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INVESTOR ADVISORY

Wendy's Non-Responsiveness to Near-Unanimous Shareholder Resolution on Farmworker Human Rights and COVID-19 Demonstrates Substantial Failures of Governance and Oversight

In 2021, North American farmworkers were plagued by skyrocketing rates of COVID-19,¹ deaths due to climate change-induced heat stress,² and modern-day slavery.³ The Presidential Medal-winning Fair Food Program (the "FFP")⁴—created by the Coalition of Immokalee Workers and credited with transforming Florida tomato farms once called "ground zero for modern day slavery"⁵ into "the best working environment in American agriculture"⁶—is recognized as the gold standard for preventing human rights abuses like these, as well as sexual assault and harassment,⁷ in food retailers' produce supply chains.

As the United Nations Working Group on Business and Human Rights noted in its June 2021 report on the 10-year anniversary of the United Nations Guiding Principles, the FFP has proven that the "usual shortfalls" of social responsibility initiatives "can be avoided by giving workers a leading role in shaping and monitoring these mechanisms."⁸

Despite this wide-ranging recognition that the binding-and-enforceable Fair Food Program is uniquely effective, and the fact that Wendy's main competitors such as McDonald's and Burger King committed to the FFP years ago,⁹ Wendy's has failed to join. Instead, Wendy's continues to rely on a model of supply chain monitoring that experts have found to be ineffective for remedying and preventing human rights violations.¹⁰

Investors have begun to take notice of Wendy's status as a laggard among its peers when it comes to human rights risks in its food supply chain.

In May 2021, a shareholder proposal¹¹ (the “Resolution”) filed by the Franciscan Sisters of Allegany, NY was supported by holders of over 95% of shares voted at Wendy’s Annual Meeting.¹² The Resolution criticized Wendy’s for being “the only major fast food chain that has not joined the Fair Food Program,” and the Resolution’s Resolved Clause called for a report on human rights protections for farmworkers in Wendy’s supply chain, with a focus on whether Wendy’s ensures they are protected from harms associated with COVID-19.

Unfortunately, the December 2021 “People & Ethics” report subsequently published by Wendy’s¹³ is non-responsive to multiple elements of the proposal’s Resolved Clause, worrying in the information it does provide, and unacceptably silent regarding the modern-day slavery crisis in North American agriculture that has been increasingly reported in the media¹⁴ since the proposal was voted on by shareholders 9 months ago.

Wendy’s non-responsiveness to this Resolution, which received support from nearly all shares voted, demonstrates substantial failures in the Company’s governance and oversight of human rights risks in its food supply chain, and the shareholder engagement process more broadly, as explained further below. Investors should consider this non-responsiveness, together with the Company’s failure to commit to the Fair Food Program like its major peers, during the coming proxy season.

INVESTOR EFFORTS TO ENGAGE WITH WENDY’S

Even before more than 95% of shares were voted to approve the Resolution, a number of significant investors had urged Wendy’s in writing to join the FFP. These efforts included near-identical letters sent to the Company, in the spring of 2021, by six state treasurers and a separate group of investors representing \$1 trillion in assets under management, among them the Office of the New York City Comptroller.¹⁵ Those letters concluded that “given the FFP’s unparalleled success, its adoption by Wendy’s main competitors, and the seriousness of the human rights risks in U.S. agriculture – especially in light of COVID-19, and at a time of global reckoning over racial justice – we believe it is incumbent upon the company to join the FFP.”

The Resolution itself not only criticized the Company for failing to join the FFP, but also set forth in the Resolved Clause a list of specific information to be included in the report it called for—information that correlated directly to key features of the FFP. The items requested by the Resolution, and their connection to the mechanisms of the FFP, are summarized in the table on page 5.

Initially, rather than produce the information sought by the Resolution, Wendy's filed a no-action request with the SEC's Division of Corporate Finance asking for permission to keep the proposal off the ballot at Wendy's shareholder meeting.¹⁶ In its no-action request, Wendy's disturbingly stated its "belie[f] that the Company's day-to-day operations of running a quick-service hamburger concept are far removed from any underlying policy consideration of the protection of human rights and worker safety of the country's" farmworkers.

However, once Wendy's no-action request was denied, Wendy's board chose to endorse the Resolution when it came to a vote before shareholders.¹⁷ That decision, and the multiple federal law enforcement proceedings due to forced labor in North American agriculture that were subsequently made public during the second half of 2021,¹⁸ led many investors to expect that the Company would produce a report that responded to the Resolution and that seriously addressed the human rights risks in Wendy's food supply chain.

Seeking a constructive dialogue, the proponent of the Resolution and their representative, Investor Advocates for Social Justice (IASJ), reached out to Wendy's in August 2021 requesting to engage with the Company on the content of the report called for by the Resolution.

Unfortunately, Wendy's chose not to engage at all with the proponent or IASJ about the Resolution after it passed at Wendy's annual meeting.

WENDY'S NON-RESPONSIVE "PEOPLE AND ETHICS" REPORT

In December 2021—without consulting, or even informing, either the proponent or IASJ—Wendy's published a "People and Ethics" report¹⁹ (the "Report") that fails to respond meaningfully to either the explicit requests for information in the Resolution's Resolved Clause or the broader shareholder concerns expressed elsewhere in the Resolution. The Report omits key information sought by the Resolved Clause—information that is necessary to properly compare Wendy's supply chain monitoring practices with the FFP. And the limited information the Report does provide only reaffirms that Wendy's continues to disregard the human rights risks investors have repeatedly raised with the Company.

Most notably, the report confirms that Wendy's "did not institute any new requirements specific to COVID-19" to protect farmworkers in its supply chain, a stark contrast with the FFP's groundbreaking COVID-19 safety protocols.²⁰

The Report's answers—or, more often, its failure to offer responsive information—to eight (8) specific requests for information in the Resolved Clause are summarized below:

RESOLVED CLAUSE	RESPONSIVE?	WENDY'S STATEMENT
How often Wendy's requires third-party audits on-site at each meat and produce supplier (each, a "Supplier") location for adherence with the "Human Rights and Labor Practices Expectations" contained in Wendy's Supplier Code of Conduct ("Human Rights Expectations")	<i>No response</i>	
The number of Supplier locations that received third-party audits on-site for adherence with Human Rights Expectations in the last year	<i>No response</i>	
The number of Supplier workers personally interviewed at each Supplier location that received a third-party audit on-site for adherence with Human Rights Expectations in the last year	<i>No response</i>	
A list of all third-party auditors approved by Wendy's to monitor adherence to the Human Rights Expectations	<i>Non-Responsive</i>	The Report states that Wendy's has "evaluated and authorized several human rights and labor practice frameworks" that satisfy Wendy's requirement of "third-party human rights reviews" for its fresh produce suppliers, and provides a partial list of "certifications more commonly used by [Wendy's] suppliers today." But rather than supply a list of the third-party auditors Wendy's has approved in the past to audit Supplier compliance with certification standards, the Report instead states: "Wendy's considers and approves requests or proposals for particular third-party auditors or reviewers from suppliers on a case-by-case basis and does not maintain an exclusive list of third-party auditors."
Whether Wendy's ensures Suppliers' workers have access to a third-party grievance mechanism, with the authority to order a remedy, for reporting violations of Human Rights Expectations, and, if so, the required procedures, number of grievances filed by Suppliers' employees in the last year, and outcomes of all such grievances	<i>Non-responsive</i>	The Report includes no information about a true third-party grievance mechanism. Wendy's instead mentions that its Suppliers' employees can "report potential worker safety concerns...to Wendy's" by phone or online, but states it is "not aware of any supplier worker safety or other ethics concerns being reported to Wendy's" through that first-party reporting mechanism.
Whether Wendy's requires its Suppliers to implement COVID-19 worker safety protocols	<i>Responsive [but concerning]</i>	Wendy's "did not institute any new requirements specific to COVID-19" for its Suppliers' workers
Number of times Wendy's has suspended one of its Suppliers for failing to meet the Human Rights Expectations	<i>Responsive [but concerning]</i>	Wendy's "did not become aware of any concerns that resulted in suspension or termination of a supplier relationship as a result of any failed compliance related to COVID-19 safety precautions or Code violations since the onset of the pandemic"
Total number of Supplier locations	<i>Responsive</i>	~160

The Report’s failure to provide much of the information explicitly called for by the Resolved Clause should be particularly concerning to investors, because that information correlates to key features of the FFP as summarized below:

RESOLVED CLAUSE	FAIR FOOD PROGRAM ²¹
Whether Wendy’s requires its food suppliers (“Suppliers”) to implement COVID-19 worker safety protocols	The FFP requires—and enforces—mandatory COVID-19 safety protocols on all FFP participating farms.
Number of times Wendy’s has suspended one of its Suppliers for failing to meet the “Human Rights and Labor Practices Expectations” contained in Wendy’s Supplier Code of Conduct (“Human Rights Expectations”)	The FFP requires Participating Buyers to cease purchases from Participating Growers who are suspended for violating the Fair Food Code of Conduct, which includes zero tolerance for forced labor.
A list of all third-party auditors approved by Wendy’s to monitor adherence to the Human Rights Expectations	The sole auditor approved to monitor and enforce the Fair Food Code of Conduct is the Fair Food Standards Council (FFSC), which unlike most social auditing entities is a non-profit organization that does not accept any fee for its services from the Supplier being audited.
How often Wendy’s requires third-party audits on-site at each Supplier location for adherence with the Human Rights Expectations	FFSC audits each Participating Grower every year (in addition to administering the Fair Food Program’s 24/7 worker complaint hotline year-round).
The number of Supplier locations that received third-party audits on-site for adherence with Human Rights Expectations in the last year	
The number of Supplier workers personally interviewed at each Supplier location that received a third-party audit on-site for adherence with Human Rights Expectations in the last year	FFSC conducts in-depth interviews with 50% of the workforce present at all farm locations visited for annual audits , and publishes detailed data on its audit and complaint statistics.
Whether Wendy’s ensures Suppliers’ workers have access to a third-party grievance mechanism, with the authority to order a remedy, for reporting violations of Human Rights Expectations, and, if so, the required procedures, number of grievances filed by Suppliers’ employees in the last year, and outcomes of all such grievances	FFSC operates a multilingual worker complaint hotline that is answered 24/7 by a live investigator ; no written complaint is required. Between the Program’s launch in November 2011 and the end of its ninth season in October 2020, the FFP investigated nearly 2800 worker complaints, 65% of which were resolved in less than two weeks and 82% in less than one month. FFSC has the power to order a remedy , which in the case of a Participating Grower who ceases to be in good standing must be enforced by the FFP’s Participating Buyers through the suspension of purchases from that grower.

To the limited extent the Report does provide information relevant to certain aspects of the Resolved Clause, that information raises serious concerns regarding Wendy’s human rights risk management. In particular:

1 Absence of COVID-19 safety protections leaves vulnerable farmworkers at risk.

The Report admits that “Wendy’s did not institute any new requirements specific to COVID-19” for workers in its food supply chain, but attempts to reassure investors that the Company “maintained expectations that suppliers comply with applicable laws and regulations.” This explanation is cold comfort in light of the major deficiencies, and in many cases entire absence, of COVID-19 laws and regulations protecting farmworkers,²² most of whom are Brown or Black²³ and disproportionately vulnerable to this deadly pandemic.²⁴ The Report further explains that “OSHA issued an emergency temporary standard,” and Wendy’s “expect[s] many of our U.S. suppliers would be covered by this standard.” However, that standard will **not** apply to farms in Wendy’s supply chain, because it was recently invalidated by the U.S. Supreme Court,²⁵ and in any case it would have been limited only to Wendy’s suppliers with 100 or more employees.²⁶ Neither of these limitations is present in the FFP’s COVID-19 safety protocols, which were described by farmworker Antonia Rios Hernandez in *the New York Times* as quelling her fears about the pandemic.²⁷

2 Ad-hoc approach to social audits poses serious risks of failing to identify human rights abuses such as forced labor.

While the Report states that Wendy’s has “evaluated and authorized several human rights and labor practice frameworks” that satisfy Wendy’s requirement of “third-party human rights reviews” for its fresh produce suppliers—and provides a partial list of “certifications more commonly used by [Wendy’s] suppliers today”—the Report does not respond to the Resolved Clause’s explicit requests for information about third-party human rights audits. The Report thus leaves investors to wonder who conducts the audits, how often they occur, and whether workers have any voice in the process—or if these audits have even been conducted on-site at all during the pandemic. The Report’s statement that Wendy’s “does not maintain an exclusive list of third-party auditors” is no excuse for not providing the names of those auditors that *have been approved in the past* by Wendy’s, let alone information about the audits themselves. Likewise, the Report’s statement that Wendy’s “considers and approves requests for particular third-party auditors or reviewers from suppliers on a case-by-case basis” is indicative of an ad hoc approach to monitoring human rights, not a serious commitment to preventing abuse in a high-risk supply chain.

The Report's failure to disclose the third-party auditors Wendy's has approved in the past to conduct human rights audits leaves open the possibility that these audits are being performed by entities with track records of failing to identify human rights abuses. This information is material to investors due to the well-documented failure, as noted by the Resolution, of many social auditing firms. For example, the SA8000 certification standard, which the Report states is accepted by Wendy's, was held by a Pakistani textile factory in which 262 workers were killed in a fire.²⁸ Likewise, a Malaysian government official in December 2020 found there to be "modern slavery" at a glove factory even though that factory had been audited less than two years earlier by social auditing firm Intertek, who declared the factory to be free from forced labor.²⁹ According to its website, "Intertek is one of the largest providers of Sedex Members Ethical Trade Audits (SMETA)"—and SMETA is another of the certifications listed in the Report as accepted by Wendy's. From the Report, however, investors cannot tell if Intertek specifically is an auditor that has been approved to audit Wendy's food supply chain, or not. Investors deserve to know whether an auditor that failed to declare forced labor at a factory found to be replete with it is also an auditor that has been permitted by Wendy's to declare whether farms in Wendy's supply chain are free of forced labor, yet the Report offers investors the mere assurance that Wendy's approves auditors on a "case-by-case basis" in response to Supplier requests.

3

Farmworkers lack access to an effective third-party grievance mechanism.

The Report does not answer the Resolved Clause's question "whether Wendy's ensures Suppliers' workers have access to a third-party grievance mechanism," pointing instead to Wendy's own first-party hotline (which is "managed by a third-party vendor"). We believe it is reasonable to infer that Wendy's Suppliers' workers are *not* ensured a true third-party grievance mechanism. In any case, the Report states that Wendy's "did not become aware of any concerns that resulted in suspension or termination of a supplier relationship," and is "not aware of any supplier or worker safety or ethics concerns being reported to Wendy's" through its first-party hotline. But rather than demonstrate successful risk management, these statements suggest that the Company's systems are not channeling meaningful information to it. This is not surprising, for two reasons: (1) Wendy's is not transparent about the names of its suppliers, so farmworkers would have no way to know whether they were working for a Wendy's supplier in the first place, and regardless (2) even if a farmworker did know they were working for a Wendy's supplier, the Report makes clear that Wendy's first step in addressing a worker grievance concerning a supplier would typically be "sharing those concerns with the supplier," which raises a risk of retaliation that would deter a reasonable grievant—especially since the Report does not suggest that Wendy's ensures access to a meaningful remedy to Suppliers' workers who complain to Wendy's.

The increased prevalence of worker safety and human rights risks to farmworkers during COVID-19 is well-documented³⁰—including multiple cases connected to U.S. farms owned by Mastronardi Produce,³¹ a reported Wendy’s supplier,³² as well as at Mexican tomato farms imported into the U.S. by Mastronardi.³³ Ultimately, there are two possibilities: either Wendy’s produce supply chain is entirely free of the human rights abuses that are endemic elsewhere in North American agriculture, or Wendy’s mechanisms for identifying and/or enforcing any such violations are inadequate. The second possibility seems more likely.

Finally, the Report fails to address any potential connection between Wendy’s supply chain and two Mexican tomato farms subject to an October 2021 import ban by U.S. Customs and Border Protection (“CBP”) due to forced labor.³⁴ This is information the Company should have publicly disclosed to shareholders in light of the fact that tomatoes from those farms had been previously imported to the U.S. by Mastronardi Produce,³⁵ a reported Wendy’s Supplier.³⁶ If Wendy’s indeed sourced tomatoes in the past from a Supplier implicated in the federal import ban, it is highly non-responsive not to have disclosed that information to shareholders who overwhelmingly approved a resolution seeking disclosures concerning the effectiveness of human rights protections in Wendy’s food supply chain. Likewise, if Wendy’s did *not* source tomatoes from any Mastronardi-owned farm connected either to forced labor or other documented labor law violations, the Report should have disclosed that information instead.

This silence by the Company is even more concerning because Wendy’s had announced to investors at its 2018 Annual Meeting³⁷ that it would move to sourcing “nearly all tomatoes” from greenhouses in “the United States and Canada”—due to what Wendy’s claimed at the time were “safe, indoor working conditions” there—yet Wendy’s more recent investor materials³⁸ no longer appear to make claims about its tomatoes’ country-of-origin, or about greenhouses being “safe” for workers. Evading transparency in this manner leaves investors without necessary information about potential connections between Wendy’s supply chain and documented human rights abuses in Mexico—questions that should have been answered by the Report.

WENDY'S NON-RESPONSIVENESS TO SHAREHOLDERS ECHOES THE IRRATIONALITY OF THE COMPANY'S FAILURE TO JOIN THE FFP

Unfortunately, Wendy's non-responsiveness to the Resolution is consistent with the Company's years-long public resistance to joining the Fair Food Program and thereby meeting the standard set by all its major fast-food restaurant competitors, including McDonald's, Burger King, Yum Brands, and Subway. That history, which is set forth in greater detail as an Appendix to this Investor Advisory, includes:

- Refusing to join the FFP in 2013, even though the Company claimed it was purchasing from FFP growers, because, according to an official Wendy's statement at the time, "America doesn't work that way",³⁹
- Shifting its winter tomato purchases in 2015 from farms in Florida to the slavery-ridden Mexican tomato industry, where Wendy's was later found to have purchased from a Mexican grower, Bioparques, with widely-documented child labor, forced labor, sexual harassment and horrific living conditions;⁴⁰ and
- Accusing farmworker women and their allies in 2018 of "trying to exploit the positive momentum that has been generated by and for women in the #MeToo and Time's Up Movement" when they fasted outside the office of Wendy's Board Chair Nelson Peltz to highlight the persistent risk of sexual assault and harassment faced by farmworker women outside the FFP.⁴¹

Wendy's continued failure to join the FFP is even more perplexing in the aftermath of 2021, a year in which horrifying new instances of modern-day slavery were brought to light on Mexican tomato farms by CBP⁴² and on multiple non-FFP farms in the Southeast U.S by DOL and other federal agencies.⁴³ Also in the last year, both CBP⁴⁴ and DOL⁴⁵ published guidance endorsing the Fair Food Program as the solution to the scourge of forced labor plaguing farms.

In the words of Mike Rios, Regional Agricultural Enforcement Coordinator with DOL, the FFP "is something every grower and food retailer should be a part of" because "the program's success is absolutely undeniable."⁴⁶

"There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the Fair Food Program and Bangladesh Accord".

UNITED STATES CUSTOMS AND BORDER PROTECTION, VIRTUAL TRADE WEEK: FORCED LABOR FREQUENTLY ASKED QUESTIONS (FAQS)

Despite those recommendations from federal law enforcement, the Report dismisses the FFP offhandedly by stating that “at the present time, none of our suppliers use the Fair Food Program” which “operates predominantly in the outdoor, field-grown tomato sector.” But sophisticated investors know that this statement is yet another instance of non-responsiveness.

The foundation of the FFP is the *commitment* of large retailer buyers of produce—including, it cannot be emphasized enough, all of Wendy’s major fast food competitors—to buy from FFP farms. This commitment incentivizes non-participating farms to join the FFP. If Wendy’s were truly committed to human rights and wanted greenhouse growers to participate in the FFP, it would condition some of its purchases on FFP participation.

That is the same type of condition that many FFP Participating Buyers agreed to for Florida tomatoes long before any Florida tomato farms had ever joined the FFP;⁴⁷ that is how Wal-Mart helped expand the

FFP to tomato farms in new states in 2014;⁴⁸ and that is how the FFP added the largest cut flower *greenhouse* on the East Coast as a new FFP Participating Grower in 2020.⁴⁹

CONCLUSION

Wendy’s non-responsiveness to the Resolution raises serious concerns about the Company’s oversight of human rights risks in its food supply chain, and its willingness to engage with shareholders in good faith. This non-responsiveness also suggests that Wendy’s irrational failure to join the Fair Food Program reflects larger governance issues at the Company.

It is therefore incumbent on investors to hold Wendy’s board accountable for that non-responsiveness, not to accept further evasion or lack of transparency by the Company, during the 2022 proxy season.

ABOUT CIW (CIW)

The Coalition of Immokalee Workers (CIW) is a worker-based human rights organization internationally recognized for its achievements in fighting human trafficking and gender-based violence at work. The CIW pioneered the design and development of the Worker-driven Social Responsibility paradigm, a worker-led, market-enforced approach to the protection of human rights in corporate supply chains. www.ciw-online.org

ABOUT INVESTOR ADVOCATES FOR SOCIAL JUSTICE (IASJ)

Investor Advocates for Social Justice (IASJ), a successor to the Tri-State Coalition for Responsible Investment, is a 501(c)(3) non-profit organization representing investors with faith-based values who seek to leverage their investments to advance human rights, climate justice, racial equity, and the common good. On behalf of our Affiliates, we engage companies to address strategic environmental, social, and governance issues and advocate for change. IASJ uses a variety of shareholder advocacy strategies to encourage corporations to adopt more ethical and sustainable business practices, and believes in seeking out and building collaborative partners who share similar goals, in an effort to increase the effectiveness and impact of our work. Founded in 1975, formerly known as Tri-CRI, we have over forty years of experience with shareholder advocacy and responsible investment. www.iasj.org

ENDNOTES

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[smuggling-forced-labor-among-allegations-south-georgia-federal-indictment](https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-in-south-georgia-federal-indictment).

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APPENDIX:
WENDY'S AND THE FAIR
FOOD PROGRAM



FAIR FOOD PROGRAM TIMELINE HIGHLIGHTS

2010

U.S. State Department recognizes CIW with "Hero" award for its work with law enforcement to prosecute 7 cases of modern-day slavery in U.S. agriculture, freeing over 1000 workers



2012

Chipotle and Trader Joe's join FFP



TRADER JOE'S



2011

FFP launches on Florida tomato farms, with 9 participating buyers committed to the program, including Burger King, McDonald's, Subway, and Yum! Brands



2013

"AMERICA DOESN'T WORK THAT WAY"



Wendy's claims that it purchases Florida tomatoes from FFP farms, but refuses to commit to Program because it says "America doesn't work that way"



2015

FFP recognized with U.S. Presidential Medal for "Extraordinary Efforts to Combat Human Trafficking"

Wendy's tells consumers it will be moving its winter tomato purchases from Florida to Mexico

2014

LA Times documents flagrant human rights abuses in Mexican tomato industry

Wal-Mart joins FFP, expanding FFP to tomato farms in new Southeast states



2016

Harper's Magazine confirms Wendy's purchased tomatoes from Bioparques, a Mexican tomato grower with **documented modern-day slavery**

CIW declares boycott of Wendy's



NEXT: 2017-2021



FAIR FOOD PROGRAM

TIMELINE HIGHLIGHTS

2017

Worker-driven Milk with Dignity Program, modeled on the FFP, launches in Vermont dairy industry, with Ben & Jerry's as Participating Buyer



2018

Farmworker women fast in front of offices of Wendy's Board Chair to protest sexual violence in the fields; Wendy's comes under fire for accusing CIW of "trying to exploit" #MeToo

Wendy's announces plan to shift "nearly all" tomato purchases to greenhouses in U.S. and Canada

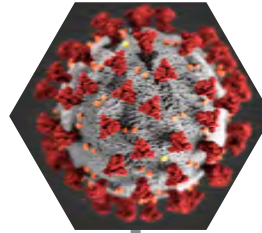


2020

FFP expands to major Tennessee tomato farm and Virginia flower greenhouse

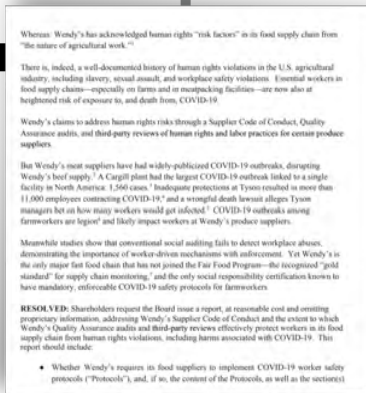
FFP adds groundbreaking COVID-19 safety protocols for farmworkers

10-year study finds CSR audits "not fit for purpose" of ensuring human rights, concludes FFP is "gold standard"



Major COVID outbreak at U.S. tomato greenhouse owned by reported Wendy's supplier Mastronardi Produce

Shareholder resolution filed by Franciscan Sisters of Allegany, NY seeking report on protections for workers in Wendy's food supply chain during COVID-19



2021

MAY: Anita Hill-led Hollywood Commission announces partnership with CIW to develop program modeled on FFP to protect workers at independent film and TV production companies from workplace abuse

“ THERE ARE MYRIAD LESSONS FOR HOLLYWOOD TO GLEAN FROM THE APPROACH, EXECUTION AND SUCCESS OF CIW AND THE FAIR FOOD PROGRAM IN ERADICATING SEXUAL HARASSMENT FROM AN INDUSTRY DEVOID OF ACCOUNTABILITY AND RIFE WITH ABUSE ”

ANITA HILL

2021

JANUARY: SEC rejects Wendy's No-Action Request to keep resolution off ballot

MARCH: DOL announces fines for wage theft and discrimination at another U.S. tomato greenhouse owned by reported Wendy's supplier Mastronardi

MAY: Shareholder resolution passes with 95% of shares voted in support

FAIR FOOD PROGRAM

TIMELINE HIGHLIGHTS

2022

JANUARY: DOL urges retailers to help combat human trafficking by joining the FFP



DECEMBER: LA Times confirms that reported Wendy's supplier Mastronardi was importer of tomatoes from farms subject to CBP import ban



NOVEMBER: FFP expands to North Carolina sweet potato farm

NOVEMBER: DOJ and DOL announce 24-defendant RICO and forced labor indictment involving non-FFP farms in Southeast U.S.



SEPTEMBER: Florida prosecutors file RICO and forced labor indictment involving non-FFP farms in Southeast U.S.

OCTOBER: CBP announces import ban on two Mexican tomato farms due to forced labor concerns



2021

AUGUST: CBP FAQ declares most human rights audits ineffective, recommends companies invest in FFP instead

AUGUST: FFP announces enhanced, enforceable heat stress safety protocols including mandatory cool-down rest breaks



PART ONE

Overview: The Fair Food Program's Effective Worker-driven Social Responsibility (WSR) versus Wendy's Fig-Leaf Corporate Social Responsibility (CSR)

Despite years of petitions¹ and peaceful protests,² including fasts by farmworkers,³ students,⁴ and faith leaders,⁵ and support from prominent human rights activists⁶ (including leaders of the Time's Up Movement⁷) and institutional investors (including a group of major investors spearheaded by ICCR⁸), Wendy's still has not joined the award-winning⁹ Fair Food Program (FFP).¹⁰

Wendy's failure to require any of its suppliers to participate in the groundbreaking social responsibility initiative — launched in 2011 by the Coalition of Immokalee Workers (CIW) to address rampant and longstanding human rights violations in the agricultural supply chains of American food retailers, with a focus on tomatoes — cannot be justified on either business or human rights grounds in light of the following:

- (1) All of Wendy's major fast food competitors (including McDonald's, Burger King, Subway, Yum Brands, and Chipotle) currently participate in the FFP, along with nine other major food retailers such as Wal-Mart, Aramark and Whole Foods,¹¹ who has noted that "the impact on cost is nominal,"¹² but
- (2) Wendy's continues to rely on a voluntary code of conduct to address potential human rights violations in its tomato supply chain,¹³ despite a growing chorus of experts¹⁴ that has discredited that approach as ill-equipped to enforce human rights on the ground, with no significant track record of success.





The FFP's Award-Winning Mechanisms for Preventing Human Rights Abuse

The FFP requires participating farms to meet human rights standards set forth in the CIW's Fair Food Code of Conduct,¹⁵ foremost among which is a zero-tolerance policy for forced labor, child labor, and sexual assault. These standards are enforced through market consequences established in the CIW's legally-binding Fair Food Agreements, in which Participating Buyers (such as McDonald's and Burger King) commit to buy from growers in good standing with the FFP, and to cease purchases from growers who lose that status.

Under the FFP, the Fair Food Standards Council (FFSC), an independent third-party monitor created to ensure compliance with the FFP Code of Conduct, carries out monitoring and enforcement with necessary rigor compared to off-the-shelf for-profit social auditors that certify other standards: annual audits where 50% of workers present are interviewed, and ongoing investigation and resolution of workers' complaints of violations of the Code on a daily basis. Between the Program's launch in November 2011 and the end of its ninth season in October 2020, the FFP investigated nearly 2800 worker complaints, 65% of which were resolved in less than two weeks and 82% in less than one month.¹⁶ Hundreds more have been resolved since. Those complaints are made by workers to a hotline that is staffed 24/7 by human rights experts who speak the languages farmworkers speak. Furthermore, to ensure that this complaint system truly transforms the workplace, the CIW conducts worker-to-worker education sessions, held on-the-farm and on-the-clock, focused on workers' rights under the Code, empowering workers to serve as the frontline monitors of their own human rights. Participating buyers also pay a small Fair Food Premium, which generates a line-item bonus on farmworkers' regular paychecks; as of July 2021, more than \$36 million in Fair Food premiums had been paid into the Program (and millions more have been paid since), significantly ameliorating the economic insecurity on which American farm labor has been based throughout U.S. history.¹⁷

The FFP’s multiple avenues for worker voice (including an unparalleled complaint investigation and resolution process guarded against retaliation), meaningful market consequences for violations, and economic impact have achieved unprecedented advances for farmworkers under the Program’s protections.

The FFP’s proven impact prompted the Obama-Biden administration to award CIW a Presidential Medal in 2015 for its “extraordinary accomplishment” in effectively eradicate[ing] human trafficking in the farms that participate in their Fair Food Program.¹⁸ The FFP’s success also led to a MacArthur “Genius” Grant in 2017 for its “visionary strategy... with potential to transform workplace environments across the global supply chain,”¹⁹ and, most recently, commendation published by two key government law enforcement agencies, the U.S. Department of Labor²⁰ and U.S. Customs and Border Protection.²¹



Recognition of the Fair Food Program’s unique monitoring and enforcement mechanisms and unprecedented success has not been limited to the United States. The United Nations’ Special Rapporteur on Trafficking in Persons, for example, has stated that the FFP “must be considered as an international benchmark” for addressing labor trafficking in corporate supply chains.²² Likewise, Alexandra Guaqueta, former Chair of the UN Working Group on Business and Human Rights, praised the FFP as “a ground-breaking accountability arrangement” that, “through market incentives for growers and retailers, monitoring policies and, crucially, a robust and accessible mechanism to resolve complaints and provide remedy” delivers “respect for human rights and better living standards for workers.”²³



In 2021, on the 10-year anniversary of the United States Guiding Principles for Business and Human Rights, the UN Working Group recognized that “worker-driven social responsibility initiatives, such as the Coalition of Immokalee Workers’ Fair Food Program, demonstrate the benefits of developing site-level grievance mechanisms and that their usual shortfalls can be avoided by giving workers a leading role in shaping and monitoring these mechanisms.”²⁴

Wendy's CSR Approach to Human Rights Does Not Compare to the FFP

The power of the FFP comes from the *commitment* of large retailer *buyers* of produce—including all of Wendy's main competitors—to buy from FFP farms, enforce FFP market consequences, and pay the FFP premium. Wendy's does none of those, and instead has chosen to allow its suppliers to pick-and-choose among conventional third-party social auditors, an approach Fordham law professor and widely-respected labor expert Jim Brudney has characterized as "little more than a sham."²⁵

The fallacy of Wendy's approach to supply chain responsibility is as obvious as it is galling: Given the choice between a worker-driven, market-enforced social responsibility program that demands real compliance, and a menu of voluntary options that employ none of the FFP's unique mechanisms for monitoring and enforcement, produce suppliers will almost always choose the latter—to the detriment of workers, and investors, alike—because less rigorous monitoring and enforcement means less work for growers accustomed to minimal oversight. Yet that is precisely what Wendy's permits its suppliers to do, having "authorized several human rights and labor practice frameworks" that suppliers can use (the full list of which it has not disclosed), including "the Equitable Food Initiative, SA8000, and SEDEX/SMETA."²⁶

Yet, time and again, we have seen that typical voluntary social auditing is not effective at protecting workers. For example, the SA8000 certification listed by Wendy's on its website was held by a Pakistani textile factory in which 262 workers were killed in a fire.²⁷ Likewise, Intertek—which according to its website is "is one of the largest providers of Sedex Members Ethical Trade Audits (SMETA)"—audited a glove factory and declared it free from forced labor, but it was later found to have "conditions so squalid that [Malaysia's] human resources minister M. Saravanan later likened them to "modern slavery."²⁸ CBP later placed an import ban on the glove factory due to indicators of forced labor.²⁹

This contrast between the effectiveness of the Fair Food Program, versus the ineffectiveness of traditional social auditing like that used by Wendy's, is not mere opinion—it is the consensus of government and academic experts alike.

In 2021, following new cases of modern-day slavery documented on Mexican tomato farms by United States Customs and Border Protection (CBP)³⁰ and on U.S. farms by the United States Department of Labor (DOL) and other agencies,³¹ both CBP³² and DOL³³ published guidance endorsing the Fair Food Program as the solution to the scourge of forced labor plaguing farms.

According to the CBP FAQ:

There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the Fair Food Program and Bangladesh Accord.

Evidence cited by the CBP FAQ included research by the Re:Structure Lab, a project of Stanford and Yale Universities that “brings together multi-disciplinary academic expertise on severe labour exploitation with valuable practical experience in business model innovation and policy change at local and global levels.”

According to a November 2021 report by Re:Structure Lab:³⁴

Research demonstrates that private sector initiatives such as worker reporting tools and hotlines, ethical auditing, and certification can have perverse effects and inadvertently harm workers in supply chains when those initiatives are not worker-driven. Investors can prompt review of these tools and initiatives and demand accountability for their role and effectiveness in relation to locating, reporting, and addressing forced labour in supply chains. In particular, where workers are demanding adoption of a worker-driven social responsibility (WSR) solution to address a human rights risk in a company’s supply chain, investors can, and should, follow the lead of those workers in pressing the company to adopt that solution.

Likewise, a landmark 10-year study released in July 2020 by the Institute for Multi-Stakeholder Initiative Integrity—an independent organization, incubated at Harvard Law School from 2010-12³⁵ and dedicated to measuring the effectiveness of corporate responsibility programs—concluded that the “grand experiment” of “voluntary codes of conduct and oversight mechanisms” has “failed its goal of providing effective protection against abuse” and does not “hold corporations to account for harm, or provide access to remedy” for victims of human rights abuses.³⁶ In short, the study, which examined 40 such programs in-depth, concluded that those traditional forms of corporate responsibility “should not be relied on for the protection of human rights.”

The same study contrasted the failed CSR model directly with the Fair Food Program’s worker-driven social responsibility (WSR) model, finding as follows:

“Given the demonstrable failure of corporate social responsibility schemes and multi-stakeholder initiatives, Worker-driven Social Responsibility (WSR) is the only existing model with the proven potential to afford protection for the most vulnerable and lowest-wage workers in global supply chains.”³⁷

The FFP is the “gold standard,” the report concludes, because of two “fundamental distinctions”: (1) it “is structurally designed to center rights holders in the monitoring and implementation of standards; and (2) creates legally binding standards that workers can enforce outside of the initiatives.”



SPOTLIGHT

The Fair Food Program, Forced Labor, and Sexual Violence: A Closer Look

Before the advent of the FFP, conditions in Florida’s tomato fields were characterized by outrageous labor abuse, including multiple cases of federally-prosecuted modern-day slavery, sexual violence, and wage theft.³⁸ Farmworkers had been subject to decades of physical abuse, pistol whippings, involuntary confinement, debt bondage, and starvation wages. Crew leaders routinely assaulted women workers and demanded sex in exchange for steady employment. During the 1990s, the CIW uncovered numerous slavery operations in which workers received little or no pay for their labor. Those who tried to escape risked beatings or worse.

Those investigations led to multiple successful federal prosecutions that, in total, put more than a dozen farm bosses in prison for sentences up to 30 years and helped free over 1,500 workers. The CIW’s pioneering anti-slavery efforts helped to spark today’s global anti-trafficking movement and were honored by then-Secretary of State Hillary Clinton in 2010.³⁹

But isolated prosecutions were not solving the systemic abuses in the fields, so the CIW designed the Fair Food Program, leveraging the purchasing power of food industry brands to incentivize and enforce compliance with fundamental human rights standards in corporate supply chains. In 2011, after winning agreements with nearly a dozen of those brands through a series of national consumer campaigns, the CIW launched the FFP in Florida.

Among the many concrete changes it has achieved over the past decade, the FFP has made unprecedented strides in the fight to end not only modern-day slavery, but also the generations of sexual assault and harassment that have disproportionately harmed farmworker women—what author Bernice Yeung called “a #MeToo-era marvel” in her Pulitzer Prize-nominated book *In a Day’s Work: The Fight To End Sexual Violence Against America’s Most Vulnerable Workers*.⁴⁰ Actress and activist Alyssa Milano — a leader of the Time’s Up movement — outlined the CIW and FFP’s work in this area in a March 2019 Op-Ed, an extended excerpt of which follows:⁴¹

... Launched in 2011, the Fair Food Program has radically transformed conditions for over 35,000 farmworkers, and counting, in seven states and three crops. A survey of 150 farmworker women in California's Central Valley, outside of the Fair Food Program, found that 80 percent had experienced sexual harassment. Inside the Fair Food Program, there have been almost no reported instances of sexual assault by a supervisor for nearly six years.

Alejandrina Carrera, a farmworker employed on a participating farm, described the change to CNN: "You can work freely. You're not going to be harassed. You're not going to be insulted. There's more respect now."

The secret of these remarkable farmworkers' success? Real-life market power. The retail food brands — companies like McDonald's and Whole Foods — sign legally binding agreements committing to purchase only from farms where the Fair Food Program is in place and, conversely, to suspend purchases from farms that are suspended from the program for human rights violations, like sexual assault.

A carrot and a stick.

Do the right thing, and you'll have access to fourteen of the world's largest buyers. Turn a blind eye to abuse, allow sexual harassment and assault to flourish as they once did, and you'll be out of the Fair Food Program, and lose the business of many of the industry's most cherished clients.

In short, the Immokalee workers' Fair Food Program has flipped the economic power dynamic that normally drives sexual violence on its head. Before the program, women who were victims of assault in the fields had to fear losing their jobs if they reported the abuse, and so sexual violence went unreported and unchecked. Today, farmworker women who complain are protected from retaliation by the power of the program's market consequences, while farm owners are the ones who have something to fear — losing sales to important customers — if a violation is found on their farms. And so, sexual violence in Fair Food Program fields is a thing of the past.

The Immokalee workers' laser focus on power is a lesson for us all, as we stand up and declare Time's Up on sexual harassment and assault. Sexual violence is a crime of power. Redress the underlying imbalance of power and we can end it. Make sexual abuse at work economically impossible, and a world without survivors of sexual assault — the world Alejandrina describes so beautifully to CNN — becomes possible."

Even as Wendy's continues to turn its back on the FFP's trailblazing success combatting sexual violence and harassment, those who appreciate the importance of this work most are looking to the CIW for guidance on how to expand its lessons to new industries. This includes a groundbreaking WSR program targeting Gender-Based Violence in Lesotho's garment industry,⁴² and pilot program in the U.S. film and television industry that CIW is helping to design with the Anita Hill-led Hollywood Commission.⁴³

Anita Hill, announcing the Hollywood Commission partnership with the CIW, said,

"There are myriad lessons for Hollywood to glean from the approach, execution and success of CIW and the Fair Food Program in eradicating sexual harassment from an industry devoid of accountability and rife with abuse."⁴⁴



PART TWO

Wendy's Irrational Failure to Join the Fair Food Program

Wendy's has often remarked that it has "no reason to doubt that CIW's work has improved conditions on tomato farms in Florida."⁴⁵ But Wendy's admission that the Fair Food Program "has improved conditions on tomato farms in Florida" is an extraordinary understatement.

The truth is that the FFP has, in the words of Susan Marquis, former Dean of the Pardee RAND Graduate School, transformed the Florida tomato fields "from being the worst" in the country — replete with "appalling stories of abuse and modern slavery" — to "probably the best working environment in American agriculture."⁴⁶

Meanwhile, although the rest of North American agriculture has remained rife with horrific abuse—for example, "the vast majority (over 70%) of federal labor standards investigations of farms" detect violations of farmworker rights¹—Wendy's has consistently shifted its purchasing away from the FFP.



2015-2016

Wendy's Abandons Fair Food Tomato Growers in Florida for Slavery-Ridden Mexico, and CIW Declares Boycott

In the early years of the FFP, after more than 90% of Florida tomato growers joined the Fair Food Program *en masse* in 2011, Wendy's purchased at least some of its tomatoes covered by the FFP by simply continuing to buy from Florida growers who became Participating Growers in the FFP once it launched. However, even then, rather than simply join its competitors in paying the FFP premium on its Florida tomato purchases and agreeing to buy Florida tomatoes only from growers in good standing with the FFP's human rights Code of Conduct, Wendy's turned its back on progress and refused to join the Fair Food Program. "America doesn't work that way," Wendy's insisted on its website at the time.⁴⁷

Things got worse when Wendy's shifted its tomato supply chain out of Florida. Wendy's shift was described by Harper's Magazine⁴⁸ as follows:

For a period, the company, which is controlled by hedge-fund billionaire Nelson Peltz's Trian Partners, adopted the P.R. gambit of telling consumers, via its website, that it didn't need to join the program because it was already buying from Fair Food Program growers. Left unmentioned was the fact that it was not paying the workers their penny a pound, nor did it agree to buy only from program-affiliated growers. This subterfuge did not last long. In early 2015, the C.I.W. stepped up pressure on the errant firm to mend its ways, fomenting a campaign for consumers to call its headquarters and demand that it sign on to the program. But Wendy's now had a ready response. Caller after caller was informed that the company's strictures were beside the point, because the firm was not buying any tomatoes from Florida at all. Again, the devil was in the omissions, because winter tomatoes for the North American market can only from three places: Florida, Canada, and Mexico.

HARPER'S MAGAZINE

March 16, 2016

Trump's Tomatoes

The story behind the billionaire's fast food of choice

By Andrew Cockburn

According to the Washington Post, guests on Donald Trump's luxurious personal 757 jet—gold-plated seat-belt buckles—who get peckish and order a burger are served Wendy's. It would have to be Wendy's. No other food chain strives so hard to avoid buying tomatoes from Florida, where they are almost guaranteed to have been picked by immigrants, a policy surely appealing to Trump. Admittedly, the tomatoes in question are quite possibly picked by a worker confined in conditions of near slavery, paid minimal amounts and forced to scavenge for food, but at least he or she is not an immigrant working in this country.



To understand the background to the Wendy's guarantee, we have to go back to the beginning of the century, when a workers' rights group in Florida, the Coalition of Immokalee Workers, pioneered an innovative and effective strategy. Agricultural workers are a traditionally exploited group, excluded from the National Labor Relations Act, the New Deal law enshrining basic workers' rights such as collective bargaining. Conditions have been especially dire for the men and women, almost entirely immigrants from Mexico and Central America, who picked the Florida fruit and vegetable crops. In 2001, tomato pickers were still being paid the forty cents per thirty-two-pound bucket of tomatoes that they were two decades earlier. (Some received nothing at all. When I visited Immokalee in 2001, the C.I.W. had just uncovered a slave camp nestled between a Ramada Inn and a retirement community in the little town of Lake Placid, the fifth such operation busted by the Coalition in the past six years. Inmates who tried to escape risked beatings or worse.)

Naturally, the workers had fought for better conditions using traditional means, but a number of strikes had yielded only defeat. In 2001, however, the C.I.W. conceived and adopted a new strategy, targeting not the agribusinesses that employed and exploited them, but the farmers' corporate customers, using the leverage of consumers' social conscience. In the first such campaign, the group fomented a nationwide boycott of Taco Bell. The demand was

According to a Wendy's spokesperson, "Wendy's transitioned into purchasing its tomatoes from Florida to Mexico because Mexico provides higher-quality vine-ripened tomatoes in the winter."⁴⁹ But—leaving aside for the moment that the quality of Florida tomatoes is apparently good enough for all of Wendy's main peer restaurants—at the time of Wendy's purchasing shift, the Mexican produce industry's reputation in the food industry was one of widespread and violent human rights violations.

The Mexican produce industry came under intense and increasing scrutiny around this same time, peaking with a multi-part, in-depth report by the Los Angeles Times in December 2014, which exposed, among many disturbing crimes, a massive modern-day slavery operation at the agribusiness giant, Bioparques.⁵⁰

In March 2016—two years after the LA Times expose on Bioparques, and a year after Wendy's statements that it had shifted its purchases away from Florida—Harper's Magazine confirmed that Wendy's was a customer of Bioparques, and the CIW declared a boycott of Wendy's.⁵¹

Los Angeles Times Product of Mexico Harsh Harvest No Way Out Company Stores Child Labor Portraits of Labor En Español


f t e

Desperate workers on a Mexican mega-farm: 'They treated us like slaves'

By **RICHARD MAROSI**
DEC. 10, 2014

Scorpions and bedbugs. Constant hunger. No pay for months. Finally, a bold escape leads to a government raid, exposing deplorable conditions. But justice proves elusive.

Second of four stories





2018

Farmworker Women Fast to Protest Sexual Violence in the Fields, and Wendy's Comes under Fire for Accusing Farmworkers of Exploiting #MeToo

Two years later—with Wendy's still purchasing from Mexico—farmworker women and their allies with the CIW fasted for five days outside the offices of Wendy's Board Chair to highlight the persistent risk of sexual assault and harassment facing farmworker women outside the Fair Food Program.

In response, Wendy's accused the CIW of "trying to exploit the positive momentum that has been generated by and for women in the #MeToo and Time's Up Movement."⁵²

The rebuke from leaders of the Time's Up movement, from Alyssa Milano to Amy Schumer to Eve Ensler, was strong and swift: farmworker women were not exploiting the #MeToo and Time's Up movements, they are central to it.⁵³ In Milano's words: "If you really want to get on the wrong side of the Time's Up movement, keep using our name to attack and belittle farmworker women who are fighting to keep themselves and their sisters safe from rape in the fields."⁵⁴





2018-2021

Wendy's Reassures Investors It Will Move to "Safe" U.S. and Canadian Greenhouses, but Widespread Reports of Human Rights Abuses in Greenhouses Follow, including Greenhouses Connected to Reported Wendy's Supplier Mastronardi Produce

At its shareholder meeting in June 2018, Wendy's abruptly announced its decision to shift all of its tomato purchases to hydroponic greenhouses starting in 2019. In its official press release Wendy's claimed that (1) "nearly all tomatoes will be sourced from the United States and Canada," and (2) these greenhouses would offer "safe, indoor working conditions."⁵⁵ Wendy's made similar claims to the New York Times in a March 2019 article about campus protests against Wendy's for its failure to join the FFP.⁵⁶

By the time Wendy's published its 2020 "Corporate Social Responsibility Report,"⁵⁷ however, the company had apparently ceased making both of these claims. Regarding the source of its tomatoes, the 2020 CSR report states only, "Since 2019, we have sourced tomatoes for our North American restaurants exclusively from greenhouse farms." Regarding the working conditions in greenhouses, the 2020 CSR report states only that greenhouses provide "a temperature-controlled working environment."

To our knowledge, Wendy's has never put investors on notice of this change in the nature of its supply chain disclosures.

Whether Wendy's has returned to (if it ever reduced in the first place) its pre-2019 quantity of tomato purchases from Mexico cannot be confirmed at this time, because Wendy's does not disclose its suppliers, their locations, or how much it purchases from them.



New documentary reveals harsh world of migrant workers in Canadian greenhouses

Alia Dharsni

Apr 29, 2016 · April 29, 2016 · 3 minute read · [Join the conversation](#)



An image from the documentary, Migrant Dreams. PHOTO BY SASHA APPLER

BUSINESS | Posted October 23, 2021 | Updated October 23, 2021

Madison tomato grower repeatedly violated federal laws with hiring practices, report found

A federal investigation determined Backyard Farms had a practice of dismissing domestic workers to make room for incoming foreign workers between 2017-2019.

BY TAYLOR ABRDOTT MORNING SENTINEL

Coronavirus

Inside Green Empire Farm: Upstate NY's biggest coronavirus outbreak slams migrant workers

Updated: May 08, 2020, 6:48 p.m. | Published: May 08, 2020, 7:01 a.m.

Subscr \$1 for 6

CALIFORNIA

U.S. blocking tomato shipments from Mexican farms accused of abusing workers

Regardless, it would not be surprising if Wendy's were reluctant to continue claiming that working conditions in tomato greenhouses are "safe." As Margaret Gray, an associate professor of political science at Adelphi University and an expert in farm labor conditions, told the New York Times in March 2019 when discussing Wendy's move to greenhouse-grown tomatoes, "[i]ndoor greenhouse farms are not inherently better in terms of labor conditions,"⁵⁸ and indeed there was already at the time evidence of harsh conditions faced by farmworkers in Canadian greenhouses.⁵⁹

Confirming Professor Gray's point, since 2020, there have been new reports of major abuses in greenhouses throughout North America—and especially at greenhouses owned or distributed by reported Wendy's supplier⁶⁰ Mastronardi Produce. In New York State, a Mastronardi-owned tomato greenhouse, Green Empire Farms, was the locus of a major COVID-19 outbreak in early 2020, with more than half of the workforce testing positive for COVID-19.⁶¹ While Wendy's said in May 2020 that Green Empire Farms was not in its supply chain,⁶² it is notable that Green Empire Farms only opened for business in August 2019.⁶³ Then, in 2021, a Mastronardi tomato greenhouse in Maine was cited by the U.S. Department of Labor for rampant discrimination.⁶⁴ And there have been recent reports of farmworker abuse at non-Mastronardi greenhouses too, both in the United States⁶⁵ and Canada.⁶⁶

Even more concerning: in October 2021, U.S. Customs and Border Protection (CBP) found indications of forced labor at tomato farms imported by Mastronardi, "North America's largest distributor of greenhouse tomatoes."⁶⁷ CBP "identified at least five of the International Labor Organization's indicators of forced labor during its investigation, including abuse of vulnerability, deception, withholding of wages, debt bondage, and abusive working and living conditions."⁶⁸



SPOTLIGHT

FFP Rises to the Challenges of COVID-19 and Climate Change

The unprecedented events of 2020-21 have only underscored the power of the FFP’s proven model for protecting human rights. Farmworkers in general have been disproportionately vulnerable to COVID-19,⁶⁹ but inside the FFP, the Program’s unique monitoring mechanisms and enforcement protocols have addressed farmworkers’ COVID-related health and safety concerns.

This is because, since the early days of the pandemic, and in the absence of COVID-19 safety protections for farmworkers under federal (and most states’) law, the CIW has worked tirelessly to enforce worker health and safety protections on participating farms—including drafting and implementing enforceable COVID-19 safety protocols in consultation with FFP Participating Growers.⁷⁰

The FFP’s COVID-19 protocols were lauded by farmworker Antonia Rios Hernandez in *the New York Times* as quelling her fears about the pandemic.⁷¹ The CIW and FFP Participating Growers also took the lead on crucial public health education and COVID-prevention efforts in the farmworker community more broadly, alongside public health expert allies such as Doctors Without Borders and Partners in Health.⁷²

The COVID-19 pandemic has coincided with increased awareness of the threat posed by climate change, and just as the FFP confronted the impact of the pandemic on farmworkers, so too has it addressed head-on the increased risk posed to farmworker lives by rising temperatures.

Farmworkers die from heat exposure at a rate nearly 20 times that of other workers in the United States—a problem that is only getting worse with climate change.⁷³

As it did with COVID-19 in 2020, the CIW in 2021 consulted with FFP participating growers in adding enforceable standards on FFP farms to help keep farmworkers safe from heat illness.⁷⁴ Prior to adoption of the FFP's new heat stress protocols, participating farms in the FFP already had to abide by the Fair Food Code of Conduct's requirements of access to shade, water, and elective rest breaks, each of which helps prevent heat stress. The FFP's new "Heat Stress Illness Awareness, Prevention, and Response Plan" added several key new protections, including mandatory cool-down rest breaks.⁷⁵

The FFP's new protections against the twin scourges of COVID-19 and climate change have something in common: both address issues where U.S. laws do not even protect most farmworkers on paper (to say nothing of enforcement, which has been lacking across-the-board when it comes to farmworker rights). As of August 6, 2021, PBS reported that only three states "have heat-standard laws that are meant to monitor heat and protect workers from the risk of heat illnesses," and there is no federal standard.⁷⁶ Likewise, according to the National Center for Farmworker Health, as of December 20, 2020—nearly a full year into the pandemic—only 11 U.S. states had issued some form of mandatory regulations for protecting agricultural workers from exposure to COVID-19.⁷⁷ More recently, efforts by the United States Occupational Safety and Health Administration (OSHA) to pass a mandatory COVID-19 standard were struck down by the U.S. Supreme Court.⁷⁸

Unfortunately, because Wendy's has shifted its purchases away from Fair Food Program farms—and because Wendy's has failed to require its current suppliers to join the FFP—farmworkers in Wendy's supply chain have not benefitted from the FFP's new, lifesaving protections.





2021-PRESENT

As Law Enforcement Agencies Announce New Forced Labor Prosecutions and Encourage Retailers to Join the FFP, Wendy’s Remains an Industry Outlier

In June 2021, shortly after a shareholder proposal⁷⁹ was approved – with more than 95% of shares voted in favor at Wendy’s Annual Meeting⁸⁰ – criticizing Wendy’s for failing to join the FFP, anti-trafficking expert Polaris published data demonstrating that the COVID-19 crisis has heightened the prevalence of labor trafficking of agricultural workers.⁸¹ Subsequently, in October 2021, CBP placed an import ban on certain fresh tomatoes produced in Mexico, following an investigation identifying at least five indicators of forced labor.⁸² Then, in November 2021, federal prosecutors—led by the U.S. Department of Justice, with support from the U.S. Department of Labor—announced a 24-defendant forced labor indictment involving more than 70,000 petitioned-for workers under the H-2A agricultural guestworker visa program.⁸³

Allegations in the DOJ indictment were especially jarring. As described by Vice Magazine:⁸⁴

The alleged conditions it uncovered were brutal; at least two workers died, and another was allegedly repeatedly kidnapped and raped.

While migrants toiled in Georgia’s fields as contract laborers, some of them dug onions with their bare hands for pennies per bucket, and people threatened them with a gun. Members of the accused... labor trafficking operation held onto their passports and documents to keep them from escaping, the indictment alleges.

Migrant workers were also allegedly charged unlawful fees they could not afford; some were illegally forced to do lawn care, construction, and restaurant work; and others were threatened with violence or deportation, according to the indictment. All the while, many of the workers lived in cramped, dirty conditions, sometimes with little to no food or safe water.

Workers were even unlawfully sold and traded to other conspirators within the crime ring, a so-called “transnational criminal organization”—described as “Patricio TCO” in the indictment—that made more than \$200 million as part of the scheme.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA WAYCROSS DIVISION	
UNITED STATES OF AMERICA	INDICTMENT NO. _____
v.	CR521-0009
MARIA LETICIA PATRICIO,	) 18 U.S.C. § 1349
DANIEL MENDOZA,	) Conspiracy to Commit
NERY RENE CARRILLO-NAJARRO,	) Mail Fraud
ANTONIO CHAVEZ RAMOS,	) 18 U.S.C. § 1341
a/k/a, Tony Chavez,	) Mail Fraud
JC LONGORIA CASTRO,	) 18 U.S.C. § 1594
VICTORIANO CHAVEZ HERNANDEZ,	) Conspiracy to Engage in
ENRIQUE DUQUE TOVAR,	) Forced Labor
JOSE CARMEN DUQUE TOVAR,	) 18 U.S.C. § 1588
CHARLES MICHAEL KING,	) Forced Labor
STANLEY NEAL MCGAULEY,	) 18 U.S.C. § 1966(h)
LUIS ALBERTO MARTINEZ,	) Conspiracy to Commit
a/k/a, Chino Martinez,	) Money Laundering
DELIA IBARRA RÓJAS,	) 18 U.S.C. § 1512
	) Tampering with a Witness
	) Aiding and Abetting
	) 18 U.S.C. § 2

In the wake of this swell of law enforcement activity, two of the agencies behind it—CBP⁸⁵ and DOL⁸⁶—published guidance endorsing the Fair Food Program as the solution to the scourge of forced labor plaguing farms outside the Program. In the words of Mike Rios, Regional Agricultural Enforcement Coordinator with DOL, the FFP “is something every grower and food retailer should be a part of” because “the program’s success is absolutely undeniable.”⁸⁷ And according to a CBP FAQ:

There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the Fair Food Program and Bangladesh Accord.

Despite those recommendations from federal law enforcement, Wendy’s continues to publicly refuse to commit to the Program, stating:⁸⁸

From time to time, we have been asked by certain stakeholders about participation by Wendy’s and our suppliers in the Fair Food Program. Wendy’s considers the Fair Food Program to be an acceptable assurance framework that would meet the requirements set forth in the Code; however, at the present time, none of our suppliers use the Fair Food Program framework. As we have previously shared, since 2019 we have been sourcing tomatoes for our North America restaurants exclusively from indoor, hydroponic greenhouses while our understanding is that the Fair Food Program operates predominantly in the outdoor, field-grown tomato sector.

Wendy’s diplomatic words mask its evasion of the FFP, and the unprecedented prevention against modern slavery and other human rights risks it provides. When Wendy’s says that it “considers the Fair Food Program to be an acceptable certification” among many others it accepts from its suppliers, that statement not only denies the exceptional success of the FFP, but ignores its essential nature, which is rooted in *legally-binding agreements with participating brands*.

The power of the FFP comes from the *commitment* of large retailer buyers of produce—including all of Wendy’s major competitors—to buy from FFP farms, enforce FFP market consequences, and pay the FFP premium. This commitment incentivizes non-participating farms to join the FFP.

Otherwise, produce suppliers—given the choice between the FFP and its requirement of real compliance through in-depth mechanisms, versus other options that employ none of the FFP’s unique mechanisms for monitoring and enforcement—will choose the path of least resistance almost every time.

If Wendy's were truly committed to respecting human rights—if it wanted to help change the unfortunate fact that none of its suppliers use the Fair Food Program—it would not matter that the FFP “operates predominantly in the outdoor, field-grown tomato sector” currently.

Rather, if Wendy's were truly committed to human rights and wanted greenhouse growers to participate in the FFP, it would condition some of its purchases on FFP participation.

That is the same type of condition that many FFP Participating Buyers agreed to for Florida tomatoes long before any Florida tomato farms had ever joined the FFP;⁸⁹ that is how Wal-Mart helped expand the FFP to tomato farms in new states in 2014;⁹⁰ and that is how the FFP added the largest cut flower greenhouse on the East Coast as a new FFP Participating Grower in 2020.⁹¹



A worker harvests flowers in an FFP greenhouse



CONCLUSION

It remains hard to understand why Wendy's remains an industry outlier for failing to join the FFP, when current FFP Participating Buyers and Growers—as well as their customers—see immense value in the Program.

In the words of Whole Foods Market's Senior Global Produce Manager: "it's the right thing to do, and the impact on cost is nominal. What you get is greater transparency."⁹² Jon Esformes, Operating Partner of Pacific Tomato Growers, echoes that sentiment. Without the FFP, he has said, "bad things were happening in agriculture" but there was "no mechanism to find out about" them until the FFP provided the "tool."⁹³

There appears to be no good reason — other than its own intransigence — stopping Wendy's from joining the FFP and thereby becoming part of the gold standard for preventing human rights abuses in the U.S. agricultural industry. By changing course now, Wendy's can still reap the benefits that other corporate partners of the FFP have, such as the Compass Group—the largest food service and catering company in the United States—which credits the FFP with having "forever change[d] the food industry along with the hearts and minds of Compass associates" by creating "a new model for corporate engagement."⁹⁴

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