

CERTIFIED EXPLOITATION:

How Equitable Food Initiative and Fair Trade USA Fail to Protect Farmworkers in the Mexican Produce Industry



October 2023

By James Daria and Anna Canning

Suggested Citation:

James Daria, Anna Canning. Certified Exploitation: How Equitable Food Initiative and Fair Trade USA Fail to Protect Farmworkers in the Mexican Produce Industry, Corporate Accountability Lab (October 2023). ©2023 Corporate Accountability Lab.

All rights reserved. All content contained herein is subject to the terms and conditions of Corporate Accountability Lab's copyright license. Read more at corpaccountabilitylab.org/cal-copyright-license.

Design by Jane Canning.

Photos on pages 23, 25, 28, 33, 34, 36, 44, and 46 by anonymous workers. Photos on cover and on pages 3, 5, 6, 7, 8, 9, 10, 11, 15, 16, 19, 20, 21, 22, 29, 39, 41, 42, 43, 45, 48, and 57 by Dr. James Daria

Authors:

Dr. James Daria is Assistant Professor of Anthropology and Co-Director of the Food Studies Program at Spelman College. Dr. Daria is an anthropologist of food, labor, and migration who has conducted ethnographic research in the San Quintín valley since 2016. Besides his professional training in anthropology, Dr. Daria has been an immigrant rights activist, farm labor organizer, and popular educator.

Anna Canning has over fifteen years of experience working in supply chains and in movements for food justice and human rights. She has previously written in-depth analyses of ethical certifications for the fair trade watchdog Fair World Project. Ms. Canning is currently Director of Communications for the Worker-driven Social Responsibility Network.

CONTENTS:



1. Fair and Equitable?

Ethical Certifications in Fresh Produce Commodity Chains:
The Case of San Quintín, Baja California, Mexico..... **5**

2. Representation or Repression?

EFI's Failure to Protect Workers' Rights at Rancho Nuevo
Produce..... **15**

3. The Santa Mónica Strawberry Strike:

Workers Take Action to Address Poverty Wages at EFI and
FTUSA Certified Plantation..... **29**

4. Trapped:

Evidence of Forced Labor of Contracted Migrant Farmworkers
at EFI and FTUSA Certified Rancho Agrícola Santa Mónica.... **38**

5. Conclusion:

Transnational Agriculture, Ethical Certifications, and Farm
Labor Organizing..... **45**



A Note on Acronyms:

Throughout the text, the following acronyms are used for the main subjects of the report:

A&W = Andrew & Williamson Fresh Produce

EFI = Equitable Food Initiative

FTUSA = Fair Trade USA

SINDJA = Sindicato Independiente Nacional Democrática de Jornaleros Agrícolas (the Independent National Democratic Union of Agricultural Day Laborers)

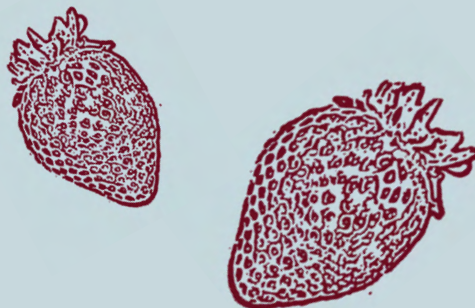
A Note on Methodology

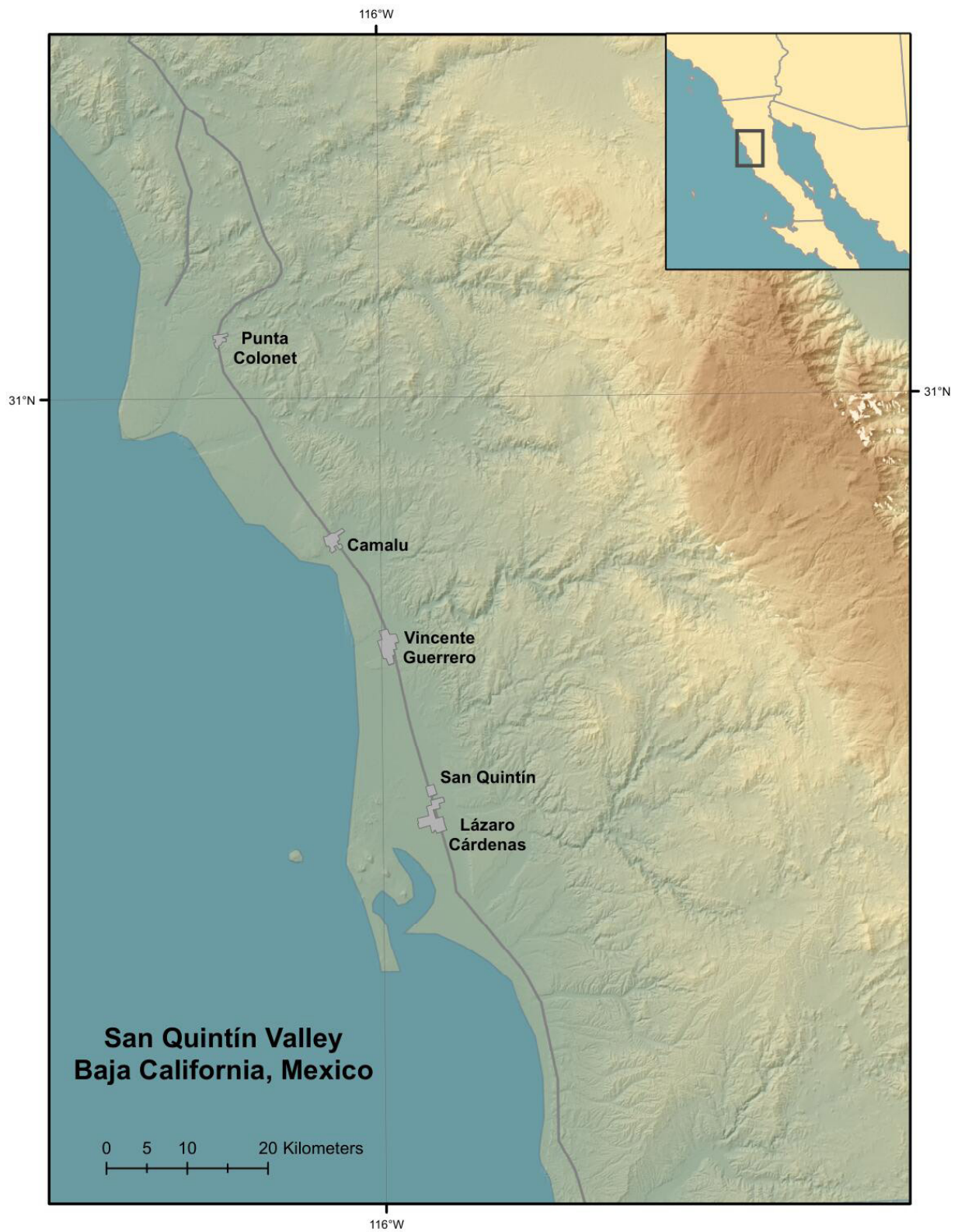
This report is the result of long-term ethnographic research in San Quintín. Since 2016, Dr. James Daria has undertaken over 200 semi-structured interviews with workers, labor contractors, community leaders, activists, and union leaders regarding labor conditions in the San Quintín produce sector and the presence of eco-social certifiers.¹ Farm labor is often a very gendered form of work. Thus, while attempts at gender parity were made, roughly 60 percent of interviews were with men and 40 percent with women. Additionally, most workers interviewed were Indigenous, and many were internal migrants from southern Mexico, as are roughly 80 percent of farmworkers in the San Quintín valley.² All farmworker interviews were conducted in Spanish with translation by the author. The case studies cited here mostly come from an intense period of organizing activity in 2021-2022.

Although just a few voices are cited here, their experiences fit the larger patterns of the longer-term research. The long-term nature of this research and the protection of their identities help to bring these voices of Mexican farmworkers and their organizations forward – not an easy task considering the constant harassment, repression, and blacklisting they experience. Fear of retaliation is a constant as workers fear losing their jobs or the opportunity to obtain H-2A guestworker visas as a path to higher-paying work in the U.S. if they speak up about workplace conditions. Names have thus been changed to protect worker identities.

Most of the voices contained here are farmworkers'; attempts to engage FTUSA and EFI as well as local employees in charge of certification programs at BerryMex and El Milagro de Baja were unsuccessful as access to their production sites and organizational practices was denied. Few growers, corporations, company unions, and fair-trade organizations granted interviews.³

A few details in this report were previously published by the main author in *Mexican Studies/Estudios Mexicanos* and *Frontera Norte*.⁴ We appreciate the editors of these journals to allow the reproduction of this information.





Map of the San Quintín valley region in Baja California, Mexico (Made with Natural Earth spatial data by Doug R. Oetter, Georgia College & State University)."

INTRODUCTION:

Walk into a supermarket at any time of the year in the United States and shoppers are likely to find fresh berries, tomatoes, and cucumbers. On the plastic clamshell packaging, the labels may declare them “fair trade” and “responsibly grown,” but behind the labels, the workers who harvest these fruits and vegetables often live and labor in conditions they call “twenty-first century slavery.”

This contradiction – exploited workers growing produce that is certified as ethically sourced – arises in the context of accelerating U.S. importation of these products. Between 2010 and 2018, imports by volume of strawberries increased 79 percent.⁵ In 2019, the United States imported almost two-thirds of the fresh fruit and one-third of the fresh vegetables it consumed. Nearly three-fourths of those imports came from Mexico.⁶ Mexico exports more than 90 percent of the berries it produces to the United States, and much of those berries are grown in the San Quintín valley in Baja California, the focus of this report.⁷

This trend is not new. It has been evident since the North American Free Trade Agreement (“NAFTA”) took effect in 1994, reducing tariffs and encouraging U.S. companies to move supply contracts across the border. There are clear and simple advantages to sourcing produce from Mexico instead of the United States: lower wages and lower production costs in general due to lack of enforcement of labor law.⁸ In California, a key produce-growing state in the U.S., the minimum wage for agricultural workers is now \$15 per hour – as much as a worker doing a similar job in Mexico might make in a day.⁹

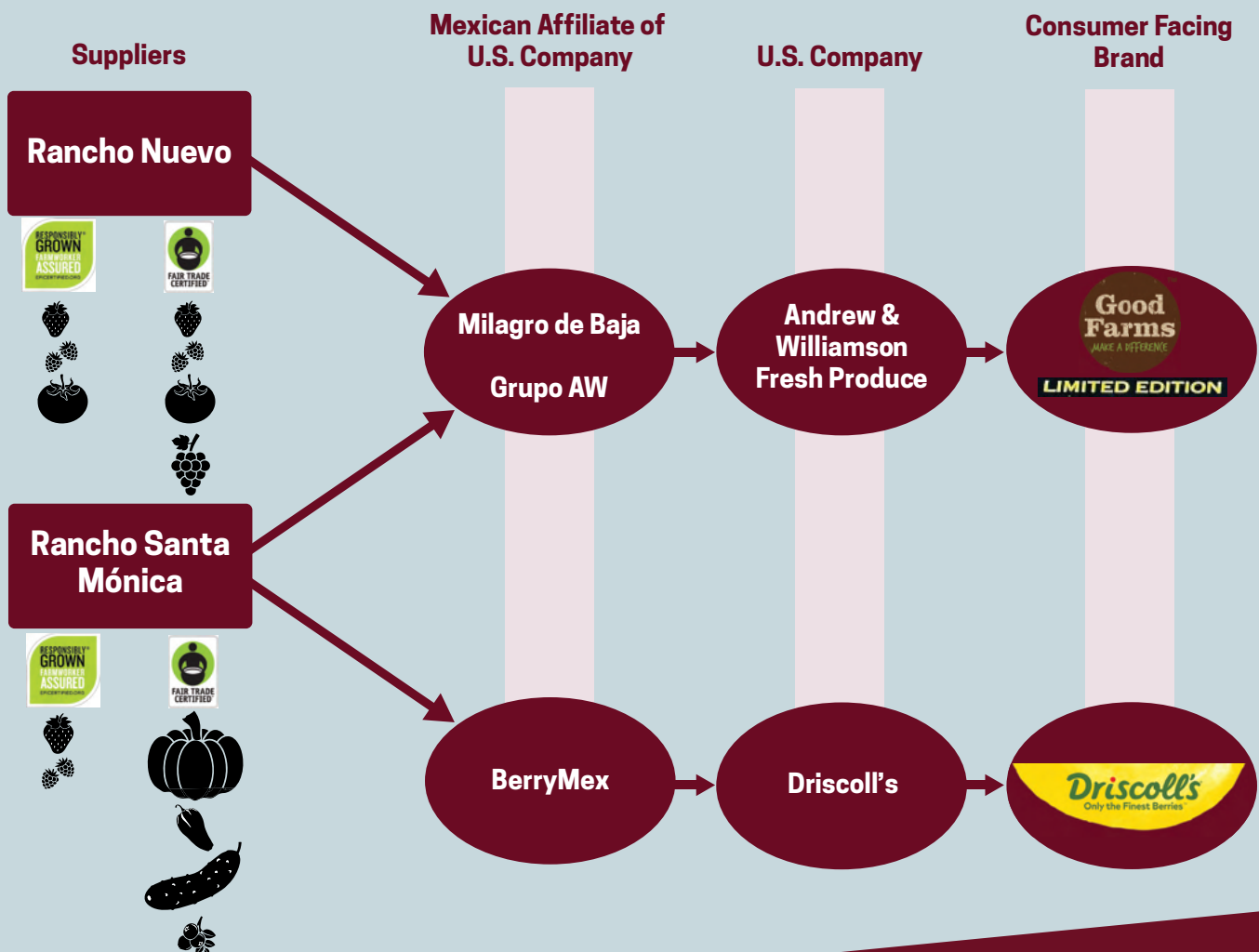
Transnational expansion in the produce sector for U.S. companies has not always been smooth. Over the last decade, produce companies have been dogged by outbreaks of foodborne illness and exposés of forced labor and other human rights abuses in their commodity chains.¹⁰ In response, certification schemes seeking to label berries, tomatoes, cucumbers, and a growing number of other crops as “ethical” and “fair trade” have entered the marketplace. Yet, as this report shows, these labels paper over a deeply abusive reality where workers report widespread low wages and wage theft, corrupt company unions, retaliation, and exploitative conditions, in some cases amounting to forced labor.



This report focuses on certification standards established and implemented by Equitable Food Initiative (“EFI”) and Fair Trade USA (“FTUSA,” formerly TransFair USA), the two major ethical labeling initiatives operating in San Quintín, Mexico. The report debunks the common claim that these initiatives fill a regulatory gap and that having some certification scheme is better than having none. Among other issues with these programs, workers describe the ways that employers use certifications to undermine workers’ independent organizing – organizing that is responsible for much of the progress – albeit minimal – that workers have made in the San Quintín produce sector.



This report explores the failures of the EFI and FTUSA certification schemes during a critical period of concerted labor activity in Driscoll’s and Andrew & Williamson Fresh Produce’s supply chains – at farms growing for BerryMex (Driscoll’s Mexican affiliate) and El Milagro de Baja (Andrew & Williamson Fresh Produce’s Mexican affiliate) in particular. Additionally, this report demonstrates how close relationships between corporations and certifiers and shared interests in consumer marketing help to shape and maintain such schemes so that companies avoid supply chain disruptions. This research is situated in a broader context in which ethical certification is increasingly discredited as a vehicle for protecting human rights but nevertheless continues to be widely used.¹¹



I. FAIR AND EQUITABLE?

Ethical Certifications In Fresh Produce Commodity Chains: The Case Of San Quintín, Baja California, Mexico

A. Farmworker Organizing in San Quintín

On March 17, 2015, tens of thousands of farmworkers began a three-month long general strike that brought agricultural production to a grinding halt in the San Quintín valley. These events set the stage for the current situation in San Quintín and show how eco-social certifiers Fair Trade USA (“FTUSA”) and Ethical Food Initiative (“EFI”) worked hand-in-hand with companies to clean up corporate images after a transnational boycott.

The *jornaleros* (farmworkers) of San Quintín are mostly Indigenous migrant or settled seasonal workers from southern Mexican states including Oaxaca, Guerrero, and Chiapas, and speak a number of different languages including Triqui, Mixteco, Zapoteco, and Nahuatl.¹² Displaced from their communities of origin, in interviews, they often called themselves the “slaves of the twenty-first century,” compelled to work ten- to twelve-hour shifts seven days a week for an average pay of \$100MX/\$6US a day. While *jornalero* technically translates as “day laborer,” implying a short-term commitment, the reality in these agro-export enclaves is that the work is now increasingly often full-time and year-round. Yet by classifying them as short-term workers, they are excluded from many legal benefits and protections afforded by Mexican labor law.





In theory – and on paper – farmworkers in Mexico are guaranteed the progressive labor rights and protections won as an outcome of the Mexican Revolution of 1910 and ingrained in the country’s constitution, labor law, and social security legislation. This legal framework guarantees equal rights for all Mexican workers regardless of occupation. In practice, however, Mexican farmworkers, who are often from marginalized groups, are excluded from the protections most urban industrial workers enjoy.

San Quintín is located in the state of Baja California, a mere 300 kilometers (186 miles) south of the U.S.-Mexican border. The estimated population of San Quintín is over 100,000, with the majority of the population comprised of settled and seasonal migrant farmworkers from poor regions of Mexico’s South and Southeast. There are over two million migrant seasonal agricultural workers in Mexico in places like San Quintín. Including families who migrate with workers, this number rises to almost ten million. For the majority of Mexico’s farmworkers, their labor is seasonal, poorly paid, and oftentimes risky. Farmworkers are routinely denied overtime pay, pensions, health care, and other legal rights afforded to urban workers.

In great part because of its proximity to the border zone, farm wages are higher in San Quintín than in other parts of the country, but so too is the cost of living. Health care coverage under the national health system is higher in San Quintín than in other areas of the country, although historically and systemically insufficient.¹³

The fresh produce industry in San Quintín relies on an expansion of the California model of agriculture and is dominated by U.S.-based transnational corporations and their global commodity chains.¹⁴ Agricultural corporations – literal food empires – based in the United States organize production and distribute products that are planted, grown, and harvested in Mexico. Driscoll’s is one of those corporations, marketing berries from both sides of the border under its brand, and its supply chains are examined in this report. Andrew & Williamson Fresh Produce (“A&W”) is the other produce company whose supply chains are examined in this report; that company markets its crops under the Good Farms label at Costco and other stores.

BerryMex and Reiter Affiliated Companies: Driscoll's Transnational Reach

BerryMex began operations in San Quintín in 2000. Driscoll's considers BerryMex an "independent grower" as it is owned and operated by Reiter Affiliated Companies ("RAC"). However, the Reiter family is an original founder of Driscoll's. Garland and Miles Reiter, the owners of RAC, are the grandsons of Joseph "Ed" Reiter, who co-founded Driscoll's with R.O. "Dick" Driscoll over 100 years ago. RAC began its operations in Mexico under the name BerryMex in 1991 and subsequently expanded its affiliated growers in 1994, the year that NAFTA came into effect. The company is expanding operations in countries like Mexico and China where manual labor is cheap and workers have few legal protections. RAC is reportedly also investing in "Agrobot" technology to eventually replace a large portion of manual labor involved in harvesting.

A Decade in China is just the Beginning for Driscoll's, as the Berry Giant Continues to Grow its China Business, FRUITNET.COM, May 17, 2023, <https://www.fruitnet.com/asiafruit/driscolls-celebrates-ten-year-anniversary-in-china/249034.article>.

Stephen Kloosterman, *Driscoll's Innovates with Machinery, Fruit, Marketing,* VEGETABLE GROWERS NEWS, Apr. 19, 2018, <https://vegetablegrowersnews.com/article/driscolls-innovates-with-machinery-fruit-marketing/>.



San Quintín is a global agricultural enclave characterized by cutting-edge technology and the exploitation of workers in growing food for export. The companies that operate in these enclaves extract the labor power of Indigenous men, women, and children so ruthlessly that the striking workers in 2015 described their labor conditions as forms of modern slavery.

Workers' rights are often violated through the ubiquitous presence of company unions that thwart labor organizing throughout Mexico.¹⁵ San Quintín is no different. All major fresh produce growers in San Quintín have company unions affiliated with powerful labor federations: the Confederación Regional Obrera Mexicana ("CROM"), Confederación de Trabajadores Mexicanos ("CTM"), and the Confederación Revolucionaria de Obreros y Campesinos ("CROC"). Each of these company unions' contracts are employer protection agreements with local growers. These company unions do not represent workers' interests and few farmworkers in San Quintín know their names – let alone what is written into the contracts negotiated to shape their working conditions.¹⁶



Company Unions: Many Names, Same Anti-Worker Purpose

Company unions are also sometimes referred to as “employer unions,” “yellow unions,” or, in Mexico, “sindicatos blancos” or “sindicatos charros.”

An employer union is one that is generally recognized as having representatives who are not freely elected by the workers it claims to represent and over which the employer has some degree of control. Such bodies are prohibited under the ILO Convention on the Right to Organise and Collective Bargaining (No. 98).

Company unions often prevent a legitimate labor union from organizing workers. Under the leadership of company unions, collective bargaining agreements are negotiated unilaterally between the union representative and the employer without worker representation. These employer protection contracts, or “sweetheart” agreements, often allow the employer to reduce labor costs by lowering salaries, ignoring labor protections, not paying social security benefits, and preventing workers from utilizing legally established grievance procedures.

International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949, ILO No. 98, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098.

Graciela Bensusán, *The Transformation of the Mexican Labour Regulation Model and its link to North American Economic Integration*, International Labour Organization, Working Paper, <https://www.ilo.org/static/english/intserv/working-papers/wp015/index.html>.

Among the demands of the 2015 San Quintín farmworker strike was an end to these company unions and their phony collective bargaining agreements. The strike was spearheaded by la Alianza de Organizaciones Nacional, Estatal y Municipal por la Justicia Social (“*la Alianza*”), an independent workers’ organization founded in 2012. After the state and federal governments ignored its long-standing calls to improve farm labor conditions, *la Alianza* planned a general strike to force the government to cede to its fourteen-point list of demands.¹⁷

The San Quintín farmworker strike began early in the morning on March 17, 2015.¹⁸ In addition to stopping work, thousands of farmworkers blockaded over 100 kilometers of the trans-peninsular highway connecting San Quintín to Tijuana and US markets, effectively cutting off strawberry shipments in the middle of harvest season.¹⁹

This militant action finally brought the workers some success when, in June 2015, representatives of *la Alianza*, growers, and the government signed an agreement to end the strike and grant the farmworker movement significant concessions, although many were short-lived.²⁰ Many of *la Alianza*'s demands are still being called for and are incorporated in this report's recommendations.

Several months later, on November 28, 2015, the constitutive assembly of the Sindicato Independiente Nacional Democrática de Jornaleros Agrícolas ("SINDJA") was held in Tijuana.²¹ SINDJA is Mexico's first truly democratic grassroots farmworker union. Unlike the company unions, SINDJA's leadership came from the ranks of farmworkers.²² SINDJA's formation represents a historic event in the history of Mexican unionism as for the first time in history, popular pressure forced the federal government to recognize an independent farmworker union.²³

Meanwhile, to the north in Washington state, the independent union Familias Unidas por la Justicia ("FUJ") was also organizing with Indigenous migrant farmworkers.²⁴ Both independent unions were campaigning for union contracts within Driscoll's supply chain, organizing a cross-border "Boycott Driscoll's" campaign.²⁵ The result: what labor journalist David Bacon dubbed the "Pacific Coast Farmworker Rebellion" of 2015 that connected Indigenous migrant farmworkers from Baja California to Washington.²⁶

In the fall of 2016, as a result of the global Boycott Driscoll's campaign, the FUJ won its collective bargaining agreement with the Sakuma Brothers Farm in Washington and concluded its participation in the boycott.²⁷ Meanwhile, no grower large or small has agreed to a collective bargaining agreement with the SINDJA union. However, the strike of 2015 has had another lasting consequence: when confronted with the possibility of disruption and facing broad solidarity, transnational brands Driscoll's and A&W moved quickly to partner with ethical certifiers to help rehabilitate their images to the public.²⁸

B. Ethical Certifications Protect Company Reputations, Not Workers' Rights

There is a long history of corporations using ethical certifications to "fairwash" their corporate images.²⁹ The close collaboration between Driscoll's and A&W and FTUSA and EFI-CIERTO, explored below, underscores the ways that corporations make use of multi-stakeholder initiatives to develop corporate-friendly private regulation with a veneer of broader participation and acceptance in service of consumer marketing goals.

The collaboration between A&W and EFI began when A&W needed to reestablish consumer confidence after decades of scandals and outbreaks of foodborne illness.³⁰ In short, A&W was backed into a corner with a series of outbreaks of foodborne illnesses and federal fraud charges.³¹ Ernie Farley, an A&W executive and current EFI director, admitted it was the company's food safety issues that brought about collaboration with Costco to launch EFI in 2012.³²



Bad Berries, Bad Business

Andrew & Williamson Fresh Produce (A&W) is a San Diego based company operating in the valley of San Quintín that has suffered a long history of health violations and food poisoning epidemics. Its facilities in San Quintín were directly linked to a number of food safety problems, including a 1997 hepatitis A outbreak that infected 153 children and teachers in Michigan and put thousands more at risk in five other states. The outbreak was linked to A&W's frozen strawberries grown in Baja California and then processed in the state of California. The Food and Drug Administration (FDA) found that A&W had fraudulently labeled 1.7 million pounds of frozen strawberries grown in San Quintín and sold them to the U.S. Department of Agriculture for their subsidized school lunch program. A&W president Fredrick L. Williamson and sales representative Richard H. Kershaw pleaded guilty to charges of conspiracy and Williamson served a ten-month sentence including five months in prison. Besides thousands of dollars paid in restitutions and fines, the company paid the government \$1.3 million in damages.

In 2011, Andrew & Williamson suffered a recall of its "Limited Edition" organic grape tomatoes produced in Mexico due to salmonella. Then, in 2015, a salmonella poona outbreak from cucumbers produced by A&W affiliate Rancho Don Juanito in San Quintín. The outbreak sickened over five hundred people in forty states and led to four deaths. Although the FDA investigated the farm, the FDA found no direct cause of the contamination, blaming general unsanitary labor and food handling conditions.

Lawrence K. Altman, *153 Hepatitis Cases are Traced to Frozen Imported Strawberries*, NEW YORK TIMES, Apr. 3, 1997, <https://www.nytimes.com/1997/04/03/us/153-hepatitis-cases-are-traced-to-frozen-imported-strawberries.html>.
Id.

Tony Perry, *Food Firm Pleads Guilty to Fraud*, LOS ANGELES TIMES, Nov. 14, 1997, <https://www.latimes.com/archives/la-xpm-1997-nov-14-mn-53641-story.html>.

Id.; *Seller of Tainted Strawberries to Schools Gets 5 Months in Prison*, LOS ANGELES TIMES, June 16, 1998, <http://articles.latimes.com/1998/jun/16/news/mn-60371> [hereinafter *Seller of Tainted Strawberries to Schools Gets 5 Months in Prison*].

Bill Marler, *Marler Clark Files 10 Salmonella Lawsuits Against Andrew & Williamson Fresh Produce*, FOOD POISON JOURNAL, Sept. 23, 2015, <http://www.foodpoisonjournal.com/foodborne-illness-outbreaks/marler-clark-files-10-salmonella-lawsuits-against-andrew-williamson-fresh-produce/#.WYODUK2Z0u4>; *Seller of Tainted Strawberries to Schools Gets 5 Months in Prison*, *supra* note 4.

Organic Grape Tomatoes Recalled for Salmonella, CBC NEWS, Sept. 30, 2011, <https://www.cbc.ca/news/health/organic-grape-tomatoes-recalled-for-salmonella-1.1118028>.

Multistate Outbreak of Salmonella Poona Infections Linked to Imported Cucumbers, CDC (Center for Disease Control), 2016, <https://www.cdc.gov/salmonella/poona-09-15/index.html>; Dan Flynn, *Mexican Cucumbers Fuel Salmonella Poona Outbreak*, FOOD SAFETY NEWS, Jan. 27, 2016, <https://www.foodsafetynews.com/2016/01/mexican-cucumbers-fuel-salmonella-poona-outbreak/>; Joan Murphy, *Andrew & Williamson Donates to STOP Foodborne Illness, Urges Industry to Join*, THE PRODUCE NEWS, Sept. 29, 2015, <https://theproducenews.com/print/pdf/node/16758>.

Background on Equitable Food Initiative

EFI is a multi-stakeholder initiative that develops the standards for the “Ethically Grown, Farmworker Assured” label. EFI standards weave together food safety, pest control, safer pesticide usage, and labor protections. EFI key stakeholders include A&W, Costco, Whole Foods, Bon Appetit food service company, the UFW, and Oxfam America. Connections between A&W, buyers, and EFI are close, with overlapping board seats and leadership roles. In 2018, Ernie Farley of A&W took over for UFW’s Erik Nicholson as chair of EFI. Farley is a partner in A&W, a representative of grower organizations, and has been an executive in the produce industry in the United States and Mexico for decades.

According to Farley, a decade of food safety issues curtailing international expansion brought A&W to work with EFI. A&W farms in the United States and San Quintín functioned as a pilot for EFI certification, and the first farms were certified in 2014. Costco covered the costs of certification and capital for A&W to acquire land in San Quintín, in exchange for rights to the produce. By 2017, A&W had twenty certified farms throughout the United States and Mexico, employing over 10,000 farmworkers.

Melissa De Leon Chavez, *EFI Welcomes Ernie Farley of Andrew & Williamson Fresh Produce as Board Chair and Carol Schrader as Vice Chair*, ANDNOWUKNOW PRODUCE INDUSTRY NEWS, Oct. 19, 2018, <https://www.andnowuknow.com/shop-talk/efi-welcomes-ernie-farley-andrew-williamson-fresh-produce-board-chair-and-melissa-de-leon/60181>.

Tom Burfield, *Andrew & Williamson Workers Benefit from Fair Trade*, THE PACKER, Aug. 20, 2015, <http://www.thepacker.com/shipping-profiles/san-diegobaja-tomatoes/andrew-williamson-workers-benefit-fair-trade>.

Herb Weisbaum, *‘Culture-changing’ Initiative to Stop Food Contamination on the Farm*, NBC NEWS, Aug. 19, 2013, <https://www.nbcnews.com/health/culture-changing-initiative-stop-food-contamination-farm-6C10855682>.

Janet I. Tu, *Costco Gets Creative to Meet Shoppers’ Huge Appetite for Organics*, SEATTLE TIMES, Apr. 1, 2016, <http://www.seattletimes.com/business/retail/costco-gets-creative-to-meet-shoppers-huge-appetite-for-organics/>.

Elizabeth Grossman, *From Farm to Table: A New Model for Growing Food Fairly and Safely*, THE PUMP HANDLE, June 6, 2013. <http://www.thepumphandle.org/2013/06/06/from-farm-to-table-a-new-model-for-growing-food-fairly-and-safely/#.YovXCS2ZN-U>.



In addition to EFI, many of the same players came together to form Centro de Investigación, Entrenamiento, y Reclutamiento del Trabajador Organizado (“CIERTO”), applying a similar approach to the recruitment of guestworkers from Mexico and Central America for U.S.-based firms.³³ The first farms were certified by EFI in 2014 – just one year before the historic farmworker strike.³⁴ CIERTO’s initial pilot program began in 2014 at A&W facilities in San Quintín during the strike.³⁵

Meanwhile, Driscoll’s also responded to labor unrest in its berry supply chains by turning to eco-social certification. In January 2016, less than a year after the general strike, Driscoll’s partnered with FTUSA to market fair trade and organic certified strawberries and raspberries grown in San Quintín by BerryMex.³⁶ The pilot program covered eleven farms that employed about 3,500 *jornaleros*, and, given the company’s view that its pilot program was successful, it expanded production to FTUSA certified blueberries and blackberries.³⁷ In a 2016 interview, Driscoll’s Americas Executive Vice President Soren Bjorn admitted that the general strike of 2015 in San Quintín and the Sakuma Brothers Farm union drive in Washington state forced the company to analyze its labor practices,³⁸ saying: “Not that things were illegal but it’s just that what we find is the number one issue that exists is a very poor dialogue between the farmworker community and the farmers,” in reference to growers in Driscoll’s supply chains.³⁹

However, the subsequent dialogue that took place between company representatives and farmworkers did not take the form of the union negotiations that workers had been demanding. Instead, in a series of multi-stakeholder conversations, companies put forward their own solutions to the labor unrest and bad publicity.

Background on Fair Trade USA

FTUSA, originally Transfair USA, was the first fair trade certification in the United States and marketed the first fair trade coffee sold in the country in 1999. Fair trade coffee initially came from small-scale farmers who sought to distinguish their product from that grown in plantation agriculture systems. The name “fair trade” sought to delineate an alternative to the free trade agreements that were already impacting small farmers livelihoods. Amid much controversy, in 2011 FTUSA created its own standards to allow certification of plantation-produced products.

Provoking further controversy, in 2017 FTUSA expanded certification to include U.S.-based produce, drawing opposition from grassroots farmworker organizations, fair trade advocates, and others, who objected on many grounds, including lack of transparent and formal engagement with rights-holders.

In 2021, FTUSA revised its standards for U.S. production, bringing them closer in line with U.S. labor law, which is notoriously inadequate for farmworkers, and further from ILO guidelines. This revision came on the tails of a pilot of a dairy standard that was not publicly part of the stakeholder engagement process.

Scott Sherman, *The Brawl Over Fair Trade Coffee*, THE NATION, Aug. 22, 2012, <https://www.thenation.com/article/archive/brawl-over-fair-trade-coffee/>.

Kerstin Lindgren, *Letter to Fair Trade USA*, FAIR WORLD PROJECT, Mar. 18, 2016, <https://fairworldproject.org/wp-content/uploads/2016/03/FTUSA-domestic-program.pdf>.

Anna Canning, *Fair Trade Dairy at One Year: Labor Abuses, Low Standards, and Misleading Labels*, FAIR WORLD PROJECT, Mar. 29, 2022, <https://fairworldproject.org/fair-trade-dairy-chobani-labor-abuses/>.

After the 2015 general strike, representatives of FTUSA, EFI, A&W, Driscoll's, Costco, and the United Farm Workers ("UFW") approached *la Alianza* and SINDJA on two occasions. In two closed-door meetings, representatives of these multinational corporations, certifiers, and U.S.-based unions proposed partnership with *la Alianza* and SINDJA to implement the certification programs. According to *la Alianza* members interviewed for this report, the talks ended without any agreements as the foreign representatives did not agree to the key demands of the Mexican farmworkers – the repeal of the existing contracts with the corrupt company unions and the signing of a collective bargaining agreement with SINDJA. The *jornalero* leaders walked away from the negotiating table, as they did not believe that EFI and FTUSA certification would improve the lives of farmworkers in the San Quintín valley.⁴⁰

While the engagement of the UFW lends the appearance of farmworker union support to the MSIs here (through FTUSA and, to a greater extent, EFI-CIERTO), the UFW do not represent workers in San Quintín.⁴¹ As Jennifer Gordon notes, "the UFW has stepped outside the collective bargaining mold entirely with its support for EFI and for CIERTO."⁴² This repositioning serves to strengthen the position of Driscoll's and Andrew & Williamson – and strengthens the very corporate consolidation that UFW leadership has cited as an obstacle to its own organizing.⁴³

Multi-Stakeholder Initiatives (MSIs): Centering Stakeholder Processes over Rights-holders

FTUSA and EFI certifications are examples of standard-setting MSIs that formally involve NGOs, brands, producers, and worker organizations in standard-setting processes.

The Institute for Multi-Stakeholder Initiative Integrity ("MSI-Integrity") defines MSIs as "collaborations between businesses, civil society and other stakeholders that seek to address issues of mutual concern, including human rights and sustainability. To do so, initiatives may work to facilitate dialogue across stakeholder groups, foster cross-sector engagement, or develop and apply standards for corporate or government conduct."

While once considered a private solution to global governance gaps, there is a growing consensus that MSIs are *not* effective at reaching their stated goals and visions. Some researchers go further, arguing that MSIs – including the certifications discussed here – function as a "new modality of labor control," in the words of researcher Sandy Brown, as they are a "soft" strategy to thwart labor's power and stymie the organizing of independent unions. For Brown, the distinction between fair trade certification and trade unions is "critical because it highlights how workers buying into the philanthropic model may undermine their control over the labor process through collective bargaining with employers." This is possible given that "certification creates an incentive for workers and growers to forego more radical types of contestation at the point of production" including workers' rights to association, collective action, and negotiation.

What are MSIs?, MSI Integrity Institute for Multi-Stakeholder Initiative Integrity, <https://www.msi-integrity.org/what-are-msis/>.

Sandy Brown, *One Hundred Years of Labor Control: Violence, Militancy, and the Fairtrade Banana Commodity Chain in Colombia*, ENVIRONMENT AND PLANNING, Vol. 45 (2013).

SINDJA has decried EFI and FTUSA in multiple communiques. “And the rights of the *jornaleros*?” it asked in one of them, “in the standards of the EFI, no article of the Mexican constitution is cited and even less so the federal labor law.”⁴⁴ According to SINDJA, “both organizations... have the same purpose of violating the rule of law.”⁴⁵ Instead of these certification programs, *la Alianza* and SINDJA “demanded the intervention of the International Labour Organization (“ILO”) so that the Mexican government fulfills its international agreements on the rights of Indigenous peoples, human rights, the right to a union, and the right to strike.”⁴⁶ *La Alianza* and SINDJA declared these two certification schemes to be “anti-union” and “*charro*” (corrupt) programs, seeking to “*maquillar*” (paint over or fairwash) the problems that *jornaleros* suffer. According to these groups, these programs “lack the capacity to resolve the real problems that are lived day to day in the fields.”⁴⁷ To sum up their position, SINDJA and *la Alianza* declared:

We will not permit them to continue tricking the agricultural workers. Nor will we permit that these types of programs be direct accomplices of the labor exploitation of the *jornaleros* by certifying products like strawberries, blackberries, blueberries, and raspberries that represent the slavery of the XXI century.⁴⁸

Both FTUSA and EFI claim to protect workers’ rights to freedom of association and collective bargaining. However, in reality, they undermine these rights. While both certification schemes have explicit standards related to freedom of association and collective bargaining, these rights are routinely and systemically violated.⁴⁹ Moreover, these schemes fairwash violations of these workers’ rights.⁵⁰

*The following FTUSA and/or EFI-certified farms in San Quintín use company unions that have secured employer protection contracts. This practice is at odds with internationally recognized standards assuring protections for freedom of association, collective bargaining, and other labor rights.*⁵¹

Grower	Local Company Protection Union	National Union Federation	Operative Certification(s)	Brand(s)	Distributor	Known Retailers
Rancho Nuevo Produce	Sindicato Nacional de Trabajadores, Obreros de Industria y Asalariados del Campo, Similares y Conexos (“SINTOICAC”)	Confederación de Trabadores de México (“CTM”)	EFI; FTUSA	Good Farms; H-E-B	A&W	Costco, Whole Foods
Rancho Agrícola Santa Mónica	Sindicato de Obreros y Campesinos, Cargadores, Operadores de Maquinaria en General, Similares y Conexos del Valle de San Quintín	Confederación Regional Obrera Mexicana (“CROM”)	EFI; FTUSA	Good Farms; H-E-B	A&W	Costco, Whole Foods
Milagro de Baja	Sindicato México-Moderno de Trabajadores de la Baja California	Confederación Regional Obrero y Campesino (“CROC”)	EFI; FTUSA (formerly certified)	Good Farms	A&W	Costco, Whole Foods
BerryMex	Sindicato de Obreros y Campesinos, Cargadores, Operadores de Maquinaria en General, Similares y Conexos del Valle de San Quintín	Confederación Regional Obrera Mexicana (“CROM”)	FTUSA	Driscoll's	Driscoll's	Kroger; Fred Meyer

2. REPRESENTATION OR REPRESSION?

EFI's Failure to Protect Workers' Rights at Rancho Nuevo Produce

Rancho Nuevo Produce is a local grower in Vicente Guerrero, San Quintín. Founded in 1997 by Sabino Becerra Rivera, Rancho Nuevo Produce is a family-run business that operates as an affiliate grower for A&W through its association with Grupo AW and Milagro de Baja. While it originally grew chilies and tomatoes, Rancho Nuevo now dedicates the majority of its 170 hectares to strawberries and raspberries. It also has a small production of saladette and cherry tomatoes. In recent years the company has expanded into wine grapes and operates a wine production facility and tasting room. In peak harvest time, Rancho Nuevo Produce employs roughly 600 workers.⁵² Its produce is primarily sold in Costco under the Good Farms and Limited Edition labels and is certified by EFI and FTUSA.⁵³ Although Rancho Nuevo carries both EFI and FTUSA certification on paper, workers interviewed in the course of this research indicated that there was no active Fair Trade committee at Rancho Nuevo. Workers in strawberry production report occasionally picking into boxes bearing the FTUSA label and receiving a small premium.



Rancho Nuevo highlights EFI's contradictions in San Quintín. Worker voices show just how far EFI's program falls short of its ambitions "to transform agriculture and improve the lives of farmworkers."⁵⁴ Instead, while farmworker testimony highlights the positive aspects of the program's food safety initiatives, it also underscores the near complete failure to guarantee labor rights, freedom of association, and social protections, all of which are lauded by EFI. Despite the certification, numerous systemic violations of both EFI standards and Mexican labor law continue at Rancho Nuevo.

A. Equitable Food Initiative: Food Safety and Labor Rights in Transnational Plantation Agriculture

EFI's growth with large brands was in large part driven by its emphasis on food safety, a result of brands facing criminal indictments and fines for mishandling multiple cases of foodborne illness. EFI standards emphasize food safety, pest management, and labor rights. EFI's program recognizes that food safety and farmworker rights are critically intertwined in what it calls "red button moments," where farmworkers

are faced with a choice between protecting the health and safety of consumers or their own economic interests.⁵⁵ Fresh berries are picked directly into the plastic clamshells that are sold in stores; thus, farmworkers serve both as pickers and as a critical point of quality control. Because workers are paid piece rate, they are incentivized to pick as many berries as possible and reject as few as possible. By protecting labor rights alongside food safety and pesticide issues, proponents claim that EFI creates a workplace free of retaliation if workers report violations of its standards. Given A&W's long history of food safety violations – including numerous deaths from their contaminated products – this program serves as critical risk-management for both A&W and its customer Costco, but it does not adequately protect farmworkers' rights.⁵⁶

Farmworker Ñuu Saví is a seasonal *jornalero* at Rancho Nuevo Produce who migrated from Oaxaca approximately ten years ago. Ñuu Saví farmworker appreciates the food safety aspect of EFI but requested anonymity because of the long history of retaliation, repression, and blacklisting at Rancho Nuevo. Fearing retaliation, he asked to be represented by his chosen pseudonym.⁵⁷ Ñuu Saví farmworker explains,

What I most like about Rancho Nuevo is that there is a lot of hygiene because in the quality control table, long before the pandemic began, as long as five years ago when I arrived, there are antibacterial gel dispensers. In the morning we must strictly pass through the hand washing area. If we don't go through the hand washing area we cannot enter to pick. This is what I like about this farm. But as it has good things it also has bad things.

“ From the time I started at Rancho Nuevo, five years ago, I do not know a benefit for the worker having EFI. This is what I would like to know. In what ways can the EFI group help us?”

*-Ñuu Saví farmworker,
EFI- and FTUSA-certified Rancho Nuevo*

View of Rancho Nuevo.



EFI standards have improved practices regarding hygiene and breaks that have positive implications for food safety and worker health and wellbeing. However, labor abuses continue and farmworkers report being afraid to report violations.

B. Low Pay, Extreme Precarity: Labor Rights Violations At EFI- and FTUSA-Certified Rancho Nuevo Produce

Certifications make big claims to promote fairness and ethical conduct. But the standards that back the labels often do not live up to these claims. Instead, on many fundamental aspects of decent work, the standards merely spell out compliance with local labor law rather than going beyond it. In this case, the standards set are in fact *lower* than Mexican labor law, which is especially concerning as these certification standards’ requirements for know-your-rights trainings focus on the private standards instead of federal and international law. Instead of filling a gap in regulation in transnational supply chains, even on paper, FTUSA and EFI’s standards fail to improve upon existing Mexican labor law. Indeed, in many cases, Mexican labor law offers *higher* worker protections. At the same time, implementation and enforcement are lacking for both Mexican labor law and private certification standards at Rancho Nuevo.

	International Labour Organization standards	Mexican labor law	EFI standards	FTUSA standards
Standard workday	Eight hours	Day shift: eight hours Night shift: seven hours Mixed day/night: seven and one half hours	Ten hours	Eight hours
Mandated break time	No specific requirement (workers must be notified of rest intervals, whatever they may be)	30 minutes/shift, unpaid	30-minute lunch break every five hours, unpaid; 15-minute break every four hours, paid	30-minute lunch break, unpaid; 15-minute break every four hours, paid
Standard work week	48 hours	48 hours	60 hours	Outside the U.S.: 48 hours (recommended); U.S.: up to 60 hours.
Maximum workday	Ten hours	Standard workday plus three hours overtime up to three times/week	No specific requirement	Fourteen consecutive hours
Maximum work week	56 hours	57 hours, unless not extending the work week would cause existential threat to workers or company	No specific requirement	60 hours unless workers agree in writing
Overtime pay for hours over standard work week	No less than one and one-quarter times standard rate; no specific requirement for agriculture	Two times standard rate for overtime up to three additional hours three times /week. Additional overtime: three times standard rate. Work on day of rest to be paid twice the standard rate plus 25 percent bonus.	No specific requirement	No specific requirement

	International Labour Organization standards	Mexican labor law	EFI standards	FTUSA standards
Overtime work	All overtime voluntary	Minimum one day per week; work on day of rest to be paid twice the standard rate plus 25 percent bonus.	All overtime voluntary	All overtime voluntary
Day of rest	24 hours in every seven-day period	Minimum one day per week; work on day of rest to be paid twice the standard rate plus 25% bonus.	No specific requirement	24 hours after six consecutive workdays
Holiday pay	Not specific requirement	Three times the standard rate for federal holidays worked	No specific requirement	No specific requirement
Vacation time	Not specific requirement for agriculture	After one year of work, a worker is entitled to six days paid vacation. Vacation days accrued increase two days per year of service up to four years and 12 days of vacation. At five years of service, vacation time accruals continue to increase an additional two days with every five additional years of service. Workers are also entitled to a vacation premium equal to twenty-five percent of their daily wages.	No specific requirement; three days paid bereavement leave for immediate family	Follow local law; Optional best practice/progress points for six days paid vacation, three days paid sick time annually (employer to determine worker eligibility)

International Labour Organization, Hours of Work (Industry) Convention, 1919, No. 1, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C001.

International Labor Organization, Hours of Work (Commerce and Offices) Convention, 1930, No. 30, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C030.

International Labor Organization, Holiday with Pay Convention (Revised), 1970, No. 132, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C132. ILO Convention No. 132 provides guidance for national legislation regarding holidays with pay, allows national legislation to distinguish between agricultural, non-agricultural work.

Ley Federal del Trabajo [LFT], Diario Oficial de la Federación [DOF] 05-01-1970, últimas reformas DOF 27-12-2022 (Mex.), Artículos 61, 63, 66-68, 73, 76, 78, 80 (reformed in 2022 and effective 2023).

Equitable Food Initiative Social Standards FOA 1.1-1.5, FWC-3 & FWC-3.1, https://equitablefood.org/wp-content/uploads/EFI-Social-Standards_v2.1.pdf.

Fair Trade USA Agricultural Production Standard 1.2.0, Module 3 covers wages and working hours. https://assets.fairtradecertified.org/image/upload/v1654625272/Standards/Agricultural%20Production%20Standard%20USA/FTUSA_STD_APS_EN_1.2.0.pdf

Fair Trade USA Agricultural Production Standard 1.2.0 United States Amendment version 1.0.0, Module 3 covers wages and working hours. https://assets.fairtradecertified.org/image/upload/v1654625281/Standards/Agricultural%20Production%20Standard%20USA/FTUSA_STD_APSUSAmendment_EN_1.0.0.pdf

The terms of Mexican labor law are precise and address many issues farmworkers face, including short-term contracts and forced overtime. EFI standards fall far short of Mexican labor law, although they do include the requirement that employers comply with all national, state, and local laws regarding labor.⁵⁸ However, certification does not ensure that there has been compliance with local labor law. Instead, it merely multiplies the number of unenforced rules: neither local law nor private certification standards are fully complied with at EFI and FTUSA certified Rancho Nuevo Produce, as will be discussed in-depth in the following pages.

C. Harvest Time: Forced Overtime and Wage Theft

Rules governing overtime pay exhibit one of the greatest differences between, on the one hand, EFI and FTUSA standards and, on the other hand, Mexico's federal labor law. Further complicating matters, all these rules fail to specify a key issue that farmworkers in the San Quintín valley face: how to calculate the impact of overtime on piece-rate pay.

The gap between paper standards and farmworkers' reality is greatest during the harvest season. Mexican federal labor law considers that paying workers by the box picked – i.e., piece rate – is inherently exploitative. Thus, under law, workers are only supposed to be paid piece rate temporarily and when there are extenuating circumstances.⁵⁹ But in reality, piece-rate pay is the norm throughout the harvest season.

Farmworkers at Rancho Nuevo claim they are forced by their foremen (*mayordomos*) to work long hours during harvests, including overtime, often seven days a week. Fruit is ripe for just a short time, so the harvest period often means 11 or 12-hour days stretching from sun-up to sun-down. Yet according to workers, growers routinely do not adjust workers' per-box pay for produce picked when those long days exceed an eight-hour workday. Mexican labor law grants generous overtime, with rates double and triple standard wages.⁶⁰ A box of raspberries, for example, contains 12 six-ounce or six 12-ounce clamshell baskets. In 2022, a worker earned \$25MX/\$1.25US per box. During overtime, the box is paid a small amount more \$27MX/\$1.35US. That sum is far short of the \$25-\$50MX/\$1.25-\$2.50US that a strict interpretation of the law calculates. This represents wage theft and transfers the wealth created by workers at the bottom of the food commodity chain to growers and distributors.



Certification standards fail to curb excessive use of piece-rate pay, and they do not address the issue of properly calculating overtime pay for workers paid by the piece. The net result: In 2022, one 12-ounce clamshell sold for \$4.99US for conventional berries and \$6.99US for organic berries at Costco, with the workers' wages coming to less than \$0.30US per clamshell – a tiny fraction of the value of the berries.⁶¹

Outside of harvest time, for example, when preparing fields for planting, workers are paid by the day and rarely work overtime and instead are often underemployed.⁶² In 2022 workers reported that Rancho Nuevo paid \$300MX/\$15US daily wage for non-harvest work, which is slightly higher than the minimum wage established in the northern border region (\$260.34MX/\$13US) – a daily wage which is less than the hourly minimum wage across the border in California.⁶³

D. Seasonal Contracts, Permanent Workers: Another Form of Wage Theft

Ñuu Saví farmworker explains how his employer (and most agricultural employers in the valley) avoids its legal obligations. “I understand that under Federal Labor Law... beginning with the first 200 workdays all the farmworkers should have permanent contracts. I have coworkers that have 20, 30, years at the company and they still have seasonal contracts.”

The law clearly states that a seasonal or temporary farmworker who works continuously for more than 27 weeks (just shy of seven months) is to be considered a permanent worker.⁶⁴ But farmworkers at Rancho Nuevo report that they are forced to sign contracts every six months where they “voluntarily” resign and are then rehired. Every time they sign a contract, they give up their rights to seniority, retirement, and other important benefits:

We have to sign the contract every six months. What happens? Signing a seasonal contract each six months is like...entering as a new employee, when it shouldn't be that way... If the CTM worked in benefit for the workers, it would demand [the end of this practice] not only of Rancho Nuevo but of all the companies in the San Quintín valley, in all of the plantations where the CTM should be protecting the rights of the workers. But it is not that way. Instead, it is on the bosses' side. Because of this there are no vacations.

According to this worker, only foremen and administrative employees (supervisors, managers, and office workers) are hired under permanent contracts.



E. Hard Work, No Rest: Holiday Pay, Days Off, and Vacation Time

Rest days and holiday pay are another area of contention. Here, too, EFI standards do not regulate days of rest except to say that employers should follow applicable local labor laws. Under Mexican federal labor law, however, one day of rest is mandated (usually Sundays) and must be paid.⁶⁵ Ñuu Saví farmworker is very clear on how these calculations ought to be made:

For example, as I understand it on Sundays the box shouldn't be paid at \$27MX/\$1.35US. Why? Because in the federal labor law it says in Article 69 that if I work seven days a week, I have the right to rest one day and this day must be paid. And they don't pay it! The federal labor law in Article 73 mentions that if I work on Sundays or holidays, they have to pay me double. According to the price of the boxes on normal days, in this case, on Sunday they should be paying \$75MX/\$3.75US a box, but they don't pay that. They only pay \$27MX/\$1.35US.

Vacation time is another legal protection afforded to workers under Mexican law that is not enforced at Rancho Nuevo. According to Ñuu Saví farmworker, "The federal labor law states it, but Rancho Nuevo does not comply with the right to vacations. It doesn't comply." In fact, this worker has never had a vacation. "From the time I arrived [five years ago]. I understand that it is the company who should notify me of my vacations, but they protect themselves by saying that we have a seasonal contract." Mexican labor law provides for a basic schedule of vacation days that increases with longevity and is supposed to be paid proportionate to the number of days worked in a year. Yet Rancho Nuevo Produce fulfills neither of these legal obligations. By permanently classifying farmworkers in agro-export enclaves as temporary employees through a repeated series of short-term contracts, companies are able to avoid paying vacation benefits and various social security benefits. Instead, they pay what is termed an "integrated salary," incorporating a portion of those long-term benefits in workers' paychecks, meaning that they will never access these benefits.⁶⁶ Ñuu Saví states:



Federal labor law says that bonuses, *utilidades* (profit sharing), vacation premium, Sunday pay... These earnings should not be paid in a proportional manner [i.e. through the integrated salary]. BerryMex, Rancho Nuevo and all the companies in the San Quintín valley are not fulfilling what is established in the federal labor law.⁶⁷

While Ñuu Saví farmworker is unusual in his understanding of labor law, his testimony matches what is reported by other workers. The farmworker movement considers the integrated salary a form of wage theft and their demands include its abolition.

F. Certifications Fail to Educate or Empower Workers

Conversations with Ñuu Saví farmworker also illuminate another key issue: lack of training. Few farmworkers who work on plantations certified by EFI and FTUSA know their rights under federal labor law. Neither certifications' standards emphasize know-your-rights training for workers. Instead, the requirements for training focus on safety and on the scope of the certification standards.⁶⁸ Yet even this limited scope of training does not appear to reach workers. As Ñuu Saví farmworker describes:

I do not know who the representatives of the EFI group committee [the body responsible for training workers on standards] are. But when the audit comes, when an audit is coming, they arrive to present it. From the time I started at Rancho Nuevo, five years ago, I do not know a benefit for the worker having EFI. This is what I would like to know. In what ways can the EFI group help us? In what ways does it benefit us?

Workers reported that the only rights secured by EFI are short breaks and an hour-long lunch.⁶⁹ “Yes, I recognize that it was by means of the EFI group that we are getting paid the break at 10:00 am,” Ñuu Saví farmworker stated. Besides the break, however, neither the rights enshrined in law, nor the standards promised by EFI, are fulfilled. The worker continues:

But the EFI group [Leadership Team], like I told you, I don't know the content of the standards, but I have heard that a standard of EFI says that from the moment in which I leave my house to catch the bus, from this moment on my workday begins.⁷⁰ There are coworkers that catch the bus at five in the morning; from 5:00 am the company – because of EFI standards – should be paying the worker this time.⁷¹ But as I told you, they are not doing it. Why? Because the EFI group [Leadership Team] has not undertaken an assembly. This is what I have been waiting for, that they undertake an assembly and inform the workers about the contents of the standards, what their rights are, what our obligations as workers are, but up till now they haven't done it.⁷²



Ñuu Saví farmworker described how he had to ask to be lent an EFI manual containing the standards but was required to bring it back the very next day. In fact, the EFI training manual referred to by Ñuu Saví farmworker and used at Rancho Nuevo is a good example of why the program fails to protect worker rights.⁷³ This manual is used to train members of the “Leadership Team,” but is not distributed to other workers. The majority of the text describes procedures for holding meetings, facilitating communication, and problem solving. The specific standards are at the very end of the manual and no information is given with regard to Mexican constitutional, labor, or social security law.

One of the greatest problems faced by farmworkers is their lack of knowledge of their rights under the Mexican constitution and federal labor law. Farmworkers usually come from poor rural backgrounds in the south of Mexico and often speak Indigenous languages as their first language.⁷⁴ Few farmworkers have access to decent educational opportunities, and some are illiterate. Yet it appears that little to no effort is made to educate workers about standards or to make information accessible to them.⁷⁵

G. “Continual Improvement”: The EFI Leadership Team

A key component of implementing EFI standards is the “Leadership Team.” This committee is supposed to bring management, foremen, maintenance, and fieldworkers together to solve problems on the job.⁷⁶ Previous research argued that Leadership Team is undemocratic and could lead to management dominance.⁷⁷ Just as the multi-stakeholder process entrenches uneven power dynamics and obscures the central voice of rights-holders, *i.e.*, workers, similar problems exist within the Leadership Team itself.



The EFI Leadership Team or Grupo Mejoras Continuas (GMC) at Rancho Nuevo

At Rancho Nuevo, the joint-body Leadership Team is called “*Grupo Mejoras Continuas*” (the “Continual Improvement Group”) and is often referred to by workers as the “EFI committee” or the “EFI group.” U.S.-based farmworker organizations defend their participation as stakeholders in these certification programs by claiming that the joint-body committees on the certified farms function as an alternative instance of labor organization that guarantees the protection of worker rights.⁷⁸ Yet in reality, the EFI committee consistently fails to protect workers. While the EFI Leadership Team has occasional meetings with fieldworkers, Ñuu Saví farmworker describes them as insufficient and ineffective:

Why? Because when they do their presentation they just say, ‘I am Juan,’ ‘I am Maria,’ ‘I work in this area’ or ‘I am Pedro and I work in this area’ or ‘we are representatives of the EFI group’ and that’s it! The presentation is over. They don’t give us the opportunity to speak. They just go through their roll call. They have some flyers, but no one has taken the time to read them. Why? Because the group doesn’t allow it. They just get up and leave. They really don’t create a space. It is exactly because of this that I have not been able to let them know about my disagreement with the EFI group.

Ñuu Saví farmworker’s perspective is that of a fieldworker viewing the EFI Leadership Team from the outside. From the inside, the power imbalances are even more apparent.

EFI claims to create “worker engagement” through an “investment in developing workers’ soft skills and the systems to engage them.”⁷⁹ However, abuses do not occur because workers lack the “soft skills” to advocate for themselves. Instead, these committees fail to protect workers’ rights because they fail to address the power imbalances of transnational agriculture. Instead of empowering workers, the EFI Leadership Team furthers worker repression while providing cover for agricultural corporations and fairwashing their images.

At Rancho Nuevo Produce, the imperfect nature of the joint-body committee is evident. Information gathered during ethnographic fieldwork in 2022 demonstrates the imbalance of power in the Leadership Team. Of a total number of ten members of the EFI Leadership Team, only one can be classified as a fieldworker. Two other workers are *ponchadoras* (punchers) and *revisadores* (checkers) who tally and check over boxes of fruit and are just above fieldworkers in the labor hierarchy. These workers on the quality control table have a higher level of authority and are often put in place by a foreman who they know well. They accept or reject the boxes of produce harvested by fieldworkers based on quality control standards. If they claim a box is rejected, the foreman or engineer normally backs their claim. Although higher than fieldworkers, punchers and checkers are still classified as seasonal workers, although their jobs are not as physically strenuous, and they earn higher daily wages than fieldworkers. At Rancho Nuevo, a *ponchadora* is the person in charge of the EFI Leadership Team and is described by many workers as “the favorite of the company.”

Supervisors, managers, and foremen who directly supervise fieldworkers also participate in the joint-body committees. Workers’ testimony reveals that many of these management officials misuse their power. For example, one member of the Leadership Team is a *mayordomo* (foreman) directly in charge of fieldworkers in the raspberry fields and has a reputation for getting angry at workers, retaliating, and firing workers without consequences. Workers’ nickname for him suggests, with a little obscenity, that he is

“**I do not feel that there is trust enough to put in my complaint because I know that I am going to suffer retaliation tomorrow.**”

-Ñuu Saví farmworker, EFI- and FTUSA-certified Rancho Nuevo

a tough taskmaster who is very “close with” the owners of the company and “was basically born on the farm.” He is known by crewmembers as one of the foremen who (illegally) force them to work overtime “until 6:00 or 7:00 pm.” Another member is an engineer in charge of both foremen and fieldworkers and is a direct descendent of the grower Sabino Becerra Rivera. Other members are involved in maintenance, mechanics, or other operations and rarely spend time with fieldworkers. While EFI materials point towards the Leadership Team as a tool to build skills for rank-and-file workers, it does not live up to that ambition.

H. Rampant Retaliation and Cronyism Undermine Enforcement of Protections

One of the key premises of EFI certification is that workers will not be retaliated against for reporting standards violations, a premise that underlies their claims to protect both food safety and labor rights.⁸⁰ When asked if he felt there was enough trust to denounce standards violations, Ñuu Saví said in dismay, “I don’t feel safe. No, there is no trust.” He elaborated:

Because precisely under the EFI standards it says that, as there is the Leadership Team on the farm, there should not be any retaliation but there is. We know there are a lot of types of retaliation – verbal retaliation that doesn’t become physical, but retaliation that exists here in Mexico that we know as indirect words, these exist. Always. The people that get on the quality control table are friends, are family, and being family and being friends is when the retaliation begins... Because of this, in my opinion, I say that I do not feel that there is trust enough to put in my complaint because I know that I am going to suffer retaliation tomorrow.



I. “Always On the Side of the Boss”: An Insider’s Perspective on the Failures of EFI Leadership Teams

Lucinda is a woman farmworker who was a member of the EFI joint-body committee but quit because of the ongoing abusive atmosphere of the committee. As Lucinda explains:

What they say to us when we go to the EFI meeting is not true, because if I report something, which is what it says there, that there isn’t going to be any retaliation and they don’t confirm or they don’t go and really check if there is any. It is difficult because we cannot speak. They fire us. They have fired people. They have fired women...The foremen more than anything. Whatever happens and ‘leave your box [of fruit] and get out,’ and that is what always happens.

Given that Lucinda was on the Leadership Team and had access to the standards, she spoke up on

occasion in meetings against being forced to work overtime – especially on federal holidays. When she asked her foreman if they had to work more than eight hours given that it was a holiday, her foreman replied to her, “Don’t go around causing problems, get to work, if they came to work it is because they are going to work and not ask questions.” He then replied to her, “If you don’t like it, leave your box, turn in your identification, and hit the road.” She remarked how difficult her job was as a Leadership Team member given the power of the foremen to break the rules without consequences. “You can’t ask them anything,” she remarked.

EFI standards encourage the inclusion of both men and women on the EFI Leadership team to prevent sexual harassment or gender bias.⁸¹ However, that nod to equity does not address the power imbalances of the plantation. Lucinda explains:

There is harassment against women. They harass women. For example, if they begin to say things to her...like things [referring to a romantic or sexual nature]...if they don’t want or don’t put up with it, they begin to give them more rows or they treat them worse. And when they accept and go around with a foreman, a *surquero* [a foreman’s assistant], a helper, that is when they help her or when they tell her “you get to choose last” and they give her less work, fewer furrows, or they give her the part that isn’t horrible or they send her to do some other work. But if she doesn’t want [his advances], as a punishment they give her heavier work. It’s ugly on this farm but the EFI group doesn’t do anything.

EFI’s standards forbid the sexual harassment that Lucinda refers to.⁸² Yet in her experience, the system is not set up to address the issue in a safe, trustworthy manner.

Lucinda also explained how a foreman’s presence on the Leadership Team fails to curb bad behavior– and instead, excuses it. One afternoon, as the foreman was giving an assignment, a worker said that he was going to leave early to run an errand. Because they were working eight- to ten-hour shifts with forced overtime, “early” may have meant at the end of his eight-hour shift. Nevertheless, the foreman yelled, “If you are leaving early, leave now, now is early.” The young worker sadly turned in his badge and tools and left.

Lucinda reported this unjust firing. Lucinda described how the foreman didn’t go to the following week’s meeting of the EFI Leadership Team, of which both she and the foreman were members. She brought up the improper firing with the other members. A couple of them nodded in agreement with her and expressed their disapproval. “That’s a shame. Too bad,” was the only response of the EFI Leadership Team members. “No, I wasn’t ok with that either,” Lucinda claims one of them declared, although the person originally failed to speak up – an example of how the atmosphere of the Leadership Team stifles accountability. Lucinda went on to explain:

Well the foreman gets mad, he doesn’t let the people go home after eight hours. [EFI standards] say that people are not obligated to work extra and just work eight hours, and that after eight hours they can’t force you to work more if you don’t want to but this foreman does this because we are all obligated. As he says, ‘while there is daylight you gotta work.’ This is bad, but there is no one

“There are a lot of irregularities on this plantation; they always treat people bad, always. Yeah, I consider us their slaves because I don’t live.”

-Lucinda, farmworker, EFI- and FTUSA-certified Rancho Nuevo

to defend us. And there is a union, the CTM union, but it never helps us. It is always on the side of the bosses.

These demands violate EFI and FTUSA standards, which spell out both the standard workday and forbid retaliation against workers who decline overtime work.⁸³ Overtime is also supposed to be voluntary under federal labor law.⁸⁴ Lucinda continues,

There are a lot of irregularities on this plantation; they always treat people bad, always. Yeah, I consider us their slaves because I don't live. Well, I live more there [at work] than here [at home], because when I leave work late I arrive after dark. You can barely see the street. I get home, I basically just go to sleep as well as the majority of others. But we don't know another way to better things.

Workers also made this comparison to slavery when speaking out in the 2015 strike. Years later and despite the ethical certifications, this comparison often comes up in conversations with workers.

Lucinda left the EFI joint-body committee as she saw it as a waste of time: “[b]ecause it is always on the side of the boss, because they are all part of the same family. Yes, there are fieldworkers, but the coordinator, the secretary, they are all part of the boss’s family.” Lucinda’s allegations were a refrain when interviewing workers about EFI Leadership Teams on plantations throughout the valley. As the EFI Leadership Team members were all “*allegados al patron*,” they frowned upon Lucinda making complaints or reporting faults. Finally, she left the committee. “I am not going to be complicit in the bad things that are happening, so I prefer not to show up,” she concluded.

“The EFI group [auditors] comes from the United States to review if its working, [but] they don’t know...They should pay more attention or they should go into the fields and talk with the workers. ...They ask us a lot of questions, but we can’t say the truth there, because the coordinator is there, the human resources person is there...”

-Lucinda, farmworker, EFI- and FTUSA certified Rancho Nuevo

While EFI claims the Leadership Team model teaches soft skills and yields empowerment, the experience of workers, both in and outside the committee is that it is yet another tool of management that does little to improve conditions for workers or to protect basic rights.

J. Annual Audits: The Theatre of Compliance

Like most certifications, compliance with EFI and FTUSA standards is verified by an audit conducted by third-party auditing companies.⁸⁵ Through a combination of interviews and paperwork review, auditors are supposed to gather a picture of an operation in a few days and assess whether the producer is eligible to renew their certification and/or if any corrective action plans are required.⁸⁶ One of the Leadership Team’s main tasks is to coordinate with the auditors. Lucinda described how the annual EFI audit is undermined by the Leadership Team’s actions, a description that is supported by numerous other workers. These failures of auditing fit with a larger pattern observed by researchers across multiple industries.⁸⁷

Lucinda’s description of the auditing process sheds light on just how little information is given to workers about how the certification system works – even to those like her who

are members of the Leadership Team. EFI Auditor Guidance documents describe the auditing interview process for the Leadership Team as a “focus group” interview, which should include at least 70 percent of members.⁸⁸

The EFI group⁸⁹ comes from the United States to review if its working, [but] they don't know...They should pay more attention or they should go into the fields and talk with the workers. They arrive at the office and just those from the EFI group enter and ask us [the Leadership Team] questions. Yes, they ask us a lot of questions, but we can't say the truth there, because the coordinator is there, the human resources person is there... Sometimes, more times than not, I think we always just tell lies because they ask us 'Are you doing this' 'Are you taking care of that?' 'Do you have a list of how many injuries? Of everything that has happened here? Do you have it reported and do you have solutions to it?'...[They ask us] 'Are you aware of everything that happens?' and we say yes and they ask us 'Are there results? Are there solutions? Do you have results?' And well everyone says yes, although no, although we might just move our heads, but we are saying lies and this is what I don't like. Because of this I said 'No more.'

Since the Leadership Team is a joint-body committee where foremen, management, and even direct relatives of the growers all participate, it is impossible to create a space of safety, trust, and protection for fieldworkers on the committee. Lucinda describes further how audits on Rancho Nuevo fail to capture workers' experiences: “Before they [the auditors] come, they tell us ‘we have to go over this and when they come we have to tell them yes.’ In other words, they instruct us to lie, and really we aren't really complying.”

Lucinda's evidence of management coaching before audits indicates another way that audit deception frequently occurs. This reality, as well as her descriptions of the perceived management alignment with auditors, fit into a broader pattern. Audits such as this routinely fail to capture abuses. Indeed, ELEVATE, one of the auditors used by EFI, has itself said “that social audits are not designed to capture sensitive labor and human rights violations such as forced labor and harassment,” when faced with evidence of its failings in other industries.⁹⁰

The nepotism and normalized harassment and retaliation that workers describe are a far cry from the collaborative and respectful work environment⁹¹ EFI claims its certification promotes. While on paper EFI claims to address the “us-versus-them” between management and workers, simply putting both groups on a committee does not achieve such an outcome. Instead, these committees obscure the power imbalance between farmworkers and management.⁹² Without the presence of genuine worker representation, meaningful protections from retaliation, appropriate enforcement mechanisms, and the power to make changes in workplace operations, the joint-body committees fail to meet the goals of “empowering” workers and can actually do the opposite.⁹³ In practice, the Leadership Team functions as a form of worker repression, not unlike the company unions.

Abelina Ramirez Ruiz of the SINDJA union protesting with striking workers at Rancho Nuevo.



3. THE SANTA MÓNICA STRAWBERRY STRIKE: Workers Take Action to Address Poverty Wages at EFI and FTUSA Certified Plantation

On Friday, March 25, 2022, over 300 strawberry workers went on strike at Rancho Agrícola Santa Mónica.⁹⁴ Santa Mónica is an agricultural exporter owned by the Meza family, a powerful clan involved in the region's agriculture and politics, and currently run by Julio Mario Meza Virgilio. Santa Mónica is an independent affiliate of A&W and a supplier to Driscoll's.⁹⁵ EFI certifies the plantation's strawberries and raspberries⁹⁶ while FTUSA certified its organic pumpkin, mini-peppers, and cucumbers as well as conventional cucumbers.⁹⁷ Rancho Agrícola Santa Mónica is also a supplier of FTUSA certified conventional and organic blueberries for Driscoll's.⁹⁸

Santa Mónica obtained its EFI certification in 2016, just a year after the historic farmworker strike in San Quintín.⁹⁹ Despite EFI and FTUSA certification, worker discontent and occasional strikes are common at Santa Mónica, a result of abusive foremen, extremely low wages, and violations of Mexican labor law. The plantation also employs company unions as named in section 1.B, an affiliate of the CROM.

This section highlights the discontent of farmworkers at EFI and FTUSA certified Rancho Agrícola Santa Mónica as they struggle with low pay and forced overtime during harvest. Worker interviews here underscore the same issues with piece-rate pay and improper compensation for hours worked and benefits at Rancho Nuevo discussed above. As at Rancho Nuevo, FTUSA and EFI certifications fail to fill the regulatory gaps and address perennial, systemic issues at Rancho Agrícola Santa Mónica. FTUSA does not certify strawberry and raspberries at Rancho Agrícola Santa Mónica; thus, most of the testimony focuses on the impacts of EFI certification on berry workers.¹⁰⁰ The next section will focus on a case where workers described indicators of forced labor in the cucumber fields certified by FTUSA.

One of the most vaunted aspects of both FTUSA and EFI certification is the "social premium."¹⁰¹ This sum of money paid by buyers for each quantity of certified produce sold is promoted by certifiers and buyers alike as meeting a plethora of financial needs for workers. Worker testimony, however, reveals that the premium fails to compensate workers for their undervalued labor, let alone the rampant wage theft they experience. Further, the resolution of the Rancho Agrícola Santa Mónica strike provides an example of another path forward by which workers can win some meaningful improvements to working conditions.



Water tank purchased with Fair Trade premium funds.

A. Social Premiums Obscure Low Wages, Undervalued Work

FTUSA and other ethical certifications have long promoted their social premiums as a key way that they improve farmworker livelihoods.¹⁰² These premiums are paid to workers in two forms – as economic bonuses or through the distribution of material aid (such as water tanks, building materials, etc.). In the EFI program at Santa Mónica, premiums paid as an economic bonus are transferred into a fund managed by the Leadership Team on the plantation to be distributed back to the workers. FTUSA premium funds are distributed via the Fair Trade Committee; instead of cash payments direct to workers, the money has gone to essential goods such as buying water tanks, which are sold to workers at a reduced price.

“**To me, Fair Trade means unfair trade.”**

-Raul, farmworker EFI- and FTUSA-certified Rancho Santa Mónica

Fair Trade certification was built on the premise that if consumers paid just a little more for a product and buyers paid the required premium, that little sum would “trickle down” to workers and alleviate poverty. There are two key issues with this trickle-down theory. First, fair trade certification benefits agricultural corporations and farmers much more than farmworkers, as the certification gives the producers and distributors access to niche markets for their products at higher prices.¹⁰³ While companies are required to distribute the premium to workers, they are not required to distribute greater earned profits in sales to their workers resulting from the certification labels.¹⁰⁴

Further, at least in the U.S. marketplace, from coffee to chocolate to produce, many products that have eco-social certification labels are also marketed as being of better quality. Raul, a *jornalero* who participated in the 2015 strike, had a very clear assessment of the true cost of that higher quality.

To me, Fair Trade means unfair trade. What the consumer is paying for with these programs is a higher quality product. Higher quality for me as a *jornalero* means I am going to earn less money because it means I have to work slower and only pick the very best. If it is a normal harvest, I pick everything that isn't too green or damaged. Everything is of standard quality and I go fast which means I can pick a higher number of boxes and make more money. With the high quality products for EFI or Fair Trade I have to work slower and thus make less money. So the extra money that is generated really does belong to me and I would rather receive that money [as salary] than in an ill-conceived project of supposedly social benefit that I may or may not see.

Raul clearly names the issue: a higher quality product is more labor intensive, both because he has the added work of sorting as he picks, and, as he is paid by the piece, he earns less for that additional labor. Thus, certification does not actually disrupt the exploitative status quo in which farm labor is fundamentally undervalued.

This meticulous sorting of berries that the worker describes is part of a larger transition within agro-export industries – and another way that certification is enabling the extraction of still more profit from underpaid and over-exploited workers. Having workers pick directly into the plastic clamshells that go to the supermarket eliminates separate sorting and packing steps. This creates greater “value-added” to the products harvested by farmworkers while also increasing labor input and decreasing real wages.¹⁰⁵ This makes the work both physically and mentally more demanding. EFI certification with its focus on food safety facilitates this shift. Yet this intensification of labor and skill is not rewarded through higher salaries – and, while EFI premiums are paid directly to workers, they fail to address the gap.

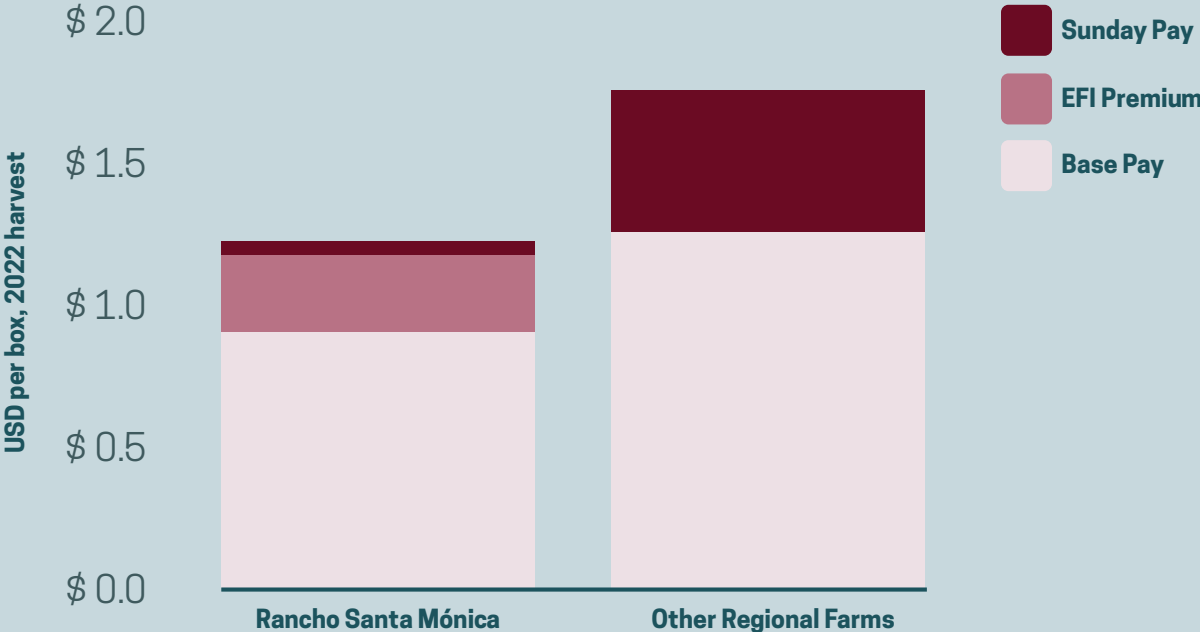
In the 2022 harvest season, workers reported that EFI-certified Rancho Agrícola Santa Mónica paid \$18MX/\$0.90US for a box of first-class strawberries during the week and \$19MX/\$0.95US to those compelled to work Sundays, the legal day of rest.¹⁰⁶ By law, workers cannot be obligated to work on legally stipulated days of rest, including Sundays.¹⁰⁷ If workers do work on a Sunday, the law stipulates that the worker must be paid twice the normal daily salary plus a 25 percent premium.¹⁰⁸ If this Sunday premium was applied to boxes of fruit, the company would have to pay \$58.6MX/\$2.93US a box of strawberries – a significant increase for workers’ earnings.

Not only are these wages below legal wages; they are even low in an industry built on underpaying workers. During the 2022 strawberry season, the average pay workers reported in San Quintín was between \$20MX/\$1US and \$25M/\$1.25US a box of first-class strawberries during the week and up to \$30MX/\$1.50 US on Sundays. Despite EFI certification that promises “fair compensation,”¹⁰⁹ wages at Santa Monica were some of the lowest in the industry. Meanwhile, the EFI premium for workers is \$0.034US per pound of strawberries, or approximately \$0.27US per box, a sum that does not bring wages up to the average pay in the region, let alone compensate for the added work.¹¹⁰ These premiums only apply to boxes picked with EFI stickers on them, a fraction of what workers pick – and thus, not a significant addition to their wages.

EFI Promises of “Fair Compensation” Fail to Deliver

Workers report lower pay on EFI-certified Rancho Santa Mónica. In addition, higher quality standards for certified berries mean workers pick fewer boxes per hour and earn less per day.

Workers report being able to pick between 60-90 boxes per day, depending on age, skill, and field conditions.



Farmworkers rarely understand what the certifications that claim to regulate their working conditions do, or what sort of benefits or rights they are supposed to receive. A farmworker interviewed for this report knew very little of what the EFI certification meant despite having worked on a certified farm for years. She described it as “a company in the United States who gives us a reward for each box of fruit.” Her most recent bonus was \$200MX/\$10US. When asked if she knew if that was the right amount, she responded, “I believe that the company gives us what they think each person deserves.”

B. The EFI Leadership Team Fails to Improve Worker-Management Relations

Like at Rancho Nuevo, the EFI Leadership Team at Rancho Agrícola Santa Mónica is a “joint-body” committee made up of members of management, foremen, maintenance, and fieldworkers. Rodrigo was a member of the Leadership Team for roughly a year but remarked, “I left because I didn’t like the environment.” Rodrigo explained that he left because of the EFI Leadership Team’s ineffectiveness – especially with the problems of low wages and unpaid overtime. “Well, whatever they say they don’t fulfill,” Rodrigo remarked, summing up the failures of the programs. Rodrigo mentioned that the EFI Leadership Team did a good job at incorporating female members, but, similar to Rancho Nuevo, the inclusion of foremen, human resources, and engineers tilted the balance of power towards management and away from the fieldworkers.

“**Because the companies are at this level, when they have more money, us employees are like slaves. We are nothing...**”

*-Farmworker EFI- and FTUSA-
certified Rancho Santa Mónica*

According to Rodrigo, the EFI Leadership Team’s primary function was to “check what the people were doing, make a report, and all that.” The chief responsibility he recalled from his time on the EFI Leadership Team was food safety. “Well, we did inspections, meetings were held, and we spoke with the workers about how the product needs to be clean [so it was necessary to] wash hands before the harvest and after the harvest and before lunch and after lunch and all that. That is what we did.” When asked if the EFI committee ever talked about labor rights he just mentioned the premium EFI pays for certified boxes. When asked about the company-imposed CROM union, Rodrigo laughed and replied: “That union! Crap! It’s not worth crap.”

While making transformative claims, the EFI Leadership Team structure is embedded in the hierarchy and power dynamics of the farm – and the larger system of exploitation in which it is situated. According to Rodrigo, the standard response from foremen is, “If you want to work, then work.” Given extreme poverty in southern Mexican states, there are always people migrating north to agro-export enclaves like San Quintín willing to take the job and not ask for a raise. Thus, according to Rodrigo, not many people approach the EFI Leadership Team with problems.

C. EFI Requirements for Wages Have Decreased Over Time

The March 2022 strike at Santa Monica makes clear the ways that EFI certification fails to make good on one of the central promises of the program: to improve farmworkers’ lives. Not only does the lead up to the strike demonstrate that workers continue to experience retaliation and little engagement from the joint-body meant to protect their interests, but a close read of the standards also shows how far they are from meeting workers’ basic demands.

EFI’s current standards do not set any specific requirements for wages beyond a nod to compliance with local laws. This stands in contrast to EFI’s original standards. “Within two weeks of the date of certification,” the 2013 document states, “farmworkers receive, at a minimum, pay of \$9.05 an hour in the United States or, outside of the United States, 125 percent of the minimum wage mandated in that country.”¹¹¹ However, over time EFI’s worker standards have become weaker. Now, instead of pegging wages to a calculation above the local minimum wage or taking steps towards a living wage, standards state: “A process is in place and operating to guarantee that legally required hourly wage rates apply to both work and break time, even when workers are paid by piece rate.”¹¹²

As discussed in detail in a prior section, EFI standards fail to address regulatory gaps that exist concerning overtime and piece rate premiums under Mexican law. Further, by merely requiring compliance with the legal minimum wage – a condition which the private standard setting body is ill-equipped to enforce – EFI fails at the strongest contributions voluntary standards can make towards workers’ well-being, which would be benchmarking standards to living wages instead of reinforcing often too-low minimum wage laws.¹¹³ Further, the standards dub non-compliance with wage requirements as a “minor” violation – as if breaking wage and hour laws were no big deal.¹¹⁴

D. Multi-Stakeholder Initiatives Put Business Interests Before Workers

While “continuous improvement” is a refrain of the EFI program, the evolution of EFI’s wage and hour standards as the program expanded in scope is part of a larger trend.¹¹⁵ Research has shown that it is common for the multi-stakeholder standards revision processes to be overly focused on corporate interests and thus lead to outcomes that are ever-more business friendly.¹¹⁶ There are no contractual or legal obligations to raise workers’ wages. Instead, the decision is left to the goodwill of the grower who is under pressure higher up in the commodity chain to increase profits by reducing labor costs. Nor, as previously discussed, does the EFI program support the development of any countervailing worker power to adequately advocate for workers’ interests in the ongoing race to the bottom for labor conditions and costs.



Worker organizing during the Santa Mónica strawberry strike.

This failure to address supply chain power dynamics surfaces again in another revision of standards. Originally, EFI had five indicators defining “fair compensation.” Now there are just three. Fair Compensation (“FC”) standard 1.1 originally stated that “The grower is engaged in a process with buyers participating in the EFI to discuss how the generation of added value in the food supply system can be shared, including by the improvement of wages and working conditions for farmworkers.”¹¹⁷ In the current standards, FC 1.1 reads “The Employer shall account for all monies received from customers that are designated as an EFI premium.”¹¹⁸ Instead of connecting buyers to responsibility for the wages and conditions in their supply chains, the focus has shifted to transparency, or, more simply, to good accounting practices. Additionally, instead of an emphasis on wages – a guaranteed, transparent sum that could be captured in an employment contract – the focus has shifted to market-driven premiums. Workers’ earnings thus fluctuate depending on whether the boxes they fill bear a certification seal or not.

EFI’s literature claims that, “The EFI Premium Account shall be allocated to workers in return for the additional responsibilities required of workers on an EFI-certified operation.”¹¹⁹ Known as a *bono* or “bonus” to farmworkers, few if any workers understand how it is

calculated or who it comes from. The lack of transparency is one issue. EFI premiums for strawberries are \$0.034US per pound for strawberries and \$0.046US per pound for raspberries, a sum that, as discussed above, does not even bring workers at Rancho Santa Monica up to the average wage in the region, let alone compensate them for the additional labor of meeting EFI standards.¹²⁰ This premium has not changed since 2018, when the premium for organic produce was cut and berry premiums were reduced.¹²¹ Instead of continual improvement, premiums have actually gone down.

Focus on the premium sidelines a key issue. EFI certification fails to enforce even basic compliance with federal labor law. Moreover, the emphasis on the premium and its tie to increased value wrongly refocuses the discussion. Instead of addressing the issues of chronic wage theft and underpayment of agricultural workers, these standards place the focus on worker productivity and value generated. Workers' rights and legally owed wages must be the bedrock of any program that claims to benefit them, not merely a value-add that may trickle down from the marketplace.

E. Workers Strike: Direct Action Wins Better Wages

Frustrated by low pay and forced overtime, workers in the strawberry fields at Rancho Santa Monica went on strike on Friday, March 25, 2022.¹²² The strike originally began as a work stoppage in one labor crew, but it quickly spread throughout the plantation as workers were fed up with the low piece-rate for strawberries. Additionally, the culture of retaliation against workers who speak up spurred workers to take collective action, in attempt to prevent firings of a few who might speak up individually. This strike shows both how thoroughly EFI's claims to resolve the "us-versus-them" dynamic of workers and management has failed and offers an example of how worker-driven collective action coupled with independent farmworker union organizing can win concrete gains.

Rodrigo, the worker who earlier described his experiences as part of the EFI Leadership Team at Rancho Santa Monica, discussed the strawberry strike a few weeks after it had occurred. The strike had broken out because workers were unhappy with the low pay for each box of strawberries picked and went on strike to demand higher wages. Asked why the workers did not go to the EFI Leadership Team to try and resolve the issue, Rodrigo responded: "That is the problem ... If EFI [Leadership Team] says 'no, pay this much,' they tell the boss but the boss says 'no.' Or the general foreman says, 'No, I'll handle it.' And that's it, there it ends." Thus both the grower and the foremen are able to prevent the EFI Leadership Team from improving the labor conditions or wages on the job – or preventing the ultimate decision to go on strike.

Scenes from the Santa Mónica strawberry strike.



Prior to the strike, workers had tried to convince the local delegation of the Secretaria de Trabajo y Previsión Social (“STPS,” the office of the Sectary of Labor and Social Welfare) to intervene on their behalf, but STPS did not engage. Eventually, frustrated by stagnating negotiations with grower Julio Meza Virgilio, the striking workers came to the independent union SINDJA to ask for their advice. Workers were primarily focused on increasing their piece-rate pay for boxes picked. Yet discussions with SINDJA representatives uncovered larger issues. SINDJA leaders urged the striking workers to include overtime pay, forced overtime, and other legal protections in their negotiations. “If you are on strike, you are fighting for a raise, an increase in the price of the boxes, then put everything in the package, it should go in the package, right?” Secretary of Organization Lorenzo Rodríguez Jiménez urged them: “Overtime, holidays, Sundays, and the raise in the price of the boxes – all of it. Make a list of demands.” Another point that arose during the negotiations was verbal abuse. Workers specifically named their mistreatment by foreman Joaquín Hernández, nicknamed “El Guajolote” (“The Turkey”) in their complaints to grower Julio Meza Virgilio. This was a longstanding issue that had not been addressed within the EFI program.

Unlike the company union, SINDJA representatives worked to build trust with workers. Together they created a list of demands and a negotiating committee.

Negotiations were not easy, and progress stalled a few times. Yet stakes were high for both sides. While negotiations were happening, agricultural production was shut down. A few days of missed pay and farmworkers lose the ability to eat, pay rent, buy gas, or get water piped into their shacks from *pipas* (private trucks), a necessity given the scarcity of water in the valley. However, the workers had strategically planned to strike at the most vulnerable point in the harvest, meaning that the grower had more to lose than the workers. According to worker testimony from the meeting, the grower Julio Meza Virgilio lamented that his fruit was rotting away as it lay unpicked in the fields. It was because of this that negotiations took a turn for the better for workers.

F. The Strike Ends: Workers and SINDJA Negotiate a Raise

By Saturday evening, just a day after it began, the strike ended. The negotiations between grower Meza Virgilio and the workers represented by the SINDJA union were a success.¹²³

Impact of strike on workers’ pay per box picked			
	Before strike	Workers’ negotiated price	Increase
First class quality	\$18MX/\$0.90US	\$20MX/\$1US	\$2MX/\$0.10US
First class quality, holiday/ overtime	No additional earnings for workers	\$22MX/\$1.10US	
Second class quality	\$13MX/\$0.65US	\$20MX/\$1US	\$7MX/\$0.35US
Second class quality, holiday/overtime	No additional earnings for workers	\$22MX/\$1.10US	
Third class quality, holiday/ overtime			\$2MX/\$0.10US

The sums in this table may look small, but they represent a significant increase in real wages for farmworkers who get paid by for each box they pick. Moreover, these changes were a result of direct action by workers themselves, and represent what they negotiated for themselves, with the support of an independent farmworker union.

When a farmworker was asked whether the strike was worth it, he replied,

The truth is that it is just because – just imagine – we work from sunup to sundown and for them to not give us an extra peso? No way. Thanks to us working from sunup to sundown, they have everything and we are forgotten. They forget about us, they don't give us what we are worth, nothing. If we speak up or want to say that we don't like something they retaliate against us and say 'You know what? You are a troublemaker. You are a striker and you can get out of here.' They never pay attention, they never listen to the farmworker. There is no respect. On this plantation, to be exact, there is no respect. They don't have any dignity, no respect.

The strike in the strawberry fields at Rancho Agrícola Santa Mónica forced the grower to respect the farmworkers for the first time.

The grower Julio Meza Virgilio is one of the most powerful businesspeople in San Quintín. Yet he was forced to sit down and negotiate with the workers. In the weeks following the strike, Meza Virgilio allowed representatives from the SINDJA union to enter the plantation and consult with workers. SINDJA undertook its own inspection process to guarantee that the agreements between the workers and the grower were upheld. SINDJA essentially conducted its own auditing process -- what EFI pays third-party auditors to do despite the auditors often missing obvious violations of standards. One of the main concerns for the workers was retaliation for striking. Under the agreement, the grower promised to respect the workers' right to strike and that there would be no retaliation.

Strawberry workers striking for better wages at Rancho Santa Mónica



Another outcome of the strike was that the workers' gains were not restricted to the strawberry pickers who walked out in the spring of 2022. Instead, raspberry workers also reported a \$0.25US increase in pay per box (from \$18MX/\$0.90US in 2021 to \$23MX/\$1.15US a box in summer 2022).

This was not the only benefit. The general foreman Joaquín Hernández was forced to treat workers better. "Since the strike he doesn't say anything anymore. He has changed, he now is really peaceful. But before the strike he went around scolding everyone, the foremen as well." Forced overtime in the strawberry harvest was (at least temporarily) eliminated as well. "Now everyone is in agreement that after 3:00 pm they can't be forced to work," one worker claimed. Further, roughly one month after the strike, Rancho Agrícola Santa Mónica gave workers their *utilidades* (profit sharing) for the first time.

The strawberry worker strike at Santa Mónica was not exceptional. Strikes come and go throughout the valley as mistreatment and low wages are endemic to Mexico's agro-export industry—although they are not always as successful as this one was. As a young, Indigenous woman farmworker from the mountains of Guerrero working at Santa Mónica explained, Mexican migrant and seasonal farmworkers do not have the same rights as other Mexican citizens. Their vulnerable status created by the intersection of race/ethnicity, class, gender, linguistic ability, and place of origin produce greater susceptibility to systemic violations of labor rights:

We are scared because as workers – and even more so us who are not from here – we don't have 100 percent of our rights. But if we had them we would demand more, but because of the condition in which we find ourselves, the bosses don't take us into account. ... Because the companies are at this level, when they have more money, us employees are like slaves. We are nothing...For them there are plenty of people to work and we have to accept what they give us.

The strike and subsequent agreements negotiated by workers and SINDJA show that there exists another path forward. By organizing, workers won better wages and respect. These agreements are not binding as the current official collective bargaining agreements with the plantation are signed with the company union CROM, an example of how these company unions deny workers an authentic collective bargaining agreement with an independent union. The need for reform of these company unions has been documented in other research.¹²⁴ However, SINDJA negotiating on behalf of the strawberry workers offers an example of what is possible with strong, worker-led organizing, even in difficult conditions.

4. TRAPPED:

Evidence of Forced Labor of Contracted Migrant Farmworkers at EFI and FTUSA Certified Rancho Agrícola Santa Mónica

Despite certification by both EFI and FTUSA, workers on Rancho Agrícola Santa Mónica report conditions that check off nearly every indicator of forced labor.

The following accounts come from interviews conducted in the summer of 2022 with members of a work crew contracted from the southern states of Chiapas, Tabasco, and Veracruz.¹²⁵ Pablo is a migrant farmworker from Chiapas. He came to San Quintín, lured by promises of plentiful work and good pay. Through connections between the growers, Rancho Agrícola Santa Mónica transported Pablo and about 25 other workers to San Quintín promising \$300MX/\$15US a day and an extra \$40MX/\$2US during overtime to bag chili peppers in the packing sheds. Upon arrival, Santa Monica administrators had workers sign a contract for 120 days. “They didn’t even let us read the paper,” Pablo exclaimed. Secret contracts such as this are violations of FTUSA’s standards, which stipulate that contracted workers should have written contracts.¹²⁶ “And when we got here to the labor camp [the administrator from Santa Mónica] said that we were going to work in the fields for a week and then we were going to enter the packing shed. But when we arrived they took all of our documents and a week’s pay... But only originals, they didn’t want copies.”¹²⁷ When asked, Pablo clearly understood why their documents were confiscated: “So that we don’t leave, because later the workers would leave.”

ILO Indicators of Forced Labor

Forced or compulsory labor is defined as work that is done under threat, menace, or penalty and is based on a lack of free will and consent.

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

Not all eleven indicators need to be present to define forced labor; in some situations, a single indicator can imply the existence of forced labor.

International Labour Office, ILO Indicators of Forced Labor, Special Action Programme to Combat Forced Labour, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

Pablo came to Santa Mónica expecting to earn \$300MX/\$15US for an eight hour day in the packing shed. Instead, he ended up doing the grueling work of picking cucumbers for just \$3MX//\$0.15US per bucket. And that was not the only surprise. Pablo stated how administrators from Santa Mónica argued that since the company paid their transportation fees, they were indebted to the company. The company deducted a week's pay and told the workers they must work a minimum of at least 60 days to get reimbursed. "They are forcing us to work," Pablo complained. Pablo's observations are accurate: retention of identity documents, withholding of wages, deception, and debt bondage are all indicators of forced labor under ILO standards. Additionally, many of these payroll deductions are not allowed under FTUSA's standards, although precise guidance varies.¹²⁸

Pablo reports that before starting work at Santa Mónica, he and other workers had been promised better paying jobs in the packing house. "But a week went by and then another and we always worked in the fields," Pablo explained. Workers did not know why this was happening. Pablo described how a few workers tried to protest, but the majority were afraid to speak up. Between the isolation and extreme poverty they faced as migrant farmworkers from southern Mexico and the humiliation and deception they faced from plantation management, the workers felt defenseless and violated. "Truthfully, you don't feel good. You don't feel good because we are always locked in. Just work in the fields. They don't allow you to rest or to leave," Pablo related with great sadness. "You feel trapped because they don't even let you stay one day inside your room to rest." Worst of all, "Lots of work and little money."



A. Paper v. Practice: Certification Standards and Forced Labor

Pablo and his fellow workers' experiences indicate several ILO indicators of forced labor. Forced or compulsory labor is defined as work that is done under threat, menace, or penalty and is based on a lack of free will and consent.¹²⁹ In addition to indicating forced labor under international standards, confiscating workers' identity documents and withholding wages are illegal in Mexico as well as strictly prohibited under FTUSA¹³⁰ and EFI¹³¹ standards. FTUSA's Agricultural Production Standards have clear guidance on the prevention and deterrence of forced, bonded or compulsory labor as well as deception in recruitment or hiring. FTUSA defines forced labor in line with that of the ILO Convention 29 stating "forced or compulsory labor means all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily."¹³² The standards provide clear, detailed guidance of the intention of the criteria to preserve workers' essential freedoms.

EFI's standards against slavery, human trafficking, and forced labor¹³³ as well as those regarding housing¹³⁴ and recruitment are laxer than those of FTUSA.¹³⁵ Yet the thoroughness of these standards is irrelevant as there is little evidence that they are enforced, or that the people they are supposed to benefit are aware of the protections they are supposed to grant.

SUB-MODULE 2.1: Certificate Holders and Employers Take Action to Prevent and Do Not Engage In Forced, Bonded, or Compulsory Labor.

No.	Compliance Criterion	SF	MF	LF	Intent and Clarification
Objective 2.1.1: All workers provide work or services under no threat of penalty and are not hired under bond, debt, or other obligation.					
2.1.1.a	All workers provide work or services voluntarily. This includes that there is no forced labor, bonded labor, human trafficking, contract substitution, indentured labor, slave labor, prison labor, deception in recruitment and hiring, fraudulent visa practices, or any restrictions on freedom of movement.	C-Y0	C-Y0	C-Y0	<p>The intent of this requirement is to ensure that employers are taking necessary steps to control the risk of forced labor, and that no forced labor is happening. Per ILO Convention 29, forced or compulsory labor means all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily.</p> <p>The intent of this criterion includes, but is not limited to:</p> <ul style="list-style-type: none"> • There are no restrictions on a worker's freedom of movement from the workplace or employer-provided housing; • Workers are not forced to remain employed or accept employment through any form of mental or physical coercion; • Workers are free to leave the employer; • The employer may not retain salary, benefits, property, documents, or control worker bank accounts as a means to force workers to remain; • The employer does not make false promises about terms and types of work; • The manager and employer do not threaten to denounce workers to the authorities, unless legally justifiable; • If workers have taken out loans from the employer, workers must be allowed to pay them back via means other than work, if they so wish; • Workers are not required to store identity papers or important travel documents with the employer as a condition of employment; and, • The employer may not require workers to pay deposits or bonds in order to force workers to remain.

FTUSA standards covering forced labor.

Unfortunately, what Pablo and his fellow workers report is not an isolated case. Instead, a growing body of evidence underscores the fact that, regardless of how thorough standards may be on paper, they fail to prevent the worst forms of labor abuses.¹³⁶ First, if the enforcement of standards relies on an annual audit interviewing a selection of fieldworkers across the certified entities' operations, it is inherently limited in scope. Further, the very factors that make workers particularly vulnerable to forced labor also make it difficult for the auditors tasked with ensuring compliance with standards to detect such abuses. The root causes of forced labor are, ultimately, an issue of power. More rules alone will not alter such a dynamic. Despite the grave issues reported by workers, Rancho Agrícola Santa Mónica remains certified by both FTUSA and EFI.¹³⁷

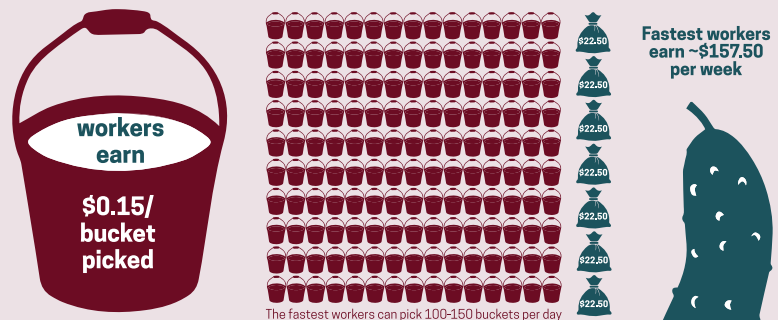
When asked, Pablo described how he felt working for Santa Mónica: "Enslaved. Because they force you. Because on other plantations like where we came from it is not like this." In fact, the workers interviewed were looking for ways to escape their contract but did not want to leave without their documents or the money the boss owed them. Many were willing to risk losing documents and desert but lacked the ability to do so, as they were housed in labor camps. "You feel trapped here. Because everything is far away. We don't feel good at this camp."

B. Trapped: Low Wages and Long Days without Respite

While workers alongside Pablo quickly became aware that they were trapped in their employment at Rancho Agrícola Santa Mónica, they did not yet know the extent of their exploitation. While they understood that the secretive contracts they had signed were for 120 days, they soon learned that was interpreted by their bosses as 120 days of continuous work. Even though Sunday is a legal day of rest in Mexico, they were expected to keep working.

After almost two months of daily work with forced overtime, Pablo was exhausted. The morning after a late night of work, Pablo accidentally overslept. Viviana, the company representative in charge of the contracted workers at Santa Mónica, came to scold Pablo. She threw him out of the labor camp and told him to wait in the park. “They don’t want to see you there in your room. They want to see you working all week,” he said. When workers decide to take a rest day, they are routinely told to leave the camp and are often transported to the public park in Lázaro Cárdenas to wait until nightfall without food or water. Further, if they take a day off, they are barred from eating at the labor camp’s mess hall – even though the workers themselves must pay \$65MX/\$3.25US a day for meals. Thus, workers accrue more debt for meals they are not even allowed to eat. Meals normally consisted of only rice, beans, and tortillas during each of the three daily meals.

Neither “Fair” nor “Equitable” Cucumber Pickers’ Wages on Rancho Santa Mónica



Company paycheck deductions take hard-earned wages from workers

- Daily meals, even when they're not allowed to eat them.....\$3.25
- Weekly check cashing at company store.....\$4.25

Weekly take-home pay for the fastest workers: \$130.50

For an average worker, that comes to \$15/per day - that's the hourly minimum wage just north of the border in California.

All sums in U.S. dollars.



These deductions came on top of notoriously low wages at Rancho Agrícola Santa Mónica. The last section chronicled how such low wages led strawberry workers to go on strike. And conditions were no better in the cucumber fields. Pablo described how on a normal day, they began work at 7:00 am and worked until around 5:00 pm with just 15-30 minutes for lunch. On any given day, they each harvested 100 to 150 buckets, earning \$3MX/\$0.15US per bucket picked. Converting the piece rate to minimum wages, a worker has to pick 87 buckets to earn the daily minimum wage of \$260.34MX/\$13.02US). That means the most productive workers picking 150 buckets per day earn \$450MX/\$22.50US, which comes to about \$3,150MX/\$157.50US per week. And that is before paycheck deductions, including for meals workers are sometimes barred from accessing and for company-provided check cashing services.¹³⁸ After those deductions, workers get about \$300MX/\$15US per day – an hour’s minimum wage just north of the border.

Pablo described the situation on these certified farms as “unjust.” “It’s a f***ing lot of work,” he emphasized. “They give you a f***ing lot of work and until it’s done you can’t leave the fields. It is not just; no one liked it.” What Pablo describes are still more indicators of forced labor, including forced and excessive overtime.

C. Living Conditions in the Labor Camps

Workers who are contracted from other states to labor at Santa Mónica are often housed in a labor camp called *Las Cebollas* (The Onions), located just north of San Quintín. However, as there was no space available there, the workers from Pablo’s contracted crew were initially forced to sleep in a *cuartería* (simple apartment style building with rooms made to house temporary and seasonal farmworkers) in Lázaro Cárdenas, around a half an hour away. The contractor generally picked up the workers between 5:00 and 6:00 am to bring them to *Las Cebollas* to eat breakfast before beginning work at 7:00 am. Workers were barely given a half hour to eat lunch and returned to the fields. At the end of the workday, between 3:30 pm and 5:00 pm, they were brought back to *Las Cebollas* where they were forced to wait until 7:00 pm to be transported by bus to the *cuartería* in Lázaro Cárdenas to bathe and sleep. In other words, often from 5:00 am to 7:00 pm – approximately 14 hours—the workers were unable to return to their quarters to rest, sleep, wash clothes, or take care of other necessities. Workers slept four to a room in squalid conditions. They were provided a thin mattress but no blankets. The rooms and bathroom were extremely dirty. There was little freedom or time to leave, buy necessities, or send money home to relatives.



The *cuartería* in Lázaro Cárdenas.

Las Cebollas labor camp.



After around 20 days, workers were eventually relocated to the *Las Cebollas* labor camp, although conditions there were little better. Workers described cramped conditions at *Las Cebollas*, the inability to charge their cell phones to maintain contact with family members, and the inability to leave the premises. Pablo described just two working restrooms and a couple of showers for the men, a majority of the approximately 200 workers housed in the labor camp.

As Pablo was alone, he was assigned a singles room with six other male workers. Each worker had a bunk bed – made of wooden pallets used on the plantation originally destined to be thrown away but repurposed for workers’ beds. The camp gave workers a thin mattress but no sheets or blankets.

The heat was intense inside the concrete walls of the dormitory rooms. “And there are a f****ing lot of bedbugs,” Pablo exclaimed with obvious disgust in his voice. The bedbugs lived in the wood from the pallets that were used to make their beds. “Everyone was all bit up by the bedbugs,” Pablo described. “They had bedbug bites everywhere, all over their faces. It was filled with bedbugs.”¹³⁹ These accounts are evidence of abusive living conditions, another ILO indicator of forced labor.



The mansion of grower Julio Meza Virgilio

Adding to the sense of isolation, the labor camp is surrounded by an extremely tall fence and has security guards posted at the entrance. The extremely dire conditions of their labor camp are contrasted with the mansion of grower Julio Meza Virgilio that overlooks the plantation. Although partly still under construction, local electricians who worked at the mansion claim it has a number of luxuries including a commercial-sized movie theater. Farmworkers working in the fields below the house are aware that it is their exploited labor, and the unjust and illegal practices they experience every day, are what produced such wealth for the grower.

D. SINDJA Intervenes on Behalf of the Workers

The contract workers laboring in these grim and illegal conditions finally got a lucky break, once again through connecting to the independent union SINDJA. Abelina Ramírez Ruiz, the Secretary General of SINDJA, investigated the case that Pablo described above and documented the abuses and forced labor at Santa Mónica in the Mexican press.¹⁴⁰ Neither the state nor the federal government was interested, however. On August 9 and 10, 2022, Thomas E. Reott, the new U.S. Consul General in Tijuana, arrived in San Quintín to meet with growers and workers in the produce commodity chains between Mexico and the United States.¹⁴¹ One of Consul General Reott’s main tasks is to strengthen economic and commercial

relationships between the U.S. and Mexico in light of the “U.S.-Mexico High-Level Economic Dialogue” initiated between the administrations of Joe Biden and Andrés Manuel López Obrador.¹⁴² Consul General Reott visited growers on his first day in San Quintín and visited workers on the second day. During its meeting with the SINDJA union, Abelina Ramírez Ruiz took the consular delegation and members of the Mexico City offices of the AFL-CIO’s Solidarity Center to various plantations and labor camps

Tall fences surround the Las Cebollas labor camp.



where violations are the norm. Ramírez Ruiz then brought Consul General Reott to the *Las Cebollas* labor camp. They were initially denied entry, but eventually Consul General Reott heard first-hand from workers of the abuses they suffered.

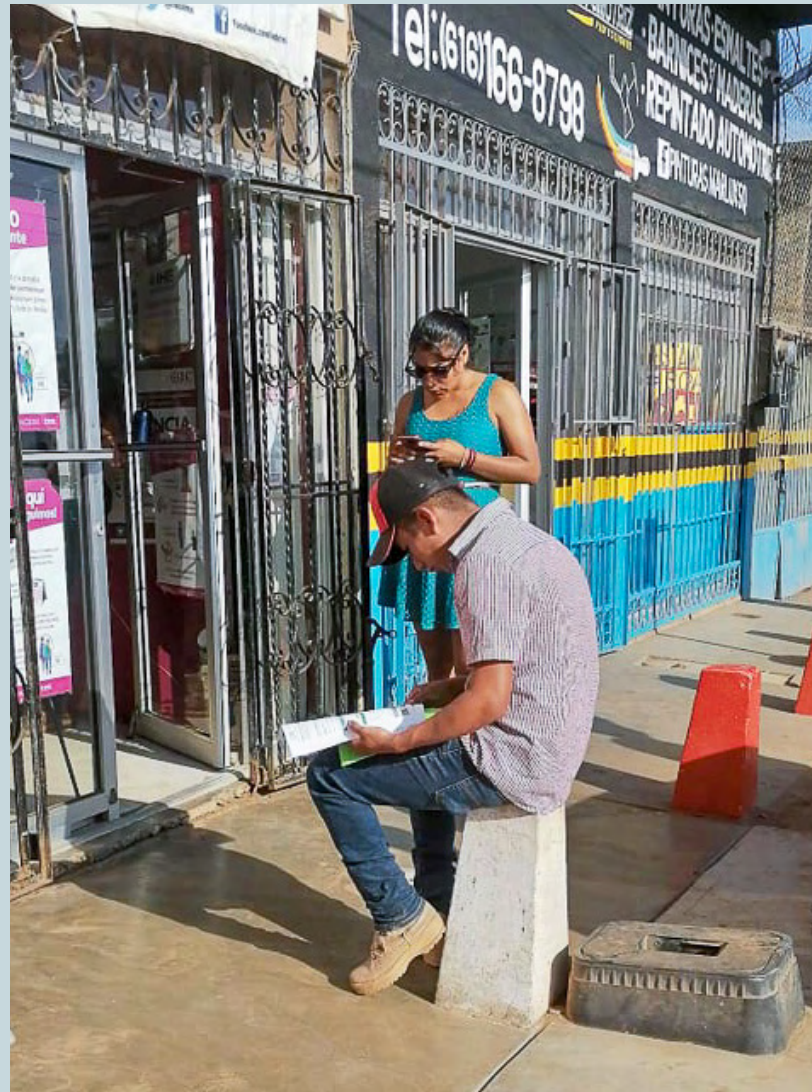
Despite disinterest from state and federal labor authorities, the international pressure exerted through the presence of the Solidarity Center and Consul General Reott provided the needed leverage to release the workers. Three days after the Consul’s visit, on Saturday, August 13, Rancho Agrícola Santa Mónica gave the workers their documents and the week of salary it had withheld. Not everyone was paid in full, however; Santa Mónica allegedly still owes Pablo around \$500MX/\$25US.¹⁴³ That very day, after cashing their weekly paychecks, all the workers left Rancho Agrícola Santa Mónica, just days short of completing the 60-day minimum of their 120-day contracts. Many left San Quintín, while some sought work on other plantations in the valley. With the help of a local leader, Pablo found temporary housing and obtained his voter identification. Reflecting on his experience at Rancho Santa Mónica, Pablo said, “I felt like a slave there.”

“**I felt like a slave there.**”

-Pablo, migrant farmworker, EFI- and FTUSA-certified Santa Mónica

The abuses against Indigenous farmworkers are too often treated as just the cost of maintaining the “competitive advantage” of San Quintín’s produce industry, where 90 percent of crops are exported to the United States.¹⁴⁴ These violations of Mexican and international law and the abuses farmworkers like Pablo suffer not only go unpunished, but they are invisible to FTUSA and EFI. Despite the evidence of widespread, systemic abuse at Rancho Santa Mónica and Rancho Nuevo chronicled in this report and reported consistently by workers, neither certifier has decertified these plantations.¹⁴⁵

Ultimately, the abuses and failures of certifications found in the San Quintín valley are part of a larger pattern. A growing body of research points to the conflicts of interest and power imbalances that render impotent these social certifications and the audits that review compliance.¹⁴⁶ They are part of what researcher Genevieve LeBaron has dubbed “corporate fairytales about modern slavery,”¹⁴⁷ stories that obscure the root causes of exploitation: the dominant business model that hoards wealth with the brands at the top of supply chains and leaves little for the people laboring at the bottom.



Pablo gets his federal identification after fleeing Santa Mónica.

5. CONCLUSION:

Transnational Agriculture, Ethical Certifications, And Farm Labor Organizing

Farmworkers in Mexico put food on the tables of the United States. Our health and nutrition is intimately linked with the health and safety of the people who toil daily to produce the food we eat. This interdependence lies behind global produce supply chains that are marked by severe and systemic abuses of the farmworkers at the bottom of the chains.

The massive farmworker strike in San Quintín, Baja California, Mexico in 2015 brought global attention to the abuses these workers suffered. Transnational agricultural corporations responded to this unprecedented farmworker revolt by partnering with ethical certifiers FTUSA and EFI. The strawberries, blueberries, raspberries, blackberries, tomatoes, and cucumbers produced in San Quintín are now labeled as “fair” and “equitable.” However, workers have made few concrete gains since these certification schemes entered the scene – and the original demands of the 2015 strike are largely unmet.

The abuses chronicled in this report are two-fold. The repeated, systemic violations of human rights, including forced labor, routine violations of freedom of association, labor rights, and wage theft are staggering, especially when considering that the workers’ voices included here are only a fraction of those interviewed. The tapestry of all these abuses adds up to a larger ongoing story and points to the ways that multinational companies use multi-stakeholder processes and eco-social certification to co-opt, undermine, and neutralize worker organizing and wide-spread solidarity, such as that of the Driscoll’s boycott movement of 2015.

Mexico’s agro-export industry continues to grow, fueled by free trade policies, low wages, corporate-friendly regulations, and lax enforcement of existing labor law. Increasingly, the industry is positioned as an economical alternative to California’s Central Valley with its lagging water supply and increasing costs – why pay a worker a \$15US minimum wage per hour when the wages just a few hours south are \$15US per day or less?



While one of the justifications for these ethical certifications is to fill regulatory gaps, we see how they fail to address such gaps and instead support the continued divestment from public programs and entitlements meant to benefit workers. In place of legally guaranteed wages and benefits, multinational companies and their affiliate growers pay workers premiums based on sales. Instead of stemming the race to the bottom fueled by corporate-friendly free trade agreements, FTUSA and EFI's labels facilitate the development of a parallel corporate-friendly soft law regime. While their PR touts "continual improvement," that is not what workers report. The only thing these labels certify is continued exploitation.

While EFI and FTUSA's PR touts "continual improvement," that is not what workers report. The only thing these labels certify is continued exploitation.

program on-farm –hence the absence of an element of the FTUSA program that features heavily in their promotion of how the certification works to empower workers. A few workers could point to fair trade premium projects, such as water tanks with the FTUSA logo, yet had limited understanding of why or how they were there. This is especially true where both EFI and FTUSA coexist on the same plantation as workers fail to distinguish between the two programs and their respective representatives.

EFI standards are both less detailed, and, critically, also fail to fill regulatory gaps, in many cases being lower than Mexican labor law.¹⁴⁸ EFI's standards are developed as part of a multi-stakeholder initiative bringing together brands, U.S.-based NGOs, and U.S.-based farmworker unions.¹⁴⁹ These farmworker

unions provide EFI with a moral authority, yet this report uncovers the weaknesses of mistaking participation in a multi-stakeholder initiative for real representation. Although U.S.-based farmworker union leaders are on EFI's boards, there is no U.S.-based grassroots farmworker participation.¹⁵⁰ Worse, no Mexican-based farmworker union or organization is a member of EFI. While Mexican workers lack an effective, organized voice in EFI's programs at any level, from Leadership Team to standards setting bodies to boards, multinational produce companies are well represented. Major funders and buyers A&W and Costco are chair and vice chair of the board respectively, an imbalance also present on the standards committee. Likewise, Fair Trade USA's board is well populated with brand representatives, yet no farmworker representatives (or representation from any other sector of the labor movement).¹⁵¹ Ultimately, this points to one of the principle failings of MSIs: despite making claims couched in the language of human and labor rights and the language of engaging all stakeholders, "in reality, MSIs entrench power in

Strawberries at Rancho Nuevo.



favor of corporations – the entities they seek to regulate.”¹⁵² In fact, just 13 percent of MSIs have board representation from the people they claim to benefit, and none found in their comprehensive review had a majority of rights-holders on their governing bodies.¹⁵³

There is a growing consensus that MSIs (including ethical certifications such as EFI and FTUSA) are not designed to protect human rights as they claim, instead pointing to a far more limited role.¹⁵⁴ At the heart of that conclusion is that they fail to center rights-holders (i.e., the workers they claim to benefit) – or even define them as rights-holders who have legal recourse when these programs fail to protect them. Since the 2015 strike, SINDJA members and farmworkers on certified farms continually speak out against FTUSA and EFI, going so far as to liken them to the company unions that are undermining their organizing and their ability to defend their own rights.

Mexico’s agro-export sector is built on an extractive model. The growth of these massive farms depends on the “competitive advantage” of the extreme exploitation of labor. Part of the failure of these ethical certifications can be attributed to the ways in which they fail to address the root causes of this exploitation. In the ten years since EFI’s pilot program began, produce exporters, growers, and brands have seen massive growth, yet this wealth has not trickled down to workers, nor is there evidence that certification is improving working conditions or wages. The lack of improvements evidenced by worker testimony is not merely a fact of incremental change coming slowly. Instead, it is evidence that the model is working as it is designed. In the time that EFI’s standards have been in existence, wage requirements and berry premiums have gone down, not up.

There is a growing body of research showing the inadequacy of MSIs, specifically certifications and the audits they depend on for compliance, to protect human rights in supply chains. The growth of MSIs is part of a larger picture: the consolidation of corporate power and accompanying deregulation and privatization of public resources. Limited government budgets render private enforcement appealing. Yet this trend of delegating the task of monitoring vital human rights to for-profit entities (auditing firms) is troubling. Unlike public institutions, these entities are only accountable to their clients – the suppliers and brands who hire them.

Just as the MSIs that set the certification standards fail to address the power imbalances between brands and rights-holders (i.e., workers), so too do the joint-body committees (including the EFI Leadership Team discussed most in this report) fail to address the hierarchies of the farm. The result, as we have seen, is the opposite of empowerment.

A. Changing the Power Dynamics

What would it take to grapple meaningfully with the power dynamics of the transnational agro-export industry? In the first place, change requires naming and addressing those dynamics. Global companies such as Driscoll’s, A&W, and Costco bear the responsibility for their purchasing practices – and the conditions those purchasing practices create for workers in their supply chains. While a network of contract growers who in turn hire labor contractors allows brands distance and deniability, they are the ones who reap the ultimate benefits from the status quo. This report underscores the extent to which brands use certifiers for reputation and risk management – from food safety to forced labor.

In the time that EFI’s standards have been in existence, wage requirements and berry premiums have gone down, not up.

B. Strong Independent Worker Organizing Supports Human Rights

Throughout this report, one of the few bright spots winning concessions, however temporary, for farmworkers in San Quintín's fresh produce sector has been independent, grassroots farmworker organizing. In fact, two unions representing workers in Driscoll's supply chain have gained strength since the 2015 strikes and Driscoll's boycott: Familias Unidas por la Justicia in Washington state, and SINDJA in the San Quintín valley. While SINDJA has yet to sign a collective bargaining agreement with any grower, due at least in part to the widespread dominance of company unions, it has repeatedly won concessions for workers. This report shows how SINDJA supported striking workers to win better pay and stepped into an enforcement role to assess on-farm conditions and has exposed conditions of forced labor on certified farms.

The Driscoll's boycott and farmworker actions of 2015 showed the power of solidarity action with people on both sides of the border supporting farmworkers' demands. The response to that moment has also shown how readily multinational corporations can rise to address what they see as risks to their supply chains – and how readily certifiers who speak of workers' wellbeing can be complicit in enabling corporate abuses.

C. Recommendations:

It is time to address the failures of certifications to protect the fundamental human rights they claim to protect. As this report shows, certifications are also actively undermining independent worker organizing that has greater potential to defend those rights.

Participation in multi-stakeholder initiatives is not a proxy for direct engagement with organized workers in specific supply chains and worksites. The solutions here provide some steps towards reforming the private regulation of transnational agriculture through binding contracts, strong independent worker organizations and worker-driven enforcement, with meaningful financial contributions from companies. These steps are just a small element of the larger shifts of money and power needed to truly address the abuses built into the transnational agro-export industry.



For Brands and Certifiers:

- Certifiers must not certify suppliers with known labor rights abuses, including the presence of employer unions.
- Independent workers' organizations must be directly engaged in the development and monitoring of any programs that claim to protect workers' rights. Despite their ubiquity, employer protection unions cannot be a stand-in for worker engagement.
- Brands must replace voluntary certifications with binding agreements with independent worker organizations in their supply chains to ensure workers' rights are protected.
- Brands and certifiers must ensure compliance with national labor laws –voluntary certifications cannot be permitted to undermine or replace compliance with national law.
- Certifiers must require the direct hiring of workers, recognizing the role of labor contracting in facilitating exploitation, forced labor, and a lack of accountability.
- Brands must pay prices that cover the true cost of rights-respecting practices, including production and enforcement.

Worker Demands in the Mexican Regulatory Context:

To fulfill the above, workers are calling on brands, certifiers, and suppliers to ensure the following take place in the San Quintín produce sector, demands which are consistent with the demands of the 2015 strike.

- End of employer protection contracts with company unions that violate collective bargaining and freedom of association rights.
- Good faith grower negotiations with independent worker unions on their sites. Suppliers must prioritize growers who sign collective bargaining agreements with such worker organizations.
- Compliance with federal labor law, social security law, and constitutional rights. These include, but are not limited to overtime, vacation, Sunday bonus, holiday pay, utilidades (profit sharing) and aguinaldo (seasonal bonus payments).
- End of forced overtime. All overtime must be voluntary without coercion or reprisals by foremen, growers, and company unions.
- Payment of piece-rate overtime according to law at a minimum or higher if established in a collective bargaining agreement with independent farmworker union to ensure fair pay.
- End of temporary contracts which farmworkers are forced to sign to keep workers in an artificial “temporary” status negating their labor and social security rights.
- End of forced labor, sexual harassment, and sexual violence in the workplace.
- End of subcontracting in agriculture.
- End of the “integrated salary” that incorporates legally established labor and social security benefits into short-term paychecks, reducing salaries and eroding long-term rights to pensions and other benefits.

Endnotes

- 1 James Daria, *Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border*, PhD Dissertation, University of Oregon (2019) [hereinafter *Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border*].
- 2 Farm Workers in San Quintin, *Rural Migration News*, Dec. 30, 2021, <https://migration.ucdavis.edu/rmn/blog/post/?id=2676>.
- 3 See, e.g., EFI-cofounder Erik Nicholson refused to go on the record for this research. Both Sandra Tapia, BerryMex human resources representative in charge of FTUSA certification, and Candelaria Quintero, Milagro de Baja human resources representative in charge of EFI certification, also refused to participate in this investigation and denied access to their programs, sites, and documents.
- 4 James Daria, *Fairwashing and Union Busting: The Privatization of Labor Standards in Mexico's Agro-Export Industry*, *Mexican Studies/Estudios Mexicanos*, Vol. 38, 2022, pp. 379-405 [hereinafter *Fairwashing and Union Busting*]; James Daria, *Rigged Elections: The Failure of Mexico's New Labor Model to Protect Farmworker Rights*, *Frontera Norte*, Vol. 35, 2023, pp. 1-21, <https://fronteranorte.colef.mx/index.php/fronteranorte/article/view/2332> [hereinafter *Rigged Elections*].
- 5 Alan Hodges, et al., *Potential Economic Impacts in Florida of Increased Imports of Mexican Fruits and Vegetables*, Economic Impact Analysis Program, University of Florida, June 4, 2019, p. 1, <https://fred.ifas.ufl.edu/pdf/economic-impact-analysis/MexicoFruit&Vegetable.pdf>.
- 6 US Imports of Fresh Fruit and Vegetable, *Rural Migration News*, Feb. 24, 2021, <https://migration.ucdavis.edu/rmn/blog/post/?id=2569>.
- 7 La Zona sur de Baja California líder en producción de berries, Gobierno de Mexico, Feb. 24, 2021, <https://prod.senasica.gob.mx/ALERTAS/inicio/pages/single.php?noticia=7129>.
- 8 Matthew Fischer-Daly & Mark Anner, *Strawberry Global Supply Chains in Mexico*, Solidarity Center, Mar. 2021, <https://www.solidaritycenter.org/wp-content/uploads/2021/09/Strawberry-Global-Supply-Chains-in-Mexico-March-2021.pdf> [hereinafter *Strawberry Global Supply Chains in Mexico*].
- 9 Agriculture, Labor Enforcement Task Force (LETF), California Department of Industrial Relations, 2022, https://www.dir.ca.gov/letf/Agriculture_Employer_Brochure.pdf; see generally *Strawberry Global Supply Chains in Mexico*, supra note 8.
- 10 See generally *Strawberry Global Supply Chains in Mexico*, supra note 8.
- 11 See generally Anna Canning, *Looking Back, Looking Forward: Fair Trade Certification in 2022*, Fair World Project, 2022, <https://fairworldproject.org/wp-content/uploads/2022/08/Fair-Trade-Certification-in-2022.pdf>.
- 12 Christian Zlolniski, *Made in Baja: The Lives of Farmworkers and Growers behind Mexico's Transnational Agriculture Boom*, p. 3 (2019).
- 13 Agustín Escobar Latapí, et al., *Baja California Regional Study, Jornaleros en la Agricultura Mexicana de Exportación*, p. 99, 2023, <https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/Farmworkers23.pdf>.
- 14 Anna Mary Garrapa, *Jornaleros agrícolas y corporaciones transnacionales en el valle de San Quintín*, *Frontera Norte*, Vol. 31, 2019, <https://doi.org/10.33679/rfn.v1i1.2018>.
- 15 Christian Zlolniski, *Economic Globalization and Changing Capital-Labor Relations in Baja California's Fresh-Produce Industry*, in *The Anthropology of Labor Unions*, pp. 173-174 (2013).
- 16 Id.; Saúl Escobar Toledo, *El Camino Obrero: Historia del Sindicalismo Mexicano, 1907-2017*, *Historia Mexicana*, El Colegio de México, Vol. 74:1, 2021, pp. 141-145.
- 17 Elena J. Cruz, *El Movimiento Laboral-Comunitario de los Jornaleros del Valle de San Quintín*, *Facultad Latinoamericana de Ciencias Sede Académica de México*, p. 160 (2016). See also *Sindicato Independiente Nacional Democrático de Jornaleros Agrícolas*, *Boletín de la campaña Contra los Contratos de Protección Patronal en México*, 1: 2 Segunda Época (Mar. 2016), Apr. 21, 2017, p. 2, https://issuu.com/sinproteccion/docs/ne_ccpp2 [hereinafter *Boletín CCPP*].
- 18 Jo Tuckman, *Baja California Farm Workers Demand Better Pay and Working Conditions*, *The Guardian*, Mar. 25, 2015, <https://www.theguardian.com/world/2015/mar/25/mexico-baja-california-farm-workers-strike>.
- 19 *Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border*, supra note 1.
- 20 Id.
- 21 James Daria, *Organizing the Slaves of the 21st Century: Mexico's First Independent and Democratic Farmworker Union Fighting Rural Authoritarianism in the Context of Global Capitalism*, March 17-18, 2018, International Institute of Social Studies (ISS) in The Hague, Netherlands, p. 5, https://www.iss.nl/sites/corporate/files/2018-03/ERPI%20CP%2022_Daria.pdf.
- 22 See, e.g., David Bacon, *The Cross-Border Farmworker Rebellion*, *The American Prospect*, Oct. 31, 2018, <https://prospect.org/labor/cross-border-farmworker-rebellion/> [hereinafter *The Cross-Border Farmworker Rebellion*].

- 23 See The National Independent and Democratic Union of Agricultural Day Laborers, SINDJA, <https://sindja.org/en/>.
- 24 The Cross-Border Farmworker Rebellion, supra note 23.
- 25 See, e.g., David Bacon, The Pacific Coast Farm-Worker Rebellion, *The Nation*, Aug. 28, 2015, <https://www.thenation.com/article/archive/the-pacific-coast-farm-worker-rebellion/> [hereinafter The Pacific Coast Farm-Worker Rebellion]; Driscoll's Workers Call for Global Boycott over Alleged Abuses at World's Biggest Berry Distributor, *Democracy Now*, May 9, 2016, https://www.democracynow.org/2016/5/9/driscolls_workers_call_for_cross_border.
- 26 The Pacific Coast Farm-Worker Rebellion.
- 27 David Bacon, Why These Farm Workers Went on Strike – And Why it Matters, *The Nation*, Oct. 3, 2016, <https://www.thenation.com/article/archive/why-these-farm-workers-went-on-strike-and-why-it-matters/>.
- 28 Fairwashing and Union Busting, supra note 4, p. 391.
- 29 See, e.g., Liana Foxvog & Gabriela Rosazza, “Fyffes Farms Exposed. The Fight for Justice in the Honduran Melon Fields,” Washington, DC: International Labor Rights Forum, International Union of Food Workers Latin America Regional Secretariat, and Fair World Project; Anna Canning, Label Before Labor. Fair Trade USA's Dairy Label Fails Workers, Fair World Project, 2021. See also Avery Kelly, Fair Trade USA and the Failures of Eco-Social Certification, Corporate Accountability Lab, May 20, 2021, <https://corpaccountabilitylab.org/calblog/2021/5/20/fair-trade-usa-amp-the-failures-of-eco-social-certificationbsp>.
- 30 See, e.g., Lawrence K. Altman, 153 Hepatitis Cases are Traced to Frozen Imported Strawberries, *New York Times*, Apr. 3, 1997, <https://www.nytimes.com/1997/04/03/us/153-hepatitis-cases-are-traced-to-frozen-imported-strawberries.html> [hereinafter 153 Hepatitis Cases are Traced to Frozen Imported Strawberries]; Bill Marler, Marler Clark Files 10 Salmonella Lawsuits Against Andrew & Williamson Fresh Produce, *Food Poison Journal*, Sept. 23, 2015, <http://www.foodpoisonjournal.com/foodborne-illness-outbreaks/marler-clark-files-10-salmonella-lawsuits-against-andrew-williamson-fresh-produce/#.WYODUK2Z0u4> [hereinafter Marler Clark Files 10 Salmonella Lawsuits Against Andrew & Williamson Fresh Produce]; Organic Grape Tomatoes Recalled for Salmonella, *CBC News*, Sept. 30, 2011, <https://www.cbc.ca/news/health/organic-grape-tomatoes-recalled-for-salmonella-1.1118028> [hereinafter Organic Grape Tomatoes Recalled for Salmonella]; Multistate Outbreak of Salmonella Poona Infections Linked to Imported Cucumbers, CDC (Center for Disease Control), 2016, <https://www.cdc.gov/salmonella/poona-09-15/index.html> [hereinafter Multistate Outbreak of Salmonella Poona Infections Linked to Imported Cucumbers].
- 31 See Tony Perry, Food Firm Pleads Guilty to Fraud, *Los Angeles Times*, Nov. 14, 1997, <https://www.latimes.com/archives/la-xpm-1997-nov-14-mn-53641-story.html>; Seller of Tainted Strawberries to Schools Gets 5 Months in Prison, *Los Angeles Times*, June 16, 1998, <http://articles.latimes.com/1998/jun/16/news/mn-60371>.
- 32 Elizabeth Grossman, From Farm to Table: A New Model for Growing Food Fairly and Safely, *The Pump Handle*, June 6, 2013, <http://www.thepumphandle.org/2013/06/06/from-farm-to-table-a-new-model-for-growing-food-fairly-and-safely/#.YovXCS2ZN-U>; Melissa De Leon Chavez, Equitable Food Initiative Recognized by Global Food Safety Initiative, *AndNowU-Know*, Sept. 13, 2022.
- 33 See CIERTO, <https://www.ciertoglobal.org/inicio/>.
- 34 Jennifer Gordon, Roles of Workers and Unions in Regulating Labor Recruitment in Mexico, Jan. 22, 2015, p. 19, <https://www.solidaritycenter.org/wp-content/uploads/2015/05/Migration.Roles-for-Workers-and-Unions-in-Regulating-labor-Recruitment-in-Mexico.Jennifer-Gordon-Fordham.5.15.pdf> [hereinafter Roles of Workers and Unions].
- 35 See id.
- 36 Fair Trade Certification, Driscoll's, <https://www.driscolls.com/about/worker-welfare/fair-trade>.
- 37 Driscoll's to Include More Growers in Fair Trade Berry Program, *Fresh Fruit Portal*, Oct. 14, 2016, <https://www.freshfruitportal.com/news/2016/10/14/driscolls-to-include-more-growers-in-fair-trade-berry-program/>.
- 38 Driscoll's Applies Fresh Approach to Ag Labor Relations, *Fresh Fruit Portal*, Feb. 3, 2016, <https://www.freshfruitportal.com/news/2016/02/03/qa-driscolls-applies-fresh-approach-to-ag-labor-relations/>.
- 39 Q&A: Driscoll's Applies Fresh Approach to Ag Labor Relations, *Fresh Fruit Portal*, Feb. 3, 2016, <https://www.freshfruitportal.com/news/2016/02/03/qa-driscolls-applies-fresh-approach-to-ag-labor-relations/>.
- 40 Boletín CAPP, supra note 18, p. 3.
- 41 See generally Insight 2: Stakeholder Participation, MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020 (describing generally how MSIs are rarely representative of the worker-communities they claim to support). See also Chapman Dialogue Addresses the Future of the Agricultural Industry with United Farm Workers of America President Arturo Rodriguez, Chapman University Fowler School of Law, Oct. 17, 2017, <https://blogs.chapman.edu/law/2017/10/17/chapman-dialogue-addresses-the-future-of-the-agricultural-industry-with-united-farm-workers-of-america-president-arturo-rodriguez/> (summarizing UFW President Arturo Rodriguez's efforts to participate in a consortium with organizations like EFL,

retailers, as well as major fruit buyers, and the “outreach” to workers required to explain changes to the industry) [hereinafter Chapman Dialogue].

- 42 See Roles of Workers and Unions, *supra* note 35, pp. 20-21.
- 43 Dick Anderson, In the Shadow of Cesar Chavez, Michigan Alum Magazine, 2015, <https://alumni.umich.edu/michigan-alum/in-the-shadow-of-chavez/> (highlighting the UFW’s move to work with, rather than against, big retailers as a new strategy to respond to a changing agricultural industry). See also Fairwashing Union Busting, *supra* note 4; Chapman Dialogue, *supra* note 42.
- 44 Boletín CCPP, *supra* note 18, p. 3.
- 45 *Id.*
- 46 *Id.*
- 47 *Id.* p. 31.
- 48 *Id.*
- 49 Fairwashing and Union Busting, *supra* note 4. See also Fair Trade USA Agricultural Protection Standards 2.3, https://assets.fairtradecertified.org/image/upload/v1654625272/Standards/Agricultural%20Production%20Standard%20USA/FTUSA_STD_APS_EN_1.2.0.pdf [hereinafter FTUSA APS]; Equitable Food Initiative Social Standards FOA 1.1-1.5, <https://equitablefood.org/wp-content/uploads/EFI-Social-Standards-v2.1.pdf> [hereinafter EFI SS].
- 50 Fairwashing and Union Busting, *supra* note 4.
- 51 Rigged Elections, *supra* note 4.
- 52 Enrique Rojas, Sabino Becerra. Rancho Nuevo Produce, legado de toda una vida..., *Agricultor de San Quintín* 2: 6 (enero), pp. 11-13, 2017. See also Strawberry Global Supply Chains in Mexico, *supra* note 8.
- 53 See Rancho Nuevo EFI certification at SCS Global Services, https://equitablefood.org/wpcontent/uploads/EFI-CRT-RanchoNuevoProduce_010622.pdf and FTUSA certification, <https://www.scs-certified.com/fff/viewsupplier.php?id=2130>. See also James Daria, Spring of Discontent: Mexican Berry Pickers Strike for a Bigger Share of Profits, *Labor Notes*, July 5, 2022, <https://labornotes.org/blogs/2022/07/spring-discontent-mexican-berry-pickers-strike-bigger-share-profits>.
- 54 The EFI Mission Statement states, “We bring together growers, farmworkers, retailers and consumers to transform agriculture and improve the lives of farmworkers.” Equitable Food Initiative, About EFI, <https://equitablefood.org/about-efi/>.
- 55 Herb Weisbaum, Culture-changing’ Initiative to Stop Food Contamination on the Farm, *NBC News*, Apr. 19, 2013, <https://www.nbcnews.com/healthmain/culture-changing-initiative-stop-food-contamination-farm-6c10855682>.
- 56 See 153 Hepatitis Cases are Traced to Frozen Imported Strawberries, *supra* note 31; Marler Clark Files 10 Salmonella Lawsuits Against Andrew & Williamson Fresh Produce, *supra* note 31; Organic Grape Tomatoes Recalled for Salmonella, *supra* note 31; Multistate Outbreak of Salmonella Poona Infections Linked to Imported Cucumbers, *supra* note 31.
- 57 “Ñuu Savi” is the term for the Mixteco people in the Mixteco language, literally meaning “the people of the rain.”
- 58 EFI SS, *supra* note 50, CL-1.
- 59 Ley Federal del Trabajo [LFT], Diario Oficial de la Federación [DOF] 05-01-1970, últimas reformas DOF 27-12-2022 (Mex.), Artículos 35 y 36 (reformed on Nov. 30, 2012) [hereinafter Ley Federal del Trabajo].
- 60 *Id.*, Artículos 68, 73.
- 61 Retail prices of berries observed in Costco stores by the author in Oregon during summer 2022. Workers are paid \$1.25US per box or \$1.35US per box during overtime. With six 12-ounce clamshells in a box, a worker thus earns between \$0.21-\$0.23US per clamshell. EFI premiums add a few cents to those earnings.
- 62 Author interviews with over 200 workers conducted in the field yielded many reports of underemployment and daily payment outside harvest time. See also Christian Zolniski, *Export Agriculture, Transnational Farmworkers, and Labor Resistance in the Mexico-US Borderlands*, *Dialectical Anthropology*, Vol. 42:2, 2018, pp. 165-169.
- 63 As of January 1, 2022, agricultural employers with more than 25 workers are required to pay a minimum wage of \$15 US per hour as well as overtime at a rate of one and one-half times the farmworker’s regular pay after an eight-hour day in a 40-hour work week. For employers with 25 or fewer workers, the minimum wage was \$14US per hour as of January 1, 2022, moving to \$15US per hour as of January 1, 2023. Overtime thresholds for these smaller employers were also being phased in as specified by the California Department of Industrial Relations Labor Enforcement Taskforce. *Agriculture, Labor Enforcement Task Force (LETF)*, California Department of Industrial Relations, 2022, https://www.dir.ca.gov/letf/Agriculture_Employer_Brochure.pdf.
- 64 Ley Federal del Trabajo, *supra* note 73, Artículo 280.
- 65 *Id.*, Artículo 69.
- 66 *Id.*, Artículo 77. See also *Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border*, *supra* note 1, pp. 131-134.

- 67 Ñuu Savi farmworker appears to be alluding to Ley Federal del Trabajo, supra note 73, Artículo 79.
- 68 EFI SS HS 6.3 focus on safety; ND2.2 on sexual harassment. WI-L-1 Details the requirements such that “Workers have been informed about and show an understanding of their rights and responsibilities guaranteed in accordance with the EFI Social Standards.” Similarly, FTUSA 3.7.1.a requires that workers on mid- and large farms be informed of their rights under the APS. However, training on other labor rights afforded under law is either a non-mandatory best practice, or extra progress points (3.7.1.b).
- 69 See, e.g., EFI SS, supra note 50, FWC 3.2, (establishing a fifteen minute rest period in the middle of a four-hour work period). EFI SS, supra note 50, FWC 3.3, (establishing a 30-minute unpaid lunch break for every five hours worked).
- 70 EFI SS, supra note 50, FWC 2.3.
- 71 Id., FWC 3.4, establishes that workers are to be compensated “for all time under the direction and control of the Employer whether or not actual work is being performed.” Norm FWC 2.3 states “In cases where workers are required by the Employer to be transported to work, the work time begins at the time the worker boards the employer-designated transportation and ends upon disembarking.”
- 72 EFI’s Worker Involvement – Labor (WI-L) Standards 1.1-1.8 relate to workers being informed about their rights and responsibilities under EFI SS. These include knowledge about pay, breaks, no-retaliation policies, and anti-discrimination measures. Workers should also be knowledgeable about EFI standards and the role of the EFI committee at the workplace.
- 73 EFI, “Manual de Capacitación,” Ver. 4, May 2020. Copy on file with author.
- 74 Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border, supra note 1, p. 25.
- 75 EFI SS, supra note 50, FWC 1.1 (stating farmworkers are to receive contracts in a language they understand). See also Jornalero: Indigenous Migrant Farmworkers Along the U.S./Mexican Border, supra note 1.
- 76 EFI SS, supra note 50, LMC 1.1-1.8.
- 77 Heather Zoller, Ron Strohlic & Christy Getz, Agricultural Workers’ Participation in Certification as a Mechanism for Improving Working Conditions: The Equitable Food Initiative, Journal of Applied Communication Research, Vol. 48:6, 2020, p. 668.
- 78 Author interview with Baldemar Velasquez, president of the Farm Labor Organizing Committee (FLOC) and member of EFI’s Executive Board, on May 17, 2022.
- 79 Equitable Food Initiative, Our Impact, <https://equitablefood.org/our-impact/>.
- 80 EFI SS, supra note 50, NR 1.1-1.3.
- 81 Id., LMC 1.2.
- 82 Id., ND 2.1 (forbidding sexual harassment, a “major” violation). See also FTUSA APS, supra note 50, 2.4.2.
- 83 EFI SS, supra note 50, FWC 3.1. Violation of this standard is considered a “minor” offense.
- 84 Ley Federal del Trabajo, supra note 73, Artículo 66.
- 85 See, e.g., ELEVATE and SCS Global Services provide auditing services for EFI.
- 86 See “Fair Trade USA Certification,” SCS Global Services, <https://www.scsglobalservices.com/services/fair-trade-certification> (“The on-site audit includes document review, worker interviews, and field observations. Draft findings are communicated in the closing meeting. Audit report is sent to client within 20 business days.”); see also Justice in the Fields: A Report on the Role of Farmworker Justice Certification and an Evaluation of the Effectiveness of Seven Labels, Fair World Project, p. 17, <https://fairworldproject.org/wp-content/uploads/2016/10/Justice-In-The-Fields-Report.pdf>.
- 87 See generally Re:Structure Lab, Forced Labour Evidence Brief: Social Auditing and Ethical Certification, Vancouver, Stanford, Simon Fraser & Yale Universities, 2022; Obsessed with Audit Tools, Missing the Goal: Why Social Audits Can’t Fix Labor Rights Abuses in Global Supply Chains, Human Rights Watch, 2022.
- 88 EFI Certification Program Requirements 12.5.3.1., <https://equitablefood.org/wp-content/uploads/Certification-Program-Requirements-v2.1.pdf>.
- 89 Lucinda refers to the third-party auditors contracted to perform inspections as “the EFI group.”
- 90 Correspondence between the Business Human Rights Resource Centre and ELEVATE, Sept. 30, 2019, https://media.business-humanrights.org/media/documents/files/documents/ELEVATE_response_to_CCC_report_Fig_Leaf_for_Fashion_20190930.pdf.
- 91 Equitable Food Initiative, Our Impact <https://equitablefood.org/our-impact/>.
- 92 Rie Makita, Fair Trade Certification: The Case of Tea Plantation Workers in India, Development Policy Review, Vol. 30:1, 2012, pp. 87-88 [hereinafter Fair Trade Certification].
- 93 Laura T. Reynolds, Fair Trade Flowers: Global Certification, Environmental Sustainability, and Labor Standards, Rural Sociology, Vol. 77:4, 2012, pp. 493, 517.

- 94 Más de 300 jornaleros agrícolas de SQ logran, a través de un paro de labores, importante aumento a sus ingresos, 4 Vientos, <https://www.4vientos.net/mas-de-300-jornaleros-agricolas-de-sq-logran-a-traves-de-un-paro-de-labores-im-portante-aumento-a-sus-ingresos>.
- 95 Id.; Rancho Agrícola Santa Monica, FTUSA Certification Addendum (provided by third-party auditor SCS Global Services), Dec. 10, 2020, <https://cdn.scsglobalservices.com/certificates/12/BB12DF0A-959C-A84F-BFEE-D24F962D9EB4.pdf>; Strawberry Global Supply Chains in Mexico, supra note 8, p. 13.
- 96 Rancho Agrícola Santa Monica, EFI Certification (provided by third-party auditor SCS Global Services), Jan. 17, 2020, https://equitablefood.org/wp-content/uploads/EFI_CERT_RanchoAgricolaSantaMonica_011720.pdf.
- 97 Rancho Agrícola Santa Monica, FTUSA Certification (provided by third-party auditor SCS Global Services), June 29, 2022, <https://www.scsglobalservices.com/certified-clients/certificates/38253?v>. Certificate valid during this research, until Mar. 28, 2023.
- 98 Rancho Agrícola Santa Monica, FTUSA Certification (provided by third-party auditor SCS Global Services), Dec. 10, 2020, <https://www.scsglobalservices.com/certified-clients/certificates/current/1229316?v>; Rancho Agrícola Santa Monica, FTUSA Certification Addendum (provided by third-party auditor SCS Global Services), Dec. 10, 2020, <https://cdn.scsglobalservices.com/certificates/12/BB12DF0A-959C-A84F-BFEE-D24F962D9EB4.pdf>.
- 99 EFI Certified Farms, Equitable Food Initiative, <https://equitablefood.org/efi-certified-farms/>.
- 100 SCS Global Services issued FTUSA certification for pumpkins, cucumbers and mini-peppers at Rancho Agrícola Santa Mónica, as well as EFI certification for strawberries and raspberries.
- 101 See EFI Certification, Equitable Food Initiative, <https://equitablefood.org/certification/>; Price and Premium Search, Fair Trade USA, <https://www.fairtradecertified.org/get-certified/standards/price-and-premiums/#>.
- 102 See generally Fair Trade Certified, Our Impact, <https://www.fairtradecertified.org/what-we-do/our-impact/>, where terms “fair trade premium” and “Community Development Fund” are used interchangeably, and Equitable Food Initiative, Our Impact, <https://equitablefood.org/our-impact/>, where premium funds are described as “worker bonuses.”
- 103 Fair Trade Certification, supra note 107, p. 87.
- 104 Daniel Jaffee & Philip H. Howard, Who’s the Fairest of Them All? The Fractured Landscape of U.S. Fair Trade Certification, Agriculture and Human Values, Vol. 332016, p. 817.
- 105 Christian Zolniski, Space-Time Compression: The Workplace Regime of Transnational Capitalist Agriculture in Northern Mexico, in The Routledge Handbook of the Anthropology of Labor, p. 202 (2022).
- 106 Ley Federal del Trabajo, supra note 73, Artículo 69.
- 107 Id., Artículo 73.
- 108 Id., Artículo 71.
- 109 EFI SS, supra note 50, FC 1.1-1.3.
- 110 EFI Commodity Schedule and List of Buying Partners, Version 1.1 | 1 Date of Issue: July 1st, 2018, p. 2, accessed May 2023 [hereinafter EFI Commodity Schedule].
- 111 Equitable Food Initiative, The Equitable Food Initiative Social Standard, Version 1.0: FC Indicator 1.2, June 2013, p. 9 [hereinafter EFI SS 1.0].
- 112 EFI SS, supra note 50, FC 1.3.
- 113 Id., FC-1 (requiring fair compensation for workers, e.g., legally required hourly wage rates); See also Elizabeth A. Bennett, Voluntary Sustainability Standards: A Squandered Opportunity to Improve Workers’ Wages, Sustainable development, Vol. 26, 2018, pp. 65-82.
- 114 EFI SS, supra note 50, FC 1.3.
- 115 See Equitable Food Initiative, EFI Certification (“Our approach builds a framework and an internal culture of continuous improvement that helps growers respond to evolving retail requirements...”).
- 116 Hamish van der Ven, Effects of stakeholder input on voluntary sustainability standards, Global Environmental Change, Vol. 75, 2022, <https://doi.org/10.1016/j.gloenvcha.2022.102554>.
- 117 EFI SS 1.0, supra note 126, p. 9.
- 118 EFI SS, supra note 50, FC 1.1.
- 119 Id., FC 1.2.
- 120 EFI Commodity Schedule, supra note 125. Note that premiums for organic certified berries were removed as of 2018, although retailers such as Costco continue to charge an additional \$2US or more for a small clamshell of organic berries.
- 121 Id., p. 2.

- 122 Protestan jornaleros de San Quintín para exigir aumento en pago por caja recolectada, Península BC, Mar. 25, 2022, <https://peninsulabc.com.mx/2022/03/protestan-jornaleros-de-san-quintin-para-exigir-aumento-en-pago-por-caja-recolectada/>.
- 123 SINDJA, “Comunicado,” San Quintín, Baja California, Mar. 26, 2022. Copy on file with author.
- 124 See generally Rigged Elections, supra note 4.
- 125 FTUSA certificate for this time period issued by third-party auditor SCS Global: <https://cdn.scsglobalservices.com/certificates/12/AB8FC69C-0191-7542-BD44-F6124ADEB6E1.pdf>.
- 126 FTUSA APS, supra note 50, 3.5.1a.
- 127 Documents Pablo reported that they had to surrender were the original copies of their birth certificate, clave única de registro de población (“CURP,” similar to a social security number), and their official voter registration card (referred to as the “INE” as it is issued by the National Electoral Institute, or Instituto Nacional Electoral). Pablo didn’t have an INE identification and was forced to hand over his birth certificate and CURP.
- 128 FTUSA’s standards on whether a certified plantation is required to cover contracted workers’ transportation fees depends on the number of years of certification and the size of the plantation. The plantation is required to cover 50 percent to 100 percent of the costs of recruitment and transportation given the size and years certified.
- 129 See International Labor Organization, Forced Labour Convention, 1930, No. 29; see also International Labor Organization, Abolition of Forced Labour Convention, 1957, No. 105.
- 130 FTUSA APS, supra note 50, 2.1.1.a states “The employer may not retain salary, benefits, property, documents, or control worker bank accounts as a means to force workers to remain.”
- 131 EFI SS, supra note 50, FWC 4.1 states “Farm owners, managers, labor providers, and/or others do not hold, for any reason, any part of the worker’s salary, benefits, property, or documents.”
- 132 FTUSA APS, supra note 50, 2.1.1.a.
- 133 EFI SS, supra note 50, FWC-4.
- 134 Id., EPH-1.
- 135 Id., FLR-1.
- 136 Genevieve LeBaron, A Market in Deception? Ethically Certifying Exploitative Supply Chains, in FIGHTING MODERN SLAVERY AND HUMAN TRAFFICKING: HISTORY AND CONTEMPORARY POLICY, pp. 156-178 (2021).
- 137 For both certifications, audits of Rancho Agrícola Santa Mónica have been performed by SCS Global Services. See Rancho Agrícola Santa Monica, FTUSA Certification (provided by third-party auditor SCS Global Services), Dec. 10, 2020, <https://www.scsglobalservices.com/certified-clients/certificates/current/1229316?v>; Rancho Agrícola Santa Monica, FTUSA Certifications (provided by third-party auditor SCS Global Services), June 29, 2022, <https://www.scsglobalservices.com/certified-clients/certificates/38253?v>; Rancho Agrícola Santa Monica, FTUSA Certification (provided by third-party auditor SCS Global Services) for cucumbers, pumpkins, and mini peppers was terminated as of March 28, 2023 with no further information publicly available. <https://www.scsglobalservices.com/certified-clients/certificates/38253?v>.
- 138 According to workers, Santa Mónica deducted \$455MX/\$22.75US a week from workers’ paychecks for meals. Workers were also charged a fee of \$85MX/\$4.25US every week to cash a check at the plantation’s store as they had little time or freedom to travel to a bank Saturday evenings after leaving work around 5:00 pm. FTUSA APS 3.6.2.b states “Workers are not compelled to make use of stores or services operated by the employer.” This includes check cashing in the company store as options do exist nearby.
- 139 FTUSA APS, supra note 50, 3.6.2.e guarantees worker housing free of vermin and infestations. The housing standards on paper are commendable, but not applied at Las Cebollas.
- 140 Antonio Heras, Agroindustriales de BC Retienen Documentos y Sueldo a los Jornaleros, La Jornada, Aug. 9, 2022, <https://www.jornada.com.mx/notas/2022/08/09/estados/agroindustriales-de-bc-retienen-documentos-y-sueldo-a-jornaleros/>.
- 141 Thomas E. Reott, Opinion: Important Work, Warm People Drew Me Back to Mexico as the New U.S. Consul General, The San Diego Union-Tribune, Nov. 18, 2021.
- 142 The White House, Re-Launching the U.S.-Mexico High Level Economic Dialogue (HLED), Sept. 9, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/09/re-launching-the-u-s-mexico-high-level-economic-dialogue-hled/> (describing the goals of the joint dialogue effort underlying Consul General Reott’s work); Consul General Thomas E. Reott, U.S. Embassy and Consulates in Mexico, Aug. 19, 2021, <https://mx.usembassy.gov/consul-general-thomas-e-reott/>.
- 143 Indicators of forced labor such as the ones described here are among zero tolerance findings listed by FTUSA, Remediation of Zero Tolerance Findings Under the Agricultural Production Standard, version 1.0.0. https://assets.fairtradecertified.org/image/upload/v1655948090/Certification/CRT_PRO_RemediatingZeroToleranceFindings_EN_1.0.0.pdf, which outlines timelines for addressing and remediating findings within 14-21 days of the certifier notifying the plantation of

the issue.

- 144 See, e.g., La Zona sur de Baja California líder en producción de berries, Gobierno de Mexico, Feb. 24, 2021, <https://prod.senasica.gob.mx/ALERTAS/inicio/pages/single.php?noticia=7129>.
- 145 Santa Mónica's FT USA certificate for cucumbers, pumpkins, and mini peppers was marked as terminated as of March 28, 2023. No information is publicly available regarding the termination. As noted above (fn.129), Rancho Santa Mónica remains certified by FTUSA and EFI for other crops.
- 146 Certification Schemes: Why Fair Trade International, Rainforest Alliance, and Others are Failing Workers and Consumers, Corporate Accountability Lab, Feb. 1, 2023, <https://corpaccountabilitylab.org/calblog/2023/2/1/certification-schemes-why-fairtrade-international-rainforest-alliance-and-others-are-failing-workers-and-consumers>.
- 147 Genevieve LeBaron, OPINION: It's Time to Stop Believing Corporate Fairytales About Modern Slavery, Thompson Reuters Foundation News, July 30, 2020, <https://news.trust.org/item/20200730072924-uxgwe/>.
- 148 Fairwashing and Union Busting, *supra* note 4, p. 393.
- 149 Equitable Food Initiative, About EFI, <https://equitablefood.org/about-efi/>.
- 150 Equitable Food Initiative, EFI Board & Staff, <https://equitablefood.org/board-and-staff>.
- 151 Fair Trade Certified, Board of Directors, <https://www.fairtradecertified.org/about-us/board-of-directors/>.
- 152 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, <https://www.msi-integrity.org/not-fit-for-purpose>.
- 153 *Id.*, p. 66.
- 154 See generally, *id.*

