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Kimberly M. Bousquet

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Kimberly M. Bousquet*

Of the 2.4 million farm-working laborers in the United States, upwards of 73% are immigrants.¹ And, according to the Economic Policy Institute, immigrants make up nearly 22% of all workers in the U.S. food industry, including 27% of food production workers, 37% of meat processing industry workers, 34% of commercial bakery workers, and 31% of fruit and vegetable preservation work.² Another study found that “[p]eople of color make up the majority of essential workers in food and agriculture (50%) and in industrial, commercial, residential facilities and services (53%).”³ Many of these workers--if not the majority in some sectors--are undocumented and/or unauthorized. Approximately 25% of U.S. immigrants were born in Mexico.⁴ Thus, when we discuss issues involving food and farm workers in the United States, we are largely talking about racial and ethnic minorities, undocumented individuals, and members of the immigrant community (foreign born and their children).⁵

Before COVID-19, many Americans condemned immigrants, even documented and authorized immigrants, as “illegals” and unwanted. Indeed, ridding the U.S. of undocumented immigrants was a core promise of the Trump campaign in 2016, which promised to create a “deportation force” that would remove millions of such persons.⁶ Mr. Trump stoked this anti-immigrant fire throughout his presidential race and presidency, referring to

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¹ *Who Are Farmworkers?*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/about-farmworker-justice/who-we-serve/> (last visited Apr. 11, 2019).

² *The Essential Role of Immigrants in the U.S. Food Supply Chain*, MIGRATION POLICY INSTITUTE (Apr. 2020), <https://www.migrationpolicy.org/content/essential-role-immigrants-us-food-supply-chain>.

³ Celine McNicholas & Margaret Poydock, *Who are essential workers? A comprehensive look at their wages, demographics, and unionization rates*, ECONOMIC POLICY INSTITUTE (May 19, 2020, 11:25 AM), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>.

⁴ Abby Budiman, *Key findings about U.S. immigrants*, PEW RESEARCH CENTER (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>.

⁵ Of course, this is not new, but it’s still very important to keep in mind.

⁶ Muzzaffar Chishti & Sarah Pierce, *Trump’s Promise of Millions of Deportations Is Yet to Be Fulfilled*, MIGRATION POLICY INSTITUTE (Oct. 29, 2020), <https://www.migrationpolicy.org/article/trump-deportations-unfinished-mission>.

certain immigrant groups as rapists, criminals, drug mules, violent, and/or as coming from “shithole countries.”⁷

Yet, early in the grips of the COVID-19 pandemic, America found itself utterly dependent on this previously rejected underground segment of our society. Once declared “illegals”, these workers are now considered *essential*. Essential, as in necessary. Indeed, during this pandemic, twenty percent of all declared essential workers were food and agricultural workers.⁸ Underscoring this point was an April 28, 2020 executive order issued by then President Trump, stating that closures of meat packing plants -- “threaten the continued functioning of the national meat and poultry supply chain, undermining critical infrastructure during the national emergency.”⁹

This order followed the U.S. Department of Homeland Security’s Cybersecurity & Infrastructure Security Agency’s (“CISA”) April 17, 2020 advisory memorandum titled “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response.”¹⁰ The list identified “workers who conduct ... operations and services that are ... essential to continued critical infrastructure viability,” and “workers who support crucial supply chains and enable functions for critical infrastructure.”¹¹

Just below health care workers and law enforcement on the list were agriculture and food workers. At least four categories in this group are largely comprised of immigrants: (1) food manufacturing workers including those in production, processing, and slaughter facilities; (2) farmers, and farm and ranch workers; and (3) workers supporting production including persons engaged in raising, cultivating, harvesting, packing, storing or delivering agricultural or horticultural commodities.

The CISA’s report aligns with public sentiment. “More than four in five adults agree that grocery store workers (89%), farm workers (85%), and agricultural and food production (86%) workers are essential workers” and “[m]ore than four in five adults believe grocery store workers (90%), agriculture and food production workers (85%), and farm workers (82%)

⁷ Eugene Scott, *Trump’s most insulting – and violent – language is often reserved for immigrants*, The Washington Post (Oct. 2, 2019, 2:21 PM), <https://www.washingtonpost.com/politics/2019/10/02/trumps-most-insulting-violent-language-is-often-reserved-immigrants/>.

⁸ McNicholas & Poydock, *supra* note 3.

⁹ Exec. Order No. 13917, 85 Fed. Reg. 26313 (May 1, 2020).

¹⁰ See Advisory Memorandum, Christopher C. Krebs, Director, Cybersecurity and Infrastructure Security Agency, Identification of Essential Critical Infrastructure Workers During COVID-19 Response (Apr. 17, 2020), https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_4.pdf.

¹¹ See *id.*

should be made a priority when it comes to being among the first to receive the coronavirus vaccine.”¹²

It may have taken a global pandemic to get here, but Americans are finally ready to

acknowledge that our immigrant population is essential to the functioning of our food system and that it is a national imperative to ensure the health and safety of these workers. Even as former President Trump has proclaimed, without these immigrant workers our food systems would not function.

Because farm and food workers have been (correctly) identified as essential, and because jobs in this industry generally aren't salaried and don't offer paid benefits or sick leave, these workers did not have the luxury of staying home to ride out the pandemic. For this reason alone, it was inevitable that COVID-19 would have some level of disproportionate impact on America's food and farm workers.

But the wildly disproportionate impact from the coronavirus on food and farm-working population is not due solely to increased exposure. Instead, the disproportionate impact was heightened and worsened by pre-existing social and financial inequities, systemic barriers to resources, and the legal structures and systems that have allowed inequality and racism to flourish during the pandemic.

The COVID-19 pandemic has highlighted the following inequalities in our agricultural workers:

- Cramped housing, with many farm workers and their families living together in communal housing;
- Extreme poverty, with 22% of farmworker families living below the poverty line;¹³
- Despite extreme poverty, most farm workers are not receiving public benefits;¹⁴
- Cultural and language barriers preventing farmworkers from understanding and exercising rights and accessing government services;

¹² Jacqui Fatka, *IDFA survey finds 80% of adults believe food industry workers should be prioritized in receiving coronavirus vaccine*, FARMPROGRESS (Dec. 16, 2020), https://www.farmprogress.com/regulatory/support-high-food-worker-prioritization-covid-vaccine?NL=DFP-01&Issue=DFP-01_20201217_DFP-01_738&sfvc4enews=42&cl=article_6_5&utm_rid=CPG02000002563648&utm_campaign=55825&utm_medium=email&elq2=d144ebf02b8e4f6188380a89c07e11c5.

¹³ FARMWORKER JUSTICE, *supra* note 1.

¹⁴ *Id.*

- Remote and isolated work locations, making travel and obtaining medical care difficult and farmworkers entirely dependent on the farmer-landowner; and
- The inability to access unemployment benefits or to take paid sick leave¹⁵

These communities also live under constant threat of workplace raids, deportation, detainment, and general anti-immigrant sentiment, all of which have a negative effect on access to preventive health care, health insurance, education, and government services.¹⁶

A similar litany of inequalities exists for food processing and production workers, and other workers in the food supply chain (e.g., the average salary for a food processing worker is nearly 20,000 less than the average national salary).¹⁷

These inequalities compounded the impacts of COVID-19 in these communities for a number of reasons, including the following:

- Close living quarters, crowded transportation, and lack of access to sanitation caused quicker and easier spread of disease.
- Lack of public services, poverty, and cultural/language barriers prevent adequate health care, leading to higher degrees of sickness and death, and
- Lack of benefits forced people to work or lose their jobs and be unable to support their family.

The results – COVID-19 inequality:

¹⁵ NATIONAL CENTER FOR FARMWORKER HEALTH, INC., *COVID-19 in Rural America: Impact on Farms & Agricultural Workers* (Feb. 2021), http://www.ncfh.org/uploads/3/8/6/8/38685499/msaws_and_covid-19_fact_sheet_2.1.21.pdf.

¹⁶ Krista M. Perreira & Juan M. Pedroza, *Policies of Exclusion: Implications for the Health of Immigrants and Their Children*, 40 ANNU. REV. PUBLIC HEALTH 147, 149 – 150 (2019).

¹⁷ *Food Processing Workers, All Other*, DATA USA, <https://datausa.io/profile/soc/food-processing-workers-all-other#:~:text=The%20number%20of%20people%20employed,other%20employed%20by%20various%20industries> (last visited Apr. 18, 2021).

- Farmworkers are contracting the coronavirus at a much greater rate than the rest of the population.¹⁸ Among 31 states providing data, 37% of food processing and agriculture workers were Hispanic or Latino but they represented 73% of lab-confirmed COVID-19 cases.¹⁹
- Although these numbers are likely underestimates, Purdue University “estimates that more than 480,000 agricultural workers have tested positive for COVID-19 nationwide,” though this figure excludes contracted and temporary labor, which account for a significant portion of the farm labor population.²⁰
- “According to data collected by FERN, as of March 26, 2021 at 12pm ET, at least **1,424** meatpacking and food processing plants and **407** farms and production facilities have had confirmed cases of Covid-19. At least **89,009** workers (58,300 meatpacking workers, 17,701 food processing workers, and 13,008 farmworkers) have tested positive for Covid-19 and at least **378** workers (286 meatpacking workers, 49 food processing workers, and 43 farmworkers) have died.”²¹

The CDC concluded in January 2021, that factors contributing to the workplace and community transmission of COVID-19 among farmworkers were: “prolonged close contact with coworkers, congregate housing, shared transportation, and frequent community contact.”²² “Several factors at the individual-, household-, community-, and occupational-level, including long-standing health and social disparities, likely contribute to disproportionate disease incidence among racial and ethnic minority workers.”²³

Unfortunately, U.S. law and policy failed to protect food and farm workers during the coronavirus pandemic and have contributed to the unequal impact of COVID-19. Probably the most egregious failure was the lack of a national mandate requiring all agriculture and food sector employers to provide worker protections. Instead, the CDC provided an “interim

¹⁸ Kara Manke, *State's farmworkers hit hard by COVID-19*, DAILY DEMOCRAT (Dec. 15, 2020), <https://www.dailydemocrat.com/2020/12/15/states-farmworkers-hit-hard-by-covid-19/>.

¹⁹ NATIONAL CENTER FOR FARMWORKER HEALTH, *supra* note 15.

²⁰ *See id.*

²¹ Leah Douglas, *Mapping Covid-19 outbreaks in the food system*, Food & Environment Reporting Network (Apr. 22, 2020), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>.

²² Michelle A. Waltenburg et al., *Coronavirus Disease among Workers in Food Processing, Food Manufacturing, and Agriculture Workplaces*, 27 EMERGING INFECTIOUS DISEASES 243, 244 (2021).

²³ *Id.* at 248.

guidance” that employers were free to ignore.²⁴ This failure left these workers without adequate personal protective equipment, testing, effective social distancing measures, and essentially prevented any efforts to contact trace, screen incoming employees for coronavirus, or quarantine positive cases.²⁵ The government compounded this failure by refusing to provide federal stimulus money to undocumented workers in the CARES Act,²⁶ and by excluding a number of categories of immigrants from free COVID-19 testing.²⁷

Joseph Lewnard, assistant professor of epidemiology at UC Berkeley who studied the impacts of COVID-19 on farmworkers, noted of his study results: “These findings validate concerns from researchers, public health professionals and community advocates that farmworkers would suffer from the COVID-19 pandemic in California..... We have failed to protect this population, while they have continued to engage in essential work through the pandemic.”²⁸

Our food system depends on the health, safety and well-being of our largely-immigrant food and farm workers. And although U.S. law and policy failed to protect food and farm workers from uncontrolled coronavirus outbreaks, the CDC and many non-governmental organizations are working to keep this issue in our national conscience. Lawmakers must not ignore these efforts, but must take action to protect these essential workers and to decrease the inequalities that allowed COVID-19 to flourish in our food and farm worker communities.

²⁴ *Agriculture Workers & Employers Interim Guidance from CDC and the U.S. Department of Labor*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 2, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>.

²⁵ Waltenburg et al., *supra* note 22 at 247.

²⁶ NATIONAL CENTER FOR FARMWORKER HEALTH, INC., *supra* note 15.

²⁷ Zoe Willingham & Silva Mathema, *Protecting Farmworkers From Coronavirus and Securing the Food Supply*, Center for American Progress (Apr. 23, 2020, 9:01 AM), <https://www.americanprogress.org/issues/economy/reports/2020/04/23/483488/protecting-farmworkers-coronavirus-securing-food-supply/>.

²⁸ Manke, *supra* note 18.