miguel: A woman can't do it.
- Ivan: A woman...a little more slowly...yes, they can harvest. [Looks at friend] Look, what I'm saying to you is that she can harvest... slowly...the peppers don't weigh much...she can harvest slowly, but she can't harvest like someone who's stronger...and well...sometimes with the weight, the bucket is heavy. Well, I've seen women harvest in Mexico, and they're good at working. Well...here no. I haven't seen it.
- Interviewer: I ask because I haven't seen any women at the camps.
- Miguel: No, not here, but in Mexico yeah. There are a lot of women working in the fields in Mexico...where we come from.

In interviews, the majority of male guestworkers recruited for the H-2A program were quick to state that only men are able to perform the masculinized work in the fields. They often noted, as indicated in the exchange above, that women were slower, weaker, and are thus unable to carry a bucket to pick fruits and vegetables at harvest time. Such sentiments were echoed by a Mexican official I interviewed who is directly involved with bilateral relations between Mexico and the US for the Guestworker Program. He indicated that hiring preferences are biased towards young males in the US Guestworker Program because men are believed to be best suited for agriculture because of what is considered stereotypically “masculine work.”

Field organizers who work with H-2A workers have a more critical understanding of gendered assumptions fueling food production's division of labor. In interviews, they

often brought up how the structural foundation of “machismo” informs discriminatory hiring decisions during recruitment. Nelson Carrasquillo, Executive Director of CATA, indicated gender stereotypes about men only being able to fulfill H-2A job responsibilities do not hold up against reality. Carrasquillo stated stereotypical arguments about which sex is best able to perform food production seasonal labor is rooted in the definition of “grueling work.” Carrasquillo went on to say,

...[G]rueling pace, grueling work, a physically demanding type of work and the concept that men are the ones that have the stamina physically, the energy, and so on. But that doesn't...the reality is not consistent, no? Like if you go to Mexico for example, if you go to the fields you will see a lot of women doing work. So to claim that it is a man's work doesn't coincide...it doesn't reflect the reality.

Carrasquillo's statements offered a more nuanced reflection of on the ground practices regarding the longstanding role of women in agriculture, juxtaposing stereotypical gendered assumptions about abilities. From a comparative perspective, the statements of H-2A guestworkers Ivan and Miguel above are similar to those of Carrasquillo. They tried to make sense of the different roles they have observed women play in both the US and Mexico, but have yet to resolve the cognitive dissonance between such contrasting portrayals. In fact, women have played a significant part in agriculture since its inception (Lastarria-Cornhiel 2006, 1). In recent decades, neoliberal restructuring policies, economic crises, civil wars, and males migrating to cities and other countries have increased the share of women working in food production worldwide, leading scholars to label the phenomenon as the “feminization of agriculture” (Deere 2005). Globally, women make up an estimated 43 percent of the agricultural workforce in developing countries, with this proportion varying depending on access to farmland and

cultural norms (FAO 2011, 5; Deere 2005; Lastarria-Cornhiel 2006). In Latin America, an estimated 23 percent of the agricultural workforce in Mexico is female, climbing to 36 percent in Brazil, and 46 percent in Bolivia (Deere 2005, 21). These figures, as well as global estimates, are conservative, since they only consider full-time paid employment. Women around the world often typically represent the bulk of the unpaid or temporary workforce. Consequently, the proportion of women in agriculture is likely higher than official estimates.

Females in H-2B food processing positions on Maryland's Eastern Shore also held stereotypical gendered assumptions about the work they were most suited for in the US. During interviews, upon asking why most H-2B crab pickers are women, I received responses such as "We have more ability with our hands," "it's easier for us to do this work than men," and "[men] have hands that are slower and bigger." H-2B crab pickers' beliefs that they were hired for the position because of their nimble hands was supported by at least one community stakeholder who works with them on a habitual basis. This community stakeholder, who provides legal services to women at the fieldsite, reified such gendered language at one of the H-2B labor camps, stating to the women, "Why do they bring mainly women from Mexico to work with crab? Their hands are smaller and you are smaller...the women from Mexico are smaller." A nearby H-2B worker agreed, proudly interjecting, "We are harder working." At this, the community stakeholder replied, "Harder working, more agile, and it makes it easier to use the little knife [to pick crab]." Interactions like these demonstrated how some H-2B workers, and even those who are charged with advocating on their behalf, shared naturalized assumptions about gender and what is considered stereotypical "women's work."

Gendered stereotyping was not only described by the guestworkers themselves, it was also evidenced in recruitment ads for guestworkers. Figure 8, below, is one example of discriminatory hiring preferences in action. I encountered this recruitment ad for the US Guestworker Program's H-2A category in a local Jalisco, Mexico newspaper called *Independencia*. The headline reads in Spanish, "Do you have experience in harvesting? Do you want to go to the United States with a work visa?" Importantly, the announcement explicitly notes the company is only seeking "men between 18 and 35 years of age."

Figure 8: Recruiter Advertisement for US Guestworkers (2015)

?Tienes experiencia en piscas? ¿quieres ir a estados unidos con visa de trabajo?

Written by Francisco Hernandez V. on October 31, 2015 in [ANUNCIOS](#), [Hijos Ausentes](#), [Jocotepec](#), [NOTICIAS](#) with [Comments](#)



TRABAJO #PREPARETE #VISAH2A #INMIGRACION #EDUCACION

TIENES EXPERIENCIA EN LA PISCA DE FRUTA CON BERRY MEX, DRISCOLLS O DOLE. TE INTERESA TRABAJAR EN USA? TE INVITAMOS A PARTICIPAR EN NUESTRA ACADEMIA DEL MIGRANTE PARA PREPARARTE PARA SOLICITAR UNA VISA H-2A PARA TRABAJOS TEMPORALES EN EL CAMPO EN USA.

Los invitamos a registrarse para un curso donde prepararemos a las personas que tengan interés en solicitar una visa de trabajo H-2A para trabajadores agrícolas. El curso se dará el — Domingo 8 de Noviembre de 10 am – 1:00 pm en Independencia #27 sur, Jocotepec, Jalisco 45800 La Lic. Liliana Miranda de San Diego, CA estará impartiendo este curso. Debe registrarse para poder participar:

Se abrirá el registro el día 6 de Noviembre. Hay solo cupo para 100 personas. Para registrarse pase a Independencia # 27 sur Jocotepec Jalisco con estos documentos:

Requisitos del Registro:

- Pasaporte Mexicano vigente
- IFE vigente
- Acta de nacimiento
- Experiencia de 1 año en la pesca de frutas o verduras.
- Carta de recomendación
- Copia de cheques/nomina de la empresa en la que trabajó (mínimo 6 meses)
- Nunca haber estado en USA como indocumentado
- Hombre entre la edad de 18 – 35 años de edad.

Source: Independencia, Jalisco, Mexico, October 31, 2015

Recruitment ads such as the one above, gave a more complex glimpse into employer's strategized gendered recruitment practices. Daniela Dwyer, former Supervising Attorney for the Farmworker Project for Maryland's Legal Aid Bureau, spoke to this point regarding the US Guestworker Program. Dwyer commented,

The all-female or all-male [workforce] tends to be dictated by the employer's notion, prejudicial notion, of what men versus women should be doing. So crab picking, which you know, involves a lot of manual dexterity is considered more feminine work, I guess, because women are better at [uses sarcastic voice] "detail oriented work," and you know, have "little hands" It's all very absurd.

Just as women have a long history of engaging in agricultural production, men have also worked in food processing, particularly seafood processing. In fact, according to the United Nations Food and Agriculture Organization, an estimated 53 percent of the 120 million people employed in capture fisheries and post-harvest production around the world are men (Monfort 2015, 9). This proportion rises to as high as 80 percent in Africa and 75 percent in the Americas (Monfort 2015, 11). Even on the local level on Maryland's Eastern Shore, men – particularly African American men – are the primary laborers shucking oysters and other bivalves (Shannon 2005). Hence, arguments contending one sex is "naturally" more capable at certain food production tasks do not match reality worldwide or even within a historic context.

Many community stakeholders interviewed were very much aware of the rampant prejudicial hiring practices informing the US Guestworker Program's gendered division of labor. Manuel Gúzman, Lead Field Organizer for CATA, spoke of the complicity of US employers and international recruiters in practicing gender discrimination for guestworker hiring. He indicated that many intend to exculpate themselves from such practices by placing responsibility on the guestworkers themselves (despite documented

gendered recruitment ads being placed). According to Gúzman, “the employers may say, ‘it’s not discrimination, it’s the people that are applying, what are we supposed to do?’ I don’t know how they decide, but I believe these agencies aren’t doing what they should be doing, treating it as if it weren’t discriminatory.”

Rachael Micah-Jones, Executive Director of Centro de los Derechos del Migrante based out of Baltimore, also spoke of the discrimination in hiring practices for the US Guestworker Program. Centro de los Derechos del Migrante produced an investigatory report regarding Maryland’s crab industry in 2010 and the explicit gender discrimination practiced in recruitment. When I asked Micah-Jones how gender plays a role in H-2A and H-2B recruitment, she responded,

I think it plays a huge role and certainly what we’ve seen on the ground in communities in Mexico is that oftentimes workers are recruited, and during that recruitment process, there’s a number of forms of discrimination that take place. Sometimes this is explicit that only, you know, men are recruited for most of the agricultural jobs and women might be told that they can’t do that work or because they only have housing for men that they can’t recruit women. And then in terms of the H-2B program, what we’ve seen is very gendered recruitment. So, women for example being recruited for picking jobs in the crab industry

Notably, a few guestworker women took pride in being assumed to be the better sex within the processing side of food production. However, others quietly mentioned that despite having applied to the H-2A program because of better wages and working conditions, and having had worked in crop planting and harvesting in Mexico, they had been placed in the lowly regulated H-2B program instead. Supporting these narratives, Carol Brooke stated, “We have noticed women being pushed to work in H-2B jobs rather than H-2A jobs, even though H-2A jobs provide some benefits that H-2B jobs do not.

And then, even within the H-2B world, the jobs themselves that women are able to work in are restricted.”

One of those individuals who did try to directly challenge gender discrimination within the US Guestworker Program is Marcela Olvera-Morales. In 2008, she filed a class-action law suit on behalf of herself and other women who had originally applied to the H-2A program, but were siphoned into the H-2B program instead, as H-2A positions were reserved for men (Ramirez 2014). The suit was brought against an assortment of grower’s associations and recruitment agencies, including the International Labor Management Corporation (ILMC).²² ILMC is a considerably large guestworker recruitment and employment agency on the east coast, which according to its website, “places more seasonal workers under the H-2A and H-2B programs than any other company in the US, more than 15,000 annually” (ILMC 2016). According to the plaintiff’s legal brief submitted in *Olvera-Morales v. International Labor Management Corporation* (2008),

The defendant employment agencies and employers deliberately steered her [Olvera-Morales] and other women like her into lower paying jobs with fewer benefits. Though she and other unskilled women workers were qualified for higher paying positions with significantly greater benefits, defendants reserved those jobs almost exclusively for men. Thousands of women workers throughout the country have been affected by the defendants’ policies and practices of discriminating on the basis of sex...Ms. Olvera-Morales charges that these employers, who employed her as an H-2B worker, discriminated against her on the basis of sex by refusing to hire her for, assign her to, or employ her in an H-2A position because she is a woman.

²² In addition to charges being brought against the International Labor Management Corporation for gender discrimination, a 41-count indictment was also brought against the company in 2014 by the Department of Labor for falsifying H-2 applications to the federal government and then selling them to companies who had not qualified for the visas (Bensinger, Garrison, and Singer-Vine 2015).

Daniela Dwyer was one of the co-counsel who represented Olvera-Morales and the other women in the class action suit. According to Dwyer, there was at least one grower's association that was dictating to recruiters in the home country the kinds of workers they should hire. Dwyer, among the other co-counsel representing the plaintiffs, alleged the gender discrimination in hiring practices was in violation of Title VII of the Civil Rights Act of 1964. Title VII is the national law providing protections against discrimination on the basis of race, color, national origin, and sex. In speaking about the outcome of the case, Dwyer stated,

The 4th Circuit Court of Appeals determined that Title VII, which is the national law that provides protections against employment discrimination, they decided that there was no extra-territorial enforceability – meaning you have a right to non-discrimination within the boundaries of the United States, but if your employer or your employer's agent discriminates against you outside of the United States for a US job there was no enforcement. So...um...so there are some industries that are all female or all male and at least in the 4th Circuit that's lawful. And the all female or all male tends to be dictated by the employer's notion, prejudicial notion, of what men verses women should be doing.

As Dwyer commented above, the case brought by Olvera-Morales and similarly situated women, was ultimately deemed to not be within the protection jurisdiction of Title VII of the Civil Rights Act. As decided by the 4th Circuit Court, extra-territorial sex discrimination taking place outside of the US has no enforceability. Said more simply, employment agencies operating through the US Guestworker Program can practice explicit gender discrimination because recruitment takes place beyond US borders. Jessica Culley of CATA also directly addressed this case, stating "...for whatever reason the US government has determined that anti-discrimination laws do not apply to

recruitment done in other countries...so recruiters can target only men, and only young men...and it's not illegal in terms of the recruitment.”

In sum, a gendered division of labor underpins food production within the US Guestworker Program with men placed in H-2A job and women in H-2B jobs. This division of labor is often not by choice. From my interviews with guestworkers, community stakeholders, and federal and state government employees, it was revealed that despite many women applying for H-2A jobs in the food sector – where they would receive increased protections and better pay – the vast majority are siphoned into the lower-regulated H-2B visa category. Findings from interviews reveal that the resulting gendered division of labor is underpinned by perceptions of what is believed to be stereotypical “men’s work” verses “women’s work.” While not explicitly stated by interviewees, another possible phenomenon could be that by separating men and women, it may be easier for employers to control workers. The following section discusses how employers have separated workers of different nationalities in an effort prevent them from organizing by fostering ill will and resentment against one another. Separating workers by biological sex could be another example of segregation by social category as a means to control. Future research endeavors should examine this further.

Class action lawsuits brought against employers for explicit gender discrimination in hiring practices have been unsuccessful. The US judicial system has ruled that when it comes to hiring discrimination by international labor recruiters, there is no extra-territorial enforceability. Said more simply, when discrimination takes place outside of US borders, US discrimination law does not apply. Companies can openly

practice gender discrimination for the US Guestworker Program without any fear of retribution.

5.2.2 Racialized Recruitment

The process of guestworker recruitment “on paper” appears relatively straightforward and unbiased. At face value and in theory, any prospective guestworkers in one of the 84 countries where US Embassies and Consulates have access to H-2A and H-2B visas should be able to apply.²³ The application process is fairly detailed and involves coordination from a number of bureaucracies. First, in accordance with the US Department of Labor’s Office of Foreign Labor Certification, employers must obtain a Prevailing Wage Determination from the National Prevailing Wage Center, which designates the minimum hourly pay for specific H-2A and H-2B jobs (often dependent on geographic location). Having a Prevailing Wage Determination is aimed at ensuring migrant labor wages remain at market levels so as not to adversely affect the wages of US workers. Second, employers must conduct pre-filing recruitment, which ensures that the jobs the employer seeks to fill have first been advertised to domestic workers. The employer must file a job order with the State Workforce Agency that remains open for 10 days, which is typically filed about 60 days prior to the start day of the work. He or she must also publish two print advertisements (one has to be on a Sunday) with a description of the job and contact information. Third, the employer submits an application to the US Department of Labor for Temporary Employment Certification. If approved for requested foreign workers, the employer then takes their certification to US Citizenship and

²³ As noted by US Citizenship and Immigration Services, on January 16, 2016, there were 84 countries participating in the H-2A and H-2B categories of the US Guestworker Program. For more information, please visit <https://www.uscis.gov/news/uscis-announces-addition-16-countries-eligible-participate-h-2a-and-h-2b-visa-programs>.

Immigration Services (USCIS) and submits an I-129 Petition for Nonimmigrant Workers. Once the worker request goes to USCIS, they approve the I-129 and issue an I-797B. This form is then sent to the US Embassies and Consulates within the foreign countries where the H-2A and H-2B visas are being requested.

It is at this final stage in the process where employers in the US exert power and control over who is even able to submit an application for the US Guestworker Program. According to Art Read, General Counsel at Friends of Farmworkers in Philadelphia, US Embassies and Consulates require employers to designate particular recruiters who then “present workers against the visa.” Read stated,

The role of the recruiter and the employer is they get to decide who’s allowed to go to the consulate to...apply for the visa. So basically, they’re applying for the job... The recruiting process...doesn’t just happen on it’s own. The employer sets it up. It’s not like this is a free enterprise system where anybody down there can apply for the job. The employer has to designate to the consulate someone as their agent for presenting workers for an approved petition.

US Guestworker Program recruitment, then, is not an independently functioning process where any individual can go to a US Embassy or Consulate to apply. Rather, recruiters – acting at the bequest of US employers – function as gatekeepers. Recruiters wield a great deal of power, and one area in which this power is demonstrated is through the marketing of specific nationalities over others for the US Guestworker Program.

Table 11: Percent of Visas Issued to each Country (2009-2013)

Countries	H-2A Visas Issued	H-2B Visas Issued
Mexico	94%	71%
Guatemala	1%	5%
Jamaica	0%	9%
South Africa	2%	3%
Peru	1%	0%
Philippines	0%	2%
Nicaragua	<1%	0%

Source: (GAO 2015, 18)

As an example of recruiter influence over who can apply for guestworker visas, consider that 84 countries participate in the US Guestworker Program’s H-2A and H-2B categories. Yet, – as depicted in Table 11 above – Mexico is clearly favored. Between 2009 and 2013, an overwhelming 94 percent of H-2A visas and 71 percent of H-2B visas were issued to Mexican guestworkers. The disproportionately high number of guestworkers from Mexico has a great deal to do with an obvious proximity to the US as well as historic foreign labor agreements, such as the Bracero Program.

However, it is also related to how Mexican workers have been constructed as a distinct racialized category through Westernized discourses. This research subscribes to race as a social construction rather than biological determination. Racial categories are assigned through “human interaction rather than natural differentiation” (Lopez 2000, 168). In the early 1800s, Anglos within the US began categorizing and stratifying Hispanic populations, constructing nationalities as distinct races, stigmatizing some more than others (Lopez 2000, 168-169). Mexicans were viewed as a lower racial caste than Hispanics from Argentina or Brazil for example. The “Greaser Act” targeted Mexicans,

constructing them as an inferior race by the California Legislature in 1855 (Lopez 2000, 169). In 1954, “Operation Wetback” was put into effect by the US government to deport only undocumented Mexican workers rather than other Hispanic populations throughout the country (Garcia 1980).

Such racialization of Mexican workers is exhibited by recruiter advertisements to US agribusiness employers. As noted in Figure 9, below, Mexican workers are explicitly stated as “happy, agreeable people” with “a strong work ethic,” who “need to increase their earnings” since they are “under-employed.” Similar advertisements, which prey upon racialized tropes, can be found on recruiter websites such as Mexican-Workers.com, MasLabor.com, MexicanLabor.com, and LatinLabor.com. Thus, despite alleged neutrality for nationalities in all 84 countries having equal access to apply to H-2A and H-2B visas, Mexicans are preferred by recruiters and US employers.

Figure 9: Recruiter Advertisement for Employers (2015)

Mexican Workers, the obvious choice.

Many US employers are familiar with Mexican workers. We have a large population of US citizens and residents with Mexican heritage. They have been part of America since the beginning of our country.

It is reasonable to look to Mexico for willing workers when we cannot find sufficient eligible US workers willing to tackle some of our seasonal and temporary job openings. Since Mexico is next door, it is easy to travel back and forth.

When we at [USAMEX Ltd](#) explore Mexico, we find:

- People with a strong work ethic.
- Happy, agreeable people who we like a lot.
- Workers who need to increase their earnings.
- Skilled workers
- Motivated workers
- Under-employed workers

Source: USAMEX, Ltd, www.USAMEX.org, accessed November 2015

African Americans have been displaced by guestworkers in job sectors throughout the US. One example of which is crab picking in Maryland. Historically, African slaves fulfilled labor needs within the Maryland seafood industry (Gabaccia and Gabaccia 2009, 42). Following emancipation, black women processed crab and oyster meat, packaging it for retail (Feltault 2005, 2). David Seminara, a former consular officer serving in US Embassies overseas, interviewed Carol Swain, a Vanderbilt law professor specializing on the relationship between US immigration and race relations. In directly speaking to employers' preference today to hire Mexican workers, Swain stated, "African American workers can be perceived as being too demanding, employers like the idea of being able to import more docile workers" (Seminara 2010, 11). Hence, behind recruiters' statements about Mexican workers' eagerness and agreeableness lie not too subtle insinuations that they will not complain if faced with heavy workloads, long hours, and poor earnings.

In interviews with guestworkers, several spoke of being treated as an inferior racial class by employers. For example, Teresa, a 22-year-old guestworker from San Luis Potosí spoke about mistreatment in the H-2B program by her crew leader and employer, the *señor* and the *patron*, respectively. She stated, "The most important thing is that you feel you're of the same race...I don't feel equal...if I go and tell the *patron* that the *señor* treats someone poorly, he's not going to believe me, he's going to believe the *señor*." Teresa expresses that the employer – the *patron* – who is white, may not believe her because she feels that she is of an inferior race. Her expression also speaks to the

intersections of race and gender, as the *señor*, who also happens to be Mexican, is thought to be more likely believed by the employer than guestworkers.

Explicit racialization by employers not only makes guestworkers feel less than human and alienated from the surrounding society, but it is also a strategic tactic used by employers to prevent workers from organizing. For example, while most H-2A and H-2B workers are from Mexico, when Guatemalans are hired in the US Guestworker Program, according to Art Read, they “are typically paid less and exploited more than Mexican workers.” In speaking of racialized recruitment practices explicitly conducted to prevent them from forming solidarity, Read discussed previous legal cases where he represented exploited guestworkers. Read stated,

That particular employer plays workers off by ethnicity against each other, I mean by national origins. So Guatemalans against Mexicans, some employer’s place in Mexico against another employer’s place in Mexico... he plays off of inter-employee tensions to keep them from unifying. So you know, Mexican workers attacking Guatemalan workers physically in some cases...It’s actually not that unusual... I remember a mushroom organizing campaign in the ‘80s in which the employer played off an area in Mexico in which the workers were against each other. So the workers from one part of Mexico against another part of Mexico...he was deliberately playing on the tensions between them, in fact he deliberately recruited from different regions in Mexico, in order to have that tension within the work force to keep them from being unified. So those kinds of things...I mean it’s not at all unusual unfortunately...and in terms of patterns, and in fact, very deliberate.

Thus, because of racialized social systems, guestworkers from Mexico are often constructed and advertised as “happy, agreeable people” in desperate need of jobs, who will be less demanding than African Americans who previously held positions now designated to the H-2A and H-2B programs. Nationalities are categorized, relegating some below others, as is the case of Guatemalans being paid less and exploited more

often than Mexican guestworkers. Employers have capitalized off the social construction of racialized hierarchies, breeding discontent among workers, inhibiting them from organizing. Racialization also keeps some workers from filing a complaint, as they feel they will not be believed because they are of a different “race” from the employer. Without proper protections in place, this widespread racialization is able to prosper.

5.2.3 Formal and Informal Recruitment Fees

Information about recruiters – from which employers contract them to fees charged – is confidential. According to the Global Workers Justice Alliance (GWJA), while the Department of State has recruiter information on file, it does not reveal recruiter names to the public (2010). The US Department of Labor neither tracks nor makes public recruiter information (GWJA 2010). Minimal federal oversight breeds a lack of accountability over the recruiting process, but more so, a lack of transparency about what that process involves. Even basic information about the location of a recruiter’s brick and mortar office remains unclear. Chris Setz-Kelly, an attorney with the Nationalities Services Center, had the following to say regarding these phenomena:

[For] one or two cases that I’ve worked on directly, the recruitment agencies were organized...when I say organized, they were incorporated in the United States...I believe the entire staff were foreign nationals and the staff were recruiting from the country from which they were from...obviously these are people who have considerable influence in these countries. Because they’re based in the US, and they’re running these quasi businesses that are relatively successful and making a lot of money...so they really know where to go to get workers who are going to be susceptible to the recruiting efforts. I know one case in particular where a legal services organization in Florida tried to sue the recruiting agency. Because it was organized under Florida law and registered and incorporated in Florida, they couldn’t serve the lawsuit on any one associated with the recruiting agency because they were all back in Honduras. These are literally fly by night...so everybody clears out once there’s some kind of suggestion that the whole thing is kind of tumbling down...

As previously mentioned, employers and recruiters act as gatekeepers in the US Guestworker Program, controlling access to even those who are allowed to apply for an H-2A or H-2B visa. Knowing such visas are in high demand, recruiters operating at the behest of employers, historically charged exorbitantly high illegal recruitment fees without penalty (Rathod and Lockie 2010, 14). The Southern Poverty Law Center (SPLC), a non-profit advocacy organization, investigated the recruitment process and high fees charged to guestworkers. Fees were “sometimes thousands of dollars – to cover travel, visas and other costs, including profit for recruiters” (SPLC 2013, 9). Being that many guestworkers live in poverty (and for this very reason they seek seasonal employment in the US), many did not have cash in-hand to pay recruitment fees. Consequently, recruitment agencies offered high-interest loans for guestworkers to pay the fees involved (SPLC 2013, 9). The SPLC found in some cases recruiters required guestworkers to “leave collateral, such as the deed to their house or car,” to ensure workers fulfill the payment of their contract obligations (SPLC 2013, 9).

While illegal recruitment fees were standard practice for over 20 years, in 2012, the Department of Labor made such fees for the program illegal (SPLC 2013, 8). However, because there continues to be little transparency and accountability over the recruitment process, recruiters are still able to employ predatory practices (Singh 2015). Recruitment agencies are also able to dodge the US Department of Labor requirement by re-framing what they charge. Rather than recruitment “fees,” recruiters now frequently charge hundreds of dollars for “classes” for those interested in becoming guestworkers in the US. Figure 10, below, illustrates the second portion of the previous recruitment advertisement from the Jalisco, Mexico newspaper *Independencia*,

Figure 10: Recruiter Advertisement for US Guestworkers (2015)

Temas del Curso:

Este curso es para personas que tengan interés en solicitar una Visa H-2A. Revisaremos los siguientes temas:

- Requisitos y procesos para solicitar la visa y como contactar a las empresas.
- Como solicitar Certificación de no antecedentes penales de Mexico
- Solicitud de FBI de no antecedentes penales en USA.
- Como hacer un curriculum vitae para comprobar tu experiencia
- Expectativas y la vida de un trabajador agrícola.
- Tus derechos laborales en USA
- Requisito de hacer tus impuestos en USA y como solicitar el numero de seguro social.
- Leyes Criminales y de inmigración en USA
- Solicitar una licencia de manejar en USA
- Como hacer remesas y abrir una cuenta de banco en USA
- Finanzas: Como crear un presupuesto y ahorrar.
- Manejo de comida en el trabajo y salubridad
- Tu salud en el trabajo – protección en contra de los pesticidas y la deshidratación.

El costo de este curso es de \$450 dólares. El deposito es de solo \$150 dólares y el resto se da en pagos en 3 meses. Se puede hacer el pago en pesos.

Este curso esta limitado para solo 100 personas. Por favor de llamar para registrarse lo mas pronto posible. Para su registro puede contactar a la Lic. Liliana Miranda al 01 858 361-0664. Mándanos un inbox con tu numero de teléfono o un email a liliana@guiademinmigracion.com y nosotros te llamamos por teléfono para que no pagues una llamada de larga distancia.

OJO***Las empresas en USA cubren los costos del proceso de las visa.

OJO**Este es un curso para prepararte para solicitarlo una visa H2A. Nuestra empresa tiene contactos con varias empresas en USA que necesitan trabajadores y te ayudaremos a solicitar trabajo con ellos. **No te podemos garantizar trabajo ya que esto dependerá de tu experiencia y asegurar que el gobierno te de la visa.** Les estamos cobrando por la consultoria para preparar todos los requisitos para solicitarlo, ayudarte a preparar tu solicitud para sobresalir y prepararte para una vida en USA. El costo de este curso corre completamente por tu cuenta.

Estamos preparando a las personas para solicitar trabajo en Diciembre y Enero para trabajar en USA a partir de Marzo del 2016.

Source: Independencia, Jalisco, Mexico, October 31, 2015

The advertisement notes the recruiter is soliciting “students” for a \$450 course for applying for a US work visa. They offer the disclaimer that they do not guarantee placement in the US Guestworker Program, as it depends on one’s experience and the assurance from the government. Importantly, all of the course offerings – from learning about labor rights in the US, to protection from pesticide exposure – are offered for free by non-profit organizations in the US and Mexico. Such rights are also discussed at US Embassies and Consulates when guestworkers apply for their visa. Recruiters know this, but capitalize on prospective guestworkers’ lack of knowledge regarding such information.

The guestworkers I interviewed were all primarily contracted through informal recruiters, where recruitment fees also play a role. H-2B workers on Maryland’s Eastern Shore spoke of connections through cousins, friends of friends, and so on. Liliana, a 30-year old H-2B worker from San Luis Potosí, offered, “We tell [the recruiter] that we want to bring a family member or a friend and we give them the name and they get in touch with them.” Sergio, a 25-year old H-2A worker from Guanajuato discussed that the individual designated *encargado* of the group, or crew leader, plays a significant role in home community recruitment. Sergio stated,

We came because the people that helped to contract us have been working here many years. So, the *patrones* told them that they are hiring...and well...once you’re in you come again and again. Like...the people here are from the town where we live and they make note of the people back home for jobs and that’s why there’s a lot of people from Guanajuato. Where we’re from [in Mexico]...well...those people are in charge here. If you’re a worker, after years you can be in charge. In charge of the packing or harvesting...If you know people...you can bring people to the same place where we are right now.

While much of this resembles the typical form of networking one would expect within any job sector, interviewees spoke of informal recruiters abusing their power. Crew leaders are entrusted by employers to act as overseers of H-2A and H-2B laborers. They have typically worked for the same employer for many years, working their way up from a first time seasonal hire, to trusted confidant. According to Art Read, returnees “turn into their own role as recruiters and make money off the process.” Informal recruiters may charge as much as \$750 with limited explanation as to what the charges cover (Rathod and Lockie 2010, 15). In interviews with H-2A and H-2B guestworkers for this research, most guestworkers were charged about \$300 by informal recruiters for ambiguous fees.

Overall, recruiters operate “fly by night” businesses, with next to no transparency over their business practices. Illegal recruitment fees have been steadily cracked down upon by federal agencies, however in their wake, new forms and methods of implementing fees have arisen. Some recruiters charge for “workshops” on being hired by the US Guestworker Program, even though all of the information presented is given out for free at US Embassies and Consulates. Informal recruitment fees are also charged by returning guestworkers as well, ensuring that someone’s name can be given to the employer for the upcoming season for a price.

5.2.4 Exhausting and Dangerous Work

Work schedules vary depending on employer and visa category. For H-2A workers, the workday typically begins between 5:30am to 6:00am and normally ends between 5:00pm to 6:00pm. However, H-2A guestworkers and outreach workers commented to be that there are some days where they are still in the fields until 9:30pm

or 10:00pm. When this happens, workers are out in the sun in the sweltering heat stooping to pick vegetables and fruits for a full 16-hour day of hard labor. They reported constantly being thirsty in the fields, sun burnt, and always exhausted. Some camps do not allow for time-off on the weekends, especially during the busy harvest season. When asked to describe their jobs in one word, the most common responses given by H-2A workers were “stressful,” “intense,” “lonely,” “sad,” and “dirty.” They further elaborated with some of the following responses. Eduardo a 20-year old H-2A guestworker from Guanajuato stated, “the *patrones* always want to get the most work out of you, always asking you to work more... always... always... there’s never a limit.” In echoing these sentiments, Diego, a 21-year old H-2A worker from the State of Mexico stated,

In the camps...it’s very hard...it’s hard and tiring... because... look... you get home from working a very long day...very late, you have to cook, prepare dinner, finally, you have to take a shower. I find little moments every now and then when I can speak to my family. So, in addition to the actual job, it’s an extra job to try to get everything else done here.

H-2B workers in seafood processing begin their workday slightly earlier than H-2A counterparts, typically around 4:00am. In order to keep crabmeat fresh, the processing facility is kept near freezing. Workers wear hooded sweatshirts to stay warm. They gather seated on stools around stainless steel tables, hunched over in order to pick crab for the next 12 to 15 hours. Bathroom breaks are limited. H-2B workers used some of the same words as H-2A workers to describe their positions, such as “stressful.” Angelica, a 36-year old H-2B worker from Michoacán, went on to say, “There isn’t rest...there just isn’t.”

In describing their jobs, several H-2B workers used a word that took me aback, as it had not been expressed during my prior interviews with H-2A workers – “dangerous.”

H-2B workers went on to state that lesions from cutting crabmeat with knives and getting pricked by crab claws are frequent, and consequently, so are infections. Mariana a 20-year from San Luis Potosí, Andrea a 33-year old from Michoacán, and Veronica a 28-year-old from Hidalgo shared the following dialogue related to their H-2B positions,

- Mariana: We cut ourselves, we prick ourselves, and later our hands hurt.
- Andrea: Yes because when we go to Mexico, it takes 3 to 4 months for our hands to heal, and then we have to come back again in May.
- Veronica: And when I feel tired and my hand feels strange, if I've been pricked or cut, in that moment I don't really feel anything, but later I feel like my hands are infected.
- Mariana: You have pain for 3 weeks when that happens.
- Veronica: Also when there's some kind of allergy you turn red here [gestures to hand], when you get cut.
- Interviewer: Do you use gloves?
- Mariana: No.
- Andrea: No. Only an apron and a knife.
- Mariana: It's going to give us rheumatism pretty quickly.

H-2B workers do not use gloves when they pick crab as they believe it limits their dexterity, slowing them down. They use sharp knives, which are about six inches long. The H-2B workers reported that their hands are so cut and inflamed throughout the season, that by the time they finally finish healing during their four-months off, they must return to work only to be cut again. Women discussed how the stress of working quickly led to more cuts on their hands, especially for those new to the job. Cuts – both fresh and old – were apparent on the hands of all workers, even the more experienced workers who

had been doing these jobs for over five or six years. According to Rachel Micah-Jones, Executive Director of Centro de los Derechos del Migrante, since some workers are paid by the pound of crabmeat rather than by the hour, “there’s real pressure to work very quickly so that they can make minimum wage because if they’re not picking quickly, they might get fired.”

For seafood processors within the H-2B program, chronic infection is a major health concern. Amy Liebman, Director of Environmental and Occupational Health for the Migrant Clinicians Network in Maryland, provides outreach to H-2A and H-2B workers in farming and crab picking, among other industries. The Migrant Clinicians Network helps migrants to have better access to healthcare through outreach at their worksites and living arrangements. Liebman specializes in occupational hazards. She commented, it is “very easy” to catch bacterial infections from handling seafood, such as crabs, with open hand wounds. One such infection is *Vibrio vulnificus*, which can cause diarrhea, vomiting, and *Necrotizing fasciitis* – more commonly known as “skin-eating bacteria” (Oliver 2005). If the infection enters the bloodstream or if the patient already has a compromised immune system, infection from *Vibrio vulnificus* carries a mortality rate of 50 percent within 48 hours (Rathod and Lockie 2010, 27).

In addition to the constant threat of infection, Liebman reported that she has treated many women employed in H-2B crab picking for other occupational hazards. She commented that since many H-2B workers are paid by the pound, and not by the hour, “...there’s a lot of pressure to get as much meat out of the crab as possible, and so many women don’t take bathroom breaks... they’re working as hard as they can... we see a lot of problems.” According to Liberman, the result of this is chronic damage to the

muscular skeletal system from standing or sitting on a stool all day. An additional hazard facing H-2B workers is widespread urinary tract infections. Left untreated, an infection can spread to the kidneys and cause permanent kidney damage, and even blood poisoning.

Overall, all guestworkers interviewed discussed how they must endure exhausting and stressful work. However, those within the H-2B program also described their work as “dangerous” and reported feeling that their health and safety were an issue. Cuts from working with seafood can leave workers exposed to infection, and in the worst cases fatal bacteria. Additional occupational hazards include muscular-skeletal issues and urinary tract infections. Importantly, it must be noted that just because H-2A workers did not describe their jobs as dangerous that such possibilities can be dismissed. It is very likely that male guestworkers’ concept of *machismo* did not allow them to communicate their vulnerabilities regarding safety and health to me. Yet, since it was not discussed by male guestworkers in the H-2A program, I am unable to include such narratives within this research.

5.2.5 Contract Fraud

According to federal regulations, upon completion of 50 percent of the contract period, employers are required to compensate H-2A and H-2B guestworkers for their bus tickets and expenses accrued for food and lodging en route to the US. For H-2A workers, they unanimously spoke of this upfront cost being remunerated, even before they reached the 50 percent threshold. Conversely, H-2B workers told a different story. In a conversation with Dora, a 30-year-old crab picker from San Luis Potosí, in her fifth year of the program, she spoke of her employer not only failing to fully compensate her co-

workers for the cost of the journey, but also threatening them if they continued to ask about the money they were owed. Dora's travel, along with several of her co-workers, took five days by bus, leading to approximately \$750 per person in expenses. Dora spoke of this in the following interview excerpt

Interviewer: Did your employer reimburse you for your travel expenses?

Dora: Yes, they paid, but just a part. According to them, they said they paid everything, but really they paid just part of it...part of the transport. According to them they paid the entire amount, but the truth is they didn't even pay half of the cost. No one is going to say anything about this because they're afraid. The *señores* [the male crew leaders] are people who are much higher up than us...there's a person higher up that sends someone, and then they threaten us so no one asks about the money...it's like that.

Interviewer: He threatens you if you complain so that you're not able to receive the full money?

Dora: Yeah...it's like that.

Interviewer: From the expenses?

Dora: Exactly.

Interviewer: They say you're not going to come next year if you complain?

Dora: Next year, you won't come...

Interviewer: They won't renew the contract?

Dora: Yes...exactly.

While H-2B guestworkers expressed contract fraud being exercised in employers failing to pay the full sum of their incoming travel expenses at the start of the season, it can also affect workers returning home at the end of the season. According to law, once guestworkers complete the remaining 50 percent of their contract, their employer must pay for their bus ride back to their country of origin. In order to skirt this rule, employers

throughout the Mid-Atlantic region set an arbitrarily late contract end date. By making the contract end date weeks after the season's conclusion, guestworkers are left without sufficient work, which creates a disincentive for them to stay for the remainder of the contract. Workers often hire a bus themselves – at a cost of several hundred dollars – using the money they have earned. As told by Jessica Culley of CATA,

You're supposed to have your transportation from Mexico to the US paid upfront or reimbursed very soon after you arrive and then as long as you complete some percentage of the contract...then they're supposed to pay for your transportation home. But...I know at least one case where...every year the farmer puts the end of the contract for the end of September...But by the beginning of September...the work is really drying up, they only have a couple of hours a day if that. The workers tend to get really anxious and just ready to go...They're like 'let's just go' and...they'll hire a bus to take themselves back to Mexico and because they didn't finish out the season, they don't get that paid for. They pay it out of their own wages...If it happens every year why is the farmer putting the end of the contract, the date that he does, instead of making it sooner? ... The system is set up in such a way that it sort of incentivizes certain kinds of lying in order to save a little money here and there and so that's one of the things I think a lot of farms do. Like I was looking at a contract the other day...and their contract ends on November 30th, and I was like November 30th? What is any farmer going to be doing at the end of November?

In addition to not reimbursing travel expenses, another area of frequent contract fraud is wage theft. H-2A workers on all the farms I visited reported making \$11.29 per hour. Yet, when I asked workers if they are always paid by the hour or if they are sometimes paid by the day, I received different responses. In speaking to this, Jessica Culley reported how some companies fabricate the number of hours worked in order to pay workers less than what is stated in the contract. Culley remarked the following in regards to H-2A worker wage theft,

Some places are paying very responsibly what they're supposed to be paying, which I think is \$11.29 per hour...Other places report fewer hours so they can say someone is working 40 hours a week at \$11.29

when really they're working 60 hours a week at \$9 an hour...There is no time clock, nobody is swiping in and swiping out and it's all a handwritten record.

H-2A workers stated they earned between \$80 and \$100 per day – regardless if they worked 50 hours that week or 100 hours. Several H-2A workers seemed to be aware, or at least suspicious, of wage theft occurring at their job site, even though no H-2A workers directly commented on it. Several H-2A workers spoke of working longer hours than they had anticipated and not earning enough money to make it worthwhile. For example, Carlos a 22-year old H-2A worker from Veracruz in his second year in the program, stated, “I started out thinking let’s see what happens. But, being here has made me think that here the work isn’t worth it. You think you’re going to earn something better than in Mexico, but this didn’t happen like I thought it would.” Roberto, a 34-year old from Guanajuato in his first year with the H-2A program similarly responded, “When I arrived I thought we’d make more money and have work like at other jobs [in Mexico], but it was really difficult. In Mexico, there are the same types of jobs, but it’s calmer there. Here, it’s more difficult...with the weather it’s hotter here too. There’s always more and more work that we need to do.”

H-2B workers more explicitly commented on discrepancies regarding what they were actually paid from what was stated in their contract. When I asked Lorena, a 20-year-old from the state of Hidalgo, and Cecilia, a 30-year-old from the state of Michoacán about their contracts, they discussed how they are supposed to be paid overtime for the additional two to four hours they work every day week on top of their eight-hour work-day, plus the additional eight hours of overtime from their Saturday shifts (and sometimes Sundays). According to the contract their employer provided them,

depicted in Figure 11 below, for regular working hours they should be paid \$7.52 per hour of regular time (noted as *pago por hora*) and \$11.28 per hour of overtime (noted as *tiempo extra*). Lorena and Cecilia stated that for the 18+ hours of overtime they work per week, they are still paid insufficiently at the \$7.52 regular rate rather than the overtime rate of \$11.28.

Figure 11: Excerpt of H-2B Work Contract

Condiciones de trabajo

Padre/Arro de Empleo
 No. [REDACTED]
 Dni. [REDACTED] NT RD [REDACTED] 1634
 # de Tel. [REDACTED]

2. Tiempo de empleo: 4-01-2014 - 11-30-2014

Descripción de las tareas y salarios: Limpiar y remover las masas de la jaba. Limpiando las masas, el gusapacho, los "dead mass finger" los intestinos y los fies. Remover la masa y poner en un bote. Limpieza general de la planta. Preparar y empacar la masa para consumo. Cargar y descargar camiones y barcos. Después de 21 días de empleo hay que hacer mínimo de 3.5lbs al hora o una despodida del trabajo.

Pago por hora: \$7.52 Tiempo extra: \$11.28 (o \$2.80 por libra)

Todos los impuestos aplicables de EEUU serán deducidos como requiere la ley. Tiempo extra es posible pero no es garantizado

Horas: 35-40 horas por semana


Dia Tipico: 5am - 1:30pm

Almuerzo:

Dia de pago: Viernes

When Lorena and Cecilia showed me the contract, I noticed that it was out of date. As noted in Figure 11, above, the *tiempo de empleo*, or date of employment is listed as April 1, 2014 to November 30, 2014. When I asked the H-2B workers if the employer had said anything about this contract being out of date, they responded that no, they had not noticed and did not think anything was out of the ordinary, as they believed their pay-rates had stayed the same as the previous year. However, I continued to be suspicious, and decided to investigate further. All employer applications for H-2A and H-2B workers are posted on the US Department of Labor's website. I discovered that in 2015 there had been a wage hike for H-2B workers in the region and all employers were legally obligated to pay. In reviewing Figure 12, below, this particular employer was legally responsible for actually paying \$10.76 per hour of regular time and \$16.14 per hour of overtime. Hence, while Lorena and Cecilia believed they were being defrauded of approximately \$70 per week by their employer, in actuality this number is closer to nearly \$160 per week of overtime. When this figure is combined with the additional \$130 per week they should be earning for a regular 40-hour workweek, the employer is legally responsible for paying them each an additional \$290 per week (or \$1,160 per month). This is a significant amount of money for anyone, regardless of citizenship status.

Figure 12: Excerpt of H-2B Application



OMB Approval: 1205-0509
Expiration Date: 03/31/2016

H-2B Application for Temporary Employment Certification
ETA Form 9142B
U.S. Department of Labor

G. Rate of Pay

<p>1. Basic Rate of Pay Offered *</p> <p>From: \$ 10 . 76 To (Optional): \$ 0 . 0</p>	<p>1a. Overtime Rate of Pay (if applicable) \$</p> <p>From: \$ 16 . 14 To (Optional): \$ 0 . 0</p>
<p>2. Per: (Choose only one) * <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Piece Rate</p>	
<p>2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$</p> <p>N/A</p>	
<p>3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue</u> and <u>complete</u> description. \$</p> <p>SEE ADDENDUM</p>	

On December 5, 2014, the United States Court of Appeals for the Third Circuit issued a decision in *Comite de Apoyo a los Trabajadores*

In order to commit this wage theft, one contract is submitted to the US Department of Labor stating the employer will pay the regular and overtime wages stipulated by the federal and state government. Once approved, the employer will present a different contract to the workers themselves. According to Art Read at Friends of Farmworkers, this type of contract fraud is particularly prevalent within the seafood industry's H-2B program. He stated workers often believe they are getting a fair rate because they never see the original H-2B application submitted by their employer to the US Department of Labor. Consequently, they are paid what is stated on *their* contract (a fraudulent contract). Hence, when it comes to being cheated by contract fraud, the first problem, according to Read, "Is whether workers even know it."

In sum, employers within the US Guestworker Program are able to commit contract fraud in a number of ways. First, as in the case of the H-2B workers interviewed, employers may not reimburse them for the cost of travel and related expenses during their journey to the US. Second, in the case of both H-2A and H-2B workers, employers may artificially extend the contract end date beyond the work season. This leaves workers with few actual working hours in the final weeks, giving them the incentive to go home. Should they leave before the contract is complete, the employer is not financially responsible for paying the return travel and lodging expenses. Third, employers may overwork guestworkers, but pay them the same rate they would for a regular 40-hour workweek. Since the guestworkers I spoke with did not have official "clock in" and "clock out" software or timestamp capabilities, tracking the hours worked was at the discretion of the employer. Lastly, from the H-2B guestworkers I spoke with, submitting one contract to the US Department of Labor and providing the worker with another, is a

means through which employers are able to pay much lower rates than what is legally obligated by the federal and local governments.

5.2.6 Retaliation Through Gatekeeping

While the guestworkers I spoke with had much to complain about regarding their working and living conditions, most were afraid to lobby complaints because of retaliation. Retaliation occurs in a number of ways primarily related to gatekeeping. Nathaniel Norton, who has represented guestworkers in the region who have filed suit against former employers, stated once a guestworker complains about labor conditions, effects include, “getting your work hours decreased from that point on...getting worse jobs...getting additional scrutiny so they’ll find any reason to fire you.” Once a guestworker complains, crew leaders or employers may simply not invite that individual to apply for a work visa for the following year. According to Art Read, “the employer, typically, will designate a group of returning workers, who he tells the recruiter, ‘I want these workers back’.” Read and Norton spoke of guestworkers who had complained of not being placed on the invitation list, without warning, and simply not being invited back to participate in the program. Others are sent home on the spot. Norton indicated that in terms of employer-led retaliation, “the big one tends to be... ‘well ok you’re complaining, we’ll send you home’.”

Several H-2B workers spoke of this retaliation. According to Andrea, a 33-year old H-2B worker from Michoacán and Guadalupe, a 36-year old from San Luis Potosí, they have a male crew leader who frequently asks them and other women to perform work not stated in their contract. Should they complain, they are threatened with not being invited back the following year. The threat of losing employment was enough for

most women to stop complaining about the exploitative conditions. According to Andrea and Guadalupe,

Andrea: They don't respect the contract...and this man [the crew leader], he makes us do work that isn't in the contract...And if someone complains, well, it's the same thing then. They're not going to ask you to come back for another year, so nobody is going to say anything.

Guadalupe: Like right now, he's already threatened four people...four people are sure they are not coming back next year.

Interviewer: Where does he live?

Andrea: Well, there [gestures out window to another nearby trailer]. They give him the trailer there in front where he can watch everyone.

Andrea and Guadalupe discuss how their crew leader has already threatened four members of their unit with expulsion from the program. They also speak of him living about 50 yards from their housing “where he can watch everyone.” With actions constantly being policed, it is difficult for guestworkers to even speak among themselves about what is occurring on and off the job site as far as rights violations are concerned. Guestworkers were very careful about speaking with me regarding their circumstances, as they did not want the information to get back to their employer. With the livelihoods of their families dependent on their guestworker remittances, they were very fearful of jeopardizing the income.

Retaliation through gatekeeping not only affects individual guestworkers, but their home communities as well. Rachel Micah-Jones, Executive Director of the *Centro de Los Derechos del Migrante, Inc.*, called this phenomenon “a huge concern.” Micah-Jones stated that when her organization does investigative reporting on H-2A and H-2B

visa abuses, they interview guestworkers from multiple communities in order to anonymize participants in their public reports so that “no one individual community could be targeted” if word gets back to the employer. When employers see that a particular sending community has lobbied charges of labor rights abuses, according to Carol Brooke, “a recruiter will just stop coming to a particular area because these workers are ‘problems’.”

Sending communities are also where most guestworker family members reside.

Carol Brooke spoke of gatekeeping as a form of retaliation against family members:

You know another thing that people fear is retaliation against their family members back home if they make complaints while they’re here [in the US]. And sometimes there’s money that can be held over people’s heads, they’ve taken out loans from a loan shark. If they make trouble here that loan may become due and they might lose their family land...there’s all sorts of ways that sending communities can suffer because of things that happen.

Hence, not only do guestworkers fear the retaliation of being sent home – and being unable to send remittances to dependents – they also fear what effect reporting abuse would have on their communities. From interviews during this research, it was evident that whole sending communities can be blacklisted from the upcoming season’s guestworker recruitment efforts. Consequently, retaliation by employers – and the crew leaders and recruiters they hire – represents a significantly oppressive tool to keep guestworkers compliant.

5.2.7 Sexual Harassment and Assault

Abuse within the US Guestworker Program is not confined to enduring exhausting and dangerous jobs, wage theft, or retaliation through dismissal. According to Amy Liebman of the Migrant Clinician’s Network, “sexual harassment, which is an

occupational hazard that women deal with, is definitely an issue.” She continued, “You have to think about the gendered hierarchy of that work structure.” Gendered hierarchies within employment environments are notorious for sexual harassment and assault. Such predatory behaviors are not based on sexual desire, but rather one of power, whereby “sexual harassers derogate others based on sex to protect or enhance their sex-based social status, and are motivated and able to do so by a social context that pervasively and fundamentally stratifies social status by sex” (Berdahl 2007, 641). Community stakeholders spoke of sexual violence – both generally as well as within the US Guestworker Program – being more about power and control than sexual attraction. For example, Daniela Dwyer commented, “sexual harassment is very prevalent especially because people are so isolated.” Carol Brooke further elaborated on this theme in the statement below,

We represented a woman who was harassed by the employer. And it sounded like it was not an isolated incident, that there had been other people who had been harassed as well, but who were not coming forward. And I think, you know, the program lends itself to that kind of abuse because people come here, they can only work for one employer, they’re isolated, they don’t have connections to the community, and they need the jobs, and they don’t have their own transportation. I mean, there’s (*sic*) just so many barriers to getting any kind of help. And, they’re living and working for somebody so that person has access to them 24/7, basically. So I just think there’s a lot of structural issues that contribute to the opportunities for harassment.

As Brooke notes, H-2B workers are isolated geographically, often in very rural areas without access to public transportation or being able to walk to nearby communities. They are financially dependent upon their employer. They do not have the ability to “vote with their feet” by being able to apply for employment elsewhere. Guestworkers are legally bound to work for only the employer designated on their

contract; they are not able to apply at another site. Lack of English language ability also contributes to employer power and control, as workers are less likely to be able to reach out to non-Spanish speakers for assistance.

Because of vulnerabilities discussed above, community stakeholders reported that within the H-2B program, sexual harassment and assault is widespread. Micah-Jones, Executive Director of Centro de los Derechos del Migrante, stated that throughout her organization's advocacy work with H-2B seafood processors in the greater Baltimore area, "stories of sexual violence and sexual harassment did come up and have come up." One graphic account came from Dwyer, who represented a female worker who was sexually harassed and assaulted by her crew leader. Dwyer stated,

We have a lot of migrants who have complaints about sexual harassment. And we've represented migrant worker women who are recruited by a crew leader...and the crew leader harassed her...tried to isolate her and then was providing housing that was under his control...He assigned her to a unit right next to his. And that was so he could isolate her there... And then he would, like, knock on the walls at night to get her attention or to keep her up. When she wouldn't agree to give him sexual favors he cut off the water in her unit and wouldn't agree to restore the water until she gave him sexual favors.

Only one out of fourteen interviewed H-2B workers verbally expressed that she had experienced sexual harassment on the job. She was a first year worker who told me she did not want to discuss it, while at the same time folding her arms, and putting her head face down on the table. She was visibly disturbed by the incident. The other thirteen women quietly told me they had not experienced sexual harassment, but avoided eye contact while stating this. This type of body language gave the impression they were not being forthcoming with their responses. This was expected, for even if women had experienced it, they likely wanted to keep their positions within the H-2B program for

fear of retaliation if submitting a complaint. Should word get out that they were accusing management of sexual harassment and assault accusations, their employers may blacklist them from the US Guestworker Program in the future.

Because of high rates of sexual assault, H-2B employers are suspected of forcing female workers to take birth control. Dwyer has been told the following by clients who worked in Maryland's Eastern Shore crab picking,

So long as you were working in crab picking, you were required to be on the pill because the employer didn't want to have to deal with people being pregnant and having to return home. And again I found that especially disturbing not just because it's an issue of power and control over your own body, but also because these women are so isolated I don't know who they think they would be vulnerable to pregnancy from beyond the employer that they interact with everyday.

Despite sexual harassment being relatively common within industries like crab picking, complaints are rarely submitted to the company or the US Department of Labor. I asked Leila Borrero Krouse, an immigration specialist and outreach worker employed with CATA's offices in Maryland, about her knowledge of sexual harassment within the seafood industry. According to Borrero-Krouse, "They [the women] don't want to rock the boat, they just want to work, and work, work, and they don't want to complain. They will swallow everything that comes their way just so they can earn their money...to support their families."

Overall, H-2A and H-2B guestworkers throughout the Mid-Atlantic Region often endure precarious working conditions. Sexual harassment and assault is not just a "women's issue," men can be affected as well. However, women are at a higher risk for sexual harassment and assault than men, given they are gendered as a devalued labor source, making attempts at power and control over them more likely. My interviews were

limited to women in the H-2B visa category. Given the very low proportion of women in the H-2A program, attempts at interviews were unsuccessful. Since women in the H-2A program experience similar conditions that may facilitate sexual harassment as those of H-2B, future research should explore this correlation in depth.

5.3 Reflections on the Future

Well we need a lot more legal protections especially for H-2B workers. There are particular regulations that apply to the H-2A program that have never been developed for the H-2B program and for a long time the US Department of Labor took the position that because there weren't these regulations that they didn't have much authority to enforce many H-2B rights (Daniela Dwyer, Managing Attorney, Farmworker Program, 2015).

Throughout the course of interviews in developing this research, participants offered their reflections on the current state of the US Guestworker Program, underlying constraints, as well as possible interventions for improving labor rights and protections. The most nuanced responses came from the community stakeholders and government employees most familiar with the program's legislative policy and corresponding regulations. The guestworkers I spoke with were reticent to offer recommendations. When I inquired what changes they would make to the program – even after discussing threats or acts of violence witnessed, wage theft, or contract fraud – most became visibly embarrassed, responding with “I don't know.” It is the assumption of this researcher, based on the surrounding context, that either A) they felt unqualified to offer recommendations, or B) by providing a recommendation they feared it would be seen as an affront to the program entirely, and they did not wish to be blacklisted should the information get back to their employer. The following information reveals hurdles that

mitigate improvements to the program, as well as recommendations offered by interviewees (community stakeholders and government employees). While action at the Congressional level has stalled, I would be remiss in this research if I did not share these final perspectives of those most intimately acquainted with the US Guestworker Program.

In asking why labor exploitation continues within the US Guestworker Program on a general level, the answer typically provided by community stakeholders and government employees is that the program's rules have been structured in such a way as to allow the current outcome. Employer associations, and their respective lobbying firms, are powerful actors in the policy-making process. From the program's inception to today, such organizations have a high profile role in swaying legislation toward their interests. According to Nelson Carrasquillo, organizations like the American Farm Bureau Federation have "have access to whatever and whoever they want in terms of sending their message." The American Farm Bureau Federation is a national organization represented by 22 registered federal lobbyists, spending \$2 million per year to push Big Ag issues on Capitol Hill (Shearn 2012). In addition to the money spent on swaying legislation toward the side of the agricultural employers, Carrasquillo went on to discuss even the organization's constant physical presence in front of politicians is something that must be considered. Carrasquillo commented that in New Jersey, the Farm Bureau is directly across the street from the State Legislature. He stated, "All you have to do is cross the street and you're right in, right there. So that capacity of being present, of being able to have a presence all the time, seven days a week, enables them to have an open door."

Rachel Micah-Jones similarly commented on this open door, stating agribusiness has a near constant presence on Capitol Hill. In recalling her own experiences with agribusiness influence on US Guestworker Program policy (especially within the H-2B visa category), she stated,

With respect to the H-2B program I'll certainly say that anytime we've done any briefings about the program on the Hill or any time we visited offices we've always been told that various employer associations have certainly been there and expressed concerns. And we understand them to be quite powerful actors in the policy process. In fact, a number of the protections for workers weren't initially implemented because of appropriations and appropriation riders, which would not have happened, I'm guessing, without the power of the industries weighing in with folks on the Hill. I would say that they hold tremendous political power in a way that H-2B workers don't, since they don't have the same economic resources to contribute to campaigns. They haven't necessarily received the same kind of response from politicians as these associations. One thing that we've been trying to do is bring their voices and experiences to the debate so that their perspectives are heard.

Many community stakeholders and government employees observed that agribusiness influence on guestworker legislation had yielded a significant detriment to H-2B workers' rights and protections. As a first step for recommended improvement was to H-2B rights and regulations on par (at least on paper) with that of the H-2A visa category. As mentioned in the previous chapter, the Department of Labor's 2012 Final Rule improved H-2B working conditions somewhat. The Final Rule obligated employers to disclose the work contract to guestworkers upon visa application (with the contract written in a language understood by the worker). It also mandated that the contract and related workers' rights be posted in public locations at the worksite. In updating these basic provisions, it aligned work contract disclosure provisions with that of existing H-2A provisions. Similarly, the Department of Labor's 2012 Final Rule also required the employer to reimburse H-2B workers for their transportation and lodging to and from the

US, which had also be part of the existing H-2A program. From 1986 to 2012, all H-2B workers had previously been made to pay for their own round trip international transportation to the job site – equaling several hundred dollars of out of pocket expenses.

While some areas within the H-2B program improved courtesy of the 2012 Final File, a number of vital labor rights have lagged behind the H-2A visa category since the inception of both programs in 1986. As previously mentioned, housing is a significant issue for H-2B workers. Despite the H-2A program mandating that the employer pay for housing, under the H-2B program, the worker is required to pay for the accommodations the employer provides. There are no caps on what H-2B employers may charge for rent; it is entirely at their discretion. H-2B job sites, and corresponding housing units, are often in rural locations with little direct housing competition. Despite this, H-2B workers typically pay hundreds of dollars per month for a shared room (sometimes accommodating up to four people per room). In one H-2B housing unit I visited in the rural Eastern Shore of Maryland, there were 16 women living in a small trailer, each paying \$160 per month to their employer. The cumulative rent for this sub-par facility was generating \$2,560 in employer revenue per month – a rent similar to what would be expected in Manhattan if comparing rental cost to square footage. Interviewees suggested that to improve the H-2B program, housing accommodation should be billed into the program at the employer's expense, as this is what is customary in the H-2A program.

Interviewees also suggested that meals be covered, which is mandated in the H-2A program. H-2A workers are guaranteed three meals per day at the employer's expense. In the H-2A housing units I visited, workers told me that weekly trips to the

supermarket were covered by the employer if food was not distributed on site. H-2A workers also had access to their own vehicle to make such trips. In this respect, H-2A workers had autonomy over when and how they would go to the supermarket to purchase food. For example, when I was visiting one of the H-2A camps, about five workers were returning from the supermarket. They unloaded the groceries in the kitchen while one of the workers – designated as chef for the night – began preparing a meal for everyone. When prompted, the H-2A workers told me they mutually decide food choice for the week, and take turns doing the shopping and meal preparation. Conversely, with the H-2B program, workers are not given free meals on-site, nor are they given a weekly allowance to purchase food. The costs incurred come directly out of pocket. Adding further disempowerment, H-2B workers are also not given a vehicle in order to drive to the supermarket to purchase food. Rather, as noted earlier, H-2B workers I spoke with referenced being driven around by a male supervisor on Sunday mornings to visit Walmart only. They had no autonomy over deciding when they would go food shopping, nor did they have a say in where (assuming Walmart was not their ideal food purchasing location).

A third area for H-2B improvement brought up by interviewees was the rate of pay. As noted in the previous chapter, H-2A workers receive the highest of five wages: Adverse effect wage rate, prevailing wage, agreed-upon collective bargaining wage, or federal or state minimum wage. In the H-2B program however, the 2015 regulations stipulated that H-2B workers are paid a prevailing wage based on a private wage survey conducted at the discretion of the employer. Methodology for conducting this survey is secret and employers often use the survey's results as evidence to pay workers as little as

possible. Accordingly, in order to improve the working conditions for H-2B employees, interviewees suggested wage policy to be at least on par with H-2A counterparts. While this would not necessarily eliminate the threat of wage theft by employers, it would at least guarantee (on paper) higher wages for H-2B employees.

A final area for needed H-2B improvement recommended by interviewees is to allow H-2B workers access to free legal aid through the Legal Services Corporation (LSC). As discussed in the previous chapter, only H-2A workers have access to free legal aid in which to hire a lawyer to prosecute exploitative employers or recoup lost wages. The LSC is a non-profit established by the US Congress to provide free legal assistance to those who cannot afford it. The LSC is the largest legal funder of civil legal aid in the nation, granting \$375 million toward legal representation in 2015 (LSC 2016b). The LSC had been established to only provide free legal aid to US citizens, however, in 1996 Congress voted to allow free legal services to be provided to H-2A agricultural workers and only H-2B workers who work in forestry jobs (LSC 2016a). H-2B workers in all other industries, including food production, are not entitled to free legal services. This means that in order for an H-2B worker to hire a lawyer, payment must come out of pocket. When a worker has been exploited financially, having basic resources to hire a lawyer becomes out of reach. In speaking to this issue, Daniela Dwyer stated,

I'm not saying that H-2A workers don't have serious plight, they do, but that plight is not necessarily any worse than the plight of a lot of H-2B workers. And we can't represent them because Congress doesn't allow it. So you know, a blanket allowance of allowing legal aid organizations to represent any person who came in lawfully on a visa would help a lot. But that would also have to be accompanied by increased funding.

An immediate area of improvement needed for both H-2A and H-2B visa categories is mitigating the conditions that allow employer threats and retaliation to

thrive. According to community stakeholders such as Nathaniel Norton, the root cause of this employers having a “captive” worker population. Norton stated, “agribusiness has just decided these are the terms, these are the wages and working conditions that we’re willing to provide, and they get a captive workforce that is captive to one job and one employer, with a sort of built in system of retaliation and threats.” Norton’s comments get to the heart of the rules being structured in such a way as to make guestworkers reluctant to report abuse while they are still under contract. As discussed in interviews above, guestworkers who complain about working conditions are often sent home or threatened with physical violence.

Interviewees recommended that a solution to mitigating employer threats and retaliation is changing regulations to allow for visa portability within the H-2A and H-2B categories. Current regulations within the US Guestworker Program do not allow visas to be transferred between employers. When guestworkers are issued an H-2A or H-2B visa via the US Department of State, the visa is valid only under the condition that the guestworker remains with the employer stated on the visa application. Should the guestworker experience abuse on the job, they have no other options as far as legal employment is concerned. However, if given a portable visa, should instances of exploitation arise with one employer, the guestworker could apply for a position with a new employer during the same season. Chis Setz-Kelly spoke to the issue of visa portability in being able to provide exploited guestworkers with additional livelihood opportunities, and more robust immigration status in the US. According to Setz-Kelley,

I think the fact that there’s no portability with guestworker visas is a huge problem. Because people come here on these visas and then they’re treated horribly and ...there’s no easy way for them to just transfer their status to another employer. A lot of our workers have some fear of

returning to their home country because there's bad blood between them and the employer. Usually the employer, or the recruiter that they work with, has considerable power in the region where the worker is from. So if they're able to stay here in the US, oftentimes it's without status and they're living in the shadows, you know they're not going to school or getting healthcare, they're probably working another crummy job, where they're being exploited in a similar fashion a lot of times. So yeah, visa portability.

Interviewees recommended more comprehensive oversight – particularly monitoring and enforcement – of the US Guestworker Program by federal and state agencies. With regards to monitoring, current agency responsibilities are scattered, making comprehensive supervision of labor rights difficult. As told by Bryan Smolock, an investigator with Pennsylvania's Department of Labor, "You have situations where different agencies have different portions of control over the Guestworker Program." For instance, visa fraud would be the US Department of State and Homeland Security. Wage theft and contract fraud are investigated by the US Department of Labor if the business under examination grosses more than \$500,000 per year. If the business grosses under \$500,000 per year, then state-level Departments of Labor investigate the labor abuses. Unsanitary living conditions, such as vermin infested housing, are investigated by either the US Department of Agriculture or state-level Departments of Agriculture. The Occupational Safety and Health Administration (OSHA) investigates exposure to occupational hazards. Throughout the cycle of hiring and employing guestworkers, NGOs and direct service providers may be assisting guestworkers with visa concerns or reporting abusive work and living conditions. Local law enforcement may be conducting its own investigations. This results in a silo effect where abusive working or living conditions discovered by one agency are not necessarily shared with the others.

Alfonso Gristina, who directs the Wilkes-Barre District Office for the US Department of Labor, also spoke to the lack of comprehensive monitoring over the US Guestworker Program. According to Gristina,

As far as applying to come here, paying...collecting the fees associated with the application process, the vetting, and so forth, that is done depending on the program, by the State Department or the Department of Homeland Security. And it's not until they're actually here working for an employer that our role [at the US Department of Labor] becomes relevant.

With regards to enforcement, several interviewees said that improvements are direly needed. Regulations that exist within legislation are frequently disregarded, increasing guestworker vulnerability. For example, Jessica Culley stated, “the Guestworker Program doesn't look bad on paper, but it's just not enforced. And so there are all of these issues with employers actually complying with what the law says.” Daniela Dwyer similarly commented, “I'm not going to say that the Department of Labor does nothing because that's not true, but relative to the amount of fraud and abuse, there's very little enforcement that occurs.” Vulnerabilities with enforcement can occur at every level of the US Guestworker Program implementation process – from recruitment to the guestworker's return to their community of origin at the end of the season. Such vulnerabilities have been evidence in this chapter.

Abuses of labor rights and protections within the US Guestworker continue on a more general level because violations against human rights are perceived to take place “out there” in other countries besides the US. As an example of this omission, labor exploitation – and more specifically, human trafficking – has been discounted in the US both theoretically and empirically within the academic literature (Gozdziak and Collett 2005, 99). It has been overlooked in the policy arena as well. Even the US Department of

State's "Trafficking in Persons Report" – which compiles human trafficking information on "every country" in the world annually (TIP Report 2009, 9) – neglected to include the US within its global rankings from 2000 until 2010. While the US government now has a special Office to Monitor and Combat Trafficking in Persons through the State Department, the majority of its programming is still centered on combating exploitation abroad rather than domestically.

Nathanial Norton, Supervising Attorney for the Legal Aid Bureau's Farmworker Program in Maryland and Delaware, spoke of the lack of US commitment to combat migrant labor abuse. In an effort to shine an international spotlight on US labor practices, Norton participated in a review of the protection of migrant workers in the US by the United Nations Human Rights Commission and its compliance with the International Convention on Civil and Political Rights (ICCPR). The ICCPR, which the US has signed and ratified, is an international human rights treaty obligating nations to protect and preserve basic human rights such as the right to human dignity, equality before the law, freedom of association, freedom from ill treatment, gender equality, and minority rights. Norton stated, "We do think the US has obligations" when it comes to protecting migrant workers. In arguing the US has not met those obligations, Norton and others filed a complaint with the United Nations Special Rapporteur on Migrants and the Special Rapporteur on Extreme Poverty and Human Rights. They requested the Special Rapporteurs send a communication to the US government, asking for a response regarding the complaint. In detailing the response they received, Norton stated,

The US took an extraordinary long time to respond and finally responded after we traveled to Geneva to sort of pressure them to do so at the Human Rights Committee. So they responded, but they responded in the typical way that the US responds to any sort of treaty body or

complaint with sort of broad generalizations about how wonderful the Constitution and Bill of Rights are... And with, you know, a few special instances where they have done good things for migrant workers generally...and then a sort of broad shrugging of any responsibility by saying we can't do anything about these complaints because these are really matters that are left to the states and we have a federalist system...and so sorry we can't really do anything.

While action to improve both H-2A and H-2B guestworker rights may have stalled on Capitol Hill, some of the most successful campaigns advocating for guestworkers are migrant-led grassroots movements. The Coalition of Immokalee Workers, a migrant worker-based organization in South Florida, is actively seeking to end forced labor practices, migrant labor rights abuses, and gender-based violence in farm work from Florida to New Jersey. The Coalition of Immokalee workers is responsible for the Fair Food Program, a partnership of farmworkers, growers, and major food retailers, such as Walmart, Whole Foods, and Subway. The partnership abides by a farmworker-designed code of conduct, whereby farmworkers are ensured humane working conditions and wages, coined by the Coalition of Immokalee Workers as “Worker-Driven Social Responsibility.” The Fair Food Standards Council, a third-party monitoring organization, oversees compliance, and companies fulfilling workers’ rights are considered “Fair Food Certified” and receive a corresponding food label (similar to “Organic” labels for foods grown without chemical usage). Companies out of compliance lose their Fair Food certification.

According to Marley Moynahan, spokesperson for the Coalition of Immokalee Workers, in the past it was difficult for consumers to know about what occurs at the bottom of a food chain because of the increasing levels of distance between growers and food. However, she indicated that this trend is beginning to turn as consumers are

“making the connections between exploitation and the food they eat.” As a result, food companies are beginning to have a vested interest in monitoring their supply chains since “now there are market consequences.” If consumers find out about labor abuses, it hurts their brand name and profits. Hence, while previously most companies had not considered social responsibility towards guestworkers (and other migrant laborers), it may be something more and more organizations consider with regards to their brand recognition.

Not all guestworkers may wish to be the front and center of a movement. For those who prefer to voice their concerns anonymously, the Centro de los Derechos del Migrante recently began a crowd-sourcing website where workers can report abuses by specific employers and recruiters. The platform is called *Contratados* (“hired,” www.contratados.org), and it operates in a similar fashion as Yelp (www.yelp.com). Workers rate employers and recruiters following a season, and this can help bring transparency to the on the ground working conditions that future workers may face. In speaking of *Contratados* Micah-Jones of *Centro de los Derechos del Migrante* stated, not only can guestworkers share their experiences with others, but in turn they “can make informed decisions about the opportunities in the US.

In sum, those most intimately familiar with the US Guestworker Program can offer legislators a more systemic perspective regarding the current state of the program, its underlying constraints, as well as possible interventions for improving labor rights and protections. Members of Congress should pay heed to the above recommendations offered by community stakeholders and government employees who work with the US Guestworker Program on a daily basis.

5.4 Conclusion

This chapter demonstrated the on the ground effects of the existing deficient labor rights and protections within the US Guestworker Program. Examining the lived experiences of guestworkers within the H-2A and H-2B program has been too often ignored in the academic literature. Interviews with guestworkers, community stakeholders, and government employees provides a more nuanced account of the US Guestworker Program's implementation overall, unveiling rich insight and situated context. While both H-2A and H-2B guestworkers experience precarious working conditions, their corresponding rights and protections are not equal. H-2B workers more readily endured abusive circumstances.

Adding further complexity, gender discrimination is rampant within the US Guestworker Program. Patriarchal power relations pervade agribusiness on the local level, resulting in a gendered division of labor where male guestworkers are placed within the H-2A program, while female guestworkers are siphoned into that of H-2B. Migrant women are viewed as an expendable, cheap, and docile labor source, and consequently, they hold the least visible and most vulnerable guestworker positions as H-2B workers. Contract fraud, wage theft, sexual harassment, employer threats, and occupational injuries are rampant – and in the worst conditions, practices analogous to labor trafficking thrive.

In conclusion, the US Guestworker Program has become a mainstay for fulfilling low-cost labor supply needs for farms and food processing centers across the country. This research illustrates that despite being staples of the US food industry, guestworkers are frequently exploited. The legacy of plantation economics informs the US

Guestworker Program's structural foundation, creating a legally sanctioned underclass of disenfranchised and ghettoized workers with little recourse against employer abuse.

Chapter 6

CONCLUSION

The reality of the food system that we have today is a system based on the plantation model, so it perpetuates the reality of slave labor; it just has a different name, a different context. That mentality, that way of doing agriculture today, has to be changed in order to have a food system that is just (Nelson Carrasquillo, Executive Director, *El Comité de Apoyo a los Trabajadores*, 2015).

The quote above provided by Nelson Carrasquillo, Executive Director of *El Comité de Apoyo a los Trabajadores* (CATA) provides an apt description of the US food system's hidden realities. With roots that extend back to the systemic oppressions of plantation economics, the human beings responsible for producing our food are frequently exploited. Adding further complication, the majority of these individuals are non-citizens, and constitute a legally sanctioned underclass of disenfranchised and ghettoized workers with little recourse against employer cruelties. This research has focused on a subset of such agribusiness workers, the H-2A and H-2B visa holders hired through the US Guestworker Program. The Program has become a mainstay for fulfilling low-cost labor supply needs for farms and food processing centers across the country.

This research has argued that agribusiness influence over US Guestworker Program legislation has diluted guestworker's labor rights and protections. The findings

support this hypothesis by demonstrating that despite being staples of the US food industry, guestworkers are often exploited. Exploitation largely goes unchecked thanks to agribusiness' concentration of political power. Valued at \$7 trillion, the food industry represents approximately ten percent of the global economy (Beth Hoffman 2013, 5). With such high economic profits at stake, corporate agribusiness has a vested interest in ensuring their demands are met on Capitol Hill. Chief among these is safeguarding a steady stream of cheap labor to meet food harvesting and processing demands. To ensure agribusiness interests are represented within the legislative realm, sizeable financial investments have been made to Congress through both campaign contributions and lobbying efforts. Since the mid-1990s, these financial investments have surpassed \$3 billion.

Discourses from political actors, namely the US Senators and Representatives with ties to agribusiness funding, have explicitly shaped and given meaning to the Guestworker Program's labor rights and protections over the past two decades. While national-level narratives were predominantly framed as being against immigration, systematic efforts by this small group of legislators endorsed a contradictory story. By charging that agribusiness was on the brink of collapse without foreign labor, such political actors, sympathetic to the food industry, proposed legislation to expand the US Guestworker Program and decrease "burdensome regulations" protecting workers' rights. The result of such strategized efforts has constrained the freedoms of guestworkers, particularly H-2B workers, leaving them without viable protections against dangerous employment conditions.

Combining US Guestworker policy analysis and fieldwork via a case study approach provided the rigor needed to comprehensively understand how and why the US Guestworker Program functions as it does. Guestworker policy and local-level implementation do not exist in disparate vacuums. As such, exploring both ends of this spectrum lends this research credibility, as I was able to examine how Congressional discourses informed guestworker regulations, resulting in gaps in guestworker rights and protections. If I were to have only analyzed policy or fieldwork alone, I would not have been able to synthesize the findings for how national discourse constitutes and constrains guestworker lived experiences.

6.1 Reflections

The reflexivity of a feminist curiosity helps to unveil complex layers of social construction. As such, this research revealed nuance both between and within the H-2A and H-2B visa categories that merit further discussion, as well as possible avenues for future research.

6.1.1 H-2A and H-2B Improvements

Marginal improvements have been made in the H-2B program in the past few years, as previously noted in Table 6. H-2B work contracts and rights disclosures are now required, and H-2B workers no longer have to pay for transportation to and from the US. However, these modest efforts were only intended to bring aspects of the H-2B program up to the standards of its H-2A counterpart. Today, gross inequalities in rights and protections continue to exist. H-2B workers must pay for their own housing, while it is given free of charge for H-2A workers. H-2B workers must pay for all meals during their tenure in the US, even though H-2A employers provide this for free. The rate of pay

under H-2B conditions is based on a private wage survey conducted at the discretion of the employer. The methodology for the survey is secret and employers often use the survey's results to warrant paying as little as possible. Conversely, H-2A workers are paid the highest of four wages: adverse effect wage rate, prevailing wage, agreed-upon collective bargaining wage, or federal or state minimum wage. Lastly, while H-2A workers have access to free legal aid provided by the Congressionally-funded Legal Services Corporation, H-2B workers must pay for their own private attorney to represent them.

While both H-2A and H-2B visas leave guestworkers vulnerable to abuse, the H-2A visa category is better regulated and monitored than that of the H-2B program. The original H-2 visa, created with the 1952 Immigration and Nationality Act, is the predecessor to the H-2A and H-2B programs. In 1986, the H-2 program was split into that of H-2A and H-2B because legislators wanted to put safeguards in place specifically for agricultural workers to prevent the same kind of exploitation experienced under the Bracero Program (Trautman 2014; Bruno 2006; Mathes 2012). Consequently, the new H-2A regulations were created with considerations from seminal agricultural labor rights legislation like the 1938 Fair Labor Standards Act (FLSA) and the 1983 Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Legislators felt that the existing H-2 regulations functioned “reasonably well” for non-agricultural workers, and hence H-2B workers were denied the same rights provisions afforded to the H-2A program (Mathes 2012; Trautman 2014).

Over the years, efforts by agribusiness-friendly members of Congress to rollback protections in the H-2A program largely failed, while those directed to the H-2B program

mostly passed. This was primarily due to opposition by human rights groups who had remained vigilant of agribusiness-friendly H-2A legislation. By the mid-2000s, however, Congress shifted the focus heavily to augmenting the H-2B program. Historically diminished H-2B oversight made rollbacks in protections easier to accomplish. When resistance to agribusiness-friendly H-2B regulations were met, legislative fixes were implemented, such as surreptitiously placing H-2B rollbacks in unrelated bills and omnibus packages.

This does not suggest that the H-2A program is not without its faults. Indeed, both H-2A and H-2B regulations merit substantial improvements. For both visa categories, should a worker file a complaint, they stand the risk of being fired from their job by their employer. Once they are dismissed, they lose their visa, which is essentially their legal status and right to remain in country. Without such status, they are undocumented. This becomes a classic case of a Catch-22, for if the guestworker decides to file a case against the employer, they could be easily deported. Such a Catch-22 precludes many guestworkers from even considering filing against their employer, as they cannot legally remain in the US without their visa status.

One way to mitigate this, as well as diminish the strength of employer threats and retaliation, is changing the current H-2A and H-2B regulations to allow for visa portability. Current regulations within the US Guestworker Program do not allow visas to be transferred between employers. When guestworkers are issued an H-2A or H-2B visa via the US Department of State, the visa is valid only under the condition that the guestworker remains with the employer stated on the visa application. Should the guestworker experience abuse on the job, they have no other options as far as legal

employment is concerned. However, if given a portable visa, should instances of exploitation arise with one employer, the guestworker could apply for a position with a new employer during the same season.

On a general level, more comprehensive oversight is sorely needed by federal and state agencies. Current agency responsibilities are scattered, making comprehensive supervision of labor rights difficult. This creates a silo effect where abusive working or living conditions discovered by one agency are not necessarily shared with the others. Regarding enforcement, existing regulations are frequently disregarded, increasing guestworker vulnerability. Vulnerabilities with enforcement can occur at every level of the US Guestworker Program implementation process – from recruitment to the guestworker’s return to their community of origin at the end of the season.

The US public needs to be more aware of the human rights violations taking place on our own soil. Migrant-led grassroots movements are generating the bulk of awareness-raising among the general public. Groups include the regionally local CATA, as well as the Florida-founded Coalition of Immokalee Workers. Groups such as these actively seek to end migrant labor abuses, fight for decent work conditions and fair pay, while partaking in media campaigns, community groups, and field organizing. Future scholarship should further research the migrant rights policy gains precipitated by groups such as these, as those most aware of US Guestworker Program abuses are the individuals who experienced the exploitation first hand.

6.1.2 Female Migrants in the US Guestworker Program

As mentioned, while both H-2A and H-2B workers must negotiate a terrain of constrained freedoms, those within the H-2B sector sustain the most precarious working

conditions. Adding further complexity, the majority of H-2B food processors are women. This gendered division of labor is often not by choice. Despite many women applying for H-2A jobs in the food sector – where they receive increased protections and wages – the vast majority are siphoned into the lower-regulated H-2B visa category. The resulting gendered division of labor is intertwined in perceptions of what is believed to be stereotypical “men’s work” verses “women’s work.” Women are denoted as slower, weaker, and unable to perform simple H-2A tasks, despite routinely performing the same fieldwork as men in Mexico.

Recruitment ads reified this gender discrimination in print, explicitly stating employer’s strategized recruitment practices based on prejudicial opinions of what men verses women are more capable of doing. Legal attempts to challenge gender discrimination in hiring practices under Title VII of the Civil Rights Act, have not found success. As decided by the 4th Circuit Court, extra-territorial sex discrimination taking place outside of the US has no enforceability. Said more simply, employment agencies operating through the US Guestworker Program can practice explicit gender discrimination because recruitment takes place beyond US borders.

Females within the US Guestworker Program have been left at the margins of policy conversations, where they would be able to have their voices heard from a legislative standpoint. According to Adarely Ponce, a former H-2B worker who now works for Centro de los Derechos del Migrante, “Migrant women are commonly excluded and made invisible in debates about immigration. Even if women represent a minority, we also migrate to work” (CDM 2013, 13). My policy research supported Ponce’s statement. During Congressional testimonies, migrants were always assumed

male and referred to with the pronoun “he” regardless of the actual gender make-up of the population being discussed. Unfortunately, the perpetual assumption of masculinity precluded Congressional discussion of the prevention of abuses more commonly associated with female victims – namely, sexual harassment and assault.²⁴ Gendered hierarchies within employment environments are notorious for such gender-based violence. These predatory behaviors are not based on sexual desire, but rather power, in order to protect one’s “sex-based social status” (Berdahl 2007, 641). Add gender hierarchies to the isolation female guestworkers experience geographically and linguistically while working for the US Guestworker Program, and one has the volatile structural antecedents for sexual assault.

Overall, more attention must be given to female guestworkers within Congressional hearings on the US Guestworker Program and subsequent regulation discussions. We must move beyond the outdated prejudicial assumption that only men migrate for work, as women constitute a growing population of migrants worldwide. Refocusing the way we conventionally think about the US Guestworker Program, allows for a better understanding of the vast number of women who come to the US each year to labor in our fields and factories. Future scholarship should focus on effective means to preventing the widespread occurrence of sexual assault within the Guestworker Program.

²⁴ A 2013 Southern Poverty Law Center (SPLC) survey found that 90 percent of female migrant farmworkers in California were sexually harassed. Rape is common as well. The SPLC reported that female farmworkers in Fresno, California referred to their company’s field as *fil de calzon*, or field of underwear, because of the high frequency of rape by supervisors when the women worked in the fields.

6.1.3 Racialized Bodies in the Trump Era

While the data collection for this research concluded in 2015, there must be some discussion regarding how it relates to current political events. The temporary foreign labor force in the US “constitute[s] a labor supply stripped of most of its human needs” (Calavita 2010, 165). The majority of temporary migrant labor within agribusiness is Hispanic, and principally from Mexico. The exploitation of Hispanic migrant workers has been equated to the discriminatory laws against blacks in the Jim Crow era (Brennan 2014, 43). Widespread abuses of Hispanic migrants in communities with long histories of racism have prompted some labor organizers to refer to particular counties and states across the US as living under “Juan Crow” (Brennan 2014, 43–44).

Adding fuel to the fire of structural racism against Mexican labor is President Trump’s anti-immigrant rhetoric, specifically targeted at Mexicans. Trump’s speech to formally announce his run for presidential office, June 16, 2015 was inundated with racist propaganda. Trump infamously declared, “When Mexico sends its people, they're not sending their best... They're bringing drugs. They're bringing crime. They're rapists.” President Trump’s anti-immigrant rhetoric has normalized racist and xenophobic discourse, and added legitimacy to the horrendous nature of the white supremacy movement.

Even migrants who are legally documented, such as US guestworkers, are likely to feel the adverse effects of such political narratives at the local level. Already, recruiter advertisements refer to Mexican workers as “happy, agreeable people.” Behind such statements about Mexican workers’ stereotypical eagerness and agreeableness lie not too

subtle insinuations that they will not complain if faced with heavy workloads, long hours, and poor earnings.

Employers stand to capitalize off the construction of racialized hierarchies from more than just a monetary perspective. First, racialization keeps some workers from filing complaints of abuse. Guestworkers commented to me that they did not feel like they were treated equal to whites. Consequently, they were hesitant to report employer abuse to the authorities, believing they were more likely to believe a white employer than themselves. Second, some employers have intentionally breed discontent among workers from different nationalities, such as Mexicans and Guatemalans. Creating divisions inhibits workers from organizing, giving employers added power over them.

Without proper protections in place, widespread racialization within the US Guestworker Program is able to prosper. The current political context is also increasing guestworker vulnerability to abuse. Increased oversight over the Guestworker Program at the local-level must be increased, and future scholarship must investigate the adverse effects of dehumanizing presidential rhetoric on foreign born individuals residing in the US, such as guestworkers and other migrant populations.

6.2 Conclusion

Guided by a feminist curiosity, this research fills extant research gaps, providing an enhanced understanding of the origin, content, and scope of labor rights and protections within the US Guestworker Program's H-2A and H-2B categories. Overall, I demonstrate how overlapping macro spheres of economic and political influence create local-level gendered systems of production and exploitation. Through interviews with the guestworkers themselves, and the community stakeholders and government employees

involved with the program, the research demonstrates how complexity exists “just below the surface” (Enloe 2014, 238). Unveiling multiple standpoints and subjectivities regarding how policy has affected guestworkers’ situated context is vital for a more nuanced understanding of the US Guestworker Program’s implementation overall.

Unfortunately, forced labor practices within the US food industry are not new. Historically, agricultural production and food processing have relied on disenfranchised populations without full legal protection to redress abusive labor practices – from yesterday’s slaves and indentured laborers, to the temporary guestworkers and undocumented migrants of today. Capitalistic practices under neoliberal globalization have only increased the extent to which this abuse is carried out. Consumers demand low prices, and food companies keep costs low through processes of hyper-commodification achieved by hiring cheap, foreign workers. While there have been vocal advocates for guestworker rights in Congress, on-the-whole there is a lack of political will to repeal rollbacks in protections and institute the safeguards that all individuals – regardless of sex, race, class, and citizenship status – deserve.

REFERENCES

- Abadan-Unat, Nermin. 2011. *Turks in Europe*. Berlin: Berghahn Books.
- Ackerly, Brooke A., Maria Stern, and Jacqui True, eds. 2006. *Feminist Methodologies for International Relations*. Cambridge: Cambridge University Press.
- Adamson, Fiona B. 2006. "Crossing Borders: International Migration and National Security." *International Security* 31 (1): 165–99.
- Allen, Rachel. 2009. "LABOR, FARMS, AND IMMIGRATION: ALIEN LIFE ON THE FARM PREPARED AS AN ACADEMIC REQUIREMENT FOR THE AGRICULTURAL LAW COURSE." Pennsylvania State University.
- Anker, Christien van den, and Ilse van Liempt, eds. 2012. *Human Rights and Migration: Trafficking for Forced Labour*. New York: Palgrave Macmillan.
- Bacon, David. 2007. "Workers, Not Guests." *The Nation*, February 6.
<https://www.thenation.com/article/workers-not-guests/>.
- Bair, Jennifer. 2010. "On Difference and Capital: Gender and the Globalization of Production." *Signs* 36 (1): 203–26.
- Barker, Drucilla K. 2005. "Beyond Women and Economics: Rereading 'Women's Work'." *Signs* 30 (4): 2189–2209.
- Bauder, Harald. 2006. *Labor Movement: How Migration Regulates Labor Markets*. Oxford: Oxford University Press.
- Bedford, Kate, and Shirin M Rai. 2010. "Feminists Theorize International Political

- Economy.” *Signs* 36 (1): 1–18.
- Bello, Walden. 2004. “Deglobalization: Ideas for a New World Economy.” In *Deglobalisation: Ideas for a New World*, 127. New York and London: Zed Books.
- Bensinger, Ken, Jessica Garrison, and Jeremy Singer-Vine. 2015. “The Coyote.” *BuzzFeed News*.
- Bentley, Helen Delich. 2016. “2015 Foreign Commerce Statistical Report.” Baltimore.
- Berdahl, Jennifer L. 2007. “Harassment Based on Sex: Protecting Social Status in the Context of Gender Hierarchy.” *Source: The Academy of Management Review* 32 (2): 641–58.
- Beth Hoffman. 2013. “Behind the Brands: Food Justice and the ‘Big 10’ Food and Beverage Companies.” Washington, DC.
- Bhagwati, Jagdish. 2007. *In Defense of Globalization*. Oxford: Oxford University Press.
- BLS. 2015. “Labor Force Characteristics of Foreign-Born Workers Summary.” *Economic News Release, Bureau of Labor Statistics*.
- Boas, Taylor C., and Jordan Gans-Morse. 2009. “Neoliberalism: From New Liberal Philosophy to Anti-Liberal Slogan.” *Studies in Comparative International Development* 44 (2): 137–61. doi:10.1007/s12116-009-9040-5.
- Boswell, Christina. 2009. *The Political Uses of Expert Knowledge*. Cambridge: Cambridge University Press.
- Brown, Drucilla, Alan Deardorff, and Robert Stern. 2004. “The Effects of Multinational Production on Wages and Working Conditions in Developing Countries.” In *Challenges to Globalization: Analyzing the Economics*, 279–329. Chicago: University of Chicago Press.

- Bruno, Andorra. 2006. "CRS Report for Congress Immigration: Policy Considerations Related to Guest Worker Programs." *Congressional Research Service*. Washington, DC.
- Calavita, Kitty. 2010. *Inside the State: The Bracero Program, Immigration, and the I.N.S.* New York: Routledge.
- Cameron, Sally. 2008. "Trafficking of Women for Prostitution." In *Trafficking in Humans: Social, Cultural, and Political Dimensions*, edited by Sally Cameron and Edward Newman. New York: United Nations University Press.
- Carlson, William L. 2012. "Temporary Non-Agricultural Employment of H-2B Aliens in the United States." *Federal Register* 77 (34).
- Castles, Stephen. 1986. "The Guest-Worker in Western Europe - An Obituary." *The International Migration Review* 20 (4): 761–78.
- . 2000. "International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues." *International Social Science Journal* 52 (165): 269–81.
- . 2004. "Why Migration Policies Fail." *Ethnic and Racial Studies* 27 (2): 205–27.
- . 2006a. "Back to the Future?: Can Europe Meet Its Labour Needs Through Temporary Migration?" 1. Oxford.
- . 2006b. "Guestworkers in Europe: A Resurrection?" *International Migration Review* 40 (4): 741–66.
- Castles, Stephen, and Mark J. Miller. 2009. *The Age of Migration: International Population Movements in the Modern World*. New York: Guilford Publication.
- CATA. 2016. "CATA: Our Mission." *Website for El Comité de Apoyo a Los Trabajadores Agrícolas*.

- CDM. 2013. "Impact Report 2013." Baltimore.
- Chang, Kimberly A., and L.H.M. Ling. 2011. "Globalization and Its Intimate Other: Filipina Domestic Workers in Hong Kong." In *Gender and Global Restructuring: Sightings, Sites, and Resistances*, edited by Marianne Marchand and Anne Sisson Runyan, 2nd ed., 30–47. London; New York: Routledge.
- Chen, Michelle. 2014. "Immigration Reform: Corporate Demands Trump Human Rights." *New Labor Forum* 23 (1): 30–37. d
- Chomsky, Noam. 1999. *Profit Over People: Neoliberalism and Global Order*. New York: Seven Stories Press.
- Clairmont, Nicholas. 2017. "What Will Trump's Executive Order Do to H-1B Visas?" *The Atlantic*, April.
- Clapp, Jennifer, and Doris Fuchs, eds. 2009. *Corporate Power in Global Agri-food Governance*. Cambridge Mass.: MIT Press.
- Coates, Ta-nehisi. 2017. "The First White President." *The Atlantic*, no. October: 1–36.
- Cohen, Benjamin J. 2008. *International Political Economy: An Intellectual History*. Princeton: Princeton University Press.
- Cohen, Joseph Nathan, and Miguel Angel Centeno. 2006. *Neoliberalism and Patterns of Economic Performance, 1980-2000*. *Annals of the American Academy of Political and Social Science*. Vol. 606.
- Constant, Amelie, and Douglas S. Massey. 2002. "Return Migration by German Guestworkers: Neoclassical versus New Economic Theories." *International Migration* 40 (4): 5–38.
- Cornett, Tracy. 2014. "2014 Awards Agribusiness Food Processing." *Expansion*

Solutions Magazine.

Costa, Daniel. 2016. "The H-2B Temporary Foreign Worker Program For Labor Shortages or Cheap, Temporary Labor?" Washington, DC.

CQ Almanac. 1996. "White House Calls the Shots, As Illegal Alien Bill Clears." *CQ Almanac*.

Craig, Richard B. 1971. *The Bracero Program: Interest Groups and Foreign Policy*. Austin: University of Texas.

Davies, Ronald B., and Krishna Chaitanya Vadlamannati. 2013. "A Race to the Bottom in Labor Standards? An Empirical Investigation." *Journal of Development Economics* 103: 1–14.

00000aab0f6b&acdnat=1458748888_f4262f5e3882dd13ab6b8a77e2bea2fe0.

Deere, Carmen Diana. 2005. "The Feminization of Agriculture? Economic Restructuring in Rural Latin America."

DeLaet, Debra L. 2000. *U.S. Immigration Policy in an Age of Rights*. Westport: Praeger.

Donnelly, Grace. 2017. "New Data Shows Foreign Interest in American Jobs May Be Declining Under Trump." *Fortune*, August.

Dorchester. 2016. "Hoopers Island - About Us." *Dorchester County Office of Tourism*.

<http://visitdorchester.org/hoopers-island/>.

Drutman, Lee, and Alexander Furnas. 2013. "Untangling the Webs of Immigration Lobbying - Sunlight Foundation Blog." Washington, DC.

<http://sunlightfoundation.com/blog/2013/03/25/immigration/>.

Duncan, Natasha T, Ayoung Kim, and Brigitte S Waldorf. 2016. "Gendered Immigration Policies and Brain Waste: U.S. Immigration Policy for High-Skilled Labor."

Newark.

- Durand, Jorge. 2007. "Migration Policy and the Asymmetry of Power: The Mexican Case, 1900-2000." In *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*, 0:224–44. Chicago: University of Illinois Press.
- Durand, Jorge, Douglas S. Massey, and Fernando Charvet. 2000. "The Changing Geography of Mexican Immigration to the United States: 1910-1996." *Social Science Quarterly* 81 (1): 1–15.
- Durand, Jorge, Douglas S. Massey, and Rene M. Zenteno. 2001. "Mexican Immigration to the United States: Continuities and Changes." *Latin American Research Review* 36 (1): 107–27.
- Enloe, Cynthia H. 2014. *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*. Berkeley and Los Angeles: University of California Press.
- Ezquerria, Sandra. 2007. "Gender, Migration, and the State: Filipino Women and Reproductive Labor in the United States." *Philippine Journal of Third World Studies* 22 (1): 117–44.
- Facchini, Giovanni, Anna Maria Mayda, and Prachi Mishra. 2011. "Do Interest Groups Affect US Immigration Policy?" *Journal of International Economics* 85 (1). Elsevier B.V.: 114–28.
- FAO. 2011. "THE STATE OF FOOD AND AGRICULTURE: WOMEN IN AGRICULTURE, Closing the Gender Gap for Development." Rome.
- FarmAid. 2016. "Corporate Concentration in Agriculture." *Farm Aid*.
- Feltault, Kelly. 2005. "'We're Our Own Boss': Gendered Class-Consciousness and White Privilege among Hooper's Island Crab Pickers." *Anthropology of Work*

Review XXVI (1): 1–13.

Fernandez Campbell, Alexia. 2017. “Trump Lifted the Cap on H-2B Worker Visas. Then His Businesses Asked for 76 of Them. - Vox.”

Fetzer, Joel S. 2000. *Public Attitudes Toward Immigration in the United States, France, and Germany*. Cambridge: Cambridge University Press.

Flanagan, Robert J. 2006. *Globalization and Labor Conditions: Working Conditions and Worker Rights in a Global Economy*. Oxford: Oxford University Press.

Fletcher, Michael A., and Darryl Fears. 2005. “Bush Pushes Guestworker Program.” *Washington Post*, November 29.

“Foreign-Trade Zones.” 2016. Baltimore.

Forsythe, David P. 2006. *Human Rights in International Relations*. Cambridge: Cambridge University Press.

Francis, Laura D. 2015. “DHS, DOL Issue Interim H-2B Rule, Add More Worker Protections, Transparency.” *Bloomberg: Daily Labor Report*, April 29.

Freeman, Gary P. 1995. “Modes of Immigration Politics in Liberal Democratic States.” *International Migration Review* 29 (4): 881–902.

Freeman, Gary P., and Alan K. Kessler. 2008. “Political Economy and Migration Policy.” *Journal of Ethnic and Migration Studies* 34 (4): 655–78.

Gabaccia, Donna R., and Donna R Gabaccia. 2009. *We Are What We Eat: Ethnic Food and the Making of Americans*. Cambridge Mass.: Harvard University Press.

GAO. 2015. “H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers.” Washington.

Garcia, Juan Ramon. 1980. *Operation Wetback: The Mass Deportation of Mexican*

- Undocumented Workers in 1954*. Westport: Greenwood Press.
- Geertz, Clifford. 1973. "Thick Description: Toward an Interpretive Theory of Cultures." In *The Interpretation of Cultures*, 3–30. New York: Basic Books.
- Gilbert, Lauren. 2005. "Fields of Hope, Fields of Despair: Legisprudential and Historic Perspectives on the AgJobs Bill of 2003." *Harvard Journal on Legislation* 42: 417–82.
- Golash-Boza, Tanya. 2009. "The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail." *Sociology Compass* 2: 295–309.
- Goldin, Ian, and Geoffrey Cameron. 2011. *Exceptional People: How Migration Shaped Our World and Will Define Our Future*. Princeton: Princeton University Press.
- Gozdziak, Elzbieta M., and Elizabeth A. Collett. 2005. "Research on Human Trafficking in North America: A Review of Literature." *International Migration* 43 (1–2): 99–128.
- GWJA. 2010. "Changes to Improve the Protections of H-2 Workers." Brooklyn. http://www.globalworkers.org/sites/default/files/h-2_changes_10_10.pdf.
- H-2BWorkceCoalition. 2017. "Member Associations." *H-2B Workforce Coalition*. http://www.h2bworkforcecoalition.com/page.asp?g=h2b&content=member_associations.
- Hagan, Jacqueline, and Scott Phillips. 2008. "Border Blunders: The Unanticipated Human and Economic Costs of the US Approach to Immigration Control, 1986–2007." *Criminology & Public Policy* 7 (1): 83–94.
- Hansen, Randall. 2002. "Globalization, Embedded Realism, and Path Dependence: The Other Immigrants to Europe." *Comparative Political Studies* 35 (3): 259–83.

- Hanson, Gordon H. 2010. "The Governance of Migration Policy." *Journal of Human Development and Capabilities* 11 (2): 185–207.
- Hassel, Anke. 2008. "The Evolution of a Global Labor Governance Regime." *Governance* 21 (2): 231–51.
- Held, David. 1999. *Global Transformations: Politics, Economics and Culture*. Vol. 4. Stanford: Stanford University Press.
<https://books.google.com/books?id=VBXvvo4Vo-oC&pgis=1>.
- Hirsch, Yale. 2010. *The Capitalist Spirit: How Each and Every One of Us Can Make A Giant Difference in Our Fast-Changing World*. New York: John Wiley & Sons.
- Hollifield, James F. 2004. "The Emerging Migration State." *International Migration Review* 38 (3): 885–912.
- Hollifield, James F. 2012. "Why Do States Risk Migration?" In *IPSA's 22nd World Congress of Political Science - Reshaping Power, Shifting Boundaries*, 1–39. Madrid.
- Huntington, Samuel P. 2009. "Huntington The Hispanic Challenge.pdf." *Foreign Policy* 141: 30–45.
- Hutchings, Kimberby. 2000. "Towards a Feminist International Ethics." *Review of International Studies* 26: 111–30.
- ILMC. 2016. "International Labor Management Corporation." *International Labor Management Corporation*. <http://ilmclabor.tumblr.com/>.
- ILO. 2005. "A Global Alliance Against Forced Labour - Global Report on Forced Labor." Geneva.
- Jachimowicz, Maia. 2004. "Bush Proposes New Temporary Worker Program."

Migration Policy Institute, February 1.

Jackson, Patrick Thaddeus. 2010. *The Conduct of Inquiry in International Relations:*

Philosophy of Science and Its Implications for the Study of World Politics (Google eBook). Taylor & Francis.

———. 2011. *The Conduct of Inquiry in International Relations*. London; New York: Routledge.

Jenks, Rosemary. 2001. “The USA PATRIOT Act of 2001: A Summary of the Anti-

Terrorism Law’s Immigration-Related Provisions.” *Center for Immigration Studies*.

Jersey, State of New. 2014. “NJ Advantages for International Companies.” *State of New Jersey Business Portal*. <http://www.nj.gov/njbusiness/international/>.

Jones, Michael D., and Mark K. McBeth. 2010. “Narrative Policy Framework : Clear Enough to Be Wrong? A Narrative Policy Framework: Clear Enough to.” *Policy Studies Journal* 38 (2): 329–53.

Joppke, Christian. 1998. “Why Liberal States Accept Unwanted Immigration.” *World Politics* 50 (2): 266–93.

———. 1999. *Immigration and the Nation-State: The United States, Germany, and Great Britain*. Oxford: Oxford University Press.

Kearney, Melissa S., Benjamin H. Harris, Brad Hershbein, David Boddy, Lucie Parker, and Katherine DiLucido. 2014. “What’s the Catch? Challenges and Opportunities of the US Fishing Industry.” *The Hamilton Project*, 1–8.

http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/Challenges_opportunities_fishing_industry_policybrief.pdf.

Keohane, Robert O., and Joseph S. Nye. 1977. “Power and Interdependence: World

Politics in Transition.”

Klotz, Audie. 1995. *Norms in International Relations: The Struggle Against Apartheid*.

Ithaca: Cornell University Press.

Kofman, Elenore, and Rosemary Sales. 2001. “Migrant Women and Exclusion in

Europe.” In *Rethinking European Welfare: Transformations of European Social*

Policy, edited by Janet Fink, Gail Lewis, and John Clarke, 96–111. London: SAGE

Publications.

Kofman, Eleonore, Annie Phizacklea, Parvati Raghuram, and Rosemary Sales, eds. 2000.

Gender and International Migration in Europe: Employment, Welfare, and Politics.

London; New York: Routledge.

Koser, Khalid. 2007. *International Migration: A Very Short Introduction*. Oxford: Oxford

University Press.

Kotz, David. 2000. “Globalization and Neoliberalism.” Amherst.

http://people.umass.edu/dmkotz/Glob_and_NL_02.pdf.

Laffey, Mark, and Jutta Weldes. 2004. “Methodological Reflections on Discourse

Analysis.” *Qualitative Methods* 2 (1): 28–30.

Lahav, Gallya. 1998. “Immigration and the State: The Devolution and Privatisation of

Immigration Control in the EU.” *Journal of Ethnic and Migration Studies* 24 (4):

675–94.

Landon, Todd. 2000. *Issues and Methods in Comparative Politics: An Introduction*. 3rd

ed. New York, London: Routledge Taylor & Francis Group.

Lang, Tim, and Michael Heasman. 2015. *Food Wars: The Global Battle for Mouths,*

Minds and Markets. 2nd ed. London; New York: Routledge.

- Lastarria-Cornhiel, Susana. 2006. "Feminization of Agriculture: Trends and Driving Forces."
- LeCompte, Margaret. 2005. "Analyzing Qualitative Data." *Urologic Nursing* 25 (3): 217–20. <http://www.ncbi.nlm.nih.gov/pubmed/22835014>.
- Library of Congress. 2009. "Congressional Record, US Senate."
- Lijphart, Arend. 1971. "Comparative Politics and the Comparative Method." *The American Political Science Review* 65 (3): 682–93.
- Lipton, Douglas. 2008. "An Economic Analysis of Guest Workers in Maryland's Blue Crab Industry." *Maryland Sea Grant Extension Program*. College Park, MD. http://www.mdsg.umd.edu/sites/default/files/files/store/Crab_Brief_Guest_2008_01.pdf.
- Lopez, Ian. 2000. "The Social Construction of Race." In *Critical Race Theory: The Cutting Edge*, edited by Richard Delgado and Jean Stefancic, 2nd ed., 163–75. Philadelphia: Temple University Press.
- LSC. 2016a. "About Statutory Restrictions on LSC-Funded Programs." *Legal Services Corporation*. <https://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs>.
- . 2016b. "LSC Funding." *Legal Services Corporation*. <https://www.lsc.gov/lsc-funding>.
- Mah, Jai S. 1997. "Core Labour Standards and Export Performance in Developing Countries." *The World Economy* 20 (6): 773–85. doi:10.1111/1467-9701.00100.
- Marshall, Catherine, and Gretchen B. Rossman. 1989. *Designing Qualitative Research*. Sage Publications.
- Martin, Philip. 1998. "Factors That Influence Migration: Guestworkers - Past and

- Present.” In *US Commission on Immigration Reform*, 877–95. Washington.
- . 2007. “Farm Labor Shortages: How Real? What Response.” *Center for Immigration Studies*, no. November. <http://cis.org/articles/2007/back907.html>.
- Martin, Philip L., and Mark J. Miller. 1980. “Guestworkers: Lessons from Western Europe.” *Industrial & Labor Relations Review* 33 (3): 315.
- Martin, Philip, and Mark Miller. 2000. “Employer Sanctions: French, German and US Experiences.” Geneva.
- “Maryland Seafood Production.” 2015. *State of Maryland*.
<http://msa.maryland.gov/msa/mdmanual/01glance/html/seafoodp.html>.
- Massey, Douglas S., Jorge Durand, and Nolan J. Malone. 2002. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation.
- Massey, Douglas S, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, and J Edward Taylor. 1993a. “Theories of International A Review Migration : And Appraisal.” *Population and Development Review* 19 (3): 431–66.
- . 1993b. “Theories of International Migration: A Review and Appraisal.” *Population and Development Review* 19 (3): 431–66.
- Mathes, Charles C. 2012. “The Department of Labor’ S Changing Policies Toward the H-2B Temporary Worker Program: Primarily for the Benefit of Nobody.” *Fordham Law Review* 8 (4): 1801–51. <http://ir.lawnet.fordham.edu/flr/vol80/iss4/8>.
- Mattera, Philip. 2004. “USDA Inc: How Agribusiness Has Hijacked Regulatory Policy at the US Department of Agriculture.” Omaha. [http://www.nffc.net/Issues/CorporateControl/USDA INC.pdf](http://www.nffc.net/Issues/CorporateControl/USDA%20INC.pdf).

- McMichael, Philip. 2009. "A Food Regime Genealogy." *The Journal of Peace Studies* 36 (1): 139–69.
- Meghani, Zahra, and Jennifer Kuzma. 2011. "The 'Revolving Door' between Regulatory Agencies and Industry: A Problem That Requires Reconceptualizing Objectivity." *Journal of Agricultural and Environmental Ethics* 24 (6): 575–99.
- Meyer, William H. 1998. *Human Rights and International Political Economy in Third World Nations: Multinational Corporations, Foreign Aid, and Repression*. Westport: Greenwood Publishing Group.
- . 2015. "Testing Theories of Labor Rights and Development." *Human Rights Quarterly* 37 (2): 414–38. doi:10.1353/hrq.2015.0036.
- Miller, Mark J. 2006. "Opportunities and Challenges for Migrant and Migrant-Background Youth in Developed Countries." New York.
- Minkoff-Zern, Laura-Anne. 2012. "Migrations of Hunger and Knowledge: Food Insecurity and California's Indigenous Farmworkers." University of California, Berkeley.
- Moch, Leslie Page. 2003. *Moving Europeans: Migration in Western Europe Since 1650*. Bloomington and Indianapolis: Indiana University Press.
- Money, Jeannette. 1999. *Fences and Neighbors: The Political Geography of Immigration Control*. Ithaca: Cornell University Press.
- Monfort, Marie Christine. 2015. "The Role of Women in the Seafood Industry." *GLOBEFISH Research Programme* 119 (67). www.globefish.org.
- Mosley, L., and S. Uno. 2007. "Racing to the Bottom or Climbing to the Top? Economic Globalization and Collective Labor Rights." *Comparative Political Studies*, July.

- Mosley, Layna. 2010. *Labor Rights and Multinational Production*. Cambridge: Cambridge University Press.
- Murphy, Sophia. 2006. "Concentrated Market Power and Agricultural Trade." Berlin. http://iatp-web.us/iatp/files/451_2_89014.pdf.
- NationalArchives. 2008. "Department of Labor in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers); Final Rule." Washington. <https://www.foreignlaborcert.doleta.gov/pdf/H2BFinalRule.pdf>.
- Nations, United. 2017. "Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedures." Geneva.
- NCAE. 2017. "Who We Are." *National Council of Agricultural Employers*. <http://ncaeonline.org/about/about-us2/>.
- Nevins, Jospeh. 2010. "Security First: The Obama Administration and Immigration "Reform'."
- Newell, Peter. 2009. "Technology, Food, Power: Governing GMOs in Argentina." In *Corporate Power in Global Agrifood Governance*, edited by Jennifer Clapp and Doris A. Fuchs, 253–81. Cambridge: MIT Press.
- "NJ Farm Facts." 2016. *Jersey Fresh*. Trenton. <http://jerseyfresh.nj.gov/facts/>.
- NJDOL. 2015. "New Jersey State Agricultural Outreach Plan." Trenton. http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/AOPPY2014.pdf.
- Northrup, David. 1995. *Indentured Labor in the Age of Imperialism, 1834-1922*. Cambridge: Cambridge University Press.
- Oliver, J D. 2005. "Wound Infections Caused by *Vibrio Vulnificus* and Other Marine Bacteria." *Epidemiology and Infection* 133 (3): 383–91.

- Olvera-Morales v. Int'l Labor Management Corp. 2008, No. 1:05CV.
- Overbeek, Henk. 2002. "Neoliberalism and the Regulation of Global Labor Mobility." *Annals of the American Academy of Political and Social Science* 581: 74–90.
<http://townsendlab.berkeley.edu/critical-theory/resources>.
- Owens, Colleen, Meredith Dank, Justin Breaux, Isela Banuelos, Amy Farrell, Rebecca Pfeffer, Katie Bright, Ryan Heitsmith, and Jack McDevitt. 2014. "Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States." Washington.
- Papademetriou, Demetrios G., Philip L. Martin, and Mark J. Miller. 1983. "U. S. Immigration Policy: The Guestworker Option Revisited*." *International Migration* 21 (1): 39–55.
- Peters, Margaret. 2013. "The Challenges of Comparing Immigration Across Three Centuries." *Newsletter of the American Political Science Association, Organized Section on Migration and Citizenship* 1 (2): 28–34.
- Peterson, Spike V. 2005. "How (the Meaning of) Gender Matters in Political Economy." *New Political Economy* 10 (4): 499–521. doi:10.1080/13563460500344468.
- Pew. 2012. "Cleaning Up the Chesapeake Bay." *The Pew Charitable Trusts*.
<http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2012/02/13/cleaning-up-the-chesapeake-bay#sthash.LDt679FM.dpuf>.
- Piore, Michael J. 1979. *Birds of Passage: Migrant Labor and Industrial Societies*. Cambridge: Cambridge Univ Press.
- Plewa, Piotr. 2007. "The Rise and Fall of Temporary Foreign Worker Policies: Lessons for Poland." *International Migration* 45 (2): 3–36.

- Polaski, Sandra. 2006. "Combining Global and Local Forces: The Case of Labor Rights in Cambodia." *World Development* 34 (5): 919–32.
doi:10.1016/j.worlddev.2005.04.019.
- Powell, Eleanor, and Justin Grimmer. 2016. "Money in Exile: Campaign Contributions and Committee Access." *The Journal of Politics* 78 (4): 974–88.
- Powell, Lynda. 2012. *The Influence of Campaign Contributions in State Legislatures*. Ann Arbor, MI: University of Michigan Press.
- Program, Chesapeake Bay. 2016. "Facts & Figures."
<http://www.chesapeakebay.net/discover/bay101/facts>.
- Quayson, Ato, and Antonela Arhin. 2014. *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*. Taylor & Francis.
- Quirk, Joel. 2011. *The Anti-Slavery Project: From the Slave Trade to Human Trafficking*. Philadelphia: University of Pennsylvania Press.
- Ramirez, Monica. 2014. "Farmworker Women Leaders Making Major Impact." *Latino Rebels*. <http://www.latinorebels.com/2014/03/26/farmworker-women-leaders-making-major-impact/>.
- Rathod, Jayesh, and Adrienne Lockie. 2010. "Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry." Washington and Baltimore.
- Raworth, Kate. 2004. "Trading Away Our Rights: Women Working in Global Supply Chains." Oxford, UK.
- Read, Arthur. 2015. "Comments of the Low Wage Worker Legal Network and Other

- Organizations Concerning Proposed Regulations for the Temporary Non-Agricultural H-2B Program.” Philadelphia.
- Read, Arthur N. 2006. “Temporary Migrant Workers : Worker Rights and Organizing Strategies - Perspectives from the U.S. Experience.” Vol. 525. Philadelphia, Pennsylvania.
- . 2007. “LEARNING FROM THE PAST : DESIGNING EFFECTIVE WORKER PROTECTIONS FOR COMPREHENSIVE IMMIGRATION REFORM.” *Temple Political & Civil Rights Law Review* 16 (2): 423–54.
- Reichert, Joshua S., and Douglass S. Massey. 1982. “Guestworker Programs: Evidence from Europe and the United States and Some Implications for US Policy.” *Population Research and Policy Review* 1: 1–17.
- Resources, Maryland Department of Natural. 2016. “Functions.” *State of Maryland*.
<http://msa.maryland.gov/msa/mdmanual/21dnr/html/21agen.html#seafood>.
- Reubens, Edwin P. 1986. “Temporary Foreign Workers in the US: Myths, Facts, and Policies.” *The International Migration Review* 20 (4): 1037–47.
http://www.jstor.org.udel.idm.oclc.org/stable/pdf/2545749.pdf?_=1459356379196.
- Rist, Ray C. 1979. “Migration and Marginality: Guestworkers in Germany and France.” *Daedalus* 108 (2): 95–108.
- Roe, Emery. 1994. *Narrative Policy Analysis: Theory and Practice*. Durham,: Duke University Press.
- Rosenberg, Mica, Ryan McNeill, Megan Twohey, and Michelle Conlin. 2015. “Exclusive: Donald Trump’s Companies Have Sought Visas to Import at Least 1,100 Workers | Reuters.” *Reuters*, July 21.

- Ross, William M. 2000. "THE ROAD TO H-2A AND BEYOND: AN ANALYSIS OF MIGRANT WORKER LEGISLATION IN AGRIBUSINESS." *Drake Journal of Agricultural Law*.
- Rosser, J. Barkley, and Marina V. Rosser. 2004. *Comparative Economics in a Transforming World Economy*. Cambridge Mass.: MIT Press.
- Ruark, Eric. 2011. "Illegal Immigration & Agribusiness: The Effect on the Agriculture Industry of Converting to a Legal Workforce." *Federation for American Immigration Reform*.
- Rudolph, Christopher. 2003. "Security and the Political Economy of International Migration." *American Political Science Review* 97 (4): 603–20.
- Ruggie, John Gerard. 2013. *Just Business: Multinational Corporations and Human Rights*. W. W. Norton & Company.
- Ruhs, Martin. 2013. *The Price of Rights: Regulating International Labor Migration*. Princeton: Princeton University Press.
- Ruhs, Martin, and Philip Martin. 2008. "Numbers vs. Rights: Trade-Offs and Guest Worker Programs." *International Migration Review* 42 (1): 249–65.
- Runyan, Anne Sisson, and V. Spike Peterson. 2014a. "Gendered Lenses on World Politics." In *Global Gender Issues in the New Millennium*, 39–97. New York: Columbia University Press.
- . 2014b. "Introduction: Gender and Global Issues." In *Global Gender Issues in the New Millennium*, 1–38. New York: Columbia University Press.
- Sanders, Bernie, Richard Durbin, Mazie Hirono, Richard Blumenthal, and Jeff Merkley. 2015. "Senate Letter To Senators McConnell and Reid, H-2B Protections."

- Washington DC: United States Senate.
- Schain, Martin A. 2009. "The State Strikes Back : Immigration Policy in the European Union." *The European Journal of International Law* 20 (1): 93–109.
- Schain, Martin, Aristide E. Zolberg, and Patrick Hossay, eds. 2002. *Shadows Over Europe: The Development and Impact of the Extreme Right in Western Europe* (9780312295936): New York: Palgrave Macmillan.
- Schönwälder, Karen. 2004. "Why Germany's Guestworkers Were Largely Europeans: The Selective Principles of Post-War Labour Recruitment Policy." *Ethnic and Racial Studies* 27 (2). Taylor & Francis Group: 248–65.
- Schwartz-Shea, Peregrine, and Dvora Yanow. 2012. *Interpretive Research Design: Concepts and Processes*. New York, London: Routledge.
- Schwenken, Helen. 2005. "'Domestic Slavery' versus 'workers' Rights': Political Mobilizations of Migrant Domestic Workers in the European Union." 116. San Diego.
- Scott, Joan W. 1991. "The Evidence of Experience." *Critical Inquiry* 17 (4): 773–97.
- Seminara, David. 2010. "Dirty Work: In-Sourcing American Jobs with H-2B Guestworkers." *Center for Immigration Studies*. Washington, DC.
- Shannon, Timothy. 2005. "Slavery in the Chesapeake." *Gettysburg University*.
http://www3.gettysburg.edu/~tshannon/hist106web/site8/slavery_in_the_chesapeake.htm.
- Shearn, Ian T. 2012. "Whose Side Is the American Farm Bureau On?" *The Nation*, July.
<https://www.thenation.com/article/whose-side-american-farm-bureau/>.
- Singh, Sonia. 2015. "Migrant Workers Spread the Word on Illegal Fees | Labor Notes."

- Labor Notes: Putting the Movement Back in the Labor Movement.*
- <http://www.labornotes.org/2015/09/migrant-workers-spread-word-illegal-fees>.
- Soederberg, Susanne, Goerg Menz, and Philp G. Cerny, eds. 2005. *Internalizing Globalization: The Rise of Neoliberalism and the Decline of National Varieties of Capitalism*. New York: Palgrave Macmillan.
- Soysal, Yasmin Nuhoglu. 1994. *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press.
- SPLC. 2013. "Close to Slavery: Guestworker Programs in the United States." Montgomery.
- Strange, Susan. 1996. *The Retreat of the State: The Diffusion of Power in the World Economy*. Vol. 13. Cambridge: Cambridge University Press.
- Tayac, Gabrielle, Edwin Schupman, and Genevieve Simermyer. 2006. *We Have A Story To Tell: Native Peoples of the Chesapeake Region*. Washington, DC: Smithsonian Institution.
- Tichenor, Daniel J, and Richard A Harris. 2003. "Organized Interests and American Political Development." *Political Science Quarterly* 117 (4): 587–612.
- Tickner, J. 2001. *Gendering World Politics: Issues and Approaches in the Post-Cold War Era*. New York: Columbia University Press.
- Tickner, J. Ann. 2005. "What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions." *International Studies Quarterly* 49 (1): 1–21.
- Tillis, Thom, John Cornyn, Richard Burr, Andy Harris, Rick Nolan, Leonard Lance, Garret Graves, et al. 2015. "Letter to Ranking Members of Senate Committee on

- Appropriations.” Washington, DC: US Congress.
- Tourism, State of Maryland. 2016. “Maryland Facts.” *State of Maryland*.
<http://www.visitmaryland.org/info/maryland-facts>.
- Trautman, Laurie Darian. 2014. “TEMPORARY WORKER, PERMANENT ALIEN: AN ANALYSIS OF GUEST WORKER POLICIES IN THE UNITED STATES AND CANADA.” *Univeristy of Oregon*.
- Trochim, William M.K. 2014. “Nonprobability Sampling.” *Research Methods Knowledge Base*. <http://www.socialresearchmethods.net/kb/samprnon.php>.
- True, Jacqui. 2012. *The Political Economy of Violence Against Women*. Oxford University Press.
- True, Jacqui, and Michael Mintrom. 2001. “Transnational Networks and Policy Diffusion : The Case of Gender Mainstreaming.” *International Studies Quarterly* 45 (1): 27–57.
- Twine, France Winddance. 2000. “Racial Ideologies and Racial Methodologies.” In *Raceing Research, Researching Race: Methodological Dilemmas in Critical Race Studies*, 1–34.
- UC Davis. 2000. “Guest Workers H-2A to H-2C.” *Rural Migration News*.
<https://migration.ucdavis.edu/rmn/more.php?id=458>.
- UN. 2013. “Population Facts.” New York.
http://esa.un.org/unmigration/documents/the_number_of_international_migrants.pdf
- . 2015. “News on Migration.” *United Nations Population Fund*.
<http://www.unfpa.org/migration>.
- US Congress. 2015. *H.R.2029 - 114th Congress (2015-2016): Consolidated*

- Appropriations Act, 2016*. Washington, DC: US Congress.
- <https://www.congress.gov/bill/114th-congress/house-bill/2029/text>.
- US House of Representatives Committee on Appropriations. 2015. "Appropriations Committee Releases the Fiscal Year 2016 Labor, Health and Human Services Funding Bill." *US House of Representatives Committee on Appropriations*, June 16.
- US Senate. 2015. "S. Rept. 114-74 - DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATION BILL, 2016." Washington, DC.
- van Dijk, Teun a. 1997. "What Is Political Discourse Analysis?" *Belgian Journal of Linguistics* 11 (1): 11–52. doi:10.1075/bjl.11.03dij.
- Vivian, Shannon Leigh. 2005. "Be Our Guest: A Review of the Legal and Regulatory History of U.S. Immigration Policy toward Mexico and Recommendations for Combating Employer Exploitation of Nonimmigrant and Undocumented Workers." *Seton Hall Legislative Journal* 30: 189–211.
- Wallerstein, Immanuel. 2003. *Historical Capitalism with Capitalist Civilization*. 11th ed. New York, London: Verso Books.
- Warner, Judith Ann. 2005. "The Social Construction of the Criminal Alien in Immigration Law, Enforcement Practice and Statistical Enumeration: Consequences for Immigrant Stereotyping." *Journal of Social and Ecological Boundaries* Copyright *Journal of Social and Ecological Boundaries*, 56–80.
- Weber, John. 2015. *From South Texas to the Nation: The Exploitation of Mexican Labor in the 20th Century*. Durham, NC: University of North Carolina Press.
- Wedeen, Lisa. 2010. "Reflections on Ethnographic Work in Political Science." *Annual*

- Review of Political Science*, no. 1986.
- Weiner, Myron. 1993. *International Migration and Security*. Boulder: Westview Press.
- White, Emily B. 2007. "How We Treat Our Guests: Mobilizing Employment Discrimination Protections in a Guest Worker Program." *Berkeley Journal of Employment & Labor Law* 28 (1).
- Whitworth, Sandra. 2008. "Feminism." In *The Oxford Handbook of International Relations*, 391–407. Oxford: Oxford University Press.
- Wibben, Annick. 2011. *Feminist Security Studies: A Narrative Approach*. New York: Routledge.
- Zolberg, Aristide. 1987. "Wanted But Not Welcome." In *Population in an Interacting World*, edited by William Alonso, 36–73. Cambridge: Harvard University Press.
- . 2006. *A Nation by Design: Immigration Policy in the Fashioning of America*. Cambridge Mass.: Harvard University Press.
- Zolberg, Aristide E. 1999. "The Politics of Immigration Policy: An Externalist Perspective." *American Behavioral Scientist* 42 (9): 1276–79.

Appendix A IRB APPROVAL LETTER



RESEARCH OFFICE

210 Hallihen Hall
University of Delaware
Newark, Delaware 19716-11
Ph: 302/831-2136
Fax: 302/831-2828

DATE: June 9, 2015

TO: Samantha Kelley, PhD Candidate
FROM: University of Delaware IRB

STUDY TITLE: [757648-1] Migrant Labor in US Agriculture

SUBMISSION TYPE: New Project

ACTION: DETERMINATION OF EXEMPT STATUS
DECISION DATE: June 9, 2015

REVIEW CATEGORY: Exemption category # (2)

Thank you for your submission of New Project materials for this research study. The University of Delaware IRB has determined this project is EXEMPT FROM IRB REVIEW according to federal regulations.

We will put a copy of this correspondence on file in our office. Please remember to notify us if you make any substantial changes to the project.

If you have any questions, please contact Nicole Farnese-McFarlane at (302) 831-1119 or nicoletfm@udel.edu. Please include your study title and reference number in all correspondence with this office.

Appendix B

GUESTWORKER INFORMED CONSENT

The following Informed Consent for guestworkers was both printed as well as delivered verbally to ensure that participants understood.

Consentimiento de Participación

Usted ha sido invitado a participar en un estudio de investigación acerca de las condiciones laborales en el Programa de Trabajadores Invitados. La investigadora, Samantha Kelley, es una estudiante doctoral de la Universidad de Delaware.

Por favor pregunte a Samantha, para que le explique, si hubiera alguna palabra o información que usted no entienda claramente. Usted puede llevarse una copia de este consentimiento para sus registros.

El estudio es completamente voluntario. Todas sus respuestas son anónimas, su nombre no aparecerá en ninguna parte del estudio. Usted puede abandonar el estudio en cualquier momento sin ningún problema.

Samantha va a hacer preguntas sobre su trabajo durante unos 30 a 60 minutos. La entrevista será grabada en audio. Las grabaciones serán confidenciales. Samantha será la única que los escuche. Si prefiere no ser grabado con audio, por favor dígle a Samantha.

Existe el riesgo mínimo de que su empleador pueda descubrir que habló con Samantha. Sin embargo, ella ha tomado todas las medidas para asegurar que esto no ocurra. A cambio de la entrevista, usted recibirá \$10 en la forma de una tarjeta de regalo de Walmart.

La información obtenida en esta investigación nos ayudará a comprender mejor las condiciones laborales de los trabajadores contratados en los Estados Unidos. Si tiene alguna pregunta acerca del estudio en el futuro, póngase en contacto con Samantha Kelley al (267) 456-2674 o sskelley@udel.edu.

¿Le gustaría participar en esta entrevista?

Appendix C
COMMUNITY STAKEHOLDER AND GOVERNMENT EMPLOYEE
INFORMED CONSENT

The following Informed Consent was delivered verbally to community stakeholders and government employees:

My name is Samantha Kelley, and I'm a PhD student in the Department of Political Science and International Relations at the University of Delaware. This interview is for research purposes and will last about 1 hour. I am interviewing you because of your experience and expertise.

I'm interested in learning more about labor practices facing H-2A and H-2B workers in the Mid-Atlantic region. This research is completely independent. It is for my dissertation. I am not associated with any organization or government body.

There are no anticipated risks, benefits, or compensation associated with your participation. However, the knowledge gained from this research will help us better understand the working conditions of migrant farmworkers in the US, with policy implications for preventing exploitative labor practices in the future. Your involvement is voluntary, so you may stop at any time.

The interview will be audio-recorded. These recordings will remain confidential and I will be the only one having access to them.

The interview will be analyzed and incorporated into my writing and may sometimes appear as quotes. You may choose to be identified or remain anonymous. If you choose to remain anonymous, your identity will be completely protected and all identifying information will be removed from my research write-up. I will simply refer to you as a NGO representative (or lawyer, or advocate, etc.). If you would like to be identified I will use your full name and official title. Please let me know if you would like to remain anonymous or how I should refer to you (wait for response).

If you have any questions or concerns after this interview, please contact me (give them my business card).

Do you agree to continue with this interview?

Appendix D
GUESTWORKER INTERVIEW PROTOCOL

I. Información Previa del Entrevistado

- ¿De dónde es usted originalmente?
- ¿Cuánto tiempo ha trabajado en los EEUU? ¿En New Jersey/Maryland?
- ¿Cuál es su trabajo actual?

II. Preguntas Principales

- ¿Cómo llegó a los EEUU (transporte)? ¿Cuánto le costó el viaje? ¿Pagó su empleador?
- ¿Que diferencias - si fuera el caso - hay entre el trabajo que le dijeron que haría y el que realmente hace ahora?
- Por favor cuénteme sobre el lugar dónde vive ahora.
 - Más:
 - ¿Cuántas personas viven con usted?
 - ¿Cuanto cuesta la renta? ¿Paga su empleador?
 - ¿Cuanto tiempo tarda para llegar de su casa al trabajo?
 - ¿Toma un coche o un autobús?
- ¿Dónde come la mayoría de sus comidas usualmente? ¿En casa? ¿En restaurantes?
 - Más:
 - ¿Tiene una cocina que funcione para preparar sus alimentos en su casa? Por ejemplo, con una estufa o un refrigerador.
- Si se siente cómodo respondiendo a esta pregunta, ¿cuánto dinero gana al día?
 - Más:
 - ¿Le pagan por hora o por destajo?
 - ¿Le pagan a tiempo?
 - ¿Puede ahorrar dinero?
 - ¿Puede enviar dinero a su familia?
- ¿Cuales son las condiciones de su trabajo?
 - Más:
 - ¿Hay condiciones que sean particularmente buenas acerca de su trabajo?

- ¿Hay condiciones que sean particularmente malas para usted o ha oído sobre condiciones malas para otras trabajadoras?
 - ¿Le quitaron sus documentos de identificación (como su pasaporte, visa, etc.) sin la intención de cuidarlos?
 - Si hubiera un accidente de trabajo - si el trabajo es peligroso, por ejemplo - ¿recibe compensación del empleador?
 - ¿Cuántos hombres trabajan con usted en este trabajo? ¿Son las condiciones laborales diferentes para mujeres y hombres?
 - ¿Está expuesto a toxinas en su trabajo? Si es el caso ¿Recibió ropa de protección?
- Por favor, cuénteme sobre sus experiencias con el derecho a la libertad de asociación, sindicatos, por ejemplo.
 - Más:
 - En su trabajo, ¿puede unirse a un sindicato?
 - ¿Se siente cómodo hablando con su jefe sobre problemas o preocupaciones con el trabajo?
- ¿Cómo se siente acerca de su red social aquí en New Jersey/Maryland?
 - Más:
 - ¿Tiene familia o amigos aquí en la comunidad?
 - ¿Hay festivales o eventos en la comunidad?
 - ¿Tiene días libres para descansar? ¿Cuántos días trabaja cada semana?

II. Preguntas Secundarias

- ¿Cómo encontró su trabajo actual?
 - Más:
 - ¿Encontró su trabajo a través de una agencia de contratación en los EEUU o México (u otro país)?
- ¿Cómo es un día típico de trabajo para usted?
 - Más:
 - ¿A que hora empieza? ¿A que hora termina?
- ¿Cuales tres palabras usaría para describir su trabajo?
- ¿Cuáles fueron sus primeras impresiones de su trabajo?
 - Más:
 - ¿Cómo han cambiado con el tiempo?
- En su opinión, ¿Qué es lo mejor de ser una persona con una visa H-2A/H-2B? ¿Lo peor?
- ¿Cuales son los mayores desafíos para los trabajadores con la visa H-2A/H-2B en los EEUU?

Appendix E
COMMUNITY STAKEHOLDER AND GOVERNMENT EMPLOYEE
INTERVIEW PROTOCOL

I. Interviewee Background

- What is your current position and what communities do you serve?
- How long have you worked in this field?

II. Primary Questions

- How do most H-2A and H-2B guestworkers hear about their jobs and get to the US? Are they compensated by their employer?
- Have you seen or heard of anyone who worked in a substantially different job than what they were promised?
 - Probe:
 - What did they expect to do?
 - What did they do in the end?
 - How is it different for H-2A vs. H-2B?
- What are the housing conditions like for the guestworkers you work with?
 - Probe:
 - Is housing crowded? Is it sanitary?
 - Monthly cost? Does employer pay?
 - Distance from work site? Car or bus?
 - How is it different for H-2A vs. H-2B?
- How do the guestworkers you work with usually get their meals? Do they have access to a working kitchen?
 - Probe:
 - How is it different for H-2A vs. H-2B?
- How are guestworkers usually paid?
 - Probes:
 - By the hour or piece-rate?
 - Is pay on-time?
 - Are they able to save money with this job? Send remittances?
 - How is it different for H-2A vs. H-2B?
- What are the working conditions like?

- Probes:
 - Negative/positive examples?
 - Workers' compensation?
 - Different working conditions for women and men?
 - What do you know of pesticides in the area?
 - How is it different for H-2A vs. H-2B?
- What is the social network like for guestworkers you work with?
 - Probes:
 - Family/friends in area?
 - Festivals/community events?
 - Time off to relax with friends and family?
 - How is it different for H-2A vs. H-2B?

III. Secondary Interview Questions:

- In your opinion, what are the best things about being a guestworker in the US?
 - Probe:
 - Can you give me specific examples?
- What are the greatest challenges guestworkers have in the US?
 - Probe:
 - Can you give me specific examples?
- Why do you think there are gaps in guestworker protections?
- Who else would you recommend I speak to about guestworkers?