

# New Forms of Voluntarism in Agricultural Employment: Insights from California

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*Employment violations at the bottom of the (food) supply chain are hard to detect and sue for, for a combination of reasons that render farmworkers vulnerable to seeing their rights violated when compared to other food chain workers (especially those higher up in the supply chain, such as waiting staff). To counter this trend, new forms of voluntarism have emerged claiming to tackle employment violations before they even arise. One such effort is the Multistakeholder Initiative (MSI), involving partnerships between different stakeholders, including participants from the private, public or civil society areas. With their numbers proliferating across many sectors featuring low-wage jobs, including agriculture, research studies into how MSIs fare in reaching their goals vary in their assessment. This article provides insights as to how one particular MSI – the Rural Solution Program – fares in its quest to advance conflict resolution mechanisms at a time when farmworkers see their rights violated and employers witness high levels of worker turnaround. The article asks whether it is the MSI itself that accounts for the resolution of conflict or whether other factors contribute to the situation, doing so viewed through the lenses of institutional theory and regulatory space theory. The article is, then, divided as follows: Section One sets the scene by exploring the reasons as to why farmworkers routinely see their rights being violated. Section Two, then, turns to reviewing the rise of new forms of voluntarism in employment relations, before reviewing the effects of certification programs on stakeholders. Section Three introduces the case-study MSI and outlines how the research for this article was conducted. Section Four, subsequently, presents the findings, before these are discussed using the aforementioned analytic framework of institutional theory and regulatory space theory – with particular attention being paid here to concepts of ‘cimmigration’ and ‘immemployment’ – in the fifth and final section.*

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In 2019, the Wage and Hour Division of the United States (US) sued agricultural employers for the non-payment of farmworker wages to the amount of USD 6.0 million, with civil penalties amounting to USD 6.3 million (Costa et al., 2020). While this news may come as a shock to readers unfamiliar with employment violations in agriculture, those within the field saw these numbers as being just the tip of the iceberg (ibid.). This is because employment violations at the bottom of the (food) supply chain are hard to detect and sue for, for a combination of reasons that render farmworkers vulnerable to seeing their rights violated when compared to other food chain workers (especially those higher up in the supply chain, such as waiting staff). To counter this trend, new forms of voluntarism have emerged claiming to tackle employment violations before they even arise, through conflict resolution formulas. A key example of such voluntarism is the Multistakeholder Initiative (MSI), which is the focus of this article. Importantly, participation in the certification programs offered by MSIs plays a crucial role with respect to the aforementioned conflict resolution formulas: to be able to have access to and apply these formulas, farms must be certified by such initiatives in the first instance. For the current article, one particularly noteworthy example of an MSI, the Rural Solution Program (RSP) (an amalgam of farmworker, farmer/grower and retail stakeholders), which is considered the 'gold standard' among various existing MSIs in the agricultural sector based on its comparatively high standards and all-encompassing criteria by focusing equally on employees (farmworkers) and employers (farmers and growers)), serves as a case study for better understanding how new forms of voluntarism may be impacting on employment dynamics in agriculture. Findings gathered through ethnographic fieldwork and semi-structured interviews conducted on two farms –one that has been RSP-certified and one that has not – and desk-based research reveal that, while certification programs, such as the RSP, can play a key role in highlighting dynamics that occur on farms and in the fields, this highlighting does not address deeper issues and, rather, paints a picture of a moment in time. This is because political, historical, economic and social dynamics larger than the local level dynamics of farms as a workplace shape the experience of farmworkers in the US, contributing to the likelihood of them seeing their employment conditions violated. At the same time, conflict resolution may be implemented through factors/means other than certification programs, e.g. the quality of the employer-employee relationship and/or unionization. These insights are important as new forms of voluntarism in employment relations in agriculture are on the rise, with results for the targeted audience – farmworkers – that merit investigation. The article is organized as follows. Section One sets the scene by exploring the reasons as to why farmworkers routinely see their rights being violated in comparison to other worker groups. Section Two, then, turns to reviewing the rise of new forms of voluntarism in employment relations, before reviewing the effects of certification programs on stakeholders. Section Three introduces the case-study MSI – the Rural Solution Program – and outlines how the research for this article was conducted. Section Four, subsequently,

presents the findings, before these are discussed using the aforementioned analytic framework of institutional theory and regulatory space theory – with particular attention being paid here to concepts of ‘crimmigration’ and ‘immigration’ – in the fifth and final section.

## **SETTING THE SCENE: EMPLOYMENT IN US AGRICULTURE AND EMPLOYMENT VIOLATIONS**

In 2020, agriculture, food and related industries in the US employed a total of 19.7 million workers in full- and part-time jobs (USDA ERS, 2020). This number represented 10.3 percent of total US employment in that year. The United States Department of Agriculture’s Economic Research Service (2020) estimated that direct on-farm employment amounted to 2.6 million jobs, or 1.4 percent of US employment.<sup>1</sup> The total number of jobs available, however, does not necessarily coincide with the number of workers taking up positions. Based on the 2019 Quarterly Census of Employment and Wages collected by the U.S. Bureau of Labor Statistics, Costa et al. (2020) estimate the figure for average employment as being 1.7 million for 2020. In a previous analysis of social security numbers, Martin et al. (2014) suggested that the total number of farmworkers employed in California agriculture was 829,300, or twice average employment in 2014. The gap between recorded jobs and actual workers suggests that employment contracts of farmworkers are not year-round and that workers take up multiple positions during any year.<sup>2</sup> This observation explains why farmworkers rate among one of the most destitute worker groups in the US; indeed, their daily average hourly wage was estimated to be USD 16.62 (Costa, 2023). The annual median wage for farmworkers for the fiscal year 2021 in California amounted to USD 29,680, meaning that they feature on the ‘poor worker’ segment of the labor market (U.S. Bureau of Labor Statistics, 2022).<sup>3</sup>

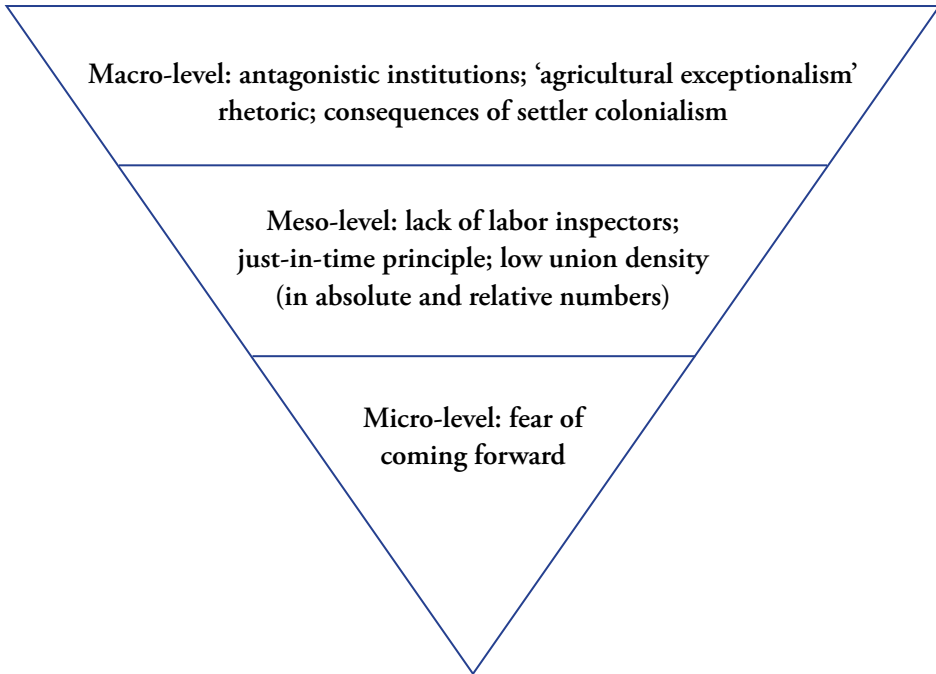
Despite having been labeled as ‘essential workers’,<sup>4</sup> evidence suggests that farmworkers have not seen their employment conditions change; on the contrary, survey findings from the California Institute for Rural Studies (Cimini, 2020; California Institute for Rural Studies, 2021) demonstrate that fatality levels among farmworkers during the COVID-19 pandemic were three times higher than those of other industrial counterparts. The high infection rate and casualties among farmworkers before vaccines became available indicates that employment conditions, which also impact on living conditions, at the very least remained the same (e.g. comparatively low wages), if they did not in fact worsen.<sup>5</sup>

As the introduction has alluded to, there exist several explications as to why employment violations in agriculture are less likely to be detected than those occurring at the higher end of the food supply chain. Additionally, filing claims with agencies can be an (intentionally) alienating and cumbersome process, driving low-

wage workers away from attempting to do so (Gleeson, 2016; Griffith and Gleeson, 2018; Paret and Gleeson, 2016).

Factors explaining farmworkers' heightened vulnerability to seeing their employment conditions violated can be split across the macro-, meso- and micro-levels. Figure 1, below, demonstrates how these different levels may interact, yielding the particular outcomes that they do for farmworkers.

**Figure 1:** Inverted triangle showing the dynamics shaping farmworkers' vulnerability to employment violations



As Figure 1 demonstrates, several factors exist at the macro-level that explain why farmworkers see their rights violated more so than other groups. First, the continuous existence of antagonistic institutions (Fischer-Daly, 2021; Doellgast et al., 2018) at the US federal level means that farmworkers do not enjoy the same degree of protection related to employment as their counterparts in other sectors. To this day, farmworkers remain exempt from the 1935 National Labor Relations Act (Farmworker Justice, 2022), whereby they remain prohibited from forming associations and collective bargaining provisions. While government stipulates the legal basis at the federal level, US states are free to expand on or challenge existing federal law. In the case of California, farmworkers can join unions (Office of Governor Gavin Newsome, 2022). Still, union organizing recently took a hit with the Supreme Court deciding that a 1975 California rule trespassed property

owners' rights by granting union organizers (limited) access to farms and food-processing facilities (Los Angeles Times Editorial Board, 2021), in a context where unions already experience a number of challenges in reaching farmworkers (Martin and Mason, 2017). However, more recently yet, a potentially significant legislative change took place in respect of agriculture when Bill AB-2183, which sees farmworkers' unionizing rights expanded (Schonfeld, 2022), was signed into law in California in September 2022 (Office of Governor Gavin Newsome, 2022). While the presidential backing may send waves of hope across the interested public, recent findings from researchers at UC Merced have revealed that membership of United Farm Workers is very low – indeed, declaring it statistically non-existent for the fiscal year 2020 (Montalvo and Duara, 2022). Whether the signing of AB-2183 will make a difference, thus, remains to be seen.

The continuity of a lack of rights at the federal level can be explained by two processes that are closely linked: legacies of 'settler colonialism'<sup>6</sup> (Glenn, 2015) and the ongoing belief in 'agricultural exceptionalism' (Thomas, 1985; Gray, 2013). Following the call by Glenn (2015) to acknowledge 'settler colonialism' as a structure affecting, among others, Mexican nationals (historically and in the present), their predominance in the agricultural labor market can be explained through these lenses. This is because employment conditions associated with farm work are highly precarious, harsh and demeaning, and so tend to be eschewed by citizens,<sup>7</sup> who also tend to have a broader panoply of employment options than do non-citizens and will thus be looking for work that is more comfortable and more greatly valued.<sup>8</sup>

The lack of rights associated with farm work and its laborers also stems from the aforementioned idea of 'agricultural exceptionalism'. Based on the assumption that work in agriculture falls outside industrial work regulations because of unique production conditions (e.g. unpredictability of weather, and plagues influencing the seasonality of crops), employer representatives have lobbied the state to bring agricultural employment law in line with such considerations. In fact, employment in agriculture *is* subject to specific production conditions depending on crops and farming styles (organic versus conventional).<sup>9</sup>

At the meso-level, a different set of factors provides explanations as to why farmworkers are more likely to experience employment violations. Looking at both the US and California, the number of labor inspectors is low. At the federal level, their low number has been linked to increased casualties on the job (AFL-CIO, 2022); at the state level, meanwhile, several reports point toward the continuous understaffing of dedicated safety inspectors in the California Division of Occupational Safety and Health (Botts and Tobias, 2020; Romero, 2021). The low level of labor inspectors complicates concerns of workers about their health and safety.

Another channel that could help farmworkers in addressing work complaints is unionization. Unionization rates among farmworkers in the US and California are very low, to the point of being, in certain cases, non-existent (Montalvo and Duara, 2022). A range of factors, including low wages, a lack of political will (Martin and

Mason, 2017) and changes in selling practices to consumers (ibid.) contribute to weakened union power, explaining low membership numbers.

Lastly, at the micro-level, conflict resolution mechanisms may not be available at the company and/or local levels. If these are, they may not be user-friendly or geared toward representing farmworker interests. Farmworkers themselves may be afraid of coming forward regarding employment violations because of the different identified layers contributing to their vulnerability. Furthermore, working in an industry characterized by precarious employment conditions (Sexsmith, 2016, 2022) with a high turnaround in laborers – who, moreover, are likely to have a precarious legal status (e.g. H-2A workers), or lack legal status entirely (i.e. undocumented workers) – may contribute to farmworkers' reluctance to use conflict resolution mechanisms and/or flag up employment violations: that is, out of fear of losing their job in a competitive context (additionally, a sense of loyalty to the employer may be a factor) (Hirschman, 1970).<sup>10</sup> The following section now turns to how these various factors shape regulatory spaces and facilitate the emergence of new forms of voluntarism.

### ***Regulatory spaces and voluntarism in employment relations***

This section looks into how regulatory spaces – entities that make up an ever-changing state – influence the employment conditions of farmworkers in the California strawberry industry. Focusing on the role of the state in shaping these regulatory spaces by letting them emerge is key. Several scholars have shown in their research how the state shapes employment relations beyond solely serving as a legislative vehicle (Clegg, 1976; Schmitter, 1974; Hall and Soskice, 2001; Howell, 2021), a shortcoming that has been previously noted (Kelly, 1998; Hyman, 1989).

Depending on the specific context, the dearth in attention paid to the role of the state in shaping employment relations can be, at times, explained by the limits or failures of state regulations, as it has been in the British context (MacKenzie and Martínez Lucio, 2019). Investigating the functioning mechanisms of the United Kingdom's Health and Safety Executive, Gangmasters and Labour Abuse Authority and the HM Revenue and Customs – three state agencies tasked with labor, safety and health inspections – it has been possible to discern external and internal pressures as key variables in explaining the impacts of particular regulations and their enforcement (Mustchin and Martínez Lucio, 2022).

It is in this sort of context that the transfer of regulatory responsibility between stakeholders, or what MacKenzie and Martínez Lucio (2019) refer to as the colonization of regulatory spaces, can be explained. These spaces, which make up the state, are subject to economic and social dynamics aiming at ensuring the reproduction of the status quo. While previous research has focused on the contributions of economic and social dynamics, this article argues that legal aspects, in the form of 'crimmigration,' and 'immployment' (see Griffith and Gleeson, 2018), merit consideration. Thus, the state appears to have a janus-faced role: on

the one hand, freeing up space for other stakeholders to take on the reins, while, on the other hand, ensuring that the overarching frame – e.g. effects stemming from law – does not change.

With respect to the Rural Solution Project, this means that getting certified would result in fewer work-related conflicts as the certification includes a conflict resolution procedure. At a time when states create regulatory spaces for stakeholders (Bowkett et al., 2017) to fill up the vacuum, their development and functioning demands attention even if research findings suggest that these do not yield the anticipated results (LeBaron et al., 2022).

While voluntarism tends to be portrayed as an innovation, research suggests that it may be synonymous with already existing laws that reflect employer dynamics (Williams et al., 2011; Demougin et al., 2021), rather than a private form of labor regulation. Forms of voluntarism also impact on one another. Understanding how institutions – in this case, new forms of voluntarism – do as they do and their consequences is best analyzed through institutional theory (see discussions by Mizruchi and Fein, 1999; Heugens and Lander, 2009; Meyer and Rowan, 1977; Terlaak and Gong, 2008).

Institutional theory scholars have found that certification programs are likely to experience two forms of issues (Bromley and Powell, 2012). These are policy-practice gaps and practice-outcome gaps (Kuruvilla, 2020). The first kind of issue – the *policy-practice* gap – happens when companies attempt to implement certification programs that fail to deliver what they set out to do. This may be because either the implementation did not happen at all or because it happened to such a weak degree that no noticeable change can be traced back to it (ibid.). In the case of the RSP, however, implementation has occurred, whereby if an issue arises, it would not amount to a policy-practice but rather a *practice-outcome* gap. This sort of gap refers to a situation where companies indeed implement the requested criteria and make changes to their operations in line with the certification program. However, it remains unclear as to whether the ensuing changes can be traced solely to the certification program or also to other factors (Kuruvilla, 2020). As mentioned, the RSP's model should allow farms to avoid the experience of policy-practice gaps. This is because the certification structure also means that only those farms with a high-enough rating to pass the inspection, and thus receive the certification, are being advanced by the RSP-inspection board. While the chance of policy-practice gaps is low for the reason just given, certified RSP farms may, rather, run the risk of practice-outcome gaps as they do not take account of the specificities of farms, business operations and the local context (Besky, 2013; Kuruvilla, 2020). By disregarding local needs, RSP-certified farms may therefore run into practice-outcome gaps.

Bearing in mind these factors, insights presented and discussed in the findings section add a new understanding regarding how certification programs, in the form of MSIs, fare in achieving their goals. This is also the rationale as to why regulation and institutional theories are deployed to analyze the collected data.

Conventional wisdom postulates that certification labels reduce obstacles for interested companies in terms of participating in markets (Stavins, 2000). However, this line of reasoning has proven to be erroneous in the context of small and medium-sized companies that choose to certify (Moroz et al., 2018). Thus, the most 'vulnerable' companies appear to pay the biggest growth penalty, which is likely to be the case in many certification programs. This is because certification labels also entail costs – such as certification fees and the time and staff involved in fulfilling the certification requirements – that can act as inhibitors to becoming certified and acceding to particular markets. Moreover, there is the factor that consumers and/or (large) buyers may request that suppliers certify to fulfill certain standards. Yet, these criteria may be stringent and, as mentioned, come at a cost (in terms of time, staff members, and fees), and may therefore go beyond the bandwidth of what small companies can afford and actually implement. Considering that the majority of farms are small and medium-sized, it comes as no surprise that certifications that require implementation/transposition have a low uptake. Thus, by making the (un)willing decision not to certify, companies in the supply chain actually exclude themselves from participating in this particular market and lose their potential share. As such, certification labels can, instead, act as a market barrier (Klooster, 2005, 2010; McEwan and Bek, 2009), while, at the same time, being a means of 'control at a distance' (Ponte and Gibbon 2005) by consumers and/or large buyers.

Certification labels have also been criticized on grounds of reflecting temporal/momentary political and social influences. Arguably, they run the risk of serving certain interests – and not those of the majority – across time, as well as disregarding those of 'weaker' stakeholders (Besky, 2013). This means that certification programs may replicate dynamics that exist at the broader level, rather than (necessarily) challenging them. Therefore, certification programs run the risk of 'purpose-washing': claiming to do/implement something, while actually not doing so, and, thus, acting as a shield for a company's (potentially criminal) misbehavior, such as employment violations. Depending on the wider political, social and economic context in which they operate, certification programs may reflect the interplay of the various interests of different stakeholders in distinct fashions, depending on what issues customers may identify as important at any given time (focusing on environmental concerns, for instance, rather than labor issues). Beder states that "the theory and application of economic instruments ... is shaped by the interests, values and ideologies of those who are promoting and implementing them" (1996, 51). Therefore, the larger social and political contexts in which certification labels emerge are key aspects in establishing the authority and legitimacy of policy recommendations/outcomes (Cashore et al., 2003). These considerations highlight the importance of paying attention to input or procedural legitimacy with this sort of market-based tool (Schlyter et al., 2009; Cashore et al., 2003). As such, the effectiveness of certification labels, as a suitable alternative to state regulations and/or as an option for filling gaps in global governance, has been called into question (Klooster, 2005, 2010; Gulbrandsen, 2004, 2008, 2009; Brown and Getz, 2008).



## CASE STUDY AND RESEARCH METHODS

The research informing this article sought to consider whether certification programs indeed achieve what they set out to do or whether other institutional factors may, rather, explain outcomes. To this end, a case-study approach (Flyvberg, 2006) was adopted, involving the selection of two farms as the focus of the research: one certified and one non-certified. The decision to execute the research in this way was to be able to treat ‘certification’ expressly as an independent variable and so better understand its potential relationship to ‘workplace conflict resolution’ as a dependent variable.

The contrasting case study was identified after talking to the office of the Agricultural Commissioner in a Californian county, who hold information regarding yearly turnarounds, acres and crop production. To understand the effects of RSP certification on conflict resolution procedures, however, the two case studies had to be selected on the basis of certain shared similarities and not solely of difference. This is because employment conditions, and thus complaints, vary according to the nature of work; in respect of agriculture specifically, the crops produced (e.g. strawberries versus cilantro versus nuts), the size of the ranch (e.g. family versus corporate or small, medium or large farms) and production mode in operation (conventional versus organic production, itself influenced by the size of the ranch) all will actively shape the conditions in which farmworkers find themselves. Thus, comparing conflict resolution outcomes across farms that are very different to each in respect of such characteristics would obscure our understanding of the effects of certification labels per se. In this connection, Table 1, below, outlines the similarities between this farm and the RSP-certified farm. Before looking further into these, the rationale for the sampling method – theoretical sampling – needs to be elucidated. The two case studies were selected on the following bases: i) employment: both farms offer the same jobs to local farmworkers; ii) geography and climate: while the two farms are located in different counties, they are in close proximity to one another and feature a comparable climate that allows for similar production patterns; and iii) workforce: both farms are able to draw on locals to execute farm work, who are also able to find jobs elsewhere.

Having the two case studies in place, I reached out to the owners of both businesses, the RSP-certified farm and its non-certified counterpart farm, who agreed to talk to me. Alongside the reasons already referred to for selecting these two case studies, their shared reputation also merits highlighting. Thus, when deciding to investigate the RSP-certified farm, the counterpart case study had to have a similar reputation. Table 1, below, shows how the two farms compared and contrasted with one another on key aspects in 2021.

**Table 1:** Case-study characteristics

|                   | <b>RSP-certified farm</b>   | <b>Counterpart farm</b>   |
|-------------------|---|---|
| Production mode   | Organic   | Organic   |
| Acres             | 80  | 80  |
| Yearly sales      | USD 2 million   | USD 2 million   |
| Workers           | 20  | 25  |
| Crops             | Strawberries, raspberries, kiwi fruit, corn, squashes, blackberries | Strawberries, raspberries, blackberries, radishes, broccoli, blueberries, green beans, summer squashes, winter squashes, cilantro, parsley, and flowers |
| Selling mechanism | Direct marketing, restaurants, bakeries                             | Direct marketing, restaurants, school district  |
| Union contracts   | Yes   | No  |
| Certifications    | Organic, RSP  | Organic   |

Both owners have experience with becoming certified as they hold the organic certification label. The RSP-certified farm, in addition, offers unionized contracts.

Findings were gathered through ethnographic fieldwork, informal interviews and desk-based research. The fieldwork took the form of volunteering as a strawberry picker on both farms. The data collection process lasted three weeks per farm. The research received ethical approval by the Institutional Review Board at UC Berkeley in Spring 2020; because of the on-going COVID-19 pandemic, data could only be collected in person once COVID-19-related restrictions were lifted, delaying the data collection process by a year and shortening its length (due to my research stay in the US being time-limited).

Both farmers allowed me to volunteer as a strawberry picker with their crews. Before embarking on fieldwork, I introduced myself to the crew I was going to join, explained who I was, what my job consisted of and that I would engage in unpaid volunteer work (and was, thus, not taking wages away from them). At the RSP-certified farm, where the fieldwork process started, I was trained by a farmworker for one morning on how to pick and pack several crops (berries, peas and beans). (During my field work there, I volunteered to pick with the crew, deliver produce to distribution centers and sell at the farmers’ market.) On the counterpart farm, I hit the fields straight away, as by then I felt I was familiar with the strawberry-picking process. Running my picked and packed boxes past the crew leader, however, revealed a slightly different picture, whereby I had to retrain in how to pack strawberries that were subsequently sold in clam shells (closed boxes). (Before dropping off boxes, I always passed by the crew leader to ensure that the produce I picked and packed would pass quality control to not cause any financial loss to both companies.)

While learning strawberry picking from professionals was one aim of the fieldwork, the other one was to build up trust with colleagues and to gain a deeper understanding of the type of conflicts that may arise in the fields, both among employees and between employees and employers. To this end, I had to spend some time working as a picker myself as expecting for workers to open up on the spot is unrealistic, not least because of potential distrust and fear of losing either their job or their standing in the community. Thus, as time progressed and the crews on both farms became used to me, they started opening up about their lives and work patterns. I decided not to ask them about problems directly as, again, this may have stirred up fear and mistrust. Also, to loosen up the atmosphere and to bond over non-work-related issues, chats also focused at times on music, family, food and differences between Mexico, the US and my home country of Austria, although these talks were most often initiated by my colleagues. This part was equally important as it also took pressure off and avoided objectifying me and my fellow strawberry pickers. Last, but not least, fieldwork and interacting with Spanish-speakers was possible due to my fluency in Spanish. While working in the fields, I picked up Mexican Spanish (in contrast to the European castellano Spanish I had learnt at school and university).

In total, the collected and presented data in the next section is based on 15 interviews (eight interviews on the RSP-certified farm and seven interviews on the counterpart farm), on witnessed informal discussions among colleagues, and on desk-based research. Participants included farmworkers, former workers, growers, managers and supervisors. All eight interviewees on the RSP-certified farm had been there long enough to be able to share insights about what had changed post-certification. Regarding demographic information, 11 out of the 15 interviewees were male. The four female participants were, then, clearly in the minority. On the RSP farm, only one worker was female, and she played a key role in seeing the certification through as she gathered and submitted the required information to RSP. The three other female farmworkers I interviewed were from the counterpart farm. Regarding age, the average age of staff (farmworkers and other workers alike) on the RSP farm was early 50s (the majority of farmworkers were in their 50s; the other workers, including the farm manager, were in their mid- to late 30s). The average age of staff (farmworkers only) on the counterpart farm, meanwhile, was early 30s (with farmworkers ranging from their 20s to 40s).<sup>11</sup> Table 2, below, explains the interviewee distribution.

**Table 2:** Interviewee distribution and demographic data (excluding owners), by farm type

| <b>RSP-Certified Farm Interviewees</b>                  |            |               |
|---|------------|---------------|
| <b>Official Job Title and Participant ID</b>            | <b>Age</b> | <b>Gender</b> |
| Farm manager_(Manager_RSP)                              | 35         | Male          |
| Labor relations staff member (LRSM_RSP)                 | 41         | Female        |
| Farmworker_RSP#1  | 55         | Male          |
| Farmworker_RSP#2  | 52         | Male          |
| Farmworker_RSP#3  | 54         | Male          |
| Farmworker_RSP#4  | 56         | Male          |
| Farmworker_RSP#5  | 59         | Male          |
| Employer_RSP  | 74         | Male          |
| <b>Counterpart, or Non-Certified, Farm Interviewees</b> |            |               |
| <b>Official Job Title and Participant ID</b>            | <b>Age</b> | <b>Gender</b> |
| Farmworker_NCF#1  | 33         | Female        |
| Farmworker_NCF#2  | 41         | Female        |
| Farmworker_NCF#3  | 25         | Female        |
| Farmworker_NCF#4  | 45         | Male          |
| Farmworker_NCF#5  | 24         | Female        |
| Farmworker_NCF#6  | 25         | Male          |
| Employer_NCF  | 48         | Male          |

In terms of age and gender, then, I stood out on the RSP farm, but not on the counterpart farm. When asked about workplace conflict, women did not come forward, while men did. This may be due to there having been a larger share of men working on these sites. While the total number of interviews seems low, theoretical saturation was reached as I analyzed collected data as fieldwork progressed to see whether every new interview yielded novel insights or not, when compared to those that had already been conducted.<sup>12</sup>

Data collected both from witnessed conversation (taken down as field notes) and from interviews were analyzed through a content analysis. Content analysis can be divided into three different processes (Meuser and Nagel, 2009), namely i) reading an interview transcript or set of field notes repeatedly; ii) breaking this up into various parts, with codes thus emerging; and iii) codes themselves being changed as new information emerges, before triangulating them. Codes that emerged from this analysis were subsequently checked among and between participants groups, before being contrasted with findings from desk-based research. Desk-based research outputs were identified by looking for key words such as ‘conflict in agricultural employment’, ‘conflict resolution’, ‘conflict on farms’, and ‘employment violation’. These findings, in turn, were triangulated among one another to see what codes

emerged. The following findings section presents the insights that came up from this fieldwork and desk-based research.

## FINDINGS

Established in the mid-2010s, the Rural Solution Program (RSP) has set out to make the agricultural industry more just and inclusive by challenging existing dynamics between retailers and farmers/growers, and by strengthening farmworkers' position. RSP is managed by a non-profit and features a range of different stakeholders. These include employer representatives, farmworker representatives and retail representatives. Conflict resolution mechanisms<sup>13</sup> between employers and employees at the farm level play out on non-certified and certified farms, as illustrated by Figure 2, below.

**Figure 2:** Conflict resolution mechanisms on RSP-certified farms and non-RSP-certified farms

On RSP-certified ranches  
 Conflict → Discussion → Internal conflict resolution fails → RSP Conflict Resolution Procedure → Company at risk of losing certification, unless successful resolution is found

On non-RSP-certified ranches  
 Conflict → Discussion → Internal conflict resolution fails → Worker remains in the job unhappy, quits or is fired, while employer may lose workforce

Based on insights from the RSP Manual, certified farms should have a lower worker turnaround than non-certified farms. This is because certified farms are more likely to see conflicts being addressed and resolved at the company level as farmworkers feel empowered to speak up in a context where state institutions are antagonistic toward them filing claims. In contrast, non-RSP-certified farms should see a higher turnover in workers because of a higher degree of unresolved conflict. Table 3, below, briefly summarizes the types of employment violations – differing according to worker group –<sup>14</sup> that have been discerned by research outputs.<sup>15</sup>

**Table 3:** Employment violations in agriculture by worker group

|                       | <b>Local (undocumented) farmworkers</b>   | <b>Documented temporary foreign workers</b>   |
|-----------------------|---|---|
| Employment violations | <ul style="list-style-type: none"> <li>• Wage theft (non-payment of wages, overtime hours and box stealing);</li> <li>• Physical and psychological threats/violence.</li> </ul> | <ul style="list-style-type: none"> <li>• Wage theft (non-payment of wages, overtime);</li> <li>• Passport retention;</li> <li>• Psychological threat (blacklisting);</li> <li>• Abusive living conditions.</li> </ul> |

Notably, none of the interviewees on either the certified and the non-certified ranch revealed occurrences of wage theft, of physical and/or psychological threats/violence, of passport retention, of blacklisting or of abusive living conditions being offered by employers. The implementation of the RSP-certification did, however, have consequences at the workplace level, as confirmed by participants Employer\_RSP, Manager\_RSP and LRSM\_RSP, as well as Farmworker\_RSP#1, #2, #3, #4 and #5. Each of these interviewees relayed the case of a crew leader who left the farm after declining the offer of an alternative position following a workplace-related conflict. This particular crew leader had been putting pressure on workers to do things how he saw fit, which was not in line with the expectations of managers (Manager\_RSP and LRSM\_RSP) or the employer (Employer\_RSP). This supervisor was eventually fired due to this lack of alignment in expectations and also because of a personal disagreement with a colleague that had put that person at risk (as Farmworker\_RSP#1, #2, #3 and #4 and Manager\_RSP each recalled). Once the story came out (this was because workers felt empowered to speak up and because of the careful involvement of the managers and employer), the supervisor was given the chance to work on another site at the company, which he declined to do, instead returning to his country of origin.

These findings suggest that certification programs can achieve what they set out to do, although they require openness, willingness and support from the employer and workers on the farm if they are to bear fruit. Employer\_RSP explained that he chose to seek certification as another pair of eyes in order to understand, in more depth, dynamics on the farm and in the fields. The certification process entailed interviews with workers on the farm and training to help them understand what the certification was about and how it affected them. As such, getting licensed allowed both the employer and the workers to ascertain the depth of what was going on when it came to the crew leader. And as, following the certification, it was established that the crew leader had behaved ‘out of line’ toward a colleague, the only solution was to either relocate him within the company or fire him. While some evidence had already been available pre-certification about the crew leader’s behavior, the extent of this was less clear to workers who were not directly involved with work in the field. As such, the certification did highlight a problematic dynamic in the

workplace, which otherwise may not have received the attention it deserved. The involvement on the farm of participants Manager\_RSP and LRSM\_RSP resulted in the issue being addressed.

When farmworkers were asked about how the labor process changed before and after certification, they could not provide any concrete examples, pointing toward a lack of change and/or of interest in the certification, as well as an already high set of employment criteria and open communication lines to address workplace-related conflict. Thus, while the RSP certification did provide additional insights into a previously known dynamic, Employer\_RSP, Manager\_RSP and LRSM\_RSP had previously each been made aware of problems with the said crew leader; the certification program may have benefited more from the farm being a participant, rather than the other way around, due to the farm's already high work standards, open communication channels and the oversight by different individuals (including its managers and the employer). In Fall 2021, when it came to renewing the certification, Employer\_RSP decided to not seek renewal as the operation had changed in terms of acre size, number of employees and yearly turnaround sales, whereby available funds to retrain the workforce and pay the certification fee became untenable.

Regarding the implementation of the certification while it was still in play, Employer\_RSP put Worker\_RSP#2 in charge of filling in the requested information. Workers on the farm all received training and were interviewed about dynamics. As Farmworker\_RSP#1, #2, #3 and #4 explained, employment conditions did not change following the implementation of the certification program, which does not necessarily mean that the certified farm's engagement with the program amounts to a policy-practice gap. It may, rather, just have ticked most of the boxes pre-certification, with this then being the reason as to why the certification program reached out to the farm for certification in the first instance and not the other way around.

Turning to the counterpart farm, it would be expected for conflict resolution mechanisms to be less available here, resulting, for instance, in a higher turnaround of workers or lower productivity levels because of farmworker frustration linked to a perceived lack of valuation. Indeed, contrasting workforce characteristics between the two workplaces, Employer\_RSP had workers who had been employed at the farm for a longer time than did the employer on the non-certified farm. A quick conclusion to jump to would be to claim that Employer\_NCF's farm had a higher worker turnaround because of possible heightened workplace conflict and a relative lack of conflict resolution procedures. The truth is that the labor situation on this farm is more likely to depict the wider reality of US agriculture than the situation on the RSP farm. This is for a number of reasons. At an observational level, it transpired that farmworkers on the RSP-certified ranch lived in very close proximity to the actual workplace, while those laboring in non-certified fields had a longer way to travel to work. The fact that RSP-certified farmworkers lived in proximity to

the farm may also have meant that workplace and life dynamics were not as easily separated, sometimes spilling over into one another. A larger share of the number of farmworkers on the non-certified farm, in contrast, had to travel to work and, therefore, were likely to be more mobile overall. This overall mobility, or access to drivers (if the person did not drive themselves), means that such farmworkers also have a greater chance of possibly finding alternative employment opportunities, as they can choose to do so without being at risk of losing their accommodation. Moreover, the average age on the RSP-certified farm was higher than on the counterpart farm. This had to do with the RSP-certified farm also having a union contract, whereby workers were compensated according to years of seniority and were entitled to benefits. Thus, farmworkers had a lower incentive to leave work, while the employer could count on a stable workforce who wanted to remain. However, whether unionized contracts, seniority, higher wages and benefits solely explain why workers remained on the RSP-certified farm is open to discussion; it may also be that these workers enjoyed how the operation was being run and the opportunity to be able to have family members living on the farm with them (even if these relatives did not work for the certified farm). Meanwhile, as the counterpart farm did not offer similar wage increases according to years spent at the company or similar career prospects (even if, as we shall see, there was the opportunity for family members to work together), farmworkers there may have felt less inclined to remain at this company. Still, it should be recognized that, for the region where the counterpart farm is located, the offered wages were competitive and only matched by one other farmer.

Another major point of difference between the two farms concerned the fact that Employer\_NCF rejected the idea of certification labels as a way of standing out from other companies in order to compete for market share; however, his farm was certified organic because of his belief in growing fruit, vegetables and flowers without pesticides and his wish to be able to provide his community with qualitatively good food. When I was working in the fields on the counterpart farm, I noticed that the composition of the crews had changed between two of my shifts (involving a gap of a month), and to a larger extent than I ever witnessed during the entirety of my time on the RSP-certified farm. This change may be partially explicable by a factor that was mentioned earlier: that the living conditions of the respective workforces may influence their working conditions, whereby farmworkers on the counterpart farm have, in a sense, a greater choice of employment opportunities. When talking to Employer\_NCF, he explained the turnaround in terms of production winding down depending on the season, resulting in workers having to look for jobs elsewhere. When asking colleagues in the field, however, how they would explain the turnaround in workers and whether this change signaled failed workplace conflict resolution, answers varied.

Farmworker\_NCF#1 explained that those staying on were those with the least choice – temporary foreign workers, also known as H-2A workers. H-2A workers



are tied through their visa to one employer and cannot lawfully change work, unless they were to first return to their country of origin and, from there, apply for a job at another US farm. Thus, in comparison to local farmworkers, H-2A workers cannot readily change employer should conflict arise and they find they wish to do so. Farmworker\_NCF#1 pointed this fact out, although she and several of her colleagues (Farmworker\_NCF#2, #3 and #4) remained on the non-certified farm throughout the time I was there. Thus, while Farmworker\_NCF#1 may be correct in pointing out the lack of rights of H-2A workers, this observation does not explain why she and her colleagues (all local farmworkers) stayed on, while others left. Their reason for remaining could have been linked to the farm being in the vicinity of where this group of workers lived, whereby they did not need to travel far and on official roads to do their job. This circumstance may turn out to be more significant than might at first be thought. Research output reveals that Latino and Black drivers are more likely to be stopped by the police than white drivers. While California police cannot ask a person about his/her/their legal status, or lack thereof, because it is a sanctuary state, research (Wang et al., 2022) has shown that state agencies share data with one another – whereby data recorded by the police may end up in the hands of United States Immigration and Custom Enforcement (ICE), which is in charge of deportation. Farmworker\_NCF#2 explained to me the reason for others leaving was that they had other options available. These options may mean different employment and conditions, which would not necessarily hint at conflict being the reason for leaving. This is being said in a context where farm work does not receive the recognition it deserves and remains characterized as a ‘3D’ job on low pay. Thus, workers who can do so may choose to get a job in a different industry with different conditions instead. When interviewing Farmworker\_NCF#3, #4, #5 and #6, it transpired that they were part of a family that worked together at the ranch. Employer\_NCF may have had a keen interest in conflict resolution so as to avoid potentially losing four workers in one go. When I asked them about why they stayed, while others left, they highlighted their gratitude to the employer in giving them employment considering that they had recently arrived in the US. A lack of knowledge concerning labor markets and employment conditions may also be a reason as to why workers shy away from conflict, fueled, perhaps, by insecurity related to a more general unfamiliarity with law and customs in a different national setting.

When asking Employer\_NCF about conflict resolution procedures on the farm, he explained that he held staff meetings every couple of weeks, where workers could raise complaints. Asked about the possibility of workers not feeling comfortable enough to raise complaints in front of colleagues, he replied that workers also had the chance to talk with him individually, as he drove past every crew daily, interacting with them, whereby workers could also speak with him directly. This explanation, nonetheless, did not explain the worker turnover. While it is generally assumed that workers quit jobs if conditions get too dire, it is also true to say that they may quit

voluntarily. One conflict Employer\_NCF was made aware of was the inadequate treatment of one crew by its leader. In addition to this treatment, Employer\_NCF was told about the crew leader engaging in criminal behavior on the farm, which could implicate the farm in any potential criminal investigations. To resolve this situation, the employer asked the crew leader in question for a meeting to discuss the allegations. The conflict between workers and the crew leader, and between the crew leader and the employer, was resolved when Employer\_NCF asked the crew leader how he would react if he had an employee that behaved in such a fashion. The crew leader said he would fire the employee, whereby he then voluntarily left the company. Thus, conflict resolution occurred through direct communication with the employer.

## **DISCUSSION**

The findings presented above add a range of insights to institutional theory and regulatory space theory. First, regarding institutional theory, it can be argued that the RSP-certified farm experiences neither a policy-practice nor a practice-outcome gap. This is because the certification program had been implemented to the fullest extent and also passed inspection by the program managers, ruling out the possibility of a policy-practice gap. Regarding any potential for a practice-outcome gap, one particular outcome of conflict resolution seeming to negate this possibility could be linked, to a certain degree, to the certification program: the quitting of the crew leader; however, linking it solely to the RSP does not seem to be warranted. This is because the RSP-certified farm already ticked many boxes pre-certification in terms of criteria. Thus, the changes ensuing from the certification cannot clearly be linked only to said certification, but also to other factors. These may include high levels of communication between staff, of trust and of knowledge of rights. Hence, the RSP-certified farm took on the certification, on the one hand, for reflection and, on the other hand, for corporate strategy, to signal to its existing and future customer base what was happening on the farm. While it is laudable in itself that the RSP wants to take on the agricultural industry and its structure at all levels, and to change it from within, the choice to work with companies that already have a high standing prior to being certified does not yield change. While there is the idea of this putting pressure on other companies to follow suit, the certification program fails to acknowledge that there are larger dynamics at stake that local dynamics cannot well challenge. Moreover, the implementation of the certification program did go almost unperceived among the workforce on the farm.

Certification programs do not exist in vacuum, but in regulatory spaces created by the state. In an age and time where states have lost their enforcement power for protecting workers – relying, instead, on them filing claims (Gleeson, 2016; Gleeson and Griffith, 2021) – worker precarity may be best analyzed through

the case of highly vulnerable workers: in this case, farmworkers. As the findings section explained, farmworkers tend largely to be undocumented and, to a small degree, documented. Both populations bring their own set of vulnerabilities to the experience of precarity. Employers are not only an extension of the state in creating migrant worker precarity, and thus an extension of the immigration state, but also endure risks and costs in this process that affect worker precarity.

Both farmworker groups – local undocumented and H-2A workers – operate in slightly different contexts, explaining why they may be deterred from filing claims. In the case of undocumented workers, ‘cimmigration’ (Stumpf, 2006) – the merger between immigration and criminal law – disincentivizes undocumented employees from coming forward to government authorities so as to highlight workplace protection violations, whereby violations may be kept in the dark, out of victims’ fear of deportation. Meanwhile, H-2A workers, present on the non-certified farm, could well be experiencing ‘immployment’ obstacles because they are documented – the perceived risk of their non-hiring or deportation should they raise complaints or, indeed, do anything other than display high levels of loyalty to the employer. Moreover, if contracts end before the agreed upon date, H-2A employers must notify the US Department of Labor and Homeland Security of their workers leaving.

Certification programs, such as the RSP, may act as a tool to support both cimmigration and immployment (although on the certified farm there are no H-2A workers). This is because the state opens up regulatory spaces in a context where workplace enforcements/inspections are already low, whereby farmworkers have to make an effort in coming forward to file claims with antagonistic institutions. While certification labels claim to improve the lot of workers, they may act as diversions to the process of filing claims, irrespective of whether farms that certify subsequently experience policy-practice and/or practice-outcome gaps. In this sense, certification labels can potentially obscure claims and lead to an underreporting of employment violations. Thus, instead of simply maintaining the status quo, certification labels may also worsen it, although this claim needs further investigation. The overarching macro-level dynamics also contribute to certifications having a weakened effect.

As findings from the case studies have shown, then, the close involvement of employers and staff members is key in detecting and following up on conflict disputes and advancing resolution if they care about the wellbeing of their workers and of their business. The role of employers may be tricky as research has shown that they themselves may act as an extended arm of immigration enforcement. Thus, future research should look at under what circumstances employers have an incentive in advancing conflict resolution mechanisms (and under what circumstances not), and how employers’ values in the context of cimmigration and immployment also shape their attitude to conflict resolution mechanisms.

## CONCLUSION

This article has investigated whether or not certification labels can have an impact on employment conditions of farmworkers and, if so, how. Findings from an exploratory study on conflict resolution mechanisms on two farms – one certified and one non-certified – made the case that certification on the RSP-certified farm did not, in and of itself, reveal problematic dynamics (caused by the crew leader) but, rather, gave the employer (and managers) the means of more fully understanding the depth of a problem that they were already aware of to some degree. Thus, certification requires careful attention (by employers, managers and workers) to be able to work. Depending on the composition of the workforce, different macro-level factors – crimmigration or immemployment – may also come into play and reduce, from the onset, the likelihood of farmworkers filing complaints. As findings from this exploratory research have revealed, the involvement of employers and staff members is thus key in communicating with employees and in efforts to successfully implement certification labels. Future research avenues include scrutinizing certification programs in low-wage sectors, as their numbers are increasing rapidly, including exploring the reasons behind how they fare and the potential role here of different structural factors.

## NOTES

- 1 Employment on farms is diverse. The USDA's Economic Research Service (2022) stratifies/categorizes farm employment along the following lines: i) farm laborers, graders and sorters; and ii) farm managers, inspectors and supervisors.
- 2 Employment in organic farming has been shown to provide workers with more hours than in conventional farming. This is because, in organic farming, farmworkers need to dedicate a larger amount of time to weeding and similar tasks.
- 3 For comparative purposes, the average median wage for other so-called low-skilled workers amounted to USD 37,520 (construction) in 2021 (U.S. Bureau of Labor Statistics, 2022). Costa and Martin (2020) suggest that the financial plight/precariousness borne by farmworkers could be relieved by households across the US spending an additional USD 25.00 per year on food, which would translate into a 40 percent pay rise for farmworkers.
- 4 The term 'essential' has been interpreted in different ways. On the one hand, it has been used to denote worker groups who are employed in sectors where remote work is not possible and who, thus, should have been first in line for receiving PPE gear to protect them from COVID-19. On the other hand, it has been hoped that by labeling low-wage worker groups, such as farmworkers, as 'essential', change in their employment conditions would arise, reflecting i) their significance to the functioning of society, and ii) their heightened exposure

to highly adverse employment conditions in the COVID-19 pandemic before vaccines were available. The term ‘essential’ has been criticized on the grounds of not actually heralding any noteworthy change. Moreover, focusing on workers sidelines those persons who had to choose to abandon employment because of childcare duties during the pandemic – for instance, as schools (all grades/levels) were closed and instead operated remotely.

- 5 Low wages mean that farmworkers are unlikely to be able to afford rent which, depending on their workplace, may be high. To make ends meet, farmworkers may also choose to drive to work together. Because of these necessary choices based on precarious working conditions, farmworkers have experienced a greater exposure to COVID-19 than other worker groups.
- 6 The term ‘settler colonialism’ is usually applied to the dispossession of Native Americans by European settlers. However, Glenn (2015) advocates for expanding this framework to also include other ethnic groups that have been treated in similar ways, such as Asians and Latinos, a call this article follows.
- 7 While citizens do have the highest level of labor market access, in theory, because of their legal status, it is also true to say that they can experience discrimination along different lines and find themselves working in agriculture because of a lack of other options.
- 8 At the moment of writing, the majority of farmworkers in the US are Latinos. A century ago, Japanese and Chinese workers constituted the majority. Agriculture has seen different waves of immigrants take up jobs and, also, during World War II, internal migrants (aka Dustbowl migrants).
- 9 Nonetheless, these are considerations that growers and farmers factor in each year in their business plans and produce prices.
- 10 It is also true to say that the longer a worker lives in a place, the more likely it is that the person is familiar with alternative employment options and may, thus, eschew complaint resolution mechanisms at the workplace in favor of finding another job.
- 11 I have not included the farm owners in this calculation of average age. In both cases, the owners were older than the farmworkers. The certified farm owner was in his 70s, while the counterpart farm owner was in his late 40s.
- 12 It could also be true that I did not reach genuine theoretical saturation because the participants may not have opened up to me as much as I felt that they had. Potentially, there may have been more conflicts, both between employees and between the grower and employees, which I did not hear of – a shortcoming I recognize. However, understanding and capturing all forms of conflict is unlikely as i) as a white, middle-class, female researcher who comes from a different world (for me to grasp the entire extent of potential workplace-related conflict may not be possible, not least because farmworkers could be reluctant to fully open up to me as I may just be too different); and ii) while I was told about a range of conflicts, I did only pay attention to workplace-related ones

and not personal differences between workers. I was also exposed to a workplace conflict in the form of harassment. I resolved the situation by walking out on the person at work, a privileged option I recognize I have that others may lack. Consequently, I also kept my distance from that worker and colleagues that appeared to be closer to him than to other colleagues.

- 13 For the purpose of this article, only conflict resolution procedures at the employer-employee level are investigated. RSP also endorses such procedures between retailers and farmers/growers.
- 14 The RSP-certified farm relied entirely on local farmworkers; its counterpart also included so-called agricultural temporary foreign workers in addition to local farmworkers.
- 15 While these violations have been discerned by academic and non-academic researchers, it is also true to say that, very often, what happens in the field stays in the field; thus, not all workplace-related issues reach the attention of employers (growers, farmers and contractors) or the wider public.

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