



THE FRUITS OF THE PAST:

The Unfair Consequences of Excluding Massachusetts Farmworkers from State Labor Law Protections and How the **Fairness for Farmworkers Act** Will Remedy That Injustice



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Diego V. (2021)

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The Fairness for Farmworkers Coalition comprises individuals from the: ACLU of Massachusetts, Central West Justice Center, Connecticut River Valley Farmworkers Health Program, Massachusetts Law Reform Institute, and the Pioneer Valley Workers Center.

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¹ An Act establishing fairness for agricultural laborers, H.1979, 2021 Leg., 192nd Session (Mass. 2021), <https://malegislature.gov/Bills/192/HD2312>; An Act establishing fairness for agricultural workers, S.1205, 2021 Leg., 192nd Session, <https://malegislature.gov/Bills/192/SD1895>.

² The views represented herein do not purport to represent the views of Boston College Law School.

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Call to Action

PASS THE FAIRNESS FOR FARMWORKERS ACT

It is Time for Massachusetts to Act. Passing the Fairness for Farmworkers Act (FFA), currently before the Massachusetts legislature, will end the second-class treatment of farmworkers under our state's wage and hour law. The bill has three essential parts:

- First, the FFA repeals the \$8.00 substandard minimum wage for agricultural and farm work. All farmworkers will be paid the state minimum wage.
- Second, the FFA provides overtime pay for all farmworkers. *Seasonal* farmworkers will receive one and a half times their normal rate of pay for work performed in excess of fifty-five (55) hours in a week. *Year-round* farmworkers, like other hourly employees, will receive time and a half for all hours worked in excess of forty (40).
- Third, the FFA establishes the right to a day of rest each week for seasonal farmworkers and provides overtime pay at time and a half for workers who elect to work on that day of rest.

The Fairness for Farmworkers Act makes the farmworkers' minimum wage the same as all other essential workers in the food supply chain – e.g., meat packers, food processors and grocery store workers. It recognizes the dignity, diligence, skill and hard work of these essential workers.

The text of the FFA and a section-by-section analysis are included in the Appendix.

Executive Summary

Farmworkers across Massachusetts plant and harvest fruits and vegetables, raise livestock, and tend to orchards and nurseries. It is both highly skilled and often back-breaking work. Yet, Massachusetts law excludes farmworkers from important labor protections afforded the rest of the workforce.¹

State law guarantees most workers a minimum wage of \$13.50 per hour, one day of rest a week, and overtime after 40 hours worked per week.² In contrast, Massachusetts law provides farmworkers with a substandard minimum wage of \$8.00 per hour,³ allows them to be required to work seven days a week, and does not require farm employers to pay overtime wage⁴ rates even though they may work 12 hours a day and 60 hours or more per week during the planting and harvesting seasons.

It is time to guarantee farmworkers the same fundamental rights that Massachusetts wage and hour law has long provided to other workers in this state. The decades-long exclusion of farmworkers from Massachusetts' labor laws is an unsustainable moral and economic stain on our state's protective labor standards. It is time to right this wrong and pass the Fairness for Farmworkers Act.

The Landscape: Small Farms but Big Business for the Commonwealth

Massachusetts has over 7,000 farms. These farms employ more than 13,000 farmworkers and produce more than \$475,000,000 in agricultural goods each year.⁵ The average size of a farm in the state is 68 acres; many farms are less than 50 acres.⁶ Only about one-third of the farms in the state employ farmworkers.⁷

Farming is particularly important in Hampshire, Worcester, Berkshire, Franklin, and Plymouth counties.⁸ Farms in Massachusetts cultivate and harvest a wide range of crops, which account for 77% of Massachusetts agricultural sales, the remaining 23% of agricultural sales are those from livestock and poultry.⁹ According to the Massachusetts Food Policy Council, Massachusetts ranks third in the nation for the average per-farm agricultural products sold directly to consumers.¹⁰

The Worker: Migrant and Seasonal Farmworkers Feed the Commonwealth

A majority of the 13,000 farmworkers engage in seasonal, rather than year-round, farm work. Approximately 60% are employed as farmworkers for fewer than 150 days each year.¹¹ Compared to all other families in Massachusetts, twice as many farmworker families live in severe poverty – 17.6% compared to 8.3%. And 38% of farmworker families live at or near poverty compared to 16.9% of all other families in Massachusetts.¹²

Massachusetts farmworkers are disproportionately immigrants, as illustrated by data from the Connecticut River Valley Farmworker Health Program (CRVFHP).¹³ In 2019, nearly 90% of CRVFHP's Massachusetts-based patients were born abroad, overwhelmingly coming from Central American nations and Jamaica.¹⁴ Farmworkers who are seasonal H-2A visa holders account for a relatively small percentage, approximately 4%, of hired farmworkers in the Commonwealth.¹⁵ An estimated 59% of farmworkers are men and 41% are women.¹⁶ The average age of Massachusetts farmworkers is 32, whereas the average age of all workers in the Commonwealth is 41.¹⁷

Reap What you Sow: Denying Farmworkers Basic Workplace Rights Is an American Grown Problem

Farmworkers were excluded from the basic labor protections that most American workers won during the New Deal era. It is now widely recognized that excluding farmworkers from the landmark workplace legislation of the 1930s – the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) – was designed to reinforce Jim Crow segregation and provide state sanction for the economic exploitation of African-American farmworkers at that time.¹⁸ Exploitive vestiges of this thinly-veiled, race-based exclusion from minimal labor standards continue to present a moral, social and economic dilemma for our nation. Subsequent Congressional amendments to the FLSA in the latter part of the twentieth century finally established a minimum wage standard for agricultural workers, but otherwise maintained farmworker’s second-class employee status, denying them overtime pay rates under FLSA.¹⁹ The legacy of FLSA’s racist exclusion of farmworkers from minimum wage and overtime protections continues to serve as a nationwide impediment to providing a living wage for all Americans.²⁰

A Failed Legal Legacy: The Economic and Social Costs of Excluding Farmworkers from Massachusetts Wage and Hour Protections

Excluding farmworkers from the wage and hour protections afforded to other Massachusetts workers has mired farmworker families in poverty for generations, contributed to their poor health, and pushed them into substandard housing.²¹ Farmworkers face unique workplace hazards and health concerns that accompany long work hours and a

physically demanding, fast-paced work environment.²² Agricultural workers, alongside fishermen, experience the highest rate of occupational fatalities in Massachusetts.²³ Risks to health and safety compound the social and economic deprivations farmworkers experience from the poverty-inducing agricultural subminimum wage.²⁴

The Price for Equity: Raising Wages for Farmworkers is a Sustainable Economic Model for Farmers

A recent report published by the University of Massachusetts Political Economy Research Institute (PERI) indicates that changes proposed by the Fairness for Farmworkers Act would result in a nominal increase for most farm’s annual production costs, raising costs by an average of 1.3%.²⁵ This minimal increase in labor costs can be offset by small price increases - a few cents for most products - that will barely be noticed by consumers.²⁶

The fact that only minimal price increases are necessary to cover farm owners’ higher labor costs should be considered alongside the fact that a relatively high proportion of food produced on Massachusetts farms goes directly to local consumers.²⁷ Taken together, these factors allow Massachusetts farm owners to consider leveraging higher agricultural standards in this state to differentiate their products from other areas with weaker labor standards.

Importantly, PERI’s research on the cost of overtime pay is conservatively premised on farm owners paying all seasonal farmworkers overtime after 40 hours of work in any given week, whereas the Fairness for Farmworkers Act would require overtime pay after 55 hours in a week for seasonal farm work.²⁸

Harvesting Justice Across the U.S.: States are Heeding the Call to Fix this Harvest of Shame

California, Colorado, New York, Ohio, South Dakota, Washington and Wisconsin now provide farmworkers with the same state minimum wage paid to all other workers.²⁹ Maine is also considering a bill to end that state's substandard agricultural minimum wage.³⁰ Six states

across the country – Washington, California, Minnesota, New York, Maryland and Hawai'i – have assured farmworkers some form of guaranteed overtime, five by statute and one through judicial action.³¹ Further, New York State requires a weekly day of rest for farmworkers.³²

This report explores the challenges of farm work and demonstrates how the substandard minimum wage, lack of overtime pay, and failure to provide a day of rest creates and perpetuates the impoverishment and unjust treatment of farmworkers in the Commonwealth:

- **Section I** surveys the economics of farming in Massachusetts.
- **Section II** presents the demographics of farmworkers in the Commonwealth.
- **Section III** recounts the racist origins of agricultural exemptions at the federal level, and the consequent challenges those exemptions created for farmworkers nationwide.
- **Section IV** addresses the legacy of excluding farmworkers from Massachusetts wage and hour protections and the law's departure from the Commonwealth's otherwise proud history of progressive legislation by detailing the challenges confronting farmworkers, including poverty, health and safety risks, and unaffordable housing.
- **Section V** explains why the Fairness for Farmworkers Act will not unduly burden farmers or the state's economy.
- **Section VI** situates the Fairness for Farmworkers Act in the context of a wave of similar legal protections enacted by other states to improve the wages and working conditions of farmworkers.



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Introduction

The Commonwealth is home to some of the nation’s premier medical centers, institutions of higher learning, and cutting-edge biotechnology and information technology industries. These industries, along with our world-renowned performing arts venues, robust tourism sector, and popular professional sports industry, allow the Commonwealth to produce the highest gross domestic product per capita of any state.³³ But too often, our state’s vibrant agricultural sector and the essential contributions that farmers and farmworkers³⁴ make to our state’s economy are not recognized. From the cranberry bogs on Cape Cod to the fertile farmland of the Pioneer Valley in the west, more than 7,000 farms and over 13,000 farmworkers, produce over \$475 million in agricultural commodities yearly across Massachusetts.³⁵

Throughout the Commonwealth, farmworkers plant and harvest fruits and vegetables, raise livestock, and tend the orchards and nurseries.³⁶ Yet, despite the vital contribution that farmworkers make to our food security and economic well-being,

Massachusetts' minimum wage and overtime hour laws – designed to prevent most workers from earning poverty-level wages – excludes this essential workforce.³⁷ In 2021, farmworkers can still plant and harvest crops for as little as \$8.00 per hour, for up to twelve hours a day without the legal right to have a day of rest or overtime pay.³⁸

The \$8.00 minimum wage for farmworkers is 40% lower than the regular state minimum wage of \$13.50.

MASS. GEN. LAWS ch. 151, § 2 (2021).

Massachusetts law should not permit a disproportionately immigrant and Black and Latino workforce to earn a poverty-inducing wage that is 40% lower than the current state minimum wage.³⁹ The longstanding exclusion of farmworkers from our state's minimum wage and overtime protections – afforded to virtually all other employees – is part of our nation's legacy of structural racism and inequality that serves as a stain upon the Commonwealth's otherwise protective wage laws.⁴⁰ This exclusion has condemned the essential agricultural workforce to poverty, health disparities, and substandard housing in farmworker communities across the state.⁴¹

The Fairness for Farmworkers Act takes important steps to resolve these statutory injustices without imposing unreasonable cost burdens on farmers or consumers.⁴² The Act

- abolishes the substandard \$8.00 minimum wage for agricultural and farm work and requires farmworkers be paid the state minimum wage.
- requires a weekly day of rest for most seasonal farmworkers and provides overtime pay for workers who elect to work on a mandated day of rest.
- provides overtime pay for farmworkers:
 - Seasonal farmworkers will be entitled to one-and-a-half times their normal rate of pay for any work performed in excess of fifty-five (55) hours per week;
 - Year-round farm employees will be entitled to one-and-a-half times their normal rate of pay for all hours worked in excess of forty (40) hours per week.



I. The Landscape: Small Farms but Big Business for the Commonwealth

A. Farms in Massachusetts – an Overview

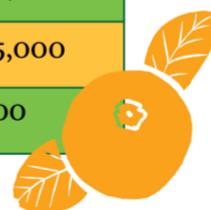
The Commonwealth is home to approximately 7,241 farms that occupy 491,653 acres.⁴³ These farms produce more than \$475,000,000 in agricultural goods each year.⁴⁴ The United States Department of Agriculture (USDA) defines a farm as “any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year.”⁴⁵ The USDA defines small farms as those farms with agricultural sales below \$250,000.⁴⁶ Under the USDA definition the vast majority of Commonwealth’s agricultural landscape comprises small farms, 94.2% to be exact.⁴⁷ Massachusetts defines a farm for tax purposes as “land not less than five acres in area . . . [that is] actively devoted to agricultural or horticultural uses.”⁴⁸

Farms are found throughout Massachusetts. Most farms, however, are concentrated in the thriving agricultural communities of Central and Western Massachusetts and in Plymouth County, near the southeastern shore.⁴⁹ The Massachusetts top-five counties with the most acreage devoted to agriculture are: Worcester–95,308 acres; Franklin–88,247

acres; Plymouth–60,036 acres; Berkshire–58,647 acres; and Hampshire–50,644 acres.⁵⁰ Franklin County has the highest percentage of farmland of any county in the state; 16-19% of that county’s land is used for agricultural purposes.⁵¹ Nearly 70% of farms in Massachusetts occupy less than 50 acres.⁵² The average size of a farm in the Commonwealth is 68 acres.⁵³ Farms in Worcester, Middlesex, and Franklin counties generated over \$60,000,000 per county in sales in 2017, and farming operations in Plymouth County produced over \$70,000,000 in sales.⁵⁴

Massachusetts farms by acres and sales per county⁵⁵

County	# of Farms	Acres	Sales
Worcester	1,568	95,308	\$65,196,000
Franklin	830	88,247	\$68,890,000
Plymouth	758	60,036	\$71,935,000
Hampshire	692	50,644	\$46,026,000
Bristol	688	32,025	\$35,202,000
Middlesex	620	27,332	\$63,350,000
Hampden	523	35,992	\$25,892,000
Berkshire	475	58,647	\$23,491,000
Essex	419	20,726	\$32,866,000
Barnstable	321	6,564	\$23,119,000
Norfolk	197	7,627	\$11,538,000
Dukes	108	7,715	\$5,391,000
Nantucket	21	796	\$1,195,000
Suffolk	20	24	\$162,000



Massachusetts farms grow a variety of fruits and vegetables including apples, strawberries, cranberries, melons, raspberries, pears, and peaches, potatoes, green beans, sweet corn, asparagus, carrots, radishes, pumpkins, and eggplants among other produce.⁵⁶

Farms in the Commonwealth also grow feed for farm animals, cultivate tobacco, and a range of nurseries grow flowers and plants as well as trees and bushes for landscaping.⁵⁷

A wide range of other agricultural commodities are produced in Massachusetts, including meat, dairy products, and farmed seafood.⁵⁸ Livestock raised on Massachusetts farms include cattle, pigs, goats, sheep, horses, mules, and donkeys.⁵⁹ Poultry farms raise chickens and turkeys.⁶⁰ Dairy farms in Massachusetts produce milk, cheese, and eggs.⁶¹ Massachusetts is also home to aquaculture operations that cultivate trout, hard shell clams, bay scallops, and oysters.⁶²

The highest grossing agricultural commodities produced in Massachusetts by yearly market value are greenhouse and nursery products (\$135.4 million), vegetables and melons (\$107.8 million), cranberries (\$59.6 million), and dairy cattle and milk (\$54.9 million).⁶³ These values roughly correlate with the number of farms producing each of the state's high grossing farm commodities: vegetables and melons are produced on 908 or 12.5% of all farms, and there are 777 greenhouse, nursery, and floriculture farms constituting 10.7% of all farms.⁶⁴ Fruit, tree nuts and berries are produced on 845 or 11.7% of all farms.⁶⁵

Corporate farms account for 43% of the agricultural commodities produced in the state, amounting in 2017 to \$206 million in agricultural products. Individual or family-owned farms, which are the majority of farms, produced almost \$155 million in agricultural products.⁶⁶ Partnerships, coops and other institutions produce the remaining \$94 million of the \$455 million in agricultural products Massachusetts farms produced in 2017.⁶⁷

Importantly, locally oriented sales comprise a significant portion of the Massachusetts farm economy.⁶⁸ Massachusetts ranks fifth in the nation for direct-to-market sales, with over \$100 million in sales going directly to farm owners.⁶⁹ This accounts for 21.1% of the state's total sales of agricultural products, the highest proportion of direct-to-market sales in the country.⁷⁰ The direct-to-market sales feature of Massachusetts' agricultural sector may allow farmers to pass increased labor costs on to consumers through nominal price increases while significantly improving the lives of farmworkers and their families.⁷¹

B. Brief Overview of Hired Farm Labor Expenditures on Massachusetts Farms

Not all farms in Massachusetts hire farmworkers. Indeed, in 2017, only one-third, or 2,367 farms, hired all the 13,142 farmworkers employed in Massachusetts.⁷² Farms that hired farmworkers spent, in total, \$158 million in labor costs in 2017.⁷³

However, this cost is not distributed evenly. Almost three-fourths, 71%, of the expenditures for hired farm labor – about \$112.9 million - was spent by farms with expenses of \$100,000 or more.⁷⁴ Of that \$112.9 million in labor costs, \$56.8 million (50%) was spent by farms with expenses of \$500,000 or more.⁷⁵ The remaining \$45.1 million of the \$158 million was spent by farms with expenses less than \$99,999, and roughly half of that amount, \$24.7 million, was spent by farms with annual expenses of \$50,000 - \$99,999.⁷⁶

C. Who Hires Farm Labor?

The employment of farmworkers is not evenly distributed among farm employers. Of the 2,367 farms in Massachusetts that hire farmworkers, 1065 farms hire just one or two farmworkers; this amounts to 1562 workers or 12% of the farmworkers hired each year.⁷⁷ 22% of farms hired three or four farmworkers, 19% hired 5-9 farmworkers, and 14% hired more than 10 farmworkers.⁷⁸

The five counties with the highest dollar amount of agricultural sales have the largest farms and hire more than 8,700 farmworkers, well over half of the farmworkers employed in the state.⁷⁹ More than half of the farmworkers hired in these five counties work on farms that hire 5 or more farmworkers.⁸⁰

Farm Sales and the Farmworker Labor Force in Five Largest Agricultural Counties⁸¹



County	Annual Sales	# of Farms that hire Farmworkers	Total # of Farmworkers	# of Farms that hire > 10 workers	# of Farmworkers on farms >10 workers
Plymouth	\$71,935,000	337	1873	36	575
Franklin	\$68,890,000	236	1457	28	911
Worcester	\$65,196,000	436	2262	52	1090
Middlesex	\$63,350,000	253	1873	44	1133
Hampshire	\$46,026,000	213	1267	46	785

These counties, with the exception of Hampshire County, also have the highest expenditures for hired farm labor in Massachusetts. Middlesex County spent about \$26 million on hired farm labor, followed by Worcester County – \$22.5 million, Plymouth County – \$20.2 million, and Franklin County – \$19.5 million.⁸² Bristol and Essex Counties followed with \$15.2 million and \$12.9 million in expenditures on hired farm labor, respectively.⁸³

Worcester County, which has \$65 million in annual sales – the third highest county amount, hires more farmworkers than any county. In Worcester County, 73% of farmworkers work on farms that hire five or more farmworkers,⁸⁴ but only 12 % of all farms in Worcester County, or 52 farms, employ 10 or more farmworkers and hire 48% of the total farmworker labor force in Worcester County.⁸⁵

Plymouth County follows a similar pattern. Only 11% of farms hire 10 or more farmworkers, yet these farms hire 39% of the county's farmworker labor force, employing 66% of the farmworkers on farms that hire 5 or more farmworkers.⁸⁶ More than 80% of Middlesex County's farmworker labor force is also highly concentrated; 80% work on farms that hire 5 or more farmworkers and 61% working on farms that hire 10 or more workers.⁸⁷

The pattern holds true for farms in the Pioneer Valley. In Franklin County 76% of all farmworkers in this county are employed on farms that hire five or more workers, and 63% of the 76% are employed on the 28 farms that hire 10 or more workers.⁸⁸ Similarly, in Hampshire County 78% of all farmworkers in this county are employed on farms that hire five or more farmworkers, and of them 62% are employed on farms that hire 10 or more farmworkers – which only account for 22% of such farms in Hampshire County.⁸⁹



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I. Migrant and Seasonal Farmworkers: Who They Are and What They Earn

Despite farmworkers' critical contributions to the Commonwealth's agricultural economy, poverty remains widespread among Massachusetts farmworker families. According to the U.S. Department of Agriculture (USDA), hired farmworkers are more likely to be immigrants and non-White compared to other Massachusetts workers.⁹⁰ USDA census data also indicates that Massachusetts farmworkers face elevated health and safety risks as well as difficulties securing safe and affordable housing.⁹¹

Farmworker Testimony

“Yo he trabajado como campesino por muchos años en mi país, y también aquí. Trabajar en el campo es mucho trabajo. Nosotros cultivamos la comida mas saludable, verduras, que va a las tiendas para que la gente coma. Nosotros somos una fuente importante en el estado, y esta ley nos conviene a nosotros para ganar mas dinero y tener un día de descanso con la familia. Yo quisiera que los legisladores nos ayuden en ese aspecto, y nos den voz ya que nosotros no tenemos voz en este país.”

“I have worked as a farmworker for many years in my country, and also here. Working on the farm is a lot of work. We harvest the healthiest food- fruits and vegetables, that goes to the stores so people can eat. We are an important source for the state, and this law benefits us so we can earn more money and have a day of rest with our families. I would like for legislators to help us in that regard, and to give us a voice since we really don't have a voice in this country.”

- A. Bartolon (Farmworker from Franklin County), male, age 27.
[translation by the authors]

A. Demographics of Massachusetts Farmworkers

Although demographic data regarding the approximately 13,000 hired farmworkers in the Commonwealth is incomplete, the available data is significant and provides crucial insights.⁹² A majority of Massachusetts farmworkers engage in seasonal, rather than year-round, farm work.⁹³ Approximately 60% are employed as farmworkers for less than 150 days each year.⁹⁴ Furthermore H-2A visa holders account for only a relatively small percentage, approximately 4%, of hired farmworkers in the Commonwealth.⁹⁵ The H-2A visa program provides temporary work authorization to foreign agricultural workers who obtain a work contract with a specific farm employer.⁹⁶ Many H-2A visa holders who work on Massachusetts farms are from Jamaica.⁹⁷

Massachusetts farmworkers are disproportionately immigrant, according to current data from the Connecticut River Valley Farmworker Health Program (CRVFHP)⁹⁸ which serves farmworkers across Western Massachusetts and Connecticut. In 2019, nearly 90% of CRVFHP's Massachusetts-based patients were born abroad.⁹⁹ Specifically, 50.12% of CRVFHP's patients self-reported as being from Guatemala, 22.52% from Mexico, and 11.32% from Jamaica.¹⁰⁰ A much smaller percentage, 1.9% are from El Salvador. Another 12.41% indicated “other” as their country of origin.¹⁰¹ Of the 12.41% that indicated “other,” the

breakdown is as follows: almost two-thirds or 64.95% were from the United States, which included 1.7% being from Puerto Rico; 14.95% were from Ecuador, 8.88% were from the Dominican Republic, 3.74% were from Honduras, 2.34% were from Nicaragua, and 1.4% were from Syria.¹⁰² Less than 1% indicated that they were from Cape Verde, Colombia, Guinea, Moldova, or the Middle East.¹⁰³

Massachusetts farmworkers tend to be fairly young and have average-sized families.¹⁰⁴ An estimated 59% are men and 41% are women.¹⁰⁵ The average age of Massachusetts farmworkers is 32 years-old whereas the average age of all workers in the Commonwealth is 41 years-old.¹⁰⁶ Farmworker families have three members on average, which aligns with the typical family size of all Massachusetts workers.¹⁰⁷

B. Farmworker Wages Based on Available Data

According to data collected by the CRVFP, of the 2949 farmworkers surveyed, the average farmworker annual income as of 2019 was \$12,908.97.¹⁰⁸ This is only slightly higher than the 2019 federal poverty level for a family of one person, which was \$12,492.¹⁰⁹ However, only 90 respondents, or 3% of farmworkers surveyed, identified themselves as a family of one, i.e., having no dependents.¹¹⁰ Indeed, the survey found the average respondent had five dependents.¹¹¹ For a family that size, the poverty level jumps up to \$69,180.¹¹² But only six of the 2949 survey respondents reported a yearly income that exceeded \$62,400.¹¹³

The CRVFP data indicates that median weekly pay for the 2,949 farmworkers surveyed was \$480, this included wages for the farm season and the year overall.¹¹⁴ The data does not indicate the hourly wage rate, but when the median weekly pay rate is calculated based on a 40-hour work week, only half of respondents are paid over \$12/hour. However, the reality is that seasonal farmworkers routinely work upwards of 55-60 hours a week, reducing the weekly wage to somewhere between \$9.60/hour and \$8/hour (respectively for a 50-hour work week and a 60-hour work week).¹¹⁵



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II. Reap What you Sow: Denying Farmworkers Basic Workplace Rights Is an American Grown Problem

The longstanding exclusion of farmworkers from the minimum wage protections and overtime rules of the federal Fair Labor Standards Act (FLSA), and from most states' wage and hour protections as well, has had profound consequences for farmworkers nationwide.¹¹⁶ These inadequate legal safeguards continue to contribute to widespread poverty among farmworker families across the country. The COVID-19 pandemic has exacerbated the poor conditions under which many farmworkers live and work.¹¹⁷

A. *Structural Racism & Agricultural Exemptions*

Excluding farmworkers from basic legal protections afforded to other workers is not a mistake or oversight. Rather, it is a symptom of structural racism that has its roots in the

exploitation of the African American population, who, up until the Great Migration of the 20th century, resided primarily in the South, toiling as domestic workers and on large farms as sharecroppers.¹¹⁸ Even after the abolition of slavery, Southern farmers continued to exploit African American workers to sustain the plantation agricultural system.¹¹⁹ Southern farmers impacted the debates in Congress in the mid-1930s over New Deal legislation.¹²⁰ Segregationists in Congress unabashedly argued to exempt farmworkers from labor protections.¹²¹ Southern lawmakers opposed FLSA, arguing that requiring employers to pay the overwhelmingly African American farm workforce a minimum wage would undermine segregation and obstruct white employers' access to inexpensive labor.¹²²

Consequently, in 1938, in order to secure the support of these Southern legislators for New Deal reforms, Congress exempted farmworkers from the FLSA provisions that required a minimum wage and increased pay for overtime hours for other workers.¹²³ Southern legislators also successfully excluded farmworkers from other protective New Deal legislation, including the National Labor Relations Act (NLRA) and the Social Security Act,¹²⁴ enshrining the subjugation of African Americans workers as a corrosive component of the New Deal's workplace laws. To this day, FLSA effectively classifies farmworkers as second-class employees and federal labor law still denies farmworkers the legal right to form unions and collectively bargain.

B. Poverty Amongst Farmworkers Nationwide

The legacy of the FLSA's race-based exclusions from minimum wage and overtime protections continues to oppress farmworkers nationwide.¹²⁵ One-third of farmworker families live in poverty in the United States.¹²⁶ This bleak economic fact contributes to numerous challenges that farmworkers confront nationwide, including adverse health impacts, food insecurity, educational challenges and lack of access to affordable housing.¹²⁷ Poverty among farmworker families also adds to the national epidemic of childhood poverty and has intergenerational consequences; it inflicts on future generations of farmworkers' children the same economic and social inequalities now experienced by their parents.¹²⁸

Today, the majority of our nation's farmworkers are of Hispanic and Latino descent; at least half are undocumented.¹²⁹ Rural isolation, limited English proficiency and a host of cultural barriers obstruct farmworkers accessing needed social services even when they are

legally available.¹³⁰ The COVID-19 pandemic has exacerbated and brought into sharp relief the harsh consequences of exempting farmworkers from minimum wage and hour standards. High rates of COVID-19 infections plagued farmworker families at the height of the pandemic due to their lack of access to Personal Protective Equipment (PPE) and inability to social distance at home and on the job.¹³¹

To make matters worse, farmworkers are often ineligible for federal relief benefits, state unemployment compensation or paid sick leave.¹³² And, despite the heightened health risks associated with essential farm labor, many farmworkers were largely excluded from COVID-related stimulus payments.¹³³ COVID-19 aside, problems caused by the high rates of occupational injuries and substandard housing – are exacerbated by the lack of access both to health insurance and adequate medical care.¹³⁴ Moreover, those farmworkers without legal work authorization are more often than not reluctant to challenge sub-standard labor conditions, fearing that stepping forward could have adverse immigration consequences, including the possibility of deportation and family separation.¹³⁵



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III. A Failed Legal Legacy: The Economic and Social Costs of Excluding Farmworkers from Massachusetts Wage and Hour Protections

A. A Historical Look-back at the Shortcomings of Massachusetts Law

Today, Massachusetts wage and hour law allows farmworkers to be paid a substandard minimum wage of \$8.00 an hour and deprives farmworkers of both overtime pay and a day of rest.¹³⁶ These inequities were first codified in Massachusetts' 1947 minimum wage law, which exempted farmworkers.¹³⁷ A 1956 amendment to the minimum wage law maintained these inequities and expressly excluded farmworkers from minimum wage laws by excluding farmworkers from the definition of "occupation" used in minimum wage and overtime laws.¹³⁸

It was not until 1967 that consideration was given to agricultural workers in Massachusetts

Farmworker Testimony

"[T]odo trabajador tiene derecho a ganar un salario justo y recibir pago extra después de las horas estipuladas por la ley y es necesario que tomen un día para estar con la familia y todo esto no está sucediendo en las fincas como Derecho de trabajadores deben recibir este beneficio."

"[E]very worker has the right to earn a just wage and receive overtime pay after the hours stipulated by law and it is necessary they take a day to be with the family, and all of this is not happening on the farms [and] as a Right farmworkers should receive this benefit."

- Claudia Rosales,
Farmworker Organizer for the Pioneer Valley Workers Center
[translation by the authors]

and the substandard minimum wage was established.¹³⁹ In 1967, the legislature initially established the substandard minimum wage of \$1.20 per hour for agricultural workers.¹⁴⁰ Three years later, state lawmakers raised the agricultural minimum wage from \$1.50 to \$1.60.¹⁴¹

The substandard wages and abysmal work conditions of farmworkers was not acknowledged by the Massachusetts legislature until 1967.¹⁴² At that time, the Massachusetts Senate and House of Representatives directed the Massachusetts Legislative Research Council (“The Council”) to study and investigate the extent to which state laws and practices protected migratory laborers and their families.¹⁴³ The Council produced a report in 1967 on migratory farm labor that examined recruitment, transportation, wages, working conditions, health and housing standards, and educational opportunities, as well as how state and federal cooperation in these matters could be improved.¹⁴⁴

The Council’s findings, published fifty-four years ago, described migrant farmworkers as “creature[s] of misfortune - living in abject poverty, culturally isolated and generally rejected by the community, with children, educationally bereft, who will succeed to the same tragic circumstance.”¹⁴⁵ The report also identified the special problems facing farmworkers, particularly in the areas of housing and sanitation, transportation, education, health services, voting requirements, job placement and job instability.”¹⁴⁶



“He [the farmworker] lives and works generally under sub-standard conditions and has largely been denied most of the social benefits granted to American workers.”

COMMONWEALTH OF MASS. LEGIS. RESEARCH COUNCIL,
REP. RELATIVE TO MIGRATORY LABOR, S. 1303 at 15 (1967).

The report concluded that “the itinerant farmworker has been generally unable to improve his economic status... the earnings of migrant laborers are at the lowest level of our entire economy, far below the poverty level standard.”¹⁴⁷ The Council noted that

sociologists at that time described the plight of farmworkers as a “national disgrace.”¹⁴⁸

Following the issuance of the Council’s report, Massachusetts legislators in 1967 established the sub-minimum wage but still excluded them from the law’s overtime provision.¹⁴⁹ The substandard minimum wage remained at \$1.60 an hour until 2014 when it increased to \$8.00 an hour for agricultural workers, where it remains to this day.¹⁵⁰

But the disparity between the subminimum wage for farmworkers and the minimum wage for most other workers remained.¹⁵¹ In fact, on the same day that the increase went into effect for farmworkers, the standard minimum wage increased from \$8.00 to \$9.00 an hour for all other workers.¹⁵² Since then the gap has continued to widen. In 2018, Massachusetts lawmakers passed a bill to increase the general minimum wage to \$15.00 an hour by 2023, while maintaining the \$8.00 an hour wage paid to farmworkers.¹⁵³ In sum, little has changed in the Massachusetts law over the course of the last fifty-plus years to address the fact that farmworkers' wages and work conditions have remained far below what, by any measure, is a living wage.¹⁵⁴

Laws that deny farmworkers a livable minimum wage, overtime pay, and a guaranteed day of rest continue in effect despite the fact that the Council identified these reforms nearly fifty years-ago as the components of “a realistic minimum wage statute [that] would be a significant advance in progressive labor relations for the migrant worker.”¹⁵⁵ The Council also suggested bringing migrant worker protections in line with federal protections for “industrial” workers, improving interstate transportation for migrant workers, providing education and childcare for migrant workers, “decent” farmworker housing, and enacting federal regulations to govern farmworker labor contracts.¹⁵⁶

It was clear to the Massachusetts legislature in 1967 that the plight of migrant farmworkers needed to be addressed.¹⁵⁷ But to date legislative reforms have not fully addressed the persistent disparities and inequities that are inherent in the Massachusetts agricultural sub-minimum wage standards. Consequently, Massachusetts farmworkers face remarkably similar circumstances to what their predecessors faced over fifty-five years ago. They are still unable to escape poverty due to sub-minimum wages. Their mobility remains compromised because immigrant farmworkers cannot secure driver's licenses. Massachusetts prides itself as being a pioneer of progressive social legislation, but legislative advances benefiting other sectors of the Massachusetts workforce have not included farmworkers.¹⁵⁸

B. Court Decision Limits Definition of Farm Work

A 2019 decision of the Supreme Judicial Court of Massachusetts underscores the fact that litigation and judicial review cannot resolve the deficiencies in the law that relegate

farmworkers to second-class status.¹⁵⁹ In *Arias-Villano v. Chang & Sons Enterprises, Inc.*, the Supreme Judicial Court held that workers employed at an indoor sprout growing facility who packaged and delivered agricultural products were entitled to overtime pay. The Court held that state law distinguishes farm work such as “planting, raising, and harvesting crops” from other agricultural work such as packaging and delivering.¹⁶⁰ The Court concluded that agricultural workers engaged in the latter types of tasks are essentially production line workers and therefore not excluded from earning overtime compensation at time and a half rate as required by state law.¹⁶¹

Although *Arias-Villano* narrowed the scope of the agricultural overtime exemption, the decision did not address a host of wage-related issues that directly affect most farmworkers. The issue in the case was narrow and specific, i.e., whether workers cleaning and packing produce on what was essentially an industrial production line, were entitled to overtime after forty hours. Consequently, this ruling impacted only a small percentage of agricultural workers. *Arias-Villano* was a step toward equality for agricultural workers, but it left unaddressed the major economic issue for the overwhelming number of farmworkers: what should the minimum wage be?

C. Widespread Poverty Among Massachusetts Farmworkers

Farmworker families will not escape poverty as long as the \$8.00 an hour agricultural substandard minimum wage remains the law. Twice as many farmworker families now live in severe poverty as compared to

Of Massachusetts Farmworker Families:

17.6% live in severe poverty compared to 8.3% of all workers' families in the state.
38% live near poverty compared to 16.9% of all workers' families in the state.

UMASS POLITICAL ECONOMY AND RESEARCH INSTITUTE REPORT (2020)

other families – 17.6% compared to 8.3%.¹⁶² An additional 38% of farmworker families live near poverty compared to 16.9% of other families in Massachusetts.¹⁶³

But these statistics do not paint a complete picture. The federal government's outdated and flawed,¹⁶⁴ but widely used, definition of the poverty level not only excludes a significant number of individuals and families living in poverty but also fails to account for large regional variations in the cost of living. This statistical deficiency is especially

important when examining poverty in Massachusetts, the state with the fifth highest cost of living.¹⁶⁵ Consider, for example, that the line demarcating poverty in Massachusetts is the same as in Louisiana.¹⁶⁶ Even those farmworkers in Massachusetts who are paid slightly above the national poverty level are not earning a living wage. Their income is often just barely enough to cover the costs of housing, food, and childrearing, let alone other expenses considered fundamental to an American family's economic security.¹⁶⁷

All available data indicate that the incidence of poverty among Massachusetts farmworkers is much higher than that of other workers.¹⁶⁸ The Pioneer Valley Workers Center's (PVWC) recent survey of western Massachusetts farmworkers found that 40% of the respondents earned \$12.00 or less per hour, and 1 in 3 farmworker families had a monthly income between \$1,000 and \$1,500.¹⁶⁹ Ironically, low wages and ineligibility for overtime compensation often prevent farmworkers from putting food on their own families' tables.¹⁷⁰

D. Safety and Health Risks

“Excluding farmworkers from health and safety protections cannot be justified by an assertion that the agricultural industry, and society's general welfare, depends on a caste system that is repugnant to our nation's best self.”

Martinez-Cuevas v. DeRuyters Bros. Dairy, Inc., 475 P.3d 164, 178 (Wash. 2020) (Gonzalez, J., concurring)

Farmworkers contend with a host of safety concerns and health risks that are associated with long work hours and seven-day work weeks with no day of rest. Ninety per cent (90%) of the respondents to the PVWC's survey reported that they worked more than 40 hours per week.¹⁷¹

According to research presented to the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health, farmworkers without adequate opportunities to rest are more susceptible to injuries.¹⁷² This is particularly problematic because, along with inadequate rest opportunities, farmworkers often encounter an extremely fast-paced work environment and hazards associated with dangerous machinery, toxic chemicals, and animal-borne diseases.¹⁷³

Western Massachusetts farmworkers report that the fast-paced requirements of farm labor and a routine of long workdays are associated with wide range of health and safety concerns according to interviews with farmworkers compiled for a master's thesis in labor studies at the University of Massachusetts. One immigrant farmworker conveyed her introduction to farm labor this way:

"I arrived on a Saturday, and on Monday I was already working on a farm. Thank God ... It was pretty intense, uy! Pretty intense! I told myself, 'Wow, I can't do this.' In fact, I cried. I cried hard in the field, because twelve hours with the hoe... I started working with the hoe, weeding and weeding and weeding and weeding. And that heat, that rain, that cold. Whatever the weather is. And to have to be there those twelve hours, because if you say 'I'm tired' or 'I want to leave,' well, they say 'There's no work anymore.'"

Another farmworker described the demands of strawberry picking this way:

"Of all the jobs in the field, the toughest from my point of view was picking strawberries. Because it requires crouching there on the ground, looking for strawberries, the eight, ten, or twelve hours that you work. And at the first lunch break, I felt that I just couldn't take it anymore. When we took that first break, we all threw ourselves on the ground to rest, and I said "Ay! My God. [This work] is for donkeys, this not for humans."

A farmworker, experienced as a subsistence farmer in Central America, conveyed the challenge of fast-paced work on a conveyor belt at a local nursery:

"Ay, no! I couldn't, I couldn't because I didn't have the agility ... It was my first day of work. And I didn't know what the job was going to be like, and she [the boss] didn't explain it to you, and the people who are there don't explain it to you. Only one woman, who was so kind, explained to me how I had to do things. Because the rest didn't talk. And the people who work there and have an agility like this fast, fast, fast! And I don't know how they do it. And angry, the boss says to me again, "You don't understand!" But it is the only job that I can get right now. "Oh!" I say, "And now, what do I do?" And I am a person who is very emotional—I don't like to be shouted at. I'm tempted to cry. She came and told me 'No, you're no use here.'"

According to PVWC survey data, a majority of farmworkers routinely carry out tasks that jeopardize their personal safety.¹⁷⁴ Yet workers report that adequate health and safety training by farm employers is rare as is the provision of basic protective equipment. Fifty-three percent (53%) of respondents noted that their employers did not provide them with protective equipment to work with pesticides.¹⁷⁵ In Massachusetts, agricultural workers

alongside fishermen have higher rates of occupational fatalities compared to workers in other industries.¹⁷⁶

Sanitation and access to drinking water are still problems for workers in the fields. Almost half, 48% of the respondents, reported that they did not always have access to a bathroom, and 37% noted that they cannot always access drinking water on the job.¹⁷⁷ Some survey respondents revealed that their employers would chastise them for halting their work to take a drink of water.¹⁷⁸

Given these challenging conditions, it is unsurprising that Massachusetts farmworkers confront myriad health issues, which the CRVFHP notes, are similar to health issues farmworkers face nationwide.¹⁷⁹ The CRVFHP reported that farmworkers frequently experience chronic conditions such as diabetes and hypertension¹⁸⁰ and struggle with health issues related to pesticide and herbicide use.¹⁸¹ Health problems arising from pesticide exposure, including dermatological issues, headaches, and musculoskeletal conditions, are widespread among farmworkers.¹⁸² Farmworkers in Massachusetts, like those in other parts of the country, are also at high risk of heat-related illness, which can impact farmworkers during the hot summer months.¹⁸³

Despite the elevated health and safety risks Massachusetts farmworkers face, many farmworkers in the Commonwealth lack benefits that would help them cope with these issues. For example, 88% of Massachusetts farmworkers who the PVWC surveyed reported that their employers did not offer paid sick days.¹⁸⁴ Approximately 80% of CRVFHP's Massachusetts farmworker patients did not have health insurance in 2019.¹⁸⁵

E. Housing Challenges

The substandard wage scale of Massachusetts farmworkers contributes to their struggle to find stable, affordable, and safe housing. Currently, most farmworkers throughout Massachusetts secure their own housing.¹⁸⁶ Only a small minority of farmworkers live in employer provided housing, including many workers on H-2A visas whose employers are required to provide housing.¹⁸⁷ But most farmworkers are renters who are part of the low-wage workforce facing a housing crisis driven by the high cost of living in this state. Housing advocates report that more than half of extremely low-income renters in Massachusetts experience the severe cost burdens of unaffordable housing.¹⁸⁸

Indeed, there is currently a shortage of more than 150,000 affordable housing units in the Commonwealth.¹⁸⁹ Given this housing crisis, farmworkers' poverty level wages present the difficult choice of paying rent or buying food and seeking medical care.¹⁹⁰

Moreover, the Pioneer Valley Planning Commission found that farmworkers who identify as Latino or Hispanic are more likely to live in economically deprived and racially segregated communities¹⁹¹ due to the combined impact of discriminatory rental practices and zoning laws that reinforce patterns of racial segregation. The combined challenge facing farmworkers of housing discrimination and earning poverty-level or near poverty-level wages¹⁹² is confirmed by the CRVFHP, which reports that the majority of their Massachusetts farmworker patients live in three Springfield zip codes with high concentrations of poverty.¹⁹³ These same zip codes fall within the Springfield Metropolitan Statistical Area with the third highest rate of Hispanic-White segregation in the country.¹⁹⁴

When this reality is overlaid on the knot of other poverty-induced challenges facing farmworkers, e.g., language barriers and limited knowledge of housing rights, immigrant farmworkers may find themselves forced to accept substandard and crowded multi-family living arrangements in segregated neighborhoods.¹⁹⁵ Within such neighborhoods, the consequences of poverty may be further compounded by underserved schools, transportation challenges, and environmental health concerns that adversely impact the health and safety of farmworkers, and widen the opportunity gap for their children.¹⁹⁶

In short, farmworkers' substandard living situations, high housing prices and substandard wages can compound the physical, mental, and health and safety issues that confront the agricultural labor force.¹⁹⁷ Add to all this the fact that the immigration status of many farmworkers makes them ineligible for lower-cost public housing or food assistance.¹⁹⁸ And, at the present time Massachusetts does not allow those immigrants not "lawfully present" to obtain driver's licenses.¹⁹⁹ These are additional challenge for non-citizen immigrant farmworkers who already have few affordable housing options and often find themselves concentrated in a city at a considerable distance from the farms where they work.²⁰⁰ In sum, high housing prices combined with substandard wages pose significant challenges, particularly for noncitizen farmworkers.²⁰¹



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IV. The Price for Equity: Raising Wages for Farmworkers is a Sustainable Economic Model for Farmers

The Fairness for Farmworkers Act will be an important step in providing fair treatment for farmworkers without overly burdening or undermining the economic well-being of farm owners or consumers. These reforms will provide significant benefits for all stakeholders and will have only a minor impact on farm labor costs and consumer prices.

A. *Maximizing Justice at Minimum Cost*

According to a report issued by the University of Massachusetts Political Economy Research Institute (PERI), the reforms in the Fairness for Farmworkers Act will not result in unreasonable labor costs for farmers.²⁰² In fact, the PERI report estimates that the average Massachusetts farm would have to increase prices by only 1.3% to cover the additional labor

costs associated with a far more expansive overtime provision than the one called for in the Fairness for Farmworker's Act.²⁰³ PERI estimates that this 1.3% price increase could be offset with minimal retail price increases²⁰⁴ of just a few cents for most of farm products. PERI's report estimates a 2-cent increase for a gallon of milk or a pint of blueberries and a 1-cent increase for a pound of asparagus if overtime pay rates were extended to farmworkers.²⁰⁵ The report concludes that this modest price increase would be hardly perceptible and easily absorbed by consumers.

PERI's calculations of the increased labor costs for extending overtime protections to all farmworkers also takes into account the labor costs associated with seasonal fluctuations in farm employment. In 2020, the projected yearly cost for farm labor in Massachusetts was \$166.4 million according to the 2017 U.S. Census of Agriculture (COA).²⁰⁶ The Farm Labor Survey reports that the highest farmworker employment levels and the need for longer work hours occur in the summer and fall months, with spring labor expenditures approximately 27% lower than in the summer or fall.²⁰⁷ In the winter months, the estimated expenditure for labor drops considerably; in 2019 it was less than half of labor costs in the summer or fall due to a lower demand for farm labor and a smaller percentage of farmworkers working overtime.²⁰⁸

Given this data, the PERI report estimates that requiring Massachusetts farmers to provide overtime compensation would result in less than a 5% increase to yearly wage expenditures if overtime were paid for working more than 40 hours each week.²⁰⁹ This amounts to an increase of less than 2% of a typical farm's annual expenditures.²¹⁰

Importantly, PERI's research conservatively premised the projected increase in labor costs on an overtime formula that triggers overtime rates after using 40 hours of work per week.²¹¹ This calculation resulted in overtime labor costs that are significantly higher than the labor costs that would actually result from the FFA because the proposed reforms would entitle seasonal farmworkers to overtime after 55 hours of work (not after 40 hours) when farm employment and overtime demands peak.²¹²

B. Significant Benefits for All Stakeholders

The Fairness for Farmworkers Act will improve farmworker families' living standards without destabilizing the farm economy. First, the FFA's seasonal overtime

requirement recognizes the economics of seasonal farming. The FFA’s overtime provision is not triggered until after 55 hours of work, recognizing the reality of long workdays to assure that planting and harvesting will occur despite changing weather conditions.²¹³ Second, the higher minimum wage will help stabilize the agricultural workforce to the benefit of both farmworkers and farm employers.²¹⁴ The current legal framework, which sanctions low wages and little rest for farmworkers, translates into higher labor force turnover, a significant problem for farm employers facing a chronic shortage of experienced, skilled agricultural workers.²¹⁵ Unlike the current framework, the FFA will help reduce social, racial and economic inequality for farmworkers and their families *and* benefit farm owners by reducing employee turnover, and absenteeism and improving employee morale.²¹⁶

The FFA’s elimination of the substandard farmworker wage scale rests on sound economic policy that will benefit the entire state.²¹⁷ It is well established that “every extra dollar going into the pockets of low-wage workers . . . adds about \$1.21 to the national economy.”²¹⁸ The FFA will also strike a blow at poverty among farmworkers and thereby take steps to address childhood poverty, which cost the nation more than one trillion dollars or about 5.4% of GDP in 2015.²¹⁹ The Fairness for Farmworkers Act is a win-win reform that will boost local economies, reduce instability in the agricultural workforce, enhance food security and take meaningful steps to reduce poverty.



Diego V. (2021)

V. Harvesting Justice Across the U.S.: States are Heeding the Call to Fix this Harvest of Shame

A. Justice for Farmworkers in Other States

Massachusetts should join with other states that have addressed the inequities of maintaining a subminimum agricultural wage and denying overtime protection to farmworkers. The legislatures in California, Colorado, Maryland, Hawaii, Minnesota, Washington, and New York have all adopted reforms aimed at eliminating the subminimum agricultural wage.²²⁰ More specifically, seven states – California, Colorado, New York, Ohio, South Dakota, and Wisconsin – have enacted laws that currently provide farmworkers with the same state

“It’s ironic that those who till the soil, cultivate and harvest the fruits, vegetables, and other foods that fill your tables with abundance have nothing left for themselves.”

- Cesar E. Chavez

American Farmworker Activist
Co-founder of National Farm Workers Association and
the United Farm Workers Union (AFL-CIO)

minimum wage that other workers are entitled to.²²¹ And, recently, New York passed legislation requiring a weekly day of rest for farmworkers.²²²

These developments have prompted other states to consider similar provisions.²²³ In Washington, for example, the state high court in 2020 held that the agricultural exemptions in that state's wage and hour law violated the state constitution and extended to dairy farm workers the same overtime requirements afforded to all other laborers. In May 2021, the governor of Washington state signed legislation that extends this guarantee to all farmworkers.²²⁴ Maine, a close neighbor of Massachusetts with a similar agricultural industry is considering similar legislation.²²⁵

B. Reform Efforts at the National Level

The proposed U.S. Citizenship Act of 2021,²²⁶ if enacted by Congress, would provide farmworkers nationwide with overtime compensation for hours worked in excess of 55 hours in a week beginning in 2022.²²⁷ This Act would also gradually reduce the number of hours required for farmworkers to qualify for overtime pay to 40 hours a week beginning in 2025.²²⁸ However, prospects for the enactment of such federal legislation remain uncertain. Massachusetts farmworkers cannot afford to wait for federal action to eliminate the racially tainted farmworker minimum wage exemption and the exclusion of these workers from state overtime requirements.²²⁹

Conclusion

Massachusetts should extend wage and hour protections to farmworkers, who are disproportionately immigrant and/or Latino and no less deserving of basic labor protections than other workers. The longstanding agricultural exemptions in federal and state wage and hour laws are a legacy of systemic racism in federal and state wage and hour law that continues to negatively impact farmworkers. Recognizing this, legislators across the country are now working to remove agricultural exemptions from wage and hour laws. Massachusetts should do the same.

The Fairness for Farmworkers Act is the necessary next step to provide all Massachusetts farmworkers equal treatment under state wage and hour law. The essential contributions of farmworkers during the COVID-19 pandemic have highlighted the everyday challenges facing Massachusetts farmworkers including widespread poverty, elevated health risks, and difficulty finding affordable housing. There is no reason to delay. It is time to place Massachusetts farmworkers on equal footing, with other Massachusetts workers.

It is time to pass the Fairness for Farmworkers Act.

An Act establishing fairness for agricultural laborers

SECTION 1. Chapter 136 of the General Laws is hereby amended by adding the following new section:

Section 17. Every person employed in seasonal agricultural and farm work as defined in section 2 of chapter 151 who is not the parent, child, spouse or other member of the employer's immediate family shall be allowed at least 24 consecutive hours of rest in each calendar week. Twenty-four consecutive hours spent at rest due to circumstances such as inclement weather or unfavorable crop conditions shall be deemed to constitute the rest required by this section. No provision of this section shall prohibit an employee engaged in seasonal agricultural and farm work from voluntarily agreeing to work on such day of rest required by this paragraph, provided that the work is compensated at a rate which is at least one and one-half times the laborer's regular rate of pay for all hours worked on such day of rest.

SECTION 2. Section 1A of chapter 151 of the General Laws is hereby amended by inserting at the end of the first sentence, after the word "employed", the following provision:

; provided, however, that with respect to employers employing employees engaged in seasonal agricultural and farm work as defined in section 2, no employer in the commonwealth shall employ any such employee for a work week longer than 55 hours unless such employee receives compensation for his employment in excess of 55 hours at a rate not less than one and one-half times the regular rate at which he is employed.

SECTION 3. Said section 1A of said chapter 151 is hereby further amended by striking out clause 19.

SECTION 4. Section 2 of said chapter 151 is hereby amended by striking out, in the first sentence of the definition of 'Occupation,' after the words "professional service", the words "agricultural and farm work,".

SECTION 5. Said section 2 of said chapter 151 is hereby further amended by adding the following definition:

"Seasonal", when modifying "agricultural and farm work" as used in this chapter, means labor performed during a period of an agricultural business's operation of growing and harvesting (a) lasting not more than 235 continuous days that includes the months of June, July and August, or (b) beginning not earlier than the first day of August nor later than the first day of September and lasting not more than 100 continuous days.

An Act Establishing Fairness for Agricultural Laborers in Massachusetts

Section-by-Section Description

SECTION 1: Provides a weekly day of rest for most seasonal agricultural and farm workers and provides for time and one-half pay for workers who choose to work on that day instead.

SECTIONS 2 and 3: Provide for overtime for farmworkers employed *year-round* in agriculture with pay at time and half for all hours over 40 worked in a week and for overtime for *seasonal* agricultural and farm laborers at a rate of no less than time and one-half pay for any work performed after 55 hours in a week.

SECTION 4: Eliminates the sub-minimum wage of \$8.00 per hour for agricultural and farm work, making those workers eligible for the generally applicable minimum wage.

SECTION 5: Defines “seasonal agricultural and farm work” for purposes of the minimum wage and overtime laws.

Endnotes

- ¹ See MASS. GEN. LAWS ch. 151, §§ 1A, 2A (2021); see also MASS. GEN. LAWS ch. 149, § 50 (2021).
- ² *Id.*
- ³ See MASS. GEN. LAWS ch. 151, § 2A (2021).
- ⁴ See MASS. GEN. LAWS ch. 151, § 1A (2021).
- ⁵ U.S. DEP'T OF AGRIC., 2017 CENSUS OF AGRICULTURE MASSACHUSETTS STATE AND COUNTY DATA 7, 9, 88 (2019) [hereinafter MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5].
- ⁶ *Id.* at 2.
- ⁷ *Id.* at 88.
- ⁸ See MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 230-235; see also, U.S. DEP'T OF AGRIC., 2017 CENSUS OF AGRICULTURE STATE PROFILE MASSACHUSETTS 2 (2017) [hereinafter STATE PROFILE MASSACHUSETTS, *supra* note 8].
- ⁹ *Id.*
- ¹⁰ See METRO. AREA PLANNING COUNCIL ET AL., 2015 MASSACHUSETTS LOCAL ACTION PLAN 214 (2015) [hereinafter MASSACHUSETTS LOCAL ACTION PLAN] (Massachusetts ranks third in the nation for the average per-farm agricultural products sold directly to consumers.).
- ¹¹ See MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 88.
- ¹² See JEANNETTE WICKS-LIM, ESTIMATES OF THE POTENTIAL BENEFITS AND COSTS OF EXTENDING OVERTIME ELIGIBILITY TO ALL FARMWORKERS IN MASSACHUSETTS 6 (2020) [hereinafter WICKS-LIM, *supra* note 12].
- ¹³ Connecticut River Valley Farmworker Health Program Demographics Report, CONN. RIVER VALLEY FARMWORKER HEALTH PROGRAM (Mar. 1, 2021) (on file with authors) [hereinafter CRVFHP Demographics Report, *supra* note 13] (offering insight into the demographics of Massachusetts farmworkers).
- ¹⁴ CRVFHP Demographics Report, *supra* note 13.
- ¹⁵ Email from Erik Gonzalez, Massachusetts Office of Workforce Development, to Claudia Quintero, Staff Attorney, Central West Justice Center (Mar. 8, 2021, 2:58 PM EST) (on file with authors).
- ¹⁶ CRVFHP Demographics Report, *supra* note 13.
- ¹⁷ CRVFHP Demographics Report, *supra* note 13; see also WICKS-LIM, *supra* note 12, at 5.
- ¹⁸ Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L. J. 95, 100, 102 (2011); see Sarah O. Rodman et al., *Agricultural Exceptionalism at the State Level: Characterization of Wage and Hour Laws for Farmworkers*, J. AGRIC., FOOD SYS., & COMTY. DEV., Winter 2015-2016, at 91 (describing why Southern legislators wanted to exclude farmworkers from labor protections); *The Great Migration: The African-American Exodus North*, NAT'L PUB. RADIO (Sept. 13, 2010).
- ¹⁹ See 29 U.S.C. § 213(6) (2021) (describing classes of farmworkers who are not entitled to the federal minimum wage and noting that farmworkers are ineligible for overtime compensation); see also U.S. DEPARTMENT OF LABOR, *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)* (Jan. 2020), <https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture> (last visited Aug. 5, 2021) (which states that “[a]lthough exempt from the overtime requirements of the FLSA, agricultural employees must be paid the federal minimum wage” of \$7.25 an hour.).
- ²⁰ Perea, *supra* note 18, at 97-98; see also Alexis Guild & Iris Figueroa, *The Neighbors Who Feed Us: Government Policy - Challenges and Solutions*, 13 HARV. L. POL'Y REV. 157, 159 (2018) (arguing that the exclusion of farmworkers from labor protections at the federal and state levels is partially responsible for the difficulties farmworkers face).
- ²¹ See *infra* Part IV.
- ²² See *infra* Part IV; CRVFHP Demographics Report, *supra* note 13.
- ²³ MASS. DEP'T OF PUB. HEALTH, FATAL INJURIES AT WORK MASSACHUSETTS FATALITY UPDATE 2016-2017 2 (2019) [hereinafter FATAL INJURIES AT WORK MASSACHUSETTS FATALITY UPDATE, *supra* note 23].
- ²⁴ See *infra* Part IV.
- ²⁵ WICKS-LIM, *supra* note 12, at 20.
- ²⁶ *Id.* at 21 (for example “The price of an average gallon of milk would increase from \$3.50 to \$3.52. The price of a pound of asparagus would increase from \$2.50 to \$2.51. The price of a pint [of] blueberries would increase from \$3.00 to \$3.02.”).
- ²⁷ See MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5.
- ²⁸ Wicks-Lim, *supra* note 12.
- ²⁹ Farmworker Justice, Wages Map, <https://www.farmworkerjustice.org/wages-map/> (last visited August 4, 2021) [hereinafter Wages Map, *supra* note 29]. On June 25, Colorado Governor Jared Polis signed into law SB 21-087 extending the states minimum wage standards to farmworkers, overtime pay at time and a half after 40 hours of work, collective bargaining rights and other significant advances for workplace rights for farmworkers, https://leg.colorado.gov/sites/default/files/2021a_087_signed.pdf (last visited on July 2, 2021).

³⁰ H.P. 760, 130th Maine Leg., 1st Reg. Sess. (Me. 2021); Evan Popp, ‘We Have the Chance to Do Better:’ Lawmakers Hear Bills to Include Farmworkers in Labor Laws, BEACON, Apr. 8, 2021, <https://mainebeacon.com/we-have-the-chance-to-do-better-lawmakers-hear-bills-to-include-farmworkers-in-labor-laws/> (Discussing farmworker overtime bill in Maine); Jessica Folker, *New Bill Would Extend Rights for Organizing, Overtime Pay to Farmworkers*, L. WEEK COLO., Mar. 8, 2021, <https://lawweekcolorado.com/article/new-bill-would-extend-rights-for-organizing-overtime-pay-to-farmworkers/> (Discussing farmworker overtime bill in Colorado); Compare Center for Agriculture and Rural Sustainability, *Economic Impact of Agriculture: Maine*, DIV. OF AGRIC. RESEARCH & EXTENSION UNIV. OF ARK. SYS., <https://economic-impact-of-ag.uark.edu/maine/> (last visited Apr. 17, 2021) [hereinafter *Economic Impact of Agriculture: Maine*], with Center for Agriculture and Rural Sustainability, *Economic Impact of Agriculture: Massachusetts*, DIV. OF AGRIC. RESEARCH & EXTENSION UNIV. OF ARK. SYS., <https://economic-impact-of-ag.uark.edu/massachusetts/> (last visited Apr. 17, 2021) [hereinafter *Economic Impact of Agriculture: Massachusetts*, *supra* note 30.].

³¹ Farmworker Justice, Overtime Map, <https://www.farmworkerjustice.org/overtime-map/> (last visited August 4, 2021) [hereinafter Overtime Map].

³² N.Y. Lab. Law § 161 (McKinney, 2021).

³³ See *Per Capita Real Gross Domestic Product (GDP) of the United States in 2019, by State*, STATISTA, <https://www.statista.com/statistics/248063/per-capita-us-real-gross-domestic-product-gdp-by-state/> (last visited Mar. 26, 2021); see also Louis Jacobson, *The Best of Times, the Worst of Times: A Ranking of State Economies*, GOVERNING (Aug. 19, 2016), https://www.governing.com/archive/gov-state-economic-rankings-governor-ratings.html?utm_term=The%20Best%20of%20Times.%20the%20Worst%20of%20Times:%20A%20Ranking%20of%20State%20Economies.

³⁴ The Massachusetts agricultural exemption provision defines “farmworker” as a worker engaged in “labor on a farm and the growing and harvesting of agricultural, floricultural, and horticultural commodities.” MASS. GEN. LAWS ch. 151, § 2.

³⁵ MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 7, 9, 88; see also STATE PROFILE MASSACHUSETTS, *supra* note 8.

³⁶ See *Arias-Villano v. Chang & Sons Enterprises, Inc.*, 118 N.E.3d 835, 840 (Mass. 2019). The Supreme Judicial Court’s decision in *Arias-Villano v. Chang & Sons Enterprises, Inc.* determined that this exemption should be read narrowly to cover only those workers engaged in the activities of “planting, raising, and harvesting crops” and not the post-harvesting or secondary activities such as cleaning, packing, and preserving, ensuring that the latter labor is subject to state overtime laws.

³⁷ See MASS. GEN. LAWS ch. 151, § 1, *et seq.* (2021).

³⁸ See MASS. GEN. LAWS ch. 151, § 2A (establishing a subminimum wage for farmworkers); see also MASS. GEN. LAWS ch. 149, § 50 (excluding farmworkers from the day of rest requirement).

³⁹ See generally MASS. GEN. LAWS ch. 151, § 1, *et seq.*; see also WICKS-LIM, *supra* note 12, at 5; see Demographics Report, *supra* note 13, (Mar. 1, 2021) (on file with authors) (offering insight into the demographics of Massachusetts farmworkers).

⁴⁰ See generally Perea, *supra* note 18.

⁴¹ See *infra* Part IV.

⁴² WICKS-LIM, *supra* note 12, at 21.

⁴³ MA DEP’T. OF AGRIC. RES., AGRIC. RES. AND STATISTICS: STATISTICS ON AGRIC. IN MA (2021), <https://www.mass.gov/info-details/agricultural-resources-facts-and-statistics> (last visited Aug. 4, 2021) [hereinafter MA AGRIC. RES. AND STATISTICS, *supra* note 43].

⁴⁴ MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 7, 9.

⁴⁵ See 2017 Census of Agricultural Data, USDA National Agricultural Statistics Survey, VIII Introduction, https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/usv1.pdf (Apr. 2019).

⁴⁶ U.S. DEP’T. OF AGRIC., *Small Farms, Big Differences* (Mar. 11, 2021), <https://www.usda.gov/media/blog/2010/05/18/small-farms-big-differences> (last visited Aug. 4, 2021).

⁴⁷ See STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2 (noting that many Massachusetts farms are family-owned).

⁴⁸ See MASS. GEN. LAWS ch. 61A § 3 (registration by the Department of Motor Vehicles to operate farm equipment requires that a farmer prove they are “substantially engaged in farming or the growing and harvesting of forest products...and show that at least forty percent (40%) of [their] income is from the activity; or the activity produced a gross income of at least \$1,000...or if [their] farm is enrolled in and classified under M.G.L. c. 61A as being devoted to agricultural or horticultural use.”).

⁴⁹ See MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 230-235.

⁵⁰ See MA AGRIC. RES. AND STATISTICS, *supra* note 43.

⁵¹ *Id.*

⁵² STATE PROFILE MASSACHUSETTS, *supra* note 8, at 1 (showing that 68% of farms in the state cover less than 50 acres).

⁵³ See MA AGRIC. RES. AND STATISTICS, *supra* note 43.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See MA AGRIC. DEP’T. OF AGRIC. RES., Massachusetts Agriculture Snapshot 2021, <https://www.mass.gov/doc/snapshot-of-ma-agriculture-presentation/download> (last visited Aug. 4, 2021); see also STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2;

see also MA DEP'T. OF AGRIC. RES., *Massachusetts-Grown Produce Availability Calendar*, <https://www.mass.gov/doc/produce-availability-chart/download> (last visited Aug. 4, 2021) [hereinafter MA-Grown Produce Availability Calendar, *supra* note 56].

⁵⁷ See STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2; UNIV. OF MASS. AMHERST CENTER FOR AGRICULTURE, FOOD, AND THE ENVIRONMENT, *Top Five Types of Massachusetts Farms*, <https://ag.umass.edu/resources/massachusetts-agricultural-data/top-five-types-of-massachusetts-farms> (last visited Aug. 4, 2021) [hereinafter UMASS Top Five Types of Massachusetts Farms, *supra* note 57]; see also Domenic Poli, *Valley has rich history of growing tobacco*, GREENFIELD RECORDER (Sept. 15, 2019 9:00:17 PM), <https://www.recorder.com/History-of-tobacco-in-Pioneer-Valley-27429701> (last visited Aug. 4, 2021).

⁵⁸ See STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2; MA-Grown Produce Availability Calendar, *supra* note 56; see also UMASS Top Five Types of Massachusetts Farms, *supra* note 57.

⁵⁹ See STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2.

⁶⁰ *Id.*; *Turkey Farms*, MASS. DEP'T OF AGRIC. RES., <https://www.mass.gov/service-details/turkey-farms> (last visited Aug. 4, 2021).

⁶¹ See STATE PROFILE MASSACHUSETTS, *supra* note 8, at 2; MA-Grown Produce Availability Calendar, *supra* note 56.

⁶² *Id.*

⁶³ See UMASS Top Five Types of Massachusetts Farms, *supra* note 57; see also UNIVERSITY OF ARKANSAS DIVISION OF AGRICULTURE RESEARCH AND EXTENSION, *Economic Impact of Agriculture: Massachusetts*, <https://economic-impact-of-ag.uada.edu/massachusetts/> (last visited Aug. 4, 2021).

⁶⁴ UNIV. OF MASS. AMHERST CENTER FOR AGRICULTURE, FOOD, AND THE ENVIRONMENT, *Diverse Mix of Farm Types*, <https://ag.umass.edu/resources/massachusetts-agricultural-data/number-of-farms/diverse-mix-of-farm-types> (last visited Aug. 4, 2021).

⁶⁵ *Id.*

⁶⁶ UNIV. OF MASS. AMHERST CENTER FOR AGRICULTURE, FOOD, AND THE ENVIRONMENT, *Farm Type by Business*, <https://ag.umass.edu/resources/massachusetts-agricultural-data/types-of-business-organizations/farm-business-type-by> (last visited Aug. 4, 2021).

⁶⁷ *Id.*

⁶⁸ UNIV. OF MASS. AMHERST CENTER FOR AGRICULTURE, FOOD, AND THE ENVIRONMENT, *Ag Sales to Consumers*, <https://ag.umass.edu/resources/massachusetts-agricultural-data/market-value/ag-sales-to-consumers> (last visited Aug. 4, 2021).

⁶⁹ See MA AGRIC. DEP'T. OF AGRIC. RES., *Massachusetts Agriculture Snapshot 2021*, <https://www.mass.gov/doc/snapshot-of-ma-agriculture-presentation/download> (Last visited Aug. 4, 2021); see also MA AGRIC. RES. AND STATISTICS, *supra* note 43.

⁷⁰ *Id.*

⁷¹ See generally WICKS-LIM, *supra* note 12.

⁷² MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 260.

⁷³ *Id.* at 37.

⁷⁴ *Id.* at 102.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 260.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 260-263.

⁸³ *Id.*

⁸⁴ *Id.* at 263.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 262.

⁸⁸ *Id.* at 261.

⁸⁹ *Id.* at 262.

⁹⁰ See generally MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5.

⁹¹ See *infra* Part IV.

⁹² MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 88; see also CRVFHP Demographics Report, *supra* note 13. It should be noted that the size of the agricultural labor force cited in the federal government's census data may be underestimating the number of farmworkers. This problem has long been recognized by the U.S. Census Bureau, which has stated that [e]numerating the hard to count population, including migrant and seasonal farmworkers, is a key goal for the 2010 Decennial Census. Migrant and seasonal farm worker populations pose several census challenges, including fear

and mistrust, unconventional housing arrangements, language and literacy, and mobility. *Difficult to Measure Topics: The 2010 Census: Enumerating the Hard to Count, Including Migrant and Seasonal Farmworkers*. U.S. Census Bureau Report to the Joint UNECE/Eurostat Meeting on Population and Housing Censuses. (April 24, 2008).

⁹³ WICKS-LIM, *supra* note 12, at 9.

⁹⁴ *Id.*; see also MASSACHUSETTS STATE AND COUNTY DATA, *supra* note 5, at 88.

⁹⁵ Email from Erik Gonzalez, Massachusetts Office of Workforce Development, to Claudia Quintero, Staff Attorney, Central West Justice Center (Mar. 8, 2021, 2:58 PM EST) (on file with authors).

⁹⁶ Admission of Temporary H-2A Workers, 8 U.S.C. § 1188 (2018); *H-2A: Temporary Agricultural Employment of Foreign Workers*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/agriculture/h2a> (last visited Apr. 29, 2021). An H-2A employer is required to provide free housing and in some instances free transportation to the worksite and meals. U.S.; see also DEP'T OF LABOR, LEGAL PROTECTIONS FOR H-2A WORKERS FACT SHEET 1, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/H2AEnglish.pdf>.

⁹⁷ See *H2A Decision-Making Guide*, COMTY. INVOLVED IN SUSTAINING AGRIC., <https://www.buylocalfood.org/h2a-decision-making-guide/> (last visited May 4, 2021).

⁹⁸ See CRVFHP Demographics Report, *supra* note 13.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See WICKS-LIM, *supra* note 12, at 5-6.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See CRVFHP Demographics Report, *supra* note 13.

¹⁰⁹ See U.S. HEALTH AND HUMAN SERVICES POVERTY GUIDELINES FOR 2019,

https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//187731/2019-pctpovertytool-highlight.pdf (last visited Aug. 4, 2021); see also MASSHEALTH INCOME STANDARDS AND FEDERAL POVERTY Guidelines, Mass Health (March 2019,), <https://www.masslegalservices.org/system/files/library/2019%20fpl-deskguide.pdf> (last visited Aug. 4, 2021).

¹¹⁰ See CRVFHP Demographics Report, *supra* note 13.

¹¹¹ *Id.*

¹¹² See U.S. HEALTH AND HUMAN SERVICES POVERTY GUIDELINES FOR 2019,

https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//187731/2019-pctpovertytool-highlight.pdf (last visited Aug. 4, 2021); see also MASSHEALTH INCOME STANDARDS AND FEDERAL POVERTY Guidelines, Mass Health (March 2019,), <https://www.masslegalservices.org/system/files/library/2019%20fpl-deskguide.pdf> (last visited Aug. 4, 2021).

¹¹³ See CRVFHP Demographics Report, *supra* note 13.

¹¹⁴ *Id.*

¹¹⁵ See WICKS-LIM, *supra* note 12, at 11.

¹¹⁶ 29 U.S.C. § 201, *et seq.* (2021).

¹¹⁷ See *infra* Part IV.

¹¹⁸ MARC LINDER, MIGRANT WORKERS AND MINIMUM WAGES: REGULATING THE EXPLOITATION OF AGRICULTURAL EXPLOITATION IN THE UNITED STATES 156 (1992) [Hereinafter Linder, *Migrant Workers and Min. Wage*, *supra* note 118]; Perea, *supra* note 18, at 95, 100; Rodman et al., *supra* note 18, at 91 (describing why Southern legislators wanted to exclude farmworkers from labor protections); *The Great Migration: The African-American Exodus North*, NAT'L PUB. RADIO (Sept. 13, 2010), <https://www.npr.org/templates/story/story.php?storyId=129827444>.

¹¹⁹ Linder, *Migrant Workers and Min. Wage*, *supra* note 118 at 156; Perea, *supra* note 18, at 101.

¹²⁰ Linder, *Migrant Workers and Min. Wage*, *supra* note 118 at 127-133.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See generally Linder, *Migrant Workers and Min. Wage*, *supra* note 118.

¹²⁴ *Id.*; see also Perea, *supra* note 18.

¹²⁵ See generally Linder, *Migrant Workers and Min. Wage*, *supra* note 118; see Perea, *supra* note 18, at 97-98; Guild & Figueroa, *supra* note 20, at 157, 159 (2018) (arguing that the exclusion of farmworkers from labor protections at the federal and state levels is partially responsible for the difficulties farmworkers face).

¹²⁶ See TRISH HERNANDEZ & SUSAN GABBARD, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2015-2016: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS 36 (2018) (showing that 33% of respondents' families were impoverished).

¹²⁷ See *infra* Part IV; see also Areeba Haider, *The Basic Facts About Children in Poverty*, CTR. FOR AM. PROGRESS (Jan. 12, 2021), <https://www.americanprogress.org/issues/poverty/reports/2021/01/12/494506/basic-facts-children-poverty/> (last visited

Mar. 26, 2021) (noting that there are 11 million children living in poverty in the U.S. and pointing to low-wage work as one of the causes); see generally Zoe E. Taylor & Yumary Ruiz, *Executive Function, Dispositional Resilience, and Cognitive Engagement in Latinx Children of Migrant Farmworkers*, 100 CHILD. & YOUTH SERV. REV. 57, 57-58 (2019); *Improving Working Conditions for U.S. Farmworkers and Food Production Workers*, AM. PUB. HEALTH ASS'N (Nov. 7, 2017), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/improving-working-conditions> [hereinafter *Improving Working Conditions for U.S. Farmworkers*, *supra* note 127]; Rebecca Halvorson, *Nutrition-Related Conditions Among Children of Migrant and Seasonal Farmworkers in the United States: Causes and Solutions* (Dec. 2014) (unpublished B.S. Senior Project, California Polytechnic State University), <https://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1015&context=fsnsp>.

¹²⁸ See generally ROBERT L. WAGMILLER, JR. & ROBERT M. ADELMAN, *CHILDHOOD AND INTERGENERATIONAL POVERTY: THE LONG-TERM CONSEQUENCES OF GROWING UP POOR 1* (2009) (demonstrating that children who live in poverty have an increased chance of experiencing poverty as young adults).

¹²⁹ See National Center for Farmworker Health, *Agricultural Worker Demographics* (2018), http://www.ncfh.org/uploads/3/8/6/8/38685499/indigenous_ag_workers_2018_5.18.20.pdf (last visited Aug. 4, 2021); see also TRISH HERNANDEZ & SUSAN GABBARD, *FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2015-2016: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS 1-5* (2018).

¹³⁰ See generally, Meierotto, Lisa, Rebecca L. Som Castellano, and Cynthia Curl, *Isolation and Fear of Deportation: Intersectional Barriers to Well-being Among Latina Farmworkers In Southwestern Idaho*, THE JOURNAL OF CULTURE AND AGRICULTURE CULTURE, AGRICULTURE, FOOD AND ENVIRONMENT, v. 42, 2 pp. 93-102 (2020) (while the issues addressed pertains to farmworkers in Idaho, the issue is not unique to farmworkers in Idaho); see also MASSACHUSETTS HOUSING PARTNERSHIP, *White Paper on Rural Housing Issues in Massachusetts: Findings of the Rural Initiative and Recommendations 9* (Dec. 2014), <https://www.mhp.net/writable/resources/documents/rural.white.paper.final.pdf> (last visited Aug. 4, 2021).

¹³¹ See Laura Reiley & Beth Reinhard, *Virus's Unseen Hot Zone: The American Farm*, WASH. POST (Sept. 24, 2020), <https://www.washingtonpost.com/business/2020/09/24/seasonal-farm/>; Melanie Benesh & Jared Hayes, *Work Conditions Make Farmworkers Uniquely Vulnerable to COVID-19*, ENVT'L WORKING GRP (May 13, 2020), <https://www.ewg.org/news-and-analysis/2020/05/work-conditions-make-farmworkers-uniquely-vulnerable-covid-1/>; see also *Statement by Farmworker Advocates on COVID-19 and the Risks to Farmworkers*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/blog-post/statement-by-farmworker-advocates-on-covid-19-and-the-risks-to-farmworkers/> (last visited Mar. 26, 2021) [hereinafter *Statement by Farmworkers Advocates*]; see *Who We Serve*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/about-farmworker-justice/who-we-serve/> (last visited May 4, 2021); see ZOE WILLINGHAM & SILVIA MATHEMA, *PROTECTING FARMWORKERS FROM CORONAVIRUS AND SECURING THE FOOD SUPPLY 4* (2020).

¹³² See MASS LEGAL SERVICES, *Who is Covered by Unemployment Insurance* (2020), <https://www.masslegalservices.org/content/who-covered-unemployment-insurance> (last visited Aug. 4, 2021); see also NATIONAL EMPLOYMENT LAW PROJECT, Rebecca Smith, *Immigrant Workers' Eligibility For Unemployment Insurance* (Mar. 31, 2020), <https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/> (last visited Aug. 4, 2021).

¹³³ FARMWORKER JUSTICE, Patricia Morales, *Views of Two Members of Congress on Farmworkers and the Pandemic*, <https://www.farmworkerjustice.org/blog-post/views-of-two-members-of-congress-on-farmworkers-and-the-pandemic/> (last visited Aug. 4, 2021) (explaining that noncitizen farmworkers did not receive federal stimulus checks).

¹³⁴ See TRISH HERNANDEZ & SUSAN GABBARD, *FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2015-2016: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS 40* (2018) (indicating that a significant number of farmworkers have difficulty getting and paying for medical care); Benesh & Hayes, *supra* note 131 (discussing farmworker housing); *Improving Working Conditions for U.S. Farmworkers*, *supra* note 127 (elaborating on factors that contribute to workplace injuries and deaths).

¹³⁵ See generally, Meierotto, Lisa, Rebecca L. Som Castellano, and Cynthia Curl, *Isolation and Fear of Deportation: Intersectional Barriers to Well-being Among Latina Farmworkers In Southwestern Idaho*, THE JOURNAL OF CULTURE AND AGRICULTURE CULTURE, AGRICULTURE, FOOD AND ENVIRONMENT, v. 42, 2 pp. 93-102 (2020); see also Farmworker Justice, *Immigration Reform and Farmworkers*, https://www.farmworkerjustice.org/advocacy_program/immigration-reform-farmworkers/ (last visited Aug. 4, 2021).

¹³⁶ See MASS. GEN. LAWS ch. 151, §§ 1A, 2A (2021); see also MASS. GEN. LAWS ch. 149, § 50.

¹³⁷ An Act Incorporating As Part Of The General Laws Certain Laws Extending The Minimum Wage Law, So Called, To Adult Male 'Persons, 1947 Act 0432, <https://archives.lib.state.ma.us/bitstream/handle/2452/57047/1947acts0432.pdf?sequence=3&isAllowed=y> (last visited Aug. 4, 2021).

¹³⁸ See An Act to Clarify the Definition of "Occupation" Under the Minimum Fair Wage Act as it Applies to Work on a Farm, H.R. No. 731 (1956).

¹³⁹ See An Act Establishing Minimum Wage for Farm Workers and Providing for the Annual Inspection of Farm Labor Camps, H.R. No. 5036 (1967).

¹⁴⁰ *Id.* (The act through subsequent amendments set the agricultural minimum wage at \$1.20 and provided for annual wage increases through 1969, leaving the final substandard wage at \$1.50 an hour for 1969).

¹⁴¹ 1970 Mass. Acts 509 (raising the agricultural minimum wage from \$1.50 to \$1.60). The Massachusetts legislature raised the general minimum wage from \$1.60 to \$1.75 in 1971.

¹⁴² See generally COMMONWEALTH OF MASS. LEGIS. RESEARCH COUNCIL REP. RELATIVE TO MIGRATORY LABOR, S. 165-1303, 1st Sess. (1976).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ 1967 Mass. Acts 718 (setting the agricultural minimum wage at \$1.20 and providing for annual wage increases through 1969); 1966 Mass. Acts 679 (raising the general minimum wage to \$1.40 and providing for increases through 1968).

¹⁵⁰ See An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms, S. No. 2195 (2014).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ 2018 Mass Acts 121. Advocates of raising the minimum wage to \$15.00 indicated that doing so would increase workers' earnings, improve employee retention, and benefit the local economy. Press Release, Raise Up Massachusetts, Raise Up Massachusetts to Drop Minimum Wage, Paid Leave Ballot Questions After Historic Win for Working People (Jun. 26, 2018).

¹⁵⁴ See generally MIT, *Living Wage Calculation for Massachusetts*, <https://livingwage.mit.edu/states/25>.

¹⁵⁵ See COMMONWEALTH OF MASS. LEGIS. RESEARCH COUNCIL REP. RELATIVE TO MIGRATORY LABOR, S. 165-1303, 1st Sess., at 27 (1967).

¹⁵⁶ *Id.* at 29-25.

¹⁵⁷ See generally *Id.*

¹⁵⁸ See *Id.* at 13.

¹⁵⁹ See, e.g., *Arias-Villano v. Chang & Sons Enterprises, Inc.*, 118 N.E.3d 835, 840 (2019) (ruling that the agricultural exception for overtime does not apply to workers whose duties included both harvesting as well as "cleaning, sorting, and packaging" but farmworkers engaged only in harvesting and planting remain ineligible for overtime pay).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 6.

¹⁶³ *Id.*

¹⁶⁴ *Who Counts As Poor?: The Official Way America Calculates Poverty is Deeply Flawed*, THE ECONOMIST, (Sept. 26, 2019)

<https://www.economist.com/special-report/2019/09/26/the-official-way-america-calculates-poverty-is-deeply-flawed> (last visited Aug. 4, 2021).

¹⁶⁵ World Population Review, *Cost of Living Index by State 2021*, (Apr. 16, 2021)

<https://worldpopulationreview.com/state-rankings/cost-of-living-index-by-state>.

¹⁶⁶ *Id.*

¹⁶⁷ See *Who Counts As Poor?: The Official Way America Calculates Poverty is Deeply Flawed*, THE ECONOMIST, (Sept. 26, 2019)

<https://www.economist.com/special-report/2019/09/26/the-official-way-america-calculates-poverty-is-deeply-flawed>;

World Population Review, *Cost of Living Index by State 2021*, (Apr. 16, 2021, 4:51 PM),

<https://worldpopulationreview.com/state-rankings/cost-of-living-index-by-state>; John Kim, The American Dream—How

Much Does It Cost?, The Amherst Student, [https://amherststudent.amherst.edu/article/2018/04/03/american-](https://amherststudent.amherst.edu/article/2018/04/03/american-dream%E2%80%94how-much-does-it)

[dream%E2%80%94how-much-does-it-](https://amherststudent.amherst.edu/article/2018/04/03/american-dream%E2%80%94how-much-does-it)

[cost.html#:~:text=According%20to%20a%20study%20conducted,is%20estimated%20to%20be%20%2459%2C039](https://amherststudent.amherst.edu/article/2018/04/03/american-dream%E2%80%94how-much-does-it-cost.html#:~:text=According%20to%20a%20study%20conducted,is%20estimated%20to%20be%20%2459%2C039)

("Access to decent housing, transportation, groceries, health care, education, clothing and some retirement savings comprise the common notion of what the American Dream is. According to a study conducted in 2014 by USA Today, living out this American Dream for a household of four would cost roughly around \$130,000 per year. This annual sum is nearly two and a half times larger than the median household income, which is estimated to be \$59,039.")

¹⁶⁸ Farmworker Justice, *Farmworkers' Low Wage Rates Have Risen Modestly; Now Congress May Pass a Law to Lower Them*, [https://www.farmworkerjustice.org/blog-post/farmworkers-low-wage-rates-have-risen-modestly-now-congress-may-](https://www.farmworkerjustice.org/blog-post/farmworkers-low-wage-rates-have-risen-modestly-now-congress-may-pass-a-law-to-lower-them/)

[pass-a-law-to-lower-them/](https://www.farmworkerjustice.org/blog-post/farmworkers-low-wage-rates-have-risen-modestly-now-congress-may-pass-a-law-to-lower-them/). (Noting that the poverty rate is over twice as high for farmworkers).

¹⁶⁹ Letter from Pioneer Valley Workers Center, Initial Survey Results (Feb. 2020) (on file with authors) [hereinafter Letter from Pioneer Valley Workers Center, *supra* note 169].

- ¹⁷⁰ See Brittany G. Hill et al., *Prevalence and Predictors of Food Insecurity in Migrant Farmworkers in Georgia*, 101(5) AM. J. OF PUB. HEALTH, 831 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3076419/-hunger-food-yolo-county/>; *The Facts*, MASS. FOOD TRUST PROGRAM, <https://mapublichealth.org/priorities/access-to-healthy-affordable-food/ma-food-trust-program/> (last visited Mar. 26, 2021) (showing Springfield as the city in Massachusetts with the second largest grocery gap, surpassed only by Chelsea); Sarah Rathod, *Why the People Picking California's Tomatoes Can't Afford to Eat Them*, MOTHER JONES (Apr. 29, 2016), <https://www.motherjones.com/politics/2016/04/california-tomatoes-farm-workers>; see generally PIONEER VALLEY PLANNING COMM'N ET AL., AN ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR THE MUNICIPALITIES OF SPRINGFIELD, HOLYOKE, CHICOPEE AND WESTFIELD (2020), http://www.pvpc.org/sites/default/files/files/FourcityAIRReport_proposedFINALforpublicreview.pdf [hereinafter IMPEDIMENTS TO FAIR HOUSING CHOICE]; WICKS-LIM, *supra* note 12.
- ¹⁷¹ Letter from Pioneer Valley Workers Center, *supra* note 169.
- ¹⁷² See Imelda Wong & Naomi Swanson, *NIOSH Working Hours, Sleep, and Fatigue Forum: A Recap and Future Directions*, NIOSH SCIENCE BLOG (Oct 7, 2020), <https://blogs.cdc.gov/niosh-science-blog/2019/10/07/fatigue-forum/>; see also *Long Work Hours, Extended or Irregular Shifts, and Worker Fatigue: Hazards*, OCCUPATIONAL HEALTH AND SAFETY ADMIN., <https://www.osha.gov/worker-fatigue/hazards> (last visited May 4, 2021) (detailing how fatigue contributes to injuries and health conditions among employees).
- ¹⁷³ *Improving Working Conditions for U.S. Farmworkers*, *supra* note 127 (detailing facets of farm work that render workers prone to occupational injuries and fatalities).
- ¹⁷⁴ Letter from Pioneer Valley Workers Center, *supra* note 169.
- ¹⁷⁵ *Id.*
- ¹⁷⁶ FATAL INJURIES AT WORK MASSACHUSETTS FATALITY UPDATE, *supra* note 23 at 2.
- ¹⁷⁷ *Id.*
- ¹⁷⁸ *Id.*
- ¹⁷⁹ See, *About CRVFHP*, MASS. LEAGUE OF CMTY. HEALTH CTRS., <http://www.crvfhp.org/> (last visited Apr. 6, 2021).
- ¹⁸⁰ *Id.*
- ¹⁸¹ *Id.*
- ¹⁸² *Id.*
- ¹⁸³ Valerie Vi Thein Mac & Linda A. McCauley, *Farmworker Vulnerability to Heat Hazards: A Conceptual Framework*, J. OF NURSING SCHOLARSHIP 617 (2017); Sarah Rattigan, *The Heat is On - But Heat Illness is Preventable*, MASS PUBLIC HEALTH BLOG, <https://blog.mass.gov/publichealth/workplace-health-and-safety/the-heat-is-on-but-heat-illness-is-preventable/>; S. E. Smith, *Heat is Now the Deadliest Threat to Farmworkers. Only Two States Protect Them From It*, TALKPOVERTY.ORG (June 20, 2019), <https://talkpoverty.org/2019/06/20/farmworkers-heat-illness-deaths/>.
- ¹⁸⁴ Letter from Pioneer Valley Workers Center, *supra* note 169.
- ¹⁸⁵ CRVFHP Demographics Report, *supra* note 13.
- ¹⁸⁶ THOMAS ARCURY, DANA MORA, *Latinx Farmworkers and Farm Work in the Eastern United States: The Context for Health, Safety, and Justice*, in Thomas Arcury, Sara Quandt, *LATINX FARMWORKERS IN THE EASTERN UNITED STATES* 11, 26 (Springer, Cham eds., 2020), https://doi-org.ezproxy.neu.edu/10.1007/978-3-030-36643-8_2.
- ¹⁸⁷ 8 U.S.C. § 1188; LEGAL PROTECTIONS FOR H-2A WORKERS FACT SHEET, *supra* note 96, at 1.
- ¹⁸⁸ *Massachusetts*, NAT'L LOW INCOME HOUSING COAL., <https://nlihc.org/housing-needs-by-state/massachusetts> (last visited Mar. 26, 2021) (showing that 60% of extremely low income renters in Massachusetts are severely cost burdened, meaning they spend more than half of their income on housing costs and utilities, and 77% of extremely low income renters spend more than 30% of their income on housing costs and utilities.).
- ¹⁸⁹ *Id.*
- ¹⁹⁰ See NICHOLAS CHIUMENTI, *THE GROWING SHORTAGE OF AFFORDABLE HOUSING FOR THE EXTREMELY LOW INCOME IN MASSACHUSETTS*, NEW ENGLAND PUBLIC POL'Y CTR. 4 (2019), <https://www.bostonfed.org/media/Documents/Workingpapers/PDF/2019/neppcpr1901.pdf>.
- ¹⁹¹ *Id.* (showing that the rate of Massachusetts Farmworkers who identify as Hispanic is 24% as compared to 10% of Massachusetts workers generally); see generally IMPEDIMENTS TO FAIR HOUSING CHOICE, *supra* note 170.
- ¹⁹² See CHIUMENTI *supra* note 190, at 10, 18; IMPEDIMENTS TO FAIR HOUSING CHOICE, *supra* note 170, at 90.
- ¹⁹³ CRVFHP Demographics Report *supra* note 13 (showing the highest percentages of their clients in Massachusetts reported living in zip codes 01104, 01107, and 01108); *Lowest Poverty Zips in Massachusetts*, UNITEDSTATESZIPCODES.ORG, https://www.unitedstateszipcodes.org/rankings/zips-in-ma/poverty_rate/ (last visited Mar. 26, 2021) (showing zip codes 01104, 01107, and 01108 as being among the 20 zip codes with the highest rates of poverty in Massachusetts).
- ¹⁹⁴ IMPEDIMENTS TO FAIR HOUSING CHOICE, *supra* note 170, at 94.
- ¹⁹⁵ See generally HERNANDEZ & GABBARD, *supra* note 126, at 10-11, 15-19 (showing that 30% of respondents could not speak English, 41% could not read in English, and a third of the respondents lived in overcrowded conditions); see also Erin Tiernan, *For Quincy's Immigrants, Rising Housing Costs Hit Even Harder*, THE PATRIOT LEDGER (Jul. 7, 2019), <https://www.patriotledger.com/news/20190705/for-quincys-immigrants-rising-housing-costs-hit-even-harder>

(explaining the challenges faced by immigrants in Massachusetts in navigating the housing system which results in accepting substandard and overcrowded conditions); CRVFHP Demographics Report *supra* note 13 (showing that of the Massachusetts patients of CRVFHP, 80.38% were renting, 7.80% were doubled up or living with others, 1.78% were living in transitional housing, 1.38% indicated “other” without specifying, 0.98% indicated they owned a home, 0.23% indicated they did not know, 0.11% were living in the street, 0.06% were living in a shelter, 0.06% were living in an RV, 0.06% were living in a hotel room, 0.06% were living in a bunker, and the remaining workers were those that indicated they lived in employer-provided housing (farm camps)); see Quandt, *supra*, note 186 at, 263-64 (showing that in a national study, many noncitizen farmworkers share homes with non-family members, and the extent of shared living among noncitizen farmworkers is higher than that among citizen farmworkers. Further, only 24% of noncitizen farmworkers live in a home that they own, or their family own and one in five noncitizen farmworkers lives in a mobile home or other temporary dwelling.).

¹⁹⁶ IMPEDIMENTS TO FAIR HOUSING CHOICE, *supra* note 170, at 94, 97, 104; see ROBERT PUTNAM, OUR KIDS 41 (2015) (“Ultimately, growing class segregation across neighborhoods, schools, marriages... means that rich Americans and poor Americans are living, learning, and raising children in increasingly separate and unequal worlds, removing the stepping-stones to upward mobility.”).

¹⁹⁷ See Quandt, *supra* note 187, at 263, 269-77; see generally Margot Kushel, et al., *Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans*, 21(1) J. GEN. INTERNAL MED. 71 (Jan 2006) (finding in a national study that both housing instability and food insecurity were associated with barriers to health care.).

¹⁹⁸ See NAT’L HOUSING LAW PROJECT, IMMIGRATION REQUIREMENTS: OTHER ASSISTANCE PROGRAMS FOR HOUSING AND HOMELESSNESS (2021), <https://www.nhlp.org/wp-content/uploads/Immigration-Restrictions-Other-Programs.pdf>; SNAP Policy on Non-Citizen Eligibility, USDA FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/eligibility/citizen/non-citizen-policy> (last visited Mar. 26, 2021).

¹⁹⁹ MASS. GEN. LAWS ch. 90 § 8 (2021) (“No license of any type may be issued to any person who does not have lawful presence in the United States.”); But see H. 3012, 191st Gen. Ct., Reg. Sess. (Mass. 2019-2020) and S. 2641, 191st Gen. Ct., Reg. Sess. (Mass. 2019-2020) (permitting all qualified residents of Massachusetts to obtain a driver’s license regardless of immigration status).

²⁰⁰ Monique Patenaude, *How Licensing Restrictions Affect Immigrant Farmworkers*, GENESEO (Jun. 2, 2020), <https://www.geneseo.edu/news/how-licensing-restrictions-affect-immigrant-farmworkers> (discussing how immigration status based driver’s license restrictions contribute to social isolation and health risks among farmworkers by forcing them to rely on an unregulated, informal economy of drivers that strains family budgets and is dangerous in times of illness or injury-related emergencies).

²⁰¹ WICKS-LIM, *supra* note 12, at 6.

²⁰² See generally *id.*

²⁰³ *Id.* at 20.

²⁰⁴ See *id.* at 20-21.

²⁰⁵ *Id.* at 21.

²⁰⁶ *Id.* at 11.

²⁰⁷ *Id.* at 10, 11.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 13.

²¹⁰ *Id.* at 10-13. As explained in the PERI report, this projected increase in labor costs, however, uses a calculation that produces a far higher amount of overtime wages than the FFA proposes, because the report uses any hours over 40 per week as triggering an overtime rate and not the FFA’s mandate of overtime pay after 55 hours per week. Notably, even with the projected increase in labor costs at 40 hours/week, the increase still amounts to only 1.6% of overall revenue based on Massachusetts farm owners taking in a total of \$573.4 million in revenue from product sales (\$499 million), government payments (\$4.2 million), and farm-related income (\$74.0 million). Of this \$573 million in overall revenue, 32% was used to cover labor expenditures.

²¹¹ *Id.*

²¹² Fairness for Farmworkers Act, S.D. 1895, 192nd Gen. Court of the Commonwealth of Mass., 1st Ann. Sess. (Mass. 2021).

²¹³ See *id.*

²¹⁴ CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COSTS TO REPLACING EMPLOYEES 2 (2012) (“The typical cost of turnover for positions earning less than \$30,000 annually is 16% of an employee’s annual salary”); George A. Akerlof & Janet L. Yellen, *The Fair Wage-Effort Hypothesis and Unemployment*, 105 Q. J. OF ECON. 255, 268 (1990); Arindrajit Dube et al., *Minimum Wage Shocks, Employment Flows and Labor Market Frictions* 10 (Apr. 6, 2012) (unpublished manuscript), <https://escholarship.org/uc/item/76p927ks> (“hires, separations and the turnover rate fall substantially and significantly with minimum wage increases”).

²¹⁵ *Improving Working Conditions for U.S. Farmworkers*, *supra* note 127 (indicating that insufficient compensation contributes to low retention); see WICKS-LIM, *supra* note 12, at 19 (use of H-2A farmworkers is an indicator that there is a shortage of agricultural workers in Massachusetts).

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- ²¹⁶ CTR. FOR AM. PROGRESS, *supra* note 214, at 2; Akerlof & Yellen, *supra* note 214, at 268; Arindrajit Dube et al., *supra* note 214, at 10.
- ²¹⁷ See HERNANDEZ & GABBARD, *supra* note 126, at 39-40 (indicating that poverty among farmworkers can impose costs on the general public).
- ²¹⁸ Sarah Anderson, *Wall Street Bonuses and the Minimum Wage*, INST. FOR POL'Y STUDIES (Mar. 12, 2014), <https://ips-dc.org/wall-street-bonuses-and-the-minimum-wage/>.
- ²¹⁹ Michael McLaughlin & Mark R. Rank, *Estimating the Economic Cost of Childhood Poverty in the United States*, 42 SOC. WORK RES., 73, 78 (2018).
- ²²⁰ CAL. LAB CODE § 860 (2021); N.Y. LAB. LAW § 674-a (McKinney 2021); MD. CODE ANN., LAB. & EMPL. § 3-415 (2017); HAW. REV. STAT. § 387-3 (2021); MINN. STAT. § 177.25; WASH. REV. CODE ANN. § 49.46.010 (3)(a)) (2021).
- ²²¹ *Wages Map*, *supra* note 29.
- ²²² N.Y. Lab. Law § 161 (McKinney, 2021).
- ²²³ Folker, *supra* note 30 (Discussing farmworker overtime bill in Colorado); Nicholas K. Geranios, *Measure Allowing Overtime for Farmworkers Moves Forward*, ASSOCIATED PRESS, Mar. 12, 2021, <https://www.ifiberone.com/columbia-basin/measure-allowing-overtime-for-farmworkers-moves-forward/article-57d44bb4-83b8-11eb-8a68-93f2a706892d.html> (Discussing farmworker overtime bill in Washington); Popp, *supra* note 30 (Discussing farmworker overtime bill in Maine).
- ²²⁴ *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 475 P.3d 164, 174 (2020); S.B. 5172, 67th Legislature, 2021 Regular Session (Wash. 2021) (signed into law on May 11, 2021, by Governor Jay Inslee, creating overtime protections for agricultural workers. The legislative text sets out a phased-in approach. Starting in 2022, farmworkers will be entitled to overtime pay for any hours they work over the 55 hour-per-week cap. That cap will drop to 48 hours per week in 2023 and 40 hours per week in 2024.); Jessica Fu, *Washington state is likely to pass one of the nation's strongest farmworker overtime laws*, THE COUNTER, Apr. 14, 2021, <https://thecounter.org/washington-state-may-pass-significant-us-farmworker-overtime-laws/>.
- ²²⁵ H.P. 760, 130th Maine Leg., 1st Reg. Sess. (Me. 2021); Popp, *supra* note 30; Folker, *supra* note 30; *Compare Economic Impact of Agriculture: Maine, supra* note 30, with *Economic Impact of Agriculture: Massachusetts, supra* note 30.
- ²²⁶ H.R. 1177, 117th Cong. (2021); S. 384, 117th Cong. (2021); Charles Davis, *Biden Unveils Immigration Proposal that Offers Green Cards and Overtime Pay to Farm Workers and a Pathway to Citizenship for Dreamers*, BUS. INSIDER (Jan. 20, 2021), <https://www.businessinsider.com/biden-immigration-proposal-to-offer-green-cards-to-farm-workers-2021-1>.
- ²²⁷ H.R. 1177 § 5106(a)(1).
- ²²⁸ *Id.* The Act would phase in overtime requirements for farmworkers over a greater number of years for smaller employers. *Id.*
- ²²⁹ See 29 U.S.C. § 213 (2021) (containing agricultural exemptions); MASS. GEN. LAWS ch. 151, §§ 1A, 2A (2021) (instituting a subminimum wage for farmworkers and declining to offer them overtime pay).