

An Analysis of the Conditions of Immigrant Farmworkers in North Carolina During the COVID-19 Pandemic

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I. Introduction

As of the end of December 2020, North Carolina recorded almost 500,000 COVID-19 cases and more than 6,400 related deaths.¹ Among these, where ethnicity was reported, Hispanic respondents represented 25% of all state cases,² despite making up only 9% of the state population.³ While this is an improvement from the 39% of cases they comprised at the beginning of June,⁴ the fact remains that this demographic is vastly overrepresented among the over 520,000 victims of the pandemic across the state thus far.⁵

A primary driver for infection across farmworkers is the physical nature of their agricultural labor, impossible to carry out remotely, as 85% of fruits and vegetables produced in the state are harvested by hand.⁶ The North Carolina Department of Health and Human Services (NCDHHS) has listed a number of locations of COVID-19 outbreaks in its congregate living facility report, updated periodically.⁷ The NCDHHS's counts, however, may critically underestimate actual COVID-19 figures across Hispanic farmworkers.

¹ *North Carolina Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/north-carolina-coronavirus-cases.html> (last visited Dec. 26, 2020).

² *Cases Demographics*, N.C. DEP'T HEALTH AND HUM. SERVS., <https://covid19.ncdhhs.gov/dashboard/cases-demographics> (last visited Dec. 26, 2020) [hereinafter *Demographics*].

³ Rebecca Tippet, *The Hispanic/Latino Community in North Carolina (2017)*, CAROLINA DEMOGRAPHY (Oct. 10, 2017), <https://www.ncdemography.org/2017/10/10/the-hispaniclatino-community-in-north-carolina/#:~:text=Statewide%2C%209%25%20of%20North%20Carolina%27s,over%20the%20past%2025%20years.>

⁴ 2020 Bill Text NC E.O. 143 (June 4, 2020) [hereinafter Exec. Order No. 143].

⁵ *Demographics*, *supra* note 2.

⁶ NC Farmworker Institute, *Facts About North Carolina Farmworkers*, STUDENT ACTION WITH FARMWORKERS, <https://saf-unite.org/content/facts-about-north-carolina-farmworkers> (last visited Dec. 26, 2020).

⁷ *COVID-19 Ongoing Outbreaks in Congregate Living Settings*, N.C. DEP'T HEALTH AND HUM. SERVS. (Dec. 22, 2020), <https://files.nc.gov/covid/documents/dashboard/Weekly-COVID19-Ongoing-Outbreaks.pdf> (explaining

This paper will discuss the conditions of immigrant farmworkers in N.C. that heighten their vulnerability to the COVID-19 pandemic, noting the need for an adequate response from state authorities. Part II will cover several factors contributing to the risk of coronavirus infections among these farmworkers, including factors regarding housing, employment, and health care provision. Part III will evaluate the quality of the current responses to the pandemic. Lastly, Part IV will summarize the discussion and reiterate experts' recommendations moving forward and Part V will conclude.

II. Factors Increasing the Risk of COVID-19 Infections Among Immigrant Farmworkers

A. Precarious Housing Conditions

Since independent rental housing or other dwelling alternatives in rural areas tend to be scarce and restrictively expensive,⁸ most immigrant farmworkers, who come to the United States on temporary work visas, reside in labor camps provided by their employers.⁹ Importantly, the precarious conditions in these labor camps increase the farmworkers' risk of exposure to coronavirus.¹⁰ Poor housing conditions are pervasive in farmworker labor camps, and they remain largely inconspicuous in the rural landscape.¹¹

the NCDHHS has defined an outbreak as the finding of more than two cases within the same facility, where the facility holds ten or more residents).

⁸ Teresa Wiltz, *States Struggle to Provide Housing for Migrant Farmworkers*, PEW CHARITABLE TRUSTS (May 2, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/05/02/struggle-to-provide-housing-for-migrant-farmworkers>.

⁹ Aaron Sánchez-Guerra ET AL., *Coronavirus poses a threat to a major NC food producer: the immigrant farmworker*, NEWS & OBSERVER (Apr. 8, 2020, 5:33 PM), <https://www.newsobserver.com/news/coronavirus/article241444926.html>.

¹⁰ Liora Engel-Smith, *For migrant workers in NC, coronavirus may be hard to avoid*, N.C. HEALTH NEWS (Mar. 13, 2020), <https://www.northcarolinahealthnews.org/2020/03/13/for-migrant-workers-in-nc-coronavirus-may-be-hard-to-avoid/>. Additionally, about 80,000 of N.C. farmworkers are also migrant or seasonal, respectively meaning that they either enter the state to work temporarily or permanently reside in the state but only work on agriculture seasonally. Elizabeth Freeman Lambar & Gayle Thomas, *The Health and Well-being of North Carolina's Farmworkers*, 80 N.C. MED. J. 2, 107 (2019).

¹¹ Phillip Summers ET AL., *Hidden Farmworker Labor Camps in North Carolina: An Indicator of Structural Vulnerability*, 105 AM. J. PUB. HEALTH 12, 2572-2574 (2015).

Immigrant farmworkers commonly share a room with three or four peers,¹² and their bathrooms often have as few as five toilets and no dividers.¹³ Additionally, employers do not typically keep designated places to house farmworkers in quarantine.¹⁴ The NC Migrant Housing Act of 1989, which established housing standards for migrant workers, only requires one toilet for every fifteen workers and one wash tub for every thirty workers.¹⁵ All farmworkers in a labor camp usually share the same kitchen and living areas,¹⁶ making social distancing virtually impossible to engage in, and facilitating the spread of the virus when a resident of the facility contracts the disease while working on the fields or otherwise.

Transportation conditions add another layer of exposure, with workers in the Franklin work camp, for example, reportedly living in tight quarters and riding to work together in close spaces.¹⁷ Nonprofit organizations like Farmworker Justice have warned about the heightened risk of coronavirus transmissions due to overcrowded dwellings.¹⁸

COVID-19 cases have in fact been growing exponentially among migrant labor camps, some of which exclusively house Hispanic workers who are part of the federal H-2A temporary work visa program.¹⁹ N.C. is among the top five states employing H-2A visa holders, with

¹² Engel-Smith, *supra* note 10.

¹³ Sánchez-Guerra ET AL., *supra* note 9.

¹⁴ *Id.*

¹⁵ N.C. GEN. STAT. § 95-222:229 (1989); *Introduction to Migrant Housing Inspections in North Carolina*, N.C. DEPT LAB. (Jan. 2008), https://files.nc.gov/ncdol/ash/publications/ash_blue_book.pdf.

¹⁶ Engel-Smith, *supra* note 10.

¹⁷ John Boyle, *COVID-19 cases soar among Hispanic population in NC, disproportionately high*, CITIZEN TIMES (July 17, 2020, 6:00 AM), <https://www.citizen-times.com/story/news/local/2020/07/17/covid-19-cases-soar-among-hispanic-population-nc/5436219002/>.

¹⁸ *Statement by Farmworker Advocates on COVID-19 and the Risks to Farmworkers*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/blog-post/statement-by-farmworker-advocates-on-covid-19-and-the-risks-to-farmworkers/> (last visited Dec. 26, 2020).

¹⁹ Boyle, *supra* note 17; see *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers> (last updated Dec. 18, 2020) for more information about the H-2A program.

almost twenty thousand of these farmworkers laboring across the state.²⁰ This year, growers have prioritized the hiring of H-2A workers, over whom employers can exercise greater contractual control compared to seasonal and undocumented workers who are consequently left with significantly reduced work.²¹ This greater control, however, has historically allowed for abuse around the sales of food for H-2A farmworkers, leading to increased food insecurity and loss of money.²²

B. Job Insecurity and Employer Retaliation

Exacerbating the issue is the possibility that the respondents themselves underreport their symptoms due to fear of losing their livelihoods.²³ For instance, some farmworkers have disclosed not being in a secure enough position to miss a day's worth of income.²⁴ The national average income for individual farmworkers ranged between \$17,500 and \$19,999 for the 2015-2016 year,²⁵ and East Coast farmworkers have been reported in previous years to earn around 35% less than the national average.²⁶ Moreover, N.C. farmworkers are often denied paid sick leave, are unaware of governmental paid COVID-19 leave programs, and express reason to fear that their employers will retaliate against them and their peers in the labor camp, as their peers may be suspected of being infected given the impracticability of social distancing in the camps and the consequent ease of widespread infection.²⁷

²⁰ *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 Q1-Q3*, U.S. DEP'T LAB. (June 30, 2020), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020_Q3.pdf.

²¹ Lariza Garzon & Andrew R. Smolski, *Episcopal Farmworker Ministry and disaster response to COVID-19*, 9 J. AGRIC., FOOD SYS., AND CMTY. DEV. 4, 193 (2020).

²² *Id.*

²³ Anna Jensen, *A Letter to Gov. Cooper*, FARMWORKER ADVOCACY NETWORK (June 16, 2020), <https://ncfan.org/2020/a-letter-to-gov-cooper/>.

²⁴ *Id.*

²⁵ *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*, U.S. DEP'T LAB. (Jan. 2018), https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf [hereinafter *NAWS*].

²⁶ NC Farmworker Institute, *supra* note 6.

²⁷ *Id.*

Farmworkers expect retaliation to entail anything from suspension of work—and of wages—to termination of their contract and dismissal to their countries of origin.²⁸ Research indicates that Hispanics have suffered greater loss of employment income during the pandemic than any other racial or ethnic group in N.C., especially those living in rural areas,²⁹ consistent with reports by advocacy groups like Action N.C.³⁰ While the study does not appear to have focused on farmworkers, the mentioned characteristics are consistent with the realities of immigrant farmworkers in the state.

The silence on potential coronavirus cases, in turn, provides some workers with false reassurance that coronavirus has not permeated their workplace, which, coupled with the unavailability of personal protective equipment (PPE), makes this population all the more vulnerable to the virus.³¹ Even where PPE may be made available, it may nonetheless be impractical to wear, as it could aggravate the heat and humidity that farmworkers undergo in their work.³²

C. Difficulties in Providing Health Care

When immigrant farmworkers do seek care, the response they received is undermined by various systemic factors, such as employers' reluctance to provide transportation to testing or medical centers and the inability of outreach organizations to meet this need at a large scale.³³ In some instances where transport is possible, some hospitals and health departments refuse to test

²⁸ Engel-Smith, *supra* note 10.

²⁹ Abby Cooper ET AL., *The Impact of COVID-19 on North Carolina: Poverty, Housing & Food Insecurity* (July 23, 2020) (Press Conference, UNC Public Policy) (on file with the University of North Carolina at Chapel Hill) <https://publicpolicy.unc.edu/wp-content/uploads/sites/107/2020/07/COVID-Executive-Summary-FINAL.pdf>.

³⁰ Editorial, *Hispanic workers help keep NC running. Their thanks? A heavy dose of COVID-19*, NEWS & OBSERVER (June 22, 2020, 7:20 PM), <https://www.newsobserver.com/opinion/article243666837.html>.

³¹ Jensen, *supra* note 23.

³² Sara A. Quandt ET AL. *COVID-19 Pandemic among Latinx Farmworker and Nonfarmworker Families in North Carolina: Knowledge, Risk Perceptions, and Preventive Behaviors*, 17 INT'L J. ENV'T RSCH. AND PUB. HEALTH 16, 5786 (2020).

³³ Jensen, *supra* note 23.

farmworkers, even when these workers are part of the NCDHHS lists for priority testing, or the tests are otherwise unaffordable.³⁴ Language barriers also add additional obstacles to treatment.³⁵

Other problems raise additional concerns regarding the accuracy of the reported case counts. For instance, some hospitals and health departments neglect to document their immigrant patients' type of work or housing.³⁶ Some hospitals and health departments also refuse to test multiple members of a household when a single member tests positive, and this fails to trigger quarantine efforts even though some household members may work at different locations, contributing to the spread of the pandemic.³⁷

III. Efforts to Contain Coronavirus Infections

A. Individual-Level Strategies

The challenges in testing have led N.C. authorities to prompt the Guatemalan and Mexican consulates in Raleigh to share instructions on how to find help and emphasizing personal responsibility in staying safe, including by wearing face masks and maintaining social distancing,³⁸ solutions that are often unworkable as discussed above. The NCDHHS has also offered grants to five nongovernmental organizations to assist Hispanic communities with preventive measures and provide access to COVID-19 testing and tracing.³⁹

But individual-oriented strategies to combat the pandemic are largely inefficient given the practical realities and cultural expectations that immigrant farmworkers face.⁴⁰ Seasonal

³⁴ *Id.*

³⁵ *Id.* (explaining how language barriers complicate making diagnoses and prescribing follow-ups).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Aaron Sánchez-Guerra, *As COVID-19 cases surge among Latinos, NC leaders amplify messages of preventive measures*, NEWS & OBSERVER (July 24, 2020, 1:59 PM), <https://www.newsobserver.com/news/coronavirus/article244438722.html>.

³⁹ Boyle, *supra* note 17.

⁴⁰ Quandt et al., *supra* note 32.

Hispanic farmworkers and their families, despite having strong awareness of the public health messages issued since the pandemic began, may not be able to comply with them.⁴¹ Moreover, while farmworkers have reported commonly wearing masks at work, specific measures for consistency or enforcement of mask wearing are unavailable.⁴²

B. Governmental Protections

The difficulties involved in individual and third-party strategies indicate that the protection of farmworkers may most effectively be regulated by the state. But governmental implementation, let alone enforcement, of labor protections for farmworkers has been persistently limited due to the prevalence of a laissez-faire political philosophy reminiscent of the agricultural exceptionalism of the 1930s.⁴³ Agricultural exceptionalism was characterized by the exclusion of farmworkers from most federal labor protections, including the right to unionize under the 1935 National Labor Relations Act and, in many instances, the right to just compensation under the 1938 Fair Labor Standards Act and even access to workers' compensation coverage.⁴⁴ Consequently, farmworkers find themselves left out of necessary protections otherwise guaranteed to other worker categories.⁴⁵

Notably, the N.C. Department of Labor has done little to protect immigrant farmworkers from COVID-19 despite having received close to 1,000 complaints from farmworkers and meat-

⁴¹ *Id.* (noting that the households studied had a median of five members, including extended family, and explaining that cultural norms among the Hispanic population prioritize frequent close contact within the family unit and foster disapproval for wearing masks at home despite most adults in the household working in settings where they had close contact with non-family co-workers.).

⁴² *Id.*

⁴³ Freeman Lambar & Thomas, *supra* note 10, at 109.

⁴⁴ *Id.*

⁴⁵ See Sarah O. Rodman, *Agricultural Exceptionalism in U.S. Policies and Policy Debates: A Mixed Methods Analysis* (2016) (Ph.D. dissertation, Johns Hopkins University) (on file with the Sheridan Libraries, Johns Hopkins University) for a historical overview and a comprehensive mapping of state-level policies perpetuating agricultural exceptionalism.

and-poultry processing workers by the beginning of November.⁴⁶ The lax oversight is especially alarming as the winter season arrives,⁴⁷ as immigrant farmworkers continue to work through the end of the year and with more workers arriving next spring.⁴⁸

Meanwhile, N.C. Agriculture Commissioner Steven Troxler announced in September that asymptomatic farmworkers, including Christmas tree farmworkers, may not be relieved with pay despite the heightened risk of infection.⁴⁹ Troxler emphasized that farmworkers must comply with individual-level solutions that are likely infeasible,⁵⁰ as previously discussed.

The Commissioner describes Christmas tree farmworkers as “critical infrastructure workers within the Food and Agriculture Sector.”⁵¹ The United States Department of Homeland Security defines “critical infrastructure” as “the physical and cybernetic systems and assets that are so vital to the United States, and whose disability or destruction would have a debilitating

⁴⁶ Lucy Thames, *Farmworkers, Poultry Processing Workers, and Community Members Remember Lives Lost from COVID-19 and Call on NC Dept. of Labor to Take Action*, FARMWORKER ADVOCACY NETWORK (Nov. 2, 2020), <https://ncfan.org/2020/farmworkers-poultry-processing-workers-and-community-members-remember-lives-lost-from-covid-19-and-call-on-nc-dept-of-labor-to-take-action> (explaining that the NCDOL has so far responded to most of these cases by merely sending letters to employers describing best practices and offering guidance).

⁴⁷ Rossi A. Hassad, *Why COVID-19 Might Get Worse in Winter, Just Like Flu*, MEDPAGE TODAY (Nov. 5, 2020), <https://www.medpagetoday.com/infectiousdisease/covid19/89495> (describing how the seasonal changes are likely to exacerbate the risk and severity of coronavirus).

⁴⁸ Thames, *supra* note 46.

⁴⁹ Letter from Steven W. Troxler, Comm’r, N.C. Dep’t Agric. and Consumer Servs. (Aug. 2020) (on file with author) [hereinafter Troxler]; *see also* Paola Jaramillo & Nicolás Baintrub, *North Carolina Department of Agriculture says asymptomatic Farmworkers exposed to COVID-19 must continue working*, ENLACE LATINO NC (Sept. 8, 2020), <https://enlancelatinonc.org/north-carolina-department-of-agriculture-says-asymptomatic-farmworkers-exposed-to-covid-19-must-continue-working/#.X8ZzPKvQhPY> (suggesting that Commissioner Troxler’s directive may have been issued in response to a COVID-19 outbreak at a Christmas tree farm in Sparta).

⁵⁰ Troxler, *supra* note 49; *see also* *COVID-19 Critical Infrastructure Sector Response Planning*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Dec. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/critical-infrastructure-sectors.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcommunity%2Fcritical-workers%2Fimplementing-safety-practices.html.

⁵¹ Troxler, *supra* note 49; *see also* *COVID Resourced for Farmers & Farm Workers*, NC CHRISTMAS TREE ASS’N, <https://ncchristmastrees.com/covid-resources-for-farmers-farm-workers/> (last visited Dec. 26, 2020) (explaining that Christmas tree farming involves the production of Fraser fir trees in N.C., which represent over 94% of all species grown across the state and over 25% of all trees grown in the U.S., with the whole industry contributing over \$85 million to the state economy each year).

impact on our physical or economic security or on our public health or safety.”⁵² Contrary to Commissioner Troxler’s categorization, the Christmas tree industry, while profitable, is not so vital to the state that its interruption would compromise the public health and safety.

Still, at least one state lawmaker, Representative Jimmy Dixon of Duplin County, has defended the exposure of farmworkers to COVID-19 as necessary for the sake of the market.⁵³ While this point has made its way into the mainstream political discourse,⁵⁴ the World Health Organization warns that such propositions are not only unethical but also medically unsound.⁵⁵

In a different approach, Governor Roy Cooper issued Executive Order No. 143 on June 4 to address the lack of protections available to farmworkers.⁵⁶ Governor Cooper committed to follow up with another executive order instituting significant labor protections for farmworkers, similar to executive orders issued in Wisconsin⁵⁷ and Michigan⁵⁸ involving additional safety

⁵² Paola Jaramillo & Nicolás Baintrub, *North Carolina Department of Agriculture says asymptomatic Farmworkers exposed to COVID-19 must continue working*, ENLACE LATINO NC (Sept. 8, 2020), <https://enlancelatinonc.org/north-carolina-department-of-agriculture-says-asymptomatic-farmworkers-exposed-to-covid-19-must-continue-working/#.X8ZzPKvQhPY> (noting that food industry workers, for instance, provide a service that is essential to the daily living of the general public and that may not therefore be safely interrupted).

⁵³ Editorial, *supra* note 30 (citing Rep. Dixon’s argument that the economy would be strengthened if more people contract the virus so that the population develops herd immunity).

⁵⁴ See Yasmeen Abutaleb & Josh Dawsey, *New Trump pandemic adviser pushes controversial ‘herd immunity’ strategy, worrying public health officials*, WASH. POST (Aug. 31, 2020, 3:56 PM), https://www.washingtonpost.com/politics/trump-coronavirus-scott-atlas-herd-immunity/2020/08/30/925e68fe-e93b-11ea-970a-64c73a1c2392_story.html; Dan Diamond, *‘We want them infected’: Trump appointee demanded ‘herd immunity’ strategy, emails reveal*, POLITICO (Dec. 16, 2020, 1:22 PM), <https://www.politico.com/news/2020/12/16/trump-appointee-demanded-herd-immunity-strategy-446408>.

⁵⁵ *Coronavirus disease (COVID-19): Herd immunity, lockdowns and COVID-19*, WORLD HEALTH ORG. (Oct. 15, 2020), <https://www.who.int/news-room/q-a-detail/herd-immunity-lockdowns-and-covid-19#:~:text=%27Herd%20immunity%27%2C%20also%20known,by%20exposing%20them%20to%20it>.

⁵⁶ Exec. Order No. 143, *supra* note 4 (designating a task force to “create economic stability, eliminate health disparities, and achieve environmental justice in North Carolina” and setting up a structure in support of mass testing, food distribution, and support of vulnerable communities, among other measures).

⁵⁷ 2020 Bill Text WI E.O. 526 (Apr. 14, 2020).

⁵⁸ 2020 Bill Text MI E.O. 137 (June 29, 2020).

measures in working and housing environments.⁵⁹ However, Cooper rescinded his promise in September following pushback from the N.C. Departments of Labor and Agriculture.⁶⁰

IV. Recommendations

Emphasizing the need for a systemic response to the pandemic, over 120 labor, farm, environmental, religious, and civil rights organizations representing millions of farmworkers in and outside of N.C. sent a letter to Governor Cooper, NCDHHS Secretary Dr. Mandy Cohen, Labor Commissioner Cherie Berry, and Commissioner Troxler calling for “immediate action [to protect] workers who put their lives on the line while sustaining North Carolina’s largest industries and our food supply.”⁶¹ The letter demands the state to enforce, instead of merely advise, necessary safety requirements including workplace protections, expanded screening and testing, and enhanced workplace communication and training to safeguard hygiene standards in the workplace and to protect workers from retaliation by their employers, among other measures.⁶²

While Cooper has continued to issue executive orders in response to COVID-19 as recently as December 21st,⁶³ none of these orders have addressed farmworkers’ pleas.⁶⁴ The N.C. Farmworker Advocacy Network (NCFAN) has additionally listed several recommendations for state officials, including an extension of the Governor’s Executive Order No. 131⁶⁵ to

⁵⁹ Aaron Sánchez-Guerra, *After pushback from officials, Cooper halts executive order to protect agricultural workers*, NEWS & OBSERVER (Sept. 10, 2020, 4:59 PM), <https://www.newsobserver.com/news/politics-government/article245580035.html>.

⁶⁰ *Id.*

⁶¹ Letter from A Better Balance, ET AL., to Roy Cooper, Governor, State of N.C., ET AL. (Sept. 25, 2020) (on file with the Center for Biological Diversity).

⁶² *Id.*

⁶³ 2020 Bill Text NC E.O. 183 (Dec. 21, 2020).

⁶⁴ *Executive Orders*, N.C. OFF. GOVERNOR, <https://governor.nc.gov/news/executive-orders> (last visited Dec. 29, 2020).

⁶⁵ 2020 Bill Text NC E.O. 131 (Apr. 9, 2020) (mandating appropriate COVID-19 restrictions for retail establishments).

agricultural workers.⁶⁶ The group also demanded more accessible testing for immigrant farmworkers, noting that Executive Order No. 143, which expanded access to COVID-19 testing,⁶⁷ failed to include safeguards specific to farmworkers.⁶⁸

NCFAN also called for Secretary Cohen to use her enforcement authority under N.C. Gen. Stat. §130A-17–20 to enforce protections for immigrant farmworkers.⁶⁹ These statutes grant Cohen and a corresponding local health director the right to enter premises where entry is necessary to enforce public health provisions or rules,⁷⁰ or to order or otherwise execute an abatement where a public health nuisance or an imminent hazard exists.⁷¹ The statutes also permit the Secretary or a local health director to institute an action for injunctive relief against violators or to take other particular measures.⁷²

North Carolinian public officers may also draw inspiration from measures implemented in other states. Beside the aforementioned executive order, Michigan has also issued an emergency order requiring employers to draft a plan outlining how they will test farmworkers prior to in-person work.⁷³ Similarly, Washington issued a proclamation requiring daily employee temperature checks, timely access to COVID-19 tests for symptomatic workers with

⁶⁶ Jensen, *supra* note 23.

⁶⁷ Exec. Order No. 143, *supra* note 4.

⁶⁸ Jensen, *supra* note 23 (listing the organizations demands, including offering no-cost testing at labor camps or nearby locations with Spanish interpretation and more available hours as well as better communication from the NCDHHS concerning the implications of testing).

⁶⁹ *Id.* (referencing the Secretary of the NCDHHS's powers to monitor precarious conditions in farms and labor camps, to enforce expanded labor protections where employers have failed to safeguard the health of immigrant farmworkers, and to impose penalties against landowners refusing to comply with public health directions).

⁷⁰ N.C. GEN. STAT. § 130A-17 (2015).

⁷¹ N.C. GEN. STAT. § 130A-19, -20 (2015).

⁷² N.C. GEN. STAT. § 130A-18, -19 (2015).

⁷³ Emergency Order Under MCL 333.2253, *Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers*, MICHIGAN DEPT. OF HEALTH AND HUMAN SERVS. (Aug. 3, 2020), https://www.michigan.gov/documents/coronavirus/2020.08.03_-_MDHHS_Public_Health_Order_-_Agriculture_Testing_vF_698096_7.pdf.

transportation provided, and workable social distancing plans, forbidding continued operations in cases of employer noncompliance.⁷⁴

Moreover, some state legislatures have introduced bills to support their farmworkers, such as New Jersey's S 2596, which would allow the N.J. Commissioner of Health to provide grants to improve the health and safety of farmworkers, including improving housing and workstations,⁷⁵ and Ohio's H.B. 605, which would declare an "occupational disease" under the Workers' Compensation Law whenever a food processing worker contracts COVID-19 during an emergency period.⁷⁶

Given the feasibility of the aforementioned actions, the State of North Carolina must leave behind its policy of agricultural exceptionalism and commit to enhance and expand health protections for immigrant farmworkers. State authorities should increase their oversight of housing and workplace hygiene standards and ensure that the number of workers, the dimensions of their environment, the shift assignments, and other relevant factors allow for effective social distancing and proper sanitation measures. The State must further prevent employers from categorizing farmworkers as essential infrastructure where their work, even if profitable, is not so vital that its slowdown would harm to public health or safety. Accordingly, supplementary regulations must protect farmworkers from the instabilities inherent in their work, such as employer retaliation and income insecurity, which affect visa-holding farmworkers as well as the undocumented workforce. Lastly, farmworkers need better provision of health care, including a greater quantity of accessible testing and treatment centers and more accurate reporting of cases.

⁷⁴ 2020 Bill Text WA E.O. 744 (Aug. 19, 2020).

⁷⁵ S 2596, 219th Leg., Reg. Sess. (N.J. 2020).

⁷⁶ H.B. 605, 133rd Gen. Assemb., Reg. Sess. (Ohio 2020).

V. Conclusion

The dangers presented by these conditions necessitate a comprehensive, systematic response from the State of N.C. to protect immigrant farmworkers. Mere action at the individual and grassroots levels, while active and necessary, has proven insufficient in addressing the many adversities that immigrant farmworkers face in the state. Given farmworkers' experiences during the past year, and the likelihood that current conditions will continue into the upcoming year, the demanded regulations may be one of the most, if not the most, effective way to guarantee the safety of this vulnerable population.