

Cornell Law School

Lawyers in the Best Sense

# Predatory Immigration Regimes

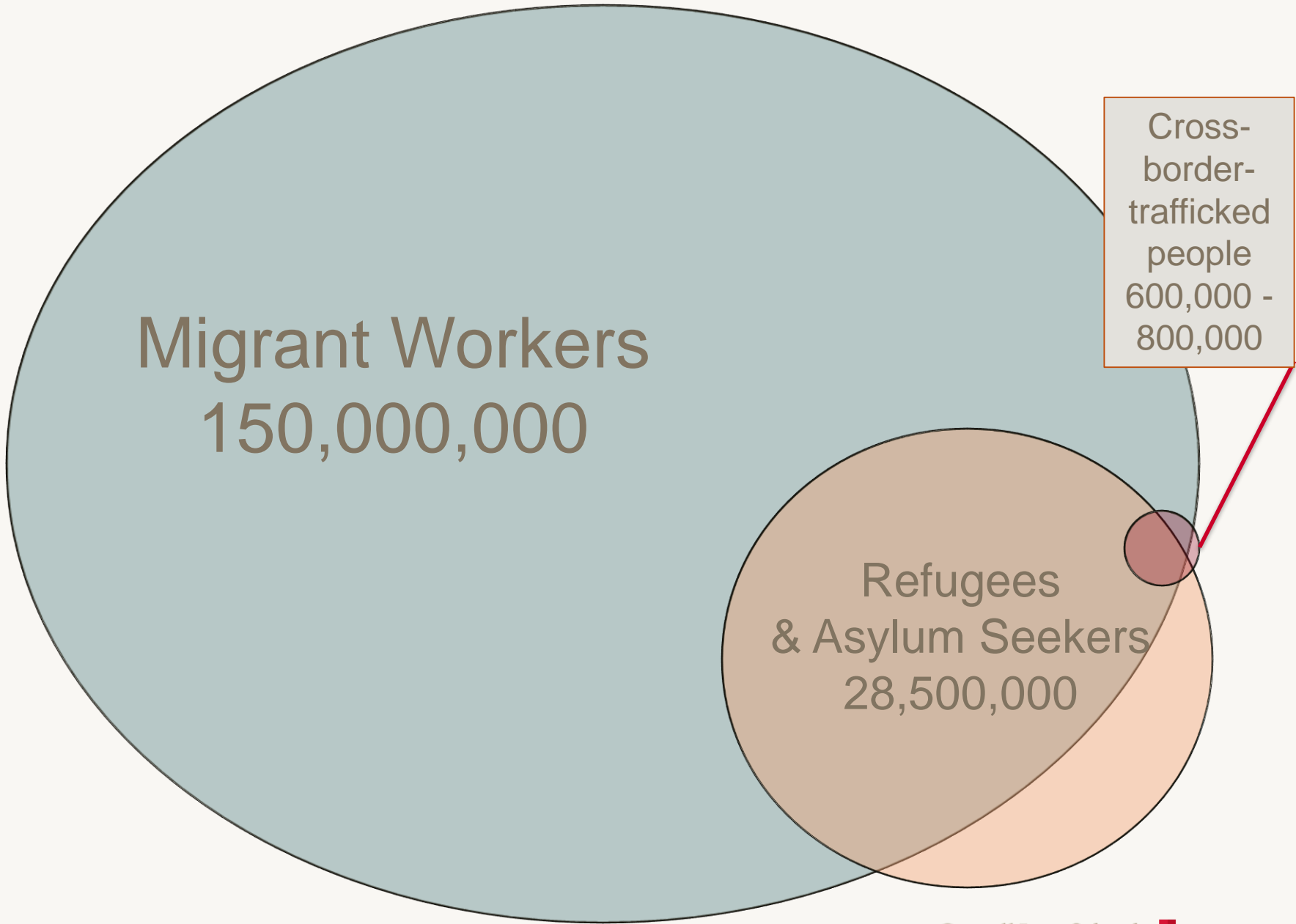


Beth Lyon

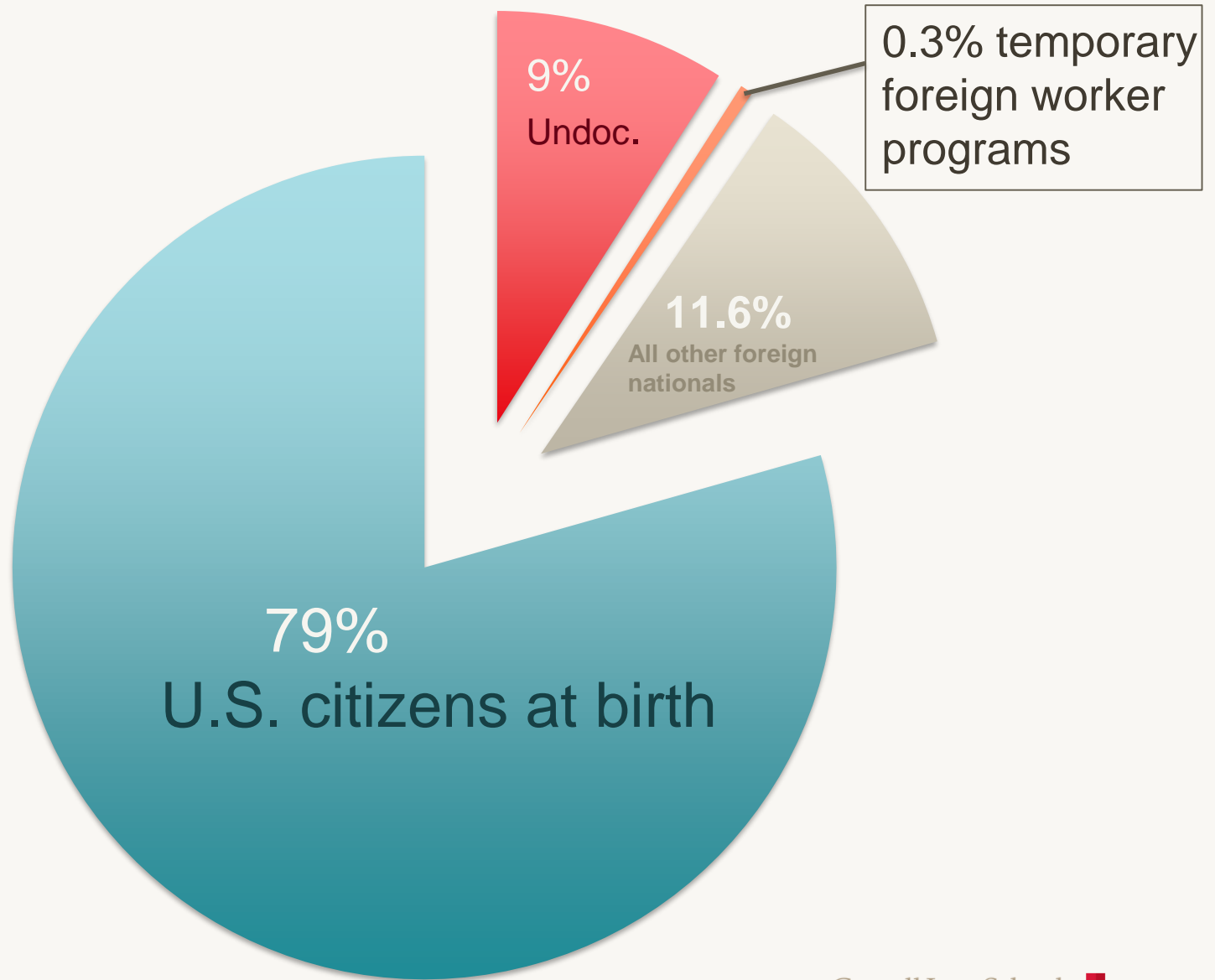
Northern Kentucky Law Review Symposium  
Common Cause: Synthesizing the Work  
of Human Rights and Civil Rights Scholars and Practitioners

APRIL 12, 2019

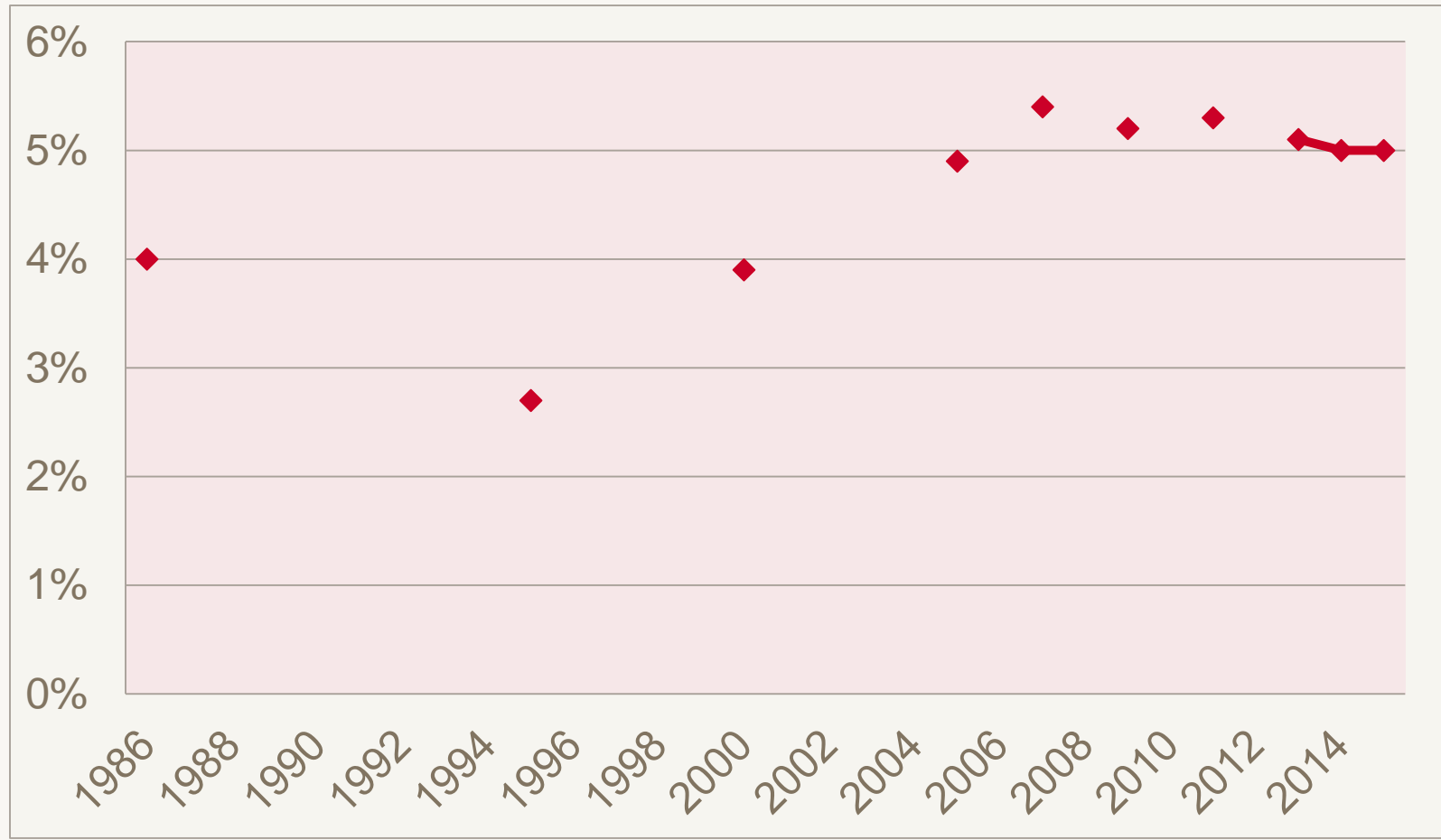




# Snapshot of U.S. Low Wage Labor Force



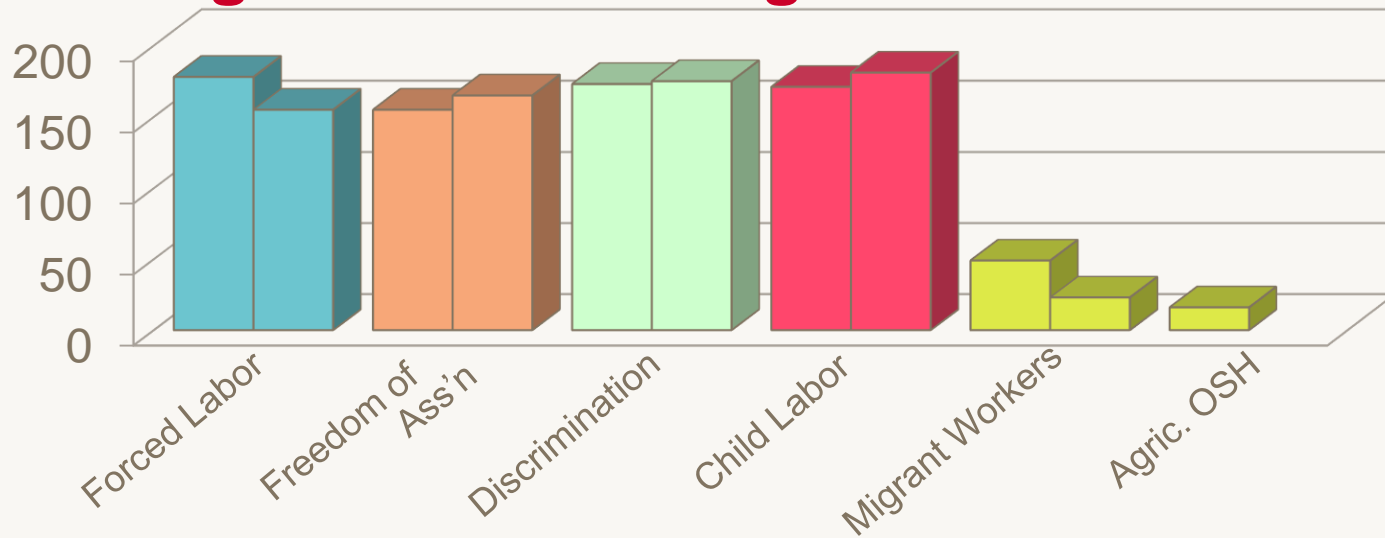
# Undocumented workers as a share of the U.S. labor force



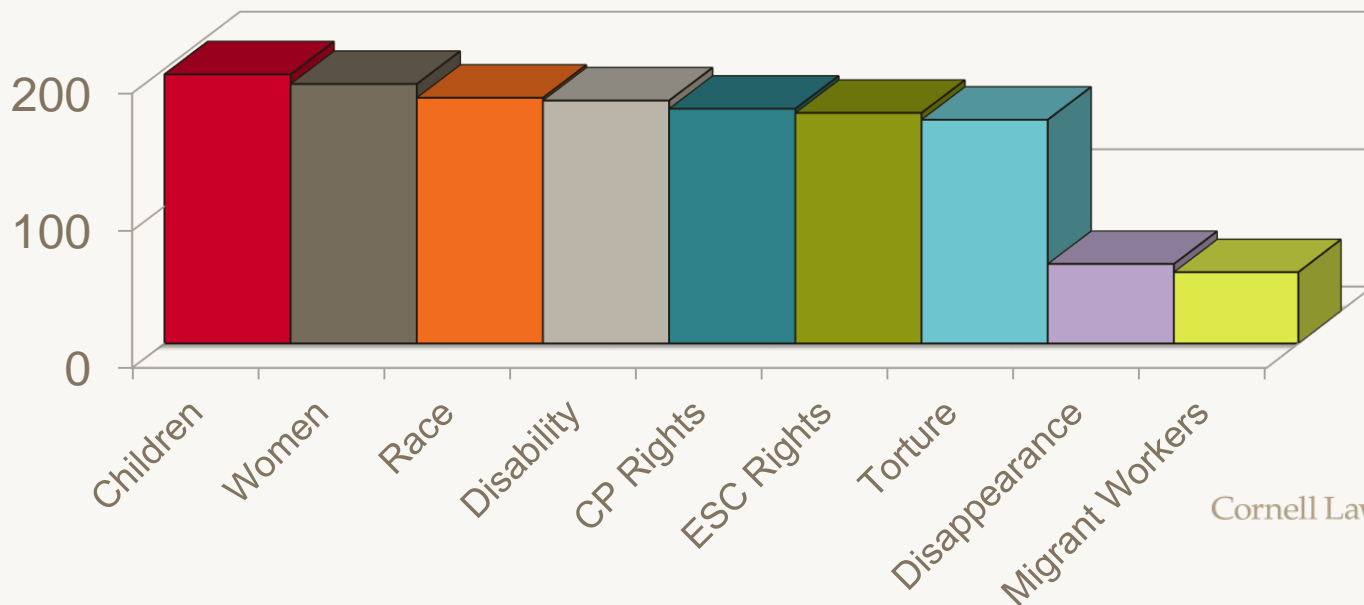
# International regulatory abyss

- No requirement of sufficient work visas
- No requirement to regularize
- Unratified protections for temporary foreign workers
- Stalled norm development

# Fundamental ILO Conventions versus ILO Migrant Worker & Ag. Conventions



# Ratification of "Core" UN Human Rights Treaties



# Predictable harms arising from immigration regime

## UNDOCUMENTED WORKERS

- Wage and remedy “discount”
- Criminalization
- Clandestinization
- Fear, shame, loss of hope
- Border harms (60%)
- Status discrimination
- Masks child labor
- Smuggling debt

## BOTH

- De jure exclusions
- Higher workplace injury and fatality rates
- Family disruption
- Heightened likelihood of forced labor, indentured servitude, debt bondage and human trafficking
- Lack of access to justice, including returnees
- Racial and ethnic discrimination

## TEMPORARY FOREIGN WORKERS

- Employer-tied
- Blacklisting
- Confiscation of passports

# Interventions

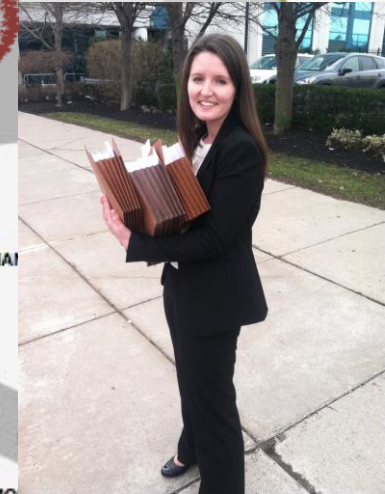
- Legal arguments
  - Just and favorable conditions of work
  - Full employment under conditions safeguarding fundamental political and economic freedoms to the individual
  - Extraterritorial obligations
  - International humanitarian law as interpretive tool
- Shaming terminology
- Index - mix of legal and derived norms



# Shifting the Shame

- Joseph Carens – moral obligation to regularize irregular migrants who have “established themselves firmly as members of society”
- Colin Grey – “integrated” migrants should be given a “non-oppressive status”
- Peter Singer – new ethic, need to reconsider the moral significance we currently place on national boundaries
- Sarah Fine – immigration controls should seek new prescriptions to correct for racist impact and racist colonial legacy
- Patty Tamara Lenard – need to respect decisions of guestworkers as “autonomous agents”
- Joel Trachtman – ethical distribution and liberty dictate ‘structuring borders to advance position of the least fortunate’
- Chantal Thomas – “presumption of sovereign exclusion need not be seen as immutable”

# Farmworker Legal Assistance Clinic



- Deportation Defense, Asylum
- Special Immigrant Juvenile Status
- Guardianship
- Domestic Violence, Trafficking-Victim-Visas
- Wrongful Discharge
- H2-A Recruitment Abuse
- Wage and Hour
- Policy projects



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