

Regulating Labor Supply Chains: Sending States, Private Power, and the Evolving Governance of Temporary Labor Migration

Kathryn Babineau
Department of Sociology
University of Virginia
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Committee:
Jennifer Bair (Chair), Adam Slez, Milton Vickerman, Yingyao Wang, Jay
Shimshack

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Dedication

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Chapter 1: Introduction

At a conference in late December 2023, the Guatemalan Ambassador to the United States stood in front of a full ballroom of hundreds of America's biggest agricultural employers, and discussed Guatemala's recruitment program for agricultural labor. The program utilizes the H-2A visa, a temporary labor program that was originally established in 1952 as a pathway to bring into the United States foreign nationals who had been recruited and hired by petitioning employers to engage in temporary agricultural labor. Most recently reformed in 1986, the H-2A visa program has exploded in recent years, becoming one of the largest temporary worker visa programs in the world. As a result, the recruitment and processing of workers who are eligible for H-2A visas has become a multi-billion dollar business, with private recruiters controlling the market of employers seeking to identify, transport, and process workers through the logistically complicated H-2A labor supply chain. A growing mountain of evidence also demonstrates that recruiters don't just charge employers for their services; they also engage in a wide range of fraudulent schemes to charge workers for opportunities to come to the US on an H-2A visa. In worst case scenarios, some of which have grabbed headlines, workers are not only charged fees but also held against their will in systemic cases of human trafficking that affect tens of thousands of workers.¹

Despite private recruiters' dominance of the H-2A program, many of the sending countries from which H-2A workers originate, including Mexico, Jamaica, Honduras, Guatemala, and El Salvador, are hoping to create a new recruitment model, one which will displace private recruiters' hold on the H-2A supply chain. These efforts came to a head in a

¹ The types of human trafficking that occur within the H-2A program, as well as their prevalence, are further discussed in chapter 5.

conference room in Las Vegas, Nevada, as representatives from many sending countries made the case for their national program to the assembled audience of US agricultural employers. Their basic message was, “Pick us [the government recruiters] over them [the private recruiters].” At the center stage microphone, the Guatemalan Ambassador had his turn. He explained that the Guatemalan Ministry of Labor, with funding and logistical support from the US Agency for International Development, had amassed a database of at least 10,000 workers who were “clean” [lacked a negative immigration history, health problems, or other issues that might affect workplace performance] and ready to be hired by approved H-2A agricultural employers in the United States. Elaborating, he described the Guatemalan government’s philosophy towards its worker recruitment services, which are provided free of charge to employers who are approved to hire H-2A workers: “We are client oriented and focused on you,” describing those in the room who had hired Guatemalan workers in recent years as “satisfied customers.”

In past decades, this would likely not have been the way an Ambassador from a sending state would have spoken about migration policy. When negotiating the structure of the Bracero program in the early 1940s, for example, a historical account (written in 1960) explained that Mexican officials were fierce in their demands to advocate for workers:

The Mexican rejected the provision in the ‘standards’ which authorized the farmers or their agents to recruit workers in Mexico. Señor Padilla [Mexico’s Foreign Minister] stated emphatically that under no circumstances would Mexico permit representatives of the states of the American Union or of employers’ associations to recruit labor on Mexican soil...The Mexicans also insisted on the inclusion, by reference, of Article 29 of the Mexican labor law. The interagency committee had Article 29 before it when it advocated the payment of transportation, repatriation, and other costs by employers, but the Mexican delegation maintained that mention of the article in the agreement would strengthen the document. (Scruggs 1960, p. 147).

Once the Bracero program was in place and workers began to arrive, Weise (2015) and others document how Mexican officials were known to roam the Texas countryside, investigating complaints themselves that the farmers of the Jim Crow South were brutally mis-treating workers. Thus, while these earlier temporary work programs could be engines of exploitation and abuse (discussed further in chapter 2), it's also the case that Minister Ezequiel Padilla was definitely not interested in being 'customer-oriented' in his negotiations with the United States to send Mexican workers abroad. When Mexican officials first finalized the Bracero program, the government got its wish, and worked with US agencies to directly administer the program. Over time, however, as I document in subsequent chapters, this control was lost, giving way to subsequent Bracero agreements, as well as the visa programs that followed Bracero (like the H-2 visa). Under these new visas, a privatized recruitment system, in which employer representatives travelled to Mexico to hire workers with extremely limited oversight from public officials, prevails. Under the H-2A visa, the focus of this dissertation, private management of the recruitment, transportation, and worksite conditions for H-2A workers is the norm. In place of the sending state that insisted that labor law would be respected and privatized temporary migration would never prevail, officials now attempt to lure employers to use their ethical H-2A visa services with offers of reduced fees, travel subsidies and a 'customer-oriented' approach.

Back in the conference ballroom, however, it became clear that the Ambassador's mission was more than it first appeared. After talking about the ways in which Guatemala's H-2A government-run labor recruitment program makes for happy customers, hawking his country's workers as if they were commodities, the Ambassador then did something quite interesting. In a pivot in his speech, he outlined a number of worker-centered initiatives that had been adopted to support the 7,180 Guatemala workers that have received H-2 visas through the Ministry of Labor

program since 2019. He noted that the US Consular interview process, which is a requirement for workers to receive their visas, is not conducive to encouraging workers to build trust and disclose abuse, a major issue with the H-2 process. Because US agencies are not expending the resources necessary to detect and eliminate instances of abuse of Guatemalan H-2 workers, the Ambassador explained that his government had developed an app to follow up with workers during their migration process and after returning home, along with other mechanisms that the Ministry of Labor uses to confirm that workers have access to resources throughout their migration experience. In interviews I conducted with Guatemalan officials, many confirmed that they supplement these official sources with their personal WhatsApp numbers, which they provide to departing workers in case of issues during transit to or upon arrival in the United States (Govt 5). These data – accessible by virtue of the Ministry's recruitment program - provide officials with unique insights into the experiences of Guatemalans who travel to the US on a temporary visa, allowing them to understand workers' experiences and mobilize resources to advocate (albeit delicately) for workers who find themselves in abusive conditions. It became clear that the Guatemalan program was interested in growing its share of the H-2A market by recruiting more employers to use its service. However, its long-term goal was to use that market share to gain information about worker experience, establish direct lines of communication with employers, displace the frequently abusive privatized recruitment system and, ultimately, support workers.

The Ambassador's comments thus represent two long-running trends in temporary labor migration from the Global South to the Global North. First, the process of transnational migrant labor functions like a supply chain, and those who manage and regulate the migrant labor process – from the point of worker recruitment in the sending country to the workplace in the receiving

country – understand, interpret, and reinforce the structure of the labor supply chain through the process of recruiting and transporting temporary labor migrants. There is a temporary labor migration market, and by extension a labor supply chain, that is created when sending states must compete for the business of employers and, by extension, for temporary migrant visas for their citizens; this is a process that Gordon (2017) refers to as “global labor arbitrage.” Secondly, migrant sending states, predominantly from the Global South, often seek to manipulate the dynamics of the temporary labor migrant market in their favor for two reasons: (1) To maximize remittances sent home; and (2) to exert greater control over the structure and operation of the migrant labor process. In other words, they attempt to combat the effects of privatization on temporary migration, and regulate the visa process through participation as a market actor in the temporary labor migrant supply chain.

In order to participate in temporary labor migration markets, sending countries must first secure opportunities to enter these markets. As the anecdote above underscores, the history of sending country participation in temporary labor migration long predates the H-2A program, as Calavita (1992) and others (e.g. Spickard 2007, Scruggs 1960, Clark 2018, Mize 2016) have documented, and for many decades was dominated by bilateral agreements between sending and receiving countries. These agreements created a specific role for sending countries in the regulation of temporary labor migration, however imperfect or curtailed. In the ensuing era of globalized economic exchange, changes in global economic activity created a system that some have characterized as “supply chain capitalism” (Gereffi 2019, Brinks et al 2021), and migrant receiving countries – and in particular, the industries in the Global North that rely on labor migrants to operate – reconfigured temporary labor migration programs into largely privatized structures, regulated *de jure* by the receiving country governments but administered *de facto* by

the industries utilizing the program. Importantly, this new structure rarely creates a role for sending country governments to regulate temporary labor migration programs, and attempts to push for such a role might mean that Global North employers choose to hire elsewhere; indeed, sending countries find themselves in a similar situation as developing countries who become ‘regulation takers’ (Strange 1996) in their attempts to attract development opportunities via foreign direct investment (Mosley & Uno 2007). This was particularly true for countries sending migrants to the United States, which pioneered the new privatized temporary labor model decades ago (Hahamovitch 2011).

In light of the prevailing conditions that preclude their involvement as joint regulators of temporary migrant labor programs, sending countries have gotten creative in their attempts to redistribute the benefits of temporary labor migration, which primarily accrue to employers, towards labor migrants themselves, as well as the states and communities from which they originate (Iskander 2010). One of the most common strategies is regulation by managing the migrant labor stream themselves, on behalf of employers. And while (as I discuss in chapter 2) this strategy has a long history, in the modern era such opportunities frequently come from new partnerships, including opportunities from worker-led organizations and advocacy groups, as well as the receiving countries themselves.

This dissertation explores these strategies of market participation by sending states, tracing their origins and assessing their effectiveness. It attempts to understand how sending states exploit opportunities for agency, despite an inability to shape the terms of inclusion in temporary labor markets. In doing so, I attempt to answer two key questions:

1. *What is the temporary migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate temporary migrant labor supply chains, and how has their control over these supply chains shifted over time?*

This dissertation, therefore, is not about the H-2A program in the United States, nor it is an ethnography of H-2A workers. Instead, my focus is to trace the contested role of sending states in the regulation of labor supply chains, using a study of the H-2A program as one site of that contestation. Thus, it is primarily a supply chain study, and aims to understand the position of Global South states as actors who are both part of transnational labor supply chains (in that temporary labor migrants originate in and are recruited from those places), but also excluded from them (in that they cannot directly structure the supply chain itself). It also tries to determine the agency that they exercise from that position, and how it is either amplified or curtailed by the other actors that influence (or seek to influence) the migrant labor supply chain. These other actors include private recruitment and logistics agencies, Global North countries, other Global South countries, national and transnational worker-led organizations (including NGOs and unions), other advocacy groups, agricultural employers in the Global North, and the retailers to whom employers sell their products.

In subsequent chapters, I show that developing countries do regulate labor supply chains in two ways: First, they create new, entrepreneurial initiatives, including innovative partnerships, which provide them with opportunities to intervene in the H-2A program, and in particular to advocate for H-2A applicants and workers that find themselves in abusive or exploitative situations. Second, they welcome opportunities created by other actors, and often use them as ‘openings’ through which they gain abilities to surveil (i.e. collect information on H-2A applications, recruitment, and processing) and influence the H-2A program. Nevertheless, I find that sending states engage in these two kinds of regulation through their attempts to participate in labor migration markets *as market actors*. As a result, they often end up reinforcing the fundamental structure of the temporary labor migration markets that render them ‘regulation

takers' (Strange 1996) in the first place. Thus, while their efforts may ameliorate particular aspects of the temporary labor migration experience for workers, they are also unable to address other major problems with the H-2A system. Indeed, through their efforts to make an impact where they can, sending states can actually reinforce and entrench temporary labor migrant market dynamics. For example, sending states often work to increase their control of temporary labor migration by attempting to attract employers – and the jobs that come with them – on the basis of cost and quality, a strategy that often reinforces the primacy of employers' needs and demands over those of migrant workers. In other words, sending states retake control of some parts of the labor migration supply chain by reinforcing their lack of control over other nodes of it.

Interestingly, many sending state bureaucrats involved in the regulation of temporary labor migration are aware of this paradox in their work, and they grapple with their roles as both challengers and reinforcers of the prevailing regulatory structures. Their awareness of this tension primarily manifests as a persistent push for a return to bilateral migration agreements, hoping to once again create an official role for the sending state in setting and enforcing temporary labor migration policy. In general, however, sending states seek out opportunities that allow them to move beyond their limited role in migration policy, where they deal with the effects of programs created and implemented by receiving states (often at the behest of industry actors in those countries); instead, they want to have a direct say in how temporary labor migration will be structured (e.g. Livnat & Shamir 2022). Some of these possibilities may come from private organizations or other regulatory actors. Conversely, the desire of other actors to maintain control over the migrant labor supply chain may render them as powerful veto players acting against sending states' efforts.

I. Applying a Supply Chain Analysis to Labor Migration – Contributions to Sociological Studies of Migration and Global Value Chains

Throughout my analysis of the labor supply chain, I utilize analytical tools and frameworks – specifically, those developed within the Global Value Chains, or GVC, literature (Gereffi 2019a) – that were originally developed to analyze commodities. In the commodity chains literature that was the forerunner to the GVC approach, scholars acknowledged that commodity chains were the main organizational form of capitalist economic activity, claiming that by as early as the eighteenth century we can observe “the transformation of the trade of surpluses between distant points into a true division of labor with integrated production processes crosscutting political jurisdictions” (Hopkins & Wallerstein 1986, p. 158). In these studies, emerging primarily from the literature studying development, commodity chains were defined as, “A network of labor and production processes whose end result is a finished commodity” (Hopkins & Wallerstein 1986, p. 159). Since the emergence of the commodity chain, scholars from the GVC tradition have undertaken rich empirical studies of the transnational production processes of commodities (Gereffi & Korzeniewicz 1994, 2019a, Bair 2009, Ponte 2019, Horner 2017). As Gereffi (2019b) explains, by centering their studies on commodity chains, GVC scholars broke with other development scholars. This new work recognized that networks of private actors (specifically, powerful multi-national corporations that control major global industries) were central to understanding how all states, but particularly developing states, engage with the global economy. Private power, therefore, plays a major role in deciding the value distribution of commodity production processes, or who captures the economic and productivity gains of a globalizing economy. It also sought to:

Link the macro-level issues related to the structure of the world-economy with the meso-level characteristics of national development strategies, and the micro-level emphasis on the inter-firm networks and related political and social consequences of local embeddedness.” (Gereffi 2019b, p. 5)

By relating power dynamics in global industries to national development strategies, GVC scholars developed theoretical tools to conceptualize and study *governance*, defined as the process through which actors negotiate and set the structure of a given value chain. This includes what goods will be produced, where they will be made, and under what conditions (e.g. labor and environmental standards, etc.). Studying governance, therefore, means trying to relate the structure of the value chain with the actors that participate in it. In doing so, GVC scholars assess the tools available to each of the actors exerting control over a value chain, as well as the interests of those actors and the leverage they apply vis-à-vis one another.

To date, there have been no studies that apply the analytical tools and methods of supply chain studies to the process of labor migration, save for a few excellent pieces of legal scholarship (Gordon 2007, 2017). There are a number of good reasons for this, the most important of which is that humans are not commodities. Labor, however, is a fictitious commodity (Polayni 2001), and temporary labor migration programs are often structured to import labor from abroad without allowing the humans providing that labor with permanent pathways to social and political inclusion in receiving countries (Griffith 2006, Parreñas 2021, Shamir 2017, Ruhs 2005, Castles 2006). Furthermore, when considering the perspective of workers who are migrating, the process of labor migration through a temporary work visa functions in an analogous way to supply chains for commodities. These similarities – between the process that produces temporary migrant labor and the process that produces commodities – are not incidental, but instead indicate an important clue to the way forward in understanding the governance of temporary labor migration: We need a new theoretical conceptualization of the

migrant labor supply chain, one that draws from the tools and methods developed in sociological and political economy analyses of commodity production, and specifically GVC scholarship.

Ultimately, GVC analysis is motivated by an understanding that while actors structure the supply chain, supply chain dynamics also shape the agency of these actors. This kind of analysis requires first a rich description of the chain, and careful identification of the actors involved. This is an important innovation over many studies of H-2A migration, which primarily understand migration as a process negotiated between states, rather than as one that is also governed by private actors. Furthermore, most temporary migration studies deal with one component of the migration process (e.g. focusing solely on recruitment, or the workplaces where migrants labor), rather than assessing the entire chain and the way in which the constellation of public and private actors shifts as you move across it. Conducting a GVC-type analysis of a temporary migrant labor program, therefore, constitutes a significant contribution to migration scholarship, allowing me to focus on important drivers of worker exploitation that have been under-emphasized in previous work. It also allows a far better understanding of the structure in which sending states operate, as they seek to shape migration policy and improve their citizens' treatment and pay while working abroad. As a result, it is much easier to see how the regulation of temporary migrant labor supply chains suffer from a phenomenon known as the "race to the bottom" (discussed in chapter 2), which limits sending states' ability to intervene to protect workers for fear that employers might go somewhere else (i.e. another country) to recruit.

My analysis also offers two major contributions to GVC scholarship. First, it constitutes the first analysis of a labor supply chain, expanding the application of GVC theoretical tools and creating opportunities for future work in this area. Second, this work expands the developing body of knowledge on the role that states play in the governance of global value chains. On this

second point, I explicitly differentiate the power, leverage, and control of migrant sending states of the Global South from the receiving states of the Global North, an issue that has been explored in migration scholarship (Hahamovitch 2014, Parreñas 2021, Agarwala 2022) and legal scholarship of migration (e.g. Livnat & Shamir 2022).

In the next section, I provide a brief overview of my case selection, explaining why my study focuses on the H-2A program, a visa used by US employers to hire workers from around the world to provide seasonal agricultural labor. Under the structure of the H-2A program, employers can choose to hire workers from 82 countries around the world, almost all of which are located in the Global South. The vast majority of workers, however, are recruited from only a few countries, primarily Mexico. Thus, I also use the next section to begin to explain my selection of Mexico's H-2A labor supply chain as my main case study, using those of Guatemala and Jamaica as shadow case comparisons (I provide a more thorough case selection discussion in chapter 3).

II. Case Selection: Comparing the Regulation of the H-2A Migrant Labor Supply Chain in Mexico, Guatemala, and Jamaica

In order to accomplish my research goals, I focus this study on the H-2A migrant labor supply chain, one of the largest temporary migrant programs in the world (by yearly volume of workers - see chapters 2 and 3) that has dramatically grown over the last decade. First created in 1952 and modified in 1986 by the Immigration Reform and Control Act (IRCA), the H-2A program allows agricultural employers to hire foreign-born workers for seasonal farm jobs (e.g. planting, harvesting, packing, etc.) in the United States. H-2A jobs are approved by the US Department of Labor, but visas and other immigration-related documents for each worker are approved and processed by the US Department of State and the US Citizenship and Immigration

Services (USCIS). While workers typically only come to the US for a limited period (typically 6-9 months), they can return year over year to the same employment opportunities, sometimes for two decades or more. Regardless of how long they work in the United States, H-2A workers do not have a path to permanent residency or US citizenship.

As I explain in subsequent chapters, the H-2A program is well-known for its privatized structure; in contrast to other temporary work programs that are directly managed by public officials (like Canada's agricultural worker program), a set of private actors manage and implement virtually all of the components of the H-2A supply chain, from recruitment to transportation, to workplace monitoring. In many cases, the only interaction that an H-2A worker might have with a public official is during their interview at the US consulate to receive their work visa. Even this interview, however, is frequently waived, in which case an H-2A worker would move from their community of origin to their workplace in the United States without ever interacting with a public official. As a result, a multi-million dollar H-2A recruitment and logistics industry has grown over the past few decades, providing employers with support in order to recruit and hire workers abroad and transport them to the United States.

While there are a number of countries from which H-2A workers are selected, the largest (accounting for approximately 92% of the H-2A visas issued in 2023) is undoubtedly Mexico. For this reason, I focus my study on Mexico. As I discuss in chapters 4 and 5, Mexico's size as an H-2A labor supplier means that it also hosts the largest private recruitment and logistics industry. Thus, part of the regulatory challenge for Mexican government agencies is the control of a massive, widespread, privatized H-2A temporary migrant labor supply chain. The case also exemplifies – and therefore allows me to explore – the possibilities of innovative partnerships with private regulators, which the Mexican government has pursued. In addition to my in-depth

study of the Mexican case, I employ two shadow case comparisons which I weave throughout the narrative of my empirical chapters: Jamaica, the oldest H-2A sending state, serves as a diachronic comparison, and Guatemala, one of the newest (and fastest increasing) sending states, serves as a synchronic comparison (Biernacki 2018). In the next section, I provide a short summary of the subsequent chapters and the main findings of the study. I also demonstrate the larger sociological themes and questions to which this study speaks.

III. Chapter Outline and Contributions of the Study

While I do address and utilize the extensive body of literature developed on temporary migrant labor programs by migration scholars, this dissertation aims to undertake an analysis of the migrant labor supply chain, utilizing the theoretical and methodological instruments originally developed by GVC and other scholars to study commodity supply chains. In chapter 2, I first provide some historical background on the evolution of temporary migrant labor programs since their beginning in the early 20th century, then move into a detailed discussion of the relevant literature. After laying out my theoretical framework, I next detail the multiple methods that I use to conduct my study, including semi-structured interviews, ethnographic observation, and secondary data (chapter 3). I then begin my empirical chapters, first laying out the structure of the H-2A migrant labor supply chain (chapter 4), following the worker experience from the community of origin to the workplace in the United States. This discussion includes the key steps, or nodes, of the H-2A chain and the actors involved in governing each node. I also provide a more focused discussion of the kinds of governance arrangements (i.e. distributions of power between public and private actors) that prevail in the H-2A supply chain.

After providing an overview of the H-2A labor supply chain structure, I analyze the three most pivotal nodes in the H-2A migrant labor supply chain: Recruitment (chapter 5), visa

issuance (chapter 6), and the workplace in the United States (chapter 7). In these chapters, I begin by discussing what kinds of activities take place in each node, as well as the challenges that workers face in addressing them. Next, I provide a focused analysis of the actors involved at each node, as well as how those actors shape the way that the activities of the migrant labor supply chain are governed. I pay particular attention to the strategies that sending states deploy, as they attempt to exert a greater degree of control over the labor migration process at each step in the supply chain, from worker recruitment to visa issuance, and during work for their employer in the United States.

I remain cognizant throughout my analysis that migrant labor supply chains exist within a broader constellation of agrifood supply chains; as I lay out in chapters 2, 4, and 5, while agricultural employers sit atop (and drive much of) the structure of migrant labor supply chains, they are actually first- (and sometimes second-) tier suppliers for the buyers of agricultural products (e.g. restaurants and grocery store chains). These agricultural buyers have their own sets of conditions and requirements that producers must meet, some of which have direct implications for the H-2A program. I most directly address this dynamic in chapter 5, where I discuss the Fair Food Program, an initiative begun by a workers' coalition that requires major agricultural buyers (like Walmart) to pledge to exclusively source agricultural products from suppliers who are compliant with a set of worker protections, including specific requirements related to the recruitment and treatment of H-2A workers. Thus, the H-2A migrant labor supply chain is driven by employer decisions, but also by the buyers to which they must answer, as well as the worker organizations that harness that power.

My aim is to outline why and how sending states struggle to exert control over the nodes of the H-2A migrant supply chain, in large part because the United States (under considerable

pressure from the agricultural industry) refuses to sign a bilateral migration agreement that would give them a formal role in the administration of temporary labor migration programs. In response to this exclusion, I also identify how sending states deploy a variety of strategies to push back against their exclusion. In some cases, sending states attempt to set regulations on the private actors that manage the H-2A migrant labor supply chain, including requiring the recruiters that operate in their countries to register themselves and follow certain requirements to protect workers. They also seek to police fraudulent activity by those actors, helping workers to decipher whether offers of employment in the United States are legitimate or part of an exploitative scheme to extract payments from those workers. To do so, they sometimes form partnerships with non-governmental organizations and international governance organizations (like the International Labor Organisation), as well as unions. They leverage their consular networks in the United States to protect workers and advocate for US authorities to intervene when employers fail to follow the terms of employment laid out in H-2A contracts; in some cases, they create their own shadow labor ministries to operate in the United States and monitor working conditions.

Primarily, however, sending states seek to regulate temporary migrant labor supply chains by participating in them as market actors. This means that they serve as recruiters and logistics coordinators, hoping to establish an ethical migrant labor supply chain, attract the business of H-2A employers with a variety of incentives (primarily by offering their services for free), and ultimately displace the exploitative, privatized migration system by out-competing it. In some cases, they receive help in their efforts from the receiving state itself (in the case of Guatemala, whose recruitment program is funded by a US development agency), as well as private regulatory actors, including (in the case of Mexico) the Fair Food Program (discussed above) led

by the Coalition of Immokalee Workers (CIW). And while I document that these strategies have yielded some non-trivial reductions in abuse of H-2A workers, as well as greater sending state control of the temporary migration process, I also demonstrate that sending states' efforts often end up reinforcing the very supply chain structure that excludes them from a direct regulatory role in the first place.

Beyond its specific contributions to the fields of migration and GVC scholarship that I highlighted in section I above, this study demonstrates the micro- and meso-level processes by which macro-level inequalities are re-created and reinforced on the global stage. Thus, it touches on a number of other important areas of sociological work, especially the fields of global regulation and the sociology of development (e.g. McDonnell 2020), and global south-north relations. It is also, fundamentally, a study about the actors and forces that govern workers and workplaces, and thus speaks to important questions in the field of labor and labor studies, particularly the field's growing interest in the relationship between migration processes and labor precarity (e.g. Milkman 2020, Parreñas 2015). In the chapter that follows, I begin with a historical overview of the agricultural industry in the late 19th and early 20th century, tracing how changing demand and new production processes led to a rise in the use of migrant labor. I then trace the specific conditions that led to the rise of the first temporary migrant labor programs in the early 20th century. I show how these programs went from being directly managed and regulated by government actors from receiving and sending states, to ones that are almost exclusively managed and controlled by private actors from the agricultural industry. Next, I provide a thorough literature review, identifying my contribution to the migration literature, discussing the Global Value Chains (GVC) approach, and outlining my specific contributions to both areas of scholarship.

Chapter 2: Conceptualizing the Migrant Labor Supply Chain

I. Introduction

This project attempts to understand how labor migration is regulated, and how certain actors involved in that regulation exert control over the labor migration process. Specifically, it attempts to answer the following research questions:

1. *What is the temporary migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate temporary migrant labor supply chains, and how has their control over these supply chains shifted over time?*

As I laid out in Chapter 1, the world of temporary labor migration has long been a site of complicated interactions between migrants, sending and receiving states, industry actors, and worker organizations, all of whom have sought to exert control over the structure of temporary migrant programs. These interactions have been difficult to capture with the theoretical tools developed in the migration scholarship. Thus, answering my research questions necessitates the application of a novel theoretical framework that has not previously been applied to sociological studies of migration processes.

In the chapter that follows, I aim to accomplish two goals. First, I provide a historical overview of labor migration, focusing on the origin and evolution of temporary labor visas from their emergence in the early 20th century. Second, I provide a literature review, in which I discuss the Global Value Chains (GVC) approach, and in particular how GVC scholars study the governance of supply chains. I explain how current approaches to temporary migrant labor visas, mostly originating from migration studies, often struggle to adequately assess the tension created by what Gordon (2017) refers to as “global labor arbitrage,” a term that refers to the global market of temporary labor migrants and the process by which sending states are forced to

compete with one another for visas and jobs in the migrant receiving countries of the Global North. As a result of the phenomenon of global labor arbitrage, which was created when the bilateral labor migration programs of the mid-20th century ended, sending countries participate in a global labor market for migrant workers; thus, they wind up caught between the competing priorities of (1) ensuring their workers are competitive on this labor market and (2) ensuring those workers are not exploited by their employers abroad.

I demonstrate that migration scholars have not typically addressed this tension in their work on temporary migrant labor programs (with a few notable exceptions), because migration is typically understood as a process between states. As a result, they have not conceptualized temporary labor migration as a kind of supply chain, over which multiple kinds of actors (both public and private) exert control. By using a GVC approach, I am able to do exactly that, and I argue that this provides two important analytical advantages. First, it shows how the privatization of temporary migrant labor programs – i.e. the abandonment of bilateral agreements – creates the dynamic of global labor arbitrage. As a result, sending countries compete for jobs on the global migrant labor market in a similar way that producer firms compete in what GVC scholars refer to as buyer-driven supply chains.² At the same time, sending countries are trying to manage the recruitment process for migrant workers, which often requires setting requirements on recruiters and employers that might drive them to hire elsewhere. This is a tension that producer firms, as well as regulators in the countries where producers are domiciled, frequently encounter in buyer-driven chains, and has been well-documented by GVC scholars. Thus, in my analysis here, I can

² Buyer-driven supply chains are defined as, “Those industries in which large retailers, brand-names merchandisers, and trading companies play the pivotal role in setting up decentralized production networks in a variety of exporting countries typically located in the Third World” (Gereffi 2019c, p. 46). Thus, the buyers exert more control than producers over the structure of this kind of commodity chain.

draw on that literature to articulate the tension of sending states in the context of the global temporary migrant labor market.

Secondly, a GVC approach – and specifically, its analysis of how global supply chains are governed – allows me to understand the regulatory deficits that emerge from the structure of the global temporary labor market, as bilateral agreements are abandoned. There are two kinds of regulatory deficits that emerge: First, temporary migrant labor supply chains cross borders, creating a trans-nationalized process that is analogous to what happens in global supply chains. As supply chains cross borders, scholarship has shown that regulatory deficits emerge as nations struggle to control a process that is not contained within their territory. Deficits often are more prominent in buyer-driven supply chains, and in the countries that primarily house producer firms. Second, regulatory (or governance) problems also emerge as the employers – both buyers and producers - within supply chains engage in what Weil (2014) refers to as ‘fissuring.’ One common form of fissuring is subcontracting, one of the most pervasive practices in the context of temporary migrant labor supply chains. While transnational regulatory deficits and fissuring are two distinct phenomenon with different effects on the governance of supply chains, they are connected in important ways that GVC scholarship helps elucidate; most importantly, the pressures (created by trans-nationalization) that producers face in buyer-driven supply chains often drive the uptake of fissuring strategies. Thus, using this new theoretical frame, I can better explain how temporary migrant labor functions, how it is governed (controlled) by public and private actors, and why sending states struggle to regulate the process of temporary migrant labor recruitment.

II. Temporary Migration in US Agriculture

From their inception, temporary migrant labor programs, also referred to as guestworker programs, have existed in the context of the paradox that arose from mass migration in the 19th century. There was an economic reality that motivated the creation of temporary worker programs: Needing cheap labor. Cheap labor, however, typically came from groups of immigrants that have long been socially constructed as ‘undesirable’ (Cook-Martín 2019). These competing desires – to access labor from these ‘undesirable’ groups while preventing a viable path to citizenship conferring economic and political rights – form the basis of many guestworker programs (Castles 2006). In the case of the United States, temporary labor migration programs originated over a century ago to address labor shortages in the agricultural industry. The governance of these programs, or the “authority and power relationship that determine how financial, material and human resources are allocated” (Gereffi 2019c, p. 44-45), has changed over time, along with sending states’ power to exert control over guestworker regulations.

Begun in 1917 as the United States entered World War I, the first Bracero program originated in the sugar beet industry to provide cheap, immigrant labor from Mexico for a crop that, like many other agricultural commodities, was continuing to transform and industrialize during the 20th century (Nodín-Valdés 1991, Mapes 2009). As a result of changes in production volume, technology, and demand, farmers found themselves needing increasingly more seasonal workers during harvest and other peak times of labor-intensity, while also preventing those workers from permanently settling in the agricultural communities where they worked. By the end of the 19th century, US agriculture was transforming itself, beginning in California, which pioneered a corporate-style farming at a time where other areas of the country organized

themselves around family farms or plantations. The West also pioneered what came to be known as “truck farming” (Hahamovitch, 1997), or the mass production of fruits and vegetables for America’s growing urban centers. In addition to more common (and less-labor intensive) crops, California became a primary producer of goods like figs, grapes, raisins, tomatoes, peaches, citrus fruits, and apricots, all of which were becoming more popular among American consumers (Fisher 1951). Mass production of sugar beets also began in the late 19th century, much of it located in California (Street 2004, Nodín Valdés 1991). These changes in the kind of crops farmed drove not only new technological innovations, like the massive sugar refineries that came online at the turn of the 20th century; they also required massive amounts of seasonal labor at specific intervals in the growing and harvest cycle in order to successfully harvest them. Indeed, while corporate-minded growers were successful in developing new technologies to increase crop yields and economize on labor costs during the growing phase of yearly crops, these successes only served to increase the need for hand labor during the harvest (Macy et al. 1937), a process that growers were unable to successfully mechanize until the 1950s.³

All of these developments led to increasing pressure on the labor needs of Western growers, and brought about the transition to widespread use of migrant labor much more quickly than in the Midwest and East Coast. While Western growers continued to search unsuccessfully for mechanization alternatives that would eliminate the need for large amounts of hand labor, they also went in search of a labor force that was willing to both work for as low wages as possible and to accept extreme job insecurity (Street 2004, p. 468; Macy et al., 1937). Generally speaking, white, native-born workers were unwilling to work under these conditions; as a result,

³ As will be discussed below, some fruit and vegetable crops were fully mechanized in the 1950 – including tomatoes destined for canning – while others continue to be picked by hand, including table grapes, strawberries (Wells, 1996; Seabrook, 2019), and fresh tomatoes.

as Martin (1993) notes, “Large farms turned to workers without other job options” (p. 58). These workers turned out to be almost exclusively immigrant populations newly arrived to California. Laborers organized themselves largely along ethnic lines, forming the beginnings of what would become the federally regulated Farm Labor Contractor (FLC) – otherwise known as crewleader – system.

Before the FLC system became federally sanctioned, farms developed strategies to play different groups of workers off one another, beginning with the Japanese crews that were favored at the beginning of the century and moving towards a preference for Mexican workers by the 1910s, particularly as the Mexican Revolution raged on and thousands of rural Mexicans sought any work they could find in California, away from the violence (Martin, 1993, p. 59). As Hahamovitch (1997) helpfully summarizes:

“...California growers imported armies of workers who remained isolated from the rest of the workforce. Mexican Americans, Chinese, Japanese, Filipinos, and Mexican have all dominated California agriculture at one time or another. Eventually, however, these workers would either organize or abandon agricultural employment to buy land, return home, or seek industrial jobs. Their actions would force growers to seek a new source of cheap and tractable labor.” (p.6)

While its origins lie on the West Coast, this model would quickly spread elsewhere, and become the dominant form of agricultural labor by the start of World War II. The modern-day FLC system, which is undergoing rapid expansion, became a federally-sanctioned sub-contracting system through which crewleaders can recruit a group of workers, then contract with growers to provide labor at the times in the production and harvest cycle that it is needed. It was formally legalized in the U.S. in 1963, and was last updated under the Migrant Seasonal Worker Protection Act in 1983 (LeRoy 1998). The FLC system has long been recognized by federal labor experts as weakly regulated, and offers ample opportunities for crewleaders to engage in

myriad abuses against the workers they employ, up to and including human trafficking (Martin 1993, p. 90-91; see also Weise 2015).

Throughout much of the 20th century, many farmers in the South and Southwest continued to grow cotton. Other farmers, however, near many of the major urban centers of the United States – including New York, Philadelphia, and Washington, DC – decided to try their luck at truck farming, and began growing many of the fruits and vegetables that had been so successful in California. Growers benefited from many of the advancements of Western farmers, including refrigeration, a more extensive rail network, mechanization of many labor-intensive parts of producing fruits and vegetables, and a growing demand for these fresh goods among city dwellers. Indeed, new methods of irrigation, commercial fertilizer, and greenhouse growing all made truck farming poised to be more profitable than ever – for those who could afford to leave behind “The evils of land monopoly,” invest in these expensive inputs, and begin to diversify the crops they grew beyond cotton (Hahamovitch, 1997, p. 23).⁴ However, these growers also inherited the labor challenges that large-scale Western growers encountered. In the Northeast, family farms or industrial work had long been the dominant form of labor organization, and now growers needed to find a reliable seasonal workforce for their abundant harvests. In the South, the share-cropping system and the centuries-long subjugation of African American workers, first through slavery and then through Jim Crow, meant that more labor was available; however, this ‘traditional’ organization of labor didn’t fit the needs of the truck farming industry. Like the West, growers up and down the Eastern seaboard were increasingly willing to “recruit labor

⁴ Most Southerners don’t go into this kind of farming: according to Hahamovitch (1997), they were both unable to see the advantages and lacked the capital to invest in the necessary equipment, even as the boll weevil – a devastating pest to cotton – began in Texas at the turn of the 20th century and spread throughout the South (p. 81).

farther away” to “pick up where the machines left off” rather than to raise wages to rates that might recruit local workers away from better-paying industries (Hahamovitch, 1997, p. 28).

Until the period during and immediately preceding the first World War, many areas of the country had access to racialized, exploitable, and deportable farm labor without the need for special immigration programs. The war put a bigger squeeze on the availability of agricultural labor than in any previous era of American history, as the wartime economy recruited soldiers out of the fields and pulled workers into industrial sectors from agriculture. This was particularly true in the South, where African American workers left exploitative sharecropper situations for better wages and working conditions farther north in a mass exodus now known as the Great Migration (Weise, 2015); in places like Norfolk, Virginia, for example, the world’s largest navy base was on the rise, and offered far better opportunities than on Virginia’s farms (Hahamovitch, 1997, p. 89). Meanwhile, southern planters were harvesting record war-time crops to meet rising prices and demand. The spread of canning technology, which made vegetables able to transport even farther and longer, further fanned the demand for truck farming goods (Daniel, 1981). Farmers in the South and Northeast needed workers who would work harder for lower wages than they might make in other industries, and they needed them quickly.

While California remained the most common migrant destination, Southern growers also turned to immigrant labor from Mexico, absorbing a significant portion of ten-fold increase in migration between 1913 and 1924. As a result, growers sought an amendment to federal immigration policy, and they got it: “As federal legislators moved to restrict European and Asian immigration, labor-hungry business interests ensured that Mexican immigration would continue

un-hindered” (Weise, 2015, p. 5).⁵ This change was solidified as the United States was to enter World War I, which Michigan growers convinced the Secretary of Labor William Wilson:

“To waive the head tax and literacy clause for Mexicans coming into the United States to work in the fields. Heeding these demands, in May 1917 Wilson invoked a provision of the newly signed 1917 Immigration Act granting the USDL the authority to admit workers *on a temporary and emergency basis*. Wilson’s departmental order allowed the temporary admission of Mexicans and their families as agricultural workers for six months without paying a head tax or passing a literacy test. He also waived the restrictions imposed by the 1885 contract labor law by allowing U.S. corporations to recruit Mexican workers abroad” (Mapes 2009, p. 128, emphasis mine).

With these policy changes, the first guestworker program in the United States – known as Bracero I – was born. Mexican workers filled vacancies left by African Americans on cotton farms in the South and Southwest, often brought to US farms in Mississippi and elsewhere by *enganchadores*, or labor recruiters that US growers hired to recruit and transport labor across the Mexico-US border (Weise, 2015, p. 58).⁶

As the first US guestworker programs came into force, a narrative about those programs – namely, that agriculture suffers from issues of labor shortage, rather than issues of labor relations – began to pervade both industry actors’ and US officials’ approaches to migration policy (Mapes 2009). It was also during this time that the first cross-border migrant labor recruitment networks took root, leading some scholars to refer to the early twentieth century as the ‘Era of the Enganche.’ ‘Enganche’ is a Spanish term for ‘hooked,’ and refers to the experience of many migrants with the first labor recruiters of the 20th century. As Massey (2011) explains:

“Convincing peasant farmers to undertake a long journey for unknown work in foreign land was not easy and recruiters overcame this reluctance with promises of high wages,

⁵ It should be noted that while I focus on the influx of Mexican immigrants during this period, growers in the South had attempted to recruit immigrant labor from many other regions of the world prior to settling on Mexican and Central American laborers, as Weise (2015) details.

⁶ These recruitment systems, which continue to present day, are often exploitative of the laborers who use them, and have had varying degrees control exerted over them by the Mexican and US government.

lodging, transport, and a signing bonus. When migrants finally arrived at the job, however, they often found that travel costs, lodging, and bonuses were to be deducted from their wages, which turned out to be considerably less generous than originally promised, leaving the recruited workers feeling ‘hooked’” (p. 252).

On the Mexican side of the border, the Bracero I program proved disastrous, with many workers returning home reporting deeply unequal, racialized treatment at the hands of American growers (Mize 2016). Many workers dealt with long-term injuries incurred during their time working in the United States, and thus required social programs that Mexican officials found themselves needing to create and fund (Fitzgerald 2009). To add insult to injury, American authorities also engaged in mass deportations throughout the years of the Great Depression, particularly targeting many of the Mexicans who had been recruited to provide needed labor just a few years before (Massey 2011). Thus, when American officials again turned to Mexico during World War II to help address a labor shortage in American agriculture, the sending state used its leverage to demand better treatment for Mexican workers. The resulting program, Bracero II, would run from 1942 to 1964 and become the world’s largest guestworker program to date.⁷

Bracero II (hereafter referred to as ‘the Bracero program’) has been well-studied, and the often-poor conditions in which Mexican workers labored through the program have been well-documented (Weise 2015, Mize 2016, Calavita 1992 Galarza 1956, Fitzgerald 2009). These same studies have also meticulously documented Mexican officials’ mishandling of the Bracero program, and many instances of systemic corruption by government functionaries tasked with running the recruitment of Bracero workers. Nevertheless, even scholars critical of the Bracero program and Mexico’s involvement in it (including myself) acknowledge that Mexican officials

⁷ All told, over 4.6 million Mexicans were admitted to the United States under the Bracero program from 1942-1964 (Spickard 2007, p. 515). During its peak year (1956), over 445,000 workers were admitted. While the H-2A numbers are growing and may outpace the Bracero program at its height sometime in the near future, the Bracero program remains the largest guestworker program in American history.

successfully advocated for extraordinarily broad involvement in the administration of the Bracero program, including critical protections for workers and direct oversight of American employers. For example, Mize (2016) argues that the first Bracero agreement of 1942 included protections against racial discrimination, a mandatory contract review process for each worker (which required both US and Mexican officials to sign off), and requirements for growers to pay for housing and transportation costs from Bracero recruitment centers. Importantly, these protections against discrimination applied in the Jim Crow era South, and Mexican consular officials were empowered to enforce them (Weise 2015). As Clark (2018) demonstrates, the sending states (including Mexico) that were in negotiations to send labor to the US during World War II successfully forced the US government to play an active role in not only managing the process of recruitment, but in guaranteeing that labor conditions would be respected:⁸

“When the governments of Mexico, the Bahamas Islands, Jamaica, Newfoundland, Barbados, and British Honduras insisted upon US state involvement in managing labor migration during World War II, there were significant consequences for migrant labor rights. Given that under the bilateral international labor treaties, *the US government had agreed to be the primary employer of each migrant*, it also became the guarantor of each worker’s contract. Following international negotiations, the WFA [War Food Administration] and WMC [War Manpower Commission] drew up standard contracts defining the rights and obligations between the US government and migrant, the “Contract for Employment and Transportation Agreement,” and each employer and worker.” – p. 628, emphasis mine

These obligations even included requirements that employer decisions to dismiss Bracero workers be reviewed by a committee of US federal officials to ensure that the dismissal was justified, and Mexican Consulates were required to be notified of – and be in agreement with – any dismissal decisions by employers *before* they occurred. In her assessment of Mexico’s role in the first Bracero agreement negotiations, Hahamovitch (2014) went so far as to claim that:

⁸ Because the Bracero program was a bilateral labor agreement between the Mexican and American governments, all contracts went to Mexicans.

“Mexican officials *acted essentially as union negotiators* for Mexican nationals. They insisted that US officials do the recruiting, that the United States commit to enforcing the terms of workers’ contracts, and that guestworkers not be sent to states – most notably, Texas – that were notorious for treating Mexicans terribly.” – pg. 5, emphasis mine

Importantly, each of the sending state governments would have the opportunity to directly coordinate recruitment themselves, in collaboration with US authorities (Clark 2018, Weise 2015). There is also evidence that many Mexican workers, finding that their contract terms were habitually ignored upon arrival, lodged complaints with their local consulates, which allowed the consulates to continue to advocate for specific protections (including the first minimum wage protections for any workers in American agriculture) throughout the 1940s and early 1950s (Weise 2015). Thus, while Bracero is almost universally criticized for the way in which US employers treated workers, as well as Mexican officials’ failures to fully protect their citizens, it is clear that sending states were not passive ‘regulation takers’ (Strange 1996) but instead were active participants in making and enforcing regulations via a bilateral agreement, however imperfect.

Many allies of organized labor, and farmworker advocates, were hopeful that the protections offered to workers through the Bracero program, would become the baseline for all agricultural workers (Scruggs 1960). However, throughout the Bracero program’s 20-year history, the protections that sending states helped to instantiate infuriated American growers, who (after slavery, Jim Crow sharecropping, and other exploitative arrangements) were unaccustomed to dealing with a workforce that had any leverage or bargaining power, much less the presence of officials from another country (in this case Mexico) that were willing to advocate for them on a sustained basis (Hahamovitch 1997, 2014). Thus, while they fought to force US authorities to weaken the labor protections of the Bracero program, they also sought to break the power of sending states to advocate for their citizens by creating a new kind of guestworker program. To

do so, Florida growers from the state's sugar cane industry made a concerted lobbying effort to Caribbean governments to create a different migrant labor initiative, as Hahamovitch (2011) documents. By 1947, while Mexicans enjoyed the protections of the Bracero program, Florida growers were successful in getting the Bahamian, Jamaican, and other Caribbean governments to sign on to a new type of agreement to provide immigrant labor in the Jim Crow South; this agreement dropped many of the protections included in the Bracero program, including eliminating any official role of the US government:

“In the summer of 1947, the federal government disposed of the fifty-two permanent and seventy temporary migrant labor camps it had built to house domestic workers during the Depression and the war, selling them to growers associations for just \$1 apiece...In December, [US] officials stopped recruiting and transporting foreign workers, washing their hands of responsibility for negotiating, signing, or guaranteeing the terms of foreign workers' contracts. In their place, growers associations began bargaining directly with foreign governments, which recruited workers for them. Instead of being contracted by the federal government, guestworkers were now bound to the particular employers or employer associations that advanced their fares. Classified as 'non-immigrants' by the INS, postwar guestworkers had no right to stay in the United States, nor could they be reclassified as permanent immigrants. Temporary workers would be permanently temporary.” – Hahamovitch 2014, pg. 16-17

Thus, while foreign governments retained some formal role in recruitment, they were precluded from their previous ability to negotiate directly with the receiving government, on workers' behalf. Instead, they would be dealing directly with the growers looking to recruit and hire workers, and those growers had multiple nations from which they could choose to recruit. And it was this program, not Bracero, that would become the foundation of the H-2A program.

Throughout the 1950s and 1960s, the Bracero program persisted but the agreements were weakened with each subsequent renewal, until a number of factors, including advocacy from newly formed United Farm Workers (who saw guestworker programs as a critical threat to their organizing strategies), brought it to an end in 1964 (Clarke 2018, Spickard 2007). Mexican officials were also weakened in their negotiating position over time because there was

increasingly less demand for guest workers as agriculture mechanized, and undocumented labor became increasingly plentiful. Finally, with the formal creation of H-2A program in 1952, Mexico now found itself in competition with Caribbean countries, whose governments had accepted an agreement (largely promoted by US growers, including Farm Bureau Associations) that included virtually none of the worker protection requirements that Mexico had pushed for inclusion in the Bracero agreements.

While the Bracero program carved out a specific regulatory role for sending states, the H-2A program transformed guestwork into a largely privatized structure. Workers could be dismissed at any time by employers, and many of the workplace protections enjoyed by Bracero workers were eliminated. Importantly, there was no prescribed role for sending states in the regulatory structure, and the lack of a bilateral agreement between the U.S. and the sending state meant that home country governments became worried (for the first time) about employers deciding to hire from elsewhere if too many ‘onerous’ requirements were placed on them (Hahamovitch 2011). This moment, therefore, marks the creation of the ‘global labor arbitrage’ that now dominates temporary migrant labor (Gordon 2017). This refers to the process whereby sending states help their migrants out-compete those from other sending states for temporary labor visas on the global market, in order to capture remittance money. As global labor arbitrage deepens, the effects on workers are significant. As I discuss throughout this dissertation, temporary migrant workers are often economically disadvantaged, and endure even horrific conditions out of economic need and a fear of dismissal and deportation. Indeed, by the time the H-2A program was revised into its current form by the 1986 Immigration Reform and Control Act (IRCA), even the formerly-activist Mexican state had a ‘policy of no policy’ on US

immigration policy.⁹ Mexican government officials were neither consulted nor involved in writing the regulations put into effect (Fitzgerald 2011, p. 187). Importantly, the current H-2A program provides no role for sending states in managing or regulating H-2A worker recruitment. While the Jamaican government has been involved in the recruitment and hiring of workers since the establishment of the H-2A program, it does not do so in the form of a bilateral agreement in which the receiving state is the guarantor of the employment contract. Rather, sending state officials work directly with employers and employer-contracted private recruiters. Even this level of sending state involvement in the H-2A program is the rare exception to the rule, and in most cases both the sending and receiving states are virtually absent from the regulation and management of the H-2A migrant labor stream. In other nations that send H-2A workers to the US (the vast majority of which are Mexicans), recruitment is conducted exclusively by private recruitment businesses (in collaboration with the US employers that hired them).

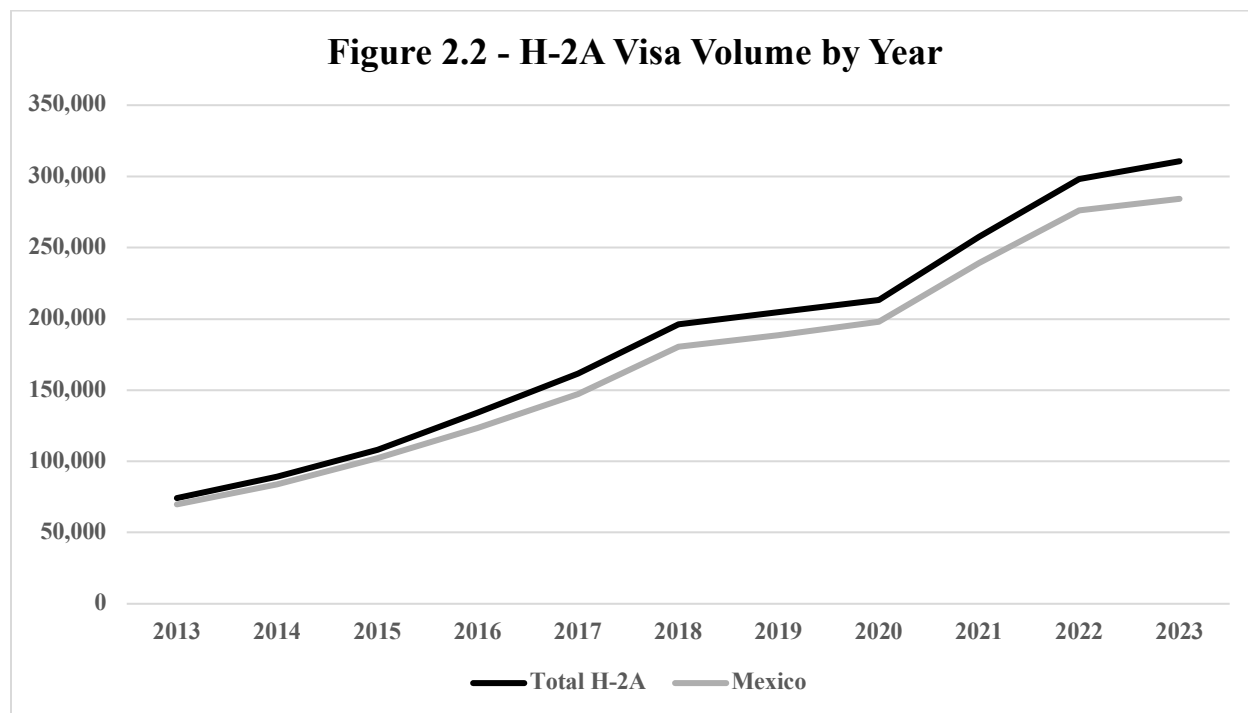
Figure 2.1 - Top 15 H-2A Sending States by Volume

	2016	2017	2018	2019	2020	2021	2022	2023
Mexico	123,231	147,272	180,420	188,758	197,908	239,274	275,981	284,272
South Africa	0	0	3,562	4,816	5,508	6,897	9,554	12,706
Jamaica	4,295	4,845	5,251	5,030	4,659	4,872	4,826	4,612
Guatemala	1,680	3,451	3,936	2,537	2,123	2,507	2,978	3,757
Somalia	2,335	2,800	0	0	0	0	0	0
Peru	874	942	946	974	536	915	975	850
Nicaragua	388	445	483	593	693	783	966	1,076
Honduras	400	415	334	306	299	454	558	685
Romania	202	216	249	236	224	245	273	310
Ukraine	125	204	241	304	383	528	267	173
Costa Rica	116	116	144	205	243	296	384	390
El Salvador	61	176	145	157	168	284	377	395
New Zealand	102	96	81	85	82	36	35	55
Argentina	4	3	5	52	57	203	215	180

⁹ Under IRCA, the general H-2 visa that had previously existed was split into two categories, the H-2A visa for agricultural workers and the H-2B visa for all non-agricultural temporary labor (e.g. lawn care and tree services, hospitality jobs, and other kinds of non-agricultural seasonal work).

Brazil	22	26	33	41	69	51	146	272
Grand Total	134,368	161,583	196,409	204,801	213,394	257,898	298,336	310,676

Source: US Department of Agriculture Economic Research Service

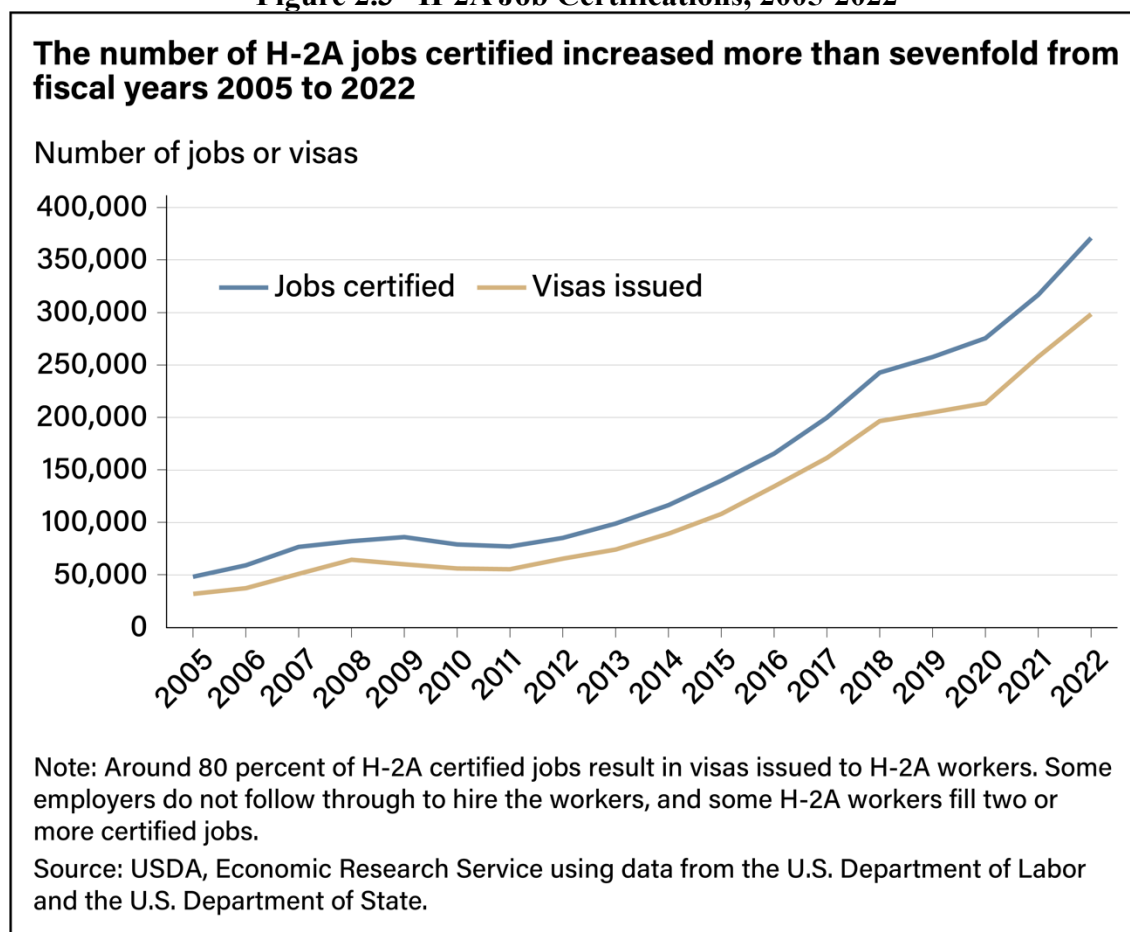


Source: US Department of Agriculture Economic Research Service

Throughout much of the rest of the 20th century (1952 until the early 2010s), the H-2A visa and guestworker programs in general faded in popularity. Given the porous nature of the border between the two countries, Mexican migrants surged across the US border without documents or government authorization (known as undocumented labor) and took jobs in US agriculture previously held by Bracero workers. Unprotected by even the requirements of the Bracero program, undocumented workers represented an even cheaper labor source for agricultural employers. Thus, as undocumented labor became more plentiful, demand for temporary labor plateaued, then declined. By the early 2010s, however, as Figures 2.1, 2.2, and 2.3 demonstrate, global economic changes – such as a declining population of undocumented workers willing to labor in US agriculture –prompted an increased demand for guestworkers, which had now expanded far beyond the agricultural industry. Sending states showed a renewed

willingness to intervene in temporary migrant labor, especially Mexico (Fitzgerald 2009), largely in response to documented cases of labor and human rights abuse. Unlike almost a century ago, however, these states confront a global privatized structure of recruitment and employment of temporary workers, and an alphabet-soup of labor visa programs that send migrants to a wide variety of countries.¹⁰ In the context of the US agricultural industry, where the temporary labor program began in North America, at least 87 countries are approved to send workers to the United States.

Figure 2.3 –H-2A Job Certifications, 2005-2022



¹⁰ The current state of temporary migrant labor recruitment, including the degree of privatization, is discussed in Chapter 4. Importantly, a number of worker and other non-state organizations are now involved in temporary migrant labor programs. Thus, the privatization of temporary labor programs doesn't only refer to industry, but also to all the other groups that are involved in trying to regulate/control the structure of the program and outcomes for workers).

A. Sociological Approaches to Temporary Labor Migration

Migration scholarship offers a number of theoretical lenses for analyzing the development and regulation of temporary labor migration programs, and indeed such programs have garnered increasing interest from migration scholars in recent years (Chang 2021, Parreñas 2021, Cook-Martín 2019). Among the relevant streams of research, one body of work has focused primarily on migrants themselves. This includes scholarship on racialization and its effects on migrants (Mize 2016, Holmes 2013, Lippard & Gallagher 2011), the prospect of Bourdieusian capital accumulation by migrants and its relationship to migrant pathways (e.g. Chang 2021, Paul 2011), and the impact of visa structures on the choices of individual migrants (e.g. Marrow 2011). Another body of work has sought to understand the relationship between migration and the state, including both sending and receiving states. This literature studies how states control (or attempt to control) migrant flows, including through ‘remote-control migration’ (Fitzgerald 2020)¹¹, as well as the institutional, domestic political, and policy-making structures that give shape to migration policy (Calavita 1992, Iskander 2010, Fitzgerald & Cook-Martín 2014, Fitzgerald 2009). In a new study, for example, Surak (2023) conducts a supply-chain analysis of the global market for citizenship, recognizing the role that the private sector plays in co-structuring this market along with the states that sell citizenship opportunities to wealthy individuals.

Lurking in the background of much of this scholarship is a broad set of industry actors, who crop up in the stories scholars tell in a variety of ways that are nevertheless typically

¹¹ Fitzgerald (2020) writes: “Aristide Zolberg (1997) coined ‘remote border control’ to describe the transatlantic system of visas issued by consulates abroad and outbound passenger screening at European ports that took shape in the nineteenth and early twentieth centuries...Like borders, remote controls are used to filter, and not simply to exclude. Their *raison d’être*, however, is the capacity to exclude, winnow, and ‘cull the masses’ according to shifting criteria of admission and rejection.” (Pg. 4).

underemphasized or inadequately explored. Iskander (2010), for example, discusses how Moroccan agribusiness aligned with the monarchy and influenced major decisions about the structure of emigration policy (p. 42-45); she also notes the role the U.S. agribusiness played in the structure of the Bracero program, which in turn created profound effects on Mexican migration policy. For example, she discusses how, at the end of World War II, an ‘increasingly powerful agribusiness lobby’ pushed to not only extend but expand the Bracero program (pg. 52-53), but also successfully pushed to change the structure of Bracero contracts in 1947 in order to begin a process of privatization of the program (also discussed in previous section). Furthermore, she explains that Texas growers, who were originally excluded from the Bracero program at the behest of Mexican policymakers (given Texan employers’ particularly brutal track record against Mexican nationals), not only pushed to be included as Bracero employers; they also ignored a number of key provisions of the Bracero agreement, including the requirement that they not hire Mexican workers outside of the confines of the Bracero program. Finally, growers successfully pushed the US government to ignore requirements – originally demanded by the Mexican government – that growers hire workers for only one turn (contract) in the United States. In all of these cases, US officials sided with agribusiness interests through lobbying pressure and persuasion, furthering sidelining Mexican officials. Mize (2016) also discusses the profound role that industry actors, in particular growers’ associations, played in re-shaping the Bracero program over the course of its existence, including the weaponization of deportation as a mechanism of labor control in the context of temporary migrant labor programs (p. 20).

While their actions are treated as important context, the role of industry actors in shaping and influencing the structure of migration programs are rarely the focus of migration scholarship. Research on sending states’ attempts establish and foster ties to their emigrants, those attempts

are primarily understood as a way to capture remittances, to the detriment of other factors (e.g. Fitzgerald 2009, Portes & Zhou 2012). Indeed, much of the literature on migration and sending states primarily considers those states' policy approaches towards maximizing remittances (Agarwala 2022, Levitt & de la Dehesa 2003, Hernández-León & Sandoval Hernández 2022), including disciplining their citizens to be ideal candidates for temporary migrant jobs on the global visa market (Parreñas 2021, Rodriguez 2010). In her analysis of temporary migration to Gulf-Arab states, anthropologist Wright (2021) argues, "The poor working conditions that workers experience in the Gulf *cannot be simply attributed to Gulf Arab traditions* or the negative impact of oil rents on states...Current labor conditions are shaped by oil company management techniques and international discourses that tie oil to national security" (p. 13). Wright's work certainly demonstrates the driving role that oil companies play in shaping the experience of migration for workers, as well as their influence on the policy and regulatory choices made by sending and receiving states.

Some research, however, does assess the role of sending states in supporting migrants abroad in the process of making labor claims. This includes Mexican migrants who draw on consular networks for support in a wide variety of labor-related issues and requests, as Martínéz-Schuldt, Hagan, and Weissman explain (2021). While this research has found that a wide variety of workers draw on Mexican consular resources to understand their rights, begin the labor claims-making process, and access resources (including lawyers, other US government agencies, documents or referrals), H-2A workers in particular require consular officials to serve as 'intermediaries.' As intermediaries for temporary migrant workers, all of whom frequently cross borders or move within the US (as their contracts dictate), consular officials:

"Frequently need to serve as intermediaries between migrant workers and governmental institutions on both sides of the US-Mexico border by channeling and interpreting

information as well as by securing administrative documents crucial to the claims-making process” (Martínez-Schuldt, Hagan, and Weissman 2021, p. 4).

A number of other migration scholars in sociology and related disciplines, observing sending states’ emphasis on remittances and their limited capacity to support workers, diagnose the deeply asymmetrical power relationship that exists between these governments and the receiving states of the Global North. Delano (2011) points out that while these power asymmetries “define the policy options of sending countries” (p. 17), some sending states may have more leverage than others to demand terms and shape migration policy. She goes on to closely consider the case of Mexico and the United States, noting that the North American Free Trade Agreement (NAFTA) spurred an unprecedented level of economic integration between the United States and Mexico, which in turn affected Mexico’s bargaining power vis-à-vis influencing the United States’ migration policy. It also allowed Mexico opportunities to engage American policymakers on a number of issues, including migration, in the decades since NAFTA went into effect, thus reinforcing a dynamic in which further integration of transnational supply chains creates both opportunities and limits for sending states to intervene in migrant labor supply chains.¹²

Taken collectively, migration scholarship suggests that sending states either lost or abdicated power to the demands of more powerful receiving states in the Global North. Very little scholarship, however, asks *why* receiving states were making certain demands in the first place, which constituencies within the receiving state were served by them, or what economic and political pressures are brought to bear on sending and receiving states by private industry

¹² Delano (2011) writes, “NAFTA, and the process of economic liberalization in Mexico leading to the agreement, also opened up a series of new channels of communication between the countries and forms of cooperation in areas where they did not exist before. In the case of migration there was a significant development of agreements, working groups, consultation mechanisms, binational studies, and other forms of collaboration that led each country to have a better understanding of the other’s position, to common definitions on the issues and joint proposals for solutions” (pg. 52).

actors with a vested interest in structuring the labor migration supply chain to suit their needs. And, while there is growing interest in the global migration industry that works to serve the needs of private sector actors (e.g. Cook-Martín 2024a), much of the migration scholarship fails to center these actors or explain how their influence shapes the experience of migrants.

There is a small interdisciplinary literature, discussed in the previous section and primarily from scholars in labor studies, that emphasizes the labor dimension (as opposed to the migration dimensions) of migrant labor programs. They do so by approaching temporary migrant worker programs as a particular kind of labor setting, and then grapple with how migration policy and process affect the conditions in which workers labor (e.g. Milkman 2020, Mapes 2009, Hahamovitch 2014). Other scholars have begun documenting the efforts of civil society and labor organizations to bridge the gaps in enforcement that temporary migration programs often create by virtue of their transnationalism—that is, the fact that crossing borders makes regulations much harder to enforce. The most comprehensive efforts along these lines is Bada and Gleeson’s (2023) work on ‘meso-level’ institutions (including labor unions, worker centers, and immigrant advocacy organizations) that deploy advocacy strategies to mobilize sending state protections for migrant workers (see also Gordon 2007). In their survey of current efforts by non-state organizations, the authors find significant evidence of co-enforcement (Fine & Gordon 2010), in which work non-state organizations support the claims-making of immigrant workers vis-à-vis federal and state agencies in the United States, in many cases enlisting sending state consular networks to support such claims. Bada and Gleeson (2023) detail numerous examples of collaboration between government officials and non-state organizations, as well as concerted efforts at transnational coordination by civil society organizations (like the Center for Migrant Rights, Justice in Motion, and Project for Economic, Social and Cultural Rights, also known as

ProDESC, discussed further in Chapter 5 of this dissertation). In particular, they find evidence that some organizations are formulating new strategies to protect emigrant workers (particularly guestworkers) before they leave and after they arrive home from work in the United States.¹³

This work signals a growing interest in grappling more directly with the effects of private industry, worker organizations, and other non-state actors on the historical trajectory of temporary labor migration programs. In particular, it demonstrates how the issues presented by guestworker programs – i.e. the reasons why workers in these programs so often end up as victims of egregious labor violations – are transnational in nature, and thus require an analytical framework that adequately captures that reality. Scholarship has also demonstrated how temporary migrant labor programs are being actively influenced by a wide group of state and non-state actors. What has not been done, however, is a synthesis of these threads: To understand how the sending state, the receiving state, and non-state actors (both non-governmental organizations *and* industry actors) shape the temporary migrant labor chain, in the context of privatization of temporary migrant labor programs and the ensuing dynamic of global labor arbitrage (Gordon 2017).

For example, Bada and Gleeson (2023) focus on how the advocacy strategies of the civil society organizations they feature are in large part attempts to combat the deterioration in workplace conditions created by ‘fissuring’ (Weil 2014 - discussed further below), including subcontracting. Even this work, however, which prominently features one kind of non-state actor (civil society organizations), sees such organizations vis-à-vis their efforts to lobby nation-states

¹³ Interestingly, in their chapter on transnational labor advocacy strategies, in which they discuss efforts by civil society organizations to engage the sending state to improve guestworker labor conditions, Bada and Gleeson (2023) provide only a cursory mention (two sentences) of the National Employment Service’s efforts to facilitate and monitor guestworker recruitment. They also don’t discuss the Fair Food Program, instead focusing largely on work by labor unions (based in the US and Mexico) to deploy new strategies to protect H-2A farmworkers, as well as non-governmental organizations.

to change policy. Migration, therefore, is typically understood as about the power of the state to regulate who crosses borders, and the state (and public institutions more broadly) has tended to be at the center of the migration literature, especially research on migration policy-making (e.g. Calavita 1992, Fitzgerald & Cook-Martin 2014). A state-based understanding for migration, however, cannot capture the private sector's role in driving global labor arbitrage and shaping the structure of the migrant labor supply chain. As a result, these studies understand the regulatory deficits that emerge in the workplaces where migrants find themselves laboring (including fissuring), but they fail to capture a second kind of regulatory deficits that emerge *because* the migrant chain crosses international borders.

I seek to address this gap by taking an analytically different approach. When it comes to labor migration, and especially temporary labor migration as it has evolved in the 21st century, private actors play a major role in the regulation of what Jennifer Gordon (2017) first coined the “human labor supply chain.” Scholars like Hernández-León (2020, see also Hernández-León & Sandoval Hernández 2022), for example, show how a set of private actors, including migration brokers like document processors and recruiters, shape the structure of the migration industry (see also Cook-Martín 2024a, 2024b). Building on this work, I study temporary labor migration differently than those offered by the scholarship outlined above—one that focuses on the broader field of state and non-state actors that interact in the creation and governance of the transnational migrant labor supply chain. To do so, I employ a novel theoretical approach that has not previously been applied to the study of migration, which will allow me directly address the role of private power and its relationship to public power, as represented by the sending and receiving states that are the focus of much of the scholarship on labor migration to date.

III. Studying the Migrant Labor Supply Chain - Modifying Global Value Chains Lens:

In this dissertation, I apply a Global Value Chains (GVC) lens to analyze the role of private power in temporary labor migration, and by extension the possibilities and challenges sending states face in re-taking control of guestworker regulation, especially the recruitment component of the migrant labor supply chain. Building on the tradition of scholarship known as Political Economy of the World System (Wallerstein 1983, 1974, Arrighi 2010),¹⁴ Gereffi (2019a) and other influential GVC scholars sought to explain differing national development outcomes in the 20th and 21st centuries. Critically, this body of scholarship makes the central claim that transnational corporations (TNCs) have remade the global economy in such a way that it is necessary to abandon a state-centric analysis of development outcomes and economic activity. This is not to say that an analysis of the state is not an important part of any GVC study, but that power of private actors to also influence structure the global economy should be taken seriously. This premise is summarized well by Gibbon and Ponte (2008):

“It postulates that the global economy can be usefully understood as a **combination of discrete, product-specific ‘value chains’** rather than of liberalized markets. In these value chains, distinct firms are linked in internationally dispersed but integrated systems of input supply, trade, production and final marketing.” – p. 366, emphasis mine

Thus, the GVC approach recognizes an international division of labor in which various pieces of a commodity are produced in different locations (Bair 2009), forming a chain. GVC scholars thus attempt to understand these production chains that produce commodities and generate value; they also study value chains to assess possibilities for ‘upgrading’ (Bair and Gereffi 2001), by which national economies can capture greater value from the commodity chain by moving up to

¹⁴ As Bair (2009) notes, Hopkins and Wallerstein (1986) were the first to coin the term ‘commodity chain,’ which predates the GVC adoption of the term.

more technology or capital-intensive, and generally more profitable, activities (i.e. moving from producing raw cotton to refining it into textiles). As will be discussed further in chapter 3, the GVC approach places a high premium on comparative field research that attempts to understand industries and the power distributions within particular commodity chains (Gereffi 2005, p. 169)

Using a GVC approach, I mobilize the tools developed by GVC scholars studying commodity chains for goods and services and apply them to what Polanyi calls the “fictitious commodity” of labor (2001). GVC scholarship has historically attempted to explain the impact of supply chain arrangements on two kinds of upgrading: Economic and social (Gereffi 2019a, Barrientos, Gereffi & Rossi 2011).¹⁵ By focusing on these two aspects of upgrading, GVC scholars assess how developing countries participate in global value chains, and how opportunities for participation (and upgrading) are shaped by the structure of those value chains (e.g. Marslev, Staritz, & Raj-Reichert 2022, Lee & Gereffi 2015, Gereffi & Lee 2016, Barrientos et. al. 2016, Bek et. al. 2016). This allowed GVC scholars to focus on the role of the powerful private actors – buyers – who sit at the top of global value chains and, in many cases, drive the structure of the chain (e.g. Bair & Gereffi 2001). The value chain structure, in turn, affects the prospects for both kinds of upgrading, and by extension the social and labor conditions of workers. In other words, it is clear that while corporate buyers navigate an institutional environment shaped by states, then it is equally true that states navigate an institutional environment shaped by those corporations.

Nevertheless, there are many other factors that exert control over the chain, or place limits on the kind of action that actors can take to change its structure. Economic and social

¹⁵ Within GVC scholarship, economic upgrading is defined as, “Countries and firms moving to higher value activities in GVCs with improved technology, knowledge, and skills” (Gereffi & Lee 2014, p. 277). Social upgrading is defined as, “The process of improving the rights and entitlements of workers as social actors and enhancing the quality of their employment” (Gereffi & Lee 2014, p. 277).

upgrading, for example, is dependent on the nature of the chain in question, as well as the distribution of power between buyers and producers (Bair 2009, Alexander 2020). For example, agricultural products must be grown at certain temperatures, which places important limits on the method and location of production, and the decisions that any agricultural buyer might be able to take to affect the structure of the chain (e.g. Ponte 2019). GVC scholars have also studied the role that other actors play in structuring the chain, including the (mostly developed) states where powerful buyers are domiciled (Horner & Alford 2019, Horner 2017), as well as the developing countries where supplier companies and/or important production sites are often located (Horner & Nadvi 2017, Fischer-Daly 2023). Increasingly, scholars are also studying the role that private regulators play in global supply chains, including the increasingly ubiquitous social certification programs like Fair Trade (e.g. Bartley 2018, Jaffee 2014, Koenig-Archibugi 2017), voluntary standards regimes, interventions by international governance organizations (Amengual & Chirot 2016), and corporate-social responsibility initiatives (e.g. Bair & Palpaceur 2015).

Thus, GVC scholarship has produced a body of knowledge about how supply chains are structured, as well as who (an increasingly diverse group of public and private actors) and what (production realities and other material factors) structures them. Importantly, these studies also focus on who benefits from the structure of supply chains, as well as how actors struggle to change the way the way in which value created by the chain is distributed. In the sections that follow, I focus specifically on the GVC approach to governance of supply chains, and explain how findings from this body of scholarship can be applied to the migrant labor supply chain.

Identifying and Understanding the Governance Structures of the Global Economy:

Given the analytical tools that this framework offers, I will therefore utilize a GVC analysis to both map the migrant labor supply chain and also understand how the chain's

structure and dynamics reflect the distribution of regulatory power among the actors who participate in the chain.¹⁶ It also provides a framework for understanding how, “*External conditions and pressures*, particularly by global buyers and through a variety of public and private governance processes, facilitate the diffusion of global standards and affect economic and social upgrading” (Gereffi & Lee 2019, p. 277, emphasis mine). GVC scholarship, therefore, helps me to understand how the structure of the migrant labor supply chain may affect the quality of recruitment processes and labor conditions that are experienced by workers who participate in those chains, a phenomenon analogous to social upgrading.

Furthermore, a GVC approach allows me to understand *who structures* the migrant supply chain, including identifying the interests of all the actors involved in this structuring process, and what resources or leverage they utilize to do so. Thus, in my analysis, I study how temporary labor migration is regulated by delineating and analyzing the *governance structure of the migrant labor supply chain*, which includes “...international as well as national regulations, and both public, private, and social forms of governance” (Gereffi & Lee 2014, p. 277). In this case, public governance encompasses all of the tools and leverage – whether utilized or not – that can be exerted by nation-states to shape the structure of global value chains, including enacting laws and passing regulations; states can also act as buyers or producers (Horner & Alford 2019). While these laws are set by countries with defined national boundaries, they can often have impacts beyond their borders, particularly in the case of trade policy or other kinds of interstate commerce regulations (as in the case of NAFTA, for example, as discussed in Martin 1993). Importantly, public governance includes the enforcement apparatus of the state, or “[t]he

¹⁶ My term – the migrant labor supply chain – is an adaptation of the term “human labor supply chain,” first coined by scholar Jennifer Gordon (2017). As I explain more in-depth in subsequent sections of this chapter, I draw heavily on Gordon’s theoretical and empirical contributions to the study of temporary migrant labor, given that she was the first (and, to date, only) scholar to conceptualize the flow of temporary workers as a kind of supply chain.

existence of competent and impartial bureaucracies that [are] central to generating compliance” (Mosley 2017, p. 157).

One important challenge – also discussed in previous sections – to which national governments have struggled to respond is a phenomenon that David Weil (2014) refers to as the ‘fissuring’ of the employment relationship:

Employment is no longer the clear relationship between a well-defined employer and a worker. **The basic terms of employment – hiring, evaluation, pay, supervision, training, coordination – are now the result of multiple organizations.** Responsibility for conditions has become blurred. Like a rock with a fracture that deepens and spreads with time, the workplace over the past three decades has fissured. (p. 7, emphasis mine)

Fissuring has created problems for regulators and other public governance institutions within national boundaries, as the increased prevalence of subcontracting makes it increasingly hard for public regulators to hold those responsible for creating abusive labor conditions accountable. In the case of agriculture, this enforcement gap was obvious as more cases of forced labor were identified and prosecuted in the second half of the 20th century and into the 21st: While farm labor contractors were regularly prosecuted for holding workers against their will, the farms that employed those contractors, and the buyers who purchased from those farms, faced no legal repercussions because they had no employment relationship with the workers who were victims of the scheme (Marquis 2017).

National governments are also contending with a second, perhaps even more challenging, regulatory problem. In light of the profound transformations in the organization of capital in the 20th century, namely the globalization of commerce, public governance forms have struggled to adapt and regulate the increasingly complicated supply chains that frequently cross-national borders. As buyer-driven supply chains cross international borders, the problems of

subcontracting arrangements are compounded for public regulators as they confront the phenomenon of outsourcing as well as offshoring. As Weil (2014) writes:

Outsourcing and offshoring share a fundamental characteristic with other organizational forms that create fissured workplaces: They entail a lead company [‘buyer’ or ‘lead firm’] focusing on a core area of competency and shedding activities (manufacturing and assembly) to other businesses [referred to as ‘producers’ in the GVC literature], all the while ensuring that technical, quality, and delivery standards are rigorously adhered to by those subordinate suppliers. (p. 168)

Taken from the perspective of the Global South governments, where many of the world’s producers (and comparatively few of the world’s global buyers) are domiciled, there are two main challenges presented by outsourcing. First, outsourcing often creates a ‘race to the bottom’ (Seidman 2007) as producers compete for the business of buyers, a dynamic which places pressure on Global South countries to lower or eliminate regulatory requirements – including labor standards – that might increase producers’ costs and threaten their competitiveness (see also Bartley & Kinkaid 2015, LeBaron 2020). The pressure created by the race to the bottom is not felt equally; it is likely to be more acute in cost-sensitive buyer-driven supply chains (Navdi 2008), and in chains where production can be easily moved elsewhere (or in cases where buyers have a variety of comparable producers from which to select – see Bair & Mahutga 2023).

Secondly, the transnational nature of outsourcing means that producer countries cannot directly regulate the buyer firms – primarily domiciled in the Global North – that drive the production process and set expectations for producers. Thus, it is difficult for Global South countries, which are tasked with overseeing much of the production that occurs in the global economy and flows to the Global North, to access buyers directly, or apply leverage to make them change their contract terms, including pricing, delivery timelines, and other standards. Global South countries have also struggled create a globalized public regulatory system that places them on equal footing with the countries of the Global North, despite an increasing

recognition that improving labor conditions in supply chains will require regulatory tools that extend beyond national borders (e.g. Bartley 2018, Seidman 2007, Locke 2013). As Quark's (2013) study of negotiations at the World Trade Organization demonstrates, the most powerful national governments often push for trade and other international regulatory arrangements that limit the ability of less powerful states, where producers are domiciled, to re-structure supply chains, or re-write the 'rules of the game' (see also Danielsen 2015).

In centering how lead-firms' transnational supply chains have transformed the global economic system, the GVC approach allows for the articulation of a confluence of problems for public governance institutions, particularly those of less-powerful Global South countries. It demonstrates how the phenomena of subcontracting, and outsourcing in particular, drives 'governance gaps' in public regulation, as the relationship between public and private becomes increasingly entangled and distorted. As a result of these failures in public governance, new private governance arrangements have emerged in the last few decades, as civil society organizations, workers' rights groups, and corporations themselves developed new programs that attempt to address the gaps in public governance, especially the challenges of the race to the bottom and the absence of transnational standards (Locke 2013, Fransen 2012). Indeed, as I discuss more fully below, evidence suggests that some kinds of corporate-led private regulation were created in order to prevent more stringent regulation by public regulators, as civil society groups became increasingly critical of lead firms' role in the degradation of labor and environmental conditions for workers in global supply chains (King & McDonnell 2015, Soule 2009).

While the research I have outlined here documents the consequences of global transformations within commodity production chains, I will show in subsequent chapters that

many findings from this work are easily applied to the structure of temporary labor migration, which creates a kind of human supply chain, supported by global labor arbitrage (Gordon 2017). In other words, migrant sending countries in the Global South must attract employers from the Global North who have outsourced their worker recruitment to an increasing number of countries. Sending countries in turn hope that setting fewer requirements and smoothing the way for prospective clients will increase their opportunities to earn visa offers vis-à-vis other similarly positioned nations. We can therefore say that the migrant supply chain is buyer-driven, and subject to the race to the bottom dynamic that is created by outsourcing. The recruitment apparatuses in migrant-sending countries – which act as a ‘producer’ of migrant labor – find themselves in competition with one another to attract prospective employers (‘buyers’); these migrant labor supply chains also cross national borders, making it difficult for one single country to regulate. Similarly to negotiations at the World Trade Organization or other international forums, Global North countries have typically aligned themselves with the employers (i.e. the private interests) operating within their borders, and have prioritized employer concerns: Namely, maintaining access to cheap, exportable labor (Castles 2006, Hahamovitch 2014). Sending states, meanwhile, have two (sometimes competing) objectives: (1) To maintain access to temporary worker jobs, and (2) re-shape the global ‘rules of the game’ to directly address the problems creating by global labor arbitrage (i.e. require more stringent labor and recruiting standards from hiring companies). As a result, the public governance structure of the migrant labor supply chain suffers from virtually the same complications, entanglements, and weaknesses as that for commodity supply chains. It is no surprise, therefore, that the prospect of private regulation, or other kinds of ‘hybrid’ governance arrangements (Bair 2017) has become increasingly popular in the realm of temporary labor migration, with varied results. In the next

section, I outline current research on the advantages and limitations of private regulatory arrangements, as well as the types of regulation that have emerged. Finally, I focus on findings regarding the overall effectiveness of private regulation; GVC and other research in this area has increasingly found that while purely private regulatory interventions are largely ineffective, a number of innovative partnerships between public and private governance structures may hold greater promise.

A. Public and Private Governance as Intertwined Spheres

In the context of global supply chains, private governance has been described by Bartley (2018) as the flow of “rules and assurances” that “accompany orders and products” through the production chain (p. 47), many of which are designed to combat the race to the bottom dynamic that plagues worksites within global supply chains. Such flows take a number of forms, including: Social auditing and certification programs, in which independent organizations certify companies as compliant with a set of environmental, labor or other social standards, often in exchange for fees from the companies they are certifying (Jaffee 2012, Overdevest 2010, Reinecke, Manning & von Hagen 2012); corporate social responsibility (CSR) policies implemented by the companies themselves, or corporate commitments to self-regulate and voluntarily abide by compacts or other arrangements set by international governance organizations (Lim & Tsutsui 2012, Anner 2017); and international standards organizations, including international governance organizations that create social responsibility requirements and work – through both persuasion and pressure – to drive firms’ adoption of them (Berliner and Prakash 2012, 2015). Fundamentally, however, all of these forms are premised on the idea that the structure of the global market can be mobilized to incentivize ‘socially responsible’ behavior, including improved environmental practices and labor standards. Increasingly, ‘private

governance’ has become synonymous with terms like ‘responsible sourcing,’ in recognition that the lead firms that drive the structure of supply chains – and therefore exert governance over it, primarily through their sourcing and pricing decisions – must be convinced to make and abide by commitments to social responsibility.¹⁷ As Bartley (2018) explains:

The flow of rules and assurances constitutes the fundamental mode of enforcement for most forms of transnational private regulation. Indeed, what is “regulatory” about this form of governance is that specific rules are promoted and verifiable assurances are demanded. The stringency of rules and the credibility of assurances may vary, but this basic structure of scrutiny can be found in a number of cases, from fair labor and sustainable forestry projects to those focused on sustainable agriculture, responsible mining, and product safety. (p. 50)

In many cases, firms are convinced to make such commitments after protracted public organizing action or other threats of reputational risk (King & Soule 2007, Soule 2009), as the expectations for private industry self-regulation expands (Havinga 2006, Kuruvilla 2021, Brudney 2023).

Despite the explosion of private governance initiatives (PGIs), which by some estimates constitute a more than \$80 billion-dollar global industry (Dreier & Luce 2023), evidence from scholarship suggests that they are largely ineffective at accomplishing many of their stated goals. The concerns about CSR programs are fairly self-explanatory: Companies that make commitments to abide by standards, without any external verification or penalties for non-compliance, are unlikely to prioritize those commitments and abide by them (Lim & Tsutsui 2012, Utting 2015, LeBaron 2020), although some research has argued that the pressures of normative socialization through CSR adoption create real pressures on firms (Pope 2015, King & McDonnell 2015, Berstein & Cashore 2007). For the purposes of this dissertation, however, it is

¹⁷ Research on the uptake of global financial regulation by Mosley (2003) points out that TNCs play an important role in influencing the adoption of international standards by nation-states, noting that many countries have been slow to adopt the International Monetary Fund’s Special Data Dissemination Standard because they are not required by lenders. If private lenders begin requiring the SDDS as a “decision-making criterion,” Mosley argues, widespread national adoption would be likely (p. 340).

important to focus more closely on current research on the efficacy of social auditing, or certification, programs. Within the growing body of research on these tools, particularly in the context of supply chain arrangements (i.e. buyers setting requirements for producers), two key problems emerge, both of which are related to enforcement. First, many social certification programs suffer from a conflict of interest. In many cases, they are charged with auditing, and setting standards for, the same organizations that contract (and pay) them to conduct the audits (e.g. Jaffee 2012, 2014).¹⁸ Indeed, some scholars have argued that PGIs were in fact never meant to effectively regulate the industries where they are implemented, but may instead function as ‘substitutes’ for (likely more stringent) public regulation (Locke, Rissing, & Pal 2013).

Secondly, and relatedly, certification programs frequently do not effectively audit the operations they are tasked with monitoring. Effective social audits take intensive amounts of time, attention to detail, and frequent visits to the sites being monitored, and many certification programs lack the resources or expertise to meet these requirements (Kuruvilla 2021). Perhaps mostly importantly, however, scholars find PGIs fail because their enforcement structures do not seriously engage in the industry and public regulatory context in which they are operating, a phenomenon Bartley (2018) has referred to as the “hope of transcendence.” Bartley argues that PGIs are based on the premise that they are able to monitor supply chains and enforce standards by *transcending* the local context in which particular producers (typically the target of PGIs) might be located, or the other functional realities of a given commodity chain (e.g. pricing strategies or production timeline requirements). Scholarship finds, however, that this hope of transcendence is a false one (e.g. Koenig-Archibugi 2017, Bair, Anner & Blasi 2020). As Bartley goes on to explain, even ineffective public governance institutions (i.e. those that are unable to

¹⁸ As will be discussed in the empirical chapters, this problem can be mitigated by the structure of the certification program, including the degree to which buyers or other organizations provide funding for the certification

rigorously regulate an industry) may still ‘reconfigure the meanings’ of the norms and assurances that private governance measures attempt to push through the production value chain, including certification programs and standards. In other words, even weak public governance institutions shape the effect that private governance measures have in a value chain because they shape the context in which private governance programs are implemented; public governance institutions can even serve as veto players to actively inhibit the effectiveness of private governance efforts, as Bair, Anner, and Blasi found in Bangladesh (2020). Indeed, one recent report labeled most PGIs as ‘not fit for purpose’ (MSI Integrity 2020), or in other words, unable to make meaningful changes in the ‘norms and assurances’ regarding labor rights, environmental protections, and other social governance issues that flow through the value chain.

Despite the mounting evidence that PGIs are ineffectual, some research sees that effective private governance may be possible when designed to be attentive to the political and economic realities of a given value chain, especially when PGIs utilize, or form innovative partnerships with, public governance structures. Current studies of private regulation recognize the importance of local public actors; private governance is not simply ‘filling a void’ where such actors are presumed to be lacking (Bartley 2014, p. 95). Rather, as Amengual and Chirot (2016) argue, state actors contend with “institutional weaknesses” that affect the reach and effectiveness of public regulators, but this does not mean that the state is absent. Amengual and Fine (2017), for example, find evidence that worker organizations in Argentina and the United States can form innovative partnerships with state labor inspectors and regulators in order to strengthen enforcement of existing regulations (see also Amengual 2014, Fine & Gordon 2010, Fine & Bartley 2018). Thus, scholars now argue that “[d]ifferences among private governance regimes may be more significant than the public-private distinction” that has structured much of the

literature on regulation and governance (Bair, Anner, and Blasi 2020, p. 23). These arrangements create unique collaborations of public and private actors that transcend a clean distinction between these two spheres, a phenomenon referred to as ‘hybrid governance’ (Bair 2017).

This emerging set of hybrid regulatory arrangements complicates the pervasive characterization that private regulatory efforts to improve labor practices in supply chains are ineffective and doomed to ‘bluewash’ or ‘greenwash’ operations (Berliner & Prakash 2015, Pizzetti, Gatti & Seele 2021), rather than support meaningful improvements. While real scope conditions for their application exist (e.g. Fine 2015, Fine & Bartley 2018), hybrid arrangements may succeed precisely because they combine public and private governance elements, thereby avoiding the ‘hope of transcendence’ by engaging directly with the context in which a supply chain is situated, as well as the set of stakeholders (e.g. workers, firms, and public officials) that are already active in the industry (Eberlein 2019). Notably, much of the research on effective PGIs centers on partnerships between corporations or public agencies and worker organizations, suggesting that these groups – and their close connections to the communities, industries and worksites being monitored – may be more effective than other kinds of PGIs (e.g. Rodriguez-Garavito 2005, Babineau & Stephens 2024). One particular variety of worker-led PGIs, including ‘worker-driven social responsibility’ programs (Asbed & Sellers 2013), incorporates worker voice directly as a driver of both the design and the ongoing enforcement structure of the initiative (Coin 2011, Griffith 2009); such programs contrast sharply with many other PGIs, which either only periodically consult with workers or don’t consult with them at all.

B. Public Governance, Private Governance, and the Migrant Labor Supply Chain

In addition to providing important historical background on the origin and evolution of temporary migrant labor programs, this chapter has outlined critical gaps in the literature on the

regulation of temporary migration. Within the migration literature, scholarship on temporary migration tends to rely on a state-centric approach, given that migration flows are traditionally understood to be a state-to-state process that is negotiated and managed by two nations. While these public actors are of course essential to the temporary migration process – indeed, even this study is primarily interested in the role of the sending state – many studies have failed to adopt frameworks that can also appreciate the powerful role that private actors play in the temporary migration process, despite making frequent mention of the role that businesses, civil society, and other non-state groups play in shaping the migration process.

In order to fill this gap, I argue for a different approach, treating temporary labor as a multi-step, transnational process, over which a number of actors (both public and private) exert regulatory control. I thus attempt to answer the following research questions:

1. *What is the migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate labor supply chains, and how has their control over these supply chains shifted over time?*

Applying a GVC lens – and particularly, the findings from GVC research on governance and private regulation – to the study of temporary migrant labor helps to correct for the shortcomings of the studies I have outlined above (Gordon 2007, 2017).¹⁹ While this is not a common approach to the study of temporary migrant labor, it has some obvious benefits. As discussed above, GVC scholars have extensively studied how changes in global economic activity and the development of associated supply chain capitalism created opportunities for wealth redistribution from the Global North to the Global South (e.g. Danielsen 2019). However, this

¹⁹ In her research on transnational labor organizing and temporary labor programs, Jennifer Gordon has long argued that temporary migrant labor should be understood as a human supply chain. In particular, she argues that the process of ‘labor arbitrage’ – in which employers and recruiters, as well as sending and receiving states – barter over the cost and conditions of workers within these programs – creates a human supply chain.

literature also highlights how developing countries struggle to avoid the race to the bottom as they seek to regulate the worksites of supply chain capitalism. In migrant labor supply chains, developing countries seek to use temporary migrant labor programs to capture remittance income from migrants for their country, a dynamic that scholars have referred to as the ‘migration development regime’ (Agarwala 2022). The ‘migration development regime’ concept captures the way in which sending states can build migration policies with the aim of making their migrants the most attractive on the global market (e.g. Rodriguez 2010), an effort that is often reinforced by Global North policies; the concept does *not* fully capture the ways in which industry actors helped drive the marketization of temporary migrant labor programs, creating a race to the bottom among sending states and limiting opportunities for public regulatory intervention to govern the chain (i.e. redistribute the allocation of value across the chain – see Ponte & Gibbon 2005). Thus, a GVC lens provides a more complete picture of how sending states transformed from regulators – however imperfect – of temporary labor programs, to facilitators and competitors vying for the business of employers seeking to hire their nationals.

GVC scholarship also offers opportunities to assess current ‘hybrid’ arrangements that may provide opportunities for sending states to reclaim their role as regulators of the migrant labor supply chain. While GVC scholars have not studied labor supply chains, they have conducted perhaps the most extensive body of work on efforts to marshal private governance of labor in supply chains (Amengual 2010, 2014, Amengual & Chirot 2016, Amengual & Fine 2017, Bartley 2014, 2018, Mayer & Gereffi 2010, Koenig-Archibugi 2017, Bair 2017). These studies demonstrate that while the analytical distinction between public and private governance is helpful, in practice multiple public and private actors overlap, intertwine, and struggle with one another to govern global supply chains. This work also draws important distinctions between

different kinds of private regulatory actors, who can have divergent impacts on the structure and labor conditions within a value chain. These impacts depend on the interests of the actor – which range from ethical certification programs employed by corporations to unions and other worker-led grassroots organizations – as well as the leverage available to those actors.

I draw from on the GVC framework because it resonates with my analytical goals, allowing me to consider: (1) how temporary migrant labor process (from recruitment to visa issuance, to travel to worksite) functions like a supply chain, including the key links, or nodes, in the chain; (2) how the chain is governed, with specific attention to the power that private (non-state) actors assert over it at different nodes, as well as the relationship between public and private power (e.g. Ponte 2019, Horner & Alford 2019); and (3) how the governance structure at one node of the supply chain affects what happens at other nodes of the chain (Ponte & Sturgeon 2014). This final point is particularly important for my study; while I am primarily interested in understanding how sending states are attempting to change the structure of worker recruitment, my findings demonstrate that these states see greater control of recruitment as the entry point through which they can exert control over other parts of the migrant labor supply chain, including migrants' employment experiences once they arrive and begin employment in the United States. For example, as I will demonstrate and as other recent scholarship has highlighted (Bada & Gleeson 2023), sending states are increasingly participating in H-2A recruitment as a strategy to reclaim a role as advocates for workers who share complaints about employers after arriving in the United State, a role they previously held during the Bracero program and other bilateral guestworker arrangements (Hahamovitch 2014, Weise 2015, Clark 2018). Furthermore, this dissertation also contributes to the GVC literature by (1) creating a framework to analyze

labor supply chains while (2) expanding the GVC understanding of the role that states play in the governance of global value chains.

In the next chapter, I outline my research design for accomplishing these analytical goals, drawing on the example of the large body of GVC studies that rely on comparative field research. As I explain, I utilize a mixed-methods approach, relying primarily on primary qualitative data collected through interviews and ethnographic observation during multiple periods of field research. However, I also supplement this data with secondary sources, including data on migration flows from a number of public agencies in Mexico and United States, as well as other government documents, news articles, and policy reports.

Chapter 3: Studying the Migrant Labor Supply Chain

In the previous chapter, I provided an overview of temporary migrant worker programs, otherwise known as guestworker programs, as well as identifying an important shortcoming in the literature that studies how these programs are governed. I outlined my theoretical approach and motivated my main research questions:

1. *What is the temporary migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate temporary migrant labor supply chains, and how has their control over these supply chains shifted over time?*

In this chapter, I explain my methods for answering those questions. I begin by outlining the motivation for my case selection, using Mexico as my main case while employing shadow comparisons of Guatemala and Jamaica. I then provide an overview of my field site selection, as well as the kinds of data that I collected for this project, including primary and secondary sources. Finally, I explain how those data are deployed in the ensuing empirical chapters to answer both of my research questions.

I. Studying the Behemoth - Motivation for Case Selection of Mexico

While 82 countries have sent at least one worker to the United States on an H-2A visa in the last decade, the program is dominated by Mexican nationals, who received over 92% of visas issued from 2013-2023.²⁰ Over the lifetime of the H-2A program, Mexicans have constituted the largest stream, by far, of workers. As a result, studying the regulation of the H-2A program necessitates a close look at Mexico-US H-2A migration, and this flow is my main analytical focus. Mexican leaders have spent the past few decades working to diversify and increase

²⁰ Based on data of H-2A visa volume by national origin, provided to author by the US Department of Agriculture's Economic Research Service.

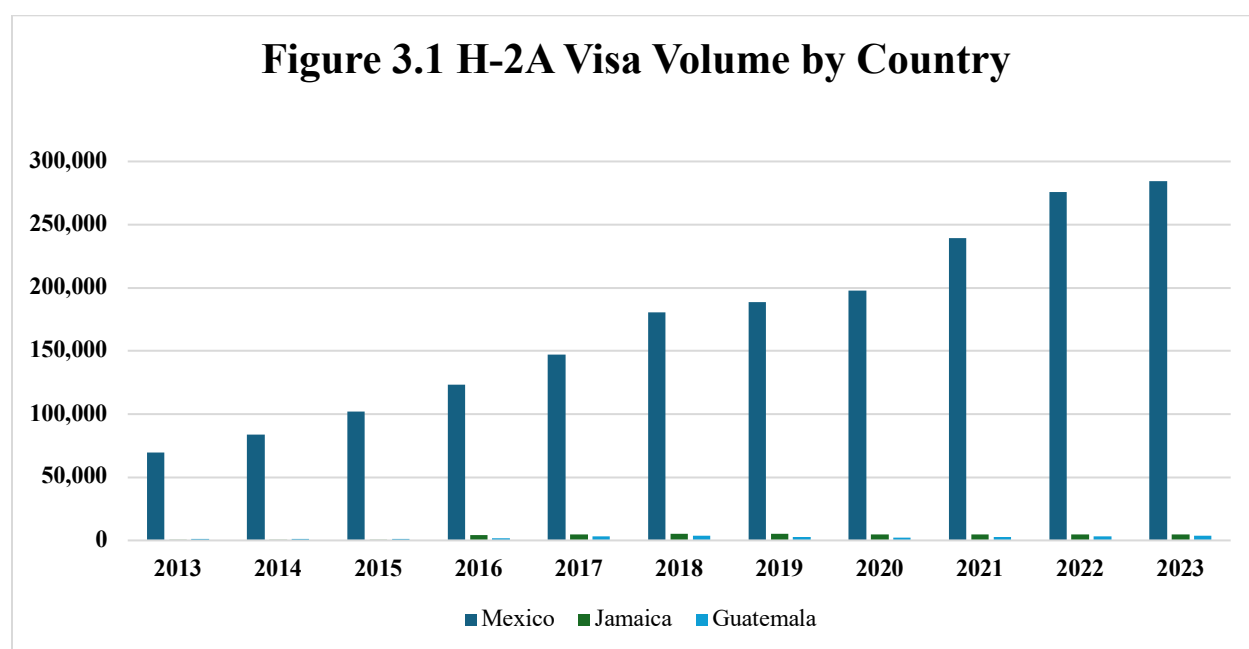
domestic employment opportunities – including by growing industries such as vehicle manufacturing and mining (Seelke 2023, International Trade Administration 2023, Villarreal 2020). Their efforts may be working, as statistics show that that Mexican-born workers are returning home from the United States.²¹ Nevertheless, Mexicans provide a growing amount of temporary agricultural labor in the United States. Indeed, recent figures suggest that Mexico is growing more, rather than less, reliant on remittances, which have skyrocketed to more than \$64 billion annually.²² Thus, this dissertation focuses primarily on the sending state of Mexico and the Mexican H-2A migrant labor chain to the United States.

Although Mexico's dominance of the H-2A migrant labor supply chain makes it an obvious choice for this study, it is entirely possible that some components of the dynamic between the US and Mexico are unique to the two countries' relationship. Thus, while Mexico accounts for the vast majority H-2A workers, a study that only considers this flow of migrants may be less generalizable to other sending-receiving state dyads (Overmyer-Velázquez 2011). I therefore employ multiple points of comparison throughout my analysis in order to identify that which is applicable exclusively to the US-Mexico context, and that which may be more broadly applicable to migrant labor supply chain governance elsewhere. While the majority of Mexican migrants are headed for the United States, I compare the H-2A program at multiple nodes with the migrant labor chain of Mexicans participating in the Canadian Seasonal Agricultural Worker Program, which functions similarly to the US H-2A program and exclusively recruits Mexicans.

²¹ As Alba (2024) outlines in a recent post for the think-tank Migration Policy Institute, the Mexican-born population living in the United States continues to drop from its peak in 2007-2008, at the height of the Great Recession. However, he also notes that "Mexico remains the world's second-largest migrant population." Accessed at: <https://www.migrationpolicy.org/article/mexico-crossroads-emigration-transit>.

²² Remittances in 2023 were higher than at any time in the last 28 years. Source: Banco de México, "Balance of Payments, (CA11) - Workers' Remittances," Accessed June 19, 2024. Data available at: <https://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarCuadroAnalitico&idCuadro=CA11§or=1&locale=en>

Furthermore, I employ two shadow cases to provide additional comparison with the Mexican experience, and to ensure that my findings regarding the Mexican state are not an artifact of its unique relationship with its northern neighbor. I consider both Jamaica, the oldest H-2A country with the longest continuous streak of temporary labor migrants who have worked in the United States, and Guatemala, one of the most recent but most active sending countries in terms of its attempts to break into the H-2A market and expand its market share. Figure 3.1 below outlines the last decade of H-2A visa volume for all three countries I study. These two shadow cases allow for a diachronic (in the case of Jamaica) and synchronic (in the case of Guatemala) point of comparison with Mexico (e.g. Biernacki 1997). In both contexts, interviews with government officials who have experience working on recruitment for the H-2A program, as well as secondary source desk research and participant observation, provide important opportunities to triangulate the reports and experiences of Mexican officials with findings from other countries. They also allow me to understand how sending states' attempts to re-take control are contingent on their relative position and size in the temporary labor market.



For example, as discussed in chapter 2, Jamaica has been sending migrants to the United States through the H-2A program since 1952, longer than any other nation. This uniquely long history of H-2A migration has allowed the government to establish relationships with particular employers that it can then leverage into greater control of recruitment, including developing an apparatus within the Jamaican government to attempt to manage the H-2A program. However, its smaller population (and comparatively low number of workers with agricultural experience), as well as the increased logistical hurdles for transporting workers (who must come by air, rather than bus), mean that Jamaica possesses a much more limited H-2A market share vis-à-vis Mexico. These factors make it vulnerable to losing visa slots over time. Guatemala, conversely, is one of the only H-2A countries without a large and entrenched H-2A recruitment apparatus (either public or private), and it has attempted to apply lessons learned from other H-2A countries to both (1) increase H-2A hires from Guatemala and (2) increase the Guatemalan government's capacity to oversee and intervene in those workers' migration trajectories. Nevertheless, it, too, struggles to increase its market share, particularly as it tries to sell U.S. employers on the idea of using a more logistically complicated labor supply chain than that offered by Mexico: Guatemalan workers are farther away from the United States geographically and thus more expensive to transport to their eventual work sites, and the US consular network in Guatemala (unlike that in Mexico) is unaccustomed to handling and processing a large volume of visas for US employers. Using at least two countries as shadow cases throughout my analysis, therefore, allows me to identify the advantages and disadvantages of being a 'behemoth' labor supplier like Mexico.

II. Data and Methods

Answering the questions posed by this dissertation, like many GVC studies, requires the utilization of methods that allow me to investigate complex dynamics of power, and in particular private power. In order to do so, I employ a combination of qualitative methods in my study, using models of previous work on commodity chains and migration to inform my selection of methods, including ethnographic observation, semi-structured interviews, and desk research. Overall, my study aims to accomplish three goals: (1) map the links in the migrant labor supply chain; (2) identify the actors involved in the chain, including the activities they undertake; and (3) analyze the governance structures that control the chain, including possibilities for future shifts in these structures. While all are important and interrelated aims of my research, the third goal – to understand how the migrant labor supply chain is governed – is my main concern, and therefore the focus of my empirical data collection and analysis efforts. This means studying how public and private power works within a networked group of individuals and organizations, including how that power is both enabled and constrained.

The mix of methods I employ arises from the difficulties of understanding the interactions happening between the constellation of networked actors within the supply chain, which requires a variety of approaches to capture accurately. This is a difficult task which requires careful negotiation and significant access, but also necessitates close study and utilization of publicly available data, along with extensive triangulation in order to ensure that my findings accurately reflect the social reality and power dynamics of these groups. It also requires detailed contextual analysis to understand and actually identify the nodes of the chain, all of the actors involved at each link, and the connections between each of them. This scene-setting is essential not only to a GVC analysis, as discussed in Chapter 2, but also to the

understanding of how social power is gained and leveraged at different points in the migrant labor supply chain and how the structure of the chain places limits on (or conversely enables) those activities.

In this study, I aim to identify and understand the power dynamics that many of the organizations and individuals may have incentive to conceal. This means, for example, that the CEO of a buyer firm might agree to be interviewed but may tell me a story about purchasing negotiations with a supplier that isn't accurate, or perhaps is incomplete. Alternately, that same participant might characterize a particular commodities market one way, which may accurately reflect her particular set of experiences but is not an adequate account of the broader field. For this reason, I employ a mixed-methods approach that, for example, allows me to use triangulation to verify my hypothetical CEO's account of purchase negotiations with public transaction data that supports (or disputes) her version of events. Furthermore, if I do discover differences between interview answers and public documents, the disparity in accounts between different sources can also be important data; if business owners are universally claiming that the labor market functions one way, despite other evidence that countermands that claim, this disparity (and the reasons it exists) can be an important point of analysis in this dissertation. For example, while their claims may not be factually accurate, business owners' interpretation of the labor market still informs their decisions on hiring and labor.

Historical comparison is also an important part of this puzzle for two reasons. First, it allows me to understand, "What is new and what is old in TMRs [temporary migrant regimes] and...how this might matter" (Cook-Martín 2019, p. 1390). Understanding the trajectory of agricultural labor, including how it has shifted over time, contextualizes more recent changes in the migrant labor supply chain. Second, historical comparison allows me to understand how

sending states lost control over the migrant labor supply chain in the first place, including the ability to play a role in designing the structure of the program. As a result, the role of privatization and private power in the shifting structure becomes central to my empirical work, in order to compare those historical experiences to current sending state efforts to re-take control of it. Thus, I utilize a variety of methods to accomplish to my research goals, each of which are detailed below.

In conducting my research, I undertook over 3 months of travel to multiple locations in Mexico (three states, including Mexico City in the Federal Capitol District and Nuevo León) as well as multiple trips to agricultural locations in Florida, Virginia, and North Carolina. Finally, I attended H-2A-related conferences and events in Mexico, Nevada, and Florida. Each of these field sites is described in greater detail in the ethnographic observation section below. In addition to these trips, I also travelled frequently to Washington, D.C., to conduct interviews with policymakers and attend relevant events, including seminars and other speaking engagements held at think-tanks and federal agencies that featured discussions of H-2A policy. Finally, I attended a number of virtual events, many of which were held online due to lingering Covid-19 restrictions that prevented participants from travelling. In places where I was unable to travel, I conducted interviews remotely, including with participants based in Guatemala and Jamaica, as well as other H-2A sending countries, including El Salvador and Honduras.

Interviews: The bulk of my data comes from 80 semi-structured interviews with 60 individuals, including:

1. Officials at U.S. visa processing sites, where H-2A workers must officially apply with employer documentation to receive their work permits and U.S. entry approval;

2. Policymakers in Mexico and the United States involved in the administration of the H-2A program and other guestworker programs;
3. Policymakers in Guatemala, El Salvador, Honduras, and Jamaica including officials in the Ministry of Labor and Ministry of Foreign Affairs who have been involved in implementing H-2A recruitment programs;
4. Large-scale private recruitment agencies operating in Mexico and Central America involved in finding, transporting, and hiring H-2A workers;
5. U.S. agricultural employers who hire and employ H-2A workers;
6. Lead firms that purchase from H-2A employers; and
7. Worker and civil society organizations that are currently working to intervene in the H-2A recruitment process.²³

I used an interview guide (provided in Appendix B) in these conversations; however, as you can see from the guide, the semi-structured format allowed me to target my questions according to the particular participant group with which I was speaking. Recorded interviews were translated into English (where applicable) and transcribed for analysis. Interviews that took place over the course of field observation days, under circumstance in which recording was not possible (i.e. the interview took place in a crowded café or public place), or in cases where interviewees requested that the interview not be recorded, were transcribed by hand and analyzed. Apart from my formal interviews, I also had numerous conversations with workers who participate in the H-2A program throughout my ethnographic observations, but given the circumstances in which opportunities to speak with these workers arose (typically when employers or other company representatives were present), I did not conduct full interviews with this study group as dictated

²³ A full list of interviews and an interview guide is available in Appendices A & B, respectively.

by my IRB protocol. In many cases, my analysis involves comparing interview data by participant groups, in order to identify key themes across multiple kinds of data and triangulate findings across a variety of types of sources. For example, I can use reports from an interview with Mexican government officials regarding current recruitment practices and systematically compare them with the views and information provided by interviewees from other study groups, as well as other kinds of data that address the same topics.

Field Observation: In addition to interviews, I conducted in-depth field observations at seven different sites throughout my study. I sought to use field observation in order to accomplish two research goals. First, I aimed to observe each of the key components of the migrant labor supply chain, including worker recruitment, critical stops on workers' travel trajectories to the United States, and workers' arrival to their place of employment. These sites, therefore, were selected based on interviews with expert informants, as well as extensive desk research (discussed below), much of which I completed before fieldwork began. Second, I aimed to attend a series of public events that provided important insight into both sending and receiving state policies on temporary labor migration, as well as access to industry actors. Based again on reports from experts I interviewed, as well as my own preliminary desk research, I selected these events because they provided opportunities to accomplish two aims that cannot be realized from interview data alone. First, I was able to observe interactions between industry actors and officials from receiving and sending states, as well as international governance organizations; in other words, I could observe direct interactions that allow insight into the dynamic of public and private power that governs the migrant labor supply chain. Second, there is incredible value in seeing how the actors who structure and participate in the migrant labor supply chain speak to one another in public forums. Indeed, I have found that many actors are remarkably transparent

in these settings, and therefore provide a great deal of insight into how they understand the structure of the migrant labor supply chain, as well as how that understanding informs their actions. Thus, my seven sites of ethnographic observation are:²⁴

1. Eastern Shore, Virginia: During the summer of 2019, I undertook two days of ethnographic observation of an education session (on workers' rights and protections), as well as a labor rights audit that was being conducted on a produce farm that employs H-2A workers. Both the education session and the audit were carried out by the Coalition of Immokalee Workers' (CIW) Fair Food Program (FFP), a human rights initiative based in Immokalee, Florida. The FFP, which is discussed in greater detail in Chapter 3, is a supply chain initiative based on the tenants of Worker-Driven Social Responsibility ('WSR' – see Asbed 2014), and provides human rights protections for H-2A workers. During the days I spent with the FFP team, I observed multiple education sessions, during which CIW staff members presented approximately 45-minutes of information to recently-arrived H-2A workers. The staff members described the protections available to workers under US federal law, Virginia state law, and FFP requirements (these sessions are discussed further in Chapter 3). I also shadowed interviews conducted with H-2A workers by the FFP auditing body, the Fair Food Standards Council (FFSC). During these interviews, FFSC auditors asked workers a number of questions about the working conditions on their employing farm, as well as their experiences being recruited and hired for H-2A jobs. In other words, observing these interviews gave me an opportunity to collect data directly from workers about their experiences in the migrant labor supply chain. My observation period in the Eastern Shore also allowed me to have brief interactions with workers, including short conversations.

²⁴ A full list of ethnographic observation days are provided in Appendix A

Given the FFP program requirements (discussed in Chapter 3), all the employer's workers were recruited by the Mexico's National Employment Service (the Servicio Nacional de Empleo, or SNE, in Spanish), and they discussed those experiences during interviews with monitors. Thus, my observations captured information from workers about the H-2A hiring process and working conditions upon arrival.

2. A state in Southern Mexico:²⁵ In May 2023, I negotiated access to observe the recruitment process for a large group of H-2A workers being managed by the SNE. During this trip, I was permitted to observe both pre-screening interviews with H-2A job applicants conducted by the SNE's staff in a Southern Mexican state with a predominantly rural population, as well as interviews conducted with approved applicants by recruiters contracted to find workers for H-2A employers. Over the course of my days spent observing at the SNE offices, I also had the opportunity to interview the private recruiters who conduct the final interview and make final hiring decisions, as well as the government staff working on the H-2A application process for the SNE at the state level. Finally, using contacts (including migration experts) who referred me to other organizations as well as my own outreach efforts to other organizations, I also conducted interviews with individuals involved in recruiting H-2A workers in that same state through other processes outside of the SNE, including a recruitment organization (CIERTO), affiliated with the United Farm Workers (UFW) union in California.
3. Mexico City, Mexico: While H-2A workers enroute to the United States rarely transit through Mexico City, the country's capital is a major center for policymaking and high-level

²⁵ Because this visit involved some highly sensitive interviews and officials requested that I take extra care to protect their identity, I am unable to name the particular state where I conducted this study. There is only one head SNE office in each Mexican state, so naming the state could make it quite simple to immediately identify the staff members.

discussions regarding current labor migration policy and its future. In Mexico City, I conducted interviews with staff at a number of Mexican federal government agencies, including the Ministry of Labor and the Ministry of Foreign Affairs, as well as US policymakers and a number of non-governmental organizations (NGOs) that are involved (in various capacities) with structuring and managing the recruitment of H-2A migrant workers. I also attended a number of high-level events involving Mexican, US, Canadian, and Central American policymakers, as well as NGOs and international governance organizations (IGOs), including the International Labor Organization (ILO). Some of these events directly addressed issues of temporary labor migration, including an event sponsored by the ILO that featured presentations by the Mexican, Guatemalan, and Honduran Ministries of Labor, as well as the Ministry of Foreign Affairs of El Salvador, which were all directly discussing the issue of temporary labor migrant recruitment and recruitment-related abuse. Other events discussed other aspects of trade and migration that have significant implications for international migrant flows.

4. North Carolina: In September 2023, I attended and observed the ‘Labor Rights Week’ activities at the state’s Mexican consulate, a week-long set of events that is organized in collaboration with local organizations and run (simultaneously) at every consulate in Mexico’s extensive network throughout the United States. These events are designed to provide support for Mexican nationals working in the United States, and to provide local workers with information about resources available to them, including irregular migrants, H-2A visa holders, and other kinds of visa holders and temporary laborers in the area. This year, the Labor Rights Week events in North Carolina featured officials from the local Guatemalan Consulate for the first time. In addition to the Labor Rights Week activities, I also visited and

observed the arrival of workers at the worksite of a major H-2A employer in the state and interviewed local employers as well as labor rights organizations operating in the area, some of whom have unionized H-2A workers.

5. Monterrey, Mexico: Home to the busiest US Consulate in the world, Monterrey is the stopover point for the vast majority of H-2A workers headed to the United States. During workers' time in Monterrey, recruitment organizations and logistics agencies (contracted by the companies that are hiring the workers) organize worker documents and present them to both the US Consulate, as well as a contracted visa office. During my research in Monterrey in January 2024, I conducted interviews with a number of Mexican officials, as well as civil society and worker organizations; I also travelled throughout the city, observing the areas where workers stay during their time in Monterrey as they wait for their visas to be processed.
6. Las Vegas, Nevada: In December 2023, I attended a major national conference of agricultural employers, run by an agricultural lobbying and industry association, the National Council of Agricultural Employers. The conference, which is open to any members of the public who register, provided the opportunity to attend presentations given by a wide variety of actors within the migrant labor supply chain, including: Lawyers and logistics agencies that process recruitment paperwork; recruitment agencies that interview and select H-2A workers; federal departments that issue visas, approve employer petitions for H-2A workers, and regulate H-2A workplaces; officials from sending states who are seeking employment opportunities for their nationals through the H-2 program; international governance organizations working on issues of temporary migrant labor recruitment; and agricultural employers themselves. During the conference, I interacted with all of these stakeholders who participated in the

conference, and also had a rare opportunity to observe interactions between all of these groups in a single space, as they asked each other questions, presented differing points of view, and worked through disagreements over H-2A policy and other important questions related to agricultural labor.

7. Immokalee, Florida: Throughout the research period, I undertook multiple trips to Immokalee, Florida, one of the largest farmworker communities on the East Coast that is also a major fruit and vegetable production area during the winter months in the United States. In addition to observing workers and worksites for H-2A workers at fruit and vegetable farms throughout Immokalee, I also spent time at the offices of a local community and worker organization, the Coalition of Immokalee Workers (CIW). While there, I observed community meetings held at the CIW offices, as well as other kinds of interactions with workers. I also observed worker pick-up and drop-off points throughout the city, where farmworkers in the area meet their transportation on to farm sites in the region.

These observations include a wide variety of activities taking place throughout the H-2A hiring, migration, and labor process, as well as attending conferences and other public events that deal with H-2A policy to observe a wide variety of interactions between regulators and workers, as well as with private actors. Over the course of my trips, I conducted over 21 days of ethnographic observation.

In addition to primary data collection, I also utilize a number of secondary sources throughout my analysis to complement and triangulate my findings. This includes extensive desk research including: Policy briefs, announcements, and press releases from US, Mexican, and Central American governments related to shifts in migration policy, trade policy, or other related issues; public documents published by H-2A employers and agricultural industry associations on

business strategy or other issues related to H-2A migration; news articles from major news outlets, as well as national and regional industry news outlets; international, national, and state court and legal documents, including criminal complaints and indictments of individuals involved in H-2A trafficking cases, as well as treaty and other international agreements between nations related to migration policy; and other publicly available documents related to the regulation and management of the H-2A program. Finally, I utilized a number of publicly available data sources on migration flows, like the U.S. Department of Labor's published lists of ETA-790 job orders, which are submitted by all employers looking to hire workers through the H-2A program. In some instances, I was also provided with anonymized data on workers hired through the H-2A program by informants that I either interviewed or observed, which I used for some supplemental descriptive analysis of specific flows of H-2A labor migrants (discussed further in Chapters 4 and 5).

III. Conclusion

As discussed above and in chapter 2, using a GVC approach to answer my research questions requires collecting multiple kinds of primary data, as well as utilizing secondary data in my analysis. This chapter provided a justification for case selection and provided an outline for how my primary and secondary data will be used in my empirical chapters. It also provided an overview of my data collection methods, highlighting the importance of using multiple kinds of data to triangulate my findings. In the upcoming chapters, I will use this data to begin to answer my research questions, first outlining the structure and the three key nodes of the migrant labor supply chain (chapter 4), and then providing an in-depth look at how each of those nodes is governed. I then spend time explaining the recruitment node (chapter 5), the visa processing node (chapter 6), and the worksite node (chapter 7), focusing my analysis in each chapter on how

private and public power is leveraged to govern the way that labor is produced through the migrant labor supply chain. Throughout, I also highlight and assess the opportunities that sending states seize to expand the influence they exert over how migrant labor is recruited, processed, and utilized in the context of the H-2A visa program.

Chapter 4: Conceptualizing the Migrant Labor Supply Chain

I. Introduction

In the previous chapter, my overview of the GVC literature offered a simplified model of a supply chain, envisioning one buyer firm at the top of the chain, making purchasing decisions and selecting between available producers based on a set of metrics related to price, quality, regulatory requirements, and (increasingly) social responsibility standards imposed by private regulatory organizations. Most importantly, my conceptualization thus far has suggested that buyers select from one set of producers who make the final products that are ultimately sold to consumers. In reality, however, supply chains are far more complicated than this simplified version, as Weil (2014) and others have emphasized; buyers often purchase from a logistics company that sub-contracts to producers, or producers may also source key inputs from other suppliers, creating a number of producer-buyer relationships underneath the ‘lead firm’ at the top of a given supply chain. These relationships create a complicated network of firms connected along a supply chain, most of which are trying to negotiate multiple demands and pressures.

Regulatory demands—be they public, private, or hybrid—are one set of pressures that supply chain actors must navigate. For example, Ponte’s analysis (2019) of sustainability governance in global value chains undertakes an in-depth investigation of three agrifood commodities (wine, coffee, and biofuels) that have become the focus of public and private sustainability standards in recent years. Ponte studies each commodity to understand all the points, or ‘nodes’, in the production process, including where they take place, the actors involved in the node, the kind of activity undertaken and its relationship to activities at other nodes, and the degree of control that each actor exerts over the activities taking place. Thus, it becomes clear how lead firms ‘drive’ supply chains (see also Ponte 2007), particularly for their first-tier

suppliers but increasingly for firms all the way down the supply chain; other actors, however, push back. Diagrams like Figure 4.1 (below), which outline the nodes and actors in the wine supply chain, are common in this type of analysis. Finally, and perhaps most importantly, a supply chain analysis requires careful attentiveness to the process of value creation and capture occurring at each node of the supply chain (Gereffi 2019a, 2019b, Ponte 2007, 2019).

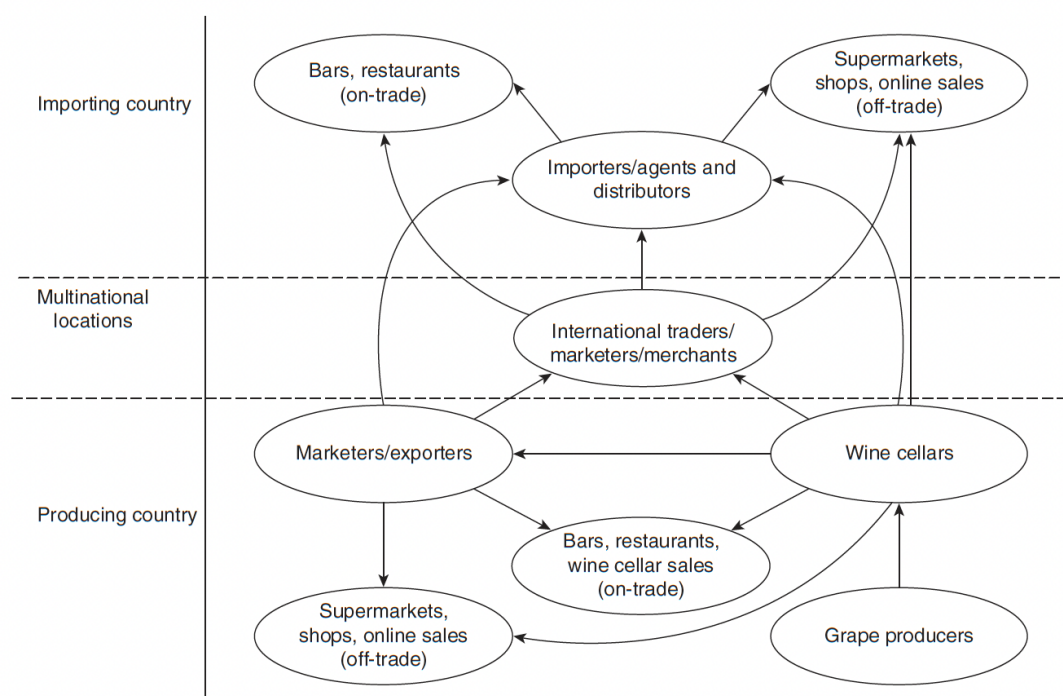


Figure 3.1 Simplified Configuration of the Wine GVC
Source: Adapted from Ponte (2007b)

Figure 4.1 – Example of a Wine Value Chain (as originally appeared in Ponte 2007)

The migrant labor supply chain is no different, and therefore it is important to spend time explaining the structure of the supply chain I study, including the actors involved and the relationships between them, in detail. This information is outlined in Figure 2 below, and each aspect will be described in this chapter. Providing an overview of the labor supply chain accomplishes two goals: First, it allows me to engage in some table-setting which will shape the rest of my analysis; second, it also helps demonstrate why a supply chain analysis of migrant

labor centers important relationships between contractors, recruiters, employers, and regulators, which profoundly shape the experiences of H-2A workers, much of which has been missed by other theoretical framings. This analysis also helps demonstrate why I focus my later empirical chapters on three key nodes of the migrant labor supply chain (point of recruitment, visa processing, and arrival at US worksite), as I show here why these components of the chain represent key ‘inflection points,’ or places in which regulators from sending states attempt to intervene and shape the experience of H-2A workers.

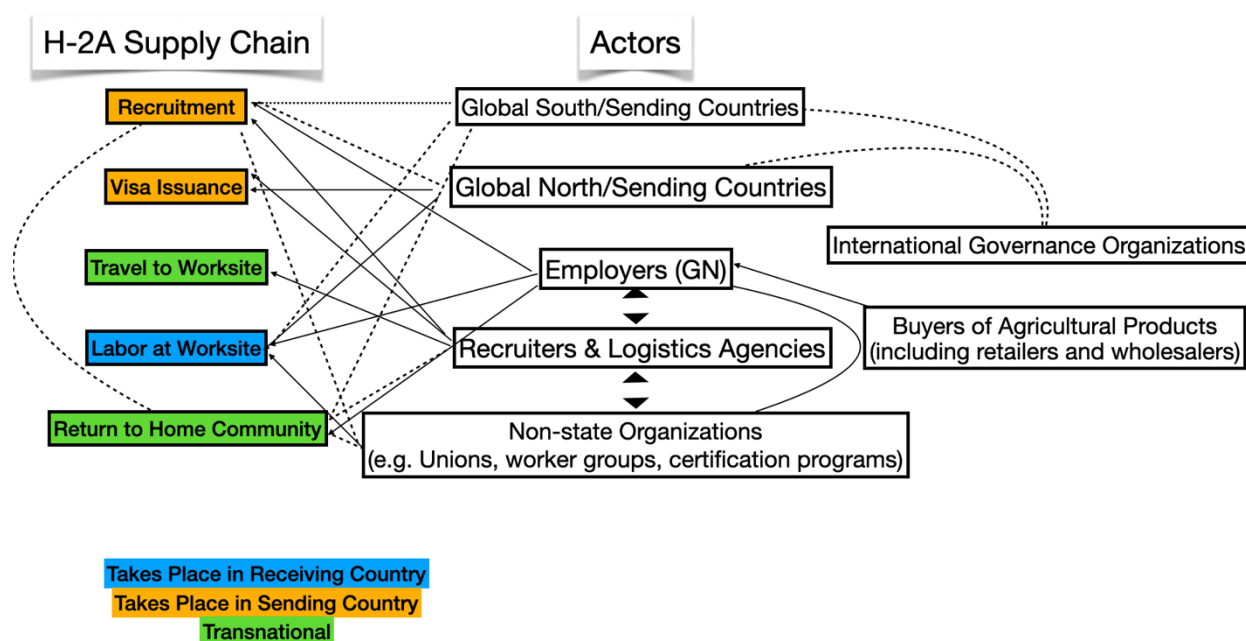


Figure 4.2 – the H-2A Migrant Labor Supply Chain

The chapter proceeds as follows: First, I outline the structure of the migrant labor supply chain, explaining all of the components of a worker’s journey from their home community, through the recruitment and interview process for an H-2A job, registration, and finally travel to the workplace in the United States. The process underscores not only the cyclical nature of temporary labor migration, but also the process by which the ‘fictitious commodity’ of migrant labor (Polanyi 1946) is produced by the structure of the supply chain, which allows receiving

countries to “import labour but not people,” (Castles 2006, pg. 760). Secondly, I provide a description of the actors involved in the supply chain, focusing on the nature of their participation in each node of the chain, as well as the incentive structures and restrictions that they face. While these details will continue to be fleshed out in subsequent empirical chapters – especially how the incentive structures, restrictions, and opportunities that each actor faces can change - here I provide a framework for thinking about these issues going forward. Finally, I consider the variations in the structure of the migrant labor supply chain, specifically the different formulations of the worker recruitment arrangements currently in operation in the context of the H-2A program.

II. Getting an H-2A Job – Laying Out the Structure of the Migrant Labor Supply Chain

Regardless of workers’ destination in the United States, the formal steps through which migrant labor is procured, processed, and transported through the H-2A program is largely standardized. As Figure 4.2 outlines, there are five main ‘nodes’ in the H-2A migrant labor supply chain.

1. Recruitment: While ostensibly one node, or link, in the migrant labor supply chain, recruitment is actually a multi-step process involving a number of actors. Employers begin the process by applying to hire workers abroad, submitting paperwork (known as the ETA-790) with the US Department of Labor Office of Foreign Labor Control (OFLC). After receiving approval from OFLC (or alternately, making revisions to the application and re-submitting), employers are also required to submit paperwork (known as the I-129) to US Citizenship and Immigration Services. Together, these approved documents grant employers the right to hire workers from outside of the United States for temporary visa contract jobs. The ETA-790 in particular provides a description of the location and dates of work, the

nature of the tasks for the workers, the number of visas being requested, the profile of worker being recruited, and the pay; it also requires that employers justify why workers from the domestic labor force are unable to meet the employer's labor needs (i.e. why it is necessary to hire workers from abroad), including providing proof that the employer attempted to hire domestically but was unsuccessful.²⁶ The I-129, by contrast, is much more formulaic, and is primarily designed to allow border security forces to track how many individuals enter the United States based on the employer for which they are approved to work.

While employers can prepare this paperwork themselves if they so choose, they often don't, and instead hire a representative to prepare and file the paperwork on their behalf. As a number of my interviewees explained, employers frequently argue that the amount of paperwork related to the H-2A program – including federal job applications – can be overwhelming, particularly for the growing number of smaller growers who utilize the program but are unable to employ any full-time human resources staff. As a result, many employers turn to logistics organizations who specialize in the preparation of H-2A paperwork, including several law firms that offer such services.²⁷

²⁶ Employer applicants are required to report the hiring opportunity to their state workforce agency (SWA), and make some sort of local public job posting for any H-2A positions, in order to justify why they must hire abroad rather than source their labor from the domestic workforce. These job postings can be as simple as a local ad in the newspaper, and have come under some debate from advocates who point out that many H-2A job ads are placed in outlets that have low circulation and are unlikely to be seen by qualified local applicants for jobs.

²⁷ Employers can typically select the level of support they would like. For example, one popular platform sells access to an H-2A software that provides digital support to prepare and submit federal documentation, as well as track follow-up documents that may be required for compliance reviews (see SESO Labor, accessed at <https://www.sesolabor.com/solutions/h-2a-software>). Other services are more comprehensive, and allow farms to hire a 'case manager' that provides individualized support during the H-2A application process, while recruiting and hiring workers, and during the time that H-2A workers are in the United States. These services might include 'accepting referrals from the local State Workforce Agency;' all approved H-2A applications must also be shared with the State Workforce Agency (SWA), and any local applicants who wish to apply for a position with an H-2A employer must be considered by the employer. This regulation is specifically designed to prevent H-2A workers from displacing the local workforce. As a result, if a local applicant meets the job's qualifications, employers must hire them. In some cases, these H-2A firms provide 'regulatory consultants' to assist with any local applicants for H-2A jobs (See for example: <https://www.maslabor.com/h2a>).

After receiving approval to hire workers abroad, employers may recruit and hire workers in any H-2A approved country. While this node in the chain actually involves a couple of inter-related steps, workers are typically screened and interviewed by employer-contracted recruiters, who either travel to workers' communities of origin or sub-contract to a network of other individuals to identify qualified applicants. Recruiters typically receive a very specific 'order sheet' from employers, including gender and age preferences for workers, alongside more typical job candidate qualifications (e.g. work experience).²⁸ For workers who have been asked to return to the United States to work for an employer with whom they were contracted previously, recruiters facilitate contact with the returning worker, communicating key details to them including the job start date and confirming their interest in returning to the United States. Once completed, recruiters present employers with a list of the workers to be hired for the year's contract, which employers will approve.

2. Visa Issuance: Once selected/hired for an H-2A position, applicants next travel from their community to a US Consular city, where they will receive their visa from Consular Officers. While some H-2A employers handle the visa application process directly for their new hires, worker travel is usually handled by recruiters who communicate directly with new hires, including a sub-set of recruiters who specialize in the 'logistics' component of the H-2A process. Regardless of who spearheads the process, travel for workers must be facilitated

²⁸ Because H-2A recruitment and selection of employees takes place outside of the United States, H-2A workers do not enjoy the same anti-discrimination protections in hiring practices that would apply if US employers were hiring without the territorial United States. As the organization Farmworker Justice explains in a recent post, "Employers may also prefer H-2A workers for a number of other reasons, including that the H-2A employer does not pay Social Security or Unemployment Tax on the guestworkers' wages, but must do so on the U.S. workers' wages; H-2A workers are excluded from the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act; and while recruiting in foreign countries, employers can select workers based on age and gender, which is illegal inside the United States" (Accessed June 20, 2024 at: <https://www.farmworkerjustice.org/blog-post/eoc-settlement-highlights-discrimination-against-us-workers-in-h-2a-program/>) .

from their community of origin to their destination for work in the United States.²⁹ While the vast majority of applicants travel to Monterrey, Mexico, an increasing number of workers head to consulates in other cities as US officials struggle to keep up with the rapid expansion of the H-2A program (and the corresponding increases in visa application volume).



Figure 4.3 - Map of US Consulates in Mexico (accessed via the US Embassy in Mexico - <https://mx.usembassy.gov/find-your-consular-location/>)

Applicants typically stay in a local hotel for a few days, during which time they present their identification documents to a US State Department contractor office, and wait to either

(1) present themselves to the US Consulate to be interviewed before receiving an H-2A visa,

²⁹ While they are advised by company representatives (either in-house H-2A staff or recruiters), workers are typically responsible for making their own way to the visa application city, typically Monterrey, Mexico in the north of the country. If they keep receipts, they are eligible for these expenses to be reimbursed by the company upon arrival to the United States (although, in practice, many workers are not properly reimbursed). Once their visas are approved, workers board transportation that has been arranged by the company (i.e. logistics contractors working on behalf of the company) to cross the border into the United State and travel to their eventual worksite.

or (2) wait for the interview requirement to be waived (in which case, they receive their visa without a visit to the US Consulate – explained further in Chapter 6). Like recruitment, this process also takes place in the country of origin, and recruiters and logistics agencies typically manage the process and work to limit the amount of time that H-2A applicants spend waiting to receive visas. While workers are usually responsible for travelling to Monterrey (or another consular city) on their own, upon arrival they stay in recruiter-arranged housing, and follow a strict schedule set out by the recruiter. Workers who are rejected by the Consulate (typically due to a criminal record in the United States or previous record of undocumented migration) return to their communities of origin, without compensation for their expenses incurred to travel for the visa interview.





Pictures from Monterrey, Mexico (January 2024). Top Photo: A Visa Application Office in Monterrey, providing paperwork and logistics services to workers and companies. Bottom Photo: H-2 Workers load into multi-passenger vans bound for jobs in the United States.

3. Transport to United States: Upon receiving their visa, workers immediately (sometimes, within minutes) travel on to the United States to begin work for their employer, as the pictures above demonstrate. Workers travel in buses or other ground transportation arranged by the recruiters and logistics agencies. During this transit, their visas and passports are inspected and processed by US Citizenship and Immigration Services (USCIS) at the US border. It is important to note that, by this point in the H-2A worker process, at least three separate agencies have been involved in processing documentation for worker visas: The Department of Labor, the Department of State, and the USCIS (a division of the Department of Homeland Security). It is unclear how much information-sharing occurs across these agencies, although public comments from officials affiliated with these agencies, as well as concerns raised by advocates, suggests that they do not share data effectively. As a result, the current process creates a patchwork picture of the H-2A worker's experience from recruitment to employment; furthermore, while sending states are sometimes able to access this information, there is no data that is directly shared by any of these departments with

sending states. Thus, by this point in the H-2A worker's journey, employers – or more accurately, the recruitment agencies hired by employers – are the only actors, public or private, that maintain access to information about every component of the migrant labor supply chain. The majority of ground transportation is tracked electronically, allowing employers, and any recruitment and logistics subcontractors they hire, to know exactly where workers are and when they are expected to arrive.

4. Labor in the United States: When workers arrive in the United States, they typically travel straight to company premises, often riding on days-long bus or van trips without stopping. The first company stop is either some central processing site, like a company office, or the housing where workers will be staying during their time in the United States.³⁰ After some on-boarding trainings (some of which take place during transit to the United States), workers begin labor within a few days of arrival on company premises. Contracts typically run for 6-9 months, but workers may be asked to extend their contracts during their stay depending on employer needs. As I discuss further in Chapter 7, those who do not meet production requirements, or do not agree to stay longer as needed, are aware that they will likely not be asked back for future contracts; indeed, this provision is usually directly communicated to workers during training. Companies also communicate production requirements to workers: Workers must harvest certain minimum amounts, or meet other standards, in order to be asked to return to work for the company on another H-2A contract for next year's harvest. While many H-2A workers have a direct employment relationship with one particular grower/business, a growing number of workers are actually employed by Farm Labor Contractors (FLC), who are federally licensed agricultural labor brokers that contract their H-

³⁰ Under H-2A regulations, this housing is required to be provided by the employer.

2A crew out to a number of farms, sometimes across multiple states. According to recent data from the Wilson Center, FLCs accounted for 45% of H-2A job certifications in FY 2022.³¹

Thus, while workers may arrive at a site in North Carolina, they can spend the next few months travelling to worksites in South Carolina, Georgia, and Virginia, depending on the harvesting needs of the companies contracting them. Regardless of the arrangement, all H-2A worksites, including addresses and the tasks being completed by workers, must be disclosed on the ETA-790 provided to and approved by the US Department of Labor.

5. Return to Country of Origin: After completing their contract, H-2A workers have ten days to return home to their country of origin. While most companies provide transportation (and are required to do so) for most of the trip back home, workers may elect to find their own way home, at their own expense. This is particularly true for workers who wish to visit family members or friends in the United States, as H-2A employers typically arrange transportation to return to workers' country of origin immediately after the work period ends. Some choose to stay in the United States without documentation past their visa expiration date (a decision that the recruitment industry refers to as 'absconding'). Thus, employers typically aim to hire workers that will stay for their entire contract period, then return home, in order to maximize their profits; maintaining a workforce that stays and return for multiple seasons is far more profitable than high turnover. According to US regulations, employers are fined \$10 per worker that they cannot prove left the United States and returned home after their contract. However, apart from the incredibly low dollar amount of the fine, employers indicated that this rule is not well enforced; simply proving that workers were provided a method of

³¹ See Philip Martin's recent post on the expansion of the H-2A program, published on the Wilson Center website, available at: <https://www.wilsoncenter.org/article/h-2a-program-expands-2023>

transport home, without documenting which workers actually took that method (and which chose to return through their own means) is typically enough (Farm 5).

As I discuss more in chapters 5-7, one of the main goals of the H-2A program is for employers to build a workforce that returns to their operations year after year to conduct seasonal labor. This strategy allows employers to select the top performers each year to return for the following season, and to ultimately build a workforce that is highly productive. In many cases, studies suggest that H-2A workers are 15-30% more productive than domestic workers doing the same jobs, and these gains can be even greater if companies are able to capture a large number of returning workers (rather than being forced to recruit and hire new H-2A labor each year).³² Thus, this chain functions cyclically, continually re-producing migrant labor.

As I have discussed in previous chapters, a closer look at the H-2A migrant labor supply chain demonstrates that migration is not simply a process negotiated between states, but is in fact also regulated by a set of private actors who exert a high degree of control over the structure of the chain and how it functions. As Hernández-Leon (2020) explains:

While state bureaucracies (i.e. labour and foreign affairs ministries, immigration bureaus) assume broad responsibility over regulation and administration, the day-to-day implementation and governance of these schemes are often devolved to private actors (Gordon 2017). Lawyers, contracting agencies, recruiters, document processors, transportation and lodging businesses and others, constitute a migration industry in charge of developing the material infrastructures and deploying the know-how that facilitates migration. As migration entrepreneurs, these private actors seek financial compensation in exchange for brokering cross-border mobility, a motivation that differs from that of state officials, who may be driven by political expediency and bureaucratic efficacy. (p. 1)

By assuming ‘day-to-day implementation and governance’ of the multi-staged process that produces H-2A migrant labor, these private actors become de-facto regulators of the supply

³² According to analysis and comments provided by economist Philip Martin, available at: https://www.unifiedsymposium.org/wp-content/uploads/2023/08/philip_martin_california_farm_labor_in_the_2020s.pdf

chain. In the next section, I outline the full complement of actors – both public and private – that are involved in this supply chain. Furthermore, as Hernández-Leon signals in the quote above, I also begin to provide insight into the incentives and constraints that they confront, and the implications for the governance structure of the chain as a whole.

III. Who Governs the Chain? The Actors who Structure, Manage, and Regulate Temporary Migrant Labor

As detailed in Figure 4.2 above, a constellation of actors exerts influence over the structure of the migrant labor supply chain, at various points in the five nodes of the supply chain I study. In this section, I describe each of the actors shown in Figure 4.2, pointing out their specific role in managing and regulating the temporary migrant labor supply chain. First, Global South country governments, also referred to as ‘sending states’ throughout this analysis, send migrants abroad via temporary work visas to access higher wages from agricultural employers in the Global North. By sending migrants abroad, sending states typically hope to accomplish two goals. First, they hope to capture remittances, which may help promote various community development initiatives. Second, spurred by a growing awareness of the exploitative conditions that often prevail within temporary migrant labor programs (discussed in previous sections of this chapter), sending states also aim to identify and eliminate the kinds of bad practices and actors that leave workers vulnerable. While this dissertation’s primary empirical and theoretical goal is to understand the role of each actor in the governance of the migrant labor supply chain, I am particularly interested in the role of sending countries, which are almost exclusively located in the Global South.

Because employers can choose to hire from anywhere, migrant sending states contend with the pressure of a ‘race to the bottom’ dynamic. There are certainly factors which mean that

sending states are not interchangeable, particularly in the immediate term. Mexico, for example, currently makes up over 92% of the H-2A labor force every year, a share which would be difficult for other sending countries to make up in 12 or 24 months' time. It is conceivable, however, that employers could move away from Mexico over a period of a few years. As a result, while Mexico enjoys some ability to place requirements on employers who wish to recruit Mexican workers, stringent controls also run the risk of driving employers (who occupy an analogous role to buyers in the supply chain) to recruit from other countries that do not impose such requirements.³³ Thus, in many ways, Mexico's position in the global migrant labor supply chain is similar to say, Bangladesh's position in the garment supply chain, where regulators fear that raising wage requirements and other worker protections may drive buyer firms to purchase garments from producer firms domiciled in other countries (Bair, Anner & Blasi 2020). It also mimics the global competition for other types of foreign direct investment (Mosley & Uno 2007, Messerschmidt & Janz 2023).

Global North country governments, often referred to in this dissertation as 'receiving states,' create the visa categories for which employers can apply and set regulations governing them. In the case of the United States, the focus of my analysis, multiple federal agencies administer the H-2A program, including setting requirements for recruitment and creating a patchwork of regulations and regulators. While some receiving countries, including Canada, administer temporary migrant labor programs through bilateral agreements with sending state governments, many programs exist without a formal mechanism to incorporate partnership or feedback from sending states. Indeed, scholars agree that temporary migrant labor programs are primarily constructed according to the needs, suggestions, and concerns of the industry leaders in the

³³ This phenomenon has also been referred to a regulatory arbitrage (Rao, Yue, & Ingram 2011).

Global North that employ migrant labor (e.g. Castles 2006). As Hahamovitch (2011) and Calavita (1992) document, the agricultural industry has been particularly effective at pushing federal agencies to craft migrant labor policy according to its needs. Increasingly, Global North countries are responding to widespread criticism of their management (or lack thereof) of temporary migrant labor programs, as high-profile allegations of temporary migrant exploitation grow. For example, the US Agency for International Development (USAID), a division of the State Department, is partnering directly with sending states to implement a program that addresses issues of H-2A worker recruitment (discussed further in chapters 5 and 6). Importantly, the programs also aim to increase the number of H-2A workers that employers hire from Central American countries, given that the vast majority of workers are currently recruited from Mexico. USAID frequently discusses the programs – and an increase in H-2A hires from the region – as a remittance-based development strategy for the Northern Triangle countries, similar to the phenomenon of the ‘migration development regime’ that Agarwala (2022) identified in India.

Despite new state-run pilot programs, private recruitment agencies facilitate the recruitment of the vast majority of H-2A workers. Within the broad umbrella of ‘recruiters’ are a range of businesses that provide different services to employers seeking to hire H-2A workers, including conducting worker interviews and coordinating worker transportation and document processing. In some cases, recruiters are also the employers of record for workers. For example, a farm labor contractor (FLC) can apply to hire a group of H-2A workers, but can also be a recruiter. Large farming operations may also conduct their own recruiting, particularly if they are large enough to hire full-time human resources staff capable of travelling to conduct interviews and carry out other required recruitment functions. As discussed in the previous section, it is also frequently

the case that multiple recruiters (logistics agencies, legal consultants, and field recruiters) can be involved in administering a single group of workers.

As the supply chain description above demonstrates, H-2A employers, including farm owners and Farm Labor Contractors (FLCs), exercise an incredible amount of control over the structure of the migrant labor supply chain (Martin 2014). Since the creation of the H-2A program in 1952, employers have consistently pushed to limit state oversight, often arguing that the nation's food supply will suffer if their requests to circumscribe the control of public regulators are not taken seriously (Hahamovitch 2011, 2014). Employers I spoke with continue to argue that public oversight of the H-2A program is overly onerous and costly. As I discuss in later sections, employers do face genuine challenges navigating the complicated H-2A migrant labor supply chain; indeed, this is one of their main motivations for utilizing a recruitment service to hire H-2A workers. It's also clear that these employers themselves have to navigate challenging dynamics as producers in agricultural supply chains, where they face stubbornly high prices for inputs (like fertilizer and equipment), as well as continually ratcheting expectations from agricultural buyers over price and quality (Burch & Pritchard 2018, Estabrook 2012). Producers also face competition from a growing number of export-agriculture producers who produce outside the country and often enjoy much lower labor costs than those in the United States (see for example Escobar Latapí 2020). Interestingly, many export farms are located in Mexico, the origin country for the vast majority of H-2A laborers. Some of these farms are owned by H-2A employers in the United States, who have operations in both countries.

The retailers and buyers at the top of agrifood supply chains, who purchase products from H-2A employers, also exert immense, albeit indirect, power over the temporary migrant labor supply chain. Agricultural supply chains are typically considered 'buyer-driven,' a term

originating in the Global Value Chains literature that I discussed extensively in chapter 2. That is, retailers are empowered to make decisions that drive the structure of the chain; the commercial terms and conditions they offer suppliers may, in turn affect the terms and conditions of work experience by those who labor at the production sites along the chain. One consistent pressure that buyers place on producers is demanding static or even declining prices for agricultural goods, while also requiring that certain quality standards be met.

National and transnational worker-led organizations, including non-governmental organizations (NGOs), worker coalitions, and unions, deploy a variety of strategies to support H-2A workers and improve their conditions of labor and recruitment. Worker organizations vary in their approach towards H-2A advocacy. Generally, worker organizations try to create arrangements that parallel (or are separate from) state efforts, but some engage with state authorities directly. While none of them set out to strengthen sending state institutions, those that engage with state authorities often end up providing sending states with opportunities to insert themselves in the H-2A regulatory process.

Other international NGOs and International Governance Organizations (IGOs) also seek to address the conditions of recruitment and labor for workers within temporary migrant labor visa programs. Such organizations include the United Nations and the International Labor Organization, which has recently launched a major multi-national initiative on worker recruitment. While often similar to transnational worker organizations, the groups in this category are not primarily comprised of workers from the agricultural sector, although they may often work closely with groups in the other category.

As Figure 4.2 (above) and Figure 4.3 (below) demonstrate, the diverse group of actors who are involved in the governance of the transnational migrant labor supply chain exert control at

different nodes in the chain. Furthermore, while this dissertation considers how multiple nodes of the chain are governed, there is one node that gets particular attention: Worker recruitment. As I detail in the section below, the existing body of scholars on temporary migrant labor, as well as conversations within national and international policy circles, demonstrates that the method in which workers are recruited, including the actors involved and the leverage that they exert, has profound impacts on how the whole of the migrant labor supply chain is governed. It is also the node of the chain where privatization has most dramatically altered the role of the sending state over the past century of temporary migrant labor program, and where sending states are most actively seeking to regain regulatory control. As a result, I use the next section to develop a typology of temporary migrant worker recruitment arrangements, in order to situate the way in which H-2A workers are recruited (the focus on chapter 5) within the broader set of arrangements that exist globally.

IV. Spotlighting Recruitment: An Emerging Typology of Broker Arrangements

As the sections above and Figure 4.3 (below) highlights, a study of the migrant labor supply chain reveals the critical role that recruitment arrangements play, as well as the variation in relationships between recruiters, logistics agencies, labor contractors (including Farm Labor Contractors, or FLCs), and employers. While the other actors involved in the migrant labor supply chain are directly connected to (i.e. manage) two or three stages in the chain, recruiters are the only actor involved in at least four stages of the chain (recruitment, visa issuance, travel to worksite, and return to home communities). As Hernández-Leon (2020) explains:

Document processors and recruiters occupy critical positions in the larger H-2 brokerage apparatus, which allow them to interact downstream with migrants, upstream with contracting companies, employers and consular officials, and laterally with colleagues

(i.e. individuals who perform a similar task) and with ancillary service providers (i.e. transporters, hoteliers). (P. 3)

As Hernández-Leon's analysis suggests, recruiters contend with serious pressures: They work for employers, and therefore must answer to their demands regarding the number, profile, and type of workers to be hired for H-2A contracts. The more knowledgeable the employer, the more likely they are to drive the recruitment process, setting strict requirements for how recruitment is to be conducted (specifically, who is to be hired, from particular regions of one country, etc.). Recruiters also must answer to public officials from the receiving state, as well as the federal contractors who process visa documents. These officials review the application information of each worker, and as I discuss in subsequent chapters, also elect to interview some workers prior to issuing them a visa. While document processors may be paid regardless of the outcome, recruiters who interview and hire workers are often only paid when a worker is successfully issued a visa, giving public officials who make those decisions at least some leverage over recruiters.

In many cases, however, employers have only a limited understanding of worker recruitment, and by default allow these labor brokers to operate within a highly permissive structure. This is particularly true for recruiters that conduct document processing, and are therefore contracted by employers to inform them of any legal requirements or applicable regulations that they may need to follow. Furthermore, given the decreasing oversight that receiving country officials exert over the recruitment and visa process (discussed further in chapter 6), the check that state authorities exert over recruiter behavior is minimal.

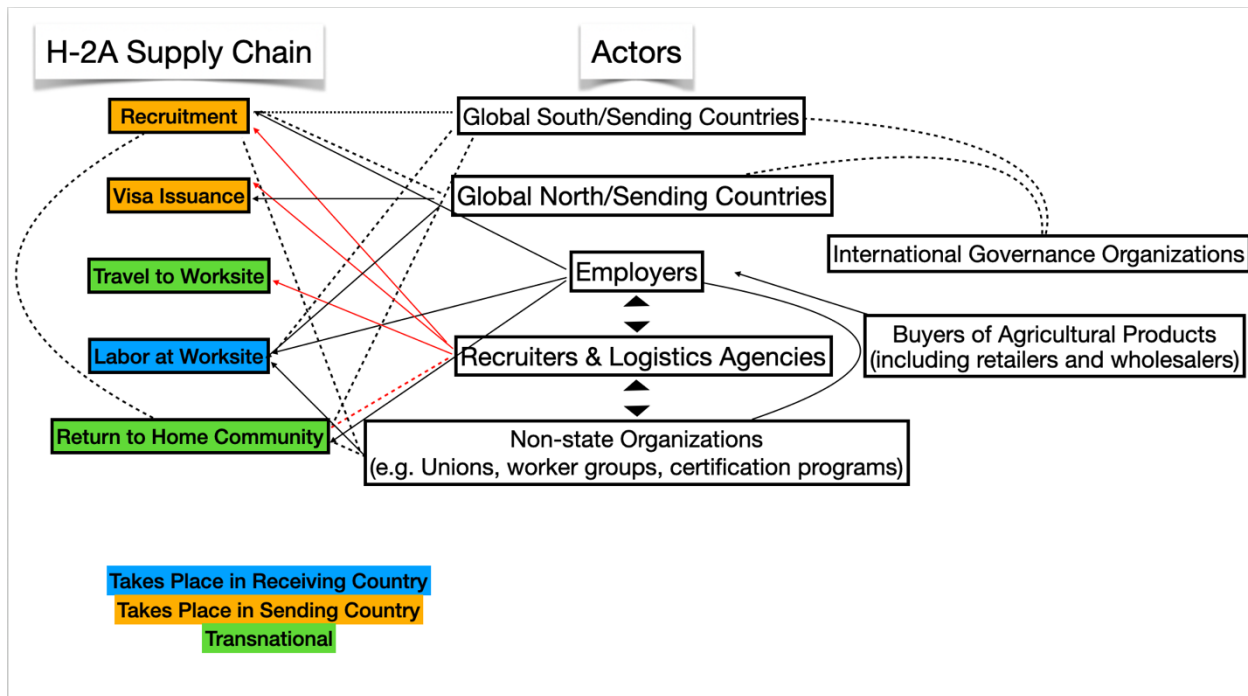


Figure 3: Migrant Labor Supply Chain (Role of Recruiters Highlighted in Red)

Figure 3 above highlights the control that recruiters exert over the supply chain, by virtue of the increasing privatization of temporary migrant worker recruitment as well as, in many cases, the limited involvement of employers (Surak 2017). However, as I have suggested in my discussion above, recruitment arrangements can vary, depending on the relationships between an employer and the individuals or organizations doing document preparation, worker interviews, and visa processing. Looking beyond the H-2A program that is the focus of this dissertation, an analysis of temporary migrant worker programs suggests that there are four main kinds of broker arrangements (two main categories, with category two divided into three subtypes) in operation today. These include:

Government as Recruiter (Type 1): Defined as instances in which either sending or receiving states (in many cases, both) not only set the regulations governing TMWP recruitment and registration, but actively participate in the management of these two activities. As detailed in chapter 2, work by Hahamovitch (2011) suggests that the original World War II-era H-2A

operated under a system like this, although the agricultural industry held great sway over the program from the beginning. To a certain extent, the Bracero program also falls under this classification, particularly in its early years (Spickard 2007, Hahamovitch 2014). Preibisch's (2010) work on Canada suggests that the country's Seasonal Agricultural Workers Program (SAWP) also falls under this classification.

Private Recruiters (Type 2): There are multiple kinds of private recruitment, which is defined as all recruitment arrangements that are not public (i.e. managed by the government). In such arrangements, states function more as 'licensors' rather than direct regulators or administrators (Hernández-Leon 2020). There are businesses, which vary in size and geographic coverage, that operate legally in finding workers to fill vacancies offered by guestworker programs, making up a multi-billion-dollar business worldwide (Martin 2017). However, as this chapter has already highlighted, the relationships between employers and private recruiters create networks of subcontracting and variations in the way that the migrant labor supply chain works, which are important to identify and analyze. Within the H-2A program, there are multiple arrangements that my research identified, which can be summarized into three main categories:

- 1) **Employer-contracted private recruitment agency:** In the majority of private recruitment arrangements, employers contract a recruitment agency, for workers that will ultimately be direct employees of the company upon arrival in the United States. In some arrangements, employer co-ops or associations serve as the employer of record. Perhaps the most well-known H-2A co-op employer is the North Carolina Growers' Association (NCGA), which manages the recruitment and contract process for dozens (or more) agricultural employers throughout the state of North Carolina. The NCGA model will be discussed throughout the remaining empirical chapters. In other cases, a Farm Labor Contractor (FLC) serves as the

employer of record and submits an ETA-790 with the intention of hiring workers that will labor on multiple farms.

- 2) **Internal Company Recruitment:** In a small but growing number of situations, companies themselves directly administer the recruitment process, primarily by hiring full-time human resources (HR) staff to manage the process. In some cases, like one farm that I interviewed, these employers are multinationals with operations in both the United States and Mexico. This structure allows the company to recruit H-2A workers for their domestic operations from elsewhere within its own labor force (i.e. the laborers employed on its owned and operated farms in Mexico). While some of these farms may consult with a lawyer for contract preparation or hire a logistics firm to handle some of the travel details for workers, their level of involvement in the recruitment process is greater than that of employers who are far more reliant on a recruitment agency. For example, hiring decisions are made by their own employees (by staff located abroad, and/or staff that travel from the United States) rather than contracting out this work.
- 3) **Public-Private Partnership:** In some instances, sending and receiving states partner with employers and private recruiters to facilitate the recruitment process. The origin, history, and recent growth of these models is a focus of my analysis. While some of these models, including one developed by the Jamaican Ministry of Labor, have a decades-long history, others have emerged quite recently. Interestingly, receiving states – the United States in particular (discussed above) – are supporting these initiatives, and actively working to stand up other partnerships.

Some of public-private partnerships feature a direct role for worker organizations, which participate in the recruitment process and therefore gain opportunities to directly govern the

supply chain. Historically, workers' groups have been influential in protesting the establishment of new guestworker programs, and have at times been successful in ending them (Spickard 2007, Gordon 2007). However, attempts by such organizations to ameliorate recruitment conditions, without advocating for a wholesale elimination of guestworker programs, are quite new.

Responding to the H-2A program's entrenchment and the growing share of farmworkers that are H-2A, some worker-led organizations are taking a different approach. In light of opportunities for abuse at the recruitment link of the migrant labor supply chain, scholars have documented how worker organizations, including transnational unions and other groups, have sought to exert control over the labor recruitment process. For example, I detail the case of the Coalition of Immokalee Workers (CIW), a Florida workers' group that Asbed and Hitov (2017) in chapter 5, demonstrating how a partnership between the CIW and the Mexican federal government has sought to eliminate the abusive practices that workers often experience through private recruitment operations. I also discuss the efforts of North Carolina labor union, the Farm Labor Organizing Committee (FLOC), that has sought to unionize H-2A workers working in the state (see also Gordon 2007, Coin 2011, & Smith-Nonini 2009), ultimately signing a collective bargaining agreement with one of the largest H-2A employers nationally, the North Carolina Growers' Association.

Finally, it is important to note that informal networks are an important component of the private recruitment structure. Informal contacts are one of the main pathways through which many migrants find jobs, including family contacts, community announcements, and word of mouth. While it might be assumed that informal networks provide the greatest opportunity for abuse, studies like that of Griffith (2006) suggest that a significant portion of workers learn about work through connections provided by family and friends. Spickard (2007) also notes a similar

dynamic at play with the Bracero ‘paroled’ program, which was tacitly supported by the U.S. government.³⁴

Each of these arrangements presents unique challenges for workers, although recent studies tend to suggest that the first type – government regulation – provides the most meaningful protections for migrant workers (Preibisch, 2010). This may indicate why in recent years, the employers who contract migrant labor have sought to undermine these kinds of agreements, particularly by dis-empowering sending states from meaningfully asserting protections for their citizens while laboring abroad (Hahamovitch, 2011, 2014; Martin, 2014; Griffith, 2006; Clark, 2017; Conniff, 1985). As formal bilateral agreements give way to private recruitment, it is also clear that the lines between different forms of private recruitment are becoming more blurred. As Griffith (2006), summarizing data from interviews he conducted with H-2 workers across a number of industries, writes:

Most of the those who reported learning of H-2 work through a contractor actually may have learned of the job through a network connection. Of the third of workers who learned about the job through a contractor, three-fourths of them knew the contractor through family members or friends... This diversity of responses reflects the fact that, as for most of the H-2 as well as the non-H2 labor force, labor contracting between the United States and Mexico is a layered process, with several intermediaries between U.S. employers and potential Mexican workers. (p. 168)

Hahamovitch (2011) documents similarly complicated recruiter relationships in her account of Jamaican H-2A workers during the World War II era, noting that while the contracts for workers were negotiated by the Jamaican government, opportunities to participate in the program were often distributed by Jamaican officials as political patronage.

³⁴ Spickard (2007) writes, “In theory, employers sent representatives south of the border to work with Mexican officials in recruiting braceros. In fact, it was much more common for workers to come north illegally on their own and then to be legalized on the spot – the term used was ‘paroled’ – once they had found work in the United States. This maneuver was supported by the INS [Immigration and Naturalization Service], and saved employers millions of dollars in recruitment costs” (p. 303).

V. Conclusion

In this chapter, I have outlined the structure of the migrant labor supply chain, including identifying key nodes and actors. In doing so, I have begun to answer my first research question (*what is the migrant labor supply chain and how is it governed?*). As discussed in chapters two and three, I utilize a Global Value Chains (GVC) approach to study the migrant labor supply chain. As a result, my analysis is motivated by an understanding that while actors structure the supply chain, supply chain dynamics also shape the scope and extent of the agency of chain actors. My focus in this chapter has been to outline the structure of the chain – that is, to explain what the migrant supply chain ‘is,’ and how it produces temporary labor for the agricultural industry in the United States. In the final section of this chapter, I begin to answer the second part of this question, as my focus on recruitment begins a discussion of how the chain is governed. In outlining a typology of temporary migrant worker recruitment arrangements, each of these models creates different power distributions along the chain among the actors involved in worker recruitment. In the next chapter, I continue my discussion of recruitment, comparing the recruitment arrangements developed by the Mexican National Employment Service (SNE) with those of other countries. In doing so, I also delve further into the effect of privatized recruitment structures, including the reasons why this node of the supply chain is usually the place where abuse of H-2A workers begins.

Chapter 5: Recruiting H-2A Workers

I. Introduction:

In this chapter, I revisit the research question that I began to answer in chapter 4, and in doing so, also begin to answer my second main research question. Throughout the chapters of my empirical analysis, I attempt to answer two key questions:

3. *What is the migrant labor supply chain, and how is it governed?*
4. *How do developing country governments regulate labor supply chains, and how has their control over these supply chains shifted over time?*

In the previous chapter, I outlined the migrant labor supply chain, including the key nodes in the chain and the actors who participate in governing it. In this chapter, I provide additional context to answer question one, providing a detailed description of the process of worker recruitment. In doing so, I also answer part of my second research question, as I provide detailed information about the role of the sending state in H-2A recruitment processes.

The chapter proceeds as follows: I first provide a brief comparative analysis of the private recruitment process, centering the Mexico case but also discussing the role of recruiters in Guatemala and Jamaica. Next, I spend the bulk of the chapter outlining one of the most comprehensive efforts by Mexico, the largest sending state, to intervene in the worker recruitment process by using a state agency to recruit workers for H-2A contracts directly. I then compare the efforts of Mexico's state agencies with those of Guatemala and Jamaica, which also have their own state-led recruitment apparatus. Throughout my analysis, I highlight ways in which H-2A workers frequently experience fraud and abuse as a result of the recruitment process, as well as how sending state efforts attempt to prevent or limit this kind of abuse. I also discuss how worker-led organizations, including one union (the United Farm Workers) and one

worker-led private regulatory initiative (the Coalition of Immokalee Workers' Fair Food Program), play a role in sending states' efforts. In order to answer my research questions, my specific focus throughout this chapter is to identify how recruitment is governed, as well as how sending states are attempting to change that governance structure.

In both my in-depth case study of Mexico, as well as my shadow case comparisons, I find that sending states are working to govern the recruitment node of the migrant labor supply chain by working to displace private recruiters. Once they obtain contracts from more H-2A employers, these states agencies are actively looking for ways to use their position as recruiters of choice to help workers to navigate the process more fairly, including providing workers channels for complaints and providing workers with support and assistance in their cases against employers. They also work to push employers to undertake more 'fair' recruiting processes, including (sometimes) pushing employers to consider employing applicants that might fall outside of the characteristics employers value most (in terms of origin, experience, or age). I also find that Mexico differs from my other two cases, as they are utilizing partnership with worker-led private regulatory initiatives to gain access to employers and displace private recruiters. By contrast, Jamaica's recruitment program is decades-old, and the country's Ministry of Labor is utilizing a strategy of direct engagement with employers to increase hires from their country. The Guatemalan Ministry of Labor, which is heading recruitment efforts in that country, has primarily partnered with the United States Agency for International Development (USAID), as well as the Mexican government, in an effort to assert greater control of the country's H-2A recruitment apparatus.

II. Governing Private Recruitment:

Private recruitment is a multi-billion dollar industry in Mexico, although it incorporates so many informal revenue streams and is so poorly regulated that exact estimates of the size of the business (including the number of recruitment firms) are nearly impossible to calculate (Martin 2017). As has been discussed in previous chapters, the recruitment industry is well-regulated on paper. US regulations prohibit recruitment firms from charging workers any fees, and clearly outline the costs for which employers are responsible versus those that can be paid by H-2A workers themselves. Mexico also has legal requirements that all recruiters looking to contract workers to travel abroad be registered and approved, but SNE officials indicated that only a handful of firms actually do so.³⁵ Against this backdrop, the H-2A program has increased 10-fold in recent years: The US Department of Labor certified applications for 370,000 H-2A spots during fiscal year 2022, and about 300,000 visas were issued to workers, with the vast majority (about 93%) of those workers originating in Mexico.³⁶ Thus, the H-2 recruitment industry, which maintains a presence in both the US and Mexico, is tightly regulated on paper but suffers from a lack of enforcement. In the context of the migrant labor ‘race to the bottom,’ in which sending states are vying for the opportunity to earn H-2A job offers for their workers, effective regulation and enforcement is both difficult (requiring immense resources and personnel) and dangerous, as overly stringent requirements might push employers to go elsewhere. In cases where employers are heavily reliant on recruiters to provide recommendations about the locations and profile of worker that should be recruited for H-2 jobs,

³⁵ Other Mexican officials I spoke with also confirmed that a number of politicians enjoy close ties to H-2 recruiters, and would likely push back on any attempts to more seriously regulate the industry.

³⁶ Data available through the US Department of Agriculture’s Economic Research Service: <https://www.ers.usda.gov/amber-waves/2023/march/h-2a-temporary-agricultural-job-certifications-continued-to-soar-in-2022/?cpid=email>

this threat is even more present, as recruiters who resent stricter regulatory controls might go elsewhere.

As a result, recruiters enjoy incredible latitude to cut corners and engage in a wide variety of abusive practices; indeed some recruiters I spoke with, as well as farmers, indicated that it's difficult to compete as a recruiter that follows the regulations, given that those who do not follow the rules can charge lower prices that are more attractive to employers (who are themselves squeezed by price pressures). As one H-2A employer explained:

H-2A immigration is fraught with the same dangers as illegal immigration, with the caveat that the H-2A program is potentially worse because the H-2A program has the veneer of legality. We are really good at making laws and really bad at following them in this country. We need enforcement first to be a top priority. (Farm 1)

Another expert offered a similar assessment, noting that subcontracting within the recruitment industry is quite common:

Companies like WAFLA [a large recruiter] and Mas Labor [another large H-2A recruiter, based in Virginia] are in the US and only have subcontractors in Mexico; they have no visibility into what those subcontractors are doing or what is happening in Mexico. These subcontractors are all unknown. I can't name a single [private] recruitment agency besides CIERTO [discussed below] with a continuous presence in Mexico, that actually runs the whole chain...A lot of growers are paying the cost of ethical recruitment, they pay a lump sum of \$1500-1800 per worker, and they don't know where it goes (or, whether they are being over-charged)... so the suppliers [recruiters] of labor are being irresponsible. (Exp 6)

Worker fraud and abuse, up to and including forced labor, is occurring throughout the visa program even as it continues to expand.³⁷ For example, in a recent H-2A trafficking case (dubbed 'Blooming Onion' by investigators) detailed in a Federal District Court indictment, one criminal ring of contract recruiters funneled over 71,000 workers into the United States from 2015 until

³⁷ In the last decade, the utilization of the program has more than tripled, from approximately 75,000 visas in 2010 to 270,000 during 2020; it was the only visa program that continued to expand even during the Covid-19 pandemic. More information on H-2A visas by year is available from the US Department of Agriculture Economic Research Service: <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#h2a>.

late 2021; this was equivalent to approximately 5-6% of the H-2A workforce that entered the US over the time period.³⁸ The workers, all of whom were cleared by the US Consulate to enter the United States, were forced to live in squalor with no running water, and labor on a large swathe of onion farms in southern Georgia. Documents indicate that the profits of the scheme, which involved farmers contracting out the procurement of migrant worker crews to third party recruiters, reached over \$200 million. Far from an anomaly, this case may represent the tip of the iceberg of H-2A abuse; the latest Trafficking in Persons report issued by the US State Department identified human trafficking by H-2A recruiters as one of the greatest challenges to stopping forced labor in the United States.³⁹

Aside from forced labor, the most common recruitment-related abuse is the litany of small and large fees that recruiters charge workers, eating into already-low wages (Martin 2017). Workers are also often lured to pay for H-2A job offers by individuals posing as recruiters, which then never materialize. One expert, whose organization vets the legitimacy of temporary migrant job offers for workers, indicated that such schemes have grown exponentially as the H-2A program expands (Exp 4). In all of these cases of abuse, one of the major issues is failures in data

³⁸ The Federal Indictment is available on the Department of Justice website: <https://www.justice.gov/usao-sdga/press-release/file/1450546/download>. The total volume of H-2A workers from 2015-2020 was calculated using reports from the US State Department (<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableXVB.pdf>), the US Department of Agriculture (<https://www.ers.usda.gov/webdocs/publications/102015/eib-226.pdf?v=1074.7>), and the Economic Policy Institute (<https://www.epi.org/blog/the-farmworker-wage-gap-continued-in-2020-farmworkers-and-h-2a-workers-earned-very-low-wages-during-the-pandemic-even-compared-with-other-low-wage-workers/>). Data on 2021 worker visas is not yet available.

³⁹ As the report documented, “The government again did not increase efforts to prevent human trafficking in its employment-based and other nonimmigrant visa programs or to hold employers and their agents, including labor recruiters, accountable for practices known to lead to human trafficking. In addition, it implemented policies that reduced its ability to oversee and enforce worker protections in these programs, which made it even harder for workers to protect themselves from an abusive employer or to access a healthy and safe workplace during the pandemic because they were forced to continue working or feared losing their job and immigration status.” US Department of State 2021 Trafficking in Persons Report, pg. 591 (<https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>)

sharing and transparency amongst agencies charged with monitoring the recruitment apparatus from the boundaries of the United States:

The big thing is that the ETA (Employment and Training Administration) approves the contracts, but only HSI (Homeland Security Investigations, a division of the Department of Homeland Security that investigates human trafficking cases) has all of the workers' names [of all the H-2A workers that are actually hired]. So, everyone has a piece of it, but no one has the whole picture. And honestly this is the tip of the iceberg [this case], but there is no real plan to deal with it. For example, WHD has all of this information on problematic crewleaders, those for whom it has found violations in the past. But DHS doesn't have any of that information, so they don't know who the FLCs are that shouldn't be working with H-2A workers. Another example: The WHD and OIG, two agencies within the same department, can't share interviews even for the same case, so workers have to be interviewed multiple times for the same case, so that both agencies can have the information. There are a lot of different issues with H-2A, and none of them are small. But the penalties, and the enforcement, are really small. The worst that happens in most cases of violations is that WHD fines them, but it's nothing compared to the earnings that these companies pull in using H-2A workers. And this is only going to get worse, because every day in agriculture more and more contratados (H-2A workers) arrive. (CIW 3, 7)

Until quite recently, the United States also has created no formal partnerships with sending state countries to fill these data gaps, or assist in monitoring and compliance. While it is beginning to do so in the Northern Triangle (discussed elsewhere in this chapter) and Mexico,⁴⁰ all the experts I interviewed did not believe that the large data gaps identified by the experts above have not been seriously addressed.

While the private recruitment industry is not nearly as large or established in Guatemala, officials from the Guatemalan Ministry of Labor reported that by 2018, there were 2-3 private recruitment companies operating in the country. They also reported that, like in Mexico, the level of fraud perpetrated against workers increased as H-2A hires increased:

“There were a lot of scams in Guatemala, selling fake slots [job offers] to workers all over the world – Israel, the U.S. and Canada. When we started to hear about how these

⁴⁰ One interviewee (Exp 5) explained that the US Department of Labor shares some data on H-2A workers with the Ministry of Foreign Affairs in Mexico, but that other agencies in Mexico (like the National Employment Service) do not receive this data.

scams were spreading – not just in the capital, Guatemala City, but also in the countryside, it was too much.” – Govt 5

Jamaican officials, by contrast, did not report a similar problem with recruitment-related fraud (Govt 12), noting that the process for agricultural workers has been managed by Ministry of Labor for decades. Nevertheless, private recruiters do operate in Jamaica, albeit on a much smaller scale than in Mexico or Guatemala. Specifically, Jamaican officials reported that some recruiters – contracted by employers – will travel down to conduct interviews with workers, but only through the process established by the Ministry of Labor. While a few private recruiters are approved to directly contract workers in the hospitality industry, all agricultural workers must be hired through the Jamaican government, making Jamaica’s H-2A hiring and selection process unique among other sending states. This does not mean, however, that Jamaica does not actively recruit employers; as the image below, taken at an agricultural employer’s conference indicates, officials from the Ministry of Labor have developed a variety of materials, including bags and cups to advertise their ‘skilled and reliable’ workers, in order to entice additional employers to hire from Jamaica.



Figure 5.1, Bags being distributed to Attendees by the Jamaican Ministry of Labor at an Agricultural Employers' Event in 2023

III. “We Are the Biggest Recruiter in Mexico” – How Mexico’s SNE Became an H-2A Recruiter:

Since 1974, when Mexico signed a memorandum of understanding with the Canadian government to begin the Program for Temporary Agricultural Workers (PTAT in Spanish), Mexico’s National Employment Service (SNE in Spanish) has been recruiting agricultural workers.⁴¹ Through Canada’s PTAT, which is in many ways analogous to the US H-2A program, the SNE is the exclusive recruiter of workers throughout Mexico for all of Canada’s agricultural employers, sending more than 25,000 workers yearly. To do so, they have developed a nationwide recruiting apparatus, with 78 regional offices spread throughout the 26 Mexican states (Govt 2). The SNE follows Mexico’s federalized structure: The main federal office, based in Mexico City, coordinates the activities of all regional offices, and signs an agreement with the

⁴¹ <https://www.gob.mx/sre/acciones-y-programas/el-programa-de-trabajadores-agricolas-temporales-mexico-canada-ptat>

SNE offices in each state. Regional offices are staffed by employees of the state government, who work closely with the federal office, and are jointly funded with national and state funds (Govt 2). Workers in Mexico are well aware of the SNE offices; among the population of agricultural workers, which are increasingly concentrated in the rural areas in the south of Mexico, many have a preference for traveling to Canada through PTAT rather than finding jobs through the H-2A program in the US. In large part, workers prefer the SNE/PTAT over H-2A because they believe the recruitment process eliminates being defrauded, a common practice that plagues the H-2A program. Indeed, virtually every worker I observed or interviewed during my study reported experiencing some kind of fraud previously, including paying recruitment fees for H-2 jobs that were advertised on Facebook or WhatsApp but did not actually exist.

A. The Formation of a Public-Private Recruitment Partnership

Like many other farms in the United States, agricultural employers who participate in the Coalition of Immokalee Workers' (CIW) Fair Food Program (FFP) were using private recruiters when they began hiring H-2A workers in 2014. Rising to prominence in the 1990s, the Coalition of Immokalee Workers (CIW) began as a farmworker advocacy organization. The CIW has assisted state and federal law enforcement in investigating and prosecuting labor recruiters and other actors engaging in labor abuse and human trafficking (King 2013). The Fair Food Program (FFP), which grew out of this work, is an initiative involving legally binding agreements with 14 major buyers of agricultural products, including McDonald's, Walmart, Taco Bell, and KFC (Marquis 2017). Under this program, buyers commit to purchasing produce only from participating growers that are verified to be compliant with labor and human rights standards laid out in the FFP Code of Conduct drafted by the CIW. While the Program originally began in Florida, it has since been adopted by farms in at least eight other states; an international effort to

expand a modified version of the FFP is underway in South Africa, Chile, and the United Kingdom.

The FFP Code of Conduct is monitored by the FFP's Fair Food Standards Council (FFSC), a third-party auditing body that is tasked with conducting regular audit visits to all participating farms to ensure compliance, as well as monitoring a 24-hour complaint line that workers on participating farms can call with concerns. Under the structure of the FFP, the FFSC is empowered to rigorously monitor farms to ensure that they are abiding by the Program's standards; much of the staff at the FFSC works as the Council's 'field research team,' and interviews all field-level supervisors, farm management, and at least 50% of the farm workforce during their visits to participating employers. Prior to FFSC team visits, workers attend a paid education session with CIW staffers, themselves former farmworkers, who explain the protections afforded by the Program (as well as federal regulations) and underscore the importance to workers of trusting FFSC auditors and sharing information during audits. Farms must also provide financial auditors at the FFSC with full access to payroll and other workforce documents, which are meticulously reviewed. When field or financial auditors find instances of non-compliance with the Fair Food Code of Conduct, the FFSC partners with farms to draft a 'Corrective Action Plan' (CAP) so that farms can address issues in a timely manner. If the FFSC determines that a farm is persistently non-compliant with CAP measures or has committed a 'zero tolerance' violation (including finding evidence of forced labor or child labor on the farm), the farm faces suspension from the FFP. During an FFP suspension, the 14 participating buyers will no longer purchase from the farm's operation (Brudney 2016).⁴² In other words, suspension

⁴² Within the state of Florida, where the FFP originated, an FFP sanction of a participating grower means that the grower is cut off from the supply chain, as purchases from participating buyers must cease. Outside of Florida, participating growers receive 'preferential purchasing' from at least some of the 14 buyer signatories. As a result,

from the FFP can mean temporary exclusion from the agricultural supply chain for producers, who face a serious risk of being unable to find buyers for their products.

While many FFP-participating employers exclusively hire crews of domestic workers, beginning in 2014 some farms began hiring much of their workforce through the H-2A program. Participating farms indicated that they began hiring H-2A workers for many of the same reasons that other growers and grower associations indicated (and the same reasons why the program's utilization has grown exponentially in the last decade), including labor shortages and stalled US immigration reform. In offering an explanation for the turn towards H-2A workers, one grower cited the antipathy towards undocumented migrants:

No one wants to deal with the reality that there are 15-20 million undocumented folks doing the work that no one wants to do, and covid accelerated the inability to migrate across the border. The labor issues we are having is because we are now missing lots of undocumented workers, so there is no one to work, which is not sustainable. (Farm 1)

As FFSC growers began to hire H-2A workers, the Program's auditors discovered widespread evidence of fraud during their interviews and conversations with workers. As discussed in chapter 4, workers coming on H-2A contracts often end up paying fees to their recruiter (or to a local contact that put them in touch with a recruiter), in exchange for a job offer in the United States. This practice is long-standing (including during the Bracero program – see Mize 2016) and ubiquitous; many of my interviewees reported that recruitment fees are so common that most workers have no idea that they are illegal. In addition to charging fees, recruiters and employers often don't follow the required regulations for H-2A, leaving workers on the hook to cover transportation and other costs that are supposed to be paid by employers. Many interviewees

while suspension from the program for farms outside Florida will very likely result in lost revenue, the program is less punitive in other states.

suggested that recruiters often pass these costs on to workers in order to compete for employers' business.

Passing on costs to workers allows recruiters to operate with smaller margins and eliminate some of the cost burden associated with the H-2A program. As one FFSC auditor explained:

We see a lot of the hassle and the struggle that growers go through, and we see all the costs....they have to hire someone to process all the paperwork, handle logistics, etc because unless you're [a large grower], they don't have the administrative capacity in house to file all the paperwork. Then on top of that, they have to re-imburse workers' travel.... (FFSC 3)

This is particularly true as the H-2A supply chain sees a growing number of contracts in which a Farm Labor Contractor (FLC) is the employer, who then subcontracts H-2A workers to farm owners.⁴³

During the first year that FFSC growers hired H-2A workers, auditors discovered that despite the protections for workers offered by the Fair Food Program, recruitment abuse was still widespread. As further evidence of how widespread such practices are, the FFSC's annual report from 2015 noted the following findings from audits of farms employing H-2A workers:

During the 2014-2015 season, many workers at three sites (50%) reported paying significant recruitment fees, representing systemic problems with illegal recruitment and application fees inside the company's recruiting network. Based on these findings, 52 workers were reimbursed a total of **\$13,386** by Participating Growers.... (Fair Food Standards Council 2015, p. 41)

⁴³ As one employer explained, FLCs were virtually absent from the migrant labor supply chain before about 2008; by 2024, however, much of the growth in the H-2A program has been coming from FLC employers. Furthermore, because of the cost structure for hiring and placing H-2A workers, the employer also explained why FLCs drive so much of the abuse that persists in the H-2A program: "FLCs can't do cheaper than growers with direct employment [i.e. growers employing H-2A workers directly] AND be in compliance with H-2A regulations" (Farm 6). Thus, FLCs tend to cut corners, or pass on costs related to H-2A compliance to workers themselves. Furthermore, by subcontracting their H-2A labor to an FLC, employers also are exempt from some liability for compliance with H-2A regulations.

In the case of workers within the Fair Food Program, auditors were able to account for all of the fees that workers had been charged illegally during the recruitment process, and required the growers who employed them to reimburse workers for these charges; furthermore, given the anti-retaliation protections that are essential to the Program, workers could report paying recruitment fees (and request compensation) without fear of not being asked to return on a future contract or some other form of retaliation.⁴⁴

The experience of the first H-2A season taught the FFP that even committed employers who were being closely monitored by a private regulatory mechanism were getting implicated in violations of both domestic regulations governing H-2A and the FFP Code of Conduct. Given pervasive problems with private recruiting in the migrant labor supply chain, FFP workers, like many of their counterparts on non-participating FFP farms, were victimized by the H-2A recruitment system before they arrived in the United States. After speaking with workers who had come on H-2A contracts during the 2014-2015 season, FFSC received suggestions from them to consider a partnership with the Mexican SNE (National Employment Service). Some of the H-2A workers that FFSC auditors spoke with had previously participated in Canada's Program for Temporary Agricultural Workers and had secured their employment in PTAT through the SNE recruitment process. Apart from the Canadian guestworker program for which the SNE recruits workers, the SNE also places workers for internal positions in other states (for

⁴⁴ While the US Department of Labor (DOL) is also empowered to investigate these kinds of fees and compel employers to reimburse workers, the number of investigations are extremely limited (in part due to a limited number of Wage and Hour Division staff capable of investigating any complaints). Furthermore, the lack of rigorous auditing of all employers who employ H-2A workers makes it difficult for DOL investigators to enforce anti-retaliation provisions. For example, while the Department of Labor collects millions yearly in back wages for H-2A workers that have been the victim of violations, the fragmented nature of the migrant labor supply chain means that those wages are often very difficult to return to the worker that has earned them. See: <https://blog.dol.gov/2023/03/17/returning-what-is-owed-to-migrant-workers>

example, helping applicants located in southern Mexican states to obtain jobs in northern Mexican states).

After an extensive vetting and coordination process, the FFSC signed an agreement with the SNE in 2016, making the SNE the officially sanctioned recruiter of workers for any employers wishing to use the H-2A program. As one interviewee explained:

We also vetted them before beginning our work with them, we met with [a number of reputable non-profit organizations] and they were all happy with the SNE and the job that they were doing handling worker recruitment in Mexico for the Canadian guestworker program. In fact, these organizations were all more concerned about what was happening to workers once they actually arrived in Canada. (FFSC 1)

As explained to me by both SNE officials and FFSC staff, as well as employers and private recruiters (who still play a role in the recruitment process, as described below), the process utilizes the SNE's extensive network of regional recruitment offices to standardize the process of hiring workers. It also creates redundancies in communication, so that workers have multiple outlets to contact about the visa process and their offer of work. For example, in the case of returning workers (i.e. those who are being invited to return to work for an employer), one FFSC staff member noted the following:

It's still easier for the company to communicate with them in order to invite back workers for the next season, as the crewleaders have the workers' phone numbers, so it's easier for them to send it out [than for SNE to do it]. But, SNE is still involved in terms of reaching out to the workers in order to have parallel lines of communication, because any time there is only one channel of communication the power differential is too much. We were finding that someone who was going out to really remote areas of Mexico, and he was just supposed to be ferrying information to remote areas [about workers being hired back], not as a recruiter, but was charging fees because he was the only one going out and speaking to those workers. We also got SNE to spend more resources to communicate with those workers and get them information about their contract. **We find that having only one line of communication with workers [i.e. just the company], that is where things have the potential to get exploitative.** (FFSC 3, Emphasis mine)

As the quote above demonstrates, there is also extensive information-sharing that takes place between the SNE, the FFSC, and the employers utilizing H-2A workers (and the SNE's services). Furthermore, since the implementation of the new partnership, there have been no reported instances of recruitment fees paid by workers, with the exception of two instances that, according to all of my interviewees, were quickly identified by the SNE and were shut down. As one interviewee explained:

For example, we had some reports of corruption in the Chiapas office [of the SNE surrounding recruitment], and so did a joint investigation with the SNE to shut this down. The SNE [federal office, based on Mexico City] did a great job with this investigation, and even held a meeting with the affected families to tell them how they could access civil penalties for the recruitment violations that they experienced. So, we have a strong partnership with them. (FFSC 1)

IV. Using Recruitment to Retake Control? The Specifics of the SNE-FFSC Recruitment Process

During my research, I conducted interviews with recruiters, SNE staff (at the federal and state level), FFSC auditors, and employers who hire H-2A workers, about the H-2A recruitment process. Additionally, I had the opportunity to observe the SNE's worker recruitment process in one state in Southern Mexico. These two types of primary data gave me a valuable insight into the mechanics of the partnership between the SNE and the FFSC, as well as detailed information about the relationships that SNE staff develop with US employers. What is important about this initiative is the degree to which it enables the Mexican government to play a different, and more effective, role in regulating the recruitment of H-2A workers. As previous chapters documented, this has been an aim of the SNE and the Mexican government for some time. However, while willing to cooperate on some smaller initiatives aimed at improving H-2A workers protections, US policymakers have generally shown little to no willingness to partner with Mexican officials to seriously re-make the structure of H-2A worker recruitment, instead preferring to allow a

privatized recruitment system to prevail. In other words, SNE was unable to play any meaningful role in governing the recruitment of H-2A workers in Mexico.

However, as a result of the partnership with the FFSC (a private regulatory group), a group of growers is now required to use the SNE to recruit H-2A workers, giving the agency the opportunity to gain direct access to the migrant labor supply chain. In what follows, I explain how the SNE recruits H-2A workers. This analysis addresses both of my research questions, as careful evaluation of the SNE-FFSC program provides insight into both the structure of the migrant labor supply chain (research question #1), revealing details and features overlooked in previous research, as well as the ways in which sending states are attempting to re-structure how this supply chain is governed (research question #2).

Given that FFSC growers are required to use the SNE recruitment process to hire H-2A workers, the SNE provides services to a group of employers that cannot go obtain recruitment services elsewhere. As a result, the SNE does not need to compete with other recruiters for the business of these employers. Nevertheless, the SNE process provides significant advantages for H-2A employers: It possesses national reach with dozens of regional offices, decades of experience recruiting agricultural workers for other programs, and provides its services for free. In the context of its partnership with the FFSC, the SNE process is also highly standardized, giving growers access to an easy, effective way to recruit workers. When I asked one FFSC staffer to describe the process, they outlined the document submission process that growers follow:

It's pretty systemic, the growers submit a template of their ETA-790 and an estimated number of workers that they expect to recruit for the season.⁴⁵ We then review the template, and check that any new AEW rates [federally-mandated wage rates for H-2A

⁴⁵ As discussed in chapter 4, growers must submit a form (the ETA-790), designed by the Department of Labor's Employment and Training Administration (ETA). The forms are submitted to the ETA's Office of Foreign Labor Control (OFLC), which reviews them and decides whether they will be approved.

workers] are correct, and we also check the accessibility of the translation [of the contract]. Then, we can use that same template for the rest of the season; if growers don't use a template, they send every single ETA-790 that they use and we review each of them individually...All of these growers already have somebody who is a logistics company and at the end of the contract the grower says this worker is eligible to return or not (based on not finishing the contract of production). And the SNE knows all of that, based on exit interviews with SNE [discussed further in subsequent chapters]. When a new ETA comes in, I send the SNE the information, along with the logistical person to contact. Then the logistical company coordinates with workers if they were going to use Monterrey as the consular city or somewhere else...So, the SNE doesn't coordinate consular appointments, they have a logistical company that they recommend, and workers know when to be in the consular city for their appointment. And that's when they get information on the FFP, as well as their contract information, etc. And some companies do their on-boarding there. [Due to some challenges during Covid], now workers can do their SNE registry online, so we made the participating growers sign up all the workers on the SNE database; so, the SNE could do exit interviews about their contracts. (FFSC 7)

Next, the federal SNE offices use this information to contact the states where recruiting is to take place. Both federal and state officials confirmed that the selection of states is typically based on the type of workers that the employer is looking to hire, but that all employers place a premium on states with a strong tradition of agriculture, or those likely to have a large population of people who have worked (often as internal migrants) on the export-oriented farms found primarily in the north of the country. Interestingly, many of the workers with experience on Northern export farms are more likely to be from Southern states, where I conducted my ethnographic observations of the worker recruitment process. As one official explains:

A company could say, 'I produce tulips' so we orient the recruitment of workers towards Morelos [presumably because Morelos also produces tulips]. And although we have 30,000 workers who were evaluated to enter the program [referring to the workers in the SNE database], we have to recruit workers who have experience in flower cultivation, so we are doing a focused recruitment in the areas where there are flower greenhouses [in Mexico] in order to find workers who are already experienced in flower growing. So, we will go to Morelos to interview 50 workers – well, we will probably interview 100 in order to bring 50. (Govt 2)

At the state level, officials confirmed that recruiting must be done for free, and emphasized that it's important for workers to have experience working in agriculture outside of their

communities. They also stated that they typically prioritize workers that have already travelled to the United States on a contract. In recruiting these candidates (which is typically done by SNE regional offices, who cultivate and use community contacts, as well as Facebook), state SNE officials are rigorous in checking references, going so far as to require paystubs or copies of previous visas from workers who claim to have either gone to the U.S. or worked in the Mexican export agriculture industry.

Interestingly, federal SNE officials, as well as FFSC staff, confirmed that state-level SNE staff understand the H-2A visa but are often completely unaware of the Fair Food Program or the SNE's relationship with the Program. When I questioned state SNE officials in southern Mexico about their knowledge of the FFP, only one of the three officials responsible for managing H-2A recruitment was aware of the Program, although they spoke extensively about efforts to try to partner with US Embassy staff in Mexico to deal with issues of recruitment fraud; they were also extremely knowledgeable about the companies (the vast majority of whom participate in the FFP) for whom they were recruiting H-2A workers, including information gleaned from returning workers about which companies were preferred employers (and why).

Once a pool of applicants is established and an employer request has been received, the SNE then pulls workers from the existing pool of candidates to come to the headquarters of a given state office (usually located in the capital city of the state) to be interviewed.⁴⁶ Nevertheless, this recruitment method doesn't completely eliminate the role of 'word of mouth' in home communities as a way to locate workers, one of the common ways that recruitment fees are charged to applicants. As one official explained to me when I asked him about how workers find jobs:

⁴⁶ State officials told me that workers are required to cover their costs to travel to be interviewed at the state capital.

Cousins or friends pass information to one another through word of mouth, recommending businesses or our process, and they all go into the system for opportunities. (Govt 10)

Interviews take place over the course of two days. On the first day, SNE staff conduct screening interviews of workers, using a detailed questionnaire (in some cases, SNE staff assist the worker in completing the questionnaire). As described by my informants, and observed in my shadowing of staff as they conducted these interviews with workers, the questionnaire has three main goals: (1) Establish how much applicable work experience the candidate has, (2) determine the applicant's immigration history and passport status (including ties to Mexico and the U.S.), and (3) determine workers' medical history. In many cases, SNE officials will use information about work history to assess whether a worker has accurately reported this information; for example, I observed one exchange between an applicant (who had traveled to the U.S. on previous H-2A contracts) and his SNE interviewer (100% of applicants for this H-2A contract were male):

Govt 9: "Ok, so this position is for red fruits [berries]. Red fruits, what are those?"

[Applicant explains what red fruits are, listing off some of them]

Govt 9: "So, you said here that you had experience in red fruits?"

Applicant: "Yes"

Govt 9: So in 2021 what were you doing?

Applicant: "I worked in cherries and apple."

Govt 9: "And what kind of work did you do in cherries?"

[Applicant provides a response about harvesting work in cherries, including harvesting and 'selecting varieties' for the 'dueña,' the boss]

Govt 9: "And how many seasons did you work the cherry harvest?"

Applicant: "Two" [Govt 9 adds notes to questionnaire, but has not spoken again] "There are only two months of the harvest" [Applicant volunteers this information without being asked]

[Govt 9 asks a few other questions about work experience, and is particularly interested in gaps in the worker's employment history, including seasons when the worker did not travel to the US on an H-2A visa. Govt 9 then returns to questions about raspberries after worker begins to note on his questionnaire, which he is completing himself at Govt 9's desk, that he worked in the industry in California]

Govt 9: And how do you plant raspberries?

[Applicant proceeds to walk through the process of planting raspberries in great detail]

This exchange demonstrates that much of the interview process is dedicated to determining whether applicants have exaggerated or falsified their work experience, perhaps in part because employers (including many I interviewed) often complain that new H-2A hires are unproductive and unfamiliar with their work responsibilities prior to coming to the United States. Applicants (like the one above) usually quickly realize the purpose of the questions, and will often begin to volunteer information in the hopes of demonstrating what they know about industrial agriculture.

SNE officials are very particular about work experience. As one official explained to me:

The main reason that we reject workers is that they don't have experience working outside of their home communities. They have to have experience in raspberries, vegetables, fruits, or something like this. They can't just be growing corn and beans locally. (Govt 10)

As my description below will demonstrate, private recruiters working with the SNE (who select the final pool of hires) utilize similar strategies. SNE officials adopt a similar tact when discussing immigration history with workers, often questioning them multiple times about their immigration record to ensure that they will not encounter obstacles to obtaining a visa.

In many cases, questions asked by the SNE staff member would be inappropriate or illegal in many U.S. job interviews, save for a background check or other security clearance interview. For example, in addition to more common questions about work experience (including specific crop types, number of seasons, and location of employment), applicants are asked where

all of their family members reside (in Mexico, the United States, or elsewhere), along with questions about their family medical history. One candidate, for example, was asked to list his father's diabetes diagnosis on his form. Candidates are also asked to disclose if they have been diagnosed with a sexually transmitted infection (STI), along with a host of other medical conditions. Indeed, the questions seemed to be designed to ensure that employers are provided with an experienced, healthy, young workforce with limited ties to the United States, especially the kind of ties that might persuade them to 'abscond' from their contracts rather than returning to Mexico.

Despite the intrusive nature of the questions from SNE personnel, however, these interviews are also an opportunity for workers to gain information and knowledge about the H-2A program from a trustworthy source. For example, multiple workers that I observed asked SNE staff about whether they needed to pay any recruitment or other fees in order to obtain a job offer in the US, and it was clear from their attitude and way of asking the question that they were unaware that such fees might be problematic or illegal. In response, SNE officials would patiently walk workers through the costs that they were expected to cover up front (including their trip to Monterrey to interview for their visa) as well as those that would be covered by the company (or reimbursed later). In every instance, the information provided by officials to candidates was an accurate summary of the applicable U.S. regulations, allowing workers (many for the first time) access to information that could be used to protect themselves against fraud.

During every interview I observed, SNE officials emphasized that the recruitment and screening process was free for workers, and that they should not be charged at any point for the opportunity to work in the United States. Evidence from the previous nine seasons demonstrates that federal SNE officials also remain vigilant about corruption within the ranks of SNE state

offices. For example, when worker complaints of illegal recruitment fees surfaced from FFP farms in 2016-2017, the SNE responded quickly, shutting down offices and conducting a full investigation; the individuals responsible were identified and blacklisted.⁴⁷ Workers were also provided with a copy of the engagement letter from the company that would employ them in the United States, which they were also requested to sign. The letters provided clear information about the terms of employment being offered and a summary of the expenses that the company covers.

Additionally, SNE officials use their knowledge of the workers' lives, including their family situation and previous work experience, to help applicants shape the most attractive profile possible for employers. For example, after asking applicants about their work experience, including prompting them to provide details about the kind of work they did (e.g. planting versus harvest preparation, or harvesting itself), SNE officials will often use that information to help workers answer their questionnaire according to the demands and requirements that the employer has outlined in their request for applicants. These interviews, therefore, not only provide an opportunity for SNE staff to select workers according to the company's criteria, but also to help workers – many of whom are unfamiliar with navigating the recruitment process for an H-2A job – to shape their applications to be as competitive as possible, while arming them with information about the process so that they can protect themselves. I observed that SNE officials, especially those who interact with workers directly, sympathize with workers and their perspective. One official, for example, explained that:

⁴⁷ As FFSC and SNE staff explained, it is difficult to recover any money workers might have paid in these cases, because that would require being a named complainant in a Mexican criminal case. Many workers are reluctant to come forward and share their information for fear of criminal retaliation, a fear that is well-founded given the country's exceptionally high rates of violent crime. Nevertheless, SNE staff that have been implicated in such cases are fired and are therefore excluded from the recruitment process for workers.

We have to follow the rules, but this makes it really hard and complicated for the workers. They take a long time to read things and understand them, it [this process] costs them a lot. (Govt 10)

They went on to explain that workers who lack the necessary experience to travel abroad are often steered towards jobs offered by businesses in the export sector in Northern Mexico, for whom the SNE also hires; jobs in the North can be a steppingstone to the United States, and an opportunity to gain experience.

SNE officials also recognize that their position, and their ability to help workers, is dependent on being reliant and effective recruiters for the businesses that are using them, especially those businesses that are outside of the Fair Food Program. During my visit, the head of the office (the only official familiar with the FFP), explained that “Of course, this is only one model of recruiting companies use” (Govt 11). On the days that I was in the office, the SNE had been tapped to screen applicants for a new employer who was ‘trying out’ the SNE model after previously relying on private recruiters. Beyond concerns about productivity and previous experience, there is pressure to find workers who are willing (and able) to meet elevated production standards for H-2A workers (discussed further in Chapter 7). For example, when I asked the SNE officials why previous work experience in the US or Mexican export agriculture was so important for applicants to have, one responded:

Well, it’s important that they [applicants] have experience outside of their ‘campo farming’ [i.e. farming in their community]. Because, in their community, if they get tired or hot they can stop [i.e. take a break]. And that doesn’t work for the company. (Govt 11)

A. The Role of Private Recruiters

After workers spend the day in initial screening interviews, those who have been selected by SNE staff stay in the state capital for an additional few days to interview with recruiters that

the employer has hired.⁴⁸ Based on my interviews with SNE officials, FFSC staff, and employers, it is clear that not all businesses hire a recruiter to travel down and conduct interviews with workers in person. Indeed, while this practice was more common when the partnership began, the vast majority of companies within the FFP either employ a large number of returning H-2A workers (over 80% of their workforce) or recruit the top producers from their farms in Northern Mexico to come to the US on H-2A contracts (as is the practice for at least two FFP growers). As a result, while FFP growers still employ logistics coordinators to handle the travel process for workers coming to the US, those who have worked with the SNE over multiple seasons now allow the state officials to make their selections. In this case (where no private recruiter interviews take place), only new workers travel to SNE offices for a single day of screening interviews with staff. However, other farms do rely on recruiters. My observations in the SNE offices happened to occur during recruitment for a new grower, one that does not participate in the FFP and had not previously recruited through the SNE. As a result, eligible applicants were asked to return for interviews with recruiters working for the company.⁴⁹

Unlike the interviews with SNE officials a few days prior, which took place in open cubicles throughout the office floor, the interviews with private recruiters that I observed took place in private offices (recruiters always shut the door behind them to conduct interviews out of earshot of SNE staff and workers). These offices are also the only air-conditioned spaces in the building. On the morning of the interviews, workers were all asked to arrive at the same time, just after 8:00 AM, and are seated in a holding area near the front of the offices.⁵⁰ SNE staff are

⁴⁸ Workers are not reimbursed for these costs, according to SNE officials.

⁴⁹ Throughout my time observing recruiter interviews, I learned the employer for whom the SNE was recruiting does not participate in the FFP; instead, the employer had been referred to the SNE by one of the private recruiters conducting interviews. This recruiter had previously worked with participating growers in the FFP and knew the SNE from that experience.

⁵⁰ During this morning meetup, and before the recruiters arrived, the SNE also presented me during their morning announcements. They explained who I was, my affiliation with the University of Virginia, and explained my

all in white shirts with the logo of the office, making them look uniform and much easier to identify than the previous day of initial interviews, when staff-members wore their own clothes to the office. After calling roll to ensure all approved applicants (those who passed the first-round interviews) are present, the SNE staff address the workers, explaining the procedures for the day, as well as the selection process. The SNE staff begin moving through the group, checking documents and confirming that the workers have brought everything necessary (previous visas and work records, passports, etc.). The staff announce once again that all recruitment services are free, and that workers should not be charged for anything but their passport fees (i.e. the fee paid to the Ministry of Foreign Affairs to obtain a Mexican passport). However, they also provide an announcement about the importance of completing their contracts, and returning home, stating:

You can't jump your visa, because it will affect everyone on the contract. You will take away from your compañeros [the Spanish word for work partner]. (Govt 11)

The SNE staff also explain the contract terms, how long they can expect to stay in the US, and then turn to a discussion of 'appropriate behavior' upon arrival at their worksite:

When you get to the US, don't start fights, don't drink alcohol. How you behave on this first contract will shape opportunities in the future... don't become 'illegal' [by absconding]. Finish your contract so that you have an opportunity to go back... If someone works hard ('echan ganas'), they will get opportunities to come back. (Govt 11)

To reiterate this point, the same SNE official then goes on to tell a story about workers who got drunk during their stay in Monterrey (waiting for visas), then got arrested and were unable to continue on to the United States. Finally, the SNE staff explain to workers that they should demonstrate their knowledge during the interviews with recruiters, encouraging them to speak up

purpose for observing the day's activities. As they gave me an opportunity to address the workers directly, I used that time to explain that no worker was required to allow me to observe them, and I also underscored that I had no affiliation with the company to which they were applying for work. I also explained that whether or not they chose to participate in my study (i.e. allow me to observe them), that decision would have no impact on any potential offer of employment by the companies interviewing them.

about what they know (regarding agriculture etc.). This is notable, given that the vast majority of workers come from very rural backgrounds, and I overheard many communicating with family members (either over phone or with those who had accompanied them) in indigenous languages. Given the cultural expectation that silence is respectful, the SNE staff seem to recognize that applicants will not be successful if they are not encouraged to speak. At this point, the head of the SNE recruitment team gives her final comments to the other SNE officials before the recruiters walk through the door: “It’s important that we make a good impression, because these recruiters can lead to other opportunities for other workers” (Govt 11)

As the recruiters walk in, they also address the group as a whole before beginning the process of interviewing each applicant individually (there will be selecting 55 candidates in total). They confirm much of what the SNE officials say, confirming that workers should not lie about their immigration history. They also ask the workers, in a call and response format, “Why are you coming to the US?” to which the workers respond as a group, “To work!;” the call and response goes back and forth three times, so that by the end the whole group of workers is affirming their enthusiasm for the opportunity in a collective, thunderous reply. The recruiters provide additional details about the opportunity [in this case, a farm in the Northwest of the US], including specific dates of visa issuance and travel, as well as the type of labor to be conducted and the contract terms. They outline the visa application and interview process in great detail, and make it clear that recruiting, housing (in Monterrey and the United States), and travel will be covered by the company. In fact, one of the recruiters specifically states that workers should bring “about \$55” to cover food for the first week. They then open the floor for questions, answering queries about weather and appropriate clothing at the job site, as well as logistical concerns. Before breaking into individual interviews, the recruiters bring up the topic of

production requirements for workers, stating that while they will be paid for everything they produce (and that they shouldn't be charged any recruitment fees), all applicants should be ready to work as needed. They ask the group:

“If we ask you to work on Sunday, you will right?”

Workers: “Yes!”

“Because why did you come to the United States?”

Workers: “To Work!”

Recruiters seem to be very interested and concerned – some might say obsessed – with immigration and production standards, but interviews make it clear that this is also a product of their pay structure. As one interviewee explained to me, the recruitment, travel, and visa process costs companies about \$1,000 per H-2A worker (assuming that employers follow the rules and do not pass these costs on to workers). Furthermore, they explain that it will take workers about 30 days to learn the work and begin to meet production standards; in other words, the H-2A program is a significant cost outlay for employers, and recruiters are reliant on the fees that employers pay to recruit workers that can help recoup these costs.

During the interviews, recruiters receive a file from the SNE staff that includes the questionnaires completed with applicants a few days prior, a ‘CV’ for each worker that the SNE has completed (based on the questionnaire answers), as well as workers’ documents and other materials. They review the file, and then ask questions very similar to those asked by SNE staff. However, recruiters ask very little about workers’ health, instead focusing on immigration history and work experience. About work experience, they are very particular, making sure that they have exact time amounts of experience, the location (either in Mexico, on export farms, or in the United States), and specific information about any previous crops. The recruiters are extremely

knowledgeable about specific harvesting processes, asking workers detailed questions about industries in which they worked. Indeed, recruiters indicated that they assess the workers' physical characteristics during the interview as part of their assessment of whether they should hire an applicant. For example, as one worker (who had been selected) was leaving the room after a successful interview, the recruiter turned to me, saying:

I know he works in the field [i.e. that he is telling me the truth about his work experience.] I know from his color [his skin color], his look, from his hands. I look for dirt under his fingernails, etc. I can't see that through a screen [i.e. a zoom interview].

Like in the SNE interviews, workers are quick to try to provide evidence of their willingness to work. For example, in one interview when the recruiter brings up work hours, one applicant replies: "What hours you give me, if there is availability to work, I will take it."

Recruiters are quick to ask about any gaps in worker history, and to understand why any worker who had previously travelled to the U.S. via an H-2A visa was not asked to return by the company that originally hired them. They also ask about family ties to the United States and Mexico, including the location of any family members. For example, after observing one recruiter's interview, I ask him why he was so interested in the workers' children and the number of times the applicant has gone back and forth to the United States. He explains that he tries to understand the story of the worker, in order to assess whether the applicant is likely to 'abscond' if they arrive in the United States, particularly if the contract doesn't meet their expectations in some way. He notes in the case of the previous applicant, the fact that he has a brother living in California might be concerning; however, the applicant's children in Mexico, as well as his history of working on a number of previous H-2 contracts (evidenced by the number of visas in his passports, which the recruiter reviews) suggests that he is unlikely to leave the company to stay in the United States.

The workers that are selected for employment are told to stay until the end of the day, and the recruiter signs an employment offer letter (a copy of which the worker originally received from SNE staff during their screening interview). Those who do not make the cut are typically not selected because it is clear (to the recruiter) that they are over-exaggerating or falsifying their work experience or have a negative immigration history that could affect their status. However, much like the SNE officials, it is clear that recruiters are also concerned about applicants – especially those that are rejected – and the economic and familial pressures that they face. They demonstrate a high level of awareness of their power as brokers in the migrant labor supply chain, and while they are keen to deliver a ‘labor product’ as expected by employers, they also recognize the times when the system feels inhumane. For example, one interview of a rejected applicant demonstrated this dynamic:

[Recruiter begins by asking a number of questions about the worker’s work history, then turns to family]

Recruit 1: “So what is your family like?”

Applicant: “Well I have 7 brothers.”

Recruit 1: “And you are the only one of the 7 brothers who want to come?”

Applicant: “Well, I’m the only one so far. My oldest brothers are 43 & 39, they are too old anyway. But we all got together as a group, and decided that I would try to go the United States. So the brothers all told me [especially my older brothers], ‘we will help you with everything and help you pay for all the documents. So, among the 7 brothers, we pooled resources so I could get a job, and then if I’m successful [and earn money] the younger ones may try to come.’”

[At this point, Recruiter 1 asks about immigration history. The applicant explains that he has previously been to the United States without documented status, and does have a traffic ticket from that time. Recruiter 1 explains that for this contract, he can only take workers with a clean immigration history, but that he is going to note his file to get him an opportunity with another company that he works with. The worker leaves, and Recruiter 1 assures him he will be in touch. At this point, Recruiter 1 turns to me. I ask them to explain their decision.]

Recruit 1: “Well, any time workers have to borrow money like that – and they always do, because they never have any – they do so from cousins, brothers, or loan sharks... If workers have been to the U.S. without documents, it’s fine [i.e. we can still hire them] so long as they were a ghost in the U.S. [i.e. there is no record that they were there]. What would happen to this worker, when the application arrived at the consular level, is it would be placed in administrative review. It can float in this phase for 4 weeks to 6 months, it's hard to say. **But, what I like to do to help people like this guy, is to send with another company I know [the company for which they are currently working is a new client], knowing that the visa will be put into administrative review and denied. But, when it is denied, the Consulate will give the worker a letter, telling them when they can re-apply [successfully], and then I will bring them when they can go. But if you don’t first apply for a visa [and get denied], this process never gets triggered, and the worker will never be able to go.”**

[Later in the day, the same recruiter returns to the subject of loans that workers take out to cover migration costs, noting how predatory they are: “We aren’t talking about 6,7,8 % interest [implying that interest rates are much higher than this].”

In this instance, a recruiter was willing to facilitate a process to assist a worker, knowing that they would never get paid, as a rejected visa application would mean no fee from the employer.

In short, while recruiters are willing to support workers and applicants, often at personal cost, the privatized nature of the recruitment process means that they exert an enormous amount of influence over applications, even in the context of the SNE process.

Recruiters (at least those working with the SNE) are also concerned about recruitment fees, asking every worker they interview if they were required to pay someone in exchange for the opportunity to get an interview:

At every point of the journey we talk about it [recruitment fees]. And every once in a while, we get a bite. (Recruit 1)

And indeed, while no workers reported paying recruitment fees for the job opportunity for which they were interviewing, a number reported having been previously defrauded. One had actually paid fees and traveled all the way to Mexico City, having been told by a contact that he would receive a job offer to go to Canada, only to discover upon arrival that the job and the opportunity did not exist.

V. Other Recruitment Models Pushing Back Against Recruitment Privatization

While no other model of recruitment involves the Mexican state directly, it's worth discussing some of the other organizations that are working to monitoring the migrant labor supply chain at the point of recruitment. Within H-2A, there is only one unionized recruitment scheme, operating under a collective bargaining agreement between the H-2A union, the Farm Labor Organizing Committee (FLOC), and the North Carolina Growers Association (NCGA), an association that employs tens of thousands of H-2A farmworkers yearly. Workers employed by the NCGA are recruited by word of mouth, typically via referrals by other current employees, and then are registered and managed by nine recruiters working with the NCGA (and under observations of the FLOC – FLOC 3). As one of the FLOC representatives explained, farm owners begin the process by requesting the number of workers that are needed to the NCGA:

The owner asks. Once the owner asks...the owner reports through the NCGA. Then [ringtone starts playing]. So, they call CSI [a visa processing company] here. Durango, we have understood is the primary office, and they're in charge of seeing where the worker is from. If he's Chiapas, or from Oaxaca, so that they can speak to the worker. The worker sends his documents by mail, so they can tell you whatever, and we also understand on behalf of the workers that all of the documentations goes all the way to Durango, why, I have no idea, but from Durango they send it here to start its processing or in like last year, they sent them to Matamoros, Guadalajara, where the consulates decide where they should send more, more than anything based on where there is appointment availability. When the CSI has an appointment for that worker, for Pedro from wherever, then there begins the Visa from NCGA, that on that date the worker needs to be in Monterrey so that they can go to their appointment. And that happens one month before the worker needs to be here and gives the NCGA time to tell us and send us the list of crossings, like we call it. So we, in that time, we don't talk to them with a lot of anticipation because sometimes they change the dates, but we do talk to them with 15 days of anticipation, so that the worker can see the costs that they're going to incur, for orientation and whatnot. The worker comes and stays between 2 and 3 days here. And they need to pay the hotel, food, transportation. And that's basically the process. (FLOC 2)

Decisions about re-hiring are made by employers, but the conditions for re-hire are overseen closely by the FLOC, under the conditions of the CBA. FLOC organizers also explained that they are engaged within the communities where workers are being hired; in addition to staffing an office in Monterrey (where workers regularly call and visit to share complaints or get information)⁵¹, staff members travel to each community to conduct trainings and meet with current workers who have traveled to work on H-2A visas, as well as those who are considering going in the future. As one of the organizers explained:

Well, the goal is to inform people. For one about the collective contract, because they do know they're under a contract but they don't know what a collective contract is and they don't know their laboral rights. And, the objective in going to communities and when we go we don't just talk to those who are employed under FLOC but instead everyone who will come, other workers who aren't members. And, we begin to explain to them parts of that and what the benefits are of being under a collective contract, [], and explaining to them where the union comes from because also there's a big difference between being a union in Mexico and being a union in the United States.... The workers are from approximately 15 states of the republic, there are some that have more. But based on where the workers are, and we see some that are concentrated in a region, we do routes. In a given moments its up to me to go to San Luis Potosí, Hidalgo, my coworker goes to Guanajuato, to Nayarit, Umberto goes to Durango, to Tamaulipas...basically, we split up. There are times where we go together. But yes...we identify workers and we talk about themes related to the contract but also to identify problems that happened in the last season with the intention of anticipating them. There are some problems you can resolve quickly, there are some you can't. One of the big advantages that isn't talked about but a big advantage of the fact that they're part of the union is that they can change ranches. And, for example, is any other job if you didn't end up leaving well or if you didn't get along with the boss, they put you on the black list and then you can't come back. Here the

⁵¹ Indeed, while conducting the interview in the office, a worker called the office with a question about a potential offer for work this year: "Here, in the office, it's two things basically. The first is, like you saw [referenced the call received a few minutes earlier], a worker calls, that worker is from Durango, last year this worker wasn't recruited. We have to see if his contract ended well or not, and if that contract has ended well, we direct ourselves to the NCGA, because he has 8 years of experience, so that this year he can be recruited. So the first point is that this office is to give them recruitment continuity while these workers are in Mexico. Once some of them, or when they cross, they can also speak to this office to report something, or file a complaint, any problem them have. So, to provide continuity to the process. The other part, like I was telling you, is that I think NCGA is going to start sending us the lists of those who are going to cross in February, and our job is to talk to them and make sure they're aware, because many of the workers where they live they don't have signal, sometimes we communicate through a Whatsapp, sometimes through a phone call or yeah, that's the most common form, so that their recruitment date doesn't pass. Because unfortunately sometimes we think that the recruitment office doesn't tell them so that they don't come and then someone else can go in their place" (FLOC 1).

advantage is that you can change ranches if everything is good with your contract.
(FLOC 2)

This work – direct organizing within Mexico – is not without risks, and in the next chapter I explain some of the details of the violence that organizers experienced in the past, including a murder at their offices in Monterrey. However, it provides the FLOC with unparalleled access to detailed information from workers’ communities; it also allows the organizers to have access to workers before they begin the H-2A process, arming them with information. As will be discussed in later chapters, the FLOC also follows workers through their journey, through the visa application process in northern Mexico and on to their employment site in North Carolina.

Like the FLOC, another recruitment model, designed by the United Farm Workers union and known as ‘CIERTO’ (meaning ‘true’ in Spanish), follows workers throughout the process, without significant involvement of the Mexican state; job postings for H-2A positions that CIERTO is managing are advertised through the local Ministry of Labor (STPS) offices, which include the SNE, although recruiters reported that they also rely on word of mouth to find applicants (Recruit 3). While workers recruited through CIERTO are not unionized, the organization pitches itself as an ethical recruiter supported by Americas first (and oldest) farmworker union, and a viable alternative to the abusive private recruiters that dominate the H-2A business. Directors of CIERTO’s recruitment process indicated that the process is run in part through a CIERTO app, which workers can download on the phone and use to answer a detailed questionnaire about their journey through the H-2A program, from recruitment through visa approval and during their time working in the United States, as well as their return to Mexico (Recruit 2). This information is used not only to facilitate recruitment and selection, but is also collected by ‘verificadores’ (verifiers in Spanish) that are employed throughout Mexico to be a point of contact for recruited workers, applicants, and returning workers. According to the

interviewees I spoke with, verficadores get involved communicating with workers directly after the employer and CIERTO offices have spoken with workers, and then the verficadores follow workers all the way through the process. The program also covers most fees for workers except for the costs to obtain a passport, even those that could be legally charged to H-2A applicants, and provides training for workers in their communities of origin before departure. As a result, it has been lauded internationally for its work as an ethical recruiter that has eliminated the cost of recruitment fees for the workers it manages (about 2,000 workers for 13 businesses). However, recruiters also noted that CIERTO's need to continually recruit new employers as clients means that it also struggles to push back against employer demands, particularly those related to the discriminatory characteristics that employers often use to hire workers. As one individual working with CIERTO explained:

H-2A is really selective, it's not open to everyone. You need specific characteristics [to be hired], only men between 18-40 years old are hired. There are no opportunities for women. So, while CIERTO is a process that is more ethical because it's free, it's also not open to everyone. (Recruit 3)

Other organizations, like Mexico City-based non-profit ProDesc (acronym for the Economic, Social, and Cultural Rights Project), also take a supply-chain approach through its RADAR project to targeting abuses within the H-2A program. Through RADAR, ProDesc is working to create worker centers throughout Mexico and trying to create a corridor of migration to protect H-2A workers, from the point of recruitment through to their arrival in the United States. The organization is also working to document cases of abuse by recruiters, as well as cases of hiring and other kinds of discrimination within the H-2A program.

VI. Reclaiming Control of the Recruitment Process?

By becoming recruiters themselves, the SNE gains access to the recruitment process, and some degree of control over both its structure and its effect on workers. As I detail above, there

are a number of ways in which workers who are recruited by the SNE are supported by the process, including protections against recruitment-related fraud and support in the application process, as SNE officials help applicants to project the kind of background and profile desired by employers. This is especially true for workers who are monitored by the Fair Food Program, who have multiple points of contact and strong protections against recruitment-related fraud.

However, the SNE model – regulate the migrant labor supply chain by participating in it – is not without some significant challenges. For example, one of the main ways in which the SNE hopes to undercut private recruiters is by offering employers a free service. This model requires utilizing funds from the Mexican government to subsidize the recruitment and labor needs of Global North employers, a requirement that has become even more difficult in light of recent budget cuts. As one expert explained, “The SNE has good intentions, but not a lot of capacity... their budget was cut 92% in the last two years” (Exp 7). There are also significant security concerns with which SNE officials must contend, as they attempt to displace a powerful industry, one that likely has ties to Mexico’s extremely powerful organized crime groups. As one official explained:

There are a number of people who for many years have managed the program, and are established, and when they hear about us they prefer not to work with us because they already have a business arrangement that contracts them. And the employer who has the contract, in place of paying \$100, \$200, \$300 dollars for each worker that they are connected with by the recruiter’s people, if they start working with the SNE instead they are going to save all of that money. And this savings multiplies by hundreds, for this business. And there are some recruiters who have told us, you are affecting our interests [i.e. our profit]. (Govt 2)

Most importantly, by becoming a recruiter that is competing with other private recruitment firms, the SNE frequently finds itself subject to the pressures created by the ‘race to the bottom,’ even as it attempts to challenge that dynamic and improve the oversight of H-2A recruitment. As a result, the SNE process is mostly designed to make things easier for recruiters:

To have it be a pleasurable and professional experience in the office, and for recruiters to be able to exclusively interview applicants that fit the profile of workers they are looking for (Male, young, and willing and able to work doing hard agricultural labor for as many hours and days as necessary during their contracts). One expert interviewee, who works closely with the SNE in Mexico as part of a transnational non-profit organization, recounted a story about the SNE's unwillingness (or perhaps inability) to deal with the blatant issues of discrimination that exist within their recruitment program:

When we are working with a worker, they will often ask, 'Well, if this job offer isn't real, where can I find a real one?' And one place that we know that does responsible recruitment is the Secretary of Labor (STPS in Spanish, of which the SNE is a sub-agency). That's our answer to workers. The problem is, they have such few spots for employment offered. And, from a from a discrimination standpoint [particularly gender discrimination], the SNE has the same problem as private recruiters. For example, when I speaking with one SNE official about why the agency doesn't recruit more women, they responded, 'Well, the only women worth hiring are from Sonora [a state in Mexico] because they're enormous [in size].'.... at the end of the day, STPS has a well-intentioned interest in protecting employers; they want to make sure that they continue to be inclined to work with them (rather than with other private recruiters). (Exp 3)

This analysis articulates a key tension for the SNE, of preventing fraud and abuse by recruiting H-2A workers through a responsible channel, while also meeting employer demands, even when those demands are discriminatory. At the same time, by earning the opportunity to support recruiters and facilitate recruitment, the SNE's role as recruiter creates (and utilizes) unique opportunities to help workers navigate the H-2A process, to ensure that they are treated fairly and to advocate on their behalf.

While the numbers of workers (and the recruitment industry by extension) is much smaller in scale outside of Mexico, Guatemala also seeks to assert control over recruitment by becoming the recruiter of choice, while also encouraging US employers to choose Guatemalans over nationals from other sending states. As a result, the Guatemalan Ministry of Labor, which

modeled itself off of the SNE recruitment model and has built a database of over 30,000 qualified applicants,⁵² is working like Mexico to displace private recruiters:

That's why there are 2-3 private recruiters that are really big, and we haven't started a fight against them, but we know we don't have the capacity to compete against them. So, we are trying to give them information about illegal charges, fair recruitment [in order to begin to break their power and hold over the labor market]. (Govt 5)

One would think that given the size and relative recent establishment of Guatemalan migrant labor stream, displacing private recruiters would be a much simpler task than in Mexico, where recruitment networks go back decades and have deep roots throughout the entire country. However, as the quote above indicates, displacing private recruiters in Guatemala, even in a country where only a few thousand workers are being recruited, is no small feat. Guatemala has recently received help and support from the US Agency for International Development (USAID), which has launched a responsible recruitment initiative and is working with the Guatemalan Ministry of Labor to support the expansion of its H-2A and H-2B recruitment programs. In doing so, USAID is clear that its goal of the programming is to support the ethical recruitment pathways of the Central American governments it is supporting. But the most important policy motivations for the program are to, “Enhance our nation’s food security and expand opportunities for lawful migration,” as a 2023 press release indicated.⁵³ Indeed, USAID’s policies seem primarily aimed at supporting Guatemala’s (and other Central American countries’) recruitment

⁵² Guatemala’s work with the Mexican Ministry of Labor is not the only attempt at cooperation on issues of labor migration across the region. For example, a conference that took place in May 2024 in Costa Rica (convened by the Ministry of Labor and Work) brought together Mexican officials with other public officials who monitor and recruitment temporary migrant labor. The conference was titled “Forum of the National Employment System of Costa Rica” and was aimed at facilitating ‘strategic collaboration’ to “permit the exchange of knowledge and experiences, enriching the policies and programs focused on employment in the country [Costa Rica],” according to a recent press release. Thus, it is evident that Guatemala is not the only regional partner looking to learn from the Mexican experience. Press release available at:

https://www.mtss.go.cr/prensa/comunicados/2024/mayo/cp_025_2024.html.

⁵³ Press release available here: <https://www.usaid.gov/news-information/press-releases/sep-22-2023-usdas-pilot-program-enhance-our-nations-food-security-and-expand-opportunities-lawful-migration>

competitiveness, in the hopes of not only attracting more employers to Guatemala, but also to ensure that a state-run recruitment apparatus captures much of that business.

Guatemala has had some success with their programming, in large part due to the influx of international support they have received, and this has (like in the Mexico case) allowed Guatemalan officials opportunities to intervene on behalf of workers experiencing a wide variety of labor rights violations. As one interviewee explained:

The thing is that right now, we have a big chance and a lot of plus as a government, because we have the support of international organizations and diplomats in Canada and the US. For the private sector, they don't really care about the worker – they were just sending workers, and the recruiters don't really care if they have a good labor environment. That's what we were fighting for, because as a government we care about human rights and labor rights. That's why one of our strategic allies are the departments of Labor in the U.S. and Canada. The ones that aren't so happy with us are the employers, because they say 'we did this with the private sector' [i.e. they don't want things to change]. We had a lot of people [workers] saying: 'I didn't get paid for two weeks at my job, or we didn't get my ticket back to Guatemala paid for.' But the private recruiters didn't want to say anything because they didn't want to lose the employer [i.e. the recruitment business]. We know that there are a lot of employers that don't respect the rights of the workers. (Govt 5)

However, the Guatemalan program has struggled to grow, precisely because the costs of ethical recruitment, combined with the extra travel costs associated with hiring workers from Central America instead of Mexico. In order to compete, the government has utilized a strategy to market their workers to employers, arguing that Guatemalans are harder working and more reliable than workers from other sending states. The same official went on to tell me:

Sometimes employers get angry when I say you have to pay the ticket for the workers to go, and I say 'that's not my law, that's the law of the United States.' Sometimes the employer doesn't know how the H-2B visas or program works, so sometimes I have to give them the documents from the US DOL to make them understand that it's not the [Guatemalan recruitment] program that is asking for the tickets both ways, that they must give them the housing, but at the end they [employers] are like ok, we don't have any choice. The plus we have is that – and I've been seeing this in Canada and the US – there is Mexico, and it's cheaper to take workers into the US from there than Guatemala. But, they are always happy to take Guatemalans, because Guatemalans are the best workers in

the world. The employers prefer to pay a lot more (\$200-300 per worker) than a Mexican or someone from Jamaica. (Govt 5)

Thus, while the country has partnered with Mexico to learn about their recruitment model, it is also clear that Guatemalans see themselves in competition with other H-2A sending states. This competition orientation is on display in many of the materials prepared by Guatemalans for employers, including the brochure below that features the following tagline:

“What makes us different? Guatemalans are the best agricultural laborers on the market – good workers who are highly productive.”

The brochure goes on to describe the H-2A hiring process as ‘client oriented,’ and services are provided at no cost to the employer. Nevertheless, employers are not fully convinced by the marketing strategy. One employer highlighted their recent experiences on a pilot recruiting trip down to Guatemala, after seeing some of the marketing materials (like the brochure below). The employer said that while 18-19 workers were hired from Guatemala as an ‘experiment’ with recruitment in the country, ultimately a third of those workers left (i.e. returned home without completing their contracts), and many were not ‘successful’ (i.e. productive), or lacked appropriate experience in agriculture. Ultimately, the employer decided that the additional cost of recruiting Guatemalan workers was not justified, saying, “It’s so expensive, you gotta get people who are going to be successful” (Farm 5). The grower returned to exclusively recruiting Mexican H-2A workers the following year.



Figure 5.2 – Copy of Recent Brochure, Prepared by the Guatemalan Ministry of Labor to be Distributed to Employers

Like Guatemala, the Jamaican Ministry of Labor also markets its workers to agricultural employers looking for H-2A hires, and as the quote above indicates, many other sending states see Mexico and Jamaica as the leaders in the competition for visa slots. Unlike Guatemala, however, the Jamaican Ministry of Labor has decades of experience exclusively managing the recruitment of workers for H-2A visas (as described above, private recruiters are permitted to recruit workers for non-agricultural temporary labor jobs). While Jamaica maintains exclusive control over recruitment, the ‘race to the bottom’ dynamic, which is reinforced by the lack of bilateral agreement with the United States, creates pressure on the Ministry as it seeks to compete for employers and maintain a recruitment process that is attentive to employer needs.

Nevertheless, the decades of experience with the program has given the Jamaican Ministry more latitude to select workers without direct participation of employers, unlike the Mexican and Guatemalan ministries:

The MOL has a team that goes into the community twice a year and does a recruitment drive, but those people have to be recommended by their members of parliament. They then have a further interview - they make a short list and a weed out - and then we create an employment pool, so at any time we have 2 to 3 thousand workers that are ready for employment. Or, if they need 75 apple pickers, we select 100 from the pool for him [employer] to interview. And then once we select them, those workers need to get a police certificate when they are being selected for the job. And then once we select them, those workers need to get a police certificate when they are being selected for the job. Once they have the police certificate, then now they have their information that the Ministry assists them in completing their application for a visa and they submit their passport, the visa, and the police certificate. They pay for their visa, which is refunded by the employer within a week of their arrival... So, the recruitment process happens with people from the ministry going into the center of the community or somewhere else, they get their recommendations from the member of parliament, the first screening interview is done, and then we select the pool. And then the employer gets a list from the pool and they select who they would like...

Most times, the employer will have us just select for them. It's also the case that if you have a farm that has been using the program for 40 years and they have an 80% return rate. But 9 out of 10 times, when you have a new employer, they are going to come and do their recruitment [interviews]. (Govt 12)

Jamaican officials indicated that it is important to be attentive to the immigration history of workers, as well as the likelihood that they will abscond. While employers are not seriously penalized for employing workers that leave their worksites before completing their contracts, sending states who have high 'absconding' rates risk being decertified by US officials, effectively cutting them out from the migrant labor supply chain:

In December or January of each year, the US will publish a list of all the certified participating countries for the next year. They will say ok Jamaica is on the list to continue their participation, or they may say that Jamaica has been struck off the list and that could be for any number of offenses. Let us say that your AWOL percentage goes beyond 5% of the number of persons that you have here, then they will flag your country and say too many people are running off... you have to fix this problem. Or it could be that they are coming here, but too many people get incarcerated or are found to do jobs in

other areas, or they stay beyond their contract date... So, nobody is comfortable in any given year. (Govt 12)

While this interviewee went on to explain that the likelihood of actually being de-listed is quite low in a given year, the comments nevertheless demonstrate that officials are aware of the risk, and that the possibility of getting delisted creates pressures to find workers that will stay for their full contract. While Jamaican officials were the only ones to mention this concern about delisting, it seems reasonable to assume that this possibility also informs the concerns of other sending states.

VII. Conclusion

As this chapter has outlined, the SNE is using opportunities, in some cases provided by worker-led private regulatory actors, in order to insert itself into the recruitment process for H-2A workers. Mexican authorities have attempted to directly regulate the massive industry of H-2A recruiters that operate throughout the country, including by registering recruiters with the Mexican government and attempting to partner with the US Embassy to form a recruitment registry. It also works to police fraudulent opportunities posted online via WhatsApp or Facebook, hoping to lure aspiring applicants with offers of work abroad, in many cases working to form partnerships with other agencies and migration-focused NGOs in order to do so.⁵⁴ Additionally, the SNE operates in an international environment where attention on temporary migrant labor programs and recruitment-related abuse, including the problems related to

⁵⁴ As one SNE official explained: “when we find out about a fraudulent business, the only thing that we do is upload something on Facebook like ‘ojo: this business is a fraud, don’t work with them or exercise caution before accepting an offer, consult with the SNE.’ If there is a worker who says, ‘I have this offer of work with this business,’ we say, ‘give us their details/information, and we will consult with the US embassy.’ If the embassy says this offer is not ‘boletinada’ or this petition doesn’t exist or is a prior petition from the business [i.e. not an active offer of employment], we are using that method to confirm a lot of fraudulent activity, but we only know about what is reported to us or what we are asked about. In all Mexico there are a lot of people recruiting, and we don’t know, and we won’t find out until after they have defrauded people” (Govt 2).

predatory sub-contracting arrangements, is growing. Within the United States, the increasingly high-profile nature of anti-trafficking enforcement might also sway more employers to use the SNE (or some other responsible recruitment model), as the risk of negative publicity grows. However, the structure of the privatized recruitment industry has limited Mexico's ability to intervene in H-2A. And while Mexico continues to push for a bilateral agreement with the United States regarding recruitment, and have almost succeeded a few times in the past decades (Govt 2 & 3), US policymakers have shown no appetite for any kind of agreement that would eliminate the private recruitment apparatus.

Given the fragmented nature of the recruitment industry (including subcontracting and lots of 'word of mouth' arrangements in communities of origin), the power that employers wield in hiring decisions, and the unwillingness (and lack of capacity) of American regulators to intervene in the recruitment process, direct attempts at regulation have been difficult to implement and largely ineffective. Thus, the SNE has used an opportunity – created in large part by the Fair Food Program's decision to partner with the agency, and require all participating employers to exclusively hire H-2A workers through the SNE – to gain access to the recruitment process by becoming a recruiter themselves. Building on FFP's intervention, the SNE has sought to capitalize and earn the business of additional employers. While it uses the opportunity to participate in the market to support and protect workers, it ultimately must increase its market participation by being more employer-friendly, in order to maintain and grow its market share. Like in Guatemala, the SNE's market share growth is constrained by both private recruiters who have a strong foothold throughout the country, as well as concerns that employers might begin recruiting from another country entirely. Furthermore, as discussed above, the SNE also has several 'responsible recruitment' competitors in Mexico, including CIERTO, FLOC unionization

efforts, and the “Responsible Recruitment” global certification standard, created by an international NGO, Stronger Together.⁵⁵

In the next chapter, I move to the next link in the supply chain, the visa approval process, drawing on field research conducted in Nuevo León, northern Mexico, home to the city of Monterrey and one of the busiest American consulates in the world. I describe how, after gaining access to the migrant labor supply chain through recruitment, the SNE is developing a process to follow workers through their journey and advocate for them as problems arise. However, the tensions that arose during the recruitment process – advocating for workers, while creating an employer-friendly process – persist throughout the migrant labor supply chain, and create both opportunities and constraints for SNE officials. Throughout the chapter, I compare the Mexican experience with my shadow cases, Jamaica and Guatemala. In particular, I discuss how sending states compete over visa-processing times, as well as transport costs to both the US Consulate site (where visas are issued) and on to the US worksite, as a strategy to justify continued involvement of sending state officials in the transit and visa approval process.

⁵⁵ More information is available here: <https://responsiblerecruitmenttoolkit.org/clearview-us/>

Chapter 6: The Visa Approval Process and the Task of ‘Acompanamiento’ in Gray Zones

I. Introduction

*“Really, the worker is missing because no institution is following him, is going with him.”
(FLOC 1)*

When discussing the problems with the H-2A program, experts with many different affiliations, including non-governmental organizations (NGOs), government officials, even recruiters, bring up the problem of ‘acompanamiento,’ a term in Spanish that literally translates to ‘accompaniment,’ or the process of accompanying. They discuss how workers are often subject to abuse because of a failure of regulation and lack of oversight of public actors to accompany them on their journey through the migrant labor supply chain, particularly in the ‘gray zones’ where regulatory control is limited. One of the main ways in which public regulators fail to ‘accompany’ workers is during the visa issuing process. In the previous chapter, I provided a detailed comparative analysis of the worker recruitment process within the migrant labor supply chain, finding that sending states seek to address the problem of global labor arbitrage – and increase their oversight of the recruitment process – by participating in the recruitment process. In doing so, I provided a partial answer to both of my research questions: What is the migrant labor supply chain, and how is it governed? How do developing country governments regulate labor supply chains, and how has their control over these supply chains shifted over time?

In this chapter, I continue to answer both of these questions, focusing on the next major node in the migrant labor supply chain, the visa approval process. I begin by outlining how workers travel to a consular city to obtain their visas, building on the description provided in chapter 4. I then discuss the SNE’s work in this area, and how the agency is working to manage

the visa approval process, including pushing back against the group of private actors (logistics coordinators) who exert significant control over this node of the migrant labor supply chain. I also compare the process in Mexico, where a network of US consulates along the border with the United States is well established and workers can board buses to drive across the border to their worksites, with the experience of my two shadow cases, Guatemala and Jamaica, where the consular network is much less extensive and workers must fly to their destinations. I find that while sending states want to make the visa approval easier for employers, they do challenge employers (and the recruiters and logistics coordinators who work for them) when they feel it is necessary to do so to protect workers. These efforts can be understood as an effort by sending state to provide a degree of *acompanamiento* to workers on their journeys through the gray zones of the migrant labor supply chain.

II. The H-2 Machine: Approval Process and the Effect of Privatization

As described in chapter 4, once workers are hired for a job opportunity through the H-2A program in the United States, they must apply for and successfully receive a visa, issued by the US Consulate. While employers must pay for all transportation and housing costs during the journey from the point of recruitment,⁵⁶ workers are responsible for paying their own visa application fees and obtaining their own passport, and indeed this is typically required before workers are even permitted to apply for an H-2A job. Recruiters, and in many cases logistics coordinators (discussed in chapter 4), handle the visa application process for workers, which is first submitted to a central document processing office. As one recruiter explained:

⁵⁶ Workers typically pay these costs themselves, and then submit receipts to be reimbursed by the company. If they are unable to provide receipts, the company must reimburse workers for the average amount of expenses that all workers on the contract incurred. Reimbursements must be provided by the time the worker has completed 50% of their contract time. Given the complexity of handling reimbursements, most larger agricultural companies arrange to pay for these costs up front, thereby limiting the paperwork necessary to document payments to every H-2A hire.

Once we have that list [of applicants], we make an appointment for the visas [i.e. visa issuance], because we have to have the specific names and details for each person before we can make the appointments. To make the visa appointments, we need Names, Passport number, Birthdays, etc. all the details that the Consulate requires

Now, there is a company called Mexico Labor Visas⁵⁷ – they make the appointment for us, they pay for the visas, handle the admin end, book the hotel, the transport to the US, anything along those lines (except for meals, which the worker needs to pay for themselves until they get reimbursed by the company), and then the company that hires these individuals reimburses and pays for the services to Mexico Labor Visas. The idea is to not have the worker pay directly for much of anything – you know how some companies require the worker to go ahead to prepay directly [for these expenses] and then reimburse them later – none of the companies that I deal with do that at this point.

Then Mexico Labor Visas also call the workers up and contacts them and asks the worker to send them the following items: A copy of their passport, a copy of any previous visas that they have had, a copy of their driver's license (I think; this is the only document I'm not sure that they require). And the worker sends their stuff in, then Mexico Labor Visas lets them know what time they need to be in Monterrey. They can't be late; they are supposed to be there by 7:00 AM on the date for their appointment. And by the way, the appointment date that Mexico Labor Visas gives to the workers is not the date of their interview [at the US Consulate] – it's the date that all of the passports have to be collected, along with a copy of their social security card, and then all of that gets submitted, the passports are bundled into groups of 10 and taken to the Consulate itself. I'm saying the Consulate – but there is a thing called the CAS, but it's a company/agency/something that is contracted by the Consulate to prepare or issue the visas; this is who all the documents go to, to be sent on to the Consulate for visa issuance. But the passports are held [by CAS and/or Mexico Labor Visas] until the day of the appointment. So, if I tell you that your appointment is this coming Sunday on the 24th, you have to be there by 7:00 AM on the 24th. (Recruit 1)

The company, 'CAS' to which the quote above refers is the "Centro de Atención a Solicitantes," or Center for Applicant Attention, a US government contractor that processes the initial visa application information before it is reviewed by the consulate, as indicated by the interviewee above.

⁵⁷ Like Mexico Labor Visas, there are a number of other private companies that are seeking to build digital solutions to streamline the process of handling H-2A related documentation, including the information required to obtain visas. It is unclear how much market share these companies have captured, but the response from multiple interviewees when asking about them indicates that there is great enthusiasm for their use. Some of these companies, including SESO labor (<https://www.sesolabor.com>), openly state that they believe technological solutions to H-2A processing can also modernize American agriculture and reduce worker abuse.

Based on this account, which is almost identical to the one provided by other observers of the visa process (discussed below), it is clear that for much of the visa application process, workers do not retain control of their own identifying documents. As is evident from the quote above, workers must place a great degree of trust in the recruiters and logistics coordinators, like Mexico Labor Visas, that are tasked with processing their documents. Indeed, upon arrival in Monterrey (most workers must manage their own transportation to the border city), workers must actually surrender their documents to hiring managers. This is in spite of the fact that most anti-trafficking materials, including those designed by the US Department of State itself, state that one of the ‘red flags’ indicating a human trafficking or forced labor situation is when an employer demands that you turn over key documents, like your passport, and holds them so that you are unable to access them. Nevertheless, the H-2A visa approval process, overseen by the State Department, requires exactly that.



Figure 6.1: Photos from the Applicant Application Center in Monterrey, Mexico. A large sign is visible on the left-hand side of the second photo, warning applicants about the dangers of becoming a victim of visa-related fraud. Most workers do not visit CAS themselves, but instead submit their documents to a recruiter who provides those documents to the office for them.

Apart from the dangers introduced by the visa application process, the transit through Monterrey can be full of other, smaller abuses, including substandard living conditions and charging small illegal fees (for meals, transport, or other services).

State Department (DOS) officials, like much of the public regulatory apparatus supporting the migrant labor supply chain, work to facilitate the ability of private actors (employers and recruiters) to process worker applicants for a wide variety of temporary labor visas, especially H-2A. In their comments at an agricultural employers' conference (open to any members of the public wishing to register), which was attended by at least three members of the consulate staff from the US Consulate in Monterrey, DOS officials were clear that they are focused on improving the processing times for H-2A visas, primarily by continuing to waive the requirement of an interview with a consular official for most worker applicants. While other experts I interviewed do not believe that the consular interview is effective at preventing worker abuse, for many workers it constituted the only interaction with a public official in the privatized labor supply chain. While most of the questions are directed towards the worker's immigration history – particularly if there is evidence that the worker was present in the United States without documentation before – consular officials also provide some information during these interviews related to recruitment-related abuse.⁵⁸ While consular officials were always permitted broad discretion to waive this requirement and issue the worker a visa based on a review of their passport and paperwork alone (which is, of course, provided in a packet by the recruiter), the increasing volume of H-2A workers has put more pressure on officials to speed up processing times. Now, as the volume of workers increases and these interviews are increasingly waived, more individuals than ever before are moving through the H-2A labor supply chain without ever interacting with any of the public agencies tasked with overseeing the program. As one DOS official explained to agricultural employers during a presentation in which he discussed

⁵⁸ As one interviewee explained, "This is also the case with the H-2A program. For example, the USG Consulate interviews with applicants are not helpful to identify recruitment fraud, because if you say that you paid you don't get a visa (yet would still owe recruitment fees)" (FFSC 1).

Monterrey's visa processing system (and compared it to the slower-moving systems in Central America, especially Guatemala and El Salvador):

We put in a lot of waivers all the time. Monterrey is the gold standard for H-2s. We know that the 3-day model [the time it takes in Monterrey to process an H-2A visa] is the gold standard. Monterrey's consulate is set up to be an H-2 machine, it is slick as we can possibly make it and has a huge infrastructure to support H-2 workers. One of the things in the NCA countries that isn't necessarily part of Monterrey is the ministries. The ministries do sometimes get a bit snarled up...but yes, we are training to get every H-2 post as close to the 3-day model of Monterrey as possible. (DOS official, Bureau of Consular Affairs)

As the quote above suggests, the 'H-2 machine' of Monterrey processes more H-2A visas than any other consulate in the world, including the other US consulates in Mexico. As discussed in previous chapters, Monterrey's role in the H-2A labor supply chain means that it is a focus of H-2A policy. It's also a hub for the private recruitment industry, and some members of this industry assert control using violence. As one of the organizers for FLOC (discussed in Chapter 5) explained:

I remember when we got recognition from the growers' association, my bargaining team (12 members in 2004), and I asked them all, how much did you guys give the recruiter? At the time the expenses should have been no more than \$350, and no one paid less than \$500, and someone paid up to \$3000 for the recruiter. And we have been arguing against those issues, and it got one of our guys assassinated, Santiago Rafael Cruz. In 2007 & 2008 I did a speaking tour to explain to workers how much they had to actually pay, and we were filing grievances under the collective bargaining agreement in order to hold the US employers accountable to recruitment violations. So we got two recruiters fired, and our fight against extortion and bribes got the attention not just of the NCGA [North Carolina Growers Association].

So, we opened offices in Monterrey, and our offices were stalked, we had people following us on the street, and in 2007 they caught Santiago Rafael Cruz on the street, bound him and beat him to death in our office. When our congresswoman Marcy Cator travelled with me to Monterrey, we filed a complaint into the Interamerican Commission of Human Rights, they ordered the government to give us protective measures. I'm supposed to have a cell phone that I can call, I don't use it because the police are corrupt. (FLOC 3)

FLOC organizers still work at the office in Monterrey where Santiago was murdered.

Private recruiters and logistics coordinators dominate the visa issuance process in Monterrey, more than any other consular city. However, it's worth noting that some H-2A employers handle their own visa processing, working directly with different consulates (other than Monterrey) in order to process workers. A representative of one vegetable harvesting company, who recruits workers from their operations in Mexico, explained that handling the process themselves allows for greater management of the process and prevents recruitment-related abuse by limiting the sub-contracting arrangements that dominate the H-2A migration process:

Farm 3: We started with H-2A 4-5 years ago, and we have been clear from the beginning that we can't have this workforce separate (i.e. separated in the workspace) from our domestic labor.

And [my boss] has allowed us to do the H-2A program our way. So, for example, we do not go through the Monterrey Consulate, but instead through Hermosillo [a much smaller US Consulate in a different state]. This allows me to pick the hotel for all the applicants, the service lady who brings the food, to pick the transport company, which arrives on time, etc. It's a much smoother process. And I choose all the employees [of those who had been working at our Mexico operations] who will receive job offers here. I make the list [of workers], I contact them personally to discuss the opportunity, and I follow them physically on their whole journey.

So you don't follow the process that the other growers use?

Farm 3: No, not at all. We wanted to do something that matched with us/our company, and not with what everyone else was doing.

What do you mean by what everyone else was doing?

Farm 3: Well, using the Consulate in Monterrey, and following the H-2A guidelines about receipts and reimbursements. Instead, we pay to provide hotels and food up front, eliminating the safety concerns for workers [who would otherwise have to find their way to the Consulate on their own and submit receipts], and making the whole journey more planned out. Other growers are following the letter of the law, I'm not saying that they are doing anything wrong. But we want our foray into H-2A to match our values.

Regardless of the model – managed by the company or managed by recruiters and logistics subcontractors – the visa issuing process is controlled almost exclusively by private actors, with

the facilitation of the receiving state. In this context, I discuss in the next section the attempts by the Mexican SNE to intervene.

III. Pushing for Access – SNE’s Attempts at Managing Logistics

As the agency has expanded its involvement in the recruitment process for H-2A workers in Mexico, the SNE is increasingly looking for ways to insert itself into this privatized recruitment process. Recruiters indicated that, through the SNE process, the state offices where workers are recruited receive information about their visa appointments, and help the recruiters coordinate travel:

Once...we have the appointment [at the Consulate to receive visas], we notify the offices of the SNE in Mexico City and I go ahead and notify the different states offices [of the SNE] to tell people [all new and returning hires] that they have appointments, and ask the state offices to begin letting people know where they have to be etc. (Recruit 1)

Upon arrival in Monterrey, the SNE plays a limited role, according to all of the officials I interviewed. Nevertheless, the SNE does maintain a presence in Monterrey, and both federal and state staff were familiar with the layout of the H-2A infrastructure of the city, including where workers stay (i.e. which hotels are popular among recruiters), where they work, and the visa filing process for workers:

There is a very defined area close to the consulate in Santa Catarina...But they, the officers who do visa procedures that are here near the center and there you can be around that whole building and all the people who are around eating, are people who are brought from other states to go through those procedures... The last time I went with them [a group of workers], there were the employers who went with the workers [to CAS, the government processor discussed above]. And the documents, they put them in order and they pass them out [i.e. distribute the application materials to the appropriate worker, for presentation and processing by CAS]. (Govt 13)

The quote above demonstrates that SNE staff are not only aware of the visa process but are also, in some cases, directly involved in accompanying workers through it. However, SNE staff currently do not have a proscribed role in the visa application process, even for workers who

being recruited by Fair Food Program employers (and for whom the SNE managed the worker recruitment process, as described in Chapter 5).

SNE staff in Monterrey also work to manage complaints and field concerns from workers. Applicants who are searching for a job through a private recruiter often enlist the SNE to verify that the job offer they are considering is real:

We receive many calls from the south of Mexico, from people who talk to them, who talk to them through Facebook, through WhatsApp, who pretend that they are located here in the north, and the applicants call us and let us know. Many call us to verify that the company [job opportunity being advertised] is registered, and we tell them if we do not have it on the list, and we tell them to be careful because generally what those people want is your money [i.e. they are fraudsters]. It is very difficult to eradicate that because people convince them [workers] very easily, even after they have spoken to us. This is very difficult. For example, people will say to us, 'I have problems with immigration...and he [the recruiter I have been talking to] says he is going to fix it for me.' No, they are not going to fix you [i.e. arrange for you to get a visa, despite negative immigration history]. They want to take money from you. So there are many people who abuse workers, especially those from central and southern Mexico. Facebook is also a very powerful tools for [recruiters]. They take down logos from social media to create the façade of being part of the consulate or the SNE [or other official offices], and they leave them [the workers] out there [in the city of Monterrey] waiting. It is very difficult to eradicate. And with respect to personnel and resources, I don't even have funds for a phone. (Govt 13)

The quote above indicates two important themes. First, chapter 5 noted that during the recruitment process, many SNE officials are concerned about the migration history of the applicants before them. While much of this concern is a reflection of the demands of recruiters and employers (workers will not receive a visa with a negative immigration history), the preoccupation with migration history is also born out of concern for applicants; applicants who do not disclose their immigration history, and ultimately travel but do not receive a visa, will be left to pay large bills on their own. Furthermore, SNE officials have found that many recruitment fraud schemes focus on the visa process, as applicants are frequently promised that paying fees will 'fix' the situation. Thus, it is likely that much of the emphasis on immigration history is also

part of a concerted effort to educate applicants about the visa approval process. Second, it is clear that the SNE is under-resourced, and therefore likely unable to provide a full set of services to H-2A applicants, recruiters, and employers during the visa approval process. While the official's comments – not having enough funds for a phone – were made somewhat in jest during the interview, they also indicate a real truth, discussed in previous chapters, about the level of funding available to the SNE.

The limits on resources also place limits on the possibility of regional coordination of SNE offices, between those offices in the recruiting states (predominantly in the South) and the visa processing states in the North of the country. Officials indicated that there is some regional coordination between SNE offices. As one explained, offices from southern states, like Oaxaca, might call their colleagues in Monterrey if they have received questions from workers about a change in the hotel that a recruiter is using. In those cases, the staff at Oaxaca's SNE will utilize the expertise of staff in the North, including a knowledge of the city and the hotels commonly used by recruiters to house workers, in order to ensure that the hotel where workers are housed is of the same quality as the hotel that the recruiter originally listed. These connections provide important opportunities for colleagues to provide accountability and surveillance of practices along the entire chain.

However, half of the funding for each SNE office is provided by the state government, and there is very little incentive for the industrialized Northern states to fund an office that would primarily serve workers who live in Southern states and are merely transiting through the area on their journeys to the United States.⁵⁹ Indeed, during the interview with SNE staff in Monterrey,

⁵⁹ Importantly, workers travelling to Canada through the bilateral PTAT program receive their visas at the Canadian consulate in Mexico City, so while the SNE manages the visa process for Canadian workers, there is no need to have an agency presence in the North of the country to support those workers.

officials consistently pointed out that Nuevo León, and the city of Monterrey in particular, is highly industrialized and one of the wealthiest in Mexico. As a result, there is virtually no appetite within the state for agricultural jobs – which are known even in Mexico for their poor conditions and pay – for workers in the North, who enjoy better opportunities domestically.



Figure 6.2: Views of the highly industrialized city of Monterrey, including the state government offices

All of these factors make it difficult for the SNE to take control of the visa issuing process, especially when it is working to compete with a market of well-resourced logistics coordinators and recruiters throughout the city. The agency primarily relies on one main selling point – their services are free – in order to push employers to use their services for visa processing, long a goal of federal-level SNE officials who administer the H-2A recruitment

program. They also believe that employers will receive ‘peace of mind’ from using the SNE for logistics management, as workers will feel more comfortable with the SNE than other recruiters:

In fact, when you go to the office of many private recruiters, you can see that people who are not from here and are already partnering with private agencies, using their procedures. Okay. But a lot of emphasis is placed on the fact that whoever approaches the National Service in Mexico to see how we support them, has to demonstrate many situations of accompaniment, of peace of mind, and the employer has the benefit of the worker or applicant feeling confident, because they are accompanied by an institution, so that gives a lot of peace of mind to the employer, to the worker. (Govt 13)

Nevertheless, the lack of capacity to handle the complicated logistical process, including coordinating transport and lodging for large groups of workers, a complicated visa process, and in some cases, company trainings of workers before departure from Monterrey, has severely limited the SNE’s ability to compete in the highly competitive H-2A logistics market.

Furthermore, as will be discussed in the next section, actors in the private logistics market have no interest in releasing their hold on this lucrative business. As one interviewee explained, “There are some companies that will let us coordinate logistics [in Monterrey], but not many... there are ‘powerful interests’” (Govt 2).

A. Active Resistance from the Private Sector

While following the work of the SNE, officials discussed some instances in which their attempts to support workers were actively undermined by employer-contracted logistics coordinators. When asked about their work in Monterrey, officials explained:

In particular, we have a bad relationship with [one recruiter] - we gave workers cards de bienestar [more on these cards below]; he was angry about this, saying that he did not want SNE to “interfere in his process.”

Currently, for the companies that [the logistics coordinator] supports, he handles meal reimbursement for workers as well as arranging travel (from Monterrey to US) and lodging for the workers while they are staying in Monterrey. He gets paid per worker and gets the money for the reserved hotel, food and stay, and transportation. Once the visas are approved, he coordinates their travel on to their destination in the United States.

[SNE official provides the name of the hotel where this coordinator typically houses workers].

Now, the SNE does have offices in Monterrey, but we have been told by this logistics coordinator [who handles the logistics for a number of farms for which the SNE recruits] that they don't want us to be in the hotels where we are going to speak with workers. The logistics coordinator told that that if the employer does not tell them that it is ok for us [the SNE] to be there [talking to workers at their hotel in Monterrey], then you aren't allowed. It was a difficult conversation. (Govt 2)

After this initial comment on the conflict with the logistics coordinator, the official shared the rest of the story during an interview:

We sent an email to various employers about these new bank cards that we were going to be issuing to workers.⁶⁰ We were giving these cards to workers when they were hired. This is part of a Mexican federal government policy and is supported by USAID to better integrate things so that the businesses can directly pay workers, and save on transaction fees for workers [who want to send money back home]. However, the recruiter was furious about this and blocked this process [i.e. prevent workers from being issued the cards]. (Govt 2)

A few minutes later, the official explained:

So, there is an SNE presence in Monterrey. We are trying to really establish a SNE base in Monterrey, so that we can handle the whole process for employers [i.e. hiring through registration and travel to US], but so far we haven't had a lot of success. Ultimately, there are a lot of entrenched private interests that don't want to see the system changed. (Govt 2)

Apart from the SNE's experience, there is also evidence from employers that logistics coordinators are prone to be territorial, as well as engaging in cost-saving measures despite receiving pay to provide housing, transport, and food for each worker. For example, one employer recounted an instance in which workers, whose transport had been arranged by a logistics coordinator, ended up riding for an unnecessarily extended trip (so that the coordinator could combine the workers from two farms); a few workers were also forced to ride in the

⁶⁰ These cards are referred to as *Tarjetas de Bienestar*, or 'Wellbeing cards' in Spanish. They are, as the interviewee describes, bank cards issued to workers. Employers can use the cards to pay workers directly, which allows workers sending money back home to save substantially on transaction fees. More information is available at: <https://tarjetafinabien.com/>.

middle of the aisle for the multi-day bus trip to Virginia from Monterrey, as there were not enough seats:

So, the workers were coming to Virginia and before getting to Virginia they went all the way to Florida. Then Florida to Virginia. So they added 6 hours to the trip for them. And this year, two people got to me, exhausted, sitting in the aisles because there was not room. Imagine, for a trip from Monterrey! (Farm 5)

The same employer also recounted instances in which the coordinator did not arrange for adequate lodging for workers, forcing women (some of the very few H-2A female workers hired yearly) to room with men on their journey, and requiring workers to sleep in rooms at double capacity:

One of the other women called me, they put me in a room to sleep with the men. What I found out is that they make them sleep all together...In the same bed. In hotels, a room for two people, they'd put four.

Why did they do that?

Cheaper for them. We look for savings, but not to that extent. And even then, I discovered that from pure coincidence, because people don't complain. Because they guys don't complain. They don't complain. (Farm 5)

These insights are some of the few from my research that demonstrate active resistance to the SNE's efforts to involve themselves in the H-2A labor supply chain. They demonstrate the serious challenges that the SNE faces to its efforts, but also the ways in which many private actors (like logistics coordinators) use their control over particular components of the labor supply chain – and specifically, the lack of public oversight – to cut corners in the services offered to workers in order to maximize their profits. The task of 'acompañamiento,' therefore, is one of the hardest for the SNE to accomplish, given the time, personnel, expertise, and funding that would be required to effectively monitor workers' journeys. If done successfully, however, workers likely stand to gain substantially from having someone 'accompany' them as they move north.

IV. The Implications of Sending State Control of Visa Approval

In comparison to Guatemala and Jamaica, Mexico as a sending state stands out for its lack of control of the visa approval process. In Jamaica, officials from the Ministry of Labor manage worker recruitment and subsequently assist workers in the completion and submission of their passport, visa application, and other required documents to the US Embassy for review and approval. In Guatemala, the Ministry of Labor has been increasingly involved in the visa approval process, while working to crackdown on visa-related fraud that has taken similar forms to those described above in Mexico. Thus, this is an instance in which Mexico's unique relationship with the United States, and specifically the large and established US consular network in Mexico, likely influences the opportunities for the SNE to wrest control of the visa approval process, making it difficult for the agency to displace a large recruitment industry when its market share (i.e. the number of visas it recruits yearly in comparison to private recruiters) is so small. In both Guatemala and Jamaica, there are not only fewer workers, but only one US consulate (in the capital city of each country) that issues visas, making the management of the labor supply chain much more feasible.

In all three sending states, but in especially in Mexico and Guatemala, officials seeking to involve themselves in the visa issuing process justify their intervention by claiming that working with their agency gives employers a competitive edge, even while they also explain that this control allows them to protect and support workers. In the SNE's case, this means emphasizing that its services are free, so as to out-compete the private logistics coordinators that charge employers; in doing so, they capitalize on a growing awareness among employers that these coordinators may be charging them to provide services to workers that are not ultimately provided. During my ethnographic research, I also observed Guatemalan and American officials

specifically addressing employer concerns regarding visa processing times for Guatemalan H-2A workers, as well as subsidies for travel from Guatemala to the United States. During these conversations, officials typically discuss how they are actively working to get visa processing times down at the US consulate in Guatemala, to the number of days in which the ‘H-2 machine’ of Monterrey can finalize applications. They also provide subsidies to employers for flights and logistical support to arrange travel, thereby lowering costs for employers (the cost of transporting workers from places other than Mexico is frequently cited by employers as a major barrier to H-2A expansion in Central America). While doing so for competitive purposes, this strategy also means that Guatemalan officials gain an incredible amount of insight and control over the visa processing and travel nodes of the migrant labor supply chain. It also worth noting that, as discussed in previous chapters, Guatemala receives substantial financial support for this work from USAID, as part of the American strategy to reduce irregular migration from Central America to the United States. Mexico, by contrast, receives no such financial support.

In this chapter, I have continued to answer both of my research questions, describing in detail how an important node in the migrant labor supply chain – the visa processing node – functions. I have also outlined the public and private actors that exert control over this part of the migrant labor supply chain, explaining that in the Mexico case, this node is almost exclusively controlled by private recruiters. Because of the structure of the SNE, including its funding structure, as well as other challenges associated with displacing the powerful and entrenched logistics coordinators that process worker visas, this component of the chain has proven particularly difficult for Mexican officials to regulate. Nevertheless, officials continue to work to gain information about this node in the migrant labor supply chain, gathering and sharing information about the infrastructure in the key city of Monterrey where the vast majority of

Mexican H-2A workers travel to receive their visas. This information includes, for example, information about the quality of specific hotels, and some attempts by the various state offices of the SNE to communicate with one another in their efforts to ‘accompany’ workers on their journey northward. Officials have also attempted to physically interact with workers in Monterrey, distributing secure debit cards that reduce the possibilities of financial fraud for workers and easing the process of sending remittances back home. However, as discussed above, officials have been actively blocked by private industry actors in these attempts. Without a significant investment of resources or a bilateral agreement (like that with Canada) that would require employers to cooperate with the SNE for H-2A logistical coordination, this node of the supply chain remains particularly difficult to regulate in the Mexican context. In the next chapter, I focus on worker’ time in the United States, assessing attempts by sending state officials to continue to accompany workers after they cross into the United States and arrive at their worksites.

Chapter 7: The Regulatory Sending State Goes Transnational

I. Introduction

As I have highlighted throughout this dissertation, sending states struggle to regulate the migrant labor supply chain in large part because the chain crosses international borders. Many of the abuses that H-2A workers experience occur after arrival in the receiving country. Like the other nodes of the supply chain, the sending state’s minimal enforcement and monitoring apparatus of H-2A workplaces means that workers who find themselves in abusive situations

have very few options for redress. As the migrant labor supply chain grows, sending states have become increasingly concerned about the possibilities for H-2A abuse. As a result, they are working to utilize their consular networks, as well as other officials placed in the United States, to provide support and protection to workers that need it. As discussed in detail in chapters 2 and 5, sending states have also developed partnerships with private, worker-led organizations to bolster their monitoring and enforcement efforts.

In this chapter, I focus on the experience of H-2A workers upon arrival in the United States, the final key node in my analysis of the H-2A supply chain. To do so, I continue to answer both of my research questions:

1. *What is the temporary migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate temporary migrant labor supply chains, and how has their control over these supply chains shifted over time?*

I discuss how the SNE's partnership with the Fair Food Program creates opportunities to follow workers throughout their journey northward and during their time working in the United States. I also briefly discuss other strategies that the SNE and other Mexican agencies are employing to support workers, including leveraging the Mexican Consulate network in the United States. I also use this chapter to provide a conclusion to this dissertation, synthesizing information from all of the empirical chapters to reflect on how my research questions have been answered.

Finally, I consider opportunities for further research.

II. The Effects of Privatization in the H-2A Workplace

As in the other nodes of the migrant labor supply chain, the privatized regulatory structure limits the possibility for sending state intervention in the H-2A workplace. Unlike the historical examples discussed in chapters 1 and 2, in which Mexican officials often directly intervened to investigate workplace complaints during the first years of the Bracero guestworker

program, the lack of a bilateral agreement governing the H-2A program means that sending states have no official role in monitoring or enforcing workplace regulations that apply to H-2A workers. Nevertheless, H-2A workers do enjoy some specific protections through their classifications under US law as temporary workers who have been issued a particular class of visa, as migrant farmworkers, and as individuals who are laboring in the United States. However, this section will focus specifically on the main workplace issues that either only apply to H-2A workers, or disproportionately affect them in comparison to other workers in the agricultural industry.

One of the most active discussion points for H-2A workers is the issue of production requirements, particularly for the piece-rate pay that is frequently used in agricultural harvesting work. Under the requirements of the H-2A program, employers are required to pay all H-2A workers (as well as domestic workers doing the same jobs as H-2A workers) an “Adverse Effect Wage Rate” (AEWR), an hourly wage rate that is always higher than the minimum wage in a given location. The AEWR is set based on location by the US Department of Labor and is frequently discussed when growers talk about the increased costs of the H-2A program; for example, in Washington State, the current AEWR is \$19.25, while the minimum wage is \$16.28.

Furthermore, H-2A workers are protected by a federal regulation known as the $\frac{3}{4}$ guarantee, a provision that was originally negotiated into agricultural guestworker contracts by the Mexican government during the Bracero program (see Clark 2018), and whose continuation was pushed by Jamaica (Govt 12). This guarantee requires that employers pay workers for at least $\frac{3}{4}$ of the hours originally offered in their contract (i.e. the hours of work listed in the ETA-790 submitted to the Department of Labor). In this case, if a farm says that workers will be conducting harvesting work for five days weekly, for eight hours a day, then employers are

required to pay workers for at least $\frac{3}{4}$ of those hours, or 30 hours, at the AEW rate for the entirety of the contract's duration. This guarantee must be paid even if workers are not actually needed for this many hours, with a few exceptions: If an Act of God prevents the employer from offering work (e.g. a natural disaster), or the worker is terminated for cause.⁶¹ Thus, while farmers are not required to pay other costs for H-2A workers (including employers' social security and medicare tax), they are required to shoulder the costs of recruitment, transportation, and housing (which must comply with H-2A regulations and be provided free of charge), on top of an increased minimum wage rate. Indeed, the paperwork and compliance requirements associated with the H-2A program can be onerous, particularly on smaller operations that cannot afford to hire a full-time human resources (HR) staff.

As a result, independent analyses have demonstrated that H-2A workers must be 20% more productive than their domestic counterparts in order to avoid costing their employers more.⁶² Given these dynamics, H-2A workers are frequently pushed by employers to produce more, and production requirements are often written into the contracts that workers review prior to beginning their employment. Under these contracts, workers who do not meet production standards can be asked to leave (i.e. terminated for cause), thereby relieving employers of paying the $\frac{3}{4}$ guarantee. Thus, employers are increasingly including production requirements (e.g. a certain number of pounds or buckets that must be harvested in an hour or over the course of a workday) in their contracts, and they are also enforcing them. In many cases, workers receive information about these production requirements, and are aware that if they are not met, they can be asked to leave and return home during their time working in the United States. Workers are

⁶¹ A full explanation is available on the Department of Labor website: <https://www.dol.gov/agencies/whd/agriculture/h2a/final-rule/employer-guide#termination>

⁶² These figures regarding productivity are available from a blog post by economist Phil Martin, published on Rural Migration News on January 10, 2024. Available at: <https://migration.ucdavis.edu/rmn/blog/post/?id=2905>

also aware that not meeting production requirements can result in not being asked back for a subsequent season of employment, which is often an important goal for workers who receive an offer of H-2A employment.

As a result, the pace of work on H-2A farms frequently outstrips that on domestic farms, and raises a number of worker safety concerns; recent economic analyses find that H-2A workers are “15 to 30 percent more productive” than domestic workers.⁶³ Thus, while the H-2A program offers workers the opportunities to earn higher wages, the higher wage and recruitment costs means that employers often set strict production requirements for H-2A recruits, allowing them (in many cases) to more than re-coup their additional cost outlays.

During my two days of observation at one farm employing H-2A workers, workers could be seen running up and down the rows of the fields on a blistering hot Virginia day in August, and at least three workers received medical treatment after showing signs of severe heat stroke.⁶⁴ It was clear that these workers were laboring at the limits of human capacity, a phenomenon that is far less frequent among domestic crews that do not have to be worried about losing the ability to work in the United States if they are unable to meet higher production standards. Interviewees also communicated to me that H-2A workers feel less comfortable raising concerns for fear that they will not be asked back to work in subsequent seasons if they complain, a phenomenon known as “black-listing.” While it is illegal under DOL regulations to dismiss or black-list workers who raise concerns about “any matter involving the H-2A program,” the lack of serious enforcement of these provisions means that blacklisting is quite common, according to many

⁶³ This analysis of H-2A labor was provided by Professor Phil Martin, as part of a symposium:

https://www.unifiedsymposium.org/wp-content/uploads/2023/08/philip_martin_california_farm_labor_in_the_2020s.pdf

⁶⁴ It is worth noting that private regulatory programs, like the Fair Food Program, discussed further below, have created heat-stroke protocols that are specifically designed to address these dynamics in the field. More information is available here: <https://fairfoodprogram.org/2021/08/20/relief-from-the-heat/>

interviewees. H-2A regulations can be complicated to follow and apply, and Department of Labor staff in the Wage and Hour Division, DOL's main enforcement body, is seriously understaffed and receives little enforcement support from the other agencies that share the burden of H-2A regulation (e.g. the DOL Employment and Training Administration and the Department of State). Indeed, one other enforcement agency, the Occupational Safety and Health Administration (OSHA), is so understaffed that it is typically does not visit an agricultural workplace to investigate health and safety practices unless a worker has already died.

Thus, despite the additional costs associated with the H-2A program, the program also confers important benefits to employers, allowing them to build a more productive workforce that is unable to leave the employer in search of other (perhaps better opportunities). As one US grower claimed during a public event on H-2A labor:

This whole H-2A program is what I call 'just in time labor. So you have just in time inventory, this is just in time labor, which creates productivity. (U.S. Grower⁶⁵)

A US official tasked with monitoring and enforcing the provisions of the H-2A program confirmed that the structure of the H-2A program, combined with a limited amount of enforcement capacity by US agencies (specifically the DOL), creates a highly favorable environment for employers to use the H-2A program to build a highly productive and dependable workforce:

The mobility of agricultural labor is the enemy of the agricultural employer.... Agricultural employers look to the H-2A program because people literally cannot leave, and they don't have to worry about creating a better work environment because the worker can't leave anyway. (Govt 1)

⁶⁵ Farrington was speaking during a public event on the future of H-2A recruitment, on September 29 2020. The event was a virtual event, organized by a non-profit, Stronger Together.

One farmer explained that the restrictions on the visa (prohibiting workers from taking alternate employment offers) help lower absconding rates, and keep workers in undesirable agricultural jobs:

For all of these sectors that are right above us on the jobs ladder [in terms of conditions an pay, e.g. construction], people come to the farms [where H-2A workers are located] and try to recruit workers, so [one of the managers] uses our orientation when workers arrive to explain that taking one of these offers and absconding is a bad idea. Basically, we communicate to them that if you leave and we have already reported you to the USCIS as ‘absconded,’ then you can’t come back on another visa to the United States. (Farm 5)

The farmer also reported that the company has a maximum absconding rate of 3% yearly, and a 93.8% return rate from one season to the next.

Since employers can use the program to recruit a workforce that meets certain characteristics, the privatized structure of H-2A regulation creates a labor environment that makes it difficult to identify and eliminate abusive situations. For example, in recent years, successful H-2A applicants within the SNE’s recruitment program were over 95% male, with a median age of 30 years.⁶⁶ Within that pool, employers can then set high production requirements, which workers feel compelled to meet in order to be allowed to stay through the season and receive an offer to return to the same worksite the following year. This also allows for a refining process at each worksite, in which employers can retain top performers and replace poor performers. Observing the utilization of H-2A across US agriculture, one auditor working for the Fair Food Program explained:

Each year, they [the company] get to cut the low-producing workers, and add more workers that pick more, so the production of the crew every year goes up. They are basically building a specialized workforce. (FFSC 2)

⁶⁶ Based on H-2A applicant and hiring data provided to author from the *Servicio Nacional de Empleo* (National Employment Service).

Given this context – the practices permitted under US law, as well as limited enforcement on the rules that do exist – there is limited opportunity for sending states to intervene. In light of these realities, multiple organizations are actively working to provide better protections for workers beyond those currently offered by the public regulatory apparatus. These include the Farm Labor Organizing Committee (discussed previously in chapters 4 and 5), which has used its collective bargaining agreement with the North Carolina Growers’ Association to institute progressive disciplinary procedures that protect workers from arbitrary dismissal; FLOC also designed a clear seniority system that governs how NCGA employers are to hire returning workers, in order to limit the impact of excessively high production requirements or concerns that workers can’t share complaints without losing their place in the program.

The next section highlights some of the strategies that sending states use to intervene on behalf of workers to ensure that workplace conditions are appropriate, and rules are applied fairly, focusing on my main case of Mexico. In doing so, however, sending states are always mindful of the implications for future employment opportunities for both the workers currently on contract, as well as other future applicants from their country. In other words, officials are always mindful of the ‘race to the bottom’ dynamic that prevails through the H-2A system as they search for opportunities to engage employers and US regulators and improve H-2A oversight.

III. The FFP-SNE Partnership in the United States

In Mexico, where an entrenched private recruitment system dominates, officials from both the Ministries of Labor and Foreign Affairs have developed a variety of creative strategies to combat the common issues prevailing amongst H-2A workers. While I discuss the utilization of the Foreign Ministry’s Consular Network in the next section, in this section I explain the

partnership between the Labor Ministry's National Employment Service (SNE in Spanish) and the Fair Food Program, highlighting how it is leveraged to protect H-2A workers once they arrive in the United States. I first outlined this partnership – a kind of hybrid regulatory arrangement – in detail in Chapter 5 when discussing worker recruitment. In the context of the SNE-FFP agreement, the SNE handles the worker recruitment process as described previously, using this process to not only speak to workers directly about their rights as H-2A workers and to provide support, but also to gain information about the structure of the H-2A program. When discussing the problems with H-2A, a number of Mexican officials identified the failure of US government regulators to share data on worker flows as a key issue with the program, one that limits enforcement and prevents worker advocacy. One Mexican official compared the bilateral agreement of the Mexican-Canadian PTAT program with the H-2A program:

With the Canadian program, what do you like about it, what would you fix about it?

What I like is there's certainty of the program, like, this is going to happen, you're going to get your visa, workers are going to arrive. We know where workers are going, something that we don't know here [in the U.S.]. So, in a way the procedure of recruitment and employment with H-2As, we know something if workers happen to cross through Laredo and the consulate is aware that certain H-2A workers are crossing. But we don't have statistics. I like that from the PTAT program, I know that we have a point of contact in the Canadian government saying, 'hey, there's some issue in this company.' I don't have to fight with a company. It's government, there's something [someone to talk to]... (Govt 3)

Within the context of FFP farms, the partnership between the FFP and the SNE means that these gaps in knowledge are remedied in two key ways. First, by being the only sanctioned recruiter for FFP employers and managing the application and selection process, the SNE is also able to collect detailed information about where workers are headed in the United States, and monitor their journeys. They then use this data to learn about worker flows, including rates of returning workers and recruitment trends over time. SNE officials also collect exit interviews from

returning workers that were recruited through their offices, collating and analyzing the responses at a national level in order to learn about workers' experiences in the United States.

Secondly, SNE officials maintain close relationships with the FFP's enforcement team, one of the most rigorous private regulatory organizations in the world. On FFP farms, the enforcement arm of the organization takes on many responsibilities similar to those of the Canadian government under PTAT, providing the SNE with a point of contact to share concerns and particular worker complaints that may have reached their offices instead of FFP auditors. Indeed, FFP auditors – who visit every participating farm yearly – go much farther than officials in Canada, where Mexican officials said that worksite abuses (including poor housing and conditions) had been a continuing concern. As one of the FFSC financial auditors explained:

For the growers using H-2A workers, we have built out additional auditing procedures to include requirements for H-2s...I get all the receipts and documentation for recruitment, travel, expenses, etc. for every worker... No one [i.e. federal or state authorities] is monitoring the program as closely as we are. (FFP 1)

Similar to the way in which the FFP reports any recruitment-related worker reports with the SNE, the SNE also shares concerns from workers with the FFP staff, who use that information to inform future seasons' enforcement efforts (FFSC 7).

In addition to its work with the Fair Food Program, the National Employment Service also reaches out to employers directly regarding workplace issues, as at least one employer who recruits workers through the SNE reported. In some other cases, particularly when SNE officials are concerned that there is some fundamental violation of the H-2A contract, they also involve the extensive Mexican Consular network. As one official described:

There have been cases where suddenly there is more work and maybe they [the H-2A employer] didn't authorize appointments in the Consulate [i.e. to bring in more workers] and maybe they move workers from this state/county to another place [i.e. offer H-2A workers already in the US an additional contract at a different location with another H-2A

employer]. If the employer communicates this to the workers, and the workers are in agreement (with the new arrangement), we don't have any issue with them working elsewhere. If they – the workers – are ok with it. But if they aren't ok with it, what we try to do is make sure that the [Mexican] Consulate is aware that these workers have traveled to the US so that they have Consulate protection, and the Consulate can come [to help]. (Govt 2)

The information collected at SNE offices is then passed on to the 50 Mexican consulate offices located around the United States, which are able to monitor and support H-2A workers located closest to them. In the next section, I focus on the role of the Mexican Consulates in the enforcement structure targeting H-2A workers.

IV. Leveraging the Biggest Consular Network in the World

While the SNE is in communication with the Fair Food Program, it also communicates directly with the Mexican Ministry of Foreign Affairs, whose consular network in the United States is the largest and most comprehensive in the world. As a result, it provides support for workers recruited through the SNE process, but also for Mexican nationals across the United States who have migrated on H-2A visas. In the case of the SNE, officials use data on worker groups who are expected in the United States and advise the local consulate with information about the worksite, expected conditions, and contract terms. As one explained:

We are trying to involve them [the consulate] more, because this is not a program like the one with Canada. But the ideal/idea is that we advise the Consulate that a group of workers left for the US on this date, so that they know if someone presents at the Consulate needing protection they know that there are Mexican workers in the area [i.e. the details of where they are and what they are supposed to be doing]. (Govt 2)

SNE officials admitted that this coordination is not always seamless, and that they continue to work on improving coordination with consular officials. Nevertheless, the consular network serves as an important resource for workers, as staff at the Fair Food Program noted:

The Mexican Consulate is actually a big partner for us, they actually referred the original H-2A case that just had the indictment come down [referring to a large H-2A trafficking

case prosecuted in the Southeastern United States, in which the CIW supported the investigation]. They help with referring cases, as well as investigating trafficking cases and providing some important findings. (CIW 2)

In fact, officials from the Mexican Ministry of Foreign Affairs explained that much of the consular networks' labor rights agenda evolved from the investigation of individual cases:

Mexico has used its consular networks to advocate for workers - what are usually the ways that you end up kind of getting involved in situations?

Govt 3: I think the trigger for efforts, particularly with temporary workers, was the case of Peri & Sons.⁶⁷ I think it's [in] Nevada, an onion business, I believe. Basically, they didn't pay out the wages... they did everything that should not be done to temporary workers. Withheld the passports, no transportation, no housing.

In that case, that division, it was a San Francisco division – the Northern California Division. They didn't want to go to the farm...but they're telling us, the workers are telling us this is wrong.

And how did they tell you? Did they call or...

Govt 3: So the consulates...we have the building (the brick and mortar consulate), and then we have this additional layer for... called *Consulados Móviles*. That we take our services to remote locations. As remote as we can, on a weekend, usually trying to... to offer the service in a, in a holiday or a day of rest for people. So you have the workers they come and they ask for a renewal of passports, or a consular ID, and that's when we start interacting. So, that case, we knew through somebody from the local...from a locality that told us. And then we started working and interviewing them. So, as you can imagine, the workers are afraid. They are afraid of being deported, even though they have documented status. They are afraid of not being hired again. There's... I could spend a lot of time talking about the middle person and the contractors.

So, what we did, we organized this... it's called labor rights week. So, it's a full week at the consulates. At the same time, the 50 consulates bring in agencies, both state and federal, to pass fliers, to explain... it's an outreach effort. And we pass the information. Some agencies were very intelligent in like, printing the phone number and arm bands (like plastic bands) so the worker had it – if there was an issue they could call. And it has borne good fruits, because people now know that regardless of them being Mexicans, they have rights. So, it's basically, it's Know Your Rights. And more and more, we have people trusting the agencies and contacting directly and.... and it was win-win, because

⁶⁷ Workers at Peri & Sons received a \$2.8 million judgement in a US federal court case in 2016 for the charging of recruitment fees and failure to pay appropriate hourly rates to workers. Available at: <https://thiermanbuck.com/nevada-farm-workers-to-receive-2-8m-in-peri-sons-case/>

the agencies, they have the resources, they have the people, [but] they didn't have the cases.

So in this case, in Northern California, you went... so you heard through one of the 'Móviles?'

Govt 3: And then we asked Wage and Hours [the Department of Labor's Wage and Hour Division], and Wage and Hours [conducted] an investigation [that] [resulted in] millions of dollars in settlement. But then we had to find the workers in Mexico to give them the money. So, that's the best example for you.

Thus, like the SNE, the consular networks work to form partnerships with worker organizations in order to support worker complaints, as Bada and Gleeson (2023) document in their work (discussed in chapter 2). However, they also work to push US authorities to investigate potential violations, which are usually identified through the outreach work that they conduct all over the country. In doing so, they not only advocate for Mexican citizens caught in abusive situations within the H-2A program, but also support the enforcement of US regulations, as was the case with the federal human trafficking case mentioned in the quote above.

In addition to advocacy efforts, the exchange above also mentions the "Labor Rights Week" that takes place during the first week of September (typically coinciding with Labor Day) across all of the Mexican Consulates in the United States. Labor Rights Week is the most visible of Mexico's outreach efforts to Mexican workers in the United States, and includes a few key speakers at formal events, including members of the consulate staff. At the Labor Rights Week I attended, organizers had also arranged for many of the local advocacy and workers' rights organizations, including some unions and legal aid organizations, as well as US agency representatives (e.g. the local Equal Employment Opportunity Commission representative, as well as the National Labor Relations Board) to attend and staff tables at the consulate throughout the week. The goal of the week's events is to provide resources and educational opportunities to workers, many of whom are not familiar with the protections afforded to them under US law.

Local public health organizations also attended, providing COVID-19 and other vaccines, as well as information about local health resources. The event was extremely well-attended, with a long line and throngs of crowds outside waiting to enter.

Like in the SNE's case with the employers for whom it recruits, consular officials also aim to keep tabs on local groups of H-2A workers who are arriving in their area of responsibility. In many cases, they will go out and visit with workers. For example, interviewees explained that officials from the consulate in Raleigh attend worker arrivals at the main processing center for the North Carolina Growers' Association, providing information to workers about consular resources and sharing contact information from almost the moment that they step off the bus in North Carolina. Increasingly, this kind of work, including the Labor Rights Week and travel and outreach to local worker groups, is done in collaboration with Guatemalan consular officials, as one interviewee explained:

In terms of collaboration... there is collaboration, the effort is called TRICAMEX. So, these are the consulates of El Salvador, Honduras and Guatemala. That's why [there is] the TRICA: [it means] tri-Central America, and Mexico. And now there's some consulates, some regions that have other consulates. and these are information sharing and collaboration... collaborative efforts in the United States by these consulates. So, what we want is, if the consulates of Guatemala hear of something, they'll tell the consulate of Mexico, which are best practices. So, you expand the network. Now, in terms of something more, um, institutionalized of best practices, we don't have something yet. (Govt 3)

Indeed, during the labor rights week that I attended, the head of the local Guatemalan Consulate also came to speak, and some of the events were head jointly by both consulates. Guatemalan officials confirmed that, apart from formally partnering with Mexican institutions in the United States, Guatemala is also utilizing its consular network to support H-2A workers once they migrate to the United States. One official, who told me that they also provide all H-2A workers recruited by the Ministry of Labor with their personal WhatsApp number (to make it easy for

workers to reach someone directly), provided an account of a specific complaint that involved officials from the Guatemalan Consulate:

We have had some workers who have experienced problems of racism and discrimination, and this was really bad. And it was weird because the employer was Mexican [although a US citizen], but he had Mexican supervisors who were saying ‘I’m not giving you hours because you are Guatemalan.’ So, I communicated with the Consulate in Miami, so they can take action and go and visit. In other cases [that we manage] we have a lot of workers who travel with a private recruiter who come to us and ask for our help because the employer was charging them where they were living far more than they were making in wages [debt peonage], and the employer said they had to come back the next year to work off the debt. Some of these workers [who contacted us] couldn’t read or write, and so they didn’t have any information, and weren’t given any information by the recruiter. (Govt 5)

Of all the sending states, Jamaica’s strategy is the most well-developed, particularly within the receiving state. As one official described:

We have a service, the Jamaica Central Labor Organization, that is the only such operating service for workers set up by any country with workers here [in the United States]. Every other country may have a representative in their office, operating in their consulate or embassy. That’s not what we do. We have a team of Liaison offices, the central office is located in Washington DC but it is not the same as the Embassy. We have our own data system, finance system, and our liaison officers know that we are strategically positioned – we have somebody who travels to Vermont, goes down to Michigan, who goes to the state of NY and Maine. We have somebody who is doing another part of NY that is doing the Champlain valley and the Hudson valley. We have somebody out on the West Coast that is taking care of that area, so we have people and that’s what we do. We take care first and foremost of the workers’ interests. Before the workers leave Jamaica, there is an orientation that takes place. An orientation that gives the new worker a highlight of what they are going into – does it get really cold, what to expect, they also get a contract of their wage, how many hours and/or days of what they are supposed to work.

What we do is that the minute that the worker arrives until the worker leaves, we know where they are, we know what’s happening with them. If the person gets sick, we have a family services unit set up – and if a worker gets sick, someone from our office will fly from our office to the hospital, and we over see everything (not financially) but we are in touch with the Ministry in Jamaica and the family. We oversee everything, nobody has to leave Jamaica to handle this.

If they are sick, we go to the hospital, we speak to the doctors, we get all the necessary information, we sign off on the forms, we work alongside them and their families. If unfortunately a worker is locked up, we are not there representing the workers but we

provide every support; in case of a passing, we handle repatriation and have social workers. So, we have programs to provide persons in need. And the same thing, if something is happening in Jamaica, we will go to sit with the worker to say this is happening, and if they need to leave we arrange for that.

And all of this is funded by the Jamaican government?

Our operation is funded by the Jamaican government. And we also help the employer, because they typically would be the people handling all of this (going to social security office, working out everything that needs to be done), so we take a load off the employer. (Govt 12)

The Jamaican Central Labor Organisation (JCLO) began in 1943, and was originally part of a consortium of West Indian countries that banded together to provide support to workers.⁶⁸ While the other countries originally part of the consortium have abandoned their participation, Jamaica has continued it, and continues to support workers. Thus, while Mexico has the largest footprint in the United States, and the most wide-ranging profile of activities to support migrants working in the US, it is in fact Jamaica that has the longest-running and most comprehensive infrastructure in the receiving state, designed to specifically to support the needs of H-2A workers.

V. Conclusion: Possibilities and Limitations for Sending State Strategies to Regulate Receiving State Workplaces

In this chapter, I have continued to provide an answer to both of my research questions, focusing on the final key node of the migrant labor supply chain during which workers arrive at US employer worksites and conduct labor as part of the H-2A visa program. The activities of sending states to protect and support workers during their time in the receiving states are unique from those at any other stage of the migrant labor supply chain. Once workers arrive in the United States to begin work, sending states are more likely to directly challenge the market

⁶⁸ More information is available on the Ministry of Labor and Social Security website: <https://www.mlss.gov.jm/departments/jamaica-central-labour-organization/>

dynamics that structure the migrant labor supply chain, even if these activities might make their migrants less competitive for H-2A job offers. In the racial discrimination example above – described by a Guatemalan official – Guatemalan consular officials used worker reports to make a visit to the worksite where workers reported issues, in order to get the behavior to stop. Thus, rather than attempting to persuade the employer, or encourage them to select Guatemalan workers with promises of better prices, lower costs, or increased productivity, Guatemalan officials visited the farm with the express goal of advocating for the workers on the farm and pushing the employer to change practices. Similarly, the Mexican consular efforts to visit remote farm locations, as well as track workers' whereabouts during their time in the United States, represents an activity that is more consistent with monitoring employer practices rather than attempting to convince them to choose Mexican workers. And while the Jamaican government officials mention that the activities of the JCLO help to “take the load off of the employer,” the effect of those activities is to provide needed support for workers and to directly insert themselves into the dynamics of H-2A worksites. It may be the case that sending states are more willing to directly challenge employers when they can call upon the institutions and regulations of the receiving state to strengthen their claims. Indeed, once H-2A workers are on US soil, the obligations of American public officials to prevent them from being abused is much more clear than in the case of worker recruitment or transport.

This is not to say that sending state officials who operate in the United States are not mindful of the political and economic impacts of their activities, both for workers and for their countries more broadly; indeed, all of my interviewees were very mindful of the challenging dynamics that they needed to navigate, and frequently suggested that direct antagonization of employers is not typically a helpful strategy (except in cases of clear-cut, highly abusive

situations, like human trafficking). Furthermore, many of the types of activities I have outlined above, including staging conferences, meeting with and providing information to workers, and establishing mobile consular units, are all non-confrontational worker protection strategies. Nevertheless, consular and labor ministry officials – particularly those from Mexico and Guatemala – demonstrate a willingness to ensure their citizens are treated fairly by US employers.

One possible reason for this difference in approach at this final stage of the supply chain is the dramatic variation in resources that are available to sending states once workers leave their own countries and cross into the United States. While the receiving state has shown little to no interest in directly regulating current recruitment and travel practices, during which private actors dominate, sending states can find reliable and willing receiving state partners to investigate labor issues occurring in the United States. This is particularly true when consulates have been alerted to issues and complaints from workers, which make it easier to trigger an investigation from the Department of Labor's Wage and Hour Division, as well as other investigative bodies (e.g. Homeland Security Investigations, in the case of human trafficking). Thus, while many US labor rights monitoring and enforcement agencies are under-resourced, they do at least exist within the national boundaries of the United States, and can be leveraged to protect workers. In the case of the Mexican SNE and its partnership with the Fair Food Program, the ability to call on both US federal government resources as well as the investigative and enforcement power of a team of effective private regulators allows for multiple kinds of intervention by the sending state. In the case of the FFP-SNE partnership, the SNE is protected from losing business if it challenges employers to respond to worker concerns, as FFP-

participating employers are required to recruit all H-2A workers through the SNE program, or else face program suspension (and lose the ability to access key buyers of their products).

Of course, this work by sending states is made far more effective when it is able to capture reliable information about worker flows, which it accomplishes by participating in the recruitment and travel processes for workers. Thus, its market participation strategy at other points in the supply chain spurs a more direct, confrontational strategy at the final node in the supply chain, once workers arrive in the United States. There are, however, a set of issues that the sending state strategies discussed above do not address. In particular, the issue of productivity standards, as well as discrimination in the context of H-2A worker selection (an issue that directly relates to increasing productivity standards), as well as the contract terms (including the visa restrictions on switching employers, and the conditions to be asked back) that are leveraged to push workers to produce more, work longer hours, and make themselves available to employers for overtime, contract extensions, or other requests. And while Mexico continues to push for a bilateral agreement (as discussed in previous chapters) that might allow for sending states to directly address these issues, the current privatized structure leaves virtually no recourse to deal with H-2A workplace requirements that – while exploitative – are permitted under the current regulations governing the program. As one expert explained:

H-2A has taken us back in a lot of our progress among the workforce. For example, we were up to 20-25% women in the fields, older people could work and we were starting to get rid of some of the draconian production standards that many people couldn't meet. Now, all the H-2A crews have turned that back, dropping the level of women in the fields and raising production standards again to levels that only a young, really fit/productive person could keep up with. So, with H-2A you are see a backsliding of the progress on production standards, etc., because you have now gone back to an all-male workforce that is really at the prime of their lives, and the quotas are set up such that you really can't meet them unless you are quite fit and meet that criteria. And that's made it quite difficult for other workers to compete. (CIW 2)

In the next and final chapter, I provide a conclusion to this dissertation, summarizing the answers to my research questions, providing an overview of policy implications, and noting some opportunities for future research that this study has not yet addressed.

Chapter 8: Are Sending States Reclaiming Control? Conclusions, Summary of Findings, and Areas for Future Research

“Pick us over them;” “We are open for business;” “We are client-oriented and focused on you.” I began chapter 1 by summarizing presentations by officials from the states who send migrant workers to the United States through the H-2A visa program, who all used phrases like these to describe their country’s approach to the recruitment of H-2A workers. Indeed, it was as if officials were hawking workers from their country as though they were commodities. This episode, in which I directly observed officials from migrant sending states actively marketing the workers from their countries on the global temporary labor market, captures a number of important features of this market that I have tried to explain and describe throughout this dissertation. Thus, as stated in my introduction, I set out to undertake a multi-method study of the migrant labor process, reconceptualizing it as a supply chain and utilizing new theoretical tools to interpret and understand sending states’ efforts to exert some control over this chain. In doing so, I attempt to answer two research questions:

1. *What is the migrant labor supply chain, and how is it governed?*
2. *How do developing country governments regulate labor supply chains, and how has their control over these supply chains shifted over time?*

In the context of a privatized labor migration regime, in which private employers may choose from a variety of sending countries to supply their labor, and in which public authorities exert little direct regulatory control, it is difficult for sending states to regulate the temporary migrant labor supply chain. One reason for this difficulty is that receiving country governments, particularly the United States, have shown more interest in facilitating and meeting the needs of employers of temporary migrant workers than engaging with sending states to directly and

rigorously regulate temporary labor migration. In the absence of bilateral agreements that would eliminate competition for work opportunities between sending states, the competitive dynamic that Gordon (2017) identified as “global labor arbitrage” creates a regulatory race to the bottom, in which sending states are reluctant to place too many requirements on employers who wish to recruit from their countries, for fear that they will take their business (and job opportunities) elsewhere. As a result, they have had to be creative, and have adopted a number of strategies to intervene and regulate temporary migrant labor. According to my findings, there are two goals of this regulation: (1) To capture more remittances (i.e. ensure that workers are being paid appropriately) and (2) to provide better protections for migrant workers, who frequently find themselves in exploitative situations with little recourse. To accomplish these goals, many sending states have adopted a market participation strategy, in which the state itself provides recruitment and transportation services to employers.

In chapters 2 and 3, I laid out my theoretical framework and plan for studying these efforts by sending states. I began by offering a history of temporary labor migration, then proposed an alternate understanding of the temporary migration process than that typically offered by state-based interpretations found in most migration scholarship, in which temporary labor migration is understood as a state-to-state exchange that is managed and regulated by public actors. Instead, I argue that private actors (particularly employers of temporary workers, as well as the client firms to which these producers sell) exert an enormous amount of control over the structure and process of temporary labor migration, such that they – along with public regulators – effectively co-govern it. To understand the role these private actors play, as well as the strategies that sending states employ to assert control of labor migration, I conceptualize temporary labor migration as a kind of supply chain. Accordingly, in studying the migrant labor supply chain, I

utilize theoretical and methodological tools, developed by Global Value Chains (GVC) scholars, to analyze labor conditions and governance in commodity supply chains. In chapter 3, I laid out my plan for undertaking this work, providing a full accounting of my methods. I describe the migrant labor supply chain in detail in chapter 4, including the actors involved in the chain and the key nodes in it. This work motivates my other empirical chapters, which each focus on a node in the supply chain. In chapter 5, I analyzed the recruitment process, explaining how sending states and worker-led organizations seek to establish ethical alternatives to the private recruitment industry. In chapter 6, I discussed the H-2A visa approval process, finding that despite the relative ease of travel between Mexico and the US, Mexican officials struggle with limited resources and are therefore unable to bring a huge private logistics industry under their control; they also receive no support in their efforts from other actors, unlike Guatemala, which enjoys the financial and logistical support of USAID, and Jamaica, which has a much smaller H-2A visa footprint and decades of experience managing it. In chapter 7, I discussed the issues affecting the workplace in the United States, finding that sending states leverage their own consular networks, as well as receiving state institutions, worker-led organizations, and other NGOs to provide workers with resources and protection.

I. Main Findings

Overall, I have found that a market participation strategy allows sending states to work directly with employers and creates opportunities for sending states to manage the flow of migrants through the temporary migrant labor supply chain. In doing so, they hope to displace, at least partially, the private recruitment and logistics industries that currently manage the migrant labor supply chain and are responsible for many of the abuses committed within it. This strategy allows sending states to form partnerships with non-state organizations, including worker-

oriented private regulatory actors, unions, and other non-governmental organizations, that are also working to improve labor conditions in agricultural supply chains.

Despite the relative success of many of these efforts, however, a market-based strategy requires that states compete on the global temporary labor market, both with one another and with the private recruitment industries that operate within their countries. Thus, they find themselves caught in a contradictory position: Regulating the migrant labor supply chain by participating in it ends up entrenching many of the market-based dynamics that exclude sending states from playing other kinds of role in the chain's governance (i.e. direct regulation). In other words, when sending states attempt to control temporary migrant trajectories by competing for employers' business, including structuring their recruitment processes to be employer-friendly, they both provide support to workers and reinforce the control that employers exert over the structure of the migrant labor supply chain.

This tension was readily observable throughout my empirical work, which I detailed in the last three chapters before this conclusion. For example, I cite multiple instances in which sending states discuss opportunities for, and indeed attempt to create, solidarity with each other, supporting one another's recruitment models as well as workplace monitoring and worker advocacy strategies. Indeed, during a panel staged in Mexico City by the International Labour Organisation, during which officials from Mexico and Central America spoke, a number of officials (but particularly those from Guatemala) reiterated the importance of working together as a bloc. Simultaneously, however, I have also found that states compete by arguing to employers that their workers are 'better,' which typically means stronger, more docile, productive, or otherwise less likely to complain, in order to encourage employers to select their country and use

their recruiting and transportation services. Efforts at solidarity between sending states are thus undermined by their concurrent efforts to claim a larger share of the migrant labor market.

Relatedly, I have found important variation between my main case, Mexico, and my two shadow case comparisons, Guatemala and Jamaica, which I have sought to highlight throughout my empirical work. For example, while Mexico's SNE must work to displace a powerful and large private H-2A recruitment industry and recruits well under 5% of Mexico's H-2A workers, Guatemala's state recruitment program, run by the Ministry of Labor and supported by USAID, controls approximately 33% of the H-2A stream in 2022.⁶⁹ This may be in part because the demand for Guatemalan workers is minimal – albeit growing – in comparison to that of Mexico. As a result, Guatemala's H-2A migration process is much easier to control, with far fewer private actors and established networks to root out. While its H-2A footprint is closer to that of Guatemala than Mexico, Jamaica, whose program predates both Mexico and Guatemala by decades, has the most comprehensive approach, able to handle recruitment and logistics for employers. Jamaica is also the only nation to have a Labor Ministry staff that travels around the United States to follow workers on their journeys. The case of Jamaica suggests that long-term engagement can provide effective protections for temporary migrant workers. Indeed, some of the H-2A regulations that are encoded in US law (and used by sending states in their advocacy efforts) were originally proposed and supported by Jamaica and other sending state governments.

Thus, it is important not to discount the findings in chapters five through seven that highlight the important ways in which sending states' market participation strategies achieve real

⁶⁹ The report, "Temporary Regular Migration of Guatemalans to Canada and the United States: Analysis of the Impact on Living Conditions, Migration Intentions, Barriers, and Opportunities," drafted by Action Against Hunger, USAID and the International Organization for Migration, was published in July 2023 and is available here: https://reliefweb.int/attachments/8f4f3a72-b9d1-4c1f-ab38-ffcb5ea1273b/EN_GT-Agencias-y-ONGs-del-desarrollo_Jul-2023.pdf. The Guatemalan Ministry of Labor's recruitment program is discussed on page 15.

improvements for workers. As I identify, some of these improvements come through innovative partnerships between private regulatory groups and government officials, most notably the partnership that has been forged between the Fair Food Program (FFP) and the Mexican Ministry of Labor's National Employment Service (SNE). Under this partnership, the FFP provides an opportunity for the SNE to regulate the recruitment of H-2A workers by requiring that FFP-participating employers use the SNE's recruiting services. And as I document, Mexican officials have taken advantage of the opportunity that this partnership affords, using it to build out their knowledge of the H-2A supply chain and increase their foothold in the temporary migrant marketplace. I also find that receiving states are supporting sending state efforts, as the case of USAID's investment in Guatemala's state recruitment program demonstrates. There are, in short, important gains for sending states, in their long-term effort to re-take control of the temporary migrant labor supply chain.

Ultimately, however, there is a reason that Mexican officials have not abandoned their quest for a new bilateral labor agreement, a reason why they are not assuaged by the comprehensive memorandums of understanding (the most recent of which was signed in January 2023) on migration, all of which stop short of eliminating privatized recruitment. Using a supply chain analysis, as I have done in this study, it becomes clear that establishing a bilateral agreement isn't just about creating a formal, policy-making role for Mexico, and re-establishing temporary labor migration as a process that is negotiated and managed between two states. As I discuss further below, it is also about forcing a restructuring of the migrant labor supply chain, in order to eliminate the state's need to compete with a powerful private recruitment industry, and thereby resist a race to the bottom dynamic.

In the absence of these agreements, the buyer-driven dynamic of the migrant labor supply chain is extremely challenging to counteract. Even if the state can offer particular incentives that help it to out-compete other actors (or make a pre-emptive move, as in the case of Guatemala), the privatized governance structure of the temporary labor supply chain is reinforced when states try to compete for market share with private recruiters and with each other. Against the backdrop of this finding, the FFP-SNE partnership is particularly innovative. This is primarily because the partnership requires that employers use a government agency to recruit H-2A workers to remain in good standing with the FFP requirements. The program has been successful in reducing abusive recruitment and work conditions for H-2A migrants. It therefore provides evidence that some private regulatory actors can force a restructuring of the migrant labor supply chain away from a buyer-driven orientation and towards greater public control, so long as they have willing public partners and obtain the proper leverage over employers.

II. Policy Implications – Should Temporary Migration Return to Bilateralism?

In his work, David Weil (2014) takes great pains to identify the dynamic of fissuring – in which amorphous employment arrangements (including subcontracting and other tactics) have become more pervasive, with profound consequences for the structure of the workplace – and how it lowers labor standards. In the context of temporary labor migration in US agriculture, as discussed in chapter 2, the fissuring process began long ago, dating to the first signed Bracero agreement in 1942. While the 1942 agreement constituted a bilateral program in which the sending state (Mexico) was an active participant in the administration of the program, and the US government was the employer of record of Bracero labor migrants, subsequent agreements weakened this relationship, and control of both the sending and receiving states over Bracero workers' experience was ceded to the private sector (employers). In the H-2A program that

followed it, privatization deepened, as more non-state actors earned a formalized role in the labor and migration process (including allowing Farm Labor Contractors, discussed in chapter 2, to serve as employers of H-2A workers). As this dissertation has argued, these private actors are tightly regulated *de jure* by the receiving state but are *de facto* given broad latitude to operate as they see fit.

Therefore, privatization increases the risk for temporary migrant labor exploitation because both states – the receiving state, but especially the sending state – do not play an active role in the governance of the migrant labor supply chain. Indeed, as I have documented, the sending state is often precluded from an active role in the chain’s governance, either by outright exclusion (*de facto* and *de jure*) or through the creation of a ‘race to the bottom’ dynamic that dissuades sending states from intervening in ways that risk their ‘market share’ of temporary labor migrants. However, similar to Weil’s findings, it is clear that privatization creates a second, related problem: A private migrant labor supply chain is one in which many actors, some public but most private, play a role in structuring the way in which migrant workers are recruited, travel, and labor, thereby diffusing the responsibility of any one actor for minimizing exploitation at any (or all) of the links in the supply chain. When the legal responsibility for ensuring fair and equal treatment (or conversely, legal responsibility when labor rights are violated) can be shirked by pointing the finger at another actor, the workers that move through the migrant labor supply chain suffer.

In response to these two problems created by privatization, the general solution offered by the receiving state, as well as myriad non-governmental organizations, is to offer more privatization. As I document, however, sending states seem to be attempting to offer a different kind of solution, in some cases in collaboration with worker-led organizations and occasionally

aided by the receiving states themselves. In doing so, these solutions attempt to create an active role for sending states in the governance of the migrant labor supply chain, primarily as market actors (i.e. recruiters and logistics coordinators). As a result, sending states hope to create clearer delineation of responsibility over key nodes of the supply chain, allowing regulations governing temporary migrant labor to be more enforceable. When the state knows which recruiters are operating in its territory, for example, it knows who to hold responsible when workers report paying recruitment fees. Furthermore, when the state is contracted directly by employers to recruit and transport workers, it creates opportunities to re-assume responsibility for worker well-being, while also identifying a particular actor in the receiving state (i.e. the employer) who must ensure worker well-being in the United States.

Of course, as I have outlined, these solutions are imperfect, mostly because sending states end up addressing some issues created by privatization by reinforcing the market-based temporary migrant labor system that perpetuates them. Like the private migrant recruitment industry, sending states that recruit and transport workers also serve the interests of employers in order to obtain contracts and grow their market share. Thus, sending states solve some of the problems of fissuring, particularly at certain nodes in the migrant labor supply chain. However, they do so by reinforcing the temporary migrant labor supply chain structure that ultimately drives (and re-creates) the race to the bottom, thereby undermining their ability to change the chain and how it is governed.

These findings, therefore, might suggest that a return to bilateralism – to the Bracero envisioned by Minister Padilla (discussed in chapter 1) during the summit between the US and Mexico in 1942 – would solve the problems that plague today's temporary migrant labor supply chain, especially the H-2A visa. This kind of solution is implausible (i.e. highly unlikely to

succeed politically), and in some sense facile; the bilateral Bracero program, as I document in chapter 2, is notorious for the abuse that millions of Mexican workers who joined it suffered in American agricultural fields. What is attractive about bilateralism, however, is that it allows sending states to simultaneously attack both kinds of privatization problems by fundamentally restructuring the migrant labor supply chain, especially how it is governed. It is this impulse, therefore, that should be carried forward into policy discussions, even more so than a commitment to return temporary migrant labor supply chains to bilateral governance.

III. Areas for Future Research

This dissertation has sought to answer two research questions, making contributions to understanding how temporary labor migration supply chains are structured and how they are governed. In doing so, this work also highlights some important areas for future research. In large part, future work will be informed and shaped by major changes in both migrant labor supply chain structures, as well as the transnational agrifood value chains for which many temporary migrants provide labor. For example, many interviewees noted that the creation of the US-Mexico-Canada Agreement, a free trade agreement known to many as the ‘new NAFTA,’ has stimulated changes in the structure of the supply chains that cross borders between the three countries, and ushered in sweeping reforms to Mexican law and union dynamics.⁷⁰ These changes include an increasingly large and powerful Mexican export agriculture industry, much of which provides direct competition for US and Canadian producers. Indeed, as I discuss in chapter 5, there are a number of US growers who have either opened new operations in Mexico

⁷⁰ NAFTA is the abbreviation for the North American Free Trade Agreement, which first came into force in 1994 and marked a new era of economic integration between Mexico, Canada, and the United States, with sweeping consequences for a number of industries (Bair & Gereffi 2001, Martin 1993). The USMCA was a re-negotiation of NAFTA and its key provisions governing trade by the Trump Administration. It went into effect in 2020.

or expanded their footprint for production abroad, hoping to take advantage of cheaper labor costs. Furthermore, as producers increase their size and market share, their power vis-à-vis buyers, who have typically driven the structure (and by extension, labor conditions) in agrifood supply chains, may increase. Powerful producers abroad may also make it harder for H-2A employers producing in the United States to compete on the global market. All of these developments raise important questions about the changing role of monopoly and monopsony in global agrifood supply chains and the implications of those changes for global labor rights, as Fisher-Daly (2023) has argued (see also Anner, Fischer-Daly, & Maffie 2021). And while I have begun to address their connection to the governance of temporary migrant labor programs, there is much more work to be done.

This dissertation also signals the growing importance of Central American countries as major suppliers of migrant labor, as they seek to expand the share of temporary migrant visas that their citizens capture yearly. In many cases, these efforts are being offered by policymakers as solutions that will drive national and community development, similar to other nations with a long history of labor migration (Agarwala 2022). State-run recruitment programs in Central America also signal a new role for receiving states in the context of privatized migration, as the US Agency for International Development (USAID) expands its involvement in recruitment and supports Central American governments in their effort to control the H-2 migrant labor supply chain by becoming the recruiter of choice. These developments may also have profound implications for Mexico, which currently provides the lion's share of H-2A migrant labor to the United States, and by extension Mexico's ambitions (documented extensively in this work) to reassert control over the migrant labor supply chain.

Finally, this dissertation highlighted one final, important link in the migrant labor supply chain: The labor migrant's return to the home country. While there is a growing body of work (including this dissertation) on the experience of temporary labor migrants during recruitment and while working for employers abroad, relatively little is known about workers' return home. Nevertheless research (discussed in chapter 2) suggests that sending states, who must provide social programs and other support to returning migrants that are either no longer able or willing to continue working in temporary migrant labor programs, are paying close attention to the experiences of returning workers. Future research can shed further light on the unique governance challenges that arise at this important node of the temporary migrant labor supply chain.

IV. Conclusion and Contributions

This dissertation contributes to both the sociological study of migration and to GVC scholarship. In the case of migration studies, by treating the temporary labor migration process as a labor supply chain, I am able to address the role that private actors play in controlling (i.e. governing) the labor migration process. As a result, I have been able to provide better, more complete answers to important questions about why temporary migrant programs can be so exploitative, and the role that privatization plays in driving that exploitation. My contributions to the GVC literature are more extensive. Firstly, while GVC scholars have attended to the institutional ecology that shapes the flow of commodities, they have failed thus far to conceptualize the flow of labor in the form of transnational migration. This study fills that gap, but it also informs more general understandings of the role that states play in the shaping and re-shaping of GVCs, a growing area of focus. GVC scholarship on the state has previously documented that states can play a 'producer' role in commodity chains (Horner and Alford 2019)

and use that role to govern the chains in which they serve as a producer. In my case, I provide an understanding of how states attempt to govern a labor supply chain by being a ‘producer’ of that labor (i.e. providing recruitment and logistics services) and explore the possibilities and limits of that particular governance strategy. Importantly, I find that states use the producer strategy to govern migrant labor supply chains when they have been excluded from other governance roles. Furthermore, while participating in the migration process as a producer, they also push back against the limits of this role where possible, including by lobbying more economically powerful receiving countries to share data on migrant flows and increase oversight of temporary migration. Finally, through my thorough investigation of the FFP-SNE partnership, this study informs ongoing research conversations regarding the possibilities and limits of private regulatory organizations to effectively govern GVCs.

While its origins lie in the previous century, temporary labor migration serves a growing and important role in the structure of the 21st century global economy, particularly in the production of one of the world’s most critical commodities, the food that we eat. During the recent Covid-19 pandemic, for example, temporary migrant workers were labeled ‘essential’ to US agriculture. Throughout a months-long shutdown to contain the virus, H-2A migrants’ work (along with other members of the agricultural workforce) allowed Americans to continue to enjoy fruits and vegetables, while growers avoided the financial catastrophe of leaving crops to rot on the vine. Indeed, the labor provided by temporary workers has become essential to the production of food and is intertwined with the fortunes of global agrifood supply chains. The struggle, therefore, is in deciding how the value produced by that labor will be distributed. Whether achieved through interventions by sending states, worker-led organizations, or some other method, the workers who participate in temporary labor migration deserve an engaged,

deliberate, and pragmatic approach to address the exploitation they frequently face, particularly from all of us who eat the food they deliver to our tables.

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Appendix A

Interview and Ethnographic Observation Log

Interviewee Affiliation by Group	Location of Interview
CIW	In person
CIW	In person
CIW	In person
CIW	Phone
CIW	Phone
CIW	Phone
CIW	In person
CIW	In person
FFSC	In person
FFSC	In person
FFSC	In person
FFSC	In person
FFSC	In person
FFSC	In person
FFP	In person
US Department of Labor	Phone
Employer	Zoom
Employer	Zoom
Employer	Zoom
Employer	Zoom
Mexican SNE	Zoom & In Person
NGO Expert	Zoom
FFP	Phone
FFP	Phone
NGO Expert	Zoom
MX SRE	In person
MX SRE	Zoom
CIERTO	Zoom & In Person
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person

NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
Mexican SNE	In person
CIERTO	In person
NCGA (North Carolina Growers Association)	In person
Recruiter	In person
Mexican SNE	In person
Mexican SNE	In person
Mexican SNE	In person
Mexican SNE	In person
Mexican SNE	In person
Employer	In person
FFSC	Zoom
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
NGO Expert	In person
STPS (Former)	In person
ILO Mexico	In person
ILO Mexico	In person
ILO Mexico	In person
Honduras Ministry of Labor	Zoom
Guatemala Ministry of Labor	Zoom
FLOC	Zoom
FLOC	Zoom
FLOC	In person

Jamaica Labor Ministry	Telephone
SNE Monterrey	In person
FLOC	In person

Total Number of Individuals Interviewed: 64

Total Number of Interviews Conducted: 84

Ethnographic & Event Observation Log

Type of Event	Location (in-person or remote)	Type of Participants
Stronger Together Webinar	Zoom	Departments of Labor & State (US)
Stronger Together Webinar	Zoom	Mutliple H-2A Employers (Driscoll, Lipman); CIERTO
Stronger Together Webinar	Zoom	Farmworker Justice; Verite; Florida Rural Legal Servcies
Stronger Together Webinar	Zoom	Responsible Recruitment Model Launch
ILO Event	Mexico City	Ministries of Labor of Mexico, GT, ES, and Honduras; ILO migrations officials; IOM; other labor migration stakeholders
NCGA Annual Event	Zoom	Employers, lawyers, US Agency Reps, Ministries of Labor from Central America
SNE Ethnographic Observations	Southern Mexico	H-2A workers, recruiters, employer reps, SNE officials
Employer and FFSC Ethnographic Observations	Eastern Shore, Virginia	H-2A workers, supervisors, employers, FFSC auditors, CIW staff
TMEC Labor Council meeting	Zoom	Alejandro Encines gives public statements, others respond

MSPA Requirements - NCGA	Zoom	Employer group sponsored presentation by attorneys on requirements of MSPA compliance
FLOC/NCGA Onboarding day	North Carolina	Employer, labor union reps, H-2A workers
Mexican Consulate Labor Rights Week	North Carolina	US Agency reps, Mexican & Guatemala consulate reps, NGOs, workers/Mexican citizens visiting Consulate
Bilateral Labor MOU Presentation on Fair Recruitment - US DOL & Mexican Government	Zoom/Mexico City	US DOL; US State Department; Members of Mexican Government
NCAE Conference 2023	Las Vegas, NV	Employers, government, recruiters
US Consulate & Visa processing Center, Hotels	Monterrey, Mexico	

Appendix B

Qualitative Semi-Structured Interview Guide

Interview Protocol for Organizational Representatives and Experts

1. Can you tell me about your position at [name of organization/entity]?
2. How long have you been in this role?
3. Beyond this position, have you worked in other agricultural or supply chain contexts, and if so, what kind of work did you do?
4. There has been significant emphasis in recent years on the rise of guestworker programs to fill jobs in a number of countries. In your view, has there been an increase in the utilization of these programs? In particular, have more U.S. employers started using the H-2A program? If so, why?
5. What are the advantages and disadvantages of recent changes of guestworker programs (from the perspective of employers, workers, sending/receiving governments, and/or worker organizations)?
6. [For experts from public regulatory agencies]: What kind of work does your organization specifically do [i.e. regulatory responsibilities, jurisdiction, etc.]? Can you describe what legal protections do (and don't) exist for farmworkers? For the protections that do exist [with which you have experience], how are those enforced? Can you talk about any barriers to effective enforcement of protections, particularly related to the H-2A program?
7. When and how did the idea of a public-private partnership to address H-2A recruitment come about? What problem was this partnership trying to solve?
8. What have been the biggest challenges or obstacles to making this partnership work?
9. What would you say have been the most significant accomplishments?
10. [For farms/H-2A employers]: what are the benefits of participating in the FFP/SNE H-2A recruitment program?
11. [For farms/H-2A employers]: How has this initiative affected your relationships with your workers? With your clients?
12. [For experts from public regulatory agencies]: Does this partnership approach differ from the way that your agency/organization regulates agricultural labor and temporary worker migration? Has it changed the way you work with and/or monitor stakeholders in agriculture (growers, retailers/food brands, other government agencies, and workers)? If so, how?
13. [For experts from public regulatory agencies]: Do you work with the Fair Food Program? If so, can you describe how that working relationship operates?
14. Why do you think more farms aren't using this H-2A recruitment program?
15. Do you think this model is replicable/expandable within the United States and to other countries? To other industries/programs?
16. [For experts]: This initiative presents a private form of regulation insofar as it is an effort to improve conditions and police labor and migration standards via agreements among supply chain actors. Do you think this affects public governance of labor conditions in agriculture, either positively or negatively? If so, how?
17. Is there anything else you think it's important for me to know?