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While You Were Eating: The Unspoken Human Cost of Putting Food on Our Tables

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FEATURE

**WHILE YOU WERE EATING:
THE UNSPOKEN HUMAN
COST OF PUTTING FOOD
ON OUR TABLES**

by DARCI JENKINS AND MIGUEL KEBERLEIN GUTIÉRREZ

“It has to do with the men, women, and children who harvest the crops in this country of ours, the best fed nation on earth. These are the forgotten people, the under protected, the under educated, the under clothed, the underfed.”¹

—Edward R. Murrow, *Harvest of Shame* (1960)

INTRODUCTION

The vastness of the agricultural system in the United States has a tendency to obscure some of the underlying issues regarding how food is brought to dinner tables all across America. A nationwide survey indicates that 72 percent of consumers know nothing or very little about farming.² The reality is that hundreds of thousands of migrant and seasonal agricultural workers are recruited to farms across the country to plant, cultivate, harvest, or tend to livestock each year.³ U.S. farms produce over \$297 billion in sales, with Illinois ranking as number six in value of agricultural products in the states.⁴ Farmworkers are the backbone of the U.S. agricultural system and vital to the economies of states such as Illinois, yet their plight is too often ignored.⁵

Illinois is a significant state within the overall agricultural economy of the United States, with over 80 percent of the state's geographical area dedicated to farming.⁶ The United States is the world's largest corn producer, and corn is the largest cash crop in the U.S., accounting for over \$76 billion. Illinois, although affected by a severe drought in 2012, is still a leading producer of corn.⁷ Seven of the top ten agribusinesses in the United States have operations in Illinois, including Cargill, Archer Daniels Midland Company (ADM), and Monsanto.⁸ Most of the large companies are in the hybrid corn seed business, either directly or indirectly, and hire thousands of farmworkers each year to rogue and detassel corn.⁹ Farmworkers are mostly recruited by Farm Labor Contractors (FLCs) working at the direction of companies needing cheap labor. Although FLCs are required under the law to register with the U.S. Department of Labor (USDOL),¹⁰ hundreds of FLCs operate without a license or continue to operate even though they have been debarred and appear on the USDOL's Ineligible Farm Labor Contractor list.¹¹ Unfortunately, even as Congress currently debates an overhaul of the immigration system that would include key measures for farmworkers, scant attention is given to an ever increasing problem that continues to grow within the farmworker community: human trafficking.¹²

WHO IS A MIGRANT FARMWORKER?

Farmworkers generally fall into one of three categories: migrant, seasonal, or H-2A foreign guest worker. Under the Migrant and Agricultural and Seasonal Workers Protection Act (AWPA), a migrant farmworker is defined as a worker

who must be away from his place of residence overnight in order to perform the agricultural job, whereas a seasonal farmworker is not required to be away from his place of residence overnight.¹³ An H-2A foreign guest worker is someone who is recruited abroad to fulfill agricultural jobs U.S. eligible workers are unwilling to accept and are brought to the United States on a special visa that ties them to a single employer for a period of time not to exceed one year.¹⁴ No matter what category a farmworker may fall into, few legal protections exist that prevent the exploitation of this very vulnerable group.

The search for a cheap, seasonal, farm labor force to produce America's food while maximizing the profits of landowners and businesses has historically begun abroad.¹⁵ The system in place today, which excludes farmworkers from many of the federal labor, wage, and social statutes meant to protect mainstream workers, can be traced back to the time of slavery.¹⁶

The first migrant farmworkers in America were brought to the United States from Africa through the Trans-Atlantic Slave Trade and forced to work on plantations in the South.¹⁷ Although slavery ended with President Lincoln's Emancipation Proclamation of 1863 and the Thirteenth Amendment of 1865, former slaves continued to work on plantations as farmworkers.¹⁸ Growers in the North also began recruiting and hiring former slaves migrating north. Coinciding with the abolition of slavery was also a rise in the recruitment of Mexican workers in the early twentieth century.¹⁹

Whether it was slaves or voluntary migrants, the agricultural system in the U.S. has been built on the backs of the most vulnerable. Racism and bigotry were not only part of the social fabric, but part of governance.²⁰ When Franklin Roosevelt sought to pass his New Deal legislation in the 1930s, he faced an oligarchy in the South that demanded that the economic supremacy of Whites be upheld.²¹ As Roosevelt put it, "Even in the treatment of national problems there are geographic and industrial diversities which practical statesmanship cannot wholly ignore."²² Consequently, farmworkers were excluded from the National Labor Relations Act (now called the Labor-Management Relations Act), the Social Security Act, the Fair Labor Standards Act, and other important legislation that followed.²³

It was not until 1960, when Edward R. Murrow's television documentary *Harvest of Shame* aired, that a new generation of Americans took notice of the plight of migrant farmworkers.²⁴ By then, the modern system of using "hawk-

ers” or “crew leaders” had taken hold.²⁵ The United States saw first-hand how the best fed nation on earth exploited its most vulnerable workers, crowding them into buses or piling them onto trucks like cattle and moving them thousands of miles from Florida to New Jersey, Mexico to California, and Texas to Illinois.²⁶ Crew leaders were paid by farmers to supply them with labor necessary to work their crops, and crew leaders took full advantage of the system.²⁷ Promises of good wages, free housing and transportation to and from the job, and the hope for a better future, proved more than illusive. Instead, crew leaders operated as independent contractors, pocketing much of the money meant for workers, and workers could do little to combat these abuses.²⁸ This “recruitment” system continues today in several forms. Domestically, many growers, such as Monsanto, use farm labor recruiters to bring workers into many northern states, including Illinois.²⁹

Americans’ first taste of a food system based on the backs of farmworkers forced into poverty elicited a weak attempt at remedying the situation. In 1963, Congress enacted the Farm Labor Contractor Registration Act (FLCRA);³⁰ however, it failed to meet its stated goal of protecting “agricultural workers whose employment had been historically characterized by low wages, long hours and poor working conditions.”³¹ The FLCRA attempted to hold FLCs, or crew leaders, more responsible for the promises made to workers at the time of recruitment. It required FLCs to register with the U.S. Department of Labor before engaging in contracting, stripped FLCs of their licenses to recruit if they provided false and misleading information, and required FLCs to pay workers promptly and provide proper documentation for the hours paid.³² However, it failed to provide farmworkers with any private right of action, and thus its shortcomings became quickly apparent.³³ Twenty years later, Congress attempted a second fix. The AWPA was enacted on January 14, 1983, and designed to “remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers.”³⁴ While the AWPA does provide a private right of action for farmworkers, it limits damage recovery to \$500 per violation, per worker, per year or actual damages.³⁵ The AWPA, while more robust than the FLCRA, still provides little incentive for employers and FLCs to improve the employment conditions for farmworkers and serious shortcomings remain.³⁶

THE PERFECT COVER FOR HUMAN TRAFFICKING

Human trafficking typically conjures up images of young girls engaged in prostitution; individuals from other countries being smuggled into the United States in crates or handcuffed, or the all too common impression of Liam Neeson's daughter in the movie *Taken*.³⁷ The reality is that a victim of human trafficking is anyone who is compelled by force, fraud, or coercion for the purpose of labor, including but not limited to prostitution.³⁸ Victims are U.S. citizens, legal immigrants, migrant workers, and undocumented individuals. They are men, women, transgender individuals, and children from all different races, socioeconomic backgrounds, sexual orientations, and education levels. Certainly, the media plays a significant role in how society perceives the issue of human trafficking. As a result, many people are not aware that human trafficking is highly prevalent throughout the United States, nor do they understand that human trafficking permeates a wide range of industries besides the commercial sex trade, including: restaurants; hotels; nail and hair salons; construction work; and agriculture.³⁹

Congress provides a Federal definition of human trafficking in the Trafficking Victims Protection Act of 2000:

“Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁴⁰

Just as slave holders in the nineteenth century used cheap or free labor for profit, traffickers are often motivated by the lure of easy money.⁴¹ Human trafficking is estimated to be one of the most profitable criminal enterprises, second only to drugs, with an estimated profit of \$32 billion world-wide.⁴² Victims who are trafficked share two common characteristics: vulnerability and the pursuit of economic opportunity. Many victims of human trafficking have formerly been living in poverty. Some have been displaced by natural disaster or armed conflict, yet others are victims of sexual assault and/or domestic violence. Many are runaway youth, undocumented, or from marginalized populations.⁴³

These factors have increased labor movement both within countries and across international borders.⁴⁴ The decision for an individual to relocate is based on the perception that wages and opportunities in other areas are greater than those where he or she is currently residing.⁴⁵ As a result, when offered what is promised to be a well-paying job, many do not hesitate to take the opportunity because poverty has left them with little choice: they are in need of economic stability. Others are given no choice at all: they are simply taken against their will. Traffickers exploit victim's desperation, knowing that these individuals are highly vulnerable and are without the resources to flee or escape once they have been trafficked.

Historically, farmworkers in the U.S. have suffered a fate similar to that of other trafficking victims. The system that was in place before the airing of *Harvest of Shame* prospers to this day—and it is in many ways worse. In Illinois, as in much of the Midwest, the majority of farmworkers are recruited from the Texas Rio Grande Valley and Mexico.⁴⁶ Farm labor recruiters are tasked with providing transportation and housing for the workers and use many different tactics to induce workers to make the trek north.⁴⁷ These workers are recruited by crew leaders wielding promises of well-paying jobs, free housing, and free transportation. Traffickers, in these cases recruiters, strategically prey upon vulnerable populations. Many farmworkers are second- and third-generation laborers, illustrating the limited social mobility in countries such as Mexico and the perpetration of generational poverty.⁴⁸ Additionally, many farmworkers are children.⁴⁹ On average, most workers have only attained a seventh grade education, are monolingual Spanish speakers, and lack skills that might allow them to find work in other sectors of the workforce.⁵⁰ About half of all migrant farmworkers in the United States are undocumented aliens.⁵¹ They have endured public scapegoating for working jobs that most people are not willing to do.⁵² As a result, many migrant farmworkers are unaware they are being exploited; and when they realize they are, they are unable to seek appropriate help from law enforcement, an attorney, and/or a social service agency because they are trapped in a system that flies under the radar and is geographically isolated from quality services.

The challenges facing migrant farmworkers are legion. Farmworkers are the lowest paid occupational group in the country, with most living in poverty.⁵³ While farmworkers are likely to work between 60 to 80 hours per week during peak season, they are still exempt from being paid overtime.⁵⁴ Additionally, workers commonly suffer workplace injuries, as farming consistently ranks as

one of the most dangerous occupations in the United States.⁵⁵ For example, farmworkers, including children, are routinely exposed to toxic pesticides.⁵⁶ Workplace injuries are common but go untreated.⁵⁷ Employers, most of whom are required to carry worker's compensation insurance, know that they are unlikely to be sanctioned for failing to adhere to the processes that allow farmworkers to seek medical treatment.⁵⁸ Wage theft, labor law violations, and general abuse are regular offenses endured by farmworkers in the United States. However, it is important to distinguish labor law violations from human trafficking. This distinction can be made by assessing a worker's situation through the three pillars of human trafficking: force, fraud, and coercion. In order to meet the Federal definition of human trafficking, a potential victim must have experienced at least *one* of them.

FORCE

The most straightforward and easily identifiable pillar of the human trafficking definition is "force." It can include physical violence, sexual assault, isolation, confinement, and restrictive mechanisms such as handcuffs, heavy locks, etc. Force is often used at the beginning stages of victimization to decrease the victim's resistance. Using force against one victim often serves a secondary purpose: to intimidate and threaten other workers.⁵⁹

FRAUD

Another element of human trafficking is fraud. Fraud is legally defined as "some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury."⁶⁰ In the context of human trafficking, traffickers often make false promises (e.g. advertising a higher wage or salary than what is ultimately paid; hours of work an individual can expect to work; great living conditions; and hope for a better life).⁶¹

Although an individual may know and agree to tasks involved in tending live-stock, he or she is purposefully kept ignorant of the deplorable conditions awaiting him or her.⁶² Migrant farmworkers are often promised a certain wage or salary over a specified period of time (e.g., three or four months), yet these conditions are often not upheld by the agriculture employer or FLC. Instead, migrant farmworkers may find themselves living in abhorrent labor camps

with hundreds of other migrant workers; having minimal access to food or water working 12-16 hours per day with limited breaks; and being paid inconsistent amounts that do not mirror the quantity of work they are completing.⁶³

In Illinois, one of the largest migrant labor camps is a former hospital on an abandoned Air Force base, referred to as the “Nightengale Camp,” which houses up to 450 farmworkers in the dead of summer each year.⁶⁴ The aging building lacks enough bathrooms and hot water, is over crowded and dirty, and has rodents.⁶⁵ It is also licensed for use by the state of Illinois.⁶⁶

Additionally, traffickers often create fraudulent documents, such as passports or government identification materials, for victims in order to get him or her into the U.S. to work.⁶⁷ These documents are used freely and often accepted; however, the identity portrayed does not match the laborer’s true identity.⁶⁸ Traffickers may also withhold workers’ legitimate documents once they are in the United States to intimidate workers and ensure that the worker will not try to escape. Not only does withholding documentation keep a worker tied to an employer, but workers are led to believe Immigration and Customs Enforcement (ICE) will arrest and deport them if they do not have their documents on their person.

COERCION

The Trafficking Victims Protection Act of 2000 (TVPA) noted that involuntary servitude statutes were meant to be used for cases in which victims were “held in condition of servitude through nonviolent coercion.”⁶⁹

As defined by the TVPA of 2000 coercion includes:

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) the abuse or threatened abuse of the legal process.⁷⁰

It has been argued that migration of workers to the U.S. has been primarily coercive due to the fact that the workers are attempting to flee economic devastation.⁷¹ As a result, this can have implications that the worker acted as his or

her own agent and exercised free will. Indeed, fleeing poverty does not imply physical force or even deception. Still, viewing migration among farmworkers through a re-conceptualized framework, as Kim & Chang recommend, would recognize such activity as “coercion created by the destruction of subsistence economies and social service states.”⁷²

FEMALE FARMWORKERS AND GENDER DISCRIMINATION

Female migrant farmworkers clearly illustrate Kim & Chang’s argument. Women often are forced to migrate for labor, particularly in agriculture and domestic servitude, for several reasons. Due to patriarchal traditions, women lack work opportunities and do not have inheritance rights. Additionally, women are removed from their families when they marry, eliminating ties to family and friends who typically would contribute to her well-being.⁷³

Although more women are seeking opportunities outside of their home countries, they do not necessarily have the funds to get to the country in which they are seeking work. Human traffickers offer new options for those needing to migrate for employment by assisting with illegal border crossings and providing false documentation as well as covering the costs to travel or relocate.⁷⁴ Indeed, as legal immigration in the United States is made more difficult, the profit made by traffickers rises proportionately.⁷⁵ Because traffickers cover the costs and burden for the worker to relocate to the U.S., the worker is automatically in a symbiotic relationship underpinned by power and control, which is often manifested through physical and sexual abuse as well as harassment and emotional abuse.⁷⁶

Female migrant farmworkers are not the only workers in debt bondage with their employer. Male farmworkers are highly susceptible to exploitative situations due to the fact that they also are seeking opportunity because of economic factors in their home countries. In *John Doe I v. Moises and Maria Rodriguez*, the defendants smuggled workers across the U.S.-Mexico border to work on a farm in Colorado.⁷⁷ The workers were then brought to the labor camps in which they would be living and told they each owed \$1,300 to the employer to cover transportation costs.⁷⁸ Laborers in debt bondage face an ongoing cycle of added debt that includes transportation costs, housing costs, food and clothing costs, and the cost to obtain documentation if applicable.⁷⁹ The accruing of debt is continual; the chance to be free of it often impossi-

ble.⁸⁰ If a debt bonded individual dies or is unable to pay off the debt himself or herself, the debt is often passed on to his/her children, contributing to the cycle of poverty and exploitation.⁸¹

Traffickers also strategically instill fear in farmworkers to maintain them as laborers. In *John Doe I v. Moises and Maria Rodriguez*, the plaintiffs believed that if they tried to escape the labor camp or the farm, they would be severely harmed and the workers left behind would incur the debt of those who escaped.⁸² While working under hostile, hazardous, and exploitative conditions, workers often form a deep bond with each other; therefore, the threat of passing on debt is legitimate and strategic. Employers can and do discharge employees who are costing them more than the revenue they generate.⁸³

While employers obtain the highest return on investment by providing the minimal level of well-being for laborers, this often leads to medical and mental health issues that take away from a worker's ability to be optimally productive. Factors such as discrimination, language inadequacy, reduced self-esteem, financial stress, and lack of family or social supports often lead to high rates of anxiety and depression among farm workers.⁸⁴ Further, farmworkers who voluntarily migrated for work are less likely to be depressed than those who did not have a choice.⁸⁵ Such labor is also physically harmful as migrant farmworkers experience health concerns due to the occupational hazards of their work.⁸⁶ Workers experience respiratory problems, severe allergic reactions, heat stroke and dehydration due to lack of drinkable water and urinary tract infections due to lack of access to sanitary toilet facilities for workers to use while in the fields.⁸⁷

Abuses in the recruitment of foreign workers are endemic. The Federal H-2A guest worker program is similar to the better known Bracero guest worker program, which was terminated due to its notorious labor issues.⁸⁸ H-2A employers and their recruiting agents in Mexico and other countries exploit the vulnerability of foreign citizens living in poverty. Under the H-2A guest worker program, employers are legally allowed to bring in workers from abroad under a special visa that ties workers to a single employer for a period of time up to one year.⁸⁹ However, H-2A workers have even fewer protections than other workers and in fact have no rights at all under the AWP.⁹⁰ As a result, farmworkers are fearful of speaking out against issues such as wage violations, hazardous working conditions, or illegal activity by the employer because the risk of losing everything is so great.⁹¹

Moreover, the threat of deportation facing these guest workers qualifies as coercion because it is an abuse of the legal process. Further, guest workers are excluded from the AWPAs and have fewer legal protections than even domestic farmworkers. Consequently, H-2A workers are not privy to disclosure of job terms during recruitment, transportation, safety requirements, or access to federal courts.⁹² The H-2A recruitment system has led to numerous documented cases of debt-peonage, human trafficking, and forced labor.⁹³ In fact, the law that governs the H-2A program uses the term “import” when referring to the human beings who are brought to work in the United States on temporary work visas.⁹⁴ While the term “import” is associated with commodities, the U.S. Constitution used that term to refer euphemistically to chattel slavery.⁹⁵

CONCLUSION

Edward R. Murrow’s introduction to his most famous documentary, *Harvest of Shame*, is still as poignant today as it was in 1960; only today Murrow might add to his list of descriptors, “the trafficked”. The exploitation, abuse of power, and trafficking occurring within the agriculture industry in the U.S. has existed for over a century and yet minimal attention and no resolution has been provided.

Our agricultural system offers human traffickers the ideal cover under which to operate. Agricultural work is often isolated and transient, and income can be irregular. Unscrupulous crew leaders exploit these conditions of vulnerability, adding debt, violence and threats to hold farmworkers in conditions of servitude.⁹⁶ FLCs and employers capitalize on the very definition of migrant farmworker – these workers are only in the U.S. temporarily and they are isolated from resources, therefore avoiding becoming identified as a victim. Instead, farmers continue to be abused and exploited while the agricultural industry exponentially profits.

The reality remains that the agricultural system built on the backs of farmworkers is the most productive in the world.⁹⁷ The general public has historically seen agricultural work as something reflective of the American ethos of hard work, and therefore most people do not think about farming as an inherently dehumanizing kind of labor.⁹⁸ In the Midwest, where several large metropolitan areas are within a few hours’ drive of fields where farmworkers toil (e.g., Chicago, St. Louis, the Quad-Cities, and Indianapolis),

labor trafficking does not garner the same attention as sex trafficking.⁹⁹ Recently, a Davenport jury awarded \$240 million to 32 disabled men that were labor trafficked to work at West Liberty Foods in Iowa. It was the largest trafficking case in the state's history.¹⁰⁰ Yet the case received much less national attention compared to several recent sex trafficking cases across the country.¹⁰¹

Society's unwillingness to confront a system that so perfectly lends itself to human trafficking may have much to do with the psychic discomfort required to acknowledge this uneasy fact: the exploitation of workers is what puts food on dinner tables across America.¹⁰²

NOTES

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