

Farmworkers & the Law, Summer 2025

Vermont Law & Graduate School, FAA 5130 01

Instructor Contact

Emma Scott, escott@vermontlaw.edu

Class Dates & Times

June 20, 2025 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 1)

June 21, 2025 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 2)

June 22, 2025 – 10:00am – 12:00pm, 1:00pm – 3:00pm (Class Day 3)

Course Description

There are over two million farmworkers growing, tending, harvesting, and packing agricultural products in the United States yet they have long been excluded from core labor protections. This course looks at the ways law and policy have failed these essential workers and the movements, campaigns, and worker-led initiatives seeking to address these deficits. The course materials bring together sociological insights with legal analysis to ensure students understand the context in which law and policy operate. Focus areas include wage and hour law, the H-2A visa program, the joint employer standard, occupational health and safety, and worker-led organizing efforts.

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.

As a reminder, a student will be automatically withdrawn from the course with a grade of F-Wd if the student is absent from any class. The instructor does not have discretion to amend or waive this policy. **Excessive tardiness will count as an absence.**

Accommodations for Disabilities

Vermont Law and Graduate School encourages students with disabilities, visible or hidden, to seek appropriate accommodations. If you have a disability and would like to request an accommodation please review The Vermont Law and Graduate School Disability Policy

at: <https://www.vermontlaw.edu/community/students/academic-success/accommodations>

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:

30% Class Participation – Class Participation will be determined based on preparation to participate in the session's discussion, the quality and thoughtfulness of contributions to the conversation, participation in class activities, and demonstrated conscientiousness of class time and making space for others to speak. While laptops are permitted in class, time spent on messaging apps, email, or web-surfing will detract from one's Class Participation score.

70% Final Paper – The Final Paper will be take-home and should be uploaded to Canvas no later than **6:00pm, Sunday, June 29, 2025**. 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 (up to 2500 words).
- (2) An essay (up to 1500 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, June 22, 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.

A note about the Paper Deadline and Word Limits: The deadline and word limits will be enforced as follows to ensure fairness across students:

- A half letter grade will be deducted from your final grade for submitting an exam after the 6:00pm deadline. There will be an additional half-letter deduction on the following schedule:
 - 12:00pm, Monday, June 30
 - 11:59pm, Monday, June 30
 - 11:59pm, Tuesday, July 1
 - 11:59pm, Wednesday, July 2
 - 11:59pm, Thursday, July 3
- Exceeding the word limit will result in a half letter grade deduction from your final grade. Exceeding the word limit by 250 words or more will result in a full letter grade deduction.

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

- Joanna Welborn et al., *Más de Una Historia*, SOUTHERN CULTURES (2019), <https://www.southerncultures.org/article/mas-de-una-historia/>.
- 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; also available for download here: <https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>).
-
- *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; available for download here: <https://scholarship.law.upenn.edu/jbl/vol8/iss1/1/>).

- Farm Laborers Fair Labor Practices Act, A8419 (New York, 2019–2020) (bill text available here: <https://legislation.nysenate.gov/pdf/bills/2019/A8419>).

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).
- *New York v. Scalia*, 490 F.Supp.3d 748 (2020) (available via WestLaw and Lexis; edited version available on Canvas) (**read only** the following sections: Introduction (no heading); I.A.1; I.B up to paragraph that begins “The Final Rule acknowledges the 2014 and 2016 AIs.” on *764; III.B.1.a; III.B.1.d; IV.) .
-
- Tina Vásquez, *Human trafficking or a guest worker program? H-2A’s systemic issues result in catastrophic violations*, PRISM (Apr. 14, 2023), <https://prismreports.org/2023/04/14/h2a-visa-wage-theft-exploitation/>.
- 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; also available here: <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2020/02/Jagow-Final.pdf>).

Class Day 3: Worker Health & Safety & Private Solutions

- *Health & Safety*, NAT’L FARM WORKER MINISTRY, <https://nfwm.org/farm-workers/farm-worker-issues/health-safety/> (watch the shorts videos on Heat Stress and Pesticide Exposure (no reading)).
- EMMA SCOTT & GRAY NORTON ET AL., *PRECARIOUS PROTECTION: ANALYZING COMPLIANCE WITH PESTICIDE REGULATIONS FOR FARMWORKER SAFETY* (2023), <https://www.vermontlaw.edu/sites/default/files/2023-12/precarius-protection.pdf> (read **Executive Summary**, pp 4-12, and **Deeper Dive into WPS Components**, pp 33-64, **only**).
- OLIVIA N. GUARNA, *EXPOSED & AT RISK: OPPORTUNITIES TO STRENGTHEN ENFORCEMENT OF PESTICIDE REGULATIONS FOR FARMWORKER SAFETY* (2022), <https://www.vermontlaw.edu/wp-content/uploads/2024/07/Exposed-and-At-Risk-1.pdf> (read **Section II. The Structure of Enforcement of Pesticide Use Laws & Regulations only**).
- Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70698 (Aug. 30, 2024), <https://www.federalregister.gov/documents/2024/08/30/2024-14824/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings> (read **Executive Summary only**; *skim* the Table of Contents to see what the proposed rule covers)
- **Review Public Comments**
 - Go to: <https://www.regulations.gov/docket/OSHA-2021-0009/comments>
 - Review several comments. You can use the search feature to find comments from specific organizations or comments that expressly reference farmworkers. Come to class prepared to share a comment you found interesting or informative.
-
- *Explore on your own: Apart from creating new laws and regulations, what strategies and innovations are being used to empower or protect farmworkers? Examples may include worker-driven social responsibility programs, labeling/certification schemes, corporate campaigns, and other types of worker organizing. Come to class with at least one example to share.*