



TEXAS A&M UNIVERSITY

School of Law

TAMU Law Answers Webinars

Conversations in Law & Social Justice Webinar Series

“Farmworker Employment Justice”

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Panelists:

- **Edgar Iván Aguilasocho**, Partner, Martinez Aguilasocho Law, Inc.
- **Briana Beltran**, Lecturer, Farmworker Legal Assistance Clinic, Cornell Law School
- **Beth Lyon**, Clinical Professor of Law, Associate Dean for Experiential Education and Clinical Program Director, Cornell Law School
- **José Padilla**, Executive Director, California Rural Legal Assistance
- Moderator: **Leticia Saucedo**, Martin Luther King Jr. Professor of Law, U.C. Davis School of Law

Disclaimer: While some of the panelists are attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

TRANSCRIPT of webinar video at <https://youtu.be/II-ICNaMGoQ> :

- Hello, and welcome to the [Texas A&M School of Law](#)'s webinar, [Farmworker Employment Justice](#). This is the sixth and final installment of our spring 2021 [TAMU Law Answers: "Conversations In Law and Social Justice"](#).

And this is our webinar series. We're excited to be at its end. We've had great conversations. You can find information about our webinars and tamulawanswers.info.

And so we're excited to introduce today's webinar, which is co-sponsored by the [Network for Justice](#), which is part of the American Bar Foundation's [The Future of Latinos in the United States](#), and the [American Bar Association's Commission on Hispanic Legal Rights and Responsibilities](#).

I'm going to take the opportunity to briefly just highlight some of our panelists for today. They include Edgar Iván Aguilasocho, who is a partner at Martinez Aguilasocho Law in the Central Valley in California. It's based out Bakersville. Briana Beltran was a lecturer at the Farmworker Legal Assistance Clinic at Cornell Law School. Professor Beth Lyon, who is also the associate dean for experiential education and clinical program director at Cornell Law School. And Jose Padilla, the executive director of the California Rural Legal Assistance.

We have more information about them on the website. We don't go through all the bios because we have very accomplished individuals and we only have an hour. So I want to also hand over the presentation to Professor Leticia Saucedo, who's going to be serving as moderator. And she's my partner in crime on this webinar series. She's a professor at UC Davis School of Law.

Before I hand it over to her, though, a couple of things. While some of the panelists are attorneys and they will be discussing the law, they will be discussing it generally. So nothing in the webinar should be considered as legal advice. If an attendee has an issue that they want to address, we encourage them to contact their local county bar legal lawyer referral service, or to contact their own legal advisor to address their unique circumstances.

After the initial presentations and discussions, we will have a question and answer session. Please type in any questions you might have in the Zoom Q&A feature. It allows you to ask questions as we're going on in the presentation. And the panelists will address the submitted questions as time allows. So thank you all for being here. And Professor Saucedo, why don't you take it away.

- Thank you, Professor Herrera. And I'm really excited to have this wonderful group of folks here to talk to us about farmworkers and access to justice issues. And I want to start with demographics and farmworker communities today. So Jose, I'm going to ask you the first question. Can you describe who's working on farms today in California?

- On mute. OK. I wanted to thank Professor Luz Herrera for inviting me to be a part of this work. This work that's personal to me. And Luz was on our board of directors some time ago. For more reason to thank her.

But in terms of the demographics in California, I'll say some things. I prefer to talk about the human story. But in terms of the data, I'll give you a few pieces.

In California, first of all, California is the largest state in the country with farmworker and ag. Federal Legal Aid has migrant program. And so we are the largest funded-- we get about \$2, \$3 million a year to serve farmworkers through our migrant program in CRLA.

California has 29% of farmworkers throughout the country. In California, 90% of those are going to be Mexican born. And perhaps interestingly or not interestingly, when you look at the United States and you look at the workforce, the farmworker workforce, there's one community that's has a low demographic or proportionality in the workforce. And that's the indigenous farmworker.

We've been doing indigenous farmworker work maybe for 15, 20 years. And people are surprised that-- I used to think 20% of ag in California was being done by farmworkers. But in

doing my research this time around, there's about 10% of our ag is done by indigenous farmworkers in the country. 1% is done by indigenous farmworkers.

Indigenous farmworkers are farmworkers who are coming primarily from the state of Oaxaca. They come in not speaking Spanish. There's three primary groups, the Mixteco, the Zapoteco, and then there's the Triques.

In rural California, we will find the Mixteco and the Triques. And so we have outreach workers with the capacity to speak indigenous languages. We have one Triques speaker, we have four Mixteco speakers, whose responsibility is to do legal education and outreach to that workforce. But again, California has about 10% of that workforce is indigenous.

The other thing that's huge in California, as Mister Aguilasocho knows, is the farm labor contractor. I guess over the last 15, 20 years, farm labor contracting has come in and become a big part of California agriculture. One third of agriculture in California is done through the farm labor contractor.

When I was growing up and my dad sent me out to the fields, the very few times we went out, we went out with a bunch of local folks who would take us out. My aunt had a crew, my uncle had a crew. And so they were local folk.

But now the grower puts in a middle person. And unfortunately, these middle people are the ones that take advantage of the farmworker in ugly ways. And I could talk about that later in terms of the issues we see with the farm labor contractor. But anyway, like I said, it's the third of ag in California is done through this middle person.

The other demographic is that about a third of the farmworkers are going to be low income. And so that's what we find in California. Finally, the other data point is that farm work in the country is primarily a male farmworker About 68% to 70% are going to be male workers. Maybe the average age is 38 years. And a third are going to be women immigrant farmworkers. And I will talk about that later as to what kinds of specific issues we find with that demographic, where the women farmworkers, the immigrant women farmworkers, are being taken advantage of by some of their supervisors. So I'm going to stop there in terms of the demographics in California.

- Great. Thank you. And I want to make sure that we also cover the East Coast. So Briana, what do the demographics look like of the farmworkers working on farms on the East Coast?

- Yeah, thank you. In terms of the East Coast, I think there's just a huge range as you go North and South. One thing that's definitely much more common, well, it's getting more common everywhere, but historically has been quite true of the Southeast, is just the prominence of the H-2A program, which I know is going to come up later in our conversation. So I'll just pin that for now.

But in terms of New York specifically, where we sit, one thing I wanted to talk to just talk about a little bit is just the nature of the population given what industries are prominent. And so in New York, there's a huge dairy industry. It's a year round industry. And I think that tends to just really impact who you see doing that work.

So I looked the other day at a report that was released a few years ago by a group of both nonprofit organizations and academics who collaborated to do interviews of immigrant dairy workers. And they had some demographic data. So it was a small group but they interviewed 88 farmworkers. And I think the numbers I'll cover in a second, resonate with the types of clients we represent in the clinic and what we've seen in general.

So of those 88 farmworkers, 90% were men. In terms of country of origin, 61% from Mexico, 34% from Guatemala. 93% of them were undocumented.

Age wise, it's a relatively young population. 41% were age 25 to 34. Another 26%, 35 to 44. And then 20% were under 25 years old.

And then in terms of family status, 62% are married and 70% have kids. So I threw out some of those numbers-- it's a small group-- but just to give a sense of what we see in terms of the nature of the industry impacting who we see doing that work in terms of people who are settled out and not parts of these migratory streams or here on H-2A visas. So that's just a little piece of the picture of what we're seeing here in New York.

- Excellent. Thank you. And my sense is, both of you have talked a little bit about undocumented farmworkers, as well as seasonal farmworkers, even though the industry might not be seasonal. So I want to move to how these demographics might actually affect the types of cases that you are seeing and the types of remedies that might be available, given the population, with respect to ethnicity, age, gender, and, as Briana said, race status, nonimmigrant status. So why don't we start with ethnicity, Jose.

- You're talking about in terms of the types of cases we see, right?

- Yeah. One of the things that you mentioned was that you're seeing a lot of indigenous farm workers, as well. And I'm imagining that that has an effect on how you approach the cases and what types of remedies might be available.

- Yeah, well, in terms of the practice, first of all, let me give a little bit of history to lay the foundation of why we do the work that we do. CRLA was founded by movement people. Movement people, that Edgar is very well aware of, coming out of Bakersfield and that part of the country.

But the CRLA was founded-- on his first board of directors were Cesar Chavez, Dolores Huerta, and those who know labor history, the other person was on that first board was Larry Itliong, the Filipino organizer who carried out the first grape strike back in 1965. And we started in '66. And so the founder of CRLA, a guy named Jim Lorenz, came from a corporate law firm in Los Angeles and wanted to set up a corporate law firm for farm workers. And on that first board, he had these movement people on.

Another Latino on the first board of directors was the first Latino California Supreme Court Justice Cruz Reynoso. And at the time he came on the board, he was a private practitioner in Imperial County, where I was born and raised. But he was on the first board.

But needless to say, with so many movement people on, labor became a huge focus for CRLA. And so from the very, very start, those farmworker roots impacted the work that we do. For me, as Caesar would say, this is all personal work. For me, it's always been personal because my grandparents were farmworkers, my father was a migrant farmworker before he went to World War II. And so we were raised around farm work. And so it's not surprising that I gravitated to that practice when I got out of law school.

So that was CRLAs founding. And so labor and employment is huge, huge for what we do. And when you talk about labor and employment, you ask, well, what kinds of cases are you talking about?

And I'll just very briefly mention that about a third of our work is going to be in labor and employment. Again, wage theft, the farm labor contractors being scofflaws, not paying minimum wage, skimming off the top of worker wages. All of that leads to wage theft. I think the last time I looked at that number and our recovery of wages I think was maybe four or five years ago. We had recovered something like \$1.5 million in owed wages, stolen wages from the worker.

And similarly, we do a lot of dairy work case. We have a dairy worker project too for the same reasons that were mentioned before. That is, in California, huge dairy industry in the Central Valley. But that will attract a lot of the immigrant worker.

Why? Because dairy work is year round, if compared to farm work, which is seasonal. And so a lot of workers who have been working in ag will maybe prefer dairy because it means 12 months of work versus maybe the nine or 10 in farm work.

So our practice then has become that work. It's labor law heavy. Less immigration because the federal government does not let us represent the undocumented worker. And as I'll talk in a little while, one of the areas of practice where we were the first Legal Aid the country to practice this type of law, was defending farmworker women in sexual harassment cases. Later on, I'll just touch upon the huge, huge settlements that we have won on behalf of farmworker women being subject to sexual harassment by the male supervisors throughout the industry.

But anyway, those are the kinds of practice, the work that we do. Again, labor law, civil rights, some immigration on behalf of farmworkers. So I'm going to stop there.

- Excellent. Thank you. Briana mentioned that about a fifth of the farmworker population, at least on the East Coast, is folks who are younger than 25. So Beth, how does that affect the types of cases that you're seeing and the different remedies that are available?

- Well, thank you very much, Professor Saucedo and Professor Herrera for this amazing series. It's really been incredible what you put together. And it's an honor to speak with all of you today.

Maybe before talking about the remedies, I'm going to focus just a little bit more on some of the demographics around child and youth farmworkers. I think in the US, the story is a little bit about the actual numbers but also about the lack of numbers. And I think it's important to highlight that.

The US Department of Labor does a regular survey of farmworker demographics, talking with crop workers. And states that 3% of farmworkers are between the ages of 14 and 17. But because the Department of Labor has an explicit policy of not approaching farmworkers during that survey process if they appear to be under 14 years of age, they don't provide any data on farmworkers who are young. And so the US Government Accountability Office, the GAO, recently issued a report cataloging efforts to track child labor in the United States, and particularly noted the federal government's worst failure, which is tracking child labor in agriculture.

So that leaves us with very rough estimates that more than 523,000 children aged under 18, work on US farms. And about 148,000 of those are hired as opposed to being the children of the farm owner, operator. And of the hired children on farms, roughly 2,700 of them are age 12 and under. And one of the reasons why we see so many child workers is that the US actually excludes agriculture from many of the protections of the Fair Labor Standards Act, including the entry age of child workers.

So by mentioning these numbers, which are pretty high, I do want to note that most farmworkers and farmworker advocates that I've worked with are not child labor abolitionists, and neither am I. But I do think it's important to have good numbers as a way to promote safe workspaces for all workers, including young workers.

And then just briefly, to turn to the types of cases, really what we wind up seeing is that because so many workers are under the age of 21, it means that if they are in removal proceedings or they're undocumented, they actually have a pathway to citizenship that's a special visa called the Special Immigrant Juvenile Visa.

And we've seen how children coming to the US across the border, how they're stopped. They're separated from their families at times. They're put in detention. They run that horrific gamut at the border.

But then when they end up working on a farm in the United States, they're still in very active removal proceedings. And they're trying to defend those removal proceedings from a very remote location and get to a city that could be three, four, six hours away to attend those removal proceedings and prevent themselves from having a deportation order. So for legal services, that means that we need to reach out, find young people who are very nervous about being contacted or being in touch with lawyers, and help them to seek this special status through first, a family court process and then through the deportation process.

- And I can imagine that that's a really difficult process given how remote, as you say, these workers and these children, these child workers are. So my question is about how clinics are working with legal services organizations to do that kind of work?

- Apologizes, is that one for me?

- Yes, that's for you.

- Oh, thanks.

- [INAUDIBLE] Briana.

- Well, I can just answer quickly and Briana can fill in. But because this process is a multi-step process, you have to have a predicate order from a state court, whether it's a family court or a juvenile justice system. That means that you have to engage local legal services and local family bar, many of whom are not language accessible, are not comfortable with processes that are related to immigration, and are worried about their reputation with the local judge, who oftentimes might even be in agriculture themselves or come from a farm family, and often are elected. So that I think is the most difficult piece of it.

And then with the immigration portions, oftentimes there are privately funded organizations that can assist with those stages. But it all has to be coordinated. And the truth is that, probably the vast majority of children never get representation. Where we are in Buffalo, which has a huge catchment of most of New York state, 50% of the unaccompanied minor docket has no representation at all, no lawyer in court.

- [INAUDIBLE]. Briana, I want to move to you and see if you can add to this picture. What's happening with H-2A workers and their representation?

- And I mentioned in passing in my first answer just about the H-2A work population in the US. But to give a little context and just explain. The H-2A visa is a visa that's available to come to the US to do temporary agricultural work.

It is something that employers apply for. And if a worker gets the visa, their time in the US and lawful status is really dependent upon them working for that employer. So they can't leave if things are bad. And they're supposed to return to their home country once the contract term is up.

So it's a situation that really lends itself to a lot of exploitation but has been enormously popular. So I'm going to try to show some slides that just give some numbers in terms of what's happened. The program has existed for a little over 30 years. So I have some both in table form and a graph, for those who like lines.

These are the number of visas that have been granted every year by the State Department. It's a little hard to get precise numbers just because the program operates in two pieces in terms of the Department of Labor certifying positions. And we have information on that based on employer and location. So you can get state specific data there.

But the second step is the State Department granting the visas. And that's your national picture of how it's grown. So here's some numbers. You see in 2020, we're at over 213,000. There's just a graph of the same numbers.

One thing that I found just recently reading some articles about the H-2A program, basically it seems like whatever was written in 2001, 2002, 2010, last year-- and I've done this-- people comment, oh, it's doubled, it's tripled in the last few years. No matter where you were on time, people are basically saying the same thing just because it's shot up so much. So I'll stop that share. But I just wanted to follow up for some context.

I think just one thing that's important is, as I said, these are visas that are limited in time and scope. And so we have some cases, they're not as a New York based, but we have cases where we represented H-2A workers, or would-be workers in the United States. And they are time limited. So if you're going to take on a case that's either going to be litigation or some sort of immigration relief for individuals who are in the H-2A status, you're probably going to be dealing with them when they're not in the US anymore.

And so there's a whole host of logistics and concerns that can come up in cases in terms of representing workers who may need to participate in discovery. Or if it's a workers' comp case, give testimony. Whatever it may be, if they're abroad, there are challenges that come with that.

And I'll circle back a little more to give some examples from some of our cases in a bit. But one, I think, big pattern we've seen a lot of in the clinic, cases that I did even before being at Cornell, is the common pattern of paying recruitment fees. So these are fees that workers are charged to get the visa, or to be put on the list for next year, whatever the term of art the situation uses there.

There are fees that are prohibited under the regulations. But it's nevertheless super common for workers to be charged these fees to be able to participate and get an H-2A visa. So again, I'll turn it back over to the next question. But I'll circle back and give some examples of how that intersection of workers who've experienced these types of violations and then not being in the US, how that presents specific problems.

- OK, great. And Jose, did you have something to add?

- I wanted to add something on the H2-A. We're seeing a lot of growth in the H2-A program in California. And the H2-A, legal as they are, authorized as they are, it is still a captured workforce.

And right now, we're carrying legislation through our Foundation-- we have a CRLA Foundation that does not have the restrictions that CRLA, the corporation, does. And right now, we're working with Assembly Member Kalra and Senator Durazo. And we've got a proposed legislation that will protect H2-A workers, among other workers, against retaliation when they complain and they raise questions about their employment, their housing conditions, their working conditions.

Again, because they are a captured workforce, they're going to be very fearful. Because if they complain, they fear being blacklisted in Mexico where they get recruited. And so we have seen the need to legislate a little more protection, anti-retaliation protections for H2-A workers. And that's going through the legislature right now. I'll stop there.

- And I can imagine there's also advocacy issues at the federal level. I remember reading a few years ago about attempts by growers to expand the H-2 programs to things like full-time dairies. And at the same time, limit access of H2-A workers to legal services, to health insurance, and that sort of thing in Mexico. There's always a movement, it seems to me, to make them even more captive or captured, as you say.

I want to pivot a little bit to focus on some access to justice issues and bring Edgar in. And have Edgar talk to us a little bit about the litigation that's going on now at all levels, including the

Supreme Court. There's a case in the Supreme Court now that just went to oral argument called Cedar Point Nursery versus Hassid, which deals with growers.

Growers are actually challenging California state law or regulation that allows organizers to go onto properties to organize farmworkers. And growers are challenging that as a violation, as a taking, basically. So Edgar, I know that you and your firm are involved in that case. So I'm hoping that you can start us out by talking a little bit about the case and about your involvement.

- And just echoing with other folks, thank you, Letitia, and thank you, Luz, for putting this together. This is a wonderful talk and I'm glad to be sharing some space with these wonderful folks. Just on the issue of Cedar Point, maybe first of all, I'll give a little background in terms of the work that I do at the firm, that we do as a firm. And then I can go into the Cedar Point work and how that fits in.

But essentially, our firm is one in a series of a historically different ways that the farmworker movement in California has organized their legal team, or been represented to do all the wonderful things that they've done over the years. There have been times when the UFW, in the early days, the attorneys were in-house. There have been times when it was a private law firm. And it's in all sorts of different variations of attorneys coming in to not take the lead in the movement but support all the different work that's being done, which has always been varied and always been extremely crucial.

So in terms of the categories of work that we do, I think about it as three bubbles. One is the big bubble of general counsel type work, where we represent all sorts of different entities within the farmworkers movement, which I consider to be-- like the United Farm Workers Union, which is a labor organization like the Teamsters or SEIU. There's a UFW Foundation, which is a growing, nonprofit organization that does primarily immigration legal services throughout California but has expanded to different policy work and is starting to expand to different states around the country. That's growing very quickly.

We represent the only a farm worker pension plans and health care plans in the country, as far as we're aware, the Robert F. Kennedy Medical Plan and the Juan de la Cruz Pension Plan, and a number of other organizations, as well. So anything that they need in terms of contract work, or if they have dispute, a trademark, issue or something like that, we handle that for them.

For the Union, the second bubble is essentially, labor work. It's unfair labor practices, it's representing workers or the union in front of, occasionally, the National Labor Relations Board, when it involves workers that are not necessarily considered agricultural. Historically, farmworkers have been excluded from all of those wonderful things that passed during the New Deal, the National Labor Relations Act, the FLSA. So the history is, California passed its own we consider better version of a law called Agricultural Labor Relations Act that protects farmworkers right to organize in California. So a lot of our litigation has to do with that.

And then the third bubble overlaps with Jose quite a bit. We tend to do some cases together, also, which is the wage and hour employment law world. We do we do a lot of wage and hour class actions, gender discrimination, sexual harassment cases, all that stuff right.

So where Cedar Point falls in, it goes back to that labor organizing bubble. And it's holding the ground for things that were accomplished and battles that should have been won back in the '60s and '70s. In '75, California passed the Agricultural Labor Relations Act. And it included in part an access regulation that was considered and passed. And was ultimately held up by the California Supreme Court way back in the day that only affects California.

It has to do with an organizer's right before work, after work, and during nonproductive lunch time during the day, to, for a certain amount of days per year, go and speak with farmworkers. So it shouldn't be costing the grower any money. It shouldn't be affecting them whatsoever.

But the last several years have been a bit topsy-turvy. So for some reason, the United States Supreme Court took up an appeal challenging that access regulation that's been on the books for all these decades on the basis that the Fifth Amendment Taking Clause, which prohibits public use of private land without just compensation.

So on the basis that union organizers going onto private property is somehow a taking. I think they mostly couched their argument in terms of easements. But I'm sure there's plenty of law students on this webinar who are listening, maybe thinking about easements, things that run with the land, and all that sort of stuff, and are probably confused as to why an easements case only affecting California, involving organizers would go to the Supreme Court. We're also very confused. So we have no idea how that's going to go.

But essentially, we coordinated with a number of other wonderful organizations that also filed amicus briefs in that case, and with the state attorneys, who are presenting the principal case. And essentially, the core of everyone's arguments there is, the same mechanisms under the Constitution that allow union organizers to go onto property to talk to farmworkers in California is the same mechanism that OSHA might use to go and inspect health and safety issues on the farm. It's the same basis that allowed the government to impose racial equality standards on private businesses. For example, the Takings Clause came up in litigation when restaurant owners and hotel owners were forced to open up their businesses to citizens of any race.

So it's a puzzling case. There's a Supreme Court case on the books that are related to the NLRA that we think covers us. But it's a different time. So we'll see how that goes.

I think there's a couple of other things I could also touch on in terms of current litigation very quickly, things that have come up. Touching on the discussion that Briana and Jose were having on H2-A issues. This is something I think that's concerned us within the United Farm Workers, us as attorneys for the Union for quite some time.

And there's so many issues that come up when you have a captive workforce that's dependent on an employer to recruit them from a community of origin, usually in Mexico, transport them to the United States somewhere where they don't know anyone, that is likely somewhere remote, and can only work with a particular employer using that particular visa.

So the concern that we've had for a number of years is that this is prime conditions for labor trafficking cases, where you're essentially putting someone into a modern day version of slavery by forcing them to work against their will, using all sorts of different types of coercion. So there

have been more cases coming out on that issue. Prominently in the media in certain states, there have been cases that have come up on the criminal side.

We have one case that we argued last summer before the Ninth Circuit involving Mexican veterinarians, who were fraudulently recruited using a NAFTA TN visa, which is supposed to be for professionals. And essentially the way that happens is, because of things that have already been mentioned, dairy workers are year round. H2-A visas are for seasonal, temporary employees. Some groups of dairies got together and came up with the idea of using this animal scientist visa to recruit folks to work on their dairies as general laborers, coincidentally, without letting the folks as they recruited them that that's what they would be doing.

So what the case involves with the Ninth Circuit is, essentially, these folks being defrauded into coming into the United States, constantly surveilled, and threatened with deportation for complaining about their working conditions. So we feel strongly that things are going to go our way with that case. There's a Seventh Circuit case that just came out that points in that direction. But we'll see there.

And I guess, just finishing this off in terms of things that are happening now, it's always a balance between protecting what we have, pushing things forward, which we're trying to do with the labor trafficking stuff, and then just reacting to things that are happening at the moment. So with COVID, there have been all sorts of issues that have come up. There have been a number of agricultural growers that have had outbreaks. There have been a number of processing plants that we've dealt with that have had COVID outbreaks.

And workers would come to us for help. And I think not surprising to probably anyone on the call, rather than deal with the COVID issue, the employers get into anti-union mode and do everything they can to suppress workers coming together to try to protect themselves. So those are the types of issues that we've been dealing with.

With that type of litigation, it's a combination of we worked on some civil litigation to get restraining orders against employers, effectively forcing them to do something about the COVID outbreak. Shutting down, cleaning, and implementing new measures, and things like that. We've done some litigation like that.

We've worked with our sister organizations on all the contract work that's involved with distributing PPE and meals to farmworkers who need it. And everything in between, dealing with all sorts of agencies. So it's a lot of work. But it's very important and it's good to have allies like Jose, and Beth, and Briana that are also doing the work in their own respects.

- Thank you. And also at the end, we'll ask all of you again, including you, Edgar, how our law students and law schools can get involved in that work. But I want to stick with the health and safety issues for a minute and have all of you talk about the types of issues that you've seen with respect to health and safety, following up with Edgar's discussion about COVID related issues and how they're dealing with health and safety.

And I want to start with Beth. And one of the questions in the Q&A, Beth, is, in general, what type of issues are you seeing with respect to health and safety? But also, the safety protections

for young farmworkers under OSHA. Are they less protective than for other young workers? And do you deal with any of these types of cases?

- Well, thank you for that question. OSHA excludes quite a bit of agricultural work. A lot of workers are not protected by OSHA. And even those that are, very few actually see action. The federal government does very little in the way of monitoring safety conditions.

So many workers over the years have told me, I see people coming onto the farm to make sure the food is clean, and hygienic, and safe, and the animals are safe, but no one's coming to check on my conditions. And I really think that's pretty common around the country. In particular with children, the United States is a pariah around the world in terms of child labor because we have a rule that says that although in America, children age 16 to 18 years old are not permitted to work in hazardous forms of labor, agriculture is excluded. So children working on a farm are permitted to be involved in hazardous labor.

And for that reason and many other reasons, a child who's working on a farm is five times more likely to experience a fatality, to die on the job than a child working in any other industry in this country. So there's some very serious policy issues that need to be addressed. But because of the power, the political power of agriculture, we just can't seem to get at those things.

I just want to add one thing. I know we don't have a lot of time. But I wanted to give a few statistics follow up on Edgar's great presentation about the work they've been doing on COVID with some numbers. Because there has been some research on incidents of COVID in farm workers.

So there was a study of over 1,000 farmworkers in central California that found that 20% had antibodies for COVID-19. And in the US population at large, we know it's less than 10%. So that really I think shows the risks. And also, of course, we've seen a lot of data on the stark disparities in the rate of COVID cases and COVID related deaths among people of color in the US. And that's also reflected on farms.

So 31 states have reported data. And 37% of workers in those industries of farm and restaurant work were Hispanic or Latino. But they represented 73% of the laboratory confirmed COVID-19 cases in those industries. So I just wanted to share that. The government failure to curb opportunism on farms and failure to protect workers is really evident in the numbers.

- Thank you for sharing those numbers. They're pretty telling. Jose, did you want to add something?

- In terms of the COVID work, and Edgar mentioned the United Farm Workers, I'm on a state advisory group talking about the vaccination rollout, and all of that. And Diana Tellefson, who was on there from the UFW Foundation, she's talked about the kinds of events that have been held in the Central Valley. We're part of those, the AFW is part of those.

You're pushing vaccination for workers, trying to give them access and trying to make sure that they get their proportional share of those vaccinations. But again, you need advocacy for that to happen. Again, we've partnered. That's one of the things that we put out there. That the only way

that this is going to be successful is that for the state of California to partner with on-the-ground community-based organizations who have the trust of workers.

And so we've been somewhat successful in those vaccination events. At the same time, you use those events to pass out PPE. The growers are not going to give masks, for the most part. And it's got to be other groups working with them. So COVID has hit that farmworker very heavily.

And again remember about the farmworker the housing conditions are not helpful. Social distancing on a bus transportation, you think the farmworker contractors transporting farmworkers on their buses worry about six feet? No, those buses are crowded. And the farmworker housing is crowded.

The risk of farmworker populations during COVID, that health risk has really fallen heavy on them. So anyway, I just wanted to mention that about COVID. Can I make a comment about the health and safety?

- Yes.

- I wanted to mention that one of the areas of practice where we do-- we look at it as a safety issue. And Edgar knows about that. And that's sexual harassment advocacy that I touched upon.

You talk about a captured workforce. farmworker women suffer differently in ag than the regular worker. The fact that they're immigrant women working in those fields, young teenage immigrant women, they get taken advantage of. And so CRLA, we're the first Legal Aid in the country to do sexual harassment work on behalf of farm workers. And we've been doing it now for about 20 years.

But the initial case walked in as a \$600 wage case. Tanimura and Antle, one of the big grower companies in the Salinas area, had a worker there. She quit her job and was owed two weeks of pay. So she came into the office for two weeks of pay.

At the time, we were starting to work with the federal government with EEOC, trying to figure out how they might be helpful in providing farmworker assistance. And we were looking for a sexual harassment case because we heard that that was a big issue out there. But it walked in as a \$600 case. At the end, it was a \$1.8 million settlement on behalf of all the farmworker women who were being sexually harassed working for Tanimura and Antle.

Five years ago, we won another \$1.2 million case for women working in the Berry's, Reiter Berry Farm's case. Four years ago, we won a case, \$1 million on behalf of celery workers. 19-22-year-old immigrant farmworker women working in celery, again, being sexually harassed by the bosses. And so farmworker women, because they suffer differently, our advocacy has to shift. And the idea that you would bring sexual harassment cases against a grower is huge. And it was a huge thing for us.

And other farmworker Legal Aids have followed. Florida Rural did a case where they won a \$17 million settlement on behalf of farmworker women in Florida being sexually harassed by supervisors in a company there. So again, that's one of those areas of practice that's different.

But I feel great that we have been able to provide that kind of representation. Because in a recent conversation with my mother, I was I was bragging about that kind of work. And my mother revealed for the first time that one of my own aunts had been raped in the fields, and one of my cousins was a result of that.

And she said, but we had we couldn't do anything. That was just the work that was out there. And that was a risk that we faced as an immigrant farmworkers in the Central Valley. And so for me to be able to now provide defense for that gender issue in farm work has been very satisfying. So I wanted to mention that's part of the safety issues that we address in our Legal Aid. Out.

- Briana, I want to give you an opportunity to talk a little bit about health and safety in H-2 to workers and see if the issues are the same. Or are there other issues that are specific to the population?

- Just real quick on that on the health and safety thing. I'm remembering last summer, seeing just lots of articles pop up about different H2-A workforce's and COVID. And the reaction of some of the growers was basically to heighten what already was a situation of the captive workforce. And just basically not let the workers go anywhere.

They already were in a situation like that. And the reaction was not more testing, or PPE, or actually things that could help. But just, you can't leave your farm to go anywhere.

One thing I wanted to just touch on is a couple of examples from the clinic on H2-A issues and the recruitment fees and how it's played out in terms of access to justice problems. Just thinking about the fact that the workers are from other countries. And if they're here then go home, how that impacts their ability to get relief.

So we had a case where we had a group of workers who were recruited to the US on H2-A visas and paid a bunch of recruitment fees in their home country before going to the US consulate for their interview. And then they ultimately found out at their interview that the visas were canceled supposedly because the employer had been under investigation. That's part of what the DOL can do. If an employer is violating those rules, they will cancel the visas and not let the employer bring in the workers.

But at what cost? The workers paid these fees and they don't get the visas to come to the US to earn the higher wages to pay down their debts, and whatever they were expecting to happen. That's just an example of the worker, they originally tried to pursue an administrative remedy to get DOL to help. But because they never came to the US, they weren't able to help.

Organizations like CRLA and the other federally funded organizations wouldn't have been able to represent the workers because they also never came to the US. And there's regulations around when you can represent H2-A workers. So that's just a case that ended up with us because no one else could really take it.

Another example, building on the themes of labor trafficking and recruitment fees. We have another group case where we have pursued what are called U visas, so visas for victims of certain enumerated crimes, based on a situation of labor trafficking, including recruitment fees, but also other really horrible workplace conditions in the US.

The U visa is great on the one hand, because you can apply for that even if you're not in the US anymore. So the workers went back home. And they're able to pursue this form of immigration relief that if approved, they could come back to the US down the line. But unfortunately, it's a really oversubscribed program. There's a huge backlog because there's a cap as to how many can be granted per year.

And so if our clients get approved, it may be a dozen years before they come to the US. Versus an equivalent US based worker, or someone who maybe stayed in the US after the expiration of their visa, there are different remedies available to them. They could have applied for a different visa called a T visa, based on labor trafficking. If they had applied for a U visa, if they were approved, they could be granted deferred action and granted a work permit while they wait out this long wait list.

There's a lot to critique. Even that as well, I'm not saying that's a great model. But just thinking about our clients who experienced these horrible conditions and then did eventually comply with the terms of their visas and went back home.

And now, they're here waiting a dozen years, hopefully, to come back versus similarly situated workers in the US who would have a much faster path to getting those remedies. So just seeing the comparative nature of how workers who were adjacent to or were part of the H2-A program get doubly harmed, I guess, when trying to pursue their remedies from other countries. We'll turn it back over to you, Letitia.

- Good. Thank you, Briana. Both of those are great examples of how complex these issues become and how important access to justice issues are for this particular population.

So for all of you, this is a question for all of you, how can law schools help? How do they help uncover the problems that farmworkers continue to face. And how can they help with the work that's already ongoing? Beth, I'll start with you.

- Great. Well, thank you. So I think I'll just quickly set up some of the dynamics around law schools assisting foreign workers. One is that most law schools in America are in cities and are focused on moving their students into law firms in cities.

And so oftentimes, farmworkers are an afterthought and not something that a lot of administrations think about. And also, the schools that you would think would have the best access and the most motivation would be land grant schools. They are oftentimes located in agricultural areas, they are getting money to think about agricultural issues.

But what I found is that oftentimes, their audience tends to be big ag and not farmworkers. So there's been, I think, obstacles for a long time. But that said, a lot of law schools-- and I'm sure the other speakers are going to give some great examples-- have done incredible, creative work, whether it's community engagement or teaching or research.

And just to mention, in my case, I had the privilege of starting the Farmworker Clinic at Villanova Law School in 2001. And then the clinic where Briana and I work here at Cornell in 2015. And I got to say that every semester we have a wait list. Every semester students want to

do this work, even if they never thought about it before they came to law school. And so I just really want to commend that it's a great topic for law schools to focus on.

And I'll also just briefly mention that Briana and I and others at Cornell are doing a survey right now about university engagement with farmworkers. And so if you're at a university or if you have a good relationship with the university working on farmworker issues, please take a minute to fill it out. Thanks.

- And that survey is in the chat. For those of you who are interested, there is a link to the survey. Anyone else before I move to the last five minutes of Q&A?

This has been a wonderful, wonderful conversation. I think we could do this for another hour. But does anyone else want to add anything before I get to a couple of questions? One of which is, Edgar, if you can go in and drop the citations to your labor trafficking cases in the Q&A, that would be helpful.

- Sure.

- Jose, did you have--

- Guys, as just again for law schools, I think that push giving public interest lawyering support in whatever way you can. The topics that you teach, I think there's an incredible-- I saw one comment about how incredible it was that Texas A&M was doing a farmworker webinar like this one.

But addressing the issues intentionally, public interest class that talks about racial justice, issues of farmworkers can be placed right into a racial justice curriculum. Labor law. I remember I took labor law at Berkeley Law and there was nothing about farmworkers. Maybe that was way back when. But the labor law classes, again, having some focus around that. Civil rights classes, immigration classes, they all can have as a piece farmworker advocacy to discuss the issues that came out of that kind of a practice.

The other thing is law student internships or fellowships that are sponsored by the law school. Again, wherever your law school is, but hooking up with a Legal Aid that's doing farmworker advocacy. Do an internship, maybe some kind of collaboration with Legal Aids, like that.

They're in Georgia, those Legal Aids are in Florida. There are Legal Aids in northern New York. They're there. And so doing collaborations with some of those Legal Aids I think would be-- with migrant Legal Aid, I think would be a very, very good form of support for these kinds of issues through your law school work. I'm going to shut up there.

- Just a couple of quick points before we finish up on this. I think I have a lot of things to say about what law schools can do to be able to help with farmworker issues. I think for myself, what helped was-- so I went to the UC Irvine School of Law. And there were a number of points where I had access to advocates in the farmworker justice world.

Even though I am from a farmworker family myself, it didn't occur to me until I got to law school to start looking into this as a possibility. Because I saw organizations like CRLA and the UFW, and it's like the big shining star. And it didn't occur to me that actually very few new lawyers want to do this work or have the opportunity to have contact with folks doing this work to be able to be introduced to it and see it as a realistic possibility.

So what definitely worked for me was having different professors who are in the pro bono or volunteer work world provide opportunities and connections to folks doing this work. I think our firm has a consistent practice of having volunteers help us with not necessarily immediate cases, things that need immediate help because that's difficult to do remotely, but for the long term, if there's a research project or something like that we need that'll help us with our advocacy in the future, then we'll have law students help us with that. I think working closely with the career development office, making sure it's not just academic, but the career development office at a particular law school is looking at work in rural communities as a realistic option.

A big part of the access to justice gap has to do with law schools that are pushing folks to go to rural places and young lawyers not willing to move somewhere, even for a couple of years, to do this type of work. So I know for our firm, we've had an open [? opportunity ?] position for well over a year. And I know CRLA has run into the same issue over and over again, also. So it's about making that a realistic option to go be-- I think to steal a phrase from Luz-- a community lawyer somewhere, where folks actually need it. And tie the curriculum into that work will go a long way. But I think it's still a very serious problem.

- Thank you. And thank you all so much for this wonderful discussion. I definitely learned a lot. And I'm sure that as well. I'm sorry that we didn't get to the questions and answers. If you all can look at those and see if there's any one that you can answer in writing, that would be great. Otherwise, I'm going to turn it over to Luz Herrera for the conclusion of our webinar.

- Yeah, I don't have a whole lot to say because this is our last webinar in the series. But we're very grateful to all of the panelists for your participation today but also for your continued good work, and to Professor Saucedo for moderating this panel. Again, you can look at the webinar videos at TAMULawAnswers.info. There's usually about a two-week lag between the last one done and then having it loaded.

But we hope you enjoyed the webinar series. And we look forward to connecting with you through another means, through the [Network for Justice](#). So thank you all. And have a good evening or afternoon.

- Thank you.

- Thank you.

- Bye.