

Farmworkers & the Law, Summer 2023

Vermont Law & Graduate School, FAA5350

Instructor Contact

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HLS Food Law & Policy Clinic

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Class Dates & Times

July 28, 2023 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 1)

July 29, 2023 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 2)

July 30, 2023 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 3)

Course Description

The approximately two million farmworkers who grow our food are essential to this country. Yet they are often overlooked in national policy efforts on issues ranging from immigration law to environmental justice. In some areas, like labor rights and occupational health and safety, they are explicitly denied certain basic protections. This course will detail farmworkers' current living and working conditions as well as the history of their exclusion from key laws and regulations. It will also explore current tools and strategies used by farmworker advocates at both the state and federal level, including litigation, legislative advocacy, and worker organizing. The class seeks to highlight how the intersection of different legal regimes impacts farmworkers and their families. Its goal is to encourage students to first focus on understanding a particular community, and then analyze whether and how the law could be an effective tool in serving that community.

What to Expect in Class

Class time will be comprised of lecture, discussion, and in-class activities. Students should come prepared to actively participate in the discussion, bringing reflections and questions from the readings completed in preparation for that day of class. Given the central role of discussion to this course, the instructor will strive to ensure that all students are comfortable participating and that all students' viewpoints are included. All participants (students and instructor) are expected to engage with one another respectfully and to be open to perspectives that challenge their own.

Students should bring their laptop computers with them to class, if feasible, to facilitate participation in activities related to the theme for that day.

Grading

Grades will be provided on an A – F scale in accordance with VLGS policy. Grades will be determined in accordance with the following breakdown:

50% Class Participation – Class Participation will be determined based on preparation to participate in the session's discussion, quality and thoughtfulness of contributions to the

conversation, and participation in class activities. While laptops are permitted in class, time spent on messaging apps, email, and/or web-surfing will detract from one's Class Participation score.

50% Final Paper – The Final Paper will be take-home and should be uploaded to TWEN no later than **6:00pm, Sunday, August 6, 2023**. Final Papers will be graded anonymously. The Final Paper will include:

- (1) Written analysis in response to a hypothetical fact pattern, applying the legal precedents read about and discussed in class.
- (2) An essay (1500 – 2000 words) on a policy proposal, of the student's choosing, related to the course subject and material.

Students will receive written instructions for their Final Paper at the conclusion of class on Sunday, July 30, with the opportunity to ask clarifying questions concerning the Paper's requirements at that time.

The Final Paper score will be matched to a student's name to determine a final grade for the course (Final Paper + Class Participation) only after all Final Papers have been scored.

Course Readings

All readings listed are required and should be completed prior to the Class Day for which they are listed. A break in the list indicates which readings the instructor anticipates will be covered before and after the mid-day break on a given Class Day, subject to variation based on the flow of class discussion.

Class Day 1: Agricultural Exceptionalism & Labor Organizing

- FARM BILL LAW ENTERPRISE, [FARMWORKERS](#) (2022) (**Introduction, pgs. 1-11, only**).
- Joanna Welborn et al., [Más de Una Historia](#), SOUTHERN CULTURES (2019).
- 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 (2011) (available via WestLaw and Lexis).
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- *Holly Farms Corp. v. NLRB*, 517 U.S. 392 (1996) (available via WestLaw and Lexis).
- Jennifer Gordon, *Law, Lawyers & Labor: The United Farm Workers' Legal Strategy in the 1960s & 1970s & the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1, 10–44 (2005) (**Section II only**; available via WestLaw and Lexis).
- *Hernandez v. State*, 173 A.D.3d 105 (N.Y. App. Div. 2019) (available via WestLaw and Lexis).

Class Day 2: Farm Labor Contracting & the H-2A Visa Program

- *Torres- Lopez v. May*, 111 F.3d 633 (1997) (available via WestLaw and Lexis).
- 29 C.F.R. § 791.2 Determining Joint Employer Status under the FLSA (2020) (available via WestLaw and Lexis; **please view the version in effect from Mar. 16, 2020 to Oct. 4, 2021, which has since been rescinded**).
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- OFF. OF FOREIGN LAB. CERT., [H-2A TEMPORARY AGRICULTURAL LABOR CERTIFICATION PROGRAM – SELECTED STATISTICS FY2017](#).
- OFF. OF FOREIGN LAB. CERT., [H-2A TEMPORARY AGRICULTURAL LABOR CERTIFICATION PROGRAM – SELECTED STATISTICS FY2022](#).
- Julia Jagow, *Dairy Farms and H-2A Harms: How Present Immigration Policy is Hurting Wisconsin and Immigrant Workers*, 2019 WIS. L. REV. 1269 (2019) (available via WestLaw and Lexis).

Class Day 3: Worker Health & Safety & Worker-Led Solutions

- SARAH GOLDMAN ET AL., [ESSENTIAL & IN CRISIS: A REVIEW OF THE PUBLIC HEALTH THREATS FACING FARMWORKERS IN THE US](#) (2021) (**pgs. 26–43 only**).
- OLIVIA N. GUARNA, [EXPOSED & AT RISK](#) (2022) (**pgs. 7–42 only**).
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- Manoj Dias-Abey, *Justice on Our Fields: Can “Alt-Labor” Organizations Improve Migrant Farm Workers’ Conditions?*, 53 HARV. C.R.-C.L. L. REV. 167 (2018) (available via WestLaw and Lexis).
- Annelise Jolley, [The Co-op Farming Model Might Help Save America’s Small Farms](#), CIV. EATS (Oct. 3, 2018).